

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) 225-3641

July 13, 2011

The Honorable Jacob Lew
Director
The Office of Management and Budget
725 17th Street, N.W.
Washington, D.C. 20503

Dear Mr. Lew:

I am in receipt of a letter dated July 12, 2011, from Mr. William R. Richardson, Deputy General Counsel of the Office of Management and Budget (OMB), relating to the document requests of this Committee set forth in a letter to you dated March 14, 2011.

In the Committee's March 14 document request, and in Committee staff's discussions with OMB staff, the Committee has sought four categories of documents: (1) all documents within OMB's possession relating to Solyndra, such as memoranda, reports, and notes; (2) all communications within OMB relating to Solyndra; (3) all communications between OMB and the Department of Energy (DOE) relating to Solyndra; and (4) all communications between OMB and the White House relating to Solyndra.

In his letter, Mr. Richardson described the *in camera* review that took place on July 11, 2011, of communications between OMB and DOE relating to the Solyndra guarantee. While I do appreciate OMB finally making those documents available to the Committee for an *in camera* review, with all due respect, those documents represent only one of the four categories of documents this Committee has requested. Furthermore, the most useful information was redacted from the OMB-DOE communications, including the ratings ultimately assigned to the Solyndra loan guarantee. OMB still refuses to produce the other three categories of documents, after four months of delay and repeated attempts at negotiations on the part of Committee staff.

The production of the OMB-DOE communications, as well as communications and documents within OMB relating to Solyndra, has been the subject of numerous conversations between Committee staff and OMB staff since the Committee sent its document request to OMB

in March 2011.¹ In fact, Committee staff proposed an *in camera* review of these communications to OMB staff in May, and I, in a conversation with Deputy Director Jeffrey Zients on May 25, agreed to the same. However, when the *in camera* review we discussed finally took place on June 7, OMB selected eight emails between OMB and DOE to make available to Committee staff, and refused to produce the rest of the emails or the agreed-upon internal OMB emails and documents. The accommodations for this week's *in camera* review of OMB-DOE communications has been available to OMB all along. Yet, it has taken OMB over two months to accept these accommodations and produce Solyndra-related communications (albeit, only some of the emails between OMB and DOE, and not OMB's internal communications, and in an *in camera* setting) to the Committee.²

At the July 11 *in camera* review, Committee staff asked OMB about production of the other categories of documents sought by this Committee, specifically, OMB's internal communications and documents relating to Solyndra, and its communications with the White House. As OMB has done for months, OMB staff refused to provide an answer about whether they would produce these materials, and instead maintained that the OMB-DOE communications sufficiently show whether or not OMB has done its job with regard to Solyndra. This Committee cannot move forward with its investigation without understanding the complete picture of OMB's involvement, or seeing the results of OMB's work.

Committee staff has made these points repeatedly to OMB staff with regard to the production of OMB documents (such as reports, analyses, and memoranda) and OMB's internal communications relating to Solyndra. I agree with Mr. Richardson about the "importance of the accommodation process by which the Executive Branch and Congress work together in addressing each other's legitimate needs and concerns," and this Committee has worked extensively during the course of this investigation to accommodate OMB's concerns and allow OMB sufficient time to respond to this Committee's request. However, accommodation does not mean that OMB can determine which documents the Committee can review or that OMB can delay production of the documents indefinitely. The Committee has jurisdiction over the DOE Loan Guarantee program, and conducting oversight of this multi-billion dollar program assists the Committee in carrying out its legislative functions. The Committee has demonstrated its need for this information and has offered accommodations to address OMB's concerns about the confidentiality of its communications. Mr. Richardson states in his letter that OMB is committed to working with Committee staff, but four months have passed with no change in OMB's position with regard to the other three categories of documents and communications. We believe that fact speaks louder about OMB's commitment to cooperating with this Committee's investigation than do OMB's empty statements about "working with the subcommittee."

¹ In the letter, Mr. Richardson states that OMB is now in the process of identifying and reviewing documents covering the period of the Solyndra loan restructuring. These documents are clearly responsive to the Committee's March 14 request. The fact that OMB is only identifying them now, four months after the request was sent, demonstrates OMB's failure to respond to this Committee's requests fully and in a timely manner.

² In his letter, Mr. Richardson states that the redactions made to the OMB-DOE communications were "references to other transactions or proceedings." This is not true. OMB staff told Committee staff during that meeting that OMB had also redacted from the documents the risk ratings and other ratings relevant to the credit subsidy score for the Solyndra guarantee, even though this information is plainly responsive to the Committee's request. OMB also redacted portions of these communications that were internal to OMB.

As you may know, the Committee has noticed a business meeting to take place on July 14, 2011, to consider a resolution authorizing the issuance of a subpoena to OMB for documents relating to Solyndra. Should OMB decide prior to this meeting that it will produce the requested documents, please notify us of this decision in writing no later than 11:00 a.m. on July 14. Otherwise, Committee staff will contact you regarding the subpoena following the meeting.

If you have any questions about this matter, do not hesitate to contact Todd Harrison or Karen Christian of the Majority Committee staff at (202) 225-2927.

Sincerely,

A handwritten signature in black ink that reads "Cliff Stearns". The signature is written in a cursive, flowing style.

Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations

cc: The Honorable Fred Upton, Chairman

The Honorable Henry A. Waxman, Ranking Member

The Honorable Diana De Gette, Ranking Member
Subcommittee on Oversight and Investigations