THE COMMITTEE ON ENERGY AND COMMERCE

INTERNAL MEMORANDUM

July 10, 2012

TO: Members, Subcommittee on Energy and Power and Subcommittee on Oversight and Investigations

FROM: Committee Staff

RE: Hearing on "The American Energy Initiative"

On Thursday, July 12, 2012, at 9:15 a.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Energy and Power and the Subcommittee on Oversight and Investigations will hold the twenty-fourth day of the hearing on "The American Energy Initiative." This day of the hearing will focus on H.R. ____, the "No More Solyndras Act" and H.R. ___, the "Smart Energy Act."

I. WITNESSES

Panel I

Mr. David G. Frantz
Acting Executive Director
Loan Program Office
U.S. Department of Energy

The Honorable Dr. Kathleen Hogan
Deputy Assistant Secretary for Energy Efficiency
Office of Energy Efficiency and Renewable Energy
U.S. Department of Energy

Panel II

Mr. Kenneth Berlin
General Counsel & Senior Vice President for Policy and Programming
Coalition for Green Capital

Dr. David W. Kreutzer
Research Fellow in Energy Economics and Climate Change
The Heritage Foundation

Ms. Diana Furchtgott-Roth
Senior Fellow
Manhattan Institute for Policy Research

Panel III

Mr. Paul D. Chamberlin
Assistant Vice President
Energy and Campus Development
University of New Hampshire

Mr. John Marrone
Vice President, Energy Initiatives
Saint-Gobain Corporation
On behalf of:
Industrial Energy Consumers of America

Mr. Jeff Drees
U.S. Country President
Schneider Electric
On behalf of:
NEMA and NEMA's Industrial Energy Efficiency Coalition

Mr. Steven Nadel
Executive Director
American Council for an Energy-Efficient Economy

Ms. Kateri Callahan
President
Alliance to Save Energy

II. NO MORE SOLYNDRAS ACT

A. BACKGROUND

Title XVII of the Energy Policy Act of 2005 established a loan guarantee program within the Department of Energy (DOE) authorizing the Secretary of Energy to issue loan guarantees for projects that avoid, reduce, or sequester air pollutants or greenhouse gases and employ new or significantly improved technologies compared with commercial technologies in service at the time the guarantee is issued.[1] President Obama's February 2009 stimulus package expanded Title XVII by adding section 1705 to include projects that use commercial technology for renewable energy systems, electric power transmission systems, and leading-edge biofuels projects and by appropriating $6 billion in funding to pay the credit subsidy costs[2] for section 1705 loan guarantees.[3] In March 2009, DOE was provided with an additional $47 billion in loan guarantee authority to make guarantees under Title XVII.[4]

Since enactment of the stimulus package, DOE has issued loan guarantees for 28 projects totaling over $15 billion under the section 1705 program.[5] Three of the first five companies receiving section 1705 loan guarantees have already declared bankruptcy:

- Abound Solar, Inc. ($400 million approved; $68 million disbursed)

[1] The Energy Policy Act of 2005, Pub. L. No. 109-58 (2005).
[2] Credit subsidy costs represent the cost of the loan to the taxpayer if the recipient of the guarantee defaults on the loan. Congress transferred $3.6 billion of the $6 billion in funding to other programs, leaving DOE with $2.4 billion to cover credit subsidy costs for section 1705 loan guarantees.
[3] The American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (2009).
[4] Omnibus Appropriations Act of 2009, Pub. L. No. 111-8 (2009).
[5] U.S. Government Accountability Office, "DOE Loan Guarantees: Further Actions are Needed to Improve Tracking and Review of Applications," GAO-12-157 (March 2012).

- Beacon Power Corporation ($43 million approved; $39 million disbursed)
- Solyndra, Inc. ($535 million approved; $527 million disbursed)

In February 2011, based on media reports in late 2010 and early 2011, the Committee opened its investigation of the Solyndra loan guarantee.[6] Over the course of the 17-month investigation, the Committee identified several shortcomings in the loan guarantee process, many of which are applicable not only to the Solyndra guarantee, but to the DOE loan guarantee program generally. For instance, a primary deficiency that the Committee identified is that DOE's consultation with the Treasury Department on loan guarantees was limited and in some instances rushed.[7] Further, the investigation unveiled a lack of transparency and a failure by DOE to follow its processes for reviewing applications and documenting its analysis and approvals. In addition, DOE subordinated the interests of the U.S. taxpayer to those of private interests when it restructured the Solyndra loan, despite an express statutory prohibition against such subordination.

B. Summary of the Legislation

A discussion draft of H.R. ____, the "No More Solyndras Act," was released on July 9, 2012, by Representatives Upton (R-MI) and Stearns (R-FL).

Section 1: Provides the short title of "No More Solyndras Act."

Section 2: Sets forth findings regarding DOE's Loan Guarantee Program under Title XVII of the Energy Policy Act of 2005, and highlights key findings of the Energy and Commerce Committee's investigation into the loan guarantee issued to Solyndra.

Section 3:

- Prohibits DOE from issuing any loan guarantees for applications submitted after December 31, 2011.

- Provides that loan guarantee applications submitted prior to December 31, 2011, remain eligible to receive a DOE loan guarantee if certain conditions are satisfied, including:

  - The Secretary of Treasury must provide a written recommendation to DOE on the merits of the guarantee.

[6] Solyndra was the first recipient of a DOE loan guarantee in September 2009. Within one year of receiving the loan guarantee, the company experienced significant financial problems that resulted in the layoff of approximately 135 temporary and 40 full-time employees, in November 2010. The company subsequently filed for Chapter 11 bankruptcy and laid off its remaining workforce of approximately 1,000 individuals.

[7] *See, e.g.*, U.S. Department of the Treasury, Office of the Inspector General, "Consultation on Solyndra Loan Guarantee was Rushed," OIG-12-048 (April 3, 2012) (concluding that whether the "consultation met the intent of the applicable law and regulation is not clear because Treasury's consultative role was not sufficiently defined, the consultation that did occur was rushed, and no documentation was retained as to how Treasury's serious concerns with the loan were addressed.").

  - If DOE makes a guarantee that does not conform to a Treasury recommendation, DOE must identify in a report to Congress its reasons for deviating from the Treasury recommendation.

- Provides that for any new guarantee issued, DOE must report to Congress on: (i) the review and decision-making process utilized by DOE in issuing the guarantee; (ii) the terms of the guarantee; (iii) the recipient; and (iv) the technology and project.

Section 4:

- Prohibits DOE from restructuring the terms of any guarantee unless it first consults with Treasury.

- Prohibits the subordination of U.S. taxpayer dollars to any other financing.

III. SMART ENERGY ACT

A. BACKGROUND

The federal government could see significant cost savings from improved energy efficiency given that it is the nation's largest user of electricity and fuel, accounting for roughly 1.5 percent of annual U.S. energy consumption. For instance, optimizing the use of energy savings performance contracts (ESPCs) to improve the energy efficiency of federal buildings could significantly reduce energy consumption. Other measures that could improve energy efficiency at the federal level include: data center consolidation, personal computer power savings techniques, and utilization of advanced metering infrastructure and demand response programs.

In addition to the federal government, significant energy efficiency gains can be realized in the nation's industrial and manufacturing sectors. Promoting early stage industrial energy efficiency technology and supporting innovative manufacturing processes could cut industrial energy consumption, reduce industrial waste, and improve industrial competitiveness. Moreover, increasing electricity production from combined heat and power and waste heat recovery could provide an additional source of affordable and reliable energy in the U.S.

B. SUMMARY OF THE LEGISLATION

A discussion draft of H.R. ____, the "Smart Energy Act," was released on July 9, 2012, by Representative Bass (R-NH).

Section 1: Sets forth the Act's short title and provides a table of contents.

Title I

Section 101: Requires the use of ESPCs by federal agencies utilizing private sector financing.

Section 102: Requires federal agencies to participate, as appropriate, in demand response programs for grid reliability and costs savings purposes.

Section 103: Requires federal agencies and the Office of Management and Budget to assess data center consolidation plans and complete missing elements in their respective data center inventories.

Section 104: Requires the issuance of guidance for federal agencies to use computing tools that promote energy savings through the use of computer hardware, energy efficiency software, and power management tools.

Section 105: Requires the Department of Energy to prepare a "best practices" report for the use of advanced metering of energy consumption in federal facilities, buildings, and equipment.

Section 106: Requires the use of web-based tracking systems to certify compliance with the requirements for energy and water evaluations, the implementation of identified energy and water measures, and the publishing of consumption data on an individual facility basis.

Title II

Section 201: Requires the Secretary of Energy to study the legal, regulatory, and economic barriers to the deployment of industrial energy efficiency. The Secretary must report the findings of the study to Congress along with recommendations and guidance.

Section 202: Builds on R&D programs within the Department of Energy to promote the development of early-stage energy efficiency technologies and the use of innovative manufacturing processes and research to move toward eventual commercialization.

Section 203: Requires the Secretary of Energy to develop a strategic plan to double the production of electricity from combined heat and power and waste heat recovery in the U.S.

IV. ISSUES

The following issues will be examined at the hearing:

- The origin and scope of the DOE Title XVII loan guarantee program.
- Lessons learned from the Committee's investigation into the Solyndra loan guarantee.
- Measures to improve the energy efficiency of the federal government and reduce costs.
- Measures to improve industrial energy efficiency and facilitate greater development of combined heat and power and waste heat recovery.

V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Patrick Currier or Karen Christian at (202) 225-2927.