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CLEARINGHOUSE RULE 99-160

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

The proposed order repeals and recreates ch. VA 4. A review of the contents indicates that the text of the repealed and recreated chapter is substantially the same as existing rules. In these cases, it is preferable to revise the chapter through amendments and deletions rather than repealing and recreating the entire chapter. In this way, far less text would be included in the rule and the reader could determine the actual differences between the written rule and the prior rule. However, if the decision is made that repealing and recreating the entire chapter is desirable, every effort should be made to make sure that the revised chapter correctly reflects the approved drafting style for administrative rules. Following are examples of errors in drafting that should be corrected. Please review the entire rule for these errors.

- a. The treatment clause on the first page of the rule should be preceded by “SECTION 1.”
- b. Throughout the rule, terms such as therein, herein, thereon, thereto and therewith are used. These terms are to be avoided. For examples of this use, see s. VA 4.01 (intro.) (4), (8), (11) and (13). [See s. 1.01 (9) (c), Manual.]
- c. Section VA 4.01 (17) states that work credit “shall not” include the cost or value of materials used. It should state that it “does not” include cost or value of materials used.
- d. In s. VA 4.02, the title refers to “**Manufactured home loans.**” In s. VA 4.02 (1), the term “manufactured home” is used. However, in subs. (2) to (5), the term referred to is “mobile

home” or “mobile homes.” The terminology should be consistent. It is suggested that a definition be created of “manufactured home” and that that term be used in the rule. [See s. 1.01 (7), Manual.]

e. In s. VA 4.03 (1), the title is not in proper format. [See s. 1.05 (2) (c), Manual.]

f. In s. VA 4.03 (3) (d), “will be” should be replaced by “is” and “where the applicant shall deposit” should be replaced by “if the applicant deposits.” [See s. 1.01 (2), Manual.]

g. Throughout the rule, references are made to “veterans,” “applicants” and “veteran-borrower.” One term should be used consistently throughout the rule.

h. Except for introductory material, all subunits of a rule should end with a period. [See s. 1.03 (intro.), Manual.] For example, in s. VA 4.03 (3) (g) 1. to 4., the semicolons should be replaced by periods.

i. In s. VA 4.03 (3) (j), the third sentence is not substantive and should therefore be placed in a note.

j. Throughout the rule, “ the” or another appropriate article should replace “such.” [See s. 1.01 (9) (c), Manual.] For example, in the last sentence of s. VA 4.03 (3) (n) (intro.), “Such” should either be deleted or replaced by “The.” Also, introductory material should include a phrase like “any of the following” or “all of the following.” For example, s. VA 4.03 (3) (n) (intro.) should end with “Advances may be made at any of the following times:”.

k. In s. VA 4.03 (3) (q) (intro.), “, however, at its discretion,” should be deleted and “if all of the following occur” should replace “provided that.”

l. The rule should be reviewed for the proper use of “shall” and “may.” For examples of incorrect usage, see s. VA 4.04 (13). Words like “must” and “will” should be replaced by “shall.” A prohibition is expressed by “may not” rather than “shall not.” [See s. 1.01 (2), Manual.]

m. In s. VA 4.04 (6), “little question” should be replaced by a less vague term.

n. Throughout the rule, the active voice should replace the passive voice. [See s. 1.01 (1), Manual.] For example, s. VA 4.06 (1) should begin “_____ shall approve”

o. In s. VA 4.07 (5) (b), “Wis. Adm. Code” should be deleted.

p. In s. VA 4.08 (2), “Before authorized lenders willing to participate in the mortgage loan program will be allowed to process mortgage loan applications, they will enter into contracts with the department” should be replaced by “No lender may process a mortgage loan application until the lender has entered into a contract with the department.”

q. In s. VA 4.08 (4), “etc.,” should be deleted.

r. In s. VA 4.08 (8), “(b)” should be deleted.

s. In s. VA 4.11 (intro.) the material in parentheses should be deleted. Also, “the department shall do all of the following:” should replace “the procedures set forth below shall be followed by the department:”. In s. 4.11 (7), “(hereinafter referred to as the “board”)” should be deleted. The term “board” should be defined in s. VA 4.01.

t. The titles to ss. 4.13 (4) (a), (b) and (c) and 4.14 (3) (a) to (g) are not in proper format. Paragraph titles should be italicized and be all lower case, except the first letter. [See s. 1.05 (2) (d), Manual.]

u. Section VA 4.14 (1) should be rewritten in its entirety. The subsection needs a title. References to “code” are inappropriate. Section 45.76 (1) (c), Stats., does not have any subdivisions. The subsection should be rewritten along the following lines:

(1) _____. This section applies only to the program under s. 45.76 (1) (c), Stats. This section applies in conjunction with other provisions of this chapter. This section supersedes any inconsistent provision of this chapter with respect to the program under s. 45.76 (1) (c), Stats.

v. In s. VA 4.08 (10), the reference to “the Wisconsin Administrative Code” is overly broad. Also, what is the lender’s manual referred to in that subsection? Does it contain any substantive provisions? If so, see ss. 227.01 (13) and 227.10 (1), Stats. Finally, “Notwithstanding” is misspelled.

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

a. In s. VA 4.01, reference is made to “the administrative rules issued by the Fannie Mae Program.” In s. VA 4.03 (3) (n), reference is made to “VA/FHA guidelines.” In s. VA 4.06 (4), reference is made to “Fannie Mae guidelines and standards.” These references are inadequate. Can specific references be included? [See s. 1.07 (3), Manual.]

b. In s. VA 4.03 (3) (j), reference is made to a “standard form 17c or a comparable form.” This is inadequate. What is the form and who issues it?

c. In s. VA 4.05 (2), “pursuant s. VA 4.09 (9)” should be changed to “pursuant to s. VA 4.08 (9).”

d. In s. VA 4.08 (4), “this chapter” should replace “ch. VA 4.”

e. Section VA 4.14 (2) (a) refers to s. VA 14.03 (2). There is not a rule with this number.

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

a. The definitions of “annual income” and “current monthly income” in s. VA 4.01 (2) and (6) are somewhat circular.

b. In s. VA 4.03 (6), a comma should be inserted after “cases.” Throughout the rule, a prepositional phrase at the beginning of a sentence should end with a comma.

c. In s. VA 4.03 (7) and elsewhere in the rule, “floodplain” should replace “flood plain.”

d. In s. VA 4.12 (4), “finds” should replace “should find.”

e. Section VA 4.08 (5) includes the phrase “. . . , unless the lender corrects the deficiency within 60 days’ notice of the deficiency” It appears that “days after” should replace “days’.”