

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

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CHAMBER OF COMMERCE OF THE  
UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

EDWARD C. HUGLER, ACTING  
SECRETARY OF LABOR, and UNITED  
STATES DEPARTMENT OF LABOR,

Defendants.

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)  
) Civil Action No. 3:16-cv-1476-M  
) Consolidated with:  
) 3:16-cv-1530-C  
) 3:16-cv-1537-N  
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**MOTION FOR STAY OF PROCEEDINGS**

This Court, as does any district court presiding over a civil action, has broad discretion to control its docket. *McKnight v. Blanchard*, 667 F.2d 477, 479 (5th Cir. 1982); *Credit Card Fraud Control Corp. v. Maxmind, Inc.*, No. 3:14-3262, 2015 WL 1879747, at \*2 (N.D. Tex. Apr. 24, 2015). For the good and sufficient reasons discussed below, this Court should exercise that discretion here and stay proceedings in this action pending a status report that Defendants propose to file on or around March 10, 2017. Such a stay would make sense for the judiciary, the parties and the affected public.

On February 3, 2017, the President issued a memorandum to the Secretary of Labor, directing the Secretary to “examine the Fiduciary Duty Rule” and to “prepare an updated economic and legal analysis” of the Rule in regard to three enumerated considerations, among other things. See Presidential Memorandum on Fiduciary Duty Rule ([link](#)) (attached as Exhibit A). The memorandum further directed that if the Secretary “make[s] an affirmative determination as to any one of the [enumerated] considerations,” or for any other reason after appropriate review, he “shall

publish for notice and comment a proposed rule rescinding or revising the Rule, as appropriate and as consistent with law.” *Id.*

The Department is carefully reviewing the issues raised in the President's Memorandum of February 3, with the immediate goal of deciding the best course of action to implement its spirit and intent. The Department is assessing its legal options for delaying the applicability date (the first of which is April 10). Moreover, the outcome of the Department's review may differ in relevant ways from the April 8, 2016 rulemaking challenged by Plaintiffs. For example, although the Department conducted an exhaustive regulatory impact analysis in this rulemaking, its cost-benefit analysis was challenged in this litigation and could be updated. The rulemaking may additionally be “revised or rescinded.” *See id.*

Accordingly, it would not serve judicial economy to issue a ruling at this point; nor would it be efficient for this Court, for the Court of Appeals for this Circuit, or for the parties to be confronted by a range of appellate issues at this time. Further, a judicial decision on a rulemaking as complex as this while the Department is undertaking the examination and potential promulgation of a proposal pursuant to the Presidential Memorandum can be expected to cause confusion with the affected public, whether parties to this litigation or not. Therefore, Defendants respectfully request that the Court stay the proceedings in this action pending the results of the review directed by the President.

Defendants propose that an initial joint status report be due on March 10, 2017 to update the Court on the Department's actions and address whether a continued stay is warranted. A proposed order is attached for the Court's convenience.

Dated: February 8, 2017

Respectfully submitted,

Of Counsel:

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**CERTIFICATE OF CONFERENCE**

On February 6 and 7, 2017, I conferred by electronic mail and telephone with counsel for each of the three sets of plaintiffs—Jason Mendro for the Chamber of Commerce plaintiffs, Joseph Guerra for the Indexed Annuity Leadership Council plaintiffs, and Kelly Dunbar for the American Council of Life Insurers plaintiffs. Plaintiff's counsel communicated that they oppose this motion.

/s/ Galen N. Thorp  
GALEN N. THORP

**CERTIFICATE OF SERVICE**

On February 8, 2017, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court for the Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served the plaintiff electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Galen N. Thorp  
GALEN N. THORP

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Consolidated with:

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3:16-cv-1537-N

**[PROPOSED] ORDER**

Having carefully considered the Defendants' motion for stay of proceedings, and for good cause shown, it is hereby:

ORDERED that Defendants' motion for stay of proceedings is GRANTED; and further

ORDERED that the parties shall file a joint status report on or before March 10, 2017 addressing (1) the Department of Labor's actions pursuant to the February 3, 2017 Presidential Memorandum and (2) whether a continued stay of proceedings is appropriate.

Date:

BARBARA M.G. LYNN  
Chief United States District Judge

MEMORANDUM FOR THE SECRETARY OF LABOR

SUBJECT:           Fiduciary Duty Rule

One of the priorities of my Administration is to empower Americans to make their own financial decisions, to facilitate their ability to save for retirement and build the individual wealth necessary to afford typical lifetime expenses, such as buying a home and paying for college, and to withstand unexpected financial emergencies.

The Department of Labor's (Department) final rule entitled, Definition of the Term "Fiduciary"; Conflict of Interest Rule -- Retirement Investment Advice, 81 *Fed. Reg.* 20946 (April 8, 2016) (Fiduciary Duty Rule or Rule), may significantly alter the manner in which Americans can receive financial advice, and may not be consistent with the policies of my Administration.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

Section 1. Department of Labor Review of Fiduciary Duty Rule. (a) You are directed to examine the Fiduciary Duty Rule to determine whether it may adversely affect the ability of Americans to gain access to retirement information and financial advice. As part of this examination, you shall prepare an updated economic and legal analysis concerning the likely impact of the Fiduciary Duty Rule, which shall consider, among other things, the following:

(i) Whether the anticipated applicability of the Fiduciary Duty Rule has harmed or is likely to harm investors due to a reduction of Americans' access to certain retirement savings offerings, retirement product structures, retirement savings information, or related financial advice;

(ii) Whether the anticipated applicability of the Fiduciary Duty Rule has resulted in dislocations or disruptions within the retirement services industry that may adversely affect investors or retirees; and

(iii) Whether the Fiduciary Duty Rule is likely to cause an increase in litigation, and an increase in the prices that investors and retirees must pay to gain access to retirement services.

(b) If you make an affirmative determination as to any of the considerations identified in subsection (a) -- or if you conclude for any other reason after appropriate review that the Fiduciary Duty Rule is inconsistent with the priority identified earlier in this memorandum -- then you shall publish for notice and comment a proposed rule rescinding or revising the Rule, as appropriate and as consistent with law.

Sec. 2. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) You are hereby authorized and directed to publish this memorandum in the *Federal Register*.