

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

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FAQ 21-06

Frequently Asked Questions
Part Two

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 second¹ 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 directs the Department to make \$20 million available for the purpose of making grants to State licensing agencies (SLA) designated to administer the Randolph-Sheppard Act (Act). Section 318 directs 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 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 will 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.

Q1. Which vendors are eligible to receive FRRP payments?

Section 318 makes clear that only vendors who incurred an uncompensated loss in calendar year 2020 are eligible to receive FRRP payments. Therefore, an SLA must have a basis for determining whether a vendor incurred a previously uncompensated loss in order to determine a

¹ RSA issued the first set of FAQs related to the Randolph-Sheppard FRRP Appropriation on March 12, 2021. See [Randolph-Sheppard Act Financial Relief and Restoration Payments Appropriation](#).

vendor's eligibility to receive FRRP payments. If a vendor did not incur a loss in calendar year 2020 or if the vendor has already been compensated for that loss, the vendor is not eligible to receive FRRP payments. See also information provided in Q2 and Q4 below and in Q1 and Q2 in the first FAQs issued March 12, 2021, regarding losses and compensation, respectively.

Q2. Can a vendor receive funds exceeding its losses if the Elected Committee of Blind Vendors (Elected Committee) votes to distribute FRRPs equally to eligible vendors?

No. The FRRP payments can only be used to offset vendor losses not otherwise compensated. As noted in the answer to Q2 in RSA's first FAQ document, a vendor's 2020 losses could be calculated in many ways. The SLA and Elected Committee should take a flexible and reasonable view on how to determine vendor losses, considering the varying circumstances that may be occurring in their State. For example, a vendor may operate multiple vending facilities and only some may have closed during 2020. The open facilities may have seen an increased volume during the 2020 calendar year; however, considering the income the vendor would have received if all the facilities had been open during 2020, the vendor may still have incurred a loss. In sum, the amount of FRRP payments a vendor receives must not exceed the total amount of 2020 uncompensated losses the vendor incurred.

Q3. What level of detail should an SLA include in its response to Part B, number 1 of the Assurances and Use of FRRP Funds form?

Part B, number 1 of the Assurances and Use of FRRP Funds form asks the SLA to “[e]xplain briefly how the SLA will distribute the FRRP funds to blind vendors to offset losses incurred during the 2020 calendar year.” In answering this question, an SLA needs to provide enough detail in its response to demonstrate that the SLA determined that: (1) each vendor who will receive FRRP payments incurred an uncompensated loss in calendar year 2020, and (2) that loss equals or exceeds the amount the vendor will receive in FRRP payments. Therefore, each SLA, should determine, with the active participation of the Elected Committee² and describe in response to Part B, number 1 of the Assurances and Use of FRRP Funds form how the SLA will distribute the FRRP funds. For example, the SLA could describe the proportion of each vendor's uncompensated losses it will offset, or it could explain that it has enough funds to fully compensate all vendors based on the number of uncompensated losses each vendor incurred. Each State's situation will be different, but such level of detail is necessary to ensure that the SLA distributes the funds in a manner consistent with the statutory requirements of the FRRP Appropriation – specifically to provide financial relief and restoration payments to offset uncompensated losses incurred by blind vendors in calendar year 2020. Finally, the level of detail RSA is requesting on the Assurances and Use of FRRP Funds form will help the SLA demonstrate that any remaining FRRP funds that are deposited into the set-aside account are done so only after the uncompensated losses incurred by blind vendors in calendar year 2020 are covered by FRRP payments.

²Active participation would include discussion with the Elected Committee, establishing how the SLA will calculate losses, determine compensation, and distribute the FRRP payments, but does not have to include information regarding individual vendor payment amounts. See 34 C.F.R. § 395.14 and Technical Assistance Circular RSA-TAC-21-01.

See Q5 below for additional supporting information the SLA may need to obtain from a vendor, as necessary on a case-by-case basis, to respond to Part B, number 1 of the Assurances and Use of FRRP Funds form.

Q4. How should an SLA determine what payments to vendors constitute compensation for purposes of the FRRP funds?

An SLA should use the information set forth in Q5 of the first FAQ document, and as is clarified further herein, when assessing whether a payment previously received by a vendor is considered compensation for purposes of the FRRP funds. Specifically, if a vendor received a benefit after a loss was incurred, whether that benefit is 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 facts of the particular circumstance.

As it pertains to payments made by an SLA under the Act for fair minimum return (FMR) and sick/vacation leave paid from the set-aside funds under 34 C.F.R § 395.9 to assist vendors during 2020, such payments would have a close connection between the benefit received and the loss sustained. In States where such payments were made in 2020 to help vendors who were incurring losses due to the COVID-19 pandemic (or for other reasons beyond their control), RSA considers such payments compensation when determining whether a vendor's losses were previously compensated. Note that even if an SLA provided FMR payments or vacation/sick leave payments to vendors in 2020, a vendor's losses may exceed the compensation received, making the vendor eligible for FRRP payments in an amount not exceeding the uncompensated loss incurred.

If an SLA believes that the FMR payments or sick/vacation payments made to vendors in 2020 were not made to assist vendors in recovering from losses but were made in the routine course of implementing its usual policy and practice separate from any consideration of income (e.g., if every vendor in the State received a FMR payment regardless of the vendor's income), or some other unique circumstance exists that makes these payments not compensation, the SLA should provide the information that demonstrates this in its response to Part B, number 4 of the Assurances and Use of FRRP Funds form. Therefore, the SLA should provide information specifically addressing any FMR payments and sick/vacation payments made in 2020 (information that RSA already has on the State's 2020 RSA-15) regarding the SLA's use of set-aside funds for these purposes in order to respond to Part B, number 4's question regarding compensation. (See Q5 below and Q5 of the first FAQ document for more detailed information about completing number 4 on Part B of the Assurances and Use of FRRP Funds form.) As RSA noted in response to Q5 in the first FAQ document, while an SLA should determine whether the benefits a vendor received from another source have a close connection to the loss the vendor incurred in 2020 to be considered compensation, RSA does not make an assessment as to whether payments such as Paycheck Protection Program (PPP) loans, unemployment benefits, and Social Security Disability Insurance (SSDI) are compensation in the context of the FRRP funds because those programs fall within the purview of other Federal and State agencies, not RSA. RSA notes, however, that because of the varying circumstances in each State and for each individual vendor, it is reasonable for different States to make different decisions regarding these and similar Federal and State programs.

The determinations made by an SLA, as described above, are necessary to ensure the SLA satisfies the requirement of Section 318, specifically to ensure that FRRP payments made to blind vendors offset losses that were incurred in calendar year 2020 and which were not otherwise compensated. Therefore, as noted in the response to Q5 of these FAQs, because Part B, number 4 of the Assurances and Use of FRRP Funds form asks an SLA to describe how it will ensure the vendors' losses were not previously compensated, the SLA, with the active participation of the Elected Committee, needs to address whether certain payments a vendor may have received constitute compensation. Depending on that decision, the SLA may need information from the vendor detailing such payments.

Q5. What level of detail should an SLA include in its response to Part B, number 4 of the Assurances and Use of FRRP Funds form?

Part B, number 4 of the Assurances and Use of FRRP Funds form asks an SLA, “[h]ow will the SLA ensure blind vendor losses were not previously compensated?” RSA needs to know how the SLA determined that the blind vendors' losses were not previously compensated to ensure that the SLA satisfies the requirement of Section 318. The SLA can demonstrate this to RSA in its response by, for instance, describing what decisions were made with the required active participation of the Elected Committee, about the types of payments to vendors that are considered “compensation” and by describing the supporting documentation obtained from vendors concerning compensation for losses they received, as appropriate. For more information on compensation and documentation related to the compensation, see Q3 and Q5 in these FAQs.

Q6. What supporting documentation will an SLA need to obtain from vendors to show losses were not otherwise compensated?

While Part B of the Assurances and Use of FRRP Funds form does not require an SLA to submit supporting documentation to demonstrate that the agency is distributing the FRRP funds in accordance with statutory requirements, 2 C.F.R. §§ 200.302 and 200.303 require the SLA to retain supporting documentation to demonstrate that the agency is satisfying Federal requirements (i.e., that only eligible vendors are receiving FRRP funds and in amounts that do not exceed their uncompensated losses incurred in calendar year 2020). In each State, it is up to the SLA, after active participation with the Elected Committee, to determine how much and what kind of documentation is required to show the vendor's uncompensated losses, depending on how losses are calculated and what payments to vendors are considered compensation, consistent with Q4 above. Because an SLA must make supporting documentation available to RSA upon request, it must be able to access the supporting documentation from vendors if not retained by the SLA (consistent with the assurances noted in 34 C.F.R. § 395.3(a)(11)(viii) and (ix)). An SLA is ultimately responsible to demonstrate that it is complying with fiscal requirements applicable to all Federal grant recipients, that it has internal controls in place, as required by 2 C.F.R. §§ 200.302 and 200.303 and is complying with Assurance 7 of the signed Assurances in Part A.

It is likely that an SLA will already have in its possession some of the documentation needed to respond to Part B, number 1 of the Assurances and Use of FRRP Funds form, to support the

losses incurred by vendors (e.g., profit/loss statements submitted routinely by each vendor that show the amount of loss incurred by each vendor). However, an SLA may need to give individual vendors an opportunity, on a case-by-case basis, to provide supplemental information to support additional losses, if any, not reflected in the profit/loss statements. Such additional supporting information would be important if the profit/loss statement, for example, does not reflect all losses incurred by the vendor, such as discarding and replacing spoiled or expired stock and supplies. The vendor must retain supporting documentation of all losses incurred and which form the basis of the FRRP payments. The vendor must make the supporting documentation available to the SLA upon request to document that Federal funds are being used in an allowable manner, consistent with 2 C.F.R. § 200.329.

In addition, in developing a response to Part B, number 4 of the Assurances and Use of FRRP Funds form, an SLA may need to obtain additional information from each vendor to determine whether the losses incurred in calendar year 2020 were not previously compensated. In the event the SLA determines, with the active participation of the Elected Committee, that no vendor in the State received compensation that had a close connection to the loss (as described in Q4 of these FAQs), then no further documentation is needed from the vendor. In addition, if the SLA paid out FMR or sick/vacation payments for losses incurred in calendar year 2020 as described in Q4 of these FAQs, then no further documentation is needed from the vendor because the SLA has the necessary documentation in its files. However, if the SLA, with active participation of the Elected Committee, determines, for example, that unemployment compensation benefits constitute compensation for purposes of FRRP funds, the SLA would need to obtain some documentation from the vendor such as a signed attestation under penalty of perjury that the vendor suffered a loss of a specific amount and that the vendor did not receive any payments in the form of unemployment compensation benefits to offset that loss or that the vendor received a specific amount of unemployment compensation benefits to offset that loss. Obtaining such an attestation or other verification of compensation received by the vendor could help the SLA ensure it is satisfying the requirements of Section 318 and 2 C.F.R. part 200. While there is no Federal requirement that the vendor provide documentation to the SLA to support the amount of compensation received, it will be important that the vendor retain this supporting documentation so that it can be provided to the SLA upon request.

Q7. Can an SLA use FRRP funds as set-aside and make FMR payments to vendors in calendar year 2021?

Yes. Once all eligible vendors in the State are fully compensated for losses incurred during calendar year 2020, the SLA may use the remaining FRRP funds for all the set-aside purposes authorized by 34 C.F.R. § 395.9, including FMR payments to vendors in calendar year 2021 and through September 30, 2022, which is the end of the period of performance for the FRRP award. The SLA is required to actively participate with the Elected Committee when making these decisions.

Q8. Must FRRP payments be reported as income for FY 2021 taxes?

Because this question asks for an interpretation of laws administered by other Federal and State agencies, RSA encourages SLAs to seek guidance from their in-house attorneys or Attorneys

General on Federal and State tax law implications with respect to the distribution of these funds to blind vendors. The vendors should also be encouraged to seek advice from their own tax advisors as to how these payments should be reported to the Internal Revenue Service and State tax authorities.

Q9. Can SLAs apply set-aside charges against FRRP payments?

No. The FRRP funds are not net proceeds from the operation of vending facilities and, therefore, are not subject to set-aside payment requirements. However, if any funds remain after an SLA makes financial relief and restoration payments to vendors to cover their losses incurred in 2020, those funds may be placed in the SLA's set-aside account for purposes authorized by 34 C.F.R. § 395.9. As noted in Assurance 6 of the FRRP Assurances and Use of FRRP Funds, expenditures paid with FRRP funds from the set-aside account may not be used to satisfy the match requirement under the Vocational Rehabilitation program because FRRP funds are Federal funds, not non-Federal funds. Therefore, SLAs will need to account for any FRRP funds deposited into the set-aside differently than other set-aside funds deposited from the vendor net proceeds or Federal unassigned vending machine income.

Q10. How quickly will RSA make FRRP funds available to an SLA after receiving its Assurances and Use of FRRP Funds form?

RSA cannot provide an exact timeframe for making an award after receiving an Assurances and Use of FRRP Funds form, as this is a new process, and RSA may have to work with a State to resolve any issues with the information provided in its form. However, barring any unforeseen circumstances, RSA is committed to making awards as quickly as possible and will disburse FRRP funds to SLAs on a rolling basis after approving the FRRP Assurances and Use of FRRP Funds forms.