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# Wisconsin Legislative Council

## RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 23-073

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]**

#### 2. Form, Style and Placement in Administrative Code

a. SECTION 2 of the rule creates a process for a lien to be created when the debt of an overpayment of emergency assistance, paid pursuant to s. 49.138, Stats., is delinquent. The proposed rule creates this lien process in ch. DCF 101, Wis. Adm. Code. However, ch. DCF 101, Wis. Adm. Code, generally applies to payments made pursuant to ss. 49.141 through 49.161, Stats., while emergency assistance payments are made under s. 49.138, Stats., and implemented in ch. DCF 120. [ss. DCF 101.01, and 120.01, Wis. Adm. Code.] Including liens related to emergency assistance overpayments in ch. DCF 101 may create confusion. The department should review whether implementation of this lien process should instead be achieved via creation of a parallel provision in ch. DCF 120, so that the collection of emergency assistance overpayments is entirely addressed in its own chapter. If so, the cross-reference to s. DCF 101.23 (9), Wis. Adm. Code, in SECTION 6 of the rule, should also be deleted.

b. SECTION 3 creates a definition of an “intentional program violation”, for purposes of ch. DCF 120, Wis. Adm. Code, using a reference to the same term as defined in statute. As the subjects of chs. DCF 101 and 120 are similar in nature, the department should consider whether the definition of an “intentional program violation” under s. DCF 101.23 (1) (f), Wis. Adm. Code, for payments made under ss. 49.148, 49.155, 49.157, and 49.19, Stats., should reference the same statute.

c. Section DCF 101.23 (1) (g), Wis. Adm. Code, creates a definition of “overpayment” for purposes of payments made under ss. 49.148, 49.155, 49.157, and 49.19, Stats. This definition, however, does not apply to emergency assistance overpayments. The department should consider creating a definition of “overpayment” in ch. DCF 120, in addition to the other definitions created in SECTION 3 of the proposed rule.

d. In s. DCF 101.23 (5) (a), Wis. Adm. Code, if an overpayment is due to an administrative error, the recoupment of that overpayment via reduction of continued benefits is limited to no more than 10 percent of the benefits. The department should consider whether the recovery of

overpayment under ch. DCF 120 should provide parallel treatment if the overpayment of benefits under s. 49.138, Stats., is due to an administrative error.

e. In proposed s. DCF 120.085 (2) (d) 1., the phrase “for setoff against any state tax refunds or credits owed under s. 71.93, Stats.,” differs from a similar provision in s. DCF 101.23 (8), Wis. Adm. Code. The department should consider revising one of these phrases so that they are consistent with each other.

f. In proposed s. DCF 120.085 (1) (d) 3. and (2) (d) 3., the collection methods of “[a]ny other legal means” appears to have the same meaning as the phrase, “other authorized collection methods”, which is used in s. DCF 101.23 (8), Wis. Adm. Code. The department should consider revising one of these phrases so that they are consistent with each other.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

The citation to the specific subsection in s. 49.138 (1), Stats., found in SECTION 2, should be deleted. The entire s. 49.138, Stats., should be referenced.

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In proposed s. DCF 120.085 (1) (d) (intro.), it appears that there are commas missing, and an extra “and” in the following conjunction: “If a debt is delinquent under par. (c) and no appeal rights are pending and the time...”. This conjunction should be rephrased to read: “If a debt is delinquent under par. (c), no appeal rights are pending, and the time...”.

b. In proposed s. DCF 120.085 (2) (d) 2., there is an extra comma that should be deleted after the citation to s. 49.195 (3m), Stats.

c. In proposed s. DCF 120.085 (3) (b), the sentence starting with the phrase, “6 years after...” should be rewritten “Six years after...”.