

OMB'S ROLE IN THE DOE LOAN GUARANTEE PROCESS

HEARING BEFORE THE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS OF THE COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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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 Colo- rado, opening statement	8
Prepared statement	9
Hon. Marsha Blackburn, a Representative in Congress from the State of Tennessee, opening statement	18
Prepared statement	20
Hon. Michael C. Burgess, a Representative in Congress from the State of Texas, opening statement	21
Prepared statement	22

SUBMITTED MATERIAL

Letter from William R. Richardson Jr., Deputy General Counsel, Office of Management and Budget, to Mr. Stearns, dated June 22, 2011, submitted by Ms. DeGette	11
Letter from Jeffrey D. Zients, Deputy Director for Management, Office of Management and Budget, to Mr. Stearns, dated June 23, 2011, submitted by Ms. DeGette	14
Email from Karen Christian to Allie Neil, dated June 17, 2011, submitted by Mr. Stearns	16
Majority Supplemental Memorandum, dated June 13, 2011, submitted by Mr. Stearns	25
Subcommittee exhibit binder	31

OMB'S ROLE IN THE DOE LOAN GUARANTEE PROCESS

FRIDAY, JUNE 24, 2011

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

The subcommittee met, pursuant to call, at 9:55 a.m., in room 2123 of the Rayburn House Office Building, Hon. Cliff Stearns (chairman of the subcommittee) presiding.

Members present: Representatives Stearns, Burgess, Blackburn, Griffith, and DeGette.

Staff present: Carl Anderson, Counsel, Oversight; Jim Barnette, General Counsel; Sean Bonyun, Deputy Communications Director; Karen Christian, Counsel, Oversight; Kirby Howard, Legislative Clerk; Carly McWilliams, Legislative Clerk; Andrew Powaleny, Press Assistant; Alan Slobodin, Deputy Chief Counsel, Oversight; Kristin Amerling, Democratic Chief Counsel and Oversight Staff Director; Phil Barnett, Democratic Staff Director; Tiffany Benjamin, Democratic Investigative Counsel; Karen Lightfoot, Democratic Communications Director and Senior Policy Advisor; Ali Neubauer, Democratic Investigator; and Anne Tindall, Democratic Counsel.

Mr. STEARNS. Good morning, everybody. The Subcommittee on Oversight and Investigations will convene. Our witness, obviously, did not show, so what we intend to do is do opening statements, myself and the ranking member and the ranking chairman, as well as members on this side, and then we will recess after that, after we put documents into the record by unanimous consent.

So I will start with my opening statement.

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

We convene this hearing of the Subcommittee on Oversight and Investigation to investigate OMB's role in the Department of Energy's loan guarantee process. The Energy Policy Act of 2005 gave the Department of Energy the authority to award loan guarantees to companies investing in innovative, clean technologies, or renewable energy projects. Through the stimulus, Congress appropriated nearly \$2.5 billion to pay the credit subsidy costs for the companies receiving these loan guarantees. With that funding, the DOE Loan Guarantee Program took off. So far, DOE has announced loan guarantees for 20 projects totaling over \$11 billion in financing.

Solyndra, a California company, was the first recipient of a DOE loan guarantee. However, since receiving the guarantee, Solyndra has suffered a number of financial setbacks. Solyndra's own auditors noted the company's "recurring losses" and "negative cash flows." The company canceled a planned Initial Public Offering in 2010, and was forced to lay off employees in November 2010.

DOE announced just last March that it had notified—excuse me—modified the loan guarantee to extend the repayment period, and Solyndra's investors injected additional funding into the company.

Due to the number of problems Solyndra experienced, this subcommittee began an investigation of the DOE Loan Guarantee Program and the Solyndra guarantee, in particular. Examining the Loan Program was an obvious choice for this subcommittee. This committee is the authorizing committee for DOE and the Loan Guarantee Program. The Loan Programs Office had received over \$2 billion in funding from the stimulus, and the committee had yet to conduct any oversight of the program. So, on February 17, 2011, this committee opened an investigation with a letter to DOE requesting a briefing and documents. As our investigation unfolded, we learned that OMB played an important role in the DOE loan guarantee process. We also became aware of a White House memorandum sent to President Obama in October 2010, where White House staff discussed certain "risks" presented by the loan guarantee program and specifically discussed OMB's role in reviewing these loans. DOE staff were not able to shed much light on these issues or on OMB's processes for reviewing the Solyndra guarantee, so this committee sent OMB Director Jack Lew a letter on March 14, 2011, requesting a briefing and certain specific documents.

Over three months later, this committee still does not have all the information or the full picture of OMB's review processes with respect to Solyndra. At almost every step, OMB has sought to delay or frustrate this committee's efforts to move this investigation forward. We did get a briefing, but OMB staff were able to offer few specifics about OMB's review of Solyndra's deal. We thought the documents would provide those details, but OMB has produced only those records that DOE gave to OMB in the course of the Solyndra review. These documents reveal nothing about what OMB did with DOE's information, and OMB so far has failed to produce any of its own reports, any memorandum, or analyses to demonstrate how it even considered or weighed the risks presented by the Solyndra deal.

Committee staff then pressed OMB for production of the requested communications records, hoping these documents would provide the story of OMB's role over the course of the Solyndra review. OMB refused to produce these documents, stating (1) in OMB's opinion, the committee did not need to see these documents, (2) that they had concerns about the confidentiality of staff discussions should these documents be made public. Committee staff attempted to accommodate this second concern by offering to review these documents in camera, meaning that committee staff would look over these documents but not take possession of them unless that review revealed a further need for the committee to take possession of the documents.

In order to move the investigation forward, I called today's witness, Deputy Director Jeffrey Zients, 3 weeks ago to see if we could reach an agreement about production of these communications. During our conversation, I asked OMB to make available to committee staff all emails exchanged on Solyndra, both internally among OMB staff and with the Department of Energy, for an in camera review. He stated he needed to consult with OMB's counsel. One day later, OMB staff called back to schedule the agreed-upon in camera review. But, in what I view as a telling example of OMB's overall approach to this investigation, they did not live up to their end of the bargain. Instead of producing all communications relating to Solyndra, as we had discussed, OMB took it upon itself to select just eight emails that were exchanged between DOE and OMB in late August 2009, just 1 week before the Solyndra loan closed. According to OMB staff, they made their own determination that it was not necessary for this committee to see any more emails, including OMB's own internal emails. In their opinion, these eight emails were all the committee needed to see.

OMB's position demonstrates a fundamental misunderstanding of the Constitutional roles of Congress and the Executive Branch. It is not OMB's job to direct this investigation and decide what Congress can and cannot see. This committee has jurisdiction over the Department of Energy program. OMB plays a role in approving the credit subsidy costs for over \$11 billion in loan guarantees. Congress appropriated over \$2 billion in taxpayer money to pay these costs. Congress and the taxpayers have a right to know if OMB is doing a good job of weighing the risks that are associated with these investments and with these deals. We know that OMB's role extended beyond the 1-week period in late August 2009. I had hoped that the Deputy Director would have viewed this hearing as I do: OMB's last chance to finally, and fully, answer the committee's questions about OMB's role in reviewing the Solyndra guarantee and simply turn over the requested documents that we have sought.

However, they once again have chosen to delay and frustrate this committee's efforts to resolve this matter. I believe the time has come for the committee to fulfill its oversight obligations and responsibility and pursue this information together and with the ranking member and the Democrats to move this investigation forward. And ultimately if we can agree, or not agree, we might move to possibly a subpoena.

[The prepared statement of Mr. Stearns follows:]

**Opening Statement of the Honorable Cliff Stearns
Chairman, Subcommittee on Oversight and Investigations
OMB's Role in the DOE Loan Guarantee Process
Friday, June 24, 2011
(998 words)**

We convene this hearing of the Subcommittee on Oversight and Investigations to examine OMB's role in the DOE Loan Guarantee Process.

The Energy Policy Act of 2005 gave the Department of Energy the authority to award loan guarantees to companies investing in innovative clean technologies or renewable energy projects. Through the stimulus, Congress appropriated nearly \$2.5 billion to pay the credit subsidy costs for the companies receiving these loan guarantees. With that funding, the DOE Loan Guarantee Program took off. So far, DOE has announced loan guarantees for 20 projects totaling over \$11 billion in financing.

Solyndra, a California company, was the first recipient of a DOE loan guarantee. However, since receiving the guarantee, Solyndra has suffered a number of financial setbacks. Solyndra's own auditors noted the company's "recurring losses" and "negative cash flows." The company canceled a planned Initial Public Offering in June 2010, and was forced to lay off employees in November 2010. DOE announced just last March that it had modified the loan guarantee to extend the repayment period, and Solyndra's investors injected additional funding into the company.

Due to the number of problems Solyndra experienced, this Subcommittee began an investigation of the DOE Loan Guarantee Program and the Solyndra guarantee, in particular. Examining the Loan Program was an obvious choice for this Subcommittee. This committee is the authorizing committee for DOE and the Loan Guarantee Program. The Loan Programs Office had received over \$2 billion in funding from the stimulus, and this Committee had yet to conduct any oversight of the program. So, on February 17, 2011, this Committee opened an investigation with a letter to DOE requesting a briefing and documents.

As our investigation unfolded, we learned that OMB played an important role in the DOE loan guarantee process. We also became aware of a White House Memorandum sent to President Obama in October 2010, where White House staff discussed certain “risks” presented by the loan guarantee program and specifically discussed OMB’s role in reviewing these loans. DOE staff were not able to shed much light on these issues or on OMB’s processes for reviewing the Solyndra guarantee, so this Committee sent OMB Director Jack Lew a letter on March 14, 2011, requesting a briefing and certain documents.

Over three months later, this Committee still does not have the full picture of OMB’s review processes with respect to Solyndra. At almost every step, OMB has sought to delay or frustrate this Committee’s efforts to move this investigation forward. We did get a briefing, but OMB staff were able to offer few specifics about OMB’s review of the Solyndra deal. We thought the documents would provide those details, but OMB has produced only those records that DOE gave to OMB in the course of the Solyndra review. These documents reveal nothing about what OMB did with DOE’s information, and OMB so far has failed to produce any of its

own reports, memoranda, or analyses to demonstrate how it considered or weighed the risks presented by the Solyndra deal.

Committee staff then pressed OMB for production of the requested communications records, hoping those documents would provide the story of OMB's role over the course of the Solyndra review. OMB refused to produce these documents, stating that (1) in OMB's opinion, the Committee did not need to see such documents, and (2) they had concerns about the confidentiality of staff discussions should these documents be made public. Committee staff attempted to accommodate this second concern by offering to review these documents *in camera*, meaning that Committee staff would look over these documents but not take possession of them unless that review revealed a further need for the Committee to take possession of the documents.

In order to move the investigation forward, I called today's witness, Deputy Director Jeffrey Zients, three weeks ago to see if we could reach an agreement about production of these communications. During our conversation, I asked OMB to make available to Committee staff all emails exchanged on Solyndra — both internally among OMB staff and with DOE — for an *in camera* review. Mr. Zients stated he needed to consult with OMB's counsel. One day later, OMB staff called back to schedule the agreed-upon *in camera* review. But, in what I view as a telling example of OMB's overall approach to this investigation, OMB did not live up to its end of the bargain. Instead of producing all communications relating to Solyndra, as Mr. Zients and I had discussed, OMB took it upon itself to select just 8 emails that were exchanged between DOE and OMB in late August 2009, just one week before the Solyndra loan closed. According to OMB staff, they made their own determination that it was not necessary for this Committee to see any other emails,

including OMB's own internal emails. In their opinion, these 8 emails were all the Committee needed to see.

OMB's position demonstrates a fundamental misunderstanding of the Constitutional roles of Congress and the Executive Branch. It is not OMB's job to direct this investigation and decide what Congress can and cannot see. This Committee has jurisdiction over the DOE program. OMB plays a role in approving the credit subsidy costs for over \$11 billion in guarantees. Congress appropriated over \$2 billion in taxpayer money to pay these costs. Congress and the taxpayers have a right to know if OMB is doing a good job of weighing the risks associated with these deals. We know that OMB's role extended beyond the one-week period in late August 2009.

I had hoped that Deputy Director Zients would have viewed this hearing as I do: OMB's last chance to finally — and fully — answer the Committee's questions about OMB's role in reviewing the Solyndra guarantee and turn over the requested documents. However, OMB chose once again to delay and frustrate this Committee's efforts to resolve this matter. I believe the time has come for this Committee to fulfill its oversight responsibilities and pursue a subpoena to move this investigation forward.

Mr. STEARNS. And with that, I recognize the ranking member for her opening statement.

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

Ms. DEGETTE. Thank you, Mr. Chairman. I think that this hearing, "OMB's Role in the DOE Loan Guarantee Process," is a potentially very constructive hearing, and that this committee could play a real oversight role going forward. The subcommittee could do a thoughtful review of the material we have obtained. They could follow the facts where they lead. And obtaining testimony from OMB officials is a legitimate means of advancing this effort.

Having said that, I think it is hard to see how an empty-chair hearing would accomplish anything, and I think it is a profound waste of everybody's time. Instead of truly examining OMB's role in the DOE Loan Guarantee Program, we are spending time on a hearing that will obtain absolutely no new facts for the record. And this proceeding follows on the heels of public statements by the chairman this spring, suggesting that the Loan Guarantee Program involved political favoritism, an allegation that is completely unsupported by the documents provided by DOE and OMB, and by interviews the committee has conducted with relevant parties.

And by the way, given those statements, it is easy to see why the DOE would be a little bit leery about just unlimited document productions.

Now, the hearing date today was announced before the Majority even contacted their witness to ascertain his availability. In fact, he received his formal invitation to this hearing just 3-1/2 days ago. Mr. Ziens, as I understand it, is perfectly willing to testify, but rather than reschedule the hearing for one of the dozens of days he is available, the Majority has called members here to just address their concern to an empty chair.

Now, he says—Mr. Ziens says he is willing to come before the committee. He couldn't come today, but he is willing to come in the future. Now, I will also say, the Minority is very willing to work with the Majority to make sure that appropriate documents are produced by the witnesses. OMB has a duty to provide appropriate documents. If they are not providing appropriate documents, then that needs to happen. We have agreed, Mr. Chairman, upon a process by which over the next recess, the next 10 days or so, our staffs will work together and will work with the OMB to identify and produce the appropriate documents. If that does not happen, then we will sit down and talk about further steps, because this is an appropriate oversight role, and we do look forward to working with you. But frankly, I think sitting here this morning is a big waste of time.

And I yield back.

[The prepared statement of Ms. DeGette follows:]

Opening Statement of Rep. Diana DeGette
Ranking Member
Subcommittee on Oversight and Investigations
“OMB’s Role in the DOE Loan Guarantee Process”
June 24, 2011

We are convened here today under highly unusual circumstances: we have an empty chair where we typically have a witness. The majority’s invited witness, Mr. Jeffrey Zients, Deputy Director of the Office of Management and Budget, has made clear his willingness to appear before the Committee, but he was unable to attend at the majority’s preferred date and time.

I find the majority’s approach to this hearing troubling. The hearing date was announced before the majority even contacted the witness to ascertain his availability. In fact, the witness received his formal invitation to this hearing just three and a half days ago. And Mr. Zients is perfectly willing to testify. But rather than reschedule the hearing for one of the dozens of days Mr. Zients is available, the majority has called members here to question an empty chair.

Instead of truly examining OMB’s role in the Department of Energy loan guarantee program, we are spending time on a hearing that will obtain absolutely no new facts for the record. And this proceeding follows on the heels of public statements by the Chairman this spring suggesting the loan guarantee program involved political favoritism – an allegation that is completely unsupported by the documents provided by DOE and OMB, and by interviews the Committee has conducted with relevant parties.

I do believe there is potential for the Subcommittee to play a constructive oversight role going forward in this investigation. The Subcommittee could do a thoughtful review of the material we have obtained and follow the facts where they lead. And I don’t dispute that obtaining testimony from OMB officials is a legitimate means of advancing this effort. However, today’s empty chair hearing doesn’t accomplish anything and is a profound waste of our time.

I look forward to working with the Chairman to conduct a real hearing on the issues at hand.

Mr. STEARNS. I thank the gentlelady.

Ms. DEGETTE. Mr. Chairman, I also have two letters I would like to enter for the record. The letter from—are they both from Mr. Zients? One is from Bill Richardson, the deputy general counsel, dated June 22, to you, and the other is from Mr. Zients, dated yesterday. Both these letters express their willingness to come, and also their willingness to work with the committee on the documents that would be produced. I ask unanimous consent to enter those into the record.

Mr. STEARNS. Unanimous consent is so ordered, and we had also an email here by unanimous consent as shown to your staff. We would like to put that as part of the record.

By unanimous consent, that is part of the record.

[The information follows:]



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

June 22, 2011

The Honorable Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Stearns:

This responds to your letter of June 20, 2011, regarding the subcommittee's hearing scheduled for June 24, 2011, entitled "OMB's Role in the DOE Loan Guarantee Process."

Your letter asks for testimony at this hearing from Jeffrey Zients, Deputy Director for Management at the Office of Management and Budget (OMB). We did not receive your letter until Monday evening. As discussed with your staff and with you directly, Mr. Zients has agreed to appear before your subcommittee to address this matter. However, because of the unusually short notice afforded by your letter, we have asked you and your staff to work with us to find an alternate date and time for his testimony.

Your letter also incorporates the generalized document request contained in your earlier March 14, 2011 letter, without reference to any of the briefings and information we have already provided to subcommittee staff over the past three months, including the hundreds of pages of documents that we have made available for their review. As noted in greater detail below, we believe that this information has addressed directly all of the specific questions relating to the subject of your March 14 letter raised by subcommittee staff.

Your March 14 letter identified your interest in better understanding OMB's review and approval of the credit subsidy cost for the Solyndra guarantee. OMB's role in connection with the issuance of loan guarantees under section 503(a) of the Federal Credit Reform Act of 1990 (FCRA), as implemented by Part 185 of OMB Circular A-11, is to review and approve credit subsidy cost estimates by agencies. Under Circular A-11, "OMB has the final responsibility for determining subsidy estimates, in consultation with the agencies." Since receiving your letter, OMB has provided subcommittee staff with two briefings, detailed responses to each of their specific questions, and access to a range of documents that squarely answer these questions. This information has been in addition to the more than 20,000 pages that we understand the Department of Energy (DOE) has also provided to the subcommittee concerning this same transaction.

1. On April 4, OMB's Associate Director for Natural Resources, Energy, and Science, and its Assistant Director for Budget, provided subcommittee staff with a two-hour briefing that

explained OMB's role under the Federal Credit Reform Act and our A-11 Circular process, OMB's review of loan guarantees generally, and the Solyndra application in particular.

2. After this briefing, subcommittee staff requested copies of all the information about the proposed Solyndra loan guarantee application provided by DOE to OMB. OMB searched its files and provided this material, which included documents from as early as 2008, when DOE's review of Solyndra's proposal for a loan guarantee was already underway. These documents included materials about Solyndra later relied upon by OMB in reviewing DOE's proposed credit subsidy estimate: the initial credit subsidy estimate range provided by DOE in December 2008, two detailed independent financial analyses of the company prepared by Fitch in August 2008 and August 2009, three independent engineering reports assessing Solyndra's solar panel technology provided in January, February, and April 2009, the materials provided to the DOE credit committee on January 9, 2009, a description of the proposed terms and conditions for the transaction, and detailed presentations from DOE to OMB in January, March, and August 2009 summarizing the risks and factors to be considered.

3. Subsequently, subcommittee staff raised six questions and asked for specific additional documentation regarding the briefings that had been provided to OMB by DOE. OMB promptly provided detailed answers to these six questions, which included information about the dates and subjects of meetings between OMB and DOE in connection with review of the Solyndra transaction, and provided each of the specific documents requested.

4. OMB also provided subcommittee staff with information about the final credit subsidy cost for the Solyndra transaction, the apportionment of that cost, and how that cost was calculated. To assist staff in understanding the details of that calculation, OMB also made available for their review the actual cash flow estimates, including disbursements, payments, and default and recovery rate assumptions, underlying the credit subsidy score.

5. Subcommittee staff then requested information from OMB about the specific questions that it had asked DOE about its proposed credit subsidy cost, which was submitted to OMB in late August 2009, and whether that proposed cost was later changed prior to the final apportionment of the cost on September 2, 2009. In response to this request, OMB provided a second briefing. OMB made clear that the focus of this briefing would be to answer the questions posed by staff -- to identify and explain each of the questions raised by OMB with DOE during the course of its review process. At this briefing, OMB described -- and included corroborating documentary evidence of -- the six specific questions OMB asked DOE in light of OMB's review of the foregoing materials, the answers provided by DOE to OMB to those questions, OMB's request for further supplementation of those answers, OMB's recommendation concerning the proposed credit subsidy score in light of those answers, why and how OMB came to that recommendation, and documentation of the final apportionment.

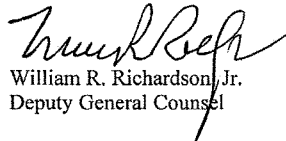
In short, OMB has provided the subcommittee with the information on which OMB relied in conducting its review, the nature of OMB's questions raised in light of its review, the responses provided by DOE in response to those questions, and the decision reached in light of those responses. As you know, OMB has had substantial concerns about disclosing the deliberations upon which it regularly relies in working with DOE (among many other agencies)

on review and approval under the Federal Credit Reform Act, in the absence of any particularized showing of need. It is well recognized that such disclosures run a substantial risk of deterring Executive Branch personnel from engaging in the kinds of exchanges of views that are critical to the effective discharge of their responsibilities. However, in an effort to accommodate staff's specific questions on this matter, we agreed to describe (and to provide documentary evidence of) the details of this review process. After review of the detailed information provided, the staff has not raised any further questions about OMB's analysis and determination.

Based on our prior conversations with subcommittee staff, we had understood that providing such documentary evidence of OMB's credit subsidy review process could enable them to complete their inquiry if such evidence corroborated OMB's account. In light of the foregoing concerns, OMB has not undertaken to provide any additional deliberative material beyond that necessary to corroborate the nature of its questions raised with DOE about the proposed credit subsidy cost, and it has explained to staff that the additional e-mail communications between OMB and DOE relating to these questions do not identify any additional questions that have not previously been documented. However, we would be prepared to provide a further briefing that would afford staff an opportunity to review such additional e-mails between OMB and DOE that address any such questions.

As noted above, OMB believes it has provided the subcommittee with a very detailed and specific response concerning the nature and scope of OMB's review and approval of the credit subsidy cost for Solyndra as described in your March 14 letter, and that will enable the subcommittee to conduct appropriate oversight with respect to OMB's discharge of its statutory role in the DOE loan guarantee process. We continue to believe in the importance of this accommodation process, by which the Executive Branch and the committees of Congress can cooperate in addressing each other's legitimate needs and concerns. To this end, we have consistently emphasized OMB's willingness to work with the subcommittee to answer any specific questions it may have in connection with OMB's role, in a way that also accommodates our concerns about preserving the confidentiality of the deliberations of staff within the Executive Office of the President. We would be pleased to discuss further any such questions and how OMB might address them.

Sincerely,



William R. Richardson, Jr.
Deputy General Counsel

cc: The Honorable Henry A. Waxman, Ranking Member



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

June 23, 2011

The Honorable Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Stearns:

I am writing in response to your letter sent today to Jacob Lew, the Director of the Office of Management and Budget (OMB).

Your letter reaffirms your invitation for my testimony at your subcommittee's hearing that is scheduled for tomorrow, Friday, June 24, 2011, entitled "OMB's Role in the DOE Loan Guarantee Process." I am delighted to appear before your subcommittee to discuss this matter. We were, however, only provided with an unusually short notice of less than four days and unfortunately I had a scheduling conflict on Friday. Your invitation was sent on Monday evening. On Wednesday, I personally discussed with you my willingness to appear and requested an alternative date and time. We restated this response by letter sent later that day and have remained willing to work with your staff to find a mutually acceptable alternative date as quickly as possible. Your staff has not responded to our offer.

Your letter also provides an accounting of the exchanges between your subcommittee and OMB. This accounting does not, however, provide an accurate description of our conversation last month. Your assertion that I agreed to produce all communications responsive to your general March 14 request is not accurate. Rather, I assured you that OMB would provide your staff with a briefing and access to communications between OMB and the Department of Energy (DOE) that would answer the specific questions posed by your staff. Specifically, we agreed to describe and provide access to documents sufficient to identify (1) the questions OMB proposed to DOE regarding its proposed credit subsidy cost for the loan guarantee to Solyndra, Inc., (2) DOE's corresponding answers to those questions, and (3) OMB's final response to DOE's proposal. OMB promptly provided your staff with that briefing and access to those documents.

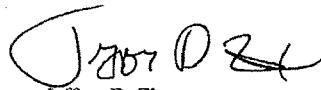
I also take exception to your characterization of OMB as "stonewalling" your inquiry. OMB's extensive work to accommodate your subcommittee is detailed in a letter to you from OMB's Deputy General Counsel on Wednesday, June 22. This has included two briefings, detailed responses to each specific question posed by your staff, and access to a range of documents that squarely answer these questions. These productions are also in addition to the more than 20,000 pages that we understand DOE has provided. Throughout our interactions with your staff, we have consistently emphasized that OMB is willing to work with your subcommittee to answer any specific questions it may have in connection with OMB's role. We remain committed to doing so. Furthermore, as discussed with your staff on several occasions,

and reaffirmed in our Wednesday letter, we are prepared to provide a further briefing that would afford your staff with an opportunity to review certain additional documents.

I'd like to underscore once again that OMB understands and respects Congress' oversight role and remains committed to cooperating with your subcommittee's oversight inquiries, including your inquiry into DOE's loan guarantee to Solyndra. We believe in the importance of the accommodation process, by which the Executive Branch and the committees of Congress can cooperate in addressing each other's legitimate needs and concerns.

I look forward to hearing from you on a mutually acceptable alternative hearing date.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey D. Zients". The signature is stylized with a large initial "J" and a long horizontal stroke at the end.

Jeffrey D. Zients
Deputy Director for Management

cc: The Honorable Fred Upton, Chairman
cc: The Honorable Henry A. Waxman, Ranking Member
cc: The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations

Christian, Karen

From: Christian, Karen
Sent: Friday, June 17, 2011 10:07 PM
To: 'Neill, Allie'
Cc: Harrison, Todd; Slobodin, Alan
Subject: Hearing Notice
Attachments: img-8171739-0001.pdf

Dear Allie,

Attached please find a notice for a hearing to take place on Friday, June 24.

A formal witness invitation to Deputy Director Zients will follow on Monday.

Karen

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 226-3641

June 17, 2011

Committee on Energy and Commerce
Subcommittee on Oversight and Investigations

HEARING NOTICE

The Subcommittee on Oversight and Investigations has scheduled a hearing on Friday, June 24, 2011, at 9:30 a.m. in 2123 Rayburn House Office Building. The hearing is entitled "OMB's Role in the DOE Loan Guarantee Process." Witnesses will be by invitation only.

A bipartisan staff briefing for this hearing will be held on Thursday, June 23, 2011, at 4:00 p.m. in 2322 Rayburn House Office Building. The Republican staff briefing will follow immediately after the bipartisan briefing in 2322 Rayburn. The Democratic staff briefing will follow immediately after the bipartisan briefing in 2123 Rayburn.

If you have any questions concerning this hearing, please contact Todd Harrison or Karen Christian at extension 5-2927.



Cliff Stearns
Chairman

The Committee on Energy and Commerce endeavors to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, or have any questions regarding special accommodations generally, please contact the Committee in advance of the scheduled event (4 business days notice is requested) at (202) 225-2927; TTY# (202) 225-1904; or 2125 Rayburn House Office Building.

Mr. STEARNS. And I would just point out to the gentlelady that we did invite the deputy director 7 days ago, plenty of time in advance, according to the rules.

And with that, I recognize for 5 minutes the gentlelady from Tennessee, Ms. Blackburn.

OPENING STATEMENT OF HON. MARSHA BLACKBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mrs. BLACKBURN. Thank you, Mr. Chairman. I know that the bell has rung for votes, and we will soon be heading in that direction, but I think that as we sit here this morning, even though we will not have our hearing as we had wanted to have, that we have to remember the words of Reagan, “trust, but verify.” And that is what we are going to do over and over again as we look at what—the steps that the bureaucracy is taking. Our constituents are hurting, we have unemployment at 9.1 percent. Underemployment is getting pretty close to the 20 percent range. Small businesses with fewer than 20 employees face an average regulatory cost of over \$10,000 per employee, due to all of the new federal regulations that have been hitting them. It seems as if there is no end in sight on those. And if that is not enough, CBO has stated that our Nation’s debt will overtake our economy by the end of the decade.

This is not a rosy outlook. Now, more than ever, this committee and OMB have a responsibility. It is a responsibility to the taxpayers to ensure that every dollar that leaves Washington, especially through loan guarantees backed by American taxpayers, are being put through the highest levels of oversight and accountability.

As we examine OMB’s role in the Loan Guarantee Process today, one loan in particular that we all were looking forward to discussing is the \$535 million loan guarantee to Solyndra in September ’09 to build a solar panel manufacturing facility. I thought it was interesting 6 months after the loan guarantee was approved, Solyndra’s auditor, PricewaterhouseCoopers, stated that the company had suffered recurring losses from operations, negative cash flow since inception, and has a net stockholder’s deficit that, among other concerns, raised substantial doubt about its ability to continue as a going concern.

My questions would be, did OMB and DOE share any of these same concerns just 6 months prior to this report? We don’t fully know the answer yet, and we are not going to get it today. Also, what exactly was OMB’s role throughout the loan guarantee process to Solyndra? And we don’t have the answer to that, either. We don’t know, because OMB has yet to produce the notes, analyses, memoranda, documents that its staff has created in response to a Solyndra review.

I hope that OMB will change their position and be willing to work with us on this issue. Our constituents want some answers. We need to have answers to these questions. You know, Mr. Chairman, much of it is due to the fact we are hearing today that the President now is wanting to do a half-billion-dollar technology fund to do similar things. Congress shouldn’t be—the President and the

administration shouldn't be choosing winners and losers, and we need to be diligent in our oversight.

I yield to the gentleman from Texas.

[The prepared statement of Mrs. Blackburn follows:]

Congressman Marsha Blackburn
Opening Statement for Energy and Commerce
Oversight & Investigations Subcommittee
“OMB’s Role in the DOE Loan Guarantee Process”
June 24, 2011

- Trust but verify. That’s the role of this committee and that’s why we have convened this morning.
- Our constituents are hurting. Unemployment is at 9.1%. Small businesses with fewer than 20 employees face an average regulatory cost of over \$10,000 per employee due to an onslaught of federal regulations that have no end in sight. And if that’s not enough to be concerned about, CBO has stated that our nation’s debt will overtake our economy by the end of the decade.
- Now more than ever does this committee and OMB have a responsibility to ensure that every dollar that leaves Washington- especially through loan guarantees backed by American taxpayers- are being put through the highest levels of oversight and review.
- As we examine OMB’s role in the loan guarantee process today one loan in particular that I would like to discuss is the \$535 million loan guarantee given to Solyndra in September 2009 to build a solar panel manufacturing facility.
- 6 months after the loan guarantee was approved, Solyndra’s auditor, PriceWaterhouseCoopers stated 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.”
- Did OMB and DOE share any of these same concerns just 6 months prior to this report? We don’t fully know that answer yet. What exactly has OMB’s role been throughout the loan guarantee process to Solyndra? We don’t truly know that either.
- We don’t know because OMB has yet to produce any notes, analyses, memoranda or other documents that its staff has created in response to a Solyndra review. In fact OMB has been so reluctant to work with this committee that we didn’t even know for sure if you would be here today, Mr. Zients. I’m glad to see that you are here and I look forward to further discussing my concerns with you during questioning.
- Thank you Mr. Chairman and I yield back the balance of my time.

Mr. STEARNS. Ms. Blackburn yields to the gentleman from Texas.

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

Mr. BURGESS. I thank the gentlelady for yielding.

So we are here today in the Oversight and Investigations Subcommittee to get information on how funds from the so-called stimulus package from 2009 have been used. This investigation—this type of investigation is historically what this subcommittee has done best, but we find ourselves thwarted by an administration that, once again, is being non-compliant with the will of the Congress.

Now, shovel-ready is a concept that was thrown around a lot in 2009, but just over the last few weeks, the President himself admitted that he wasn't quite sure the definition of shovel-ready, or maybe he was unsure of the definition of shovel-ready when the bill was passed. But in any event, what started as a \$787 billion bill turned into \$862 billion, and the fact of the matter is, we have got very little to show for it.

In the course of conducting our constitutionally mandated role of oversight, this committee has repeatedly attempted to work with Office of Management and Budget to review the documents pertinent to this investigation. Time and again, this White House has thwarted any sort of sunlight being shown on how the federal taxpayer money is being spent and how determinations were made to that end. This is important work, and this committee must accomplish this. The administration must recognize that the Legislative Branch is indeed a coequal branch of government, and the will of the Legislative Branch must not be thwarted as it has been repeatedly by this administration on numerous fronts.

I hope the chairman will take this lack of response by the administration very seriously, and be fully prepared to exercise all of the authority that this subcommittee has in order to compel this witness to come and testify before our subcommittee.

Mr. Chairman, I will yield back the balance of my time.

[The prepared statement of Mr. Burgess follows:]

**Energy & Commerce Committee
Subcommittee on Oversight & Investigations
Hearing: OMB's Role in the DOE Loan Guarantee Process
Opening Statement
June 24, 2011**

Thank you, Mr. Chairman.

We're here today to continue this committee's oversight and investigations into the way funds from the ill-advised so-called "Stimulus" package from 2009 have been doled out. This kind of investigation is what this committee does best. We heard over and over again in the 111th Congress how slow the Department of Energy was in getting money out the door for "shovel-ready" projects. As the president recently admitted, 'shovel-ready' projects were few and far between. Rather than spur economic development, the economy continued to stall after passage of the \$787 billion legislation (which CBO later placed at costing closer to \$862 billion).

In the course of conducting its Constitutionally-given role of oversight, this committee has repeatedly attempted to work with OMB to review

documents pertinent to this investigation. Time and again, this White House has thwarted any sort of transparency as to how federal taxpayer money is being spent and how determinations are made as to that end. This is important work that the committee must accomplish, and I hope we will not let up until all documents are produced and OMB acknowledges Congress' proper role in oversight.

With that, I yield back.

Mrs. BLACKBURN. Yield back.

Mr. STEARNS. I thank the gentleman. I would also ask unanimous consent to enter the following documents into the record: the Majority staff's supplemental memorandum regarding the efforts it has taken to obtain documents from OMB, and 2, the document binder for the hearing.

Without objection, so ordered.

[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.

Committee on Energy and Commerce
Subcommittee on Oversight and Investigations
OMB's Role in the DOE Loan Guarantee Process
June 23, 2011

Exhibits Index

TAB	DESCRIPTION	DATE
1	White House Memorandum Regarding "Renewable Energy Loan Guarantees and Grants"	10/25/2010
2	Email from OMB Legislative Affairs Staff to Committee Staff Regarding "Follow up from 4/11 briefing"	4/15/2011
3	Letter from Chairman Cliff Stearns to OMB Director Jacob Lew	6/23/2011

BRIEFING MEMO

THE WHITE HOUSE
Washington

October 25, 2010

MEMORANDUM FOR THE PRESIDENT

FROM: CAROL BROWNER
RON KLAIN
LARRY SUMMERS

SUBJECT: Renewable Energy Loan Guarantees and Grants

Your advisors seek your direction on implementing the energy loan guarantee program. Three near-term risks characterize this program: rescission of non-obligated funds; criticism from Hill supporters and stakeholders for slow implementation; and making commitments to projects that would have happened anyway and thus fail to advance your clean energy agenda. In considering these risks, the Department of Energy supports a process that would limit OMB and Treasury review. OMB and Treasury support the establishment of clear policy principles for project review, recognizing that this may pose a risk that some program funds may not be obligated by the program's September 30, 2011 sunset date. We also believe you should consider working with Congress to reprogram loan guarantee funds for an extension of the Recovery Act's renewable grant program during the lame duck tax extenders debate. An expanded EDB, including Secretary Chu, will provide an opportunity to discuss the options described below with you tomorrow.

DISCUSSION

Background

The Recovery Act created two new programs to promote deployment of renewable power: the 1705 energy loan guarantee program and the 1603 grant in lieu of tax credit program.

1705 Energy Loan Guarantee Program: The Recovery Act appropriated about \$6 billion to enable the government to pay for the credit subsidies associated with loan guarantees for renewable energy (and related) projects. The credit subsidy can be thought of as the premium that must be paid for the insurance the government provides in guaranteeing the loan for a project. This program was intended to address concerns about tightening credit markets for renewable projects. It represents a modification of the existing 1703 loan guarantee program, which supports innovative technologies and covers renewables, nuclear, and advanced fossil. To date, the 1703 program has not received appropriations for credit

subsidies, thus requiring project developers to pay the government for the credit subsidy and thereby limiting the interest in the 1703 program among small renewable developers.¹

1603 Grant Program: Renewables developers may opt to convert the existing renewable investment tax credit, equal to 30 percent of a project's investment cost, into a grant. Before the financial crisis, renewable developers often partnered with large financials that had sizable taxable income and could use tax credits, i.e., provide "tax equity." This program addresses concerns about the capacity of the tax equity market for renewables through 2010.

Doubling Renewable Power Goal: Based on these Recovery Act programs, the Administration set a goal to double renewable power generation within three years. In 2009, the wind industry enjoyed its best year ever with nearly 10,000 megawatts of new installed capacity. Lawrence Berkley National Lab estimated that nearly one-quarter of this capacity would not have been built in the absence of the 1603 grant program. The 1705 loan guarantee program did not close any deals on renewable generation in 2009.

Summary of 1705 Loan Guarantee Program and 1603 Grant Program (through October 25)

	1705 Loan Guarantee	1603 Grant
Staff	100-200 FTE DOE staff and contractors	5 Treasury FTEs and 15 DOE FTEs
Determination of Receipt	Discretionary, reflecting deal characteristics and negotiations with sponsor	Standardized, subject to eligible technology entering into service
Typical length of review	6+ months	4-6 weeks
Program sunset date	September 30, 2011	December 31, 2010
Total number of projects (closed/conditional for 1705)	4 / 8	3,851
Number of wind power projects	1 / 1	203
Number of solar power projects	0 / 2	3,571
Number of geothermal power projects	1 / 1	23
Number of biomass power projects	0 / 0	25
Number of other technology projects	2 / 4	29
Number of states with supported projects	4 / 6	48 plus DC and PR
Total capacity installed (MW)	~80 / ~1,600	~8,600
Total investment supported	\$1.2 billion / \$7.6 billion	~\$18.2 billion

Note: Project sponsors for all power generation projects under the 1705 program have indicated that they intend to claim a 1603 grant once they enter into service.

¹ The 1703 program has made conditional commitments for the Southern Company's Vogtle nuclear power plant in Georgia and AREVA's Eagle Rock Enrichment Facility in Idaho.

Estimated Benefits of 1705 and 1603 to Renewables Developers: The combined effect of 1603 and 1705 lowers the cost of a new wind farm by about 55% and solar technologies by about half relative to a no-subsidy case (see appendix table 1). Renewables' intermittency problem limits the deployment of these technologies, which could be remedied by installing back-up capacity (likely increases the cost by 2 to 4¢/kWh). Past experience with the wind tax credit suggests that the 1603 grant and the associated tax credits could have a significant impact on new wind capacity. Appendix figure 1 shows (in shaded regions) the halt to new investment during the three times the wind tax credit expired since 1999.

Loan Guarantee Pipeline and Process: After receiving an application, DOE conducts extensive due diligence work on the technological, financial, credit, legal, contractual, environmental, and operational aspects of each project. This due diligence can take months to complete and often results in significant changes to the original transaction structure to mitigate identified risks. In addition to negotiating with the project sponsors, DOE also engages in a back-and-forth with OMB and Treasury, in particular after the deal package has been submitted for review. OMB review of DOE projects has averaged 28 calendar days since September 2009, and 17-business days for the 1 closing and 3 conditional commitments DOE has transmitted between August 1 and October 15 of this year. DOE notes that the back and forth consumes a significant amount of staff time, thereby making it challenging to move several transactions forward simultaneously. Policy 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. Last week, DOE conducted an interagency preview of five projects, with the expectation that most of these could reach the conditional commitment stage within the next 4-8 weeks under the current review system. DOE currently has 35 projects in due diligence, and expects a significant number of new applications when two project solicitations close in the next few weeks. Since loan guarantee funds can only be obligated at closing, conditional commitments will need to occur in the first quarter of 2011 in order to close by September 30, 2011.

Legislative Implications

The Administration's approach to the renewable loan guarantee program and grants has implications for legislative activity, including the FY2011 appropriations (House mark is \$0, Senate mark is \$380 million for energy loan guarantee credit subsidies); the tax extenders bill in which some Members would like to extend the 1603 grant; and the FY2012 budget.

Risks Characterizing the Loan Guarantee Program

Rescission Risk: The 1705 loan guarantee program has been scaled back to about \$2.5 billion after reprogramming for Cash-for-Clunkers (May 2009) and the state aid package (August 2010). There has been recent interest in rescinding unobligated Recovery Act balances to pay for other programs. DOE has obligated about 2.5% of the \$2.5 billion in the 1705 program appropriations. An additional 9 projects have received 1705 conditional commitments, and if DOE closes these deals, the total obligations would be about \$500 - \$900 million.

Congressional Risk: Failing to make progress on renewables loan guarantees could upset the Hill (Sen. Bingaman, Speaker Pelosi), as well as renewables stakeholders, and draw criticism of the White House, which has been singled out as a roadblock on past loan guarantees.

Economic Risk: OMB and Treasury, which have statutory obligations to review 1705 loan guarantees, 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 investment – some loan guarantee projects would appear likely to move forward without the credit support offered by 1705 (including those projects that already exist and for which the loan guarantee simply provides a means for refinancing). See the appendix for an illustration of these issues with the Shepherds Flat project.

Energy Loan Guarantee Program Options

Option 1: Limit OMB and Treasury Oversight Role

In the current review process, after working with project sponsors for 6 to 18 months, DOE submits projects for review of the credit subsidy for conditional commitments and policy review by OMB and Treasury. DOE would prefer to eliminate the deal-by-deal review and instead have OMB and Treasury play roles akin to what they do for other credit programs, such as OPIC and Ex-Im Bank. It should be noted, however, that OPIC and Ex-Im credit programs have a long track record; OMB was more involved in the review of these programs in their early years; and they have boards with representation by other Federal agencies, including Treasury, that review and approve all major projects. DOE would make initial credit subsidy estimates at the conditional commitment stage, and OMB would only review and approve of the credit subsidy used at the time of closing on a deal.

Pros

- Some Members of Congress may applaud this effort, *if* it results in a meaningful increase in the rate of granting conditional commitments to energy projects.

Cons

- Still exposes 1705 program to rescission risk until DOE can move through its pipeline a lot more conditional commitments – up to twice as many in the next few months as have been made in first 20 months of the program.
- OMB believes that this approach will not remedy the challenge of an insufficient number of financially and technically viable projects in the 1705 pipeline.
- The economic risks will not likely be addressed.

Option 2: Make the Process Work Better by Establishing Clear Policy Principles

Treasury and OMB believe that clear policy principles – and associated metrics for evaluation – should be developed for the energy loan guarantee program. These principles would be applied to all projects and address issues like doubling dipping, skin in the game, and incrementality of investment (including refinancing). Those proposed loan guarantee projects that have satisfactory measures under each of the key policy principles would then be expedited through review. Those that do not would require more extensive policy review

and possible rejection. It is important to recognize that under such an approach, there is a risk that not all of the 1705 appropriation of \$2.5 billion will be obligated by the program's sunset of September 30, 2011.

Pros

- Ensures the economic integrity of government support for renewables.

Cons

- Exposes the program to rescission risk through September 30, 2011.
- Some Members of Congress may criticize this effort to limit the application of the loan guarantee program. The White House will bear this criticism.

Option 3: Reprogram 1705 Funds for an Extension of 1603 Grant Program

The 1603 grant program expires on December 31, although the associated tax credits that could be converted into grants under this program do not sunset until December 31, 2012. A 2-year extension of the 1603 grant program through the sunset of the associated tax credits has a \$2.5 billion tax score. The Administration could work with Congress during the lame duck on the tax extenders bill to reprogram the 1705 funds to pay for the 1603 extension. As a variant of this option, the funds could be reprogrammed to support other clean energy priorities, such as the 48C clean energy manufacturing tax credit.

Pros

- Moves funds to the 1603 program that has been much more effective in promoting renewable energy, and likely to have a more significant impact on renewable energy investment in 2011 and 2012.
- Reduces economic risks and the rescission risks identified above.

Cons

- Sen. Bingaman, who views 1705 as "his program," would strongly oppose.
- Could signal the failure of a Recovery Act program that has been featured prominently by the Administration.
- The reprogramming effort entails the risk that Congress accepts the 1705 rescission but fails to deliver the 1603 extension.

Option 4: Streamline and Accelerate OMB / Treasury Reviews with Project Prioritization

OVP supports an option that falls in possible middle ground between options 1 and 2. This approach would create an expedited deal review process, while not doing away with Treasury and OMB reviews altogether. One option to be explored would be to assign higher credit subsidy scores in order to reach faster agreement on the government's risk tolerance and to more quickly utilize the \$2.5 billion in appropriated funds. In addition, this approach could prioritize deals with more favorable policy characteristics (e.g., deals with lower total government subsidies). This option would prevent the holding of the loan guarantee program to a more rigorous policy standard in awarding stimulus funds than other Recovery Act programs. The focus would be on spending all remaining funds while maintaining the necessary risk avoidance and *prioritizing* policy issues where possible.

Pros:

- Parties with equities, including Hill members and industry groups, would view the Administration as supporting a program that they have spent political capital defending.
- This would be an attempt to fix a broken process, as opposed to a complete and unexpected overhaul which could engender criticism.

Cons:

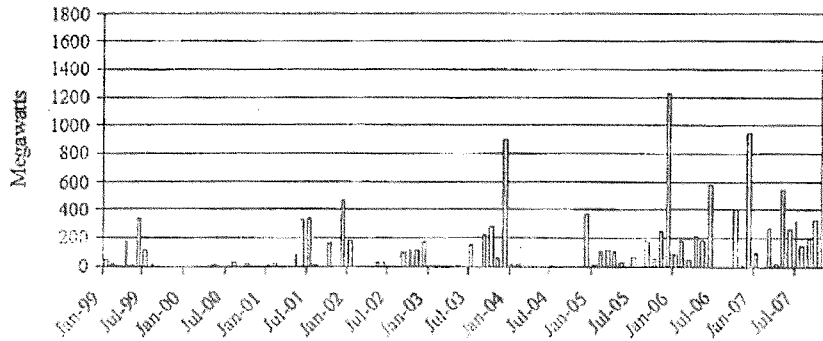
- DOE, OMB, and Treasury have tried to reach common ground on which to execute the program to date, and success has been limited.
- In order to spend the remaining budget authority, the policy principles may be so lax that this option may resemble Option 1 in practice.

Appendix Table 1: Cost of Generating Power from New Capacity Investment by Technology Type, ¢/kWh

	Natural Gas	Wind	Solar Thermal
No Subsidy Cost	7.3	8.8	23.2
Cost with 1603	7.3	6.7	16.0
Cost with 1603 and 1705	7.3	4.0	12.6

Source: DOE Energy Information Administration 2010.

Appendix Figure 1: U.S. Wind Capacity Additions and Periods of No Wind Tax Credit (shaded), 1999-2007



Source: Metcalf 2009 using DOE Energy Information Administration data.

Appendix: Shepherds Flat Loan Guarantee

The Shepherds Flat loan guarantee illustrates some of the economic and public policy issues raised by OMB and Treasury. Shepherds Flat is an 845-megawatt wind farm proposed for Oregon. This \$1.9 billion project would consist of 338 GE wind turbines manufactured in South Carolina and Florida and, upon completion; it would represent the largest wind farm in the country. The sponsor's equity is about 11% of the project costs, and would generate an estimated return on equity of 30%.

- Double dipping: The total government subsidies are about \$1.2 billion.

Subsidy Type	Approximate Amount (millions)
Federal 1603 grant (equal to 30% investment tax credit)	\$500
State tax credits	\$18
Accelerated depreciation on Federal and State taxes	\$200
Value of loan guarantee	\$300
Premium paid for power from state renewable electricity standard	\$220
Total	\$1,238

- Skin in the game: The government would provide a significant subsidy (65+%), while the sponsor would provide little skin in the game (equity about 10%).
- Non-incremental investment: This project would likely move without the loan guarantee. The economics are favorable for wind investment given tax credits and state renewable energy standards. GE signaled through Hill staff that it considered going to the private market for financing out of frustration with the review process. The return on equity is high (30%) because of tax credits, grants, and selling power at above-market rates, which suggests that the alternative of private financing would not make the project financially non-viable.
- Carbon reduction benefits: If this wind power displaced power generated from sources with the average California carbon intensity, it would result in about 18 million fewer tons of CO₂ emissions through 2033. Carbon reductions would have to be valued at nearly \$130 per ton CO₂ for the climate benefits to equal the subsidies (more than 6 times the primary estimate used by the government in evaluating rules).

Christian, Karen

From: [REDACTED]@omb.eop.gov]
Sent: Friday, April 15, 2011 6:30 PM
To: Christian, Karen
Subject: Follow up from 4/11 briefing
Attachments: January Slides to send.pdf; m09-24.pdf; March Slides to send.pdf; August slides to send.pdf

Karen,

This is in response to your email dated April 12, 2011, which asked OMB to provide answers to six questions, as well as certain documents. Our answers are below and the documents are attached. Please note that portions of these documents contain financial and proprietary information that may be covered by the Trade Secrets Act, 18 U.S.C. § 1905, as well as other potentially sensitive information. As such information would not be available to persons outside the government, we respectfully request that this information not be copied or distributed outside of the Committee without further consultation with OMB.

1. **Date of DOE briefing to OMB in January 2009 on Solyndra (Courtney described this as staff briefing, with possible power point presentation); list of staff attending for OMB; copy of slides presented at this briefing; point person for DOE; questions or feedback to DOE.**

OMB's staff's recollection is that DOE briefed OMB on or shortly after January 9, 2009, and that the principal participants from DOE were Director of the Loan Guarantee Office and staff from that office. Career staff from OMB's Budget Review Division, Energy Branch of the Natural Resources Programs Management Offices, and Economic Policy offices attended. Attached is a copy of the presentation provided by DOE. DOE subsequently advised OMB that it had determined to defer further consideration of the proposal pending additional analysis, eliminating any need for OMB review. At our briefing, you also asked when OMB learned of the Solyndra application. We have since determined that DOE had earlier notified OMB of that application in December 2008.

2. **Date of DOE briefing to OMB in March 2009 on Solyndra; list of staff attending for OMB; copy of slides presented at briefing; point person for DOE; questions or feedback to DOE.**

The March briefing by DOE to OMB was on March 13, 2009. OMB staff's recollection is that the principal participants from DOE were Director of the Loan Guarantee Office and staff from that office. Career staff from OMB's Budget Review Division, Energy Branch of the Natural Resources Programs Management Offices, and Economic Policy offices attended. Attached is a copy of the presentation provided by DOE, with redactions to protect against disclosure of credit subsidy calculations as previously discussed. At this point, OMB did not provide its views on the credit subsidy range estimated for the project.

3. **Date of DOE briefing to OMB in August 2009 (the briefing before Solyndra was closed) – the same information requested for 1 and 2 (above).**

The August 2009 briefing by DOE to OMB was on August 25, 2009. OMB staff's recollection is that the principal participants from DOE were Director of the Loan Guarantee Office and staff from that office. Career staff from OMB's Budget Review Division, Energy Branch of the Natural Resources Programs Management Offices, and Economic Policy offices attended. Attached is a copy of the presentation provided by DOE, with similar redactions. Following this briefing, OMB approved an apportionment reflecting the credit subsidy cost for the project, which was executed on September 2, 2009. We provided this document to you on April 4, 2011.

4. **Whether the Credit Subsidy Score changed between January and September.**

Originally, DOE assigned to Solyndra not a specific credit subsidy score but a broad credit subsidy range. This range, provided when the project was being processed under the Section 1703 "self pay" program, was based on the preliminary credit assessment provided by the rating agency in Solyndra's loan guarantee application and was not informed by the specific terms and conditions being negotiated with DOE. It was intended purely as an indicative range and was not binding on the final credit subsidy cost. However, the final credit subsidy cost calculated in September 2009 fell within the range originally contemplated.

5. The date DOE first contacted OMB about modifying the Solyndra loan guarantee agreement (the modification ultimately took place in March 2011). In addition, [REDACTED] or [REDACTED] (my notes don't indicate who) said that a meeting took place about the Solyndra loan modification, and I would request the date of that meeting.

DOE first contacted OMB to request a meeting on the status of Solyndra on October 28, 2010. The meeting requested by DOE on that date occurred on October 29, 2010.

6. The Recovery Act site addressing contact with lobbyists (I believe [REDACTED] said she could find this).

Attached is a copy of the OMB guidance addressing this subject. The link to the relevant website is http://www.whitehouse.gov/omb/recovery_contact_disclosure_forms/.

[REDACTED]
OMB Leg Affairs
202-395-4790

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Minority (202) 225-3641

June 23, 2011

Mr. Jacob Lew
Director
The Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Mr. Lew,

I am writing to you regarding the Office of Management and Budget's (OMB) response to a letter from the Committee on Energy and Commerce (Committee) dated March 14, 2011. This letter requested documents and a briefing from OMB relating to its role in the approval of a \$535 million Department of Energy (DOE) loan guarantee to Solyndra, Inc., a California company.

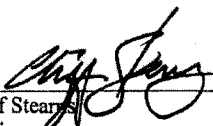
In the three months since this letter was sent, this Committee has worked extensively with OMB staff to obtain production of the requested documents. Committee staff has repeatedly attempted to accommodate OMB's concerns regarding these documents. In order to accommodate your staff's concerns, I myself came to an agreement with Deputy Director Jeffrey Zients to have a briefing and an *in camera* review of communications responsive to the Committee's request. I was astonished when OMB subsequently violated our agreement and refused to bring the agreed upon documents to the briefing. At that meeting, your staff told Committee staff that, in OMB's opinion, it was not necessary for this Committee to see the requested documents. This is unacceptable.

Congress has a right to this information. This Committee has jurisdiction over the DOE Loan Guarantee Program. It is conducting an investigation pursuant to Rules X and XI of the U.S. House of Representatives. We have a direct interest in understanding how OMB and DOE carried out their roles with respect to approving over \$11 billion in financing, and whether they properly weighed the risks presented by these guarantees, and the Solyndra guarantee in particular. OMB's opinion that this Committee does not need to see certain documents is not a proper basis for withholding these documents, and betrays a fundamental misunderstanding of the Constitutional roles of Congress and the Executive Branch.

Letter to Mr. Jacob Lew
Page 2

I expect OMB to produce the documents requested in the March 14 letter. I expect Deputy Director Zients to appear before this Committee tomorrow and answer the questions of this Committee fully and without qualification regarding OMB's actions during the Solyndra loan review. It is time for OMB to stop stonewalling and allow this investigation to proceed.

Sincerely,



Cliff Stearns
Chairman
Subcommittee on Oversight
And Investigations

cc: The Honorable Fred Upton, Chairman
The Honorable Henry A. Waxman, Ranking Member
The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations

Mr. STEARNS. It is very unfortunate that our witness failed to show, but we have made every effort to do so. The subcommittee is adjourned.

[Whereupon, at 10:12 a.m., the subcommittee was adjourned.]

