

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

JACQUELINE HALBIG, et al.,)
)
 Plaintiffs,)
)
 v.)
)
KATHLEEN SEBELIUS, in her official capacity)
 as U.S. Secretary of Health and Human Services,)
et al.,)
)
 Defendants.)
 _____)

Case No. 1:13-cv-00623-PLF

**DEFENDANTS’ MOTION FOR AN EXTENSION OF TIME TO FILE
THEIR REPLY BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS**

The defendants, Kathleen Sebelius, in her official capacity as Secretary of Health and Human Services; Jacob J. Lew, in his official capacity as Secretary of the Treasury; Daniel I. Werfel, in his official capacity as Acting Commissioner of Internal Revenue; the United States Department of Health and Human Services; the United States Department of the Treasury; and the Internal Revenue Service, respectfully move this Court for an extension of seven days, to and including September 27, 2013, in which to file their opposition to the plaintiffs’ motion for a preliminary injunction. In support of this motion, counsel for the defendants state as follows:

1. The defendants filed their motion to dismiss the complaint on July 29, 2013. (ECF 23.) The motion to dismiss notes six threshold defects in the complaint: (1) the plaintiffs lack Article III standing; (2) the plaintiffs lack prudential standing; (3) the case is not ripe; (4) the Administrative Procedure Act does not afford the plaintiffs a cause of action; (5) the employer plaintiffs’ claims are barred by the Anti-Injunction Act; and (6) those claims also fail for the absence of indispensable parties. The defendants’ motion is fully briefed.

2. The plaintiffs filed a motion for a preliminary injunction on September 10, 2013. (ECF 30.) Absent an extension, the defendants' opposition would be due to be filed on or before September 20, 2013.

3. The plaintiffs did not meet and confer with counsel for the defendants before filing their preliminary injunction motion or their request for expedition. Local Civil Rule 7(m) directs parties to meet and confer before filing nondispositive motions.

4. The plaintiffs would suffer no prejudice from a short, seven-day extension in the time for the filing of the defendants' opposition. The plaintiffs have requested expedition of their preliminary injunction motion. But, as the defendants have explained in their separately-filed response to that request (ECF 33), the request for expedition is insubstantial. The sole movant for the preliminary injunction, David Klemencic, suffers no injury at all from the Treasury regulation he challenges; his asserted (but non-existent) injury is solely economic, and thus is not an irreparable injury; and even that asserted injury turns on his desire to apply for catastrophic health insurance coverage, which he may do at any time up to March 31, 2014, more than six months from now.

5. A brief extension of seven days, to and including September 27, 2013, is necessary to afford the defendants adequate time to prepare an opposition brief for filing with the Court. The defendants' opposition brief will require review and approval from officials within the Department of Justice and the three defendant agencies. The defendants will require an additional seven days to allow time for this process of review. In addition, the undersigned counsel for the defendant faces multiple conflicting litigation obligations, which would interfere with his ability to prepare and file an opposition brief by the current deadline. Among other

responsibilities, the undersigned counsel is lead counsel for the defendant, the Department of the Treasury, in a series of cases challenging an amendment to the preferred stock purchase agreements between Treasury and the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.¹ The undersigned counsel will be required to devote significant time and attention to these cases during the time in which he otherwise would be preparing briefing in this action. The undersigned counsel is also responsible for the preparation and filing of the government's answer to the complaint in *Oklahoma v. Sebelius*, No. 6:11-cv-00030-RAW (E.D. Okla.), which is due to be filed on or before September 25, 2013. The undersigned counsel is also responsible for the preparation and filing of the government's motion for summary judgment (on extension) on or before September 25, 2013, in *Judicial Watch, Inc. v. Dep't of Treasury*, No. 1:13-cv-00199-KBJ (D.D.C.). Although the deadlines for filings in the latter two cases fall after the current deadline for a filing in this case, the undersigned counsel will be required to devote significant attention to both cases this week to prepare for those filings, further interfering with his ability to prepare an opposition memorandum in this case within the current deadline.

6. To accommodate these conflicting obligations, the defendants respectfully request that they be afforded until September 27, 2013 in which to file their opposition to the preliminary injunction motion. No other pending deadlines in this action would be affected by the granting of this requested extension.

¹ These cases are *Perry Capital LLC v. Lew*, No. 1:13-cv-1025-RLW (D.D.C.); *Fairholme Funds, Inc. v. FHFA, et al.*, No. 1:13-cv-1053-RLW (D.D.C.); *Liao v. Lew*, No. 1:13-cv-01094-RLW (D.D.C.); *Cane v. FHFA, et al.*, No. 1:13-cv-01184-RLW (D.D.C.); and *Dennis v. FHFA, et al.*, No. 1:13-cv-01208-RLW (D.D.C.).

7. Pursuant to Local Civil Rule 7(m), the undersigned counsel contacted counsel for the plaintiffs, Michael Carvin, Esquire, and Yaakov Roth, Esquire, to ask for their consent to this motion. Mr. Roth replied that the plaintiffs would consent to this request for an extension, on the condition that a hearing on their preliminary injunction motion would be held by October 1, 2013, or later that same week. For the reasons already discussed, the defendants do not believe that an expedited hearing is necessary with respect to the preliminary injunction motion.

WHEREFORE, for the foregoing reasons, the defendants respectfully request that the Court grant them an extension of time in which to file their opposition to the preliminary injunction motions, to and including September 27, 2013.

Dated: September 16, 2013

Respectfully submitted,

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Assistant Attorney General

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 /s/ Joel McElvain
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_____)

[PROPOSED] ORDER

Upon consideration of the defendants’ motion for an extension of time to file their opposition to the plaintiffs’ motion for a preliminary injunction, and finding good cause therefor, it is hereby ORDERED that the motion is granted, and it is further ORDERED that the defendants shall file their opposition to the plaintiffs’ motion for a preliminary injunction on or before September 27, 2013.

IT IS SO ORDERED.

Dated: _____

PAUL L. FRIEDMAN
United States District Judge