



DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2510

RIN 1210-AB76

Definition of Employee Pension Benefit Plan under ERISA

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Final rule; CRA Revocation.

SUMMARY: Under the Congressional Review Act, Congress has passed, and the President has signed resolutions of disapproval of Savings Arrangements Established by States for Non-Governmental Employees and Savings Arrangements Established by Qualified State Political Subdivisions for Non-Governmental Employees, as codified in the Code of Federal Regulations. The Employee Benefits Security Administration (EBSA) published these final rules in 2016, effective October 31, 2016 and January 19, 2017, respectively. Because these resolutions invalidate these final rules, EBSA is hereby removing these final rules from the Code of Federal Regulations.

DATES: This action is effective [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jeffrey J. Turner, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693-8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On August 30, 2016, the Department issued a

final rule entitled Savings Arrangements Established by States for Non-Governmental Employees (81 FR 59464, Aug. 30, 2016). The final rule, which became effective on October 31, 2016, amended an existing rule defining “employee pension benefit plans” for purposes of ERISA (29 CFR part 2510, §2510.3-2) in order to add a safe harbor for certain state-established savings arrangements. Subsequently, on December 20, 2016, the Department issued another final rule entitled Savings Arrangements Established by Qualified State Political Subdivisions for Non-Governmental Employees (81 FR 92639, Dec. 20, 2016), which amended the August 30, 2016, final rule to expand the safe harbor to savings arrangements established by qualified state political subdivisions. The December 20, 2016, final rule became effective on January 19, 2017. (81 FR 59464, Aug. 30, 2016).

On February 15, 2017, the United States House of Representatives, under authority of the Congressional Review Act (5 U.S.C. 801 et seq.), passed joint resolution H.J. Res. 66 disapproving the August 30, 2016, final rule published in 81 FR 59464. (Cong. Rec. p. H1206-1218.) The Senate passed H.J. Res. 66 on May 3, 2017. (Cong. Rec. p. S2692-2712.) President Trump signed the resolution into law on May 17, 2017, as Public Law 115-35. Also on February 15, 2017, the United States House of Representatives, under authority of the Congressional Review Act, passed joint resolution H.J. Res. 67 disapproving the December 20, 2016, final rule published in 81 FR 92639. (Cong. Rec. p. H1218.) The Senate passed H.J. Res. 67 on March 30, 2017 (Cong. Rec. p. S2121-2122.), and President Trump signed it into law on April 13, 2017, as Public Law 115-24. Accordingly, as required by Public Law 115-35 and Public Law 115-24, the Department is hereby revising the Code of Federal Regulations to reflect Congress’s

disapproval of both final rules.

List of Subjects in 29 CFR Part 2510

Accounting, Coverage, Employee benefit plans, Employee Retirement Income Security Act, Pensions, Reporting.

For the reasons stated above and under the authority of the Congressional Review Act (5 U.S.C. 801 et seq.), Pub. L. 115-35 (May 17, 2017), and Pub. L. 115-24 (April 13, 2017), the Department of Labor amends 29 CFR part 2510 as follows:

PART 2510--DEFINITIONS OF TERMS USED IN SUBCHAPTERS C, D, E, F, G, AND L OF THIS CHAPTER

1. The authority citation for part 2510 continues to read as follows:

AUTHORITY: 29 U.S.C. 1002(2), 1002(21), 1002(37), 1002(38), 1002(40), 1031, and 1135; Secretary of Labor's Order No. 1-2011, 77 FR 1088 (Jan. 9, 2012); Secs. 2510.3-21, 2510.3-101 and 2510.3-102 also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. at 237 (2012), E.O. 12108, 44 FR 1065 (Jan. 3, 1979) and 29 U.S.C. 1135 note. Sec. 2510.3-38 is also issued under sec. 1, Pub. L. 105-72, 111 Stat. 1457 (1997).

2. Amend § 2510.3-2 by revising paragraph (a) and removing paragraph (h) to read as follows:

§ 2510.3-2 Employee pension benefit plan.

(a) General. This section clarifies the limits of the defined terms “employee

pension benefit plan” and “pension plan” for purposes of Title I of the Act and this chapter by identifying certain specific plans, funds and programs which do not constitute employee pension benefit plans for those purposes. To the extent that these plans, funds and programs constitute employee welfare benefit plans within the meaning of section 3(1) of the Act and § 2510.3-1, they will be covered under Title I; however, they will not be subject to parts 2 and 3 of Title I of the Act.

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Signed at Washington, DC, this 22nd day of June, 2017.

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Deputy Assistant Secretary for Program Operations, Employee Benefits Security
Administration, Department of Labor.

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