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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

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December 22, 2017

VIA U.S. MAIL & EMAIL (Stephen.Billy@opm.gov)

Ms. Kathleen McGettigan
Acting Director
Office of Personnel Management
1900 E Street NW
Washington, DC 20415-1000

Dear Acting Director McGettigan:

Pursuant to its authority under section 12(e) of S. Res. 62 (115th Congress), the Committee on Homeland Security and Governmental Affairs is investigating the development of Office of Personnel Management's (OPM) 2013 regulation that enabled Members of Congress and their staff to purchase health insurance from the District of Columbia Small Business Health Options Plan (SHOP) exchange and receive an employer contribution.¹ To assist the Committee with its investigation, please provide the documents requested in the enclosed subpoena by January 5, 2018. In order to expedite the production of documents that are responsive to the enclosed subpoena, the Committee requests that you submit responsive material as it becomes available.

Congress has sought information about OPM's development of this regulation for several years.² In the 113th Congress and the 114th Congress, OPM did not satisfactorily respond to these requests. I renewed this oversight in the 115th Congress. On August 16, 2017, I wrote to you to request all OPM material concerning the SHOP regulation.³ On October 4, 2017, after receiving an insufficient response containing material already available to the Committee, I again wrote to you to reiterate my request and inform you that the Committee could consider compulsory process if OPM did not produce the entirety of the requested material.⁴

¹ Federal Employees Health Benefits Program: Members of Congress and Congressional Staff, 78 Fed. Reg. 60,653 (Oct. 2, 2013).

² S. Comm. on Homeland Security and Governmental Affairs, *Nomination of the Honorable Beth F. Cobert to be Director, Office of Personnel Management: Hearing before the S. Comm. on Homeland Security and Gov't Affairs, 114th Cong.* (Feb. 4, 2016); Letter from Sen. David Vitter, S. Comm. on Small Bus, to Katherine Archuleta, Director, Office of Personnel Management, Feb. 13, 2015; Letter from Sen. David Vitter, to Elaine Kaplan, Acting Director, Office of Personnel Management, Oct. 9, 2013. *See also Johnson v. U.S. Office of Personnel Mgmt*, 4-CV-9; 14-2723, (E.D. Wis. 2014) (order granting motion to dismiss) *aff'd*, (7th Cir. 2015).

³ Letter from Sen. Ron Johnson, Chairman S. Comm. on Homeland Security and Gov't Affairs, to Kathleen McGettigan, Acting Director, Office of Personnel Management, Aug. 16, 2017.

⁴ Letter from Sen. Ron Johnson, Chairman S. Comm. on Homeland Security and Gov't Affairs, to Kathleen McGettigan, Acting Director, Office of Personnel Management, Oct. 4, 2017.

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To date, OPM's compliance with the Committee's inquiry has been deficient. In the four months since my initial request, OPM has produced a limited number of responsive documents, made available for *in camera* review only a small subset of responsive material, and refused to produce some documents specifically identified by the Committee during the *in camera* review process. OPM's refusal to produce these documents, after months of delay, has frustrated the Committee's oversight efforts.

The American people have a right to know how and why OPM drafted a final regulation that allows Members of Congress and staff to continue to receive an employer contribution, paid by the taxpayer, without authorization in law. The limited information available to the Committee shows that OPM initially believed it could not provide an employer contribution to Members of Congress and staff. The Committee requires the full universe of material to understand fully OPM's development of the regulation.

I regret that OPM's lack of cooperation with the Committee's oversight has required me to issue a subpoena. To ensure the Committee has a full understanding of the development of OPM's regulation, and as detailed in the enclosed subpoena schedule and instructions, please produce all material that relates to OPM's continuation of an employer contribution toward the health insurance for Members of Congress and staff. This universe broadly includes, but is not limited to, draft regulations, internal deliberations, draft policy proposals, interagency communications, legal guidance, docket management system (DMS) material, stakeholder communications, and similar material.

If you have any questions relating to this subpoena, please contact Committee staff at 202-224-4751. Thank you for your attention to this matter.

Sincerely,

Ron Johnson
Chairman

cc: The Honorable Claire McCaskill
Ranking Member

Enclosure