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## THE DEPARTMENT OF EDUCATION MUST EXERCISE ITS OVERSIGHT RESPONSIBILITY OVER THE RANDOLPH-SHEPPARD PROGRAM

**Congress enacted the Randolph-Sheppard Act to create entrepreneurial opportunities for blind individuals by granting them a priority to manage and operate food service businesses on federal properties.**<sup>1</sup> The Department of Education is responsible for providing administrative oversight for the Program,<sup>2</sup> but has failed to modernize its regulations or provide the necessary policy guidance that will alleviate conflict and allow the Program to reach its full potential. Current regulations were promulgated in 1975 and are no longer reflective of today's foodservice industry.

**The Randolph-Sheppard priority includes troop dining contracts.**<sup>3</sup> In the absence of guidance from the Department of Education on how the Act is to be applied to these cafeteria contracts, the Department of Defense continuously ignores its responsibility under federal law, leading to burdensome and costly arbitrations and litigation. In response to a letter from former Congressman Pete Sessions in 2018, the Secretary of Education offered clarity on this topic.<sup>4</sup> However, the Secretary's letter has done little to stem the tide of arbitrations and court cases being filed on this issue. It is critical that the Department of Education promulgate regulations that reflect the department's policy as communicated in the Secretary's 2018 letter or, at a minimum, issue a clear policy statement as to its interpretation of the regulations under the Randolph-Sheppard Act.

**When disputes arise, the Randolph-Sheppard Act provides for the matter to be resolved by a three-member arbitration panel convened by the Secretary of Education.** Interim regulations governing these arbitration panels were drafted in 1978, but never finalized. Since the regulations were never finalized, the Department's ability to resolve disputes without arbitration is limited. This lack of regulatory guidelines causes lengthy delays in convening arbitration panels—with some lasting as long as two years. Such delays create a burden on State Licensing Agencies, federal entities, and blind entrepreneurs. It is critical that the Department of Education finalize regulations with strict timelines for the various stages of the conflict resolution process.

**The AbilityOne Commission is responsible for identifying goods and services to be placed on the Procurement List and awarded to nonprofit agencies employing people with disabilities.** The Commissioner of the Rehabilitation Services Administration, housed within the Department of Education, serves on the AbilityOne Commission by statute. An RSA Commissioner has yet to be confirmed by the Senate, meaning that the interests of blind entrepreneurs are currently not represented on the Commission. Consequently, the Commission has made illegal decisions about contracts to which the Randolph-Sheppard Act applies. The National Association of Blind Merchants has called upon the department to designate a representative on the AbilityOne Commission to no avail. The Senate should move swiftly to confirm a Commissioner for the Rehabilitation Services Administration. In the interim, Congress should immediately compel the Department of Education to appoint a representative to the AbilityOne Commission who can speak to the interests of blind entrepreneurs under the Randolph-Sheppard Act.

**The Department of Education must promulgate regulations that reflect the Department's interpretation of the Randolph-Sheppard Act as it applies to troop dining contracts as communicated in the Secretary's 2018 letter.**

**The Senate must move swiftly to confirm a Commissioner for the Rehabilitation Services Administration.**

**Congress should immediately compel the Department of Education to appoint a representative to the AbilityOne Commission who can speak to the interests of blind entrepreneurs under the Randolph-Sheppard Act.**

**The Department of Education must finalize regulatory guidance with strict timelines for each step of the conflict resolution process.**

## **THE RIGHTS OF BLIND ENTREPRENEURS UNDER THE RANDOLPH-SHEPPARD ACT MUST BE PROTECTED**

### **For more information, contact:**

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<sup>1</sup> 20 U.S.C. § 107(a)

<sup>2</sup> 20 U.S.C. § 107(b)

<sup>3</sup> 34 C.F.R. § 395.33

<sup>4</sup> Betsy DeVos, U.S. Department of Education, Letter to Congressman Sessions, March 5, 2018