

Part 7: Confidentiality/Disclosure

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Part 7

Confidentiality/Disclosure of Eligibility Information

A. General

The issues of privacy and confidentiality of personal data are complicated as well as sensitive. Before developing State and local disclosure policies, SAs and LEAs should discuss the issue with their legal counsel.

LEAs may disclose children's free and reduced price meal eligibility information to programs, activities and individuals that are specifically authorized access under the NSLA which is the law that sets forth the disclosure limits for the Child Nutrition Programs. Disclosure is always an option, not a requirement.

The agency responsible for making the free and reduced price meal or free milk eligibility determination makes the decision on whether or not children's information will be disclosed. This will be the LEA or the school administration. The LEA may opt to disclose children's eligibility information to Medicaid or State Children's Health Insurance Program (SCHIP) officials if the SA has not prohibited such disclosure to these health insurance programs and the family does not decline to have their children's eligibility information released.

B. Aggregate Information

The LEA may disclose aggregate information to any program or individual when children cannot be identified through release of the aggregate data or by means of deduction. An example of aggregate data is the number of children eligible for free or reduced price meals in school district. As aggregate data does not identify individual children, parental notification and parental consent are not needed. However, LEAs are cautioned about release of aggregate data when individual children's eligibility may be deduced such as release of data about a specific classroom or subset when the numbers of eligible children is very small.

C. Disclosure Chart

The NSLA specifies that persons directly connected with the administration or enforcement of certain programs or activities are permitted to have access to children's eligibility information. The following chart shows the circumstances for disclosing eligibility information. If you have concerns or questions about disclosing children's eligibility information, contact your SA for further guidance.

Recipient of Information	Information that May be Disclosed	Required Notification and Consent
<i>Programs under the National School Lunch Act or Child Nutrition Act</i>	All eligibility information	Prior notice and consent not required
<i>Federal/State or local means tested nutrition programs with eligibility standards comparable to the NSLP</i>	Eligibility status only	Prior notice and consent not required
<i>Federal education programs</i>	Eligibility status only	Prior notice and consent not required
<i>State education programs administered by a State agency or local education agency</i>	Eligibility status only	Prior notice and consent not required
<i>Local education programs</i>	NO eligibility information, unless parental consent is obtained	Must obtain parental consent
<i>Medicaid or the State children's health insurance programs (SCHIP), administered by a State or local agency authorized under titles XIX or XXI of the Social Security Act to identify and enroll eligible children</i>	All eligibility information, unless parents elect not to have information disclosed	Must give prior notice to parents and opportunity for parents to decline to have their information disclosed
<i>State health programs other than Medicaid/SCHIP, administered by a State agency or local education agency</i>	Eligibility status only	Prior consent not required
<i>Federal health programs other than Medicaid/SCHIP</i>	NO eligibility information, unless parental consent is obtained	Must obtain parental consent
<i>Local health program</i>	NO eligibility information, unless parental consent is obtained	Must obtain parental consent
<i>Comptroller General of the United States for purposes of audit and examination</i>	All eligibility information	Prior notice and consent not required
<i>Federal, State or local law enforcement officials investigating alleged violations of any of the programs under the NSLA and CNA or investigating violations of any of the programs that are authorized to have access to names and eligibility status</i>	All eligibility information	Prior notice and consent not required

See Appendix D for a chart showing grouping by what information may be released.

D. "Need to Know"

Although a program or person may be authorized under the NSLA to receive free and reduced price eligibility information, there *must* be a legitimate need to know to provide a service or carry out an authorized activity.

State Medicaid and SCHIP agencies and health insurance program operators receiving children's free and reduced price meal or free milk eligibility information *must* use that information to enroll eligible children in State Medicaid or SCHIP. The State Medicaid or SCHIP enrollment process may include seeking to identify and identifying children from low income households, who are potentially eligible for State Medicaid or SCHIP for the purpose of enrolling them in State Medicaid or SCHIP.

E. National Assessment of Educational Progress (NAEP)

LEAs may disclose, without parent/guardian consent, children's names and eligibility status to persons who are directly connected to the administration or enforcement of NAEP because NAEP is a Federal education program. Additionally, LEAs may disclose children's names and eligibility status to persons directly connected with the administration or enforcement of State educational assessment programs to the extent that the State assessment is part of the NAEP or the assessment program is established at the State, not local level. Other State education programs also are eligible to have access to participants' names and eligibility status, without parent/guardian consent, but the program must be established at the State, not local level.

The term "persons directly connected" for the purpose of disclosure to NAEP includes Federal, State and local program operators responsible for NAEP program administration or program compliance and their contractors. This does not imply that these persons have routine access to participants' eligibility status. There must be a "need to know" for legitimate NAEP purposes.

LEAs are encouraged to inform households when they plan to disclose or use eligibility information outside the originating program and to have a written agreement with NAEP officials (see I. Agreements/Memoranda of Understanding in this part).

F. No Child Left Behind (NCLB)

Because NCLB is a Federal education program, LEA officials may disclose a child's eligibility status to persons directly connected with, and who have a need

to know, a child's free and reduced price meal eligibility status in order to administer and enforce the NCLB requirements. However, other information obtained from the free and reduced price school meal application or obtained through direct certification cannot be disclosed. LEA officials must keep in mind that the intent of the confidentiality provisions is to limit the disclosure of a child's eligibility status to those who have a "need to know" for proper administration and enforcement of a Federal education program. LEAs must establish procedures that limit access to a child's eligibility status to as few individuals as possible.

LEA officials, prior to their disclosing information on the eligibility of individual children, should enter into a memorandum of understanding or other agreement to which all involved parties (including both officials who administer the school meals/milk programs and officials who administer the overall education functions) would adhere. This agreement would specify the names of the individuals who would have access to the information, how the information would be used in implementing NCLB and how the information will be protected from unauthorized uses and third-party disclosures, and should include a statement of the penalties for misuse of the information.

G. Family Educational Rights and Privacy Act (FERPA)

Federal Department of Education has established that education records are under the purview of FERPA. However, for the school meals programs and milk program, the restrictions imposed by the laws governing these programs, not FERPA, apply.

H. Parental Notification for Disclosure

Unless otherwise indicated, LEAs must inform households if they plan to disclose or use eligibility information outside the originating program, i.e., lunch, breakfast or milk program. This may be done as either a general notification of potential disclosure or a specific notification to disclose information to a particular program.

Notice Requirements

The notice of potential disclosure or specific disclosure may be in the letter to households that accompanies the free and reduced price meal or free milk application, on the application, or, for children directly certified, in the document informing households of the participants' eligibility through direct certification. The notification should state that the children's names, eligibility status and other information provided on the application or obtained through direct certification may be disclosed to certain other Federal, State or local agencies as authorized by the NSLA. A list of the specific programs is not necessary.

Parents/guardians must be notified of the potential disclosure or specific

disclosure and given the opportunity to elect not to have their children's information disclosed.

The notification of potential disclosure or specific disclosure must inform the parents/guardians:

- that they are not required to consent to the disclosure;
- that the information will be used to facilitate the enrollment of eligible children in a health insurance program or other programs; and
- that their decision will not affect their children's eligibility for free and reduced price meals or free milk.

The notice of either potential or specific disclosure must be given prior to disclosure and parents/guardians given a reasonable time limit to respond. For children who are determined eligible through direct certification, the notice of potential or specific disclosure may be in the document informing parents/guardians of their children's eligibility for free meals through direct certification.

See Appendix B for the link to a prototype notification of disclosure.

I. Agreements/Memoranda of Understanding

An agreement is not needed for Federal, State or local agencies evaluating or reviewing Child Nutrition Program operations. Similarly, an agreement is not necessary for disclosures to the Comptroller General. These activities are part of routine operations of the Child Nutrition Programs and enforcement.

Non-Medicaid/SCHIP Agencies

The LEA should enter into a written agreement with other entities, including NAEP, requesting the information prior to disclosing children's eligibility information. The agreement should:

- be signed by both the LEA and receiving entity;
- identify the entity receiving the information;
- describe the information to be disclosed and how it will be used;
- describe how the information will be protected from unauthorized uses and disclosures; and
- describe the penalties for unauthorized disclosure.

Medicaid/SCHIP Agencies

For any disclosures to Medicaid or SCHIP, the LEA and receiving agency must have an agreement or Memorandum of Understanding which includes:

- the health insurance program or health agency receiving children's eligibility information;
- the information that will be disclosed and specify that the information must only be used to seek to enroll children in State Medicaid or SCHIP;
- how the information will be used and how it will be protected from unauthorized uses and disclosures;

- the penalties for unauthorized disclosure; and
- the signature of the determining agency and the State Medicaid/SCHIP program or agency receiving the children's eligibility information.

In all cases, the receiving entity must be informed in writing that:

- eligibility information may only be used for the purpose for which the disclosure was made;
- further use or disclosure to other parties is prohibited; and
- a violation of this provision may result in a fine of not more than \$1000 or imprisonment of not more than 1 year, or both.

A prototype agreement is in Appendix C.

J. Other Disclosures that Require Parental Consent

Children's parents or guardians may always provide consent for the disclosure of any or all of the information related to their children's eligibility status (i.e., whether children are eligible for free or reduced price meals), or the information that the household provided through the free and reduced price meal eligibility process.

A disclosure of **all** eligibility information to any other Federal, State or local program or individual not included in the NSLA requires parental consent. Other programs that require parental consent are local health and local education programs and other local level activities. For example, the disclosure of children's eligibility for free and reduced price meals to determine children's eligibility for free text books or reduced fees for summer school requires consent when these are local initiatives and not State programs.

The disclosure of information other than names and eligibility status to the programs authorized only to receive participants' names and eligibility status also requires written consent. For example, determining agencies may disclose names and eligibility status to a Federal education program, but if the program requests family size, determining agencies must obtain consent prior to disclosure.

K. Consent Statement Requirements

The consent statement must be in writing. It may be obtained at the time of application, or at a later time.

The consent statement must:

- identify the information that will be shared and how the information will be used;
- be signed and dated. In the case of a child participant, the consent statement *must* be signed by the parent or guardian of the applicant household, even though the application for free and reduced price meals or

free milk may be signed by any adult household member. For adult participants in the Child and Adult Care Food Program, the adult participant *must* sign the consent statement unless a guardian has been appointed;

- state that failing to sign the consent statement will not affect eligibility or participation for the program and that the information will not be shared by the receiving program with any other entity or program; and
- enable the parent/guardian/adult to limit consent to only those programs with which he or she wishes to share information. For example, the consent statement could use a check-off system under which the applicant would check or initial a box to indicate that he or she wants to have information disclosed to determine eligibility for benefits from a certain program.

L. Social Security Numbers

The free and reduced price application requires the complete social security number of the adult household member who signs the application. Most programs that request children's free and reduced price meal or free milk eligibility information will not need the adult's social security number.

However, when disclosing or using the social security number provided by the household on the application for any purpose other than the program for which the number was collected (the NSLP, SBP, etc.), the determining agency must modify the notice required by the Privacy Act of 1974 concerning the potential uses of the social security number. The notice must inform households of the additional intended uses of the number.

M. Penalties for Improper Disclosure

The NSLA establishes a fine of not more than \$1000 or imprisonment of not more than one (1) year, or both, for publishing, divulging, disclosing, or making known in any manner or extent not authorized by Federal law, any eligibility information. This includes the disclosure of eligibility information by one entity authorized under the NSLA to receive the information to any other entity, even if that entity would otherwise be authorized to receive the information directly from the determining agency.

N. Questions and Answers

Q1 *What does disclosure mean as it relates to children's personal free and reduced price meal or free milk eligibility information?*

A Disclosure means revealing or using individual children's program eligibility

information that is obtained through the free and reduced price eligibility process for a purpose other than the purpose for which the information was obtained. Disclosure includes but is not limited to access, release, or transfer of personal data about children by means of print, tape, microfilm, microfiche, electronic communication or any other means. It includes eligibility information obtained through the free and reduced price application or through direct certification and whether the children are eligible for free meals or reduced price meals.

Q2 *May representatives of State or local education agencies evaluating the results and compliance with student assessment programs have access to children's eligibility information?*

A State and local representatives of State or local education agencies would be covered only to the extent that the assessment program was established at the State, not local level.

Q3 *May the principal of a school compare the test scores of students in his/her school, by socioeconomic status, to the test scores of students in another school in the same district?*

A Students' names and free or reduced price eligibility status may be disclosed, without consent, for a Federal or State education program. However, parental consent is required for disclosure to a local education program.

Q4 *May the LEA disclose eligibility information to other Child Nutrition Programs?*

A The LEA may disclose all eligibility information from children's free and reduced price applications or information obtained through direct certification to persons directly connected with the administration or enforcement of the programs authorized under the NSLA or Child Nutrition Act of 1966. This includes the NSLP, SBP, SMP, Child and Adult Care Food Program (CACFP), Summer Food Service Program (SFSP), and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). This means that program eligibility information collected for any one of the Child Nutrition Programs may be shared with another Child Nutrition Program, even if the programs are sponsored by different entities. For example, a public school may disclose information from children's free and reduced price school meal applications, without parental consent, to a SFSP administered by a parks and recreation agency.

Q5 *Who are persons "directly connected" to the administration or enforcement of a program?*

- A** The LEA may disclose children's eligibility status only to persons determined to be "directly connected" with the administration or enforcement of a Federal education program, State education program, State health program or a means-tested nutrition program; also, to persons directly connected with the Comptroller General Office or law enforcement for an authorized activity.

Persons directly connected to program administration or program enforcement include Federal, State and local program operators responsible for the ongoing operation or activities of their respective program, and compliance officials responsible for the monitoring, reviewing, auditing or investigating a program authorized to have access to free and reduced price eligibility information.

Q6 *Who are persons "directly connected" with the administration of State Medicaid and SCHIP?*

- A** Persons directly connected with the administration of State Medicaid and SCHIP for purposes of disclosure of free and reduced price meal and free milk eligibility information are State employees and persons authorized under Federal and State Medicaid and SCHIP requirements to carry out initial processing of applications or to make eligibility determinations. Check with your State Medicaid/SCHIP coordinator to determine the persons or entities in your State authorized to enroll children in Medicaid and SCHIP.

Q7 *What eligibility information may an LEA disclose to means-tested nutrition programs?*

- A** Without parental consent, the LEA may only disclose name and eligibility status. Disclosure of other information, such as parents' names and address, requires parental notification and consent.

Q8 *Who is responsible for making the decision on whether to disclose children's eligibility status and/or to disclose other personal information?*

- A** Whether or not to disclose children's eligibility information is a local decision. The LEA should develop a policy on disclosing free and reduced price meal eligibility information. However, for disclosures to Medicaid and SCHIP, the decision on disclosure is a joint SA/LEA decision. Both the SA and LEA must agree to disclose children's information to Medicaid and SCHIP.

Q9 *When I notify parents that their information will be disclosed to Medicaid or SCHIP unless they decline to have their information shared, how long do I have to wait for a response from the parent before I release their*

information?

A LEAs should provide adequate time for any parental response. A minimum of 10 calendar days should be provided. It is a good idea to include a date in the parental notification statement that informs households that they *must* respond by a specified date if they do not want their information disclosed to Medicaid or SCHIP.

Q10 *Can the SA enter into a Memorandum of Understanding for all LEAs for disclosing information to Medicaid/SCHIP?*

A No.

Q11 *How do I know who to contact for more information regarding Medicaid and SCHIP?*

A For State and Federal Medicaid, visit:
<http://www.cms.hhs.gov/home/medicaid.aspx>.
For SCHIP, visit: <http://www.cms.hhs.gov/home/schip.asp>.



Appendix C

PROTOTYPE DISCLOSURE OF FREE AND REDUCED PRICE INFORMATION AGREEMENT

I. PURPOSE AND SCOPE

(Insert name of determining agency) and (insert name of receiving agency) acknowledge and agree that children's free and reduced price meal and free milk eligibility information obtained under provisions of the Richard B. Russell National School Lunch Act (42 USC 1751 et. seq.) (NSLA) or Child Nutrition Act of 1966 (42 USC 1771 et. seq.) (CNA) and the regulations implementing these Acts is confidential information. This Agreement is intended to ensure that any information disclosed by the (insert name of determining agency) to the (insert name of receiving agency) about children eligible for free and reduced price meals or free milk will be used only for purposes specified in this Agreement and that the (insert name of determining agency) and (insert name of receiving agency) recognize that there are penalties for unauthorized disclosures of this eligibility information.

II. AUTHORITY

Section 9(b)(6)(A) of the NSLA (42 USC 1758(b)(6)(A)) authorizes the limited disclosure of children's free and reduced price meal or free milk eligibility information to specific programs or individuals, without prior parent/guardian consent. Except that, the parent/guardian must be provided the opportunity to decline to share eligibility information prior to the disclosure for identifying children eligible for benefits under or enrolling children in the State Medicaid Program and the State children's health insurance program. Additionally, the statute specifies that for any disclosures not authorized by the statute, the consent of children's parents/guardians must be obtained prior to the disclosure.

The *requesting* agency certifies that it is currently authorized to administer the following program(s) and that information requested will only be used by the program(s) indicated:

Check all that apply

Program

Information authorized

	<p><i>Medicaid or the State children's health insurance program (SCHIP), administered by a State or local agency authorized under titles XIX or XXI of the Social Security Act.</i> Specify Program:</p>	<p>All eligibility information, unless parents elect not to have information disclosed.</p>
	<p><i>State health program other than Medicaid/SCHIP, administered by a State agency or local education agency.</i> Specify Program:</p>	<p>Eligibility status only; consent not required.</p>
	<p><i>Federal health program other than Medicaid/SCHIP</i> Specify Program:</p>	<p>NO eligibility information, unless parental consent is obtained.</p>
	<p><i>Local health program</i> Specify Program:</p>	<p>NO eligibility information, unless parental consent is obtained.</p>
	<p><i>Child Nutrition Program under the National School Lunch Act or Child Nutrition Act</i> Specify Program:</p>	<p>All eligibility information; consent not required.</p>
	<p><i>Federal/State or local means tested nutrition program with eligibility standards comparable to the National School Lunch Program</i> Specify Program:</p>	<p>Eligibility status only; consent not required.</p>
	<p><i>Federal education program</i> Specify Program:</p>	<p>Eligibility status only; consent not required.</p>
	<p><i>State education program administered by a State agency or local education agency</i> Specify Program:</p>	<p>Eligibility status only; consent not required.</p>

Note: Section 9(b)(6)(A) specifies that certain programs may receive children's eligibility status **only**, without parental consent. Parental consent must be obtained to disclose any additional eligibility information. Section 9(b)(6)(A)(iv) specifies that for State Medicaid or SCHIP, parents must be notified and given opportunity to elect not to have information disclosed. Social security numbers may only be disclosed if households are given notice of the disclosure and the uses to be made of their social security numbers as required by Sec. 7 of the Privacy Act.

III. RESPONSIBILITIES

(Insert Name of Determining Agency) will:

When required, secure parents/guardians consent prior to any disclosure not authorized by the National School Lunch Act or any regulations under that Act, unless prior consent is secured by the receiving agency and made available to the determining agency;

For State Medicaid and SCHIP notify parents/guardians of potential disclosures and provide opportunity for parents/guardians to elect not to have information disclosed;

Disclose eligibility information only to persons directly connected to the administration or enforcement of programs authorized access under the National School Lunch Act or regulations under the Act or to programs or services for which parents/guardians gave consent.

(Insert Name of Receiving Agency) will:

Ensure that only persons who are directly connected with the administration or enforcement of the *(insert name of the Program)* and whose job responsibilities require use of the eligibility information will have access to children's eligibility information:

(Specify by name(s) or title(s))

Use children's free and reduced price eligibility information for the following specific purpose(s):

(Describe)

Inform all persons that have access to children's free and reduced price meal eligibility information that the information is confidential, that children's eligibility information must only be used for purposes specified above, and the penalties for unauthorized disclosures.

Protect the confidentiality of children's free and reduced price meal or free milk eligibility information as follows:

Specifically describe how the information will be protected from unauthorized uses and further disclosures.)

Description of Procedures to Transfer Meal Eligibility Information (May be completed by either the determining agency or receiving agency)

Describe the procedures for transferring students' meal eligibility information from the determining agency to the requesting agency/program so as to limit the number of individuals who have access to the information.

(Describe)

IV. EFFECTIVE DATES

This agreement shall be effective from _____ to _____

V. PENALTIES

Any person who publishes, divulges, discloses, or makes known in any manner, or to any extent not authorized by Federal law (Section 9(b)(6)(C) of the National School Lunch Act; 42 USC 1758(b)(6)(C)) or a regulation, any information about a child's eligibility for free and reduced price meals or free milk shall be fined not more than a \$1,000 or imprisonment of not more than 1 year or both.

VI. SIGNATURES

The parties acknowledge that children's free and reduced price meal and free milk eligibility information may be used only for the specific purposes stated above; that unauthorized use of free and reduced price meal and free milk information or further disclosure to other persons or programs is prohibited and a violation of Federal law which may result in civil and criminal penalties.

Requesting Agency/Program Administrator

Printed Name: _____
Title: _____ Phone: _____
Signature: _____
Date: _____

Determining Agency Administrator

Printed Name: _____
Title: _____ Phone: _____
Signature: _____
Date: _____

***Any attachments will become part of this agreement.**

Appendix D

Disclosure Chart by What May be Released

All Eligibility Information		
Recipient of Information	Information that May be Disclosed to Recipient	Required Notification and Consent
<i>Child Nutrition Programs</i> under the National School Lunch Act or Child Nutrition Act (NSLP, SBP, SMP, CACFP, SFSP, and WIC)	All eligibility information	Prior notice and consent not required
<i>Federal, State or local law enforcement officials</i> investigating alleged violations of any of the programs under the NSLA and CNA or investigating violations of any of the programs authorized to have access to names and eligibility status	All eligibility information	Prior notice and consent not required
<i>Comptroller General</i> of the United States for purposes of audit and examination	All eligibility information	Prior notice and consent not required
<i>Medicaid or the State children's health insurance programs (SCHIP)</i> , administered by a State or local agency authorized under titles XIX or XXI of the Social Security Act to identify and enroll eligible children	All eligibility information, unless parents elect not to have information disclosed	Must give prior notice to parents and opportunity for parents to decline to have their information disclosed
Eligibility Status Only		
Recipient of Information	Information that May be Disclosed to Recipient	Required Notification and Consent
<i>Federal/State or local means tested nutrition programs</i> with eligibility standards comparable to the NSLP	Eligibility status only	Prior notice and consent not required
<i>Federal education programs</i>	Eligibility status only	Prior notice and consent not required
<i>State education programs</i> administered by a State agency or local education agency	Eligibility status only	Prior notice and consent not required
<i>State health programs</i> other than Medicaid/SCHIP, administered by a State agency or local education agency	Eligibility status only	Prior notice and consent not required
No Eligibility Information, Unless Parental Consent Is Obtained		
<i>Local education programs</i>	NO eligibility information, unless parental consent is obtained	Must obtain parental consent
<i>Federal health programs</i> other than Medicaid/SCHIP	NO eligibility information, unless parental consent is obtained	Must obtain parental consent
<i>Local health program</i>	NO eligibility information, unless parental consent is obtained	Must obtain parental consent