

105TH CONGRESS  
1ST SESSION

# S. 106

To require that employees who participate in cash or deferred arrangements are free to determine whether to be invested in employer real property and employer securities, and if not, to protect such employees by applying the same prohibited transaction rules that apply to traditional defined benefit pension plans, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JANUARY 21, 1997

Mrs. BOXER introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To require that employees who participate in cash or deferred arrangements are free to determine whether to be invested in employer real property and employer securities, and if not, to protect such employees by applying the same prohibited transaction rules that apply to traditional defined benefit pension plans, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “401(k) Pension Protec-  
5 tion Act of 1997”.

1 **SEC. 2. SECTION 401(k) INVESTMENT PROTECTION.**

2 (a) LIMITATIONS ON INVESTMENT IN EMPLOYER SE-  
3 CURITIES AND EMPLOYER REAL PROPERTY BY CASH OR  
4 DEFERRED ARRANGEMENTS.—Paragraph (3) of section  
5 407(d) of the Employee Retirement Income Security Act  
6 of 1974 (29 U.S.C. 1107(d)) is amended by adding at the  
7 end the following new subparagraph:

8 “(D) The term ‘eligible individual account plan’  
9 does not include that portion of an individual ac-  
10 count plan that consists of elective deferrals (as de-  
11 fined in section 402(g)(3) of the Internal Revenue  
12 Code of 1986) pursuant to a qualified cash or de-  
13 ferred arrangement as defined in section 401(k) of  
14 the Internal Revenue Code of 1986 (and earnings  
15 thereon), if such elective deferrals (or earnings  
16 thereon) are required to be invested in qualifying  
17 employer securities or qualifying employer real prop-  
18 erty or both pursuant to the documents and instru-  
19 ments governing the plan or at the direction of a  
20 person other than the participant (or the partici-  
21 pant’s beneficiary) on whose behalf such elective de-  
22 ferrals are made to the plan. For the purposes of  
23 subsection (a), such portion shall be treated as a  
24 separate plan. This subparagraph shall not apply to  
25 an individual account plan if the fair market value

1 of the assets of all individual account plans main-  
2 tained by the employer equals not more than 10 per-  
3 cent of the fair market value of the assets of all pen-  
4 sion plans maintained by the employer.”.

5 (b) EFFECTIVE DATE.—

6 (1) IN GENERAL.—The amendments made by  
7 this section shall take effect on the date of the en-  
8 actment of this Act.

9 (2) TRANSITION RULE FOR PLANS HOLDING  
10 EXCESS SECURITIES OR PROPERTY.—

11 (A) IN GENERAL.—In the case of a plan  
12 which on the date of the enactment of this Act,  
13 has holdings of employer securities and em-  
14 ployer real property (as defined in section  
15 407(d) of the Employee Retirement Income Se-  
16 curity Act of 1974 (29 U.S.C. 1107(d)) in ex-  
17 cess of the amount specified in such section  
18 407, the amendment made by this section ap-  
19 plies to any acquisition of such securities and  
20 property on or after such date, but does not  
21 apply to the specific holdings which constitute  
22 such excess during the period of such excess.

23 (B) SPECIAL RULE FOR CERTAIN ACQUISSI-  
24 TIONS.—Employer securities and employer real  
25 property acquired pursuant to a binding written

1 contract to acquire such securities and real  
2 property entered into and in effect on the date  
3 of the enactment of this Act, shall be treated as  
4 acquired immediately before such date.

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