

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

AMERICAN COUNCIL OF LIFE
INSURERS, NATIONAL ASSOCIATION
OF INSURANCE AND FINANCIAL
ADVISORS-FORT WORTH, NATIONAL
ASSOCIATION OF INSURANCE AND
FINANCIAL ADVISORS-DALLAS,
NATIONAL ASSOCIATION OF
INSURANCE AND FINANCIAL
ADVISORS-PINEYWOODS OF EAST
TEXAS, NATIONAL ASSOCIATION OF
INSURANCE AND FINANCIAL
ADVISORS-TEXAS, NATIONAL
ASSOCIATION OF INSURANCE AND
FINANCIAL ADVISORS, NATIONAL
ASSOCIATION FOR FIXED ANNUITIES,
INSURED RETIREMENT INSTITUTE, and
FINSECA,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
LABOR, and JULIE SU, in her official
capacity as Acting Secretary, United States
Department of Labor,

Defendants.

Civil Action No. 4:24-cv-00482

PLAINTIFFS' RESPONSE TO NOTICE OF STAY OF EFFECTIVE DATE

The Department of Labor rightly notified this Court (ECF No. 59) regarding Judge Kernodle's recent opinion in *Federation of Americans for Consumer Choice, et. al. v. Department of Labor* ("FACC"), No. 6:24-cv-00163-JDK (E.D. Tex.). Under 5 U.S.C. § 705, that decision stays the effective date of two aspects of the rulemaking package challenged here—namely (1) the Retirement Security Rule: Definition of an Investment Advice Fiduciary, 89 Fed.

Reg. 32,122 (Apr. 25, 2024), and (2) the Amendment to Prohibited Transaction Exemption 84-24, 89 Fed. Reg. 32,302 (Apr. 25, 2024). *See* Op. 41-42 (ECF No. 59-1). On the merits, the *FACC* opinion strongly reaffirms Plaintiffs' likelihood of success in this case.

In its notice, DOL does not argue that the *FACC* decision should delay resolution of Plaintiffs' request for preliminary relief in this case. With good reason. Courts routinely grant preliminary relief under the Administrative Procedure Act even where other district courts have done so. *See, e.g., Carroll Indep. Sch. Dist. v. U.S. Dep't of Educ.*, 2024 WL 3381901, at *3 & n.12 (N.D. Tex. July 11, 2024) (discussing multiple preliminary injunctions issued to prevent enforcement of federal regulation); *Tennessee v. Becerra*, 2024 WL 3283887, at *14 (S.D. Miss. July 3, 2024) (staying HHS rule on a "nationwide" basis under the APA); *Texas v. Becerra*, 2024 WL 3297147, at *12 (E.D. Tex. July 3, 2024) (staying same HHS rule "as to Texas and Montana and all covered entities in those States"). That approach makes sense here: Preliminary relief from this Court is necessary to protect Plaintiffs from irreparable harm, regardless of how the *FACC* litigation unfolds—something that Plaintiffs here, as non-parties to the *FACC* case, cannot control. What is more, preliminary relief also remains necessary here because Plaintiffs in this case seek preliminary relief from the Amendment to Prohibited Transaction Exemption 2020-02, 89 Fed. Reg. 32,260 (Apr. 25, 2024), which would impose obligations similar to PTE 84-24 on the sales of retirement products by career insurance agents and insurance companies, among others. *See* Pls.' Mem. 2 n.1 (ECF No. 12). That aspect of the final rulemaking package was not at issue in *FACC*.

Plaintiffs thus respectfully request that this Court rule on their pending motion for preliminary injunction and stay of effective date at its earliest convenience.

Dated: July 26, 2024

Respectfully submitted,

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