

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

U.S. DEPARTMENT OF LABOR, et al.,

Defendants.

Civil Action No. 18-1747 (JDB)

**ORDER**

Upon consideration of [31] plaintiff States' motion for summary judgment, [47] defendants' motion to dismiss, or, in the alternative, motion for summary judgment, the parties' memoranda in support of and in opposition to these motions, the arguments presented at the January 24, 2019, motions hearing, and the entire record herein; and for the reasons stated in the memorandum opinion filed on this date; it is hereby

**ORDERED** that [47] defendants' motion to dismiss is **DENIED**; it is further

**ORDERED** that [47] defendants' motion for summary judgment is **DENIED**; it is further

**ORDERED** that [31] plaintiff States' motion for summary judgment is **GRANTED**; it is further

**ORDERED** that the "Bona fide group or association of employers" and "Commonality of interest" provisions of the Department of Labor's Final Rule, Definition of "Employer" Under Section 3(5) of ERISA—Association Health Plans, 83 Fed. Reg. 28,912 (June 21, 2018) ("Final Rule"), which are codified at 29 C.F.R. §§ 2510.3-5(b)–(c), are **VACATED**; it is further

**ORDERED** that the "Dual treatment of working owners as employers and employees" provision of the Department of Labor's Final Rule, which is codified at 29 C.F.R. § 2510.3-5(e), is **VACATED**; and it is further

**ORDERED** that the Final Rule is otherwise **REMANDED** to the Department of Labor for consideration of the effect of the severability provision, 29 C.F.R. § 2510.3-5(g), on the remaining portions of the Final Rule.

**SO ORDERED.**

\_\_\_\_\_  
/s/

JOHN D. BATES  
United States District Judge

Dated: March 28, 2019