

DECEMBER 07, 1998

SUBJECT: Limited Disclosure of Children's Free and Reduced Price Meal or Free Milk Eligibility Information (SP 99-3); (CACFP 99-2)

TO: State Agencies
Child Nutrition Programs
All States

The Healthy Meals for Healthy Americans Act of 1994, P.L. 103-448, amended Section 9(b)(2)(C) of the National School Lunch Act (NSLA) (42 U.S.C. 1751(b)(2)(C)) to allow, without consent, limited disclosure of information about free and reduced price meal or free milk eligibility. The disclosure limitations apply to all the Child Nutrition Programs. The statute also specifies a fine of not more than \$1,000 or imprisonment of not more than 1 year, or both, for unauthorized disclosures of free and reduced price meal or free milk eligibility information.

Prior to issuance of a final rule, we are authorizing determining agencies to disclose free and reduced price meal or free milk eligibility information to the extent authorized in the statute. For purposes of this memorandum a "determining agency" means the State agency, school food authority, school (including a private school or charter school), child care institution or Summer Food Service Program sponsor that makes the free and reduced price meal or free milk eligibility determination.

Disclosure of eligibility information about participants beyond that authorized by the statute is permitted only with consent. The entity receiving the information from the determining agency, hereafter termed the "receiving entity," may use the information only for the purpose authorized and may not share the information further. In no case are determining agencies *required* to disclose eligibility information. Providing aggregate information that does not identify individuals continues to be permitted without consent.

The issues of privacy and confidentiality of personal data are complicated as well as sensitive. Therefore, prior to developing State and local disclosure policies, we recommend that determining agencies discuss the disclosure provisions with their legal counsel. At a minimum, determining agencies that decide to disclose information that identifies individuals must follow these guidelines. **These guidelines apply to eligibility information regardless of the manner in which the**

information is maintained including, but not limited to, print, tape, microfilm, microfiche, and electronic communication. Additionally, State agencies no longer need to send requests for disclosures to FNS for approval.

I. What information may be disclosed permissibly without consent?

(The term “persons directly connected” in this section includes Federal, State and local program operators responsible for program administration or program compliance and their contractors.)

A. Disclosing names and eligibility status in accordance with the NSLA. Determining agencies may disclose, without consent, participants’ names and eligibility status (whether they are eligible for free meals or free milk or reduced price meals) to persons *directly* connected with the administration or enforcement of the following programs:

1. Federal education programs, such as Title I and the National Assessment Educational Progress.
2. State health or State education programs provided the programs are administered by a State agency or a local education agency.

Representatives of State or local education agencies evaluating the results and compliance with student assessment programs would be covered only to the extent that the assessment program was established at the State, not local level.

3. Federal, State, or local means-tested nutrition programs with eligibility standards comparable to the National School Lunch Program (i.e., food assistance programs to households with income at or below 185 percent of the Federal poverty level, such as the Food Stamp Program or a State or local nutrition program).

B. Disclosing all eligibility information in accordance with the NSLA. In addition to names and eligibility status, determining agencies may disclose, without consent, all eligibility information obtained through the free and reduced price meal or free milk eligibility process (including all information on the application or obtained through direct certification or verification) to the following:

1. Persons directly connected with the administration or enforcement of the programs authorized under the NSLA or Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1771). This includes the National School Lunch Program, School Breakfast Program, Special Milk Program, Child and Adult Care Food Program,

Summer Food Service Program, 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 Summer Food Service Program administered by Parks and Recreation.

2. The Comptroller General of the United States for purposes of audit and examination.
3. 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 authorized to have access to names and eligibility status discussed in paragraph A above.

C. Recommendation for notifying households of potential disclosures. While not a requirement, we recommend that determining agencies inform households if they plan to disclose or use eligibility information outside the originating program. The notice of potential disclosure may be in the notice/letter to households that accompanies the free and reduced price meal or free milk application, on the application, or, for participants directly certified, in the document informing households of the participants' eligibility through direct certification. The notification should state that the participants' names, eligibility status and other information provided on the application or obtained through direct certification or verification 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.

II. What types of disclosures require consent?

A. Disclosing eligibility information to individuals and programs not authorized under the NSLA. The disclosure of participants' names and *any* eligibility information that identifies them individually to programs or individuals not specifically authorized by the NSLA requires written consent. Some programs that may request names and eligibility information for which consent prior to disclosure is required include:

1. Federal health programs, such as Medicaid or the Children's Health Insurance Program (CHIP);

2. 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; and
3. Any other Federal, State or local program or individual not included in the statute.

B. Disclosing information that goes beyond that allowed under the NSLA. 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.

III. What are the requirements for consent statements?

The consent statement must be in writing. It may be obtained at the time of application, such as on a multi-use application, or at a later time.

The consent statement must conform to the following requirements:

1. The consent statement must identify the information that will be shared and how the information will be used.
2. The consent statement must 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 CACFP, the adult participant must sign the consent statement unless a guardian has been appointed.
3. The consent statement must 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.
4. The parent/guardian/adult must be able 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 particular program.

IV. What are the requirements for disclosure of social security numbers?

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 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.

V. Are agreements required?

Prior to disclosing or using any information for purposes other than the program for which the information was obtained, we recommend that the determining agency enter into a written agreement with the entity requesting the information. We suggest that the agreement be signed by both the determining agency 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.

At a minimum, the receiving entity must be informed in writing that eligibility information may only be used for the purpose for which the disclosure was made, that further use or disclosure to other parties is prohibited and that 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.

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 Child Nutrition Program operations and enforcement.

VI. Are there any penalties for improper disclosure?

The NSLA establishes a fine of not more than \$1000 or imprisonment of not more than 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.

These guidelines are subject to change pending issuance of a final rule.

/ORIGINAL SIGNED/

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