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PHS COMMISSIONED OFFICERS RETIREMENT
EQUALIZATION

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BEFORE THE
SUBCOMMITTEE ON
PUBLIC HEALTH AND WELFARE
OF THE
COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES
NINETY-FIRST CONGRESS
SECOND SESSION

ON
H.R. 10138, H.R. 14948, and S. 2452
BILLS TO AMEND SECTION 211 OF THE PUBLIC HEALTH SERVICE ACT TO EQUALIZE THE RETIREMENT BENEFITS FOR COMMISSIONED OFFICERS OF THE PUBLIC HEALTH SERVICE WITH RETIREMENT BENEFITS PROVIDED FOR OTHER OFFICERS IN THE UNIFORMED SERVICES

JANUARY 28, 1970

Serial No. 91-38

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PHS COMMISSIONED OFFICERS RETIREMENT
EQUALIZATION

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PHS COMMISSIONED OFFICERS RETIREMENT EQUALIZATION

WEDNESDAY, JANUARY 28, 1970

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON PUBLIC HEALTH AND WELFARE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2218, Rayburn House Office Building, Hon. John Jarman (chairman of the subcommittee) presiding.

Mr. JARMAN. The subcommittee will please be in order.

The hearings today are on H.R. 10138, introduced by our colleague on the committee, Mr. Moss, and other similar bills to permit commissioned officers of the Public Health Service to use service creditable for basic pay purposes in computing their retired pay.

Commissioned officers of the Army, Navy, Air Force, and PHS who are medical doctors may include as service in the computation of their retired pay all years of active service plus the 4 years of their medical training and an additional year of medical internship.

In the case of the Army, Navy, and Air Force, these officers may also count certain years of inactive service before May 31, 1958, for which they receive credit in computation of basic pay; however, although the Public Health Service is considered as a uniformed service, this retirement benefit is not available to officers in that service.

The bill would eliminate this inequity involving commissioned officers of the Public Health Service and is supported by all agencies of the executive branch which have reported on the legislation. A bill, S. 2452, to accomplish this result passed the Senate unanimously last year.

At this point there will be included in the record the text of the bills, H.R. 10138, H.R. 14948, and S. 2452, and the agency reports thereon.

(The documents referred to follow:)

[H.R. 10138, H.R. 14948, and S. 2452, 91st Cong., 1st Sess., introduced by Mr. Moss on April 15, 1969, Mr. Quillen on November 24, 1969, and passed by the Senate on October 20, 1969, respectively, are identical as follows:]

A BILL To amend section 211 of the Public Health Service Act to equalize the retirement benefits for commissioned officers of the Public Health Service with retirement benefits provided for other officers in the uniformed services

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (4) of section 211(a) of the Public Health Service Act (42 U.S.C. 212(a)(4)) is amended by inserting the word "plus" after the semicolon at the end of clause (ii), and by adding after clause (ii) the following new clause:

(1)

"(iii) the number of years of service with which he was entitled to be credited for purposes of basic pay on May 31, 1958, or (if higher) on any date prior thereto, reduced by any such year included under clause (i) and further reduced by any such year with which he was entitled to be credited under paragraphs (7) and (8) of section 205(a) of title 37, United States Code, on any date before June 1, 1958;"

Sec. 2. The amendments made by this Act shall apply in the case of retired pay for any period after the month in which this Act is enacted.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., July 25, 1969.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to the Committee's request for the views of the Bureau of the Budget on H.R. 10138, a bill to amend section 211 of the Public Health Service Act to equalize the retirement benefits for commissioned officers of the Public Health Service with retirement benefits provided for other officers in the uniformed services.

The purpose of the bill is to grant commissioned officers of the Public Health Service the right to count active and inactive service credited for base pay purposes prior to June 1, 1958, in computing retired pay.

The Bureau of the Budget concurs in the views expressed in the report which the Secretary of Health, Education, and Welfare is submitting to your Committee on this bill, and accordingly has no objection to its enactment.

Sincerely,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., November 19, 1969.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for our views on S. 2452, as passed by the Senate October 20, 1969, a bill to amend section 211 of the Public Health Service Act to equalize the retirement benefits for commissioned officers of the Public Health Service with retirement benefits provided for other officers in the uniformed services.

The purpose of the bill is to grant commissioned officers of the Public Health Service the right to count active and inactive service credited for base pay purposes prior to June 1, 1958, in computing retired pay.

The Bureau of the Budget has concurred in the views expressed in the report of the Department of Health, Education, and Welfare on H.R. 10138, an identical bill pending before your Committee, and accordingly has no objection to enactment of S. 2452.

Sincerely yours,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference,

UNITED STATES CIVIL SERVICE COMMISSION,
Washington, D.C., July 28, 1969.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives.

DEAR MR. CHAIRMAN: This refers further to your request for Commission report on H.R. 10138, a bill to amend section 211 of the Public Health Service Act to equalize the retirement benefits for commissioned officers of the Public Health Service with retirement benefits provided for other officers in the uniformed services.

The bill pertains to benefits under a staff retirement system administered by the Department of Health, Education, and Welfare. Not being the action agency, the Commission offers no comment on the merits of this legislation. Enactment of the bill would not disturb existing safeguards against double benefits for the same service under the Civil Service Retirement System and the retired pay provisions for commissioned officers of the Public Health Service.

The Bureau of the Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

J. E. JOHNSON,
Acting Chairman.

UNITED STATES CIVIL SERVICE COMMISSION,
Washington, D.C., November 18, 1969.

HON. HARLEY O. STAGGERS,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives.*

DEAR MR. CHAIRMAN: This refers to your request for Commission report on S. 2452, a bill to amend section 211 of the Public Health Service Act to equalize the retirement benefits for commissioned officers of the Public Health Service with retirement benefits provided for other officers in the uniformed services.

The bill pertains to benefits under a staff retirement system administered by the Department of Health, Education, and Welfare. Not being the action agency, the Commission offers no comment on the merits of this legislation. Enactment of the bill would not disturb existing safeguards against double benefits for the same service under the Civil Service Retirement System and the retired pay provisions for commissioned officers of the Public Health Service.

The Bureau of the Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

ROBERT HAMPTON,
Chairman.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., August 4, 1969.

HON. HARLEY O. STAGGERS,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.*

DEAR MR. CHAIRMAN: This letter is in response to your request of April 17, 1969, for a report on H.R. 10138, a bill to amend section 211 of the Public Health Service Act to equalize the retirement benefits for commissionee officers of the Public Health Service with retirement benefits provided for other officers in the uniformed services.

The bill would amend section 211(a) (4) (B) of the Public Health Service Act which now provides an alternative formula for computing the retired pay of commissioned officers of the Public Health Service. Under existing law (section 211(a) (4) (B)), a Public Health Service officer is entitled to retired pay at the rate of 2½ percent of the basic pay of the highest grade held by him as such officer and, in the case of a temporary promotion to such grade, in which he has performed active duty for not less than 6 months, (A) for each year of active service, or (B) if it results in higher retired pay, for each of the following years:

(i) Years of active service as a member of a uniformed service; plus

(ii) In the case of a medical or dental officer, four years, and in the case of a medical officer who has completed one year of medical internship, one additional year, but reduced by the number of years of active service performed while at medical or dental school or while serving the internship.

Section 1 of the bill would add a new clause (iii) to section 211(a) (4) (B) which would add to the above entitlement the number of years of service with which he was entitled to be credited for purposes of basic pay on May 31, 1958, or if higher, on any date prior thereto. This would be reduced, however, by the number of years of active service included under clause (i) and further reduced by the

number of years with which he was entitled to be credited on any date before June 1, 1958, under paragraphs (7) and (8) of 37 U.S.C. 205(a) which relate to cumulative years of service for medical and dental officers of the uniformed services and are equivalent to the provisions of clause (ii) of section 211(a)(4)(B) of the Public Health Service Act with respect to medical or dental officers.

Section 2 of the bill would provide that the amendments made by the bill shall apply in the case of retired pay for any period after the month in which the bill is enacted. Thus, beginning with the month following the month of enactment, the new provisions would be a part of the alternative formula of section 211(a)(4) and would be available for the computation of retirement benefits to be paid to those officers who retired before the date of enactment of the bill.

Before June 1, 1958, commissioned officers of the military services retiring with less than 30 years of active service could use up to 30 of their years of service (active and inactive) for basic pay purposes in computing their retired pay. For example, an Army officer could be credited with 26 years of active service in addition to four years of inactive service in a reserve component, making a total of 30 creditable years.

Section 11(a) of Public Law 85-422 (10 U.S.C. 1405) modified this provision for military retired pay to permit the use of only those years of service for basic pay purposes which were credited on May 31, 1958; after that date, only active service could be credited in computing retired pay, with the exception of the four or five years authorized to be credited to physicians and dentists under paragraphs (7) and (8) of 37 U.S.C. 205(a).

In October of 1968, Representative Henry P. Smith, at the request of a constituent, solicited the advice of the American Law Division of the Library of Congress as whether the retirement benefit discussed herein might not already be available to commissioned officers of the Public Health Service, thus making H.R. 912 superfluous. H.R. 912, introduced into the 90th Congress by Representative Moss, is identical to H.R. 10138. In reply to this request, the American Law Division advised that the benefit in question is available under existing law to Public Health Service commissioned officers.

Despite this advice and similar advice from the Office of the General Counsel of this Department, it was decided to submit this question to the Comptroller General. In a decision (B-166166) dated March 21, 1969, the Comptroller General held that existing law did not extend this benefit to commissioned officers of the Public Health Service.

Thus, at the present time the only substantial difference in the provisions for computing the retired pay of Public Health Service officers and officers of the other uniformed services is that Public Health Service officers may not be credited with the years of service for basic pay purposes credited to them before June 1, 1958. The addition of the proposed clause (iii) to section 211(a)(4)(B) would eliminate this inequity.

Many applicants for appointment in the Commissioned Corps have had both active and inactive military service. They are not always willing to suffer the loss of credit for their inactive service before June 1, 1958, which would be creditable under the military retirement system but which is not now creditable under the Service's staff retirement system. Then, too, the Service finds itself in the embarrassing situation of having on duty a number of officers with prior duty in the military service who were mistakenly told that all retirement credits they had earned under the military retirement system could be transferred and used in computing their retirement pay under the staff retirement system of the Public Health Service. Enactment of this bill would not only correct this error, but more significantly, would rectify the inequitable situation which now prevails.

We would, therefore, recommend enactment of H.R. 10138.

We are advised by the Bureau of the Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

ROBERT H. FINCH,
Secretary.

DEPARTMENT OF DEFENSE,
DEPARTMENT OF THE NAVY,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., August 28, 1969.

HON. HARLEY O. STAGGERS,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.*

DEAR MR. CHAIRMAN: Your request for comment on H.R. 10138, a bill to amend section 211 of the Public Health Service Act to equalize the retirement benefits for commissioned officers of the Public Health Service with retirement benefits provided for other officers in the uniformed services, has been assigned to this Department by the Secretary of Defense for the preparation of a report thereon expressing the views of the Department of Defense.

Prior to June 1, 1958, a commissioned officer retiring from active duty in the armed forces was credited with both active and inactive service, up to a combined total of 30 years, for the computation of his retired pay. This formula was changed by section 11(a) of Public Law 85-422 (10 U.S.C. 1405), so that inactive duty performed after May 31, 1958 is no longer creditable toward retirement pay. However, inactive duty completed prior to that date is still included in the computation.

The retirement pay of officers of the Public Health Service and that of officers of the armed forces are now based upon substantially identical principles and formulae. However, one major difference is that the retirement pay of officers of the Public Health Service may not be computed in any part upon inactive service performed prior to June 1, 1958. For this reason, an officer who retires from active duty from, for example, the Naval Reserve is credited with any inactive duty he may have and which is saved by Public Law 85-422 (72 Stat. 122). However, if following World War II or the Korean War this same officer had joined and later retired from the Public Health Service, his inactive Naval Reserve service could not be transferred to his credit for retirement pay purposes.

The Department of the Navy, on behalf of the Department of Defense, interposes no objection to the enactment of H.R. 10138, which would correct this presumably inadvertent inequity.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report on H.R. 10138 for the consideration of the Committee.

For the Secretary of the Navy:

Sincerely yours,

JOHN D. H. KANE, Jr.,
Captain, U.S. Navy, Deputy Chief.

DEPARTMENT OF DEFENSE,
DEPARTMENT OF THE NAVY,
OFFICE OF THE SECRETARY,
Washington, D.C., November 4, 1969.

HON. HARLEY O. STAGGERS,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Your request for comment on S. 2452, an act to amend section 211 of the Public Health Service Act to equalize the retirement benefits for commissioned officers of the Public Health Service with retirement benefits provided for other officers in the uniformed services, has been assigned to this Department by the Secretary of Defense for the preparation of a report thereon expressing the views of the Department of Defense.

Prior to June 1, 1958, a commissioned officer retiring from active duty in the armed forces was credited with both active and inactive service, up to a combined total of 30 years, for the computation of his retired pay. This formula was changed by section 11(a) of Public Law 85-422 (10 U.S.C. 1405), so that inactive duty performed after May 31, 1958 is no longer creditable toward retirement pay. However, inactive duty completed prior to that date is still included in the computation.

The retirement pay of officers of the Public Health Service and that of officers of the armed forces are now based upon substantially identical principles and formulae. However, one major difference is that the retirement pay of officers of the Public Health Service may not be computed in any part upon inactive service performed prior to June 1, 1958. For this reason, an officer who retires from active duty from, for example, the Naval Reserve is credited with any inactive duty he may have and which is saved by Public Law 85-422 (72 Stat. 122). However, if following World War II or the Korean War this same officer had joined and later retired from the Public Health Service, his inactive Naval Reserve service could not be transferred to his credit for retirement pay purposes.

The Department of the Navy, on behalf of the Department of Defense, interposes no objection to the enactment of S. 2452, which would correct this presumably inadvertent inequity.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report on S. 2452 for the consideration of the Committee.

For the Secretary of the Navy:

Sincerely yours,

JOHN D. H. KANE, Jr., *Captain, U.S. Navy, Deputy Chief.*

Mr. JARMAN. Our first witness this morning is Mr. Stuart H. Clarke, Deputy Assistant Secretary for Personnel and Training, Department of Health, Education, and Welfare.

Mr. Clarke, we appreciate your being with us this morning.

STATEMENT OF HON. STUART H. CLARKE, DEPUTY ASSISTANT SECRETARY FOR PERSONNEL AND TRAINING, OFFICE OF THE SECRETARY, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. CLARKE. Thank you, Mr. Chairman. I appreciate the opportunity to be here this morning to discuss the Department's position on H.R. 10138.

I must apologize for the fact that I have a stuffed-up head due to the flu bug. I hope you will bear with me.

I am here today to represent the Department of Health, Education, and Welfare concerning two bills, H.R. 10138 and S. 2452, which are being considered by your subcommittee. These two bills are identical.

The bills would amend section 211(a)(4)(B) of the Public Health Service Act which presently provides alternative formulas for computing the retired pay of commissioned officers of the Public Health Service. These formulas provide that a Public Health Service officer is entitled to retired pay at the rate of 2½ percent of the basic pay of the highest grade held by him as such officer and, in the case of a temporary promotion to such grade, in which he has performed active duty for not less than 6 months, (a) for each year of active service, or (b) if it results in higher retired pay, for each of the following years:

(i) Years of active service as a member of a uniformed service; plus

(ii) In the case of a medical or dental officer, 4 years, and in the case of a medical officer who has completed 1 year of medical internship, 1 additional year, but reduced by the number of years of active service performed while at medical or dental school or while serving the internship.

Section 1 of the bills would add a new clause (iii) to section 211(a) (4) (B) which would permit officers to use the years of service with which they were entitled to be credited for purposes of basic pay on May 31, 1958. These years of service would be reduced, however, by those years of service which are otherwise creditable in computing retired pay and which would result in a dual crediting of the same period of service if it were not for the reduction provision. An officer who uses the years of service which would be authorized by clause (iii) can be credited after May 31, 1958, for purposes of retired pay computation only with those years authorized in clauses (i) and (ii).

Section 2 of the bills would provide that the amendments made by the bills shall apply in the case of retired pay for any period after the month in which the bill is enacted. Thus, beginning with the month following the month of enactment, the new provisions would be a part of the alternative formulas of section 211(a) (4) and would be available for the computation of retirement benefits to be paid to those officers who retired before the date of enactment of the bill. In those cases where the bills would result in increased retired pay, the recomputation would be made retroactively to the date of each such officer's retirement, but the increase would be payable only from the first day of the month following the date of enactment.

Before June 1, 1958, commissioned officers of the military services retiring with less than 30 years of active service could use up to 30 of their years of service for basic pay purposes in computing their retired pay. For example, an Army officer could be credited with 26 years of active service in addition to 4 years of inactive service in a reserve component, making a total of 30 creditable years.

Section 11(a) of Public Law 85-422 (10 U.S.C. 1405) modified this provision for military retired pay to permit the use of only those years of service for basic pay purposes which were credited on May 31, 1958; after that date, only active service could be credited in computing retired pay, with the exception of the 4 or 5 years authorized to be credited to physicians and dentists under paragraphs (7) and (8) of 37 U.S.C. 205(a).

Thus, at the present time the only substantial difference in the provisions for computing the retired pay of Public Health Service officers and officers of the other uniformed services is that Public Health Service officers may not be credited with the years of service for basic pay purposes credited to them before June 1, 1958, (other than those years presently authorized under section 211(a) (4) (B) (i) and (ii) of the Public Health Service Act). The addition of the proposed clause (iii) to section 211(a) (4) (B) would eliminate this inequity.

Many applicants for appointment in the commissioned corps have had both active and inactive military service. They are not always willing to suffer the loss of credit for their inactive service before June 1, 1958, which would be creditable under the military retirement system, but which is not now creditable under the Service's staff retirement system. Then, too, the Service finds itself in the embarrassing situation of having on duty a number of officers with prior duty in the military service who were mistakenly told that all retirement credits they had earned under the military retirement system could be transferred and used in computing their retirement

pay under the staff retirement system of the Public Health Service. Enactment of S. 2452 would not only correct this error, but more significantly, would rectify the inequitable situation which now prevails.

The Department of Health, Education, and Welfare recommends favorable consideration of these bills by your subcommittee, Mr. Chairman, and by the full committee, and the enactment of S. 2452 by the House of Representatives.

Thank you. I would be very happy to answer any questions.

Mr. JARMAN. Thank you, Mr. Clarke.

Could you give the subcommittee a breakdown of the total cost of the bill?

Mr. CLARKE. Yes, sir. We have made some cost projections and we feel the maximum estimated cost of the bill for those officers that retired prior to June 30, 1969, would be \$181,809.

Mr. ROGERS. Is that per year?

Mr. CLARKE. Yes, sir. This would represent an increased retirement annuity for approximately 101 officers. The Public Health Service presently has a retired list of 834 officers and 101 could potentially benefit by this bill. We feel the increase would remain constant except in later years it would decrease because of the death of officers on retirement.

We also anticipate that approximately 20 officers per year will retire in the immediate future and probably benefit by the bill. This would be an added annual cost of approximately \$38,000 a year over and above the \$181,809.

At some point in time, however, the figure would start reducing until it would go down to a zero figure.

Mr. JARMAN. Thank you. Mr. Rogers.

Mr. ROGERS. Thank you, Mr. Chairman.

Mr. Secretary, what are the plans of the Department for the commissioned corps?

Mr. CLARKE. We in the Department at the present time have a proposal that we have submitted to the Secretary. It has been approved by Dr. Egeberg, Assistant Secretary for Health and Scientific Affairs, and by Dr. Steinfeld, the Surgeon General of the Public Health Service.

This proposal calls for the cancellation of the previously submitted Health Service personnel bill under the previous Secretary. Our recommendations to the Secretary call for revitalizing the commissioned corps of the Public Health Service.

Mr. ROGERS. I think that is good. That is what I was concerned with, the phaseout of the commissioned corps. I think it is very important and I am delighted to know that the Department is working along those lines.

I also hope you will take steps to increase it. I think this will be one way that we can begin to get service into communities where we can not get doctors to go. I think we are going to have to use this and also I hope great thought will be given by the Department to bringing in young men who are getting out of the service, developing new career classifications, and this way we avoid, I think, the possibility of problems with State licensing to at least develop this.

I hope that the Department will give great attention to this. I wonder if any thought is being given in this direction? I have previously discussed it with someone in the Department.

Mr. CLARKE. I have had some discussions with Dr. Steinfeld, the Surgeon General of the Public Health Service.

Of course, one of the problems we have with the Selective Service law of 1967 is that commissioned officers who are fulfilling military obligation cannot work outside the bureaus and officers of the Public Health Service except with the Coast Guard and Bureau of Prisons.

We can, however, hopefully interest officers who have fulfilled their draft obligation in the Public Health Service to stay on and continue to serve in the Public Health Service, but possibly work in communities with OEO programs, other poverty groups, and so on.

Mr. ROGERS. I wasn't thinking just of that. I was thinking we may have to use this as the only possibility perhaps of getting medical service to communities where you cannot get a doctor to go.

Mr. CLARKE. That is possibly true, sir, but again the present draft act prohibits or precludes the assignment of officers.

Mr. ROGERS. Well, suppose they volunteer?

Mr. CLARKE. If they are serving in the Public Health Service during their first 2 years, they automatically fulfill their draft obligation and they cannot be assigned outside the Public Health Service.

Mr. ROGERS. How about after the 2 years?

Mr. CLARKE. After 2 years; yes, sir.

Mr. ROGERS. Don't you have any staying in longer than 2 years?

Mr. CLARKE. Yes; naturally we do encourage that.

Mr. ROGERS. I would hope so, yes.

Mr. CLARKE. Yes.

Mr. ROGERS. How many commissioned officers do you have?

Mr. CLARKE. We have presently about 5,800 commissioned officers and approximately half of these are medical officers.

Mr. ROGERS. How many nurses do you have?

Mr. CLARKE. In the commissioned service we have very few nurses, just a little over 200. Most of our nurses in HEW are civilian.

Mr. ROGERS. Are you going to try to boost these figures?

Mr. CLARKE. I think in the Nurse Corps we have found that the civilian service is more attractive to the young girls coming out of nursing schools because most of them are married and want to raise families, and in the commissioned corps we do move our nurses around considerably.

Mr. ROGERS. What about your 5,800 doctors?

Mr. CLARKE. Of the 5,800 total officers, approximately half are physicians. This past June we recruited approximately 700-plus physicians into the corps. This coming June the figure will be raised slightly based on program needs.

Mr. ROGERS. I would be interested in knowing those figures.

Mr. CLARKE. All right, sir.

Mr. ROGERS. And what your projection is, because I think it is very important for you to build up this corps.

Mr. CLARKE. Can I get those and send them to the committee?

Mr. ROGERS. Surely. Thank you, Mr. Chairman.

(The following letter was received for the record:)

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
OFFICE OF THE SECRETARY,
Washington, D.C., February 11, 1970.

HON. JOHN JARMAN,
Chairman, Subcommittee on Public Health and Welfare,
Committee on Interstate and Foreign Commerce,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in reference to the additional information promised during my testimony on H.R. 10138 before the Subcommittee on Public Health and Welfare. Mr. Rogers was interested in the projections we might provide on the increase in Commissioned Corps strength in the next year.

As I indicated to you our present active duty strength is about 5,800. This is down from a high of about 6,650, which was prior to the reduction required by the Revenue and Expenditures Control Act and more recently, budgetary restrictions. The present strength, identified by category and both the fiscal year 1970 and projected fiscal year 1971 appointments are indicated below.

Category	Dec. 31, 1969 active duty strength	Appointments fiscal year 1970	Projected appointments fiscal year 1971
Medical.....	2,729	713	903
Dental.....	524	116	120
Sanitary engineer.....	669	84	200
Pharmacist.....	323	67	70
Scientist.....	213	20	20
Nurse.....	235	18	15
Dietician.....	64	13	17
Therapist.....	91	10	25
Veterinarian.....	101	9	25
Sanitarian.....	224	12	30
Health services.....	671	110	70
Total.....	5,844	1,171	1,495

From these figures you can see that we project an approximate 300 officer increase in those appointed this year. Our retention rate experience has not been good and we anticipate that perhaps 1200 or more officers will separate as we appoint approximately 1500 new ones in FY 1971. As I indicated to you, the Surgeon General and the Assistant Secretary for Health and Scientific Affairs have made recommendations to the Secretary of Health, Education, and Welfare. These include programs which would modernize and strengthen the Commissioned Corps system. The programs, if implemented, will enhance our ability to attract qualified health manpower. Coupled with dynamic leadership and a meaningful professional challenge, we expect that they will also greatly increase our ability to retain scarce health professionals. Our growth will depend upon program expansion within necessary budgetary and position limitations.

I would again like to express my sincere appreciation for your interest in the Public Health Service and in the Commissioned Corps system in particular. I will advise you of developments in our program to strengthen the Corps and thus better serve the health needs of the American people.

Sincerely yours,

STUART H. CLARKE,
Deputy Assistant Secretary for Personnel and Training.

Mr. JARMAN. Dr. Carter.

Dr. CARTER. No questions.

Mr. JARMAN. Mr. Hastings.

Mr. HASTINGS. I have no questions.

Mr. JARMAN. Mr. Clarke I think you have made a very good presentation and we appreciate your being here with us.

Mr. CLARKE. Thank you, Mr. Chairman.

Mr. JARMAN. This concludes the testimony before the subcommittee on this bill and the committee will stand adjourned.

(The following letter was received for the record:)

GENERAL ACCOUNTING OFFICE,
COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., March 21, 1969.

B-166166.

The Honorable the SECRETARY OF HEALTH, EDUCATION, AND WELFARE.

DEAR MR. SECRETARY: Reference is made to your letter of February 10, 1969, requesting decision as to the service which may be credited to commissioned officers of the Public Health Service in the computation of their retired pay.

You say that section 211 of the Public Health Service Act, as amended, 42 U.S.C. 212, provides several formulae for computing retired pay of Public Health Service officers under varying circumstances; that subsection (a)(4) of section 220 [221] of that act, as amended, 42 U.S.C. 213a(a)(4), assimilates commissioned officers of the Public Health Service to commissioned officers of the Army for the purposes of the benefits provided under chapter 71 of title 10, U.S. Code, Computation of Retired Pay; and that section 1405, included in chapter 71, "establishes a formula for computation of retired pay" which includes the use of years of service (including inactive service) for basic pay purposes to the credit of an officer on May 31, 1958. It is stated that the use of such inactive service is not included in the years of service authorized to be credited for computing retired pay under section 211 of the Public Health Service Act and that, for reasons not clearly ascertainable, section 211 of the Public Health Service Act has been used exclusively to compute the retired pay of commissioned officers of the Public Health Service.

You further state that an aggrieved officer requested review by his Congressman of his eligibility to use his basic pay credits (inactive service) in the multiplier factor in computing his retired pay which resulted in bills being introduced in prior Congresses to authorize credit of such inactive service in the computation of the retired pay of Public Health Service officers.

Your letter indicates that, prior to the reintroduction of such proposed legislation in the 91st Congress, Congressman Henry P. Smith III requested the American Law Division, Legislative Reference Service, Library of Congress, to review the need for such legislation; that the American Law Division concluded that section 1405 of title 10 is applicable to Public Health Service officers; that new legislation is therefore unnecessary; and that the General Counsel of the Department of Health, Education, and Welfare also has reached the same conclusion. The bill introduced in the 90th Congress, H.R. 912, was designed to allow full time for inactive service performed prior to June 1958 in determining the multiplier factor in computing retired pay.

Section 211(a)(4) of the Public Health Service Act, as amended, provides that the retired pay of commissioned officers of the Public Health Service should be computed on the basis of 2½ percent of the basic pay of the officer's grade multiplied by his years of active service plus, in the case of medical and dental officers, certain constructive service. Section 221(a)(4) of that act, as added by section 4 of the act of August 10, 1956, ch. 1041, 70A Stat. 619, provides that commissioned officers of the Service are entitled to all the rights and benefits now or hereafter provided for commissioned officers of the Army under chapter 71 of title 10, U.S. Code, Computation of Retired Pay, except formula 3 of section 1401. When that act was enacted chapter 71 of title 10, U.S. Code, did not contain a section 1405.

Section 1405 of title 10, U.S. Code, was made a part of chapter 71 by the act of May 20, 1958, and insofar as that section relates to commissioned officers of the Army its effect is to authorize the inclusion in the multiplier factor, in computing the retired pay of such officers, of their years of inactive service prior to June 1, 1958, under formula 4 of section 1401, section 3888(1), section 3927(b)(1), and formula B of section 3991. Those sections refer to computation of retired pay of (1) warrant officers (formula 4 of section 1401); (2) certain officers of the Army mandatorily retired for age (section 3888(1)); (3) certain officers involuntarily retired because not recommended for promotion, excessive number in grade, etc. (section 3927(b)(1)); and (4) commissioned officers of the Army voluntarily retired for more than 20 years of service (formula B of section 3991).

It should be noted that formula 4 of section 1401, the only section mentioned in section 1405 that is a part of chapter 71, does not apply to commissioned officers of the Army (the specified sections of title 10, U.S. Code, to which that formula applies relate to warrant officers) and hence that formula does not appear to be for consideration here.

Prior to the enactment of the Pay Readjustment Act of 1942, approved June 16, 1942, ch. 413, 56 Stat. 359, Regular commissioned officers of the uniformed services appointed on and after June 1, 1922, generally could count only

active commissioned service in computing their active duty pay. See section 1 of the uniformed services pay act of June 10, 1922, ch. 212, 42 Stat. 627, 37 U.S.C. 4 (1940 ed.). Thus, commissioned officers could not even count active service as enlisted men for longevity pay purposes. 5 Comp. Gen. 1035.

As long as those provisions remained in effect, retirement statutes that provided that the percentage multiple in the computation of the retired pay of commissioned officers should be based on the number of years of service to which they were entitled to credit in the computation of their pay on the active list precluded the counting of inactive commissioned service or even active enlisted service in determining their retired pay percentage multiple. See, for example, section 5 of the act of July 31, 1935, ch. 422, 49 Stat. 507, as amended, 10 U.S.C. 971b (1940 ed.); and section 12 of the act of June 23, 1938, ch. 598, 52 Stat. 949, 34 U.S.C. 404(b) (1940 ed.).

During World War II certain changes were made relating to the computation of active duty pay and, possibly without there being a general awareness of the full effect thereof, such changes concerning active duty pay indirectly permitted much more service to be used in the computation of retired pay. However, in the act of February 21, 1946, ch. 34, 60 Stat. 26, and the act of June 29, 1948, ch. 708, 62 Stat. 1081, amending prior laws, the formula for computing the retired pay multiplier factor on the basis of service creditable for longevity pay purposes was retained with respect to officers of the Army, Navy, Marine Corps, Air Force and Coast Guard.

Under the Department of Defense proposals made pursuant to the recommendations of the Defense Advisory Committee on Professional and Technical Compensation (Cordiner Committee), the compensation system of the uniformed services would have practically eliminated the longevity (length of service) concept in military compensation and replaced it with a pay system based on years of service in grade, rather than cumulative years of service (longevity concept).

In a bill introduced in the Senate, S. 2014, 85th Congress, 1st session, to carry into effect those recommendations, section 202 of the Career Compensation Act, which set forth the service creditable for longevity pay purposes, would have been eliminated, making it necessary to provide elsewhere in the statutory law the service creditable for computing retired pay. Section 5(3) of that bill would have added a new section to title 10, U.S. Code, section 1405, to list the service creditable in determining years of service for the computation of retired pay. In order to allow the computation of retired pay to continue to include service then creditable for that purpose without change, the new section 1405 would have restated the substance of the rules then contained in section 202 of the Career Compensation Act of 1949 for basic (longevity) pay purposes.

Section 12(a)(4) of that bill would have added a new subsection (h) to section 211 of the Public Health Service Act to permit certain retired Public Health Service officers to compute their retired pay on the basis of "years of service computed under section 1405 of title 10, United States Code."

In view of the conclusion of the Senate Armed Services Committee that those commissioned officers of the armed services who had served at least 20 years on active duty and thereafter remained in or were appointed in the Reserve prior to being transferred to a retired list with pay under then existing law should not be eligible, when their active and inactive Reserve service totaled 30 years, to receive the same retired pay as officers who had served on active duty for 30 years, that Committee adopted an amendment to section 11, referred to as "Section Affecting Retired Pay Multiplier," of H.R. 11470, which became the 1958 military pay act, "which will prevent the inclusion of nonactive duty Reserve service in the computation of the retired pay on the basis of a full active duty year." S. Rept. No. 1472, 85th Cong., 2d sess. 14.

The Committee explained its amendment relating to eliminating credit for inactive service in the multiplier factor as follows:

"Subsection (a): Clause (I) amends chapter 71 of title 10, United States Code, by adding a new section 1405 at the end thereof. The new section provides that, for the purposes of those enumerated sections of title 10 relating to *retirement from an armed force*, the years of service to be used as a multiplier in computing retired pay, but not eligibility for retirement, will be as follows:

"(1) All active service performed in the Armed Forces by the member concerned.

"(2) The years of service credited to him under section 202(a)(7) of the Career Compensation Act of 1949 for his professional education, if he is a medical or dental officer.

"(3) The years of service, not included in clause (1) or (2), with which he was entitled to be credited, on the day before the effective date of this section, in computing his retired pay.

* * * * *

"The effect of this rule is to eliminate, with one exception, the future accumulation of years of nonactive service for use as a multiplier in the computation of retired pay. However, such years *accumulated before the effective date of this act will continue* to be credited. * * * (Underscoring added.)

See page 25 of that Senate Report. The Senate amendment is further explained in the Conference Report (H. Rept. No. 1701, 85th Cong., 2d sess. 16) as follows:

"8. Another provision of the Senate amendment contained a provision which will prevent the inclusion of nonactive duty Reserve service in the computation of the retired pay on the basis of a full active duty year, and will provide that such service will be computed on the basis of the point computation system applicable to Reserve officers retired under the reserve retirement law at age 60. This section would affect those officers who had served at least 20 years on active duty and thereafter remain or are appointed in the Reserve prior to being transferred to a retired list with pay. As a result of the Senate amendment all future inactive reserve time will be computed on the same basis for retired pay purposes."

While the Congress in enacting the 1958 military pay bill did not eliminate the longevity concept of military pay and therefore did not delete section 202 governing service creditable for basic (longevity) pay purposes under the Career Compensation Act, it made conforming changes in the retirement laws with respect to service creditable for computing retired pay and added section 1405 to chapter 71 of title 10, U.S. Code, to eliminate the crediting of full time for inactive service performed thereafter in determining the percentage multiple in retired pay formulae.

It may be noted that section 3 of S. 3082, a companion bill to S. 3081 (similar to H.R. 11470), which was designed to accomplish what section 11 of the 1958 military pay act did accomplish, would have amended the law authorizing the crediting of inactive service in the retired pay percentage multiple of commissioned officers of the Coast and Geodetic Survey (who, like Public Health Service officers, had been made eligible for the benefits of chapter 71 of title 10, U.S. Code, by section 3 of the act of August 10, 1956, 70A Stat. 619) by striking out the words "for which entitled to credit in the computation of his pay while on active duty" in 33 U.S.C. 853o (1952 ed.) and inserting there the words, "that may be credited to him under section 1405 of title 10, United States Code."

In commenting on that section of the proposed bill, the Department of the Air Force as spokesman for the Department of Defense recommended that section 3 be clarified:

"It further appears that there may be some doubt that section 3 of the bill would make the new formula applicable to the Coast and Geodetic Survey. Therefore, it is suggested that there should be inserted on line 23 of page 4, after the word 'Code', the phrase 'as if his service were *service as a member of the Armed Forces*'." (Italic supplied.)

See letter of April 4, 1958, to the Chairman of the Senate Committee on Armed Services, S. Rept. No. 1472, 85th Cong., 2d sess. 32, 33. That language was included in section 11(c) of the 1958 military pay law as recommended by the Department of the Air Force. No similar provision was made with respect to the Public Health Service, for which there then existed no authority to count inactive service in the retired pay percentage multiple.

Section 221(a) of the Public Health Service Act was enacted by section 4 of the act of August 10, 1956, ch. 1041, 70A Stat. 619, which codified titles 10 and 34 of the United States Code as title 10 thereof. It is clear that at that time commissioned officers of the Public Health Service were not authorized to count inactive service in their retired pay percentage multiple.

Section 1405 was not a part of title 10, U.S. Code, as codified by the 1956 act, but was added by section 11 of the 1958 military pay act, the express purpose of which was to prohibit full credit for inactive service performed after May 1958 in computing the retired pay percentage multiple of Army, Navy, Marine Corps, Air Force, Coast Guard, and Coast and Geodetic Survey officers. In 1956 when section 221 of the Public Health Service Act was enacted, chapter 71 of title 10 had nothing to do with counting inactive time in the retired pay percentage multiple of Army officers retired with over 20 years of active service. Army officers could count such inactive time not by virtue of 10 U.S.C. 1405 but by

virtue of 10 U.S.C. 3911 and 3991 and their source statutes, the act of July 31, 1935, as amended by section 202 of the act of June 29, 1948, 62 Stat. 1084.

In 1956 Public Health Service officers did not have a similar right and could count only active service in their retired pay percentage multiple under section 211 of the Public Health Service Act. While section 4 of the 1956 act mentions rights "now or hereafter provided for Army officers," section 1405 of chapter 71 as added in 1958 by section 11 of the 1958 military pay act did not add to, but actually restricted, the right of Army officers to count inactive service performed after May 1958 for retired pay percentage multiple purposes.

Thus, section 1405 did not confer upon Army officers the right to full credit for inactive service prior to June 1958 in their retired pay percentage multiple, but restricted the right to such credit to service performed prior to June 1958, that is, to such service as was creditable for that purpose on May 31, 1958. We find nothing in the law which thus reduced the rights of other retired officers, which might be viewed as increasing the rights of retired officers of the Public Health Service.

In view of the foregoing considerations, the fact that the retired pay proposal in S. 2014 to authorize the Public Health Service officers to count inactive service in their retired pay percentage multiple was not enacted in the 1958 military pay law, and the fact that the purpose of section 11 of that law adding section 1405 to title 10, U.S. Code, was to limit the authorization for other officers of the uniformed services to count inactive service in their retired pay percentage multiple to such service performed prior to June 1958, it is our opinion that Public Health Service officers are not authorized to count inactive service prior to June 1958 in their retired pay percentage multiple by virtue of the provisions of 10 U.S.C. 1405.

In this connection, it is noted that the above-mentioned Conference Report states that since the 1958 amendment is prospective in scope, it would "not affect the service presently creditable under existing law."

Since, in our view, Public Health Service officers are not authorized to count any of their inactive service in determining their retired pay percentage multiple under existing law, we believe that additional legislation would be necessary if credit for such service prior to June 1, 1958, is to be authorized for them. Legislation such as that proposed in S. 912, 90th Congress, would seem to be appropriate for that purpose if the Congress should decide that Public Health Service officers should receive that benefit.

Sincerely yours,

R. F. KELLER,

Acting Comptroller General of the United States.

(Whereupon, at 10:30 a.m. the hearing adjourned.)

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