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TECHNICAL ASSISTANCE CIRCULAR

RSA-TAC-24-03

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ADDRESSEES: STATE VOCATIONAL REHABILITATION AGENCIES
STATE REHABILITATION COUNCILS
CLIENT ASSISTANCE PROGRAMS
STATE LICENSING AGENCIES
TECHNICAL ASSISTANCE CENTERS

SUBJECT: Use of VR Program Funds for Initial Stocks and Supplies and Operating Expenses for Vendors Under the Randolph-Sheppard Vending Facilities Program

PURPOSE:

The Randolph-Sheppard vending facilities program (RSVFP) provides remunerative employment for individuals who are blind through the operation of vending facilities on Federal and other property. The [Randolph-Sheppard Act](#) (R-S Act)¹ gives priority for such individuals who are licensed by a State licensing agency (SLAs),² to operate vending facilities, including cafeterias, on Federal property. With the Vocational Rehabilitation Amendments of 1954, Congress emphasized a critical nexus between the RSVFP and the Vocational Rehabilitation (VR) program by expanding the scope of VR services to encompass the acquisition of vending stands, equipment, and stocks and necessary supplies to enable individuals with significant disabilities to operate any type of small business enterprise under State agency management and supervision. The expenditure of VR funds for these purposes for the benefit of the RSVFP remained an authorized service to groups under the VR program when the [Rehabilitation Act of 1973](#) (Rehabilitation Act) was enacted, and these services remain permissible today.³

SLAs, RSVFP vendors, and professional associations on behalf of RSVFP vendors have sought guidance from the Rehabilitation Services Administration (RSA) regarding the use of VR

¹ [20 U.S.C. § 107](#), et seq.

² A “State licensing agency” (SLA), as defined at [34 C.F.R. § 395.1\(v\)](#), is the VR agency providing VR services to individuals who are blind in the State under the VR services portion of the Unified or Combined State Plan (see [34 C.F.R. §§ 395.2](#) and [395.5](#)) and that has been designated by the Secretary of the Department of Education to issue licenses to individuals who are blind under the RSVFP. Therefore, when providing VR services for the benefit of licensed blind vendors operating vending facilities under the RSVFP, there is a close administrative nexus between the State VR agency and the SLA. Although the VR agency is solely responsible for administering the VR program and the costs incurred under that program ([34 C.F.R. § 361.13](#)) and the SLA is responsible for administering the RSVFP ([34 C.F.R. § 395.3](#)), this TAC uses “State VR agency” and “SLA” interchangeably throughout, depending on which term best fits the specific content of that reference.

³ [29 U.S.C. § 723\(b\)\(1\)](#).

program funds to support the RSVFP. Many of these inquiries concern Federal requirements governing the “initial establishment period,” as that term is used in VR program regulations, and allowable costs for the purchase of initial stocks and supplies and the payment of initial operating expenses under the VR program for the benefit of vending facilities operated by licensed blind vendors under the RSVFP. In response, RSA issues this technical assistance circular (TAC) to clarify pertinent Federal requirements and describe flexibilities in determining the “initial establishment period” and when “initial stocks and supplies” and “initial operating expenses” are allowable under the VR program, authorized under Title I of the Rehabilitation Act, for the benefit of the RSVFP. By implementing the guidance in this TAC, VR agencies, particularly those administering VR programs serving individuals who are blind or visually impaired, and SLAs will improve support for the RSVFP through the appropriate use of VR program funds and, thereby, increase opportunities for individuals who are blind to obtain competitive integrated employment and economic self-sufficiency in the RSVFP.

For reader convenience, the first-time legal citations are used in the text and footnotes, links are included to the document referenced. The citations section of the TAC also includes links to the legal references in this document.

BACKGROUND:

Many of the questions addressed in this TAC raise legal and operational issues that are inter-related. Therefore, to minimize redundancy and improve clarity, the guidance below is provided in a manner that we believe is most helpful to VR agencies and SLAs, and the licensed blind vendors they serve, as they implement the Federal requirements governing the use of VR funds for the purchase of initial stocks and supplies and for the payment of initial operating expenses of vending facilities operated by licensed blind vendors under the RSVFP.

Section 103(b)(1) of the Rehabilitation Act and [34 C.F.R. § 361.49\(a\)\(5\)](#) permit VR agencies to use VR funds to purchase initial stocks and supplies for vending facilities⁴ supervised by the State agency and operated by licensed blind vendors under the RSVFP. The VR regulations at 34 C.F.R. § 361.49(a)(5) also permit VR funds to be used to pay for initial operating expenses of these vending facilities. In allowing these costs, VR program regulations at 34 C.F.R. § 361.49(a)(5)(ii) and (iii) establish certain guidelines. Specifically, VR agencies may incur costs for the purchase of initial stocks and supplies when they are “necessary for the establishment of a new business enterprise during the initial establishment period, which may not exceed six months (34 C.F.R. § 361.49(a)(5)(ii)). They may also incur costs for initial operating expenses “during the initial establishment period, which may not exceed six months” (34 C.F.R. § 361.49(a)(5)(iii)).

In [Program Assistance Circular \(PAC\)-89-02](#), dated January 3, 1989, RSA explained that initial stocks and supplies purchased for the benefit of the RSVFP include “all types of merchandise

⁴ Section 103(b)(1) of the Rehabilitation Act refers to “small business” and [34 C.F.R. § 361.49\(a\)\(5\)](#) refers to “small business enterprise;” however, for purposes of this TAC, the small businesses we are discussing are vending facilities operated by licensed blind vendors under the RSVFP. It is RSA’s understanding that some States refer to the RSVFP and Business Enterprise Program (BEP) interchangeably. For ease of the reader, we use only the RSVFP throughout this TAC.

necessary for the establishment of the new business enterprise. Initial stocks should be interpreted as items purchased for the purpose of marketing to customers.” In this TAC, RSA further clarifies that initial stocks and supplies include the initial inventory and all supplies (e.g., utensils, paper products, plastic ware, cups, pots and pans, disinfectants, and cleaning supplies) necessary for the establishment of a new business enterprise by a licensed blind vendor operating a facility under the RSVFP during the initial establishment period of that business enterprise, for a maximum period of six months. Initial stocks and supplies purchased for the benefit of the RSVFP are those items that meet the definition of “supplies” in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at [2 C.F.R. § 200.1](#).⁵

Many of the questions addressed in this TAC relate to the six-month period allowed for the use of VR funds to purchase initial stocks and supplies and pay for initial operating expenses of business enterprises under the RSVFP. In this TAC, RSA provides its interpretation of these requirements, which have advanced given the evolution of the RSVFP since it was first introduced in connection with the VR Program in 1954.⁶ This guidance includes several critical points that VR agencies and SLAs must keep in mind as they implement Federal requirements governing the allowability of VR funds to purchase initial stocks and supplies and pay for initial operating expenses under the VR program for the benefit of licensed blind vendors operating vending facilities under the RSVFP.

TECHNICAL ASSISTANCE

VR regulations do not require that all initial stocks and supplies and initial operating expenses be provided for the maximum six-month period. Rather, the regulations at 34 C.F.R. § 361.49(a)(5)(ii) permit the purchase of initial stocks and supplies that are “*necessary*” for the initial establishment period of the business enterprise, “not to exceed six months.” Similarly, 34 C.F.R. § 361.49(a)(5)(iii) permits VR agencies to use VR funds to pay for “operational costs” “which may not exceed six months.” The regulatory criteria afford States significant flexibility in the administration of the VR program for the benefit of the RSVFP. While SLAs may use VR program funds to purchase initial stocks and supplies and pay initial operating expenses during the entire maximum six-month establishment period, for example when establishing a vending facility for the first time, the regulations do not require an automatic six-month period for the purchase of initial stocks and supplies and payment of initial operating expenses. A State limiting the expenditure of Federal funds for these purposes to a specific period of time less than 6 months for all vendors in its rules and policies, has exercised this flexibility to shorten the initial establishment period in which it is necessary for the VR agency to purchase initial stocks and supplies and pay for initial operating expenses. States must develop written policies, pursuant to 34 C.F.R. § 361.49(b), and must establish State RSVFP rules, with the active participation of the Elected Committee of Blind Vendors, pursuant to [34 C.F.R. §§ 395.3 and 395.4](#). It is important to note that all written policies and State rules governing the use of VR

⁵ “Supplies” are those items that do not meet the definition of “equipment” at 2 C.F.R. § 200.1. For purposes of the RSVFP (regardless of whether purchased with RSVFP set-aside funds or VR program funds), the per unit acquisition cost level of equipment is the lesser of the State’s capitalization threshold or \$1,000, in accordance with an exception granted to RSA by the Office of Management and Budget on October 6, 2022. ([Federal Register Notice](#))

⁶ The R-S Act was initially enacted in 1936; however, it was amended by the Vocational Rehabilitation Amendments of 1954, which created a nexus between the VR program and the R-S Act.

funds for the purchase of initial stocks and supplies, or the payment of initial operating expenditures must ensure that costs paid are consistent with requirements of the Federal cost principles at [2 C.F.R. §§ 200.403 through 200.405](#) with respect to allowability, reasonableness, and allocability. To that end, for States whose written policies and State rules allow for agency discretion, up to a maximum of six months (i.e., like that permitted in VR regulations at 34 C.F.R. § 361.49(a)(5)(ii) and (iii)), VR agencies should not assume that every new licensed blind vendor requires the maximum six months allowed by Federal regulations. In other words, the VR agency may only expend VR funds for the purchase of initial stocks and supplies and for the payment of initial operating expenses after determining, at a minimum –

- The estimated number of initial stocks and supplies and the initial operating expenses necessary for the start-up operation of the vending facility; and
- How much time, up to the maximum six months, will the licensed blind vendor require support in the start-up of the vending facility, thereby ensuring the expenditure of funds is reasonable and consistent with 2 C.F.R. § 200.404 and, thus, allowable under 2 C.F.R. § 200.403.

When a cost is allowable under the VR program, including expenses related to the start-up of vending facilities, such as initial stocks and supplies and initial operating expenses, the State agency may use non-Federal funds to pay that cost instead of using Federal VR funds. Any non-Federal funds⁷ used to purchase allowable initial stocks and supplies or pay for initial operating expenses will count toward the State’s match and maintenance of effort requirements; therefore, VR agencies must report these amounts as non-Federal share on the Vocational Rehabilitation Financial Report (RSA-17), as required by [34 C.F.R. §§ 361.60](#) and [361.62](#).

The following examples clarify when VR funds may be used to purchase initial stocks and supplies and pay for initial operating expenses for vending facilities operated under the RSVFP.

Examples:

1. New Licensed Blind Vendor Assumes Responsibility for Established Site that is Not Fully Stocked:

An established vending facility is operated by Vendor A, who retires. Vendor B, another licensed blind vendor, assumes responsibility for the vending facility while it is still operating at a profit. As Vendor A neared retirement, the vendor only replaced the stocks and supplies that were most popular with the customers. Other necessary inventory and supplies became depleted. This means Vendor B needs financial assistance from the SLA to get the inventory and supplies fully stocked again. In this example, Vendor B is establishing a new business enterprise when they become the new licensed operator of the vending facility once operated by Vendor A. The initial establishment period, for purposes of 34 C.F.R. § 361.49(a)(5)(ii) and (iii), for Vendor B starts the first day they assume operation of the vending facility and ends on the last day that Vendor B no longer needs financial assistance for the start-up costs of their vending operation consistent with

⁷ [34 C.F.R. § 395.9](#) does not permit the expenditure of RSVFP set-aside funds for initial stocks and supplies and initial operating expenses.

the State's written policies, rules, and Federal requirements, including Federal cost principles. In this State, the VR agency's written policy and the SLA's State rules for the provision of services to licensed blind vendors allow for a maximum of six months for both the purchase of initial stocks and supplies and for the payment of initial operating expenses. This means that VR funds may be used to purchase initial stocks and supplies or pay initial operating expenditures for Vendor B for no more than six months.

Initial Stocks and Supplies:

Using the analysis above, the SLA determined that Vendor B needs financial assistance to get the vending facility fully stocked with inventory and supplies, some of which were left depleted by Vendor A when they retired. To identify how much financial assistance to give Vendor B, the SLA considered the amount of stocks and supplies that were remaining and the vending facility's operating income, thus determining the amount necessary for the establishment of Vendor B's business enterprise in accordance with 34 C.F.R. § 361.49(a)(5)(ii). The SLA considered the vending facility's operating income to determine when it would be sufficient to enable Vendor B to begin purchasing stocks and supplies from the vending facility's income. The SLA also consulted its RSVFP Rules for any State rules governing the allowability of financial assistance to Vendor B. For example, the SLA may determine that Vendor B only needs financial assistance from VR funds to pay for initial stocks and supplies for the first two months after assuming responsibility for the facility to bring the inventory and supplies up to an adequate amount.

Initial Operating Expenses:

The SLA should conduct a similar analysis for initial operating expenses (e.g., bookkeeping services, marketing, and personnel costs). It is possible the SLA may determine that Vendor B does not need financial assistance to pay for initial operating expenses since the facility has been established for a long time and was operating at a profit at Vendor A's retirement. The SLA could determine that the vending facility's income generated by Vendor B will be sufficient to pay the operating costs. Alternatively, the SLA could determine that Vendor B needs financial assistance for one month given bills that will be due just as they take over the business, before having an opportunity to generate income as the operator.

The SLA would use the same analyses as above, with respect to the purchase of initial stocks and supplies and the payment of initial operating expenses, if Vendor B leaves and Vendor C becomes the new operator of the business enterprise, thereby starting a new "initial establishment period" for Vendor C's operation at the vending facility. The amount of financial assistance Vendor C would need, in terms of the number of months, would depend on the facts that exist at that time, but not to exceed six months.

2. New Licensed Blind Vendor Assumes Responsibility for Established Site that is Fully Stocked:

Building on the example above, but changing the facts slightly, Vendor A retires and leaves the vending facility fully stocked. Vendor B takes over the vending facility as the new licensed blind vendor. Vendor B decides, as part of the establishment of their new vending site, to hire additional staff so they can expand the hours of operation for the facility. The additional staff person will work 20 hours each week. Using the analysis described above, the VR agency may only pay for any initial stocks and supplies for Vendor B that may be necessary for a short transitional period to accommodate bills related to stocks and supplies that may come immediately due prior to the ability of Vendor B to generate sufficient income by the facility to cover those bills, in accordance with 34 C.F.R. § 361.49(a)(5)(ii) and the Federal cost principles at 2 C.F.R. §§ 200.403 through 200.405, since Vendor A left the vending facility fully stocked when they retired. Given that the existing vending facility Vendor B is taking over is a thriving business operation, Vendor B will be able to replace stocks and supplies as they are depleted. However, with the additional staff, they will incur significantly more operational costs than Vendor A. Therefore, it would be reasonable for the VR agency to use VR funds to pay for the salary and expenses of the additional staff person for a maximum of six months, in accordance with 34 C.F.R. § 361.49(a)(5)(iii) and consistent with written policies and State rules and the Federal cost principles at 2 C.F.R. §§ 200.403 through 200.405.

3. New Licensed Blind Vendor Assumes Responsibility for Established Site that is Fully Stocked; State Rules Permit Initial Stocks and Supplies for Two Weeks:

Building on the example above, but changing the facts slightly, the State has promulgated RSVFP rules and developed VR written policies that state every new licensed blind vendor of a vending facility receives two weeks of initial stocks and supplies. Although this two-week period is far less than the maximum allowed by Federal regulations with respect to the purchase of initial stocks and supplies, the “establishment period” is within the time allowed by Federal VR regulations in that it is less than the six-month maximum period. As such, this shorter time is permissible under Federal VR regulations provided the State can show that two weeks is necessary and reasonable in accordance with the Uniform Guidance for the payment of initial stocks and supplies to all licensed blind vendors.⁸ In determining the amount of initial operational expenses Vendor B needs, the same analysis as used in Example 2 above is applicable since the State’s two-week rule in this example only applies to initial stocks and supplies.

⁸ A State that sets a definite time period applicable to all licensed blind vendors for the payment of initial stocks and supplies and initial operating expenses through VR program written policies or RSVFP State rules must demonstrate that such time period is reasonable and necessary under the Federal cost principles at 2 C.F.R. §§ 200.403 through 200.405. It will likely be harder for States to demonstrate that longer time periods, particularly those time periods closer to the six-month maximum allowed under 34 C.F.R. § 361.49(a)(5)(ii), are reasonable and necessary for all licensed blind vendors regardless of the factual circumstances of each individual vendor.

4. Conversion of Vending Facility Type by Same Licensed Blind Vendor:

Vendor C has operated a thriving vending machine vending facility for many years in a Federal office building. Vendor C now wants to convert the business operation from vending machines to a micro market. To do so, Vendor C needs --

- (1) Various new equipment, such as refrigerator cases, shelves for dry goods, and an electronic payment kiosk;
- (2) Electrical and plumbing work to ready the new equipment for use in the micro market vending facility; and
- (3) Different products to stock the new equipment, which will offer a wider array of products than the vending machines currently operated.

This State's written VR policies and RSVFP rules establish a maximum period of six months for the purchase of initial stocks and supplies and for the payment of initial operating expenses.

Neither Section 103(a)(1) of the Rehabilitation Act nor 34 C.F.R. § 361.49(a)(5) set time limits on the purchase of equipment for use in vending facilities. In other words, *VR agencies may use VR funds to acquire new or replacement equipment for use in a vending facility at any time during the life of the vending facility.* In purchasing the equipment, costs associated with readying that equipment for use are also allowable.⁹ Similarly, SLAs may use RSVFP set-aside funds to purchase equipment at any time during the life of the vending facility ([34 C.F.R. § 395.9\(b\)\(2\)](#)). Set-aside funds refer to funds which accrue to an SLA from an assessment against the net proceeds of each vending facility in the RSVFP and any income from vending machines on Federal property which accrues to the State licensing agency.¹⁰

Therefore, the VR agency or SLA could use VR funds or RSVFP set-aside funds to purchase equipment needed by Vendor C for the conversion of the facility from vending machines to a micro market; allowable costs for the acquisition of the equipment could include costs for readying the space to meet the installation requirements. There is no time limit for the purchase of such equipment; however, the equipment and associated installation costs must be reasonable and necessary in accordance with the Uniform Guidance.

In addition to the equipment, Vendor C also needs to purchase a broader range of inventory to be sold in the micro market, as well as additional supplies. These costs will be substantially higher than Vendor C incurs monthly in their current vending facility. Although their current vending machine business operation is profitable, it is not enough to sustain a larger scale micro market enterprise. In this example, the change in business

⁹ "Acquisition costs" means the cost of the asset (i.e., the equipment), including the cost to ready the asset for its intended use ([2 C.F.R. § 200.1](#)). For example, acquisition costs for refrigerator cases would include the purchase price of the equipment, as well as any electrical, plumbing, or drywall work necessary for the installation of the refrigerator cases.

¹⁰ 24 C.F.R. § 395.1(s).

operation from a vending machine facility to a micro market vending facility constitutes a new business enterprise under the RSVFP for Vendor C for purposes of 34 C.F.R. § 361.49(a)(5)(ii) and (iii). Therefore, the first day of operation as a micro market would begin the start of the “initial establishment period” for Vendor C. As such, the VR agency may use VR funds to purchase initial stocks and supplies for Vendor C’s micro market that are *necessary* for the establishment period for a maximum of six months and consistent with written policies and State RSVFP rules, as well as the Federal cost principles at 2 C.F.R. §§ 200.403 through 200.405.

The VR agency must consider the extent of the change in inventory and supplies that are necessitated by the conversion. Depending on how extensive the inventory offered by Vendor C in their vending machines is, they may not need to expand very much. However, as vending machine inventory is usually quite limited, a more significant expansion of inventory likely is necessary when converting to a micro market. These are the facts the VR agency must consider when determining how many months of initial stocks and supplies are necessary to provide using VR funds to Vendor C consistent with 34 C.F.R. § 361.49(a)(5)(ii) and written policies and State RSVFP rules.

RSA recognizes that this interpretation is different than what is stated in PAC-89-02, issued 35 years ago, which states: “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.” Considering current Federal requirements, both in 34 C.F.R. § 361.49(a)(5) and the Federal cost principles at 2 C.F.R. §§ 200.403 through 200.405, particularly section 200.404,¹¹ RSA has concluded that our current position here in Example 4 is more consistent with the plain meaning of the statute and regulations and reasonably reflects evolving market trends where vendors can sell a wide variety of articles using modern technology. *We believe a conversion from one type of vending facility to another is a significant change in the business operation, and, with each such change in the business operation of the facility, a new “initial establishment period” starts, as contemplated by 34 C.F.R. § 361.49(a)(5)(ii) and (iii) since these provisions are not tied specifically to the “acquisition” of vending facilities and equipment that is described more generally in Section 103(b)(1) of the Rehabilitation Act and 34 C.F.R. § 361.49(a)(5).* This means with each such change, the VR agency could use VR funds to pay for initial stocks and supplies for a maximum of six months to the extent such purchases are “necessary” in accordance with 34 C.F.R. § 361.49(a)(5)(ii).

In this example, Vendor C may also incur higher operational costs in operating the micro market than they did operating the vending machines facility. The first day that Vendor C begins operating the micro market starts the initial establishment period for that micro market business enterprise. Given the anticipated significant higher operational costs, the VR agency may find it necessary and reasonable that Vendor C requires financial

¹¹ [2.C.F.R. § 200.404](#) states, in pertinent part, “[a] cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.”

assistance for the maximum period of six months to get the micro market operational. RSA believes, under these facts, these costs would be allowable under the VR program at 34 C.F.R. § 361.49(a)(5)(iii) and would be consistent with the Federal cost principles at 2 C.F.R. §§ 200.403 through 200.405.

5. Licensed Blind Vendor Reimbursement to the SLA for Initial Stocks and Supplies:

Vendor D is assigned to be the licensed blind vendor of a micro market, a new vending facility at a Federal office building. The SLA purchased the initial stocks and supplies for the micro market for the full six months establishment period, consistent with written VR policies and RSVFP State rules, because it was a new vending facility. The total cost of the initial stocks and supplies for the six-month period was \$18,000; the SLA used VR funds to pay the full amount of the cost initially. The State's rules and regulations permit the SLA to seek reimbursement for the value of the initial stocks and supplies from Vendor D over a two-year period.

To be designated as the SLA to administer the RSVFP, the State must provide suitable vending facility equipment and adequate initial stocks to the licensed blind vendor and have policies addressing how the SLA will meet this requirement (Section 107(b)(2) of the R-S Act and 34 C.F.R. § 395.3(a)(5)). The equipment and stocks may be owned by the SLA or by the licensed blind vendor, and State policies vary in how they implement this requirement. States may determine the right, title to, and interest in a vending facility, its equipment or inventory may be vested in the licensed blind vendor. States must ensure that the requirements of [34 C.F.R. § 395.6](#) are satisfied, including, among other things, the requirement to enter into a written agreement with the licensed blind vendor that covers specific terms and conditions consistent with the State's regulations, [34 C.F.R. part 395](#), and the permit for the vending facility. *If State rules¹² do not contain these provisions, the State must submit proposed rule revisions to RSA for approval before implementing such policies in the State.*

Some State rules and regulations require the SLA to ensure the vending facility is fully stocked at the time the initial licensed blind vendor and all successor licensed blind vendors take over the operation of the vending facility, but require the existing and successor licensed blind vendors, in accordance with State RSVFP rules and regulations, to reimburse the SLA for some or all of the cost of that initial stocks and supplies over a set period of time (e.g., two years). Such reimbursements would be considered refunds for fiscal accounting purposes by the VR agency and, as such, would not constitute program income¹³ to the VR program as that term is defined at [34 C.F.R. § 361.63](#) and 2 C.F.R. § 200.1. Specifically, the payments of these costs by a licensed blind vendor do

¹² [TAC-22-01: RSA Approval of State Rules](#).

¹³ This TAC is drafted with the assumption that the initial stocks and supplies at issue, and thus the subject of a reimbursement policy, were paid with either Federal VR grant funds or non-Federal funds used for matching purposes under the VR program. As stated herein, any repayments for the initial stocks and supplies would constitute a refund and not program income. However, if the VR agency used program income to purchase the initial stocks and supplies initially, the repayment of those costs would be considered a refund of program income to the State VR agency in the Federal fiscal year received for reporting and accounting purposes; as such, these refunds must be used for allowable VR program purposes as was true when the program income was first earned.

not constitute income earned by the agency but rather direct repayments of the costs incurred, thereby putting these payments outside the scope of “program income” as that term is defined. The refund of Federal funds must be applied, for accounting and reporting purposes, to the Federal fiscal year from which the initial cost expenditure was made.

With this type of reimbursement, Vendor D would own the dollar value of the initial stocks and supplies equal to the amount Vendor D paid to the SLA in accordance with the written agreement consistent with the requirements of 34 C.F.R. § 395.6. In such an arrangement, when Vendor D leaves the vending facility, they would be able to take the value (i.e., \$18,000 or applicable pro rata share of that full amount) of initial stocks and supplies with them and, in turn, the SLA would re-stock the vending facility with initial stocks and supplies for the successor licensed blind vendor during the “initial establishment period” of their business operation of that micro market vending facility for a period not to exceed six months pursuant to 34 C.F.R. § 361.49(a)(5)(ii) and consistent with the VR agency’s written policies developed pursuant to 34 C.F.R. § 361.49(b) and the State’s RSVFP rules promulgated in accordance with 34 C.F.R. § 395.4. The SLA could also purchase the stocks from Vendor D as part of the costs associated with the “initial establishment period” for the successor licensed blind vendor. Because a reimbursement arrangement is contemplated by the R-S Act when it recognizes that either the SLA or licensed blind vendor can own the initial stocks and supplies as just described, RSA would *not* consider this arrangement a “loan” to Vendor D for purposes of the VR program or the RSVFP.

6. Initial Stocks and Supplies Provided Through an Individualized Plan for Employment (IPE):

Vendor E is a VR program participant, with a signed IPE, whose chosen employment outcome goal is to operate a small business. After much counseling, the individual and VR counselor agree that becoming a licensed blind vendor under the RSVFP is a good option for Vendor E. After satisfying the requirements for becoming a licensed blind vendor with individualized VR services from the VR program, Vendor E is assigned to an existing vending machine facility at a Federal office building. The vending facility has not had an assigned licensed blind vendor for an extended period due to low numbers of Federal employees in the office. The inventory for the vending machines was completely exhausted at the start of Vendor E’s “initial establishment period” of their business operation. Vendor E’s IPE includes six months of initial stocks and supplies for the vending machines pursuant to Section 103(a)(12) of the Rehabilitation Act and [34 C.F.R. § 361.48\(b\)\(16\)](#). The VR agency’s written policies for the provision of services to individuals starting a small business under an IPE, in accordance with [34 C.F.R. § 361.50](#), permit the VR agency to purchase initial stocks and supplies, as necessary, for a maximum start-up period of six months. In this example, the State has made the decision through its written policies that it will provide initial stocks and supplies for VR participants starting a small business under an IPE up to a maximum of six months to

mirror Federal requirements governing the purchase of initial stocks and supplies under 34 C.F.R. § 361.49(a)(5)(ii).

When Vendor E advanced to a new vending location, the SLA assigned Vendor F to the Federal office building's vending machine vending facility. Vendor F is not a VR program participant and does not have an approved IPE. The inventory was fully stocked at Vendor E's departure. The SLA agreed to add one more vending machine to the facility which needed to be stocked when Vendor F took over the operation of the facility. Given the thriving nature of this vending facility, as part of the "initial establishment period", the SLA determined it was necessary to only pay for three months of initial stocks and supplies for Vendor F's new vending machine in accordance with 34 C.F.R. § 361.49(a)(5)(ii) and the Federal cost principles at 2 C.F.R. §§ 200.403 through 200.405.

The SLA's determination of the amount of financial assistance Vendor F needed for the new vending machine is consistent with its State rules and Federal regulations at 34 C.F.R. § 361.49(b), which permit the purchase of initial stocks and supplies for a period not to exceed six months, and the Federal cost principles in terms of what a reasonable person would do under the circumstances. The SLA used VR funds to pay the costs of these initial stocks and supplies since such costs are not allowable with RSVFP set-aside funds; however, since Vendor F is not a VR program participant, the services were provided pursuant to Section 103(b)(1) of the Rehabilitation Act and 34 C.F.R. § 361.49(a)(5)(ii) and not under an IPE. As such, the services provided must be consistent with the agency's written policies for the provision of such services, developed pursuant to 34 C.F.R. § 361.49(b), and consistent with the State's RSVFP rules developed in accordance with 34 C.F.R. § 395.4, both of which permit the purchase of initial stocks and supplies for a maximum period of six months for purposes of this example.

With both Vendor E and Vendor F, VR funds are used to pay for the same type of services, namely initial stocks and supplies. The difference is that Vendor E is a VR program participant and Vendor F is not. As a VR program participant, neither the Rehabilitation Act nor its regulations specifically limit the provision of initial stocks and supplies under an IPE to a maximum of six months, as it does for the provision of initial stocks and supplies in the context of services to groups (i.e., to those who are not VR participants, such as Vendor F). However, if States opt to provide initial stocks and supplies for small business enterprises under either an IPE or as a service to groups, State VR agencies must develop written policies and procedures regarding the nature and scope of those services. Written policies for the provision of services to VR program participants under an IPE, including those related to initial stocks and supplies, must be developed in accordance with 34 C.F.R. § 361.50; those governing the provision of services to licensed blind vendors who are not VR program participants under an IPE must be developed in accordance with 34 C.F.R. § 361.49(b). In developing and implementing these policies, the State agency must satisfy the requirements of the Federal cost principles at 2 C.F.R. §§ 200.403 through 200.405, and particularly § 200.404 with respect to reasonableness, to ensure allowability of those costs.

For purposes of this example, it is important to note that the term “vocational rehabilitation services”¹⁴ includes both individualized VR services provided to VR program participants under an approved IPE, pursuant to Section 103(a) of the Rehabilitation Act and [34 C.F.R. § 361.48\(b\)](#), and VR services to groups provided pursuant to Section 103(b) of the Rehabilitation Act and 34 C.F.R. § 361.49(a), including those provided to licensed blind vendors operating a vending facility under the RSVFP. In considering the provision of VR services to licensed blind vendors, such as Vendor E and Vendor F, it will be necessary for the State agency to determine whether the licensed blind vendor has been determined eligible for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI). Pursuant to [34 C.F.R. § 361.54\(b\)\(3\)\(ii\)](#), the VR agency may not impose a financial need test or require the financial participation of any individual who has been determined eligible for SSI or SSDI as a condition of furnishing any VR services. For purposes of this example, the initial stocks and supplies provided to Vendor E and Vendor F are “VR services,” as that term is defined. This means that the State agency may not impose a financial needs test or require the financial participation for either Vendor E or Vendor F as a condition for receiving the initial stocks and supplies if they have been determined eligible for SSI or SSDI.

Although the financial need and financial participation restriction of 34 C.F.R. § 361.54(b)(3)(ii) applies to any VR service, which includes both individualized services and services to groups (34 C.F.R. § 361.5(c)(57)), the R-S Act and its regulations contemplate the possibility that the licensed blind vendor could own vending facilities, and thus could be expected to reimburse the cost of initial stocks and supplies for ownership to transfer from the SLA to the licensed blind vendor (34 C.F.R. § 395.6). It is important to give meaning to the R-S Act’s provisions, which are separate and distinct from the VR program, and to recognize the fact that the VR funds are used under Section 103(a)(12) or 103(b)(1) of the Rehabilitation Act and 34 C.F.R. §§ 361.48(b)(16) or 361.49(a)(5) to benefit the RSVFP and not the VR program. Thus, we believe that the financial need restriction of 34 C.F.R. § 361.54 is not implicated when an SLA is requiring payment from the licensed blind vendor of Federal VR funds paid for the benefit of licensed blind vendors operating a vending facility under the RSVFP in exchange for transfer of ownership from the SLA to the licensed blind vendor, regardless of whether they are recipients of SSI or SSDI. The financial needs test or financial participation of VR participants described in 34 C.F.R. § 361.54 contemplates the participant’s personal income as a basis for the level of financial assistance that the VR agency agrees to provide on the signed IPE. However, the R-S Act contemplates the possibility that licensed blind vendors will be given an opportunity to own the equipment or stocks and supplies. In such an arrangement, the repayment of the cost to the SLA would be paid out of the vending facility’s operating budget, not the licensed blind vendor’s personal income. Therefore, any such repayment is not considered a financial participation for purposes of 34 C.F.R. § 361.54. As noted previously in this TAC, the

¹⁴ “Vocational rehabilitation services” is defined at Section (7)(40) of the Rehabilitation Act and [34 C.F.R. § 361.5\(c\)\(57\)](#).

repayment of these initial stocks and supplies is also not considered a loan to the licensed blind vendor because this repayment scheme is contemplated under the R-S Act.

SUMMARY:

A change from one type of vending facility to another or one licensed blind vendor to another is a change in the business operation; and, with each change in the business operation of the facility, a new “initial establishment period” is considered to start for purposes of the VR program requirements at 34 C.F.R. § 361.49(a)(5)(ii) and (iii). However, to be clear, the mere fact that a new establishment period starts does not necessarily mean VR funds must be used to pay for initial start-up costs. With respect to initial stocks and supplies, the SLA must determine whether conversion from one facility type to another or from one licensed blind vendor to another makes the purchase of such stocks and supplies necessary and, if so, for what time period. With respect to initial operating expenses, the SLA must also determine whether the payment of such is necessary and reasonable, in accordance with Federal cost principles, for the establishment period under a new licensed blind vendor or of the newly converted vending facility, as determined by State written policies and RSVFP rules. Furthermore, the VR agency’s actions must be consistent with its written policies and procedures for the expenditure of VR funds for the RSVFP, in accordance with 34 C.F.R. §§ 361.49(b)(1) and 361.50; and the SLA’s expenditure of funds must be consistent with its State rules and regulations governing the RSVFP, in accordance with 34 C.F.R. § 395.4.

Any non-Federal funds used to purchase allowable initial stocks and supplies or pay for initial operational expenses will count toward the State’s match and maintenance of effort requirements and must be reported as non-Federal share on the Vocational Rehabilitation Financial Report (RSA-17).

EFFECTIVE DATE: Upon issuance.

INQUIRIES:

David Steele, Chief
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CITATIONS:

[Rehabilitation Act of 1973](#)

[Randolph-Sheppard Act](#)

State Vocational Rehabilitation Services Program Regulations [34 C.F.R. §§ 361.5\(c\)\(57\)](#), [361.13\(c\)](#), [361.48\(b\)\(16\)](#), [361.49\(a\)\(5\) and \(b\)\(1\)](#), [361.50](#), [361.54\(b\)\(3\)\(ii\)](#), [361.60](#), [361.62](#), [361.63](#)

Randolph-Sheppard Vending Facilities Program Regulations at [34 C.F.R. §§ 395.1, 395.2, 395.3\(a\)\(5\), 395.4, 395.5, 395.6, 395.9\(b\)\(2\)](#)

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards Regulations at [2 C.F.R. §§ 200.1, 200.403 through 200.405](#)

[Program Assistance Circular 89-02](#) (January 3, 1989)

/s/
Danté Q. Allen
Commissioner

cc: Counsel of State Administrators of Vocational Rehabilitation
National Council of State Agencies for the Blind
National Association of Blind Merchants