

National School Lunch Program and School Breakfast Program

Federal Law: National School Lunch Program (NSLP) and School Breakfast Program (SBP)

Confidentiality Provisions

Theme: Social Service Programs

Citation: [42 U.S.C. § 1758\(b\)\(6\)](#); [7 C.F.R. § 245.2](#); [7 C.F.R. § 245.6](#)

Confidentiality provisions to protect program eligibility information.

THE LAW

What does the law do?

The National School Lunch Program (NSLP) and School Breakfast Program (SBP) confidentiality provisions protect eligibility information contained in applications for children's free or reduced price meals. Generally, state and local agencies responsible for administering NSLP and SBP can [only disclose NSLP and SBP eligibility information to persons and organizations authorized by the Richard B. Russell National School Lunch Act \(NSLA\)](#). Disclosures of NSLP and SBP eligibility information are permitted for establishing eligibility or administration for certain federal, state or local programs without parental consent.

To whom does the law apply?

The NSLP and SBP confidentiality provisions apply to state agencies and local education agencies administering the NSLP and SBP program.

How is "identifiable" information defined?

The law restricts disclosures, defined as using or revealing "[individual](#)" children's information. The NSLP and SBP confidentiality provisions allow disclosures of aggregate information if the aggregate information does not identify individual children or when children cannot be identified "[by means of deduction](#)."

SHARING OF IDENTIFIABLE DATA

Does this law allow identifiable data to be shared?

[State NSLP and SBP agencies and local education agencies can use or disclose](#) NSLP and SBP eligibility information without parental consent to persons directly connected to the administration, enforcement, or audit of certain programs or activities. NSLP and SBP eligibility information can also be disclosed to the Medicaid program and the Children's Health Insurance Program (CHIP) for targeting and identifying children who might be eligible for Medicaid or CHIP. State agencies and local education agencies can use or disclose protected NSLP and SBP information with prior written consent from children's parents or guardians.

Among who?

Generally, [NSLP and SBP eligibility information can only be disclosed to individuals or organizations that have a "need to know" the information](#) due to a direct connection with the administration or enforcement of a federal

education program, State education program, State health program, a means-tested nutrition program, or any program authorized under the NSLA or the Child Nutrition Act of 1966 (e.g, the National School Lunch Program or School Breakfast Program, Special Milk Program, Summer Food Service Program, Child and Adult Care Food Program, and the Special Supplemental Nutrition Program for Women, Infants and Children). NSLP and SBP eligibility information can be disclosed to Medicaid and CHIP to facilitate enrollment in those programs. The Comptroller General Office and law enforcement officials can also receive protected NSLP and SBP eligibility information for audit or enforcement activities.

What are the prerequisites and conditions?

The [law only permits the disclosure of a child's name and eligibility status \(without parental consent\)](#) when the disclosure is to a federal education program, State education program, State health program, a means-tested nutrition, or a third party contractor assisting with eligibility. In contrast, all NSLP and SBP eligibility information can be disclosed to any program authorized under the NSLA or the Child Nutrition Act, Medicaid, CHIP, the Comptroller General Office, and law enforcement officials. The state and local NSLP and SBP agencies must [opt to allow](#) disclosures to the Medicaid or CHIP programs. A [written agreement is required for disclosures to Medicaid or CHIP programs](#) and [recommended for disclosures to other programs](#). Parents and guardians must be notified of disclosures to other programs, including Medicaid and CHIP. Parents and guardians must be provided an [opportunity to decline](#) disclosures to Medicaid or CHIP ([10 calendar days is recommended](#)). Written consent for the disclosure of eligibility information must meet [certain regulatory requirements](#).

SHARING OF DE-IDENTIFIED DATA

Does this law allow de-identified information to be shared?

The NSLP and SBP confidentiality provisions [permit the disclosure of aggregate information](#) that does not identify an individual student and does not permit identification by deduction. For example, disclosing the aggregate data for [one classroom could permit the identification of individuals](#), but aggregate data for a [school district would be less likely to permit the identification of an individual](#). Parental consent is not needed for disclosures of aggregate data.

Does this law define de-identification or standards to render the data de-identified?

The NSLP and SBP confidentiality provisions identify [aggregation](#) as a method to render data non-identifiable (i.e., free to use or disclose).

DATA SHARING IMPLICATIONS FOR PUBLIC HEALTH

Does this law support data sharing to improve the health of communities?

The NSLP and SBP confidentiality provisions permit data sharing to facilitate enrollment in other social service programs that promote community health, including Medicaid, CHIP, and other child nutrition programs.

How does this law hinder data sharing to improve the health of communities?

The NSLP and SBP confidentiality provisions place strict restrictions on uses of NSLP and SBP eligibility information. The law does not contain general disclosure provisions that permit disclosures or uses for public health or research uses.

Does this law establish prerequisites, conditions, or limitations for data sharing, not previously identified?

This is not applicable to this law.

What other terms apply to sharing this data?

The NSLP and SBP confidentiality provisions [restrict additional disclosures](#) beyond the purpose of the initial disclosure. The NSLP and SBP confidentiality provisions contain [criminal penalties](#) for unauthorized disclosures of NSLP and SBP eligibility information.

What remedies or solutions might be employed to support data sharing while complying with this law?

Federal Food and Nutrition Service guidance provides prototype forms and agreements, including [data sharing agreements](#) and [household notice, consent and program application forms](#).

What ethical considerations apply to the exercise of discretion to share data under this law?

NSLP and SBP serves many vulnerable populations (e.g., low income individuals, children). Some NSLP and SBP participants or parents might feel coerced to provide information to gain access to needed NSLP and SBP services.

Additional information relating to the confidentiality provisions for NSLP and SBP and other nutritional programs can be found [here](#).

SUPPORTERS



Robert Wood Johnson Foundation

The Network for Public Health Law is a national initiative of the Robert Wood Johnson Foundation.

This document was developed by Cason Schmit, Research Assistant Professor, Texas A&M University and reviewed by Jennifer Bernstein, Deputy Director, Mid-States Region of The Network for Public Health Law. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.