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Administrative Conference of the United States
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Submitted via ACUS Web Portal

Re: Identifying and Reducing Burdens in Administrative Processes

To the Office of the Chairman:

By notice published February 15, 2023, the Administrative Conference of the United States (ACUS) requests "public input on how agencies can identify and reduce unnecessary procedural burdens that members of the public face when they engage with administrative programs or participate in administrative processes."[1] The Electronic Privacy Information Center (EPIC) applauds the Conference's inquiry and urges ACUS to factor into its findings the importance of testing and disclosure requirements for agencies adopting new technologies to ensure that such systems do not create or exacerbate administrative burdens.

The Electronic Privacy Information Center[2] is a public interest research center established in 1994 to secure the fundamental right to privacy in the digital age for all people through advocacy, research, and litigation. EPIC advocates for common sense regulation concerning government use of automated decision-making systems. Part of this work includes investigating and illustrating the opacity problems in digital government service delivery.

EPIC is concerned about the adoption of automated systems to score and screen people in the delivery of government services. Such systems can (1) inflict privacy harms through excessive and unnecessary data collection; (2) create or exacerbate discrimination harms through inaccurate and biased determinations; and (3) impose a time tax by forcing individuals to make new accounts, understand new policies, and or try to remedy inaccurate results.

Though many systems used in the provision of government services are advertised as reducing burdens on both agencies and members of the public, they often increase complexity, force benefit recipients to undergo additional surveillance, and subject recipients to screening or scoring without a meaningful opportunity to contest the results. A recent high-profile example came in the IRS's requirement that taxpayers submit to a face scan by ID.me, a private company, as a condition of accessing certain online tax services. Public outcry over the privacy and bias

[1] Identifying and Reducing Burdens in Administrative Processes; Request for Comments, 88 Fed. Reg. 9,851 (Feb. 15, 2023), https://www.federalregister.gov/documents/2023/02/15/2023-03181/identifying-and-reducing-burdens-in-administrative-processes-request-for-comments.

risks of ID.me ultimately led the agency to announce that it would not require use of the system[2]—yet a year later, the IRS had still failed to provide an alternative.[3]

Moreover, not every automated system used in the provision of government services receives as much visibility or public attention as ID.me. The public often lacks an effective mechanism to understand which systems the government is using or to ensure their accountability. As a result, automated government decisions that unfairly deny a benefit may not be easy to remedy. The resources below provide real-life examples of this dynamic:

- Virginia Eubanks, *The Shakedown State*, EPIC (July 26, 2022), https://epic.org/shakedownstate/
- Marissa Gerchick, Tobi Jegede, Tarak Shah, Ana Gutiérrez, Sophie Beiers, Noam Shemtov, Kath Xu, Anjana Samant, *How Policy Hidden in an Algorithm is Threatening Families in This Pennsylvania County*, ACLU (Mar. 14, 2023), https://www.aclu.org/news/womens-rights/how-policy-hidden-in-an-algorithm-is-threatening-families-in-this-pennsylvania-county
- Casey Ross, Bob Herman, *Denied by AI: How Medicare Advantage plans use algorithms to cut off care for seniors in need*, STAT+ (Mar.13, 2023), https://www.statnews.com/2023/03/13/medicare-advantage-plans-denial-artificial-intelligence/
- Robert N. Charette, *Michigan's MiDAS Unemployment System: Algorithm Alchemy Created Lead, Not Gold*, IEEE Spectrum (Jan. 24, 2018), https://spectrum.ieee.org/michigans-midas-unemployment-system-algorithm-alchemy-that-created-lead-not-gold
- Adrienne Roberts, *Michigan's UIA selects Deloitte to replace unemployment insurance* system, Detroit Free Press (Nov. 15, 2022), https://www.freep.com/story/money/business/michigan/2022/11/15/michigan-unemployment-insurance-system-deloitte-midas-ufacts/69649312007/
- Inioluwa Deborah Raji, Peggy Xu, Colleen Honigsberg, Daniel Ho, *Outsider Oversight: Designing a Third Party Audit Ecosystem for AI Governance* (June 9, 2022), https://arxiv.org/pdf/2206.04737.pdf

For example, a 14-month EPIC investigation[4] showed that the District of Columbia government outsources critical governmental decisions to automated decision-making systems in areas such as public benefits, healthcare, policing, and housing. As a result, District residents are surveilled, screened, and scored every day. But because of weak government transparency laws, opaque procurement processes, the power and influence of technology vendors, and declines in local journalism, it has been difficult to uncover the details of how many automated decision-making systems are used in government programs.

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[2] Veronica Irwin, *The IRS cut ties with controversial facial recognition company ID.me*, Protocol (Feb. 7, 2022), available at https://www.protocol.com/bulletins/irs-wyden-id-me.
[3] Tonya Riley, *A year after outcry, IRS still doesn't offer taxpayers alternative to ID.me*, CyberScoop (Feb. 9, 2023), https://cyberscoop.com/irs-facial-recognition-identity-privacy/.
[4] EPIC. *Scored & Screened in D.C.*, https://epic.org/screened-scored-in-dc/ (Nov. 2022)

The same is true in most states and at the federal level. A previous ACUS report detailed the simultaneous increase in the use of automated decision-making systems and the lack of transparency concerning their use and design.[5] For example:

- Todd Feathers, *It Takes a Small Miracle to Learn Basic Facts About Government Algorithms*, The Markup (Apr. 1, 2023), https://themarkup.org/hello-world/2023/04/01/it-takes-a-small-miracle-to-learn-basic-facts-about-government-algorithms
- *MFIA Study Calls for Algorithmic Accountability*, Yale Law School (Dec. 20, 2021), https://law.yale.edu/yls-today/news/mfia-study-calls-algorithmic-accountability
- *AI was a spectacular failure*, FastCompany (Nov. 26, 2019), https://www.fastcompany.com/90436012/the-first-effort-to-regulate-ai-was-a-spectacular-failure
- Virginia Eubanks, *Automating Inequality*

As ACUS makes its findings, EPIC urges the Conference to consider how the growing adoption of technology in government service delivery can be made more thoughtful, accountable, and transparent. In particular, we recommend the following resources and proposed legislation concerning the use of automated decision-making systems in government:

- Rashida Richardson, *Best Practices for Government Procurement of Data-Driven Technologies* (June 1, 2021) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3855637
- Emmanel Moss, Elizabeth Anne Watkins, Ranjit Singh, Madeleine Clare Elish, & Jacob Metcalf, *Assembling Accountability: Algorithmic Impact Assessment for the Public Interest* (June 29, 2021), https://datasociety.net/library/assembling-accountability-algorithmic-impact-assessment-for-the-public-interest/
- Washington State SB 5116, *Establishing guidelines for government procurement and use of automated decision systems in order to protect consumers, improve transparency, and create more market predictability* (2022), https://app.leg.wa.gov/billsummary?BillNumber=5116&Year=2021&Initiative=false
- EPIC Testimony in support of SB 5116 (2022), https://epic.org/wp-content/uploads/testimony/congress/EPIC-SB5116-WA-Jan2021.pdf

EPIC is willing and eager to discuss these dynamics further as you develop your report and recommendations. Please don't hesitate to reach out to me at winters@epic.org or 202-483-1140 x 126.

Sincerely,
/s/ Ben Winters
Ben Winters
Senior Counsel
Electronic Privacy Information Center

[5] *Government by Algorithm: Artificial Intelligence in Federal Administreative Agencies*, ACUS (Feb. 19, 2020) https://www.acus.gov/report/government-algorithm-artificial-intelligence-federal-administrative-agencies