

CRS Report for Congress

The Randolph-Sheppard Act: Business Enterprise Opportunities for the Blind

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Summary

The Randolph-Sheppard Act (P.L. 74-732), as amended, was enacted to provide blind individuals with remunerative employment and to enhance their economic well-being. Under the act, blind individuals in need of employment are given priority in the operation of vending facilities and automatic vending machines on federal property. Typically, blind individuals who receive Randolph-Sheppard contracts act as managers, subcontracting with food service organizations that provide meal and/or vending services on a day-to-day basis. Since its inception, the Randolph-Sheppard Business Enterprise Program has extended its reach beyond federal locations to include state, county, municipal, and private installations. However, the priority provisions of the Randolph-Sheppard Act (R-SA) apply only to the operation of vending facilities on federal property. This program is not mandatory, though every state except Wyoming chooses to participate.

The 1974 amendments to the R-SA added cafeterias to its list of eligible “vending facilities.” Congress, however, did not specify whether military mess halls should be treated as “cafeterias” in context of the R-SA. This issue has been quite controversial, raising concerns about possible conflicts between the R-SA and AbilityOne (formerly Javits-Wagner-O’Day, or JWOD), a statutorily mandated procurement program that promotes employment opportunities for persons who are blind or severely disabled.

In FY2007, a total of 2,545 blind vendors operated 3,031 Randolph-Sheppard vending facilities, generating \$713.2 million in gross income, with average vendor earnings of \$46,963. This report provides a brief history of the Randolph-Sheppard program and an explanation of how it is structured. Then, detailed financial and operational data are provided — including the number of program participants, their overall sales, and their earnings. Finally, the report explores how JWOD and the R-SA intersect, or overlap. It concludes with a discussion of recent legislation that has been introduced to reform and combine the AbilityOne and the Randolph-Sheppard programs. This report will be revised as new program data become available and as legislative or judicial events warrant.

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The Randolph-Sheppard Act: Business Enterprise Opportunities for the Blind

Background

Signed into law in 1936, the Randolph-Sheppard Act¹ (R-SA) provides employment opportunities to qualified blind persons through the operation of vending facilities² in federal *buildings*. In enacting the R-SA, Congress's explicit intent was to foster independence and self-sufficiency among the visually impaired. During its first 15 years, however, this program met with little success.³ Encouraged by the invention of "vending machines," legislators revisited the R-SA in 1954 (P.L. 83-565), expanding its applicability to federal *properties*⁴ (previously *buildings*).

Nonetheless, the Randolph-Sheppard vending program still failed to employ significant numbers of blind individuals — in part because the law continued to provide agency officials with broad discretion when implementing R-SA provisions: blind or visually impaired vendors were only to be given preference "so far as is feasible." This feasibility standard was replaced in 1974 (P.L. 93-516) when R-SA amendments clearly established a federal-state relationship and created a process by which priority was given to blind vendors seeking to operate vending facilities on federal property. The 1974 changes also broadened the reach of the R-SA to include management functions once thought to be beyond the capability of blind individuals. Finally, these amendments also added cafeterias to the R-SA's list of eligible "vending facilities."

Today, four types of retail facilities are governed by R-SA regulations:⁵

- Automatic (coin-operated) vending machines.

¹ P.L. 74-732, 49 Stat. 1559. The Randolph-Sheppard Act is named for its two sponsors: Representative Jennings Randolph (WV) and Senator Morris Sheppard (TX).

² The R-SA defines "vending facilities" as "automatic vending machines, cafeterias, snack bars, cart services, shelters, counters, and such other appropriate auxiliary equipment as the Secretary [of Education] may by regulation prescribe as being necessary for the sale of the articles or services described in [20 USC §107a(a)(5)] and which may be operated by blind licensees."

³ Erik L. Christiansen, "The Applicability of the Randolph-Sheppard Act to Military Mess Halls," *The Army Lawyer*, Department of the Army Pamphlet 27-50-371, April 1, 2004, pp. 1-13.

⁴ Federal property is any building, land, or other real property owned, leased, or occupied by any agency or department of the United States (20 USC §107e (3)).

⁵ 34 CFR §395.

- Retail stores, which provide prepackaged food (e.g., hot dogs, microwaveable sandwiches, hot/cold beverages, prepared soups). These stores often also sell magazines, newspapers, and tobacco products.
- Snack bars/delicatessens, which offer prepackaged goods but also “prepared-on-premises” food items.
- Cafeterias, which at a minimum, must serve hot meals.

The program has also expanded from federal facilities to include some state, county, and private facilities.⁶ However, private vending facilities are not subject to Randolph-Sheppard Act regulations.

Program Description

Under the Randolph-Sheppard vending facilities program, state licensing agencies (SLAs) are responsible for recruiting, training, and licensing blind⁷ and visually impaired individuals to manage vending facilities.⁸ SLAs by definition are entities that provide vocational rehabilitation services to persons who are blind, such as job counseling or training, information and referral, and job search assistance. Blind entrepreneurs who receive funds from an SLA to manage vending facilities usually subcontract with a food service company to help with operations and/or provide expertise. SLAs administer Randolph-Sheppard programs at the state-level, where these programs are most commonly referred to as “business enterprise programs”; by contrast, the U.S. Department of Education dubs them “vending facility programs” for the blind.⁹ The R-SA requires that each participating state empower an elected committee to help inform and direct the work of its SLA. As a result, Randolph-Sheppard program policies may vary from state to state.

The Randolph-Sheppard program is funded by several sources. These include federal funds allocated through the vocational rehabilitation state grant program under the Rehabilitation Act of 1973, as amended;¹⁰ a portion of net proceeds from

⁶ Under the Surface Transportation Assistance Act (P.L. 97-424), as amended, blind vendors are given priority when state governments award contracts for the operation of vending facilities in rest areas along interstate highways.

⁷ Legal blindness is defined as visual acuity (vision) of 20/200 or less in the better eye with the best correction possible. This means that a legally blind individual would have to stand 20 feet (6.1 m) from an object to see it — with vision correction — with the same degree of clarity as a normally sighted person could from 200 feet (61 m). Approximately 10% of those people deemed legally blind have no vision. The rest have some vision, from light perception alone to relatively good acuity.

⁸ To be eligible for operating a Randolph-Sheppard vending facility, an individual must be a U.S. citizen as well as be legally blind.

⁹ See [<http://www.ed.gov/programs/rsarsp/index.html>].

¹⁰ For further information, see CRS Report RL34017, *Vocational Rehabilitation Grants to* (continued...)

vending machines on federal property;¹¹ a set-aside levied by states on vendors;¹² and state appropriations. The program is administered by the Rehabilitation Services Administration, part of the Office of Special Education and Rehabilitative Services (OSERS) in the Department of Education.

Program Data

Table 1 describes the number of blind contractors who received contracts to manage vending operations under the Randolph-Sheppard program since FY1998. It also details the number of facilities, both federal and non-federal, that these vendors have served, and the average annual earnings of each vendor. In FY2007 (the latest year for which data are available), 2,545 vendors oversaw 3,031 vending facilities.¹³ There were 1,070 (35.3%) vending facilities located on federal property, whereas 1,961 (64.7%) were located on non-federal property. Nationally, average annual earnings for vendors were \$46,753, an 0.4% decrease compared with the prior fiscal year (**Table 1**).¹⁴

¹⁰ (...continued)

States and Territories: Overview and Analysis of the Allotment Formula, by Scott Szymendera, and CRS Report RL31298, *Rehabilitation Act: Summary of 1998 Reauthorization Legislation*, by Carol O'Shaughnessy.

¹¹ The law allows in certain cases a portion of net proceeds from vending machines on federal property to be set aside for program support.

¹² Not all states levy a set-aside on vendors. However, a reasonable amount of funds could be set aside from the net proceeds generated by the operation of vending facilities for such purposes as maintenance and replacement of equipment, purchase of new equipment, management services, and health insurance contributions, among other things (see 34 CFR 395.9).

¹³ Over and above these licensed blind operators, the Randolph-Sheppard program employed an additional 500 individuals with disabilities in FY2007.

¹⁴ U.S. Department of Education, OSERS, RSA-IM-07-05, June 27, 2007.

Table 1. Randolph-Sheppard Program Vendors, FY1998-FY2007

| | FY1998 | FY1999 | FY2000 | FY2001 | FY2002 | FY2003 | FY2004 | FY2005 | FY2006 | FY2007 |
|--|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Number of Vendors | | | | | | | | | | |
| Federal locations | 974 | 925 | 897 | 900 | 912 | 905 | 911 | 895 | 894 | 888 |
| Non-federal locations | 1,979 | 1,888 | 1,819 | 1,811 | 1,768 | 1,726 | 1,618 | 1,669 | 1,681 | 1,657 |
| Total | 2,953 | 2,716 | 2,729 | 2,711 | 2,680 | 2,631 | 2,529 | 2,564 | 2,575 | 2,545 |
| Number of Vending Facilities | | | | | | | | | | |
| Federal locations | 1,135 | 1,119 | 1,114 | 1,111 | 1,097 | 1,096 | 1,110 | 1,115 | 1,069 | 1,070 |
| Non-federal locations | 2,256 | 2,232 | 2,178 | 2,083 | 2,030 | 2,023 | 1,994 | 1,965 | 1,971 | 1,961 |
| Total | 3,391 | 3,351 | 3,292 | 3,194 | 3,127 | 3,119 | 3,104 | 3,080 | 3,040 | 3,031 |
| Average Earnings of Vendors^a | | | | | | | | | | |
| Total | \$29,815 | \$32,556 | \$34,298 | \$34,921 | \$37,246 | \$38,147 | \$40,503 | \$43,584 | \$46,963 | \$46,753 |

Source: Data provided by U.S. Department of Education, Office of Special Education and Rehabilitative Services, June 16, 2008.

a. Calculated by dividing total vendor earnings by vendor person-years.

Table 2 details gross income and net earnings for Randolph-Sheppard vendors for each year from FY1998 to FY2007. In FY2007, the program generated \$713.2 million in gross income (meaning overall sales and vending machine income combined), with \$116.3 million in net earnings (meaning aggregate profit) going to vendors.

Table 2. Earnings and Funding Sources of the Randolph-Sheppard Program, FY1998-FY2007
(\$ in millions)

| | FY1998 | FY1999 | FY2000 | FY2001 | FY2002 | FY2003 | FY2004 | FY2005 | FY2006 | FY2007 |
|----------------------------|------------|-------------|-------------|-------------|-------------|-------------|----------------------|-------------|-------------|-------------|
| Income and Earnings | | | | | | | | | | |
| Gross income ^a | \$425.5 | \$448.1 | \$471.1 | \$466.3 | \$453.6 | \$475.9 | \$620.4 ^b | \$661.3 | \$692.2 | \$713.2 |
| Vendors Earnings | 86.4 | 90.6 | 93.9 | 95.0 | 96.8 | 98.7 | 105.2 | 111.2 | 115.7 | 116.3 |
| Funding Sources | | | | | | | | | | |
| Vending machine income | n/a | 15.3 | 16.0 | 14.5 | 16.6 | 15.2 | 18.7 | 17.2 | 20.0 | 21.9 |
| Vendor levied set-aside | n/a | 15.3 | 14.2 | 12.0 | 11.5 | 12.5 | 11.1 | 12.8 | 13.1 | 14.4 |
| State appropriation | n/a | 6.6 | 6.6 | 5.9 | 6.2 | 6.7 | 6.7 | 9.2 | 7.1 | 7.0 |
| Federal funds ^c | n/a | 34.0 | 38.5 | 32.3 | 31.4 | 27.8 | 37.5 | 37.1 | 35.2 | 39.3 |
| Total | n/a | 71.1 | 75.3 | 64.7 | 65.8 | 62.2 | 74.0 | 76.3 | 75.4 | 82.6 |

Source: Data provided by the U.S. Department of Education, Office of Special Education and Rehabilitative Services, June 16, 2008.

Note: n/a = not available.

a. Gross sales, vending machine income, and fair minimum return.

b. The notable increase in “gross sales” after FY2003 is attributable to a change in reporting procedures related to military dining facility contracts granted to state licensing agencies. Beginning in FY2004, these agencies were advised to report all information about Department of Defense contracts in their reports to the Rehabilitation Services Administration.

c. Funds allocated through the Vocational Rehabilitation State Grant program.

Intersection Between the Randolph-Sheppard and AbilityOne Programs

The 1974 amendments have also raised questions about the scope of the Randolph-Sheppard preference. Specifically, disability rights advocates and various food service contractors have contended that the R-SA’s blind vendor priority conflicts with other set-aside programs, such as AbilityOne. AbilityOne, formerly the Javits-Wagner-O’Day program (JWOD), is a federal program that helps provide jobs for individuals with disabilities through federal contracts.

Signed by President Franklin D. Roosevelt in 1938, the Wagner-O’Day Act¹⁵ sought to provide employment opportunities for people who were blind by allowing them to manufacture mops and brooms to sell to the federal government. In 1971,

¹⁵ P.L. 75-739.

Congress amended this Act¹⁶ to include people with severe disabilities and to enable the program to sell services — not just material goods — to the federal government. Today, through the products and services it offers to federal entities, AbilityOne facilitates employment opportunities for thousands of individuals with disabilities.

The Committee for Purchase From People Who Are Blind or Severely Disabled (hereafter, the Committee) is the federal agency authorized to administer AbilityOne. The Committee is responsible for determining which products and services will be furnished to the government by people who are blind or severely disabled. It also determines the fair market prices to be paid for those items. Two nonprofit agencies, the National Industries for the Blind (NIB) and NISH (formerly the National Institute for the Severely Handicapped), have been designated to assist AbilityOne with program implementation and the production of goods and services.

The AbilityOne and the Randolph-Sheppard programs both provide contracting preferences for the blind. However, AbilityOne typically offers visually impaired and severely disabled individuals employment in “sheltered” work environments, while R-SA provides a somewhat broader array of opportunities, including management positions.¹⁷

Table 3 outlines the structural differences between AbilityOne and Randolph-Sheppard. Under the Randolph-Sheppard program, contracts are typically awarded through direct negotiations or competitive bidding; by contrast, competition is a non-issue with AbilityOne, because goods or services are purchased by federal agencies off of a procurement list established by the Committee.

¹⁶ P.L. 92-28, 85 Stat. 77, 41 U.S.C. §§ 46-48c.

¹⁷ The AbilityOne employees are paid hourly wages, according to federal government rules and regulations; R-SA vendors typically receive a percentage of contract profits. The Government Accountability Office estimated that in 2007 the average wage of an AbilityOne employee was \$13.15 per hour, including fringe benefits (see *Defense Contracts: Contracting for Military Services under the Randolph-Sheppard and Javits-Wagner-O'Day Programs*, GAO-08-3, October 2007).

Table 3. Comparison of the Randolph-Sheppard and AbilityOne Programs

| | Randolph-Sheppard | AbilityOne |
|--|--|--|
| Statute | P.L. 74-732, 49 Stat. 1559, as amended by P.L. 83-565 and P.L. 93-516 20 U.S.C. §§ 107-107f | P.L. 92-28, 85 Stat. 77, 41 U.S.C. §§ 46-48c |
| Date authority expires | Indefinite. | Indefinite. |
| Regulations | 34 CFR 395, 41 CFR 101-20.2 | 41 CFR 51 |
| Program participants or beneficiaries | Blind vendor, usually with the assistance of a “teaming partner.” | Local nonprofit agency using blind or severely disabled workers. |
| Type of services offered | The Randolph-Sheppard program provides opportunities for legally blind individuals to manage a broad array of food-service operations, including <ul style="list-style-type: none"> • cafeterias • coffee shops • snack bars • vending locations | Many products (e.g., office supplies) are available under the AbilityOne Program, as are a wide range of services, including <ul style="list-style-type: none"> • administrative, janitorial, and laundry services • commissary shelf stocking • full food service • grounds maintenance |
| Administration | Department of Education is responsible for oversight, but program is operated at the state level by a state licensing agency under the auspices of the state vocational rehabilitation program. | The Committee for Purchase from People Who Are Blind or Severely Disabled is the AbilityOne program’s federal overseer. It works with two Central Nonprofit Agencies, NISH and NIB, to coordinate the provision of goods and services to the federal government. |
| Competitiveness of contracts | The Randolph-Sheppard Act requires that federal government agencies <i>give priority</i> for the operation of vending facilities on federal property to blind persons licensed by a state agency. | No. The Javits-Wagner-O’Day Act requires that federal government agencies purchase certain products and services from a procurement list maintained by The Committee and updated in the Federal Register. |
| Purchasers of services or material goods | Federal government, primarily. Two of the largest purchasers are the Department of Defense and the General Services Administration. | Federal government, primarily. Once a product or service is on the AbilityOne Procurement List, the government must buy it from an the designated nonprofit agency. |
| Requirements to employ individuals with disabilities | No specific requirement that blind managers hire workers with disabilities. | The Committee requires that at least 75% of the total number of direct labor hours procured from a participating agency be completed by persons with disabilities. |

Source: Adapted by Congressional Research Service from GAO-08-3, *Contracting for Military Services under the Randolph-Sheppard and Javits-Wagner-O’Day Programs*, October 2007.

Despite the fundamental distinctions between these two programs, the fact that each provides food services, loosely defined, has led some observers to argue that Randolph-Sheppard and AbilityOne are de facto competitors in certain circumstances. For instance, tensions have mounted around food service operations on military bases in recent years. Because many of the items that may be purchased off of the Committee's (JWOD) Procurement List are also tasks that a Randolph-Sheppard vendor could or would supply as part of a cafeteria contract, including mess hall attendant services (e.g., waiters), sales support (e.g., cashiers), and cleaning assistance (e.g., table busing, dishwashing), JWOD and the R-SA have been perceived to be in conflict, or in competition. Moreover, R-SA vendors argue that they are at a competitive disadvantage for a number of reasons. First, JWOD services have a fixed price, predetermined by the Committee; second, JWOD companies do not have to go through a laborious, and often time-consuming, competitive bidding process. Most importantly, federal agencies/departments are prohibited from acquiring goods and services (equivalent to JWOD items) from sources other than the National Industries for the Blind and NISH nonprofit agencies.¹⁸

Legislative Activity

The Javits-Wagner-O'Day (JWOD) and Randolph-Sheppard (R-SA) Modernization Act of 2008 (S. 3112) was introduced by Senator Michael Enzi on June 11, 2008. This comprehensive bill would reauthorize, reconfigure, and expand both programs, bolstering the job training aspects of each and increasing regulatory oversight to prevent waste, fraud, and abuse. S. 3112 changes the name of the existing Committee for Purchase From People Who Are Blind or Severely Disabled to the Committee for the Advancement of Individuals with Disabilities, giving this entity responsibility for administering both the R-SA program and the AbilityOne/JWOD procurement program. This bill also places an explicit emphasis on greater oversight of both JWOD and R-SA, including regular financial audits of Randolph-Sheppard's central nonprofit agencies and of state licensing agencies participating in the JWOD program. Finally, S. 3112 underscores the importance of converting nonintegrated community rehabilitation programs into programs that offer integrated, community-based employment opportunities.

Other significant changes that would occur if S. 3112 were to become law include the following:

- A requirement that SLAs train and give R-SA permits to persons with other severe disabilities beyond blindness (starting three years after enactment of the legislation).
- A requirement that any existing state VR self-employment program be merged with the R-SA to create a single self-employment framework for all persons who are blind or have severe disabilities.
- A limit of three years on contracts between R-SA vendors and their teaming partners.

¹⁸ Only the Federal Prison Industries can override JWOD's priority for products/services.

Provisions specific to R-SA military contracting include the following:

- A clarification which states that, in the context of military contracting, the term cafeteria refers only to “services pertaining to a full food service military dining facility.” It does not include auxiliary services such as dish washing, maintenance, cleaning, or related support.
- An order that prohibits the AbilityOne program from competing for full food contracts. Any full food contract that AbilityOne currently has on its procurement list will be removed five years after this bill becomes law.
- A decree that state licensing agencies will no longer receive preferences when competing for full food service contracts *with the military*.

S. 3112 was referred to the Senate Committee on Health, Education, Labor, and Pensions. No similar legislation has been introduced in the House of Representatives.