



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 01-078

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 September 1998.]

2. Form, Style and Placement in Administrative Code

a. The rule is not in compliance with the standard drafting guidelines set forth in the Administrative Rule Procedure Manual or the Drafting Manual of the Legislative Reference Bureau. It will be necessary to redraft the rule to comply with these standards prior to submitting the final draft version to the Legislature for review. [See s. 227.14 (1), Stats.]

b. It is not feasible to cite all of the areas in which the rule is inconsistent with drafting standards, but the following general observations may be helpful:

- (1) A copy of a rule prepared by the Department of Agriculture, Trade and Consumer Protection is attached to provide a model of how a rule should be drafted.
- (2) The standard drafting guidelines are in the Manual at pages 1 to 16. These provisions will be helpful in using appropriate drafting style, arrangement of the rule, numbering, format and other concerns. For example:
 - (a) The definitions should be in alphabetical order and conform to s. 1.01 (7), Manual.
 - (b) Subsection numbers should be enclosed in parentheses. [See s. 1.03 (3), Manual.]

(c) The arrangement of the rule should follow the provisions of s. 1.02, Manual.

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

a. Under s. HEA 13.04, item 1, it is not clear who will set the maximum award. If it is the Higher Educational Aids Board, that should be stated. Will this be done by rule? [See s. 227.01 (13) and 227.10 (1), Stats.] Also, in the first sentence, “is” should be changed to “of.”

b. The third sentence of s. HEA 13.04, item 1, should be rewritten for clarity. As drafted, it is not clear how the calculation will be done; for example, how will the “borrower’s cost of education” be determined? Also, what will be included in the “need-based aid” or “any other educational cost related resources”? Use of the language “(t)he exact amount of the award will be up to” is also ambiguous in that it is not clear whether the award is required to match the calculation or may not exceed the amount of the calculation.

c. Throughout the rule, the term “shall” is used in areas where a permissive “may” appears to be more appropriate; and the term “will” is used where it is not clear whether a mandatory or permissive direction is intended. It is suggested that the agency review the entire text of the rule to assure that the terminology used reflects the intent of the agency. Also, “is required to” should be replaced by “shall.”

d. Section HEA 13.05, item 3, states that the board “shall voucher a check.” What is intended by this phrase; would “issue a check” cover the intended requirement?

e. The section of the rule dealing with loan forgiveness [s. HEA 13.06], terms of repayment [s. HEA 13.07] and deferment [s. HEA 13.08] all need to be carefully redrafted so that they clearly state the intended requirements. Special attention should be directed to clarifying which determinations are to be made by the board and which are not subject to board review. For example, the rule appears to require deferment of a loan to all borrowers who meet the criteria or status under s. HEA 13.08, without any review by the board of the determination. The agency may wish to consider whether to institute a review procedure for requests for deferment or forgiveness, to allow determinations to be made on the situation of each person. As drafted, it is not clear how the rule would be read to allow a review and decision.

f. The language in s. HEA 13.08, item 7, defining “forbearance” should be placed in the definition section.

g. The language in the second sentence of s. HEA 13.08, item 3, relating to granting a deferment to persons who are employed in a “private agency” that is similar to the peace corps or VISTA if the agency is federally tax-exempt seems likely to cause some confusion in allocating loan deferments in the future. Also “vista” should be replaced by “Volunteers in Service to America.”

h. The agency should consider an initial applicability section to specify which loans will be subject to the rule when it takes effect, especially since there are apparently loans currently outstanding.