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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

2017 MAY 10 10:33

3167

May 10, 2017

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

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 Department of Banking and Securities (DoBS) has serious concerns regarding the impact the proposed regulations and are providing comments to these proposed regulations in accordance with the Pennsylvania Independent Regulatory Review Commission (IRRC) 30-day comment period which is open from April 22 to May 22, 2017.

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 order to modernize how hiring is done through the SCSC and to improve service delivery. The changes were to 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, the proposed regulations seem to undermine the intended purpose of the laws enacted.

Approximately 85% percent of the DoBS positions are covered by the SCSC. Therefore, we have a very significant and personal stake in having the laws implemented as written and intended. As an impacted agency, we were not consulted for any input on these proposed regulations. Therefore, we are providing the below specific examples of how the legislative changes will allow DoBS to improve services and how the proposed regulations would negatively impact our service delivery.

Section 95.1. Application requirements.

Act 167 amended Section 212 (d) of the Act 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 Commonwealth jobs by having a single site for both non-Civil Service and Civil Service positions. Currently potential candidates need to know that jobs with the Commonwealth are posted on two different websites. This is not intuitive for potential job seekers to know that they need to check two separate websites for a listing of potential jobs with DoBS. Furthermore, since Commonwealth salaries related to DoBS civil service positions are more in line with entry level job seekers, we need a venue where candidates can see all available positions with the DoBS. Entry level talent is geared to ease of the internet and are unaware of institutional state government processes such as the current and proposed civil service process. The new law intended to simplify the application process by having one comprehensive list of all available Commonwealth jobs. The proposed regulations does not seem to rectify this issue.

- It is the IRRC’s mission to “*make certain that the agency has the statutory authority to enact the regulation and determine whether the regulation is consistent with legislative intent*”. We believe this portion is clearly inconsistent with both legislative authority and intent.
- Further, “*IRRC then considers other criteria, such as economic impact, ...*”. Personnel is the most significant portion of our budget, and adequate resources is critical to efficient operations. We believe the regulations as proposed would have a negative economic impact on DoBS.
- We assert that the regulations need to be changed to allow for “an” [singular] employment application and achieve the legislative intent of simplifying processes.

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. As the hiring and employing agency, DoBS is in a better position to know how candidates can best be evaluated for our specific positions. For example, all DoBS examiners are all tested the same, with a written exam. However, dependent on the program area for which they are being hired, a different skill set is required. A depository examiner may require extensive mathematical ability while a non-depository examiner may need to have more analytical skill. A review of E&T would yield better suited candidates than taking a broad-brush review based on the results of a written test. Furthermore, we want our positions to be considered on their own merit and not grouped under one test announcement. Since our positions are listed with exams used by other agencies, it is not a well-suited evaluation of a candidate’s potential to be grouped and evaluated on a written examination test score.

Civil Society is steering away from basing qualifications on test scores. This is evident in college admissions where they are steering away from making determinations on students admission

solely based on SAT scores. Instead, they are reviewing a student's E&T. Therefore, we are likely discouraging this younger entry level talent pool from applying for positions if we continue to use written exams as a basis for qualification of a position.

In addition, with written tests, candidates must be able to physically arrive in person to one of the seven SCSC test sites for written exams. Given the internet and use of electronic communication, this is a very archaic approach to applying for a job. We cannot remain competitive in the job market if we do not change to be more in line with mainstream hiring standards. The civil service positions at DoBS are highly technical therefore, we need highly technical candidates to be applying for positions. Highly technical candidates are not looking to physically go onsite to take a test to prove their skill set.

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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, DoBS had difficulty filling certain positions. For most positions, only the candidates within the rule of three were provided to hiring managers. However, in situations where hiring managers were able to review all applications of eligible candidates who responded to the availability survey, they identified candidates outside of the rule of three that they would have liked to consider but could not. This has occurred specifically when filling Depository Financial Institution Examiner 1 vacancies.

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 DoBS from seeking an alternative to the Rule-of Three for vacancy-based postings. For DoBS, the regulations pose a significant potential negative impact. Our agency has an active recruiting program with colleges and universities for engaging new entry level talent. Our hope is that we would be able to consider those candidates whom we have recruited by using an alternative to the Rule-of-Three if necessary. If not, this would reduce our return on investment from our recruitment efforts.

Second, the regulation forces us to keep the alternative to the Rule-of-Three in place for at least 12 months. This will dissuade DoBS from using an alternative to the Rule-of Three especially

regarding entrance level positions such as the Depository and Non-Depository Financial Institution Examiner positions. 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 require DoBS to use the alternative Rule for at least one year. Therefore, DoBS 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.

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- We assert that the regulations need to be changed to remove the onerous requirements that were not in the Act 69 amendment to Section 601.

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 DoBS wants to post all its job openings to capture an available and interested candidate pool.

Vacancy based hiring will not only decrease the amount of time, money and paperwork involved in surveying candidates via snail mail, but, improve the candidate pool by acquiring "interested" candidates that apply for specific job openings which in turn gives a fresh new candidate pool of available and interested job seekers. Thereby, we are being prudent in our use of time and efficient with our use of resources.

DoBS has been very aggressive in its recruitment efforts. We are committed to our Strategic Plan goal of developing bench strength in the department and our RRRev Up! Initiative that focuses on Recruitment, Recognition and Retention of employees. These regulations do not look to be a course that promotes our mission as it relates to improving the hiring of a talented workforce. We invest a lot of time and energy in staying current with our messaging on social media and with electronic communication, via our website, twitter feed, Facebook posts, quarterly newsletter, etc. We use these venues for recruiting, such as posting vacancies on LinkedIn, creating a careers page online, etc. This is where we are promoting our agency as a great place to work and focusing efforts to recruit new talent. In addition, we also attend recruitment events, post our attendance on our online calendar, distribute new brochures, contact cards, flyers and have developed a resource account for "Jobs at DoBS". As a result, we have received interest from some very talented, and qualified candidates but have lost them to the private sector because of the current civil service process which is not in line with the legislative intent of simplifying processes.

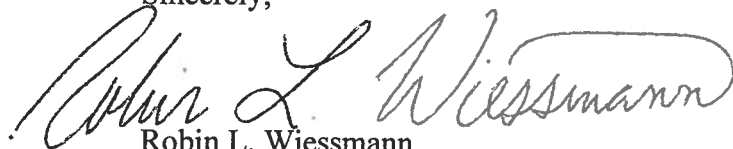
One example is a qualified and interested candidate for our vacant Securities Accountant Chief (MA10), which remains unfilled. Since there was not a test for the Securities Accountant Chief job, we requested a localized examination of E&T. SCSC requested that we utilize candidates from a

comparable list for an Accountant 3 prior to doing a localized examination. We worked with the candidate to complete the civil service application and set up a time to take the written test, however, the candidate expressed concerns (and, rightly so) with taking a MA08 test for a MA10 position. Thus, we lost this potential candidate. Another example, which the SCSC is aware of, is that it has been more than a year since we could fill a Securities Offering Analyst position. We have conducted three separate localized examinations since 2014 that resulted in two possible candidates. We have spent countless hours on efforts to acquire qualified and interested candidates, however, the current civil service process, coupled by the METs, has precluded us from hiring. For this position, we were extremely aggressive in recruiting, advertising at 20+ colleges/universities, and using all social media outlets, securities organizations, bar associations, websites, newsletters, etc. We will continue our aggressive recruitment and are taking steps to adjust the METs. However, we believe that without the ability to use vacancy based hiring, our efforts will not have the intended effect of increasing our qualified applicant pool.

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- We assert that the regulations need to be changed to fully enable vacancy-based hiring as the statute intended, without undue impediments by the commission.

DoBS respectfully requests that the Commission review our comments on the proposed regulations and will appreciate your consideration of the many negative effects the proposed regulations would have on our agency if they are adopted as written. Instead, it is our hope that the Act gets implemented as intended and we can post ALL vacancies online with interested candidates applying electronically and being evaluated based on their experience and training. Please contact me if you need any additional information on the matters addressed in this letter.

Sincerely,



Robin L. Wiessmann
Secretary