

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) PI 35, Milwaukee Parental Choice Program; PI 48, Racine And Wisconsin Parental Choice Programs; PI 49, Special Needs Scholarship Program	
4. Subject Parental Choice and Special Needs Scholarship Programs offsetting revenue, statements of actual cost, and affecting small business	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected
7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input checked="" type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137 (3) (b) 1., Stats. \$0	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137 (3) (b) 2., Stats.? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule This proposed rule will amend chs. PI 35, 48, and 49 of the Wisconsin Administrative Code to provide that loans under the Paycheck Protection Program (PPP), which are forgiven by the federal government, are not offsetting revenue in the financial audit supplemental schedule for any of the state's Parental Choice Programs or the Special Needs Scholarship Program. Schools participating in the Special Needs Scholarship Program have the option to submit a statement of actual costs that specifies the special education expenses the school incurred for educating a Special Needs Scholarship Program pupil in the prior school year. If a school submits a statement of actual costs for a pupil, the payment amount for that pupil in the subsequent school year is based on the actual costs for the pupil in the statement. The proposed rule specifies that if an amount included in a Special Needs Scholarship Program statement of actual costs is part of a forgiven PPP loan, and the amount is forgiven on or before October 15 th following the school year, the costs in the statement of actual costs must be reduced by the forgiven amount. The proposed rule also specifies that any adjustments to a statement of actual costs due to forgiven PPP loans will be paid back through the Enrollment Audit certification process. Finally, it indicates that the payment amount for an actual cost pupil will not be below the Special Needs Scholarship Program payment rate for a pupil that did not submit a statement of actual costs.	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments School Choice Wisconsin, Bender Consulting, LLC., Wisconsin Council of Religious & Independent Schools, and Wisconsin Catholic Conference were contacted for comments on the fiscal estimate for this proposed rule.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA None.	
14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)	

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Sections 1, 2, and 4 of the proposed rule provide that the forgiven portion of loans under the PPP are not included as offsetting revenues in the financial audit supplemental schedule for schools participating in any of the state's Parental Choice Programs and the Special Needs Scholarship Program. It is the department's understanding that most schools participating in the Parental Choice Programs or the Special Needs Scholarship had a PPP loan. The effect on small businesses as a result of this rule is indeterminate because the department does not have: 1) the PPP loan amounts; 2) the amounts forgiven; and 3) when the amounts will be forgiven for each private school participating in the Parental Choice Programs or Special Needs Scholarship Program. According to the Small Business Administration, First Draw PPP loans made to eligible borrowers qualify for full loan forgiveness if during the 8- to 24-week covered period following loan disbursement:

- Employee and compensation levels are maintained;
- The loan proceeds are spent on payroll costs and other eligible expenses; and
- At least 60% of the proceeds are spent on payroll costs.

The department anticipates that schools participating in the Parental Choice Programs or Special Needs Scholarship Program will meet the above criteria and have their PPP loan forgiven in whole or part. Without this rule, the forgiven portion of a PPP loan that was used for eligible education expenses would be included in offsetting revenue and decrease a school's eligible education expenses, resulting in an increase in the school's Parental Choice Programs and/or Special Needs Scholarship reserve balance. The reserve balance is the remaining balance of Parental Choice Programs or Special Needs Scholarship revenue that hasn't been spent on eligible education expenses. Private schools participating in the Parental Choice Programs or Special Needs Scholarship Program are required to have a cash and investment balance that is at least as much as the reserve balances with certain adjustments. As a result, the increase in the reserve balances would result in schools being required to have a higher cash and investment balance.

Additionally, sections 3 and 5 of the proposed rule specify that any amount forgiven for a PPP loan until October 15th in the following school year reduces the costs in the Special Needs Scholarship Program statement of actual costs for the current school year. The proposed rule provides if an amount is forgiven between the due date of the statement of actual costs and October 15th, the change in the per pupil payment will be made through the Enrollment Audit certification process. Finally, this rule change ensures that schools will not receive less than the standard payment rate for a pupil included in a statement of actual costs due to changes in the actual cost, such as costs that are subsequently forgiven.

Forgiven PPP loans will not be counted as government assistance revenue and will therefore not increase the cash and investment balance required for private schools participating in a Parental Choice Program or the Special Needs Scholarship Program as a result of this rule. There are no anticipated compliance costs associated with the proposed rule or anticipated additional costs to small businesses. The proposed rule helps small businesses by ensuring a private school does not receive a payment for a pupil below the standard payment rate due to costs in the statement of actual cost that are subsequently forgiven. The effect on small businesses as a result of the rule is indeterminate.

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

This rule change is designed to address the forgiveness of the PPP loans for private schools participating in the Parental Choice and Special Needs Scholarship programs. The proposed rule provides that the forgiven portion of loans under the PPP are not included as offsetting revenues in the financial audit supplemental schedule for schools participating in any of the state's Parental Choice Programs and/or the Special Needs Scholarship Program. Without a rule, the forgiven portion of the PPP loan will be treated inconsistently between the 2019-20 school year and future school years. If a rule is not in place, the loans that are forgiven after the 2019-20 school year will reduce each participating school's eligible education expenses in the financial audit supplemental schedule.

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Further, the rule change clarifies when expenses in the statement of actual costs need to be reduced because a portion of a PPP loan is forgiven. The rule change also provides that if an amount is forgiven between the due date of the statement of actual costs and October 15th, the change in the per pupil payment will be made through the Enrollment Audit certification process. Finally, this rule change ensures that schools will not receive less than the standard payment rate for a pupil included in a statement of actual costs due to costs that are subsequently forgiven. If these rule changes are not made, the forgiven portion of a PPP loan that was used for eligible education expenses would be included in offsetting revenue and decrease a school's eligible education expenses, resulting in an increase in the school's Parental Choice Programs and/or Special Needs Scholarship reserve balance.

16. Long-Range Implications of Implementing the Rule

With these proposed rule changes, forgiven PPP loans will not be counted as government assistance revenue and will therefore not increase the cash and investment balance required for schools participating in a Parental Choice Program or the Special Needs Scholarship Program. The proposed rule helps small businesses by ensuring a private school does not receive a payment for a pupil below the standard payment rate due to costs in the statement of actual cost that are subsequently forgiven.

17. Compare With Approaches Being Used by Federal Government

The PPP is a loan administered by the Small Business Administration designed to provide a direct incentive for small businesses to keep their workers on payroll. Borrowers may be eligible for PPP loan forgiveness. More information on the PPP may be found here: <https://www.sba.gov/funding-programs/loans/covid-19-relief-options/paycheck-protection-program>.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois: Under the Invest in Kids Program, students are eligible to receive a scholarship to attend qualified, nonpublic schools in Illinois if their family is below 300% of the federal poverty level. Student scholarships cannot exceed the state's average operational expense per pupil, with exceptions and a \$75 million credit cap for scholarship awards. However, there are no comparable rules or statutes governing special needs scholarship programs in Illinois.

Iowa: The School Tuition Organization Tax Credit provides that individuals, corporations, LLCs and other partnerships that donate to School Tuition Organizations (STOs) may receive a 65% tax credit, and STOs in turn give out funds as tuition grants to lower-income students to attend an accredited, nonpublic school. However, there are no comparable rules or statutes governing special needs scholarship programs in Iowa.

Michigan: There are no rules governing private school choice or special needs scholarship programs in Michigan.

Minnesota: There are no rules governing private school choice or special needs scholarship programs in Minnesota.

19. Contact Name

Carl Bryan, Administrative Rules Coordinator
Department of Public Instruction

20. Contact Phone Number

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This document can be made available in alternate formats to individuals with disabilities upon request.

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ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

Sections 1, 2 and 4 of the proposed rule provide that the forgiven portion of loans under the PPP are not included as offsetting revenues in the financial audit supplemental schedule for schools participating in any of the state's Parental Choice Programs and the Special Needs Scholarship Program. It is the department's understanding that most schools participating in the Parental Choice Programs or the Special Needs Scholarship had a PPP loan. The effect on small businesses as a result of this rule is indeterminate because the department does not have: 1) the PPP loan amounts; 2) the amounts forgiven; and 3) when the amounts will be forgiven for each private school participating in the Parental Choice Programs or Special Needs Scholarship Program. According to the Small Business Administration, First Draw PPP loans made to eligible borrowers qualify for full loan forgiveness if during the 8- to 24-week covered period following loan disbursement:

- Employee and compensation levels are maintained
- The loan proceeds are spent on payroll costs and other eligible expenses; and
- At least 60% of the proceeds are spent on payroll costs

The department anticipates that schools participating in the Parental Choice Programs or Special Needs Scholarship Program will meet the above criteria and have their PPP loan forgiven in whole or part. Without this rule, the forgiven portion of a PPP loan that was used for eligible education expenses would be included in offsetting revenue and decrease a school's eligible education expenses, resulting in an increase in the school's Parental Choice Programs and/or Special Needs Scholarship reserve balance. The reserve balance is the remaining balance of Parental Choice Programs or Special Needs Scholarship revenue that hasn't been spent on eligible education expenses. Private schools participating in the Parental Choice Programs or Special Needs Scholarship Program are required to have a cash and investment balance that is at least as much as the reserve balances with certain adjustments. As a result, the increase in the reserve balances would result in schools being required to have a higher cash and investment balance.

Additionally, sections 3 and 5 of the proposed rule specify that any amount forgiven for a PPP loan until October 15th in the following school year reduces the costs in the Special Needs Scholarship Program statement of actual cost for the current school year. The proposed rule provides if an amount is forgiven between the due date of the statement of actual costs and October 15th, the change in the per pupil payment will be made through the Enrollment Audit certification process. Finally, this rule change ensures that schools will not receive less than the standard payment rate for a pupil included in a statement of actual costs due to changes in the actual cost, such as costs that are subsequently forgiven.

Forgiven PPP loans will not be counted as government assistance revenue and will therefore not increase the cash and investment balance required for private schools participating in a Parental Choice Program or the Special Needs Scholarship Program as a result of this rule. There are no anticipated compliance costs associated with the proposed rule or anticipated additional costs to small businesses. The proposed rule helps small businesses by ensuring a private school does not receive a payment for a pupil below the standard payment rate because of costs in the statement of actual cost that are subsequently forgiven. The effect on small businesses as a result of the rule is indeterminate.

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

An analysis conducted by the department indicates that the proposed rule may impact small businesses in the state, specifically private schools participating in any of the state's Parental Choice Programs or the Special Needs

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Scholarship Program that have received loans under the PPP. Chapters PI 35, 48, and 49 of the Wisconsin Administrative Code govern the administration of private schools participating in the Milwaukee Parental Choice Program, the Racine and Wisconsin Parental Choice Programs, and the Special Needs Scholarship Program, respectively, including fiscal requirements for schools participating in any of these programs. Under current rule, private schools participating in the Parental Choice Programs and Special Needs Scholarship Program must annually submit a financial audit that determines the school's net eligible education expenses. Further, under current rule, private schools participating in the Special Needs Scholarship Program may submit a statement of actual costs for services provided to a pupil participating in the Special Needs Scholarship Program.

Pursuant to s. 118.38 (4) (a) 1., Stats., the department was given the authority to waive the requirement that any PPP loans received under the CARES Act that are forgiven on or before June 30, 2020, be included as offsetting revenue in the 2019-20 financial audit. However, the forgiveness for some of the participating schools' loans will not be included in the school's financial audit until after the 2019-20 school year. Further, the federal government has made additional PPP loans available. These loans would also be forgiven at a later date. In analyzing the economic impact of this rule, PPP loans that are forgiven will not result in a reduction in each participating private school's net eligible education expenses in the financial audit supplemental schedule. Additionally, private schools participating in the Special Needs Scholarship Program will not receive less than the standard payment rate for a pupil included in a statement of actual costs due to costs that are subsequently forgiven.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

Forgiven PPP loans will not be counted as government assistance revenue and will therefore not increase the cash and investment balance required for private schools participating in a Parental Choice Program or the Special Needs Scholarship Program as a result of this rule. There are no anticipated compliance costs associated with the proposed rule or anticipated additional costs to small businesses.

5. Describe the Rule's Enforcement Provisions

Wis. Stat. 115.7915, 118.60, and 119.23 and Chapters PI 35, 48, and 49 specify that the financial audit supplemental schedule, including the offsetting revenue, is audited by an independent auditor. The financial audit, including the financial audit supplemental schedule, is then reviewed and certified by the department. The audit of the financial audit by the independent auditor also includes reviewing the statement of actual costs.

Additionally, the proposed rule provides if an amount is forgiven between the due date of the statement of actual costs and October 15th, the change in the per pupil payment will be made through the Enrollment Audit certification process.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
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