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4 HEARING ON ``OMB'S ROLE IN THE DOE LOAN GUARANTEE PROCESS

5 FRIDAY, JUNE 24, 2011

6 House of Representatives,

7 Subcommittee on Oversight and Investigation

8 Committee on Energy and Commerce

9 Washington, D.C.

10 The Subcommittee met, pursuant to call, at 9:55 a.m., in  
11 Room 2123 of the Rayburn House Office Building, Hon. Cliff  
12 Stearns [Chairman of the Subcommittee] presiding.

13 Members present: Representatives Stearns, Burgess,  
14 Blackburn, Griffith, and DeGette.

15 Staff present: Carl Anderson, Counsel, Oversight; Jim  
16 Barnette, General Counsel; Sean Bonyun, Deputy Communications  
17 Director; Karen Christian, Counsel, Oversight; Howard Kirby,  
18 Legislative Clerk; Carly McWilliams, Legislative Clerk;

19 Andrew Powaleny, Press Assistant; Alan Slobodin, Deputy Chief  
20 Counsel, Oversight; Kristin Amerling, Democratic Chief  
21 Counsel and Oversight Staff Director; Phil Barnett,  
22 Democratic Staff Director; Tiffany Benjamin, Democratic  
23 Investigative Counsel; Karen Lightfoot, Democratic  
24 Communications Director, and Senior Policy Advisor; Ali  
25 Neubauer, Democratic Investigator; and Anne Tindall,  
26 Democratic Counsel.

|  
27           Mr. {Stearns.} Good morning, everybody. The  
28 Subcommittee on Oversight and Investigations will convene.  
29 Our witness, obviously, did not show, so what we intend to do  
30 is do opening statements, myself and the ranking member and  
31 the ranking chairman, as well as members on this side, and  
32 then we will recess after that, after we put documents into  
33 the record by unanimous consent.

34           So I will start with my opening statement. We convene  
35 this hearing of the Subcommittee on Oversight and  
36 Investigation to investigate OMB's role in the Department of  
37 Energy's loan guarantee process. The Energy Policy Act of  
38 2005 gave the Department of Energy the authority to award  
39 loan guarantees to companies investing in innovative, clean  
40 technologies, or renewable energy projects. Through the  
41 stimulus, Congress appropriated nearly \$2.5 billion to pay  
42 the credit subsidy costs for the companies receiving these  
43 loan guarantees. With that funding, the DOE Loan Guarantee  
44 Program took off. So far, DOE has announced loan guarantees  
45 for 20 projects totaling over \$11 billion in financing.

46           Solyndra, a California company, was the first recipient  
47 of a DOE loan guarantee. However, since receiving the  
48 guarantee, Solyndra has suffered a number of financial  
49 setbacks. Solyndra's own auditors noted the company's

50 ``recurring losses'' and ``negative cash flows.'' The  
51 company canceled a planned Initial Public Offering in June  
52 2010, and was forced to lay off employees in November 2010.

53 DOE announced just last March that it had notified--  
54 excuse me--modified the loan guarantee to extend the  
55 repayment period, and Solyndra's investors injected  
56 additional funding into the company.

57 Due to the number of problems Solyndra experienced, this  
58 subcommittee began an investigation of the DOE Loan Guarantee  
59 Program and the Solyndra guarantee, in particular. Examining  
60 the Loan Program was an obvious choice for this subcommittee.  
61 This committee is the authorizing committee for DOE and the  
62 Loan Guarantee Program. The Loan Programs Office had  
63 received over \$2 billion in funding from the stimulus, and  
64 the committee had yet to conduct any oversight of the  
65 program. So, on February 17, 2011, this committee opened an  
66 investigation with a letter to DOE requesting a briefing and  
67 documents. As our investigation unfolded, we learned that  
68 OMB played an important role in the DOE loan guarantee  
69 process. We also became aware of a White House memorandum  
70 sent to President Obama in October 2010, where White House  
71 staff discussed certain ``risks'' presented by the loan  
72 guarantee program and specifically discussed OMB's role in  
73 reviewing these loans. DOE staff were not able to shed much

74 light on these issues or on OMB's processes for reviewing the  
75 Solyndra guarantee, so this committee sent OMB Director Jack  
76 Lew a letter on March 14, 2011, requesting a briefing and  
77 certain specific documents.

78 Over three months later, this committee still does not  
79 have the full picture of OMB's review processes with respect  
80 to Solyndra. At almost every step, OMB has sought to delay  
81 or frustrate this committee's efforts to move this  
82 investigation forward. We did get a briefing, but OMB staff  
83 were able to offer few specifics about OMB's review of  
84 Solyndra's deal. We thought the documents would provide  
85 those details, but OMB has produced only those records that  
86 DOE gave to OMB in the course of the Solyndra review. These  
87 documents reveal nothing about what OMB did with DOE's  
88 information, and OMB so far has failed to produce any of its  
89 own reports, any memorandum, or analyses to demonstrate how  
90 it even considered or weighed the risks presented by the  
91 Solyndra deal.

92 Committee staff then pressed OMB for production of the  
93 requested communications records, hoping those documents  
94 would provide the story of OMB's role over the course of the  
95 Solyndra review. OMB refused to produce these documents,  
96 stating (1) in OMB's opinion, the committee did not need to  
97 see such documents, (2) they had concerns about the

98 confidentiality of staff discussions should these documents  
99 be made public. Committee staff attempted to accommodate  
100 this second concern by offering to review these documents in  
101 camera, meaning that committee staff would look over these  
102 documents but not take possession of them unless that review  
103 revealed a further need for the committee to take possession  
104 of the documents.

105 In order to move the investigation forward, I called  
106 today's witness, Deputy Director Jeffrey Zients, 3 weeks ago  
107 to see if we could reach an agreement about production of  
108 these communications. During our conversation, I asked OMB  
109 to make available to committee staff all emails exchanged on  
110 Solyndra, both internally among OMB staff and with the  
111 Department of Energy, for an in camera review. He stated he  
112 needed to consult with OMB's counsel. One day later, OMB  
113 staff called back to schedule the agreed-upon in camera  
114 review. But, in what I view as a telling example of OMB's  
115 overall approach to this investigation, they did not live up  
116 to their end of the bargain. Instead of producing all  
117 communications relating to Solyndra, as we had discussed, OMB  
118 took it upon itself to select just eight emails that were  
119 exchanged between DOE and OMB in late August 2009, just 1  
120 week before the Solyndra loan closed. According to OMB  
121 staff, they made their own determination that it was not

122 necessary for this committee to see any more emails,  
123 including OMB's own internal emails. In their opinion, these  
124 eight emails were all the committee needed to see.

125 OMB's position demonstrates a fundamental  
126 misunderstanding of the Constitutional roles of Congress and  
127 the Executive Branch. It is not OMB's job to direct this  
128 investigation and decide what Congress can and cannot see.  
129 This committee has jurisdiction over the Department of Energy  
130 program. OMB plays a role in approving the credit subsidy  
131 costs for over \$11 billion in loan guarantees. Congress  
132 appropriated over \$2 billion in taxpayer money to pay these  
133 costs. Congress and the taxpayers have a right to know if  
134 OMB is doing a good job of weighing the risks associated with  
135 these investments and with these deals. We know that OMB's  
136 role extended beyond the 1-week period in late August 2009.  
137 I had hoped that the Deputy Director would have viewed this  
138 hearing as I do: OMB's last chance to finally, and fully,  
139 answer the committee's questions about OMB's role in  
140 reviewing the Solyndra guarantee and simply turn over the  
141 requested documents that we have sought.

142 However, they once again have chosen to delay and  
143 frustrate this committee's efforts to resolve this matter. I  
144 believe the time has come for the committee to fulfill its  
145 oversight obligations and responsibility and pursue this

146 information together; if we can with the ranking member and  
147 the Democrats to move this investigation forward. And  
148 ultimately if we can agree or not agree we might move to  
149 possibly a subpoena.

150 [The prepared statement of Mr. Stearns follows:]

151 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
152           Mr. {Stearns.} And with that, I recognize the ranking  
153 member for her opening statement.

154           Ms. {DeGette.} Thank you, Mr. Chairman. I think that  
155 this hearing, ``OMB's Role in the DOE Loan Guarantee  
156 Process'', is a potentially very constructive hearing, and  
157 that this committee could play a real oversight role going  
158 forward. The subcommittee could do a thoughtful review of  
159 the material we have obtained. They could follow the facts  
160 where they lead. And obtaining testimony from OMB officials  
161 is a legitimate means of advancing this effort.

162           Having said that, I think it is hard to see how an empty  
163 chair hearing would accomplish anything, and I think it is a  
164 profound waste of everybody's time. Instead of truly  
165 examining OMB's role in the DOE Loan Guarantee Program, we  
166 are spending time on a hearing that will obtain absolutely no  
167 new facts for the record. And this proceeding follows on the  
168 heels of public statements by the chairman this spring,  
169 suggesting that the Loan Guarantee Program involved political  
170 favoritism, an allegation that is completely unsupported by  
171 the documents provided by DOE and OMB, and by interviews the  
172 committee has conducted with relevant parties.

173           And by the way, given those statements, it is easy to  
174 see why the DOE would be a little bit leery about just

175 unlimited document productions.

176           Now, the hearing date today was announced before the  
177 Majority even contacted their witness to ascertain his  
178 availability. In fact, he received his formal invitation to  
179 this hearing just 3-1/2 days ago. Mr. Zients, as I  
180 understand it, is perfectly willing to testify, but rather  
181 than reschedule the hearing for one of the dozens of days he  
182 is available, the Majority has called members here to just  
183 address their concern to an empty chair.

184           Now, he says--Mr. Zients says he is willing to come  
185 before the committee. He couldn't come today, but he is  
186 willing to come in the future. Now, I will also say, the  
187 Minority is very willing to work with the Majority to make  
188 sure that appropriate documents are produced by the  
189 witnesses. OMB has a duty to provide appropriate documents.  
190 If they are not providing appropriate documents, then that  
191 needs to happen. We have agreed, Mr. Chairman, upon a  
192 process by which over the next recess, the next 10 days or  
193 so, our staffs will work together and will work with the OMB  
194 to identify and produce the appropriate documents. If that  
195 does not happen, then we will sit down and talk about further  
196 steps, because this is an appropriate oversight role, and we  
197 do look forward to working with you. But frankly, I think  
198 sitting here this morning is a big waste of time.

199           And I yield back.

200           [The prepared statement of Ms. DeGette follows:]

201   \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
202 Mr. {Stearns.} I thank the gentle lady.

203 Ms. {DeGette.} Mr. Chairman, I also have two letters I  
204 would like to enter for the record. The letter from--are  
205 they both from Mr. Zients? One is from Bill Richardson, the  
206 deputy general counsel, dated June 22, to you, and the other  
207 is from Mr. Zients, dated yesterday. Both these letters  
208 express their willingness to come, and also their willingness  
209 to work with the committee on the documents that would be  
210 produced. I ask unanimous consent to enter those into the  
211 record.

212 Mr. {Stearns.} Unanimous consent is so ordered, and we  
213 had also an email here by unanimous consent as shown to your  
214 staff. We would like to put that as part of the record.

215 By unanimous consent, that is part of the record.

216 [The information follows:]

217 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
218 Mr. {Stearns.} And I would just point out to the  
219 gentlelady that we did invite the deputy director 7 days ago,  
220 plenty of time in advance, according to the rules.

221 And with that, I recognize for 5 minutes the gentlelady  
222 from Tennessee, Ms. Blackburn.

223 Mrs. {Blackburn.} Thank you, Mr. Chairman. I know that  
224 the bell has rung for votes, and we will soon be heading in  
225 that direction, but I think that as we sit here this morning,  
226 even though we will not have our hearing as we had wanted to  
227 have, that we have to remember the words of Reagan, ``trust,  
228 but verify.'' And that is what we are going to do over and  
229 over again as we look at what--the steps that the bureaucracy  
230 is taking. Our constituents are hurting, we have  
231 unemployment at 9.1 percent. Underemployment is getting  
232 pretty close to the 20 percent range. Small businesses with  
233 fewer than 20 employees face an average regulatory cost of  
234 over \$10,000 per employee, due to all of the new federal  
235 regulations that have been hitting them. It seems as if  
236 there is no end in sight on those. And if that is not  
237 enough, CBO has stated that our Nation's debt will overtake  
238 our economy by the end of the decade.

239 This is not a rosy outlook. Now, more than ever, this  
240 committee and OMB have a responsibility. It is a

241 responsibility to the taxpayers to ensure that every dollar  
242 that leaves Washington, especially though loan guarantees  
243 backed by American taxpayers, are being put through the  
244 highest levels of oversight and accountability.

245         As we examine OMB's role in the Loan Guarantee Process  
246 today, one loan in particular that we all were looking  
247 forward to discussing is the \$535 million loan guarantee to  
248 Solyndra in September '09 to build a solar panel  
249 manufacturing facility. I thought it was interesting 6  
250 months after the loan guarantee was approved, Solyndra's  
251 auditor, PricewaterhouseCoopers stated that the company had  
252 suffered recurring losses from operations, negative cash flow  
253 since inception, and has a net stockholder's deficit that,  
254 among other concerns, raised substantial doubt about its  
255 ability to continue as a going concern.

256         My questions would be, did OMB and DOE share any of  
257 these same concerns just 6 months prior to this report? We  
258 don't fully know the answer yet, and we are not going to get  
259 it today. Also, what exactly was OMB's role throughout the  
260 loan guarantee process to Solyndra, and we don't have the  
261 answer to that, either. We don't know, because OMB has yet  
262 to produce the notes, analyses, memoranda, documents that its  
263 staff has created in response to a Solyndra review.

264         I hope that OMB will change their position and be

265 willing to work with us on this issue. Our constituents want  
266 some answers. We need to have answers to these questions.  
267 You know, Mr. Chairman, much of it is due to the fact we are  
268 hearing today that the President now is wanting to do a half-  
269 billion dollar technology fund to do similar things.  
270 Congress shouldn't be--the President and the administration  
271 shouldn't be choosing winners and losers, and we need to be  
272 diligent in our oversight.

273 I yield to the gentleman from Texas.

274 [The prepared statement of Mrs. Blackburn follows:]

275 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
276 Mr. {Stearns.} Ms. Blackburn yields to the gentleman  
277 from Texas.

278 Dr. {Burgess.} I thank the gentlelady for yielding.

279 So we are here today in the Oversight and Investigations  
280 Subcommittee to get information on how funds from the so-  
281 called stimulus package from 2009 have been used. This  
282 investigation--this type of investigation is historically  
283 what this subcommittee has done best, but we find ourselves  
284 thwarted by an administration that, once again, is being non-  
285 compliant with the will of the Congress.

286 Now, shovel-ready is a concept that was thrown a lot in  
287 2009, but just over the last few weeks, the President himself  
288 admitted that he wasn't quite sure the definition of shovel-  
289 ready, or maybe he was unsure of the definition of shovel-  
290 ready when the bill was passed. But in any event, what  
291 started as a \$787 billion bill turned into \$862 billion, and  
292 the fact of the matter is, we have got very little to show  
293 for it.

294 In the course of conducting our constitutionally  
295 mandated role of oversight, this committee has repeatedly  
296 attempted to work with Office of Management of the Budget to  
297 review the documents pertinent to this investigation. Time  
298 and again, this White House has thwarted any sort of sunlight

299 being shown on how the federal taxpayer money is being spent  
300 and how determinations were made to that end. This is  
301 important work, and this committee must accomplish this. The  
302 administration must recognize that the Legislative Branch is  
303 indeed a coequal branch of government, and the will of the  
304 Legislative Branch must not be thwarted as it has been  
305 repeatedly by this administration on numerous fronts.

306 I hope the chairman will take this lack of response by  
307 the administration very seriously, and be fully prepared to  
308 exercise all of the authority that this subcommittee has in  
309 order to compel this witness to come and testify before our  
310 subcommittee.

311 Mr. Chairman, I will yield back the balance of my time.

312 [The prepared statement of Dr. Burgess follows:]

313 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
314 Mrs. {Blackburn.} Yield back.

315 Mr. {Stearns.} I thank the gentleman. I would also ask  
316 unanimous consent to enter the following documents into the  
317 record, the Majority staff's supplemental memorandum  
318 regarding the efforts it has taken to obtain documents from  
319 OMB, and two, the document binder for the hearing.

320 Without objection, so ordered.

321 [The information follows:]

322 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
323           Mr. {Stearns.} It is very unfortunate that our witness  
324 failed to show, but we have made every effort to do so. The  
325 subcommittee is adjourned.

326           [Whereupon, at 10:12 a.m., the subcommittee was  
327 adjourned.]