

May 8, 2018

Representative Jim Jordan, Chairman
Representative Gary Palmer, Chairman
Representative Raja Krishnamoorthi, Ranking Member
Representative Jamie Raskin, Ranking Member
U.S. House Committee on Oversight & Government Reform
Subcommittee on Healthcare, Benefits, and Administrative Rules
Subcommittee on Intergovernmental Affairs
2154 Rayburn House Office Building
Washington, DC 20515

Dear Chairmen Jordan and Palmer and Ranking Members Krishnamoorthi and Raskin:

We write to you in advance of the hearing “Program Integrity for the Supplemental Nutrition Assistance Program.”¹ Section 4001 of the of the Agriculture and Nutrition Act of 2018 would establish a federal database of SNAP recipients with personal data, such as social security numbers, employment status, and income amounts.² If Congress decides to create this federal database, then the Department of Agriculture will be subject to Privacy Act obligations, including potential liability for the data breaches that may result.

The Electronic Privacy Information Center (“EPIC”) is a public interest research center established in 1994 to focus public attention on emerging privacy and civil liberties issues.³ Last year, EPIC successfully challenged the efforts of a federal commission to establish a national voter database, noting that voting, like SNAP administration, is a state function.⁴ EPIC also made clear that under the E-Government Act, federal agencies must undertake a Privacy Impact Assessment prior to the creation of a new record system containing personally identifiable information.⁵ The Department of Agriculture will have to conduct a Privacy Impact Assessment before a database of SNAP recipients is established.

¹ *Program Integrity for the Supplemental Nutrition Assistance Program*, 115th Cong. (2018), H. Comm. on Oversight & Gov. Reform, Subcomm. on Healthcare, Benefits, and Administrative Rules and Subcomm. on Intergovernmental Affairs (May 9, 2018), <https://oversight.house.gov/hearing/program-integrity-for-the-supplemental-nutrition-assistance-program/>.

² Danielle Citron and David Super, *We Don’t Need a National Data Center of the Poor*, Slate (May 8, 2018), <https://slate.com/technology/2018/05/the-national-food-stamp-database-proposed-by-house-republicans-is-a-potential-nightmare.html>.

³ EPIC, *About EPIC*, <https://epic.org/epic/about.html>.

⁴ *EPIC v. Commission*, No. 17-1320 (D.D.C. filed July 3, 2017). Briefs and related documents are available at <https://epic.org/privacy/litigation/voter/epic-v-commission/>.

⁵ 44 U.S.C. § 3501 note.

Data breaches are an epidemic in the United States. 2017 marked yet another “worst year ever” for data breaches.⁶ One report found that the number of data breaches nearly doubled from 2016 to 2017, and 73% of all U.S. companies have now been breached.⁷ There were 159,700 cybersecurity incidents in 2017.⁸ These figures represent a disturbing lack of data security. Recently, government data breaches have been numerous and severe and have raised concerns surrounding the safety of data stored by the U.S. Government. In recent years, data breaches have affected the Office of Personnel Management,⁹ Internal Revenue Service,¹⁰ Federal Bureau of Investigation, and the DHS.¹¹ A February 2018 report found that 57 percent of federal agencies experienced a data breach in the past year, compared to only 26 percent of non-US government agencies worldwide.¹²

The data breach epidemic imposes an enormous cost on the U.S. economy. According to the Department of Justice, 17.6 million individuals – 7% of all Americans – experienced identity theft, at a cost of \$15.4 billion to the U.S. economy.¹³ The Department of Justice found that 86% of identity theft victims experienced the fraudulent use of existing account information.¹⁴ A recent report found that identity fraud increased by 16 percent in 2016, with \$16 billion stolen from 15.4 million U.S. consumers.¹⁵ Identity theft continues to be the number one complaint to the FTC.¹⁶

Identity theft can completely derail a person’s financial future. Criminals who have gained access to others’ personally identifiable information can open bank accounts and credit cards, take out loans, and conduct other financial activities using someone else’s identity. Identity theft has severe consequences for consumers, including:¹⁷

- Being denied of credit cards and loans
- Being unable to rent an apartment or find housing
- Paying increased interest rates on existing credit cards

⁶ Online Trust Alliance, *Cyber Incident and Breach Trend Report*, (Jan. 25, 2018), https://www.otalliance.org/system/files/files/initiative/documents/ota_cyber_incident_trends_report_jan2018.pdf.

⁷ *Id.*; See also, Thales, 2018 DATA THREAT REPORT, <https://dtr.thalesecurity.com/>.

⁸ Online Trust Alliance, *supra*, at 5.

⁹ Dan Goodin, *Call it a “Data Rupture”: Hack Hitting OPM Affects 21.5 Million*, ARSTECHNICA (July 9, 2015), <http://arstechnica.com/security/2015/07/call-it-a-data-rupture-hack-hitting-opm-affects-21-5-million/>.

¹⁰ *Id.*

¹¹ Alexandra Burlacu, *Teen Arrested Over DHS and FBI Data Hack*, TECH TIMES (Feb. 13, 2016), <http://www.techtimes.com/articles/133501/20160213/teen-arrested-over-dhs-and-fbi-data-hack.htm>.

¹² Thales, *2018 Thales Data Threat Report - Federal Government Edition* (February 2018), <https://dtr-gov.thalesecurity.com>.

¹³ Bureau of Justice Statistics, *17.6 Million U.S. Residents Experienced Identity Theft in 2014*, Press Release, (Sep. 27, 2015), <https://www.bjs.gov/content/pub/press/vit14pr.cfm>.

¹⁴ *Id.*

¹⁵ Javelin Strategy & Research, *Identity Fraud Hits Record High With 15.4 Million U.S. Victims in 2016, Up 16 Percent According to new Javelin Strategy & Research Study*, Press Release, (Feb. 1, 2017), <https://www.javelinstrategy.com/press-release/identity-fraud-hits-record-high-154-million-us-victims-2016-16-percent-according-new>.

¹⁶ Fed. Trade Comm’n, *FTC Releases Annual Summary of Consumer Complaints* (March 3, 2017), <https://www.ftc.gov/news-events/press-releases/2017/03/ftc-releases-annual-summary-consumer-complaints>.

¹⁷ Identity Theft Resource Center, *Identity Theft: The Aftermath 2017*, <http://www.idtheftcenter.org/images/page-docs/Aftermath2017Finalv1.pdf>.

- Having greater difficulty getting a job
- Suffering severe distress and anxiety

Cyber security is a concern at the USDA.¹⁸ According to the agency:

Cyber Security secures the business of USDA by managing the risks of cyber threats and vulnerabilities. We protect USDA agencies as they deliver IT services to their stakeholders and the American people.

That means our primary purpose is making sure USDA organizations and their employees have the knowledge and tools they need to fulfill their responsibilities and to create an environment of trust for their customers.

To that end, we focus as a service organization on delivering:

- Comprehensive leadership in developing and implementing an enterprise-wide, trusted environment in support of all USDA components
- A framework for tracking, reporting, and responding to events in an efficient and timely manner
- A centralized threat awareness and security analytics capability
- Effective outreach, communications, and reporting capabilities
- An enhanced enterprise security posture with technical guidance, engineering and operational services
- An architecture of security related products and solutions
- A complete Assessment and Authorization (A&A) function via the Risk Management Framework (RMF) process for all systems

If Congress decides to create this federal database, then the Department of Agriculture will be subject to Privacy Act obligations, including potential liability for breaches that may result.

We ask that this Statement from EPIC be entered in the hearing record. We look forward to working with you on these issues of vital importance to the American public.

Sincerely,

/s/ Marc Rotenberg

Marc Rotenberg
EPIC President

/s/ Caitriona Fitzgerald

Caitriona Fitzgerald
EPIC Policy Director

/s/ Christine Bannan

Christine Bannan
EPIC Policy Fellow

¹⁸ USDA, Office of the Chief Information Officer, *Cyber Security, Securing the Business of USDA*, <https://www.ocio.usda.gov/about-ocio/cyber-security>