OPENING STATEMENT OF
LUIS V. GUTIERREZ
RANKING DEMOCRAT
SUBCOMMITTEE ON OVERSIGHT & INVESTIGATIONS
"THE ENRON COLLAPSE: IMPACT ON INVESTORS AND FINANCIAL MARKETS"
December 12, 2001

Good morning Chairman Baker, Chairwoman Kelly, Ranking Member LaFalce, Ranking Member Kanjorski and thank you for holding this hearing.

We are gathered here today because of a series of unfortunate events that culminated on December 2 with the filing for bankruptcy of Enron.

In Houston alone, Enron has laid off more than 4,500 of its 7,500 employees as part of a corporate restructuring program to drastically cut costs. The victims of this catastrophe -- Enron's employees--have been left wondering how bankruptcy would affect their severance pay, health insurance and financial futures. For a vast majority of them, the spectacular collapse of their company causes a financial and personal tragedy. Many feel betrayed and angry. Sadly, many workers did not even know that they were about to lose their jobs. They just came in one day to work and were simply given 30 minutes to pack their belongings and leave.

In addition to the lay-offs, a great number of Enron employees lost in a matter of months almost all the value of the stock they owned, which plunged into levels below one dollar. The Labor Department stated that Enron employees have lost between 70 to 90 percent of their retirement funds–which translates to more than $1 billion. Many of Enron's employees had invested all of their 401(k) funds into Enron's stock. And why wouldn't they? Just months ago Enron was the country's seventh-largest company in terms of reported revenue. Enron was the fast-rising star that had turned the dreary business of energy trading into one of the world's vastest corporate fortunes. It reported quarterly revenues of nearly $47 billion. Its stock has fallen from nearly $90 to some pennies.

The Enron case brings to the fore an issue that has long worried pension and benefits experts: a retirement plan hugely dependent on the health of a company that provides it. Although the Employee Retirement Security Act of 1974 states that an employer with a traditional pension plan cannot invest more than 10 percent of the plan's assets in the employer's stock, traditional pension plans are rapidly falling out of favor, with the newer 401(k) replacing them. Currently, there are no limits yet on how much of an employees's pension plan may be comprised of the employer's stock, nor are there any caps on investments in employer stock with employer-contributed funds.

Enron's own-stock accounted for more than 60 percent of the assets in the $2.1 billion defined benefit 401(k) plan several months ago. It is widely known that some companies have even higher levels, creating an even worse scenario should these companies fail. Indeed, these amounts are situated well beyond what would be described as prudent diversification, because if there is one lesson to be learned from this tragedy that is explained by the term Diversification. Diversification should be made the very first and most important rule in investing in 401(k).

The dangers of over-concentrating company stock in a 401(k) plan have been made vividly clear by the Enron Corp. debacle. But despite the perils, millions of American workers have little choice but to bet their retirement savings, as well as their jobs, on the fortunes of their employers.

However, Enron is hardly alone in its high exposure to its own stock. About 120 of the largest U.S. companies, as represented by the Committee on the Investment of Employee Benefit Assets, have seen their own stock rise to an average one-third of plan assets.

Hardest hit will be Enron's 21,000 workers. For three weeks, starting in late October, all Enron retirement plan participants were locked into their current allocations when the firm decided to go ahead with a switch to new plan administrators. Enron stock lost 35 percent of its value during the freeze, but the workers' pain was not shared by top executives, many of whom had already cashed in millions of dollars worth of Enron stock earlier this year. For instance, Enron Chairman, Kenneth Lay, was able to sell at least $23 million worth of his company's stock this year –a year in which its price has gone from $82 to just 26 cents per share.

The only mistake these employees have committed were being loyal to their company and wanting their own small but well-deserved share of the riches Enron executives habitually pocketed during their years at the company. Of Enron's 21,000 employees, the approximate 12,000 who participated in the Enron 401(k) plan now have virtually nothing.

Another source of problems is that companies that make their matching contributions in stock usually place restrictions on the trading of those shares by the employees. Generally, workers cannot sell their shares until they are near the retirement age, making them captive investors.

Enron prevented its workers from selling the shares they had accumulated until they reached the age of 50. Although this did not save the stock from collapse, it did major harm to its employees. It is alarming to consider that Enron is not alone in such a requirement. Other big companies lock workers into their 401(k) company shares until a certain age. We all know that you are not supposed put all eggs in one basket. Yet nationwide we have an average of 30 percent company stock held in these plans.

Apart from the financial problems caused to thousands of people nationwide by the precipitous fall of Enron, probably I should say even internationally, there are other source of serious issues that also need to be discussed.

To that list of people affected by the economy, we also have to add the immigrants that are being laid off across the country and even being forced to leave the country due to immigration regulations. In the case of Enron, several hundred foreign nationals were working with H-1B visas in Houston alone and a significant number of them have been laid off, shattering in seconds years of hard work and lifetime ambitions.

As if losing your retirement savings and your job wasn't enough, indeed there is the case of these hundreds of immigrants that have come to the U.S. with an employer-specific visa and through their work have contributed to the betterment of our economy, especially during these difficult times. The workers, all of the sudden, find themselves desperate to find a job in about 30 days, so that they and their families, are not forced to leave the country.

Mr. Chairman, to conclude I would like to touch on an issue that I consider key on this affair. Under my perspective, transparency of information must be enforced in publicly traded firms, such as Enron.

Transparency in financial reporting plays an essential role in making the financial markets fundamentally efficient. This is absolutely necessary if we want to have healthy markets.

Although the internal controls within Enron as well as the independent oversight by the board and auditors will be investigated in detail, what answers can be given to (ex) employees, pension holders, shareholders, and creditors who have lost lifetime savings, retirement income, and jobs due to the actions of two dozen people?

Also, we should not forget that Enron distributed an additional $55 million to 500 key employees two days before filing for bankruptcy protection as an incentive for them to remain with the company while Enron works to emerge from Chapter 11.

If it is not a felony for executives to cash out their millions before their failures are revealed and then block employees from salvaging their 401(k) plans afterward, it certainly represents the height of arrogance and indecency.

Thank you.