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4 HEARING ON ``SOLYNDRA AND THE DOE LOAN GUARANTEE PROGRAM''  
5 WEDNESDAY, SEPTEMBER 14, 2011  
6 House of Representatives,  
7 Subcommittee on Oversight and Investigations  
8 Committee on Energy and Commerce  
9 Washington, D.C.

10 The Subcommittee met, pursuant to call, at 9:35 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, Terry,  
14 Sullivan, Murphy, Burgess, Blackburn, Myrick, Bilbray,  
15 Gingrey, Scalise, Gardner, Griffith, Barton, Upton (ex  
16 officio), Pompeo, DeGette, Schakowsky, Markey, Green,  
17 Christensen, Dingell, and Waxman (ex officio).

18 Staff Present: Carl Anderson, Counsel, Oversight; Gary

19 Andres, Staff Director; Sean Bonyun, Deputy Communications  
20 Director; Karen Christian, Deputy Chief Counsel,  
21 Oversight/Investigations; Todd Harrison, Chief Counsel,  
22 Oversight/Investigations; Carly McWilliams, Legislative  
23 Clerk; Andrew Powaleny, Deputy Press Secretary; Krista  
24 Rosenthall, Counsel to Chairman Emeritus; Alan Slobodin,  
25 Deputy Chief Counsel, Oversight; John Stone, Associate  
26 Counsel; Kristen Amerling, Chief Counsel and Staff Director,  
27 Oversight; Phil Barnett, Staff Director; Brian Cohen, Senior  
28 Policy and Staff Director, Investigations; Karen Lightfoot,  
29 Communications Director; Elizabeth Letter, Press Assistant;  
30 Alvin Banks, Investigator; Matthew Siegler, Counsel; Stacia  
31 Cardille, Counsel; and Anne Tindall, Counsel.

|  
32           Mr. {Stearns.} Good morning, everybody. We convene  
33 this important hearing of the Subcommittee on Oversight and  
34 Investigation to examine the involvement of the Department of  
35 Energy and the White House Office of Management and Budget in  
36 the review, approval, and subsequent restructuring of the  
37 \$535 million loan guarantee to Solyndra.

38           The Obama Administration has repeatedly touted its green  
39 energy plan as the savior for our faltering economy.  
40 Solyndra was the first loan guarantee issued by the Obama  
41 Administration using stimulus dollars. Administration  
42 officials held out the company as a shining example of how  
43 the stimulus was creating jobs and invigorating the economy.  
44 However, just after 2 years of receiving this half of a  
45 billion dollar loan guarantee, and 6 months after DOE  
46 restructured the terms of the deal, Solyndra has closed its  
47 door, laid off over a thousand employees, and filed for  
48 bankruptcy. Last week, the FBI agents raided the facility.

49           One of our witnesses today, Mr. Silver, attempts to  
50 claim in his written testimony that the Bush Administration  
51 is equally at fault for approving Solyndra's deal and that  
52 Solyndra was a train ready to leave the station when  
53 President Obama took office. But in reality, on January 9,  
54 2009--at the end of the Bush Administration--the DOE Credit

55 Committee voted against offering a conditional commitment to  
56 Solyndra, saying that the real deal was premature and  
57 questioning its underlying financial support. Only after the  
58 Obama Administration took control, and the stimulus passed,  
59 was the Solyndra deal pushed through.

60 We have been asking questions for almost 7 months about  
61 this deal. We have gathered documents from the Department of  
62 Energy. In a party-line vote, the committee was forced to  
63 subpoena OMB in July in order to get even basic information  
64 showing their role in the Solyndra deal. Now, committee  
65 Democrats have questioned the basis of our investigation and  
66 actually have accused the committee of engaging in a fishing  
67 expedition and abusing our subpoena power. But what the  
68 committee's review of these documents clearly show is that we  
69 were right all along to ask questions about this loan. It  
70 should not take a financial restructuring, bankruptcy, and  
71 FBI raid for my colleagues on the other side of the aisle to  
72 put politics aside and join us in our efforts.

73 The documents demonstrate that when DOE was reviewing  
74 the Solyndra guarantee in 2009, it was well aware of the  
75 financial problems the deal posed. What the documents also  
76 show is that the rush to push out stimulus dollars may have  
77 impacted the depth and quality of DOE and OMB's review. In  
78 fact, the White House had scheduled Vice President Biden's

79 and Secretary Chu's appearing at Solyndra's groundbreaking  
80 event prior to DOE even making its final presentation to OMB  
81 on the terms of the Solyndra deal. An email from a senior  
82 OMB staff member to the Office of the Vice President sums up  
83 this disturbing revelation. In it, he states, ``We have  
84 ended up with a situation of having to do rushed approvals on  
85 a couple of occasions. We would prefer to have sufficient  
86 time to do our due diligent reviews and have the approval set  
87 the date for the announcement rather than the other way  
88 around.''

89       Only 6 months after the loan closed, Solyndra's  
90 financial troubles became increasingly severe. In March  
91 2010, an independent auditor issued a report stating, ``the  
92 Company has suffered recurring losses from operations,  
93 negative cash flows since inception and has a net  
94 stockholders' deficit that, among other factors, raises  
95 substantial doubt about its ability to continue as a going  
96 concern.''

97 Nonetheless, President Obama visited Solyndra in  
98 May and proclaimed, ``the true engine of economic growth will  
99 always be companies like Solyndra.''

100       Just 1 year after the loan closed, Solyndra was almost  
101 out of cash. In late fall of 2010, DOE began negotiations  
102 with Solyndra and two of its main investors about  
restructuring the loan in order to keep the company afloat.

103 Under the restructuring agreement, Solyndra's private  
104 investors were given priority over the government with regard  
105 to the first \$75 million recovered in the event of  
106 liquidation. Documents reviewed by the committee staff raise  
107 serious concerns about whether this deal was better for the  
108 taxpayers. These concerns are spelled out in an email  
109 between OMB staff in late January 2011, which notes that,  
110 ``while the company may avoid default with a restructuring,  
111 there is also a good chance it will not. At that point,  
112 additional funds would have been put at risk, recoveries may  
113 be lower, and questions will be asked.''

114 So my colleagues, we are here today to ask those very  
115 questions. If Solyndra really is the ``litmus test for the  
116 Loan Guarantee Program's ability to fund good projects  
117 quickly,''' as DOE's stimulus advisor called it in an email to  
118 DOE officials, I am very concerned about where the \$10  
119 billion DOE that they have left to spend before the September  
120 30 deadline is gone, taxpayers would be better served by not  
121 risking even more of their money, instead using it to reduce  
122 our mounting national deficit.

123 Thank you, and with that I recognize the distinguished  
124 colleague from Colorado, Ms. DeGette.

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

126 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

127 Ms. {DeGette.} Thank you very much, Mr. Chairman.

128 While China's initiatives continue to threaten our  
129 Nation's renewable energy industry and while we continue to  
130 try to revive our economy, it should be clear to everybody in  
131 this room that solar energy development is not a Democratic  
132 or a Republican issue; it is an issue of securing American  
133 energy innovation for decades to come. And so we should have  
134 a larger discussion about how government can appropriately  
135 support the development of domestic clean energy  
136 technologies. As we all know, and as we can tell from the  
137 chairman's opening statement, there has been a great deal  
138 written in the media about today's hearing, and  
139 unfortunately, the issue has become very politicized.

140 The narrow purpose of today's hearing is to thoroughly  
141 examine the process and decisions surrounding the Solyndra  
142 loan guarantee, but we can't help but look at the issue  
143 through the larger lens of what our national energy policy  
144 should be going forward. And as we think about the broader  
145 issues, it is important to see just what happened with the  
146 Solyndra loan.

147 Now, the chairman said that the minority opposed this  
148 investigation, and that couldn't be farther from the truth.  
149 We believe this investigation into Solyndra is important to

150 understand both what happened here and also what our  
151 appropriate energy policy is. And furthermore, we never  
152 oppose production of any documents. We oppose the subpoena  
153 because we believe that the documents were being produced in  
154 good time. But having said that, I am happy that we now have  
155 the documents, and I think those documents should be made  
156 available to everybody.

157         The documents and briefings that I have reviewed show  
158 that the Department of Energy in both the Bush and Obama  
159 Administrations supported Solyndra's loan guarantee  
160 application. In 2007, the Bush Administration DOE invited  
161 Solyndra to submit a full application, and by the end of the  
162 Bush Administration, DOE had submitted the application to its  
163 Critical Committee for review. After President Obama took  
164 office, DOE continued to work on the application and  
165 ultimately approved the loan guarantee in September 2009.

166         In spring of 2010, a pre-IPO audit of Solyndra raised  
167 concerns about Solyndra's viability, and by late 2010, DOE  
168 had determined that the company was headed towards default.  
169 DOE was faced with a choice at this point: restructure the  
170 loan to increase the chances that Solyndra could repay the  
171 taxpayers' funds or cut their losses and accept the high  
172 possibility of default. Ultimately, DOE determined  
173 restructuring was the course of action most likely to

174 preserve the full recovery of the loan value. Under terms  
175 approved in February 2011, Solyndra was given more time to  
176 repay the loan, the government obtained additional  
177 collateral, and Solyndra was required to raise an additional  
178 \$75 million from private investors that would have primacy  
179 over the government's interest in the event of liquidation  
180 before 2013.

181 Now, this July, Solyndra's CEO visited my office as well  
182 as other members' and talked about the strong demand for the  
183 company's product and how 2011 revenues were projected to  
184 double from 2010. Now, as we all know, less than 2 months  
185 later, the company announced it would file for bankruptcy.  
186 And now, the Federal Government's recovery of over \$500  
187 million loaned to Solyndra is at grave risk. It is always  
188 easier to assess decisions in hindsight, but particularly  
189 with a loan this big, it is critical that we get answers to  
190 several key questions.

191 First, did the Bush and Obama Administrations conduct  
192 appropriate due diligence before September 2009 guarantee  
193 approval? Second, did the Department of Energy sufficiently  
194 monitor the financial status of Solyndra after loan  
195 disbursements began, particularly as the market forces seemed  
196 to be against them? Third, did Solyndra make accurate  
197 representations to the government about its financial

198 prospects both before and after approval of its loan  
199 guarantee? And when Solyndra's financial situation  
200 deteriorated, did the government make the correct decisions  
201 about restructuring the loan?

202 In examining these issues, I want to underscore that we  
203 not only lose sight of the policy context for the Loan  
204 Guarantee Program that supported Solyndra. This program was  
205 designed to help U.S. companies to grow and compete in a  
206 global clean energy market in which countries like China and  
207 others are providing a wide range of incentives and support  
208 for domestic industry. Even if we conclude that bad  
209 judgments were made on the Solyndra loan, we have got to  
210 continue to work hard to develop and implement appropriate  
211 policies that give American clean energy investors the  
212 support they need to make the U.S. a market leader in the  
213 future and also that protect the U.S. taxpayer.

214 These are critical decisions. Ranking Member Waxman and  
215 I have asked that the Solyndra CEO and CFO be called, and I  
216 believe that is going to be happening in short order.  
217 Because I am perplexed at how they can be in my office in  
218 July telling me things were looking better and filing for  
219 bankruptcy 2 months later.

220 With that, Mr. Chairman, I yield back.

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

222 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
223           Mr. {Stearns.} The gentlelady mentioned in her opening  
224 statement about the documents we have been reviewing. Would  
225 she consider a unanimous consent request that all those  
226 documents be made part of the record?

227           Ms. {DeGette.} Yes.

228           Mr. {Stearns.} So ordered.

229           [The information follows:]

230 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
231           Mr. {Stearns.} With that, we recognize the  
232 distinguished full chairman of the Energy and Commerce  
233 Committee, the gentleman from Michigan, Mr. Upton.

234           The {Chairman.} Well, thank you, Mr. Chairman.  
235 In 2009, Solyndra was the first company to receive a DOE  
236 energy loan funded with stimulus dollars. Just 2 years after  
237 getting \$535 million in taxpayer money, and being touted by  
238 President Obama as a model for how the government's venture  
239 capital program in green technology should work, the company  
240 has filed for bankruptcy and been raided by the FBI.

241           We are starting to look at the DOE Loan Guarantee  
242 Program and Solyndra's deal in February. Some questioned the  
243 basis for this investigation. And after 4 months of  
244 wrangling with the administration to produce relevant  
245 documents, the committee was forced to issue a subpoena to  
246 OMB. I think Solyndra's recent bankruptcy filing and last  
247 week's FBI raid clearly show that the committee was more than  
248 justified in its scrutiny of the deal. Pursuant to our  
249 oversight functions, we have an important responsibility to  
250 pursue answers regarding the use of taxpayers' money.

251           Our investigation raises several questions about whether  
252 the administration did everything that it could to protect  
253 taxpayer dollars. Why did the administration think Solyndra

254 was such a good bet? Why did the administration push ahead  
255 with restructuring the Solyndra guarantee this year, when  
256 some in the government voiced serious concerns about the  
257 commercial viability of the company? Why did DOE and OMB  
258 allow the government to be subordinated to the private  
259 investors in apparent violation of the law?

260 I look forward to the testimony of Mr. Zients from OMB  
261 and Mr. Silver, Executive Director of DOE's Loan Program  
262 Office. I want to know what the Solyndra failure means for  
263 the Loan Guarantee Program. Was Solyndra just one bad bet by  
264 an administration rushing to claim credit for the first loan  
265 guarantee, or is it the tip of the iceberg? DOE has closed  
266 over \$8 billion in loan guarantees to other ``green tech''  
267 companies, and it has about \$10 billion left to spend in the  
268 next few weeks before the September 30 deadline. If the  
269 administration was so wrong about Solyndra after 9 months of  
270 due diligence, how can it possibly exercise the proper  
271 controls when doling out another \$10 billion dollars in the  
272 next couple of weeks? In this time of record debt, I  
273 question whether the government is qualified to act as a  
274 venture capitalist, picking winners and losers in speculative  
275 ventures and shelling out billions of taxpayer dollars to  
276 keep them afloat.

277 We began this investigation to shine a bright light on a

278 program shrouded in secrecy and uncertainty. New details are  
279 coming to the forefront today about who decided to allocate  
280 billions in taxpayer dollars, and where, and why. This is  
281 important information, and the public has a right to know how  
282 their hard-earned dollars are being spent. But it is not the  
283 end of our inquiry. The answers we have turned up so far  
284 spark additional questions, and I am committed to pursuing  
285 this investigation and conducting rigorous oversight of the  
286 Loan Guarantee Program and its recipients. I hope the  
287 administration and our friends on both sides of the aisle  
288 will share our commitment to getting answers.

289 I yield to the gentleman from Texas, Mr. Barton.

290 [The prepared statement of Mr. Upton follows:]

291 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
292 Mr. {Barton.} Thank you, Chairman Upton.

293 I think this is a litmus test of how this subcommittee  
294 is going to work together to investigate something that  
295 obviously needs to be investigated. I was very gratified to  
296 hear Ranking Member DeGette's request that the record include  
297 all the documents that have been discovered so far because at  
298 the beginning of this investigation, my friends on the  
299 minority side did not support the subpoena to get those  
300 documents.

301 Mr. Chairman, I support Loan Guarantee Programs for  
302 alternative energy. Having said that, I do not support the  
303 process by which this particular loan guarantee was  
304 announced. It is curious to me that in January of 2009, the  
305 Credit Committee unanimously recommended against this loan  
306 guarantee, but 2 months later after President Obama had been  
307 sworn in, the Credit Committee approved, as far as I can  
308 tell, the identical loan commitment with no intervening  
309 improvement in the process. A DOE staff member at the time  
310 said this project is going to run out of cash in September of  
311 2011. And how prescient was that, Mr. Chairman? As we all  
312 know, they declared bankruptcy last week.

313 I look forward to the testimony of these officials and I  
314 look forward next week to the testimony of the members of the

315 company. And Mr. Chairman and subcommittee chairman and  
316 Ranking Member DeGette and Ranking Member Waxman, I strongly  
317 support you all working together to pursue this investigation  
318 on a bipartisan basis. And I yield back to the chairman.

319 [The prepared statement of Mr. Barton follows:]

320 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
321           The {Chairman.} I thank the gentleman and I yield the  
322 balance of the time to Dr. Burgess.

323           Dr. {Burgess.} Thank you, Mr. Chairman.

324           Ranking Member DeGette referenced the fact that going  
325 back to the Bush Administration this discussion was going on  
326 in the Department of Energy. I just do want to take a moment  
327 to point out that the Credit Committee at the Department of  
328 Energy January 12, 2009, the last dates of the Bush  
329 Administration, the day after their meeting it was a  
330 unanimous decision not to engage in further discussions with  
331 Solyndra at this time.

332           Now, we all know the stimulus bill was about shovel-  
333 ready projects. It appeared that the shovel that this  
334 project was ready for was to bury it somewhere. And yet it  
335 was resurrected. Now, I believe in redemption, I believe in  
336 the afterlife, but I don't believe this was this wisest and  
337 best use. I do want to convey the message to members of the  
338 administration that when this committee calls, you respond.  
339 When we ask for documents, you produce them. When we  
340 schedule a hearing, you show up. We are a coequal branch of  
341 government. We have a responsibility to protect the people's  
342 money as well, and it does not appear that those interests  
343 were followed. And unfortunately, now the taxpayer is going

344 to suffer.

345 I yield back the balance of my time.

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

347 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
348           Mr. {Stearns.} The gentleman yields back. The  
349 distinguished ranking member, the gentleman from California,  
350 Mr. Waxman, is recognized.

351           Mr. {Waxman.} Thank you, Mr. Chairman.

352           Today, we are holding a hearing on the loan guarantee  
353 provided by the Department of Energy in 2009 to Solyndra, a  
354 U.S. solar panel manufacturer. And this is an important  
355 hearing. Taxpayers have over \$500 million at risk as a  
356 result of Solyndra's bankruptcy. We need to understand what  
357 happened, who should be held accountable, and how we can  
358 avoid future losses. We also need to ask whether Solyndra  
359 misled federal officials.

360           In July, the company's CEO met with me in my office. He  
361 assured me that the company was in a strong financial  
362 condition and in no danger of failing. In fact, he said the  
363 company was going to double its revenues in 2011. I have a  
364 hard time reconciling those representations with the  
365 company's decision to file for bankruptcy 1 month later.  
366 Committee staff have now reviewed thousands of pages of  
367 internal documents from the Department of Energy and the  
368 Office of Management and Budget. And they raise a number of  
369 questions. The documents show that under both the Bush  
370 Administration and the Obama Administration DOE officials

371 strongly backed Solyndra. They believed its silicon-free  
372 solar panels--Mr. Chairman, may I have an opportunity to  
373 speak?

374 Mr. {Stearns.} Absolutely. Committee will be in order  
375 to listen to the gentleman's statement.

376 Mr. {Waxman.} They believe that silicon-free solar  
377 panels offered cost savings and its tubular shape reduced  
378 installation costs. And they thought the internal reviews  
379 they conducted and the external studies they commissions  
380 showed Solyndra could compete successfully in the global  
381 marketplace. Well, these rosy scenarios were not realized.  
382 Today, we will ask why. Is the reason unforeseen  
383 developments in the global marketplace as Solyndra and DOE  
384 argue? Or is the reason sloppy or inadequate vetting, or  
385 worse yet, corporate malfeasance?

386 By late 2010, both DOE and OMB knew Solyndra was facing  
387 difficulty in meeting its loan obligation. This triggered a  
388 vigorous internal debate about what the government should do  
389 to protect the taxpayers. DOE projected that an immediate  
390 liquidation would return less than 20 cents on the dollar, so  
391 they favored restructuring because of the potential for  
392 recovering more of the taxpayers' investment. Some OMB  
393 officials warned against restructuring on the grounds that it  
394 might not be enough to avoid bankruptcy and default. Well,

395 that was not an easy decision and we need to ask whether the  
396 right choice was made.

397         Given the bankruptcy of Solyndra and the dollars now at  
398 risk, we have an obligation to the taxpayer to investigate  
399 the transaction thoroughly. That is why I welcome this  
400 hearing and why Ranking Member DeGette and I have urged  
401 Chairman Stearns to hold another hearing where we can  
402 question Solyndra's CEO.

403         I disagree vehemently, however, with the policy  
404 conclusions my Republican colleagues have already drawn.  
405 They say the collapse of Solyndra shows the folly of federal  
406 investments in solar and other clean energy technologies, and  
407 they argue the government should not pick winners and losers  
408 in the energy marketplace. This sounds superficially  
409 appealing but there is a fundamental flaw in their logic.  
410 The majority of Republicans on this committee deny that  
411 climate change is real. If you are a science-denier, there  
412 is no reason for government to invest in clean energy.

413         It is ironic that at this very moment in Washington,  
414 CEOs of a number of corporations, including Bill Gates from  
415 Microsoft; Mr. Immelt from GE; Norm Augustine, former  
416 Lockheed-Martin chairman; Chad Holliday, Bank of America; Tim  
417 Solso, CEO of Cummins, are all here representing American  
418 Energy Innovation Council, and they are calling for major new

419 investments in alternative energy and renewable energy so  
420 that we don't fall behind the Chinese and others who are  
421 competing in this area and outcompeting us.

422         If you live in reality, you know the world cannot  
423 continue its dependence on fossil fuels, that we are in  
424 danger of losing this industry to our competitors, especially  
425 China. And last month alone, 3 U.S. solar manufacturers have  
426 declared bankruptcy because they couldn't compete with  
427 Chinese companies.

428         This weekend, the business columnist Steve Pearlstein  
429 wrote in the Washington Post, ``listening to the Republicans  
430 talk about the economy and economic policy is like entering  
431 into an alternative universe.''  
432 He is right. Republicans on  
433 this committee oppose putting a market price on carbon  
434 emissions. They oppose EPA regulation of carbon pollution,  
435 and now they oppose government investment that promote clean  
436 energy alternatives. That is an economic dissonance for  
437 fledgling clean energy companies that have to compete against  
438 both an entrenched fossil fuel industry and heavily  
439 subsidized foreign firms. And it is a grievous blow to our  
440 future prosperity.

440         Thank you, Mr. Chairman.

441         [The prepared statement of Mr. Waxman follows:]

442 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
443           Mr. {Stearns.} I thank the gentleman. And with that,  
444 the opening statements are concluded. And I ask unanimous  
445 consent that the written opening statements of the members be  
446 introduced into the record anyone who wishes to do it.  
447 Without objection, the documents will be so entered.

448           To our witnesses, you are aware that the committee is  
449 holding an investigative hearing, and when doing so has had  
450 the practice of taking testimony under oath. Do you have any  
451 objection to taking testimony under oath?

452           The chair then advises you that under the rules of the  
453 House and the rules of the committee, you are entitled to be  
454 advised by counsel. Do you desire to be advised by counsel  
455 during your testimony today? No. In that case, if you would  
456 please rise and raise your right hand, I will swear you in.

457           [Witnesses sworn.]

458           Mr. {Stearns.} You are now under oath and subject to  
459 the penalties set forth in Title XVIII, Section 1001, of the  
460 United States Code.

461           We welcome you to give a 5-minute summary of your  
462 written statement. So with that, Mr. Silver, we welcome you  
463 with your opening statement.

|  
464 ^TESTIMONY OF JONATHAN SILVER, DIRECTOR, LOAN PROGRAMS  
465 OFFICE, U.S. DEPARTMENT OF ENERGY; AND JEFFREY ZIENTS, DEPUTY  
466 DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

|  
467 ^TESTIMONY OF JONATHAN SILVER

468 } Mr. {Silver.} Thank you, Chairman Stearns, Ranking  
469 Member DeGette, and members of the subcommittee. My name is  
470 Jonathan Silver, and I am the executive director of the Loan  
471 Programs Office. I joined with the Department of Energy and  
472 took this position in November of 2009.

473 In 2005, recognizing that there was a systemic shortage  
474 of private debt financing for innovative clean energy  
475 projects from renewable to clean coal to nuclear power,  
476 President Bush signed bipartisan legislation that established  
477 the Title XVII Loan Program. The program was specifically  
478 designed to support next-generation energy projects, which  
479 involved technology and market risks that private sector  
480 lenders often cannot or will not underwrite.

481 Other governments have recognized the value of such  
482 programs as well. Germany and Canada already operate  
483 government-backed clean energy lending programs. The U.K.,  
484 Australia, and India have announced the intent to do the

485 same. But none have been as aggressive as the Chinese  
486 Government, which last year alone provided more than \$30  
487 billion in credit to its country's largest solar  
488 manufacturers. That is roughly 20 times larger than  
489 America's investment in the same period. Why is China making  
490 this investment? Because the race for solar manufacturing  
491 jobs is a race worth winning. Over the next few decades,  
492 this will become a global market worth trillions of dollars.

493 In 1995, the United States manufactured more than 40  
494 percent of the solar cells and modules sold worldwide.  
495 Today, it is 6 percent. Meanwhile, China's share has grown  
496 from 6 percent in 2005 to 54 percent today. China is now  
497 home to 5 of the 10 largest solar panel manufacturers in the  
498 world. Seven of the 10 largest are in Asia. Only 2 are in  
499 the United States. It is in this context that we should  
500 discuss the Solyndra transaction.

501 Solyndra submitted its initial application in 2006. By  
502 late 2008, the Loan Program staff considered Solyndra the  
503 most advanced of the projects it had reviewed and the likely  
504 recipient of the program's first loan guarantee. In fact, by  
505 the time the Obama Administration took office, the career  
506 staff had already established a timeline for issuing the  
507 company a conditional loan commitment in March of 2009. In  
508 March, on the exact schedule that had been developed during

509 the Bush Administration, the program issued Solyndra a  
510 conditional commitment. In September, after several more  
511 months of additional due diligence and documentation, DOE  
512 finalized the loan guarantee. Although I was not at the  
513 Department at that time, it is my understanding that the  
514 transaction went through nearly 3 years of rigorous internal  
515 and external due diligence, including reviews by a leading  
516 independent engineering firm, the Department's own solar  
517 experts, and a blue chip law firm all before any taxpayer  
518 funds were put at risk.

519 The Federal Government was not alone in its assessment  
520 of Solyndra's potential. Some of America's most  
521 sophisticated professional investors collectively invested  
522 nearly \$1 billion in the company after conducting extensive  
523 due diligence of their own, and again, before any taxpayer  
524 dollars were deployed.

525 In 2009, Solyndra appeared to be well positioned to  
526 compete and succeed in the global marketplace. Solyndra  
527 manufactures cylindrical thin-film solar cells, which avoided  
528 both the high cost of polysilicon--a critical component in  
529 making conventional solar panels--and certain costs  
530 associated with installing flat panels. But polysilicon  
531 prices subsequently dropped significantly taking Solyndra and  
532 many industry analysts by surprise and by providing a

533 significant benefit to several of the company's Chinese  
534 competitors.

535         These developments made Solyndra's business model more  
536 challenging. The company took steps to respond, cutting  
537 costs even as revenues increased 40 percent between 2009 and  
538 2010 from \$100 million to \$140 million. Despite increasing  
539 revenue, the company ran short of cash and faced imminent  
540 bankruptcy without an emergency influx of new capital from  
541 its investors. The Department of Energy faced a difficult  
542 choice: whether a) to refuse the proposed terms of that  
543 financing ensuring that the company would close and the  
544 government would recover only a small amount of its loan; or  
545 b) to allow the company to take the financing, giving it and  
546 its almost 1,000 workers a fighting chance at success and the  
547 government the possibility of a higher recovery on that loan.

548         After extensive analysis both internally and from  
549 independent market and financial advisors and using the same  
550 tools and approaches that private lenders use in such  
551 circumstances, the Department concluded that restructuring  
552 the loan gave the U.S. taxpayer the best chance of being  
553 repaid. Unfortunately, the changes in the solar market have  
554 only accelerated. Chinese companies have flooded the market  
555 with inexpensive panels, and Europe, historically the largest  
556 purchaser of solar panels, is in the midst of an economic

557 crisis that has significantly reduced demand. The result has  
558 been a further and unprecedented 42 percent drop in solar  
559 cell prices in the first 8 months of 2011 alone.

560         These changes were particularly damaging to Solyndra,  
561 and as you know, the company declared bankruptcy earlier this  
562 month. While we are all disappointed in the outcome,  
563 Solyndra's situation should not overshadow the professional  
564 work that the Department's loan programs have done to date or  
565 the need to continue to find ways to support clean energy in  
566 this country.

567         Developing a robust clean energy manufacturing sector in  
568 the United States is critical to our long-term national  
569 interests and one of the most important tools as our global  
570 competitors have already learned is low-cost financing  
571 effectively targeted and deployed. This isn't picking  
572 winners and losers; it is helping ensure that we have winners  
573 here at all. We invented this technology and we should  
574 produce it here. The question is whether we are willing to  
575 take on this challenge or whether we will simple cede  
576 leadership in this vital sector to other nations and watch as  
577 tens of thousands of jobs are created overseas. The  
578 administration believes this is a battle we must fight and  
579 win.

580         Mr. Chairman, I thank the members of the committee and I

581 look forward to answering your questions.

582 [The prepared statement of Mr. Silver follows:]

583 \*\*\*\*\* INSERT 1 \*\*\*\*\*

584

|

Mr. {Stearns.} Thank you. Mr. Zients?

|  
585 ^TESTIMONY OF JEFFREY ZIENTS

586 } Mr. {Zients.} Chairman Stearns, Ranking Member DeGette,  
587 members of the subcommittee, thank you for inviting me here  
588 today to testify on OMB's role in the implementation of the  
589 Department of Energy's Loan Guarantee Program.

590 The DOE Loan Guarantee Program authorized by Congress in  
591 Title XVII of the Energy Policy Act of 2005 is a key part of  
592 the administration's efforts to promote economic growth and  
593 create jobs across the country and to jumpstart the clean  
594 energy economy. As you know, OMB engages in general  
595 oversight of the programs being executed by federal agencies.  
596 Therefore, OMB has been an active participant in interagency  
597 discussions about major milestones and DOE's implementation  
598 of Title XVII helping to ensure they are consistent with the  
599 statutory framework and administration policy.

600 These interagency discussions are an important forum for  
601 asking tough questions and pressure-testing assumptions,  
602 respectful of DOE's statutory authority to make final  
603 programmatic decisions on Title XVII loan guarantees.

604 OMB also has a particular statutory role in the Title  
605 XVII program under the Federal Credit Reform Act of 1990,  
606 known as FCRA. Pursuant to FCRA, OMB reviews and must

607 approve credit subsidy cost estimates for all loan and loan  
608 guarantee programs, including the credit subsidy cost  
609 estimates generated by DOE for the Title XVII program. OMB  
610 ensures that costs are accounted for appropriately. In  
611 performing its statutory role under FCRA, OMB works closely  
612 with agencies' credit subsidy cost models. Based on these  
613 models, OMB reviews and exercises final approval authority  
614 over credit subsidy costs to ensure that the costs of direct  
615 loans and loan guarantees are presented, and reflect  
616 estimated risks, consistently across federal agencies so that  
617 taxpayer funds are invested in a prudent and effective  
618 fashion. By contrast, the final decision on whether to issue  
619 the loan or guarantee rests with the agency implementing the  
620 applicable program--DOE in the case of Title XVII.

621 In the Solyndra loan guarantee, OMB's approval of DOE's  
622 proposed credit subsidy cost was conducted in August and  
623 September of 2009. While I was not directly involved in this  
624 aspect of the transaction, what I have learned since  
625 indicates that the approval process reflected a thorough  
626 examination and analysis of DOE's calculation of this  
627 estimated cost. OMB staff addressed with DOE a series of  
628 specific questions about its analysis. Based on these  
629 discussions, OMB and DOE ultimately agreed on the credit  
630 subsidy cost, and OMB ensured it was budgeted and accounted

631 for appropriately. The loan guarantee was then issued in  
632 September 2009.

633 In February 2011, DOE undertook a restructuring of  
634 Solyndra's debt in light of the acute financial troubles the  
635 company was experiencing. OMB's statutory role in the  
636 restructuring transaction was the same as its role in the  
637 original transaction--to ensure that the credit subsidy cost  
638 was appropriately accounted for, consistent with OMB's  
639 responsibilities under FCRA. OMB worked closely with DOE to  
640 understand the specifics of the proposal before making a cost  
641 determination. DOE ultimately provided information and  
642 analysis to OMB to show that the loan was in imminent default  
643 and that the restructuring proposal was expected to be less  
644 costly to taxpayers than other options, including  
645 liquidation. OMB determined that DOE's analysis was  
646 reasonable and reflected the information as it was understood  
647 at that time.

648 Since then, a challenging global solar market has  
649 continued to affect a number of solar manufacturers,  
650 including Solyndra. The company's recent announcement that  
651 it was suspending operations and filing for bankruptcy is  
652 without a doubt a very unfortunate outcome and one that will  
653 limit the government's recovery of funds loaned to the  
654 company.

655 Congress designed the Title XVII Loan Guarantee Program  
656 to fund innovative clean energy projects that might not  
657 otherwise receive the necessary capital for deployment. The  
658 program envisions that while some of these projects might not  
659 succeed, others will contribute to the country's ability to  
660 achieve its clean energy goals. OMB will continue to work  
661 diligently with DOE to help make the Title XVII program a  
662 success and to ensure that the costs associated with the  
663 inherent risks in the program are budgeted and accounted for  
664 to protect taxpayers' interests.

665 Mr. Chairman and members of the subcommittee, I would be  
666 pleased to answer any questions you have.

667 [The prepared statement of Mr. Zients follows:]

668 \*\*\*\*\* INSERT 2 \*\*\*\*\*

|  
669 Mr. {Stearns.} I thank the gentleman, and I will start  
670 with opening questions. And they are directed to you, Mr.  
671 Silver, and if you could possibly just answer yes or no.

672 In your testimony, you claim that some of Solyndra's due  
673 diligence was done by the end of the Bush Administration. Is  
674 that correct?

675 Mr. {Silver.} Yes, the application was received--

676 Mr. {Stearns.} Yes, that is all I need. Isn't it true,  
677 though, that at the end of the Bush Administration a DOE  
678 Credit Committee met on January 9, 2009, to consider the  
679 Solyndra guarantee? Were you aware of that?

680 Mr. {Silver.} The Credit Committee is made up of--

681 Mr. {Stearns.} No, I am not asking you--just answer the  
682 question.

683 Mr. {Silver.} Which met in early 2009--

684 Mr. {Stearns.} Right. Okay, so you agree. That Credit  
685 Committee recommended that the Solyndra loan guarantee be  
686 remanded to the Loan Programs Office stating, ``The number of  
687 issues unresolved make a recommendation for approval  
688 premature at this time.'' Were you aware of the Credit  
689 Committee's meeting when you submitted your testimony to the  
690 committee this morning?

691 Mr. {Silver.} I was. And, as I said, Congressman, I

692 was not there at the time, but it is my understanding that it  
693 was not--it was remanded back for additional data--

694 Mr. {Stearns.} No, I am asking the questions. I just  
695 need a yes or no.

696 Mr. {Waxman.} Let him give the answer.

697 Mr. {Stearns.} Well, I think he has given an answer.

698 In an email sent a few days after the January Credit  
699 Committee meeting, a member of that Credit Committee sent an  
700 email to his fellow members. In that January 13, 2009, email  
701 he states, ``After canvassing the committee, it was a  
702 unanimous decision not to engage in further discussions with  
703 Solyndra at this time.'' Do you understand that the Credit  
704 Committee in the Bush Administration essentially decided that  
705 the due diligence was not complete at this point?

706 Mr. {Silver.} No, Mr. Chairman. In fact, the Credit  
707 Committee that you are referring to, as I said, made up of a  
708 group of career professionals is also exactly the same Credit  
709 Committee that then approved--

710 Mr. {Stearns.} I understand that, but the point is what  
711 I just quoted to you is the truth, isn't that correct? That  
712 quote is accurate?

713 Mr. {Silver.} I don't--haven't seen that email, sir.

714 Mr. {Stearns.} Okay.

715 Mr. {Silver.} I wasn't there at the time.

716 Mr. {Stearns.} Well, you can assure it is. And the DOE  
717 should quit talking with Solyndra. That was the  
718 recommendation. Now, Mr. Silver, in your testimony, you  
719 stated that regarding Solyndra, ``Much of the extensive due  
720 diligence on the transaction was conducted between 2006 and  
721 the end of 2008.'' I would like to bring this information to  
722 your attention. Isn't it true that the Loan Programs Office  
723 didn't hire its first federal employee until August 1, 2007?

724 Mr. {Silver.} I am not aware of that but it sounds  
725 about right.

726 Mr. {Stearns.} Okay. If you don't know, we can provide  
727 this information. We provided it to the committee staff  
728 through a PowerPoint presentation. Now, by the end of 2007,  
729 isn't it true that the office had only 8 federal employees?

730 Mr. {Silver.} Again, I don't know the exact numbers.

731 Mr. {Stearns.} Okay. So who was doing all this  
732 extensive due diligence that you keep talking about in 2006  
733 and 7 at the loan program?

734 Mr. {Silver.} Well, sir, the Department--if you would  
735 like an answer to that question--

736 Mr. {Stearns.} Sure.

737 Mr. {Silver.} --the Department is made up of 115,000  
738 working professionals, including about 70,000 scientists a  
739 number of whom are solar experts--

740 Mr. {Stearns.} But the DOE Credit Committee was the  
741 responsible authority for approving the credit of Solyndra.  
742 Isn't it--

743 Mr. {Silver.} No, actually--

744 Mr. {Stearns.} Okay.

745 Mr. {Silver.} --technically, sir, the Credit Committee  
746 actually simply reviews a transaction and recommends it--

747 Mr. {Stearns.} Right.

748 Mr. {Silver.} --for approval.

749 Mr. {Stearns.} I think we have established they did not  
750 think they should go ahead. Isn't it also true that during  
751 that time period, DOE was reviewing the 140 or so  
752 applications that it received in response to its first  
753 solicitation, how did DOE have time to do extensive due  
754 diligence on Solyndra from 2006 to 2007 like you indicated?  
755 That baffles us.

756 Mr. {Silver.} If you will give me a moment to explain,  
757 I think I can. The 2006 solicitation resulted in 143  
758 submissions. The loan program staff and others at the  
759 Department reviewed those for eligibility, which is a thinner  
760 review than the full due diligence, and recommended 16  
761 applications to file a full application.

762 Mr. {Stearns.} But--

763 Mr. {Silver.} Eleven did so. Solyndra was one of those

764 and the Department conducted due diligence on all of those  
765 11.

766 Mr. {Stearns.} But Mr. Silver, isn't it true the first  
767 draft of the independent marketing report wasn't even submitted  
768 until March 2009? You were there. Isn't that correct?

769 Mr. {Silver.} No, I was not there at that time, sir.  
770 It is my understanding, though, from reviewing the record  
771 that there were several market research reports that were  
772 directly relevant that were used as the basis for assessment,  
773 and there was subsequently a direct marketing report done for  
774 the project, which was produced in the time frame--

775 Mr. {Stearns.} Our records show an independent engineer  
776 report that you cited in your testimony was submitted in  
777 early January 2009. Is that correct?

778 Mr. {Silver.} I think that is the case, yes, sir.

779 Mr. {Stearns.} The due diligent legal memorandum  
780 submitted by the Morrison and Forester, which you have also  
781 cited in your written testimony, that also was submitted in  
782 early 2009, correct?

783 Mr. {Silver.} I believe that is the case.

784 Mr. {Stearns.} Given this, how do you explain the  
785 statement in your testimony that the extensive due diligence  
786 was conducted in 2006 and 2008?

787 Mr. {Silver.} Actually, I didn't say it was conducted

788 in 2006. I said the application was receive in 2006 and due  
789 diligence began and continued from late 2007 through 2008.  
790 It would be logical for the reports that you are making  
791 reference to here to be completed after that work was done  
792 during that period.

793 Mr. {Stearns.} Well, Mr. Silver, I think my time has  
794 expired, but I think what we have established is that the  
795 Credit Committee during the Bush Administration found the  
796 Solyndra deal to be premature and remanded it for further  
797 work. And we have all the evidence and all the clear  
798 evidence, so we are a little puzzled with your opening  
799 statement. With that, my time has expired and I recognize  
800 the ranking member, Ms. DeGette.

801 Ms. {DeGette.} Thank you very much, Mr. Chairman.

802 I would like to start my questions by asking unanimous  
803 consent to put the Credit Committee recommendation that the  
804 chairman referred to into the record so that we can know what  
805 we are talking about.

806 Mr. {Stearns.} By unanimous consent, so ordered.

807 [The information follows:]

808 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
809 Ms. {DeGette.} Thank you very much.

810 Mr. Silver, I had staff hand you a copy of this Credit  
811 Committee recommendation. Have you seen this document  
812 before?

813 Mr. {Silver.} No, ma'am, I have not.

814 Ms. {DeGette.} Okay. This is the document that the  
815 chairman was referring to where the Credit Committee remanded  
816 the project to LGPO that they denied the application and they  
817 remanded it for more information. That is the thing the  
818 chairman was referring to. And it was also the information  
819 that he had up on the screen. It was from this memo. Now,  
820 as I read this document, it says, ``While the project appears  
821 to have merit, there are several areas where the information  
822 presented did not thoroughly support a finding, but the  
823 project is ready to be approved at this time.'' And then it  
824 lists 4 areas that it says need to be supplemented. Do you  
825 see that?

826 Mr. {Silver.} Yes, ma'am.

827 Ms. {DeGette.} And then at the bottom is said, ``the  
828 Credit Committee is appreciative of the hard work done by the  
829 origination staff but believes the number of issues  
830 unresolved makes the recommendation for approval premature at  
831 this time.'' Do you see that?

832 Mr. {Silver.} I do.

833 Ms. {DeGette.} And then it concludes, ``Therefore, the  
834 committee, without prejudice, remands the project to the LGPO  
835 for further development of information addressing the issues  
836 outlined above. Correct?

837 Mr. {Silver.} Yes, ma'am.

838 Ms. {DeGette.} So this document is not a complete  
839 denial of the application; it is remanding it for more  
840 information, correct?

841 Mr. {Silver.} Not only is it not a complete denial, it  
842 would be typical of a credit committee in both the public and  
843 the private sector to perform its function in exactly this  
844 way. If they believed additional data was--

845 Ms. {DeGette.} And was that data eventually developed  
846 and submitted to the DOE? No?

847 Mr. {Silver.} The--

848 Ms. {DeGette.} The data that was requested--

849 Mr. {Silver.} The data was additionally developed and  
850 the summary of that data was represented to the Credit  
851 Committee.

852 Ms. {DeGette.} And subsequently, in March of 2009, the  
853 application was approved, correct?

854 Mr. {Silver.} Yes, ma'am.

855 Ms. {DeGette.} And was that data submitted as part of

856 that application, this data that was requested?

857 Mr. {Silver.} Again, I wasn't there, but it is my  
858 understanding that that was the case.

859 Ms. {DeGette.} Okay, thank you. Now, I wanted to ask  
860 you a couple of questions about what kind of policies and  
861 incentives that we need to have in the United States to  
862 promote competitiveness in the clean energy market? This is  
863 what you talked about in your testimony. In your written  
864 testimony, what you said was in between 1995 and 2010, the  
865 share photovoltaic cells and panels manufactured in the U.S.  
866 dropped from over 40 percent to just 6 percent. We have seen  
867 this with some Colorado companies that are trying to develop  
868 solar but they can't actually find cells that are  
869 manufactured in this country. Since 2005, China's market  
870 share has actually increased from 6 percent to 54 percent,  
871 and half of the world's 10 largest solar panel manufacturers  
872 are now Chinese. So the question I have is what does that  
873 tell us about the state of play in the solar manufacturing  
874 industry?

875 Mr. {Silver.} Congresswoman, I think it tells us that  
876 the rest of the world takes this industry and this industry  
877 opportunity enormously seriously, has a multi-decade  
878 perspective on its importance, believes, as we do, that it  
879 will be a multi-trillion-dollar market that will generate

880 tens of thousands of jobs and is deeply committed to it.

881 Ms. {DeGette.} Now, what is the Chinese Government  
882 doing that you know of to provide support to its solar  
883 industry?

884 Mr. {Silver.} The Chinese Government has already  
885 committed up to \$30 billion of credit to its 4 or 5 largest  
886 solar panel manufacturers. It generally and frequently  
887 provides both zero-cost financing, occasionally free land,  
888 and other kinds of incentives and subsidies to that sector.

889 Ms. {DeGette.} And does cheap labor play a part in  
890 China's ability to dominate the world market on this solar  
891 development?

892 Mr. {Silver.} It certainly has in the past and cheap  
893 labor does play a material role in other parts of the world  
894 in their competitiveness. Increasingly, however, the  
895 challenge is becoming one related to government support for  
896 the industry itself, financially.

897 Ms. {DeGette.} So it is not as much cheap labor as  
898 capital that the Chinese Government is providing in your  
899 view?

900 Mr. {Silver.} Correct. Access to inexpensive debt  
901 capital, yes, ma'am.

902 Ms. {DeGette.} Okay. So based on your experiences at  
903 DOE and the private sector and your understanding of

904 initiatives of other governments like China, do you really  
905 think it is worth us having policies like this Title XVII  
906 Loan Program and other policies to support solar or should we  
907 just walk away from it altogether as a government?

908 Mr. {Silver.} I can't imagine a scenario in which we  
909 would willingly as a country walk away from what will be  
910 undoubtedly one of the largest if not the largest industries  
911 in the world over the next several decades.

912 Ms. {DeGette.} Well, do you think though that there is  
913 any way we can actually compete?

914 Mr. {Silver.} Yes, we have an incredibly strong and  
915 innovative workforce, but what we have got to be able to  
916 support not only innovation at the R&D level, we also have to  
917 be able to support commercial deployment. Without commercial  
918 deployment, we cannot continue to recognize the benefits that  
919 come from innovation.

920 Ms. {DeGette.} So irrespective of the details of the  
921 Solyndra case which are still unfolding to this day, you  
922 think that these kinds of loan-support programs are important  
923 to development of the U.S. solar energy and jobs. Is that  
924 right?

925 Mr. {Silver.} I think they are critical. They are only  
926 part of the fabric of what is necessary but they are  
927 critical.

928 Ms. {DeGette.} Now, Mr.--pronounce your name for me.

929 Mr. {Zients.} Zients.

930 Ms. {DeGette.} Zients. Mr. Zients, I wanted to ask you  
931 because you talked about this Title XVII funding and there  
932 are a number of other projects that are receiving--and I  
933 believe over 40. Has that worked in other projects? Is it  
934 working in other loan situations?

935 Mr. {Zients.} Well, the program is, as you know,  
936 relatively new, so loans have recently closed for the most  
937 part. And we have every reason to be optimistic that the  
938 portfolio as a whole will perform.

939 Ms. {DeGette.} And how large is the portfolio as a  
940 whole?

941 Mr. {Zients.} I defer to Jonathan on specific numbers.  
942 I think you have a good estimate in what you said.

943 Ms. {DeGette.} Thank you very much. Thank you, Mr.  
944 Chair.

945 Mr. {Stearns.} The gentleman from Texas, Mr. Barton, is  
946 recognized for 5 minutes.

947 Mr. {Barton.} Thank you, Mr. Chairman.

948 Just for the record, are you two gentlemen career civil  
949 service employees or are you political appointees?

950 Mr. {Silver.} Political appointees, sir.

951 Mr. {Zients.} Political appointee.

952 Mr. {Barton.} Both, okay. Chairman Stearns alluded to  
953 this but I want to follow up a little bit. While President  
954 Bush was still in office on January the 9th of 2009, the  
955 Credit Committee, which is a part of the Department of Energy  
956 I believe did recommend against going forward with the  
957 Solyndra loan. Less than 2 months later, on March the 12th  
958 of 2009, the Credit Committee conditionally approved the  
959 loan. First of all, is that factually correct?

960 Mr. {Silver.} The timeline is correct, sir. The Credit  
961 Committee--the first Credit Committee that met did not reject  
962 the loan. They remanded it back for further analysis. But  
963 your timeline with respect to the 2 Credit Committees is  
964 correct.

965 Mr. {Barton.} The individuals that are on the Credit  
966 Committee, are those political appointees or civil service?

967 Mr. {Silver.} Civil service.

968 Mr. {Barton.} Okay. Were the 2 Credit Committees  
969 identical in their makeup?

970 Mr. {Silver.} I believe that to be true.

971 Mr. {Barton.} So the same people in the same agency--to  
972 use your terminology--needed additional information--or  
973 anyway, they did not approve it in January but in March, the  
974 same committee made up of the same people did approve or  
975 conditionally approve. That is correct, right?

976 Mr. {Silver.} No, sir. Technically, the Credit  
977 Committee does not approve a conditional commitment. The  
978 Credit Committee recommends a transaction for approval, which  
979 is then further reviewed by a group called the Credit Review  
980 Board, the CRB, and they--

981 Mr. {Barton.} Well, instead of putting up a red light,  
982 they put up a green light or at least a yellow light?

983 Mr. {Silver.} They indicated that the initial questions  
984 that had been--they had raised in the first meeting had been  
985 addressed. And they--

986 Mr. {Barton.} All right. Now, what changed in the  
987 intervening period?

988 Mr. {Silver.} Additional due diligence was conducted--

989 Mr. {Barton.} Specifically, what changed?

990 Mr. {Silver.} Well, as I say, additional due diligence  
991 was conducted--

992 Mr. {Barton.} Well, specifically, what additional due  
993 diligence?

994 Mr. {Silver.} Market--additional market research was  
995 developed and--

996 Mr. {Barton.} Is that available and does the committee  
997 staff have it?

998 Mr. {Silver.} I believe the committee staff has it. We  
999 have turned over over 35,000 pages of materials.

1000 Mr. {Barton.} But for purposes of this hearing under  
1001 oath you are saying that what changed is additional  
1002 information that wasn't available in January became available  
1003 in the intervening period, is that correct?

1004 Mr. {Silver.} Additional due diligence was done--

1005 Mr. {Barton.} But additional due diligence doesn't cut  
1006 it, okay? We need, you know, half a billion dollars was not  
1007 supported in January under the Bush Administration was  
1008 supported, conditionally recommended in March. We know the  
1009 one thing changed is that the President changed. We know  
1010 that changed.

1011 Mr. {Silver.} I will be happy to get back to you, sir,  
1012 with the additional information--

1013 Mr. {Barton.} But due diligence is a generic term.

1014 Mr. {Silver.} Well, it is a generic term but it covers  
1015 very specific things, particularly research on market  
1016 conditions, financial conditions, technical--

1017 Mr. {Barton.} Is it possible that one of the things  
1018 that changed was political influence?

1019 Mr. {Silver.} I don't believe so, sir. I wasn't there  
1020 but there is no indication in the record--

1021 Mr. {Barton.} Nobody commented to the White House that  
1022 this project should go forward? There were no supporters of  
1023 the President that stepped forward and had meetings and there

1024 were no White House officials that encouraged people at the  
1025 Department of Energy to just--this was all done under a  
1026 bubble top and purely on merit?

1027 Mr. {Silver.} Well, sir, I can't speak to that because  
1028 I wasn't there, but what I will say to you is that the loan  
1029 program career staff that was doing--did the work in 2008  
1030 under a Republican-appointed CFO continued to do that work  
1031 under the same individual who was a--

1032 Mr. {Barton.} Well, let me ask one final question  
1033 because my time is about to expire. Is it typical of a loan  
1034 guarantee that a project 1) gets a half a billion dollars,  
1035 and 2) that half a billion is 2/3 of the cost of the project,  
1036 and 3) that the federal obligation is subordinated to private  
1037 sector capital, which is a direct violation of federal law?

1038 Mr. {Silver.} There is no typical, sir, in answering  
1039 that because every project financing is different and depends  
1040 on the size, structure, and the technology that is being--

1041 Mr. {Barton.} So if myself and Mr. Scalise and Mr.  
1042 Gardner and maybe for good measure Mr. Markey and Mr. Dingell  
1043 put together a deal and asked for a half a billion dollars,  
1044 it is acceptable under this program for it to be approved?

1045 Mr. {Silver.} Well, sir, if you had a legitimate  
1046 project that went through--

1047 Mr. {Barton.} I think we could have a legitimate

1048 project that wouldn't go bankrupt within 2 years.

1049 Mr. {Silver.} If you had a project that met the  
1050 criteria of the solicitation and was deemed to be eligible  
1051 and went through technical, legal, financial regulatory and  
1052 other kinds of due diligence and was deemed to be a potential  
1053 process, then perhaps yes.

1054 Mr. {Barton.} Okay. Thank you, Mr. Chairman.

1055 Mr. {Stearns.} I thank the gentleman. The  
1056 distinguished ranking member, Mr. Waxman, is recognized for 5  
1057 minutes.

1058 Mr. {Waxman.} Thank you, Mr. Chairman.

1059 As I understand it, in 2005, the Congress passed the  
1060 Loan Guarantee Program. We did this on a bipartisan basis  
1061 because we wanted to move forward with these enterprises that  
1062 would give us renewable and alternative energy rather than  
1063 continue our reliance on fossil fuels. The idea of a loan  
1064 guarantee is that we want them to borrow the money but we  
1065 know there is an inherent risk in a new startup. Isn't that  
1066 correct, Mr. Silver?

1067 Mr. {Silver.} Yes, sir. When Congress set up the  
1068 program, it set it up specifically to compensate for the lack  
1069 of debt financing for innovative energy and recognized the  
1070 inherent risks in that by providing credit subsidy, which is  
1071 essentially loan loss reserve.

1072           Mr. {Waxman.} No one wants to go and invest in the  
1073 market in a solar energy, wind power, anything else, unless  
1074 they know it is really going to return the investment and  
1075 give them a profit. So the government has decided we will  
1076 help these groups get started because it is important for our  
1077 Nation to move to alternative energy.

1078           Mr. {Silver.} I agree with that and I would only add  
1079 one caveat. We don't actually start these companies. They--  
1080 the private sector does. In the case of Solyndra, almost a  
1081 billion dollars of private equity had gone into this company  
1082 before the government made its loan. And all the  
1083 transactions that we work on have very, very significant  
1084 private capital behind them.

1085           Mr. {Waxman.} I was taken aback by the figure that  
1086 between 1995 and 2010 the share of photovoltaic cells and  
1087 panels manufactured in the United States dropped from 40  
1088 percent to just 6 percent. At the same time just since 2005,  
1089 China's market has increased from 6 percent to 54 percent.  
1090 So half of the world's largest 10 solar panel manufacturers  
1091 are now Chinese. And we would like to be able to compete as  
1092 well. And I gather your answer to Ms. DeGette is one of the  
1093 reasons that China is outmaneuvering us is that the  
1094 government is putting a lot more money behind their solar  
1095 industry than we are doing. Is that right?

1096 Mr. {Silver.} Yes, sir. As I said, China has committed  
1097 at a minimum \$30 billion from the China Development Bank and  
1098 another several billion--

1099 Mr. {Waxman.} And that is 20 times more than we are  
1100 providing by way of any subsidies or loan guarantees.

1101 Mr. {Silver.} At least because there are other  
1102 subsidies and incentives that the Chinese Government provides  
1103 as well.

1104 Mr. {Waxman.} Well, who would be against such a thing?  
1105 Well, I will tell you who would be. Entrenched fossil fuel  
1106 industry wouldn't like this. This is competition for them.  
1107 And I think that is playing a part in some of the reactions  
1108 that I am hearing. But one of the key issues of this  
1109 investigation, as identified by Chairman Stearns, has been  
1110 whether DOE issued the Solyndra loan guarantee as a favor to  
1111 George Kaiser, a major donor to President Obama's campaign.  
1112 These are serious allegations. Mr. Stearns said the  
1113 administration gives ``some of this money out to people who  
1114 are either contributors or strong supporters.'' And he  
1115 implied that the Solyndra loan decision was based on  
1116 political favoritism.

1117 Before I ask you about these allegations, I would like  
1118 to get a bit of background on this loan guarantee. My  
1119 understanding is Solyndra applied to this loan in 2006 when

1120 Bush was president.

1121 Mr. {Silver.} That is correct, sir.

1122 Mr. {Waxman.} And the DOE invited the company to submit  
1123 a full application to the program in October 2007.

1124 Mr. {Silver.} Yes, sir.

1125 Mr. {Waxman.} And December 4, 2008, DOE documents  
1126 outline the Solyndra loan as one of the three highest  
1127 priorities of the next 45 days. And all of this took place  
1128 during the Bush Administration.

1129 Mr. {Silver.} Yes, sir.

1130 Mr. {Waxman.} Now, in fact, January 5, 2009, email to a  
1131 DOE official, John Scott of Solyndra, said, ``We think that a  
1132 public announcement would acknowledge the hard work of the  
1133 existing administration and the appointees in DOE and the  
1134 LGPO as well as benefit Solyndra's fundraising efforts for  
1135 the equity contribution.'' And in this email Mr. Scott was  
1136 talking about the Bush Administration. But the fact that the  
1137 loan didn't close until President Obama took office seems to  
1138 have given rise to allegations of political favoritism.  
1139 Well, this Kaiser Group wasn't the only private investment.  
1140 A lot of the investment came from another group that is  
1141 called Madrone, and that is a Walton family. They give to  
1142 Republicans. But they were looking to make an investment in  
1143 a loan that was being guaranteed by the Federal Government.

1144 I would like to you ask you, Mr. Silver and Mr. Zients,  
1145 about your interactions with Mr. Kaiser and his impact on  
1146 this loan. Did you or your staff have any interaction with  
1147 Mr. Kaiser relating to the Solyndra loan guarantee?

1148 Mr. {Silver.} Well, sir, as I said before, I was not  
1149 here at that time. But no, I have never met or spoken to the  
1150 man. And as I understand from my staff, neither have they.

1151 Mr. {Waxman.} And the staff of civil servants?

1152 Mr. {Silver.} Yes, sir.

1153 Mr. {Waxman.} Who have been around--

1154 Mr. {Silver.} Yes.

1155 Mr. {Waxman.} --even to the time of the Bush  
1156 Administration. Mr. Zients, is that the same answer for you?

1157 Mr. {Zients.} Same for me, both personally and my  
1158 knowledge of the OMB staff interaction.

1159 Mr. {Waxman.} Did either of you instruct anyone to give  
1160 the loan guarantee to Solyndra or restructure the loan  
1161 because of the donations to the President by Mr. Kaiser?

1162 Mr. {Silver.} No, sir.

1163 Mr. {Zients.} No.

1164 Mr. {Waxman.} Did anyone in the administration instruct  
1165 you or your staff to grant or restructure the loan guarantee  
1166 because of the donations to the President by Mr. Kaiser?

1167 Mr. {Silver.} No, sir.

1168 Mr. {Zients.} No.

1169 Mr. {Waxman.} Are you aware of anything that would  
1170 suggest that Mr. Kaiser's donations to the President were a  
1171 factor in determining whether to grant the Solyndra loan  
1172 guarantee?

1173 Mr. {Silver.} No, sir. Again, I wasn't there but I  
1174 have no reason to believe that.

1175 Mr. {Zients.} I was not actively involved but have no  
1176 reason to believe that.

1177 Mr. {Waxman.} Can you assure us if the Solyndra  
1178 decisions were made on the merits and that there was no  
1179 favoritism shown towards Solyndra for any reason?

1180 Mr. {Silver.} It is my understanding that that is  
1181 correct.

1182 Mr. {Zients.} My understanding is the same.

1183 Mr. {Waxman.} Our chairman has made some serious  
1184 allegations. I think the real question before us is whether  
1185 the vetting was done appropriately and whether it was done  
1186 based on full representation by Solyndra about their economic  
1187 viability. And I don't think we ought to use this failure of  
1188 this particular guarantee to discredit was it an important  
1189 loan guarantee in order to move to be able to compete in this  
1190 area with China and to move our country away from dependence  
1191 on fossil fuel.

1192 Thank you, Mr. Chairman.

1193 Mr. {Stearns.} I thank the gentleman. Dr. Burgess, the  
1194 gentleman from Texas, recognized for 5 minutes.

1195 Dr. {Burgess.} And I thank the chairman. And I will  
1196 agree with Ranking Member Waxman. We do want the  
1197 availability of solar at the retail level of this country. I  
1198 look forward to the day where I can reduce my electricity  
1199 bill by putting some type of solar panel on my roof or in my  
1200 yard, but have we advanced that vision of the future with the  
1201 activities that have occurred in regards to this case, and in  
1202 particular, the jurisdictions for which you two are  
1203 responsible for, the Department of Energy and the Office of  
1204 Management and Budget, which does have the responsibility for  
1205 direct oversight?

1206 Now, Mr. Zients, in your testimony to us today, you talk  
1207 about pressure testing I believe when you were talking about  
1208 the interagency discussions, an important forum for asking  
1209 the tough questions and pressure-testing assumptions. Well,  
1210 let us think about that for a moment. A lot of emails that  
1211 have now been produced to the committee, to the committee  
1212 staff, and in going through those, we keep coming up against  
1213 the notion that there was pressure all right but this is a  
1214 pressure cooker. This wasn't a pressure test. This was we  
1215 got to get this thing out the door because we have got a

1216 groundbreaking. And it might involve a trip by the President  
1217 or a satellite appearance by the Vice President. So yeah,  
1218 there was pressure but it was pressure applied in pushing  
1219 this thing out the door. In retrospect, was that the wrong  
1220 kind of pressure to apply?

1221 Mr. {Zients.} Are there specific emails that you are  
1222 referring to?

1223 Dr. {Burgess.} Yeah, I would be happy to do that.

1224 Mr. {Zients.} Can I get a copy?

1225 Dr. {Burgess.} Were we providing him a copy of those  
1226 emails? I think we are. I don't want to reference anyone's  
1227 name because that is not appropriate.

1228 Ms. {DeGette.} Mr. Chairman, if I could be provided a  
1229 copy of those emails, that would be helpful.

1230 Dr. {Burgess.} Will do it. We will be glad to do it.

1231 Mr. {Zients.} I am just looking at the top line at the  
1232 dates here--

1233 Dr. {Burgess.} These are all available.

1234 Mr. {Zients.} --they appear to be in the August time  
1235 frame where I am not, best of my knowledge, and the author of  
1236 any of these emails are actually even on any of these emails  
1237 as I was not actively involved. So I will comment but I  
1238 don't know the intention of any specific email.

1239 At that period of time, OMB was playing its statutory

1240 role under FCRA to ensure that an appropriate credit subsidy  
1241 score was given to the project. So this is not about whether  
1242 the loan should go forward or not. This is about the  
1243 accounting for the loan. And there was some scheduling  
1244 requests from the VP's office and the VP's office was  
1245 interested in potentially being part of an announcement of  
1246 the closing of the very first loan. But I want to be crystal  
1247 clear as to my understanding from my interactions with the  
1248 staff in preparation for this hearing that those scheduling  
1249 requests had no impact whatsoever on the credit subsidy score  
1250 that was given to this project. OMB staff, based on its  
1251 analysis, decided to increase the credit subsidy score to  
1252 make it more conservative and DOE agreed with that, so the  
1253 closing occurred after OMB staff had done a thorough analysis  
1254 of the credit subsidy score and decided to increase the  
1255 credit subsidy score to make it more conservative.

1256 Dr. {Burgess.} Well, let us--

1257 Mr. {Zients.} But the scheduling logistics had not  
1258 been--

1259 Dr. {Burgess.} I am running out of time. Let me just  
1260 reference August 27, 2009, 4:40 p.m., and this is an email  
1261 from someone in OMB--`as long as we make it crystal clear to  
1262 the Department of Energy that this is only in the interest of  
1263 time, there is no precedent set that I am okay with it, but

1264 we also need to make sure that they don't jam us on later  
1265 details so there isn't time to negotiate those, too,''  
1266 implying that there was pressure placed upon--

1267 Mr. {Zients.} Well, again, not being involved and not  
1268 being on this email chain, I think what is clear is that OMB  
1269 staff was--to the best of my understanding based on my  
1270 discussions with OMB staff because I was not actively  
1271 involved--comfortable with the credit subsidy score, which is  
1272 the statutory responsibility of OMB, and in fact, the credit  
1273 subsidy score was increased during the period of time--

1274 Dr. {Burgess.} Yes, and with all due respect, sir--

1275 Mr. {Zients.} --and DOE agreed with that--

1276 Dr. {Burgess.} --it doesn't sound like they were  
1277 comfortable. They say it is in the interest of time. This  
1278 time we will let it go, but tell those guys over at DOE that  
1279 they are not going to jam us on this also.

1280 Mr. {Zients.} In preparation for this hearing, I talked  
1281 to the OMB career staff and no one hesitated in my  
1282 discussions with them as to whether they were comfortable  
1283 with the final determination of the credit subsidy score for  
1284 this project. And as I said, the credit subsidy score was  
1285 increased--i.e., made more conservative--as a result of the  
1286 OMB analysis and DOE agreed with that.

1287 Dr. {Burgess.} Let me just in the remaining time, Mr.

1288 Silver, ask you, this is the filing with the SEC on the S-1  
1289 report from March 2010 on the planned initial public  
1290 offering, and Solyndra's auditor, PricewaterhouseCoopers,  
1291 stated the company's S-1 amended, ``though the company has  
1292 suffered recurring losses from operations, negative cash flow  
1293 since inception, it has a net stockholder deficit, and it  
1294 raised substantial doubt about its ability to continue as  
1295 going concern, '' did this prompt any curiosity on your part  
1296 or did it change anything about the Department of Energy's  
1297 behavior about this application?

1298 Mr. {Silver.} Well, let me respond first, Congressman,  
1299 as a former venture capitalist and tell you that frequently  
1300 companies, particularly high-growth companies like Solyndra,  
1301 will make filings for companies that, while they are growing  
1302 rapidly, still are continuing to burn case. A going concern  
1303 review by an independent auditor is--accompanies that kind of  
1304 scenario. I should also point out that in the time frame--

1305 Dr. {Burgess.} Sir, I am going to run out of time, but  
1306 with all due respect, venture capital is different from a  
1307 government investment, a taxpayer subsidy--

1308 Mr. {Stearns.} The gentleman's time has expired.

1309 Dr. {Burgess.} This is a different universe and your  
1310 response as a venture capitalist is likely not consistent  
1311 with being a good steward of the taxpayers' money. And I

1312 will yield back to the chairman. Thank you.

1313 Mr. {Stearns.} The gentleman yields back. We recognize  
1314 the chairman emeritus of the Energy and Commerce Committee,  
1315 the gentleman from Michigan, Mr. Dingell, for 5 minutes.

1316 Mr. {Dingell.} You are most kind. Thank you, Mr.  
1317 Chairman. I am very pleased to see that we are having proper  
1318 oversight and it is my hope as we move forward that if the  
1319 majority has evidence of wrongdoing, they will present it to  
1320 us so we can take proper action.

1321 Mr. Silver, you say in your testimony that Solyndra  
1322 first applied for a guaranteed loan in 2006 when President  
1323 Bush was still in office, is that correct?

1324 Mr. {Silver.} Yes, sir.

1325 Mr. {Dingell.} I understand you had people who worked  
1326 within the Loan Program Office and who do the due diligence  
1327 on determining the quality and feasibility of loan  
1328 applications. Are these people political appointees?

1329 Mr. {Silver.} No, sir, career--

1330 Mr. {Dingell.} They are career?

1331 Mr. {Silver.} And analysts and advisors.

1332 Mr. {Dingell.} Good. So the staff reviewing  
1333 application for a guaranteed loan over the past 5 years are  
1334 not political appointees but instead are rather career,  
1335 nonpolitical employees who serve from administration to

1336 administration, is that right?

1337 Mr. {Silver.} Yes, sir.

1338 Mr. {Dingell.} All right. Now, although I understand  
1339 that you haven't yet been at the loan office, is it your  
1340 assessment that the guaranteed loan was awarded based on the  
1341 project proposal and the strength of the application and not  
1342 on any political influence? Remember, you are under oath.

1343 Mr. {Silver.} To the best of my knowledge--and as you  
1344 point out I wasn't there--but to the best of my knowledge,  
1345 yes.

1346 Mr. {Dingell.} Okay. So nonpolitical career Department  
1347 of Energy employees while serving under the Bush  
1348 Administration recommended a timetable to award Solyndra a  
1349 guaranteed loan. Was this the timetable against which the  
1350 loan was eventually committed?

1351 Mr. {Silver.} The career staff identified the  
1352 timeframes after having brought it forward in the first  
1353 Credit Committee as marked for a second Credit Committee and  
1354 produced it at that time, yes.

1355 Mr. {Dingell.} All right. Let us go fast-forward a  
1356 year to 2010 when Solyndra approached the Department of  
1357 Energy for further assistance. Was this due to low-cost  
1358 competition from Chinese manufacturers, Solyndra needed help?  
1359 If your office had not agreed to restructure the loan, would

1360 Solyndra have gone bankrupt in 2010?

1361 Mr. {Silver.} Yes, sir.

1362 Mr. {Dingell.} Now, without the structured loan or  
1363 restructured loan, would Solyndra have had any chance of  
1364 success?

1365 Mr. {Silver.} It is hard to imagine how since they had  
1366 a liquidity crisis. They were out of operating capital.

1367 Mr. {Dingell.} Now, would the company's 1,100 workers  
1368 been laid off in 2010, then?

1369 Mr. {Silver.} I would assume so, yes.

1370 Mr. {Dingell.} Solyndra secured an additional \$75  
1371 million from investors as part of a loan restructuring. Is  
1372 it a standard in loan restructuring for new investment to  
1373 have priority in the case of a liquidation?

1374 Mr. {Silver.} It is very typical.

1375 Mr. {Dingell.} Now, Mr. Chairman, I have been waiting  
1376 anxiously to hear what we have to show that there is  
1377 wrongdoing here, and I am still waiting to see something that  
1378 makes me be concerned that we have here some wrongdoing. And  
1379 I don't want us to proceed just on suspicions or doubtful  
1380 questions or misinterpretations of emails or finding emails  
1381 where none exist. Now, let us try and see what took place.

1382 First, during the Bush Administration, Solyndra  
1383 submitted a pre-application for a loan guarantee. Second,

1384 that then a financial and technical review were conducted.  
1385 In October 2007 the Department of Energy invited Solyndra and  
1386 15 other applications to submit full applications. Solyndra  
1387 submitted their full application in 2008. Later, in 2008,  
1388 the Department of Energy indicated that Solyndra was in the  
1389 best position to receive the first loan guarantee. You  
1390 remember this was under the Bush Administration. In January  
1391 2009, during the final days of the Bush Administration, the  
1392 Department set forth a timeline to complete due diligence on  
1393 the Solyndra application that would lead to approval by the  
1394 spring of 2009. Next came in the administration of President  
1395 Obama. Now, during that spring of 2009, the Department  
1396 continued to do its due diligence and completed its work in  
1397 August. The loan guarantee was issued in September 2009, 3  
1398 years after the pre-application was originally submitted.

1399 I am looking forward to hearing from the committee  
1400 leadership and from the committee staff is there anything in  
1401 the record to suggest this proposal was rushed through or  
1402 that improper consideration was given or that there was any  
1403 improper or illegal pressure or political activity which  
1404 might have led to us being where we are today? I would urge  
1405 my colleagues to look hard for the facts and take all the  
1406 facts into consideration and to see to it that as we go about  
1407 our business, we are careful in finding the truth and not

1408 just having a splendid time making unjust accusations  
1409 regarding the program and the administration. Thank you.

1410 Mr. {Stearns.} The gentleman's time has expired. I  
1411 recognize the gentleman from Nebraska, Mr. Terry.

1412 Mr. {Terry.} Thank you, Mr. Chairman. And I would  
1413 agree with the chairman emeritus that we do need to do our  
1414 due diligence and find out on behalf of the taxpayers what  
1415 went wrong here. And that does need to be our ultimate  
1416 mission.

1417 There is a theme that I am picking up in the  
1418 questioning, and that is I think everyone must agree that  
1419 there is some scandal involved in this. And I am reaching  
1420 this conclusion by the amount of time spent to ensure that  
1421 people believe that this was somehow approved and all of the  
1422 work done under the Bush Administration. That seems to be  
1423 the MO is if there is a crisis that occurs today, blame it on  
1424 the past administration.

1425 And so just to set some facts straight because even you,  
1426 Mr. Silver, mentioned in your written testimony provided to  
1427 us that Solyndra submitted its initial application in 2006  
1428 and much of the ``extensive due diligence on the transaction  
1429 was conducted between 2006 and 2008,`` but the irrefutable  
1430 fact is that on January 9, 2011, the Bush Administration DOE  
1431 Credit Committee remands the Solyndra application calling it

1432 premature and citing unresolved issues. So it seems to me  
1433 that not all of the ``extensive due diligence'' on the  
1434 transaction was conducted between 2006 and 2008 but that the  
1435 Bush Administration said very specifically that the  
1436 application required much more due diligence.

1437         Then you said, Mr. Silver, if I am correct that you said  
1438 in 2011 more due diligence was done that led to the approval.  
1439 Is that a correct statement?

1440         Mr. {Silver.} I believe you mean 2009, Congressman?

1441         Mr. {Terry.} Well, yes.

1442         Mr. {Silver.} Yes, additional due diligence--it is my  
1443 understanding that additional due diligence was done from the  
1444 time the initial Credit Committee remanded it back to the  
1445 loan program effort through to the next Credit Committee,  
1446 which met subsequently in March. And during that time,  
1447 additional work on market research and legal and technical  
1448 matters and other kinds of things that would normally make up  
1449 the responses to the questions that the Credit Committee had  
1450 asked were developed and answered.

1451         Mr. {Terry.} Then after the president was inaugurated,  
1452 an email from a DOE staffer states that we are approaching  
1453 the beginning of the approval process for Solyndra again. So  
1454 the work continued on the application, correct?

1455         Mr. {Silver.} Yes, that is my understanding.

1456 Mr. {Terry.} Now, what we would like to know is--Mr.  
1457 Waxman was going down this path so I am going to follow up on  
1458 his questions--he asked in a way that made you responsible  
1459 for assuming motives of other people. I am just going to ask  
1460 you point-blank. After you started your role at DOE or in  
1461 your role, did you receive any communications from a White  
1462 House employee, personnel, Carol Browner, Rahm Emanuel,  
1463 anybody regarding the Solyndra loan?

1464 Mr. {Silver.} You mean in--

1465 Mr. {Terry.} Yes or no. Did you--

1466 Mr. {Silver.} When I joined?

1467 Mr. {Terry.} Yeah.

1468 Mr. {Silver.} No, when I joined--

1469 Mr. {Terry.} You had no communications from anyone--

1470 Mr. {Silver.} The Solyndra loan, it was closed in  
1471 September, sir, and I arrived in November.

1472 Mr. {Terry.} What about the restructuring time period?

1473 Mr. {Silver.} Well, the restructuring occurred  
1474 approximately a year later, was largely conducted on a staff-  
1475 to-staff basis. There were interactions--

1476 Mr. {Terry.} Were there interactions then--if you are  
1477 denying that you received any communications directly from  
1478 the White House to you--

1479 Mr. {Silver.} No, what I am trying to describe to you--

1480 Mr. {Terry.} That is my question, so please answer my  
1481 question. Did you receive during your time there any  
1482 communications from anyone from the White House regarding the  
1483 Solyndra loan? That is an easy question. It is either yes  
1484 or no.

1485 Mr. {Silver.} And it actually has an easy answer. We  
1486 work regularly on this transaction and every other  
1487 transaction with our interagency colleagues at OMB and at  
1488 the--

1489 Mr. {Terry.} I said White House.

1490 Mr. {Silver.} I am not sure what distinction that is.  
1491 We work with the OMB--

1492 Mr. {Terry.} Oh, really?

1493 Mr. {Silver.} --and any--

1494 Mr. {Terry.} How about--you want me to start naming  
1495 individuals. Carol Browner and her staff, did you receive  
1496 any communications? I think the question is very clear and  
1497 you are--

1498 Mr. {Silver.} It is and what--the answer to this--

1499 Mr. {Stearns.} Mr. Silver, you are under oath and you  
1500 need to answer the question yes or no.

1501 Mr. {Silver.} The question is do we interact with  
1502 elements--with different agencies and the answer to that  
1503 question is yes, extensively.

1504 Mr. {Terry.} I did not say different agencies. I said  
1505 White House.

1506 Mr. {Silver.} Well, individuals in those agencies, we  
1507 work--

1508 Mr. {Terry.} Okay. So you did receive communications  
1509 directly to you from somebody in the White House?

1510 Mr. {Silver.} I don't recall who would have been  
1511 involved directly. What I can tell you is the discussions  
1512 around these transactions as Mr. Zients referred to are  
1513 conducted on a staff-to-staff--career staff-to-career staff  
1514 basis working to develop the transaction.

1515 Mr. {Terry.} So once again, have you received--you  
1516 received any communications regarding the Solyndra loan from  
1517 anyone from the White House?

1518 Mr. {Silver.} Well, I mean Mr. Zients and I have talked  
1519 about it.

1520 Mr. {Terry.} Okay. Mr. Zients, have you? It is fairly  
1521 clear obviously Mr. Silver is not going to answer the  
1522 question.

1523 Mr. {Zients.} Well, again, as to the loan itself, I  
1524 wasn't involved when the loan was closed. As to the  
1525 restructuring, yes, I do interact with components of the  
1526 White House. I would make a distinction between OMB and the  
1527 White House to get--to tap into their expertise on energy and

1528 on financial markets.

1529 Mr. {Terry.} Okay. And who was the person that you  
1530 were communicating with in the White House?

1531 Mr. {Zients.} The primary expertise resided at the time  
1532 what was then the Office of Energy and Climate Control.

1533 Mr. {Terry.} That was Carol Browner's office?

1534 Mr. {Zients.} Carol Browner led that office, yes.

1535 Mr. {Terry.} Did they suggest to you--my time is up.

1536 Mr. {Stearns.} Thank you, gentleman. And the gentleman  
1537 from Massachusetts, Mr. Markey, is recognized for 5 minutes.

1538 Mr. {Markey.} Thank you, Mr. Chairman, very much. I  
1539 will just note, first of all, that if you want to waste  
1540 American taxpayers' dollars, let us talk about the oil  
1541 industry at record high profits getting \$41 billion worth of  
1542 tax money from taxpayers. And secondly, if you want to talk  
1543 about loan guarantees, the Southern Company has received a  
1544 loan guarantee 15 times larger than Solyndra, and if we are  
1545 going to reexamine whether or not that is a good investment  
1546 after Fukushima, after the earthquake near the North Anna  
1547 Plant, let us have that hearing, because I think that money  
1548 is in jeopardy if you are really concerned. That is 15 times  
1549 larger. We know we will never have a hearing on the oil  
1550 industry or the nuclear industry in this committee. This is  
1551 all part of an agenda here that deals with the solar

1552 industry, the wind industry.

1553           So let us go back in time here, Mr. Silver, and it is  
1554 back in 2009. You are looking at this loan guarantee. What  
1555 does the market look like for solar?

1556           Mr. {Silver.} Well, although I wasn't at the Department  
1557 in 2009, I do have a point of view on the solar industry  
1558 then. Polysilicon prices were extraordinarily high and the  
1559 cost--what they call balance-of-systems costs of putting  
1560 conventional solar paneling on roofs, which involved  
1561 penetrating the roofs as well, was very, very expensive. So  
1562 the Solyndra technology, which had received a lot of  
1563 attention during that period, was particularly innovative  
1564 because it addressed both of those key problems.

1565           Mr. {Markey.} In general you are not providing this  
1566 financing to Fortune 500 companies. You are providing them  
1567 to companies that are largely startups with innovative  
1568 technologies to ensure that we are in this marketplace. Is  
1569 that not correct?

1570           Mr. {Silver.} That is, Congressman, and with the added  
1571 addition that the companies themselves are required to raise  
1572 substantial amounts of capital and Solyndra had already  
1573 raised many, many hundreds of millions of dollars.

1574           Mr. {Markey.} Now, when these loan guarantees were  
1575 being provided, at any time did your agency or any part of

1576 the Federal Government project a 42 percent drop in the price  
1577 of solar panel prices in an 8-month period?

1578 Mr. {Silver.} Well, not only did they not project the  
1579 42 percent drop this year, but between 2008 and now, that  
1580 price had dropped about 80 percent. And most analysts were  
1581 surprised by that.

1582 Mr. {Markey.} So just so we can have an honest  
1583 discussion here, there is a Moore's Law for solar, and I hold  
1584 up the chart, and that is that every time there is a doubling  
1585 of solar panels worldwide in deployment, the cost of  
1586 producing them goes down by 18 percent. And that phenomenon  
1587 has become very predictable. Now, in 2011, so we can see the  
1588 forest for the trees, the Chinese funded \$20 billion for 4  
1589 solar companies in 2010. And we have seen in the first 8  
1590 months of this year a 42 percent collapse in the price of  
1591 these solar panels. Was that foreseeable in 2009?

1592 Mr. {Silver.} It was not, although China's commitment  
1593 to this was increasingly clear. And actually, I believe,  
1594 Congressman, that number is closer to \$30 billion.

1595 Mr. {Markey.} Did anyone in the marketplace predict a  
1596 42 percent drop in the price of these solar panels in 2011?

1597 Mr. {Silver.} I can't speak for every analyst out there  
1598 but certainly many, many professionals following the industry  
1599 were surprised.

1600 Mr. {Markey.} Were surprised. Now, let us go to the  
1601 marketplace at large. Evergreen went bankrupt this year in  
1602 the United States. SpectraWatt went bankrupt. German Solar  
1603 SE shut down their Arizona solar facility. BP Solar shut  
1604 down their facility in Frederick, Maryland. Emerging  
1605 Conversion and Daystar Technologies lost 80 percent of their  
1606 market value this year. This 42 percent drop this year is as  
1607 a result of the Chinese intervention in this marketplace.  
1608 This was not knowable in 2009. This was not knowable in  
1609 2010. This was a market intervention.

1610 Now, if the Republicans think that like Johnny Carson's  
1611 Carnac that there is an envelope, you know, with the answer  
1612 in it that was available in 2009, they are kidding  
1613 themselves. We are in a race. We are in a global race here  
1614 and we are doing our best to make this case to the  
1615 Republicans on this committee. While they keep the loan  
1616 guarantees for nuclear intact as they pass their budget,  
1617 while they continue to protect those oil company tax breaks  
1618 up to \$41 billion, they are turning on a pin on a collapsing  
1619 market here in the United States on something that really is  
1620 related to the fact that we are not focusing upon the Chinese  
1621 intervention into this marketplace.

1622 So I just hope that the Administration and their policy  
1623 of financing these kinds of programs--and I think for the

1624 most part it has been a big success story and I think we have  
1625 to keep that in mind as well--is something that this  
1626 committee keeps in their mind as we move forward.

1627 I thank you, Mr. Chairman.

1628 Mr. {Stearns.} Mr. Sullivan is recognized for 5  
1629 minutes.

1630 Mr. {Sullivan.} Thank you, Mr. Chairman. I appreciate  
1631 you holding this.

1632 Mr. Silver, on January 9, 2009, the Credit Committee  
1633 during the Bush Administration found the Solyndra deal to be  
1634 premature and stopped all further work. An email sent by DOE  
1635 Credit Committee a few days later stated that it was a  
1636 unanimous decision not to engage in further discussions with  
1637 Solyndra at this time, and yet on January 26, 2009, after the  
1638 Obama Administration came in, a DOE staffer notes in an email  
1639 that ``DOE has decided to restart the approval process for  
1640 Solyndra.'' What prompted this decision?

1641 Mr. {Silver.} Well, Congressman, again, since I wasn't  
1642 there I can only give you my review of the record, but it  
1643 appears to me when the first Credit Committee remanded it  
1644 back, what they specifically did was to say we have specific  
1645 questions which we need answered before we can take this  
1646 application up again. The career staff in the loan programs  
1647 office then went to work answering those questions, and when

1648 they had been resolved, brought the transaction forward  
1649 again.

1650 Mr. {Sullivan.} This was about 2 weeks before the  
1651 stimulus was signed into law. Didn't that have something to  
1652 do with it?

1653 Mr. {Silver.} Not to my knowledge, no.

1654 Mr. {Sullivan.} Secretary Chu directed DOE to  
1655 accelerate the process and deliver the first loan in a matter  
1656 of months. Is that right?

1657 Mr. {Silver.} I don't know what the Secretary said  
1658 specifically, but the Recovery Act certainly had a focus on  
1659 bringing projects forward quickly. In fact, as you know,  
1660 Congressman, there is a sunset date of September 30 of this  
1661 year to get the 1705 projects done. And you know, a lot of  
1662 work has gone into this and other programs to move monies as  
1663 efficiently, effectively, and yet as prudently as possible.

1664 Mr. {Sullivan.} Solyndra's application was part of  
1665 Secretary Chu's acceleration process. You know that is  
1666 right, don't you?

1667 Mr. {Silver.} I assume that to be true, but again, I  
1668 wasn't there.

1669 Mr. {Sullivan.} So you say yes?

1670 Mr. {Silver.} I assume that to be the case.

1671 Mr. {Sullivan.} Okay. What did DOE do to accelerate

1672 this process? At this time, the DOE loan programs office was  
1673 very thinly staffed, is that right?

1674 Mr. {Silver.} It depends on your definition of thinly,  
1675 but yes, there were not very many people there.

1676 Mr. {Sullivan.} How many employees did it have?

1677 Mr. {Silver.} I don't know at the time, sir, but I  
1678 believe it was between 10 and 20.

1679 Mr. {Sullivan.} Did it even have the resources to do  
1680 the review under the Secretary's accelerated time frame?

1681 Mr. {Silver.} Yes. Remember, the loan program's  
1682 professionals make use of outside advisors as well.

1683 Mr. {Sullivan.} Well, I want to resolve a discrepancy  
1684 here. You stated that Solyndra was accelerated per Secretary  
1685 Chu's policy and yet in your testimony you state that  
1686 Solyndra proceed, ``on the exact timeline that had been  
1687 developed under the Bush Administration.'' Which is it and  
1688 can you clarify this?

1689 Mr. {Silver.} Well, I don't think those 2 statements  
1690 are incompatible. The career staff in the loan programs  
1691 office identified the March time frame as when they would  
1692 come back to the Credit Committee when the proposal was  
1693 originally sent back to them.

1694 Mr. {Sullivan.} You mentioned earlier when I just came  
1695 in that you are a private equity or you worked on Wall Street

1696 or what did you--

1697 Mr. {Silver.} A bit of everything.

1698 Mr. {Sullivan.} Okay. So you have looked at businesses  
1699 and you have seen if they are worthy or not. In that  
1700 capacity, would you lend a half a billion dollars to this  
1701 company in the information--

1702 Mr. {Silver.} Well, I am by training and background  
1703 both a venture capitalist and a hedge fund investor, but I am  
1704 in position really to second-guess having not been there what  
1705 the transaction that occurred. What I can tell you is this.  
1706 Extensive due diligence was done across multiple years on all  
1707 of the relevant characteristics that would go into a typical  
1708 project financing.

1709 Mr. {Sullivan.} Okay. If we could look at Slide 10,  
1710 could someone pull that up? I would like to ask you about  
1711 this, OMB. ``Given the time pressures we were under to sign  
1712 off on Solyndra, we don't have time to change this model.''  
1713 This is what they are saying between each other. ``As long  
1714 as we make it crystal clear to DOE that this was only in the  
1715 interest of time and that there was no precedent set, then I  
1716 am okay with it. But we also need to make sure they don't  
1717 jam us on later deals so there isn't time to negotiate those,  
1718 too.''' This was on August 27. Biden wants to do an  
1719 appearance very soon after that. The stimulus was done on

1720 September 4. What do you have to say about this?

1721 Mr. {Zients.} I wasn't involved in this but based on  
1722 what is on the screen here, I think this has to do with the  
1723 closing of the transaction and OMB's role at that point is to  
1724 make sure that the credit subsidy score is correct from a  
1725 budgeting-cost perspective. It is not about the loan overall  
1726 at that stage; it is about the credit subsidy score. And my  
1727 understanding, having talked to staff in preparation for this  
1728 hearing, is that staff was very comfortable and had no  
1729 hesitation as to its final determination of the credit  
1730 subsidy score, which as I mentioned earlier, the credit  
1731 subsidy score has actually increased as a result of OMB's  
1732 analysis and DOE concurred with that. So the credit subsidy  
1733 score was made more conservative in that period of time as it  
1734 was signed off in preparation for closing of the loan.

1735 Mr. {Sullivan.} Well, she said there was a problem with  
1736 the model. Do you think that is a problem--

1737 Mr. {Zients.} Again, not having been there, not knowing  
1738 the author's intent, what I can tell you that in preparation  
1739 for this hearing, I have talked to OMB career staff and there  
1740 was no hesitation that they expressed to me as to whether the  
1741 final credit subsidy score was indeed one that they were  
1742 comfortable with. And it was increased as a result of the  
1743 OMB analysis and DOE agreed with that increase.

1744 Mr. {Sullivan.} Well, the Solyndra--

1745 Mr. {Stearns.} The gentleman's time has expired.

1746 Mr. {Sullivan.} Thank you, Mr. Chairman.

1747 Mr. {Stearns.} Ms. Christensen is recognized for 5  
1748 minutes.

1749 Dr. {Christensen.} Thank you, Mr. Chairman. I want to  
1750 also just thank our ranking members for insisting that we  
1751 hear from the Solyndra officials. It is important that we  
1752 get the fullest picture, especially since my reading of the  
1753 testimony suggests that DOE and OMB appear to have done  
1754 adequate due diligence and that part of the collapse of  
1755 Solyndra at least appears to be due to forces beyond their  
1756 control.

1757 Nevertheless, this subcommittee has the responsibility  
1758 to determine all the facts and apply relevant lessons learned  
1759 going forward. But I also think it is important that we  
1760 accept that innovation always carries some degree of risk,  
1761 and it is also important that we not use the failure in this  
1762 instance or even others as an excuse to turn away from the  
1763 pursuit of green energy, a green economy, and the U.S.  
1764 leadership in this area.

1765 So my questions, then, are to Mr. Silver. I would like  
1766 to ask you to take me through the DOE's monitoring system for  
1767 loans as it existed in 2009, 2010, and how it exists now. I

1768 do want to point out that a series of GAO and DOE Inspector  
1769 General reports dating to the Bush Administration have  
1770 identified problems with management and controls in the DOE  
1771 Loan Guarantee Program. So it is fair to point out that  
1772 these programs did not begin with you. Still, it is  
1773 important to ensure accountability for how this program is  
1774 run.

1775 So the first question, after the Solyndra loan guarantee  
1776 was first closed in 2009, what mechanisms did DOE use to  
1777 monitor Solyndra's cash flow?

1778 Mr. {Silver.} In addition to our origination teams, our  
1779 credit teams, our legal teams, our technical teams, and our  
1780 regulatory teams, we also have a portfolio management group,  
1781 and their responsibility is to monitor transactions post-  
1782 closing against the covenants in each individual transaction.

1783 Dr. {Christensen.} Were there site visits to California  
1784 or--

1785 Mr. {Silver.} There are regular site visits.

1786 Dr. {Christensen.} How did DOE's practices change when  
1787 the loan was restricted in 2011?

1788 Mr. {Silver.} Well, the principle difference was that  
1789 in addition to picking up certain additional collateral for  
1790 the loan, we negotiated and took an observer's seat in this  
1791 particular transaction. Now, I should say, Congresswoman,

1792 that that is an unusual thing to do and to have. Typically  
1793 lenders, including lenders in the private sector, do not have  
1794 board seats or even generally board observe seats, but we  
1795 thought it was important to do that in order to be able to  
1796 continue to monitor it.

1797 Dr. {Christensen.} So despite this ongoing monitoring,  
1798 it does not appear that DOE anticipated Solyndra's deep  
1799 financial troubles this summer. So Mr. Silver, how would you  
1800 explain this, that you were not able to anticipate the deep  
1801 financial troubles?

1802 Mr. {Silver.} Well, as several members have mentioned  
1803 and as I mentioned in my opening remarks, the precipitous  
1804 price drop of the silicon and panel prices has deeply  
1805 contributed to that. I should note that we, too, anticipated  
1806 there would need to be, you know, additional support for this  
1807 company in the out years as it continued to grow, and that  
1808 was built into the restructuring transaction as well.

1809 Dr. {Christensen.} Mr. Silver, I know that Solyndra was  
1810 raided by the FBI and the DOE Inspector General following the  
1811 bankruptcy announcement. Do you know why this raid occurred?

1812 Mr. {Silver.} No, ma'am, I have no idea. I am not part  
1813 of that investigation or privy to it.

1814 Dr. {Christensen.} Did Solyndra ever mislead DOE that  
1815 you know of? Do you have any reason to think that the

1816 company was not providing you with all appropriate  
1817 information?

1818         Mr. {Silver.} I have no reason sitting here today to  
1819 believe that we were misled.

1820         Dr. {Christensen.} So what lessons have you learned?  
1821 Have DOE's loan monitoring practices changed since you began  
1822 as director of the Loan Guarantee Program in the fall of  
1823 2009? Do you anticipate making further changes in response  
1824 to the loss of taxpayer funds as a result of the Solyndra  
1825 bankruptcy?

1826         Mr. {Silver.} Well, the entire program has changed,  
1827 Congresswoman. When I got there, there were about 35 people.  
1828 We now have between 180 and 200 people, deep bench strength  
1829 in each of the areas that I identified. We built out, among  
1830 other things, an electronic portal which permits applicants  
1831 to submit electronically, thereby capturing all their data  
1832 and shrinking the intake time. I might mention as an aside  
1833 that we won a national award for that software. We built out  
1834 a complete records management piece which had not existed  
1835 heretofore and we will continue to make additional  
1836 improvements as can.

1837         Dr. {Christensen.} Thank you for this information. One  
1838 of the key roles for the committee moving forward will be to  
1839 understand why DOE did not foresee the Solyndra bankruptcy

1840 earlier-you have helped us at least some information  
1841 regarding that--and whether there are ways to improve the  
1842 system from monitoring projects that better fit the program.  
1843 Thank you for your responses.

1844 Mr. {Silver.} Thank you, ma'am.

1845 Dr. {Christensen.} I yield.

1846 Mr. {Stearns.} The gentlelady yields back. The  
1847 gentlelady from Tennessee is recognized for 5 minutes, Ms.  
1848 Blackburn.

1849 Mrs. {Blackburn.} Thank you, Mr. Chairman. And thank  
1850 you both for being here with us. Just a couple of questions  
1851 and I know you have been here for quite a while.

1852 I have got a couple of emails I want to put up here.

1853 Mr. Silver, you said you had worked on Wall Street and--

1854 Mr. {Silver.} No, I didn't work specifically on Wall  
1855 Street.

1856 Mrs. {Blackburn.} Okay.

1857 Mr. {Silver.} Midtown but for a hedge fund, yes.

1858 Mrs. {Blackburn.} For a hedge fund. Okay. So you are  
1859 pretty used to reviewing companies and looking at the history  
1860 of companies and deciding if something is going to be a good  
1861 investment or not, correct?

1862 Mr. {Silver.} Yes, ma'am.

1863 Mrs. {Blackburn.} Okay. And I would imagine that DOE

1864 had a file that was passed onto you when you came into your  
1865 position. Did they have a file that contained the different  
1866 loans that had been approved and the tracking on those, the  
1867 accountabilities to the taxpayer? Because, you know, we are  
1868 about fairness for the taxpayer.

1869 Mr. {Silver.} Yes, as are we, and yes, there were  
1870 files.

1871 Mrs. {Blackburn.} Okay. So you did have files. Okay.  
1872 Mr. Zients, did you get a file at OMB on Solyndra and the due  
1873 diligence that was done and then the process that was  
1874 followed?

1875 Mr. {Zients.} I became involved with Solyndra around  
1876 the period of the restructuring.

1877 Mrs. {Blackburn.} Not the question. Did you receive a  
1878 file that goes back to day one?

1879 Mr. {Zients.} No.

1880 Mrs. {Blackburn.} So you had no knowledge of the  
1881 history?

1882 Mr. {Zients.} Well, OMB's role here, as I have talked  
1883 about before is specifically on FCRA around--

1884 Mrs. {Blackburn.} Sir, not my question. Did you get a  
1885 file? Was there some history of the process?

1886 Mr. {Zients.} I was briefed by our staff on the history  
1887 of the process.

1888 Mrs. {Blackburn.} But nothing in writing?

1889 Mr. {Zients.} I reviewed documents that the staff  
1890 produced but there is not one comprehensive--

1891 Mrs. {Blackburn.} Sir--

1892 Mr. {Zients.} --file that I had been exposed to.

1893 Mrs. {Blackburn.} --there is no Solyndra loan guarantee  
1894 file at OMB is what you are saying?

1895 Mr. {Zients.} My assumption would be, although I don't--  
1896 -I have not seen it--that the career staff, yes, maintains a  
1897 file on Solyndra. That is not something--

1898 Mrs. {Blackburn.} But you have not seen that?

1899 Mr. {Zients.} No.

1900 Mrs. {Blackburn.} Okay. All right. Now, there are 2  
1901 emails here and let us talk about these for a minute. The  
1902 first one, August 19, an email between the DOE staff--dated  
1903 the 19th--stated that ``We still have a major outstanding  
1904 issue, the issue of working capital assumptions.'' Mr.  
1905 Silver, I assume you know a little bit about that--``has been  
1906 a major issue repeatedly raised since December '08. You want  
1907 to pay attention to those dates. Now, let us look at the  
1908 next day there is an email. Now, Mr. Markey was concerned  
1909 that no one seemed to be Carnac and have a silver ball.  
1910 Well, it looks like we might have somebody that was doing a  
1911 little bit of looking ahead. So let us talk about this.

1912 That email says, ``The issue of working capital remains  
1913 unresolved. The issue is cash balances not cost. Solyndra  
1914 seems to agree that the model runs out of cash in September  
1915 2011 even in the base case without any stress. This is a  
1916 liquidity issue.'' Mr. Silver, what do you say to that?

1917 Mr. {Silver.} Well, that would not be surprising in a  
1918 modeling scenario. That is, in fact, exactly what you use  
1919 modeling to do, to identify where there are holes in the  
1920 project. It also does--

1921 Mrs. {Blackburn.} Have you ever seen this email?

1922 Mr. {Silver.} I have not seen this specific--

1923 Mrs. {Blackburn.} This is the first time you have seen  
1924 this email. Were you aware that the liquidity issue had  
1925 arisen?

1926 Mr. {Silver.} I was aware that the liquidity--

1927 Mrs. {Blackburn.} Was that in the file?

1928 Mr. {Silver.} I don't honestly remember if that was in  
1929 the file or not. Again, I arrived in November--

1930 Mrs. {Blackburn.} Just remember you are under oath.

1931 Mr. {Silver.} I am deeply aware of that, Congresswoman.

1932 Mrs. {Blackburn.} Okay. Let us go on to the rest of  
1933 this.

1934 Mr. {Silver.} Just to be clear, though, I arrived in  
1935 November of 2009 and since the loan was already issued at

1936 that point, we essentially move into the role that a bank  
1937 managing a mortgage would. We manage the loan.

1938 Mrs. {Blackburn.} Yes, sir. And I appreciate that.  
1939 That is why I asked if you were passed a file. My assumption  
1940 would be--and you know, Mr. Chairman, my goodness, I would  
1941 think if we have got loan guarantee programs going in  
1942 different agencies and there is not a comprehensive file that  
1943 will give the history of that that would show the due  
1944 diligence that would document this, that would show the  
1945 orderly process that was followed, or as Mr. Waxman was so  
1946 concerned about the vetting process, my goodness, we should  
1947 be reviewing every one of these loan programs. Is OMB not  
1948 looking at this on a comprehensive basis to make certain that  
1949 individuals are meeting their timelines, that someone is  
1950 following this. Are they just sending this money out in  
1951 droves and nobody is doing the follow-up? So we will want to  
1952 do that. Let us look at the rest of this email. And I am  
1953 quoting--

1954 Ms. {DeGette.} Chairman, with all due respect, I  
1955 believe she is badgering the witness and I would--

1956 Mr. {Stearns.} Let the gentlelady finish her testimony.

1957 Mrs. {Blackburn.} ``How we can advance a project that  
1958 hasn't''--

1959 Ms. {DeGette.} Time has expired.

1960 Mrs. {Blackburn.} --``funded working capital  
1961 requirements if it generates a working capital shortfall of  
1962 \$50 million when working capital assumptions are entered into  
1963 this model?'' Now, that was the question that was asked.  
1964 And to all of my colleagues, I just think that, you know,  
1965 when you look at this and you see that someone at DOE was  
1966 asking those questions and was looking at that modeling, it  
1967 should cause us to seek to do a little bit more review and  
1968 oversight. And I yield back.

1969 Mr. {Stearns.} The gentlelady's time has expired. Ms.  
1970 Schakowsky is recognized for 5 minutes.

1971 Ms. {Schakowsky.} All right. Thank you, Mr. Chairman.  
1972 You know, I agree that we should closely examine what went  
1973 wrong and how the loan guarantee process can be improved if  
1974 it needs improvement. But I am very concerned here that this  
1975 is an attack on a program that, let us face it, when you  
1976 invest in various innovative and novel technologies that we  
1977 need to do, it is not true, Mr. Silver, that there is some  
1978 inherent risk associated with each of these deals, not with  
1979 just Solyndra?

1980 Mr. {Silver.} There is risk and almost by definition in  
1981 the identification of the innovation itself, in building out  
1982 that innovation at scale, there is an old adage that every  
1983 bank wants to be the first bank to do your second loan. The

1984 program is intended to be the first bank to do the first  
1985 loan.

1986 Ms. {Schakowsky.} You know, my colleagues certainly  
1987 obviously want to make this a political issue, but they also  
1988 talk about not wanting to pick winners and losers. And for  
1989 heaven's sake, as my colleague said, we are investing right  
1990 now billions of dollars in oil and gas companies. We are  
1991 investing, as my colleague Mr. Markey said, in a questionable  
1992 technology, risky technology called nuclear. But I want to  
1993 know that in selecting projects for loan guarantees, what  
1994 efforts have you taken to ensure that you have appropriately  
1995 diversified our portfolio?

1996 Mr. {Silver.} Well, thank you for that question. I  
1997 want to be quite clear on this. The Loan Guarantee Program  
1998 does not perceive itself to be in the business of picking  
1999 winners or losers at all. In fact, the marketplace is the  
2000 place to do that. And as someone who has come directly from  
2001 that, I certainly support and attest to that. We don't  
2002 actually look at projects that have not already garnered or  
2003 will, as part of the process, attract substantial private  
2004 capital. In fact, private capital is one of the bedrock  
2005 requirements for the issuance of a loan guarantee.

2006 The question isn't really so much are we picking winners  
2007 and losers because we not only, as you point out, invest

2008 across a diversified portfolio--we invest in wind, solar,  
2009 geothermal, biofuels and the like--we also invest in directly  
2010 competing technologies within those sectors because it is the  
2011 program objective, the program mandate to introduce a wide  
2012 range of innovative technologies so that the marketplace,  
2013 seeing these projects, can then replicate them on their own.  
2014 And when the markets are in those areas, we exit.

2015 But the real issue is how are we going to pick--if we  
2016 are not going to substantially--if we are not going to be  
2017 significant participants in this, then how are we going to  
2018 build these American companies at all? Because China and the  
2019 rest of the world are spending billions and billions of  
2020 dollars to build out these industries.

2021 Ms. {Schakowsky.} Now, on September 2, 2011, a Forbes  
2022 article noted that this program should be judged based on its  
2023 entire portfolio as opposed to one individual loan. I wonder  
2024 if you could talk about that, just put this particular loan  
2025 in context, either one of you.

2026 Mr. {Silver.} Absolutely. I am happy to do so. We  
2027 have invested, as I said, in a wide range of technologies. I  
2028 do want to point out that the vast majority of our  
2029 investments have been in generation projects rather than in  
2030 manufacturing projects. And the reason that is important is  
2031 because generation projects have what are called off-take

2032 agreements through PPAs, power purchase agreements typically  
2033 with utilities, which means that the power that is being  
2034 created, the clean energy power that is being created is  
2035 already contracted for. And it has--the generation projects  
2036 which make up the vast majority of our portfolio have a  
2037 vastly different risk profile than manufacturing projects do.  
2038 We have actually only done 4 manufacturing projects in the  
2039 40-odd projects we have done across the program.

2040 Ms. {Schakowsky.} What would be the consequences do you  
2041 think if this investigation ended up in a conclusion that  
2042 making investments in companies that do alternative energy,  
2043 solar in particular, what would the consequences for our  
2044 country be if we were to divest of those kinds of loans?

2045 Mr. {Silver.} I think the consequences would be  
2046 profound and they would be profoundly negative. We are  
2047 competing with countries around the world who see this as one  
2048 of the largest industrial sectors and industrial  
2049 opportunities of the next generation, and if we cede the  
2050 field, if we walk off of the field, there is no way that we  
2051 can succeed because this--these industries are different in  
2052 kind than perhaps the software industry. You need platform  
2053 companies here in order to be able to succeed.

2054 As I pointed out earlier in my testimony, five of the  
2055 largest solar panel companies are in China. Seven are in

2056 Asia. The eighth is in Europe, and there are only two here.  
2057 You need to build out at scale. You need to deploy  
2058 commercially because that is how you build out the supply  
2059 chains in these countries. You have to create what  
2060 economists call demand pull. And if you don't do that, you  
2061 can't keep those supply chains alive and they can't, in turn,  
2062 reduce their costs. So consequently, we have underinvested  
2063 in the supply chains in this country in clean energy for  
2064 decades and we are only now beginning to catch up.

2065 Ms. {Schakowsky.} Thank you. Thank you for your work.

2066 Mr. {Silver.} Thank you.

2067 Mr. {Stearns.} The gentlelady's time has expired. The  
2068 gentleman from Georgia, Mr. Gingrey, is recognized for 5  
2069 minutes.

2070 Dr. {Gingrey.} Mr. Chairman, thank you.

2071 I first off wanted to make a statement in regard to a  
2072 couple of my colleagues on the other side of the aisle  
2073 comparing Solyndra--this bankrupt company totally unproven  
2074 technology--to the Southern Company. I take a little  
2075 exception to that comparison. Southern Company owns  
2076 Mississippi Power, Alabama Power, Georgia Power, among  
2077 others, and employs literally thousands of people. It is  
2078 closely regulated by the Georgia Public Service Commission,  
2079 has 3 nuclear power facilities, 2 in Georgia, 1 in Alabama

2080 with 5 reactors that have been in production for years. So  
2081 this loan guarantee to start up 2 additional reactors at  
2082 Plant Vogel by the Southern Company, comparing that loan  
2083 guarantee to this loan guarantee for a company like Solyndra  
2084 is a little disingenuous.

2085 But let me go ahead and start the questioning with you,  
2086 Mr. Silver. When you met with committee staff in March of  
2087 this year, you represented that the restructuring agreement  
2088 your agency reached with Solyndra in 2011, I believe  
2089 February, had positioned the DOT and the United States  
2090 taxpayer for maximum recovery. But the company is now  
2091 bankrupt and it turns out the government is now in a second  
2092 position to Solyndra's investors in the deal, those that put  
2093 up an additional 75 million in that restructuring. Why did  
2094 the DOT allow Solyndra's investors to be first in line to  
2095 recover rather than the taxpayer? Under the Energy Policy  
2096 Act, isn't your number one duty to protect the taxpayer  
2097 funds?

2098 Mr. {Silver.} It is absolutely one of our essential  
2099 concerns to focus as much as we can on the security of the  
2100 taxpayer monies, and that is why we reached the decision we  
2101 did. A restructuring is always by definition a decision  
2102 among a set of tough choices because it means by definition a  
2103 company is struggling. The fundamental question that we were

2104 trying to answer--

2105           Dr. {Gingrey.} Yeah, but let me interrupt you. If you  
2106 have the legal authority to make those tough choices, the  
2107 Energy Policy Act of 2005 expressly states ``the obligation  
2108 on loan guarantee shall be subject to the condition that it  
2109 is not subordinate to other financing.'' This language makes  
2110 Congress' intent seem pretty clear to me, to protect the  
2111 taxpayers' money. Isn't this exactly what the Solyndra  
2112 restructuring did, make the taxpayers' interest subject to  
2113 other financing? Doesn't the Solyndra restructuring violate  
2114 the law?

2115           Mr. {Silver.} Congressman, I am not a lawyer but I will  
2116 tell you that the decision was reviewed by the Loan Guarantee  
2117 counsel, by DOE counsel, and by OMB counsel, and the  
2118 conclusion of that analysis was that projects needed to have--  
2119 -be in the senior-secured position at issuance, as indeed  
2120 this loan was, as indeed every of our loans is. But I will  
2121 tell you--while not a lawyer, I will tell you as a  
2122 businessman that if you do not permit restructuring of  
2123 transactions and the tools required to do that, lenders will  
2124 be--

2125           Dr. {Gingrey.} Let me interrupt. I understand that. I  
2126 understand that in the private sector, and of course, you  
2127 came from the private sector. I think you mentioned earlier

2128 involved in hedge fund activity and that sort of thing and a  
2129 lot of wheeling and dealing and that is permitted. But in  
2130 this particular instance--now, you said you received a legal  
2131 memorandum on DOE's interpretation of the Energy Policy Act,  
2132 correct?

2133 Mr. {Silver.} As I said, counsel at--from the loan  
2134 program at the general counsel of the DOE and at OMB all  
2135 reviewed this matter.

2136 Dr. {Gingrey.} Who reviewed the memorandum?

2137 Mr. {Silver.} Which lawyers?

2138 Dr. {Gingrey.} Yes.

2139 Mr. {Silver.} I am not sure which.

2140 Dr. {Gingrey.} But it was approved by the general  
2141 counsel. You just don't know which lawyers?

2142 Mr. {Silver.} I don't know which staff lawyers did the  
2143 work, no, sir.

2144 Dr. {Gingrey.} Okay. But it was approved by the  
2145 general counsel?

2146 Mr. {Silver.} It was certainly reviewed.

2147 Dr. {Gingrey.} I want to discuss one part of the legal  
2148 opinion. Will the committee clerk please put the language  
2149 from the statute on the screen? I believe that is slide  
2150 number 1. Yeah. Just look at what it says and let me read  
2151 it to you because I am kind of in the corner here and I can't

2152 read the monitor. But number 3, subordination, ``The  
2153 obligation shall be subject to the condition that the  
2154 obligation''--the loan--``is not subordinate to other  
2155 financing.'' That is part of the Energy Policy Act of 2005.  
2156 The DOE legal opinion seems to be based on the use of the  
2157 word ``is'' in the statute. The legal opinion states, ``The  
2158 reading of the provision is reinforced by the use of the word  
2159 'is,' which we viewed as confirming the intent that the  
2160 condition be satisfied at a single point in time,'' meaning  
2161 you can't subordinate when the guarantee is issued but you  
2162 can at restructuring. Is DOE basing its opinion that  
2163 taxpayers can be second in line to investors based on what  
2164 the meaning of 'is' is? Wasn't DOE's tortured interpretation  
2165 exactly the opposite of that plain language in the statute?

2166 Mr. {Silver.} I am not a lawyer, sir. I relied on  
2167 counsel's judgment on that.

2168 Dr. {Gingrey.} You didn't have a very good lawyer and I  
2169 think you got bad advice. I yield back.

2170 Mr. {Stearns.} The gentleman from Texas is recognized  
2171 for 5 minutes, Mr. Green.

2172 Mr. {Green.} Thank you, Mr. Chairman. And I have some  
2173 questions but I am shocked that my Republican colleagues be  
2174 concerned about somebody coming from a private sector to the  
2175 government payroll. I thought that is what we needed more

2176 folks from the private sector. So, you know, I don't like  
2177 wheelie-dealie either but it sounds terrible when you hear  
2178 it.

2179           But Mr. Silver and Mr. Zients, I want to ask some  
2180 questions about that legal basis on restructuring the loan,  
2181 and if you could put that section back up that my colleague  
2182 from Georgia had because that is the series of questions I am  
2183 going to ask about.

2184           The committee's investigation revealed that there  
2185 appears to have been 2 major legal questions under discussion  
2186 as the Solyndra restructuring was going forward--the first to  
2187 the extent which the DOE had authority to subordinate the  
2188 U.S. creditor position to private investors, and second was  
2189 whether the restructure should be considered a modification  
2190 of the loan. The first question, Mr. Silver, what does it  
2191 mean to subordinate an interest?

2192           Mr. {Silver.} It means that new capital coming in would  
2193 be in a prime position on exit depending on the structure of  
2194 the exit. I might point out here, Congressman, that  
2195 typically in a restructuring in which new capital comes in--  
2196 and you have to ask yourself the very obvious question--why  
2197 would any capital--new capital come into a troubled situation  
2198 if they did not come in in a prime position? But here--and  
2199 typically in the private sector and in loans in other federal

2200 agencies, the prime trumps other subordinated capital all the  
2201 way through. In the transaction we structured, we actually  
2202 were able to ensure that it was only in the event of  
2203 liquidation that that would be a senior position. In the  
2204 event that the company as a sold as a turnkey operation,  
2205 which is still possible, it will not be in a senior position.

2206       Mr. {Green.} Okay. There is language in Section 1702  
2207 that my colleague pointed out in the Energy Policy Act that  
2208 the senior position is designed to prevent the subordination  
2209 of government's interest in these loans. It reads, ``the  
2210 obligation shall be subject to the condition that the  
2211 obligation is not subordinate to other financing,`` but your  
2212 legal staff determined that there was a legitimate legal  
2213 basis to subordinate the government's interest in Solyndra in  
2214 this case. Can you describe for us your staff's legal  
2215 rationale?

2216       Mr. {Silver.} Yes, as best I can not being a lawyer,  
2217 and that is that the judgment was made that the law required  
2218 that the loans at issuance be in a senior secured position as  
2219 I said, indeed, as Solyndra was and in fact I want to assure  
2220 the committee as all the transactions that we have closed to  
2221 date are. But that in the event that a project struggled and  
2222 there is no surprise as to the fact that projects struggle  
2223 from time to time, we had the authority to figure out other

2224 solutions. I should remind the committee that absent the  
2225 ability to do this, this company would have closed then with  
2226 the 1,100 jobs lost then and the likelihood of any real  
2227 recovery to the taxpayer being relatively de minimis because  
2228 at the time the loan was restructured, although the physical  
2229 building has been built, the plant had not been fitting out.  
2230 It is also an adage of project finance and particularly  
2231 restructuring work in project finance that the value of a  
2232 completed project is infinitely greater than an incomplete  
2233 project.

2234 Mr. {Green.} The documents provided to the committee by  
2235 the OMB suggest that your staff may have had some concerns  
2236 about this approach. However, ultimately, you did not step  
2237 in and stop DOE from subordinating the interest. Why not?

2238 Mr. {Zients.} OMB's role here is in oversight of the  
2239 program and OMB's career staff and lawyers--and again I am  
2240 not a lawyer--determined that--

2241 Mr. {Green.} You know, I keep hearing that but I don't  
2242 know if--

2243 Mr. {Zients.} General counsel--

2244 Mr. {Green.} --a law license shows anything on common  
2245 sense.

2246 Mr. {Zients.} General counsel's determination was that  
2247 this was--was that the DOE approach was reasonable.

2248           Mr. {Silver.} Congressman, if I could just add one  
2249 thing to that. You have asked--people have asked about the  
2250 subordination. I want to make it clear that the billion  
2251 dollars of equity--of private equity that went into this  
2252 company originally is wiped out in that scenario. We are not  
2253 talking about all of that private capital coming forward,  
2254 just the newest piece of money that came in in order to  
2255 provide the company with a fighting chance to restructure its  
2256 operations.

2257           Mr. {Green.} The second legal issue raised by the  
2258 restructuring was whether it was a modification of the loan  
2259 agreement. My understanding is that the Federal Credit  
2260 Reporting Act generally prohibits loan modifications that  
2261 increase taxpayer cost but the definition of modification  
2262 does not include a restructuring to work out a troubled loan  
2263 or a loan that is in imminent default. Is my understanding  
2264 correct?

2265           Mr. {Zients.} This situation was ultimately deemed a  
2266 workout for 2 reasons: first, that the company was in  
2267 imminent default, which it clearly--DOE had determined it  
2268 was; and secondly, that it was in the best interest of  
2269 taxpayers to restructure the loan as opposed to liquidation.  
2270 So when those 2 conditions are met, a loan is considered a  
2271 workout in that scenario.

2272 Mr. {Green.} Okay. So it was a workout and not a  
2273 modification?

2274 Mr. {Zients.} Yes.

2275 Mr. {Green.} Okay. Mr. Silver, what was the DOE's  
2276 rationale for determining that restructuring did not  
2277 constitute a modification?

2278 Mr. {Silver.} Exactly as Mr. Zients has indicated.

2279 Mr. {Green.} Mr. Zients, your staff has also expressed  
2280 concern over whether the restructuring constituted  
2281 modification. What analysis did your staff go through making  
2282 the determination that the change is not a legal modification  
2283 of the loan?

2284 Mr. {Zients.} At the beginning of the process when we  
2285 first heard about the financial troubles, the staff's  
2286 orientation is going to be that there could be a  
2287 modification. As the staff worked with DOE to understand the  
2288 dire financial situation and the fact that the company was in  
2289 imminent default and that DOE's analysis was reasonable, that  
2290 the taxpayers were better served through a restructuring  
2291 rather than a liquidation, OMB career staff determined that  
2292 it was indeed a workout.

2293 Mr. {Stearns.} The gentleman's time has expired.

2294 Mr. {Green.} Thank you, Mr. Chairman.

2295 Mr. {Stearns.} The gentleman from Pennsylvania, Mr.

2296 Murphy, is recognized for 5 minutes.

2297 Mr. {Murphy.} Thank you.

2298 Mr. Silver, I just want to get a couple things on this  
2299 in terms of your expertise. When you were managing director  
2300 of Core Capital Partners, had you ever managed something--a  
2301 loan of this size before?

2302 Mr. {Silver.} Core Capital Partners was a venture fund,  
2303 sir, so we didn't provide that. We provided equity.

2304 Mr. {Murphy.} You provided equity. Have you ever  
2305 provided equity of this size?

2306 Mr. {Silver.} Not individually in a loan at Core  
2307 Capital but in other configurations, yes.

2308 Mr. {Murphy.} At Tiger Management had you ever--

2309 Mr. {Silver.} Yes, sir.

2310 Mr. {Murphy.} So you are used to that. You are used to  
2311 reviewing these things. And I go back to this on Slide 5 if  
2312 somebody could up Slide 5. In this when they had in August  
2313 of 2009, someone wrote this. I can't quite read that up  
2314 there--but wrote this in terms of saying that some issues  
2315 with regard to the concerns about the health of the company  
2316 there, major outstanding issues at the point in 2008, but it  
2317 says an email the following day states, ``the issue of  
2318 working capital remains unresolved. The issue is cash  
2319 balances, not cost. Solyndra seems to agree that the model

2320 runs out of cash September 2011 even in the base case without  
2321 any stress. There is a liquidity issue.'" When did you  
2322 become aware of that email?

2323 Mr. {Silver.} I have not seen this specific email.  
2324 That email was written in August of 2009. I arrived in  
2325 November of 2009. There would have been no reason for me to  
2326 know of its existence while we worked on the company but--

2327 Mr. {Murphy.} So you would not have known of anybody's  
2328 concern that there wasn't enough capital to keep the company  
2329 going?

2330 Mr. {Silver.} Certainly. The career staff monitoring  
2331 this was deeply aware of the issues and--

2332 Mr. {Murphy.} And your job is to have oversight over  
2333 this staff?

2334 Mr. {Silver.} My job is to have oversight over the  
2335 staff.

2336 Mr. {Murphy.} So you are saying you had oversight but  
2337 you were not aware of a memo saying this company didn't have  
2338 the money to keep going?

2339 Mr. {Silver.} Well, I am not aware of this particular  
2340 email, but certainly I was aware of the company's status and  
2341 situation.

2342 Mr. {Murphy.} At that time? And yet things were still  
2343 going through?

2344 Mr. {Silver.} Well, the loan had already gone through,  
2345 sir. We--

2346 Mr. {Murphy.} But what I am concerned about here is as  
2347 we are looking at this--and next we can move forward to the  
2348 restructuring. Now, the restructuring--

2349 Mr. {Silver.} Maybe I should clarify exactly what the  
2350 loan was for. We provided a loan guarantee to support the  
2351 construction of a physical plant called Fab 2.

2352 Mr. {Murphy.} And when was that approved?

2353 Mr. {Silver.} That is what the loan was for. It was  
2354 approved in September and that plant actually was delivered  
2355 on time and on budget. The way the loan worked--

2356 Mr. {Murphy.} On time on budget for a company that  
2357 staff are saying couldn't function regardless of what they  
2358 had in terms of a building.

2359 Mr. {Silver.} No, that doesn't actually say, sir, that  
2360 the company can't function. That says that there will be a  
2361 liquidity issue in 2011, several years in--

2362 Mr. {Murphy.} Meaning they run out of money.

2363 Mr. {Silver.} No, meaning that they will have to  
2364 address that issue.

2365 Mr. {Murphy.} And if they don't, they run out of money.

2366 Mr. {Silver.} Conceivably, yes.

2367 Mr. {Murphy.} I am just trying to establish your job is

2368 you have handled loans like this. Would you offer a loan to  
2369 a company that says they are not going to have the money to  
2370 pay it back unless they make some changes?

2371 Mr. {Silver.} Well, again, I wasn't there when this  
2372 loan was issued, sir, but what I can tell you is--

2373 Mr. {Murphy.} But in the time you have been there, you  
2374 became aware of this. Did you begin to address these issues  
2375 with Solyndra to say show me the money?

2376 Mr. {Silver.} Well, staff talked with the company on a  
2377 regular--

2378 Mr. {Murphy.} Sir, I really want you to stop throwing  
2379 everybody else under the bus. I hear you throwing all your  
2380 staff under the bus. I want to know. You are in charge, you  
2381 have handled loans of this size, and now you are saying it is  
2382 everybody else's fault but you except you are in charge. You  
2383 tell me what you as a person in charge did with half a  
2384 billion dollars of taxpayers' money now saying it is all my  
2385 staff's fault, I didn't know, I can't do anything about it.  
2386 You tell me what you are going to tell the taxpayers when we  
2387 are in the hole for so much money in this country and you are  
2388 dealing with this in a very casual cavalier way. Whose fault  
2389 is it?

2390 Mr. {Silver.} Well, sir, first let me say that the 200-  
2391 odd professionals working in the Loan Guarantee Program are

2392 exceptional professionals--

2393           Mr. {Silver.} And you throw them all under the bus it  
2394 is a pretty bumpy ride, but you are the driver, Mr. Silver.  
2395 You are the driver. And now you are saying this is  
2396 restructured. And going back to the slide that says, ``the  
2397 obligation shall be subject to the condition that the  
2398 obligation is not subordinate to other financing and now it  
2399 gets restructured so the taxpayers don't get their money  
2400 back.

2401           Mr. {Silver.} The restructuring--any restructuring,  
2402 Congressman, is based on a binary decision as to what is the  
2403 better outcome for recovery, a liquidation, a sale of assets  
2404 at a moment in time or a restructuring.

2405           Mr. {Murphy.} Who was it that made the decision that  
2406 this act passed into law by the Federal Government was going  
2407 to not be adhered to? Who made that decision?

2408           Mr. {Silver.} As I said it was reviewed by legal  
2409 counsel for the loan program--

2410           Mr. {Murphy.} So you have no responsibility in this  
2411 either. So we are throwing him under the bus, too?

2412           Mr. {Silver.} I am not a lawyer, sir. I rely on  
2413 counsel.

2414           Mr. {Murphy.} Are we throwing her under the bus, too?  
2415 Did the Secretary of Energy have anything to do with this

2416 decision or is he under the bus, too?

2417 Mr. {Silver.} Not to my knowledge.

2418 Mr. {Murphy.} So no one is responsible. This is an  
2419 incredible organization you work for. No one in the Federal  
2420 Government is responsible for half a billion dollars of  
2421 taxpayers' money. This is phenomenal. What do you do for a  
2422 living? If you don't know what is happening and everybody  
2423 else is to blame, what do we go back and tell our  
2424 constituents who have to work hard with so many people in  
2425 this country in poverty, so many people in problems, we are  
2426 saying this federal agency is saying we don't take any  
2427 responsibility. It is everybody else's fault.

2428 Mr. {Silver.} We work to the fullest of our  
2429 capabilities, Congressman, to ensure that these projects are  
2430 as de-risked as possible--

2431 Mr. {Murphy.} I understand but now the taxpayers are on  
2432 the hook for this.

2433 Mr. {Silver.} As was pointed out earlier, there are  
2434 always challenges in investing in innovation. And I should  
2435 point out that Congress through the appropriation of \$2.4  
2436 billion of credit--

2437 Mr. {Murphy.} When did this company actually get their  
2438 check?

2439 Mr. {Silver.} It doesn't work like that, Congressman.

2440 They draw against a loan--

2441 Mr. {Murphy.} Exactly. And at any point you could have  
2442 stopped it when you found out the information that they  
2443 couldn't exist. And that was under your watch, Mr. Silver.

2444 Mr. {Silver.} Our transaction--our loan was for the  
2445 construction of a physical plant.

2446 Mr. {Murphy.} And at some point when you realized they  
2447 couldn't function anymore in that physical plant, that is  
2448 when you step in and take leadership and stop throwing your  
2449 staff under the bus. I yield back.

2450 Mr. {Stearns.} The gentleman yields back, but the  
2451 question Mr. Murphy is really asking, should someone be  
2452 fired, Mr. Silver? Should anybody be fired? Yes or no?

2453 Mr. {Silver.} The people in the Loan Guarantee Program  
2454 at the Department of Energy, at OMB, our colleagues at OMB  
2455 and alike have worked--

2456 Mr. {Stearns.} Okay. So you are saying no one should  
2457 be fired.

2458 Mr. {Silver.} I am saying that we are doing the best  
2459 job we know how to do--

2460 Mr. {Stearns.} All right. All right. I understand  
2461 what you are saying. The gentleman from Virginia, Mr.  
2462 Griffith, is recognized for 5 minutes.

2463 Mr. {Griffith.} Thank you, Mr. Chairman. If we could

2464 have Slide 1 again. Yes, I am concerned about this ``is''  
2465 situation, but I would point out in paragraphs 1 and 2 it  
2466 references that ``no guarantee shall be made unless'' which  
2467 gives some flexibility, but in paragraph 3 of Section 1702 it  
2468 says, ``the obligation shall be subject to condition that the  
2469 obligation is not subordinate to other financing. Have you  
2470 read the memorandum of law on this?

2471 Mr. {Silver.} I have not read the full memorandum, no,  
2472 but I have been briefed by counsel--

2473 Mr. {Griffith.} Would it shock you to know that if you  
2474 read it and you pay attention to what is being said--and I  
2475 have it right here. I would be happy to give you a copy with  
2476 my notes on it if you want them. It looks like it is a law  
2477 school project where you are told to come up with an answer.  
2478 Here is the question, give me the right answer, defend it the  
2479 best you can. That is what it looks like.

2480 Because under this analysis, what it says is is that if  
2481 we close the loan in the morning and at lunch somebody has an  
2482 epiphany and says you know what? I think that we should see  
2483 if we can get some more money from somebody else and we are  
2484 going to subordinate that money and we are not going to  
2485 follow this paragraph. Because there is no line. And in  
2486 fact somebody raised that issue the memorandum points out.  
2487 Somebody raised the issue. Should there be a line between

2488 when the loan is granted and possible default? And they said  
2489 no, that is not necessary because the law doesn't say that.  
2490 You can change it anytime you want to if the Secretary thinks  
2491 it is appropriate. Does that make good common sense as Mr.  
2492 Green pointed out to you? You don't have to be a lawyer to  
2493 know good common sense. Does it make common sense that the  
2494 Congress of the United States responsible for setting our  
2495 legislative policy would say that you are not to subordinate  
2496 but under the interpretation of your lawyers, they could  
2497 subordinate it after lunch for a loan closed in the morning?  
2498 Does that make good common sense to you, sir?

2499 Mr. {Silver.} Well, Congressman, what makes sense to me  
2500 is to ensure that we have the tools available to us to do  
2501 whatever is necessary in a troubled situation to secure the  
2502 taxpayers' interest.

2503 Mr. {Griffith.} Even if it is in violation of the law  
2504 and what common sense would tell you, the common English  
2505 always trumps legal mumbo-jumbo and the common English makes  
2506 it clear you are not to subordinate. But in January when you  
2507 were at the helm your people subordinated \$75 million of this  
2508 money, American taxpayer dollars to private investors. And  
2509 part of the deal was they were going to invest more money in  
2510 August. Isn't that true?

2511 Mr. {Silver.} That is true.

2512 Mr. {Griffith.} And they did not do so. Isn't that  
2513 also true?

2514 Mr. {Silver.} That is true.

2515 Mr. {Griffith.} And when did your observer tell you  
2516 that they weren't going to invest anymore money so that you  
2517 might have been able to anticipate the bankruptcy? When did  
2518 your observer tell you that?

2519 Mr. {Silver.} In late July.

2520 Mr. {Griffith.} And weren't we trying to get  
2521 information from you all at that time or was that the other  
2522 fellow?

2523 Mr. {Silver.} I don't know what you are referring to,  
2524 Congressman.

2525 Mr. {Griffith.} The documents that we were requesting  
2526 when we had a subpoena. I guess that was in--

2527 Mr. {Silver.} We sent you, as I said, 35,000 pages of  
2528 material.

2529 Mr. {Griffith.} --July. All right. Just so we know,  
2530 you have got all these other loans out there, 4 to  
2531 manufacturers, which would be in a similar situation to this  
2532 one. Have you subordinated any of that money?

2533 Mr. {Silver.} No other transactions have had  
2534 subordinations. I would go further and say that of the 2--  
2535 there are only 2 deals that have actually closed and

2536 completed construction and both of those are repaying on a  
2537 timely basis.

2538           Mr. {Griffith.} All right. And if you didn't look at  
2539 the memorandum, attached to the memorandum there are all  
2540 kinds of charts on how Solyndra is going to make money. Did  
2541 you look at those financial charts?

2542           Mr. {Silver.} Sure, I have seen the company's  
2543 financials.

2544           Mr. {Griffith.} All right. You earlier testified that  
2545 part of the reason Solyndra went under was the fact that the  
2546 Chinese were able to make their product cheaper and the  
2547 Europeans stopped buying. Now, while it may have gotten  
2548 worse, wasn't that also true in January when you restructured  
2549 this loan?

2550           Mr. {Silver.} It has been true for the last several  
2551 years.

2552           Mr. {Griffith.} Okay. In that I would have to ask you,  
2553 then, when you look at these numbers, how in the world if you  
2554 know that and your analysts have told you that, how in the  
2555 world could you anticipate that profits at Solyndra would  
2556 double next year? Because that is in all the models that are  
2557 attached to the legal memorandum.

2558           Mr. {Silver.} I will leave it to the company's  
2559 management team to describe their financial projections, but

2560 what I will say to you--

2561 Mr. {Griffith.} Wait a minute. Wait a minute. You are  
2562 concerned enough you put an observer on the board and you  
2563 subordinated American taxpayer dollars but you are going to  
2564 leave it to their management to determine how they can say  
2565 that they are going to double it? Doesn't that sound like  
2566 that is not common sense again?

2567 Mr. {Silver.} Well, with all due respect, revenues are  
2568 not actually the driver of how a loan or loan guarantee would  
2569 necessarily get paid. What we focus on are cash flows and  
2570 those can be managed in a variety of different ways.

2571 Mr. {Griffith.} But you would acknowledge that if their  
2572 model was somewhat weak to begin with--and I recognize there  
2573 is risk whenever you are doing something new--but if their  
2574 model was weak to begin with and then market gets worse,  
2575 doesn't that mean that maybe we should have just not thrown  
2576 good money after bad because now we are in a worse position  
2577 in the bankruptcy courts to get our money back, are we not?

2578 Mr. {Silver.} Well, at the time--

2579 Mr. {Griffith.} Are we in worse position than we would  
2580 have been if we had just let them go into bankruptcy, Chapter  
2581 11, last January? We are or are we not?

2582 Mr. {Silver.} That will depend--not necessarily. That  
2583 will depend on the outcome of the bankruptcy. As I tried to

2584 indicate before, when you are looking at this issue and  
2585 admitting that there are no good choices, one of the issues  
2586 is liquidation and you have to determine a liquidation--

2587 Mr. {Griffith.} Is it the administration's policy that  
2588 bankruptcy is a good thing?

2589 Mr. {Silver.} I can't speak for the administration but  
2590 common sense would suggest that it is not.

2591 Mr. {Griffith.} I would agree with you. I yield back.

2592 Mr. {Stearns.} The gentleman yields back, time has  
2593 expired. The gentleman from California, Mr. Bilbray, is  
2594 recognized for 5 minutes.

2595 Mr. {Bilbray.} Thank you very much, Mr. Chairman. Mr.  
2596 Chairman, before I go on, I would like to just address the  
2597 ranking member of this committee because I hope she  
2598 recognizes and we all recognize this is not a Democrat or  
2599 Republican issue when we are talking about this ``is.''  
2600 This is specifically a threat to the legislative process when you  
2601 can have an attorney play this word game and does that mean  
2602 that Democrat or Republican, when they specifically direct in  
2603 legislation that we now have to say not only it will not  
2604 happen but we must say it will not and shall never be allowed  
2605 to happen? Do we have to play this word game? Because I  
2606 don't think it is a Democrat or Republican issue. I think  
2607 this is an issue about the law is the law and I don't care

2608 how convoluted an attorney wants to do it. This doesn't pass  
2609 the smell test in any way in the world. So I just think this  
2610 is really an affront on both sides of the aisle by this  
2611 manipulation. And just admit it that it was. We tried to  
2612 get the job done and we crossed over a line to a commonsense  
2613 person and anybody rational would say you crossed the line of  
2614 what the law specifically said.

2615 Now, that aside, there are a lot people talking about  
2616 solar power here, some of us who worked at citing solar  
2617 factories here. Mr. Silver, are you comfortable, first of  
2618 all, with the thin film technology that was chosen by this  
2619 company? Did you have any concerns about them using thin  
2620 film technology?

2621 Mr. {Silver.} Congressman, I am, first of all, not a  
2622 solar technical analyst but I am highly comfortable with the  
2623 fact that the solar experts at the Department of Energy, of  
2624 whom there are many, and the independent engineers which were  
2625 well known and well respected firms were qualified--

2626 Mr. {Bilbray.} Were you informed that there has been  
2627 more false starts and more failure in thin film than any  
2628 other form of photovoltaic production?

2629 Mr. {Silver.} I don't know that to be true or not but--

2630 Mr. {Bilbray.} Okay. And were you aware that when we  
2631 talk about China that China has concentrated almost

2632 ostensibly in polycrystalline technology and avoid thin film?

2633           Mr. {Silver.} Well, China has focused on the market  
2634 segment you are describing in part because it is a very cost-  
2635 effective way to mass produce those panels. The Solyndra  
2636 technology was designed in its time and place to circumvent  
2637 or to overcome 2 fundamental challenges--the very high price  
2638 of polysilicon and the installation costs which they refer to  
2639 as--

2640           Mr. {Bilbray.} And they also have in fact the  
2641 historical problem of a lack of durability and the loss of  
2642 proficiency of thin film as opposed to mono- and poly-  
2643 technologies. But my question to you, you are a business  
2644 man. You are looking at a company. Did you review their  
2645 proposal for the construction of their factory, the  
2646 technology, the siting of it, the planned development of it,  
2647 and its related costs and oversight?

2648           Mr. {Silver.} I am sorry. What is the--

2649           Mr. {Bilbray.} Did you look at where they were talking  
2650 about building this factory, how they were building it, and  
2651 the related issues of the cost of just building the factory?

2652           Mr. {Silver.} No, sir, because the loan was issued  
2653 before I arrived at the Department.

2654           Mr. {Bilbray.} Okay. When you went and renegotiated  
2655 it, did you take a look at what was being proposed?

2656 Mr. {Silver.} Well, at that point, the plant was  
2657 largely built, although it was not, as I say, fitted out.

2658 Mr. {Bilbray.} Okay. Did anybody down the line raise  
2659 the issue that the proposal was to build the facility in the  
2660 State of California in the Bay area in a nonattainment area,  
2661 can you think of as a business man anywhere in America where  
2662 you probably have more regulatory obstructionism to the  
2663 construction of a manufacturing operation than you would have  
2664 in a nonattainment area in the State of California?

2665 Mr. {Silver.} I am not qualified to answer that  
2666 question, but what I can say is that the investors that  
2667 backed this company and the management team that originally  
2668 led it must have concluded that this was the right place to  
2669 do it.

2670 Mr. {Bilbray.} Mr. Silver, are you aware of anybody in  
2671 your department that have notified grant applicants that if  
2672 they want to go get the grant that their production should be  
2673 moved out of the State of California to a State that has less  
2674 regulatory obstructionism?

2675 Mr. {Silver.} We don't issue grants in the loan  
2676 program, sir, but I am not aware of that, no.

2677 Mr. {Bilbray.} Okay. Well, maybe we ought to talk  
2678 about the fact--let me just point out, this grant application  
2679 was asking to take 30 acres of agricultural land in the State

2680 of California in a nonattainment area. It was going to be  
2681 required to be able to go not just through the DOD and the  
2682 U.S. but having to get the Environmental Quality Act under  
2683 Sequel for California, has to get a permit from the city, air  
2684 quality from the Bay area, air quality which is nonattainment  
2685 area with some of the strictest air pollution regs in the  
2686 entire world. It was going to require a general permit for  
2687 discharge and storm water, which means that not only did you  
2688 have the California environmental agencies involved, not only  
2689 did you have the State Water Quality Control Board involved,  
2690 you had the local regional water Quality Control Board that  
2691 you have to get a permit from.

2692 The fact is is that the California Department of  
2693 Occupational Safety, which has some of the most restrictive  
2694 regulations in the world you had to get a permit from, you  
2695 had the hazardous waste generation, which California again  
2696 under HAZMAT has some of the most restricted funds. Then you  
2697 get into wastewater discharge, and these are just some of the  
2698 permits down the line.

2699 Nobody in your department or when they reviewed this  
2700 raised the issue that this is not only a terrible place to  
2701 try to site a facility but you are proposing--didn't anybody  
2702 raise the issue of why build a whole new facility rather than  
2703 moving into an existing abandoned facility in a State that

2704 has 12 percent unemployment and huge empty resources?

2705 Anybody even talk about the question of why would you build a  
2706 new facility when there are warehouses available?

2707 Mr. Chairman? Would he answer the question?

2708 Mr. {Stearns.} Time has expired but you are welcome,  
2709 Mr. Silver, to answer the question yes or no.

2710 Mr. {Silver.} Sure, I will to the best of my knowledge.  
2711 At the risk of repeating myself since I wasn't there, I don't  
2712 know what the nature of the discussions were, but I can tell  
2713 you that applicants for loan guarantees are required to have  
2714 all of their siting permits and other kinds of permits in  
2715 place by the time the project is undertaken.

2716 Mr. {Bilbray.} And all of it was stated down that it  
2717 will attain it before construction when they get in the line?  
2718 And all I got to say is somebody who is siting--we are siting  
2719 existing warehouses. It is absurd with the kind of vacancy  
2720 we have in the State of California for anybody to even talk  
2721 about or come to you or any government agency and say we want  
2722 to build a whole new area on ag land. I yield back.

2723 Mr. {Stearns.} The time of the gentleman has expired.  
2724 The gentleman from Louisiana, Mr. Scalise, is recognized for  
2725 5 minutes.

2726 Mr. {Scalise.} Thank you, Mr. Chairman. I want to  
2727 thank you for calling this hearing. You know, we have been

2728 pressing on this issue and asking a lot of questions about  
2729 this Solyndra loan program for months now on this  
2730 subcommittee, but I think it is really important that we have  
2731 this hearing now because while Solyndra was touted as really  
2732 one of the poster children by President Obama of his first  
2733 stimulus bill, and clearly there is a lot of evidence that  
2734 shows that this was something that the White House really  
2735 wanted to move through quickly and the emails indicate that.

2736         But while this was one of the poster children of the  
2737 first stimulus bill, the President right now is touting what  
2738 I call son of stimulus, another bill to come through, spend  
2739 more taxpayer money, to do more things like this. And in  
2740 fact if you look at some of the issues that we have raised  
2741 about this loan program, some of these projects that were  
2742 funded by stimulus, just Solyndra alone was touted to create  
2743 3,000 jobs. The President touted that. It is going to be a  
2744 great success story. And of course, we have seen the failure  
2745 there. And a lot of us are questioning this kind of double  
2746 down son of stimulus approach where they are going to come  
2747 back and do more of this kind of same failed policy of just  
2748 spending money we don't have.

2749         And, you know, of course the President said in front of  
2750 our chamber last week, pass the bill now. We hadn't even  
2751 seen the bill. The President didn't even give us the text of

2752 the bill and he said pass the bill now, called on the  
2753 American people ask us to pass the bill now. I hope you  
2754 understand now why a lot of us are real skeptical when the  
2755 President says pass a bill now because he did that with the  
2756 stimulus bill and we see the failure there. He did that with  
2757 the healthcare bill. We are still unearthing problems there.  
2758 So when the President says pass a bill, you can wonder why  
2759 some of us say let me read the bill first and let us look at  
2760 the details.

2761 But now when we get specifically to this issue of what  
2762 happened with Solyndra, Mr. Silver, I know you have testified  
2763 that you weren't in your position until November of 2009.  
2764 When you came in, you have acknowledged there was a file on  
2765 Solyndra. Did you read that file?

2766 Mr. {Silver.} I read through all of the materials for  
2767 the entire program when I arrived.

2768 Mr. {Scalise.} Did you see the concerns that were being  
2769 raised by your own agency back then prior to your coming that  
2770 under what they were looking at, Solyndra could go bankrupt  
2771 by September of 2011?

2772 Mr. {Silver.} I certainly saw all of the materials that  
2773 were, you know, related to that discussion. I need to  
2774 reemphasize, Congressman, that the loan guarantee was  
2775 specifically for the construction of a physical factory,

2776 which was done. And the way that works--

2777 Mr. {Scalise.} And look, it is your job ultimately to  
2778 go through that loan guarantee and see if there are things  
2779 that meet the taxpayer interests--

2780 Mr. {Silver.} That is correct.

2781 Mr. {Scalise.} --but also I think you need to also be  
2782 aware of the way that the program is being implemented.  
2783 After you came in, the Government Accountability Office did a  
2784 report that was, I think, pretty scathing about your loan  
2785 program. They actually made some recommendations. They  
2786 pointed out some problems. They pointed out, again, after  
2787 you came in, GAO put this report out. They pointed out that  
2788 the loan program treated applicants inconsistently favoring  
2789 some and disadvantaging others. And they gave examples. Did  
2790 you read this GAO report?

2791 Mr. {Silver.} I did, Congressman, and if you will give  
2792 me a minute to respond to--

2793 Mr. {Scalise.} I can't give you that long. I don't  
2794 have that much time.

2795 Mr. {Silver.} --the GAO question. First, let me note  
2796 that while the report did come out after I arrived, it covers  
2797 the 2008 and 2009 time period, and so I was there for  
2798 approximately 1 month--

2799 Mr. {Scalise.} So did you make any changes based on the

2800 problems that they now know?

2801 Mr. {Silver.} Yes, we have actually made substantial  
2802 changes as we have grown the organization.

2803 Mr. {Scalise.} All right. But let me ask you this.  
2804 You were here after you all did the restructuring of  
2805 Solyndra's loan. Who made the decision to put the taxpayers  
2806 in the back of the line and subordinate in violation of  
2807 federal law? Who made that decision?

2808 Mr. {Silver.} Well, first, Congressman, as I have said  
2809 before, I don't know that it was in violation of any law.  
2810 There were multiple--

2811 Mr. {Scalise.} Someone made the decision. Did you make  
2812 the decision to subordinate--

2813 Mr. {Silver.} There were a variety of legal--

2814 Mr. {Scalise.} Did you? Did you make it?

2815 Mr. {Silver.} The loan program--

2816 Mr. {Scalise.} This is a yes or no question. Did you  
2817 make the decision to subordinate the taxpayers and put them  
2818 in the back of the line when the decision was made to  
2819 restructure because you were there?

2820 Mr. {Silver.} The question is not--does not have a yes  
2821 or no answer, Congressman.

2822 Mr. {Scalise.} So you don't know? You either made the  
2823 decision or you didn't. I think--

2824 Mr. {Silver.} The process--

2825 Mr. {Scalise.} --that is a straightforward question.

2826 And look, we have been asking for months now, in fact, we on  
2827 this subcommittee asked your agency for some of these  
2828 documents prior to the modification of the loan, prior to the  
2829 restructuring, and you all stonewalled us as you are  
2830 stonewalling right now refusing to answer a direct question.  
2831 And \$535 million of taxpayer money is at stake. Maybe if you  
2832 would have given us that information back months ago when we  
2833 asked for it before you restructured, the taxpayers wouldn't  
2834 be in the back of the line today. So you can understand, I  
2835 would hope, why we are saying who made the decision to put  
2836 the taxpayers in the back of the line? Can you get me that  
2837 information if you can't answer it directly now?

2838 Mr. {Silver.} I am happy to meet with you to describe  
2839 the--

2840 Mr. {Scalise.} No, I want in writing--I am going to ask  
2841 on behalf of the committee, Mr. Chairman, if you can get us  
2842 in writing the names of the people in the decision-making  
2843 process--and it might be multiple people--who made the  
2844 decision to put the taxpayers in the back of the line meaning  
2845 subordinate the taxpayers in what many of us think are in  
2846 violation of the law. I don't know what your counsel thinks  
2847 and your counsel may be part of this list, but I want to know

2848 if you are part of the list. I want to know if the Secretary  
2849 is part of the list. I want to know if anyone in the White  
2850 House is part of that decision-making chain that said we are  
2851 going to subordinate the taxpayers of the United States in  
2852 restructuring this Solyndra loan. I think we deserve that  
2853 answer and I am asking you to get that information, however  
2854 many people it is. But somebody made that decision or  
2855 multiple people, but you can't say nobody made it because the  
2856 decision was made. Would you at least agree with that and  
2857 then get that information to this committee?

2858 Mr. {Silver.} We will work with you to provide you what  
2859 you need.

2860 Mr. {Scalise.} Thank you. And I yield back.

2861 Mr. {Stearns.} The gentleman's time has expired. The  
2862 gentleman from Colorado, Mr. Gardner, is recognized for 5  
2863 minutes.

2864 Mr. {Gardner.} Thank you, Mr. Chairman, and thank you  
2865 to the witnesses as well for your time today. And I would  
2866 yield the 30 seconds to my colleague, Mr. Bilbray, from  
2867 California.

2868 Mr. {Bilbray.} Mr. Silver, my biggest concern I just  
2869 want to say in closing as somebody who supports solar energy,  
2870 I think we got to keep the science not the blind faith, and  
2871 it appears to me that this entire process was driven more by

2872 an assumption that anything solar was good and you could  
2873 force it through and it was all going to work out. And the  
2874 lack of critical review for this production I think is the  
2875 greatest threat for future solar. It is this kind of blind  
2876 faith that we have got to avoid. This should be driven by  
2877 science and good investment, not by an assumption that  
2878 whatever is renewable obviously is going to be great. And I  
2879 think this failure was driven more by that. I don't think it  
2880 was a criminal intent. But that criminal intent you can bust  
2881 one guy. The trouble is with this kind of prejudice for a  
2882 technology blindly, there is more threat to that happening in  
2883 the future and not just financially but the energy  
2884 independence of this country and the competitiveness of this  
2885 country. And that is what I am critical on.

2886       Mr. {Silver.} Congressman, I wholeheartedly agree with  
2887 you that we ought to back the science, which is why a large  
2888 group of sophisticated private investors who have done their  
2889 own--had done their own due diligence, why the loan program  
2890 staff from the 2007 to 2009 time frame using independent  
2891 engineers, other outside advisors, and the solar experts at  
2892 Department of Energy came to that conclusion.

2893       Mr. {Bilbray.} Well, the record shows that there was  
2894 political interjection, there was PR issues. The  
2895 preconceived idea that if it was solar, it had to be a great

2896 package, and frankly there is good stuff, there is bad stuff,  
2897 and the greatest threat to the good stuff is allowing garbage  
2898 to get through the system and being treated as if its sacred  
2899 rather than being critical about it. And it wasn't critical  
2900 enough and history has proven that it wasn't a critical  
2901 review of this. We got to make sure that doesn't happen  
2902 again. I yield back to the gentleman.

2903 Mr. {Gardner.} Thank you. And reclaiming my time.

2904 Mr. Silver, I want to go back to this issue of the  
2905 emails and the dismissal by the Credit Committee of this  
2906 project. January 9--it is a Friday--2009, an email was sent  
2907 from the Credit Committee remanding the Solyndra application  
2908 calling it premature and citing a number of unresolved  
2909 issues. In your testimony, you have said that this was over  
2910 nothing big, no big details--

2911 Mr. {Silver.} No, I didn't. I never said that,  
2912 Congressman. What I said was the Credit Committee remanded  
2913 it back for additional work and due diligence was done on  
2914 that work. And then it was brought forward in the time frame  
2915 that--I should--if I may--

2916 Mr. {Gardner.} Well, let me just talk--

2917 Mr. {Silver.} --I would like to just point out one  
2918 other--

2919 Mr. {Gardner.} --about this due diligence--

2920 Mr. {Silver.} I would like to just point out one other  
2921 thing which is that--

2922 Mr. {Gardner.} Reclaiming my time. This is my time. I  
2923 am sorry because I want to talk about these matters of due  
2924 diligence on January 9, what you said, due diligence took  
2925 place over. Let me read these to you. It is Slide #2 if you  
2926 could put that on there. ``There is presently not an  
2927 independent market study addressing long-term prospects for  
2928 this specific company beyond the sales agreement already  
2929 placed. Since the independent credit assessment raised the  
2930 issue of obsolescence in marketing this project, it is  
2931 important to have an independent analysis of that issue as  
2932 well as the current state of the competitive market.'' Point  
2933 2, ``while the sales agreement is said to have been analyzed  
2934 by the outside legal advisor assigned to this case, the  
2935 committee did not have access to this document.'' Point 3,  
2936 ``there are questions regarding the nature and strength of  
2937 the parent guarantee for the completion of the project.'' Point  
2938 4, ``while it is encouraging to see the apparent  
2939 progress in the development of the product at the Fab 1  
2940 facility, there is concern regarding the scale-up of  
2941 production assumed in the plant for Fab 2.'' That was in an  
2942 email on January 9. That is the areas of due diligence that  
2943 you are saying that you did and you did it by January 26, a

2944 Monday, 2009?

2945 Mr. {Silver.} Congressman, I don't know where--what  
2946 dates you are referring to. Let me--

2947 Mr. {Gardner.} These are the emails when the Credit  
2948 Committee said no, we are not going to do this and then all  
2949 of a sudden an email just days later, 10 working days later--

2950 Ms. {DeGette.} Will the gentleman yield?

2951 Mr. {Gardner.} --we are going to go forward.

2952 Ms. {DeGette.} Does the gentleman have copies of those  
2953 emails? The minority has--

2954 Mr. {Gardner.} I am happy to provide--

2955 Ms. {DeGette.} I would appreciate that.

2956 Mr. {Gardner.} Sure.

2957 Ms. {DeGette.} We don't have copies of those emails and  
2958 I don't think the witness does either and I am getting a  
2959 little lost here.

2960 Mr. {Gardner.} On January 9, 2009, the Credit Committee  
2961 sent an email, and I think if you go to Slide 4 you can see  
2962 what I am talking about. There we go, 2009, talking about  
2963 the Credit Committee remand of Solyndra application calling  
2964 it premature. January 26, we are approaching the beginning  
2965 of the approval process. So the areas of due diligence that  
2966 you said took place took place in 10 working days? These are  
2967 pretty significant issues.

2968 Mr. {Silver.} No, that is not accurate, Congressman,  
2969 and if you will give me just a moment to try to answer your  
2970 question. There are actually--there is actually an extended  
2971 period of due diligence that takes place here. The Credit  
2972 Committee--the first Credit Committee met; then there was a  
2973 several-month period before it met again and I need to make  
2974 sure this is clear because I don't think it is because I  
2975 don't--

2976 Mr. {Gardner.} It didn't meet when they made their  
2977 decision to move forward?

2978 Mr. {Silver.} What gets approved at that juncture,  
2979 Congressman, is a conditional commitment, not the final close  
2980 of the loan. The loan itself didn't close until September  
2981 and so additional due diligence takes place from the  
2982 conditional commitment through the close of the loan, as is  
2983 true in every transaction.

2984 Mr. {Gardner.} What changed, then, between January 9  
2985 when they needed that information and January 26, 10 days  
2986 later, when they evidently didn't need that information.

2987 Mr. {Silver.} I don't know what the January 26 date is  
2988 that you are referring to.

2989 Mr. {Gardner.} The January 26 email was right there.  
2990 It says, ``a DOE staff member states that we are approaching  
2991 the beginning of the approval process for Solyndra again.''

2992 The Credit Committee met and said they didn't do it because  
2993 they needed this information.

2994 Mr. {Silver.} Why do you assume that language says we  
2995 are beginning--approaching the beginning of an approval  
2996 process necessarily means anything about the time frame for  
2997 which due--under which due diligence took place?

2998 Mr. {Gardner.} Well, I am assuming that the Credit  
2999 Committee, their observations were taken into account, were  
3000 they not?

3001 Mr. {Silver.} Absolutely, but the beginning--as I read  
3002 it as you are now showing it to me, we are approaching the  
3003 beginning of the approval process, that suggests a pretty  
3004 open-ended period of time during which due diligence was--

3005 Mr. {Gardner.} So the Credit Committee then at that  
3006 point, it doesn't matter what the Credit Committee is  
3007 concerned--

3008 Mr. {Silver.} No, the Credit Committee met again in  
3009 March.

3010 Mr. {Gardner.} Because they said we are going to end  
3011 this.

3012 Mr. {Silver.} No, they said that we were--they were  
3013 going to meet again in March, which they did.

3014 Mr. {Dingell.} Mr. Chairman, where are all--

3015 Mr. {Stearns.} The gentleman's time has expired.

3016 Mr. {Dingell.} Mr. Chairman, where are--

3017 Mr. {Stearns.} We are on the first round--

3018 Mr. {Dingell.} I have a unanimous consent request--

3019 Mr. {Stearns.} Yes, you are recognized.

3020 Mr. {Dingell.} Can we put all of these emails into the  
3021 record? I am sitting here, I am seeing a wee bit of  
3022 information carefully yellow-lined that is supposed to tell  
3023 me what has happened here. I don't think there is any lawyer  
3024 that would tell you that that would be sufficient evidence of  
3025 anything. The whole document should be placed before us so  
3026 we know--

3027 Mr. {Stearns.} Well--

3028 Mr. {Dingell.} If there is wrongdoing here, by golly,  
3029 let us dig it out. But let us see the whole thing.

3030 Mr. {Stearns.} Okay.

3031 Mr. {Dingell.} So far we are getting a lot of  
3032 assumptions and understandings and comments from the other  
3033 side in which they are saying oh, this is terrible. What has  
3034 happened here? But I don't know what has happened and to  
3035 speak perfectly frank with you, I don't see anything up there  
3036 which tells me that we have a clear picture of the problems  
3037 to which we are inquiring. So if we are going to inquire,  
3038 let us inquire fairly. Let us let everybody see them. Is it  
3039 possible that my Republican colleagues have seen these papers

3040 and the rest of us have not?

3041           Mr. {Stearns.} We will take the constructive criticism  
3042 under advisement. We have unanimous consent in which all the  
3043 documents will be made available and a part.

3044           [The information follows:]

3045 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
3046 Mr. {Stearns.} And I ask my side, the counsel, to  
3047 provide the gentleman and your side all these documents,  
3048 which we have. And they have been produced, I am told, so I  
3049 guess the question is they haven't got to you. Is that a  
3050 fair assumption?

3051 Ms. {DeGette.} Well, if the gentleman will yield?

3052 Mr. {Dingell.} I want them in the record, Mr. Chairman.

3053 Mr. {Stearns.} Oh, okay. So you have the same  
3054 documents we do, you just want to make sure they are part of  
3055 the record?

3056 Mr. {Dingell.} I want--

3057 Ms. {DeGette.} If the gentleman will yield?

3058 Mr. {Dingell.} --to see them--

3059 Mr. {Stearns.} And we pass the unanimous consent--

3060 Mr. {Dingell.} --I want to know what they said--

3061 Mr. {Stearns.} Okay.

3062 Mr. {Dingell.} --and I want them in the record.

3063 Mr. {Stearns.} They will be put in the record. We had  
3064 unanimous consent to do so.

3065 Ms. {DeGette.} Yeah, and if the gentleman would yield?

3066 Mr. {Stearns.} Yes.

3067 Ms. {DeGette.} We were told that the documents were  
3068 produced under an agreement with the majority that they were

3069 to be confidential and were not to be copied or in any way  
3070 disseminated. We--

3071 Mr. {Stearns.} At the request of OMB, right?

3072 Ms. {DeGette.} Okay. But--

3073 Mr. {Stearns.} Yeah.

3074 Ms. {DeGette.} --what happened was in between yesterday  
3075 when I found this out at about 7:00 p.m. last night and  
3076 today, it turned out that lo, number one, the majority  
3077 released a number of these documents to the press and, number  
3078 two, the majority apparently took some of these documents and  
3079 excerpted them in the way that the chairman emeritus is  
3080 saying and put them on slides, which we have never been  
3081 provided. I am going to tell you, Mr. Chairman, I have been  
3082 on this subcommittee for 15 years and I am just as much  
3083 concerned about this Solyndra loan as everybody else is, but  
3084 the way that the information has just been parceled out, the  
3085 witnesses don't have the full copies of the emails in front  
3086 of them, the minority doesn't have the full copies of the  
3087 emails in front of them until we asked for them, that is not  
3088 in the grand tradition of this subcommittee.

3089 Mr. {Stearns.} We have heard your argument in your  
3090 opening statement and we made a unanimous consent that you  
3091 all be part of the document. I am told that you were given,  
3092 your staff was given all these documents. OMB--

3093 Ms. {DeGette.} We were told we couldn't copy it.

3094 Mr. {Stearns.} OMB is the one that specified that. We  
3095 have now agreed that we are going to make them all public.

3096 Ms. {DeGette.} Mr. Chairman, they were subpoenaed from  
3097 OMB. OMB doesn't have the right to tell us whether we can  
3098 copy--

3099 Mr. {Stearns.} I understand that.

3100 Ms. {DeGette.} --the documents or not.

3101 Mr. {Stearns.} I understand that but we have all agreed  
3102 that OMB can't tell us and we are going to make these public.

3103 Ms. {DeGette.} Thank you.

3104 Mr. {Stearns.} And so I appreciate your concern. We  
3105 have a unanimous consent from a member who is on the  
3106 committee but not on the subcommittee, the gentleman from  
3107 Kansas, Mr. Pompeo. Is there any objection to allowing him  
3108 in the first round--we are going to go for a second round--

3109 Mr. {Waxman.} Well--

3110 Mr. {Stearns.} --is there any objection to allow him to  
3111 ask questions?

3112 Mr. {Dingell.} I have no objection but I would like to  
3113 understand if we are going to get those documents and if we  
3114 are going to have a second--

3115 Mr. {Stearns.} Your point is you have the documents but  
3116 you want to make sure the documents are available to--

3117 Mr. {Dingell.} No, I want to see them.

3118 Mr. {Stearns.} Okay. Well, as I understand from my  
3119 counsel, we have provided all the documents to you. They  
3120 were produced to both sides. You have them. Now, is it  
3121 possible your staff has not made them available to you?

3122 Mr. {Dingell.} I understand that it is the committee  
3123 staff to make these available to all members of the committee  
3124 and I understand this committee staff works for all of us.

3125 Mr. {Stearns.} Well, I think that--

3126 Mr. {Dingell.} And if I am in error--

3127 Mr. {Stearns.} My staff has told me that we have--

3128 Mr. {Dingell.} --tell me so.

3129 Mr. {Stearns.} --provided you--

3130 Ms. {DeGette.} Mr. Chairman, what happened was we were  
3131 told we could look at the documents but we couldn't copy them  
3132 and that under some kind of agreement the majority made with  
3133 the OMB that the documents could not be disseminated in any  
3134 way, which is frankly a ridiculous agreement--

3135 Mr. {Stearns.} Well, no, I think you made that--

3136 Ms. {DeGette.} --if the majority made that, but in  
3137 addition, always in the past in this subcommittee, if we  
3138 questioned on documents, we had the full document available  
3139 for everybody and for the witnesses so that they could review  
3140 those and give their answers. Instead, what we have had

3141 today is these slides which were made taking quotes out of  
3142 the documents without providing the documents to anybody.

3143 Mr. {Stearns.} In conclusion, I think the fact that you  
3144 and Mr. Dingell's point is that these documents should have  
3145 been made available in a tab so that they can go to the tab.

3146 Mr. {Sullivan.} Mr. Chairman? Mr. Chairman, if I can  
3147 ask a question?

3148 Mr. {Stearns.} Sure.

3149 Mr. {Sullivan.} I think from everything I am hearing,  
3150 the emails that are in question are emails from Department of  
3151 Energy staff. Doesn't Mr. Silver already have access to all  
3152 of that?

3153 Mr. {Stearns.} He doesn't necessarily have access--

3154 Mr. {Sullivan.} Chairman, those are people that work  
3155 under him in his agency who communicated back and forth that  
3156 we had to subpoena, but I don't think he has to subpoena to  
3157 get his own internal documents from--

3158 Mr. {Dingell.} Mr. Chairman, we are not complaining  
3159 about whether Mr. Silver has these emails or not. I am  
3160 complaining that we do not have the emails.

3161 Ms. {DeGette.} Well, and also--

3162 Mr. {Dingell.} And I find myself affronted that I am  
3163 reading about these things in the newspaper and am not having  
3164 them presented to me. That is a most curious way--

3165 Mr. {Stearns.} Okay. All right.

3166 Mr. {Dingell.} --to proceed about a congressional  
3167 investigation.

3168 Mr. {Stearns.} Well, we have a little disagreement here  
3169 but out of deference to you, I will take your criticism under  
3170 advisement. And let us continue on.

3171 Mr. {Dingell.} That does not comfort--

3172 Mr. {Zients.} May we have a 2-minute break?

3173 Mr. {Dingell.} --me when you take it under advisement.  
3174 That means I might hear about it--

3175 Mr. {Stearns.} Well, I think--

3176 Mr. {Dingell.} --sometime before the end of the session  
3177 if I am lucky.

3178 Mr. {Stearns.} All right.

3179 Mr. {Dingell.} I do not view that as being an adequate  
3180 answer for my concerns. I don't like the precedent which I  
3181 see being set here that I am going to read about these things  
3182 in the press. And I don't like at all the fact that we are  
3183 having all manners of inferences drawn by the majority while  
3184 the minority has not seen the documents. And so I am not  
3185 comforted by these matters being taken under advisement.

3186 Mr. {Stearns.} Well, the gentleman has done this job  
3187 much more than--

3188 Mr. {Dingell.} They should be addressed now--

3189 Mr. {Stearns.} Yes.

3190 Mr. {Dingell.} --not at some future--

3191 Mr. {Stearns.} Okay. The gentleman--

3192 Mr. {Dingell.} --time.

3193 Mr. {Stearns.} --has done this job more years than I

3194 have ever done it or will do. I respect his opinion. We

3195 have a little disagreement and the fact is we say we have

3196 given you all the documents. The fact that you don't have it

3197 in front of you is not necessarily our fault because your

3198 staff--

3199 Mr. {Dingell.} Maybe I have to raise the question of

3200 whose staff we are going to fire. Are we going to fire the

3201 majority staff or the minority staff?

3202 Mr. {Stearns.} Well, I think there is a--

3203 Mr. {Dingell.} If the majority staff is making this

3204 kind of a decision, they are going well beyond their powers--

3205 Mr. {Stearns.} Well--

3206 Mr. {Dingell.} --and well beyond their authorities. If

3207 the minority staff is doing it, we are going to thrash this

3208 out inside the minority and find out why in the hell they are

3209 doing it this way.

3210 Mr. {Stearns.} I suggest you do that and then you and I

3211 talk.

3212 Mr. {Dingell.} Well, I suggest that we talk now because

3213 this is the business of the committee and I find the business  
3214 of the committee being conducted in a curious way.

3215 Mr. {Stearns.} Well, the curious way is that you don't  
3216 recognize that you have all the documents when my staff has  
3217 provided all the documents to you. So we are a little  
3218 puzzled why we are discussing why you don't have all the  
3219 documents when you do.

3220 Ms. {DeGette.} No, the problem is--

3221 Mr. {Dingell.} Where are the documents--

3222 Mr. {Stearns.} Let Mr. Dingell finish.

3223 Mr. {Dingell.} --then--

3224 Mr. {Stearns.} Okay.

3225 Mr. {Dingell.} --if I have had them presented to me, I  
3226 am anxious to see them.

3227 Mr. {Stearns.} Okay. Well, I think what we are going  
3228 to do is continue this discussion, but I want to let the  
3229 gentleman from Kansas--I recognize him for 5 minutes.

3230 Mr. {Pompeo.} Thank you, Mr. Chairman. And thank you  
3231 to the minority for allowing me to participate in the hearing  
3232 today.

3233 You know, Mr. Waxman started this hearing an awful long  
3234 time ago talking about the fact that the Solyndra folks came  
3235 in his office in July, told him everything was great and then  
3236 filed bankruptcy shortly thereafter and he couldn't

3237 understand why. There is a simple reason. Nobody in that  
3238 room had any skin in the game. This is exactly what we get  
3239 when the Federal Government tries to put money into  
3240 businesses and try to pick winners and losers. And in fact  
3241 because I have heard Mr. Zients speak, your task is really to  
3242 pick just amongst losers. Every one of these has a credit  
3243 subsidy, right? Is that correct? The Federal Credit Reform  
3244 Act, you are out there looking at every one of these loans  
3245 and deciding how much of a loser this guarantee is going to  
3246 be.

3247 Mr. {Zients.} No, I mean the point is to put a credit  
3248 allowance--

3249 Mr. {Pompeo.} A score, a cost to the taxpayer.

3250 Mr. {Zients.} That is the purpose of the program--

3251 Mr. {Pompeo.} Right.

3252 Mr. {Zients.} --is the 1705 program--

3253 Mr. {Pompeo.} Right.

3254 Mr. {Zients.} --does loans with credit subsidies.

3255 Mr. {Pompeo.} Right. Look, I am very familiar with  
3256 FCRA. I actually, oddly enough, wrote about this when I was  
3257 in law school and was published so I know a fair amount about  
3258 the process that you go through there. And you talked about  
3259 your score having changed. What were the 2 scores that were  
3260 given both in 2009 and then I guess twice in 2011?

3261 Mr. {Zients.} Well, the score in 2009, I don't know the  
3262 exact percent of the score--

3263 Mr. {Pompeo.} And you got that--

3264 Mr. {Zients.} --but it increased--

3265 Mr. {Pompeo.} If you can get me the 2 scores, what the  
3266 original scoring was and what the subsequent scoring was?

3267 Mr. {Zients.} I am sorry?

3268 Mr. {Pompeo.} Can you provide to me and to this  
3269 committee the original score and the subsequent score?

3270 Mr. {Zients.} Yeah, we can follow up on that request.

3271 Mr. {Pompeo.} Okay. So you will provide that  
3272 information to the committee?

3273 Mr. {Zients.} We will work with staff to make sure that  
3274 that information is provided.

3275 Mr. {Pompeo.} Right. And then you will give us also  
3276 the score in 2011 during the restructuring? You decided this  
3277 was how much additional subsidy will need to be provided.

3278 Mr. {Zients.} Well, in 2011 as part of the  
3279 restructuring, the determination was that it was a workout  
3280 based on the fact that the loan was in imminent default and  
3281 that a workout or a restructuring was in the best interest of  
3282 taxpayers. That would be reflected, the cost of that, in the  
3283 budget.

3284 Mr. {Pompeo.} So it was a negative score. It was good

3285 for the taxpayers that this restructuring was taking place?

3286 Mr. {Zients.} No.

3287 Mr. {Pompeo.} It was going to cost them less?

3288 Mr. {Zients.} No, the restructuring in the budget--in  
3289 the annual budget it will be reflected that the loan--the  
3290 condition of the loan--

3291 Mr. {Pompeo.} This is exactly what happens when folks  
3292 without skin in the game get involved in trying to do credit  
3293 analysis. Let me go back, Mr. Silver, I want to ask you.

3294 Mr. Markey spoke about Carnac, that no one could have known  
3295 what was going to happen to the price of photovoltaic cells,  
3296 PV cells, that this was just unimaginable that Solyndra's  
3297 sales price would fall below its cost of production. Do you  
3298 agree with that? And he said in 2008 who could have known?

3299 Mr. {Silver.} Well, I think many, many analysts and  
3300 observers have been surprised by the speed and rate of the  
3301 decline in cell prices, yes.

3302 Mr. {Pompeo.} Mr. Chairman, I ask unanimous consent to  
3303 place into the record an article. It is from August 4, 2008.  
3304 It appeared in Xconomy. It is written by a man named Mark  
3305 Modzelewski, the technology commentator. In August of 2008  
3306 he wrote, ``the cost of PVs, you hear a lot about companies  
3307 working toward price parity and grid parity--and here is the  
3308 potentially really bad news for investors. Some big players

3309 in the private equity and research side have hypothesized  
3310 that the price of solar cells is about to plummet so quickly  
3311 that manufacturers will enter a netherworld where their cost  
3312 of production exceeds their sales price.'" So it didn't take  
3313 Carnac. It just took Mark. Is that correct?

3314 Mr. {Dingell.} What is the status of--

3315 Mr. {Stearns.} The gentleman will--does he have a point  
3316 of information?

3317 Mr. {Dingell.} No, I don't.

3318 Mr. {Stearns.} Okay.

3319 Mr. {Dingell.} I have a reservation to a unanimous  
3320 consent request just made.

3321 Mr. {Stearns.} Okay. The gentleman from Michigan  
3322 objects and it will not be put in the record.

3323 Mr. {Dingell.} I don't object. I just want to know are  
3324 the papers, the emails and other things that I have been  
3325 discussing with the chair going to be put in the record and  
3326 are they going to be made available to us?

3327 Mr. {Stearns.} Yes, they are.

3328 Mr. {Dingell.} I want to make sure everybody is treated  
3329 alike.

3330 Mr. {Stearns.} Absolutely.

3331 Mr. {Dingell.} If the gentleman wants to put something  
3332 in, I probably won't object, but I just want to make sure

3333 that I am getting what I--

3334 Mr. {Stearns.} With that understanding, do you still  
3335 object?

3336 Mr. {Dingell.} I don't object.

3337 Mr. {Stearns.} All right.

3338 Mr. {Pompeo.} Thank you.

3339 Mr. {Stearns.} With unanimous consent, so ordered.

3340 [The information follows:]

3341 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
3342 Mr. {Pompeo.} Thank you. Thank you, Mr. Chairman.  
3343 Thank you, Mr. Dingell. Mr. Silver, was DOE aware of these  
3344 concerns? I know you weren't there at the time but you said  
3345 there are files. Were they aware of the concerns about the  
3346 pricing of these cells which were central to Solyndra's  
3347 ability to repay the government's money?

3348 Mr. {Silver.} Well, Solyndra's cylindrical thin film  
3349 cells were always more expensive than conventional matters,  
3350 but the issue is total cost of ownership and you have to  
3351 combine the cost of the cell with the installation, the  
3352 balance of systems payments to understand the total cost of  
3353 ownership. And at that time and in that place, that was a  
3354 very competitive opportunity.

3355 Mr. {Pompeo.} I understand. You know, you have said  
3356 you have gone from 35 to 180 folks or so in your  
3357 organization.

3358 Mr. {Silver.} Approximately.

3359 Mr. {Pompeo.} You said that proudly. It troubles me a  
3360 great deal that the Federal Government has an agency that has  
3361 grown by almost 6 times. I hope you hired Mark as one of  
3362 those folks that you brought on board going from 30 to 180.

3363 Mr. {Silver.} Actually, we have hired an enormously  
3364 large and talented pool of former private sector, public

3365 finance experts and executives, so I think we have built a  
3366 very good team. And it was designed simply to exist to put  
3367 out monies--

3368 Mr. {Pompeo.} I appreciate that. You talked about this  
3369 loss of market share, that we have lost this market share  
3370 because these prices have fallen. Isn't that precisely what  
3371 these programs are intended to do, to develop products so  
3372 that the cost of production will come down and solar can  
3373 compete with all of the other great energies in the world?

3374 Mr. {Silver.} That--

3375 Mr. {Pompeo.} Shouldn't you be thrilled that the price  
3376 has come down? Instead, you act as if it is sad because we  
3377 lost half a billion dollars of taxpayer money.

3378 Mr. {Silver.} No, it is--you are completely correct.  
3379 It is our collective effort to try to find innovative  
3380 technology to in fact do that. We issued--just as an  
3381 example, we issued a different solar manufacturing loan  
3382 guarantee just recently to a company whose improvement is a  
3383 process improvement rather than a product improvement--

3384 Mr. {Pompeo.} Right.

3385 Mr. {Silver.} --and allows it to cut the cost of solar  
3386 panel manufacturing by 50 percent.

3387 Mr. {Pompeo.} Right. So the globe succeeded in  
3388 reducing the price but the American taxpayers lost half a

3389 billion dollars by us trying to pick a particular business  
3390 that was going to benefit from that price reduction. Isn't  
3391 that precisely what happened here?

3392 Mr. {Silver.} Well, what is happening is that we are  
3393 putting together a portfolio of innovation--

3394 Mr. {Pompeo.} This was a bad outcome. I have listened.  
3395 I have been here for the entire hearing today save for about  
3396 2 minutes, and I have heard not a single person stand up and  
3397 take any accountability for a single dollar of taxpayer money  
3398 that is gone. We ask who made decisions, we asked who was  
3399 responsible, and the two of you stand here and point to other  
3400 people and take no accountability to the taxpayers in America  
3401 and in Kansas for having lost half a billion of their  
3402 dollars. And for me, that is unacceptable. I yield back my  
3403 time, Mr. Chairman.

3404 Mr. {Stearns.} The gentleman's time has expired. The  
3405 witnesses have indicated a request--personal request of 5-  
3406 minute break, so we will recess our subcommittee and come  
3407 back at 12:30.

3408 Mr. {Silver.} Thank you.

3409 Mr. {Stearns.} And we appreciate your support. I  
3410 remind all members we are going to have a second round.

3411 [Recess.]

3412 Mr. {Stearns.} The Committee on Oversight and

3413 Investigation will reconvene and we will start our second  
3414 round. And if the witnesses will have forbearance here, we  
3415 will try and wrap up very soon. There are a couple on my  
3416 side and just I think one at this side if Mr. Dingell doesn't  
3417 show up.

3418 I will start with my questions here and I need someone  
3419 in counsel here to take care of the clock so that I keep  
3420 myself on schedule.

3421 Mr. Silver, I was just going back to when I asked you  
3422 questions in the beginning. In response to my question about  
3423 Department of Energy conducting due diligence back in 2006,  
3424 you testified under oath--we are reading exactly what you  
3425 said. We got the exact transcript. ``Actually, I didn't say  
3426 that it was conducted in 2006. I said the application was  
3427 received in 2006 and due diligence began and continued from  
3428 late 2007 through 2008.'' But this is at odds and opposite  
3429 with the written testimony that you submitted to the  
3430 committee where you state, ``extensive due diligence on the  
3431 transaction was conducted between 2006 and the end of 2008.''  
3432 Did the ``extensive due diligence'' that you referred to  
3433 beginning at the end of 2000, as you stated in your verbal  
3434 testimony, or the 2006, as you submitted in your written  
3435 testimony? I am giving you an opportunity to correct it.

3436 Mr. {Silver.} Thank you. I don't think those

3437 statements are incompatible. The solicitation was issued in  
3438 2006 and pre-applications were received at that time. The  
3439 Loan Program Office received 143, began reviews of those--

3440 Mr. {Stearns.} Do you stand by your written testimony  
3441 or your oral testimony?

3442 Mr. {Silver.} There is due diligence that takes place  
3443 in order to ensure eligibility and then there is further due  
3444 diligence that takes place in order to--

3445 Mr. {Stearns.} Well, you said to me that due diligence  
3446 was not conducted in 2006 but yet in your written testimony  
3447 it says it was. So which is which? Just yes or no. Is it  
3448 your written testimony or your oral testimony this morning?

3449 Mr. {Silver.} Well, it is both, Congressman. There are  
3450 certain kinds of--

3451 Mr. {Stearns.} You can't have due diligence in 2006  
3452 because in one you said it wasn't and the other you said it  
3453 was.

3454 Mr. {Silver.} The due diligence done in 2006 was to  
3455 ensure the eligibility of the project and--

3456 Mr. {Stearns.} So it was 2 different types of due  
3457 diligence is what you are saying.

3458 Mr. {Silver.} Yes, sir, exactly.

3459 Mr. {Stearns.} And what are these 2 different types?

3460 Mr. {Silver.} Well, the--

3461 Mr. {Stearns.} Due diligence to me means due diligence.

3462 Are you saying due diligence has two different meanings?

3463 Mr. {Silver.} I am. Due diligence here--I am exactly  
3464 saying that. Due diligence here was to decide whether or not  
3465 an application was in fact eligible, and therefore, the due  
3466 diligence was around technical and financial issues only.

3467 Once it was deemed eligible, it was--the company was invited  
3468 to submit a full application and full due diligence began.

3469 That would include substantially greater kinds of due  
3470 diligence than what was done to ensure eligibility.

3471 Mr. {Stearns.} Okay. I certainly give you an  
3472 opportunity to correct that.

3473 Mr. Zients, you testified that OMB did ``a thorough  
3474 examination and analysis.'' And Mr. Silver, you also  
3475 testified that DOE conducted months of rigorous and  
3476 comprehensive due diligence and documentation. I think both  
3477 of you have indicated that. Is that correct?

3478 Mr. {Zients.} I assume this is around the credit  
3479 subsidy?

3480 Mr. {Stearns.} Well--

3481 Mr. {Zients.} It is hard to react to that--

3482 Mr. {Stearns.} Okay.

3483 Mr. {Zients.} --out of context. If you give me the  
3484 full context--

3485 Mr. {Stearns.} Yeah. Well, the full context is whether  
3486 Solyndra itself would be a viable company and that doing this  
3487 due diligence we are talking about, both of you had performed  
3488 due diligence in that respect. So--

3489 Mr. {Zients.} Just to be clear, OMB's statutory  
3490 responsibilities around FCRA and the credit subsidy--

3491 Mr. {Stearns.} Okay.

3492 Mr. {Zients.} --and around the credit subsidy score,  
3493 yes, it was a thorough analysis.

3494 Mr. {Stearns.} Okay. So when I am alluding to the fact  
3495 we had 2 government agencies doing what they are supposed to  
3496 do under the law and both of you testified that you did your  
3497 thorough analysis, examination, rigorous and comprehensive  
3498 due diligence and documentation. So the question I think for  
3499 me on this committee and I think for both Democrats and  
3500 Republicans, this creates some very serious questions about  
3501 each of your abilities to put aside the administration's what  
3502 appears to be--and I still stand by this--a political agenda.  
3503 And you should have protected the taxpayers and made some  
3504 forceful actions here after this analysis because you should  
3505 have seen the problems and you should have said taxpayers  
3506 need to be protected and this has got to stop. And I think  
3507 what, in the larger sense, we are worried about is with this  
3508 project and others that are stimulus projects is the

3509 comprehensive analysis done by both your agencies sufficient  
3510 so the taxpayers can feel a good deal of comfort that you  
3511 will protect taxpayers in the future and we won't see these  
3512 out-of-control stimulus projects like Solyndra continue. So  
3513 that is my basic concern, and I think anybody that watches  
3514 this hearing will have the same concern that you folks did  
3515 your due diligence, did the comprehensive, and yet this thing  
3516 not only went into bankruptcy but now we have the FBI  
3517 investigating. And that is what I would like to move to, Mr.  
3518 Silver, with you.

3519           You said you are a venture capitalist. This company  
3520 Solyndra raised \$1.5 billion. As I understand it, roughly a  
3521 billion dollars from venture capitalists plus the taxpayers  
3522 at half a billion plus the hedge funds came in for \$75  
3523 million. Is that correct?

3524           Mr. {Silver.} Approximately, yes.

3525           Mr. {Stearns.} Okay, approximately. So let us say 1.5  
3526 billion, and they did a burn rate of 1.5 billion in less than  
3527 2 years, is that correct?

3528           Mr. {Silver.} Not--a burn rate would be the amount of  
3529 money they go through per month--

3530           Mr. {Stearns.} Well, let us say they went through a  
3531 significant cash burn, is that a correct statement?

3532           Mr. {Silver.} Yes, they did.

3533 Mr. {Stearns.} Now, with all your experience on the  
3534 private sector and in hedge funds that you talked about,  
3535 don't you think that to look at that kind of cash burn rate  
3536 would send some alarms to you and to others at the Department  
3537 of Energy, something is seriously wrong here, and you have  
3538 got to protect taxpayers?

3539 Mr. {Silver.} I think you have to put this in context,  
3540 Congressman. The company's revenues actually were--grew very  
3541 dramatically during this period. They had \$6 million of  
3542 revenue in 2008. They had \$100 million in revenue of 2009,  
3543 \$140 million in revenue in 2010, and so that is what you  
3544 would expect a burn rate--

3545 Mr. {Stearns.} But even the emails we have shown you  
3546 said that they are going to run out of money by September  
3547 2011. So I guess the problem we have is what was Solyndra  
3548 burning all this money on? Do you know? Can you tell me  
3549 today? Of this 1.5 billion, where was it all going?

3550 Mr. {Silver.} In the most general terms--and I can't  
3551 give you dollars and cents sitting here today--but they built  
3552 this brand new huge fabrication facility, which was  
3553 approximately a 700-and-change million-dollar facility  
3554 equipped with advanced-state robotics. They had a smaller  
3555 prototype plant if you will called Fab 1, and they had hired--  
3556 --which was also part of the set of objectives--they had hired

3557 hundreds of additional people. There were 3,000 people who  
3558 were involved in the construction of the--

3559 Mr. {Stearns.} Okay. I will accept what you are  
3560 saying. I am just saying with your experience as a venture  
3561 capitalist, I am surprised that you didn't see this cash burn  
3562 rate as a serious flag--

3563 Mr. {Silver.} We did, Congressman, and we talked with  
3564 the company about it regularly, but I need to underscore  
3565 something I said before. As lenders and particularly with  
3566 lender liability issues, we are not actually in a position to  
3567 force a company--

3568 Mr. {Stearns.} Okay.

3569 Mr. {Silver.} --to do anything. So there were regular-  
3570 -

3571 Mr. {Stearns.} Let me just close by this question. In  
3572 your mind's eye, why did the FBI raid Solyndra?

3573 Mr. {Silver.} I have no idea, sir.

3574 Mr. {Stearns.} Was it a surprise to you?

3575 Mr. {Silver.} Yes.

3576 Mr. {Stearns.} Was it a surprise to you?

3577 Mr. {Zients.} Yes.

3578 Mr. {Stearns.} And all your colleagues have no idea why  
3579 the FBI raided it? And you had no advanced warning?

3580 Mr. {Silver.} I can't speak for all my colleagues but I

3581 was not aware of any investigation.

3582 Mr. {Stearns.} Do you suspect there is a reason why?

3583 Mr. {Silver.} I wouldn't even hazard a guess, sir.

3584 Mr. {Stearns.} Okay. My time has expired. The ranking  
3585 member is recognized for 5 minutes.

3586 Ms. {DeGette.} Thank you, Mr. Chairman.

3587 I guess, Mr. Silver, I would ask you what were the main  
3588 reasons DOE concluded Solyndra was worth the government's  
3589 investment?

3590 Mr. {Silver.} In 2008 and 2009, as the due diligence  
3591 was being done, the price of polysilicon, which is the  
3592 fundamental component for building out conventional solar  
3593 panels, was very high and had been high for an extended  
3594 period. It was expected to remain high. In addition, the  
3595 cost of installation, as I have indicated, called balance-of-  
3596 systems costs for installing conventional solar paneling is  
3597 very expensive. That is because the panels themselves are  
3598 flat, they need to penetrate the roof, there are air uplift  
3599 issues and the like. The cylindrical thin film technology  
3600 obviates all of that, and while the cylinders themselves are  
3601 more expensive than the panels, the total cost of ownership,  
3602 particularly absent the price of the expensive polysilicon  
3603 was very attractive.

3604 Ms. {DeGette.} So what happened in the market or with

3605 technology that caused those 2 things to not pan out  
3606 basically?

3607       Mr. {Silver.} Well, a number of different things.  
3608 First, the price of poly silicon actually came down more  
3609 dramatically than expected as plants came on quickly to ramp  
3610 up production. China began flooding the world market with  
3611 increasingly inexpensive conventional solar panels because,  
3612 as we have discussed earlier, the Chinese Government through  
3613 both the China Development Bank and other smaller banks has  
3614 provided multiple tens of billions of dollars of credit and  
3615 credit subsidies plus other forms of support to their solar  
3616 manufacturing industry. In addition, other countries have  
3617 become actively involved in supporting those areas as well.  
3618 So all of that drove the price curve down in a very  
3619 significant fashion.

3620       Ms. {DeGette.} And here is my question. Why didn't DOE  
3621 predict those events?

3622       Mr. {Silver.} I think we did understand that there were  
3623 challenges in the marketplace. The fundamental  
3624 responsibility and objective of this program is to identify  
3625 innovative technologies that can be built out at scale and  
3626 therefore leapfrog the traditional price curves that these  
3627 technologies are on. But if the slope of the curve is more  
3628 dramatic than anticipated, you will have this kind of event.

3629 Ms. {DeGette.} So you did predict it in a way but you  
3630 didn't think it would be this dramatic or what?

3631 Mr. {Silver.} Well, we have--as you know, we have a  
3632 large number of solar experts and solar industry experts at  
3633 the Department. In addition, on this particular project, a  
3634 number of different analysts and independent advisors were  
3635 brought on board to analyze this as well.

3636 Ms. {DeGette.} Do you think there are things DOE could  
3637 have done to prevent really this whole debacle with the  
3638 Solyndra loan? Was there more due diligence that could have  
3639 been done? Was it rushed too fast to approval? What could  
3640 have been done?

3641 Mr. {Silver.} It clearly wasn't rushed too fast because  
3642 there were several years of due diligence that went on.  
3643 There are always going to be changes and shifts in market  
3644 dynamics. I remind the committee that the loan which was to  
3645 build out the plant actually built out the plant on time and  
3646 on budget and at the same time revenues were dramatically  
3647 increasing. There was a significant--as I--again, I--there  
3648 was a significant customer base as well. But I guess the  
3649 fundamental challenge is to ensure that we are doing  
3650 everything we can to de-risk these projects, and that is why  
3651 we build in--the terms and conditions of these things are,  
3652 you know, dozens and dozens and dozens of pages long to do

3653 everything we can to de-risk these projects.

3654 Ms. {DeGette.} So you don't think there is anything  
3655 else that could have been done here? Is that your bottom  
3656 line?

3657 Mr. {Silver.} By the time of the restructuring, the  
3658 plant was built but had not been fitted out, and so one might  
3659 conceivably, you know, have identified a different plant  
3660 configuration. But again, I hesitate to second-guess because  
3661 it is the private sector that brought this project forward.  
3662 I want to remind the committee--

3663 Ms. {DeGette.} Yeah. I don't have much time left. Mr.  
3664 Zients, what is your opinion? Is there anything we could  
3665 have done to predict this or to stop this?

3666 Mr. {Zients.} Well, I think it is the nature of backing  
3667 innovative technologies, that there are technology risks in  
3668 some situations, market risks--we are competing in a global  
3669 market so I think the lesson learned here is that  
3670 marketplaces can change even more rapidly than one would have  
3671 anticipated in terms of the cost curve that we talked about  
3672 before. I don't think anyone would have thought that the  
3673 cost could decrease and the price could decrease so  
3674 dramatically. Going forward, we need to make sure that we  
3675 understand those types of market shifts can occur.

3676 Ms. {DeGette.} Thank you.

3677           Mr. Chairman, I just want to reiterate my request for  
3678 unanimous consent that the documents that have been referred  
3679 to in the hearing today by the members be included in the  
3680 record. And in addition, there is a document that I have  
3681 which I think would help complete the record. It is the  
3682 Credit Committee paper request for loan guarantee approval  
3683 dated March 11, 2009. And I think that would help answer  
3684 some of the follow-up questions about what happened after  
3685 this January 9 meeting. My only one concern is at the top of  
3686 this document it does say ``restricted distribution,  
3687 privileged business information,' ' and as I flip through it,  
3688 it does look like there might be business information. So  
3689 the caveat I would have is to look and see if there is  
3690 privileged business information in here before we make the  
3691 whole thing part of the record.

3692           Mr. {Stearns.} Okay. By unanimous consent, so ordered.

3693           [The information follows:]

3694 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|

3695           Mr. {Stearns.} And also we want to put our supplemental  
3696 report by unanimous consent also.

3697           [The information follows:]

3698           \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

3699 Ms. {DeGette.} Thank you.

3700 Mr. {Stearns.} With that, we will move to Mr. Griffith.

3701 The gentleman from Virginia is recognized for 5 minutes.

3702 Mr. {Griffith.} Thank you, Mr. Chairman.

3703 Mr. Silver, we talked earlier about other companies in  
3704 similar circumstances, and I am not sure that I asked the  
3705 question on observers. I asked others that had been  
3706 subordinated, whether the taxpayers' money had been  
3707 subordinated. Are there observers on any other boards as a  
3708 part of this Loan Guarantee Program?

3709 Mr. {Silver.} No, sir. Nor would there typically be.

3710 Mr. {Griffith.} And in regard to the observer, I am  
3711 concerned. You indicated to me that they told you that  
3712 bankruptcy was most likely by the end of July. Is that not  
3713 what you told me earlier?

3714 Mr. {Silver.} That the company was, you know, facing  
3715 imminent troubles. I don't know that I would describe it as  
3716 bankruptcy because, of course--

3717 Mr. {Griffith.} Because I asked bankruptcy before and  
3718 you said end of July.

3719 Mr. {Silver.} Well, they were clearly having financial  
3720 troubles again and we are going to need to figure out what to  
3721 do or would face a bankruptcy.

3722 Mr. {Griffith.} All right. Because that raises a real  
3723 concern for me that I think every member of this committee is  
3724 concerned about. Apparently they--not you all--Solyndra was  
3725 here on Capitol Hill speaking to Members of Congress  
3726 indicating everything was on track at the same time that your  
3727 observer was telling you all that there was a problem.  
3728 Again, I am not saying that you all knew they were up here  
3729 telling fibs, but I am concerned that they were up here  
3730 telling fibs. That being said, what was your observer's  
3731 role, because clearly they were in trouble, and what  
3732 recommendations did he make to you all and did you all send  
3733 word through him to the board on what they should do to  
3734 protect the taxpayer dollars?

3735 Mr. {Silver.} Well, first, Congressman, in this  
3736 particular case, the observer is a woman--

3737 Mr. {Griffith.} Thank you.

3738 Mr. {Silver.} --but what she did--and she is also the  
3739 head of our portfolio management group and a career civil  
3740 servant who ran that express function at the Export Import  
3741 Bank for many, many years. She is a highly--

3742 Mr. {Griffith.} Okay.

3743 Mr. {Silver.} --highly achieved--

3744 Mr. {Griffith.} She is a great lady.

3745 Mr. {Silver.} Great lady.

3746 Mr. {Griffith.} I am not going to dispute that. What  
3747 did she say we should do? Did she give you all advice on  
3748 what should be done? Did she take messages back to the board  
3749 saying we want to protect the taxpayer dollars? I mean they  
3750 laid off all the employees. Why couldn't they have laid off  
3751 half--those kind of questions. Was that going on?

3752 Mr. {Silver.} Yes, on a regular basis.

3753 Mr. {Griffith.} And can you provide us some kind of  
3754 written documentation as to what was going on and what steps  
3755 were being taken to try to protect the taxpayers' dollars  
3756 once you learned that even after the restructuring, this  
3757 company was going to fail or was likely to fail?

3758 Mr. {Silver.} I don't know if there are any documents  
3759 specifically related to that, but I do know that we have now  
3760 turned over, as I said, close to--

3761 Mr. {Griffith.} I understand. I am asking you if you  
3762 can--

3763 Mr. {Silver.} I don't think there are any other  
3764 documents. I mean I think we have--

3765 Mr. {Griffith.} I am asking you to create a document.  
3766 Can somebody give us something in writing as to what was  
3767 being done from July until the announcement that they were  
3768 going bankrupt to try to protect the taxpayers' dollars?

3769 Mr. {Silver.} We can certainly work with you on that,

3770 yes.

3771 Mr. {Griffith.} All right. Thank you. And all the  
3772 problems that you cite regarding Solyndra with maybe the  
3773 exception of the cost of the polysilicon--I apologize if I  
3774 got that wrong--dealing with the competition from China and  
3775 the economic instability in Europe and so forth where they  
3776 buy more of these things, on the other loans that you have,  
3777 are those pressures not also present?

3778 Mr. {Silver.} Well, as I said, the vast majority of our  
3779 portfolio--

3780 Mr. {Griffith.} Or production. I am talking about the  
3781 4 manufacturing.

3782 Mr. {Silver.} They are to a certain degree. The  
3783 project that I made reference to earlier actually is a  
3784 process project rather than a product product. So it  
3785 produces a standard conventional panel, but it does it in a  
3786 much more cost-effective way with about half the use of  
3787 materials and about half the time. So it is a bit of a  
3788 different configuration.

3789 Mr. {Griffith.} So how much money do we have--that we  
3790 have guaranteed a loan for that company?

3791 Mr. {Silver.} I think--I will have to check the exact  
3792 number but it is about \$135 million.

3793 Mr. {Griffith.} Okay. So we gave 535 to the company

3794 that is riskier and 135 to one. And are they doing well?

3795 Mr. {Silver.} So far. Again, these projects are only  
3796 now just beginning construction most of them.

3797 Mr. {Griffith.} Will you tell us if these companies  
3798 start to have problems so that we can anticipate this and try  
3799 to figure out what we need to do as the folks who are  
3800 ultimately responsible for the spending of the taxpayers'  
3801 money?

3802 Mr. {Silver.} Happy to work with you on that, sir.

3803 Mr. {Griffith.} All right. And then, you know, we act  
3804 like sometimes--and I know there is no perfect world and  
3805 maybe one guy or one gal got it right, but we act like, you  
3806 know, we didn't see this coming and yet, you know, there are  
3807 indications that somebody on your team--and I know you  
3808 weren't there at the time the loan was made, but somebody on  
3809 your team had it figured out and I am just wondering what  
3810 steps have you taken knowing that someone on your team raised  
3811 a concern that the models wouldn't work. What steps are you  
3812 taking to make sure that even it is a minority viewpoint,  
3813 when it comes to spending half a billion dollars of the  
3814 taxpayers' money, that maybe you will pay attention to every  
3815 warning sign.

3816 Mr. {Silver.} Well, as a matter of practice, with every  
3817 transaction we do, we run a series of sensitivity analyses

3818 which change variables in the assumptions and therefore--

3819 Mr. {Griffith.} Is that different now than it was in  
3820 August of 2009 when somebody raised the warning flag and  
3821 nobody seemed to pay attention?

3822 Mr. {Silver.} I don't know for sure but I doubt it. I  
3823 doubt that it was different. I mean it--

3824 Mr. {Griffith.} You are using the same model?

3825 Mr. {Silver.} It is standard practice to run  
3826 sensitivity analyses.

3827 Mr. {Griffith.} And now that we have had this hearing,  
3828 are you going to go back and take a look at it and see if you  
3829 can come up with a better-tuned or finer-tuned model?

3830 Mr. {Silver.} We will continue to work with OMB to  
3831 improve the models, yes.

3832 Mr. {Griffith.} All right. I yield back my time.

3833 Mr. {Stearns.} The gentleman yields back his time and  
3834 the gentleman emeritus of the Energy and Commerce Committee  
3835 is recognized for 5 minutes, Mr. Dingell of Michigan.

3836 Mr. {Dingell.} Mr. Chairman, I thank you for your  
3837 courtesy.

3838 I got a few little questions here to ask. I have been  
3839 looking sort of at how these events occurred and perhaps, Mr.  
3840 Silver, you could help me with this. On January 9, Solyndra  
3841 transaction was reviewed by a DOE Credit Committee and

3842 remanded for further analysis, right?

3843 Mr. {Silver.} Yes, sir.

3844 Mr. {Dingell.} It was not rejected.

3845 Mr. {Silver.} I am sorry?

3846 Mr. {Dingell.} It was not rejected. It just--

3847 Mr. {Silver.} It was not formally rejected. It was  
3848 remanded back.

3849 Mr. {Dingell.} Okay. Then, on the 15th of January,  
3850 loan program staff notified DOE Credit Review Board that it  
3851 had developed a schedule to complete Solyndra due diligence  
3852 that would bring the project to approval in early March 2009  
3853 and final closing by early to mid-April 2009, is that right?

3854 Mr. {Silver.} I think that was the original projection.

3855 Mr. {Dingell.} Okay. Then, Obama came into office on  
3856 January 20, 2009, 5 days later. So then, if I look here I  
3857 see on February, March 2009, DOE continues to negotiate terms  
3858 and conditions with Solyndra, is that right?

3859 Mr. {Silver.} I believe so, yes, sir.

3860 Mr. {Dingell.} Okay. And then on March 12, DOE Credit  
3861 Committee considers and approves Solyndra transaction. Is  
3862 that right?

3863 Mr. {Silver.} Yes, a recommendation for--

3864 Mr. {Dingell.} Who was on that Credit Committee?

3865 Mr. {Silver.} I would have to get you the specific

3866 names but it is the same group--

3867 Mr. {Dingell.} Please.

3868 Mr. {Silver.} --of career professionals that were on  
3869 the first committee.

3870 Mr. {Dingell.} No political appointees?

3871 Mr. {Silver.} No political appointees, no, sir.

3872 Mr. {Dingell.} All right. So then, on the 20th of  
3873 March, DOE issued a conditional commitment to Solyndra, is  
3874 that right?

3875 Mr. {Silver.} That is correct.

3876 Mr. {Dingell.} Now, what were the conditions in that  
3877 conditional commitment?

3878 Mr. {Silver.} Well, there were a number of them.  
3879 Conditions precedent are simply things that company, the  
3880 applicant, needs to do in order to complete its  
3881 responsibilities before we can close.

3882 Mr. {Dingell.} And what you say is if you do those  
3883 things, we will make--

3884 Mr. {Silver.} Right. Among them, for example, was the  
3885 raise of an additional several hundred million dollars of  
3886 capital, which they did. And during the time they were doing  
3887 their CP work, we were continuing to do additional due  
3888 diligence. It is important to remember that due diligence  
3889 continues post-conditional commitment all the way to final

3890 close.

3891 Mr. {Dingell.} Okay. Now, then, on the 27th of April,  
3892 independent market consultant report was submitted, is that  
3893 right?

3894 Mr. {Silver.} I believe so, yes.

3895 Mr. {Dingell.} Now, what did that report contain?

3896 Mr. {Silver.} Well, the market--and independent market  
3897 report generally describes the market for the product,  
3898 examines the competitive landscape, looks at relative cost  
3899 attributes, and the kind of classic documentation you would  
3900 describe around that.

3901 Mr. {Dingell.} Okay. Now, my colleagues on the other  
3902 side of the aisle appear to be of the view that at some  
3903 point, the Department of Energy denied the loan to Solyndra  
3904 on January 9 of 2009. Now, isn't it true that at that time  
3905 the Department's Credit Review Board simply asked for further  
3906 information and did not reject the request?

3907 Mr. {Silver.} The Credit Committee, sir, not the Credit  
3908 Review Board. But yes, the Credit Committee.

3909 Mr. {Dingell.} Okay. And then in your comments you  
3910 have indicated shortly after the request for more  
3911 information, the Loan Program Office outlined a timeline to  
3912 complete the due diligence on the Solyndra request. Is that  
3913 right?

3914 Mr. {Silver.} Yes, sir.

3915 Mr. {Dingell.} When did that occur? What date or  
3916 approximately what time?

3917 Mr. {Silver.} I don't know the exact date but they came  
3918 back rather quickly and said we will be in a position to  
3919 bring this back some time in the March time frame.

3920 Mr. {Dingell.} Okay. Now, when was that timeline  
3921 developed? Before or after President Obama came into office?

3922 Mr. {Silver.} Before the Obama Administration took  
3923 office.

3924 Mr. {Dingell.} It was, okay. So what I am seeing here,  
3925 then, this was followed up by the bankruptcy of Solyndra.  
3926 When was that bankruptcy filed?

3927 Mr. {Silver.} I don't know the specific date but  
3928 sometime in early September.

3929 Mr. {Dingell.} All right. Now--

3930 Mr. {Stearns.} The gentleman--it is September 6 of this  
3931 year is the bankruptcy.

3932 Mr. {Dingell.} Thank you, Mr. Chairman. I would note  
3933 that the bankruptcy, though, is not complete. It is going to  
3934 throw Solyndra into reorganization. Is that right?

3935 Mr. {Silver.} I believe so.

3936 Mr. {Dingell.} So the end result of that will be that  
3937 the United States will be a creditor, right?

3938 Mr. {Silver.} I am sorry, will be what?

3939 Mr. {Dingell.} The United States will be a creditor?

3940 Mr. {Silver.} A creditor, yes. I am sorry. Um-hum.

3941 Mr. {Dingell.} And now, the practical result of that is  
3942 that, first of all, we have done things to get ourselves in a  
3943 position where we see that Solyndra had a chance, at least  
3944 during this, to provide jobs, put forward a new technology in  
3945 the United States. Is that right?

3946 Mr. {Silver.} Yes, sir. The value--the analysis that  
3947 produced the going concern valuation suggested that it was a  
3948 2 to 4x greater recovery likely to the taxpayer than a  
3949 liquidation analysis.

3950 Mr. {Dingell.} Okay. And during that time, the  
3951 buildings and so forth were completed?

3952 Mr. {Silver.} Yes.

3953 Mr. {Dingell.} Is that right? And I want to thank you,  
3954 Mr. Chairman, for your courtesy here, but I just got just a  
3955 couple more small questions.

3956 I would note that the government's chance of recovery  
3957 from that reorganization are better both in amount and  
3958 certainty than if we had seen Solyndra go into bankruptcy  
3959 earlier, is that right?

3960 Mr. {Silver.} We expect so. We will have to see what  
3961 happens actually in the bankruptcy process, but we have a

3962 completed and operating plant fully fitted out, inventory and  
3963 all kinds of things that did not exist during the first  
3964 restructuring.

3965 Mr. {Dingell.} Very good.

3966 Mr. Chairman, you are very kind. Thank you for your  
3967 courtesy.

3968 Mr. {Stearns.} The gentleman's time has expired. Then  
3969 we recognize the gentleman from Texas, Dr. Burgess, for 5  
3970 minutes.

3971 Dr. {Burgess.} Thank you, Mr. Chairman.

3972 Gentlemen, I appreciate your perseverance and endurance  
3973 in the hearing today.

3974 This morning's Washington Post references an email  
3975 exchange between an assistant to Rahm Emanuel, then the White  
3976 House Chief of Staff, August 31 of 2009, to the Office of  
3977 Management and Budget about the upcoming announcement where  
3978 we talked about this before. This was the groundbreaking  
3979 where Secretary Chu was going to be at the company on  
3980 September 4 and Vice President Biden was going to appear by  
3981 satellite. And this staffer was concerned about the upcoming  
3982 Biden announcement on Solyndra and asked whether there is  
3983 anything we can do to help speed along the OMB side? And an  
3984 OMB staffer responded, ``I would prefer this announcement be  
3985 postponed. This is the first loan guarantee that we should

3986 have full review with all hands on deck and make sure we get  
3987 it right.'" I mean that seems pretty reasonable from OMB.

3988 Now, when the OMB staff briefed committee staff last  
3989 spring, well, there was, as you know, quite a lot of  
3990 difficulty in getting any of these documents to the committee  
3991 staff from OMB. It took 4 months to get any emails or  
3992 communications in reviewing Solyndra's loan guarantee. And  
3993 in fact this committee in July had a business meeting to  
3994 subpoena those documents because we were having no success in  
3995 acquiring those. And now we have them and we see that the  
3996 White House scheduled announcement date before the OMB even  
3997 began reviewing the deal in August 2009, we also see that OMB  
3998 was aware that the groundbreaking event and it felt time  
3999 pressures to do their work possibly resulting in the use of a  
4000 wrong financial model. Is this why the committee had to  
4001 subpoena the documents? Was there something here that you  
4002 didn't want us to see?

4003 Mr. {Zients.} Can I see the email that you are  
4004 referring to?

4005 Dr. {Burgess.} Well, actually, it is a Washington Post  
4006 article from this morning, but I am sure we have the same  
4007 emails in the document binder that can be provided.

4008 Ms. {DeGette.} Mr. Chairman, give him the email.

4009 Mr. {Stearns.} Gentlemen, continue. The gentleman has

4010 the time.

4011 Dr. {Burgess.} Well, they are looking for the emails  
4012 and we will come back to that. Let me just ask for both of  
4013 you, would you be able to provide to this committee, not  
4014 today but get back to us and provide the names to the  
4015 committee of every career and political appointee at both  
4016 Department of Energy and Office of Management and Budget and  
4017 the West Wing who worked on the project or inquired about the  
4018 project and provide access to committee staff to any of those  
4019 individuals that the committee believes is necessary to  
4020 question for this investigation.

4021 Mr. {Zients.} OMB has been cooperating with the  
4022 committee--

4023 Dr. {Burgess.} Sir, we subpoenaed the documents in  
4024 July. You can't characterize that as cooperation.

4025 Mr. {Zients.} A few days before the subpoena, which we  
4026 thought was unnecessary, we turned over--

4027 Dr. {Burgess.} Unnecessary? We had this hearing--

4028 Mr. {Zients.} --1,000 pages--

4029 Dr. {Burgess.} --and your chair was empty in July.  
4030 Your chair was empty. There was no one there. No one  
4031 responded.

4032 Mr. {Zients.} Well, as to that, I was given less than 4  
4033 days' notice. I had a personal reason why I could not be

4034 here. I expressed to Chairman Stearns directly on the  
4035 telephone that I was willing to come if there could have been  
4036 an alternative time. The decision was made there was no  
4037 alternative time but I want to be clear that I was willing to  
4038 come to the committee as long as I had either sufficient  
4039 notice--

4040 Dr. {Burgess.} In the sense of time, I mean this has  
4041 been going on for a long time.

4042 Mr. {Zients.} So in--

4043 Dr. {Burgess.} And here is the thing that is really  
4044 concerning a lot of us. Had you responded to the committee  
4045 staff, had you responded to the committee's request, could we  
4046 perhaps have preserved some of those taxpayer dollars that  
4047 have now been lost in a bankruptcy proceeding and  
4048 subordinated to a venture capital firm?

4049 Mr. {Zients.} Prior to--

4050 Dr. {Burgess.} Had there been cooperation from your  
4051 office, would this loss to the taxpayer have been as great?

4052 Mr. {Zients.} Prior to the subpoena, which I believe  
4053 was mid-July, OMB worked with committee staff, turned over  
4054 1,000 pages of documents, did numerous meetings. Since mid-  
4055 July OMB has turned over over 9,000 pages of documents.  
4056 There have been--

4057 Dr. {Burgess.} Yeah, sir, I have got to interrupt you

4058 because I am going to run out of time. That letter was in  
4059 March and it took a long time to get anything back.

4060 Mr. {Zients.} I am sorry?

4061 Dr. {Burgess.} I have a couple of things--and you have  
4062 gotten now the emails. I am going to ask you to take those  
4063 and we will get you the question in writing, and I would  
4064 appreciate a response to that question--

4065 Mr. {Zients.} I am sorry, can you repeat the question?

4066 Dr. {Burgess.} Well, I am going to submit the question  
4067 to you in writing regarding those emails so we are all clear  
4068 about what we are asking and what we are answering. And then  
4069 I also have a memo from October 25 of 2010 to the President  
4070 from Carol Browner, Ron Klain, and Larry Summers. And I have  
4071 a series of questions that I want to ask you about this memo  
4072 as well, and because of time constraints, obviously, I can't  
4073 get to them. We will provide you this memo and we will  
4074 provide you the questions. And I would appreciate a timely  
4075 response to those interrogatories. Thank you.

4076 Mr. {Zients.} Thank you.

4077 Dr. {Burgess.} And I will yield back, Mr. Chairman.

4078 Mr. {Stearns.} The gentleman yields back.

4079 Mr. Scalise is recognized for 5 minutes.

4080 Mr. {Scalise.} Thank you, Mr. Chairman.

4081 I want to ask Mr. Zients--is that the proper way to say

4082 it? I want to get that right.

4083 Mr. {Zients.} Thank you.

4084 Mr. {Scalise.} Sure. You were at OMB throughout this  
4085 whole process with Solyndra from when they got the original  
4086 loan?

4087 Mr. {Zients.} No.

4088 Mr. {Scalise.} When did you come into OMB?

4089 Mr. {Zients.} When I came into OMB I was confirmed by  
4090 the Senate in late June of 2009. So the conditional  
4091 commitment period, the earlier administration period I was  
4092 not at OMB.

4093 Mr. {Scalise.} And when was the loan to Solyndra  
4094 finalized?

4095 Mr. {Zients.} In September so I was there--

4096 Mr. {Scalise.} So you were there at OMB--

4097 Mr. {Zients.} I was at OMB at the time. I was not--

4098 Mr. {Scalise.} At the time that Solyndra first got the  
4099 loan, first was approved--

4100 Mr. {Zients.} When it closed, yes.

4101 Mr. {Scalise.} --for and got the loan.

4102 Mr. {Zients.} When it closed.

4103 Mr. {Scalise.} Following up on some of the questions  
4104 that Dr. Burgess had--

4105 Mr. {Zients.} Just to clarify, I was not personally

4106 involved in--

4107           Mr. {Scalise.} Well, and these are the questions that I  
4108 am going to ask you about because there is involvement  
4109 between OMB and the Department of Energy and the White House,  
4110 and what we have been trying to establish is just exactly  
4111 what was that relationship between OMB, the Department of  
4112 Energy, and the White House relating to the Solyndra loan?  
4113 And of course, we did start asking for this information  
4114 months ago. Prior to the restructuring--and your office was  
4115 not complying and getting us some of the information we were  
4116 requesting to the point we did have to subpoena. And there  
4117 is a timeline issue that a lot of us have concerns with, too,  
4118 because if we were able to stop the restructuring from  
4119 happening, for example, then the taxpayers would not have  
4120 been pushed in the back of the line to where now they are  
4121 subordinated in bankruptcy--

4122           Mr. {Zients.} Just so we have our timelines correct, I  
4123 believe that the restructuring was completed in February.

4124           Mr. {Scalise.} And our staff started asking for some of  
4125 this documentation prior to that time.

4126           Mr. {Zients.} Is that--that is not my understanding.

4127           Mr. {Scalise.} That is the timeline I have. But  
4128 regardless of that, I want to get to some of these specific  
4129 emails because these emails span throughout the entire length

4130 of the Solyndra loan and restructuring, and it seems to  
4131 indicate a pattern. Starting going back in Slide 7 if we can  
4132 put that up and that way you can see it--and by the way,  
4133 these emails were all provided to the minority as soon as we  
4134 got them. So everybody had access to these emails on this  
4135 committee and subcommittee.

4136 Ms. {DeGette.} Does the witness have these emails that  
4137 Mr. Scalise is referring to?

4138 Mr. {Scalise.} I think they just gave him these emails.  
4139 Some of these came from--

4140 Mr. {Zients.} I don't think that--

4141 Mr. {Scalise.} --his own agency, of course. Some of  
4142 these are from OMB.

4143 Mr. {Zients.} Talking about specific emails, I agree  
4144 with the Congresswoman--

4145 Mr. {Scalise.} Well, and I want to ask you a question  
4146 about this email. I think it does show though--what I want  
4147 to do is show that there was a pattern of expediency, of  
4148 rushing--

4149 Ms. {DeGette.} Does the witness have this email?

4150 Mr. {Stearns.} Point of order? What is your point of  
4151 order?

4152 Mr. {Zients.} I do--if I am going to respond to an  
4153 email, I need to make sure I have it.

4154 Mr. {Stearns.} Does Mr. Zients have that?

4155 Mr. {Scalise.} Mr. Chairman, is the clock still  
4156 running? If we can just get the clock to stop while--

4157 Mr. {Stearns.} Well, we gave you about 2 minutes before  
4158 you even started the clock, so you are well into it. But now  
4159 the witness has the emails, is that correct?

4160 Mr. {Zients.} I am going to need to absorb this. What  
4161 he has just handed me is not what is on the screen. I can  
4162 look through and see--

4163 Mr. {Scalise.} Page 7, I will read the quote. ``In  
4164 congressional testimony''--and by the way this is  
4165 congressional testimony. This isn't some email that we just  
4166 got. This was testimony going back to March of 2009, a  
4167 senior Department of Energy official said that Secretary Chu  
4168 ``has directed us to accelerate the process significantly''  
4169 talking about the loan process. And I will go to some OMB  
4170 emails. Of course, on page 9 on Slide 9--

4171 Mr. {Zients.} The email I have in front of me to the  
4172 best of my knowledge--and again, I wasn't actually in seat on  
4173 March 17, 2009, but to the best of my knowledge doesn't have  
4174 any OMB people on it, so it is very difficult--

4175 Mr. {Scalise.} Right, but there is a March of 2009  
4176 email on Slide 9, ``this deal is not ready for prime time.''  
4177 Go to the next slide. ``Given the time pressure we are under

4178 to sign off on Solyndra, we don't have time to change the  
4179 model''--that is an OMB staff email from August of 2009 after  
4180 you came on board. Another quote from that same email, ``but  
4181 we also need to make sure they don't jam us on later deals so  
4182 there is a time to negotiate those, too.'' Next page--

4183 Mr. {Zients.} So--

4184 Mr. {Scalise.} --more OMB emails. And I will ask if I  
4185 want to get all of these into record. Again, they are  
4186 available to both committee staffs. ``If there is anything  
4187 we can help speed along on the OMB side''--

4188 Mr. {Zients.} If I am going to respond, then I need to--  
4189 -we need to as we go case by case, I need to understand what  
4190 email you are referring to, I need to have that email in  
4191 front of me--

4192 Mr. {Scalise.} Sure. There is a communication on Slide  
4193 11, for example, August 31, 2009, the special assistant noted  
4194 the Vice President's announcement at Solyndra on September 4  
4195 and whether ``there is anything we can help speed along on  
4196 OMB side.'' So were you involved? And forget about the  
4197 emails. Were you involved in any communications with the  
4198 White House to push the Department of Energy to speed this  
4199 thing along?

4200 Mr. {Zients.} No.

4201 Mr. {Scalise.} You were not?

4202 Mr. {Zients.} No.

4203 Mr. {Scalise.} Were you aware that anyone else at OMB  
4204 was involved--

4205 Mr. {Zients.} I am now aware in my preparation for the  
4206 hearing that there was a request from the Vice President's  
4207 office about scheduling logistics for a potential event.  
4208 This again has nothing to do with the decision to give the  
4209 loan or not give the loan to the company. This process has  
4210 to do with OMB's statutory responsibility to determine the  
4211 right credit subsidy. The right--the credit subsidy was  
4212 actually increased during--

4213 Mr. {Scalise.} Well, then I don't know if that was  
4214 credit subsidies. I will go to Slide 12 because this is  
4215 specifically an OMB email and I will read it and you can look  
4216 at it.

4217 Mr. {Zients.} Well, OMB--

4218 Mr. {Scalise.} This is an OMB email that specifically  
4219 talks about the approval. ``We have ended up with a  
4220 situation of having to do rushed approvals on a couple of  
4221 occasions, and we are worried about Solyndra at the end of  
4222 the week. We would prefer to have sufficient time to do our  
4223 due diligence reviews and have the approval set the date for  
4224 the announcement rather than the other way around.'' This  
4225 was a communication between OMB and Terrell McSweeny at the

4226 office of the Vice President.

4227 Mr. {Zients.} This does have to do with the credit  
4228 subsidy score. This does not have to do with the yes/no on  
4229 the loan. This has to do with the credit subsidy score. As  
4230 I mentioned before, the credit subsidy score was actually  
4231 increased--

4232 Mr. {Scalise.} Right. And so the question, then--and I  
4233 am almost out of time--

4234 Mr. {Zients.} Let me just say one thing.

4235 Mr. {Scalise.} There is clear--

4236 Mr. {Zients.} In my preparation for this hearing--

4237 Mr. {Scalise.} --communication between OMB and the  
4238 White House and Department of Energy regarding all this,  
4239 whether it was just about a ribbon cutting, but I think it  
4240 shows that crony capitalism is running amok relating to this  
4241 program. And I think this is a classic example. And there  
4242 was a PricewaterhouseCoopers study that was done back in  
4243 2010. USA Today writes about it in an article, in an  
4244 editorial today when they talk about PricewaterhouseCoopers  
4245 saying there is substantial doubt about its ability to  
4246 continue going as a concern, Solyndra. And so this was over  
4247 a year ago they reported a serious concern about Solyndra  
4248 going forward and obviously--

4249 Mr. {Zients.} That is--

4250 Mr. {Scalise.} --that was pushed back from the  
4251 administration somewhere to push this thing along.

4252 Mr. {Zients.} I am sorry. The chronology of events is  
4253 not consistent. You are asking about a period of time in  
4254 August/September of 2009. You are now referencing--

4255 Mr. {Scalise.} I am going throughout the whole process.  
4256 I am not just focusing--

4257 Mr. {Zients.} You are now referencing--

4258 Mr. {Scalise.} --on one area because there was a loan,  
4259 there was a restructuring. There has continued to be--

4260 Mr. {Zients.} To respond to your question about--

4261 Mr. {Scalise.} --advancements of plenty and yet there  
4262 were warning signs at every level, and yet it seems like  
4263 crony capitalism was trumping the smart decision-making  
4264 process and due diligence that should have been going on and  
4265 a lot of these emails show that out to be the case. And yet  
4266 \$535 million of taxpayer money are now at risk. And so I  
4267 hope you can understand and maybe you weren't directly  
4268 involved but somebody at your agency was--

4269 Mr. {Stearns.} The gentleman's time has expired.

4270 Mr. {Scalise.} --in that chain. I yield back.

4271 Mr. {Stearns.} The gentleman from--Mr. Griffith is  
4272 recognized for 5 minutes. Oh, Mr. Markey. Mr. Markey, do  
4273 you wish to ask questions in the second round? Yes, I mean

4274 you are up if you want to go right now.

4275 Mr. {Markey.} May I reserve this time?

4276 Mr. {Stearns.} Okay. You can reserve, yeah. Mr.

4277 Griffith from Virginia is recognized for 5 minutes.

4278 Mr. {Griffith.} Mr. Chairman, I already had a second

4279 round. I am glad to take a third round.

4280 Mr. {Stearns.} Okay. Then we can go to the gentleman

4281 who is not on the subcommittee but he is on the full

4282 committee, the gentleman from Kansas is recognized for 5

4283 minutes.

4284 Mr. {Pompeo.} Thank you, Mr. Chairman.

4285 Mr. Zients, following up on Representative Scalise, were

4286 you not aware that the staff was being jammed, that they were

4287 being rushed? Were you at any time aware that they were

4288 being hurried and that they felt hurried or were you just

4289 oblivious to that?

4290 Mr. {Zients.} What period of time are we talking about?

4291 Mr. {Pompeo.} At any. How about we will start at any--

4292 Mr. {Zients.} No.

4293 Mr. {Pompeo.} --period of time.

4294 Mr. {Zients.} So I was not involved so I would not have

4295 been aware at the time. In my preparation for this hearing--

4296 Mr. {Pompeo.} Um-hum.

4297 Mr. {Zients.} --I talked to OMB staff, and again, what

4298 we are talking about here is the credit subsidy.

4299 Mr. {Pompeo.} I understand.

4300 Mr. {Zients.} And on the credit subsidy, the OMB staff  
4301 has presented to me that they had no hesitation as to the  
4302 final decision, and the final decision of the credit subsidy  
4303 actually increased the credit subsidy--

4304 Mr. {Pompeo.} Right.

4305 Mr. {Zients.} --which made it more conservative.

4306 Mr. {Pompeo.} Right, they could still have been wrong  
4307 because they were hurried. Do you think these emails, they  
4308 were just wrong, they were making this stuff, they weren't  
4309 hurried? When they--

4310 Mr. {Zients.} At the end of the day, the OMB career  
4311 staff, which has deep expertise in credit scoring, felt  
4312 comfortable--

4313 Mr. {Pompeo.} Yeah.

4314 Mr. {Zients.} --with the credit subsidy score.

4315 Mr. {Pompeo.} That expertise is very apparent in a half  
4316 a billion dollars being lost by the American taxpayer. It is  
4317 readily apparent to us.

4318 Mr. Zients, there is a January 4 memorandum I want to  
4319 just read to you. It is an OMB memorandum prepared by the  
4320 OMB staff. It says, ``even under DOE's proposed  
4321 restructuring, we are skeptical about the long-term viability

4322 of the company. Bankruptcy or default are real possibilities  
4323 and Solyndra's product is priced at a premium in the market  
4324 with rapidly declining prices and the company's cost  
4325 structure does not cover operating margins. It is not clear  
4326 that Solyndra would be able to achieve the scale and  
4327 efficiency improvements necessary to improve margins.' ' This  
4328 was during the restructuring time. Why did OMB not stop the  
4329 restructuring from going forward?

4330 Mr. {Zients.} OMB--

4331 Mr. {Pompeo.} Or recommend that?

4332 Mr. {Zients.} OMB pressure-tested DOE's analysis. OMB  
4333 determined that the company was in imminent default, and then  
4334 OMB determined that DOE's recommendation that the company be  
4335 restructured was preferable to liquidation, that that was a  
4336 reasonable outcome that DOE had reached.

4337 Mr. {Pompeo.} Would you please provide the witness,  
4338 there is a series of emails in and around that same time,  
4339 January 4, 2011, one of them at 2:08 p.m.? Can you just make  
4340 sure he has got a copy of that? Thank you.

4341 I will summarize but this is an email chain where it is  
4342 very clear that the data are suggesting to staff at this  
4343 moment in time that liquidation will cost the taxpayers a  
4344 lower loss than will restructuring. Do you see, it says  
4345 liquidation--it is underlined, it has got some analysis for

4346 expected recovery, and then it shows ``restructured, expected  
4347 loss.'' The difference under bankruptcy at the time they  
4348 expected losses estimated by this person on your staff to be  
4349 \$141 million, and it says if we do the restructuring, your  
4350 staff says it will be about \$385 million loss. Do you see  
4351 what I am referring to there?

4352 Mr. {Zients.} Yeah. I am not on this email chain but--

4353 Mr. {Pompeo.} No, sir, you are not, but they work for  
4354 you.

4355 Mr. {Zients.} I am sorry?

4356 Mr. {Pompeo.} You are not on the chain but they work  
4357 for you.

4358 Mr. {Zients.} Right. So, you know, our staff is  
4359 obviously pressure-testing and understanding an evolving  
4360 situation, the restructuring was actually done in February--

4361 Mr. {Pompeo.} Right.

4362 Mr. {Zients.} --off of DOE's recommendation. OMB  
4363 decided that that was reasonable. At this point in time,  
4364 there was information that the staff was looking at. The  
4365 information obviously evolved across that period of time. As  
4366 OMB got more information, the DOE made its final  
4367 recommendation. OMB determined that DOE's recommendation was  
4368 reasonable to restructure the loan.

4369 Mr. {Pompeo.} Can you show me that evolution because

4370 there is no evidence in the documents I have reviewed of any  
4371 evolution. This is what your agency thought on January 4 of  
4372 2011, and I have seen no data that would suggest there was an  
4373 evolution other than your testimony here this morning.

4374 Mr. {Zients.} Well, first of all, this is an email from  
4375 one analyst--

4376 Mr. {Pompeo.} Multiple emails.

4377 Mr. {Zients.} I would not represent--

4378 Mr. {Pompeo.} Read the whole--

4379 Mr. {Zients.} --that that is to what the agency--

4380 Mr. {Pompeo.} Read the whole chain, sir. These folks  
4381 think this is a horrible idea to go forward with this  
4382 restructuring. They think the taxpayers will lose. And  
4383 these are the only government officials in the entire process  
4384 that seem to me to have demonstrated to have concern for  
4385 taxpayer finances.

4386 Mr. {Zients.} OMB's role here is to make sure that this  
4387 budgeted for correctly. Ultimately, DOE has--is ultimately  
4388 responsible for the decision as to whether or not to  
4389 restructure or liquidate.

4390 Mr. {Pompeo.} Yeah.

4391 Mr. {Zients.} OMB determined that that was a reasonable  
4392 conclusion.

4393 Mr. {Pompeo.} Do you think it was a reasonable

4394 conclusion today, sitting here today? Do you think it was a  
4395 reasonable conclusion?

4396 Mr. {Zients.} It is unclear--

4397 Mr. {Pompeo.} Well, what is your opinion, sir? Do you  
4398 think it was a reasonable conclusion?

4399 Mr. {Zients.} To restructure the loan when it does?

4400 Mr. {Pompeo.} Um-hum.

4401 Mr. {Zients.} I think that there is reason to believe  
4402 that that was reasonable at that point in time.

4403 Mr. {Pompeo.} Reason to believe it was reasonable and  
4404 you are not a lawyer? I mean an answer like that--

4405 Mr. {Zients.} It was a reasonable conclusion at that  
4406 point in time.

4407 Mr. {Pompeo.} Mr. Silver, do you think it was a  
4408 reasonable conclusion to do the restructuring at this time?

4409 Mr. {Silver.} Yes, I do, Congressman. We did a  
4410 detailed liquidation analysis, which suggested that the  
4411 returns would be 2 to 4x below what they would be as a going  
4412 concern. And to do that, we evaluated the price of the  
4413 buildings and the land. We also evaluated the value of  
4414 inventory on a going concern basis. What you do on a going  
4415 concern basis, just to be clear, is you match it with what  
4416 are called IBA--

4417 Mr. {Pompeo.} I am very familiar with that--

4418 Mr. {Silver.} So you use--and since you are, you will  
4419 know that we scour the market for comparables. We took the  
4420 low end of the comparables, and then we measured that against  
4421 the liquidation.

4422 Mr. {Pompeo.} So you were just wrong? But you still  
4423 believe you might be right because--

4424 Mr. {Silver.} Well, you don't know what will happen--

4425 Mr. {Pompeo.} Right. So what do you think? Do you  
4426 think we did a good deal?

4427 Mr. {Silver.} I think that when you are called on to  
4428 make a judgment at the time with the best available  
4429 information you have, you go with the probabilistic return.

4430 Mr. {Pompeo.} Right. And so you think it was realistic  
4431 to subordinate the taxpayer at that time as well as part of  
4432 that restructuring?

4433 Mr. {Silver.} Every piece of data that we had from  
4434 independent analysts about the technology at that time--which  
4435 we re-underwrote the technology and the market space. We had  
4436 another market report done--all seemed to suggest that that  
4437 could happen.

4438 Mr. {Pompeo.} I appreciate it. I just want to ask one  
4439 more question. My time is up. I have listened to you for  
4440 several hours now, just yes or no, do you both just treat  
4441 this as just the normal cost of doing business? Is that how

4442 you think this failure at Solyndra--you just think this was  
4443 the normal cost of doing business? You talk about portfolio  
4444 theory, this stuff happens, bad things happen. Would you  
4445 both just say yes or no? This is just the way things go?  
4446 Yes or no.

4447 Mr. {Silver.} I think that while it is very  
4448 regrettable, the loss was anticipated and when Congress set  
4449 out the credit--appropriated credit subsidy--

4450 Mr. {Pompeo.} You think it is very normal. Mr. Zients?

4451 Mr. {Zients.} It is not normal. It is a very  
4452 disappointing outcome, but it comes with the terrain of  
4453 backing innovative technologies.

4454 Mr. {Pompeo.} Yeah, it is part of what happens when the  
4455 government gets involved in things like this. I agree.

4456 Mr. {Silver.} Well, it is also what is required in  
4457 order to compete successfully with what is happening around  
4458 the world, particularly in China.

4459 Mr. {Pompeo.} Solyndra certainly wasn't capable of  
4460 competing even in spite of all of this government assistance,  
4461 were they?

4462 Mr. {Stearns.} The gentleman's time has expired.

4463 Mr. {Pompeo.} Thank you. Thank you, Mr. Chairman.

4464 Mr. {Stearns.} I think we are ready to close--

4465 Mr. {Markey.} Mr. Chairman?

4466 Mr. {Stearns.} --end the committee unless the gentleman  
4467 from Massachusetts wishes to participate in the second round.

4468 Mr. {Markey.} Mr. Chairman? Mr. Chairman.

4469 Mr. {Stearns.} Oh, Mr. Bilbray, too. So Mr. Bilbray,  
4470 you will be after the gentleman from Massachusetts. We have  
4471 recognized Mr. Markey for 5 minutes.

4472 Mr. {Markey.} Thank you, Mr. Chairman.

4473 I have to compliment my Republican colleagues on their  
4474 discipline, but after weighing these relentless and very  
4475 serious allegations of lawbreaking and inappropriate  
4476 politicization of the loan guarantee process, I am  
4477 unconvinced. Three years of due diligence was exercised in  
4478 considering this application. OMB completed their review  
4479 process, albeit in expedited manner due to the nature of a  
4480 Recovery Act that needed to get money out the door as quickly  
4481 as possible. I would add that the chairman of the  
4482 subcommittee and the full committee expressed a need to get  
4483 Recovery Act money out the door quickly after that law was  
4484 passed.

4485 Mr. Silver, do you believe that the Department cut  
4486 corners in considering this loan guarantee in the months and  
4487 years leading up to its finalization in September of 2009?

4488 Mr. {Silver.} Again, with a review of the record--I  
4489 wasn't there, but with a review of the record, no, I don't

4490 believe so.

4491 Mr. {Markey.} Mr. Zients, was OMB able to do and  
4492 exercise their oversight role to complete a comprehensive  
4493 review of the Department of Energy's loan package to  
4494 Solyndra?

4495 Mr. {Zients.} Yes. My belief is yes.

4496 Mr. {Markey.} When you pulled thousands of pages of  
4497 emails, can you tell whatever story you would like when you  
4498 look back retrospectively? You know, we live life forwards  
4499 but we understand it backwards. Is it possible to--

4500 Mr. {Silver.} I believe that--

4501 Mr. {Markey.} --create any storyline?

4502 Mr. {Silver.} I believe that can happen, yes, sir.

4503 Mr. {Markey.} The majority has chosen to politicize  
4504 this program and it is attempting to discredit clean energy  
4505 the same way they have tried to do to climate science. It is  
4506 that simple. That simple.

4507 What this really reminds me of, to be honest with you,  
4508 is the late 1990s after this committee had passed the  
4509 Telecommunications Act of 1990 and there was a boom on  
4510 broadband. And many companies failed. Pets.com., the list  
4511 is long. On the other hand, there were companies that, in  
4512 the new environment that we had created, were successful.  
4513 EBay, Amazon, Google, YouTube, the list goes on. There were

4514 many successes, many failures because we created a paranoia-  
4515 inducing Darwinian marketplace. What is different here, of  
4516 course, and what no one anticipated in 2009--although we were  
4517 in a competition with the Chinese--and by the way, when we  
4518 passed the Telecommunications Act, we were trying to make  
4519 sure we branded it Made in the USA, which we did. That is  
4520 how people view that internet revolution in Egypt and Tunisia  
4521 and countries around the world. But here, the Chinese have  
4522 now decided to dump \$20 billion into 4 companies. Can you  
4523 talk about that, Mr. Silver? Can you talk about this  
4524 environment now within which American solar companies, wind  
4525 companies are now competing against a state-run set of  
4526 corporations against our private-sector companies?

4527       Mr. {Silver.} Yes, Congressman, I would be happy to.  
4528 Not only, as you pointed out, has China underwritten its  
4529 solar manufacturing industry with tens and tens of billions  
4530 of dollars, they have, as I indicated earlier, produced and  
4531 provided a wide array of additional support facilities  
4532 including free land and other kinds of things. There are  
4533 also mechanisms in place for the purchase of those panels in  
4534 the domestic market that don't exist here.

4535       But I don't think we should limit our focus to China  
4536 alone. Countries around the world understand the importance  
4537 and the viability of this space, and it is important that we

4538 take this as a global challenge. There will only be one  
4539 opportunity for us to become a winner here and if we miss  
4540 that window, we will have missed a multitrillion dollar  
4541 market.

4542 Mr. {Markey.} I thank you. I think if we keep China  
4543 here as the headline and we understand what we were trying to  
4544 do in putting together a plan, we had a plan for telecom.  
4545 China and the United States are pretty much starting at the  
4546 same point in solar and wind. We were trying to put together  
4547 a plan, batteries as well.

4548 Let me also say this. You can look back and I can right  
4549 now say there is an NRC senior scientist who has a memo to  
4550 all the NRC commissioners saying that the AP1000, which is  
4551 the reactor the Southern Company wants to build, will crack  
4552 like a glass cup if there is an earthquake. Now, you can  
4553 keep that memo and you can say that is the reason we should  
4554 give no loan guarantees to the Southern Company or other  
4555 companies. We can just say we waited in the totality of all  
4556 the evidence.

4557 I am hearing my Republican colleagues expressing a great  
4558 deal of angst about whether or not a \$535 million loan  
4559 guarantee should have been given to Solyndra when there is no  
4560 evidence that they have expressed any concerns about far  
4561 larger guarantees that have been given to the Southern

4562 Company, to other companies that could in fact wind up with  
4563 billions of dollars ultimately being put on the shoulders of  
4564 the taxpayers in our country. And I am talking specifically  
4565 about the nuclear sector. There is a fundamental crisis  
4566 happening in Japan and Germany and other countries. We are  
4567 part of a global story and it is impacting the domestic  
4568 nuclear industry. Those loan guarantees could come back to  
4569 haunt the taxpayers in our country and I hope that we see a  
4570 similar interest in that subject, because that is happening  
4571 right now. And now is the time for this committee to  
4572 exercise the due diligence to protect the taxpayer.

4573 Thank you, Mr. Chairman.

4574 Mr. {Stearns.} The gentleman's time has expired and the  
4575 gentleman from California, Mr. Bilbray, is recognized.

4576 Mr. {Bilbray.} Yes, Mr. Chairman. Let me join with my  
4577 colleague from Massachusetts and call for a hearing on the  
4578 nuclear issue because I think, you know, the gentleman from  
4579 Massachusetts has to remember that like just last week in San  
4580 Diego, the plants shut down exactly as planned during a  
4581 blackout exactly as posed to get the facts from Japan. And  
4582 as somebody who has a nuclear facility in his county, I am  
4583 more confident now of the safety of our technology than I was  
4584 beforehand and remind the gentleman from Massachusetts that  
4585 the beautiful bay of San Diego Bay is full of nuclear

4586 reactors being run by 20-something-year-old kids. And it is  
4587 safer and cleaner because we have those reactors in San Diego  
4588 Bay. But getting back to the issue here is that the  
4589 technology was not keeping up with the hype. And as somebody  
4590 that still feels strongly about the opportunity of clean  
4591 technology, I think the inappropriate application of  
4592 political influence or perception--and I don't think this was  
4593 an intentional misdeed. I think it is a much deeper problem  
4594 that this was a prejudiced for a broad definition of  
4595 technology as if somehow this was going to be the answer for  
4596 everything.

4597         First of all, let me clarify the gentleman from  
4598 Massachusetts pointed out that China has been aggressive on  
4599 this, I will remind you that this plant was cited where the  
4600 electricity was 22 cents a kilowatt, twice of what it is in  
4601 Ohio and where China is producing them in an area where there  
4602 is 6 cents a kilowatt is what they are charging. So, Mr.  
4603 Silver, all of this does relate to the productivity and the  
4604 ability to compete in a world market, doesn't it?

4605         Mr. {Silver.} Yes. Certainly, citing issues are  
4606 relevant.

4607         Mr. {Bilbray.} And shouldn't these things be considered  
4608 along with the specific technology that is being proposed to  
4609 provide a certain product by asking for the grant?

4610 Mr. {Silver.} Once again, Congressman, we don't provide  
4611 grants, but I think what you mean is--

4612 Mr. {Bilbray.} The loan guarantee.

4613 Mr. {Silver.} The technologies that we underwrite are  
4614 those that are spelled out in the legislation. We don't  
4615 search out those that aren't.

4616 Mr. {Bilbray.} Okay. I have a question for you  
4617 specifically. This part of the stimulus bill, San Diego we  
4618 are siting a French facility to build solar panels  
4619 specifically because we have a stationary source. First  
4620 thing we do is not try to build a new facility. California,  
4621 as everyone knows, has had businesses fleeing. We have huge  
4622 open warehouses, and the logic our mayor is making and we are  
4623 making working with him is why don't we go ahead and retrofit  
4624 existing structures rather than building one? The fact that  
4625 this was proposing to take virgin farmland and go from the  
4626 ground up and build all the construction of a whole new  
4627 building with all the related so-called stimulus of building  
4628 on virgin land on the ground up, did that have any influence  
4629 in the fact that this was included in the stimulus bill, not  
4630 just the green part of it, of the hope that all solar was  
4631 going to be good, but the fact that you had a whole new  
4632 factory being build in California, probably the only one even  
4633 being considered? Do you think that had any influence on the

4634 approval of this process that the fact that they were  
4635 capitalizing a whole new facility rather than retrofitting an  
4636 existing one?

4637 Mr. {Silver.} I don't know how to answer that. The  
4638 applications that we receive come in from the sponsors  
4639 themselves, so the proposal, the project has already been put  
4640 together by private sector actors, including the investors in  
4641 whatever project it is.

4642 Mr. {Bilbray.} But that is in the prospectus.

4643 Mr. {Silver.} No, they are making--they are actually  
4644 filing an application for a specific--funding for a specific  
4645 project.

4646 Mr. {Bilbray.} But the technical review had that in  
4647 consideration.

4648 Mr. {Silver.} Well, the technical review--

4649 Mr. {Bilbray.} That was part of the documentation they  
4650 gave the Technical Review Board.

4651 Mr. {Silver.} The technical review is intended to  
4652 ensure that the technology works, which clearly it did--they  
4653 sold hundreds of millions of dollars worth of product--and to  
4654 ensure that the plant will be built in such a way as to  
4655 produce them appropriately.

4656 Mr. {Bilbray.} Okay. So in other words, do you or do  
4657 you not feel that the fact that they had a major capital

4658 improvement proposed in this package helped sell it as part  
4659 of the stimulus package?

4660 Mr. {Silver.} I don't know the answer to that. We  
4661 don't evaluate projects on the basis of their impact for non-  
4662 project-specific activities. We manage them against a  
4663 criteria and objectives of the program.

4664 Mr. {Bilbray.} Okay. I am going to ask you again  
4665 because you had time to talk to your staff about it. Are you  
4666 aware or has anybody made you aware of your agency actually  
4667 intervening about the siting of where production sites should  
4668 be placed as a condition of getting the loan guarantee?

4669 Mr. {Silver.} I am not aware of that, no.

4670 Mr. {Bilbray.} Okay. I would ask you to specifically  
4671 ask that question and investigate that question.

4672 Mr. {Silver.} I am happy to do so.

4673 Mr. {Bilbray.} Because I have good information that  
4674 that specifically has been made a condition of some grants,  
4675 at least one, that the production line needs to be built in a  
4676 certain area and not in another area and that is something  
4677 that has been documented to me very strongly. And I think it  
4678 is real critical.

4679 My biggest problem here, again, is that the perception  
4680 that solar is good means all solar proposals are good and why  
4681 don't we move it?

4682 Mr. {Silver.} Congressman, if I may, we received  
4683 literally hundreds and hundreds of applications, dozens and  
4684 dozens of solar--

4685 Mr. {Bilbray.} Let me just say that this was a half a  
4686 billion dollar mistake and I would ask that we point out that  
4687 there was an action taken by your body under a justification  
4688 of a legal definition that I think is a threat to both  
4689 Democrats and Republicans that the word ``is'' is, and that  
4690 for somebody to sit there and ignore the law and redefine the  
4691 word ``is'' I think the American people are outraged that a  
4692 half a billion dollar issue was raised while legal jargon was  
4693 ignoring the fact that the law is in there. And I don't  
4694 think Democrat or Republican wants to have to add in every  
4695 law that it will never happen.

4696 I yield back to the gentleman.

4697 Mr. {Stearns.} The gentleman's time has expired. I  
4698 think we have finished and we have had a very good  
4699 discussion. I want to thank the witnesses.

4700 Does the ranking gentlelady have any concluding comments  
4701 before I wrap up?

4702 Ms. {DeGette.} I want to thank the witnesses for coming  
4703 today. I think we had a very spirited and interesting  
4704 discussion about both the specifics of this deal and also the  
4705 future of Federal Government's role in solar energy. I am

4706 very much looking forward to the testimony of the executives  
4707 of Solyndra next week and I would hope, Mr. Chairman, that we  
4708 can have a more orderly way of presenting documents.

4709 Mr. {Markey.} Would the gentlelady yield?

4710 Ms. {DeGette.} I yield, sure.

4711 Mr. {Stearns.} Well, we are just trying to conclude  
4712 this--

4713 Mr. {Markey.} Through the gentlelady I would like to  
4714 urge that we have a hearing on the risk premium which DOE and  
4715 OMB are charging to the nuclear industry for loan guarantees  
4716 post-Fukushima and post the Wall Street reassessment. This  
4717 is happening right now. We should get ahead of this issue  
4718 and hold these hearings.

4719 Mr. {Stearns.} I will take that under advisement.

4720 Let me conclude by just saying to both of you that I  
4721 think you should, based upon what I hear today, go back and  
4722 look at all solar panel projects of stimulus package. I  
4723 think when you realize that the solar industry is truly  
4724 dependent on subsidies and the government pays about 30  
4725 percent of the cost of businesses to invest, consumers get a  
4726 federal tax credit of \$2,000 for their renewables, States are  
4727 throwing in a hefty portion of additional incentives, and  
4728 they are offering a subsidy of residential solar as much as  
4729 \$2.50 per installed watt, and you look at all of this and you

4730 do the analysis, even at \$140 a barrel, the idea that solar  
4731 panels are going to break even is questionable. So I think  
4732 with that, particularly in light of what is happening in  
4733 China, I think your office would be well to look at all the  
4734 other stimulus package dealing with photovoltaic cells.

4735 And with that, the subcommittee is adjourned.

4736 Dr. {Burgess.} Mr. Chairman?

4737 Mr. {Stearns.} Yes?

4738 Dr. {Burgess.} May I just ask a question before  
4739 adjourning? Our written questions will be permitted and they  
4740 will be responded to and included in the record?

4741 Mr. {Stearns.} They will. They will be. And the  
4742 witnesses will be responsible for answering these questions  
4743 under the order of the House.

4744 Dr. {Burgess.} And further, Mr. Chairman, I am grateful  
4745 we have the CEO and CFO of Solyndra coming in. I think it is  
4746 very important that we have the Secretary of Energy and the  
4747 chairman--

4748 Mr. {Stearns.} I think Secretary Chu should be invited,  
4749 I think he should attend, and because the questions both  
4750 sides have brought up, I think his credibility on this  
4751 project should be part of the witness process. And so I  
4752 think--

4753 Dr. {Burgess.} Secretary Lew as well?

4754 Mr. {Stearns.} Secretary Lew as well, yeah.

4755 Dr. {Burgess.} All right. Thank you.

4756 Mr. {Stearns.} Thank you. Subcommittee is adjourned.

4757 [Whereupon, at 1:40 p.m., the subcommittee was

4758 adjourned.]