

Committee on Energy and Commerce
 Subcommittee on Oversight and Investigations
Continuing Developments Regarding the Solyndra Loan Guarantee
 October 14, 2011

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[REDACTED]
From: [REDACTED]
Sent: Thursday, March 19, 2009 2:25 PM
To: [REDACTED]
Subject: RE: Could you type up in short bullets your questions/concerns so I can quickly turn out the list of Treasury concerns for Karthic and Ken this PM

Great Questions -- all of them!! Thanks

From: [REDACTED]
Sent: Thursday, March 19, 2009 2:16 PM
To: [REDACTED]
Subject: RE: Could you type up in short bullets your questions/concerns so I can quickly turn out the list of Treasury concerns for Karthic and Ken this PM

What is phase 2's economic impact on phase 1?
Does it impact repayment potential?

Is phase 2 constructed concurrent or sequential to phase 1?

Shared facilities: does phase 2 reimburse phase 1 for economic depreciation it causes of the loan collateral?

What is the difference between budgeted contingency funds (included in base costs) and overrun project costs?

If contingency funds are removed do we need to bump up the overrun equity commitment?

What's the initial base equity commitment?

Who determines the interest rate (FFB or DoE)?

Par or Market Prepayment?

What is the collateral requirement / % of loan backed by collateral / when is collateral valued...

Can sponsor remove equity as they repay / prepay loan (as long as they maintain 27% equity)?

Pricing mechanism for sales of output of the project (arms length)?
Independent auditor?

Who owns projects improvements to sponsor's intellectual property?

What are customary exceptions to subordination to full repayment of guaranteed loan?

Valuation of alternative asset for Debt Service Reserve Account?

Who is the insurer and how did they prove they were financially sound.

Is the 90 percent stripping threshold standard (see SBA)?

What is 90% of useful life of the project?

How is a significant equity investment determined?

[REDACTED]
Financial Economist
Office of Debt Management
Department of Treasury

E-mail: [REDACTED]@do.treas.gov

Phone: [REDACTED]

From: [REDACTED]

Sent: Thursday, March 19, 2009 1:46 PM

To: [REDACTED]

Subject: Could you type up in short bullets your questions/concerns so I can quickly turn out the list of Treasury concerns for Karthic and Ken this PM



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

March 16, 2010

Memorandum To Files

From: FFB Loan Administration Staff

Subject: Treasury/FFB Consultation with the Department of Energy (DOE) on the Solyndra Fab 2 LLC Project ("the Project")

Treasury and FFB staff convened a conference call with members of DOE's Loan Guarantee Program Office (LGPO) on March 19, 2009 to discuss a potential loan guarantee to be issued under Title XVII of the Energy Policy Act of 2005. A guaranteed loan totaling \$535 million is requested by the applicant to finance its Fab 2 manufacturing facility for thin-film omni-facial solar modules targeting the commercial rooftop market.

Attendees from DOE included David Frantz, LGPO, and Bill Miller, LGPO.

Attendees from FFB were Gary Burner, Whitney Culbertson, Leona Cosby, and Pearl Buenvenida. Attendees from Treasury's Office of Policy and Legislative Review were Paula Farrell, Preston Atkins, Karen Weber, Colleen McLoughlin, and Ed Garnett. Nathan Struempfler and Mike Dai from the Office of Debt Management also attended.

Key points made by DOE in their briefing materials include:

- Innovative technology of cylindrical tube photovoltaic panels that are lighter weight, provide a lower wind profile, and are less expensive to install than other solar panels available.
- Solyndra is in the ramp-up and optimization phase of its initial production line (Fab 1); experience developed from Fab 1 will be for the benefit of the Fab 2 project.
- Experienced management team has a demonstrated ability to raise capital (\$750 million to date) to support the project.

FFB staff conclusions based on the presentation and written materials provided are:

- Equity contribution is merely 27% of the Project costs, which is low for a start-up company. We also note that this is below the original expectation of 35% equity contributions when the Title XVII program was first designed. The borrower claims that it cannot raise additional capital in this market.
- Deal is structured to protect the sponsor's interest in the first production line (Fab 1) such that the government cannot grab this asset along with the intellectual property (IP) in the event of default.

- **Christian Gronet, Founder and CEO of Solyndra, maintains a sizeable share of the company's equity. He is its single largest shareholder (12.6%).**
- **Substitution effects with other solar panel manufacturers remain a challenge to meeting the product's expected market penetration.**

[REDACTED]

From: [REDACTED]@omb.eop.gov]
Sent: Monday, July 26, 2010 5:13 PM
To: Frantz, David
Cc: [REDACTED]
Subject: RE: Solyndra Follow Up

Dave,

Thanks again for the conversation last week regarding the status of Solyndra and DOE's monitoring plan. Given the critical importance of monitoring and recent accounts of the Solyndra project, we appreciate your time in providing an overview of the steps DOE is taking on this front and an update on Solyndra specifically. Given information recently reported in the media, I'm sure you can understand our interest in understanding the current status of this project and associated taxpayer risk. We look forward to following up with the new director of monitoring now that she is onboard to get a better understanding of the organization, systems, processes, etc. DOE will use in monitoring and analyzing loans going forward.

Per our conversation, we have pulled together the items requested July 16, items DOE indicated they planned to provide on Wednesday's call, and follow up items from our discussion so that we have a common list of items. Please let me know if you have any questions.

Thanks.

Summary of Follow Up Items

1. Follow-up items per the July 16 email, including updated parent financial statements and financial model for the project and parent, as well as the latest IE report.
2. Please provide the latest tear sheet summary for the project.
3. Actual performance against the loan covenants, including *pro forma* impact (if any) as a result of the recent sale of the \$175mm of secured convertible promissory notes
4. Monthly variance reports: As we discussed this may serve as a proxy for the type of information we are looking for until DOE develops a more standard and systematic way of collecting and reporting key data. For the Sponsor: Variance analysis against Sponsor's 2010 plan. For the Borrower: Variance analysis per the construction schedule (timing) and budget (cost).
5. Current market price, production, productivity (e.g., watts / panel), and cost data vs. the pro forma projections at closing. This may include:
 - a. Monthly production and sales figures since financial close in 2009.
 - b. An update to the chart on page 22 of the Credit Committee Paper (March 2009) regarding the cumulative yield for Fab1. Also an updated analysis of the increase in conversion efficiency per panel (175 watts per module in March 2009).
 - c. Please provide additional information around the comment that the manufacturing "cost" was approximately \$1.50 (assuming this means per watt). How has this performance compared to the base case projections and why? Please describe how this compares to Solyndra's December 2009 S-1 filing which

indicated 17.2MW sold and \$108,321K in cost of revenue (or an implied cost per watt of \$6.30) for the 9 months ended October 31.

d. Updates to Solyndra's sales contracts:

- i. Page 12 of the Credit Committee Paper (March 2009) gave pricing and volume details for Solyndra's existing contracts. Please provide a current update to that table (including additional contracts signed) and any market color that explains why average selling price is now only \$2.50/watt. Please describe how this compares to Solyndra's December 2009 S-1 filing which indicated 17.2MW sold and \$58.814K in revenue (or an implied \$3.42 average price/watt) for the 9 months ended October 31.
6. Please provide a breakdown of the cost data by source (i.e. manufacturing overhead – including depreciation, materials, labor, etc.) and a crosswalk to cost data for other solar manufacturers as was provided in support of the Abound request, including estimated balance of plant costs.
7. Summary of terms of \$175mm secured convertible promissory notes, and description of how Solyndra's business plan and creditworthiness has been impacted by the decision to raise funds in this manner, instead of accessing the public equity markets (including any impact that the security interest has on the parent company's ability to meet its obligations).
8. Citation for the accounting standards governing going concern statements and any written response by Solyndra to the auditor's statement with specific financial information supporting their position.
9. Additional detail on the nature of the transaction being contemplated by the reference to the sale of 'excess production capacity' in the July 2010 Quarterly Portfolio Report.
10. What changes has Solyndra requested (per the July 16 email)? Please provide a summary of each request and any implications of these changes. Please also describe what these changes would mean in terms of taxpayer risk. Please also describe how the sub-lease and sale of 'excess capacity' would be booked by the parent and project. Please describe the changes to the Common Agreement that Solyndra has requested (per June 2010 Quarterly Portfolio Report).
11. Please describe the 'changes to the construction line items' and any implications of these changes.
12. Prior to closing, OMB requested the following: *Can DOE provide the results of an independent test which verifies Solyndra's claim regarding higher electricity generation per rooftop and lower balance of system costs? That is, have they provided results for any tests which compare the costs of two similar rooftops – one with Solyndra and the other with conventional panels that demonstrate the greater generation and the lower costs? Could DOE provide this information based on the current data available?*

Also, as we discussed, we should think about a systematic way to track the loan guarantees after they have closed. Particularly, it would be helpful to have advance notification of any issues that arise so that folks are not surprised by reports in the media. This would also help in collecting information we will ultimately need in the re-estimate process. We look forward to working with DOE to develop some way to track this information. We have made good progress on similar reports for tracking the pipeline of deals on the front end of the process. Now that we have some deals that are closing, we should think about similar reports for that stage as well.

Please let me know if you have any questions.

Thanks.

From: [REDACTED]
Sent: Monday, July 19, 2010 4:35 PM
To: [REDACTED]@do.treas.gov
Cc: [REDACTED]
Subject: RE: Solyndra Follow Up

We can make this work but let's please plan on a tel-conference. It is much more efficient as we can't afford the time away from the office. Just send us a number for dial in for 3:30.

Many thanks,

Dave

David G. Frantz
US Department of Energy
Director, Loan Guarantee Office, CF-1.3
Office: [REDACTED] Fax: [REDACTED]
David.Frantz@[REDACTED]

From: [REDACTED] [mailto:[REDACTED]@omb.eop.gov]
Sent: Monday, July 19, 2010 4:27 PM
To: Frantz, David; [REDACTED]@do.treas.gov
Subject: Solyndra Follow Up

Dave and [REDACTED]

In follow up to our discussion earlier regarding Solyndra, any time Wednesday afternoon from 3:30 on works for us. Let me know what time works for you. If you send clearance information to me or [REDACTED] by Wednesday morning, that would be great.

Thanks.

[REDACTED]

From: [REDACTED]
Sent: Wednesday, November 03, 2010 8:58 PM
To: 'Frances.Nwachuku@[REDACTED]'
Cc: [REDACTED]
Subject: Solyndra

Frances:

I hope this finds you doing well. [REDACTED] and I work on behalf of Assistant Secretary Mary Miller to coordinate Treasury's consultative role in the DOE Loan Guarantee Program. Dave Frantz suggested that I reach out to you regarding a request we have about current DOE work on Solyndra.

I understand that your group met with OMB in recent days, and is doing some additional analysis before circling back with OMB in a week or two. When you do circle back with OMB, we would greatly appreciate it if you could loop us in to those discussions, so that we can keep abreast of your assessment of the situation, and the courses of action you are considering. If you'd like to touch base in the meantime, feel free to give me a ring.

We'll look forward to meeting you sometime soon.

Thanks,
[REDACTED]

[REDACTED]
Office of Environment and Energy
U.S. Department of the Treasury
Phone: [REDACTED]
Fax: [REDACTED]
Email: [REDACTED]@do.treas.gov

[REDACTED]

From: [REDACTED]
Sent: Friday, January 07, 2011 4:17 PM
To: [REDACTED]
Subject: may I call you about the A.G.'s "compromise of claim" authority?

[REDACTED]

I just want to be sure I'm up-to-date when I say to another agency: "You need to talk to DOJ before you start going down that road."

If you prefer, you can refer me to someone else in your office.

[REDACTED]

[REDACTED]

*Deputy Assistant General Counsel
(Banking and Finance)
Department of the Treasury
Room 2020, Main Treasury Building
1500 Pennsylvania Avenue NW
Washington, DC 20220*

Tel: [REDACTED]
Fax: [REDACTED]
Email: [REDACTED]

[REDACTED]

From: [REDACTED]
Sent: Friday, January 07, 2011 4:22 PM
To: [REDACTED]
Subject: RE: may I call you about the A.G.'s "compromise of claim" authority?

I'll call [REDACTED] on Monday.

Thanks!

[REDACTED]

-----Original Message-----

From: [REDACTED] [mailto:[REDACTED]@usdoj.gov]
Sent: Friday, January 07, 2011 4:19 PM
To: [REDACTED]
Subject: RE: may I call you about the A.G.'s "compromise of claim" authority?

[REDACTED] is our resident expert [REDACTED]. She's out today but back on Monday. I can talk today but may be less facile with the subject. ;-)

From: [REDACTED]@do.treas.gov [mailto:[REDACTED]@do.treas.gov]
Sent: Friday, January 07, 2011 4:17 PM
To: [REDACTED]
Subject: may I call you about the A.G.'s "compromise of claim" authority?

[REDACTED]

I just want to be sure I'm up-to-date when I say to another agency: "You need to talk to DOJ before you start going down that road."

If you prefer, you can refer me to someone else in your office.

[REDACTED]
Deputy Assistant General Counsel

(Banking and Finance)

Department of the Treasury

Room 2020, Main Treasury Building

1500 Pennsylvania Avenue NW

Washington, DC 20220

Tel:

Fax:

Email: [REDACTED]@do.treas.gov

[REDACTED]

From: Burner, Gary
Sent: Thursday, February 10, 2011 2:05 PM
To: 'susan.richardson@[REDACTED]'; 'Frances.Nwachuku@[REDACTED]'
Subject: Solyndra

Dear Frances and Susan,

Treasury staff has learned from the Office of Management and Budget that the Department of Energy is close to implementing a set of adjustments to the Solyndra Loan Guarantee Agreement in response to Solyndra's financial condition. We understand that these adjustments may include subordination of Solyndra's \$535 million reimbursement obligation to DOE and possibly the forgiveness of interest. Unless DOE has other authorities, these adjustments may require approval of the Department of Justice pursuant to 31 USC 3711 and 31 CFR Part 902. Unless other authorities exist, this statute rests with DOJ the authority to accept the compromise of a claim of the U.S. Government in those instances where the principal balance of a debt exceeds \$100,000. Let me know if you need the name of a contact at DOJ.

Will you be referring the contemplated adjustment to DOJ or are there other authorities that DOE is using to compromise this debt?

Please let us know if the FFB can be of any assistance as you move forward. If you need to modify any FFB agreements, please let me know.

Sincerely,
Gary

[REDACTED]

From: Nwachuku, Frances [REDACTED]
Sent: Thursday, February 10, 2011 4:44 PM
To: Burner, Gary; Richardson, Susan
Subject: RE: Solyndra

Hi Gary,

I believe there is a gross misunderstanding of the outcome of the negotiated restructuring of the Solyndra obligation to DOE. Could you give me a call to discuss. Thanks.

Frances

Frances I. Nwachuku
Director,
Portfolio Management Division
Loan Programs Office
US Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

Direct: [REDACTED]
Mobile: [REDACTED]
Fax: [REDACTED]

From: Gary.Burner@ [REDACTED] [mailto: [REDACTED]]
Sent: Thursday, February 10, 2011 2:05 PM
To: Richardson, Susan; Nwachuku, Frances
Subject: Solyndra

Dear Frances and Susan,

Treasury staff has learned from the Office of Management and Budget that the Department of Energy is close to implementing a set of adjustments to the Solyndra Loan Guarantee Agreement in response to Solyndra's financial condition. We understand that these adjustments may include subordination of Solyndra's \$535 million reimbursement obligation to DOE and possibly the forgiveness of interest. Unless DOE has other authorities, these adjustments may require approval of the Department of Justice pursuant to 31 USC 3711 and 31 CFR Part 902. Unless other authorities exist, this statute rests with DOJ the authority to accept the compromise of a claim of the U.S. Government in those instances where the principal balance of a debt exceeds \$100,000. Let me know if you need the name of a contact at DOJ.

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Please let us know if the FFB can be of any assistance as you move forward. If you need to modify any FFB agreements, please let me know.

Sincerely,
Gary

[REDACTED]

From: Nwachuku, Frances [REDACTED]
Sent: Friday, February 11, 2011 10:55 AM
To: Burner, Gary
Cc: [REDACTED]
Subject: RE: Solyndra

Gary,

Below is the language.

OMB Circular A-11 185.3 (ab):

"Work-outs mean plans that offer options short of default or foreclosure for resolving troubled loans or loans in imminent default, such as deferring or forgiving principal or interest, reducing the borrower's interest rate, extending the loan maturity, or postponing collection action. Work-outs are expected to minimize the cost to the Government of resolving troubled loans or loans in imminent default. They should only be utilized if it is likely that the borrower will be able to repay under the terms of the workout and if the cost of the work-out is less than the cost of default or foreclosure. For post-1991 direct loans and loan guarantees, the expected effects of work-outs on cash flow are included in the original estimate of the subsidy cost. Therefore, to the extent that the effects of work-outs on cash flow are the same as originally estimated, they do not alter the subsidy cost. If the effects on cash flow are more or less than the original estimate, the differences are included in reestimates of the subsidy and are not a modification."

Frances

Frances I. Nwachuku
Director,
Portfolio Management Division
Loan Programs Office
US Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

Direct: [REDACTED]
Mobile: [REDACTED]
Fax: [REDACTED]

-----Original Message-----

From: Gary.Burner@[REDACTED] [mailto:[REDACTED]]
Sent: Friday, February 11, 2011 9:07 AM
To: Nwachuku, Frances
Subject: Re: Solyndra

11AM is fine.

----- Original Message -----

From: Nwachuku, Frances [REDACTED]
To: Burner, Gary
Sent: Thu Feb 10 22:58:57 2011
Subject: Re: Solyndra

I have a 10am, but can talk at 11am.

Frances

----- Original Message -----

From: Gary.Burner@ [REDACTED]
To: Nwachuku, Frances; Richardson, Susan
Sent: Thu Feb 10 17:54:22 2011
Subject: RE: Solyndra

Frances,

Thanks for your quick response. Do you have some time tomorrow around 10:00AM?

Gary

-----Original Message-----

From: Nwachuku, Frances [mailto: [REDACTED]]
Sent: Thursday, February 10, 2011 4:44 PM
To: Burner, Gary; Richardson, Susan
Subject: RE: Solyndra

Hi Gary,

I believe there is a gross misunderstanding of the outcome of the negotiated restructuring of the Solyndra obligation to DOE. Could you give me a call to discuss. Thanks.

Frances

Frances I. Nwachuku
Director,
Portfolio Management Division
Loan Programs Office
US Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

Direct: [REDACTED]
Mobile: [REDACTED]
Fax: [REDACTED]

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To: Richardson, Susan; Nwachuku, Frances
Subject: Solyndra

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Will you be referring the contemplated adjustment to DOJ or are there other authorities that DOE is using to compromise this debt?

Please let us know if the FFB can be of any assistance as you move forward. If you need to modify any FFB agreements, please let me know.

Sincerely,
Gary

[REDACTED]

From: Burner, Gary
Sent: Friday, August 12, 2011 11:51 AM
To: Nwachuku, Frances
Cc: [REDACTED]
Subject: RE: Solyndra

Frances,

Can we get an update on the status of Solyndra today? If so, please call [REDACTED] on [REDACTED] and she can conference me in. I am offsite today.

Gary

From: Nwachuku, Frances [REDACTED]
Sent: Friday, February 11, 2011 10:54 AM
To: Burner, Gary
Cc: [REDACTED]
Subject: RE: Solyndra

Gary,

Below is the language.

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Frances

Frances I. Nwachuku
Director,
Portfolio Management Division
Loan Programs Office
US Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

[REDACTED]

-----Original Message-----

From: Gary.Burner@ [REDACTED]
Sent: Friday, February 11, 2011 9:07 AM
To: Nwachuku, Frances
Subject: Re: Solyndra

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From: Nwachuku, Frances [REDACTED]
To: Burner, Gary
Sent: Thu Feb 10 22:58:57 2011
Subject: Re: Solyndra

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Sent: Thu Feb 10 17:54:22 2011
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Subject: RE: Solyndra

Hi Gary,

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Frances

Frances I. Nwachuku
Director,
Portfolio Management Division
Loan Programs Office
US Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

Direct: [REDACTED]
Mobile: [REDACTED]

[REDACTED]

From: [REDACTED]
Sent: Tuesday, August 16, 2011 9:52 PM
To: Miller, Mary
Cc: Grippo, Gary
Subject: RE: DOE Loan Guarantees

Sure. I will be there.

The Title XVII statute and the DOE regulations both require that the guaranteed loan shall not be subordinate to any loan or other debt obligation.

The DOE regulations state that DOE shall consult with OMB and Treasury before DOE grants any "deviation" from the requirements of the regulations (to the extent such requirement is not specified by the statute) that would constitute a substantial change in the financial terms of the Loan Guarantee Agreement.

But I will bet a quarter that the DOE lawyers have some kind of theory on how whatever restructuring they have done and whatever they are considering doing does not violate these requirements. Can't wait to hear it.

[REDACTED]

From: Miller, Mary
Sent: Tuesday, August 16, 2011 7:41 PM
To: [REDACTED]
Cc: Grippo, Gary
Subject: DOE Loan Guarantees

[REDACTED] - I may be on a call tomorrow morning about the Solyndra loan restructuring. I need to know from you what Treasury's role should be in this. What does the statute say about putting the government in a subordinate position to new loans? We told DOE that they needed to consult DOJ about changing the terms of the loan. Apparently they did not consult DOJ. Should we press for that now as they consider another restructuring? There is a small amount of funds left at the FFB that has not been drawn down. Should we release that? I have a number of questions. It might be good for you to listen in on the call tomorrow. I think it will be in the 9:30 to 10AM range. Are you available?

Mary J. Miller
Assistant Secretary for Financial Markets
[REDACTED]

[REDACTED]

From: Zients, Jeffrey D. [REDACTED]
Sent: Wednesday, August 17, 2011 8:57 AM
To: Miller, Mary
Cc: Wolin, Neal
Subject: RE: Solyndra

Thanks Mary.
JZ

From: Mary.Miller@[REDACTED]
Sent: Wednesday, August 17, 2011 8:24 AM
To: Zients, Jeffrey D.
Cc: Neal.Wolin@[REDACTED]
Subject: Solyndra

Jeff – prior to our call today I wanted to clarify an important point. 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. Our 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. The DOE regulations also state that DOE shall consult with OMB and Treasury before any “deviation” is granted from the financial terms of the Loan Guarantee Agreement. In February we requested in writing that DOE seek the Department of Justice’s approval of any proposed restructuring. To our knowledge that has never happened.

While I expect 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. We are studying the materials for the call later today. Thanks for your assistance.

Mary J. Miller
Assistant Secretary for Financial Markets
[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: Wednesday, August 17, 2011 9:13 AM
To: Miller, Mary; Grippo, Gary; Burner, Gary; [REDACTED]
Subject: RE: Materials for tomorrow's 9:30 briefing

Here are my initial thoughts in case we don't get a chance to talk much before the call:

- I think we need some additional pieces of information to evaluate the proposed restructuring, including:

- What do we think the liquidation value of Solyndra is right now, considering all tangible and intangible assets in which DOE has security?

- What consideration was given to taking control of the company and selling to a strategic investor?

- What are reasonable projections of the company's cash margins if one excludes consideration of sunk costs/existing debt (that is, the value if we were to sell the company-
-I found the historical financials somewhat confusing given the widening gap between operating margins and EBITDA over time, but I may be reading something wrong)?

- We should also get clarity on the assumptions behind the revenue and cost projections with respect to assumed product pricing, sales volumes, and costs? We're in this place because they have historically been overly optimistic. Are they now sufficiently conservative?

- We should also ask for a break-even analysis of the financial projections at which liquidating the company or selling to a strategic investor becomes more attractive than the proposed restructuring.

Finally, the proposed restructuring is clearly favorable to the other investors (DOE would presumably say this is necessary to entice new cash infusions). In short, the other investors go from having \$610 million above their subordinated debt/equity to having \$325 million above their equity with 60 cents on every dollar that goes to equity. Further, the additional money that they are proposing to put in the project would be riskless as long as they are confident that S's liquidation value would be at least \$250 million.

From the USG's perspective, we would go from having \$75 million above us to having \$175 million above all but \$75 million of our capital, and only 40 cent recovery on every dollar going to equity. This is why I think the above break-even analyses are critical.

[REDACTED]

Office of Environment and Energy
U.S. Department of the Treasury
Phone: [REDACTED]
Fax: [REDACTED]
Email: [REDACTED]

-----Original Message-----

From: Miller, Mary
Sent: Wednesday, August 17, 2011 8:02 AM

To: Grippo, Gary; Burner, Gary; [REDACTED]
Subject: FW: Materials for tomorrow's 9:30 briefing

A call was scheduled for 9:30 this morning, but now may be pushed back. I would like your quick analysis of the attached document. I realize this is short notice (and that Gary Grippo is traveling), but I want to have the best understanding of this that I can from any of you that can access and read this. I will let you know when the call is rescheduled. Please do not forward on this document. Thanks

-----Original Message-----

From: [REDACTED]
Sent: Tuesday, August 16, 2011 10:01 PM
To: 'Jeffrey_D_Zients@[REDACTED]'; 'Sally_C_Ericsson@[REDACTED]';
[REDACTED]; Miller, Mary; [REDACTED]
Cc: [REDACTED] Silver, Jonathan; Poneman, Daniel; [REDACTED]
Subject: Materials for tomorrow's 9:30 briefing

All - per your request, attached please find Lazard/DOE's preparatory materials for the Solyndra discussion tomorrow morning, including historical financials, current status, a comparison of the original deal terms to the current restructured deal terms, projected financials, and a draft restructuring proposal.

An invitation with dial-in information will follow. If you have any questions, please don't hesitate to contact me at your convenience.

Best,

Morgan

[REDACTED]
Loan Programs Office
U.S. Department of Energy
[REDACTED]

From: [REDACTED]
Sent: Wednesday, August 17, 2011 1:01 PM
To: [REDACTED]
Subject: authority to compromise claims owed to the government

Unless DOE has other authorities, compromises of claims require approval of the Department of Justice pursuant to 31 USC 3711 and 31 CFR Part 902. Unless other authorities exist, this statute rests with DOJ the authority to accept the compromise of a claim of the U.S. Government in those instances where the principal balance of a debt exceeds \$100,000. Claim compromises include loan work-outs.

31 U.S.C. § 3711. Collection and compromise

- (a) The head of an executive, judicial, or legislative agency--
- (1) shall try to collect a claim of the United States Government for money or property arising out of the activities of, or referred to, the agency;
 - (2) may compromise a claim of the Government of not more than \$100,000 (excluding interest) or such higher amount as the Attorney General may from time to time prescribe that has not been referred to another executive or legislative agency for further collection action, except that only the Comptroller General may compromise a claim arising out of an exception the Comptroller General makes in the account of an accountable official; and
 - (3) may suspend or end collection action on a claim referred to in clause (2) of this subsection when it appears that no person liable on the claim has the present or prospective ability to pay a significant amount of the claim or the cost of collecting the claim is likely to be more than the amount recovered.
- (b)(1) The head of an executive, judicial, or legislative agency may not act under subsection (a)(2) or (3) of this section on a claim that appears to be fraudulent, false, or misrepresented by a party with an interest in the claim, or that is based on conduct in violation of the antitrust laws.
- (2) The Secretary of Transportation may not compromise for less than \$500 a penalty under section 21302 of title 49 for a violation of chapter 203, 205, or 207 of title 49 or a regulation or requirement prescribed or order issued under any of those chapters.
- (c) A compromise under this section is final and conclusive unless gotten by fraud, misrepresentation, presenting a false claim, or mutual mistake of fact. An accountable official is not liable for an amount paid or for the value of property lost or damaged if the amount or value is not recovered because of a compromise under this section.
- (d) The head of an executive, judicial, or legislative agency acts under--
- (1) regulations prescribed by the head of the agency; and
 - (2) standards that the Attorney General, the Secretary of the Treasury, may prescribe. [FN1]

31 C.F.R. § 902.1 Scope and application.

- (a) The standards set forth in this part apply to the compromise of debts pursuant to 31 U.S.C. 3711. An agency may exercise such compromise authority for debts arising out of activities of, or referred or transferred for collection services to, that agency when the amount of the debt then due, exclusive of interest, penalties, and administrative costs, does not exceed \$100,000 or any higher amount authorized by the Attorney General. Agency heads may designate officials within their respective agencies to exercise the authorities in this section.
- (b) Unless otherwise provided by law, when the principal balance of a debt, exclusive of interest, penalties, and administrative costs, exceeds \$100,000 or any higher amount authorized by the Attorney General, the authority to accept the compromise rests with the Department of Justice. The agency should evaluate the compromise offer, using the factors set forth in this part. If an offer to compromise any debt in excess of \$100,000 is acceptable to the agency, the agency shall refer the debt to the Civil Division or other appropriate litigating division in the Department of Justice using a Claims Collection Litigation Report (CCLR). Agencies may obtain the CCLR from the Department of Justice's National Central Intake Facility. The referral shall include appropriate financial information and a recommendation for the acceptance of the compromise offer. Justice Department approval is not required if the agency rejects a compromise offer.

The office within the Justice Department that routinely handles compromises of claims, including "work-outs" of debts owed to the government, is The Commercial Litigation Branch in the Civil Division.


*Deputy Assistant General Counsel
(Banking and Finance)
Department of the Treasury
Room 2020, Main Treasury Building
1500 Pennsylvania Avenue NW
Washington, DC 20220*

Tel: 
Fax:
Email:

[REDACTED]

From: [REDACTED]
Sent: Wednesday, August 17, 2011 3:25 PM
To: 'Zlents, Jeffrey D.'
Cc: [REDACTED]
Subject: Solyndra

Jeff,

Following this morning's call, we had a few thoughts that may help inform DOE and Lazard's review of Solyndra options. Since we imagine that OMB will have follow-up questions for DOE, we thought it would be best to share these thoughts with you, and you should feel free to incorporate them in anything you send to DOE. While this should not impede option evaluation, we should preface these thoughts by reiterating our current understanding that the authority to approve a potential restructuring resides with the Department of Justice.

- Goldman Sachs' presentation to, and analysis of, potential strategic buyers may offer a useful assessment of Solyndra's firm value, and the value of a strategic sale under a restructuring.
- It may be useful to see a table of potential USG and investor recoveries under a range of assumptions about pre- and post-restructuring firm value under BOTH current and proposed capital structures. DOE's deck focused only on USG recoveries under the proposed structure. This table would:
 - Allow evaluation of what must be assumed about current firm value and post-restructuring value accretion to conclude that the proposed restructuring is preferable to the existing structure.
 - Indicate alignment of USG and investor incentives for the proposed restructuring.
- Along these lines, quick back-of-the-envelope calculations suggest that:
 - Making \$75 million of Tranche B USG debt pari passu with Tranche A is only valuable if firm value without restructuring is less than [REDACTED]. Presumably this is unlikely if investors would consider investing more money in the firm.
 - If firm value today is between [REDACTED] the proposed restructuring would only increase the USG's recovery if it increases firm value by at least [REDACTED] relative to today's value [REDACTED] is the assumed amount of new Tranche C investor debt that would be senior to all but the Tranche B USG claim).
 - The higher the current firm value is above [REDACTED] the more the proposed restructuring must increase firm value in order to increase USG recovery relative to the current structure. This is because the USG would be trading [REDACTED].
- In evaluating the potential to attract a strategic buyer absent restructuring, it may be worthwhile better understanding the ability to attract buyers even after a temporary shutdown.
- It may be helpful to get more details on what must be assumed about future product pricing, sales volumes, costs, and earnings multiples to conclude that the restructuring will increase USG recovery.
- DOE's deck only provided an income statement/projection. Option evaluation could be improved if the company's balance sheet and cash flow statement/projections were available.
- It may be useful to clarify whether Tranche E creditors could still force the company into bankruptcy at any point under the proposed restructuring, as this would affect option evaluation.

Regards,
[REDACTED]

**Office of Environment and Energy
U.S. Department of the Treasury**

Phone:

Fax:

Email:

[REDACTED]

From: Zients, Jeffrey D. [REDACTED]
Sent: Wednesday, August 17, 2011 5:52 PM
To: Miller, Mary; [REDACTED] Wolin, Neal; [REDACTED]
Subject: Fw: update on solyndra

From: [REDACTED]
To: [REDACTED]
Sent: Wed Aug 17 17:47:35 2011
Subject: update on solyndra

[REDACTED] called to let me know that in the initial conversations today with Solyndra's investors, they were not interested in the straw proposal. DOE will be trying to have an additional conversation tonight, but they're not expecting a different outcome, as DOE has learned that the company has begun shut down planning. It's unclear what that means in terms of how many people are involved at Solyndra, but we're now in a place where this could break at any time. DOE communications will be reaching out to WH comms shortly to coordinate.

[REDACTED]

From: [REDACTED]
Sent: Sunday, August 28, 2011 4:40 PM
To: Miller, Mary; Grippo, Gary
Subject: Re: Solyndra

Here are a few quick thoughts based on my read of the material:

- Why are the investors offering to put up another 10MM given the forecasted recovery levels and the USG's senior position?

- I think DOE should be thinking through whether the proposed deal is just giving the investors more time to extract more value from the firm before bankruptcy (and hence reduce USG collateral), in which case it's clearly in the investors' interest regardless of the firm's prospects.

- For example, is there discounting in the factoring of ARs such that investors are getting more than one dollar of ARs per dollar invested, in which case the USG loses more than 1 dollar in collateral for each dollar the investors put in.

- It would also be good to get clarity on whether we could still sell the company as a going concern (rather than be forced to liquidate assets) after a temporary shutdown (ie if no more funding were provided at this time). If so, even if a temporary shutdown would reduce the value to a strategic investor relative to if there were no shutdown, this makes the case for continued funding weaker.

- To date, DOE has been suggesting that a near-term shutdown takes selling the company (rather than the individual pieces of equipment) off the table. But it's not clear why.

----- Original Message -----
From: Miller, Mary
Sent: Sunday, August 28, 2011 03:27 PM
To: [REDACTED]
Subject: Fw: Solyndra

This is the 5pm call which I will join a few minutes late. It's intended to have Lazard update their numbers before the 5:30 call. I expect we will rehash this then.

----- Original Message -----
From: [REDACTED]
Sent: Saturday, August 27, 2011 02:19 PM
To: [REDACTED]@who.eop.gov>; Poneman, Daniel
[REDACTED]@who.eop.gov'; [REDACTED]@who.eop.gov>;
'Jeffrey_D_Zients@[REDACTED]'; Miller, Mary; Silver,
Jonathan [REDACTED]@omb.eop.gov'

Cc: [REDACTED]
[REDACTED] Wolin, Neal; [REDACTED]
Subject: Re: Solyndra

All-

We are confirmed for a conference call with Lazard tomorrow at 5pm. We can use the following call-in number: [REDACTED]

----- Original Message -----

From: [REDACTED]
Sent: Saturday, August 27, 2011 01:02 PM
To: Poneman, Daniel; [REDACTED] Zients, Jeffrey D.
[REDACTED] 'mary.millere@ [REDACTED]
Silver, [REDACTED]
Cc: Levy, Jonathan; [REDACTED] 'neal.wolin@ [REDACTED]
<neal.wolin@do.treas.gov>
Subject: Re: Solyndra

Great. Let us know when its set up and if you need a conference line.

----- Original Message -----

From: Poneman, Daniel [REDACTED]
To: [REDACTED]; Zients, Jeffrey D.; 'mary.millere@ [REDACTED]
[REDACTED] Silver, Jonathan [REDACTED]
Cc: [REDACTED]
[REDACTED] 'neal.wolin@ [REDACTED]
Sent: Sat Aug 27 11:53:07 2011
Subject: Re: Solyndra

If we have power, that works for me.

----- Original Message -----

From: [REDACTED]
Sent: Saturday, August 27, 2011 11:07 AM
To: Poneman, Daniel; [REDACTED] Zients, Jeffrey D.
[REDACTED] 'mary.millere@ [REDACTED]
Silver, Jonathan; [REDACTED]
Cc: [REDACTED] 'neal.wolin@ [REDACTED]
Subject: Re: Solyndra

Our team was already planning a call sunday. Could we ask them to do briefing at 5pm on Sun? If weekend isn't an option, 8:30 Mon.

----- Original Message -----

From: Poneman, Daniel [REDACTED]
To: [REDACTED] Zients, Jeffrey D.; 'mary.millere@ [REDACTED]
[REDACTED] Silver, Jonathan [REDACTED]
Cc: [REDACTED] 'neal.wolin@ [REDACTED]
Sent: Sat Aug 27 10:12:47 2011
Subject: Solyndra

Per our telcon yesterday, I would like to ask LPO to organize a conf call at the earliest opportunity for lazard to brief the options they see for solyndra under current circumstances. Impending whether counsels for today. I am available any time after noon. If people would reply w availabilities, LPO will take it from there. Many thanks. DP