EXTENSIONS OF REMARKS

THE 401(k) PENSION PROTECTION ACT OF 1996

HON. GARY A. CONDIT
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 23, 1996

Mr. CONDIT. Mr. Speaker, recently I introduced H.R. 3688, the 401(k) Pension Protection Act of 1996. This legislation will protect the retirement savings of approximately 30 million Americans in 20 to 30 million households. Senator BARBARA BOXER previously introduced this bill in the U.S. Senate.

Under current law, traditional, defined benefit, pension plans are prohibited by the Employee Retirement Income Security Act [ERISA] from investing more than 10 percent of their assets in securities and real estate of the company sponsoring the pension plan. ERISA also requires diversification of employer investments made by traditional pension plans. Such plans are protected by Federal Pension Benefit Guaranty Corporation [PBGC] insurance in the event of the bankruptcy of the sponsoring company.

These rules and protections do not apply to 401(k)-type plans, exposing their participants to greater investment risk; 401(k)'s are not insured by the PBGC. Market risk is completely borne by participants.

In early June, a Wall Street Journal lead story illustrated the dangers that uneven application of conflict-of-interest rules presents to 401(k)'s. Color Tile, Inc., a nationwide retailer, sought bankruptcy protection in January. Color Tile closed 234 of 723 stores and fired hundred of employees.

The employees were shocked to learn that 83 percent of their 401(k) assets were invested in 44 Color Tile stores, some of which were closed. Color Tile's only retirement plan is the 401(k). The bankruptcy put not only the employees's jobs, but their pension savings, in jeopardy.

The danger to 401(k)'s permitted by the lack of a 10-percent limitation is also illustrated by the 1992 failure of Carter Hawley Hale stores, a major California department store chain. Carter Hawley's 401(k) was invested in Carter stock. The bankruptcy wiped out 92 percent of 14,000 employees' 401(k) plan assets.

This was unintended and unforeseen. ERISA originally contained no 401(k); 401(k) was added in 1978 to the section covering profit sharing plans, which are exempt from the 10-percent limitations on employer investment. At the time, the limitations were not seen as relevant. Experts predicted that the 401(k)'s would be small, profit-sharing plans. The defined benefit pension plan already protected by the conflict rules, was considered the vehicle for delivery of retirement security.

These expectations proved wide of the mark; 401(k) plans have become in many cases the predominant pension plan for Americans, not supplemental, profit-sharing plans. They enroll approximately 30 to 35 million Americans, hold $675 billion in assets, and are growing dramatically. It is time to protect 401(k) plans as ERISA intended retirement security vehicles to be protected.

H.R. 3688 applies the same employer conflict-of-interest and diversification rules to both 401(k) and traditional pension plans. Both would be prohibited from investing more than 10 percent of their assets in employer securities and real estate. Plans which hold no more than 10 percent of the retirement assets for all qualified pension plans of an employer would continue to be exempt. This permits smaller, supplementary, profit-sharing plans to be 100 percent invested in employer securities and property.

Investments in excess of the 10-percent limitation on the date of enactment would be grandfathered, allowing those plans to gradually reduce the amount in excess as they make new investments and receive new contributions. Current law allowing the Secretary of Labor to grant exemptions from conflict rules would continue.

Participant-directed 401(k) plans would be exempt, allowing employees to assume the risk of investing more than 10 percent of their assets in their employer. Employers could contribute stock in excess of the limit but only to employee directed accounts, requiring employers to compete in the financial marketplace with other investments, e.g., mutual funds, to retain the employee's investment.

Mr. Speaker, this legislation is needed to protect the retirement savings of Americans and I urge our colleagues to cosponsor this legislation.

H.R. 3688

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''401(k) Pension Protection Act of 1996''.

SEC. 2. CERTAIN PROHIBITED TRANSACTIONS APPLIED TO 401(k) PLANS.

(a) IN GENERAL.—Paragraph (3) of section 407(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1107(d)) is amended by adding at the end the following new sentence: ''Such term also excludes an individual account plan that includes a qualified cash or deferred arrangement described in section 401(k) of the Internal Revenue Code of 1986, if such plan, together with all other individual account plans maintained by the employer, owns more than 10 percent of the assets owned by all pension plans maintained by the employer. For purposes of the preceding sentence, the assets of such plan subject to participant control (within the meaning of section 404(c)) shall not be taken into account.''.

(b) EFFECTIVE DATE; TRANSITION RULE.—

(1) EFFECTIVE DATE.—Except as provided in paragraph (2), the amendment made by this section shall apply to plans on and after the date of the enactment of this Act.

(2) TRANSITION RULE FOR PLANS HOLDING EXCESS SECURITIES OR PROPERTY.—In the case of a plan which on the date of the enactment of this Act has holdings of employer securities and employer real property (as defined in section 407(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1107(d)) in excess of the amount specified in such section 407, the amendment made by this section shall apply to any acquisition of such securities and property on or after such date of enactment, but shall not apply to the specific holdings which constitute such excess during the period of such excess.

[From Newsweek, July 8, 1996]

WHEN A 401(K) IS NOT OK

(By Jane Bryant Quinn)

Everyone loves the 401(K)—including me, most of the time. Unseen hands pluck money out of your paycheck and invest it for your future, tax-deferred. If you leave the job early, you carry this portable pension with you. More than 22 million workers were covered by 228,000 plans in 1995, according to Access Research in Windsor, Conn. That's the only private retirement plan that a large percentage of them have.

But something is rotten in 401(k)-land, and it's going to cost some trusting employees much of the money they've put aside. These otherwise excellent plans have leaks. Unscrupulous, careless or foolish employers are despoiling some accounts.

Let me hasten to say that most of the 401(k)s today seem safe from harm. Those are the plans where workers can choose their own investments and follows their progress. But for about 20 percent of the plans (some small, some large), the boss or his minions handle part or all of the money. That's where the temptations lie. If the company gets into trouble, the boss might borrow recklessly from the 401(k). If he thinks he can outinvest anybody in the house, he might plunge into risky new issues that don't belong in the average worker's plan. He can even toy with showoff ''investments'' like Persian carpets or Kewpie dolls.

For a good example of what can go wrong, consider the luckless workers at Carter Hawley Hale, which filed for bankruptcy in 1991. They had no investment choice. Their entire 401(k) was invested in nearly worthless Carter stock. And then there's Color Tile, a $700 million floor-covering firm in Ft. Worth, Texas, that entered bankruptcy this year. A committee run by Color Tile's former chairman invested more than 90 percent of the 401(k) in Color Tile stores, according to a lawsuit filed on behalf of the plan. Color Tile didn't return calls. No one knows what the plan is currently worth. The employees can't get their money out.

Déjá vu: A generation ago, the same kinds of abuses poisoned traditional pension plans (the kind that pay retirees a monthly income for life). Employers could promise pensions but not provide all the money needed to pay. They could make workers wait for 15 or 20 years to receive any benefits, then fire them just before they qualified. For a while, most lawmakers shrugged off these tragedies as ''small stuff.'' It took a mount of injury to win ERISA, today's pension-protection law. How big does the next Color Tile have to be, for holders of 401(k)s to win protection, too? Here's an agenda, for any legislator of conscience:

Ban collectibles as 401(k) investments (art, antiques, stamps, gems, memorabilia). They're not permitted for Individual Retirement Accounts, Keogh plans or the 403(b) plans used by schools, hospitals and other nonprofits. So why should 401(k) savers be exposed to so nutty a risk? If the boss wants to cuddle up to a carpet, let him buy it on his own dime, not with money from the plan. I don't care if the plan gets lucky and the carpet's value flies. It's an unconscionable ''investment'' to force on workers of modest means.

Ban employers from putting more than 10 percent of plan money into the company's own securities or real estate. That's already the rule for traditional pension plans. A bill just proposed by Sen. Barbara Boxer, a California Democrat, would give the same protection to a 401(k) if the plan lets the boss make all the investment decisions.

Boxer's opponents are quick to say that the pension law shouldn't be rewritten just because of a smelly plan like Color Tile's. But there's a lot more rot in this barrel than anyone knows. Doctors and dentists, for example, may use a 401(k) to buy the building they practice in. That's fine for a well-to-do doc who also has other investments. But it's contemptuous of the nurse whose small savings are now tied up in one piece of real estate. Rick Shoff, president of NRP Financial Group in Jamison, Pa., and a recordkeeper for 401(k)s, advises employer-directed plans to put one or two employees on the investment committee. They deserve a say in where their money goes.

If I were czar, I'd stop plans from investing more than 10 percent of their assets in any real-estate or nonpublic business venture. These deals are illiquid and their value uncertain, says Normal Stein, professor of law at the University of Alabama. When you get a payout from such a plan, you may or may not receive a fair share, depending on how accurate the appraisal was. On rare occasions, you can't even get your share in cash. The plan might hand you a piece of paper attesting that part of the property is yours— and a fat lot of good that will do you if you want to sell.

Require a warning label on plans that let workers invest in company shares. The shares themselves may be low-risk, but it's high-risk to overinvest in them. In general, you should put no more than 10 percent of your money there, even when business is good. If employers use stock to match employee contributions, the employees should be free to swap into something else.

Offer an investment alternative to employees who hate their 401(k)s. You'd lose your company match, but who cares, if it's buying the equivalent of Carter Hawley shares? At present, you can switch to a tax-deferred Individual Retirement Account, but only if (1) no funds went toward 401(k)s this year, for you or your spouse, and (2) neither has a traditional pension plan. Employees with modest incomes can take an IRA write-off even if they're in a plan. But that's worth only $2,000 a year. Why not pressure plans to improve by creating real competition? Let unhappy workers put the same dollars into some sort of independent 401(k).

Under current law, those responsible for a 401(k) are supposed to act prudently and invest for the good solely of the participants. ''But noncompliance is an option for small employers,'' says attorney Michael Gordon of Washington, D.C. ''Nobody thinks the government's going to knock on their door and enforce the law.''

Skunks like that might not pay attention to reform (complain to the Labor Department at 202–219–8776). But new laws could save the many plans whose sponsors aren't devious, just dumb.

THE DEFENSE OF MARRIAGE ACT

HON. JAMES M. TALENT
OF MISSOURI
IN THE HOUSE OF REPRESENTATIVES
Tuesday, July 23, 1996

Mr. TALENT. Mr. Speaker, marriage is older than the Government, older than the Constitution and the Union, older than the political traditions from which our Republic springs. It originated with human civilization; it is rooted in and sanctioned by the precepts of all the great monotheistic religions and in particular the Judeo-Christian religion. It strikes me as an enormous act of presumption to treat the institution of marriage as if it were infinitely malleable, like silly putty that can be turned and twisted into any shape without destroying it. If marriage means anything, it means nothing, and if it means nothing then our society fades away like a flower with no roots. I support this bill because it does what it says it will do; it defends marriage insofar as it is appropriate in our Federal system for the Congress to do so.

I want primarily today to concentrate on the arguments offered against the bill.

First, it is said that the bill discriminates against loving homosexual partners. Well, Mr. Chairman, this bill maintains the standards of our society; and whenever you maintain a standard, you necessarily place a burden on those who don't meet the standard. Our society has a standard against polygamy; that means that loving polygamous couples cannot all marry each other. We have a rule against incest. That discriminates against adult incestuous couples who wish to marry. Mr. Chairman, our society is hurting so badly that I'm for almost any kind of real love or commitment. But there is a limit to how much we can change the organic institutions of our society in response to the alienation some people feel. We live in a free country, where people can live pretty much as they want. It is free precisely because we have standards, because our society has successfully socialized most Americans in the values of love, charity, and tolerance; and the institution on which we depend to socialize these values is the institution of marriage. Those who oppose this bill are either seeking no standards or a standard vastly different from that sanctioned by millennia of tradition, the teachings of all the monotheistic religions, and in particular the teachings of Judeo-Christian religion on which our culture is based.

It is also argued that supporting this bill and defending traditional marriage is equivalent to racial bigotry. Here I have to offer the House a personal complaint. I don't speak very often on the House floor, and it seems like every time I do somebody is calling me a racial bigot. I was for a balanced budget and that made me the same as a racist. I'm for welfare reform and in the eyes of some that was the equivalent of racism. Now I'm for the traditional standards of marriage and once again the other side is calling me a bigot. Well, if supporting heterosexual marriage is the equivalent of racism, then Pope John Paul is the equivalent of a racist and so are a lot of black pastors around the country because they all support traditional marriage, too. Mr. Chairman, it is precisely this kind of incoherence, this substitute of moral posturing for moral reasoning, that is at the heart of the cultural decline in America today.

Finally, we are told that this bill is divisive. Mr. Chairman, there is a division in our society over whether homosexuality should be treated in all respects as equivalent to heterosexuality. Those who support this agenda are attacking the marriage institution in support of their cultural goals. We do not call you divisive because you are attacking the institution of marriage. Why do you call us divisive for defending it? The question isn't whether any of us are being divisive; it is what side of the division you are on, and whether you want this dispute to be resolved for every State by the Supreme Court of one State. If you respect marriage, if you cherish the traditions of our society, if you want to nurture the most basic institutions of our culture, then vote against these amendments and for the Defense of Marriage Act.

INTRODUCTION OF THE NORTHERN MARIANA ISLANDS DELEGATE ACT

HON. ELTON GALLEGLY
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Tuesday, July 23, 1996

Mr. GALLEGLY. Mr. Speaker, I am introducing today a bill to provide for a nonvoting Delegate to the House of Representatives to represent the Commonwealth of the Northern Mariana Islands.

I do so with the original cosponsorship of Chairman DON YOUNG. Both of us have set the goal of clearing away the old, traditional ways of dealing with the territories of our Nation. The Northern Mariana Islands Delegate bill serves that goal. This measure enjoys broad bipartisan support and I want to acknowledge members of the minority who are also original cosponsors.

I believe in fairness and political justice. Every U.S. citizen living within the borders of this Nation should have a voice in Congress. Only the people of the Northern Marianas do not. My bill corrects that. It provides for a Delegate to represent the Northern Marianas here in the House of Representatives.

Historically, Congress has provided for representation by Delegate for over 30 U.S. territories. Today, four of five territories and the District of Columbia, or the six areas of our Nation which have permanent populations but are not States, are so represented. My bill provides representation for the sixth, the Northern Mariana Islands.

I also believe in reducing the influence of Washington in local affairs and in increasing local responsibility for local actions. During the last two Congresses, I urged the closing of the Interior Department office that has for years been a kind of territorial overseer. With the bipartisan support of my colleagues, the 104th Congress has terminated the Office of Territorial and International Affairs, eliminated the Assistant Secretary political position for that office, and reduced the bureaucracy in half. That office was no longer required since the territories have their own elected officials at home and their own elected official in Congress. However, only the Northern Marianas lacks an elected representative in Congress and the legislation I have introduced corrects that. With passage of the Northern Mariana Islands Delegate Act, all these territories will be