

UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES  
REHABILITATION SERVICES ADMINISTRATION  
WASHINGTON, DC 20202-2800

TECHNICAL ASSISTANCE CIRCULAR  
RSA-TAC-21-01  
DATE: December 15, 2020

ADDRESSEES: STATE VOCATIONAL REHABILITATION AGENCIES  
ELECTED COMMITTEES OF BLIND VENDORS

SUBJECT: Active Participation of Elected Committees of Blind Vendors with  
State Licensing Agencies in the Randolph-Sheppard Vending Facility  
Program

PURPOSE:

The Rehabilitation Services Administration (RSA) received several inquiries from State licensing agencies (SLAs) and Elected Committees of Blind Vendors (ECBVs) under the Randolph-Sheppard Act (Act) seeking guidance regarding issues related to the active participation of the ECBV in the major administrative and policy decisions affecting the operation of the vending facility program in the States. While there is flexibility on how each State may fulfill its obligation to ensure that active participation occurs with the ECBV in the respective State, RSA provides this technical assistance circular (TAC) to SLAs and ECBVs regarding the Federal requirements governing active participation. This TAC also answers the questions received and provides guidance clarifying Federal requirements for SLAs and ECBVs, including examples of major administrative decisions and policy and program development where active participation is required.

Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

TECHNICAL ASSISTANCE:

**Legal Requirements**

Section 107b-1(2) of the Act requires that the SLA conduct the biennial election of the ECBV, which shall be fully representative of all blind licensees (not just vendors) in the State program. Section 107b-1(3) of the Act requires that the SLA ensure that the ECBV's responsibilities include:

- (1) Participation, with the State agency, in major administrative decisions and policy and program development;
- (2) Receiving grievances of blind licensees and serving as advocates for such

- licensees;
- (3) Participation, with the State agency, in the development and administration of a transfer and promotion system for blind licensees;
  - (4) Participation, with the State agency, in developing training and retraining programs; and
  - (5) Sponsorship, with the assistance of the State agency, of meetings and instructional conferences for blind licensees.

In its application for designation as an SLA, 34 CFR § 395.3(4) requires that the State agency indicate “the methods to be used to ensure the continuing and active participation of the [ECBV] in matters affecting policy and program development and administration.”

The ECBV’s responsibilities, including reference to those areas requiring “active participation,” are contained in 34 C.F.R. § 395.14(b). The ECBV shall—

- (1) Actively participate with the SLA in major administrative decisions and policy and program development decisions affecting the overall administration of the State’s vending facility program;
- (2) Receive and transmit to the SLA grievances at the request of blind vendors and serve as advocates for such vendors in connection with such grievances;
- (3) Actively participate with the SLA in the development and administration of a State system for the transfer and promotion of blind vendors;
- (4) Actively participate with the SLA in the development of training and retraining programs for blind vendors; and
- (5) Sponsor, with the assistance of the SLA, meetings, and instructional conferences for blind vendors within the State.

The active participation of the ECBV is also specifically required in 34 C.F.R. § 395.9(c) for the method of determining the charge for the funds that may be set aside under § 395.9(a) for the purposes of—

- (1) Maintenance and replacement of equipment;
- (2) The purchase of new equipment;
- (3) Management services;
- (4) Assuring a fair minimum of return to vendors; or
- (5) 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.

#### TECHNICAL ASSISTANCE:

#### **Active Participation**

Although there is no definition of “active participation” in the Act or regulations, we look first to the overall purpose of the Act to “provide blind persons with remunerative employment, enlarging the economic opportunities of the blind and stimulating the blind to greater efforts in

striving to make themselves self-supporting,” in considering the intent of Congress to expand the opportunities of people who are blind under the Act. In addition, the preamble to the final regulations implementing the Act, 42 FR 15802, 15803 (March 23, 1977) states that the ECBV is to “participate fully with the [SLA] in making major administrative and policy decisions affecting...the vending facility program” and that the [ECBV] “effectively and constructively participate” with the SLA.

RSA provides the clarification and examples in this Technical Assistance Circular of the “active participation” requirement to provide guidance to both SLAs and ECBVs on how they can take actions to meet this requirement.

### **Clarification of Requirement**

- Active participation in the decision-making process means that the ECBV maintains an active role, beyond that of participating in a purely advisory capacity, in guiding the program and policy decisions that directly affect blind licensees.
- The active participation requirement is not a mere invitation for the ECBV to comment on proposed or pending policies and procedures or other decisions affecting the overall program. Rather, the ECBV should be actively engaged in the process.
- While the SLA has final authority and responsibility to ensure proper and effective administration of the State’s Vending Facility Program consistent with Federal and State requirements, it is the responsibility of both the ECBV and the SLA to participate in an ongoing process of information sharing, substantive discussion, negotiation, and collaborative decision-making that results in program and policy decisions and actions representing the best efforts of both the ECBV and the SLA acting in the interests of the licensees.
- While using subcommittees is one way the ECBV may choose to actively participate, subcommittees do not have the authority to act in lieu of the full ECBV unless explicitly authorized to do so by the full ECBV or its approved rules.
- The SLA and the ECBV collaborate on the development of the program rules, policies, and procedures affecting the overall administration of the program, and it is then the responsibility of the SLA to make decisions with respect to day-to-day administration of the program consistent with that framework.
- The ECBV chair is the liaison between the other committee members and the SLA, and communication between the two is critical; however, decisions that require the active participation of the ECBV must be brought before the full ECBV for its consideration and made by the ECBV, not just the chair.
- Decisions of the ECBV should be reflected in the minutes of its meetings or otherwise documented, and the ECBV chair or SLA should be prepared to provide such documentation of active participation when requested by RSA.
- When submitting any State rule or regulation, including operating agreements, related to the State’s Vending Facility Program, which must be approved by RSA as required by 34 C.F.R. § 395.4, SLAs must include documentation that demonstrates active participation by the ECBV occurred.

## Examples of Active Participation

- The following are some examples of major administrative decisions and policy and program development where the active participation of the ECBV would be required:
  - Decisions that go into creating an annual budget as to how the SLAs will apportion funds among program activities, such as the establishment of new vending facilities, replacement and maintenance of equipment, provision of initial stocks and supplies, and support for training for vendors. SLAs can determine with the ECBV how changes to that budget will occur.
  - The process to select vendors to fill vacancies.
  - Policies concerning the set-aside of vending facility and vending machine income for ongoing program activities (including, for example, equipment purchases and maintenance, management services, and ensuring a fair minimum return to each vendor's operation). The SLA must determine with the ECBV the amount of set-aside, if any, that is reasonable.
  - An SLA proposal to use a portion of set-aside or vending machine income to cover any retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time. In addition, SLAs must provide information to and obtain a majority vote of all licensees in the State.
  - A proposed change to vendor operating agreements that is more than a purely ministerial or technical change.
  - Revisions to the SLA's rules, policies, and procedures, whether in the State's administrative code or in a handbook or manual.
  - The development of the qualifications and training programs for individuals entering the vending facility program.
  - The development of the grievance procedure for blind vendors within the State, including the State evidentiary hearing process.
- Examples within this document should not be construed as a complete list of issues that warrant active participation.

Ongoing collaboration is both essential and mutually beneficial to blind licensees and the SLAs, given the significance and major impact that administrative, policy, and other program decisions have on each blind vendor's business operations and livelihood. RSA encourages the SLAs and the ECBV to define the scope of "active participation" broadly, as the State's program should operate in an atmosphere that fosters meaningful involvement by the licensees' representative body, the ECBV. That involvement serves as a crucial and unique feature of the program.

INQUIRIES:

Corinne Weidenthal, Chief  
Service Programs Unit  
(202) 245-6529  
Corinne.Weidenthal@ed.gov

/s/

---

Mark Schultz  
Commissioner, Rehabilitation Services Administration  
Delegated the authority to perform  
the functions and duties of the Assistant Secretary  
for the Office of Special Education and Rehabilitative Services