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SOLYNDRA AND THE DOE LOAN GUARANTEE PROGRAM

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

SEPTEMBER 14, 2011

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C O N T E N T S

	Page
Hon. Cliff Stearns, a Representative in Congress from the State of Florida, opening statement	1
Prepared statement	4
Hon. Diana DeGette, a Representative in Congress from the State of Colorado, opening statement	6
Hon. Fred Upton, a Representative in Congress from the State of Michigan, opening statement	25
Prepared statement	27
Hon. Joe Barton, a Representative in Congress from the State of Texas, opening statement	29
Hon. Michael C. Burgess, a Representative in Congress from the State of Texas, opening statement	29
Prepared statement	30
Hon. Henry A. Waxman, a Representative in Congress from the State of California, opening statement	31
Hon. Marsha Blackburn, a Representative in Congress from the State of Tennessee, prepared statement	153

WITNESSES

Jonathan Silver, Executive Director, Loan Programs Office, Department of Energy	33
Prepared statement	36
Answers to submitted questions	167
Jeffrey D. Zients, Deputy Director for Management, Office of Management and Budget	42
Prepared statement	44
Answers to submitted questions	182

SUBMITTED MATERIAL

Department of the Environment and Office of Management and Budget staff emails, dated January to August 2009, and OMB staff email, dated January 31, 2011, submitted by Ms. DeGette	8
Credit Committee Recommendation re: Solyndra Fab 2 LLC submission as of January 9, 2009, submitted by Ms. DeGette	50
Article, "The Solar Hype Cycle: Don't Let The Sun Go Down On Me," dated August 4, 2008, by Mark Modzelewski for Xconomy.com, submitted by Mr. Pompeo	94
Credit Committee Paper Request for Loan Guarantee Approval of Solyndra Fab 2, LLC, project, dated March 11, 2009, submitted by Ms. DeGette	104
Majority supplemental memo, dated June 23, 2011, submitted by Mr. Stearns	129
Majority slide presentation, submitted by Mr. Stearns	154

SOLYNDRA AND THE DOE LOAN GUARANTEE PROGRAM

WEDNESDAY, SEPTEMBER 14, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 9:35 a.m., in room 2123 of the Rayburn House Office Building, Hon. Cliff Stearns (chairman of the subcommittee) presiding.

Members present: Representatives Stearns, Terry, Sullivan, Murphy, Burgess, Blackburn, Myrick, Bilbray, Gingrey, Scalise, Gardner, Griffith, Barton, Upton (ex officio), Pompeo, DeGette, Schakowsky, Markey, Green, Christensen, Dingell, and Waxman (ex officio).

Staff present: Carl Anderson, Counsel, Oversight; Gary Andres, Staff Director; Sean Bonyun, Deputy Communications Director; Karen Christian, Deputy Chief Counsel, Oversight/Investigations; Todd Harrison, Chief Counsel, Oversight/Investigations; Carly McWilliams, Legislative Clerk; Andrew Powaleny, Deputy Press Secretary; Krista Rosenthall, Counsel to Chairman Emeritus; Alan Slobodin, Deputy Chief Counsel, Oversight; John Stone, Counsel, Oversight/Investigations; Kristen Amerling, Minority Chief Counsel and Staff Director, Oversight; Phil Barnett, Minority Staff Director; Brian Cohen, Minority Senior Policy and Staff Director, Investigations; Karen Lightfoot, Minority Communications Director; Elizabeth Letter, Minority Press Assistant; Alvin Banks, Minority Investigator; Matthew Siegler, Minority Counsel; Stacia Cardille, Minority Counsel; and Anne Tindall, Minority Counsel.

OPENING STATEMENT OF HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. STEARNS. Good morning, everybody. We convene this important hearing of the Subcommittee on Oversight and Investigations to examine the involvement of the Department of Energy and the White House Office of Management and Budget in the review, approval, and subsequent restructuring of the $535 million loan guarantee to Solyndra.

The Obama administration has repeatedly touted its green energy plan as the savior for our faltering economy. Solyndra was the first loan guarantee issued by the Obama administration using stimulus dollars. Administration officials held out the company as a shining example of how the stimulus was creating jobs and invigorating the economy. However, just after 2 years of receiving this

half-of-a-billion-dollar loan guarantee, and 6 months after DOE restructured the terms of the deal, Solyndra has closed its door, laid off over a thousand employees, and filed for bankruptcy. Last week, the FBI agents raided the facility.

One of our witnesses today, Mr. Silver, attempts to claim in his written testimony that the Bush administration is equally at fault for approving Solyndra's deal and that Solyndra was a train ready to leave the station when President Obama took office. But in reality, on January 9, 2009—at the end of the Bush administration—the DOE Credit Committee voted against offering a conditional commitment to Solyndra, saying that the real deal was premature and questioning its underlying financial support. Only after the Obama administration took control, and the stimulus passed, was the Solyndra deal pushed through.

We have been asking questions for almost 7 months about this deal. We have gathered documents from the Department of Energy. In a party-line vote, the committee was forced to subpoena OMB in July in order to get even basic information showing their role in the Solyndra deal. Now, committee Democrats have questioned the basis of our investigation and actually have accused the committee of engaging in a fishing expedition and abusing our subpoena power. But what the committee's review of these documents clearly show is that we were right all along to ask questions about this loan. It should not take a financial restructuring, bankruptcy, and FBI raid for my colleagues on the other side of the aisle to put politics aside and join us in our efforts.

The documents demonstrate that when DOE was reviewing the Solyndra guarantee in 2009, it was well aware of the financial problems the deal posed. What the documents also show is that the rush to push out stimulus dollars may have impacted the depth and quality of DOE and OMB's review. In fact, the White House had scheduled Vice President Biden's and Secretary Chu's appearing at Solyndra's groundbreaking event prior to DOE even making its final presentation to OMB on the terms of the Solyndra deal. An email from a senior OMB staff member to the Office of the Vice President sums up this disturbing revelation. In it, he states, "We have ended up with a situation of having to do rushed approvals on a couple of occasions. We would prefer to have sufficient time to do our due diligent reviews and have the approval set the date for the announcement rather than the other way around."

Only 6 months after the loan closed, Solyndra's financial troubles became increasingly severe. In March 2010, an independent auditor issued a report stating, "the Company has suffered recurring losses from operations, negative cash flows since inception and has a net stockholders' deficit that, among other factors, raises substantial doubt about its ability to continue as a going concern." Nonetheless, President Obama visited Solyndra in May and proclaimed, "the true engine of economic growth will always be companies like Solyndra."

Just one year after the loan closed, Solyndra was almost out of cash. In late fall of 2010, DOE began negotiations with Solyndra and two of its main investors about restructuring the loan in order to keep the company afloat. Under the restructuring agreement, Solyndra's private investors were given priority over the govern-

ment with regard to the first $75 million recovered in the event of liquidation. Documents reviewed by the committee staff raise serious concerns about whether this deal was better for the taxpayers. These concerns are spelled out in an email between OMB staff in late January 2011, which notes that, "while the company may avoid default with a restructuring, there is also a good chance it will not. At that point, additional funds would have been put at risk, recoveries may be lower, and questions will be asked."

So my colleagues, we are here today to ask those very questions. If Solyndra really is the "litmus test for the Loan Guarantee Program's ability to fund good projects quickly," as DOE's stimulus advisor called it in an email to DOE officials, I am very concerned about where the $10 billion DOE that they have left to spend before the September 30 deadline is gone, taxpayers would be better served by not risking even more of their money, instead using it to reduce our mounting national deficit.

Thank you, and with that I recognize the distinguished colleague from Colorado, Ms. DeGette.

[The prepared statement of Mr. Stearns follows:]

Opening Statement of the Honorable Cliff Stearns
Chairman, Subcommittee on Oversight and Investigations
"Solyndra and the DOE Loan Guarantee Program"
September 14, 2011

(As Prepared for Delivery)

We convene this hearing of the Subcommittee on Oversight and Investigations to examine the involvement of the Department of Energy and the White House Office of Management and Budget in the review, approval, and subsequent restructuring of the $535 million loan guarantee to Solyndra.

The Obama Administration has repeatedly touted its green energy plan as the savior of our faltering economy. Solyndra was the first loan guarantee issued by the Obama Administration using stimulus dollars. Administration officials held out the company as a glowing example of how the stimulus was creating jobs and invigorating the economy. However, just two years after receiving this half of a billion dollar loan guarantee, and six months after DOE restructured the terms of the deal, Solyndra has closed its doors, laid off over a thousand workers, and filed for bankruptcy. Last week, FBI agents raided the facility.

One of our witnesses today, Mr. Silver, attempts to claim in his written testimony that the Bush Administration is equally at fault for approving Solyndra and that Solyndra was a train ready to leave the station when President Obama took office. In reality, on January 9, 2009—at the end of the Bush Administration—the DOE Credit Committee voted against offering a conditional commitment to Solyndra, saying that the deal was premature and questioning its underlying financial support. Only after the Obama Administration took control, and the stimulus passed, was the Solyndra deal pushed through.

We have been asking questions for almost seven months about this deal. We have gathered documents from the Department of Energy. In a party-line vote, the Committee was forced to subpoena OMB in July in order to get even basic information showing their role in the Solyndra deal. Committee Democrats have questioned the basis of our investigation, and accused the Committee of engaging in a fishing expedition and abusing our subpoena power. But what the Committee's review of these documents clearly shows is that we were right all along to ask questions about this loan. It should not take a financial restructuring, bankruptcy, and FBI raid for my colleagues on the other side of the aisle to put politics aside and join us in our efforts.

The documents demonstrate that, when DOE was reviewing the Solyndra guarantee in 2009, it was well aware of the financial problems the deal posed. What the documents also show is that the rush to push out stimulus dollars may have impacted the depth and quality of DOE and OMB's review. In fact, the White House had scheduled Vice President Biden's and Secretary

Chu's appearances at Solyndra' groundbreaking event prior to DOE even making its final presentation to OMB on the terms of the Solyndra deal. An email from a senior OMB staff member to the Office of the Vice President sums up this disturbing revelation. In it, he states "We have ended up with a situation of having to do rushed approvals on a couple of occasions…we would prefer to have sufficient time to do our due diligence reviews and have the approval set the date for the announcement rather than the other way around."

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We are here today to ask those very questions and more. If Solyndra really is the "litmus test for the loan guarantee program's ability to fund good projects quickly," as DOE's stimulus advisor called it in an email to DOE officials, I am very concerned about where the $10 billion DOE has left to spend before the September 30 deadline is going.

OPENING STATEMENT OF HON. DIANA DEGETTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Ms. DEGETTE. Thank you very much, Mr. Chairman.

While China's initiatives continue to threaten our Nation's renewable energy industry and while we continue to try to revive our economy, it should be clear to everybody in this room that solar energy development is not a Democratic or a Republican issue; it is an issue of securing American energy innovation for decades to come. And so we should have a larger discussion about how government can appropriately support the development of domestic clean energy technologies. As we all know, and as we can tell from the chairman's opening statement, there has been a great deal written in the media about today's hearing, and unfortunately, the issue has become very politicized.

The narrow purpose of today's hearing is to thoroughly examine the process and decisions surrounding the Solyndra loan guarantee, but we can't help but look at the issue through the larger lens of what our national energy policy should be going forward. And as we think about the broader issues, it is important to see just what happened with the Solyndra loan.

Now, the chairman said that the minority opposed this investigation, and that couldn't be farther from the truth. We believe this investigation into Solyndra is important to understand both what happened here and also what our appropriate energy policy is. And furthermore, we never oppose production of any documents. We oppose the subpoena because we believe that the documents were being produced in good time. But having said that, I am happy that we now have the documents, and I think those documents should be made available to everybody.

The documents and briefings that I have reviewed show that the Department of Energy in both the Bush and Obama administrations supported Solyndra's loan guarantee application. In 2007, the Bush administration DOE invited Solyndra to submit a full application, and by the end of the Bush administration, DOE had submitted the application to its Critical Committee for review. After President Obama took office, DOE continued to work on the application and ultimately approved the loan guarantee in September 2009.

In spring of 2010, a pre-IPO audit of Solyndra raised concerns about Solyndra's viability, and by late 2010, DOE had determined that the company was headed towards default. DOE was faced with a choice at this point: restructure the loan to increase the chances that Solyndra could repay the taxpayers' funds or cut their losses and accept the high possibility of default. Ultimately, DOE determined restructuring was the course of action most likely to preserve the full recovery of the loan value. Under terms approved in February 2011, Solyndra was given more time to repay the loan, the government obtained additional collateral, and Solyndra was required to raise an additional $75 million from private investors that would have primacy over the government's interest in the event of liquidation before 2013.

Now, this July, Solyndra's CEO visited my office as well as other members' and talked about the strong demand for the company's

product and how 2011 revenues were projected to double from 2010. Now, as we all know, less than 2 months later, the company announced it would file for bankruptcy. And now, the Federal Government's recovery of over $500 million loaned to Solyndra is at grave risk. It is always easier to assess decisions in hindsight, but particularly with a loan this big, it is critical that we get answers to several key questions.

First, did the Bush and Obama administrations conduct appropriate due diligence before September 2009 guarantee approval? Second, did the Department of Energy sufficiently monitor the financial status of Solyndra after loan disbursements began, particularly as the market forces seemed to be against them? Third, did Solyndra make accurate representations to the government about its financial prospects both before and after approval of its loan guarantee? And when Solyndra's financial situation deteriorated, did the government make the correct decisions about restructuring the loan?

In examining these issues, I want to underscore that we not only lose sight of the policy context for the Loan Guarantee Program that supported Solyndra. This program was designed to help U.S. companies to grow and compete in a global clean energy market in which countries like China and others are providing a wide range of incentives and support for domestic industry. Even if we conclude that bad judgments were made on the Solyndra loan, we have got to continue to work hard to develop and implement appropriate policies that give American clean energy investors the support they need to make the U.S. a market leader in the future and also that protect the U.S. taxpayer.

These are critical decisions. Ranking Member Waxman and I have asked that the Solyndra CEO and CFO be called, and I believe that is going to be happening in short order. Because I am perplexed at how they can be in my office in July telling me things were looking better and filing for bankruptcy 2 months later.

With that, Mr. Chairman, I yield back.

Mr. STEARNS. The gentlelady mentioned in her opening statement about the documents we have been reviewing. Would she consider a unanimous consent request that all those documents be made part of the record?

Ms. DEGETTE. Yes.

Mr. STEARNS. So ordered.

[The information follows:]

[redacted]

From: Seward, Lachlan
Sent: Tuesday, January 13, 2009 2:11 PM
To: [redacted]
Cc: [redacted]
Subject: RE: USA Today Article on Rooftop Solar Systems

[redacted] Thanks. It serves serves to bolster our argument for a market analysis at this time.

Lach

-----Original Message-----
From: [redacted]
Sent: Tuesday, January 13, 2009 1:16 PM
To: [redacted]
Cc: [redacted]
Subject: RE: USA Today Article on Rooftop Solar Systems

To All-There is an article on page 1B of today's USA Today news paper on the "Glut of roof top solar systems."

-----Original Message-----
From: Seward, Lachlan
Sent: Tuesday, January 13, 2009 12:30 PM
To: [redacted]
Cc: [redacted]
Subject: Solyndra Meeting

After canvassing the committee it was the unanimous decision not to engage in further discussions with Solyndra at this time.

Lach

[redacted]

From: [redacted]
Sent: Monday, January 26, 2009 5:15 PM
To: [redacted]
Cc: [redacted]
Subject: RE: Solyndra Analysis

[redacted]

As we are approaching the beginning of the approval process for Solyndra again, I wanted to highlight the questions below that remain outstanding. In order to move forward with the credit review of this project, I will need the responses to the questions below. Please let me know when the responses are ready. Delay in getting these responses will delay our ability to review the project and to meet the target deadline we have set.

As an additional note, I want to ensure that these concerns are addressed in the negotiations occuring Friday with Solyndra. As a practical matter, it would be ackward to finalize negotiations with the applicant and then to go back to them with additional requests for information. I want to ensure that the specific concerns Credit Policy and Credit Committee have indicated are reflected in the negotiated terms.

Please send your responses to the questions below at your earliest convenience.

Thanks.

From: [redacted]
Sent: Wednesday, January 07, 2009 5:12 PM
To: [redacted]
Subject: Solyndra Analysis
Importance: High

All,

Below is a status of information requests Credit Policy has made regarding Solyndra. Each of these three emails was intended to provide constructive feedback to move this process forward. To-date, I have not received a response to most of these requests.

Also attached is Credit Policy's presentation for OMB. This analysis was run based on information received as of January 4 and does not reflect any subsequent submissions.

We have not run the credit subsidy range pending receipt of information requested below. At this point, I believe we have two options:

1) Provide the initial estimate provided to the applicant 12/9 stating that it has not been updated to reflect the LGPO's due diligence and underwriting assumptions.
2) Run the calculation based on the amortization we received today and Credit Policy's ratings with the caveat that this is subject to change based on new/additional information as well as the new Term Sheet proposal.

I suggest we discuss as soon as possible. I have not released any information to OMB as was originally scheduled for today. I am scheduled to brief OMB tomorrow.

Thanks.

December 15, 2008 Email

The credit analysis of the Solyndra project may benefit from the following considerations. These are grouped into several categories

[redacted]

From: [redacted]
Sent: Tuesday, March 10, 2009 11:59 AM
To: [redacted]
Subject: RE: Solar co loan announcement in northern california

DOE is trying to deliver the first loan guarantee within 60 days from inauguration (the prior administration could not get it done in four years). This deal is NOT ready for prime time.

This loan guarantee will NOT be delivered or approved by any of these actions by March 19

1) [redacted] acknowledges that the company needs to raise $200 million in private equity

2) All of the OMB approval steps need to be completed. (OMB staff have not seen the draft Term Sheet (or any of the negotiated terms), the independent engineer's report, or the independent market as[redacted]

3) After DOE gets the final credit rating, they will submit a subsidy cost to OMB for review and approval. It's anticipated that this would likely be happening in May. OMB has serious issues with the DOE subsidy cost model which we need to address very quickly -- we are planning to kick this discussion off next week.

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-----Original Message-----
From: [redacted]
Sent: Tuesday, March 10, 2009 11:36 AM
To: [redacted]
Subject: RE: Solar co loan announcement in northern california

Lets expedite the conversation. If I need to pull this off the track, its needs to be within the next few hours.

DO NOT COPY

-----Original Message-----
From: [redacted]
Sent: Tuesday, March 10, 2009 11:27 AM
To: [redacted]
Subject: FW: Solar co loan announcement in northern california

It looks like this needs to be vetted with Preeta before the deal can be announced -- it would not be god if there was an announcement and the deal was not completed. There's a recurrent problem with the scheduling office looking for events before they are ready to go.

[redacted]

-----Original Message-----
From: [redacted]
Sent: Tuesday, March 10, 2009 11:25 AM
To: [redacted]
Cc: [redacted]
Subject: FW: Solar co loan announcement in northern california

Solyndra's Board approved the negotiated terms of a deal last night. DOE hasn't offered them the official "Term Sheet" yet. That can only be offered after DOE's Credit Committee and Credit Review Board recommend (or not) to the Secretary that he approve the guarantee.

The Credit Committee is scheduled for Thursday, and CRB on Friday-Tuesday.

Assuming the CC and CRB recommend approval, then DOE will enter into a Conditional Commitment with Solyndra. Subsequent to that, Solyndra must meet all conditions precedent to a loan guarantee before the guarantee is executed. (At execution the obligation is entered into.)

After conditional commitment DOE must consult Treasury on the terms and conditions of the deal, and OMB must review and approve the credit subsidy cost. (No later than 30 days prior to closing, Solyndra must give DOE a credit rating based on the final terms and financials of the deal. This will inform the credit subsidy cost estimate.)

According to DOE, the credit subsidy cost will be paid by Recovery Act appropriations, not by the borrower. This loan guarantee is being processed under the new Section 1705b of Title XVII. While DOE had originally told OMB that they would need to amend existing Title XVII regulations to process any 1705b loan, they are now arguing that applications that were submitted under the 2008 Solicitation can be processed. They say that it is therefore not necessary to amend the regulations to execute this loan guarantee. We have not vetted this idea with our general counsel.

CONFIDENTIAL

-----Original Message-----
From: [redacted]
Sent: Tuesday, March 10, 2009 10:38 AM
To: [redacted]
Subject: FW: Solar co loan announcement in northern california

DO NOT COPY

-----Original Message-----
From: [redacted]
Sent: Tuesday, March 10, 2009 10:33 AM
To: [redacted]
Subject: FW: Solar co loan announcement in northern california

-----Original Message-----
From: [redacted]
Sent: Tuesday, March 10, 2009 10:31 AM
To: [redacted]
Subject: FW: Solar co loan announcement in northern california

Need to know where we are asap.

-----Original Message-----
From: [redacted]
Sent: Tuesday, March 10, 2009 10:05 AM
To: [redacted]
Subject: FW: Solar co loan announcement in northern california

Your thoughts?

Page 2 of 000

-----Original Message-----
From: [redacted]hq.doe.gov]
Sent: Tuesday, March 10, 2009 10:04 AM
To: [redacted]
Cc: [redacted]
Subject: Solar co loan announcement in northern california

[redacted]

The solar co board approved the terms of the loan guarantee last night, setting us up for the first loan guarantee conditional commitment for the president's visit to california on the 19th. We still need to do internal credit committee and credit review board internally this week, but all is on track for this announcement in northern california (I mixed tesla's so cal mfg facility and the norther california solar mfg facility). The team is putting together a two page briefing memo for you this morning on the visit. Three highlights:

First loan guarantee from the department of energy--delivered in 60 days from inauguration (the prior administration could not get it done in four years). This illustrates the pace at which the deparment is moving to address the urgent challenges in the economy.

This loan is for an advanced technology solar manufacturing facility with strong global markets--this company will serve the US market (thanks to the strong tax policies from the recovery act) and will make significant exports to europe (US mfg jobs to serve the global market).

This deal is designed to bring private capital off the sidelines. The sponsors now need to go out and raise $200mm in equity but the combination of tax policy and the loan guarantee makes this an attractive business for private capital again. Doe taking this action should help unfreeze the credit markets.

Regards, [redacted]

CONFIDENTIAL
DO NOT COPY

[redacted]
Senior Advisor to the Secretary of Energy for Recovery Act Spending Department of Energy 1000 Independence Avenue, 7th Floor
202 586 1989

From: [redacted]
To: [redacted]
Subject: Solyndra
Date: Wednesday, August 19, 2009 10:28:21 PM
Attachments: Solyndra - Base Case Projections 2009-08-18.xlsx

---

[redacted]

Thanks for following up yesterday on Solyndra. I think we were able to close out a number of issues. I appreciate the work Solyndra did on this yesterday evening regarding the financial model and construction milestones.

I'm concerned, however, that we still have a major outstanding issue. The attached model represents the Base Case that was utilized by Fitch and the project team. In this version, all working capital assumptions were eliminated, suggesting that Fab2 will hold no A/R; inventory or A/P balances. While debt coverage is robust under stress conditions, the project cash balance goes to $62,000.00 in September 2011. Under the assumption that a small amount of cash is tied up in working capital, the project will face a funding shortfall. Even one day of A/R results in a negative cash balance, for example.

The issue of working capital assumptions has been a major issue repeatedly raised since December. Furthermore, the assumption of no working capital at the project company is inconsistent with the model we looked at just yesterday and the project team 'due diligence update'. We are now two days away from the scheduled OMB presentation and, having received some information, we seem to have a major issue. We need to figure out how to resolve ASAP.

In addition to the critical issue above, we have a number of other modeling issues that need to be addressed. For example, as stated yesterday, property taxes don't seem to appear in the model. We should also revise the income tax assumption to match the PWC assessment.

I suggest we convene tomorrow morning to figure out how we are going to address. I have to meet with Medicine Bow first thing, but suggest 10:30.

Does that work for everyone?

Thanks.

From: [redacted]
To: [redacted]
Subject: RE: Solyndra
Date: Thursday, August 20, 2009 12:30:18 AM

This sounds like an issue needing immediate attention. Certainly, we can't meet with OMB until this is addressed.

[redacted] called to get a status check from me. Do I need to raise this with him?

[redacted]

From: [redacted]
Sent: Wednesday, August 19, 2009 10:28 PM
To: [redacted]
Subject: Solyndra

[redacted]

Thanks for following up yesterday on Solyndra. I think we were able to close out a number of issues. I appreciate the work Solyndra did on this yesterday evening regarding the financial model and construction milestones.

I'm concerned, however, that we still have a major outstanding issue. The attached model represents the Base Case that was utilized by Fitch and the project team. In this version, all working capital assumptions were eliminated, suggesting that Fab2 will hold no A/R; inventory or A/P balances. While debt coverage is robust under stress conditions, the project cash balance goes to $62,000.00 in September 2011. Under the assumption that a small amount of cash is tied up in working capital, the project will face a funding shortfall. Even one day of A/R results in a negative cash balance, for example.

The issue of working capital assumptions has been a major issue repeatedly raised since December. Furthermore, the assumption of no working capital at the project company is inconsistent with the model we looked at just yesterday and the project team 'due diligence update'. We are now two days away from the scheduled OMB presentation and, having received some information, we seem to have a major issue. We need to figure out how to resolve ASAP.

In addition to the critical issue above, we have a number of other modeling issues that need to be addressed. For example, as stated yesterday, property taxes don't seem to appear in the model. We should also revise the income tax assumption to match the PWC assessment.

I suggest we convene tomorrow morning to figure out how we are going to address. I have to meet with Medicine Bow first thing, but suggest 10:30.

Does that work for everyone?

Thanks.

From: [redacted]
To: [redacted]
Subject: FW: Solyndra: Responses to Credit Analysis Questions
Date: Thursday, August 20, 2009 3:27:59 PM

[redacted]

Thanks for requesting the additional information. I would like your analysis of the materials presented.

In order to move this forward, I think we have the following next steps:

1. I will look at the property tax information against the issue raised by RW Beck in January.

2. We can adjust the income tax assumption to 30%. The result should be de minimus, but we should use that assumption from PWC.

3. The issue of Working Capital remains unresolved. First, it seems clear that the cost overrun equity commitment would support cost overruns and ineligible project costs. However, the issue is cash balances, not cost. [redacted] seems to agree that the model runs out of cash in Sept. 2011 even in the base case without any stress. This is a liquidity issue. Secondly, given the implications above, it is difficult to assume in a default scenario that any other entity would be able to assume management of the project company without any working capital. As a practical matter, this is not feasible and leads to questions of ability to run the project company as a stand alone entity. Finally, how can we advance a project that hasn't funded working capital requirements nor seems to have any provision for funding working capital requirements and that generates a working capital shortfall of $50M when working capital assumptions are entered into the model? This is a serious issue we need to resolve as a credit matter. It also simply won't stand up to review by oversight bodies. Are there provision in the agreements that provide access to working capital provided by the parent (e.g., a liquidity facility)? I don't think the cost overrun commitment accomplishes this, but perhaps an inter-company line of credit would.

4. We still do not have a lender case. In order to move forward, I have gone ahead and built one. I will send it under separate cover. I need you to confirm it and to include it in the due diligence update. Moving forward, the deal team needs to provide this case. Notwithstanding the working captal issue above, the lender case supports the conclusions you've made and addresses the LGPO policy requirement of having a lender case.

Thanks.

-----Original Message-----
From: [redacted]
Sent: Thursday, August 20, 2009 2:24 PM
To: [redacted]
Cc: [redacted]
Subject: Solyndra: Responses to Credit Analysis Questions

[redacted]

In response to questions related to the credit analysis of the Solyndra Fab 2 project, we have prepared the responses below.

The current Solyndra Fab 2 Base Case Projections have changed since the original model was presented,

[redacted]

From: [redacted]@hq.doe.gov]
Sent: Thursday, August 27, 2009 10:31 AM
To: [redacted]
Subject: Solyndra Closing Date

[redacted]

Could you confirm whether there are any issues regarding a closing on Sept. 3 for a Sept. 4 VP event on Solyndra? This implies we will need to wrap up our review/approval by Sept. 1 so we can get internal approval here for the loan/subsidy commitment and then execute the apportionment etc. I believe you were going to follow up with [redacted]

Thanks.

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[redacted]

From: [redacted]
Sent: Thursday, August 27, 2009 4:40 PM
To: [redacted]
Cc: [redacted]
Subject: RE: Final Solyndra Credit Subsidy Cost

As long as we make it crystal clear to DOE that this is only in the interest of time, and that there's no precedent set, then I'm okay with it. But we also need to make sure they don't jam us on later deals so there isn't time to negotiate those, too.

From: [redacted]
Sent: Thursday, August 27, 2009 4:31 PM
To: [redacted]
Cc: [redacted]
Subject: RE: Final Solyndra Credit Subsidy Cost

We don't know. I would assume that [redacted] would assume liquidation. (And in fact the first credit assessment that Fitch did, coincidentally for Solyndra, stated that as a startup, Fitch would assume liquidation.) When we were working on the model DOE argued that if a project is project financed, then of course one assumes work out. We however, persisted in saying that that would be determined on a case-by-case basis as determined by project specifics. (We essentially kicked the can down the road, and then Fitch rode to our rescue by stating that as a startup [redacted] assumes liquidation.)

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From: [redacted]
Sent: Thursday, August 27, 2009 4:20 PM
To: [redacted]
Cc: [redacted]
Subject: RE: Final Solyndra Credit Subsidy Cost

So we know what to say if asked, what are the arguments for assuming a workout vs. liquidation?

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From: [redacted]
Sent: Thursday, August 27, 2009 3:10 PM
To: [redacted]
Cc: [redacted]
Subject: Final Solyndra Credit Subsidy Cost

I just wanted to check with you to make sure that you (in [redacted] and [redacted] absence) are ok with our proposal on Solyndra's credit subsidy cost: (I've been out for 2.5 weeks, and [redacted] has been covering this issue for me so will fill in with details.) The credit subsidy model that OMB approved last October for the Title XVII loan guarantee program assumed a workout scenario for recoveries. However, we made it clear to DOE that decisions as to whether work out or liquidation should be assumed in the model for specific cases, would be made on a case by case basis. Given the time pressure we are under to sign-off on Solyndra, we don't have time to change the model to assume liquidation.

DOE is proposing to use a recovery treatment that BRD and the Energy Branch have been pushing DOE to use on the auto loan program. [redacted] can you fill [redacted] is as to the exact nature of this methodology? Both [redacted] and I believe this is the best approach for this one case, given time constraints. Do you have any concerns?

[redacted]

From: [redacted]
Sent: Monday, August 31, 2009 12:48 PM
To: McSweeny, Terrell P.
Subject: DOE announcement

Hi Terrell,

I was wondering if you could tell me who schedules announcements and events with the Department of Energy that you folks are participating in? We have ended up in the situation of having to do rushed approvals on a couple of occasions (and we are worried about Solyndra at the end of this week). We would prefer to have sufficient time to do our due diligence reviews and have the approval set the date for the announcement rather than the other way around.

Is there some person I can speak with to work on coordinating these announcements?

[redacted]
Office of Management and Budget
[redacted]
395-[redacted]

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[redacted]

From: [redacted]
Sent: Monday, August 31, 2009 3:17 PM
To: [redacted]
Subject: RE: Solyndra Update

I'm checking with OMB...

-----Original Message-----
From: [redacted]
Sent: Monday, August 31, 2009 3:05 PM
To: [redacted]
Subject: FW: Solyndra Update

See below

We are walking a fine line with Solyndra needing to begin notifying investors to fly in for the Friday event, but this OMB piece not being final.

Our concern on the press end is that this leaks out before the OMB portion is cooked - if there is any way to accelerate, would give a lot of peace of mind/flexibility on that front.

The final step will be the loan closing which will happen on Thursday regardless - but my understanding is that that's pretty much a given - it's the leaking out before OMB is finished that could leave us in an awkward place.

-----Original Message-----
From: [redacted]@hq.doe.gov]
Sent: Friday, August 28, 2009 10:08 AM
To: [redacted]
Cc: [redacted]
Subject: RE: Solyndra Update

On the OMB side, from our Credit Policy Director

"We still have one outstanding question from our initial meeting Tuesday (DOE has not responded--I need more information from [redacted] and Solyndra).
We have also not received the final set of questions/issues from OMB to which DOE will need to respond. After OMB review, and any changes are made to the credit subsidy cash flows, OMB would essentially pre-approve that calculation (formal approval comes in the form of the apportionment which occurs after S2 or S1 approve commitment of the loan amount and subsidy rate)."

OMB is fully aware of the Friday timeline. The DOE team is hoping to receive the final OMB questions/issues today so that they can be quickly reviewed/responded in full so that we can complete the outstanding process requirements.

[redacted]

-----Original Message-----
From: [redacted]
Sent: Friday, August 28, 2009 9:50 AM
To: [redacted]

Cc: [redacted]

Subject: RE: Solyndra Update

9:00 am PT timing should be fine for CA.

Defer to [redacted] on the OMB part.

Proposal for notifications is:
1. Yesterday the company was notified of the event date, but for planning purposes only and to ask their VIPs to hold time on their schedule (their investors already know the details because they have to sign paperwork as the deal goes forward). They will hold on broader invites until we notify electeds of details later next week.
2. On Monday DOE will call electeds to notify them that the Secretary will be in Northern California on Friday morning (no other info available then), then later in the week give more information.
3. On Thursday we will notify press.

Local press will of course be invited. Will defer to others about any national press coordination.

Questions?

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-----Original Message-----
From: [redacted]@ovp.eop.gov]
Sent: Thursday, August 27, 2009 4:09 PM
To: [redacted]
Cc: [redacted]

Subject: RE: Solyndra Update

Hello folks -

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Wrapping up some loose ends from our call today:

1. Timing - We've made some adjustments to our schedule and it now looks like the VP's window of availability is 12:00 PM ET - 12:45 PM ET. That would put us at a 9:00 AM PT event start with VP portion around 9:15 AM PT. Does that work on the CA end?

2. OMB Approval - Can someone provide a quick rundown of what final step this is that OMB would be clearing? We just want to make sure we can be as helpful as possible in ensuring this gets done for you on timeline. We were thinking all OMB clearance was to be finished this week (?) - but perhaps there is a final step we hadn't considered?

3. Browner/WH Attendee - [redacted] can you took a look at this part?

4. Notification Timeline - Team DOE will draft up a proposal for Congressional/elected, company/investor and press notification for discussion. Noting that I'm connecting [redacted] and [redacted] with [redacted] and [redacted] re: electeds.

5. VP Side/Satellite - VP will do this from the White House - TBD whether there is a press pool in there or we just make the feed available - but no audience. We'll go back to WHCA to let them know this is a go and connect with appropriate OVP and DOE folks to begin working through the cost and logistical details.

Anything I've missed?

[redacted]

From: [redacted]@hq.doe.gov]
Sent: Wednesday, August 26, 2009 8:01 PM
To: [redacted]
Cc: [redacted]
Subject: Re: Solyndra Update

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Sure. Including DOE press.

----- Original Message -----
From: [redacted]
To: [redacted]@who.eop.gov>; [redacted]
Cc: [redacted]
Sent: Wed Aug 26 18:49:36 2009
Subject: RE: Solyndra Update

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Alright, everyone - thanks for your patience as we nailed this down here.

It looks like this will definitely be a VPOTUS event after all - and it would need to be on the 4th in that case.

I hear [redacted] had a good visit out there and things look feasible from a logistical standpoint - but much more to discuss. Shall we hop on a call tomorrow to discuss further? How about 1:00 PM? If that works, will circulate number.

From: [redacted]
Sent: Tuesday, August 25, 2009 11:54 AM
To: [redacted]
Cc: [redacted]
Subject: RE: Solyndra Update

Sounds good. POTUS on the 8th was what we were going for, but that's looking unlikely. With POTUS unlikely, we wanted to give this to the VPOTUS, and 4th was looking best.

Glad to discuss tomorrow.

From: [redacted]hq.doe.gov]
Sent: Tuesday, August 25, 2009 11:51 AM
To: [redacted]
Cc: [redacted]
Subject: RE: Solyndra Update

hey all - lets talk about this, as of last Friday the POTUS was set to satellite in and the event has been moved to the 18th.

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Where did you see Solyndra was on the 4th? Worried about the dates you have [redacted] want to make sure we're all on the same page. [redacted] and I should probably discuss when tomorrow's event is over.

From: [redacted]
Sent: Tuesday, August 25, 2009 11:48 AM
To: [redacted]
Cc: [redacted]
Subject: RE: Solyndra Update

DO NOT COPY

[redacted] I am looping in [redacted] Thanks.

[redacted]
Department of Energy
202-586-1335

From: [redacted]who.eop.gov]
Sent: Tuesday, August 25, 2009 10:28 AM
To: [redacted]

Cc: [redacted]
Subject: Solyndra Update

We are thinking (technical logistics allowing) that we would want the VP can satellite into the event on 9/4 (next Friday). It's the same day unemployment numbers come out, and we'd want to use this as an example where the Recovery Act is helping create new high tech jobs. Does that work for you guys? Were you guys going to send Sec. Chu or someone else to CA? We are discussing the possibility of sending someone from here (e.g. [redacted] out there as well.

Let me know if 9/4 sounds ok. Let me know what DoE would be thinking of doing with the Secretary or otherwise. Don't need a formal event memo in a rush, but just want to start planning things if this sounds generally ok. Glad to do a quick call with whomever. Thanks,

[redacted]

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[redacted]

From: [redacted]
Sent: Monday, January 31, 2011 1:39 PM
To: [redacted]
Cc:
Subject: Solyndra optics

Although the decision has already been made for OMB not to play an active role in determining what to do with Solyndra, the Director/S-1 meeting tomorrow might present an opportunity to flag to DOE at the highest level the stakes involved, for the Secretary to do as he sees fit (and be fully informed and accountable for the decision). Although optics are generally out of our lane, it may be worthwhile for the Director to privately make this point to the Secretary:

Given the PR and policy attention Solyndra has received since 2009, the optics of a Solyndra default will be bad whenever it occurs. While the company *may* avoid default with a restructuring, there is also a good chance it will not. If Solyndra defaults down the road, the optics will arguably be worse later than they would be today. At that point, additional funds have been put [redacted] *may* be lower, and questions will be asked as to why the Administration made a bad investment, not just once (which could hopefully be explained as part of the challenge of supporting innovative technologies), but twice (which could easily be portrayed as bad judgment, or worse). In addition, the timing will likely coincide with the 2012 campaign season heating up, whereas a default today could be put in the context of (and perhaps even get some credit for) fiscal discipline / good government because the Administration would be limiting further taxpayer exposure, letting bad projects go, and could make public steps it is taking to learn lessons and improve / limit future lending.

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I understood from the readout of the Friday meeting that Solyndra's prospects may have hit home for [redacted] on Friday. Perhaps she'd have an appetite for conveying this message.

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Mr. STEARNS. With that, we recognize the distinguished full chairman of the Energy and Commerce Committee, the gentleman from Michigan, Mr. Upton.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Well, thank you, Mr. Chairman. In 2009, Solyndra was the first company to receive a DOE energy loan funded with stimulus dollars. Just 2 years after getting $535 million in taxpayer money, and being touted by President Obama as a model for how the government's venture capital program in green technology should work, the company has filed for bankruptcy and been raided by the FBI.

We are starting to look at the DOE Loan Guarantee Program and Solyndra's deal in February. Some questioned the basis for this investigation. And after 4 months of wrangling with the administration to produce relevant documents, the committee was forced to issue a subpoena to OMB. I think Solyndra's recent bankruptcy filing and last week's FBI raid clearly show that the committee was more than justified in its scrutiny of the deal. Pursuant to our oversight functions, we have an important responsibility to pursue answers regarding the use of taxpayers' money.

Our investigation raises several questions about whether the administration did everything that it could to protect taxpayer dollars. Why did the administration think Solyndra was such a good bet? Why did the administration push ahead with restructuring the Solyndra guarantee this year, when some in the government voiced serious concerns about the commercial viability of the company? Why did DOE and OMB allow the government to be subordinated to the private investors in apparent violation of the law?

I look forward to the testimony of Mr. Zients from OMB and Mr. Silver, Executive Director of DOE's Loan Program Office. I want to know what the Solyndra failure means for the Loan Guarantee Program. Was Solyndra just one bad bet by an administration rushing to claim credit for the first loan guarantee, or is it the tip of the iceberg? DOE has closed over $8 billion in loan guarantees to other "green tech" companies, and it has about $10 billion left to spend in the next few weeks before the September 30 deadline. If the administration was so wrong about Solyndra after 9 months of due diligence, how can it possibly exercise the proper controls when doling out another $10 billion in the next couple of weeks? In this time of record debt, I question whether the government is qualified to act as a venture capitalist, picking winners and losers in speculative ventures and shelling out billions of taxpayer dollars to keep them afloat.

We began this investigation to shine a bright light on a program shrouded in secrecy and uncertainty. New details are coming to the forefront today about who decided to allocate billions in taxpayer dollars, and where, and why. This is important information, and the public has a right to know how their hard-earned dollars are being spent. But it is not the end of our inquiry. The answers we have turned up so far spark additional questions, and I am committed to pursuing this investigation and conducting rigorous oversight of the Loan Guarantee Program and its recipients. I hope the

administration and our friends on both sides of the aisle will share our commitment to getting answers.

I yield to the gentleman from Texas, Mr. Barton.

[The prepared statement of Mr. Upton follows:]

Opening Statement of the Honorable Fred Upton
Chairman, Committee on Energy and Commerce
"Solyndra and the DOE Loan Guarantee Program"
September 14, 2011
(As Prepared for Delivery)

In 2009, Solyndra was the first company to receive a Department of Energy loan guarantee funded with stimulus dollars. Just two years after getting $535 million in taxpayer dollars, and being touted by President Obama as a model for how the government's venture capital program in green technology should work, the company has filed for bankruptcy and been raided by the FBI.

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Our investigation raises several questions about whether the Administration did everything it could to protect taxpayer dollars. Why did the Administration think Solyndra was such a good bet? Why did the Administration push ahead with restructuring the Solyndra guarantee this year, when some in the government voiced serious concerns about the commercial viability of the company? Why did DOE and OMB allow the government to be subordinated to the private investors, in apparent violation of the law?

I look forward to the testimony of Jeffrey Zients from OMB and Jonathan Silver, Executive Director of DOE's Loans Program Office. I want to know what the Solyndra failure means for the Loan Guarantee Program. Was Solyndra just one bad bet by an Administration rushing to claim credit for the first loan guarantee, or is it the tip of the iceberg? DOE has closed over $8 billion in loan guarantees to other "green tech" companies, and it has about $10 billion left to spend in the next few weeks, before the September 30 deadline. If the administration was so wrong about Solyndra after nine months of due diligence, how can it possibly exercise the proper controls when doling out $10 billion dollars in a matter of weeks? In this time of record debt, I question whether the government is qualified to act as a

venture capitalist, picking winners and losers in speculative ventures and shelling out billions of taxpayer dollars to keep them afloat.

We began this investigation to shine a bright light on a program shrouded in secrecy and uncertainty. New details are coming to the forefront today about who decided to allocate billions in taxpayer dollars, and where, and why. This is important information, and the public has a right to know how their hard-earned dollars are being spent. But this is not the end of our inquiry. The answers we have turned up so far spark additional questions, and I am committed to pursuing this investigation and conducting rigorous oversight of the Loan Guarantee Program and its recipients. I hope the Administration and my friends on the other side of the aisle will share our commitment to getting answers.

OPENING STATEMENT OF HON. JOE BARTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. BARTON. Thank you, Chairman Upton.

I think this is a litmus test of how this subcommittee is going to work together to investigate something that obviously needs to be investigated. I was very gratified to hear Ranking Member DeGette's request that the record include all the documents that have been discovered so far because at the beginning of this investigation, my friends on the minority side did not support the subpoena to get those documents.

Mr. Chairman, I support Loan Guarantee Programs for alternative energy. Having said that, I do not support the process by which this particular loan guarantee was announced. It is curious to me that in January of 2009, the Credit Committee unanimously recommended against this loan guarantee, but 2 months later after President Obama had been sworn in, the Credit Committee approved, as far as I can tell, the identical loan commitment with no intervening improvement in the process. A DOE staff member at the time said this project is going to run out of cash in September of 2011. And how prescient was that, Mr. Chairman? As we all know, they declared bankruptcy last week.

I look forward to the testimony of these officials and I look forward next week to the testimony of the members of the company. And Mr. Chairman and subcommittee chairman and Ranking Member DeGette and Ranking Member Waxman, I strongly support you all working together to pursue this investigation on a bipartisan basis. And I yield back to the chairman.

Mr. UPTON. I thank the gentleman and I yield the balance of the time to Dr. Burgess.

Mr. BURGESS. Thank you, Mr. Chairman.

OPENING STATEMENT OF HON. MICHAEL C. BURGESS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Ranking Member DeGette referenced the fact that going back to the Bush administration this discussion was going on in the Department of Energy. I just do want to take a moment to point out that the Credit Committee at the Department of Energy January 12, 2009, the last dates of the Bush administration, the day after their meeting it was a unanimous decision not to engage in further discussions with Solyndra at this time.

Now, we all know the stimulus bill was about shovel-ready projects. It appeared that the shovel that this project was ready for was to bury it somewhere. And yet it was resurrected. Now, I believe in redemption, I believe in the afterlife, but I don't believe this was this wisest and best use. I do want to convey the message to members of the administration that when this committee calls, you respond. When we ask for documents, you produce them. When we schedule a hearing, you show up. We are a coequal branch of government. We have a responsibility to protect the people's money as well, and it does not appear that those interests were followed. And unfortunately, now the taxpayer is going to suffer.

I yield back the balance of my time.

[The prepared statement of Mr. Burgess follows:]

Energy & Commerce Committee
Subcommittee on Oversight and Investigations
Hearing: Solyndra and the DOE Loan Guarantee Program
September 14, 2011
Congressman Michael C. Burgess, M.D.
Opening Statement

Thank you, Mr. Chairman.

I'm pleased to finally see the Director of the White House's Office of Management and Budget, Jeffry Zients, before the committee. I believe Chairmen Upton and Stearns have been more than patient with OMB in their months-long requests for documents and hearing appearances. It's a shame that it took a subpoena for this administration to cooperate in any meaningful way.

Several months ago, the democrats on this committee were reticent to assist the majority in its proper investigation, some going so far as to accuse the majority of being on a fishing expedition. They've once again shown themselves to be on the wrong side of history. As more documents are received from OMB by this committee, it is becoming clearer that decisions were made by the Department of Energy and by OMB that were reckless with taxpayer dollars. And not a handful of taxpayer dollars – half a billion dollars in taxpayer money.

It appears that the Obama White House, in its blind support of the solar industry, have put the taxpayers on course to lose $535 million with nothing to show for it. So beholden to environmental special interests is the Obama Administration that money from the DOE Loan Guarantee Program began to be obligated mere days after President Obama's inauguration.

It is still far from clear exactly what sort of vetting process OMB did with the Solyndra application in order to assure taxpayers that it was a sound investment. Of course, we know now that it was not. It appears the Bush Administration also saw that this was not a sound investment. What changed? I hope that Mr. Zients will be more forthcoming with this answer than he and his office have been in the past few months.

I look forward to today's hearing, and hope that it will shed further light on the poor decisions that led up to the squandering of over half a billion dollars in taxpayer funds.

With that, I yield back.

Mr. STEARNS. The gentleman yields back. The distinguished ranking member, the gentleman from California, Mr. Waxman, is recognized.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you, Mr. Chairman.

Today, we are holding a hearing on the loan guarantee provided by the Department of Energy in 2009 to Solyndra, a U.S. solar panel manufacturer. And this is an important hearing. Taxpayers have over $500 million at risk as a result of Solyndra's bankruptcy. We need to understand what happened, who should be held accountable, and how we can avoid future losses. We also need to ask whether Solyndra misled federal officials.

In July, the company's CEO met with me in my office. He assured me that the company was in a strong financial condition and in no danger of failing. In fact, he said the company was going to double its revenues in 2011. I have a hard time reconciling those representations with the company's decision to file for bankruptcy 1 month later. Committee staff have now reviewed thousands of pages of internal documents from the Department of Energy and the Office of Management and Budget. And they raise a number of questions. The documents show that under both the Bush administration and the Obama administration DOE officials strongly backed Solyndra. They believed its silicon-free solar panels—Mr. Chairman, may I have an opportunity to speak?

Mr. STEARNS. Absolutely. Committee will be in order to listen to the gentleman's statement.

Mr. WAXMAN. They believe that silicon-free solar panels offered cost savings and its tubular shape reduced installation costs. And they thought the internal reviews they conducted and the external studies they commissions showed Solyndra could compete successfully in the global marketplace. Well, these rosy scenarios were not realized. Today, we will ask why. Is the reason unforeseen developments in the global marketplace as Solyndra and DOE argue? Or is the reason sloppy or inadequate vetting, or worse yet, corporate malfeasance?

By late 2010, both DOE and OMB knew Solyndra was facing difficulty in meeting its loan obligation. This triggered a vigorous internal debate about what the government should do to protect the taxpayers. DOE projected that an immediate liquidation would return less than 20 cents on the dollar, so they favored restructuring because of the potential for recovering more of the taxpayers' investment. Some OMB officials warned against restructuring on the grounds that it might not be enough to avoid bankruptcy and default. Well, that was not an easy decision and we need to ask whether the right choice was made.

Given the bankruptcy of Solyndra and the dollars now at risk, we have an obligation to the taxpayer to investigate the transaction thoroughly. That is why I welcome this hearing and why Ranking Member DeGette and I have urged Chairman Stearns to hold another hearing where we can question Solyndra's CEO.

I disagree vehemently, however, with the policy conclusions my Republican colleagues have already drawn. They say the collapse of Solyndra shows the folly of federal investments in solar and other clean energy technologies, and they argue the government should not pick winners and losers in the energy marketplace. This sounds superficially appealing but there is a fundamental flaw in their logic. The majority of Republicans on this committee deny that climate change is real. If you are a science-denier, there is no reason for government to invest in clean energy.

It is ironic that at this very moment in Washington, CEOs of a number of corporations, including Bill Gates from Microsoft; Mr. Immelt from GE; Norm Augustine, former Lockheed-Martin chairman; Chad Holliday, Bank of America; Tim Solso, CEO of Cummins, are all here representing American Energy Innovation Council, and they are calling for major new investments in alternative energy and renewable energy so that we don't fall behind the Chinese and others who are competing in this area and outcompeting us.

If you live in reality, you know the world cannot continue its dependence on fossil fuels, that we are in danger of losing this industry to our competitors, especially China. And last month alone, 3 U.S. solar manufacturers have declared bankruptcy because they couldn't compete with Chinese companies.

This weekend, the business columnist Steve Pearlstein wrote in the Washington Post, "listening to the Republicans talk about the economy and economic policy is like entering into an alternative universe." He is right. Republicans on this committee oppose putting a market price on carbon emissions. They oppose EPA regulation of carbon pollution, and now they oppose government investment that promote clean energy alternatives. That is an economic dissonance for fledgling clean energy companies that have to compete against both an entrenched fossil fuel industry and heavily subsidized foreign firms. And it is a grievous blow to our future prosperity.

Thank you, Mr. Chairman.

Mr. STEARNS. I thank the gentleman. And with that, the opening statements are concluded. And I ask unanimous consent that the written opening statements of the members be introduced into the record, anyone who wishes to do it. Without objection, the documents will be so entered.

To our witnesses, you are aware that the committee is holding an investigative hearing, and when doing so has had the practice of taking testimony under oath. Do you have any objection to taking testimony under oath?

The chair then advises you that under the rules of the House and the rules of the committee, you are entitled to be advised by counsel. Do you desire to be advised by counsel during your testimony today? No. In that case, if you would please rise and raise your right hand, I will swear you in.

[Witnesses sworn.]

Mr. STEARNS. You are now under oath and subject to the penalties set forth in Title XVIII, Section 1001, of the United States Code.

We welcome you to give a 5-minute summary of your written statement. So with that, Mr. Silver, we welcome you with your opening statement.

TESTIMONY OF JONATHAN SILVER, DIRECTOR, LOAN PROGRAMS OFFICE, DEPARTMENT OF ENERGY; AND JEFFREY D. ZIENTS, DEPUTY DIRECTOR FOR MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET

TESTIMONY OF JONATHAN SILVER

Mr. SILVER. Thank you, Chairman Stearns, Ranking Member DeGette, and members of the subcommittee. My name is Jonathan Silver, and I am the executive director of the Loan Programs Office. I joined with the Department of Energy and took this position in November of 2009.

In 2005, recognizing that there was a systemic shortage of private debt financing for innovative clean energy projects from renewable to clean coal to nuclear power, President Bush signed bipartisan legislation that established the Title XVII Loan Program. The program was specifically designed to support next-generation energy projects, which involved technology and market risks that private sector lenders often cannot or will not underwrite.

Other governments have recognized the value of such programs as well. Germany and Canada already operate government-backed clean energy lending programs. The U.K., Australia, and India have announced the intent to do the same. But none have been as aggressive as the Chinese Government, which last year alone provided more than $30 billion in credit to its country's largest solar manufacturers. That is roughly 20 times larger than America's investment in the same period. Why is China making this investment? Because the race for solar manufacturing jobs is a race worth winning. Over the next few decades, this will become a global market worth trillions of dollars.

In 1995, the United States manufactured more than 40 percent of the solar cells and modules sold worldwide. Today, it is 6 percent. Meanwhile, China's share has grown from 6 percent in 2005 to 54 percent today. China is now home to 5 of the 10 largest solar panel manufacturers in the world. Seven of the 10 largest are in Asia. Only 2 are in the United States. It is in this context that we should discuss the Solyndra transaction.

Solyndra submitted its initial application in 2006. By late 2008, the Loan Program staff considered Solyndra the most advanced of the projects it had reviewed and the likely recipient of the program's first loan guarantee. In fact, by the time the Obama administration took office, the career staff had already established a timeline for issuing the company a conditional loan commitment in March of 2009. In March, on the exact schedule that had been developed during the Bush administration, the program issued Solyndra a conditional commitment. In September, after several more months of additional due diligence and documentation, DOE finalized the loan guarantee. Although I was not at the Department at that time, it is my understanding that the transaction went through nearly 3 years of rigorous internal and external due diligence, including reviews by a leading independent engineering

firm, the Department's own solar experts, and a blue chip law firm all before any taxpayer funds were put at risk.

The Federal Government was not alone in its assessment of Solyndra's potential. Some of America's most sophisticated professional investors collectively invested nearly $1 billion in the company after conducting extensive due diligence of their own, and again, before any taxpayer dollars were deployed.

In 2009, Solyndra appeared to be well positioned to compete and succeed in the global marketplace. Solyndra manufactures cylindrical thin-film solar cells, which avoided both the high cost of polysilicon—a critical component in making conventional solar panels—and certain costs associated with installing flat panels. But polysilicon prices subsequently dropped significantly taking Solyndra and many industry analysts by surprise and by providing a significant benefit to several of the company's Chinese competitors.

These developments made Solyndra's business model more challenging. The company took steps to respond, cutting costs even as revenues increased 40 percent between 2009 and 2010 from $100 million to $140 million. Despite increasing revenue, the company ran short of cash and faced imminent bankruptcy without an emergency influx of new capital from its investors. The Department of Energy faced a difficult choice: whether a) to refuse the proposed terms of that financing ensuring that the company would close and the government would recover only a small amount of its loan; or b) to allow the company to take the financing, giving it and its almost 1,000 workers a fighting chance at success and the government the possibility of a higher recovery on that loan.

After extensive analysis both internally and from independent market and financial advisors and using the same tools and approaches that private lenders use in such circumstances, the Department concluded that restructuring the loan gave the U.S. taxpayer the best chance of being repaid. Unfortunately, the changes in the solar market have only accelerated. Chinese companies have flooded the market with inexpensive panels, and Europe, historically the largest purchaser of solar panels, is in the midst of an economic crisis that has significantly reduced demand. The result has been a further and unprecedented 42 percent drop in solar cell prices in the first 8 months of 2011 alone.

These changes were particularly damaging to Solyndra, and as you know, the company declared bankruptcy earlier this month. While we are all disappointed in the outcome, Solyndra's situation should not overshadow the professional work that the Department's loan programs have done to date or the need to continue to find ways to support clean energy in this country.

Developing a robust clean energy manufacturing sector in the United States is critical to our long-term national interests and one of the most important tools as our global competitors have already learned is low-cost financing effectively targeted and deployed. This isn't picking winners and losers; it is helping ensure that we have winners here at all. We invented this technology and we should produce it here. The question is whether we are willing to take on this challenge or whether we will simple cede leadership in this vital sector to other nations and watch as tens of thousands of jobs

are created overseas. The administration believes this is a battle we must fight and win.

Mr. Chairman, I thank the members of the committee and I look forward to answering your questions.

[The prepared statement of Mr. Silver follows:]

Testimony of
Jonathan Silver, Executive Director
Loan Programs Office, U.S. Department of Energy
Before the
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
U.S. House of Representatives

September 14, 2011

Thank you Chairman Stearns, Ranking Member DeGette, and members of the Subcommittee. My name is Jonathan Silver, and I have served as Executive Director of the Loan Programs Office at the Department of Energy since November 2009.

For most of my career, I have worked in the private sector, analyzing, financing, and building pioneering companies in clean energy, telecommunications and advanced manufacturing. I do this because I believe so passionately that America's innovators and entrepreneurs are the best in the world, and need not take a back seat to any other nation.

Background

My office oversees three programs: the Section 1703 and 1705 loan guarantee programs, created by the 2005 Energy Policy Act and the 2009 Recovery Act, respectively, to support commercial deployment of clean and renewable energy, and the Advanced Technology Vehicles Manufacturing loan program – which is helping America's auto manufacturers and their suppliers retool and produce new vehicles that will reduce our oil dependence and make us more competitive.

In 2005, recognizing a systemic shortage of private sector debt financing for certain types of innovative clean energy projects – from renewables to clean coal to nuclear power – President Bush signed into law bipartisan legislation that established the Title XVII loan guarantee program. The program was designed to provide support to these cutting edge industries, which have great potential to create jobs in whatever country wins the clean energy race, but also involve technology and market risks that private sector lenders often cannot or will not underwrite.

Recognizing that support for innovative technologies comes with inherent risks, Congress in creating the 1705 program appropriated funds to account for such risks. Congress believed that the overall positive impact that the program, and its many successful investments, would have on our national clean energy economy outweighed the associated risk.

Other governments have reached the same conclusion. Germany and Canada, for example, operate government-backed clean energy lending programs. And, in the last several months, the UK, Australia, and India, have announced their intent to do the same. These programs

lower the cost of capital for projects utilizing innovative energy technologies, so they will be more competitive and attractive to private investors.

But no country has been as aggressive as China, which last year, alone, provided more than $30 billion in credit to the country's largest solar manufacturers through the government-controlled China Development Bank.[1] That's roughly 20 times larger than America's investment in the same time period. Moreover, this is just what they have announced. China has undoubtedly extended support well beyond what they have disclosed publicly. Why is China making this investment? Because the race for solar manufacturing jobs is a race worth winning. Over the next four decades, this is a global market estimated to be worth trillions of dollars.[2]

Solyndra Transaction

Solyndra submitted its initial application in 2006, and much of the extensive due diligence on the transaction was conducted between 2006 and the end of 2008. By late 2008, Solyndra was considered by those involved in the DOE loan programs to be the project most advanced in the due diligence process, and the likely recipient of the program's first loan guarantee. In fact, by the time the Obama Administration took office in late January 2009, the loan programs' staff had already established a goal of, and timeline for, issuing the company a conditional loan guarantee commitment in March 2009.

After the Obama Administration took office, the loan programs' staff, and their advisors, continued their comprehensive review of the transaction and, in March 2009, on the exact timeline that had been developed during the Bush Administration, the program issued Solyndra a conditional commitment for a $535 million loan guarantee. Subsequently, in September 2009, following several more months of rigorous and comprehensive due diligence and documentation by the loan programs' staff and external advisors, and the raising of almost $200 million of additional private investment by the company, the transaction reached financial close and DOE formally issued its loan guarantee.

Although I was not at the Department when the Solyndra loan guarantee was considered or issued, it is my understanding that the transaction went through nearly three years of rigorous and exhaustive internal and external due diligence before any taxpayer funds were put at risk.

This included:

- A comprehensive review of the technology and a market study on the international solar manufacturing industry conducted by RW Beck, a highly respected engineering firm.
- A legal review by Morrison & Foerster, a large, international law firm with particular expertise in project finance.

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[1] Bloomberg New Energy Finance, China Development Bank – how it came to be a giant lender to clean energy, March 11, 2011.

[2] The IEA 2010 PV technology roadmap cites cumulative installed PV capacity of over 3 terawatts by 2050, and states that PV will reach price parity in many regions by 2020. Assuming prices continue to decline, this will be a market worth trillions.

- And a thorough technology review by the Solar Technologies Program in the Department of Energy's Office of Energy Efficiency and Renewable Energy - which gave it the highest rating of any of the solar manufacturing applicants that had applied for a loan guarantee at that time.
- Multiple financial reviews by Fitch Ratings, Ltd., one of the country's leading independent credit rating agencies..

Based on this analysis, the Department concluded that the Solyndra project, while not without risk, was a worthy and promising project, and that it had demonstrated – as required by the loan programs' governing statute – a "reasonable prospect" of repaying the government's loan.

The federal government was not alone in its assessment of Solyndra's potential. Some of America's most sophisticated professional investors collectively invested nearly a billion dollars in the company after conducting extensive due diligence of their own – almost all of it invested before a single dollar of taxpayer funds was provided to the company.

Last year, Solyndra was recognized by the Massachusetts Institute of Technology's *Technology Review* as one of the "50 Most Innovative Companies in the World" and included by the *Wall Street Journal* in its review "The Next Big Thing: Top 50 Venture Backed Companies." These were just a few of a long list of other awards and reviews of the company..

Many of the competitive difficulties Solyndra has faced in the two years since it received the DOE loan guarantee highlight the challenges facing America in global race for clean energy jobs. In 1995, more than 40 percent of the solar cells and modules sold around the world were made in the United States.[3] Today, only six percent are made here.[4] In the last 6 years, China's market share has grown from 6 percent to 54 percent.[5] China is now home to the world's leading solar panel manufacturing company and five of the ten largest in the world. Asia, in total, is home to seven of the top ten. The U.S. has just two companies on that list.[6]

In 2009, Solyndra appeared to be well-positioned to compete and succeed in the global marketplace. Solyndra manufactured cylindrical, thin-film, solar cells, which avoided both the high cost of polysilicon – a crucial component used in conventional solar panels – and certain costs associated with installing flat panels. But polysilicon prices subsequently dropped significantly, taking Solyndra, and many industry analysts, by surprise.[7] Among the principal beneficiaries of this pricing environment were four of Solyndra's Chinese competitors, which

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[3] Maycock, P.D. (February 2002). "World PV Cell/Module Production (1988-2011)" *PV News.*
[4] Mints, P. (2011). Photovolatic Manufacturer Shipments, Capacity & Competitive Analysis 2010/2011. Palo Alto, CA: Navigant Consulting Photovoltaic Service Program. Report NPS-Supply6 (April 2011).
[5] Mints, P. (2011). Photovolatic Manufacturer Shipments, Capacity & Competitive Analysis 2010/2011. Palo Alto, CA: Navigant Consulting Photovoltaic Service Program. Report NPS-Supply6 (April 2011).
[6] Bloomberg New Energy Finance, June 1, 2011, JISEA/CSIS/NREL Meeting, Washington DC
[7] Bloomberg New Energy Finance, August 2011 Solar Spot Price Index Update, Aug. 31, 2011

sell polysilicon panels and received $20 billion in credit from the China Development Bank in the 2010.[8]

These developments made Solyndra's business model more challenging. The company attempted to cut costs and enhanced its sales and marketing efforts, which resulted in increased sales and revenues. In fact, its revenues increased 40% between 2009 and 2010, from $100m to $140m. But Solyndra's efforts to gain market-share left it short of capital and, by the summer of 2010, the company faced the prospect of bankruptcy if it could not secure an influx of new cash.

Unsuccessful in its efforts to raise additional equity, Solyndra approached DOE, in late 2010, asking DOE to increase its loan commitment. DOE refused, indicating that any additional funds would need to come from other sources. Solyndra then sought to secure a new $75 million emergency loan from its current equity investors. The proposed new loan provided terms that were expected to be more favorable to taxpayers than any other financing options that were available to the company at that time. As is typical in cases where distressed companies seek new debt financing, the new financing would have priority, in the event of liquidation, over the company's existing debt—including the DOE loan guarantee (the investors' almost $1 billion of original equity investment was, and remains, subordinated to the debt owed to the government).

DOE faced a choice: whether to (1) refuse to allow the restructuring, thereby ensuring that Solyndra would close its doors immediately, and that the U.S. taxpayer would recover only a modest amount of the loan; or (2) allow the company to accept the emergency financing, thereby giving it and its almost 1,000 workers a fighting chance at success, and the government a higher expected recovery on its loan.

The decision was not an easy one, and it was made only after significant analysis and deliberation, using the same sort of tools and rigor that private sector lenders use in such scenarios. DOE had commissioned a new and comprehensive analysis of Solyndra's prospects in the global solar market (conducted by Navigant, a leading market research firm), and undertook — with the aid of experienced financial consultants — a complete review of the company's financial condition, business plan, and assets.[9] Both the market study and the financial modeling suggested that the company's value as a going concern was greater than what the government was likely to recover in liquidation at that time. Accordingly, DOE determined that restructuring the loan guarantee gave the U.S. taxpayer the best chance of being repaid on the loan.

Unfortunately, changes in the solar market have only accelerated in 2011, since the restructuring - making it much more difficult for the company to compete. Chinese companies have flooded

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[8] Bloomberg New Energy Finance, China Development Bank - how it came to be a giant lender to clean energy, March 11, 2011.

[9] Included among these assets was the partially-complete manufacturing facility that Solyndra was building using government funds. DOE determined, as part of the restructuring, that the facility would be more valuable, even in the event of a future liquidation, once complete. Solyndra ultimately completed construction of this facility ahead of schedule earlier this year.

the market with inexpensive panels, and Europe — currently the largest customer base for solar panels — has suffered from an economic crisis that has significantly reduced demand and forced cuts in subsidies for solar deployment that were important to Solyndra's business model. The result has been a further and unprecedented 42% drop in solar cell prices in the first eight months of 2011.[10]

In light of these changes in the solar market, the Department, which was closely monitoring Solyndra, regularly discussed with the company its need to aggressively cut costs in order to remain competitive. Of course, as a lender, the Department did not have the ability to mandate specific cost-cutting measures, and Solyndra itself proved unable to cut its costs sufficiently to remain competitive. In early September, having failed to raise the additional capital then needed to continue operations, the company filed for bankruptcy.

Without DOE's agreement to restructure Solyndra's loan, the company likely would have faced bankruptcy much earlier - in December 2010. Restructuring gave them a fighting chance to compete and succeed, and kept approximately 1000 workers from losing their jobs. In fact, between December and when they filed for bankruptcy, the company paid its employees and suppliers more than $200 million - money that went into the economy, creating jobs up and down the supply chain.
While we are all disappointed in the outcome, securing America's leadership in this vital new industry requires that we support innovation and deployment. Solyndra's situation should not overshadow the great work that the Department's loan programs have done to date, or the need to continue to find ways to support clean energy in this country.

The projects supported under the Department's loan guarantee programs will make meaningful contributions to our nation. It is important to note that the loan guarantee programs support an array of technologies and project types, most of which have significantly different risk profiles than Solyndra. For example, the majority of the projects we have supported in the Section 1705 program are clean power generation facilities that benefit from offtake agreements under which utilities have made long-term commitments to buy the power they produce.

That said, developing a robust clean energy manufacturing sector in the United States is crucial to our long-term national interests, and we need to ensure that American companies and workers are given the tools they need to succeed in this competitive space. And one of the most important tools — as our global competitors have learned — is low-cost financing, wisely targeted and responsibly deployed. This isn't picking "winners" and "losers" — it is helping ensure that we have winners here at all. We invented this technology, and we should produce it here.

The question is whether we are willing to take on this challenge, or whether we will simply cede leadership in clean energy to other nations and watch as tens of thousands of jobs are created overseas. We were once the leaders in this field, and we can be again. As President

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[10] Bloomberg New Energy Finance, August 2011 Solar Spot Price Index Update, Aug. 31, 2011

Kennedy said of the mission to the moon: "If we are to go only half way, or reduce our sights in the face of difficulty, in my judgment it would be better not to go at all."

Mr. Chairman, I thank the members of the committee and I look forward to answering your questions.

Mr. STEARNS. Thank you. Mr. Zients?

TESTIMONY OF JEFFREY D. ZIENTS

Mr. ZIENTS. Chairman Stearns, Ranking Member DeGette, members of the subcommittee, thank you for inviting me here today to testify on OMB's role in the implementation of the Department of Energy's Loan Guarantee Program.

The DOE Loan Guarantee Program authorized by Congress in Title XVII of the Energy Policy Act of 2005 is a key part of the administration's efforts to promote economic growth and create jobs across the country and to jumpstart the clean energy economy. As you know, OMB engages in general oversight of the programs being executed by federal agencies. Therefore, OMB has been an active participant in interagency discussions about major milestones and DOE's implementation of Title XVII helping to ensure they are consistent with the statutory framework and administration policy.

These interagency discussions are an important forum for asking tough questions and pressure-testing assumptions, respectful of DOE's statutory authority to make final programmatic decisions on Title XVII loan guarantees.

OMB also has a particular statutory role in the Title XVII program under the Federal Credit Reform Act of 1990, known as FCRA. Pursuant to FCRA, OMB reviews and must approve credit subsidy cost estimates for all loan and loan guarantee programs, including the credit subsidy cost estimates generated by DOE for the Title XVII program. OMB ensures that costs are accounted for appropriately. In performing its statutory role under FCRA, OMB works closely with agencies' credit subsidy cost models. Based on these models, OMB reviews and exercises final approval authority over credit subsidy costs to ensure that the costs of direct loans and loan guarantees are presented, and reflect estimated risks, consistently across federal agencies so that taxpayer funds are invested in a prudent and effective fashion. By contrast, the final decision on whether to issue the loan or guarantee rests with the agency implementing the applicable program—DOE in the case of Title XVII.

In the Solyndra loan guarantee, OMB's approval of DOE's proposed credit subsidy cost was conducted in August and September of 2009. While I was not directly involved in this aspect of the transaction, what I have learned since indicates that the approval process reflected a thorough examination and analysis of DOE's calculation of this estimated cost. OMB staff addressed with DOE a series of specific questions about its analysis. Based on these discussions, OMB and DOE ultimately agreed on the credit subsidy cost, and OMB ensured it was budgeted and accounted for appropriately. The loan guarantee was then issued in September 2009.

In February 2011, DOE undertook a restructuring of Solyndra's debt in light of the acute financial troubles the company was experiencing. OMB's statutory role in the restructuring transaction was the same as its role in the original transaction—to ensure that the credit subsidy cost was appropriately accounted for, consistent with OMB's responsibilities under FCRA. OMB worked closely with DOE to understand the specifics of the proposal before making a cost determination. DOE ultimately provided information and analysis to OMB to show that the loan was in imminent default and

that the restructuring proposal was expected to be less costly to taxpayers than other options, including liquidation. OMB determined that DOE's analysis was reasonable and reflected the information as it was understood at that time.

Since then, a challenging global solar market has continued to affect a number of solar manufacturers, including Solyndra. The company's recent announcement that it was suspending operations and filing for bankruptcy is without a doubt a very unfortunate outcome and one that will limit the government's recovery of funds loaned to the company.

Congress designed the Title XVII Loan Guarantee Program to fund innovative clean energy projects that might not otherwise receive the necessary capital for deployment. The program envisions that while some of these projects might not succeed, others will contribute to the country's ability to achieve its clean energy goals. OMB will continue to work diligently with DOE to help make the Title XVII program a success and to ensure that the costs associated with the inherent risks in the program are budgeted and accounted for to protect taxpayers' interests.

Mr. Chairman and members of the subcommittee, I would be pleased to answer any questions you have.

[The prepared statement of Mr. Zients follows:]

STATEMENT OF THE HONORABLE JEFFREY D. ZIENTS
DEPUTY DIRECTOR FOR MANAGEMENT
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES

SEPTEMBER 14, 2011

Chairman Stearns, Ranking Member DeGette, Members of the Subcommittee,

Thank you for inviting me here to testify today on OMB's role in the implementation of the Department of Energy's loan guarantee program. The program aims to accelerate the domestic commercial deployment of innovative and advanced clean energy technologies at a scale sufficient to contribute meaningfully to the achievement of our national clean energy objectives – including job creation; reducing dependency on oil; improving our environmental legacy; and enhancing American competitiveness in the global economy of the 21st century. Authorized by Congress in Title XVII of the Energy Policy Act of 2005, the program has received continuing bipartisan congressional support, including repeated appropriations actions.

This program is a key part of the Administration's efforts to promote economic growth, create jobs across the country, and jumpstart the clean energy economy. The Recovery Act, which aimed to support rapid job creation and other economic activity, appropriated credit subsidy funds for Title XVII loan guarantees in the credit-constrained economy. The Administration is making every effort to ensure that the program's implementation increases economic growth and promotes clean energy, while protecting the taxpayers' interests.

Since its inception in the last Administration, the Title XVII program has supported a wide variety of energy projects, including 19 solar projects, 5 wind projects, and 3 geothermal projects across the country. OMB has reviewed each of the deals DOE has submitted to OMB for loan closing or a conditional commitment. As of September 12, 2011, 18 loan guarantees have closed and another 18 projects have received conditional commitments.

As you know, OMB engages in general oversight of the programs being executed by federal agencies, particularly the implementation of such critical initiatives as the

Recovery Act. Therefore, OMB has been a participant in interagency discussions about major milestones in DOE's implementation of Title XVII, helping to ensure they are consistent with the statutory framework and Administration policy. These interagency discussions are an important forum for asking tough questions and pressure-testing assumptions, respectful of DOE's statutory authority to make final programmatic decisions on Title XVII loan guarantees.

OMB also has a particular statutory role in the Title XVII program under the Federal Credit Reform Act of 1990, known as FCRA. Pursuant to Section 503 of FCRA, OMB reviews and must approve credit subsidy cost estimates for all loan and loan guarantee programs, including the credit subsidy cost estimates generated by DOE for the Title XVII program, to ensure that costs are accounted for appropriately. The Title XVII program provides relatively large-dollar guarantees and because their characteristics, terms, and risks vary greatly from project to project, OMB assesses cost estimates on a loan-by-loan basis. This is the same approach OMB uses for loans or loan guarantees of other similar programs that involve large deals or varied structures, such as those administered by the Overseas Private Investment Corporation and the Export-Import Bank.

In performing its statutory role under FCRA, OMB delegates the modeling of credit subsidy costs to agencies, and issues implementing guidance to ensure consistent and accurate estimates of cost. For new programs or programs issuing their first loans or loan guarantees, such as the Title XVII program in 2009, OMB works closely with agencies to create or revise credit subsidy models. Based on these models, OMB reviews and exercises final approval authority over credit subsidy costs to ensure that the costs of direct loans and loan guarantees are presented, and reflect estimated risks, consistently across Federal agencies so that taxpayer funds are invested in a prudent and effective fashion. By contrast, the final decision on whether to issue the loan or guarantee rests with the agency implementing the applicable program - DOE in the case of Title XVII.

With respect to the Solyndra loan guarantee, OMB's approval of DOE's proposed credit subsidy cost was conducted in August and September of 2009. While I was not directly involved in this aspect of the transaction, what I have learned since indicates that the approval process reflected a thorough examination and analysis of DOE's calculation of this estimated cost. In particular, it is my understanding that OMB's review of the cost estimate was informed by the terms and conditions of the loan guarantee agreement, a credit rating report from an independent credit rating agency, additional independent reports on the engineering aspects of and market conditions surrounding Solyndra's proposal, and a proposed credit subsidy cash flow analysis by DOE. OMB staff addressed with DOE a series of specific questions about its analysis, including those focusing on the financial relationship between Solyndra and its project finance subsidiary, the liquidation analysis underlying DOE's proposed estimates, the

customer contracts Solyndra had lined up, the market trends in prices for solar panels, and field testing of greater efficiencies and lower installation costs associated with the unique design of Solyndra's panels. Based on these discussions, OMB and DOE ultimately agreed on the credit subsidy cost, and OMB ensured it was budgeted and accounted for appropriately. The loan guarantee was then issued in September 2009.

In February 2011, DOE undertook a restructuring of Solyndra's debt in light of acute financial troubles the company was experiencing. OMB's statutory role in the restructuring transaction was the same as its role in the original transaction – to ensure that the credit subsidy cost was appropriately accounted for, consistent with OMB's responsibilities under the FCRA. OMB worked closely with DOE to understand the specifics of the proposal before making a cost determination. DOE ultimately provided information and analysis to OMB to show that the loan was in imminent default, and that the restructuring proposal was expected to be less costly to taxpayers than other options, including liquidation. OMB determined that DOE's analysis was reasonable, and reflected the information as it was understood at that time.

Since then, a challenging global solar market has continued to affect a number of solar manufacturers, including Solyndra. The company's recent announcement that it was suspending operations and filing for bankruptcy is without a doubt, a very unfortunate outcome, and one that will limit the Government's recovery of funds loaned to the company. While DOE maintains primary responsibility for monitoring the specifics of each loan guarantee, OMB has discussed with DOE the status and implications of Solyndra's financial condition, and worked diligently with DOE to ensure that changes in market conditions and other factors that have affected this deal have been appropriately accounted for in the budget through the annual re-estimate process, as is done with all federal loan guarantees.

Congress designed the Title XVII loan guarantee program to fund innovative clean energy projects that might not otherwise receive the necessary capital for deployment. The program envisions that while some of these projects might not succeed, others will contribute to the United States' ability to achieve its clean energy goals. OMB will continue to work diligently with DOE to help make the Title XVII program a success, and to ensure that the costs associated with the inherent risks in the program are budgeted and accounted for to protect taxpayers' interests.

Mr. Chairman and Members of the Subcommittee, I would be pleased to answer any questions you may have.

Mr. STEARNS. I thank the gentleman, and I will start with opening questions. And they are directed to you, Mr. Silver, and if you could possibly just answer yes or no.

In your testimony, you claim that some of Solyndra's due diligence was done by the end of the Bush administration. Is that correct?

Mr. SILVER. Yes, the application was received——

Mr. STEARNS. Yes, that is all I need. Isn't it true, though, that at the end of the Bush administration a DOE Credit Committee met on January 9, 2009, to consider the Solyndra guarantee? Were you aware of that?

Mr. SILVER. The Credit Committee is made up of——

Mr. STEARNS. No, I am not asking you—just answer the question.

Mr. SILVER. Which met in early 2009——

Mr. STEARNS. Right. OK, so you agree. That Credit Committee recommended that the Solyndra loan guarantee be remanded to the Loan Programs Office stating, "The number of issues unresolved make a recommendation for approval premature at this time." Were you aware of the Credit Committee's meeting when you submitted your testimony to the committee this morning?

Mr. SILVER. I was. And, as I said, Congressman, I was not there at the time, but it is my understanding that it was not—it was remanded back for additional data——

Mr. STEARNS. No, I am asking the questions. I just need a yes or no.

Mr. WAXMAN. Let him give the answer.

Mr. STEARNS. Well, I think he has given an answer. In an email sent a few days after the January Credit Committee meeting, a member of that Credit Committee sent an email to his fellow members. In that January 13, 2009, email he states, "After canvassing the committee, it was a unanimous decision not to engage in further discussions with Solyndra at this time." Do you understand that the Credit Committee in the Bush administration essentially decided that the due diligence was not complete at this point?

Mr. SILVER. No, Mr. Chairman. In fact, the Credit Committee that you are referring to, as I said, made up of a group of career professionals is also exactly the same Credit Committee that then approved——

Mr. STEARNS. I understand that, but the point is what I just quoted to you is the truth, isn't that correct? That quote is accurate?

Mr. SILVER. I don't—haven't seen that email, sir.

Mr. STEARNS. OK.

Mr. SILVER. I wasn't there at the time.

Mr. STEARNS. Well, you can assure it is. And the DOE should quit talking with Solyndra. That was the recommendation. Now, Mr. Silver, in your testimony, you stated that regarding Solyndra, "Much of the extensive due diligence on the transaction was conducted between 2006 and the end of 2008." I would like to bring this information to your attention. Isn't it true that the Loan Programs Office didn't hire its first federal employee until August 1, 2007?

Mr. SILVER. I am not aware of that but it sounds about right.

Mr. STEARNS. OK. If you don't know, we can provide this information. We provided it to the committee staff through a PowerPoint presentation. Now, by the end of 2007, isn't it true that the office had only 8 federal employees?

Mr. SILVER. Again, I don't know the exact numbers.

Mr. STEARNS. OK. So who was doing all this extensive due diligence that you keep talking about in 2006 and 7 at the loan program?

Mr. SILVER. Well, sir, the Department—if you would like an answer to that question——

Mr. STEARNS. Sure.

Mr. SILVER [continuing]. The Department is made up of 115,000 working professionals, including about 70,000 scientists a number of whom are solar experts——

Mr. STEARNS. But the DOE Credit Committee was the responsible authority for approving the credit of Solyndra. Isn't it——

Mr. SILVER. No, actually——

Mr. STEARNS. OK.

Mr. SILVER [continuing]. Technically, sir, the Credit Committee actually simply reviews a transaction and recommends it——

Mr. STEARNS. Right.

Mr. SILVER [continuing]. For approval.

Mr. STEARNS. I think we have established they did not think they should go ahead. Isn't it also true that during that time period, DOE was reviewing the 140 or so applications that it received in response to its first solicitation, how did DOE have time to do extensive due diligence on Solyndra from 2006 to 2007 like you indicated? That baffles us.

Mr. SILVER. If you will give me a moment to explain, I think I can. The 2006 solicitation resulted in 143 submissions. The loan program staff and others at the Department reviewed those for eligibility, which is a thinner review than the full due diligence, and recommended 16 applications to file a full application.

Mr. STEARNS. But——

Mr. SILVER. Eleven did so. Solyndra was one of those and the Department conducted due diligence on all of those 11.

Mr. STEARNS. But Mr. Silver, isn't it true the first draft of the independent marking report wasn't even submitted until March 2009? You were there. Isn't that correct?

Mr. SILVER. No, I was not there at that time, sir. It is my understanding, though, from reviewing the record that there were several market research reports that were directly relevant that were used as the basis for assessment, and there was subsequently a direct marketing report done for the project, which was produced in the time frame——

Mr. STEARNS. Our records show an independent engineer report that you cited in your testimony was submitted in early January 2009. Is that correct?

Mr. SILVER. I think that is the case, yes, sir.

Mr. STEARNS. The due diligent legal memorandum submitted by the Morrison and Forester, which you have also cited in your written testimony, that also was submitted in early 2009, correct?

Mr. SILVER. I believe that is the case.

Mr. STEARNS. Given this, how do you explain the statement in your testimony that the extensive due diligence was conducted in 2006 and 2008?

Mr. SILVER. Actually, I didn't say it was conducted in 2006. I said the application was receive in 2006 and due diligence began and continued from late 2007 through 2008. It would be logical for the reports that you are making reference to here to be completed after that work was done during that period.

Mr. STEARNS. Well, Mr. Silver, I think my time has expired, but I think what we have established is that the Credit Committee during the Bush administration found the Solyndra deal to be premature and remanded it for further work. And we have all the evidence and all the clear evidence, so we are a little puzzled with your opening statement. With that, my time has expired and I recognize the ranking member, Ms. DeGette.

Ms. DEGETTE. Thank you very much, Mr. Chairman.

I would like to start my questions by asking unanimous consent to put the Credit Committee Recommendation that the chairman referred to into the record so that we can know what we are talking about.

Mr. STEARNS. By unanimous consent, so ordered.

[The information follows:]

Solyndra Fab 2, LLC

Credit Committee Recommendation

From: Chairman Loan Guarantee Credit Committee
To: Director Loan Guarantee Program Office

Subject: Credit Committee Recommendation re: Solyndra Fab 2 LLC, solar photovoltaic power panel project for a loan guarantee of $ 535,000,000.

On January 9, 2009, the Credit Committee convened to consider the referenced project for a loan guarantee of $535,000,000 under Title XVII of the Energy Policy Act of 2006. On January 9, 2009, following a presentation to the Credit Committee and further deliberations among its members, the committee reached the following conclusions:

- The apparent haste in recommending the project meant that certain LGPO credit procedures were not adhered to. Of particular concern were the receipt of the Final Credit Committee Paper and Credit Committee policies and procedures without the requisite advanced notice.

- While the project appears to have merit, there are several areas where the information presented did not thoroughly support a finding that the project is ready to be approved at this time:

    1. There is presently not an independent market study addressing long term prospects for this specific company beyond the sales agreement already in place. Since the independent credit assessment raised the issue of obsolescence in marketing this project it is important to have an independent analysis of that issue as well as the current state of the competitive market.
    2. While the sales agreement is said to have been analyzed by the outside legal advisor assigned to this case, the committee did not have access to this document.
    3. There are questions regarding the nature and the strength of the parent guarantee for the completion of the project.
    4. While it is encouraging to see the apparent progress in the development of the product at the Fab 1 facility, there is concern regarding the scale-up of production assumed in the plan for Fab 2.

The Credit Committee is appreciative of the hard work done by the origination staff, but believes that the number of issues unresolved makes a recommendation for approval premature at this time. Therefore, the committee, without prejudice, remands the project to the LGPO for further development of information addressing the issues outlined above.

Ms. DEGETTE. Thank you very much.

Mr. Silver, I had staff hand you a copy of this Credit Committee Recommendation. Have you seen this document before?

Mr. SILVER. No, ma'am, I have not.

Ms. DEGETTE. OK. This is the document that the chairman was referring to where the Credit Committee remanded the project to LGPO that they denied the application and they remanded it for more information. That is the thing the chairman was referring to. And it was also the information that he had up on the screen. It was from this memo. Now, as I read this document, it says, "While the project appears to have merit, there are several areas where the information presented did not thoroughly support a finding, but the project is ready to be approved at this time." And then it lists 4 areas that it says need to be supplemented. Do you see that?

Mr. SILVER. Yes, ma'am.

Ms. DEGETTE. And then at the bottom is said, "the Credit Committee is appreciative of the hard work done by the origination staff but believes the number of issues unresolved makes the recommendation for approval premature at this time." Do you see that?

Mr. SILVER. I do.

Ms. DEGETTE. And then it concludes, "Therefore, the committee, without prejudice, remands the project to the LGPO for further development of information addressing the issues outlined above. Correct?

Mr. SILVER. Yes, ma'am.

Ms. DEGETTE. So this document is not a complete denial of the application; it is remanding it for more information, correct?

Mr. SILVER. Not only is it not a complete denial, it would be typical of a credit committee in both the public and the private sector to perform its function in exactly this way. If they believed additional data was——

Ms. DEGETTE. And was that data eventually developed and submitted to the DOE? No?

Mr. SILVER. The——

Ms. DEGETTE. The data that was requested——

Mr. SILVER. The data was additionally developed and the summary of that data was represented to the Credit Committee.

Ms. DEGETTE. And subsequently, in March of 2009, the application was approved, correct?

Mr. SILVER. Yes, ma'am.

Ms. DEGETTE. And was that data submitted as part of that application, this data that was requested?

Mr. SILVER. Again, I wasn't there, but it is my understanding that that was the case.

Ms. DEGETTE. OK, thank you. Now, I wanted to ask you a couple of questions about what kind of policies and incentives that we need to have in the United States to promote competitiveness in the clean energy market? This is what you talked about in your testimony. In your written testimony, what you said was in between 1995 and 2010, the share photovoltaic cells and panels manufactured in the U.S. dropped from over 40 percent to just 6 percent. We have seen this with some Colorado companies that are trying to develop solar but they can't actually find cells that are

manufactured in this country. Since 2005, China's market share has actually increased from 6 percent to 54 percent, and half of the world's 10 largest solar panel manufacturers are now Chinese. So the question I have is what does that tell us about the state of play in the solar manufacturing industry?

Mr. SILVER. Congresswoman, I think it tells us that the rest of the world takes this industry and this industry opportunity enormously seriously, has a multi-decade perspective on its importance, believes, as we do, that it will be a multi-trillion-dollar market that will generate tens of thousands of jobs and is deeply committed to it.

Ms. DEGETTE. Now, what is the Chinese Government doing that you know of to provide support to its solar industry?

Mr. SILVER. The Chinese Government has already committed up to $30 billion of credit to its 4 or 5 largest solar panel manufacturers. It generally and frequently provides both zero-cost financing, occasionally free land, and other kinds of incentives and subsidies to that sector.

Ms. DEGETTE. And does cheap labor play a part in China's ability to dominate the world market on this solar development?

Mr. SILVER. It certainly has in the past and cheap labor does play a material role in other parts of the world in their competitiveness. Increasingly, however, the challenge is becoming one related to government support for the industry itself, financially.

Ms. DEGETTE. So it is not as much cheap labor as capital that the Chinese Government is providing in your view?

Mr. SILVER. Correct. Access to inexpensive debt capital, yes, ma'am.

Ms. DEGETTE. OK. So based on your experiences at DOE and the private sector and your understanding of initiatives of other governments like China, do you really think it is worth us having policies like this Title XVII Loan Program and other policies to support solar or should we just walk away from it altogether as a government?

Mr. SILVER. I can't imagine a scenario in which we would willingly as a country walk away from what will be undoubtedly one of the largest if not the largest industries in the world over the next several decades.

Ms. DEGETTE. Well, do you think though that there is any way we can actually compete?

Mr. SILVER. Yes, we have an incredibly strong and innovative workforce, but what we have got to be able to support not only innovation at the R&D level, we also have to be able to support commercial deployment. Without commercial deployment, we cannot continue to recognize the benefits that come from innovation.

Ms. DEGETTE. So irrespective of the details of the Solyndra case which are still unfolding to this day, you think that these kinds of loan-support programs are important to development of the U.S. solar energy and jobs. Is that right?

Mr. SILVER. I think they are critical. They are only part of the fabric of what is necessary but they are critical.

Ms. DEGETTE. Now, Mr.—pronounce your name for me.

Mr. ZIENTS. Zients.

Ms. DEGETTE. Zients. Mr. Zients, I wanted to ask you because you talked about this Title XVII funding and there are a number of other projects that are receiving—and I believe over 40. Has that worked in other projects? Is it working in other loan situations?

Mr. ZIENTS. Well, the program is, as you know, relatively new, so loans have recently closed for the most part. And we have every reason to be optimistic that the portfolio as a whole will perform.

Ms. DEGETTE. And how large is the portfolio as a whole?

Mr. ZIENTS. I defer to Jonathan on specific numbers. I think you have a good estimate in what you said.

Ms. DEGETTE. Thank you very much. Thank you, Mr. Chair.

Mr. STEARNS. The gentleman from Texas, Mr. Barton, is recognized for 5 minutes.

Mr. BARTON. Thank you, Mr. Chairman.

Just for the record, are you two gentlemen career civil service employees or are you political appointees?

Mr. SILVER. Political appointees, sir.

Mr. ZIENTS. Political appointee.

Mr. BARTON. Both, OK. Chairman Stearns alluded to this but I want to follow up a little bit. While President Bush was still in office on January the 9th of 2009, the Credit Committee, which is a part of the Department of Energy I believe did recommend against going forward with the Solyndra loan. Less than 2 months later, on March the 12th of 2009, the Credit Committee conditionally approved the loan. First of all, is that factually correct?

Mr. SILVER. The timeline is correct, sir. The Credit Committee—the first Credit Committee that met did not reject the loan. They remanded it back for further analysis. But your timeline with respect to the 2 Credit Committees is correct.

Mr. BARTON. The individuals that are on the Credit Committee, are those political appointees or civil service?

Mr. SILVER. Civil service.

Mr. BARTON. OK. Were the 2 Credit Committees identical in their makeup?

Mr. SILVER. I believe that to be true.

Mr. BARTON. So the same people in the same agency—to use your terminology—needed additional information—or anyway, they did not approve it in January but in March, the same committee made up of the same people did approve or conditionally approve. That is correct, right?

Mr. SILVER. No, sir. Technically, the Credit Committee does not approve a conditional commitment. The Credit Committee recommends a transaction for approval, which is then further reviewed by a group called the Credit Review Board, the CRB, and they——

Mr. BARTON. Well, instead of putting up a red light, they put up a green light or at least a yellow light?

Mr. SILVER. They indicated that the initial questions that had been—they had raised in the first meeting had been addressed. And they——

Mr. BARTON. All right. Now, what changed in the intervening period?

Mr. SILVER. Additional due diligence was conducted——

Mr. BARTON. Specifically, what changed?

Mr. SILVER. Well, as I say, additional due diligence was conducted——

Mr. BARTON. Well, specifically, what additional due diligence?

Mr. SILVER. Market—additional market research was developed and——

Mr. BARTON. Is that available and does the committee staff have it?

Mr. SILVER. I believe the committee staff has it. We have turned over over 35,000 pages of materials.

Mr. BARTON. But for purposes of this hearing under oath you are saying that what changed is additional information that wasn't available in January became available in the intervening period, is that correct?

Mr. SILVER. Additional due diligence was done——

Mr. BARTON. But additional due diligence doesn't cut it, OK? We need, you know, half a billion dollars was not supported in January under the Bush administration was supported, conditionally recommended in March. We know the one thing changed is that the President changed. We know that changed.

Mr. SILVER. I will be happy to get back to you, sir, with the additional information——

Mr. BARTON. But due diligence is a generic term.

Mr. SILVER. Well, it is a generic term but it covers very specific things, particularly research on market conditions, financial conditions, technical——

Mr. BARTON. Is it possible that one of the things that changed was political influence?

Mr. SILVER. I don't believe so, sir. I wasn't there but there is no indication in the record——

Mr. BARTON. Nobody commented to the White House that this project should go forward? There were no supporters of the President that stepped forward and had meetings and there were no White House officials that encouraged people at the Department of Energy to just—this was all done under a bubble top and purely on merit?

Mr. SILVER. Well, sir, I can't speak to that because I wasn't there, but what I will say to you is that the loan program career staff that was doing—did the work in 2008 under a Republican-appointed CFO continued to do that work under the same individual who was a——

Mr. BARTON. Well, let me ask one final question because my time is about to expire. Is it typical of a loan guarantee that a project 1) gets a half a billion dollars, and 2) that half a billion is 2/3 of the cost of the project, and 3) that the federal obligation is subordinated to private sector capital, which is a direct violation of federal law?

Mr. SILVER. There is no typical, sir, in answering that because every project financing is different and depends on the size, structure, and the technology that is being——

Mr. BARTON. So if myself and Mr. Scalise and Mr. Gardner and maybe for good measure Mr. Markey and Mr. Dingell put together a deal and asked for a half a billion dollars, it is acceptable under this program for it to be approved?

Mr. SILVER. Well, sir, if you had a legitimate project that went through——

Mr. BARTON. I think we could have a legitimate project that wouldn't go bankrupt within 2 years.

Mr. SILVER. If you had a project that met the criteria of the solicitation and was deemed to be eligible and went through technical, legal, financial regulatory and other kinds of due diligence and was deemed to be a potential process, then perhaps yes.

Mr. BARTON. OK. Thank you, Mr. Chairman.

Mr. STEARNS. I thank the gentleman. The distinguished ranking member, Mr. Waxman, is recognized for 5 minutes.

Mr. WAXMAN. Thank you, Mr. Chairman.

As I understand it, in 2005, the Congress passed the Loan Guarantee Program. We did this on a bipartisan basis because we wanted to move forward with these enterprises that would give us renewable and alternative energy rather than continue our reliance on fossil fuels. The idea of a loan guarantee is that we want them to borrow the money but we know there is an inherent risk in a new startup. Isn't that correct, Mr. Silver?

Mr. SILVER. Yes, sir. When Congress set up the program, it set it up specifically to compensate for the lack of debt financing for innovative energy and recognized the inherent risks in that by providing credit subsidy, which is essentially loan loss reserve.

Mr. WAXMAN. No one wants to go and invest in the market in a solar energy, wind power, anything else, unless they know it is really going to return the investment and give them a profit. So the government has decided we will help these groups get started because it is important for our Nation to move to alternative energy.

Mr. SILVER. I agree with that and I would only add one caveat. We don't actually start these companies. They—the private sector does. In the case of Solyndra, almost a billion dollars of private equity had gone into this company before the government made its loan. And all the transactions that we work on have very, very significant private capital behind them.

Mr. WAXMAN. I was taken aback by the figure that between 1995 and 2010 the share of photovoltaic cells and panels manufactured in the United States dropped from 40 percent to just 6 percent. At the same time just since 2005, China's market has increased from 6 percent to 54 percent. So half of the world's largest 10 solar panel manufacturers are now Chinese. And we would like to be able to compete as well. And I gather your answer to Ms. DeGette is one of the reasons that China is outmaneuvering us is that the government is putting a lot more money behind their solar industry than we are doing. Is that right?

Mr. SILVER. Yes, sir. As I said, China has committed at a minimum $30 billion from the China Development Bank and another several billion——

Mr. WAXMAN. And that is 20 times more than we are providing by way of any subsidies or loan guarantees.

Mr. SILVER. At least because there are other subsidies and incentives that the Chinese Government provides as well.

Mr. WAXMAN. Well, who would be against such a thing? Well, I will tell you who would be. Entrenched fossil fuel industry wouldn't like this. This is competition for them. And I think that is playing

a part in some of the reactions that I am hearing. But one of the key issues of this investigation, as identified by Chairman Stearns, has been whether DOE issued the Solyndra loan guarantee as a favor to George Kaiser, a major donor to President Obama's campaign. These are serious allegations. Mr. Stearns said the administration gives "some of this money out to people who are either contributors or strong supporters." And he implied that the Solyndra loan decision was based on political favoritism.

Before I ask you about these allegations, I would like to get a bit of background on this loan guarantee. My understanding is Solyndra applied to this loan in 2006 when Bush was president.

Mr. SILVER. That is correct, sir.

Mr. WAXMAN. And the DOE invited the company to submit a full application to the program in October 2007.

Mr. SILVER. Yes, sir.

Mr. WAXMAN. And December 4, 2008, DOE documents outline the Solyndra loan as one of the three highest priorities of the next 45 days. And all of this took place during the Bush administration.

Mr. SILVER. Yes, sir.

Mr. WAXMAN. Now, in fact, January 5, 2009, email to a DOE official, John Scott of Solyndra, said, "We think that a public announcement would acknowledge the hard work of the existing administration and the appointees in DOE and the LGPO as well as benefit Solyndra's fundraising efforts for the equity contribution." And in this email Mr. Scott was talking about the Bush administration. But the fact that the loan didn't close until President Obama took office seems to have given rise to allegations of political favoritism. Well, this Kaiser Group wasn't the only private investment. A lot of the investment came from another group that is called Madrone, and that is a Walton family. They give to Republicans. But they were looking to make an investment in a loan that was being guaranteed by the Federal Government.

I would like to you ask you, Mr. Silver and Mr. Zients, about your interactions with Mr. Kaiser and his impact on this loan. Did you or your staff have any interaction with Mr. Kaiser relating to the Solyndra loan guarantee?

Mr. SILVER. Well, sir, as I said before, I was not here at that time. But no, I have never met or spoken to the man. And as I understand from my staff, neither have they.

Mr. WAXMAN. And the staff of civil servants?

Mr. SILVER. Yes, sir.

Mr. WAXMAN. Who have been around——

Mr. SILVER. Yes.

Mr. WAXMAN [continuing]. Even to the time of the Bush administration. Mr. Zients, is that the same answer for you?

Mr. ZIENTS. Same for me, both personally and my knowledge of the OMB staff interaction.

Mr. WAXMAN. Did either of you instruct anyone to give the loan guarantee to Solyndra or restructure the loan because of the donations to the President by Mr. Kaiser?

Mr. SILVER. No, sir.

Mr. ZIENTS. No.

Mr. WAXMAN. Did anyone in the administration instruct you or your staff to grant or restructure the loan guarantee because of the donations to the President by Mr. Kaiser?

Mr. SILVER. No, sir.

Mr. ZIENTS. No.

Mr. WAXMAN. Are you aware of anything that would suggest that Mr. Kaiser's donations to the President were a factor in determining whether to grant the Solyndra loan guarantee?

Mr. SILVER. No, sir. Again, I wasn't there but I have no reason to believe that.

Mr. ZIENTS. I was not actively involved but have no reason to believe that.

Mr. WAXMAN. Can you assure us if the Solyndra decisions were made on the merits and that there was no favoritism shown towards Solyndra for any reason?

Mr. SILVER. It is my understanding that that is correct.

Mr. ZIENTS. My understanding is the same.

Mr. WAXMAN. Our chairman has made some serious allegations. I think the real question before us is whether the vetting was done appropriately and whether it was done based on full representation by Solyndra about their economic viability. And I don't think we ought to use this failure of this particular guarantee to discredit was it an important loan guarantee in order to move to be able to compete in this area with China and to move our country away from dependence on fossil fuel.

Thank you, Mr. Chairman.

Mr. STEARNS. I thank the gentleman. Dr. Burgess, the gentleman from Texas, recognized for 5 minutes.

Mr. BURGESS. And I thank the chairman. And I will agree with Ranking Member Waxman. We do want the availability of solar at the retail level of this country. I look forward to the day where I can reduce my electricity bill by putting some type of solar panel on my roof or in my yard, but have we advanced that vision of the future with the activities that have occurred in regards to this case, and in particular, the jurisdictions for which you two are responsible for, the Department of Energy and the Office of Management and Budget, which does have the responsibility for direct oversight?

Now, Mr. Zients, in your testimony to us today, you talk about pressure testing I believe when you were talking about the interagency discussions, an important forum for asking the tough questions and pressure-testing assumptions. Well, let us think about that for a moment. A lot of emails that have now been produced to the committee, to the committee staff, and in going through those, we keep coming up against the notion that there was pressure all right but this is a pressure cooker. This wasn't a pressure test. This was we got to get this thing out the door because we have got a groundbreaking. And it might involve a trip by the President or a satellite appearance by the Vice President. So yes, there was pressure but it was pressure applied in pushing this thing out the door. In retrospect, was that the wrong kind of pressure to apply?

Mr. ZIENTS. Are there specific emails that you are referring to?

Mr. BURGESS. Yes, I would be happy to do that.

Mr. ZIENTS. Can I get a copy?

Mr. BURGESS. Were we providing him a copy of those emails? I think we are. I don't want to reference anyone's name because that is not appropriate.

Ms. DEGETTE. Mr. Chairman, if I could be provided a copy of those emails, that would be helpful.

Mr. BURGESS. Will do it. We will be glad to do it.

Mr. ZIENTS. I am just looking at the top line at the dates here——

Mr. BURGESS. These are all available.

Mr. ZIENTS [continuing]. They appear to be in the August time frame where I am not, best of my knowledge, and the author of any of these emails are actually even on any of these emails as I was not actively involved. So I will comment but I don't know the intention of any specific email.

At that period of time, OMB was playing its statutory role under FCRA to ensure that an appropriate credit subsidy score was given to the project. So this is not about whether the loan should go forward or not. This is about the accounting for the loan. And there was some scheduling requests from the VP's office and the VP's office was interested in potentially being part of an announcement of the closing of the very first loan. But I want to be crystal clear as to my understanding from my interactions with the staff in preparation for this hearing that those scheduling requests had no impact whatsoever on the credit subsidy score that was given to this project. OMB staff, based on its analysis, decided to increase the credit subsidy score to make it more conservative and DOE agreed with that, so the closing occurred after OMB staff had done a thorough analysis of the credit subsidy score and decided to increase the credit subsidy score to make it more conservative.

Mr. BURGESS. Well, let us——

Mr. ZIENTS. But the scheduling logistics had not been——

Mr. BURGESS. I am running out of time. Let me just reference August 27, 2009, 4:40 p.m., and this is an email from someone in OMB—"as long as we make it crystal clear to the Department of Energy that this is only in the interest of time, there is no precedent set that I am OK with it, but we also need to make sure that they don't jam us on later details so there isn't time to negotiate those, too," implying that there was pressure placed upon——

Mr. ZIENTS. Well, again, not being involved and not being on this email chain, I think what is clear is that OMB staff was—to the best of my understanding based on my discussions with OMB staff because I was not actively involved—comfortable with the credit subsidy score, which is the statutory responsibility of OMB, and in fact, the credit subsidy score was increased during the period of time——

Mr. BURGESS. Yes, and with all due respect, sir——

Mr. ZIENTS [continuing]. And DOE agreed with that——

Mr. BURGESS [continuing]. It doesn't sound like they were comfortable. They say it is in the interest of time. This time we will let it go, but tell those guys over at DOE that they are not going to jam us on this also.

Mr. ZIENTS. In preparation for this hearing, I talked to the OMB career staff and no one hesitated in my discussions with them as to whether they were comfortable with the final determination of

the credit subsidy score for this project. And as I said, the credit subsidy score was increased—i.e., made more conservative—as a result of the OMB analysis and DOE agreed with that.

Mr. BURGESS. Let me just in the remaining time, Mr. Silver, ask you, this is the filing with the SEC on the S–1 report from March 2010 on the planned initial public offering, and Solyndra's auditor, PricewaterhouseCoopers, stated the company's S–1 amended, "though the company has suffered recurring losses from operations, negative cash flow since inception, it has a net stockholder deficit, and it raised substantial doubt about its ability to continue as going concern," did this prompt any curiosity on your part or did it change anything about the Department of Energy's behavior about this application?

Mr. SILVER. Well, let me respond first, Congressman, as a former venture capitalist and tell you that frequently companies, particularly high-growth companies like Solyndra, will make filings for companies that, while they are growing rapidly, still are continuing to burn case. A going concern review by an independent auditor is—accompanies that kind of scenario. I should also point out that in the time frame——

Mr. BURGESS. Sir, I am going to run out of time, but with all due respect, venture capital is different from a government investment, a taxpayer subsidy——

Mr. STEARNS. The gentleman's time has expired.

Mr. BURGESS. This is a different universe and your response as a venture capitalist is likely not consistent with being a good steward of the taxpayers' money. And I will yield back to the chairman. Thank you.

Mr. STEARNS. The gentleman yields back. We recognize the chairman emeritus of the Energy and Commerce Committee, the gentleman from Michigan, Mr. Dingell, for 5 minutes.

Mr. DINGELL. You are most kind. Thank you, Mr. Chairman. I am very pleased to see that we are having proper oversight and it is my hope as we move forward that if the majority has evidence of wrongdoing, they will present it to us so we can take proper action.

Mr. Silver, you say in your testimony that Solyndra first applied for a guaranteed loan in 2006 when President Bush was still in office, is that correct?

Mr. SILVER. Yes, sir.

Mr. DINGELL. I understand you had people who worked within the Loan Program Office and who do the due diligence on determining the quality and feasibility of loan applications. Are these people political appointees?

Mr. SILVER. No, sir, career——

Mr. DINGELL. They are career?

Mr. SILVER. And analysts and advisors.

Mr. DINGELL. Good. So the staff reviewing application for a guaranteed loan over the past 5 years are not political appointees but instead are rather career, nonpolitical employees who serve from administration to administration, is that right?

Mr. SILVER. Yes, sir.

Mr. DINGELL. All right. Now, although I understand that you haven't yet been at the loan office, is it your assessment that the

guaranteed loan was awarded based on the project proposal and the strength of the application and not on any political influence? Remember, you are under oath.

Mr. SILVER. To the best of my knowledge—and as you point out I wasn't there—but to the best of my knowledge, yes.

Mr. DINGELL. OK. So nonpolitical career Department of Energy employees while serving under the Bush administration recommended a timetable to award Solyndra a guaranteed loan. Was this the timetable against which the loan was eventually committed?

Mr. SILVER. The career staff identified the timeframes after having brought it forward in the first Credit Committee as marked for a second Credit Committee and produced it at that time, yes.

Mr. DINGELL. All right. Let us go fast-forward a year to 2010 when Solyndra approached the Department of Energy for further assistance. Was this due to low-cost competition from Chinese manufacturers, Solyndra needed help? If your office had not agreed to restructure the loan, would Solyndra have gone bankrupt in 2010?

Mr. SILVER. Yes, sir.

Mr. DINGELL. Now, without the structured loan or restructured loan, would Solyndra have had any chance of success?

Mr. SILVER. It is hard to imagine how since they had a liquidity crisis. They were out of operating capital.

Mr. DINGELL. Now, would the company's 1,100 workers been laid off in 2010, then?

Mr. SILVER. I would assume so, yes.

Mr. DINGELL. Solyndra secured an additional $75 million from investors as part of a loan restructuring. Is it a standard in loan restructuring for new investment to have priority in the case of a liquidation?

Mr. SILVER. It is very typical.

Mr. DINGELL. Now, Mr. Chairman, I have been waiting anxiously to hear what we have to show that there is wrongdoing here, and I am still waiting to see something that makes me be concerned that we have here some wrongdoing. And I don't want us to proceed just on suspicions or doubtful questions or misinterpretations of emails or finding emails where none exist. Now, let us try and see what took place.

First, during the Bush administration, Solyndra submitted a pre-application for a loan guarantee. Second, that then a financial and technical review were conducted. In October 2007 the Department of Energy invited Solyndra and 15 other applications to submit full applications. Solyndra submitted their full application in 2008. Later, in 2008, the Department of Energy indicated that Solyndra was in the best position to receive the first loan guarantee. You remember this was under the Bush administration. In January 2009, during the final days of the Bush administration, the Department set forth a timeline to complete due diligence on the Solyndra application that would lead to approval by the spring of 2009. Next came in the administration of President Obama. Now, during that spring of 2009, the Department continued to do its due diligence and completed its work in August. The loan guarantee was issued in September 2009, 3 years after the pre-application was originally submitted.

I am looking forward to hearing from the committee leadership and from the committee staff is there anything in the record to suggest this proposal was rushed through or that improper consideration was given or that there was any improper or illegal pressure or political activity which might have led to us being where we are today? I would urge my colleagues to look hard for the facts and take all the facts into consideration and to see to it that as we go about our business, we are careful in finding the truth and not just having a splendid time making unjust accusations regarding the program and the administration. Thank you.

Mr. STEARNS. The gentleman's time has expired. I recognize the gentleman from Nebraska, Mr. Terry.

Mr. TERRY. Thank you, Mr. Chairman. And I would agree with the chairman emeritus that we do need to do our due diligence and find out on behalf of the taxpayers what went wrong here. And that does need to be our ultimate mission.

There is a theme that I am picking up in the questioning, and that is I think everyone must agree that there is some scandal involved in this. And I am reaching this conclusion by the amount of time spent to ensure that people believe that this was somehow approved and all of the work done under the Bush administration. That seems to be the MO is if there is a crisis that occurs today, blame it on the past administration.

And so just to set some facts straight because even you, Mr. Silver, mentioned in your written testimony provided to us that Solyndra submitted its initial application in 2006 and much of the "extensive due diligence on the transaction was conducted between 2006 and 2008," but the irrefutable fact is that on January 9, 2011, the Bush administration DOE Credit Committee remands the Solyndra application calling it premature and citing unresolved issues. So it seems to me that not all of the "extensive due diligence" on the transaction was conducted between 2006 and 2008 but that the Bush administration said very specifically that the application required much more due diligence.

Then you said, Mr. Silver, if I am correct that you said in 2011 more due diligence was done that led to the approval. Is that a correct statement?

Mr. SILVER. I believe you mean 2009, Congressman?

Mr. TERRY. Well, yes.

Mr. SILVER. Yes, additional due diligence—it is my understanding that additional due diligence was done from the time the initial Credit Committee remanded it back to the loan program effort through to the next Credit Committee, which met subsequently in March. And during that time, additional work on market research and legal and technical matters and other kinds of things that would normally make up the responses to the questions that the Credit Committee had asked were developed and answered.

Mr. TERRY. Then after the president was inaugurated, an email from a DOE staffer states that we are approaching the beginning of the approval process for Solyndra again. So the work continued on the application, correct?

Mr. SILVER. Yes, that is my understanding.

Mr. TERRY. Now, what we would like to know is—Mr. Waxman was going down this path so I am going to follow up on his ques-

tions—he asked in a way that made you responsible for assuming motives of other people. I am just going to ask you point-blank. After you started your role at DOE or in your role, did you receive any communications from a White House employee, personnel, Carol Browner, Rahm Emanuel, anybody regarding the Solyndra loan?

Mr. SILVER. You mean in——

Mr. TERRY. Yes or no. Did you——

Mr. SILVER. When I joined?

Mr. TERRY. Yes.

Mr. SILVER. No, when I joined——

Mr. TERRY. You had no communications from anyone——

Mr. SILVER. The Solyndra loan, it was closed in September, sir, and I arrived in November.

Mr. TERRY. What about the restructuring time period?

Mr. SILVER. Well, the restructuring occurred approximately a year later, was largely conducted on a staff-to-staff basis. There were interactions——

Mr. TERRY. Were there interactions then—if you are denying that you received any communications directly from the White House to you——

Mr. SILVER. No, what I am trying to describe to you——

Mr. TERRY. That is my question, so please answer my question. Did you receive during your time there any communications from anyone from the White House regarding the Solyndra loan? That is an easy question. It is either yes or no.

Mr. SILVER. And it actually has an easy answer. We work regularly on this transaction and every other transaction with our interagency colleagues at OMB and at the——

Mr. TERRY. I said White House.

Mr. SILVER. I am not sure what distinction that is. We work with the OMB——

Mr. TERRY. Oh, really?

Mr. SILVER [continuing]. And any——

Mr. TERRY. How about—you want me to start naming individuals. Carol Browner and her staff, did you receive any communications? I think the question is very clear and you are——

Mr. SILVER. It is and what—the answer to this——

Mr. STEARNS. Mr. Silver, you are under oath and you need to answer the question yes or no.

Mr. SILVER. The question is do we interact with elements—with different agencies and the answer to that question is yes, extensively.

Mr. TERRY. I did not say different agencies. I said White House.

Mr. SILVER. Well, individuals in those agencies, we work——

Mr. TERRY. OK. So you did receive communications directly to you from somebody in the White House?

Mr. SILVER. I don't recall who would have been involved directly. What I can tell you is the discussions around these transactions as Mr. Zients referred to are conducted on a staff-to-staff—career staff-to-career staff basis working to develop the transaction.

Mr. TERRY. So once again, have you received—you received any communications regarding the Solyndra loan from anyone from the White House?

Mr. SILVER. Well, I mean Mr. Zients and I have talked about it.

Mr. TERRY. OK. Mr. Zients, have you? It is fairly clear obviously Mr. Silver is not going to answer the question.

Mr. ZIENTS. Well, again, as to the loan itself, I wasn't involved when the loan was closed. As to the restructuring, yes, I do interact with components of the White House. I would make a distinction between OMB and the White House to get—to tap into their expertise on energy and on financial markets.

Mr. TERRY. OK. And who was the person that you were communicating with in the White House?

Mr. ZIENTS. The primary expertise resided at the time what was then the Office of Energy and Climate Control.

Mr. TERRY. That was Carol Browner's office?

Mr. ZIENTS. Carol Browner led that office, yes.

Mr. TERRY. Did they suggest to you—my time is up.

Mr. STEARNS. Thank you, gentleman. And the gentleman from Massachusetts, Mr. Markey, is recognized for 5 minutes.

Mr. MARKEY. Thank you, Mr. Chairman, very much. I will just note, first of all, that if you want to waste American taxpayers' dollars, let us talk about the oil industry at record high profits getting $41 billion worth of tax money from taxpayers. And secondly, if you want to talk about loan guarantees, the Southern Company has received a loan guarantee 15 times larger than Solyndra, and if we are going to reexamine whether or not that is a good investment after Fukushima, after the earthquake near the North Anna Plant, let us have that hearing, because I think that money is in jeopardy if you are really concerned. That is 15 times larger. We know we will never have a hearing on the oil industry or the nuclear industry in this committee. This is all part of an agenda here that deals with the solar industry, the wind industry.

So let us go back in time here, Mr. Silver, and it is back in 2009. You are looking at this loan guarantee. What does the market look like for solar?

Mr. SILVER. Well, although I wasn't at the Department in 2009, I do have a point of view on the solar industry then. Polysilicon prices were extraordinarily high and the cost—what they call balance-of-systems costs of putting conventional solar paneling on roofs, which involved penetrating the roofs as well, was very, very expensive. So the Solyndra technology, which had received a lot of attention during that period, was particularly innovative because it addressed both of those key problems.

Mr. MARKEY. In general you are not providing this financing to Fortune 500 companies. You are providing them to companies that are largely startups with innovative technologies to ensure that we are in this marketplace. Is that not correct?

Mr. SILVER. That is, Congressman, and with the added addition that the companies themselves are required to raise substantial amounts of capital and Solyndra had already raised many, many hundreds of millions of dollars.

Mr. MARKEY. Now, when these loan guarantees were being provided, at any time did your agency or any part of the Federal Government project a 42 percent drop in the price of solar panel prices in an 8-month period?

Mr. SILVER. Well, not only did they not project the 42 percent drop this year, but between 2008 and now, that price had dropped about 80 percent. And most analysts were surprised by that.

Mr. MARKEY. So just so we can have an honest discussion here, there is a Moore's Law for solar, and I hold up the chart, and that is that every time there is a doubling of solar panels worldwide in deployment, the cost of producing them goes down by 18 percent. And that phenomenon has become very predictable. Now, in 2011, so we can see the forest for the trees, the Chinese funded $20 billion for 4 solar companies in 2010. And we have seen in the first 8 months of this year a 42 percent collapse in the price of these solar panels. Was that foreseeable in 2009?

Mr. SILVER. It was not, although China's commitment to this was increasingly clear. And actually, I believe, Congressman, that number is closer to $30 billion.

Mr. MARKEY. Did anyone in the marketplace predict a 42 percent drop in the price of these solar panels in 2011?

Mr. SILVER. I can't speak for every analyst out there but certainly many, many professionals following the industry were surprised.

Mr. MARKEY. Were surprised. Now, let us go to the marketplace at large. Evergreen went bankrupt this year in the United States. SpectraWatt went bankrupt. German Solar SE shut down their Arizona solar facility. BP Solar shut down their facility in Frederick, Maryland. Emerging Conversion and Daystar Technologies lost 80 percent of their market value this year. This 42 percent drop this year is as a result of the Chinese intervention in this marketplace. This was not knowable in 2009. This was not knowable in 2010. This was a market intervention.

Now, if the Republicans think that like Johnny Carson's Carnac that there is an envelope, you know, with the answer in it that was available in 2009, they are kidding themselves. We are in a race. We are in a global race here and we are doing our best to make this case to the Republicans on this committee. While they keep the loan guarantees for nuclear intact as they pass their budget, while they continue to protect those oil company tax breaks up to $41 billion, they are turning on a pin on a collapsing market here in the United States on something that really is related to the fact that we are not focusing upon the Chinese intervention into this marketplace.

So I just hope that the administration and their policy of financing these kinds of programs—and I think for the most part it has been a big success story and I think we have to keep that in mind as well—is something that this committee keeps in their mind as we move forward.

I thank you, Mr. Chairman.

Mr. STEARNS. Mr. Sullivan is recognized for 5 minutes.

Mr. SULLIVAN. Thank you, Mr. Chairman. I appreciate you holding this.

Mr. Silver, on January 9, 2009, the Credit Committee during the Bush administration found the Solyndra deal to be premature and stopped all further work. An email sent by DOE Credit Committee a few days later stated that it was a unanimous decision not to engage in further discussions with Solyndra at this time, and yet on

January 26, 2009, after the Obama administration came in, a DOE staffer notes in an email that "DOE has decided to restart the approval process for Solyndra." What prompted this decision?

Mr. SILVER. Well, Congressman, again, since I wasn't there I can only give you my review of the record, but it appears to me when the first Credit Committee remanded it back, what they specifically did was to say we have specific questions which we need answered before we can take this application up again. The career staff in the loan programs office then went to work answering those questions, and when they had been resolved, brought the transaction forward again.

Mr. SULLIVAN. This was about 2 weeks before the stimulus was signed into law. Didn't that have something to do with it?

Mr. SILVER. Not to my knowledge, no.

Mr. SULLIVAN. Secretary Chu directed DOE to accelerate the process and deliver the first loan in a matter of months. Is that right?

Mr. SILVER. I don't know what the Secretary said specifically, but the Recovery Act certainly had a focus on bringing projects forward quickly. In fact, as you know, Congressman, there is a sunset date of September 30 of this year to get the 1705 projects done. And you know, a lot of work has gone into this and other programs to move monies as efficiently, effectively, and yet as prudently as possible.

Mr. SULLIVAN. Solyndra's application was part of Secretary Chu's acceleration process. You know that is right, don't you?

Mr. SILVER. I assume that to be true, but again, I wasn't there.

Mr. SULLIVAN. So you say yes?

Mr. SILVER. I assume that to be the case.

Mr. SULLIVAN. OK. What did DOE do to accelerate this process? At this time, the DOE loan programs office was very thinly staffed, is that right?

Mr. SILVER. It depends on your definition of thinly, but yes, there were not very many people there.

Mr. SULLIVAN. How many employees did it have?

Mr. SILVER. I don't know at the time, sir, but I believe it was between 10 and 20.

Mr. SULLIVAN. Did it even have the resources to do the review under the Secretary's accelerated time frame?

Mr. SILVER. Yes. Remember, the loan program's professionals make use of outside advisors as well.

Mr. SULLIVAN. Well, I want to resolve a discrepancy here. You stated that Solyndra was accelerated per Secretary Chu's policy and yet in your testimony you state that Solyndra proceed, "on the exact timeline that had been developed under the Bush administration." Which is it and can you clarify this?

Mr. SILVER. Well, I don't think those 2 statements are incompatible. The career staff in the loan programs office identified the March time frame as when they would come back to the Credit Committee when the proposal was originally sent back to them.

Mr. SULLIVAN. You mentioned earlier when I just came in that you are a private equity or you worked on Wall Street or what did you——

Mr. SILVER. A bit of everything.

Mr. SULLIVAN. OK. So you have looked at businesses and you have seen if they are worthy or not. In that capacity, would you lend a half a billion dollars to this company in the information——

Mr. SILVER. Well, I am by training and background both a venture capitalist and a hedge fund investor, but I am in position really to second-guess having not been there what the transaction that occurred. What I can tell you is this. Extensive due diligence was done across multiple years on all of the relevant characteristics that would go into a typical project financing.

Mr. SULLIVAN. OK. If we could look at Slide 10, could someone pull that up?

[The information appears at the conclusion of the hearing.]

I would like to ask you about this, OMB. "Given the time pressures we were under to sign off on Solyndra, we don't have time to change this model." This is what they are saying between each other. "As long as we make it crystal clear to DOE that this was only in the interest of time and that there was no precedent set, then I am OK with it. But we also need to make sure they don't jam us on later deals so there isn't time to negotiate those, too." This was on August 27. Biden wants to do an appearance very soon after that. The stimulus was done on September 4. What do you have to say about this?

Mr. ZIENTS. I wasn't involved in this but based on what is on the screen here, I think this has to do with the closing of the transaction and OMB's role at that point is to make sure that the credit subsidy score is correct from a budgeting-cost perspective. It is not about the loan overall at that stage; it is about the credit subsidy score. And my understanding, having talked to staff in preparation for this hearing, is that staff was very comfortable and had no hesitation as to its final determination of the credit subsidy score, which as I mentioned earlier, the credit subsidy score has actually increased as a result of OMB's analysis and DOE concurred with that. So the credit subsidy score was made more conservative in that period of time as it was signed off in preparation for closing of the loan.

Mr. SULLIVAN. Well, she said there was a problem with the model. Do you think that is a problem——

Mr. ZIENTS. Again, not having been there, not knowing the author's intent, what I can tell you that in preparation for this hearing, I have talked to OMB career staff and there was no hesitation that they expressed to me as to whether the final credit subsidy score was indeed one that they were comfortable with. And it was increased as a result of the OMB analysis and DOE agreed with that increase.

Mr. SULLIVAN. Well, the Solyndra——

Mr. STEARNS. The gentleman's time has expired.

Mr. SULLIVAN. Thank you, Mr. Chairman.

Mr. STEARNS. Ms. Christensen is recognized for 5 minutes.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman. I want to also just thank our ranking members for insisting that we hear from the Solyndra officials. It is important that we get the fullest picture, especially since my reading of the testimony suggests that DOE and OMB appear to have done adequate due diligence and

that part of the collapse of Solyndra at least appears to be due to forces beyond their control.

Nevertheless, this subcommittee has the responsibility to determine all the facts and apply relevant lessons learned going forward. But I also think it is important that we accept that innovation always carries some degree of risk, and it is also important that we not use the failure in this instance or even others as an excuse to turn away from the pursuit of green energy, a green economy, and the U.S. leadership in this area.

So my questions, then, are to Mr. Silver. I would like to ask you to take me through the DOE's monitoring system for loans as it existed in 2009, 2010, and how it exists now. I do want to point out that a series of GAO and DOE Inspector General reports dating to the Bush administration have identified problems with management and controls in the DOE Loan Guarantee Program. So it is fair to point out that these programs did not begin with you. Still, it is important to ensure accountability for how this program is run.

So the first question, after the Solyndra loan guarantee was first closed in 2009, what mechanisms did DOE use to monitor Solyndra's cash flow?

Mr. SILVER. In addition to our origination teams, our credit teams, our legal teams, our technical teams, and our regulatory teams, we also have a portfolio management group, and their responsibility is to monitor transactions post-closing against the covenants in each individual transaction.

Mrs. CHRISTENSEN. Were there site visits to California or——

Mr. SILVER. There are regular site visits.

Mrs. CHRISTENSEN. How did DOE's practices change when the loan was restricted in 2011?

Mr. SILVER. Well, the principle difference was that in addition to picking up certain additional collateral for the loan, we negotiated and took an observer's seat in this particular transaction. Now, I should say, Congresswoman, that that is an unusual thing to do and to have. Typically lenders, including lenders in the private sector, do not have board seats or even generally board observe seats, but we thought it was important to do that in order to be able to continue to monitor it.

Mrs. CHRISTENSEN. So despite this ongoing monitoring, it does not appear that DOE anticipated Solyndra's deep financial troubles this summer. So Mr. Silver, how would you explain this, that you were not able to anticipate the deep financial troubles?

Mr. SILVER. Well, as several members have mentioned and as I mentioned in my opening remarks, the precipitous price drop of the silicon and panel prices has deeply contributed to that. I should note that we, too, anticipated there would need to be, you know, additional support for this company in the out years as it continued to grow, and that was built into the restructuring transaction as well.

Mrs. CHRISTENSEN. Mr. Silver, I know that Solyndra was raided by the FBI and the DOE Inspector General following the bankruptcy announcement. Do you know why this raid occurred?

Mr. SILVER. No, ma'am, I have no idea. I am not part of that investigation or privy to it.

Mrs. CHRISTENSEN. Did Solyndra ever mislead DOE that you know of? Do you have any reason to think that the company was not providing you with all appropriate information?

Mr. SILVER. I have no reason sitting here today to believe that we were misled.

Mrs. CHRISTENSEN. So what lessons have you learned? Have DOE's loan monitoring practices changed since you began as director of the Loan Guarantee Program in the fall of 2009? Do you anticipate making further changes in response to the loss of taxpayer funds as a result of the Solyndra bankruptcy?

Mr. SILVER. Well, the entire program has changed, Congresswoman. When I got there, there were about 35 people. We know have between 180 and 200 people, deep bench strength in each of the areas that I identified. We built out, among other things, an electronic portal which permits applicants to submit electronically, thereby capturing all their data and shrinking the intake time. I might mention as an aside that we won a national award for that software. We built out a complete records management piece which had not existed heretofore and we will continue to make additional improvements as can.

Mrs. CHRISTENSEN. Thank you for this information. One of the key roles for the committee moving forward will be to understand why DOE did not foresee the Solyndra bankruptcy earlier-you have helped us at least some information regarding that—and whether there are ways to improve the system from monitoring projects that better fit the program. Thank you for your responses.

Mr. SILVER. Thank you, ma'am.

Mrs. CHRISTENSEN. I yield.

Mr. STEARNS. The gentlelady yields back. The gentlelady from Tennessee is recognized for 5 minutes, Ms. Blackburn.

Mrs. BLACKBURN. Thank you, Mr. Chairman. And thank you both for being here with us. Just a couple of questions and I know you have been here for quite a while.

I have got a couple of emails I want to put up here. Mr. Silver, you said you had worked on Wall Street and——

Mr. SILVER. No, I didn't work specifically on Wall Street.

Mrs. BLACKBURN. OK.

Mr. SILVER. Midtown but for a hedge fund, yes.

Mrs. BLACKBURN. For a hedge fund. OK. So you are pretty used to reviewing companies and looking at the history of companies and deciding if something is going to be a good investment or not, correct?

Mr. SILVER. Yes, ma'am.

Mrs. BLACKBURN. OK. And I would imagine that DOE had a file that was passed onto you when you came into your position. Did they have a file that contained the different loans that had been approved and the tracking on those, the accountabilities to the taxpayer? Because, you know, we are about fairness for the taxpayer.

Mr. SILVER. Yes, as are we, and yes, there were files.

Mrs. BLACKBURN. OK. So you did have files. OK. Mr. Zients, did you get a file at OMB on Solyndra and the due diligence that was done and then the process that was followed?

Mr. ZIENTS. I became involved with Solyndra around the period of the restructuring.

Mrs. BLACKBURN. Not the question. Did you receive a file that goes back to day one?

Mr. ZIENTS. No.

Mrs. BLACKBURN. So you had no knowledge of the history?

Mr. ZIENTS. Well, OMB's role here, as I have talked about before is specifically on FCRA around——

Mrs. BLACKBURN. Sir, not my question. Did you get a file? Was there some history of the process?

Mr. ZIENTS. I was briefed by our staff on the history of the process.

Mrs. BLACKBURN. But nothing in writing?

Mr. ZIENTS. I reviewed documents that the staff produced but there is not one comprehensive——

Mrs. BLACKBURN. Sir——

Mr. ZIENTS [continuing]. File that I had been exposed to.

Mrs. BLACKBURN [continuing]. There is no Solyndra loan guarantee file at OMB is what you are saying?

Mr. ZIENTS. My assumption would be, although I don't—I have not seen it—that the career staff, yes, maintains a file on Solyndra. That is not something——

Mrs. BLACKBURN. But you have not seen that?

Mr. ZIENTS. No.

Mrs. BLACKBURN. OK. All right. Now, there are 2 emails here and let us talk about these for a minute. The first one, August 19, an email between the DOE staff—dated the 19th—stated that "We still have a major outstanding issue, the issue of working capital assumptions." Mr. Silver, I assume you know a little bit about that—"has been a major issue repeatedly raised since December '08. You want to pay attention to those dates. Now, let us look at the next day there is an email. Now, Mr. Markey was concerned that no one seemed to be Carnac and have a silver ball. Well, it looks like we might have somebody that was doing a little bit of looking ahead. So let us talk about this. That email says, "The issue of working capital remains unresolved. The issue is cash balances not cost. Solyndra seems to agree that the model runs out of cash in September 2011 even in the base case without any stress. This is a liquidity issue." Mr. Silver, what do you say to that?

Mr. SILVER. Well, that would not be surprising in a modeling scenario. That is, in fact, exactly what you use modeling to do, to identify where there are holes in the project. It also does——

Mrs. BLACKBURN. Have you ever seen this email?

Mr. SILVER. I have not seen this specific——

Mrs. BLACKBURN. This is the first time you have seen this email. Were you aware that the liquidity issue had arisen?

Mr. SILVER. I was aware that the liquidity——

Mrs. BLACKBURN. Was that in the file?

Mr. SILVER. I don't honestly remember if that was in the file or not. Again, I arrived in November——

Mrs. BLACKBURN. Just remember you are under oath.

Mr. SILVER. I am deeply aware of that, Congresswoman.

Mrs. BLACKBURN. OK. Let us go on to the rest of this.

Mr. SILVER. Just to be clear, though, I arrived in November of 2009 and since the loan was already issued at that point, we essen-

tially move into the role that a bank managing a mortgage would. We manage the loan.

Mrs. BLACKBURN. Yes, sir. And I appreciate that. That is why I asked if you were passed a file. My assumption would be—and you know, Mr. Chairman, my goodness, I would think if we have got loan guarantee programs going in different agencies and there is not a comprehensive file that will give the history of that that would show the due diligence that would document this, that would show the orderly process that was followed, or as Mr. Waxman was so concerned about the vetting process, my goodness, we should be reviewing every one of these loan programs. Is OMB not looking at this on a comprehensive basis to make certain that individuals are meeting their timelines, that someone is following this. Are they just sending this money out in droves and nobody is doing the follow-up? So we will want to do that. Let us look at the rest of this email. And I am quoting——

Ms. DEGETTE. Chairman, with all due respect, I believe she is badgering the witness and I would——

Mr. STEARNS. Let the gentlelady finish her testimony.

Mrs. BLACKBURN. "How we can advance a project that hasn't"——

Ms. DEGETTE. Time has expired.

Mrs. BLACKBURN [continuing]. "Funded working capital requirements if it generates a working capital shortfall of $50 million when working capital assumptions are entered into this model?" Now, that was the question that was asked. And to all of my colleagues, I just think that, you know, when you look at this and you see that someone at DOE was asking those questions and was looking at that modeling, it should cause us to seek to do a little bit more review and oversight. And I yield back.

Mr. STEARNS. The gentlelady's time has expired. Ms. Schakowsky is recognized for 5 minutes.

Ms. SCHAKOWSKY. All right. Thank you, Mr. Chairman. You know, I agree that we should closely examine what went wrong and how the loan guarantee process can be improved if it needs improvement. But I am very concerned here that this is an attack on a program that, let us face it, when you invest in various innovative and novel technologies that we need to do, it is not true, Mr. Silver, that there is some inherent risk associated with each of these deals, not with just Solyndra?

Mr. SILVER. There is risk and almost by definition in the identification of the innovation itself, in building out that innovation at scale, there is an old adage that every bank wants to be the first bank to do your second loan. The program is intended to be the first bank to do the first loan.

Ms. SCHAKOWSKY. You know, my colleagues certainly obviously want to make this a political issue, but they also talk about not wanting to pick winners and losers. And for heaven's sake, as my colleague said, we are investing right now billions of dollars in oil and gas companies. We are investing, as my colleague Mr. Markey said, in a questionable technology, risky technology called nuclear. But I want to know that in selecting projects for loan guarantees, what efforts have you taken to ensure that you have appropriately diversified our portfolio?

Mr. SILVER. Well, thank you for that question. I want to be quite clear on this. The Loan Guarantee Program does not perceive itself to be in the business of picking winners or losers at all. In fact, the marketplace is the place to do that. And as someone who has come directly from that, I certainly support and attest to that. We don't actually look at projects that have not already garnered or will, as part of the process, attract substantial private capital. In fact, private capital is one of the bedrock requirements for the issuance of a loan guarantee.

The question isn't really so much are we picking winners and losers because we not only, as you point out, invest across a diversified portfolio—we invest in wind, solar, geothermal, biofuels and the like—we also invest in directly competing technologies within those sectors because it is the program objective, the program mandate to introduce a wide range of innovative technologies so that the marketplace, seeing these projects, can then replicate them on their own. And when the markets are in those areas, we exit.

But the real issue is how are we going to pick—if we are not going to substantially—if we are not going to be significant participants in this, then how are we going to build these American companies at all? Because China and the rest of the world are spending billions and billions of dollars to build out these industries.

Ms. SCHAKOWSKY. Now, on September 2, 2011, a Forbes article noted that this program should be judged based on its entire portfolio as opposed to one individual loan. I wonder if you could talk about that, just put this particular loan in context, either one of you.

Mr. SILVER. Absolutely. I am happy to do so. We have invested, as I said, in a wide range of technologies. I do want to point out that the vast majority of our investments have been in generation projects rather than in manufacturing projects. And the reason that is important is because generation projects have what are called off-take agreements through PPAs, power purchase agreements typically with utilities, which means that the power that is being created, the clean energy power that is being created is already contracted for. And it has—the generation projects which make up the vast majority of our portfolio have a vastly different risk profile than manufacturing projects do. We have actually only done 4 manufacturing projects in the 40-odd projects we have done across the program.

Ms. SCHAKOWSKY. What would be the consequences do you think if this investigation ended up in a conclusion that making investments in companies that do alternative energy, solar in particular, what would the consequences for our country be if we were to divest of those kinds of loans?

Mr. SILVER. I think the consequences would be profound and they would be profoundly negative. We are competing with countries around the world who see this as one of the largest industrial sectors and industrial opportunities of the next generation, and if we cede the field, if we walk off of the field, there is no way that we can succeed because this—these industries are different in kind than perhaps the software industry. You need platform companies here in order to be able to succeed.

As I pointed out earlier in my testimony, five of the largest solar panel companies are in China. Seven are in Asia. The eighth is in Europe, and there are only two here. You need to build out at scale. You need to deploy commercially because that is how you build out the supply chains in these countries. You have to create what economists call demand pull. And if you don't do that, you can't keep those supply chains alive and they can't, in turn, reduce their costs. So consequently, we have underinvested in the supply chains in this country in clean energy for decades and we are only now beginning to catch up.

Ms. SCHAKOWSKY. Thank you. Thank you for your work.

Mr. SILVER. Thank you.

Mr. STEARNS. The gentlelady's time has expired. The gentleman from Georgia, Mr. Gingrey, is recognized for 5 minutes.

Mr. GINGREY. Mr. Chairman, thank you.

I first off wanted to make a statement in regard to a couple of my colleagues on the other side of the aisle comparing Solyndra—this bankrupt company totally unproven technology—to the Southern Company. I take a little exception to that comparison. Southern Company owns Mississippi Power, Alabama Power, Georgia Power, among others, and employs literally thousands of people. It is closely regulated by the Georgia Public Service Commission, has 3 nuclear power facilities, 2 in Georgia, 1 in Alabama with 5 reactors that have been in production for years. So this loan guarantee to start up 2 additional reactors at Plant Vogtle by the Southern Company, comparing that loan guarantee to this loan guarantee for a company like Solyndra is a little disingenuous.

But let me go ahead and start the questioning with you, Mr. Silver. When you met with committee staff in March of this year, you represented that the restructuring agreement your agency reached with Solyndra in 2011, I believe February, had positioned the DOT and the United States taxpayer for maximum recovery. But the company is now bankrupt and it turns out the government is now in a second position to Solyndra's investors in the deal, those that put up an additional 75 million in that restructuring. Why did the DOT allow Solyndra's investors to be first in line to recover rather than the taxpayer? Under the Energy Policy Act, isn't your number one duty to protect the taxpayer funds?

Mr. SILVER. It is absolutely one of our essential concerns to focus as much as we can on the security of the taxpayer monies, and that is why we reached the decision we did. A restructuring is always by definition a decision among a set of tough choices because it means by definition a company is struggling. The fundamental question that we were trying to answer——

Mr. GINGREY. Yes, but let me interrupt you. If you have the legal authority to make those tough choices, the Energy Policy Act of 2005 expressly states "the obligation on loan guarantee shall be subject to the condition that it is not subordinate to other financing." This language makes Congress' intent seem pretty clear to me, to protect the taxpayers' money. Isn't this exactly what the Solyndra restructuring did, make the taxpayers' interest subject to other financing? Doesn't the Solyndra restructuring violate the law?

Mr. SILVER. Congressman, I am not a lawyer but I will tell you that the decision was reviewed by the Loan Guarantee counsel, by DOE counsel, and by OMB counsel, and the conclusion of that analysis was that projects needed to have—be in the senior-secured position at issuance, as indeed this loan was, as indeed every of our loans is. But I will tell you—while not a lawyer, I will tell you as a businessman that if you do not permit restructuring of transactions and the tools required to do that, lenders will be——

Mr. GINGREY. Let me interrupt. I understand that. I understand that in the private sector, and of course, you came from the private sector. I think you mentioned earlier involved in hedge fund activity and that sort of thing and a lot of wheeling and dealing and that is permitted. But in this particular instance—now, you said you received a legal memorandum on DOE's interpretation of the Energy Policy Act, correct?

Mr. SILVER. As I said, counsel at—from the loan program at the general counsel of the DOE and at OMB all reviewed this matter.

Mr. GINGREY. Who reviewed the memorandum?

Mr. SILVER. Which lawyers?

Mr. GINGREY. Yes.

Mr. SILVER. I am not sure which.

Mr. GINGREY. But it was approved by the general counsel. You just don't know which lawyers?

Mr. SILVER. I don't know which staff lawyers did the work, no, sir.

Mr. GINGREY. OK. But it was approved by the general counsel?

Mr. SILVER. It was certainly reviewed.

Mr. GINGREY. I want to discuss one part of the legal opinion. Will the committee clerk please put the language from the statute on the screen? I believe that is slide number 1. Yes. Just look at what it says and let me read it to you because I am kind of in the corner here and I can't read the monitor. But number 3, subordination, "The obligation shall be subject to the condition that the obligation"—the loan—"is not subordinate to other financing." That is part of the Energy Policy Act of 2005. The DOE legal opinion seems to be based on the use of the word "is" in the statute. The legal opinion states, "The reading of the provision is reinforced by the use of the word 'is,' which we viewed as confirming the intent that the condition be satisfied at a single point in time," meaning you can't subordinate when the guarantee is issued but you can at restructuring. Is DOE basing its opinion that taxpayers can be second in line to investors based on what the meaning of 'is' is? Wasn't DOE's tortured interpretation exactly the opposite of that plain language in the statute?

Mr. SILVER. I am not a lawyer, sir. I relied on counsel's judgment on that.

Mr. GINGREY. You didn't have a very good lawyer and I think you got bad advice. I yield back.

Mr. STEARNS. The gentleman from Texas is recognized for 5 minutes, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman. And I have some questions but I am shocked that my Republican colleagues be concerned about somebody coming from a private sector to the government payroll. I thought that is what we needed more folks from the pri-

vate sector. So, you know, I don't like wheelie-dealie either but it sounds terrible when you hear it.

But Mr. Silver and Mr. Zients, I want to ask some questions about that legal basis on restructuring the loan, and if you could put that section back up that my colleague from Georgia had because that is the series of questions I am going to ask about.

The committee's investigation revealed that there appears to have been 2 major legal questions under discussion as the Solyndra restructuring was going forward—the first to the extent which the DOE had authority to subordinate the U.S. creditor position to private investors, and second was whether the restructure should be considered a modification of the loan. The first question, Mr. Silver, what does it mean to subordinate an interest?

Mr. SILVER. It means that new capital coming in would be in a prime position on exit depending on the structure of the exit. I might point out here, Congressman, that typically in a restructuring in which new capital comes in—and you have to ask yourself the very obvious question—why would any capital—new capital come into a troubled situation if they did not come in in a prime position? But here—and typically in the private sector and in loans in other federal agencies, the prime trumps other subordinated capital all the way through. In the transaction we structured, we actually were able to ensure that it was only in the event of liquidation that that would be a senior position. In the event that the company as a sold as a turnkey operation, which is still possible, it will not be in a senior position.

Mr. GREEN. OK. There is language in Section 1702 that my colleague pointed out in the Energy Policy Act that the senior position is designed to prevent the subordination of government's interest in these loans. It reads, "the obligation shall be subject to the condition that the obligation is not subordinate to other financing," but your legal staff determined that there was a legitimate legal basis to subordinate the government's interest in Solyndra in this case. Can you describe for us your staff's legal rationale?

Mr. SILVER. Yes, as best I can not being a lawyer, and that is that the judgment was made that the law required that the loans at issuance be in a senior secured position as I said, indeed, as Solyndra was and in fact I want to assure the committee as all the transactions that we have closed to date are. But that in the event that a project struggled and there is no surprise as to the fact that projects struggle from time to time, we had the authority to figure out other solutions. I should remind the committee that absent the ability to do this, this company would have closed then with the 1,100 jobs lost then and the likelihood of any real recovery to the taxpayer being relatively de minimis because at the time the loan was restructured, although the physical building has been built, the plant had not been fitting out. It is also an adage of project finance and particularly restructuring work in project finance that the value of a completed project is infinitely greater than an incomplete project.

Mr. GREEN. The documents provided to the committee by the OMB suggest that your staff may have had some concerns about this approach. However, ultimately, you did not step in and stop DOE from subordinating the interest. Why not?

Mr. ZIENTS. OMB's role here is in oversight of the program and OMB's career staff and lawyers—and again I am not a lawyer—determined that——

Mr. GREEN. You know, I keep hearing that but I don't know if——

Mr. ZIENTS. General counsel——

Mr. GREEN [continuing]. A law license shows anything on common sense.

Mr. ZIENTS. General counsel's determination was that this was—was that the DOE approach was reasonable.

Mr. SILVER. Congressman, if I could just add one thing to that. You have asked—people have asked about the subordination. I want to make it clear that the billion dollars of equity—of private equity that went into this company originally is wiped out in that scenario. We are not talking about all of that private capital coming forward, just the newest piece of money that came in in order to provide the company with a fighting chance to restructure its operations.

Mr. GREEN. The second legal issue raised by the restructuring was whether it was a modification of the loan agreement. My understanding is that the Federal Credit Reporting Act generally prohibits loan modifications that increase taxpayer cost but the definition of modification does not include a restructuring to work out a troubled loan or a loan that is in imminent default. Is my understanding correct?

Mr. ZIENTS. This situation was ultimately deemed a workout for 2 reasons: first, that the company was in imminent default, which it clearly—DOE had determined it was; and secondly, that it was in the best interest of taxpayers to restructure the loan as opposed to liquidation. So when those 2 conditions are met, a loan is considered a workout in that scenario.

Mr. GREEN. OK. So it was a workout and not a modification?

Mr. ZIENTS. Yes.

Mr. GREEN. OK. Mr. Silver, what was the DOE's rationale for determining that restructuring did not constitute a modification?

Mr. SILVER. Exactly as Mr. Zients has indicated.

Mr. GREEN. Mr. Zients, your staff has also expressed concern over whether the restructuring constituted modification. What analysis did your staff go through making the determination that the change is not a legal modification of the loan?

Mr. ZIENTS. At the beginning of the process when we first heard about the financial troubles, the staff's orientation is going to be that there could be a modification. As the staff worked with DOE to understand the dire financial situation and the fact that the company was in imminent default and that DOE's analysis was reasonable, that the taxpayers were better served through a restructuring rather than a liquidation, OMB career staff determined that it was indeed a workout.

Mr. STEARNS. The gentleman's time has expired.

Mr. GREEN. Thank you, Mr. Chairman.

Mr. STEARNS. The gentleman from Pennsylvania, Mr. Murphy, is recognized for 5 minutes.

Mr. MURPHY. Thank you.

Mr. Silver, I just want to get a couple things on this in terms of your expertise. When you were managing director of Core Capital Partners, had you ever managed something—a loan of this size before?

Mr. SILVER. Core Capital Partners was a venture fund, sir, so we didn't provide that. We provided equity.

Mr. MURPHY. You provided equity. Have you ever provided equity of this size?

Mr. SILVER. Not individually in a loan at Core Capital but in other configurations, yes.

Mr. MURPHY. At Tiger Management had you ever——

Mr. SILVER. Yes, sir.

Mr. MURPHY. So you are used to that. You are used to reviewing these things. And I go back to this on Slide 5 if somebody could up Slide 5. In this when they had in August of 2009, someone wrote this. I can't quite read that up there—but wrote this in terms of saying that some issues with regard to the concerns about the health of the company there, major outstanding issues at the point in 2008, but it says an email the following day states, "the issue of working capital remains unresolved. The issue is cash balances, not cost. Solyndra seems to agree that the model runs out of cash September 2011 even in the base case without any stress. There is a liquidity issue." When did you become aware of that email?

Mr. SILVER. I have not seen this specific email. That email was written in August of 2009. I arrived in November of 2009. There would have been no reason for me to know of its existence while we worked on the company but——

Mr. MURPHY. So you would not have known of anybody's concern that there wasn't enough capital to keep the company going?

Mr. SILVER. Certainly. The career staff monitoring this was deeply aware of the issues and——

Mr. MURPHY. And your job is to have oversight over this staff?

Mr. SILVER. My job is to have oversight over the staff.

Mr. MURPHY. So you are saying you had oversight but you were not aware of a memo saying this company didn't have the money to keep going?

Mr. SILVER. Well, I am not aware of this particular email, but certainly I was aware of the company's status and situation.

Mr. MURPHY. At that time? And yet things were still going through?

Mr. SILVER. Well, the loan had already gone through, sir. We——

Mr. MURPHY. But what I am concerned about here is as we are looking at this—and next we can move forward to the restructuring. Now, the restructuring——

Mr. SILVER. Maybe I should clarify exactly what the loan was for. We provided a loan guarantee to support the construction of a physical plant called Fab 2.

Mr. MURPHY. And when was that approved?

Mr. SILVER. That is what the loan was for. It was approved in September and that plant actually was delivered on time and on budget. The way the loan worked——

Mr. MURPHY. On time on budget for a company that staff are saying couldn't function regardless of what they had in terms of a building.

Mr. SILVER. No, that doesn't actually say, sir, that the company can't function. That says that there will be a liquidity issue in 2011, several years in——

Mr. MURPHY. Meaning they run out of money.

Mr. SILVER. No, meaning that they will have to address that issue.

Mr. MURPHY. And if they don't, they run out of money.

Mr. SILVER. Conceivably, yes.

Mr. MURPHY. I am just trying to establish your job is you have handled loans like this. Would you offer a loan to a company that says they are not going to have the money to pay it back unless they make some changes?

Mr. SILVER. Well, again, I wasn't there when this loan was issued, sir, but what I can tell you is——

Mr. MURPHY. But in the time you have been there, you became aware of this. Did you begin to address these issues with Solyndra to say show me the money?

Mr. SILVER. Well, staff talked with the company on a regular——

Mr. MURPHY. Sir, I really want you to stop throwing everybody else under the bus. I hear you throwing all your staff under the bus. I want to know. You are in charge, you have handled loans of this size, and now you are saying it is everybody else's fault but you except you are in charge. You tell me what you as a person in charge did with half a billion dollars of taxpayers' money now saying it is all my staff's fault, I didn't know, I can't do anything about it. You tell me what you are going to tell the taxpayers when we are in the hole for so much money in this country and you are dealing with this in a very casual cavalier way. Whose fault is it?

Mr. SILVER. Well, sir, first let me say that the 200-odd professionals working in the Loan Guarantee Program are exceptional professionals——

Mr. SILVER. And you throw them all under the bus it is a pretty bumpy ride, but you are the driver, Mr. Silver. You are the driver. And now you are saying this is restructured. And going back to the slide that says, "the obligation shall be subject to the condition that the obligation is not subordinate to other financing and now it gets restructured so the taxpayers don't get their money back.

Mr. SILVER. The restructuring—any restructuring, Congressman, is based on a binary decision as to what is the better outcome for recovery, a liquidation, a sale of assets at a moment in time or a restructuring.

Mr. MURPHY. Who was it that made the decision that this act passed into law by the Federal Government was going to not be adhered to? Who made that decision?

Mr. SILVER. As I said it was reviewed by legal counsel for the loan program——

Mr. MURPHY. So you have no responsibility in this either. So we are throwing him under the bus, too?

Mr. SILVER. I am not a lawyer, sir. I rely on counsel.

Mr. MURPHY. Are we throwing her under the bus, too? Did the Secretary of Energy have anything to do with this decision or is he under the bus, too?

Mr. SILVER. Not to my knowledge.

Mr. MURPHY. So no one is responsible. This is an incredible organization you work for. No one in the Federal Government is responsible for half a billion dollars of taxpayers' money. This is phenomenal. What do you do for a living? If you don't know what is happening and everybody else is to blame, what do we go back and tell our constituents who have to work hard with so many people in this country in poverty, so many people in problems, we are saying this federal agency is saying we don't take any responsibility. It is everybody else's fault.

Mr. SILVER. We work to the fullest of our capabilities, Congressman, to ensure that these projects are as de-risked as possible——

Mr. MURPHY. I understand but now the taxpayers are on the hook for this.

Mr. SILVER. As was pointed out earlier, there are always challenges in investing in innovation. And I should point out that Congress through the appropriation of $2.4 billion of credit——

Mr. MURPHY. When did this company actually get their check?

Mr. SILVER. It doesn't work like that, Congressman. They draw against a loan——

Mr. MURPHY. Exactly. And at any point you could have stopped it when you found out the information that they couldn't exist. And that was under your watch, Mr. Silver.

Mr. SILVER. Our transaction—our loan was for the construction of a physical plant.

Mr. MURPHY. And at some point when you realized they couldn't function anymore in that physical plant, that is when you step in and take leadership and stop throwing your staff under the bus. I yield back.

Mr. STEARNS. The gentleman yields back, but the question Mr. Murphy is really asking, should someone be fired, Mr. Silver? Should anybody be fired? Yes or no?

Mr. SILVER. The people in the Loan Guarantee Program at the Department of Energy, at OMB, our colleagues at OMB and alike have worked——

Mr. STEARNS. OK. So you are saying no one should be fired.

Mr. SILVER. I am saying that we are doing the best job we know how to do——

Mr. STEARNS. All right. All right. I understand what you are saying. The gentleman from Virginia, Mr. Griffith, is recognized for 5 minutes.

Mr. GRIFFITH. Thank you, Mr. Chairman. If we could have Slide 1 again. Yes, I am concerned about this "is" situation, but I would point out in paragraphs 1 and 2 it references that "no guarantee shall be made unless" which gives some flexibility, but in paragraph 3 of Section 1702 it says, "the obligation shall be subject to condition that the obligation is not subordinate to other financing. Have you read the memorandum of law on this?

Mr. SILVER. I have not read the full memorandum, no, but I have been briefed by counsel——

Mr. GRIFFITH. Would it shock you to know that if you read it and you pay attention to what is being said—and I have it right here. I would be happy to give you a copy with my notes on it if you want them. It looks like it is a law school project where you are told to come up with an answer. Here is the question, give me the right answer, defend it the best you can. That is what it looks like.

Because under this analysis, what it says is is that if we close the loan in the morning and at lunch somebody has an epiphany and says you know what? I think that we should see if we can get some more money from somebody else and we are going to subordinate that money and we are not going to follow this paragraph. Because there is no line. And in fact somebody raised that issue the memorandum points out. Somebody raised the issue. Should there be a line between when the loan is granted and possible default? And they said no, that is not necessary because the law doesn't say that. You can change it anytime you want to if the Secretary thinks it is appropriate. Does that make good common sense as Mr. Green pointed out to you? You don't have to be a lawyer to know good common sense. Does it make common sense that the Congress of the United States responsible for setting our legislative policy would say that you are not to subordinate but under the interpretation of your lawyers, they could subordinate it after lunch for a loan closed in the morning? Does that make good common sense to you, sir?

Mr. SILVER. Well, Congressman, what makes sense to me is to ensure that we have the tools available to us to do whatever is necessary in a troubled situation to secure the taxpayers' interest.

Mr. GRIFFITH. Even if it is in violation of the law and what common sense would tell you, the common English always trumps legal mumbo-jumbo and the common English makes it clear you are not to subordinate. But in January when you were at the helm your people subordinated $75 million of this money, American taxpayer dollars to private investors. And part of the deal was they were going to invest more money in August. Isn't that true?

Mr. SILVER. That is true.

Mr. GRIFFITH. And they did not do so. Isn't that also true?

Mr. SILVER. That is true.

Mr. GRIFFITH. And when did your observer tell you that they weren't going to invest anymore money so that you might have been able to anticipate the bankruptcy? When did your observer tell you that?

Mr. SILVER. In late July.

Mr. GRIFFITH. And weren't we trying to get information from you all at that time or was that the other fellow?

Mr. SILVER. I don't know what you are referring to, Congressman.

Mr. GRIFFITH. The documents that we were requesting when we had a subpoena. I guess that was in——

Mr. SILVER. We sent you, as I said, 35,000 pages of material.

Mr. GRIFFITH [continuing]. July. All right. Just so we know, you have got all these other loans out there, 4 to manufacturers, which would be in a similar situation to this one. Have you subordinated any of that money?

Mr. SILVER. No other transactions have had subordinations. I would go further and say that of the 2—there are only 2 deals that have actually closed and completed construction and both of those are repaying on a timely basis.

Mr. GRIFFITH. All right. And if you didn't look at the memorandum, attached to the memorandum there are all kinds of charts on how Solyndra is going to make money. Did you look at those financial charts?

Mr. SILVER. Sure, I have seen the company's financials.

Mr. GRIFFITH. All right. You earlier testified that part of the reason Solyndra went under was the fact that the Chinese were able to make their product cheaper and the Europeans stopped buying. Now, while it may have gotten worse, wasn't that also true in January when you restructured this loan?

Mr. SILVER. It has been true for the last several years.

Mr. GRIFFITH. OK. In that I would have to ask you, then, when you look at these numbers, how in the world if you know that and your analysts have told you that, how in the world could you anticipate that profits at Solyndra would double next year? Because that is in all the models that are attached to the legal memorandum.

Mr. SILVER. I will leave it to the company's management team to describe their financial projections, but what I will say to you——

Mr. GRIFFITH. Wait a minute. Wait a minute. You are concerned enough you put an observer on the board and you subordinated American taxpayer dollars but you are going to leave it to their management to determine how they can say that they are going to double it? Doesn't that sound like that is not common sense again?

Mr. SILVER. Well, with all due respect, revenues are not actually the driver of how a loan or loan guarantee would necessarily get paid. What we focus on are cash flows and those can be managed in a variety of different ways.

Mr. GRIFFITH. But you would acknowledge that if their model was somewhat weak to begin with—and I recognize there is risk whenever you are doing something new—but if their model was weak to begin with and then market gets worse, doesn't that mean that maybe we should have just not thrown good money after bad because now we are in a worse position in the bankruptcy courts to get our money back, are we not?

Mr. SILVER. Well, at the time——

Mr. GRIFFITH. Are we in worse position than we would have been if we had just let them go into bankruptcy, Chapter 11, last January? We are or are we not?

Mr. SILVER. That will depend—not necessarily. That will depend on the outcome of the bankruptcy. As I tried to indicate before, when you are looking at this issue and admitting that there are no good choices, one of the issues is liquidation and you have to determine a liquidation——

Mr. GRIFFITH. Is it the administration's policy that bankruptcy is a good thing?

Mr. SILVER. I can't speak for the administration but common sense would suggest that it is not.

Mr. GRIFFITH. I would agree with you. I yield back.

Mr. STEARNS. The gentleman yields back, time has expired. The gentleman from California, Mr. Bilbray, is recognized for 5 minutes.

Mr. BILBRAY. Thank you very much, Mr. Chairman. Mr. Chairman, before I go on, I would like to just address the ranking member of this committee because I hope she recognizes and we all recognize this is not a Democrat or Republican issue when we are talking about this "is." This is specifically a threat to the legislative process when you can have an attorney play this word game and does that mean that Democrat or Republican, when they specifically direct in legislation that we now have to say not only it will not happen but we must say it will not and shall never be allowed to happen? Do we have to play this word game? Because I don't think it is a Democrat or Republican issue. I think this is an issue about the law is the law and I don't care how convoluted an attorney wants to do it. This doesn't pass the smell test in any way in the world. So I just think this is really an affront on both sides of the aisle by this manipulation. And just admit it that it was. We tried to get the job done and we crossed over a line to a commonsense person and anybody rational would say you crossed the line of what the law specifically said.

Now, that aside, there are a lot people talking about solar power here, some of us who worked at citing solar factories here. Mr. Silver, are you comfortable, first of all, with the thin film technology that was chosen by this company? Did you have any concerns about them using thin film technology?

Mr. SILVER. Congressman, I am, first of all, not a solar technical analyst but I am highly comfortable with the fact that the solar experts at the Department of Energy, of whom there are many, and the independent engineers which were well known and well respected firms were qualified——

Mr. BILBRAY. Were you informed that there has been more false starts and more failure in thin film than any other form of photovoltaic production?

Mr. SILVER. I don't know that to be true or not but——

Mr. BILBRAY. OK. And were you aware that when we talk about China that China has concentrated almost ostensibly in polycrystalline technology and avoid thin film?

Mr. SILVER. Well, China has focused on the market segment you are describing in part because it is a very cost-effective way to mass produce those panels. The Solyndra technology was designed in its time and place to circumvent or to overcome 2 fundamental challenges—the very high price of polysilicon and the installation costs which they refer to as——

Mr. BILBRAY. And they also have in fact the historical problem of a lack of durability and the loss of proficiency of thin film as opposed to mono- and poly-technologies. But my question to you, you are a business man. You are looking at a company. Did you review their proposal for the construction of their factory, the technology, the siting of it, the planned development of it, and its related costs and oversight?

Mr. SILVER. I am sorry. What is the——

Mr. BILBRAY. Did you look at where they were talking about building this factory, how they were building it, and the related issues of the cost of just building the factory?

Mr. SILVER. No, sir, because the loan was issued before I arrived at the Department.

Mr. BILBRAY. OK. When you went and renegotiated it, did you take a look at what was being proposed?

Mr. SILVER. Well, at that point, the plant was largely built, although it was not, as I say, fitted out.

Mr. BILBRAY. OK. Did anybody down the line raise the issue that the proposal was to build the facility in the State of California in the Bay area in a nonattainment area, can you think of as a business man anywhere in America where you probably have more regulatory obstructionism to the construction of a manufacturing operation than you would have in a nonattainment area in the State of California?

Mr. SILVER. I am not qualified to answer that question, but what I can say is that the investors that backed this company and the management team that originally led it must have concluded that this was the right place to do it.

Mr. BILBRAY. Mr. Silver, are you aware of anybody in your department that have notified grant applicants that if they want to go get the grant that their production should be moved out of the State of California to a State that has less regulatory obstructionism?

Mr. SILVER. We don't issue grants in the loan program, sir, but I am not aware of that, no.

Mr. BILBRAY. OK. Well, maybe we ought to talk about the fact—let me just point out, this grant application was asking to take 30 acres of agricultural land in the State of California in a nonattainment area. It was going to be required to be able to go not just through the DOD and the U.S. but having to get the Environmental Quality Act under Sequel for California, has to get a permit from the city, air quality from the Bay area, air quality which is nonattainment area with some of the strictest air pollution regs in the entire world. It was going to require a general permit for discharge and storm water, which means that not only did you have the California environmental agencies involved, not only did you have the State Water Quality Control Board involved, you had the local regional water Quality Control Board that you have to get a permit from.

The fact is is that the California Department of Occupational Safety, which has some of the most restrictive regulations in the world you had to get a permit from, you had the hazardous waste generation, which California again under HAZMAT has some of the most restricted funds. Then you get into wastewater discharge, and these are just some of the permits down the line.

Nobody in your department or when they reviewed this raised the issue that this is not only a terrible place to try to site a facility but you are proposing—didn't anybody raise the issue of why build a whole new facility rather than moving into an existing abandoned facility in a State that has 12 percent unemployment and huge empty resources? Anybody even talk about the question of

why would you build a new facility when there are warehouses available?

Mr. Chairman? Would he answer the question?

Mr. STEARNS. Time has expired but you are welcome, Mr. Silver, to answer the question yes or no.

Mr. SILVER. Sure, I will to the best of my knowledge. At the risk of repeating myself since I wasn't there, I don't know what the nature of the discussions were, but I can tell you that applicants for loan guarantees are required to have all of their siting permits and other kinds of permits in place by the time the project is undertaken.

Mr. BILBRAY. And all of it was stated down that it will attain it before construction when they get in the line? And all I got to say is somebody who is siting—we are siting existing warehouses. It is absurd with the kind of vacancy we have in the State of California for anybody to even talk about or come to you or any government agency and say we want to build a whole new area on ag land. I yield back.

Mr. STEARNS. The time of the gentleman has expired. The gentleman from Louisiana, Mr. Scalise, is recognized for 5 minutes.

Mr. SCALISE. Thank you, Mr. Chairman. I want to thank you for calling this hearing. You know, we have been pressing on this issue and asking a lot of questions about this Solyndra loan program for months now on this subcommittee, but I think it is really important that we have this hearing now because while Solyndra was touted as really one of the poster children by President Obama of his first stimulus bill, and clearly there is a lot of evidence that shows that this was something that the White House really wanted to move through quickly and the emails indicate that.

But while this was one of the poster children of the first stimulus bill, the President right now is touting what I call son of stimulus, another bill to come through, spend more taxpayer money, to do more things like this. And in fact if you look at some of the issues that we have raised about this loan program, some of these projects that were funded by stimulus, just Solyndra alone was touted to create 3,000 jobs. The President touted that. It is going to be a great success story. And of course, we have seen the failure there. And a lot of us are questioning this kind of double down son of stimulus approach where they are going to come back and do more of this kind of same failed policy of just spending money we don't have.

And, you know, of course the President said in front of our chamber last week, pass the bill now. We hadn't even seen the bill. The President didn't even give us the text of the bill and he said pass the bill now, called on the American people ask us to pass the bill now. I hope you understand now why a lot of us are real skeptical when the President says pass a bill now because he did that with the stimulus bill and we see the failure there. He did that with the healthcare bill. We are still unearthing problems there. So when the President says pass a bill, you can wonder why some of us say let me read the bill first and let us look at the details.

But now when we get specifically to this issue of what happened with Solyndra, Mr. Silver, I know you have testified that you weren't in your position until November of 2009. When you came

in, you have acknowledged there was a file on Solyndra. Did you read that file?

Mr. SILVER. I read through all of the materials for the entire program when I arrived.

Mr. SCALISE. Did you see the concerns that were being raised by your own agency back then prior to your coming that under what they were looking at, Solyndra could go bankrupt by September of 2011?

Mr. SILVER. I certainly saw all of the materials that were, you know, related to that discussion. I need to reemphasize, Congressman, that the loan guarantee was specifically for the construction of a physical factory, which was done. And the way that works——

Mr. SCALISE. And look, it is your job ultimately to go through that loan guarantee and see if there are things that meet the taxpayer interests——

Mr. SILVER. That is correct.

Mr. SCALISE [continuing]. But also I think you need to also be aware of the way that the program is being implemented. After you came in, the Government Accountability Office did a report that was, I think, pretty scathing about your loan program. They actually made some recommendations. They pointed out some problems. They pointed out, again, after you came in, GAO put this report out. They pointed out that the loan program treated applicants inconsistently favoring some and disadvantaging others. And they gave examples. Did you read this GAO report?

Mr. SILVER. I did, Congressman, and if you will give me a minute to respond to——

Mr. SCALISE. I can't give you that long. I don't have that much time.

Mr. SILVER [continuing]. The GAO question. First, let me note that while the report did come out after I arrived, it covers the 2008 and 2009 time period, and so I was there for approximately 1 month——

Mr. SCALISE. So did you make any changes based on the problems that they now know?

Mr. SILVER. Yes, we have actually made substantial changes as we have grown the organization.

Mr. SCALISE. All right. But let me ask you this. You were here after you all did the restructuring of Solyndra's loan. Who made the decision to put the taxpayers in the back of the line and subordinate in violation of federal law? Who made that decision?

Mr. SILVER. Well, first, Congressman, as I have said before, I don't know that it was in violation of any law. There were multiple——

Mr. SCALISE. Someone made the decision. Did you make the decision to subordinate——

Mr. SILVER. There were a variety of legal——

Mr. SCALISE. Did you? Did you make it?

Mr. SILVER. The loan program——

Mr. SCALISE. This is a yes or no question. Did you make the decision to subordinate the taxpayers and put them in the back of the line when the decision was made to restructure because you were there?

Mr. SILVER. The question is not—does not have a yes or no answer, Congressman.

Mr. SCALISE. So you don't know? You either made the decision or you didn't. I think——

Mr. SILVER. The process——

Mr. SCALISE [continuing]. That is a straightforward question. And look, we have been asking for months now, in fact, we on this subcommittee asked your agency for some of these documents prior to the modification of the loan, prior to the restructuring, and you all stonewalled us as you are stonewalling right now refusing to answer a direct question. And $535 million of taxpayer money is at stake. Maybe if you would have given us that information back months ago when we asked for it before you restructured, the taxpayers wouldn't be in the back of the line today. So you can understand, I would hope, why we are saying who made the decision to put the taxpayers in the back of the line? Can you get me that information if you can't answer it directly now?

Mr. SILVER. I am happy to meet with you to describe the——

Mr. SCALISE. No, I want in writing—I am going to ask on behalf of the committee, Mr. Chairman, if you can get us in writing the names of the people in the decision-making process—and it might be multiple people—who made the decision to put the taxpayers in the back of the line meaning subordinate the taxpayers in what many of us think are in violation of the law. I don't know what your counsel thinks and your counsel may be part of this list, but I want to know if you are part of the list. I want to know if the Secretary is part of the list. I want to know if anyone in the White House is part of that decision-making chain that said we are going to subordinate the taxpayers of the United States in restructuring this Solyndra loan. I think we deserve that answer and I am asking you to get that information, however many people it is. But somebody made that decision or multiple people, but you can't say nobody made it because the decision was made. Would you at least agree with that and then get that information to this committee?

Mr. SILVER. We will work with you to provide you what you need.

Mr. SCALISE. Thank you. And I yield back.

Mr. STEARNS. The gentleman's time has expired. The gentleman from Colorado, Mr. Gardner, is recognized for 5 minutes.

Mr. GARDNER. Thank you, Mr. Chairman, and thank you to the witnesses as well for your time today. And I would yield the 30 seconds to my colleague, Mr. Bilbray, from California.

Mr. BILBRAY. Mr. Silver, my biggest concern I just want to say in closing as somebody who supports solar energy, I think we got to keep the science not the blind faith, and it appears to me that this entire process was driven more by an assumption that anything solar was good and you could force it through and it was all going to work out. And the lack of critical review for this production I think is the greatest threat for future solar. It is this kind of blind faith that we have got to avoid. This should be driven by science and good investment, not by an assumption that whatever is renewable obviously is going to be great. And I think this failure was driven more by that. I don't think it was a criminal intent. But that criminal intent you can bust one guy. The trouble is with this

kind of prejudice for a technology blindly, there is more threat to that happening in the future and not just financially but the energy independence of this country and the competitiveness of this country. And that is what I am critical on.

Mr. SILVER. Congressman, I wholeheartedly agree with you that we ought to back the science, which is why a large group of sophisticated private investors who have done their own—had done their own due diligence, why the loan program staff from the 2007 to 2009 time frame using independent engineers, other outside advisors, and the solar experts at Department of Energy came to that conclusion.

Mr. BILBRAY. Well, the record shows that there was political interjection, there was PR issues. The preconceived idea that if it was solar, it had to be a great package, and frankly there is good stuff, there is bad stuff, and the greatest threat to the good stuff is allowing garbage to get through the system and being treated as if its sacred rather than being critical about it. And it wasn't critical enough and history has proven that it wasn't a critical review of this. We got to make sure that doesn't happen again. I yield back to the gentleman.

Mr. GARDNER. Thank you. And reclaiming my time.

Mr. Silver, I want to go back to this issue of the emails and the dismissal by the Credit Committee of this project. January 9—it is a Friday—2009, an email was sent from the Credit Committee remanding the Solyndra application calling it premature and citing a number of unresolved issues. In your testimony, you have said that this was over nothing big, no big details——

Mr. SILVER. No, I didn't. I never said that, Congressman. What I said was the Credit Committee remanded it back for additional work and due diligence was done on that work. And then it was brought forward in the time frame that—I should—if I may——

Mr. GARDNER. Well, let me just talk——

Mr. SILVER [continuing]. I would like to just point out one other——

Mr. GARDNER [continuing]. About this due diligence——

Mr. SILVER. I would like to just point out one other thing which is that——

Mr. GARDNER. Reclaiming my time. This is my time. I am sorry because I want to talk about these matters of due diligence on January 9, what you said, due diligence took place over. Let me read these to you. It is Slide #2 if you could put that on there. "There is presently not an independent market study addressing long-term prospects for this specific company beyond the sales agreement already placed. Since the independent credit assessment raised the issue of obsolescence in marketing this project, it is important to have an independent analysis of that issue as well as the current state of the competitive market." Point 2, "while the sales agreement is said to have been analyzed by the outside legal advisor assigned to this case, the committee did not have access to this document." Point 3, "there are questions regarding the nature and strength of the parent guarantee for the completion of the project." Point 4, "while it is encouraging to see the apparent progress in the development of the product at the Fab 1 facility, there is concern regarding the scale-up of production assumed in the plant for Fab

2." That was in an email on January 9. That is the areas of due diligence that you are saying that you did and you did it by January 26, a Monday, 2009?

Mr. SILVER. Congressman, I don't know where—what dates you are referring to. Let me——

Mr. GARDNER. These are the emails when the Credit Committee said no, we are not going to do this and then all of a sudden an email just days later, 10 working days later——

Ms. DEGETTE. Will the gentleman yield?

Mr. GARDNER [continuing]. We are going to go forward.

Ms. DEGETTE. Does the gentleman have copies of those emails? The minority has——

Mr. GARDNER. I am happy to provide——

Ms. DEGETTE. I would appreciate that.

Mr. GARDNER. Sure.

Ms. DEGETTE. We don't have copies of those emails and I don't think the witness does either and I am getting a little lost here.

Mr. GARDNER. On January 9, 2009, the Credit Committee sent an email, and I think if you go to Slide 4 you can see what I am talking about. There we go, 2009, talking about the Credit Committee remand of Solyndra application calling it premature. January 26, we are approaching the beginning of the approval process. So the areas of due diligence that you said took place took place in 10 working days? These are pretty significant issues.

Mr. SILVER. No, that is not accurate, Congressman, and if you will give me just a moment to try to answer your question. There are actually—there is actually an extended period of due diligence that takes place here. The Credit Committee—the first Credit Committee met; then there was a several-month period before it met again and I need to make sure this is clear because I don't think it is because I don't——

Mr. GARDNER. It didn't meet when they made their decision to move forward?

Mr. SILVER. What gets approved at that juncture, Congressman, is a conditional commitment, not the final close of the loan. The loan itself didn't close until September and so additional due diligence takes place from the conditional commitment through the close of the loan, as is true in every transaction.

Mr. GARDNER. What changed, then, between January 9 when they needed that information and January 26, 10 days later, when they evidently didn't need that information.

Mr. SILVER. I don't know what the January 26 date is that you are referring to.

Mr. GARDNER. The January 26 email was right there. It says, "a DOE staff member states that we are approaching the beginning of the approval process for Solyndra again." The Credit Committee met and said they didn't do it because they needed this information.

Mr. SILVER. Why do you assume that language says we are beginning—approaching the beginning of an approval process necessarily means anything about the time frame for which due—under which due diligence took place?

Mr. GARDNER. Well, I am assuming that the Credit Committee, their observations were taken into account, were they not?

Mr. SILVER. Absolutely, but the beginning—as I read it as you are now showing it to me, we are approaching the beginning of the approval process, that suggests a pretty open-ended period of time during which due diligence was——

Mr. GARDNER. So the Credit Committee then at that point, it doesn't matter what the Credit Committee is concerned——

Mr. SILVER. No, the Credit Committee met again in March.

Mr. GARDNER. Because they said we are going to end this.

Mr. SILVER. No, they said that we were—they were going to meet again in March, which they did.

Mr. DINGELL. Mr. Chairman, where are all——

Mr. STEARNS. The gentleman's time has expired.

Mr. DINGELL. Mr. Chairman, where are——

Mr. STEARNS. We are on the first round——

Mr. DINGELL. I have a unanimous consent request——

Mr. STEARNS. Yes, you are recognized.

Mr. DINGELL. Can we put all of these emails into the record? I am sitting here, I am seeing a wee bit of information carefully yellow-lined that is supposed to tell me what has happened here. I don't think there is any lawyer that would tell you that that would be sufficient evidence of anything. The whole document should be placed before us so we know——

Mr. STEARNS. Well——

Mr. DINGELL. If there is wrongdoing here, by golly, let us dig it out. But let us see the whole thing.

Mr. STEARNS. OK.

Mr. DINGELL. So far we are getting a lot of assumptions and understandings and comments from the other side in which they are saying oh, this is terrible. What has happened here? But I don't know what has happened and to speak perfectly frank with you, I don't see anything up there which tells me that we have a clear picture of the problems to which we are inquiring. So if we are going to inquire, let us inquire fairly. Let us let everybody see them. Is it possible that my Republican colleagues have seen these papers and the rest of us have not?

Mr. STEARNS. We will take the constructive criticism under advisement. We have unanimous consent in which all the documents will be made available and a part.

Mr. STEARNS. And I ask my side, the counsel, to provide the gentleman and your side all these documents, which we have. And they have been produced, I am told, so I guess the question is they haven't got to you. Is that a fair assumption?

Ms. DEGETTE. Well, if the gentleman will yield?

Mr. DINGELL. I want them in the record, Mr. Chairman.

Mr. STEARNS. Oh, OK. So you have the same documents we do, you just want to make sure they are part of the record?

Mr. DINGELL. I want——

Ms. DEGETTE. If the gentleman will yield?

Mr. DINGELL [continuing]. To see them——

Mr. STEARNS. And we pass the unanimous consent——

Mr. DINGELL [continuing]. I want to know what they said——

Mr. STEARNS. OK.

Mr. DINGELL [continuing]. And I want them in the record.

Mr. STEARNS. They will be put in the record. We had unanimous consent to do so.

Ms. DEGETTE. Yes, and if the gentleman would yield?

Mr. STEARNS. Yes.

Ms. DEGETTE. We were told that the documents were produced under an agreement with the majority that they were to be confidential and were not to be copied or in any way disseminated. We——

Mr. STEARNS. At the request of OMB, right?

Ms. DEGETTE. OK. But——

Mr. STEARNS. Yes.

Ms. DEGETTE [continuing]. What happened was in between yesterday when I found this out at about 7:00 p.m. last night and today, it turned out that lo, number one, the majority released a number of these documents to the press and, number two, the majority apparently took some of these documents and excerpted them in the way that the chairman emeritus is saying and put them on slides, which we have never been provided. I am going to tell you, Mr. Chairman, I have been on this subcommittee for 15 years and I am just as much concerned about this Solyndra loan as everybody else is, but the way that the information has just been parceled out, the witnesses don't have the full copies of the emails in front of them, the minority doesn't have the full copies of the emails in front of them until we asked for them, that is not in the grand tradition of this subcommittee.

Mr. STEARNS. We have heard your argument in your opening statement and we made a unanimous consent that you all be part of the document. I am told that you were given, your staff was given all these documents. OMB——

Ms. DEGETTE. We were told we couldn't copy it.

Mr. STEARNS. OMB is the one that specified that. We have now agreed that we are going to make them all public.

Ms. DEGETTE. Mr. Chairman, they were subpoenaed from OMB. OMB doesn't have the right to tell us whether we can copy——

Mr. STEARNS. I understand that.

Ms. DEGETTE [continuing]. The documents or not.

Mr. STEARNS. I understand that but we have all agreed that OMB can't tell us and we are going to make these public.

Ms. DEGETTE. Thank you.

Mr. STEARNS. And so I appreciate your concern. We have a unanimous consent from a member who is on the committee but not on the subcommittee, the gentleman from Kansas, Mr. Pompeo. Is there any objection to allowing him in the first round—we are going to go for a second round——

Mr. WAXMAN. Well——

Mr. STEARNS [continuing]. Is there any objection to allow him to ask questions?

Mr. DINGELL. I have no objection but I would like to understand if we are going to get those documents and if we are going to have a second——

Mr. STEARNS. Your point is you have the documents but you want to make sure the documents are available to——

Mr. DINGELL. No, I want to see them.

Mr. STEARNS. OK. Well, as I understand from my counsel, we have provided all the documents to you. They were produced to both sides. You have them. Now, is it possible your staff has not made them available to you?

Mr. DINGELL. I understand that it is the committee staff to make these available to all members of the committee and I understand this committee staff works for all of us.

Mr. STEARNS. Well, I think that——

Mr. DINGELL. And if I am in error——

Mr. STEARNS. My staff has told me that we have——

Mr. DINGELL [continuing]. Tell me so.

Mr. STEARNS [continuing]. Provided you——

Ms. DEGETTE. Mr. Chairman, what happened was we were told we could look at the documents but we couldn't copy them and that under some kind of agreement the majority made with the OMB that the documents could not be disseminated in any way, which is frankly a ridiculous agreement——

Mr. STEARNS. Well, no, I think you made that——

Ms. DEGETTE [continuing]. If the majority made that, but in addition, always in the past in this subcommittee, if we questioned on documents, we had the full document available for everybody and for the witnesses so that they could review those and give their answers. Instead, what we have had today is these slides which were made taking quotes out of the documents without providing the documents to anybody.

Mr. STEARNS. In conclusion, I think the fact that you and Mr. Dingell's point is that these documents should have been made available in a tab so that they can go to the tab.

Mr. SULLIVAN. Mr. Chairman? Mr. Chairman, if I can ask a question?

Mr. STEARNS. Sure.

Mr. SULLIVAN. I think from everything I am hearing, the emails that are in question are emails from Department of Energy staff. Doesn't Mr. Silver already have access to all of that?

Mr. STEARNS. He doesn't necessarily have access——

Mr. SULLIVAN. Chairman, those are people that work under him in his agency who communicated back and forth that we had to subpoena, but I don't think he has to subpoena to get his own internal documents from——

Mr. DINGELL. Mr. Chairman, we are not complaining about whether Mr. Silver has these emails or not. I am complaining that we do not have the emails.

Ms. DEGETTE. Well, and also——

Mr. DINGELL. And I find myself affronted that I am reading about these things in the newspaper and am not having them presented to me. That is a most curious way——

Mr. STEARNS. OK. All right.

Mr. DINGELL. —to proceed about a congressional investigation.

Mr. STEARNS. Well, we have a little disagreement here but out of deference to you, I will take your criticism under advisement. And let us continue on.

Mr. DINGELL. That does not comfort——

Mr. ZIENTS. May we have a 2-minute break?

Mr. DINGELL [continuing]. Me when you take it under advisement. That means I might hear about it——

Mr. STEARNS. Well, I think——

Mr. DINGELL [continuing]. Sometime before the end of the session if I am lucky.

Mr. STEARNS. All right.

Mr. DINGELL. I do not view that as being an adequate answer for my concerns. I don't like the precedent which I see being set here that I am going to read about these things in the press. And I don't like at all the fact that we are having all manners of inferences drawn by the majority while the minority has not seen the documents. And so I am not comforted by these matters being taken under advisement.

Mr. STEARNS. Well, the gentleman has done this job much more than——

Mr. DINGELL. They should be addressed now——

Mr. STEARNS. Yes.

Mr. DINGELL [continuing]. Not at some future——

Mr. STEARNS. OK. The gentleman——

Mr. DINGELL [continuing]. Time.

Mr. STEARNS [continuing]. Has done this job more years than I have ever done it or will do. I respect his opinion. We have a little disagreement and the fact is we say we have given you all the documents. The fact that you don't have it in front of you is not necessarily our fault because your staff——

Mr. DINGELL. Maybe I have to raise the question of whose staff we are going to fire. Are we going to fire the majority staff or the minority staff?

Mr. STEARNS. Well, I think there is a——

Mr. DINGELL. If the majority staff is making this kind of a decision, they are going well beyond their powers——

Mr. STEARNS. Well——

Mr. DINGELL [continuing]. And well beyond their authorities. If the minority staff is doing it, we are going to thrash this out inside the minority and find out why in the hell they are doing it this way.

Mr. STEARNS. I suggest you do that and then you and I talk.

Mr. DINGELL. Well, I suggest that we talk now because this is the business of the committee and I find the business of the committee being conducted in a curious way.

Mr. STEARNS. Well, the curious way is that you don't recognize that you have all the documents when my staff has provided all the documents to you. So we are a little puzzled why we are discussing why you don't have all the documents when you do.

Ms. DEGETTE. No, the problem is——

Mr. DINGELL. Where are the documents——

Mr. STEARNS. Let Mr. Dingell finish.

Mr. DINGELL [continuing]. Then——

Mr. STEARNS. OK.

Mr. DINGELL [continuing]. If I have had them presented to me, I am anxious to see them.

Mr. STEARNS. OK. Well, I think what we are going to do is continue this discussion, but I want to let the gentleman from Kansas—I recognize him for 5 minutes.

Mr. POMPEO. Thank you, Mr. Chairman. And thank you to the minority for allowing me to participate in the hearing today.

You know, Mr. Waxman started this hearing an awful long time ago talking about the fact that the Solyndra folks came in his office in July, told him everything was great and then filed bankruptcy shortly thereafter and he couldn't understand why. There is a simple reason. Nobody in that room had any skin in the game. This is exactly what we get when the Federal Government tries to put money into businesses and try to pick winners and losers. And in fact because I have heard Mr. Zients speak, your task is really to pick just amongst losers. Every one of these has a credit subsidy, right? Is that correct? The Federal Credit Reform Act, you are out there looking at every one of these loans and deciding how much of a loser this guarantee is going to be.

Mr. ZIENTS. No, I mean the point is to put a credit allowance——

Mr. POMPEO. A score, a cost to the taxpayer.

Mr. ZIENTS. That is the purpose of the program——

Mr. POMPEO. Right.

Mr. ZIENTS [continuing]. Is the 1705 program——

Mr. POMPEO. Right.

Mr. ZIENTS [continuing]. Does loans with credit subsidies.

Mr. POMPEO. Right. Look, I am very familiar with FCRA. I actually, oddly enough, wrote about this when I was in law school and was published so I know a fair amount about the process that you go through there. And you talked about your score having changed. What were the 2 scores that were given both in 2009 and then I guess twice in 2011?

Mr. ZIENTS. Well, the score in 2009, I don't know the exact percent of the score——

Mr. POMPEO. And you got that——

Mr. ZIENTS [continuing]. But it increased——

Mr. POMPEO. If you can get me the 2 scores, what the original scoring was and what the subsequent scoring was?

Mr. ZIENTS. I am sorry?

Mr. POMPEO. Can you provide to me and to this committee the original score and the subsequent score?

Mr. ZIENTS. Yes, we can follow up on that request.

Mr. POMPEO. OK. So you will provide that information to the committee?

Mr. ZIENTS. We will work with staff to make sure that that information is provided.

Mr. POMPEO. Right. And then you will give us also the score in 2011 during the restructuring? You decided this was how much additional subsidy will need to be provided.

Mr. ZIENTS. Well, in 2011 as part of the restructuring, the determination was that it was a workout based on the fact that the loan was in imminent default and that a workout or a restructuring was in the best interest of taxpayers. That would be reflected, the cost of that, in the budget.

Mr. POMPEO. So it was a negative score. It was good for the taxpayers that this restructuring was taking place?

Mr. ZIENTS. No.

Mr. POMPEO. It was going to cost them less?

Mr. ZIENTS. No, the restructuring in the budget—in the annual budget it will be reflected that the loan—the condition of the loan——

Mr. POMPEO. This is exactly what happens when folks without skin in the game get involved in trying to do credit analysis. Let me go back, Mr. Silver, I want to ask you. Mr. Markey spoke about Carnac, that no one could have known what was going to happen to the price of photovoltaic cells, PV cells, that this was just unimaginable that Solyndra's sales price would fall below its cost of production. Do you agree with that? And he said in 2008 who could have known?

Mr. SILVER. Well, I think many, many analysts and observers have been surprised by the speed and rate of the decline in cell prices, yes.

Mr. POMPEO. Mr. Chairman, I ask unanimous consent to place into the record an article. It is from August 4, 2008. It appeared in Xconomy. It is written by a man named Mark Modzelewski, the technology commentator. In August of 2008 he wrote, "the cost of PVs, you hear a lot about companies working toward price parity and grid parity—and here is the potentially really bad news for investors. Some big players in the private equity and research side have hypothesized that the price of solar cells is about to plummet so quickly that manufacturers will enter a netherworld where their cost of production exceeds their sales price." So it didn't take Carnac. It just took Mark. Is that correct?

Mr. DINGELL. What is the status of——

Mr. STEARNS. The gentleman will—does he have a point of information?

Mr. DINGELL. No, I don't.

Mr. STEARNS. OK.

Mr. DINGELL. I have a reservation to a unanimous consent request just made.

Mr. STEARNS. OK. The gentleman from Michigan objects and it will not be put in the record.

Mr. DINGELL. I don't object. I just want to know are the papers, the emails and other things that I have been discussing with the chair going to be put in the record and are they going to be made available to us?

Mr. STEARNS. Yes, they are.

Mr. DINGELL. I want to make sure everybody is treated alike.

Mr. STEARNS. Absolutely.

Mr. DINGELL. If the gentleman wants to put something in, I probably won't object, but I just want to make sure that I am getting what I——

Mr. STEARNS. With that understanding, do you still object?

Mr. DINGELL. I don't object.

Mr. STEARNS. All right.

Mr. POMPEO. Thank you.

Mr. STEARNS. With unanimous consent, so ordered.

[The information follows:]

The Solar Hype Cycle: Don't Let The Sun Go Down On Me
Xconomy.com

Mark Modzelewski
8/4/08

The other day the *Boston Globe* had a piece on **solar technology coming of age** in which Caltech chemistry professor Nathan Lewis stated: "We're not in a hype cycle…If you go to Silicon Valley and around Route 128, everyone and their brother who used to make computer chips are now trying to make thin-film solar cells."

Dr. Lewis seems to ignore that he gleefully gave a textbook definition of a hype cycle. And an out-of-control hype cycle is literally what we're in when it comes to solar energy.

There are dozens of separate subsectors of research, development and production that fall under the solar energy banner. I am going to skip passive solar, solar water heaters and solar thermal (which I actually like) and cut right to the solar energy sector most encumbered with hype, technical issues, mad money, and conflicts with reality—photovoltaics.

Photovoltaics (PVs) convert sunlight directly into electricity. Basically, they are those ugly glass boxes you see over at the Porter Square Plaza in Cambridge. Production of photovoltaic cells has been doubling every two years, since 2002, making it the fastest-growing energy technology sector in the world.

PVs break down for the most part into crystalline silicon PV, inorganic thin film, multi-junction PV, and organic and Gratzel PV systems. In a nutshell, you have the old, thick, expensive ones and newer, thinner, cheaper, often flexible ones. The issues making them problematic as an energy solution are that PVs cost too much to make, install, and maintain—oh, and they also only work when the sun is out.

To the cost issue of PVs, you hear a lot about companies working toward "price parity" and "grid parity"—i.e. a cost per megawatt on a par with electricity from fossil fuels—but nearly any number you see in print is half baked. Over and over again, companies have failed to translate the efficiencies achieved in lab experiments into durable solar panels that can be mass-produced cost effectively. Miasolé, for instance, has been getting 8 to 10 percent efficiency in the lab but only 4 percent or so in a mass-production form. Once you account for installation, maintenance, and repair costs for homes and business—which often add more than 50 percent to the base cost

of PV panels—it's clear that PV solar is never going to be cost-effective as a replacement baseload power source.

So if you were to go the Al Gore route of building a national, grid-replacing, mega solar farm in Nevada, we'd all go broke and die. It's an inconvenient truth (ouch!) that besides destroying 5 million acres of land (about seven times the size of Rhode Island; wait until the environmentalist hear about that!) and another 7.5 million acres of adjoining land to support the system, it would cost around $21 trillion dollars to build a solar farm large enough to meet U.S. power needs—and we'd still have to keep the current energy grid up and running and ready to go for the two-thirds of the time when the sun isn't doing its job.

In addition, though solar has this reputation of being a green technology, the reality is that PVs are full of gross pollutants, gnarly residues and nasty chemicals. Making PVs requires toxic heavy metals such as lead, mercury and cadmium—and throw in silicon tetrachloride to boot. Then there's the mining operations needed to get many of the materials. And for good measure, don't forget that PVs are made in factories. The plant at Suntech, one of the world's biggest PV makers, is powered by a coal plant. Oh, the delicious irony.

On top of all of this, the PV industry is truly dependent on subsidies. The government now pays 30 percent of the cost to businesses to invest in solar to meet their energy needs. For consumers, there's a Federal tax credit of $2000 for your renewable energy system (solar or wind) after rebates. States throw in a hearty helping of additional incentives, as in the case of California, which offers a subsidy for residential solar of as much as $2.50 per installed watt, depending on a system's expected performance.

Even with all those subsidies, and even with oil at $140 a barrel, and even when you add in the federal and state taxes on oil production, solar still doesn't reach break-even with fossil fuels, except in some start-up's PowerPoint presentation.

Worst of all, this hype is bad for the environment. Focusing so much on PVs means that we're moving investment dollars away from other clean energy technologies that have much more potential. I often hear folks at clean energy forums state that the United States needs to emulate Germany by creating more incentives to build PV farms. What's not mentioned is that it takes six years for a German PV plant to generate the amount of power used to make the PV cell.

http://www.xconomy.com/national/2008/08/04/the-solar-hype-cycle-dont-let-the-sun-go-down-on-me/?single_page=true

So PV solar costs too much, isn't exactly green, isn't as good as claimed, and depends on government support. What else can be wrong with it? Investors—and their bad habit of creating impossible expectations, stoking the fires of hype, and inflating a huge bubble that could pop at any time.

Let's start with thin film PV maker First Solar, which is up something like 900% since its IPO. The company is sporting a $20 billion market cap after $196.9 million in revenues for the first three months of the year. Think about that for a second. We aren't talking an online or software play. We are talking a company producing a physical good. This little bit of valuation lunacy has triggered a VC feeding frenzy on similar solar plays with **NanoSolar** and Miasolé already having valuations of well over $1 billion before selling much of anything.

All told last year, VC investments in solar power (and almost all of it in PVs) reached around $1.36 billion, up from $400 million in 2005. The bulk of those investments went into backing various thin-film technologies—55 in 2007 alone. More than 100 thin-film companies are vying for a slice of the market, according to a recent **Lux Research** report, which forecast that thin-film solar will occupy 28 percent of the solar market by 2012. As the report noted, "This exceptional rate of growth demonstrates that VC firms believe solar is far from its peak." Gaia help us. (Disclosure: I am a co-founder of Lux Research and a shareholder. However, I no longer have any operational or oversight role with the company.)

And with all the investment focus going to solar power, an interesting situation has developed—overcapacity. In a classic "who'd a thunk," we are entering a prolonged period in which PV supply is outpacing demand. Lower barriers to entry will contribute to lower production prices and lower margins. This turn of events won't likely last forever, but do you really want to be investing in one of the 100-plus new entrants in a market that is already producing more than the market can handle?

This is a good time to note that no VC-backed companies even IPOed in the second quarter. Furthermore, the average size of the solar IPOs that have occurred has been dropping since 2005. Solar equipment maker GT Solar, a pretty solid company that makes equipment for manufacturing PV cells, went public last week and fell 11.6 percent in its first day of trading and continued to fall over 20 percent more.

And here is the potential really bad news for investors. Some big players in private equity and on the research side have hypothesized that the price of PV solar cells is about to plummet so

quickly that manufacturers will enter a netherworld where they are making enough to keep the lights on but not enough to make a formidable profit. That's going to make shareholders and potential shareholders really happy. It's also going to give birth to a whole new foreign energy "boogieman" as China becomes *the* dominant solar player in a way that dwarfs OPEC's role in oil. With its centralized manufacturing base, the Chinese can wait out any market downturns and work with small margins in a way public U.S. companies can't. They will gradually gain control of the PV market in much the same way that the Japanese took over the small battery sector a couple decades ago.

So as you can tell, PVs as an investment area really bum me out. I don't find the technology all that thrilling either. PVs will certainly be a piece of the global energy puzzle, but will have nothing like the role of coal, oil, hydroelectric, nuclear, and even other green technologies. If you're looking for a sure winner in this crowded mess of a field…good luck. One spin of the roulette wheel seems like a safer bet for cleantech investors these days.

Mr. POMPEO. Thank you. Thank you, Mr. Chairman. Thank you, Mr. Dingell. Mr. Silver, was DOE aware of these concerns? I know you weren't there at the time but you said there are files. Were they aware of the concerns about the pricing of these cells which were central to Solyndra's ability to repay the government's money?

Mr. SILVER. Well, Solyndra's cylindrical thin film cells were always more expensive than conventional matters, but the issue is total cost of ownership and you have to combine the cost of the cell with the installation, the balance of systems payments to understand the total cost of ownership. And at that time and in that place, that was a very competitive opportunity.

Mr. POMPEO. I understand. You know, you have said you have gone from 35 to 180 folks or so in your organization.

Mr. SILVER. Approximately.

Mr. POMPEO. You said that proudly. It troubles me a great deal that the Federal Government has an agency that has grown by almost 6 times. I hope you hired Mark as one of those folks that you brought on board going from 30 to 180.

Mr. SILVER. Actually, we have hired an enormously large and talented pool of former private sector, public finance experts and executives, so I think we have built a very good team. And it was designed simply to exist to put out monies——

Mr. POMPEO. I appreciate that. You talked about this loss of market share, that we have lost this market share because these prices have fallen. Isn't that precisely what these programs are intended to do, to develop products so that the cost of production will come down and solar can compete with all of the other great energies in the world?

Mr. SILVER. That——

Mr. POMPEO. Shouldn't you be thrilled that the price has come down? Instead, you act as if it is sad because we lost half a billion dollars of taxpayer money.

Mr. SILVER. No, it is—you are completely correct. It is our collective effort to try to find innovative technology to in fact do that. We issued—just as an example, we issued a different solar manufacturing loan guarantee just recently to a company whose improvement is a process improvement rather than a product improvement——

Mr. POMPEO. Right.

Mr. SILVER [continuing]. And allows it to cut the cost of solar panel manufacturing by 50 percent.

Mr. POMPEO. Right. So the globe succeeded in reducing the price but the American taxpayers lost half a billion dollars by us trying to pick a particular business that was going to benefit from that price reduction. Isn't that precisely what happened here?

Mr. SILVER. Well, what is happening is that we are putting together a portfolio of innovation——

Mr. POMPEO. This was a bad outcome. I have listened. I have been here for the entire hearing today save for about 2 minutes, and I have heard not a single person stand up and take any accountability for a single dollar of taxpayer money that is gone. We ask who made decisions, we asked who was responsible, and the two of you stand here and point to other people and take no ac-

countability to the taxpayers in America and in Kansas for having lost half a billion of their dollars. And for me, that is unacceptable. I yield back my time, Mr. Chairman.

Mr. STEARNS. The gentleman's time has expired. The witnesses have indicated a request—personal request of 5-minute break, so we will recess our subcommittee and come back at 12:30.

Mr. SILVER. Thank you.

Mr. STEARNS. And we appreciate your support. I remind all members we are going to have a second round.

[Recess.]

Mr. STEARNS. The Committee on Oversight and Investigation will reconvene and we will start our second round. And if the witnesses will have forbearance here, we will try and wrap up very soon. There are a couple on my side and just I think one at this side if Mr. Dingell doesn't show up.

I will start with my questions here and I need someone in counsel here to take care of the clock so that I keep myself on schedule.

Mr. Silver, I was just going back to when I asked you questions in the beginning. In response to my question about Department of Energy conducting due diligence back in 2006, you testified under oath—we are reading exactly what you said. We got the exact transcript. "Actually, I didn't say that it was conducted in 2006. I said the application was received in 2006 and due diligence began and continued from late 2007 through 2008." But this is at odds and opposite with the written testimony that you submitted to the committee where you state, "extensive due diligence on the transaction was conducted between 2006 and the end of 2008." Did the "extensive due diligence" that you referred to beginning at the end of 2000, as you stated in your verbal testimony, or the 2006, as you submitted in your written testimony? I am giving you an opportunity to correct it.

Mr. SILVER. Thank you. I don't think those statements are incompatible. The solicitation was issued in 2006 and pre-applications were received at that time. The Loan Program Office received 143, began reviews of those——

Mr. STEARNS. Do you stand by your written testimony or your oral testimony?

Mr. SILVER. There is due diligence that takes place in order to ensure eligibility and then there is further due diligence that takes place in order to——

Mr. STEARNS. Well, you said to me that due diligence was not conducted in 2006 but yet in your written testimony it says it was. So which is which? Just yes or no. Is it your written testimony or your oral testimony this morning?

Mr. SILVER. Well, it is both, Congressman. There are certain kinds of——

Mr. STEARNS. You can't have due diligence in 2006 because in one you said it wasn't and the other you said it was.

Mr. SILVER. The due diligence done in 2006 was to ensure the eligibility of the project and——

Mr. STEARNS. So it was 2 different types of due diligence is what you are saying.

Mr. SILVER. Yes, sir, exactly.

Mr. STEARNS. And what are these 2 different types?

Mr. SILVER. Well, the——

Mr. STEARNS. Due diligence to me means due diligence. Are you saying due diligence has two different meanings?

Mr. SILVER. I am. Due diligence here—I am exactly saying that. Due diligence here was to decide whether or not an application was in fact eligible, and therefore, the due diligence was around technical and financial issues only. Once it was deemed eligible, it was—the company was invited to submit a full application and full due diligence began. That would include substantially greater kinds of due diligence than what was done to ensure eligibility.

Mr. STEARNS. OK. I certainly give you an opportunity to correct that.

Mr. Zients, you testified that OMB did "a thorough examination and analysis." And Mr. Silver, you also testified that DOE conducted months of rigorous and comprehensive due diligence and documentation. I think both of you have indicated that. Is that correct?

Mr. ZIENTS. I assume this is around the credit subsidy?

Mr. STEARNS. Well——

Mr. ZIENTS. It is hard to react to that——

Mr. STEARNS. OK.

Mr. ZIENTS [continuing]. Out of context. If you give me the full context——

Mr. STEARNS. Yes. Well, the full context is whether Solyndra itself would be a viable company and that doing this due diligence we are talking about, both of you had performed due diligence in that respect. So——

Mr. ZIENTS. Just to be clear, OMB's statutory responsibilities around FCRA and the credit subsidy——

Mr. STEARNS. OK.

Mr. ZIENTS [continuing]. And around the credit subsidy score, yes, it was a thorough analysis.

Mr. STEARNS. OK. So when I am alluding to the fact we had 2 government agencies doing what they are supposed to do under the law and both of you testified that you did your thorough analysis, examination, rigorous and comprehensive due diligence and documentation. So the question I think for me on this committee and I think for both Democrats and Republicans, this creates some very serious questions about each of your abilities to put aside the administration's what appears to be—and I still stand by this—a political agenda. And you should have protected the taxpayers and made some forceful actions here after this analysis because you should have seen the problems and you should have said taxpayers need to be protected and this has got to stop. And I think what, in the larger sense, we are worried about is with this project and others that are stimulus projects is the comprehensive analysis done by both your agencies sufficient so the taxpayers can feel a good deal of comfort that you will protect taxpayers in the future and we won't see these out-of-control stimulus projects like Solyndra continue. So that is my basic concern, and I think anybody that watches this hearing will have the same concern that you folks did your due diligence, did the comprehensive, and yet this thing not only went into bankruptcy but now we have the FBI

investigating. And that is what I would like to move to, Mr. Silver, with you.

You said you are a venture capitalist. This company Solyndra raised $1.5 billion. As I understand it, roughly a billion dollars from venture capitalists plus the taxpayers at half a billion plus the hedge funds came in for $75 million. Is that correct?

Mr. SILVER. Approximately, yes.

Mr. STEARNS. OK, approximately. So let us say 1.5 billion, and they did a burn rate of 1.5 billion in less than 2 years, is that correct?

Mr. SILVER. Not—a burn rate would be the amount of money they go through per month——

Mr. STEARNS. Well, let us say they went through a significant cash burn, is that a correct statement?

Mr. SILVER. Yes, they did.

Mr. STEARNS. Now, with all your experience on the private sector and in hedge funds that you talked about, don't you think that to look at that kind of cash burn rate would send some alarms to you and to others at the Department of Energy, something is seriously wrong here, and you have got to protect taxpayers?

Mr. SILVER. I think you have to put this in context, Congressman. The company's revenues actually were—grew very dramatically during this period. They had $6 million of revenue in 2008. They had $100 million in revenue of 2009, $140 million in revenue in 2010, and so that is what you would expect a burn rate——

Mr. STEARNS. But even the emails we have shown you said that they are going to run out of money by September 2011. So I guess the problem we have is what was Solyndra burning all this money on? Do you know? Can you tell me today? Of this 1.5 billion, where was it all going?

Mr. SILVER. In the most general terms—and I can't give you dollars and cents sitting here today—but they built this brand new huge fabrication facility, which was approximately a 700-and-change-million-dollar facility equipped with advanced-state robotics. They had a smaller prototype plant if you will called Fab 1, and they had hired—which was also part of the set of objectives—they had hired hundreds of additional people. There were 3,000 people who were involved in the construction of the——

Mr. STEARNS. OK. I will accept what you are saying. I am just saying with your experience as a venture capitalist, I am surprised that you didn't see this cash burn rate as a serious flag——

Mr. SILVER. We did, Congressman, and we talked with the company about it regularly, but I need to underscore something I said before. As lenders and particularly with lender liability issues, we are not actually in a position to force a company——

Mr. STEARNS. OK.

Mr. SILVER [continuing]. To do anything. So there were regular——

Mr. STEARNS. Let me just close by this question. In your mind's eye, why did the FBI raid Solyndra?

Mr. SILVER. I have no idea, sir.

Mr. STEARNS. Was it a surprise to you?

Mr. SILVER. Yes.

Mr. STEARNS. Was it a surprise to you?

Mr. ZIENTS. Yes.

Mr. STEARNS. And all your colleagues have no idea why the FBI raided it? And you had no advanced warning?

Mr. SILVER. I can't speak for all my colleagues but I was not aware of any investigation.

Mr. STEARNS. Do you suspect there is a reason why?

Mr. SILVER. I wouldn't even hazard a guess, sir.

Mr. STEARNS. OK. My time has expired. The ranking member is recognized for 5 minutes.

Ms. DEGETTE. Thank you, Mr. Chairman.

I guess, Mr. Silver, I would ask you what were the main reasons DOE concluded Solyndra was worth the government's investment?

Mr. SILVER. In 2008 and 2009, as the due diligence was being done, the price of polysilicon, which is the fundamental component for building out conventional solar panels, was very high and had been high for an extended period. It was expected to remain high. In addition, the cost of installation, as I have indicated, called balance-of-systems costs for installing conventional solar paneling is very expensive. That is because the panels themselves are flat, they need to penetrate the roof, there are air uplift issues and the like. The cylindrical thin film technology obviates all of that, and while the cylinders themselves are more expensive than the panels, the total cost of ownership, particularly absent the price of the expensive polysilicon was very attractive.

Ms. DEGETTE. So what happened in the market or with technology that caused those 2 things to not pan out basically?

Mr. SILVER. Well, a number of different things. First, the price of poly silicon actually came down more dramatically than expected as plants came on quickly to ramp up production. China began flooding the world market with increasingly inexpensive conventional solar panels because, as we have discussed earlier, the Chinese Government through both the China Development Bank and other smaller banks has provided multiple tens of billions of dollars of credit and credit subsidies plus other forms of support to their solar manufacturing industry. In addition, other countries have become actively involved in supporting those areas as well. So all of that drove the price curve down in a very significant fashion.

Ms. DEGETTE. And here is my question. Why didn't DOE predict those events?

Mr. SILVER. I think we did understand that there were challenges in the marketplace. The fundamental responsibility and objective of this program is to identify innovative technologies that can be built out at scale and therefore leapfrog the traditional price curves that these technologies are on. But if the slope of the curve is more dramatic than anticipated, you will have this kind of event.

Ms. DEGETTE. So you did predict it in a way but you didn't think it would be this dramatic or what?

Mr. SILVER. Well, we have—as you know, we have a large number of solar experts and solar industry experts at the Department. In addition, on this particular project, a number of different analysts and independent advisors were brought on board to analyze this as well.

Ms. DEGETTE. Do you think there are things DOE could have done to prevent really this whole debacle with the Solyndra loan?

Was there more due diligence that could have been done? Was it rushed too fast to approval? What could have been done?

Mr. SILVER. It clearly wasn't rushed too fast because there were several years of due diligence that went on. There are always going to be changes and shifts in market dynamics. I remind the committee that the loan which was to build out the plant actually built out the plant on time and on budget and at the same time revenues were dramatically increasing. There was a significant—as I—again, I—there was a significant customer base as well. But I guess the fundamental challenge is to ensure that we are doing everything we can to de-risk these projects, and that is why we build in—the terms and conditions of these things are, you know, dozens and dozens and dozens of pages long to do everything we can to de-risk these projects.

Ms. DEGETTE. So you don't think there is anything else that could have been done here? Is that your bottom line?

Mr. SILVER. By the time of the restructuring, the plant was built but had not been fitted out, and so one might conceivably, you know, have identified a different plant configuration. But again, I hesitate to second-guess because it is the private sector that brought this project forward. I want to remind the committee——

Ms. DEGETTE. Yes. I don't have much time left. Mr. Zients, what is your opinion? Is there anything we could have done to predict this or to stop this?

Mr. ZIENTS. Well, I think it is the nature of backing innovative technologies, that there are technology risks in some situations, market risks—we are competing in a global market so I think the lesson learned here is that marketplaces can change even more rapidly than one would have anticipated in terms of the cost curve that we talked about before. I don't think anyone would have thought that the cost could decrease and the price could decrease so dramatically. Going forward, we need to make sure that we understand those types of market shifts can occur.

Ms. DEGETTE. Thank you.

Mr. Chairman, I just want to reiterate my request for unanimous consent that the documents that have been referred to in the hearing today by the members be included in the record. And in addition, there is a document that I have which I think would help complete the record. It is the Credit Committee paper request for loan guarantee approval dated March 11, 2009. And I think that would help answer some of the follow-up questions about what happened after this January 9 meeting. My only one concern is at the top of this document it does say "restricted distribution, privileged business information," and as I flip through it, it does look like there might be business information. So the caveat I would have is to look and see if there is privileged business information in here before we make the whole thing part of the record.

Mr. STEARNS. OK. By unanimous consent, so ordered.

[The information follows:]

RESTRICTED DISTRIBUTION – PRIVILEGED BUSINESS INFORMATION
U.S. Department of Energy Loan Guarantee Program

CREDIT COMMITTEE PAPER
REQUEST FOR LOAN GUARANTEE APPROVAL

PROJECT:	Solyndra Fab 2, LLC
LOAN NUMBER:	1013 (FY06 Solicitation)
DATE:	March 11, 2009

LGPO CLEARANCE

Origination Team Members, LGPO

_____
William G. Miller, Program Manager, Origination, LGPO

_____
Loren Romano, Senior Investment Officer, Origination, LGPO

_____
Daniel C. Tobin, Senior Investment Officer, Origination, LGPO

_____
David Schmitzer, Director, Origination, LGPO

PROJECT REPORT

TABLE OF CONTENTS

Page

PROJECT AND LOAN SUMMARY SHEET 5
EXECUTIVE SUMMARY 6
SUMMARY OF TERM SHEET 7
OVERVIEW 8
PROJECT ELIGIBILITY 8
INNOVATIVE TECHNOLOGY 9
TECHNICAL INFORMATION 9
INDEPENDENT ENGINEER'S REPORT 10
STATUS OF ENVIRONMENTAL REVIEW 10
BUSINESS PLAN 10
PRICING AND VOLUME – EXISTING CONTRACTS 12
MARKET ANALYSIS 12
FINANCING PLAN 17
FINANCIAL MODEL AND SENSITIVITY ANALYSIS 18
KEY RISKS & MITIGANTS 20
APPLICANT INFORMATION 23
MANAGEMENT TEAM 23
BACKGROUND AND LEGAL STRUCTURE 24
ORGANIZATION 24
GOVERNMENT SUPPORT/PERMITS 24
CREDIT ASSESSMENT/ CREDIT HISTORY 24

ATTACHMENTS

Compliance Checklist	Tab 2
Proposed Term Sheet	Tab3
Equity Financing Plan	Tab 4
Financial Statements	Tab 5
Independent Engineer's Report	Tab 6
Independent Market Report	Tab 7
LGPO Credit Analysis Documents	Tab 8
Amortization Schedule	Tab 9
Equity / Debt Contribution Schedule	Tab 10
Management Team	Tab 11
Stress Testing / Financial Scenarios	Tab 12
NEPA Compliance Documents	Back Pocket

PROJECT AND LOAN SUMMARY SHEET

Technology: CIGS Thin Film Solar PV Technology

Project Type: Solar Energy

Description: Manufacturing of thin-film omni-facial solar modules for commercial roof-top applications.

Location: Fremont, California

Innovation: Unique cylindrical design for photovoltaic ("PV") modules based on Copper Indium Gallium Selenide ("CIGS") thin film PV technology.

Title XVII Justification: The PV output of this proposed facility would avoid 122.5 million metric tons of carbon dioxide, 0.5 million metric tons of sulfur dioxide and 190 thousand metric tons of nitrogen oxides, through displacement of traditional power generation.

Project Status: Federal, state and local construction and environmental permits in process;

Project Cost: $733 million

Uses Of Funds:

Facilities Capex:	
Front End	$272.9
Back End	$ 33.4
Contingency	$ 52.0
	$358.3 million
Equipment Capex:	
Line 1	$118.1
Line 2	$ 72.8
Line 3	$ 79.9
Contingency	$ 15.0
	$285.8 million
Real Estate	**$ 42.5**
Interest during Cons.	**$ 27.0**
Other Costs	**$ 19.0**
Total Costs	**$733 million**

Sources Of Funds:

Senior Debt (DOE):	**$535 million**	(73%)
Equity – Cash:	**$198 million**	(27%)
Total Uses	**$733 million**	

Funding Structure: LGPO % of Sr. Debt: 100%

Loan Terms: Tenor: 7 years, with outstanding principal payable in arrears in equal quarterly installments commencing month 32 after loan signing. Interest to remain current.

Repayment: 20 equal quarterly principal payments beginning Q1, 2012.

Loan Pricing: 7-year treasury (currently 2.58%) plus ~0.25% FFB spread fixed per annum

LGPO Fees:

Application:	$ 50,000
Facility:	$4,300,000
Maintenance:	$ 25,000 (per year)
Total:	**$4,375,000**

LGPO Internal Risk Assessment: High B range

Initial Credit Agency Rating: B+

Initial Credit Subsidy Estimate: (6%-14%)

Borrower: Solyndra Fab2, LLC (a Delaware limited liability company formed solely for the purpose of constructing, financing, owning and operating the Project). The Sponsor will maintain 100% ownership of Borrower.

Sponsors: Solyndra Inc. (California)

Project Support: Contingent equity pledge for construction cost overruns of which **$30 million will be pre-funded.** Usual security, including pledge of Project company shares and assets.

Other Government Support including DOE: None

Project Team:

LPGO Origination:	Miller, Romano, Tobin
LGPO Gen. Counsel:	Boswell, Wade
NEPA Compliance:	Thomas, Sharon
Outside Counsel:	Morrison & Foerster

Last Site Visit: 5/2008; Tobin

Loan Number: 1013 (FY06 Solicitation)

Source of Funds: FFB

EXECUTIVE SUMMARY

Solyndra Inc. ("Solyndra" or "Sponsor") has developed an innovative technology involving the use of thin-film CIGS, a semiconductor material, to transform glass tubes into functional photovoltaic ("PV") modules. Forty of these modules are fabricated into a solar panel that has a number of advantages over traditional solar panels. The cylindrical tube gathers light from all directions, resulting in a higher PV conversion efficiency than competing thin film technologies. The Solyndra PV panels are lighter weight, provide a lower wind profile and are less expensive to install than other solar panels available on the market. Solyndra's proprietary design and configuration is now ready for large-scale commercial implementation -- taking the technology from the lab to the market.

Solyndra is currently in the latter stages of completing its initial 113 MW production line ("Fab1"), and is now in the ramp-up and technology optimization phase. The company intends to ultimately construct a larger facility ("Fab2") that will eventually consist of six production lines essentially identical to Fab1. Solyndra has applied for a loan guarantee from LGPO for a total of $535 million to finance the first three production lines of Fab2.

Upon completion, Fab2 PV output would reduce the emissions from traditional power sources, including: 245 million metric tons of carbon dioxide, 1 million metric tons of sulfur dioxide and 380 thousand metric tons of nitrogen oxides. This project received the highest scoring from the 2006 initial application assessment team, and was further validated through review of the LGPO portfolio by the DOE Office of Science.

The Sponsor is managed by a highly-experienced team of technical and financial professionals, and has engaged top-line engineering, construction, legal and financial advisors in developing its plans for the Project. The Sponsor has raised $750 million dollars in support of its operations to date, mostly from well-financed venture-capital firms, demonstrating the ability to raise the private equity needed to capitalize the Project. The Sponsor will be required to provide an additional $198 million of equity at financial close.

The market for PV solar power is growing. As concluded by RW Beck in its independent market analysis for DOE, assuming that Solyndra can meet its technical, manufacturing and cost projections, it should be well positioned to compete with other PV manufacturers and sell its product at a price that can support the projections in its financial model. The US the market is supported by the federal renewable energy investment tax credit, which was recently given an eight-year extension; in Europe the market is helped by "Feed-In-Tariffs" that give advantages to building owners who feed solar power back into the relevant power grid. The Solydra base case projections demonstrate cash flows sufficient to support the requested loan facility. When these projections are stress-tested using assumptions that presume significant reductions in manufacturing performance and market price, the project model continues to demonstrate cash flows sufficient to repay the loan within the agreed maturity. A large portion of the projected production (from all lines) has been pre-sold in the US and European markets at agreed prices that are higher than the prices used in the Project's financial models, although the current contracts would need to be extended to cover the full life of the loan guarantee.

As mitigation of the risks associated with any ramp-up of new technology to commercial scale, the Fab2 project will have the benefit of the Sponsor's experience in developing and operating its Fab1 production line which uses the same processes, tools and line-configuration. To date, over 20,000 Fab1 panels have been produced and sold, at specifications, efficiencies and throughputs nearing the steady-state production levels projected for the Fab2 production.

The LGPO recommends the approval of this Project's application and the issuance of a Conditional Commitment to execute the requested loan guarantee, subject to the Terms and Conditions accompanying this submission.

SUMMARY OF TERMS & CONDITIONS

Borrower: Solyndra Fab 2 LLC

Sponsor: Solyndra, Inc. – Fremont, California

Loan Amount: Up to $535 Million

Purpose: To finance the Fab 2 Phase 1 manufacturing facility for thin-film omni-facial solar modules for commercial roof-top applications with rated output of 210 Mw.

Lender: FFB

Guarantor: DOE – 100% of Loan Amount

Tenor: 7 years from loan signing

Disbursement Availability: For 32 months from financial close

Interest Rate: H15 + FFB Spread of approximately .35% payable quarterly in arrears.

Equity Commitment: Pro-rata contributions of Equity (27%) and Debt (73%).

Cost Overruns Commitment: 100% guarantee of the Sponsor

Cost Overrun Prefunding:
$30 million total, funded in months 15 – 21.

Principal Amortization: Equal quarterly repayment starting in month 32. Interest to remain current during construction period.

Voluntary Prepayment: Allowed, per FFB procedures.

Project Accounts:
- Construction Account
- Project Revenue Account
- Debt Service Reserve (DSR) Account
- Debt Service Payment Account

DSR Account: Must be funded with 6 months of debt service requirements.

Cash Flow Waterfall:
Funds from the Project Revenue Account must be applied in the following order:
1) Operating Costs
2) Debt Service Payments
3) Debt Service Reserve replenishment
4) Restricted Payments

Restricted Payments to Sponsors:
Allowed after Physical and Operational Completion, and only if Debt Service Coverage is 1.5 or greater.

Collateral:
First priority, perfected security interest in the following:
- Real property, including buildings and equipment
- Inventory and receivables
- Intellectual property
- Insurance proceeds
- Pledge of stock of the Borrower
- Rights to Project Documents, including sales contracts, supply agreements, construction contract, O&M contract, etc …

Conditions Precedent:
Typical for project finance transactions for all drawings.

Financial Covenants:
- Debt Service Coverage Ratio for the Borrower of not less than 1.2 to 1.0;
- Sponsor Indebtedness to Tangible Net Worth must be less than .5 to 1.0 **prior** to Project Completion;
- Sponsor Tangible Net Worth must be greater than $175 million **following** Project Completion. If this covenant is breached, the DSR Account requirement will be adjusted to 9 months of debt service for a period of at least 1 year.

Other Covenants:
Typical for project finance transactions including:
- Maintenance of required insurance

Events of Default:
Typical for project finance transactions including:
- No Change of Control without the prior written consent of DOE

LGPO Fees:
Application Fee: $ 50,000
Facility Fee: $4,300,000 (payable 20% at acceptance of term sheet and 80% at loan signing)
Maintenance Fee: $ 25,000 (per year)

Credit Subsidy Cost: Paid through appropriated funds.

PROJECT INFORMATION

Overview

Solyndra is proposing to construct and operate a thin-film, solar photovoltaic panel fabrication facility in Fremont, CA. When completed, Solyndra's Fab2 facility will produce ready-to-install PV panels capable of producing 420 Megawatts of electricity. The production capacity will be constructed, installed and financed in two phases. The company has approached the LGPO to finance Phase 1 of Fab2 (the "Project") which would comprise 210 Mw (approximately 1 million panels per year).

The Project will include the construction of a 650,000 square foot "front end" manufacturing building, the purchase and installation of the initial three production lines and the retrofitting of a 300,000 square foot "back end" assembly building (which will be leased). The first of three production lines is scheduled to begin operation in late 2010. The proposed site for the front end manufacturing building is a 30 acre parcel of land ¼ mile from Solyndra's headquarters. Solyndra has selected CH2M HILL as the engineering contractor. CH2M HILL will provide overall management for the engineering and design of the Fab2 facility.

Solyndra is negotiating the construction agreement with Rudolph and Sletten, Inc., a leader in California construction, and will complete the construction contract prior to loan closing. The contract will be on a Guaranteed Maximum Price basis, with incentives.

The Project will manufacture a thin film photovoltaic (PV) panel that provides inherently clean, greenhouse gas emission-free electrical energy production. Use of Solyndra Fab2 panels to generate electricity will avoid the air pollutants or anthropogenic emissions of greenhouse gases that are traditionally generated by fossil fuel-based electricity sources, which have been linked to human-induced global climate change.

Solyndra intends to rapidly penetrate the commercial rooftop market, with sales being driven by its differentiated and cost-effective product. The increased capacity of Fab2 will be necessary to meet its currently contracted production requirements and to provide sufficient capacity to further diversify its customer base in the US and overseas.

Solyndra is currently producing full-size PV panels utilizing its module design panels from their Fab1 Facility, and has achieved certification on these panels from both IEC and UL standards. Solyndra began installing the high-volume Fab1 production line in 2007. Fab1 is projected to have a capacity of 113 MW per year of panels and is currently undergoing commissioning and qualification. Solyndra plans to replicate its Fab1 technology, manufacturing knowledge and production infrastructure into the design of Fab2.

Project Eligibility

The Project meets all statutory requirements set forth in Title XVII of the Energy Policy Act of 2005, specifically, Section 1703 which defines an "eligible project". The project (1) avoids, reduces, or sequesters air pollutants or anthropogenic emissions of greenhouse gases. The full anticipated project (Phase 1 and Phase 2 of Fab2), if implemented at the scale proposed will avoid 245 million metric tons of carbon dioxide, 1 million metric tons of sulfur dioxide and 380 thousand metric tons of nitrogen oxides); and (2) employs new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued. Under subsection (b) Categories, the project is a "renewable energy system."

Innovative Technology

The Sponsor has developed a unique, high performance, photovoltaic panel designed to solve some of the most challenging installation problems for PV systems on commercial rooftops. Solyndra's novel cylindrical cell design enables improved collection of all available light and do not require costly tracking or tilt mounting hardware. Solyndra's PV panels greatly simplify and lower the cost of mounting, allowing tighter module packing (even over rooftop obstacles), are impervious to moisture and allow lower temperature operation. Solyndra's panels are low weight and allow wind to flow through the modules (essentially eliminating wind loading). This unique design is self-ballasting and enables the installation of PV systems on lighter duty roofs not currently suitable for PV panels.

TECHNICAL INFORMATION

Construction Plans

The Fab2 facility, when completed, will consist of a 650,000 square foot front end manufacturing building and a 300,000 square foot back end assembly building. It is anticipated that the front end building will eventually support six production lines capable of producing an aggregate of 420 megawatts per year of solar panels. This project (Phase 1 of Fab2) encompasses only three production lines.

Solyndra Fab2's Back End manufacturing activity will be housed in one or more leased buildings.

Solyndra anticipates contracting with Rudolph and Sletten to provide general contractor services for Fab2 Phase 1 construction. Final execution of this contract will be a Condition Precedent to financial closing on the loan guarantee. Studios Architecture was retained for master planning and Hathaway Dinwiddie Construction Company ("HDCC") for pre-construction services related to Solyndra Fab2's Front End facility. The Applicant, Studios Architecture and HDCC have a pre-existing relationship established for work performed on the Applicant's corporate headquarters in Fremont, CA.

The proposed project design method for Solyndra Fab2 will be a traditional "Design, Negotiate and Build" method with a design assist process for the mechanical, plumbing, process piping, electrical and controls systems.

The Sponsor will employ a bonus strategy with the General Contractor. Instead of negotiating liquidated damages, the Applicant will establish key milestone dates for the project and establish goals for savings on the Guaranteed Maximum Price budget and meeting the expectations for quality of work. If the General Contractor and their subcontractors meet all the established goals, they will be paid a bonus.

Solyndra has designed and built proprietary manufacturing process equipment for their Fab1 production line. Solyndra will duplicate this technology for Fab2, and will be responsible for manufacturing and installing a significant portion of the line equipment for Fab2. They have a dedicated equipment division to address this challenge.

Independent Engineer's Report

The DOE's independent engineer for this project is RW Beck, which submitted its final report February 27, 2009. The full report is attached in Tab 6. RW Beck's fundamental conclusions include:

- *"... we are of the opinion that Solyndra has previously demonstrated the capability to construct and operate facilities of similar size and technology as the Fab2 Facility."*
- *" ... the CIGS PV technology proposed for the Fab2 Facility is a technically viable method of manufacturing PV array capable of producing electricity in the quantity proposed by Solyndra."*
- *" The estimates that serve as the basis for the Total Estimated Facility Construction Cost, including the Construction Contingency, were developed in accordance with generally accepted engineering practices and methods of estimation. Further, the Total Estimated Facility Construction Cost and Construction Contingency, supplemented by an appropriate level of Cost Overrun Commitment, are within the range of costs that we would expect for projects of similar size and technology."*
- *"Provided that Solyndra's responsibilities are completed on schedule, and in the absence of unanticipated events ... the 17-month construction duration ... is somewhat aggressive, but achievable using generally accepted project, engineering and construction management practices."*
- *"Based on our review of the information presented in the Pro Forma (projections) and Solyndra's identified contingency plans to mitigate the risks of scale-up and yield improvements, the performance assumptions ... are achievable."*

Operations & Maintenance

The Operations and Maintenance of the Project facility will be performed by a separate corporate entity, owned and controlled by Solyndra, Inc.

Status of Environmental Review

The DOE NEPA review process in ongoing, and thus far showing no material adverse issues. Satisfactory completion of this review will be a condition for closing the Loan Guarantee. See Back of Book.

BUSINESS PLAN

Overview

Solyndra's novel PV design offers several operational advantages including "air-flow" gaps which eliminate wind loading, low-weight and the ability for modules to be installed over roof obstructions and closer to skylights without penetration of the rooftop. In summary, Solyndra's PV panels are designed to provide more energy per rooftop and a 40% reduction in balance of system costs (mounting and installation related costs). Solyndra bundles the mounts and related accessories with its PV panels. To the knowledge of the RW Beck, no other PV panel manufacturer includes mounts in its pricing. The average delivered price of Solyndra's panels on a dollar per kWh basis is competitive to wafer silicon PV panels and First Solar's thin film CdTe PV panels.

Solyndra is focusing primarily on the large-scale commercial rooftop market (e.g., manufacturing and big-box retail). It will not target the building owners directly, but rather will sell its product to "integrators" who will install and connect the PV panels, often as a part of the installation of a new or retrofitted roof (tying-in well with increasing regulatory requirements for installation of reflective white roof membranes or other energy-efficiency equipment), and often in conjunction with other parties who are positioned to take advantage of various tax credits and accounting incentives.

Solyndra's existing customer base is diversified into US, European and (so-far-limited) Asian markets (through its multi-national integrators), mitigating the risk of regulatory, FX and economic changes. The Navigant market analysis firm has projected that the low-slope commercial rooftop market will have significant growth in the near- and mid term, with Compound Annual Growth Rates ("CAGR") of between 32-48 percent through 2012, and between 28-35 percent between 2012 to 2017. This will mean that the target market will be many times Solyndra's 210 MW per year production from Fab2 Phase 1. Various research reports have placed the total commercial rooftop area available for PV installations at approximately 30 billion square feet, representing a potential market of over 200,000 MW of power, or 950 years of production from the Solyndra facility.

Solyndra Advantages

Solyndra uses a hollow glass tube as the substrate and hermetically seals this tube in a larger protective outer glass tube (creating the module) while adding an "Optical Coupling Agent" (OPA) between the tubes to increase the amount of light incident on the PV module. Forty modules are then fabricated into a deployable PV array or panel.

Solyndra has identified the following advantages of its technology strategy, compared to its competitors in rooftop applications:

- Efficiency. Utilization of a material with a higher PV conversion efficiency than competing thin-film PV technologies (*i.e.*, a-Si and CdTe). An extremely thin "active layer" of CIGS can be deposited onto a substrate via a number of deposition technologies, allowing for reduced material usage compared to single- and multi-crystalline silicon PV technologies. CIGS cells in the laboratory have reached a higher cell efficiency (20 percent) compared to other thin film technologies (a-Si and CdTe).
- Encapsulation. Novel hermetic encapsulation technology. This eliminates the chance for water diffusion into the cell, which can cause reliability problems over the lifetime of the product. It also allows for the use of the optical coupling agent, which traps additional light, resulting in higher energy output for each module.
- Design. The cylindrical shape of Solyndra cells has a number of advantages. The omni-facial cylindrical cell geometry optimizes the collection of available direct, diffuse and reflected sunlight. Because the sun sees the same cell geometry throughout the day, an omni-facial cell is inherently self-tracking for collection of direct light without any additional tracking hardware; diffuse light is collected from all angles. Reflected light is also efficiently collected by the downward-facing area of the cell. This additional light collection also results in increased energy output per module.

  The unique geometry of Solyndra's panels also allows for a higher energy density per rooftop, as panels can be placed with less concern for panel-to-panel shading (no need for tilt) and the panels can be placed closer to obstructions. This enables larger system sales per rooftop, resulting in potentially higher gross margins for installers. The novel PV panel design provides a combination of lighter weight, lower wind profile, and better collection of available light in rooftop applications compared to competing PV technologies.
- Balance of System Costs. The unique form factor of Solyndra's PV panel allows for a reduced installation cost compared to other PV technologies. The horizontal mounting and free air-flow, self-ballasting panel construction greatly simplify the requirements for mounting hardware. The mounting structure is lightweight, inexpensive, non-penetrating and easy to install. The simple mounts can be quickly attached and then the panels can be set down on the rooftop. No additional ballast or mounting hardware is needed to secure the panels to the rooftop. According to Solyndra, the greatly simplified mounting hardware and

reduction in required labor, along with other system-level benefits, enable a reduction in BOS cost of over 40 percent compared to mounts for standard PV modules. Solyndra PV systems are faster and less costly to install than conventional PV systems, resulting in lower design and installation, labor costs.

LGPO further notes that Solyndra's existing customer base is diversified into US, European and Asian markets (through its multi-national integrators), mitigating the risk of regulatory and economic changes.

Solyndra has signed four long-term contracts with major solar installers and integrators in both the US and Europe. These contracts provide firm pricing and volumes through 2012 with cumulative contracted volumes of approximately 500 Mw and cumulative contracted revenue in excess of $1.4 billion. The current contracts already represent a substantial portion of production volumes for both Fab1 and Fab2 Phase 1. Its most recent contract (Carlisle, in September 2008) was executed at a price of $3.00/watt for 2012, 12% higher than Solyndra management's estimated selling price in 2012.

Pricing and Volume – Existing Contracts

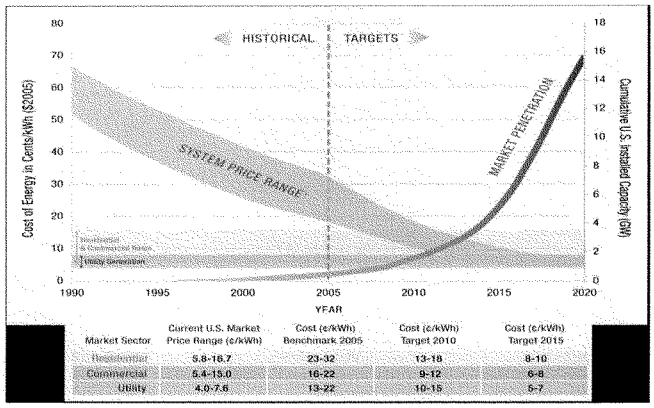
Contracted Panel Price ($/watt)	2008	2009	2010	2011	2012
Phoenix Solar	3.44	3.21	2.97	2.72	2.48
SPI	3.85	3.70	3.50	3.25	3.00
Gecko Logic	3.74	3.40	3.10	2.81	2.56
Carlisle	3.80	3.69	3.47	3.25	3.00
Weighted Avg Panel Price	3.64	3.50	3.23	2.94	2.69
Fab2 Panel Price Assumption	0.00	0.00	3.19	3.01	2.67
Volume Under Contract (MW)	**2008**	**2009**	**2010**	**2011**	**2012**
Phoenix Solar	0	10	28	68	110
SPI	0	10	20	30	40
Gecko Logic	0	5	15	25	36
Carlisle	0	7	15	31	47
Total	1	32	78	154	233
Fab1 Output	4	66	103	110	110
Fab2 Output	0	0	8	177	210
Total Output	4	66	110	287	320
% Contracted	*23 %*	*49 %*	*71 %*	*54 %*	*73 %*

Solyndra anticipates continued improvement in its systems and tools, increased throughput and yields, absorption of fixed costs over larger volumes and other economies of scale; thus reducing its manufacturing costs per watt. The company also believes that its continued design development should increase the number of sellable watts per module, which is driven by conversion efficiency of the individual cells. Its current conversion efficiency is approximately 21%, which produces a nameplate power of 175 watts per module. The company believes it can increase this output to 210 watts per module by 2011.

Market Analysis

Solyndra's market penetration and sales will continue to be driven by the regulatory landscape. US and European incentives and regulations strongly influence PV sales both directly through programs directed at solar power and indirectly through general renewable regulatory programs.

Solyndra will initially be competing for market share in the solar power niche market, and should be well positioned as the price for solar power approaches parity with retail prices for energy from the traditional grid. The tables below prepared by DOE's Solar Technologies program demonstrate this assertion.



Market Sector	Current U.S. Market Price Range (¢/kWh)	Cost (¢/kWh) Benchmark 2005	Cost (¢/kWh) Target 2010	Cost (¢/kWh) Target 2015
Residential	5.8-16.7	23-32	13-18	8-10
Commercial	5.4-15.0	16-22	9-12	6-8
Utility	4.0-7.6	13-22	10-15	5-7

In the US, the primary market motivator is the federal investment tax credit which gives the purchaser/owner of renewable energy generation facilities an income tax credit of 30% of the cost of purchase and installation. The market also benefits from advanced depreciation provisions (Modified Accelerated Cost Recovery System of Depreciation, "MACRS"), Renewable Portfolio Standards ("RPS"), mostly set by the various states, net meter requirements (again, set by states) and other direct and indirect state and local provisions. The value of these incentives passes through the entire market chain (manufacturer, installer, building owner and purchaser of the equipment that is installed). The manufacturer may also benefit from a newly-passed tax credit that could be applied to manufacturers (and not end-users) of renewable energy resources. (This possible credit is not included in the analysis of this credit, as it remains uncertain as to how the department of Treasury may apply the provisions.)

The incentives in Europe are also significant, but the mechanism is different; the main European governmental program to encourage renewable energy is through "Feed-In Tariffs" (FITs). The power generated from solar sources by small-scale producers is purchased by utilities at (substantially in some jurisdictions) above-market prices, and the resultant costs are shared across utility customers.

The Solyndra business plan for US markets is founded upon leveraging the value of these incentives among several parties of interest. In the US, an archetypical structure would involve a financial investor (interested in using the tax credit for its own books or selling it to another tax-paying entity) who will purchase the power generated from a rooftop PV system from the building owner using a long-term Power Purchase Agreement. The installer gets paid for the installation (with a markup), and the PV manufacturer can sell panels for a higher price than would be possible without the incentive. The issue for analysis is whether there is enough value in the tax incentive to cover all the parties' needs for return on their investments (including opportunity cost to the building owner). Stated another way, can the cost of power from the solar installation, with the tax incentive factored in, be competitive with the cost of peak grid power in the relevant jurisdiction. RW Beck has concluded that (with stated caveats and in certain markets) the answer is likely to be yes.

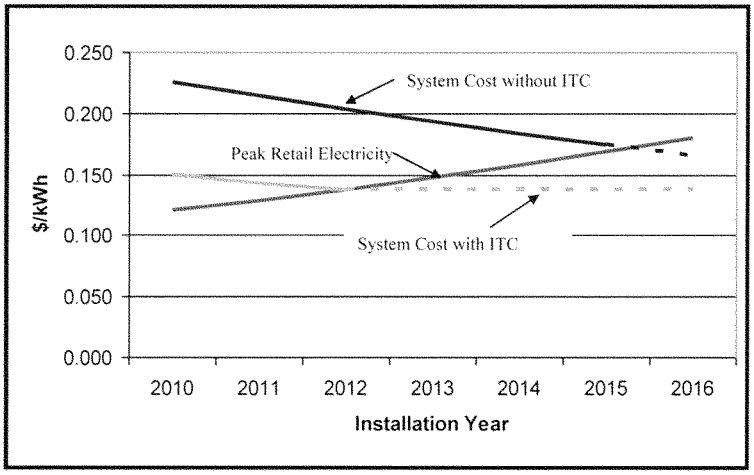
In European markets the deal structure is simpler, but the driving issue remains the same: is there enough value in the FIT to enable the purchaser of Solyndra's product to make a profit from the FIT? Again, RW Beck has concluded that this is possible in certain markets (and the number of markets is growing):

> **"Based on our review, we are of the opinion that the current and developing regulation and incentives, as applicable to PV solar, will support Solyndra's PV panel marketing and sales creating a situation where PV energy production costs are closer or equal to grid parity or FIT prices, as the case may be, in Solyndra's primary market areas."**

RW Beck has made individual analysis of several of Solyndra's target market jurisdictions in the US and in Europe. For detail, we refer to the attached Draft Report of the Independent Market Consultant. The fundamental analysis applies to each of these markets – the viability of the Solyndra cost and price model depends upon the point where the system costs, combined with the available incentives, reaches parity with peak grid pricing.

From the Market Consultant's Report, a graphic analysis of the general concept follows:

Rooftop Solar System Cost vs. Peak Retail Electricity Prices (With and without ITC)



US Market Mechanism: RPS

The incentives mechanism at the state level for most of the renewable power generation in the US is the Renewable Portfolio Standards ("RPS"). These programs generally involve wholesale renewable power generators that sell power to investor-owned utilities who need to satisfy state RPS requirements. These two parties typically enter into long-term contracts to supply power to the grid. Some of the stronger state incentives are in the Solyndra target states, California, Massachusetts, Hawaii and New Jersey.

Solyndra's primary US marketing strategy, however, is directed at leveraging the federal investment tax credit for renewable energy (which has just been extended for 8 years). The model involves persuading end-users to participate in the installation of PV panels, using Power Purchase Agreements ("PPAs"). PPAs are contracts wherein a property owner ("off-taker") contracts with a financial entity (the ultimate owner of the system, and PPA provider), to purchase energy from a PV system installed by a PV system "Integrator" (essentially installers on the PPA off-taker's property). In return, the PPA off-taker agrees to purchase electricity from the PPA provider for an extended period of time (15-25 years) at a set initial price with pre-defined escalations. The PPA provider assumes the risks and responsibilities of system ownership, including purchase, operation and maintenance of the solar equipment. The Integrator is responsible for designing and installing the system.

One of the key criteria for this model is the tax benefit to the owner of the panels, who can use both the tax credit provisions (of up to 30%) and can also depreciate the entire capital cost of the project on an accelerated five-year basis. The end customer (building owner) benefits by purchasing power at or lower than the prevailing utility rates (with that price locked in via the PPA), without using his own capital. The integrator makes an immediate markup on the installation cost (~9-15%).

European Market Mechanism: FIT

The European market is primarily driven by Feed-In-Tariffs which are special rates paid to eligible generating resources intended as a subsidy for solar and other renewable resources. The comparative value of the FIT subsidy versus the cost of power without the subsidy for various European markets is shown in the chart below, from the RW Beck report.

Cost of Solar Electricity Compared to Feed-in Tariff Rates
Installation Years 2010 – 2016

		Prices by Installation Year ($/kWh)						
State	Price/Grid Parity	2010	2011	2012	2013	2014	2015	2016
Belgium	Cost of Solar Electricity	0.55	0.51	0.47	0.47	0.45	0.44	0.43
	FIT Rate	0.56	0.55	0.54	0.53	0.52	0.51	0.50
France	Cost of Solar Electricity	0.34	0.32	0.30	0.29	0.29	0.28	0.27
	FIT Rate	0.58	0.59	0.60	0.61	0.62	0.63	0.64
Germany	Cost of Solar Electricity	0.41	0.39	0.35	0.35	0.34	0.33	0.32
	FIT Rate	0.46	0.41	0.39	0.37	0.36	0.34	0.32
Italy	Cost of Solar Electricity	0.34	0.32	0.29	0.29	0.28	0.28	0.27
	FIT Rate	0.50	0.49	0.48	0.47	0.46	0.45	0.44
Spain	Cost of Solar Electricity	0.30	0.28	0.26	0.26	0.25	0.24	0.23
	FIT Rate	0.38	0.35	0.32	0.30	0.27	0.25	0.23

Solyndra's panels at the projected panel prices could be economically marketed in all five key foreign markets for all installation years from 2010 through 2016. That is, at the projected panel prices, it is expected that all parties could be properly compensated, including the expected return on equity required. In some foreign markets, however, such as Belgium and Germany, the results for some installation years indicate that the gaps between the minimum cost to satisfy all parties using Solyndra's panels is much tighter. These tighter gaps would be an indication of how sensitive these markets may become in these particular installation years. If the cost to any party in these transactions rises above the modeled costs, including panel prices, operating costs and required returns, or if the FITs turn out to be lower, then Solyndra may have to lower panel prices below the projected levels.

Competition

First Solar, a leading manufacturer of PV panels, has introduced thin-film CdTe PV panels which operate at greater than 9 percent efficiency, with competitive pricing and availability for commercial rooftop and large-scale utility, ground-mounted systems. The cost to make CdTe PV modules have recently reached under $1 per W_p, according to First Solar. CdTe panels are rigid products fabricated on low-cost, soda-lime glass substrates. CdTe panels will have a relatively high balance of system cost compared to the Solyndra panels, due to the mounting requirements. Rooftop installations, due to the limited amount of space, usually end up using higher efficiency panels, including those manufactured with wafer silicon and CIGS, rather than the type sold by First Solar.

Solyndra specifically reported that it does not intend to compete in land/ground applications, and consequently, we did not compare Solyndra's technology against low efficiency, low cost competitors that are likely to deploy technology into large "utility"-scale land applications. Solyndra's major competition comes, rather, from the manufacturers of wafer silicon panels, which control 90% of the roof-top market share

Retail System Cost Comparison
($/W$_p$)

	2010	2011	2012	2013	2014	2015	2016
Solyndra Technology							
Balance of System Costs	$0.90	0.85	0.80	0.80	0.80	0.80	0.80
Panel Price	$3.19	3.01	2.67	2.65	2.52	2.39	2.27
System Cost to Integrator	$4.09	3.86	3.47	3.45	3.32	3.19	3.07
Downstream Margin	$0.40	0.38	0.34	0.34	0.33	0.32	0.30
Retail System Price	$4.50	4.24	3.81	3.79	3.65	3.51	3.38
Wafer-Silicon Technology							
Balance of System Costs	$1.67	1.58	1.50	1.46	1.43	1.39	1.36
Panel Price	$2.52	2.34	2.16	2.11	2.05	2.01	1.96
System Cost to Integrator	$4.19	3.92	3.66	3.57	3.48	3.40	3.32
Downstream Margin	$0.41	0.39	0.36	0.35	0.34	0.34	0.33
Retail System Price	$4.60	4.31	4.02	3.92	3.83	3.73	3.65

This analysis demonstrates that Solyndra's product can compete with wafer-silicon on a price basis, according to RW Beck.

RW Beck Market Analysis

RW Beck analysis of the markets that Solyndra competes in has concluded that:

- *The current and developing regulation and incentives, as applicable to PV solar, will support Solyndra's PV marketing and sales by creating a situation where PV energy production costs are closer or equal to grid parity or FIT prices, as the case may be, in Solyndra's primary market areas.*

- *...Solyndra's target market is many times Solyndra's overall 210 MW production from the Fab2 Facility.*

- *We estimate that the minimum PPA price that could be offered using the Solyndra technology is lower than the peak retail commercial rates otherwise available to end users in Solyndra's primary US markets in all years during the term of the proposed Loan.*

- *We estimate that the cost of electricity from energy produced from the Solyndra technology is lower than the FIT rates in Solyndra's primary European markets in all years during the term of the proposed Loan.*

- *In low-slope, cool roof applications, integrators should be able to offer a retail system price per Watt to the finance companies using Solyndra's technology competitive with that realized when using wafer-silicon technology.*

- *On low-slope, cool roof applications, the average system delivered price per kWh to the end user produced from the Solyndra technology is projected to be competitive with that of wafer-silicon technology.*

- *Based on our review and all the assumptions related to the estimation of the levelized cost of energy from the Solyndra technology, the average selling prices assumed in Solyndra's Pro forma... should allow PPA financiers to offer energy prices that are competitive with peak retail commercial rated in Solyndra's primary US markets. Further, these average selling prices should allow integrators and financiers to offer energy prices that are lower than FITs in Solyndra's primary European markets.*

FINANCING PLAN

Overview

Solyndra is well capitalized and has demonstrated reasonable access to capital from its investors, having raised over 750 million dollars to date. Continued support from its backers will be essential to the success of the Fab2 facility. The company must raise at least $198 million by loan closing for its required equity injection into the Fab2 project.

Uses Of Funds:

Facilities Capex:	
Front End	$272.9
Back End	$33.4
Contingency	$52.0
	$358.3
Equipment Capex:	
Line 1	$118.1
Line 2	$72.8
Line 3	$79.9
Contingency	$15.0
	$285.8
Real Estate	$42.5
Interest during Cons.	$27.0
Other Costs	$19.0
Total Costs	**$733 million**

Sources Of Funds:

Senior Debt (DOE):	$535 million	(73%)
Equity – Cash:	$198 million	(27%)
Total Uses	**$733 million**	

Funding Structure:

LGPO % of Sen. Debt:	100%
Source of Funds:	FFB

Financial Model and Sensitivity Analysis

Solyndra's base case financial projections are included in Tab 12. The following summarizes the results of the base case projections, as well as the sensitivity analysis for three scenarios.

- **Base Case Analysis**

The Base Case analysis uses data and projections from the Project's business model and a comprehensive compilation of inputs used for its business planning purposes.

The Base Case uses the following key assumptions:

- Panel pricing estimates to reflect recently concluded long-term sales contracts and updated projections as to solar market fundamentals;
- Panel output and efficiency based on the Project Fab2 facility nameplate capacity, assuming that this level will be reached by 2012, with a reasonable ramp up.;
- Debt to be repaid by the end of 2016
- Interest to remain current during construction.

Base Case Assumptions								
	2009	2010	2011	2012	2013	2014	2015	2016
# of Panels Shipped	--	9202	587,983	964,381	1,000,173	1,000,173	1,000,173	1,000,173
Ave Selling Price ($/watt)	--	$3.19	$3.01	$2.67	$2.65	$2.52	$2.39	$2.27
Revenue ($Million)	--	$6	$372	$540	$557	$529	$502	$477
Gross Margin ($Million)	--	($12)	$140	$260	$275	$252	$232	$212
Gross Margin %	--	--	38%	48%	49%	48%	46%	45%
Net Income ($Million)	($5)	($41)	$86	$167	$183	$170	$159	$148

Base Case Results								
	2009	2010	2011	2012	2013	2014	2015	2016
Cash Flow ($Million)	($3)	($20)	$102	$237	$247	$231	$214	$198
Debt Service (P+I) ($MM)	$2	$12	$16	$136	$132	$128	$125	$51
Debt Service Coverage	NA	NA	NA	1.7	1.9	1.8	1.7	3.9

Given these production and market assumptions, the Project expects to achieve gross margins of 38-49% upon reaching full production, against revenues of $500+ million. This cash flow would be sufficient to provide debt service coverage ratios (calculated using adjusted funds from operations) of a minimum of 1.7x in 2012. Further, the financial projections do not include future cost reduction potential from initiatives such as further manufacturing automation, outsourcing of equipment sub-component assembly, and lowering of labor costs by moving encapsulation and panel framing functions closer to end-customers.

Performance approaching Base Case assumptions would provide significant positive free cash once the Project becomes operational.

- **Downside Case – Output Decreased by 10%**

Key Assumptions:

- Annual shipments decreased by 10%, due to yield loss, efficiency or reductions in demand;
- Other assumptions remain the same.

Downside Case Assumptions								
	2009	2010	2011	2012	2013	2014	2015	2016
# of Panels Shipped	--	8264	528,863	867,883	900,189	900,189	900,189	900,189
Ave Selling Price ($/watt)	--	$3.19	$3.01	$2.67	$2.65	$2.52	$2.39	$2.27
Revenue ($Million)	--	$5	$334	$486	$501	$476	$452	$430
Gross Margin ($Million)	--	($13)	$116	$223	$237	$216	$198	$181
Gross Margin %	--	--	35%	46%	47%	45%	44%	42%
Net Income ($Million)	($5)	($41)	$68	$139	$153	$141	$132	$122

Downside Case Results								
	2009	2010	2011	2012	2013	2014	2015	2016
Cash Flow ($Million)	($3)	($20)	$89	$209	$218	$204	$189	$175
Debt Service (P+I) ($MM)	$2	$12	$16	$136	$132	$128	$125	$51
Debt Service Coverage	NA	NA	NA	1.5	1.7	1.6	1.5	3.4

Note that in this scenario the Project would maintain gross margins of over 40% in steady state, enabling debt service coverage in excess of 1.5x, and having no projected effect on the repayment of the debt by the end of 2016.

- **Stressed Case**

This scenario assumes gross margins are reduced to 30%, with shipments decreased by 10%.

Stressed Case Assumptions								
	2009	2010	2011	2012	2013	2014	2015	2016
# of Panels Shipped	--	8264	528,863	867,883	900,189	900,189	900,189	900,189
Ave Selling Price ($/watt)	--	$3.19	$3.01	$2.67	$2.65	$2.52	$2.39	$2.27
Revenue ($Million)	--	$5	$334	$486	$501	$476	$452	$430
Gross Margin ($Million)	--	($13)	$101	$146	$151	$143	$137	$130
Gross Margin %	--	--	30%	30%	30%	30%	30%	30%
Net Income ($Million)	($5)	($41)	$57	$81	$87	$85	$83	$80

Stressed Case Results								
	2009	2010	2011	2012	2013	2014	2015	2016
Cash Flow ($Million)	($3)	($20)	$79	$157	$155	$148	$144	$136
Debt Service (P+I) ($MM)	$2	$12	$16	$136	$132	$128	$125	$51
Debt Service Coverage	NA	NA	NA	1.2	1.2	1.2	1.2	2.7

Under this stress, debt service remains over 1.2x, and the debt can still be paid by the end of 2016.

- **Minimum Coverage Case**

This scenario stresses the model such that the debt service ratio equals 1.0.

Minimum Coverage Case Assumptions								
	2009	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**
# of Panels Shipped	--	9202	587,983	964,381	1,000,173	1,000,173	1,000,173	1,000,173
Ave Selling Price ($/watt)	--	$3.19	$3.01	$1.91	$1.93	$1.83	$1.79	$1.45
Revenue ($Million)	--	$6	$372	$387	$405	$385	$376	$309
Gross Margin ($Million)	--	($12)	$140	$106	$124	$108	$106	$45
Gross Margin %	--	--	38%	28%	31%	28%	28%	14%
Net Income ($Million)	($5)	($41)	$86	$51	$67	$58	$59	$15

Minimum Coverage Case Results								
	2009	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**
Cash Flow ($Million)	($3)	($20)	$102	$142	$133	$123	$119	$76
Debt Service (P+I) ($MM)	$2	$12	$16	$136	$132	$128	$125	$51
Debt Service Coverage	NA	NA	NA	1.0	1.0	1.0	1.0	1.5

Under this hypothetical, revenue would have to be reduced by 40% in 2012 to $1.91 per watt. Additional price declines are imposed in 2014 - 2016.

This artificial scenario demonstrates the degree to which the Project's financial and physical performance would have to be stressed to reach the point where the entire free cash flow would have to be used to support the debt.

Key Risks & Mitigants

- **Market Risk**

Solyndra faces a number of risks to its operations, however the most important risk category pertains to Market Risk. In this case, Market Risk can be broken down into several sub-categories of risk:

- Regulatory: The various federal, state and international governmental incentives (Incentive Tax Credit, RPS, accounting incentives, FITs) that are significant drivers of the PV market could be reduced or eliminated.

  Mitigant: in the current economic and environmental situation, it is much more likely that government support of renewable energy will increase than be reduced.

- Runaway Competitor: A new technology could totally disrupt the market through substantial increases in efficiency or reductions in cost.

  Mitigant: no such competitor appears on the horizon, and it is likely that DOE, RW Beck or the sources consulted by RW Beck would know of such technological advances. Even such a competitor would be unlikely to price at an all-in price (with incentives) at substantially lower than grid parity. In any case, such a disruptive technology would be unlikely to develop fast enough through R&D, pilot and commercial ramp-up during the tenor of the loan.

- Cheap Grid: Some "magic bullet" non-solar technology could appear so as to undercut the current price economics of power on the grid.

  Mitigant: such an event would so disrupt the world economy that its effects on the PV market are outside speculation. As noted above, such a disruptive technology would be unlikely to develop fast enough through R&D, pilot and commercial ramp-up during the tenor of the loan.

The RW Beck analysis has commented on the following specific market risks:

- *"While we do not expect any emerging technologies to become commercially viable within the repayment period of the loan, the introduction of an emerging technology with lower-cost PV products introduced to the market could impact Solyndra's success.*
- *"Even though the current legislative atmosphere would lead one to expect that more incentives will be created in the future, rather than less, the withdrawal or reduction of government incentives would decrease the overall value of PV products, including Solyndra's.*
- *"Although one would expect that industry pricing would be driven by available commercial retail or FIT electricity prices, competitive pricing pressure driven by innovation and/or growing spread in feedstock materials could reduce the cost of competing technologies.*
- *"Excess capacity or the inability to sell the entire production volume of the Fab2 Facility, for whatever reason, would be expected to increase Solyndra's pricing or reduce their profit margins."*

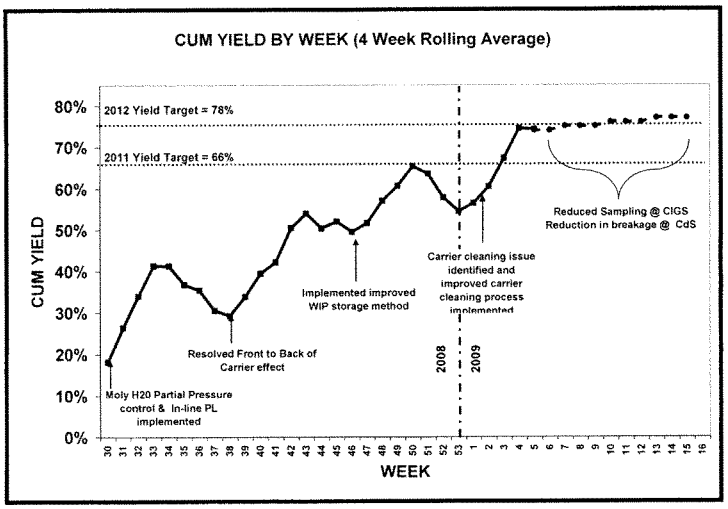
- **Scale Up Risk**

The Project is strategically dependant upon a relatively new technology (thin-film CIGS deposition and lithographic cell creation) utilized in a new, innovative and proprietary manner. The scale-up risk is mitigated by the significant manufacturing experience the Sponsor has gained starting up the Fab1 facility. As of February 2009, over 20,000 panels have been sold to clients in the US and Europe. To date, all installed panels in the field are meeting or exceeding the current performance and energy production targets of 165-175 watts per panel.

The ramp up of production from Fab1 has to date exceeded the scheduled and projected expectations in efficiency and yield. Current cumulative factory yields, a key measure of throughput, exceeded 80% in February 2009, exceeding the 77% steady-state target yield utilized in the base case financial model. RW Beck has completed a thorough review of each step in the PV manufacturing process and has confirmed **that "Solyndra's contingency plans to mitigate the risk of scale-up and yield improvements ... are achievable."**

The following chart exhibits Solyndra's progress and success in increasing its manufacturing yield. The Fab1 line has already exceeded the 2012 yield target for Fab2. In the first week of February, the cumulative yield exceeded 80%.

Solyndra Fab2 Manufacturing Facility
Five-month Cumulative Trend for ILDS / Fab1 Line



- **Completion Risk**

Facility completion is based on two separate and distinct criteria: 1) "Building Completion" and 2) "Process Completion". The General Contractor will be responsible for completion of the structure, the equipment included in the Construction contract scope of work; commissioning the respective equipment; and completing punch-list items. It is anticipated that the Construction Contract will have a reasonable level of monetary retention built into it and will be a Guaranteed Maximum Price contract with incentives. The Construction Contract will be reviewed by RW Beck prior to financial close.

Solyndra will be responsible for procuring, designing and installing the production line equipment for Fab2, and will be responsible for assuring that the Phase 1 of Fab2 process operates at a level needed to produce 210 MW of capacity per annum. The Fab2 process is considered to be complete when the Facility meets these operational design requirements. Solyndra has gained valuable start-up, commissioning and O&M experience associated with Fab1 and will in most cases duplicate the manufacturing tools and processes into Fab2.

Solyndra, Inc. has agreed to provide a Solyndra Fab2 Phase 1 Cost Overrun Commitment as follows: The Project Sponsor will commit to fund any Project Costs in excess of $733 million after full utilization of the proceeds of the Loan and the Equity Commitment. **This overrun commitment is not subject to a maximum dollar amount**. Solyndra will also **pre-fund** this commitment up to a maximum of $30 million starting in month 15 following closing.

APPLICANT INFORMATION

Management Team

Solyndra has assembled a senior management team with considerable corporate experience in designing, constructing, and ramping up large scale manufacturing facilities. The Company also has a core expertise in designing specialty tooling equipment that is utilized in its production process. Solyndra currently employs approximately 750 full time and contract individuals, most of which are engineering resources focused on the technical development of the Company's products and manufacturing process. Solyndra is led by the seasoned management team described below:

- **Dr. Chris Gronet**. Solyndra's principal inventor, Founder and Chief Executive Officer, was previously a senior executive at Applied Materials for 11 years, a leading semiconductor equipment manufacturer. Dr. Gronet is intimately involved in the day to day operations of the Company including monitoring and contributing to product design, process innovations, and manufacturing ramp. Dr. Gronet holds over 20 U.S. patents in thin film and related technologies. Dr. Gronet earned a Ph.D. in semiconductor processing and a Bachelor of Science degree in materials science, both from Stanford University.

- **Bill Stover**. Chief Financial Officer. Mr. Stover was most recently Chief Financial Officer at Micron Technology, Inc., a manufacturer of semiconductor devices. Prior to joining Micron, Mr. Stover was an audit manager with Coopers & Lybrand.

- **Ben Bierman**. Vice President of Technology in charge of day to day at Fab1 operations, has more than 20 years of semiconductor manufacturing and fabrication equipment experience at Applied Materials and LAM Research.

- **Dr. Kelly Truman**. Vice President of Marketing and Business Development, has more than 20 years experience in the semiconductor industry most recently as the Vice President of Marketing at ReVera, a provider of metrology used to monitor and control films and critical layers deployed in the semiconductor manufacturing process.

In addition to significant management resources, Solyndra is also able to draw on the technical expertise of certain Directors on its Board. **Dr. James Gibbons**, Director, was the former Dean of Engineering of Stanford University and founder of Sera Solar. **Dr. Dan Maydan**, Director, was President of Applied Materials from 1994 to 2003 and previously spent 13 years at Bell Labs. Dr. Gibbons and Dr. Maydan are actively involved in the technical oversight of the Company's technology development and manufacturing capacity expansion.

The majority of the management team and technical staff have extensive experience in process equipment design and fabrication, high-technology systems integration, CIGS thin films and high-volume hard disk manufacturing. The Applicant has assembled a Board of Directors with direct experience in both thin film materials science research and development, as well as the design and manufacture of thin film production machinery. In addition, members of the Board have outstanding records of success in guiding the development of numerous high-technology concerns, with a particular emphasis on renewable energy.

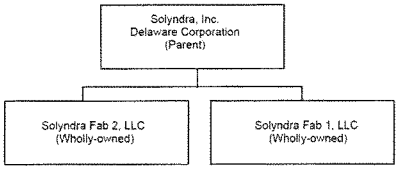
Relative to other thin film PV manufacturers, the Applicant has a substantial advantage due to its in-house equipment integration and manufacturing expertise for high-volume thin film production. The management team has developed considerable direct experience in the equipment design, manufacture and production of its unique cylindrical CIGS-based PV systems that it gained through design and development of the Applicant's original "mini" In-Line Development System (ILDS) and its full production scale Fab1.

Background and Legal Structure

Solyndra Fab2, LLC, (the "Borrower" or "Project") is a wholly-owned subsidiary of the parent, Solyndra, Inc. The Borrower is a special purpose entity that has been formed solely for the purpose of constructing, financing, owning and operating the Project. The Sponsor was incorporated in 2005 in the state of Delaware and currently owns 100% of the capital stock of the Project. Solyndra, Inc. is a privately-held company whose voting ownership is held by venture capital firms and individuals (employees and management).

Organization

Solyndra, Inc. is the Applicant to the Loan Guarantee Program and is the Sponsor for the Solyndra Fab2 project. Solyndra, Inc. has two subsidiaries including Solyndra Fab2, LLC (the legal entity representing Solyndra Fab2) and Solyndra Fab1, LLC. The Parent owns 100% of the capital stock of its subsidiaries. Solyndra Fab1, LLC currently serves no operational purpose. It was established at a time when the Applicant anticipated a corporate structure that legally separated each fabrication facility.



Government Support/Permits

The Project is not receiving any direct financial support from the US government, the State of California, County of Alameda or City of Fremont. The Sponsor will receive all necessary federal, state and local permits to begin construction of the Fab2 facility by loan closing. The Applicant has excellent relationships with administrative personnel in the City of Fremont, including permitting and inspection personnel. These relationships have allowed rapid processing of building permits and other related applications in the past.

Credit Assessment/Credit History

The initial Preliminary Credit Assessment was submitted by Fitch on August 27, 2008 and assessed the credit as a B+.

A credit history dated as of June 4, 2008 for the Applicant as prepared by Dun & Bradstreet, Inc. shows:

D&B Rating 1R3

This credit rating was assigned because of D&B's assessment of the company's financial ratios and its cash flow.
Rating: 1R3 (1R indicates 10 or more employees)
Composite credit appraisal: 3 is fair

Applicant Statement

The Applicant has attested that, based on the Project information provided to the LGPO for consideration of extending a loan guarantee, that there is a reasonable prospect that the Guaranteed Obligation will be paid on time and in full (including interest) from project cash flow according to the terms proposed in the Application.

Mr. STEARNS. And also we want to put our supplemental report by unanimous consent also.

[The information follows:]

The Committee on Energy and Commerce
Supplemental Memorandum

June 23, 2011

TO: Majority Members, Subcommittee on Oversight and Investigations

FROM: Subcommittee on Oversight and Investigations Majority Staff

RE: OMB's Responsiveness to the Committee's Request for Documents in the Solyndra Loan Guarantee Investigation

I. BACKGROUND

The Committee on Energy and Commerce opened an investigation of the Department of Energy (DOE) Loan Guarantee Program on February 17, 2011, with a letter requesting documents and information from DOE Secretary Steven Chu.

DOE's Loan Guarantee Program was created by the Energy Policy Act of 2005. The Act authorized the Secretary of the Department to make loan guarantees to companies investing in either innovative clean technologies or commercial-scale renewable energy projects. In 2009, the American Reinvestment and Recovery Act (ARRA) appropriated funding to pay for the credit subsidy costs of the DOE loan guarantees for certain renewable energy, electric transmission, and leading edge biofuels systems (referred to as 1705 loan guarantees). Since the stimulus provided funding for the credit subsidy costs, DOE has announced 20 conditional commitments for loan guarantees, and 11 of these guarantees have now closed. These loans represent over $11 billion in guarantees.

The first guarantee issued by the DOE Loan Programs Office was to Solyndra Inc., a California company, for $535 million. Since Solyndra received its guarantee in September 2009, the company has experienced a number of financial setbacks. In March 2010, Solyndra's auditor, PriceWaterhouseCoopers stated in the company's SEC registration that the "Company had suffered recurring losses from operations, negative cash flows since inception and has a net stockholder's deficit that, among other concerns, raise substantial doubt about its ability to continue as a going concern." Just three months later, in June 2010, the company cancelled a $300 million Initial Public Offering (IPO). On November 3, 2010, Solyndra announced that it was closing its older manufacturing facility, resulting in the layoff of 135 temporary employees and approximately 40 full-time employees. Further, in March 2011, DOE announced that it had modified the terms of the Solyndra loan guarantee to extend the repayment period. In addition,

Solyndra announced at the same time that its investors had entered into a $75 million credit facility with the company, with the option of a second $75 million.

This Committee's investigation showed that the Office of Management and Budget plays a key role in approving the DOE Loan Guarantees. For this reason, the Committee sent a letter to OMB Director Jacob Lew on March 14, 2011 (March 14 letter), requesting a briefing and certain documents regarding the Solyndra guarantee. Although this document request was sent over three months ago, OMB has yet to fully respond to the Committee's requests. Instead, OMB has repeatedly sought to delay and thwart this Committee's efforts to understand its actions during the course of the Solyndra review.

On June 22, 2011, OMB Deputy General Counsel William R. Richardson, Jr., sent Chairman Stearns a letter characterizing OMB's response to this Committee's investigation. This letter contains multiple misrepresentations and does not present an accurate recitation of OMB's conduct during the course of this investigation. The purpose of this memorandum is to explain in detail the Committee's efforts to achieve production of the documents requested in the March 14 letter, and OMB's responses to the Committee's efforts.

II. OMB's Responsiveness to the Committee's Investigation

A. The Chronology of the Committee's Investigation

In his June 22, 2011, letter, OMB Deputy General Counsel Richardson made certain representations about the efforts of OMB staff to respond to the Committee's March 14 document request. This chronology conveniently leaves out the lengths Committee staff has gone to accommodate OMB's concerns, to obtain even basic information from OMB regarding its actions with respect to Solyndra, as well as OMB's stonewalling of these efforts.

For example, despite the fact that the March 14 letter requests that OMB contact Committee staff to schedule a briefing, OMB never contacted the Committee. Instead, on March 21, 2011, Committee staff contacted OMB staff to schedule the briefing. OMB Legislative Affairs staff responded that they would "check on this." After not hearing back from OMB for another week, Committee staff again emailed the OMB Legislative Affairs staff on March 28, 2011, and asked about the status of the briefing. OMB Legislative Affairs staff called back the next day and proposed some dates for the briefing. The briefing was originally scheduled for April 5, but Committee staff agreed to postpone the briefing at OMB's request due to the ongoing budget negotiations.

An initial briefing took place on April 11, 2011, nearly one month after the Committee's original request. While OMB was able to explain the role of the agency generally with respect to DOE loan guarantees, the OMB staff who attended this briefing were not able to answer several specific questions about OMB's actions regarding the Solyndra review. For example, after DOE made presentations about Solyndra to OMB in January and March of 2009, OMB staff were "sure" that they had asked "all sorts of questions" of DOE staff and "provided feedback," but OMB staff could not or would not say what those questions were. OMB staff was also not able to identify the specific documents or information DOE had provided to OMB staff at the time of these briefings. Presumably, the feedback OMB staff provided and the questions they asked of

DOE helped shape the Solyndra deal. It is clearly relevant to this Committee's understanding of what happened during the Solyndra deal and whether OMB took appropriate actions to assess the risk presented by the guarantee. Yet, OMB has continued to refuse to provide this information to the Committee.

As Deputy General Counsel Richardson stated in his June 22 letter, following the April 11 briefing, Committee staff did request that OMB provide to the Committee copies of all documents that DOE had shared with OMB. However, this request does not, as his letter seems to suggest, excuse OMB from providing all the other documents responsive to the Committee's requests. Committee staff did ask OMB staff six follow-up questions after the briefing. But, OMB's responses did not fully address the questions asked. For example, Committee staff asked OMB to describe the "questions or feedback to DOE" that OMB staff provided after the January, March, and August presentations by DOE to OMB regarding Solyndra. OMB did not answer that question at all with respect to the January and August presentations. With regard to the March 2009 presentation, OMB responded that it "did not provide its views on the credit subsidy range estimated for the project." The Committee did not ask whether OMB provided its views on the credit subsidy; the Committee asked what feedback and questions were asked of DOE.

Further, after the April 11 briefing, Committee staff asked whether the credit subsidy score for Solyndra had changed between January and September of 2009. OMB responded that "the final credit subsidy cost calculated in September 2009 fell within the range originally contemplated." Again, this answer was not responsive to the question asked. In fact, Committee staff recently learned that the credit subsidy cost did change after OMB reviewed the number calculated by DOE in August 2009. Therefore, OMB's answer is not only nonresponsive, it is also misleading and incorrect. OMB's responses to these questions from Committee staff are indicative of its responses to the Committee's requests generally: OMB answers the questions it wants to answer, and asserts that any other information is not necessary to the Committee's investigation. Attached to this memorandum is a copy of OMB's April 15, 2011, email responding to the Committee's questions to this letter. This email demonstrates OMB's efforts not only to limit the information this Committee receives but, possibly, to mislead the Committee.

After receiving OMB's response to the follow-up questions from the April 11 briefing, Committee staff expected that the documents it had requested from OMB would help shed light on OMB's actions during the Solyndra review.[1] In particular, Committee staff pressed OMB for production of certain Solyndra credit subsidy and cash flow documents. These were DOE-created documents that DOE had submitted to OMB during the Solyndra review. Although the Committee had requested that DOE produce these documents, DOE informed Committee staff that it was required to consult with OMB about producing these materials due to their sensitive nature. Before producing the documents to the Committee, DOE had submitted these documents to OMB on or about March 22, 2011 so OMB could approve the production to the Committee. Committee staff emailed OMB staff on March 30, April 4, April 11, and April 12. On April 14, 2011, DOE finally produced to the Committee 90 pages of cash flow and credit

[1] As of the briefing, OMB had only produced two reports provided by DOE to OMB during the review.

subsidy documents, approximately 30 of which were wholly redacted. Even though Committee staff was not convinced that OMB's concerns are legitimate, Committee staff was sensitive to OMB's position that these documents, if made public, might allow future loan guarantee applicants to "game" the system, and therefore agreed to an *in camera* review of these documents at DOE headquarters on April 27, 2011.

B. Committee Staff's Repeated Efforts to Accommodate OMB's Concerns and Obtain Production of the Documents Responsive to the Committee's March 14 Letter

As Deputy General Counsel Richardson stated in his June 22 letter, OMB did produce 20 documents to the Committee, including a credit assessment, a draft term sheet for Solyndra, and engineering and marketing reports, which totaled 393 pages. These documents, however, were all created or provided by DOE to OMB in the course of the Solyndra review. OMB has yet to produce a single memoranda, report, or analysis — aside from the final apportionment paper for Solyndra — reflecting its own work on the Solyndra review. The documents produced reveal nothing about what OMB did with DOE's information, or how OMB considered or weighed the risks presented by the Solyndra deal.

For this reason, Committee staff repeatedly asked OMB staff to produce internal OMB emails responsive to the Committee's March 14, 2011, letter. On May 4 and May 10, 2011, Committee staff sent emails to OMB asking about the status of the production. On May 13, 2011, Committee staff had a conference call with OMB Legislative Affairs staff and General Counsel staff to discuss the production of these emails. During that call, OMB staff communicated that they were only willing to produce emails that OMB staff considered to be "factual" in nature, that is, only those emails that showed the actual Credit Subsidy Score approved by OMB. OMB staff explained that they did not want to produce internal emails among OMB staff regarding the Solyndra deal. As a compromise, OMB staff proposed a second briefing with the Assistant Director of Budget, and represented that this briefing would provide all of the details of OMB's internal deliberations and OMB's questions and concerns regarding the Solyndra guarantee.

Committee staff held a second call with OMB staff regarding the OMB emails on May 19, 2011. Committee staff communicated that a briefing was not sufficient, and that the emails must be produced in order for staff to have an accurate understanding of OMB's concerns during the Solyndra review. A third call was convened for the following day, Friday, May 20, 2011. During that call, Committee staff agreed to the briefing proposed by OMB so long as OMB brought the emails responsive to the Committee's request to the briefing and allowed for an *in camera* review of these records by Committee staff. During this call, OMB staff reiterated that the briefing they proposed would provide all of the details of the review that were reflected in the emails, but said that protecting the confidentiality of OMB staff was the primary concern. Committee staff pointed out that the *in camera* review should address that concern, and asked OMB staff to determine no later than May 23 whether the agency would agree to that form of production.

On Monday, May 23, Committee staff called OMB to ask if they would agree to the proposed *in camera* production of emails. OMB staff stated that they needed additional time to make this determination. At this point, Committee staff recommended to Chairman Stearns that he call OMB to see if he could resolve the matter and move the investigation forward.

Ultimately, a call was scheduled between Chairman Stearns and OMB Deputy Director Jeffrey Zients for May 25, 2011. During that call, Chairman Stearns explained to Deputy Director Zients that the Committee wanted to see the internal emails among OMB staff regarding the Solyndra guarantee. Chairman Stearns further explained that a briefing was not sufficient, as it would not reflect the precise details of the review, what actions OMB took and how they impacted the Solyndra deal, and that an important part of any investigation is to verify the information received by examining records and documents. Deputy Director Zients informed Chairman Stearns that he needed to check with his counsel, and that he would get back to Chairman Stearns about the *in camera* briefing and production.

On May 26, 2011, OMB staff reached out to Chairman Stearns' personal office staff to schedule the briefing. The briefing and *in camera* production was scheduled for June 7, 2011. Although Chairman Stearns made clear to Deputy Director Zients that the *in camera* review was to include all emails, including internal emails, among OMB staff on the Solyndra deal, OMB produced only 8 emails between OMB and DOE sent during a one-week period in late August 2009. These emails did not include any internal emails among OMB staff members regarding the Solyndra loan guarantee. In response to Committee staff's questions, OMB staff acknowledged that OMB had identified other emails between OMB and DOE staff, as well as internal emails between OMB staff members, relating to the review of Solyndra that were responsive to the Committee's March 14 letter, but that OMB was refusing to produce those emails to Committee staff. According to OMB staff, it is unnecessary for the Committee to view the internal emails.

C. The Committee Has a Right to the Documents Requested in the March 14 Letter, and OMB is not Justified in Withholding Them

During the course of this investigation, OMB has continued to assert that this Committee does not need to see, and has not demonstrated a need for, the documents it has requested. Not only is this incorrect, OMB's position also demonstrates a fundamental misunderstanding of the respective roles of Congress and OMB. It is not for OMB staff to selectively decide which responsive documents the Committee needs to see.

The Committee has a right to obtain production of the documents it requested in the March 14 letter. Pursuant to rules X and XI of the U.S. House of Representatives, the Committee is conducting an investigation of the DOE Loan Guarantee Program and the Solyndra loan guarantee. Through the American Recovery and Reinvestment Act (ARRA or stimulus), Congress has appropriated $2.5 billion in funding to pay the subsidy costs for over $11 billion in DOE loan guarantee. Under the Financial Credit Reform Act (FCRA), OMB plays a role in reviewing and approving the loan guarantees. However, OMB's role is not limited to simply punching numbers in a calculator to produce a credit subsidy cost, as Committee staff has pointed out exhaustively to OMB staff. Committee staff understands — and has communicated to OMB — that OMB's role extended to asking questions about any aspect of the loan guarantee, including its terms and conditions.

OMB staff has admitted that OMB's involvement in the Solyndra deal began as early as December 2008 — well before the final credit subsidy number was calculated in August 2009. The actions OMB took during those nine months with respect to Solyndra is relevant to this

Committee's investigation. Congress has appropriated $2.5 billion in funding to pay the subsidy costs for the DOE loan guarantees. This Committee not only has an interest in learning the number calculated and how it was calculated, but it also has a direct interest in learning whether OMB appropriately carried out its role to analyze the risks associated with the Solyndra guarantee. As the risk factors of these loans directly bear on the credit subsidy cost determination, they are plainly relevant to the Committee's investigation. While OMB has provided some information about what OMB did in the week preceding the closing of the Solyndra guarantee in September 2009, it has provided almost no information about its involvement in the preceding nine months. Further, a White House memorandum was presented to President Obama in October 2010 questioning the appropriate role of OMB in the DOE loan guarantee process and proposing changes to OMB's role.

Committee staff believes that this Committee has convincingly, and repeatedly, demonstrated the reasons these documents are relevant to its investigation. OMB's arguments against production are without basis.

III. CONCLUSION

Committee staff believes that OMB staff has consistently responded to this Committee's questions throughout this investigation with half-answers and qualified responses. OMB's repeated delays in responding to the Committee's document requests and its refusal to turn over the documents demonstrate that OMB is engaging in a deliberate pattern of obstruction.

Chairman Stearns made an agreement with the Deputy Director of OMB for an *in camera* production of all responsive emails and communications that took place on June 7. Despite this agreement, OMB reneged and refused to produce the emails. Committee staff questions whether OMB intends to make a good faith effort to respond to the Committee's document requests. OMB staff has acknowledged that these documents exist. OMB staff has acknowledged that they are relevant to the Committee's investigation of the Solyndra loan guarantee, as these records relate to OMB's review of the Solyndra deal. Yet, the agency continues to refuse to produce these documents for review.

Deputy General Counsel Richardson stated in his June 22 letter that OMB is prepared to provide a "further briefing that would afford staff an opportunity to review such additional emails between OMB and DOE." However, Committee staff has been down this road before. OMB has repeatedly promised to produce documents at briefings, only then to refuse to produce such documents. Committee staff's repeated efforts to accommodate OMB's concerns have been instead met with delay and gamesmanship.

It is not for OMB to decide what documents the Energy and Commerce Committee needs to see. This matter can only be resolved by full production of the documents requested.

Ms. DEGETTE. Thank you.

Mr. STEARNS. With that, we will move to Mr. Griffith. The gentleman from Virginia is recognized for 5 minutes.

Mr. GRIFFITH. Thank you, Mr. Chairman.

Mr. Silver, we talked earlier about other companies in similar circumstances, and I am not sure that I asked the question on observers. I asked others that had been subordinated, whether the taxpayers' money had been subordinated. Are there observers on any other boards as a part of this Loan Guarantee Program?

Mr. SILVER. No, sir. Nor would there typically be.

Mr. GRIFFITH. And in regard to the observer, I am concerned. You indicated to me that they told you that bankruptcy was most likely by the end of July. Is that not what you told me earlier?

Mr. SILVER. That the company was, you know, facing imminent troubles. I don't know that I would describe it as bankruptcy because, of course——

Mr. GRIFFITH. Because I asked bankruptcy before and you said end of July.

Mr. SILVER. Well, they were clearly having financial troubles again and we are going to need to figure out what to do or would face a bankruptcy.

Mr. GRIFFITH. All right. Because that raises a real concern for me that I think every member of this committee is concerned about. Apparently they—not you all—Solyndra was here on Capitol Hill speaking to Members of Congress indicating everything was on track at the same time that your observer was telling you all that there was a problem. Again, I am not saying that you all knew they were up here telling fibs, but I am concerned that they were up here telling fibs. That being said, what was your observer's role, because clearly they were in trouble, and what recommendations did he make to you all and did you all send word through him to the board on what they should do to protect the taxpayer dollars?

Mr. SILVER. Well, first, Congressman, in this particular case, the observer is a woman——

Mr. GRIFFITH. Thank you.

Mr. SILVER [continuing]. But what she did—and she is also the head of our portfolio management group and a career civil servant who ran that express function at the Export Import Bank for many, many years. She is a highly——

Mr. GRIFFITH. OK.

Mr. SILVER [continuing]. Highly achieved——

Mr. GRIFFITH. She is a great lady.

Mr. SILVER. Great lady.

Mr. GRIFFITH. I am not going to dispute that. What did she say we should do? Did she give you all advice on what should be done? Did she take messages back to the board saying we want to protect the taxpayer dollars? I mean they laid off all the employees. Why couldn't they have laid off half—those kind of questions. Was that going on?

Mr. SILVER. Yes, on a regular basis.

Mr. GRIFFITH. And can you provide us some kind of written documentation as to what was going on and what steps were being taken to try to protect the taxpayers' dollars once you learned that

even after the restructuring, this company was going to fail or was likely to fail?

Mr. SILVER. I don't know if there are any documents specifically related to that, but I do know that we have now turned over, as I said, close to——

Mr. GRIFFITH. I understand. I am asking you if you can——

Mr. SILVER. I don't think there are any other documents. I mean I think we have——

Mr. GRIFFITH. I am asking you to create a document. Can somebody give us something in writing as to what was being done from July until the announcement that they were going bankrupt to try to protect the taxpayers' dollars?

Mr. SILVER. We can certainly work with you on that, yes.

Mr. GRIFFITH. All right. Thank you. And all the problems that you cite regarding Solyndra with maybe the exception of the cost of the polysilicon—I apologize if I got that wrong—dealing with the competition from China and the economic instability in Europe and so forth where they buy more of these things, on the other loans that you have, are those pressures not also present?

Mr. SILVER. Well, as I said, the vast majority of our portfolio——

Mr. GRIFFITH. Or production. I am talking about the 4 manufacturing.

Mr. SILVER. They are to a certain degree. The project that I made reference to earlier actually is a process project rather than a product product. So it produces a standard conventional panel, but it does it in a much more cost-effective way with about half the use of materials and about half the time. So it is a bit of a different configuration.

Mr. GRIFFITH. So how much money do we have—that we have guaranteed a loan for that company?

Mr. SILVER. I think—I will have to check the exact number but it is about $135 million.

Mr. GRIFFITH. OK. So we gave 535 to the company that is riskier and 135 to one. And are they doing well?

Mr. SILVER. So far. Again, these projects are only now just beginning construction most of them.

Mr. GRIFFITH. Will you tell us if these companies start to have problems so that we can anticipate this and try to figure out what we need to do as the folks who are ultimately responsible for the spending of the taxpayers' money?

Mr. SILVER. Happy to work with you on that, sir.

Mr. GRIFFITH. All right. And then, you know, we act like sometimes—and I know there is no perfect world and maybe one guy or one gal got it right, but we act like, you know, we didn't see this coming and yet, you know, there are indications that somebody on your team—and I know you weren't there at the time the loan was made, but somebody on your team had it figured out and I am just wondering what steps have you taken knowing that someone on your team raised a concern that the models wouldn't work. What steps are you taking to make sure that even it is a minority viewpoint, when it comes to spending half a billion dollars of the taxpayers' money, that maybe you will pay attention to every warning sign.

Mr. SILVER. Well, as a matter of practice, with every transaction we do, we run a series of sensitivity analyses which change variables in the assumptions and therefore——

Mr. GRIFFITH. Is that different now than it was in August of 2009 when somebody raised the warning flag and nobody seemed to pay attention?

Mr. SILVER. I don't know for sure but I doubt it. I doubt that it was different. I mean it——

Mr. GRIFFITH. You are using the same model?

Mr. SILVER. It is standard practice to run sensitivity analyses.

Mr. GRIFFITH. And now that we have had this hearing, are you going to go back and take a look at it and see if you can come up with a better-tuned or finer-tuned model?

Mr. SILVER. We will continue to work with OMB to improve the models, yes.

Mr. GRIFFITH. All right. I yield back my time.

Mr. STEARNS. The gentleman yields back his time and the gentleman emeritus of the Energy and Commerce Committee is recognized for 5 minutes, Mr. Dingell of Michigan.

Mr. DINGELL. Mr. Chairman, I thank you for your courtesy.

I got a few little questions here to ask. I have been looking sort of at how these events occurred and perhaps, Mr. Silver, you could help me with this. On January 9, Solyndra transaction was reviewed by a DOE Credit Committee and remanded for further analysis, right?

Mr. SILVER. Yes, sir.

Mr. DINGELL. It was not rejected.

Mr. SILVER. I am sorry?

Mr. DINGELL. It was not rejected. It just——

Mr. SILVER. It was not formally rejected. It was remanded back.

Mr. DINGELL. OK. Then, on the 15th of January, loan program staff notified DOE Credit Review Board that it had developed a schedule to complete Solyndra due diligence that would bring the project to approval in early March 2009 and final closing by early to mid-April 2009, is that right?

Mr. SILVER. I think that was the original projection.

Mr. DINGELL. OK. Then, Obama came into office on January 20, 2009, 5 days later. So then, if I look here I see on February, March 2009, DOE continues to negotiate terms and conditions with Solyndra, is that right?

Mr. SILVER. I believe so, yes, sir.

Mr. DINGELL. OK. And then on March 12, DOE Credit Committee considers and approves Solyndra transaction. Is that right?

Mr. SILVER. Yes, a recommendation for——

Mr. DINGELL. Who was on that Credit Committee?

Mr. SILVER. I would have to get you the specific names but it is the same group——

Mr. DINGELL. Please.

Mr. SILVER [continuing]. Of career professionals that were on the first committee.

Mr. DINGELL. No political appointees?

Mr. SILVER. No political appointees, no, sir.

Mr. DINGELL. All right. So then, on the 20th of March, DOE issued a conditional commitment to Solyndra, is that right?

Mr. SILVER. That is correct.

Mr. DINGELL. Now, what were the conditions in that conditional commitment?

Mr. SILVER. Well, there were a number of them. Conditions precedent are simply things that company, the applicant, needs to do in order to complete its responsibilities before we can close.

Mr. DINGELL. And what you say is if you do those things, we will make——

Mr. SILVER. Right. Among them, for example, was the raise of an additional several hundred million dollars of capital, which they did. And during the time they were doing their CP work, we were continuing to do additional due diligence. It is important to remember that due diligence continues post-conditional commitment all the way to final close.

Mr. DINGELL. OK. Now, then, on the 27th of April, independent market consultant report was submitted, is that right?

Mr. SILVER. I believe so, yes.

Mr. DINGELL. Now, what did that report contain?

Mr. SILVER. Well, the market—and independent market report generally describes the market for the product, examines the competitive landscape, looks at relative cost attributes, and the kind of classic documentation you would describe around that.

Mr. DINGELL. OK. Now, my colleagues on the other side of the aisle appear to be of the view that at some point, the Department of Energy denied the loan to Solyndra on January 9 of 2009. Now, isn't it true that at that time the Department's Credit Review Board simply asked for further information and did not reject the request?

Mr. SILVER. The Credit Committee, sir, not the Credit Review Board. But yes, the Credit Committee.

Mr. DINGELL. OK. And then in your comments you have indicated shortly after the request for more information, the Loan Program Office outlined a timeline to complete the due diligence on the Solyndra request. Is that right?

Mr. SILVER. Yes, sir.

Mr. DINGELL. When did that occur? What date or approximately what time?

Mr. SILVER. I don't know the exact date but they came back rather quickly and said we will be in a position to bring this back some time in the March time frame.

Mr. DINGELL. OK. Now, when was that timeline developed? Before or after President Obama came into office?

Mr. SILVER. Before the Obama administration took office.

Mr. DINGELL. It was, OK. So what I am seeing here, then, this was followed up by the bankruptcy of Solyndra. When was that bankruptcy filed?

Mr. SILVER. I don't know the specific date but sometime in early September.

Mr. DINGELL. All right. Now——

Mr. STEARNS. The gentleman—it is September 6 of this year is the bankruptcy.

Mr. DINGELL. Thank you, Mr. Chairman. I would note that the bankruptcy, though, is not complete. It is going to throw Solyndra into reorganization. Is that right?

Mr. SILVER. I believe so.

Mr. DINGELL. So the end result of that will be that the United States will be a creditor, right?

Mr. SILVER. I am sorry, will be what?

Mr. DINGELL. The United States will be a creditor?

Mr. SILVER. A creditor, yes. I am sorry. Um-hum.

Mr. DINGELL. And now, the practical result of that is that, first of all, we have done things to get ourselves in a position where we see that Solyndra had a chance, at least during this, to provide jobs, put forward a new technology in the United States. Is that right?

Mr. SILVER. Yes, sir. The value—the analysis that produced the going concern valuation suggested that it was a 2 to 4x greater recovery likely to the taxpayer than a liquidation analysis.

Mr. DINGELL. OK. And during that time, the buildings and so forth were completed?

Mr. SILVER. Yes.

Mr. DINGELL. Is that right? And I want to thank you, Mr. Chairman, for your courtesy here, but I just got just a couple more small questions.

I would note that the government's chance of recovery from that reorganization are better both in amount and certainty than if we had seen Solyndra go into bankruptcy earlier, is that right?

Mr. SILVER. We expect so. We will have to see what happens actually in the bankruptcy process, but we have a completed and operating plant fully fitted out, inventory and all kinds of things that did not exist during the first restructuring.

Mr. DINGELL. Very good.

Mr. Chairman, you are very kind. Thank you for your courtesy.

Mr. STEARNS. The gentleman's time has expired. Then we recognize the gentleman from Texas, Dr. Burgess, for 5 minutes.

Mr. BURGESS. Thank you, Mr. Chairman.

Gentlemen, I appreciate your perseverance and endurance in the hearing today.

This morning's Washington Post references an email exchange between an assistant to Rahm Emanuel, then the White House Chief of Staff, August 31 of 2009, to the Office of Management and Budget about the upcoming announcement where we talked about this before. This was the groundbreaking where Secretary Chu was going to be at the company on September 4 and Vice President Biden was going to appear by satellite. And this staffer was concerned about the upcoming Biden announcement on Solyndra and asked whether there is anything we can do to help speed along the OMB side? And an OMB staffer responded, "I would prefer this announcement be postponed. This is the first loan guarantee that we should have full review with all hands on deck and make sure we get it right." I mean that seems pretty reasonable from OMB.

Now, when the OMB staff briefed committee staff last spring, well, there was, as you know, quite a lot of difficulty in getting any of these documents to the committee staff from OMB. It took 4 months to get any emails or communications in reviewing Solyndra's loan guarantee. And in fact this committee in July had a business meeting to subpoena those documents because we were having no success in acquiring those. And now we have them and

we see that the White House scheduled announcement date before the OMB even began reviewing the deal in August 2009, we also see that OMB was aware that the groundbreaking event and it felt time pressures to do their work possibly resulting in the use of a wrong financial model. Is this why the committee had to subpoena the documents? Was there something here that you didn't want us to see?

Mr. ZIENTS. Can I see the email that you are referring to?

Mr. BURGESS. Well, actually, it is a Washington Post article from this morning, but I am sure we have the same emails in the document binder that can be provided.

Ms. DEGETTE. Mr. Chairman, give him the email.

Mr. STEARNS. Gentlemen, continue. The gentleman has the time.

Mr. BURGESS. Well, they are looking for the emails and we will come back to that. Let me just ask for both of you, would you be able to provide to this committee, not today but get back to us and provide the names to the committee of every career and political appointee at both Department of Energy and Office of Management and Budget and the West Wing who worked on the project or inquired about the project and provide access to committee staff to any of those individuals that the committee believes is necessary to question for this investigation.

Mr. ZIENTS. OMB has been cooperating with the committee——

Mr. BURGESS. Sir, we subpoenaed the documents in July. You can't characterize that as cooperation.

Mr. ZIENTS. A few days before the subpoena, which we thought was unnecessary, we turned over——

Mr. BURGESS. Unnecessary? We had this hearing——

Mr. ZIENTS [continuing]. 1,000 pages——

Mr. BURGESS [continuing]. And your chair was empty in July. Your chair was empty. There was no one there. No one responded.

Mr. ZIENTS. Well, as to that, I was given less than 4 days' notice. I had a personal reason why I could not be here. I expressed to Chairman Stearns directly on the telephone that I was willing to come if there could have been an alternative time. The decision was made there was no alternative time but I want to be clear that I was willing to come to the committee as long as I had either sufficient notice——

Mr. BURGESS. In the sense of time, I mean this has been going on for a long time.

Mr. ZIENTS. So in——

Mr. BURGESS. And here is the thing that is really concerning a lot of us. Had you responded to the committee staff, had you responded to the committee's request, could we perhaps have preserved some of those taxpayer dollars that have now been lost in a bankruptcy proceeding and subordinated to a venture capital firm?

Mr. ZIENTS. Prior to——

Mr. BURGESS. Had there been cooperation from your office, would this loss to the taxpayer have been as great?

Mr. ZIENTS. Prior to the subpoena, which I believe was mid-July, OMB worked with committee staff, turned over 1,000 pages of documents, did numerous meetings. Since mid-July OMB has turned over over 9,000 pages of documents. There have been——

Mr. BURGESS. Yes, sir, I have got to interrupt you because I am going to run out of time. That letter was in March and it took a long time to get anything back.

Mr. ZIENTS. I am sorry?

Mr. BURGESS. I have a couple of things—and you have gotten now the emails. I am going to ask you to take those and we will get you the question in writing, and I would appreciate a response to that question——

Mr. ZIENTS. I am sorry, can you repeat the question?

Mr. BURGESS. Well, I am going to submit the question to you in writing regarding those emails so we are all clear about what we are asking and what we are answering. And then I also have a memo from October 25 of 2010 to the President from Carol Browner, Ron Klain, and Larry Summers. And I have a series of questions that I want to ask you about this memo as well, and because of time constraints, obviously, I can't get to them. We will provide you this memo and we will provide you the questions. And I would appreciate a timely response to those interrogatories. Thank you.

Mr. ZIENTS. Thank you.

Mr. BURGESS. And I will yield back, Mr. Chairman.

Mr. STEARNS. The gentleman yields back.

Mr. Scalise is recognized for 5 minutes.

Mr. SCALISE. Thank you, Mr. Chairman.

I want to ask Mr. Zients—is that the proper way to say it? I want to get that right.

Mr. ZIENTS. Thank you.

Mr. SCALISE. Sure. You were at OMB throughout this whole process with Solyndra from when they got the original loan?

Mr. ZIENTS. No.

Mr. SCALISE. When did you come into OMB?

Mr. ZIENTS. When I came into OMB I was confirmed by the Senate in late June of 2009. So the conditional commitment period, the earlier administration period I was not at OMB.

Mr. SCALISE. And when was the loan to Solyndra finalized?

Mr. ZIENTS. In September so I was there——

Mr. SCALISE. So you were there at OMB——

Mr. ZIENTS. I was at OMB at the time. I was not——

Mr. SCALISE. At the time that Solyndra first got the loan, first was approved——

Mr. ZIENTS. When it closed, yes.

Mr. SCALISE [continuing]. For and got the loan.

Mr. ZIENTS. When it closed.

Mr. SCALISE. Following up on some of the questions that Dr. Burgess had——

Mr. ZIENTS. Just to clarify, I was not personally involved in——

Mr. SCALISE. Well, and these are the questions that I am going to ask you about because there is involvement between OMB and the Department of Energy and the White House, and what we have been trying to establish is just exactly what was that relationship between OMB, the Department of Energy, and the White House relating to the Solyndra loan? And of course, we did start asking for this information months ago. Prior to the restructuring—and your office was not complying and getting us some of the information we were requesting to the point we did have to subpoena. And there

is a timeline issue that a lot of us have concerns with, too, because if we were able to stop the restructuring from happening, for example, then the taxpayers would not have been pushed in the back of the line to where now they are subordinated in bankruptcy——

Mr. ZIENTS. Just so we have our timelines correct, I believe that the restructuring was completed in February.

Mr. SCALISE. And our staff started asking for some of this documentation prior to that time.

Mr. ZIENTS. Is that—that is not my understanding.

Mr. SCALISE. That is the timeline I have. But regardless of that, I want to get to some of these specific emails because these emails span throughout the entire length of the Solyndra loan and restructuring, and it seems to indicate a pattern. Starting going back in Slide 7 if we can put that up and that way you can see it—and by the way, these emails were all provided to the minority as soon as we got them. So everybody had access to these emails on this committee and subcommittee.

Ms. DEGETTE. Does the witness have these emails that Mr. Scalise is referring to?

Mr. SCALISE. I think they just gave him these emails. Some of these came from——

Mr. ZIENTS. I don't think that——

Mr. SCALISE [continuing]. His own agency, of course. Some of these are from OMB.

Mr. ZIENTS. Talking about specific emails, I agree with the Congresswoman——

Mr. SCALISE. Well, and I want to ask you a question about this email. I think it does show though—what I want to do is show that there was a pattern of expediency, of rushing——

Ms. DEGETTE. Does the witness have this email?

Mr. STEARNS. Point of order? What is your point of order?

Mr. ZIENTS. I do—if I am going to respond to an email, I need to make sure I have it.

Mr. STEARNS. Does Mr. Zients have that?

Mr. SCALISE. Mr. Chairman, is the clock still running? If we can just get the clock to stop while——

Mr. STEARNS. Well, we gave you about 2 minutes before you even started the clock, so you are well into it. But now the witness has the emails, is that correct?

Mr. ZIENTS. I am going to need to absorb this. What he has just handed me is not what is on the screen. I can look through and see——

Mr. SCALISE. Page 7, I will read the quote. "In congressional testimony"—and by the way this is congressional testimony. This isn't some email that we just got. This was testimony going back to March of 2009, a senior Department of Energy official said that Secretary Chu "has directed us to accelerate the process significantly" talking about the loan process. And I will go to some OMB emails. Of course, on page 9 on Slide 9——

Mr. ZIENTS. The email I have in front of me to the best of my knowledge—and again, I wasn't actually in seat on March 17, 2009, but to the best of my knowledge doesn't have any OMB people on it, so it is very difficult——

Mr. SCALISE. Right, but there is a March of 2009 email on Slide 9, "this deal is not ready for prime time." Go to the next slide. "Given the time pressure we are under to sign off on Solyndra, we don't have time to change the model"—that is an OMB staff email from August of 2009 after you came on board. Another quote from that same email, "but we also need to make sure they don't jam us on later deals so there is a time to negotiate those, too." Next page——

Mr. ZIENTS. So——

Mr. SCALISE [continuing]. More OMB emails. And I will ask if I want to get all of these into record. Again, they are available to both committee staffs. "If there is anything we can help speed along on the OMB side"——

Mr. ZIENTS. If I am going to respond, then I need to—we need to as we go case by case, I need to understand what email you are referring to, I need to have that email in front of me——

Mr. SCALISE. Sure. There is a communication on Slide 11, for example, August 31, 2009, the special assistant noted the Vice President's announcement at Solyndra on September 4 and whether "there is anything we can help speed along on OMB side." So were you involved? And forget about the emails. Were you involved in any communications with the White House to push the Department of Energy to speed this thing along?

Mr. ZIENTS. No.

Mr. SCALISE. You were not?

Mr. ZIENTS. No.

Mr. SCALISE. Were you aware that anyone else at OMB was involved——

Mr. ZIENTS. I am now aware in my preparation for the hearing that there was a request from the Vice President's office about scheduling logistics for a potential event. This again has nothing to do with the decision to give the loan or not give the loan to the company. This process has to do with OMB's statutory responsibility to determine the right credit subsidy. The right—the credit subsidy was actually increased during——

Mr. SCALISE. Well, then I don't know if that was credit subsidies. I will go to Slide 12 because this is specifically an OMB email and I will read it and you can look at it.

Mr. ZIENTS. Well, OMB——

Mr. SCALISE. This is an OMB email that specifically talks about the approval. "We have ended up with a situation of having to do rushed approvals on a couple of occasions, and we are worried about Solyndra at the end of the week. We would prefer to have sufficient time to do our due diligence reviews and have the approval set the date for the announcement rather than the other way around." This was a communication between OMB and Terrell McSweeny at the office of the Vice President.

Mr. ZIENTS. This does have to do with the credit subsidy score. This does not have to do with the yes/no on the loan. This has to do with the credit subsidy score. As I mentioned before, the credit subsidy score was actually increased——

Mr. SCALISE. Right. And so the question, then—and I am almost out of time——

Mr. ZIENTS. Let me just say one thing.

Mr. SCALISE. There is clear——

Mr. ZIENTS. In my preparation for this hearing——

Mr. SCALISE [continuing]. Communication between OMB and the White House and Department of Energy regarding all this, whether it was just about a ribbon cutting, but I think it shows that crony capitalism is running amok relating to this program. And I think this is a classic example. And there was a PricewaterhouseCoopers study that was done back in 2010. USA Today writes about it in an article, in an editorial today when they talk about PricewaterhouseCoopers saying there is substantial doubt about its ability to continue going as a concern, Solyndra. And so this was over a year ago they reported a serious concern about Solyndra going forward and obviously——

Mr. ZIENTS. That is——

Mr. SCALISE [continuing]. That was pushed back from the administration somewhere to push this thing along.

Mr. ZIENTS. I am sorry. The chronology of events is not consistent. You are asking about a period of time in August/September of 2009. You are now referencing——

Mr. SCALISE. I am going throughout the whole process. I am not just focusing——

Mr. ZIENTS. You are now referencing——

Mr. SCALISE [continuing]. On one area because there was a loan, there was a restructuring. There has continued to be——

Mr. ZIENTS. To respond to your question about——

Mr. SCALISE [continuing]. Advancements of plenty and yet there were warning signs at every level, and yet it seems like crony capitalism was trumping the smart decision-making process and due diligence that should have been going on and a lot of these emails show that out to be the case. And yet $535 million of taxpayer money are now at risk. And so I hope you can understand and maybe you weren't directly involved but somebody at your agency was——

Mr. STEARNS. The gentleman's time has expired.

Mr. SCALISE [continuing]. In that chain. I yield back.

Mr. STEARNS. The gentleman from—Mr. Griffith is recognized for 5 minutes. Oh, Mr. Markey. Mr. Markey, do you wish to ask questions in the second round? Yes, I mean you are up if you want to go right now.

Mr. MARKEY. May I reserve this time?

Mr. STEARNS. OK. You can reserve, yes. Mr. Griffith from Virginia is recognized for 5 minutes.

Mr. GRIFFITH. Mr. Chairman, I already had a second round. I am glad to take a third round.

Mr. STEARNS. OK. Then we can go to the gentleman who is not on the subcommittee but he is on the full committee, the gentleman from Kansas is recognized for 5 minutes.

Mr. POMPEO. Thank you, Mr. Chairman.

Mr. Zients, following up on Representative Scalise, were you not aware that the staff was being jammed, that they were being rushed? Were you at any time aware that they were being hurried and that they felt hurried or were you just oblivious to that?

Mr. ZIENTS. What period of time are we talking about?

Mr. POMPEO. At any. How about we will start at any——

Mr. ZIENTS. No.

Mr. POMPEO [continuing]. Period of time.

Mr. ZIENTS. So I was not involved so I would not have been aware at the time. In my preparation for this hearing——

Mr. POMPEO. Um-hum.

Mr. ZIENTS [continuing]. I talked to OMB staff, and again, what we are talking about here is the credit subsidy.

Mr. POMPEO. I understand.

Mr. ZIENTS. And on the credit subsidy, the OMB staff has presented to me that they had no hesitation as to the final decision, and the final decision of the credit subsidy actually increased the credit subsidy——

Mr. POMPEO. Right.

Mr. ZIENTS [continuing]. Which made it more conservative.

Mr. POMPEO. Right, they could still have been wrong because they were hurried. Do you think these emails, they were just wrong, they were making this stuff, they weren't hurried? When they——

Mr. ZIENTS. At the end of the day, the OMB career staff, which has deep expertise in credit scoring, felt comfortable——

Mr. POMPEO. Yes.

Mr. ZIENTS [continuing]. With the credit subsidy score.

Mr. POMPEO. That expertise is very apparent in a half a billion dollars being lost by the American taxpayer. It is readily apparent to us.

Mr. Zients, there is a January 4 memorandum I want to just read to you. It is an OMB memorandum prepared by the OMB staff. It says, "even under DOE's proposed restructuring, we are skeptical about the long-term viability of the company. Bankruptcy or default are real possibilities and Solyndra's product is priced at a premium in the market with rapidly declining prices and the company's cost structure does not cover operating margins. It is not clear that Solyndra would be able to achieve the scale and efficiency improvements necessary to improve margins." This was during the restructuring time. Why did OMB not stop the restructuring from going forward?

Mr. ZIENTS. OMB——

Mr. POMPEO. Or recommend that?

Mr. ZIENTS. OMB pressure-tested DOE's analysis. OMB determined that the company was in imminent default, and then OMB determined that DOE's recommendation that the company be restructured was preferable to liquidation, that that was a reasonable outcome that DOE had reached.

Mr. POMPEO. Would you please provide the witness, there is a series of emails in and around that same time, January 4, 2011, one of them at 2:08 p.m.? Can you just make sure he has got a copy of that? Thank you.

I will summarize but this is an email chain where it is very clear that the data are suggesting to staff at this moment in time that liquidation will cost the taxpayers a lower loss than will restructuring. Do you see, it says liquidation—it is underlined, it has got some analysis for expected recovery, and then it shows "restructured, expected loss." The difference under bankruptcy at the time they expected losses estimated by this person on your staff to be

$141 million, and it says if we do the restructuring, your staff says it will be about $385 million loss. Do you see what I am referring to there?

Mr. ZIENTS. Yes. I am not on this email chain but——

Mr. POMPEO. No, sir, you are not, but they work for you.

Mr. ZIENTS. I am sorry?

Mr. POMPEO. You are not on the chain but they work for you.

Mr. ZIENTS. Right. So, you know, our staff is obviously pressure-testing and understanding an evolving situation, the restructuring was actually done in February——

Mr. POMPEO. Right.

Mr. ZIENTS [continuing]. Off of DOE's recommendation. OMB decided that that was reasonable. At this point in time, there was information that the staff was looking at. The information obviously evolved across that period of time. As OMB got more information, the DOE made its final recommendation. OMB determined that DOE's recommendation was reasonable to restructure the loan.

Mr. POMPEO. Can you show me that evolution because there is no evidence in the documents I have reviewed of any evolution. This is what your agency though on January 4 of 2011, and I have seen no data that would suggest there was an evolution other than your testimony here this morning.

Mr. ZIENTS. Well, first of all, this is an email from one analyst——

Mr. POMPEO. Multiple emails.

Mr. ZIENTS. I would not represent——

Mr. POMPEO. Read the whole——

Mr. ZIENTS [continuing]. That that is to what the agency——

Mr. POMPEO. Read the whole chain, sir. These folks think this is a horrible idea to go forward with this restructuring. They think the taxpayers will lose. And these are the only government officials in the entire process that seem to me to have demonstrated to have concern for taxpayer finances.

Mr. ZIENTS. OMB's role here is to make sure that this budgeted for correctly. Ultimately, DOE has—is ultimately responsible for the decision as to whether or not to restructure or liquidate.

Mr. POMPEO. Yes.

Mr. ZIENTS. OMB determined that that was a reasonable conclusion.

Mr. POMPEO. Do you think it was a reasonable conclusion today, sitting here today? Do you think it was a reasonable conclusion?

Mr. ZIENTS. It is unclear——

Mr. POMPEO. Well, what is your opinion, sir? Do you think it was a reasonable conclusion?

Mr. ZIENTS. To restructure the loan when it does?

Mr. POMPEO. Um-hum.

Mr. ZIENTS. I think that there is reason to believe that that was reasonable at that point in time.

Mr. POMPEO. Reason to believe it was reasonable and you are not a lawyer? I mean an answer like that——

Mr. ZIENTS. It was a reasonable conclusion at that point in time.

Mr. POMPEO. Mr. Silver, do you think it was a reasonable conclusion to do the restructuring at this time?

Mr. SILVER. Yes, I do, Congressman. We did a detailed liquidation analysis, which suggested that the returns would be 2 to 4x below what they would be as a going concern. And to do that, we evaluated the price of the buildings and the land. We also evaluated the value of inventory on a going concern basis. What you do on a going concern basis, just to be clear, is you match it with what are called IBA——

Mr. POMPEO. I am very familiar with that——

Mr. SILVER. So you use—and since you are, you will know that we scour the market for comparables. We took the low end of the comparables, and then we measured that against the liquidation.

Mr. POMPEO. So you were just wrong? But you still believe you might be right because——

Mr. SILVER. Well, you don't know what will happen——

Mr. POMPEO. Right. So what do you think? Do you think we did a good deal?

Mr. SILVER. I think that when you are called on to make a judgment at the time with the best available information you have, you go with the probabilistic return.

Mr. POMPEO. Right. And so you think it was realistic to subordinate the taxpayer at that time as well as part of that restructuring?

Mr. SILVER. Every piece of data that we had from independent analysts about the technology at that time—which we reunderwrote the technology and the market space. We had another market report done—all seemed to suggest that that could happen.

Mr. POMPEO. I appreciate it. I just want to ask one more question. My time is up. I have listened to you for several hours now, just yes or no, do you both just treat this as just the normal cost of doing business? Is that how you think this failure at Solyndra—you just think this was the normal cost of doing business? You talk about portfolio theory, this stuff happens, bad things happen. Would you both just say yes or no? This is just the way things go? Yes or no.

Mr. SILVER. I think that while it is very regrettable, the loss was anticipated and when Congress set out the credit—appropriated credit subsidy——

Mr. POMPEO. You think it is very normal. Mr. Zients?

Mr. ZIENTS. It is not normal. It is a very disappointing outcome, but it comes with the terrain of backing innovative technologies.

Mr. POMPEO. Yes, it is part of what happens when the government gets involved in things like this. I agree.

Mr. SILVER. Well, it is also what is required in order to compete successfully with what is happening around the world, particularly in China.

Mr. POMPEO. Solyndra certainly wasn't capable of competing even in spite of all of this government assistance, were they?

Mr. STEARNS. The gentleman's time has expired.

Mr. POMPEO. Thank you. Thank you, Mr. Chairman.

Mr. STEARNS. I think we are ready to close——

Mr. MARKEY. Mr. Chairman?

Mr. STEARNS. —end the committee unless the gentleman from Massachusetts wishes to participate in the second round.

Mr. MARKEY. Mr. Chairman? Mr. Chairman.

Mr. STEARNS. Oh, Mr. Bilbray, too. So Mr. Bilbray, you will be after the gentleman from Massachusetts. We have recognized Mr. Markey for 5 minutes.

Mr. MARKEY. Thank you, Mr. Chairman.

I have to compliment my Republican colleagues on their discipline, but after weighing these relentless and very serious allegations of lawbreaking and inappropriate politicization of the loan guarantee process, I am unconvinced. Three years of due diligence was exercised in considering this application. OMB completed their review process, albeit in expedited manner due to the nature of a Recovery Act that needed to get money out the door as quickly as possible. I would add that the chairman of the subcommittee and the full committee expressed a need to get Recovery Act money out the door quickly after that law was passed.

Mr. Silver, do you believe that the Department cut corners in considering this loan guarantee in the months and years leading up to its finalization in September of 2009?

Mr. SILVER. Again, with a review of the record—I wasn't there, but with a review of the record, no, I don't believe so.

Mr. MARKEY. Mr. Zients, was OMB able to do and exercise their oversight role to complete a comprehensive review of the Department of Energy's loan package to Solyndra?

Mr. ZIENTS. Yes. My belief is yes.

Mr. MARKEY. When you pulled thousands of pages of emails, can you tell whatever story you would like when you look back retrospectively? You know, we live life forwards but we understand it backwards. Is it possible to——

Mr. SILVER. I believe that——

Mr. MARKEY [continuing]. Create any storyline?

Mr. SILVER. I believe that can happen, yes, sir.

Mr. MARKEY. The majority has chosen to politicize this program and it is attempting to discredit clean energy the same way they have tried to do to climate science. It is that simple. That simple.

What this really reminds me of, to be honest with you, is the late 1990s after this committee had passed the Telecommunications Act of 1990 and there was a boom on broadband. And many companies failed. Pets.com., the list is long. On the other hand, there were companies that, in the new environment that we had created, were successful. EBay, Amazon, Google, YouTube, the list goes on. There were many successes, many failures because we created a paranoia-inducing Darwinian marketplace. What is different here, of course, and what no one anticipated in 2009—although we were in a competition with the Chinese—and by the way, when we passed the Telecommunications Act, we were trying to make sure we branded it Made in the USA, which we did. That is how people view that internet revolution in Egypt and Tunisia and countries around the world. But here, the Chinese have now decided to dump $20 billion into 4 companies. Can you talk about that, Mr. Silver? Can you talk about this environment now within which American solar companies, wind companies are now competing against a state-run set of corporations against our private-sector companies?

Mr. SILVER. Yes, Congressman, I would be happy to. Not only, as you pointed out, has China underwritten its solar manufacturing industry with tens and tens of billions of dollars, they have,

as I indicated earlier, produced and provided a wide array of additional support facilities including free land and other kinds of things. There are also mechanisms in place for the purchase of those panels in the domestic market that don't exist here.

But I don't think we should limit our focus to China alone. Countries around the world understand the importance and the viability of this space, and it is important that we take this as a global challenge. There will only be one opportunity for us to become a winner here and if we miss that window, we will have missed a multitrillion-dollar market.

Mr. MARKEY. I thank you. I think if we keep China here as the headline and we understand what we were trying to do in putting together a plan, we had a plan for telecom. China and the United States are pretty much starting at the same point in solar and wind. We were trying to put together a plan, batteries as well.

Let me also say this. You can look back and I can right now say there is an NRC senior scientist who has a memo to all the NRC commissioners saying that the AP1000, which is the reactor the Southern Company wants to build, will crack like a glass cup if there is an earthquake. Now, you can keep that memo and you can say that is the reason we should give no loan guarantees to the Southern Company or other companies. We can just say we waited in the totality of all the evidence.

I am hearing my Republican colleagues expressing a great deal of angst about whether or not a $535 million loan guarantee should have been given to Solyndra when there is no evidence that they have expressed any concerns about far larger guarantees that have been given to the Southern Company, to other companies that could in fact wind up with billions of dollars ultimately being put on the shoulders of the taxpayers in our country. And I am talking specifically about the nuclear sector. There is a fundamental crisis happening in Japan and Germany and other countries. We are part of a global story and it is impacting the domestic nuclear industry. Those loan guarantees could come back to haunt the taxpayers in our country and I hope that we see a similar interest in that subject, because that is happening right now. And now is the time for this committee to exercise the due diligence to protect the taxpayer.

Thank you, Mr. Chairman.

Mr. STEARNS. The gentleman's time has expired and the gentleman from California, Mr. Bilbray, is recognized.

Mr. BILBRAY. Yes, Mr. Chairman. Let me join with my colleague from Massachusetts and call for a hearing on the nuclear issue because I think, you know, the gentleman from Massachusetts has to remember that like just last week in San Diego, the plants shut down exactly as planned during a blackout exactly as posed to get the facts from Japan. And as somebody who has a nuclear facility in his county, I am more confident now of the safety of our technology than I was beforehand and remind the gentleman from Massachusetts that the beautiful bay of San Diego Bay is full of nuclear reactors being run by 20-something-year-old kids. And it is safer and cleaner because we have those reactors in San Diego Bay. But getting back to the issue here is that the technology was not keeping up with the hype. And as somebody that still feels strongly about the opportunity of clean technology, I think the inappropriate

application of political influence or perception—and I don't think this was an intentional misdeed. I think it is a much deeper problem that this was a prejudiced for a broad definition of technology as if somehow this was going to be the answer for everything.

First of all, let me clarify the gentleman from Massachusetts pointed out that China has been aggressive on this, I will remind you that this plant was cited where the electricity was 22 cents a kilowatt, twice of what it is in Ohio and where China is producing them in an area where there is 6 cents a kilowatt is what they are charging. So, Mr. Silver, all of this does relate to the productivity and the ability to compete in a world market, doesn't it?

Mr. SILVER. Yes. Certainly, citing issues are relevant.

Mr. BILBRAY. And shouldn't these things be considered along with the specific technology that is being proposed to provide a certain product by asking for the grant?

Mr. SILVER. Once again, Congressman, we don't provide grants, but I think what you mean is——

Mr. BILBRAY. The loan guarantee.

Mr. SILVER. The technologies that we underwrite are those that are spelled out in the legislation. We don't search out those that aren't.

Mr. BILBRAY. OK. I have a question for you specifically. This part of the stimulus bill, San Diego we are siting a French facility to build solar panels specifically because we have a stationary source. First thing we do is not try to build a new facility. California, as everyone knows, has had businesses fleeing. We have huge open warehouses, and the logic our mayor is making and we are making working with him is why don't we go ahead and retrofit existing structures rather than building one? The fact that this was proposing to take virgin farmland and go from the ground up and build all the construction of a whole new building with all the related so-called stimulus of building on virgin land on the ground up, did that have any influence in the fact that this was included in the stimulus bill, not just the green part of it, of the hope that all solar was going to be good, but the fact that you had a whole new factory being build in California, probably the only one even being considered? Do you think that had any influence on the approval of this process that the fact that they were capitalizing a whole new facility rather than retrofitting an existing one?

Mr. SILVER. I don't know how to answer that. The applications that we receive come in from the sponsors themselves, so the proposal, the project has already been put together by private sector actors, including the investors in whatever project it is.

Mr. BILBRAY. But that is in the prospectus.

Mr. SILVER. No, they are making—they are actually filing an application for a specific—funding for a specific project.

Mr. BILBRAY. But the technical review had that in consideration.

Mr. SILVER. Well, the technical review——

Mr. BILBRAY. That was part of the documentation they gave the Technical Review Board.

Mr. SILVER. The technical review is intended to ensure that the technology works, which clearly it did—they sold hundreds of millions of dollars worth of product—and to ensure that the plant will be built in such a way as to produce them appropriately.

Mr. BILBRAY. OK. So in other words, do you or do you not feel that the fact that they had a major capital improvement proposed in this package helped sell it as part of the stimulus package?

Mr. SILVER. I don't know the answer to that. We don't evaluate projects on the basis of their impact for non-project-specific activities. We manage them against a criteria and objectives of the program.

Mr. BILBRAY. OK. I am going to ask you again because you had time to talk to your staff about it. Are you aware or has anybody made you aware of your agency actually intervening about the siting of where production sites should be placed as a condition of getting the loan guarantee?

Mr. SILVER. I am not aware of that, no.

Mr. BILBRAY. OK. I would ask you to specifically ask that question and investigate that question.

Mr. SILVER. I am happy to do so.

Mr. BILBRAY. Because I have good information that that specifically has been made a condition of some grants, at least one, that the production line needs to built in a certain area and not in another area and that is something that has been documented to me very strongly. And I think it is real critical.

My biggest problem here, again, is that the perception that solar is good means all solar proposals are good and why don't we move it?

Mr. SILVER. Congressman, if I may, we received literally hundreds and hundreds of applications, dozens and dozens of solar——

Mr. BILBRAY. Let me just say that this was a half-a-billion-dollar mistake and I would ask that we point out that there was an action taken by your body under a justification of a legal definition that I think is a threat to both Democrats and Republicans that the word "is" is, and that for somebody to sit there and ignore the law and redefine the word "is" I think the American people are outraged that a half-a-billion-dollar issue was raised while legal jargon was ignoring the fact that the law is in there. And I don't think Democrat or Republican wants to have to add in every law that it will never happen.

I yield back to the gentleman.

Mr. STEARNS. The gentleman's time has expired. I think we have finished and we have had a very good discussion. I want to thank the witnesses.

Does the ranking gentlelady have any concluding comments before I wrap up?

Ms. DEGETTE. I want to thank the witnesses for coming today. I think we had a very spirited and interesting discussion about both the specifics of this deal and also the future of Federal Government's role in solar energy. I am very much looking forward to the testimony of the executives of Solyndra next week and I would hope, Mr. Chairman, that we can have a more orderly way of presenting documents.

Mr. MARKEY. Would the gentlelady yield?

Ms. DEGETTE. I yield, sure.

Mr. STEARNS. Well, we are just trying to conclude this——

Mr. MARKEY. Through the gentlelady I would like to urge that we have a hearing on the risk premium which DOE and OMB are

charging to the nuclear industry for loan guarantees post-Fukushima and post the Wall Street reassessment. This is happening right now. We should get ahead of this issue and hold these hearings.

Mr. STEARNS. I will take that under advisement.

Let me conclude by just saying to both of you that I think you should, based upon what I hear today, go back and look at all solar panel projects of stimulus package. I think when you realize that the solar industry is truly dependent on subsidies and the government pays about 30 percent of the cost of businesses to invest, consumers get a federal tax credit of $2,000 for their renewables, States are throwing in a hefty portion of additional incentives, and they are offering a subsidy of residential solar as much as $2.50 per installed watt, and you look at all of this and you do the analysis, even at $140 a barrel, the idea that solar panels are going to break even is questionable. So I think with that, particularly in light of what is happening in China, I think your office would be well to look at all the other stimulus package dealing with photovoltaic cells.

And with that, the subcommittee is adjourned.

Mr. BURGESS. Mr. Chairman?

Mr. STEARNS. Yes?

Mr. BURGESS. May I just ask a question before adjourning? Our written questions will be permitted and they will be responded to and included in the record?

Mr. STEARNS. They will. They will be. And the witnesses will be responsible for answering these questions under the order of the House.

Mr. BURGESS. And further, Mr. Chairman, I am grateful we have the CEO and CFO of Solyndra coming in. I think it is very important that we have the Secretary of Energy and the chairman——

Mr. STEARNS. I think Secretary Chu should be invited, I think he should attend, and because the questions both sides have brought up, I think his credibility on this project should be part of the witness process. And so I think——

Mr. BURGESS. Secretary Lew as well?

Mr. STEARNS. Secretary Lew as well, yes.

Mr. BURGESS. All right. Thank you.

Mr. STEARNS. Thank you. Subcommittee is adjourned.

[Whereupon, at 1:38 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

Congressman Marsha Blackburn
Opening Statement for Energy and Commerce
Oversight & Investigations Subcommittee
"Solyndra Bankruptcy"
September 14, 2011

Thank you Mr. Chairman.

First let me say, Mr. Zients, thank you for coming here this morning. All it took was a subpoena, a declared bankruptcy, and a FBI raid to get you to finally appear before this committee.

On August 31st Solyndra, the recipient of a $535 million stimulus DOE loan guarantee, delivered American taxpayers another economic blow by declaring bankruptcy and laying off 1,100 employees.

From the very beginning this Administration was completely blinded from red flags and warning signs that were well documented long before Solyndra declared bankruptcy. Warning signs such as high product costs, a 2008 Fitch Ratings evaluation, a PricewaterhouseCoopers audit warning of recurring losses from operations and negative cash flows since inception and raised concerns from DOE and OMB employees. These warnings did not deter this Administration but only encouraged Vice President Joe Biden to exclaim that "this is what the recovery act is all about."

The Administration's refusal to acknowledge any warning signs reminds me of the Bruce Springsteen song, "Blinded by the light." Only in this case the light that easily blinded this Administration was reflecting off of a Solyndra solar panel.

Solyndra is not the first example of a high risk, new and expensive commercially unproven product in a volatile market that has failed with government financing nor will it be the last. It is my hope that we can use this hearing today to examine the failings of Solyndra, the loan guarantee process, and examine other loan guarantee recipients- some which have received billions in government financing - to determine how many more taxpayer funded companies are at risk of collapse.

Thank you Mr. Chairman and I yield back.

ENERGY POLICY ACT OF 2005

SEC. 1702. TERMS AND CONDITIONS

(d) REPAYMENT

(1) IN GENERAL.—No guarantee shall be made unless the Secretary determines that there is reasonable prospect of repayment of the principal and interest on the obligation by the borrower.

(2) AMOUNT.—No guarantee shall be made unless the Secretary determines that the amount of the obligation (where combined with amounts available to the borrower from other sources) will be sufficient to carry out the project.

(3) SUBORDINATION.—The obligation shall be subject to the condition that the obligation is not subordinate to other financing.

1

Solyndra Fab 2, LLC Credit Committee Recommendation

From: Chairman Loan Guarantee Credit Committee

To: Director Loan Guarantee Program Office

Subject: Credit Committee Recommendation re: Solyndra Fab 2 LLC, solar photovoltaic power panel project for a loan guarantee of $ 535,000,000.

On January 9, 2009, the Credit Committee convened to consider the referenced project for a loan guarantee of $535,000,000 under Title XVII of the Energy Policy Act of 2006.

On January 9,2009, following a presentation to the Credit Committee and further deliberations among its members, the committee reached the following conclusions:

- The apparent haste in recommending the project meant that certain LGPO credit procedures were not adhered to. Of particular concern were the receipt of the Final Credit Committee Paper and Credit Committee policies and procedures without the requisite advanced notice.
- While the project appears to have merit, there are several areas where the Information presented did not thoroughly support a finding that the project is ready to be approved at this time;

  1. There is presently not an independent market study addressing long term prospects for this specific company beyond the sales agreement already in place. Since the independent credit assessment raised the issue of obsolescence in marketing this project it is important to have an independent analysis of that issue, as well as the current state of the competitive market.
  2. While the sales agreement is said to have been analyzed by the outside legal advisor assigned to this case, the committee did not have access to this document
  3. There are questions regarding the nature and the strength of the parent guarantee for the completion of the project.
  4. While it is encouraging to see the apparent progress in the development of the product at the Fab 1 facility, there is concern regarding the scale-up of production assumed in the plan for Fab 2.

The Credit Committee is appreciative of the hard work done by the origination staff, but believes that the number of issues unresolved makes a recommendation for approval premature at this time. Therefore, the committee, without prejudice, remands the project to the LGPO for further development of information addressing the issues outlined above.

"The Credit Committee is appreciative of the hard work done by the origination staff, but believes that the number of issues unresolved makes a recommendation for approval premature at this time. Therefore, the committee, without prejudice, remands the project to the LGPO for further development of information addressing the issues outlined above."

--Credit Committee Recommendation
January 9, 2009

- January 9, 2009: Bush Administration DOE Credit Committee remands Solyndra application, calling it premature and citing a number of unresolved issues.

- January 20, 2009: Obama Inauguration

- January 26, 2009: Email - a DOE staff member states that "we are approaching the **beginning** of the approval process for Solyndra again," and goes on to list the credit questions that remain unresolved in the deal.

4

- An email between DOE staff dated August 19, 2009, stated that "we still have a major outstanding issue . . . . The issue of working capital assumptions has been a major issue repeatedly raised since December [2008]."

  -August 19, 2009, email between DOE regarding "Solyndra"

- An email the following day states that "The issue of working capital remains unresolved. . . . the issue is cash balances, not cost. [Solyndra] seems to agree that the model runs out of cash in Sept. 2011 even in the base case without any stress. This is a liquidity issue." The DOE staff member went on to ask "how we can advance a project that hasn't funded working capital requirements and that generates a working capital shortfall of $50 [million] when working capital assumptions are entered into the model?"

  -August 20, 2009 email between DOE staff regarding "FW: Solyndra: Responses to Credit Analysis

"The true engine of economic growth will always be companies like Solyndra."

– President Obama, May 25, 2010

"This announcement today is part of the unprecedented investment this Administration is making in renewable energy and exactly what the Recovery Act is all about."

–Vice President Biden, Solyndra Groundbreaking Event, September 4, 2009

"We are confident they can repay the loan."

— DOE Secretary Steven Chu, March 3, 2011, after the Solyndra loan guarantee was restructured

- In Congressional testimony on March 19, 2009, DOE Senior Advisor Matt Rogers stated that Secretary Chu "has directed us to accelerate the process significantly and deliver the first loans in a matter of months, while maintaining appropriate oversight and due diligence to protect taxpayers' interests."

--Testimony of Matthew Rogers, Senior Advisor, U.S. Department of Energy, before the Subcommittee on Investigations and Oversight, Committee on Science and Technology, March 19, 2009.

- A statement released after the DOE Credit Review Board (CRB) voted to offer a loan guarantee to Solyndra stated that these improvements in loan processing "allowed the Department of Energy to offer its first loan guarantee within the first two months of the Obama Administration."
  - --March 17, 2009 email between DOE staff regarding Urgent--- Draft Solyndra press release."

In early March, OMB staff exchanged an email stating that "DOE staff just told me that there's a 99 percent certainty that President Obama, on **March 19** in California for other reasons, will announce that DOE is offering a loan guarantee to Solyndra. As far as I can tell the obligation won't be entered into until May, but once the President endorses it, I doubt seriously that the Secretary will withdraw for any reason."

-- March 6, 2009, email between OMB staff regarding "Title XVII."

On the same day, Ronald Klain, then-Chief of Staff to Vice President Joe Biden, sent an email to OMB staff and asked "[c]an we chat on Monday about the DOE flag in here on Solyndra . . . . If you guys think this is a bad idea, I need to unwind the W[est] W[ing] QUICKLY."

--March 7, 2009, email between Ronald Klain and OMB staff.

8

- "this deal is NOT ready for prime time," and explained that the deal could not be finalized by March 19 as OMB approval steps had yet to be completed.

--March 10, 2009, email between OMB staff regarding "RE: Solar co loan announcement in northern california."

- "[g]iven the time pressure we are under to sign-off on Solyndra, we don't have time to change the model."

- "[a]s long as we make it crystal clear to DOE that this is only in the interest of time, and that there's no precedent set, then I'm okay with it. But we also need to make sure they don't jam us on later deals so there isn't time to negotiate those, too."

-August 27, 2009, email between OMB staff regarding "Final Solyndra Credit Subsidy Cost."

10

- In an email dated August 31, the special assistant noted the Vice President's announcement at Solyndra on September 4, and whether "there is anything we can help speed along on OMB side."
- That OMB staff member responded that "I would prefer that this announcement be postponed. . . . This is the first loan guarantee and we should have full review with all hands on deck to make sure we get it right."

--August 31, 2009, email between DOE and OMB in advance of groundbreaking

"We have ended up with a situation of having to do rushed approvals on a couple of occasions (and we are worried about Solyndra at the end of the week). We would prefer to have sufficient time to do our due diligence reviews and have the approval set the date for the announcement rather than the other way around."

August 31, 2009, email between OMB and Terrell McSweeny of the Office of the Vice President, regarding "DOE Announcement."

"[w]hile the company *may* avoid default with a restructuring, there is also a good chance it will not. . . . At that point, additional funds would have been put at risk, recoveries *may* be lower, and questions will be asked . . . ."

–January 31, 2011, email between OMB staff regarding "Solyndra Optics" (emphasis in original).

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

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Minority (202) 225-3641

January 11, 2012

Mr. David G Frantz
Director
Loan Programs Office
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Mr. Frantz:

On September 14, 2011, Mr. Silver testified at the Subcommittee on Oversight and Investigations hearing entitled "Solyndra and The DOE Loan Guarantee Program." During the hearing Mr. Silver committed to working with the Subcommittee to provide information to continue its investigation. Due to Mr. Silver's resignation and your appointment as Executive Director the Subcommittee is submitting Members' additional questions to you.

The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and then (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please email your responses, in Word or PDF format, to the legislative clerk (Carly.McWilliams@mail.house.gov) by the close of business on Thursday, January 26, 2012.

Sincerely,

Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations

cc: The Honorable Diana DeGette, Ranking Member,
Subcommittee on Subcommittee on Oversight and Investigations

Attachment

QUESTIONS FROM CHAIRMAN CLIFF STEARNS

Q1. Which individuals at the Department of Energy (DOE) discussed with Solyndra personnel the issue of delaying the announcement of layoffs until after the midterm elections in November 2010?

a. Did anyone from DOE discuss this issue with anyone from the Executive Office of the President?

b. Please provide all documents and communications referring or relating to this request.

A1a-b. DOE has referred this matter to the Department's Inspector General, and has not learned the outcome of any resulting inquiry. DOE would be willing to brief the Committee on the results of any such inquiry when it has been completed.

Q2. With whom from the White House, outside of OMB, did Jonathan Silver discuss the restructuring of the Solyndra loan guarantee from October 2010 through March 2011? Please provide all related documents and communications.

A2. Jonathan Silver is no longer employed at the DOE. Nevertheless, DOE has produced more than 192,000 pages of documents to the Committee responsive to this inquiry, including several hundred emails sent by or to Mr. Silver, and is continuing to review for documents responsive to the Committee's inquiry. As those emails reflect, at no time did White House officials direct the Department to take or not to take any action relating to the proposed restructuring. On the contrary, the decision to restructure Solyndra's loan guarantee in February 2011—like the decision to issue a conditional commitment in March 2009 and to finalize the loan guarantee in September 2009—was made by the Secretary on the merits in order to advance the goals of ARRA and Title XVII of Energy Policy Act of 2005 (EPAct) and to secure the maximum possible benefit for taxpayers.

Q3. With whom from the White House, outside of OMB, did Jonathan Silver discuss the financial condition of Solyndra during 2010?

A3. Jonathan Silver is no longer employed at the Department of Energy. Nevertheless, DOE has produced more than 192,000 pages of documents to the Committee responsive to this

inquiry, including several hundred emails sent by or to Mr. Silver, and is continuing to review for documents responsive to the Committee's inquiry. Those emails reflect communications during 2010 between Mr. Silver and White House officials including officials in the Office of the Vice President, the National Economic Council, and the Office of Energy and Climate Change. More importantly, as the emails reflect, at no time did White House officials direct the Department to take or not to take any action relating to the decision to issue the conditional commitment or to finalize the loan guarantee to Solyndra. On the contrary, the decision to issue a conditional commitment to Solyndra in March 2009 and to finalize the loan guarantee in September 2009—like the decision to restructure the loan guarantee in February 2011—was made by the Secretary on the merits in order to advance the goals of Title XVII of Energy Policy Act of 2005 (EPAct) and secure the maximum possible benefit for taxpayers.

Q4. Rep. Scalise asked Mr. Silver to provide names of individuals included in the decision-making process to restructure the loan, including White House officials. Silver replied, "We will work with you to provide you what you need." Please provide this list.

A4. The Department's decision to restructure Solyndra's loan guarantee in February 2011 was made by the Secretary when on February 22, 2012, he signed an action memo approving the restructuring. A copy of the memo is provided for the record. Throughout the Committee's investigation, DOE has worked with the Committee to identify all DOE employees involved with the Solyndra transaction, and to provide communications to and from those employees to the Committee.

Q5. Did Silver ever use a non-governmental email account to communicate on matters relating to Solyndra or the loan guarantee program? If so, please provide that email address or addresses and copies of all such emails.

A5. The documents produced to the Committee show that on occasion DOE staff and

consultants, including Mr. Silver, used non-governmental email accounts in the normal course of business to communicate on matters relating to the loan guarantee program. Throughout the course of our productions, we have provided such emails in the Department's custody to the Committee in unredacted form and will continue to do as we continue our search for additional responsive documents.

Q6. It is apparent that one of Solyndra's strategies to obtain additional capital was to have government entities purchase their panels. On July 14, 2010, Jonathan Silver connected former Solyndra CEO, Chris Gronet, with Bob Peck, Commissioner of Public Buildings at the General Services Administration (GSA), asking him to meet with Solyndra and that Silver would "personally appreciate it." Did Silver discuss this outreach with anyone at DOE and/or the White House at any time?

a. Did Silver ever discuss the prospect of Solyndra procuring government contracts with anyone at DOE and/or the Executive Office of the President?

b. Has Silver, or anyone else from DOE, contacted the Department of Defense (DOD) or GSA on behalf of or relating to other loan guarantee recipients?

c. If so, please provide all documents and communications referring or relating to such communications.

A6a-c. DOE regularly provides businesses, industries, universities and other stakeholders with information on the programmatic and financial resources of the Department as well as our local, state, and federal partners. DOE furthers its mission by facilitating these stakeholders' efforts to address the economic, energy, and environmental challenges confronting the United States. DOE has no control over the General Service Administration's (GSA) purchasing decisions. In addition, any entity seeking to obtain a GSA contract to supply goods or services must follow all applicable rules, policy and procedures set out in the Federal Acquisition Regulation (FAR), the principal set of rules in the Federal Acquisition Regulation System and the Defense Federal Acquisition Regulation Supplement, issued pursuant to Office of Federal Procurement Policy Act of 1974. As the FAR's Statement of Guiding Principles for the Federal

Acquisition System lays out, its purpose is to promoting competition, minimize administrative operating costs, and conduct business with integrity, fairness, and openness while fulfilling the public policy objectives of the United States (48 CFR 1.102). At this time, DOE is unaware of any additional contact between any LPO official and DOD or GSA on behalf of a loan guarantee recipient. LPO officials did have contact with DOD officials in the course of the LPO's evaluation of an application for a loan guarantee for a project that involved the installation of solar rooftop panels on privatized housing for military personnel. No loan guarantee was issued for that project, and, to the best of DOE's knowledge, the contact was made solely for purposes of completing the LPO's underwriting analysis. If the Department identifies additional examples, we will work to provide that information to the Committee.

Q7. Silver stated in his testimony, "the [loan] program was specifically designed to support next-generation energy projects, which involved technology and market risks that private sector lenders often cannot or will not underwrite." He went on to state that "We have actually only done four manufacturing projects in the 40-odd projects we have done across the program."

a. Were the twelve solar generation projects with long term power purchase agreements included in the portfolio to offset the risk of the four solar manufacturing projects?

b. Do the utilities that have contracted for the power generated by these projects pay for the transmission costs or are they covered by the terms of the loan guarantee? How does this affect the utilities' ratemaking?

c. Could the generation projects not secure adequate private capital without the loan guarantees?

d. If the goal of the program was to create solar manufacturing jobs involving innovative technology, how many permanent jobs have been created by the manufacturing projects? By the generation projects?

A.7a-d. The solar generation projects were not included in the portfolio to offset the risk of the solar manufacturing companies. While DOE was conscious of the benefits—both

credit and non-credit—of a diversified portfolio, our effort was designed to fulfill Congress's legislative intent as stated in the American Recovery and Reinvestment Act (ARRA). When adding Section 1705 to the Energy Policy Act of 2005 (EPAct) through ARRA, Congress directed agencies to invest appropriated funds "as quickly as possible consistent with prudent management" and set an outside date of September 30, 2011 for the issuance of loan guarantees and commencement of construction by the projects (ARRA, Section 3). Accordingly, we were required to prioritize projects by their ability to reach financial closing and commence construction within the timeframe set by Congress.

Whether utilities that have contracted for the power generated by these projects pay for the transmission costs is determined individually for each project. Generally, however, the project is responsible for construction of interconnection facilities, and, if required, transmission facilities to the point of interconnection with the grid. The costs of such construction would be eligible project costs, borne pro rata by project equity and proceeds of the guaranteed loan. The cost of transmission from the interconnection point, including construction costs of transmission facilities, would generally be borne by the utility. As such, state Public Utility Commissions and the Federal Energy Regulatory Commission (FERC) are responsible for rate-making and determining exactly how such costs are to be taken into account.

DOE does not believe that these projects would have moved forward as quickly, if at all, without loan guarantees. Several factors, including the long term nature of the financing required, the size of projects, the limited capacity of the credit markets, and

the economic terms on which financing, if available at all, would have been provided limited these projects' ability to secure private capital. That result would have been inconsistent with the Congressional intent of ARRA.

With respect to jobs, to date the sponsors of manufacturing projects have stated that their projects directly supported 1,720 permanent jobs and 3,720 construction jobs. The non-manufacturing projects (including generation, energy storage, and biofuels) have directly supported 708 permanent jobs and 10,583 construction jobs. None of these estimates includes the indirect jobs created by these projects.

Q8. Silver stated in his testimony that "using the same tools and approaches that private lenders use in such circumstances, the Department concluded that restructuring the loan gave the U. S. taxpayer the best chance of being repaid." However, the final terms of the restructuring, which subordinated the taxpayer to the first $75 million recovered in the event of a liquidation, were offered to the private investors only after DOE realized that the private investors were willing to proceed with bankruptcy discussions. If this was the best deal for the taxpayer, why wasn't it offered initially?

A8. In late 2010 and early 2011, the Department faced a choice between certain bankruptcy — entailing the loss of hundreds of jobs and a likelihood that U.S. taxpayers would recover only a modest amount on the loan — or allowing the company to accept emergency financing, thereby giving its almost 1,000 workers a chance to succeed. Moreover, at that time Solyndra's Fab 2 facility was only partially complete. Giving Solyndra and its workers a fighting chance to succeed also gave them time to complete Fab 2, which meant that in the event of subsequent financial difficulties Solyndra would have a fully built manufacturing facility as a saleable asset. Our estimates indicated this would make the company substantially more valuable than if it were forced to restructure or liquidate with Fab 2 only partially constructed. Thus, although the decision to restructure Solyndra's obligation entailed some risk, as

transactions of that type necessarily do, it also cleared the way for private investment, gave the company a fighting chance to succeed, and was estimated to increase its expected value to the taxpayer. After careful consideration, the Department determined that given these available alternatives, restructuring offered the highest chance of repayment and was, therefore, in the taxpayers' best interest.

Q9. When Rep. Murphy asked whether Secretary Chu "had anything to do with [the restructuring]," Jonathan Silver stated, "Not to my knowledge." Would Silver like to correct the record with respect to this statement?

A9. As noted previously, Jonathan Silver is no longer employed at DOE. However, as DOE has reiterated to the Committee on several occasions, the decision to restructure Solyndra's loan guarantee in February 2011 — like the decision to issue a conditional commitment in March 2009 and to finalize the loan guarantee in September 2009 — was made by the Secretary of Energy in order to advance the goals of ARRA and Title XVII of the EPAct and to secure the maximum possible benefit for taxpayers. DOE did not enter into any binding agreement to restructure the loan until after the Secretary approved the restructuring on February 22, 2011. A copy of the action memo is included for the record.

Q10. When Rep. Griffith asked Silver whether any additional loans had been restructured, subordinating taxpayers in the process, Silver replied, "No other transactions have had subordinations. I would go further and say that of the two-there are only two deals that have actually closed and completed construction and bother of these are repaying on a timely basis." What two projects was he speaking of? Are they still repaying on a timely basis?

A10. At the time of Jonathan Silver's testimony, the two projects that had closed and completed construction were Kahuku Wind Power, LLC and Nevada Geothermal Power Company, Inc. We can provide payment status information to the Committee under separate cover if the Committee so desires.

Q11. Rep. Griffith asks Silver to provide "written documentation as to ... what steps were being taken to try to protect the taxpayers' dollars once you learned that even after the restructuring, this company was going to fail or was likely to fail." Silver agreed to "work with the Committee on that." Please describe such efforts in detail.

A11. The Loan Programs Office (LPO) has built out its Portfolio Management Division (PMD) to ensure its ability to proactively monitor loan and loan guarantee transactions, restructure transactions as necessary, and maximize recoveries to the U.S. taxpayer. PMD has three functional groups—Asset Monitoring and Supervision, Credit Review & Compliance, and Special Assets & Loan Administration— that are accountable for the various risks involved in loan and loan guarantee transactions.

Processes and systems to support proactive monitoring, loan administration, compliance, reporting, and resolution include, among other things:

- Monitoring Policies and Procedures
- QuickSilver custom portfolio management software system
- Davis-Bacon Act compliance mechanism
- Mechanisms for managing troubled assets
- Mechanisms for responding to external inquiries and oversight
- Credit Review and Compliance framework
- Periodic reports to provide timely warning of significant events
- Early warning system (for transactions that require heightened attention)
- Default list
- Impaired assets list

PMD is held accountable through rigorous internal and external reviews, including:

- Internal Credit Review as well as Compliance Quarterly Evaluations
- Analysis of periodic PMD reports by DOE, LPO ,the Risk Committee, and PMD senior management
- OIG Examinations and GAO Audits
- Annual DOE audit by KPMG

In addition, former Assistant Secretary of the Treasury for Financial Stability Herbert Allison reviewed DOE's Loan Guarantee Programs and provided a report on the current status, credit characteristics, and risk of loss of DOE's portfolio of loans. While the

Allison report confirms that DOE's overall portfolio of loans is expected to perform as expected financially, it also includes a number of recommendations on how to improve the management of the loan program and ongoing monitoring of the loan portfolio. DOE is reviewing the recommendations to determine the best way to use them to further strengthen the program.

QUESTIONS FROM REPRESENTATIVE MICHAEL C. BURGESS

Q1. Please provide to the Committee the names, positions, and role in the process of every career and political appointee at DOE, OMB, and the West Wing who worked on the Solyndra approval process or inquired about the project and provide access to committee staff to any of those individuals the committee believes necessary to question under oath for this investigation.

A1. Through the course of the Committee's investigation, DOE has worked with the Committee to identify all DOE employees involved with the Solyndra transaction. The communications to and from those employees have been provided to the Committee. To date, the Department has provided five separate briefings on Solyndra and participated in two congressional hearings before the Committee. As it has consistently done, the Department will continue to seek ways to accommodate the Committee's information needs by identifying the appropriate officials to give testimony before the Committee or conduct briefings with Committee staff.

Q2. In October 2010, a White House Memorandum was prepared for President Obama by Carol Browner (then-Director of the White House Office of Energy and Climate Change Policy); Ron Klain (then-Chief of Staff to Vice President Biden); and Larry Summers (then-Director of the National Economic Council).

a. Are you familiar with this memorandum?

b. This memorandum raises several concerns with the implementation of the DOE Loan Guarantee Program, correct?

c. Did anyone consult you as the memorandum was being drafted about its subject matters and concerns?

d. In particular, the memorandum states that "OMB and Treasury … have raised implementation questions, including "double dipping"- the total government subsidy for loan guarantee recipients, which have exceeded 60%, "skin in the game"- the relatively small private equity (as low as 10%) developers put into projects; and non-incremental investments - some loan guarantee projects would appear likely to move forward without the credit support offered by the loan guarantee. Mr. Silver, do you agree with these concerns?

A2a-d. As Mr. Silver is no longer working at the Department, it is not possible to say with

certainty whether he was consulted "as the memorandum was drafted." Its subject matter and concerns, however, certainly were discussed among Mr. Silver, other LPO officials and officials from the other named government offices prior to the date of the Memorandum.

DOE agrees that the issues of "double-dipping," "skin in the game" and "non-incremental investments" merit consideration. They were given careful consideration in the process of underwriting and approving the loan guarantees issued to date under Title XVII, both in DOE's internal underwriting process and in inter-agency discussions among DOE, OMB, Treasury and the National Economic Council (NEC).

Q3. The White House memorandum also describes the amount of time it takes for a loan guarantee to be approved. The memo states that the average review time was 28 days for loans submitted in 2009 and early 2010, and 17 days for loans submitted after August 2010. I take it that DOE and probably the loan applicants were concerned about the length of the review - that it was too long?

a. As you know, DOE made its final presentation about Solyndra to OMB on August 25, about one week before the Solyndra deal closed. During that time, documents show that OMB was reviewing the terms and ratings underlying the deal.

b. Why did OMB need only one week to review Solyndra? That seems short when compared to the three and four- week OMB review periods that are described in the White House Memorandum.

c. With Solyndra being the first guarantee ever issued by DOE, and the first time DOE used its model to compute the credit subsidy numbers, I would have thought the review time would be longer.

A3a-c. We understand this question to refer to the time period for OMB review of DOE's computation of the credit subsidy cost for Solyndra at origination, shortly before closing based on the final computation.

DOE is not in a position to speak for OMB. In our experience, however, OMB devotes the time and resources necessary to perform its obligations appropriately.

We do not believe that OMB would have approved the credit subsidy cost for Solyndra if it was not satisfied that its review was complete.

Q4. The White House Memorandum states that "[p]olicy review by Treasury and the White House has occasionally extended the amount of time a project is under review beyond the time taken by OMB to score a credit subsidy."

a. What is the White House policy review? What does this consist of?

b. When does the White House policy review take place? Before there is a conditional commitment for a loan? When OMB is reviewing it?

c. What were the specific policy principles that the White House and Treasury wanted the DOE loan guarantees to achieve? Where are they defined?

d. What office or officials within the White House conduct the policy review?

e. Were there any loan guarantee applications that did not proceed because they failed the White House policy review?

f. If yes, please submit for the record the name of the loan guarantee applicant and why they did not satisfy the policy review.

g. Were the terms and conditions of any DOE loan guarantee agreement changed as a result of the White House or Treasury policy review?

h. Can you give me an example of questions or concerns that are raised during a policy review?

A4a-h. The NEC, occasionally joined by other officials from the Executive Office of the President, has typically reviewed the information provided to OMB and Treasury in the course of our statutory consultations with those agencies. For some proposed transactions, policy issues were raised by the DOE, NEC, Treasury, OMB, or other officials. Principles underlying the discussions surrounded the efficient and effective use of Federal assistance—to maximize policy goals while minimizing risk and cost to the taxpayer. Those concerns were then thoroughly reviewed by DOE and discussed among all relevant parties.

Generally, this policy review has taken place prior to conditional commitment, concurrently with DOE's consultation with Treasury (as required by Title XVII) and OMB's review of the estimated range of credit subsidy cost.

Disclosure of loan guarantee applications that did not proceed, or modifications that occurred after interagency consultations, may involve proprietary information that could adversely affect a company's financial position. Accordingly, we shall seek to accommodate the request for details about specific transactions through other means.

QUESTIONS FROM REPRESENTATIVE STEVE SCALISE

Q1. Please provide a list of those involved in the discussions and negotiations to restructure the Solyndra loan guarantee, putting the taxpayer behind private investors.

a. When were these meetings held and who attended these meetings?

b. Where did the idea to put private investors ahead of the government for repayment come from?

c. Who had final sign off on allowing Solyndra to subordinate the federal government to private investors during Solyndra's restructuring?

A1a-c. The proposal to restructure the guaranteed obligation was developed as it became clear in late 2010 and early 2011 that Solyndra faced an impending cash flow crisis. As part of the restructuring plan, the Department agreed to subordinate a portion of Solyndra's obligation to it to clear the way for private investment, enabling an infusion of emergency financing that gave the company's almost 1,000 workers a chance to succeed and the taxpayers a higher expected recovery on the loan. Subordination in such circumstances is a common practice in the private sector. The Loan Programs Office team, including its Executive Director, had extensive experience with this practice, based upon their accumulated years of private sector experience. The restructuring was approved by the Secretary after vetting by professionals in DOE's Loan Programs Office and Office of General Counsel, after discussion with OMB, and the Treasury Department.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

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January 11, 2012

The Honorable Jeffrey Zients
Deputy Director for Management and C.P.O
The Office of Management and Budget
725 17th Street, N.W.
Washington, D.C. 20503

Dear Mr. Zients,

Thank you for appearing before the Subcommittee on Oversight and Investigations on Wednesday, September 14, 2011, to testify at the hearing entitled "Solyndra and The DOE Loan Guarantee Program."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for 10 business days to permit Members to submit additional questions to witnesses, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and then (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Thursday, January 26, 2012. Your responses should be e-mailed to the Legislative Clerk, in Word or PDF format, at Carly.McWilliams@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations

cc: Diana DeGette, Ranking Member, Subcommittee on Oversight and Investigations

Attachment

1. **What is your understanding of the $2.4 billion Congress appropriated in the stimulus to cover credit subsidy costs of the section 1705 program? Do you agree with Secretary Chu's and Jonathan Silver's assertion that it was essentially a loan loss reserve fund?**

The appropriations were made available to cover the credit subsidy cost for 1705 loan guarantees. The Federal Credit Reform Act defines the credit subsidy cost as the estimated long-term cost to the Federal Government of a direct loan or guarantee, calculated as the net present value of all cash flows to and from the Government associated with that loan, excluding administrative costs. Payments reflected in the subsidy cost may include disbursements of a direct loan, repayments of principal and interest (net of defaults), default claim payments on guarantees, and recoveries. For the 1705 program, credit subsidy costs are estimated individually for each loan, and therefore reflect the specific project characteristics underlying the loan. While not exactly the same as a private sector loan loss reserve, the credit subsidy cost for each loan could be viewed as akin to a loan loss reserve for that loan.

2. **Solyndra's credit subsidy score, even after it was increased it to make it more conservative, was low in relation to other loan guarantees for renewable energy projects. Yet, except for Beacon Power, other projects with higher credit subsidy scores have not failed.**
   a. **Did OMB change the way it calculated credit subsidy scores during the section 1705 loan guarantee program? If so, please explain these changes and why they were made.**

OMB does not calculate the credit subsidy costs for Federal credit programs; rather, agencies are responsible for estimating credit subsidy costs subject to OMB review and approval. Because the 1705 program by design supports a wide variety of different projects, with terms and conditions that vary greatly from deal to deal, credit subsidy costs for the program are estimated individually for each loan, and reflect the specific project characteristics underlying the loan. The general framework for the model did not change, and is designed to take into account all available information that would affect the credit subsidy cost.

   b. **Do you feel as though the credit subsidy scores ultimately agreed upon accurately reflect the risk of each parent company's inability to repay its loan?**

The subsidy cost at the time of financial closing for each loan represents the best estimate of the long-term cost to the Federal Government of that loan, and reflects all available information, including project-specific risks and other characteristics.

   c. **Per Representative Pompeo's request, please provide the original score and the subsequent score for the loan guarantee to Solyndra.**

OMB has provided this information to the Committee's staff. Because such financial information would not ordinarily be available to persons outside the Federal Government, OMB has requested that the Committee's staff not share this information outside the Committee without further consultation with OMB.

3. **With respect to the restructuring, communications provided to the Committee show that OMB had serious questions up until the final determination about whether the proposed agreement was a "work out" as opposed to a "modification" You stated in your testimony that ultimately "OMB determined that DOE's analysis was reasonable and reflected the information as it was understood at that time." Please provide the specific information DOE provided that changed OMB's opinion and list the names of the individuals who were involved in that discussion and decision.**

Over the course of the discussions, DOE provided justification, analysis, and estimates in support of the classification of the transaction as a "workout," including materials supporting DOE's conclusion that the project was in imminent default and that restructuring (rather than liquidation) was the better option to recover the maximum amount of the Government's loan. It is my understanding that OMB has made available to the Committee's staff relevant documents and information responsive to your inquiry.

   a. **Did anyone at OMB have any discussions with any individuals within the executive office of the president (aside from OMB) about the terms of the restructuring? If so, who from OMB and who from the Executive Office of the President were involved in those discussions? If so, did this influence OMB's change in position?**

Based on my personal recollection, OMB officials notified certain components of the Executive Office of the President regarding the restructuring of the Solyndra loan guarantee, including the National Economic Council, the Office of Energy and Climate Change Policy, and the Office of the Chief of Staff. To my knowledge, these communications did not concern the question of whether or not the restructuring constituted a "workout" or a "modification."

4. **You stated in your testimony, "as to the restructuring, yes, I do interact with components of the White House." With whom from the White House, outside of OMB, did you discuss any aspect of the Solyndra loan guarantee, including its February 2011 restructuring and/or its second proposed restructuring? Please provide all related documents and communications.**

The components of the Executive Office of the President with whom I discussed the February 2011 restructuring of the Solyndra loan guarantee are mentioned in the response to question 3a. With regard to the discussions in August 2011, I also discussed aspects of the Solyndra loan guarantee with additional components within the Executive Office of the President, including the Domestic Policy Council and the Office of the White House Counsel. My understanding is that OMB has made available to the Committee's staff relevant documents and communications subject to the parameters and categories discussed between the Committee's staff and OMB.

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