

UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION  
AND REHABILITATIVE SERVICES  
REHABILITATION SERVICES ADMINISTRATION  
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PROGRAM ASSISTANCE CIRCULAR  
RSA-PAC-89-02  
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TO: State Rehabilitation Agencies (General)  
State Rehabilitation Agencies (Blind)  
RSA Regional Commissioners  
RSA Senior Staff

SUBJECT: Guidelines for Use of Federal Financial Participation and Set-Aside Funds in the  
Randolph-Sheppard Vending Facility Program

STATUTORY AND REGULATORY CITATIONS:

- (1) Randolph-Sheppard Act, as amended, 20 USC 107 et seq. and section 103(b)(1) of the Rehabilitation Act of 1973, as amended, 29 USC 723(b).
- (2) 34 CFR 395, Subparts A and B (Randolph-Sheppard) and 34 CFR 361.72 (Rehabilitation Act). Throughout this document, the latter regulation is referred to as the "VR" (Vocational Rehabilitation) regulation.

BACKGROUND:

This Program Assistance Circular (PAC) is a revision of Commissioner's letter No. 66-17 which was issued prior to the Randolph-Sheppard amendments of 1974. This PAC incorporates changes made by the Amendments, and provides programmatic explanations and agency practice with respect to the statutory requirements. It specifically identifies state agency expenditures which can or cannot be made from set-aside funds under the Randolph-Sheppard Act, and identifies expenditures which qualify for Federal matching under the Rehabilitation act. Regulations are often quoted in their entirety in order to provide a context for the subregulatory guidance.

The material is organized and five sections:

1. Definition of terms;
2. Set-aside funds;

3. Federal financial participation for services for groups of severely handicapped individuals under section 103(b) of the Rehabilitation Act;
4. Expenditures made by the State licensing agency SLA from set-aside funds which are eligible for Federal matching under the Rehabilitation Act;
5. Expenditures made by the SLA from setaside funds which are not eligible for Federal matching.

#### SUPPORTIVE GUIDELINES:

1. Definition of Terms

- a. Vending Facility – “means automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment which may be operated by blind licensees and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, and including the vending or exchange of chances for any lottery authorized by State law and conducted by an agency of a State within such State.” Citation 34 CFR 395.1(x)

The general categories of Randolph-Sheppard vending facilities are “dry” or sundry facilities, snack bars which may involve the sale of food prepared on or off the premises, cafeterias, and automatic vending machines. Many facilities are a combination of the aforementioned general categories. In addition to the foregoing, more recently other business activities such as greeting card shops, gift shops, and “fast food” facilities have been successfully established under the Randolph-Sheppard program.

- b. State Licensing Agency (SLA) – “means the State agency designated by the Secretary under this part to issue licenses to blind persons for the operation of vending facilities on Federal and other property.” Citation 34 CFR 395.1(v)

- c. Set-aside Funds -- “means funds which accrue to a State licensing agency from an assessment against the net proceeds of each vending facility in the State’s vending facility program and any income from vending machines on Federal property which accrues to the State licensing agency.” Citation 34 CFR 395.1(s)

- d. Equipment – As used in this PAC, the term “equipment” means “a vocational rehabilitation service” as defined in the VR regulations at 34 CFR 361.1(c). However, some of the definitional guidance is drawn from EDGAR (Education Department Grants Administration Regulations) at 34 CFR Part 74. According to current RSA policy, the EDGAR definition of “equipment” at 34 CFR 74.132, and the rules pertaining

thereto, apply only to equipment used by the SLA to carry out the administrative aspects of the rehabilitation program.

- (1) Equipment --- means tangible personal property having a useful life of more than one year. (Typical examples are such items as coffee urns, grills, refrigerators, counters, tables, and chairs. Less typical equipment includes such items as plumbing, woodworking, electrical material, and shelters.)  
Other charges, such as cost of transportation, temporary storage, and installation of new equipment may be included in the unit acquisition cost. Also included would be the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the equipment usable for the purpose for which it was acquired.
- (2) Replacement of Equipment – means equipment acquired to take the place of other equipment. To qualify as replacement equipment, it should serve the same function as the equipment replaced and should be of the same nature or character, although not necessarily the same model, grade, or quality.
- (3) Shelters – to be considered as part of the equipment of an enterprise, the shelter furnished to house the undertaking must be one “customarily furnished by the operator of a like undertaking occupying the premises under a short-term lease”. Citation 34 CFR 361.72(a)

This means that the structure should generally be portable, i.e. easily dismantled and reassembled (when necessary).

e. Initial Stock --- includes all types of merchandise necessary for the establishment of the new business enterprise. Initial stock should be interpreted as items purchased for the purpose of marketing to customers. In a major expansion of a vending facility location or a change in the nature of the facility (such as changing a dry facility to a vending machine facility or snack bar) new items not previously carried on the stock inventory but now considered necessary or desirable for the location can't be considered initial stock.

f. Management Services – “means supervision, inspection, quality control, consultation, accounting, regulating, in- service training, and other related services provided on a systematic basis to support and improve vending facilities operated by blind vendors. ‘Management services’ does not include those services or costs which pertain to the on-going operation of an individual facility after the initial establishment period.” Citation 34 CFR 395.1(j)

By a policy determination but made by the Assistant Secretary for Special Education and Rehabilitative Services on August 23, 1985, this definition includes the exploration by the SLA of new locations (i.e., site surveys) and the development of these locations (i.e., negotiations leading to the finalization of a permit or contract).

Also included in this definition are the SLA activities related to the selection and operation of the State Committee of Blind Vendors as determined by the State agency. Citation 34 CFR 395.14

## 2. Set-Aside Funds

The application for designation submitted by the SLA shall specify the extent to which funds will be set-aside or caused to be set-aside from the net proceeds (as defined in section 395.1(k)) of the operation of each vending facility. Set-aside also includes vending machine income which accrues to the State licensing agency under section 395.8 (c). See section 395.1 (s) as above.

The application further provides for the establishment, with the active participation of the State Committee of Blind Vendors, of a set-aside funds schedule covering each of the purposes for which set-aside funds are intended to be used. The set-aside schedule shall be designed to prevent, so far as is practical, a greater charge for any purpose than is reasonably required. See 34 CFR 395.3 and 395.9.

The SLA shall “maintain adequate records to support the reasonableness of the charge for each purpose including any reserves necessary to assure that such purposes can be achieved on a consistent basis.” Citation 34 CFR 395.9

Any change in the set-aside schedule will be submitted to the Commissioner of RSA for approval prior to being put into effect. Funds will be set-aside only for the purposes of:

- (a) Maintenance and replacement of equipment;
- (b) The purchase of new equipment;
- (c) Management services;
- (d) Assuring a fair minimum of return to vendors; or
- (e) The establishment and maintenance of retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time, if it is so determined by a majority vote of blind vendors licensed by the State licensing agency, after such agency provides to each such vendor information on all matters relevant to such proposed purposes.” Citation 34 CFR 395.9

3. Federal Financial Participation

This portion of the PAC sets forth the SLA expenditures for the Randolph-Sheppard Vending Facility Program that are eligible for Federal matching.

Congress has never appropriated funds for either Federal or State administration of the Randolph-Sheppard Act pursuant to the authorization language at 20 USC 107f. Rather, funding authority for expenditures made for the Randolph-Sheppard Vending Facility Program is found in section 103(b) of the Rehabilitation Act and 34 CFR 361.72 of the VR regulations dealing with small business enterprises (including vending facilities for groups severely handicapped individuals.)

**(Note:** We note here that under the Randolph-Sheppard Act, the Commissioner of RSA must “insure... that uniform and effective training programs...are provided or blind individuals, though services under the Rehabilitation Act of 1973.” 20 USC 107d-4 and 34 CFR 395.11 (underline added)

Sec. 361.72 of the VR regulations provides that Federal financial participation will be available for certain expenditures in the operation of the Randolph-Sheppard vending facility program. These expenditures include:

- a. The acquisition of vending facility equipment. The term “acquisition” has consistently been interpreted by RSA to include replacement;
- b. Initial stock and supplies for a facility;
- c. Management services and supervision provided by the State agency to improve the operation of such vending facilities. According to our understanding of the definition of Management Services and Supervision, set forth on page 4 of the circular, the term include service and initial costs necessary for establishing and maintaining the vending facility for not to exceed 6 months, i.e., during the “initial establishment period” referred to in 34 CFR 395.1(j), set forth on page 4. Examples of such costs are utilities, licenses, and occupational fees, advertising and public liability insurance. As noted earlier, this term has also been interpreted to include exploration and development costs incurred by the SLA for the development of new locations. See page 4 of this circular.

Where the SLA retains title to initial stocks and supplies for vending facilities under the program, and a vendor leaves a facility, the SLA is obligated to pay that vendor or his or heirs the value of usable stock and supplies above the amount provided him initially. The increase in the value of stock and supplies over a period of years could be caused by an

increase in sales of the facility, product lines, or the cost of merchandise. Since the SLA has continued interest in control of the facility, it also has an obligation to furnish the incoming vendor suitable initial stock and supplies in accordance with state rules and regulations. Therefore, the use of Federal financial participation to cover the increase the value of initial stocks and supplies would be appropriate. Conversely, replacement of stock depleted below the original inventory would not be subject to Federal financial participation.

Federal financial participation will not be available in SLA expenditures for:

- a. The purchase of any land, building or construction of such buildings. This exclusion with respect to buildings does not apply to shelters as described in the section. See 34 CFR 361.72(a)
- b. Good Will – In the purchase of an existing vending facility, Federal financial participation is only available in the acquisition of equipment, initial stocks and supplies. Federal financial participation would not be available for the purchase of “good will.”

4. Expenditures Made by the State Vending Facility Programs from Set-Aside Funds Which are Eligible for Federal Matching

As noted earlier, SLAs are authorized under the Randolph-Sheppard Act to set aside funds for the purposes set forth in the statute. Under 34 CFR 361.72(b) such expenditures in turn are considered as expenditures of State funds for Federal matching purposes.

However, only three of the purposes for which funds may be set-aside under the Randolph-Sheppard Act are eligible for Federal financial participation under the Rehabilitation Act, as amended. These are purchases of new equipment, the replacement of equipment, and management services and supervision.

It is also important to emphasize the Federal financial participation is available in certain types of expenditures for which funds may not be set-aside under the Randolph-Sheppard Act. These are the purchase of initial stocks and supplies for vending facilities, and the training of operators as a rehabilitation service under the Rehabilitation Act as provided under 20 U.S.C. Sec. 107d-4.

5. Expenditures Made by the SLA from Set-Aside Funds that are not Eligible for Federal Matching.

The following expenditures made from set-aside funds are not eligible for Federal matching:

- a. Maintenance of equipment. (Note: This was amended in PD 99-05)

- b. Guaranteeing a fair minimum return to licensed vendors.
- c. The establishment and maintenance of retirement or pension funds, health insurance contributions and provision for paid vacation for blind vendors.

INQUIRIES TO:

RSA REGIONAL COMMISSIONERS

/S/  
Commissioner of Rehabilitation Services

cc: Joe Owens, CSAVR