

February 13, 2015

The Honorable Katherine Archuleta
Director
Office of Personnel Management
1900 E St. NW
Washington, DC 20415

Dear Director Archuleta:

Your office is now aware of the procedural hold I have placed on the nomination of Earl L. Gay to be Deputy Director of the Office of Personnel Management (OPM). I am aware that the White House has reached out to Senate staff, and I look forward to your cooperation in expeditiously determining the information and transparency requirements necessary to proceed with this nomination.

On October 9, 2013, I requested that your office provide “all correspondence OPM officials had within the Administration and with Members of Congress and their staff regarding how the agency arrived at its position in the final rule,” issued on September 30, 2013, which ultimately impacted how Members of Congress and their staff receive and are awarded health benefits.¹ At the time, it had been widely reported that OPM was deliberating with Congress and officials in the White House, including the President, over the specifics of this rule.² Since that time, additional information has come to light indicating that false information was provided to the District of Columbia Health Benefits Exchange (DCHBE).³

Jurisdiction of the U.S. Senate Committee on Small Business and Entrepreneurship includes oversight responsibilities affecting or related to small businesses. According to the application DCHBE approved, that now includes Congress in this matter. Allowing Congress, which employs nearly 16,000 people, to determine itself as a “small business”

¹ Letter from David Vitter, U.S. Senator, to Elaine Kaplan, Acting Director of the Office of Personnel Management, (Oct. 9, 2013) (on file with the Committee on Small Business and Entrepreneurship).

² Eric Yoder, *Employer Health-premium share will continue for Hill staff forced out of FEHBP*, WASH. POST (Aug. 7, 2013) <http://www.washingtonpost.com/blogs/federal-eye/wp/2013/08/07/employer-health-premium-share-will-continue-for-hill-staff-forced-out-of-fehbp/>.

³ Letter from David Vitter, Chairman of the Senate Committee on Small Business and Entrepreneurship, to Mila Kofman, Executive Director, D.C. Health Benefit Exchange Authority, et.al., (Feb. 3, 2015) available at http://www.sbc.senate.gov/public/?a=Files.Serve&File_id=df54c3f3-cfec-4339-a90b-cb2ffe71c35f.

should not have passed the common sense test. Unfortunately, it appears that the White House, and in particular, OPM, may have had some role in this.

Regardless of any involvement in the misinformation provided to DCHBE, OPM was directly involved in the broader inequity forced on the American people when the rule developed affecting Congressional health care was allowed to be implemented. In order for the Deputy Director of OPM's nomination to move forward a fulfillment of the requests outlined, as well as thorough responses to the questions asked, in my October 2013 letter must be fulfilled. Accordingly, for your convenience, I reiterate those requests here:

1. Prior to issuing the rule did anyone within OPM, advising on this particular matter, argue that OPM did not have the authority to determine that FEHB contribution could be used towards purchasing a plan on an exchange or with a private insurance plan outside FEHB?
2. Please disclose all email correspondence in any way relating to the issuing of the rule, including emails regarding meetings OPM officials had with Members of Congress and/or any of their staff prior to issuing the proposed rule on August 2, 2013, and prior to issuing the final rule issued on September 30, 2013.
3. Please disclose all email correspondence, including meetings that OPM officials have had with the White House, including the President, with regard 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, and their respective staff with regard to OPM's authority to authorize FEHB subsidies for health plans on an exchange? If so, please describe the nature of the disagreement and disclose the person/persons involved.
5. Please disclose all correspondence involving, 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."

As you are aware, the President committed to faithfully execute the law as a responsibility to his office and in respect for our republic.⁴ That duty carries over to your office via the President you serve. Should anyone within the Office of the President, or that of OPM, wish to see the nomination move forward, I will be happy to work toward that end upon a complete and full response to the requested information now pending for

⁴ U.S. CONST. art. II, § 1, cl. 8.

more than 15 months. Accordingly, we ask that you respond to this request by March 2, 2015, by delivering copies of all documents to the Committee office located in the Russell Senate Office Building, Room 428A, or by sending electronically to bryan_zumwalt@sbc.senate.gov.

Sincerely,

A handwritten signature in blue ink that reads "David Vitter". The signature is written in a cursive style with a large, stylized "D" and "V".

David Vitter
Chairman

Senate Committee on Small Business and Entrepreneurship