

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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WASHINGTON, DC 20515-6115

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December 1, 2011

Ms. Cynthia Hogan
Chief Counsel
Executive Office of the Vice President
Eisenhower Executive Office Building, Room 342
Washington, D.C. 20501

Dear Ms. Hogan:

Thank you for your joint letter with the White House Counsel's office dated Friday, November 11, 2011, attaching certain emails responsive to the Committee's November 3, 2011, subpoena. We also appreciate that your staff recently showed a small number of emails to Committee staff *in camera*.¹

We have serious concerns, however, relating to your search for documents responsive to the Committee's subpoena. In your joint letter you state that instead of searching for the documents specified in the Committee's subpoena, you unilaterally redefined (and narrowed) the language of the Committee's subpoena. You then state that you were unable to find any responsive documents in three of your four newly defined categories. First, the recipient of a duly authorized subpoena from the Congress of the United States cannot simply redefine the scope of the subpoena. Second, the language you utilized to redefine the Committee's document requests carefully excludes documents in your possession which are relevant to the Committee's inquiry and responsive to the subpoena.

It is apparent from the documents already in the Committee's possession that White House and Vice President's Office personnel were intimately involved in decisions related to Solyndra and the loan guarantee program. For instance, some of those documents indicate that senior White House advisers such as Larry Summers, Carol Browner, Ron Klain and Valerie Jarrett were all involved in decisions regarding Solyndra and the loan guarantee program. To provide just one example, Klain, Summers and Browner wrote a memorandum dated October 25,

¹ We reiterate our request for production of the specific emails on the list we gave to you at the end of that meeting. Please produce copies of those emails by the close of business on Friday, December 2, 2011.

2010, to President Obama which discussed numerous problems with the loan guarantee program and suggested a substantial restructuring of that program. These and other documents already in the Committee's possession clearly indicate that you have numerous other documents in your possession which are responsive to the subpoena, but which have not been produced. In order for the Committee to complete its investigation of the problems with the loan guarantee program and the related loss of taxpayer dollars, those documents must be produced to the Committee.

We also have questions regarding your offer to make available documents relating to the restructuring of the Solyndra loan guarantee. In your joint letter you state: "...we located several documents that reflect that White House officials had discussions with the DOE about its decisions to restructure the Solyndra loan...". Our staff was able to review these documents *in camera* on November 15, 2011. But the small handful of documents shown to the staff were from August 2011, not the October 2010 through February 2011 time period during which the administration restructured the Solyndra loan. The restructuring and subordination of the taxpayer's money is a primary focus of the Committee's investigation. Certain documents indicate that the White House approved the restructuring of the Solyndra loan and the subordination of the taxpayer's money. Any documents in the possession of the White House which refer or relate to the restructuring or the subordination are directly relevant to the Committee's investigation, responsive to the duly-served subpoena, and must be produced.

In your letter you refer to the importance of "...engag[ing] in a serious discussion of accommodation...". To date, however, you have refused to engage in any discussions whatsoever with the Committee regarding the scope of your internal investigation or the quantity and type of documents in your possession. Instead, you have simply "cherry-picked" a small number of documents for production. The Committee needs to see all of the relevant documents in order to conduct a thorough investigation of the loss of over half a billion dollars of the taxpayer's money. If the White House has nothing to hide, producing all of the relevant documents in an open and transparent manner should not cause any undue hardship.

The subpoena served upon the Executive Office of the Vice President had a deadline of November 10, 2011. On November 11, 2011, you selectively produced 136 pages of documents. It is clear that you have numerous other documents in your possession which are responsive to the subpoena. You are therefore currently in violation of the subpoena and must immediately produce all responsive documents or the Committee will be forced to take further steps to ensure compliance with the subpoena. In the interest of moving the document production process forward, while reserving all of the Committee's rights under the subpoena as currently worded, if you will engage in discussions with Committee staff regarding the quantity and types of responsive documents in your possession, we would be willing to discuss prioritizing certain categories of documents for production.

Finally, the refusal by the Office of Management and Budget (OMB) to make certain employees available to the Committee for interviews, briefings or hearings is simply unacceptable. These employees, whose names we have sent to you under separate cover, were closely involved in the approval and review process for the Solyndra loan guarantee, and possess information critical to the Committee's investigation. As OMB is encompassed within the Executive Office of the President, it is our understanding that the White House Counsel's office

has been involved in the decision to deny the Committee access to those individuals. This refusal is, unfortunately, only the latest in a series of attempts to impede this Committee's investigation into the loss of half of a billion dollars of taxpayer funds. We had hoped to obtain your cooperation to avoid the need to issue additional subpoenas for testimony. If the White House persists in stonewalling this Committee, however, we will not hesitate to take the necessary steps to ensure that there is no further obstruction of our investigation.

Please have your staff contact Todd Harrison or Karen Christian at (202) 225-2927 by 12:00 noon, December 2, 2011, to discuss your response to this letter and to the Committee's subpoena.

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