

**U.S. Department of Education Activities under the  
Randolph-Sheppard Vending Facility Program:  
Report in Response to Congressional Directives in the  
Fiscal Year 2020 Further Consolidated  
Appropriations Act**



**U.S. Department of Education  
Office of Special Education and  
Rehabilitative Services  
Rehabilitation Services Administration**

**December 2020**

## **U.S. Department of Education**

Betsy DeVos

*Secretary*

## **Office of Special Education and Rehabilitative Services**

Mark Schultz

*Commissioner, Rehabilitation Services Administration. Delegated the authority to perform the functions and duties of the Assistant Secretary*

### **December 2020**

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**U.S. DEPARTMENT OF EDUCATION ACTIVITIES UNDER THE RANDOLPH-SHEPPARD VENDING FACILITY PROGRAM:  
REPORT IN RESPONSE TO CONGRESSIONAL DIRECTIVES IN THE FISCAL YEAR  
2020 FURTHER CONSOLIDATED APPROPRIATIONS ACT**

**Introduction**

First authorized in 1936 under the Randolph-Sheppard Act (Act), the Randolph-Sheppard Vending Facility Program (RSVFP) provides persons who are blind with remunerative employment and helps increase economic opportunities for the blind in order to stimulate greater efforts toward self-support.

The law was subsequently amended in 1954 and again in 1974 to ensure individuals who are blind will be given a priority in the operation of vending facilities on Federal property. Vending facilities include cafeterias, snack bars, and automatic vending machines. The law permits the priority to be applied to Federal and other property, and most States have expanded the program through State laws to include State, county, municipal, and private locations as well. Under the RSVFP, State licensing agencies (SLAs) recruit, train, license, and, through permits or contracts, place individuals who are blind into positions as operators of vending facilities located on Federal and other properties.

The U.S. Department of Education (Department) has promulgated regulations implementing the Act at 34 C.F.R. part 395.

In Federal fiscal year (FFY) 2018, a total of 1,822 blind vendors operated 2,209 vending facilities located on Federal and other property. The total earnings of all vendors were \$127.4 million, and the national average net earnings of vendors was \$69,907. The total gross income for the program was \$698.8 million.

The Act assigns the Rehabilitation Services Administration (RSA) extensive program administration responsibilities. The U.S. Department of Education is submitting this report, pursuant to the congressional explanatory statement to the fiscal year 2020 Further Consolidated Appropriations Act (Pub. L. No. 116-94), signed into law on December 20, 2019, to the Committees on Appropriations. This report to Congress summarizes the status of arbitrations, SLA rule and policy reviews, and prior approval procedures, including approving routine expenditures associated with the program.

**Status of Arbitrations**

The Act and its implementing regulations establish arbitration as the dispute resolution procedure available to parties who allege violations of the Act. Any blind licensee who is dissatisfied with any action arising from the operation or administration of the State's vending facility program may submit to an SLA a request for a full evidentiary hearing, which will be provided by that SLA. If dissatisfied with the results of the hearing, the blind licensee may file a complaint with the Secretary, who will convene a panel to arbitrate the dispute. 20 U.S.C. § 107d-1(a). Whenever any SLA determines that any Federal agency is failing to comply with the provisions

of the Act or regulations, the SLA may file a complaint with the Secretary who shall convene a panel to arbitrate the dispute. 20 U.S.C. § 107d-1(b).

As of September 30, 2020, there are 29 cases in various stages of arbitration—from requests for arbitration to awaiting final decisions from arbitration panels. There are many reasons, often beyond the control of the Department, as to why a case may be slow to move through the arbitration process. For example, a party to the arbitration may delay in appointing its panel member. Appointed panel members often need to register for payment in the government’s System of Awards Management or renew their registration if they have a prior but expired registration. In addition, panel members appointed by parties may choose not to serve because of illness or other reasons requiring member replacement. Once a case is fully appointed, the panel schedule is largely beyond control of the Department. The Department has examined those requests for arbitration that, for whatever reason, have yet to be convened by the Department after significant time has passed; the Department has instituted a plan to move these requests forward expeditiously toward a convening.

In FFYs 2019 and 2020, the Department received nine requests for arbitration in each year. Two of those cases were dismissed due to a lack of the required evidentiary hearing, and three cases were withdrawn. The remaining 13 are in various stages of the arbitration process and are expected to move forward in FFY 2021.

An arbitration program specialist in RSA closely monitors requests and provides parties pursuing arbitration with acknowledgement and convening letters, generally on a first in, first out basis unless the arbitration request presents novel legal issues, or other extenuating circumstances.

The Office of the General Counsel (OGC) reviews all convening letters prior to RSA giving notice to the parties.

## **Conflict Resolution**

- Given the significant resources expended by the Department and program stakeholders on arbitration, RSA instituted a conflict resolution (CR) initiative in early 2019, creating a means by which parties could receive neutral facilitation from RSA.
- Blind licensees, including the elected committee of blind vendors, SLAs, and Federal agencies who find themselves at an impasse regarding potential violations of, or issues related to the Randolph Sheppard Act (20 U.S.C. § 107, et seq) or its implementing regulations (34 C.F.R. § 395), are given the opportunity to request RSA facilitation. After a complaint and request for arbitration is filed with the Department, the parties are informed that CR is an option if all parties are willing to participate.
- The objectives of this CR effort are to encourage local resolution of issues in the shortest time and with minimal resources, to develop best practices to deal internally with issues before they disrupt optimal promotion and execution of the program, and to increase respect and collaboration between and among blind licensees, specialists, administrators, and agencies.
- The first CR meeting, held in August 2019, resulted in a settlement and withdrawal of a case from arbitration.
- One CR meeting did not reach a resolution, and the CR process was discontinued; two cases remain in the CR process, and the parties involved in one case will soon be contacted to assess their interest in CR.

- Currently, the CR specialist is facilitating CR meetings with an SLA and elected committee members.

### **Review of SLA Rules and Policies and Procedures**

The Act and its implementing regulations require SLAs to provide their rules, regulations, policies, procedures, and related documents to RSA for review and approval before they can be used in the State’s vending facility program. These rules, regulations, policies, procedures and related documents include:

- The application for designation as an SLA (34 C.F.R. §§ 395.2 and 395.3);
- The State rules and regulations affecting the administration and operation of the State’s vending facility program, as well as revisions to the State rules and regulations (34 C.F.R. § 395.4);
- If an SLA wishes to require a set-aside from blind vendors, a prior determination by the Secretary that the amount of such funds to be set aside is reasonable (34 C.F.R. § 395.9(a);
- Changes to schedules for the setting aside of funds (34 C.F.R. § 395.3(a)(11)(iii);
- Changes in the legal authority of the SLA (34 C.F.R. § 395.3(a)(11)(iii);
- Changes to blind vendor operating agreements (34 C.F.R. § 395.3(a)(11)(iii);
- Changes to arrangements for carrying general liability and product liability insurance (34 C.F.R. § 395.3(a)(11)(iii); and
- Changes to contractual arrangements for the furnishing of services by a nominee (34 C.F.R. § 395.3(a)(11)(iii).

With respect to rules and regulations, the Department has received 14 State submissions of rules and regulations for review during the period September 30, 2018, to October 1, 2020. The following is the current status of those reviews:

- The Department returned six rules’ packages with letters of approval; and
- The Department returned the other eight rules’ packages with comments, requesting further information needed for approval.

In addition to the routine review of rules’ packages, RSA accelerated its usual internal review processes to quickly respond to and approve, as appropriate, more than 30 questions and requests from SLAs to amend policies and institute emergency procedures related to the impact of the coronavirus pandemic. Many approvals related to requests to use set-aside funds to pay blind vendors who were temporarily prevented from working due to the closure of facilities.

### **Prior Approval Requests**

On October 29, 2019, the Office of Special Education and Rehabilitative Services released a frequently asked questions (FAQs) document on prior approval procedures (<https://www2.ed.gov/policy/speced/guid/faq-prior-approval-10-29-2019.pdf>). Prior approval applies to State formula grant programs administered by RSA for two direct cost categories: participant support costs and equipment, as further described in the FAQs. The prior approval means that grantees no longer need to submit separate individual requests for prior approval for

these costs as described in the FAQs. In addition, the FAQs provide flexibility for agencies when requesting prior approval related to general purpose equipment used in the RSVFP.

The FAQs clarify that the Department will accept multiple items in a prior approval request in the aggregate. Some agencies chose to submit prior approval requests for the RSVFP for each item claiming this aids their internal tracking. Making single requests for each item rather than aggregate requests results in greater departmental staff resources devoted to evaluating these requests, which may increase the time the Department needs to provide approval. RSA continues to encourage agencies to use the aggregate approach for their submissions, as such will assist agencies in purchasing Randolph-Sheppard equipment more efficiently.

The FAQs and the technical assistance RSA provided to vocational rehabilitation agencies has been effective in clarifying the requirements and process for prior approval requests. For example, there has been a substantial decline in the number of questions received by the Department in FFY 2020 regarding the applicability of prior approval requirements of the RSVFP. RSA has also been able to resolve issues related to the RSVFP prior approval requests so that all allowable costs for which prior approval has been requested have been approved. In some instances, RSA has required agencies to remove unallowable renovation costs from prior approval requests before approving the allowable costs. Once the unallowable costs were removed, the Department approved these requests.

In summary, in FFY 2020, RSA made considerable progress in creating processes to reduce the backlog of arbitration requests and SLA reviews of rules, policies and procedures, as well as in providing guidance for prior approval requests. We expect to continue these processes in FFY 2021.