

**COMPUTER MATCHING AGREEMENT BETWEEN  
THE U.S. DEPARTMENT OF EDUCATION  
AND  
THE U.S. DEPARTMENT OF JUSTICE**

I. INTRODUCTION

This computer matching agreement (CMA) is between the U.S. Department of Education (ED) and the Department of Justice (DOJ) in accordance with the Privacy Act of 1974 (5 U.S.C. 552a) (Privacy Act), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100-503) and the Computer Matching and Privacy Protection Amendments of 1990 (Pub. L. 101-508) (CMPPA); the Office of Management and Budget (OMB) Final Guidance Interpreting the Provisions of Pub. L. 100-503, the Computer Matching and Privacy Protection Act of 1988 (54 FR 25818, June 19, 1989); and OMB Circular A-108, Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act (81 FR 94424, December 23, 2016).

The CMPPA requires the agencies involved in any matching program covered by the CMPPA to execute a written agreement specifying the terms and conditions under which matches will be conducted. The agreement must also include the procedural requirements and verification safeguards of the CMPPA. This CMA provides for a computer match between ED Federal Student Aid Application File and the DOJ Denial of Federal Benefits and Defense Procurement Fraud Debarment Clearinghouse System (DFB/DPPD) database.

Under the Controlled Substances Act, 21 U.S.C. 862, an individual convicted of a Federal or State drug trafficking or possession offense may be denied, at the discretion of the court, certain Federal benefits, including those under the Student Financial Assistance Programs authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA).

II. PURPOSE AND AUTHORITY

The purpose of this matching program is to ensure that the requirements of section 421 of the Controlled Substances Act (originally enacted as section 5301 of the Anti-Drug Abuse Act of 1988, Pub. L. 100-690, 21 U.S.C. 853a, which was amended and redesignated as section 421 of the Controlled Substances Act by section 1002(d) of the Crime Control Act of 1990, Pub. L. 101-647) (hereinafter referred to as "section 5301"), are met.

Section 5301 requires, in pertinent part, that the President shall transmit to the Congress a report:

- (A) Describing the manner in which Federal agencies will implement and enforce the requirements of this section (see 21 U.S.C. 862(g)(1)(B));  
and
- (B) Detailing the means by which Federal agencies will exchange and share the data and information necessary to implement and enforce the withholding of Federal benefits (see 21 U.S.C. 862(g)(1)(C)).

DOJ is the lead contact agency for information related to section 5301 violations and, as such, provides this data to ED under this Agreement pursuant to the Privacy Act, 5 U.S.C. 552a(o) and 28 U.S.C. 530C.

ED (recipient agency) seeks access to the information contained in the DOJ (source agency) Denial of Federal Benefits and Defense Procurement Fraud Debarment Clearinghouse program (DFB/DPFD) database (formerly known as DEBARS) that is authorized under section 5301 for the purpose of ensuring that Title IV, HEA student financial assistance is not awarded to individuals subject to denial of benefits under court orders issued pursuant to section 5301.

ED and DOJ have determined that, for purposes of verifying Title IV, HEA student financial assistance eligibility, direct access to the DFB/DPFD database would be more useful than access to the General Services Administration's (GSA) list of Parties Excluded From Federal Procurement and Non-Procurement Programs (GSA List) because the DFB/DPFD database contains information essential to the effective operation of the match that is not available in the GSA List. For example, the DFB/DPFD database contains more complete identifying information concerning the individual, including both the date of birth and the Social Security number (SSN) of the individual. Additionally, through Role-Based Access and coding DFB data, the DFB/DPFD database contains precise information concerning the specific Title IV, HEA student financial assistance program for which benefits have been denied to individuals sanctioned under section 5301.

### III. JUSTIFICATION AND EXPECTED RESULTS

Section 5301 provides an option to sentencing judges to deny all or selected Federal benefits (including Title IV, HEA student financial assistance) to individuals convicted of drug trafficking or possession. Section 5301 is one of a number of provisions enacted by Congress with the intent of reducing the demand for illegal drugs. It represents a strong objective that Federal benefits not be used to support individuals engaged in illicit drug activities. DOJ is administering this law in a manner designed to achieve these objectives to the maximum extent possible.

The agencies have determined that a computer matching program is the most efficient, expeditious, and effective means of obtaining and processing the information needed by ED to determine whether Title IV, HEA applicants have been convicted of certain drug-related offenses and subsequently denied Federal student financial assistance pursuant to section 5301. By matching the names, dates of birth, and SSNs in the DFB/DPFD database with ED's student financial aid records, ED is able to identify students who do not qualify for Federal student financial assistance pursuant to the provisions set forth in the Controlled Substances Act. Thus, ED avoids the cost of disbursing student financial assistance funds to individuals who do not qualify for Federal student financial assistance, but who would otherwise receive aid had the matching program not existed. Finally, a manual system would require ED to locate matched students after they have already enrolled in school. DOJ reports that about 18,924 individuals were actively debarred from the receipt of certain Federal benefits, including Federal student financial assistance, as of November 2017. In addition, over 18 million individuals apply for Federal student financial assistance each award year. In view of these numbers, an automated

matching program is the only practical method to prevent improper payments to applicants who are not eligible to receive the benefits administered by ED under Title IV of the HEA.

For the award year cycle covering 2016-2017, a cost-benefit analysis demonstrated the benefit of using the computer matching program. While the cost of running the computer matching program was \$5,563.96, the total cost avoidance, based upon Title IV, HEA student financial assistance denied in accordance with section 5301, was \$355,680 (see Appendix A: Cost-Benefit Analysis). The cost benefit ratio is 0.015.

As discussed above, there is no viable alternative to a computer match given the current numbers of section 5301 sanctions. Furthermore, a manual scheme is necessarily “after the fact.” That is, the manual process relies on locating the applicant and attempting to prevent him or her from using a valid Federal aid output document, the Student Aid Report (SAR), after the SAR is issued. In contrast, the computer match prohibits the initial disbursement of Title IV, HEA funds to students ineligible under section 5301. See section VI, Verification Procedures, of this agreement.

#### IV. RECORDS DESCRIPTION

##### A. Records that will be matched:

- (1) ED system of records: Federal Student Aid Application File (18-11-01) (ED system of records notice was published in the *Federal Register* on June 4, 1999, see page 30159 of 64 FR 30106; corrections published in the *Federal Register* on December 27, 1999, see page 72407 of 64 FR 72384; March 2, 2000, 65 FR 11294; April 11, 2001, 66 FR 18758; and August 3, 2011, 76 FR 46774) (Note: The ED Central Processing System [CPS] is the ED information system that processes data from the Federal Student Aid Application File.)
- (2) DOJ system of records: DFB/DPFD (formerly known as DEBAR System) (DOJ system of records notice was published in the *Federal Register* on May 10, 1999, 64 FR 25071; modified on January 31, 2001 by 66 FR 8425 and May 25, 2017 by 82 FR 24147).

##### B. Data elements contained within the Federal Student Aid Application File to be matched with the automated DFB/DPFD system of records are as follows:

- (1) Name
- (2) Date of Birth
- (3) SSN

##### C. Data elements contained within the DFB/DPFD database which ED accesses:

- (1) Name
- (2) SSN
- (3) Title IV, HEA Program(s) included under court sanction
- (4) End date of the debarment period

(5) Codes for the denied Federal benefits as contained in the Catalog of Federal Domestic Assistance.

- D. Method of retrieving the file: Every four to six weeks, the ED contractor shall log onto the DFB/DPFD system through an internet browser using encrypted HTTPS protocol over SSL through Role-Based Access and coding DFB data, to download the drug conviction file from DOJ DFB/DPFD's database using secure transport. The ED contractor will replace the existing data in the CPS DOJ Database table with the data in the DFB/DPFD database. The Federal Student Aid Application File will be matched against the CPS DOJ Database table daily to identify individuals who are ineligible for Title IV aid due to having received a sentence that denied them Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988.
- E. Number of Records: As of November 2017, DOJ reports that about 18,924 individuals were actively debarred from the receipt of certain Federal benefits, including Federal student financial assistance. During the past year, an average of 45 individuals were added to the database each month. At this rate of increase, the Bureau of Justice Assistance(BJA) anticipates that the number of persons receiving section 5301 sanctions who are active in the database will increase to about 19,500 by the end of 2018. These figures include a small number of records that, through Role-Based Access and specific coding of DFB data, will not be provided to ED since they do not involve a denial of benefits under Title IV of the HEA. During the processing cycle that began on October 1, 2015, through June 30, 2017, ED processed more than 18 million applications for Title IV, HEA student financial assistance.
- F. Duration of the matching agreement: Eighteen (18) months commencing as stated in section XII, Effective Date, of this agreement.

V. NOTICE PROCEDURES

ED agrees to publish in the *Federal Register* a notice of this computer matching program, as specified in the CMPPA and in compliance with OMB guidance. ED further agrees to ensure that, at the time of application, applicants for Title IV, HEA benefits are provided with a notice displayed on Federal financial aid application forms that the information provided on their application is subject to verification through computer matching.

Periodic notice, if any, will provided as directed by a Data Intergrity Board pursuant to 5 U.S.C. 552a(o)(1)(D).

VI. VERIFICATION PROCEDURES

The OMB Final Guidelines for the Privacy Act (Final Guidance Interpreting the Provisions of Public Law 100-503, the Computer Matching and Privacy Protection Act of 1988, 54 FR 25818, June 19, 1989) state that the type of verification procedures used for a particular matching program depends upon the purpose of that program. This match will identify the Title IV, HEA applicants who are subject to denial of Federal benefits and will ensure that reasonable

verification procedures have been developed that yield confirmatory data and provide ED with a reasonable basis for taking action. When a match is made, the individual in question already will have had a court hearing in connection with the underlying criminal conviction and sentence, and his or her eligibility for Title IV, HEA benefits will have been determined by a Federal or State judge. Because the individual's denial of benefits sanction has already been determined, the verification procedures for this match focus on verifying the individual's identity for Title IV, HEA purposes.

The basic verification procedures are as follows:

A. ED Issues to Applicant Section 5301 Comment of Ineligibility on SAR

An individual will have at least thirty (30) calendar days from the date of the output document (the date on the applicant's Student Aid Report (SAR) to contest a proposed adverse action before his or her eligibility for Title IV, HEA student financial assistance is denied. The individual applicant is determined to be the best source of information on the validity of notice results in which a computer match occurs pertaining to his or her application. The highly automated process used under the Title IV, HEA program requires compressed verification procedures because it is not possible to intervene until after the SAR is issued and reviewed by the student. With regard to each individual for whom a match occurs, ED will inform him or her that ED cannot continue to process his or her application because a computer match has occurred with regard to his or her identity. ED will inform the individual of this information by providing a section 5301 comment on his or her SAR stating that ED cannot process the application for Title IV, HEA program assistance further because of issues raised by the Anti-Drug Abuse Act of 1988. Further, the applicant will be instructed to contact ED within 30 days from the date of the letter at the phone number provided by ED on the SAR to contest the adverse action.

B. Applicant May Inquire Regarding Section 5301 Comment

If the applicant makes an inquiry within the specified time (30 days) regarding a section 5301 comment on the applicant's SAR, ED headquarters will obtain additional information from the DFB/DPFD database and receive staff assistance to independently verify and confirm the accuracy of the DFB/DPFD.

With regard to an applicant's inquiry based upon section 5301, ED personnel will have direct and immediate access, through Federal Student Aid's Central Processing System (CPS), to the applicant's FAFSA record including section 5301 file data provided by DOJ. Consequently, when the applicant contacts ED with questions regarding his or her section 5301 comment, ED personnel will be able to quickly confirm the student's ineligibility for one or more of the Title IV, HEA program(s). A new 5301 file is retrieved from DOJ every four to six weeks, loaded into the CPS, and matched against the Title IV, HEA application file, which also contains the individual's name and SSN. For a match to occur, the individual's name, SSN, and date of birth must match.

If the applicant does not make an inquiry to ED within the specified time regarding a section 5301 comment that he or she receives, ED's initial finding will be upheld as final, and Title IV, HEA program eligibility will be denied.

C. ED Verifies Eligibility

Should verification with DOJ, as noted in section VI. B. above, indicate that eligibility is restored, ED personnel will be able to override standard CPS system procedures to produce and forward a valid SAR. This will enable the student applicant, if otherwise eligible, to receive financial assistance at the postsecondary educational institution he or she is attending. However, should the outcome of such verification with DOJ confirm the initial finding, the applicant will be so notified and provided with at least 30 additional calendar days, from the date ED provides its finding to the applicant, in which the applicant may contest the initial finding.

D. Applicant May Contest Finding of Ineligibility

Should an applicant not contest a finding after the additional 30 calendar days, as noted above, ED's finding will take effect, and Title IV, HEA student financial assistance will be denied. Conversely, if the applicant provides additional information sufficient to refute ED's initial finding, after consulting with DOJ, ED will be able to override standard systems procedures to produce and forward a valid SAR. This will enable the student applicant, if otherwise eligible, to receive financial assistance at the postsecondary educational institution the applicant is attending.

VII. DISPOSITION OF MATCHED ITEMS

ED will retain all matched records received from the DOJ data file(s) with identifying information in accordance with the requirements of the Department of Education Comprehensive Records Retention and Disposition Schedule, 072 FSA Application, Origination, and Disbursement Records (DAA-0441-2013-0002) (ED 072). ED is currently in the process of preparing, and submitting for the National Archives and Records Administration's (NARA) review, amendments to ED 072. ED will not destroy the aforementioned records until such time as NARA approves these amendments.

VIII. SECURITY SAFEGUARDS & PRIVACY

DOJ and ED agree to comply with the requirements of the Federal Information Security Management Act (FISMA), 44 U.S.C. 3541 et seq.; related OMB circulars and memoranda, including Circular A-130, Management of Federal Information Resources, and Memorandum M 17-12, "Preparing for and Responding to a Breach of Personally Identifiable Information" (January 3, 2017); National Institute of Standards and Technology (NIST) directives; and the Federal Acquisition Regulations (FAR). Both CPS and the DFB/DPFD database will have a current Authority to Operate in accordance with FISMA. These laws, directives, and regulations include requirements for safeguarding Federal information systems and personally identifiable information (PII) used in Federal Agency business processes, as well as related reporting

requirements. Both agencies recognize and will comply with the laws, regulations, NIST standards, and OMB directives including those published subsequent to the effective date of this agreement.

Specific security requirements include, but are not limited to, the following:

- At a minimum, data must be protected at the Moderate system certification criticality level according to Federal Information Processing Standards (FIPS) Publication 199, Standards for Security Categorization of Federal Information and Information Systems.
- All systems involved in this match have completed the security authorization process within the last three years, using the required NIST guidance, and have an Authorization to Operate (ATO) with the appropriate signatures.
- Electronic files are encrypted using the FIPS 140-2 standard and, to the extent possible, are interoperable with ED's personal identity verification logical access control card (PIV LAC) for Government Employees and support contractors authorized to have an HSPD-12 card (HSPD-12= Homeland Security Presidential Directive #12).

FISMA requirements apply to all Federal contractors, organizations or entities that possess or use Federal information, or that operate, use, or have access to Federal information systems on behalf of an agency. DOJ and ED agree that they are responsible for oversight and compliance of their own contractors and agents. DOJ and ED each reserve the right to conduct onsite inspections of any contractor or agent in order to monitor compliance with FISMA regulations during the lifetime of this agreement.

ED agrees to secure PII received from DOJ pursuant to this agreement in accordance with the Federal requirements that apply to the receipt and use of information subject to the Privacy Act and other applicable statutes.

The DFB Program database collects this information regarding those individuals for whom benefits are denied and forwards this information to the General Services Administration (GSA) for inclusion in the publication "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs," more commonly known as the "Debarment List." Prior to the provision of certain benefits, Federal agencies are required by law to consult the Debarment List. Participating agencies can access the database online, input data as a judicial participant or verify data as a Federal agency. Hard copy records of judgments from participating Federal and State courts about sentences of drug traffickers or possessors are still received by postal or private delivery service and facsimile until further notice. The required data is taken from the court order and entered into the database. The hard copy files are then maintained in a secure file room with a 24 hour/7 days a week cipher lock. Electronic transmission of data is sent by encrypted email. Facsimiles are received through a dedicated line. Access to the stored files are given to the assigned Federal program director and the assigned contractor.

The DPFDP Program is the clearinghouse for information provided by the United States Attorneys' Offices on individuals convicted of defense-contract related felony charges. The clearinghouse

collects data regarding those individuals who have been referred for debarment, and again forwards such data to GSA.

The DFB/DPFD database stores and disseminates sensitive PII data and is therefore required to meet Federal guidelines relating to the management of such data. Features of the system include: user authentication to gain access, role-based access to different functional areas, and audit trails for operations performed on the system. As of 2017, the DFB/DPFD database, including the DFB data, is also hosted at the Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, 810 Seventh Street, NW, Washington, DC 20531.

The FISMA requires all agencies to report security incidents to a Federal incident response center. The center (US-CERT) is located within the Department of Homeland Security. All incidents involving confirmed or suspected breaches of PII must be reported to US-CERT within one hour of discovering the incident.

#### A. Incident Reporting

Both Parties agree to report incidents in accordance with NIST 800-53, Rev. 4, OCIO 14, Department of Education Handbook for Information Security Incident Response, and Reporting Procedures, and OJP OCIO 20 Incident Response Plan SOP v3.51.

Upon detection of an incident related to this interconnection, the agency experiencing the incident will promptly notify the other agency's Systems Security Contact named in this agreement. DOJ will promptly notify the following FSA groups in the order listed, until a successful notification is made: Central Processing System Owner's Primary Representative, Central Processing System Information System Security Officer (ISSO) or Central Processing System Alternate ISSO. These contacts are listed in Section XIII.

If the Party experiencing the incident is unable to speak with the other Party's System Security Contact within one hour or if for some reason contacting the System Security Contact is not practicable (e.g., outside of normal business hours), then the Security Operations Center will be contacted.

If either DOJ or ED experience a loss of PII provided by DOJ or ED under the terms of this agreement, they will also comply with the personally identifiable information breach reporting and security requirements as required by OMB M 17-12, "Preparing for and Responding to a Breach of Personally Identifiable Information." ED and DOJ also agree to notify the security contact(s) named in this agreement as soon as possible, but no later than 30 minutes after the discovery of a breach involving PII. The agency that experienced the incident will be responsible for following its established procedures, including notifying the proper organizations (e.g., United States Computer Emergency Readiness Team (US-CERT), the ISSOs, and other contacts listed in this document), conducting a breach and risk analysis, and making a determination of the need for notice and/or remediation to individuals affected by the loss. If the agency's analysis indicates that an individual notice is appropriate, the agency that experienced the incident will be responsible for providing such notice without cost to the other agency.



B. Application of Policies and Procedures

DOJ and ED will adopt policies and procedures to ensure that information contained in their respective records or obtained from each other is used solely as provided in this agreement. DOJ and ED agree to comply with these guidelines and any subsequent revisions.

C. Onsite Inspection

Each agency participating in this agreement reserves the right to monitor compliance with FISMA and OMB M-12-17 requirements and to make onsite inspections for purposes of auditing compliance, if necessary, during the lifetime of this agreement or during any extension of this agreement.

IX. RECORDS USE, DUPLICATION, AND REDISCLOSURE RESTRICTIONS

The agencies agree not to use or disclose any records viewed by the other agency pursuant to this matching agreement, except as required by law or essential to the conduct of the matching program (e.g., to verify the status with respect to section 5301 sanctions of applicants for or recipients of Title IV, HEA assistance programs). However, the information may be used for necessary follow-up action as well as to support criminal investigations, prosecutions, or other law enforcement activity, if the match uncovers activity that warrants such a result.

X. RECORDS ACCURACY ASSESSMENT

The personal identifier data (i.e., SSN, name, and date of birth) in the ED Federal Student Aid Application File system of records used in this matching program are derived from information personally reported by the applicants for Title IV, HEA student financial assistance. In addition, each applicant's SSN is verified with the Social Security Administration at the time of application. The accuracy rate of the "Federal Student Aid application file" (18-11-01) was measured and confirmed in November 2017 as 97.7% percent.

Based on SSA's Office of Quality Review "FY 2015 Enumeration Accuracy Report (April, 2016)," the SSA Enumeration System database (the Master Files of SSN Holders and SSN Applications System) used for SSN matching is 100 percent accurate for records updated by SSA employees based on this report. Therefore, the identifier information is 99.99 percent accurate.

Federal and State courts can electronically enter the source data into the DFB/DPFD database online. Currently, Federal and State courts can also send hard copy records of judgments to the DFB program where DOJ contractors input the source data into the DFB/DPFD database. This source data is reviewed for accuracy prior to inclusion in the DFB/DPFD database. Since some source data is prepared and entered manually by DOJ, there is chance of human error. A data reconciliation of DFB/DPFD database active cases and SAM.gov for excluded parties is performed monthly to identify errors between the two systems. ED and DOJ have reviewed the records subject to this agreement and concluded that the records are being maintained to a

standard of accuracy that assures fairness in any eligibility determination made on the basis of this record.

## XI. COMPTROLLER GENERAL ACCESS

The Government Accountability Office (Comptroller General) may have access to all ED and DOJ records as necessary in order to verify compliance with this agreement.

## XII. DURATION OF THE AGREEMENT

### A. Effective Date:

The life of this CMA is estimated to cover the 18-month period from June 20, 2018 through December 19, 2019. However, the effective date of this CMA and the date when the match may begin shall be whichever date is the latest of the following three dates: (1) the date of the last signatory to this CMA as set forth in Article XIX, below; (2) at the expiration of the 30-day public comment period following ED's publication of notice of this matching program in the *Federal Register*, assuming that ED receives no public comments or receives public comments but makes no changes to the Matching Notice as a result of the public comments, or 30 days from the date on which ED publishes a Revised Matching Notice in the *Federal Register*, assuming that ED receives public comments and revises the Matching Notice as a result of public comments; or (3) at the expiration of the 60-day period following ED's transmittal of a report concerning the matching program to OMB and to the appropriate Congressional Committees, along with a copy of this agreement, unless OMB waives any of the 60-day review period for compelling reasons, in which case, 60 days minus the number of days waived by OMB from the date of ED's transmittal of the report of the matching program.

### B. Renewal and Termination:

Pursuant to 5 U.S.C. 552a(o)(2)(D) the Data Integrity Boards (DIB) of ED and DOJ may, within three months prior to the expiration of this agreement, renew this agreement for a period not to exceed 12 months if:

1. The matching program will be conducted without change; and
2. ED and DOJ certify to their DIBs that they have conducted the matching program in compliance with the original agreement.

If either party does not want to continue this program, it must notify the other party of its intention not to continue at least 90 days before the end of the then-current period.