THE WHITE HOUSE

WASHINGTON

November 4, 2011

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Cliff Stearns
Chairman, Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Upton and Congressman Stearns:

I am in receipt of the subpoena your Committee issued to the White House dated November 3, 2011. I am disappointed and troubled that, despite our offer to work with the Committee on a more focused request that balances the important interests of both the Congress and the Executive Branch, the Committee decided to move forward with an overbroad subpoena that is unprecedented and unnecessary. Earlier this week, we made a good faith offer to work with the Committee to accommodate its legitimate oversight concerns. You rejected our offer without explaining how it fell short of your legitimate oversight purpose. I can only conclude that your decision to issue a subpoena, authorized by a party-line vote, was driven more by partisan politics than a legitimate effort to conduct a responsible investigation.

As I made clear in our meeting this week, the Committee's extremely broad request for documents—now a subpoena—is a significant intrusion on Executive Branch interests, particularly given that you have not made any effort to tailor the request to the legitimate interests of the Committee. As written, it encompasses all communications within the White House from the beginning of this Administration to the present that refer or relate to Solyndra, and the subpoena purports to demand a complete response in less than a week. Thus, any document that references Solyndra, even in passing, is arguably responsive to the Committee's request, and you reaffirmed this week that you intend for the request to be that broad. There is no basis for such a broad request beyond a "vast fishing expedition," as Congressman Dingell noted yesterday. Moreover, responding to such an expansive request would require the devotion of substantial resources to gather and review many documents that are of no legitimate oversight interest—which is itself an unreasonable burden on the President's ability to meet his constitutional duties. For example, we do not understand how thousands of pages of news clips—all of which are responsive to the subpoena you issued—relate to the Committee's inquiry.

In past correspondence and again in our meeting this week, we suggested that the Committee focus first on communications between the White House and those agencies directly involved in the Solyndra loan guarantee. These communications, which the agencies have been producing for weeks now, are the best evidence of any White House involvement in decision-making on the Solyndra loan guarantee. Given the Committee's stated oversight interests, I would have expected that the Committee would want to review those documents—including 1,100 pages produced by the Department of Energy the day before the subpoena was issued—before insisting on a burdensome and intrusive request for internal White House communications. The Committee has rejected that approach without any justification other than a general curiosity about internal White House communications. Such curiosity is not a sufficient justification for encroaching on longstanding and important Executive Branch confidentiality interests, particularly when none of the more than 85,000 pages of documents produced to date evidence any favoritism to political supporters or wrongdoing by the White House.

While we continue to believe that the Committee should focus first on agency communications with the White House, this week, in good faith, we suggested narrowing the Committee's request to focus on the specific substantive areas that have been the focus of the Committee's inquiry. The Committee rejected that offer as well, again without any justification. Your claim that a subpoena is necessary because the Committee has been waiting for months for White House documents is demonstrably false. We responded promptly to the Committee's first request for communications with Solyndra and certain of its investors and representatives, dated September 1, 2011, with document productions on September 13, September 30 and October 7, 2011. The Committee's second request—for all internal White House documents relating to Solyndra—was received little more than a month ago and I made it clear during our meeting this week that the White House was willing to cooperate with an appropriately narrowed request. Indeed, Chairman Upton's statement at yesterday's hearing—that the subpoena was drafted long before our meeting this week—belies any suggestion that the Committee was forced to take this precipitous action because of a lack of cooperation from the White House.

We remain willing to work with the Committee to accommodate its legitimate oversight interests in a balanced manner. Given the breadth of the subpoena, I hope that the Committee's public statement that it intends to negotiate the scope of any document production is sincere.

Sincerely,

Kathryn H. Ruemmler
Counsel to the President

Cc: The Honorable Henry Waxman
Ranking Member
Committee on Energy and Commerce

The Honorable Diana DeGette
Ranking Member
Subcommittee on Oversight and Investigations