

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

October 7, 2011

The Honorable Timothy F. Geithner
Secretary
United States Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretary Geithner:

Pursuant to House Rules X and XI of the U.S. House of Representatives, we write today seeking documents and information concerning the role of the Department of the Treasury in the loan guarantees issued by the Loan Programs Office at the Department of Energy (DOE). In particular, we are interested in learning about the loan guarantee awarded to Solyndra, Inc. (Solyndra) of Fremont, CA.

In September 2009, Solyndra was the first recipient of a DOE loan guarantee, totaling \$535 million. On August 31, 2011, the company closed its doors and announced its intention to file for bankruptcy. One week later, Solyndra was raided by agents of the Federal Bureau of Investigation.

Under the Energy Policy Act of 2005, the Secretary of the Department of Energy is required to consult with the Secretary of the Department of the Treasury with regard to loan guarantees issued pursuant to the Act. See Section 1702(a). The regulations implementing the Energy Policy Act also require that the DOE "consult with the Secretary of the Treasury regarding the terms and conditions" of the loan guarantee, both before a conditional commitment is issued and before the loan guarantee is finalized. Section 609.7(a) and 609.9 (c)(4). In addition, in the event of a deviation, the DOE Secretary is required to consult with the Secretary of the Treasury "before granting any deviation that would constitute a substantial change in the financial terms of the Loan Guarantee Agreement and related documents."

In the course of our investigation, we have uncovered information that raises questions as to whether the Department of Energy satisfied the requirement to consult with the Department of the Treasury about the \$535 million loan guarantee issued to Solyndra in September 2009 and

the restructuring of that agreement in February 2011. On August 17, 2011, Department of the Treasury Assistant Secretary for Financial Markets Mary J. Miller sent an email to Jeffrey D. Zients, Deputy Director of the Office of Management and Budget (OMB), in which she stated that “[s]ince 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.” Further, Assistant Secretary Miller also questioned whether DOE’s decision to subordinate its interest in Solyndra to Solyndra’s investors was proper, stating “[o]ur 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.” Miller went on to explain 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.”

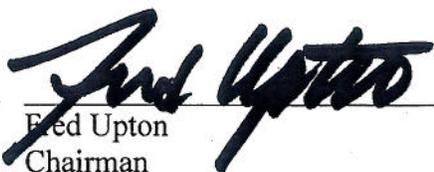
In order to better understand the Department of the Treasury’s role in the Solyndra loan guarantee, we ask that you provide the following information no later than October 12, 2011:

1. All documents containing communications relating to the \$535 million loan guarantee issued to Solyndra, Inc., including, but not limited to, letters and email, between and among the officials, staff, administrators, and employees of (1) the Department of the Treasury, (2) the Department of Energy, (3) the Office of Management and Budget, (4) the White House, and (5) the Department of Justice.
2. All documents, including but not limited to, memoranda, analyses, studies, notes, reports, and all drafts of such documents, relating to the \$535 million loan guarantee issued to Solyndra, Inc., by the Department of Energy.

We request that your staff contact the Committee no later than noon on October 11, 2011, to discuss a schedule for production. This schedule should provide for production of the documents no later than 5 p.m. on October 12, 2011. An attachment to this letter provides additional information about how to respond to the Committee’s request.

Please do not hesitate to have your staff contact Karen Christian and Todd Harrison at (202) 225-2927 with the Committee with any questions about this letter.

Sincerely,


Fred Upton
Chairman


Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations

Attachment