

**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**

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 the Committee to fulfill its oversight obligations and responsibility and pursue this information together; if we can 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.