REPORT AND ANALYSIS OF
CLEARINGHOUSE RULE 07-083

1. The proposed rule.

   The proposed rule is attached in its final draft form.

2. A plain language analysis.

   The plain language analysis precedes the final draft of the proposed rule in the above referenced attachment.

3. Reference to the applicable forms.

   WDVA 2201 will need to be amended to reflect the proposed rule. A copy of WDVA 2201 is attached.

4. A statement explaining the need for the proposed rule.

   The proposed rule is needed because the purpose of the statute is not being met by the current rule and a disproportionate number of veterans are being denied the statutory benefit because of the current rule.

5. A detailed statement explaining the basis and purpose for the proposed rule.

   The basis and purpose of amending the rule is to allow returning veterans sufficient time to meet the pre-application requirements elaborated under s.45.20 (2) (f), Stats. The department has recorded a disproportionate number of applicants who have been unable to meet the time limit, currently no later than 30 days after the commencement of a semester or class, for submitting this information under the current administrative rule since it became effective on January 1, 2006. The department believes that extending this period by amending the rule to allow 180 days to submit the pre-application will allow veterans sufficient time to fulfill the statutory requirement.

   The statutory purpose of the pre-application was to improve the department's ability to track the expenditures for the grant program and more accurately determine the appropriate funding for the program. The pre-application does not require an accurate estimate and any estimate it does provide must be reconciled with the actual tuition reported on the application. The department is therefore using the same information it had previously been using to track program costs, but denying otherwise eligible veterans the reimbursement of tuition based on the pre-application requirement. The department has been unable to use the pre-application to improve its tracking of the costs of the program and develop more accurate fiscal estimates of potential program use. The proposed rule will allow

veterans the opportunity to fulfill the pre-application requirement in the same time frame as the application process, without adversely affecting any tracking capability currently available, but allowing otherwise eligible veterans to receive this benefit.

6. Public hearing appearances and registration.

   No individuals or organizations registered any testimony at the hearing on October 19, 2007. The County Veterans Service Officers Association of Wisconsin forwarded the attached letter within the time period established by the Board for written comments.

7. Summary of public comments made as a result of testimony presented at the public hearing and the agency's response to those comments

   The public hearing was conducted on October 19, 2007. While no testimony was received at the public hearing, the Board allowed written testimony to be submitted through October 26, 2007 and the County Veterans Service Officers Association of Wisconsin submitted the attached letter in support of the amended rule. The Association indicates that it would prefer the abolition of the requirement of the pre-application, but agrees that the proposed amendment of the rule by the department is appropriate given the current statutory authority. The department is in agreement with the testimony offered by the Association.

8. An explanation of modifications made in the proposed rule as a result of the public comments or testimony received at public hearings.

   No modifications were made in the proposed rule.

9. The legislative council staff clearinghouse report.

   The legislative council staff clearinghouse report is attached.

10. Response to legislative council staff clearinghouse report.

    (1) The department rejects the Legislative Council Rules Clearinghouse's discussion of statutory authority. The statute specifies that "…the department shall promulgate a rule that establishes the number of days after the commencement of an academic term that begins after December 31, 2005 by which a veteran who will be seeking reimbursement under this section must provide the department with all of the following information:" The language of the statute is specific as to what the department may promulgate in a rule and does not include a more expansive right to allow a good cause delay, as suggested by the Legislative Council Rules Clearinghouse's discussion. As noted in that discussion, there is a statutory provision allowing for a good cause delay in the

application process [s. 45.20 (2) (c) 2. a., Stats.], however it is a statutory provision and not a rule promulgated by the department. The legislature would presumably have indicated its willingness to have a good cause delay in the submission of the pre-application by including the same language in the body of the statute.

The department also disagrees with the Legislative Council Rules Clearinghouse's discussion of the length of time allowed for the submission of the pre-application as it pertains to the viability of tracking the programs costs upon completion of the coursework. As nothing in either the statute or the current rule compels an accurate estimate of the costs to be reimbursed, the department is reliant upon the actual reported costs submitted with the application to compile the program costs. As the statute allows up to 60 days following the completion of the class or semester to complete the application and a potentially longer period to submit it if good cause for a delay in submission is involved, the department is unable to obtain accurate information regarding program costs for any given semester until at least 60 days following a semester. The period of time referenced by the department in the amended rule, 180 days, reflects the general length of the fall and spring semesters at institutions of higher education (120 days or 4 months) and the 60 day submission period for the application. As the information submitted on the application is the only valid information for tracking costs, allowing the veteran to submit the pre-application in the same time frame as the application does affect the department's current ability to track costs. Such a change does allow the department to pay eligible veterans who, for whatever reason, were unable to submit the pre-application in the current 30 day period.

Lastly, many veterans returning from deployment had previously used the department's program prior to the addition of the pre-application requirement. Some of these veterans return home from deployment and regrettably do not review the program changes which have occurred in the period they were deployed. They register at school and go to classes, anticipating they will need to submit an application to the department for reimbursement within 60 days of the completion of the class or semester. Applications are submitted and rejected due to a pre-application requirement that emerged while the veteran was deployed. The department does not believe the legislature intended the pre-application requirement to disenfranchise this deserving group of veterans: the amendment to the rule will not interfere with the viability of the original purpose of the statute, but it will ensure this group of veterans receives the benefit the legislature originally enacted for them.

(2) The Legislative Council Rules Clearinghouse report also indicated that the department had failed to follow the format provided in s.1.02 (2) (a) of their Manual for rules preface. The department accepts the recommendation to revise the rules preface to comply with s. 1.02 (2) (a) of their Manual.

11. A final regulatory flexibility analysis.

No final regulatory flexibility analysis is required for this proposed rule.

12. A copy of the economic impact report.

    No economic impact report is required for this proposed rule.

13. A copy of a report prepared by the department of administration regarding an economic impact report.

    No report from the department of administration regarding the economic impact of this proposed rule is required.

14. Any change to the proposed rule's plain language analysis or fiscal estimate.

    No change has been made to the proposed rule's plain language analysis or fiscal estimate.

Dated at Madison, Wisconsin, November ____, 2007.

STATE OF WISCONSIN
DEPARTMENT OF VETERANS AFFAIRS

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WILLIAM J. KLOSTER, ACTING SECRETARY