



Commissioned Officers Association of the U.S. Public Health Service

**Gerard M. Farrell
Captain U.S. Navy (Ret)
Executive Director**

April 6, 2011

The Honorable Kathleen Sebelius
Secretary, Department of Health and Human Services
Hubert H. Humphrey Building
Washington, DC 20201

Dear Secretary Sebelius:

The Commissioned Officers Association of the U.S. Public Health Service writes to express our serious concern with your Department's decision to overturn decades of precedent and declare, without further explanation, that PHS Commissioned Corps officers are no longer to be considered "exempt" personnel in the event of federal employee furloughs incident to a looming government shutdown. An announcement to this effect was sent to all PHS Commissioned Corps officers earlier today by the Deputy Surgeon General.

In your memorandum to all HHS employees dated April 5th and cited by RADM Lushniak this afternoon, you refer employees to the OPM website for further information. The OPM website contradicts any assertion that Corps officers are not exempt when it states that exempt employees "includes those Presidential appointees who are not subject to a Federal employee leave system-i.e., who are entitled to an annual salary without consideration of the hours of duty required and thus cannot be placed in nonduty/nonpay status." By virtue of the fact that all Commissioned Corps officers are now Regular Corps officers, they are all "Presidential appointees" and entitled to an annual salary "without consideration of the hours of duty required." DHHS is on record many times over citing the fact that Corps officers are available "24/7" and not entitled to additional compensation for working "overtime" as one of the principal advantages of the Corps as a uniformed service.

Surely, the intent is not to suggest that the rules can be used to exempt some Presidential appointees, such as political appointees, while not exempting others such as uniformed service members. Clearly, the Department of Defense and Department of Homeland Security take a different view where their uniformed services are concerned, classifying them all as "exempt."

Such a significant alteration to policy deserves to at least be accompanied by an explanation of the reasons supporting the change. A request to your Office of General Counsel for such an explanation earlier today was rebuffed; a reply I find inconsistent with this Administration's commitment to transparency.

Moreover, any such explanation should also address the fact public health is a fundamental and integral component of our national security – on multiple levels – from our ability to sustain an effective economy to our ability to sustain an effective military capability; not to mention the importance of effective public health and disease prevention measures to contain the cost of health care. The PHS Commissioned Corps is essential to all of these functions.

Accordingly, we urge you in the strongest possible terms to reverse the findings of whatever analysis led to this unfortunate decision to include uniformed PHS officers among those federal employees subject to furlough in the event of a government shutdown.

Sincerely yours,

A handwritten signature in black ink, appearing to read "G. Farrell", with a long horizontal stroke extending to the right.

Gerard M. Farrell
Executive Director

Cc:

Dr. Koh

VADM Benjamin

Chairman Harkin

Ranking Member Enzi

Chairman Upton

Ranking Member Waxman