Opening Statement of the Honorable Cliff Stearns
Chairman, Subcommittee on Oversight and Investigations
"Continuing Developments Regarding the Solyndra Loan Guarantee"
October 14, 2011
(As Prepared for Delivery)

We convene this hearing of the Subcommittee on Oversight and Investigations to gain a better understanding about the Department of Treasury's role in reviewing the Solyndra loan guarantee, particularly with regard to the Department of Energy's decision to restructure the loan guarantee and subordinate taxpayers to private investors.

While President Obama may claim that hindsight is 20/20, the facts tell a much different story. Recent emails produced by the White House and OMB, as well as a long chain of others, clearly show that numerous members of the Obama Administration—from the most senior levels in the West Wing down to career professionals at OMB and DOE—knew that Solyndra was a bad bet destined to fail. And while the Obama Administration may not have had a crystal ball, they did have financial models in August 2009 foretelling that Solyndra would run out of money in September 2011, which they chose to ignore.

In late 2010, Solyndra informed DOE that their situation was dire. DOE began negotiations to restructure the terms of the loan to keep Solyndra above water. Under the new arrangement, two primary investors in Solyndra, Argonaut and Madrone Capital, were given priority over the government with respect to the first $75 million recovered in the event of liquidation. I and other members of this Subcommittee have continuously questioned the legal basis for this unprecedented decision. Section 1702(3) of the Energy Policy Act of 2005 clearly states in plain language that when DOE makes a loan, "the obligation shall be subject to the condition that the obligation is not subordinate to other financing."

Previous communications produced to the Committee revealed that there were numerous concerns within the Administration regarding the financial and political impact of the restructuring. What the latest round of emails show is that senior officials within the Obama Administration had significant concerns about its legal basis, and that those concerns were simply ignored.

In August 2011, as discussions about a second restructuring were underway, Assistant Secretary of Treasury, Mary Miller, emailed the Deputy Director of OMB, Jeffrey Zeints, stating that:

> “since July of 2010, Treasury has asked DOE for briefings on Solyndra’s financial condition and any restructuring of terms. The only information we have received about this has been through OMB, as DOE has not responded to any requests for information about Solyndra.”

She goes on to note that “[Treasury’s] legal counsel believes that the statute and the DOE regulations both require that the guaranteed loan should not be subordinate to any loan or other debt obligation” and that “in February, [Treasury] requested in writing that DOE seek the Department of Justice’s approval of any proposed restructuring” and that to her knowledge “that has never happened.” In her closing, Assistant Secretary Miller seems almost resigned to DOE’s course of action in stating that while she “expect[s] that DOE has a view about why loan subordination can occur without DOJ approval or Treasury consultation, I wanted to correct any impression that we have acquiesced in the steps to date.”

Unfortunately, Assistant Secretary Miller is unable to join us today to discuss her correspondence with DOE or her Department’s role in the Solyndra review. Hopefully, however, our witnesses can shed some light on the decision-making process that occurred around the time of the restructuring. In fact, one of our witnesses, Gary Burner, Chief Financial Officer at the Treasury Department’s Federal Financing Bank, also emailed key DOE officials involved in the Solyndra restructuring after hearing about the proposed terms of the new agreement from OMB. He noted on February 10th that he understood “these adjustments may include subordination of Solyndra’s $535 million reimbursement obligation to DOE and possibly the forgiveness of interest.” Accordingly, he raised the prospect of seeking DOJ approval, which never ultimately occurred.

Judging from these emails, it is clear that senior officials at the Department of Treasury were not sufficiently consulted about the restructuring and when they offered their opinions and warning signs, they were ignored like so many of the others along the way. It should be noted, however, that the final rule issued by DOE implementing Title 17 of the Energy Policy Act specifically requires DOE to consult with the Secretary of Treasury before “DOE grants a deviation that would constitute a substantial change in the financial terms of the Loan Guarantee Agreement.” There is no exception allowing DOE to ignore those who disagree with its course of action.

I look forward to better understanding why the Department of Treasury felt so strongly about being consulted prior to the restructuring of the loan guarantee and whether they believe DOE violated the Energy Policy Act of 2005.

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