

Thomas H. Stanton  
5410 Lambeth Road  
Bethesda, MD 20814  
(202) 965-2200  
[Tstan77346@gmail.com](mailto:Tstan77346@gmail.com)  
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Federal Housing Finance Agency  
Office of Strategic Initiatives  
400 Seventh Street, SW  
Washington, DC 20024  
BY E-MAIL: [SecuritizationInfrastructure@fhfa.gov](mailto:SecuritizationInfrastructure@fhfa.gov)

SUBJECT: Comment on FHFA Release, “Building a New Infrastructure for the Secondary Mortgage Market”

Dear Madams/Sirs:

Thank you for the opportunity to submit this comment on the FHFA proposed framework for a new infrastructure for the secondary mortgage market (hereafter, the “FHFA plan”). I am a specialist in organizational design and management and have analyzed the government sponsored enterprise (GSE) as an organizational form for many years. My book, *A State of Risk: Will Government Sponsored Enterprises be the Next Financial Crisis* (HarperBusiness, 1991) helped prompt policymakers to create the Office of Federal Housing Enterprise Oversight (OFHEO), the predecessor agency to FHFA. Some of my work may be found on my website, [www.thomas-stanton.com](http://www.thomas-stanton.com).

In my comments today I would like to make three points:

1. FHFA is to be commended for prompting the design of a securitization platform and model pooling and servicing agreement (PSA) that can serve not only the Enterprises, but also “a post-conservatorship market with multiple future issuers.”
2. FHFA should collaborate closely with other government housing agencies, including FHA, VA, the Rural Housing Service (RHS) and Ginnie Mae, to ensure

that the new platform and model pooling and servicing agreement serve government-backed as well as conventional mortgages.

3. FHFA should give thought now as to the most beneficial governance structure to oversee and guide operations of the new platform and model pooling and servicing agreement as they develop over time. The model of standards-setting organizations, backed by government's authority to issue regulations, may offer the best governance structure.

Consider each of these points in turn.

- 1. FHFA is to be commended for prompting the design of a securitization platform and model pooling and servicing agreement (PSA) that can serve not only the Enterprises, but also “a post-conservatorship market with multiple future issuers.”**

FHFA's 2012 Conservatorship Scorecards specify that FHFA and the Enterprises will collaborate to "...develop and finalize a plan...for the design and build of a single securitization platform that can serve both the Enterprises and a post-conservatorship market with multiple future issuers." The Scorecards also specify that FHFA and the enterprises will collaborate to propose a model pooling and servicing agreement (PSA).

These developments are essential to protect the costly investment that taxpayers have made in the Enterprises since their failure in 2008. As the Financial Crisis Inquiry Commission has documented, the operational systems of Fannie Mae and Freddie Mac are seriously inadequate. Thus, the commission reported on an interview with FHFA officials conducted in 2010:

“John Kerr, the FHFA examiner (and an OCC veteran) in charge of Fannie examinations, labeled Fannie ‘the worst-run financial institution’ he had seen in his 30 years as a bank regulator. Scott Smith, who became associate director at FHFA..., concurred; ...To Austin Kelly, an OFHEO examination specialist, there was no relying on Fannie’s numbers, because their ‘processes were a bowl of spaghetti.’ Kerr and a colleague said that that they were struck that Fannie Mae, a multitrillion-dollar company, employed unsophisticated technology: it was less techsavvy than the average community bank.”<sup>1</sup>

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<sup>1</sup> Financial Crisis Inquiry Commission, *Final Report of the Financial Crisis Inquiry Commission*, 2011, pp. 321-322 (footnote omitted).

The FHFA plan to develop a securitization platform will help to remedy this shortcoming and promote proper management of the \$ 5 trillion of mortgages that the GSEs fund.

The FHFA plan also can benefit the larger mortgage market. This approach builds on some of the best contributions that the GSEs made to support mortgage market standardization in the past. In 1971, at the behest of Congress, Fannie Mae and Freddie Mac collaborated to help standardize conventional mortgage forms for the 50 states, thereby helping to foster a national mortgage market that would serve not only mortgages purchased by the GSEs, but also the mortgage market more generally.<sup>2</sup> These and other steps helped to create a single national mortgage market for the United States that was far superior to the previous fragmented markets. Creation of an open securitization platform using standardized procedures can similarly promote efficiency in today's mortgage market.

Failings of the mortgage market in the recent financial crisis include shortcomings in disclosures, both to consumers and to investors, and conflicting incentives of mortgage servicers and trustees that created serious impediments to working out of mortgage delinquencies and defaults in an efficient manner. By helping to standardize relevant documents and arrangements, the FHFA plan can make a major contribution to addressing these shortcomings.

**2. FHFA should collaborate closely with other government housing agencies, including FHA, VA, the Rural Housing Service (RHS) and Ginnie Mae, to ensure that the new platform and model pooling and servicing agreement serve government-backed as well as conventional mortgages.**

The FHFA Release includes a discussion of the Ginnie Mae securitization model and ways that it differs from GSE securitization. Among other important distinctions, the Fannie Mae and Freddie Mac charters specify that the Enterprises shall first purchase mortgages that they securitize. By contrast, Ginnie Mae may not purchase mortgages and instead adds a government guarantee of timely payment to mortgages pooled and securitized by other issuers. Also, Ginnie Mae relies on underwriting that is specified and applied by FHA, VA, and the RHS to mortgages that Ginnie Mae securitizes. By contrast, the Enterprises conduct their own mortgage underwriting.

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<sup>2</sup> See, e.g., United States Senate, Committee on Banking, Housing and Urban Affairs, *Federal National Mortgage Association Public Meeting on Conventional Mortgage Forms, Sponsored by Federal National Mortgage Association and Federal Home Loan Mortgage Corporation*, April 5 and 6, 1971, Document No. 92-21, Senate, 92d Congress, 1<sup>st</sup> Session.

There is ample evidence that government housing agencies also may suffer from inadequate systems. To give a major example, HUD Secretary Steve Preston pointed out in November 2008 that the volume of FHA mortgage insurance trebled over the prior year. He made a blunt assessment that FHA would not be strong enough, either in statutory authority or administratively, to carry the load of a substantial increase in volume without causing significant potential losses to taxpayers. Secretary Preston pointed to problems with FHA's patchwork of IT systems, noting that FHA's core loan processing system is still written in COBOL.<sup>3</sup>

It will be important for FHFA to consult closely with the government housing agencies, and especially Ginnie Mae, to ensure that the new platform and PSA are designed with enough flexibility to serve not only mortgages securitized by the GSEs, but also federally-backed mortgages. By strengthening the infrastructure for securitization of government mortgages, FHFA can make a major contribution to effectiveness of this part of the mortgage market.

**3. FHFA should give thought now as to the most beneficial governance structure to oversee and guide operations of the new platform and model pooling and servicing agreement as they develop over time. The model of standards-setting organizations, backed by government's authority to issue regulations, may offer the best governance structure.**

The need for cooperation of FHFA and other government agencies relates to the broader question of the appropriate governance structure to oversee and guide operations of the new platform and evolution of the standardized PSA and other documents and arrangements once they have been established. My suggestion here is that the model of standards-setting organizations, backed by government's authority to issue regulations, is the most promising to ensure evolution of documents and systems that serve the market most effectively.

Following this comment is a chapter I have written that presents what some have called a "Stakeholder Council" model of governance. That chapter focuses on quite different substantive issues relating to homeland security that involve a distinct set of stakeholders. Setting those substantive issues aside, the Stakeholder Council approach would seem directly applicable to the need to ensure design and evolution of a mortgage securitization platform and PSA and other standardization needed to serve the residential mortgage market as it evolves over time.

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<sup>3</sup> HUD Secretary Steve Preston, Prepared Remarks at the National Press Club, November 19, 2008, available at <http://www.hud.gov/news/speeches/2008-11-19.cfm>, accessed January 2, 2009.

For collaboration by stakeholders that include both agencies and nonagencies of all levels of government, the Stakeholder Council Model seems applicable when common goals have been defined but divergent approaches must be reconciled. The interoperability of systems and processes and disclosures, which seems to be the core function sought by the FHFA plan, seems particularly suited to the model. Especially now, after the financial crisis revealed shortcomings in so many mortgage securitization arrangements, FHFA would seem to be ideally positioned to begin the process of standardization of the securitization platform, documentation, and relationships among key mortgage market participants. That said, the FHFA should coordinate its work with other federal agencies including Ginnie Mae and the Consumer Financial Protection Bureau, that have a stake in parts of the process, as well as with private sector stakeholders.

Experience with the standards-setting process suggests some useful preconditions for effective management of the Stakeholder Council Model. First, the alternative to collaboration needs to be visibly worse to the major participants than collaboration. That seems to be the case today, when the mortgage market is in serious disarray. Second, there needs to be a strong advocate of collaboration in a key policy position, currently the FHFA, who has the ability to bring the parties to the table and keep them there. The process may work well if the parties are motivated in the context of a powerful champion who both (1) has the authority to impose an alternative, and (2) is willing to forego that imposition on condition that the parties themselves devise a superior outcome in a reasonable period of time. Third, the process requires that leaders and key participants have leadership skills, vision, and willingness to compromise in their greater self-interest.

If stakeholders are willing to come together on this basis, then the mortgage market will be able to build on the securitization platform and other standardization, as a way to ensure that these important initiatives continue to evolve as the mortgage market returns to health. As the FHFA proceeds to develop the securitization platform, PSA, and other elements of institutional support for the mortgage finance market, it should explore the issue of governance and the best models that FHFA may want to propose to the Congress to ensure the longer term success of this effort.

Thank you for the opportunity to submit this comment.

Yours truly,

Thomas H. Stanton

## ATTACHMENT

Excerpt from Thomas H. Stanton, ed., *Meeting the Challenge of 9/11; Blueprints for More Effective Government*, M.E. Sharpe Publishers, 2006

### Chapter 13

#### **Improving Federal Relations with States, Localities, and Private Organizations on Matters of Homeland Security: The Stakeholder Council Model**

**By Thomas H. Stanton**

##### **I. Introduction: Homeland Security and the Administration of Third-Party Government**

The challenge of homeland security has brought to the fore the observation of Lester Salamon that the administration of government services is moving from a hierarchical structure to the management of organizational networks.<sup>4</sup> Homeland security requires (1) detection of potential threats, (2), effective incident response, and (3) improvement of systems and infrastructure to prevent or mitigate hostile acts. In each of these areas, the federal government must act through what Salamon has called third-party government, including state and local governments and private actors. Even in areas where a hierarchical model of governance may be called for, such as security of air travel, “high-reliability organizations depend on effective management of their horizontal boundaries with other organizations.”<sup>5</sup>

Third-party government is significant in all aspects of administering homeland security: detection, response, and prevention. Detection of potential threats involves (besides international intelligence work) state, local, or private policing of critical facilities and infrastructure, borders, and monitoring of public health, for example. Effective incident response has depends on local police and firefighters and public health officials. Improvement of systems and infrastructure depends on coordination of activities of numerous state or local government organizations and private parties.

It is not comforting that, as Salamon and others point out, third party government poses major management challenges whose contours are not completely

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<sup>4</sup> Lester M. Salamon, “The New Governance and the Tools of Public Action: An Introduction,” Chapter 1 in Lester M. Salamon, ed., *Tools of Government: A Guide to the New Governance*, (New York: Oxford University Press, 2002), pp. 11-14.

<sup>5</sup> H. George Frederickson and Todd R. LaPorte, “Airport Security, High Reliability, and the Problem of Rationality,” *Public Administration Review*, Vol. 62, special issue, September 2002, pp. 33-43, at p. 40

understood either by practitioners or academics in the field of public administration.<sup>6</sup> As Harold Seidman has observed,

“The principles developed by the President’s Committee on Administrative Management and the first Hoover Commission which call for straight lines of authority from the President down through department heads with no entity exercising power independent of its superior are not adapted to current circumstance. Straight lines of authority and accountability cannot be established in what has become in major degree a non-hierarchical system. Federal agencies now rely for service delivery on third parties who are not legally responsible to the President and subject to his direction. Federal powers are limited to those agreed upon and specified in grants and contracts.”<sup>7</sup>

The problem is more than one of power and control. Third party government also involves information asymmetries: the states, localities and private parties that must address homeland security and other matters may have much more sophisticated understanding many critical facts that the federal government must know to do its job. Enid Beaumont and Bruce McDowell document this point for states and localities in chapter 12.

This chapter tries to begin to fill the conceptual gap highlighted by Seidman and Salamon. The hierarchical model of federal administration involves the imposition of rules, often based on limited consultation with the affected parties. This is unlikely to be effective in dealing with complex problems, those of homeland security, that call for management of organizational networks. There are too many stakeholder positions and countervailing values for government or private parties to succeed with a purely mandatory approach to many important issues.<sup>8</sup> The “Stakeholder Council Model,”<sup>9</sup> an alternative approach for federal interaction with states, localities, and private parties, provides a forum and a process for bringing different stakeholders together to develop solutions in defined areas of federal concern.

The chapter then shows how the Stakeholder Council Model might be applied to an important and complex area of homeland security, the development of comprehensive

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<sup>6</sup> *Ibid*, p. 41.

<sup>7</sup> Harold Seidman, “Foreword,” to Thomas H. Stanton and Benjamin Ginsberg, eds., *Making Government Manageable*, Johns Hopkins University Press, 2004, p. x.

<sup>8</sup> See, e.g., Robert O’Harrow, Jr., “Aviation ID System Stirs Doubts: Senate Panel Wants Data on Impact on Passenger Privacy,” *Washington Post*, March 14, 2003, p. A16.

<sup>9</sup> Benjamin Miller first proposed this term in comments on an early draft of, “Developing and Implementing Comprehensive Identity Management Systems: Insights from a Symposium at the Johns Hopkins University,” Johns Hopkins Center for the Study of American Government, April 2003.

identity management systems. As proposed here, the Stakeholder Council Model seeks to combine the strengths of the traditional hierarchical model of public administration, i.e., application of resources in a timely manner to the achievement of a specified goal, with those of the new organizational network model, i.e., the gaining of essential information about a problem and devising of a solution that incorporates the strengths, needs, and incentives of multiple third parties. Finally, the appendix to this chapter, written by Dwight Ink, provides some useful insights about coordination, many of which relate well to the principles of the Stakeholder Council Model.

Two important questions that this chapter raises, and that need to be addressed in the future both conceptually and in pilot programs, are (1) where the Stakeholder Council Model is most applicable and (2) under what conditions. For the federal government, Harold Seidman cautions that, “Agencies are most likely to collaborate and network when they are in agreement on common objectives, operate under the same laws and regulations, and do not compete for scarce resources.”<sup>10</sup>

For collaboration by stakeholders that include both agencies and nonagencies of all levels of government, the Stakeholder Council Model seems applicable when common goals have been defined but divergent approaches must be reconciled. The issue of interoperability of systems, discussed below with respect to identity management, seems particularly suited to the model. Especially at early stages of development when no one stakeholder has developed the ideal system, interoperability offers potentially fruitful collaboration because of benefits that can flow from development of systems that interact across federal, state and local agencies, and private organizations.

Experience suggests some useful preconditions for effective management of the Stakeholder Council Model. First, the alternative to collaboration needs to be visibly worse to the major participants than collaboration. Second, there needs to be a strong advocate of collaboration in a key policy position, at the Office of Management and Budget, for example, who has the ability to bring the parties to the table and keep them there. The process may work well if the parties are motivated in the context of a powerful champion who both (1) has the authority to impose an unpleasant alternative, and (2) is willing to forego that imposition on condition that the parties themselves devise a superior outcome in a reasonable period of time. Third, the process requires that leaders and key participants have leadership skills, vision, and willingness to compromise in their greater self-interest.

The author wishes to acknowledge the value of the insights gained from a symposium on “Developing and Implementing Comprehensive Identity Management

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<sup>10</sup> Seidman, *supra*, note 4.



Systems,” held at the Johns Hopkins University Center for the Study of American Government on December 10, 2002. That meeting was cosponsored by the Johns Hopkins Center, the General Services Administration (GSA), the National Association of Clearinghouse Administrators (NACHA), and the Maximus Corporation. About 25 people, from several federal agencies, state and local governments, the government of Canada, from parts of the private sector such as transportation, credit cards, and food retailing, academics, advocacy groups, consortia with an interest in identity management, and vendors of technology systems and consulting systems relating to identity management, participated on an off-the-record basis. The dynamics of that symposium, and the writing of the subsequent report, involving stakeholders from many perspectives, provided an opportunity to understand how a more extended Stakeholder Council approach might help to fashion federal policies with respect to aspects of homeland security that are based on a more sophisticated comprehension of the underlying issues than would be possible through a more directive hierarchical approach.

## **II. The Stakeholder Council Model**

The Stakeholder Council Model is based on years of experience with standards-setting groups in many sectors of the economy. The particular antecedent of most relevance is the NACHA EBT (i.e., Electronic Benefits Transfer) Council. The EBT Council began in September 1995 as an organization composed of federal agencies, states, merchants, payments networks, financial institutions and other EBT service providers, including consultants and processors. The federal government, through the Office of Management and Budget, encouraged these stakeholders to meet in a deliberative group to develop operating rules for the electronic delivery of government benefits, including food stamp and cash benefits. Instead of giving beneficiaries food stamp coupons or paper checks, state governments provide them with a debit-type card that contains the value of their food stamp or cash benefits and that can be used at retailers and in ATMs.

The history of the EBT Council is instructive. In the 1980s, each state with an EBT system operated it on a proprietary basis so that one state’s system would not accept another state’s EBT cards. While paper food stamps, for example, were valid in any state of the Union, the lack of interoperability of EBT systems meant that recipients lost portability of their benefits. The states, food retailers and the federal Office of Management and Budget, sought a means of promoting interoperability among state EBT systems. It is useful to note that leadership from the states had laid the groundwork for federal involvement.

The EBT Council obtained a common mark that appears on participating state cards and developed operating rules and agreements as to rights, responsibilities, and liability, to govern transactions using the EBT card. Currently 48 states offer statewide EBT programs and 36 of these use the rules developed by the EBT Council. As the use of the EBT Council's operating rules has expanded, states are adding to the functions that are served through their EBT card systems, including payments for Temporary Assistance for Needy Families (TANF), Medicaid, and child care.<sup>11</sup> The U.S. Department of Agriculture (USDA) announced in 2004 that the delivery of food stamps has now moved completely to electronic form. USDA is seeking to rename the program because the term "food stamps" has become an anachronism.<sup>12</sup>

To achieve interoperability is not easy. The EBT Council needed to adopt technical standards that allow for a rapid response when an EBT card is presented at a retailer or ATM. Also, operating guidelines were required that specify how the receiving retailer is to use the card, and what to do in special circumstances such as if the system goes down. Finally, the EBT Council needed to develop a set of legal operating rules that set forth the liability of the parties issuing, using, and receiving the EBT card, that govern the operating standards, and that prescribe the rules for dispute resolution. Fortunately, the EBT Council was able to acquire an initial set of operating rules and subsequently purchased a national servicemark to help speed its work.

One participant in the Johns Hopkins symposium described the government's perspective on the EBT Council as follows:

"...let me describe a little bit the federal government's thinking on EBT. We could have written a regulation, and we know how to write rules -- but we weren't sure that...regulating [was appropriate]. However, in order to get a broad base of participants to participate together, there really did need to be a common set of rules, and defined set of rules. And we felt that it would work best if it was an industry-based set of rules that the government had a seat at the table, participated in, [and] endorsed.

"[T]he government always has veto power. The government can always say no, but it's proven very successful from our standpoint in that the program is administered on a standardized basis. It's efficient for our administration, and we have the industry participation in this government program, because it makes business sense, it makes good business sense

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<sup>11</sup> See, Helena Sims, "The EBT Council: A Model for e-Government Projects," National Association of Clearinghouse Administrators, undated.

<sup>12</sup> Robert Pear, "Electronic Cards Replace Coupons for Food Stamps," *The New York Times*, June 23, 2004.

because there's a common set of rules that is administered by an industry-based group.”<sup>13</sup>

In other words, the structure of the EBT Council is such that no government, federal or state, gives up its authority to make decisions. Rather, the EBT Council provides an opportunity for the participating government and private parties to fashion a set of rules that may be more suitable for participating parties than the federal government might have been able to devise by itself or through a formal notice-and-comment rulemaking. If the federal government declines to accept the work product of the EBT Council it always retains the option to issue its own regulation. Similarly, if states do not want to accept the work of the EBT Council, they are not required to use the council's system or operating rules in their own EBT systems.

The deliberate denial of independent power to a coordinating group can be a source of strength for the coordination process. This helps to focus stakeholders on persuasion rather than efforts to direct the other parties in the process. The process of disaster recovery described by Dwight Ink in Chapter 7, above, relied on such a body, called the Field Committee, which was organized to coordinate rather than wield independent power. The result was that, “The committee's task was to coordinate, and help expedite, the operations of the various [federal] agencies with one another and with their counterparts at the state and local level. Under no circumstances was it to become another decision-making layer in the federal system.”<sup>14</sup>

The validity of the EBT Council also rests on its openness and inclusion of a broad range of stakeholders. The EBT Council is governed by a Representative Board, consisting of 25 members. Each of the five main stakeholder groups is limited to a maximum of five seats, so that balance is maintained on the Representative Board. If an impasse arises concerning the EBT rules, the Representative Board can break it with a two-thirds majority of the votes cast. Under the voting rules, government entities have a special ability to block changes to the EBT operating rules that they as a group find objectionable.

The EBT Council has two categories of dues paying members, full members, who pay \$6,000 per year, and who have voting rights and can serve on the Representative

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<sup>13</sup> Cited in “Developing and Implementing Comprehensive Identity Management Systems: Insights from a Symposium at the Johns Hopkins University,” Johns Hopkins Center for the Study of American Government (forthcoming). Recall that all comments from the symposium are not attributable by name to particular speakers.

<sup>14</sup> Dwight Ink and Alan L. Dean, “Modernizing Federal Field Operations,” chapter 8, Thomas H. Stanton and Benjamin Ginsberg, eds., *Making Government Manageable*, Johns Hopkins University Press, 2004, p. 194.

Board, and associates, who have no voting rights but may attend all meetings and participate in calls. The largest group of dues paying members comes from state governments. The only federal agency to pay dues, as a non-voting associate, is the General Services Administration. Other federal agencies may participate as advisors in EBT Council meetings and calls. The Food and Nutrition Service of the US Department of Agriculture participates as a non-voting non-dues paying advisor and attends meetings and participates in conference calls. Although the federal advisors do not vote, they do exercise influence because the EBT Council is concerned to assure that its operating rules are consistent with federal laws and regulations.<sup>15</sup>

This relates to another important issue: given the frequently frayed relations between the federal government on the one hand, and state and local governments on the other, as Beaumont and McDowell show in chapter 12, all participants in the Stakeholder Council Model must make repeated efforts to assure that the process is not merely another top-down federal exercise. While positive results depend on the participants joining in a *nationwide* perspective, the process depends on all parties seeing themselves as coequal in their potential contributions to the process. The inclusion of nongovernmental stakeholders, who also have major contributions to make, helps to reduce the perception of a top-down process. On the other hand, the Stakeholder Council Model does not involve the blurring of public-private boundaries that Ronald Moe and Dan Guttman warn against in chapters 5 and 10; the process respects the different roles of each sector and preserves for all governmental entities the ability to exercise their legal responsibilities.

The EBT Council is not an expensive undertaking, especially compared to the magnitude of the benefits that pass through the EBT system. While the system rules were being developed, the council required support from perhaps two staff persons and an annual budget of about \$ 350,000; currently, with the rules written but in a process of continuing revision, the council requires support from two people half-time each and a total budget off about \$ 225,000. These funds come from assessments on participating members (\$ 6,000 annual dues for voting full membership and \$ 2,000 annual dues for associates) who in addition, each pay the costs of their own participation.

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<sup>15</sup> Helena Sims, NACHA Senior Director for Public/Private Partnerships of NACHA and Executive Director of the EBT Council, personal communication to the author, March 10, 2003.

### **III. Identity Management as a Case Study of the Complexities of Intergovernmental Coordination**

Since September 11, identity management has been of special concern at airports, other vulnerable facilities, and points of entry to the United States. Identity management is also important in the commercial world, for example to prevent identity theft and fraudulent use of credit cards. The development of comprehensive identity management systems in the current environment is challenging and complex, involving many different parties that issue credentials, rely on them, and use them for a variety of purposes that may be different from the purposes for which they were issued.

To be effective, a comprehensive identity management system must respect tradeoffs against other values, such as privacy. Often countervailing values can coexist, as is seen in a number of democratic countries with effective identity management systems that also have high privacy standards. To make such tradeoffs properly requires a forum in which representatives of the affected interests can work together to determine if common ground can be found on which to build a reasonable accommodation. For example, by taking the issue of privacy to a deeper level, it may be that a resolution could be found in distinguishing between (1) effective identification and (2) the recording of information about particular transactions and activities. In other words, it may be possible to create an ID credential that establishes a person's identity but that cannot be used to track that person's activities. Other accommodations may also be possible.

Effective identity management is complicated by the need for source documents, such as birth and death certificates, that provide information relied upon by issuers of other credentials, such as driver's licenses, and identity cards. These source documents (traditionally called "breeder" documents) are gathered and maintained with variable quality by different states. The presence of about 100 million visitors to the United States further complicates effective identity management. Ultimately, the problems of identity management relate to systems and the people who use those systems. Too often the people issuing identity documents, including visas, driver's licenses, and social security cards, may be among the least compensated, skilled or motivated people in the issuing organization.

Issues of identity management involve several different analytical levels:

- ID Validation. The person who receives an identity document must be the right person. This involves some level of background check and ability to rely on source documents or, for foreigners, other credible information.

- Authentication. When a person presents an identity document, it must be demonstrably genuine.
- Verification. When a person presents an identity document, they should currently be eligible to do so. Documents should be properly revoked when a person changes employment or other status that means that they are no longer eligible for the benefits that relate to the document they present.

Governments are under pressure to upgrade the quality of their identity documents. State motor vehicle departments are attempting to coordinate improvements in the documentation required for obtaining a driver's license. The government of Canada has undertaken a far-reaching improvement in identity management. Perhaps the most interesting example of improved credentials has been the initiative of the Government of Mexico to issue a special identity card, the *Matricula Consular*, to over a million illegal aliens from Mexico who reside in the United States. This identity card enables the alien to obtain a bank account, a driver's license, and other benefits that are unavailable to an undocumented person. (On the other hand, the General Services Administration has announced that a *Matricula Consular* may not be used to gain access to a federal building without further investigation into its authenticity).

The effort of state governments to improve the quality of their credentials has shone a bright light on the variable quality of the source documents such as birth and death records that native-born Americans use to document their eligibility for driver's licenses and other documents. While some states such as Iowa have made significant progress, there is wide variation in the quality of these source documents across states and localities. Even though some states improve their source document systems, the sovereignty of state governments means that they resist being directed to do so. The absence of a sound system of death records, for example, results in the Social Security Administration sending benefit checks to some people long after they are deceased.

Cleaning up the data behind the source documents and maintaining high-quality data are difficult tasks. When Canada improved its identity management system, it addressed the problem of inadequate source documents both by eliminating some especially loose forms of documentation and by establishing a guarantor system so that a person is required to obtain a certification of identity from a licensed professional (e.g., a lawyer, banker, engineer, or notary) who has known the person for a number of years and who will vouch for their source documents, before the Canadian government will issue a passport.

An important issue of identity management relates to interoperability. As federal and state governments move towards an eGovernment model for the provision of services, they are seeking to invest in technologies that can be used across government agencies and that are, to the extent possible, consistent with commercial standards used in the private sector. Otherwise, a set of inconsistent identity management systems is likely to emerge, for airline and airport workers, for hazardous materials truck drivers, for maritime workers and for security at border crossings. To implement these laws private employers, as well as federal, state, local and nongovernmental organizations will need to issue their own credentials. A plethora of systems has already developed as governments and private organizations attempt to upgrade the quality of their identity management systems. The disparate systems somehow require coordination if they are to eliminate wide gaps.

The creation of a system of national identity documents probably does not mean the development of a single national ID credential for the United States. U.S. cultural values would militate against such a single card. In Britain, where similar cultural values prevail, the U.K. government is considering a system of reliance on three documents: a driver's license, a passport, or – for those with neither of those documents – a new “entitlement card.” Although everyone would be obligated to possess one of these documents, no one would be obligated to carry it. It is not clear how much information the entitlement card would contain or even whether the U.K. government ultimately will adopt such a system.<sup>16</sup> Canada, another country with a common cultural heritage, also has resisted the adoption of a single identity credential. Instead, the government of Canada is working to build a common technology platform to support the range of uses for a number of different identifying credentials.

One approach to government identity management might be to design credentials with various levels, so that a credential could be upgraded, or could build on other information systems, as an individual has need for a higher level or different type of access. When the need no longer exists, the higher level or different type of access could be suspended or terminated.

The Johns Hopkins conference concluded with a number of observations about the need for a process to help bring agencies of the federal government together with state and local agencies and private parties that require effective identity management to develop interoperable identity management systems:

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<sup>16</sup> See, “Identity Cards: Papers Please,” *The Economist*, December 14, 2002, p. 51.

1. The federal government must play a leadership role along with the states.<sup>17</sup> Otherwise, in the colorful metaphor of one participant, “you’re going to have a thousand flowers blooming that don’t talk to each other. “ Different identity management systems will be more effective to the extent that they are consistent and compatible.
2. Federal leadership is essential also because of the major stake of the federal government in developing identity management systems that govern access to critical federal facilities and facilities that will be subject to federal regulations or rules.
3. On the other hand, the federal government cannot dictate a single solution for identity management. Instead, the federal government should provide leadership and, to use the word of one participant, “sponsorship” and should establish a sense of the direction in which identity management should develop. This can help to guide the states and private sector organizations that also have a stake in development of consistent systems of identity management.
4. The federal government, working with the states and other stakeholders, can help to establish standards that incorporate the concerns and needs of states and private organizations and create an assurance that credentials that meet the federal standards will be acceptable for specified governmental purposes.
5. It is important to use a collaborative process along the lines of the Stakeholder Council Model to make progress. Critical elements of the process are that the right groups must be involved, working with a clear agenda and goals as well as a commitment to implement whatever recommendations and solutions are proposed.
6. Some participants urged specific action: that the Office of Management and Budget or perhaps the Department of Homeland Security should promptly convene and support the establishment of a public/private process along the lines of the Stakeholder Council Model with the goal of developing a single

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<sup>17</sup> Symposium participants focused on identity management systems broadly and did not seek to express a view of the potential role of smart cards or other specific technologies in identity management systems. However, the symposium’s emphasis on the need for federal leadership in identity management did presage a GAO report on smart cards that calls for government leadership and specifically for the OMB Director to issue governmentwide policy and guidance after consulting with the relevant federal agencies. See, U.S. General Accounting Office, *Electronic Government: Progress in Promoting Adoption of Smart Card Technology*, GAO-03-144, January 2003, at p. 35.



interoperable architecture and a set of standards and rules for comprehensive identity management systems.

#### **IV. Applying the Stakeholder Council Model to the Development of Comprehensive Identity Management Systems**

Helena Sims, who played a major role in the successful EBT process has summarized some of the important characteristics of a successful Stakeholder Council: (1) commitment by the federal government, (2) a strong business case for using common rules, (3) clear vision of the goals and process by the participating parties, (4) attainable goals, (5) a consistent message, and (6) involvement of the key stakeholders.<sup>18</sup> These elements would seem to be present in the area of identity management systems.

Applying the Stakeholder Council Model to identity management systems can help to highlight the strengths and limitations of the Stakeholder Council approach. Consider the following framework:

- The federal government, through the Office of Management and Budget, the Department of Homeland Security, or the General Services Administration (responsible for many of the federal government's electronic government initiatives) would announce that it seeks to encourage development of interoperable systems of identity management, to be applied to federal (nondefense) facilities, airports, and other high priority uses.
- After discussions with the states and other stakeholders, the federal government would set forth specific issues that require resolution. These issues should be potentially susceptible to solution through consideration of fairly technical issues. Interoperability is such an issue.
- The process should have a timetable. One of the costs of a deliberative process along the lines of the Stakeholder Council Model is that the deliberations can be time-consuming. The participants should try to mitigate this problem by setting fairly clear goals and setting realistic but firm deadlines.
- It will be important to assure that the right parties are at the table. This calls for judgment and also raises the possibility that the funded participants would need to provide stipends to some of the less affluent

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<sup>18</sup> Adapted from Helena Sims, presentation to the NAPA Standing Panel on Executive Organization, October 15, 2004.

advocacy groups, e.g., those that represent consumer or privacy interests. If stipends are awarded, they must be designed carefully so that payment does not affect, or create the appearance of affecting, the substantive contributions made by the groups receiving stipends.

- For the first year, the federal government is likely to be required to pay some or all of the costs of the process. Ordinarily state governments could be expected to pay start-up costs as well; however, this may be difficult, given the current fiscal condition of the states.
- Ultimately, if an issue such as interoperability is successfully addressed, the Stakeholder Council Model is likely to turn into an ongoing activity. It has been the experience of the EBT Council, and other standards-setting groups, that standards must be maintained once they are developed. Changing technologies and patterns of application make such a continuing process necessary. Funding for that ongoing activity will be required. The experience of the EBT Council (and other standards groups) shows how the costs of the ongoing process can be paid through dues by the participating members.

The Stakeholder Council Model is potentially also applicable to other homeland security issues. For example, the Maritime Transportation Security Act of 2002 (MTSA) requires the Secretary of Transportation (or the Secretary of Homeland Security after responsibilities are transferred to the new department) to enhance maritime cargo security, and in particular to reduce the security risks of containerized cargo shipments. The MTSA also directs the Commissioner of Customs to issue regulations providing for the electronic transmission to Customs of information pertaining to cargo to be brought into the US or to be sent from the US prior to the arrival or departure of the cargo.

The implementation of these responsibilities cannot be done by federal fiat alone. It may be that the Stakeholder Council Model could provide a forum to allow for the necessary exchange of information among the countervailing interests such as carriers, shippers, technology vendors, ports, the Transportation Security Administration and the Commissioner of Customs. This could help avoid the fashioning of solutions that rely on inappropriate technologies or that impose unnecessary burdens on commerce in the effort to enhance port security. Once again, interoperability may be an important goal for cargo security systems developed through the Stakeholder Council Model.<sup>19</sup>

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<sup>19</sup> The author would like to thank Richard Gluck of the law firm of Garvey, Schubert & Barer, and a participant in the Johns Hopkins symposium, for this example.

## V. **Conclusion: Making the Stakeholder Council Model Work**

This analysis does not intend to suggest that the Stakeholder Council Model is a universal panacea. The contention rather is that homeland security involves countervailing values that often cannot best be addressed by solutions dictated from Washington. The Stakeholder Council Model presents an alternative approach that, while potentially more time-consuming in the deliberative phase, may allow for the development of more effective and comprehensive solutions for the longer term. Needed now are consideration of the areas where the Stakeholder Council Model might be most applicable, the framework for applying the model, and one or more pilot tests.

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