

**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,

FINANCIAL SERVICES INSTITUTE and
SECURITIES INDUSTRY AND
FINANCIAL MARKETS ASSOCIATION,

Plaintiffs-Intervenors,

v.

UNITED STATES DEPARTMENT OF
LABOR, and LORI CHAVEZ-DEREMER,
in her official capacity as Secretary, United
States Department of Labor,

Defendants.

Civil Action No. 4:24-cv-00482

UNOPPOSED MOTION FOR ENTRY OF FINAL JUDGMENT

Plaintiffs (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) and Plaintiffs-Intervenors (Financial Services Institute and Securities Industry and Financial Markets Association) together file this motion for entry of final judgment pursuant to Federal Rule of Civil Procedure 58. Defendants do not oppose the relief requested in this motion. In support of the motion, Plaintiffs and Plaintiffs-Intervenors state as follows:

1. On May 24, 2024, Plaintiffs filed this action challenging the legality of four substantively intertwined regulations (together, the “Rule”) promulgated by the Department of Labor (“DOL”) on April 25, 2024: *Retirement Security Rule: Definition of an Investment Advice Fiduciary*, 89 Fed. Reg. 32,122 (April 25, 2024); *Amendment to Prohibited Transaction Exemption 2020-02*, 89 Fed. Reg. 32,260 (Apr. 25, 2024); *Amendment to Prohibited Transaction Exemption 84-24*, 89 Fed. Reg. 32,302 (Apr. 25, 2024); *Amendment to Prohibited Transaction Exemptions 75-1, 77-4, 80-83, 83-1, and 86-128*, 89 Fed. Reg. 32,346 (Apr. 25, 2024). Plaintiffs challenge the Rule as contrary to law, arbitrary and capricious, and in violation of the Employment Retirement Income Security Act of 1974 (“ERISA”) and the Administrative Procedure Act (“APA”). *See* Dkt. 1 ¶¶ 112-166.

2. On June 28, 2024, Plaintiffs-Intervenors filed an unopposed motion to intervene (Dkts. 40-41), which the Court granted on July 1 (Dkt. 47). Plaintiffs-Intervenors challenge one of the regulations at issue in Plaintiffs’ complaint: *Retirement Security Rule: Definition of an Investment Advice Fiduciary*, 89 Fed. Reg. 32,122 (April 25, 2024). *See* Dkt. 50 ¶ 5 n.1. Plaintiffs-Intervenors challenge that regulation as contrary to law, arbitrary and capricious, and in violation of ERISA and the APA. *Id.* ¶¶ 54-88.

3. The Rule was scheduled to go into effect on September 23, 2024. On May 24, however, Plaintiffs moved to stay the effective date under 5 U.S.C. § 705. *See* Dkts. 11-13. This Court granted the motion on July 26. *See* Dkt. 61.

4. Relying on Fifth Circuit precedent invalidating a similar DOL regulation promulgated in 2016, Plaintiffs' stay motion argued that the Rule is unlawful because, among other reasons, it:

- (a) applies fiduciary obligations to insurance agents and broker-dealers who do not meet ERISA's common-law standard of fiduciary status, including its requirement "of an intimate relationship" of "trust and confidence between the adviser and client" that goes "beyond ordinary buyer-seller interactions," *Chamber of Commerce v. U.S. Dep't of Labor*, 885 F.3d 360, 374 (5th Cir. 2018);
- (b) overrides the "basic division drawn by ERISA" between "ERISA employer-sponsored plans" (governed by Title I) and "individual IRA accounts" (governed by Title II), *id.* at 381;
- (c) impermissibly regulates the sale of variable annuities and fixed indexed annuities, usurping authority that the Dodd-Frank Act of 2020 delegated to the Securities and Exchange Commission or reserved to the States, *see id.* at 385-386; and
- (d) establishes "vehicles for private lawsuits indirectly through ... contract provisions" that are not authorized by ERISA, *id.* at 384.

See Dkt. 12 at 12-22.

5. In its memorandum opinion and order granting Plaintiffs' stay motion, the Court held that "Plaintiffs are virtually certain to succeed on the merits" because "the Rule 'conflicts with ERISA' in several ways." Dkt. 61 at 7-8. Applying the Fifth Circuit's *Chamber* decision,

the Court held that ERISA “codified the common law understanding” of fiduciary status “as a ‘relationship of trust and confidence’ between a fiduciary and her client” and “embraced the industry distinction between investment advice and mere sales conduct.” *Id.* at 8 (quoting *Chamber*, 885 F.3d at 369-370). The Court held that the Rule thus violates ERISA because it “expands ERISA’s fiduciary standard in a way not limited to ‘those already recognized as fiduciary under the common law’ and instead grants the DOL discretion to recognize a fiduciary relationship where the common law would not.” *Id.* at 9. “*Chamber*,” the Court explained, “unambiguously forecloses all of Defendants’ arguments” in defense of the Rule. *Id.*

6. In addition, the Court stated that it “fully agree[d] with ... and adopt[ed]” the reasoning of Judge Kernodle in the Eastern District of Texas, who one day earlier had stayed aspects of the same Rule. Dkt. 61 at 8. As Judge Kernodle reasoned, the Rule independently “conflicts with ERISA by ignoring the distinction between [ERISA] Title I ... and Title II,” and is arbitrary and capricious because it “exposes IRA service providers to breach-of-fiduciary-duty liability, essentially recreating the 2016 Rule’s [unlawful] private cause of action.” *Fed. of Ams. for Consumer Choice v. U.S. Dep’t of Labor*, 742 F. Supp. 3d 677, 696-699 (E.D. Tex. 2024).

7. For these reasons, and upon consideration of the remaining equitable factors, this Court stayed the effective date of the Rule in its entirety “during the pendency of this suit and any appeal.” Dkt. 61 at 17.

8. Defendants initially appealed this Court’s stay decision, *see* Dkt. 65, but after the change in Administration, at Defendants’ request, the Fifth Circuit held the appeal in abeyance, *see* Dkts. 62, 70, *American Council of Life Insurers, et al. v. DOL*, No. 24-10890 (5th Cir.). On November 28, 2025, Defendants voluntarily dismissed their appeal pursuant to Federal Rule of Appellate Procedure 42 before briefing had concluded.

9. In light of the Fifth Circuit’s *Chamber* decision, Defendants do not oppose the entry of a final judgment for Plaintiffs and Plaintiffs-Intervenors that conforms to the reasoning of the Court’s stay decision. Defendants acknowledge that *Chamber* controls in this case, and that they have already had a full and sufficient opportunity to present any arguments against vacatur of the Rule. No party believes that further briefing is necessary for the Court to finally determine the lawfulness of the Rule and to enter final judgment accordingly.

10. In Plaintiffs’ view, the proper remedy is universal vacatur of the Rule in its entirety. Under Fifth Circuit precedent, when an agency action is contrary to law or arbitrary and capricious, “universal vacatur is appropriate,” particularly where (as here) “a party-specific injunction would thwart the uniformity and predictability” of the regulatory regime at issue. *Texas Med. Ass’n v. U.S. Dep’t of Health & Human Servs.*, 11 F.4th 762, 779-780 (5th Cir. 2024); *see also, e.g., Restaurant Law Ctr. v. DOL*, 120 F.4th 163, 177 (5th Cir. 2024); *Chamber of Commerce v. SEC*, 88 F.4th 1115, 1118 (5th Cir. 2023). Moreover, as with DOL’s 2016 regulation, “this comprehensive regulatory package is plainly not amenable to severance” because the various components of the Rule were adopted simultaneously and are substantively intertwined and interdependent. *Chamber*, 885 F.3d at 388.¹

11. It is Defendants’ position that the APA does not authorize a court to vacate an agency rule, and that if vacatur is an available remedy, then like all equitable remedies, such relief must be subject to traditional equitable limitations, including the principle of party-specific relief. Defendants acknowledge, however, that there is substantial authority opposing this position in some circuits, including the Fifth Circuit, although the Supreme Court has not ruled

¹ Plaintiffs-Intervenors join only in the request for vacatur of the *Retirement Security Rule*, 89 Fed. Reg. 32,122, because they have not pled a claim regarding the legality of the other portions of the Rule package.

on the issue. In not opposing this motion, Defendants agree not to pursue this position in this case, but reserve the right to continue to advance this position in other cases.

12. For these reasons, the Court should enter a final judgment vacating the Rule in its entirety on the grounds previously set forth in the Court's stay decision.

March 9, 2026

Respectfully submitted,

/s/ Eugene Scalia

Eugene Scalia*
Jason J. Mendro*
GIBSON, DUNN & CRUTCHER LLP
1700 M Street, N.W.
Washington, D.C. 20036
(202) 955-8500
(202) 467-0539 (fax)
EScalia@gibsondunn.com
JMendro@gibsondunn.com

Russ Falconer (TX Bar No. 24069695)
GIBSON, DUNN & CRUTCHER LLP
2001 Ross Avenue, Suite 2100
Dallas, TX 75201
(214) 698-3170
(214) 571-2958 (fax)
RFalconer@gibsondunn.com

Charles W. Fillmore (TX Bar No. 00785861)
BROWN PRUITT WAMBSGANSS DEAN FORMAN
& MOORE, P.C.
201 Main Street, Suite 700
Fort Worth, Texas 76102
(817) 338-4888
cfillmore@brownpruitt.com

Counsel for Plaintiffs-Intervenors

* Admitted *pro hac vice*

/s/ Kelly P. Dunbar

Kelly P. Dunbar*
Kevin M. Lamb*
WILMER CUTLER PICKERING
HALE AND DORR LLP
2100 Pennsylvania Ave. NW
Washington, DC 20037
(202) 663-6000
(202) 663-6363 (fax)
kelly.dunbar@wilmerhale.com
kevin.lamb@wilmerhale.com

Andres C. Salinas*
WILMER CUTLER PICKERING
HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
(212) 230-8800
(212) 230-8888 (fax)
andres.salinas@wilmerhale.com

/s/ Michael A. Yanof

Michael A. Yanof, Texas Bar No. 24003215
NICOLAIDES FINK THORPE
MICHAELIDES SULLIVAN LLP
2501 North Harwood Street
Suite 1210
Dallas, TX 75201
(469) 290-9047
(469) 290-9041 (fax)
myanof@nicolaidessllp.com

Counsel for Plaintiffs