



STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION

Tony Evers, Governor  
Joel Brennan, Secretary

April 23, 2019

Senator Nass, Senate Co-Chair  
Joint Committee for Review of Administrative Rules  
Room 10S, State Capitol  
Madison, WI 53702

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Representative Ballweg, Assembly Co-Chair  
Joint Committee for Review of Administrative Rules  
Room 210N, State Capitol  
Madison, WI 53702

**RE: Petition to Repeal Unauthorized Rule**

Dear Committee Co-Chairs:

Enclosed please find a Petition and Order to Repeal Unauthorized Rules. The Department of Administration has determined that s. Adm 89.03(2) and (3), Wis. Admin. Code., relating to the mandatory geographic distribution of housing grant funds, are unauthorized as defined in s. 227.26 (4) (a), Wis. Stats., following the repeal of s. 16.303(2)(c), Wis. Stats., in 2017 Wisconsin Act 59. Accordingly, the Department hereby proposes to repeal s. Adm 89.03(2) and (3) via the process identified under s. 227.26 (4), Wis. Stats.

Please contact me if you have any questions.

Sincerely,

Susan Brown  
Acting Division Administrator

Enclosure

## DEPARTMENT OF ADMINISTRATION

### PETITION AND ORDER TO REPEAL UNAUTHORIZED RULES

The Wisconsin Department of Administration hereby petitions the Joint Committee for Review of Administrative Rules to repeal rules that the Department has determined to be unauthorized, using the process described in s. 227.26 (4), Wis. Stats.

#### Proposed Order

An order relating to the expedited repeal of s. 89.03(2) and (3), Wis. Admin. Code, relating to the mandatory geographic distribution of housing grant funds.

#### Analysis

##### 1. References to Statutes Interpreted and Related Statutes or Rules

Section 16.303 Wis. Stats establishes the authority under which the Department makes a variety of awards from the s. 20.505(7)(b), Wis. Stats appropriation. Programs administered under this statutory authority include: Housing Cost Reduction Initiative (HCRI), Homeless Prevention Program (HPP) and Critical Assistance Program (CA). Section 16.303 Wis. Stats provide various requirements for the Department to interpret and apply under the above programs. Accordingly, Chapter Adm 89 was promulgated to interpret these provisions under the authority of s. 227.11, Wis. Stats.

Specifically, s. Adm 89.03(2)-(3), Wis. Admin. Code, was promulgated to interpret the requirement in s 16.303(2)(c), Wis. Stats., which required the Department to “[e]nsure that the funds for the grants and loans are reasonably balanced among geographic areas of this state.”

The Department continues to work collaboratively with local Continua of Care, which are the recipients of funding under s. 20.505 (7) (b), regarding the distribution of funds. Eliminating the previous geographic distribution language promulgated under Adm 89.03 (2) and (3) had become difficult to administer and was requested by the CoC's.

##### 2. References to and Explanation of Statutory Authority

In 2017, the legislature enacted 2017 Wisconsin Act 59, which repealed s. 16.303(2)(c), Wis. Stats. *See* 2017 Wisconsin Act 59, § 118. The rule provisions in question were written solely under the authority to interpret s. 16.303(2)(c) and were written at the behest of and in consultation with stakeholder groups. Under the authority of s. 227.11, Wis. Stats., Adm 89.03(2)-(3) now lack statutory authority after the statutory provision has been repealed.

##### 3. Brief Summary of Proposed Rule

Since the legislature repealed the requirement of a geographic balance in the distribution of funds, the Department no longer has the authority to impose that requirement. Instead, the Department must distribute funds according to the remaining criteria in s. 16.303(2)(a), (d), and (e) that the legislature did not repeal—none of which currently authorizes the requirements set forth in s. Adm 89.03(2) and (3). Nor do the rule provisions which the Department is proposing to repeal perform other functions or provide other guidance related to housing grants or loans

beyond simply interpreting the former geographic requirement that no longer exists in statute. Accordingly, the Department proposes to repeal s. Adm 89.03(2) and (3) as unauthorized rules.

4. Email Address and Telephone Number for Agency Contact Person

Landon Williams, Policy Initiatives Advisor, (608) 267-9376, [LandonT.Williams@wisconsin.gov](mailto:LandonT.Williams@wisconsin.gov)

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**TEXT OF PROPOSED RULE**

**SECTION 1.** Adm 89.03(2) and (3) are repealed.

**SECTION 2. EFFECTIVE DATE.** The repeal of rules pursuant to this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro), Stats.

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