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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF AGING

May 12, 2017

Pennsylvania Independent Regulatory Review Commission
333 Market Street
14th Floor
Harrisburg, PA 17101

Re: Pennsylvania State Civil Service Commission
Proposed Regulation #61-6
Implementation of Act 69 of 2016 and Act 167 of 2016
IRRC Identification Number 3167

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Dear Commissioners:

On April 22, the Pennsylvania State Civil Service Commission (SCSC) published in the Pennsylvania Bulletin proposed regulations for Act 69 of 2016 and Act 167 of 2016. The Pennsylvania Independent Regulatory Review Commission (IRRC) 30-day comment period on the proposed regulations is open from April 22 to May 22. As the State Unit on Aging, the Pennsylvania Department of Aging carefully reviewed the proposed regulations and identified serious concerns regarding the impact the proposed regulations will have on the Department. As such, we are providing comments to the proposed regulations. Please note that SCSC did not contact the Department in order to solicit our input on these proposed regulations prior to publication.

Last year, the General Assembly passed, and Governor Wolf signed into law, Acts 69 and 167 of 2016. These laws made very significant and important changes to the Pennsylvania Civil Service Act (the Act). In short, these statutory amendments were enacted to modernize how hiring is done through the SCSC and to improve service delivery. The changes would make it easier for candidates to apply for positions, create a larger pool of candidates from which agencies could choose, and give the agencies the ability to decide the method of examinations to be used in evaluating candidates for positions. Instead of implementing the law as written, SCSC has decided to issue proposed regulations which will undermine the intended purpose of the laws and give SCSC the ability to thwart the implementation of them.

Approximately 80 percent of our Department positions are covered by the SCSC. Therefore, we have a very significant and personal stake in having the laws implemented as written and intended. We are providing the below specific examples of how the legislative changes will allow the Department of Aging to improve services and how the proposed regulations will negatively impact our service delivery.

Section 95.1. Application requirements.

Act 167 amended Section 212 (d) of the Act was amended to provide: "The commission shall enter into an agreement to utilize the form and method of an employment application that is standard across departments and agencies that are under the Governor's jurisdiction for the purpose of entrance to, or promotion in, the classified service." 71 P.S. §741.212(d).

This change to the law was made to make it easier for people to apply for state jobs by having a single site for both non-Civil Service and Civil Service positions. For Civil Service positions at the Department of Aging, this change would be important because currently members of the public who are interested in working for the Department of Aging must wait until a civil service exam is open. In particular, the Department of Aging frequently gets inquiries from people who are interested in employment as an Aging Services Specialist. Our response to them is that they must take a civil service exam; however, the exam is not always open and it casts an unfavorable light on state government when we have to tell potential applicants that they must take a civil service exam but the exam is not open. In fact, the Aging Services Specialist exam is open, on average, only every three or four years. It was open: from April 2006 to October 2006; from April 2010 to April 2011; from June 2013 to June 2014; and currently from March 2017 to September 2017. It is unacceptable to inform potential job candidates how to apply for an Aging Services Specialist job and then have to tell them that the means for doing so are not available.

Section 95.20. Authority to Select Method of Examination.

Act 167 amended Section 502 of the Act to allow the appointing authority (the agency), and not SCSC, to determine the method of the "examinations." SCSC currently uses written tests or experience and training (E&T) to evaluate candidates for positions. However, the Department of Aging is in a better position to know how candidates can best be evaluated for our specific positions. The Department of Aging believes that using experience and training (E&T) to evaluate applicants for Aging Services Specialist and Administrative Officer jobs – to name a few – will provide qualified candidate pools.

In addition, with written tests, candidates must take time off work and drive to one of the six SCSC test sites for written exams, and, as noted above, this is only if the exam is open in the first place.

Section 97.11. Appointment Process – Use of Alternative to Rule-of-Three.

Act 69 amended Section 601 to allow expansion of hiring eligible lists other than the standard “Rule-of-Three.” With the standard Rule-of-Three, the Department of Aging had difficulty filling certain positions. In particular, we have had difficulty filling clerical positions. Although the Department makes the hiring process a priority, at times a selected candidate had turned down a job offer because he or she had already accepted an offer with another state agency, and this then forced us to recalculate the Rule-of-Three and conduct more interviews. An expansion from the standard Rule-of-Three would give us a larger applicant pool from the beginning, and if a selected candidate turns down the job offer, other applicants would be available within the expanded pool.

In addition, the regulations have onerous requirements that were not in the Act 69 amendment to Section 601.

First, the regulation requires specification of the job classification or classification series to which the alternative rule will apply. This language ignores the concept of “vacancy-based” hiring. Act 69 amended Section 602 of the Act to permit vacancy-based postings. This regulatory requirement would preclude the Department of Aging from seeking an alternative to the Rule-of-Three for vacancy-based postings. For the Department of Aging, the regulations pose a significant potential negative impact, particularly for the Aging Services Specialist and Aging Services Supervisor job titles, which are used solely by the Department.

Second, the regulation forces us to keep the alternative to the Rule-of-Three in place for at least 12 months. This will dissuade the Department of Aging from using an alternative to the Rule-of-Three especially regarding positions in the clerical field. There will be uncertainty as to how effective the alternative Rule is for these positions until it is implemented. In the event the alternative Rule is not effective, the regulation would have the Department of Aging stuck using the alternative Rule for at least one year. Therefore, the Department of Aging will be forced to continue using the Rule-of-Three for most or all positions instead of taking a chance on how the alternative Rule may work out for filling positions.

Section 98.1 and 98.2. Vacancy-Based Hiring.

Act 69 was intended to allow agencies to fill vacant positions as they occur through “vacancy-based” job postings. This is how jobs are posted in the private sector and how the Department of Aging desires to post most of its job openings. For example, the Department of Aging would

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prefer to use vacancy-based postings for the job titles of Aging Services Specialist, Aging Services Supervisor, Administrative Officers, Accountants, and Fiscal Technician. The Department of Aging believes that we, and not SCSC, are in a better position to know which jobs should be done through vacancy-based posting. We want to use vacancy-based postings for Civil Service positions but believe the regulation is an impediment to do so.

The Department of Aging appreciates the opportunity to provide these comments, and thanks the Commission for its review of our comments to the proposed regulations. Your consideration of the many negative effects that the proposed regulations would have on us if they are adopted as written is deeply appreciated. Please contact me if you need any additional information on the matters addressed in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Teresa Osborne". The signature is written in a cursive, somewhat stylized font.

Teresa Osborne
Secretary of Aging