

PERFORMANCE AUDIT

DEPARTMENT OF REHABILITATION SERVICES - BUSINESS ENTERPRISE PROGRAM

For the period January 1, 2007 through June 30, 2010



*Independently serving the citizens of
Oklahoma by promoting the
accountability and fiscal integrity of
governmental funds.*



Oklahoma State
Auditor & Inspector
Gary Jones, CPA, CFE

**Audit Report of the
Department of Rehabilitation Services -
Business Enterprise Program**

**For the Period
January 1, 2007 through June 30, 2010**



Oklahoma State Auditor & Inspector

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March 8, 2011

TO THE COMMISSION ON REHABILITATION SERVICES

This is the audit report of the Department of Rehabilitation Services' Business Enterprise Program for the period January 1, 2007 through June 30, 2010. The Office of the State Auditor and Inspector is committed to serving the public interest by providing independent oversight and by issuing reports that serve as a management tool to the State. Our goal is to ensure a government that is accountable to the people of the State of Oklahoma.

We wish to take this opportunity to express our appreciation to the agency's staff for the assistance and cooperation extended to our office during the course of our engagement.

Sincerely,

A handwritten signature in blue ink that reads "Gary A. Jones". The signature is fluid and cursive.

Gary A. Jones, CPA, CFE
Oklahoma State Auditor and Inspector

**Department of Rehabilitation Services
Business Enterprise Program
Performance Audit**

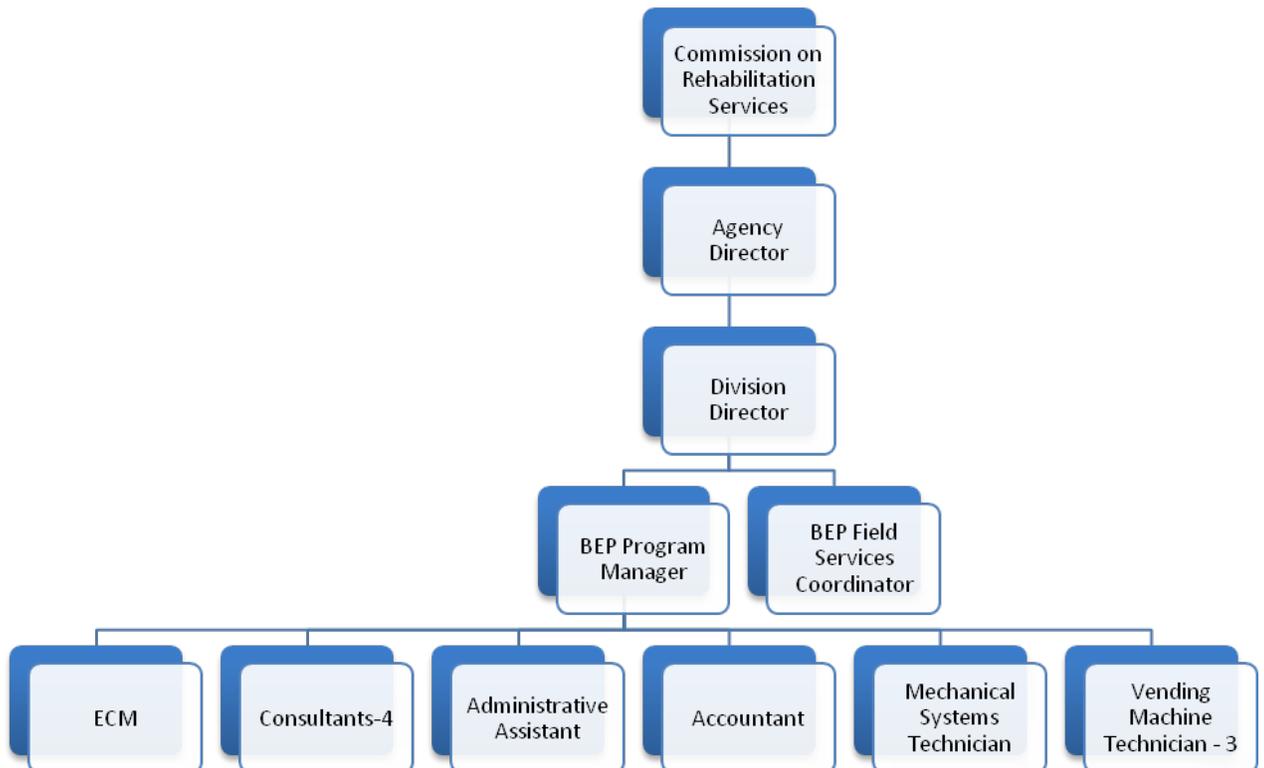
Background

The United States Randolph-Sheppard Act (Act) created the Business Enterprise Program (BEP or program). The program’s purpose is to provide blind people gainful employment, increase their economic opportunities, and help them become self-supporting. The Department of Rehabilitation Services (Agency) is the state agency responsible for administering the Act and managing the BEP. The Agency trains and assists licensed managers (LM) who are blind or visually impaired in establishing and operating food service businesses¹ in public and private facilities across the state. The Agency equips the locations, provides the initial inventory, and offers on-going technical support through business consultants. LMs pay a percentage of net proceeds from their operation to the Agency, which uses the funds for the LMs’ retirement and health insurance.

The LMs are collectively represented to the Agency through the elected committee of licensed managers (ECM). The ECM’s function includes but is not limited to actively participating in major administrative, policy, and program development decisions as well as receiving and transmitting grievances to the Agency at the request of LMs.

The BEP is governed by Title 612:25 of the Oklahoma Administrative Code (OAC). Any OAC sections discussed in the report can be seen in the Appendix.

Organization of the BEP



¹ Food service businesses can include vending machines, snack bars (selling limited lines of refreshment and prepared food items necessary for light meal services), and cafeterias.

Department of Rehabilitation Services
Business Enterprise Program
Performance Audit

**Purpose, Scope, and
Sample Methodology**

This audit was conducted at the request of the executive director of the Agency in accordance with 74 O.S. § 213.2.B (request from the chief executive officer of a governmental entity to conduct a performance audit).

The audit period covered was January 1, 2007 through June 30, 2010 unless noted otherwise in the body of the report.

We selected our samples in such a way that whenever possible, the samples are representative of the populations and provide sufficient evidential matter. Sample methodologies can vary and are selected based on the audit objective and whether the total population of data was available. Random sampling is the preferred method; however, we may also use haphazard sampling (a methodology that produces a representative selection for non-statistical sampling), or judgmental selection when data limitation prevents the use of the other two methods. We identified specific attributes for testing each of the samples. When appropriate, we projected our results to that population.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This report is a public document pursuant to the Oklahoma Open Records Act (51 O.S. § 24A.1 et seq.), and shall be open to any person for inspection and copying.

Objective 1 - Determine whether training provided to the program's LMs ensures certain goals² and objectives³ of the program are met.

Conclusion

The Agency should place LMs in a position to succeed through their initial and continuing training, facility/route placement, and ongoing support. This should enable them to manage an optimal number of facilities/vending machines as their careers progress, which in turn should increase the LMs' net profit. Various forms of informal and formal training have been provided to the LMs. However, we are unable to conclude as to whether the training provided to them ensured certain goals and objectives of the program were met due to BEP management's inability to provide certain supporting documentation related to:

- LMs that have been promoted for demonstrating their ability to manage a more complex operation;
- Occurrence and/or evidence of monthly inspections and annual evaluations; and
- Historical net profit by LMs.

² The goal determined significant is from OAC 612:25-2-2(b) (2), which states: "Administer a continuing process of career development and upward mobility for qualified persons in the Business Enterprise Program."

³ The objectives determined significant are from OAC 612:25-2-2(c) (5) and (6), which state: "(5) Develop and maintain standards of conduct and a system of accountability for Business Enterprise Program licensed managers. (6) Establish and maintain procedures for quality customer service."

Department of Rehabilitation Services
Business Enterprise Program
Performance Audit

Methodology

To accomplish our objective, we performed the following:

- Reviewed OAC 612:25-4-14(a) and (d) to obtain an understanding of the Agency's policies regarding LM training;
- Interviewed the BEP division director, the BEP field services coordinator, the BEP program manager, all four business consultants (as of July 2010), the former BEP training coordinator (who left the program in March 2010), and 27 LMs⁴ in person or through survey;
- Reviewed training policies and procedures from other states' BEPs;
- Requested a listing of LMs whose business activity (i.e. facilities, machines, net profit) had increased for the period July 1, 2008 to June 30, 2010;
- Randomly selected ten LMs from each of four randomly selected months (May 2009, September 2009, April 2010, and May 2010) to determine:
 - certain aspects of the LMs' monthly reports were accurate;
 - monthly inspection reports were completed and signed by the LM and business consultant; and
 - the business consultant identified any significant issues.
- Attempted to review annual evaluations for the sample of LMs noted in the preceding bullet.

Observation

Training Should Be Evaluated and Formalized

OAC 612:25-4-14(a) states in part, "The Business Enterprise Training Program trains clients in the day to day operations of the business enterprise. The scope of the program includes training in the Randolph-Sheppard Act, rules and regulations of the Business Enterprise Program, state and federal tax reporting, food service preparation and delivery, sanitation, personal appearance and hygiene, inventory and stocking, money management, staffing of personnel, and safety procedures..."

LMs who entered the BEP during the last 10 years received some method of formalized training from the former BEP training officer. Prior to this date, the specifics of training provided, if any, is unknown due to staff turnover. According to the training officer, the curriculum during the last 10 years consisted of eight weeks of classroom study using the "Manage First" series (a management development program created by the National Restaurant Association Educational Foundation) and eight weeks of on-the-job training. Each LM had to pass six "Manage First" tests and two BEP-specific tests: one is regarding completion of the monthly report and one regarding policies and procedures. (The term "policies and procedures" is used interchangeably with OAC.) However, the

⁴ Management represented to us that there were 42 LMs (this excludes one LM who is the focus of another audit currently being conducted by the Office of the State Auditor and Inspector) in the program as of June 30, 2010. Due to the nature of supporting documentation, we were unable to validate the completeness of this data. We judgmentally selected six managers to interview in person based on their Oklahoma City addresses and responses to our phone calls. A survey was sent to the remaining 36 LMs as well as 14 other LMs who were no longer in the program at June 30, 2010 per management. In total, responses to all or portions of our questions were provided by 27 LMs. Four of the LMs responding were not in the program at June 30, 2010. We believe the response rate of 48% (27/56 = 48%) is adequate for our purposes. The likelihood of obtaining additional, relevant information related to training from the LMs who did not respond was considered unlikely.

Department of Rehabilitation Services
Business Enterprise Program
Performance Audit

test on policies and procedures was discontinued during our audit period. An overall score of 80% was required to pass the training. Complete training records from this period do not exist.

We also interviewed or surveyed a total of 27 LMs (four of whom were not in the program at June 30, 2010). Only nine of those interviewed or surveyed felt they were adequately trained overall, while 15 others⁵ indicated they were somewhat or not adequately trained. A significant area LMs indicated they would like training on vending machine repair, so they could address issues without being totally dependent on the business consultants or vending machine technicians. Additional training topics mentioned were tax issues, completing monthly reports, personnel issues, ordering goods, familiarization with new equipment, computers, managing more lucrative facilities, and cash register training with Braille overlay.

It appears the most recent training curriculum was developed mainly by the training officer without any direction or input by management or the LMs. Without consistent and effective training, the goals and objectives of the BEP will be more difficult to achieve.

Recommendation

We recommend management evaluate their current training curriculum and determine how the topics mentioned by the LMs could be improved upon or added to the training. Management may wish to consider working with other state agencies, such as the Oklahoma Department of Career and Technology Education (ODCTE), to discuss the possibility of developing and providing a specific training course for new and existing LMs. Training topics mentioned in these discussions should include, but not be limited to:

- The OAC (discussed further under objective 3 of this report);
- Prerequisite requirements (e.g., successful completion of a small business management course from a community college is required in Maryland, while Michigan requires successful completion of certain program-related competencies from an institution of higher education which offers a major in food or hotel management);
- Completing monthly reports;
- Finance/accounting /tax issues;
- Human resources;
- Technology;
- Vending machine repair;
- Training duration, format, and location; and
- Specialized training for managing high sale facilities, including personal financial stability (e.g., can the LM make payroll in the first month of operation when managing a large enterprise with multiple employees?).

Views of Responsible Officials

The agency concurs with this finding. Training curriculum will be evaluated and partnerships will be sought to develop and provide a more specific training course.

⁵ Of the LMs who replied to the survey, three did not respond to this question.

**Department of Rehabilitation Services
Business Enterprise Program
Performance Audit**

Observation

Goals and Objectives Not Being Measured

An effective internal control system provides for accurate and reliable data so management can properly monitor and evaluate whether program goals are being met.

To determine if the training provided to the LMs ensured the goal of administering “a continuing process of career development and upward mobility,”⁶ we defined our measures of an LM experiencing career development and upward mobility as someone who:

- was promoted to a potentially more profitable facility during their tenure in the program;
- was assigned additional operations (had one facility/vending machine and now operates more than one) during their tenure in the program; and
- increased their net profit over time.

Management was unable to provide us with documentation indicating how many facilities/locations an LM operated at their entry date into the BEP and how many they operated at June 30, 2010.

Management began tracking the LMs’ monthly net profits beginning in October 2009; however, this information is obtained from the monthly reports, which we determined may not be reliable (see objective 4’s conclusion).

Failure to retain accurate and reliable data hinders management’s ability to properly evaluate whether the program’s goals have been achieved.

Recommendation

We recommend management define specific measures to be used to ensure the program’s goals are met. This process should include, at a minimum, gathering data and ensuring it is accurate, reliable, and retained. Policies and procedures related to this process should be established and implemented.

Views of Responsible Officials

The agency concurs with this finding. Policies and procedures will be developed to improve data collection and ensure that the program’s goals are met.

Observation

Monthly Inspections/Annual Evaluations Are Not Occurring

According to OAC 612:25-2-2(c) (5) and (6), two of the program’s objectives are:

- Develop and maintain standards of conduct and a system of accountability for Business Enterprise Program licensed managers.
- Establish and maintain procedures for quality customer service.

OAC 612:25-4-4(e) requires the consultants to complete monthly inspection reports and OAC 612:25-4-58 requires an annual evaluation of the LMs to be performed.

We determined the inspection reports and annual evaluations could be used as measures for determining whether the program objectives had been met. Management could not

⁶ OAC 612:25-2-2(b) (2) indicates this is a goal of the BEP.

**Department of Rehabilitation Services
Business Enterprise Program
Performance Audit**

provide us with 31 of 40 randomly selected monthly inspection reports, nor could they provide us with any annual evaluations because they had not been performed.

Management did not make the monthly inspection reports or the annual evaluations a priority. Without this formal communication, management has no way of ensuring the LMs are operating in compliance with applicable laws and regulations or are providing an appropriate level of customer service to maximize their potential success.

Recommendation

We recommend applicable personnel should immediately begin conducting the monthly inspections and annual evaluations as required by the OAC. Documentation supporting the monthly inspections and annual evaluations should be retained. The results should be communicated to the LMs so they can continue to improve their operations.

Views of Responsible Officials

The agency concurs with this finding. Monthly inspections and annual evaluations will be conducted as required by the OAC.

Observation

Program Data Is Not Retained and May Not Be Accurate

An effective internal control system provides for accurate records to be maintained to support program operations.

Multiple types of historical and current data related to the LMs were requested during the course of our procedures. As noted previously in this report, some data could not be provided because it was not maintained. That which was provided had errors. We requested a listing of LMs in the program at June 30, 2010. The requested information included items such as name, address, entry date in the BEP, and location of facilities/routes. The following was noted:

- The entry date for one LM was incorrect;
- The exit date for one LM was incorrect; and
- There were numerous inconsistencies in the data, which were later clarified.

Management has not made maintaining complete and accurate records a priority. BEP records may be incorrect and incomplete.

Recommendation

We recommend management perform a complete and thorough examination of their records related to the LMs to ensure they are accurate. Policies and procedures should be established and implemented to ensure accurate and reliable records are retained.

Views of Responsible Officials

The Agency concurs with this finding. Management will perform an examination to correct program data that is inaccurate. Procedures regarding the maintenance of the program data will be developed.

**Department of Rehabilitation Services
Business Enterprise Program
Performance Audit**

training course for new and existing business consultants. Training topics mentioned in these discussions should include, but not be limited to:

- The OAC;
- Prerequisite requirements (e.g., education and job-related experience);
- Analyzing the monthly reports;
- Finance/accounting /tax issues;
- Human resources;
- Technology; and
- Training duration, format, and location.

Views of Responsible Officials

The agency concurs with this finding. Training curriculum will be evaluated and partnerships will be sought to develop and provide a more specific training course for business consultants.

Objective 3 - Determine whether certain portions of Oklahoma Administrative Code Title 612:25 are written to allow the program to achieve its objectives.

Conclusion

Generally, OAC 612:25 (BEP) was written to allow the program to achieve its objectives¹¹. However, several modifications should be made to these policies to improve their clarity or to properly reflect the procedures performed.

Methodology

To accomplish our objective, the following was performed¹²:

- Reviewed OAC 612:25 to identify policies and procedures that appeared significant to the Agency’s ability to meet the program’s objectives¹³;
- Interviewed the BEP division director, the BEP field services coordinator, the BEP program manager, all four business consultants (as of July 2010), and 27 LMs. Only two of the LMs had comments related to the OAC;
- Reviewed policies and procedures from other states’ BEPs specifically for discussions related to business expenses and set-aside payments.

Observation

OAC Should Be Modified

An effective internal control system includes detailed written policies and procedures to inform employees and LMs about the Agency’s expectations and program-related practices.

In reviewing the OAC and through discussions with management, the LMs, and business consultants, we noted sections of the OAC appear vague, open to interpretation or their location seemed “out of place” which could all lead to confusion for the reader. For example:

¹¹ OAC 612:25-2-2(c) identifies the seven program objectives.

¹²Compliance with the OAC was not included as part of this objective.

¹³ As a result of inquiry and our own review of the OAC, numerous suggestions and comments were brought to our attention; however, many of them were considered to be commentary and/or of insignificant magnitude to be included in the report. Our observations will focus on key issues that should be addressed by management.

Department of Rehabilitation Services
Business Enterprise Program
Performance Audit

- OAC 612:25-4-58 requires annual evaluations of the LMs to include a determination they have actively participated in the program. However, the OAC does not explain how active participation is to be measured. As a result, each consultant would have to use his or her own judgment in determining this has been demonstrated¹⁴;
- OAC 612:25-4-27 discusses that the Agency will provide the LMs with an initial inventory. Management has indicated that they use OAC 612:10-7-230.4 to provide the LMs with an initial inventory of up to \$10,000. The OAC discussing the initial inventory process does not detail this practice; as a result, an employee or LM may not be aware of this allowance;
- OAC 612:25-4-14 and 612:25-4-15 discuss LM training. Management should consider the recommendations made in objective 1 of this report in potential revisions to this OAC;
- OAC 612:25-4-4 defines roles for both the Agency and the business consultant. Currently, the business consultants have been assigned all of these roles, many of which conflict with each other. Failure to properly separate these responsibilities could impact the business consultants' ability to remain independent when performing their duties;
- OAC 612:25-6-21 discusses business expenses the LMs can claim on their monthly reports. The OAC is vague as to what is allowable business expense, but is detailed regarding disallowance of mileage and limitation of telephone expenses. The current language allows employees and LMs to interpret "business expense" based on their own judgment. As a result, the allowability of an item is open to interpretation;
- OAC 612:25-6-21(c) discusses that supporting documentation should be retained for business expenses; however, the OAC does not discuss documentation that should be retained to support amounts reported for gross sales, beginning inventory, salaries, etc. Without specifying what supporting documentation is expected for amounts reported on the monthly reports, they may be misstated;
- OAC 612:25-6-22(a) requires the business consultant to review the monthly report for items such as correct loan payment, correct set-aside payment, and approved business expenses. The OAC has no requirement that a review of the monthly reports' supporting documentation should be performed. In addition, the policy is written in such a way that not all items on the report may be reviewed. Without review of the supporting documentation and all amounts on the monthly reports, errors could occur and not be detected in a timely manner;
- The OAC does not include a code of ethics or a conflict of interests statement. For example, OAC should address whether the relative of a business consultant or another Agency employee qualifies to be an LM. Without this policy, the potential for inappropriate relationships exists;
- As discussed in objective 2 of this report, the OAC does not include any policy regarding the training of business consultants; and
- The OAC does not include specific procedures on how often inventory counts should be performed by the LMs. Amounts on the monthly reports can be misstated.

¹⁴ As discussed in objective 1 of this report, these annual evaluations are not being performed.

**Department of Rehabilitation Services
Business Enterprise Program
Performance Audit**

Failure to have clear, detailed OAC could hinder employees' and LMs' understanding of their duties and responsibilities as well as management's ability to properly assess whether program objectives have been met. Making certain portions of the OAC clear and precise does not appear to have been a priority for management.

Recommendation We recommend management review the OAC related to the BEP and modify as needed to ensure it is clear and properly reflects the procedures performed by the Agency and LMs to ensure the program objectives are met.

Views of Responsible Officials The agency concurs with this finding. The agency will review the OAC's identified in this finding and any others applicable to the program. The goal of the review will be to provide greater clarity towards the Agency's expectations and program related practices.

Objective 4 - Determine whether certain information submitted by the LMs on their monthly reports is accurate.

Conclusion With respect to the items tested, certain information (gross sales, beginning/ending inventory values, merchandise purchased, business expenses) submitted by the LMs on their monthly reports is not accurate.

Methodology To accomplish our objective, the following was performed:

- Reviewed OAC 612:25-6-22 (monthly reports);
- Interviewed the BEP division director, the BEP program manager, and all four business consultants (as of July 2010) to obtain an understanding of the report completion and review process; and
- Attempted to test ten randomly selected LMs from each of four randomly selected months from the period July 1, 2008 to June 30, 2010 (May 2009, September 2009, April 2010, and May 2010) to ensure certain aspects¹⁵ of the LMs' monthly reports were accurate. However, after performing work on 16 reports with an error rate of 88%, further testing was determined to be unnecessary because it was unlikely our results would change.

Observation **Monthly Reports Are Not Accurate**

An effective internal control system provides detailed written policies and procedures to inform employees and LMs about the Agency's expectations and program-related practices.

OAC 612:25-6-21(c) requires that expense items identified on the monthly reports should have supporting documentation located in the business enterprise available for review.

We tested 16 monthly reports covering 11 different LMs. All reports were significantly mathematically accurate. However, 14 of the 16 reports did not have adequate supporting documentation, either because no support existed or the support did not agree to the report.¹⁶ Examples of typical exceptions are:

¹⁵ The aspects of the reports were determined to be: 1) the report was mathematically accurate, and 2) amounts reported for gross sales, merchandise purchased, beginning inventory, and business expenses agreed to supporting documentation.

¹⁶ We accepted a variance of 5% before this was considered an error.

**Department of Rehabilitation Services
Business Enterprise Program
Performance Audit**

- No supporting documentation for gross sales (e.g., cash register receipts);
- No supporting documentation for salaries, some of which were paid in cash; and
- Supporting documentation did not agree to what was reported or did not exist for other expense items. In addition, based on discussion with management, the business consultants, the BEP accountant, and the LMs, inventory counts are being conducted at the LMs' discretion. This may be quarterly, twice per year, or never.

Although the OAC requires documentation be retained, many LMs did not retain the documentation because of the scarcity of requests by the business consultants for the information. As discussed in objective 3 of this report, the OAC does not provide consistent guidance on supporting documentation for the monthly reports or inventory counts.

Monthly reports may be misstated. Consequently, the set-aside payments and merchandise loan payments¹⁷ made to the Agency may not be accurate.

Recommendation

We recommend management evaluate and modify the OAC and specify exactly what they expect the LM to retain as support for amounts presented on the monthly report. For example:

- Gross sales in a snack bar facility: the OAC could specify all sales should be recorded in a cash register and the daily cash register receipts summary should be retained as supporting documentation;
- Gross sales for vending machines: currently, sales are identified on the monthly report. However, no mechanism is in place to provide documentation of the sales amount or to verify the amount. Management should consider researching potential technology¹⁸ that would allow for better accountability and improve the reporting process for these sales.

Lastly, management should determine the frequency with which inventory counts should be conducted and formally communicate this requirement to the LMs through a specific policy.

Views of Responsible Officials

The agency concurs with this finding. Due to the serious nature of this finding, DRS has elected to structure the remedy using a fiscal model that captures reporting, business ethics and review. Training and policy changes will address the inappropriate nature of cash payments. Detailed instructions will explain monthly reporting requirements and detail what expenditures are allowable and what documents must be attached to the report to be considered a timely filing. Finally, DRS will develop standards that will allow for DRS to compare /review required tax and withholding filings in order to validate the monthly reports.

¹⁷ See OAC 612:25-4-27 in the Appendix.

¹⁸ We spoke with one supplier of electronic vending machine monitoring systems. The supplier indicated this system could be added to each machine for around \$300 plus a minimal monthly fee. This system would allow a reviewer to log onto a website to view a certain machine's sales and compare this to what the LM presented on their report. There is an initial investment in this type of product; however, the BEP may be losing this amount or more from under-reporting of sales, which ultimately reduces the amount of the set-aside payments.

**Department of Rehabilitation Services
Business Enterprise Program
Performance Audit**

Other Items Noted

Although not considered significant to the audit objectives, we feel the following issues should be communicated to management.

Observation

Communication Barriers Exist

An effective internal control system has in place policies and procedures that reduce the risk of errors, fraud, and professional misconduct within an organization. A key factor in this system is the environment established by management. Management's ethics, integrity, attitude, and communication style become the foundation of all other internal control components.

As part of our procedures, we interviewed BEP employees and multiple LMs. From these discussions, we noted that communication challenges exist between management and the LMs and are causing, among other things, poor moral. Whether the communication barriers are factual or perceived, they may be having a negative impact on the success of the BEP and compliance with applicable regulations. In addition, the risk for fraud increases.

Recommendation

We recommend management be cognizant of the risks associated with ineffective communication within a program and work to eliminate any such barriers in an impartial manner. Clear communication channels should flow in both an upstream and downstream direction within the program. For example, in implementing the changes recommended in this report, management should explain to the LMs why the changes are occurring as well as how they will impact and protect the LMs going forward.

Views of Responsible Officials

The Agency concurs with this finding and understands the vital role communication plays in the success of the program.

Observation

Business Consultant Job Specifications Should Be Reviewed

The starting salary for the business consultant is approximately \$1,900 per month with required knowledge, skills, and abilities including but not limited to: principles and practices of small business management; retail merchandising; sales; bookkeeping; the operation and maintenance of vending machines; advising operators in the use of modern business techniques; and communicating effectively. Discussions with BEP personnel in Iowa and Missouri indicate beginning salaries in comparable positions in those states are approximately \$3,000 per month while Arkansas' beginning salary is \$2,100 per month.¹⁹ Management has high expectations of this position; however, their financial commitment does not appear proportionate with the responsibilities.

Recommendation

We recommend management consider whether the salary range, the knowledge, skills, and abilities, and the education and experience as currently designed are appropriate for this position.

¹⁹ We considered other states in obtaining this information; however, of those that provided responses we believe Iowa, Missouri, and Arkansas are the most comparable to Oklahoma's cost of living.

**Department of Rehabilitation Services
Business Enterprise Program
Performance Audit**

**Views of Responsible
Officials**

The Agency concurs with the finding. The Agency recognizes that salaries are below that of surrounding states. While this has been an issue across the board, management will review available options.

Observation

Cash Transactions Not Supported

An effective internal control system has in place policies and procedures which:

- reduce the risk of errors, fraud, and professional misconduct within an organization;
- ensure adequate supporting documentation is maintained for all transactions.

Through discussions with LMs and review of monthly reports, we noted that some LMs are paying their employees' salaries in cash. Management has not developed an OAC addressing this issue. As a result, supporting documentation may not exist for these types of transactions and may misstate the monthly reports.

Recommendation

We recommend management consider this practice and determine whether they believe it is acceptable. Once a decision is made, an OAC should be developed and implemented reflecting management's expectations.

**Views of Responsible
Officials**

The agency concurs with the finding. DRS views the practice identified in this finding as unacceptable. Policies and training will address the serious nature of this practice and the ramifications for failure to comply with new standards and rules.

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**Department of Rehabilitation Services
Business Enterprise Program
Performance Audit –Appendix**

Oklahoma Administrative Code

612:25-1-1. Purpose

- (a) The purpose of the Business Enterprise Program Manual is to provide uniform rules and regulations for the administration of the Business Enterprise Program operated by the State Licensing Agency.
- (b) The purpose of this Chapter is to set forth the legal authority from which these rules are derived, to proclaim the mission of the Business Enterprise Program, define terms used in this body of policy, and to set forth the organization of the Business Enterprise Program.

612:25-2-2. Mission of the Business Enterprise Program

- (a) **Mission.** The mission of the Business Enterprise Program is to establish and maintain business enterprises operated by qualified individuals who are blind.
- (b) **Goals.** The goals for the Business Enterprise Program are set forth in (1) and (2) of this Subsection.
 - (1) Provide employment opportunities for qualified persons who are blind by establishing and maintaining Business Enterprise Program Facilities.
 - (2) Administer a continuing process of career development and upward mobility for qualified persons in the Business Enterprise Program.
- (c) **Objectives.** The objectives of the Business Enterprise Program are set forth in (1) through (7) of this Subsection.
 - (1) Establish and equip Business Enterprise Program Facilities.
 - (2) Assure availability of Business Enterprise Program licensed managers.
 - (3) Provide management support services to Business Enterprise Program licensed managers.
 - (4) Develop and maintain standards of conduct and a system of accountability for State Licensing Agency staff.
 - (5) Develop and maintain standards of conduct and a system of accountability for Business Enterprise Program licensed managers.
 - (6) Establish and maintain procedures for quality customer service.
 - (7) Attain the program's financial stability through its administration in an operationally efficient and cost-effective manner.

612:25-2-3. Federal legal authority

- (a) The Randolph-Sheppard Act of 1936, as amended [20 U.S.C. Section 107 et seq.], authorizes designated State Licensing Agencies to establish and administer Business Enterprise Programs in their respective States. The law locates the State Licensing Agency (SLA) for the program in the individual State or territorial agency which offers vocational rehabilitation services for individuals who are blind under the Rehabilitation Act [29 USC 701 et seq.].
- (b) Primary regulatory authority for the Business Enterprise Program is found at 34 CFR Part 395. Other regulatory guidelines impacting the Business Enterprise Program are found at 34 CFR Part 361 and 32 CFR 260.

612:25-2-4. State legal authority

Rules for the Business Enterprise Program are promulgated by the Oklahoma Commission for Rehabilitation Services under the authority of 74 O.S., Section 166.1 et seq., and in accordance with the Administrative Procedures Act, 75 O.S., Sections 250 et seq.

612:25-2-5. Definitions

The following words or terms, when used in this Manual, shall have the following meaning unless the context clearly indicates otherwise:

Department of Rehabilitation Services
Business Enterprise Program
Performance Audit - Appendix

"Acquired stock" means that stock in which the licensed manager has accrued equity and which the State Licensing Agency, in conjunction with the licensed manager or licensed managers involved, has determined is suitable for use. Stock in which the licensed manager has not accrued equity is not acquired stock and remains the property of the State Licensing Agency.

"Act" means the Randolph-Sheppard Vending Facility Act (Public Law 74-732), as Amended by Public Law 83-565 and Pub Law 93-516, 20 U.S.C., Ch. 6A, Sec. 107.

"Active participation" means a process of good faith negotiations involving the Elected Committee of Licensed Managers and the State Licensing Agency. The Committee must be given the opportunity to have meaningful input into the decision-making process in the formulation of program policies which affect licensed managers. The SLA is charged with the ultimate responsibility for the administration and operation of all aspects of the Business Enterprise Program.

"BEP" means the Business Enterprise Program of the State Licensing Agency which provides self-employment opportunities for qualified persons who are blind.

"BEP Programs Manager" means the person who has responsibility for the operation of the Business Enterprise Program in the State.

"BEP Training Specialist" means an individual who is responsible for the SLA's part in planning, coordinating, and/or conducting the training activities for prospective licensed managers and for in-service and upward mobility training activities for experienced licensed managers.

"Blind person" means a person who, after examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the person shall select, has been determined to have (1) not more than 20/200 central visual acuity in the better eye with correcting lenses, or (2) an equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

"Board" or "Commission" means the governing body for the State Licensing Agency.

"Business consultant (BC)" means an individual who provides consultative and management services to those business enterprises and licensed managers in the area of the State to which the consultant is assigned.

"Business enterprise" means an approved business administered by the State Licensing Agency. See definition of "Vending Facility."

"Business Enterprise Program (BEP)" means the Business Enterprise Program services available to establish business enterprises for persons who are blind.

"Cafeteria facility" means a food dispensing business enterprise capable of providing a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a line where customers serve themselves from displayed selections. A cafeteria may be fully automatic or provide limited waiter or waitress service. Table and/or booth seating facilities are always provided.

"Client or Consumer" means any person who has made application for the State Licensing Agency's services and has been determined by the State Licensing Agency to be eligible for services.

"Commissioner" means the Commissioner of the Rehabilitation Services Administration (RSA) who exercises approval authority for the Federal government under the Randolph-Sheppard Act.

"Committee" means the Elected Committee of Licensed Managers.

"Contract" means a written agreement between the State Licensing Agency and officials in control of Federal or other property to establish a business enterprise.

"Contract labor" means a person or company that performs duties or services not a part of the regular duties of the business enterprise.

"Counselor" means Division of Vocational Rehabilitation or Division of Visual Services counselors assigned to the State Licensing Agency's program of vocational rehabilitation.

"Director" or "Executive Director" means the chief administrator of the State Licensing Agency.

Department of Rehabilitation Services
Business Enterprise Program
Performance Audit –Appendix

"Displaced licensed manager" means a licensed manager who has been displaced from his or her business enterprise through no fault of his or her own.

"Dry/Wet facility" means any business enterprises providing manual dispensing of prepackaged articles, refreshments, and services.

"Elected Committee of Licensed Managers (ECM)" means the committee elected biennially by licensed managers in accordance with 34 CFR 395.14.

"Emergency" means an unforeseen circumstance that calls for immediate action. When a piece of equipment is out of order it is not normally considered an emergency unless it will harm/destroy lives, other equipment or property.

"Employee" means an individual who receives compensation for services rendered to a licensed manager.

"Equipment, expendable" means items having a relatively small cost per item and having a relatively short life expectancy.

"Equipment, non-expendable" means all necessary equipment which requires a relatively high capital outlay and has a normal life expectancy of several years.

"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 United States Postal Service), or any other instrumentality wholly owned by the United States.

"Federal regulations" means the regulations issued pursuant to the Randolph-Sheppard Act.

"Grantor" means a Federal, State, County, Parish, city government, private corporation, company, partnership or individual, who grants a permit or enters into an agreement with the State Licensing Agency to operate a business enterprise on its/their property.

"Grantor's agreement" means a written document between a Grantor and the State Licensing Agency which sets forth the terms, conditions and responsibilities of all parties to the agreement for the operation of a business enterprise on private and/or public property.

"Gross receipts" means all revenue from a business enterprise, including sales tax.

"Inactive Licensee" means a licensed individual who is not currently working in the Business Enterprise Program.

"Initial stock and supplies" means those resalable items or supplies necessary for the opening and operation of a specific type of business enterprise.

"Interim manager" means a licensed manager appointed to manage a business enterprise on a temporary basis.

"License" means a written instrument issued by the State Licensing Agency to a person who is blind, authorizing such person to manage a business enterprise.

"Licensed employee" means a licensed individual who is currently working for a licensed manager.

"Licensed manager (LM)" means a licensed individual who has signed an agreement with the State Licensing Agency to manage a Randolph-Sheppard business enterprise under the supervision of the State Licensing Agency.

"Licensee" means a person who is blind and holds a valid BEP license.

"Licensing agency" means the State Licensing Agency (SLA), which has been designated by the Commissioner, pursuant to the Act, to issue licenses to persons who are blind for the management of business enterprises.

"Management services" means inspection, quality control, consultation, accounting, regulating, in-service training, and other related services provided on a systematic basis to support and improve business enterprises operated by licensed managers.

Department of Rehabilitation Services
Business Enterprise Program
Performance Audit - Appendix

"Manager's agreement" means an agreement between a licensed manager and the State Licensing Agency, establishing basic terms and conditions for management of a business enterprise.

"Net earnings" or "Net profits" means gross profit after deducting operating expenses and set-aside collected.

"Net proceeds" means the amount remaining from the sale of articles or services of business enterprises and any vending machine income or other income accruing to licensed managers after deducting the cost of such sales and other authorized expenses excluding set-aside charges required to be paid by the licensed managers.

"Net sales" means the sum total of sales, excluding sales tax.

"Nominee" means a nonprofit agency or organization designated by the State Licensing Agency through a written agreement to act as its agent in the provision of services to licensed managers under the State's Business Enterprise Program.

"Other income" means money received by a licensed manager from sources other than over the counter and machine sales.

"Other property" means property which is not Federal property and on which business enterprises are established or operated by the use of any funds derived in whole or in part, directly or indirectly, from the operation of vending facilities on any Federal property.

"Permit" means the official approval given a State Licensing Agency by a department, agency, or instrumentality in control of the maintenance, operation and protection of Federal property or person in control of other property where the State Licensing Agency is authorized to establish a business enterprise.

"Purveyor" means an approved source of supply for food, beverages, supplies, or services.

"Randolph-Sheppard Act" means Public Law 74-732 as amended by Public Law 83-565, Public Law 93-516, and Public Law 95-602, 20 U.S.C. Chapter 6A, Section 107.

"Retained vending machine income" means vending machine income disbursed by a property managing department, agency or instrumentality of the United States, or received from vending machines on State or other property in excess of the amounts eligible to accrue to licensed managers.

"Routine preventive maintenance" means the regular care, upkeep, and cleaning of equipment used in a business enterprise whether owned by the State Licensing Agency or the licensed manager.

"Rules and regulations" means the instrument written by the State Licensing Agency and approved by the Secretary of Education setting forth the conduct and operation of the Business Enterprise Program. A copy of the document granting approval of the rules and regulations from RSA, will be mailed to each licensed manager as a revision to the BEP handbook.

"Saleable stock/merchandise" means products comprising the merchandise available for sale to the public and determined by the SLA to be from an approved source in the original container, in date, consistent with the needs of the customers for a particular business enterprise.

"Satellite business enterprise" means a business enterprise without a permanently assigned licensed manager which is being managed by a licensed manager who is also managing his/her regularly assigned business enterprise.

"Satisfactory site" means an area determined by the BEP Programs Manager to have sufficient space, electrical and plumbing outlets, and other such accommodations as prescribed by the Act, for the location and operation of a business enterprise in accordance with applicable health laws and building codes.

"Secretary" means the United States Secretary of Education.

"Set-aside funds" means funds which accrue to a State Licensing Agency from an assessment against the net proceeds of each business enterprise in the State's business enterprise Program and any income from vending machines on Federal property which accrues to the SLA.

"Snack bar business enterprise" means a business enterprise engaged in selling limited lines of refreshment and prepared food items necessary for a light meal service.

Department of Rehabilitation Services
Business Enterprise Program
Performance Audit –Appendix

"State Licensing Agency (SLA)" means the State agency that issues licenses to persons who are blind for the operation of business enterprises on public and/or private property.

"State property" means lands, buildings, and/or equipment owned, leased, or otherwise controlled by the State.

"Statewide average manager earnings" means the average annual manager earnings (after set-aside) as calculated each year for the RSA-15 Report.

"Trainee" means a qualified client of the Division of Visual Services, who when referred to the Business Enterprise Program, is placed in training to prepare for licensing under the rules and regulations of the State Licensing Agency.

"Training program" means the program of study and/or on-the-job training provided to prospective and/or experienced licensed managers.

"Vending facility" means automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment which may be operated by licensed managers 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. [CFR 34, Part 395.1(X)]

"Vending machine" means any machine, operated using currency or other medium of exchange, which dispenses articles or services, except any machine operated by the United States Postal Service for the sale of postage stamps or other postal products and services. Machines providing services of a recreational nature and telephones shall not be considered to be vending machines.

"Vending machine facility" means an automated business enterprise which dispenses a variety of food and refreshment items and services from vending machines. Included in this category would be interstate highway locations and vending machine routes.

"Vocational Rehabilitation Services" means those services as defined in the Rehabilitation Act. [29 USC 701 et seq.]

"Volunteer" means an individual who works in a business enterprise and receives no compensation.

612:25-2-6 Promulgation of Business Enterprise Program policies

- (a) Rules and procedures, that is, the policies governing the administration of the Business Enterprise Program are developed and maintained in accordance with the Randolph-Sheppard Act [20 U.S.C., Sections 107 et. seq.], the Rehabilitation Act [29 U.S.C. 31-42], and the Administrative Procedures Act [75 O.S., Sections 250 et seq].
- (b) The rule making authority is the Oklahoma Commission for Rehabilitation Services, hereinafter referred to as the SLA.

612: 25-2-7 Federal Assurances Policy of non-discrimination

- (a) The SLA will assure compliance with all State and Federal Rules and Regulations applicable to the Randolph Sheppard Act.
- (b) The State Licensing Agency assures that it shall not exclude from participation, deny the benefits of the program, or otherwise subject any person to discrimination because of the person's gender, age, physical or mental impairment, religion, race, creed, national origin, or political affiliation in accordance with the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act of 1990.
- (c) Every licensed manager of a business enterprise shall operate the business enterprise in such a manner that no person shall be subject to discrimination because of the person's gender, age, physical or mental impairment, religion, race, creed, national origin, or political affiliation whether that person is a present or prospective purveyor, customer, employee or other individual who might come into contact with the business enterprise.

Department of Rehabilitation Services
Business Enterprise Program
Performance Audit - Appendix

- (d) Confidentiality and requests for information. Policies on confidentiality of client records in the BEP will apply also to licensed managers in the BEP and to those who apply for training. Such information will be limited to purposes directly connected with the administration of the BEP and may not be released either directly or indirectly for any other purpose without the consent of the licensed manager/applicant or his/her legal representative. While the SLA complies with the Freedom of Information Act, protection of confidential information takes precedence. When information is requested that is not clearly of a public nature, the information will be treated as confidential unless and until ruled otherwise by the general counsel for the SLA. The SLA may charge reasonable fees for copies of information.

612:25-2-8. Accessibility of written materials

Upon advance request, all written materials will be provided to each licensed manager, licensed employee, or licensee in a format accessible to that licensed manager, licensed employee, or Licensee to the extent practicable. It is the responsibility of the licensed manager, licensed employee, or licensee to inform the SLA of the accessible format needed.

612:25-4-1. Organization of the State Licensing Agency

- (1) **Governing board.** The governing board of the SLA is the Oklahoma Commission for Rehabilitation Services. There are three members of the Commission. One member is appointed by the Governor, one member is appointed by the President Pro Tempore of the Oklahoma Senate, and one member is appointed by the Speaker of the Oklahoma House of Representatives. The Director of the Department of Rehabilitation Services (SLA) reports directly to the Commission.
- (2) **Central office staff.** The Business Enterprise Program is located in the Division of Visual Services and is administered by the Business Enterprise Program Programs Manager who reports directly to the Visual Services Division Administrator. The BEP Programs Manager is assisted by the business consultants, training officer, support services personnel and an administrative assistant.
- (3) **Field staff.** The State is divided into specific geographic areas for the purpose of administering the Business Enterprise Program, and a business consultant is assigned to each area. The business consultant provides the link between the licensed managers and the central office and is authorized to provide the services and is obligated to assist and support the licensed managers in complying with the rules and regulations of the Rehabilitation Services Administration and the SLA relative to business enterprises established under the Randolph-Sheppard Act.
- (4) **Support services staff.** The SLA purchases and provides equipment for use in business enterprises as required by Federal Law. The equipment is purchased, stored and serviced by the Support Services Section of the BEP. Personnel include a Support Services Supervisor, Clerk Typist, Mechanical Contractor, Vending Machine Technician, Warehouse Worker and a Custodial Worker. The support services personnel are responsible for all support services including the purchase, delivery, storage, maintenance and inventory control of equipment. The Support Services Section is also responsible for writing and administering support contracts associated with the BEP.
- (5) **Licensed managers.** The individual enterprises established by the Business Enterprise Program are managed by licensed managers who derive their livelihood from net profits of the operations. Licensed managers are subject to instructions, policies, rules and regulations of the Business Enterprise Program, but are not employees of the program, the SLA, or the State of Oklahoma. They do, however, have a contractual relationship with the SLA and are required to manage the business enterprise in accordance with established rules and regulations.

612:25-4-3. Guidelines for communication

The licensed manager is to maintain appropriate and professional communication with customers and grantor. The point of communication for licensed managers with the SLA is the business consultant. Circumstances in which a licensed manager may contact the BEP Programs Manager are:

- (1) when a problem cannot be resolved through the area business consultant or the Elected Committee of Managers,

**Department of Rehabilitation Services
Business Enterprise Program
Performance Audit –Appendix**

- (2) when there is a specific complaint concerning the conduct and/or behavior of a business consultant, or
- (3) when an emergency develops and the business consultant is not available.

612:25-4-4. Management services provided by the State Licensing Agency

- (a) **Overview of management services.** Management services include inspection, quality control, consultation, accounting, regulating, in-service training, and other related services provided on a systematic basis to support and improve business enterprises.
- (b) **Technical assistance services.** The SLA will provide each licensed manager with:
 - (1) Recommendations for optimizing the profitability of the business enterprise.
 - (2) Recommendations and feedback on business enterprise operations including quality, service, and cleanliness.
 - (3) Possible solutions to problems recognized by the licensed manager or brought to the licensed manager's attention by BEP staff or the grantor.
 - (4) Providing upward mobility and in-service training.
 - (5) Explanation of the SLA's procedures, policies, and standards.
- (c) **Services provided by the business consultant.** Business consultants will assist licensed managers, in their assigned area, to meet Business Enterprise Program requirements through review and consultation on:
 - (1) compliance with applicable laws and program regulations;
 - (2) compliance with all conditions in the manager's license;
 - (3) assuring that merchandise is:
 - (A) sold in accordance with the grantor's agreement;
 - (B) of high quality, adequately stocked, and properly displayed;
 - (4) standards for employee personal appearance and hygiene;
 - (5) quality customer service;
 - (6) maintenance of sanitation and safety standards;
 - (7) proper maintenance of equipment;
 - (8) communications and working relationships between the licensed manager and customers, purveyor, employees, grantor, and the general public;
 - (9) SLA and other agency requirements for record keeping; and
 - (10) licensed manager performance evaluations.
- (d) **Business consultants' on-site review.** Business consultants' on-site reviews will be made as often as necessary, but not less than once each month to ensure the continued success of the business enterprise. Each time the business consultant visits a business enterprise, he/she will document the visit on the case memorandum form.
- (e) **Inspection reports.** The business consultant completes an inspection of the facility using the Location Review form at least monthly. The report will contain at least the information in (1) - (6) of this Subsection to the extent relevant:
 - (1) Suggestions which will aid the licensed manager in the successful operation of the business enterprise.
 - (2) Violations of State or Federal Laws and the SLA's policies, rules and regulations.
 - (3) Comments on any conditions relating to any aspect of the business enterprise and recommendations for improvement.
 - (4) Follow-up action from previous inspection reports about noted discrepancies.
 - (5) Training needed or requested.
 - (6) Proper insurance, permits and license are current and posted.
- (f) **Visits by the BEP Programs Manager.** The BEP Programs Manager will periodically visit business enterprises.
- (g) **Assistance of Rehabilitation Services staff.** At the request of the business consultant or other BEP staff members, rehabilitation staff will provide necessary assistance to the program when in the best interest of the licensed manager or the SLA.

Department of Rehabilitation Services
Business Enterprise Program
Performance Audit - Appendix

- (h) **SLA provision of training.** The SLA shall ensure that effective programs of vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials, shall be provided to trainees as vocational rehabilitation services. Such programs shall include on-the-job training in all aspects of business enterprise operations for licensed managers, and upward mobility training including further education and additional training or retraining for improved work opportunities for all licensed managers. [34 CFR 395.11] Details of the BEP training provided by the SLA are presented in 612:25-4-14 and 612:25-4-15.

612:25-4-14. Training for new or potential licensed managers

- (a) **General statement.** The Business Enterprise Training Program trains clients in the day to day operations of the business enterprise. The scope of the program includes training in the Randolph-Sheppard Act, rules and regulations of the Business Enterprise Program, state and federal tax reporting, food service preparation and delivery, sanitation, personal appearance and hygiene, inventory and stocking, money management, staffing of personnel, and safety procedures. Through the Division of Visual Services and Division of Vocational Rehabilitation, the SLA will provide training necessary for each blind individual, including, personal and vocational adjustment, vocational counseling and guidance, training materials, and licensed manager training.
- (1) The SLA will provide training that leads to licensing and potential for employment in the Business Enterprise Program. The Business Enterprise Training Program provides training in essential aspects of business enterprise operation and management for blind persons with the capability to operate a business enterprise.
 - (2) Through the Division of Visual Services and Division of Vocational Rehabilitation and the Business Enterprise Training Program, the SLA provides additional training or retraining for improved work opportunities for the licensed managers.
 - (3) Post-employment services are provided to the licensed managers through vocational rehabilitation services as necessary to assure that the optimum employment outcome is achieved and suitable employment is maintained.
- (b) **Prerequisites for training.** Before an individual can qualify as a Business Enterprise Program trainee, the DVS or DVR Counselor assures the prerequisites set forth in (1) through (7) of this Subsection are met.
- (1) a current general physical examination;
 - (2) current eye examination;
 - (3) current psychological evaluation, if indicated;
 - (4) completion of personal adjustment training, when indicated;
 - (5) good general health and stamina;
 - (6) completion of all needed physical restoration services when indicated; and
 - (7) an evaluation from the Visual Services Evaluator including completion of the "Job Fit Survey".
- (c) **Application process.** Each applicant who meets the prerequisites for training is interviewed by the local business consultant. Before the interview, the business consultant reviews the applicant's rehabilitation case folder. The business consultant assesses the applicant's qualifications and reports his or her recommendations to the local counselor. The local counselor sends the application to the Business Enterprise Program training officer with a cover memorandum which includes:
- (1) current eye examination, documenting blindness;
 - (2) documentation for citizenship;
 - (3) documentation the client is 18 years of age;
 - (4) client's work history;
 - (5) educational background;
 - (6) personal adjustment training when indicated;
 - (7) rehabilitation training prerequisites established by BEP Program Staff to better optimize the successful employment outcome;
 - (8) desired training date consistent with the BEP Program Training schedule;
 - (9) current physical examination;
 - (10) current psychological evaluation, when indicated; and

Department of Rehabilitation Services
Business Enterprise Program
Performance Audit –Appendix

- (11) business consultants evaluation.
- (12) This application must be received and approved by BEP Programs Manager a minimum of 60 days prior to the next scheduled training session.
- (d) **Duration of training.** The normal duration of training is six months. Training may be extended or reduced at the discretion of the training officer based on the training needs of the individual trainee.
- (e) **Evaluation.** Each trainee's progress is evaluated monthly with regard to his/her potential for future success. The Monthly Trainee Progress Form is completed by the training officer and discussed with and acknowledged by the trainee and a copy forwarded to trainee's counselor.
- (f) **Completion of training.** Each trainee who completes the Managers Training Course is issued a certificate certifying that the trainee has met all the criteria to be a licensed manager in the Business Enterprise Program. The individual is granted a license upon actual entry into the program.
- (g) **Failure to complete training.** The training officer will notify the BEP Programs Manager whenever it appears that a trainee will not be able to successfully complete training. The BEP Programs Manager will review the written recommendation of the training officer along with all pertinent information concerning the trainee and make a decision regarding continuation or termination of the training. The BEP Programs Manager will notify the trainee's DVR or DVS counselor of a decision to terminate training.
- (h) **Post-training interview.** Upon completion of training, each trainee is interviewed by a representative of the Elected Committee of Licensed Managers, normally the chairperson, to evaluate the effectiveness of the training program. The interviewer formulates recommendations and comments to provide to the BEP Programs Manager.. This interview does not determine the trainee's eligibility. The purpose of this interview is to evaluate the performance of the training officer and the effectiveness of the training program. The SLA will make the final determination as to who will be licensed.
- (i) **Acceptance of out-of-state licenses.** The training officer will evaluate the skills and knowledge of applicants for the Business Enterprise Program who were licensed managers in other states. Training will be provided to correct any noted deficiencies and acquaint the applicant with Oklahoma's program. Special training will be given the applicant in preparation for the Oklahoma Health Department's Certified Food Handler's test. After qualifications are met, the applicant is issued a certificate.
- (j) **Longevity.** Longevity in the Oklahoma Business Enterprise Program will start the first work day upon entering into the program after training. Only time actually worked in the Oklahoma BEP may be counted.

612:25-4-15. Training for present licensed managers

Post-employment (upward mobility) training will be provided by the SLA to encourage greater professional competence and to promote the upward mobility of licensed managers

612:25-4-25. Management of BEP equipment and fixtures

- (a) The SLA will provide each business enterprise with fixtures and equipment in such quantity and quality so as to give reasonable assurance of successful operation by the licensed manager. The SLA retains the right, title, and interest to all BEP equipment and fixtures. The SLA has the authority to direct, control, transfer and dispose of such equipment as it deems necessary. All capital equipment is purchased, inventoried, and disposed of in accordance with Department of Rehabilitation Services policy.
- (b) Equipment for new locations will be determined by the business consultant and BEP Programs Manager in consultation with an ECM member specified by the ECM Chairperson.
- (c) The licensed manager will make no additions, deletions or modifications to the business enterprise and its operation, in the form of equipment, fixtures or facilities, without first obtaining written authorization from the SLA.

612:25-4-26. Maintenance and replacement of business enterprise equipment

The SLA shall maintain, or cause to be maintained, all business enterprise equipment in good repair and in an attractive condition and shall replace or cause to be replaced worn-out and obsolete equipment as required to ensure the continued successful operation of the business enterprise. [34 CFR 395.10]

Department of Rehabilitation Services
Business Enterprise Program
Performance Audit - Appendix

612:25-4-27. Initial inventory and supplies

- (a) The SLA shall provide for initial inventory of merchandise for resale as needed by a licensed manager.
- (b) All merchandise purchased and placed on a merchandise loan must have prior approval by the SLA.
- (c) The licensed manager will at all times keep an adequate stock of merchandise consistent with the needs of the business enterprise. At no time will inventory level fall below that of the balance of the merchandise loan.
- (d) The total amount of the merchandise loan will not exceed the average of the prior year's inventories without approval from the BEP Programs Manager.
- (e) The incoming licensed manager, the business consultant, and BEP Programs Manager will have final say as to what is purchased from the existing stock. If the leased/owned equipment transfers to the new licensed manager, the products for that piece of equipment will be placed on merchandise loan.
- (f) The SLA will not make multiple purchases from any purveyor. The SLA will make a one time purchase from each purveyor to acquire the proper and sufficient merchandise to manage the business enterprise.
- (g) The licensed manager will sign a merchandise security agreement which will be filed at the county courthouse.
- (h) If a licensed manager wishes to provide his or her own merchandise and will not require a merchandise loan, he or she must sign a statement to that effect.

612:25-4-28. Method of payment for initial stock

- (a) The licensed manager will be offered two options for initial stocking of the business enterprise. These options are:
 - (1) **Option A.** the licensed manager agrees to reimburse the SLA for stock provided and thereby secures title to the stock; or
 - (2) **Option B.** the licensed manager purchases the stock directly.
- (b) In selecting Option A the licensed manager establishes an equity in the stock. When the licensed manager leaves the business enterprise, he/she will receive equity in the stock (ending inventory less merchandise loan balance, Option A) less any unmet obligations to the SLA such as set-aside charges.
- (c) Merchandise must be salable to be included in the closing inventory.
- (d) In the event of the licensed managers death, his estate will be entitled to a settlement based upon the same terms and conditions.
- (e) The licensed manager or his/her designated beneficiary may request a hearing when dissatisfied with the determination of the amount to be paid by the SLA for a licensed manager's ownership in stock.
- (f) The licensed manager may not permit the ownership of the stock to vest in any person or organization other than the SLA.

612:25-4-29. Failure of licensed manager to repay loan

- (a) If a licensed manager is two (2) payments in arrears with the merchandise loan payment, the licensed manager is not eligible to make application into the selection process.
- (b) If a licensed manager is three (3) months in arrears, with the merchandise loan payment, the licensed manager is placed on probation.
- (c) If a licensed manager is four (4) months in arrears with the merchandise loan payment, the licensed managers agreement is subject to termination, the license may be suspended/terminated and the loan sent to the legal department for collection.
- (d) When a licensed manager leaves the program for any reason, the merchandise loan is due in full. However arrangements may be made with the SLA to divide the balance into 24 equal payments that will be due on the first of each month.
- (e) If a licensed employee or licensee's merchandise loan is not current, he/she is not eligible to apply for a business enterprise.
- (f) If a licensed employee or licensee is three (3) payments in arrears, The BEP license is subject to suspension.

Department of Rehabilitation Services
Business Enterprise Program
Performance Audit –Appendix

- (g) If a licensed employee or licensee does not make a payment for one year, the BEP license will be terminated and loan forwarded to the legal department for collection.

612:25-4-30. Second merchandise loan

- (a) Under documented extreme circumstances, a licensed manager who has paid off his/her previous merchandise loan, may receive a second (2nd) merchandise loan for the same facility when it has been determined that the merchandise loan is necessary to allow the licensed manager to remain in his/her facility as manager.
- (b) If a licensed manager requires a 2nd merchandise loan while the first loan is still outstanding, other than for the expansion of his/her facility, he/she will automatically be placed on probation until one of the loans is paid in full.
- (c) When a licensed manager moves from one location to another, the licensed manager will be given a merchandise loan based on need. If the manager has an outstanding loan, the SLA will not make a 2nd merchandise loan unless such loan has been approved by 3/4 of the Selection Committee and the BEP Programs Manager. However the new and old merchandise loans will not be combined. If the first (1st) merchandise loan is not clear when the inventory is extended, the licensed manager will be placed on probation.
- (d) If a facility expands, the SLA will provide a merchandise loan to cover the additional saleable merchandise needed.

612:25-4-52. SLA responsibility for assignment and transfer of licensed managers

The SLA will carry out assignment and transfer of licensed managers through business enterprise vacancy announcements, eligibility verification, and establishing and convening a Selection Committee.

612:25-4-53. Promotion and transfer policy

- (a) **Promotion.** It is the SLA's policy to promote any "Licensee" to a better location when he/she has demonstrated the ability to manage a more complex operation. Selection for promotion is made by the Business Enterprise Program Selection Committee.
- (b) **Transfer.** It is the SLA's policy to transfer licensed managers to different locations of substantially the same complexity and income potential when it appears to be in the best interest of the licensed manager and/or the BEP. The SLA notifies the licensed manager in writing by registered or certified mail, return receipt requested, of a transfer and the grounds therefore.

612:25-4-54. Business enterprise vacancy announcement

- (a) The procedure for announcing business enterprise openings is a mail out to all licensed managers, licensed employees, and licensees on the mailing list.
- (b) The announcement period will be ten working days. The BEP Programs Manager and the Chairperson of the Elected Committee of Licensed Managers may issue an announcement for a shorter period of time due to extenuating circumstances. The closing date for the vacancy will be stated on the announcement.
- (c) The information in (1) through (10) of this Subsection will be contained on each announcement.
 - (1) type of business enterprise;
 - (2) estimated number of employees in the building and/or traffic flow;
 - (3) location of the business enterprise;
 - (4) classification;
 - (5) average gross sales as reported on monthly report;
 - (6) for a new business enterprise, estimates of monthly net sales based upon potential patronage, with disclaimer this estimate is not a guarantee of sales;
 - (7) application due date;
 - (8) name and telephone number of the BEP Consultant; and

Department of Rehabilitation Services
Business Enterprise Program
Performance Audit - Appendix

- (9) name and work phone number of the current manager. Unlisted phone numbers will not be listed on the announcement without prior approval of the Licensed Manager.
- (10) According to policy Chapter 612:25-4-59 paragraph (g); Any agreement made to the selection committee by a candidate will be transferred to an addendum in the operator's agreement if selected to manage the facility.

612:25-4-55. Qualifications

- (a) In order to apply for placement as a licensed manager in the Business Enterprise Program, an individual must hold a current license issued by the SLA. In addition, the SLA requires experience in the program before an individual will be considered eligible to apply for "A" and "B" classification business enterprises. A new location is to be classified "C" for the initial 90 days of operation. Experience requirements for each classification are:
 - (1) Classification A. Applicants will be restricted to individuals who have a minimum of three (3) years total experience in an Oklahoma business enterprise including a minimum of one (1) year of management experience.
 - (2) Classification B. Applicants will be restricted to individuals who have a minimum of two (2) years total experience in an Oklahoma business enterprise, including a minimum of six (6) months of management experience, or two (2) years additional employment in a business enterprise may be substituted for the management experience.
 - (3) Classification C. No experience required, except on new locations as determined by the Selection Committee.
 - (4) Classification D. No experience required.
- (b) The Selection Committee may require prior business enterprise experience on applications for any facility including new locations. Verified experience in a business enterprise in another state may be considered by the selection committee.
- (c) A displaced licensed manager will have priority in the selection process for a comparable business enterprise, including type, size and geographical location, for one year from the date of displacement.
- (d) Applicants will not be eligible to apply for a business enterprise facility if any of the following conditions exist:
 - (1) The licensed manager is on probation or the SLA has initiated suspension/termination proceedings against the licensed manager.
 - (2) The applicant is not current with their merchandise loan payments.
 - (3) The applicant is not current with his/her set-aside owed to the SLA.
 - (4) The applicant has not submitted a business plan for their current business enterprise facility.
 - (5) The applicant has not scored at least an 80 on the annual evaluation.
 - (6) Conditions 1-5 will not apply to new BEP training graduates.
- (e) Applicants must be eligible to obtain an Oklahoma Tax Permit.

612:25-4-56. Applications

- (a) Applications must be received in the BEP Headquarters by the deadline date and time in order to be considered. The applications may be mailed, facsimiled or hand delivered. Phone applications will be accepted prior to the deadline, however the applicant must sign an application form prior to being interviewed by the Selection Committee.
- (b) Applications received before the announcement expiration date and time are reviewed to determine if the applicant meets the basic qualifications.
- (c) All eligible applicants will be scheduled for an interview with the Selection Committee. Applicants who do not meet the basic qualifications will be notified in writing.

612:25-4-57. Applicant Selection Committee

Department of Rehabilitation Services
Business Enterprise Program
Performance Audit –Appendix

Selection Committee. The Selection Committee shall be established and convened by the SLA. The Selection Committee will consider applicants for assignment and transfer. The Selection Committee shall make recommendation(s) to the SLA or designee.

- (1) The BEP selection committee is chaired by the BEP Programs Manager or designee. Members include the area BEP Consultant or designee, the BEP training officer or designee, the area member of the ECM or alternate and the chairperson of the ECM or vice-chair or secretary.
- (2) In the event the Area member of ECM or the alternate cannot attend or serve, or is related to an applicant, another ECM member or alternate may be called as a substitute member to be determined by the Chairman of ECM.

612:25-4-58. Annual Evaluation

- (a) The BEP consultants will conduct an annual evaluation of each business enterprise manager in his/her area. The manager will be evaluated in the following areas:
 - (1) Tasks/responsibilities
 - (A) Timely submission and accuracy of all required monthly reports and Payments.
 - (B) Appropriate gross profit percentage attained as reported on monthly reports.
 - (C) Appropriate net profit percentage attained as reported on monthly reports.
 - (D) Maintains an acceptable level of merchandise inventory.
 - (E) Attendance at Agency and other certified training.
 - (F) Active participation in the Business Enterprise Program.
 - (2) Work Habits
 - (A) Provides preventive maintenance and appropriate cleaning/sanitation.
 - (B) Merchandise displayed, rotated and stocked sufficiently.
 - (C) Maintains required insurances.
 - (D) Maintains agreed upon hours of operation.
 - (E) Maintains good relations with customers and grantors.
- (b) Any business enterprise manager not receiving at least 80 points of the available 100 points on an annual evaluation will not be eligible to apply for a business enterprise facility during the current evaluation year.
- (c) Any score above 80 obtained by the licensed manager will accrue to the benefit of the licensed manager in any selection process during the current evaluation year.

612:25-4-59. Interview, Selection Process and Scoring

- (a) All eligible applicants will be referred by the SLA to the Selection Committee for a personal interview.
- (b) All personal information made available to the Selection committee and all information discussed in the course of a selection is held confidential. Information will not be released to any other individual, agency, or organization by Selection Committee members, unless they are advised by legal counsel to release information.
- (c) An applicant not present for the interview will have his/her name removed from consideration for this location.
- (d) Following every interview, each Selection Committee member will complete a score sheet on the applicant. Members of the Selection committee must complete their own score sheets before assisting another member. After each interview, the scores from all score sheets on the applicant will be totaled. Selection Committee members may not change their scores for an applicant after scores for the applicant have been tabulated. The total scores for all applicants will then be ranked.
- (e) Any candidate not scoring a minimum of 50 percent of the available points, not considering the points given for number of years in the program, will be considered not qualified to manage the facility being considered.
- (f) The BEP Programs Manager/Chairperson of the Selection Committee or designee's score will not be added into the ranking unless it is a tie.

Department of Rehabilitation Services
Business Enterprise Program
Performance Audit - Appendix

- (g) Any agreement made to the selection committee by a candidate will be transferred to an addendum in the manager's agreement if the candidate is selected to manage the facility.
- (h) After all applicants' scores from the initial interview have been tabulated, any applicant whose total score is within 5 points of the applicant receiving the highest score will be awarded a second interview. The SLA will have the responsibility of convening the Selection Committee and notifying all eligible applicants of the time and place of the second interview. The second interview will be governed by the same process rules as the initial interview described above.
- (i) After the second interview has been completed the combined scores of the first and second interviews of each applicant will be added together and divided by two (2) to determine the final rankings of the applicants. The names of the two top scoring applicants will be submitted to the BEP Programs Manager in order of ranking. The BEP Programs Manager may choose either applicant submitted.
- (j) The BEP Programs Manager may re-interview each of the two candidates before making a final decision. However, the decision cannot be extended more than 5 working days following the second interview.
- (k) The scoring shall be based on the following factors:
 - (1) Personal interview;
 - (2) Business Plan;
 - (3) Annual licensing/training evaluation; and
 - (4) Seniority.

612:25-4-60. Ninety day replacement

If the licensed manager defaults on the licensed managers Agreement for any reason (i.e. resignation, removal by the SLA or death) during the first 90 days from the date of selection, the BEP Programs Manager will offer the business enterprise to the second of the two candidates submitted by the Selection Committee during the previous selection process. If the second person decides to remove his/her name for consideration, it will be offered to the next applicant with the highest accumulated points. In the event of a tie, the BEP Programs Manager and Chairperson of the Elected Committee of Licensed Managers will review the applications and make the final selection. This procedure will be exercised until a qualified licensed manager accepts the business enterprise. If all the applicants have removed their names from consideration, a determination will be made by the BEP Programs Manager to remove, re-announce, or satellite the business enterprise.

612:25-4-61. Satellite/remote business enterprise locations

- (a) A business enterprise or vending machine facility will be assigned to a licensed manager on a temporary basis when the regular selection process does not produce a permanent licensed manager, or when a business enterprise is vacated on short notice by a licensed manager and the time element to follow the regular selection process will cause the grantor to terminate the permit/contract with the SLA.
- (b) The BEP Programs Manager, in consultation with the Chairperson of the Elected Committee of Licensed Managers, may assign a licensed manager to a satellite/remote business enterprise on a temporary basis. The length of the agreement for a temporary assignment will be until the regular selection process can generate a permanent licensed manager to manage the vacant business enterprise with a minimum of 90 days. At the SLA's discretion, in order to achieve an equitable distribution of satellite business enterprises, a licensee that currently operates a location and a satellite will not be eligible for an additional satellite unless there are no other applicants.
- (c) After the selection process is completed, a temporary agreement will be issued for a maximum of one year, at which time the satellite business enterprise will be advertised and a permanent licensed manager selected through the normal selection process. At the end of one year, if a permanent licensed manager is not produced through the selection process, the temporary location may be closed, added permanently to another business enterprise through the selection process, or again be placed on a temporary agreement for a maximum of one year.
- (d) The temporary agreement for a satellite business enterprise may be canceled only for cause shown.
- (e) The licensed manager may resign the satellite agreement with 20 days written notice.

Department of Rehabilitation Services
Business Enterprise Program
Performance Audit –Appendix

- (f) The satellite business enterprise will be managed as a separate business location for all purposes except for insurance and the tax permit. It is the licensed manager's responsibility to notify the Oklahoma Tax Commission and his or her insurance carrier of the addition.
- (g) When a licensed manager is managing a satellite location, travel expenses to go between the two business enterprises will be considered a business expense of the satellite/remote location at the state rate.

612:25-4-62. Vending machine income

- (a) Vending machine income from vending machines on Federal property which has been disbursed to the SLA by a property manager under the vending machine income sharing provisions of the Federal Regulations shall accrue to each licensed manager operating a business enterprise on Federal property in an amount not to exceed the average net income of the total number of licensed managers, as determined each fiscal year on the basis of each prior year's operations, except that vending machine income shall not accrue to any licensed manager in any amount exceeding the average net income of the total number of licensed managers in the United States.
- (b) No licensed manager shall receive less vending machine income than he/she was receiving during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under this ceiling.
- (c) One-hundred percent (100%) of all vending machine income from vending machines on Federal property which are in direct competition with a business enterprise operated by a licensed manager will accrue to the SLA which shall disburse such income to such licensed manager operating such business enterprise on such property provided that the total amount of such income accruing to such licensed manager does not exceed the maximum amount determined under 34 CFR 395.8(a). In the event that there is income in excess of the maximum amount which may be disbursed to the licensed manager under 34 CFR 395.8(a), such additional income shall accrue to the SLA for purposes determined in accordance with 34 CFR 395.8(c).
- (d) The SLA will disburse vending machine income to qualifying licensed managers on at least a quarterly basis.
- (e) Vending machine income retained by the SLA will be used in accordance with applicable Federal regulations.
- (f) Unassigned income from non-Federal property is used to develop and enhance the BEP.

612:25-4-72. Audits

The SLA reserves the right to develop procedures and conduct audits including the use of third party auditors.

612:25-4-73. Due process

- (a) **Due process overview.** The SLA provides procedures for fair hearings of licensed managers' grievances. These procedures provide each licensed manager the opportunity to seek remediation of dissatisfaction with any SLA action arising from the operation of the BEP.
- (b) **Informal administrative review.** It is the policy of the SLA to resolve complaints in an expeditious and facilitative manner. These resolutions shall be accomplished through the informal administrative review process whenever possible. A licensed manager has the right to request a full evidentiary hearing at any time within established due process time lines.
 - (1) Informal administrative reviews are conducted by the SLA staff person closest to the problem who was not involved in the action resulting in the complaint, and who can resolve the complaint in the most expeditious manner.
 - (2) The informal administrative review is to be completed within 45 calendar days of receipt of the complaint to the appropriate SLA staff person.
 - (3) The results of the informal administrative review are to be reported in writing to the BEP Programs Manager, with a copy going to the licensed manager affected.

Department of Rehabilitation Services
Business Enterprise Program
Performance Audit - Appendix

- (c) **Full evidentiary hearings.** licensed managers have the right to a full evidentiary hearing to resolve dissatisfaction with any SLA action arising from the operation or administration of the Business Enterprise Program.
- (1) If the complaint cannot be resolved with an informal administrative review, or in the absence of an informal administrative review, the licensed manager may request a full evidentiary hearing. The request for a full evidentiary hearing must be made to the BEP Programs Manager in writing within 30 calendar days from the date the licensed manager receives the written notification of adverse action, or the written report of the informal administrative review. The request for a full evidentiary hearing is to be sent by certified mail.
 - (2) The licensed manager may be represented in the evidentiary hearing by legal counsel, or other representation of the licensed manager's choice, and at the licensed manager's expense.
 - (3) Reader services or other reasonable accommodations will be arranged by the SLA upon the request of the licensed manager.
 - (4) The hearing will be scheduled by the SLA for a time and place convenient and accessible to the licensed manager and the SLA staff involved in the hearing. The licensed manager will be notified of the place and time of the hearing and the right to be represented by legal or other counsel in writing.
 - (5) The hearing will be conducted by an impartial and qualified official with no involvement or vested interest in the SLA, action at issue, or with the operation of the affected business enterprise. The presiding officer will conduct the hearing in accordance with State and/or Federal laws and rules governing the conduct of such proceedings. In any case, the hearing will be conducted in a manner that avoids delay, maintains order, and provides for a full recording and reporting of the proceedings so that a full and true disclosure of the facts and issues occurs.
 - (6) The hearing officer's determination will be based upon the facts as presented by both parties and upon applicable law and the existing rules of the SLA. The hearing officer does not have the power to rule upon the legality or construction of the rules themselves. The officer's decision will determine the relevant issues and facts to be ruled upon.
 - (7) The hearing officer shall make a written report of the evidence presented, the laws and rules used in determining a resolution, and the resolution itself. This report shall be issued to the BEP Programs Manager and the licensed manager, or his/her authorized representative within 15 calendar days of the conclusion of the full evidentiary hearing.
 - (8) The hearing officer's report shall be issued to the Director of the SLA within 15 calendar days of the conclusion of the full evidentiary hearing. The SLA Director issues his or her final written decision to the BEP Programs Manager and the licensed manager within 30 calendar days of the date on which he or she receives the hearing officer's report.
 - (9) If the licensed manager is dissatisfied with the decision, she or he may request that the Secretary (USDE) convene an arbitration panel.

612:25-4-74. Probation

- (a) **Scope.** It is the SLA's responsibility to protect the taxpayer's investment from abuse and the interest of all Licensed Managers in the state. For these reasons, disciplinary actions/procedures have been established for licensed managers who refuse to follow rules, regulations, or specified procedures. A licensed manager who is not meeting all of the requirements or qualifications set forth in the rules and regulations, or a licensed manager who is not managing the business enterprise in a proper manner, may be placed on probation. Intensive review/consultation will be provided during the probationary period. The period of the probation will be used to focus on specific problem areas and attempts will be made to improve the licensed manager's performance. This is the first step in the disciplinary ladder. If proper results are not achieved, suspension or revocation of BEP License may be necessary.
- (b) **Initiation of probation procedure.** The BEP Programs Manager will place licensed managers on probation through a probation letter. The business consultant will deliver, read and explain the letter of probation to the licensed manager. The business consultant and licensed manager will then sign the

Department of Rehabilitation Services
Business Enterprise Program
Performance Audit –Appendix

probation letter. The original is given to the licensed manager, one copy returned to the BEP Programs Manager, and one copy mailed to the Chairperson of the Elected Committee of Licensed Managers.

- (c) **Probationary letter.** The probationary letter will specify by reference to specific sections of the rules and regulations, the violation(s) which prompted the probation. It will clearly state the terms of the probation, including the length of the probationary period, the remedial action required and the consequences of failure to take remedial action. A statement will be included which indicates it has been read and understood by the licensed manager, followed by a space for the licensed manager's and business consultant's signature, and the date. This acknowledgement does not imply that the licensed manager agrees with the charges, but rather, that he/she understands the terms of his/her probation. Refusal to sign does not invalidate the letter.
- (d) **Probationary periods.** Probationary periods are usually 30 to 90 days, at the discretion of the BEP Programs Manager, but may be longer or shorter as circumstances warrant. The exact period of probation will be specified in the probationary letter.
- (e) **Consequences.** The business consultant may recommend to the BEP Programs Manager that the licensed manager be taken off probation whenever the licensed manager's performance improves to a satisfactory level. If remedial action does not result in improved performance within the time specified, the BEP Programs Manager may recommend that:
 - (1) the SLA Director transfer the licensed manager to a more suitable business enterprise;
 - (2) the probationary period be extended; and/or
 - (3) the SLA Director terminate the Managers Agreement and suspend/terminate the licensed manager's BEP license.

612:25-4-75. Arbitration of complaints after the evidentiary hearing

- (a) The licensed manager has the right to file a request for arbitration with the Secretary (USDE) if dissatisfied with the outcome of the evidentiary hearing. By filing a complaint with the Secretary, the licensed manager consents to the release of information necessary for the conduct of an ad hoc arbitration panel.
- (b) The complaint must be filed in writing and must contain:
 - (1) a statement of the grievance;
 - (2) the date and place of the full evidentiary hearing;
 - (3) a copy of the decision and what actions have been taken because of the decision;
 - (4) the part of the decision which is causing the dissatisfaction and reason for the dissatisfaction; and
 - (5) a statement as to what is required to remedy the situation.
- (c) The Secretary (USDE) will convene an arbitration panel after receiving a complaint which meets the requirements in (b) of this Section. The decision of the panel will be final, except as provided for in 20 U.S.C. 107d-2. The Secretary will pay the reasonable costs for the arbitration. An abstract of the arbitration decision will be published in the Federal Register. The panel will be convened by the Secretary in accordance with (1) through (4) of this Subsection.
 - (1) The SLA shall designate one member of the panel.
 - (2) The licensed manager shall designate one member of the panel.
 - (3) The designees of the SLA and the licensed manager shall together designate the third panel member who shall not be an employee of the SLA. This member shall be the chairperson of the panel.
 - (4) If the SLA or licensed manager does not select a member for the panel, the Secretary will designate such a member on the applicable party's behalf.

612:25-4-76. Arbitration of SLA complaints against federal agencies

The SLA is to resolve problems related to the operation of a business enterprise with the full participation of the licensed manager and the appropriate property manager. The SLA may file a complaint with the Secretary (USDE) if it determines that an agency controlling Federal property is not complying with the provisions of the Randolph-Sheppard Act or U.S. Department of Education regulations. After the complaint is received, the Secretary will convene an arbitration panel. If the panel finds that the Federal agency is in violation of the Act

Department of Rehabilitation Services
Business Enterprise Program
Performance Audit - Appendix

or USDE regulations, that Federal agency will be notified that it is expected to correct the violation according to 20 U.S.C. 107d-2. The Secretary pays the reasonable costs of this arbitration. The decision resulting from the arbitration will be published in the Federal Register. The arbitration panel will be convened by the Secretary in accordance with (1) through (4) of this Subsection.

- (1) The SLA will designate one member of the panel.
- (2) The agency controlling the Federal property over which the dispute arose will designate one member of the panel.
- (3) The designees of the SLA and the agency controlling the property will designate a third member who is not an employee of the agency controlling the Federal property. This member will chair the panel.
- (4) If either the SLA or the head of the Federal department, agency, or instrumentality fails to designate a member of an arbitration panel, the Secretary shall designate such member on behalf of such party.

612:25-6-1. Licensing requirements for managing a business enterprise

- (a) **Definition of license.** A license is a written instrument issued by the SLA to a licensed manager, authorizing such person to operate a business enterprise on Federal or other property.
- (b) **Issuance and conditions of a license.** A license shall be issued by the SLA in accordance with Federal regulations making the individual eligible to operate a business enterprise. The license shall be prominently displayed in the licensed manager's business enterprise. The license remains effective for an indefinite length of time, unless terminated, suspended, or revoked by the SLA in accordance with State and Federal regulations. A license issued to a qualified individual is non-transferable. Requirements for the issuance of a BEP license are that the individual:
 - (1) must be blind as verified by documentation;
 - (2) must be a U.S. citizen residing in the State of Oklahoma. Birth certificate or other applicable documentation must be submitted with application;
 - (3) be at least 18 years of age or older;
 - (4) have completed all services on the Individualized Rehabilitation Program which may interfere with the training program;
 - (5) have documentation of independent living skills; and
 - (6) have basic math skills.
- (c) **Termination of agreement or removal from a business enterprise.** The SLA may terminate a manager's agreement and/or immediately remove the licensed manager from operation of a business enterprise for cause shown. Termination of a manager's agreement or removal from operation of a business enterprise does not necessarily mean that the manager's license will be suspended or terminated. The licensed manager has the right to a full evidentiary hearing when dissatisfied with any State Licensing Agency action in accordance with BEP, State, and Federal regulations.
- (d) **Reinstatement of license.** Reinstatement of a BEP License for a retired individual can be accomplished by formally requesting the SLA reinstate the BEP License within a two year period of the retirement date.
- (e) **Termination of license.** A license automatically expires when the licensed manager is no longer a U.S. citizen, no longer meets the definition of legal blindness, surrenders his or her license, resigns, retires, or dies. A license may be terminated or suspended by the SLA, after affording the licensed manager an opportunity for a full evidentiary hearing in accordance with State and Federal regulations.

612:25-6-2. Standards for licensed managers

- (a) The licensed manager will agree to the terms of the licensed manager's agreement, rules and regulations governing the Business Enterprise Program, and the permit or contract governing the specific business enterprise.
- (b) The licensed manager will operate the business enterprise in accordance with all applicable health laws and regulations, safety regulations and other federal, state, county, and municipality laws and regulations applicable to the business enterprise.
- (c) The licensed manager will work cooperatively with authorized representatives of the SLA in connection with their official responsibilities.

Department of Rehabilitation Services
Business Enterprise Program
Performance Audit –Appendix

- (d) The licensed manager will take proper care of the equipment and fixtures to minimize repair and replacement costs. The licensed manager will be responsible for repair or replacement costs when caused by the negligence of the licensed manager or his employees, repairs below \$25.00, or unauthorized repair cost. In the event of withdrawal from the business enterprise for any reason, the licensed manager will leave all equipment to the disposal of the SLA.
- (e) The licensed manager will collect and pay sales tax as required.
- (f) The licensed manager will be responsible for substitute operation.
- (g) The licensed manager will not take action inconsistent with the paramount right, title, and interest of the SLA to business enterprise equipment.
- (h) The licensed manager will accept the agreement subject to the policies, rules, and regulations of the SLA as they exist or are modified.
- (i) The licensed manager will keep daily records of gross sales, merchandise purchased, and expenses for the business enterprise.
- (j) The licensed manager will complete and submit all necessary Federal and State reports and payments as required for each individual business enterprise.
- (k) The licensed manager will dress and maintain a level of personal hygiene which will convey a positive public image.
- (l) The licensed manager will maintain appropriate professional relationships with purveyors, customers, and building officials as in (1) through (3) of this Subsection.
 - (1) **Relationships with purveyor.** The licensed manager is free to choose the purveyor from whom he/she is to make purchases, provided, however, that such purveyor is established and reputable.
 - (2) **Relationships with customers.** To serve the best interest of the public, the licensed manager and his/her employees must provide prompt, cheerful and courteous service to all customers and accommodate, within reasonable limits, such other persons who may come to the business enterprise requesting change, information, or other services.
 - (3) **Relationships with building officials.** Units (i) and (ii) of this Subparagraph provide guidance in maintaining a productive relationship with building officials.
 - (A) The licensed manager must comply with all reasonable requests concerning the operation of a business enterprise that may be made by officials of the building in which the enterprise is located, provided that such requests do not conflict with the agreement and the rules and regulations issued by the SLA as contained herein.
 - (B) If differences should arise between the licensed manager and the grantor, the licensed manager shall bring the matter to the immediate attention of the business consultant for appropriate action.
- (m) The licensed manager will supervise employees in a manner that promotes quality customer service.
- (n) The licensed manager will maintain and display current licenses and permits, including BEP license, in the business enterprise.
- (o) The licensed manager will comply with all regulations and laws governing the possession and/or use of firearms, weapons, alcohol and other drugs.
- (p) When a licensed manager starts or buys a similar business, the licensed manager must report the nature and location of the business and make assurances to the SLA that the two businesses will not intermingle in any manner and the merchandise of the two businesses will be in separate locations. At no time will state owned equipment be used in the private business.

612:25-6-3. Grounds for suspension or termination of a license

A BEP license may be suspended or terminated for the reasons set forth in (1) through (14) of this Subsection.

- (1) Failure to open the assigned business enterprise as stated in the permit/contract with the grantor agency, without prior proper approval from the SLA (abandonment of business enterprise).
- (2) Defrauding any agency of the government (including the SLA) or any purveyor or failure to pay monies due including taxes, fees, or assessments to any governmental entity or purveyor.

Department of Rehabilitation Services
Business Enterprise Program
Performance Audit - Appendix

- (3) Failure to file required financial and other records with the SLA or preserve them for a specified time, and failure to comply/cooperate with audits conducted by the SLA or other State or Federal agencies.
- (4) Failure to maintain the required insurance coverage.
- (5) The business enterprise is not being operated in accordance with the rules and regulations, terms and conditions of the permit with the grantor agency, or the terms and conditions of the business enterprise manager's agreement.
- (6) Intentional abuse, neglect, unauthorized use or removal of the business enterprise equipment; or failure to properly maintain the equipment in a clean and operating manner within the scope of the licensed manager's level of maintenance authorization.
- (7) Substance abuse (alcoholic beverages, illegal drugs, etc.) while operating the business enterprise; or other substance abuse that interferes with the operation of a business enterprise.
- (8) Operation of a business enterprise in such a way that the SLA's investment is obviously endangered.
- (9) An attempt by a licensed manager to derive personal benefit from privileged information acquired through participation in the Business Enterprise Program.
- (10) Failure to comply with all Federal and State laws prohibiting discrimination and failure to provide services without regard to race, gender, color, national origin, religion, age, political affiliation, or disability.
- (11) Determination by the SLA that the licensed manager no longer has the necessary skills and abilities for effectively managing a business enterprise.
- (12) Use of the business enterprise to conduct unlawful activities.
- (13) Failure to personally operate and manage the business enterprise in accordance with the manager's agreement.
- (14) Does not actively work as a licensed manager or licensed employee in the Business Enterprise Program for 2 years.

612:25-6-4. Use of dog guides

- (a) A licensed manager, licensed employee, or trainee may house a dog guide in designated areas other than food preparation and food serving areas. Each business enterprise will be surveyed and a dog guide area designated as needed.
- (b) The dog guide will be kept in a suitable kennel provided by SLA and screened from customers' view to provide maximum security for the dog guide.
- (c) It is the dog guide owner's responsibility to keep the dog guide, kennel and kennel area neat, clean and odor free at all times.
- (d) After leaving the kennel area, any licensed manager, licensed employee or trainee must immediately wash his/her hands before returning to work.
- (e) This Section will not in any way prohibit blind customers with dog guides from access to business enterprises.

612:25-6-5. Motor vehicle operation

All licensed managers, licensed employees, licensee or trainees of business enterprises will not operate a motor vehicle on any public street or highway. If it is determined that a licensed manager, licensed Employee, licensee or trainee of a business enterprise has operated a vehicle for which a state driver's license is required on any public street or highway, his/her licensed manager's agreement and/or BEP License will be subject to revocation, suspension, or termination.

612:25-6-15. Setting aside of funds

- (a) Set-aside charges paid by the licensed manager will be placed in a revolving account maintained by the SLA. Set-aside charges will be re-evaluated yearly by the SLA and the Elected Committee of Licensed Managers. Adjustments will be made accordingly in the appropriate classification, with allowances for reasonable charges for improving services, fluctuation of costs, and for program expansion.
- (b) Funds will be set aside only for the purpose of:

**Department of Rehabilitation Services
Business Enterprise Program
Performance Audit –Appendix**

- (1) maintenance and replacement of equipment;
 - (2) the purchase of new equipment;
 - (3) management services;
 - (4) assuring a fair minimum of return to licensed managers; or
 - (5) the establishment and maintenance of retirement or pension funds, health insurance contributions, or provisions for paid sick leave and vacation time.
- (c) The licensed manager's set-aside charges will be on a sliding scale of 0% to not more than 12% of the net proceeds of the business enterprise during any one month. The sliding scale will be in four classifications: Class A, B, C, and D (based on prior year's performance).
- (1) Class A - 12% of net proceeds, \$26,000 and above.
 - (2) Class B - 10% of net proceeds, \$15,000 to \$25,999.
 - (3) Class C - 6% of net proceeds, \$4500 to \$14,999.
 - (4) Class D - 0% of net proceeds, \$4499 and below.
- (d) When a licensed manager timely submits his/her set-aside payment to the BEP by the 25th of the month, the manager's set-aside obligation will be reduced by 1% of the set-aside amount due that month. However, if the set-aside payment is received in the BEP office ten days or more after the due date, the licensed manager will be assessed a late fee in the amount of 20% of the set-aside due for that month. If the licensed manager's set aside payment is 60 days late, the licensed manager will be placed on probation until their set aside payments to the agency are current. If the licensed manager's set aside payment is more than 90 days late his/her operating agreement will be suspended or terminated by the BEP Programs Manager.
- (e) If a business enterprise should show a marked change in net proceeds, a request for reclassification may be made by the licensed manager or the SLA after 90 days. Each licensed manager will be notified of changes in set-aside charges, and the new percentage of net proceeds will be effective at the beginning of the first business month following the mailing of notice to the licensed manager. The licensed manager will start paying the higher or lower percentage of set-aside with the second report due following notification.
- (f) All new business enterprises will be placed in class C for 90 days, at which time the SLA will review the business enterprise for reclassification and notify the licensed manager of changes in set-aside charges and the new percentage of net proceeds shall be effective at the beginning of the first business month following the mailing of notice to the licensed manager.

612:25-6-16. Criteria to establish a business enterprise

A suitable site for a new business enterprise will be selected after the business consultant makes a thorough study of the location. A site survey form will be completed. This survey will include:

- (1) building population;
- (2) number of visitors;
- (3) competition in the immediate area;
- (4) building security;
- (5) average salary of prospective customers;
- (6) estimated installation cost to provide required services;
- (7) stability of number of prospective customers;
- (8) longevity of potential facility; and
- (9) geographic location.

612:25-6-17. Contracts and permits for business enterprise facilities

When it is determined that a business enterprise is feasible and when agreements are ready to be made with the grantor, one of four types of arrangements will be adopted with the grantor.

- (1) **Private industry.** Agreements made with private industry are on a contract basis and sometimes require a percentage payment.
- (2) **State and local government.** State and local government location agreements are made when Application for Authority to Establish a business enterprise in a State, County or Municipal Building is signed.

Department of Rehabilitation Services
Business Enterprise Program
Performance Audit - Appendix

- (3) **Federal property - business enterprise.** The Department of Education form, Application and Permit for the Establishment of a business enterprise on Federal and other Property, is the instrument, or formal agreement governing the establishment of a business enterprise. Procedures and conditions pertaining to the permit are contained in the regulations [34 CFR 395.34].
- (4) **Federal property - cafeteria facility.** Contracts may be required for the operation of a cafeteria on federal property. These contracts sometimes specify such things as costs of items, brand names, portion size and other conditions of agreement between the federal agency and the SLA.

612:25-6-18. Establishing new business enterprises

- (a) **Site selection, planning, and initial stocking.** After the business consultant designs, plans and makes specifications for a business enterprise, he/she submits the plans and specifications for approval to the BEP Programs Manager. The business consultant will assist the support services supervisor in preparing requisitions for submission to purchase new equipment and building fixtures. This applies to equipment, merchandise, electrical installation, plumbing installation, repairs, etc. The SLA will provide each business enterprise with adequate suitable equipment and initial stock as required by federal law. When stocking these business enterprises, all purchases will be made in accordance with DRS rules and state law.
- (b) **Establishment of a licensed manager.** The establishment of a licensed manager will normally be by the business consultant in whose area the business enterprise is located. Before assuming the operation of any business enterprise, the licensed manager must sign an application and agreement with the SLA. The agreement provides, among other things, for the payment each month of a set-aside charge for the use of the equipment furnished by the SLA. The business consultant will remain at the business enterprise for a sufficient time to assure a smooth business operation. The licensed manager, if possible, will be available one week prior to the opening of a new facility to become familiar with the business enterprise, consult with the business consultant regarding the operation, and assist in purchasing the initial stock of merchandise. Every effort will be made to provide customers of operating business enterprises with uninterrupted service during the change of licensed managers. If the business enterprise is closed for inventory, prior arrangements must be made with grantor.
- (c) **Installation process.** The business consultant will complete a change over sheet for each installation completed. The business consultant will insure that all address, phone numbers and other related information are correct. The business consultant will assist licensed manager in filling out any insurance or retirement enrollment or change cards as necessary. The licensed manager is given a copy of the permit/contract. The licensed manager is given a supply of the forms required by the SLA relative to the business enterprise operation. The business consultant will verify that workers' compensation, general and product liability insurance on the business enterprises are in effect. The business enterprise will not be opened by the new licensed manager until this can be verified.
- (d) **Managers agreement.** When all of the requirements in (a) through (c) of this Section have been met, the licensed manager must sign a licensed managers agreement before assuming the operation of any business enterprise. Before signing, the licensed manager will read or have read to him/her by the business consultant the licensed managers agreement.
- (e) **Merchandise inventory.** The licensed manager will be advised of the two optional methods of initially stocking the facility. An accurate merchandise inventory is completed, then signed by both the incoming and outgoing licensed managers, accepting the count of merchandise. The outgoing licensed manager, incoming licensed manager or designee, and a representative from the SLA must be present when merchandise is counted. The SLA has the option to purchase the licensed manager's stock at wholesale cost to be fixed by two persons, agreed upon by the licensed manager and a representative of the SLA.
- (f) **Equipment inventory.** An equipment inventory is completed and the incoming licensed manager signs the inventory sheet and assumes responsibility for the equipment.
- (g) **Merchandise inventory procedures.** The merchandise inventory shall be conducted by the business consultant with the assistance of the outgoing and incoming licensed managers. Any additional assistance will require approval from the BEP Programs Manager. If the facility is to be closed for the inventory, sufficient and proper notice (one week minimum) will be given to the customers and grantor. Items that are not to be included on inventory are deposits and personal equipment. Arrangements will need to be made

Department of Rehabilitation Services
Business Enterprise Program
Performance Audit –Appendix

between the outgoing and incoming licensed managers for these items. Receipts should be collected that day for pricing purposes. They should be returned to the outgoing licensed manager at the conclusion of the pricing phase.

- (h) **Extending the inventory.** The extended inventory will be forward to the BEP Programs Manager within 10 working days of the date of the merchandise inventory. If more time is needed, a written request must be forwarded to the BEP Administrator explaining the circumstances for the delay and asking for an extension. The inventory will be extended to four (4) decimal places rounded to two (2). The inventory extension should be check at least 3 times for accuracy. If errors continue to occur, keep checking it until there are no more errors.

612:25-6-19. Employees of the licensed manager

- (a) The business consultant has no direct responsibility over the business enterprise employees. If, in the course of an inspection or a complaint is filed by a customer or grantor against a business enterprise employee, the business consultant will bring the complaint/problem to the attention of the licensed manager. A business consultant may make suggestions as to the action that needs to be taken, however the responsibility lies with the licensed manager as to disciplinary action toward the business enterprise employee.
- (b) In the event the grantor requests a business enterprise employee be terminated/suspended, the information will be presented to the licensed manager immediately by personal contact or phone call followed by written memorandum indicating the reason for the requested termination. If the licensed manager fails to terminate the employee, the licensed manager is subject to termination of the licensed managers agreement.
- (c) The business consultant will immediately notify the SLA state office by memorandum for insurance and retirement purposes when a licensee/licensed employee starts to work for another licensed manager or quits.
- (d) Licensed managers are to take affirmative action to employ and advance qualified individuals with disabilities on the same conditions and regulations required in Section 503 of the Rehabilitation Act of 1964 [P.L. 88-352].
- (e) Volunteer labor is permitted in a business enterprise, however the volunteer must be covered by insurance in the event of injury. This insurance coverage will be documented in the SLA state office prior to the individual's actual work in a business enterprise.

612:25-6-20. Closing a business enterprise

- (a) A business enterprise may be closed immediately by the SLA, the grantor, any government agency or the licensed manager when a life threatening situation, health or safety hazard exists. Notice of the closing should be made as soon as possible to the SLA and the grantor.
- (b) The business enterprise will also be closed immediately for failure to have proper insurance verification for product and general liability and workers' compensation insurance.
- (c) The business enterprise may be closed for short periods of time with prior written approval from the SLA and the grantor.
- (d) The SLA's policy is to operate business enterprises that have the potential to produce net profit returns for licensed managers which will enable them to live self sufficiently and with dignity within their communities. Additional consideration is given to the amount of return on investment as related to expenditures for capital outlay, management services overhead, and other expenses of operation. Anytime a licensed manager vacates a business enterprise, the business consultant will re-evaluate the business enterprise if it generates revenue below the program net profit objective. A business enterprise that lacks the potential to meet the SLA's net profit objective will normally be closed unless a licensed manager would be satisfied with the business enterprise.

Department of Rehabilitation Services
Business Enterprise Program
Performance Audit - Appendix

612:25-6-21. Business expenses

- (a) All business enterprises will be so designed and stocked with merchandise that a licensed manager can purchase from wholesalers that deliver products to the location, and there will be minimal travel required by the licensed manager.
- (b) All monthly report information must remain in the business enterprise during normal business hours. If a business deduction cannot be verified by the business consultant while in a business enterprise, the deduction will not be allowed, stricken from the report, and a revised report will be forwarded to the licensed manager to reflect the change.
- (c) The expense column on the monthly report should reflect the actual expenses incurred by the business enterprise. The items claimed on the report should have documentation located in the business enterprise for the business consultant to review, (merchandise receipts, salaries, copies of the quarterly IRS and social security report, insurance invoice and policies, and etc.). If it is considered by the SLA that the amount of the expenses is excessive, the SLA may audit the business enterprise to determine that the expenses are actually required for that particular location.
- (d) There will be no mileage or vehicle expense claimed as a business expense on the monthly report except as detailed at 612:25-4-61(g).
- (e) The amount of telephone charges claimed on each monthly report will be limited to a total of \$50.00 for all communication devices.
- (f) If a licensed manager rents, leases, or buys equipment to enhance the business enterprise, the cost may be deducted as a business expense. The licensed manager must have prior written approval as per Section 612:25-4-25(h) and written notice will be given to the SLA accountant.

612:25-6-22. Monthly reports

- (a) **Content and when due.** Monthly reports are due in the business consultant's office on or before the 25th of each month. The business consultant will review each monthly report for mathematical errors, correct loan payment, correct set-aside payment, approved business expenses, and other factors that will affect the accuracy of the report. The business consultant will sign the report indicating that the report is correct and all items in question have been discussed with the licensed manager.
- (b) **Failure to file in a timely manner.** Continued late reporting may cause formal disciplinary action.
- (c) **Corrective action for late reports.** Corrective action for late reports will be taken as described in (1) through (4) of this Subsection.
 - (1) If the report is not received by the 1st of the following month (5 days late), the business consultant will call the licensed manager to remind the licensed manager that the report is 5 days past due.
 - (2) If the report is not received by the 15th of the next month (20 days late), the business consultant will send a letter to the licensed manager asking for the report.
 - (3) If the report is not received by the next report due date (25th) (one month late) the licensed manager will be placed on probation.
 - (4) If the 1st and second reports are not received by the time the 3rd report is due (25th), the licensed manager's agreement will be canceled and the BEP Licenses will be suspended.
- (d) **Fee for reports.** The Agency maintains records for its use and may charge a reasonable fee to supply copies of records to individuals. The agency will supply copies of lost reports or other documents at 25 cents per each side of a page. Copies of reports or other documents will be facsimile at a cost of \$1.00 per page.

612:25-6-32. The Elected Committee of Licensed Managers

- (a) Authority for Establishing an Elected Committee of Licensed Managers is found in Section 107-B1 of Chapter 6A of Title 20 U.S., commonly referred to as the Randolph-Sheppard Act.
- (b) Paragraphs (1) and (2) of this Subsection provide guidance in approaching the degree of participation by the ECM.

Department of Rehabilitation Services
Business Enterprise Program
Performance Audit –Appendix

- (1) Active participation means a process of good faith negotiations involving the ECM and the SLA. The Committee must be given the opportunity to have meaningful input into the decision-making process in the formulation of program policies which affect licensed managers.
- (2) The SLA is charged with the ultimate responsibility for the administration and operation of all aspects of the Business Enterprise Program.
- (c) Functions of the Elected Committee of Licensed Managers include:
 - (1) Actively participate with the SLA in the major administrative, policy, and program development decisions affecting the overall administration of the Business Enterprise Program.
 - (2) To receive and transmit to the SLA grievances at the request of licensed managers and serve as advocates for such managers in connection with such grievances.
 - (3) To actively participate with the SLA in the development and administration of a State system for the transfer and promotion of licensed managers.
 - (4) To participate with the SLA in the developing training and retraining programs for licensed managers.
 - (5) To sponsor, with the assistance of the SLA, meeting and instructional conferences for licensed managers.
 - (6) To participate in setting out the method of determining the charge for each of the purposes listed in (A) through (E) of this Paragraph.
 - (A) Maintenance and replacement of equipment;
 - (B) The purchase of new equipment;
 - (C) Management services;
 - (D) Assuring a fair minimum of return to licensed managers; or
 - (E) The establishment and maintenance of retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time, if it is so determined by a majority vote of licensed managers, after the SLA provides to each licensed manager information on all matters relevant to such proposed purposes. [34 CFR 395.9(b) and (c)]
- (d) The ECM will be composed of licensed managers and licensed employees based on such factors as geography and business enterprise type, with a goal of providing for proportional representation of licensed managers on Federal property and other property. There will be an executive committee with their duties and terms of office specified in the bylaws of the ECM.
- (e) The SLA shall provide for the biennial election of an Elected Committee of Licensed Managers which shall be fully representative of all licensed managers in the BEP. [34 CFR 395.14]

612:25-6-33. Organization and operation of the Elected Committee of Licensed Managers

- (a) **Organization.** The ECM will be organized according to the provisions set forth in (1) through (7) of this Subsection.
 - (1) The ECM consists of five committee members and four alternate members.
 - (2) Representation of all licensed managers will be obtained by area districts. The districts are formed by dividing the state into four areas starting with a point to be determined and drawing a line east and west and north and south to the state borders. The four quadrants are divided in order to have as close to an equal number of business enterprises as possible. Each quadrant will have one ECM member and one alternate.
 - (3) The term of office for ECM members is two years. A member of the committee will not serve more than two consecutive terms in any one office.
 - (4) The fifth ECM member is elected at large and will be the Chairperson of the Elected Committee of Licensed Managers.
 - (5) The Vice Chairperson will be elected by and from the Elected Committee of Licensed Managers.
 - (6) When the Chairperson is not present, the Vice Chairperson will preside at the meeting and the alternate for the Vice Chairperson will represent the area of the Vice Chairperson.
 - (7) Elections will be held in the northeast and northwest districts on even numbered years. Southeast district, southwest district, and the member-at-large elections will be held on odd numbered years.

Department of Rehabilitation Services
Business Enterprise Program
Performance Audit - Appendix

- (b) **Nominations and elections.** The procedures set forth in (1) through (14) of this Subsection shall be used to nominate and elect members of the committee.
- (1) The ECM Chairperson of the Committee of Licensed Managers presides over the election of the Committee of Licensed Managers.
 - (2) The election will be conducted annually at the licensed managers training conference. The SLA presents the districts for nomination and a list of eligible voters and candidates for each district. The Chairperson will call for nominations from the floor for ECM members. Nominees must give consent to be nominated. The ECM members will receive advance written notice of the election.
 - (3) A licensed manager or licensed employee is eligible to be a nominated candidate and to vote for the member at large and one candidate for the ECM in the district in which his or her facility is located.
 - (4) The voting is by secret ballot. The ballot will contain the name of the nominees in their respective district and will be circulated and read by the SLA to each eligible voter.
 - (5) Eligible voters at the ECM meeting at the annual training conference, will mark their ballot or sign a written waiver if the licensed manager does not wish to vote.
 - (6) ECM members are elected by a majority vote of licensed managers present at the ECM meeting voting in the district in which their business enterprise is located. If a candidate does not receive a majority vote in the first election, a run-off election will be conducted. The candidate receiving the second highest number of votes will be the alternate ECM member.
 - (7) If no licensed manager or no licensed employee will accept the nomination for an ECM district, during the prescribed election process, the new Elected Committee of Licensed Managers will appoint an ECM member and alternate member to represent the district. If the ECM member appointed is the past ECM member and not eligible for a third term, the two-term limitation is waived for this term.
 - (8) If an ECM member or alternate ECM member is placed on probation for any reason, the ECM member or alternate ECM member will be suspended from participation with the Elected Committee of Licensed Managers during the period of the probation.
 - (9) licensed managers or licensed employees on probation are not eligible to run for any Elected Committee of Licensed Managers position.
 - (10) If an ECM member moves to another district, resigns from the Elected Committee of Licensed Managers, or resigns from his/her facility, the alternate ECM member will fill the ECM member's position for the remainder of the term and the Elected Committee of Licensed Managers will appoint a new alternate ECM member.
 - (11) The SLA is responsible for the collection and tallying of votes.
 - (12) Newly elected ECM members of the Committee of Licensed Managers will take office at the end of the annual training conference.
 - (13) The Elected Committee of Licensed Managers will appoint a new alternate ECM member for the district where there is a vacancy.
 - (14) If both the ECM member and the alternate ECM member resign, the Elected Committee of Licensed Managers will appoint licensed managers or licensed employees from the district to fill both vacancies.
 - (15) If an ECM member misses two (2) consecutive meetings, it is considered that he/she has resigned from the Elected Committee.
- (c) **Operation.** The Elected Committee of Licensed Managers shall operate according to (1) through (3) of this Subsection.
- (1) The Elected Committee of Licensed Managers will convene at least once each year at the licensed manager's training conference. The time and place of joint meetings scheduled by SLA staff and the Elected Committee of Licensed Managers. Requests for meetings by the ECM committee will be made in writing to the SLA for prior approval of financial assistance.
 - (2) The ECM members will be notified of matters within its purview that are being considered for decision. The ECM committee members will have the opportunity to initiate subjects for consideration by it and the SLA. Recommendations by the ECM members will be in writing and given serious consideration by the SLA.
 - (3) The SLA has the ultimate responsibility for the administration of the Business Enterprise Program. If the SLA does not adopt the views and positions of the Elected Committee of Licensed Managers it will

Department of Rehabilitation Services
Business Enterprise Program
Performance Audit –Appendix

- notify the ECM Committee in writing of the decision reached or the action taken and the reasons therefore.
- (4) A quorum will consist of three (3) of the members or alternates of the Elected Committee be present.
 - (d) **Materials.** The SLA will supply the necessary materials for the function of the Elected Committee of Licensed Managers upon written request to the SLA. The Elected Committee of Licensed Managers may elect to carry on its functions through subcommittees.
 - (e) **Travel Expenses.** ECM members on committee business will be reimbursed for travel expenses at the same rates and conditions as state employees.



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