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U.S. Office of Personnel Management
Room 2H28
1900 E Street, NW
Washington, D.C. 20415

RE: Federal Employees Health Benefits Program: Members of Congress and Congressional Staff

To Whom It May Concern:

The U.S. Chamber of Commerce (the “Chamber”) submits these comments in response to the Proposed Rule with Request For Comments (“Proposed Rule”) relating to the statutory provision that amends the Federal Employees Health Benefits (“FEHB”) Program regarding coverage for Members of Congress and Congressional Staff.1 This Proposed Rule was published in the Federal Register on August 8, 2013 by the Office of Personnel Management (“OPM”) to implement the mandate contained in Section 1312 (d)(3)(D) of the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 (“PPACA”).2

The Chamber is the world’s largest business federation, representing the interests of more than three million businesses and organizations of every size, sector and region, with substantial membership in all 50 states. More than 96 percent of the Chamber’s members are small businesses with 100 or fewer employees, 70 percent of which have 10 or fewer employees. Yet, virtually all of the nation’s largest companies are also active members. Therefore, we are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large. Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business – manufacturing, retailing, services, construction, wholesaling, and finance – is represented. These comments have been

developed with the input of member companies with an interest in improving the health care system.

**OVERVIEW**

The Chamber understands the challenges in promulgating regulations that equitably and appropriately implement the PPACA, a law that requires significant clarification through the regulatory process. While the Proposed Rule may provide needed relief to Congressional Staff, whom historically have enjoyed significant employer contributions towards their health care premiums through the FEHB program, there are a number of elements that must be further clarified to ensure equitable and fair treatment across the employer and employee populations affected by the PPACA. While we appreciate the time constraints in addressing this issue with open-enrollment beginning in just over three weeks, we find the lack of detailed information troubling and hope to have an opportunity to comment on the more technical elements necessary to implement this position. Therefore, the Chamber urges the OPM to carefully consider and promptly clarify several operational points and call on the Departments of Labor, Health and Human Services and Treasury to afford equal treatment and permit all other employers the opportunity to provide employer contributions to their employees who purchase coverage in the individual market.

**OUTSTANDING OPERATIONAL QUESTIONS**

*Compliance with 4980H: Shared Responsibility for Employers Regarding Health Coverage*

The Proposed Rule is very brief and while it clarifies that Members of Congress (“Members”) and Congressional Staff (“Staff”) will continue to receive the government contribution (their employer’s contribution) to the cost of coverage when they enroll in a health benefit plan through the exchange, it is not clear how this contribution will be calculated or distributed. Beyond the mechanics of how the funds will be conveyed, questions remain about how this clarification will dovetail with the government’s obligation as an employer to provide affordable minimum value coverage to full-time employees and dependents under the “shared responsibility” requirement. Given the generous government contribution to coverage under the FEHB Program historically, it is quite likely that the coverage will be affordable for Members and Staff on the exchange if the contribution remains comparable. However, it is not an absolute certainty and as a result, it would be improper to exempt the Federal Government from verifying compliance and fulfilling the reporting requirements associated with the provisions of the shared responsibility requirement, particularly at the same time that all employers are challenged by the substantial cost and logistical implications of implementing the very same requirements.

*Premium Tax Credits: Double Dipping*

The Proposed Rule was silent on the availability of premium tax credits to Members and Staff and makes no reference to the “Question and Answers” that were issued simultaneously. Therefore we urge OPM to include the material discussed in the Questions and Answers document in the Final Rule. Typically, under the PPACA, individuals can either use their
employer’s contribution to purchase the coverage offered by their employer on the group market or, if affordable coverage is not offered, individuals below 400% of the Federal Poverty Level (“FPL”) can apply for premium tax credits to purchase coverage on the exchange in the individual market. The Proposed Rule offers a remedy to permit Members and Staff to continue to receive their employer (the government’s) contribution when they buy their coverage through the exchange in the individual market, but is silent as to their ability to access premium tax credits. In order to remain consistent with the other PPACA provisions, we urge the OPM to clarify that Members and Staff who are able to purchase affordable coverage on the exchange with the help of their employer’s contribution are not eligible to receive premium tax credits as the seventh question on the “Questions and Answers” document suggests.

**Fundamental Policy Concern**

*Equity for Other Employers: Permit Stand-Alone Health Reimbursement Arrangements*

Given the position advanced in the Proposed Rule, we continue to urge the Departments of Treasury, Health and Human Services and Labor to issue regulations permitting all employers equitable treatment on this issue. Just as the Federal Government is now able to do for Members and Staff, all employers should also be permitted to offer their employees an employer contribution to purchase coverage in the individual market.

As we stated in our written response to the “FAQs about Affordable Care Act Implementation Part XI” issued on January 24, 2013, we believe that employers should be permitted to provide a stand-alone Health Reimbursement Arrangement (“HRA”) which their employees can use to purchase coverage on the exchange in the individual market.3 Not only do we believe that employers should be permitted to use this mechanism to satisfy their shared responsibility requirement under the law for policy reasons, but given the position put forth in the Proposed Rule, the Administration is permitting the Federal Government to do just that for Members and Staff. It would be inequitable and unjust to not permit all employers the same option.

An HRA is a particular kind of employer health subsidy – essentially a flexible savings account (“FSA”) funded solely by an employer under which unused employer contributions can be rolled over from year to year. We understand that the Departments believe that any employer subsidy to buy individual health insurance (except a Retiree Plan subsidy) violates the PPACA’s annual limit proscription. However, clearly, the Administration is bent on making an exception to this strict statutory reading for Members and Staff. We believe that the details necessary to implement the Proposed Rule could and must be equitably provided as options for all employers.

**Conclusion**

We urge the OPM to work collaboratively with the Departments of Treasury, Health and Human Services and Labor and appropriately indicate the operational steps and elements necessary to advance this position for both Members and Staff and employers as well.

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In order to provide equity and quiet the nation’s skeptics about Washington’s self-dealing, we strongly urge the Departments to permit employers to satisfy their shared responsibility requirement by offering stand-alone HRAs for employees to buy PPACA-compliant individual market qualified health plans. A balanced approach would consider an HRA or other employer subsidy earmarked for the purchase of individual insurance coverage to be aggregated for purposes of determining whether core PPACA requirements are met. We believe that the position of the Chamber and its member companies would promote the central goals of the PPACA. Allowing employers to subsidize individual coverage will help make such coverage more affordable. Employer subsidies will also make it more likely that Americans will be covered.

We urge the Departments to continue to work carefully, pragmatically and cooperatively with the business community to minimize burdens placed on employers as they work to comply with the law. We remain committed to the employer-sponsored system and hope the Departments will consider the effects that various implementation choices will have on employers and their ability to continue to offer the coverage that their employees value.

Sincerely,

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