

on public health or safety is likely, it may take appropriate action, notwithstanding these due process requirements.

(2) In such cases, the agency shall include the possibility of suspension of due process for this reason in its matching program agreement.

§ 317.96 Matching program agreement.

(a) *Requirements.* The agency should allow sufficient lead time to ensure that a matching agreement between the participants can be negotiated and signed in time to secure the Defense Data Integrity Board decision before the match begins. The agency, if receiving records from or disclosing records to a non-Federal agency for use in a matching program, is responsible for preparing the matching agreement and should solicit relevant data from the non-Federal agency where necessary. Both Federal source and recipient agencies must have the matching agreement approved by their respective Data Integrity Boards. In cases where matching takes place entirely within the Department of Defense, the agency may satisfy the matching agreement requirements by preparing a Memorandum of Understanding (MOU) between the systems of records managers involved. Before the agency may participate in a matching program the Defense Data Integrity Board must have evaluated the proposed match and approved the terms of the matching agreement or MOU.

(b) *Agreements or MOUs must contain the following elements—*(1) *Purpose and legal authority.* Citation of the Federal or state statutory or regulatory authority for undertaking the matching program. Do not cite the Privacy Act.

(2) *Justification and expected results.* A full explanation of why a computer matching program, as opposed to some other form of activity, is being proposed and what the expected results will be, including a specific estimate of any savings.

(3) *Records description.* A full identification of the system of records (FEDERAL REGISTER citations) or non-Federal records, number of subjects of record, and what data elements will be included in the match.

(4) *Dates.* An indication of whether the match is a one-time or continuing program (not to exceed 18 months) and the projected starting and completion dates for the match.

(5) *Prior notice to subjects of record.* A description of the direct and constructive notice procedures afforded the subjects of record. Copies of the published applicable record system notices involved and all applicable forms containing the appropriate Privacy Act Statement being used by the participants of the proposed match should be provided.

(6) *Verification procedures.* A full description of the methods the agency will use to independently verify the information obtained through the matching program.

(7) *Disposition of matched items.* A statement that the information generated as a result of the matching program will be destroyed as soon as it has served the matching program's purpose and any legal retention requirements the agency establishes in conjunction with the National Archives and Records Administration or other cognizant authority.

(8) *Security procedures.* A description of the administrative, technical and physical safeguards to be used in protecting the information. They should be commensurate with the level of sensitivity of the data.

(9) *Records usage, duplication and disclosure restrictions.* A description of any specific restrictions imposed by either the source agency or by statute or regulation on collateral uses of the records used in the matching program. Recipient agencies may not use the records obtained for a matching program under a matching agreement for any other purpose unless there is a specific statutory authority or there is a direct essential connection to the conduct of the matching program. Agreements shall specify how long the recipient agency may keep records provided for a matching program and when they will be returned to the source agency or destroyed.

(10) *Records accuracy assessments.* A description of any information relating to the quality of the records to be used in the matching program such as the error rate percentage of the data entry

for the affected records. The worse the quality of the data, the less likely the matching program will have a cost-beneficial result.

(11) *Disclosure Accounting.* A certification by the agency participating in a matching program as a source agency for disclosures outside the Department of Defense that a disclosure accounting shall be maintained on the subjects of record as required by the Privacy Act.

(12) *Access by the Comptroller General.* A statement that the Comptroller General may have access to all records of a recipient DoD component or non-Federal agency necessary to monitor or verify compliance with the agreement. In this instance, the Comptroller General may inspect state or local government records used in matching programs.

(c) *Non-Federal agencies.* Non-Federal agencies intending to participate in covered matching programs are required to do the following:

(1) Execute matching agreements prepared by a Federal agency or agencies involved in the matching program.

(2) Provide data to Federal agencies on the costs and benefits of matching programs.

(3) Certify that they will not take adverse action against an individual as a result of any information developed in a matching program unless the information has been independently verified and until the applicable number of days after the individual has been notified of the findings and given an opportunity to contest them has elapsed.

(4) For renewals of matching programs, certify that the terms of the agreement have been followed.

(d) *Duration of matching programs.* Matching agreements will remain in force only as long as necessary to fulfill their specific purposes. They will automatically expire 18 months after their approval unless the Defense Data Integrity Board grants an extension of up to one year at least three months prior to the actual expiration date. The program must remain unchanged if an extension is to be granted. Each party to the agreement must certify that the program has been conducted in compliance with the matching agreement. Requests for extensions shall be submitted through channels to the Board.

(e) *Altered matching program.* (1) An altered matching program is one that is already established, but with such a significant change proposed that it requires revision of the matching notice and approval of the Defense Data Integrity Board, OMB and Congress. A significant change is one which does one or more of the following:

(i) Changes the purpose for which the program was established.

(ii) Changes the matching population either by including new categories of subjects of record, or by greatly increasing the numbers of records matched.

(iii) Changes the legal authority under which the match was being conducted.

(iv) Changes the records (data elements) that will be used in the match.

(2) A proposal to alter an established matching program shall be submitted through channels to the Defense Data Integrity Board for review and approval.

(f) *Non compliance sanctions.* (1) The agency shall not disclose any record for use in a matching program as a source agency to any recipient agency (within or outside the Department of Defense) if there is reason to believe that the terms of the matching agreement/MOU or the due process requirements are not being met by the recipient agency. The Defense Privacy Office, DA&M, shall be informed immediately, through channels, should any such incident occur. Normally consulting with the recipient agency should resolve the problem, but the responsibility rests with the source.

(2) No source agency shall renew a matching agreement/MOU unless the recipient agency (within or outside the Department of Defense) has certified that it has complied with the provisions of the agreement/MOU and the agency has no reason to believe otherwise.

(3) A willful disclosure of records from a system of records for any unauthorized computer matching program may subject the responsible officer or employee to criminal penalties. Civil remedies are also available to matching program subjects who can show

they were harmed by an agency's violation of the Act as set forth in subpart J of this part.

§ 317.97 Cost-benefit analysis.

(a) *Purpose.* The requirement for a cost-benefit analysis by the Act is to assist the agency in determining whether or not to conduct or participate in a matching program. Its application is required in two places: As an agency conclusion in the matching agreement containing the justification and specific estimate of savings; and in the Data Integrity Board review process where it is forwarded as part of the matching proposal. The intent of this requirement is not to create a presumption that when agencies balance individual rights and cost savings, the latter should inevitably prevail. Rather, it is to ensure that sound management practices are followed when agencies use records from Privacy Act systems in matching programs. It is not in the government's interest to engage in matching activities that drain agency resources that could be better spent elsewhere. Agencies should use the cost-benefit requirement as an opportunity to re-examine programs and weed out those that produce only marginal results.

(b) *Cost-benefit analysis.* The agency, when proposing matching programs, must provide the Board with all information which is relevant and necessary to allow the Board to make an informed decision including a cost-benefit analysis. The Defense Data Integrity Board shall not approve any matching agreement unless the Board finds the cost-benefit analysis demonstrates the program is likely to be cost effective.

(1) The Board may waive the cost-benefit analysis requirement if it determines in writing that submission of such an analysis is not required.

(2) If a matching program is required by a specific statute, then a cost-benefit analysis is not required. However, any renegotiation of such a matching agreement shall be accompanied by a cost-benefit analysis. The finding need not be favorable. The intent, in this case, is to provide Congress with information to help it evaluate the effec-

tiveness of statutory matching requirements.

(3) The Board must find that agreements conform to the provisions of the Act and appropriate guidelines, regulations, and statutes.

§ 317.98 Appeals of denials of matching agreements.

(a) *Disapproval by the Board.* If the Defense Data Integrity Board disapproves a matching agreement, a party to the agreement may appeal the disapproval to the Director of the Office of Management and Budget, Washington, DC 20503. Appeals must be made within 30 days after the Defense Data Integrity Board's written disapproval. The appealing party shall submit with its appeal the following:

(1) Copies of all documentation accompanying the initial matching agreement proposal.

(2) A copy of the Defense Data Integrity Board's disapproval and reasons.

(3) Evidence supporting the cost-benefit effectiveness of the match.

(4) Any other relevant information, e.g., timing considerations, public interest served by the match, etc.

(b) *OMB approval.* If the Director of the Office of Management and Budget approves a matching program it will not become effective until 30 days after the Director reports his decision to Congress.

(c) *Recourse by the Inspector General.* If the Defense Data Integrity Board and the Director of the Office of Management and Budget both disapprove a matching program proposed by the Inspector General of the denial agency, the Inspector General may report that disapproval to the head of Department of Defense and to the Congress.

§ 317.99 Proposals for matching programs.

(a) *Who initiates the action.* The recipient DoD component (or the DoD component source agency in a match conducted by a non-Federal agency); or the recipient activity within the DoD component for internal matches, is responsible for reporting the match for