United States Department of Agriculture

Food and Nutrition Service

3101 Park Center Drive
Alexandria, VA 22302-1500

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SUBJECT: Disclosure Requirements for the Child Nutrition Programs

TO: Regional Directors
Child Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

We have received a number of inquiries from local educational agencies (LEAs) about the suitability of releasing eligibility information. FNS strongly encourages States and LEAs to utilize data-sharing authorities appropriately to expand access to programs and services and support effective operation of educational programs. However, recent inquiries from program operators have indicated that they are being asked to share information that is not releasable and/or that eligibility information is being requested by or for persons who do not have a legitimate need for it.

This memorandum restates the statutory and regulatory requirements for disclosure of information concerning children who are eligible for free or reduced price meals in any of the Child Nutrition Programs. While the large majority of requests for eligibility information are related to the school meal programs, we are also including the Child and Adult Care Food Program (CACFP) and the Summer Food Service Program (SFSP) to remind State agencies and local institutions that the disclosure requirements also apply to these programs.

Please keep in mind that:

- the statutory and regulatory requirements limit when information may be released without the written consent of the child's parent or guardian;
- the release of data by an LEA is always optional, not required;
- an agreement or memorandum of understanding (MOU) between State or local agencies may be required and, even if not required, is useful; and
- aggregate information will often meet the needs of the requestor and should be used whenever possible. However, LEAs, institutions, sponsors, etc. are cautioned about release of aggregate data when individual children's eligibility may be deduced. For example, individual identities of children in a specific classroom may be deduced since this is a very small subset in a school.

Statutory and Regulatory Requirements
Section 9(b)(6) of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1758(b)(6)) delineates the restrictions on the disclosure and use of information obtained from an application for free and reduced price meals, as well as the criminal penalties for improper release of information. Note that while the law discusses applications, the disclosure requirements also apply to information obtained through the direct certification process. A copy of this section of the law is attached for reference. We recommend that State agencies and LEAs and, as applicable, CACFP institutions, sponsoring organizations and family day care home providers and SFSP sponsoring organizations, cite the law when responding to requests for release of information.

The regulations implementing the law are as follows:

Program	Definition of Disclosure	Provisions on Privacy Act Notice and Disclosure to Other Programs
Special Milk Program for Children	7 CFR 215.2(i-1)	7 CFR 215.13a(f)-(l)
Summer Food Service Program	7 CFR 225.2	7 CFR 225.15(f)-(l)
Child and Adult Care Food Program	7 CFR 226.2	7 CFR 226.23(e) and (i)-(n)
National School Lunch and School Breakfast Programs	7 CFR 245.2	7 CFR 245.6(a) and (f)-(k)

Guidance
Part 7 of the Eligibility Manual for School Meals, January 2008 edition, provides specific guidance on applying the statutory and regulatory requirements. The manual may be found at: http://www.fns.usda.gov/cnd/guidance/default.htm. A convenient source of information is the manual's "Disclosure Chart" which briefly outlines various types of requestors and any restrictions on receipt of information. The chart is attached to this memorandum for your reference.

Examples of specific programs that are authorized, by law, to receive eligibility status of individual children are the No Child Left Behind Program and the National Assessment of Educational Progress (NAEP). The name and eligibility status only may be shared with these programs without prior notice and consent.

However, in recognition of the importance of health insurance for children, the law and regulations provide special procedures for sharing of eligibility information with Medicaid and the State Children's Health Insurance Program (SCHIP) in accordance with the required agreement. All eligibility information may be shared unless the child's parent or guardian elects not to share the information. To allow the parent/guardian to decline, the LEA must include a form that explains sharing with Medicaid/SCHIP; i.e., unless the parent/guardian signs and

submits the "opt out" form, eligibility information will be shared with Medicaid/SCHIP. A sample of an "opt out form" is included in our prototype application package which may be found at: http://www.fns.usda.gov/cnd/frp/frp.process.htm. The NSLA specifies the "opt out" procedure for Medicaid/SCHIP purposes; therefore, LEAs cannot use the same form used for prior consent to release eligibility information for other programs.

Our guidance emphasizes that, in addition to being authorized to receive information, there must be a "need to know." For instance, while Federal education programs are authorized, not all persons administering an education program in the school district need to access information (e.g., teachers, principals or guidance counselors). State and local agencies must be assured that persons receiving a child's free/reduced price eligibility information have a legitimate need to know.

Periodically, schools will be asked to release eligibility information to a non-custodial parent or to a parent who has split custody. For example, a father shares custody with the children's mother but believes that the mother has misrepresented household circumstances and that the children should not be eligible for free or reduced price meals. These requests are not permitted under the statute or regulations without written permission from the person who signed the application. If there is any question about releasing this information for custody or divorce actions, local officials should contact the school district's attorneys for assistance.

Inter-Agency Agreements

Our regulations and guidance address agreements between agencies in order to facilitate sharing information. For Medicaid/SCHIP, the State agency administering the Child Nutrition Programs and the State agency administering Medicaid and SCHIP or the LEA and the local Medicaid/SCHIP agency must enter into agreement. We recommend that an agreement or MOU be used to share information for other purposes such as other Federal or state education programs. The agreement should detail the procedures for data sharing, persons who will have access to the information and why they need the information, etc. Please refer to sections 245.6(j), 215.13a(k), 225.15(k) and 226.23(m) of the regulations and Part 7, Section I. of the eligibility manual for more information on agreements**.**

Parental Consent for Information Sharing

If a request for information is not authorized under the statute or when authorized release is limited to name and eligibility status, the release can always be made with informed consent by the parent or guardian. A common example of programs that would require written consent from a parent/guardian are local or state waivers of fees (for books, athletic activities, etc.) related to eligibility for free or reduced price school meals. Our prototype application package (http://www.fns.usda.gov/cnd/frp/frp.process.htm) includes a suggested form that may be sent by LEAs at the time of application or when services or programs become available. This form allows parents or guardians to authorize release. The parents/guardians must be told the purpose of the program or service and what information will be shared. Further, forms must be

completed annually as consent cannot be extended from one school year to the next. If a child is directly certified, LEAs must provide parents/guardians with this information and the consent form; for example, if the LEA sends written notices of direct certification eligibility, the information and consent form could be included. State and local agencies administering the CACFP and SFSP should modify the consent form to meet their needs.

Expectations

We understand that LEA staff and, more specifically, school-level food service personnel are frequently asked to provide free and reduced price eligibility information about individual children and may have concerns about releasing information. As noted above, while FNS does encourage and support appropriate sharing of information, each request must be carefully reviewed. In order to properly release eligibility information, an official must first determine if the request is from one of the programs or sources authorized under the statute. If so, the official must ensure that the person(s) who would receive and use the information have a legitimate need to carry out an authorized activity.

The State agency must ensure that all CACFP staff at the institution, sponsoring organization or family day care home provider level and appropriate LEA staff have a thorough understanding of the policies on release of children's eligibility information. We recommend that there be a primary contact at the LEA-level, such as the food service director, rather than staff at individual schools. This should allow for more consistent and appropriate application of the disclosure requirements. We strongly urge LEA officials and CACFP staff to contact the State agency office that administers the Child Nutrition Programs if they have any questions or concerns about release of information before they provide the information. In turn, State agencies should contact their regional office to discuss requests for information and any questionable practices. FNS wants to assist LEA and State agency officials in assuring that the disclosure requirements are correctly applied.

Original Signed

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Director
Child Nutrition Division

Attachments

RICHARD B. RUSSELL NATIONAL SCHOOL LUNCH ACT

[As Amended Through P.L. 111–80, Effective October 21, 2009]

Section 9. NUTRITIONAL AND OTHER PROGRAM REQUIREMENTS (42 U.S.C. 1758)

(b) (6) USE OR DISCLOSURE OF INFORMATION.—

(A) IN GENERAL.—The use or disclosure of any information obtained from an application for free or reduced price meals, or from a State or local agency referred to in paragraph (3)(F), (4), or (5), shall be limited to—

(i) a person directly connected with the administration or enforcement of this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) (including a regulation promulgated under either Act);

(ii) a person directly connected with the administration or enforcement of—

(I) a Federal education program;

(II) a State health or education program administered by the State or local educational agency (other than a program carried out under title XIX or XXI of the Social Security Act (42 U.S.C. 1396 et seq.; 42 U.S.C. 1397aa et seq.)); or

(III) a Federal, State, or local means-tested nutrition program with eligibility standards comparable to the school lunch program under this Act;

(iii)(I) the Comptroller General of the United States for audit and examination authorized by any other provision of law; and

(II) notwithstanding any other provision of law, a Federal, State, or local law enforcement official for the purpose of investigating an alleged violation of any program covered by this paragraph or paragraph (3)(F), (4), or (5);

(iv) a person directly connected with the administration of the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) or the State children's health insurance program under title XXI of that Act (42 U.S.C. 1397aa et seq.) solely for the purposes of—

(I) identifying children eligible for benefits under, and enrolling children in, those programs, except that this subclause shall apply only to the extent that the State and the local educational agency or school food authority so elect; and

(II) verifying the eligibility of children for programs under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); and

(v) a third party contractor described in paragraph (3)(G)(iv).

(B) LIMITATION ON INFORMATION PROVIDED.—Information provided under clause (ii) or (v) of subparagraph (A) shall be limited to the income eligibility status of the child for whom application for free or reduced price meal benefits is made or for whom eligibility information is provided under paragraph (3)(F), (4), or (5), unless the consent of the parent or guardian of the child for whom application for benefits was made is obtained.

(C) CRIMINAL PENALTY.—A person described in subparagraph (A) who publishes, divulges, discloses, or makes known in any manner, or to any extent not authorized by Federal law (including a regulation), any information obtained under this subsection shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

(D) REQUIREMENTS FOR WAIVER OF CONFIDENTIALITY.—

A State that elects to exercise the option described in subparagraph (A)(iv)(I) shall ensure that any local educational agency or school food authority acting in accordance with that option—

(i) has a written agreement with 1 or more State or local agencies administering health programs for children under titles XIX and XXI of the Social Security Act (42 U.S.C. 1396 et seq. and 1397aa et seq.) that requires the health agencies to use the information obtained under subparagraph (A) to seek to enroll children in those health programs; and

(ii)(I) notifies each household, the information of which shall be disclosed under subparagraph (A), that the information disclosed will be used only to enroll children in health programs referred to in subparagraph (A)(iv); and

(II) provides each parent or guardian of a child in the household with an opportunity to elect not to have the information disclosed.

(E) USE OF DISCLOSED INFORMATION.—A person to which information is disclosed under subparagraph (A)(iv)(I) shall use or disclose the information only as necessary for the purpose of enrolling children in health programs referred to in subparagraph (A)(iv).

Recipient of Information	Information that May be Disclosed	Required Notification and Consent
*Program*s 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	Must obtain 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	Must obtain parental consent
Local health program	NO eligibility information, unless parental consent is obtained	Must obtain 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 and consent not required