

**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 1.20 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 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, April 30, 2004.

STATE OF WISCONSIN
DEPARTMENT OF VETERANS AFFAIRS

JOHN A. SCOCOS, SECRETARY