



**United States Senate  
Committee on Small Business and  
Entrepreneurship  
Chairman's Report**

***Above the People:  
An Investigation of Congress' Fraudulent  
Obamacare Subsidy and the Cover Up to  
Continue the Special Exemption***

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## **EXECUTIVE SUMMARY**

The United States was founded upon the principle that all its citizens, including its elected officials, must live under the law. However, through some disconnection with the American people, or willful ignorance of their own responsibilities as elected representatives, Washington, D.C. lawmakers often create or support exemptions for themselves from laws they pass. Unfortunately, such troubling conduct is by no means a new occurrence, and multiple examples of special Congressional exemptions can be found dating back to the nineteenth century. One of the most recent, and perhaps most egregious, instances of this arrogance arises from Congress exempting of itself from the requirements of the Patient Protection and Affordable Care Act (“Obamacare”).

The enactment of Obamacare in 2010 brought forth major changes in how Americans and their families received healthcare, including new mandates, adjustments in healthcare plans and providers, and new taxes and fees. Obamacare also impacted members of Congress, who faced losing their generous existing health insurance coverage in January 2014. Faced with the harsh uncertainties this law created, Congress, with help from the Obama administration, worked in secret to exempt itself from it. The scheme centered on Congress allowing all 535 of its members, as well as many congressional staffers, to be placed into a healthcare exchange designated for small businesses employing no more than 50 persons.

This report documents the process through which Congress exempted itself from Obamacare, highlighting its evasion of the law and how an entity with roughly 15,000 full time employees was allowed to enter a healthcare exchange created only for businesses with 50 or fewer employees. It also details the extensive investigation by Senate Small Business and

Entrepreneurship Committee Chairman David Vitter to bring transparency to this issue, as well as the efforts by Congress and others to impede his investigation. The report concludes with a series of unanswered questions that will remain unanswered until the parties responsible for the Washington Obamacare Exemption are held accountable for their actions.

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## INTRODUCTION

“Congress would exempt itself from the law of gravity if it could.”

- Former Congressman Henry Hyde (R-IL)<sup>1</sup>

“Over the decades, Congress has passed innumerable statutes that regulate every aspect of life in the American workplace, then quickly exempted themselves.”<sup>2</sup>

- Gerald D. Skoning, *The Wall Street Journal*

As far back as 1788, James Madison perceptively cautioned in the Federalist Papers that to prevent “oppressive measures,” elected officials must “make no law which will not have its full operation on themselves and their friends. . . .”<sup>[3]</sup> Madison further explained that this virtue “has always been deemed one of the strongest bonds by which human policy can connect the rulers and the people together. It creates between them that communion of interests and sympathy of sentiments, of which few governments have furnished examples; but without which every government degenerates into tyranny.”<sup>[4]</sup>

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<sup>1</sup> Rand Paul, *Taking a Stand: Moving Beyond Partisan Politics to Unite America* 71 (Hachette Book Group 2015) available at

<https://books.google.com/books?id=m0B0AAQBAJ&pg=PT56&lpg=PT56&dq=%22congress+would+exempt+itself+from%22+hyde&source=bl&ots=BszbuZYFzV&sig=ND7xGbNqTcQ2aPpuA6Sv9QBoFL8&hl=en&sa=X&ei=sFWNVdPjBIWp-QGH9LjoBQ&ved=0CB4Q6AEwAA#v=onepage&q=%22congress%20would%20exempt%20itself%20from%22%20hyde&f=false>

<sup>2</sup> Gerald D. Skoning, *How Congress Puts Itself Above the Law*, THE WALL STREET JOURNAL (Apr. 15, 2013), <http://www.wsj.com/articles/SB10001424127887324504704578413182814140480>.

<sup>[3]</sup> James Madison, Federalist No. 57, *The Alleged Tendency of the New Plan to Elevate the Few at the Expense of the Many Considered in Connection with Representation*, NEW YORK PACKET (Feb. 19, 1788), available at <http://www.constitution.org/fed/federa57.htm>.

<sup>[4]</sup> James Madison, Federalist No. 57, *The Alleged Tendency of the New Plan to Elevate the Few at the Expense of the Many Considered in Connection with Representation*, NEW YORK PACKET (Feb. 19, 1788), available at <http://www.constitution.org/fed/federa57.htm>.

Unfortunately, Congress has often ignored this wisdom and instead deliberately removed itself from the path it forces the American people down. The chart below shows some of the laws Congress originally, or later, exempted itself from following.

<p><b><i>Whistleblower Protection Act of 1989</i></b> Congress exempts itself from worker protections for reporting waste, mismanagement, and lawbreaking</p>	<p><b><i>Age Discrimination in Employment Act of 1967 and Americans with Disabilities Act of 1990</i></b> Congress exempts itself from needing to retain personnel files</p>
<p><b><i>Fair Labor Standards Act of 1938</i></b> Congress exempts itself from the minimum wage, 40-hour workweek, and overtime pay rates</p>	<p><b><i>Occupational Health and Safety Act of 1979</i></b> Congress exempts itself from being subpoenaed to investigate health and safety violations</p>
<p><b><i>Civil Rights Act of 1964, Title VII</i></b> Congress exempts itself from laws banning employment discrimination</p>	<p><b><i>Securities Exchange Act of 1934</i></b> Congress exempts itself from the ban on insider trading</p>
<p><b><i>Freedom of Information Act of 1966</i></b> Congress exempts itself from the burden of meeting public requests for information.</p>	<p><b><i>Civil Rights Act of 1991</i></b> Congress again exempts itself from complying with workplace discrimination policies.</p>
<p><b><i>Civil Service Act of 1883</i></b> Congress exempts itself from the employment provisions contained in the Act.</p>	<p><b><i>Ethics Reform Act of 1989</i></b> The U.S. Senate exempts itself from legislation imposing government-wide limits on outside income and employment.</p>

[5] [6] [7]

A modern-day example of such conduct arises from the complex and deeply flawed Patient Protection and Affordable Care Act, commonly known as “Obamacare.” In 2009 and 2010, President Obama and the Democrat-controlled Congress rushed the 974 pages of

<sup>[5]</sup> Theodoric Meyer, *Do as We Say, Congress Says, Then Does What It Wants*, PRO PUBLICA (Jan. 31, 2013), <http://www.propublica.org/article/do-as-we-say-congress-says-then-does-what-it-wants>.

<sup>[6]</sup> Gerald D. Skoning, *How Congress Puts Itself Above the Law*, THE WALL STREET JOURNAL (Apr. 15, 2013), <http://www.wsj.com/articles/SB10001424127887324504704578413182814140480>.

<sup>[7]</sup> Congressional Exemptions and Special Rules, U.S. House of Representatives Committee on Rules, <http://archives.democrats.rules.house.gov/Archives/jcoc2ae.htm> (last accessed July 20, 2015).

Obamacare through the U.S. House and Senate instead of taking time to dissect the myriad of provisions and consider its long-term impacts on the nation. During that time, then-Speaker of the House Nancy Pelosi (D-Calif.) notoriously proclaimed, “We have to pass the bill so that you can find out what is in it.”<sup>[8]</sup>

Not surprisingly, the final product that President Obama signed in March 2010 contained a host of inadequate, poorly written language that thrust drastic and unwanted health insurance changes onto countless Americans, including members of Congress, who carelessly revoked their own generous healthcare coverage and monthly employer/government premium contributions. Facing the prospect of falling victim to the consequences of its own bad law, Congress and the Obama administration negotiated behind closed doors and devised a loophole that shielded them from the consequences of the law.

The scheme employed to provide the Washington Obamacare Exemption involved a fraudulent misrepresentation in which the U.S. House of Representatives and Senate were defined as small employers to enable their members and some staff to receive generous taxpayer-funded contributions, not otherwise available under the new law. Through the exemption, Congress not only provided itself special relief at the expense of the American taxpayer, but also removed any direct need or urgency to fix the problems in the law through practical legislative solutions.

When Senator David Vitter (R-La.) assumed the Chairmanship of the Senate Committee on Small Business and Entrepreneurship in January 2015, he immediately began to investigate how Congress could qualify as a “small employer” and thus avoid the comprehensive challenges of having Obamacare. Through the investigation, Chairman Vitter hoped to (1) understand and

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<sup>[8]</sup> John C. Cahrssen, John S. Hoff, *Dear Speaker Pelosi, We’ve Looked Inside Obamacare And It’s Really Bad*, FORBES (Nov. 11, 2013), <http://www.forbes.com/sites/realspin/2013/11/11/dear-speaker-pelosi-weve-looked-inside-obamacare-and-its-really-bad/>.

uncover how such an unfair, illegal and secretive fix occurred; (2) bring further attention to the need to fix the mess created by Obamacare; and (3) reinforce the noble and basic principle advocated by Madison and others that under no circumstances whatsoever should our elected officials ever be allowed to avoid the consequences of the laws they enact.

At its core, the Washington Obamacare Exemption represents the immense abuse of power by unelected bureaucrats in Washington, D.C. at the clandestine direction of elected officials and the Obama administration. What follows in this report examines the healthcare coverage exemption Congress created for itself after passing Obamacare, how Congress covertly worked with the Obama administration to illegally exempt itself from the law, and the ongoing efforts to block any investigation or inquiry into such troubling conduct.

## I. OBAMACARE IN ACTION: UNEXPECTED CONSEQUENCES FOR AMERICANS AND CONGRESS

“If they did not know exactly what they were doing to themselves, did lawmakers who wrote and passed [Obamacare] fully grasp the details of how it would influence the lives of other Americans?”<sup>3</sup>

- Robert Pear, *The New York Times*, April 12, 2010

“The Affordable Care Act contains more than a few examples of inartful drafting. . . . Several features of the Act’s passage contributed to that unfortunate reality. Congress wrote key parts of the Act behind closed doors, rather than through ‘the traditional legislative process’. . . . As a result, the Act does not reflect the type of care and deliberation that one might expect of such significant legislation.”<sup>4</sup>

Chief Justice John Roberts, *King v. Burwell*, June 25, 2015

### a. *Americans Lose Their Healthcare*

Following the enactment of the Affordable Care Act on March 23, 2010, countless Americans faced the possibility of whether they and their families would lose their existing health insurance. The public outcry and pervading uncertainty forced President Obama to make a last-minute promise that Americans could keep their existing insurance.<sup>5</sup> However, this assurance proved false as insurers and employers anxious about the costs of failing to comply with Obamacare announced the cancellations or non-renewals of insurance plans that they determined did not meet the law’s stringent standards.<sup>6</sup>

Ultimately, the changes largely affected millions of workers previously covered by employer-sponsored healthcare plans, which constitute the most utilized source of health

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<sup>3</sup> Robert Pear, *Baffled by Health Plan? So Are Some Law Makers*, THE NEW YORK TIMES (Apr. 12, 2010) [http://www.nytimes.com/2010/04/13/us/politics/13health.html?\\_r=0](http://www.nytimes.com/2010/04/13/us/politics/13health.html?_r=0).

<sup>4</sup> *King v. Burwell*, 576 U.S. \_\_\_\_ (2015) at p. 14, [http://www.supremecourt.gov/opinions/14pdf/14-114\\_qo11.pdf](http://www.supremecourt.gov/opinions/14pdf/14-114_qo11.pdf)

<sup>5</sup> <http://www.factcheck.org/2013/11/keeping-your-health-plan/>.

<sup>6</sup> Ashely Parker, Robert Pear, *Obama Moves to Avert Cancellation of Insurance*, THE NEW YORK TIMES (Nov. 14, 2015), [http://www.nytimes.com/2013/11/15/us/politics/obama-to-offer-health-care-fix-to-keep-plans-democrat-says.html?\\_r=0](http://www.nytimes.com/2013/11/15/us/politics/obama-to-offer-health-care-fix-to-keep-plans-democrat-says.html?_r=0).

insurance. Before Obamacare became law, roughly 157 million non-elderly Americans received their health insurance through their employers.<sup>7</sup> In recent years, the number has gone down to roughly 149 million people.<sup>8</sup> Small businesses, which employ roughly 99% of Americans, now experienced the additional pressure of deciding the level of healthcare insurance they could afford to offer to their employees.<sup>9</sup>

Consequently, in the wake of Obamacare, American workers faced burdens that included:

- (1) Losing their individual and employer-provided health coverage;
- (2) Finding alternatives that involved paying higher premiums with unwanted or useless new coverage (i.e. maternity care for men<sup>10</sup>); and
- (3) Changing doctors and healthcare providers.

#### ***b. Congress Loses Its Healthcare***

Before Obamacare, members of Congress and their staff received health insurance coverage through the Federal Employees Health Benefits program (FEHBP), a healthcare network for federal workers established in 1959 and run by the Office of Personnel Management

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<sup>7</sup> Gary Claxton, Bianca DiJulio, et.al, *Employer Health Benefits: 2010 Annual Survey*, THE KAISER FAMILY FOUNDATION and HEALTH RESEARCH & EDUCATIONAL TRUST and NATIONAL OPINION RESEARCH CENTER (Sept. 2010), available at <https://kaiserfamilyfoundation.files.wordpress.com/2013/04/8085.pdf>.

<sup>8</sup> Gary Claxton, Matthew Rae, et.al., *Employer Health Benefits: 2014 Annual Survey*, THE KAISER FAMILY FOUNDATION and HEALTH RESEARCH & EDUCATIONAL TRUST and NATIONAL OPINION RESEARCH CENTER AT THE UNIVERSITY OF CHICAGO (Sept. 2014), available at <http://files.kff.org/attachment/2014-employer-health-benefits-survey-full-report>.

<sup>9</sup> *Small Business Facts*, Small Business & Entrepreneurship Council, <http://www.sbecouncil.org/about-us/facts-and-data/> (last accessed July 20, 2015).

<sup>10</sup> Geoffrey Cowley, *Why 57-year-old men need maternity benefits*, MSNBC (Nov. 14, 2013), <http://www.msnbc.com/msnbc/healthcare>.

(OPM).<sup>11</sup> FEHBP represents the country's largest employer-sponsored health insurance program with costs approaching \$32.4 billion in premiums for roughly 8 million enrollees in 2013.<sup>12</sup> Through FEHBP, members of Congress and their staff chose from a variety of health insurance policies that provided coverage for individuals and their family members.<sup>13</sup> FEHBP also allowed members and staff to receive taxpayer-funded government contributions towards their monthly premiums.<sup>14</sup> The biweekly government contribution for these plan premiums equaled 72% of the weighted average premium of all FEHBP plans, not to exceed 75% of any plan's premium.<sup>15</sup> In 2013, the maximum FEHBP contribution averaged \$413.49 per month (\$4,966.80 per year) for individual coverage and \$920.73 per month (\$10,048.76 per year) for family coverage.<sup>16</sup> Pursuant to the tax code, these taxpayer-funded government contributions counted as tax-free income to employees.<sup>17</sup>

Under the leadership of Speaker Pelosi and then-Senate Majority Leader Harry Reid (D-NV), Congress passed Obamacare, which also repealed its FEHBP coverage without a remedy. Specifically, the law mandated that members of Congress and their staffs give up their FEHBP

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<sup>11</sup> 5 U.S.C. § 8909, <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title5/pdf/USCODE-2011-title5-partIII-subpartG-chap89-sec8909.pdf>.

<sup>12</sup> Annie L. Mach, Ada S. Cornell, *Laws Affecting the Federal Employees Health Benefits Program*, CONGRESSIONAL RESEARCH SERVICE (Feb. 18, 2014), <http://www.crs.gov/pages/Reports.aspx?PRODCODE=R42741&Source=search>.

<sup>13</sup> Annie L. Mach, Ada S. Cornell, *Laws Affecting the Federal Employees Health Benefits Program*, CONGRESSIONAL RESEARCH SERVICE (Feb. 18, 2014), <http://www.crs.gov/pages/Reports.aspx?PRODCODE=R42741&Source=search>.

<sup>14</sup> Annie L. Mach, Ada S. Cornell, *Laws Affecting the Federal Employees Health Benefits Program*, CONGRESSIONAL RESEARCH SERVICE (Feb. 18, 2014), <http://www.crs.gov/pages/Reports.aspx?PRODCODE=R42741&Source=search>.

<sup>15</sup> Annie L. Mach, Ada S. Cornell, *Laws Affecting the Federal Employees Health Benefits Program*, CONGRESSIONAL RESEARCH SERVICE (Feb. 18, 2014), <http://www.crs.gov/pages/Reports.aspx?PRODCODE=R42741&Source=search>.

<sup>16</sup> Non-Postal Premium Rates for the Federal Employees Health Benefits Program, Office of Personnel Management (2013), <http://www.opm.gov/healthcare-insurance/healthcare/plan-information/premiums/2013/nonpostal-hmo.pdf>.

<sup>17</sup> Robert E. Moffit, PH.D., Edmund F. Haislmaier, Joseph A Morris, *Congress in the Obamacare Trap: No Easy Escape*, THE HERATIGE FOUNDATION (Aug. 2, 2013), [http://www.heritage.org/research/reports/2013/08/congress-in-the-obamacare-trap-no-easy-escape#\\_ftn7](http://www.heritage.org/research/reports/2013/08/congress-in-the-obamacare-trap-no-easy-escape#_ftn7).

health plans beginning January 1, 2014, and join a healthcare Exchange.<sup>18</sup> The relevant part of the Act states:

“The only health plans that the Federal Government may make available to Members of Congress and congressional staff with respect to their service as a Member of Congress or congressional staff shall be health plans that are —

- (I) created under this Act (or an amendment made by this Act); or
- (II) offered through an Exchange established under this Act (or an amendment made by this Act).”<sup>19</sup>

An amendment introduced during debate on the bill by Senator Chuck Grassley (R-IA) would have removed ambiguities in this final language by better clarifying how Obamacare treats Congress. First, the amendment clearly delineated which federal employees were subject to the law and must enroll on the new Exchanges, including “the President, Vice President, each Member of Congress, each political appointee, and each Congressional employee.”<sup>20</sup> Second, unlike the final law, the amendment permitted federal employees to continue receiving employer/government contributions, like under FEHBP.<sup>21</sup> The Senate never voted on the Grassley amendment before the bill became law. Senator Grassley tried one more time to pass this amendment when another opportunity arose on March 24, 2010, but it was defeated by a vote of 56 to 43.<sup>22</sup>

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<sup>18</sup> Questions and Answers Health Insurance Coverage: Members of Congress and Congressional Staff, Office of Personnel Management, <https://www.opm.gov/retirement-services/publications-forms/benefits-administration-letters/2013/13-204attachment2.pdf>.

<sup>19</sup> 42 U.S.C. §18032(d)(3)(D), available at <https://www.law.cornell.edu/uscode/text/42/18032>.

<sup>20</sup> Robert E. Moffit, PH.D., Edmund F. Haislmaier, Joseph A Morris, *Congress in the Obamacare Trap: No Easy Escape*, THE HERATIGE FOUNDATION (Aug. 2, 2013), <http://www.heritage.org/research/reports/2013/08/congress-in-the-obamacare-trap-no-easy-escape>

<sup>21</sup> Robert E. Moffit, PH.D., Edmund F. Haislmaier, Joseph A Morris, *Congress in the Obamacare Trap: No Easy Escape*, THE HERATIGE FOUNDATION (Aug. 2, 2013), <http://www.heritage.org/research/reports/2013/08/congress-in-the-obamacare-trap-no-easy-escape>

<sup>22</sup> Robert E. Moffit, PH.D., Edmund F. Haislmaier, Joseph A Morris, *Congress in the Obamacare Trap: No Easy Escape*, THE HERATIGE FOUNDATION (Aug. 2, 2013), <http://www.heritage.org/research/reports/2013/08/congress-in-the-obamacare-trap-no-easy-escape>

Accordingly, members of Congress forced themselves onto the District of Columbia Health Benefits Exchange Authority (DCHBEA) where they faced losing their healthcare provider, changing their insurance options, and losing their substantial employer/government contribution towards their monthly premiums. DCHBEA's Exchange was not a practical marketplace for Congress and its staff, only offering options for individuals, through the individual Exchange, and small businesses, through the Small Business Health Options Program (SHOP) Exchange.<sup>23</sup> Under the law, these choices proved either unsuitable or unavailable to Congress.

*c. Problems with the Individual Exchange*

*i. Congress Forced to Pay Full Health Insurance Premiums*

DCHBEA's individual market serves people who apply without an employer-covered alternative. Therefore, it offers no taxpayer-funded government contribution like FEHBP. It does, however, provide subsidies to help low-income persons living in the District of Columbia.<sup>24</sup> Under these rules, members of Congress who make an average of \$174,000 per year are ineligible to receive a subsidy on this Exchange.<sup>25</sup>

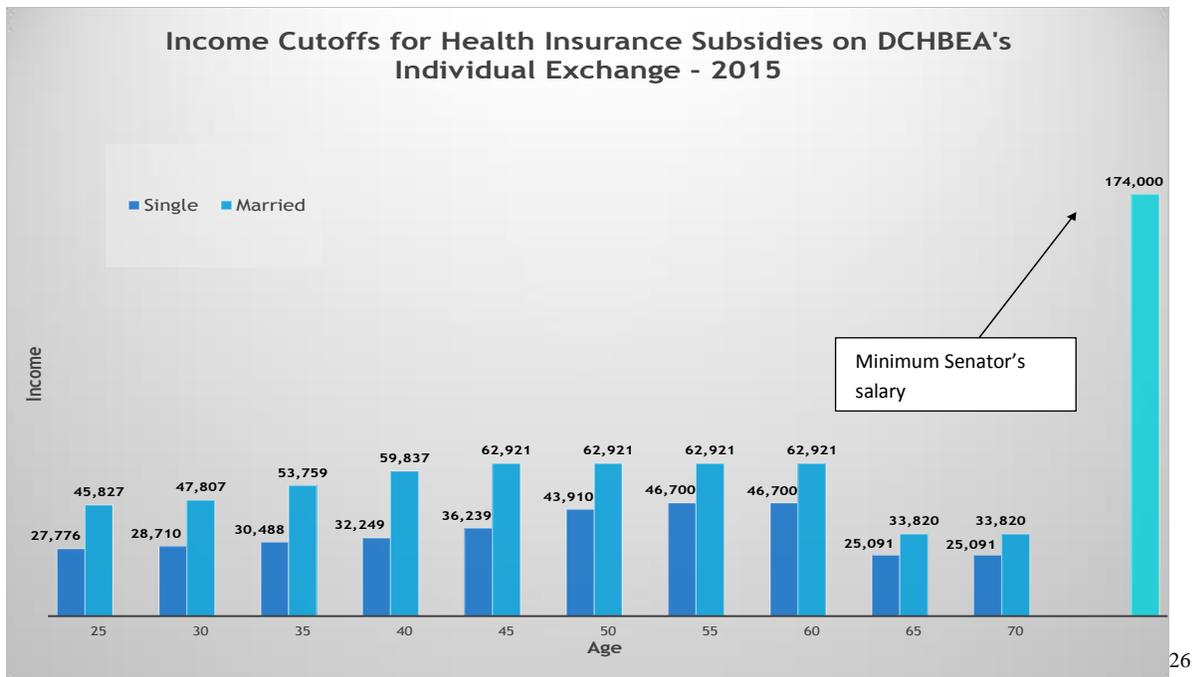
The chart below illustrates the various subsidy cutoffs on DCHBEA's individual Exchange as of 2015 for unmarried individuals and persons married to someone of the same age based on annual earnings and age.

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<sup>23</sup> DC Health Link, <https://dchealthlink.com/> (last accessed July 20, 2015).

<sup>24</sup> *Reduce Your Premiums*, DC Health Link, <https://dchealthlink.com/reduce-your-premiums> (last accessed July 20, 2015).

<sup>25</sup> Ida A. Brudnick, *Salaries of Members of Congress: Recent Actions and Historical Tables*, CONGRESSIONAL RESEARCH SERVICE (June 8, 2015) <http://www.crs.gov/pdfloader/97-1011>.



As such, members of Congress obtain health insurance on the DCHBEA individual Exchange with monthly premiums similar to their previous ones on FEHBP would pay the entire premium cost out of their own pockets, without any contribution.

***ii. Congress Penalizes Itself Under the Individual Exchange***

In addition to the loss of the taxpayer-funded government contributions, Congress joining the individual Exchange would create an inconvenient problem arising from penalty triggers in Obamacare. The issue stems from the “Employer Shared Responsibility” fine, or “Employer Mandate,” that started January 1, 2015.<sup>27</sup> This penalty applies to employers with at least 50 full-time employees during the past year that do not offer health insurance to at least 95% of full-time workers, and that employ at least one full-time employee receiving a health insurance premium

<sup>26</sup> *Calculate Your Cost*, DC Health Link, <https://dchealthlink.com/calculator> (last accessed July 20, 2015).

<sup>27</sup> *Employer Shared Responsibility Provisions*, Internal Revenue Service (Feb. 18, 2015), <http://www.irs.gov/Affordable-Care-Act/Employers/Employer-Shared-Responsibility-Provisions>

credit on the marketplace.<sup>28</sup> Consequently, if just one person employed full-time in Congress receives a health insurance subsidy on the DCHBEA individual Exchange, then Congress would incur the heavy fine it created under the law. Starting salaries for some staff employed by the U.S. House and Senate can be low enough to qualify for a subsidy on the individual Exchange.<sup>29</sup> This penalty equates to \$2,000 per year multiplied by the number of full-time employees, less 30.<sup>30</sup> Given that Congress employs roughly 15,000 people,<sup>31</sup> the fine would equal almost \$30 million a year.<sup>32</sup>

#### *d. DCHBEA's SHOP Exchange – Congress as a “Small Employer”*

With the DCHBEA individual Exchange an impractical and unappealing choice, Congress turned to the small business (SHOP) Exchange. This Exchange advertises multiple health insurers and plans for small businesses located in Washington, D.C.<sup>33</sup> A D.C. employer can pick the plan options and insurers<sup>34</sup> and must set an employer contribution level of at least 50% towards its employees' insurance premiums.<sup>35</sup>

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<sup>28</sup> *Employer Shared Responsibility Provisions*, Internal Revenue Service (Feb. 18, 2015),

<http://www.irs.gov/Affordable-Care-Act/Employers/Employer-Shared-Responsibility-Provisions>

<sup>29</sup> Lara E. Chausow, R. Eric Petersen, and Amber Hope Wilhelm, Cong. Research Serv., R43946 (2015), Senate Staff Levels in Member, Committee, Leadership, and Other Offices, 1977-2014; Lara E. Chausow, R. Eric Petersen, and Amber Hope Wilhelm, Cong. Research Serv., R43947 (2015) House of Representatives Staff Levels in Member, Committee, Leadership, and Other Offices, 1977-2014.

<sup>30</sup> *Employer Shared Responsibility Provisions*, Internal Revenue Service (Feb. 18, 2015),

<http://www.irs.gov/Affordable-Care-Act/Employers/Employer-Shared-Responsibility-Provisions>

<sup>31</sup> Lara E. Chausow, R. Eric Petersen, and Amber Hope Wilhelm, Cong. Research Serv., R43946 (2015), Senate Staff Levels in Member, Committee, Leadership, and Other Offices, 1977-2014; Lara E. Chausow, R. Eric Petersen, and Amber Hope Wilhelm, Cong. Research Serv., R43947 (2015) House of Representatives Staff Levels in Member, Committee, Leadership, and Other Offices, 1977-2014.

<sup>32</sup> 15,000 employees x \$2,000 – 30 = \$29,999,970.00.

<sup>33</sup> *Small Business Overview*. DC Health Link. <https://dchealthlink.com/overview-smallbiz>. As of July 2015, it advertised offering 196 different plans through 4 health insurers.

<sup>34</sup> *Small Business Overview*. DC Health Link. <https://dchealthlink.com/overview-smallbiz>.

<sup>35</sup> *Small Business Guide to DC Health Link*, DC Health Link, p. 25,

<https://dchealthlink.com/sites/default/files/forms/Small%20Business%20Guide%20to%20DC%20Health%20Link.pdf>

As attractive as the SHOP Exchange would appear to members of Congress, especially given the employer contribution, the Exchange only serves entities that fit within the clear definition of “small employer” found in both the Affordable Care Act and the District of Columbia law. Obamacare defines “small employer” as an entity that employs an “average of at least 1 but not more than 100 employees on business days during the preceding calendar year.”<sup>36</sup> The District of Columbia adopted an alternative definition offered by Obamacare through January 1, 2016, that defines “small employer” as one with 50 or fewer employees.<sup>37</sup> No ambiguity exists in the law that could extend DCHBEA’s SHOP Exchange coverage to any entity with more than 50 employees.<sup>38</sup> Since Congress employs several thousand people, it far from qualifies for health insurance on the SHOP Exchange.<sup>39</sup> Moreover, neither Obamacare, nor D.C. law, nor DCHBEA provide any special exceptions to this definition and the resulting limitations placed on entities qualified to use this Exchange.

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<sup>36</sup> 42 U.S.C. §18024, <http://www.gpo.gov/fdsys/pkg/USCODE-2010-title42/pdf/USCODE-2010-title42-chap157-subchapIII-partA-sec18024.pdf>

<sup>37</sup> 42 U.S.C. §18024, <http://www.gpo.gov/fdsys/pkg/USCODE-2010-title42/pdf/USCODE-2010-title42-chap157-subchapIII-partA-sec18024.pdf>

<sup>38</sup> *Small Business Guide to DC Health Link*, DC Health Link, p. 4, <https://dchealthlink.com/sites/default/files/forms/Small%20Business%20Guide%20to%20DC%20Health%20Link.pdf>.

<sup>39</sup> Senate Staff Levels in Member, Committee, Leadership, and Other Offices, 1977-2014; House of Representatives Staff Levels in Member, Committee, Leadership, and Other Offices, 1977-2014

## II. CONGRESS EXEMPTS ITSELF FROM OBAMACARE

“By removing themselves from a key Obamacare component, lawmakers and aides would be held to a different standard than the people who put them in office.”<sup>40</sup>

- POLITICO, *Lawmakers, aides may get Obamacare exemption*, April 24, 2013

With the January 1, 2014, deadline for Congress losing its FEHBP benefits quickly approaching, Congress scrambled for a solution. Reports indicated that top lawmakers initiated “confidential talks” with Obama administration officials to carve out a suitable exemption from Obamacare.<sup>41</sup> After extended closed-door deliberations, a proposal emerged that involved using OPM to promulgate a special agency rule that only applied to Congress.<sup>42</sup> OPM released the final rule on October 2, 2013,<sup>43</sup> despite the disappointment, disbelief, and indignation that many Americans shared when they learned that Congress was exempting itself from Obamacare. OPM stated:

“Many commenters expressed their view that a Government contribution is antithetical to the intent of Section 1312 of the Affordable Care Act, which they interpret to require Members of Congress and congressional staff to purchase the same health insurance available to private citizens on the Exchanges. Commenters asserted that Members of Congress and congressional staff should be subject to the same requirements as citizens purchasing insurance on the Exchanges, including individual responsibility for premiums and income restrictions for premium assistance.”<sup>44</sup>

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<sup>40</sup> John Bresnahan, Jake Sherman, *Lawmakers, aides may get Obamacare exemption*, POLITICO (Apr. 24, 2013), <http://www.politico.com/story/2013/04/obamacare-exemption-lawmakers-aides-90610.html#ixzz3dRPzh9GR>

<sup>41</sup> John Bresnahan, Jake Sherman, *Lawmakers, aides may get Obamacare exemption*, POLITICO (Apr. 24, 2013), <http://www.politico.com/story/2013/04/obamacare-exemption-lawmakers-aides-90610.html#ixzz3dRPzh9GR>

<sup>42</sup> Irsten Blom and Ada S. Cornell, Cong. Research Serv., R43922, *Federal Employees Health Benefits (FEHB) Program: An Overview* (2015), <http://www.crs.gov/pdfloader/R43922>.

<sup>43</sup> *Federal Employees Health Benefits Program: Members of Congress and Congressional Staff*, 78 Fed. Reg. 60653, 60656 (Oct. 2, 2013), <http://www.gpo.gov/fdsys/pkg/FR-2013-10-02/pdf/2013-23565.pdf>.

<sup>44</sup> *Federal Employees Health Benefits Program: Members of Congress and Congressional Staff*, 78 Fed. Reg. 60653, 60656 (Oct. 2, 2013), <http://www.gpo.gov/fdsys/pkg/FR-2013-10-02/pdf/2013-23565.pdf>.

The final rule creates two major exceptions to Obamacare for Congress and its staff. First, it places all members of Congress and certain staff on DCHBEA’s SHOP Exchange, which enabled them to once again continue receiving the employer/government contribution towards their monthly premiums.<sup>45</sup> It further ensured that the government contribution equaled the contribution allowed under FEHBP (72% of the weighted average premium of all FEHBP plans, not to exceed 75% of any plan’s premium).<sup>46</sup> As OPM explained: “The formula for Government contributions is set forth in 5 USC §8906 and is the same formula used for other Federal employees.”<sup>47</sup>

The chart below illustrates the government contribution amounts that members of Congress would receive under each health insurance situation.

<b>Government Contributions Amounts for Members of Congress</b> based on 2013 numbers		
<b>Insurance Plan</b>	<b>Individuals</b>	<b>Family</b>
Pre-Obamacare FEHBP	\$413.49	\$920.73
DCHBEA Individual Exchange	\$0	\$0
DCHBEA SHOP Exchange per OPM Rule	\$413.49	\$920.73

The OPM rule allowed Congress to recover its generous government/employer contribution at the original pre-Obamacare amount.

<sup>45</sup> Federal Employees Health Benefits Program: Members of Congress and Congressional Staff, 78 Fed. Reg. 60653, 60656 (Oct. 2, 2013), <http://www.gpo.gov/fdsys/pkg/FR-2013-10-02/pdf/2013-23565.pdf>.

<sup>46</sup> Letter from John O’Brian, Office of Personnel Management, (Sept. 30, 2013) available at <http://www.opm.gov/retirement-services/publications-forms/benefits-administration-letters/2013/13-207.pdf>.

<sup>47</sup> Letter from John O’Brian, Office of Personnel Management, (Sept. 30, 2013) available at <http://www.opm.gov/retirement-services/publications-forms/benefits-administration-letters/2013/13-207.pdf>.

The second change made by the rule came through interpreting a vague, undefined term in the definitions section of the Affordable Care Act in order to permit some congressional staff to continue receiving FEHBP benefits. The Act defines “congressional staff” as all full-time and part-time employees employed by the “official office” of a member of Congress, whether based inside or outside of the District of Columbia:<sup>48</sup>

“(b) DEFINITIONS.—In this section:

...

(2) CONGRESSIONAL STAFF.—The term ‘congressional staff’ means all full-time and part-time employees employed by the official office of a Member of Congress, whether in Washington, DC or outside of Washington, DC.”<sup>49</sup>

OPM’s rule allowed each member office to decide which employees are “official,” and therefore, must enroll on the SHOP Exchange, and which are “unofficial” and could remain on FEHBP.<sup>50</sup>

On its face, the OPM rule does three significant things:

- (1) It completely supersedes statutory law passed by officials elected by and fully accountable to the American people;
- (2) It further removes members of Congress from the people they serve by specially exempting them from personally experiencing the worst parts of the law they passed; and
- (3) It creates tax-payer funded “employer contributions” for Congress unpermitted by the law.

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<sup>48</sup> Letter from John O’Brian, Office of Personnel Management, (Sept. 30, 2013) available at <http://www.opm.gov/retirement-services/publications-forms/benefits-administration-letters/2013/13-207.pdf>.

<sup>49</sup> 42 U.S.C. §18032(d)(3)(D), available at <https://www.law.cornell.edu/uscode/text/42/18032>.

<sup>50</sup> Letter from John O’Brian, Office of Personnel Management, (Sept. 30, 2013) available at <http://www.opm.gov/retirement-services/publications-forms/benefits-administration-letters/2013/13-207.pdf>.

As one critic observed, this setup “gives Congress a special exemption that lets that lets them keep their health plans and slips \$10,000 per year into the pockets of lawmakers, without the constitutional hassles of an act of Congress and an intervening election.”<sup>51</sup>

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<sup>51</sup> Michael F. Cannon, *The ACA is dead – long live Obamacare*, WASHINGTON EXAMINER (July 10, 2015), <http://www.washingtonexaminer.com/the-aca-is-dead-long-live-obamacare/article/2567953>.

### III. CONGRESS APPLIES TO THE SHOP EXCHANGE – MISREPRESENTATIONS TO SECURE ILLEGAL BENEFITS, AND THE SUBSEQUENT COVER UP

“We deserve to know who signed that application, because they are robbing taxpayers.”<sup>52</sup>

– Michael F. Cannon, CATO Institute director of health-policy studies, May 7, 2015

In September 2014, the government watchdog group Judicial Watch received several documents from DCHBEA in response to a Freedom of Information Act (FOIA) request related to Congress receiving benefits on DCHBEA’s SHOP Exchange.<sup>53</sup> DCHBEA’s production included nine pages of applications completed and submitted online for all U.S. House and Senate members and House staff to enroll on the SHOP Exchange.<sup>54</sup> The applications for the House and Senate members had been submitted in November 2013, after the issuance of OPM’s final rule and before the January 1, 2014 deadline for losing FEHBP coverage.<sup>55</sup> The application for House staff was submitted in February 2014.<sup>56</sup>

Had the House and Senate completed the online SHOP applications with truthful information, the applications would have been automatically rejected by DCHBEA’s software

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<sup>52</sup> Brendan Bordelon, *How Five Republicans Let Congress Keep Its Fraudulent Obamacare Subsidies*, NATIONAL REVIEW (May 7, 2015), <http://www.nationalreview.com/article/418055/how-five-republicans-let-congress-keep-its-fraudulent-obamacare-subsidies-brendan>.

<sup>53</sup> Letter from Mary Beth Senkewicz, DC Health Benefit Exchange Authority, to Michael Bekesha, Judicial Watch Inc. (Sept. 5, 2014), *available at* <http://www.judicialwatch.org/wp-content/uploads/2014/10/Vining-v-DC-Health-Benefit-Exchange.pdf>.

<sup>54</sup> Letter from Mary Beth Senkewicz, DC Health Benefit Exchange Authority, to Michael Bekesha, Judicial Watch Inc. (Sept. 5, 2014), *available at* <http://www.judicialwatch.org/wp-content/uploads/2014/10/Vining-v-DC-Health-Benefit-Exchange.pdf>.

<sup>55</sup> Letter from Mary Beth Senkewicz, DC Health Benefit Exchange Authority, to Michael Bekesha, Judicial Watch Inc. (Sept. 5, 2014), *available at* <http://www.judicialwatch.org/wp-content/uploads/2014/10/Vining-v-DC-Health-Benefit-Exchange.pdf>.

<sup>56</sup> Letter from Mary Beth Senkewicz, DC Health Benefit Exchange Authority, to Michael Bekesha, Judicial Watch Inc. (Sept. 5, 2014), *available at* <http://www.judicialwatch.org/wp-content/uploads/2014/10/Vining-v-DC-Health-Benefit-Exchange.pdf>.

system based on employee size and other prohibitive factors. Consequently, the forms submitted contain blatantly false misrepresentations to qualify.

First, all three applications state that each legislative body employed only 45 full-time equivalent employees during the previous calendar year. Secondly, they all included blatantly false employee names and birthdates. Finally, they incorrectly list the House and Senate (federal bodies) as “State/local Government” entities.<sup>57</sup>

Moreover, the applications submitted in November 2013 on behalf of the House and Senate members contain **identical** misrepresentations.<sup>58</sup> The February 2014 application for the House staff uses the same made-up number of employees (45) as the earlier ones.<sup>59</sup> The below chart compares these representations to the facts.

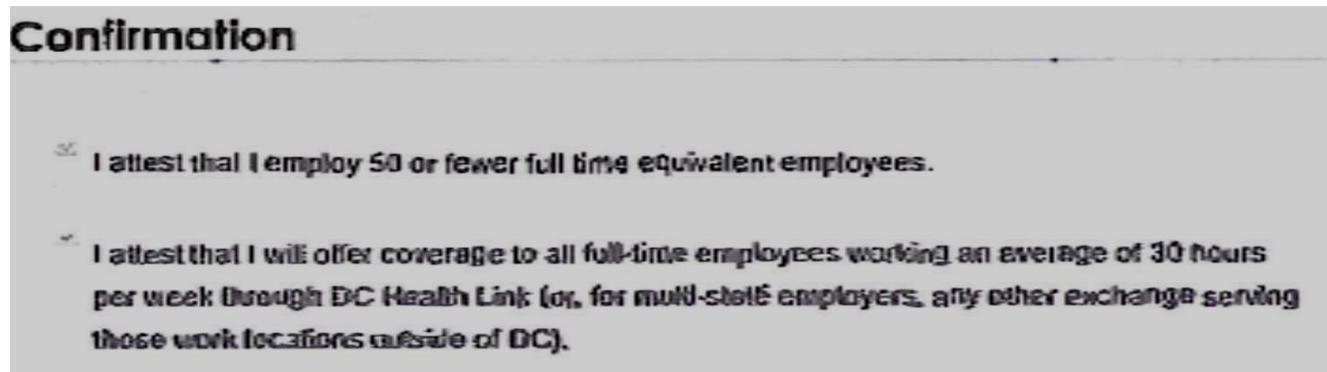
<u>CONGRESSIONAL APPLICATIONS FOR OBAMACARE</u>		
	<b>Applications</b>	<b>Reality</b>
<b>Employees</b>	“45”	~15,000
<b>Employer Classification</b>	“State/Local Government”	Federal Government
<b>Employee Names</b>	“Twenty Congress” or “first last”	

<sup>57</sup> Letter from Mary Beth Senkewicz, DC Health Benefit Exchange Authority, to Michael Bekesha, Judicial Watch Inc. (Sept. 5, 2014), *available at* <http://www.judicialwatch.org/wp-content/uploads/2014/10/Vining-v-DC-Health-Benefit-Exchange.pdf>.

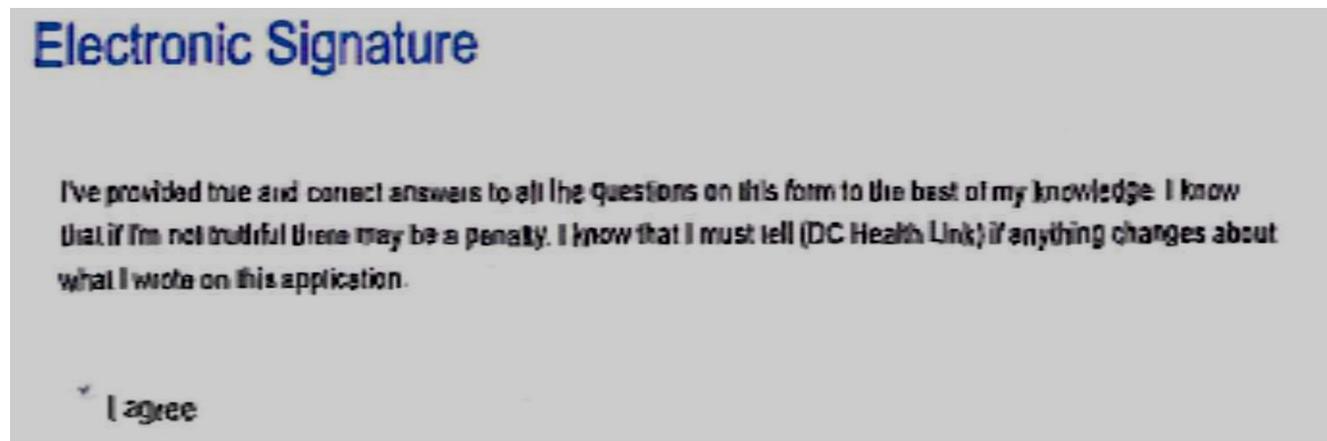
<sup>58</sup> Letter from Mary Beth Senkewicz, DC Health Benefit Exchange Authority, to Michael Bekesha, Judicial Watch Inc. (Sept. 5, 2014), *available at* <http://www.judicialwatch.org/wp-content/uploads/2014/10/Vining-v-DC-Health-Benefit-Exchange.pdf>.

<sup>59</sup> Letter from Mary Beth Senkewicz, DC Health Benefit Exchange Authority, to Michael Bekesha, Judicial Watch Inc. (Sept. 5, 2014), *available at* <http://www.judicialwatch.org/wp-content/uploads/2014/10/Vining-v-DC-Health-Benefit-Exchange.pdf>.

At the end of each application, the applicant erroneously verified that the House/Senate employ “50 or fewer full time equivalent employees.”<sup>60</sup>



Furthermore, above the signature, the applicant falsely attested, subject to penalty, that the answers provided are “true and correct.”<sup>61</sup>



As for misrepresenting the U.S. House and Senate as state/local governments, DCHBEA did not list the U.S. House and Senate as “appropriate options” as eligible entities for the SHOP Exchange.<sup>62</sup>

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<sup>60</sup> Letter from Mary Beth Senkewicz, DC Health Benefit Exchange Authority, to Michael Bekesha, Judicial Watch Inc. (Sept. 5, 2014), available at <http://www.judicialwatch.org/wp-content/uploads/2014/10/Vining-v-DC-Health-Benefit-Exchange.pdf>.

<sup>61</sup> Letter from Mary Beth Senkewicz, DC Health Benefit Exchange Authority, to Michael Bekesha, Judicial Watch Inc. (Sept. 5, 2014), available at <http://www.judicialwatch.org/wp-content/uploads/2014/10/Vining-v-DC-Health-Benefit-Exchange.pdf>.

<sup>62</sup> *Small Business Guide to DC Health Link*, DC Health Link, p. 28, <https://dchealthlink.com/sites/default/files/forms/Small%20Business%20Guide%20to%20DC%20Health%20Link.pdf> (last accessed July 20, 2015)

**Employer & Business Type**

\*Business Type

Select the appropriate options from the drop-down menu:

- Private Sector
  - C-Corporation,
  - S-Corporation,
  - Partnership, or
  - Tax-Exempt Organization
- Church/Church-Affiliated
- State/Local Government
- Foreign Government

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One final, but significant, feature of the applications produced is the redactions that deliberately shield the person(s) who completed them.<sup>63</sup>

## Electronic Signature

I've provided true and correct answers to all the questions on this form to the best of my knowledge. I know that if I'm not truthful there may be a penalty. I know that I must tell (DC Health Link) if anything changes about what I wrote on this application.

I agree

Job Title from Your Company

Signature:

Date 11/03/2013

***a. Takeaways from the Redacted DCHBEA SHOP Applications***

The identical false misrepresentations on the House and Senate applications submitted in November 2013 show a carefully coordinated scheme that likely originated from the same source

<sup>63</sup> Letter from Mary Beth Senkewicz, DC Health Benefit Exchange Authority, to Michael Bekesha, Judicial Watch Inc. (Sept. 5, 2014), available at <http://www.judicialwatch.org/wp-content/uploads/2014/10/Vining-v-DC-Health-Benefit-Exchange.pdf>.

who either personally completed them or gave instructions to others on how to complete them. The two forms allege the same erroneous number of full-time equivalent employees (“45” . . . out of 50 possible choices), contain the exact same false employee name and birthdate (“Twenty Congress” and “01/01/1994”), and use the same false employer classification (“State/Local Government”).

Second, the applicant(s) seemingly disregarded the threat of penalties, given that the false statements were made on all three applications. In another context, no private business would be able to get away with failing to comply with the law in this way once without facing penalties and other adverse consequences - let alone three times.

Third, the redactions serve only to protect the source of the statements. They intentionally erect additional obstacles for those seeking transparency and accountability into Congress’s actions.

These circumstances raise many questions, including identifying who in Congress completed the applications and why DCHBEA used redactions before producing the documents.

#### **IV. THE INVESTIGATION: HOW WAS CONGRESS ABLE TO EXEMPT ITSELF FROM OBAMACARE?**

“Allowing Congress – which employs nearly 16,000 individuals – to determine itself as a ‘small business’ doesn’t pass the common sense test. We need to know exactly how and why this was allowed to happen, so we can fix this injustice and eliminate Washington’s Obamacare Exemption. Washington insiders should be forced to live under Obamacare just like the rest of America without a special taxpayer funded subsidy.”<sup>64</sup>

- Senator David Vitter (R-LA), February 4, 2015

The redacted DCHBEA SHOP applications provide a startling illustration of the extent to which Congress is willing to go in order to protect itself. They also raise questions regarding the persons and decisions underlying the illegal OPM rule, including any officials ordering the completion of the fraudulent applications.

On February 3, 2015, Senator David Vitter, as Chairman of the Senate Committee on Small Business and Entrepreneurship, sent a letter to officials in the House of Representatives, in the Senate, and at DCHBEA requesting information that included copies of the nine pages of applications discussed above in their original, un-redacted forms.<sup>65</sup> The Small Business Committee’s jurisdiction includes the ability to investigate “all problems of American small business enterprises. . .”<sup>66</sup> For a large entity like Congress to take advantage of systems in place

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<sup>64</sup> Press Release, *Vitter Launches Investigation into Washington’s Obamacare Exemption*, US. Senate Committee On Small Business and Entrepreneurship (Feb 4, 2015), [http://www.sbc.senate.gov/public/index.cfm?p=PressReleases&ContentRecord\\_id=89fde9f3-127c-4f65-8eb3-cb81956003a3&ContentType\\_id=4bfd610b-f7c6-4d07-9c74-7aab32dd9838&Group\\_id=0a5867cf-c34c-421f-969b-ea2a5b192a22&MonthDisplay=2&YearDisplay=2015](http://www.sbc.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=89fde9f3-127c-4f65-8eb3-cb81956003a3&ContentType_id=4bfd610b-f7c6-4d07-9c74-7aab32dd9838&Group_id=0a5867cf-c34c-421f-969b-ea2a5b192a22&MonthDisplay=2&YearDisplay=2015)

<sup>65</sup> Letter from Hon. David Vitter, U.S. S., to Karen Hass, Clerk of US. HR., Mila Kofman, D.C. Health Benefit Exchange Authority, Ilena Garcia, Senate Disbursing Office (Feb3, 2015), *available at* [http://www.sbc.senate.gov/public/?a=Files.Serve&File\\_id=df54c3f3-cfec-4339-a90b-cb2ffe71c35f](http://www.sbc.senate.gov/public/?a=Files.Serve&File_id=df54c3f3-cfec-4339-a90b-cb2ffe71c35f)

<sup>66</sup> *Rules for the Committee on Small Business and Entrepreneurship- 114<sup>th</sup> Congress*, U.S. Senate Comm. on Small Business & Entrepreneurship, <http://www.sbc.senate.gov/public/index.cfm?p=Rules#eaa29324-2fe9-44bc-ae0a-809722769a40>.

that are meant solely for small businesses certainly qualifies as an issue affecting small businesses.

Chairman Vitter received responses from the House, Senate and DCHBEA on February 19. All three entities failed to produce any of the information requested. Instead, the Clerk of the Senate Disbursing Office recited a background of the OPM rule.<sup>67</sup> The Chief Administrative Officer for the House of Representatives declined to respond based on the claim that the Committee lacked jurisdiction to investigate the “internal operations of the House of Representatives.”<sup>68</sup> Finally, DCHBEA refused to comply on the grounds that a pending lawsuit filed by Judicial Watch prevented it from doing so.<sup>69</sup> No such privilege exists to shield DCHBEA from producing this information as part of a Congressional investigation. Follow-up correspondence again yielded incomplete, noncompliant responses.

In a February 2015 email from the Senate Disbursing Office to Committee staff, the Financial Clerk alleged that it could not comply with the Chairman’s requests because “in good faith. . .the Disbursing Office does not have a copy of, nor have access to” the applications since they were submitted electronically on DCHBEA’s website.<sup>70</sup> In other words, the office that by its own admission is “responsible for administration of federal benefits programs for Members and employees of the Senate” supposedly retained no record whatsoever of the Senate enrolling in the DCHBEA SHOP Exchange.<sup>71</sup> Among the conclusions to draw from such a statement is the

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<sup>67</sup> Letter from Ileana Garcia, Financial Clerk of the Senate, to Hon. David Vitter, US. Senate (Feb. 13, 2015), *available at* [http://www.sbc.senate.gov/public/?a=Files.Serve&File\\_id=48bf0baf-9f5c-481a-bcac-40e68d2caa53](http://www.sbc.senate.gov/public/?a=Files.Serve&File_id=48bf0baf-9f5c-481a-bcac-40e68d2caa53)

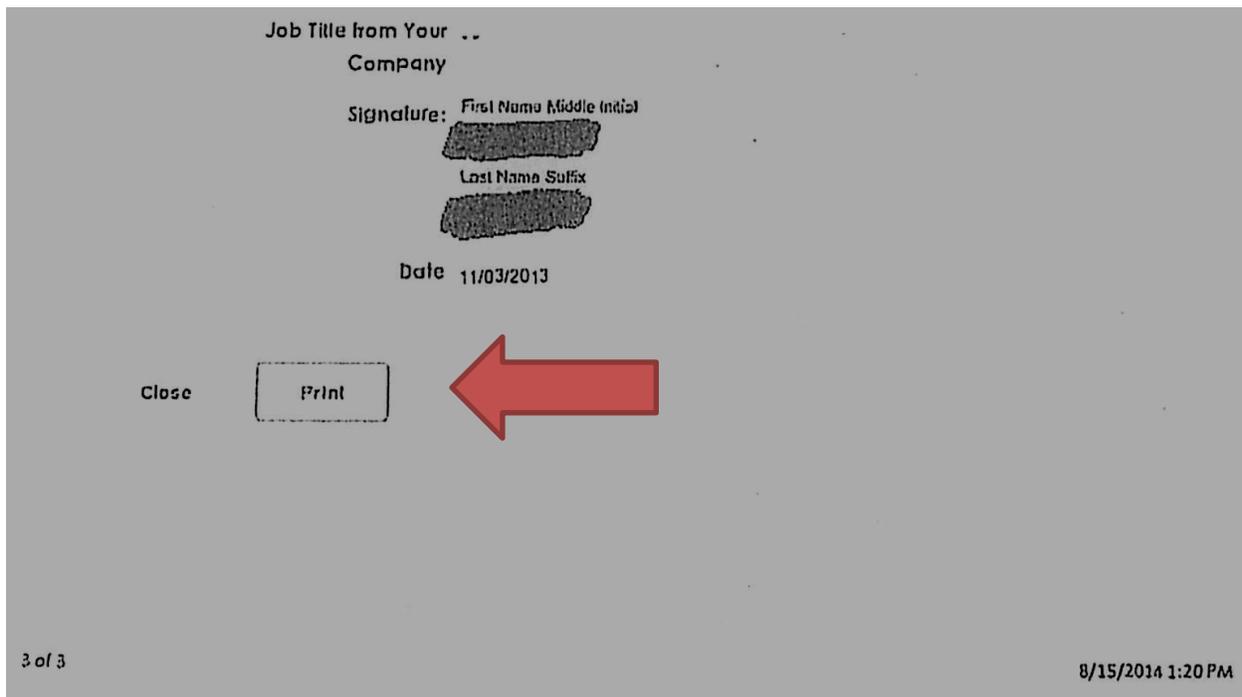
<sup>68</sup> Letter from Ed Cassidy, CAO U.S. HR., to Hon. David Vitter, US. S. (Feb 13, [2015]), *available at* [http://www.sbc.senate.gov/public/?a=Files.Serve&File\\_id=45aaab9a-9c8f-4f09-a40c-201366df19b0](http://www.sbc.senate.gov/public/?a=Files.Serve&File_id=45aaab9a-9c8f-4f09-a40c-201366df19b0)

<sup>69</sup> Letter from Mila Kofman, DC Health Benefit Exchange Authority, to Hon. David Vitter, U.S. Senate (Feb 13, 2015), *available at* [http://www.sbc.senate.gov/public/?a=Files.Serve&File\\_id=4f177137-33f0-43dd-9b17-0d6b4736fa4b](http://www.sbc.senate.gov/public/?a=Files.Serve&File_id=4f177137-33f0-43dd-9b17-0d6b4736fa4b)

<sup>70</sup> Email from Ileana Garcia, Financial Clerk of the Senate, to Zak Baig, Staff Director, (Feb. 24, 2015) (On file with the Committee)

<sup>71</sup> Letter from Ileana Garcia, Financial Clerk of the Senate, to Hon. David Vitter, US. Senate (Feb. 13, 2015), *available at* [http://www.sbc.senate.gov/public/?a=Files.Serve&File\\_id=48bf0baf-9f5c-481a-bcac-40e68d2caa53](http://www.sbc.senate.gov/public/?a=Files.Serve&File_id=48bf0baf-9f5c-481a-bcac-40e68d2caa53).

possibility that the Senate's application was not completed by someone in the Senate Disbursing Office, but instead originated elsewhere in Congress. Moreover, as the applications clearly show, there is a prominent button at the bottom of the last page to easily print the forms for recordkeeping purposes.<sup>72</sup>



During this time, Chairman Vitter also sent three letters to OPM Director Katherine Archuleta requesting all communications with members of Congress and/or officials in the White House regarding the October 2, 2013 final rule.<sup>73</sup> OPM failed to provide any of the information requested.<sup>74</sup>

In March 2015, officials from DCHBEA agreed to meet with Committee staff, in good faith, to discuss producing the nine pages of applications in their original, un-redacted form. At

<sup>72</sup> Letter from Mary Beth Senkewicz, DC Health Benefit Exchange Authority, to Michael Bekesha, Judicial Watch Inc. (Sept 5, 2014), available at <http://www.judicialwatch.org/wp-content/uploads/2014/10/Vining-v-DC-Health-Benefit-Exchange.pdf>.

<sup>73</sup> Letter from David Vitter, US Senate, to Katherine Archuleta, Director of OPM (Oct. 9, 2013)(on file with the Committee); Letter from David Vitter, US Senate, to Katherine Archuleta, Director of OPM (Mar. 9, 2015)(on file with the Committee).

<sup>74</sup> Letter from Katherina Archuleta, Director of OPM, to David Vitter, US Senate, (Mar. 13, 2015) (on file with the Committee).

the meeting, DCHBEA officials flatly refused to voluntarily produce the information requested. DCHBEA abandoned its previous claim that the pending lawsuit prevented it from complying with Chairman Vitter’s request, and instead newly alleged that broad and unrelated privacy concerns protected it from fulfilling its obligation to the Committee.

With all three entities failing to cooperate, the remaining option to obtain the documents and further the investigation was compulsory means through the issuance of a subpoena to DCHBEA, since it produced the redacted applications for both the House and Senate. Under the Committee’s rules, Chairman Vitter needed either the consent of the Committee’s ranking Democrat member, or the approval of a majority of the Committee (10 members) to issue a subpoena for production of the documents.<sup>75</sup>

On April 23, 2015, the Chairman held a Committee business meeting that included deliberation and a vote on issuing the subpoena to DCHBEA for the nine pages of applications in their original forms, without any alterations, omissions or redactions.<sup>76</sup> Despite the Chairman’s detailed description of the clear misrepresentations and redactions on the applications, the Committee denied issuance of the subpoena by a vote of 5 – 14.<sup>77</sup>

Yes (5)	No (14)
Sen. David Vitter	Sen. Jim Risch
Sen. Marco Rubio	Sen. Rand Paul
Sen. Tim Scott	Sen. Deb Fischer
Sen. Cory Gardner	Sen. Kelly Ayotte
Sen. Joni Ernst	Sen. Mike Enzi
	Sen. Jeanne Shaheen
	Sen. Maria Cantwell

<sup>75</sup> *Rule for the Committee on Small Business and Entrepreneurship- 114<sup>th</sup> Congress*, U.S. S. Comm. on Small Business & Entrepreneurship, <http://www.sbc.senate.gov/public/index.cfm?p=Rules>.

<sup>76</sup> *Committee Votes to CONCEAL Docs FALSELY Certifying Congress a Small Business*, American Commitment (Apr. 28, 2015), <https://www.youtube.com/watch?v=vvkFTXfZdGM>

<sup>77</sup> News Release, *Vitter: Committee Vote To Impede Investigation Disappointing, Typical Of Insider Mentality To Protect Congressional Perks*, U.S. S. Comm. on Small Business and Entrepreneurship (Apr. 23, 2015), [http://www.sbc.senate.gov/public/index.cfm?p=PressReleases&ContentRecord\\_id=bf95f5d4-1ae1-4ef8-92cd-496a0039428d&ContentType\\_id=4bfd610b-f7c6-4d07-9c74-7aab32dd9838&Group\\_id=0a5867cf-c34c-421f-969b-ea2a5b192a22&MonthDisplay=4&YearDisplay=2015](http://www.sbc.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=bf95f5d4-1ae1-4ef8-92cd-496a0039428d&ContentType_id=4bfd610b-f7c6-4d07-9c74-7aab32dd9838&Group_id=0a5867cf-c34c-421f-969b-ea2a5b192a22&MonthDisplay=4&YearDisplay=2015)

Sen. Ben Cardin  
Sen. Heidi Heitkamp  
Sen. Ed Markey  
Sen. Cory Booker  
Sen. Chris Coons  
Sen. Mazie Hirono  
Sen. Gary Peters<sup>78</sup>

This denial occurred after a majority of the Committee members, and a majority of the full Senate, voted in favor of an amendment introduced by Senator Vitter on March 27, 2015 to end the special Congressional exemption under the OPM rule by a vote of 52-46.<sup>79</sup>

Following the Committee's vote, the Chairman stated:

“The message is clear: Congress should be able to lie so that members can get a special Obamacare subsidy unavailable to anyone else at that income level. Designating the House and Senate as "small businesses" with 45 employees is not right. And we owe it to our constituents to find out how this was permitted to happen.”<sup>80</sup>

***a. Citizens Groups File Ethics Complaint***

Following the subpoena vote, outside organizations sharing Chairman Vitter's concerns launched an independent effort to compel Congress to investigate the Washington Obamacare Exemption. On June 25, 2015, the Counsel for Citizens Against Government Waste, a non-profit organization representing over one million member, led a group of ten organizations in submitting a complaint to the Senate Select Committee on

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<sup>78</sup> [http://www.sbc.senate.gov/public/index.cfm?p=PressReleases&ContentRecord\\_id=bf95f5d4-1ae1-4ef8-92cd-496a0039428d&ContentType\\_id=4bfd610b-f7c6-4d07-9c74-7aab32dd9838&Group\\_id=0a5867cf-c34c-421f-969b-ea2a5b192a22&MonthDisplay=4&YearDisplay=2015](http://www.sbc.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=bf95f5d4-1ae1-4ef8-92cd-496a0039428d&ContentType_id=4bfd610b-f7c6-4d07-9c74-7aab32dd9838&Group_id=0a5867cf-c34c-421f-969b-ea2a5b192a22&MonthDisplay=4&YearDisplay=2015).

<sup>79</sup> Hannah Hess, *Vitter Amendment Rears Its Head in Wee Hours of Vote-a-Rama (Updated)*, ROLL CALL (Mar. 27, 2015), <http://blogs.rollcall.com/wgdb/vitter-amendment-rears-its-head-in-wee-hours-of-vote-a-rama/>.

<sup>80</sup> News Release, *Vitter: Committee Vote To Impede Investigation Disappointing, Typical Of Insider Mentality To Protect Congressional Perks*, U.S. S. Comm. on Small Business and Entrepreneurship (Apr. 23, 2015), [http://www.sbc.senate.gov/public/index.cfm?p=PressReleases&ContentRecord\\_id=bf95f5d4-1ae1-4ef8-92cd-496a0039428d&ContentType\\_id=4bfd610b-f7c6-4d07-9c74-7aab32dd9838&Group\\_id=0a5867cf-c34c-421f-969b-ea2a5b192a22&MonthDisplay=4&YearDisplay=2015](http://www.sbc.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=bf95f5d4-1ae1-4ef8-92cd-496a0039428d&ContentType_id=4bfd610b-f7c6-4d07-9c74-7aab32dd9838&Group_id=0a5867cf-c34c-421f-969b-ea2a5b192a22&MonthDisplay=4&YearDisplay=2015).

Ethics that demanded an investigation into whether Congress violated federal and local laws by obtaining healthcare benefits on the DCHBEA SHOP Exchange.<sup>81</sup>

Chief among the groups' concerns was that the SHOP applications "may be fraudulent" and were "misused as a mechanism to get access to taxpayer money to pay for the health insurance of senators. . ."<sup>82</sup> The complaint cited three federal laws and one District of Columbia law that they believe were violated.<sup>83</sup> Notable among these laws is 18 U.S.C. §1035, which forbids the falsification of material information relating to a health care benefit program. The law states:

§ 1035. False statements relating to health care matters

- (a) Whoever, in any matter involving a health care benefit program,<sup>84</sup> knowingly and willfully—
- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; or
  - (2) makes any materially false, fictitious, or fraudulent statements or representations, or makes or uses any materially false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, in connection with the delivery of or payment for health care benefits, items, or services, shall be fined under this title or imprisoned not more than 5 years, or both.<sup>85</sup>

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<sup>81</sup> Letter from Naomi Lopez-Bauman, et.al, to Hon. Johnny Isakson and Hon. Barbra Boxer, U.S. Senate Select Comm. on Ethics (June 25, 2015), *available at* <http://cagw.org/sites/default/files/pdf/Ethics-Complaint-Final.pdf>.

<sup>82</sup> Letter from Naomi Lopez-Bauman, et.al, to Hon. Johnny Isakson and Hon. Barbra Boxer, U.S. Senate Select Comm. on Ethics (June 25, 2015), *available at* <http://cagw.org/sites/default/files/pdf/Ethics-Complaint-Final.pdf>.

<sup>83</sup> Letter from Naomi Lopez-Bauman, et.al, to Hon. Johnny Isakson and Hon. Barbra Boxer, U.S. Senate Select Comm. on Ethics (June 25, 2015), *available at* <http://cagw.org/sites/default/files/pdf/Ethics-Complaint-Final.pdf>.

<sup>84</sup> Pursuant to 18 U.S.C. § 24(b): "As used in this title, the term 'health care benefit program' means any public or private plan or contract, affecting commerce, under which any medical benefit, item, or service is provided to any individual, and includes any individual or entity who is providing a medical benefit, item, or service for which payment may be made under the plan or contract." Available at <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title18/pdf/USCODE-2011-title18-partI-chap1-sec24.pdf>.

<sup>85</sup> 18 U.S.C. § 1035, <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title18/pdf/USCODE-2011-title18-partI-chap47-sec1035.pdf>

Under the Senate Ethics Committee’s rules, the Committee must “promptly commence a preliminary inquiry” into any complaint “alleging that any Senator, or officer or employee of the Senate has violated a law. . .”<sup>86</sup> The inquiry remains pending before the Ethics Committee.

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<sup>86</sup> *Rules of Procedure*, Select Committee on Ethics, 114<sup>th</sup> Congress,  
[http://www.ethics.senate.gov/public/index.cfm/files/serve?File\\_id=551b39fc-30ed-4b14-b0d3-1706608a6fcb](http://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=551b39fc-30ed-4b14-b0d3-1706608a6fcb)

## V. CONCLUSION & UNANSWERED QUESTIONS

Through poorly-written legislation, a free pass from the Obama administration, and a deliberate mislabeling of Congress as a “small business,” United States lawmakers have created a healthcare system that favors a few at the cost of many. Senator Vitter launched the Washington Obamacare Exemption investigation in order to expose misconduct, strengthen transparency and accountability in government, and preserve the well-established but poorly followed principle that our elected officials must follow the laws they pass - without exception. Sidestepping legislation that is designed to redress such issues cannot effectively govern a nation that struggles to cope with a law that has wrongfully suppressed our free market system. Senator Vitter’s investigation aims to bring light to the backdoor deals and false information presented by members of Congress, with hopes to annul the Washington’s Obamacare Exemption. Eluding its classification as a cornerstone of the federal government, Congress has devalued the title of “small business” and in this case, has placed itself above the law it created. As Congress and the Obama administration continue to evade the inconveniences and costs of Obamacare, while also obstructing attempts to investigate how the Washington Obamacare Exemption came to be, it becomes quite clear that there is much more to uncover.

In light of the obstructions delaying the investigation, multiple questions remain, including:

- Which members of Congress and White House officials participated in the closed-door meetings to formulate the OPM rule exempting Congress from Obamacare?
- What was the rationale behind forcing Congress into DCHBEA’s SHOP Exchange, despite its illegality?

- Which offices and/or officials in Congress, the White House, or otherwise, completed or directed the completion of the SHOP Exchange applications containing the fraudulent misrepresentations?
- Who decided that both the House and Senate DCHBEA SHOP applications should contain the exact same misrepresentations?
- Did anyone in Congress, or in the Obama administration, counsel DCHBEA to purposefully redact the names of the sources of the applications?
- Did anyone in Congress, or the White House counsel DCHBEA, the Senate Disbursing Office, and/or the Chief Administrative Office of the House of Representatives to not cooperate with Chairman Vitter's investigation?
- Did any members of Congress actively direct members of the Senate Committee on Small Business and Entrepreneurship to oppose the issuance of the subpoena for the un-redacted applications, and/or to speak out against the investigation? If so, who gave such directions and why?

## **VI. APPENDIX**

### **TIMELINE OF EVENTS: CONGRESSIONAL EXEMPTION FROM OBAMACARE**

#### **Winter 2009**

Both the Senate and the House of Representatives begin work on Obamacare bills.

#### **Fall 2009**

The House passes the first Obamacare bill and it goes to the Senate.

The Senate Committee on Health, Education, Labor and Pensions (HELP) introduces its own version of the bill. This is the first bill that requires Congress and staff to participate in a “Federal health insurance program,” later known as the Exchanges.

Another Obamacare bill before the Senate Finance Committee includes provisions that require Congress and staff to participate in the Exchanges; to receive an employer contribution on the Exchanges.

Senate Majority Leader Harry Reid leads the effort to merge the two Senate bills. Several amendments are discussed during this time. Discussions continue and changes are made; however, the final version stipulates that Congress and staff must join the newly created Health Insurance Exchanges, meaning they will lose their existing employer/government contribution to monthly premiums.

#### **Dec. 24, 2009**

The Senate passes Obamacare.

#### **March 21, 2010**

The House passes Obamacare.

#### **March 23, 2010**

President Obama signs Obamacare into law.

#### **Spring 2013**

Congress grows increasingly concerned over the future of its health benefits given the loss of its FEHBP benefits on January 1, 2014.

## **Summer 2013**

Office of Personnel Management (OPM) begins discussing “interrupting” Obamacare to allow Congress and staff to continue receiving employer/government contributions towards their health insurance.

Senator David Vitter introduces a bill to include the President, Vice-President, executive branch political appointees, and employees of congressional committees and leadership offices of Congress to obtain health insurance from the Exchanges. They would all receive the same amount of financial support from tax credits or subsidies as any American purchasing health insurance on the Exchanges would receive (S. 902).

## **Fall 2013**

Senator Vitter introduces No Exemption for Washington from Obamacare Act (S. 1487). Vitter fights to get a Senate vote on his legislation, but Majority Leader Reid blocks his attempts.

OPM finalizes their regulation that allows Congress and congressional staff to receive subsidized health insurance by filing on the District of Columbia SHOP Exchange. (Final rule effective on Oct. 2, 2013).

The House and Senate file applications on the SHOP Exchange as small businesses.

## **Spring 2014**

Senator Vitter attempts to get a vote for his legislation, but Majority Leader Reid again pulls the bill from the floor before a vote.

## **Summer 2014**

Senator Vitter reintroduced his legislation to end the Obamacare exemption for Congress as an amendment to the Bring Jobs Home Act (S 2569).

## **Summer/Fall 2014**

In response to a FOIA request, Judicial Watch obtains from OPM the 9 pages of applications completed by the House and Senate to enroll the DCHBEA SHOP program. The applications contain misrepresentations and redactions.

## **January/February 2015**

Senator Vitter again introduces No Exemption for Washington from Obamacare Act (S. 16).

Senator Vitter, as Chair of the Senate Small Business Committee, launches an investigation into Congress applying as a small business on the SHOP Exchange. He writes to officials at DCHBEA, the Senate, and the House. After all three refuse to cooperate, Committee staff follows up with emails, but receives no response.

### **March 2015**

Committee staff meet with DCHBEA officials to discuss obtaining the 9 pages of un-redacted documents. For the 3<sup>rd</sup> time in the past month, DCHBEA cites unmeritorious grounds for refusing to cooperate.

### **March 27, 2015**

By a total of 52-46, the Senate votes to approve Sen. Vitter's Amendment requiring Congress, the President, Vice President and Executive Branch officials to purchase healthcare pursuant to the requirements of Obamacare.

### **April 23, 2015**

By a vote of 5-14, the Senate Committee on Small Business and Entrepreneurship votes to deny issuance of a subpoena to DCHBEA to obtain the 9 pages of health insurance applications in their original, un-redacted form.

Close

Print

## Employer Information

---

### Employer name & address

**Employer name** US House of Representatives

**Doing business as(name)** US House of Representatives

**Federal Employer Identification Number(EIN)** [REDACTED]

**Employer Type** State/local government

**Average Number of Full-Time Employees (in Prior Calendar Year)** ..

**Average Number of Part-Time Employees (in Prior Calendar Year)** ..

**Average Weekly Hours Worked By Part-Time Employees** ..

**Number of Full-Time Equivalents (FTEs) in Prior Calendar Year** 45

### Primary business address

**Business address Line 1** US House of Representatives

**Business address Line 2** Members Svc Room 139A Cannon HOB

**City** Washington

**State** DC

**ZIP Code** 20515

## Contact name & email address

Check here if you are the contact?

Name First Name Middle Initial Last Name Suffix  
[Redacted] [Redacted]  
Title ..  
E-mail address: [Redacted]

## Contact mailing address

Check here if the contact address is the same as the primary business address?

Address Mailing address Line 1 Mailing address Line 2  
US House of Representatives Members Svc Room 139A Cannon HOB  
City State ZIP Code  
Washington DC 20515

## Contact preferences

Preferred phone number Phone type Phone number Phone number Ext.  
Work [Redacted]  
Secondary phone number Phone type Phone number Phone number Ext.  
-- -- --  
Fax number ..  
Preferred spoken language ..  
Preferred written language ..

## Finalize Employees

---

1

First Name	Last Name	Date of Birth	ZIP Code	EE Class
Twenty	Congress	01/01/1994	20002	All Employees
Employer Dependents: None				

## Confirmation

- I attest that I employ 50 or fewer full time equivalent employees.
- I attest that I will offer coverage to all full-time employees working an average of 30 hours per week through DC Health Link (or, for multi-state employers, any other exchange serving those work locations outside of DC).

## Electronic Signature

I've provided true and correct answers to all the questions on this form to the best of my knowledge. I know that if I'm not truthful there may be a penalty. I know that I must tell (DC Health Link) if anything changes about what I wrote on this application.

I agree

Job Title from Your  
Company

Signature: First Name Middle Initial

[Redacted Signature]

Last Name Suffix

[Redacted Suffix]

Date 11/25/2013

Close

Print

Close

Print

## Employer Information

---

### Employer name & address

**Employer name** US House of Representatives

**Doing business as(name)** STAFF US House of Representatives

**Federal Employer Identification Number(EIN)** [REDACTED]

**Employer Type** State/local government

**Average Number of Full-Time Employees (In Prior Calendar Year)** ..

**Average Number of Part-time Employees (In Prior Calendar Year)** ..

**Average Weekly Hours Worked By Part-Time Employees** ..

**Number of Full-Time Equivalents (FTEs) in Prior Calendar Year** 45

### Primary business address

**Business address Line 1** 8-215 Longworth HOB

**Business address Line 2** ..

**City** Washington

**State** DC

**ZIP Code** 20515

## Contact name & email address

Check here if you are the contact?

**Name**    First Name    Middle Initial    Last Name    Suffix  
[Redacted]    [Redacted]

**Title**    ..

**E-mail address**    [Redacted]

## Contact mailing address

Check here if the contact address is the same as the primary business address?

**Address**    Mailing address Line 1    Mailing address Line 2    City    State    ZIP Code  
B-215 Longworth HOB    ..    Washington DC    20515

## Contact preferences

**Preferred phone number**    Phone type    Phone number    Phone number Ext.  
Work    [Redacted]

**Secondary phone number**    Phone type    Phone number    Phone number Ext.  
..    ..    ..

**fax number**    ..

**Preferred spoken language**    ..

**Preferred written language**    ..

## Finalize Employees

---

1

First Name	Last Name	Date of Birth	ZIP Code	EE Class
------------	-----------	---------------	----------	----------

First Name	Last Name	Date of Birth	ZIP Code	EE Class
first	last	01/01/1980	20002	All Employees
Employee Dependents: None				

## Confirmation

- I attest that I employ 50 or fewer full time equivalent employees.
- I attest that I will offer coverage to all full-time employees working an average of 30 hours per week through DC Health Link (or, for multi-state employers, any other exchange serving those work locations outside of DC).

## Electronic Signature

I've provided true and correct answers to all the questions on this form to the best of my knowledge. I know that if I'm not truthful there may be a penalty. I know that I must tell (DC Health Link) if anything changes about what I wrote on this application.

- I agree

Job Title from Your ...  
Company

Signature: First Name Middle Initial

[Redacted]

Last Name Suffix

[Redacted]

Date 02/19/2014

Close

Print

Close

Print

## Employer Information

---

### Employer name & address

Employer name United States Senate  
 Doing business as(name) United States Senate  
 Federal Employer Identification Number(EIN) [REDACTED]  
 Employer Type State/local government

Average Number of Full-Time Employees (in Prior Calendar Year) ..

Average Number of Part-Time Employees (in Prior Calendar Year) ..

Average Weekly Hours Worked By Part-Time Employees ..

Number of Full-Time Equivalents (FTEs) in Prior Calendar Year 45

### Primary business address

Business address Line 1 United States Senate  
 Business address Line 2 Disbursing Office  
 City Washington  
 State DC  
 ZIP Code 20510

## Contact name & email address

Check here if you are the contact?

**Name**    First Name    Middle Initial    Last Name    Suffix

[Redacted]    [Redacted]

**Title**    ..

**E-mail address**    [Redacted]

## Contact mailing address

Check here if the contact address is the same as the primary business address?

**Address**    Mailing address Line 1    Mailing address Line 2    City    State    ZIP Code  
United States Senate Disbursing Office    Washington DC    20510

## Contact preferences

**Preferred phone number**    Phone type    Phone number    Phone number Ext.

Work    [Redacted]

**Secondary phone number**    Phone type    Phone number    Phone number Ext.

..    ..    ..

**Fax number**    ..

**Preferred spoken language**    ..

**Preferred written language**    ..

## Finalize Employees

---

1

First Name	Last Name	Date of Birth	ZIP Code	EE Class
------------	-----------	---------------	----------	----------

First Name	Last Name	Date of Birth	ZIP Code	EE Class
Twenty	Congress	01/01/1994	20002	All Employees
Employee Dependents: None				

## Confirmation

- I attest that I employ 50 or fewer full time equivalent employees.
- I attest that I will offer coverage to all full-time employees working an average of 30 hours per week through DC Health Link (or, for multi-state employers, any other exchange serving those work locations outside of DC).

## Electronic Signature

I've provided true and correct answers to all the questions on this form to the best of my knowledge. I know that if I'm not truthful there may be a penalty. I know that I must tell (DC Health Link) if anything changes about what I wrote on this application.

- I agree

Job Title from Your ..  
Company

Signature: First Name Middle (initial)

[Redacted Signature]

Last Name Suffix

[Redacted Signature]

Date 11/03/2013

Close

Print

DAVID VITTER  
LOUISIANA

DEPUTY WHIP

Environment and Public Works  
Top Ranking Republican

Armed Services

Banking, Housing, and Urban Affairs

Small Business and Entrepreneurship

# United States Senate

WASHINGTON, DC 20510

WASHINGTON, D.C.  
1101 SENATE OFFICE BUILDING  
SUITE 501  
WASHINGTON, DC 20510  
(202) 224-4673  
FAX: (202) 224-4661

BATON ROUGE  
888 CONSTITUTION SQUARE  
BATON ROUGE, LA 70802  
(225) 383-9331  
FAX: (225) 383-6992

Website with E-Mail Access:  
vitter.senate.gov

October 9, 2013

The Honorable Elaine Kaplan  
Acting Director  
Office of Personnel Management  
1900 E St NW  
Washington, DC 20415

Dear Acting Director Kaplan:

I write seeking more information regarding the Office of Personnel Management's (OPM's) final rule to "fix" Obamacare for Members of Congress and their staffs but not for the American people. While I continue to argue that this "fix" is both unfair and illegal, I ask that you release 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.

It has been widely reported that OPM was in deliberations with Congress and officials in the White House, including the President, over the specifics of this rule. This "fix" was one of many delayed regulations, which leads me to believe that there was much debate between the White House and Congress over OPM's authority to bend the rules and help Members and congressional staff to ultimately retain their very generous taxpayer funded subsidies. Objective legal experts who have looked at this regulation contend that OPM is not authorized to subsidize plans on the Exchange for which it has not contracted or approved, and is only allowed to approve and contract with group plans that meet the rate and benefit requirements of the Federal Employee Health Benefits Program (FEHBP).<sup>1</sup> Accordingly, should OPM subsidize plans selected from the Small Business Health Options Program (SHOP) Exchange, those plans will either violate the requirements of FEHBP<sup>2</sup> or will violate the requirements under Obamacare.<sup>3</sup>

Given that Open Enrollment started October 1<sup>st</sup>, and the deadline to choose a health plan by December 31<sup>st</sup>, beyond the initial request for correspondence I ask that you respond to the following questions and make available all information requested below by no later than October 18, 2013.

1. Prior to issuing the rule did anyone within OPM, advising on this particular matter, at any point argue that OPM did not have authority to determine that the FEHB contribution could be used towards purchasing a plan on an exchange or with a private insurance plan outside FEHB?

<sup>1</sup> "Wrinkle in Health Law Vexes Lawmakers' Aides," Robert Pear. New York Times. July 29, 2013.

<sup>2</sup> Title 5 U.S.C. § 8901(6)

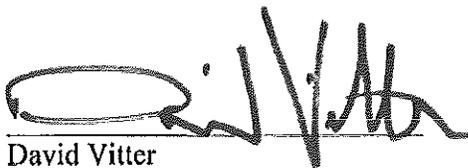
<sup>3</sup> § 1312(d)(3)(D) of Patient Protection and Affordable Care Act (PPACA)

ACADIANA	CENTRAL LOUISIANA	NORTHEAST LOUISIANA	NORTHWEST LOUISIANA	SOUTHEAST LOUISIANA	SOUTHWEST LOUISIANA
2201 Canal Street Room 201 Baton Rouge, LA 70802 (225) 383-9562 Fax: (225) 593-9562	6503 Colquhoun Boulevard Suite 200 A Baton Rouge, LA 70803 (225) 419-9169 Fax: (225) 419-9189	1151 Loyola Avenue Suite 150 Monroe, LA 71201 (225) 325-9120 Fax: (225) 325-9185	190 Poydras Street Room 3001 114 Shreveport, LA 71103 (318) 661-0147 Fax: (318) 661-1605	2770 Veterans Boulevard Suite 200 Monroe, LA 70002 (225) 333-2757 Fax: (225) 333-2697	110 Bay Street Suite F Lafayette, LA 70501 (337) 436-0363 Fax: (337) 436-3163

2. Please disclose all email correspondence including 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 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, White House, their respective staff with regards to OPM's authority to authorize FEHB subsidies for health plans on an Exchange?

OPM has a Constitutional responsibility to interpret the legislative language within the scope of the Obamacare statute.<sup>4</sup> Self-dealing special treatment to avoid the consequences of law that Congress itself passed, is precisely why the American people do not trust Washington. The public has a right to know the answers to the questions listed above, and I look forward to your timely response.

Sincerely,

A handwritten signature in black ink, appearing to read "David Vitter", written over a horizontal line.

David Vitter  
U.S. Senator

---

<sup>4</sup> § 1312(d)(3)(D) of PPACA

DAVID MITTER, LOUISIANA, CHAIRMAN  
BENJAMIN L. CARDIN, MARYLAND, RANKING MEMBER

JAMES E. RUSH, IDAHO  
MARC RUBIO, FLORIDA  
RAND PAUL, KENTUCKY  
TIM SCOTT, SOUTH CAROLINA  
DEB FISCHER, NEBRASKA  
CORY GARDNER, COLORADO  
JOHN ERNST, IOWA  
KELLY AYOTTE, NEW HAMPSHIRE  
MICHAEL B. ENZI, WYOMING

MARIA CANTWELL, WASHINGTON  
JEANNE SHAHEEN, NEW HAMPSHIRE  
HEIDI HEHKAMP, NORTH DAKOTA  
EDWARD J. MARKEY, MASSACHUSETTS  
CORY A. BOOKER, NEW JERSEY  
CHRISTOPHER A. COONS, DELAWARE  
MAZIE HIRONO, HAWAII  
GARY C. PETERS, MICHIGAN

## United States Senate

COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP

WASHINGTON, DC 20510-6350

TELEPHONE: (202) 224-5175 FAX: (202) 224-5610

ZAK BAIG, REPUBLICAN STAFF DIRECTOR  
ANN JACOBS, DEMOCRATIC STAFF DIRECTOR

February 3, 2015

Karen Hass  
Clerk of the U.S. House of Representatives  
Room H154  
U.S. Capitol  
Washington, DC 20515

Ilena Garcia  
Financial Clerk, Senate Disbursing Office  
127 Hart Senate Office Building  
Washington, DC 20510

Mila Kofman  
Executive Director  
D.C. Health Benefit Exchange Authority  
1225 Eye St. NW, Suite 400  
Washington, DC 20005

Dear Ms. Haas, Ms. Garcia, and Ms. Kofman,

I write to you today seeking information concerning documents submitted by Congress to the District of Columbia Health Benefits Exchange (DCHBE).

Specifically, it appears as though certain false information may have been filed with DCHBE that inaccurately indicates the U.S. Congress would meet any rational definition of a "small business." Because DCHBE allowed that determination to be made, Congress is now able to keep their taxpayer funded employer contribution while purchasing health plans on the DCHBE. This federal taxpayer subsidy is unavailable to any other American under the Affordable Care Act.

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 to determine itself as a "small business" should not have passed the common sense test.

As each of you is aware, on October 15, 2014, Judicial Watch filed a lawsuit against the District of Columbia Health Benefit Exchange Authority regarding its decision to allow Congress to participate in D.C.'s Small Business Exchange.<sup>1</sup> In its complaint Judicial Watch cites several applications filed by the U.S. House of Representatives and U.S. Senate that misrepresented material information including fake names, the number of full-time equivalent employees, and a definition of Congress as a "state/local government."<sup>2</sup>

<sup>1</sup> Vining v. DC Health Benefits Exchange, No. 14-0006496 (Super. Ct. D.C. filed Oct. 15, 2014).

<sup>2</sup> Letter from Mary Senkewicz, Associate General Counsel and Policy Advisor, DC Health Benefit Exchange Authority, to Michael Bekesha, Judicial Watch, Inc. (Sept. 5, 2014), <http://www.judicialwatch.org/wp->

These documents, that have been made public, prove that someone within Congress knowingly falsified information in order for Congress to keep their Obamacare subsidy. We need to know who, immediately, so we can fix this injustice and eliminate the unfair practice.

Under the Employer Information section of the D.C. Health Link application, the Primary Business address indicates that the Office of the Clerk of the U.S. House of Representatives (House Clerk) and the U.S. Senate Disbursing Office (Senate Disbursing) were responsible for submitting these applications. Employees of these two offices carry out the administrative functions of both chambers. The individuals who submitted these documents would be well aware that Congress employs nearly 16,000 individuals, not 45 employees as the application ridiculously claims. They would also be aware that Congress serves as part of the Legislative Branch of the federal government, not as a state or local government. Finally, the House Clerk and Senate Disbursing employees who signed under the electronic signature claimed that they provided "correct answers to all questions."<sup>3</sup>

Documents submitted to the court appear to include significant redactions, including, but not limited to, names, contact information, and federal employee identification number (EIN). This, of course, leaves out information that would otherwise inform the public who is responsible for facilitating such a disingenuous outcome. Accordingly, I have the following specific requests that require immediate attention:

- 1) DCHBE expeditiously facilitate a meeting in my office or over the phone to discuss your role in approving Congress's "small business" health care applications.
- 2) The House Clerk and U.S. Senate Disbursing Offices confirm from which offices they were instructed to falsify these applications.
- 3) That DCHBE produce electronic and/or paper copies of any and all applications and other documents that were previously produced by DCHBE/DC Exchange Authority to Judicial Watch as part of a Judicial Watch Freedom of Information Act (FOIA) request in their original, unaltered form without any redactions, omissions or deletions whatsoever.
- 4) Cooperate with the Senate Small Business and Entrepreneurship Committee in its request to uphold federal law and only allow businesses with 50 or fewer full-time equivalent employees to participate in the D.C. Small Business Exchange.

As you are well aware, if any business in the United States were to knowingly provide false information when applying for a state or federal program, it would likely face severe penalties. As the operator of the D.C. Exchange, DCHBE has a responsibility to hold Congress to the same standard as any other business in the District of Columbia, and I ask that you comply with these requests no later than Friday, February 13, 2015. We ask that the documents produced in

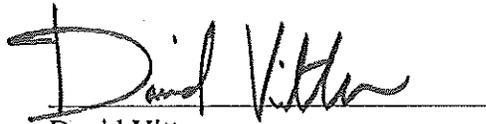
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<content/uploads/2014/10/Vining-v-DC-Health-Benefit-Exchange.pdf> (as on pages 4, 7, and 10 of the pdf file where names of employees are either listed as "Twenty Congress" or "first last"; as on pages 2, 4, 5, 7, 8 and 10 of the pdf file where number of employees for the U.S. House of Representatives or the U.S. Senate are cited as "45" or the confirmation is cited as "I attest that I employ 50 or fewer full time equivalent employees"; as on pages 2, 5, and 8 of the pdf file where employer type is cited as "State/local government").

<sup>3</sup> *Id.*

response to request 3 be delivered to the majority office of the Senate Committee on Small Business and Entrepreneurship, Room 428A of the Russell Senate Office Building. Should you have any questions, please contact my staff, at 202-224-5175.

Thank you,

A handwritten signature in black ink that reads "David Vitter". The signature is written in a cursive style and is positioned above a horizontal line.

David Vitter

Chairman

Committee on Small Business and Entrepreneurship



February 13, 2015

The Honorable David Vitter  
United States Senate  
Committee on Small Business and Entrepreneurship  
Washington, DC 20510-6350

RE: Congressional enrollment through DC Health Link

Dear Chairman Vitter:

Thank you for the opportunity to provide you with information about DC Health Link. This letter is to respond to your February 3, 2015 request for copies of employer applications submitted by the Office of Payroll and Benefits of the U.S. House of Representatives and the Senate Disbursing Office on behalf of designated Congressional staff and Members for employer sponsored health insurance coverage through DC Health Link's SHOP – the District's on-line health insurance marketplace for businesses and their workers.

The Health Benefit Exchange Authority (HBX), a private-public partnership, is responsible for implementing a state-based online health insurance marketplace under the Affordable Care Act for the District of Columbia. The marketplace, called DC Health Link, enables individuals, families and small businesses to compare health insurance prices and benefits and to purchase affordable, quality health coverage. From October 1, 2013 to February 9, 2015, DC Health Link has served 80,587 people: 20,358 people have enrolled in private health insurance, 44,457 people have been determined eligible for Medicaid, and 15,763 people enrolled through SHOP (includes Congressional enrollment). It is estimated that the District's uninsured rate dropped by as much as 43% in the first year of DC Health Link's operations, with more than 18,000 previously uninsured people gaining coverage.

In 2015, DC Health Link's Small Business Marketplace offers 193 different coverage options from four major health insurance companies -- Aetna, CareFirst Blue Cross Blue Shield, Kaiser Permanente, and United Health Care. There are 31 coverage options for individuals and their families offered by Aetna, CareFirst and Kaiser in DC Health Link's individual marketplace. Health insurance choices include HSA compatible high deductible health plans and zero deductible options, and include health maintenance organizations (HMOs), preferred provider organizations (PPOs), and point of service (POS) plans.



1225 Eye Street NW, 4th Floor, Washington, DC 20005

DC Health Link opened for business on October 1, 2013, offering employers and employees broad choices. This means that for the first time, small businesses like large ones can offer a choice of insurance companies and coverage levels to their employees. The employer receives one bill even when employees choose coverage from different insurance companies. Last year, there were 113 products available at the gold level – enabling a small business to offer all 113 products when the business selected all gold coverage (Gold level is the coverage level available to Congress). Looking at the first 463 small business customers in DC Health Link, two-thirds chose to offer their employees broad choices -- 102 small businesses offer their employees a choice of all health plans in a metal level and 207 offer their employees a choice of all the metal levels and plans from a single carrier.

We are proud of the choices and competitively priced products DC Health Link offers the business community. In fact, the DC Chamber of Commerce, the Greater Washington Hispanic Chamber of Commerce, and the Restaurant Association Metropolitan Washington became DC Health Link customers – each one realizing savings and offering their own employees better benefits. In addition to enrolling through DC Health Link, each has partnered with us to promote small business and individual enrollment through DC Health Link.

In addition to creating an on-line health insurance market that competes in a transparent way, we are committed to our customers. We work hard to preserve the privacy and confidentiality of information for all our customers – private and government (Congress) alike. Providing enrollment applications for any of our customers would be perceived as a breach of trust.

Furthermore, on October 15, 2014, Kirby Vining, represented by Judicial Watch, filed a lawsuit against HBX. The plaintiff is seeking a “judgment declaring that the U.S Congress’ participation in the District of Columbia’s ‘Small Business Exchange is unlawful and an injunction prohibiting Defendants from allowing Congress to participate in the exchange or...ordering Executive Director Kofman to cease and desist from allowing Congress to participate in the exchange.” Plaintiff’s Complaint, *Vining v. Executive Board of the HBX, et. al.*, at 2 (Oct. 15, 2014).

As expressed in our November 7, 2014 motion to dismiss (full copy attached):

...federal law expressly and specifically authorizes use of the D.C.’s SHOP Exchange by Members of Congress and designated Congressional staff through the Patient Protection and Affordable Care Act (‘ACA’), implementing regulations, and guidance. Therefore, District of Columbia law, as applied to Congressional enrollment, is preempted by the ACA and pertinent regulations...

The ACA includes a specific provision for the sale of health insurance to Members of Congress and designated Congressional staff... On October 2, 2013, one day after the District’s SHOP Exchange opened for business, the Office of Personnel Management (‘OPM’) promulgated regulations to implement §1312(d)(3)(D) of the ACA... OPM determined the District of Columbia Exchange was the ‘appropriate SHOP’ for members

of Congress and congressional staff. Defendant's Motion to Dismiss, *Vining v. Executive Board of the HBX, et. al.*, at 2, 4-5 (Nov. 7, 2014).

Due to the on-going lawsuit brought by Judicial Watch on Congressional enrollment in private health insurance through DC Health Link, we are not in a position to provide documents or discuss information related to the lawsuit.

We thank you for the opportunity to provide you with this information.

Sincerely,



Mila Kofman  
Executive Director  
DC Health Benefit Exchange Authority

Cc:  
Ranking Member Ben Cardin  
Congresswoman Eleanor Holmes Norton

# United States Senate

OFFICE OF THE SECRETARY

DISBURSING OFFICE  
WASHINGTON, DC 20510-7104

February 13, 2015

The Honorable David Vitter, Chairman  
Committee on Small Business and Entrepreneurship  
United States Senate

Dear Mr. Chairman:

This letter responds to your February 3, 2015 correspondence concerning administrative processes in the Small Business Health Options Program (SHOP) via the DC Health Benefit Exchange (DCHBX) as it relates to participation of Members of Congress and Congressional staff.

The Office of Personnel Management (OPM) has regulatory authority over and administers the Federal Employees Health Benefits (FEHB) Program as well as the other federal benefits programs. As such, OPM issued rules, regulatory guidance and operational procedures on the impact and implementation of FEHB and the Affordable Care Act regarding federal employees (specifically, as it relates to Members of Congress and designated Congressional staff).

## OPM Rules and Guidance

The following was issued in OPM Benefits Administration Letters (BAL) 13-204, 13-207 and 13-204(a), dated August 7, 2013, September 30, 2013 and November 4, 2013, respectively:

- “The Affordable Care Act states, in Subparagraph 1312(d)(3)(D), that, ‘ . . . the only health plans that the Federal Government may make available to Members of Congress and congressional staff with respect to their service as a Member of Congress or congressional staff shall be health plans that are—(I) created under this Act (or an amendment made by this Act); or (II) offered through an Exchange established under this Act . . . ’”
- “The health benefits plans currently offered by OPM under chapter 89 of title 5 are not ‘created under’ the Act; nor are they offered through the Exchanges. Therefore, Members of Congress and their employees employed by the official office may no longer purchase the health benefits plans for which OPM contracts under chapter 89 of title 5; they are limited to purchasing plans from Exchanges.”
- “. . . (OPM) has issued a final rule to amend the . . . (FEHB) Program regulations regarding coverage for Members of Congress and congressional staff. This final rule amends FEHB Program regulations to comply with Section 1312 of the Patient Protection and Affordable Care Act, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act, Public Law 111-152 . . . ”

- “The final rule includes the following modifications from OPM’s proposed rule (RIN3206- AM85): OPM has clarified that Members of Congress and designated congressional staff must enroll in an appropriate Small Business Health Options Program (SHOP) as determined by the Director in order to receive a Government contribution . . .”
- “The final rule extends a Government contribution towards health benefits plans for Members of Congress and designated congressional staff so long as the health benefits plans are purchased via the appropriate SHOP as determined by the Director. The formula for Government contributions is set forth in 5 USC 8906 and is the same formula used for other Federal employees. Nothing in the final rule or the law prevents a Member of Congress or designated congressional staff from declining a Government contribution for him or herself by choosing a different option for their health insurance coverage.”
- “Given the location of Congress in the District of Columbia, OPM has determined that the DC SHOP, known as the DC Health Link Small Business Market administered by the DC Health Benefit Exchange Authority, is the appropriate SHOP from which Members of Congress and designated congressional staff will purchase health insurance in order to receive a Government contribution.”

In addition, the Centers for Medicare and Medicaid Services (CMS) issued Affordable Insurance Exchanges Guidance, dated September 30, 2013, which states in part:

“A final rule published by OPM . . . establishes . . . (SHOP) as the channel through which [designated staff] and Members of Congress may enroll in qualified health plans. Consistent with the OPM rule, this guidance clarifies that offices of the Members of Congress are considered qualified employers eligible to offer coverage to Members and designated Congressional staff through the appropriate SHOP as determined by OPM. CMS clarifies that offices of the Members of Congress, as qualified employers, are eligible to participate in a SHOP regardless of the size and offering requirements set forth in the definition of ‘qualified employer’ in the Exchange final rule . . .”

#### OPM Administrative Processes and DC Health Link Instructions

As previously noted, in OPM BAL 13-207, dated September 30, 2013, OPM issued its final rule (published in the Federal Register on October 2, 2013, 78 Fed. Reg. 60654) stating that the DC Health Link is the appropriate SHOP from which Members and designated staff will purchase health insurance in order to receive a government contribution. The October 2, 2013 Federal Register notice added that “OPM intends to work with the DC Health Benefits Exchange to implement this rule.”

OPM BAL 13-204(a), November 4, 2013 states:

“The business process begins for the Administrative Offices when House leadership and the Senate Administrative office issue initial guidance to Members of Congress and congressional staff regarding OPM’s final rule . . . Those staff members that are designated as working in the official office must choose plans from the DC SHOP.” “The Administrative Offices will create separate accounts

on DC Health Link ([www.DCHealthlink.com](http://www.DCHealthlink.com)) for each Federal employer identification number. The Administrative Offices will select coverage effective dates of January 1, 2014 on DC Health Link and notify employees of their eligibility.”

Administrative offices were instructed to use DC Health Link and understood that, due to the compressed implementation time frame, system modifications to the DC Health Link system were not an option. Therefore, the DC Health Link system could only be used as originally configured. As a result, it was necessary to provide data that was compatible for system processing to establish the required employer account in a timely manner. OPM, DCHBX, House of Representatives and Senate Administrative Offices were all aware that it was essential that this be done promptly to facilitate seamless transition of health benefits for Members and designated staff.

The Senate Disbursing Office is a non-partisan, non-political office responsible for administration of federal benefits programs for Members and employees of the Senate. Thusly the Disbursing Office, in accordance with OPM rules, instructions and processes, established an employer account on the DC Health Link system, which facilitated appropriate access for Members and designated staff to obtain employer-sponsored health insurance.

In sum, OPM promulgated and issued regulations and instructions and directed the enrollment process. OPM publicly stated that it was working with DCHBX to implement the process. DCHBX understood and it was public information that Members of Congress and designated staff would be enrolling through DC Health Link in accordance with OPM’s determination. OPM, DCHBX and House and Senate Administrative Offices were aware of the system limitations and the compressed time frame. Thus, the issues of SHOP selection and enrollment procedure were public and the technical enrollment process was accomplished with the knowledge of all parties. Therefore, despite technical challenges, to the best of the Disbursing Office’s knowledge, this office, at no time in this process, provided any party misleading information.

I hope this description of the regulatory background, as well as the administrative process is helpful in addressing your concerns.

Respectfully,



Heana Garcia  
Financial Clerk of the Senate

Office of the  
Chief Administrative Officer  
U.S. House of Representatives  
Washington, DC 20515-6860

February 13, 2014

The Honorable David Vitter  
Chairman, Committee on Small Business & Entrepreneurship  
United States Senate  
Washington, D.C. 20510

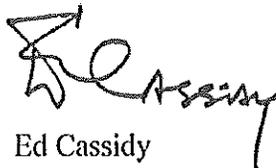
Dear Chairman Vitter:

I am writing in response to your letter of February 5, 2015. You have inquired about certain administrative processes which facilitated the purchase by Members and employees of the House of Representatives of employer-provided health coverage, pursuant to the Patient Protection and Affordable Care Act and implementing regulations adopted by the U.S. Office of Personnel Management.

Although I appreciate your interest in this important issue, I have been unable to identify a provision of the senate rules indicating that the internal operations of the House of Representatives fall within the jurisdiction of the Committee on Small Business and Entrepreneurship. *See* Rule XXV.1 (o), Standing Rules of the Senate.

That said, I am advised that recently you directed a similar letter to the Financial Clerk of the Senate Disbursing Office. While noting that I did not hold my current position during the period in question, I nevertheless have no reason to believe that a description by the Senate Disbursing Office of its actions in this matter would differ markedly from the description I would provide were the House's internal administrative procedures within the jurisdiction of your Committee.

Sincerely,



Ed Cassidy  
Chief Administrative Officer

DAVID VITTER, LOUISIANA, CHAIRMAN  
BENJAMIN L. CARDIN, MARYLAND, RANKING MEMBER

JAMES E. RISCH, IDAHO  
MARCO RUBIO, FLORIDA  
RAND PAUL, KENTUCKY  
TIM SCOTT, SOUTH CAROLINA  
DEB FISCHER, NEBRASKA  
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CHRISTOPHER A. COONS, DELAWARE  
MAZE HIRONO, HAWAII  
GARY C. FETTERS, MICHIGAN

## United States Senate

COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP

WASHINGTON, DC 20510-6350

TELEPHONE: (202) 224-5176 FAX: (202) 224-5619

ZAK BAIG, REPUBLICAN STAFF DIRECTOR  
ANN JACOBS, DEMOCRATIC STAFF DIRECTOR

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.<sup>1</sup> 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.<sup>2</sup> Since that time, additional information has come to light indicating that false information was provided to the District of Columbia Health Benefits Exchange (DCHBE).<sup>3</sup>

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"

<sup>1</sup> 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).

<sup>2</sup> 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/>.

<sup>3</sup> 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](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."

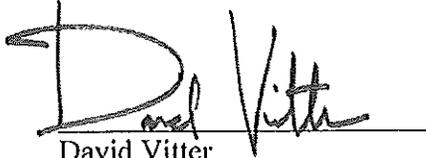
As you are aware, the President committed to faithfully execute the law as a responsibility to his office and in respect for our republic.<sup>4</sup> That duty carries over to your office via the President you serve. Should anyone within the Office of the President, or that of OPM, wish to see the nomination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

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<sup>4</sup> 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](mailto:bryan_zumwalt@sbc.senate.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "David Vitter". The signature is written in a cursive style with a large initial "D" and "V".

David Vitter

Chairman

Senate Committee on Small Business and Entrepreneurship

DAVID VITTER, LOUISIANA, CHAIRMAN  
BENJAMIN L. CARDIN, MARYLAND, RANKING MEMBER

JAMES E. RUSCH, IDAHO  
MARCO RUBIO, FLORIDA  
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ZAK BAIG, REPUBLICAN STAFF DIRECTOR  
ANN JACOBS, DEMOCRATIC STAFF DIRECTOR

## United States Senate

COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP

WASHINGTON, DC 20510-6350

TELEPHONE: (202) 224-5175 FAX: (202) 224-5619

March 2, 2015

The Honorable Ileana Garcia  
Financial Clerk of the Senate  
Hart Senate Office Building  
Room 127  
Washington, DC 20515

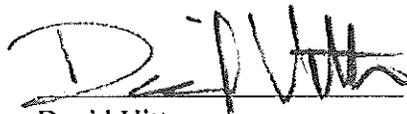
Dear Ms. Garcia:

This letter follows a string of letters and emails to you from me or my staff requesting that your office provide information to aid the Committee's investigation into how Congress qualified as a "small business" to entitle it to benefits from the District of Columbia Health Benefit Exchange Authority's (DCHBEA) Small Business Exchange. You have not produced anything responsive to this request. Instead, you assert that your office does not possess any records whatsoever relating to the application process. Surely your office must have some information regarding this important, highly impactful, decision to qualify thousands of federal government employees as employed for a small business, thus entitling them to benefits and subsidies under the DCHBEA that they otherwise have no valid right to receive.

Accordingly, I again reiterate that you cooperate with this important investigation by identifying the offices and entities in Congress that your office worked with, consulted, or followed orders from while completing and submitting the application to DCHBEA to allow the Senate to receive health benefits on DCHBEA's Small Business Exchange.

I ask that you please direct this information to the Committee's office in the Russell Senate Office Building, Room 428A, by 6:00pm on Wednesday, March 11, 2015. If I still do not receive anything by that time, the Committee will be forced to consider compulsory means to obtain your cooperation. This is a step we hope to avoid. If you would like to further discuss this matter, please call the Committee at (202) 224-5175.

Thank you,



David Vitter

Chairman

U.S. Senate Committee on Small Business & Entrepreneurship

DAVID VITTER, LOUISIANA, CHAIRMAN  
BENJAMIN L. CARDIN, MARYLAND, RANKING MEMBER

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## United States Senate

COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP

WASHINGTON, DC 20510-6350

TELEPHONE: (202) 224-5175 FAX: (202) 224-5619

ZAK BAIG, REPUBLICAN STAFF DIRECTOR  
ANN JACOBS, DEMOCRATIC STAFF DIRECTOR

March 2, 2015

The Honorable Ed Cassidy  
Chief Administrative Officer  
U.S. House of Representatives  
Room HB 26  
U.S. Capitol  
Washington, DC 20515

Dear CAO Cassidy:

This letter follows my February 3, 2015 letter and a February 19, 2015 email to you requesting that your office provide information to aid the Committee's investigation into how Congress qualified as a "small business" to entitle it to benefits from the District of Columbia Health Benefit Exchange Authority's (DCHBEA) Small Business Exchange. To date, you have not given any responsive information due to your belief that the Committee does not have jurisdiction to investigate the House of Representatives in this case.<sup>1</sup>

As was previously advised, the Committee on Small Business and Entrepreneurship possesses broad jurisdiction to investigate matters relating to and affecting small businesses. Since the House of Representatives officially declared itself to be a small business to obtain healthcare benefits and subsidies shouldered by taxpayers (including small businesses), this matter falls squarely within the scope of the Committee's jurisdiction. Accordingly, the Committee, the small business community, and the American people have a clear right to know why a body of the federal government that employs several thousand people can get away with asserting, subject to penalty,<sup>2</sup> that it employs less than 50 persons, among other blatant misrepresentations on the application. Such special, unfair, and highly suspicious conduct demands oversight and investigation of all parties involved, including the House of Representatives.

Now, and for the third time, I am requesting that you cooperate with this important investigation by identifying the offices and entities in Congress that your office worked with,

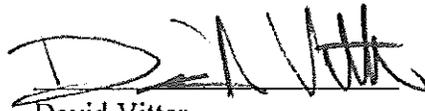
<sup>1</sup> Letter from the Hon. Ed Cassidy, Chief Administrative Officer, to David Vitter, Chairman, (Feb. 13, 2015) (on file with the Committee on Small Business and Entrepreneurship).

<sup>2</sup> Letter and enclosures from Mary Beth Senkewicz, Associate General Counsel and Policy Advisor, to Michael Bekesha, (Sept. 5, 2014); <http://www.judicialwatch.org/wp-content/uploads/2014/10/Vining-v-DC-Health-Benefit-Exchange.pdf>; the DCHBEA application states that "I've provided true and correct answers to all the questions on this form to the best of my knowledge. I know that if I'm not truthful there may be a penalty."

consulted, or followed orders from while completing and submitting the application to DCHBEA to allow the House of Representatives to receive health benefits on DCHBEA's Small Business Exchange. Such a request is more than reasonable and very easy to fully accommodate in the generous time provided to your office to respond.

I again ask that you please direct this information to the Committee's office in the Russell Senate Office Building, Room 428A, by 6:00pm on Wednesday, March 11, 2015. If I still do not receive anything by that time, the Committee will be forced to consider compulsory means to obtain your cooperation. This is a step we hope to avoid. If you would like to further discuss this matter, please call the Committee at (202) 224-5175.

Thank you,

A handwritten signature in black ink, appearing to read 'D. Vitter', written over a horizontal line.

David Vitter

Chairman

U.S. Senate Committee on Small Business & Entrepreneurship



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT  
Washington, DC 20415

The Director

MAR 13 2015

The Honorable David Vitter  
Chairman  
Committee on Small Business  
and Entrepreneurship  
United States Senate  
516 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Vitter:

Thank you for your letter, dated February 13, 2015, regarding the Office of Personnel Management's (OPM) final rule<sup>1</sup> concerning health insurance coverage for Members of Congress and their official office staff. As you know, this final rule has been effective since October 2, 2013. As a result, Members of Congress and designated congressional staff have been enrolled in health benefits plans via DC Health Link since January 1, 2014. This letter provides you with the requested background information on OPM's decision-making process while drafting and implementing the final rule.

On March 23, 2010, President Barack Obama signed the Patient Protection and Affordable Care Act (ACA) into law. Section 1312(d)(3)(D) of that law, which was included as an amendment sponsored by Senator Chuck Grassley, reads:

**MEMBERS OF CONGRESS IN THE EXCHANGE.—**

(i) **REQUIREMENT.**—Notwithstanding any other provision of law, after the effective date of this subtitle, the only health plans that the Federal Government may make available to Members of Congress and congressional staff with respect to their service as a Member of Congress or congressional staff shall be health plans that are—

(I) created under this Act (or an amendment made by this Act); or  
(II) offered through an Exchange established under this Act (or an amendment made by this Act).

(ii) **DEFINITIONS.**—In this section:

(I) **MEMBER OF CONGRESS.**—The term “Member of Congress” means any member of the House of Representatives or the Senate.

(II) **CONGRESSIONAL STAFF.**—The term “congressional staff” means all full-time and part-time employees employed by the official office of a Member of Congress, whether in in Washington, DC or outside of Washington, DC.

<sup>1</sup> <https://www.federalregister.gov/articles/2013/10/02/2013-23565/federal-employees-health-benefits-program-members-of-congress-and-congressional-staff>

As you are aware, OPM contracts for health insurance plans on behalf of Federal employees, including those in the Legislative branch, under the authority provided in 5 U.S.C. Chapter 89. It is important to note that section 1312 of the ACA did not alter the definition of “employee”<sup>2</sup> as used in 5 U.S.C. 8901(1)(B) (C) or the definition of “health benefits plan”<sup>3</sup> under 5 U.S.C. 8901(6). Further, the definition utilized in the ACA for “congressional staff” includes the term “official office of a Member of Congress” but does not offer a definition of that term.

As the administrator for health benefits for Federal employees, OPM was cognizant of its requirement to implement section 1312 of the ACA. While a specific effective date for subparagraph 1312(d)(3)(D) was not included, OPM concluded that the most reasonable interpretation of the statute was that enrollment in OPM-contracted plans under chapter 89 of Title 5 would no longer be available to Members of Congress and congressional staff who are employed by the official office of a Member of Congress as of January 1, 2014, the date under the ACA that Exchanges (also called Health Insurance Marketplaces) were scheduled to be available for providing health insurance coverage.

On August 8, 2013, OPM published a proposed rule<sup>4</sup> inviting comments on amendments to the Federal Employees Health Benefits (FEHB) Program regulations to implement this section of the ACA.

### **Members of Congress and Congressional Staff**

Because, as mentioned above, no definition of “official office of a Member of Congress” was provided in section 1312, OPM requested comment on its proposed method for identifying which staff worked for the official office. The following analysis was provided in the proposed rule:

Based on research related to the administration of congressional staffing, including communication with the respective House and Senate administrative and disbursement offices, OPM has determined that Members' offices are best equipped to make the determination as to whether an individual is employed by

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<sup>2</sup> 5 U.S.C. 8901(1) defines “employee” as including “a Member of Congress as defined by section 2106 of this title” and “a Congressional employee as defined by section 2107 of this title” among others. 5 U.S.C. section 2106 defines “Member of Congress” as “the Vice President, a member of the Senate or the House of Representatives, a Delegate to the House of Representatives, and the Resident Commissioner from Puerto Rico.” 5 U.S.C. 2107 defines “Congressional Employee” as: (1) an employee of either House of Congress, of a committee of either House, or of a joint committee of the two Houses; (2) an elected officer of either House who is not a Member of Congress; (3) the Legislative Counsel of either House and an employee of his office; (4) a member or employee of the Capitol Police; (5) an employee of a Member of Congress if the pay of the employee is paid by the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives; [(6) Repealed. Pub. L. 90-83, § 1(5)(A), Sept. 11, 1967, 81 Stat. 196.] (7) the Architect of the Capitol and an employee of the Architect of the Capitol; (8) an employee of the Botanic Garden; and (9) an employee of the Office of Congressional Accessibility Services.

<sup>3</sup> 5 U.S.C. 8901 (6) defines a “health benefits plan” to mean a group insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar group arrangement provided by a carrier for the purpose of providing, paying for, or reimbursing expenses for health services.

<sup>4</sup> <https://www.federalregister.gov/articles/2013/08/08/2013-19222/federal-employees-health-benefits-program-members-of-congress-and-congressional-staff>

the “official office” of that Member. OPM’s understanding is that congressional staff often have allocated to them a percentage of work as personal staff and a percentage of work as committee or leadership committee staff. It also is common for the percentage to change during the year. Moreover, staff are often unaware of these percentages or budgetary source of their compensation. OPM believes that allowing the employing office to make the determination as to whether particular individuals are employed by the “official office” is most appropriate, and will allow such determinations to be made by the office of the Member of Congress, which is their employer. As part of their responsibility to make this determination, the employing offices shall be the final authority with respect to the determination for each individual. Under these proposed regulations, OPM will not review or overturn these determinations. OPM seeks comment on this proposed approach.

**Clarification of Meaning of “Health Benefits Plan Under This Chapter” As Used in 5 U.S.C. 8905(b) and 5 U.S.C. 8906**

The proposed rule provided that Members of Congress and congressional staff would select a plan from an Exchange established under the ACA. At this time, it had not yet been determined which Exchange would be the most appropriate option. OPM offered the following analysis in the proposed rule:

While the Affordable Care Act does not amend 5 U.S.C. 8901, the effect of the “notwithstanding” clause of section 1312 is to limit the ability of Members of Congress and congressional staff to purchase health benefits plans for which OPM may contract under chapter 89. Section 1312 specifies that “the only health plans that the Federal Government may make available” are those that are either “created under” the ACA, or “offered through an Exchange established under” the Act. The health benefits plans for which OPM can contract under chapter 89 are not “created under” the ACA, nor are they offered through the Exchanges. Therefore, Members of Congress and congressional staff who are employed by the official office of a Member of Congress may no longer purchase the health benefits plans for which OPM contracts under chapter 89. As part of their service, they are limited to purchasing plans from Exchanges. This proposed rule implements this mandate.

As mentioned previously, the ACA did not remove Members of Congress and congressional staff from the definition of “employees” in 5 U.S.C. 8901. Under 5 U.S.C. 8906, employees are eligible for a Government contribution towards the cost of their health benefits.<sup>5</sup> In the proposed rule, OPM clarified that the term “health benefits plan” under 5 U.S.C. 8901 encompasses Exchange plans, and therefore the provision for a government contribution toward premium costs would apply to such Exchange plans.

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<sup>5</sup> 5 U.S.C. 8906(b)(1) provides that except as provided in paragraphs (2), (3), and (4), the biweekly Government contribution for health benefits for an employee or annuitant enrolled in a health benefits plan under this chapter is adjusted to an amount equal to 72 percent of the weighted average under subsection (a)(1)(A) or (B), as applicable. For an employee, the adjustment begins on the first day of the employee’s first pay period of each year. For an annuitant, the adjustment begins on the first day of the first period of each year for which an annuity payment is made.

Prior to the passage of the ACA, there was no need for OPM to clarify that the term “health benefits plan under this chapter” as used in section 8905(b) and 8906 included plans other than those health benefits plans for which OPM contracted or which OPM approved, pursuant to its authority under 5 U.S.C. 8902, 8903 and 8903a. Because there are now employees covered by chapter 89 who will be purchasing health benefits plans on Exchanges, we believe that it is appropriate to clarify that the provisions that authorize an employer contribution for “health benefits plans under this chapter,” and authorize the continuation of such coverage into retirement, includes all health benefits plans fitting within the definition set forth in 8901(6). The revisions adopted here have no impact on the availability to Members of Congress and Congressional Staff Members of the contribution established in 5 U.S.C. 8906. Health benefit plans, as defined at 5 U.S.C. 8901(6), will encompass health benefit plans offered through an Exchange.

The 30-day comment period for the proposed rule ended on September 9, 2013. OPM received approximately 60,000 comments<sup>6</sup> including comments that covered topics similar to those in your letter.

#### **Incorporating Exchange Plans Under the 5 U.S.C. 8901 (6) Definition of “Health Benefits Plan”**

On October 2, 2013, OPM issued a final rule.<sup>7</sup> This final rule clarified that Members of Congress and designated congressional staff must enroll in an appropriate SHOP as determined by the Director in order to receive a Government contribution. The following explanation was provided:

The proposed rule was silent on whether eligible individuals would select qualified health plans through an Exchange in the individual or small group market by way of the SHOP. Because a Government contribution is, in essence, an employer contribution, the final rule clarifies that Members of Congress and designated congressional staff must enroll in an appropriate SHOP as determined by the Director in order to receive a Government contribution. SHOPS are designed to provide employer-sponsored group health benefits and are, therefore, the appropriate environment in which to provide an employer contribution to Members of Congress and congressional staff. Further, this ensures that Members of Congress and congressional staff do not have additional choices in the individual Exchanges with a Government contribution that other individuals lack. Given the location of Congress in the District of Columbia, OPM has determined that the DC SHOP, known as the DC Health Link Small Business Market administered by the DC Health Benefit Exchange Authority, is the appropriate

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<sup>6</sup> Public comments can be viewed at: <http://www.regulations.gov/#documentDetail;D=OPM-2013-0016-0001>. Please note that while regulations.gov reports that 66,091 comments were received, the majority of these comments were duplicates. 211 unique comments are available for public view. When a comment was received multiple times, the number of duplicates is indicated on regulations.gov.

<sup>7</sup> <https://www.federalregister.gov/articles/2013/10/02/2013-23565/federal-employees-health-benefits-program-members-of-congress-and-congressional-staff>

SHOP from which Members of Congress and designated congressional staff will purchase health insurance in order to receive a Government contribution. OPM intends to work with the DC Health Benefits Exchange to implement this rule.

On September 30, 2013 the Department of Health and Human Services, Centers for Medicare & Medicaid Services released a memo indicating that offices of Members of Congress would be considered eligible employers for the purposes of enrolling in a SHOP. The memo reads:

Consistent with the OPM rule, this guidance clarifies that offices of the Members of Congress are considered qualified employers eligible to offer coverage to Members and designated Congressional staff through the appropriate SHOP as determined by OPM. CMS clarifies that offices of the Members of Congress, as qualified employers, are eligible to participate in a SHOP regardless of the size and offering requirements set forth in the definition of “qualified employer” in the Exchange final rule, 1 provided that the office offers coverage to those full-time employees who are determined by statute to purchase health insurance from an Exchange for the purpose of the government contribution.<sup>8</sup>

In our final rule, OPM further clarified that the Government contribution is in no way equivalent to the premium tax credit available on the individual Exchange. The Government contribution is an employer contribution towards the cost of health benefits. Members of Congress and designated congressional staff who are eligible for affordable employer-sponsored coverage that provides minimum value, with a Government contribution, are rendered ineligible for premium tax credits via the individual Exchange just as are Americans across the country who are offered affordable health benefits via their employer.<sup>9</sup> No special treatment is extended to Members of Congress or designated congressional staff. The final rule provided the following details on this matter:

Nothing in the final rule limits an individual from purchasing health insurance through other methods including the individual market Exchanges. Members of Congress and designated congressional staff are subject to the same requirements as citizens purchasing insurance on the Exchanges, including individual responsibility. Access to the Government contribution through the SHOP limits their eligibility for premium tax credits available through the individual market Exchanges.

### **Implementation**

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<sup>8</sup> The full memo is available at <http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/members-of-congress-faq-9-30-2013.pdf>

<sup>9</sup> Individuals, including Members of Congress and/or designated congressional staff, may be eligible for premium tax credits on the individual Exchange if the health benefits plans available to them via their employer are not considered “affordable” under the guidelines expressed in the ACA. “Employer coverage is considered affordable - as it relates to the premium tax credit - if the employee’s share of the annual premium for the lowest priced self-only plan is no greater than 9.56% of annual household income. People offered employer-sponsored coverage that’s affordable and provides minimum value aren’t eligible for a premium tax credit.” See <https://www.healthcare.gov/glossary/affordable-coverage/> for more information.

Following the publication of the final rule, OPM released a set of Benefits Administration Letters (BAL) detailing steps for implementing the provisions of the rule. House and Senate Administrative Offices, as well as DC Health Link, were provided with copies of each BAL.

BAL 13-204(a) (dated November 4, 2013) provides step-by-step instructions including the process for designating congressional staff as working in the "official office," effective dates of coverage and termination for designated staff, coordination between the House and Senate Administrative Offices and DC Health Link, premium deductions, the application of the Government contribution, and other implementation details. This BAL reiterated OPM's determination that the SHOP Exchange operated by DC Health Link would administer health benefits for Members of Congress and designated congressional staff as follows:

The Small Business Health Options Program (SHOP) was established by the Affordable Care Act and administers group health benefits to employees of qualified employers...

Given the location of Congress in the District of Columbia, OPM has determined that the DC SHOP, known as the DC Health Link Small Business Market (DC SHOP) administered by the DC Health Benefit Exchange Authority, is the appropriate SHOP from which Members of Congress and designated congressional staff will purchase health insurance in order to receive a Government contribution.

This BAL explicitly instructed the House and Senate Administrative Offices to create accounts via DC Health Link. These instructions read as follows:

The Administrative Offices will create separate accounts on DC Health Link ([www.DCHealthlink.com](http://www.DCHealthlink.com)) for each Federal employer identification number. The Administrative Offices will select coverage effective dates of January 1, 2014 on DC Health Link and notify employees of their eligibility. This notification will be done through internal House and Senate systems.

In coordination with DC Health Link and OPM, the House and Senate Administrative Offices held the first open enrollment period for Members of Congress and designated congressional staff selecting a health benefits plan via the DC SHOP from November 11 until December 9, 2013. The first effective date of coverage for these employees was January 1, 2014. DC Health Link and the House and Senate Administrative Offices have been providing Members of Congress and designated congressional staff with health benefits plans via the DC SHOP since that time, consistent with OPM's final rule and subsequent guidance.

Attached are copies of comments that OPM received and considered as it developed its rule. Please note that these comments may contain names and identifying information of the commenters. OPM believes that maintaining the confidentiality of individual commenters helps to encourage robust public comment on its proposed rules. Accordingly, when releasing public

comments on an OPM-proposed rule in response to a request under the Freedom of Information Act, or discussing such comments in the Federal Register notice promulgating the final rule, OPM's usual protocol is not to publish the names of individual commenters.

OPM is not constrained from releasing identities of commenters in response to a request from a congressional committee. Nevertheless, OPM asks that these identities be maintained in strict confidence and that they not be released publicly.

We hope that this letter helps to clarify your questions about our decision-making process during the implementation of the final rule in question. If you need any further assistance in this matter, please do not hesitate to contact Ms. Angela Kouters, Director of Congressional, Legislative, and Intergovernmental Affairs at 202-606-1300.

Sincerely,

A handwritten signature in cursive script, appearing to read "Katherine Archuleta".

Katherine Archuleta  
Director

Enclosures

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GARY C. PETERS, MICHIGAN

# United States Senate

COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP

WASHINGTON, DC 20510-6350

TELEPHONE: (202) 224-5175 FAX: (202) 224-5619

ZAK BAIG, REPUBLICAN STAFF DIRECTOR  
ANN JACOBS, DEMOCRATIC STAFF DIRECTOR

March 18, 2015

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

Dear Director Archuleta:

I am in receipt of your March 13, 2015 response to my multiple previous letters to you requesting information on Office of Personnel Management's (OPM) September 30, 2013 rule allowing Congress to obtain health insurance benefits on the District of Columbia Health Benefits Exchange Authority's small business exchange. Your response consisted of a letter discussing the history of the rule and approximately 200 pages of public comments on the rule that were already publically accessible. Unfortunately, you failed to disclose, or even address, the information I have asked for since October 2013, provided below:

1. Prior to issuing the September 30, 2013 rule did anyone within OPM advising on this particular matter argue that OPM did not have the authority to determine that Federal Employee Health Benefits (FEHB) contributions 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 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 the formulation and issuance of this rule.
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/or the Chief Administrative Officer of the U.S. House of Representatives suggesting staff report Congress only employs 45 full-time equivalent employees to qualify as a "small business."

The public comments you included in your response – which you acknowledged represented a tiny fraction of the thousands of comments received on the rule – provide solid proof of the strong negative feelings the American people share regarding this unfair rule and its highly questionable drafting and implementation. Americans have a right to a full, transparent account and explanation of any rule that confers taxpayer-backed/taxpayer funded benefits or contributions to Congress that conflicts with the law. Permitting Congress, with its thousands of employees, to enjoy benefits on an exchange set up for businesses that must employ less than 50 full-time equivalent employees is a prime example. The fact that you continue to withhold the information requested only further strengthens my suspicions with regard to this rule.

Accordingly, I once again request that you provide the above information. I ask not only on behalf of the Senate Committee on Small Business and Entrepreneurship and the American public, but also in the spirit of this being “Sunshine Week,”<sup>1</sup> which “is a national initiative to promote a dialogue about the importance of open government and freedom of information.”<sup>2</sup> I ask that you direct your response to the Committee in the Russell Senate Office building, Room 428A, by Friday, March 27, 2015. If you have any questions, please call the Committee at (202) 224-5175.

Sincerely,

A handwritten signature in black ink, appearing to read "David Vitter", written over a horizontal line.

David Vitter

Chairman

Senate Committee on Small Business and Entrepreneurship

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<sup>1</sup> SUNSHINE WEEK, <http://sunshineweek.rcfp.org/> (last visited March 17, 2015).

<sup>2</sup> ABOUT SUNSHINE WEEK, <http://sunshineweek.rcfp.org/about-sw/> (last visited March 17, 2015).