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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

FEDERAL PERSONNEL AND
COMPENSATION DIVISION

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FEB 27 1979

The Honorable Lloyd Bentsen
United States Senate
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Dear Senator Bentsen:

In response to your request of September 29, 1978, on behalf of your constituents, we reviewed the implementation of the Randolph-Sheppard Act Amendments of 1974 with regard to the vending machine income sharing provisions. The Elected Committee of Operators, Business Enterprise Program of the Texas State Commission for the Blind, stated that the Randolph-Sheppard Act Amendments of 1974 were not being implemented properly by Federal agencies in the State of Texas, especially the Department of Defense (DOD) and the Postal Service. The distribution of vending machine income required by the 1974 Amendments was of particular concern to the Committee.

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We compared DOD and Postal Service regulations regarding vending machine income with the Department of Health, Education, and Welfare (HEW) implementing regulations and the 1974 Amendments to determine if they were consistent. The DOD regulations were notably inconsistent with HEW regulations concerning the exemption of certain military exchange vending machines from the income sharing provisions. The State licensing agency may seek resolution of this inconsistency through the arbitration procedures provided for in the 1974 Amendments. We are also referring this matter to the appropriate Committees for consideration in their oversight role.

Further, although not contrary to the 1974 Amendments and the HEW regulations, current Postal Service policy on "break-even" food operations, in order to provide adequate food service to its employees at the lowest reasonable cost, reduces the effect of the income sharing provisions designed to enhance blind participation.

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Since the Committee expressed particular concern over the implementation of the 1974 Amendments in Texas, we visited three military installations and one metropolitan post office in Texas to determine how well they were complying with the income sharing provisions.

At the three military installations no vending machine income had been shared with blind vendors or the State Commission because the machines were considered exempt by DOD under either its regulations or the 1974 Amendments. The post office had been sharing vending machine income with the State Commission but when the Postal Service's long standing policy that most vending machines not make a profit is fully implemented, the amount shared is expected to markedly decrease. The results of our work are discussed more fully in the enclosure.

We are sending copies of this report to the Chairmen, House Subcommittee on Select Education and Senate Subcommittee on the Handicapped, which are the Congressional oversight subcommittees, and to interested agencies. We trust this information satisfies your request.

Sincerely yours,



H. L. Krieger
Director

Enclosure

GAO EXAMINATION OF
DEPARTMENT OF DEFENSE AND POSTAL SERVICE
COMPLIANCE WITH VENDING MACHINE INCOME
SHARING PROVISIONS OF RANDOLPH-SHEPPARD
ACT AMENDMENTS OF 1974

The Randolph-Sheppard Act Amendments of 1974 were enacted as title II of Public Law 63-651 on November 21, 1974. This law provides that income from vending machines on Federal property be shared in specified percentages with blind vendors or State blind vendor licensing agencies depending on the degree the machines compete with the blind vendors. Section 203(a)(1) of the law states that the Department of Health, Education, and Welfare (HEW) is the principal agency for carrying out the Randolph-Sheppard Act. The law further states that the Secretary of HEW shall take such action and promulgate such regulations as he deems necessary to assure compliance with the income sharing provisions. It also provides for arbitration procedures to resolve disputes arising as a result of the 1974 Amendments. These arbitration procedures were included in HEW's implementing regulations.

HEW proposed implementing regulations on December 23, 1975, and issued them on March 23, 1977. The Postal Service published its implementing regulations in December 1977. The Department of Defense (DOD) issued its implementing regulations on April 7, 1978.

DISAGREEMENT OVER EXCHANGE VENDING MACHINE EXEMPTION

The DOD regulations are inconsistent with HEW's implementing regulations concerning the exception of certain vending machines in the military exchange service from the income sharing provisions of the 1974 Amendments. As a result, less money is going to the blind than is required by the law and the HEW regulations.

The 1974 Amendments established new provisions governing the right of blind vendors or state blind vendor licensing agencies to share in the income from vending machines operated on Federal property. Income from vending machines within retail sales outlets under the control of military exchanges are specifically excluded from these income-sharing provisions.

As the implementing agency, HEW has established regulations enforcing the statute's income sharing and exempting provisions. The HEW regulations rephrase the Amendments' military exchange exemption slightly by stating that net income from vending machines within operated retail sales outlets of the military exchanges are exempt.

DOD has taken the position that the exemption excludes net income from all vending machines under the control of military exchanges, regardless of machine location, from the income-sharing requirements of the Randolph-Sheppard Act. DOD has implemented regulations reflecting this broader interpretation which state that net income from vending machines operated by or for the exchange services are exempt from income-sharing provisions. DOD contends that the statute is not clear and that congressional intent as reflected by the legislative history supports its interpretation. HEW, on the other hand, argues that DOD's interpretation is too broad and that the statute is clear on its face.

We conclude that HEW and its regulations most accurately interpret the law. On the basis of the language of the statute and its legislative history, we believe DOD's contention that all exchange system vending machines are excluded from income-sharing provisions of the Act is inconsistent with the law as well as HEW's regulations. Notwithstanding its argument that all exchange system vending machines already are excluded from the income-sharing provision under the present law, DOD drafted new legislation to exempt the military exchange services from all provisions of the Randolph-Sheppard Act Amendments of 1974. This proposed legislation was submitted to the Office of Management and Budget (OMB) for review in March 1978. On January 8, 1979, OMB sent the proposed legislation to interested agencies for comment.

Officials at the Army and Air Force Exchange Service (AAFES), (considered by DOD to be representative of the exchange services) estimated that of its 43,952 vending machines, the exemption as interpreted by HEW applies to only 580 machines (approximately 1.3 percent) operated within AAFES retail sales outlets. According to AAFES officials, these machines are also excluded under another provision exempting all machines at a location if their combined net income is less than \$3,000 per year. The remaining 43,372 machines were considered exempt under DOD implementing regulations. Thus, no blind vendors or State

licensing agencies were sharing exchange vending machine income. AAFES officials estimated that, if required to comply with HEW regulations, AAFES would make annual payments of \$1.7 million and \$6.7 million in retroactive payments through January 1979.

Officials of the Navy Resale System Office and the Marine Corps Exchange Service have not quantified their potential liabilities under HEW regulations but stated payments would be required.

AAFES operated all but 12 (less than one percent) of the 1,400 vending machines at the three Texas military installations we visited. Only 27 AAFES-operated machines (about 2 percent) were inside AAFES retail sales outlets. These machines also were exempt under the \$3,000 minimum income exemption. The remaining 12 machines were operated by a number of other activities and also were exempt under the above noted \$3,000 exemption.

ENFORCING POSTAL SERVICE POLICY REDUCES PAYMENTS TO BLIND

Implementation of Postal Service policy requiring the operations of certain food service facilities on a break-even (no profit, no loss) basis is reducing the effect of the income-sharing provisions designed to enhance blind participation.

Postal Service policy is that full line vended operations (includes hot and cold foods constituting a full meal) will be operated on a break-even basis in order to provide food services to its employees at the lowest reasonable cost. It provides that (1) no commissions will be paid to the Postal Service, (2) contractor profit will be limited to specified percentage of gross sales and (3) any excess profits will be returned to Postal Service employees in the form of lower prices. As a result, no commissions or profits from full line food vending operations are shared with the State licensing agency. The only vending machine income shared with blind is from isolated vending operations in the work areas, which are not full line vending operations and which earn income in excess of \$3,000 a year.

The concept of break-even food operations in the Postal Service pre-dates the Randolph-Sheppard Act Amendments of 1974 by as much as 10 years. According to Postal Service officials, however, it was not until the 1974 Amendments

demanded tighter accounting controls that the Postal Service began enforcing the break-even policy. Postal Service officials stated that the intent of the break-even policy is to provide full line food service to its employees at the lowest reasonable price, and not to deprive blind vendors or State blind agencies of any income.

The Post Office we visited in Texas has paid over \$2,400 annually under the income sharing provisions of the 1974 Amendments. However, the Post Office began enforcing the break-even policy and all food vending operations are now on a break-even basis. As a result, no income from these operations is to be shared with the blind after January 1, 1979.

LACK OF ACTION BY TEXAS STATE LICENSING AGENCY

Officials of the Texas State Commission for the Blind stated that they have not aggressively sought DOD and Postal Service compliance with the vending machine income requirements. Neither has the Commission received nor taken any dispute concerning the income sharing provisions through the arbitration procedures provided for in the 1974 Amendments. However, during the course of our review, the Commission sent an information letter to the installation commanders of the 28 major military installations in Texas offering to discuss their obligations under the 1974 Amendments.

LACK OF BLIND PARTICIPATION STATISTICS

HEW officials stated that little reliable statistical data on the blind vendor program is available for fiscal years 1977 and 1978, because of problems in computerizing the data beginning in fiscal year 1977 when HEW's implementing regulations were issued. The latest data available from HEW on the blind vendor program was manually tabulated from State licensing agency reports. This tabulation (See p. 5) contains overall program data, and does not deal solely with vending machine income.

We obtained the following information concerning vending machine income shared with the blind from DOD and the Postal Service. DOD officials stated that through fiscal year 1978 the military services paid approximately \$1.2 million to the blind under the 1974 Amendments. Postal Service officials reported payments of approximately \$2.1 million through fiscal year 1978.

STATISTICS ON BLIND PARTICIPATION IN THE
 RANDOLPH-SHEPPARD VENDING FACILITY PROGRAM
 FOR FISCAL YEARS 1975-77

	<u>Fiscal Year 1975</u>	<u>Fiscal Year 1976</u>	<u>Fiscal Year 1977</u>
Total Gross Income	149,219,484	163,609,731	178,777,400
Federal Locations	41,989,183	45,780,377	49,949,006
Non-Federal Locations	107,230,301	117,829,354	128,828,394
Total Number of Vendors	3,810	3,789	3,995
Federal Locations	1,004	991	1,026
Non-Federal Locations	2,806	2,798	2,969
Total Earnings of Vendors	29,907,126	33,314,552	36,540,835
Federal Locations	8,247,098	9,183,959	10,239,245
Non-Federal Locations	21,660,028	24,130,593	26,301,590
Average Earnings of Vendors	8,796	9,792	10,588
Federal Locations	9,000	10,452	11,177
Non-Federal Locations	8,712	9,636	10,375
Total of Vending Facilities	3,364	3,431	3,403
Federal Locations	880	882	878
Non-Federal Locations	2,484	2,549	2,525