

August 30, 2018

The Honorable Richard Shelby
Chairman
Senate Appropriations Committee
304 Russell Senate Office Building
Washington, DC 20510

The Honorable Patrick Leahy
Vice Chairman
Senate Appropriations Committee
437 Russell Senate Office Building
Washington, DC 20510

The Honorable Rodney Frelinghuysen
Chairman
House Appropriations Committee
2306 Rayburn House Office Building
Washington, DC 20515

The Honorable Nita Lowey
Ranking Member
House Appropriations Committee
2365 Rayburn House Office Building
Washington, DC 20515

The Honorable John Hoeven
Chairman
Subcommittee on Agriculture, Rural
Development, Food and Drug
Administration, and Related Agencies
338 Russell Senate Office Building
Washington, DC 20510

The Honorable Jeff Merkley
Ranking Member
Subcommittee on Agriculture, Rural
Development, Food and Drug
Administration, and Related Agencies
313 Hart Senate Office Building
Washington, DC 20510

The Honorable Robert Aderholt
Chairman
Subcommittee on Agriculture, Rural
Development, Food and Drug
Administration, and Related Agencies
235 Cannon House Office Building
Washington, DC 20515

The Honorable Sanford Bishop
Ranking Member
Subcommittee on Agriculture, Rural
Development, Food and Drug
Administration, and Related Agencies
2407 Rayburn House Office Building
Washington, DC 20515

Dear Chairs and Ranking Members:

The undersigned organizations strongly oppose the House rider (Section 768) in the FY2019 Agriculture and Rural Development Appropriations Bill that blocks the U.S. Department of Agriculture (USDA) from releasing sales data from Supplemental Nutrition Assistance Program (SNAP) authorized retailers.

We urge you to keep this rider out of the FY2019 conference spending bill. The rider is a bare-faced attempt from industry to undermine public access to taxpayer-funded data from a federal program. It would constitute an unprecedented overreach from Congress that would contradict rulings from the courts as well as the views of the appropriate authorizing committees.

We are also concerned about the larger effects that this provision would have on public disclosure and the public's right to know. This rider would undermine the integrity of the Freedom of Information Act (FOIA) and could have a chilling effect on USDA, harming taxpayers and public health efforts alike. Public disclosure ensures transparency and encourages

that there is public participation in our democratic processes, and current exemptions available under the law already provide adequate protections for commercial business information.

The law is clear that SNAP retailer sales information is not commercial business information given its lack of competitive value. In *Argus Leader v. USDA*, 889 F.3d 914 (2018), the court determined that the disclosure of aggregate SNAP sales data would not cause retailers competitive harm. The *Argus* court reasoned that grocery retailers already have access to large quantities of competitors' data and that consumer behavior models allow retailers to predict shoppers' patterns, concluding that disclosing SNAP financial data would not create a competitive disadvantage.

This rider would undermine this reasonable legal conclusion and would sweep even more broadly, barring disclosures that would go beyond the aggregate level. Taxpayers have a right to know where and how the government spends their money. Many federal programs publish data on companies that taxpayer-funded public assistance programs benefit. For example, USDA has the ability to share public assistance data from many food retailers under regulations specific to the Special Supplemental Food Program for Women, Infants, and Children (WIC) data, so long as the data protects the identity of particular individuals. Programs with more sensitive data and even more stringent legal protections, such as Medicare and Medicaid, also share company-specific financial information. Taxpayers have used this information to pressure corporate beneficiaries to offer better products.

Public health practitioners could also use SNAP sales data to enhance public health efforts. For example, previous USDA reports on SNAP spending by product type, store type, and geography have helped practitioners to better target interventions that advance health. According to comments regarding SNAP sales data submitted to the public docket, public health professionals use sales data to assess the success of food access programs like the Healthy Food Financing Initiative; outline geographic sales and enrollment trends; and better align food production and public health efforts. Exempting SNAP data from public disclosure could have a chilling effect on USDA, discouraging the agency from publishing information that maximizes public health investments.

Finally, we are also concerned that the rider's phrasing leaves USDA and the courts susceptible to overly broad interpretation, contrary to caselaw stating that FOIA exemptions must be narrowly construed. Specifically, the phrase "that contains" is problematic. Section 768 exempts "any supplemental nutrition assistance program transaction data *that contains* information specific to a retail food store, retail food store location, a person, or other entity." All SNAP data that USDA shares "contains" information specific to retail food stores, locations, and people. As discussed above, this data forms the basis of reports that inform taxpayers and public health professionals.

We do not think appropriators should consider the issue of SNAP data disclosure, particularly for a live issue in the courts. Instead, this is an issue that should be deliberated more fully by congressional authorizers with the most expertise and in the appropriate committee and using regular order. We thank you for your support to preserving this independent process and urge you to keep this unprecedented congressional overreach out of the FY2019 appropriations bill.

Sincerely,

American Heart Association

American Public Health Association

Association of SNAP Nutrition Education Administrators

Association of State Public Health Nutritionists

Berkeley Media Studies Group

Center for Digital Democracy

Center for Science in the Public Interest

Consumer Federation of America

Laurie M. Tisch Center for Food, Education & Policy, Program in Nutrition, Teachers College

Columbia University

National Consumers League

National WIC Association

Public Health Institute

Society for Nutrition Education and Behavior

Union of Concerned Scientists