

U.S. DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
REHABILITATION SERVICES ADMINISTRATION

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FAQ 21-04

Frequently Asked Questions

Randolph-Sheppard Act
Financial Relief and Restoration Payments Appropriation

The Rehabilitation Services Administration (RSA), within the U.S. Department of Education's (Department) Office of Special Education and Rehabilitative Services, issues this Frequently Asked Questions (FAQs) document in response to inquiries concerning the administration of the Randolph-Sheppard Financial Relief and Restoration Payments (FRRP) Appropriation.

In the Consolidated Appropriations Act, 2021, Division H, Title III, Section 318 (Section 318), Congress directed the Department to make \$20 million available for the purposes of making grants to State licensing agencies (SLA) designated to administer the Randolph-Sheppard Act (Act). Section 318 directed the Department to make grants to SLAs in the same proportion as the number of blind vendors operating a vending facility in a State as compared to the number of blind vendors operating a vending facility in all the States on September 30, 2019. The SLAs must use these grants:

- to make financial relief and restoration payments to offset losses of blind vendors that occurred during calendar year 2020 and which were not otherwise compensated; and
- for other purposes authorized under 34 C.F.R. § 395.9 (regarding the setting aside of funds by the SLA), but only to the extent any funds remain after the SLA makes financial relief and restoration payments to blind vendors to cover their losses incurred in calendar year 2020.

The funds shall remain available for obligation by the Secretary until September 30, 2021.

Other than statutory and regulatory requirements included in this 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. The Department has determined that this document is significant guidance under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007).

Q1. Is a vendor, who incurred losses during calendar year 2020, eligible for FRRP funds if the vendor is no longer a vendor in a facility with the State Business Enterprise Program (BEP) under the Act?

No. Congress authorized the Department to make \$20 million available to make grants to SLAs to provide relief and restoration payments to blind vendors. If a blind vendor has left the State's

BEP (e.g., the person retired, resigned, or was terminated by the program), they are not eligible for FRRP funds because they are no longer a vendor (i.e., operating a vending facility) as defined by the Department's implementing regulations at 34 C.F.R. § 395.1(aa), which provides,

“(aa) *Vendor* means a blind licensee who is operating a vending facility on Federal or other property.”

However, if a vendor is not operating a vending facility because the site closed in calendar year 2020 and remains closed, but the operation of a facility is on hold (e.g., the vending facility is temporarily closed for an undetermined period of time because it is located within a building that is closed or currently has no occupants but is expected to reopen in the future), the vendor is eligible for FRRP funds.

Q2. If a vendor had a facility in 2020, but did not have a facility in 2019, is that vendor still able to show a loss in 2020 and be eligible for FRRP funds?

Yes. A vendor is eligible to receive FRRP funds for losses incurred during calendar year 2020 to the extent such losses are not otherwise compensated. Section 318 does not require that the individual be a vendor in 2019, even though the percentage of funds an SLA receives is determined by the proportion of blind vendors in the States as of September 30, 2019. A vendor's 2020 losses could be calculated in many ways. For example, a vendor could show losses based on the amount of income earned in 2020 as compared to the amount of expenses paid; the SLAs could rely on historical data on facilities to estimate expected earnings of a particular facility; or a vendor could extrapolate from the months in 2020 that it was open. Furthermore, a vendor may claim losses for spoiled or expired stock, which could be an additional calculation of loss for calendar year 2020. This is not an exhaustive list of how to calculate losses; the SLA and Elected Committee should take a flexible and reasonable view on how to determine vendor losses, taking into account the varying circumstances that may be occurring in its State.

Q3. May FRRP funds be used to cover any losses of products incurred by the vendor?

Yes. SLAs may use the FRRP funds to make financial relief and restoration payments to offset losses of blind vendors that occurred during calendar year 2020 and which were not otherwise compensated. Losses are not limited only to income. For example, if vendors had to dispose of unused stock they had purchased because it spoiled or expired during calendar year 2020, that is a loss that can be offset by FRRP payments.

Q4. Is a blind vendor eligible for FRRP funds if the vendor's losses, incurred in calendar year 2020, were unrelated to the pandemic?

Yes. There is no requirement in Section 318 that a vendor's losses incurred in calendar year 2020 be tied to the Covid-19 pandemic. Therefore, SLAs may provide FRRP funds to compensate vendors for losses incurred during calendar year 2020 when those losses are not related to the pandemic, such as losses due to hurricanes, other natural disasters, or other reasons beyond the control of the vendor.

Q5. Should certain types of benefits, such as Social Security Disability Insurance (SSDI), Paycheck Protection Program (PPP) loans, unemployment benefits, etc. be taken into account when determining if an individual was “otherwise compensated?”

RSA interprets the term “otherwise compensated” to refer to funds that a blind vendor received from another source to compensate for the loss. If a vendor was already receiving a certain benefit before the loss was incurred, then it should not be considered compensation *because of* the loss. If a vendor received a benefit after a loss was incurred, whether that benefit should be considered compensation should be a case-by-case determination depending on the benefit, the connection between the benefit and the loss, and any other relevant circumstances to the case. We note that administration of the PPP loans, unemployment benefits, and SSDI fall within the purview of other Federal and State agencies, not RSA. Fair minimum return payments and vacation or sick leave payments paid from the set aside funds under 34 C.F.R § 395.9 could be considered compensation because of the close connection between the benefit received and the loss sustained. However, as with all decisions regarding how each State’s funds will be used, the SLA is required to actively participate¹ with the Elected Committee of Blind Vendors when making these decisions.

Q6. Can FRRP funds be used to offset losses incurred during calendar year 2021?

No. Section 318 makes clear that the SLAs are only authorized to use FRRP funds to make financial relief and restoration payments to offset losses of blind vendors that occurred during calendar year 2020. Because the statute designates the timeframe covered by the relief payments, RSA has no authority to allow FRRP funds to be used to compensate losses incurred outside of calendar year 2020.

Q7. Can SLAs use FRRP funds to pay the costs of administering the grant?

Yes. SLAs may use FRRP funds to pay necessary and reasonable administrative costs incurred during the administration of the FRRP grant (e.g., to pay for staff time to actively participate with the Elected Committee of Blind Vendors regarding the distribution of the funds, the time spent distributing the funds, and time spent satisfying fiscal and performance reporting requirements). Each SLA will have to do its own analysis, using the Federal cost principles, to determine what amount of administrative costs would be allowable with FRRP funds pursuant to 2 C.F.R. §§ 200.403 through 200.405, while ensuring the SLA satisfies the stated purposes of Section 318—namely to provide financial relief and restoration payments to blind vendors who incurred losses in 2020 and, if funds remain, for other purposes authorized by 34 C.F.R. § 395.9. The SLA should maintain the appropriate records to justify that the expense was reasonable and necessary to administer the grant.

¹ The regulations at 34 C.F.R. § 395.14(b)(1) require that the SLA actively participate with the Elected Committee of Blind Vendors in “major administrative decisions and policy and program development decisions affecting the overall administration of the State’s vending facility program.” The disbursement of FRRP funds is a major administrative decision; therefore, the Elected Committee needs to be involved in the discussions on how to disburse FRRP funds. See RSA-TAC 21-01 https://rsa.ed.gov/sites/default/files/subregulatory/RSA%20TAC%2021-01_2.pdf.

When charging administrative costs to the FRRP grant, an SLA may only charge those administrative costs that are necessary and reasonable for the performance of the FRRP grant, as opposed to administering the Randolph-Sheppard Act program in general. Only in so doing will the SLA be able to ensure that FRRP administrative costs are: 1) necessary and reasonable for the performance of the FRRP grant in accordance with 2 C.F.R. §§ 200.403 and 200.404; (2) allocable to the FRRP grant in accordance with 2 C.F.R. §§ 200.403 and 200.405; and (3) kept as low as possible, thereby ensuring maximum FRRP funds are available for the stated purposes described in Section 318.

An SLA is not required to use FRRP funds to pay its associated administrative costs. It may use other State or private funds available for this purpose.

Q8. May an SLA use Vocational Rehabilitation (VR) program funds to pay administrative costs incurred in administering the FRRP grants?

Yes, but only to the extent an SLA is using FRRP grant funds for purposes allowable under 34 C.F.R. § 395.9 that are also authorized as a VR service to groups under Section 103(b)(1) of the Rehabilitation Act of 1973 (Rehabilitation Act) and 34 C.F.R. § 361.49(a)(5). Under the Federal cost principles set forth at 2 C.F.R. §§ 200.403 through 200.405, if there are FRRP grant expenditures that are allocable to the VR program, the associated administrative costs incurred for those particular services also would be allocable to the VR program. In such a case, the SLA may use VR program funds to cover a proportional share of those administrative costs since the VR program would be benefitting from those expenditures as well. In allocating the administrative costs between the FRRP and VR grants, the SLA would need to determine which amount was reasonable and necessary for the performance of the VR award and the FRRP award to determine the allowable and allocable amount to be charged to each award in accordance with the requirements of 2 C.F.R. §§ 200.403 through 200.405. The SLA should maintain the appropriate records to justify that the expense was reasonable and necessary to administer the grant.

However, to the extent an SLA uses the FRRP grant funds to make financial relief and restoration payments to blind vendors who incurred losses in calendar year 2020, which is the primary purpose of the FRRP grants, such payments are beyond the scope of allowable costs under the VR program pursuant to Section 103(b)(1) of the Rehabilitation Act and 34 C.F.R. § 361.49(a)(5), as it relates to the Randolph-Sheppard Act program. Therefore, any associated administrative costs also would not be allowable under, or allocable to, the VR program pursuant to 2 C.F.R. §§ 200.403 through 200.405.

Q9. Will the SLAs use the RSA-15 (Report of Randolph-Sheppard Vending Facility Program) form to report distribution and use of FRRP funds?

No. SLAs will be required to submit a SF-425 form to report fiscal information at the end of Federal fiscal year (FFY) 2021 and at the end of FFY 2022, if the SLA is still distributing and using FRRP grant funds in FFY 2022. In addition, SLAs will be required to submit a performance report at the end of the period of performance (i.e., September 30, 2022) for the

grant to provide necessary data about how the funds were used. RSA is in the process of developing the information collection request for the performance report.