VIA EMAIL

Conduent State & Local Solutions, Inc.
c/o Conduent Incorporated
Business Ethics and Compliance Office
100 Campus Drive, Suite 200
Florham Park, NJ 07932

Fidelity Information Services (FIS)
11000 West Lake Park Drive
Milwaukee, WI 53224-3003

Solutran LLC
11000 Optum Circle
Eden Prairie, MN 55344

To Whom It May Concern:

We write to urge that Conduent, FIS, and Solutran reject unlawful requests from USDA for sweeping access to highly sensitive personally identifiable information (PII) about the Supplemental Nutrition Assistance Program's (SNAP) applicants and beneficiaries. As detailed in this letter, USDA's requests disregard the basic protections enacted by Congress to protect Americans' sensitive data, and do not comply with the many legal requirements Congress placed on agencies before they are permitted to collect and store sensitive information about individual Americans.

As financial services providers, your companies are well aware of the importance of protecting PII, particularly Social Security numbers. You may also be accustomed to sharing sensitive information in response to legally authorized government requests for information. **This is not such a legal request.** USDA has not complied with basic requirements to safeguard sensitive PII, such as promulgating privacy and security rules and defining the purposes for which the sensitive information may be used.

Moreover, as detailed below, a state's consent to granting USDA access to its applicant and beneficiary data does not cure the problems with USDA's request. Because the request itself

is legally deficient, your companies may incur liability under state law for sharing individuals' PII in the absence of a valid government request.

USDA's Unlawful Data Requests

The Supplemental Nutrition Assistance Program (SNAP) is a federally funded program to provide food benefits to low-income families. The program is administered by the Food and Nutrition Service (FNS) of the U.S. Department of Agriculture (USDA), but state governments are responsible for certifying household eligibility and issuing benefits.[1] States contract with vendors to issue benefits through electronic benefits transfer (EBT) systems; recipients then use an EBT debit card to make food purchases at grocery stores.[2] Because states hold responsibility for certifying eligibility and issuing benefits, they also hold data on individual SNAP beneficiaries, including their Social Security numbers, dates of birth, addresses, employment status, income, citizenship status, and information about household members.

To facilitate information-sharing between states, USDA has created a National Accuracy Clearinghouse. 88 Fed. Reg. 11403 (Feb. 23, 2023). The creation of the National Accuracy Clearinghouse demonstrates how USDA can lawfully facilitate interstate information-sharing for the purpose of combating fraud. Specifically, the NAC allows states to search one another's beneficiary databases to ensure that recipients do not receive SNAP benefits from multiple states at once, without collecting and storing sensitive PII in a single consolidated database.

In March, President Trump issued an executive order purporting to direct sweeping changes to federal data-sharing practices. Among other things, it directs agencies to "take all necessary steps, to the maximum extent consistent with law, to ensure the Federal Government has unfettered access to comprehensive data from all state programs that receive federal funding, including, as appropriate, data generated by those programs but maintained in third-party databases." E.O. 14243, *Stopping Waste, Fraud, and Abuse by Eliminating Information Silos* (March 20, 2025).

Following that order, USDA recently informed states that it is seeking unprecedented access to state-held SNAP data. First, it is seeking SNAP cardholder and transaction data directly from the states' EBT vendors. *See* U.S. Dep't of Agriculture, Letter to State Agency Directors (May 6, 2025)[3] (hereafter "Data-Sharing Guidance"). The guidance indicates that the processor-held data will be used "to ensure program integrity." Second, it has directed states to work through their processors to submit SNAP applicants' PII (including Social Security numbers, dates of birth and addresses) and the value of their SNAP benefits received. The request offers no explanation for how the agency will use that information.

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[1] Congressional Research Service, *Supplemental Nutrition Assistance Program (SNAP): A Primer on Eligibility and Benefits* (Nov. 13, 2024), https://www.congress.gov/crs-product/R42505.
[2] *Id.*
[3] Available at https://www.fns.usda.gov/snap/data-sharing-guidance.

For the reasons explained further below, those demands for data are inconsistent with federal and state law.

USDA Has Not Met Privacy Act Requirements for Establishing New System of Records

The Privacy Act governs the federal government's collection of information about individuals. 5 U.S.C. § 552a. Passed in order to "protect the privacy of individuals in [federal] information systems," *Dep't of Agric. Rural Dev. Rural Housing Serv. v. Kirtz,* 601 U.S. 42, 63 (2024) (quoting Pub. L. No. 93-579, 88 Stat. 1896 § 2(a)(5)), the Privacy Act includes numerous requirements when an agency undertakes to collect new information about individuals.

When an agency establishes any new "system of records"[4] about individuals, it must publish a notice in the Federal Register that identifies the purpose for which information about an individual is collected, from whom and what type of information is collected, how the information is shared with other agencies, and the process for individuals to access and/or correct the records maintained about them. 5 U.S.C. § 552a(e)(4). These notices are commonly referred to as "System of Records Notices" (SORNs). Importantly, the SORN must be published *before* the agency begins to collect, is given access to, or can retrieve personal information for a new system of records. 5 U.S.C. § 552a(e)(11). New "matching programs" to pair federal records with those of a state are also subject to a notice-and-comment requirement. 5 U.S.C. § 552a(e)(12). Before creating new systems of records and matching programs, the agency must also provide advance notice of its plans to the House Committee on Government Operations, Senate Committee on Governmental Affairs, and the Office of Management and Budget. 5 U.S.C. 552a(r).

USDA has not complied with any of these explicit statutory requirements. There is currently no system of records within USDA to house individual SNAP beneficiary data. Indeed, the May 6 Data-Sharing Guidance expressly acknowledges that the agency *lacks* access to nationwide SNAP beneficiary data. *See* Data-Sharing Guidance ("At present, each state, district, territory, and payment processor is a SNAP information silo."). The agency has published no new SORN creating a new system of records for applicant and beneficiary data, nor has it provided an opportunity for public notice-and-comment on its plans.

USDA has also provided no assurances that it will comply with other important provisions of the Privacy Act. In particular, an agency is required to establish rules of conduct for persons involved in the design, development, operation, or maintenance of a system of records, and is required to establish appropriate safeguards to ensure "the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity." 5 U.S.C. § 552a(e)(9)-(10).

[4] A "record" is any item of information about an individual that is maintained by a federal agency. 5 U.S.C. § 552a(a)(4). A "system of records" is a group of records controlled by a federal agency from which information is retrieved by the name or any identifier belonging to a particular individual (e.g., a Social Security number).

USDA Has Not Complied with the Paperwork Reduction Act

Separate from the requirements of the Privacy Act, the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, sets out legal requirements for federal agencies when they collect information from individuals or other non-federal actors, including state governments. Before an agency can initiate a new "collection of information,"[5] it is required to comply with detailed procedural requirements. 44 U.S.C. § 3507(a). Those requirements include analyzing the need for the collection, the burdens it will impose, and the systems in place for conducting the collection consistently with the overall mandate of the Paperwork Reduction Act; providing a 60-day notice in the Federal Register seeking public comment on the contemplated collection of information; certifying to the Director of the Office of Management and Budget ("OMB") that the proposed collection comports with the requirements of the statute; and publishing a second notice in the Federal Register describing the proposed collection and notifying commenters that their response may be submitted to the Director. *Id*. (citing 44 U.S.C. § 3506(c)(1)-(3)). After satisfying those requirements, an agency may only proceed if the Director of OMB has approved the proposed collection and issued a control number to be displayed on the collection of information. *Id.*[6]

Congress imposed these requirements to advance important values. Among other things, the purposes of the PRA are to avoid undue burdens on the public, including state governments, and to "ensure that the creation, collection, maintenance, use, dissemination, and disposition of information by or for the Federal Government is consistent with applicable laws," including the protections ensured by the Privacy Act. *Id*. at § 3501(1) & (8).

None of those requirements appear to have been satisfied here. No Federal Register notice has been published, no public comment has been sought, and there has been no certification that the proposed collection comports with the requirements of the statute. Until those requirements are met, states and their vendors should not comply with these unlawful federal demands.

USDA Has Not Complied with the E-Government Act

USDA's threatened collection of SNAP beneficiary data would also violate the privacy impact assessment (PIA) requirements of the E-Government Act of 2002 (44 U.S.C. § 3501 note). Under section 208(b) of the E-Government Act, any agency—including USDA—that "initiat[es] a new collection of information that . . . will be collected, maintained, or disseminated using information technology" is required to complete and publish a privacy impact assessment before doing so. Specifically, the USDA must "(i) conduct a privacy impact assessment; (ii) ensure the review of the privacy impact assessment by the Chief Information Officer, or

[5] "Collection of information" includes, among other things, any identical reporting or recordkeeping requirements imposed on ten or more persons. 44 U.S.C.§ 3502(3).
[6] Under some circumstances, the Director's approval may be inferred rather than express. 44 U.S.C. § 3507(c)(3).

equivalent official, as determined by the head of the agency; and (iii) if practicable, after completion of the review under clause (ii), make the privacy impact assessment publicly available through the website of the agency, publication in the Federal Register, or other means." *Id.* § 208(b)(1)(B).

The aim of Congress in enacting the E-Government Act was "[t]o make the Federal Government more transparent and accountable" and "to ensure sufficient protections for the privacy of personal information[.]" *Id.* §§ 2(b)(9), 208(a). Thus, a privacy impact assessment must be "commensurate with the size of the information system being assessed, the sensitivity of information that is in an identifiable form in that system, and the risk of harm from unauthorized release of that information." *Id.* § 2(b)(2)(B)(i). The PIA must specifically address "(I) what information is to be collected; (II) why the information is being collected; (III) the intended use of the agency of the information; (IV) with whom the information will be shared; (V) what notice or opportunities for consent would be provided to individuals regarding what information is collected and how that information is shared; (VI) how the information will be secured; and (VII) whether a system of records is being created under section 552a of title 5, United States Code, (commonly referred to as the 'Privacy Act')." *Id.* § 2(b)(2)(B)(ii).

USDA has failed utterly to conduct and publish the required privacy impact assessment for SNAP beneficiary data. Absent the completion of such a PIA, the collection of SNAP beneficiary data by USDA would be both a breach of the E-Government Act and a grave threat to the protection of personal data you are charged with safeguarding. To knowingly divulge SNAP beneficiary data under such circumstances would thus aid and abet USDA in a clear violation of federal law.

USDA's Demands Do Not Comply with USDA-Specific Legal Requirements

In justifying its demand for unprecedented access to state SNAP data, USDA points to provisions allowing it to inspect state SNAP records. *See* 7 U.S.C. § 2020(a)(3); 7 C.F.R. § 272.1(c). But nothing in those provisions requires states or their vendors to comply with USDA's current, overbroad demands.

While states are required to make their records available "for inspection and audit" by USDA, that inspection must be "subject to data and security protocols agreed to by the State agency and Secretary." 7 U.S.C. § 2020(a)(3)(B)(i). Moreover, states are required to safeguard disclosure of information obtained from applicant households from any uses other than use in connection with SNAP administration and enforcement. 7 U.S.C. § 2020(e)(8)(A).

These requirements are not satisfied by USDA's May 6 Data-Sharing Guidance. USDA's May 6 Demand for state data gave states no opportunity to negotiate appropriate "data and security protocols," as the statute requires. The request also does not verify that use of the data will be limited to SNAP administration and enforcement. Indeed, USDA's demands for PII,

rather than data such as income or employment status, suggest the data collection is for a use other than SNAP enforcement.[7]

USDA's Demands Exceed Its Constitutional Authority

Congress used its power under the Spending Clause to establish SNAP as a cooperative federal-state program. The legitimacy of the federal government's demands or conditions in continuing to fund the program "rests on whether the State voluntarily and knowingly accepts the terms" imposed on it. *Barnes v. Gorman*, 536 U.S. 181, 185-86 (2002); *see Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 219 (2022); *NFIB v. Sebellius*, 567 U.S. 519, 584 (2012) (spending power "does not include" the power to "surpris[e]" funding recipients "with post-acceptance or 'retroactive' conditions"). "Respecting this limitation is critical to ensuring that Spending Clause legislation does not undermine the status of the States as independent sovereigns in our federal system." *NFIB*, 567 U.S. at 584.

USDA imposes unconstitutional "post-acceptance" demands on states when it asserts that "[f]ailure to grant processor authorizations or to take the steps necessary to provide SNAP data to FNS may trigger noncompliance procedures codified at 7 USC 2020(g)." When states accepted SNAP funding, they agreed to collect data necessary to verify household eligibility and issue benefits to qualifying residents, all in reliance on the statutory and regulatory protections of their residents' data described above. They did not agree to the federal government's "unfettered access" to their residents' sensitive data. Threatening to invoke noncompliance procedures, including the withholding of SNAP funds, if states do not provide "unfettered access" constitutes the kind of "post-acceptance" coercion that the Spending Clause prohibits. *Id.* at 584.

USDA's threatened collection of personal information would also violate the Fifth and Fourteenth Amendment right to information privacy. "The constitutional right to privacy extends to . . . the individual interest in avoiding disclosure of personal matters." *Walls v. City of Petersburg*, 895 F.2d 188, 192 (4th Cir. 1990) (quoting *Whalen v. Roe*, 429 U.S. 589, 599–600 (1997)); *see also NASA v. Nelson*, 562 U.S. 134, 138 (2011). That right is violated when the government wrongfully effects the disclosure of information in which an individual has a "reasonable expectation of privacy," yet the government lacks a "compelling governmental interest in disclosure [that] outweighs the individual's privacy interest." *Payne v. Taslimi*, 998 F.3d 648, 655–56 (4th Cir. 2021).

SNAP beneficiaries unquestionably have a reasonable expectation of privacy in sensitive information such as their Social Security number and income data. Yet neither the USDA nor the states to whom you provide EBT services have shown a valid governmental interest, let alone a compelling one, in the disclosure of such beneficiary data to USDA. Not only would USDA's compelled production of SNAP beneficiary data violate the constitutional right to information

[7] *See* Makena Kelly and Vittoria Elliot, *DOGE is Building a Master Database to Surveil and Track Immigrants*, WIRED (Apr. 18, 2025), https://www.wired.com/story/doge-collecting-immigrant-data-surveil-track/.

privacy; your disclosure of such data—absent, at a minimum, the procedural and privacy safeguards of 7 U.S.C. § 2020(a)(3))—would improperly aid and abet the violation of beneficiaries' constitutional rights.

Vendors' Compliance with USDA's Demands May Violate State Contracts and Applicable Privacy Laws

As vendors entrusted with sensitive PII, complying with an illegal federal data request may lead to liability under your contracts with state governments and/or state privacy laws. A state's consent to the data-sharing will not necessarily cure a violation.

To provide but one example, under California's Consumer Privacy Act regulations, service providers (such as FIS and Conduent) are generally prohibited from disclosing personal information collected in the course of business, except as provided by the *written* terms of the contract with the service provider. 11 Cal. Reg. § 7050(a). While government investigations can be an exception to that rule, the law requires the government agency to get a court order, subpoena, or warrant requiring disclosure. Cal. Civ. Code § 1798.145. No such order has been issued here. The penalty for intentional violations of the California Consumer Privacy Act is an administrative fine of $7,988 per violation. Cal. Priv. Prot. Agency, *California Privacy Protection Agency Announces 2025 Increases for CCPA Fines and Penalties* (Dec. 17, 2024).[8]

Because USDA's requests for beneficiary data lack legal basis and may contradict contractual and state law privacy requirements, you should refuse them. At a minimum, you should decline to fulfill the requests until USDA has provided more information about the legal basis for its request and its compliance with Privacy Act, Paperwork Reduction Act, and E-Government Act requirements, including its plans for protecting beneficiaries' sensitive personal data, in particular Social Security numbers.

Sincerely,

Nicole Schneidman, Technology Policy Strategist
Jessica Marsden, Counsel & Director of Impact Programs
Deana El-Mallawany, Counsel & Director of Impact Programs
Jared Davidson, Counsel and Manager, Separation of Powers Project
The Protect Democracy Project, Inc.

John Davisson, Senior Counsel and Director of Litigation
Electronic Privacy Information Center (EPIC)

[8] Available at https://cppa.ca.gov/announcements/2024/20241217.html.

Alexandra Givens, President and Chief Executive Officer
Elizabeth Laird, Director, Equity in Civic Technology
Center for Democracy and Technology