

Note: These minutes summarize the discussion that took place at the Government Data Sharing Community of Practice meeting. The summary does not necessarily represent the views of GAO or the organizations that the discussion participants represent.

## **Government Data Sharing Community of Practice**

### **Panel Presentation on Legal Issues to Data Sharing: Meeting Minutes**

**Presented as a Session of the National Intergovernmental Audit Forum (NIAF)**

**November 20, 2013, 3:35-4:35 p.m. ET**

**U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314**

[http://www.gao.gov/aac/gds\\_community\\_of\\_practice/overview](http://www.gao.gov/aac/gds_community_of_practice/overview)

### **Background**

In January 2013, GAO cohosted a forum with the Council of the Inspectors General on Integrity and Efficiency (CIGIE) and the Recovery Accountability and Transparency Board to explore using data analytics—which involve a variety of techniques to analyze and interpret data—to help identify fraud, waste, and abuse in government. Forum participants included representatives from federal, state, and local government agencies as well as the private sector. Through facilitated discussion, forum participants identified a variety of challenges that hinder their abilities to share and use data. Among other challenges discussed, forum participants discussed the difficulty of balancing privacy laws and increasing the transparency of data. A summary of the key themes from the forum is published at <http://www.gao.gov/products/GAO-13-680SP>. To continue the dialogue on issues related to coordination and data sharing, GAO formed the Government Data Sharing Community of Practice.

### **Moderator:**

Steve Lord, Director, Forensic Audits and Investigative Service (FAIS), U.S. Government Accountability Office

### **Panelists:**

- Glenn P. Harris, Counsel to the Inspector General, U.S. Small Business Administration
- Gregory Hook, Deputy Legislative Auditor, Maryland Office of Legislative Audits
- Gregory M. Nelson, Healthcare Portfolio Manager, The MITRE Corporation

### **Overview**

Steve Lord opened the session by welcoming attendees to the first Government Data Sharing Community of Practice event—a panel discussion on Legal Issues to Data Sharing—and introducing the panelists. Each panelist gave a brief presentation. Afterwards, Mr. Lord facilitated discussion among the panelists and posed several questions from the audience to the panelists. The presentations and highlights from the discussion are described below.

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## **Presentations**

### *Glenn P. Harris—Balancing Privacy Laws with Data Transparency in Federal Oversight*

Mr. Harris opened the panel presentations with a discussion of the challenges associated with balancing privacy laws with data transparency from a federal oversight perspective. Mr. Harris focused on how federal agencies share data they already have, rather than on issues related to collecting new sets of data. Specifically, he discussed requirements in the Computer Matching and Privacy Protection Act of 1988 (Computer Matching Act) that may affect data sharing. Mr. Harris asked attendees to consider the potential costs and benefits of each of the requirements in the Computer Matching Act and, in particular, how each requirement strengthens privacy protection and what tradeoffs occur in the government's ability to identify fraud, waste, and abuse. Mr. Harris highlighted a number of requirements of the act that he believed may sometimes hinder data sharing, including the following:

- The Computer Matching Act requires agencies to prepare a cost/benefit analysis prior to conducting data matching. However, agencies may face difficulties quantifying the benefits of their intended data matching without knowing the scope of the potential fraud, waste, or abuse they may find through the matching process.
- Data-sharing agreements between agencies must be approved by the Data Integrity Board of each agency, which may undermine the independence of Inspector General offices (OIG). Under the Inspector General Act of 1978, OIGs are established as independent offices within their host agencies. The requirement that Data Integrity Boards approve all data-sharing agreements may serve to undermine the independence of OIGs because the majority of the board members are not officials from the OIG. Requiring these agency officials to approve an OIG-proposed data match could allow a Data Integrity Board to prevent the match or impose undue restrictions or conditions on the match, thereby compromising the independent ability of the OIG to determine the scope and methodology of the audit or investigation. In addition, the approval process is time-consuming, and it has taken as long as 2 years for OIGs to get permission to match data in some instances.
- The Computer Matching Act requires that the agency conducting the match notify beneficiaries and applicants that their records will be used in this manner. It also requires that agencies verify computer-matching findings before reducing, suspending, terminating, or denying an individual's benefits or payments. OIGs can identify potential cases of fraud, waste, or abuse and notify the agency of such cases. However, since OIGs do not make final management decisions regarding benefits or payments, they cannot notify beneficiaries that their records will be used in this manner or verify computer-matching findings before taking action to reduce benefits since that is not their role.

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# PRIVACY AND DATA SHARING

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Data Collection

VS.

Use of Data

Already

Collected

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## Computer Matching Act

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- **Publish in the Federal Register** intent to pursue the match .
- **Negotiate written agreements** with the other agency or agencies (agreements must address 8 different factors on a customized basis).
- **Prepare a cost/benefit analysis** and other materials needed by the Data Integrity Board (OMB guidance says proposals should be "well thought out and thoroughly documented proposals").
- **Convene Data Integrity Board meeting** of "senior agency officials" (as noted in the OMB guidance 54 FR at 25827) **in each agency**.
- **Obtain Approval** of the match agreement by all agency Boards.
- **Furnish detailed reports** to Congress and OMB.
- **Notify beneficiaries** and applicants that records will be matched.
- **Verify match findings** before reducing, suspending, terminating, or denying an individual's benefits or payments.

## IG Community Concerns

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- Length of time for approval
- Burden/resources associated with process
- Independence concerns arising from Data Integrity Board approval of matching used for OIG audits and investigations

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# PRIVACY AND DATA SHARING

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## Cost Benefit Analysis??

### Gregory Hook—Data Sharing Challenges and Lessons Learned from a State Perspective

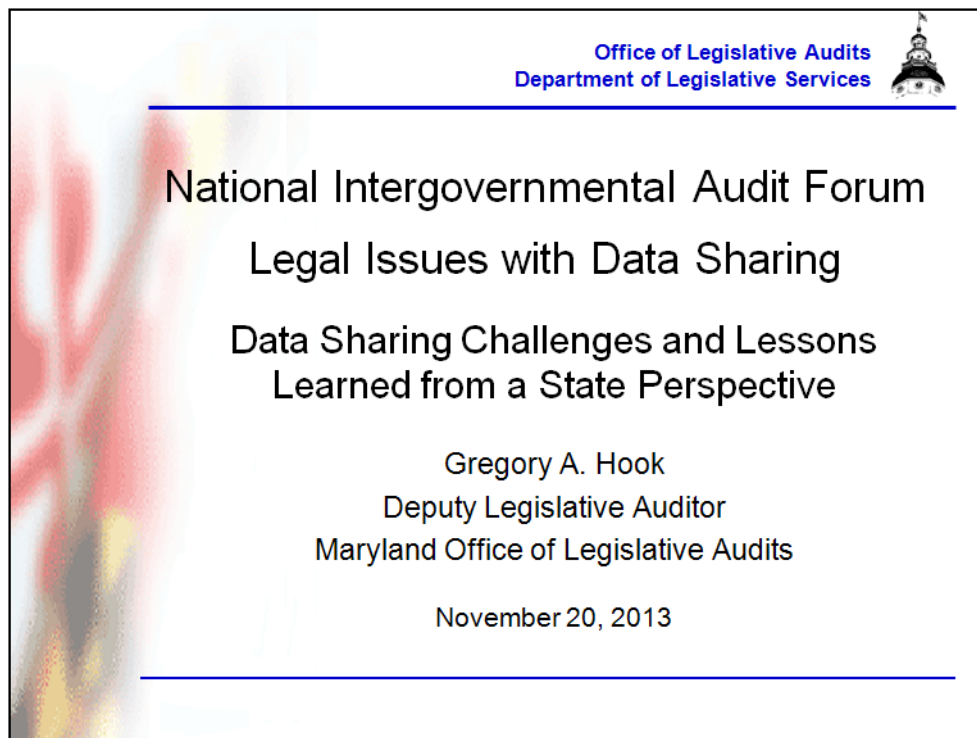
Mr. Hook provided an overview of data-sharing challenges and lessons learned from the state perspective. Mr. Hook explained that state auditors are willing to partner with federal agencies to prevent and detect fraud, waste, and abuse; and that many major programs administered by state agencies receive both federal and state funding. State auditors have the authority to audit state agencies that are recipients of federal funds.


In many cases, states have been successful in accessing and using state data to identify cases of potential fraud, waste, and abuse in state programs. In Maryland, the Maryland Office of Legislative Audits is generally able to obtain any records and documents it requests from Maryland state agencies since the state has a law that requires agencies to provide information to the office. However, some states that do not have similar legislation have faced challenges accessing data. In addition, states that do not have laws guaranteeing confidentiality of audit office work papers may limit the information agencies are willing to provide them.

Although states have been able to access and use state data for oversight of state programs, barriers to cooperation have hindered data sharing between federal agencies and state audit offices. These barriers include varied federal rules for nonfederal audit access and different levels of privacy rules for data accumulated by programs. In addition, confidentiality legislation and federal program data access may not consider state audit functions. State auditors often do not have access to basic federal data sets, including the National Directory of New Hires and the full version of the Social Security Administration's (SSA) Death Master File.

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Mr. Hook highlighted a few areas that could enhance the ability of state audit offices to conduct data analysis to identify cases of fraud, waste, or abuse. Specifically, the federal government could provide suggested language regarding confidentiality that states could adopt. In addition, legislative changes should be made to provide state audit offices with access to SSA's full death file.



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National Intergovernmental Audit Forum  
Legal Issues with Data Sharing  
Data Sharing Challenges and Lessons  
Learned from a State Perspective

Gregory A. Hook  
Deputy Legislative Auditor  
Maryland Office of Legislative Audits

November 20, 2013

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The views expressed herein are those of Mr. Hook and do not necessarily reflect the views of the Office, the Legislative Auditor, other members of the Office's staff, or the National State Auditors Association (NSAA).




## Background - NSAA

- NSAA's mission is to unite state auditors by encouraging and providing opportunities for the free exchange of information and ideas between auditors on the state, federal and local levels.
- Slight majority of state auditors belong to legislative branch.
- About two thirds of auditors are appointed and the remainder are elected.

Source: *2012 Auditing in the States: A Summary*

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## Key Issues and Talking Points

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- State auditors are willing to partner with federal agencies to combat the detection and prevention of fraud, waste, abuse, and illegal acts.
- Data mining examples of State successes and disappointments
- Barriers to cooperation between federal and state data sharing

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## State Auditors' Work

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Characteristics of major state government audit work (based on 54 state auditor respondents):

- 45 perform financial statement audits and single audits
- 35 perform economy and efficiency audits
- 36 perform program audits
- 35 performance compliance audits
- All but one investigates fraud, waste, abuse, and/or illegal acts; and more than half operate a hotline.


Source: *2012 Auditing in the States: A Summary*

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## State Auditor Strengths

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- Federal and state auditors have a shared responsibility, as there is joint federal and state funding of many major programs administered by state agencies.
- State auditors have the authority, and in many cases are required, to audit state agencies who are recipients of federal funds.
- Many state auditors conduct routine compliance or performance audits of state agencies.
- State auditors often possess detailed knowledge of state agency operations.

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## State Auditor Data Matches

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### Examples


Data matches performed by Maryland Office of Legislative Audits:

- Child Support Enforcement (Lottery, DMF and wage records)
- State payments for deceased developmentally disabled individuals (DMF and MD death records)
- Unreported lottery winnings to State income tax records
- Drivers license records to DMF
- State incarceration records to unemployment benefit claims and DMF

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## Access to Federal Data - Issues


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Examples

- Social Security Numbers (SSN)
  - Some state agencies deny auditors access to the SSNs on state databases
  - The Death Master File
  - The inability to verify the correctness of SSNs on file in state agency databases
- Matches of unemployment records with prison incarceration records
- DHHS – National Directory of New Hires
- Federal tax records

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## Barriers to Cooperation

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- Apparently varied federal rules for outside auditor access and different levels of privacy rules to data accumulated by any program.
- State audit functions not considered in all federal program data access and confidentiality legislation.
- Inconsistent state auditor confidentiality laws.
- Access to basic federal data sets.

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## Conclusions


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- With a shared mission and objective, State Auditors stand ready to partner with federal oversight agencies in detecting and preventing fraud, waste, abuse, and illegal acts; and
- Many are already doing that on a daily basis with the often times limited tools at their disposal.

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### Greg Nelson—Data-Sharing Successes and Solutions

Mr. Nelson began his presentation with an overview of MITRE. Mr. Nelson described MITRE as a nonprofit entity that was chartered by Congress to work in the public interest. In this capacity, MITRE operates seven federally funded research and development centers (FFRDC). Mr. Nelson leads MITRE's Healthcare FFRDC, which was established as a public-private partnership to address healthcare fraud, including fraud against Medicare, Medicaid, states, and private insurers. MITRE's healthcare FFRDC works to facilitate data sharing and best practices among stakeholders such as the Centers for Medicare & Medicaid Services (CMS), the Department of Justice (DOJ), state OIGs, and nine private insurance companies, among others, said Mr. Nelson.

Mr. Nelson said this partnership allows stakeholders to address topics of mutual interest; for example, each partnering entity maintains its own list of frequently misused billing codes. Each entity sends its own list of misused billing codes to MITRE, which consolidates the lists to create a master list, cross-references each entity's list with the master list, and provides each entity a list of codes that were not included on its original list. Entities are not provided information on which other entity was the original source of each billing code.

Mr. Nelson listed a number of principles he believes are key to developing a public-private partnership:

- Voluntary rather than mandatory participation.
- Collaborative decision making.

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- Data-sharing reciprocity.
- Independence of the party that aggregates and holds data (e.g., MITRE acts as intermediary to facilitate the exchange of data).

In addition, Mr. Nelson discussed a number of factors he believes contribute to the success of data-sharing initiatives:

- Building trust among partners—Trust must be earned over time by starting small and gradually gaining traction.
- Mutual benefit—Stakeholders will not participate willingly if there is no benefit to them.
- Accountability—Follow-through on agreements, such as agreements to share data.
- Mission clarity—Know what you are trying to do and what is beyond your scope. It is difficult to gain traction if you are trying to do too much.
- Partner selection and roles—Select partners for each data-sharing initiative thoughtfully and with a clear notion of what role each will play. Make sure everyone recognizes their roles.
- Have champions—Have early adopters at both the working level and the executive level within each of the partner organizations who are willing to work through challenges.

Mr. Nelson closed his presentation by stating that data sharing can occur. It may not always be easy, but it will be worth the effort.

#### **Selected Questions from the Moderator and Audience:**

Question—At the state-agency level, how can you work to resolve differing viewpoints between state agencies and federal agencies regarding whether sharing data is legally allowed?

- Mr. Hook stated that this situation is rare in Maryland, although it does occur. The Maryland Office of Legislative Audits has a staff of Assistant Attorneys General who work with attorneys in state agencies to get access to data. It is helpful to have a strong oversight community and the backing of lawyers and the legislative or governing community.

Question—Is it correct that the Computer Matching Act has an exception for data matching that is done for statistical purposes that will not affect beneficiaries? Could this exception be used to first identify the scope of the problem before investing the time and effort into pursuing a data-sharing agreement?

- Mr. Harris confirmed that there is an exception in the Computer Matching Act for matching done for statistical purposes. This exception could be used to do an initial screening to identify the number or percentage of matches to assist in identifying whether a potential problem exists, which could then be used to make the case in a cost/benefit analysis that further matching is likely to be beneficial in identifying cases of fraud, waste, or abuse.