



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 01-079

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 (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. The second sentence of s. HEA 14.04, 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 “the 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.

b. In s. HEA 14.04, item 2, the phrase “grace period, employment for forgiveness” is unclear.

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.

d. Section HEA 14.05, item 3, states that the board “shall voucher a check.” What is intended by this phrase; would “issue a check” cover the intended requirement? Also, this provision states that the agreement must set forth the terms of the loan, the terms of forgiveness, the terms of repayment and the borrower’s rights and responsibilities. It appears that many general policies will be included in this agreement form. If so, these general policies must be stated in the Wisconsin Administrative Code.

e. In s. HEA 14.05, item 4, how is the borrower to maintain contact with the board until the loan is either forgiven or repaid? This should be specified in the rule.

f. The sections of the rule dealing with loan forgiveness [s. HEA 14.06], terms of repayment [s. HEA 14.07] and deferment [s. HEA 14.08] all need to be carefully redrafted so that they clearly state the 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 14.08, 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 situations of each person. As drafted, it is not clear how the rule would be read to allow such a review and decision.

g. The language in s. HEA 14.08, item 7, defining “forbearance” should be placed in the definition section.

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.