FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

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

MEMORANDUM

August 2, 2012

To: Committee on Energy and Commerce Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Release of Republican Staff Report on the Solyndra Loan Guarantee

Today, the Republican Committee staff released a 147-page report on the investigation into the Solyndra loan guarantee. This report was not shared in advance with the Democratic staff, and it does not accurately reflect the record before the Committee.

The Republican report contains obvious inaccuracies, frequent misstatements, cherry picked evidence, and glaring omissions of exculpatory information received by the Committee.

This memorandum will address four of the major deficiencies in the Republican report: (1) its false insinuations that Solyndra decisions were influenced by political contributions; (2) its misleading assertions about Solyndra's economic prospects; (3) its incorrect claims about the role of time pressure in the decision-making process; and (4) its mischaracterization of OMB's role in the loan restructuring.

The False Insinuations about the Role of Political Contributions

The Republican members of the Committee have made repeated assertions that the White House and the Obama Administration gave Solyndra special treatment because George Kaiser, an Obama campaign donor, was a major investor in Solyndra through his nonprofit foundation. Subcommittee Chairman Stearns alleged that the Administration "give[s] some of this money out to people who are either contributors or strong supporters"[1] and said that the Committee's investigation "reveal[s] a startlingly cozy relationship between wealthy donors and the

[1] *Obama fundraiser got clean energy aid, then perch to advise Energy Secretary*, The Center for Public Integrity iWatch News (Mar. 30, 2011) (online at www.iwatchnews.org/2011/03/30/3845/green-bundler-golden-touch).

President's confidants, especially in matters related to Solyndra."[2] Similarly, full Committee Chairman Upton stated the Solyndra investigation "portrays a disturbingly close relationship between President Obama's West Wing inner circle, campaign donors, and wealthy investors that spawned the Solyndra mess."[3]

The Republican staff report does not substantiate these inflammatory allegations. The report is remarkably silent on the influence of campaign contributions. This is a tacit admission that the record before the Committee does not support the false claims that the Republican leadership of the Committee and prominent national Republicans have been making for months about the Solyndra loan guarantee.

In fact, the little the Republican report does say on the subject cherry picks facts, distorts the record, and omits exculpatory evidence to create a misleading insinuation that political contributions influenced White House actions.

For the last six months, Chairman Upton and his staff has been negotiating with the White House to interview two White House officials whom the Republicans asserted led the White House's involvement in the Solyndra loan guarantee: Heather Zichal, who is the Deputy Assistant to the President for Energy and Climate Change, and Aditya Kumar, a former White House official in the office of the Chief of Staff. The White House Counsel agreed to these interviews, which occurred last month.

The Republican report fails to mention that Ms. Zichal told the Committee that she was unaware that Mr. Kaiser was an investor in Solyndra until his connection to Solyndra was revealed by the media and the Committee in February 2011, a year and half after the loan guarantee was issued. This is not a minor omission. If the White House intervened to help Mr. Kaiser, as the Republicans have repeatedly alleged, surely the person who the Republican say was the key responsible official would have known of Mr. Kaiser. She did not.

While the Republican report fails to mention Ms. Zichal's statements, it does assert that "the White House Chief of Staff's office and others in the White House were aware that Mr. Kaiser, a bundler for President Obama's 2008 campaign, was the primary investor in Solyndra."[4] It is true that in August 2009, the Department of Energy provided Mr. Kumar in the Chief of Staff's office a list of major private equity investors in Solyndra, which included Mr. Kaiser. What the Republican report does not mention is that Mr. Kumar was asked about this during his interview. He told the Committee that although he was informed about Mr. Kaiser's

---

[2] Congressman Cliff Stearns, *Stearns Expands Investigation into West Wing Involvement with Solyndra* (Oct. 5, 2011) (online at stearns.house.gov/index.cfm?sectionid=134&parentid=6&sectiontree=6,134&itemid=1910) (press release).

[3] House Committee on Energy and Commerce, *Upton, Stearns Comment on Explosive White House Documents on Solyndra* (Oct. 7, 2011) (online at energycommerce.house.gov/News/PRArticle.aspx?NewsID=9004) (press release).

[4] House Committee on Energy and Commerce, Majority Staff Report, *The Solyndra Failure:*, 112th Cong. (Aug. 2, 2012) at 5.

investment, he did not know that Mr. Kaiser had contributed to the President until this became a matter of public discussion during the Committee's investigation. It is sophistry to imply, as the Republican report does, that the White House acted with the intent to favor a campaign contributor when the key White House officials supposedly involved did not know of the existence of the campaign contributions. And it is deceptive to omit this key exculpatory evidence from the report.

The other evidence that is mentioned in the Republican report is similarly misleading and taken out of context. The report says: "In February 2010, Mr. Kaiser actually discussed Solyndra with White House staff in Vice President Biden's office."[5] Here are the actual facts, which are quite different from the Republican implication:

> On February 24, 2010, Mr. Kaiser said he and Ken Levit, the Executive Director of the George Kaiser Family Foundation, met with six or seven Administration staff to discuss the foundation's efforts to build a park in Tulsa powered by on-site geothermal energy and a study from the National Energy Policy Institute on a new national energy policy. During the meeting, Administration staff asked Mr. Kaiser why the NEPI study did not address renewable energies as part of its assessment of options for reducing reliance on traditional fossil fuels. Mr. Kaiser stated his opinion that there was not much improvement that could be made for certain renewable technologies, like wind power, but improvements could be made for solar power. He explained that dozens of companies were working on new technologies and disclosed that "we have an interest in one of them." At that point, someone in the room mentioned Solyndra, and Mr. Kaiser or Mr. Levit acknowledged their interest in the company. Mr. Kaiser said that the Administration staff knew about Solyndra and expressed a positive reaction to the company, which surprised him.[6]

As Ranking Members Waxman and DeGette previously wrote Chairmen Upton and Stearns, Mr. Kaiser had a policy of not discussing Solyndra with Administration officials. With the exception of this single incidental reference, he adhered to that policy despite requests from his foundation staff to intervene with the White House.[7]

The Committee interviewed 14 individuals involved in the Solyndra loan guarantee, including White House officials, OMB officials, Energy Department officials, and private investors. The Committee also heard testimony from six additional officials involved in the loan guarantee, including the Secretary of Energy. Many of these individuals were career officials; one was a Bush Administration appointee. Every individual was asked whether political contributions played a role in the decisions on Solyndra. They unanimously said there was no political influence. Remarkably, the Republican report does not mention this fact.

---

[5] *Id. at 145.*

[6] Letter from Rep. Henry A. Waxman and Rep. Diana Degette to Chairman Cliff Stearns to and Chairman Fred Upton (Nov. 9, 2011).

[7] *Id.*

The Misleading Assertions about Solyndra's Economic Prospects

The Republican report misrepresents the Department of Energy's "due diligence" review of the Solyndra loan guarantee and omits key facts regarding Solyndra's economic prospects in 2009 that supported DOE's decision to award the loan guarantee to Solyndra.

The Republican report concludes that the Energy Department "should have anticipated the market challenges that contributed to Solyndra's financial condition" including the influence of China on the solar market.[8] The repeated implication in the Republican report is that the Energy Department was a poor steward of the loan guarantee program, made a reckless decision, and squandered taxpayer dollars.

The record before the Committee is not so simple. It is certainly true that there were voices inside the Administration, primarily at the Office of Management and Budget, that raised concerns about the wisdom of the investment in Solyndra. In hindsight, failed investments may look obvious, but that is not how the Solyndra investment looked in 2009 when the loan guarantee was issued.

The primary cause of Solyndra's bankruptcy was the enormous decline in the price of solar panels made by Chinese competitors, which dropped more than 70% in a two year period. The possibility that solar panels would drop steeply in price was not ignored by Department officials. Although the Republican report does not mention it, the loan programs office stress tested Solyndra's financial projections by estimating the impact of a 40% drop in solar prices.[9] Solyndra passed this stress test.

Secretary Chu testified about this point before the Committee. He explained:

> When the bottom of a market falls out and the price of solar decreases by 70 percent in two and a half years, that was totally unexpected, not only by us — if you look at the range of predictions that were being made by financial analysts from the last quarter of 2008, 2009, they — the average — there are some outliers. But the average of those were not expecting these prices to plummet. And so fundamentally this company and several others got caught in a very, very bad tsunami, if you will.[10]

According to the Republican report, no one but short-sighted officials at the Department of Energy thought Solyndra had a chance of succeeding. This is revisionist history. There were many astute investors and market observers who thought that Solyndra was a smart investment. Prior to the loan guarantee to Solyndra, the company's technology and business plan had been

---

[8]House Committee on Energy and Commerce, Majority Staff Report, The Solyndra Failure (Aug. 2, 2012), at 132.

[9] Department of Energy, *Credit Committee Paper Request for Loan Guarantee Approval Project Solyndra Fab 2, LLC* (Mar. 11, 2009).

[10] House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, *The Solyndra Failure: Views from DOE Secretary Chu*, 112th Cong. (Nov. 17, 2011) at 42.

reviewed by some of the most reputable experts in the field. The company had raised nearly $1 billion from sophisticated private investors, including Argonaut Ventures, Madrone Capital, Redpoint Ventures, and Rockport Capital Partners. Moreover, in 2010 after Solyndra was awarded the loan guarantee, the Massachusetts Institute of Technology's *Technology Review,* ranked Solyndra as one of the "50 Most Innovative Companies in the World" and the *Wall Street Journal* ranked Solyndra number one on its list of "The Next Big Thing: Top 10 Venture Backed Clean Technology Companies."[11] Regrettably, the Republican report also omits these relevant facts.

It is important to keep the purpose of the loan guarantee program in perspective. The purpose was not to make riskless investments. If that were the goal, the Department could have invested only in Treasury bonds. The whole point of the program was to make investments in clean energy companies that held considerable promise, but were too risky to secure private financing. One can debate whether Solyndra met this standard: Energy Department officials, Solyndra's private investors, and some prominent market observers thought it did; some OMB officials questioned this judgment. But it is not fair to view the investment only in hindsight, mischaracterize the extent of the Department's due diligence, and neglect the evidence supporting the Department's assessment, as the Republican report repeatedly does.

After the Solyndra bankruptcy, the White House retained Herb Allison to conduct an independent review of the loan guarantee program. Mr. Allison previously served as the Assistant Secretary of the Treasury for Financial Stability, President and CEO of Fannie Mae after it was placed into conservatorship, Chairman, President and CEO of TIAA-CREF, and National Finance Committee Chair for Senator John McCain's presidential campaign. His report, which was conducted free from any Department or White House influence, examined the overall loan guarantee portfolio, not Solyndra specifically, but his findings place the Solyndra investment in a much different context than the Republican report. Perhaps for that reason, the Republican report also fails to mention his conclusions.

Mr. Allison found that the Department's loan guarantee program is fulfilling Congress' intent to fund "innovative alternative energy projects employing technologies that [have] not reached commercial maturity and involved more risk than is typical for project and corporate debt financing." [12] In fact, Mr. Allison found that the overall loan portfolio is significantly less risky than both the Department and Congress expected. The report estimated potential losses in the portfolio and found them to be $2 billion less than the Department had previously estimated and $7 billion less than the reserve amount that Congress set aside to cover losses.[13] According

[11] *The 50 Most Innovative Companies in 2010*, MIT Technology Review (Feb. 23, 2010) and *Wall Street Journal Ranks the Next Big Thing: The Top 10 Venture Backed Clean Technology Companies*, Wall Street Journal (Mar. 4, 2010).

[12] The Independent Consultant, *Report of the Independent Consultant's Review with Respect to the Department of Energy Loan and Loan Guarantee Portfolio* (Jan. 31, 2012) (available online at www.whitehouse.gov/sites/default/files/docs/report_on_doe_loan_and_guarantee_portfolio.pdf). at 17.

[13] *Id.* at 32.

to Mr. Allison, some losses in the portfolio were anticipated, but overall the portfolio is performing well.

The Incorrect Claims about Time Pressures

The Republican report makes a number of claims about time pressure affecting the Energy Department and OMB's analysis of the loan guarantee. The Republican report states that "it is clear that the date for the Solyndra closing was not determined by OMB's substantive review and approval of the Solyndra credit subsidy cost,"[14] that "this [time] pressure may have had tangible impacts on the Solyndra credit subsidy cost calculation,"[15] and that "the timing of critical events in the review of the Solyndra loan application was driven more by the White House's desire to issue press releases and public announcements than by the completion of DOE's due diligence."[16]

Part of the Republican finding is accurate. Solyndra was the first loan guarantee and White House officials were anxious to announce the closing of a major loan guarantee under the program. As a result, there was high-level White House interest in an expeditious decision.

It is a separate question, however, whether the White House interest in an expeditious decision influenced the outcome of the decision. The Republican report says it did, but the evidence in the record does not support this finding.

The Committee interviewed two key White House officials, Heather Zichal and Aditya Kumar. Both told the Committee that neither they nor any other White House official had any involvement in the substance of the decision about the loan guarantee.

Every Department of Energy official interviewed by the Committee or questioned at a Committee hearing has confirmed that decisions on the Solyndra loan guarantee were made on the merits after sufficient analysis. These officials include the Secretary of Energy, Dr. Chu, and the Department's former Chief Financial Officer, Steve Isakowtiz, who was a Bush Administration political appointee who remained at the Department into the Obama Administration.

The Republican report relies heavily on documents written by Kelly Colyar, a Department of Energy analyst who moved to OMB and remained involved in review of the Solyndra loan guarantee. Ms. Colyar was interviewed by the Committee and her statements do not support the Republican report. She told the Committee that the Department's process leading to the closing of the loan guarantee was rigorous and thorough. She stated that as a result of the series of third party analyses conducted during the due diligence review, every question she raised was addressed by the Department. And she confirmed that all decisions on

[14] House Committee on Energy and Commerce, Majority Staff Report, *The Solyndra Failure:*, 112th Cong. (Aug. 2, 2012), at 133.
[15] *Id*., at 134.
[16] *Id*., at 130.

the loan guarantee were made on the merits and that no corners were cut in the review of Solyndra's application.[17]

OMB officials also indicated that their final review of the loan was thorough and complete. While there were time pressures, these officials said they had no impact on the quality of their analysis. Jeffrey Zients, the Deputy Director at OMB at the time the loan was closed, testified at the Committee's September 14, 2011, hearing. Mr. Zients stated: "Scheduling requests had no impact whatsoever on the credit subsidy score that was given to this project."[18] Mr. Zients continued: "In preparation for this hearing, I talked to the OMB career staff, and no one hesitated in my discussions with them as to whether they were comfortable with the final determination of the credit subsidy score for this project."[19] There was one analysis that was not done prior to the closing, which involved field testing of manufactured panels. This analysis was not feasible to complete prior to the loan guarantee because the Solyndra factory was not yet built. According to Mr. Zients, this gap in analysis was appropriately addressed by giving the loan a higher risk rating and increasing the credit subsidy score.

The Committee staff interviewed Sally Ericsson, the OMB Program Associate Director for Natural Resources in November 2011.[20] In this interview, Ms. Ericson confirmed that OMB received all necessary information needed before the loan guarantee officially closed. She stated that OMB did not cut any corners in its analysis and was comfortable with the credit subsidy score it assigned to Solyndra. Two other OMB officials interviewed by the Committee – Kevin Carroll, Chief of the OMB Energy Branch, and Courtney Timberlake, OMB Assistant Director for Budget – both confirmed these points. Both of these officials state that all of OMB's decisions were made on the merits, that they were comfortable with the quality of the review of the Solyndra loan application, that no corners were cut in their review, and that the scheduling of the loan guarantee announcement did not result in OMB approving a loan guarantee it would have otherwise rejected.[21]

Department of Treasury Officials also indicated that they were given adequate time to conduct their review. In testimony by Treasury officials at a Committee hearing on October 14, 2011, Chairman Stearns asked Gary Grippo, Deputy Assistant Secretary for Government

---

[17] House Committee on Energy and Commerce, *Interview of Kelly Colyar* (Feb. 29, 2012).

[18] House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, Testimony of Jeffrey Zients, *Hearing on Solyndra and the DOE Loan Guarantee Program,* 112th Cong. (Sept. 14, 2011).

[19] *Id.*

[20] House Committee on Energy and Commerce, *Interview of Sally Ericsson, Program Associate Director, Natural Resources Division, Office of Management and Budget* (Nov. 8, 2012).

[21] House Committee on Energy and Commerce, *Interview of Courtney Timberlake, Assistant Director for Budget, Office of Management and Budget*; (Nov. 3, 2012); House Committee on Energy and Commerce, *Interview of Sally Ericsson, Program Associate Director, Natural Resources Division, Office of Management and Budget* (Nov. 8, 2012);. House Committee on Energy and Commerce, Interview of Kevin Carroll (Mar. 5, 2012).

Financial Policy at the Treasury whether Treasury rushed to provide its consultation on Solyndra. Mr. Grippo responded, "We asked for additional time and were given additional time and provided consultation in due course."[22] Mr. Grippo later added, simply, "We were not rushed."[23]

The Mischaracterization of OMB's Role in the Loan Restructuring

The Solyndra restructuring was the first restructuring of a Department of Energy loan guarantee. As a result, OMB had to decide what level of review to give the Department's loan restructuring proposal. Contrary to the Republican report, OMB correctly determined that its role was as an examiner of the Department's decision.

As then-Deputy OMB Director Zients testified before the Committee, it was OMB's role to "pressure test" the Department's analysis, not to take over the program, which would be beyond OMB's competency. The Republican report says the documents before the Committee suggest that this determination was raised with then-OMB Director Jack Lew. However, no witnesses interviewed by the Committee could recall any such conversation. In fact, none of the witnesses could recall any conversation with Mr. Lew about the specifics of the loan restructuring. In any event, the OMB decision to adopt its examiner role was the right one, regardless of whether Mr. Lew was involved or not.

When Secretary Chu testified before the Committee, he was extensively questioned about the restructuring decision. He explained that this was a difficult decision. The choice was between taking a sure and large loss by denying restructuring or implementing a restructuring that held at least some promise of a significantly greater recovery. As he and every other person who testified before the Committee or was interviewed by Committee staff emphasized, this difficult decision was made purely on the merits.

It is a sign of good government, not bad, that there was an internal debate among analysts about this decision. The Republican report twists this appropriate internal debate into evidence of mismanagement. That is an unjustified conclusion based on the evidence before the Committee.

Conclusion

The Republican report is partisan and one-sided. It does not substantiate the primary allegation that motivated the Committee's Solyndra investigation, which is that the loan guarantee decision was a form of political payoff to a campaign contributor. To the contrary, the record before the Committee shows that Solyndra decisions were made on the merits after extensive consideration of the company's prospects. Some of the decisions were difficult decisions, but they were thoroughly debated within the Administration, as they should be.

---

[22] House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, *Hearing on Continuing Developments Regarding the Solyndra Loan Guarantee*, 112th Cong., at 25 (Oct. 14, 2011).

[23] *Id.*, at 26.