THE ENRON COLLAPSE AND ITS IMPLICATIONS FOR WORKER RETIREMENT SECURITY

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BEFORE THE

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HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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HEARING ON

THE ENRON COLLAPSE AND

IT'S IMPLICATIONS FOR WORKER RETIREMENT SECURITY

Wednesday, February 6, 2002

Committee on Education and the Workforce

U.S. House of Representatives

Washington, D.C.

The Committee met, pursuant to notice, at 10:20 a.m., in Room 2175, Rayburn House Office Building, Hon. John A. Boehner, Chairman of the Committee, presiding.

Present: Representatives Boehner, Petri, Ballenger, Hoekstra, McKeon, Castle, Johnson, Greenwood, Souder, Upton, Hilleary, Ehlers, Fletcher, DeMint, Isakson, Goodlatte, Biggert, Platts, Tiberi, Keller, Osborne, Culberson, Miller, Owens, Payne, Mink, Andrews, Roemer, Scott, Rivers, McCarthy, Tierney, Kind, Sanchez, Ford, Kucinich, Wu, Holt, Solis, Davis, and McCollum.

Staff present: David Connolly, Jr., Professional Staff Member; Christine Roth, Professional Staff Member; Dave Thomas, Legislative Assistant; Paula Nowakowski, Staff Director; George Canty, Counselor to the Chairman; Ed Gilroy, Director of Workforce Policy; Victoria Lipnic, Workforce Policy Counsel; Allison Dembeck, Executive Assistant; Stephen Settle, Professional Staff Member; Molly McLaughlin Salmi, Professional Staff Member; Dave Schnittger, Communications Director; Kevin Smith, Senior Communications Counselor; Heather Valentine, Press Secretary; Maria Miller, Communications Coordinator; Jo-Marie St. Martin, General

Counsel; Linda Stevens, Chief Clerk/Assistant to the General Counsel; Patrick Lyden, Professional Staff Member; Deborah L. Samantar, Committee Clerk/Intern Coordinator.

Mark Zuckerman, Minority General Counsel; Cheryl Johnson, Minority Counsel; Michele Varnhagen, Minority Labor Counsel/Coordinator; Peter Rutledge, Minority Senior Legislative Associate/Labor; Ann Owens, Minority Clerk; Camille Donald, Minority Legislative Associate/Labor; Dan Rawlins, Minority Staff Assistant/Labor; and, Joe Novotny, Minority Staff Assistant/Education.

Chairman Boehner. A quorum being present, the Committee on Education and the Workforce will come to order. Good morning, everyone. We're meeting today to hear testimony on the collapse of Enron and its implications for worker retirement security.

I would like to welcome our witness today, the Honorable Elaine Chao, Secretary of Labor. It is an honor to have you with us once again. This is the second time that Ms. Chao has appeared before our Committee since becoming Secretary, and I'd like to thank her for coming here today to discuss this important and timely matter.

Let me also extend a warm welcome to my colleague and Ranking Member, Mr. Miller, and to all my colleagues on the Committee. I want to thank Mr. Miller for his cooperation in helping to put this hearing and tomorrow's hearing together, and thank all of my colleagues for what I thought was a very successful first year under new management, if you will, on both sides of the aisle in the Committee last year.

I think you all know that, under Committee Rule 12(b), opening statements are limited to the Chairman and Ranking Minority Member of the Committee. Therefore, if other Members have statements, they will be included in the record, and without objection, so ordered.

OPENING STATEMENT OF CHAIRMAN JOHN A. BOEHNER, COMMITTEE ON EDUCATION AND THE WORKFORCE

Late last year, thousands of working Americans employed by Enron Corporation watched helplessly as their company collapsed, and tragically, their retirement savings were lost with it. Longtime, loyal Enron workers who had saved for years and placed their trust in the company's 401(k) plan saw their dream of a safe, secure retirement vanish, almost overnight.

Across our country, millions of hard-working Americans are asking anxiously: "Could this happen to me? What actions are the Bush Administration and Congress prepared to take to ensure that it doesn't happen to me? Why did thousands of employees who had saved all their lives for a safe and secure nest egg see their retirement savings evaporate as the company unraveled?" We also have the responsibility of asking to what extent did outdated federal pension laws contribute to Enron's fall and the fate of its workers' 401(k) plan?

Today we begin the process of asking all of those questions. As our Committee begins hearings this week into the Enron collapse, we do so with a firm commitment to identify further

reforms that promote security, education, and freedom for employees who have saved all of their lives for a secure retirement.

Last week, President Bush sent a clear message to Congress that he was committed to addressing the Enron tragedy by calling for new safeguards to help workers preserve and enhance their retirement savings. The President followed up his State of the Union speech on Friday by announcing his proposal to restore Americans' confidence in the security of their pension plans.

The President's recommendations include: providing workers greater freedom to diversify and manage their own retirement funds; ensuring that senior corporate executives are held to the same restrictions as average American workers during so-called blackout periods; giving workers quarterly information about their investments; and expanding workers' access to investment advice. We look forward to Secretary Chao telling us more today about the President's pension reform proposal, as well as the Department of Labor's role in overseeing pension plans and its Enron investigation.

While the ongoing investigations by the Bush administration and Congress will reveal the extent to which Enron's employees may have been victims of criminal wrongdoing or neglect, it is already evident that Enron's employees are the victims of an outdated federal law that continues to needlessly deny the rank-and-file workers access to quality investment advice.

Media reports have indicated that there were several windows of opportunity before and after the blackout of the Enron 401(k) plan that employees had to sell their company stock and diversify their retirement savings. This tells us that some of Enron's employees could have preserved their retirement savings if they had access to a professional advisor who would have warned them in advance that they should diversify their portfolio.

Last November, the House took the first step toward giving rank-and-file workers the same access to professional investment advice that wealthy employees and executives have by passing the Retirement Security Advice Act. I'm very pleased that President Bush and other members of the Administration have embraced this bipartisan bill. My hope is that the Senate will quickly follow suit in the same bipartisan spirit so that President Bush can sign this legislation into law on behalf of American workers.

Investment advice is likely only one part of a broader legislative exchange needed to prevent another Enron tragedy. The Enron collapse has provided tragic confirmation of the need for modernization of America's pension laws, a problem Congress must now confront with a new urgency. American workers deserve the security of knowing there will be no more Enrons and the freedom to continue to capitalize on the opportunities to save and invest. We need to ensure that American workers are fully protected and fully prepared with the tools they need to protect and enhance their retirement savings.

I would now like to yield to my friend and distinguished colleague from California, Mr. Miller.

WRITTEN OPENING STATEMENT OF CHAIRMAN JOHN A. BOEHNER, COMMITTEE ON EDUCATION AND THE WORKFORCE – SEE APPENDIX A

OPENING STATEMENT OF RANKING MEMBER GEORGE MILLER, COMMITTEE ON EDUCATION AND THE WORKFORCE

Thank you, Mr. Chairman, and thank you very much for convening this hearing. Madame Secretary, thank you for joining us this morning, and we look forward to your testimony.

The story of Enron is a scandal and a tragedy of enormous proportions. It is a story of high-ranking company officials whose arrogance and desire for personal aggrandizement overwhelmed their sense of responsibility to their company, to their employees, to their shareholders, and to the law. The Enron scheme did not simply result in the bankruptcy of what was once listed as the seventh-largest corporation on the Fortune 500 list. It was a scheme that devoured the retirement nest eggs of thousands of hard-working men and women.

The spectacle of company executives hiding the abysmal financial condition of Enron on one hand, while cashing out company stock and exercising options on the other, is an audacious assault on our pension plans and security laws. It offends our sense of fairness and clearly offends our sense of justice.

When we dig a little deeper, we see that Enron used the expansion of the 1990s to trim employees' pensions and benefits while increasing the benefits of their executives. Immediately, they started a process of having a two-tier system within the company. Those same executives got bailed out with golden parachutes and stock options while workers were locked into imploding, worthless stock.

In addition to the employees who lost their 401(k) retirement, scores of rank-and-file employees took permanent cuts in their pension plans because the company offset their benefits based on inflated and now worthless stock contributions in the company's ESOP plan. We also have learned how Enron had specific provisions that limited the employees' access to employer contributions in stock, even though they had invested in their own retirement 401(k) plan, until they reached the age of 50.

As Enron demonstrates, a worker's retirement savings can quickly become vulnerable if there are not adequate employee rights and protections. Clearly today, the outdated pension rules are putting employee nest eggs at risk.

As we see from the chart over here to the right, Enron is not the only company that has substantial financial assets of company stock vested in their employees' 401(k) plans. If you read this chart that was produced by the Congressional Research Service, you'll see Procter & Gamble at 94 percent and Sherwin Williams at 91. These have all become too familiar for us. We also notice that, in many instances, these plans have restrictions on the ability of vested employees to move

financial assets that have been contributed by the employer.

Enron is symptomatic of something larger than just the question of people's retirements and the security of their retirement plans. It also indicates the vulnerability of workers in today's world. As the minimum wage continues to fall behind the cost of living and as workers find themselves losing their jobs, they become more and more vulnerable by not having health insurance, not being able to afford the COBRA payments, and finding out that they now must invade their retirement plans.

If their retirement plans are worth anything, they are invading them now to try to pay the mortgage and save their house. They're paying a penalty if they do that. You're given an incentive if you make a savings plan to buy a house, but if you save a house, you pay a penalty. They're invading their pension plans so they can make their COBRA payments. They're invading their pension plans so they can save their cars so they can try and find work.

So pension plans are under assault because of workers' insecurity in the workplace overall. I think that this Committee has an obligation to address the needs of the 38 million Americans without health insurance, the needs of the hundreds of thousands of Americans that have exhausted their unemployment benefits, and the needs of workers who, in many instances, were working at the lower levels of the economy and have no other resources to address these concerns.

More importantly, this hearing is about fundamental change. It's about fundamental justice. It's about fundamental fairness. It's about fundamental equity. The President said, and this nation agreed, that on September 11th everything changed for America, certainly with respect to its national security. On October 16th, when Enron changed its financial picture, everything changed for retirees in America with respect to their financial security. We must be willing to investigate each and every underlying law, underlying protection and relationship in this situation.

I'm sure that my colleagues, who have been visited by people on the street, or when shopping in a store, if not asked about Enron, then were asked about 401(k)s. They're asking you about the security of their retirement. We have a national crisis. We have a national crisis of confidence. We have told small investors the miracle of the 401(k) plan was that if they invested for the long term, if they had the faith in the markets, if they started early, they could end up with $1 million or more as a retirement nest egg. They were told to be diligent: "Don't just buy a stock, look at the 10-K statement, look at what the auditors say." Now we find out that the auditors were in on the gig. The auditors were in on the gig because they were financially compromised, and so they were part of cooking the books.

So where does a small investor go now? The small investor goes to an investment advisor. We now find out that the investment advisors are in on the gig, because the investment house was looking for fees, looking for commissions, looking for partnerships with Enron and other corporations. Where does a small investor go now with confidence about their retirement? Where do the people who are 50 to 55 years old, who lost their entire nest egg at Enron go to rebuild their financial security, their plans for the future, their retirement years? Where do they go? In the current system, they have no place to turn, because the system is not on the level. The system is

dramatically compromised by financial conflicts of interest, by fraud, by deceit, by deception.

It is the role of government to once again level the playing field, protect the consumer, make sure that people who engage in criminal activity go to jail, maybe and hopefully as an example. Because as we have seen with the Andersen Company, they're fully prepared to settle for hundreds of millions of dollars when they've been found doing wrong. They've been the subjects of the largest fines in SEC history, and they continued the practice at Enron and God knows where else. So apparently, it's time that people take responsibility and face the idea of the jail door slamming behind them.

But at this moment, the small investor, the person protecting their retirement, has no place to turn. Hopefully, this Congress, this Committee, this Administration will understand the nature of this crisis that we're suffering across the country.

This isn't just coming from George Miller. This is coming from some of the most conservative Wall Street analysts in this country, and we see it every day as it plays out, as companies try to readjust the false images that they presented to the American public, to their investors, to the shareholders, to their employees.

We now see people who were selling their stock a couple of weeks ago buying it back as an act of faith. Give me a break. Give me a break. People two weeks ago sold $100 million worth of stock and they bought back $17 million last week as an act of faith to show the investors that they really had confidence in their company.

Now, we have a lot of work to do, ladies and gentlemen. This Administration has a lot of work to do, and we cannot fail in this, because we have told millions of Americans that this is their road to retirement security. We've just hit a huge, huge bump in the road that threatens each and every one's retirement plans.

Chairman Boehner. Let me thank my colleague, and before the Secretary begins her testimony, remind Members that we will allow five minutes for questions once the Secretary has finished her testimony.

For the benefit of the Members and the Secretary, we do expect several votes at about 11 o'clock, and for the benefit of the Members, you should know the Secretary has given us a two-hour time frame. At about 12:15, the Secretary is going to have to go. So I would encourage all Members in their questioning to try to tighten it up and allow this process to move forward.

With that, we want to thank the Secretary for being here, welcome you back again, and allow you to share your testimony with us.

STATEMENT OF THE HONORABLE ELAINE L. CHAO, SECRETARY, UNITED STATES DEPARTMENT OF LABOR, WASHINGTON, D.C.

Good morning, Chairman Boehner, Ranking Member Miller, and Members of the Committee. I appreciate very much the opportunity to appear before this Committee to discuss the President's plan to protect workers' retirement security.

As you may have heard, 42 million Americans have 401(k) accounts through their employers, owning a total of about $2 trillion in assets. These aren't just statistics. In fact, they represent the hopes and the aspirations of millions of Americans for a secure and decent retirement.

In a few weeks' time, thanks to the work of the Members of this Committee, we will convene the Saver Summit. This unique event is dedicated to the premise that Americans should be encouraged to save and to plan for their own future. I think we all agree that the best incentive to save that we can offer is to protect the security of these savings, whether they're held in a 401(k) program or a company or a union pension plan.

The President's plan will help those who are saving for retirement by giving workers more choice, confidence, and control over their retirement plans: choice, in terms of how they invest their retirement savings in ways that work best for them and their families; confidence in their investment that comes from investment decisions that are derived from getting reliable and professional financial assistance; and the same degree of control over their investments that any other worker in the organization receives, from the top floor to the shop floor.

The first principle of the President's plan is expanding Americans' freedom of choice over their retirement investments. Over the last 20 years, there has been a revolution in the way that people plan and save for retirement. The 401(k) plan has helped to make America a nation of investors. Workers at every income level are being empowered to make their own decisions about their financial futures based on their families' needs and goals. That increase in freedom has opened up the potential for a better quality of life for millions of Americans, but like every other increase in freedom, it has also introduced new risks.

Recent corporate bankruptcies have revealed the need for stronger safeguards to protect workers. We believe that one important way to reduce these risks is to give workers even more freedom, not less, more choice, not less. That is why the President's plan will give workers a right that the employees of Enron did not have, and that is the right to sell company stock contributed by an employer to their 401(k) after a three-year period.

For most individual investors, diversification is the key to reducing risk over the long term, and the President's proposal will give workers the right to make that choice. We need to remember, it is their money. They earned it. They sacrificed to save it. They should have the right to decide how to invest it. For that same reason, freedom of choice also means that Washington should not be allowed to set arbitrary limits on how much company stock a worker can hold. While it may be tempting to go down this road in the wake of recent business failures, this would actually take away from workers the right to choose, which they deserve. Arbitrary limits on workers' investment choices would not be progress. It would be turning back the clock.

Our modern economy is far from being perfect, but one of the wonders of the American system is that an administrative assistant from Microsoft or Home Depot or General Electric can

become a millionaire by working hard, sticking with their company and investing in it, and having a good investment strategy.

Now, of course, we all know that Enron did not turn out like a Microsoft or a Home Depot or General Electric, but one thing that our country stands for is the belief that individual Americans should have the right and the freedom to make their own financial choices based on what's best for them and their families. This is the core of what the entire world calls the American dream. Restricting workers' choices won't necessarily make their investments safer. It will just reduce the freedom that workers have to shape their own financial futures.

At the same time, choice, by itself, will not ensure the security of workers' retirement savings, either. People need to have confidence in the decisions that they will make about their investments, and that comes from getting reliable investment assistance and accurate financial information. That's why our plan and the President's plan incorporates Chairman Boehner's Retirement Security Advice Act, which passed the House with an overwhelming bipartisan majority.

[**Secretary Chao**. Mr. Chairman, I hope that you won't mind that we borrowed your fine work in this regard?
Chairman Boehner. You're more than welcome to use it all you'd like.]

As this Committee knows, these provisions would encourage employers to make investment assistance available to their employees by giving them access to professional financial advisors. On this point, I think we should also make several others, and let me make them. I think we need to make two important reality checks.

First, the last year or so has been tough sledding for the average individual investor. Second, most people simply don't have the time or the inclination to become experts on managing financial portfolios, even their own. They have jobs to do, children to take care of, school activities to support, and of course, bills to pay, among their very many other activities. Especially in these less certain economic times, people are in desperate need of help as they chart a retirement strategy that fits their unique circumstances and goals.

In the same way that we provide retirement benefits through employers, we believe that it is possible to provide retirement financial assistance through employers in a way that safeguards the workers who receive these benefits. Just as ERISA currently provides, we would require investment advisors to act solely in the interest of the employees, their clients, and we will go after anyone who violates this vital and sacred trust.

Advisors should also be required to disclose any conflicts of interest that they may have and any fees that they may earn in recommending particular investments. Employers themselves would be responsible for choosing an appropriate investment advisor and monitoring the program on behalf of their employees.

Our department, the Department of Labor, is committed to expanding our outreach efforts to let workers know what their rights are, what information they should be getting, and how to raise

concerns about self-dealing by financial advisors. With these safeguards, we can give workers the confidence that they need to make good investment decisions and build a secure retirement. After all, why should only the CEOs get good financial advice?

Finally, workers need to have the assurance of control over their retirement savings, regardless whether they are a senior executive or a rank-and-file worker. They need to have ample opportunity to make investment changes before a blackout period occurs. They must be guaranteed that their employers will be held to the highest standards of conduct and that employers will prudently act solely in their interest during a blackout period. Workers should be assured that everyone in the organization, from the CEO on down, would have to abide by the same set of restrictions.

The President's plan will achieve this, by requiring that workers be notified a full 30 days in advance that a blackout period is going to occur. Our proposal will also prevent corporate officers from selling or purchasing any company stock while workers are prohibited from trading in their 401(k) plans during a blackout period, so there would be pension parity. We will also amend ERISA to clarify in no uncertain terms the fiduciary responsibilities and accountability of employers during blackout periods.

Taken together, these measures proposed by the President will give workers the choice, the confidence, and the control that they need, that they have a right to, to protect their savings and plan for a decent retirement: the choice to make their own decisions; the confidence that comes from good information and accountability; and a level playing field that gives workers control over their retirement savings. As the President said in his State of the Union address, a good job should lead to security in retirement. We know. At the Department of Labor, retirement security is our specialty and our mission.

In the year 2001 alone, last year, we conducted nearly 4,000 employee benefit investigations, obtained 76 indictments and 49 convictions, and recovered $662 million on behalf of aggrieved beneficiaries, employees. We were on the ground investigating Enron before it even declared bankruptcy, and we are doing everything we can to help these workers, and that is my personal commitment.

Whatever kind of retirement plan an employee may have, whether it be a 401(k) or a corporate or a union pension plan, our goal is to protect all hard-working Americans, from the cubicles of Palo Alto to the shop floors of Detroit, so that employees and workers can look to their retirement with confidence and with hope.

Thank you very much for giving me the opportunity to address this very important subject today. We look forward to working with Chairman Boehner and this Committee to ensure greater retirement security for all Americans.

I would be pleased now to answer any questions.

WRITTEN STATEMENT OF THE HONORABLE ELAINE L. CHAO, SECRETARY, UNITED STATES DEPARTMENT OF LABOR, WASHINGTON, D.C. – SEE APPENDIX B

Chairman Boehner. Thank you, Madame Secretary, for your willingness to come today, and for sharing your testimony with us.

Mr. Ford. Mr. Chairman, can I ask for a point of personal privilege, sir? Obviously, the Chair is able to recognize a former presidential candidate and great advocate, Rev. Jesse Jackson, who is in the audience.

I appreciate the time, Mr. Chairman.

Chairman Boehner. Thank you, Mr. Ford.

We all know that when it comes to making changes in our retirement and pension laws, that we have to tread carefully, that we want to do more good than harm. As we begin our discussions on this subject, I was hoping that you might be able to share with us some areas that the President's task force looked at, but decided not to proceed with, or decided to tread carefully with. Are there issues such as this that the task force decided to proceed with care on?

Secretary Chao. As some of you may know, the President has appointed two Cabinet-level task forces. The task force that I am on deals with pension reform. The Secretary of the Treasury and the Secretary of Commerce are on it, as well. Our task is to deal with pension reform. This is an issue that my department has been working on for quite a while. It is a personal commitment of mine to look into pension retirement security.

So last fall, before any of this occurred, I had already asked my team to begin to review the ERISA laws and rules and regulations to see how we can improve them, and also to review them for efficacy, obviously, and for responsiveness. So when the Enron situation developed, we were already on top of the situation, as I mentioned. We don't usually disclose the investigations, but because of the intense media questions, we did confirm on December 5th that on November 16th we opened up an investigation, and that was in advance of the company's bankruptcy.

There is a second task force that deals with governance and with accountability, and the President has asked the Secretary of the Treasury, the Chairman of the Federal Reserve, and several others to take a look at those issues.

We acted in a very, very prompt and responsive fashion, and there was agreement that workers needed to have freedom and flexibility to decide their own financial futures. We had considered some other issues of accountability and auditing, for example, but that rightly belongs to the second task force. I understand they are coming up with their recommendations shortly.

I think everyone understands the need for speedy action to not only protect workers who have already been hurt, but to think about future situations, so that we can ensure future retirement

security, as well.

Chairman Boehner. There are a number of bills that have been introduced in response to the Enron collapse, and one of the features of several of these bills would be to place a restriction on the amount of company stock that was in a 401(k), either contributed by the company or purchased by the employee. As I read through the President's proposal, there is no recommendation for a cap.

Ms. Chao, why isn't there a cap?

If Mr. Miller's chart could be put back up, we may want to reference it.

Secretary Chao. This goes back to your previous question, and actually, we did consider the cap. We obviously wanted to protect workers, and we considered a lot of possibilities. The question of the cap actually is that we wanted to give workers the freedom and the right to decide their own financial futures, because this, after all, is their money. It's not the government's money.

Workers need and should have the right to determine how they want to invest their own monies. Again, this is their money. They saved it. They made sacrifices along the way to make those savings, and they should have the right to determine how they want to make their investment decisions.

Chairman Boehner. Madame Secretary, let me just say that I applaud the task force and the President for not putting a cap on the amount of company stock that can be in a 401(k) and thereby limiting employees' ability to maximize their retirement security.

I would just point out on the chart as supplied by my good friend Mr. Miller, there are two companies on this chart that I have very close knowledge of. Procter & Gamble and the Kroger Company are both located and headquartered in Cincinnati, Ohio. I have literally thousands of constituents employed in both of those companies that live in my district.

I can tell you that they're both on this list because, in Procter & Gamble's case, 94 percent of the plan assets are in company stock. For the Kroger Company, the amount is about 65 percent of the total assets of their plan in company stock. Generations of employees at Kroger, and generations of employees at Procter & Gamble have done very well investing in their stock.

If I were their investment advisor, I might suggest to them that they not have as high a percentage of company stock as a proportion of their overall portfolio. I think with the investment advice bill that we've already passed, they would get the same kind of advice from the private sector.

But how can we, the government, deny people the right to make that choice themselves, especially when, in those two companies' cases, generations, not just over the last five or ten years, but generations of workers have done very, very well?

Secretary Chao. I think it goes back to your point Mr. Chairman that we do indeed want to ensure a worker's right to make their own financial and investment decisions. Where we can be of help is

to provide assistance with professional financial advice.

Your bill provides for employees to hire financial advisors that would be made available to employees, with the caveat that these financial advisors must act in the best interests of the employees, that they disclose any conflicts of interest, and that they disclose any fees that they will receive from any such investments.

Chairman Boehner. I hate to correct the Secretary, but the financial advisors would be required to act solely in the interest of the employee. Not just in the best interest, but solely in the interest of the employee.

My time has more than expired. Let me yield to my colleague from California, Mr. Miller.

Mr. Miller. Thank you, Mr. Chairman.

Madame Secretary first, let me just welcome Rev. Jackson. Thank you very much for being here at our hearing, and thank you for bringing the workers to Washington last week, and for your participation in this effort. I understand there are a number of workers in the audience today.

Madame Secretary, I'm delighted to hear you say that it's the workers' money and you don't think there should be a cap. In my bill, I do not have a cap, because I think workers ought to make this determination. It's not the government's money.

Well, let me tell you something else. It's not the company's money.

Secretary Chao. I totally agree with you on that.

Mr. Miller. Well, then, why do you let the company dictate what I can do with my money for three years?

Secretary Chao. I think we did discuss other timetables as well, and we wanted to make sure that there was a balance between employer and employee interests. We did not want to discourage employers from making matching corporate contributions.

Mr. Miller. I appreciate that. Now, may I interrupt you?

That balance, I think, is very important.

Secretary Chao. Yes.

Mr. Miller. The President said the other day, “Good for the captain, good for the sailor.”

Secretary Chao. Yes.

Mr. Miller. But the fact of the matter is the executives were selling stock all this time. This talks about stability. You need three years' control of people's money for stability. They were bailing

out of this company. Even people with fiduciary responsibilities were bailing out of this company because they had stock options, not retirement.

Secretary Chao. Right.

Mr. Miller. So they sold more stock than in the retirement plan, so it can't be about stability.

Secretary Chao. No, the three years is basically connected.

Mr. Miller. Let me finish.

Secretary Chao. Sorry.

Mr. Miller. Let me just finish.

Secretary Chao. Yes.

Mr. Miller. The fact of the matter is that that pension is part of the compensation package for that employee. That contribution is made for services rendered by that employee. That is their money at that moment.

I think when we talk about the freedom of the employee to make these investment decisions the freedom must be real. If you were in a three-year restriction between 1998 and 2002, we saw some of the stellar companies in this country lose 70, 80, 90, 95 percent of their capitalized value. Why should I be stuck in that system if it's really about the freedom for me to maximize my retirement potential?

In the Washington Post today, in the New York Times today, stories of Enron executives bailing out all during this time, even those people who had a fiduciary relationship with the pension plan. The employers didn't think that that was instability. So I raise that point about that.

The other point is that the President's plan doesn't address the so-called KSOP, the hybrid of the ESOP and the defined benefit plan, and it doesn't provide them this kind of protection. I think you have to take a look at that. Also, what do you do about the 401(k)s that are designed just for the executives that require a payout to those executives even if the company fails? The sailor is last in line in bankruptcy, the executive is first in line, because they have a guaranteed payout. "Good for the sailor, good for the captain?" I don't think so. I don't think so.

So you can escape these regulations by going to a KSOP, and you can escape these regulations if you're in an executive 401(k) plan. Obviously, the harm continues for a three-year period, when markets move at the speed of light. That's one thing the American public learned.

Also, regarding the question on advisors. We've had some discussions in this Committee back and forth on Mr. Boehner's bill. I continue to be concerned about the independence of the advice, because now you have people coming from large investment banks, or large mutual funds that hold positions or contracts with the companies they advise, and you say they must disclose.

How is that different than the requirements between Arthur Andersen and Enron? The disclosure didn't take place. People didn't disclose this to the employees.

I think we've got to talk about the penalties for the failure to do that, and I think the disclosure has to go to the full financial basket, if you will. Even on CNBC, when one of these smart investment advisors comes on, because they got in trouble, CNBC asks them: "Do you have a position in this company? Are you long? Are you short? Do you have a relationship?"

Why? Because we now know the investment advisors are no longer independent contractors, they have to worry about what's going on in the executive suites, and the relationships between companies they give advise to.

I think you also need to make a provision. Can this investment advisor advise me about my company stock, about my Procter & Gamble, my Kroger, my K-Mart, because they've been invited in now, they have a relationship with this company. Are they going to tell them that they think Enron is a basket case, way back in December, way back in October last year? Are they going to do that? Are they going to be free to tell me? Because, again, we know that a lot of these employees kept this stock out of loyalty to the company. Even when they could sell, they didn't sell. We hope to educate them about the trap that that's part of.

So I would hope that you would look at those provisions of your legislation, because I think it's very important. I mean, I don't believe, in a market that moves as fast as it does today, that we can tell people that the employer can lock up their retirement funds. And you said it's their money. I'm not so sure the government should be able to put a cap on employee's investment decisions, but the employer sure as hell should not be able to lock up these funds for three years. In three years, we could be in a boom, out of a recession and hopefully in a recovery, and they would not have access.

Secretary Chao. Mr. Miller, let me just say that I look forward to working with you on this. This is a plan of great concern to the President, and to me personally. We are doing everything we can at the Department to help Enron workers, and you have my commitment on that.

I might also just add, on the three-year vesting, the vesting is important, whether it's three years or whatever. That was a compromise figure. Basically, we wanted to arrive at a period in which, indeed, the money is theirs. When you say that you know whose money is it, if the money in the retirement fund is not vested, it's not really the employee's.

Mr. Miller. Excuse me. I'm going to interrupt you.

The employee got that as part of their compensation with that paycheck or that contribution or that distribution for services rendered. I appreciate the fiction that somehow this isn't a defined benefit plan. That's in their 401(k) plan, in theory. Just like people think there's something in the Social Security trust fund, these people thought there was an account with their name on it. It's their money. It was put in their plan, "x" number of shares of Enron stock. That is their money at that moment. The vesting rules I appreciate. They were from a different time without computers,

with bookkeeping problems.

Secretary Chao. But that's what the three years was supposed to address, the vesting. So if that is something that we can discuss, I will be more than glad to.

Mr. Miller. Because with that vesting rule, they're locked in, as I said, at a time in the last three years when their companies lost 70, 80, and 90 percent of their capital value. That cannot be the answer of this Administration to these workers; that they're going to be locked in through economic cycles and they have to watch the diminishment of their plans.

Secretary Chao. I may have used the wrong word, for which, if I did, I apologize. But the issue also is, if an employee leaves before, let's say, a three-year, or whatever is the vesting period, the employee will not carry it with them.

Mr. Miller. Madame Secretary, that's why the vesting has to be changed. It's an old-time rule, when you were trying to coerce employees to stay. Today employees are mobile. They get offers. Why should they have to give back three years of compensation because they get a better job offer for their families? Why are you punishing these employees?

Secretary Chao. Well, Mr. Miller, as I mentioned, I look forward to working with you on this, but that is clearly not the intent.

Mr. Miller. I look forward to working with you, Madame Secretary, but that is the result, though. We have to look at the results.

Chairman Boehner. The gentleman's time has expired.

Secretary Chao. There are several other points that you have made which I appreciate. Let me go through them. It's not meant to be argumentative. I do want to work with you.

I believe I would take a look at the ESOP issue. Our plan does include ESOPs; so if there's some misunderstanding about them, let's try to clear that up, as well. Regarding trustee disclosure, we want very much to ensure that trustees are acting in the sole interest of the employees, and if it is not happening, our Department and others will be investigating that. I've heard you about the 401(k) guarantee issue. Let's talk about that issue, as well, and the advisor independence issue.

Mr. Miller. Thank you.

Chairman Boehner. The Chair recognizes the gentleman from North Carolina, Mr. Ballenger.

Mr. Ballenger. I'll try to keep this less than 15 or 20 minutes.

Secretary Chao. Thank you.

Mr. Ballenger. First of all, I'd like to say that I agree with you.

I have a company that's been in the manufacturing business since 1957, and we had a pension plan until 1974, and then the government came in and decided to put in ERISA. That meant the government was going to tell us what we could do with our money, in spite of what Mr. Miller says. So we dropped our pension plan, and went to a profit-sharing plan, which didn't work because some years we didn't make a profit. But these were still decisions that were made by management, and what was given to the employee was a decision made by management. Then we went to an ESOP. It was a privately owned company; the stock in the company was only valuable to the company. There wasn't any way you could doctor it up.

I think if you looked at the largest firms on that list that Mr. Miller has, most of those companies had ESOPs. ESOPs are where you give the company stock to the employee, and somewhere along the line, if you don't have a vesting period, the idea that you're trying to attract the workers to stay on the job is going to be lost. I don't care how he looks at it. It is of value to the company to give this benefit to the employees if they'll stick around. That's a valuable thing.

What I'm really trying to say is the more the government involves itself in these things, the more damage that can be done to future benefit plans. I just hope that somewhere, somehow, and I read your statement or heard you say it, we don't throw the baby out with the bathwater.

The basic idea, as far as I'm concerned, is these are programs that companies conscientiously put in to protect the employee as they retire, especially an ESOP. Because the only way that you can get stock out of an ESOP is to either quit, die, or retire. The whole point is, it's basically a retirement plan for the employee, and in a privately owned company like mine, nobody wants to buy the stock except the company.

So somewhere along the line, I think people have to look from a small business viewpoint, instead of from the viewpoint of a business listed on the New York Stock Exchange. That's a very small minority of the companies that exist in this country today. I'd like to put my two cents in if there is anything that I can do to defend ESOPs before we destroy them, as Mr. Miller would like to do.

I'd just like to congratulate you, because your statement pretty well covered everything that I think is worthwhile. If you have difficulty explaining to him some of the things that you wrote down or if there are any questions you would like me to answer, if you give me a shot, I'll be glad to help you answer those questions.

[Laughter.]

Secretary Chao. Thank you.

Mr. Ballenger. Thank you, ma'am. I don't need any further time.

Secretary Chao. Well, a worker's total compensation includes retirement, yes, but it includes not only retirement. It includes other benefits and also current income, as well.

Mr. Ballenger. Well we had a defined benefit plan to start with, and the government came in, so we went to a defined contribution plan to get away from the government. Then the government comes in again and we went to ESOPs, and then the government comes in again and we go to 401(k)s.

We are not trying to rob employees. We're trying to give them a benefit that will be good for their retirement, but if the government is going to make it so difficult, we don't have our own legal department. We don't have people that can draw these plans up. I do hope that you'll look at the viewpoint of smaller industries that are trying to help their employees out.

Thank you, ma'am.

Chairman Boehner. Would the gentleman from North Carolina yield?

Mr. Ballenger. Yes, sir.

Chairman Boehner. Mr. Miller, my good friend and colleague, seemed somewhat concerned about a three-year vesting period on company-given stock. I think we should clarify that what we're talking about here is stock that's matched if you will, by a company for a 401(k) or other similar savings program.

You know, today, under the rules, you could require stock be held in an account where you couldn't touch it until age 55, or in some cases, 55 and 10 years of service. Arriving at a balance of three years, I think has some merit. We have to understand that these systems that provide pensions to over half of our workforce are voluntary systems provided by employers to their employees. To the extent that we would change it, for an example, as in Mr. Miller's case, to immediately allow stock to be divested, to be changed, or to be sold could have the impact of employers providing less of a company match to 401(k) plans.

I think we've got to be very careful, as we go through this process, that we don't create disincentives for employers to become less active in this process and to give less company stock.

With that, let me introduce and recognize the gentleman from Indiana, Mr. Roemer, for five minutes.

Mr. Roemer. Thank you, Mr. Chairman.

Welcome, Madame Secretary.

Secretary Chao. Thank you.

Mr. Roemer. Happy to have you here.

We've all heard the term, particularly in the last few days, “axis of evil.” We've heard it on more than one occasion. I actually think it's applicable here. We have corporate greed, number one; two, we have faulty accounting practices; and three, we have unfair and unbalanced 401(k)

and pension systems, which equal an unmitigated disaster for the working people at Enron. Not only were 401(k)s almost demolished, pensions were wiped out. We had plans across America, in Florida losing $330 million in investments.

So what do we do? How do we try to fix this? How do we try to make sure another Enron doesn't happen again and that we don't expose working people to the problems and the pain and the disaster that they're experiencing now?

We have a system, Madame Secretary, where the executives cashed out, to the tune of millions of dollars. The workers were locked in, belted in, bolted into a system and couldn't get out of it, as they saw the stock plummet further and further, and their lifetime savings evaporate and disappear. We don't have a two-tiered system, we have a separate and unequal and unfair system for executives and for workers here.

Now, I have two questions. One relates to diversification. I know Mr. Miller's bill does not limit the amount of money that can be invested in a 401(k) in one particular company's stock. On the one hand I want to ask you why when all advice, whether it's from my father, who occasionally tries to give me some investment advice, or Charles Schwab, states, "Diversify. Don't put everything in one basket," do we have companies putting 94, 81, 75, 87 percent of their 401(k)s into one stock? Now, if you don't cap it, is there a way not to coerce workers into that kind of unbalanced system? Maybe there are some other ways to work on this.

The second question I have for you regards your budget. I just saw the other day, with the new budget in the Department of Labor, that we have cut Youth Opportunity Grants by $180 million. Now, in Indiana, we have a lot of unemployment and under-employment, and workers in a great deal of pain because of this recession. Especially for young people, it doesn't seem to me to be the fair or the appropriate time to be cutting back since we're trying to retrain our workforce in a global economy, whether they're going from a huge steel mill to smaller steel producing plant, or trying to move from steel to Intel chip-producing plants.

So I would hope that you would restore the cuts to these worker-training programs. I throw those two questions out to you.

Secretary Chao. The first question is about diversification. As I have said, the President's plan is very much in support of diversification, but we don't believe that a cap would serve the workers well, primarily because we're talking about 401(k)s, and this is their money. They have saved for it.

There is a vesting period, which if an employee leaves before the vesting period, they will not be able to take the money with them. Whether that will be changed, obviously, is legislative intent, but as of now, a person's retirement program consists of three streams of income. One is current income. One is non-cash items, such as benefits. Third is retirement.

So we want to make sure that people have the right information, because we believe that it is their right to choose how they want to make their investment decisions, and what we need to do

is to help equip them, empower them with the right information.

Mr. Roemer. Well, you said initially, Madame Secretary that there was discussion on whether or not there should be a cap.

If there was discussion about a cap in the President's announcement of this plan, what other things did you look at besides a cap to try to encourage diversification and not just limit it to information or education?

Secretary Chao. I really can't remember, but we discussed the cap, because obviously, there is existing legislation that's been introduced, and so we wanted to discuss that possibility, but I really can't, I can't remember the rest. Let me go on to a second point, and I want to be responsible in answering to you, which is why I want to be accurate.

On the second issue of the Youth Opportunity Grants, I think that's what you were talking about. That basically was a pilot program, and we have consolidated that pilot program with the rest of Workforce Investment Act programs, so that we have mainstreamed it. If a state determines that there is a need for youth opportunity grant activities, then the state can make those decisions, and the state has the money, because under the Workforce Investment Act, there are excess carryover funds of about $1.7 billion. That was a pilot program. We're wrapping it into WIA funding, and mainstreaming that program, so it will be up to the states.

Chairman Boehner. The gentleman's time has expired. The Chair recognizes the gentleman from Michigan, Mr. Hoekstra, for five minutes.

Mr. Hoekstra. I thank the chair.

Madame Secretary, it's great to see you here.

Secretary Chao. Thank you.

Mr. Hoekstra. I really applaud this Administration's leadership on this issue.

I can only reflect back a few years ago when the largest private sector union in America, the Teamsters, were wracked by a corrupt leadership, a leadership that took them to the verge of bankruptcy, looted their treasury for over $160 million, and ran a corrupt election. The last Administration did not stand up for worker rights.

This Administration is forthright. You're leading the way on protecting these and other workers, and you're coming forward with proposals. Thank you very much. The same goes for the Chairman of this Committee for standing up for worker rights and taking the lead on this issue. There are a lot of people who have been “Johnny-come-lately” to stepping up for worker rights, many people that were not around when the 1.4 million Teamsters were being abused by their leadership.

The question that I have deals with the level of accountability, whether it is at Enron, whether it is corruption within the Teamsters, or within other large organizations. We now know after almost five years with the Teamsters, that the number of people actually being held accountable and serving jail time I believe is maybe one, but no one was held accountable.

Has the Administration talked about, in these types of white-collar crimes, the feasibility of strengthening the punishments available for white-collar crime so, as our colleague from California talked about, it's no longer fines but that some of these individuals actually will be held accountable and will serve jail time?

Secretary Chao. I think "accountability" is a word that carries a lot of weight these days. Indeed, there has to be accountability, and I think workers have to be protected. White-collar crime has traditionally been an area that has not received very much of that. From this Department's point of view, that's never been the case. We have always been vigilant. As mentioned, we were among the very first agencies, if not the very first, to launch an investigation.

Let me also add, the issues with the Teamsters I think were in the past. There's a new president, Mr. James Hoffa who has worked very hard to bring a new era of integrity to the union.

Mr. Hoekstra. That's exactly right, absolutely.

Secretary Chao. It does bring about another point, and that is some of the bills that are being introduced to protect workers exclude union pension plans. I think that would be hard to justify, because again, we are concerned about protecting all workers.

Let me also add, ERISA does have criminal sanctions.

Mr. Hoekstra. There are criminal sanctions. The question is whether they will be applied and to what extent.

I just want to encourage you as you go through the process, and as you go through the process with the Justice Department and Attorney General Ashcroft, that if there is criminal behavior that is identified that it be prosecuted to the fullest extent.

I had a tough time going back to my constituents, as they watched the scandals within the previous Teamsters regime and recognized that because of a lack of aggressive prosecution by the previous Administration that people walked away. The perception is again that members of the Teamsters or in this case, employees of Enron get hurt, whereas the executives or the leadership seem to walk away scot-free. I hope that doesn't happen in this case.

I hope the leadership that this Administration has shown to date continues, and I hope it continues through the prosecutorial stage. Thank you very much.

Secretary Chao. We are fully committed to bringing accountability.

Mr. Hoekstra. That's right. Thank you.

Secretary Chao. Thank you.

Chairman Boehner. The chair recognizes the gentleman from New Jersey, Mr. Payne, for five minutes.

Mr. Payne. Thank you very much, Madame Secretary. It's always good to see you here. I hope one time you can come for something where it's just pleasant and we can have an amiable kind of conversation.

Secretary Chao. I always try for that.

Mr. Payne. Well, you've got another three years.

[Laughter.]

Chairman Boehner. Madame Secretary, it sounds like you've been sentenced.

[Laughter.]

Mr. Payne. And I hope that happens to some other people.

Let me just indicate, too, that I appreciate the Chairman calling this hearing, and also I think Mr. Miller certainly laid out many of the concerns that I have, and did it very well. In the old days, there were the defined benefits. You know, that was the way it was done. You worked, you retired at 65, and you knew what you were getting.

But along comes the defined contribution.

Secretary Chao. Right.

Mr. Payne. You work, and they say: "Put your money in here. You can walk away with a million dollars." However, the people who are now exposed to defined contributions, 401(k)s, and ESOPs, are not people who have the counsel of high-powered lawyers or good accountants. They just go along because they've heard it's the right thing to do.

So there's a big difference in the defined contributions, where you knew what you got. When my father retired, he knew what was going to come in every month, sort of like Social Security, which leads me into another concern with the new so-called privatization of Social Security that's being pushed.

How are people supposed to invest their money into different, private investment plans? Once again, poor people don't have good health care, they don't have good schools, they don't have good housing, and they don't have good advice, because they can't afford it. It's just the way that

our country is divided; those who have and those who have not.

I listened to Mr. Joseph Berardino yesterday, CEO of Arthur Andersen. Their firm is a consultant to Enron; $25 million for this, $10 million for that. He said he didn't even know and also the auditors didn't know. They were advising the company but didn't know there were problems, even with their auditing employees going to golf tournaments wearing Enron shirts. It just doesn't seem to add up. They're the auditors; they're the watchdogs with the company shirt, just like the good old boys network. How can you audit someone if you're at their golf tournament or at their reception? And so these things made no sense. I was very disappointed in Berardino's testimony yesterday, from Andersen.

However, let me just say since my friend has mentioned the Teamsters. I hope that we see the same kind of zeal for the men in the suits and the suites, so they also have to pay. You know, we have penalties where a kid who sells five grams of crack cocaine gets five years. That's the minimum sentence. That's the law. And they shouldn't sell crack, it's bad, it destroys people. But I wonder, what's going to happen to people who have sold this bad information to all of these workers, who are poor now, and who have no retirement?

I watched Mrs. Linda Lay with a lot of compassion, who said they were on the verge of bankruptcy. She was really poor now. They're broke; luxury penthouse, $7 million; two homes in Aspen, $15 million; $10 million, houses in Texas. So evidently, being poor or broke is relative. It's according to where you are on the ladder.

Now, that has really nothing specifically to do with you, but this conversation bothers me to no end. Some people who have lost their life savings are here now. I appreciate Reverend Jackson and Reverend Sharpton bringing these people in and talking with them. I hope there are other groups that are reaching out to help them.

I do have one quick question, though, for you to respond to before my time expires. Let me just ask this specific question. For a number of years, the GAO and the IG have raised serious concerns specifically regarding the audit procedures for pension plans. They recommended that limited scope audits be replaced with full audits, and that auditors be obligated to immediately report possible misuse of funds or fraud of pension funds to the Department of Labor. Limited scope audits depend on other state and federal regulators, such as state insurance and banking agencies, to vouch for plan assets under their jurisdiction, rather than a full audit of such plan assets. The current Administration vigorously sought to address these shortcomings through legislation, but Congress failed to act on them.

Would you, or why hasn't the Department of Labor recommended such changes? I know you've only been Secretary for a short time and maybe you will? What is your view on these recommendations?

Secretary Chao. Let me answer your three points.

One, on what you just said about workers accessing financial advice, we totally agree with you. The President's plan would, in fact, again, support the Chairman's bill and also empower

workers with the right information so they can make the best decisions that they can about their retirement security. That's in the President's plan. So we do support professional financial advisors.

Second of all, in the criminal investigation, you will not see any slacking in this Department in terms of pursuit of any criminal activities. As you all know, the Justice Department is also involved with the criminal investigations, and they actually investigate the bulk of them. We work with them and others. But you will not see any diminution at all, or any lack of intensity, let me assure you.

Thirdly, on the limited audit question, that is the question that is addressed by the second task force, the one on governance, accountability. So we did discuss it to some extent, but again, that is going to be within the purview of the second task force that's coming up, but I appreciate hearing your concerns.

Chairman Boehner. The gentleman's time has expired.

Mr. Payne. Thank you very much.

I, too, share the concern about the job training programs that have been cut. I understand some youth employment programs may possibly be eliminated. That was also tried in '94, when Pell Grants, which are not in your Department, were going to be slashed. I think that we're going in the wrong direction on these domestic programs.

Secretary Chao. For Job Corps, we actually increased the budget an additional $73 million. The Youth Opportunity Grants, as someone mentioned earlier, were a pilot program and were consolidated with existing WIA funds. There's about $1.7 billion in excess Workforce Investment Act funding at this point. The states can administer those programs, and they would have the flexibility to do so.

Mr. Payne. Thank you very much.

Chairman Boehner. The gentleman's time has expired.

Mr. McKeon is recognized for five minutes.

Mr. McKeon. Thank you, Mr. Chairman, and thank you, Madame Secretary, for being here today.

It seems to me that what we're dealing with is a multi-faceted problem. We have the collapse of Enron, the problem with their management, the lack of credible oversight from their auditors, the lack of credibility from market advisors and conflicts of interest.

I would like to thank you for your personal commitment to help those workers and those employees and do all you can for them. Also thank you for your commitment to pursue criminal investigations and to, as Mr. Hoekstra said, make sure that everybody that has any criminal liability

here is pursued to the fullest extent. I think that is the least that we can do.

There are many hearings and investigations moving forward, and I'm concerned that sometimes we do assign guilt. Politicians tend to jump on these things quickly, and my concern is that we sometimes move too quickly to fix a specific problem. Then we end up finding that unintended consequences hurt a lot of other people that are not guilty, that are totally innocent. By innuendo, we've kind of convicted several other companies that have been around for many, many years and have been very successful. As the Chairman pointed out, their employees and their generations of employees have benefited from their work with those companies. So I think we have to be very careful that we don't indict many companies because of the problems of some.

There's been some talk about the blackout period of Enron, and I would like to use this hearing to learn about that. Could you give us information about what the stock price of Enron was prior to the blackout period, during the blackout period, and after it? Do you have information?

Secretary Chao. We have an investigation going on; so let me ask about what I'm allowed to say and what I'm not allowed to say.

[Witness confers with staff.]

I just wanted to check. As you can imagine, if there's an ongoing investigation, I always have to be careful about what I can say, but that is information that I can reveal.

During the lockdown period, which we are investigating, there seems to be some disagreement. The lockdown period appears to have started when the stock was around $14, and at the end of the lockdown period, it was about $10 per share, so most of the gains of the stock, unfortunately, had already been dissipated by the time the lockdown period occurred.

Mr. McKeon. I appreciate you and the President coming forward quickly with a plan to address some of the shortcomings we've already seen. I think it will be dealt with like other legislation plans. We'll debate and we'll work on it.

I think the major thing that the President said, that I support, is that management and workers should be treated the same. There should not be an advantage for management over workers when dealing with their pension plans. I think management is paid more, generally, for their work. They shouldn't be given the additional advantage in this area. I think that is a very important principle, and I hope that we will hold with that as we work through this legislation.

Thank you for being here today.

Secretary Chao. I appreciate that. Indeed, the President felt very strongly that during a blackout period, if an employee were not able to sell, then obviously the executives should not be allowed to either.

Mr. McKeon. Nobody should be able to.

Secretary Chao. Right.

Chairman Boehner. The Chair recognizes the gentleman from New Jersey, Mr. Holt.

Mr. Owens. Point of order, Mr. Chairman. Mr. Chairman, point of order.

Chairman Boehner. The Chair recognizes the gentleman from New York.

Mr. Owens. Do we still have to assume that the Secretary has to leave at 12:15? I think you said that at the beginning.

Chairman Boehner. That is correct. I would expect that we will continue until there's about five minutes left on the vote, and then we will be gone approximately 15 to 20 minutes. So when we get back, we'll have time for several more questions.

The Chair recognizes the gentleman from New Jersey.

Mr. Holt. Thank you, Mr. Chairman, and thank you, Madame Secretary, for coming.

Enron robbed employees of $1 billion, and collusion between Enron executives and lawyers and accountants harmed employees, their children, investors, stockholders, and millions of families. New Jersey actually pays, because the New Jersey pension fund had $60 million tied up in this.

But looking at the pension programs, clearly, investment advice to employees is part of what's necessary to prevent future Enron-like debacles, and I was pleased to cross the aisle to join our Chairman, Mr. Boehner, in passing the Retirement Security Advice Act. But that's only part of what we need to do.

It's worth remembering, and I'm sure you are aware of this, that employers often chafe under Department of Labor regulations and investigative threats. I think people are looking at it a little bit differently now. They recognize that there really is a role for government regulations regarding transparency and fiduciary responsibility and fairness. We simply can't count on the good will of the executives and the pension managers.

Remember that Enron employees trusted their company.

Secretary Chao. Yes.

Mr. Holt. They were gung-ho about their company. They couldn't believe that their friends, who were their executives, would rob them, but that's what happened.

Let me ask you, is your idea of a good pension plan one where all employees have complete freedom to invest their own pension funds whenever and however they like?

Secretary Chao. I think it's worthwhile to remember we're talking about 401(k)s. These plans, ESOPs and 401(k)s in particular, are self-directed retirement plans, so they are usually held in addition to a pension plan, or some other long-term retirement plan. Many times, they are not the only leg.

Mr. Holt. Beyond the vesting requirement that you said that you did favor, three-year vesting or something of that sort?

Secretary Chao. May I just interrupt for one second? I think that was a nod to reality, because we wanted to be able to encourage employers to continue the corporate matching programs and we don't want to discourage them. So it's a balance. Usually the vesting period is three to five years.

Mr. Holt. I understand the argument. I understand Mr. Ballenger's argument that you want the allegiance of the employees. But this is a kind of artificial allegiance to keep them imprisoned with a vesting requirement.

Beyond vesting, though, should the company dictate in other ways what employees do with their funds?

Secretary Chao. What specifically do you have in mind?

Mr. Holt. I'm asking you.

Secretary Chao. 401(k)s are basically self-directed retirement plans, so employees usually take over control as to how they want to invest.

You know, employees now will usually receive a brochure that tells them all the different investment plans that they can go into, that they can slot either 100 percent of their 401(k) funds into, 50 percent, 25 percent, or whatever.

I think the important principle is that we don't want to discourage them or take away that right. Whether the worker decides to utilize that right is something else, but we don't want to take away the right that he or she has to decide how they want to invest their funds.

Mr. Holt. Let me just make the point that company coercion can be overt or subtle. You know, social psychologists have looked at this. I think years ago, Solomon Asch showed that a group can make a person believe that one line is shorter than another when the fact is absolutely clear that it is not shorter than the other. So I think it is important that we have independent oversight, and we can't shortchange that.

Now, just very quickly, there's a short answer to this with regard to the training programs. Can you say that with the consolidation and combining and cutting of worker training programs in the President's budget, there will be no decrease in the number of workers served?

Secretary Chao. There will be no decrease or compromise.

Mr. Holt. In the number of workers served?

Secretary Chao. In the quality of the services available or in the services that are available to the number of clients that we have. That is not our purpose at all.

Chairman Boehner. The gentleman's time has expired.

Secretary Chao. There's excess funding of $1.7 billion in the pipeline.

Mr. Holt. Thank you, Madame Secretary.

Thank you, Mr. Chairman.

Chairman Boehner. The Chair recognizes the Chairman of the Subcommittee on Employer-Employee Relations, Mr. Johnson of Texas, for five minutes.

Mr. Johnson. Thank you, Mr. Chairman. Ms. Chao, I appreciate you being here, and I want to applaud the President for taking a constructive step in putting forth this proposal on pension issues.

I appreciate particularly his strong support for enactment of meaningful investment advice, which you've been talking about, and Mr. Boehner has been talking about for plan participants, so that they know about the risks and rewards of various investment decisions. I want you to know, Secretary Chao, that constituents in my congressional district are not very excited about the United States Congress trying to tell them how they must limit company stock in their 401(k)s, and I applaud the President for avoiding placing arbitrary caps on investment in employer stock.

Speaking about elaboration on investment advice, I've received a note from a constituent in Dallas. I got this from James Setliff, and he works for Texas Instruments, and he said: "I have made my retirement possible by investing 100 percent of my 401(k) into my company, Texas Instruments, stock at opportune times." He knew when his company stock was a good investment, and when it wasn't. He really does not feel that the United States Congress or anyone else in the government should tell him that he doesn't know what he's doing.

The constituents I've heard from support shortening the period that the company match must be held, and I want to hear from plan sponsors about what impact this will make on company matches. I do have a few concerns that if Congress goes too far in legislating new rules for defined contribution plans, we will regulate these plans to death, just as we put defined benefit plans on the endangered species list. I disagree with Mr. Miller. This is a country of free enterprise and it's up to this Congress and you to protect that.

Let me ask you this. I've heard that the National Savers' Summit is going to take place at the end of this month. Can you tell me how those preparations are going and what topics are going to be addressed?

Secretary Chao. We are convening a major summit on retirement security, and it's called the Savers' Summit. It will be held February 28th through March 1st. Members of Congress are

invited. We have a great roster of speakers. We've been planning for this for well over eight months, and it's going to be a very exciting event. But more importantly, I think it will emphasize how important it is to give information to working Americans about how they can save and safeguard their retirement.

Mr. Johnson. Thank you. I also understand that Enron had a variety of employee benefit plans meant to help with retirement security for employees. For instance, we know they had a 401(k) plan, but I've heard they also had an ESOP, a defined benefit plan, a deferred compensation plan, and executives had stock option incentives.

I wonder if you could provide the plan documents filed at the Department of Labor for any of these benefit plans from that?

Secretary Chao. Of course we can.

Mr. Johnson. Thank you. I would appreciate that.

My understanding is that the Enron employees had 20 investment options, and many of them chose to have the contributions invested in company stock, along with the company match. That was invested in stock, and that's true, isn't it?

Secretary Chao. Yes, that is.

Mr. Johnson. Well, do you think that if the House- passed Investment Advice Act were enacted into law, some of those 401(k) plan participants would have diversified their investments?

Secretary Chao. I think if they were empowered with the right information, they certainly would have.

Mr. Johnson. Well, I thank you for your testimony today, and we appreciate you being here, and I yield back the balance of my time.

Secretary Chao. Thank you.

Chairman Boehner. Madame Secretary, we do have two votes on the House floor.

Secretary Chao. Okay.

Chairman Boehner. We will be gone for about 15 to 20 minutes, and we will try to hustle back as soon as we can. The Committee will stand in recess.

[Recess.]

Chairman Boehner. If everyone could take their seats, we would like to resume.

The Chair recognizes the gentleman from Virginia, Mr. Scott, for five minutes.

Mr. Scott. Thank you, Mr. Chairman, and welcome, Madame Secretary.

First, let me just say as a matter of reference that we have a safety net, Social Security, that no matter what you do with your investments, you will have your safety net. You have your private accounts outside, the pension funds and everything, where you can invest and win and lose whatever you want.

And I guess unlike some others, I am not particularly offended if, for the tax-preferred pension accounts for which people have expectations, we have some regulations that would stabilize those accounts and make them safer. We even have government guarantees for some pensions. So if we do something to make them safer, I am just not as offended as some other people.

You had indicated your proposal has limits on lockouts. Is there any limit to the total length of time for these lockouts?

Secretary Chao. Are you finished? Great. I wasn't sure with some of the other speakers.

[Laughter.]

The lockout period is a very important area, and we have looked very seriously at it. At the present time we have decided not to have any lockout limit. But there is a very strong component in there that actually will provide incentives for employers to make that lockout period very short.

That incentive is in a 401(k) plan. An employee has control over his or her investment, and so they bear the liabilities. Now, the employer does not. So during the lockout period, the employer bears the liability. And we want to clarify that within the ERISA law and codify it. So that is a very powerful incentive, that if the employers are going to have liability for any investment decisions during that blackout period, that they would try to make that blackout period as narrow, or as short as possible.

Mr. Scott. Now, that is a limitation on executives selling stock during the lockout period?

Secretary Chao. That is a separate provision that we would be introducing.

Mr. Scott. Would that limitation prevent people who have 401(k)s from selling stock in their private accounts?

Secretary Chao. The question was whether they can sell not in their 401(k), but in their private accounts?

Mr. Scott. Right.

Secretary Chao. Yes, because it is a transfer process, whereby you have a new administrator come in.

Mr. Scott. No, I mean on your private, separate non-tax-deferred account. If you happen to own company stock in that account, unrelated to your 401(k).

Secretary Chao. If you hold it with another administrator, you can sell it, certainly. If you hold it with an outside broker, yes. But if you held it within the company stock portfolio, and the administrator is administering it for you, then because there is a changeover in administrator, there probably would be some period in which there would have to be some transfer.

Mr. Scott. And this is when the captain and the sailor would be limited. Is the captain prevented from selling stock outside of his pension fund?

Secretary Chao. If there is a blackout period, nobody sells. Or everybody sells, yes.

Mr. Scott. Well, I mean, you just said that the sailor could sell in a separate account during the blackout period.

Secretary Chao. Well, the sailor may also have some outside accounts as well.

Mr. Scott. Right.

Secretary Chao. Right.

Mr. Scott. And can the captain sell in his outside accounts?

Secretary Chao. Let me get you expert advice on that.

Mr. Scott. Okay.

[Witness confers with staff.]

Secretary Chao. I have a clarification for that, and I am in error, I apologize. Under that pension parity, the executive would not be able to sell any stock during that period.

Mr. Scott. Okay. Let me ask you another question before my time runs out. Some have suggested we need new laws to prevent this from happening again. My sense is if we enforce the laws we have now, we probably could prevent a lot of it.

Secretary Chao. Yes.

Mr. Scott. You have indicated that there have been 77 criminal indictments, 42 convictions, and 49 guilty pleas. Were these convictions just for straight embezzlement? Or was a gross violation of fiduciary duty and fraud a part of any of these convictions?

Secretary Chao. I think it was a whole series of each of them.

Mr. Scott. Could you provide the Committee with a list of the charges, a brief description of the allegations, and what sentence was imposed?

Secretary Chao. Yes, of course. Yes, certainly.

Mr. Scott. Thank you.

Thank you, Mr. Chairman.

Chairman Boehner. The Chair recognizes the gentleman from Delaware, Mr. Castle, for five minutes.

Mr. Castle. Thank you very much, Mr. Chairman. And thank you, Madame Secretary, for being here. In fact, I wish you or anybody before you would have been here five or ten years ago to address these plans.

You are absolutely right in what you said; all these pension plans started to shift about 20 years ago so individuals had to be involved in their decisions. And unfortunately, I don't think we kept up as well as we should have, in terms of advice laws. But you have made some good suggestions here. If it took Enron to energize it, then that is good, and we should congratulate you, and not fault you for whatever may have happened many, many years ago.

I think there is serious wrongdoing here. I am also on the Banking Committee, and we have looked at this. I believe totally there is serious wrongdoing. How far that goes, I don't know. I think there is a tremendous imbalance amongst individuals involved in this and any corporate circumstance. You have the executives, the accounting firms, the board of directors, the law firms, the credit rating agency, the stock analysts, a few other groups, and maybe a thousand or so people. They are totally interested in driving that stock as high as they can and taking debt off the books, and all the kinds of things that led to the manipulations that became the Enron problem in this circumstance.

On the other hand, you have the employees, who may be Enron stockholders. Frankly I suspect if you asked them, they probably would have said we are proud, we are happy to be Enron stockholders, because the stock is going up and we are making money, or Proctor & Gamble or any of the other examples used today. And all of a sudden, when it collapsed, everyone is saying, oh, gee, this happened.

I don't think anybody manipulated all this so that the pension plans would collapse. That wasn't the purpose. They did it to enrich themselves, and they have enriched themselves, at least for a while, to a fare-thee-well. And unfortunately, there is the trailing effect of the pension plan, or the 401(k)s and the other types of plans holding the Enron stock being in a state of collapse.

I think our retirement laws do need to be changed. I think you are aimed in the right direction. I'm not sure if you are totally right. I don't know enough to say that. I don't know if Mr.

Miller was right in some of the things that he said. Those are things that have to be looked at. I just would beg you to keep an open mind with respect to what has to be done to protect people out there.

Now, having said that, I have some concerns about it. I totally believe in some of things that you are talking about. I totally believe in freedom of choice and that kind of thing. But I think basically those of us who have to make decisions at this time should have the fullest information we can possibly have. We should have notification of anything that is going on that impacts upon what we are doing. There is some discussion about annual statements and quarterly statements and monthly statements. Let people see what is happening to the extent that it can be done. I think all this needs to be as open as possible in terms of trading. I will tell you, I believe simplification is important.

Secretary Chao. Absolutely.

Mr. Castle. Have you called a big mutual fund firm and tried to make a transaction, and gone through all that phone stuff? After about half an hour, you feel like slamming down the phone and saying to heck with it, I will just lose money. It is easier than dealing with these operations. Simplification, I think, is of vital importance in all of this.

I think we need to look at executive compensation; maybe not you or maybe you. You are as good a person as I know in this Administration to do it. But we really need to look at that, in terms of what we are doing.

Obviously, I don't think we are going to change these laws. I don't think we are going to go back to the defined benefits plans. I don't think we are going to go back to fixed circumstances. I think to the extent that all of these funds are transportable, no matter what they are, that is an important asset in terms of what we are doing. So we need to look at that as well. You are doing the right thing, but there are serious questions that still need to be answered.

I would like to ask you if you have looked at all at stock options? I worry about stock options a tremendous amount. It is incredible to see the compensation of chieftains of corporate America today, versus the employees, and stock options have become such a major part of this. There is such a thrust to push that up, in terms of the manipulations we saw at Enron, that I am afraid it is happening in other corporations, and I am afraid we are going to have other problems before all is said and done.

I am not for over-regulating, but I am, as I said, for notification and an open process. Is anyone looking at this and its influence to try to make absolutely sure that stock manipulation is not invited because of what we are doing?

Secretary Chao. On the stock options, let me just say a couple of things. One is it is not solely a retirement tool; in many cases, it is also a retention tool.

Mr. Castle. Well, I understand that. I understand that completely. But my concern is that it helped lead to the problems in Enron.

Secretary Chao. Having said that, your important point is about the abuses, and perhaps over-generous stock compensation through stock options. And that, again, is the work of the second task force, about accountability and about governance. I think if anything, we have to emphasize accountability more and more.

Mr. Castle. Let me go back to the point that I made earlier about the simplification process here, and then my time will have run out. I can't stress simplification enough.

Secretary Chao. Yes. I totally agree.

Mr. Castle. I am a terrible investor myself. I don't have anyone to complain about except my own stupid decisions, for the most part. And I think the average person is in that mode.

But I would hope you would look at that carefully, because I don't know if people truly understand the advice they are getting. It is fine to talk about advice; I love Chairman Boehner's bill, which you have supported. I think all that is good. But let's make sure that people understand.

I yield back the balance of my time.

Secretary Chao. It is a right to have that advice.

Chairman Boehner. The gentleman's time has expired. The chair recognizes the gentleman from New Jersey, Mr. Andrews, for five minutes.

Mr. Andrews. Thank you, Mr. Chairman. Madame Secretary, thank you for your appearance this morning and your always-insightful testimony.

I think you would agree that choice is only meaningful if it is informed and voluntary. I have a very real concern that we have voluntary and informed choice by people in 401(k) plans. I think it is a staggering coincidence that in a plan that is part employer-driven and part employee-driven, that 72 percent of the Home Depot 401(k)s are in Home Depot stock. That is not an accident. I am not sure it is a voluntary choice, either.

You have embraced the bill that passed the House that the Chairman sponsored on investment advice. And I want to ask you some questions about it.

What if Enron had retained a major financial services company to manage its 401(k) plan, and if that financial services company, in another distant part of the company, was marketing limited partnerships on behalf of Enron, there hawking them every day, and the employees of the financial services company were regularly giving advice to Enron employees that buying Enron stock was a great idea? Under your proposal that you have embraced here, that would be legal, wouldn't it?

Secretary Chao. I think that brings into question the whole issue about accountability.

Mr. Andrews. Well, is it legal, or isn't it? It is conflicted advice, and if they gave notice of it, I think under your proposal it would be legal. If they put it in the employee handbook on the first day of work that by the way, our investment advisor is someone that also sells products for us, it would be legal, wouldn't it?

Secretary Chao. But they do have to give notice as to how much all of this is going to cost.

Mr. Andrews. They have to give the notice, as I read the bill, only once, and it doesn't have to be contemporaneously. It doesn't have to be exactly at the time that the question is asked.

Secretary Chao. But ERISA does require that they be. I see your point. ERISA does require that they be responsible for their advice. But that is where we want to make sure that people are given the information, and that all disclosure is made.

Mr. Andrews. I think the answer to the question is it would be legal under your proposal, and I think that is a terrible idea. And I also will tell you that you could come back and say, well, if it was a breach of fiduciary duty by the investment advisor, it is illegal under ERISA. There are two problems with that.

One, proving it is very hard to do. You really couldn't prove a quid pro quo there; you couldn't say that the reason the investment advisors were hawking Enron stock was because another part of their company was making money by hawking Enron products on the street. There is no quid pro quo, necessarily.

And the second problem is how do you get a lawyer? You know, in theory the individuals who came to Washington who have been stolen from have a remedy today. They have a great remedy. If they can put up $50,000 retainer for a law firm, and find a law firm who will take the case, and go through three years of discovery, they have a right to get their money back. And never mind the fact that maybe they had their house foreclosed on, or couldn't pay their health insurance in the meantime, or couldn't pay their daughter's college tuition in the meantime. None of that is compensated under the present law.

Do you think it should be?

Secretary Chao. Well, when a person is terminated, for example, if their company goes into bankruptcy, the first line of defense is obviously any savings that they have. But they are also eligible to go on unemployment insurance. And while that may not be enough, that is another source of assistance as well.

Mr. Andrews. Yes, but the question is whether or not using the facts in this case, and I don't know if they would, someone would justify a finding of breach of fiduciary duty by those who ran the Enron pension plan.

Secretary Chao. Then those people will be held accountable for civil or criminal penalties.

Mr. Andrews. Well sure they would be held accountable. If you could get a lawyer, if you could afford one, and if you won, all you do is get your money back. You don't get all the things that happened to you in the meantime.

If a toaster blows up in your face, you get your lost wages and your health care bills, and your pain and suffering and all the rest. But if you get lucky, and get a lawyer, and go through three years of discovery, and win your case, you get your money back. But you don't get any of the other stuff. Do you think that is right, or do you think we should fix that, as we do in the Miller bill?

Secretary Chao. We have a lot of assistance available for people who are concerned about malfeasance or abuses of their plans. And if I may, I will just give the number. It is 1-866-275-7922.

Mr. Andrews. Well, but if someone called that number and said, you know, my house just got foreclosed on, because the people running my pension plan screwed up. The law is that they can't get any remedy for that. They can't get the money to get their house back.

Secretary Chao. They can sue. As you mentioned, they can sue. They can get a lawyer.

Mr. Andrews. They can sue, but the remedy doesn't include getting the consequential damages for the harm that they suffered. And it should.

I yield back the balance of my time.

Secretary Chao. Thank you.

Chairman Boehner. The Chair will recognize the gentleman from Kentucky, Mr. Fletcher, for three minutes. And then the Secretary really does have to go.

Mr. Fletcher. Well, thank you, Mr. Chairman. And Secretary Chao, it is always good to see you. Thank you for the work that you are doing.

You know, as I look at this Administration, it is very encouraging, when you look at the tough but measured response they had to the terrorist attack. And I see that same resolve here as we look at the Enron collapse. It is very tough, but it is also very measured.

I know after 9/11 there were some that initially wanted to jump in very quickly and take some immediate, radical action. And yet the President and the Administration proceeded with a very thoughtful approach in response that has been extremely effective. I think that you all have done the same here, and so I laud you for the work that you have done along with the President on these pension plan reforms that you are advocating here today.

Particularly, one of the things that we have heard some comments on is the three-year vesting requirement, and it was five years until we recently passed a bill to reduce it to three years. The Ranking Member was very supportive of that three-year vesting period, regardless of what he

comments about now. Additionally, at that time I believe it passed out of this Committee by voice vote, and there was absolutely no objection, none, zilch, nada, to that three-year vesting period.

I think it is very reasonable. Having set up retirement plans myself in small businesses, as well as with the larger corporation I was involved with, I think it is important that we have the incentive. Companies will drop their 401(k) plans if they find that there is no loyalty associated with that. You invest a tremendous amount in employees. You invest in training, and education. So I laud you for that.

Let me ask a question about the enforcement mechanisms regarding the President's new bill. Do you have the resources? And are we really able to oversee and enforce these pension rules? I understand that some of that is outside your jurisdiction, but I wonder if you would comment on the enforcement?

I know we are going to respond very tough to Enron, and I hope that we do certainly hold them accountable for every element of the law there. And I just want to ask you to comment on the enforcement provisions.

Secretary Chao. Yes. I want to reinforce that we have an investigation ongoing. We will push it as far as it will go, and we will take it to whomever the investigation brings us to. We will spare no effort in ensuring that justice is done, number one. And we will do everything we can to try to get back as much as we can for employees.

On the enforcement side, I have great confidence in our enforcement abilities. I think we do a very good job, and I don't think we need any additional resources at this time.

Mr. Fletcher. Well, thank you. And I want to laud, again, the response of the Administration and the integrity with which they have responded to the requests even from Enron for special privileges, which they refused to give.

Secretary Chao. Right.

Mr. Fletcher. So thank you.

Chairman Boehner. The gentleman's time has expired. Madame Secretary, we want to thank you for your testimony, and your willingness to answer questions. Some of our Members did not have the chance to ask questions today, and if you don't mind, we would like to keep the hearing record open.

Secretary Chao. Of course.

Chairman Boehner. If Members do have written questions to submit to you, we will include their questions and your responses in the hearing record.

And with that, the hearing stands adjourned.

Secretary Chao. Thank you. I look forward to working with you.

Whereupon, at 12:28 p.m., the Committee was adjourned.

APPENDIX A - WRITTEN OPENING STATEMENT OF CHAIRMAN JOHN A. BOEHNER, COMMITTEE ON EDUCATION AND THE WORKFORCE

Opening Statement of Rep. John Boehner (R-OH), Chairman
Education & the Workforce Committee

February 6, 2002

Good morning. Let me start this morning by welcoming our distinguished guest today, Secretary of Labor Elaine Chao. It's an honor to have you with us. Let me also extend a warm welcome to the ranking member, Mr. Miller, and to my other colleagues.

Late last year, thousands of working Americans employed by the Enron Corporation watched helplessly as their company collapsed – and, tragically, their retirement savings were lost with it. Longtime, loyal Enron workers who had saved for years and placed their trust in the company's 401(k) plan saw their dream of a safe, secure retirement vanish.

Across our country, millions of hardworking Americans are asking anxiously: Could this happen to me? And what actions are the Bush Administration and Congress prepared to take to ensure that it *doesn't* happen to me? Why did thousands of employees who had saved all their lives for a safe and secure nest egg see their retirement savings evaporate as the company unraveled?

We also have the responsibility of asking to what extent did outdated federal pension laws contribute to Enron's fall and the fate of its workers' 401(k) plan? Today we begin the process of asking all of those questions.

As our committee begins hearings this week into the Enron collapse, we do so with a firm commitment to identify further reforms that promote security, education, and freedom for employees who've saved all their lives for a secure retirement.

Last week, President Bush sent a clear message to Congress that he was committed to addressing the Enron tragedy by calling for new safeguards to help workers preserve and enhance their retirement savings.

The President followed up his State of the Union speech on Friday by announcing his proposal to restore Americans' confidence in the security of their pension plans. His recommendations include: (1) providing workers greater freedom to diversify and manage their own retirement funds; (2) ensuring that senior corporate executives are held to the same restrictions as average American workers during "blackout periods"; (3) giving workers quarterly information about their investments; and (4) expanding workers' access to investment advice.

We look forward to Secretary Chao telling us more about the President's pension

reform proposal, as well as the Department of Labor's role in overseeing pension plans and its Enron investigation.

While the ongoing investigations by the Bush Administration and Congress will reveal the extent to which Enron's employees may have been the victims of criminal wrongdoing or neglect, it is already evident that Enron's employees are the victims of an outdated federal law that continues to needlessly deny rank-and-file workers access to quality investment advice.

Media reports have indicated that there were several windows of opportunity before and after the blackout of the Enron 401(k) plan that employees had to sell their company stock and diversify their retirement savings. This tells us that some of Enron's employees could have preserved their retirement savings if they had access to a professional adviser who would have warned them in advance that they should diversify their portfolio.

Last November, the House took the first step toward giving rank-and-file workers the same access to professional investment advice that wealthy employees and executives have by passing the Retirement Security Advice Act. I'm very pleased President Bush and other members of the Administration have embraced this bipartisan bill. My hope is that the Senate will follow suit quickly in the same bipartisan spirit so that President Bush can sign this legislation into law for America's workers.

Investment advice may not be the only legislative change needed to prevent another Enron tragedy, however. The Enron collapse has provided tragic confirmation of the need for modernization of America's pension laws -- a problem Congress must now confront with a new urgency.

American workers deserve the security of knowing there will be no more Enrons -- and the freedom to continue to capitalize on opportunities to save and invest. We need to ensure that Americans workers are fully protected and fully prepared with the tools they need to protect and enhance their retirement savings.

APPENDIX B - WRITTEN STATEMENT OF THE HONORABLE ELAINE L. CHAO, SECRETARY, UNITED STATES DEPARTMENT OF LABOR, WASHINGTON, D.C.

TESTIMONY OF ELAINE L. CHAO
SECRETARY OF LABOR
BEFORE THE COMMITTEE ON EDUCATION AND THE WORKFORCE

February 6, 2002

Introductory Remarks

Good morning Chairman Boehner, Ranking Member Miller, and Members of the Committee. Thank you for inviting me here today to share information about the Department's role in enforcement and regulation under the Employee Retirement Income Security Act (ERISA). Over the past 28 years, ERISA has fostered the growth of a voluntary, employer-based benefits system that provides retirement security to millions of Americans. I am proud to represent the Department, the Pension and Welfare Benefits Administration (PWBA), and its employees, who work diligently to protect the interests of plan participants and support the growth of our private pension and health benefits system.

This Administration is very concerned about the impact of the Enron bankruptcy on its workers and retirees. On November 16, 2001, the Department of Labor began an investigation to determine whether violations of ERISA may have taken place. The Department also is assisting affected Enron workers, informing them of their rights and options with respect to health and retirement benefits.

The Department also has been working diligently to evaluate current law and regulations, and has consulted extensively with the President's domestic and economic policy teams on how to improve and strengthen the pension system.

Although some reforms are necessary, we should not presume that the private pension system is irreparably "broken." In fact, the private pension system is a great success story. Just two generations ago, a "comfortable retirement" was available to just a privileged few; for many, old age was characterized by poverty and insecurity. Today, thanks to the private pension system that has flourished under ERISA, the majority of American workers and their families can look forward to spending their retirement years in relative comfort. Today, more than 46 million Americans are earning pension benefits on the job. More than $4 trillion is invested in the private pension system. This is, by any measure, a remarkable achievement.

As employers move toward greater use of "defined contribution" retirement plans, such as 401(k) plans, we must nurture and protect employee choice, confidence and control over their investments. I welcome this opportunity to work with the Education and Workforce Committee, and recognize the leadership you provide in protecting workers' pension assets, in raising necessary questions about the Enron situation and similar cases, and formulating policy to strengthen this country's

retirement system.

My testimony will describe ERISA's background and regulatory framework; the trend towards greater use of "defined contribution" retirement plans and what that means for employers and employees; the Department's role in enforcing ERISA and providing assistance to employees and their families; the Department's actions regarding the Enron bankruptcy; and the President's Retirement Security Plan to improve our current laws to ensure retirement security for all American workers, retirees and their families.

ERISA

The fiduciary provisions of Title I of ERISA, which are administered by the Labor Department, were enacted to address public concern that funding, vesting and management of plan assets were inadequate. ERISA's enactment was the culmination of a long line of legislative proposals concerned with the labor and tax aspects of employee benefit plans. Since its enactment in 1974, ERISA has been strengthened and amended to meet the changing retirement and health care needs of employees and their families. The Department's Pension and Welfare Benefits Administration is charged with interpreting and enforcing the statute. The Office of the Inspector General also has some criminal enforcement responsibilities regarding certain ERISA covered plans.

Under ERISA, the Department has enforcement and interpretative authority over issues related to pension plan coverage, reporting, disclosure and fiduciary responsibilities of those who handle plan funds. Additionally, the Labor Department regularly works in coordination with other state and federal enforcement agencies including the Internal Revenue Service, Federal Bureau of Investigation, and the Securities and Exchange Commission. Another agency with responsibility for private pensions is the Pension Benefit Guaranty Corporation, which insures defined-benefit pensions.

ERISA focuses on the conduct of persons (fiduciaries) who are responsible for operating pension and welfare benefit plans. Such persons must operate the plans solely in the interests of the participants and beneficiaries. If a fiduciary's conduct fails to meet ERISA's standard, the fiduciary is personally liable for plan losses attributable to such failure.

Trends in Pension Coverage

There are two basic categories of pension plans—defined benefit and defined contribution. Defined benefit plans promise to make payments at retirement that are determined by a specific formula, often based on average earnings, years of service, or other factors. In contrast, defined contribution plans use individual accounts that may be funded by employers, employees or both; the benefit level in retirement depends on contribution levels and investment performance.

Over the past 20 years, the employment-based private pension system has been shifting toward defined contribution plans. The number of participants in these plans has grown from nearly 12 million in 1975 to over 58 million in 1998. Over three-fourths of all pension-covered workers are now enrolled in either a primary or supplemental defined contribution plan. Assets held by these plans increased from $74 billion in 1975 to over $2 trillion today.

Most of the new pension coverage has been in defined contribution plans. Nearly all new businesses establishing pension plans are choosing to adopt defined contribution plans, specifically 401(k) plans. In addition, many large employers with existing defined benefit plans have adopted 401(k)s and other types of defined contribution plans to provide supplemental benefits to their workers.

Most workers whose 401(k) plans are invested heavily in company stock have at least one other pension plan sponsored by their employer. Just 10 percent of all company stock held by large 401(k) plans (plans with 100 or more participants) was held by stand-alone plans in 1996; the other 90 percent was held by 401(k) plans that operate alongside other pension plans, such as defined benefit plans covering the same workers.

Although there has been a shift to defined contribution plans, defined benefit plans remain a vital component of our retirement system. Under defined benefit plans, workers are assured of a predictable benefit upon retirement that does not vary with investment results.

The trends in the pension system are a reflection of fundamental changes in the economy as well as the current preferences of workers and employers. The movement from a manufacturing-based to a service-based economy, the growth in the number of families with two wage earners, the increase in the number of part-time and temporary workers in the economy, and the increased mobility of workers has led to the growing popularity of defined contribution plans.

Employers' views have similarly changed. Increased competition and economic volatility have made it much more difficult to undertake the long-term financial commitment necessary for a defined benefit pension plan. Many employers perceive defined contribution plans to be advantageous while workers have also embraced the idea of having more direct control over the amount of contributions to make and how to invest their pension accounts.

Emerging trends in defined contribution plans and workers' job mobility make it increasingly important that participants receive timely and complete information about employment-based pension and welfare benefit plans in order to make sound retirement and health planning decisions.

Employer Securities Under ERISA

The investment of pension funds in the securities of a sponsoring employer is

specifically addressed by ERISA. ERISA generally requires that pension plan assets be managed prudently and that portfolios be diversified in order to limit the possibility of large losses. Indeed, under ERISA, traditional "defined benefit" pension plans are generally allowed to invest no more than 10 percent of their assets in employer securities and real property. However, ERISA includes specific provisions that permit individual account employer plans like 401(k) plans to hold large investments in employer securities and real property, with few limitations.

As a separate matter, employee stock ownership plans (ESOPs) are eligible individual account plans that are designed to invest primarily in qualifying employer securities. Congress also has provided a number of tax advantages that encourage employers to establish ESOPs. By statutory design, ESOPs are intended to promote worker ownership of their employer with the goal of aligning worker and employer interests. They are statutorily required to hold at least 50 percent of their assets in employer stock. On average, ESOPs held approximately 60 percent in employer securities in 1996.

The legislative history of ERISA provides us with some of the rationale behind these exceptions to the rules regarding diversification. First, Congress viewed individual account plans as having a different purpose from than defined benefit plans. Also, Congress noted that these plans had traditionally invested in employer securities.

In 1997, Congress amended ERISA to limit the extent to which a 401(k) plan can require workers to invest their contributions in employer stock. The rule generally limits the maximum that an employee can be required to invest in employer securities to 10 percent. The rule, however, does not limit the ability of workers to voluntarily invest in employer stock. Furthermore, the rule does not apply to employer matching contributions of employer stock or ESOPs.

Recent data indicates that 401(k) plans holding significant percentages of assets in employer securities tend to be very large, though few in number. Currently, almost 19 percent of all 401(k) assets, or about $380 billion, is invested in company stock. The distribution of holdings of employer securities is very uneven, however, with most 401(k) plans holding very small amounts or no employer stock. Fewer than 300 large plans (those with 100 or more participants), or just one percent of all 401 (k) plans, invested 50 percent or more in company stock in 1996.

Because the plans heavily invested in company stock tend to be very large (with an average of 21,000 participants), the number of workers affected and the amount of money involved are substantial. In 1996, just 157 plans held $100 million or more in company stock. Together, these plans covered 3.3 million participants, and held $61 billion in company stock.

A great deal of the 401(k) money invested in company stock is under the control of workers. When participants can choose how to invest their entire account and company stock is an option, participants invest 22 percent of assets overall in

company stock. However, when employers mandate 401(k) plan investments into employer stock, workers choose to direct higher portions of the funds they control into employer stock. In these plans, participants direct 33 percent of the assets they control into company stock.

If a 401(k) plan provides workers with the right to direct their account investments, and the plan is determined to have complied with section 404(c) of ERISA, then plan fiduciaries are relieved of liability regarding the consequences of participants' investment choices. The Department's Section 404(c) regulations are designed to ensure that workers have meaningful control of their investments. Among other things, employees must be able to direct their investments among a broad range of alternatives, with a reasonable frequency, and must receive information concerning their investment alternatives.

PWBA Actions: Immediate Response to Enron

We are bringing to bear our full authority under the law to provide assistance to workers affected by situations such as the recent Enron bankruptcy.

The Department of Labor has made a concerted effort to respond rapidly to situations such as Enron. In these circumstances, there are two aspects to our efforts: to help the workers whose benefits may be placed at risk and to conduct an investigation to determine whether there has been any violation of the law.

On November 16, 2001, over two weeks before Enron declared bankruptcy, the Department launched an investigation into the activities of Enron's pension plans. Our investigation is fact intensive with our investigators conducting document searches and interviews. The investigation is examining the full range of relevant issues to determine whether violations of ERISA occurred, including Enron's treatment of their recent blackout period.

Blackout periods routinely occur when plans change service providers or when companies merge. Such periods are intended to ensure that account balances and participant information are transferred accurately. Blackout periods will vary in length depending on the condition of the records, the size of the plan, and number of investment options. While there are no specific ERISA rules governing blackout periods, plan fiduciaries are obliged to be prudent in designing and implementing blackout periods affecting plan investments.

In early December, it became apparent that Enron would enter bankruptcy. Because the health and pension benefits of workers were at risk, we initiated our rapid response participant assistance program to provide as much help as possible to individual workers.

On December 6 and 7, 2001, the Department, working directly with the Texas Workforce Commission, met on-site in Houston with 1200 laid-off employees from Enron to provide information about unemployment insurance, job placement,

retraining and employee benefits issues. PWBA's staff was there to answer questions about health care continuation coverage under COBRA, special enrollment rights under HIPAA, pension plans, how to file claims for benefits, and other questions posed by the employees. We also distributed 4500 booklets to the workers and Enron personnel describing employee benefits rights after job loss, and provided Enron employees with a direct line to our benefit advisors and to nearby One-Stop reemployment centers. These services were made available nationwide to other Enron locations.

PWBA regularly works throughout the country to assist employees facing plant closings, job loss or a reduction in hours, and subsequent loss of employee benefits. Our regional offices make it a top priority to offer timely assistance, education and outreach to dislocated workers.

I am pleased to announce that we have just activated a new Toll Free Participant and Compliance Assistance Number, 1-866-275-7922 for workers and employers to make inquiries regarding their retirement and health plans and benefits. The Toll Free Number is equipped to accommodate English, Spanish, and Mandarin speaking individuals. Callers will be automatically linked to the PWBA Regional Office servicing the geographic area from which they are calling. Benefits Advisors will be available to respond to their questions, assist workers in understanding their rights or obtaining a benefit, and assist employers or plan sponsors in understanding their obligations and obtaining the necessary information to meet their legal responsibilities under the law. Callers may also access our publications hotline through this number or they may access them on the PWBA website. Some of the publications available are: *Pension and Health Care Coverage – Questions & Answers for Dislocated Workers, Protect Your Pension, Health Benefits Under COBRA*, and many more. Workers and employers may also submit their questions or requests for assistance electronically to PWBA through our website, www.askpwba.dol.gov .

PWBA Benefits Advisors also provide onsite assistance in conjunction with employers and state agencies to unemployed workers – conducting outreach sessions, distributing publications, and answering specific questions related to employee benefits from workers who are facing job loss. In FY 2001, we participated in onsite outreach sessions for workers affected by 140 plan closings. So far this year, we have participated in 106 rapid response events reaching nearly 40,000 workers.

The Rapid ERISA Action Team (REACT) enforcement program is designed to assist vulnerable workers who are potentially exposed to the greatest risk of loss, such as when their employer has filed for bankruptcy. The new REACT initiative enables PWBA to respond in an expedited manner to protect the rights and benefits of plan participants. Since introduction of the REACT program in 2000, we have initiated over 500 REACT investigations and recovered over $10 million dollars.

Under REACT, PWBA reviews the company's benefit plans, the rules that govern

them, and takes immediate action to ascertain whether the plan's assets are accounted for. We also advise all those affected by the bankruptcy filing, and provide rapid assistance in filing proofs of claim to protect the plans, the participants, and the beneficiaries. PWBA investigates the conduct of the responsible fiduciaries and evaluates whether a lawsuit should be filed to recover plan losses and secure benefits.

Our investigation of Enron was begun under REACT. Because I do not want to jeopardize our ongoing Enron investigation, I cannot discuss the details of the case. Without drawing any conclusions about Enron activities, I will attempt to briefly describe what constitutes a fiduciary duty under ERISA, how that duty impacts on investment in employer securities, the duty to disclose, and the ability to impose blackout periods.

Determining whether ERISA has been violated often requires a finding of a breach of fiduciary responsibility. Fiduciaries include the named fiduciary of a plan, as well as those individuals who exercise discretionary authority in the management of employee benefit plans, individuals who give investment advice for compensation, and those who have discretionary responsibility for administration of the pension plan.

ERISA holds fiduciaries to an extremely high standard of care, under which the fiduciary must act in the sole interest of the plan, its participants and beneficiaries, using the care, skill and diligence of an expert – the "prudent expert" rule. The fiduciary also must follow plan documents to the extent consistent with the law. Fiduciaries may be held personally liable for damages and equitable relief, such as disgorgement of profits, for breaching their duties under ERISA.

While a participant or beneficiary can sue on their behalf of the plan, the Secretary of Labor can also sue on behalf of the plan, and pursue civil penalties. We have 683 enforcement and compliance personnel and 65 attorneys who work on ERISA matters. In calendar year 2001, the Department closed approximately 4,800 civil cases and recovered over $662 million. There were also 77 criminal indictments during the year, as well as 42 convictions and 49 guilty pleas.

President Bush's Plan

Less than one month ago, President Bush formed a task force on retirement security and asked me, Treasury Secretary O'Neill and Commerce Secretary Evans to analyze our current pension rules and regulations and make recommendations to ensure that people are not exposed to losing their life savings as a result of a bankruptcy. In his State of the Union speech, the President reiterated his commitment to improving the retirement security of all Americans.

The President's Retirement Security Plan, announced on February 1, would strengthen workers' ability to manage their retirement funds more effectively by giving them freedom to diversify, better information, and access to professional

investment advice. It would ensure that senior executives are held to the same restrictions as American workers during temporary blackout periods and that employers assume full fiduciary responsibility during such times.

Under current law, workers can be required to hold company stock in their 401(k) plans for extended periods of time, often until they reach a specified age. Workers lack the certainty of advance notice of blackout periods when they cannot control their accounts, lack access to investment advice and lack useful information on the status of their retirement savings. The President' Retirement Security Plan will provide workers with confidence, choice and control of their retirement future.

The President's plan would increase workers' ability to diversify their retirement savings. The Administration believes employers should continue to have the option to use company stock to make matching contributions, because it is important to encourage employers to make generous contributions to workers' 401(k) plans. However, workers should also have the freedom to choose how they wish to invest their retirement savings. The President's Retirement Security Plan will ensure that workers can sell company stock and diversify into other investment options after they have participated in the 401(k) plan for three years.

The President is also very concerned about blackout periods, and the Retirement Security plan suggests changes to make blackout periods fair, responsible and transparent. Our proposal creates equity between senior executives and rank and file workers, by imposing similar restrictions on senior executives' ability to sell employer stock while workers are unable to make 401(k) investment changes. It is unfair for workers to be denied the ability to sell company stock in their 401(k) accounts during blackout periods while senior executives do not face similar restrictions with regard to the sale of company stock not held in 401(k) accounts. Because the oversight of stock transactions of senior executives may go beyond the jurisdiction of the Department of Labor's regulation of pension plans, I will work with the appropriate agencies to develop equitable reform.

The President's Retirement Security Plan ensures that workers will have ample opportunity to make investment changes before a blackout period is imposed by requiring that they be given notice of the blackout period 30 days before it begins. Although employers regularly give advance notice of pending blackout periods, an explicit notice provision will give workers assurance that they will know when a blackout period is expected.

As my testimony stated, ERISA may limit the liability of employers when workers are given control of their individual account investments. The President's Retirement Security Plan would amend ERISA to ensure that when a blackout period is imposed and participants are not in control of their investments, fiduciaries will be held accountable for treating their workers' assets as carefully as they treat their own. Of course, employees would still have to prove that the employer breached a fiduciary duty in order to seek damages.

The President's plan calls on the Senate to pass H. R. 2269 – the Retirement Security Advice Act – which passed the House with an overwhelming bipartisan majority. This Committee and Chairman Boehner, the bill's sponsor, are to be commended for their dedication to promoting professional advice for workers. I am proud that my Department has worked closely with many of you to pass the legislation. The bill would encourage employers to make investment advice available to workers and allow qualified financial advisers to offer advice if they agree to act solely in the interests of the workers they advise. Partnered with the proposed increased ability for workers to diversify out of employer stock, investment advice services will be more critical than ever.

Finally, the Administration recognizes that workers deserve timely information about their 401(k) plan investments. To enable workers to make informed decisions, the President's Retirement Security Plan will require employers to give workers quarterly benefit statements that include information about their individual accounts, including the value of their assets, their rights to diversify, and the importance of maintaining a diversified portfolio. As Secretary of Labor, I would be given authority to tailor this requirement to the needs of small plans. Again, in combination with investment advice and the ability to diversify, quarterly, educational benefit statements will give workers the tools they need to make sound investment decisions.

Conclusion

The private pension system is essential to the security of American workers, retirees and their families. While the current scrutiny is appropriate and welcome, we must strengthen the confidence of the American workforce that their retirement savings are secure. The challenge before us today is to strengthen the system in ways that enhance its ability to deliver the retirement income American workers depend on. We must accomplish this without unnecessarily limiting employers' willingness to establish and maintain plans for their workers or employees' freedom to direct their own savings. The President's Retirement Security Plan strikes just such a balance.

We look forward to working with Chairman Boehner and members of this Committee in continuing this discussion and in developing ways to achieve greater retirement security for all Americans.

APPENDIX C – SUBMITTED FOR THE RECORD, STATEMENT OF CONGRESSWOMAN MARGE ROUKEMA, COMMITTEE ON EDUCATION AND THE WORKFORCE

Statement of Congresswoman Roukema
Committee on Education and the Workforce Hearing:
The Enron Collapse and its
Implications for Worker Retirement Security
Wednesday, February 6, 2002

Thank you Mr. Chairman for bringing this important issue before the Committee. Like you, I am deeply concerned about Enron employees and retirees who invested a substantial portion of their retirement assets in Enron stock and are now facing financial uncertainty.

By virtue of my service on two key Committees – the Committee on Education and Workforce and the Committee on Financial Services -- I wear more than one hat when it comes to Enron.

As you know, the Financial Services Committee started a series of hearings this week designed to determine if the regulatory system failed in the Enron case, and how reforms could correct any obvious shortcomings. I have been active on the Financial Services Committee in this area and am anxious to learn as much as I can about Enron's corporate activities, their accounting procedures and the auditing practices of Arthur Andersen.

In this Committee, our focus is retirement security. The issues raised by the Enron bankruptcy have serious implications for millions of Americans who depend on their employers' pension plans for their retirement. Our actions as a Committee have the potential to protect nearly 50 percent of American households. We cannot take this charge lightly.

Since the enactment of ERISA in 1974, almost half of American households have joined the "shareholder society" by investing in the stock market, many through their employer-provided defined contribution plans. Today, 42 million workers hold 401(k) accounts amounting to $2.0 trillion in retirement assets. Private pension plans - including 401(k)s -- are crucial to retirement security for millions of Americans. These workers need to have full confidence in the security of their pension plans.

We have spent considerable time over the years promoting expanded pension coverage and portability. But we have also tried to ensure that American workers' pensions and retirement savings are protected. I have always argued that there are three necessary components of a successful retirement system: (1) accessibility; (2) security; and (3) information. These are exactly the issues that we are facing today. We need to provide our workers easier access to pensions so that they have the ability to save for retirement. We must ensure that retirement savings are secure. And we must ensure that workers have the information they need to make wise choices to fully achieve their retirement goals.

The President is in full agreement on these points. His pension protection proposal includes all three of these principles, plus an important lesson we have learned from the Enron fiasco. We must hold employers to the same limitations faced by employees.

The President's plan will: (1) provide workers greater freedom to diversify and manage their own retirement funds; (2) give workers quarterly information about their investments and rights to diversify them; (3) expand workers' access to investment advice; and (4) ensure that senior corporate executives are held to the same restrictions as average American workers during "blackout periods" and that employers assume full fiduciary responsibility during these times.

In spite of the flaws exposed by the Enron debacle, we must be careful not to dissuade employers from providing such plans to their workers. Even while we make reforms to protect retirement savings, we must continue to encourage employers to make generous contributions to workers' 401(k) plans, including stock options.

Workers must also be free to choose how to invest their retirement savings. It is not our role to tell employees how to manage their pension plans. However we can ensure that employees have the ability to sell company stock and diversify into other investment options. And we can also guarantee employees access to information and advice regarding their pensions and investments. We have already recognized the importance equipping workers with the knowledge to make wise decisions for their future, but we must now make this proposal a reality.

I am committed to strengthening the retirement security of workers and their families. I look forward to this hearing to thoroughly analyze whether employers are complying with current federal standards and assess how well we currently protect plan participants.

APPENDIX D – SUBMITTED FOR THE RECORD, STATEMENT OF CONGRESSMAN FRED UPTON, COMMITTEE ON EDUCATION AND THE WORKFORCE

Opening Statement
Congressman Fred Upton
Member, House Education and the Workforce Committee
Hearing on "The Enron Collapse and its Implications for Worker Retirement Security"
February 6, 2002

The collapse of Enron is the subject of a number of congressional inquiries and investigations. From faulty accounting gimmicks and misleading information to the disgraceful shredding of documents, Enron's actions have made it an eyesore and an embarrassment to businesses that play by the rules.

It is the duty of Congress to get to the bottom of these egregious acts. However, of most importance to me is the effect of the Enron collapse and ensuing scandal on worker's pensions. The real shame is the fact that Enron executives made millions while company employees lost almost everything. I come from the school of thought that employers should take care of and protect their employees - not purposely mislead them in the name of corporate and individual profit. Some of these employees lost their entire savings because of the possibly illegal acts of Enron executives. ***While these allegations remain to be proven, it is clearly apparent to the average person that Enron abused the trust and loyalty of its employees.***

It is clear that Congress must act to create safeguards to protect the retirement security of all Americans. However, we must do so decisively without infringing on the rights of employees to invest their money as they see fit. At the same time, we must continue to encourage businesses to match employee contributions and stop short of any proposal that imposes onerous prescriptives which will discourage these important contributions.

Secretary Chao, thank you for agreeing to come before this committee to discuss the Administration's pension reform proposal. President Bush took the initiative to establish an interagency task force to look at ways to protect worker retirements, and I am eager to learn more about this proposal and the Department of Labor's investigation into Enron's activities.

I was especially pleased to learn that the President's pension reform proposals would give employees the right to sell company stocks and diversify into other investment options after they have participated in a 401(k) plan for three years. This is sure to give employees more control of their retirement income.

Chairman Johnson, Chairman Boehner, and Secretary Chao, I look forward to furthering the President's proposal.

APPENDIX E – SUBMITTED FOR THE RECORD, STATEMENT OF CONGRESSMAN DONALD PAYNE, COMMITTEE ON EDUCATION AND THE WORKFORCE

Congressman Donald M. Payne
Statement for "*The Enron Collapse and Its Implications for Worker Retirement Security*"
February 6, 2002

Thank you, Mr. Chairman for holding this hearing on what should be the most important issue of the Enron scandal, protecting the American worker. We are here today to deal with a very serious issue and apply the intellect, patriotism, and immense will public service that is embodied in this committee to assist those who need us the most.

What hurts many of my colleagues and I so much is the lack of integrity and concern the managers, board members and accountants have had for the employees at Enron. The cozy relationship between auditor and company cost the employees a staggering $1 billion and unfortunately there is little assistance current law can offer them. 12,000 dreams have vaporized, and 12,000 lives are suffering with the fall of Enron's stock. While this number may be relatively small to some, the fact of the matter is, this could happen again. The Enron collapse highlights the underlying weakness in a pension system that is used by nearly 1 in 5 American workers. About 2,000 companies, covering 6 million of the nation's 40 million 401(k) participants, offer their own stock as an option in the company's plan. A considerable number of these companies virtually require their employees to invest in company stock by making their matching 401(k) contributions in that form. Furthermore, many of the companies making company stock contributions restrict employees from selling the stock until they are near retirement. Ladies and gentlemen, it is time for the rules to change. We cannot and must not let this catastrophe occur again.

This debacle draws attention to numerous despicable acts but most importantly highlights the lack of integrity this company possesses. What is integrity? Integrity is defined as a steadfast adherence to a strict moral or ethical code. Enron tore away from the very fabric of the word when they chose to gamble with people's lives.
Allowing their workers to grip their futures to company stock is more than a minor financial blunder; it's a moral wrong.

The Bush Administration remedy to this mess does little to address the larger issues of retirement security; workers could lose the protections if an employer converted a 401(k) plan into an employee stock ownership plan.

We can all agree we cannot let this occur again. When employees' holdings remain concentrated in their employers' stock, they run a higher risk of a major loss. The Miller bill seeks to correct loopholes, shifting less risk on our workers and put control of their money is their hands.

Thank you again for holding this hearing on an issue of such great importance to the American workforce.

APPENDIX F – SUBMITTED FOR THE RECORD, RESPONSE OF THE HONORABLE ELAINE L. CHAO, SECRETARY OF LABOR TO QUESTIONS SUBMITTED BY CONGRESSMAN JOHN TIERNEY, COMMITTEE ON EDUCATION AND THE WORKFORCE

Questions for Secretary Chao
Enron Hearing February 6, 2002

I .Investment Advice: The Administration's proposed pension bill includes a provision that requires employers to provide investment advice for the worker. Investment advice was also included in H.R. 2269, which many of my colleagues suggest (sic) that some people would not have lost their retirement security if they had competent investment advice. I agree that advice is a crucial tool in retirement planning. What I do not agree with is the notion that an investment advisor, hired by the employer, would not have a conflict of interest, and provide unbiased guidance.

1. Isn't it true that the Administration's bill does not provide independent verification for the employee?
2. Does the worker have any outside resources, aside from the employer-hired advisor?
3. Would the advisor be more likely to suggest purchasing the company stock because it is cheaper for the company versus compensating the employee with cash?

Answer: The President's retirement security plan incorporates H.R. 3762, which passed the House with a bi-partisan majority on April 9th. That legislation would require investment advisors to accept full fiduciary responsibility to act solely in the workers' best interest and to disclose any fees or relationships. Workers are in desperate need of professional investment advice. Their access to these services would be greatly limited if employers had to employ totally separate investment advisors rather than rely on financial institutions that offer other services to the plan sponsors. Of course, individuals would still be free to obtain advice from an outside source. It would be a violation of ERISA for a fiduciary advisor to recommend company stock because it would be cheaper for the company. The fiduciary advisor must make recommendations based solely on what is in the workers' best interests, not the company's.

II. Government Oversight of Retirement Savings- The Department of Labor recently announced that it had reached an agreement with Enron's Administrative Committee to appoint an independent fiduciary to serve as fiduciary of the company's three retirement plans. As head of the Department of Labor, you generally do not get involved with oversight of individual pension plans, normally the Pension and Welfare Benefits Administration reviews these retirement plans. While reviewing the Administration's budget for fiscal year 2003, it came to my attention that the Department of Labor expects to investigate 1,000 less plans than they did in 2001. The Pension and Welfare Benefits Administration estimates that in fiscal year 2003, it will conduct 6,398 plan

reviews and investigations versus the 7,463 in 2001 (page 667 of the FY 2003 Budget Appendix)

4. Don't you think that the Department of Labor should review more pension plans?
5. If there had been more oversight of pension plans, would the government have been able to minimize the mismanagement of Enron's retirement plans?
6. Will you support full funding for this legislation?

Answer: The Department's ERISA compliance efforts cannot prevent business failures or their potential impact on employee benefit plans. The recent legislation passed by the House on April 11 contains many of the President's pension reform proposals from the Retirement Security Plan announced in February. When enacted, these provisions will help mitigate the impact of business failures on employees. This legislation mandates that employees have more access to information about their benefits, allows workers to diversify their accounts more frequently, requires notice prior to any blackout period, prevents executives from selling stock while rank and file employees are in a black out period and encourages the provision of investment advice.

None of our activities, by themselves, can guarantee the protection of all benefits from economic and financial market conditions. Nevertheless, we believe that a balanced, reasoned approach utilizing education and outreach, as well as compliance assistance and enforcement, will enhance and improve the security of retirement benefits, and will result in the American public having greater confidence in the system.

To fully leverage its resources, PWBA – as well as most federal enforcement agencies -- engages in "targeting." The term ``targeting" refers to the process whereby specific individuals or entities are identified for investigation because of some indication that an ERISA violation may have occurred or may be about to occur. Through "targeting," PWBA seeks to identify situations and apply its enforcement resources to protect those employee benefit plan participants and beneficiaries whose security and livelihood are in the greatest danger of being harmed as a result of ERISA violations. Such methods focus on those situations where participants and beneficiaries are most susceptible to actual loss of benefits, or where ``populations" of plan participants are potentially exposed to the greatest risk of falling victim to unlawful conduct. To help ensure that our limited resources go as far as possible, PWBA has also established programs, such as the Voluntary Fiduciary Corrections Program, that complements after-the-fact enforcement with compliance assistance and prevention, thereby enhancing the security of workers' retirement programs and benefits.

The vast majority of the projected decrease in investigations can be attributed to an improvement in PWBA's compliance assistance efforts regarding Form 5500 reviews. As you know, plans sponsors are required to file annual Form 5500's that are used by the Department of Labor, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation.

In the past, PWBA performed Form 5500 reviews after the receipt of filings, and considered such reviews investigations. With the new EFAST system allowing Form 5500's to be processed electronically, PWBA is able to shift its investigative efforts to proactive "Help Desk" assistance in order to advise plan sponsors with their filing questions.

Additionally, PWBA is developing a baseline to establish the quality of plan audits. This baseline is constructed through the examination of a statistical sample of plan filings. Neither these sample audits, nor the "Help Desk" assistance, are counted as investigations, and therefore the number of investigations is expected to decline. The funding provided in the President's FY03 budget request is sufficient to carry out our mission of protecting the retirement benefits of working and retired Americans.

III: Executive Buyouts vs. Retiree Health Benefits - ERISA was enacted to protect the retirement assets of the working person. Much has been said about the importance of retirement security in the form of pension plans. I want to talk about another form of retirement security, something else that an employer may sponsor on behalf of their workforce in order to compensate them for years of service and dedication: retiree health benefits. Retiree health benefits are not covered by ERISA. While we are trying to make workers whole, we should address this very important issue. I want to bridge the gap between the executives who are left on the payroll of companies that are financially troubled, while retiree health benefits are stripped.

7. Do you think we should close this loophole?

Answer: Please be assured that this Administration is concerned about employer-provided retiree health coverage.

The principal statute that governs retiree health benefits is the Employee Retirement Income Security Act of 1974 (ERISA). Under ERISA, employers are free to provide health benefit programs, including coverage for retirees, on a voluntary basis. ERISA requires that group health plans pay for the benefits

that are promised, including retiree health benefits. However, the law does not permit substantial advance funding of future retiree health benefits.

Most employers do reserve the right to adapt benefit programs to changing circumstances in the terms of the plans that they sponsor, including modifying benefits, adjusting premiums or terminating plans. Over the last decade, a change in the corporate accounting rules (Financial Accounting Standard 106, which requires companies to carry retiree health obligations as a liability on the balance sheet) and rising health costs have led some employers to reduce or eliminate benefits prospectively. In a few cases, plan sponsors have terminated benefits completely.

Retiree health coverage poses numerous public policy challenges because it involves not only private sector employers and limitations on advance funding, but also the Medicare program and other factors such as the rising cost of prescription drugs. I believe we must address retiree health issues in a comprehensive fashion, in conjunction with Medicare reform. Mandating retiree coverage under private voluntary health plans, however, would have the predictable result of discouraging employers from offering health benefits at all.

APPENDIX G – SUBMITTED FOR THE RECORD, CRIMINAL ENFORCEMENT ACCOMPLISHMENTS, CALENDAR YEAR 2001, U.S. DEPARTMENT OF LABOR, WASHINGTON, D.C.

Criminal Enforcement Accomplishment - Calendar Year 2001

Case Name	Defendent Name	Event Text	Type of Offender	Jail Term Months	Home Confin Months	Probation Months	Bar Years
Thomas Fitzgerald	Fitzgerald, Thomas	Conviction	Medical Provider	40	0	36	0
Albert Lawrence/Lawrence Group, Inc. Savings And Security Plan	Lawrence, Albert W	Conviction	Trustee (Individual)	37	0	36	13
Craig J. Nelsen	Nelson, Craig	Conviction	Trustee (Individual)	3	3	36	0
Anthony G. Dipace	DiPace, Anthony	Conviction	Investment Consultant/Advisor	60	0	0	0
Mkm Medical Equipmnt.Inc.401k	Pierce, Steven	Guilty Plea	Medical Provider	8	0	36	0
Michael J. Usilton	Usilton, Michael	Guilty Plea	Accountant	18	0	36	3
Halpak Plastics Inc. 401(K)Pln	Kaplan, Sandra	Guilty Plea	Trustee (Individual)	0	6	0	0
Halpak Plastics Inc.Def.Ben.Pl	Kaplan, Harold	Guilty Plea	Trustee (Individual)	0	6	48	0
Thomas Fitzgerald	Adler, Joseph	Guilty Plea	Accountant	0	0	24	0
Antar-Com 401k Plan	Montefusco, John	Guilty Plea	Insurance Agent/Broker	6	12	36	0
Carrafiello Diel & Associates	Guarnieri, Donald J.	Guilty Plea	Company Official (Non-owner)	12	0	24	0
Scientific Radio Sys 401k Plan	Herstine, Richard	Guilty Plea	Company Official (Non-owner)	0	0	12	13
Ufcw Lu 1 Pension Fund	Talarico, Joseph C.	Guilty Plea	Other	0	0	0	0
Ufcw Lu 1 Pension Fund	Talarico, Samuel Jr.	Guilty Plea	Plan Administrator	0	0	0	0
Ufcw Lu 1 Pension Fund	Talarico, Samuel	Guilty Plea	Other	0	0	0	0
Ufcw Lu 1 Western Ny Pen Fund	Danella, Dennis	Guilty Plea	Other	0	0	0	0
Ufcw Lu 1 Western Ny Pen Fund	Finkle, James	Guilty Plea	Other	0	0	0	0
Ufcw Lu 1 Western Ny Pen Fund	Bloom, Jay	Guilty Plea	Other	0	0	0	0
Ufcw Lu 1 Education Saf & Cult	O'Leary, James	Guilty Plea	Other	0	0	0	0
Ufcw Lu 1 Education Saf & Cult	Bianco, Anthony	Guilty Plea	Other	0	0	0	0
Ufcw Lu 1 Education Saf & Cult	Biernat, Marlene	Guilty Plea	Other	0	0	0	0
Ufcw Lu 1 Health & Welfare Fund	DeFalco, Elliot	Guilty Plea	Other	0	0	0	0
Ufcw Lu 1 Health & Welfare Fund	Mannella, Mario	Guilty Plea	Other	0	0	0	0
Ufcw Lu 1 Health & Welfare Fund	Cannistra, Patrick	Guilty Plea	Other	0	0	0	0
Ufcw Lu 1 Health & Welfare Fund	Barron, Donald	Guilty Plea	Other	0	0	0	0

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26 USC 7206 - Fraud and False Statements (Regarding Taxes)	29 USC 501(c) Embezzlement of Union Monies (LMRDA)
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26 USC 7206 - Fraud and False Statements (Regarding Taxes)	
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18 USC 1347 - Health Care Fraud	18 USC 669 - Theft or Embezzlement in connection with Health Care
18 USC 664 - Theft or Embezzlement from Employee Benefit Plan	

Kurt Claywell As Trust Of Clay	Claywell, Kurt	Guilty Plea	Trustee (Individual)	0	6	24	0
Fraternal Insurance Grp Inc.	Pereira, Paul J.	Guilty Plea	Plan Administrator	36	0	0	0
Bloch Industries Inc	Shambo, Paul	Guilty Plea	Trustee (Individual)	0	0	0	0
Bloch Industries Inc	Lohwater, Michael	Guilty Plea	Trustee (Individual)	0	6	60	0
Morton Speech Language Inc	Morton, Betty	Guilty Plea	Trustee (Individual)	36	0	36	0
Eldridge Robert J.	Eldridge, Robert	Guilty Plea	Plan Administrator	24	0	36	0
Electrical Energy Services Inc Supp. Plan	Phillips, Bruce	Guilty Plea	Owner	12	0	72	0
Electrical Energy Services Inc Pension Plan	Electrical Services, Inc.	Guilty Plea	Plan Sponsor	0	0	0	0
Painters Local 186 Training Fund	Gould, Warren	Guilty Plea	Plan Administrator	0	0	0	0
Leslie Sharee King	King, Leslie	Guilty Plea	Other	14	0	36	13
Dyahiann L. Morris	Morris, Dyahiann	Guilty Plea	Other	3	0	60	13
Wolfe John J.	Wolfe, John	Guilty Plea	Plan Administrator	15	0	36	13
Espisito, Anna	espisito, anna	Guilty Plea	Other	0	6	60	0
Belanger, Dr. Kenneth	BELANGER, KENNETH	Guilty Plea	Medical Provider	12	0	36	0
Makey, John	MACKEY, SCOTT	Guilty Plea	Owner	0	0	0	0
Namoli, Anthony J.	NAMOLI, ANTHONY J.	Guilty Plea	Other	6	0	36	0
Laura Krpan	Krpan, Laura	Guilty Plea	Owner	24	0	36	0
Michael Ronan	Ronan, Michael	Guilty Plea	Owner	5	5	36	0
Nick F. D'Adamio	D'Adamio, Nick	Guilty Plea	Third Party Administrator	15	0	36	0
Craig J. Nelsen	Nelson, Craig	Guilty Plea	Trustee (Individual)	3	3	36	0
Taylor Mathews	Matthews, Jr., R. Taylor	Guilty Plea	Trustee (Individual)	0	4	36	13
Taylor Mathews	Woodson Products Company, L.L.C.	Guilty Plea	Plan Sponsor	0	0	24	0
First Care & Employee Benefits	Hermes, Harry	Guilty Plea	Owner	15	0	0	0
Faith Home Health Services Def. Comp Plan	Fairley, Detra	Guilty Plea	Trustee (Individual)	0	0	12	13
Faith Home Health Services Def. Comp Plan	Jackson, Paulette	Guilty Plea	Trustee (Individual)	0	0	12	13
U. S. Staffing	Smith, James	Guilty Plea	Trustee (Individual)	0	0	36	0
U. S. Staffing	Adcock, W. Sherman	Guilty Plea	Trustee (Individual)	0	0	36	0
Howell Transportation Services Inc	Stone, Kristy B	Guilty Plea	Record Keeper	0	0	24	0
Albert Ogbunamari	Obinwanne, Uche	Guilty Plea	Other	0	0	12	13
Albert Ogbunamari	Ogbunamiri, Albert	Guilty Plea	Participant/Beneficiary	15	0	36	13
Affiliated Home Health Of Monroe, La.	Laukhuff, Ralph (Randy)	Guilty Plea	Owner	18	0	36	0
Affiliated Home Health Of Monroe, La.	Yap, Kim Keong	Guilty Plea	Accountant	14	0	36	0
Affiliated Home Health Of Monroe, La.	Leggett, Bethany	Guilty Plea	Company Official (Non-owner)	6	0	60	0
Triune Resources, Inc. Ee'S Health Care Plan	Darner, Mark	Guilty Plea	Medical Provider	60	0	36	13

18 USC 664 - Theft or Embezzlement from Employee Benefit Plan
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18 USC 664 - Theft or Embezzlement from Employee Benefit Plan
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18 USC 371- Conspiracy
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18 USC 664 - Theft or Embezzlement from Employee Benefit Plan

18 USC 1343 - Fraud by Wire, Radio, or Television

18 USC 2 - Principals
Other
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18 USC 2 - Principals
18 USC 1341 - Frauds and Swindles (Mail Fraud)

18 USC 1341 - Frauds and Swindles (Mail Fraud)
26 USC 7206 - Fraud and False Statements (Regarding Taxes)

18 USC 669 - Theft or Embezzlement in connection with Health Care
18 USC 669 - Theft or Embezzlement in connection with Health Care

18 USC 1347 - Health Care Fraud

18 USC 1347 - Health Care Fraud

18 USC 1341 - Frauds and Swindles (Mail Fraud)

Mee, Inc./Ortiz, Richard L.	Ortiz, Richard	Guilty Plea	Trustee (Individual)	0	0	60	13
Christopher "Puffer" Haff	Haff, Christopher	Guilty Plea	Insurance Agent/Broker	4	0	36	0
Douglas J. Dobbins	Dobbins, Douglas	Guilty Plea	Other	27	0	36	0
Gary Kelley	Kelley, Gary	Guilty Plea	Company Official (Non-owner)	37	0	36	0
Mary Barnes/International Mailing Systems, Inc.	Barnes, Mary	Guilty Plea	Record Keeper	216	0	0	13
Jared E. Hawkins	Hawkins, Jared	Guilty Plea	Accountant	0	0	60	13
U-Me Enterprises, Inc 401k Retirement Savings Plan	Kuwamura, Isaac	Guilty Plea	Company Official (Non-owner)	0	0	60	0
U-Me Enterprises, Inc 401k Retirement Savings Plan	Yamane, Randell	Guilty Plea	Owner	8	0	36	0
Wilcare Corporation 401k Plan	WILL, VERNON	Guilty Plea	Contributing Employer	72	0	84	0
Wilcare Corporation 401k Plan	WILL, DOUGLAS	Guilty Plea	Plan Administrator	0	0	36	0

18 USC 664 - Theft or Embezzlement from Employee Benefit Plan
Theft
29 USC 1131 - Reporting and Disclosure (ERISA 501)
18 USC 371- Conspiracy
18 USC 371- Conspiracy
Fraud
Fraud

18 USC 1957 - Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity

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APPENDIX H – SUBMITTED FOR THE RECORD, STATEMENT OF THE ERISA INDUSTRY COMMITTEE (ERIC), WASHINGTON, D.C.

THE ERISA INDUSTRY COMMITTEE
1400 L. STREET, NW, SUITE 350 WASHINGTON, D.C 20005-3509 TEL: (202) 789-1400 FAX: (202) 789-1120

THE ERISA INDUSTRY COMMITTEE

STATEMENT ON

INVESTMENTS IN EMPLOYER STOCK

BY

EMPLOYER-SPONSORED DEFINED CONTRIBUTION PLANS

SUBMITTED TO

THE COMMITTEE ON EDUCATION AND THE WORKFORCE

OF THE UNITED STATES HOUSE OF REPRESENTATIVES

FEBRUARY 6, 2002

The ERISA Industry Committee ("ERIC") is pleased to submit this statement regarding investments in employer stock by employer-sponsored defined contribution plans.

ERIC is a nonprofit association committed to the advancement of the employee retirement, health, and welfare benefit plans of America's largest employers. ERIC's members provide comprehensive retirement, health care coverage, and other economic security benefits directly to some 25 million active and retired workers and their families. ERIC has a strong interest in proposals affecting its members' ability to deliver those benefits, their costs and effectiveness, and the role of those benefits in the American economy.

In addressing the many issues raised by the Enron matter, Congress is faced with a difficult decision regarding the treatment of defined contribution plan investments in employer stock. As recent events demonstrate, although employees whose retirement benefits are based on the value of employer stock have the opportunity to enjoy substantial gains and an increase in their retirement benefits if the stock price appreciates, they also are exposed to the risk that the value of the stock will fall and a concomitant reduction in their retirement benefits.

On the other hand, voluntary employer-sponsored retirement plans, including plans that invest in employer stock, have been enormously successful in providing retirement benefits to employees. If Congress responds excessively to the risks associated with stock-based plans by imposing restrictions that prevent these plans from meeting employers' business needs, Congress will have addressed one risk by creating a different and more dangerous risk: that millions of employees will be unable to share in their employers' success. In addition, excessive legislative limits on investments in employer stock may cause employers to reduce their commitments to their plans, resulting in significant reductions in employees' retirement savings.

The task facing Congress is made more difficult because the issues do not relate solely to employer-sponsored retirement plans. Many of the issues relate to the accuracy, adequacy, and timeliness of the disclosures made to shareholders generally, including those who hold stock outside of an employer-sponsored plan. The way in which such disclosure issues are resolved could affect, and to some extent may obviate, Congress's decisions regarding the stock held by an employer-sponsored plan.

Employee accounts in employer-sponsored § 401(k) and other defined contribution plans are a major source of retirement savings for employees and their families. As of the end of 2000, approximately 42 million employees had accounts in § 401(k) plan accounts, representing $1.8 trillion in assets.[1]

At the same time, employer-sponsored retirement plans are voluntary arrangements. Employers are not required to sponsor retirement plans for their employees; they are not required to contribute to their profit sharing and stock bonus plans; and they are not required to make matching contributions to their § 401(k) plans. Total § 401(k) plan contributions are clearly higher, however, in plans where the employer matches employee contributions than in plans where there is no employer match.[2]

Employee stock ownership, stock bonus, and other stock-based plans are not only permitted by ERISA, they are strongly and affirmatively promoted by numerous provisions of law that have encouraged employers for nearly a century -- since 1921-- to maintain stock-based defined contribution plans for their employees.[3]

Employer stock plans serve the important purpose of aligning the interests of employees with the interests of the employer's business and encouraging employees to be attentive to the interests of the business. The following simple anecdote illustrates this point. After one company suffered losses because its delivery people regularly discarded expensive

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[1] Sarah Holden & Jack VanDerhei, "401(k) Plan Asset Allocation, Account Balances, and Loan Activity in 2000," Employee Benefit Research Institute Issue Brief at 3 (Nov. 2001).

[2] Sarah Holden & Jack VanDerhei, "Contribution Behavior of 401(k) Plan Participants," Employee Benefit Research Institute at 10 (Oct. 2001) "total contribution rates for participants in plans with employer contributions were 2.8 percentage points higher than total contribution rates for participants in plans without employer contributions" (footnotes omitted)).

[3] *See, e.g.*, Revenue Act of 1921, § 219(f) (tax exemption); Tax Reduction Act of 1975, P.L. 94-12, § 301, Tax Reform Act of 1976, P.L. 94-455, § 803 (tax credit), and Revenue Act of 1978, P.L. 95-600, § 141 (tax credits) (repealed); IRC §§ 401(a) & 501(a) (tax exemption), 404(k) (dividend deduction) and 1042 (tax-deferred sales).

containers after they took the company's merchandise out of the containers and placed the merchandise on retailers' shelves, the company responded by printing the logo of its stock plan on the containers. The delivery people immediately got the point: they saw the connection between their returning the containers to the company for reuse and their own benefits from the company's stock plan. The company, and its employee-owners, saved millions of dollars a year as a result of this program.

Employee benefit plans thus serve important business purposes in addition to providing a safety net for retirement. A key business purpose is to attract and retain talented employees. Employers compete with each other for talented employees by, among other things, designing and offering benefit plans that respond affirmatively to current and prospective employees' wishes and needs, which often include highly-valued access to the employer's stock.

Employer stock plans give employees the opportunity to purchase employer stock economically, conveniently, and tax-efficiently. Employees highly value the opportunity to invest in employer stock, the stock they know best.

Employees have benefitted enormously from participating in employer stock plans. These plans have allowed employees to benefit from substantial appreciation in the value of the companies that employ them.

Congress should allow employees to make their own decisions regarding the diversification of their employee-directed accounts. Congress should not restrict an employee's right to allocate all or part of his employee-directed account to any investment offered by the plan, including employer stock.

Employees place great value on the freedom to make their own investment choices. Congress should not curtail their freedom.

Employees who participate in employer stock plans are protected by ERISA's fiduciary standards. ERISA requires the fiduciaries of these plans to act prudently and solely in the interest of participants and beneficiaries, while taking into account the fact that employer stock plans are, by their very nature, designed to invest in employer stock. ERISA requires plan fiduciaries to communicate truthfully with participants and beneficiaries about the plan.[4]

The vast majority of major employers sponsor both defined benefit plans and defined contribution plans for their employees. In these circumstances, the employer's defined contribution plan is only one component of the employer's comprehensive retirement program; employees do not rely on the defined contribution plan alone for retirement security. As a result, it can be quite misleading to measure the diversification of an employee's retirement savings by looking only at his § 401(k) account. A substantial portion of many employees' retirement savings is attributable to their benefits in the employer's defined benefit retirement plan under which benefits are determined by the plan's formula rather than the investment performance of the plan's assets.

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[4] *See Varity Corp. v. Howe*, 516 U.S. 489 (1996); *see also* 29 C.F.R. §§ 2550-404c-1(b)(2)(i)(B), -1(c)(2), -1(d)(2)(ii)(E)(4).

The widely-reported losses suffered by participants in the plans of Enron Corporation has been attributed to the alleged misconduct of Enron officials. If the allegations are correct, the alleged misconduct goes well beyond a violation of ERISA's fiduciary standards. If the allegations of corporate misconduct are correct, they also suggest the possibility that federal securities laws have been violated.

New fiduciary standards or new restrictions on holdings of employer stock under ERISA are not well-suited toward curbing conduct of the kind that has been alleged.

ERIC favors vigorous enforcement of the federal securities laws and ERISA to assure that employees, and investors in general, have the information they need to make informed investment decisions.

ERIC supports efforts to help employees to make their investment choices wisely. For example, ERIC supports changes in current law to make it more likely that employers will make investment advice available to plan participants.

Employers' willingness to contribute to their defined contribution plans is directly linked to the plans' ability to meet the needs of employers and their employees. New restrictions on defined contribution plans that prevent these plans from meeting the needs of employers and employees will cause these plans to contract and will curtail employees' retirement savings.

Congress should preserve an employer's freedom to require that its own contributions to a defined contribution plan be invested in employer stock. If employers are prohibited from requiring their contributions to defined contribution plans to be invested in employer stock, they are likely to curtail their contributions, thereby reducing employees' retirement savings.

Moreover, new restrictions on investments in employer stock by defined contribution plans will encourage employers to replace these plans with stock plans that are not subject to these restrictions, such as stock option and stock purchase plans. Stock option and stock purchase plans are not retirement plans and are not designed to promote retirement savings. They have quite different purposes and aims. Legislation that encourages employers to replace defined contribution retirement plans with stock option and stock purchase plans will reduce employees' retirement savings.

In any event, plans' existing investments in employer stock, which were made in reliance on current law, should not be disrupted. Investments that have been made in accordance with current law should not be up-ended by new legal requirements. If plans are required to dispose of their existing stock holdings, or are subjected to new diversification requirements, the market for the employer's stock is likely to be destabilized, harming the interests of stockholders in general and plan participants in particular.

Temporary suspensions in trading activity ("blackout periods") in participant-directed plans are often necessary to accommodate changes in plan administration, such as a

change in the plan's record-keeper, a change in the plan's administrative system, or a merger with another plan. Blackout periods also occur for unanticipated reasons, such as a power outage, a computer failure, or terrorist activity.

Although many employee-directed defined contribution plans permit employees to change the way their accounts are invested on a daily basis, plans are not required to permit daily changes in investments, and the vast majority of employees do not make daily changes. Indeed, daily investment changes are often discouraged. Frequent trading is inconsistent with the plan's role a vehicle for long-term retirement savings.

ERISA's current fiduciary standards appropriately regulate plan administrators' decisions regarding (a) the need for a blackout period, (b) the duration of any blackout period, (c) the need for, and timing and content of, a notice to plan participants regarding the blackout period, and (d) the timing of the blackout period itself.

Imposing additional legislative restrictions on blackout periods will discourage improvements in plan administration, to the detriment of plan participants. ERISA's fiduciary standards require that employers retain the discretion to change plan record-keeper and computer systems even if such changes require the imposition of a brief blackout period. Legislation that imposes excessive restrictions on blackout periods would do serious damage to defined contributions plans and to the employees who participate in them.

The issues under consideration are difficult. They should not be resolved without careful fact-finding and analysis. Hasty adoption of well-intentioned but ill-considered legislation risks harming the very employees the legislation is designed to protect: the employees who participate in voluntary employer-sponsored plans. We urge the Committee to study the facts and the issues in depth before making recommendations.

For our part, we intend to continue to study the issues and develop additional recommendations which we will communicate to you promptly.
We very much appreciate the opportunity to submit this statement. We look forward to working constructively with the Committee and its staff on these challenging and important issues.

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HEARING ON THE ENRON COLLAPSE AND ITS IMPLICATIONS FOR WORKER RETIREMENT SECURITY

Thursday, February 7, 2002

Committee on Education and the Workforce

U.S. House of Representatives

Washington, D.C.

The Committee met, pursuant to call, at 10:10 a.m., in Room 2175 Rayburn House Office Building, Hon. John A. Boehner, Chairman of the Committee, presiding.

Present: Representatives Boehner, Ballenger, Hoekstra, McKeon, Castle, Johnson, Hilleary, Ehlers, Fletcher, DeMint, Isakson, Biggert, Platts, Tiberi, Keller, Osborne, Culberson, Miller, Kildee, Owens, Payne, Mink, Andrews, Roemer, Scott, Woolsey, Rivers, McCarthy, Tierney, Kind, Sanchez, Ford, Kucinich, Wu, Holt, Solis, Davis, and McCollum.

Staff Present: Christine Roth, Professional Staff Member; David Connolly, Jr., Professional Staff Member; Dave Thomas, Legislative Assistant; Paula Nowakowski, Staff Director; Ed Gilroy, Director of Workforce Policy; Allison Dembeck, Executive Assistant; Victoria Lipnic, Workforce Policy Counsel; Jo-Marie St. Martin, General Counsel; Patrick Lyden, Professional Staff Member; Molly McLaughlin Salmi, Professional Staff Member; Stephen Settle, Professional Staff Member; Kevin Smith, Senior Communications Counselor; Heather Valentine, Press Secretary; Maria Miller, Communications Coordinator; Deborah L. Samantar, Committee Clerk/Intern Coordinator.

John Lawrence, Minority Staff Director; Mark Zuckerman, Minority General Counsel; Cheryl Johnson, Counsel; Michele Varnhagen, Labor Counsel/Coordinator; Peter Rutledge, Senior Legislative Associate/Labor; Camille Donald, Legislative Associate/Labor; Dan Rawlins, Staff Assistant/Labor; Ann Owens, Clerk; Daniel Weiss, Special Assistant to the Ranking Member; Joycelyn Johnson, Staff Assistant; Joe Novotny, Staff Assistant/Education.

Chairman Boehner. A quorum being present, the Committee on Education and the Workforce will come to order.

I want to welcome everyone back for a second day of hearings on the collapse of Enron and its implications for worker retirement security. Under Committee rule 12(b) opening statements are limited to the Chairman or Ranking Member of the Committee. Therefore, if other Members do have opening statements, they will be included in the hearing record.

Without objection, so ordered.

OPENING STATEMENT OF CHAIRMAN JOHN A. BOEHNER, COMMITTEE ON EDUCATION AND THE WORKFORCE

On December 2nd, 2001, the Enron Corporation filed the largest bankruptcy petition in U.S. history. The next day the company announced that it would lay off 4,000 of its 7,500 employees as part of a corporate restructuring program.

Devastating losses in the company's employee 401(k) plan left many loyal Enron employees without their retirement security. The stories told by Enron's employees are heart wrenching. The Enron collapse has sent chills down the spine of every American employee who has worked and saved for a safe, secure retirement. About 42 million American workers own 401(k) accounts, with a total of nearly $2 trillion in assets.

In the aftermath of Enron's fall, millions of workers across the country are now asking the obvious question; why did this happen and could it happen to me? One of the tragic realities of the situation is that it has rattled the confidence of American workers in this country's pension system, a system that, by and large, has served employees and their families very well.

Even more tragic is the possibility that it could have been avoided. At least some of Enron's workers might have been able to preserve their nest eggs if Washington had taken some basic steps to update our pension laws. For example, many Enron employees might have had access to a professional investment adviser who could have warned them that too many eggs in one basket might be a bad thing. Current law enacted more than a quarter century ago before 401(k) accounts were even envisioned denies workers this opportunity.

Congress has taken some positive steps in the recent past to update our Nation's pension laws, and this Committee has been the focal point in those efforts. We passed the landmark reforms authored by my friend and colleague, Congressman Rob Portman. The reforms gave

workers portability, faster vesting and a host of other needed changes. We passed the Retirement Security Advice Act to give rank and file workers the same access to professional investment advice that wealthy executives have.

But in spite of these efforts a lot of work still lies ahead. In the aftermath of Enron, this modernization effort is taking on a grim new urgency. In short, while investigations will reveal whether Enron's employees are the victims of illegal actions, we already know that they are victims of an outdated Federal law and unless Congress acts to update those laws, there may be more victims. That is not acceptable to me. I know it is not acceptable to my colleague and friend, Mr. Miller, and I don't think it is acceptable to the other Members of this Committee.

President Bush has asked Congress to take action to strengthen worker retirement security and renew employee confidence in the pension system. He has put forth a serious plan to help Congress meet those goals. Among other things, the President's plan would bar senior corporate executives from selling company stock during times when workers are unable to trade in their own 401(k) accounts. This would require that employees be given notice 30 days before the beginning of any blackout period. It would give employees greater freedom to sell company stock and diversify into other investment options. In addition, it calls for the Senate to pass the Retirement Security Advice Act that passed the House with broad bipartisan support.

While the Members of this Committee have wide-ranging views on this subject, we all agree that we have a responsibility to act. Even before Enron's fall, Republicans and Democrats on this panel had worked for many months in a continuing effort to identify portions of ERISA that needed modernization. In light of that effort and in light of the testimony we heard yesterday from the Secretary of Labor and what I expect we will hear today, I believe that the President's plan provides an excellent starting point for legislative action in this Committee.

I know that the Chairman of the Employer-Employee Relations Subcommittee, Mr. Johnson, shares my views, and together we will be introducing the President's proposal as the first step toward a consensus product that can be signed into law on behalf of American workers. I look forward to working with all of my colleagues on this Committee toward that goal.

I also want to thank all of our witnesses for being here and your willingness to testify. We are all anxious to learn the facts of the Enron story related to retirement plans for employees, as we go forward with the legislative process. I look forward to our witnesses helping us all to better learn the lessons of Enron.

I now yield to my colleague and friend from California, Mr. Miller, for his opening statement.

OPENING STATEMENT OF CHAIRMAN JOHN A. BOEHNER, COMMITTEE ON EDUCATION AND THE WORKFORCE – SEE APPENDIX A

Mr. Miller. Thank you, Mr. Chairman. I do not have an opening statement.

I would like to yield to Mr. Kildee for a couple of brief remarks and then to Mr. Roemer for the purpose of introducing of one of our witnesses.

Mr. Kildee. I thank the gentleman for yielding.

Mr. Chairman, yesterday during the first hearing on the Enron situation, I was in the Resources Committee for a 6-hour hearing on the Indian Trust Funds. The Indian Trust Funds so far have led to the Secretary of the Interior, Mrs. Norton, being held in contempt of court. I think that all of us have certain contempt for what happened at Enron, and we're here to find out why it happened and what we can do to prevent it from happening in the future.

And I yield back the balance of my time.

Chairman Boehner. Thank you.

Mr. Roemer?

Mr. Roemer. I want to thank my Ranking Member for yielding me time on this.

I am very proud to have one of my constituents here as a witness to testify before our Committee today. Dr. Teresa Ghilarducci from the University of Notre Dame, an economics professor, is here with us to testify about some possible solutions to prevent future problems with our 401(k) pension systems. She gave eloquent and very articulate testimony last week at a meeting that George Miller and I had in my District with both unemployed and underemployed workers.

So we very much look forward to your testimony and look forward to the opportunity to ask you some questions about what lies ahead to prevent future fiascoes.

Thank you very much.

Mr. Kildee. Thank you, Mr. Chairman.

Chairman Boehner. It's now my pleasure to introduce our panel of witnesses.

Our first witness today is Mr. Tom Padgett. Mr. Padgett is a Senior Lab Analyst at EOTT, an Enron subsidiary.

Our second witness is Ms. Cindy Olson, the Executive Vice President Human Resources, Community Relations, and Building Services for the Enron Corporation.

Our third witness will be Ms. Mikie Rath. Ms. Rath is the Benefits Manager for Enron.

Our fourth witness is Mr. Scott Peterson, Global Practice Leader for Defined Contribution Services at Hewitt Associates.

And our fifth and final witness today is Professor Teresa Ghilarducci. She's Associate Professor, Department of Economics, University of Notre Dame, as you've heard, and has been a frequent witness here on this Committee. We welcome you back.

Before you begin your testimony, I will ask each of you to take an oath, and you should be aware that it is unlawful to make a false statement to Congress while under oath. And in light of that, if you'd all please stand and raise your right hand.

[Witnesses sworn.]

Chairman Boehner. All the witnesses have indicated their willingness to do so.

There are two more items of business that we want to deal with quickly before we get to the witnesses. We have many questions that we want answered today, and Mr. Miller and I have come up with an agreement that allows each side to spend a little more time than is usual on questions.

Mr. Miller and I have agreed to equally divide 40 minutes, giving each side 20 minutes of time. We will alternate from the majority to the minority in 10-minute increments until the time is gone. After the 40 minutes is over, we'll return to regular order and the 5-minute rule for questions, starting with Members who have not had a chance to ask questions.

With that said, I ask unanimous consent that 40 minutes be equally divided and controlled by the Chairman and Ranking Minority Member, used in 10-minute increments. Without objection, so ordered.

Our second item of business I'd like to note for the record is that I made a request for the production of documents by the Enron Corporation. In compliance with my request, the corporation produced a large number of documents for both the Democrat and Republican Committee staff yesterday. I understand that the witnesses have not had an opportunity to review all of the documents produced for the Committee. Many of these documents contain certain private personal matters and proprietary interests. Hence, the Committee will release only certain documents today until the Committee has had sufficient time to determine how best to handle the releasing of information contained therein.

As a result and with the concurrence of the Democrat Members of the Committee, there are several documents produced that I believe would be helpful to the Committee during the hearing today. These documents are in each of your folders and I would appreciate everyone's cooperation.

At this time, I would like to ask unanimous consent to insert the following documents into the hearing record: (1) a copy of the Enron Corporation's savings plan document, which we will refer to as Exhibit 1, (2) copies of four e-mails sent to employees regarding the savings plan, which

we will refer to as Exhibit 2, (3) a copy of my letter to the corporation requesting certain documents, which we will refer to as Exhibit 3, and (4) a copy of the letter from Mr. Miller to the corporation also requesting certain documents, which we will refer to as Exhibit 4. Without objection, so ordered.

Having said that, Mr. Padgett, you may begin your testimony. If you are not familiar with the lights in front of you, the green light will be on for 4 minutes. The amber light will be on for a minute, and when the red light comes on, we hope that your testimony will be concluded.

STATEMENT OF THOMAS O. PADGETT, SENIOR LAB ANALYST, EOTT (ENRON SUBSIDIARY), BAYTOWN, TX

Mr. Chairman, Congressman Miller, Members of this Committee, I appreciate the opportunity to sit here before you today and state my situation, which I believe mirrors the situation of many of my colleagues who work for Enron.

My name is Tom Padgett. I was an employee of the Enron Corporation with 30 years of credited service at their Morgan's Point Chemical Plant in LaPorte, Texas until August of 2001, when Enron transferred our plant to EOTT Energy Corporation. My wife, Karen, is a registered nurse whose work activity is limited now due to crippling rheumatoid arthritis. We have three grown children and five grandchildren.

I turned 59 years old last December 10th, and I've worked in the chemical industry for 35 years. My job title is Senior Lab Analyst in the Quality Control Lab. My specific job functions consist of running analysis on petroleum feed stock products coming into the plant, on-stream analysis of products within the plant, and final product analysis to make sure our products meet customer specifications. I work 12-hour shifts at the plant.

There are, or were, a lot of people like me at Enron. Not everyone at Enron is an energy trader or an MBA. We're also chemical plant employees and managers, electrical utility workers and pipeline employees, just to give a few examples. We live and work in places like LaPorte, Texas, Port Barre, Louisiana, and Portland, Oregon.

I am a participant in the Enron Corp. 401(k) savings plan. Our retirement savings and our retirement plans were based solely on my 401(k) savings plan with Enron. The value of our savings account on December 31st, 2000 was $615,456. We still have not received our year-end statement for 2001, but using the present value of Enron stock, we estimate our savings account is now worth less than $15,000.

We have sacrificed over the years in order to contribute as much as we could to our 401(k) plan account. I joined Enron from my previous job with Tenneco and rolled over our savings from our Tenneco 401(k) plan into the Enron plan. I continued to participate in the Enron savings plan after our plant was transferred to EOTT Energy. Over the last 10 years we were able to build up a sizable sum of money in our Enron 401(k) plan. I made contributions to the plan by deductions

from my paycheck every 2 weeks. Enron matched my contributions with the company's stock. Under the Enron 401(k) plan, the company's matching contribution was made exclusively with Enron stock, and participants were required to hold the matching stock until age 50. Nearly all of our savings were invested in Enron stock.

I was a dedicated and loyal employee to Enron, and I worked with the others in my plant and in the company to help make Enron one of the best companies in the Nation. Throughout my time with Enron, the top management of the company constantly encouraged us to invest our savings in Enron stock. I took the fact that the company matched our savings with only Enron stock as a further endorsement of the stock as a safe retirement investment.

More recent statements made by Enron's top management, including e-mails from Ken Lay about the company stock, also caused me to keep investing my savings into the stock. I remember in the fall of 2000, Enron's top executives telling us at an employee's meeting and by company e-mail that Enron's stock price was going to increase to at least $120 a share. When Mr. Skilling resigned last August, Mr. Lay told us that the company was stronger than it had ever been.

Many people now ask why we and so many other Enron savings plan participants did not diversify our savings accounts. My answer is that we were loyal Enron employees, proud to be owners of what we were led to believe was a great company.

I would note that our decision to invest our retirement savings in our company appears, from what I have seen in the newspapers and on television, to be the same as other employees in many large companies in the United States like Procter & Gamble, General Electric and Coca-Cola.

Enron’s top management, who I now believe benefited handsomely from our commitment, encouraged our stock ownership. Based on what we were told repeatedly by the men at the top, I never dreamed that this disaster could have happened. We're not Wall Street analysts. I am sure that most Enron employees manage their investments themselves like Karen and I did. The fact remains, though, that good investment decisions require honest information. We all know now that the information we were given was false.

We also have been asked about the lockdown of our savings account by the company in October 2001. I received notification from the company approximately 10 days before the lockdown that I would not be able to access my savings account for a period of about 4 weeks. I do not know when the lockdown period actually began, but I do know at about the same time Enron released some very damaging news about the condition of the company. By the time we were able to access our account, our Enron stock was worth less than $10 a share.

The reason that Enron gave for the lockdown was to change plan administrators. What I have still not heard explained was why the company proceeded with the lockdown at a time when they had to know that this damaging information was going to come out and cause the stock price to drop even more.

Karen and I had planned on retiring this coming June when I will be 59-1/2 years old. Our plans were to move to the country and possibly start a small farm or ranch for disabled,

handicapped or terminally ill children. Our idea was that this would allow these children's parents to have some special time to themselves to strengthen their relationship, knowing their child would be taken care of during this time.

We had planned on spending more time with our own family and grandchildren and caring for our elderly parents. Karen and I had planned on spending more time together, fishing and doing some traveling. We felt like we had enough money in our retirement savings to take care of ourselves as we grew older so we would not be a burden on our children. Now that is all gone and our children may need to take care of us.

I have lost nearly all of my retirement savings because of Enron's collapse. It appears I will need to work for another 10 years or as long as my health holds out in order to support my family. I just recently had surgery on my right hand so I can continue in my present capacity running samples in the lab.

We're not alone in this, of course. The plant where I work has approximately 100 employees, and most of them had their 401(k) savings in Enron. There were five or six other employees in my plant that also planned on retiring this year. Now they also will have to keep working to support their families. I am sure our experience is the same as thousands of other Enron employees. However, we are still more fortunate than some at Enron. We still have our jobs, unlike many who worked for Enron. I have a strong faith in God, and I know that we will make it through this.

You have been interested to hear about our experience and I appreciate your invitation to appear before you today. As our lawmakers, I will tell you that I believe the law should protect workers and their retirement savings from what happened at Enron. Companies must be responsible for giving truthful information to their employees about their retirement investments. Our loyalty and trust as Enron employees have been betrayed, and it does not look like we will be able to recoup our losses from the company or others who are responsible. But we hope that our experience and your work will prevent this from happening to others.

WRITTEN STATEMENT OF THOMAS O. PADGETT, SENIOR LAB ANALYST, EOTT (ENRON SUBSIDIARY), BAYTOWN, TX – SEE APPENDIX B

Chairman Boehner. Thank you, Mr. Padgett.

Ms. Olson?

STATEMENT OF CINDY K. OLSON, EXECUTIVE VICE PRESIDENT, HUMAN RESOURCES AND COMMUNITY RELATIONS, ENRON CORPORATION, HOUSTON, TX

Good morning. My name is Cindy Olson, and I am Executive Vice President responsible for Human Resources and Community Relations for Enron. I am here to respond to questions concerning the impact of recent events on the 20,000-plus participants in our benefit plans.

I don't feel, however, that I am able to address the bigger issue of how it came to pass that our company fell so far so fast. One internal report has just been released and I know that this Committee, other Congressional Committees, other government investigations, and ultimately the courts will continue to investigate what went wrong at Enron.

I hope to help the Committee assess the consequences of Enron's demise for our employees and retirees and their families. With me today is Mikie Rath, the Manager of Benefits. I hope we can show you that the people who ran the benefits plans did the best they could with a very difficult situation.

At Enron, we gave our plan participants many choices for their investment decisions. The 401(k) plan offered participants 20 different investment options for their retirement savings.

Mr. Chairman, I hope that my participation in this hearing and your investigation helps the Congress as you consider legislation that can create better ways to protect the retirement plans of workers. Such legislation perhaps could promote diversification, facilitate companies' ability to provide better investment advice or include other appropriate steps that experts suggest. I will be happy to answer any questions you have. Thank you.

WRITTEN STATEMENT OF CINDY K. OLSON, EXECUTIVE VICE PRESIDENT, HUMAN RESOURCES AND COMMUNITY RELATIONS, ENRON CORPORATION, HOUSTON, TX – SEE APPENDIX C

Chairman Boehner. Ms. Rath.

STATEMENT OF MIKIE RATH, BENEFITS MANAGER, ENRON CORPORATION, HOUSTON, TX

Good morning. My name is Mikie Rath and I'm the Benefits Manager at Enron. Like Ms. Olson, I am appearing here this morning to answer your questions concerning Enron's tax qualified retirement plans. As the person with the day-to-day responsibility for administering Enron's benefit plans, I hope to explain the structure of our plan and the events surrounding Enron's transition from Northern Trust to Hewitt.

As for the circumstances that led to Enron's downfall, my knowledge is limited to what I've heard reported in the press.

Enron's 401(k) plan offers a menu of 20 investment options, including a diverse selection of mutual funds, a Schwab account that functioned in many respects like a self-directed brokerage account, as well as Enron stock. This benefit of company matching was added to our program in 1998. Participants are free to trade the investments they select in their 401(k) accounts on a daily basis, including Enron stock. However, like many companies that provide these matching contributions, Enron's plan design restricted participants from trading the company's matching stock contributions until they had reached age 50.

Enron sought good service providers for its participants. After Enron outsourced its benefits services in 2000, it became clear that Northern Trust had difficulty providing the level of service that Enron employees demanded. In January 2001, Enron began searching for a new benefits administrator, and after a Request for Proposal process, we selected Hewitt in May of 2001.

When large companies change 401(k) service providers, a temporary suspension of trading in the plan is typically needed in order to allow account information to be reconciled by the old administrator and accurately transferred to the new administrator's computer systems. This temporary suspension, which is sometimes been referred to as a "lockdown" or a "transition period," can take several weeks.

In Enron's case, Enron, Northern Trust and Hewitt worked together to shorten that time period as much as possible without sacrificing the integrity of participants' accounts. Ultimately, the trading suspension encompassed 11 trading days, from October 29th to November 13th, 2001. Enron mailed a brochure to all participants some 3 weeks before the trading suspension, explaining the transition and notifying participants of the temporary suspension. Enron employees with e-mail accounts received additional reminders in the days leading up to the transition.

Unfortunately, as the Committee is no doubt aware, the commencement of the transition coincided with certain bad news about the state of Enron's finances. We considered postponing the transition, but found it was not feasible to notify more than 20,000 participants in a timely fashion.

As the Enron news continued to break, we on the plan's Administrative Committee again considered stopping the transition. However, in addition to the problem of notifying participants, we found it would actually take longer to reverse the transition than to finish it. Ultimately, we worked with Hewitt to shave 1 week off the transition, and we implemented a process for notifying participants of the early resumption of trading.

I hope my testimony can be helpful to you, and I will be happy to answer any questions. Thank you.

WRITTEN STATEMENT OF MIKIE RATH, BENEFITS MANAGER, ENRON CORPORATION, HOUSTON, TX – SEE APPENDIX D

Chairman Boehner. We have a vote on the House floor and we have approximately 5 minutes left. The Committee will stand in recess for approximately 15 minutes.

[Recess.]

Chairman Boehner. The Committee will come to order. We apologize to our witnesses for doing our constitutional duty by going to the floor and voting.

With that, Mr. Peterson, you can begin your testimony.

STATEMENT OF SCOTT PETERSON, GLOBAL PRACTICE LEADER FOR DEFINED CONTRIBUTION SERVICES, HEWITT ASSOCIATES, LINCOLNSHIRE, IL

Mr. Chairman, Congressman Miller and Members of the Committee, I am Scott Peterson, and I lead the Defined Contribution Services business of Hewitt Associates.

Let me say at the outset Mr. Chairman that we at Hewitt feel for those throughout the country who have suffered these losses. Our team that serves Enron is based in the Houston area, and some of the affected Enron employees and former employees are their friends, their family members or their neighbors. We are therefore pleased to have the opportunity to assist this Committee in its important responsibilities.

Hewitt is a leading provider of human resources outsourcing and consulting services. Hewitt was selected by Enron to become the new record keeper for the Enron 401(k) plan in May 2001 after a competitive bidding process. The job of the record keeper includes maintaining the plan's records and processing all transactions by plan participants, including contributions, changes in investment elections and withdrawals.

Our role as record keeper of the Enron 401(k) plan is important but limited. For example, we did not design Enron's 401(k) plan or determine the investment options to be offered. Those and other discretionary decisions are matters for the plan's sponsor and its fiduciary to decide, which in this case are Enron and its Administrative Committee. We also are not trustees of the

plan.

Let me now turn, as the Committee has requested, to Enron's selection of Hewitt as the record keeper for its 401(k) plan and the transfer of those responsibilities to Hewitt. Our team at Hewitt had three basic jobs. First, we had to agree with Enron exactly what services we would provide and how we would provide them. Second, we had to adapt Hewitt's record keeping system, Internet and call center to the specific provisions of Enron's plan. Third, we had to receive the participant data from the outgoing record keeper, place it on our system and verify its accuracy.

The date on which all of this work is completed is known in the human resources industry as the "live" date. During the record keeper's selection process in early 2001, Enron informed the bidders that the live date would occur in October. After we had been selected, Enron designated October 23 as the live date. As I will explain in a moment, this original live date was changed twice as our work went forward.

Enron also designated a transition or blackout period that would begin on September 14th and end on the live date of October 23rd. A blackout period has two elements. First, the outgoing record keeper must complete final processing of participant activity and perform a final reconciliation of accounts. Second, the new record keeper must receive the data, load it on its system and verify its accuracy.

During a blackout period, participants have restricted access to their accounts. Under the original timetable established by Enron, the blackout period had two phases. First, participants would be subject to restrictions on certain paper-intensive activities, such as loans and withdrawals, from the close of trading beginning on September 14th.

Second, changes in investment allocations would not be permitted during a shorter period beginning with the close of trading on Friday, September 26th. Participants would again have full access to their accounts and could change investments starting on October 23rd.

In mid-August, Enron informed us of certain plan changes. We told Enron that it would take us an additional 2 to 3 weeks to accommodate these and other changes. Enron decided on a new live date of November 20th. The blackout period was also rescheduled. Under the new schedule, restrictions on loans and withdrawals would begin on October 19th. The blackout on changes and investment allocations would begin at the close of trading on Friday, October 26th, and end on November 20th.

On October 25th, almost a week into the first phase of the blackout period, Enron reached out to their legal counsel, to us and to Northern Trust, the outgoing record keeper. They asked us to consider and respond that afternoon to a few questions. These were primarily questions involving the practical effects of shortening the blackout period. They also mentioned they could bring the whole process to a halt and wait until the following February or March.

Later that day, based on the information we had, we responded to Enron's request for information. We told Enron that we would, of course, assist them in implementing any decision that they made. Later that same day, Enron informed us that there would be no scheduled changes.

We have subsequently learned that Enron had been advised by its legal counsel that it should not make any changes in the schedule. As a result, the restriction on changes in investment took effect at the close of trading on the next day, October 26th.

Ultimately, we did accelerate the live date by a week to November 13th. We did so at the direction of the Enron Administrative Committee at a meeting held the afternoon of November 1st, after the plan's assets had been transferred to the new trustee that morning. We received the necessary data to load on our system on Wednesday, November 7th, and we went live four business days later on Tuesday, November 13th. Participants could make changes in their investment allocations and request other transactions beginning on that day.

Thank you, Mr. Chairman. I would of course be pleased to respond to any questions that you or other Members of the Committee have.

WRITTEN STATEMENT OF SCOTT PETERSON, GLOBAL PRACTICE LEADER FOR DEFINED CONTRIBUTION SERVICES, HEWITT ASSOCIATES, LINCOLNSHIRE, IL
SEE APPENDIX E

Chairman Boehner. Ms. Ghilarducci.

TESTIMONY OF DR. TERESA GHILARDUCCI, ASSOCIATE PROFESSOR, DEPARTMENT OF ECONOMICS, UNIVERSITY OF NOTRE DAME, NOTRE DAME, IN

Thank you for inviting me. I hope that I can help put the Enron situation in the context of our Nation's pension policy and trends.

Employee benefits used to be a leveler. It used to be a part of pay that narrowed the gap between the rich and the poor. Health insurance meant that the CEO and blue-collar worker had the same access to a heart bypass surgery, and CEOs or the high-paid employees could not have a pension unless that pension trickled down to blue-collar, or the rank and file workers.

But in the 1990s especially, that was reversed. The pension plans have actually contributed to a widening gap between top earners and low-income earners. Pension coverage rates, and also pension coverage rates for professionals like Mr. Padgett, have actually dropped. From 1978 to 1998, workers at the top, 78 percent, used to be covered by pensions, and now only 72 percent are covered; and that is still the highest rate of all of the income quintiles. But in addition to pension coverage falling, employer expenditures, which are a good proxy for pension quality, also fell. It fell by a whopping 22 percent since 1978. So we have to ask ourselves, has pension policy failed?

Pension policy is tax policy. Pension plans exist because of their favorable tax-favored status. The tax-favored status represents over $90 billion in taxes not collected. We all paid for some of Enron's pension plan.

I want to add a footnote here. An under appreciated, under discussed and unintended consequence of tax rate cuts is a reduction in incentives for employers to provide pensions and for individuals to divert their earnings. In fact, it is estimated that a 1 percent drop in the income tax rate, causes a 0.4 percent decline in pension coverage. In this context, Enron's 401(k) pension plan collapse is not entirely idiosyncratic. It reveals the gradual erosion of the entire pension system, and to us researchers and analysts this erosion is not very surprising.

The 1990s was the perfect storm for pensions to increase. We're all getting older, and 72 million baby boomers are getting older and presumably want more retirement security, rather than cash. And times were flush in the 1990s, so the demographic and economic situation should have predicted more pension coverage, not less. So what happened?

401(k)s happened. 401(k)-type plans have out shadowed the traditional defined benefit plans. Enron used to have a traditional plan; long-term employees were bought out, and that traditional coverage was folded into their 401(k) coverage.

My research with my coauthors has shown that if a firm adopted a DC (defined contribution) plan or the famous subset, 401(k) plan, in the '80s or '90s, it lowered its pension contribution, its cost per participant, by 20 percent. In sum, though, there are several reasons for the shift towards DC plans. I have concluded in my research that the primary reason is that they are cheaper for employers.

Now that workers desire to have control over their own accounts certainly contributes to this, but having control over your own account has some fatal flaws. One, Congress can't fix the inherent flaw that workers chose the wrong year to be born. We could all turn sixty-five when the financial markets are down for maybe a decade or so, like they were in the 1970s and perhaps the way they are going to be now in the next ten years.

Congress also can't change our human nature that makes us bad investors, but also loyal employees. We are overconfident and optimistic about our success and our employers' success. We think that what just happened, like a healthy stock market, has a high probability of happening more often than it really does. That's called the psychological state of saliency, and we usually pick instant gratification over deferred. That's what it's called, deferred gratification.

In short, human nature is such that we buy high, we sell low and we trade too often. So given this nature of ours, education can only go so far.

I'm going to emphasize just four pension reforms. I have two others that talk about coverage, but today given the tone and subject of this hearing, I'll focus on two that increase the transparency of how pension funds are administered and two that reduce the risks for workers who have only 401(k)s as their pension.

First, I feel it's under appreciated that administrative fees have a very significant effect on overall pension accumulations. Going to Hewitt, with no offense to my co-panelists, to have all of the bells and whistles to manage the plans can actually cost an employee up to 20 to 40 percent of their accumulated assets. If employers were required to pay for those administrative fees, because 401(k)s have been a structure in which those fees get passed on to employees and it's really hidden, then I think employers would take more responsibility and be more accountable for the services they provide.

In that vein, I also urge Congress to increase the transparency, or the way pensions are administered, by requiring worker-employee representation on the pension and on the administrative boards. I feel, and have for over fifteen years in my research, that if folks like Ms. Olson and Ms. Rath had been regularly consulting employees' representatives, the scenario would have been different. We are the only industrialized nation that does not require representation of employees on pension boards.

My third recommendation, which refers to reducing risks, is that I urge Congress to restrict the amount of sponsor equities or employer equities, in individual tax-favored retirement accounts. I know it's controversial that there be such restrictions, but it is not controversial among academic economists and academics in general. We all know it's unwise not to diversify, even workers know that it's unwise not to diversify. But employees are loyal, and again their self-identity and self-

esteem is tied up in how well they think their employers are going to do.

Fourth, as an advisory board member of the Pension Benefit Guarantee Corporation, I urge Congress to require, **require**, because just urging probably won't matter, an investigation into ways to reduce the risks of defined benefit plans.

In conclusion, I've argued that Congress should address that individual control of pension accounts comes at a high probability of failure, and that pensions exist because employers and employees want them and because taxpayers pay for them. Therefore, extending responsibility and fiduciary responsibility to those folks who administer the plans makes sense.

WRITTEN STATEMENT OF DR. TERESA GHILARDUCCI, ASSOCIATE PROFESSOR, DEPARTMENT OF ECONOMICS, UNIVERSITY OF NOTRE DAME, NOTRE DAME, IN – SEE APPENDIX F

Chairman Boehner. Thank you all for your testimony.

Mr. Padgett, I really want to thank you for your willingness to come and tell the Committee your story. How many years were you actually an employee? Or are you still an employee of the Enron Corporation?

Mr. Padgett. I've been an actual employee for ten years. Enron took over the plant where I work on January 1, 1992 and then they sold that plant to EOTT Energy on August 1, 2001.

Chairman Boehner. How long were you at that plant before Enron or its subsidiaries purchased the plant?

Mr. Padgett. I was there about six months. I worked for Tenneco prior to that.

Chairman Boehner. And your age is?

Mr. Padgett. Fifty-nine.

Chairman Boehner. Fifty-nine.

Did you or any of your coworkers that you're aware of seek professional investment advice for your 401(k) plan?

Mr. Padgett. No sir.

Chairman Boehner. Did you receive any information, or as I would describe it, investment education from your employers or others talking about the need to diversify your account?

Mr. Padgett. No sir.

Chairman Boehner. I certainly understand loyalty on behalf of employees and wanting to believe in the company they work for and their desire to hold company stock.

I gave several examples yesterday of companies in my own area; and in many cases, employees have done very well holding a vast majority of their 401(k) assets in their own accounts. I think we have a situation here where not only the employees of Enron, but also the investors in Enron were all led down a primrose path. I don't want to point fingers at what did or didn't happen. I think time will tell. But I do appreciate your willingness to come.

What I'd like to do in this first ten minute segment that I have is to make sure that we have all the facts on the table in terms of what the employee pension package, looked like. Then I'd specifically like to get into the design and the options in the 401(k) plan. I'd like Ms. Rath to answer most of these questions.

Could you give us a basic, broad-brush picture of what retirement plans and programs Enron offers to its employees, such as defined benefit plans, ESOP, 401(k)?

Ms. Rath. Yes, sir. We actually have all three of those. We offer our employees a defined benefit pension plan. We offer our defined contribution 401(k) plan, and for employees who were hired prior to 1994, Enron had an ESOP plan.

Chairman Boehner. Can you describe briefly the defined benefit plan at Enron?

Ms. Rath. The defined benefit plan was changed to a cash balance formula beginning in 1996. Prior to that, it was a traditional "final average pay" that rewarded years of service and was based on age, years of service and salary.

We changed our formula to a cash balance formula. We grandfathered in everyone who was in the final average pay to protect those benefits. Then, moving forward, we offered cash balance formula, because our workforce was changing. A cash balance formula actually allows people who work ten years to walk away with some benefits.

Chairman Boehner. What are the participation requirements for each of these plans?

Ms. Rath. We start vesting in each of these plans based on date of hire. The cash balance formula requires a five year vesting, which is all or nothing. There is no partial vesting in that plan.

The 401(k) plan was changed in 1999 to require a one year vesting in the company matching contributions.

Chairman Boehner. Can you outline the benefits of each of these programs?

Ms. Rath. For a participant? I want to make sure I understand.

Chairman Boehner. Yes, for a participant.

Ms. Rath. The defined benefit plan is just one of many of the benefit programs that Enron offers. It doesn't require the employee to participate. It's a company-provided benefit that the company funds into a trust. Our defined contribution plan is the employees' option to protect their own financial security. In other words, they can elect up to 15 percent of their salary to go into that plan, either on a before-tax basis or an after-tax basis.

Chairman Boehner. On a percentage basis, what would be the overall size of the defined contribution plan versus the defined benefit plan?

Ms. Rath. At the beginning of 2001, our 401(k) plan had assets in excess of $2 billion. Our defined benefit plan had approximately $200 to $300 million in it.

Chairman Boehner. If we can turn to the 401(k) plan, where a lot of the attention has focused in the last several months, can you outline the investment options available to employees in the 401(k) plan?

Ms. Rath. Yes. We offer two stock funds, an Enron stock fund in a former company that we had owned in 1999 as EOG. It used to be Enron Oil and Gas. We offered a stable value fund, which was invested mostly in insurance contracts, which was the most stable investment fund. We had ten different Fidelity funds, including some that were closed, like Magellan, in growth and income.

And in 1998, with the merger of Portland General's 401(k) plan with ours, Cowan Investments had done an investment search, and we added six different funds that encompassed a small cap growth fund and a bond fund and some of the Windsor funds, as well as a Vanguard S&P that our employees wanted.

Chairman Boehner. And the company match was how much?

Ms. Rath. The company match began in 1998 in a tiered approach. In 1998, it was based on 2 percent of pay, so the company matched 50 cents on the dollar up to 2 percent of pay. It increased in 1999 to 4 percent of pay. And then in 2000, to coincide with the merger of Portland General's plan, it was 50 cents on the dollar up to 6 percent of base pay.

Chairman Boehner. So if an employee put 12 percent of their base salary into the plan, how much would the company match?

Ms. Rath. Three percent.

Chairman Boehner. Three percent.

There have been a lot of discussions as to how much of the stock was in fact restricted. The company didn't match before 1998, and you had a 401(k) prior to that; is that correct?

Ms. Rath. We had the Enron 401(k) plan. When InterNorth and Houston Natural Gas merged in 1987, the plans became the Enron Corp. savings plan.

Chairman Boehner. Was there any match prior to 1998?

Ms. Rath. There was a match prior to 1997 in one of the companies, and I'm afraid I don't really know all of the details of that, but yes, there was a match prior to 1987.

Chairman Boehner. But in a contemporary period, the real match began in 1988?

Ms. Rath. Yes.

Chairman Boehner. And we know the amount of that match, and that match was in Enron company stock?

Ms. Rath. Yes.

Chairman Boehner. Can you outline the restrictions on that stock that was given by the company to the employees?

Ms. Rath. Part of the plan design was that the company match would be invested and allowed to be diversified at age fifty. That is fairly typical in ESOPs that are marginally invested in company stock to allow diversification as an employee gets older and needs protection.

Chairman Boehner. Let's look at the total. How much company-provided stock, as a match, existed in those 401(k) accounts on January 1st, 2001?

Ms. Rath. We had a total of about 60 percent, if I remember all of the numbers; and I would say that probably a third of that was company match. The rest of that was employee contributions.

Chairman Boehner. All right. In terms of the match, how could the employees sell or diversify the stock that was given by the company?

Ms. Rath. If they were over age fifty, we had an online system either through the Internet or a voice response system that would enable employees to get on and just choose what funds they wanted to move.

Chairman Boehner. I'm trying to determine with accuracy the amount of company stock that was in fact restricted as a percent of the overall amount of company stock that employees owned.

Ms. Rath. I don't know that we have the statistics to know who was over age fifty, or who was eligible to move that.

Chairman Boehner. All right. My time has just expired, and I recognize the gentleman from California, Mr. Miller, for ten minutes.

Mr. Miller. Thank you very much, Mr. Chairman, and thank you to all of the witnesses for being with us this morning.

Ms. Olson, if I might ask you some questions, what is your educational background?

Ms. Olson. I have a bachelor's degree in accounting.

Mr. Miller. And you started with Enron when?

Ms. Olson. In 1979.

Mr. Miller. 1979. And your current title is what?

Ms. Olson. Executive Vice President of Human Resources and Community Relations.

Mr. Miller. And could you describe for us your job responsibilities?

Ms. Olson. Currently, I have responsibility for all of human resources, which includes benefits, compensation payroll, and the business unit support of our HR generalists. I also have employee communication, employee programs, community relations programs and also building administration.

Mr. Miller. And you would report to whom in the corporation?

Ms. Olson. I report to the CEO and COO directly.

Mr. Miller. Directly?

Ms. Olson. Directly.

Mr. Miller. You were appointed to the Savings Plan Administrative Committee. When was that?

Ms. Olson. In January of 2001.

Mr. Miller. How was that determination made to appoint you?

Ms. Olson. I was actually asked by the Chairman, Jim Prentice, to join the Committee.

Mr. Miller. I see. Okay.

When you joined that committee, were you apprised, I don't know if Enron has in-house counsel, or others, of your fiduciary responsibilities as a member of that committee?

Ms. Olson. I don't recall being apprised by counsel. I know that Cynthia Barrow, the Director of Benefits, indicated the responsibility, the fiduciary responsibility.

Mr. Miller. And that was indicated as what? Did they describe that fiduciary responsibility?

Ms. Olson. To ensure the plan participants' investments were protected.

Mr. Miller. So it was explained to you that you're responsibility was to the plan participants?

Ms. Olson. Yes.

Mr. Miller. And to the quality or the safety of their investments in that plan. Is that correct?

Ms. Olson. Yes.

Mr. Miller. Was that explained to you? Was it explained to you that that really is your sole fiduciary responsibility?

Ms. Olson. Yes.

Mr. Miller. Is that your understanding?

Ms. Olson. That was my understanding.

Mr. Miller. It was reported information within the last couple of days, that in February and March of 2001, you sold some 20,000 shares of Enron stock. Is that correct?

Ms. Olson. Yes.

Mr. Miller. And you acquired those shares by what means?

Ms. Olson. That was part of my compensation.

Mr. Miller. So these were not stock options. This was stock that was given to you and you had ownership of that stock?

Ms. Olson. No. They were stock options.

Mr. Miller. They were stock options?

Ms. Olson. They were stock options, and some were restricted stock. We received 50 percent equity, 50 percent in restricted stock and 50 percent in stock options.

Mr. Miller. And those restrictions were what?

Ms. Olson. They had to vest based on the company's performance.

Mr. Miller. So sort of like a typical option, if the company did better, the price of the stock was up. You had a chance to exercise whatever your option price was, but the company had to produce

or perform?

Ms. Olson. Yes.

Mr. Miller. And then the other stock given to you was restricted in what manner?

Ms. Olson. That was based on company performance as well.

Mr. Miller. How were you able then to sell these 20,000 shares?

Ms. Olson. The restricted stock I could sell because the company had performed well. It was in the top 10 percent of the S&P 500.

Mr. Miller. So it wasn't tied to stock performance? It was tied to the positioning of the company, then? Is that what you're saying?

Have you read the Fortune Magazine article on Enron that was published in March of 2001?

Ms. Olson. I probably have.

Mr. Miller. Were you aware of some of the issues that were raised by reading that article, or prior to that article?

Ms. Olson. Probably so.

Mr. Miller. Were you aware that the price of the stock was dropping during 2001?

Ms. Olson. Very aware. Everyone in the building was aware. We have a stock board in our lobby.

Mr. Miller. Did you think about that in terms of your position on the advisory committee of the plan?

Ms. Olson. I was aware of the stock dropping just like everyone else because of the stock board in the lobby.

Mr. Miller. It is my understanding that in August, Sherron Watkins shared a memo with you regarding her concerns with Enron. Is that correct?

Ms. Olson. Yes. She came to me and asked for my advice, if she should go to Mr. Lay.

Mr. Miller. Can I show you a copy of that memo and ask if that's what she shared with you?

Ms. Olson. She shared a one page memo with me.

Mr. Miller. Is this the document she shared with you?

Ms. Olson. The top page of this document, I believe, is the document she shared with me.

Mr. Miller. Do you have or are you in possession of a copy of this document?

Ms. Olson. The top page?

Mr. Miller. Yes.

Ms. Olson. I don't know that I kept the original document she gave me. About three weeks ago, I called Mr. Lay's office and asked to get a copy of the document, and I was sent this package with the Vinson & Elkins report attached.

Mr. Miller. So you were sent the complete package? I don't know how many pages it is. What is it, seven or eight pages? When you asked for a copy of the Watkins document, that's the document that they sent you?

When was that?

Ms. Olson. That was a couple of weeks ago.

Mr. Miller. A couple of weeks ago. Were you aware of the issues raised in the additional pages to the document?

Ms. Olson. No. I was not. When she brought me the document originally, it was the top page, and I didn't have the capacity or the capabilities to determine if what she was saying in the memo was accurate.

She also told me that she herself didn't know if these were technically right, and she wanted to have someone else who had more knowledge of the financial situation look at her document. That's why I sent her to Mr. Lay.

Mr. Miller. So your recommendation, I think this has been reported, was to forward this on to Lay. Now, this document is unsigned, but you assumed that she was the author if she said she was the author of this document?

Ms. Olson. I assumed so. She's the one that brought it to me in my office that day.

Mr. Miller. And do you know that it was forwarded to Mr. Lay?

Ms. Olson. Yes. I set the meeting up with Mr. Lay.

Mr. Miller. Okay. And what happened then?

Ms. Olson. He met with her. I can't remember if she told me or Mr. Lay told me that he was kicking off an investigation by Vinson & Elkins into her allegations.

Mr. Miller. And that document was when? In August, right?

Ms. Olson. The latter part of August.

Mr. Miller. Was the information in that document discussed in the advisory committee?

Ms. Olson. In the Administrative Committee?

Mr. Miller. Administrative Committee, excuse me.

Ms. Olson. No.

Mr. Miller. What was your reaction to the document?

Ms. Olson. I didn't know.

Mr. Miller. You didn't know what?

Ms. Olson. I didn't know. I didn't know if what she was saying was true. She didn't either.

Mr. Miller. What was your reaction?

Ms. Olson. That she needed to go talk to Mr. Lay.

Mr. Miller. What would have been your reaction, if you thought it was true?

Ms. Olson. If I had thought this was true, I would have asked counsel what my next move needed to be.

Mr. Miller. But you didn't go to counsel?

Ms. Olson. I didn't know if it was true.

Mr. Miller. Did you raise it in the Administrative Committee?

Ms. Olson. No, I did not.

Mr. Miller. Why is that?

Ms. Olson. Because I didn't know if it was true. She herself told me she didn't know if it was true. That's why she wanted an investigation.

Mr. Miller. In the first page of the one page memo, she states, assuming she's the author of this, that "she's incredibly nervous that we will implode on a wave of accounting scandals." That has been stated already on the public record.

She goes on later to describe the situation with Condor and Raptor deals in 1999 and 2000: "we enjoyed a wonderfully high stock price, many executives sold the stock, we then try and reverse or fix the deals in 2001, and it's a bit like robbing the bank in one year and trying to pay it back 2 years later. Nice try, but investors were hurt, they bought $70 and $80/share looking for a $120/share price and now they're at $38 or worse. We are under too much scrutiny and there are probably one or two disgruntled 'redeployed' employees who know enough about the 'funny' accounting to get us in trouble."

Now, you're a fiduciary to the pension plan?

Ms. Olson. Yes, I am.

Mr. Miller. And this doesn't upset you? You're putting on your fiduciary hat in that part of your job to raise these questions in the advisory committee, true or untrue?

Ms. Olson. She told me that she didn't know if her allegations were true.

Mr. Miller. I understand that, but the memo now exists in fact. It's been circulated in the company in one fashion or another, either exclusively to you, or you don't know to whom else she shared with this.

Ms. Olson. I am sorry what's your question?

Mr. Miller. My question is, now you have information that, if true, would directly, and obviously did directly, impact on the value of the shares of stock in the pension plan. I guess what I'm asking you is, in your fiduciary relationship whether or not you deemed it necessary to relay this information and have some kind of discussion of this information in the advisory committee?

The next meeting would have been September, because these were monthly meetings?

Ms. Olson. Right. But she told me she didn't even know if the information was true.

Chairman Boehner. The Chair recognizes the gentleman from Texas, the Chairman of the Subcommittee on Employer-Employee Relations, for ten minutes.

Mr. Johnson. Mr. Chairman, if I might ask unanimous consent that statements be made a part of the record.

Chairman Boehner. Without objection, so ordered.

Mr. Johnson. Ms. Olson, I'd like to continue with those questions if I might. You were a fiduciary. As such, how often was the 401(k) plan audited, and by whom?

Ms. Olson. During the time when I was on the committee, I don't recall when the 401(k) plan was audited.

Mr. Johnson. Was it ever audited?

Ms. Olson. I believe so, but I don't know that for a fact.

Mr. Johnson. The auditors didn't come through your office?

Ms. Rath do you know?

Ms. Rath. Yes, sir. I do know. The plans were audited every single year. The last two years we were audited by Ernst & Young. The year prior to that we were audited by Arthur Andersen, and the years prior to that, when I first joined Enron, we were audited by a minority firm called Mir, Fox & Rodriguez.

Mr. Johnson. I see, and do those reports come to you after the audit is done?

Ms. Rath. Yes, sir. They do come to me and then they're filed with our 5500s.

Mr. Johnson. What was the date of the last audit?

Ms. Rath. We would have audited year 2000 plans in year 2001, to be filed with our 5500s that we filed in October of 2001.

Mr. Johnson. October. And did they indicate any problems at that point?

Ms. Rath. The auditors would have probably not made a recommendation in their report as to the status of the stock. They were just audited. Typically they don't order audit the investments. They just order our processes and that were in place according to the laws.

Mr. Johnson. Ms. Olson, did you sell any stock after Mr. Skilling left the company?

Ms. Olson. No, I did not.

Mr. Johnson. Did that trigger anything as far as you were concerned? I mean, did you think about making a recommendation?

Ms. Olson. Let me go back. I did convert my ESOP shares that I had held for several years in the late part of November. I did sell those shares.

Mr. Johnson. Were you doing that to protect yourself? Did you think about protecting the plan for all of the employees at that time?

Ms. Olson. Actually, the reason I did it is because of the uncertainty of Enron at the time, which everyone in the building knew. I just had remembered that I had forgotten to sell those ESOP shares.

Mr. Johnson. But why was it important for you to sell them at that point?

Ms. Olson. It wasn't important. It was just something that I thought about doing when I saw all of the uncertainty.

Mr. Johnson. You saw the uncertain what?

Ms. Olson. The uncertainty. We have televisions in the elevators and all over the floors. It was clear in November that there were problems with Enron.

Mr. Johnson. Okay. So you knew there was a problem.

Well, as a fiduciary, why didn't you suggest?

Ms. Olson. In November we started meeting as an Administrative Committee in the beginning of November on a weekly basis. We hired counsel, and we hired an independent financial adviser. None of us knew for sure where the stock price was going. We felt like we needed someone professional and independent to advise us.

Mr. Johnson. Okay. Do you know Robin Hosea?

Ms. Olson. I've heard of her.

Mr. Johnson. Did she work in your department?

Ms. Olson. She worked in the Benefits Department.

Mr. Johnson. Either one of you? Did she work in your department?

Ms. Rath. She was a member of the Benefits Department, yes, sir.

Mr. Johnson. That's under you?

Ms. Rath. She didn't report to me.

Mr. Johnson. But that department is under you.

Well, you know, according to the news reports, Enron's Senior Benefits Accountant has said that $15 million was paid to friends of executives out of the 401(k) plan. That's her. Can you

comment on what those payments were and to whom they were made?

Ms. Rath. Any payment made from the 401(k) trust fund has to be reported on the 5500 filings, and on those filings it requires us to list every single payment. There were no payments to individuals on the 5500 audited financial statements.

Mr. Johnson. So no money, according to you, was diverted from the 401(k) plans, to your knowledge?

Ms. Rath. No, sir. There was no money diverted.

Mr. Johnson. Okay. Do you know if any or can you estimate how many senior executives cashed out during that period? Or do you have any idea?

Ms. Olson. No, I'm sorry I don't.

Mr. Johnson. Okay. I'm going to yield the rest of my time to Mr. Isakson.

Mr. Isakson. Thank you.

Ms. Olson and Ms. Rath, I'd be interested in the status of your individual 401(k)s. Have you lost any money in your 401(k)s?

Ms. Rath. I haven't calculated what I've lost between any 401(k) and my stock options, Congressman.

Mr. Isakson. Ms. Olson, do you know?

Ms. Olson. It's hard to calculate money. It depends on what point in time you're calculating that. I have about 3,000 shares in the company match and the 401(k).

Mr. Isakson. What were the most shares you ever had?

Ms. Olson. Probably 6,000 or 7,000.

Mr. Isakson. Okay.

Mr. Padgett, other than your 401(k) experience, had you ever been an investor in the stock market?

Mr. Padgett. No, sir, I hadn't.

Mr. Isakson. Mr. Peterson, how many times have you been involved in your firm taking over the administration of a plan?

Mr. Peterson. Personally?

Mr. Isakson. Yes. Lots? A few?

Mr. Peterson. A few; probably seven or eight.

Mr. Isakson. Do you know of any case where a lockdown period was postponed?

Mr. Peterson. I can't think of a specific situation off the top of my mind.

Mr. Isakson. Do you know any company that cannot communicate with its workers within a five day period of time?

Mr. Peterson. I'm not sure how to answer that, sir.

Mr. Isakson. In most corporations you've ever worked with, is the communication mechanism between a company and their employees such that they can be communicated with in a few days?

Mr. Peterson. To active employees, I'd say yes.

Mr. Isakson. Okay.

Ms. Olson, on your written statement that you submitted, it says that you were removed from the Executive Committee in early 2001, and it says in late January of 2002, you became responsible for Human Resources again. All of the copies of minutes that we have from the Administrative Committee from May 3rd through November 13th indicate you were not present. I assume that's the period of time you were removed?

Ms. Olson. I was removed from the Executive Committee in late 2000, early 2001. And then just two or three weeks ago, I've become a part of it again.

Mr. Isakson. Why were you removed?

Ms. Olson. Mr. Skilling and I didn't see eye to eye.

Mr. Isakson. Why were you reinstated?

Ms. Olson. I was asked by the current management.

Mr. Isakson. Mr. Peterson, Ms. Ghilarducci stated that your fees could constitute 20 to 40 percent of a 401(k) plan. I believe that's what she said.

Am I correct, ma'am?

Ms. Ghilarducci. No. If you have high fees, it can erode the accumulation by 20 to 40 percent. I don't know what the Enron fees are.

Mr. Isakson. So your statement did not relate to Hewitt Associates?

Ms. Ghilarducci. Right.

Mr. Isakson. Okay.

Mr. Peterson, what percentage could your fees contribute in erosion?

Mr. Peterson. I'm sorry. Are you using the numbers that I have? I'm going to answer the question slightly differently. I don't intend to be changing it. Generally in a plan like this, our fees are a function of the number of people we're serving, not the assets in the plan. So it can vary depending on the average balance per person.

With that as background, I'd say for a mature 401(k) plan, often our fees run about ten basis points of assets.

Mr. Isakson. Ten basis points?

Mr. Peterson. One-tenth of 1 percent.

Mr. Isakson. So the record should reflect that the distinguished Professor's statement was a general statement, not relevant to Hewitt. Is that correct?

Ms. Ghilarducci. Hewitt or Enron, right.

Mr. Isakson. Mr. Padgett, what are your plans?

Mr. Padgett. My plans are to continue to work as long as my health holds out. Our plans for retirement are no longer plans.

Mr. Isakson. Given what you've been through, how are you now planning for whatever that retirement will be in the years that your health allows you to work?

Mr. Padgett. Well, we're continuing to put 15 percent every month in our 401(k) plan, but it's not going in Enron stock.

Mr. Isakson. It's diversified?

Mr. Padgett. It's going into a mutual fund absolutely.

Mr. Isakson. Have you sought any advice?

Mr. Padgett. From?

Mr. Isakson. On where to put that?

Mr. Padgett. No, sir.

Mr. Isakson. Mr. Chairman, I think my time is about to expire, and I yield back.

Chairman Boehner. The Committee will break. We have two votes on the House floor, and considering that we may be here for some time this afternoon, you might want to grab something to eat. The Committee will resume its deliberations and stand in recess until 12:30 p.m. today.

[Recess.]

Chairman Boehner. The Committee will come to order. It is 12:34 p.m. We will resume our deliberations. The gentleman from California, Mr. Miller, is recognized for ten minutes.

Mr. Miller. Thank you, Mr. Chairman.

If I might continue, Mr. Chairman, Ms. Olson, you mentioned that you were well aware of what happened to the Enron stock, and that everybody in the building was aware of it. It sounds like there was a fair amount of tension in the building during the course of the slide of Enron, and obviously with the flow of information.

Did you ever discuss this in the committee, in the Pension Administrative Committee?

Ms. Olson. Yes. That is why we retained counsel and started looking for a professional financial adviser for the committee.

Mr. Miller. When was that?

Ms. Olson. In the first part of November.

Mr. Miller. You asked counsel for what purpose?

Ms. Olson. We wanted someone independent to advise us on what we needed to do.

Mr. Miller. What has their advice been?

Ms. Olson. They continue to look at this, and the corporate counsel is working with them right now.

Mr. Miller. With all due respect, the advice would not be worth much today.

I don't understand. I guess the term fiduciary relationship is a strict relationship. When you went on the committee, you were advised that this was for the purposes of the employees, and the relationship ran to the preservation and the protection of the assets of the fund.

During the entire course of events, was there ever a suggestion that maybe Enron stock should be sold to preserve the assets of the fund?

Ms. Olson. That is why we hired the attorney for the committee and an investment adviser, to ask their independent recommendations.

Mr. Miller. So every time you made a recommendation that is how you did it?

Ms. Olson. The situation was very tenuous. We wanted outside counsel and an outside independent financial adviser to help us.

Mr. Miller. You haven't received any advice from that effort yet?

Ms. Olson. Not final advice, no.

Mr. Miller. Let me go back to the memo. You say you did not know whether it was true or not true. Did you give the memo to this financial counsel?

Ms. Olson. No.

Mr. Miller. You know, in everyday life, whether you are the FBI or a Member of Congress, people bring you facts. Again, in your fiduciary relationship, how did you make that determination as a member of the Committee, not as an Enron employee, that you did by suggesting that the author go to Mr. Lay. I am talking about your fiduciary relationship to the plan.

Ms. Olson. I didn't know whether the allegations in that memo were accurate or not.

Mr. Miller. I know that. I know that. But you now possess a piece of information that may or may not be accurate. Should it be accurate, it would be devastating to the assets of the plan. You are a fiduciary of that plan. Don’t you get a sense that you should have discussed this within the plan because you would have to take some action?

Ms. Olson. No. I didn't know if the memo was accurate or not.

Mr. Miller. I know you didn't know if the memo was accurate or not, but you had that information.

Ms. Olson. It was information that was not substantiated.

Mr. Miller. I understand that. But if substantiated, it had an immediate and devastating impact on the plan. I believe you have an obligation, and you may not agree with me, to investigate as a fiduciary of the plan that information, independent of Mr. Lay. Mr. Lay was not a fiduciary to the

plan; you were. It is a very difficult position you have.

Listen, I empathize here. You were wearing two hats, one of which is, I think, almost impossible to wear in your position. You are a major corporate officer and you have a fiduciary relationship to the plan, which is about the employees' assets. I am not sure that that is a situation that people can function in.

So you felt there was no requirement under your fiduciary relationship to raise this?

Ms. Olson. No, not in this case. Like I said, I didn't know if the memo was substantiated.

Mr. Miller. You keep saying that. The next logical step of any person would be to find out rather quickly if it was or was not substantiated if you were protecting a $1 billion fund.

Ms. Olson. It was in the hands of Mr. Lay and Vinson & Elkins.

Mr. Miller. It was in the hands of Mr. Lay. He had no fiduciary relationship to the fund. That is the inconsistency in this position. But that was not the only piece of information you had. You had whatever conversations you had with people in the building, in the company.

You were having a falling out with Mr. Skilling, was that correct?

Ms. Olson. Not at that time.

Mr. Miller. Not at that time. You had the information from the Fortune Magazine piece. What were the discussions on the Advisory Committee?

Ms. Olson. We hired an investment advisor.

Mr. Miller. You hired an independent counsel in November?

Ms. Olson. The first part of November.

Mr. Miller. That was done where, at the September meeting?

Ms. Olson. At the November meeting, we hired independent counsel.

Mr. Miller. How many independent meetings were you present at?

Ms. Olson. I can't recall.

Mr. Miller. Do we have those documents? These were the same documents Mr. Isakson had.

In the May meeting, you are listed as not present. On the front page of those, the first one, is that May?

Ms. Olson. May.

Mr. Miller. Then the next one is what month?

Ms. Olson. August.

Mr. Miller. You were listed as not present?

Ms. Olson. Right.

Mr. Miller. What is the next one?

Ms. Olson. October.

Mr. Miller. You are listed as not present.

Ms. Olson. Right.

Mr. Miller. What was going on?

Ms. Olson. I can't recall. There were a lot of things going on.

Mr. Miller. And this is what was happening to the stock?

Ms. Olson. That was why there were a lot of things going on.

Mr. Miller. You were not at the Advisory Committee.

I would like to ask you a question of Ms. Ghilarducci.

I think it is virtually impossible that this committee could exercise a fiduciary relationship, and I guess you can conclude that from our remarks. If this committee said, we want to sell the pension plans' Enron stock that is a message so devastating to the company and on Wall Street that it would be almost impossible for a major employee wearing a fiduciary hat to exercise that duty.

Ms. Ghilarducci. That's right. Those fiduciary responsibilities require that if you think something will hurt the beneficiaries of the fund, the participants, they should have sold the stock.

So many pension funds have this dual-hat problem. A standard way that they deal with it is to always have independent counsel or employee representatives, or there might be two independent counsels, so they fight with each other. But Enron might be idiosyncratic in that they did not really straightforwardly recognize the conflict problem and do something about it.

I am also a trustee and a fiduciary on a large pension fund, and we have independent counsel.

Mr. Miller. I just think that is the bottom line, here. The lockdown period and all the rest is interesting, but you have a group of individuals who are Enron employees, and they give and take of all of the politics of any big structure, either corporate or the Congress or what have you.

And to walk in and to suggest that they should sell the stock at 38 or 24 or 12 or at 9 is, I think, threatening to their careers and to their livelihoods. That is why I say I don't envy the position you were put in, but I think it is an impossible position. I think it runs against the interest of the employees in the pension plan that is in that situation if you do not have employee representation or you do not have independent counsel or you do not have independent members of that board.

We have so-called independent members of the board of directors for that reason. Now we find out that many of them were conflicted financially. But that is the theory, that somebody is watching the store, because people have this crossed interest.

Ms. Ghilarducci. Right.

Mr. Miller. Ms. Olson, you talked to an attorney or somebody about your stock, and it is reported that he said you were too emotionally wrapped up in this stock and you had to diversify and sell. That is the reason; I believe you testified to that.

Ms. Olson. That, along with the fact that I had been taken off the Executive Committee and I was looking at leaving Enron.

Mr. Miller. You were personally making a whole series of fiduciary relationships with respect to yourself, but they were not exercised with respect to the fund.

Ms. Olson. It was my personal investment portfolio that was not diversified.

Mr. Miller. I think that would be the same relationship that the employees would like to think you exercised on their behalf but did not. Thank you.

The Chairman. The gentleman's time has expired.

The Chair recognizes the gentleman from North Carolina, Mr. Ballenger, for five minutes.

Mr. Ballenger. Thank you, Mr. Chairman.

I would like to ask any members of the Enron employee group the following questions. Enron used stock to fund you all, not necessarily with money, but with their own stock. They backed up all these secret partnerships and so forth with stock. They used stock like it was water.

Was there any knowledge on your part that they were authorized by some vote of the stockholders or anybody else to issue all this stock? What kind of stock was it? Where did it come from?

Ms. Rath. Congressman, the stock that funded the 401(k) match came from treasury shares.

Mr. Ballenger. Was there an authorization for a number of shares in that treasury?

Ms. Rath. I wouldn't know that. That would have to come from someone in our treasury department.

Mr. Ballenger. You know, when the Condors got in trouble, they also pulled out 200,000 or 300,000 shares to cover the debt that was there. It is like they can issue any stock at any moment.

Unless I am mistaken, that is not the law. Generally speaking, the law states that in order to have treasury stock to issue any time you want to, you have to have a vote of the stockholders to permit this.

You all were all stockholders?

Ms. Rath. Yes.

Mr. Ballenger. Were you ever questioned about voting to allow the board of directors to do this?

Ms. Rath. All participants in the qualified plans that owned shares were sent proxy cards for each annual board of directors meeting; depending on how many shares they were voting.

Mr. Ballenger. When they send you a proxy card they should legally send you the description of what is going to come up at the directors meeting.

Ms. Rath. Yes, sir, they did.

Mr. Ballenger. Did they say we authorize another 5 billion shares of stock to be offered at any time it becomes necessary?

Ms. Rath. Quite honestly, I would have read the summary card, but I don't know that I can honestly tell you that I read through the entire thing.

Mr. Ballenger. All I am saying is if they issued the stock and offered the stock to you as stockholders working with your 401(k), and they also used that same 300,000 or 400,000 shares to back up these partnerships that were in financial trouble, at least that is what I read in the news media, it would appear that not only the stockholders that worked at Enron were being misled and maybe illegally used. But also, there is a possibility that every stockholder in the United States was being misused. That is just me reading something into it that I hope is not there, but it sure appears that way.

Ms. Olson, I hate to see you always have to be the one to answer questions, but you happen to have been in the position for a long time. You were put on the committee in 2001 and taken off again. When did you go on and when did you go off?

Ms. Olson. The Administrative Committee?

Mr. Ballenger. Yes.

Ms. Olson. I was on the Administrative Committee starting in January, 2001. I am still on the committee.

Mr. Ballenger. But at one time you were taken off.

Ms. Olson. No, I was talking about the Executive Committee of Enron. I was put on the Executive Committee of Enron in 1999 and removed from that committee in late 2000 early 2001. I can't remember exactly. It was the end of the year.

Mr. Ballenger. How many members were on the Executive Committee of Enron?

Ms. Olson. Approximately twenty.

Mr. Ballenger. Each one of them had fiduciary responsibility of some sort?

Ms. Olson. The Executive Committee of Enron was the Executive Committee of the company. The Administrative Committee is the committee for the plan participants.

Mr. Ballenger. Okay. Sherron Watkins was an accountant but had not been there a great length of time like you had?

Ms. Olson. I don't believe she had been there as long as I had.

Mr. Ballenger. Was she in the line of command? She obviously was probably below you. Where did she rank?

Ms. Olson. She was one of the 400 vice presidents that we had at Enron.

Mr. Ballenger. You were a vice president?

Ms. Olson. I was an executive vice president.

Mr. Ballenger. That made you the top vice president, I guess?

Ms. Olson. Not the top.

Mr. Ballenger. Could the Administrative Committee sell stock? Did you have the authority to do that?

Ms. Olson. Yes. We didn't feel like we had the total responsibility to do that. That was one of the reasons we went and got independent counsel.

The Chairman. The gentleman's time has expired.

The Chair recognizes the gentleman from New York, Mr. Owens, for five minutes.

Mr. Owens. Thank you, Mr. Chairman.

I have been here for twenty years almost, and I was here when the savings and loan swindle took place. Most Americans don't know that the taxpayers were out $500 billion. That fact has been hidden from them. In the end, it cost more than $500 billion, and the taxpayers paid the bill.

Most of those transactions were dealt with in terms of civil wrongdoings, and civil penalties were imposed. In some cases, they fined individuals, and due to technicalities in the law, I have read recently that some of those individuals who had to pay financial penalties are suing now to get some of their money back. But most of them did not go to jail.

Mr. Padgett, do you and the rest of your colleagues consider this situation that you find yourself in, where you have been victimized, as the result of a series of unfortunate accidents, or do you think there has been a racketeering swindle here?

Mr. Padgett. Well.

Mr. Owens. If that puts you on the spot, you don't have to answer.

Mr. Padgett. I won't say it puts me on the spot. I have my own personal opinions, but as far as being able to answer that according to the law.

Mr. Owens. Let me phrase it another way: Are any of your colleagues who have been swindled, demanding prosecutions of anybody at this time, do you know? I know there are some class action suits going forward, but is anybody demanding some prosecutions?

Mr. Padgett. Not to my knowledge.

Mr. Owens. Thank you.

I would like to ask Ms. Rath, how many shutdowns has Enron had in the last ten years; shutdowns of the pension fund?

Ms. Rath. We have had two blackout periods in the savings plan since I have been there.

Mr. Owens. Did any occur during the period when the price of stock was rising?

Ms. Rath. The one prior to this one was in July of 1999.

Mr. Owens. Both times the stock was going down? In July of 1999, it was already on the decline, right?

Ms. Rath. I don't remember, quite honestly, what the stock price was then.

Mr. Owens. It went up to 90 at one point, right? It was declining. We have charts here which show it was declining at that time. So in both cases, the stock was going down. In periods where the stock was going up there have been no shutdowns.

Ms. Ghilarducci, you have put your finger on something I would like to have explained in more simple detail. You said that taxpayers subsidize pension funds. Can you explain that in simple terms that we who are not economists and mathematicians can understand?

Ms. Ghilarducci. That is hard if you are an economist, but I will try.

If you get a dollar in pay, you have to pay tax on that dollar. If you divert that dollar into a pension, you get an exemption from your income tax. It is deferred. You have to pay it when it comes out. We pay for it by not collecting taxes on money diverted and the investments that they earn on those funds.

Mr. Owens. We have had many debates on pension funds in the last ten years on this Committee. At all times, the majority of Republicans have insisted that this is really the money of the corporations. The Federal Government should not interfere. That has been the song over and over again.

So we have a situation where we have retreated from regulation and involvement and protection of the citizens because of this insistence that this is really the corporations' money, but the taxpayers have a stake here?

Ms. Ghilarducci. Yes.

Mr. Owens. Let me ask one other question.

Ms. Ghilarducci. Yes.

Mr. Owens. You said that there is a high probability of 401(k) failures. When did that wisdom come into being? How long have we known there is a high probability of failure?

Ms. Ghilarducci. From the very beginning.

Mr. Owens. From the very beginning?

Ms. Ghilarducci. Yes. Academic economists in pension policy knew they were much more risky than defined benefit plans, but no one really talked that way because 401(k) balances were going up along with the stock market. So the risk involved in those plans has been there from day one.

Mr. Owens. We all know they are more risky, but you said a high probability of failure?

Ms. Ghilarducci. Right.

Mr. Owens. Has there been some information that substantiates that this has been in existence for some time?

Ms. Ghilarducci. That is the analysis. They have higher fees. Human nature is such that people will trade incorrectly. There is also a high probability that you retire at a time that the markets are not doing as well. It is a matter of luck, as well.

Mr. Owens. Did I hear you also say that ours is the only industrialized nation that does not require employee representation?

Ms. Ghilarducci. Yes. Yes.

Mr. Owens. In other industrialized nations, I suppose the corporations can out vote the employee represented on the board, but at least the employee is there as an observer in most of the pension plans in other nations. Is that what you are saying?

Ms. Ghilarducci. Yes. I did a survey a couple of years back, and so has the World Bank. It is surprising. In about half the countries, the employees represent half of the trustees, and in this country, 8 percent of pension plans have joint trustees. Those are the ones that unions and management negotiate jointly. So we have experience here.

Mr. Owens. Thank you.

Mr. Castle. [Presiding.] Thank you. I yield myself five minutes.

Let me offer my sympathy to you, Mr. Padgett, and to a lot of other Enron employees and employees in other parts of the country who have had problems with things like this, too. Our goal is both to find out what happened at Enron, and to find out how we can solve these problems.

Mr. Peterson, you indicated that in the management of Hewitt there is a ten basis point charge, which would be one-tenth of 1 percent, is that correct?

Mr. Peterson. Excuse me. The point that I was trying to convey was the fee that Hewitt & Associates charges for administration.

Mr. Castle. Are there other charges?

Mr. Peterson. There are typically fund management fees, as well, not part of Hewitt.

Mr. Castle. Are there funds within the pension plan that may have their own charges?

Mr. Peterson. Probably in the neighborhood of ten basis points.

Mr. Castle. Ms. Ghilarducci, when you say that fees of 20 to 40 percent caught your attention, I thought you were applying that to Enron, but you were not as it turned out later.

Ms. Ghilarducci. Right.

Mr. Castle. I assume the ten basis point fee is probably in the realm of reasonable. Can you confirm that, or not?

Ms. Ghilarducci. Certainly. The Department of Labor, I have to refer you to them, has done extensive research on what the fees are, what is common, and the fact that they are growing.

Mr. Castle. I'm just trying to find out if in your judgment ten basis points is a relatively fair fee.

Ms. Ghilarducci. That is a small fee. That is a small part of earning in a plan.

Mr. Castle. I understand that.

Ms. Ghilarducci. Enron would seem to have much higher fees.

Mr. Castle. Do you know of any fees they have besides mutual fees, and the administrative fees? Are there other fees in Enron?

Ms. Ghilarducci. I don't know about Enron.

Mr. Castle. There might be other fees?

Ms. Ghilarducci. The lawyer they hired, the independent counsel, would probably be counted as a fee on the form 5500. Practices vary.

Mr. Castle. Let me ask this question of either Ms. Rath or Ms. Olson, about the switch to Hewitt. Why was the switch made?

Ms. Olson. The switch was made to Hewitt from Northern Trust because of the service level that we were getting from Northern Trust.

Mr. Castle. Was it just a service question or an investment question?

Ms. Olson. There was also a consideration for the cost of the service, as well. Mikie was actually the one that was on the ground working that. She probably can answer that in more detail.

Mr. Castle. Ms. Rath?

Ms. Rath. We were very concerned about our service level. It had deteriorated, and I was working with Northern Trust pretty consistently to see if we could salvage that relationship over the period of years that I have been there.

When we realized that their technology would not support what we were requiring for 24,000 participants in a $2 billion plan, we started looking at other providers. We selected Hewitt, and if you don't mind, I can tell you that we saved over $700,000 a year on our fees.

Mr. Castle. It was really an administrative decision? You were not too worried about the choices of mutual funds or Enron stock or anything of that nature? Is that what you are saying here?

Ms. Rath. Absolutely true. Callan Associates, who was our investment adviser, helped us select our funds, so we were pretty sure that our funds were in good order. We were looking for administration and technology.

Mr. Castle. Okay. Let me go back to you, Ms. Olson. I get a little confused between Executive Committees and Administrative Committees and some of the committees you have referenced.

You seem to have been in a position where you were talking to other people or helping run aspects of the company, if not the company itself. I didn't really understand this when you were answering questions. The page we are referring to is the first page that says, "Dear Mr. Lay" that has other pages attached to it, but you only saw that first page, is that correct?

Ms. Olson. Initially when Sherron Watkins came to me she showed me the first page.

Mr. Castle. Right. It does bother me, frankly, that in reading that first page, it didn't raise a lot more flags than it did. I know you have already testified to this, and I know I am going over old ground. But the bottom line is that somebody in a position of authority, particularly with respect to pension plans and even their own stock, who would see this would probably have asked more questions or been pretty panicked.

You have indicated that she told you that she was not even sure if this was all true. I have heard you say that several times. But I have to tell you that I am still surprised that you would not have reacted to the point of talking to others. Did you speak to anybody else about this at that time or any time thereafter?

Ms. Olson. Absolutely. I set up the meeting with Mr. Lay. I felt like it was serious enough.

Mr. Castle. Did you speak to any of the committees that you were on, the Executive or Administrative Committees?

Ms. Olson. No.

Mr. Castle. Did you share it with anyone else other than Mr. Lay?

Ms. Olson. No. The only other person I spoke to about this was Mr. McMahon. Mr. McMahon was running the Global Products Group at the time, and Sherron Watkins had gone to him, as well. He had encouraged her to go to Mr. Lay.

Mr. Castle. My time is up. I am going to ask you one question and that will be the end of my time.

Did it occur to you, even though it was potentially unfounded information, but had the ability to impact tremendously upon the value of Enron stock and even the future of the corporation, to share it with anyone else other than the two individuals you have named, Mr. Lay and Mr. McMahon, such as the full committee, or to call it to anyone's attention?

Ms. Olson. No, because Mr. Lay and Vinson & Elkins were looking into it. I felt it was in good hands with them, and if there were something wrong, they would tell us.

Mr. Castle. I accept your answer. I am not sure I totally agree with it, but I accept your answer.

Mr. Kildee?

Mr. Kildee. Thank you, Mr. Chairman.

I am puzzled, too, by the fact that you did not follow through on this letter from Ms. Watkins because it was unsubstantiated. If you were to receive a note saying that there was an explosive under the front seat of your car, you would check that out, would you not?

Ms. Olson. More than likely, yes.

Mr. Kildee. I know I would. I think any prudent person would.

While this was not an explosive underneath the front seat of your car, which you would have checked out, I'm sure, as you have indicated, the word "implode," that "this thing is going to implode" is on the front page of this letter.

It seems to me that there was a certain dereliction of not following through on this. I get mail and I have received mail through the years, and just with the first glance of it, I immediately check out the issue raised. I think this was a responsibility of yours to share this with other people on the Administrative Committee, as you would have checked out a report that there was a bomb or explosive under the front seat of your car. It was your responsibility to those people.

Ms. Olson. I felt like by giving it to Mr. Lay and the Vinson & Elkins investigation, that was my responsibility.

Mr. Kildee. That is one of the problems we have here. You, in your capacity at Enron Corporation, are the fiduciary for the workers whose money is entrusted to you, and you are also an employer of Enron Corporation.

In reporting to Mr. Lay, you only acted upon one of your responsibilities. You reported to Mr. Lay. But your responsibility as fiduciary, to my mind, was not followed through on at all. The Administrative Committee should have been alerted to the fact that you had received something

unsubstantiated.

I have had threats on my life in my twenty-six years in Congress. I always turn those over to somebody. I have a responsibility to myself. You had a responsibility to other people. I find it baffling, and I can understand the conflict there, the inherent conflict of interest, but I cannot justify that you get information and only discuss it with your employer, not those whom you are really sworn to protect.

I find that very baffling, very disturbing. I want to trust my fiduciary, and not have my fiduciary just report to her employer, but also report to those who trust her to carry out her fiduciary responsibility.

May I ask Ms. Ghilarducci is there some way that we can craft legislation, first of all, to make sure that this inherent conflict we have here does not take place? Can we change Federal law on that, and does the President's proposal go far enough?

Ms. Ghilarducci. Other countries realize that corporate executives and pension trustees are often the same person and they have an inherent conflict. The way other countries deal with that is to put equal representation of employees on the board, in recognition that both have a stake.

The President's proposal does not talk about joint administration. We have experience in this country where that two-hat problem is solved, and that experience has been good.

Mr. Kildee. Let me ask you this question, too, because you are an expert on this and you also function this way.

I have the highest voting record of anyone in Congress, so I attend meetings. The only reason I was not here yesterday was because I had two hearings scheduled at the same time. But if the fiduciary in charge were to miss about half of the meetings of the Administrative Committee within a year, is that malfeasance, misfeasance, nonfeasance, or what?

Ms. Ghilarducci. There is nothing in Federal law that says how many committee meetings you have to go to, but the standard interpretation would be considered malfeasance and neglect.

The Chairman. Thank goodness there is no Federal law in having to attend a committee meeting.

Mr. Kildee. It would be considered malfeasance, by missing about half the meetings?

Ms. Ghilarducci. Oh, yes.

Mr. Kildee. Thank you, Mr. Chairman.

The Chairman. The Chair recognizes the gentleman from Texas, Mr. Culberson, for five minutes.

Mr. Culberson. Thank you, Mr. Chairman. I represent west Houston and many hundreds if not thousands of Enron employees who have lost their jobs, as well as their life's savings.

I wanted to ask if you could give me an estimate, in your opinion how many employees at Enron lost their jobs and most, if not all, of their life's savings.

Ms. Olson. Are you asking me?

Mr. Culberson. Yes, just ballpark.

Ms. Olson. As you probably know, over 4,000 people walked out of that building on December 2nd or 3rd and lost their jobs.

Mr. Culberson. How many lost most or all of their life's savings or most of their 401(k)s?

Ms. Olson. I don't have an estimate for that. I don't know if Mikie does or not.

Ms. Rath. We don't have an estimate of how many people lost, because it is very difficult to tell when people were actually buying stock. As of January, we still had 1,400 employees buying Enron stock at 39 cents, so it is difficult to know because of the daily environment who actually lost or who was just trading.

Mr. Culberson. Okay, thank you.

Could you also please tell us for the record who to your knowledge participated in the decision to make the transition to Hewitt and begin that blackout period? Who participated in that decision, and why was that decision made to transfer to Hewitt and trigger this blackout period when employees could not trade or move their stock around in their 401(k)s? This question is for both you and Ms. Rath, please.

Ms. Olson. The decision to not stop the transition was at a meeting including Mikie and myself, the director of benefits, and also our corporate counsel. And that decision was made based on the fact that we could not get information to all the plan participants that we were going to stop the transition in time, partially because of the anthrax issue. We as a nation were looking at that. And we had over half of the participants outside of the building all over the country, so that was the first meeting where we considered stopping the transition.

The next meeting we considered stopping the transition was the Administrative Committee meeting, where we had Hewitt present. We determined at that point that we could probably speed up the transition and finish it faster than we could stop it.

Mr. Culberson. So the only people involved in that decision were who again?

Ms. Olson. Myself, Mikie, Cynthia Barrow, the Director of Benefits, and Pat Macken, who was our Counsel.

Mr. Culberson. The notification that went out to employees of the impending blackout period included the e-mails which the Committee has been provided copies of. I believe there is one dated September 27, 2001, and I am confident you have copies of these. Another is dated October 16th, one is dated October 22nd, and one is dated October 26th.

Have you seen these e-mails? Are these accurate reproductions of those e-mails that were sent out to company employees?

Ms. Rath. The e-mail from September 27th was not sent out from the Enron benefits department. Our first e-mail went out in mid October, the 16th or 17th, and then we sent another e-mail out the following week, and then two e-mails on that Friday, the 26th.

Mr. Culberson. These e-mails, though, are accurate copies, and you can verify the authenticity of these to the best of your personal knowledge?

Ms. Rath. Yes.

Mr. Culberson. Did Enron use any other method of notifying employees of the pending blackout period, other than the e-mails?

Ms. Rath. Oh, definitely.

Mr. Culberson. What were those?

Ms. Rath. We sent out a tricolor, trifold color brochure to all of our participants because we do not have any way of notifying our 13,000 inactive participants of savings plan changes as we make them. So our policy has always been to mail to employees' homes, or participants' homes using the U.S. Postal Service. So we did that the first week of October.

Mr. Culberson. I understand that there were thousands, as you have already testified, of people who lost their jobs and many who lost their life's savings as a result of the collapse of Enron. During this time in which the 401(k) plan was locked down, I understand there was also a deferred compensation plan known as a rabbi trust.

I wanted to ask if during this period of time in which the average employee was locked down and unable to make any changes or withdrawals from the 401(k), did any of the senior executives at Enron make any withdrawals from the deferred compensation plan known as the rabbi trust, and if so, who were they and how much did they withdraw?

Ms. Rath. I am actually not an expert on the deferred compensation, but I can tell you that it was linked to the 401(k) plan, and both of those plans were moving together from Northern Trust to Hewitt. So for the particular blackout period and transition, it would have also been in transition from Northern to Hewitt at the same time.

Mr. Culberson. Ms. Olson, could you answer that question, please?

Ms. Olson. I am not aware of the deferral plan, either. That is in another area. That was in another area. I am not sure of that particular time frame.

Mr. Culberson. Okay.

There is, I understand, under the securities code section 16(b) which designates that there are certain executives of the company that are responsible for corporate policy issues and trading activities, and if they do not fall under that classification, their trading activity is not reportable.

Do you know whether or not any of the most highly compensated traders at Enron were classified as people whose trades would not be reportable, and do you know if any of those people exercised options in 2001 to get out of their 401(k) plan?

Ms. Olson. I'm sorry, I was not responsible during that time frame for that. I don't have that information.

The Chairman. The gentleman's time has expired.

The Chair recognizes the gentleman from New Jersey, Mr. Payne, for five minutes.

Mr. Payne. Thank you, Mr. Chairman.

Ms. Olson, I was just looking at your attendance results from May to December. Did you get to the December 2nd meeting?

Ms. Olson. I can't remember.

Mr. Payne. It makes it either a 60 percent absence, and if you didn't make December, it is 70 percent since May. I guess it is easier to remember the meetings you went to.

Let me just say also during the time you missed 70 percent of those meetings the stock went from $81.39 to $.40, if you were at the December 2 meeting. However, at the same time, you were fortunate to get some expert advice, and you were able to sell, or I guess get $6 million on some of your sales. Was that correct?

Ms. Olson. From 1996 through 2001, that is correct.

Mr. Payne. Okay. I thought I had something that said that much of this sale was done in 2001. I have something that says that "she," meaning you, sold "$6.5 million in Enron stock in 2000 and early 2001."

Ms. Olson. That was from 1996 through 2001. That was the total for those years.

Mr. Payne. Okay, and your company does not have any sort of policy regarding the two meetings that you missed? Miss and you are off? I mean were you ill then, or do you remember?

Ms. Olson. I just don't remember.

Mr. Payne. Did you see Oliver North when he did the Iran Contra hearings?

Ms. Olson. No.

Mr. Payne. If you get a chance to review it on the History Channel, you ought to do that, because he was something else, too. He didn't remember a thing.

Now, you had the Hewitt group come in. When did they come in as the auditors or whatever?

Ms. Rath. We transferred assets and record keeping functions to Hewitt beginning November 1st.

Mr. Payne. Of 2001?

Ms. Rath. 2001.

Mr. Payne. When did the Northern Trust become your auditors, or the plan executors?

Ms. Rath. They were our record keeper beginning in late 1993, early 1994, when our 401(k) plan went from a monthly-valued plan to a daily-valued plan.

Mr. Payne. And the previous company you mentioned happened to be a minority firm, and they were terminated in 1993?

Ms. Rath. I'm sorry; I thought you were asking me about our record keeper.

Mr. Payne. No, I am talking about Northern Trust that was the overall administrator of your plans.

Ms. Rath. Yes.

Mr. Payne. They could not keep up, their computers were too slow, they were unsatisfactory, you talked about how bad a job they were doing, and therefore you changed companies.

Ms. Rath. Yes.

Mr. Payne. I was just wondering about the company that served previous to the Northern Trust.

Ms. Rath. It was before me. I have no idea who was before Northern Trust.

Mr. Payne. Okay. I just wanted to mention to the gentleman, Mr. Padgett, that I really am very sorry and disturbed that your whole fortune was lost, especially because of the unintended consequences you mention: that you were going to retire; you were going to get a little farm; you were going to try to help handicapped children, to relieve parents of handicapped children. Your

parents, I'm sure they are getting older, and you wanted to spend a little more time to care for them.

Mr. Padgett. Actually, Congressman, my mother passed away January 2nd, and my step dad passed away January 19th.

Mr. Payne. I am really sorry to hear that.

The thing I am trying to bring out is that in this whole thrust for greed and this Midas touch-kind of society we are living in today, not only are you injured, but also some children out there that may have been helped by what you would have provided.

You were satisfied, you worked hard, you just wanted to have a little peace and quiet and spend a little time with your wife and do a little fishing, just simple things.

Mr. Padgett. Absolutely.

Mr. Payne. But also to make a real difference in the lives of some other people who are stressed and need a little break. So, you see, this downward spiral effect is almost like Dante's Inferno. This is the seventh level of purgatory. What I have heard from some of these witnesses is distasteful, it is disgusting; and the arrogance of "we cannot remember," or the flip way that we just have no recall, and it was only $6 million in two years rather than four years. This is really what is gnawing at this great country: greed; people's insensitivity; the whole question of "give me my thing and let the rest go, wherever it might end up."

Before my time expires, I want to say that once again, our hearts go out to you.

Mr. Padgett. Thank you, Congressman.

Chairman Boehner. The Chair recognizes the gentleman from Texas, Mr. Johnson, for five minutes.

Mr. Johnson. Thank you, Mr. Chairman. Good to see you all back.

Ms. Rath, we talked about audits done each year. What was done with those audits? Were they given to you and were they reviewed by you?

Ms. Rath. They were reviewed by me, yes, sir.

Mr. Johnson. What was the result of your review?

Ms. Rath. My review was just to make sure that everything was stated correctly from a textual standpoint. I didn't review all the numbers.

Mr. Johnson. You indicated that the auditor made no recommendations is that true? Most of the audits I have seen, they provide a recommendation with them.

Ms. Rath. We had one year where our audit firm, I don't remember whether it was this past year or the year before, didn't recommend that we change record keepers, but they strongly suggested that there were problems with Northern Trust. I don't remember the exact words of the letter, but there was definitely some caution in there.

Mr. Johnson. Do you recall what the problem was with Northern Trust?

Ms. Rath. The problem that was consistent was getting accurate data from their system. We had problems with an IRS audit for the same reason, and problems with our plan audits. It was pulling data out of that system that was inaccurate.

Mr. Johnson. Really? How do you account for that?

Ms. Rath. Northern Trust would have to account for that fact.

Mr. Johnson. They did it for you?

Ms. Rath. They did it for us. It was their computer systems.

Mr. Johnson. To your knowledge, did the Administrative Committee review those audits?

Ms. Rath. To my knowledge, the Administrative Committee did not review the audits.

Mr. Johnson. The buck stopped at your desk?

Ms. Rath. The buck stopped at my department, yes, sir.

Mr. Johnson. Okay. I ask about payments from the 401(k) plans to executives, and you indicated you didn't know of any from the 401(k) plans. Were there any payments to the executives from any of the other benefit plans such as health plans or other plans that you might have?

Ms. Rath. In my capacity, I reviewed the ESOP plan and the pension plan and the savings plan only. Our health plans were audited, but I couldn't speak to what payments were made from those plans.

Mr. Johnson. Out of the three you mentioned, there were no payments made. Is that true or false?

Ms. Rath. We followed the guidelines pretty carefully, sir. I am pretty sure there were no payments made except those that were required to be made.

Mr. Johnson. Is it, in your opinion, possible that it could have happened without you knowing about it?

Ms. Rath. I cosigned letters authorizing the trust to make payments, so I didn't authorize or sign any letters to any individuals other than plan providers.

Mr. Johnson. Thank you. I appreciate that.

Do you know, Ms. Olson, what the level of concern about the company's stock performance was in the Administrative Committee, which you were on, I understand?

Ms. Olson. Yes, absolutely. That is why we went out and hired counsel and a financial adviser. We did have a concern.

Mr. Johnson. But you hired counsel and an adviser. Was that to protect yourselves, or was it to help the people in the plan?

Ms. Olson. It was to help the people in the plan, to advise us what we needed to do.

Mr. Johnson. What was their advice?

Ms. Olson. They haven't come back with specific advice yet.

Mr. Johnson. Come on.

Ms. Olson. They haven't.

Mr. Johnson. When did you ask for that counsel?

Ms. Olson. We started working with them the first part of November.

Mr. Johnson. They still haven't come back to you?

Ms. Olson. No.

Mr. Johnson. Are you paying them?

Ms. Olson. I think so.

Mr. Johnson. Can you tell us who your legal counsel was?

Ms. Olson. Cal Courtney.

Mr. Johnson. Okay. Did they ever give you any advice about Enron's performance, or did they just walk off in the dark and say, we will see you later?

Ms. Olson. We hired FTI, and they are the financial adviser that is working on giving us advice at this point.

Mr. Johnson. Okay. I see my time has expired, Mr. Chairman. Thank you for the questioning.

Chairman Boehner. The Chair recognizes the gentleman from Indiana, Mr. Roemer, for five minutes.

Mr. Roemer. Thank you, Mr. Chairman.

Mr. Padgett, how much money did you start out with in your 401(k) account?

Mr. Padgett. How much did I start out with?

Chairman Boehner. How much did you get up to, finally?

Mr. Padgett. At December 31, 2000, it was $615,000 approximately. At the highest point of the stock, it was probably $675,000.

Mr. Roemer. When it was at $675,000 what was the stock worth?

Mr. Padgett. About $90.

Mr. Roemer. Today your 401(k) is worth how much?

Mr. Padgett. Probably less than $5,000; I have not calculated lately. It kind of makes me ill.

Mr. Roemer. I don't blame you.

Ms. Olson, what is your 401(k) account worth today? Or what was it worth at its high peak, as Mr. Padgett's, and what is it worth today?

Ms. Olson. At the high peak it was worth around $800,000. It is worth around $400,000 today.

Mr. Roemer. You lost about half the value of your 401(k), and Mr. Padgett lost $600,000, almost everything. How do you explain that?

Ms. Olson. Because I had some of my 401(k) in stable asset and not Enron stock.

Mr. Roemer. So you had stock outside of just purely the Enron stocks?

Ms. Olson. I took advantage of one of the other options.

Mr. Roemer. Did you sell stock, though, as you walked into the building? You mentioned previously in your testimony that signs are flashing everywhere in the lobby that show what the stock is worth and TVs are on everywhere.

Were you selling Enron stock all the way through, since you received the memo from Sherron Watkins?

Ms. Olson. No. The last options that I exercised were in March of 2001.

Mr. Roemer. When did you get the memo from Sherron Watkins? When did she walk in?

Ms. Olson. Sometime at the end of August of 2001.

Mr. Roemer. She gave you this memo, and you didn't do anything with your stock after you saw this memo?

Ms. Olson. I did sell 3,000 shares of my ESOP, which I have had since 1992.

Mr. Roemer. Was that just a personal decision you made to do that? Did you discuss that with friends or a stockbroker or personal advisers, or did you just decide to sell?

Ms. Olson. It was the few days before it was imminent, according to the media that we were going to file bankruptcy, so I moved my 3,000 shares of ESOP to a stable asset in the 401(k).

Mr. Roemer. Yet Mr. Padgett, who was totally exposed with Enron stock, does not receive any kind of advice. He is not seeing the Enron board flashing the demise of the company, he is off in another part of the Enron Corporation, and he loses everything.

How did Mr. Lay react when you gave him the memo that Sherron Watkins had given you saying that there was something seriously wrong with Enron?

Ms. Olson. Actually, she took the memo with her to meet with Mr. Lay. I had set up the meeting, and she gave him the memo.

Mr. Roemer. So you called Mr. Lay and said, "Ms. Watkins has a serious concern, serious enough to set up a meeting with you. I think you should meet with her"?

Ms. Olson. Yes. I said that I thought he should meet with her.

Mr. Roemer. It was serious enough to meet with Mr. Lay, but not serious enough to act on in your role as a fiduciary for the rest of the people like Mr. Padgett?

Ms. Olson. The reason Ms. Watkins wanted to meet with Mr. Lay was for him to kick off an investigation to determine if her allegations were accurate. That is what Mr. Lay did.

Mr. Roemer. But the allegations were serious enough for you to call the CEO of the company, who you report directly to, and say, "You should sit down and meet with her," yet you did not attend meetings to do something about that serious concern and try to help the rest of the employees?

Ms. Olson. I believed that it was in the hands of Mr. Lay and Vinson & Ellis and it would be handled that way.

Mr. Roemer. Did you follow up with Mr. Lay then, and ask, "How did the meeting go with Ms. Watkins? Should we do anything, Mr. Lay? We have a lot of exposed employees here. What should we do, Mr. Lay?" What did she say to you, and do you think there is some kind of veracity and accuracy in this memo?

Ms. Olson. Mr. Lay or Ms. Watkins, one of the two, let me know they were kicking off an investigation of Vinson & Elkins.

Chairman Boehner. The gentleman's time is expired. The Chair recognizes the gentleman from Georgia.

Mr. Roemer. Mr. Chairman, I would hope that we could continue to pursue some rounds on this, and again I appreciate the time.

Chairman Boehner. The Chair recognizes the gentleman from Georgia, Mr. Isakson.

Mr. Isakson. Thank you, Mr. Chairman.

Ms. Ghilarducci, I appreciated the four-point recommendations that you made. I wanted to ask you about one of them. As I remember it, one of your recommendations was that there be some type of legal limitation on the percentage of a 401(k) plan that could be in the company's stock. Is that correct?

Ms. Ghilarducci. Absolutely.

Mr. Isakson. Let me tell you the foundation for my question so it does not appear to be a loaded question. I'm always worried that we in Congress let the pendulum go too far the other way, and, because of a terrible incident, end up prohibiting a lot of very positive things.

By way of example, yesterday in his testimony Mr. Miller's posted some 20 companies and the percentage of their company stock that was in 401(k) s. One of them was Home Depot, which happens to be a company founded in my district and a company that I know a lot about from its founders. The chart is not here today, but I believe it showed that 74 percent or thereabouts of Home Depot's 401(k) plans were in Home Depot stock.

Now, my recollection of the Home Depot success story was that in its early days it used company stock contributions and encouraged investment in company stock in the 401(k) as an incentive to build a company, because the workers actually had equity. The story, if I remember correctly, is Home Depot made millionaires out of thousands of their employees because it was the employee's work that produced the great success story.

I completely understand forced diversification by a capitated corporate plan could have possibly protected Mr. Padgett to the extent whatever that capitation was on Enron stock. I also realize had he been an employee of Home Depot, it would have prohibited him from significant earnings.

So here's my two-part question. If the Congress got into that type of recommendation or it was offered, do you think in your learned opinion that it ought to be a provision that employees should be informed of and could opt out of instead of it being mandatory across-the-board? That would cause the employee to be informed, and it would cause them to make conscious decisions. Would you think that would serve the purpose of employee protection, while not preventing them from benefiting from the honorable efforts that are true in this country?

Ms. Ghilarducci. I appreciate the question. I've thought about it quite a bit, and in my testimony I notice that that employee would be conflicted. So to put in less than they want would seem disloyal and so they would be conflicted.

When the Studebaker workers lost their pension in a town I happen to live in now, Congress saw fit to restrict the investments or mandate diversification in defined benefit plans to 10 percent. I know there are celebrity companies that have a high percentage of their employee stock into 401(k)s, but on average it's about 15 percent. So I do think there should be a mandate, because the employee with just education has too many other conflicting urges not to take good advice.

Mr. Isakson. I know you used some individual psychology in your explanation. So your response is that to some of the employees the appearance of disloyalty in their minds would force them to waive the 20 percent prohibition and go ahead and put more in. Is that correct?

Ms. Ghilarducci. Some employees, though, would realize they could be loyal to the company and also be diversified in their fund.

Mr. Isakson. I want to ask this question. In the end, though, isn't the integrity of the management of the company the ultimate decider in that factor? And by that, I mean if a company would make an employee feel intimidated and not loyal because they didn't waive the mandatory diversification, it might be the same type of a company that would have purported to be in far better shape than it really was. Isn't that probably true?

Mr. Isakson. Oh, the Enron-type situation would be an exception?

Mr. Isakson. No. The point is the integrity of the management ultimately would be the decider.

Ms. Ghilarducci. I know you want yes or no, and I think it depends.

Mr. Isakson. We don't ever answer yes or no, so I can understand why you wouldn't. I yield back, Mr. Chairman.

Chairman Boehner. The gentleman's time is expired.

The Chair recognizes the gentleman from New Jersey, Mr. Holt, for five minutes.

Mr. Holt. Thank you, Mr. Chairman.

Ms. Olson, the Chairman and Mr. Roemer and others have made much of the fact that you took this memo in August seriously, or at least seriously enough to set up a meeting with the CEO of this corporation whose time I'm sure was precious. And yet you didn't take this to your advisory committee that had a fiducial responsibility for looking at the assets of the employees.

You also said that you had, it sounded to me, at best, casual introduction to your fiducial responsibilities. No one sat you down. No lawyer met with you. No official from an outside agency presented you with a course or even a booklet on your fiducial responsibilities. Is that true?

Ms. Olson. Not that I can recall.

Mr. Holt. So it sounds like it was at best casual. At least it didn't make much of an impression, if it existed at all.

Is there anything that would have helped you exercise your fiducial responsibilities if it had existed earlier, perhaps in regulation?

Ms. Olson. Potentially more information.

Mr. Holt. Okay. Did your group ever talk about the need, the desire to provide investment advice but you felt constrained because the ERISA regulations prohibited a provider offering investment advice?

Ms. Olson. We didn't talk about that in the Administrative Committee, but the benefits department spent a lot of time trying to push diversification within the company. A lot of the brochures and materials were sent out to employees, and we also held a benefit fairs. Several years ago we had some actual investment seminars, but in the benefits area, we always felt like there was a fine line that we shouldn't cross with respect to providing independent investment advice to our employees.

Mr. Holt. Thank you.

Ms. Ghilarducci, is there anything in practice or theory that suggests there's a reason why executives should have different rights to adjust their portfolios, just to buy or sell, or to have different lockout periods than workers?

Ms. Ghilarducci. No.

Mr. Holt. And with regard to the percentage of company stock in a parent company, you said all academic experts in the field would agree that there should be some limit. Could you say a bit more about that?

Ms. Ghilarducci. Oh, yes. Despite Mr. Boehner saying that I've come here a lot, I only came here once before, and there was a panel of academic experts.

Chairman Boehner. It must have been because you're so memorable.

Ms. Ghilarducci. You were here, too. There was a whole panel of us on very different spectrums of economic ideology and methodology, John Shoven from Stanford, and we all agreed that there should be some diversification in retirement plans because those are tax deferred and they're for long-term savings. The productivity issue that was raised is really produced by Congress through the ESOP plans and that's different.

Mr. Holt. Okay. Mr. Peterson, I see the time is moving along, so, just quickly, who would have the most motivation to provide genuine balanced investment advice to employees? And what would give an advisor the appropriate motivation to provide it?

Mr. Peterson. Maybe I can answer with an example of what Hewitt & Associates does in our own plan. We've made investment advice available to our associates through an independent provider.

Mr. Holt. And what provides the motivation to do that?

Mr. Peterson. That provider, they have no other relationship with us or with any of the investment managers.

Mr. Holt. And who pays them to do it?

Mr. Peterson. Hewitt Associates does.

Mr. Holt. And why does Hewitt pay them to do that?

Mr. Peterson. I think it's just supporting the notions we've been talking about here this morning of having this be something that Hewitt Associates has decided is appropriate for our people, for our employees.

Chairman Boehner. The gentleman's time is expired.

The Chair recognizes the gentleman from Ohio, Mr. Tiberi, for five minutes.

Mr. Tiberi. Thank you, Mr. Chairman.

Mr. Padgett, we heard a little bit about your situation. You've been with Enron ten years, I understand?

Mr. Padgett. Yes, sir. Ten years, but with thirty years credited service.

Mr. Tiberi. Thirty years credited service. And you lost, according to Mr. Roemer's question, $600,000 in your 401(k) plan?

Mr. Padgett. I lost a little over $600,000.

Mr. Tiberi. During your ten years with Enron, were you provided with stock options as Ms. Olson was?

Mr. Padgett. Yes, we were. In 1994, I believe it was, Enron granted hourly paid employees some stock options.

Mr. Tiberi. And so you were offered stock options?

Mr. Padgett. Yes.

Mr. Tiberi. Have you exercised those stock options?

Mr. Padgett. I exercised a portion of the first grant to buy my wife a new vehicle, and the rest of them I left in there because I had until 2004 before they expired. So with all that management was telling us as far as the price of the stock going up, I felt like I'd leave them there until it got even higher.

Mr. Tiberi. When did you exercise the portion?

Mr. Padgett. The portion I exercised was in 2000, I believe.

Mr. Tiberi. What was the worth of the stock then? Do you recall?

Mr. Padgett. The stock was worth I want to say $80-something a share.

Mr. Tiberi. And how much did you cash out, how many shares?

Mr. Padgett. I cashed out about 800 shares.

Mr. Tiberi. And how much was that worth at the time?

Mr. Padgett. Oh, gosh, about $60,000.

Mr. Tiberi. And how much stock do you have remaining?

Mr. Padgett. I've got about 2,150 shares left of that first grant. They also gave us two other grants. One, I don't remember the exact dates, was when the price of the stock was about $83 or $86 a share. I believe that was in 2000. Then when the stock dropped to $36 a share, they gave us another grant at $36 a share. So it probably gives me a total of around 3,000 shares of stock options.

Mr. Tiberi. And what is the value of that today?

Mr. Padgett. Zero. Worthless.

Mr. Tiberi. Ms. Olson, you were a member of the Administrative Committee for Enron. That's been established today. What would you say your role was as a member of that committee?

Ms. Olson. We saw our role as threefold: to ensure that the 401(k) had adequate investment options, to monitor the pension investments, and to take any grievances.

Mr. Tiberi. As a member of the committee, do you believe the committee had a role in designing the plan, and, if not, who designed the plan?

Ms. Olson. The board of directors was in charge of plan design.

Mr. Tiberi. Could the committee add or subtract options?

Ms. Olson. The committee could recommend changes to the plan design.

Mr. Tiberi. And the final authority was with?

Ms. Olson. The final authority was with the board of directors.

Mr. Tiberi. How often did the committee, during your period of time with the committee, recommend changes?

Ms. Olson. During that period of time, I didn't see any recommendations coming from the committee.

Mr. Tiberi. Did the committee offer or recommend to the board any design with respect to Enron stock?

Ms. Olson. No.

Mr. Tiberi. It never did while you were there. Did the committee, other than walking through the building and watching the TV or in the elevators, have a formal role in monitoring Enron stock?

Ms. Olson. I don't believe so.

Mr. Tiberi. So you did not monitor Enron stock as a committee?

Ms. Olson. Not as a committee. Each individual, I'm sure, monitored Enron stock.

Mr. Tiberi. Did the committee ever discuss informing Enron employees about allocation of Enron stock in their plan?

Ms. Olson. No. I don't recall us ever discussing that.

Mr. Tiberi. And the committee then also never talked about providing information to Enron employees about diversification in their plan?

Ms. Olson. I don't recall discussing that as a committee. We did as a benefits department.

Mr. Tiberi. But not the Administrative Committee?

My time is almost expired. Ms. Rath, as a benefits department, what did the committee determine was the appropriate role for your office in providing information about diversification?

Ms. Rath. My office would monitor recent legislation. We would monitor employee requests, and then we would either make recommendations to the Administrative Committee to consider, or we would be asked by the Administrative Committee to do certain functions or to provide information to them.

Mr. Tiberi. I have just one final question.

Chairman Boehner. The gentleman's time has expired. The Chair recognizes the gentleman from Massachusetts, Mr. Tierney.

Mr. Tierney. Thank you, Mr. Chairman.

Ms. Olson, back in the period between the last month of the year 2000 and March of 2001, you testified I think yesterday that you sold 83,000 shares of Enron stock for $6-1/2 million. Correct?

Ms. Olson. No. Over those years I sold $6-1/2 million from 1996 through 2001.

Mr. Tierney. And was there a period of time when your sales were heavier than others?

Ms. Olson. Yes, in late 2000 and 2001.

Mr. Tierney. Now, did you get any advice from somebody as to whether or not to hold your shares in Enron or to diversify or to sell?

Ms. Olson. Yes.

Mr. Tierney. Who did you go to for advice, somebody within the company or someone outside?

Ms. Olson. I went to someone outside the company.

Mr. Tierney. And who in particular would that be?

Ms. Olson. His name was Dean Lane with Compass Bank.

Mr. Tierney. And is advising his business, or is he just a friend?

Ms. Olson. No. He's in the business of advising.

Mr. Tierney. Why did you go to such an individual outside the company?

Ms. Olson. I was thinking about leaving the company. I'm close to fifty. My husband and I were looking at retiring, and we just felt like it was important to take a look at our financial position.

Mr. Tierney. What was going on in the company at that time that led you to think that you had to worry about whether you held your stock in the fashion it had been held for some period of time or change that plan?

Ms. Olson. It wasn't what was going on with the company. It was what was going on with me personally in the company.

Mr. Tierney. When you met with your advisor, what did you share with him about the condition of Enron at that time?

Ms. Olson. It was a great company. I thought the stock was going to go up.

Mr. Tierney. And yet, regardless of that comment, he still advised you to diversify?

Ms. Olson. Yes. He said I was way too emotionally involved in my stock and he had had other clients in similar positions with Compaq and Lucent stock. He highly advised me to think about diversifying.

Mr. Tierney. Okay. Mr. Padgett, did you have anybody advising you as to whether or not to hold your Enron stock or to diversify?

Mr. Padgett. No, sir. Not to my knowledge.

Mr. Tierney. You did have communications, however, from Mr. Lay and others within the company about holding the stock or about investing in the stock?

Mr. Padgett. Yes, sir. We were constantly encouraged to invest in the stock.

Mr. Tierney. And how were you encouraged? Was it oral communication or written in some form?

Mr. Padgett. It was usually through e-mail communications.

Mr. Tierney. I've read in the testimony and in comments that you made elsewhere that you thought at some point in time the company may have changed or deleted some aspects of the e-mail.

Mr. Padgett. It appears so.

Mr. Tierney. How does it appear that the company altered the e-mails that led you to keep your investments in Enron stock?

Mr. Padgett. I don't know if I understand the question or not.

Mr. Tierney. Well, the indications were that you thought the e-mails had been altered in some regard.

Mr. Padgett. Some of the e-mails had been deleted.

Mr. Tierney. Entirely.

Mr. Padgett. From my e-mail computer, they were.

Mr. Tierney. From your memory, what were the contents of some of those e-mails?

Mr. Padgett. They were conditions or statements of the company.

Mr. Tierney. Such as?

Mr. Padgett. Such as the company was in great shape.

If I remember correctly, one of the e-mails was from Mr. Lay and stated that the company was in the best shape it's been in years.

Mr. Tierney. And did other individuals within the company give that advice in addition to Mr. Lay?

Mr. Padgett. Yes, sir.

Mr. Tierney. And who were they, if you remember?

Mr. Padgett. Mr. Horton.

Mr. Tierney. What's his position?

Mr. Padgett. I don't know exactly what his position was. I think at one time he was CEO of our division, which was the clean fuels division.

Mr. Tierney. At any time, were you ever provided with access to a non-conflicted adviser, somebody that could advise you with respect to your holdings that didn't have a simultaneous interest in Enron?

Mr. Padgett. No, sir, not to my knowledge.

Mr. Tierney. Do you think, Mr. Padgett that having a non-conflicted adviser would have been of use to you with respect to how you maintained your retirement account?

Mr. Padgett. Yes, sir. I believe it would have. I believe it would have given me more information to work with.

Mr. Tierney. And obviously I think from the circumstances you just indicated, that getting advice from somebody that's conflicted with the company wasn't very useful to you at all, was it?

Mr. Padgett. No, sir it wasn't.

Mr. Tierney. And you relied on that conflicted advice, obviously, to your detriment.

Mr. Padgett. Absolutely. We trusted management. We trusted the company.

Mr. Tierney. Thank you. Well, point that out. My time is running out. The sole purpose of that is the one individual here who had contact with a nonconflicted adviser managed to diversify her portfolio and do substantially quite well. You, on the other hand, did not have anything except for conflicted advice, and only you suffered from that.

Part of the legislation the Administration proposed would in fact support the Chairman's bill, another bill that would allow for conflicted advice. Many of us, Mr. Padgett, have had to believe that advice is great, it ought to be provided, but it ought not to be conflicted. There's no reason at all for conflicted advice. I think that you're the poster child for that, unfortunately.

Mr. Padgett. Absolutely.

Mr. Tierney. Thank you.

Mr. Johnson. [Presiding] Thank you.

Ms. Woolsey, could I ask one question?

Ms. Woolsey. I suppose.

Mr. Johnson. Bless your heart. You're a sweetheart.

Mr. Peterson, a witness before the Senate committee complained that the blackout period lasted longer than November the 13th for some plan participants. Do you know anything about that? Can you discuss those difficulties?

Mr. Peterson. No, sir, I can't. The services we were providing were available starting on November 13th.

Mr. Johnson. Do you know, Ms.Rath?

Ms. Rath. No, sir. We had sent out a postcard to all of our participants telling them to either watch the Internet or call a recorded line so that we could notify them of the early date.

Mr. Johnson. So, according to your information, there was no extension.

Ms. Rath. No extension. We went live the morning of November 13th.

Mr. Johnson. Thank you very much.

Ms. Woolsey, you're recognized.

Ms. Woolsey. Thank you very much.

This is so hard for me, because twenty years before I got here, I was a human resources professional. From 1969 to 1980, I was part of a start-up company. I was the number six employee, and when I left, we had over 700 employees. Now, 700 versus 23,000, there's a big difference. But I keep thinking that when I first went into the business of human resources, it was at the beginning of ERISA, and that was when ESOPs first came to the forefront. We did all that because it was a telecom and actually has become a Fortune 300 company now.

So I keep thinking what I would have done if what happened to Enron was happening to my company. And I can hear my voice. I would not have let up until the president of that company paid attention to what was happening to the employees, their benefits, their futures and their livelihoods. But I know there's a difference between 700 and 23,000 employees.

Ms. Olson, I want to know if you would tell us how far removed were you from Mr. Lay in the reporting, in the hierarchy? Did you report directly to him?

Ms. Olson. I report directly to him.

Ms. Woolsey. Okay. So in your interactions with him in his "we'll put it off until tomorrow" decisions, what was that doing to you? I mean, I don't see how you could live with yourself. I'd have been frantic, because that was my job. I knew my job was to actually protect the people, and also the reputation of my company. You're a vice president in community relations. What a terrible thing for your company to be known for now.

I want to tell you, I can't bear the thought of you ending up being responsible for all of this. Somebody else really is. Who do you think that is?

Ms. Olson. I can't say. There are so many investigations. A report was just issued. The courts will decide. I don't know.

Ms. Woolsey. Do you think it was your responsibility? Are you going to end up holding the bag on this?

Ms. Olson. No.

Ms. Woolsey. Does anybody else want to comment on who they think was responsible? No?

Well, when we're all through with this, if a vice president ends up holding the bag and the people above end up going free, we really, really have a problem in this country. So I hope you participate fully in the investigation so people know exactly what happened and who ultimately made the decisions. Thank you.

Mr. Johnson. Mr. Andrews from New Jersey, the Ranking Member, Subcommittee for Employer-Employee Relations.

Mr. Andrews. Thank you. I thank all the witnesses for what I'm sure has been a very difficult process. We thank you for coming and testifying.

Truthfully, as you know, Ms. Olson, on June 25th of 2001, you were present for a meeting of the Administrative Committee. As I read the minutes of the meeting, the purpose of it was to choose among three candidates to be the large cap manager for, I assume, the cash balance plan.

Ms. Olson. It was for the pension fund.

Mr. Andrews. Okay, for the pension fund. And you made a motion to approve one of the three applicants and the motion was approved. Without being real specific as to why you supported that one applicant, what was your reasoning for choosing one of the applicants over the other two? Why did you do it?

Ms. Olson. As I recall, Jim Neugard, who works in our Treasury Department and came to every Administrative Committee meeting, provided us with information about these advisers. And we were working with Cowan & Associates as well. I believe it was Swiss Bank.

Mr. Andrews. Yes. To be honest with you, it's sort of beside the point. I assume what you did is make a choice among three people. What was the basis of that choice?

Ms. Olson. They just appeared to be better. Their returns were better.

Mr. Andrews. Right. Better for whom?

Ms. Olson. For the participants.

Mr. Andrews. For the participants in the plan.

Ms. Olson. Right.

Mr. Andrews. And that's really the essence of fiduciary duty, and I know that you understand it. I know that that's something that has meaning to you as a professional. A lot of the questions today have been about other circumstances over the last fifteen months or so. Where it's baffling to an observer is why you didn't do some other things that would have been in the best interest of the participants.

You know, in the beginning of this whole process, to look at a situation where participants in a 401(k) plan have all of their assets in the company stock, as Mr. Padgett did, raises some questions about education for investors. In March of 2001 when the Fortune magazine article appeared about the company being in grave and dire straits, I think I understand from your testimony that you didn't discuss that magazine article with any of the other members of the Administrative Committee. Correct?

Ms. Olson. No. We didn't discuss it.

Mr. Andrews. And at the time that you sold many of your own shares of the stock, for whatever reason, you didn't discuss any possible financial trouble Enron had with any other members of the Administrative Committee. Right?

Ms. Olson. No. That was a personal decision.

Mr. Andrews. And when you received this now infamous memo from Ms. Watkins in August of 2001, as Mr. Roemer said, it was of such magnitude that this fairly mid-level employee, one of 400 people at her level, gets to see the boss of the company. It must have been a major, major deal. But it's my understanding from your testimony that you didn't discuss that memo with other members of the Administrative Committee. Correct?

Ms. Olson. Correct.

Mr. Andrews. And you didn't change the education program so that people like Mr. Padgett would know that at least it was an issue that people thought the company might be in trouble. Is that correct?

Ms. Olson. That's correct.

Mr. Andrews. Mr. Padgett, during that time, outside of any popular media, any mass media, did the company tell you anything about any problems it might be having?

Mr. Padgett. No, sir, they did not.

Mr. Andrews. Okay. Now, Ms. Olson, it is obvious to me that you are an accomplished professional, that you have earned your way to a very high position in your profession, and that you are someone who knows what she is doing. I would like to follow up on Ms. Woolsey's line of questioning, because it seems to me that there's another story behind why a person of such outstanding achievement would make oversights or fail to do things that seem to be pretty

obviously need to be done.

I think the reason might lie in this: What would have happened if in April of 2001, you had gone to a meeting of the Administrative Committee and suggested that an e-mail be sent out, suggesting that there were significant reportings that Enron stock was losing great value and the company might be in some severe financial trouble? If you had made that recommendation to the Administrative Committee, what would have happened to you in your position as an employee of the company?

Ms. Olson. I honestly don't feel like I would have been at risk.

Mr. Andrews. You think that you wouldn't have been at risk? You think your career would have been in any way compromised or jeopardized by making that kind of disclosure?

Ms. Olson. That's hard to say.

Mr. Andrews. Did anyone ever tell you not to make such a disclosure?

Ms. Olson. No.

Mr. Andrews. Did anyone ever suggest that it would be in your best interest not to make such a disclosure?

Ms. Olson. No.

Mr. Andrews. Did you ever discuss the possibility of making such a disclosure with one of your superiors at the company?

Ms. Olson. No.

Mr. Andrews. Thank you very much.

Chairman Boehner. Thank you, Mr. Andrews.

Mr. Scott of Virginia, you are recognized.

Mr. Scott. Thank you, Mr. Chairman.

Mr. Chairman, I said yesterday, and I'll say again today, that I'm not as offended as some other people are about the idea of some regulation over these pension funds. We have Social Security, which is a safety net, and private investing where you can do whatever you want. There's an expectation from pension funds that's different from the ordinary investment accounts, even to the point where the Federal Government guarantees some of the pension funds.

So like I said if there's some limitation on investment options and on company stock, if in the fullness of time most of the value is capital gains, I'm not offended. There are some calculations that question whether or not you're better off outside of a taxable account, because when you draw it out of a 401(k), you have to pay ordinary income tax, whereas if you just cash it out, you're paying at the capital gains rate.

Having said that, Mr. Peterson, I notice that you called your function, I think, record keeper.

Mr. Peterson. Yes, sir.

Mr. Scott. Which is different from administrator and fiduciary, which will have other implications. Did you have a fiduciary obligation?

Mr. Peterson. No, we did not. We did not exercise any discretion in the process.

Sir, if I may, just to clarify something that was said earlier and make sure that it's certain it's clear; we are not trustee of the plan. We do not control the assets themselves.

Mr. Scott. You have a list up on the board that says investment options available under the 401(k) plan. Who decides what the investment options are?

Mr. Peterson. Enron decides those.

Mr. Scott. Enron makes those decisions.

Who at Enron makes those decisions?

Mr. Peterson. I'll defer to the folks on my right.

Ms. Rath. Those investment options are determined by recommendation, either from an investment adviser, such as Cowan & Associates, or through a recommendation from the Benefits Department to the Admin Committee.

Mr. Scott. Who has the fiduciary responsibility to make sure that whatever the investment options are, are in fact appropriate for pension funds? Does anybody have that fiduciary responsibility? I mean you've got a limited list of options. Anybody? Is there any screening process to determine whether or not the things that you can buy in the pension fund are in fact appropriate for pension funds?

Ms. Olson. I believe the Administrative Committee does.

Mr. Scott. You believe?

Ms. Olson. Yes.

Mr. Scott. You're saying that they do in fact have a fiduciary responsibility to ascertain whether or not the investment options are appropriate for pension funds? They do?

Ms. Olson. To make sure that the investment options that we offer in our pension funds are good options.

Mr. Scott. Okay.

Mr. Peterson, in your function as record keeper, you indicated that you're charging fees that are in the ten basis points range. Some of the investment options of mutual funds charge annual fees in the sixty to one hundred and fifty basis points range. Does anybody get a commission or anything like that if people buy one of the funds that charge those kinds of fees?

Mr. Peterson. Hewitt Associates and other record keepers sometimes receive contributions toward our fees, which are used to reduce the fees that are otherwise paid by the plan or by the plan sponsor from the fund managers.

Mr. Scott. Does that create a conflict of interest if some are kicking back more than others; you'd have an interest in getting those on the board?

Mr. Peterson. No, sir, because it reduces fees that are otherwise paid by the plan sponsor or by the participants.

Mr. Scott. We're kind of fraught over what is happening, and nobody has taken responsibility. I'd just like to say that somebody is going to have criminal or civil liability for this.

My time is running out. I wanted to ask a quick question on the blackout period. I notice on our own Thrift Savings Plan we have a blackout period for 6 weeks. If we don't get in a request to change allocation or something by the 15th of the month, it will be 6 weeks later before it becomes effective. What are normal blackout periods in other thrift savings, 401(k)-type plans?

Mr. Peterson. Would you like me to respond to that?

Mr. Scott. Yes, please.

Mr. Peterson. It sounds to me like the period that you describe is something that's on a regular ongoing basis. What we've been discussing in the context of the Enron situation that does occur regularly has to do specifically with changing a record keeper or trustee or something like that. As to your question about duration, very significantly depending on the circumstances we've seen, blackout periods that are as short as a few days to a week and other times where it's several weeks, over a month long.

Mr. Scott. Up to a month long?

Mr. Peterson. Even over a month long.

Mr. Scott. Is 6 weeks unusual?

Mr. Peterson. I've seen situations where a blackout is 6 weeks. I'd say today that's on the high side.

Mr. Scott. Thank you, Mr. Chairman.

Chairman Boehner. Thank you.

Ms. Rivers, do you want to question?

Ms. Rivers. Thank you, Mr. Chair. And thank you to the panel.

One of the things that strikes me with such magnitude today is the seeming, and I use the word "seeming", indifference to what was going to happen to employees here. Ms. Olson, maybe I do not understand exactly.

What it seems like I'm hearing is that a memo came through suggesting that there were big problems. You passed that information on but didn't feel any responsibility to do anything about it. Internal and external information was becoming available that there was a problem with Enron stock. The company was continuing to push its stock with its employees, and you didn't feel any responsibility to say anything about that. You at the same time were selling your own stocks for personal reasons, but usually divesting yourself of the potential liability.

What strikes me is what seems to be total indifference on your part to the potential impact of what was going on could have on people in the company. Can you explain that? I mean, weren't you concerned about people?

Ms. Olson. Absolutely. I was concerned about people. That was one of the reasons why Sherron Watkins came to me. I was an employee advocate, and I felt very comfortable that what she wanted was to be heard by Mr. Lay and that she wanted an investigation kicked off by Vinson & Elkins. She told me that her allegations were not substantiated.

Ms. Rivers. So you felt her needs were being met, but what about the needs of the other employees?

Ms. Olson. I didn't even link the two.

Ms. Rivers. I see.

Are you familiar with the Triangle Shirtwaist Factory fire from 1911? The Triangle Shirtwaist Factory went up in flames, and the floors above the first two were where all the workers were and the doors were locked, and the workers couldn't leave, and they either perished in the flames or they jumped to their death. They were all women. The first two floors were where the executives were, and they walked out to safety.

If someone came into your office and said there's a fire downstairs, could you feel comfortable sending them on to another office and doing nothing yourself?

Ms. Olson. No.

Ms. Rivers. Would you feel an obligation to warn people that there was a fire even though you hadn't confirmed it yourself?

Ms. Olson. Probably.

Ms. Rivers. Probably. Would you feel that if the company was telling people there are sprinklers all through this building and you don't have to worry and you knew there weren't any sprinklers and there was a fire, would you tell people not to believe what the company is saying and that they should get out?

Ms. Olson. If I knew that for sure, yes.

Ms. Rivers. And would you think it was right to keep the doors locked so that people couldn't get out in the case of a fire?

Ms. Olson. No.

Ms. Rivers. Thank you.

Ms. Olson. Mr. Chairman, may I clarify a question that I answered earlier, please?

Chairman Boehner. You may proceed.

Ms. Olson. When asked if the Administrative Committee had ever discussed selling Enron stock, I answered no. And we hadn't before November 1st. I just want to clarify my answer.

Chairman Boehner. All right. The Chair will recognize himself and we'll begin a second round of questions.

For the benefit of my colleagues, we should understand that when it comes to the fiduciary duty regarding a 401(k) plan, the duty revolves around the setting up of the plan, a broad enough options of investment for employees, but there's no fiduciary duty assigned to how employees invest in their own 401(k) plan. And to the extent that there was, at least in my view, a mixing of apples and oranges, there's no fiduciary duty with regard to what employees would or wouldn't do with their stock.

Now, we have a horrible situation at Enron, and I don't believe that the Enron employees that we have before us are those responsible for whatever did happen. I do appreciate the concern that many of my colleagues on both sides of the aisle have over whether Ms. Olson acted properly or was with sufficient haste given an unsubstantiated memo. But at least from my view of it at this point, there was no concrete data. And secondly, even if there had been with regard to the 401(k)

accounts, I don't believe there was a fiduciary duty to have done anything with regards to how those monies and those plans were investigated.

With that, let me yield to my colleague from Texas, Mr. Culberson, who has a district in Houston and has, I know, additional questions.

Mr. Culberson. Thank you, Mr. Chairman. I wonder if I could follow up on some of the questions I began to ask earlier, and ask if perhaps Mr. Peterson might be able to enlighten us.

I mentioned earlier there was a separate deferred compensation plan. I understand Ms. Olson and Ms. Rath don't have any personal knowledge of the rabbi trust. I wanted to ask Mr. Peterson or any other witnesses if you have any knowledge about that trust and whether or not during the lockdown period, any of the executives at Enron made any withdrawals from that deferred compensation plan known as the rabbi trust?

Mr. Peterson. Yes. As part of being engaged by Enron, we also are the record keeper for the deferred compensation program. The timing of our taking responsibility for that was concurrent with the other activities that we performed.

Mr. Culberson. Could you please tell us who made withdrawals from the deferred compensation plan and approximately how much and when?

Mr. Peterson. I don't have that information.

Mr. Culberson. Would you provide that to me, please, and to the Committee?

Mr. Peterson. In terms of specific individuals, we have a confidentiality agreement with Enron, as we do with all of our clients. Today we're here voluntarily, and we don't feel we can provide information about that within that context.

Mr. Culberson. I understand. These things are important to establish for the record. I hope you understand.

Mr. Peterson. Sure.

Mr. Culberson. Then is it your testimony that there were CEOs, executives at Enron, who withdrew funds from the rabbi trust, the deferred compensation plan, during the blackout period in which regular Enron employees could not withdraw money from their own 401(k). Is that your testimony, sir?

Mr. Peterson. What I can tell you is that I know as part of the conversion process we were informed about certain accounts that in fact had been paid out.

Mr. Culberson. Paid out during the blackout period?

Mr. Peterson. We were informed that was during the blackout period. We don't know when the payments themselves were made. They occurred before the time we began the record keeping process.

Mr. Culberson. Okay, very good.

Would any of the witnesses here have any knowledge about which Enron employees have been classified as section 16(b) executives under the Securities Code? Do any of you here have any knowledge of that? Who would be classified as a 16(b) executive, whose trades would be disclosed as a matter of public record?

Ms. Olson. Currently?

Mr. Culberson. Either currently or during 2001 and 2000.

Ms. Olson. I don't recall everyone that was.

Mr. Culberson. Do you know if during the year 2001 any options were exercised by any of the executives who were not 16(b) employees? In other words, could you tell us the names of any executives at Enron, who were not required to publish their trades publicly who were involved in selling off significant portions of Enron stocks during 2001, but were not required to discuss that publicly?

Ms. Olson. I don't have that information.

Chairman Boehner. The gentleman's time has expired. I offer the gentleman the three minutes that I had left remaining on my time.

Mr. Culberson. Thank you.

Chairman Boehner. But my goal here is to satisfy the Members who are remaining.

The Chair recognizes the gentleman from Michigan, Mr. Kildee, for five minutes.

Mr. Kildee. Thank you again, Mr. Chairman, and thank you for having this hearing today. It's been very, very helpful.

In response to one of my questions to Ms. Ghilarducci, we find that there is possible malfeasance and neglect within the Enron Corporation, and if that be the case, that could be a basis for a civil suit. But our job here is to hopefully update the law so that things like this will not occur in the future. We have an obligation to protect people like you, Mr. Padgett, and I certainly hope that from this hearing we will find how we can update the law that was passed many years ago and protect people.

And with that, Mr. Chairman, I yield back the balance of my time.

Chairman Boehner. Are there any Members seeking recognition?

The Chair recognizes the gentleman from Indiana, Mr. Roemer.

Mr. Roemer. Thank you, Mr. Chairman. Again, I want to thank you for holding two days' worth of meetings, and again thank the witnesses for the many hours of helpful testimony this morning.

Ms. Olson, let me return to a question or two that I was asking you during the previous round. With respect to the Watkins memo that was passed on to Mr. Lay on August the 15th, that's a pretty explosive memo, a pretty interesting piece of information regarding a lot of serious allegations within the company. Having seen it, I would think that would generate some talk and interest on your part, to request not only Mr. Lay to sit down and meet with Ms. Watkins, as you did, but also to possibly talk to other people about something with that kind of ramification.

Did you talk to other people within Human Resources or Community Affairs about that particular memo?

Ms. Olson. I can't recall.

Mr. Roemer. You can't recall?

Ms. Olson. I can't recall if I talked to anyone else about that memo.

Mr. Roemer. So it's a memo that is sharp enough and vivid enough in your mind to call the CEO up and get some time with him, but you can't recall if you mentioned it to anybody else within the purview of your fiduciary responsibility within the pension system?

Ms. Olson. The reason I had her go to Mr. Lay was because she wanted to go to Mr. Lay and ask him to have an investigation done.

Mr. Roemer. How about another vice president of the company? Did you have a discussion with somebody in an elevator or in an executive meeting that, gee, I've got this memo from Sherron Watkins. It's pretty explosive. What do you think about this?

Ms. Olson. I may have.

Mr. Roemer. So you may have talked about it to more vice presidents or more executive vice presidents?

Ms. Olson. I can't recall.

Mr. Roemer. Do you know a senior lawyer at Enron by the name of Jordan Mintz?

Ms. Olson. Yes, I do.

Mr. Roemer. There's a front-page article today showing that he issued warnings to Enron employees a year before the explosion at Enron. So he was warning Enron employees even before Ms. Watkins. Did you talk to him about these types of memos and warnings as well?

Ms. Olson. No, I didn't.

Mr. Roemer. What were your discussions with Mr. Jordan Mintz?

Ms. Olson. I don't recall. He's a friend and an acquaintance.

Mr. Roemer. So you have a meeting, a confluence here with two of the people in the company that are sending the memos to the highest levels of Enron saying we've got a big problem, and you're not discussing these problems with Mr. Mintz or with Ms. Watkins, or other people within the company, other than to set up this meeting with Mr. Lay?

Ms. Olson. I don't have a financial background. I can't really discuss those memos with any kind of correctness.

Mr. Roemer. Even though you're running the pension fund and the 401(k) fund?

Dr. Ghilarducci, let me ask you a question, and I don't mean to be facetious at all. There is something called the errors and omissions or the fiduciary insurance for companies like Enron.

Ms. Ghilarducci. Right.

Mr. Roemer. What is the typical amount of insurance that a company like this takes out?

Ms. Ghilarducci. As I understand it, it's about $25 million.

Mr. Roemer. Do you understand Enron's commitment in this regard? How much did they take out for insurance for errors and omissions?

Ms. Ghilarducci. I've heard it's much higher. It's about $85 million.

Mr. Roemer. And why would that be?

Ms. Ghilarducci. I don't know. Maybe they thought they were more at risk. That's why people take out insurance. I just don't know.

Mr. Roemer. Ms. Olson, do you have any comment on the amount of errors and omissions insurance that Enron has?

Ms. Olson. I have no knowledge of that. I'm not sure how much it is.

Mr. Roemer. But $25 million is standard, and $85 million is abnormally high?

Ms. Ghilarducci. That's what I understand in the business.

Mr. Roemer. Would workers like Mr. Padgett get access to that money to get reimbursed?

Ms. Ghilarducci. Maybe through a court case, but it's for the fiduciaries if they are malfeasant. If they're criminal, then that doesn't cover it, but if you just run the pension fund in a malfeasant manner that would cover you.

Mr. Roemer. So that covers the executives that make the decisions rather than helping the employees who lost all their money?

Ms. Ghilarducci. Yes. Whereas the PBGC will cover everybody in the cash balance plan.

Mr. Roemer. So the PBGC has no insurance over these kinds of 401(k) plans?

Ms. Ghilarducci. That's right.

Mr. Roemer. So the insurance doesn't cover them? The Pension Benefit Guarantee Corporation does not cover the 401(k)s. Once again, the executives are off the hook, and the workers get stuck with the pain and the problems.

Ms. Ghilarducci. Yes, the executives who run the plan for very specific behaviors.

Chairman Boehner. The gentleman's time has expired. Does any Member seek recognition?

Mr. Roemer. Mr. Chairman, I just forgot. Can I ask unanimous consent to have the following materials placed into the record for Mr. Miller?

Chairman Boehner. Without objection, so ordered.

Mr. Roemer. Thank you, Mr. Chairman.

Mr. Johnson. Let me ask what the materials are.

Chairman Boehner. Would the gentleman from Indiana give us a brief description of the document?

Mr. Roemer. Yes, Mr. Chairman. They are a description of the minutes of the Enron Corporation employee stock ownership plan meetings. They have been referred to three or four times in our conversation.

Mr. Johnson. Thank you.

Chairman Boehner. Without objection, so ordered.

The Chair recognizes the gentlelady from Minnesota, Ms. McCollum.

Ms. McCollum. Thank you, Mr. Chair. I have a document that was provided by Hewitt. Is this yours?

Mr. Peterson. Yes, ma'am.

Ms. McCollum. And in here I believe there is a printout of the Enron web site, "Money in Motion".

Mr. Peterson. Yes.

Ms. McCollum. Okay. The pages really aren't numbered, but there's a date of October 4th on the top of it. I'm wondering if that is the date that this was pulled off the web site.

Mr. Peterson. Actually, I think what is included here is a copy of a communication that we assisted Enron in sending to employees. It was described in one of the testimonies earlier. October 4th is the date it was mailed.

Ms. McCollum. October 4th is the date it was mailed. What was Enron stock doing around October 4th when this was mailed? Was it stable? Was it falling? I'm sure Ms. Olson knows.

Ms. Olson. It was going down.

Ms. McCollum. It was going down. And here it says with no excuses, "the savings plan is a great benefit". It goes on to say a few more things about Pre-Tax including, "the company match is like receiving free money". Did anyone from the company, Ms. Olson, after Enron stock started falling, discuss what was going to happen with all of this free money that the employees were going to have during the blackout period as the stock was falling? Were you concerned as one of the people who was involved in oversight of the plan that this kind of language was being delivered to people's homes?

Ms. Olson. No. We didn't have a crystal ball. We didn't know where the stock was ultimately going to go.

Ms. McCollum. Okay. Mr. Padgett you're representing thousands of employees. Thank you for sitting here in public for what must be a very painful personal time for you. In your testimony, you said, "the top management of the company constantly encouraged us to invest our stock in Enron". You received documents such as I mentioned printed by the company quite often, did you not?

Mr. Padgett. Yes, ma'am.

Ms. McCollum. And you took the fact that the company was matching your savings plan with only Enron stock as further endorsement that the stock was safe as a retirement investment. In fact, the company told you it was like receiving free money, did they not, sir?

Mr. Padgett. Yes, ma'am.

Ms. McCollum. It might also be more of a comment, Mr. Chair, but I put it to our scholar here on the panel. By providing tax breaks indirectly, as you point out, taxpayers are subsidizing companies offering pension plans. And we do that so it's a win-win situation for everyone, win for the company, and win for the employee.

But because we're endorsing that by having opportunities for companies to write off tax breaks, as you point out, there's an implicit responsibility, that high ethical standards and that looking at one another in the corporate community and employees, there's going to be care, nurturing and understanding. And it appears in the case of Enron and with the people who have testified here today that that was rather lacking. In fact, in my opinion, it was rather negligent.

Ms. Ghilarducci, I would like you to comment on what we need to do, or if we can legislate responsibility when putting out brochures like that. I'm sure their marketing people knew, because they wanted employees to retain stock. I've been a member of an employee stock program myself. Could you just reiterate again what retaining stock means to people's psychology because I think this is so important; having been a member of an employee pension plan myself, this is critical. This goes to the heart of the matter because you want to be loyal. You want to be successful. You want to believe. You're working hard, and you expect that there's high corporate ethics. So could you once again summarize how this critically interplays?

Ms. Ghilarducci. Yes. The psychology is that employees are given a chance to show loyalty and dedication to their firm by investing in stock in their 401(k), and so the psychology is to want to give that signal to the employer.

I believe that it makes sense for Congress to encourage workers to have stakes in their company through ESOPs, but it's also the responsibility of Congress to regulate retirement plans differently and just to extend the logic you have for defined benefit plans to 401(k) plans. Restrict how much employer stock is in the 401(k)s, and also prevent the employers from saying you can't sell until you're age fifty.

If there was really true fiduciary responsibility just to the participants, I, if I were on that Pension Administration Committee, would have advocated for those kinds of restrictions to be lifted, and to advocate really pushing for the diversification requirement or standard.

Chairman Boehner. The time of the gentlewoman has expired.

Let me thank our witnesses for a very long day. Excuse our interruptions. Thankfully, we finished voting several hours ago, so we didn't have to be interrupted again. The Members and I appreciate your willingness to come and testify before our Committee.

This hearing is adjourned.

Whereupon, at 2:32 p.m., the Committee was adjourned.

APPENDIX A - OPENING STATEMENT OF CHAIRMAN JOHN A. BOEHNER, COMMITTEE ON EDUCATION AND THE WORKFORCE

Opening Statement of Rep. John Boehner (R-OH), Chairman
Education & the Workforce Committee

Thursday, February 7, 2002

On December 2, 2001, the Enron Corporation filed the largest bankruptcy petition in U.S. history. The next day, the company announced that it would lay off 4,000 of its 7,500 employees as part of a corporate restructuring program. Devastating losses in the company's employee 401(k) plan left many loyal Enron employees without their retirement security.

The stories told by Enron's employees are heart-wrenching. The Enron collapse has sent chills down the spine of every American employee who has worked and saved for a safe, secure retirement. About 42 million American workers own 401(k) accounts with a total of $2.0 trillion in assets. In the aftermath of Enron's fall, millions of workers across our country are now asking the obvious question: why did this happen, and could it happen to me?

One of the tragic realities of this situation is that it has rattled the confidence of American workers in the country's pension system – a system that by and large has served employees and their families well. Even more tragic is the possibility that much of it could have been avoided. At least some of Enron's workers might have been able to preserve their nest eggs if Washington had taken some basic steps to update our nation's pension laws. For example, many Enron workers might have had access to a professional investment advisor who could have warned them they had too many eggs in one basket. Current law, enacted more than a quarter-century ago before the 401(k) account was even invented, denies workers this opportunity.

Congress has taken some positive steps in the recent past to update our nation's pension laws, and this committee has been a focal point in those efforts. We passed the landmark reforms authored by my friend and colleague, Rep. Rob Portman (R-OH), that gave workers portability, faster vesting and a host of other needed changes. We passed the Retirement Security Advice Act to give rank-and-file workers the same access to professional investment advice that wealthy executives have. But in spite of these efforts, a lot of work still lies ahead. And in the aftermath of Enron, this modernization effort has taken on a grim new urgency.

In short: while investigations will reveal whether Enron's employees are the victims of illegal actions, we already know that they are the victims of outdated federal laws. And unless Congress acts to update those laws, there may be more victims. That's not acceptable to me. I know it's not acceptable to Mr. Miller. And I don't think it's acceptable to any member of this committee.

President Bush has asked Congress to take action to strengthen worker retirement

security and renew employee confidence in the pension system. He has put forth a serious plan to help Congress meet those goals. Among other things, the President's plan would bar senior corporate executives from selling company stock during times when workers are unable to trade in their 401(k) plans. It would require that employees be given notice 30 days before the beginning of any blackout period. It would give employees greater freedom to sell company stock and diversify into other investment options. And it calls for the Senate to pass the Retirement Security Advice Act, which passed the House with bipartisan support.

The members of this committee have wide-ranging views on this topic, but we all agree we have a responsibility to act. Even before Enron's fall, Republicans and Democrats on this panel had worked for many months in a continuing effort to identify portions of ERISA that needed modernization. In light of that effort – and in light of the testimony we heard yesterday from the Secretary of Labor and will hear today – I believe the President's plan provides an excellent starting point for legislative action in this committee. I know the chairman of the Employer-Employee Relations subcommittee, Mr. Johnson, shares my view. Together, we'll be introducing the President's proposal as the first step toward a consensus product that can be signed into law on behalf of America's workers. I look forward to working with all of my colleagues toward that goal.

APPENDIX B - WRITTEN STATEMENT OF THOMAS O. PADGETT, SENIOR LAB ANALYST, EOTT (ENRON SUBSIDIARY), BAYTOWN, TX

Testimony of Mr. Thomas O. Padgett, Senior Lab Analyst at EOTT (an Enron subsidiary)

February 7, 2002

My name is Tom Padgett. I was an employee of the Enron Corporation, with 30 years of accredited service at their Morgan's Point chemical plant in La Porte, Texas, until last August, 2001, when Enron transferred our plant to EOTT Energy Corporation. My wife, Karen, is a registered nurse whose work activity is limited now due to crippling rheumatoid arthritis. We have 3 grown children and 5 grandchildren.

I turned 59 years old last December 10, and I have worked in the chemical industry for 35 years. My job title is Senior Lab Analyst in the Quality Control Lab. My specific job functions consist of running analyses on petroleum feed stock products coming into the plant, on stream analysis of products within the plant, and final product analysis to make sure our products meet customer specifications. I work 12 hour shifts at the plant.

There are -- or were -- a lot of people like me at Enron. Not everyone at Enron is an energy trader or an MBA. We are also chemical plant employees and managers, electrical utility workers, and pipeline employees, just to give a few examples. We live and work in places like La Porte, Texas, Port Barre, Louisiana, and Portland, Oregon.

I am a participant in the Enron Corp. 401(k) Savings Plan. Our retirement savings and our retirement plans were based solely on my 401(k) Savings Plan with Enron. The value of our savings account on December 31, 2000 was $615,456. We still have not received our year-end statement for 2001, but, using the present value of Enron stock, we estimate that our savings account is now worth less than $15,000 dollars.

We have sacrificed over the years in order to contribute as much as we could to our 401(k) Plan account. I joined Enron from my previous job with Tenneco, and rolled our savings from my Tenneco 401(k) Plan into the Enron Plan. I continued to participate in the Enron Savings Plan after our plant was transferred to EOTT Energy. Over the last 10 years, we were able to build up a sizable sum of money in our Enron 401(k) Plan. I made contributions to the plan by deductions from my paycheck every two weeks. My contributions were matched by Enron with the Company's stock. Under the Enron 401(k) Plan, the Company's matching contribution was made exclusively with Enron stock, and participants were required to hold the matching stock until age 50. Nearly all of our savings were invested in Enron's stock.

I was a dedicated and loyal employee to Enron, and I worked with the others in my plant and in the Company to help make Enron one of the best companies in the nation. Throughout my time with Enron, the top management of the company constantly encouraged us to invest our savings in Enron stock. I took the fact that the Company matched our savings only with Enron stock as a further endorsement of the stock as a safe retirement investment. More recent statements made by Enron's top management, including e-mails from Ken Lay, about the Company's stock also caused me to keep investing my savings into the stock. I remember, in the Fall of 2000, Enron's top executives telling us at an employee meeting and by Company e-mail that Enron's stock price was going to increase to at least $120 per share. When Mr. Skilling resigned last August, Mr. Lay told us that the Company was stronger than it had ever been.

Many people now ask why we and so many other Enron Savings Plan participants did not diversify our savings accounts. My answer is that we were loyal Enron employees, proud to be owners of what we were led to believe was a great company. I would note that our decision to invest in our retirement savings in our Company appears, from what I have seen in the newpapers and on television, to be the same as other employees in many large companies in the United States, like Procter & Gamble, General Electric and Coca-Cola.

Our stock ownership was encouraged by Enron's top management, who I now believe benefited handsomely from our commitment. Based on what we were told -- repeatedly by the men at the top -- I never dreamed that this disaster could have happened. We are not Wall Street analysts. I am sure that most Enron employees manage their investments themselves, like Karen and I did. The fact remains, though, that good investment decisions require honest information. We all know now that the information that we were given was false.

We also have been asked about the "lockdown" of our savings account by the Company in October 2001. I received notification from the Company approximately ten days before the lockdown that I would not be able to access my savings account for a period of about four weeks. I do not know when the lockdown period actually began. But I do know that, at about the same time, Enron released some very damaging news about the condition of the Company. By the time we were able to access our account, our Enron stock was worth less than $10 a share. The reason that Enron gave for the lockdown was to change plan administrators. What I still have not heard explained is why the Company proceeded with the lockdown at a time when they had to know that this damaging information was going to come out and cause the stock price to drop even more.

Karen and I had planned on retiring this coming June, when I will be 59 1/2 years old. Our plans were to move to the country and possibly start a small farm or a ranch for disabled, handicapped or terminally ill children. Our idea was that this would allow these children's parents to have some special time to themselves to strengthen their relationship, knowing their child would be taken care of during this time. We had planned on spending more time with our family and grandchildren

and caring for our elderly parents. Karen and I had planned on spending more time together, fishing and doing some traveling. We felt like we had enough money in our retirement savings to take care of ourselves as we grew older so we would not be a burden on our children.

Now that is all gone and our children may need to take care of us. I have lost nearly all of my retirement savings because of Enron's collapse. It appears that I will need to work for another ten years or as long as my health holds out in order to support my family. I just recently had surgery on my right hand so I can continue in my present capacity running samples in the lab.

We are not alone in this, of course. The plant where I work has approximately 100 employees and most of them had most of their 401(k) savings in Enron. There are five or six other employees in my plant that also had planned on retiring this year. Now they also will have to keep working to support their families. I am sure our experience is the same as thousands of other Enron employees. However, we are still more fortunate than some at Enron. We still have our jobs, unlike many who worked for Enron. I have a strong faith in God, and I know we will make it through this.

You have been interested to hear about our experience and I appreciate your invitation to appear before you today. As our lawmakers, I will tell you that I believe the law should protect workers and their retirement savings from what happened at Enron. Companies must be responsible for giving truthful information to their employees about their retirement investments. Our loyalty and trust as Enron employees have been betrayed, and it does not look like we will be able to recoup all of our losses from the Company or others who are responsible. But we hope that our experience and your work will prevent this happening to others.

APPENDIX C - WRITTEN STATEMENT OF CINDY K. OLSON, EXECUTIVE VICE PRESIDENT, HUMAN RESOURCES AND COMMUNITY RELATIONS, ENRON CORPORATION, HOUSTON, TX

Testimony of Cindy Olson, Executive Vice President
Human Resources and Community Relations for Enron Corp.

February 7, 2002

Good morning. My name is Cindy Olson and I am Executive Vice President responsible for Human Resources and Community Relations for Enron Corp. I am here to respond to questions concerning the impact of recent events on the 20,000 plus participants of our benefits plan. I do not feel, however, that I am able to address the bigger issue of how it came to pass that our company fell so far so fast. One internal report has just been released, and I know that this Committee, other congressional committees, other government investigations and, ultimately, the courts will continue to investigate what went wrong at Enron.

I hope to help the Committee assess the consequences of Enron's demise for our employees and retirees, and their families. With me today is Mikie Rath, the manager of benefits. I hope we can show you that the people who ran the benefits plan did the best they could with a difficult situation.

At Enron, we gave our plan participants many choices for their investment decisions. The 401(k) plan offered participants 20 different investment options for their retirement savings.

Mr. Chairman, I hope that my participation in this hearing and your investigation helps the Congress as you consider legislation that can create better ways to protect the retirement plans of workers. Such legislation perhaps could promote diversification, facilitate companies' ability to provide better investment advice, or include other appropriate steps that experts suggest.

APPENDIX D - WRITTEN STATEMENT OF MIKIE RATH, BENEFITS MANAGER, ENRON CORPORATION, HOUSTON, TX

Testimony of Mikie Rath, Benefits Manager
Enron Corp.

February 7, 2002

Good Morning. My name is Mikie Rath and I am the Benefits Manager at Enron. Like Ms. Olson, I am appearing here this morning to answer your questions concerning Enron's tax-qualified retirement plans. As a person with day-to-day responsibility for administering Enron's benefit plans, I hope to explain the structure of our plan and the events surrounding Enron's transition from Northern Trust to Hewitt. As for the circumstances that led to Enron's downfall, my knowledge is limited to what I have heard reported in the press.

Enron's 401(k) plan offers a menu of 20 investment options, including a diverse selection of mutual funds, a Schwab account that functioned in many respects like a self-directed brokerage account, as well as Enron stock. Enron also enhanced its employees' contributions with a matching benefit in company stock. This benefit was added to the program in 1998. Participants are free to trade the investments they select in their 401(k) accounts on a daily basis, including Enron stock. However, like many companies that provide matching contributions, Enron's plan design restricted participants from trading the company's matching stock contributions until they reached age 50.

Enron sought good service providers for its benefit plan participants. After Enron outsourced its benefits services in 2000, it became clear that Northern Trust had difficulty providing the level of service demanded by Enron's employees. In January 2001, Enron began searching for a new benefits administrator, and after a Request for Proposal process, we selected Hewitt in May of 2001.

When large companies change 401(k) service providers, a temporary suspension of trading in the plan is typically needed in order to allow account information to be reconciled by the old administrator and accurately transferred to the new administrator's computer system. This temporary suspension, which has sometimes been referred to as a "lockdown" or a "transition period," can take several weeks. In Enron's case, Enron, Northern Trust, and Hewitt worked together to shorten that time period as much as possible without sacrificing the integrity of participants' accounts. Ultimately, the trading suspension encompassed eleven trading days from October 29 to November 13, 2001. Enron mailed a brochure to all participants some three weeks before the trading suspension, explaining the transition and notifying them of the temporary suspension. Enron employees with email accounts received additional reminders in the days leading up to the transition.

Unfortunately, as the Committee is no doubt aware, the commencement of the transition coincided with certain bad news about the state of Enron's finances. We considered postponing the transition but found it was not feasible to notify more than 20,000 participants in a timely fashion. As the Enron news continued to break, we and the plan's Administrative Committee again considered stopping the transition. However, in addition to the problem of notifying participants, it would actually take longer to reverse the transition than to finish it. Ultimately, we worked with Hewitt to shave one week off the transition and we implemented a process for notifying participants of the early resumption of trading.

APPENDIX E - WRITTEN STATEMENT OF SCOTT PETERSON, GLOBAL PRACTICE LEADER FOR DEFINED CONTRIBUTION SERVICES, HEWITT ASSOCIATES, LINCOLNSHIRE, IL

Testimony of Mr. Scott Peterson
Global Practice Leader for Defined Contribution Services
on behalf of Hewitt Associates LLC

February 7, 2002

Mr. Chairman and Members of the Committee, my name is Scott Peterson and I am the Practice Leader for the Defined Contribution Services business of Hewitt Associates LLC ("Hewitt"). I am based in Hewitt's headquarters in Lincolnshire, Illinois, which is located outside of Chicago. Hewitt Associates is a leading provider of human resources outsourcing and consulting services. We employ about 13,000 associates who work in 37 countries. Our client roster includes more than two-thirds of the *Fortune 500* and more than a third of the *Global 500*.

I appear before you today on behalf of Hewitt at the invitation of this Committee to discuss Hewitt's role as the record keeper for the Enron Corp. Savings Plan (the "Enron 401(k) Plan"). Let me say at the outset that we at Hewitt feel for those at Enron throughout the country who have suffered these losses. Our team that services Enron is based in Houston and some of the affected Enron employees (and former employees) are their friends, family members or neighbors. We are therefore pleased to provide this testimony voluntarily to assist the Committee in the exercise of its oversight responsibility.

Our role with respect to the Enron 401(k) Plan is limited to serving as its record keeper. The record keeper's role includes processing all transactions by plan participants, including contributions, changes in investments and withdrawals, loans and distributions. As record keeper, we also operate a call-in center and web site to respond to participant inquiries. Although our role as record keeper is important, it is limited. For example, Hewitt did not design Enron's 401(k) Plan nor did we determine the investment options. Likewise, it was not our decision whether or when to change record keepers. Those and other discretionary decisions are matters for the plan's sponsor and its fiduciary to decide, which in this case are Enron and its Administrative Committee. Our responsibility as record keeper was and continues to be providing Enron with record keeping services of the highest quality.

401(k) Plans Under ERISA

The Enron 401(k) Plan is governed by the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). As with all plans subject to ERISA, the Enron 401(k) Plan has an employer sponsor, Enron Corp. The sponsor of an ERISA benefit plan is responsible for making decisions regarding the establishment and design and possible termination of the plan.

Each ERISA benefit plan must be embodied in a written document. That document

either names fiduciaries or specifies a procedure by which the plan sponsor designates certain individuals or groups of individuals as plan fiduciaries. A plan fiduciary is a person who (i) exercises discretionary authority or control over the management of the plan or authority or control over management or disposition of the plan's assets, (ii) renders investment advice for a fee or other compensation, or (iii) has discretionary authority or control over the administration of the plan (such as making determinations as to the eligibility for participation in the plan, benefit claims determinations, and the retention of service providers to aid in the operation of the plan). The actions of a plan fiduciary are subject to stringent rules of conduct set forth in ERISA, including the requirement that the fiduciary act solely in the interests of plan participants and their beneficiaries. Each plan has a named fiduciary called a Plan Administrator charged with overall responsibility for the plan. The Plan Administrator of the Enron 401(k) Plan is the Administrative Committee, which is comprised of a group of Enron employees appointed to the Committee by Enron.

Each ERISA 401(k) Plan must, by definition, have a trust in which the plan's assets are held. In the case of the Enron 401(k) Plan, the trustee holds the plan's assets consisting of both employee and employer contributions. In the 401(k) plan context, each participant directs the investment of his or her plan account according to the plan design as determined by the Plan Sponsor. The trustee holds, transfers and disburses those assets pursuant to each participant's individual direction, but has no discretionary authority over the investment of those assets. The trustee of the Enron 401(k) Plan was the Northern Trust Company until November 2001, when the Wilmington Trust Company became the trustee.

Finally, each ERISA 401(k) Plan has a record keeper whose responsibility is to maintain the records of the plan and perform certain related services such as providing reports to the plan participants. The record keeper in the case of the 401(k) Plan was Northern Trust Retirement Consulting Services ("NTRC") until November 2001, when Hewitt assumed that position. As a general matter, the role of the record keeper with respect to any plan is purely ministerial in nature. That is, it is not intended to confer any discretionary authority upon the person or firm providing that service.

Hewitt's Administrative Services Agreement ("Agreement") with Enron specifies the mutual understanding of Hewitt and Enron that Hewitt is not a plan fiduciary within the meaning of ERISA and that Hewitt has no discretion with respect to the management or administration of the Enron 401(k) Plan or changes to or interpretations of plan rules or policies pertaining to eligibility or entitlement of any participant to benefits under the plan. Under the Agreement, Hewitt also has no control or authority over any assets of the Enron 401(k) Plan, including the investment of those assets. Finally, the Agreement provides that all discretion and control with respect to the terms, administration or assets of the Enron 401(k) Plan shall remain with Enron or with the plan's fiduciaries.

Selection of Hewitt as Record Keeper.

Let me now turn, as the Committee has requested, to the events relating to the selection of Hewitt as the record keeper for the Enron 401(k) Plan and the transfer of those responsibilities to Hewitt. Prior to June 2001, Hewitt's relationship with Enron consisted primarily of providing actuarial services for Enron's defined benefit pension plan and data consolidation and production services for reports to benefit plan participants. In early 2000, Enron retained the services of a third party evaluator (Watson Wyatt) to manage the process by which other firms would be selected to provide services in connection with several of the Enron benefit plans, including the record keeper for the Enron 401(k) Plan. This process began in March 2000. In May 2000, Hewitt submitted a bid to provide plan record keeping services for Enron's defined contribution plans (including the 401(k) Plan), non-qualified benefit plans, defined benefit plan, and health and welfare plans. However, Enron thereafter opted not to change the record keeper for its defined contribution and non-qualified benefit plans at that time. Hewitt was not chosen to provide record keeping services for the other Enron plans.

Enron renewed the bid process in February 2001 and Hewitt was asked to update its earlier proposal. As Enron was seeking a "bundled solution", meaning Enron was looking for both a record keeper and trustee, Hewitt obtained a quote from Wilmington Trust Company. Hewitt and Wilmington Trust Company made submissions in response to the Enron request. Enron selected Hewitt as the record keeper in May 2001. After an independent review, Enron designated Wilmington Trust Company as the new trustee. Hewitt and Enron signed a letter of intent in June 2001. The team began work immediately.

Transfer of Record Keeping Responsibilities to Hewitt.

On June 28, 2001, representatives of Enron's Benefits Department and the Hewitt team met to review the "Delivery Model". This is a document which describes the services we would normally expect to provide as record keeper, additional services we could provide and a list of the services we do not provide, such as legal, tax and investment advice. In this meeting, we reviewed the Delivery Model in detail to make a preliminary determination of what services would be provided by Hewitt with respect to the Enron 401(k) Plan. On June 29, 2001, we held a similar meeting to discuss nonqualified benefit plans for which Hewitt had also been selected as the record keeper.

In July 2001, members of the Hewitt team began the "Requirements Process" with respect to the Enron 410(k) Plan. This was a detailed and comprehensive process intended to identify exactly what services and administrative processes we would in fact provide as record keeper and how and when we would provide them. During this time, we also discussed Enron's desire to complete the transition process in October 2001. The "live date" is the date on which participants in the 401(k) Plan would be able to direct any transactions available to them under the terms of the Plan (e.g. withdrawals, loans and changes in investments) with Hewitt as the record keeper. At that time, Enron's proposed "live date" was October 23, 2001. As I will explain, this original live date was changed twice by Enron as our work went

forward.

As part of the Requirements Process, the Hewitt team identified the tasks that needed to be completed and established target dates for each of those tasks in light of Enron's proposed live date of October 23, 2001. These tasks involved Enron and all of the affected service providers: Hewitt, Wilmington Trust Company (the new trustee), Northern Trust (the old trustee), and NTRC (the old record keeper). In the case of large plans such as the Enron 401(k) plan, a transition period, commonly referred to as a blackout period, is standard. A blackout period is designed to ensure accuracy of the data transferred by the old record keeper and to enable the new record keeper to transfer the data to its system and confirm its operational integrity. Trustees need to follow a similar process if trustees are changing. During all or portions of this period, plan participants are restricted in their ability to deposit or withdraw funds or to change their investments.

Original Blackout Period. With respect to the Enron 401(k) Plan, the Enron Benefits Department, following consultations with the service providers, established a blackout period that would begin on September 14, 2001 and end on the live date of October 23, 2001. The planned blackout period was two-tiered: (1) participants were restricted from taking loans, withdrawals, rollover contributions and the like from the close of trading on September 14, 2001 to October 23, 2001, and (2) participants were restricted from changing investment allocations among the fund options provided in accordance with the Plan, including the Enron Corp. stock fund, from the close of trading on September 26, 2001 through October 23, 2001.

The Requirements Process continued through September 2001. The focus was not only on the transition issues, but also on how the Plan would be administered following the transition. We devoted the overwhelming majority of our time to the post-transition administration issues. These issues included building an internet site for the Plan; setting up a voice response system; establishing a benefits center and training its personnel; establishing a communications system with the trustee and fund managers; and other similar tasks.

Revised Blackout Period. In mid-August 2001, we found it necessary to revisit the transition issues with Enron, including the timing of the blackout period. Specifically, we received a telephone call from the Enron Benefits Department indicating that Enron notified us of their decision to make several plan changes. Among other things, Enron had decided to convert three investment fund options from Vanguard funds to Fidelity funds. In addition, the Enron 401(k) Plan provided two investment fund options involving Enron-related stock, one for Enron Corp. stock and one for the stock of its former subsidiary EOG Resources, Inc. Contrary to our original expectations, Enron opted not to combine these two options. By reason of these and other changes, Hewitt had to rework certain of its previously completed programming.

We estimated that these and other changes by Enron would require two to three weeks additional work. Enron's Benefits Department informed us that the open

enrollment period for Enron's health benefit plan was scheduled for the period November 1-19, 2001 and that the Benefits Department preferred that the live date for the 401(k) plan occur after the expiration of open enrollment period for the health benefit plan. As a result, Enron rescheduled the live date for the 401(k) plan from October 23, 2001 to November 20, 2001. The asset transfer date to the new trustee was set for November 1, 2001. The blackout period for loans, withdrawals, rollover contributions, etc. was set to begin at the close of trading on October 19, 2001 and continue through November 19, 2001. A participant's ability to change his or her investment allocations among the fund options as provided in the Enron 401 (k) Plan, including the Enron Corp. stock fund, would be limited for a shorter period from close of trading October 26, 2001 through November 19, 2001.

We completed the Requirements Process and in late September 2001 Enron approved the final requirements documentation. This documentation spelled out in great detail the way in which Hewitt would provide services as Enron's new record keeper and included such items as sample correspondence, proposed responses to typical communications from plan participants, flow charts showing how work would move through our record keeping system and so on. Thus, by the end of September 2001, we had reached agreement with the Enron Benefits Department on how we would handle the transition and how we would perform our services as record keeper following the live date. On September 26, 2001, more or less simultaneous with the completion of the Requirements Process, Enron and Hewitt executed the Administrative Services Agreement, thus ending our work under the letter of intent that had been executed some months earlier. This time sequence in signing a final agreement was, in our experience, typical of the process that occurs in cases where a large benefit plan changes record keepers.

As plan sponsor, Enron was responsible for notifying plan participants of the changes in trustee, record keeper and certain investment options. At Enron's request, Hewitt drafted a communication for Enron's review. Enron revised the draft and Hewitt incorporated the changes directed by Enron, obtained Enron's final approval of the text and design and then had the communication mailed on October 4, 2001, using address lists provided by Enron and NTRC. At this point in time, Hewitt had not received population data from which it could have prepared mailing labels. A copy of that communication is attached to this testimony. I understand that there were other communications by Enron, but Hewitt did not participate in the preparation, review or distribution of those communications and, to my knowledge, did not see any of them until after they had been distributed to participants.

As I indicated earlier, the blackout period for loans, withdrawals, etc. actually began after the close of trading on October 19, 2001. The blackout period for changes in investment options, including the Enron Corp. stock fund, was scheduled to begin after the close of trading on October 26, 2001.

On October 25, 2001, almost a week into the first phase of the blackout period, a member of the Enron Benefits Department contacted Hewitt and posed a few questions. Specifically, we were asked about the systems issues and similar

practical consequences of accelerating the live date by shortening the blackout period. We were also informed that Enron's counsel had concluded that Enron had met its fiduciary obligations under ERISA with respect to the implementation of the blackout period. We were asked to comment. Finally, Enron mentioned the possibility that they could postpone the whole conversion and wait until the following February or March.

Enron asked that we respond to these questions that same day and we did so. With respect to accelerating the live date, we pointed out a series of risk considerations. These risks included the adverse effects on plan participants of commencing our record keeping activities with incorrect plan data due to a shortened review period and the possible compromising of the quality of the services we could provide to plan participants. In addition, we noted that similar data quality issues could arise with respect to the new trustee's reconciliation process.

With respect to Enron's conclusions about compliance with ERISA's fiduciary responsibility principles, we said that, following a brief consultation, one of our consultants concurred with Enron's views. We cautioned, however, that Enron needed to rely on its own legal counsel because Hewitt, as a consultant, does not provide legal advice. Finally, we discussed some of the factors Enron would want to consider in deciding whether to delay the transition period in its entirety. These factors included extra cost, staffing implications, and the inability to predict whether the Enron stock would be any less volatile. We also made clear that we would work with Enron to accommodate any changes it might decide to make in the schedule.

Later on October 25, 2001, a member of Enron's Benefit Resources Department called to notify us that a determination had been made that the transition would go forward on the then current schedule. We subsequently learned that Enron had been advised by its legal counsel that it should not alter the blackout schedule. As a result, restrictions on changes in investment allocations took effect at the close of business on the next day, October 26, 2001.

Final Blackout Period. On October 30, 2001, Enron's Benefits Department contacted Hewitt and requested that members of the Hewitt team attend a meeting of the Administrative Committee on November 1, 2001. On that date, representatives of the Hewitt team attended portions of a meeting of the Enron Administrative Committee. We had been asked to be prepared to discuss whether it would be feasible to shorten the blackout period by accelerating the live date to November 13, 2001. We informed the Administrative Committee that Hewitt could meet this more accelerated time table, but we indicated that our actual ability to do so was obviously dependent on the receipt of the necessary data from NTRC, the existing record keeper, in a timely fashion and in reliable and compatible form. We received the data transfer from NTRC on November 7, 2001 and, four business days later, Hewitt met the accelerated live date of November 13, 2001.

At the meeting on November 1, 2001, the Administrative Committee also asked

Hewitt whether it would be feasible to halt the process in place and have Northern Trust and NTRC simply reassume their respective duties as trustee and record keeper until a later date. We responded that the asset transfer to Wilmington Trust already had occurred that morning and that only Northern Trust/NTRC could advise Enron whether such a course of action was feasible. By the end of the meeting the Administrative Committee instructed Hewitt to continue and to seek to have an accelerated live date.

On November 8, 2001, at the request of Enron, a postcard was mailed by Hewitt to participants indicating that an effort was underway to shorten the blackout period and urging them to monitor the Enron web site for news as to live dates and other pertinent information. A copy of that communication is attached to this testimony. Again, Hewitt used the address lists provided by NTRC and Enron. Hewitt then completed its work, as did Wilmington Trust, and the Enron 401(k) Plan went "live", with Hewitt as record keeper, on November 13, 2001.

Let me conclude, Mr. Chairman, with the observation that for Enron, as with all out clients, we provided professional services of the highest quality. Our associates worked diligently and responsibly to implement the decisions the client made. In our role as the record keeper, our associates could not and should not make those decisions. We welcome this opportunity to assist the Committee in the exercise of its important responsibilities.

APPENDIX F - WRITTEN STATEMENT OF DR. TERESA GHILARDUCCI, ASSOCIATE PROFESSOR, DEPARTMENT OF ECONOMICS, UNIVERSITY OF NOTRE DAME, NOTRE DAME, IN

Testimony of Dr. Teresa Ghilarducci, Ph.D., Associate Professor
Department of Economics, University of Notre Dame

February 7, 2002

National Compensation Trends

It is a familiar narrative that unlike previous expansions, inequality between the nation's rich and poor families widened considerably in the 1990s – by the end of the decade average incomes in the top one-fifth of families were ten times larger than for the poorest families (Mishel et. al. 2001). Fortunately wages at the bottom of the distribution grew in the last four years. However, wages are only a part of workers' total compensation. What is happening to health insurance and pensions is bad news; coverage and quality in both types of insurance plans have fallen. The erosion in health insurance has created much more disparity than earnings alone (Medoff and Calabrese, 2001). In contrast, the pension coverage gap closed; but not because the bottom was raised but because the top had fallen – pension coverage for the top 40% of the wage distribution dropped significantly.

- Pension coverage rates for earners in the top 40% of the wage distribution fell significantly between 1978 and 1998. Pension coverage for the top 20% dropped from 78% in 1978 to 72% in 1998. For the next quintile the decline was a bit smaller, from 73% to 69%. The decline was all due to declines in male pension coverage rates – which are nearly twice that of women. (Medoff and Calabrese 2001: 117).
- Overall, employer expenditures for pensions, a good proxy for quality, fell by a whopping 22% between 1978 and 1998 (Medoff and Calabrese 2001: 134).

The Surprising and Unintended Effect of Tax Cuts Eroding Pensions

Pension policy is tax policy. Most pension plans exist because of the favorable tax consequences. Tax favoritism for pensions, Keogh, and 401(k) plans etc. represents the U.S.'s largest tax expenditure (taxes not collected). That means the $87 billion (in 1999) (Slemrod and Bakija 2000: 281) of tax expenditures for pension is larger than that for health insurance and mortgage deductions.

Therefore, an unintended consequence of the tax cuts is a reduction in the incentives for employers to provide pensions as a source of pay and reduce incentives for individuals to divert their earnings into tax-favored pension accounts. It is estimated that a 1% drop in the tax rate causes a .4% decline in pension coverage (Hinz and Turner 1998).

Below, I explore the connection between pension erosion and the expansion of 401 (k)s. Enron's 401(k) pension plan collapse is not idiosyncratic; it reveals the gradual erosion of the entire private pension system. The decline is especially curious because workers were aging and presumably wanting more retirement security and flush times made pensions more affordable. Pensions did not improve in the roaring 1990s when both the economic and demographic environments were most favorable for growth. If not in the 1990s, when would pensions improve?

Pension Erosion and 401(k)s

Pension erosion took the form of 401(k) – type retirement plans out-shadowing traditional defined benefit pensions. The new plans are worth less (especially on a risk-adjusted basis) which will force people to stay longer in the work force. Working longer is not compensated for in longer lives. To maintain the same standard of living as retirees had in the late 1970s workers will have to work over 4 years longer. But, on average, we live only one year longer. The life expectancy improvement for those who are 65 years old does not outweigh the decline in private sector pension benefits.

401(k)s and Pension Erosion

Most analysts examine how many workers are covered by 401(k)s and, perhaps, average account size. I, however, examine 401(k)s from the point of view of employer costs. The stark and surprising finding was that the menu of plan types offered by the firm did not explain the level of employers' pension contributions; it was how their pension options changed over the 1980s and mid 1990s that determined if employers improved pensions or not. **We find that 401(k)s allowed employers to reduce pension costs by almost one third. And, if a firm adopted a DC or 401(k) plan between 1981 and 1995 lowered their pension costs per person by about 20%.**

(Statistical analysis shows that a firm's pension contributions are lower than average when it sponsors a 401(k) after controlling for other factors that would affect pension costs [Ghilarducci, Nyce, and Sun, 2001]). The 827 firms in our sample dramatically reduced their tendency to provide only a DB plan for their workers over the 14-year period. See Appendix Table 1. In 1981, 45% of firms in the sample sponsored only DB plans and that share dropped to 11% in 1995. The share of firms that sponsored both DC and DB plans increased from 41% in 1981, to a whopping 73%, in 1995. The share of firms that provide only DC plans increased slightly from 14% to 16%. This is superficial evidence firms did not substitute DCs for DBs.

Furthermore, it may be surprising that the overall percentage of firms that are just offering 401(k)s plans has not changed much in recent years: firms with only 401(k) plans in 1988 was 30.2% of the sample and, in 1996, was 35.7% (see Appendix Table 2). However, firms that sponsored 401(k) plans as the sole pension plan had the lowest contribution per participant, $1,192 in 1996 compared to firms that never

sponsored a 401(k) or sponsored a 401(k) and other plans (see Appendix Table 3).

In sum, there are many reasons for the shift in DC plans (though it is not the rapid decline in job turnover – for minorities and women job tenure has actually increased); however, I find support for the hypothesis that a primary and plausible reason for the shift to individual based plans is that they are cheaper..

Workers' desire for DC and 401(k) plans certainly contribute to their growth especially in the face of job insecurity. The markets can look more secure than jobs. Human psychology and spectacular equity growth work together to cause people to "over value" the equity market and expect returns to keep growing. 401(k)s also give employees desired some control. But, 401(k)-type plans have fatal flaws and high costs; some Congress can fix, others Congress cannot.

Congress can't fix the inherent flaw that in individual – based plans workers risk they were born in the wrong year. Financial markets cycle and if the low cycle is during your later working years you will do worse than if you were older or younger. Employers smooth out payments over a large group and birth date effects become irrelevant.

Congress also can't change human nature. Good humans are notoriously bad investors. Human charming traits include overconfidence (we rank our appearance higher than those around us), saliency (to think what just happened with happen with a higher probability) and we want instant gratification (Shiller 2000). Increasingly, middle-class workers are using their so-called retirement accounts as liquid savings to buy housings, finance periods of unemployment and fund children's education. **In short, human nature is such that we buy high, sell low, and trade too often.**

Several Pension Reform Ideas

I emphasize four pension reforms below: The first two are designed to increase transparency and accountability, as well as secure more pension adequacy. The second two recommendations focus on reducing risks workers face in owning a 401 (k) and thereby increasing the risk-adjusted rate of return.

Increase Transparency which enhances the Ability to improve Benefits

- I urge Congress to require employers to pay administrative fees for 401(k)s so employers are induced to find the most the efficient provider. At the very least Congress should require employers to reveal the pension administrative costs borne by workers in a uniform and understandable way.

Employers obtain a tax break for providing pensions (more later) and thereby a duty to fiduciary principles and public interest are implied. Employers who serve as quasi- fiduciaries should assess whether the "bells and whistles" of a high profile,

high service 401(k) plan are worth the high fees. Also, of course, there could be a great deal of self-dealing in the choice of vendors that would be mitigated if these transactions were exposed.

Fees are terribly important – they are a hidden source of pension erosion in 401(k)s because the 401(k) structure allows employers to shift administrative costs to workers without detection. The Department of Labor, alarmed about the shift, has stepped up efforts to prosecute employers who charge unreasonable fees and has a proactive public education campaign -- the web site is impressive (http://www.dol.gov/dol/pwba/public/pubs/401kfe~1.htm). High service fees in individual accounts can lower lifetime accumulations by 20 – 40%. The average annual fee was over $144 per participant (retired and active) for the largest companies that report fees in 1996 (see Appendix Table 4.)

- I urge Congress to increase the transparency of 401(k) and pension administration by requiring worker representation on pension boards.

Employee representation and access to information can mitigate self-dealing problems and conflict of interests inherent when a firm must both manage a trust fund and maximize profit – sometimes the goals are not mutually compatible. The over fifty years of successful joint labor-management administration of union-negotiated multi-employer plans (covering 20% of defined benefit participants) provides support for the proposal. In addition, the United States stands apart from most industrialized nations by not requiring worker representation on pension boards. There is also evidence that when trustees represent labor and management constituencies they scrutinize each other, which results in the plans more likely being actuarially balanced and for excess pension fund earnings to be paid in the form of benefits, not in profits. (Ghilarducci 2000).

Reduce Risk

- I urge Congress to restrict the amount of sponsor equities in individual, tax-favored retirement accounts. (This is a non-controversial recommendation among academic pension economists.)

Professional investors are already prohibited by professional standards to invest more than two - ten percent of a plan's assets in any one financial vehicle (EBRI, 2002). However, employees seem to have considerable loyalty or faith in their own employer's success. Even when employees are not required to invest in company stock, they hold about 22% of their assets in their company's stock (EBRI, 2002). Also, among some of the largest U.S. company's 401(k) plans, Enron's was more diversified than that of others, such as Coca-Cola, for instance, which holds about 85% of assets in company stock compared to 64% at Enron (Chen 2002). Also, Appendix Table 5 displays the weighted average of sponsor holdings as a percentage of a companies total pension assets for some of some companies in 1996

- As an Advisory Board Member of the PBGC I urge Congress to in turn urge or require the PBGC to investigate ways to reduce the risk in defined contribution plans.

How would the PBGC go about reducing risk? Currently, the Pension Benefit Guaranty Corporation (PBGC) insures payment of defined benefit payments in the case of employer bankruptcy. The derivative and underlying work of the PBGC is that because they are exposed to the expense of having to pay pensions they do monitor and minimize exposure just like sophisticated insurance companies do. In 1998, the PBGC began using a sophisticated (and award winning) model to assess the probability a weak firm will present claims to the PBGC. The PBGC also has a sophisticated staff of lawyers and financial analysts who identify corporate mergers, acquisitions, borrowing, and other financial transactions that might put pension funds at risk. The PBGC could use the same kind of early warning system for DC plans.

Boosting Coverage

Other reforms to improve coverage for workers include:

- Require immediate vesting, or nearly immediate, for newly hired employees to help them develop the habit of retirement saving and to accumulate funds and require "reverse matching" – employers contribute to all employees 401(k) plans regardless of employees' match behavior.

401(k)s have a fatal flaw that will prevent them from ever being a good retirement income security device they require the employee to contribute before the employer's contribution is forthcoming. Research shows that lower income workers do not participate in voluntary pension plans or they withdraw the funds before retirement because their tax rates are lower and they are more often to perceive they do not earn enough. (In surveys 30 – 60% of people underestimate how much they need to save for retirement.) A full 20% of workers who could contribute to the DC plan offered at work don't and the median 401(k) balance is less than $5,000 for women and less than $11,000 for men (EBRI,1997). In fact, in 1998 for the first time, the rate of increase in assets in DB plans was greater that in DC plans. Federal Reserve officials suspect that workers are drawing down their DC accounts before retirement (Anad, 1999).

- Mandate a defined contribution, individual account supplement to Social Security and subsidize the supplement for low and lower middle income workers with tax credits deposited directly into their account.

Besides raising tax rates, an effective way to boost coverage would be to mandate individual accounts and fund it with tax credits -- e.g. the earned income tax credit – for lower income workers. Mandating coverage with government seed money is

analogous to the existing tax carrot though it is updated and more effective for low and middle-income employees. Also, to reiterate the point above, a different tax carrot is needed when tax rates are low.

Conclusion

The idea of individual responsibility in all areas of social insurance has momentum in the employer and employee relationship; therefore, new forms of regulation are needed. Some fear that regulating 401(k)s will induce employers to not provide pensions. However, pensions are not merely agreements between employers and employees. Taxpayer subsidies are important reasons retirement plans exist and government has a role in making them serve a public interest.

ERISA reform must address the coverage, protection, and adequacy gaps in the growing voluntary individual pensions sectors. ERISA regulators should construct clever and employer-responsive ways to reverse the erosion in pension coverage. Individual control of pension accounts comes at a high probability of failure—professionals make better investment decisions than individuals and the risk is minimized when distributed over a large group plan. In addition, much of the administrative expense for individual accounts are not subsidized by the employer (as they are in traditional plans) and they are higher because workers lose economies of scale, smoothing possibilities, and the advice of professionals.

APPENDIX G – SUBMITTED FOR THE RECORD, ENRON CORPORATION SAVINGS PLAN, AS AMENDED AND RESTATED, EFFECTIVE JULY 1, 1999

ENRON CORP. SAVINGS PLAN

As Amended and Restated
Effective July 1, 1999

DOL00001

ENRON CORP. SAVINGS PLAN

WHEREAS, Enron Corp. has heretofore adopted the ENRON CORP. SAVINGS PLAN, hereinafter referred to as the "Plan," for the benefit of its employees; and

WHEREAS, the Company desires to restate the Plan and to amend the Plan in several respects, intending thereby to provide an uninterrupted and continuing program of benefits;

NOW THEREFORE, the Plan is hereby restated in its entirety as follows with no interruption in time, effective as of July 1, 1999, except as otherwise indicated herein:

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I.

Definitions and Construction

I.1 Definitions. Where the following words and phrases appear in the Plan, they shall have the respective meanings set forth below, unless their context clearly indicates to the contrary.

(1) Account(s): A Participant's Before-Tax Contribution Account, Company Contribution Account, After-Tax Contribution Account, and/or EOTT Contribution Account.

(2) Act: The Employee Retirement Income Security Act of 1974, as amended.

(3) After-Tax Contribution Account: An individual account for each Participant, which is credited with his After-Tax Contributions, and which is credited with (or debited for) such Account's allocation of net income (or net loss) and changes in value of the Trust Fund.

(4) After-Tax Contributions: Contributions made to the Plan by a Participant in accordance with Section 3.2.

(5) Base Pay: With respect to any Participant, such Participant's basic rate of compensation for a Contribution Period based upon the hourly pay rate, weekly salary, established benefit rate, or similar unit of base compensation applicable to such Participant pursuant to the Company's regular payroll accounting and determined as of the last day of such Contribution Period. For purposes of determining a Participant's basic rate of compensation for a Contribution Period, elective contributions made on a Participant's behalf by the Company that are not includable in income under section 125, section 402(e)(3), section 402(h), or section 403(b) of the Code and any amounts that are not includable in the gross income of a Participant under a salary reduction agreement by reason of the application of section 132(f) of the Code shall be included. The Base Pay of any Participant taken into account for purposes of the Plan shall be limited to $160,000 for any Plan Year with such limitation to be:

(A) Adjusted automatically to reflect any amendments to section 401(a)(17) of the Code and any cost-of-living increases authorized by section 401(a)(17) of the Code; and

(B) Prorated for a Plan Year of less than twelve months and to the extent otherwise required by applicable law.

The Committee may impose the foregoing limitation ratably on a Contribution Period by Contribution Period basis or on such other reasonable basis as may be established by the Committee.

Compensation continuations past termination of a Participant's employment shall not be included as a Participant's Base Pay.

(6) **Before-Tax Contribution Account**: An individual account for each Participant, which is credited with the Before-Tax Contributions made by the Company on such Participant's behalf and credited with (or debited for) such Account's allocation of net income (or net loss) and changes in value of the Trust Fund.

(7) **Before-Tax Contributions**: Contributions made to the Plan by the Company on a Participant's behalf in accordance with the Participant's elections to defer Base Pay under the Plan's qualified cash or deferred arrangement as described in Section 3.1.

(8) **Benefit Commencement Date**: With respect to each Participant or beneficiary, the first day of the first period for which such Participant's or beneficiary's benefit is payable to him from the Trust Fund determined in accordance with Section 10.1.

(9) **Code**: The Internal Revenue Code of 1986, as amended.

(10) **Commencement Date**: The date on which an Employee first performs an Hour of Service.

(11) **Committee**: The administrative committee appointed by Enron Corp. to administer the Plan.

(12) **Company**: Enron Corp. and any entity which has adopted the Plan for the benefit of its Eligible Employees.

(13) **Company Contribution Account**: An individual account for each Participant, which is credited with the sum of (A) Company Matching Contributions made on such Participant's behalf and (B) the Company Safe Harbor Contributions, if any, made on such Participant's behalf, and which is credited with (or debited for) such Account's allocation of net income (or net loss) and changes in value of the Trust Fund.

(14) **Company Contributions**: Contributions made to the Plan pursuant to Sections 3.4, 3.5, 22.2 and 22.3.

(15) **Company Matching Contributions**: Contributions made to the Plan by the Company pursuant to Section 3.4 and Section 22.2.

(16) Company Safe Harbor Contributions: Contributions made to the Plan by the Company pursuant to Section 3.5.

(17) Contribution Period: Each payroll period or such other period as may be established by the Committee for purposes of the timing of contributions to the Plan. Contribution Periods may vary for different groups of employees.

(18) Controlled Entity: Each corporation that is a member of a controlled group of corporations, within the meaning of section 1563(a) (determined without regard to sections 1563(a)(4) and 1563(e)(3)(C)) of the Code, of which Enron Corp. is a member; each trade or business (whether or not incorporated) with which Enron Corp. is under common control, and each member of an affiliated service group, within the meaning of section 414(m) of the Code, of which Enron Corp. is a member.

(19) Direct Rollover: A payment by the Plan to an Eligible Retirement Plan designated by a Distributee.

(20) Distributee: Each (A) Participant entitled to an Eligible Rollover Distribution, (B) Participant's surviving spouse with respect to the interest of such surviving spouse in an Eligible Rollover Distribution, and (C) former spouse of a Participant who is an alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, with regard to the interest of such former spouse in an Eligible Rollover Distribution.

(21) Effective Date: July 1, 1999, as to this restatement of the Plan, except (A) as otherwise indicated in specific provisions of the Plan, and (B) that provisions of the Plan required to have an earlier effective date by applicable statute and/or regulation shall be effective as of the required effective date in such statute and/or regulation and shall apply, as of such required effective date, to any plan merged into this Plan.

(22) Eligible Employee: Each Employee other than (A) an Employee whose terms and conditions of employment are governed by a collective bargaining agreement, unless such agreement provides for his coverage under the Plan, (B) a nonresident alien who receives no earned income from the Company that constitutes income from sources within the United States, and (C) an Employee who is a Leased Employee. Notwithstanding any provision of the Plan to the contrary, no individual who is designated, compensated, or otherwise classified or treated by the Company as an independent contractor or other non-common law employee shall be eligible to become a Participant in the Plan.

(23) Eligible Retirement Plan: (A) With respect to a Distributee other than a surviving spouse, an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified plan described in section 401(a) of the Code, which under its provisions does, and under applicable law may, accept such Distributee's Eligible Rollover Distribution, and (B) with respect to a Distributee who is

a surviving spouse, an individual retirement account described in section 408(a) of the Code or an individual retirement annuity described in section 408(b) of the Code.

(24) **Eligible Rollover Distribution**: With respect to a Distributee, any distribution of all or any portion of the Accounts of a Participant other than (A) a distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary or for a specified period of ten years or more, (B) a distribution to the extent such distribution is required under section 401(a)(9) of the Code, (C) the portion of a distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), (D) a loan treated as a distribution under section 72(p) of the Code and not excepted by section 72(p)(2), (E) a loan in default that is a deemed distribution, (F) any corrective distribution provided in Sections 3.8 and 4.5(b), and (G) any other distribution so designated by the Internal Revenue Service in revenue rulings, notices and other guidance of general applicability. Further, from and after January 1, 2000, a distribution from the Before-Tax Contribution Account of a Participant who has not attained age 59½ pursuant to Section 11.2 shall not constitute an Eligible Rollover Distribution.

(25) **Employee**: Each (A) individual employed by the Company and (B) Leased Employee. United States citizens or residents who are employees of certain foreign affiliates of Enron Corp. as may be designated from time to time by Enron Corp. and identified as such a foreign affiliate employer of such employees in an agreement under section 3121(l) of the Code filed on behalf of Enron Corp. with the Internal Revenue Service, shall be treated as Employees on the condition that contributions under a funded plan of deferred compensation are not provided by any other person or entity with respect to the remuneration paid by the foreign affiliate.

(26) **Employment Commencement Date**: The date on which an individual first performs an Hour of Service.

(27) **Enron Stock**: The common stock of Enron Corp.

(28) **EO&G Stock**: The common stock of Enron Oil & Gas Company.

(29) **Highly Compensated Employee**: Each Employee who performs services during the Plan Year for which the determination of who is highly compensated is being made (the "Determination Year") and who:

(A) Is a five-percent owner of the Company (within the meaning of section 416(i)(1)(A)(iii) of the Code) at any time during the Determination Year or the twelve-month period immediately preceding the Determination Year (the "Look-Back Year"); or

(B) For the Look-Back Year, receives compensation (within the meaning of section 414(q)(4) of the Code; "compensation" for purposes of this Paragraph) in excess of $80,000 (with such amount to be adjusted automatically to reflect any cost-of-living adjustments authorized by section 414(q)(1) of the Code) during the Look-Back Year and is a member of the top 20% of Employees for the Look-Back Year (other than Employees described in section 414(q)(5) of the Code) ranked on the basis of compensation received during the year.

For purposes of the preceding sentence, (i) all employers aggregated with the Company under section 414(b), (c), (m), or (o) of the Code shall be treated as a single employer and (ii) a former Employee who had a separation year (generally, the Determination Year such Employee separates from service) prior to the Determination Year and who was an active Highly Compensated Employee for either such separation year or any Determination Year ending on or after such Employee's fifty-fifth birthday shall be deemed to be a Highly Compensated Employee. To the extent that the provisions of this Paragraph are inconsistent or conflict with the definition of a "highly compensated employee" set forth in section 414(q) of the Code and the Treasury regulations thereunder, the relevant terms and provisions of section 414(q) of the Code and the Treasury regulations thereunder shall govern and control.

(30) Hour of Service: Each hour for which an individual is directly or indirectly paid, or entitled to payment, by the Company or a Controlled Entity for the performance of duties.

(31) Investment Fund: Investment funds made available from time to time for the investment of plan assets as described in Article V.

(32) Involuntary Termination: Termination of a Participant's employment by the Company due to business circumstances, layoff or corporate reorganization (including, but not limited to division or office closure or relocation). A Participant's employment with the Company shall in no event constitute an Involuntary Termination if the Participant voluntarily terminates such employment (whether by reason of retirement or otherwise) or if such Participant's employment is terminated by the Company due to the Participant's gross negligence or willful misconduct in performance of the duties of his employment or his commission of a felony or by reason of conduct causing injury or loss to the Company.

(33) Leased Employee: Each person who is not an employee of the Company or a Controlled Entity but who performs services for the Company or a Controlled Entity pursuant to an agreement (oral or written) between the Company or a Controlled Entity and any leasing organization, provided that such person has performed such services for the Company or a Controlled Entity or for related persons (within the meaning of section 144(a)(3) of the Code) on a substantially full-time basis for a period of at least one year and such services are performed under primary direction or control by the Company or a Controlled Entity.

(34) Normal Retirement Date: The date a Participant attains the age of sixty-five.

(35) Participant: Each individual who (A) has met the eligibility requirements for participation in the Plan and elected to participate in the Plan pursuant to Article II or (B) has made a Rollover Contribution in accordance with Section 3.9, but only to the extent provided in Section 3.9. For purposes of Article V only, the beneficiary of a deceased Participant and any alternate payee under a qualified domestic relations order (as defined in Section 19.2) shall have the rights of a Participant.

(36) Period of Service: Each period of an individual's Service commencing on his Employment Commencement Date or a Reemployment Commencement Date, if applicable, and ending on a Severance from Service Date. Notwithstanding the foregoing, a period during which an individual is absent from Service by reason of the individual's pregnancy, the birth of a child of the individual, the placement of a child with the individual in connection with the adoption of such child by the individual, or for the purposes of caring for such child for the period immediately following such birth or placement shall not constitute a Period of Service between the first and second anniversary of the first date of such absence. A Period of Service shall also include any period required to be credited as a Period of Service by federal law other than the Act or the Code, but only under the conditions and to the extent so required by such federal law.

(37) Period of Severance: Each period of time commencing on an individual's Severance from Service Date and ending on a Reemployment Commencement Date.

(38) Plan: The Enron Corp. Savings Plan, as amended from time to time.

(39) Plan Year: The twelve-consecutive month period commencing January 1 of each year.

(40) Reemployment Commencement Date: The first date upon which an individual performs an Hour of Service following a Severance from Service Date.

(41) Rollover Account: An individual account for an Eligible Employee, which is credited with the Rollover Contributions of such Employee, and which is credited with (or debited for) such Account's allocation of net income (or net loss) and changes in value of the Trust Fund.

(42) Rollover Contributions: Contributions made by an Eligible Employee pursuant to Section 3.10.

(43) Service: The period of an individual's employment with the Company or a Controlled Entity. In addition, Enron Corp. may credit individuals with Vesting Service for employment with any other entity but only if and when such individuals become Eligible Employees through a stock or asset purchase or other corporate transaction but only if

such crediting of Vesting Service (A) does not exceed 5 years of Service, (B) has a legitimate business reason, (C) does not by design or operation discriminate significantly in favor of Highly Compensated Employees and (D) is applied to all similarly situated individuals.

(44) Severance from Service Date: The first date on which an individual terminates his Service following his Employment Commencement Date or a Reemployment Commencement Date, if applicable. Notwithstanding the foregoing, the Severance from Service Date of an individual who is absent from Service by reason of the individual's pregnancy, the birth of a child of the individual, the placement of a child with the individual in connection with the adoption of such child by the individual, or for purposes of caring for such child for the period immediately following such birth or placement shall be the second anniversary of the first date of such absence.

(45) Trust: The trust established under the Trust Agreement(s) to hold and invest contributions made under the Plan and income thereon, and from which the Plan benefits are distributed.

(46) Trust Agreement: The agreement entered into between Enron Corp. and the Trustee establishing the Trust, as such agreement may be amended from time to time.

(47) Trust Fund: The funds and properties held pursuant to the provisions of the Trust Agreement for the use and benefit of the Participants, together with all income, profits, and increments thereto.

(48) Trustee: The trustee or trustees qualified and acting under the Trust Agreement at any time.

(49) Vested Interest: The percentage of a Participant's Accounts which, pursuant to the Plan, is nonforfeitable.

(50) Vesting Service: The measure of service used in determining a Participant's Vested Interest as determined in accordance with Sections 8.4 and 8.5.

1.2 Number and Gender. Wherever appropriate herein, words used in the singular shall be considered to include the plural, and words used in the plural shall be considered to include the singular. The masculine gender, where appearing in the Plan, shall be deemed to include the feminine gender.

1.3 Headings. The headings of Articles and Sections herein are included solely for convenience, and if there is any conflict between such headings and the text of the Plan, the text shall control.

I.4 Construction. It is intended that the Plan be qualified within the meaning of section 401(a) of the Code and that the Trust be tax exempt under section 501(a) of the Code and all provisions herein shall be construed in accordance with such intent.

II.

Participation

Each Eligible Employee shall be eligible to become a Participant upon the first day of the first month coincident with or next following such Eligible Employee's Commencement Date or the date he becomes an Eligible Employee through a stock or asset purchase or other corporate transaction. Notwithstanding the foregoing:

(a) An Eligible Employee who was a Participant in the Plan on the day prior to the Effective Date shall remain a Participant in this restatement thereof as of the Effective Date;

(b) An Eligible Employee who was a Participant in the Plan, or who was eligible to become a Participant in the Plan, prior to a termination of employment shall be eligible to remain or become a Participant immediately upon his reemployment as an Eligible Employee; and

(c) A Participant who ceases to be an Eligible Employee but remains an Employee shall continue to be a Participant but, on and after the date he ceases to be an Eligible Employee, he shall no longer be entitled to defer Base Pay hereunder, receive allocations of Company Matching Contributions or contribute to the Plan unless and until he shall again become an Eligible Employee.

Participation in the Plan is voluntary. Any Eligible Employee may become a Participant upon the date on which he first becomes eligible by making a Before-Tax Contribution election (and related Base Pay reduction agreement) or After-Tax Contribution election in accordance with the procedures prescribed by the Committee. Any Eligible Employee who does not become a Participant upon the date on which he first becomes eligible may become a Participant on the first day of any subsequent month by making a Before-Tax Contribution election (and related Base Pay reduction agreement) or After-Tax Contribution election in accordance with the procedures prescribed by the Committee.

III.

Contributions

III.1 Before-Tax Contributions.

(a) A Participant may elect to defer an integral percentage of from 1% to 15% (or such lesser percentage as may be prescribed from time to time by the Committee) of his Base Pay for a Contribution Period by having the Company contribute the amount so deferred to the Plan. Base Pay for a Contribution Period not so deferred by such election shall be received by such Participant in cash. A Participant's election to defer an amount of his Base Pay pursuant to this Section shall be made by authorizing his Company, in the manner prescribed by the Committee, to reduce his Base Pay in the elected amount and the Company, in consideration thereof, agrees to contribute an equal amount to the Plan. The Base Pay elected to be deferred by a Participant pursuant to this Section shall become a part of the Company's Before-Tax Contributions and shall be allocated in accordance with Section 4.2(a).

(b) In restriction of the Participants' elections provided in Paragraph (a) above, the Before-Tax Contributions and the elective deferrals (within the meaning of section 402(g)(3) of the Code) under all other plans, contracts, and arrangements of the Company on behalf of any Participant for any calendar year shall not exceed $10,000 (with such amount to be adjusted automatically to reflect any cost-of-living adjustments authorized by section 402(g)(5) of the Code).

(c) In further restriction of the Participants' elections provided in Paragraph (a) above, it is specifically provided that one of the "actual deferral percentage" tests set forth in section 401(k)(3) of the Code and Treasury regulations thereunder must be met in each Plan Year. Such testing shall utilize the current year testing method as such term is defined in Internal Revenue Service Notice 98-1. If multiple use of the alternative limitation (within the meaning of section 401(m)(9) of the Code and Treasury regulation § 1.401(m)-2(b)) occurs during a Plan Year, such multiple use shall be corrected in accordance with the provisions of Treasury regulation § 1.401(m)-2(c); provided, however, that if such multiple use is not eliminated by making safe harbor contributions, then the "actual contribution percentages" of all Highly Compensated Employees participating in the Plan shall be reduced, and the excess contributions distributed, in accordance with the provisions of Section 3.8(c) and applicable Treasury regulations, so that there is no such multiple use.

(d) If the restrictions set forth in Paragraph (c) above would not otherwise be met for any Plan Year, the Base Pay deferral elections made pursuant to Paragraphs (a) above of affected Participants may be reduced by the Committee on a temporary and prospective basis in such manner as the Committee shall determine.

(e) As soon as administratively feasible following the end of each Contribution Period, but no later than the time required by applicable law, the Company shall contribute to the Trust, as Before-Tax Contributions with respect to each Participant, an amount equal to the amount of Base Pay elected to be deferred, pursuant to Paragraph (a) above (as adjusted pursuant to Paragraph (d) above), by such Participant during such Contribution Period. Such contributions, as well as the contributions made pursuant to Sections 3.2 and 3.4, shall be made without regard to current or accumulated profits of the Company. Notwithstanding the foregoing, the Plan is intended to qualify as a profit sharing plan for purposes of sections 401(a), 402, 412, and 417 of the Code.

III.2 **After-Tax Contributions.** A Participant may contribute to the Plan, as his After-Tax Contributions, an integral percentage of his Base Pay which, when added to the integral percentage of his Base Pay for such Contribution Period designated as Before-Tax Contributions, does not exceed 15% (or such lesser percentage as may be prescribed from time to time by the Committee). After-Tax Contributions shall be made by authorizing the Company to withhold such contributions from the Participant's Base Pay. Each Participant may elect the amount (within the percentage limits of this Paragraph) of his After-Tax Contributions in the manner and within the time period prescribed by the Committee. If the restrictions set forth in Section 3.6 would not otherwise be met for any Plan Year, the After-Tax Contribution elections of affected Participants may be reduced by the Committee on a temporary and prospective basis in such manner as the Committee shall determine. As soon as administratively feasible following the end of each Contribution Period, but no later than the time required by applicable law, the Company shall contribute to the Trust the After-Tax Contributions withheld from the Participants' Base Pay during such Contribution Period.

III.3 **Before-Tax and After-Tax Contribution Changes.** A Participant may change the amount of, suspend or resume his Before Tax Contributions or his After-Tax Contributions (within the applicable percentage limits set forth in Sections 3.1 and 3.2 above) effective as of the first day of any Contribution Period. Such change shall be effected in accordance with the procedures established by the Committee.

III.4 **Company Matching Contributions.** For each Contribution Period the Company shall contribute as Company Matching Contributions on behalf of each Participant other than a Participant who is a field hourly construction worker or whose contribution rights are described in Article XXII, an amount which equals 50% of the Before-Tax Contributions which were made pursuant to Section 3.1 on behalf of such Participant during such Contribution Period and which were not in excess of: for the 1999 Plan Year, 4% of such Participant's Base Pay for such Contribution Period and for the 2000 Plan Year and for Plan Years thereafter, 6% of such Participant's Base Pay for such Contribution Period.

III.5 **Company Safe Harbor Contributions.** In addition to the Company Matching Contributions made pursuant to Section 3.4 for a Plan Year, the Company, in its discretion, may contribute to the Trust as a "safe harbor contribution" for such Plan Year the amounts necessary to cause the Plan to satisfy the restrictions set forth in Section 3.1(c) (with respect to certain

restrictions on Before-Tax Contributions) and Section 3.6 (with respect to certain restrictions on Company Matching Contributions and After-Tax Contributions). Amounts contributed in order to satisfy the restrictions set forth in Section 3.1(c) shall be considered "qualified nonelective contributions" (within the meaning of Treasury regulation § 1.401(k)-1(g)(13)) for purposes of such Section, and amounts contributed in order to satisfy the restrictions set forth in Section 3.6 shall be considered Company Matching Contributions for purposes of such Section. Any amounts contributed pursuant to this Section shall be allocated in accordance with Sections 4.2(d). For purposes of the Plan, such contributions shall be treated in the same manner as Before Tax Contributions under Section 3.1 of the Plan, shall be nonforfeitable and fully vested when made, and cannot be withdrawn for any reason, including hardship until termination from any Enron company.

III.6 Restrictions on Company Matching Contributions and After-Tax Contributions. In restriction of the Company Matching Contributions and After-Tax Contributions hereunder, it is specifically provided that one of the "actual contribution percentage" tests set forth in section 401(m) of the Code and the Treasury regulations thereunder must be met in each Plan Year. Such testing shall utilize the current year testing method as such term is defined in Internal Revenue Service Notice 98-1. The Committee may elect, in accordance with applicable Treasury regulations, to treat Before-Tax Contributions to the Plan as Company Matching Contributions for purposes of meeting this requirement.

III.7 Payments to Trustee. Contributions under the Plan shall be paid by the Company directly to the Trustee as soon as practicable. On or about the date of any such payment, the Committee shall be informed as to the amount of such payment.

III.8 Return of Contributions. Anything to the contrary herein notwithstanding, the Company's contributions to the Plan are contingent upon the deductibility of such contributions under section 404 of the Code. To the extent that a deduction for contributions is disallowed, such contributions shall, upon the written demand of the Company, be returned to the Company by the Trustee within one year after the date of disallowance, reduced by any net losses of the Trust Fund attributable thereto but not increased by any net earnings of the Trust Fund attributable thereto, which net earnings shall be treated as a forfeiture in accordance with Section 4.3. Moreover, if Company contributions are made under a mistake of fact, such contributions shall, upon the written demand of the Company, be returned to the Company by the Trustee within one year after the payment thereof, reduced by any net losses of the Trust Fund attributable thereto but not increased by any net earnings of the Trust Fund attributable thereto, which net earnings shall be treated as a forfeiture in accordance with Section 4.3.

III.9 Disposition of Excess Deferrals and Excess Contributions.

(a) Anything to the contrary herein notwithstanding, any Before-Tax Contributions to the Plan for a calendar year on behalf of a Participant in excess of the limitations set forth in Section 3.1(b) and any "excess deferrals" from other plans allocated to the Plan by such Participant no later than March 1 of the next following calendar year within the meaning of, and pursuant to the provisions of, section 402(g)(2) of the Code, shall be distributed to such Participant not later than April 15 of the next following calendar year.

(b) Anything to the contrary herein notwithstanding, if, for any Plan Year, the aggregate Before-Tax Contributions made by the Company on behalf of Highly Compensated Employees exceeds the maximum amount of Before-Tax Contributions permitted on behalf of such Highly Compensated Employees pursuant to Section 3.1(c), such excess (determined by reducing Before-Tax Contributions on behalf of Highly Compensated Employees in order of the highest dollar amounts contributed on behalf of such Highly Compensated Employees in accordance with section 401(k)(8)(C) of the Code and the Treasury regulations thereunder) shall be distributed to the Highly Compensated Employees on whose behalf such excess was contributed before the end of the next following Plan Year.

(c) Anything to the contrary herein notwithstanding, if, for any Plan Year, the sum of the aggregate Company Matching Contributions and After-Tax Contributions allocated to the Accounts of Highly Compensated Employees exceeds the maximum amount of such Company Matching Contributions and After-Tax Contributions permitted on behalf of such Highly Compensated Employees pursuant to Section 3.6, such excess (determined by reducing After-Tax Contributions made by, and Company Matching Contributions made on behalf of, Highly Compensated Employees in order of the highest dollar amounts contributed by and on behalf of such Highly Compensated Employees in accordance with section 401(m)(6)(C) of the Code and Treasury regulations thereunder) shall be distributed to the Highly Compensated Employees on whose behalf such excess contributions were made or who made such excess contributions, as applicable, (or, if such excess contributions are forfeitable, they shall be forfeited) before the end of the next following Plan Year. Company Matching Contributions shall be forfeited pursuant to this Paragraph only if distribution of all vested Company Matching Contributions is insufficient to meet the requirements of this Paragraph. If vested Company Matching Contributions are distributed to a Participant and nonvested Company Matching Contributions remain credited to such Participant's Accounts, such nonvested Company Matching Contributions shall vest at the same rate as if such distribution had not been made.

(d) In coordinating the disposition of excess deferrals and excess contributions pursuant to this Section, such excess deferrals and excess contributions shall be disposed of in the following order:

(1) First, Before-Tax Contributions that constitute excess deferrals described in Paragraph (a) above that are not considered in determining the amount of Company Matching Contributions pursuant to Section 3.3 shall be distributed;

(2) Next, excess Before-Tax Contributions that constitute excess deferrals described in Paragraph (a) above that are considered in determining the amount of Company Matching Contributions pursuant to Section 3.3 shall be distributed, and the Company Matching Contributions with respect to such Before-Tax Contributions shall be forfeited;

(3) Next, excess Before-Tax Contributions described in Paragraph (b) above that are not considered in determining the amount of Company Matching Contributions pursuant to Section 3.3 shall be distributed;

(4) Next, excess Before-Tax Contributions described in Paragraph (b) above that are considered in determining the amount of Company Matching Contributions pursuant to Section 3.3 shall be distributed, and the Company Matching Contributions with respect to such Before-Tax Contributions shall be forfeited;

(5) Next, excess After-Tax Contributions described in Paragraph (c) above; and

(6) Finally, excess Company Matching Contributions described in Paragraph (c) above shall be distributed (or, if forfeitable, forfeited).

(e) Any distribution or forfeiture of excess deferrals or excess contributions pursuant to the provisions of this Section shall be adjusted for income or loss allocated thereto in the manner determined by the Committee in accordance with any method permissible under applicable Treasury regulations. Any forfeiture pursuant to the provisions of this Section shall be considered to have occurred on the date which is 2½ months after the end of the Plan Year.

III.10 Rollover Contributions.

(a) Qualified indirect Rollover Contributions may be made to the Plan by any Eligible Employee of amounts received by such Eligible Employee from an individual retirement account or annuity or from another qualified plan, but only if such Rollover Contributions are made pursuant to and in accordance with applicable provisions of the Code. Any Eligible Employee desiring to effect indirect Rollover Contributions must execute and file with the Committee the form prescribed by the Committee for such purpose. An indirect Rollover Contribution shall be credited to the Rollover Account of the Eligible Employee making such indirect Rollover Contribution as of the day on which the Rollover Contribution is made.

(b) Qualified direct Rollover Contributions may be made to the Plan by any Eligible Employee of amounts received by such Eligible Employee from certain individual retirement accounts or annuities or from an employees' trust described in section 401(a) of the Code, which is exempt from tax under section 501(a) of the Code, but only if any such direct Rollover Contribution is made pursuant to and in accordance with applicable provisions of the Code and Treasury regulations promulgated thereunder. a direct Rollover Contribution of amounts that are "eligible rollover distributions" within the meaning of section 402(f)(2)(a) of the Code may be made to the Plan irrespective of whether such eligible rollover distribution was paid to the Eligible Employee or paid to the Plan as a "direct" Rollover Contribution. A direct Rollover Contribution to the Plan must be in cash and may be effectuated only by wire transfer directed to the Trustee or by issuance of a check made payable to the Trustee, which is negotiable only by the Trustee and which identifies the Eligible Employee for whose benefit the Rollover Contribution is being made. Notwithstanding the foregoing, an Eligible Employee who is entitled to a distribution from the Enron Corp. Employee Stock Ownership Plan may make direct Rollover Contributions of such distribution to the Plan in whole shares of Enron Stock. Any Eligible Employee desiring to effect a direct Rollover Contribution to the Plan must execute and file with the Committee the form prescribed by the Committee for such purpose. The Committee may require as a condition to accepting any direct Rollover Contribution that such Eligible Employee furnish any evidence that the Committee in its discretion deems satisfactory to establish that the proposed Rollover Contribution is in fact eligible for rollover to the Plan and is made pursuant to and in accordance with applicable provisions of the Code and Treasury regulations. A Rollover Contribution shall be credited to the Rollover Contribution Account of the Eligible Employee for whose benefit such Rollover Contribution is being made as of the last day of the month in which such Rollover Contribution is made.

(c) An Eligible Employee who has made a Rollover Contribution in accordance with this Section, but who has not otherwise become a Participant in the Plan in accordance with Article II, shall become a Participant coincident with such Rollover Contribution; provided, however, that such Participant shall not have a right to defer Base Pay or have Company Contributions made on his behalf until he has otherwise satisfied the requirements imposed by Article II.

IV.

Allocations and Limitations

IV.11 Suspended Amounts. All contributions, forfeitures, and the net income (or net loss) of the Trust Fund shall be held in suspense until allocated or applied as provided herein.

IV.12 Allocation of Contributions to Accounts.

(a) Before-Tax Contributions made by the Company on a Participant's behalf pursuant to Section 3.1 shall be allocated to such Participant's Before-Tax Contribution Account.

(b) After-Tax Contributions made by a Participant pursuant to Section 3.2 shall be allocated to the After-Tax Contribution Account of such Participant.

(c) The Company Matching Contributions for each Contribution Period pursuant to Section 3.4 shall be allocated to the Company Contribution Accounts of the Participants for whom such contributions were made.

(d) The Company Safe Harbor Contribution, if any, made pursuant to Section 3.5 for a Plan Year shall be allocated as described in the Board resolution providing for such contributions to a Participant's Before-Tax Contribution Account if made to satisfy the restrictions of Section 3.1(c) and to a Participant's Company Contribution Account if made to satisfy the restrictions of Section 3.6.

(e) All contributions to the Plan shall be considered allocated to Participants Accounts no later than the last day of the Plan Year for which they were made, as determined pursuant to Article III, except that, for purposes of Section 4.4, contributions shall be considered allocated to Participants' Accounts when received by the Trustee

IV.13 Application of Forfeitures. Any amounts that are forfeited under any provision hereof during a Plan Year shall be applied in the manner determined by the Committee to reduce Company Matching Contributions and/or to pay expenses incident to the administration of the Plan and Trust. Prior to such application, forfeited amounts shall be invested in the Investment Fund or Funds designated from time to time by the Committee. This section will be applied as if the Plan is a single Plan for all Companies.

IV.14 Valuation of Accounts. All amounts contributed to the Trust Fund shall be invested as soon as administratively feasible following their receipt by the Trustee according to Participant's investment designation pursuant to Article V, and the balance of each Account shall reflect the result of each business day's pricing of the Investment Funds as determined by the Trustee. Each Investment Fund reflects the allocation of net income (or net loss), separately and

respectively in accordance with normal investment accounting practices from the time of receipt by the Trustee until the time of distribution. With respect to each Member whose employment is terminated for any reason, so long as there is any balance in any of his Accounts, such Account or Accounts shall continue to receive allocations of net income (or net loss) pursuant to this Section 4.4.

IV.15 Limitations and Corrections.

(a) For purposes of this Section, the following terms and phrases shall have these respective meanings:

(1) "Annual Additions" of a Participant for any Limitation Year shall mean the total of (a) the Company Matching Contributions and any other contributions made by the Company, Before-Tax Contributions, and forfeitures, if any, allocated to such Participant's Accounts for such year, (B) Participant's contributions, if any, (excluding any Rollover Contributions) for such year, and (C) amounts referred to in sections 415(l)(1) and 419A(d)(2) of the Code.

(2) "415 Compensation" shall mean the total of all amounts paid by the Company to or for the benefit of a Participant for services rendered or labor performed for the Company which are required to be reported on the Participant's federal income tax withholding statement or statements (Form W-2 or its subsequent equivalent), subject to the following adjustments and limitations:

(A) The following shall be included:

(i) Elective deferrals (as defined in section 402(g)(3) of the Code) from compensation to be paid by the Company to the Participant;

(ii) Any amount which is contributed or deferred by the Company at the election of the Participant and which is not includible in the gross income of the Participant by reason of section 125 or 457 of the Code; and

(iii) Any amounts that are not includable in the gross income of a Participant under a salary reduction agreement by reason of the application of section 132(f) of the Code.

(B) The 415 Compensation of any Participant taken into account for purposes of the Plan shall be limited to $160,000 for any Plan Year with such limitation to be:

(i) Adjusted automatically to reflect any amendments to section 401(a)(17) of the Code and any cost-of-living increases authorized by section 401(a)(17) of the Code; and

(ii) Prorated for a Plan Year of less than twelve months and to the extent otherwise required by applicable law.

(3) "Limitation Year" shall mean the Plan Year.

(4) "Maximum Annual Additions" of a Participant for any Limitation Year shall mean the lesser of (a) $30,000 (with such amount to be adjusted automatically to reflect any cost-of-living adjustment authorized by section 415(d) of the Code) or (B) 25% of such Participant's 415 Compensation during such Limitation Year, except that the limitation in this Clause (B) shall not apply to any contribution for medical benefits (within the meaning of section 419A(f)(2) of the Code) after separation from service with the Company or a Controlled Entity that is otherwise treated as an Annual Addition or to any amount otherwise treated as an Annual Addition under section 415(l)(1) of the Code.

(b) Contrary Plan provisions notwithstanding, in no event shall the Annual Additions credited to a Participant's Accounts for any Limitation Year exceed the Maximum Annual Additions for such Participant for such year. If as a result of a reasonable error in estimating a Participant's compensation, a reasonable error in determining the amount of elective deferrals (within the meaning of section 402(g)(3) of the Code) that may be made with respect to any individual under the limits of section 415 of the Code, or because of other limited facts and circumstances, the Annual Additions that would be credited to a Participant's Accounts for a Limitation Year would nonetheless exceed the Maximum Annual Additions for such Participant for such year, the excess Annual Additions which, but for this Section, would have been allocated to such Participant's Accounts shall be disposed of as follows:

(1) First, by returning to such Participant his After-Tax Contributions, adjusted for income or loss allocated thereto;

(2) Next, any such excess Annual Additions in the form of Before-Tax Contributions on behalf of such Participant that would not have been considered in determining the amount of Company Matching Contributions pursuant to Section 3.4 shall be distributed to such Participant, adjusted for income or loss allocated thereto; and

(3) Finally, any such excess Annual Additions in the form of Before-Tax Contributions on behalf of such Participant that would have been considered in determining the amount of Company Matching Contributions pursuant to Section 3.4 shall be distributed to such Participant, adjusted for income or loss allocated thereto, and the Company Matching Contributions that would have been allocated to such Participant's Accounts based upon such distributed Before-Tax Contributions shall, to the

extent such amounts would have otherwise been allocated to such Participant's Accounts, be treated as a forfeiture.

(c) For purposes of determining whether the Annual Additions under this Plan exceed the limitations herein provided, all defined contribution plans of the Company are to be treated as one defined contribution plan. In addition, all defined contribution plans of Controlled Entities shall be aggregated for this purpose. For purposes of this Section only, a "Controlled Entity" (other than an affiliated service group member within the meaning of section 414(m) of the Code) shall be determined by application of a more than 50% control standard in lieu of an 80% control standard. If the Annual Additions credited to a Participant's Accounts for any Limitation Year under this Plan plus the additions credited on his behalf under other defined contribution plans required to be aggregated pursuant to this Paragraph would exceed the Maximum Annual Additions for such Participant for such Limitation Year, the Annual Additions under this Plan and the additions under such other plans shall be reduced on a pro rata basis and allocated, reallocated, or returned in accordance with applicable plan provisions regarding Annual Additions in excess of Maximum Annual Additions.

(d) In the case of a Participant who also participated in a defined benefit plan of the Company or a Controlled Entity (as defined in Paragraph (d) above), the Company shall reduce the Annual Additions credited to the Accounts of such Participant under this Plan pursuant to the provisions of Paragraph (b) to the extent necessary to prevent the limitation set forth in section 415(e) of the Code from being exceeded. Notwithstanding the foregoing, the provisions of this Paragraph shall apply only if such defined benefit plan does not provide for a reduction of benefits thereunder to ensure that the limitation set forth in section 415(e) of the Code is not exceeded. Further, this Paragraph shall not apply for Limitation Years beginning after December 31, 1999.

(e) If the limitations set forth in this Section would not otherwise be met for any Limitation Year, the Base Pay deferral elections pursuant to Section 3.1 and/or After-Tax Contribution elections pursuant to Section 3.2 of affected Participants may be reduced by the Committee on a temporary and prospective basis in such manner as the Committee shall determine.

V.

Investment of Accounts

V.16 Investment of Company Contribution Accounts.

(a) Subject to Paragraph (b) below, the Company Contribution Accounts of the Participants shall be invested primarily in shares of Enron Stock, provided, however, that Company Contribution Accounts for Participants who are employees of Enron Oil & Gas Company and its subsidiaries ("EO&G Members"), shall be invested primarily in shares of EO&G Stock. From time to time, in accordance with procedures established by the Committee, an EO&G Participant may make a new election whether to have his Company Contribution Accounts invested primarily in shares of Enron Stock or EO&G Stock or in any combination of such investments.

(b) Upon a Participant's attainment of age fifty, such Participant may designate, in accordance with the procedures established from time to time by the Committee, the manner in which the amounts allocated to the Participant's Company Contribution Account are to be invested among the Investment Funds made available from time to time by the Committee. Such Participant may designate one of such Investment Funds for all the amounts allocated to the Participant's Company Contribution Account or the Participant may split the investment of such amounts between such Investment Funds in such increments as procedures established by the Committee permit.

V.17 Investment Options for Participants' Contributions. Each Participant shall designate, in accordance with the procedures established from time to time by the Committee, the manner in which the amounts allocated to his Before-Tax Contribution Account and his After-Tax Contribution Account shall be invested from among the Investment Funds made available from time to time by the Committee. Such Participant may designate one of such Investment Funds for all the amounts allocated to such Accounts or he may split the investment of the amounts allocated to such Accounts between such Investment Funds in such increments as the Committee may prescribe. A Participant may change his investment designation for future contributions to be allocated to his Before-Tax Contribution Account and After-Tax Contribution Account. Any such change shall be made in accordance with the procedures established by the Committee, and the frequency of such changes may be limited by the Committee as specified in the prospectuses relating to the Investment Funds. A Participant may elect to convert his investment designation with respect to the amounts already allocated to his Before-Tax Contribution Account and After-Tax Contribution Account. Any such conversion shall be made in accordance with the procedures established by the Committee, and the frequency of such conversions may be limited by the Committee as specified in the prospectuses relating to the Investment Funds.

V.18 Investment Options for Rollover Contributions. Each Participant shall designate, in accordance with the procedures established from time to time by the Committee, the manner in which the amounts allocated to his Rollover Account shall be invested from among the Investment Funds made available from time to time by the Committee. Such Participant may designate one of such Investment Funds for all the amounts allocated to such Account or he may split the investment of the amounts allocated to such Account between such Investment Funds in such increments as the Committee may prescribe. A Participant may elect to convert his investment designation with respect to the amounts already allocated to his Rollover Account. Any such conversion shall be made in accordance with the procedures established by the Committee, and the frequency of such conversions may be limited by the Committee as specified in the prospectuses relating to the Investment Funds.

V.19 Restriction on Acquisition of Enron Stock and EO&G Stock. Notwithstanding any other provision hereof, it is specifically provided that the Trustee shall not purchase Enron Stock, EO&G Stock or other securities issued by Enron Corp. or Enron Oil & Gas Company during any period in which such purchase is, in the opinion of counsel, restricted by any law or regulation applicable thereto. During such period, amounts that would otherwise be invested in Enron Stock, EO&G Stock or other securities issued by Enron Corp. or Enron Oil & Gas Company pursuant to an investment designation shall be invested in such other assets as the Trustee may in its discretion determine, or the Trustee may hold such amounts uninvested for a reasonable period pending the purchase of such stock or securities.

VI.

Retirement Benefits

A Participant who terminates his employment on or after his Normal Retirement Date or after having satisfied the conditions for early retirement benefits under the Enron Corp. Retirement Plan shall be entitled to a retirement benefit from his Accounts, payable at the time and in the form provided in Article X. Any contribution allocable to a Participant's Accounts after his Benefit Commencement Date shall be distributed, if his benefit was paid in a lump sum, or used to increase his payments, if his benefit is being paid on a periodic basis, as soon as administratively feasible after the date that such contribution is paid to the Trust Fund.

VII.

Disability Benefits

VII.20 Disability Benefits. In the event a Participant's employment is terminated, and such Participant is totally and permanently disabled, as determined pursuant to Section 7.2, such Participant shall be entitled to a disability benefit from his Accounts, payable at the time and in the form provided in Article X. Any contribution allocable to a Participant's Accounts after his Benefit Commencement Date shall be distributed, if his benefit was paid in a lump sum, or used to increase his payments, if his benefit is being paid on a periodic basis, as soon as administratively feasible after the date that such contribution is paid to the Trust Fund.

VII.21 Total and Permanent Disability Determined. The Committee shall determine whether a Participant has become totally and permanently disabled and shall so notify such Participant within sixty days thereafter. For purposes of this Article, "total and permanent disability" shall mean that either the Participant has been determined to be eligible to receive long term disability benefits under the Enron Corp. Long Term Disability Plan after the first 24 months of an eligible disability or that the Participant has incurred a physical or mental condition of the Participant resulting from bodily injury, disease, or mental disorder renders him incapable of continuing any gainful occupation and which condition constitutes total disability under the federal Social Security Acts.

VIII.

Pre-Retirement Termination Benefits and Determination of Vested Interest

VIII.22 No Benefits Unless Herein Set Forth. Except as set forth in this Article, upon termination of employment of a Participant prior to his Normal Retirement Date or after satisfying the conditions for early retirement under the Enron Corp. Retirement Plan for any reason other than total and permanent disability (as defined in Section 7.2) or death, such Participant shall acquire no right to any benefit from the Plan or the Trust Fund.

VIII.23 Pre-Retirement Termination Benefit. Each Participant whose employment is terminated prior to his Normal Retirement Date for any reason other than total and permanent disability (as defined in Section 7.2) or death shall be entitled to a termination benefit of his Vested Interest in his Accounts, payable at the time and in the form provided in Article X. A Participant's Vested Interest in any contribution allocable to his Accounts after his Benefit Commencement Date shall be distributed, if his benefit was paid in a lump sum, or used to increase his payments, if his benefit is being paid on a periodic basis, as soon as administratively feasible after the date that such contribution is paid to the Trust Fund.

VIII.24 Determination of Vested Interest.

(a) A Participant shall have a 100% Vested Interest in his Before-Tax Contribution Account, After-Tax Contribution Account, and Rollover Contribution Account at all times.

(b) The Vested Interest in his Company Contribution Account of any Participant who was an Eligible Employee prior to July 1, 1999 shall be 100%. The Vested Interest in the Company Contribution Account of an individual who becomes an Eligible Employee on or after July 1, 1999 shall be 0% prior to his completion of one year of Vesting Service and 100% upon his completion of one year of Vesting Service.

(c) Paragraph (b) above notwithstanding, a Participant shall have a 100% Vested Interest in his Company Contribution Account (1) upon the attainment of his Normal Retirement Date while employed by the Company or a Controlled Entity, (2) upon the termination of his employment with the Company at a time when he is totally and permanently disabled (as defined in Section 7.2), (3) upon the death of such Participant while an Employee, or (4) upon his Involuntary Termination.

(d) Notwithstanding anything contrary in the Plan, if a transaction occurs which is not approved, recommended or supported by a majority of the Board of Directors of Enron Corp. in actions taken prior to, and with respect to, such transaction in which either (i) Enron Corp. merges or consolidates with any other corporation (other than one of Enron Corp.'s wholly owned subsidiaries) and is not the surviving corporation (or survives only as the

subsidiary of another corporation), (ii) Enron Corp. sells all or substantially all of its assets to any other person or entity, or (iii) Enron Corp. is dissolved, or if (iv) any third person or entity (other than the trustee or committee of any qualified employee benefit plan of Enron Corp.) together with its affiliates and associates shall be, directly or indirectly, the Beneficial Owner of at least 30% of the Voting Stock of Enron Corp., or (v) the individuals who constitute the members of Enron Corp.'s Board of Directors (the "Incumbent Board") cease for any reason to constitute at least a majority thereof, provided that any person becoming a director whose election or nomination for election by Enron Corp.'s stockholders was approved by a vote of at least 80% of the directors comprising the Incumbent Board (either by a specific vote or by approval of the proxy statement of Enron Corp. in which such person is named as a nominee for director, without objection to such nomination) shall be, for purposes of this clause (v), considered as through such person were a member of the Incumbent Board, then within (a) 10 days of the approval by the shareholders of Enron Corp. of such merger, consolidation, sale of assets or dissolution as described in clause (i), (ii) or (iii) or (b) 30 days of the occurrence of such change of Beneficial Ownership or directors as described in clause (iv) or (v) of this Paragraph (d), each Participant shall acquire a 100% Vested Interest in his Company Contribution Account. For the purpose of this Paragraph (d), the following terms shall have the following meanings:

(1) "Affiliate" is used to indicate a relationship to a specified person and shall mean a person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such specified person.

(2) "Associate" is used to indicate a relationship with a specified person and shall mean (i) any corporation, partnership or other organization to which such specified person is an officer or partner or is, directly or indirectly, the Beneficial Owner of 10% or more of any class equity securities, (ii) any trust or other estate in which such specified person has a substantial beneficial interest or as to which such specified person serves as trustee or in a similar fiduciary capacity, (iii) any relative or spouse of such specified person, or any relative of such spouse, who has the same home as such specified person or who is a director or officer of Enron Corp. or any of its subsidiaries, and (iv) any person who is a director or officer of such specified person or any of its parents or subsidiaries (other than Enron Corp. or any wholly owned subsidiary of Enron Corp.).

(3) "Beneficial Owner" shall be defined by reference to Rule 13(d)-3 under the Securities Exchange Act of 1934; provided, however, and without limitation, any individual, corporation, partnership, group, association or other person or entity which has the right to acquire any Voting Stock at any time in the future, whether such right is contingent or absolute, pursuant to any agreement, arrangement or understanding or upon exercise of conversion rights, warrants or options, or otherwise, shall be the Beneficial Owner of such Voting Stock.

(4) "Voting Stock" shall mean all outstanding shares of capital stock of Enron Corp. entitled to vote generally in elections for directors, considered as one class

provided, however, that if Enron Corp. has shares of Voting Stock entitled to more or less than one vote for any such share, each reference to a proportion of shares of Voting Stock shall be deemed to refer to such proportion of the votes entitled to be cast by such shares.

VIII.25 **Crediting of Vesting Service.**

(a) For the period preceding the Effective Date, subject to the provisions of Section 8.5, an individual shall be credited with Vesting Service in an amount equal to all service credited to him for vesting purposes under the Plan as it existed on the day prior to the Effective Date.

(b) On and after the Effective Date, subject to the remaining Paragraphs of this Section and to the provisions of Section 8.5, an individual shall be credited with Vesting Service in an amount equal to his aggregate Periods of Service whether or not such Periods of Service are completed consecutively.

(c) Paragraph (b) above notwithstanding, if an individual terminates his Service (at a time other than during a leave of absence) and subsequently resumes his Service, if his Reemployment Commencement Date is within twelve months of his Severance from Service Date, such Period of Severance shall be treated as a Period of Service for purposes of Paragraph (b) above.

(d) Paragraph (b) above notwithstanding, if an individual terminates his Service during a leave of absence and subsequently resumes his Service, if his Reemployment Commencement Date is within twelve months of the beginning of such leave of absence, such Period of Severance shall be treated as a Period of Service for purposes of Paragraph (b) above.

VIII.26 **Forfeiture of Vesting Service.**

(a) In the case of a Participant who terminates employment with the Company at a time when he has a Vested Interest of less than 100% and who then incurs a Period of Severance of five consecutive years, such Participant's years of Vesting Service completed *after* such Period of Severance shall be disregarded for purposes of determining such Participant's Vested Interest in any Plan benefits derived from Company Contributions made on his behalf *before* such Period of Severance, but his years of Vesting Service completed *before* such Period of Severance shall not be disregarded in determining his Vested Interest in any Plan benefits derived from Company Contributions made on his behalf *after* such Period of Severance.

(b) A Participant who terminates employment with the Company at a time when he has a 100% Vested Interest shall not forfeit any of his Vesting Service for purposes of determining such Participant's Vested Interest in any Plan benefits derived from Company Contributions made on his behalf.

(c) In the case of a Participant who terminates employment at a time when he does not have any Vested Interest in his Plan benefit derived from Company Contributions and who then incurs a Period of Severance of five or more years, such Participant's Period of Service Completed before such Period of Severance shall be disregarded in determining his years of Vesting Service.

VIII.27 Forfeitures of Nonvested Account Balance.

(a) With respect to a Participant who terminates employment with the Company with a Vested Interest in his Company Contribution Account that is less than 100% and either is not entitled to a distribution from the Plan or receives a distribution from the Plan of the balance of his Vested Interest in his Accounts in the form of a lump sum distribution by the close of the second Plan Year following the Plan Year in which his employment is terminated, the nonvested portion of such terminated Participant's Company Contribution Account shall become a forfeiture as of his Benefit Commencement Date (or as of his date of termination of employment if no amount is payable from the Trust Fund on behalf of such Participant with such Participant being considered to have received a distribution of zero dollars on his date of termination of employment).

(b) With respect to a Participant who terminates employment with the Company with a Vested Interest in his Company Contribution Account less than 100% and who is not otherwise subject to the forfeiture provisions of Paragraph (a) above (or Section 8.8 below), the nonvested portion of his Company Contribution Account shall be forfeited as of the earlier of (1) the date the Participant completes a Period of Severance of five consecutive years or (2) the date of the terminated Participant's death.

VIII.28 Restoration of Forfeited Account Balance. In the event that the nonvested portion of a terminated Participant's Company Contribution Account becomes a forfeiture pursuant to Section 8.6, the terminated Participant shall, upon subsequent reemployment with the Company prior to incurring a Period of Severance of five consecutive years, have the forfeited amount restored to such Participant's Company Contribution Account unadjusted by any subsequent gains or losses of the Trust Fund; provided, however, that such restoration shall be made only if such Participant repays in cash an amount equal to the amount so distributed to him pursuant to Section 8.6 within five years from the date the Participant is reemployed; provided, further, that such Participant's repayment of amounts distributed to him from his Before-Tax Contribution Account and his After-Tax Contribution Account shall be limited to the portion thereof that was attributable to contributions with respect to which the Company made Company Matching Contributions. A reemployed Participant who was not entitled to a distribution from the Plan on his date of termination of employment shall be considered to have repaid a distribution of zero dollars on the date of his reemployment. Any such restoration shall be made as soon as practicable after the date of repayment. Notwithstanding anything to the contrary in the Plan, forfeited amounts to be restored by the Company pursuant to this Section shall be charged against and deducted from forfeitures for the Plan Year in which such amounts are restored that would otherwise be available to be applied

pursuant to Section 4.3. If such forfeitures otherwise available are not sufficient to provide such restoration, the portion of such restoration not provided by forfeitures shall be provided by an additional Company contribution.

VIII.29 Special Formula for Determining Vested Interest for Partial Accounts. With respect to a Participant whose Vested Interest in his Company Contribution Account is less than 100% and who makes a withdrawal from or receives a termination distribution from his Company Contribution Account other than a lump sum distribution by the close of the second Plan Year following the Plan Year in which his employment is terminated, any amount remaining in his Company Contribution Account shall continue to be maintained as a separate account. At any relevant time, such Participant's nonforfeitable portion of his separate account shall be determined in accordance with the following formula:

$$X = P(AB + (R \times D)) - (R \times D)$$

For purposes of applying the formula: X is the nonforfeitable portion of such separate account at the relevant time; P is the Participant's Vested Interest in his Company Contribution Account at the relevant time; AB is the balance of such separate account at the relevant time; R is the ratio of the balance of such separate account at the relevant time to the balance of such separate account after the withdrawal or distribution; and D is the amount of the withdrawal or distribution. For all other purposes of the Plan, a Participant's separate account shall be treated as a Company Contribution Account. Upon his incurring a Period of Severance of five consecutive years, the forfeitable portion of a Participant's separate account and Company Contribution Account shall be forfeited as of the end of the Plan Year during which the Participant completes such Period of Severance if not forfeited earlier pursuant to the provisions of Section 8.6.

IX.

Death Benefits

IX.30 Death Benefits. Upon the death of a Participant while an Employee, the Participant's designated beneficiary shall be entitled to a death benefit from his Accounts, payable at the time and in the form provided in Article X. Any contribution allocable to a Participant's Accounts after his Benefit Commencement Date shall be distributed, if the death benefit was paid in a lump sum, or used to increase payments, if the death benefit is being paid on a periodic basis, as soon as administratively feasible after the date that such contribution is paid to the Trust Fund.

IX.31 Designation of Beneficiaries.

(a) Each Participant shall have the right to designate the beneficiary or beneficiaries to receive payment of his benefit in the event of his death. Each such designation shall be made by executing the beneficiary designation form prescribed by the Committee and filing such form with the Committee. Any such designation may be changed at any time by such Participant by execution and filing of a new designation in accordance with this Section. Notwithstanding the foregoing, if a Participant who is married on the date of his death has designated an individual or entity other than his surviving spouse as his beneficiary, such designation shall not be effective unless (1) such surviving spouse has consented thereto in writing and such consent (A) acknowledges the effect of such specific designation, (B) either consents to the specific designated beneficiary (which designation may not subsequently be changed by the Participant without spousal consent) or expressly permits such designation by the Participant without the requirement of further consent by such spouse, and (C) is witnessed by a Plan representative (other than the Participant) or a notary public or (2) the consent of such spouse cannot be obtained because such spouse cannot be located or because of other circumstances described by applicable Treasury regulations. Any such consent by such surviving spouse shall be irrevocable.

(b) If no beneficiary designation is on file with the Committee at the time of the death of the Participant or if such designation is not effective for any reason as determined by the Committee, the designated beneficiary or beneficiaries to receive such death benefit shall be as follows:

(1) If a Participant leaves a surviving spouse, his designated beneficiary shall be such surviving spouse; and

(2) If a Participant leaves no surviving spouse, his designated beneficiary shall be (a) such Participant's executor or administrator or (B) his heirs at law if there is no administration of such Participant's estate.

(c) Notwithstanding the preceding provisions of this Section and to the extent not prohibited by state or federal law, if a Participant is divorced from his spouse and at the time of his death is not remarried to the person from whom he was divorced, any designation of such divorced spouse as his beneficiary under the Plan filed prior to the divorce shall be null and void unless the contrary is expressly stated in writing filed with the Committee by the Participant. The interest of such divorced spouse failing hereunder shall vest in the persons specified in Paragraph (b) above as if such divorced spouse did not survive the Participant.

(d) Paragraphs (a) and (b) above to the contrary notwithstanding, if a Participant who has elected to receive his Plan benefit in the form of a nontransferable annuity contract pursuant to Section 10.2(b) dies prior to his Benefit Commencement Date and leaves a surviving spouse, such Participant's beneficiary shall be such surviving spouse as to 50% of the amounts credited to his Accounts and any designation of any other person or entity by such Participant as his beneficiary with respect to such amounts shall be null and void.

X.

Time and Form of Payment of Benefits

X.32 Determination of Benefit Commencement Date.

(a) Subject to the provisions of the remaining Paragraphs of this Section, a Participant's Benefit Commencement Date shall be the date that is as soon as administratively feasible after the date the Participant or his beneficiary becomes entitled to a benefit pursuant to Article VI, VII, VIII, or IX.

(b) Unless a Participant (1) has attained age sixty-five or died or (2) consents to a distribution pursuant to Paragraph (a) within the ninety-day period ending on the date payment of his benefit hereunder is to commence pursuant to Paragraph (a), his Benefit Commencement Date shall be deferred to the date which is as soon as administratively feasible after the earlier of the date the Participant attains age sixty-five or the Participant's date of death, or such earlier date as the Participant may elect by written notice to the Committee prior to such date. The Committee shall furnish information pertinent to his consent to each Participant no less than thirty days (unless such thirty-day period is waived by an affirmative election in accordance with applicable Treasury regulations) and no more than ninety days before his Benefit Commencement Date, and the furnished information shall include a general description of the material features of, and an explanation of the relative values of, the alternative forms of benefit available under the Plan and must inform the Participant of his right to defer his Benefit Commencement Date and of his Direct Rollover right pursuant to Section 10.5 below, if applicable.

(c) A Participant's Benefit Commencement Date shall in no event be later than the sixtieth day following the close of the Plan Year during which such Participant attains, or would have attained, his Normal Retirement Date or, if later, terminates his employment with the Company or a Controlled Entity.

(d) A Participant's Benefit Commencement Date shall be in compliance with the provisions of section 401(a)(9) of the Code and applicable Treasury regulations thereunder and shall in no event be later than:

(1) For Participants attaining age seventy and one-half before January 1, 1999, April 1 of the calendar year following the calendar year in which such Participant attains the age of seventy and one-half unless the Participant affirmatively elects to defer his Benefit Commencement Date to any later date permitted under Section 401(a)(9) of the Code provided that such election shall be available only while the Participant remains actively employed with the Company;

(2) For Participants attaining age seventy and one-half after December 31, 1998, April 1 of the calendar year following the later of the calendar year in which such Participant attains the age of seventy and one-half unless the Participant affirmatively elects to defer his Benefit Commencement Date to any later date permitted under Section 401(a)(9) of the Code provided that such election shall be available only while the Participant remains actively employed with the Company and shall not be available to any Participant who is a "five percent owner" (as defined in Section 416 of the Code) with respect to the Plan Year ending in the calendar year in which such Participant attains the age of seventy and one-half; and

(3) In the case of a benefit payable pursuant to Article IX, (A) if payable to other than the Participant's spouse, the last day of the one-year period following the death of such Participant or (B) if payable to the Participant's spouse, after the date upon which such Participant would have attained the age of seventy and one-half, unless such surviving spouse dies before payments commence, in which case the Benefit Commencement Date may not be deferred beyond the last day of the one-year period following the death of such surviving spouse.

The provisions of this Section notwithstanding, a Participant may not elect to defer the receipt of his benefit hereunder to the extent that such deferral creates a death benefit that is more than incidental within the meaning of section 401(a)(9)(G) of the Code and applicable Treasury regulations thereunder.

(e) If (A) a Participant attained age seventy and one-half but did not terminate employment with the Company prior to 1997, (B) such Participant's Benefit Commencement Date occurred prior to his termination of employment pursuant to the provisions of Paragraph (d) as in effect prior to the Effective Date, (C) such Participant is an Employee and (D) such Participant was not a "five-percent owner" (as defined in section 416 of the Code) with respect to the Plan Year ending in the calendar year in which such Participant attained the age of seventy and one-half, such Participant may affirmatively elect to cease the distribution of his Accounts hereunder until the time described in Paragraph (d)(2) above.

(f) Subject to the provisions of Paragraph (d), a Participant's Benefit Commencement Date shall not occur unless the Article VI, VII, VIII, or IX event entitling the Participant (or his beneficiary) to a benefit constitutes a distributable event described in section 401(k)(2)(B) of the Code and shall not occur while the Participant is employed by the Company or any Controlled Entity (irrespective of whether the Participant has become entitled to a distribution of his benefit pursuant to Article VI, VII, VIII, or IX).

(g) Paragraphs (a), (b) and (c) above notwithstanding, but subject to the provisions of Paragraph (d) above, a Participant and the beneficiary of a Participant who dies prior to his Benefit Commencement Date, other than a Participant whose Vested Interest in his Accounts is not in excess of $5,000, must file a claim for benefits in the manner prescribed by the Committee before payment of his benefits will commence.

(h) Benefits shall be paid (or transferred pursuant to Section 10.5) in cash except that a Participant (or his designated beneficiary or legal representative in the case of a deceased Participant) may elect to have the portion of his Accounts invested in Enron Stock or EO&G Stock paid (or transferred pursuant to Section 10.5) in full shares of Enron Stock or EO&G Stock with any balance (including fractional shares of Enron Stock) to be paid or transferred in cash. Conversions of Enron Stock or EO&G Stock to cash and cash to Enron Stock or EO&G Stock shall be based upon the value of Enron Stock as applicable on the Participant's Benefit Commencement Date.

X.33 Alternative Forms of Benefit for Participants.

(a) Subject to the provisions of Paragraph (b) below, the benefit of any Participant shall be paid in a lump sum.

(b) In addition and as an elective alternative to the normal benefit payment form pursuant to Paragraph (a) above, a Participant who is entitled to a distribution from the Plan pursuant to Article VI, VII or VIII may elect to receive such distribution in the form of a commercial annuity contract providing payments for the life of the Participant if he is not married or a joint and survivor annuity providing payments for his life and a fifty percent surviving spouse annuity for the life of his surviving spouse if he is married. In lieu of the foregoing normal forms of annuity contract payments for his annuity under this Paragraph (b), a Participant may elect a commercial annuity contract providing alternate forms of annuity payments. The terms of any commercial annuity contract distributed to a Participant shall provide that payments under such annuity will commence immediately, subject to the Participant's rights to defer commencement of payments in accordance with applicable provisions of the Plan. The procedure for a Participant to elect the commercial annuity contract form of distribution will be to deliver to the Committee a written notice of his interest in an annuity form of distribution. Said written notification must be received by the Committee not later than the dates specified below:

(1) In the case of retirement, death, termination of employment or determination of total and permanent disability of the Participant, which occurs during the first 10 days of any [month], the written notification of interest in an annuity distribution form must be received by the Committee by the end of that [month].

(2) In the case of retirement, death, termination of employment or determination of total and permanent disability of the Participant, which occurs after the 10th day of any month, the written notification of interest in an annuity distribution form must be received by the Committee by the end of the following month.

Upon receipt of such notice, the Committee will give the Participant a written explanation in non-technical language of: (i) the terms and conditions of the annuity contract distribution form in general and of the normal annuity contract form of payment of the qualified joint and fifty per-

cent surviving spouse form of annuity or, as applicable, the single life form of annuity, (ii) the Participant's right to make, and to revoke, an election waiving the joint and fifty percent surviving spouse form of annuity or, as applicable, single life form of annuity, (iii) the financial effect upon his benefit (in terms of dollars per benefit payment) of his making or revoking an election to waive the qualified joint and fifty percent surviving spouse form of annuity, or, as applicable, single life form of annuity, (iv) the rights of his spouse with respect to his elections and (v) sufficient additional information to explain the relative values of alternative forms of payment under the annuity contract distribution option. The Committee will either mail or personally deliver the written explanation to the Participant by such time as to reasonably assure that it will be received on or about the later of:

(1) No more than ninety days prior to his entry date into the annuity contract; and

(2) No less than thirty days prior to his entry date into the annuity contract.

If an additional written explanation is due because of the Participant's written request for additional information, such explanation may be personally delivered or mailed (first class, postage prepaid) within thirty days from the date of the Participant's written request. The period within which the Participant must make his election shall be the ninety-day period ending on his annuity starting date (as such term is defined in Treasury Regulation § 1.401(a)-11(b)(6)). The Participant may revoke any election made (or make a new election) at any time during such election period. If, during such election period, the Participant makes a written request to the Committee for additional information, the election period will be extended to the extent necessary, to include the ninety calendar days immediately following the furnishing of all the additional information to him. Once an insurance company has issued the form of annuity contract elected, the election period shall cease and the Participant's annuity election shall be irrevocable. If a married Participant whose benefits, in the absence of an election otherwise, would be paid in the joint and fifty percent surviving spouse form of annuity elects a different annuity form, such election must be in the form of a qualified election. A qualified election is a benefit election accompanied by a written waiver of the joint and fifty percent surviving spouse form of annuity which waiver along with, where applicable, the designation of a specific beneficiary other than the spouse and his specific form of benefit is consented to by his spouse in a writing which is witnessed by a representative of the Plan, or a notary public, which acknowledges the effect of the election and which may not be changed without the consent of the Participant's spouse. Upon receipt of the executed forms wherein a Participant elects the annuity contract distribution form and the type of annuity he desires to receive, his Accounts shall be converted into cash and used to purchase a commercial annuity contract providing the annuity form of payment selected by the Participant. If a Participant who is married and who has elected an annuity contract form of distribution pursuant to subitem (e) above (regardless of the form of payment he elected under such contract) dies prior to the purchase of such contract, 50% of his Accounts shall be

distributed to his surviving spouse (and any beneficiary designation or other election to the contrary shall be null and void) in the form of an annuity contract providing a single life annuity for the life of such spouse unless such spouse elects a lump sum payment. If a Participant who is married has elected an annuity contract form of distribution pursuant to this Paragraph (b) (regardless of the form of payment he elected under such contract), any withdrawals from or loans made from his Accounts prior to the purchase of such contract shall be subject to the election and spousal consent rules described above in the same manner as the Participant's elections to take an annuity form of payment other than the joint and fifty percent surviving spouse annuity.

(c0 Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Paragraph, a Distributee may elect, at the time and in the manner prescribed by the Committee, to have any portion of an Eligible Rollover Distribution (other than any portion attributable to the offset of an outstanding loan balance of such Participant pursuant to the Plan's loan procedure) paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. The provisions of this Paragraph shall apply only if the Participant's Eligible Rollover Distribution is $200 or more or, if less than 100% of the Participant's Eligible Rollover Distribution is to be a Direct Rollover, the Direct Rollover is $500 or more. Prior to any Direct Rollover pursuant to this Paragraph, the Distributee shall furnish the Committee with a statement that the plan, account or annuity to which the benefit is to be transferred is, or is intended to be, an Eligible Retirement Plan.

(d0 Benefits shall be paid or transferred in cash except (A) the portion of a Participant's Accounts which is invested in Enron Stock shall be distributed in full shares of Enron Corp. common stock (with any balance of such portion to be paid or transferred in cash) and the portion of a Participant's Accounts which is invested in EO&G Stock shall be distributed or transferred in full shares EO&G Stock (with any balance of such portion to be paid or transferred in cash) as elected by a Participant and (B) any Participant who elects an annuity form of distribution shall have such distribution effected by the purchase and distribution to him of a commercial annuity contract.

(e0 If a Participant, who terminated his employment under circumstances such that he was entitled to a benefit pursuant to Article VI, VII, or VIII, dies prior to the time that any funds from his Accounts have been paid, or irrevocably committed to be paid, to provide a benefit pursuant to this Section, the amount of the benefit to which he was entitled shall be paid pursuant to Section 10.3 just as if such Participant had died while employed by the Company except that his Vested Interest shall be determined pursuant to Article VI, VII, or VIII, whichever is applicable.

X.34 Alternative Forms of Death Benefit. For purposes of Article IX, the death benefit for a deceased Participant shall be paid to his beneficiary designated in accordance with the provisions of Section 9.2 in a lump sum subject to the provisions of Paragraph (d) of Section 9.2.

X.35 Cash-Out of Benefit. If a Participant terminates his employment and his Vested Interest in his Accounts is not in excess of $5,000, such Participant's benefit shall be paid in one lump sum payment in lieu of any other form of benefit herein provided. Any such payment shall be made at the time specified in Section 10.1(a) without regard to the consent restrictions of Section 10.1(b) and the election and spousal consent requirements of Paragraph (b) of Section 10.2, if applicable. The provisions of this Section shall not be applicable to a Participant following his Benefit Commencement Date.

X.36 Direct Rollover Election. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Committee, to have all or any portion of an Eligible Rollover Distribution (other than any portion attributable to the offset of an outstanding loan balance of such Participant pursuant to the Plan's loan procedure) paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. The preceding sentence notwithstanding, a Distributee may elect a Direct Rollover pursuant to this Section only if such Distributee's Eligible Rollover Distributions during the Plan Year are reasonably expected to total $200 or more. Furthermore, if less than 100% of the Participant's Eligible Rollover Distribution is to be a Direct Rollover, the amount of the Direct Rollover must be $500 or more. Prior to any Direct Rollover pursuant to this Section, the Committee may require the Distributee to furnish the Committee with a statement from the plan, account, or annuity to which the benefit is to be transferred verifying that such plan, account, or annuity is, or is intended to be, an Eligible Retirement Plan.

X.37 Benefits from Account Balances. With respect to any benefit payable in any form pursuant to the Plan, such benefit shall be provided from the Account balance(s) to which the particular Participant or beneficiary is entitled.

X.38 Commercial Annuities. At the direction of the Committee, the Trustee may pay any form of benefit provided hereunder other than a lump sum payment or a Direct Rollover pursuant to Section 10.5 by the purchase of a commercial annuity contract and the distribution of such contract to the Participant or beneficiary. Thereupon, the Plan shall have no further liability with respect to the amount used to purchase the annuity contract and such Participant or beneficiary shall look solely to the company issuing such contract for such annuity payments. All certificates for commercial annuity benefits shall be nontransferable, except for surrender to the issuing company, and no benefit thereunder may be sold, assigned, discounted, or pledged (other than as collateral for a loan from the company issuing same). Notwithstanding the foregoing, the terms of any such commercial annuity contract shall conform with the time of payment, form of payment, and consent provisions of Sections 10.1, 10.2, and 10.3.

X.39 Unclaimed Benefits. In the case of a benefit payable on behalf of a Participant, if the Committee is unable to locate the Participant or beneficiary to whom such benefit is payable upon the Committee's determination thereof, such benefit shall be forfeited. Notwithstanding the foregoing, if subsequent to any such forfeiture the Participant or beneficiary to whom such

benefit is payable makes a valid claim for such benefit, such forfeited benefit shall be restored to the Plan in the manner provided in Section 8.7.

X.40 Claims Review.

(a0 In any case in which a claim for Plan benefits of a Participant or beneficiary is denied or modified, the Committee shall furnish written notice to the claimant within ninety days after receipt of such claim for Plan benefits (or within 180 days if additional information requested by the Committee necessitates an extension of the ninety-day period and the claimant is informed of such extension in writing within the original ninety-day period), which notice shall:

(1 State the specific reason or reasons for the denial or modification;

(2 Provide specific reference to pertinent Plan provisions on which the denial or modification is based;

(3 Provide a description of any additional material or information necessary for the Participant, his beneficiary, or representative to perfect the claim and an explanation of why such material or information is necessary; and

(4 Explain the Plan's claim review procedure described in Paragraph (b) below.

(b0 In the event a claim for Plan benefits is denied or modified, if the Participant, his beneficiary, or a representative of such Participant or beneficiary desires to have such denial or modification reviewed, he must, within sixty days following receipt of the notice of such denial or modification, submit a written request for review by the Committee of its initial decision. In connection with such request, the Participant, his beneficiary, or the representative of such Participant or beneficiary may review any pertinent documents upon which such denial or modification was based and may submit issues and comments in writing. Within sixty days following such request for review the Committee shall, after providing a full and fair review, render its final decision in writing to the Participant, his beneficiary or the representative of such Participant or beneficiary stating specific reasons for such decision and making specific references to pertinent Plan provisions upon which the decision is based. If special circumstances require an extension of such sixty-day period, the Committee's decision shall be rendered as soon as possible, but not later than 120 days after receipt of the request for review. If an extension of time for review is required, written notice of the extension shall be furnished to the Participant, beneficiary, or the representative of such Participant or beneficiary prior to the commencement of the extension period.

XI.

In-Service Withdrawals

11.1 In-Service Withdrawals.

(a) A Participant may withdraw from his After-Tax Contribution Account any amount not in excess of the then value of such Account.

(b) A Participant may withdraw from his Company Contribution Account any or all amounts held in such Account which are attributable to contributions allocated thereto prior to 1987.

(c) A Participant who has contributed After-Tax Contributions or had Before-Tax Contributions made on his behalf to the Plan for at least sixty cumulative months may withdraw from his Company Contribution Account an amount not exceeding his Vested Interest in the then value of the portion of such Account which is attributable to contributions made thereto prior to 1987.

(d) A Participant may withdraw from his Rollover Account any or all amounts held in such Account.

(e) A Participant who has attained age fifty-nine and one-half may withdraw from his Before-Tax Contribution Account an amount not exceeding the then value of such Account.

(f) Any withdrawal pursuant to this Section shall be made as of the last business day of a week by complying with procedures established by the Committee. In applying for a withdrawal pursuant to this Section, a Participant shall specify the dollar amount he wishes to withdraw. A Participant's withdrawal shall be distributed by liquidating the distributable amounts in his Accounts in the following order: first, the distributable amount pursuant to Paragraph (a) above; second, the distributable amount pursuant to Paragraph (b) above; third, the distributable amount pursuant to Paragraph (c) above; fourth, the distributable amount pursuant to Paragraph (d) above; and last, the distributable amount pursuant to Paragraph (e) above. Notwithstanding the provisions of this Section, only one withdrawal pursuant to the Paragraphs above may be made in any calendar quarter. No withdrawal shall be made from an Account to the extent such Account has been pledged to secure a loan under Article XII. If Participant's Account from which a withdrawal is made is invested in more than one Investment Fund, the withdrawal shall be made pro rata from each Investment Fund in which such Account is invested. All withdrawals under this Section shall be paid in cash except that the portion of a Participant's Accounts which is to be withdrawn which is invested in Enron Stock shall be paid in full shares of Enron Stock (with any balance of such portion to be paid in cash) and the portion of a Participant's Accounts which is to be withdrawn which is invested in EO&G Stock shall be paid in full shares of EO&G Stock (with any balance of such portion to be paid in cash), in either case unless the Participant has elected in writing that such

EO&G Stock shall be paid in full shares of EO&G Stock (with any balance of such portion to be paid in cash), in either case unless the Participant has elected in writing that such portion be paid in cash. Any withdrawal hereunder shall be subject to the benefit transfer election described in Section 10.5.

XI.2 Hardship Withdrawals.

A Participant who has a financial hardship, as determined by the Committee, and who has made all available withdrawals pursuant to Section 11.1 and pursuant to the provisions of any other plans of the Company and any Controlled Entities of which he is a member and who has obtained all available loans pursuant to Article XII and pursuant to the provisions of any other plans of the Company and any Controlled Entities of which he is a member may withdraw from his Before-Tax Contribution Account an amount not to exceed the amount determined by the Committee as being available for withdrawal pursuant to this Paragraph. For purposes of this Paragraph, financial hardship shall mean the immediate and heavy financial needs of the Participant. A withdrawal based upon financial hardship pursuant to this Paragraph shall not exceed the amount required to meet the immediate financial need created by the hardship and not reasonably available from other resources of the Participant. The amount required to meet the immediate financial need may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution. The determination of the existence of a Participant's financial hardship and the amount required to be distributed to meet the need created by the hardship shall be made by the Committee. The decision of the Committee shall be final and binding, provided that all Participants similarly situated shall be treated in a uniform and nondiscriminatory manner. A withdrawal shall be deemed to be made on account of an immediate and heavy financial need of a Participant if the withdrawal is for:

(1 Expenses for medical care described in section 213(d) of the Code previously incurred by the Participant, the Participant's spouse, or any dependents of the Participant (as defined in section 152 of the Code) or necessary for those persons to obtain medical care described in section 213(d) of the Code and not reimbursed or reimbursable by insurance;

(2 Costs directly related to the purchase of a principal residence of the Participant (excluding mortgage payments);

(3 Payment of tuition and related educational fees, and room and board expenses, for the next twelve months of post-secondary education for the Participant or the Participant's spouse, children, or dependents (as defined in section 152 of the Code);

(4 Payments necessary to prevent the eviction of the Participant from his principal residence or foreclosure on the mortgage of the Participant's principal residence; or

(5 Such other financial needs that the Commissioner of Internal Revenue may deem to be immediate and heavy financial needs through the publication of revenue rulings, notices, and other documents of general applicability.

The above notwithstanding, withdrawals under this Paragraph from a Participant's Before-Tax Contribution Account shall be limited to the sum of the Participant's Before-Tax Contributions to the Plan, plus income allocable thereto and credited to the Participant's Before-Tax Contribution Account as of December 31, 1988, less any previous withdrawals of such amounts. A Participant who makes a withdrawal from his Before-Tax Account under this Paragraph may not make elective contributions or employee contributions to the Plan or any other qualified or nonqualified plan of the Company or any Controlled Entity for a period of twelve months following the date of such withdrawal. Further, such Participant may not make elective contributions under the Plan or any other plan maintained by the Company or any Controlled Entity for such Participant's taxable year immediately following the taxable year of the withdrawal in excess of the applicable limit set forth in Section 3.1(d) for such next taxable year less the amount of such Participant's elective contributions for the taxable year of the withdrawal.

XI.3 Restriction on In-Service Withdrawals. All withdrawals under this Article shall be paid in cash. This Article shall not be applicable to a Participant following termination of employment and the amounts in such Participant's Accounts shall be distributable only in accordance with the provisions of Article X. A Participant may not prior to termination of employment or retirement withdraw any portion of his Accounts which is attributable to contributions which are based upon Base Pay earned by such Participant for services rendered in the United Kingdom under circumstances pursuant to which such Base Pay would be subject to taxation under the Inland Revenue laws of the United Kingdom; provided, however, that the foregoing limitation shall be applicable only with respect to contributions made by or for the benefit of such Participant to the Plan from and after May 7, 1992.

XII.

Loans

XII.1 Eligibility for Loan. Upon application by (1) any Participant who is an Employee or (2) any Participant (A) who is a party-in-interest as that term is defined in section 3(14) of the Act, as to the Plan, (B) who is no longer employed by the Company, who is a beneficiary of a deceased Participant, or who is an alternate payee under a qualified domestic relations order, as defined in section 414(p)(8) of the Code, and (C) who retains an Account balance under the Plan (an individual who is eligible to apply for a loan under this Article being hereinafter referred to as a "Participant" for purposes of this Article), the Committee may in its discretion direct the Trustee to make a loan to such Participant. Such loans shall be made pursuant to the provisions of the Committee's written loan procedure, which procedure is hereby incorporated by reference as a part of the Plan. Notwithstanding the foregoing, a Participant may not prior to termination of employment or retirement borrow any portion of his Accounts which is attributable to contributions which are based upon Base Pay earned by such Participant for services rendered in the United Kingdom under circumstances pursuant to which such Base Pay would be subject to taxation under the Inland Revenue laws of the United Kingdom.

XII.2 Maximum Loan.

A loan to a Participant may not exceed 50% of the then value of such Participant's Vested Interest in his Accounts.

XII.3 Restrictions. Any loan application shall be subject to the time of payment requirements of Section 10.1 and to the election and spousal consent requirements of Paragraph (b) of Section 10.2 respecting repayment from the pledged Accounts of the Participant upon default of the loan if at the time of the loan, the Participant has in effect an election for an annuity distribution pursuant to Paragraph (b) of Section 10.2 and has not elected with a qualified election not to receive a joint and 50% surviving spouse annuity form of annuity. Such requirements shall be contained in the loan application and must be made and obtained within the ninety-day period prior to making the loan.

XIII.

Administration of the Plan

XIII.1 Appointment of Committee. The general administration of the Plan shall be vested in the Committee which shall be appointed by Enron Corp. and shall consist of one or more persons. Any individual, whether or not an Employee, is eligible to become a member of the Committee. Each member of the Committee shall, before entering upon the performance of his duties, qualify by signing a consent to serve as a member of the Committee under and pursuant to the Plan and by filing such consent with the records of the Committee. For purposes of the Act, the Committee shall be the Plan "administrator" and shall be the "named fiduciary" with respect to the general administration of the Plan (except as to the investment of the assets of the Trust Fund).

XIII.2 Term, Vacancies, Resignation, and Removal. Each member of the Committee shall serve until he resigns, dies, or is removed by Enron Corp.. At any time during his term of office, a member of the Committee may resign by giving written notice to Enron Corp. and the Committee, such resignation to become effective upon the appointment of a substitute member or, if earlier, the lapse of thirty days after such notice is given as herein provided. At any time during his term of office, and for any reason, a member of the Committee may be removed by Enron Corp. with or without cause, and Enron Corp. may in their discretion fill any vacancy that may result therefrom. Any member of the Committee who is an Employee shall automatically cease to be a member of the Committee as of the date he ceases to be employed by Enron Corp. or a Controlled Entity of Enron Corp.

XIII.3 Officers, Records, and Procedures. The Committee may select officers and may appoint a secretary who need not be a member of the Committee. The Committee shall keep appropriate records of its proceedings and the administration of the Plan and shall make available for examination during business hours to any Participant or beneficiary such records as pertain to that individual's interest in the Plan. The Committee shall designate the person or persons who shall be authorized to sign for the Committee and, upon such designation, the signature of such person or persons shall bind the Committee.

XIII.4 Meetings. The Committee shall hold meetings upon such notice and at such time and place as it may from time to time determine. Notice to a member shall not be required if waived in writing by that member. A majority of the members of the Committee duly appointed shall constitute a quorum for the transaction of business. All resolutions or other actions taken by the Committee at any meeting where a quorum is present shall be by vote of a majority of those present at such meeting and entitled to vote. Resolutions may be adopted or other action taken without a meeting upon written consent signed by all of the members of the Committee.

XIII.5 Self-Interest of Members. No member of the Committee shall have any right to vote or decide upon any matter relating solely to himself under the Plan or to vote in any case in

which his individual right to claim any benefit under the Plan is particularly involved. In any case in which a Committee member is so disqualified to act and the remaining members cannot agree, Enron Corp. shall appoint a temporary substitute member to exercise all the powers of the disqualified member concerning the matter in which he is disqualified.

XIII.6 Compensation and Bonding. The members of the Committee shall not receive compensation with respect to their services for the Committee. To the extent required by the Act or other applicable law, or required by the Company, members of the Committee shall furnish bond or security for the performance of their duties hereunder.

XIII.7 Committee Powers and Duties. The Committee shall supervise the administration and enforcement of the Plan according to the terms and provisions hereof and shall have all powers necessary to accomplish these purposes, including, but not by way of limitation, the right, power, authority, and duty:

(a0 To make rules, regulations, and bylaws for the administration of the Plan that are not inconsistent with the terms and provisions hereof, provided such rules, regulations, and bylaws are evidenced in writing and to enforce the terms of the Plan and the rules and regulations promulgated thereunder by the Committee;

(b0 To construe in its discretion all terms, provisions, conditions, and limitations of the Plan, and, in all cases, the construction necessary for the Plan to qualify under the applicable provisions of the Code shall control;

(c0 To correct any defect or to supply any omission or to reconcile any inconsistency that may appear in the Plan in such manner and to such extent as it shall deem expedient in its discretion to effectuate the purposes of the Plan;

(d0 To employ and compensate such accountants, attorneys, investment advisors, and other agents, employees, and independent contractors as the Committee may deem necessary or advisable for the proper and efficient administration of the Plan;

(e0 To determine in its discretion all questions relating to eligibility;

(f0 To make a determination in its discretion as to the right of any person to a benefit under the Plan and to prescribe procedures to be followed by distributees in obtaining benefits hereunder;

(g0 To prepare, file, and distribute, in such manner as the Committee determines to be appropriate, such information and material as is required by the reporting and disclosure requirements of the Act;

(h0 To require and obtain from the Company and the Participants and their beneficiaries any information or data that the Committee determines is necessary for the proper administration of the Plan;

(i0 To instruct the Trustee as to the loans to Participants pursuant to the provisions of Article XII;

(j0 To direct the Trustee as to the investment of the Trust Fund in Enron Stock or EO&G Stock as the Committee may deem to be appropriate and to be in accordance with the provisions of the Plan;

(k0 To appoint investment managers pursuant to Section 15.5; and

(l0 Except as specifically provided herein, to direct the Trustee as to the exercise of rights or privileges to acquire, convert, or exchange Enron Stock or EO&G Stock.

XIII.8 Company to Supply Information. The Company shall supply full and timely information to the Committee, including, but not limited to, information relating to each Participant's Base Pay, age, retirement, death, or other cause of termination of employment and such other pertinent facts as the Committee may require. The Company shall advise the Trustee of such of the foregoing facts as are deemed necessary for the Trustee to carry out the Trustee's duties under the Plan. When making a determination in connection with the Plan, the Committee shall be entitled to rely upon the aforesaid information furnished by the Company.

XIII.9 Indemnification. The Company shall indemnify and hold harmless each member of the Committee and each Employee who is a delegate of the Committee against any and all expenses and liabilities arising out of his administrative functions or fiduciary responsibilities, including any expenses and liabilities that are caused by or result from an act or omission constituting the negligence of such individual in the performance of such functions or responsibilities, but excluding expenses and liabilities that are caused by or result from such individual's own gross negligence or willful misconduct. Expenses against which such individual shall be indemnified hereunder shall include, without limitation, the amounts of any settlement or judgment, costs, counsel fees, and related charges reasonably incurred in connection with a claim asserted or a proceeding brought or settlement thereof.

XIV.

Trustee and Administration of Trust Fund

XIV.1 Appointment, Resignation, Removal, and Replacement of Trustee.

(a0 The Trustee shall be appointed, removed, and replaced by and in the sole discretion of Enron Corp. The Trustee shall be the "named fiduciary" with respect to investment of the Trust Fund's assets.

(b0 Any Trustee may resign at any time by giving at least thirty days' written notice of such resignation to Enron Corp. Any Trustee may be removed, with or without cause, by Enron Corp. on written notice of such removal to such Trustee. Enron Corp. may appoint a successor Trustee by written designation, a copy of which shall be delivered to the Committee and the former Trustee. If there would be no other Trustee then acting, the actual appointment and qualification of a successor Trustee to whom the Trust Fund may be transferred are conditions which must be fulfilled before the resignation or removal of a Trustee shall become effective.

XIV.2 Trust Agreement. As a means of administering the assets of the Plan, the Company has entered into a Trust Agreement with the Trustee. The administration of the assets of the Plan and the duties, obligations, and responsibilities of the Trustee shall be governed by the Trust Agreement. The Trust Agreement may be amended from time to time as Enron Corp. deems advisable in order to effectuate the purposes of the Plan. The Trust Agreement is incorporated herein by reference and thereby made a part of the Plan.

XIV.3 Payment of Expenses. All expenses incident to the administration of the Plan and Trust, including but not limited to, legal, accounting, Trustee fees, direct expenses of the Company and the Committee in the administration of the Plan, and the cost of furnishing any bond or security required of the Committee shall be paid by the Trustee from the Trust Fund, and, until paid, shall constitute a claim against the Trust Fund which is paramount to the claims of Participants and beneficiaries; provided, however, that (a) the obligation of the Trustee to pay such expenses from the Trust Fund shall cease to exist to the extent such expenses are paid by the Company and (b) in the event the Trustee's compensation is to be paid, pursuant to this Section, from the Trust Fund, any individual serving as Trustee who already receives full-time pay from a Company or an association of Companies whose employees are Participants, or from an employee organization whose members are Participants, shall not receive any additional compensation for serving as Trustee. This Section shall be deemed to be a part of any contract to provide for expenses of Plan and Trust administration, whether or not the signatory to such contract is, as a matter of convenience, the Company.

XIV.4 Trust Fund Property. All income, profits, recoveries, contributions, forfeitures, and any and all monies, securities, and properties of any kind at any time received or held by the

Trustee hereunder shall be held for investment purposes as a commingled Trust Fund. The Committee shall maintain Accounts in the name of each Participant, but the maintenance of an Account designated as the Account of a Participant shall not mean that such Participant shall have a greater or lesser interest than that due him by operation of the Plan and shall not be considered as segregating any funds or property from any other funds or property contained in the commingled fund. No Participant shall have any title to any specific asset in the Trust Fund.

XIV.5 Distributions from Participants' Accounts. Distributions from a Participant's Accounts shall be made by the Trustee only if, when, and in the amount and manner directed in writing by the Committee. Any distribution made to a Participant or for his benefit shall be debited to such Participant's Account or Accounts. All distributions hereunder shall be made in cash except as otherwise specifically provided herein.

XIV.6 Payments Solely from Trust Fund. All benefits payable under the Plan shall be paid or provided for solely from the Trust Fund, and neither the Company nor the Trustee assumes any liability or responsibility for the adequacy thereof. The Committee or the Trustee may require execution and delivery of such instruments as are deemed necessary to assure proper payment of any benefits.

XIV.7 No Benefits to the Company. No part of the corpus or income of the Trust Fund shall be used for any purpose other than the exclusive purpose of providing benefits for the Participants and their beneficiaries and of defraying reasonable expenses of administering the Plan and Trust. Anything to the contrary herein notwithstanding, the Plan shall not be construed to vest any rights in the Company other than those specifically given hereunder.

XV.

Fiduciary Provisions

XV.1 Article Controls. This Article shall control over any contrary, inconsistent or ambiguous provisions contained in the Plan.

XV.2 General Allocation of Fiduciary Duties. Each fiduciary with respect to the Plan shall have only those specific powers, duties, responsibilities and obligations as are specifically given him under the Plan. Enron Corp. shall have the sole authority to appoint and remove the Trustee and members of the Committee. Except as otherwise specifically provided herein, the Committee shall have the sole responsibility for the administration of the Plan, which responsibility is specifically described herein. Except as otherwise specifically provided herein and in the Trust Agreement, the Trustee shall have the sole responsibility for the administration, investment, and management of the assets held under the Plan. However, if the Committee, as a co-fiduciary, shall exercise its power given hereunder at any time, and from time to time, by written notice to the Trustee, to direct the Trustee in the management, investment, and reinvestment of the Trust Fund, then in such event the Trustee shall be subject to all proper directions of the Committee that are made in accordance with the terms of the Plan and the Act. It is intended under the Plan that each fiduciary shall be responsible for the proper exercise of his own powers, duties, responsibilities, and obligations hereunder and shall not be responsible for any act or failure to act of another fiduciary except to the extent provided by law or as specifically provided herein.

XV.3 Fiduciary Duty. Each fiduciary under the Plan, including, but not limited to, the Committee and the Trustee as "named fiduciaries," shall discharge his duties and responsibilities with respect to the Plan:

(a0 Solely in the interest of the Participants, for the exclusive purpose of providing benefits to Participants and their beneficiaries and of defraying reasonable expenses of administering the Plan and Trust;

(b0 With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(c0 By diversifying the investments of the Plan so as to minimize the risk of large losses, unless under the circumstances it is prudent not to do so; and

(d0 In accordance with the documents and instruments governing the Plan insofar as such documents and instruments are consistent with applicable law.

No fiduciary shall cause the Plan or Trust Fund to enter into a "prohibited transaction" as provided in section 4975 of the Code or section 406 of the Act.

XV.4 Delegation of Fiduciary Duties. The Committee may appoint subcommittees, individuals, or any other agents as it deems advisable and may delegate to any of such appointees any or all of the powers and duties of the Committee. Such appointment and delegation must specify in writing the powers or duties being delegated, and must be accepted in writing by the delegatee. Upon such appointment, delegation, and acceptance, the delegating Committee members shall have no liability for the acts or omissions of any such delegatee, as long as the delegating Committee members do not violate any fiduciary responsibility in making or continuing such delegation.

XV.5 Investment Manager. The Committee may, in its sole discretion, appoint an "investment manager," with power to manage, acquire or dispose of any asset of the Plan and to direct the Trustee in this regard, so long as:

(a0 The investment manager is (1) registered as an investment adviser under the Investment Advisers Act of 1940, (2) not registered as an investment adviser under such act by reason of paragraph (1) of section 203A(a) of such act, is registered as an investment adviser under the laws of the state (referred to in such paragraph (1)) in which it maintains its principal office and place of business, and, at the time it last filed the registration form most recently filed by it with such state in order to maintain its registration under the laws of such state, also filed a copy of such form with the Secretary of Labor, (3) a bank, as defined in the Investment Advisers Act of 1940, or (4) an insurance company qualified to do business under the laws of more than one state; and

(b0 Such investment manager acknowledges in writing that he is a fiduciary with respect to the Plan.

Upon such appointment, the Committee shall not be liable for the acts of the investment manager, as long as the Committee members do not violate any fiduciary responsibility in making or continuing such appointment. The Trustee shall follow the directions of such investment manager and shall not be liable for the acts or omissions of such investment manager. The investment manager may be removed by the Committee at any time and within the Committee's sole discretion.

XV.6 Third Party Administrator. Notwithstanding any provision of the Plan or the Trust Agreement to the contrary, the Company may, in its sole discretion, engage any service provider which is not an employee or a subsidiary of the Company to perform identified administrative services with respect to the Plan ("Third-Party Administrative Services"). In the event that the Company so engages any such service provider to perform Third-Party Administrative Services, then notwithstanding any provision of the Plan to the contrary, the Company shall be fully responsible and accountable for selecting, credentialling, overseeing and monitoring such service provider, including without limitation, evaluating the quality of

performance, determining whether the fees charged are reasonable, and removing or replacing such service provider, as the Company deems to be necessary or appropriate in its discretion. Upon engaging a service provider to perform Third-Party Administrative Services, the Company shall advise the Committee in writing regarding such engagement identifying the service provider and the Third-Party Administrative Services which are to be performed by such service provider. Thereafter the Committee shall have no power, duty or responsibility with respect to such Third-Party Administrative Services and shall have no power, duty or responsibility to monitor the performance of such service provider.

XVI.

Amendments

XVI.1 Right to Amend. Subject to Section 16.2 and any other limitations contained in the Act or the Code, Enron Corp. may from time to time amend, in whole or in part, any or all of the provisions of the Plan on behalf of the Company and all Companies. Specifically, but not by way of limitation, Enron Corp. may make any amendment necessary to acquire and maintain a qualified status for the Plan under the Code, whether or not retroactive. In addition, any amendments to the Plan that do not have a significant cost impact on the Company and amendments necessary to acquire and maintain a qualified status for the Plan under the Code, whether or not retroactive, may be made by the Committee. The procedure for Enron Corp. to effect an amendment to the Plan shall be as follows:

(a0 Any amendment proposed to be made by the Plan shall first be considered by the Compensation Committee of the Board of Directors of Enron Corp. which shall have the sole power to approve and recommend to the Board of Directors of Enron Corp. that an amendment to the Plan be adopted; and

(b) Upon receipt of a recommendation by the Compensation Committee of the Board of Directors of Enron Corp. that an amendment be made to the Plan, the Board of Directors of Enron Corp. shall determine whether to adopt such amendment in accordance with its general rules and procedures of operation and upon adoption by the Board of Directors of Enron Corp. of a resolution adopting such amendment, the proposed amendment shall be deemed adopted and approved by Enron Corp.

The procedure for amending the Plan by the Committee shall be as follows:

(1) The Committee shall receive recommendations regarding adoption of a Plan amendment which is within its power to effectuate and shall consider such recommendations at a meeting called by the Committee in accordance with its regular rules and procedures;

(2) The Committee shall approve and adopt such amendment in accordance with its regular procedures regarding actions taken by the Committee and upon such approval and adoption, the amendment shall be deemed approved and adopted.

Following approval and adoption of an amendment by the Board of Directors of Enron Corp. or by the Committee, as applicable, the appropriate officers of Enron Corp. shall prepare and execute on behalf of Enron Corp. an instrument evidencing the amendment so adopted and shall take such other actions as may be appropriate or necessary to implement such amendment and secure for such amendment any qualification determination or other approval deemed appropriate or necessary by such officers.

XVI.2 Limitation on Amendments. No amendment of the Plan shall be made that would vest in the Company, directly or indirectly, any interest in or control of the Trust Fund. No amendment shall be made that would vary the Plan's exclusive purpose of providing benefits to Participants and their beneficiaries and of defraying reasonable expenses of administering the Plan or that would permit the diversion of any part of the Trust Fund from that exclusive purpose. No amendment shall be made that would reduce any then nonforfeitable interest of a Participant. No amendment shall increase the duties or responsibilities of the Trustee unless the Trustee consents thereto in writing.

XVII.

Discontinuance of Contributions, Termination, Partial Termination, and Merger or Consolidation

XVII.1 Right to Discontinue Contributions, Terminate, or Partially Terminate. The Company has established the Plan with the bona fide intention and expectation that from year to year it will be able to, and will deem it advisable to, make its contributions as herein provided. However, Enron Corp. shall have the right and the power to discontinue contributions to the Plan, terminate the Plan, or partially terminate the Plan at any time hereafter. Each member of the Committee and the Trustee shall be notified of such discontinuance, termination, or partial termination.

XVII.2 Procedure in the Event of Discontinuance of Contributions, Termination, or Partial Termination.

(a) If the Plan is amended so as to permanently discontinue Company Contributions, or if Company Contributions are in fact permanently discontinued, the Vested Interest of each affected Participant shall be 100%, effective as of the date of discontinuance. In case of such discontinuance, the Committee shall remain in existence and all other provisions of the Plan that are necessary, in the opinion of the Committee, for equitable operation of the Plan shall remain in force.

(b) If the Plan is terminated or partially terminated, the Vested Interest of each affected Participant shall be 100%, effective as of the termination date or partial termination date, as applicable. Unless the Plan is otherwise amended prior to dissolution of the Company, the Plan shall terminate as of the date of dissolution of the Company.

(c) Upon discontinuance of contributions, termination, or partial termination, any previously unallocated contributions, forfeitures, and net income (or net loss) shall be allocated among the Accounts of the Participants on such date of discontinuance, termination, or partial termination according to the provisions of Article IV. Thereafter, the net income (or net loss) shall continue to be allocated to the Accounts of the Participants until the balances of the Accounts are distributed.

(d) In the case of a termination or partial termination of the Plan, and in the absence of a Plan amendment to the contrary, the Trustee shall pay the balance of the Accounts of a Participant for whom the Plan is so terminated, or who is affected by such partial termination, to such Participant, subject to the time of payment, form of payment, and consent provisions of Article X.

XVII.3 Merger, Consolidation, or Transfer. This Plan and Trust Fund may not merge or consolidate with, or transfer its assets or liabilities to, any other plan, unless immediately

thereafter each Participant would, in the event such other plan terminated, be entitled to a benefit which is equal to or greater than the benefit to which he would have been entitled if the Plan were terminated immediately before the merger, consolidation, or transfer.

XVIII.

Participating Companies

XVIII.1 Adoption by Other Companies.

(a) It is contemplated that other corporations, associations, partnerships, or proprietorships may adopt this Plan and the Trust and thereby become Companies. By appropriate action of its Board of Directors or noncorporate counterpart, any such entity, whether or not presently existing, may become, upon approval of Enron Corp., a party hereto. Any action taken in connection with an adoption of the Plan by an entity or discontinuation of an adoption of the Plan by an entity which was not approved by Enron Corp. in accordance with the foregoing procedures shall be null and void.

(b) The provisions of the Plan and the Trust shall apply separately and equally to each Company and its Employees in the same manner as is expressly provided for the Company and its Employees, except that the power to appoint or otherwise affect the Committee or the Trustee and the power to amend or terminate the Plan shall be exercised by Enron Corp. alone pursuant to Section 16.1. With the approval of Enron Corp., any Company that is not a Controlled Entity may, by appropriate action of its Board of Directors or noncorporate counterpart, terminate its participation in the Plan and Trust. Termination of participation by a Controlled Entity must be pursuant to the provisions of Section 16.1 of the Plan. Moreover, Enron Corp. may, in its discretion, terminate a Company's Plan and Trust participation at any time.

(c) Transfer of employment among Companies shall not be considered a termination of employment hereunder, and Service with one Company shall be considered as Service with all others.

XVIII.2 Single Plan. For purposes of the Code and the Act, the Plan as adopted by the Companies shall constitute a single plan rather than a separate plan of each Company. All assets in the Trust Fund shall be available to pay benefits to all Participants and their beneficiaries.

XVIII.3 Separate Application. In the case of an entity which has adopted the Plan and which is not a Controlled Entity of Enron Corp., Section 1.01(15) of the Plan shall be applied by substituting such entity for Enron Corp. and the term "Company" as used in the Plan shall refer to that entity as if the Plan were a separate plan for the Eligible Employees of such entity except as specifically provided otherwise in the Plan.

XIX.

Miscellaneous Provisions

XIX.1 Not Contract of Employment. The adoption and maintenance of the Plan shall not be deemed to be either a contract between the Company and any person or consideration for the employment of any person. Nothing herein contained shall be deemed to give any person the right to be retained in the employ of the Company or to restrict the right of the Company to discharge any person at any time nor shall the Plan be deemed to give the Company the right to require any person to remain in the employ of the Company or to restrict any person's right to terminate his employment at any time.

XIX.2 Alienation of Interest Forbidden. Except as otherwise provided with respect to "qualified domestic relations orders" and certain judgments and settlements pursuant to section 206(d) of the Act and sections 401(a)(13) and 414(p) of the Code, and, except as otherwise provided under other applicable law, no right or interest of any kind in any benefit shall be transferable or assignable by any Participant or any beneficiary or be subject to anticipation, adjustment, alienation, encumbrance, garnishment, attachment, execution, or levy of any kind. Plan provisions to the contrary notwithstanding, the Committee shall comply with the terms and provisions of any "qualified domestic relations order," including an order that requires distributions to an alternate payee prior to a Participant's "earliest retirement age" as such term is defined in section 206(d)(3)(E)(ii) of the Act and section 414(p)(4)(B) of the Code, and shall establish appropriate procedures to effect the same.

XIX.3 Uniformed Services Employment and Reemployment Rights Act Requirements.
Notwithstanding any provision of the Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with section 414(u) of the Code.

XIX.4 Payments to Minors and Incompetents. If a Participant or beneficiary entitled to receive a benefit under the Plan is a minor or is determined by the Committee in its discretion to be incompetent or is adjudged by a court of competent jurisdiction to be legally incapable of giving valid receipt and discharge for a benefit provided under the Plan, the Committee may pay such benefit to the duly appointed guardian or conservator of such Participant or beneficiary for the account of such Participant or beneficiary. If no guardian or conservator has been appointed for such Participant or beneficiary, the Committee may pay such benefit to any third party who is determined by the Committee, in its sole discretion, to be authorized to receive such benefit for the account of such Participant or beneficiary. Such payment shall operate as a full discharge of all liabilities and obligations of the Committee, the Trustee, the Company, and any fiduciary of the Plan with respect to such benefit.

XIX.5 Acquisition and Holding of Company Stock. The Plan is specifically authorized to acquire and hold up to 100% of its assets in "qualifying employer securities," as such term is defined in Section 407(d)(5) of the Act.

XIX.6 Participant's and Beneficiary's Addresses. It shall be the affirmative duty of each Participant to inform the Committee of, and to keep on file with the Committee, his current mailing address and the current mailing address of his designated beneficiary. If a Participant fails to keep the Committee informed of his current mailing address and the current mailing address of his designated beneficiary, neither the Committee, the Trustee, the Company, nor any fiduciary under the Plan shall be responsible for any late or lost payment of a benefit or for failure of any notice to be provided timely under the terms of the Plan.

XIX.7 Incorrect Information, Fraud, Concealment, or Error. Any contrary provisions of the Plan notwithstanding, if, because of a human or systems error, or because of incorrect information provided by or correct information failed to be provided by, fraud, misrepresentation, or concealment of any relevant fact (as determined by the Committee) by any person the Plan enrolls any individual, pays benefits under the Plan, incurs a liability or makes any overpayment or erroneous payment, the Plan shall be entitled to recover from such person the benefit paid or the liability incurred, together with all expenses incidental to or necessary for such recovery.

XIX.8 Severability. If any provision of this Plan shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions hereof. In such case, each provision shall be fully severable and the Plan shall be construed and enforced as if said illegal or invalid provision had never been included herein.

XIX.9 Appendices. Any appendix to this document shall be a part of the Plan for all purposes.

XIX.10 Jurisdiction. The situs of the Plan hereby created is Texas. All provisions of the Plan shall be construed in accordance with the laws of Texas except to the extent preempted by federal law.

XX.

Top-Heavy Status

XX.1 Article Controls. Any Plan provisions to the contrary notwithstanding, the provisions of this Article shall control to the extent required to cause the Plan to comply with the requirements imposed under section 416 of the Code.

XX.2 Definitions. For purposes of this Article, the following terms and phrases shall have these respective meanings:

(a) Account Balance: As of any Valuation Date, the aggregate amount credited to an individual's account or accounts under a qualified defined contribution plan maintained by the Company or a Controlled Entity (excluding employee contributions that were deductible within the meaning of section 219 of the Code and rollover or transfer contributions made after December 31, 1983, by or on behalf of such individual to such plan from another qualified plan sponsored by an entity other than the Company or a Controlled Entity), increased by (1) the aggregate distributions made to such individual from such plan during a five-year period ending on the Determination Date and (2) the amount of any contributions due as of the Determination Date immediately following such Valuation Date.

(b) Accrued Benefit: As of any Valuation Date, the present value (computed on the basis of the Assumptions) of the cumulative accrued benefit (excluding the portion thereof that is attributable to employee contributions that were deductible pursuant to section 219 of the Code, to rollover or transfer contributions made after December 31, 1983, by or on behalf of such individual to such plan from another qualified plan sponsored by an entity other than the Company or a Controlled Entity, to proportional subsidies or to ancillary benefits) of an individual under a qualified defined benefit plan maintained by the Company or a Controlled Entity increased by (1) the aggregate distributions made to such individual from such plan during a five-year period ending on the Determination Date and (2) the estimated benefit accrued by such individual between such Valuation Date and the Determination Date immediately following such Valuation Date. Solely for the purpose of determining top-heavy status, the Accrued Benefit of an individual shall be determined under (1) the method, if any, that uniformly applies for accrual purposes under all qualified defined benefit plans maintained by the Company and the Controlled Entities or (2) if there is no such method, as if such benefit accrued not more rapidly than under the slowest accrual rate permitted under section 411(b)(1)(C) of the Code.

(c) Aggregation Group: The group of qualified plans maintained by the Company and each Controlled Entity consisting of (1) each plan in which a Key Employee participates and each other plan that enables a plan in which a Key Employee

participates to meet the requirements of section 401(a)(4) or 410 of the Code or (2) each plan in which a Key Employee participates, each other plan that enables a plan in which a Key Employee participates to meet the requirements of section 401(a)(4) or 410 of the Code and any other plan that the Company elects to include as a part of such group; provided, however, that the Company may elect to include a plan in such group only if the group will continue to meet the requirements of sections 401(a)(4) and 410 of the Code with such plan being taken into account.

(d) Assumptions: The interest rate and mortality assumptions specified for top-heavy status determination purposes in any defined benefit plan included in the Aggregation Group that includes the Plan.

(e) Determination Date: For the first Plan Year of any plan, the last day of such Plan Year and for each subsequent Plan Year of such plan, the last day of the preceding Plan Year.

(f) Key Employee: A "key employee" as defined in section 416(i) of the Code and the Treasury regulations thereunder.

(g) Plan Year: With respect to any plan, the annual accounting period used by such plan for annual reporting purposes.

(h) Remuneration: 415 Compensation as defined in Section 4.5(a)(2).

(i) Valuation Date: With respect to any Plan Year of any defined contribution plan, the most recent date within the twelve-month period ending on a Determination Date as of which the trust fund established under such plan was valued and the net income (or loss) thereof allocated to participants' accounts. With respect to any Plan Year of any defined benefit plan, the most recent date within a twelve-month period ending on a Determination Date as of which the plan assets were valued for purposes of computing plan costs for purposes of the requirements imposed under section 412 of the Code.

XX.3 Top-Heavy Status. The Plan shall be deemed to be top-heavy for a Plan Year if, as of the Determination Date for such Plan Year, (1) the sum of Account Balances of Participants who are Key Employees exceeds 60% of the sum of Account Balances of all Participants unless an Aggregation Group including the Plan is not top-heavy or (2) an Aggregation Group including the Plan is top-heavy. An Aggregation Group shall be deemed to be top-heavy as of a Determination Date if the sum (computed in accordance with section 416(g)(2)(B) of the Code and the Treasury regulations promulgated thereunder) of (1) the Account Balances of Key Employees under all defined contribution plans included in the Aggregation Group and (2) the Accrued Benefits of Key Employees under all defined benefit plans included in the Aggregation Group exceeds 60% of the sum of the Account Balances and the Accrued Benefits of all individuals under such plans. Notwithstanding the foregoing, the Account Balances and Accrued

Benefits of individuals who are not Key Employees in any Plan Year but who were Key Employees in any prior Plan Year shall not be considered in determining the top-heavy status of the Plan for such Plan Year. Further, notwithstanding the foregoing, the Account Balances and Accrued Benefits of individuals who have not performed services for the Company or any Controlled Entity at any time during the five-year period ending on the applicable Determination Date shall not be considered.

XX.4 Top-Heavy Contribution.

(a) If the Plan is determined to be top-heavy for a Plan Year, the Company shall contribute to the Plan for such Plan Year on behalf of each Participant who is not a Key Employee and who has not terminated his employment as of the last day of such Plan Year an amount equal to:

(1) The lesser of (A) 3% of such Participant's Remuneration for such Plan Year or (B) a percent of such Participant's Remuneration for such Plan Year equal to the greatest percent determined by dividing for each Key Employee the amounts allocated to such Key Employee's Before-Tax Contribution Account and Company Contribution Account for such Plan Year by such Key Employee's Remuneration; reduced by

(2) The amount of Company contributions other than Company Matching Contributions allocated to such Participant's Accounts for such Plan Year.

(b) The minimum contribution required to be made for a Plan Year pursuant to this Section for a Participant employed on the last day of such Plan Year shall be made regardless of whether such Participant is otherwise ineligible to receive an allocation of the Company's contributions for such Plan Year. The minimum contribution required to be made pursuant to this Paragraph shall also be made for an Eligible Employee who is not a Key Employee and who is excluded from participation in the Plan solely because of failing to make mandatory After-Tax Contributions or Before-Tax Contributions.

(c) Notwithstanding the foregoing, if the Plan is deemed to be top-heavy for a Plan Year, the Company's contribution for such Plan Year pursuant to this Section shall be increased by substituting "4%" in lieu of "3%" in Clause (1) hereof to the extent that Enron Corp. determine to so increase such contribution to comply with the provisions of section 416(h)(2) of the Code. Notwithstanding the foregoing, no contribution shall be made pursuant to this Section for a Plan Year with respect to a Participant who is a participant in another defined contribution plan sponsored by the Company or a Controlled Entity if such Participant receives under such other defined contribution plan (for the plan year of such plan ending with or within the Plan Year of the Plan) a contribution which is equal to or greater than the minimum contribution required by section 416(c)(2) of the Code.

(d) Notwithstanding the foregoing, no contribution shall be made pursuant to this Section for a Plan Year with respect to a Participant who is a participant in a defined benefit

plan sponsored by the Company or a Controlled Entity if such Participant accrues under such defined benefit plan (for the plan year of such plan ending with or within the Plan Year of this Plan) a benefit that is at least equal to the benefit described in section 416(c)(1) of the Code. If the preceding sentence is not applicable, the requirements of this Section shall be met by providing a minimum benefit under such defined benefit plan which, when considered with the benefit provided under the Plan as an offset, is at least equal to the benefit described in section 416(c)(1) of the Code.

XX.5 **Termination of Top-Heavy Status.** If the Plan has been deemed to be top-heavy for one or more Plan Years and thereafter ceases to be top-heavy, the provisions of this Article shall cease to apply to the Plan effective as of the Determination Date on which it is determined no longer to be top-heavy.

XX.6 **Effect of Article.** Notwithstanding anything contained herein to the contrary, the provisions of this Article shall automatically become inoperative and of no effect to the extent not required by the Code or the Act.

XXI.

EOTT Discretionary Contribution

XXI.1 Definitions. For purposes of this Article, the following terms and phrases shall have the respective meanings:

(a) Divestiture: A sale by Enron Corp. of more than 80% of the stock or assets of EOTT to an unrelated third party.

(b) EOTT: EOTT Energy Corp.

(c) EOTT Contribution Account: An individual account for each Participant who is employed by EOTT which is credited with the EOTT Discretionary Contributions made on such Participant's behalf and which is credited (or debited) with such account's allocation of net income (or net loss) of the Trust Fund.

(d) EOTT Discretionary Contributions: Contributions made to the Plan by EOTT pursuant to Section 21.2.

(e) Month of Service: With respect to any Participant who is employed by EOTT, a calendar month during which he is continuously and actively employed by EOTT.

XXI.2 EOTT Discretionary Contributions. For any Plan Year, EOTT may contribute to the Trust, out of its current or accumulated earnings and profits, as the EOTT Discretionary Contribution for such Plan Year, an amount as determined in its sole discretion. The EOTT Discretionary Contribution, if any, for a Plan Year shall be denominated as a specific and uniform amount to be contributed for each Month of Service completed by a Participant during such Plan Year who is entitled to an allocation of such EOTT Discretionary Contribution or shall be denominated as a single Plan contribution amount which shall be allocated to Participants entitled to share in such contribution based upon their Months of Service during such Plan Year, in either case as described in Section 21.3 below.

XXI.3 Allocation of EOTT Discretionary Contributions. A portion of an EOTT Discretionary Contribution for a Plan Year shall be allocated to each individual who is an Eligible Employee and who is employed by EOTT on the last day of such Plan Year or terminated employment with EOTT during such Plan Year by reason of an event or reason as may be designated by the Board of Directors of EOTT. If the EOTT Discretionary Contribution for a Plan Year has been designated to be specified dollar amount for each Participant based upon such Participant's Months of Service during such Plan Year, each Participant will receive an EOTT Discretionary Contribution allocation equal to such specified dollar amount multiplied by such Participant's Months of Service completed during such Plan Year. If the EOTT Discretionary Contribution for a Plan Year is denominated as a single aggregate amount, each

Participant who is entitled to an allocation of a portion of such EOTT Discretionary Contributior shall be allocated a portion thereof based upon the ratio of such Participant's completed Month of Service during such Plan Year to all such Participants' completed Months of Servics durin such Plan Year. A Participant's allocations of EOTT Discretionary Contributions shall b allocated to his EOTT Contribution Account.

XXI.4 Withdrawals. A Participant shall not be entitled to make in-service withdraw from his EOTT Contribution Account.

XXI.5 Vesting of EOTT Contribution Accounts. A Participant's Vested Interest in EOTT Contribution Account shall be determined by such Participant's years of Vesting Ser in accordance with the following schedule:

	Years of Vesting Service	Vested Interest
Less than	1 year	0%
	1 year	25%
	2 years	50%
	3 years	75%
	4 years or more	100%

XXI.6 General Treatment. Except as specifically set forth in this Article Participant's EOTT Contribution Account shall be treated as an additional C Contribution Account for all purposes of the Plan.

XXII.

Certain IBEW Union Benefits

XXII.1 Eligibility. The provisions of this Article XXII apply to any Eligible Employee ("Union Participant") who is covered by the 1998-2001 agreement by and between Portland General Electric Company and the International Brotherhood of Electrical Workers Local Union No. 125 AFL-CIO (the "Agreement"). The term "Retirement Program B Participant" refers to any Union Participant who satisfies any of the following requirements: (A) he was born on or after January 2, 1957; (B) he first became an Employee or is rehired as an Employee on or after January 1, 1999; or (C) he is eligible to make and affirmatively elects to be treated as a Retirement Program B Participant as described below. For purposes of the foregoing item (C), an Employee may elect to be a Retirement Program B Participant if he: (A) is covered by the Agreement; (B) was born on or before January 1, 1957; and (C) became an Employee before January 1, 1999. If an Eligible Employee satisfies the requirements of the preceding sentence, he may irrevocably elect, in accordance with the procedures established by the Committee, to be treated as a Retirement Program B Participant for purposes of eligibility for Union Matching Contributions and Union Profit Sharing Contributions described in Sections 22.2 and 22.3 below. Such election may be effective as of the first day of any month, as elected by the Employee. An Employee who makes such an election shall be treated as a "Cash Balance Participant" under the Portland General Holdings, Inc. Pension Plan for Collectively Bargained Employees and shall no longer accrue "Benefit Service" under such Pension Plan effective at the same time as the election to be treated as a Retirement Program B Participant. No Eligible Employee may elect to make an election to be treated as a Retirement Program B Participant after December 31, 2003.

XXII.2 Union Matching Contributions. For each Contribution Period, the Company shall contribute:

(a) on behalf of each Union Participant who is not a Retirement Program B Participant an amount equal to 100% of the Before Tax Contributions made to the Plan for such Contribution Period which are not in excess of 6% of such Union Participant's Base Pay.

(b) on behalf of each Retirement Program B Participant an amount equal to 100% of the Before-Tax Contributions made to the Plan for such Contribution Period by such Retirement Program B Participant which are in excess of 5% and not in excess of 10% of such Retirement Program B Participant's Base Pay for such Contribution Period. Such contributions shall be allocated to the Union Participant's Company Contribution Accounts and shall be accounted for as subaccounts therein which are treated as Company Contribution Accounts for all purposes except that a Union Participant may not make any withdrawal from such subaccount while an active Employee and a Union Participant shall have a 100% Vested Interest in such subaccount at all times if such Union Participant was hired prior to July 1, 1999.

XXII.3 Union Profit Sharing Contributions. As of the last day of each Contribution Period, the Company shall contribute on behalf of each Retirement Program B Participant an amount equal to 5% of such Participant's Base Pay for such Contribution Period. Such contribution shall be allocated to such Participant's Company Contribution Account and held as a special subaccount thereunder. The Participant's Company Contribution subaccount shall be treated as a Company Contribution Account for all purposes except that a Retirement Program B Participant may not make any withdrawal from such subaccount pursuant to Article XI and the Retirement Program B Participant's Vested Interest in such subaccount shall be 0% until the earlier of his completion of one Year of Service or the attainment of age 65 while an Employee of the Company and shall be 100% as of the earlier of the date he completes one Year of Service or the date he attains the age of 65 while an Employee.

EXECUTED this 4 day of May, 1999.

ENRON CORP.

By: _____
Mary K. Joyce
Vice-President, Compensation & Benefits

PARTICIPATING COMPANIES:

VERDUGIDOCS.1

DOL00068

APPENDIX H – SUBMITTED FOR THE RECORD, E-MAIL FROM ID FOR HUMAN RESOURCES NEWS, TO ALL PGE EMPLOYEES, 9/27/01, E-MAIL FROM ENRON ANNOUNCEMENTS TO ALL ENRON EMPLOYEES, 10/16/01, E-MAIL FROM ENRON ANNOUNCEMENTS TO ALL ENRON EMPLOYEES, 10/22/01, AND E-MAIL FROM ENRON ANNOUNCEMENTS TO ALL ENRON EMPLOYEES, 10/26/01

ID for Human Resources News - Enron 401(k) Savings Plan

From: ID for Human Resources News
To: ALL PGE EMPLOYEES
Date: 09/27/2001 5:04 PM
Subject: Enron 401(k) Savings Plan

HRNews Online

To: All Employees
From: Human Resources
Date: September 27, 2001
Re: **Enron 401(k) Savings Plan**

Enron Corp. has contracted with Hewitt Associates to be the new trustee and record keeper for the Enron 401(k) Savings Plan (replacing Northern Trust).

To ensure that records and individual accounts are converted accurately, a transition period of approximately one-month will begin Oct 19. Enron Corp is mailing a packet of detailed information to all Enron Savings Plan participants the week of October 1st.

There are no changes being made in the investment elections, plan features or plan design. A transition period is necessary whenever a company changes 401(k) administrators.

During the transition period, participants can continue to make contributions and loan deductions, but are not able to transfer funds among investment options, request a loan, request a withdrawal or close an account.

We realize you may have questions. Most of them will be addressed in the information Enron Corp is sending participants, so please read carefully the materials you receive.

Thank you.

Rath, Mikie

From: Enron Announcements/Corp/Enron@ENRON on behalf of Corporate Benefits@ENRON
Sent: Tuesday, October 16, 2001 11:10 PM
To: All Enron Employees United States Group@ENRON
Subject: To: All Domestic Employees who Participate in the Enron Corp. Savings Plan

Mark your calendar--
the Enron Corp. Savings Plan is moving to a new administrator!

In preparation, here are a few things you need to remember.

For All Savings Plan participants, **Friday, October 19 at 3:00pm CST** will be the **last day** to:
- Request a loan or a loan payoff so that funds can be allocated or distributed in time.
- Request a withdrawal (In-service or Hardship).

For SDA Participants, **Friday, October 19 at 3:00pm CST** will be your last day to:
- Make trades in your Schwab SDA brokerage account so that we can move your holdings in-kind.
- Re-invest any Schwab mutual funds into your choice of funds - the default will be your money market fund.

Other transactions, such as Contribution Rate Changes and Investment Fund Transfers, will continue until 3:00pm CST on October 26.

EnronBenefits... *keeping pace with your lifestyle.*

Rath, Mikie

From: Enron Announcements/Corp/Enron@ENRON on behalf of Corporate Benefits@ENRON
Sent: Monday, October 22, 2001 10:28 PM
To: All Enron Employees United States Group@ENRON
Subject: To: All Domestic Employees who Participate in the Enron Corp Savings Plan

October 26 is fast approaching!

Mark your calendar--
as the Enron Corp. Savings Plan moves to a new administrator!

As a Savings Plan Participant, **Friday, October 26 at 3:00pm CST** will be your last day to:

- Transfer Investment Fund Balances and make Contribution Allocation Changes
- Change your Contribution Rate for the November 15th payroll deductions
- Enroll if you were hired before October 1

TWO important reminders:

- Vanguard Lifestrategy investment options are being replaced with Fidelity Freedom funds and;
- Your funds will remain invested in the funds chosen as of 3:00pm CST until 8:00 am November 20.

At 8:00 am CST, November 20 the Savings Plan system re-opens with great new features.

Should you need assistance during the transition period, call ext. 3-7979 and press **Option 6. This option will be available from 8:00am CST October 29 until 5:00pm CST November 19.**

Enron Benefits... *keeping pace with your lifestyle.*

Rath, Mikie

From: Enron Announcements/Corp/Enron@ENRON on behalf of Corporate Benefits@ENRON
Sent: Friday, October 26, 2001 11:58 AM
To: All Enron Employees United States Group@ENRON
:ct: DRAFT- FINAL REMINDER- To All US Employees who Participate in the Enron Savings Plan

Final Reminder

If you are a participant in the Enron Corp. Savings Plan, all trades among your investment funds must be completed by **3:00 PM CST Friday, October 26.**

The makeup of your investment funds in the Savings Plan at 3:00 p.m., October 26, will 'eflect your investment decision for the duration of the transition period.

APPENDIX I –SUBMITTED FOR THE RECORD, LETTER FROM CHAIRMAN JOHN A. BOEHNER, COMMITTEE ON EDUCATION AND THE WORKFORCE, TO STEPHEN F. COOPER, INTERIM CEO AND CHIEF, ENRON CORPORATION, FEBRUARY 1, 2002

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COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2181 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6100

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MAJORITY—(202) 225–4527
(TTY)—(202) 226–3372
MINORITY—(202) 225–3725
(TTY)—(202) 226–3116

February 1, 2002

Mr. Stephen F. Cooper
Interim CEO and Chief
Enron Corporation
1400 Smith Street
Houston, Texas 77002

Dear Mr. Cooper:

Pursuant to the constitutional authority of the House of Representatives and the authority provided by Rules X and XI of the House of Representatives, the Committee on Education and the Workforce (herein "Committee") is investigating matters within its legislative and oversight jurisdiction arising from the bankruptcy of the Enron corporation and the resulting effect on its pension plans. The Committee hereby requests the production of the following documents, records or other materials:

1. Please produce a complete copy of the current Enron Savings Plan and, if different, a complete copy of the Enron Savings Plan in effect in 2001.
2. The Minutes of the Enron Savings Plan Administrative Committee Meetings in 2000 and 2001.
3. Any correspondence, including emails or other electronic communication, from Enron Corporation to Enron Savings Plan participants regarding the transfer in record keepers in 2001.
4. Enron's request for a proposal for a new Plan record keeper in 2001.
5. The Protocol or any documents regarding the procedure for transferring the Plan record keeper in 2001.
6. Any documents regarding why Enron changed record keepers in 2001.
7. Enron's contract with Hewitt Associates.

Please produce any documents and/or materials responsive to this request in accordance with the attached "General Instructions." Thank you in advance for your assistance and cooperation. **The Committee requests your response by noon on Wednesday February 6, 2002.**

In addition to the above documents, records, or other materials, the Committee hereby requests the production of the following documents:

1. Please produce any and all documents, including emails or other electronic communication, sent to the Enron Savings Plan (the "Plan") participants regarding the Plan and the administration of the Plan during 2001, excluding individual participant's benefits statements.

2. Please produce any and all documents, including emails or other electronic communication, sent to the Enron employees regarding Enron stock during the years 2000 and 2001, excluding individual employees' stock balances.

3. Please produce any and all documents, including internal reports, regarding Enron employee holdings of Enron company stock and any existing statistics regarding Enron employee holding of Enron stock.

4. Please produce any and all documents, including emails or other electronic communication, regarding Enron's request for a proposal for a new Plan record keeper in 2001.

5. Please produce any and all documents, including emails or other electronic communication, regarding the transfer in record keeper from Northern Trust to Hewitt Associates including documents relating to why the record keeper was changed and the timing of the "lockdown" or "blackout" period.

Please produce any documents and/or materials responsive to this request in accordance with the attached "General Instructions." Thank you in advance for your assistance and cooperation. **The Committee requests your response by 5:00 p.m. on Wednesday February 20, 2002**. Please contact Christine Roth or Jo-Marie St. Martin of the Committee staff at (202) 225-7101 or (202) 225-4527 if you have any questions or require additional information.

Sincerely,

JOHN BOEHNER
Chairman

cc: Robert Bennett, Esq.
Gary Slaiman, Esq.

GENERAL INSTRUCTIONS

1. In complying with this request, you are requested to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You are also requested to produce documents that you have a legal right to obtain, documents that you have a right to copy or have access to, and documents that you have placed in the temporary possession, custody, or control of any third party. No records, documents, data or information called for by this request shall be destroyed, modified, removed or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read to also include them under that alternative identification.

3. Each document produced shall be produced in a form that renders the document susceptible of copying.

4. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when this request was made. Also identify to which paragraph from the request such documents are responsive.

5. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same document.

6. If any of the requested information is available in machine-readable form (such as punch cards, paper or magnetic tapes, drums, disks, or core storage), state the form in which it is available and provide sufficient detail to allow the information to be copied to a readable format. If the information requested is stored in a computer, indicate whether you have an existing program that will print the records in a readable form.

7. If the request cannot be complied with in full, it shall be complied with to the extent possible, which shall include an explanation of why full compliance is not possible.

8. In the event that a document is withheld on the basis of privilege, provide the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.

9. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.

10. If a date set forth in this request referring to a communication, meeting, or other event is inaccurate, but the actual date is known to you or is otherwise apparent from the context of the request, you should produce all documents, which would be responsive as if the date were correct.

11. This request is continuing in nature. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date shall be produced immediately upon location or discovery subsequent thereto.

12. All documents shall be Bates stamped sequentially and produced sequentially.

13. Two sets of documents shall be delivered, one set for the Majority Staff and one set for the Minority Staff.

APPENDIX J – SUBMITTED FOR THE RECORD, LETTER FROM RANKING MEMBER GEORGE MILLER, COMMITTEE ON EDUCATION AND THE WORKFORCE, TO STEPHEN F. COOPER, INTERIM CEO AND CHIEF, ENRON CORPORATION, JANUARY 31, 2002

MAJORITY MEMBERS:

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CASS BALLENGER, NORTH CAROLINA
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COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2181 RAYBURN HOUSE OFFICE BUILDING
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SUSAN DAVIS, CALIFORNIA
BETTY McCOLLUM, MINNESOTA

MAJORITY—(202) 225-4527
(TTY)—(202) 226-3372
MINORITY—(202) 225-3725
(TTY)—(202) 226-3116

January 31, 2002

Mr. Stephen F. Cooper
Interim CEO and Chief
Enron Corporation
1400 Smith St.
Houston, TX 77002

Dear Mr. Cooper:

The House Education and Workforce Committee is holding hearings on February 6 and 7 regarding the financial failure of the Enron Corporation, with a special focus on Enron's pension and savings plans. I would very much appreciate receiving a copy of all of Enron correspondence (including correspondence sent through Enron's agents) to employees (including e-mails) directly or indirectly related to Enron's pension and savings plans for all of 2001 and January of 2002. Please exclude correspondence that related to an individual's personal plan or savings account.

I would appreciate your sending this information to me prior to our hearing in care of John Lawrence, Democratic Staff Director, 2101 Rayburn House Office Building, Washington D.C, 20515 (202.225.3725).

Sincerely,

George Miller

GEORGE MILLER
Senior Democratic Member

Copy hand delivered to Chairman Boehner:

JAN 31 2002
3:38 P.M.

APPENDIX K – SUBMITTED FOR THE RECORD, MEMORANDUM FROM SHERRON WATKINS TO MR. LAY

Dear Mr. Lay,

Has Enron become a risky place to work? For those of us who didn't get rich over the last few years, can we afford to stay?

Skilling's abrupt departure will raise suspicions of accounting improprieties and valuation issues. Enron has been very aggressive in its accounting – most notably the Raptor transactions and the Condor vehicle. We do have valuation issues with our international assets and possibly some of our EES MTM positions.

The spotlight will be on us, the market just can't accept that Skilling is leaving his dream job. I think that the valuation issues can be fixed and reported with other goodwill write-downs to occur in 2002. How do we fix the Raptor and Condor deals? They unwind in 2002 and 2003, we will have to pony up Enron stock and that won't go unnoticed.

To the layman on the street, it will look like we recognized funds flow of $800 mm from merchant asset sales in 1999 by selling to a vehicle (Condor) that we capitalized with a promise of Enron stock in later years. Is that really funds flow or is it cash from equity issuance?

We have recognized over $550 million of fair value gains on stocks via our swaps with Raptor, much of that stock has declined significantly – Avici by 98%, from $178 mm to $5 mm, The New Power Co by 70%, from $20/share to $6/share. The value in the swaps won't be there for Raptor, so once again Enron will issue stock to offset these losses. Raptor is an LJM entity. It sure looks to the layman on the street that we are hiding losses in a related company and will compensate that company with Enron stock in the future.

I am incredibly nervous that we will implode in a wave of accounting scandals. My 8 years of Enron work history will be worth nothing on my resume, the business world will consider the past successes as nothing but an elaborate accounting hoax. Skilling is resigning now for 'personal reasons' but I think he wasn't having fun, looked down the road and knew this stuff was unfixable and would rather abandon ship now than resign in shame in 2 years.

Is there a way our accounting guru's can unwind these deals now? I have thought and thought about how to do this, but I keep bumping into one big problem – we booked the Condor and Raptor deals in 1999 and 2000, we enjoyed a wonderfully high stock price, many executives sold stock, we then try and reverse or fix the deals in 2001 and it's a bit like robbing the bank in one year and trying to pay back it back 2 years later. Nice try, but investors were hurt, they bought at $70 and $80/share looking for $120/share and now they're at $38 or worse. We are under too much scrutiny and there are probably one or two disgruntled 'redeployed' employees who know enough about the 'funny' accounting to get us in trouble.

What do we do? I know this question cannot be addressed in the all employee meeting, but can you give some assurances that you and Causey will sit down and take a good hard objective look at what is going to happen to Condor and Raptor in 2002 and 2003?

Summary of alleged issues:

Raptor

Entity was capitalized with LJM equity. That equity is at risk; however, the investment was completely offset by a cash fee paid to LJM. If the Raptor entities go bankrupt LJM is not affected, there is no commitment to contribute more equity.

The majority of the capitalization of the Raptor entities is some form of Enron N/P, restricted stock and stock rights.

Enron entered into several equity derivative transactions with the Raptor entities locking in our values for various equity investments we hold.

As disclosed, in 2000, we recognized $500 million of revenue from the equity derivatives offset by market value changes in the underlying securities.

This year, with the value of our stock declining, the underlying capitalization of the Raptor entities is declining and Credit is pushing for reserves against our MTM positions.

To avoid such a write-down or reserve in Q1 2001, we 'enhanced' the capital structure of the Raptor vehicles, committing more ENE shares.

My understanding of the Q3 problem is that we must 'enhance' the vehicles by $250 million.

I realize that we have had a lot of smart people looking at this and a lot of accountants including AA&Co. have blessed the accounting treatment. None of that will protect Enron if these transactions are ever disclosed in the bright light of day. (Please review the late 90's problems of Waste Management – where AA paid $130+ mm in litigation re: questionable accounting practices).

The overriding basic principle of accounting is that if you explain the 'accounting treatment' to a man on the street, would you influence his investing decisions? Would he sell or buy the stock based on a thorough understanding of the facts? If so, you best present it correctly and/or change the accounting.

My concern is that the footnotes don't adequately explain the transactions. If adequately explained, the investor would know that the "Entities" described in our related party footnote are thinly capitalized, the equity holders have no skin in the game, and all the value in the entities comes from the underlying value of the derivatives (unfortunately in this case, a big loss) AND Enron stock and N/P. Looking at the stock we swapped, I also don't believe any other company would have entered into the equity derivative transactions with us at the same prices or without substantial premiums from Enron. In other words, the $500 million in revenue in 2000 would have been much lower. How much lower?

Raptor looks to be a big bet, if the underlying stocks did well, then no one would be the wiser. If Enron stock did well, the stock issuance to these entities would decline and the transactions would be less noticeable. All has gone against us. The stocks, most notably Hanover, The New Power Co., and Avici are underwater to great or lesser degrees.

I firmly believe that executive management of the company must have a clear and precise knowledge of these transactions and they must have the transactions reviewed by objective experts in the fields of securities law and accounting. I believe Ken Lay deserves the right to judge for himself what he believes the probabilities of discovery to be and the estimated damages to the company from those discoveries and decide one of two courses of action:

1. The probability of discovery is low enough and the estimated damage too great; therefore we find a way to quietly and quickly reverse, unwind, write down these positions/transactions.
2. The probability of discovery is too great, the estimated damage to the company too great; therefore, we must quantify, develop damage containment plans and disclose.

I firmly believe that the probability of discovery significantly increased with Skilling's shocking departure. Too many people are looking for a smoking gun.

Summary of Raptor oddities:

1. The accounting treatment looks questionable.

   a. Enron booked a $500 mm gain from equity derivatives from a related party.
   b. That related party is thinly capitalized, with no party at risk except Enron.
   c. It appears Enron has supported an income statement gain by a contribution of its own shares.

   One basic question: The related party entity has lost $500 mm in its equity derivative transactions with Enron. Who bears that loss? I can't find an equity or debt holder that bears that loss. Find out who will lose this money. Who will pay for this loss at the related party entity?

   If it's Enron, from our shares, then I think we do not have a fact pattern that would look good to the SEC or investors.

2. The equity derivative transactions do not appear to be at arms length.

   a. Enron hedged New Power, Hanover, and Avici with the related party at what now appears to be the peak of the market. New Power and Avici have fallen away significantly since. The related party was unable to lay off this risk. This fact pattern is once again very negative for Enron.
   b. I don't think any other unrelated company would have entered into these transactions at these prices. What else is going on here? What was the compensation to the related party to induce it to enter into such transactions?

3. There is a veil of secrecy around LJM and Raptor. Employees question our accounting propriety consistently and constantly. This alone is cause for concern.

   a. Jeff McMahon was highly vexed over the inherent conflicts of LJM. He complained mightily to Jeff Skilling and laid out 5 steps he thought should be taken if he was to remain as Treasurer. 3 days later, Skilling offered him the CEO spot at Enron Industrial Markets and never addressed the 5 steps with him.
   b. Cliff Baxter complained mightily to Skilling and all who would listen about the inappropriateness of our transactions with LJM.
   c. I have heard one manager level employee from the principle investments group say "I know it would be devastating to all of us, but I wish we would get caught. We're such a crooked company." The principle investments group hedged a large number of their investments with Raptor. These people know and see a lot. Many similar comments are made when you ask about these deals. Employees quote our CFO as saying that he has a handshake deal with Skilling that LJM will never lose money.

4. Can the General Counsel of Enron audit the deal trail and the money trail between Enron and LJM/Raptor and its principals? Can he look at LJM? At Raptor? If the CFO says no, isn't that a problem?

Condor and Raptor work:

1. Postpone decision on filling office of the chair, if the current decision includes CFO and/or CAO.

2. Involve Jim Derrick and Rex Rogers to hire a law firm to investigate the Condor and Raptor transactions to give Enron attorney client privilege on the work product. (Can't use V&E due to conflict – they provided some true sale opinions on some of the deals).

3. Law firm to hire one of the big 6, but not Arthur Andersen or PricewaterhouseCoopers due to their conflicts of interest: AA&Co (Enron); PWC (LJM).

4. Investigate the transactions, our accounting treatment and our future commitments to these vehicles in the form of stock, N/P, etc..
For instance: In Q3 we have a $250 mm problem with Raptor 3 (NPW) if we don't 'enhance' the capital structure of Raptor 3 to commit more ENE shares. By the way: in Q1 we enhanced the Raptor 3 deal, committing more ENE shares to avoid a write down.

5. Develop clean up plan:

   a. Best case: Clean up quietly if possible.

   b. Worst case: Quantify, develop PR and IR campaigns, customer assurance plans (don't want to go the way of Salomon's trading shop), legal actions, severance actions, disclosure.

6. Personnel to quiz confidentially to determine if I'm all wet:
   a. Jeff McMahon
   b. Mark Koenig
   c. Rick Buy
   d. Greg Whalley

To put the accounting treatment in perspective I offer the following:

1. We've contributed contingent Enron equity to the Raptor entities. Since it's contingent, we have the consideration given and received at zero. We do, as Causey points out, include the shares in our fully diluted computations of shares outstanding if the current economics of the deal imply that Enron will have to issue the shares in the future. This impacts 2002 – 2004 EPS projections only.

2. We lost value in several equity investments in 2000. $500 million of lost value. These were fair value investments, we wrote them down. However, we also booked gains from our price risk management transactions with Raptor, recording a corresponding PRM account receivable from the Raptor entities. That's a $500 million related party transaction – it's 20% of 2000 IBIT, 51% of NI pre tax, 33% of NI after tax.

3. Credit reviews the underlying capitalization of Raptor, reviews the contingent shares and determines whether the Raptor entities will have enough capital to pay Enron its $500 million when the equity derivatives expire.

4. The Raptor entities are technically bankrupt; the value of the contingent Enron shares equals or is just below the PRM account payable that Raptor owes Enron. Raptor's inception to date income statement is a $500 million loss.

5. Where are the equity and debt investors that lost out? LJM is whole on a cash on cash basis. Where did the $500 million in value come from? It came from Enron shares. Why haven't we booked the transaction as $500 million in a promise of shares to the Raptor entity and $500 million of value in our "Economic Interests" in these entities? Then we would have a write down of our value in the Raptor entities. We have not booked the latter, because we do not have to yet. Technically, we can wait and face the music in 2002 – 2004.

6. The related party footnote tries to explain these transactions. Don't you think that several interested companies, be they stock analysts, journalists, hedge fund managers, etc., are busy trying to discover the reason Skilling left? Don't you think their smartest people are pouring over that footnote disclosure right now? I can just hear the discussions – "It looks like they booked a $500 million gain from this related party company and I think, from all the undecipherable ½ page on Enron's contingent contributions to this related party entity, I think the related party entity is capitalized with Enron stock." ..... "No, no, no, you must have it all wrong, it can't be that, that's just too bad, too fraudulent, surely AA&Co wouldn't let them get away with that?" ..... "Go back to the drawing board, it's got to be something else. But find it!" ..... "Hey, just in case you might be right, try and find some insiders or 'redeployed' former employees to validate your theory."

APPENDIX L – SUBMITTED FOR THE RECORD, ENRON CORP. CASH BALANCE PLAN, ENRON CORP. SAVINGS PLAN, ENRON CORP. EMPLOYEE STOCK OWNERSHIP PLAN, MAY 3, 2001

For Record

Enron Corp. Cash Balance Plan
Enron Corp. Savings Plan
Enron Corp. Employee Stock Ownership Plan
May 3, 2001

Minutes of the meeting of the Administrative Committee held in EB3371.

Members Present	Others Present
Paula H. Riecker	Cynthia Barrow, Secretary
Sheila Knudsen	Mikie Rath
James S. Prentice, Chairman	Jim Newgard

Members Not Present
Rod Hayslett
Cindy Olson

Mr. Prentice, Chairman, called the meeting to order at 3:15 p.m. The Agenda **(Attachment I)** is made a part of these minutes. Related materials were delivered to the committee members prior to the meeting.

The minutes from the meeting held on February 8, 2001 were approved as written by vote of the Committee. **(Attachment II)**

The Chairman recognized Mikie Rath who reviewed the reasons for and status of the Enron Corp Savings Plan recordkeeper and trustee vendor search **(Attachment III)**. During the discussion Ms. Rath presented the decision for the move to Hewitt Associates as Recordkeeper and Wilmington Trust as trustee. Ms. Rath also recommended that the Committee approve the elimination of the EOGR Stock Fund and the switch from Vanguard Lifestrategy Funds to Fidelity Freedom Funds. The Committee requested that Ms. Rath work with Jim Newgard to determine whether the Fidelity Funds are a comparable class and optimal fee structure. These items will be brought back to the Committee during the August 15th meeting for Committee vote.

The Chairman then recognized Jim Newgard who informed the Committee that Callan Associates would identify and narrow the selection for Large Cap Fund Managers. Jim reviewed his detailed update of the search which is outlined in his April 30, 2001 report **(Attachment IV)**. The meeting was scheduled for June 25th for the manager presentations and Committee Vote. During these discussions, Ms. Riecker ask for the review to include a discussion regarding the approach for performance reviews when a fund of fund manager is utilized.

Mr. Newgard then presented the financial results of the first quarter of year 2001. Mr. Newgard highlighted the results of the investment manager performance as follows **(Attachment V)**

US Stocks continued to lose ground in the first quarter. Bonds enjoyed their fifth positive quarter against a favorable backdrop of falling interest rates.

Enron's Cash Balance Plan earned quarterly and 1-year returns of –7.45% and –12.15% respectively. Both results are trailing the plan's benchmark.

At the end of the year, the plan held assets totaling $230 million.

Enron Corp. Cash Balance Plan
Enron Corp. Savings Plan
Enron Corp. Employee Stock Ownership Plan
August 15, 2001

Minutes of the meeting of the Administrative Committee held in EB49C3.

Members Present	Others Present
Rod Hayslett	Cynthia Barrow, Secretary
Sheila Knudsen	Mikie Rath
James S. Prentice, Chairman	Jim Newgard
Tod Lindholm (by phone)	

Members Not Present
Cindy Olson
Paula H. Rieker

Mr. Prentice, Chairman, called the meeting to order at 3:15 p.m. The Agenda (**Attachment I**) is made a part of these minutes. Related materials were delivered to the committee members prior to the meeting.

The minutes from the meeting held on May 3rd and June 25th, 2001 were approved as written by vote of the Committee. (**Attachment II**)

The Chairman recognized Mikie Rath who brought back for vote the removal of the EOG Stock Fund (**Attachment III**) from the Enron Corp. Savings Plan Investment Portfolio. Ms. Rath reminded the Committee of the previous discussion during the May 3rd meeting. After a brief discussion regarding number of participants, Sheila Knudsen motioned in favor of removing the EOG fund and Rod Hayslett seconded the motion. The remaining Committee members voted unanimously in support of the motion.

Ms. Rath proceeded to revisit with the Committee the request to replace the Vanguard Life Strategy Funds with Fidelity Freedom Funds. Jim Newgard spoke to the Committee's questions regarding fees and rebate from these funds as compared to the Vanguard Funds. Mikie Rath provided answers to the Committee regarding the participation levels of the Life Strategy Funds as well as the process of providing all rebates to all participants of the plan. Rod Hayslett motioned to approve the request to replace the Vanguard Life Strategy Funds with Fidelity Freedom Funds and Sheila Knudsen seconded the motion. The remaining Committee members voted unanimously in support of the motion.

Mikie Rath then informed the Committee of the plans to move the Enron Corp. Employee Stock Ownership Plan to a daily transaction versus monthly transaction basis. Ms. Rath let the Committee know that a letter advising all participants of this improved service level will be forthcoming.

Enron Corp. Cash Balance Plan
Enron Corp. Savings Plan
Enron Corp. Employee Stock Ownership Plan
September 18, 2001

Minutes to the Meeting of the Administrative Committee held in EB49C1.

Members Present
Jim Prentice, Chairman
Sheila Knudsen
Rod Hayslett
Tod Lindholm
Paula Rieker

Others Present
Paul Sailor (PWC)
David Brown (PWC)
Norman Parrish (Hewitt)
Jim Newgard
Chris Rahaim
Mikie Rath
Cynthia Barrow, Secretary

Members Not Present
Cindy Olson

Purpose: Special Administrative Committee Meeting to present PriceWaterhouseCooper's proposal to Committee.

Mr. Prentice, Chairman, called the meeting to order at 3:15 p.m.

Cynthia Barrow introduced Norman Parrish of Hewitt, Paul Sailor and David Brown of PriceWaterhouse and gave an overview of the steps taken thus far as well as a high level review of the timeline of the remaining approval processes. It was explained to the Committee that the decision regarding the new plan was not a Committee responsibility. The purpose of the meeting was to inform the Committee of the impact of the plan on their investment management responsibility, should it be approved.

The floor was then turned over to David Brown who provided the Committee with an overview of the plan design and highlighted all of the various areas of Enron that had been involved in the design, modeling and assumption creation process. David then turned the meeting over to Paul Sailor who went through the details of the plan design features and explained the benefits of the plan to the employees and the company, as well as a discussion on the investment impact to the plan's success.

Upon completion of the discussion, the meeting was adjourned at 4:30 p.m.

Respectfully submitted,

Cynthia Barrow
Committee Secretary

Enron Corp. Cash Balance Plan
Enron Corp. Savings Plan
Enron Corp. Employee Stock Ownership Plan
November 13, 2001

Minutes of the meeting of the Administrative Committee held in EB 49C3

Members Present	Others Present
Tod Lindholm (by phone)	Cynthia Barrow, Secretary
Sheila Knudsen	Mikie Rath
James S. Prentice, Chairman	Jim Newgard
Rod Hayslett	Sharon Butcher
	Pat Mackin (by phone)
	Hewitt Associates (by phone)
	Cathy Graham
	Scott Letendre
	Norman Parrish
	Courtney & Associates
Members Not Present	Cal Courtney
Cindy Olson	

Mr. Prentice, Chairman, called the meeting to order at 2:35 p.m. The Agenda (**Attachment I**) is made a part of these minutes.

Mr. Prentice recognized Mikie Rath who gave an update to the Committee on the status of the Hewitt transition process. Ms. Rath, reported, that the Savings Plan was live as of 8:00 am November 13, 2001, 5 days ahead of schedule. Ms. Rath informed the committee that the Transition Update website and phone line reflected the live date. Ms. Rath reminded the Committee that these were created for the purpose of getting immediate notification to all participants as soon as the Savings Plan Transition was complete. It was reported that the plan website experienced 200 – 250 hits prior to today's meeting and that the plan had not seen large movements in accounts. Mr. Prentice asked that another e-mail be sent to employees to remind them that the Transition Period had been completed. Hewitt was then dismissed from the meeting.

The Chairman then recognized Jim Newgard who provided an update on his search for an investment advisor to the Committee. Jim reported that Morgan Stanley was the leading candidate and that he was in the final stages of negotiations, which included the finalization of the advisor's compensation. Mr. Newgard indicated that he would have the selection process finalized by Friday, November 16, 2001.

The Chairman then recognized Sharon Butcher who reported the number of total suits against Enron. Ms. Butcher confirmed that suits do exist that are on behalf of all shareholders of Enron Stock. It was agreed that no action is required of the Administrative Committee at this time. Mikie Rath, advised the Committee that as of today no notifications of any class actions have been provided to the Trustee. At the prior request of the Committee, Sharon Butcher confirmed that a Form S8 has been filed and that no new filing would be required should the Committee determine that an asset disposition, of Enron Stock held in the plan, be made.

APPENDIX M – SUBMITTED FOR THE RECORD, STATEMENT OF CONGRESSWOMAN HILDA SOLIS, COMMITTEE ON EDUCATION AND THE WORKFORCE

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31ST DISTRICT, CALIFORNIA
website: www.house.gov/solis

COMMITTEES:
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SUBCOMMITTEES:
EDUCATION REFORM
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Statement of Congresswoman Hilda L. Solis
House Education and Workforce Committee Hearing on
The Enron Collapse and Its Implication for Worker Retirement Security
February 7, 2002

Good morning to all our witnesses and thank you all for testifying today. Thank you also to Chairman Boehner and Ranking Member Miller for holding this hearing on pension reform, which is so important in the wake of the collapse of Enron.

Mr. Padgett, I can only imagine what you and your family are going through. You and thousands of employees that invested in Enron are now faced with rebuilding your financial lives. I thank you for coming here to share your story and hope that what you have to say can help other workers in the future.

It must be disheartening to know that the executives that ran this company, the people you put your faith in, were able to cash in and make enormous profits. I wonder what the Enron executives would offer to you, the typical worker who lost their life's savings, when they apparently had the insight to sell millions of dollars worth of stock prior to November 2001. What lessons can we learn about pension reform when you just can't legislate integrity?

This breakdown in accountability and trust has rippled far beyond the employees of Enron and their subsidiaries. The people of California have suffered as well, thought not as directly as Mr. Padgett. First the energy companies, including Enron, made enormous profits by charging Californians exorbitant prices for energy. Now we learn that not only were the employees of Enron duped into buying and holding stocks in a company that was on the verge of financial collapse, six of California's largest public pension funds lost almost a quarter of a billion dollars when Enron's stocks crashed.

I am eager to hear the testimony of our witnesses. Thank you.

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