Computer Matching and Privacy Protection Act: Data Integration and Individual Rights

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SUMMARY

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Computer Matching and Privacy Protection Act: Data Integration and Individual Rights

Computers and information technologies have increased the amount of data that can be collected, stored, and processed. Computers make it easier to exchange, share, and match data on individuals across programmatic and agency boundaries, enabling the use of that data for various executive branch operations.

The Computer Matching and Privacy Protection Act of 1988 (CMPPA) provides the requirements and processes by which agencies may, for certain purposes, conduct a *matching program* using individuals' data. Congress passed the CMPPA to increase the administrative controls and oversight of matching programs. The CMPPA amended provisions enacted by the Privacy Act of 1974 and operates within the Privacy Act's statutory framework.

The CMPPA covers how agencies may conduct a computerized comparison of automated records to administer federal benefit programs or to use federal personnel and payroll records. A matching program may involve two or more federal agencies or a federal agency and a state or local government agency.

Matching programs are used throughout the executive branch at agencies such as the Department of Health and Human Services, the Department of Homeland Security, the Federal Communications Commission, the Small Business Administration, the Social Security Administration, and the Treasury Department. A matching program may exchange and compare any number of records, and some match millions of records.

The CMPPA establishes a number of requirements for agencies conducting matching programs. These requirements include the execution of written matching agreements that contain a number of specifics on the conduct of matching programs, cost-benefit analyses of matching programs and documentation of specific savings, and the establishment of a Data Integrity Board (DIB) within each federal agency that conducts or participates in a matching program to approve matching agreements and oversee matching programs. Matching agreements are to be available to the public and may be published on an agency's website. An agency's DIB is required to submit to the agency head and the Office of Management and Budget (OMB) an annual report that describes the agency's matching activities.

The CMPPA requires agencies to notify individuals of the use of their information in a matching program and verify the accuracy of information produced in a matching program before suspending, reducing, terminating, or denying assistance or payment under a federal benefit program or taking another adverse action against an individual. The law requires that individuals be given the opportunity to contest the accuracy of information used in a matching program.

OMB is required to issue guidance to agencies on implementing the law, provide ongoing assistance to agencies, and provide oversight of implementation. The Government Accountability Office found varying agency interpretations of the scope of the CMPPA and partially attributed the variation to unclear guidance from OMB.

Several uses of computer matching are excepted by statute from the CMPPA's requirements. In addition, the CMPPA does not authorize disclosures of information for matching except to a federal, state, or local government agency, and the act does not apply to federal agency matches involving nongovernment parties and data.

Matching program oversight by Congress may support implementation of the CMPPA. There are a number of areas Congress may want to consider and some possible directions for future oversight or legislation. These areas include (1) clarifying the scope of the CMPPA, (2) developing an accurate accounting of matching programs, (3) ensuring sufficient and contemporaneous OMB guidance, and (4) assessing regulation and oversight of data matching.

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Introduction

Federal agencies collect a significant amount of data about individuals' current and past circumstances. This information includes tax filings, mailing address, domestic and international travel, military enlistment, Medicare history, permits applied for, and federal financial assistance received, among other data. The executive branch has collected data on nearly every American in support of its various operations and services.

Congress has long recognized that privacy is directly affected and placed at risk when agencies collect and use data on individuals.[1] Computers and information technologies greatly increase the amount of data that can be collected, stored, and processed while also enabling innovative uses of that data. Computers make it easier to exchange, share, and match data on individuals across programmatic and agency boundaries. Congress acknowledged the threat computers pose to individual privacy when it passed the Privacy Act of 1974 (Privacy Act).[2]

Since at least in the 1970s, federal agencies have been sharing and matching data on individuals. One of the first well-known uses of a federal agency matching data was in 1977 for "Project Match."[3] The then-Department of Health, Education, and Welfare compared federal payroll records with records on recipients of the then-Aid to Families with Dependent Children program to find federal personnel who were receiving improper payments.[4]

In 1988, the House Committee on Government Operations[5] observed that the Office of Management and Budget's (OMB's) interpretations of the Privacy Act's disclosure restrictions had permitted disclosures to support computer matching.[6] The committee stated that it was "not aware of any computer match that could not be conducted because of Privacy Act disclosure rules."

Over many Congresses, various statutes have required agencies to exchange and match data on individuals for a specific purpose, such as determining eligibility for a federal benefit program.[7]

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[1] See Section 2(a)(1) of the Privacy Act of 1974 (P.L. 93-579; 88 Stat. 1896): "The privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information by federal agencies."

[2] See Section 2(a)(2) of the Privacy Act of 1974 (P.L. 93-579; 88 Stat. 1896): "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." The Privacy Act is codified at Title 5, Section 552a, of the *U.S. Code*.

[3] U.S. Congress, House Committee on Government Operations, *Computer Matching and Privacy Protection Act of 1988*, report to accompany H.R. 4699, 100th Cong., 2nd sess., July 27, 1988, H.Rept. 100-802, pp. 2-3; U.S. Congress, Senate Committee on Governmental Affairs, *The Computer Matching and Privacy Protection Act of 1987*, report to accompany S. 496, 100th Cong., 2nd sess., September 15, 1988, S.Rept. 100-516, p. 2.

[4] U.S. Congress, House Committee on Government Operations, *Computer Matching and Privacy Protection Act of 1988*, report to accompany H.R. 4699, 100th Cong., 2nd sess., July 27, 1988, H.Rept. 100-802, pp. 2-3. The Department of Health, Education, and Welfare was renamed the Department of Health and Human Services upon the establishment of the Department of Education (P.L. 96-88).

[5] The House Committee on Government Operations was renamed the House Committee on Government Reform and Oversight by P.L. 104-14, Section 1(a)(6). In the 106th Congress, the committee's name was changed to Committee on Government Reform by H.Res. 5. The name was changed again in the 110th Congress to Committee on Oversight and Government Reform by H.Res. 6. The 116th Congress changed the name to Committee on Oversight and Reform by H.Res. 6.

[6] U.S. Congress, House Committee on Government Operations, *Computer Matching and Privacy Protection Act of 1988*, report to accompany H.R. 4699, 100th Cong., 2nd sess., July 27, 1988, H.Rept. 100-802, p. 5.

[7] For example, the Deficit Reduction Act of 1984 (P.L. 98-369), established that every state that administers certain

The Computer Matching and Privacy Protection Act of 1988[8] (CMPPA) establishes procedures for agencies when they disclose and match data on individuals for certain purposes. These purposes are for determining eligibility for federal benefit programs, recouping payments and debts under those programs, and comparing records of federal personnel.[9] Computer matching conducted for these purposes is called a *matching program*.

Matching programs are used throughout the executive branch of the federal government. For example, in 2022, the Department of Justice (DOJ) and Internal Revenue Service (IRS) established a matching program so that DOJ could locate people who owe debts to the United States. Specifically, DOJ sends to the IRS the names and Social Security numbers (SSNs) of people who owe debts. The IRS then provides the mailing addresses of those people to DOJ so that DOJ can locate those debtors, initiate litigation, and enforce debt collection.[10]

This report provides an overview of the CMPPA and discusses its key statutory requirements for matching programs and how *matching program* has been interpreted and implemented by OMB and various executive agencies. This overview of the CMPPA leads to a discussion of issues for Congress and explores where it might consider modifying the CMPPA specifically and the use of data matching in the executive branch more generally.

What Is the Computer Matching and Privacy Protection Act (CMPPA)?

The CMPPA provides the requirements and processes by which agencies may, for certain purposes, conduct computer matching involving individuals' data. The act emerged from several congressional concerns at the time that the administrative controls and oversight of agency matching were inadequate and that the due process rights of individuals were not adequately protected from adverse actions stemming from inaccurate information.[11] Additionally, the extent of computer matching in the executive branch was unknown, partly because the practice itself was not clearly defined.[12]

The CMPPA amended provisions originally enacted by the Privacy Act. Thus, implementation of the CMPPA operates within the Privacy Act's statutory framework. The CMPPA, like the Privacy

Social Security programs must have an income and eligibility verification system that uses wage, income, and other information from the Social Security Administration and Internal Revenue Service and verifies immigration status with the then-Immigration and Naturalization Service if the applicant for a program is not a citizen or U.S. national (42 U.S.C. §1320b-7).

[8] P.L. 100-503.

[9] 5 U.S.C. §552a(8)(A)(i-ii).

[10] For more information on this specific matching program, see DOJ, "Privacy Act of 1974; Matching Program," 87 *Federal Register* 36344-36345, June 16, 2022. See also IRS, DOJ, "Computer Matching Agreement between Department of the Treasury Internal Revenue Service and Department of Justice for the Taxpayer Address Request Program," July 30, 2022, https://www.justice.gov/doj_irs_tar_cma_2022/download.

[11] U.S. Congress, House Committee on Government Operations, *Computer Matching and Privacy Protection Act of 1988*, report to accompany H.R. 4699, 100th Cong., 2nd sess., July 27, 1988, H.Rept. 100-802, p. 6; U.S. Congress, Senate Committee on Governmental Affairs, *The Computer Matching and Privacy Protection Act of 1987*, report to accompany S. 496, 100th Cong., 2nd sess., September 15, 1988, S.Rept. 100-516, pp. 6-9. For more on the history surrounding the development of CMPPA, including computer matching prior to the CMPPA, see **Appendix A**.

[12] U.S. Congress, House Committee on Government Operations, *Computer Matching and Privacy Protection Act of 1988*, report to accompany H.R. 4699, 100th Cong., 2nd sess., July 27, 1988, H.Rept. 100-802, p. 7.

Act, concerns records of U.S. citizens or permanent legal residents.[13] A *record* generally includes personal identifiers as well as other characteristics that can be ascribed to individuals. Records are contained within a *system of records*, which is generally understood as a group of records under an agency's control.[14]

According to a report by the Office of Technology Assessment (OTA) in 1986, computers and data communication technology increased the exchange of records in ways that could not be envisioned when the Privacy Act was passed in 1974,[15] including, for example, locating student loan defaulters who were federal government employees and using federal tax information to evaluate a Medicaid claim to be paid to a physician.[16] OTA argued in its 1986 report that "agency use of new electronic technologies in processing [individual] information has eroded the protections of the Privacy Act of 1974."[17]

The CMPPA does not define *computer matching* or *matching* per se and instead defines *matching program* (see text box, "Defining *Matching Program*").[18] In the simplest terms, a matching program involves the computerized comparison of records from two or more automated systems for determining eligibility for federal benefits or using the information of federal personnel, including payroll information. The act, as its name implies, is specifically concerned with computers comparing data and does not apply to matches that are done manually.[19]

Notably, the CMPPA does not independently authorize matching or create a new authority for agencies to match records. Instead, the CMPPA establishes requirements, processes, and institutional roles for matching authorized by other laws.

[13] *Record* is defined at Title 5, Section 552a(a)(4), of the *U.S. Code* as "any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, their education, financial transactions, medical history, and criminal or employment history and that contains their name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph." Neither the Privacy Act nor Section 552a uses or defines the term *personally identifiable information*, or PII.

[14] *System of records* is defined at Title 5, Section 552a(a)(5), of the *U.S. Code* 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." For more discussion about the Privacy Act, see DOJ, *Overview of the Privacy Act of 1974*, 2020, https://www.justice.gov/opcl/overview-privacy-act-1974-2020-edition. See also CRS Report R47058, *Access to Government Information: An Overview*, by Meghan M. Stuessy.

[15] OTA, *Federal Government Information Technology: Electronic Record Systems and Individual Privacy*, June 1986, p. 3. The OTA was established within the legislative branch by the Technology Assessment Act of 1972 (P.L. 92-484). The basic function of OTA was to "provide early indications of the probable beneficial and adverse impacts of the applications of technology and to develop other coordinate information which may assist the Congress" (86 Stat. 797). Congress eliminated funding for OTA in 1995. For more information, see CRS Report R46327, *The Office of Technology Assessment: History, Authorities, Issues, and Options*, by John F. Sargent Jr.

[16] OTA, *Federal Government Information Technology*, p. 4.

[17] OTA, *Federal Government Information Technology*, p. 99.

[18] 5 U.S.C. §552a(a)(8). For elaboration and discussion of the concept of computer matching as it relates to the CMPPA's definition of *matching program*, see in this report "Defining Matching for the Purposes of the CMPPA."

[19] OMB, "Privacy Act of 1974; Final Guidance Interpreting the Provisions of P.L. 100-503, the Computer Matching and Privacy Protection Act of 1988," 54 *Federal Register* 25822, June 19, 1989. Emphasizing the specific use of a computer might have had more significance in the late 1980s because computers were not as ubiquitous then as they are now. However, the salience of the computer in the decades since the CMPPA was enacted also emphasizes the act's ongoing importance.

Defining *Matching Program*

A *matching program* is a computerized comparison of

1. "two or more automated systems of records or a system of records with nonfederal records" for the purposes of
   - establishing or verifying eligibility for or compliance with statutory and regulatory requirements for a federal benefit program or
   - to recoup delinquent debts and improper payments made to recipients, beneficiaries, participants, or providers of services under these benefit programs;[20] or
2. "two or more automated federal personnel or payroll systems of records or a system of federal personnel or payroll records with nonfederal records."[21]

The CMPPA establishes a number of requirements for agencies conducting matching programs. These requirements include the execution of written matching agreements between the agencies involved in a specific matching program.[22] Agencies must also conduct cost-benefit analyses of matching programs[23] and document specific estimates of savings in matching agreements.[24]

Additionally, the CMPPA requires that each federal agency that conducts or participates in a matching program must establish a Data Integrity Board, which is to approve and oversee such programs.[25] The act also requires individuals to be notified of the use of their information in a matching program[26] and given the opportunity to contest the accuracy of the information.[27]

The act prescribes certain roles and responsibilities to federal agencies involved in matching programs based on whether they receive records or are the source of such records. For the purposes of the CMPPA and this report, a federal agency includes any executive department or establishment in the executive branch.[28] The CMPPA also identifies and establishes some requirements for nonfederal agencies—defined as a state or local government, or an agency thereof, that receives records contained in a system of records from a federal *source agency*.[29]

Congressional Interest in Data Matching

Congress has focused on the CMPPA because of the role it plays for people seeking assistance from federal government programs and in relation to the integrity of federal programs.

[20] 5 U.S.C. §552a(a)(8)(A)(i).

[21] 5 U.S.C. §552a(a)(8)(A)(ii).

[22] 5 U.S.C. §552a(o).

[23] 5 U.S.C. §552a(u)(4)(A).

[24] 5 U.S.C. §552a(o)(1)(B).

[25] 5 U.S.C. §552a(u).

[26] 5 U.S.C. §552a(o)(1)(D).

[27] 5 U.S.C. §552a(p)(1)(B).

[28] 5 U.S.C. §552a(a)(1). While Section 552a(a)(1) is for the definition of *agency* provided at Section 552(e), the subsection was redesignated as 552(f) by P.L. 99-570, the Anti-Drug Abuse Act of 1986 (100 Stat. 3207-49). The statutory definition of *agency* also includes military departments, federal government corporations, corporations controlled by the federal government, and any independent regulatory agency. The CMPPA and the Privacy Act use the same definition of *agency* as the Freedom of Information Act (5 U.S.C. §552(f)), which is based on the definition of *agency* enacted by the Administrative Procedure Act (5 U.S.C. §551(1)).

[29] 5 U.S.C. §552a(a)(10).

For example, the House Committee on Ways and Means held a hearing in the 112th Congress on the use of data matching to improve customer service, program integrity, and taxpayer savings, including the ways the CMPPA complicates the ability of agencies to share and match data.[30] The chair of committee said:

> As often happens in the government, Washington, D.C. is the lagging indicator with legislation versus where technology in the rest of the country is. The Computer Matching and Privacy Protection Act of 1988 went into action at a time that we lived in a different technology world, with different methods of sharing information…. And realistically, when we look at this, and trying to tie this information together … that matching done right, in an integrated fashion, will free capacity to manage by exception, instead of having to spend an inordinate amount of time…. We have disconnected processes, and that can't be fixed in the current data environment. And we have many of our citizens, many frustrated agency workers that are trying to be good stewards of the taxpayers' money that lose this in process.[31]

Congress has grappled with the CMPPA's provisions in drafting new legislation. For example, in the 117th Congress, H.R. 7275 would require data exchanges and the sharing of claims and payment data to detect and prevent duplicate medical payments. While the bill would require the Secretary of Veterans Affairs, the Secretary of Defense, and the administrator of the Centers for Medicare & Medicaid Services to enter into a data matching agreement, the bill specifically does not require such an agreement to comply with the CMPPA's requirement for matching agreements. Also introduced in the 117th Congress, H.R. 8416 would exempt from the CMPPA an information sharing system that would "facilitate the administration of the universal application for federal disaster assistance" and "detect, prevent, and investigate waste, fraud, abuse, or discrimination in the administration of disaster assistance programs."

The CMPPA arguably helps facilitate other laws and their implementation, such as benefits administration. In other cases, however, it may be seen as complicating implementation of legislation. For example, the Fraud Reduction and Data Analytics Act of 2015 (P.L. 114-186) required OMB to develop guidelines for agencies to (1) establish financial and administrative controls to identify and assess fraud risk and (2) design and implement control activities that would prevent, detect, and respond to fraud.[32] The act further required OMB to base these guidelines on the Government Accountability Office's (GAO's) "Framework for Managing Fraud Risks in Federal Programs."[33] GAO's framework includes data matching and combining data across programs and from separate databases, if legally permissible, to facilitate reporting and analytics.[34] However, GAO noted in its framework that agencies cited the CMPPA as a hindrance to detecting fraud.[35]

The Payment Integrity Information Act of 2019 (P.L. 116-117) superseded the Fraud Reduction and Data Analytics Act. The Payment Integrity Information Act permits the head of each executive agency to enter into matching agreements with other agencies to allow for ongoing

[30] U.S. Congress, House Committee on Ways and Means, Subcommittee on Human Resources, *On the Use of Data Matching to Improve Customer Service, Program Integrity, and Taxpayer Savings*, committee print, 112th Cong., 1st sess., March 11, 2011, Serial 112-HR2.

[31] Ibid., p. 60.

[32] 130 Stat. 546.

[33] See GAO, *A Framework for Managing Fraud Risks in Federal Programs*, GAO-15-593SP, July 2015, https://www.gao.gov/assets/gao-15-593sp.pdf.

[34] GAO, *A Framework for Managing Fraud Risks in Federal Programs*, p. 23.

[35] GAO, *A Framework for Managing Fraud Risks in Federal Programs*, p. 7.

automated data matching to detect and prevent improper payments.[36] The law also allows matching agreements to terminate in three years (or less) and to be extended for up to three years.[37] For a discussion of matching agreements, see "Matching Agreements" within this report.

Defining *Matching* for the Purposes of the CMPPA

The concept of *computer matching* and the statutory definition of *matching program* are separate and distinct. The CMPPA does not define computer matching as the activity to be regulated. Rather, the CMPPA defines what constitutes a matching program and is thus subject to the act's requirements. While computer matching may invoke various methods and have various applications, the scope of the CMPPA is limited to what the statute has defined as a matching program.

The separation between computer matching and a matching program, however, creates ambiguity as to whether certain methods of computer matching are consistent with the statutory definition of *matching program*, including how OMB has interpreted the definition of *matching program*. According to a 2014 GAO report, ambiguity in the definition affects consistent implementation of the act across agencies and creates confusion among agencies as to what types of computer matching activities are covered by the CMPPA:[38]

> Varying agency interpretations of the scope of the act are partially due to unclear guidance from OMB on this subject. OMB's 1989 matching guidance includes examples of front-end verification programs that are covered by the act, but none of OMB's guidance documents indicate specifically whether queries are subject to the act.[39]

[36] 31 U.S.C. §3354(d)(1)(A).

[37] 31 U.S.C. §3354(d)(1)(A)(C).

[38] For further discussion, see in this report "GAO's 2014 Report on Agency Interpretations of Matching Programs."

[39] GAO, *Computer Matching Act: OMB and Selected Agencies Need to Ensure Consistent Implementation*, GAO-14-44, January 2014, p. 17.

Key Terms and Related Concepts in the CMPPA

Classic computer matching is a way to compare at once many records from different sources (e.g., different agencies).

Computer matching agreement is the written agreement between a source agency and recipient agency that specifies the details of the matching program (5 U.S.C. §552a(o)).

Data integrity board is a body within a federal agency that participates in a matching program. It makes decisions about computer matching agreements (5 U.S.C. §552a(u)).

Front-end verification compares a single record with information from another source (e.g., a different agency). An example of front-end verification is querying a database for a single record.

Matching program is a computerized comparison of automated federal records or of federal records with state or local government records to determine eligibility for a federal benefit program, to recover debts and improper payments made under federal benefit programs, or to compare federal personnel or payroll records (5 U.S.C. §552a(a)(8)).

Recipient agency is the agency in a matching program that receives records disclosed by a source agency (5 U.S.C. §552a(a)(9)).

Source agency is the agency in a matching program that discloses records (5 U.S.C. §552a(a)(11)).

Scoping Computer Matching and Methods for How Records Are Compared

When considering the CMPPA bill introduced in the House (H.R. 4699), the Committee on Government Operations characterized computer matching as "the computerized comparison of records" for specific purposes.[40] The committee then discussed two methods for computer matching—"classic computer matching" and "front end verification."

Classic computer matching "involves all the records in one record system with all the records in a second system."[41] All records are reviewed without selection or specific targeting.[42] Front-end verification is more narrowly focused on "comparing a single record with the contents of separate record system."[43] The committee noted the lack of federal guidelines and statutory and administrative controls for front-end verification.[44]

The Committee on Governmental Affairs[45] did not describe methods for computer matching in its report on the Senate's CMPPA bill (S. 496) but described computer matching as the "computer-assisted comparison of two or more automated lists or files to identify inconsistencies or irregularities among the lists or files."[46] The committee included "so-called front-end eligibility verification matches" as one of the categories of computer matches that would meet the definition of *matching program*.[47] The committee reported:

[40] U.S. Congress, House Committee on Government Operations, Computer Matching and Privacy Protection Act of 1988, report to accompany H.R. 4699, 100th Cong., 2nd sess., July 27, 1988, H.Rept. 100-802, p. 1.

[41] Ibid., p. 4.

[42] Ibid.

[43] Ibid.

[44] Ibid., p. 10.

[45] The Committee on Governmental Affairs was subsequently renamed the Committee on Homeland Security and Governmental Affairs by S.Res. 445 in the 108th Congress.

[46] U.S. Congress, Senate Committee on Governmental Affairs, *The Computer Matching and Privacy Protection Act of 1987*, report to accompany S. 496, 100th Cong., 2nd sess., September 15, 1988, S.Rept. 100-516, p. 2.

[47] Ibid., p. 10.

> Unlike current OMB guidelines which do not apply to front-end eligibility verification or to matching programs that do not compare a substantial number of records, checks on specific individuals to verify data … are subject to the bill.[48]

As part of its role in implementing the Privacy Act, OMB issued guidance in 1979 on matching programs and revised guidance in 1982.[49] The 1979 guidance stated that matching programs do not include checks on specific individuals to verify information.[50] The 1982 guidance maintained that matching programs do not include checks on specific individuals when done within a certain time frame.[51]

A CMPPA bill (S. 2756) introduced in the 99th Congress, identified "front-end eligibility verification programs" as a specific method of matching subject to the requirements for matching programs. S. 2756 defined *front-end verification programs* as "the certification of accuracy of information supplied by an applicant for federal financial assistance by matching such information against a computerized data base." However, the CMPPA bills introduced in the 100th Congress did not use nor define *front-end eligibility verification programs*. For more discussion on the legislative history of the CMPPA, see **Appendix A** of this report.

While the provisions of law enacted by the CMPPA do not reference either *classic computer matching* or *front-end verification*, the terms have been used in committee reports, the guidance issued by OMB, and review by GAO of OMB guidance and agency implementation. This suggests these terms are relevant to how agencies conduct matching programs.

Methods of Computer Matching: Classic Computer Matching and Front-End Verification

Classic Computer Matching

The House Committee on Government Operations described "classic computer matching" as comparing many individual or organizational records from two or more separate databases.[52] These records may be matched on name, SSN, address, government contract number, or other identifiers.[53] When the identification criterion for one record matches the same identification criterion in another record, this is called "a match."[54]

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[48] Ibid., p. 11.

[49] See **Appendix A** for a perspective from the House Committee on Government Operations on OMB's guidance on matching programs.

[50] OMB, "Privacy Act of 1974; Supplemental Guidance for Matching Programs," 44 *Federal Register* 23139, April 18, 1979.

[51] OMB, "Privacy Act of 1974; Revised Supplemental Guidance for Conducting Matching Programs," 47 *Federal Register* 21657, May 19, 1982.

[52] U.S. Congress, House Committee on Government Operations, *Computer Matching and Privacy Protection Act of 1988*, report to accompany H.R. 4699, 100th Cong., 2nd sess., July 27, 1988, H.Rept. 100-802, p. 4.

[53] U.S. Congress, Senate Committee on Governmental Affairs, *The Computer Matching and Privacy Protection Act of 1987*, report to accompany S. 496, 100th Cong., 2nd sess., September 15, 1988, S.Rept. 100-516, p. 2.

[54] A match might also be called a "hit" or "raw hit" (see U.S. Congress, House Committee on Government Operations, *Computer Matching and Privacy Protection Act of 1988*, report to accompany H.R. 4699, 100th Cong., 2nd sess., July 27, 1988, H.Rept. 100-802, p. 4; U.S. Congress, Senate Committee on Governmental Affairs, *The Computer Matching and Privacy Protection Act of 1987*, report to accompany S. 496, 100th Cong., 2nd sess., September 15, 1988, S.Rept. 100-516, p. 16).

Classic computer matching may be used to identify people enrolled in two programs, such as all federal employees who receive a particular benefit under a federal benefit program.[55] It may also be used to identify and compare records that have a particular characteristic, such as to compare federal program beneficiaries' records with financial records to identify financial assets in excess of a certain, specified amount.[56]

Front-End Verification

In "front-end verification," matching is the technique of comparing information provided by a single program applicant with data in other federal government files or with data in a separate record system.[57] This method of computer matching usually occurs at a very early stage—or the front-end—of a longer application process for benefits, assistance, or employment. Front-end verification acts as an initial filter for determining eligibility by verifying information provided by an applicant.[58] It may affect whether an individual can proceed to the next stage of the application process and have the application further considered.

Matching Programs: Computer Matching for Specific Purposes

The CMPPA defines *matching program* as *any* computerized comparison of two or more automated systems of records or a system of records with nonfederal records for one of the purposes defined in the CMPPA.[59] Specifically, the CMPPA covers how agencies conduct matching programs related to (1) federal benefit program administration and (2) the use of federal personnel and payroll records.[60]

Administration of Federal Benefit Programs

The CMPPA covers computerized comparisons that are used for verifying or establishing the eligibility of applicants for federal benefit programs, including those that provide cash, in-kind assistance, and payments.[61] These matching programs include those that determine the ongoing eligibility of a current benefit program participant, such as confirming compliance with program-specific statutory or regulatory requirements.

Computerized comparisons that are for the purpose of recouping of payments and debts made under benefit programs are also covered by the CMPPA as matching programs.[62]

[55] U.S. Congress, House Committee on Government Operations, *Computer Matching and Privacy Protection Act of 1988*, report to accompany H.R. 4699, 100th Cong., 2nd sess., July 27, 1988, H.Rept. 100-802, p. 4.

[56] Ibid.

[57] Ibid.

[58] Ibid.

[59] 5 U.S.C. §552a(a)(8)(A)(i).

[60] 5 U.S.C. §552a(a)(8).

[61] 5 U.S.C. §552a(a)(8)(A)(i)(I).

[62] 5 U.S.C. §552a(a)(8)(A)(i)(II).

Using Federal Personnel and Payroll Records

The CMPPA also covers computerized comparisons of automated federal personnel or payroll records.[63] Whereas the CMPPA states the particular purposes under which a matching program can be used in benefit program administration, there is no direct reference to a particular purpose with respect to federal personnel or payroll records.

In its report on the CMPPA, the Senate Committee on Governmental Affairs noted the risk involved in matches of federal personnel or payroll records:

> [H]istorically, many matching programs have involved the records of federal employees or federal retirees…. Because the files on these individuals are most readily available to agencies for use in matching programs, concerns have been raised that these individuals are "captives" of matching programs and could, unless protected, be most vulnerable to breaches of privacy in matching programs.[64]

OMB Guidance on Matching Programs Covered by the CMPPA

The CMPPA requires OMB to issue guidance to agencies on implementing the law.[65] OMB's *Final Guidance Interpreting the Provisions of* P.L. 100-503*, the Computer Matching and Privacy Protection Act of 1988* discusses the definition of *matching program* to include federal personnel or payroll matches and federal benefit matches.[66]

Of federal personnel or payroll matches, OMB states that matches must be done for reasons other than routine administrative purposes for the CMPPA to cover it as a matching program.[67] Furthermore, OMB characterizes these matching programs to include "matches whose purpose is to take any adverse financial, personnel, disciplinary, or other adverse action against federal personnel."[68]

Four Elements of Matching Programs Involving Federal Benefit Programs

OMB's guidance includes four elements within its characterization of a "federal benefits matching program:" (1) the computerized comparison of data, (2) categories of subjects covered, (3) types of programs covered, and (4) matching purpose. According to OMB, all four elements must be present to be a matching program covered by the CMPPA.[69]

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[63] 5 U.S.C. §552a(a)(8)(A)(ii).

[64] U.S. Congress, Senate Committee on Governmental Affairs, *The Computer Matching and Privacy Protection Act of 1987*, report to accompany S. 496, 100th Cong., 2nd sess., September 15, 1988, S.Rept. 100-516, p. 11.

[65] 5 U.S.C. §552a(v)(1).

[66] OMB, "Privacy Act of 1974; Final Guidance Interpreting the Provisions of P.L. 100-503, the Computer Matching and Privacy Protection Act of 1988," 54 *Federal Register* 25822-25823, June 19, 1989 (cited hereinafter as OMB, "Final Guidance Interpreting the CMPPA").

[67] OMB, "Final Guidance Interpreting the CMPPA," p. 25823.

[68] OMB, "Final Guidance Interpreting the CMPPA," p. 25824.

[69] OMB, "Final Guidance Interpreting the CMPPA," pp. 25822-25823.

Computerized Comparison of Data

In its guidance, OMB states that to be considered a matching program, the activity must involve a computerized comparison and records from two or more automated systems of records or from an agency's automated system of records and automated records maintained by a nonfederal agency (i.e., an agency or agent of state or local government).[70] OMB provides three examples of computerized comparisons of data.[71]

1. A state government employee accesses an automated federal system of records and enters data received from an applicant that is maintained in an automated form by the state government. The state employee matches this data with the federal information, makes an eligibility determination, and updates the state's database.
2. A state government employee enters data about applicants for a federal benefit program into an automated database. At the end of the week, the state government sends current applicant "tapes" to a federal agency, which matches the data with information in its automated system of records.[72] The federal agency reports results from the match to the state.
3. A federal agency operating a benefits program sends a tape with the information of defaulters to the Office of Personnel Management (OPM) to match against an OPM automated system of records that contains information about federal retirees in order to locate defaulters.

OMB also addresses whether information received orally from an applicant by a state employee and entered into a federal system of records constitutes a matching program.[73] OMB believed that the state government would likely create and maintain a record using information it had received orally and entered into a federal system of records and, therefore, would be covered by the CMPPA.[74]

OMB's guidance does not directly mention or include *front-end verification* in its discussion of the computerized comparison of data or its definition of *matching program*. However, *front-end eligibility verification programs* is a term used by OMB in the context of one of the law's requirements for providing notice to individuals that their records may be used in a matching program.[75]

Categories of Subjects

OMB's guidance also describes three categories of subjects that are part of the definition of *matching program* and thus covered by the CMPPA: (1) applicants for federal benefit programs

[70] OMB, "Final Guidance Interpreting the CMPPA," p. 25822.

[71] OMB, "Final Guidance Interpreting the CMPPA."

[72] Data storage includes many technologies, which are constantly evolving. Despite the age of OMB's guidance using the term *tape*, the National Institute of Standards and Technology references tapes among other storage types in its *Security Guidelines for Storage Infrastructure*, which was published in 2020. See Ramaswamy Chandramouli and Doron Pinhas, *Security Guidelines for Storage Infrastructure*, U.S. Department of Commerce, National Institute of Standards and Technology, October 2020, https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-209.pdf.

[73] OMB, "Final Guidance Interpreting the CMPPA," p. 25819.

[74] OMB, "Final Guidance Interpreting the CMPPA."

[75] OMB, "Final Guidance Interpreting the CMPPA," p. 25825. The requirement to provide notice is discussed in "Notifying Individuals of the Use of Their Information in a Matching Program."

(i.e., applicants initially applying for a benefits program); (2) program beneficiaries (i.e., program participants who currently receive or formerly received benefits); and (3) providers of services that support federal benefit programs (i.e., those that derive income from a program but are not its primary beneficiaries).[76]

Types of Federal Benefit Programs

OMB defines *matching program* to cover federal benefit programs that provide cash or in-kind assistance to individuals.[77] For the purposes of the CMPPA, in-kind assistance includes payments, grants, loans, or loan guarantees.[78] Any program that does not involve cash or in-kind assistance does not meet the definition of *matching program* and is not covered by the CMPPA.[79]

OMB also clarifies in its guidance that the benefit program has to be using records of citizens or of aliens lawfully admitted for permanent residence for the matching to be subject to the CMPPA.[80]

Matching Purpose

OMB's guidance includes the purpose of matches as an element of matching programs involving federal benefits. The CMPPA defines these purposes: to establish or verify eligibility for a federal benefits program, verify compliance with a program's statutory or regulatory requirements, and recoup payments and debts under such benefit programs.[81]

OMB goes further, however, and states that should any element be missing—for example, a matching purpose—then such matching would not be a matching program and would therefore not be covered by the CMPPA.[82]

OMB provides an example of two agencies—the Department of Education and the Department of Veterans Affairs—matching information of student loan recipients and education benefit recipients. The purpose of the match is to maintain current addresses for these program beneficiaries. Because the match is not for a purpose defined by the CMPPA, it is not a matching program.[83]

GAO's 2014 Report on Agency Interpretations of Matching Programs

There is a lack of consistency across agencies in their interpretation of what constitutes a matching program,[84] which ultimately affects compliance. OMB, as part of its guidance

[76] OMB, "Final Guidance Interpreting the CMPPA," pp. 25822-25823.

[77] OMB, "Final Guidance Interpreting the CMPPA," p. 25823.

[78] 5 U.S.C. §552a(a)(12).

[79] OMB, "Final Guidance Interpreting the CMPPA," p. 25823.

[80] OMB, "Final Guidance Interpreting the CMPPA," The Privacy Act's definition of *individual*—provided at 5 U.S.C. §552a(a)(2)—applies to the CMPPA. *Individual* means "a citizen of the United States or an alien lawfully admitted for permanent residence."

[81] OMB, "Final Guidance Interpreting the CMPPA;" 5 U.S.C. §552a(a)(8)(A)(I-II).

[82] OMB, "Final Guidance Interpreting the CMPPA," p. 25823.

[83] OMB, "Final Guidance Interpreting the CMPPA," p. 25823.

[84] GAO, *Computer Matching Act*, p. 28.

interpreting the CMPPA, warned agencies against "engaging in activities intended to frustrate the normal application of the act."[85] OMB also states that it is "extremely concerned that agencies not adopt data exchange practices that deliberately avoid the reach of the act where compliance would otherwise be required."[86]

According to a 2014 report, GAO found that three of the seven agencies it reviewed had narrow understandings of the scope of *matching program*.[87] Officials at these three agencies had interpreted that compliance with the CMPPA was required only when matching programs involved an entire system of records against another database,[88] similar to the "classic computer matching" method. For example, some agencies believed that the act did not apply to matching of a single record, single-record queries of systems of records, or front-end verification even if such matching was for one of the purposes defined by the CMPPA.[89] Conversely, GAO found that another three of the seven agencies it reviewed considered front-end verification or front-end queries to require compliance with the CMPPA.[90] GAO stated that

> varying agency interpretations of the scope of the act are partially due to unclear guidance from OMB on this subject. OMB's 1989 matching guidance includes examples of front-end verification programs that are covered by the act, but none of OMB's guidance documents indicate specifically whether queries are subject to the act…. Without clear guidance on the scope of the act, agencies are likely to continue to interpret what the act covers in varying ways, and its privacy protections are likely to continue to be inconsistently applied.[91]

Defining Parties to a Matching Program

A matching program involves two or more federal agencies or a federal agency and a state or local government or an agency thereof.[92] The CMPPA accounts for the different roles an agency plays by defining *recipient agency* and *source agency*.[93]

A *recipient agency* receives information contained in a system of records from a source agency.[94] A *source agency* discloses information to a recipient agency.[95] A recipient agency may disclose information that it matches back to the source agency.[96]

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[85] OMB, "Final Guidance Interpreting the CMPPA," p. 25818.

[86] OMB, "Final Guidance Interpreting the CMPPA," p. 25818.

[87] GAO, *Computer Matching Act*, pp. 14-17.

[88] GAO, *Computer Matching Act*, p. 15.

[89] GAO, *Computer Matching Act*, p. 15.

[90] GAO, *Computer Matching Act*, p. 16.

[91] GAO, *Computer Matching Act*, p. 17.

[92] Two or more federal agencies are usually involved in a matching program because matches that use only records from one agency's system of records are excepted from the definition of *matching program*. See OMB, "Final Guidance Interpreting the CMPPA," p. 25824; 5 U.S.C. §552a(a)(8)(B)(v)(II).

[93] *Recipient agency* is defined at Title 5, Section 552a(a)(9), of the *U.S. Code*. *Source agency* is defined at Title 5, Section 552a(a)(11).

[94] 5 U.S.C. §552a(a)(9).

[95] 5 U.S.C. §552a(a)(11).

[96] For example, the IRS sends back to DOJ the addresses it has found for the individuals from whom DOJ is seeking to collect debts (see IRS, DOJ, "Computer Matching Agreement Between Department of the Treasury Internal Revenue Service and Department of Justice for the Taxpayer Address Request Program"). In **0** there are examples of matching programs where the recipient agency does not send records back to the source agency.

A source agency is either a (1) federal executive branch agency or (2) a state or local government, including an agency thereof.[97] A recipient agency is a federal agency or one of its contractors. The CMPPA does not specifically name nonfederal agencies (i.e., state or local governments) in the definition of *recipient agency*. Certain federal benefit programs, however, may address circumstances when a nonfederal agency receives records disclosed to it by a federal agency.

State and Local Governments as Recipients of Federal Data

Existing statutes may imply that a state or local government can be the recipient of records from a federal agency, even if nonfederal governments are not specifically included in the definition of *recipient agency* enacted by the CMPPA.

The definition of *nonfederal agency* in the CMPPA references state and local governments receiving records from a federal agency for a matching program. As defined by the CMPPA, *nonfederal agency* means any state or local government, or agency thereof, *that receives records* contained in a system of records from a federal source agency for use in a matching program.[98]

For example, the Food and Nutrition Service (FNS) within the U.S. Department of Agriculture published a notice in the *Federal Register* of a matching program between FNS and the state agencies that administer the Supplemental Nutrition Assistance Program (SNAP).[99] The matching notice indicates that state agencies are able to access a national database—the Electronic Disqualified Recipient System (eDRS)—maintained by FNS to determine whether an applicant for SNAP has been disqualified from receiving SNAP benefits in any state because of an intentional program violation (IPV).[100] FNS previously published a rule requiring each state agency to (1) report to eDRS information on individuals disqualified from SNAP because of an IPV and (2) access eDRS to check for disqualifications.[101]

According to a set of matching notices published in the *Federal Register*, the Federal Communications Commission, via the Universal Service Administrative Company, sends information on Emergency Broadband Benefit Program (EBBP) applicants to certain state agencies, including, at a minimum, names, birth dates, and the last four digits of SSNs.[102] These state government agencies then match that information to their SNAP and Medicaid recipient records to confirm eligibility for the EBBP.

[97] 5 U.S.C. §552a(a)(11).

[98] 5 U.S.C. §552a(a)(10).

[99] FNS, "Privacy Act of 1974; Computer Matching Program," 86 *Federal Register* 54-55, January 4, 2021. The CMPPA requires published notice in the *Federal Register* of a new or revised matching program (5 U.S.C. §552a(e)(12)).

[100] FNS, "Privacy Act of 1974; Computer Matching Program," 86 *Federal Register* 55, January 4, 2021.

[101] 7 C.F.R. §273.16(i)(2); 7 C.F.R. §273.16(i)(4).

[102] Federal Communications Commission, "Privacy Act of 1974; Matching Program," 86 *Federal Register* 56266, October 8, 2021 (notice of a matching program with the Connecticut Department of Social Services); Federal Communications Commission, "Privacy Act of 1974; Matching Program," 87 *Federal Register* 12167-12168, March 3, 2022 (notice of a matching program with the Virginia Department of Social Services); Federal Communications Commission, "Privacy Act of 1974; Matching Program," 87 *Federal Register* 12454, March 4, 2022 (notice of a matching program with the Washington State Department of Social and Health Services, Economic Services Administration).

Key Statutory Requirements for Matching Programs

Matching Agreements

Generally, the CMPPA requires a written matching agreement between a source agency and a recipient agency prior to the disclosure and matching of records.[103] The law also prescribes the information that must be included in a matching agreement.[104] Among other details, matching agreements are to include:

- the justification for the program and the anticipated results, including a specific estimate of any savings;
- a description of the records that will be matched, including each data element to be used, the approximate number of records that will be matched, and the anticipated start and completion dates of the matching program (see **Table B-1** for examples);
- procedures for providing notice to an individual that information provided may be subject to verification through a matching program; and
- procedures for verifying information produced in a matching program.[105]

A matching agreement is not effective until 30 days after a copy has been sent to the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Oversight and Reform.[106] For more information on the roles committees play in receiving information on matching programs, see "Reporting from Agencies to OMB and Congress" within this report.

Matching agreements are valid for an initial 18-month period.[107] Within three months of the expiration of the initial agreement, the agreement may be renewed for one additional year if the matching program will be conducted without any change.[108]

Matching agreements are also to be made available to the public.[109] In OMB's *Circular No. A-108*, "Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act," each agency with one or more matching programs is to list and provide links to up-to-date matching agreements for all active matching programs on the agency's Privacy Act website.[110]

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[103] 5 U.S.C. §552a(o)(1).

[104] 5 U.S.C. §552a(o)(1)(A-K).

[105] For a complete enumeration of what matching agreements are to include, see 5 U.S.C. §552a(o)(1)(A-K). These requirements are also summarized in **0**.

[106] 5 U.S.C. §552a(o)(2)(B). The statute provides the names of committees that have since been renamed. The committee names used here are the most current.

[107] 5 U.S.C. §552a(o)(2)(C).

[108] 5 U.S.C. §552a(o)(2)(D).

[109] 5 U.S.C. §552a(o)(2)(A)(ii).

[110] In *Circular No. A-108,* OMB directs agencies to create a webpage that includes, at a minimum, various materials related to the agency's implementation of the Privacy Act, including the CMPPA. See OMB, *Circular No. A-108,* "Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act," December 23, 2016, p. 30, https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A108/omb_circular_a-108.pdf.

Data Integrity Boards

An agency that conducts a matching program—either as a source or recipient agency—must establish a Data Integrity Board (DIB).[111] Nonfederal agencies are not required to establish DIBs.[112]

An agency's DIB approves or declines a proposed matching program and executes matching agreements. Among other responsibilities under the CMPPA, the board is to assess cost-benefit analyses of matching programs and review on an annual basis any existing matching programs in which the agency participates to assess the continued justification for the agency's participation.[113] The board is to compile an annual report describing the agency's matching activities and submit the report to OMB and the head of the agency.[114]

The CMPPA directs the head of the agency participating in a matching program to appoint certain senior officials within the agency to the DIB. Each DIB must include any senior official within the agency responsible for implementation of the Privacy Act and the inspector general (IG) if the agency has an IG.[115] The IG, however, cannot chair the board.[116] OMB recommends that the agency Privacy Act officer be secretary of the board.[117] OMB also suggests that much of the board's work, except for the approval of matching agreements, can be delegated to less senior members.[118] Agencies must report changes to the board's membership in the annual report compiled by the DIB.[119]

Table 1 shows examples of the variation in DIB membership composition across three agencies, including variation in the number of board members and in titles and roles represented on the board. One of the examples is of an agency where a member of the board—the chief privacy officer—has designated members to the board.[120]

[111] 5 U.S.C. §552a(u)(1).

[112] OMB, "Final Guidance Interpreting the CMPPA," p. 25825.

[113] 5 U.S.C. §552a(u)(3).

[114] 5 U.S.C. §552a(u)(3)(D).

[115] 5 U.S.C. §552a(u)(2). For more information on IGs within agencies, see CRS Report R45450, *Statutory Inspectors General in the Federal Government: A Primer*, by Ben Wilhelm.

[116] 5 U.S.C. §552a(u)(2).

[117] OMB, "Final Guidance Interpreting the CMPPA," p. 25827.

[118] OMB, "Final Guidance Interpreting the CMPPA," pp. 25827-25828.

[119] 5 U.S.C. §552a(u)(3)(D)(iii).

[120] U.S. Department of Homeland Security, Privacy Office, *Computer Matching Agreements Annual Report Covering the Period January 1, 2020-December 31, 2020*, October 21, 2021, pp. 4-5, https://www.dhs.gov/sites/default/files/publications/2020_cma_annual_report.pdf.

Table 1. Data Integrity Board Membership Composition for Selected Agencies

In Calendar Year 2020

Department of Homeland Security	Department of Health and Human Services	Social Security Administration
Chief Privacy Officer (Chairperson) Inspector General Senior Director of Policy and Oversight, Privacy Office Attorney, Office of General Counsel Members designated by the Chief Privacy Officer: Chief Information Officer Deputy Officer for Programs and Compliance Deputy Director of Operations, U.S. Citizenship and Immigration Services Associate Administrator, Office of Policy and Program Analysis, Federal Emergency Management Agency Chief Data Officer/Assistant Director, Immigration and Customs Enforcement	Assistant Secretary for Administration (Chairperson) Deputy Agency Chief Freedom of Information Act Officer and Privacy Act Senior Agency Official for Privacy Principal Deputy Inspector General Assistant Deputy Associate General Counsel	Executive Director, Office of Privacy and Disclosure (Chairperson) Deputy Commissioner for Retirement and Disability Policy Deputy Commissioner for Systems and Chief Information Officer Deputy Commissioner for Operations Inspector General for Social Security Deputy Commissioner for Budget, Finance, and Management Deputy Commissioner for Legislation and Congressional Affairs

Sources: U.S. Department of Homeland Security, Privacy Office, *Computer Matching Agreements Annual Report Covering the Period January 1, 2020-December 31, 2020*, October 21, 2021, https://www.dhs.gov/sites/default/files/publications/2020_cma_annual_report.pdf; U.S. Department of Health and Human Services, "2020 HHS Annual Computer Matching Report," December 13, 2021, https://www.hhs.gov/foia/privacy/cmas/2020-hhs-annual-computer-matching-report.html; Social Security Administration, "2020 Annual Matching Activity Report," https://www.ssa.gov/privacy/cma/2020%20Annual%20Matching%20Activity%20Report.pdf.

Notes: Agencies selected based on the availability of the DIBs' annual report for 2020. The agencies included in the table were among those also selected by GAO for its 2014 report, "Computer Matching Act: OMB and Selected Agencies Need to Ensure Consistent Implementation," because of their benefits and assistance program expenditures (p. 2).

Cost-Benefit Analyses

The House Committee on Government Operations in 1988 noted in its report accompanying H.R. 4699 that proponents of computer matching believed it yielded savings to the federal government through reductions in fraud, waste, and abuse in benefit programs.[121]

The committee thought that computer matching should be permitted only if a benefit to the government could be demonstrated.[122] It stated that "the cost effectiveness of computer matching has yet to be clearly demonstrated. This is the conclusion that can be drawn from recent studies

[121] U.S. Congress, House Committee on Government Operations, *Computer Matching and Privacy Protection Act of 1988*, report to accompany H.R. 4699, 100th Cong., 2nd sess., July 27, 1988, H.Rept. 100-802, p. 11.

[122] Ibid.

by GAO and OTA."[123] The committee, however, citing a GAO report, saw value in cost-benefit analyses for determining the cost effectiveness of matching programs.[124]

The CMPPA generally requires an agency to assess the costs and benefits of a proposed matching program before approving a matching agreement.[125] These cost-benefit analyses are to demonstrate that the computer matching is likely to be cost effective in order for the matching agreement to receive approval.[126] Matching agreements are to include the specific estimate of savings.[127]

In its guidance, OMB advises that a recipient agency conduct the cost-benefit analysis for a proposed matching program and share the results with the source agency to aid in the source agency's decisionmaking to participate in the matching program.[128]

While a matching agreement is to include specific estimates of any savings, OMB's guidance cautions against literal interpretations of the cost-effectiveness requirement. In an example, OMB says that the first year of a matching program may yield a highly favorable benefit-to-cost ratio, but the ratio may be less favorable in subsequent years because its deterrent effect on fraud, for example, is no longer as dramatic.[129] OMB also advises agencies to consider the costs of not conducting a matching program when estimating costs and benefits.[130]

Waiving the Cost-Benefit Analysis Requirement

The CMPPA's requirement to assess costs and benefits can be waived under one of two circumstances:

1. The DIB determines that, in accordance with guidance issued by OMB, a cost-benefit analysis is not required; or
2. An existing statute requires a matching program.[131]

In the latter scenario, a cost-benefit analysis is to be performed upon the expiration of the initial 18-month matching agreement and before the DIB approves a renewal of the agreement.[132] Furthermore, according to OMB's guidance, cost-benefit analyses of matching programs required by statute do not need to demonstrate a financial savings or suggest cost-effectiveness, but the analysis must be done nevertheless to extend the matching program for one year.[133]

[123] Ibid., p. 13.

[124] Ibid., p. 12.

[125] 5 U.S.C. §552a(u)(4).

[126] 5 U.S.C. §552a(u)(4)(A).

[127] 5 U.S.C. §552a(o)(1)(B).

[128] OMB, "Final Guidance Interpreting the CMPPA," p. 25825.

[129] OMB, "Final Guidance Interpreting the CMPPA," p. 25828.

[130] OMB, "Final Guidance Interpreting the CMPPA," p. 25828.

[131] 5 U.S.C. §552a(u)(4)(B); 5 U.S.C. §552a(u)(4)(C).

[132] 5 U.S.C. §552a(o)(2)(C-D).

[133] OMB, "Final Guidance Interpreting the CMPPA," p. 25828.

Cost-Benefit Analysis Methods

The CMPPA does not specify the elements to be considered in a cost-benefit analysis of a matching program but rather directs OMB to develop guidance to agencies on implementation.[134] OMB's guidance suggests agencies consult the 1986 GAO report "Computer Matching: Assessing its Costs and Benefits" to inform their cost-benefit analyses.[135] GAO's cost-benefit methodology includes estimating two key costs (personnel and computer costs) and two key benefits: (1) avoidance of future improper payments and (2) recovery of improper payments and debts.[136]

In its 2014 report, GAO found that most matching agreements for the agencies GAO examined did not assess the key elements included in GAO's 1986 methodology report.[137] In its guidance, OMB stated that it would develop "a checklist providing a step-by-step methodology for accomplishing benefit-cost analysis,"[138] but it appears to GAO that no such checklist has been made available to agencies.[139]

Table 2 provides an illustration of the reported savings, costs, and cost-benefit ratios reported in the matching agreements of some matching programs. In these examples, some agreements report only costs or only savings. Without both costs and savings, it is difficult to ascertain the financials of matching programs. Even where matching is required by law, missing information in matching agreements on costs and savings is consequential for understanding the economics of matching that Congress required in statute.

[134] 5 U.S.C. §552a(v)(1); GAO, *Computer Matching Act*, p. 11.

[135] OMB, "Final Guidance Interpreting the CMPPA," p. 25828; GAO, *Computer Matching: Assessing Its Costs and Benefits*, PEMD-87-2, November 10, 1986.

[136] GAO, in its 2014 report, characterizes its 1986 report as identifying these four key elements (GAO, *Computer Matching Act*, p. 18). In its 1986 report, GAO is less specific about there being only two components within the cost category, instead identifying five major cost categories of computer matching to include "all resources spent on its activities," such as (1) personnel, (2) time, (3) facilities, (4) materials, and (5) travel costs. However, GAO's 1986 report describes only two categories of benefits: "In terms of dollars, the two major benefits are (1) the avoidance of overpayments and (2) the recovery of overpayments and debts" (GAO, *Computer Matching*, pp. 53, 71).

[137] GAO, *Computer Matching Act*, p. 19.

[138] OMB, "Final Guidance Interpreting the CMPPA," p. 25821.

[139] GAO, *Computer Matching Act*, p. 19.

Table 2. Reported Savings of Selected Matching Programs

Conducted in Calendar Year 2022

Purpose of Matching Program	Statutory Requirement	Matching Required[a]	Source Agency	Recipient Agency	Estimated Savings	Estimated Costs	Benefit-Cost Ratio
(1) To identify Housing and Urban Development (HUD) program recipients participating in Federal Emergency Management Agency (FEMA) programs because of a declared disaster or emergency and return them to HUD housing assistance and prevent duplication of benefits; (2) to develop funding formulas to request additional appropriations from Congress and to allocate funding for Community Development Block Grant-Disaster Recovery grant awards; and to prevent duplication of benefits	Prevent duplication of assistance because of a major disaster of emergency under any program, from insurance, or through any other source (42 U.S.C. §5155)	No	HUD	Department of Homeland Security (DHS), FEMA	$101,500,000[b]	$791,585[b]	128:1
To assist in determining whether an applicant is lawfully present, a qualified non-citizen, a naturalized or derived citizen and whether the five-year waiting period applies and has been satisfied for the purpose of determining eligibility for enrollment in a Qualified Health Plan or for one or more exemptions	Determine whether an individual enrolling in a Qualified Health Plan is a U.S. citizen, national, or non-citizen lawfully present (42 U.S.C. §18081(c)(2)(B))	Yes (42 U.S.C. §18081(c)(4)(A))	DHS, U.S. Citizenship and Immigration Services	Department of Health and Human Services (HHS), Centers for Medicare and Medicaid Services (CMS)	Not specified	$30,500,000	Not specified[c]

Purpose of Matching Program	Statutory Requirement	Matching Required[a]	Source Agency	Recipient Agency	Estimated Savings	Estimated Costs	Benefit-Cost Ratio
To ensure disaster survivors do not receive duplicative benefits for the same types of assistance	Prevent duplication of disaster assistance for the same disaster or emergency losses to individuals, businesses, or other entities (42 U.S.C. §5155)	No	DHS, FEMA	Small Business Administration (SBA)	$3,200,000[d]	Not specified	Not specified
To determine eligibility of applicants for Medicare's prescription drug program Part D Extra Help program (low-income subsidy assistance)	Determinations for eligibility may be made under a state plan for medical assistance or by the commissioner of Social Security (42 U.S.C. §1395w-114(a)(3)(B)(i)); the commissioner of Social Security has authority to use data to determine eligibility for programs (42 U.S.C. §1395w-114(e)(1)(A))	No	HHS, Office of Child Support Enforcement	Social Security Administration (SSA)	$15,909,954	$903,500	17.6:1

Purpose of Matching Program	Statutory Requirement	Matching Required[a]	Source Agency	Recipient Agency	Estimated Savings	Estimated Costs	Benefit-Cost Ratio
To determine eligibility for and amount of benefits for applicants and beneficiaries of needs-based benefits and to adjust income-dependent benefit payments	Unearned income information from tax returns may be disclosed for the purposes of determining eligibility and amount of benefits (Internal Revenue Code of 1986, Section 7(B))	No	Department of Treasury, Internal Revenue Service (IRS)	Department of Veterans Affairs (VA), Veterans Benefit Administration	$52,620,000[e]	Not specified	Not specified

Sources: Information in the table is from matching agreements reviewed by CRS that were publicly available. See HUD, FEMA, "Computer Matching Agreement between United States Department of Homeland Security (DHS) Federal Emergency Management Agency (FEMA) and United States Department of Housing and Urban Development (HUD)," https://www.dhs.gov/sites/default/files/2022-02/3.%20DHS%20FEMA%20Department%20HUD%20CMA_0.pdf; DHS, HHS, "Computer Matching Agreement between Department of Health and Human Services Centers for Medicare and Medicaid Services and the Department of Homeland Security United States Citizenship and Immigration Services for the Verification of United States Citizenship and Immigration Status Data for Eligibility Determinations," https://www.dhs.gov/sites/default/files/publications/4-2020_final_cms_cma.pdf; DHS, SBA, "Computer Matching Agreement between U.S. Small Business Administration and U.S. Department of Homeland Security Federal Emergency Management Agency," https://www.dhs.gov/sites/default/files/publications/2-fema_sba.pdf; HHS, SSA, "Computer Matching Agreement between Social Security Administration and U.S. Department of Health and Human Services Administration for Children and Families Office of Child Support Enforcement," https://www.hhs.gov/sites/default/files/acf-ssa-cma-2003.pdf; IRS, VA, "Computer Matching Agreement between the Department of Treasury Internal Revenue Service and the Department of Veterans Affairs Veterans Benefits Administration for the Disclosure of Information to Federal, State, and Local Agencies (DIFSLA)," https://www.oprm.va.gov/docs/CMA/DIFSLA_Restablishment_CMA_IRS_VBA_01012021_06302022_Final.pdf.

Notes: Matching agreements were selected with effective dates that included one or more months in calendar year 2022. The agencies included in the table were among those also selected by GAO for its 2014 report "Computer Matching Act: OMB and Selected Agencies Need to Ensure Consistent Implementation" because of their benefits and assistance programs expenditures (p. 2). Dollar amounts are provided as they are reported in the matching agreements to which they correspond and have not been adjusted for any inflation. In some cases, the estimate is a total calculated by CRS based on components of costs or savings as they are reported in the matching agreement to which they corresponded.

a. The statute requirement may not specifically or explicitly require a matching program as defined in the CMPPA and, instead, may refer to a "matching" requirement generically. Despite the lack of precision in the statutory language, the table includes examples from agencies that have entered into matching agreements and conduct such matching under the requirements for matching programs established by the CMPPA.

b. CRS calculation of information provided in the matching agreement. The ratio is provided in the agreement.

c. The matching agreement states that the cost-benefit analysis covers this matching program between DHS and CMS and seven other mandatory "marketplace" matching programs that CMS conducts with other federal agencies. Therefore, the cost reported is the total for all eight matching programs. Furthermore, the matching agreement states that the cost-benefit analysis "does not quantify direct government cost saving benefits sufficient to estimate whether they offset such

costs. The[analysis], therefore, does not demonstrate that the matching program is likely to be cost-effective and does not provide a favorable benefit/cost ratio" (p. 8).

d. The matching agreement refers to an "SBA Cost Benefit Analysis document" in a footnote to the estimated savings (p. 6). That document is not part of the matching agreement CRS accessed and downloaded from DHS's "Computer Matching Agreements and Notices" webpage. Costs may have been estimated in that document but were not available to CRS.

e. The estimated savings for the matching program between IRS and VA are for FY2021 and FY2022. Matching agreements take various approaches to the time frames for the estimates they include. For example, the matching agreement between HHS and SSA (row four of the table) references costs and savings for FY2018; the specific matching agreement that includes such savings was effective as of May 27, 2020, for the next 18-months (expiring November 26, 2022). In the matching agreement between FEMA and HUD, the costs and savings are for a seven-year period of time that includes, but also extends beyond, the term of the matching agreement.

Notifying Individuals of the Use of Their Information in a Matching Program

A source agency must obtain an individual's consent as a condition of disclosing that individual's records to a recipient agency in a matching program.[140] The agency disclosing records can either (1) obtain written consent directly from the individual or (2) use an exception to consent as permitted in Title 5, Section 552a(b), of the *U.S. Code*.[141]

The CMPPA requires that matching agreements include procedures for providing individualized notice at the time of application, and periodic notice thereafter, to (1) applicants for and recipients of financial assistance or payments under federal benefit programs and (2) applicants for and holders of positions as federal personnel.[142]

OMB identifies two ways an agency can provide notice to individuals: direct notice and constructive notice.[143]

Direct Notice

OMB describes direct notice as when there is some form of contact between the government and the individual.[144] It may include information provided on an application form. For "front-end eligibility verification programs," OMB suggests that agencies enlarge the statement on an application form that is required by Title 5, Section 552a(e)(3), to notify individuals that the information they provide is subject to matching.[145]

Providers of services should also be given notice on the form they use to apply for reimbursement for the services they provide.[146]

After an initial notice to an individual at the time of application, the CMPPA requires periodic notice as directed by the DIB and subject to OMB guidance.[147] The act does not define *periodic* or impose any specific timing requirements. OMB's guidance to agencies is that periodic notice should be provided whenever the application is renewed, or at least while the match is authorized, and that such periodic notice should accompany the benefit.[148]

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[140] OMB, "Final Guidance Interpreting the CMPPA," p. 25825.

[141] OMB, "Final Guidance Interpreting the CMPPA," p. 25825.

[142] 5 U.S.C. §552a(o)(1)(D)(i-ii).

[143] OMB, "Final Guidance Interpreting the CMPPA," p. 25825.

[144] OMB, "Final Guidance Interpreting the CMPPA," p. 25825.

[145] OMB, "Final Guidance Interpreting the CMPPA," p. 25825.Title 5, Section 552a(e)(3), of the *U.S. Code* requires that an agency inform individuals whom it asks to supply information, on a form used to collect such information, of the following: (1) the authority that authorizes the solicitation of the information and whether the disclosure of that information is mandatory or voluntary, (2) the principal purpose(s) for which the information is intended to be used, (3) the routine uses that may be made of the information, and (4) the effects of not providing any or all of the requested information.

[146] OMB, "Final Guidance Interpreting the CMPPA," p. 25825.

[147] 5 U.S.C. §552a(o)(1)(D).

[148] OMB, "Final Guidance Interpreting the CMPPA," p. 25825.

Constructive Notice

Another way of providing notice to individuals is through constructive notice. This type of notice includes notices that are published in the *Federal Register*. The CMPPA requires a recipient agency to publish a notice in the *Federal Register* of a matching program 30 days prior to starting such program.[149] OMB's *Circular No. A-108* indicates that if a nonfederal agency is the recipient agency, then the federal agency providing the records (i.e., the source agency) is required to publish the notice.[150]

OMB stipulates that such constructive notice for a matching program might be necessary in "emergency situations where health and safety reasons argue for a swift completion of a match," in cases where the matching program is to locate a person, or in other situations where it is not possible to provide direct notice to individuals.[151]

Notice to an individual of a matching program is effectively constructive when an agency relies on one of the Privacy Act's statutory exceptions to written consent, because the recipient agency is still required to publish notice of a matching program in the *Federal Register*.

For example, notice procedures are detailed in the matching agreement between the Small Business Administration (SBA) and the Department of Homeland Security (DHS).[152] The agreement specifies that each agency has published a system of records notice[153] in the *Federal Register* that notifies applicants and recipients of the respective programs that their information may be subject to verification through a matching program.[154] Additionally, the agreement states that for SBA recipients specifically, several of SBA's application forms provide notice to applicants that information may be disclosed under a *routine use*[155] published in the system of records notice.[156]

Verifying the Accuracy of Information Produced in Matching Programs

The CMPPA requires agencies to independently verify the accuracy of information produced in a matching program prior to suspending, terminating, reducing, or making a final denial of any assistance or payment to an individual.[157] When first passed in 1988, the CMPPA provided that no agency was to take adverse action against an individual whose records are matched in a matching

[149] 5 U.S.C. §552a(e)(12).

[150] OMB, *Circular No. A-108,* p. 19.

[151] OMB, "Final Guidance Interpreting the CMPPA," p. 25825.

[152] SBA, DHS, "Computer Matching Agreement Between U.S. Small Business Administration and U.S. Department of Homeland Security Federal Emergency Management Agency," https://www.dhs.gov/sites/default/files/2022-02/2.%20FEMA%20%26%20SBA%20CMA.pdf.

[153] Agencies are required to publish a system of records notice in the *Federal Register* by Title 5, Section 552a(e)(4), of the *U.S. Code*.

[154] SBA, DHS, "Computer Matching Agreement Between U.S. Small Business Administration and U.S. Department of Homeland Security Federal Emergency Management Agency," p. 9, https://www.dhs.gov/sites/default/files/2022-02/2.%20FEMA%20%26%20SBA%20CMA.pdf.

[155] *Routine use* is defined at Title 5, Section 552a(a)(7), of the *U.S. Code*. The Privacy Act permits an agency to disclose a record without written request or prior written consent of the individual to whom the record pertains for a *routine use* (5 U.S.C. §552a(b)(3)).

[156] SBA, DHS, "Computer Matching Agreement," p. 10.

[157] 5 U.S.C. §552a(p)(1)(A)(i).

program without first independently verifying *any* information that was produced by the matching program and used as a basis for the adverse action.[158] This requirement was amended in 1990 to add a role for an agency's DIB and to resolve conflicts that stemmed from existing laws governing federal benefit programs.[159]

The 1990 amendment to the CMPPA allows either for an agency to independently verify information, as before, or for the DIB of the recipient agency to waive the requirement.[160] As the statute stands today, the DIB can waive the independent verification requirement if (1) it determines that the information used as the basis for an adverse decision against an individual is specific to the information identifying the individual (e.g., name, address, an identification number) and to the amount of benefits paid to the individual by the source agency;[161] and (2) it has a "high degree of confidence" in the accuracy of the information received from the source agency that is used in the match.[162]

On the amended verification requirement, the House Committee on Government Operations reported:

> The purpose of the independent verification requirement is to assure that the rights of individuals are not affected automatically by computers without human involvement and without taking reasonable steps to determine 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 general presumption that information obtained from a computer is necessarily correct.[163]

Some matching programs may still use independent verification procedures despite the waiver provision enacted by Congress in 1990. For example, HHS provides access to new hire and quarterly wage information from the National Directory of New Hires (NDNH) to the state agencies that administer the unemployment compensation program.[164] The matching agreement between HHS and the state agency includes the following condition:

> [T]he state agency understands that information obtained from the NDNH is not conclusive evidence of the address and employment information of an identified individual and must,

[158] P.L. 100-503, §2 (102 Stat. 2508-2509). Specifically, Title 5, Section 552a(p)(2) at the time specified "any information used as a basis for an adverse action against an individual, including, where applicable—(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, and (C) the period or periods when the individual actually had such asset or income."

[159] P.L. 101-508, §7201 (104 Stat 1388-334); U.S. Congress, Committee on Government Operations, *Computer Matching and Privacy Protection Amendments of 1990*, report to accompany H.R. 5450, 101st Cong., 2nd sess., September 27, 1990, H.Rept. 101-768, pp. 4-5, 7.

[160] The Committee on Government Operations said in its report on H.R. 5450, "The role of the Data Integrity Board in the alternate verification process is to determine that information is limited to identification and amount of benefits paid by the source agency under a federal benefit program and that there is a high degree of confidence that the information provided to the recipient agency is accurate. These determinations must be made by the Data Integrity Board of the recipient agency" (U.S. Congress, Committee on Government Operations, *Computer Matching and Privacy Protection Amendments of 1990*, report to accompany H.R. 5450, 101st Cong., 2nd sess., September 27, 1990, H.Rept. 101-768, p. 5).

[161] U.S. Congress, Committee on Government Operations, *Computer Matching and Privacy Protection Amendments of 1990*, report to accompany H.R. 5450, 101st Cong., 2nd sess., September 27, 1990, H.Rept. 101-768, p. 4.

[162] Ibid., p. 5; 5 U.S.C. §552a(p).

[163] U.S. Congress, Committee on Government Operations, *Computer Matching and Privacy Protection Amendments of 1990*, report to accompany H.R. 5450, 101st Cong., 2nd sess., September 27, 1990, H.Rept. 101-768, p. 4.

[164] For more information on the NDNH, see CRS Report RS22889, *The National Directory of New Hires: In Brief*, by Jessica Tollestrup.

in accordance with 5 U.S.C. §552a(p)(2), independently verify the NDNH information before taking adverse action to deny, reduce, or terminate benefits.[165]

OMB's Guidance on Verification Procedures

Congress instructed OMB to issue guidance on implementing the 1990 amendment on verification procedures.[166] OMB published proposed guidance in the *Federal Register* and sought comments, including on the types of evidence that may permit a DIB to reach a "high degree of confidence" in the accuracy of data produced in a matching program.[167] No guidance in final form was subsequently published, but OMB provides a link to the proposed guidance on its Information and Regulatory Affairs webpage with privacy guidance, suggesting that the proposed guidance is, at least, the prevailing guidance to agencies.[168]

Providing Individuals with an Opportunity to Contest Information Used Against Them

The CMPPA also requires an agency to provide notice to an individual if its findings from a matching program will result in denying, terminating, suspending, or reducing any financial assistance or payment to that individual under a federal benefit program.[169] Additionally, individuals are allowed time to contest such findings.[170]

When the CMPPA was first passed, it required all federal benefit programs to allow 30 days for individuals to respond to notices.[171] However, some programs at the time were operating under statutes or regulations that permitted fewer than 30 days.[172] The 1990 amendment to the CMPPA allowed the notice period to vary with program-specific statutes and regulations.[173] Thus, how much time an individual has to respond depends on whether statute or regulation for the specific benefit program establishes a time period to respond or, if no such statute or regulation exists, within 30 days of receiving notice.[174]

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[165] HHS, "Computer Matching Agreement between U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement and State Agency Administering the Unemployment Compensation Program," p. 12, https://www.hhs.gov/sites/default/files/acf-uc-cma-2001.pdf.

[166] P.L. 101-508, §7201(b); 104 Stat. 1388-334-1388-335.

[167] OMB, "The Computer Matching and Privacy Protection Amendments of 1990 and the Privacy Act of 1974," 56 *Federal Register* 18599-18601, April 23, 1991.

[168] OMB, Office of Information and Regulatory Affairs, "Privacy Guidance, 1990s," webpage, accessed on September 14, 2022, https://www.whitehouse.gov/omb/information-regulatory-affairs/privacy/.

[169] 5 U.S.C. §552a(p)(1)(B).

[170] 5 U.S.C. §552a(p)(1)(B).

[171] P.L. 100-503, §2; 102 Stat. 209.

[172] U.S. Congress, House Committee on Government Operations, Subcommittee on Government Information, Justice, and Agriculture, *Computer Matching and Privacy Protection Amendments of 1990*, hearing on H.R. 5450, 101st Cong., 2nd sess., September 11, 1990, pp. 9-10.

[173] U.S. Congress, House Committee on Government Operations, *Computer Matching and Privacy Protection Amendments of 1990*, report to accompany H.R. 5450, 101st Cong., 2nd sess., September 27, 1990, H.Rept. 101-768, p. 7.

[174] 5 U.S.C. §552a(p)(1)(C)(i-ii). The 30-day period starts when the notice is either mailed or otherwise provided to the individual (5 U.S.C. §552a(p)(1)(C)(ii)).

Reporting

The CMPPA included several reporting mechanisms that have changed over the years through various congressional actions.

Reporting from OMB to Congress

Congress included in the CMPPA a requirement for OMB to report to Congress.[175] This reporting was to consolidate the reports that DIBs submitted to OMB and, specifically, was to include details on the cost-benefit analyses of matching programs, including the waiver of those analyses by DIBs.[176]

In addition, OMB is to biennially report to Congress more broadly on the implementation and administration of the Privacy Act, including the CMPPA.[177] This reporting requirement, however, effectively ceased when Congress passed the Federal Reports Elimination and Sunset Act of 1995 (P.L. 104-66) and the Federal Reports Elimination Act of 1998 (P.L. 105-362).[178]

Reporting from Agencies to OMB and Congress

Some reporting on matching programs is still required, however, including the annual report by an agency's DIB to the head of the agency and to OMB.[179]

In addition, an agency is to report proposals for new, re-established, or significantly modified matching programs to OMB, the House Committee on Oversight and Reform, and the Senate Committee on Homeland Security and Governmental Affairs in order to permit an evaluation of the probable or potential effect of the proposal on the privacy or other rights of individuals.[180] Potentially significant modifications include those that (1) change the purpose of the program, (2) change the authority to conduct the matching program, (3) expand the types or categories or significantly increase the number of records being matched, (4) expand the categories of individuals whose records are being matched, and (5) change the source or recipient agencies.[181]

OMB clarifies in *Circular No. A-108* that submitting notice of a new or significantly modified matching program to OMB and Congress occurs prior to public notice in the *Federal Register* and, furthermore, that OMB will have 30 days to review the new or modified matching

[175] P.L. 100-503, §4 (102 Stat. 2511). The requirement was an annual report for the first three years following enactment and a biennial report thereafter.

[176] P.L. 100-503, §4 (102 Stat. 2511).

[177] 5 U.S.C. §552a(s).

[178] P.L. 104-66, Section 3003, effectively eliminated the Privacy Act report to Congress (190 Stat. 735). P.L. 105-362, Section 1301(d), eliminated the specific reporting by OMB that consolidated the DIB reports and included information on cost-benefit analyses (112 Stat. 3293). For more information about the Federal Reports Elimination and Sunset Act of 1995, see "Contrast with Current Authorities and Previous Efforts" in CRS Report R42490, *Reexamination of Agency Reporting Requirements: Annual Process Under the GPRA Modernization Act of 2010 (GPRAMA)*, by Clinton T. Brass.

[179] 5 U.S.C. §552a(u)(3)(D).

[180] 5 U.S.C. §552a(r). Statute provides the names of committees that have since been renamed. The committee names used here are the most current.

[181] OMB, *Circular No. A-108*, pp. 18-19. OMB notes that the list it provides is not exhaustive.

program.[182] As a result, a new matching program cannot begin for at least 60 days following the approval of the matching agreement by the DIBs at the source and recipient agencies.[183]

When an agency plans to re-establish a matching program, including plans approved by the agency's DIB to renew a matching program for one-year beyond the expiration of the current matching agreement, it is to provide at least 60 days of advance notice to OMB and Congress.[184]

Exceptions to the CMPPA's Coverage

Several uses of computer matching are excepted from the CMPPA's requirements. While some of these exceptions were included in the law when it was first passed in 1988, others represent amendments passed in the years since.

Matches that are excepted may be arranged into six different categories. Broadly, the categories include (1) research and statistics; (2) matching with no adverse impact to federal employees; (3) law enforcement, security, and intelligence; (4) administration of taxes, levies, and certain savings programs; (5) inspectors general and fraud, waste, and abuse; and (6) selected matches by SSA involving incarcerated and other justice-system-involved individuals.

Research and Statistics

The CMPPA does not cover matching for research and statistics. This includes:

- producing aggregate statistical data without any personal identifiers[185] and
- when the specific data involved are not used to make decisions concerning the rights, benefits, or privileges of specific individuals.[186]

Matching with No Adverse Impact to Federal Employees

Matching that does not have an adverse impact on federal personnel is also excepted.[187] This exception includes matches that:

- relate to federal personnel and are conducted for routine administrative purposes as per OMB guidance[188] or

[182] OMB, *Circular No. A-108*, p. 20.

[183] OMB may request agencies to incorporate changes or clarifications stemming from its review. In addition, agencies may have to address comments from the public that stem from the public notice period. As such, agencies may have to delay the start of a matching program longer than the 60 days implied in statute and guidance (see Table, *Illustration of Standard Review Process for Matching Programs*, in OMB, *Circular No. A-108*, p. 21).

[184] OMB, *Circular No. A-108*, p. 20.

[185] 5 U.S.C. §552a(a)(8)(B)(i).

[186] 5 U.S.C. §552a(a)(8)(B)(ii). OMB's guidance indicates that "pilot matches"—or small-scale matches that an agency might conduct to assess the costs and benefits of a full computer matching program and are not used to make decisions that affect the rights, benefits, or privilege of any specific individual—do not require compliance with the CMPPA because such pilots are not matching programs (OMB, "Final Guidance Interpreting the CMPPA," p. 25823).

[187] 5 U.S.C. §552a(a)(8)(B)(v).

[188] 5 U.S.C. §552a(a)(8)(B)(v)(I). OMB's guidance indicates that *predominately* means that the number of records relating to federal personnel is greater than the number of any other category of records not related to federal personnel (OMB, "Final Guidance Interpreting the CMPPA," p. 25824).

- use 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 action against federal personnel.[189]

Law Enforcement, Security, and Intelligence

Several types of matching done for the purpose of law enforcement and security are also excepted. These matches include those that:

- investigate a person that has been specifically identified and named for the purpose of gathering evidence against such person as part of an investigation if the investigation is performed by an agency or a component of an agency with a principal function of criminal law enforcement,[190]
- assist foreign counterintelligence,[191] or
- produce background checks for security clearances of federal personnel or the personnel of a federal contractor.[192]

Administration of Taxes, Levies, and Certain Savings Programs

The CMPPA, when originally passed in 1988, included several tax-related matches that were excluded from the definition of *matching program*. In the years since, Congress has expanded upon the types of tax-related matches excluded from the purposes of the CMPPA.[193] These matches include those that:

- are for the purposes of tax administration, including the management and application of internal revenue laws or related statutes, as well as the development of tax policy;[194]
- enable allowable disclosures, including to state tax agencies, to administer state tax laws or to locate an individual who may be entitled to a refund;[195]

[189] 5 U.S.C. §552a(a)(8)(B)(v)(II). According to OMB's guidance, the implication of this exception is that an agency may match records from its systems of records and take adverse action against individuals without needing to comply with the CMPPA's requirements for matching programs so long as those individuals are not federal personnel (OMB, "Final Guidance Interpreting the CMPPA," p. 25824).

[190] 5 U.S.C. §552a(a)(8)(B)(iii).

[191] 5 U.S.C. §552a(a)(8)(B)(vi).

[192] 5 U.S.C. §552a(a)(8)(B)(vi).

[193] P.L. 100-503 enacted Title 5, Section 552a(a)(8)(B)(iv), of the *U.S. Code*, which specifies a number of tax-related matches (see footnotes 194, 195, and 196). P.L. 105-34 enacted Title 5, Section 552a(a)(8)(B)(vii), which specified that matches incident to a levy described in Section 6103(k)(8) of the Internal Revenue Code of 1986 is not a matching program (see footnote 198). P.L. 113-295 enacted Title 5, Section 552a(a)(8)(B)(x), of the *U.S. Code*, which specified that matches performed pursuant to Section 3(d)(4) of the Achieving a Better Life Experience Act of 2014 is not a matching program (see footnote 199).

[194] 5 U.S.C. §552a(a)(8)(B)(iv). *Tax administration* as defined by Section 6103(b)(4) of the Internal Revenue Code of 1986 "(A) means (i) the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or related statutes (or equivalent laws and statutes of a State) and tax conventions to which the United States is a party, and (ii) the development and formulation of Federal tax policy relating to existing or proposed internal revenue laws, related statutes, and tax conventions, and (B) includes assessment, collection, enforcement, litigation, publication, and statistical gathering functions under such laws, statutes, or conventions."

[195] 5 U.S.C. §552a(a)(8)(B)(iv) as pursuant to Section 6103(d) of the Internal Revenue Code of 1986.

- intercept a tax refund due to an individual[196] or for any other tax refund intercept program that is authorized by statute that OMB determines to have verification, notice, and hearing requirements that are substantially similar to those required for state income and eligibility verification systems under the Social Security Act, as amended;[197]
- are conducted incidental to the collection of an unpaid government payment,[198] or
- are conducted pursuant to a qualified Achieving a Better Life Experience program.[199]

Inspectors General and Fraud, Waste, and Abuse

Matches that IGs may use as part of their fraud, waste, and abuse prevention and investigation activities are not matching programs for the purposes of the CMPPA. Specifically, this includes matches that are:

- conducted by an IG for an audit, investigation, inspection, evaluation, or other review authorized under the Inspector General Act of 1978, as amended;[200] or
- conducted by the Secretary or IG of HHS with respect to potential fraud, waste, and abuse.[201]

Selected Matches by SSA Involving Incarcerated and Other Justice-System-Involved Individuals

Some matches SSA may perform are excepted from the CMPPA. Specifically, these are matches where:

- any federal or state agency makes available to the SSA the names and SSNs of any individuals who are confined in jails, prisons, or other penal institutions following conviction of a criminal offense, are confined by court order because of certain types of verdicts or court findings, or meet certain other related criteria,[202] or
- the SSA seeks on a monthly basis from a state or local correctional facility—including jails and prisons, or similar institutions that confine individuals—the

[196] 5 U.S.C. §552a(a)(8)(B)(iv) as under the authority granted by Sections 404(e), 464, or 1137 of the Social Security Act (42 U.S.C. §604(e), 42 U.S.C. §664, or 42 U.S.C. §1320b-7, respectively).

[197] 5 U.S.C. §552a(a)(8)(B)(iv); such systems and their requirements are contained in Section 1137 of the Social Security Act (42 U.S.C. §1320b-7).

[198] 5 U.S.C. §552a(a)(8)(B)(vii). Such a levy is described in Section 6103(k)(8) of the Internal Revenue Code of 1986.

[199] Title 5, Section 552a(a)(8)(B)(x), includes "matches performed pursuant to section 3(d)(4) of the Achieving a Better Life Experience Act of 2014" (P.L. 113-295, Division B). Neither P.L. 113-295 Division B nor Section 529A of Chapter 5 of the *U.S. Code* contain a Section 3(d)(4) despite its reference in Title 5, Section 552a(a)(8)(B)(x). For more information on Achieving a Better Life Experience programs, see CRS In Focus IF10363, *Achieving a Better Life Experience (ABLE) Programs*, by William R. Morton and Kirsten J. Colello.

[200] 5 U.S.C. App. §6(j)(2). Where Title 5, Section 552a(a)(8)(B), enumerates several exceptions to matching programs, the exception of matches conducted by IGs is not enumerated therein. This exception was enacted by P.L. 114-317 (Inspector General Empowerment Act of 2016) and is found at Title 5, Section 6(j)(2), of the *U.S. Code*.

[201] 5 U.S.C. §552a(a)(8)(B)(ix).

[202] 5 U.S.C. §552a(a)(8)(B)(viii), pursuant to Section 202(x)(3) of the Social Security Act (42 U.S.C. §402(x)(3)).

names, SSNs, and other specific information of any individuals confined in those facilities.[203]

Issues for Congress

OTA concluded in 1986 that information technology capabilities and uses had changed so dramatically since the Privacy Act of 1974 that they eroded the privacy protections of the law.[204] Such dramatic changes in information technology and its uses also characterize the 30-plus years since the CMPPA went into effect.

Agencies in the executive branch have conducted computer matching since at least the 1970s. Congress devoted particular attention to computer matching through the 1970s and late 1980s, which ultimately resulted in the CMPPA.

In the decades since, there have been minimal updates to OMB guidance on CMPPA implementation and a decrease in the number of hearings by Congress that specifically examine matching programs. Yet agencies continue to actively implement the law. Congress continues to view data matching as a policy option for reducing fraud and improper payments, and agencies continue to rely upon matching programs to comply with various laws.[205]

Congress might assess whether there are opportunities to improve computer matching in government operations and management. Matching program oversight by Congress may aid implementation of the CMPPA. There are a number of areas Congress may want to contemplate and some possible directions for future oversight or legislation. These areas are (1) clarifying the scope of the CMPPA, (2) developing an accurate accounting of matching programs, (3) ensuring sufficient and contemporaneous OMB guidance, and (4) assessing regulation and oversight of data matching.

Clarifying the Scope of the CMPPA

Congressional committees provided some definition of specific methods of computer matching when the CMPPA was first considered (see in this report, "Defining Matching for the Purposes of the CMPPA"). However, the law itself does not provide information on the computer matching methods that are within the purview of the CMPPA, such as single-record or many-record comparisons.

Separate analyses by OTA and GAO found definitional issues with matching programs since as early as the 1980s and as late as the 2010s.[206] While the statutory definition of *matching program* includes the words *any computerized comparison*, the absence of methods that meet the definition permits agencies to derive their own interpretations of what types of methods are covered by the

[203] 5 U.S.C. §552a(a)(8)(B)(viii), pursuant to Section 1611(e)(1) of the Social Security Act (42 U.S.C. §1382(e)(1)).

[204] OTA, *Federal Government Information Technology*, pp. 4, 99.

[205] See, for example, CRS Report R46789, *Unemployment Insurance: Legislative Issues in the 117th Congress, First Session*, by Katelin P. Isaacs and Julie M. Whittaker, p. 19 and p. 25; U.S. Congress, House Oversight and Reform Select Subcommittee on the Coronavirus Crisis, *Examining Federal Efforts to Prevent, Detect, and Prosecute Pandemic Relief Fraud to Safeguard Funds for All Eligible Americans*, 117th Cong., 2nd sess., June 14, 2022; U.S. Congress, House Committee on Oversight and Reform, Subcommittee on Government Operations, *Follow the Money: Tackling Improper Payments*, hearing, 117th Cong., 2nd sess., Serial No. 117-75, March 31, 2022, pp. 3, 6.

[206] OTA, *Federal Government Information Technology*, pp. 14-17.

CMPPA. The result is that some agencies' activities may potentially avoid the reach of the CMPPA.[207]

The lack of a consistent understanding across executive agencies of the types of matching methods subject to the CMPPA's provisions leaves questions about what protections are afforded to individuals in cases where an agency believes its matching methods to be outside of the scope of the CMPPA.

Congress could amend the statute to define matching methods or provide language that makes clear the number of records in a computerized comparison to constitute a matching program. OMB could also update its guidance to clarify the scope of methods and enforce compliance accordingly.

Developing an Accurate Accounting of Matching Programs

It is challenging to determine the number of matching programs that are being conducted at any given time. The House Committee on Government Operations recognized the need to establish administrative controls for matching programs, in part, because of the difficulty in ascertaining their prevalence.[208]

There is no accessible database or cataloging of current active matching programs. This makes it difficult to determine the number of matching programs, including the number of individual records that are disclosed for matching programs. As illustrated in **Appendix B**, some matching programs involve the use of millions of individual records. Congress may want to establish requirements for a centralized database of matching programs.

Although OMB directs agencies to maintain webpages that include information on their matching agreements and public notices of matching programs, there is no enforcement mechanism of the requirement. This leaves the public dependent on each agency to maintain webpages with current information. For example, the Department of Education updated its matching agreements webpage in October 2022 and lists one matching program in operation.[209] Yet the department published notice in the *Federal Register* in August 2021 of a matching program to begin in September 2021 that would continue for 18 months, putting it in operation until March 2023.[210] Requirements for *Federal Register* notices assume public knowledge about the *Federal Register* and, arguably, assumes that the public frequently and easily peruses it for notices that may pertain to them.

Congress may consider establishing a deadline for when information about matching programs is posted on agency websites. There are laws that provide general requirements for federal websites,[211] but there is wide variation across agencies in the frequency of website updates.

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[207] GAO, *Computer Matching Act*, p. 17.

[208] U.S. Congress, House Committee on Government Operations, *Computer Matching and Privacy Protection Act of 1988*, report to accompany H.R. 4699, 100th Cong., 2nd sess., July 27, 1988, H.Rept. 100-802, p. 7.

[209] U.S. Department of Education, "Department of Education's Computer Matching Agreements (CMA)," https://www2.ed.gov/about/offices/list/om/pirms/cma.html.

[210] U.S. Department of Education, "Privacy Act of 1974; Matching Program," 86 *Federal Register* 47092-47093, August 23, 2021.

[211] For example, the E-Government Act of 2002 (P.L. 107-347) required certain types of information to be available on agency websites. The 21st Century Integrated Digital Experience Act (P.L. 115-336) furthered expectations for agency websites that are created or redesigned following the act's enactment.

Congress may also consider how to monitor compliance and provide effective enforcement of timeliness.

The reporting requirement for the Privacy Act and CMPPA was terminated by the Federal Reports Elimination and Sunset Act of 1995. This eliminated reporting on the number of matching programs and their purposes through OMB's reports to Congress.[212] Congress may wish to reinstate this requirement for OMB, or establish it for an agency such as GAO, to gain an accurate accounting of matching programs that could assist in the management and oversight of such matching programs across the federal government.

Ensuring Sufficient and Contemporaneous OMB Guidance

Congress directed OMB to issue guidance to agencies[213] and provide continuing assistance and oversight of the CMPPA's implementation.[214]

OMB issued guidance to agencies in 1989 subsequent to the passage of the CMPPA.[215] At that time, OMB commented, "Although the following guidance is published in final form, OMB realizes that the implementation of this complex act will undoubtedly require the issuance of additional and clarifying guidance and intends to monitor the agencies' implementation closely to that end."[216]

As part of its report on implementation of the CMPPA, GAO made four recommendations to OMB,[217] three of which were not implemented, including a recommendation to revise guidance and clarify requirements. According to GAO, "In August 2017, OMB stated that it does not intend to address the recommendation [to revise its guidance] because it believes that the current guidance is sufficient."[218]

In December 2016, OMB updated *Circular No. A-108*, "Federal Agency Responsibilities for Review, Reporting, and Publication Under the Privacy Act,"[219] including information to agencies on when agency DIBs should submit their annual reports to OMB, where to email them, and instructions to post the reports on the agencies' websites.[220]

Congress may consider examining OMB's guidance, including whether revised guidance is needed, whether the guidance meets the current data and information technology environment and opportunities, and how revised guidance may improve the ongoing implementation of the CMPPA.

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[212] For an example of what OMB had produced, see "Matching Programs Conducted in 1994 and 1995," at https://obamawhitehouse.archives.gov/omb/inforeg_match/.

[213] 5 U.S.C. §552a(v)(1).

[214] 5 U.S.C. §552a(v)(2).

[215] OMB, "Final Guidance Interpreting the CMPPA," pp. 25818-25829.

[216] OMB, "Final Guidance Interpreting the CMPPA," p. 25818.

[217] See GAO, "Recommendations for Executive Action," https://www.gao.gov/products/gao-14-44.

[218] GAO, "Recommendations for Executive Action."

[219] OMB, *Circular No. A-108*, "Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act," December 23, 2016, https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A108/omb_circular_a-108.pdf.

[220] OMB, *Circular No. A-108*, p. 28.

GAO reported that OMB has provided little assistance to agencies and that OMB assistance has been inconsistent.[221] Congress may want to investigate what OMB has learned in the decades it has spent providing assistance and oversight of implementation of the CMPPA.

Assessing Regulation and Oversight of Data Matching

Several types of matching are excepted from the CMPPA. Little is known, however, about how frequently or how much of this excepted matching is conducted by federal agencies.

OMB and Congress are, by statute, required to receive notice of matching programs to permit the evaluation of the potential effects of such programs on individual privacy or other rights.[222] However, there is no oversight mechanism designated to evaluate the impacts of matching that is excepted from the CMPPA, no centralized reporting on the matching that qualifies as an exception, and few government-wide administrative controls for such matching excepted from the CMPPA. Congress could consider oversight hearings to determine if current controls and mechanisms are effective for the several types of matching conducted outside of the CMPPA's scope.

Because the definition of *source agency* in the CMPPA limits the purview of the law to government agencies, some agencies that match individual information with nongovernment data sources may do so with varying degrees of privacy protections in place. The CMPPA's rules of construction specifically provide that "nothing in the amendments made by this act shall be construed to authorize the disclosure of records for computer matching except to a Federal, State, or local agency."[223] The Senate's original CMPPA bill, however, included *nonfederal entity*—defined as a state or local government or an agency thereof, partnership, corporation, association, or public or private organization—as a party to matching programs,[224] indicating that regulation of matching programs between agencies and nongovernment entities was a consideration before being removed from the scope of the bill by the House.[225] Congress may wish to consider oversight mechanisms for when agencies match data with nongovernment data sources.

GAO conducted a review in 2016 on the use of commercial data services to help agencies identify fraud and improper payments.[226] GAO noted a comment from OMB that agencies must consider relevant provisions of the CMPPA when using commercial data to conduct program integrity activities.[227] But the CMPPA's rules of construction and definitions for *recipient agency* and *source agency* limit disclosures for matching programs to federal, state, and local governments.

The House Committee on the Judiciary held hearings in July 2022 on federal law enforcement's purchase of personal data from LexisNexis, a private corporation.[228] More than 30 years before

[221] GAO, *Computer Matching Act*, p. 23.

[222] 5 U.S.C. §552a(r).

[223] P.L. 100-503, §9(4); 102 Stat. 2514.

[224] Floor consideration of S. 496, *Congressional Record*, vol. 133, part 10 (May 21, 1987), p. 13543.

[225] U.S. Congress, Senate Committee on Governmental Affairs, *The Computer Matching and Privacy Protection Act of 1987*, report to accompany S. 496, 100th Cong., 2nd sess., September 15, 1988, S.Rept. 100-516, pp. 10, 30.

[226] GAO, *Program Integrity: Views on the Use of Commercial Data Services to Help Identify Fraud and Improper Payments*, GAO-16-624, June 30, 2016.

[227] GAO, *Program Integrity*, p. 12.

[228] U.S. Congress, House Committee on the Judiciary, *Digital Dragnets: Examining the Government's Access to Your Personal Data*, hearing, 117th Cong., 2nd sess., July 19, 2022. See also Elizabeth Goitein, "The Government Can't Seize Your Digital Data. Except by Buying It," *Washington Post*, April 28, 2021.

these hearings, the Senate Committee on Governmental Affairs warned that matching programs used by law enforcement, "if uncontrolled, can too easily become 'fishing expeditions' to find information about individuals when there is no suspicion of wrongdoing, risking violation of the Fourth Amendment."[229] Congress may wish to extend CMPPA's controls and procedures to federal law enforcement's use of data compiled by private corporations.

Agencies may differ in the protections they afford to individuals against erroneous or adverse decisions that depend on data from nongovernment sources. Congress may wish to evaluate the definitions of *source agency* and *recipient agency* in the CMPPA and consider including nongovernments as parties to matching programs.

The House Committee on Government Operations acknowledged the disjointed nature of federal law concerning privacy and matching in the late 1980s.[230] The committee offered that the Privacy Act predates the computer matching era. The CMPPA predates the current era of information technology, "big data," data integration, and data analytics. Congress may want to consider assessing the executive branch's matching of data on individuals and may look to consider exceptions to the CMPPA specifically as part of this oversight.

[229] U.S. Congress, Senate Committee on Governmental Affairs, *The Computer Matching and Privacy Protection Act of 1987*, report to accompany S. 496, 100th Cong., 2nd sess., September 15, 1988, S.Rept. 100-516, p. 12.

[230] U.S. Congress, House Committee on Government Operations, *Computer Matching and Privacy Protection Act of 1988*, report to accompany H.R. 4699, 100th Cong., 2nd sess., July 27, 1988, H.Rept. 100-802, p. 8.

Appendix A. Computer Matching Prior to the CMPPA

The concept of data matching predates the 1980s and the rapid growth of data matching in the executive branch. An academic article published in 1959 discussed the "automatic linking" of vital records and how computers, such as the "Datatron," could be used to bring together "two or more separately recorded pieces of information concerning a particular individual or family."[231]

Matching data on individuals directly impacts their privacy. The CMPPA amended Title 5, Section 552a, of the *U.S. Code*, which codifies the Privacy Act. While the Privacy Act is generally concerned with the unauthorized disclosure of information collected by agencies on individuals, the law does allow the disclosure of individual information under 12 exceptions.[232] One of these exceptions is *routine use*.[233]

The routine use exception allows for information to be disclosed—or, in practice, shared—"for a purpose which is compatible with the purpose for which it was collected."[234] Prior to the passage of the CMPPA, a House Committee on Government Operations report stated:

> 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. 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.[235]

Historically, the exchange and matching of records between federal agencies had been primarily for the prevention and reduction of fraud, waste, and abuse.[236] The first major computer matching program created by the federal government was reportedly Project Match in 1977.[237] It was created to support the detection of improper benefit payments to federal employees by comparing records from the Department of Health, Education, and Welfare with records from wage reporting systems in 18 states, the District of Columbia, and a handful of major localities.[238]

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[231] H. B. Newcombe et al., "Automatic Linkage of Vital Records," *Science*, vol. 130, no. 3381 (October 16, 1959), p. 954.

[232] 5 U.S.C §552a(b).

[233] 5 U.S.C §552a(b)(3).

[234] *Routine use* is defined at Title 5, Section 552a(a)(7), of the *U.S. Code*. The routine use of information contained in a system of records has to first be published in the *Federal Register*, and the public has to be given notice of the routine use before a disclosure of records occurs (OMB, "Privacy Act Guidelines—July 1, 1975: Implementation of Section 552a of Title 5 of the United States," 40 *Federal Register* 28949, July 9, 1975).

[235] U.S. Congress, House Committee on Government Operations, *Computer Matching and Privacy Protection Act of 1988*, report to accompany H.R. 4699, 100th Cong., 2nd sess., July 27, 1988, H.Rept. 100-802, p. 21. See also OTA, *Federal Government Information Technology*, pp. 5, 37, 41-42. OTA characterized *routine use* as a catchall exception permitting a variety of exchanges (p. 5).

[236] OTA, *Federal Government Information Technology*, pp. 37-43. Within this page range, OTA provides a background on computer matching to detect fraud, waste, and abuse, including examples and policy history.

[237] U.S. Congress, House Committee on Government Operations, *Computer Matching and Privacy Protection Act of 1988*, report to accompany H.R. 4699, 100th Cong., 2nd sess., July 27, 1988, H.Rept. 100-802, pp. 2-3; U.S. Congress, Senate Committee on Governmental Affairs, *The Computer Matching and Privacy Protection Act of 1987*, report to accompany S. 496, 100th Cong., 2nd sess., September 15, 1988, S.Rept. 100-516, p. 2.

[238] OTA, *Federal Government Information Technology*, p. 41.

Congress passed several laws in the years prior to the CMPPA that specifically permitted the sharing and comparing of individual information from systems of records maintained by agencies.[239] According to OTA, these laws included:

- The Tax Reform Act of 1976 (P.L. 94-455), which allowed the Secretary of the Treasury to disclose information from the IRS to federal, state, and local child support agencies to establish and collect child support obligations and locate individuals who owe such obligations;
- The Debt Collection Act of 1982 (P.L. 97-365), which allowed an agency to disclose to a consumer reporting agency a record that indicates that an individual is responsible for repayment of a claim the agency is attempting to collect; and
- The Deficit Reduction Act of 1984 (P.L. 98-369), which established that every state that administers certain Social Security Act programs must have an income and eligibility verification system that uses wage, income, and other information from the Social Security Administration and IRS and that verifies immigration status with the then-Immigration and Naturalization Service if the applicant for a program is not a citizen or U.S. national.[240]

According to OTA, even the Paperwork Reduction Act of 1980 (PRA; P.L. 96-511) was perceived at the time to encourage information sharing and potential matching between agencies in lieu of information collections to the extent such activities were permissible under other provisions of law.[241] The PRA enacted Title 44, Section 3510, of the *U.S. Code*, which authorizes the director of OMB to direct or allow an agency to make available to another agency, or an agency may make available to another agency, information obtained pursuant to an information collection if the disclosure is not inconsistent with any applicable law.

In their respective reports on the PRA, both the House Committee on Government Operations and the Senate Committee on Governmental Affairs indicated that they expected information sharing to be inconsistent with applicable law only if the applicable law specifically prohibited the sharing of information between agencies or the disclosure to anyone outside of the agency.[242] The committees did not perceive a prohibition on disclosure to the public to flatly prohibit sharing information with another agency.

[239] OTA, *Federal Government Information Technology*, pp. 43-46.

[240] See also 42 U.S.C. §1320b-7. Programs referenced in the law included Medicaid, unemployment compensation, Aid to Families with Dependent Children (replaced by the Temporary Assistance for Needy Families program), food stamps (replaced with the Supplemental Nutrition Assistance Program), old age assistance, Social Security Insurance, aid for people visually impaired, and aid for people permanently and totally disabled.

[241] OTA, *Federal Government Information Technology*, p. 44. The PRA of 1995 (P.L. 104-13) significantly amended the PRA of 1980. For more information on the PRA and federal information collections, see CRS In Focus IF11837, *The Paperwork Reduction Act and Federal Collections of Information: A Brief Overview*, by Maeve P. Carey.

[242] U.S. Congress, House Committee on Government Operations, *Paperwork Reduction Act of 1980*, report to accompany H.R. 6410, 96th Cong., 2nd sess., March 19, 1980, H.Rept. 96-835, p. 30; U.S. Congress, Senate Committee on Governmental Affairs, *Paperwork Reduction Act of 1980*, report to accompany S. 1411, 96th Cong., 2nd sess., S.Rept. 96-930, September 8, 1980, p. 50.

OMB Guidance to Agencies on Matching Programs in 1979 and 1982

1979 Guidance

In 1979, OMB supported implementation of the Privacy Act by publishing guidelines for federal agencies on conducting matching programs.[243] The guidelines were largely seen as being procedural and addressed some of the legal questions surrounding matching programs.[244] Some observers believed that the guidelines created bureaucratic obstacles that deterred some activities.[245]

The 1979 guidelines directed executive agencies to conduct cost-benefit analyses using specific considerations, including any potential harm caused to individuals, before conducting a matching program.[246]

Additionally, an agency was to submit to the director of OMB, the Speaker of the House, and the President of the Senate a report that contained certain information on the matching program, such as the source agency, how the privacy and other rights of individuals would be protected, and the safeguards that would prevent unauthorized access to individuals' personal information.[247] The guidelines also differentiated reporting requirements for antifraud matching programs from matching programs conducted for other purposes.[248]

The 1979 guidelines also specified that matching programs should be conducted "in house" rather than by a contractor.[249]

1982 Guidance

OMB revised the guidelines in 1982 based on comments from the President's Council on Integrity and Efficiency.[250] According to the House Committee on Operations, OMB issued the revised guidelines without a public comment period.[251]

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[243] OMB, "Privacy Act of 1974; Supplemental Guidance for Matching Programs," 44 *Federal Register* 23139, April 18, 1979.

[244] U.S. Congress, 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*, 98th Cong., 1st sess., November 1, 1983, H.Rept. 98-455, p. 11.

[245] Jake Kirchner, "Privacy: A History of Computer Matching in Federal Government," Computerworld, December 14, 1981, as cited in U.S. Congress, 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*, 98th Cong., 1st sess., November 1, 1983, H.Rept. 98-455, p. 12.

[246] OMB, "Privacy Act of 1974; Supplemental Guidance for Matching Programs," 44 *Federal Register* 23139, April 18, 1979.

[247] Ibid., p. 23140.

[248] Ibid., p. 23139 (specifically the section titled, "Guidelines for Agencies Conducting Anti-Fraud Matching Programs") and p. 23142 (specifically the section, "Guidelines for Conducting Other Matching Programs").

[249] Ibid., p. 23140.

[250] OMB, "Privacy Act of 1974: Revised Supplemental Guidance for Conducting Matching Programs," 47 *Federal Register* 21656, May 19, 1982. The guidance referred to "the President's Council on Integrity and Efficiency *in Government*" and likely meant the President's Council on Integrity and Efficiency," which was established by Executive Order 12301.

[251] U.S. Congress, House Committee on Government Operations, *Who Cares about Privacy? Oversight of the Privacy*

The revised guidelines no longer distinguished between antifraud and other matching programs and excluded from the definition of *matching program* matches that did not compare a "substantial" number of records.[252]

OMB also required a written agreement between agencies involved in a matching program.[253] The agreement was to prescribe the conditions under which the data from one agency could be used by another agency.

OMB continued to advise agencies to use their own employees instead of contractors.[254] Where this was impractical, the guidelines offered some procedures for using contractors, including requirements that the contract include a clause about complying with the Privacy Act.[255]

Additionally, the 1982 guidelines replaced any reporting provided to OMB and Congress under the 1979 guidelines with publication in the *Federal Register*.[256]

Congressional Hearings and Reports

A Senate committee held hearings in December 1982 titled, "Oversight of Computer Matching to Detect Fraud and Mismanagement in Government Programs."[257]

Subsequent House hearings were held in June 1983 on Privacy Act oversight that also raised various issues with matching programs and the routine use exception.[258] For example, the former counsel to the Subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations testified:

> I think we needed to do something to clarify the routine use exception. Everyone recognized at the time of the adoption of the [Privacy Act] that you could not have a blanket prohibition on the exchange of information from one agency to another. The search for a solution resulted in the routine use provision.
>
> The routine use provision, unfortunately, was probably a bad choice of words because it was created to allow exchanges of information that were compatible with the original purpose for which the material was collected, not routinely used by agencies, as it was more commonly interpreted.[259]

Act of 1974 by the Office of Management and Budget and by the Congress, 98th Cong., 1st sess., November 1, 1983, H.Rept. 98-455, p. 12.

[252] OMB, "Privacy Act of 1974: Revised Supplemental Guidance for Conducting Matching Programs," 47 *Federal Register* 21657, May 19, 1982.

[253] Ibid., p. 21657.

[254] Ibid., p. 21658.

[255] Ibid.

[256] Ibid.

[257] U.S. Congress, Senate Committee on Governmental Affairs, Subcommittee on Oversight of Government Management, *Oversight of Computer Matching to Detect Fraud and Mismanagement in Government Programs*, hearings, 97th Cong., 2nd sess., December 15-16, 1982.

[258] U.S. Congress, House Committee on Government Operations, Subcommittee on Government Information, Justice, and Agriculture, *Oversight of the Privacy Act* of 1974, hearings, 98th Cong., 1st sess., June 7-8, 1983.

[259] Ibid., p. 45.

In 1983, the House Committee on Government Operations issued a report in which it noted that OMB's 1982 guidelines on matching programs "were revised and weakened in 1982"[260] and "are significant to [the] review of OMB Privacy Act activities."[261]

In 1984, Congress heard testimony on the sharing of tax records for matching purposes authorized under law.[262]

In the 99th Congress, the CMPPA of 1986 was introduced in the Senate (S. 2756). The CMPPA of 1987 was introduced in the Senate in the 100th Congress (S. 496)[263] with some changes to the bill that had been introduced in the previous Congress.

The Senate passed S. 496 with an amendment in May 1987.[264] A House version of the CMPPA (H.R. 4699) was introduced in May 1988 and passed the House in August 1988.[265] The House substituted the language contained in H.R. 4699 for the Senate's language in S. 496 and passed S. 496.[266]

The Senate agreed to the House amendments to S. 496 with its own amendment,[267] and the House concurred with the amended bill.[268] The CMPPA was signed into law on October 18, 1988.

[260] U.S. Congress, 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*, 98th Cong., 1st sess., November 1, 1983, H.Rept. 98-455, p. 2.

[261] Ibid., p. 10.

[262] U.S. Congress, Senate Committee on Governmental Affairs, Subcommittee on Oversight of Government Management, *Computer Matching: Taxpayer Records*, hearing, 98th Cong., 2nd sess., June 6, 1984.

[263] Introduction of S. 496, *Congressional Record*, vol. 133, part 3 (February 5, 1987), pp. 3084-3087.

[264] Senate consideration of S. 496, *Congressional Record*, vol. 133, part 28 (May 21, 1987), pp. 13539-13543.

[265] CMPPA of 1988, *Congressional Record*, vol. 134, part 14 (August 1, 1988), p. 19679.

[266] CMPPA of 1988, *Congressional Record*, vol. 134, part 14 (August 1, 1988), p. 19681.

[267] CMPPA of 1988, *Congressional Record*, vol. 134, part 17 (September 20, 1988), p. 24597.

[268] House of Representatives roll call vote number 382; CMPPA of 1988, *Congressional Record*, vol. 134, part 19 (October 3, 1988), p. 27908.

Appendix B. Information Disclosed and Data Matched in Matching Programs

Matching agreements are required to include specific information, including:

- the purpose of and legal authority for the matching program;
- the justification for the matching program and the anticipated results, including specific estimates of any savings;
- 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 anticipated start and completion dates of the matching program;
- procedures for providing individualized notice at the time of application, and notice periodically thereafter, to applicants and recipients of federal benefit program assistance and to applicants for and holders of federal personnel positions that information provided may be subject to verification through matching programs;
- procedures for verifying information produced in matching programs;
- procedures for the retention and timely destruction of identifiable records created by a recipient agency or a nonfederal agency;
- procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such matched records;
- prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the nonfederal agency except where required by law or essential to the conduct of the matching program;
- procedures governing the use of records from a source agency by a recipient agency or nonfederal agency, including procedures for returning records to the source agency or destroying such records;
- information on accuracy assessments of records to be used in the matching program; and
- a notice that the Comptroller General may have access to all records of a recipient agency or a nonfederal agency that the Comptroller General deems necessary to monitor or verify compliance with the agreement.[269]

Table B-1 provides examples of some of the information contained in matching agreements for matching programs that were active in 2022, including any information that is subsequently disclosed by the recipient agency to the source agency and whether the disclosure is cited as using the routine use exception permitted by the Privacy Act.[270]

[269] 5 U.S.C. §552a(o)(1)(A-K).

[270] 5 U.S.C. §552a(b)(3).

Table B-1. Examples of Purposes, Information Disclosed, and Data Elements Matched for Matching Programs

In Calendar Year 2022

Purpose of the Matching Program	Source Agency	Recipient Agency	Effective Dates	Number of Records Disclosed by Source Agency	Information Disclosed to Recipient Agency	Data Matched and Information Disclosed by Recipient Agency to Source Agency	Disclosure Under Routine Use Exception
To identify children whose parent or guardian was a member of the U.S. Armed Forces and died as a result of performing military service in Iraq or Afghanistan after September 11, 2001, as such persons may be eligible for increased amounts of student assistance as authorized by law	Department of Defense, Defense Manpower Data Center	Department of Education (ED)	February 27, 2021, to August 26, 2022	approximately 6,651	Name Date of birth Social Security number Parent or guardian's date of death	None; however, ED will inform schools listed on the student's Free Application for Federal Student Aid that the student is eligible to receive additional financial assistance under Title IV of the Higher Education Act	Yes
To determine continued eligibility for Supplemental Security Income applicants and recipients or the correct benefit amount for recipients and deemors who did not report or incorrectly reported ownership of savings securities	Social Security Administration	Department of Treasury, Bureau of the Fiscal Service	June 26, 2021, to December 25, 2022	approximately 10 million	Name Social Security number	In request to savings securities registration information: Denomination of the security Serial number Series Issue date of the security Current redemption value Return date of the finder file In request to savings securities information: Purchase amount Account number and confirmation number Series Issue date of the security Current redemption value Return date of the finder file	No

Purpose of the Matching Program	Source Agency	Recipient Agency	Effective Dates	Number of Records Disclosed by Source Agency	Information Disclosed to Recipient Agency	Data Matched and Information Disclosed by Recipient Agency to Source Agency	Disclosure Under Routine Use Exception
To assist the Department of Housing and Urban Development (HUD) in verifying the employment and income of participants in certain rental assistance programs	HUD	Department of Health and Human Services (HHS), Administration for Children and Families, Office of Child Support Enforcement	July 28, 2021, to January 27, 2023	approximately 9.9 million	First name Last name Date of birth Social Security number	From new hire file: New hire processed date Employee name Employee address Employee date of hire Employee state of hire Federal Employer Identification Number State Employer Identification Number Department of Defense code Employer name Employer address Transmitter agency code Transmitter state code Transmitter state or agency name From quarterly wage file: Quarterly wage processed date Employee name Federal Employer Identification number State Employer Identification number Department of Defense code Employer name Employer address Employee wage amount Quarterly wage reporting period Transmitter agency code Transmitter state code Transmitter state or agency name From unemployment insurance file: Unemployment insurance processed date Claimant name Claimant address Claimant benefit amount Unemployment insurance reporting period Transmitter state code Transmitter state or agency name	Yes

To verify an applicant's or enrollee's eligibility for minimum essential coverage through an Office of Personnel Management (OPM) Health Benefits Plan	OPM	HHS, Centers for Medicare and Medicaid Services (CMS)	June 8, 2021, to December 7, 2023	approximately 2 million	Disclosed monthly: Record type Record number Unique person ID Social Security number Last name Middle name First name Last name suffix Gender Date of birth Health plan code Disclosed annually: State Plan Option Enrollment code Current total biweekly premium Future total biweekly premium Future government pays biweekly premium Future employee pays biweekly premium Future change in employee payment biweekly premium Current total monthly premium Future total monthly premium Future government pays monthly premium Future employee pays monthly premium Future change in employee payment monthly premium	CMS will not share any data with OPM under the agreement	Yes

Source: Information in the table is from matching agreements reviewed by CRS. See Department of Defense, ED, "Computer Matching Agreement between the U.S. Department of Education and the Defense Manpower Data Center of U.S. Department of Defense," https://dpcld.defense.gov/Portals/49/Documents/Privacy/CMAs/CMA14_2021_Establish.pdf; Social Security Administration, Treasury, "Computer Matching Agreement between the Social Security Administration and the Bureau of the Fiscal Service Department of the Treasury," https://www.ssa.gov/privacy/cma/Agreement%201038%2012.30.2020_Signed%20(1).pdf; HUD, HHS, "Computer Matching Agreement between U.S. Department of Health and Human Services Administration for Children and Families Office of Child Support Enforcement and U.S. Department of Housing and Urban Development," https://www.hhs.gov/sites/default/files/acf-hud-cma-2107.pdf; OPM, CMS, "Computer Matching Agreement between the Department of Health and Human Services Centers for Medicare and Medicaid Services and the Office of Personnel Management for Verification of Eligibility for Minimum Essential Coverage Under the Patient Protection and Affordable Care Act Through an Office of Personnel Management Health Benefit Plan," https://www.hhs.gov/sites/default/files/cma-cms-opm-2104.pdf.

Notes: The agencies included in the table were among those also selected by GAO for its 2014 report *Computer Matching Act: OMB and Selected Agencies Need to Ensure Consistent Implementation* because of their benefits and assistance program expenditures (p. 2).

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