



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 04-003

AN ORDER to create VA 1.20, relating to the recovery of erroneous payments made under the tuition and fee reimbursement, part-time study, and retraining grant programs.

Submitted by **DEPARTMENT OF VETERANS AFFAIRS**

01-13-2004 RECEIVED BY LEGISLATIVE COUNCIL.

02-05-2004 REPORT SENT TO AGENCY.

RS:PS

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



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Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 2002.]

2. Form, Style and Placement in Administrative Code

The section created in this rule (s. VA 1.20) is placed at the end of ch. VA 1, which contains a number of general provisions relating to the department. It is recommended that the new section be placed instead in ch. VA 2, which contains the rules relating to the three education grant programs to which the new section applies: correspondence and part-time study, retraining, and tuition and fee reimbursement grants.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. VA 1.20 (3), the reference to “subs. (1) and (2)” on lines 1 and 2 should be changed to “sub. (2),” since only sub. (2) pertains to the *amount* of repayment due.

b. Section VA 1.20 (4) refers to the department waiving “its authority to recover payments or suspend benefits *under sub. (3).*” The authority to suspend benefits is in sub. (3), but the authority to recover payments is in sub. (1). Therefore, the phrase “under sub. (1)” should be inserted after the word “payments” on line 2.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. VA 1.20 (1) (c), the word “effect” should be changed to “affects.”

b. Section VA 1.20 (2) could be rewritten as follows for purposes of clarity:

The department may recover only the portion of the grant to which the applicant would not have been entitled if the correct information had been provided or the grant had been properly calculated, or as a change in circumstances warrants.

c. Section VA 1.20 (5) refers to "appeal and review" under s. VA 1.03. Only appeal, and not review, is mentioned in s. VA 1.03. Why is "review" included here and to what does it refer? Should it be stricken?

**PROPOSED ORDER OF THE
DEPARTMENT OF VETERANS AFFAIRS**

The Wisconsin Department of Veterans Affairs proposes an order creating VA 2.05 of the Wisconsin Administrative Code relating to the recovery of erroneous payments made under the tuition and fee reimbursement, part-time study, and retraining grant programs.

**ANALYSIS PREPARED BY THE
DEPARTMENT OF VETERANS AFFAIRS**

Statutory authority: s. 45.35 (3), Stats.

Statutes interpreted: ss. 45.25, 45.396, and 45.397, Stats.

Under current law, at s. 45.35 (17), Stats., the Wisconsin department of veterans affairs has authority to recover and suspend all state veterans benefits whenever an applicant willfully provides false or fraudulent information on an application for the purpose of receiving benefits. However, there is no clear authority for the department to recover benefits that may have been erroneously paid for reasons other than the willful attempt to fraudulently procure benefits. The creation of section VA 2.05 will enable the department to seek recovery from a benefit recipient who improperly receives an educational grant for other reasons.

These programs are entirely state programs. There are no federal regulations that are applicable to the rules. There are no similar rules in adjacent states. The proposed rules are not regulatory. The focus of the rules is to recover payments already erroneously received by an individual who chose to apply for the benefit so that the veterans trust fund's fiscal integrity can be maintained. The goal is to identify a fair mechanism to accomplish this objective.

TEXT OF RULE

SECTION 1: Section VA 2.05 is created to read:

VA 2.05 Recovery of erroneous payments. (1) **CRITERIA.** The department may recover payments made as a grant under ss. 45.25, 45.396, or 45.397, Stats., if any of the following apply:

- (a) The information provided by the applicant or the school is inaccurate.

- (b) The department incorrectly calculated the grant amount.
- (c) The applicant is not entitled to a grant or is entitled to a lower grant amount as a result of a change in circumstances that affects the applicant's eligibility to receive the grant.
- (2) **AMOUNT OF RECOVERY.** The department may recover only the portion of the grant to which the applicant would not have been entitled if the correct information had been provided or the grant had been properly calculated, or as a change in circumstances warrants.
- (3) **REMEDIES.** The department may request repayment of the amount due under sub. (2). In lieu of a lump sum payment, the department may enter into an agreement under which the applicant may repay the amount due within a 12-month period. If the applicant fails to repay the amount due within 30 days of a request for repayment or fails to comply with the terms of a repayment agreement, the department may offset future grants that the applicant may be entitled to under ss. 45.25, 45.396, or 45.397, Stats. until the amount due has been recovered. The department may also suspend other benefits available to the applicant until the amount due has been recovered, except that the department may not suspend benefits available under s. 45.351, Stats.
- (4) **WAIVER.** The department may temporarily or permanently waive its authority to recover payments under sub. (1) or suspend benefits under sub. (3) if the applicant's household income is totally exempt from garnishment under s. 812.34 (2) (b), Stats.
- (5) **ADMINISTRATIVE REVIEW.** Any department decision under this section is subject to appeal under s. VA 1.03.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin, February 27, 2004

STATE OF WISCONSIN
DEPARTMENT OF VETERANS AFFAIR


JOHN A. SCOCOS, SECRETARY

REPORT AND ANALYSIS OF CLEARINGHOUSE RULE 04-003

1. Statement explaining the basis and purpose for the proposed rules.

The basis and purpose of the proposed rules are to establish an equitable procedure to recover erroneous payments made to recipients of educational grants. The procedure seeks to assure that the rights of recipients are protected by not recovering payments from emergency grants or when the individual is in financial distress and by providing an administrative appeal mechanism for any actions taken under the proposed order.

2. Summary of public comments made as a result of testimony presented at the public hearing and the agency's response to those comments.

The public hearing was conducted on February 27, 2004. A question was asked as to whether there was a time limit beyond which recovery would not be attempted. It was explained that there is no limit in the rule. However, the waiver provision would preclude any recovery while the individual was exempt from garnishment under statutory provisions. No modifications were made as a result of the comments made at the hearing.

3. Changes to the rule analysis or fiscal estimate.

None.

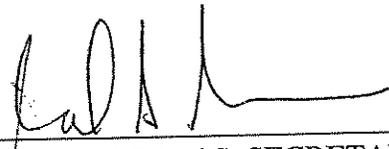
4. Public hearing appearances and registration.

Larry Smerling asked the question identified in the prior response at the hearing.

5. Response to Legislative Council Clearinghouse Report.

The recommendations of the Legislative Council Clearinghouse were wholly implemented in the final order approved by the Board.

STATE OF WISCONSIN
DEPARTMENT OF VETERANS AFFAIRS

BY: 

JOHN A. SCOCOS, SECRETARY

Fiscal Estimate — 2001 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number VA Chapter 1.20

Subject
 Administrative rule creating VA 1.20 of the Wisconsin Administrative Code relating to erroneous payments made under the tuition and fee reimbursement, part-time study, and retraining grant programs.

Fiscal Effect
 State: No State Fiscal Effect
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

<input type="checkbox"/> Increase Existing Appropriation	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs -- May be possible to absorb within agency's budget. <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Decrease Existing Appropriation	<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Create New Appropriation	<input checked="" type="checkbox"/> Decrease Costs	

Local: No Local Government Costs

1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	

Fund Sources Affected
 GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations
 s.20.485 (2)(f), (2)(h), (2)(j)

Assumptions Used in Arriving at Fiscal Estimate

Under current law, at s.45.35 (17), Stats., the Department of Veterans Affairs has the authority to recover and suspend all state veterans' benefits whenever an applicant willfully provides false or fraudulent information on an application for the purpose of receiving benefits. However, there is no clear authority to recover benefits that may have been erroneously paid for reasons other than the willful attempt to fraudulently procure benefits.

The creation of section VA 1.20 will enable the department to seek recovery from a benefit recipient who improperly receives an educational grant for other reasons, such as: 1) information provided by the applicant or the school is inaccurate; 2) the department incorrectly calculated the grant amount and 3) the applicant is not entitled to a grant or is entitled to a lower grant amount as a result of a change in circumstances that effect the eligibility to receive the grant.

In reviewing data from FY00-FY03, the amount of erroneous payments that could be recovered for reasons other than false or fraudulent information was estimated at \$42,400. Therefore, the projected annual fiscal effect is a reduction in expenditures of \$14,100 (\$42,400/3).

Long-Range Fiscal Implications

Prepared By: Zolonda Eubanks	Telephone No. 264-7072	Agency Dept of Veterans Affairs
Authorized Signature 	Telephone No. 266-4838	Date (mm/dd/ccyy) 12/30/2003

Fiscal Estimate Worksheet — 2001 Session
 Detailed Estimate of Annual Fiscal Effect

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number VA Chapter 1.20

Subject
 Administrative rule creating VA Chapter 1.20 of the Wisconsin Administrative Code relating to erroneous payments made under the tuition and fee reimbursement, part-time study, and retraining grant programs.

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Annualized Costs:	Annualized Fiscal Impact on State Funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations — Salaries and Fringes	\$	\$ -
(FTE Position Changes)	(FTE)	(FTE)
State Operations — Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		- 14,100
Total State Costs by Category	\$	\$ - 14,100
B. State Costs by Source of Funds		
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S		- 14,100
State Revenues		
<small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>		
GPR Taxes	\$	\$ -
GPR Eamed		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
Total State Revenues	\$	\$ -

Net Annualized Fiscal Impact

	State	Local
Net Change in Costs	\$ 14,100	\$
Net Change in Revenues	\$	\$

Prepared By: Zolonda Eubanks	Telephone No. 264-7072	Agency Dept of Veterans Affairs
	Authorized Signature	Telephone No. 266-4838



Wisconsin State Senator

Ron Brown

District 31

TO: Members of the Senate Committee on Homeland Security, Veterans and Military Affairs and Government Reform

FROM: Sen. Ron Brown, Chair

DATE: March 10, 2004

RE: Referral of Clearinghouse Rule 04-003

The following Clearinghouse Rule has been referred to the Senate Committee on Homeland Security, Veterans and Military Affairs and Government Reform:

- **Clearinghouse Rule 04-003**, relating to the recovery of erroneous payments made under the tuition and fee reimbursement, part-time study, and retraining grant programs.

An electronic copy of this rule is available on Folio. If you want a hard copy of CR 04-003 in the meantime, or if you have questions about the rule or wish to request a hearing, please contact Melissa Gilbert in my office at 266-8546. The committee's 30-day review period for this rule expires on **April 8**.

Thank you for your attention to this matter.

TO: Members, Assembly Veterans and Military Affairs Committee

FROM: Terry Musser, Committee Chair

DATE: March 22, 2004

RE: Clearinghouse Rule 04-003

The enclosed administrative rule, prepared by the Department of Veterans Affairs, was referred to the Assembly Veterans and Military Affairs Committee on March 17, 2004.

The creation of section VA 1.20 will enable the department to seek recovery from a benefit recipient who improperly receives an educational grant for other reasons.

Under current law, at s. 45.35 (17), Stats., the Wisconsin department of veterans affairs has authority to recover and suspend all state veterans benefits whenever an applicant willfully provides false or fraudulent information on an application for the purpose of receiving benefits.

However, there is no clear authority for the department to recover benefits that may have been erroneously paid for reasons other than the willful attempt to fraudulently procure benefits.

Our Committee has 30 days, or until Friday, April 16, 2004, to review the rule.