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February 24, 2016

The Honorable Beth F. Cobert
Acting Director
Office of Personnel Management
1900 E Street NW
Washington, DC 20415

Dear Ms. Cobert:

On February 2, 2016, I sent you a letter related to my concerns with the Washington Exemption from Obamacare and requested information and answers to longstanding questions on the origins of OPM's regulation that enabled the Congress to be declared a small business for the purpose of purchasing health care insurance on a Small Business Health Options Plan (SHOP), an insurance exchange that Congress intended for actual small businesses. I did so as Chairman of the U.S. Senate Committee on Small Business and Entrepreneurship, which has oversight responsibilities on matters affecting or relating to small businesses. Because you have failed to respond, I have placed a hold on your nomination that was hotlined in the Senate yesterday.

Since I sent that letter, it has come to my attention that the U.S. Senate Disbursing Office and the Chief Administrative Officer for the House of Representatives appear to consider the Congress a large employer for the purposes of reporting information about offers of health coverage and enrollment in health coverage for their employees under Sections 6065 and 6056 of the Internal Revenue Code. I have written the Commissioner of the Internal Revenue Service requesting confirmation that the Congress is a large employer and whether or not there have been any violations of the Internal Revenue Code given communications and regulatory language by two federal government agencies that seem to be contradictory. I forwarded to you a courtesy copy of my letter to the Commissioner.

Now, in addition to the questions in my previous letter to you, and given that the Senate Disbursing Office has indicated on Form 1095C, sent to each employee of the United States Senate, that the Congress is an "Applicable Large Employer," I must add the following question:

Can you confirm the position of the U.S. Office of Personnel Management as to whether Congress is a small business, as indicated by 5 CFR §890.102, with employees eligible to purchase health insurance on a SHOP exchange, or is it a "Large Employer" as indicated by the 1095C form sent to the Congressional employees and the IRS?

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As mentioned above, I also await your response to the questions and request for information I submitted previously. Information and answers that are responsive to those questions will be very helpful as we attempt to clear up this blatant contradiction. It is not easy for Americans to trust their leadership in Washington when Congress cannot seem to figure out if they are a large employer or a small business. Furthermore, Congressional employees could be submitting fraudulent documents to the IRS, potentially committing a crime, if you still insist that Congress is a small business. Again, the questions and information requested include the following:

1. Prior to issuing the rule, did anyone within OPM, advising on this particular matter, at any point, argue that OPM did not have the authority to determine that Federal Employee Health Benefit Plan (FEHBP) contribution could be used towards purchasing a plan on an exchange or with a private insurance plan outside FEHBP?
2. Please disclose all correspondence of any kind, including emails and meetings OPM officials had with Members of Congress or any congressional staff, prior to issuing the proposed rule on August 2, 2013, and prior to issuing the final rule October 2, 2013.
3. Please disclose all correspondence of any kind, including emails and meetings that OPM officials have had with the White House, including the President, with regards to this ruling that allows Members and congressional staff to keep their generous taxpayer funded subsidy for health insurance.
4. Was there, at any point, disagreement between OPM, Members of Congress, the White House, their respective staff with regard to OPM's authority to authorize FEHBP subsidies for health plans on an exchange?
5. Please disclose all correspondence of any kind, including emails and meetings that OPM officials have had with the U.S. Senate Disbursing Office and the Office of the Clerk of the House of Representatives suggesting staff report Congress only employs 45 full-time equivalent employees, and therefore meets the criteria of a "small business."

Please provide the requested information and answers to the above questions to me not later than close of business, March 11, 2016.

Sincerely,



David Vitter
United States Senator, Chairman of Senate
Committee on Small Business and
Entrepreneurship