

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

ASSOCIATION FOR COMMUNITY  
AFFILIATED PLANS, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
TREASURY, *et al.*,

Defendants.

Civil Action No. 18-2133 (RJL)

**MOTION TO MODIFY BRIEFING SCHEDULE**

Defendants respectfully move the Court to modify the briefing schedule for the parties' cross-motions for summary judgment in light of the recent lapse of appropriations for the Departments of Justice and the Treasury and the associated stay of proceedings entered by the Court on December 31, 2018. Due to the duration of the lapse in funding, extending the deadlines commensurate with duration of that lapse, as Defendants previously requested, would result in briefing deadlines that overlap substantially with dispositive briefing deadlines in two other cases handled by the undersigned attorneys as well as conflict with longstanding international travel plans of one of the undersigned. Defendants therefore seek a modest extension of an additional week for the parties to file their motions and an additional week for the parties to file their opposition briefs. Pursuant to Local Rule 7(m), Defendants have conferred with counsel for Plaintiffs who have indicated that Plaintiffs do not object to extending the deadlines commensurate with the length of the shutdown but do object to additional extensions, for the reasons they initially sought expedited treatment of the case. However, good cause exists for an additional modest extension, as set forth in more detail below.

1. Plaintiffs filed this case on September 14, 2018 seeking judicial review of a final rule issued by the Departments of Labor, Treasury, and Health and Human Services that largely restored the definition of short-term, limited duration insurance from a policy of less than ninety days to its long-standing definition of a policy with an initial term of less than one year.

2. On September 28, 2018, Plaintiffs moved for a preliminary injunction, ECF No. 10, which they subsequently withdrew on November 7, 2018. ECF Nos. 28 & 31.

3. On November 12, 2018, the Court entered a minute order directing that (1) Defendants prepare and serve an administrative record on Plaintiffs by December 19, 2018; (2) the parties file cross-motions for summary judgment by January 11, 2019, opposition briefs by January 25, 2019, and reply briefs by February 1, 2019; and (3) Plaintiffs file the joint administrative record appendix required by Local Civil Rule 7(n)(2) on or before February 8, 2019. *See* Minute Order dated November 12, 2018.

4. On December 19, 2018, Defendants served an administrative record on counsel for Plaintiffs that totals more than 200,000 pages. *See* ECF No. 4.

5. Two days later, on December 21, 2018, the appropriations that had been funding the Departments of Justice and the Treasury lapsed. On December 31, 2018, appropriations for the Departments still had not been restored, and accordingly, Defendants moved for a stay of the case and an extension of all then-current deadlines commensurate with the duration of the lapse in appropriations.

6. By minute order dated the same day, the Court granted Defendants' motion and stayed the case. *See* Minute Order dated December 31, 2018.

7. On January 25, 2019, appropriations for the Department of Justice and the Department of the Treasury were restored through February 15, 2019 and the Department of Justice resumed its usual civil litigation functions.

8. Because the total duration of the lapse in funding was thirty-five days, extending the briefing deadlines for summary judgment commensurate with the length of the lapse would require the parties to file their motions for summary judgment by February 15, 2019, opposition briefs by March 1, 2019, and reply briefs by March 8, 2019. Due to developments during the shutdown, however, those dates now overlap with dispositive briefing deadlines in two other cases handled by the undersigned attorneys (notwithstanding the undersigned's efforts to obtain extensions of those deadlines as well), and also conflict with a long-standing plan of one of the undersigned attorneys to be out of the country from February 23 to March 3. Moreover, the undersigned attorneys must address other time-sensitive deadlines that accumulated during the lapse in funding and associated government shut-down but are not directly related to a litigation filing, such as review of agency materials and Freedom of Information Act disclosures.

9. Therefore, Defendants request that the deadline for the parties to file cross-motions for summary judgment be extended by one week to February 22, 2019, and that the deadline for the parties to file their opposition briefs be extended by an additional week to March 15, 2019. Replies would then be due on March 22, 2019, and Plaintiffs would file the required appendix a week later, on or before March 29, 2019, consistent with the schedule originally entered by the Court.

10. These modest changes to the briefing schedule would substantially assist Defendants in presenting their arguments to the Court in this highly complex record-review case

with an administrative record of more than 200,000 pages without materially delaying the Court's consideration or disposition of Plaintiffs' claims.

Accordingly, Defendants respectfully request that the Court enter the requested relief. A proposed order accompanies this motion.

Dated: February 1, 2019

Respectfully Submitted,

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Acting Deputy Director

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**[PROPOSED] ORDER**

Upon consideration of Defendants' Motion to Modify Briefing Schedule, and for good cause shown, it is hereby ORDERED that Defendants' motion is GRANTED.

It is further ORDERED that the following schedule shall govern the above-captioned case: (1) the parties shall file cross-motions for summary judgment on or before February 22, 2019; (2) the parties shall file any responses thereto on or before March 15, 2019; (3) the parties shall file any replies in support of their cross-motions for summary judgment on or before March 22, 2019; and (4) plaintiffs shall file the joint administrative records appendix as required by Local Civil Rule 7(n)(2) on or before March 29, 2019.

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

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Richard J. Leon  
United States District Court Judge