

# United States Senate

WASHINGTON, DC 20510

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VETERANS' AFFAIRS

October 8, 2013

The Honorable Elaine Kaplan  
Acting Director  
Office of Personnel Management  
1900 E Street, NW  
Washington, D.C. 20415

Dear Acting Director Kaplan,

In light of recent press reports that Congressional Leadership staff negotiated with the Office of Personnel and Management (OPM) regarding changes made to the Federal Employees Health Benefits Program (FEHBP), I respectfully reiterate my request that you provide me with a detailed list of all conversations or negotiations with any staff members of Senate or House Leadership. These news reports run directly counter to statements you made with three other OPM staff members during our meeting two weeks ago. I am extremely concerned with these conflicting accounts, particularly as this was a question repeatedly asked of you and your staff in our meeting. While I realize that your agency may not be fully staffed at this time, I respectfully request an immediate reply to my letter due to the serious nature of this issue.

On October 1, 2013, *Politico* reported, "Under heavy pressure from Hill Democrats, Obama and White House aides got personally involved in the dispute. OPM then reversed course and issued a regulation saying the subsidies would go on" (*John Bresnahan, "Government shutdown: John Boehner's private fight for Hill health subsidies," Politico, October 1, 2013*). According to *National Review Online*, Senator Reid's chief of staff stated, "Every time one of these anonymous Republican aides takes a look at their paycheck, I hope they remember it was Harry Reid who protected their employer contribution." He continued to elaborate on these negotiations saying, "I took the action I did because I refuse to stand by and watch those who pressed for this ruling turn around and attack the very thing they asked for... Integrity means owning in public what you advocate for in private" (*Jonathan Strong, "Shutdown Could Last Weeks," National Review Online, October 1, 2013*).

Not only do these statements call into question the very role Leadership staff played in negotiating changes to their own health care coverage, but they also do not reflect what you and your staff told me during our meeting. When asked, you repeatedly stated that OPM did not negotiate with Congressional Leadership staff when crafting your proposed rule concerning their health care coverage. You also told me that it was not OPM's role to determine who is covered and who is not covered under ObamaCare, and that your agency simply implements the law as written. However, your agency's

final rule does not require all staff to go to the Exchange as was the original intent of Section 1312 of the law, and these press reports indicate that Congressional staff played a role in securing this exemption. As a proponent of transparency, I am highly concerned about any backdoor negotiations between your agency and Congressional staff in order to exempt them from the very law they helped write.

I have enclosed a copy of my September 28 letter and once again ask that you provide me with a detailed list of conversations or negotiations OPM had with any staff members of Senate or House Leadership when crafting your proposed rule. I am specifically interested in conversations regarding the provision which gives each Member of Congress the authority to determine who on their staff goes to the Exchange. If OPM engaged in any discussions – both formal and informal – with Leadership staff, was there any undue pressure received from staff during these discussions? Do you believe this to be a conflict of interest?

Given the substantial impact ObamaCare will have on American taxpayers, I respectfully disagree with your decision to exempt certain Congressional staff from this onerous mandate. I maintain my position that OPM missed an opportunity to provide clarity once and for all to ensure that if every American must be subject to ObamaCare, then all Members of Congress, their staff, you, and all political appointees must be beholden to this law as well.

Once again due to the gravity of this issue I respectfully request an immediate reply to my letter. If you have any questions you may contact my Legislative Director, Sarah Timoney Paul, at [Sarah\\_Paul@heller.senate.gov](mailto:Sarah_Paul@heller.senate.gov) or (202) 425-2028.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dean Heller", is written over a light blue horizontal line.

DEAN HELLER  
U.S. Senator