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6. Confidentiality/Disclosure

The issues of privacy and confidentiality of personal data are complicated as well as sensitive. Before developing local disclosure policies, each sponsor should discuss the issue with its legal counsel.

Sponsors may disclose children's reduced price and free Child Nutrition Program (CNP) benefit eligibility information to programs, activities and individuals that are specifically authorized access under the National School Lunch Act (NSLA), which is the law that sets forth the disclosure limits for the Child Nutrition Programs. Disclosing information to authorized entities is an option, not a requirement. The school foodservice director, in conjunction with any sponsor officials 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 within the parameters shown in the Disclosure Chart that follows. 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. 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.

Preventing Overt Identification

Unauthorized disclosure or "overt identification" of children receiving free or reduced price meal benefits may be an unintentional consequence of having a food service line where competitive foods are sold and a different food service line for NSLP program meals.

In the same way, schools that have a dual payment system that accepts both cash and electronic payments may overtly identify children through the method of payment. Schools must ensure, to the maximum extent practicable, that the sale of competitive foods and the method of payment do not inadvertently result in children being identified by their peers as receiving free or reduced price meal benefits.

In addition, schools/sponsors must ensure that children who receive free or reduced price meal benefits are not overtly identified when they are provided additional services under certain programs or activities that are permitted to have access to children's eligibility information, such as academic support under No Child Left Behind. (See the Disclosure Chart)

Sponsors must ensure compliance with disclosure limitations in this Part 8L (reference NSLA 9(b)(10) and regulations found at 7 CFR Part 245.8 and SP 45-2012 available at <http://www.fns.usda.gov/sites/default/files/SP45-2012os.pdf>).

Aggregate Information

The sponsor may disclose aggregate data 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 the school district. As aggregate data does not identify individual children,

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of Eligibility Information

parental notification and parental consent are not needed. However, sponsors are cautioned about release of aggregate data when individual children’s eligibility may be deduced (e.g., release of data about a specific classroom when the numbers of eligible children is very small).

Disclosure Chart

The NSLA specifies that persons directly connected to the administration or enforcement of certain programs or activities are permitted to have access to children’s eligibility information. The Disclosure Chart shows the circumstances for disclosing eligibility information. If you have concerns or questions about disclosing children’s eligibility information, contact Child Nutrition & Wellness at the Kansas State Department of Education for further guidance.

Recipient of Information	What May be Disclosed	Requirements
Programs under the National School Lunch Act or Child Nutrition Act	All eligibility information	Prior notice and consent not required
Federal/State or local means tested nutrition programs with eligibility standards comparable to the NSLP	Eligibility status only	Prior notice and consent not required
Federal education programs	Eligibility status only	Prior notice and consent not required
State education programs administered by a State agency or local education agency	Eligibility status only	Prior notice and consent not required
Local education programs	NO eligibility information, unless parental consent is obtained	Parental consent
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	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
State health programs other than Medicaid/SCHIP, administered by a State agency or local education agency	Eligibility status only	Prior consent not required
Federal health programs other than Medicaid/SCHIP	NO eligibility information, unless parental consent is obtained	Parental consent
Local health program	NO eligibility information, unless parental consent is obtained	Parental consent
Comptroller General of the United States for purposes of audit and examination	All eligibility information	Prior notice and consent not required
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	All eligibility information	Prior notice

Disclosure of Last Four Digits of Social Security Numbers

The Application for CNP Benefits (**KN-CLAIM on the Checklist Tab**) requires the last four digits of the Social Security number of the adult household member who signs the application. Most programs that request children’s reduced price and free CNP benefit eligibility information will not need the adult’s Social Security number.

However, when disclosing or using the last four digits of the Social Security number provided by the household on the application for any purpose other than the Child Nutrition Program, the sponsor **must** modify the notice required by the Privacy Act of 1974 concerning the potential uses of the last four digits of the Social Security number. This notice is printed on the reverse side of the Application for CNP Benefits. The notice **must** inform households of the additional intended uses of the last four digits of the Social Security number.

“Need to Know”

Although a program or person may be authorized under the NSLA to receive reduced price and free eligibility information, there **must** be a legitimate “need to know” in order to provide a service or carry out an authorized activity. Sponsors and schools must ensure that data systems, records, and other means of accessing a student’s eligibility status are limited to officials directly connected with administration or enforcement of a Federal or State program or activity. This includes Federal, State, or local program operators responsible for the ongoing operation of the program or activity, or responsible for program compliance.

Eligibility information cannot be made available to all school officials. For example, access must be limited to a student’s teachers who are directly responsible for the administration of a Federal education program, e.g., No Child Left Behind (NCLB), or who are providing tutorial or other assistance under NCLB. Teachers, guidance counselors, principals, etc. who are not providing such assistance under the appropriate statutory or regulatory requirements cannot have access. On-line data systems must have a masking or de-identification capability to prevent unauthorized access to free or reduced price eligibility status.

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 only to enroll eligible children in State Medicaid or SCHIP.

For example, a Summer Food Service Program sponsor receiving children’s reduced price and free eligibility information can use that information **only** for the Summer Food Service Program. See the Disclosure Chart for additional limitations on providing eligibility information to other programs.

National Assessment of Educational Progress

Sponsors 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, sponsors 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” relating to the administration or enforcement of a Federal education program or for legitimate NAEP purposes.

Sponsors 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 Form 6A – Request for Information on Eligibility for Child Nutrition Program Benefits).

No Child Left Behind

No Child Left Behind (NCLB) is a Federal education program. Therefore, sponsor 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 through direct certification cannot be disclosed. Sponsor 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. Sponsors must establish procedures that limit access to a child's eligibility status to as few individuals as possible.

Sponsor officials, prior to disclosing information on the eligibility of individual children, must complete Form 6A (Request for Information on Eligibility for Child Nutrition Benefits) 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. Form 6A specifies 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 would be protected from unauthorized uses and third-party disclosures, as well as includes a statement of the penalties for misuse of the information.

Family Educational Rights and Privacy Act

The Federal Department of Education has established that education records are under the purview of the Family Educational Rights and Privacy Act (FERPA). However, for the school meals programs and milk program, the restrictions imposed by section 9(b)(6) of the NSLA apply, not FERPA.

Penalties for Improper Disclosure

The NSLA establishes a fine of not more than \$1,000 or imprisonment of not more than one year, or both, for publishing, divulging, disclosing, or making known in any manner or extent not authorized by federal law, any eligibility information.

Only the CNP sponsor is allowed to disclose eligibility information. An entity authorized by the NSLA to receive CNP eligibility information is NOT allowed to share that information with any other entity. For example, the sponsor may provide students' eligibility status to a federal education program. The federal education program receiving the information is not authorized to share it with any other entity.

Agreements of Understanding

An agreement is not needed for federal, state or local agency personnel evaluating or reviewing Child Nutrition Program (CNP) operations. These activities are part of routine Child Nutrition Program operations.

Students' names and eligibility status may be disclosed to persons directly connected with the administration or enforcement of federal education programs, state education and health programs and federal, state and local means tested nutrition programs. However, these persons should **not** have routine access to participants' eligibility status. There must be a legitimate reason why the information is needed for the approved program.

The sponsor must enter into a written agreement with other entities requesting the information prior to disclosing 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.
- ◆ A violation of this provision may result in a fine of not more than \$1,000 or imprisonment of not more than one year, or both.

Refer to the sample written agreement, [Request for Information on Eligibility for Child Nutrition Program Benefits](#) and related [Policy on Confidentiality of Child Nutrition Program Benefits](#) (Form 6-A).

Requirements for Agreements on Disclosure of Eligibility Information

All agreements must:

- ◆ Be signed by both the sponsor and receiving entity
- ◆ Identify the entity receiving the information
- ◆ Specify that the information must be used ONLY for the purpose for which it was requested
- ◆ Describe the information to be disclosed and how it will be used
- ◆ Describe how the information will be protected from unauthorized uses and disclosures
- ◆ Describe the penalties for unauthorized disclosure

Parental Notification & Consent

Disclosures That Do Not Require Parental Consent

Sponsors must inform households if they plan to disclose or use eligibility information for authorized programs (see Disclosure Chart) other than the Child Nutrition Program. The notice of potential disclosure is included in the Letter to Households (**KN-CLAIM on the Checklist Tab**).

Parental consent is not required prior to disclosing eligibility information to the following programs:

- ◆ **Child Nutrition Programs** under the National School Lunch Act or Child Nutrition Act including the Summer Food Service Program, Child and Adult Care Food Program, etc.
- ◆ **Comptroller General** of the United States for purposes of audit and examination
- ◆ **Federal, state or local law enforcement officials** investigating alleged violations of any of the programs under the National School Lunch Act and Child Nutrition Act or investigating violations of any of the programs that are authorized to have access to names and eligibility status
- ◆ **Federal education programs** such as the National Assessment of Educational Progress (NAEP), Twenty-First Century Community Grants, Upward Bound, etc.
- ◆ **State education or health programs** (other than Medicaid/HealthWave) administered by the state or a local education agency
- ◆ **Federal, state or local means-tested nutrition programs** with eligibility standards comparable to the Child Nutrition Programs

Disclosures That Require Parental Consent

Parental consent (i.e. [Consent for Disclosure](#)) is required prior to disclosing Child Nutrition Program eligibility information to the following programs:

- ◆ **Medicaid or HealthWave** (the state children’s health insurance program) administered by a state or local agency authorized under Titles XIX or XXI of the Social Security Act to identify and enroll eligible children
- ◆ **Any other federal, state or local program or individual not listed in the preceding section**, even if the same person is responsible for approving eligibility for Child Nutrition Program benefits and awarding other benefits. Examples of such programs include free textbooks, reduced school fees, local charitable programs, etc.

Consent for Disclosure Requirements

Parents/guardians must consent to disclose their children's eligibility for reduced price or free Child Nutrition Program benefits **prior** to disclosure and they should be given a reasonable amount of time to respond to the request. The request for parents to consent to disclosure **must** be in writing. It may be obtained on the following form:

- ◆ [Consent for Disclosure \(www.kn-eat.org\)](http://www.kn-eat.org), School Nutrition Programs, **Food Service Facts, Chapter 6, Related Forms**)

Enter the benefit(s) in the space(s) provided before printing letter. Do **NOT** mark the checkboxes before printing. The parent or guardian of the student must mark each checkbox to confirm that they consent to disclosure of their reduced price or free Child Nutrition Program benefits in order to qualify for the specified benefit.

The Consent for Disclosure must:

- ◆ Inform the parents/guardians that they are not required to consent to the disclosure and that the information will **ONLY** be used for the purpose for which it is requested
- ◆ Identify the information that will be shared and how the information will be used
- ◆ Be signed and dated by the **parent or guardian** of the applicant household
- ◆ State that failing to sign the Consent for Disclosure will not affect eligibility or participation in the program and that the information will not be shared by the receiving program with any other entity or program
- ◆ Enable the parent/guardian/adult to consent to disclose their children's eligibility for reduce price or free Child Nutrition Program benefits for only those programs with which he or she wishes to share information

Disclosing Information to a Shared Custody or Non-Custodial Parent

Q *Can a shared custody or non-custodial parent obtain information provided by the custodial parent on his/her application for CNP benefits?*

A No. The applicant’s consent is required before school officials can disclose that an application is on file or release the household’s eligibility information to anyone outside the household for non-program purposes.

Disclosing Information for a Civic Cause

Q *May a school secretary who has access to the reduced price and free eligibility information provide eligibility information or request consent for disclosure from parents for a community wide “Adopt a Child” holiday gift exchange?*

A No. Only the food service director, in conjunction with the sponsor’s determining official, may request consents for disclosure for programs other than those listed on the Disclosure Chart. The school secretary has access to the reduced price and free data only because of her “need to know” for use in meal accountability. The consent for disclosure should be requested at the time of the initial application for benefits on [Consent for Disclosure](#) or the food service director, in conjunction with the sponsor’s determining official, should initiate the consent for disclosure.