

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS**

CHAMBER OF COMMERCE OF THE  
UNITED STATES OF AMERICA,  
FINANCIAL SERVICES INSTITUTE, INC.,  
FINANCIAL SERVICES ROUNDTABLE,  
GREATER IRVING-LAS COLINAS  
CHAMBER OF COMMERCE, HUMBLE  
AREA CHAMBER OF COMMERCE DBA  
LAKE HOUSTON AREA CHAMBER OF  
COMMERCE, INSURED RETIREMENT  
INSTITUTE, LUBBOCK CHAMBER OF  
COMMERCE, SECURITIES INDUSTRY  
AND FINANCIAL MARKETS  
ASSOCIATION, and  
TEXAS ASSOCIATION OF BUSINESS,

Plaintiffs,

v.

THOMAS E. PEREZ, SECRETARY OF  
LABOR,  
and  
UNITED STATES  
DEPARTMENT OF LABOR,

Defendants.

Civil Action No. 3:16-cv-1476-M  
Consolidated with:

3:16-cv-1530-C

3:16-cv-1537-N

**JOINT MOTION TO ESTABLISH A SCHEDULE  
FOR SUMMARY JUDGMENT PROCEEDINGS**

Plaintiffs and defendants (collectively the “Parties”) have conferred in good faith about the proceedings in the above captioned litigation and jointly move for a case management order setting a schedule for summary judgment briefing. Under the schedule proposed by the parties and set forth below, briefing would be completed by early October so that the oral argument could be held in mid- to late- October or at the Court’s earliest convenience thereafter. While

Local Rule 16.1(i) exempts this case from a mandatory Rule 16 order, the Parties agree that the order proposed here would serve judicial economy and efficiency. In support hereof, the Parties state as follows:

1. On April 8, 2016, the U.S. Department of Labor issued a final rule and related prohibited transaction exemptions promulgated under the Employee Retirement Income Security Act of 1974 (“ERISA”) and the Internal Revenue Code. *See* Definition of the Term “Fiduciary”; Conflict of Interest Rule—Retirement Investment Advice, 81 Fed. Reg. 20,936 (Apr. 8, 2016) (“Fiduciary Rule” or “Conflict of Interest Rule”).

2. On June 1, 2016, a complaint was filed by plaintiffs in the action captioned *Chamber of Commerce v. Perez*, No. 16-cv-1476 (N.D. Tex.) against defendants Thomas E. Perez, Secretary of Labor, and the U.S. Department of Labor (collectively, the “Department”), under the Administrative Procedure Act (“APA”) and the First Amendment to the U.S. Constitution, challenging the Department’s “Fiduciary Rule” and related prohibited transaction exemptions (the “*Chamber*” action).

3. On June 8, 2016, a complaint was filed by plaintiffs in the action captioned *American Council of Life Insurers v. U.S. Department of Labor*, No. 16-cv-1530 (N.D. Tex.), against defendants the U.S. Department of Labor and Thomas E. Perez, Secretary of Labor, which also challenges the Fiduciary Rule and related prohibited transaction exemptions (the “*ACL*” action).

4. On June 8, 2016, a complaint was filed by plaintiffs in the action captioned *Indexed Annuity Leadership Council v. Perez*, No. 16-cv-1537 (N.D. Tex.), against defendants Thomas E. Perez, Secretary of Labor, and the U.S. Department of Labor, which also challenges the Fiduciary Rule and related prohibited transaction exemptions (the “*IALC*” action).

5. On June 14, 15 and 16, 2016, the counsel for plaintiffs and defendants in the *ACLI*, *Chamber*, and *IALC* actions (collectively, the “Actions”) met and conferred in good faith regarding the coordination of and scheduling for these related cases.

6. On June 17, 2016, defendants filed an unopposed motion to consolidate cases, which the Court granted on June 21, 2016.

7. The Parties agree that the Department should be permitted to respond to plaintiffs’ summary judgment motions in lieu of answering the complaints.

8. The Parties agree that the cases should be decided expeditiously on cross-motions for summary judgment without discovery or any other evidentiary proceedings.

a. Plaintiffs’ position. Plaintiffs submit that there is good cause for the expeditious resolution of this litigation. Among other things, plaintiffs and/or many of their members will incur significant costs and challenges in endeavoring to comply with the Department’s rulemaking by April 2017 (the applicability date for most provisions of the rule). In the Department’s words, affected members must develop “comprehensive compliance and supervisory system[s],” revise “policies and procedures and training programs,” account for “insurance increases,” and prepare the disclosures required by the rulemaking and establish mechanisms for distributing those disclosures, among other things. 81 Fed. Reg. at 20,953, Table 1. The Department estimated that the start-up cost of compliance for affected industries will be \$5 billion. Regulatory Impact Analysis at 10. The Department has declined plaintiffs’ request to stay the deadlines imposed by the rulemaking pending the outcome of litigation, and plaintiffs therefore cannot defer these costs until after a resolution of this matter.

b. Defendants’ position. Defendants agree there is good cause for

expeditious resolution of this litigation, though for different reasons. Prompt resolution of these cases will serve the public interest and that of the plan participants and beneficiaries the Conflict of Interest Rule was designed to protect. Defendants do not necessarily agree with plaintiffs' characterization of the circumstances.

9. The Parties jointly propose that the most efficient way to conduct summary judgment briefing would be staggered cross-motions resulting in four sets of briefs as described below. Plaintiffs will endeavor to avoid redundancy by, among other things, cross-referencing and incorporating arguments in other plaintiffs' briefs.

10. The Parties also jointly propose to adjust the page limits for the briefs to provide appropriate flexibility for each set of plaintiffs to make distinct arguments while still reducing the total number of pages below the total that would be permitted by the Local Rules if summary judgment were litigated separately in each action. Plaintiffs' three summary judgment briefs would total no more than 110 pages in the aggregate. Defendants' combined opposition and cross-motion brief would total no more than 110 pages. Plaintiffs' three combined reply and cross-opposition briefs would total no more than 110 pages in the aggregate. And defendants' combined cross-reply would total no more than 50 pages. This approach reduces the total number of pages before the Court by at least 145 pages.<sup>1</sup>

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<sup>1</sup> This calculation is based on Local Rule 56.5(b):

	Local Rule	Proposed	Net Reduction
Plaintiffs' opening briefs	50 x 3 = 150 pages	110 pages	40 pages
Defendants' opposition brief and cross-motion	50 x 3 = 150 pages	110 pages	40 pages
Plaintiffs' oppositions to cross-motion and replies	50 x 3 = 150 pages	110 pages	40 pages
Defendants' reply	25 x 3 = 75 pages	50 pages	25 pages
Total	525 pages	380 pages	145 pages

11. The Parties jointly propose an efficient way to address the administrative record in this case in light of the appendix requirement for summary judgment motions under Local Rule 56.6(b). The administrative record in this case is expected to include thousands, if not hundreds of thousands, of pages, it is likely to include a significant amount of material that will not be relied upon by any party for purposes of summary judgment briefing, and it will not be available until August 1, 2016, which is after the date the plaintiffs will submit their opening briefs under the proposed schedule. Accordingly, the Parties propose to file an Initial Joint Appendix on July 18, 2016 (the same date for plaintiffs to file their opening briefs) that will consist of the documents from the administrative record on which all parties will rely, namely, the relevant notices of proposed rulemaking and exemptions, the relevant final rules and exemptions, and the draft and final regulatory impact analyses (collectively, the “core rulemaking documents”). To the extent plaintiffs cite any additional documents in their opening briefs, they will include those documents, or relevant excerpts thereof, in appendices to those briefs and will file conforming versions of their opening briefs with updated citations to the relevant page number of the administrative record one week after the administrative record is available. All other briefs (which will be filed after August 1, 2016) will cite any additional documents in the administrative record by the relevant page number in the administrative record. All documents so cited (along with the attachments to plaintiffs’ opening briefs) will also be included in a Supplemental Joint Appendix that the Parties will file one week after the government files its reply brief.

12. The Parties propose that the joint appendices to be filed on July 18 and October 14, 2016 would conform to the technical requirements of Local Rule 56.6 with the exception that the pagination would follow the consecutive pagination of the entire administrative record (e.g.,

beginning with AR0001, and not repaginating if AR1000-AR2000 was excluded as irrelevant, but instead picking up with AR2001). This small deviation from Local Rule 56.6 would save substantial administrative work because the consecutive pagination of the entire administrative record will have been completed by August 1, 2016, and little would be gained by repaginating the joint appendix.

13. The Parties, therefore, move jointly for a case management order setting the following deadlines and pages limits for cross-motions for summary judgment:

- Plaintiffs shall file up to three summary judgment briefs totaling no more than 110 pages in the aggregate, each due on July 18, 2016;
- The parties shall file an initial joint appendix consisting of the materials described in paragraph 11 above on July 18, 2016;
- Defendants shall file an index of the administrative record on August 1, 2016;
- Plaintiffs shall file conforming versions of their opening briefs, if necessary, on August 8, 2016;
- Defendants shall file a combined opposition and cross-motion brief of up to 110 pages, due on August 19, 2016;
- Plaintiffs shall file up to three combined reply and cross-opposition briefs totaling no more than 110 pages in the aggregate, each due on September 16, 2016;
- Defendants shall file a combined cross-reply of up to 50 pages, due on October 7, 2016; and
- The parties shall file a supplemental joint appendix on October 14, 2016.
- Oral argument will be held in mid- to late- October or at the Court's earliest convenience thereafter.

Dated: June 24, 2016

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**IN THE UNITED STATES DISTRICT COURT  
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CHAMBER OF COMMERCE OF THE  
UNITED STATES OF AMERICA,  
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THOMAS E. PEREZ, SECRETARY OF  
LABOR,  
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DEPARTMENT OF LABOR,

Defendants.

Civil Action No. 3:16-cv-1476-M  
Consolidated with:  
3:16-cv-1530-C  
3:16-cv-1537-N

**[PROPOSED] ORDER**

The Court, having considered the parties' Joint Motion for Summary Judgment Briefing Schedule, and with cause appearing, GRANTS the Joint Motion. Accordingly, it is hereby

ORDERED that defendants shall have no obligation to answer the complaints in the above-captioned cases; and it is further

ORDERED that the parties shall brief summary judgment pursuant to the following schedule:

- Plaintiffs shall file up to three summary judgment briefs totaling no more than 110 pages in the aggregate, each due on July 18, 2016;
- The parties shall file an initial joint appendix consisting of the core rulemaking documents, due on July 18, 2016;
- Defendants shall file an index of the administrative record on August 1, 2016;
- Plaintiffs shall file conforming versions of their opening briefs, if necessary, on August 8, 2016;
- Defendants shall file a combined opposition and cross-motion brief of up to 110 pages, due on August 19, 2016;
- Plaintiffs shall file up to three combined reply and cross-opposition briefs totaling no more than 110 pages in the aggregate, each due on September 16, 2016;
- Defendants shall file a combined cross-reply brief of up to 50 pages, due on October 7, 2016; and
- The parties shall file a supplemental joint appendix of portions of the administrative record relied upon by any party in the summary judgment briefs, together with revised briefs containing conforming citations as necessary, due on October 14, 2016.

ORDERED that plaintiffs may cross-reference and incorporate arguments in other plaintiffs' briefs; and further

ORDERED that all page limits are exclusive of the table of contents, table of authorities, signature blocks, and other portions of briefs that do not ordinarily count toward page limits in Local Rule 56.5(b); and further

ORDERED that the joint appendices of those portions of the administrative record relied upon by the parties shall be filed instead of Local Rule 56.6's appendix requirements, which joint appendices shall conform to the formatting requirements of Local Rule 56.6 except that the consecutive pagination of the administrative record may be used; and further

ORDERED that the Court will hold a hearing on the cross-motions for summary judgment on \_\_\_\_\_.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE BARBARA M.G. LYNN