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

SUBJECT: Allowable Costs for Vending Facilities and Equipment for Vendors
Under the Randolph-Sheppard Vending Facility Program

PURPOSE:

The purpose of this Technical Assistance Circular (TAC) is to provide guidance on the allowable use of State Vocational Rehabilitation (VR) Services program funds, both Federal funds and non-Federal funds used for matching purposes, for costs associated with vending facilities and other equipment acquired for the benefit of licensed blind vendors operating under the Randolph-Sheppard Vending Facility Program (RSVFP). This TAC also provides guidance on the allowable use of RSVFP set-aside funds for the maintenance, replacement, and purchase¹, of vending facility equipment, as well as the allowable use of these expenditures for match under the VR program. Set-aside funds refer to funds which accrue to a State licensing agency (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 SLA, known as unassigned Federal vending machine income.² This TAC is in response to inquiries received by the Rehabilitation Services Administration (RSA) from SLAs,³ RSVFP

¹ The Randolph-Sheppard Act and its RSVFP regulations allow RSVFP set-aside funds to be used, among other things, for the purchase of new equipment. The Rehabilitation Act of 1973 and its VR regulations allow the use of VR funds, among other things, for the acquisition of other equipment. In the context of obtaining new equipment for vending facilities for the benefit of the RSVFP, there is no distinction between the words “acquisition” and “purchase”, and they should be treated synonymously. There is nothing in either statute to suggest that the words are to be interpreted differently from one another. We believe that the purchase of new equipment entails the acquisition of any new equipment for the benefit of the vending facility and not solely equipment that did not previously exist in the vending facility.

² 34 C.F.R. § 395.1(s). For purposes of RSVFP set-aside funds, “assessments against the net proceeds” of each RSVFP vending facility vary from State to State and are based on a percentage of each vending facility’s net income (i.e., income minus costs). This percentage must be approved by the Secretary of Education as reasonable 34 C.F.R. § 395.9(a)) and is generally contained in the State’s RSVFP rules, which are developed in active participation with the State’s Elected Committee of Blind Vendors and approved by the Secretary of Education. 34 C.F.R. §§ 395.4 and 395.14. Once the percentage is approved by the Secretary, each licensed blind vendor assigned to a RSVFP vending facility must contribute that percentage of their net income to the RSVFP set-aside funds. This contribution constitutes the “assessment” mentioned in the definition of “set-aside funds.” Please note that States are not required to have set-aside funds, therefore, there are States that do not assess a set-aside fee.

³ An SLA, as defined in [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

vendors, and professional associations on behalf of RSVFP vendors regarding the use of VR program funds and RSVFP set-aside funds, to support the RSVFP.

Many of these inquiries concern the applicability of Federal requirements governing the acquisition of vending facilities and other equipment under the VR program for the benefit of the RSVFP, as well as maintenance and capital expenditures⁴ related to those vending facilities and equipment, both at the time of acquisition and later as appropriate. Through this TAC, RSA clarifies the applicability of pertinent Federal requirements governing the use of VR funds and RSVFP set-aside funds, for the acquisition of vending facilities and other equipment as well as maintenance and capital expenditures related to those vending facilities and equipment. This TAC will support VR agencies and SLAs in the appropriate use of VR program funds and RSVFP set-aside funds to increase opportunities for individuals who are blind to obtain and maintain competitive integrated employment and economic self-sufficiency in the RSVFP.

BACKGROUND:

Section 103(b)(1) of the Rehabilitation Act of 1973 (Rehabilitation Act)⁵ and 34 C.F.R. § 361.49(a)(5) allow VR agencies, in pertinent part, to use VR funds to acquire vending facilities and other equipment for vending facilities operated by licensed blind vendors under the RSVFP and supervised by the State agency. The Randolph-Sheppard Act (R-S Act)⁶ at 20 U.S.C. § 107b(3)(A) and (B) and 34 C.F.R. § 395.9(b)(1) and (2), in pertinent part, allow SLAs to use RSVFP set-aside funds for the maintenance and replacement of equipment and the purchase of new equipment. There is no authority under the R-S Act for SLAs to use RSVFP set-aside funds for the acquisition of vending facilities themselves, unlike under the Rehabilitation Act for VR agencies which authorize the use of VR program funds for the acquisition of vending facilities as well as equipment.

For purposes of the RSVFP and this TAC, a “vending facility” means “automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment which may be operated by blind licensees and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, and including the vending or exchange of [chances] for any lottery authorized by State law and conducted by an agency of a State within such State” (34 C.F.R. § 395.1(x)). As noted in Program Assistance Circular (PAC)-89-02, dated January 3, 1989, vending facilities historically fell into one of the following categories, with some facilities representing combinations of these categories:

- dry or sundry facilities;
- snack bars, which may involve the sale of food prepared on/off the premises;

[395.5](#)) and that has been designated by the Secretary of the U.S. 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\(c\)](#)) and the SLA is responsible for administering the RSVFP ([34 C.F.R. § 395.3](#)) and the costs incurred with RSVFP-set-aside funds, this TAC uses “VR agency” and “SLA” interchangeably throughout, depending on which term best fits the specific content of that reference.

⁴ The term “capital expenditures” is defined at 2 C.F.R. § 200.1.

⁵ 29 U.S.C. § 723 (b)(1).

⁶ 20 U.S.C. § 107 et seq.

- cafeterias; and
- automatic vending machines.

Since that time, vendors have pursued these and a wide range of other business models as vending facilities under the RSVFP and are interested in pursuing others not traditionally operated by blind vendors. This TAC describes existing Federal requirements applicable to vending facilities and equipment acquired for the benefit of the RSVFP to help VR agencies and SLAs implement the requirements appropriately, given the evolution of the RSVFP since it was first introduced in connection with the VR Program in 1954.⁷

TECHNICAL ASSISTANCE:

As VR agencies and SLAs plan for the expenditure of funds – VR program (Federal and non-Federal) and RSVFP set-aside funds -- it is important to remember that neither section 103(b)(1) of the Rehabilitation Act nor 20 U.S.C. § 107b(3) of the R-S Act requires agencies to expend funds on the acquisition of vending facilities and other equipment or on the maintenance and replacement of equipment and the purchase of new equipment, respectively. Rather, the Rehabilitation Act and the R-S Act authorize State agencies to expend funds, as allowable, for these purposes. Before expending funds for purposes associated with the acquisition of, as well as maintenance and capital expenditures associated with, vending facilities and other equipment acquired for the benefit of the RSVFP, State agencies must analyze the facts of the proposed costs to determine whether they are allowable under Federal law. The analysis should include consideration of the following questions:

1. Is the facility a “vending facility,” as defined in 34 C.F.R. § 395.1(x) for purposes of the RSVFP?⁸

If the business operation is not a “vending facility,” as that term is defined at 34 C.F.R. § 395.1(x), the business operation is beyond the scope of the guidance presented in this TAC because the cost is not incurred for the benefit of vending facilities operated under the RSVFP. Therefore, the costs would not be allowable under the VR program in accordance with section 103(b)(1) of the Rehabilitation Act and 34 C.F.R. § 361.49(a)(5) and they would not be allowable under the RSVFP with set-aside funds under 34 C.F.R. § 395.9(b).

2. Is the vending facility supervised by the SLA and operated by a licensed blind vendor in compliance with all requirements for such vending facilities under the R-S Act?

⁷ 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.

⁸ 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 only those “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, only RSVFP is used throughout this TAC. Even though under 34 C.F.R. § 361.49(a)(5) it is permissible for States to administer BEPs for the benefit of other disability populations, this TAC focuses exclusively on costs incurred for the benefit of the RSVFP. If the VR agency administers another BEP, the agency should consult with RSA for technical assistance regarding the allowability of VR funds under section 103(b)(1) of the Rehabilitation Act and 34 C.F.R. § 361.49(a)(5) for that BEP.

If the vending facility is operated by one or more blind vendors, the vending facility falls within the scope of the RSVFP, and this guidance. This is because the Rehabilitation Act and its regulations and the R-S Act and its regulations apply to vending facilities operated by licensed blind vendors.⁹

3. Is the vending facility on Federal¹⁰ property or another type of property for which State law or regulations give priority or preference to blind vendors?

The R-S Act gives priority for individuals who are blind and licensed by an SLA, to operate vending facilities on Federal property. Most States have enacted laws or promulgated regulations modeled on the R-S Act that include a priority or preference for blind vendors of vending facilities on certain State, county, municipal, and private property. These State laws and regulations are commonly known as a “Mini R-S Act,” and they frequently adopt the Federal R-S Act requirements at the State level. Therefore, requirements governing the expenditure of VR program funds and RSVFP set-aside funds for costs associated with vending facilities and equipment are allowable to the extent that the vending facility is located on Federal property or a property that is permissible under State RSVFP law and regulations and included in the State’s RSVFP.¹¹

4. Is the State agency proposing to incur costs for the benefit of the RSVFP that are consistent with State policies?

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, 395.4, and 395.14. All written policies and State rules governing the use of VR funds for vending facilities and other equipment acquired for the benefit of the RSVFP 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.

5. What type of expenditures are planned?

Pursuant to section 103(b)(1) of the Rehabilitation Act and 34 C.F.R. § 361.49(a)(5), VR agencies may use Federal VR funds, as well as non-Federal funds used for matching purposes under the VR program, to pay for costs associated with vending facilities and other equipment acquired for the benefit of the RSVFP. In addition, as is true for all Federal grantees, VR agencies may use VR funds (either Federal or non-Federal used for match purposes) to pay for costs to ensure the efficient operation or improvement of those vending facilities and equipment (see government-wide requirements for “maintenance and repair” at 2 C.F.R. § 200.452 and the definition for “capital

⁹ 34 C.F.R. § 395.1(x).

¹⁰ Federal property means any building, land, or other real property owned, leased, or occupied by any department, agency, or instrumentality of the United States (including the Department of Defense and the U.S. Postal Service), or any other instrumentality wholly owned by the United States, or by any department or agency of the District of Columbia or any territory or possession of the United States (34 C.F.R. § 395.1(g)).

¹¹ In at least one State, RSA is aware that the State’s “Mini R-S Act” is much more expansive than the Federal R-S Act in that it gives priorities to vendors with disabilities other than blindness. While this is permissible under State law and these activities under the State’s BEP may constitute allowable activities, for purposes of the VR program, under section 103(b)(1) of the Rehabilitation Act and 34 C.F.R. § 361.49(a)(5), these activities are beyond the scope of the RSVFP. Therefore, they are beyond the scope of the technical assistance presented in this TAC. States with such State laws should seek fact-specific technical assistance from RSA when needed.

expenditures” at 2 C.F.R. § 200.1 and their associated requirements at 2 C.F.R. § 200.439). Under the RSVFP, SLAs may use RSVFP set-aside funds to pay for the maintenance and replacement¹² of equipment and the purchase of new equipment. Therefore, it is essential that VR agencies and SLAs know what costs are planned so that the proper funds may be used to pay for those costs. In so doing, the VR agency and SLA can ensure the agency satisfies appropriate fiscal requirements for those costs, such as with respect to Federal cost principles and other applicable fiscal requirements set forth in 2 C.F.R. part 200.

6. Is the item to be purchased “equipment,” as that term is defined at 2 C.F.R. § 200.1?

For equipment purchased for the benefit of the RSVFP, regardless of whether it is purchased with VR funds or with RSVFP set-aside funds, the per unit acquisition threshold level is \$1,000 or the State’s capitalization level, whichever is less, because of a limited exception granted by the Office of Management and Budget to RSA on October 6, 2022.¹³

7. Has the VR agency requested, and received, prior written approval¹⁴ in accordance with 2 C.F.R. § 200.407 prior to incurring costs for the acquisition of vending facilities or other equipment?

Most capital expenditures require prior written approval before State agencies may use Federal VR funds, or non-Federal funds for matching purposes, for such costs. Although RSVFP set-aside funds are not subject to requirements under 2 C.F.R. part 200 since they are not Federal funds, VR agencies must satisfy all requirements under 2 C.F.R. part 200 with respect to RSVFP set-aside funds if they are used for match purposes under the VR program.

When a cost is allowable under the VR program, including expenses related to vending facilities and other equipment acquired for the benefit of the RSVFP, the State agency may use non-

¹² For purposes of the RSVFP, RSA interprets the authority under the R-S Act and at 34 C.F.R. § 395.9(b)(1) “to replace equipment” to be similar to capital expenditures with respect to that equipment, as defined at 2 C.F.R. § 200.1 and governed by requirements at 2 C.F.R. § 200.439, for the equipment used in the RSVFP vending facilities. In interpreting the authority to “replace equipment” in this manner, RSA gives meaning to two different but undefined authorities – “replacement of equipment” and “purchase of new equipment,” thereby providing clarity and consistency to States for implementation and reporting purposes. See footnote 1 for RSA’s interpretation of “purchase of new equipment.” If Congress intended for the purchase of new equipment to mean the purchase of new equipment not previously contained with the vending facility, then Congress would likely have placed the term “replacement of equipment” with “purchase of new equipment.” But Congress did not place “replacement of equipment” with “purchase of new equipment.” “Replacement of equipment” was paired with “maintenance” and therefore, must be interpreted in light of its placement in the statute. By interpreting “replacement of equipment” and “purchase of new equipment” differently, RSA ensures that RSVFP set-aside funds may be used to maintain the continued operation of (i.e., maintenance) and increase the value or useful life through capital expenditures (i.e., replace) any equipment purchased for the RSVFP vending facilities. Just as VR funds may be used to cover necessary and reasonable expenses associated with vending facility equipment for the life of that equipment (i.e., from acquisition to maintenance to capital expenditures), this interpretation ensures that RSVFP set-aside funds may be used to do the same.

¹³ [87 FR 60664](#)

¹⁴ <https://rsa.ed.gov/sites/default/files/subregulatory/rsa-faq-prior-approval-10-29-2019.pdf>

Federal funds to pay that cost instead of Federal VR funds. Any non-Federal funds¹⁵ used to pay these costs, including RSVFP set-aside funds¹⁶ as allowable under 34 C.F.R. § 395.9(b), 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 use of these funds must also be reported on the Report of Vending Facility Program (RSA-15).

Examples:

The following illustrative examples clarify when VR funds and/or RSVFP set-aside funds, as applicable, may be used to acquire vending facilities or other equipment, or incur costs associated with the maintenance of and capital expenditures for those vending facilities and equipment operated by licensed blind vendors under the RSVFP. Because the examples provided herein are general and cannot cover every factual circumstance that could arise, VR agencies and SLAs should contact the RSA Financial Management Specialist and RSA RSVFP Liaison assigned to their State to obtain specific technical assistance regarding the allowability of particular costs or the development of policies, procedures, or internal controls based on the examples in this TAC. We recommend that VR agencies and SLAs contact both the RSA Financial Management Specialist and RSVFP Liaison assigned to their State in these circumstances to ensure a holistic approach to the technical assistance provided for any specific circumstances arising in the State.

1. The State's law allows RSVFP vending facilities to operate on State, county, and municipal properties; the State law also gives licensed blind vendors a priority to operate vending facilities on these properties. A municipality and SLA are interested in establishing a vending facility at the municipal beach and there are licensed blind vendors in the RSVFP interested in operating this vending facility, which would be under the administrative supervision of the SLA and would sell food, drink, souvenirs, and fishing supplies, and would rent, among other things, fishing gear and jet skis. While there is a building onsite, some capital improvements will be necessary to make it usable for the vending facility purpose, such as the installation of network wiring, electrical upgrades for the walk-in freezer and refrigerator, and additional plumbing hookups for external faucets necessary for the goods and services sold or rented at the vending facility.

The facility proposed by this business plan would constitute a "vending facility," as defined at 34 C.F.R. § 395.1(x) because: (1) it will be operated by a blind vendor; (2) it will be under the supervision of the SLA; and (3) it will be a counter that dispenses goods or services. Although the goods proposed to be sold go beyond the list of specific goods listed in the R-S Act and 34 C.F.R. § 395.1(x), the R-S Act allows for the sale of "other articles and services" beyond the specific items listed. Therefore, the R-S Act suggests that blind vendors can participate in a variety of vending businesses, including the selling of worms for fishing and rental services for fishing gear and jet skis. The proposed vending facility is

¹⁵ Non-Federal expenditures incurred with RSVFP set-aside funds are allowable sources of match under the VR program when used for management services and the maintenance and replacement of equipment and the purchase of new equipment (34 C.F.R. § 395.9(b)(1) and (2)) because these expenditures are also allowable under the VR program. All other RSVFP set-aside expenditures are unallowable as a source of match under the VR program. On the other hand, unrestricted non-Federal funds may be spent on any allowable costs pursuant to 34 C.F.R. § 361.49(a)(5); however, the use of RSVFP set-aside funds is more limited.

¹⁶ Pursuant to 34 C.F.R. § 395.9(b)(1) and (2), RSVFP set-aside funds may be used only for costs associated with equipment acquired for the benefit of the RSVFP, not for costs associated with the vending facilities themselves.

on a municipal beach, which is allowed under State law, under which blind vendors have a priority for such sites. Therefore, this vending facility falls under the scope of the RSVFP, and activities allowed by section 103(b)(1) of the Rehabilitation Act and 34 C.F.R. § 361.49(a)(5).

As the facts describe, this vending facility will be a new RSVFP vending facility the SLA is acquiring at the municipal beach. As such, costs associated with the acquisition of the vending facility and other equipment necessary to operate the facility would be allowable under the VR program with VR program funds, as well as non-Federal funds used for match purposes, in accordance with section 103(b)(1) of the Rehabilitation Act and 34 C.F.R. § 361.49(a)(5). The purchase of new equipment would also be allowable with RSVFP set-aside funds pursuant to 34 C.F.R. § 395.9(b)(2). In this example, VR funds could be used to pay for the “acquisition costs” of the vending facility, which includes the cost to ready the asset (i.e., the building) for its intended use, which may include items such as the upgrades to the electrical work, the installation of exterior faucets, and the installation of network wiring. (2 C.F.R. § 200.1). These costs would be allowable under section 103(b)(1) of the Rehabilitation Act and 34 C.F.R. § 361.49(a)(5) with VR funds, including non-Federal funds used for matching purposes, because these expenditures were incurred in the acquisition of the vending facility itself. These costs could not be paid with RSVFP set-aside funds, because set-aside is limited to five purposes,¹⁷ which do not include acquisition costs for a vending facility. RSA wants to make clear that there is no limit on the amount of money a VR agency may spend with respect to the acquisition costs of a vending facility. However, all costs must satisfy the Federal cost principles, particularly those requiring the cost to be necessary and reasonable at 2 C.F.R. § 200.404. Additionally, capital expenditures to the vending facilities require prior written approval from RSA, are subject to the Davis-Bacon Act requirements (20 U.S.C. § 1232(b)) and may be subject to the Build America, Buy America Act¹⁸ (BABAA) requirements.

With respect to the refrigeration equipment needed (e.g., the walk-in freezer and walk-in refrigerator), acquisition costs would likely include the purchase price of the equipment, as well as any electrical, plumbing, or drywall work necessary for the installation of the walk-in freezer and refrigerator. With respect to these two examples of equipment purchases, the State agency could pay the identified expenditures with VR funds (either Federal or non-Federal) or RSVFP set-aside funds. Similarly, these same options of funding could be used to pay for the purchase of the jet skis since they constitute equipment because they have a per unit acquisition cost threshold of at least \$1,000. To be clear, there is no total limit on the amount of VR funds or RSVFP set-aside funds that may be spent on the acquisition of equipment for a vending facility; however, they must be necessary and reasonable as required by 2 C.F.R. § 200.404, and the State agency must obtain prior written approval from RSA prior to incurring the cost (if using VR funds, either Federal or non-Federal matching funds) in accordance with 2 C.F.R. § 200.407(l).

¹⁷ Under 34 CFR § 395.9(b), set aside funds may “only be used 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. . . .”

¹⁸ See Section 70912, the Build America, Buy America Act, the “Infrastructure Investment and Jobs Act” (IIJA; P.L. 117-58 and 2 C.F.R. part 184).

With respect to the fishing gear to be rented and the goods to be sold (e.g., souvenirs, worms, lures, food, and drink), these articles and services may not be those traditionally dispensed by licensed blind vendors at a RSVFP vending facility. However, the definition of “vending facility” at 34 C.F.R. § 395.1(x) allows the vending of other articles and services that can be dispensed manually or automatically, which would include the articles and services contemplated here. It is likely that each item will have a per unit acquisition cost level of less than \$1,000, meaning it satisfies the definition of “supplies” at 2 C.F.R. § 200.1, not “equipment.” As such, RSVFP set-aside funds cannot be used to purchase any of these supplies; but VR funds could be used for the purchase of stock and supplies during the initial establishment period of the vending facility. As noted in RSA-TAC-24-03, dated April 5, 2024, VR agencies may use VR funds to pay these costs as necessary, after doing an analysis to determine reasonableness and necessity, for a period not to exceed six months in accordance with the requirements of 34 C.F.R. § 361.49(a)(5)(ii). The initial establishment period for this vending facility in this example, for purposes of the purchase of initial stock and supplies, begins when the assigned vendor (i.e., Vendor A) begins their operation of the vending facility. Therefore, the initial establishment period does not begin during the time in which projects are underway to ready the site for operation as a vending facility.

In planning this business venture, Vendor A will likely be required to pay for expenses such as liability insurance costs to protect against accidents. As such, depending on the State’s written policies established under 34 C.F.R. § 361.49(b), VR funds may be used to pay these costs, as necessary and reasonable, only during the initial establishment period of Vendor A’s operation of the vending facility, not to exceed six months in accordance with 34 C.F.R. § 361.49(a)(5)(iii). The payment of these costs with VR funds must be consistent with the Federal cost principles at 2 C.F.R. §§ 200.403 through 200.405.¹⁹

2. Building on the facts of Example 1, two years into their business operation, Vendor A needs to do maintenance and repair work on some of the jet skis and purchase a new jet ski.

The RSVFP regulations at 34 C.F.R. § 395.9(b)(1) allow the use of RSVFP set-aside funds for the maintenance of equipment and the purchase of new equipment. In this example, RSVFP set-aside funds may be used to maintain the jet skis and purchase the new jet ski, because these items meet the definition of “equipment.” Because both costs are allowable under the VR program, as described below, the expenditures, if paid with RSVFP set-aside funds, may be used towards the State’s match requirement under the VR program.

The purchase of the new jet ski also would constitute the acquisition of other equipment for the vending facility, as allowed under the VR program by section 103(b)(1) of the Rehabilitation Act and 34 C.F.R. § 361.49(a)(5). As noted in RSA-TAC-24-03, there is no time limit for when VR funds may be used to acquire new equipment for a vending facility. Therefore, VR funds could also be used to purchase a new jet ski two years after the establishment of the vending facility, as could RSVFP set-aside funds.

For maintenance of equipment, this also would be an allowable use of VR funds when necessary to maintain or repair equipment purchased under the VR program, including

¹⁹ See RSA-TAC-24-03, dated April 5, 2024, for further technical assistance regarding the use of VR program funds (both Federal and non-Federal used for matching purposes) to pay initial operating costs for vending facilities operated by licensed blind vendors under the RSVFP.

equipment purchased under the VR program for the benefit of the RSVFP. Specifically, as a recipient of Federal funds, 2 C.F.R. § 200.452 makes clear that costs to maintain or repair buildings and equipment (which would include the jet skis in the example) are allowable if the costs neither add to the permanent value of the property (i.e., for purposes of this TAC “equipment”) nor appreciably prolong its intended life but keep it in an efficient operating condition.

After the State considers the program requirements and the government-wide requirements in 2 C.F.R. part 200, the State agency could use either RSVFP set-aside funds or VR funds (both Federal or non-Federal) to pay for the maintenance and acquisition (i.e., purchase) costs of equipment. As with Example 1, the VR agency must obtain prior written approval from RSA before initiating any purchase of equipment with VR funds or non-Federal funds used for match purposes. There is no requirement to obtain prior written approval from RSA before incurring costs to maintain and repair the equipment.

3. Building on the facts in Examples 1 and 2, Vendor A wants to add a kick plate to the walk-in freezer. According to Vendor A’s assessment, the walk-in freezer is otherwise in good working condition, but the door is becoming damaged from wear and tear. Kick plates can protect doors from potential damage caused by footwear, forklifts, and handcarts, enhancing their durability and lifespan.

Although neither section 103(b)(1) of the Rehabilitation Act nor 34 C.F.R. § 361.49(a)(5) specifically mention capital expenditures with respect to either vending facilities or other equipment, 2 C.F.R. § 200.439 allows Federal grantees (which include VR grantees) to expend Federal funds on capital expenditures to improve buildings and equipment so long as the grantee obtains the prior written approval of the Federal awarding agency (i.e., RSA). This means that VR agencies may use VR funds (both Federal and non-Federal funds used for match purposes) to pay for the capital expenditures necessary to improve the walk-in freezer so long as those costs are consistent with the Federal cost principles and the agency obtained prior written approval. The SLA also has the option to use RSVFP set-aside funds to pay for these capital expenditures. As noted above, RSA considers “replacement of equipment” under the RSVFP to be like capital expenditures, as that term is defined at 2 C.F.R. § 200.1. By interpreting “replacement of equipment” and “purchase of new equipment” differently, and “replacement” in line with maintenance and capital expenditures, RSA would indicate that RSVFP set-aside funds may be used to maintain the continued operation (i.e., maintenance) and increase the value or useful life through capital expenditures (i.e., replace) of any equipment purchased for the RSVFP vending facilities. If the SLA uses RSVFP set-aside funds to pay these capital expenditures, the State may use them toward satisfying its match requirement under the VR program.

4. The SLA has an opportunity to open a food truck vending facility on the property of a Federal agency. The Federal agency indicated it will not provide the food truck but will provide the site for parking the food truck. The Federal agency and SLA have agreed that the food truck will focus its menu on serving breakfast during the morning hours and ice cream and other snacks in the afternoon; in so doing, the food truck will serve a need for Federal employees not met by other restaurants in the area. The SLA finds a suitable used food truck for the basic cooking needs of Vendor B, but some upgrades will be needed to install the ice cream maker and additional refrigeration and freezer space.

In this example, the food truck will meet the definition of a vending facility at 34 C.F.R. § 395.1(x) because it will be operated by Vendor B (a licensed blind vendor), will be managed by the SLA, and will dispense goods (food and drink) or services. Because the food truck will operate on Federal property, it falls under the RSVFP and allowable activities under the VR program. Nothing in the R-S Act nor the Rehabilitation Act prohibits the SLA from purchasing the food truck for use as a vending facility under the RSVFP. Such a purchase would constitute an “acquisition of a vending facility” under section 103(b)(1) of the Rehabilitation Act and 34 C.F.R. § 361.49(a)(5) for purposes of the VR program. Although the food truck in this example constitutes a “vending facility,” as that term is defined at 34 C.F.R. § 395.1(x), it also constitutes “equipment” as defined at 2 C.F.R. § 200.1; therefore, all government-wide requirements in 2 C.F.R. part 200 applicable to “equipment” must be satisfied. In the event the SLA purchases the food truck, it belongs to the SLA, as is true of all equipment purchased by the agency in accordance with 2 C.F.R. § 200.313(a), and RSA has a Federal interest in that food truck if Federal VR funds are used to pay for its purchase.²⁰ As with the acquisition of any asset, the acquisition costs for the food truck would include the purchase price plus any costs to ready the truck for use as a vending facility, such as the necessary work to install additional refrigeration equipment and the ice cream maker. Before incurring costs under the VR program to purchase the food truck and all associated acquisition costs to ready it for use as a vending facility, the VR agency must obtain prior written approval from RSA in accordance with 2 C.F.R. § 200.407.

VR funds, both Federal and non-Federal funds used for match purposes, may be used to pay these costs (i.e., acquisition of a vending facility) in accordance with section 103(b)(1) of the Rehabilitation Act and 34 C.F.R. § 361.49(a)(5) so long as they are consistent with the Federal cost principles at 2 C.F.R. §§ 200.403 through 200.405. RSVFP set-aside funds may also be used for the purchase of the food truck in this example because the food truck itself, while a vending facility, is also equipment having a per unit acquisition cost of over \$1000. To the extent the SLA uses RSVFP set-aside funds to purchase the food truck or any equipment for the food truck, the State may use those expenditures toward satisfying its match requirement under the VR program. In the event the Federal agency decides it no longer wants the food truck to operate on its property, as noted above, the food truck still belongs to the SLA in accordance with 2 C.F.R. § 200.313(a). With that, the SLA has the option of moving it, along with Vendor B (or another vendor) to another site or, in the event the equipment is no longer needed, seek disposition instructions from RSA in accordance with 2 C.F.R. § 200.313(e). At that time, RSA will determine whether any Federal interest remains in the food truck.

5. Building on the facts in Example 4 above, prior to beginning operation as a food truck vending facility, Vendor B learned the State required additional inspections and certificates including: (1) emissions testing for the food truck; (2) a health inspection for the food truck; and (3) a certificate to serve food to the public. Each of these inspections required a fee, which Vendor B could not pay since they did not have business income at this time.

In this example, each of the fees identified are clearly tied to the acquisition of the vending facility. As such, in accordance with State policies and procedures they would constitute “acquisition costs,” as that term is defined at 2 C.F.R. § 200.1 and could be paid with VR

²⁰ Pursuant to 2 C.F.R. § 200.1, “Federal interest” is calculated, in part, on the percentage of Federal participation in the total cost of the real property or equipment.

funds (both Federal and non-Federal funds used for match purposes). They could not be paid with RSVFP set-aside funds since 34 C.F.R. § 395.9(b) does not authorize the expenditure of these funds for acquisition of vending facility costs.

In the event Vendor B must pay ongoing fees, insurance, or taxes to operate this food truck vending facility, including annual emissions testing and certifications, such costs would be considered ongoing operational costs. As stated previously and in RSA-TAC-24-03, the use of VR funds for these operational costs are limited to the initial establishment period of Vendor B's operation of the food truck vending facility, not to exceed six months in accordance with 34 C.F.R. § 361.49(a)(5)(iii). The State agency may use VR funds – not RSVFP set-aside funds – to pay operational costs so long as they are paid consistent with the State's written policies developed in accordance with 34 C.F.R. § 361.49(b) and with the Federal cost principles at 2 C.F.R. §§ 200.403 through 200.405, particularly that of § 200.404, and do not exceed six months after the start of the establishment period. This means, with respect to the various fees mentioned in this example, the State agency could use VR funds to pay the costs of those fees for up to the first six months of Vendor B starting operation of the food truck vending facility if such payments are consistent with the State agency's policies and State rules and Federal cost principles.

6. Building on the facts of Examples 4 and 5, the SLA and Vendor B have decided the food truck vending facility needs a second vehicle to gather and transport fresh produce and other supplies to the food truck while the food truck remains parked on the Federal property. The additional vehicle also would be beneficial if additional food supplies are needed during the workday while the food truck is in operation.

In this example, the additional vehicle is separate and distinct from the food truck itself, which meets the definition of a vending facility at 34 C.F.R. § 395.1(x). The additional vehicle would *not* meet the definition of a vending facility because it will not be selling articles or services, either automatically or manually. Instead, it will serve as “appropriate auxiliary equipment” to support the operation of that vending facility (as used but not defined in the RSVFP definition of “vending facility”) or would be “other equipment” under the VR program used in the vending facility, as specified in the Rehabilitation Act and its regulations for the benefit of the RSVFP. In other words, the additional vehicle is equipment that will be used in support of the vending facility. As such, the purchase of this additional vehicle would be allowable with both RSVFP set-aside funds under 34 C.F.R. § 395.9(b)(2) and with VR funds (both Federal and non-Federal funds used for match purposes) pursuant to section 103(b)(1) of the Rehabilitation Act and 34 C.F.R. § 361.49(a)(5). Therefore, if the SLA uses RSVFP set-aside funds to buy this additional vehicle, the expenditures can count towards the State's match requirement under the VR program. The State agency must ensure the purchase of any such additional vehicle is consistent with State policies and rules developed in accordance with 34 C.F.R. § 361.49(b) and 34 C.F.R. §§ 395.3 and 395.4, as well as with the Federal cost principles at 2 C.F.R. §§ 200.403 through 200.405. The State agency also must obtain prior written approval from RSA prior to using VR funds (either Federal or non-Federal used for match purposes) to purchase any such additional vehicle for the vending facility pursuant to 2 C.F.R. § 200.407. As with the food truck, the SLA would own the additional vehicle, but the Federal government maintains a Federal interest in it if it is paid with Federal VR funds and the State agency must ensure it retains title to the vehicle for program use in accordance with 2

C.F.R. § 200.313(a).²¹ When it is time to dispose of the additional vehicle because it no longer serves a purpose for the VR program or RSVFP, the VR agency must consult with RSA, in accordance with 2 C.F.R. § 200.313, to determine whether any Federal interest remains in the asset.

7. The SLA found an opportunity to open a vending facility in a strip mall where the prior lessee operated a cafe. Under this State's law, the RSVFP is authorized to operate on private property. The site already contains a fully equipped kitchen with respect to appliances. The current lessee, who is retiring from the restaurant business, gave the SLA the option to purchase the tables, chairs, and cookware directly from them. The rental agreement for the vending facility site is \$2,000 per month, and it includes internet service. However, the vending facility is responsible for utility bills (i.e., electricity and water) in addition to the monthly rent.

In this case, the site meets the definition of a vending facility, as defined at 34 C.F.R. § 395.1(x), because it dispenses food and drink, will be operated by a licensed blind vendor, and will be administered by the SLA. Because the State's law allows the SLA to operate vending facilities on private property, this vending facility falls within the scope of the RSVFP and allowable activities of the VR program under section 103(b)(1) of the Rehabilitation Act and 34 C.F.R. § 361.49(a)(5). Therefore, the VR agency may use VR funds (both Federal and non-Federal funds used for matching purposes under the VR program) to pay the acquisition costs associated with acquiring this vending facility. For example, some of the acquisition costs could include the first month's lease amount, security deposit, and the amount paid to the former cafe operator for the cookware, tables, chairs, and other essentials²² necessary to start up the cafe as a vending facility. The acquisition costs also could include initial fees for health inspections and license fees necessary to begin operation of the cafe at that strip mall. RSVFP set-aside funds cannot be used to pay any of these costs because 34 C.F.R. § 395.9(b) does not authorize the expenditure of these funds for acquisition of vending facilities.

With respect to the ongoing lease and utility payments of water and electricity, in this example (which is on private property) VR funds (both Federal and non-Federal) also could be used to pay these costs during the initial establishment period of the vending facility, not to exceed the initial six months in accordance with 34 C.F.R. § 361.49(a)(5)(iii). See RSA-TAC-24-03 for further guidance on the purchase of stocks and supplies and the payment of operational costs during the initial establishment period.

8. Building on Example 7, Vendor C is pleased with how busy the cafe is after being open for two months and wants to hire one additional staff person to assist with food preparation and service.

Staffing costs are considered ongoing operational costs of a vending facility. As such, they are allowable under the VR program and may be paid with VR funds (both Federal and non-Federal) so long as they are incurred during the initial establishment period of that vending facility, and not later (34 C.F.R. § 361.49(a)(5)(iii)). In this example, Vendor C

²¹ See footnote 19.

²² The tables, chairs, cookware, and other essentials acquired from the prior cafe operator cannot constitute "equipment" because the per unit acquisition cost for each item is likely much less than \$1,000. To constitute "equipment" purchased or acquired for the benefit of the RSVFP, it must have a per unit acquisition cost level of \$1,000 or the State's capitalization threshold level, whichever is less.

has been in operation for only two months. The State's written policies under 34 C.F.R. § 361.49(b) allow the agency to pay for necessary operational costs for a period up to six months. In this case, because the vending facility is new, the VR agency could determine it reasonable and necessary, in accordance with Federal cost principles at 2 C.F.R. §§ 200.403 through 200.405, to pay the staffing costs of the new staff person for up to the next four months. In so doing, the agency would cover the staffing costs through the end of the six-month initial establishment period of that vending facility, consistent with 34 C.F.R. § 361.49(a)(5)(iii). See RSA-TAC-24-03 for a more detailed discussion of the use of VR funds for the payment of operational costs.

9. Building on the facts in Examples 7 and 8, Vendor C has been operating for two years and notices the floor tile is badly chipped in a few places and creating a tripping hazard; they also have grown tired of the wall color. Vendor C approaches the SLA about obtaining financial assistance to replace the damaged floor tiles and change the color of the walls to their favorite color. According to the lease agreement, flooring maintenance is the responsibility of the tenant due to the heavy foot traffic caused by the lessee's customers and equipment. Painting is also the lessee's responsibility unless the need arises due to damage caused by a natural disaster or water main break.

Expenditures incurred for the purpose of maintenance of a vending facility or equipment, consistent with the requirements at 2 C.F.R. § 200.452, are allowable when they do not increase the value or useful life of the capital asset and are incurred to keep the facility or equipment in "efficient operating condition." In this example, replacing the damaged floor tiles would constitute "maintenance" as described in 2 C.F.R. § 200.452, but painting the walls in this example would not. As with any expenditure of Federal VR funds or non-Federal funds used for matching purposes, the State agency also must ensure that the cost satisfies the Federal cost principles at 2 C.F.R. §§ 200.403 through 200.405, particularly that the cost is reasonable and allocable to the VR program. In this example, the cost would be allocable to the VR program since the lease agreement makes clear that maintenance of the flooring is the responsibility of Vendor C, not the strip mall landlord. Although these costs are not needed by Vendor C, other allowable maintenance expenditures could include annual check-ups of the heating, ventilation, and air conditioning system or other major appliances, refinishing hardwood floors, or painting a wall that is badly damaged. These costs are examples of what could be necessary for the efficient operation of the vending facility or equipment and, therefore, could constitute maintenance as permitted by 2 C.F.R. § 200.452 with Federal funds, including VR funds and non-Federal funds used for matching purposes. In contrast, repainting or reflooring for cosmetic purposes only (i.e., to change the color or style) would not be considered "maintenance" under 2 C.F.R. § 200.452 and, thus, would not be allowable under the VR program with either VR program funds or non-Federal funds used for match purposes under the VR program. With changes made for cosmetic purposes only, the vending facility or equipment could continue to operate efficiently without such changes, meaning the changes are not "necessary for the efficient operation" of the facility or equipment, as required by 2 C.F.R. § 200.452. RSVFP set-aside funds cannot be used to pay for either the floor tiles or painting the walls because 34 C.F.R. § 395.9(b) does not authorize the expenditure of these funds for the maintenance of vending facilities, only for the maintenance of equipment, which the floor tiles and walls of the vending facilities are not.

10. Building on the facts in Example 7 and 8, Vendor C has been operating the cafe for 10 years. During that time, they have seen a lot of changes at the strip mall and have noticed

there is not the same level of interest in a cafe. Rather, customers appear more interested in a micro-market style facility. Because Vendor C has established rapport with the customers, the vendor wants to remain at the site but wants to change the nature of the vending facility from a cafe to a micro market. The SLA agrees, as does the owner of the strip mall. To make this conversion, Vendor C and the SLA identified that additional refrigeration cases will need to be installed, as well as additional shelving. Vendor C also wants to install an additional self-service kiosk to assist with customer traffic flow.

Neither VR program nor RSVFP requirements (i.e., section 103(b)(1) of the Rehabilitation Act, 34 C.F.R. § 361.49(a)(5), and 34 C.F.R. § 395.9(b)(2)) set time or maximum dollar amount limits on the purchase of equipment for use in vending facilities. Therefore, VR agencies and SLAs may use VR funds and RSVFP set-aside funds to acquire 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 as acquisition costs with both VR program funds (Federal and non-Federal used for match purposes) and RSVFP set-aside funds. As noted previously in this TAC, the authority under the RSVFP to purchase equipment with set-aside funds is treated similarly to the authority to acquire other equipment under the VR program for the benefit of the RSVFP.

Therefore, the VR agency or SLA could use VR or RSVFP set-aside funds to purchase equipment needed by Vendor C for the conversion of the facility from a cafe to a micro market; allowable costs for the acquisition of the equipment under either funding stream could include costs for readying the space to meet the installation requirements (e.g., drywall and flooring work or electrical and plumbing upgrades necessary for the refrigeration cases). There is no time limit for the purchase of such equipment. If the agency uses Federal VR funds, non-Federal funds or RSVFP set-aside funds used for match purposes to acquire the equipment, the equipment and associated installation costs must be reasonable and necessary in accordance with the Federal cost principles, and the State VR agency must obtain prior written approval from RSA before initiating the purchase of any of this equipment, pursuant to 2 C.F.R. § 200.407.

11. A private landowner has approached the SLA to initiate conversations about selling land to the SLA to operate a vending facility across from a State park. State law allows RSVFP vending facilities on private property. Although the location could potentially be a thriving location, there is no building or other structure onsite.

The land does not meet the definition of a “vending facility” at 34 C.F.R. § 395.1(x) because there is no facility from which articles or services may be sold or dispensed. Therefore, there can be no acquisition of a vending facility with the purchase of land under section 103(b)(1) of the Rehabilitation Act and 34 C.F.R. § 361.49(a)(5). For this reason, VR funds cannot be used to purchase land. RSVFP set-aside funds also may not be used for this purpose pursuant to 34 C.F.R. § 395.9(b).

12. The State owns land that could serve as a potential site for a thriving RSVFP vending facility. The State’s administrative agency has approached the SLA about taking over management of the land for use under the RSVFP; however, there is no building onsite. The State’s administrative agency has indicated there are no State funds to construct the building necessary for the vending facility.

As was true in Example 10, there is no vending facility, as that term is defined at 34 C.F.R. § 395.1(x), to acquire when there is land with no buildings. Therefore, there are no acquisition costs of a vending facility to pay with VR funds. Furthermore, there is no authority under section 103(b)(1) of the Rehabilitation Act or 34 C.F.R. § 361.49(a)(5) to engage in construction activities for the benefit of the RSVFP. While VR funds may be used to engage in capital expenditures to ready the facility for its use when installing equipment or engaging in other activities during the acquisition period of the vending facility, as well as to improve its operation at a later time, consistent with the requirements at 2 C.F.R. § 200.439, these activities are distinguishable from the actual construction of a building. Under the VR program, the VR agency only has the authority to engage in construction activities with a community rehabilitation program (CRP) (section 101(a)(17) of the Rehabilitation Act), and a RSVFP vending facility is not a CRP.²³

13. A private landowner approaches the SLA with an offer to sell land, including some structures on it, at a reduced price for the expressed purpose of providing employment opportunities for individuals with disabilities. The property is adjacent to a State park and near a municipal beach. Upon purchase of the land, the property would become State property with title vesting in the State. The vendor assigned to the facility would offer guided tours, camping gear rental, and sell food, drink, and other supplies.

Although it is not a traditional acquisition cost, the purchase of the property and building could meet the definition of “acquisition costs,” as defined at 2 C.F.R. § 200.1, for purposes of acquiring a vending facility pursuant to section 103(b)(1) of the Rehabilitation Act and 34 C.F.R. § 361.49(a)(5). As such, in this example, if consistent with the State’s procurement policies and procedures, as well as with Federal cost principles, the VR agency could use VR funds to purchase the land and buildings (which are “capital assets,” as defined at 2 C.F.R. § 200.1), including any other costs necessary to ready the site for its intended purpose as a vending facility (i.e., those costs that meet the definition of “acquisition costs” at 2 C.F.R. § 200.1), for use as a RSVFP vending facility. It would not be permissible to use RSVFP set-aside funds for this purpose since these funds may not be used to acquire vending facilities pursuant to 34 C.F.R. § 395.9(b). In purchasing this real property, the State must satisfy the requirements at 2 C.F.R. § 200.311.

If the State agency uses VR funds – either Federal or non-Federal funds – to purchase this land and buildings, the VR agency must obtain prior written approval before initiating the expenditure of funds. It is also important to remember that such expenditure of Federal VR funds will create a Federal interest, as defined in 2 C.F.R. § 200.1. As a result, the VR agency would be required to submit a SF-429 each year to report that Federal interest in real property in accordance with 2 C.F.R. § 200.330.

With respect to the other equipment and costs needed to ready this facility for its intended purpose, the acquisition of equipment, or initial stocks and supplies and operational costs, the State agencies should refer to other examples in this TAC and in RSA-TAC-24-03 in terms of allowability and the appropriate fund source to use.

²³ A CRP is a program that provides one or more VR services to individuals with disabilities to assist them in achieving an employment outcome. See complete definition for a CRP at section 7(4) of the Rehabilitation Act and 34 C.F.R. § 361.5(c)(7). A RSVFP vending facility, on the other hand, dispenses articles and services that do not constitute VR services, as that term is defined at section 7(40) of the Rehabilitation Act and 34 C.F.R. § 361.5(c)(57).

14. The SLA has been managing a snack bar in a Federal building for many years and has assigned Vendor D to take over the operation of the facility after the prior vendor retired. There is an opportunity for the SLA and Vendor D to sign a franchise agreement with a national doughnut shop. The franchise agreement requires Vendor D to pay an initial fee plus royalties in exchange for the use of the franchisor's trademark, business practices, or logo.

In this example, the snack bar reconfigured as a doughnut shop continues to meet the definition of a "vending facility" at 34 C.F.R. § 395.1(x). As noted throughout RSA-TAC-24-03, the first day of Vendor D's establishment period for the operation of this vending facility is the date they took over the operation of the vending facility. This is when the six-month clock (or whatever period up to six months may be specified in State rules and policies and procedures) starts with respect to the purchase of initial stocks and supplies and the payment of initial operating expenses under 34 C.F.R. § 361.49(a)(5)(ii) and (iii). All purchases of initial stocks and supplies and payment for initial operating expenses must be determined to be reasonable given the facts presented by Vendor D's circumstances, consistent with the Federal cost principles at 2 C.F.R. §§ 200.403 through 200.405, particularly § 200.404. These initial stocks and supplies and operating costs are only allowable with VR program funds, either Federal or non-Federal used for matching purposes. RSVFP set-aside funds may not be used to pay these costs because they are not authorized under 34 C.F.R. § 395.9(b).

The franchise agreement in this example is new with Vendor D, meaning that it is part of acquisition of the vending facility that Vendor D will be operating. As such, it would be reasonable to consider the initial payment of franchise fees and related expenses to that franchise agreement as included in the acquisition costs of acquiring the vending facility under the VR program for the benefit of the RSVFP; these acquisition costs could be paid with VR funds (Federal and non-Federal) pursuant to section 103(b) of the Rehabilitation Act and 34 C.F.R. § 361.49(a)(5). The monthly franchise fees could also be paid with VR program funds (both Federal and non-Federal), as necessary, as ongoing operational costs for a period not to exceed six months so long as this is consistent with the agency's written policies developed in accordance with 34 C.F.R. § 361.49(b), RSVFP policies and procedures, and the Federal cost principles at 2 C.F.R. §§ 200.403 through 200.405. See RSA-TAC-24-03 for more information about the use of VR funds for the purchase of initial stocks and supplies and the payment of ongoing operational costs. RSVFP set-aside funds may not be used to pay these costs because they are not authorized under 34 C.F.R. § 395.9(b).

15. This example provides information about how RSA could determine based on the facts presented here if a request for expenditure of VR funds is reasonable, necessary, and allocable when presented as a request for prior written approval pursuant to 2 C.F.R. § 200.407. Vendor E operates a vending facility at a state highway rest area and has done so for many years. The vending facility consists of eight vending machines that sit on a concrete pad under a wooden open-air shelter. The rest area is comprised of a rest room facility, a parking lot with 80 parking spots, and a sidewalk that runs the length of the parking lot, with a short path up to the vending facility and another up to the rest room facility. This year, the State Department of Transportation (DOT) has determined it necessary to repave the parking lot and put in accessible sidewalks with curb cuts to satisfy Federal requirements under the Americans with Disabilities Act (ADA). When replacing the sidewalk that runs the length of the parking lot, DOT also wants to replace the short

paths that lead to the restrooms and to the vending facility, as well as the concrete pad under the vending machines. According to the SLA, the wooden shelter is at least 30 years old and needs to be replaced due to structural integrity problems caused by age, termites, and rot. The restrooms are also in need of repairs to the roof. DOT suggests to the SLA that it's the SLA's responsibility to cover the costs since Vendor E has their vending facility at that highway rest area. In an effort to protect Vendor E's interest, the VR agency submits a request for prior written approval to RSA, in accordance with 2 C.F.R. § 200.407, to pay the entire cost of all these repairs, including pouring all new sidewalks with curb cuts, paving the entire parking lot, pouring a new concrete pad, erecting a new wooden shelter, and repairing the roof for the restroom facility, for a total cost of \$3 million. The VR agency plans to use a mixture of Federal VR funds and State appropriated funds to cover the costs.

In reviewing the request and obtaining additional facts from the VR agency, RSA determined that only a small portion of the proposed costs submitted are allowable under government-wide requirements for maintenance and repair and capital expenditures at 2 C.F.R. §§ 200.452 and 200.439, respectively, and are consistent with Federal cost principles at 2 C.F.R. § 200.403 through 200.405. Specifically, RSA determined that the costs to erect the wooden shelter protecting the vending machines and the concrete pad that serves as the base for the vending machines are allowable capital expenditures, as defined at 2 C.F.R. § 200.1, for purposes of the vending facility acquired for the benefit of the RSVFP and operated by Vendor E. These expenditures, incurred in accordance with 2 C.F.R. § 200.439, will increase the value and useful life of the vending facility that had been initially acquired under the VR program, pursuant to section 103(b)(1) of the Rehabilitation Act and 34 C.F.R. § 361.49(a)(5), for the benefit of the RSVFP. Therefore, by incurring these costs, the VR agency is protecting the Federal interest already invested in this vending facility by improving its value and useful life.

In discussing the facts further with the VR agency, RSA learned that the sidewalk path between the main sidewalk and the vending facility is 12 feet long and is the only paved path to the vending facility. This path leads to nothing but the vending facility and the main sidewalk. After learning this additional information, RSA agreed that this expenditure, too, is an allowable capital expenditure for the vending facility because it is a necessary pathway to and from the facility. Without it, access would be quite limited through the grass. RSA determined that this cost was reasonable and necessary and allocable to the VR program under the Federal cost principles because the benefit was solely for the benefit of those individuals using the vending facility.

With respect to the restroom roof, the main sidewalk, and the parking lot, RSA denied the request for prior approval on the basis that these costs are not allocable to the VR program under 2 C.F.R. § 200.405. Specifically, RSA determined that it is DOT's responsibility to maintain, repair and do capital improvements to highway rest areas, not the VR program. For that reason, it would not be reasonable under 2 C.F.R. § 200.404 for the VR program to bear these other maintenance and repair and capital expenditures costs. Therefore, it is reasonable for the VR program to pay for those costs associated with the vending facility only. To that end, RSA approved costs totaling \$1 million and denied the request for the remaining \$2 million.

CONCLUSION:

VR agencies and SLAs have wide flexibility in the type of activities in which they can engage through RSVFP vending facilities, so long as those activities are consistent with State laws, State rules, and policies and procedures. Before expending any funds for purposes associated with vending facilities and equipment, State agencies must analyze the facts of the proposed costs to determine whether they are allowable under Federal requirements, including government-wide requirements in 2 C.F.R. part 200 applicable to all Federal grantees. State agencies must determine what activity they plan to conduct to ensure expenses are allowable under each funding source, are consistent with Federal cost principles, and that prior written approval from RSA is obtained when required. Making this determination will require agencies to analyze the type of property upon which the vending facility will operate, the type of vending facility that will be operated, the articles and/or services that vending facility will sell, and the expenses involved in establishing and operating the vending facility.

EFFECTIVE DATE: Immediately upon issuance.

INQUIRIES:

David Steele, Chief
Fiscal Unit
David.Steele@ed.gov

CITATIONS:

- [Build America, Buy America Act](#)
- [Davis-Bacon Act](#)
- [Randolph-Sheppard Act](#)
- [Rehabilitation Act of 1973](#)
- State Vocational Rehabilitation Services Program Regulations [34 C.F.R. §§ 361.5\(c\)\(4\), 361.5\(c\)\(57\), 361.13\(c\), 361.49\(a\)\(5\) and 361.49\(b\)\(1\), 361.60, 361.62](#)
- Randolph-Sheppard Vending Facilities Program Regulations at [34 C.F.R. §§ 395.1, 395.2, 395.3, 395.4, 395.5, 395.9\(b\)\(1\) and \(2\), 395.14, 395.30](#)
- OMB Uniform Grants Guidance at [2 C.F.R. §§ 200.1, 200.311, 200.313, 200.330, 200.403 through 200.405, 200.407, 200.439, 200.452](#)
- BABAA Regulations at [2 C.F.R. part 184](#)
- [Program Assistance Circular 89-02](#) (January 3, 1989)
- [RSA TAC-24-03](#) (April 5, 2024)

Danté Q. Allen
Commissioner

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