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STATEMENT OF  
H. L. KRIEGER, DIRECTOR  
FEDERAL PERSONNEL AND COMPENSATION DIVISION  
BEFORE THE  
SUBCOMMITTEE ON THE HANDICAPPED  
OF THE SENATE COMMITTEE ON HUMAN RESOURCES

Sen 06706

ON

[ IMPLEMENTATION OF THE RANDOLPH-SHEPPARD ACT AMENDMENTS OF 1974 ]

Mr. Chairman and Members of the Subcommittee, we appreciate the opportunity to discuss our report on the implementation of the vending machine income-sharing provisions of the Randolph-Sheppard Act Amendments of 1974, released February 27, 1979, as it relates to the differences between the Departments of Defense and Health, Education, and Welfare.

Last fall our Office received a number of requests from members of the Texas congressional delegation to investigate complaints that the Randolph-Sheppard Act Amendments of 1974 were not being implemented properly by Federal agencies in the state of Texas. The Department of Defense was one of the agencies cited. Specifically, the distribution of vending machine income required by the 1974 Amendments was of particular concern.

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## BACKGROUND ON AMENDMENTS AND IMPLEMENTATION

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

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

## DISAGREEMENT OVER VENDING MACHINE EXEMPTION

The DOD regulations are inconsistent with HEW's implementing regulations concerning the exemption of certain vending machines of the military exchanges from the income-sharing provisions of the 1974 Amendments. As a result,

less money is going to the blind than is required by the law and the HEW regulations.

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

The HEW regulations rephrase the Amendments' military exchange exemption slightly by stating that net income from vending machines within operated retail sales outlets of the military exchanges is exempt from the income-sharing provisions.

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

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

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

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

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

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

At the conclusion of our review, we brought this matter to your attention for consideration by this Committee in its oversight role in an effort to resolve the differences over the interpretation of the income-sharing provisions.

Mr. Chairman this concludes my statement. My colleagues and I would be happy to respond to any questions you or members of the Committee might have.