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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

July 21, 2010

Honorable Sandi Vito, Secretary
Department of Labor and Industry
1700 Labor and Industry Building
Harrisburg, PA 17120

Re: Regulation #12-78 (IRRC #2847)
Department of Labor and Industry
Unemployment Compensation; Administration

Dear Secretary Vito:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

cc: Honorable John R. Gordner, Majority Chairman, Senate Labor and Industry Committee
Honorable Christine M. Tartaglione, Minority Chairman, Senate Labor and Industry Committee
Honorable Robert E. Belfanti, Jr., Majority Chairman, House Labor Relations Committee
Honorable Gene DiGirolamo, Minority Chairman, House Labor Relations Committee
Robert A. Mulle, Esq., Office of Attorney General
Andrew Clark, Esq., Office of General Counsel

Comments of the Independent Regulatory Review Commission



Department of Labor and Industry Regulation #12-78 (IRRC #2847)

Unemployment Compensation; Administration

July 21, 2010

We submit for your consideration the following comments on the proposed rulemaking published in the May 22, 2010 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Department of Labor and Industry (Department) to respond to all comments received from us or any other source.

1. Section 61.12. Reimbursable items. – Clarity.

The amended language in Subsection (a) states, in part, that an individual “who is *entitled* to reimbursement....*may* be paid compensation and expenses by the Department.” We recognize the fact that the language being deleted from this subsection includes the use of the words “entitled” and “may.” However, it is our understanding that individuals subject to the provisions of this section are not necessarily “entitled” to be paid compensation and expenses, but may be eligible to be paid compensation and expenses. We suggest that the final-form regulation be amended to reflect the fact that the payment of compensation and expenses is authorized, but not mandated in every situation.

2. Section 61.25. Confidentiality of information and fees. – Consistency with federal law; Need; Implementation procedures; Clarity.

Subsection (a)

This subsection addresses rules for confidentiality of unemployment compensation information. We have three concerns.

First, a commentator has stated, that under current practice, information obtained by an applicant during an unemployment compensation proceeding is often used in other legal forums. The commentator questions whether such

“redisclosure” is permitted under Section 61.25, noting that Subsections (a)(2)(ii), (a)(4)(ii) and (a)(5) are unclear. The Department should clarify its intent on this issue and revise the regulation accordingly.

Second, under Subsection (a)(3)(ii), two commentators recommend that language be added to allow disclosure of information to “the claimant’s or employer’s representative.” Commentators are concerned that without this language advocates representing claimants at hearings will have difficulty accessing case files. The Department should add this language in the final-form regulation, or explain why it should not be included.

Third, a commentator has noted that obtaining releases from claimants for unemployment compensation information can be difficult and impedes access to needed information. It was noted that federal regulations on this topic allow release of unemployment compensation to an “agent” under certain circumstances. However, in order for this provision to be operable, it must be authorized by state law. Are these releases already permitted by statute? Would the Unemployment Compensation Law permit the Department to adopt the approach allowed by 20 C.F.R. §605?

Subsection (b)

This subsection pertains to the fees that may be charged to a person seeking documents or information. It states the following:

Fees. Except as provided in section 702 of the law (43 P. S. § 862), the Department or the Board may charge a fee to a person seeking documents or information from the Department or the Board. The fee will be an amount sufficient to compensate the Department or the Board for the costs to process the request and, if the requested documents or information are available, the cost to provide the documents and information. The amount of the fee will be calculated by the Department within its discretion.

We have three concerns.

First, it is unclear as to what the Department or Board is charging for. What type of documentation or information would require the charging of a fee? For example, will a person be charged for making a telephone inquiry?

Second, the last sentence of this section is not regulatory language and does not set a binding norm. A regulation has the full force and effect of law and the last sentence does not establish a standard that could be predicted by the

regulated community. We recommend that the amount of any fee that may be charged be included in the final-form rulemaking.

Finally, a commentator has pointed out that, under federal regulation, “grant funds may be used to pay costs associated with any disclosure of UC information if not more than an incidental amount of staff time and no more than nominal processing costs are involved in making the disclosure.” See 20 C.F.R. § 603.8(b). If the Department receives grant funds, how will the federal regulation work in conjunction with this subsection?

3. Miscellaneous clarity.

- Under § 61.1, the Department is amending the definition of “Bureau” from “The Bureau of Employment Security of the Commonwealth” to “The Department.” Throughout the rulemaking, the term “Bureau” is being replaced by the term “Department.” We note that the term “Department” is already defined in § 61.1. What is the need for the revised definition of “Bureau”? We recommend the Department delete this term.

Facsimile Cover Sheet



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To: Daniel Razansky
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Date: July 21, 2010
Pages: 5

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Labor & Industry's regulation #12-78 (IRRC #2847). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Mary Sue Gallagher **Date:** 7/21/10