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Sooner. (corrected)
Hearing Date: November 12, 2014

EmR1416

**ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF VETERANS AFFAIRS
ADOPTING EMERGENCY RULES**

The statement of scope for this rule, SS 038-14, was approved by the Governor on April 21, 2014, published in Register No. 701 on May 14, 2014, and approved by Secretary John A. Scocos on May 27, 2014. This emergency rule was reviewed by the Board of Veterans Affairs on July 15, 2014 and approved by the Governor on August 20, 2014.

ORDER

The Department of Veterans Affairs hereby adopts an order to create s. VA 2.07, relating to grants to non-profit organizations.

EXEMPTION FROM FINDING OF EMERGENCY

The Legislature by Section 9 of 2013 Act 190 provides an exemption from a finding of emergency for the adoption of this rule.

ANALYSIS

1. Statute interpreted: Section 45.46, Stats.

2. Statutory authority: Sections 227.24 (1) (a), 227.10 (1), 227.11 (2) (a), and 45.03 (2).

3. Explanation of agency authority:

Section 227.24 (1) (a), Stats., authorizes the Department to promulgate rules as emergency rules if preservation of the peace, health, safety, or welfare necessitates putting the rules into effect prior to the time they would take effect if the agency complied with the non-emergency procedures. Section 9 of 2013 Act 190 explicitly authorizes the Department to promulgate emergency rules, s. 227.24 (1) (a) and (3), Stats., notwithstanding.

Section 227.10 (1), Stats., requires each department to promulgate as a rule each statement of general policy and each interpretation of a statute which it specifically

adopts to govern its enforcement or administration of that statute. Further, (2m) requires rule promulgation before a department may implement or enforce any standard, requirement, or threshold.

Section 227.11 (2) (a), Stats., authorizes the department to promulgate rules interpreting the provisions of any statute enforced or administered by the department, if the department considers it necessary to effectuate the purpose of the statute.

Section 45.03 (2), Stats., authorizes the Secretary to promulgate rules necessary to carry out the purposes of Chapter 45 and the powers and duties conferred upon it.

4. Related statute or rule:

This rule administers a one-time competitive grant program for the award of grants to nonprofit organizations that provide assistance to veterans or their families. Although the Department administers various grant programs to organizations and individuals, the existing rules are insufficient and inappropriate for the new grant authority. Grants provided under existing sections of Chapter VA 2 are not competitive grants as is created by this rule. The existing grants in Chapter VA 2 are awarded to individuals based on financial need and the satisfaction of certain established criteria. Grants under Chapter VA 7 are awarded in compliance with s. 45.41, Stats., which establishes eligibility criteria and specific award levels for veterans organizations that engage in veterans claims service. Grants under Chapter VA 8 are awarded in compliance with s. 45.82, Stats., which establishes a sliding-scale grant level to counties for improvement of service to veterans based on county population. Grants under Chapter VA 15 are awarded in compliance with s. 45.82, Stats., which establishes criteria and a sum-certain that is equally divided between qualifying tribes or bands that apply for the grant for improvement of service to veterans. Grants under Chapter VA 16 are awarded in compliance with s. 45.83, Stats., to counties that provide transportation to veterans; eligible counties receive a proportion of the total appropriation based on the number of miles veterans were transported during a specified 12-month period.

5. Plain language analysis:

This rule establishes the general criteria, procedures, requirements and conditions for the award of grants to nonprofits. It allows for grant applications from any nonprofit as defined in s.108.02 (19), to provide financial assistance or other services to veterans and their dependents.

The rule provides for solicitation of applications for grants in the form of public notice. Each grant applicant will be asked to provide: (1) proof of nonprofit status; (2) information about itself; (3) description of the financial assistance or other services it provides to veterans and their dependents; and (4) description of the need for the requested funds.

6. Summary of and comparison with, existing or proposed federal regulations.

Research revealed no completely analogous grant program within the federal government, although the federal government offers grants to nonprofit organizations that provide certain specified services to veterans or their families, or provide services to a specific segment of the veterans' community, e.g., homeless veterans. An example is the US Department of Veterans Affairs Supportive Services for Veteran Families Program that provides grants to private nonprofit organizations and consumer cooperatives who coordinate or provide support services to very low income veteran families who meet certain criteria related to housing. Program grantees are responsible for providing outreach, case management, linkages to VA benefits, and linkages to other public benefits. This federal grant program is the mechanism for delivering the USDVA's programmatic services via third-party organizations.

Conversely, the state grant program administered by this rule is intended to complement the WDVA's services by providing financial assistance to nonprofit organizations that provide services to veterans not offered by the WDVA.

7. Comparison with rules in adjacent states:

In reviewing the statutes, rules and websites of the veterans departments of adjacent states revealed no similar grant program.

8. Summary of factual data and analytical methodologies:

The department analyzed the grant processes of organizations experienced in the administration of competitive grants and used those processes as a foundation for the rule and application procedures.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

There is no effect on small business. This is a voluntary grant program available only to certain nonprofit organizations.

10. Fiscal Estimate: The proposed rule changes will have no additional fiscal impact.

11. Effect on small business: The proposed rule changes will have no impact upon small businesses.

12. Agency contact person:

Kathy Marschman, kathy.marschman@dva.wisconsin.gov, (608) 266-2256.

A hearing date will be scheduled after this emergency rule is approved by the Governor and published in the Wisconsin State Journal.

Emergency Rule

SECTION 1. VA 2 (title) is amended to read:

CHAPTER VA 2

~~GRANTS TO NEEDY VETERANS; VETERANS TUITION REIMBURSEMENT AND
RETRAINING GRANTS, AND REIMBURSEMENT OF VETERANS FOR TRIBAL
COLLEGE TUITION; NONPROFIT ORGANIZATIONS~~

SECTION 2. VA 2.07 is created to read:

VA 2.07 Grants to Nonprofit Organizations

(1) AUTHORITY AND PURPOSE. The purpose of this section is to establish rules for the implementation and administration of grants to nonprofit organizations that provide financial assistance or other services to Wisconsin veterans and their dependents, as authorized under s. 45.46, Stats.

(2) APPLICABILITY. This section applies to grants awarded under s. 45.46, Stats.

(3) DEFINITIONS. In this section:

(a) “Applicant” means a nonprofit organization that applies for a grant to provide financial assistance or other services to veterans or their dependents.

(b) “Department” means the Wisconsin department of veterans affairs.

(c) “Evaluation committee” means a committee comprised of members of the board of veterans affairs that evaluates applications made under this section.

(d) “Nonprofit organization” is an organization described in section 501 (c) (3) of the internal revenue code which is exempt from federal income tax under s. 501 (a) of the internal revenue code.

(4) ELIGIBLE APPLICANT. A nonprofit organization is eligible to receive a grant under this section when all the following apply:

(a) It provides financial or other assistance to veterans or to the dependents of veterans.

(b) It is current on all federal and state tax obligations.

(c) It is financially viable.

(5) APPLICATION. (a) *Competitive solicitation.* The department shall ensure that all solicitations are conducted in a manner that provides for fairness and competition.

(b) *Public notice.* The department shall provide reasonable public notice of all solicitations of grant proposals under s. 45.46, Stats. Notice may be made through the print, broadcast or telecommunications media, including the Internet, at the discretion of the department. The notice shall include the purpose of the grant, the selection criteria, application procedures, and all applicable solicitation deadlines that an applicant is required to meet, or shall contain instructions for obtaining this information.

(c) *Application requirements.* All applications for a grant under s. 45.46, Stats., shall be submitted to the department as directed in the notice provided under this section. All applications shall be fully completed and signed by a representative of the applicant having authority to act for the applicant, and submitted by the required filing deadline.

(6) EVALUATION OF APPLICATIONS. (a) *Evaluation criteria.* The evaluation committee shall evaluate grant applications submitted under sub. (5) against selection criteria. The department shall develop criteria to evaluate each applicant with regard to applicant's:

1. Organizational experience providing services to veterans.
2. Understanding and ability to communicate the needs of the target population (veterans and their dependents).
3. Stated purpose and objectives for the grant funds and method and timetable for expending funds.
4. Budget clarity and justification.
5. Evaluation plan for the project.

6. Outreach and referral plan to identify and assist veterans or their dependents with services.

7. Program implementation timeline.

8. Integration of outreach and employment services into plan.

9. Past performance.

10. Experience serving underserved populations or underserved geographic areas.

11. Past working relationships with veteran service organizations.

(b) *Rating applications.* The evaluation committee shall weight the importance of each evaluation criterion by assigning points to it. Using the evaluation criteria specified in par. (a) the evaluation committee shall evaluate each application against each applicable criterion and assign points signifying the degree to which the application meets the criterion up to the maximum number of points. The total points assigned to the application for all applicable criteria will be the score for the application. The evaluation committee shall numerically rank each application for each public notice.

(7) NOTIFICATION. Each applicant shall be notified in writing of the department's decision in accordance with the public notice.

(8) GRANT AWARDS. (a) The department shall award a grant to the applicants with the highest numerical score as funds are available.

(b) A grant awarded under this section shall be made on forms prepared by the department. The award shall be signed by the authorized representative of the department and shall list the conditions to which the award subject.

(c) The authorized representative of the recipient nonprofit organization shall accept the grant award by signing the award document and returning it to the department. The

department may terminate a grant award if the award is not accepted within 10 calendar days of the date of issuance by the department.

(9) AVAILABILITY OF FUNDS. All grants awarded under this section shall be contingent upon availability of funds under s. 20.485 (2) (tf), Stats.

(10) RESTRICTIONS. (a) *Prohibited use of funds.* Grant funds shall be used only for the payment or reimbursement of expenses which are reasonable, necessary, and properly assignable to the purposes of the approved grant. Any other use of grant funds is prohibited. A grantee may not use the grant funds to supplant existing employee wages and compensation. A grantee may not use grant funds to purchase capital equipment unless specified in the grant award.

(b) *Violation of prohibited use of funds.* If a grantee uses grant funds for prohibited activities under par. (a), the department may terminate the grant and recover funds previously paid to the grantee for that funding period on a recoupment schedule specified in the grant award.

(c) *Record keeping.* A grantee shall maintain grant records for at least three years and shall provide information to the department as required by the department for the purposes of program or fiscal audits and, at the request of the department, shall appear before the department to respond to any questions about the grant and use of grant funds.

(11) AMOUNT OF GRANTS. The amount of a grant award shall be based on the following:

(a) The amount requested by the applicant and approved by the department.

(b) No grantee may receive more than \$25,000 in any combination of grants during a state fiscal year.

(c) The availability of funds under s. 20.485 (2) (tf), Stats.

(12) REPORTING REQUIREMENTS. A grantee receiving a grant under this section shall submit to the department data and information on the use and effect of the grant funds as specified in this section and in the grant award. The grantee shall authorize the department to audit and inspect its records.

(13) ASSURANCES AND CERTIFICATIONS. (a) *Authority to sign and accept funds.* The grantee shall certify that the designated signatory official has the authority to sign on behalf of the grantee and has the authority to accept funds.

(b) *Compliance statement.* The grantee shall provide a statement that it is in compliance with applicable state and federal laws, rules, and regulations, including tax laws, the requirements of this section, and the grant award.

(c) *Nondiscrimination and equal opportunity.* In accordance with s. 16.765, Stats., the grantee may not discriminate in violation of state or federal law and shall follow equal employment opportunity practices in the administration and delivery of program services to eligible applicants.

SECTION 3. EFFECTIVE DATE. This rule shall take effect upon publication in the official state newspaper as provided in s. 227.24 (1) (c), Stats.

Dated this ____ day of _____, 2014.

STATE OF WISCONSIN
DEPARTMENT OF VETERANS AFFAIRS

John A. Scocos, Secretary