

The Committee on Energy and Commerce
Internal Memorandum



November 1, 2011

TO: Members, Subcommittee on Oversight and Investigation

FROM: Subcommittee on Oversight and Investigations Staff

RE: Business Meeting to Authorize the Issuance of Subpoenas in the Solyndra Investigation

On Thursday, November 3, 2011, at 9:00 a.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Oversight and Investigations will hold a business meeting to consider a resolution authorizing the issuance of subpoenas for documents relating to the \$535 million loan guarantee issued to Solyndra, Inc., by the Department of Energy (DOE).

I. DISCUSSION

A. The Committee's Investigation of the DOE Loan Guarantee Issued to Solyndra

The Energy Policy Act of 2005 authorized the Secretary of DOE to make loan guarantees to companies investing in either innovative clean technologies or commercial-scale renewable energy projects. In 2009, the American Reinvestment and Recovery Act (ARRA) appropriated funding to pay for the credit subsidy costs of the DOE loan guarantees for certain renewable energy, electric transmission, and leading edge biofuels systems. To date, the Department has issued loans or loan guarantees or offered conditional commitments for loan guarantees totaling nearly \$40 billion to support more than 40 loan guarantees.

During late 2010 and early 2011, several news outlets reported financial problems experienced by Solyndra, Inc., a California company and the first recipient of a DOE loan guarantee of \$535 million. Based on these articles, and the fact that this Committee previously had not conducted any oversight of the Loan Guarantee Program, on February 17, 2011, the Committee opened an investigation of the program and the guarantee issued to Solyndra with a letter to DOE Secretary Chu requesting a briefing and certain documents.

Following a briefing with DOE staff, the Committee sent a letter to Office of Management and Budget (OMB) Director Jacob Lew on March 14, 2011, requesting a briefing and certain documents in order to learn more about OMB's role with regard to DOE loan guarantees generally, and especially with regard to Solyndra.

The Majority Memorandum dated June 22, 2011, for the Subcommittee on Oversight and Investigations June 24, 2011, hearing entitled “OMB’s Role in the DOE Loan Guarantee Process” and a Supplemental Memorandum issued on June 23, 2011, by Majority Committee staff describe OMB’s incomplete response to the Committee’s document requests.

Following OMB’s failure to fulfill an agreement with Committee staff regarding the production of certain OMB communications, the Committee subsequently invited OMB Deputy Director Jeffrey Zients to testify at the June 24, 2011, hearing to explain OMB’s refusal. The hearing was entitled “OMB’s Role in the DOE Loan Guarantee Process.” Deputy Director Zients did not appear at the June 24, 2011 hearing.

On July 15, 2011, the Subcommittee on Oversight and Investigations voted to issue a subpoena to OMB for the previously requested documents. The vote was 14 to 8. Subsequent to the issuance of the subpoena, OMB began to produce documents to the Committee. In August 2011, OMB produced a draft legal memorandum outlining DOE’s legal justification for the restructuring of the Solyndra loan guarantee and the subordination of the taxpayer’s money. The final legal memorandum was later produced by DOE only after Committee staff made a specific request. This document was produced seven months after the Committee’s initial request, and only after the issuance of a subpoena to OMB.

On August 31, 2011, Solyndra announced it would file for bankruptcy protection. On September 8, 2011, the Federal Bureau of Investigation (FBI) served search warrants at Solyndra's offices as part of a joint investigation with DOE’s Office of Inspector General. Neither the FBI nor the DOE IG has been forthcoming with information regarding their investigation.

B. White House Contacts

During the investigation, Committee staff discovered that the Treasury Department believed DOE had violated the law in restructuring Solyndra's loan and subordinating DOE’s interest. The Committee requested information from Secretary Geithner regarding Treasury’s concerns on October 7, 2011, and conducted a hearing on that topic on October 14, 2011. On the same day, the White House allowed a select number of hand-picked reporters to review selected documents prior to delivering them to the Committee. The documents revealed a close relationship between the President’s top advisors, campaign donors, and wealthy investors that were involved with the Solyndra loan guarantee.

During the course of the investigation, documents have also shown that the White House closely monitored the Solyndra loan guarantee during the approval process, and applied pressure to DOE to accelerate the process of approving loan guarantees. The White House was particularly interested in scheduling visits to the Solyndra facility by the President and the Vice President and the Secretary of Energy.

C. The White House Document Request

On September 1, 2011, the Committee sent a document request letter to the White House Counsel to the President for communications between the White House and Solyndra and the White House and Solyndra's investors. On September 8, 2011, a teleconference occurred between Committee Staff and the White House Counsel's office to discuss the production of documents relating to the Committee's September 1, 2011, request. On September 13, 2011, the White House produced certain communications it had with Solyndra and Solyndra's investors. The White House has not yet produced all such communications in its possession.

On October 5, 2011, the Committee sent a second request for documents to the White House for all internal communications relating to Solyndra. The Committee asked the White House Counsel's office to contact Committee staff by October 6, 2011, to discuss the production of responsive documents. The Committee staff was never contacted by the White House Counsel's office. Rather than contacting Committee staff, the White House coordinated a release of specific documents and communications between the DOE and the White House to the press on October 7, 2011, before a subsequent production of those documents and communications to the Committee.

On October 14, 2011, the White House Counsel submitted a letter response to the Committee's request for internal communications relating to Solyndra. The White House Counsel stated that, in the opinion of the White House, the Committee did not need the requested documents because documents being produced by DOE, OMB and the Treasury should satisfy the Committee's interest in Solyndra. The White House Counsel did not invoke executive privilege or any other legal basis for denying the request for documents.

In a letter dated October 18, 2011, the Committee responded to the White House's letter and requested that the White House either produce the documents to the Committee or invoke a valid privilege as a basis for refusing to produce the documents. The Committee also again requested that the White House engage in a dialogue with the Committee. The White House never contacted the Committee or indicated a desire to engage in such a dialogue. On October 25, 2011, the White House Counsel sent another letter to the Committee reiterating that the Committee did not need the requested documents because other agencies were producing documents that should satisfy the Committee's investigation. The White House again failed to assert executive privilege or state a legal basis for refusing to produce the requested documents.

II. THE RESOLUTION

Committee staff has tried numerous times to contact the White House and White House Counsel's office to obtain important documents relating to the Solyndra investigation. In response to the Committee's two outstanding document requests, the White House has produced a small number of documents in response to the first request (September 1, for communications between the White House and other agencies), but has not yet completed that production, and has failed to give the Committee any timetable for production or confirmed that they will continue to comply with the request. The White House has not produced any of the internal documents and

communications requested in the second document request (October 5). Without a complete production, the Committee is unable to perform its Constitutional oversight function and complete its investigation of the Solyndra loan guarantee, an investigation it began nine months ago. This information is relevant in determining the scope of the White House's involvement in the Solyndra loan guarantee.

For these reasons, the proposed resolution will authorize Chairman Upton to issue a subpoena to the Executive Office of the President and the Office of the Vice President for production of documents relating to the Solyndra guarantee.

III. CONTACTS

If you have any questions, please contact Todd Harrison or Karen Christian at (202) 225-2927.