

Dated: December 29, 2010.

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(Acting).*

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5386-N-16]

Privacy Act of 1974; Computer Matching Program Between the Department of Housing and Urban Development (HUD) and the Department of Health and Human Services (HHS): Matching Tenant Data in Assisted Housing Programs

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of a New Computer Matching Agreement between HUD and HHS.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, as amended, HUD is providing notice of its intent to execute a new computer matching agreement with HHS for a recurring matching program with HUD's Office of Public and Indian Housing (PIH) and Office of Housing, involving comparisons of information provided by participants in any authorized HUD rental housing assistance program with the independent sources of income information available through the National Directory of New Hires (NDNH) maintained by HHS. Specifically, the HUD-HHS computer matching program will now include program participants of HUD's new Disaster Housing Assistance Program (DHAP), in addition to participants of previously authorized HUD rental housing assistance programs and conditions requiring HUD's annual Quality Control for Rental Assistance Subsidy Determinations ("QC") study to provide a statistical measurement of subsidy error within HUD rental housing assistance programs. The most recent renewal of the current matching agreement expires on January 5, 2011.

DATES: HUD will file a report of the subject matching program with the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and Office of Management and Budget's (OMB), Office of Information and Regulatory Affairs. The matching program will

become effective as cited in Section V of this notice.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

Communications should refer to the above docket number and title.

Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For Privacy Act Inquires: Office of the Chief Information Officer, contact the Chief Privacy Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2256, Washington, DC 20410, telephone number (202) 402-8073. For program information: Office of Public and Indian Housing, contact Nicole Faison, Program Advisor for the Real Estate Assessment Center, Department of Housing and Urban Development, 451 Seventh Street, SW., Room PCFL1, Washington, DC 20410, telephone number (202) 475-7963; and for the Office of Housing, contact Catherine M. Brennan, Director of the Housing Assistance Policy Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410, telephone number (202) 402-6732. (These are not toll-free numbers.) A telecommunications device for hearing- and speech-impaired individuals (TTY) is available at (800) 877-8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: On March 11, 2009, Section 239 of HUD's 2009 Appropriations Act modified Section 904 of the Stewart B. McKinney Act of 1988, as amended, to include the Disaster Housing Assistance Program (DHAP) as a "program" of HUD for the purpose of income verifications and computer matching. Computer matching for participants of the Disaster Housing Assistance Program is expected to begin no sooner than January 2, 2011. As such, pursuant to the Computer Matching and Privacy Protection Act (CMPPA) of 1988, as amended, OMB's guidance on this statute entitled "Final Guidance Interpreting the Provisions of Public Law 100-503", and OMB Circular No. A-130, Appendix 1 to OMB's Revisions of Circular No. A-130, "Transmittal Memorandum No. 4, Management of Federal Information Resources," prescribes agencies responsibilities for maintaining records

about individuals, HUD is providing the public with notice of a new computer matching agreement with HHS (previous notice of a computer matching program between HUD and HHS was previously published at 73 FR 10046 on February 25, 2008). The first HUD-HHS computer matching program was conducted in September 2005, with HUD's Office of Public and Indian Housing. The scope of the HUD-HHS computer matching program was extended to include HUD's Office of Housing in December 2007. This notice supersedes the previous notice and changes the scope of the existing computer matching program to now include participants of HUD's DHAP.

The matching program will be carried out only to the extent necessary to: (1) Verify the employment and income of individuals participating in programs identified in Section I below, to correctly determine the amount of their rent and assistance, (2) identify, prevent, and recover improper payments made on behalf of tenants, and (3) after removal of personal identifiers, to conduct analyses of the employment and income reporting of individuals participating in any HUD authorized rental housing assistance program.

HUD will make the results of the computer matching program available to public housing agencies (PHAs), private housing owners and management agents (O/As) administering HUD rental assistance programs to enable them to verify employment and income and correctly determine the rent and assistance levels for individuals participating in those programs, and contract administrators (CAs) overseeing and monitoring O/A operations. This information also may be disclosed to the HUD Inspector General (HUD/IG) and the Attorney General in detecting and investigating potential cases of fraud, waste, and abuse of the above named programs.

In addition to the above noted information disclosures, limited redisclosure of reports containing NDNH information may be redisclosed to the following persons and/or entities: (1) independent auditors for the sole purpose of performing an audit of whether these HUD authorized entities verified tenants' employment and/or income and calculated the subsidy and rent correctly; and (2) entities and/or individuals associated with grievance procedures and judicial proceedings (*i.e.* lawyers, court personnel, agency personnel, grievance hearing officers, etc.) relating to independently verified unreported income identified through this matching program.

HUD and its third party administrators (PHAs, O/As, and CAs) will use this matching authority to identify, reduce or eliminate improper payments in HUD's rental housing assistance programs, while continuing to ensure that HUD rental housing assistance programs serve and are accessible by its intended program beneficiaries.

I. Authority

This matching program is being conducted pursuant to Section 217 of the Consolidated Appropriation Act of 2004 (Pub. L. 108–199, Approved January 23, 2004), which amended Section 453(j) of the Social Security Act (42 U.S.C. 653(j)), Sections 3003 and 13403 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, approved August 10, 1993); Section 542(b) of the 1998 Appropriations Act (Pub. L. 105–65); Section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, as amended by Section 239 of HUD's 2009 Appropriations, effective March 11, 2009 (42 U.S.C. 3544); Section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543); the National Housing Act (12 U.S.C. 1701–1750g); the United States Housing Act of 1937 (42 U.S.C. 1437–1437z); Section 101 of the Housing and Community Development Act of 1965 (12 U.S.C. 1701s); the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*); and the Quality Housing and Work Responsibility Act of 1998 (42 U.S.C. 1437a(f)).

The Housing and Community Development Act of 1987 authorizes HUD to require applicants and participants (as well as members of their household six years of age and older) in HUD-administered programs involving rental housing assistance to disclose to HUD their social security numbers (SSNs) as a condition of initial or continuing eligibility for participation in the programs. Effective January 31, 2010, all applicants and participants under the age of six, are required to disclose their SSN to HUD, in accordance with regulatory revisions made to 24 CFR 5.216, as published at 74 FR 68924, on December 29, 2009.

Section 217 of the Consolidated Appropriations Act of 2004 (Pub. L. 108–199, approved January 23, 2004) authorizes HUD to provide to HHS information on persons participating in any programs authorized by:

(i) The United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*);

(ii) Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);

(iii) Section 221(d)(3), 221(d)(5) or 236 of the National Housing Act (12 U.S.C. 17151(d) and 1715z–1);

(iv) Section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013); or

(v) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s);

The Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of the Enterprise Income Verification (EIV) System—Amendments; Final rule published at 74 FR 68924 on December 29, 2009, requires program administrators to use HUD's EIV system to verify tenant employment and income information during mandatory reexaminations or recertifications of family composition and income and reduce administrative and subsidy payment errors in accordance with HUD administrative guidance (new HUD regulation at 24 CFR 5.233).

This matching program also assists HUD in complying with the following federal laws, requirements, and guidance related to identifying and reducing improper payments:

1. Improper Payments Elimination and Recovery Act of 2010 (IPERA) (Pub. L. 111–204);

2. Presidential Memorandum on Enhancing Payment Accuracy Through a “Do Not Pay List” (June 18, 2010);

3. Office of Management and Budget M–10–13, Issuance of Part III to OMB Circular A–123, appendix C;

4. Presidential Memorandum on Finding and Recapturing Improper Payments (March 10, 2010);

5. Reducing Improper Payments and Eliminating Waste in Federal Programs (Executive Order 13520, November 2009);

6. Improper Payments Information Act of 2002 (Pub. L. 107–300); and

7. Office of Management and Budget M–03–13, Improper Payments Information Act of 2002 Implementation Guide.

HHS shall then compare this information provided by HUD with data contained in the National Directory of New Hires and report the results of the data match to HUD. The Act gives HUD the authority to disclose this information to CAs, O/As, and PHAs for the purpose of verifying the employment and income of individuals receiving benefits in the above programs. HUD shall not seek, use or disclose information relating to an individual without the prior written consent of that individual, and HUD has the authority to require consent as a

condition of participating in HUD rental housing assistance programs.

HHS' disclosure of data from the National Directory of New Hires is authorized by Section 217 of the Consolidated Appropriations Act of 2004 (Pub. L. 108–199). The disclosures from the HHS system of records, “Location and Collection System of Records,” No. 09–90–0074, will be made pursuant to “Routine Use” (17), identified in the **Federal Register** last published at 72 FR 51446 on September 7, 2007. This routine use authorizes HHS to “disclose to the Department of Housing and Urban Development information in the NDNH portion of this system for purposes of verifying employment and income of individuals participating in specified programs and, after removal of personal identifiers, to conduct analyses of the employment and income reporting of these individuals.”

II. Objectives To Be Met by the Matching Program

HUD's primary objective of the computer matching program is to verify the employment and income of individuals participating in the housing programs identified in Section I above, to determine the appropriate level of rental assistance, and to detect, deter and correct fraud, waste, and abuse in rental housing assistance programs. In meeting these objectives HUD also is carrying out a responsibility under 42 U.S.C. 1437f(K) to ensure that income data provided to PHAs, and O/As, by household members is complete and accurate. HUD's various rental housing assistance programs require that participants meet certain income and other criteria to be eligible for rental assistance. In addition, tenants generally are required to report and recertify the amounts and sources of their income at least annually. However, under the QHWRA of 1998, PHAs operating Public Housing programs may now offer tenants the option to pay a flat rent, or an income-based rent. Those tenants who select a flat rent will be required to recertify income at least every three years. In addition, the changes to the Admissions and Occupancy final rule (March 29, 2000 (65 FR 16692)) specified that household composition must be recertified annually for tenants who select a flat rent or income-based rent.

An additional objective of this computer matching program is to facilitate the statistical measurement of subsidy error by completing an annual QC study. The QC study provides national estimates of the extent, severity, costs, and sources of rent errors

for rental assistance programs, administered by the Offices of Housing and Public and Indian Housing. This study is designed to measure the extent of administrative error by housing providers and tenant income reporting errors. The errors evaluated in this study affect the rent contributions tenants should have been charged. HUD will use NDNH information resulting from this data comparison and disclosure solely for the purpose of conducting aggregate analyses of employment and income reporting of individuals participating in the rental housing assistance programs. The study will not contain personally identifiable information of individuals.

III. Program Description

In this computer matching program, tenant-provided information included in HUD's automated systems of records known as Tenant Rental Assistance Certification System (TRACS) (HUD/H-11), Inventory Management System (HUD/PIH-4, formerly the Public and Indian Housing Information Center (PIC) (HUD/PIH-4), and Enterprise Income Verification (EIV) System (HUD/PIH-5) will be compared to data from the NDNH database. The notices for these systems were published at 65 FR 52777, 67 FR 20986, and 70 FR 41780, which was subsequently amended and published at 72 FR 17589, respectively. The notice for the EIV system was subsequently updated and published in the **Federal Register** on September 1, 2009, at 74 FR 45235. HUD will disclose to HHS only tenant personal identifiers, i.e., full name, Social Security Number, and date of birth. HHS will match the HUD-provided personal identifiers to personal identifiers included in the National Directory of New Hires (NDNH) contained within their systems of records known as "Location and Collection System of Records," No. 09-90-0074. HHS will provide income data to HUD only for individuals with matching personal identifiers.

A. Income Verification

Any disparity between tenant-reported income and/or sources and the income and sources derived from the match (i.e., a "hit") will be further reviewed by HUD, the program administrator, or the HUD Office of Inspector General (OIG) to determine whether the income reported by tenants to the program administrator is correct and complies with HUD and program administrator requirements. Specifically, current or prior wage information and other data will be sought directly from employers and/or tenants.

B. Administrative or Legal Actions

With respect to the "hits" that will occur as a result of this matching program, HUD requires program administrators to take appropriate action in consultation with tenants to: (1) resolve income disparities between tenant-reported and independent income source data, and (2) use correct income amounts in determining housing rental assistance.

Program administrators must compute the rent in full compliance with all applicable occupancy regulations. Program administrator must ensure that they use the correct income and correctly compute the rent. The program administrator may not suspend, terminate, reduce, or make a final denial of any housing assistance to any tenant as the result of information produced by this matching program until: (a) The tenant has received notice from the program administrator of its findings, and tenants are informed of the opportunity to contest such findings and (b) either the expiration of any notice period provided in applicable HUD requirements of the program or the 30-day period beginning on the date on which notice of adverse findings was mailed or otherwise provided to the tenant. In all cases, program administrators will resolve income discrepancies in consultation with tenants. Additionally, serious violations, which program administrators, HUD program staff, or HUD OIG verify, should be referred for full investigation and appropriate civil and/or criminal proceedings.

IV. Records To Be Matched

HHS will conduct the matching of tenant SSNs, full names, and dates of births (DOB) to tenant data HUD supplies from its Tenant Rental Assistance Certification System (TRACS) (HUD/H-11) and Public and Indian Housing Information Center (PIC) system (HUD/PIH-4). Program administrators utilize the form HUD-50058 module within the PIC system and the form HUD-50059 module within the TRACS to provide HUD with the tenant data.

HHS will match the tenant records included in HUD/H-11 and HUD/PIH-4 to NDNH records contained in HHS' "Location and Collection System of Records," No. 09-90-0074. HUD will place the resulting matched data into its Enterprise Income Verification (EIV) system (HUD/PIH-5). The notice for this system was published at 72 FR 17589, and subsequently updated and published in the **Federal Register** on September 1, 2009, at 74 FR 45235.

Routine uses of records maintained in the system, including categories of users and purposes of such uses was published in that Notice.

V. Period of the Match

The matching program will become effective and the matching may commence after the respective Data Integrity Boards (DIBs) of both agencies approve and sign the computer matching agreement, and after, the later of the following: (1) 40 days after report of the matching program is sent to Congress and OMB; (2) at least 30 days after publication of this notice in the **Federal Register**, unless comments are received, which would result in a contrary determination. The computer matching program will be conducted according to agreement between HUD and HHS. The computer matching agreement for the planned match will terminate either when the purpose of the computer matching program is accomplished, or 18 months from the effective date. The agreement may be renewed for one 12-month period, with the mutual agreement of all involved parties, if the following conditions are met:

(1) Within three months of the expiration date, all Data Integrity Boards (DIBs) review the agreement, find that the program will be conducted without change, and find a continued favorable examination of benefit/cost results; and (2) All parties certify that the program has been conducted in compliance with the agreement.

The agreement may be terminated, prior to accomplishment of the computer matching purpose or 18 months from the date the agreement is signed (whichever comes first), by the mutual agreement of all involved parties within 30 days of written notice.

Authority: 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: December 16, 2010.

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Chief Information Officer.

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