

## Kentucky Center for Statistics

### Data Access and Use Policy

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3.0	3/9/21	Jessica Cunningham	Name change, add LMI and CHFS
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General Counsel – Review			6/2/17
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#### 1) POLICY STATEMENT

The Office of the Kentucky Center for Statistics (hereinafter referred to as the “Kentucky Center for Statistics” or “KYSTATS”) collects and integrates data into the Kentucky Longitudinal Data System (“KLDS”) so that policymakers, practitioners and the public can make informed practice and policy decisions. As described in KRS 151B.134, KYSTATS does not permit access to, or the disclosure of, any individual or employer identifiable information contained therein except for those purposes expressly authorized under the Family Educational Rights and Privacy Act (FERPA), Richard B. Russell National School Lunch Act (NSLA), KRS 341.190, and all other applicable state and federal data privacy laws.

KYSTATS also administers the Labor Market Information (LMI) statistical programs on behalf of the U.S. Department of Labor, Bureau of Labor Statistics (BLS). KYSTATS does not permit access to, or disclosure of, any BLS confidential information, including but not limited to program microdata, unpublished estimates, pre-release information, and other protected data to individuals who are not authorized agents of the BLS or, in the case of pre-release information, authorized individuals listed on the Kentucky-BLS pre-release certification. This BLS data is protected in accordance with the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) (44 USC 3561 et seq), the Trade Secrets Act (18 USC 1905), all BLS information policies, and other applicable state and federal laws.

#### 2) PURPOSE

This policy establishes the rules for the access, use, and re-disclosure of data collected, stored, and/or maintained by the Kentucky Center for Statistics. This policy is consistent with the disclosure provisions of FERPA, the NSLA, KRS 341.190, CIPSEA (44 USC 3561 et seq), the Trade Secrets (18 USC 1905) Act, BLS information policies, and all other applicable state and federal data privacy and confidentiality laws.

### 3) SCOPE OF POLICY

This policy applies to all employees, contractors and any individual or group requesting access to confidential, sensitive, or restricted information stored within the KLDS or maintained by KYSTATS.

- a) Individuals granted access to any data in the KLDS or maintained by KYSTATS must abide by all related policies, laws, operating procedures, written agreement(s) and/or other required documentation from any agency submitting data to KYSTATS. These include but are not limited to restrictions on the release of individual or employer identifiable information and statistically identifiable information as defined in FERPA, 20 U.S.C. 1232g, as well as the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., KRS 157.200 et seq. and 707 KAR Chapter 1, KRS 151B.280, 787 KAR 2:020, KRS 341.190, 20 C.F.R. § 603, Subpart B, 20 C.F.R. § 617.57, 34 C.F.R. § 361.38, 20 U.S.C. 9274, KRS 164.283 and other relevant state and federal data privacy laws.

Individuals who are not authorized BLS agents (or in the case of pre-release information, not certified to receive pre-release information) will not be granted access to protected BLS data maintained by KYSTATS consistent with CIPSEA (44 USC 3561 et seq), the Trade Secrets Act (18 USC 1905), BLS information policies, and other applicable state and federal laws. Non-authorized individuals will be granted access only to published BLS data.

- b) The Board, pursuant to KRS 151B.134 (3), shall amend this Policy, as necessary, to conform with existing or prospective state and federal law and may, at its discretion, amend this Policy in any manner it shall see fit so long as the Policy remains consistent with state and federal law. At least ten (10) days prior to finalizing an amendment to the Policy, KYSTATS shall circulate a draft demonstrating the proposed amendments to all data providers for review and comment.
- c) KYSTATS shall maintain Acceptable Use Guidelines with rules to ensure that the data from the KLDS are used in ways that comply with relevant confidentiality statutes and regulations.

### 4) DEFINITIONS

- a) "Access" means the ability for an authorized user to view or manipulate data in the systems maintained by KYSTATS.
- b) "Authorized agency" refers to a public agency that is approved by the Board to have access to the De-identified Reporting System (DRS).
- c) "Authorized BLS agent" refers to individuals who have been authorized by the BLS to receive access to respondent identifiable information for work on the activities covered by the federal-state LMI cooperative agreement, who have signed a BLS agent agreement, and partake in BLS annual confidentiality training and other BLS trainings.
- d) "Authorized user" refers to an authorized agency staff member or representative who is identified by the chief executive officer of the authorized agency as having authority to access the DRS on behalf of their agency. The authorized user shall meet all state and federal requirements necessary to access information of a data owner in the DRS. The authorized agency is responsible for notifying KYSTATS within one business day when one of its authorized users separates from employment or should otherwise have their access terminated. The

authorized agency must submit to KYSTATS Authorized User Agreement signed by the authorized user and the chief executive officer of the authorized agency, and any additional forms required by the individual data owners prior to gaining access to DRS.

- e) "Board" or the "Board of the Kentucky Center for Statistics" is the entity established in KRS 151B.134.
- f) "Bureau of Labor Statistics" or "BLS" refers to the Federal agency responsible for conducting research related to labor economics and for collecting and analyzing employment and occupational statistics. The BLS engages in cooperative arrangements with states to use employment statistics collected by the states in a national-state network of data.
- g) "BLS confidential information" refers to all data collected as part of the LMI programs under sole BLS authority or joint BLS/state authority with the exception of state UI information included in the Quarterly Census of Employment and Wage (QCEW) files that have not been commingled with BLS or respondent identifiable data. This un-commingled data is subject to state confidentiality provisions, including KRS 341.190. State UI data that has been commingled with BLS or respondent identifiable data are subject to BLS confidentiality provisions including CIPSEA (44 USC 3561 et seq) and other Federal laws governing confidentiality.
- h) "Education and Workforce Development Cabinet," or "EWDC" refers to the agency established in KRS 12.020 and KRS Chapter 151B, and to agency representatives employed by the EWDC who are under the direct control of the agency.
- i) "Cabinet for Health and Family Services," or "CHFS" refers to the agency established in KRS 194A.010.
- j) "Confidential Information Protection and Statistical Efficiency Act" or "CIPSEA" (44 USC 3561 et seq) safeguards the confidentiality of individually identifiable information acquired for exclusively statistical purposes under a pledge of confidentiality by controlling access to and uses of such information.
- k) "Confidentiality" means any record or information not open for public inspection or where disclosure is restricted pursuant to relevant federal or state statute or regulation.
- l) "Council," "Council on Postsecondary Education" or "CPE" refers to the agency established in KRS 164.011, to the staff of the agency employed pursuant to KRS 164.013, and to agency representatives employed by the CPE who are under the direct control of the agency.
- m) "Data owner", "Data providers" or "providing agency" means one of the entities that provides data to KYSTATS as referenced in KRS 151B.132.
- n) "De-identification" is a process for removing individual or employer identifiable data in a manner sufficient to permit the examination of individual or employer level data without disclosing the identity of individuals or employers resulting in re-identification of the individual or employer when the data is compared with other previously released data sets. Data fields removed include all direct identifiers, and other sensitive and non-sensitive information that, alone or combined with other information that is linked or linkable to a specific individual or employer, would allow identification. Care is specifically given to minimize risk of re-identification by examining other related data that may be linkable.
- o) "De-identified Data" means individual level data which contains no individual or employer identifiable information and that can be analyzed without resulting in the disclosure of

individual or employer identities or the re-identification of individuals or employers when combined with previous data sets.

- p) "Department," "Kentucky Department of Education," or "KDE" refers to the agency established in KRS 12.020 and KRS 156.010, to the staff of the agency employed pursuant to KRS Chapter 18A, KRS 156.010, KRS 156.800 et seq., and KRS 163.032, and to agency representatives who are employed or contracted by and under the direct control of the agency.
- q) "Directory Information" means information is contained in the education records of a student that would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to, the student's name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (e.g., undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors, and awards received; and the most recent educational agency or institution attended. It does not include a student's social security number; or student identification (ID) number, except unless a student ID number, user ID, or other unique personal identifier used by a student for purposes of accessing or communicating in electronic systems, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a personal identification number (PIN), password or other factor known or possessed only by the authorized user; and a student ID number or other unique personal identifier that is displayed on a student ID badge, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a PIN, password, or other factor known or possessed only by the authorized user.
- r) "DRS" or "De-identified Reporting System" refers to the de-identified data in the KLDS that can be made available to authorized users to create reports and analysis.
- s) "Education records" means those records directly related to a student.
- t) "Family Educational Rights and Privacy Act" or "FERPA" means the federal law codified at 20 U.S.C. 1232g and its implementing regulations found in 34 C.F.R. Part 99.
- u) "KHEAA" or "Kentucky Higher Education Assistance Authority" refers to the agency established in KRS 164.742 and the adoption of assumed name in chapter 93 section 1, and to the staff and office representatives who are employed by and under the direct control of the agency.
- v) "KLDS" or "Kentucky Longitudinal Data System" refers to the statewide data system that contains education data and workforce data and additional data identified by the Board of the Kentucky Center for Statistics, referenced in KRS 151B.131 and KRS 151B.132.
- w) "National School Lunch Act" or "NSLA" means the federal law codified at 42 U.S.C 1751.
- x) "Individual or employer identifiable information" or "personally identifiable information" means information contained in an electronic record such as social security number, name, location, characteristic, or other information that alone or in combination would make an individual or employer's identity easily traceable. The BLS definition of "personally identifiable information" is any representation of information about an individual that permits the identity of the individual to whom the information applies to be reasonably inferred by either direct or indirect means. The FERPA definition of "personally identifiable information" is information that can be

used to distinguish or trace an individual's identity either directly or indirectly through linkages with other information.

- y) "Pre-release information" refers to information not previously released to the public, including official BLS estimates, official BLS statistical products, and BLS press releases. Pre-release information shall not be disclosed prior to the scheduled public release date.
- z) "Matching or linking Records" is the process where records for an individual are brought together from multiple data sources.
- aa) "Re-disclosure" occurs when data, that have been disclosed to another party such as when a school district or institution sends identifiable data to a state agency, are then re-disclosed by that agency to a third party that is not under its direct control.
- bb) "Re-identification" occurs when personally identifying information is discoverable in "de-identified data" in a way that either direct or indirect identifiers become known and the individual can be identified.
- cc) "Research" means a formal investigation designed to develop or contribute to general knowledge.
- dd) "Respondent identifiable information" or "respondent data" refers to data collected from participants in a statistical program under the auspices of BLS that could reasonably disclose the identity of participants by either direct or indirect means and includes information such as names, addresses, and other information for units from which data are requested, all identifiable respondent submissions, and administrative files commingled with confidential information, and survey collected PII.
- ee) "Restricted disclosure data file" refers to an electronic data file which contains data that may be statistically identifiable because of unique combinations of elements or small cell sizes.
- ff) "Security" includes measures to ensure that records are not lost, stolen, vandalized, disclosed in violation of confidentiality laws and this policy, accessed by unauthorized individuals, or otherwise rendered useless.
- gg) "Statistical data" refers to aggregate level data that are not individually or statistically identifiable in any way.
- hh) "KYSTATS" or "Kentucky Center for Statistics" refers to the office established in KRS 151B.132, and to the staff and office representatives who are employed by and under the direct control of the office.
- ii) "Third party" is a party other than the authorized agencies, its staff, or its authorized representatives who request access to data or information from KYSTATS.
- jj) "Time Sensitive Data Request" refers to a statistical data request received by the Center, which is requested in a shorter time frame than the five-day review period would allow.
- kk) "Trade Secrets Act (18 USC 1905)" is the federal law that provides the United States government may not disclose the confidential statistical data of any person, firm, partnership, corporation, or association.
- ll) "Workforce data" refers to data from employment, unemployment, workforce, and workforce preparation programs that is provided to KYSTATS.

## 5) INFORMATION COLLECTED AND MAINTAINED

KYSTATS collects, integrates and maintains data from state, local and national education and workforce entities at the individual level to provide feedback to policy makers, practitioners, and the general public about Kentucky's education and workforce programs. KYSTATS' data include but are not limited to:

- a) Early Learning Data –information for state-funded students between the ages of two and four served in a classroom setting. Data include enrollment dates and programs, school attended, social services received and assessment information.
- b) K-12 Data –information for kindergarten through 12<sup>th</sup> grade students and staff for Kentucky's public schools. Data include enrollment and attendance records, schools attended, demographic data, courses taken, grades received, social services received, behavior records, assessment data and graduation date. School and district data include information on school facilities, teachers, teacher of record, courses and rosters, administrators and staff.
- c) Postsecondary Data –data from Kentucky's public and private independent colleges and universities. Data at the student level include enrollment data including institutions attended, demographic data, courses and credit hours taken, degrees received, financial aid received, county and state of origin, and college readiness data. Institution data include the name and type of institution.
- d) Educator Certification and Licensure Data –data for all public school employees in Kentucky. Data include educator credentials, educator demographic data, college programs attended, dates of attendance, degrees received, assessment data, Internship data, teaching assignment and areas/grade levels qualified to teach.
- e) Higher Education Financial Aid Data –data about the financial assistance earned and disbursed for postsecondary students. Data include student demographics, state financial aid, when it was earned and when it was disbursed and the institution to which it was disbursed.
- f) Unemployment Insurance Data –employer, wage and unemployment claims payment data. Data include limited employee demographic data, earnings received by quarter and year, and industry worked. Employer data include employer industry, employer federal and state identification numbers, and employer name and location.
- g) Adult Education Data –data for all persons seeking adult education classes including High School Equivalency Diploma attainment as well as the staff who teach the adult education classes. Data include demographic data, enrollment data, programs and services received. Staff data include demographic data, education credentials and job description.
- h) Office for the Blind/Office of Vocational Rehabilitation Data –data about employment and independence training services provided to individuals with visual or hearing impairments. Data include demographic data, services received and date of services, credential received, employment data prior to services and post services.
- i) Eligible Training Provider Data –data about the training provided to individuals to increase their ability to obtain employment. Data include demographic data, program participation data, credential earned, credit hours attempted and earned and the institution attended.

- j) Health Care Licensure Data –data about individuals licensed to practice medicine or provide health care services in Kentucky. Data include demographic data and the health care license type.
- k) Labor Market Information (LMI) Data –BLS Confidential information about employment by location, industry, and occupation, labor supply and demand, earnings, unemployment, and demographics of the labor force.
- l) Health Data –Birth and death records data from the Office of Vital Statistics.
- m) Child Welfare Data –data also include adoption, foster care, child abuse and neglect records from the Department for Community Based Services.
- n) SNAP KTAP Data –data on individuals participating in the monetary assistance program from the Department for Community Based Services.
- o) Apprenticeship Data –data about individuals participating in employee training programs that combine on-the-job training and classroom instruction.
- p) Corrections Data –data about individuals in county jails and prisons as well as probation and parole records. Data also include academic, vocational, and work program participation.
- q) Revenue Data –data from household and business income tax filings, specifically forms 1040, KY 740, and 1040 Schedule C.
- r) Driver Licensing Data –current active license data used for location and demographics.

## 6) DATA ACCESS

### a) ACCESS FOR KYSTATS STAFF AND AUTHORIZED AGENCY STAFF

- i. Only authorized KYSTATS staff shall have access to identifiable information. Authorized KYSTATS staff shall only access the identifiable information for the purpose of matching and linking records together and validating the accuracy of that process. KYSTATS staff creating reports and fulfilling data requests may have access to individual or employer level de-identified data solely for the purpose of generating timely reports about education and workforce programs to be used to guide decision makers in improving the Commonwealth of Kentucky’s education system and workforce programs. All authorized KYSTATS staff that have access to individual level data must have an active Human Subject’s Research Certificate on file with KYSTATS in accordance to the KYSTATS Internal Review Board documentation. All KYSTATS staff who have access to BLS confidential information must be authorized agents of the BLS.
- ii. To the extent permitted by state and federal law, authorized agency staff from any Kentucky state agency may access statistical data related to measuring education and workforce programs. All such individuals must have an active Authorized User Agreement on-file with KYSTATS. To the extent permitted by state and federal law, these authorized individuals may share aggregate data derived from the individual level, de-identified data internally within their agency, including with Cabinet and agency leadership, for the purposes of evaluating education and workforce programs or in the performance of official duties. Prior to sharing any statistical data externally pursuant to this section, an authorized individual shall notify KYSTATS and data owners and, additionally, provide them an opportunity to comment in the

same manner set forth in Section 7 (c)(i). KYSTATS shall maintain a current listing of agency personnel who have access to individual level de-identified and aggregate level data and maintain or verify current sufficient non-disclosure statements from each individual agency personnel who has access to individual level de-identified and aggregate level data. To the extent permitted by the provisions of the BLS and by state and federal law, individuals authorized on the BLS pre-release certification may be granted access to confidential pre-release information and must comply with BLS pre-release requirements.

**b) ACCESS FOR PUBLIC**

- i. The public may access aggregate data and tables through the KYSTATS public facing website. KYSTATS publishes a variety of data in aggregate form to ensure that the confidentiality requirements of state and federal law are satisfied, including the requirement to take into consideration the risk of individual or employer re-identification. Data suppression and redaction guidelines are maintained in the KYSTATS Acceptable Use Guidelines.
- ii. De-identified data sets may be provided by KYSTATS to a requesting party if, as determined by KYSTATS, publicly accessible data files do not fully address the research question identified by the requesting party and KYSTATS has contemplated the risk of re-identification and determined the release of de-identified data are in compliance with applicable law. Disclosure may be appropriate and authorized under the FERPA Studies Exception, the FERPA Audit or Evaluation Exception and/or the FERPA Financial Aid Exception with the exception of proprietary educational testing data. KRS 61.878(1)(g) exempts “[t]est questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the exam is given or if it is to be given again” from disclosure under the Open Records law. Access to data governed by the NSLA, specifically 7 C.F.R. 245.6, shall be restricted to only those allowances consistent with that federal law. Interested requesting parties should consult the Privacy and Technical Assistance Center’s guidance on FERPA Exceptions for summary information of this guidance. Any such disclosure shall be made only if (1) the conditions in FERPA regulation 34 CFR 99.31(a) (6) are met; (2) The request for data sharing must be approved by KYSTATS and data owners with an Information and Data Sharing Agreement, signed FERPA Studies, Financial Aid and/or Audit or Evaluation Exception to ensure compliance with FERPA regulations, NSLA Requirements and all relevant policies; (3) Requester agrees to return or destroy education records at the completion of research use, as described specifically in the data sharing agreement; and (4) Researcher or Requestor understands associated penalties for violation of data privacy, use or re-disclosure, as described in the data sharing agreement.
- iii. KYSTATS may, at its discretion, defer requests for a single agency’s data to that agency. KYSTATS may elect to charge a requestor a reasonable fee to develop and process the statistical data or reports. Data may only be transferred electronically to external entities through a secure File Transfer Protocol site.



c) **ACCESS EXCEPTIONS**

With the consent of all participating agencies and to the extent permitted by state and federal law and in accordance with the requirements of KYSTATS policies, KYSTATS may release individually identifiable information for the sole purpose of increasing the match rate and improving data quality of the Kentucky Longitudinal Data System. Prior to release of data to an authorized user, a fully executed data and information sharing agreement must be in place and signed by KYSTATS, the individual or agency receiving the data, and the data owners. Access to information covered under FERPA is restricted to the FERPA Studies Exception, FERPA Audit or Evaluation Exception and/or the FERPA Financial Aid Exception. Access to data governed by the NSLA, specifically 7 C.F.R. 245.6, shall be restricted to the allowances of that federal law.

**7) PUBLICATION AND REVIEW OF REPORTS; PRIOR NOTICE TO DATA OWNER**

Reports, publications, and other public presentations of statistical data derived from the KLDS and DRS must adhere to KYSTATS Acceptable Use Guidelines to ensure individual privacy.

- a) Authorized users shall provide preview copies of all reports, publications and other statistical data derived from the DRS to KYSTATS and to the data owners at least five (5) business days prior to publication or distribution, except that notice shall be provided at least ten (10) business days in advance when individual postsecondary institutions or K-12 schools are implicated by the report, publication or statistical data.
- b) KYSTATS and data owners may object to the publication or presentation for failure to comply with state or federal privacy laws regarding suppression or redaction requirements or the KYSTATS Acceptable Use Guidelines. The KYSTATS Board will review any objection and ensure compliance with all relevant state and federal privacy laws and the KYSTATS Acceptable Use Guidelines.
- c) KYSTATS shall provide all aggregate statistical data to be included in reports and publications derived from the DRS to the data owners at least five (5) business days, or ten (10) business days as applicable, prior to publication or distribution, except as follows:
  - i) Individual Postsecondary Institution or K-12 School: Notice shall be provided at least ten (10) business days in advance when individual postsecondary institutions are implicated by the publication;
  - ii) Consent: If all data owners respond and/or comment prior to the Expiration of the applicable response period, KYSTATS may immediately proceed with publication and/or distribution of the report, publication or other statistical data.
- d) Time Sensitive Data Request: KYSTATS may release a report, publication, or other statistical data prior to the expiration of the applicable response period if it determines that waiting until the end of the window would frustrate the purpose of the request or otherwise result in harm to any agency. KYSTATS will notify the data owners as soon as possible, prior to release. Data owners may object to the publication or presentation for failure to comply with state or federal privacy laws regarding suppression or redaction requirements or the KYSTATS Acceptable Use Guidelines. The Board will review any objection and ensure compliance with all relevant state and federal privacy laws and the KYSTATS Acceptable Use Guidelines.

## **8) SECURITY REQUIREMENTS**

KYSTATS shall ensure that data, copies of data, and all reports containing individual and employer identifiable information are maintained in a secure environment to prevent unauthorized access. A secure environment includes any electronic media, computer, server, or network on which the data reside. KYSTATS shall ensure that electronic files, reports, or documents that contain individual or employer identifiable information are destroyed when no longer needed and/or required by law to be maintained. KYSTATS shall use encryption or other best practices when using individual or employer identifiable information, and shall require agencies to use encryption or other best practices when transferring individual or employer identifiable information to KYSTATS.

## **9) REQUESTS BY INDIVIDUALS TO EXAMINE THEIR PERSONAL DATA.**

In accordance with the Kentucky Open Records Act, individuals may request copies of their education records by mailing or faxing a written request to:

ATTN: Jessica Cunningham, Executive Director  
Kentucky Center for Statistics  
Mayo-Underwood Building  
500 Mero Street, 5<sup>th</sup> Floor  
Frankfort, KY 40601  
Fax Number: 502-564-9132  
Email: Jessica.Cunningham@ky.gov

When appropriate, KYSTATS will also suggest to the requester that the request be redirected to the primary agency with custody of the records that are subject to the request. KYSTATS will notify the requesting individual in writing when this occurs.

## **10) REQUESTS FOR DIRECTORY INFORMATION**

Requests for directory information, as defined in FERPA or defined in KRS 160.700(1), applicable to data collected from elementary and secondary education public schools or postsecondary institutions, cannot be fulfilled as the designation of directory information varies by each educational institution or school and KYSTATS does not have information on the parameters of directory information for each institution or school or the opt out information for each student. KYSTATS shall provide this policy information to any requester of directory information and direct the requester to pose the request to the individual institution or school that may respond to the request in accordance with its policies.