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THE SOLYNDRA FAILURE: VIEWS FROM

DEPARTMENT OF ENERGY SECRETARY CHU

THURSDAY, NOVEMBER 17, 2011

House of Representatives,

Subcommittee on Oversight

and Investigations,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittee met, pursuant to call, at 10:06 a.m., in Room 2123, Rayburn House Office Building, Hon. Cliff Stearns [chairman of the subcommittee] presiding.

Present: Representatives Stearns, Terry, Myrick, Sullivan, Murphy, Burgess, Blackburn, Bilbray, Gingrey, Scalise, Griffith, Barton, Upton (ex officio), DeGette, Schakowsky, Ross, Markey, Green, Christensen, Dingell, and Waxman (ex officio).

Also Present: Representatives Pompeo and Kinzinger.

Staff Present: Carl Anderson, Counsel, Oversight; Michael Beckerman, Deputy Staff Director; Allison Busbee, Legislative Clerk; Stacy Cline, Counsel, Oversight; Todd Harrison, Chief Counsel, Oversight and Investigations; Kirby Howard, Legislative Clerk; Alexa Marrero, Communications Director; Carly McWilliams, Legislative Clerk; Andrew Powaleny, Assistant Press Secretary; Krista Rosenthall, Counsel to Chairman Emeritus; Alan Slobodin, Deputy Chief Counsel, Oversight; Sam Spector, Counsel, Oversight; Peter Spencer, Professional Staff Member, Oversight; John Stone, Associate Counsel; James Thomas, Policy Coordinator, Oversight; Kristin Amerling, Minority Chief Counsel and Oversight Staff Director; Alvin Banks, Minority Investigator; Jeff Baran, Minority Senior Counsel; Phil Barnett, Minority Staff Director; Stacia Cardille, Minority Counsel; Brian Cohen, Minority Investigations Staff Director and Senior Policy Advisor; Karen Lightfoot, Minority Communications Director and Senior Policy Advisor; and Matt Siegler, Minority Counsel.

Mr. Stearns. Good morning, everybody. We will open the subcommittee hearing of Oversight and Investigations on the Solyndra failure and views from the Department of Energy Secretary Chu.

My colleagues, we welcome this hearing of the Subcommittee on Oversight and Investigations to further examine the Department of Energy's review and approval for the $535 million loan guarantee to Solyndra as well as its repeated efforts to keep this company atop President Obama's green-jobs pedestal. While our investigation continues, it is readily apparent that senior officials in the administration put politics before the stewardship of taxpayers' dollars.

My colleagues, we have methodically investigated the circumstances surrounding Solyndra's failure for 9 months now and have followed the facts every step of the way. Our goal is to determine why the Department of Energy and the administration tied themselves so closely to Solyndra and why they were so desperate to repeatedly prop up this company. Why did DOE make these bad decisions? And what can we do to prevent a waste of taxpayer dollars in the future?

But as our investigation has unfolded, many more questions have emerged about the loan guarantee to Solyndra, the subsequent restructuring and subordination of the taxpayers' money, and the extent of the White House involvement. So, today, we are focused on the loss of $535 million of taxpayers' money.

When DOE was reviewing the Solyndra application at the end of the Bush administration, too many issues with the parent company's cash

flow and liquidity remained unresolved, leading them to end discussions with Solyndra and remand the application itself.

Later that month, President Obama was inaugurated, and Secretary Chu took over the reins of the Department of Energy. He implemented an acceleration policy for the loan guarantee reviews. And despite the deal posing significant financial problems, Solyndra was labeled a litmus test for the program's ability to fund good projects -- quickly, too.

Secretary Chu and Vice President Biden's ribbon-cutting ceremony was scheduled before DOE even presented the final deal to OMB. OMB staff did not feel as though they had sufficient time to conduct adequate due diligence, and their concerns about models showing Solyndra running out of cash in September 2011, prophetically, were apparently ignored.

Only 6 months after the loan closed, Solyndra's financial problems became increasingly severe. Nonetheless, President Obama visited Solyndra in May of 2010 and proclaimed, quote, "The true engine of economic growth will always be companies like Solyndra," end quote.

It is important to understand how Secretary Chu addressed these concerns and the extent of authority he was granted to make sure this company, so closely connected with the fate of President Obama's green-jobs agenda, ultimately succeeded. In the fall of 2010, just 1 year after the loan closed, Solyndra had basically flat-lined and started to default on the terms of the loan. Documents show DOE granting the company several waivers, including waivers from

Davis-Bacon requirements, and desperately trying to figure out ways to keep it afloat.

In early December, after several lengthy negotiation sessions with Solyndra's primary investors and despite clear language in the statute barring them to from doing so, DOE made a last-minute offer that would subordinate taxpayers with regard to the first $75 million recovered in the event of liquidation. We have since uncovered serious disagreements within the administration about not only the legality of this arrangement but whether it was a good deal for anyone involved but the rich hedge-fund investors.

As I said before, if Solyndra really is a litmus test, we have a much bigger problem on our hands. Two of the first three deals approved under Secretary Chu's acceleration policy have now blown up and filed for bankruptcy. GAO has serious concerns about DOE's ability to monitor the loans. The White House itself now has initiated a review of the portfolio. No one has admitted any fault whatsoever, and the President and our Democrat colleagues just shrug it off and say, "Hey, sometimes things just don't work out," end quote.

The administration is still refusing to allow DOE and OMB witnesses to testify under oath. And OMB refuses to make some important witnesses available to us at all, with no one from the administration taking responsibility.

With that, that concludes my opening statement, and I recognize my distinguished colleague, Ms. DeGette from Colorado.

[The prepared statement of Mr. Stearns follows:]

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Ms. DeGette. Thank you.

Before I start my opening statement, Mr. Chairman, which witnesses has the White House refused to produce to testify under oath? Please give me their names.

Mr. Stearns. We will be glad to give you a list, and certainly --

Ms. DeGette. If I could have a list before --

Mr. Stearns. Sure.

Ms. DeGette. -- the conclusion of this hearing --

Mr. Stearns. We will be glad to give it to you.

Ms. DeGette. -- we will use our exercise to get those witnesses. Thank --

Mr. Stearns. Just between you and me, I think you know.

Ms. DeGette. -- you very much. No, I would like to know, please. Thank you.

Now, Mr. Secretary, I would like to welcome you and thank you for joining us today. Mr. Waxman and I have been urging the majority for some number of weeks now to have you over to discuss the important and legitimate issues relating to the Solyndra loan guarantee and the broader issue of the efficacy of loan guarantees for solar energy.

This investigation, we all believe, is of critical importance to the American public, both so we can get to the bottom of what happened to over half a billion dollars of taxpayer money in the short term and also to ensure the knowledge we gain from this situation can inform our efforts to drive American clean energy innovation for the long term.

Unfortunately, instead of conducting a serious inquiry into the

facts relating to Solyndra and the lessons we can learn from this case, the majority, to date, as evidenced by my colleague's opening statement, has focused on firing partisan broadsides at the Obama administration. For example, 2 weeks ago, the committee created an unnecessary and unprecedented subpoena battle with the White House, despite good-faith efforts on the part of the White House to negotiate an accommodation to produce information regarding key committee concerns in the investigation. And then, last week, when the White House did produce documents, the majority selectively released to the press three emails that presented a distorted account of Mr. Kaiser's activities while withholding documents and communications, as well as statements by Mr. Kaiser in his interview with both Democratic and Republican staff, that directly contradicted the majority's interpretation.

But let me be clear: None of us on my side of the aisle are here to defend or to apologize for the actions of anyone in the administration or in the White House in particular. In my 15 years on this committee, we have had a strong tradition of thorough and meaningful bipartisan investigations. And as ranking member of this distinguished subcommittee, it had been my hope that we could have continued that tradition in order to fulfill our oversight duties to the American people. Unfortunately, this has not been the case.

The point of this inquiry should not be to score partisan victories or to smear individuals who happen to support one political party over the other. What we should be trying to do is figure out

what happened with the Solyndra loan guarantee so we can bring accountability to the American people and improve our ability to advance the United States as a leader in the clean energy market.

Toward that end, I hope the Secretary's appearance here can provide relevant information on several key issues that we are allegedly investigating.

First, we need to examine whether appropriate due diligence occurred before DOE's September 2009 approval of the loan guarantee. Committee staff recently conducted interviews of key former and current DOE officials who were involved with the loan guarantee decisions, including Steve Isakowitz, who was appointed by President Bush and served as chief financial officer from July 2007, under the Bush administration, through July 2011, under the Obama administration.

Mr. Isakowitz told the committee staff that he believed the DOE award of a loan guarantee to Solyndra was based on the merits and that Secretary Chu did not ask anyone to cut corners on the decision. Other DOE officials who were interviewed made similar statements. I am looking forward to hearing the Secretary's perspective on the process that led to the Solyndra loan guarantee award.

Second, we need to look at whether DOE exercised good judgment by restructuring the loan guarantee and subordinating part of the government's interest in early 2011 when Solyndra was verging on default. Some members of this committee have alleged that subordination violates the Energy Policy Act. To help the committee assess this issue, we asked a former DOE general counsel to review DOE's

legal rationale for subordination.

The former DOE general counsel concluded the analysis was reasonable, stating, quote, "I conclude from the statute, the loan guarantee regulations, and DOE's prior interpretations of Section 1702 that, had it expressly considered the question of its authority to subordinate its guaranteed debt in a post-restructuring before the Solyndra default situation arose, DOE likely would have reached the same conclusion reflected in the opinion and that its conclusion is legally supported," end quote.

Mr. Chairman, I ask unanimous consent that this letter be included in the record today.

Mr. Stearns. So ordered.

Ms. DeGette. Thank you.

[The letter follows:]

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Ms. DeGette. Along those lines, I would like to hear from Secretary Chu about the lessons we can learn from DOE's experience with restructuring the Solyndra loan guarantee.

Third, I would like to hear from the Secretary regarding the status of DOE's efforts to monitor the Solyndra loan guarantee and the extent to which this has evolved over his tenure. I hope the Secretary can give us insight into whether Solyndra made accurate representations to DOE throughout the loan guarantee process.

And, finally, given the majority's heavy emphasis on allegations relating to corruption, we also need to hear from the Secretary whether political fundraising by Mr. Kaiser or anyone else had any bearing on decisions relating to the Solyndra loan guarantee.

More broadly, I hope this three-ring circus leads us to a robust discussion relating to the state of our national energy policy and, in particular, renewable energy. This situation is an excellent opportunity for us to learn how to best develop and implement policies that provide U.S. innovators the support they need to make the United States a clean energy market leader.

Thank you very much, Mr. Chairman.

[The prepared statement of Ms. DeGette follows:]

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Mr. Stearns. I thank my colleague.

I now recognize the full chairman of the Energy and Commerce Committee, the distinguished gentleman from Michigan, Mr. Upton.

The Chairman. Well, thank you, Mr. Chairman, for holding this hearing on the Department of Energy's role in the approval and subsequent restructuring of the Solyndra loan guarantee.

And welcome, Mr. Secretary.

The central focus of the investigation is to understand why DOE did and what it did and how we find ourselves with this taxpayer-funded debacle. The number of red flags about Solyndra that were raised along the way, many from within DOE, and either ignored or minimized by senior officials is astonishing. Before the loan guarantee was approved, DOE and OMB staff repeatedly questioned the financial health of Solyndra. And based on the rate it was burning through cash and other troubling issues, the truth is, the expert staff were, indeed, concerned that the company was bound to fail.

We have heard from President Obama and even from you, Mr. Secretary, that nobody had a crystal ball and no one could have predicted Solyndra's demise. But the truth is that DOE staff did predict this. One of the models reviewed by DOE staff specifically showed that Solyndra would run out of cash in September of 2011. And in March of 2010, just 6 months after the initial loan agreement was finalized, Solyndra's auditors echoed many of the same issues about working capital and recurring losses and warned that Solyndra was going to have problems staying afloat.

These concerns were not only shared by industry experts, they reached the highest levels of the West Wing. Yet, at DOE, officials were shrugging it off and calling it par for the course. Two months later, the President actually went to Solyndra's headquarters and gave a speech touting the company as an economic success story, in spite of numerous warnings from both supporters and government staffers.

These are just a few examples of the red flags DOE could have acted on to limit taxpayer losses. Instead, at every opportunity, Solyndra and DOE officials, including you, Mr. Secretary, publicly assured the American people that Solyndra was on track and would eventually thrive, right up until the time that Solyndra declared bankruptcy.

They continued telling this story even when they clearly should have known it was not the case. DOE was receiving financial reports showing that Solyndra was bleeding cash and going bankrupt. DOE also failed to mention that, behind the scenes, they were continually taking extraordinary steps to keep Solyndra on financial life support.

So, Mr. Secretary, what did you know about the situation at Solyndra, when did you know it, and how did you act on that information, if at all? These are important questions that all of us will be asking today. Your testimony is an important piece of the overall puzzle, and we will work methodically, following the facts, to get to the bottom of why taxpayers are now on the hook for more than half a billion dollars.

And I yield back the balance of my time to Mr. Barton.

[The prepared statement of the chairman follows:]

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Mr. Stearns. Mr. Barton is recognized for the balance of the time.

Mr. Barton. Thank you, Chairman Upton and Chairman Stearns.

And thank you, Mr. Secretary, for being here this morning. We appreciate you agreeing to voluntarily testify about the Solyndra loan guarantee program. I have been on this committee 25 years. Rarely, if ever, have I seen a more -- to put it as positively as possible, a more mismanaged program than the Solyndra loan guarantee. We are hopeful that you will be able to answer a number of our questions today. And I know, as a man of integrity, you are going to do your best, because I do sincerely mean that, that you are a man of integrity.

But the first question that I hope you will answer is, why did the Obama Department of Energy reverse the Bush Department of Energy decision that the Solyndra loan guarantee was not ready for prime time? To this day, that puzzles me.

Secondly, I would like to hear your answer as to why apparently you made the decision to violate the clear letter of the law in Title XVII of the Energy Policy Act that plainly states that a loan guarantee financed by the taxpayers cannot be subordinated to private investors. That just absolutely puzzles me.

And, finally, what guarantees do we have on behalf of the taxpayers that changes are going to be made in the existing loans that have been put out on this program, I think to the tune of about $16 billion, that we are not going to have a repeat of this fiasco?

This is an important program. I happen to continue to support

a loan guarantee for alternative energy, contrary to what some of my friends on the Democratic side of the aisle state. But I cannot continue to support it if we can't get some assurances that this isn't going to be history that will be repeated.

So thank you, Mr. Secretary, for being here, and I look forward to your answers.

[The prepared statement of Mr. Barton follows:]

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Mr. Stearns. I thank my colleague and recognize the distinguished gentleman from California, the ranking member of the full Energy and Commerce Committee, Mr. Waxman.

Mr. Waxman. Thank you, Mr. Chairman.

And, Secretary Chu, I want to welcome you to our hearing today.

As I have said from the outset, I believe in this oversight on the Solyndra loan guarantee issue. It is part of our job. We want to know about these taxpayers' dollars that have been lost and how we can learn from this experience not to have it repeated.

But I don't support the way Chairman Stearns and Chairman Upton have been running this investigation. They held an empty-chair hearing. They humiliated witnesses for asserting their constitutional rights. They denied Democratic requests for witnesses. They resisted the release of exculpatory documents and provoked a gratuitous conflict with the White House. And, just last week, they released cherry-picked emails that were contradicted by other documents and unjustly smeared George Kaiser. And, as we learned today in the newspaper, they criticize you for awarding loan guarantees at the same time they were seeking loan guarantees for solar energy projects in their own districts.

That is no way to conduct a responsible investigation. We should be fair and impartial, and our goal should be to find the truth.

We also need to put this investigation into context and ask the most important question: How do we make the transition to the clean energy economy of the future?

Last week, the International Energy Agency released its "World Energy Outlook." While Solyndra stories made news across the country, there was virtually no coverage of the International Energy Agency's findings, yet they are far more important to the future of our country and the business of this committee than whether the Department of Energy asked Solyndra to delay announcing a plant closure.

The International Energy Agency found, and I quote, "We cannot afford to delay further action to tackle climate change if the long-term target of limiting the global average temperature increase to 2 degrees Celsius is to be achieved. If stringent new action is not forthcoming by 2017, the energy-related infrastructure then in place will generate all the CO2 emissions allowed, leaving no room for additional power plants, factories, and other infrastructure unless they are zero-carbon."

What this means is that our future depends on developing clean energy. There will be $38 trillion invested in the new energy infrastructure over the next 20 years. Our economic growth, our national security will be determined by whether we succeed in building these new industries.

Our competitors recognize this. China spent $30 billion to subsidize solar energy in the last year alone, and jobs in manufacturing facilities are booming in China as a result. Our chairman of the subcommittee says the answer is to give up. Last month, Mr. Stearns said, and I quote, "The United States can't compete with China to make solar panels and wind turbines."

Well, I don't believe in surrender, Mr. Chairman. We can't out-compete China, but to succeed we have to reject the anti-science, anti-progress policies of the Republicans in Congress and their oil and coal industry allies.

The agenda of congressional Republicans is clear: Do everything possible to maintain our addiction to fossil fuels and cripple clean energy companies that could compete with oil and coal. House Republicans voted against putting a price on carbon pollution, which would have created market opportunities for clean energy. House Republicans voted to slash funding for energy research and development into the clean technologies. And now they are opposing government investments in solar, wind, and other clean energy companies.

We need to move past Solyndra and to begin addressing our pressing energy challenges. The voluminous records before the committee -- and we have received over 186,000 pages of documents from the Department of Energy, over 13,000 pages from the Office of Management and Budget, over 1,000 pages from the White House, nearly 200 pages of documents from the Treasury -- all of these records show that the decision to award a loan guarantee to Solyndra was based on the merits, not political considerations. As Steve Isakowitz, a Bush appointee, the chief financial officer at DOE, told us, the integrity of the review process was never compromised.

It is time for House Republicans to stop dancing on Solyndra's grave and start getting serious about energy policy. And it is shameful for members of this committee to deny the science and pretend

that we do not need a comprehensive clean energy policy.

Something far more important is at stake today than scoring partisan political points. The future of our economy and the health of our planet will be at risk until we find a way to come together and enact policies that stop weather-changing carbon pollution and make our Nation the world leader in clean energy.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Waxman follows:]

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Mr. Stearns. I thank the gentleman.

Since he -- I will take the chairman's prerogative here, since you mentioned my quote from NPR. It was taken out of context. And without elaborating, I would point out that if we intend to subsidize our industries to compete with China, who is subsidizing their industries, I think that is not a good way to handle it.

With that, now we will welcome our witness, Secretary Chu, and thank him for coming.

You have a book to your left there with tabs with lots of quotes that the committee members will be using, so we will just refer you to that tab.

Before we go any further, we have a member from the full committee, from Kansas, Mr. Pompeo -- oh, Mr. Kinzinger from Illinois, rather, is here as a member from the full committee, but he does not want to participate, but he would like to be in the hearing, with unanimous consent. Is that acceptable to the minority?

So ordered. He is welcome.

As you know, Mr. Secretary, the testimony you are about give is subject to Title 18, Section 1001 of the United States Code. When holding an investigative hearing, this committee has a practice of taking testimony under oath. Do you have any objection to testifying under oath?

Secretary Chu. No.

Mr. Stearns. The chair then advises you that, under the rules of the House and the rules of the committee, you are entitled to be

advised by counsel. Do you desire to be advised by counsel during your testimony today?

Secretary Chu. No.

Mr. Stearns. In that case, if you would please rise and raise your right hand, I will swear you in.

[Witness sworn.]

Mr. Stearns. Welcome. And, Mr. Secretary Chu, you are welcome to give your opening statement, 5 minutes.

STATEMENT OF STEVEN CHU, SECRETARY, U.S. DEPARTMENT OF ENERGY

Secretary Chu. Thank you, Chairman Stearns, and thank you, Ranking Member DeGette and members of the subcommittee, for the opportunity to speak with you today.

Investments in clean energy reached a record $243 billion last year. Solar photovoltaic systems alone represent a global market worth more than $80 billion a year today. In the coming decades, the clean energy sector is expected to grow by hundreds of billions of dollars.

We are in a fierce global race to capture this market. In the past year and a half, the China Development Bank has offered more than $34 billion in credit lines to China's solar companies. China is not alone. To strengthen their countries' competitiveness, governments around the world are providing strong support to their clean energy industries. Germany and Canada operate government-backed clean energy lending programs. And more than 50 countries offer some type of public financing for clean energy projects.

In the United States, Congress established Section 1703 and 1705 loan guarantee programs as well as the Advanced Technology Vehicles Manufacturing program, all of which provide support to cutting-edge clean energy industries that involve technology and market risks. In so doing, Congress appropriated nearly $10 billion to cover potential losses in our total loan portfolio, thereby acknowledging the inherent

risks of funding new and innovative technologies and also ensuring that those risks are properly accounted for in the budget.

We appreciate the support that the loan programs received from many Members of Congress, who have urged us to accelerate our efforts and to fund worthy projects in their States. In total, the Department received nearly 500 congressional letters about the loan programs.

Through the loan programs, the Department of Energy is supporting 38 clean energy projects that are expected to employ more than 60,000 Americans, generate enough clean electricity to power 3 million homes, and displace more than 300 million gallons of gasoline annually. These important investments are helping to make America more competitive in a global clean energy economy.

Today, we are here to specifically discuss the Solyndra loan guarantee. The Department takes our obligation to the taxpayers seriously and welcomes the opportunity to discuss this matter. As you know, the Department has consistently cooperated with the committee's investigation, providing more than 186,000 pages of documents, appearing at hearings, and briefing or being interviewed by committee staff eight times.

As this extensive record has made clear, the loan guarantee to Solyndra was subject to proper, rigorous scrutiny and healthy debate during every phase of the process. As the Secretary of Energy, the final decisions on Solyndra were mine, and I made them with the best interests of the taxpayer in mind.

And I want to be clear: Over the course of Solyndra's loan

guarantee, I did not make any decision based on political considerations. My decision to guarantee a loan to Solyndra was based on the analysis of experienced professionals and on the strength of the information they had available to them at the time.

Solyndra's potential was widely recognized outside the Department. Highly sophisticated, professional private investors, after conducting their own reviews, had collectively invested nearly a billion dollars in the company, which was named as one of the world's, quote, "50 Most Innovative Companies" by MIT's Technology Review in February of 2010. In March of 2010, the Wall Street Journal included Solyndra in its ranking, "The Next Big Thing: The Top 50 Venture-Backed Companies."

It is common for it to take some time for startup companies, especially manufacturing companies, to turn a profit. And in the 2 years since the Department issued the loan guarantee, Solyndra faced deteriorating market conditions. Solar PV production has expanded at the same time, and the demand has softened due to the global economic downturn and the decline in subsidies in countries including Spain, Italy, and Germany. The result has been an acute drop in the price of solar cells, which has taken a toll among many solar companies in Europe, Asia, and the United States.

Meanwhile, countries like China are playing to win in the solar industry. China has invested aggressively to support its companies, and, in recent years, China's market share in solar cell and solar module production has grown significantly, to roughly half the market

today.

While we are disappointed in the outcome of this particular loan, we support Congress' mandate to finance the deployment of innovative technologies and believe that our portfolio of loans does so responsibly. The President asked for a review of the Department's loan portfolio. We support that review, and I look forward to the results.

The Energy Department is committed to continually improving and applying lessons learned in everything we do because the stakes could not be higher for our country. When it comes to the clean energy race, America faces a simple choice: compete or accept defeat. I believe we can and must compete.

I thank you and welcome your questions.

[The prepared statement of Secretary Chu follows:]

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Mr. Stearns. Thank you, Mr. Secretary.

And I will start off with my questions. As I mentioned, we have a book to your left there with different tabs we will be asking you to look at. When my questions are asked, I would like you to answer "yes" or "no," and I phrased my questions in such a way that you could do that.

In that book, on tab 5, there is an interview you had with the Wall Street Journal on February 6th, 2009. And you were simply asked what percentage of the roughly $37 billion that you had to spend at DOE for these loan guarantee programs. You replied you wanted about half to be spent in a year.

So the question is, are you aware that the Department of Energy inspector general testified just this month that the Department had spent, not allocated, had spent only 45 percent of the stimulus funds nearly 3 years later, yes or no?

Secretary Chu. I am aware that we did not --

Mr. Stearns. Okay, just -- you are aware, yeah.

So the Department of Energy stimulus program failed to meet even your, based upon that interview in the Wall Street Journal, 50 percent performance target you set. Is that correct?

Secretary Chu. That is correct.

Mr. Stearns. Okay.

Now, you have repeatedly stated, in hindsight -- you keep mentioning hindsight, 20/20 -- no one could have predicted about Solyndra going bankrupt. But here is the crux and here is the problem

we have: In August 2009 -- and this is tab 14 -- before you signed off on the loan guarantee, one of your own Department of Energy staffers actually predicted, prophetically, that Solyndra would go bankrupt. And I will quote: "The issue of working capital remains unresolved. The issue is cash balances, not cost. Solyndra seems to agree that the model runs out of cash in September 2011, even in the base case without any stress."

So the bankruptcy was predicted 2 years ahead of time. Knowing of this assessment, you are the Secretary of Energy, continued to give tranches of money to Solyndra all through the next 2 years, even though your staff had predicted that Solyndra would go bankrupt in September 2011.

When you signed off on the loan guarantees, were you aware of this, of these emails and of these concerns from DOE? And OMB emails also showed that. Were you aware of that, that Solyndra was a bad bet, yes or no?

Secretary Chu. This is not -- sir, this is not a yes-or-no question. Let me explain the context of what this --

Mr. Stearns. Well, I --

Ms. DeGette. You know, let's hear him out.

Secretary Chu. -- email was about.

Mr. Stearns. Okay. Okay.

Ms. DeGette. Do you want the information?

Mr. Stearns. I don't want you to take all my time, but can you just give a short answer?

Secretary Chu. Very shortly, this email -- the cash flow had to do with the construction of Fab 2 facility. And if you look at the full analysis of that facility and the cash flow of that facility, it was going to go very rapidly into the black. In fact, that Fab 2 facility was completed on time, on budget. And the parent company --

Mr. Stearns. Okay, I understand that. But yes or no, were you aware of these DOE emails that said it would go bankrupt? That is the basic question. Were you aware of them, yes or no?

Secretary Chu. I wasn't aware of this particular email at the time.

Mr. Stearns. Were you not aware of it?

Secretary Chu. I was -- it was an issue of an analysis that was in the --

Mr. Stearns. No, the question is, were you aware that your own staff that worked for you was predicting bankruptcy in 2011, prophetically, 2 years, yes or no?

Secretary Chu. It wasn't predicting bankruptcy of the company. It was predicting a cash-flow issue that, upon further analysis, did not appear and, in fact, did not appear in reality.

Mr. Stearns. Were you aware of it at the time?

Secretary Chu. I was not aware of this email at the time.

Mr. Stearns. Okay.

During an interview with committee staff, the DOE chief financial officer admitted that he did not remember the Department validating any assumptions about the Chinese market before approving the

application.

Was that, in hindsight, the Department should have known? And wasn't that the failure of DOE?

Secretary Chu. Could you repeat the question, please?

Mr. Stearns. Sure. Basically, just asking, did you do any research about the Chinese market before you approved this loan, yes or no?

Secretary Chu. I personally did not do it, but I am --

Mr. Stearns. Okay.

Secretary Chu. -- sure my loan people have done many market surveys.

Mr. Stearns. Okay.

When Solyndra ran into financial problems and you authorized taxpayers' funds to be subordinated to these two hedge funds, were you aware that DOE staff originally told Argonaut and the DOE funds could not be subordinated under the Energy Policy Act of 2005, yes or no?

Secretary Chu. When we discussed the subordination of the loan with my general counsel, it was the decision of the general counsel of the Department of Energy -- their considered opinion was that the subordination was proper.

Mr. Stearns. Okay.

The President recently appointed Mr. Allison to look at the DOE's loan, the entire portfolio. Doesn't the fact that the President appointed somebody outside of DOE show that he doesn't think you have the wherewithal, the financial acumen, to step in and actually

understand the condition of all these loan guarantees? Doesn't this mean simply -- it does to me -- that the President has lost confidence in you and your management -- your financial-management acumen of this loan guarantee program?

Secretary Chu. We welcome outside eyes, and we welcome Herb Allison and his investigation. I made no bones about it. I should also say, before that happened, we, ourselves, within the loan program, we looked outside the loan --

Mr. Stearns. So, basically, you don't take it as any affront on your --

Secretary Chu. Pardon? Pardon?

Mr. Stearns. You don't take it as a personal affront on your integrity to run the DOE that the President has an outside group looking at it?

Secretary Chu. No. I --

Mr. Stearns. I accept that.

Secretary Chu. -- I -- I --

Mr. Stearns. Let me complete with one last question. Were you aware in early 2011 that, to subordinate this loan, the chief financial officer of the Department of Treasury said, in his 28 years, he has never seen taxpayers subordinated to outside commercial loans? Were you aware that Mr. Burner said that?

Secretary Chu. No, I was not aware he said that.

Mr. Stearns. Are you aware of it today?

Secretary Chu. Yes.

Mr. Stearns. And do you think that he is right, or do you disagree with him?

Secretary Chu. I believe that other loan -- like OPIC and Ex-Im, have, in some cases, subordinated loans.

Mr. Stearns. We are talking about taxpayers.

Secretary Chu. Well, OPIC and Ex-Im --

Mr. Stearns. All right.

Secretary Chu. -- serve the taxpayers.

Mr. Stearns. My time has expired, and we recognize the gentlelady from Colorado.

Ms. DeGette. Thank you very much, Mr. Chairman.

Secretary Chu, did any Obama campaign donor ever contact you and ask you to take any action relating to the Solyndra loan guarantee or to the restructuring of that loan guarantee?

Secretary Chu. No. No one did. No Obama campaign --

Ms. DeGette. You are under oath.

Secretary Chu. Yes.

Ms. DeGette. Okay.

Now, are you, as Secretary of Energy, aware, personally aware, of any contact by any Obama campaign donor to any employee of the Department of Energy asking them to take any action relating to the loan guarantee or to the restructuring?

Secretary Chu. I am not aware of any such --

Ms. DeGette. Have you asked your employees and the folks involved with Solyndra if they --

Secretary Chu. They were having discussions, and no one has said that something like that occurred. No one --

Ms. DeGette. Okay.

Secretary Chu. They, in fact, said that, to the best of their knowledge, it has not occurred.

Ms. DeGette. Did anyone from the White House ever contact you -- anyone from the White House ever contact you -- to take any action on the Solyndra loan guarantee or restructuring for any reason other than the actual financial analysis?

Secretary Chu. No.

Ms. DeGette. Now, are you aware of any contact by someone from the White House to anybody in the DOE? Did anybody bring that to your attention, asking them to take an unusual action relating to the loan guarantee or to the restructuring?

Secretary Chu. No, I am aware of no communication from White House to Department of Energy saying to make the loan or to restructure.

Ms. DeGette. Now, in your responses to the chairman's question, you said the decisions were yours based on professionals within the Department. Briefly, can you describe the process for -- I mean, originally, the loan was not approved under the Obama administration; it was the Bush administration. But, certainly, the tranches of money were given under the stimulus, and then there was the restructuring.

So the question is, which professionals did you rely on within the Department to make those decisions?

Secretary Chu. So, what happened when I came in as Secretary of

Energy is that there was, beginning with the confirmation hearings, tremendous interest in the loan program, getting it going. When I came into the Department, I asked, what are the loans first in line that have been prepared? And I was told by Department of Energy career people that Solyndra was the first loan; this was first in line.

Ms. DeGette. These are people who had been there previously. They were career Department of --

Secretary Chu. They were career people who had been there during the previous administration.

Ms. DeGette. Okay.

Secretary Chu. And they said that this was the first in line. It went before -- I think in early January it went before the review committee, the credit review committee. And the credit review committee said there was incomplete information, we needed more information, for example on market surveys, things of that nature. So they gave it back to the loan originators -- again, career people -- and said, we need more information before we can make a decision yes or no.

And so that is what happened. So, one set of career people told the loan originators, go back and we need this additional information before we can make an up-or-down vote.

Ms. DeGette. And then what happened?

Secretary Chu. And then, several months later, after these things were obtained -- market surveys, things of that nature -- they came back to the credit review committee, and, at that time, the same

career folks said, "Okay, you have satisfied our questions, and we recommend moving forward with the loan."

Ms. DeGette. And so you moved forward with the loan.

Secretary Chu. Right. At that time --

Ms. DeGette. Now, then, some months later, the bottom really fell out. Why do you think that happened? Was it improper reviews and data used by the career people in that analysis, in getting that market analysis? Very briefly, because I have about the same amount of time as the chairman.

Secretary Chu. Very briefly, the largest issue of why that happened is, the price of solar panels dropped precipitously. And by "precipitously" I mean in a single year it dropped by 40 percent.

Ms. DeGette. And was that primarily because of China's infusion of capital, or were there other market reasons for that as well?

Secretary Chu. There were two factors. First, there was a large production ramping up, namely in China. And, secondly, there was a softening of the market in Europe.

Ms. DeGette. Okay.

Secretary Chu. A lot of subsidies were being -- they were decreasing, and the demand was softening.

Ms. DeGette. Now, at some point, there was a decision, then, to restructure the loan, correct?

Secretary Chu. Yes.

Ms. DeGette. And why didn't the Department just walk away from the loan? Why was this decision made to restructure?

Secretary Chu. By that time, the Department knew that because of the very competitive nature of solar -- I said 40 percent in 1 year; 70 percent over a 3-year period of time, which was unheard of -- we had a half-completed factory. And it was a difficult decision. We had two choices: We either had to stop the loan, which would make Solyndra go into immediate bankruptcy, with a half-empty factory -- half-completed factory; or we could say, we can continue on the contract of the loan, which was to build this factory. Once the factory was complete, Solyndra would have a fighting chance of continuing or it could offer that factory sale as a whole unit.

Ms. DeGette. So there was some hope that you could recoup the taxpayers' money?

Secretary Chu. Yes. And we --

Ms. DeGette. Now, one last question. Why was the decision made to subordinate the government's interest to the private investors in the restructuring?

Secretary Chu. At the time, the investors -- in the time where we were disbursing the loans, again, it was a contractual arrangement with the Department of Energy, the investors were putting in more equity. And as the rapidly changing market conditions dictated, the investors said, if you want us to put in another -- first $75 million, followed by another $75 million, this first $75 million should come ahead of the Department of Energy.

And, again, we faced -- after discussing the legality of that -- and, again, our general counsel advised me that it was

legal -- then we faced this difficult decision. Do you stop giving them the money that was agreed upon and force them into bankruptcy, or do you go forward?

And so, this whole -- it was a difficult decision, and we were always, always focused on that path that could get as much taxpayer recovery as possible.

Ms. DeGette. Thank you, Mr. Chairman.

Mr. Stearns. I thank my colleague.

I recognize the full chairman, Mr. Upton, the gentleman from Michigan, for 5 minutes.

The Chairman. Thank you, Mr. Chairman.

I am going to follow the Dingell model of asking yes-and-no questions, if I can.

Were you aware, Mr. Secretary, that DOE staff was concerned throughout 2009 that the company did have a liquidity problem?

Secretary Chu. I am aware now -- well, yes. I was aware --

The Chairman. Were you aware then?

Secretary Chu. -- there was a liquidity problem in -- it wasn't a liquidity -- it was a temporarily liquidity problem in the project, which was what we were funding, namely the construction of Fab 2, but it was only a 1-month. And afterwards --

The Chairman. All right.

Secretary Chu. -- it was not an issue.

The Chairman. That goes back to the question that Mr. Stearns asked, but I am looking at a -- on October 8th, 2010, Solyndra

executives informed DOE that the company's situation -- this is a quote now -- "situation has changed quote dramatically," end quote. Bill Stover, the CEO, informed DOE that it would not be able to raise capital by the end of the year, as it originally had planned to do so, and, quote, "Without access to FFB loans in October, November, and December for work that has been completed, Solyndra would run out of cash in November," end quote.

So that is there, in addition to the email that was sent in 2009 which said that they would run out of cash by the end of August of 2011, which, of course, was true.

So were you aware of either one of those two emails to DOE?

Secretary Chu. Again, I want to not conflate the issue. The issue of the first instance I believe was --

The Chairman. It shows to me that there was a pattern, that they announced that they were going to run out of cash.

Secretary Chu. There was one instance when, in the construction of the Fab 2 project, where -- which is, I believe, the first one you were referring to. And that, as you said -- if you then go to the next month, it goes into the black and it was a modeling issue. In fact, history shows that that fab was constructed on time, on budget.

The Chairman. But in the email from nearly a year ago, they indicated, again, that they were going to run -- without access to funds, they would run out of cash in November of last year. There was another email -- are you aware of that email?

Secretary Chu. I believe those emails are still about the

construction of Fab 2.

The Chairman. All right. Were you aware of the company's problem containing costs, that it had a cash burn rate of almost $10 million a week, yes or no?

Secretary Chu. We knew that they had -- in fact, their business model -- and this is true of many companies, especially manufacturing companies. You have a cash burn rate, you build up your factory, you build up your sales, you begin to sell your product, and there was a business plan that they were going to -- which, again, nearly $1 billion of equity investments by savvy people knew of this plan.

The Chairman. Were you aware in 2010 that both OMB and Treasury were concerned that DOE was not monitoring the loan and did not have a grip on Solyndra's financial condition?

Secretary Chu. We were, in fact, monitoring the loan. In fact, about that time -- first, we started by monitoring the loan, and then we set up, later, a different entity. So a person that was not part of the loan origination by that time was beginning to monitor the loan. We set up --

The Chairman. Yeah.

Secretary Chu. We further set up another organization within the loan program to monitor the loan. And now what we have done is set up organizations outside the loan program but who have expertise --

The Chairman. It is our understanding that you weren't monitoring very closely until after it was restructured.

Do you stand by the restructuring even though the arrangement put

Solyndra's interest and investors ahead of the taxpayers?

Secretary Chu. As I said, this was a difficult choice. There was a lengthy discussion --

The Chairman? So you do.

Secretary Chu. -- about that. And it was a difficult choice for us to make. And, at that time, we felt that the first $75 million -- the company would not put in -- the investors would not put in an additional $75 million in order to continue this project. And so it was a choice of either facing immediate bankruptcy, as I said before --

The Chairman. So, because of that decision, how much money do you think the Federal Government will be able to recover?

Secretary Chu. Well, that remains to be seen, but I --

The Chairman. Well, what is your --

Secretary Chu. -- am anticipating not very much. But we would not have, had we said no, stopped disbursement of funds, stopped the completion of the factory and have it a half-complete factory. We felt that we weren't going to recover much of anything at all, at that point, as well.

The Chairman. Documents produced to the committee show that negotiations between Solyndra, its investors, and DOE came to a head this last August, August 26th, over whether DOE should advance yet another almost $5.5 million to the company. The decision was made when OMB, DOE, Treasury -- the decision was collectively no; it was stopped. And 2 days later, they declared bankruptcy.

What was DOE's position among those three? Were they in favor

of this additional money in August?

Secretary Chu. No. In fact, during that time, there were some phone calls. I wanted to -- we got another outside, independent -- Lazard, another outside firm, to give us their estimate --

The Chairman. So your --

Secretary Chu. -- of the condition of Solyndra.

The Chairman. So, was it a decision that you were afraid to send more good money after bad?

Secretary Chu. From their analysis and from --

The Chairman. The writing was on the wall?

Secretary Chu. At that time, in August of 2011 -- or July of 2011?

The Chairman. Last question. I know my time has expired. Based on what you know and what has happened, who is to apologize for the half a billion dollars that is out the door?

Secretary Chu. Well, it is --

The Chairman. DOE?

Secretary Chu. It is extremely unfortunate what has happened to Solyndra. But if you go back and look at the time decisions were being made, was there incompetence? Was there any influence of a political nature? And I would have to say no.

The Chairman. So no apology?

Secretary Chu. Well, it is extremely unfortunate what has happened to Solyndra. And I think you and I both feel the same.

But when the bottom of a market falls out and the price of solar decreases by 70 percent in 2-1/2 years, that was totally unexpected, not only by us, but if you look at the range of predictions that were being made by financial analysts from the last quarter of 2008, 2009, the average -- there are some outliers, but the average of those were not expecting these prices to plummet. And so, fundamentally, this company and several others got caught in a very bad tsunami, if you will.

Mr. Stearns. The gentleman's time has expired.

The gentleman from California, Mr. Waxman, is recognized for 5 minutes.

Mr. Waxman. Thank you, Mr. Chairman. I hope you will be as generous to me in the time allotted to me as you have to our other colleagues. I will try to stay within the 5 minutes, but I might go a little bit over it, as the others have as well.

Secretary Chu, you are a scientist, and I want to ask you a science question. Many House Republicans, including many Republicans on this committee, deny that climate change is occurring. Are they right? Is climate change a hoax, or is it real?

Secretary Chu. No, the climate is changing, and there is much compelling evidence to suggest that a large part of it is due to human activity.

Mr. Waxman. And that is because most of our world's energy comes from fossil fuels, like coal and oil, that emit quantities of carbon pollution; is that right?

Secretary Chu. That is correct, that it is due to greenhouse gas emissions, carbon dioxide being the biggest.

Mr. Waxman. Does our future economic prosperity depend on building new energy industries?

Secretary Chu. Yes.

Mr. Waxman. And that is for our economic wellbeing, but it is also for stopping the climate change, if that is possible; isn't that correct?

Secretary Chu. That is absolutely true. I think because of these two factors that we will need clean energy. But there is another very important factor, that if you look at the market and you look at what the price is going to be for solar and wind, the expectation is that wind -- wind, right now, according to Bloomberg New Energy Finance, costs, levelized cost, 7 cents a kilowatt hour. This is getting in the range of the cost of any new form of energy.

Mr. Waxman. Well, you mentioned in your comments, your opening statement, China and Germany. Are we in a race with China and other countries to make the solar panels and wind turbines that will be the cornerstone of the clean energy economy for the future?

Secretary Chu. Yes, we are.

Mr. Waxman. I ask you these questions because they are the lens in which we need to understand Solyndra. Investing in Solyndra involved risk, but it was a risk that you thought was worth taking because of the importance of clean energy to our economic future; is that right?

Secretary Chu. That is correct.

Mr. Waxman. Members on this committee say they are shocked -- shocked -- that you would invest in a company as risky as Solyndra. But, in March 2009, before Solyndra received its conditional commitment, you said publicly that you were going to set aside some loan guarantees for higher-risk projects, which you said were projects that had a default rate as high as 10 to 30 percent.

I want to show you on the monitor what you said. Quote, "We should be making some higher-risk loans. These would be much more innovative, might be more likely to fail, but could create bigger changes in the long run," end quote. You said this in March 2009 before the Energy Department gave Solyndra a loan.

When DOE awarded Solyndra the loan guarantee, were you aware there was a risk that the project could fail?

Secretary Chu. I think, not only was I aware of it, all of Congress, in passing the bill, as they said, they appropriated $10 billion to cover for loan losses. That appropriation is very valuable; it could have been appropriated for other worthy causes. And so Congress knew of the risks.

Mr. Waxman. Secretary Chu, your reputation for integrity is unimpeachable. You have just told us that you gave Solyndra a loan guarantee that you knew was risky because we are in a race with China and other nations to develop a clean energy economy for the future. Republicans on this committee paint a very different picture. They say you gave Solyndra a loan guarantee as a political favor to a campaign

contributor to President Obama.

Can you tell us unequivocally that the decision to give Solyndra a loan guarantee was made on the merits?

Secretary Chu. Absolutely, it was made only on the merits.

Mr. Waxman. And can you tell us unequivocally that campaign contributions played no role in that decision?

Secretary Chu. Yes. They played no role.

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[11:00 a.m.]

Mr. Waxman. It's pretty obvious what's going on in this hearing room. House Republicans and their coal and oil industry allies are manufacturing a scandal, trying to discredit you, President Obama, the clean energy companies. That's a great deal if you're an oil company or a coal executive, but it's unfair to you and a disservice to the American people. This was a decision made on the merits because of the urgent need to build a clean energy economy. There is no evidence in the voluminous records before the committee to support the allegations of political favoritism.

The Republicans on this committee have said over and over again, they haven't been able to get the information they've requested. Your Department has already turned over to this committee 186,000 pages of documents. Is there anything you are holding back?

Secretary Chu. No. In fact, we -- I've instructed my staff to be as cooperative as possible with this committee.

Mr. Waxman. And there have been 13,000 pages of documents from the Office of Management and Budget, and over a thousand pages of documents from the White House, which the White House was willing to give this committee, but the committee rushed to a subpoena to force it, and there are nearly 200 pages of documents from the Treasury.

With all of these documents in before this committee, I don't

think the Republicans have been able to sustain the accusations that they've tried to make, mainly on innuendo, that this was a loan guarantee that should not have been made or that should not have been continued when the loan was restructured. I thank you for your cooperation in today's hearing.

Mr. Stearns. The gentleman's time has expired.

Recognize the gentleman from Texas, Mr. Barton, for 5 minutes.

Mr. Barton. Thank you, and Mr. Secretary, I, too, will stipulate that I think you're a man of integrity, so I do share that sentiment with Chairman Waxman.

He and Ms. DeGette have just made a big deal of asking you about political influence, and you have stated under oath that there was no political influence and that you are not aware of any, and I believe that you believe that.

Having said that, who at the White House or the Department of Energy, since there was no political influence, asked Solyndra to delay the announcement of plant closures and layoffs until after the election in November of 2010, since there was no political influence on this? Who made that request?

Secretary Chu. Sir, I don't know. I just learned about that. I think --

Mr. Barton. You do know that it was made, though, don't you?

Secretary Chu. I just learned about it very recently.

Mr. Barton. So you all don't operate in a total vacuum. I mean, you know, you know who George Kaiser is, I'm sure?

Secretary Chu. Yes, I know now.

Mr. Barton. You knew that he was a major investor in a venture capital firm that had a major stake in Solyndra; you knew that?

Secretary Chu. Not at the time of the evaluation of the loan, not at the time of the restructuring. I know now what his connection -- what his role has been. He was one of the equity investors.

Mr. Barton. I believe that you're being truthful when you state that he never asked you about this particular loan program. I absolutely believe that, but it's the elephant in the room. Everybody and their dog at DOE knew who he was and knew what he was involved in, and we have on the record that he was in and around the White House at least 16 times in the time period that the Solyndra loan program was being reviewed after the Bush administration has said that it wasn't ready.

I'm going to ask you a series of questions here, and I hope that you can answer them with a yes or no answer.

Could we put up on the screen the Energy Policy Act, Section 1702?

Mr. Secretary, I'm sure that you've read Section 1702 of the Energy Policy Act, conditions, part D, subsection 3, regarding subordination, and it reads, item No. 3, the obligation shall be subject to the condition that the obligation is not subordinate to any other financing. You've read that, right?

Secretary Chu. Yes.

Mr. Barton. Okay. Do you understand what the word "shall"

means?

Secretary Chu. Yes.

Mr. Barton. Okay. I believe that the Solyndra loan restructuring program was in violation of this law because -- and your department did not follow the plain language of the law -- because the obligation shall not be subordinate to other financing. In fact, since you made the opposite decision, who did you consult with before you made that decision?

Secretary Chu. The General Counsel of the Department of Energy.

Mr. Barton. The General Counsel.

Secretary Chu. And I believe that that was about the origination of the loan, and under the conditions of the origination of the loan, we shall not subordinate to any other --

Mr. Barton. So the General Counsel would be Susan Richardson?

Secretary Chu. No, this would be Scott Harris.

Mr. Barton. Who is Susan Richardson?

Secretary Chu. She works -- she's a counsel who works in the loan program, and she --

Mr. Barton. She works, okay. I understand that she is the chief counsel of the loan program. Is that your understanding also?

Secretary Chu. That is my understanding.

Mr. Barton. Okay. Did she consult directly with you about the language of the law that we've just read?

Secretary Chu. She consulted extensively with the General Counsel's Office, with Scott Harris and others. There was an extensive

discussion about that issue, and it was again when it was finally brought to me by the General Counsel, Scott Harris, it was their opinion that this did not violate the terms of the law.

Mr. Barton. When did Mr. Harris bring that to you?

Secretary Chu. This was in a discussion as we were discussing whether we should subordinate or not, and it had to do with restructuring, and so before we could even think of restructuring in a subordination, we had to make sure that it was legal.

Mr. Barton. What date was that?

Secretary Chu. I can't --

Mr. Barton. Well, my -- the reason --

Secretary Chu. I don't remember the exact date, but it was --

Mr. Barton. I don't want to cut you off, Mr. Secretary, but the reason the dates is important is that my understanding is the decision was made to subordinate before the memo accepting subordination was prepared. So there was a decision, and then after the decision made -- at least I'm told this -- the decision was made to subordinate, but the action memo which authorized it wasn't signed until after the decision had been implemented. Is that true to your knowledge?

Secretary Chu. No, I don't -- I would not know that, but it certainly would not be the way we do things in business, the way we do things in the Department of Energy. One has to first decide whether what are the legal bounds --

Mr. Barton. My time is just about to expire. Does the name the law firm Morrison & Foerster mean anything to you?

Secretary Chu. Yes.

Mr. Barton. What are they?

Secretary Chu. They're a law firm in California in the Bay Area.

Mr. Barton. All right. And they're also a consultant for your Department of Energy. Are you aware that they prepared a memo saying that this subordination was illegal and shouldn't be allowed? Are you aware of that?

Secretary Chu. No, I'm not aware of that.

Mr. Barton. Even though you said you welcome outside ears and eyes, and they were asked to prepare a draft memo, but once they prepared it and your General Counsel saw what was in the draft memo, they basically said, we don't want to hear that. Are you aware of that?

Secretary Chu. I'm not aware of that. I'm aware of the fact that there was a lot of discussion with Morrison & Foerster with our General Counsel's Office.

Mr. Barton. Okay, my time has expired, Mr. Chairman, but we're going to do more than one round; is that not correct?

Mr. Stearns. That's correct.

Mr. Barton. Thank you, Mr. Secretary.

Mr. Stearns. Recognize the distinguished gentleman from Michigan, Mr. Dingell, for 5 minutes.

Mr. Dingell. Mr. Chairman, thank you.

Mr. Secretary, these questions are yes or no. Did DOE hire experienced people in loan programs to do the analysis on loan applications?

Secretary Chu. Yes, we did.

Mr. Dingell. Did DOE hire experienced outside consultants to help in analyzing industries, markets, and other areas of concern to the Loan Programs Office?

Secretary Chu. Yes.

Mr. Dingell. Did the Loan Programs Office share information with OMB and Treasury during due diligence process?

Secretary Chu. Yes.

Mr. Dingell. Was that process open and transparent?

Secretary Chu. We shared a lot of information with OMB and Treasury.

Mr. Dingell. So it was open?

Secretary Chu. I mean, I don't know what you mean --

Mr. Dingell. Yes or no.

Secretary Chu. It was open between OMB and Treasury and us.

Mr. Dingell. Thank you.

Now, you mentioned in your opening statement that Members of Congress submitted letters for projects in their districts. I happen to know I did. As a matter of fact, I did with my good friend Mr. Upton, we submitted it together for a project in Michigan, which, curiously enough, happens to be in trouble because of a similar market collapse.

Now, did DOE or the Loan Programs Office take these letters into account when examining loan applications?

Secretary Chu. Yes.

Mr. Dingell. So it's correct that DOE or the Loan Programs Office

only examined the merits of loan applications and did not consider any influence from the Congress or the White House, yes or no?

Secretary Chu. We did not consider any influence.

Mr. Dingell. All right.

Now, let me look at this. We've heard all these complaints about the fact that the Federal guarantee was subordinated to private loans. It was superior to earlier private loans, was it not?

Secretary Chu. Yes.

Mr. Dingell. Okay.

Secretary Chu. Well --

Mr. Dingell. It was not superior to and it was subordinated to subsequent private loans; is that right?

Secretary Chu. Yes. The first $75 million of the initial funds.

Mr. Dingell. Now let me keep going.

Without that step, you would not have been able to get any private money to assist the Federal guarantee in saving Solyndra; is that right?

Secretary Chu. That is correct.

Mr. Dingell. Okay.

Now, I'm sure you're aware this committee has issued subpoenas for documents to OMB and to the White House, and we have not done so for DOE, your agency, and for your department because you've provided us over 186 -- pieces of documents related to this issue. Are you aware of any of the 186,000 documents included in communications between the DOE and the White House?

Secretary Chu. Are you asking am I aware of all 186,000 pages?

Mr. Dingell. Well, the question is, are you aware of any of these documents that were communications between DOE and the White House?

Secretary Chu. I'm not sure what communications there were between DOE and the White House, but certainly we did not communicate with the White House on whether we should approve a loan and especially the Solyndra loan. That was our responsibility.

Mr. Dingell. Okay. So did you have any personal communications with President Obama, with the Vice President, for campaign donors or others who had financial interests in Solyndra?

Secretary Chu. No, I did not.

Mr. Dingell. Now, based on the information you have received and have reviewed regarding the due diligence done by DOE during the Bush and Obama administrations, do you believe that the Solyndra loan was awarded based on the merits of the application? Yes or no.

Secretary Chu. Yes, I believe it was awarded on the merits of the application.

Mr. Dingell. So here -- do you agree with this statement: I believe that, first of all, you had a law which said that you should make these guarantees.

Second of all, you have got a situation where the Chinese are eating our lunch. They're producing batteries and solar panels and all kinds of things because, as you have observed, their government, through the China Development Bank, has offered more than $34 billion in credit lines to China solar companies alone. Other countries are doing the same thing, Japan, Korea, and probably other South Asian

countries.

Now, having said this -- and of course, Germany and Canada are doing exactly the same thing. So you found yourself in a position where you had a law that says you've got to do something. You had a depression on your hands. And you were trying to produce jobs. And you had an industry that you were trying to develop in the United States so that we're going to be able to compete instead of the Chinese dominating the market, as they seem now to be proceeding to do. Is that a fair statement?

Secretary Chu. They certainly want to dominate the market, and we were executing the laws as passed by Congress on the loan program.

Mr. Dingell. This is one of the things that motivated you to try to get Solyndra into the business, isn't that so?

Secretary Chu. That is true. I mean, this is a worldwide competition, as I said before.

Mr. Dingell. Now, what caused the big problem as near as I can gather is that the market collapsed; is that right?

Secretary Chu. Well, the price of solar modules plummeted, that is correct.

Mr. Dingell. That's what I'm saying. I yield back the balance of my time.

Thank you, Mr. Secretary.

Mr. Stearns. Thank the gentleman.

The gentleman from Nebraska, Mr. Terry, is recognized for 5 minutes.

Mr. Terry. Thank you.

And, you know, the ultimate question before this subcommittee is really, was it a meritorious loan? Is it something that should not have been finalized and spent? That's why you're here, so we can ask the questions and get the feelings.

So, first of all, the Solyndra loan was finalized in September 2009, is that your understanding?

Secretary Chu. That's my understanding.

Mr. Terry. All right. So you were one of the -- I mean, you have a premier resumé, one of the most respected people in the Cabinet, and you were sworn in. You were confirmed easily. And what was the first day you took office?

Secretary Chu. I think it was January 22nd.

Mr. Terry. And when were you first briefed by DOE staff on the Solyndra application?

Secretary Chu. Actually, I don't know about the Solyndra application, quite candidly. Certainly early on, once I became Secretary, there was -- I was focused on trying to get the loan program going. As I said before, in my confirmation hearings, that was a central theme among many Members of Congress.

Mr. Terry. So you don't -- you can't identify when you were first briefed on this loan?

Secretary Chu. On Solyndra? No, I -- I think early on, it was --

Mr. Terry. Certainly you knew about it before September 2009?

Secretary Chu. Yes.

Mr. Terry. Okay. Then you testified earlier that you were aware of the January 9th credit committee voted against offering a conditional commitment to Solyndra, noting, quote, number of issues unresolved makes a recommendation for approval premature at this time.

Were you aware of that January 9th decision --

Secretary Chu. I'm aware --

Mr. Terry. -- prior to the loan being finalized in September of 2009?

Secretary Chu. I'm aware of it now, but was I aware of it when the loan was being finalized? I think it's safe to say that it was just remanded back for additional information, and so, quite often, when the loan program tells me about the loan, what it is, whether we should be funding it --

Mr. Terry. All right. So you didn't know that there was a decision that it was premature at the time, direct quote, until later on?

Secretary Chu. There are many instances, sir, when --

Mr. Terry. Let me ask you --

Secretary Chu. -- applications are incomplete or there is not enough --

Mr. Terry. I appreciate that.

Did you know that the credit committee also noted that it had, quote, questions regarding the nature and strength of the parent guarantee for the completion of the project and Solyndra's ability to scale up the production, also stated in that January 9th document?

Were you aware of that before the loan was finalized January -- I'm sorry, September 2009?

Secretary Chu. I was aware, as it was briefed to me at the time, this was before March, and the conditional commitment at that time --

Mr. Terry. So you received a briefing in March?

Secretary Chu. I received a briefing.

I'm not exactly sure when I received the first briefing, but certainly since Solyndra was at the head of the line, based on the work of -- during the previous administration, then it was the one that --

Mr. Terry. Did you --

Secretary Chu. -- came up.

Mr. Terry. February 12, 2009, DOE stimulus adviser stated, quote, litmus test for the loan guarantee program's ability to fund good projects -- that Solyndra, I'm sorry. That Solyndra is the, quote, litmus test for the loan guarantee program ability to fund good projects quickly. Were you aware of his quote?

Secretary Chu. I'm aware of it now.

Mr. Terry. Before September?

Secretary Chu. But I think what we were -- this was Matt Rogers, and both Matt Rogers and I felt very focused to make the loan program, and from time of application of a complete application to the time of approval, something akin to about a year of due diligence.

Mr. Terry. All right, but he stated that on February 12, 2009.

Secretary Chu. Right.

Mr. Terry. Did you have a discussion in around February 12, 2009,

that Solyndra is the litmus test?

Secretary Chu. I believe by "litmus test," what he meant was that this was going to --

Mr. Terry. No, I'm sorry, I didn't ask you for your interpretation of his statement.

Secretary Chu. Right.

Mr. Terry. But he said Solyndra is a litmus test. Were you aware of that statement?

Secretary Chu. You know, I don't recall that, but if he went and said that, I'm sure we --

Mr. Terry. All right. And you had a conversation with Matt, what was his last name?

Secretary Chu. Rogers.

Mr. Terry. -- Rogers around middle of February of 2009 about this Solyndra application?

Secretary Chu. Right, because Solyndra was first on the line --

Mr. Terry. Did you hire Matt Rogers?

Secretary Chu. I did.

Mr. Terry. Pardon me?

Secretary Chu. I did.

Mr. Terry. You hired him, okay. Was he recommended by the White House?

Secretary Chu. No.

Mr. Terry. You just out of the blue said I need a stimulus adviser?

Secretary Chu. Actually, yes. What I wanted, because the -- at the time, the U.S. economy was in free fall; we were losing hundreds of thousands of jobs a year, and I wanted someone that could manage this huge portfolio to spend the money wisely but also to spend it quickly to put Americans back to work.

Mr. Terry. All right, thank you.

Secretary Chu. Mr. Chairman, could I --

Ms. DeGette. The witness would like to add something.

Secretary Chu. Yes. Mr. Chairman, could I --

Mr. Stearns. Yes, go ahead.

Secretary Chu. Could I just interrupt just briefly. I just wanted to correct the record. My staff told me Morrison & Foerster, the legal firm in the Bay Area, had specifically reviewed the Susan Richardson memo and approved her analysis, at least that's what my staff tell me. They approved it.

Mr. Stearns. Your counsel approved the memo?

Secretary Chu. The outside counsel Morrison & Foerster.

Mr. Stearns. Outside counsel, okay. Do we have a copy of that?

Secretary Chu. We'll be glad to give it to you.

Mr. Stearns. If not, I think we would like a copy. That would be good.

Dr. Christensen is what we show on our records.

Dr. Christensen, you're recognized for 5 minutes.

Dr. Christensen. Thank you, Mr. Chairman.

And welcome, Secretary Chu. We really thank you for your

willingness to come and help us to better understand what's happening.

I think everyone agrees that we need to understand what went wrong with the Solyndra loan guarantee and how the loan guarantee programs can be improved going forward. We all also should be supporting innovative technologies, while, of course, as we have been doing, watching out for the taxpayer, but we also need to understand the big picture.

The loan guarantee program doesn't just support solar, wind, and other renewable energy projects. A substantial portion of the incentives are also available for nuclear projects. In fact, Congress has authorized $18.5 billion in loan guarantees for nuclear plant construction costs. An additional $4 billion in loan guarantees is available for uranium enrichment facilities. The Vogtle nuclear plant project has already received a conditional commitment. The loan guarantee would be worth over $8 billion. That's 16 times the size of the Solyndra loan. A $2 billion conditional commitment has also been provided to Areva for a uranium enrichment facility in Idaho.

So my first question, Secretary Chu, I think it's important to have a balanced program. If we're going to provide billions of dollars in loan guarantees for new nuclear power plants, we should also support innovative solar, wind, and geothermal energy projects. What do you think?

Secretary Chu. I agree.

Dr. Christensen. You agree.

Unlike the nuclear industry, the renewable energy industry is

still in the early stages of development. Some of the technologies supported by the loan guarantee program have never before been built at utility scale. So Secretary Chu, what role do you think the loan guarantee program should play in encouraging the development of emerging technologies?

Secretary Chu. Well, according to the bill passed by Congress, and I agree with their sentiment, precisely that we should be investing in innovative technologies. We should be investing in first-of-a-kind or first large-scale deployment of some of these innovative technologies, and by doing so, we create a marketplace within the United States. And also we, as we invest in innovative manufacturing technologies, we are in the race of a high technology race that is in a sweet spot of the United States.

The United States invented the modern solar photovoltaic technologies, not only silicon but also the thin film technologies, and I believe we can compete and compete successfully in those technologies for what will be a hundreds of billion dollar a year market.

Dr. Christensen. I agree. And we just can't afford to sit on the sidelines and allow other countries like China to dominate the market. We need those jobs and investments.

When we try to help U.S. companies compete against heavily subsidized Chinese competitors, not every project is going to succeed, but we cannot just let Solyndra's failure be an excuse to throw up our hands and give up on this huge market.

Secretary Chu, can you share your thoughts about why we need to compete for this clean energy market, whether American -- well, I guess you've really answered that we need to compete. American companies can be successful. As you said, we invented the photovoltaic solar machinery.

Secretary Chu. Right. Well, let me add again --

Dr. Christensen. But also what policies should we put in place to help make this happen beyond what we've already done?

Secretary Chu. Well, first, let me tell you about the size of the market. As I said in my opening remarks, it's something of a $235 billion renewable energy market. According to some recent analysis by Bloomberg New Energy Finance, by 2020, that's expected to be close to $400 billion a year. By 2030, that's expected to be roughly $460 billion a year renewable energy, most of it, 80 percent of it roughly, in wind and solar technologies. By 2030 -- 2020 or even less than 2020, wind is expected to reach parity with any form, new form of energy. Solar, there's a debate whether it becomes as inexpensive as, let's say, gas, by 2020 or 2030 or 2025, but there's a heavy expectation in the business world that these technologies will become competitive without subsidy in a short period, relatively short period of time.

And so the whole issue, and this is why it's so important to the United States, is that in this hundreds of billion dollars a year market, do we want to be buyers or sellers? And we have the intellectual capacity to be the sellers.

Dr. Christensen. And with all of that investment comes jobs,

correct?

Secretary Chu. Yes.

Dr. Christensen. Lots of jobs?

Secretary Chu. Lots of jobs, lots of wealth creation in the United States.

Dr. Christensen. Thank you.

Secretary Chu. And there's a world market out there.

Dr. Christensen. Thank you.

Mr. Stearns. Ms. Myrick is recognized for 5 minutes.

Mrs. Myrick. Thank you, Mr. Chairman.

Mr. Secretary, were you aware that Solyndra sent the committee a letter on July 13th of 2011, describing the financial condition of the company?

Secretary Chu. I can't say to the exact date, but around that time, the company was in trouble.

Mrs. Myrick. Well, Mr. Harris wrote the committee at that time with the purpose of providing us with the most accurate and up-to-date information regarding Solyndra and our performance in the market, and that's a quote. And he also wrote the following fact, and I quote, Solyndra's revenues grew from $6 million in 2008 to $100 million in 2009 to $140 million in 2010, and for 2011, revenues are projected to nearly double again. PriceWaterhouseCoopers audited the financial statements that were completed on June 30th in 2010, and they substantially agreed with that, but there were several points that they didn't mention, and I would like to state those.

They didn't mention that the 2010 revenue amount was exactly half of the $284 million they had originally projected in their loan application. And they did not mention that audited cost of revenue was $162 million in 2009 and $284 million in 2010 for a gross loss of 61 percent and 100 percent of revenue respectively. Additionally, audited operating expenses showed a loss from operations, and Solyndra did not mention that audited net loss was a staggering $172 million in 2009 and another $329 million in 2010. They didn't mention that cash flows from operations showed a massive outflow of net cash used of $170 million in 2009 and $194 million in 2010. This, to me, is a large red flag as cash flow from operations is usually a source of cash, not a use, and cash flow showed cash depleting at a rapid rate, from $82 million in 2008, $52 million in 2009 to $32 million in 2010. So when did you become aware of this what I think is misleading information that Solyndra submitted to Congress? And, you know, if you did, when you became aware of it, what did you do, if anything?

Secretary Chu. Well, certainly, I became aware that the company was in financial stress at the time of restructuring, as we were discussing what to do, and as time progressed, became increasingly aware that the projections of the company were not being met, and so certainly by 2011, by the spring of 2011, I knew that this company was in deep trouble.

Mrs. Myrick. Well, Mr. Silver, when he testified at the committee in September, said he's doing the best job we know how to do and the company was meeting projections.

Also, were you made aware of the fact that based on this data, the auditors issued a going concern qualification in March of 2010 that raised substantial doubt about the company's ability to continue in business?

Secretary Chu. I'm aware of it now. I believe that was the PriceWaterhouseCoopers audit.

Mrs. Myrick. Correct.

Secretary Chu. And I think in that instance that they were asked to assist and give an audit as to whether Solyndra could have an initial public offering, and due to the circumstances of Solyndra and due to the market in a terrible recession, they said no, this was not the time to have an IPO.

Mrs. Myrick. Did anyone in DOE review that financial information then and raise the concerns?

Secretary Chu. I'm sure they did, but I don't know personal knowledge of to what extent they reviewed the PriceWaterhouseCoopers analysis.

Mrs. Myrick. Did Solyndra say how the sales were going to cover its selling and general administrative costs?

Secretary Chu. I believe that Solyndra had expectations of sales that, as you pointed out, did not come to pass.

Mrs. Myrick. And also they, their manufacturing cost was up to twice sales revenue for a gross loss, that was part of it as well?

Secretary Chu. I certainly knew they had -- that they were -- their sales were not up, that they had to be selling at a

discount because, again, all companies had to sell their product at a discount. Solar panels, although very high tech, are a commodity, and when prices go down by 70 percent in 2.5 years, you're knuckling down. All the companies are knuckling down; they're trying to ride out this storm.

Mrs. Myrick. Did that auditors' growing concern question -- raise concern within the department? Was that expressed and talked about at all?

Secretary Chu. Certainly, first, the growing concern, that is kind of a standard language. In a start-up company, there is a question as to whether, as you start this company, as you start up the manufacturing, the business plans, are you going to have negative cash flows, and at sometime those cash flows turn positive. The investors, the very savvy investors who invested nearly a billion dollars, the part of their business plan was that it would be sometime in 2011 before they would actually go in the black, and that turned out to be incorrect, and then more recent projections pushed that back several quarters.

Mrs. Myrick. Thank you.

Mr. Stearns. The gentlelady's time has expired.

The gentleman from Massachusetts, Mr. Markey, is recognized for 5 minutes.

Mr. Markey. Today Americans are focused on the oversized influence of the oil companies and others through the Occupy Wall Street movement, yet Republicans are pushing their own pre-occupy movement in the hopes that Americans will be too preoccupied with this one loan

to a clean energy company that they won't see the tens of billions of dollars in government subsidies given to the oil, coal, and nuclear industries, the Republican favorites. The result, we're getting a distorted picture of the real market conditions that threaten our economic future.

Who we should really be talking about are not the bureaucrats at DOE, but the bureaucrats in China, who have made a strategic decision to drive foreign competitors out of the solar market. They did it with the rare earth minerals industry in the 1990s, and they are doing it right now with the solar industry.

Secretary Chu, many of my colleagues on this committee think renewable energy is the stuff of the Jetsons. They think solar panels are just like flying cars or life-sized robots that do housework, maybe some day way in the future. They're completely oblivious to the revolution that is going on.

Mr. Secretary, last year globally 194,000 megawatts of new electrical generating capacity was installed on the planet. What percentage of that new electrical generation power came from renewable sources? One-half of it in 2010. Half. And solar is by far the fastest growing energy industry in the world. Over the last 5 years global solar installments have increased 1,000 percent to 17,400 megawatts in 2010. For every new nuclear power plant globally that went online last year, four times as much new solar capacity was deployed. In the U.S., there are now 85,000 employees in the coal industry; 85,000 employees in the wind industry; and 100,000 employees

in the solar industry. That's the story here. Solar has big coal and big nuclear and the established energy sector scared stiff, and they've enlisted the Republican party to do something about it. That's the real story here.

The Republicans have now essentially eliminated loan guarantees for renewable energy this year, and they have left $30 billion for nuclear and coal as loan guarantees. They passed legislation to cut the solar research budget for next year by 64 percent, but they've increased the budget for nuclear and fossil energy. In their budget, they promised to cut clean energy investments by 90 percent over the next 3 years.

Historically, just as there has been a Moore's law for computer chips, there also has been a Moore's law for solar. For every doubling of solar deployments worldwide, the price declines by 18 percent. At least that was the case until this year. Through the first 8 months of this year, the price of solar panels has fallen 42 percent, a 42 percent drop in just 8 months. So the irony here is that the Republicans attack renewable energy because they claim it's too expensive, but Solyndra failed because solar is getting too cheap. The price of solar and wind and other clean energy is dropping while coal and oil prices have risen. And the Republicans and the fossil fuel industry can't let clean energy win.

And why has this happened? Why has there been a 42 percent drop? I will tell you why. Our country is in a race right now. There's a global race to become the leading maker of solar technology, and we

have some fierce competitors. Last year alone, China gave five solar companies $31 billion in financing assistance. That's on top of free land, extensive tax breaks. That's on top of a domestic currency that is substantially undervalued and allegations of dumping by Chinese state-sponsored solar companies into the U.S. market by our solar industry.

Secretary Chu, do you agree that this massive intervention into the market by China has fundamentally altered the market for solar panels and in fact made it very difficult for solar, for Evergreen, for Energy Conversion Devices in Michigan to survive, that the prices have plummeted and just like pets.com and the dot-com bubble, there are individual companies that are going to fail inside of a larger success story for solar and renewables?

Secretary Chu. Yes, I agree with that. Certainly, as I've indicated before, China has targeted all renewable energies as on their critical path for their future prosperity, not only for their domestic use, and they're going to be the leading user of renewable energies, but also they see a huge export market.

Mr. Markey. So when the price of silicon dropped dramatically, 90 percent, that hurt the technology of Solyndra because it was something that they were depending upon to have a much higher price point.

Secretary Chu. Right.

Mr. Markey. And that price point collapsed for them?

Secretary Chu. That is correct. Silicon and solar modules in

general dropped, you said 42 percent in 8 or 9 months and 70 percent in a couple years. That's unheard of. It was violating the learning curve, the Moore's law that you spoke about, it was --

Mr. Markey. That's what happened with cell phone prices because of action in this, is that the price dropped 90 percent for cell phones after we passed three bills out of this committee. We don't mourn the old brick size of phones. We all decided to put those phones at under 10 cents a minute in our pocket. That's what's happening in the solar market.

Mr. Stearns. The gentleman's time has expired, and recognize Mr. Sullivan for 5 minutes.

Mr. Sullivan. Thank you, Mr. Chairman.

Thank you, Secretary, for being here today, and I hear my good friend from Massachusetts talking about all these jobs that have been created, and you've talked about all these jobs that have been created in renewable energy and solar and wind, and looking at your Web site, it says you've created 60,000 American jobs. Is that true?

Secretary Chu. I believe that to be correct.

Mr. Sullivan. And, you know, these jobs seem pretty expensive to me, you know. You talk about the low cost, you know. At least in the coal and gas and oil industry, we're not paying for these jobs. These are private sector jobs that aren't helped by the government. And on your Web site, we took the 60,000 in Section 1703, you obligated $10,647,000,000 for those jobs. Sir, that's $1,625,000 per job. On Section 1705, 05, you obligated $16,128,500,000 for those jobs. That

cost $963,585 per job. The ATV program you obligated $9,129,000,000, that's a cost of $221,557 per job. I mean, that's a lot. How do you justify paying that much? I mean, sir, I want to have jobs; 14 million people out of work and unemployment at 9 percent, I want jobs, but I think paying for them like this is a really bad idea. What do you have to say about that?

Secretary Chu. Well, let's start with, for example, the nuclear loan. I believe that was something like an $8 billion loan. The Federal funds, the company, the applicant that applied for the loan had to pay the credit subsidy for that loan. I think it was 3 or 4 percent; I'm not exactly sure how much. So the amount of government taxpayer dollars that went into that $8 billion or $9 billion loan was essentially zero, and so because the company itself paid for that.

Mr. Sullivan. Do you stand by paying this much for these jobs?

Secretary Chu. I'm trying to explain, sir, that when you have a 1703 program where the company, the applicant pays for the credit subsidy, they are actually -- that's not taxpayer dollars. That's coming from the company.

Mr. Sullivan. Back to the Solyndra loan, would you do that loan again, knowing what you know today?

Secretary Chu. Would I do Solyndra knowing --

Mr. Sullivan. Knowing what you know today, would you approve that loan?

Secretary Chu. Certainly knowing what I know now, we would say no, but you don't make decisions, you fast forward 2 years in the future

and then go back. I wish I could do that.

Mr. Sullivan. How closely were you involved in the loan process there?

Secretary Chu. In the loan process, I was -- I have to approve all the loans, and I have to be briefed on all the loans, and I ask questions about the loans as they come up.

Mr. Sullivan. But, Mr. Secretary, with respect to the Solyndra loan application, were you aware that Solyndra reported zero sales in 2005 and 2007? You talked about that model being acceptable earlier.

Secretary Chu. 2005, I'm not even sure they actually had a fab plant up in that time, in the early days, when it was first formed as a company. You first have to build a factory, you have to build product, and then you sell.

Mr. Sullivan. Well, in 2010, you were Secretary at that time; is that correct?

Secretary Chu. Yes.

Mr. Sullivan. And Solyndra at that time, did you notice -- you said earlier you noticed they were having some difficulty, and they expressed that to you, right?

Secretary Chu. Certainly by the end -- certainly by 2011, we knew that there were -- Solyndra was in trouble.

Mr. Sullivan. Did you know that from then, in 2010, did they discuss with you that they potentially would have to lay people off and do some downsizing?

Secretary Chu. They did not discuss that with me.

Mr. Sullivan. They never discussed anything like that with you?

Secretary Chu. They might --

Mr. Sullivan. Did they discuss it with anyone at the Department of Energy?

Secretary Chu. They may have discussed it with people in the loan program.

Mr. Sullivan. Okay. So they discussed it with people in the loan program, so they were aware that Solyndra was having some difficulty in 2010. Would you say that, yes or no, is that correct, that that was expressed to someone in the loan department?

Secretary Chu. I would say that people in the loan department would know about it.

Mr. Sullivan. Why -- who put the pressure on you or them to delay divulging that knowledge until after the elections?

Secretary Chu. There was no pressure. I was not part of that decision, and I certainly would not have been in favor of that decision.

Mr. Sullivan. And I believe you to be truthful in that statement, but someone put pressure on them to not -- delay that divulging of that information on Solyndra until after the elections in 2010, and that's very political. I think it was done for political reasons. Do you think that's a proper way to do business?

Secretary Chu. No, I don't think it's a proper way to do business.

Mr. Sullivan. Thank you.

Now, who at the White House put pressure on you to get these loans

done so quickly without doing the proper due diligence?

Secretary Chu. First, no one in the White House. We never cut corners in doing the proper due diligence. As I said before, if you look at the average time of due diligence from the time of formal application of the loans, it's something like 300 --

Mr. Sullivan. Would you say proper due diligence by you would be no information on projected sales, general administrative expenses or estimated net profits, is that proper due diligence, and then get the loan out before getting that kind of information?

Secretary Chu. The business plan of Solyndra and of any start-up company is that as you're building the factory and building sales, you expect to be taking losses. The business plan was they actually expected to be in the red until sometime around 2011, and with that business plan, remember, there's a lot of savvy investors who spent nearly, invested nearly a billion dollars before the U.S. Government looked at them.

Mr. Sullivan. Thank you, Mr. Secretary.

Mr. Stearns. The gentleman's time has expired.

Recognize the gentleman from Texas, Mr. Green, for 5 minutes.

Mr. Green. Thank you, Mr. Chairman.

Thank you, Secretary Chu, for appearing before the subcommittee. The events surrounding Solyndra are of great concern to me because -- and a number of us were on this committee in 2005 when we put the loan program into effect and authorized it. It was a program that championed by both Democrats and Republicans in 2005, first passed

by a Republican House and then signed by President Bush.

When I voted for the 2005 energy bill, I never intended that taxpayer money would be made a lesser priority for repayment than other outside investors, and I know we saw the section of 1701(d)(3) on the board a few minutes ago, and I've read the opinion from an outside counsel that went into the decision of saying that that's really not true, but, you know, the black letter law typically is the one that we all look at. I understand that the taxpayer money was subordinated for those outside investments as part of the restructuring and not the original loan.

Can you explain how the department came to that conclusion that you would be living up to your fiduciary relationship as Secretary of Energy, just like we have a fiduciary relationship to the taxpayers, and responsibility for that subordination? And like I said, I did read the section and the opinion. I obviously disagree with the opinion of the outside counsel that, all of a sudden, you could subordinate that loan. Was it based on that outside counsel opinion to the Department of Energy?

Secretary Chu. As I said, we went through a very rigorous process, starting with Susan Richardson and the General Counsel's Office in the Department of Energy, also outside counsel, as pointed out in the opening statements of Congresswoman DeGette. The previous general counsel, a previous general counsel of the Department of Energy also concurs that that was a decision that was within the bounds of the law. So this was a decision that was heavily vetted through our

system. And I'm not a lawyer, but in discussing with them, the first one was in the instance of the loan, would it be subordinated? No, that was very clear. But as the record stands for itself on the decision both by the memo that was communicated to me through Scott Harris and also outside counsel and also, finally, a previous general counsel of the Department of Energy had no bone to pick in no way one way or the other, so we have a number of people saying that this is commensurate with the law.

Mr. Green. Okay. Well, has the Department of Energy or, if you know of, any Federal agency ever subordinated a Federal loan to an outside investor?

Secretary Chu. In the case of when a loan is in trouble and in the case of a restructuring, I do know, as I said, I've been told that, you know, in very rare instances to be sure that Ex-Im or OPEC, I forget which one, has done this. Usually what happens in a restructuring is either the government takes an equity position or a subordination, and so when you do do a restructuring, if there's not additional money, what we were facing was the imminent bankruptcy of a company, and we looked at both cases, of whether it goes bankrupt now or it goes bankrupt later, or when you have a complete factor, if it goes bankrupt, what would be the chance of recovery?

Mr. Green. Well, I guess I have some concern about it because, except for OPEC -- and I would appreciate any information on that because we tried to receive that from the Department of Energy -- and we couldn't, I cannot, couldn't find any example of where we

subordinated the United States interest to someone else, but I appreciate if you could get that to us.

And I understand if you went with lawyers and outside lawyers, previous counsel. But, as you know, sometimes like 10 economists, you'll get 11 different opinions. If you hire 10 lawyers, you may get 11 different opinions on it, but those of us who are on the committee and actually helped draft that law and support that program didn't ever intend that, and hopefully, for the record, that in the future, that will be the case, and if we have to, we'll change the language to what this outside opinion says, but the language is pretty clear, that subordination shall be subject to a condition that the obligation is not subordinate to other financing. I don't know how else you can read that except, you know, maybe getting around it saying, this is a second, we're trying to refinance the loan, but it seems like the refinancing should have been under the same rules as the original loan application because I couldn't find any time in history -- I know all of us, if we have, if we owe the Federal Government and I owe Bank of America or Chase, believe me, the Federal Government gets our payment first, and so that's why I think it's unusual. But you may have had -- counsel may have not been correct. Did you talk with the Department of Justice at all? I know you talked with in-house counsel at the Department of Energy. Was there ever any effort to talk with the Department of Justice for an interpretation on that?

Secretary Chu. No. We talked -- I talked with our in-house counsel, and as I noted, the Department of Energy people also sought

opinion of Morrison & Foerster.

Mr. Green. You know, it seemed like subordination is not the common practice. Was there any concern at all except for getting opinions of, like you said, previous counsel to the Department of Energy or outside counsel, that you were making precedent here or breaking precedent?

Secretary Chu. There was a discussion, and you're quite right, in the time of origination of the loan, we could not subordinate to any other equity partners or things of that nature, and so there is another clause in that act that said above all, we have to look out after the taxpayer interests and maximize recovery, and that also is part of that act.

Mr. Green. Was it ever offered that we would take, the taxpayers would take an equity portion of Solyndra in exchange for our secondary --

Secretary Chu. There's a discussion about equity position. Again, this is a new loan program, and I'm not even sure whether this loan program can actually -- I was just referring to a practice of Ex-Im and OPEC.

Mr. Stearns. The gentleman's time has expired.

Mr. Green. Well, Mr. Chairman, I would like to make sure, though, if we need to change the law because I don't think our committee made that --

Mr. Stearns. I think you made that clear. In fact, you were on the conference committee when you made that law.

Mr. Green. Well, I wasn't on the conference committee; I was on this committee. But having supported that loan guarantee program, because I support both the solar, the wind, the nuclear, you name it. In fact, I've been disappointed we weren't able to do a more aggressive program in alternative energy, but we need to change that law because I don't think we ever ought to let the taxpayers be subordinate to a new investor even under a --

Mr. Stearns. Well, I understand that.

Mr. Green. -- restructuring.

Mr. Stearns. But I think you made a very excellent point that that's -- how Mr. Chu used the law was not how it was intended, and I think you made a good point on that.

Ms. DeGette. Well, now, wait a minute.

Mr. Stearns. I mean, that's my interpretation as the chairman.

Mr. Waxman. Well, Mr. Chairman, that's your interpretation, but the lawyers said otherwise --

Mr. Stearns. Well, I appreciate that.

Mr. Waxman. -- and that has to weigh on the Secretary far more than your opinion or Mr. Green's opinion.

Mr. Stearns. Well, I certainly think --

Mr. Waxman. The rest of us are not willing to go along in changing the law.

Mr. Stearns. Well, Mr. Green's opinion is what I'm agreeing with, not yours.

Let me recognize the gentleman from Pennsylvania, Mr. Murphy.

Mr. Murphy. Thank you, Mr. Chairman.

Secretary Chu, at the Solyndra ground breaking on September 4, 2009, you said your agency, "moved aggressively to get stimulus money out the door." Were you aware that 4 days earlier, August 31st, the staff of OMB wrote to your agency and said, quote, I would prefer that this announcement be postponed, this is the first loan guarantee, and we should have full review with all hands on deck to make sure we get it right. Were you aware of that?

Secretary Chu. I'm aware of it now.

Mr. Murphy. All right and not before that. Were you aware that the following day, on September 1st, 2009, OMB downgraded Solyndra's credit rating because of the, quote, weakening world market prices for solar generally?

Secretary Chu. What -- another way of saying that, yes, is that the --

Mr. Murphy. Okay.

Secretary Chu. -- credit subsidy score went up slightly.

Mr. Murphy. There's also an email -- I appreciate that. I'm just trying to move, sir. There's an email between Steven Mitchell, managing director at Kaiser's venture capital firm, Argonaut Private Equity, and George Kaiser on March 5th, 2010, where Mitchell writes that, "Chu is apparently staying involved in Solyndra's application and continues to talk up the company as a success story." That's on tab 23. Now, is that a fair characterization, to say that you were personally interested and personally involved in Solyndra's effort to

get Federal financing? Is that a yes or no?

Secretary Chu. As I said, Solyndra was the first company, the head of the line by the loan program, and so what we were doing is in order to get the loans out, we said, all right, who are at the head of the lines, who are the most promising, what are the most promising loans? Again --

Mr. Murphy. The most promising, you said, sir?

Secretary Chu. The most promising in the opinion --

Mr. Murphy. Let's hang on to that word. Let me just -- because I have to ask you some questions because most promising is important. So were you aware then on March 16, 2010, in Solyndra's IPO filing with the SEC, PriceWaterhouseCoopers said it had, "substantial doubt about Solyndra's ability to continue as a growing concern"? Were you aware of that?

Secretary Chu. I am aware of it now.

Mr. Murphy. That doesn't sound most promising. Were you aware that in the following month, OMB staff began expressing concern about your agency's monitoring of the loan?

Secretary Chu. Sorry, say that again?

Mr. Murphy. Were you aware that in the following month, that's April of 2010, that OMB staff began expressing concern about your agency's monitoring of the loan?

Let me help you with that. What they said in April was that when evaluating the riskiness of Solyndra, they said, "DOE seems to separate the parent from the project, but I think the deal is structured in a

way that does not support that view." So at that time were you worried that your agency's calculation of the project's risk was completely different from the OMB model?

Secretary Chu. I think there's lots of robust conversations that go on between OMB and Department of Energy, and in the end, I think OMB did not object to --

Mr. Murphy. Can you just -- I've got to --

Secretary Chu. -- the restructuring.

Mr. Murphy. So were you aware then, in May of 2010, 2 days before the President's visit to Solyndra, the White House Adviser, Valerie Jarrett, and Vice President Biden's chief of staff, Ron Klain, contacted your chief of staff to express their worries about the "growing concern" letter from Price Waterhouse, were you aware of that conversation?

Secretary Chu. No.

Mr. Murphy. At any point in the spring of 2010, did you discuss with the White House the, quote, growing concern letter or the disagreements between OMB and DOE on Solyndra's financial strength?

Secretary Chu. As time progressed, there was certainly --

Mr. Murphy. At that point?

Secretary Chu. I can't say exactly at that point.

Mr. Murphy. Okay.

Secretary Chu. But certainly as time progressed.

Mr. Murphy. So were you aware -- let me just try and get these in. Were you aware that in June, after Solyndra cancelled its IPO,

an Office of Management and Budget staffer have suggested this would be a good moment to, quote, insist that DOE ramp up its monitoring function immediately? I mean was your agency monitoring or not monitoring up to that point?

Secretary Chu. I was told that by that time, we were monitoring the loans, but we had -- I'm not really sure of the exact timing, but we had one -- Solyndra was our first loan, and we then established a loan monitoring program, which has consistently been made more robust as time progressed.

Mr. Murphy. So the following, month you had a meeting with OMB director Peter Orszag about policy issues; is that correct? Do you recall that meeting?

Secretary Chu. Yes.

Mr. Murphy. Okay. Now, the day before the meeting, OMB and Treasury both sent your agency a list of information needed about Solyndra's finances. Did you discuss Solyndra with Mr. Orszag?

Secretary Chu. No, we were discussing much higher policy issues than a particular loan, I believe, at that time.

Mr. Murphy. So he didn't ask you for any critical information about Solyndra's finances, including financial statements, actual performance information, market price reduction?

Secretary Chu. Well, my recollection at the time was that we were discussing loans, for example, about whether if you took the loan plus 1603 plus production factors, other things, State subsidies, that some of the loans might be getting, there's a policy issue about --

Mr. Murphy. Well, let me ask you this, then: Were you aware that prior to your meeting with Mr. Orszag, OMB staffers said on June 22nd, quote, if DOE does not stay on top of the project, it risks becoming embarrassing, given the high profile S1 POTUS and VPOTUS events over the past year. So I have to ask, you said it was promising, we have lots of other agencies saying and PriceWaterhouseCoopers and OMB and Treasury people saying this was not going to work out. So my question is, will you admit that there were problems in monitoring this loan and getting you the information or you having the information reviewed to draw a conclusion that this was promising?

Secretary Chu. By the word "promising," what I mean is that that loan was the head of the line; it was the people in the loan program that were from the previous, who were there in the previous administration.

Mr. Murphy. Well, I didn't ask you where they were in the line, I asked if you there were problems you were aware of that you were monitoring or not in spite of it being promising --

Secretary Chu. Well, at the time of the origination of the loan after OMB's assigned credit subsidy score was something like 7.8 percent. What that means effectively is that there is a very low probability at the time in the OMB estimation that one would enter into default.

Mr. Murphy. And that was when?

Secretary Chu. This was at the time of the -- when the loan --

Mr. Murphy. But it was restructured later on, sir.

Secretary Chu. No, after restructuring, certainly, then you reevaluate, and our loan program does this all the time.

Mr. Murphy. Well, can you just tell me then finally, were you aware or not of the problems of monitoring this loan?

Mr. Stearns. The gentleman's time has expired.

Secretary Chu. We are making the loan monitoring more robust. We have a separate office, and we continue to make it more robust.

Mr. Murphy. I'm asking you, were you aware, do you admit there were problems with monitoring this loan by your agency?

Secretary Chu. At the beginning, when we had one loan, we began to set up a loan monitoring office. It was roughly at about the same time when OMB said we want you to set up a monitoring office, we did set it up, and so within certainly weeks --

Mr. Stearns. The gentleman's time has expired.

Mr. Murphy. Thank you.

Mr. Stearns. Ms. Schakowsky is recognized for 5 minutes, the gentlelady.

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DCMN HOFSTAD

[12:00 p.m.]

Ms. Schakowsky. Thank you.

Secretary Chu, as you can see, the Solyndra bankruptcy has generated a political controversy, as you might expect when taxpayers take this big a hit. And the debate is not a bad thing if we use it to learn lessons about the most effective means of government support for clean energy, the amount of risk we are willing to accept to create jobs and help our country lead the energy industries of the future.

Unfortunately, I don't feel like that is the direction the majority has taken in this investigation. In fact, what we have seen are misstatements of fact and the use of selective documents out of context.

I want to ask you some questions to see if we can get the record straight regarding the history of the Solyndra loan guarantees. Solyndra applied for a DOE loan during the Bush administration; is that correct?

Secretary Chu. That is correct.

Ms. Schakowsky. When you received early briefings on the loan program's project pipeline, was Solyndra presented as an ongoing application that had undergone due diligence and was nearly ready to proceed, or was it presented as an application that had been rejected by the previous administration?

Secretary Chu. It was presented as an application that the various processes recommended that we go forward with this loan.

Ms. Schakowsky. I would like to address one specific refrain from our Republican colleagues, the assertion that the Bush administration rejected -- that is a quote -- Solyndra's application, only to have it revived by the Obama administration.

There is a document, tab 73 in your binder, that was sent to the director of the Loan Programs Office during the final months of the Bush administration. It lists Solyndra as one of the three highest priorities through January 15th -- it says 2008, but given the time of the email, it is obvious that means 2009, because the email was December of 2008.

Mr. Chairman, I would like to have this document made part of the record.

Mr. Terry. [Presiding.] Not hearing an objection, so ordered.

[The information follows:]

******** COMMITTEE INSERT ********

Ms. Schakowsky. In early January 2009, Solyndra's application was reviewed by the credit committee at DOE. They raised some specific questions about the loan and remanded it for further consideration, quote, "without prejudice." The committee staff interviewed David Frantz, who has served as the director of the Loan Programs Office since 2007. The committee also interviewed Steve Isa -- Isakow --

Secretary Chu. Isakowitz.

Ms. Schakowsky. Thank you -- Isakowitz, who was appointed by President Bush to serve as CFO of the Department.

Mr. Isakow -- Isakowitz -- I don't know --

Secretary Chu. Isakowitz.

Ms. Schakowsky. Yeah. I should talk, "Schakowsky." Anyway -- who was appointed by President -- he continued to serve as CFO until July of 2011 and was Mr. Frantz's supervisor as Solyndra's application was reviewed.

Do you have any reason to doubt the credibility of these individuals?

Secretary Chu. No.

Ms. Schakowsky. Both "Mr. I." and Mr. Frantz made it clear that Solyndra's application was not in any way rejected by the Bush administration. They stated that the career DOE team in the Loan Programs Office continue to gather more information and negotiate a better equity split for the taxpayers after the first credit committee.

Both of these officials confirmed that consideration of the Solyndra application went on unabated as the Bush administration left

office and the Obama administration came into office. Is that your understanding, as well?

Secretary Chu. That is my understanding.

Ms. Schakowsky. Was it ever your understanding that the Solyndra application had been rejected during the previous administration or that the application was somehow on the shelf, only to be, quote, "revived by the Obama administration"?

Secretary Chu. No, not -- quite the contrary. The career folk in the Department of Energy in both administrations felt that this loan was at the head of the line of the ones that we should be looking at. And it was progressing according to the procedures.

Ms. Schakowsky. Well, I thank you, Mr. Secretary, because I think it is very important to clarify the record regarding the history of the loan guarantee and to put to rest some of the statements that were made that contradict that record.

And I am happy that we have the email and the documents that I think clearly show that this was something that was proceeding forward and was recommended to proceed forward when the Bush administration left and handed this over, with these career people that -- Dr. Frantz was still there, as I understand it.

Secretary Chu. Yes.

Ms. Schakowsky. And I yield back my time. Thank you.

Mr. Terry. All right. The gentleman from Texas, Mr. Burgess, you are recognized for 5 minutes.

Dr. Burgess. I thank the chairman for the recognition.

Secretary, thank you for being here today, and thank you for your generous time that you are spending with the committee.

I just want to say at the outset, I think solar energy has a place in the future of this Nation's armamentarium of energy sources. But I must say, what has happened with Solyndra -- and the hearing we are having today kind of underscores it -- I think it has set back the prospect for perhaps some time.

Let me ask you a question. You said earlier it is regrettable what happened and that some of these were going to fail. And, in fact, the first two out of three, between Solyndra and Beacon, the first two out of the three projects that you approved have failed. The President has said it could be as high as a 50 percent failure rate.

So what is an acceptable failure risk for this type of project?

Secretary Chu. I would say that, given the credit -- the total credit subsidy that was appropriated and set aside, the $10 billion, which included $2.4 billion for the 1705 program, certainly if we approached something on that number, that would be very bad. I, personally, don't think we are going to get anywhere close.

And if you take the loan program in its total, not only 1705 but the ATVM Loan Program, it would --

Dr. Burgess. Yeah, let me stop you there for a second, because my time is going to be very limited. They won't let me go over like others. You watch.

Mr. Terry. Thank you for recognizing that.

Dr. Burgess. But here is the deal. I mean, the confluence of

the loan guarantees, coupled with the rapid injection of dollars from the stimulus bill, has really led, in my opinion, to some touchy decisions being made. And it has led you, as the Secretary of the Department of Energy, to behave like a venture capitalist.

But you are the Secretary of Energy. You hold the Nation's nuclear secrets. You maintain the Nation's nuclear arsenal. You are not supposed to be a venture capitalist who takes risk. Is that correct?

Secretary Chu. First, the loan program is not a venture capital -- it is actually for something beyond the initial stages of investment. And the loan program, as set up by Congress, said, here is the money, here is appropriate funds to cover for losses, but we need --

Dr. Burgess. Yeah, but the bottom line is, with all due respect, you are -- I mean, look, I was in private business. I understand what it is like to take a risk. I understand what it is like to fail. But you are the Secretary of Energy. You earn almost $200,000 a year. If you approve a program that fails, at the end of the day you go home and you are still earning $200,000 a year. None of your assets are attached, nothing of yours personally is put at risk, because these are taxpayer dollars that were put on the line.

Do you understand how people are uncomfortable with this concept of the Department of Energy behaving as a venture capitalist?

Secretary Chu. Well, as I said before, this loan program was set up by Congress, and Congress appropriated in the 1705 program

$2.4 billion to account for the losses.

Dr. Burgess. As someone who was sitting in this committee in 2005 when the loan guarantee program was approved, I don't think any of us could have foreseen what was around the corner with, again, the rapid injection of cash from the stimulus bill. Most of us on this side of the dais oppose that.

Let me ask you some questions about subordination, because my colleague from Texas, Mr. Green, asked some. You said it was a difficult choice to make, about the subordination, correct?

Secretary Chu. It was difficult because, by that time, we knew that the company was in trouble, and we, again, were trying to maximize taxpayer recovery. And so, all our actions were focused on maximizing taxpayer recovery.

Dr. Burgess. Yeah. And, you know, this almost seems like a tortured legal opinion that have we come to. But do you see how some people could look at this and say, this was a violation of the law, 1702, that has been much talked about this morning, where taxpayer obligations were not allowed to be subordinated? And I realize there was, again, what I would describe as a tortured legal opinion. But do you understand that the average person looking at this says, that is not right, that shouldn't have happened?

Secretary Chu. Again, we had -- I had the opinion of general counsel I trusted, I had the opinion of many others, it went through a rigorous review process within the Department of Energy --

Dr. Burgess. Correct, and I don't dispute that. I will

stipulate to that. But, with all due respect, do you see how regular people would look at this and say, I don't think that is right?

Now, I will be the first to admit that in the Energy Policy Act of 2005 -- perhaps just an oversight, certainly could be regarded as a mistake -- there is no penalty, civil or criminal, no penalty for violation of that.

But do you feel -- and, again, at the end of the day, you are still earning your salary whether things work out or not. But do you feel that you owe people an apology for having subordinated the taxpayer dollar to what now turns out to be a very risky venture?

Secretary Chu. I think, certainly, it was very regrettable what happened to Solyndra. But I go back and say that when the market was falling out, the prices were falling out, we were focused on trying to recover as much of the taxpayer dollars as possible under those conditions.

Dr. Burgess. One last thing. Again, in my mind, this was technically a violation of the law, although there is no penalty. Have you discussed with your boss whether or not you should continue in your position, having violated the spirit of the Energy Policy Act of 2005?

Secretary Chu. Have I discussed with my boss that? No.

Dr. Burgess. Is he comfortable, do you think, with you continuing your position --

Secretary Chu. I believe so.

Dr. Burgess. -- when there was a violation of law, even though there is no penalty?

Secretary Chu. We believe there was no violation of the law.

Dr. Burgess. Again, that is a fairly tortured legal explanation that has been provided to this committee. I think the language is straightforward. Mr. Green, a Democrat, was very uncomfortable about the subordination aspect. I remain very uncomfortable. And I have to tell you, I haven't seen a poll done on this, but I think, broadly, across the country, people understand that this was not right.

Mr. Terry. Let the record show we let you go 1 minute over like everybody else.

The gentleman from Arkansas is recognized for 5 minutes.

Mr. Ross. Thank you, Mr. Chairman.

And, Mr. Secretary, I believe it is important to Members on both sides of the aisle to understand exactly why Solyndra went bankrupt and to make sure the Department of Energy is doing enough to protect the taxpayers. There has been a lot of partisan and political rhetoric associated with this investigation. I want to try to take it beyond that and remove the partisan and the political nature of it and try to get to the facts.

And, as I understand it, the Department of Energy was not the only entity that believed in Solyndra. Private equity investors made significant investments. In March of 2010, the Wall Street Journal ranked Solyndra number 5 in a list of the top 50 venture-backed companies. In that same year, MIT's Technology Review named Solyndra one of the world's 50 most innovative companies.

Mr. Chairman, hindsight is 20/20, and predicting the future of

innovative technologies is particularly difficult. In the case of Solyndra, none of us like the end result, just as any banker does not like to make a loan that ends up defaulting. But it is clear that the Department of Energy wasn't the only entity convinced that the company had a good shot at success. Smart investors, smart market analysts, smart technology experts from Wall Street to MIT, and other outside observers also got this one wrong.

So how do we learn from this, and how do we move forward while continuing to advance alternative and renewable forms of energy, something I feel very strongly about? We are shipping about $300 billion a year overseas to buy energy. That is a $300 billion annual payroll we could have right here at home in America if we could learn how to grow and make more of our own energy.

So I want to ask you some questions until I run out of time on the type of due diligence done on the Solyndra application. Given your scientific background, I would also like to get your views on why the Department of Energy and major private investors decided to bet on the company's technology.

In 2007, the Department of Energy submitted Solyndra's application to the National Renewable Energy Lab in Golden, Colorado, for review, and the National Renewable Energy Lab gave Solyndra the highest technical merit score of any application DOE has ever received. And I might add, that was in the previous administration when all that happened.

So, Secretary Chu, you are a Nobel Prize-winning physicist, and,

during your academic career, you ran a national laboratory that did work on renewable energy. So what can you tell us about the National Renewable Energy Lab process that really helped us to get to where we are today?

Secretary Chu. Well, the NREL, National Renewable Energy Lab, is one of our national laboratories. They have great expertise in solar technologies. And, in fact, I should say that out of the NREL grew another thin-film technology called cad telluride that is -- that patent has now been licensed to General Electric. And General Electric today is investing in -- $400 million investment in cad telluride that grew out of NREL. And this is -- I just spoke with Jeff Immelt, the CEO of GE, and he said, no, we think that this is going to be a very competitive technology; we think we can compete head-to-head with the Chinese.

And, going back, this is work that came out of Department of Energy laboratories, but in addition to dropping new technologies, they are also experts in assessing technologies.

Mr. Ross. After the Department of Energy's own technological review, Solyndra was invited to submit a full application to the Department of Energy. And during this process, it underwent multiple third-party reviews. The consultant CH2M HILL submitted a technology and manufacturing review for Solyndra. Solyndra's business plan relied on studies by PHOTON Consulting, Navigant Consulting, and New Energy Finance. DOE relied on outside marketing reviews of Solyndra by a host of experts on energy markets, creditworthiness, and

engineering, including Dun & Bradstreet, R.W. Beck, Black & Veatch, Fitch, and Navigant Consulting.

So, Secretary Chu, given all of this internal and external analysis, dating back to 2007, as it relates to Solyndra, do you feel confident that the DOE did its due diligence on the Solyndra loan? And, if not, what could we have done differently to ensure that we wouldn't be here today?

Secretary Chu. As you recounted, I mean, there is extraordinary due diligence not only in the Solyndra loan but every loan. And that is why it took, on a rough scale, even with the processes, a year or 2 years to actually do the due diligence on these loans.

And so, it was this combination of events, the most striking being the rapid drop in prices that affected and is stressing companies all around the world, not only in the United States but in Asia, as well as in Europe.

Mr. Ross. Mr. Secretary, I would encourage you to try to figure out what went wrong, keep this from ever happening again, while continuing to advance alternative renewable American-made energies here at home.

Secretary Chu. We, in fact, have -- if the chairman will allow me -- we, in fact, based on the Solyndra experience, not only have now a separate team within our loan office to monitor the loans and the disbursements, but we are also bringing in others. For example, in the Department of Energy, Renewable Energy, there is a group that is expert in solar; it is called our SunShot team. It is headed by someone

we recruited, a member of the National Academy of Engineering, understands the business very well. And they provide yet another set of independent eyes to monitor the loans and disbursements.

So what we are doing, as these loans go forward, is we are going to be watching like a hawk, especially given the rapid changing market conditions.

Mr. Terry. The gentlelady from Tennessee is recognized for 5 minutes.

Mrs. Blackburn. Thank you, Mr. Chairman.

And, Mr. Secretary, thank you for being with us today.

I feel almost the need to sit here and remind all of us in this room, this hearing today is not about solar power. The hearing today is about the possible abuse of Executive power and of the taxpayers' money. And we desperately want to get, and we are being diligent in trying to get, to exactly what happened with this process and where it ran so far afield.

Now, we have been through a series of red flags that existed and seem to have been transparent prior to the loan being approved, but I want to pick up right there. After that loan closed in September 2009, at that point did DOE require Solyndra to provide DOE with financial information or other additional data? After that loan was approved, did you go back to them and say, we need to find some additional data?

Secretary Chu. After a loan is approved and as we go through disbursements, we are in constant communication with the company.

Otherwise -- because these disbursements -- we have a contractual agreement, and as they build the fab plant, they have to be building it as they said they would build it, and then we disburse the funds after they have spent it to build it. So we are in constant communication the whole --

Mrs. Blackburn. You are in constant contact. But the question is really a yes-or-no: Did you or did you not require additional financial information from Solyndra?

Secretary Chu. Yes.

Mrs. Blackburn. Yes. Okay.

Were you aware that DOE staff repeatedly raised the issue of Solyndra's parents' financial health and the lack of working capital as a cause for concern?

Secretary Chu. Now, there are two parts of this. One part was the working capital in order to complete the project. And, as I said, there was a model which -- that there would be an interruption of cash flow, but in actual fact, upon re-examining this, it was not an issue, and in actual fact the plant was built on budget, on time.

Mrs. Blackburn. Okay. So, given that you were aware there was a possibility of an interruption of cash flow, why wouldn't you have gotten additional financial information on their cash flow and on the cash burn rate?

Secretary Chu. I believe during this time there was communication with the company on this cash-flow issue. And, again, it was relayed to me that this was a particular model that said this.

In 1 month, it would come to a point, but then the following months that they would be just fine in the building out of that plant.

Mrs. Blackburn. Looking at lessons learned, does the DOE now require financial information about the parent companies of its project financial deals?

Secretary Chu. Well, we always do. And, as I said before on lessons learned, when there is a rapidly changing situation, rapidly changing market, we have additional sets of eyes, not only within the loan program but also outside the loan program.

Mrs. Blackburn. Okay. And the Loan Programs Office has engaged in the kind of enhanced monitoring that you are saying you have put on Solyndra in these type situations. Are you doing these with the other companies, the 28 other --

Secretary Chu. We are now monitoring --

Mrs. Blackburn. -- companies that are in the loan program?

Secretary Chu. Of course. We are monitoring all the loans on a minimum of a monthly basis because --

Mrs. Blackburn. What about weekly cash flows?

Secretary Chu. Actually, in some instances, weekly, absolutely.

Mrs. Blackburn. What about a board observer seat?

Secretary Chu. As you know, we did have a board observer seat in Solyndra after the restructuring. And in that board observer seat, as with the equity investors, again, it was a rapidly changing dynamic, and the equity investors were as surprised as we were.

Mrs. Blackburn. Okay. Let's go back to the cash burn rate

issues because you have talked about the savvy investors that were there for Solyndra. They had a billion dollars in cash. But we keep hearing about that cash burn rate.

In your opinion, was DOE and were you aware of those cash burn rate issues before or after that loan was closed in September 2009?

Secretary Chu. I believe that they were aware of what would be happening, the business plan. And with any manufacturing plant, a new manufacturing plant, as you manufacture, as you build up the --

Mrs. Blackburn. Were you personally aware, or was --

Secretary Chu. I was aware --

Mrs. Blackburn. -- it just the analysts?

Secretary Chu. In general, as I said, I certainly have enough experience with looking at startup companies to know that that is very --

Mrs. Blackburn. Did anyone brief you specifically on Solyndra's cash burn rate issues?

Secretary Chu. As the loan progressed, yes, they did.

Mrs. Blackburn. But not before the loan closed?

Secretary Chu. Not before the loan closed, not that I recall. But I can't be sure.

Mrs. Blackburn. What did you know about the financial health of Solyndra before you approved that deal?

Secretary Chu. It was believed to be a healthy company at the time of closing. I think the bond rating was something like a B-plus at the time of closing --

Mrs. Blackburn. Okay.

Secretary Chu. -- as dictated by, actually, the OMB.

Mrs. Blackburn. Let me ask you this. Why did you allow that company to continue to pull down millions of taxpayer dollars after you discovered the financial problems in that company?

Secretary Chu. Okay. That is an excellent question.

So, as we began to know that the company had -- the parent company had cash-flow problems, not the project, we faced a decision. You are building -- the loan was to build a factory. The factory was half-built, roughly speaking, or two-thirds built. And if we had pulled the plug then, we were certain that Solyndra would go into bankruptcy.

And then we did two analyses. If you completed the factory and sold the factory and give them a fighting chance to survive as an ongoing company, what was the probability. So we faced this difficult choice. And we felt, in the taxpayers' interest, the highest probability of recovering as much as possible of taxpayer dollars was to disburse the funds.

Mrs. Blackburn. Was it in the taxpayer interest or in the desire for green energy jobs that you made that decision?

Secretary Chu. When we make a loan, we have a very green eye-shaded approach to this loan. It is a business transaction. And so, when we make this loan, we said -- we have to, by statute of the law, say that there is a reasonable prospect of this loan being paid back.

Now, having said that, we have also been mandated to make innovative loans. And, again, the loan loss reserve was designed and appropriated by Congress in order to take care of unfortunate instances such as the one in Solyndra.

Mrs. Blackburn. I yield back.

Mr. Stearns. [Presiding.] The gentlelady's time has expired.

And the gentleman from California, Mr. Bilbray, is recognized for 5 minutes.

Mr. Bilbray. Thank you very much for being here today, Mr. Secretary.

Mr. Secretary, I had the pleasure of listening to your testimony back on March 3rd of 2010. And, at that time, you stated quite distinctly that you believe that nuclear energy remains a safe and secure and economical source of clean energy. Do you still believe that today?

Secretary Chu. Well, if you are asking -- yes, I believe nuclear energy can be safe and secure. We --

Mr. Bilbray. That is all I needed to know. I just wanted to make sure that --

Secretary Chu. All right.

Mr. Bilbray. You are a high energy physicist. You are somebody who knows that. Probably of anybody who has ever been sitting in your chair, you probably understand the realities of that technology better than most, if not all, of your predecessors.

You are also well versed in not just nuclear technology, but you

have been on a steep learning curve when it comes to photovoltaic technology, too, right?

Secretary Chu. Well, the learning curve started perhaps 10 years ago.

Mr. Bilbray. Okay. My question is this. You distinctly understand the difference, the advantages and disadvantages, of poly, mono, and amorphous or thin-film technologies, right?

Secretary Chu. I do know the advantages and disadvantages, yes.

Mr. Bilbray. Now, do you personally own a solar array, a photovoltaic of any configuration?

Secretary Chu. No. Oh, well, little flashlights, solar ones, but not on my roof.

Mr. Bilbray. Yeah, a little flashlight solar would be thin film.

Secretary Chu. Yeah.

Mr. Bilbray. With what you know today and if you were buying something today you were going to put on your roof and you had the choice of the three different divisions, which technology would you choose?

Secretary Chu. It would really depend on the price, the guarantee, the warranty, how long the panels would last. So it would be an economic decision.

Mr. Bilbray. Knowing what you know with those three categories, with the same square-footage array, same price, wouldn't you agree that a reasonable consumer at this time would be choosing either mono or poly crystal if you were going to use it on your own residence at this time?

Secretary Chu. No, I -- it is not clear, because the thin-film technology is actually a very, very good technology, and this is why U.S. companies are investing, in part, in thin-film technology.

Mr. Bilbray. Are you saying the production of thin film is equal to the other two technologies?

Secretary Chu. Well, there are companies like General Electric placing big bets, saying that it is going to be superior.

Mr. Bilbray. Big bets for the future.

Secretary Chu. Well, they are investing today.

Mr. Bilbray. And the existing technology today doesn't reflect that.

Secretary Chu. No, sir. I would disagree with that. I think --

Mr. Bilbray. Okay. I appreciate that. And I am very surprised that you are disagreeing with that. But when we make reference to China and China's investment, are you aware that the overwhelming majority of China's investment is in poly and mono and not in amorphous technology?

Secretary Chu. I am aware of that.

Mr. Bilbray. Okay. Was that, the fact that the Chinese were betting on the traditional, proven technology, was that in your understanding or was that sold as being a reason to move into a new, pretty radical concept of how to produce solar panels using the amorphous technology, was there a conscious effort that you were going to be able to then sort of jump over and beat the Chinese at the game by using a new type of approach that they were not willing to invest

in?

Secretary Chu. Well, what the Chinese do, typically, is they take an existing technology and they bring it to a very, very large scale and they get economy of scale. And that is, in fact --

Mr. Bilbray. But was that a decision, that you knew that the Chinese weren't really placing bets on amorphous and, thus, there was a market -- there could be a market opportunity to move and beat them to it?

Secretary Chu. Well, the Chinese actually -- this is thin film. The Chinese actually were investing in amorphous silicon, but that turned out to be a bad bet for the Chinese. What was happening --

Mr. Bilbray. Mr. Secretary, I must interrupt you. It seems like it was a bad bet for us, too, on this one, too. So I am just saying, and I think you will reflect, that the false starts in photovoltaics -- the worst problem we have had with the failed projects have been in amorphous, that the Chinese have run in to?

Secretary Chu. Well, I think you mean thin film.

Mr. Bilbray. Thin film.

Secretary Chu. No, I think -- first of all, this is not at Department of Energy. We have loan applicants -- there are other companies investing in thin film.

The reason they are investing in thin-film technology is because, first of all, since we invented both the silicon technology, the cad telluride, the CIGS technology, there is more technological headroom in thin film. It is much cheaper to manufacture. The quantum

efficiency -- efficiency of the thin film is coming up much more rapidly. And so, this is why --

Mr. Bilbray. But, historically, it has also had a much bigger problem -- historically, it has had a problem with durability and production, except for in very low-light applications.

Secretary Chu. No, I think --

Mr. Bilbray. You think the durability of thin film traditionally has been equal?

Secretary Chu. You again may be mixing up, conflating amorphous silicon with cad telluride.

Mr. Bilbray. Okay. Cad telluride is hopefully the new breakthrough that we will see coming in the future?

Secretary Chu. Well, this cad telluride, again, it was developed in a national laboratory, licensed to other companies. And it is very competitive with --

Mr. Bilbray. Was Solyndra proposing to use that?

Secretary Chu. No. Solyndra was using another technology called CIGS. This is --

Mr. Bilbray. Which does not have the same capabilities as cad telluride.

Secretary Chu. No, it has the same capabilities as cad telluride in terms of the overall theoretical efficiency. At the time, they were in the same place in terms of the production efficiency, and they were making improvements.

Mr. Bilbray. Thank you, Mr. Chairman. I think the big issue

was --

Mr. Stearns. The gentleman's time has expired.

Mr. Bilbray. -- "theoretical" was the big word there. Thank you.

Mr. Stearns. The gentleman from Georgia is recognized for 5 minutes.

Dr. Gingrey. Mr. Chairman, I thank you.

Dr. Chu, I hate to start off with a sports analogy, but in regard to the restructuring of the Solyndra loan, I think I will give you a little sports analogy.

This Sunday, the Atlanta Falcons were playing the world-champion New Orleans Saints in Atlanta, and they went to overtime tied. And the Falcons coach made a decision deep in his own territory, 4th and 1, to go for the first down, knowing that if he punted the ball back to the New Orleans Saints and their great quarterback Drew Brees that they would be unlikely to stop them. So he goes for a first down, and he misses it. And two plays later, the New Orleans Saints have a chip-shot field goal, and they win the game.

So he takes a chance, makes, I think, a ridiculous decision, but it wasn't against the law. It was not against the law.

Now, in this situation of restructuring the Solyndra loan, I think what was done by the Department of Energy, despite what the counsel has said, is breaking the law under the Energy Policy Act.

And I would just like to know from you, Mr. Secretary, when the folks at Treasury, the people that actually made the loan -- because

this wasn't a $535 million loan guarantee; it was a loan coming straight out of the Federal Financing Bank. And they said in a letter or an email to your folks at the Department of Energy, "Before you do this restructuring, I think you better get an opinion from the Justice Department." Now, the Department of Energy ignored that and went ahead and got their own letter from in-house counsel and came up with some, in my opinion cockamamie, idea of why it was okay to do this. And the law was broken.

You have explained to us here today that, you know, your feeling about all of that was, well, if you didn't do it, the taxpayer was very likely almost immediately to see a bankruptcy of the company and a total loss of the loan, the $535 million, and that if you restructured and allowed them to come in with $75 million more of private equity, that that might save the day.

And so, it was a tough decision, and you approved and went ahead with this restructuring of the loan -- clearly breaking the law. I mean, the language -- and you have seen the slide earlier -- the language is pretty clear. And the result, of course, was the same, not unlike what happened in Atlanta this past Sunday when Coach Smith made that fateful decision. My colleague here from Louisiana says it was a good decision. But everybody says that this decision that you made was a bad decision.

And I just don't understand why you didn't go ahead and submit this to the Justice Department and ask one of their high-powered lawyers, assistant attorney generals or whatnot, to give you a legal

opinion on that. Why not?

Secretary Chu. It is my understanding that one goes to Justice if there is a change in the conditions of the loan, if you, for example, decrease the amount that would be paid back or a decrease in the interest rate -- things of that issue. And, again, it was not only the opinion of the counsel within the Department of Energy, with Susan Richardson, in a very vigorous review process --

Dr. Gingrey. Well, Mr. Secretary, I apologize for interrupting you, but I don't think the folks within the Department of Energy in that loan program were the experts in this case. The bankers of the Federal Financing Bank in the Treasury Department, clearly, they are the experts, who -- all of a sudden, they are worried about the loan.

Let me move on to another subject, and I want to ask you if you are familiar with a recent Washington Post article -- I believe this is November 15th, so just a couple of days ago -- by Carol Leonnig and Joe Stephens. And the title of this, Mr. Secretary, "Solyndra: Energy Department Pushed Firm to Keep Layoffs Quiet Until After Midterm Elections."

Now, this article -- and, Mr. Chairman, I would like to ask unanimous consent to submit this for the record.

Mr. Stearns. So ordered.

[The article follows:]

******** COMMITTEE INSERT ********

Dr. Gingrey. In this article, basically, they are saying the Solyndra people were trying to make sure that the bank, the Federal Financing Bank, would continue to advance them loan proceeds, maybe even a little in advance of when they were due. And, basically, the Department of Energy, according to this article, said, "Well, look, we know you all are going to have some layoffs coming up. It has been leaked to the press. And we would prefer that you not make those layoffs, at least the announcement of it, until November 3rd, 1 day after the midterm elections." And then, of course, they got their advancement of the loan. A little bit suspicious.

Do you have any comments on that at all, the timing of that?

Secretary Chu. Yes. First, I was not aware of any communications with our loan office with the Solyndra people until that article came out. It is not the way that I do business. We don't -- I am looking at the loan, the process of repayment, looking after the taxpayer interest, and those factors are not part of our consideration. Something like that was not discussed with me, and I would have not approved it --

Dr. Gingrey. Mr. Secretary, I believe you. I believe you. But this looks highly political.

Mr. Chairman, I yield back.

Mr. Stearns. I thank the gentleman.

And the gentleman from Louisiana, Mr. Scalise, is recognized for 5 minutes.

Mr. Scalise. Thank you, Mr Chairman. I appreciate you having

this hearing.

Mr. Secretary, thank you for coming before our committee.

I want to express similar sentiments as Dr. Burgess and others expressed. I strongly support an all-of-the-above energy policy. I think, frankly, in our country, we are sadly lacking a real energy policy that allows us to utilize the natural resources we have in this country. We have to use all the things we have, including wind and solar. But, clearly, as we can see, those technologies still haven't advanced to the level that they need to.

And what is at heart here is this question of this Solyndra loan, the $535 million of taxpayer money that have been lost, and how did we get to this point.

I think one of the big issues that I have struggled with, and others, is when we get to this question of subordination, as the loan was restructured, you know, we go back and we look at the law -- this is the law of the United States -- and it seems clear to those of us who have looked at the law that you cannot subrogate the taxpayer, meaning you can't put the taxpayer in the back of the line when you come to this decision of whether or not you are going restructure.

And so, this is -- first, this is the document, this is the actual restructuring that we got from your agency. This is the document that initiated the restructuring of the loan, including the subordination of the taxpayer. And I notice that on the last page, is this your signature on this page? Did you sign off on this document? This is noted as tab 59.

Secretary Chu. Fifty-nine?

Mr. Scalise. Department of Energy -- and this actually deals with the restructuring of the loan guarantee to Solyndra, including the restructuring. Did you sign off on this? I think you have said --

Secretary Chu. Yes, I did.

Mr. Scalise. -- in some public statements I have seen. I just want to verify --

Secretary Chu. Yes, I did.

Mr. Scalise. -- this is your signature on this document?

Secretary Chu. That is my signature.

Mr. Scalise. And so, clearly, when you go back and look at the law -- and I would hope -- did you look at the law, yourself, before you signed off on this document?

Secretary Chu. Yes.

Mr. Scalise. And this is not a long law. It is not 50 pages. It is not even a paragraph.

Secretary Chu. That is right. In --

Mr. Scalise. You looked at this law, you looked at this one paragraph, and you said, even though it says, "The obligation shall be subject to the condition that the obligation is not subordinate to other financing," you can tell me you read this and you can still determine that it is okay for you to subordinate the taxpayer even though the law says it is not?

Secretary Chu. We did not subordinate the taxpayer under the terms of the original loan, and we followed the law.

Mr. Scalise. Does the taxpayer have first dibs on the $535 million --

Secretary Chu. At the time of the --

Mr. Scalise. -- when the first dollar comes in from Solyndra, if one even does?

Secretary Chu. At the time of the original --

Mr. Scalise. That is a yes-or-no question.

Secretary Chu. Right now, after the --

Mr. Scalise. Yes or no, Mr. Secretary? Does the taxpayer have first dibs, or is some other company going to get first dibs on the first dollar that comes in or the first $75 million?

Secretary Chu. After restructuring --

Mr. Scalise. Yes or no --

Secretary Chu. -- no.

Mr. Scalise. -- the American taxpayer?

Secretary Chu. No.

Mr. Scalise. What was your answer?

Secretary Chu. After restructuring, no.

Mr. Scalise. No. Okay, so, you did that.

Now, let's go back to your legal counsel. Your legal counsel did look at this. Not only did your legal counsel look at this and their determination -- and I will go to page 5 of the legal opinion; that is tab 67. Their legal opinion says that "this reading of the provision is reinforced by the use of the word 'is.'" So here we go again with it is going to come down to the definition of the word "is," if that

is really how you are going to hang your hat.

But let's go beyond your department's attorneys. We have an email -- and we discussed this in a previous hearing in our committee. I would hope you have seen this. Gary Burner over at the Treasury said, "The statute rests with the Department of Justice the authority to accept the compromise of a claim to the U.S. Government in those instances."

They recommended that you all go to the Department of Justice. Did you do that?

Secretary Chu. We did not because we --

Mr. Scalise. Why would you not go to the Department of Justice? If you are getting -- this isn't within, this isn't somebody on our side. This is the Obama administration, the Treasury Department, saying, you ought to go to the Department of Justice because we don't think it is legal to put the taxpayer in the back of the line on a $535 million loan.

Why didn't you at least do that due diligence?

Secretary Chu. Because when you -- within the covenant of the loan and within the boundaries of the original loan, if you are acting within those original agreements, you need not go to the Justice Department. My understanding --

Mr. Scalise. Then I guess that is your opinion. I think it is wrong, and I think it is going to come out that you did violate the law in that regard. And it is a shame for the taxpayer.

I want to know who all the people were in the decision-making

process. Was anyone at the White House involved in the decision to restructure the loan, not just to subordinate the taxpayer but to restructure? Did you get any pressure?

Because we have emails showing there was pressure coming from the White House. That is one of the reasons why we are still trying to get documents from the White House. We haven't been able to get that. We had to subpoena it, and we still haven't gotten it all.

Who in the White House was talking to you about restructuring the loan?

Secretary Chu. To the best of my knowledge, I have no knowledge of anyone saying, "You need to restructure this loan." This was something that they repeatedly --

Mr. Scalise. And if you get any information on that, we are still going to try to get the facts here. We are trying to get to the bottom of the loss of $535 million.

I have heard a lot of talk about politics. I have seen a lot of emails from within the administration about politics. As we have seen, The Washington Post had the front-page story talking about emails from within your department, Department of Energy, pressing Solyndra. They are not concerned about the layoffs; they are not concerned that people are going to lose their jobs. They are just concerned about the timing, the politics. "Wait until after the election." This is disgusting.

And I would hope that you are going to go, in your department -- it happened under your nose. You testified here, under oath, you knew nothing about it. It happened in your agency. I hope you will go back

in your agency and have some heads roll. People need to be held accountable. Because political decisions were being made in your department. They were being made in the White House above you; they were being made below you. And, hopefully, maybe you weren't making any of those. But it sure is strange that they are being made all around you.

And I hope that somebody is going to be held accountable, because we are going to fight to hold people accountable because $535 million in taxpayer money was lost. I don't see any chain of emails looking out for the taxpayer money. I see a whole lot of emails in the administration that are concerned about the politics. That is what stinks the most about this.

And so, I know we are going have another round. I look forward --

Mr. Stearns. The gentleman's time has expired.

Mr. Scalise. I yield back.

Mr. Stearns. Just to follow up, you still don't know who at the White House, and you have no interest in finding out, based upon this Washington --

Secretary Chu. We --

Mr. Stearns. Excuse me -- in your department, you don't have any -- you don't know who in your department was involved with this and you --

Secretary Chu. We --

Mr. Stearns. -- have no interest in finding out?

Secretary Chu. No, we do have interest in finding out. And we --

Mr. Stearns. When are you going to do it?

Secretary Chu. Well, certainly, our general counsel's office will look at who was doing these things.

Mr. Stearns. The gentleman from Virginia is recognized for 5 minutes.

Mr. Griffith. Thank you, Mr. Chairman.

Take a deep breath. It has been a long day.

I am going in a slightly different direction. 1702(d)(3) is the subordination section, and I will be getting back to that. But, first, I would draw your attention to 1702(g)(4)(A). It is a slightly different -- it is the same question with a slightly different legal basis for it. And that would be -- the language of that is, "If the borrower defaults on an obligation, the Secretary shall notify the Attorney General of the default."

I point out to you a December 13, 2010, letter to Solyndra from Mr. Silver, Jonathan Silver, who is the head of the program, and that is not in your book.

Mr. Chairman, may that document be admitted to the record, by unanimous consent?

Mr. Stearns. So ordered.

Mr. Griffith. And if we could get a copy to --

Ms. DeGette. Reserving the right to object.

Mr. Griffith. Here are a couple copies.

It is a letter from Mr. Silver, who testified previously, the executive director of loan programs, to Solyndra Fab 2 and to Solyndra,

Inc. In that letter, he notices them that they are in default. This is December 13, 2010.

Mr. Stearns. The gentleman will suspend.

Without objection, the document is part of the record.

[The letter follows:]

******** COMMITTEE INSERT ********

Mr. Stearns. Thank you.

Mr. Griffith. Thank you.

In that document, he notices the Solyndra folks that they are in default and then goes through the reasonings why that is in default and says that the Department is not going to waive any -- if it doesn't take action immediately, it is not waiving any of its rights under the contract.

Further, I would point you to what is document 67, which is the memorandum from Susan Richardson authorizing the subordination. And in that, she indicates in paragraph 3, first sentence, "A default relating to a financial requirement has occurred under the loan agreement. When that default occurred on December 1st, 2010, $95 million of the guaranteed loan commitment remains to be advanced."

And, further, in an email from -- tab 59 -- in February, Silver further acknowledges that there was a default in December by Solyndra.

That being said, Mr. Secretary, did your office, in compliance with the code 1702(g)(4)(A), the section that requires if a borrower defaults the Secretary shall notify the Attorney General of the default, did you do that?

Secretary Chu. First, I have to look back at this code of the Justice Department.

Now, this particular letter is about --

Mr. Griffith. I am just asking you if you notified the -- when there was a default, in December, did you notify the Attorney General, as required by the code? I am not asking for your interpretation of

the letters. I have laid those out; everybody can look at those later. I only have a certain amount of time. I want to know if you notified the Attorney General, in accordance with the law.

Secretary Chu. That, I will get back to you on that. But this was a deposit in an --

Mr. Griffith. So you don't recall -- I understand. But you don't -- the bottom line is your people said it was a default and it looks like a default. And on a default, you are supposed to notify the Attorney General. I am just asking you, did you do it? Do you have any recollection of doing it?

Secretary Chu. I don't have -- I can get back to you on that.

Mr. Griffith. Thank you. I appreciate that.

Let me ask you this. Do you know what the value of the patents and other IP, intellectual properties, of Solyndra are? Do you know what those values are?

Secretary Chu. No.

Mr. Griffith. Do you believe that they have value?

Secretary Chu. They should have some value, yes.

Mr. Griffith. And do you believe it will be greater than or less than $75 million?

Secretary Chu. The IP? I couldn't have any way of assigning that.

Mr. Griffith. Okay.

And I would draw your attention to tab 68 in your book. We are now talking about that it appears from that particular tab -- do you

have that in front of you?

Secretary Chu. Sixty-eight? Yes, I do.

Mr. Griffith. Okay. It appears that there is something going on -- it is during the time period that they were beginning to discuss the subordination, and a lot of it is redacted. Do you have any idea who that was from and who it was to? It looks like it might have been from Susan Richardson.

Secretary Chu. No, I don't.

Mr. Griffith. And do you know why all of that information was redacted?

Secretary Chu. No, I don't.

Mr. Griffith. Can you find out for me as to what the purpose -- I mean, I understand there may be some reason, but can you find out why all that information was redacted?

Secretary Chu. We can get that back to you.

Mr. Griffith. And were you aware that there were numerous discussions about Solyndra's default and the problems they were having and subordination came up fairly early in December of 2010? Were you aware of that?

Secretary Chu. I am now, that they were thinking of subordination. But, again, one can't move forward until one understands the law.

Mr. Griffith. But do you understand that Solyndra was looking at bankruptcy at that point, and without some understanding that there would be a new $75 million they would have had to file bankruptcy pretty

quickly?

Secretary Chu. That is my understanding. About that time scale, they had this cash flow issue, and they needed funds to continue. And that is why one restructures.

Mr. Griffith. I understand that, but don't the records reflect that there was already an understanding within the Department of Energy with Francis Nwachuku that there was going to be a subordination, even before the lawyers had had an opportunity to determine whether or not they could?

Secretary Chu. We do not do anything until -- I mean, is it okay to look at things in parallel? Yes. But before our lawyers --

Mr. Griffith. Okay.

Secretary Chu. -- determined whether it was legal or not --

Mr. Griffith. I understand you couldn't do anything.

Secretary Chu. -- we could not move forward.

Mr. Griffith. But do you understand that, based on the documents that have been provided, it is pretty clear from the record that Solyndra would have had to have filed bankruptcy, that the investors were not willing to put the $75 million in, unless DOE subordinated? And, therefore, when writing the legal memorandum, everybody in your department knew that, unless they could figure out a way to subordinate, Solyndra was going down.

Secretary Chu. Sir --

Mr. Griffith. Isn't that true?

Secretary Chu. No. I -- no. That is not correct. Our

counsel's office, general counsel's office, and Susan Richardson's responsibility, as lawyers, to protect the Department of Energy, to make sure we act under the law, that always comes first.

Mr. Griffith. You know, it is interesting, I just questioned why you didn't -- and I go back to some of the other questions -- why you didn't get opinions, when you had OMB and Treasury saying that they didn't think it was legal, why you didn't go to Justice. Were you afraid of getting an answer that you didn't like?

Secretary Chu. First --

Mr. Stearns. The gentleman's time has expired.

Mr. Griffith. I yield back.

Ms. DeGette. I think you should let him answer.

Mr. Stearns. Oh, no, I want to let you answer. Go ahead.

Secretary Chu. Okay, certainly.

We are required to go to Justice because if there was a -- in a revision of the loan that meant we were not going to get paid back as much, things of that nature, we went to Justice. We did, as you know, go to outside counsel and sought other opinions. And, as noted earlier, there was a previous general counsel of the Department of Energy, upon looking at the decision, who also concurred with that decision.

Mr. Stearns. The gentleman's time had expired.

The gentleman from Kansas is recognized for 5 minutes.

Mr. Griffith. Mr. Chairman, if I might?

Mr. Stearns. Sure.

Mr. Griffith. Because I haven't seen it, I have only seen the draft that flags that you can't do the subordination, if we could get that outside counsel's opinion, I would greatly appreciate it.

Mr. Stearns. Mr. Secretary, can we get that opinion?

Secretary Chu. Yes.

Mr. Stearns. Is that possible to get it today? Do you have access to that?

Secretary Chu. I don't know about today. But we have an opinion of the previous general counsel of the Department of Energy.

Mr. Stearns. But I think the gentleman is asking --

Mr. Griffith. I am asking for what you had at the time the decision was made, not a Monday-morning-quarterbacking coverup.

Secretary Chu. We could certainly make those records available.

Mr. Stearns. We need the final, is what the gentleman is asking for.

Mr. Griffith. That is correct.

Mr. Stearns. Okay. Correct.

The gentleman from Kansas is recognized for 5 minutes.

Mr. Pompeo. Great. Thank you, Mr. Chairman.

Thank you, Secretary Chu, for being with us this morning.

You know, you have been asked a couple times if there is anybody who ought to apologize. So far, as far as we have been able to get you is to say "unfortunate" and "regrettable." I have a different view. I would use "reckless" and "grossly mismanaged" as a program.

And you have talked about some of the changes you have made to

try and strengthen that oversight, and I appreciate that. I want to test that just a little bit.

When the loan was originally applied for, it was applied for under Section 1703; is that correct?

Secretary Chu. The Solyndra loan? Yes.

Mr. Pompeo. And then it became -- then when Section 1705 Obama stimulus money became available, it changed to a Section 1705 program; is that correct?

Secretary Chu. That is correct.

Mr. Pompeo. Did you approve the decision to change it from a 1703 loan to a 1705 loan?

Secretary Chu. Did I approve? I think this is an action of the company and the loan program.

Mr. Pompeo. Got it. So you weren't involved in that process, the decision to allow it to be moved from 1703 to 1705?

Secretary Chu. No.

Mr. Pompeo. Great.

And, you know, the difference in those two programs is that in 1703 the company has skin in the game and has an incentive to make their company successful and make the loan less risky, but in Section 1705 it is very different. Is that correct, Mr. Chu?

Secretary Chu. No, that is not correct. As I said, the company had a billion dollars' skin in the game.

Mr. Pompeo. Right. But in Section 1705, this credit subsidy that you have referred to several times doesn't get paid by the company.

Under Section 1705, the American taxpayer provides the credit subsidy.

Secretary Chu. Yes, the American taxpayer provides the credit subsidy, but, in addition to that, going forward, there is a minimum of 20 percent additional that the equity people would have to put in.

Mr. Pompeo. Right. But that is very different. You would agree. I mean, this legislation that has the credit subsidy, the Federal Credit Reform Act, had a reason that they wanted these credit subsidies paid for by the company, correct? Because it caused the company to have a greater interest in success. There was a reason that the private entities were designed to be the ones that paid the credit subsidy. So it is a change in risk, would you agree?

Secretary Chu. There was a -- the 1705 bill that was passed by Congress was passed because they acknowledged that many of the renewable companies would not be able to afford the credit subsidy. And, therefore, they said that tax dollars would be used to pay for that credit.

Mr. Pompeo. So these were such bad investments that the company couldn't even afford that minimal amount to pay of that credit subsidy.

Secretary Chu. No. I was going back to the way that bill was designed by Congress.

Mr. Pompeo. Let me ask a question. The credit subsidy that was calculated, do you know what it was under the Section 1775 program? Do you know what the calculation said?

Secretary Chu. I believe it was something like 7.8 percent.

Mr. Pompeo. Right. So on a $535 million loan, we are talking

about $40 million, $50 million, right? Ten percent of 535 is 53. You are talking $40 million, $50 million that the company couldn't afford to pay.

Secretary Chu. The credit subsidy score, again, it is something -- and the credit subsidy as appropriated by Congress was there for a reason.

Mr. Pompeo. Right. The company couldn't afford to pay it, so the government stepped in to take care of that little incremental 40 million bucks. Is that correct? That is what happened.

Secretary Chu. Well --

Mr. Pompeo. Yes or no? That is what happened, correct?

Secretary Chu. That is what happened.

Mr. Pompeo. Great.

I want to ask you something. In light of the bankruptcy, has the DOE changed that credit subsidy score, the calculation?

Secretary Chu. Of course.

Mr. Pompeo. What is it now for the Section 1705 program?

Secretary Chu. It is presumably quite high, because we -- when we constantly re-evaluate loans, as the marketplace changes, as the health of the company changes, we are constantly updating what the risk is. That is reflected, in part, by the credit subsidy score.

Mr. Pompeo. So how does that -- what is the change? It went from, you said, roughly 7 percent to?

Secretary Chu. I would guess it would probably be -- just sort of a raw guess -- probably in the 80s.

Mr. Pompeo. Wow.

Mr. Barton. Would the gentlemen yield?

Secretary Chu. That is because when you change it, you know that the company is now in deep financial trouble, and that reflects the risk to the taxpayer.

Mr. Pompeo. Have you changed the credit subsidy scores for the other loans in the portfolio, as well, to reflect this increased risk?

Secretary Chu. We -- well, in some instances, the credit subsidy decreases, as, for example, our loan, a $5.9 billion loan, to Ford Motor Company. That credit subsidy score is greatly decreased because we feel that Ford is an ongoing, stable company, and that loan did what it was supposed to do.

Mr. Barton. Would the gentlemen yield briefly?

Mr. Pompeo. Yes.

Mr. Barton. Just to point out on this point, since the Secretary put this $10 billion on the table, nowhere in the law, nowhere in the definitions does it say that that program is to subsidize the loss of principle.

Mr. Pompeo. Thank you. Appreciate that.

Mr. Barton. The gentleman from Kansas was absolutely correct that it is designed for subsidized interest rates, longer maturities, deferral of interest, but it is not designed to cover the loss of principle. So your opening statement, Mr. Secretary, is incorrect in asserting that it is.

And I yield back.

Mr. Pompeo. Thank you, Mr. Barton.

I would agree. I want to talk about that $10 billion number, as well. That is for the entire program, not just for Section 1705. That $10 billion that was appropriated was for the entire portfolio of loans, correct?

Secretary Chu. Pardon?

Mr. Pompeo. I am trying to make sure -- in your opening statement, you said there was $10 billion to cover potential losses, which I think Mr. Barton and I both agree is not what that $10 billion was designed for. It wasn't designed to cover losses; it was designed to cover interest rates and subsidies. But even the $10 billion overstates what was appropriated for the Section 1705 program.

Secretary Chu. It was designed to cover losses in the loans if the company could not -- my understanding of what a credit subsidy -- what the credit subsidy and what the appropriated funds were for was for in the event that, as we invest in innovative companies, that some of those companies might have difficulty paying back their loans.

RPTS BLAZEJEWSKI

DCMN SECKMAN

[1:00 p.m.]

Mr. Pompeo. We have a different view of that. Section 1705 number was $2.5 billion; that's the amount of money appropriated for the Section 1705 loans.

Secretary Chu. That's right, the $10 billion, as I said before, was 1705 plus a little bit of 1703 and ATVM.

Mr. Pompeo. I have one more question. You talked about all the other cross subsidies. We have production tax credits. We have mandates in States. When you provide your credit subsidy score, what is the assumption about the continuation of those other subsidies; that is, when you're calculating the risk, do you assume that these programs, these other enormous subsidies will be renewed or do you assume that they will expire as the law directs that they will expire?

Secretary Chu. The major part that goes into the credit subsidy is the financial health of the company, the assets of the company, and most of the loans are on projects, whether it's a new fabrication plant or a project that installs solar, wind or something like that. And the credit subsidy score goes to the fact that in the event of a problem with the company or the parent company or the project, how much can the U.S. Government get repaid back? And it reflects that uncertainty and the evaluation of ultimately the OMB as to whether, what's the probability of default on the loan?

Mr. Pompeo. Well, I yield back my time.

Secretary Chu. In rough --

Mr. Stearns. The gentleman's time has expired.

Mr. Pompeo. I yield back my time. I did not get an answer to that question.

Mr. Stearns. Mr. Secretary, we're going to do a second round, and it appears mostly Republicans, I don't know how many are going to do a second round, but I would, out of deference, would you like a break of about 15 minutes for any reason, or would you like us to continue on?

Secretary Chu. I'll take a break.

Mr. Stearns. Okay, all right.

So, Mr. Secretary, we're going to reconvene here at 1:15.

Secretary Chu. All right, thank you.

Mr. Stearns. Yeah, thank you.

[Recess.]

Mr. Stearns. The subcommittee will reconvene. The ranking member is on her way, and I will open with a second round of questions.

And my questions will start, you know, obviously with Solyndra going bankrupt, you go back and look what the President said in his press conference about Solyndra, he said it was the true engine of economic growth and there will always be companies like Solyndra to make it possible for this growth.

Then when Beacon Power went bankrupt, we were also concerned about that, and of course, we found out that a quote from the administration

on that company that went bankrupt was 100 percent -- 100 Recovery Act projects that are changing America, Beacon Power being one of them.

And so the question is, when you have two of the first three loans out of the 1705 program go bankrupt, the question for you is, how many loan guarantees that you are involved with and covering and monitoring are going to fail, in your opinion?

Secretary Chu. Well, it's very hard to predict, but if I look at the portfolio --

Mr. Stearns. You've indicated that these kinds of things go bankrupt, and it is sort of an anomaly, and it's what happens in life. Are you also saying there is going to be more bankruptcies in the loan guarantee? Yes or no.

Secretary Chu. I could not say one way or the other, but I could say that the majority of our loans were not -- they were loans, for example, to establish wind farms or solar farms where there were power --

Mr. Stearns. Okay. Are any of your loans in trouble today? Can you categorically say that none of your loans are in trouble today or are they in trouble?

Secretary Chu. Like I was -- as I was saying, that if you look at the portfolio of loans, many of the loans, the majority of the loans are loans where you establish a wind farm, a solar farm, something of that ilk, and there is a power --

Mr. Stearns. Wasn't Beacon Power similar to your definition of what you're talking about?

Secretary Chu. No, not --

Mr. Stearns. Was Solyndra similar to what you're talking about?

Secretary Chu. No, these --

Mr. Stearns. So the question is, are any of these loans guarantee in financial trouble, yes or no?

Secretary Chu. As I said, it's very hard to predict what will happen.

Mr. Stearns. Just say no.

Secretary Chu. But I would say --

Mr. Stearns. Well, let me ask you this, let's help you out a bit. Are any of them in high risk?

Secretary Chu. There are different varies --

Mr. Stearns. You're not answering the question, Mr. Secretary.

Secretary Chu. There are high risk --

Mr. Stearns. I mean, you know, this Mr. Ellison is going to come back and tell us which ones are in high risk and which ones possibly could go under. You're the Secretary of Energy. Tell me today are any of these loans going to go bankrupt, yes or no, your opinion? This is all your opinion.

Secretary Chu. Sir, this is like saying do I believe that the nuclear reactors in the United States are safe.

Mr. Stearns. Well, okay, let's back up then. Are any of them in financial trouble? You certainly should be able to tell that as Secretary of the Energy. You're monitoring this. You're trying to convince us that you're on top of the situation.

Secretary Chu. Right, right.

Mr. Stearns. Are any of them in financial risk, yes or no?

Secretary Chu. There are always risks, and then --

Mr. Stearns. So all of them are in financial risk?

Secretary Chu. No, there are always risks regarding the loan, and that's when we are tasked to invest in --

Mr. Stearns. It doesn't sound like you're answering the question. I'm just asking you, yes or no, are any of them in financial risk?

Secretary Chu. There are varying degrees of risk.

Mr. Stearns. So some of them are?

Secretary Chu. Well, whenever you invest in high risk, innovative companies --

Mr. Stearns. I'll accept your statement, yes, some of them are in financial risk. I want to go back to what a lot of people are saying, that who could predict these problems with the Chinese market. During an interview with committee staff, your committee staff, the former Department of Energy chief financial officer, Isokowitz, said that the department should have validated assumptions about the Chinese market before they went ahead with these loans. Were you aware of his remarks on this?

Secretary Chu. No, I'm not aware of those remarks, but certainly we were validating what the Chinese were doing. That's why we had extensive, both inside and outside, and what the market --

Mr. Stearns. He distinctly said your office did not validate any

of the market's assumptions about the Chinese market. That's what he said. He's the Department of Energy chief financial officer. That's his opinion. Do you disagree with what he's saying?

Secretary Chu. Well, I would have to look at what his statement was in the full context, and so I can't really comment.

Mr. Stearns. Well, in full context, he basically said that you guys did not, your office did not look and validate any assumptions about the Chinese market.

Secretary Chu. He could have been talking, for example, about the ability to sell in China. I don't really know. Again, I would have to look at the full context of that --

Mr. Stearns. Okay.

Secretary Chu. -- that remark.

Mr. Stearns. He also cautioned that, he went on to caution that he felt when you deal with a commodity, you should have -- that should have sent up red flags immediately because commodity prices have a tendency to fluctuate, which you would agree. For example, the Department of Energy had a terrible experience in 1980s with the Synthetic Fuels Corporation, which was undercut by a flawed assumption about the continued rise in oil prices. Given the concerns cited by this CFO and the Department of Energy's experience with the Synthetic Fuels Corporation, didn't the department err in failing to validate assumptions about the conditions of the Chinese market before it approved this Solyndra?

Secretary Chu. If you look back at the history of how solar

prices were developing and fluctuating, there was a constant decrease in the price over --

Mr. Stearns. No, I understand what your opinion is, but the point I'm making is, I don't see the Department of Energy doing what Mr. Isokowitz said, and he validates you did not do it, so that's my -- now let me just close here before my time runs out.

You've been here this morning and this afternoon; lots of times you've said you were unaware or you were aware, but sort of anytime anything came up, you had sort of an ambivalent statement. We talked about the August 2009 email predicting Solyndra would go, be out of cash in September 2011; you knew about that, but you didn't seem to know about that. The PriceWaterhouseCoopers concerns about Solyndra, you didn't seem to be real concerned or weren't aware of it. The White House emailing your chief of staff regarding their concerns with the PriceWaterhouseCoopers report, you didn't seem to know too much about your chief of staff's awareness of that. Request to hold off announcement of the DOE loan and request by your agency to Solyndra to hold off announcing layoffs until after the midterm election, you don't have any recollection of this.

So what I'm saying is throughout all of this, you seem to have an unawareness, which goes to what I think my last question is, we have an email from February 2010 from Dan Carol, who is a former chief energy adviser to the President in his campaign. Are you aware of his email?

Secretary Chu. I became aware of it.

Mr. Stearns. So you weren't -- you became aware of it when it

hit the press. He stated you should be replaced because of incompetence. He felt, based upon what I just told you, you didn't seem to have an awareness of any of these very major issues here which we're bringing up, and that's why Dan Carol said you should be replaced, so I guess my comment is, what would you say to Dan Carol today?

Secretary Chu. First, let me go back to your previous statements. I tried to explain to you, I'll try to explain again, about the cash flow issue and the building up of the Fab 2 plant. I was aware of it, and what was happening is that there was 1 month in a particular model, there would be an issue, but subsequent months, it would go into the black, and as I stated previously, experience has borne out that in fact there was no issue in building the Fab 2 plant, and so I never said I was unaware in terms of what that issue was because it was being sometimes conflated with the cash flow problems later on with the parent company.

Mr. Stearns. My time has expired.

The gentlelady from Colorado.

Ms. DeGette. Thank you, Mr. Chairman.

Now, obviously, Mr. Secretary, we're all concerned about the failure of this Solyndra situation because the taxpayers are out almost half a billion dollars, and I heard what you had said about the initial loan. I mean, it sounds to me like the DOE was trying to administer this correctly in that originally the loan application was made under the Bush administration, the committee came back and said they needed more market data. That data was obtained, the guarantee was made.

Then, because of market conditions, the company was about to go into bankruptcy before the factory was built, and a decision was made to restructure the loan and to subordinate the government's interests. That's pretty much of a summary, correct?

Secretary Chu. That's correct.

Ms. DeGette. And a lot of us are very unhappy with the idea that the taxpayers were subordinated to the private investors. In your opinion, was there anything else that could have been done, or did the department explore any alternatives to subordinating that interest to the private investors' interest?

Secretary Chu. Yes. It was the opinion of our loan specialist that certainly the private investors were not willing to put in added equity unless they had certain conditions met, and so it was, as described to me and during our discussions in making this decision, it was clear if we said, all right, if we don't allow this, then the company would go bankrupt, and again, the discussion after clearing the legal hurdle and being told by my general counsel that it was permissible and legal, then the discussion focused on what would be in the best taxpayer interests to get the most recovery from --

Ms. DeGette. Right, so I got that. So you were involved in those conversations --

Secretary Chu. Yes.

Ms. DeGette. -- about should the taxpayers take a secondary position or not, right?

Secretary Chu. I was certainly --

Ms. DeGette. And you were pretty well convinced that if you didn't make that concession, then Solyndra would go into bankruptcy and the chances of recovering that money would be greatly lessened or zero, right?

Secretary Chu. That's right.

Ms. DeGette. Okay. Now, so, I mean, we can argue about whether we agree or disagree with that decision, but that was the rationale. It seemed like it was a prudent rationale at the time, correct?

Secretary Chu. Correct.

Ms. DeGette. So here's my question. The DOE has the Loan Programs Office, you're administering three different loan programs, and we've been talking about them, the Section 1703, the 1705, and then the technology vehicles manufacturing program.

So my question is, it follows a little bit on what the chairman was saying, are any of the loans that are currently out there in those three programs in a situation where it looks like they are about to fail and someone's coming in and asking for restructuring right now?

Secretary Chu. Right now, no.

Ms. DeGette. Okay. Do you expect that --

Secretary Chu. I mean, there's Solyndra, and there's the flywheel.

Ms. DeGette. Right, right, yes, and those are the two. And that's out of how many loans?

Secretary Chu. Something like 38 loans.

Ms. DeGette. Thirty-eight loans. And of those 38 -- so of the

36 --

Secretary Chu. And 28, yes -- It's 1705, 28; ATVM, 5; and 5 in 1703.

Ms. DeGette. Okay, about 38 loans.

Secretary Chu. 33 loans --

Ms. DeGette. So, of the rest of the loans besides, those two, the Solyndra and the other, do you foresee market -- and I should say, does your staff who report to you foresee market conditions changing so those loans are going to go into a default type of a situation?

Secretary Chu. Well, again, the majority of our loans were loans where you install something like a wind farm or a solar farm; you have a power purchase agreement. That means the utility company has a contract, we will buy your power at a certain price.

Ms. DeGette. Okay.

Secretary Chu. And those loans, we feel, are going to be very safe.

Ms. DeGette. Solid, those are solid.

Secretary Chu. Those are solid loans.

Ms. DeGette. Now of those loans, how many jobs have been created by those companies?

Secretary Chu. Well, so far there is something like 44,000 jobs created by our loans, and we expect -- and these are direct jobs, these are construction jobs; they're manufacturing jobs, and discounting some of the supply chain, so 44,000. We expect it to go over 60,000.

Ms. DeGette. And, you know, you've had a lot of time now over

the last recent months after the failure of Solyndra to reflect on this as Secretary of Energy, and this is something we're trying to reflect on, on this committee, and even my friend from Texas I see down at the end has said he supports solar energy, and he supports supporting solar energy. What can we do and what can you do to improve the administration and the approval of these loans to maximize our stewardship of the taxpayer money while at the same time promoting the idea of development of alternative energy?

Secretary Chu. Well, actually, there are several people, not only Mr. Barton, but several people on both sides of the aisle view the support of the solar industry in the United States as important and the renewable industry as important, and so I --

Ms. DeGette. So what can we do to better our stewardship --

Secretary Chu. Right, right.

Ms. DeGette. -- of the taxpayers' money while furthering --

Secretary Chu. Well, certainly we have done many of these things, and we're going to go into a heightened part. Of the loans we have now given out but where they have not been disbursed, we will have to watch very closely change in market conditions and the conditions of the company, and so we have already begun to undertake that.

Again, it's very important that decisions going forward on how to disburse the loans be made not only by the people who originated the loans but by people independent of them because it's a very natural thing if you give birth to a loan, you might have predisposed to want

it to succeed, and so we have already done that. We've set up an independent office within the loan program to monitor. We have experts as we -- experts in the Department of Energy outside the loan program, but experts in a particular field, whether it be solar or wind, to actually assist in understanding the market conditions and what -- where this company's business plan sits within the competitive fields.

Ms. DeGette. Mr. Chairman -- Mr. Secretary, I would ask if you would supplement your testimony today within 30 days and provide this committee with a summary of the changes --

Secretary Chu. I would be delighted.

Ms. DeGette. -- that you've done internally to improve your oversight and administration.

Secretary Chu. I would be delighted.

Ms. DeGette. Thank you very much.

Mr. Stearns. Thank you. The gentlelady's time has expired.

The gentleman from Nebraska, Mr. Terry, is recognized for --

Mr. Terry. Mr. Barton.

Mr. Stearns. Oh, I'm sorry, Mr. Barton. I'm sorry.

Mr. Barton is recognized for 5 minutes.

Mr. Barton. Thank you, and thank you, Secretary Chu, for again agreeing to testify voluntarily. That's not something you absolutely had to do.

I want to state before I ask my questions, I've been asked half a dozen times today whether I think you should resign, and I said every

time that I don't think you should resign. I do think you're a man of integrity. I think you're trying to do your job as the best that you can.

I also happen to believe that it's possible you're being set up to be the fall guy. There's some memos and some emails that have been leaked that you may have to go, and I'm sure you're aware of that.

I do think, though, that you're culpable for the subordination decision, and I want to focus on that in this round.

I have a timeline that's been prepared by majority staff, and we will share it with the minority, and we'll put it in the record. I'm going to go through this very quickly. If there's anything on this timeline that you fundamentally think is wrong, I wish you would flag it for me. This deals with the issue of subordination. The reason subordination is key is because, one, we have the law that says you can't subordinate. If you don't subordinate this loan guarantee and Solyndra goes bankrupt, the taxpayers are first in line to be repaid if there's anything that they can be repaid with, and Solyndra is in bankruptcy, but they do have assets.

Mr. Stearns. Will the gentleman suspend for one thing? Would you like to see a chronology of what he's talking about?

Secretary Chu. Sure.

Mr. Stearns. Is that possible, Mr. Barton?

Mr. Barton. Yeah, if we can make a copy. Do you have a copy, and can we get a copy?

Could we suspend the clock while we're doing this. I don't want

my time to be --

Mr. Stearns. We've suspended it, Mr. Barton.

Mr. Barton. All right.

Mr. Stearns. Make a copy and then give it to the ranking member and myself so we'll be able to follow this as closely as possible.

Mr. Barton. Okay. So I won't say anything while we're in suspense here.

Mr. Stearns. Well, just so everybody's on the same page here.

Ms. DeGette. It's okay, I won't --

Mr. Barton. I don't want to play unfairly.

Mr. Stearns. Well, does the ranking member want us to continue to go on?

Mr. Barton. This won't take but 2 or 3 minutes.

Mr. Stearns. Continue, we'll put you back on the clock.

Mr. Barton. All right. Well, the subordination is important because if there is no subordination and a company goes bankrupt, which Solyndra did, then the taxpayers get repaid first, and there is some value in Solyndra, even though it's in bankruptcy.

If you subordinate the loan guarantee, then the taxpayers go to the end of the line, and it's very unlikely once you pay the private sector creditors, that there's going to be money left to pay Solyndra.

On December the 6th and December the 7th, and this is the memo that we just prepared, that we presented you with, DOE and Solyndra negotiated a restructuring agreement. On December the 7th, and this is 2010, the subordination of the loan is put on the table. On December

the 8th, there is an email from Susan Richardson, the chief counsel of the loan program at DOE, requesting a meeting as soon as possible to brief Scott Harris, who is the DOE general counsel, on a serious problem with Solyndra. This is about the subordination which DOE has now offered to do.

On December the 10th, the DOE lead negotiator circulates a DOE summary to the DOE staff that includes subordination, okay? That's in December. December the 22nd, OMB asks for DOE's written analysis of subordination.

On January the 3rd, OMB again asks for a written legal analysis of subordination. On January the 3rd, the outside counsel for Department of Energy, Morrison & Foerster, sends two draft documents to DOE on the legal analysis of subordination in which they say, state that it cannot be done. On January the 6th, OMB again asks for DOE's written legal analysis of subordination. On January the 13th, Susan Richardson, the chief counsel of the Loan Programs Office, begins to draft her own legal memo on subordination, which she ultimately gives to you. On January the 20th, Susan Richardson sends a copy of her draft legal memo to OMB.

On February the 10th, the Treasury Department emails Susan Richardson at DOE to discuss subordination, and the Treasury Department is of the -- it doesn't say this here, but the Treasury Department is of the opinion that you cannot subordinate the loan. And finally, Mr. Secretary, on February the 22nd, you signed the action memo modifying restructuring the loan that does allow for subordination.

So, instead of you making a decision and then they negotiate subordination, your staff at DOE agrees to subordination, and then draft a convoluted legal opinion that they get you to sign that basically covers their rear.

Now, do you have any disagreement with anything in this timeline?

Secretary Chu. Well, sir, your characterization -- let me make a few statements. First, we were not going -- the first $75 million of new money invested by the equity holders was ahead of us, but then after that, we were sharing in the pay back of the loan, so we were not, quote, going to the back of the line.

The OMB, when it saw what was being prepared and the legal opinions within the Department of Energy, did not object to this position, and believe me, the OMB is not shy to objecting if they disagree with anything we or any other agency does.

Finally, Treasury was not offering a legal opinion. They were suggesting that we could check with Department of Justice, but under the guise of the -- under the statute, you check with the Department of Justice if the terms of the loan change, especially if they are decreased, and the taxpayers -- the terms of the agreement are changed. And so our general counsel and the counsel of the loan program said that this was within the confines of the original agreement. Therefore, we need not go to the Department of Justice.

Mr. Barton. Well, my time has expired, but last question. Knowing what you know now, if you were presented a document to subordinate the Solyndra loan, would you still agree to subordinate?

Secretary Chu. Well, I think what we would need to do -- let's take a step back, and if --

Mr. Stearns. Mr. Secretary, I think that's a yes or no question.

Mr. Barton. I'll let him answer it however he wants, but it's a straight-up Texas question.

Secretary Chu. Well, we stand by -- I think we still agree from the General Counsel's Office and the loan program office that it was within the bounds of this. This would be a last ditch thing. Again, if should there be a loan that goes in trouble in the future, one wants to recover as much of the taxpayer money as possible. If you do pull the plug and if should there be a distress situation and you do pull the plug, then you have to make the decision: If you go into bankruptcy, what assets can be recovered; if you go forward what -- with new capital in order to weather the storm, should there be a situation like that.

Mr. Barton. But the law clearly states you can't subordinate?

Mr. Stearns. Well, I think that's what Mr. Barton is saying.

Secretary Chu. I think the law --

Mr. Barton. Yeah. I want to put into the record officially the timeline that I just gave the Secretary.

Mr. Stearns. Okay. So ordered. Is that -- if there's no objection?

Ms. DeGette. No.

[The information follows:]

******** COMMITTEE INSERT ********

Secretary Chu. But the law clearly states that we cannot subordinate at the time of origination of the loan.

Mr. Stearns. The time of the gentleman has expired, but out of courtesy to the gentleman, you've indicated that the Secretary is culpable, do you think, in your opinion, that the law is broken?

Mr. Barton. If you're asking me the question, yes, sir, I think he broke the law.

Mr. Stearns. Okay. I think that's what I want to make clear that with your line of questioning, I think that's what you're saying, the law is broken, and it's an illegal act is what you're saying.

Mr. Barton. That's what I'm -- that's my opinion.

Mr. Stearns. Well, that's what I want to hear.

All right, the gentleman from Nebraska, you're recognized for 5 minutes.

Mr. Terry. Thank you, and I understand that the -- sorry, I'm -- can we break for a second?

Ms. DeGette. I want to see what this says.

Mr. Stearns. We'll put you back to 5.

Mr. Terry. I was distracted.

Mr. Stearns. Mr. Terry, I have the capability of giving you another 5 seconds.

Mr. Terry. What's that?

Mr. Stearns. I have the capability of giving you another 5 seconds.

Mr. Terry. Oh, 5 seconds. Well, I felt like I was stammering

a lot longer.

Dr. Chu, on January 13, 2009, before you were confirmed and sworn in or undertook your duties, there was a memo that from the credit committee -- well, it wasn't a memo. It was an email stating, quote, after canvassing the committee, it was the unanimous decision not to engage further discussions with Solyndra at that time. Are you aware of that email?

Secretary Chu. Yes, I am aware of it now.

Mr. Terry. A couple things that I want to clear up just from my -- because I'm confused.

Secretary Chu. Sir, could I interrupt just a second? The decision not to engage with Solyndra, that there was no more information they could give us, and we were doing -- so we disengaged in order to do further due diligence further to understand what the market was and get independent eyes on the program and what the loan was about.

Mr. Terry. Okay. Well, then we can go -- you're diverting me from where I'm going, but I'll just state for the record, then, on January 26th, that DOE staff sent another email saying that we're approaching the beginning of the approval process for Solyndra. It seems interesting that in 13 days, you've got the credit committee saying we're shutting this file down with a not to engage in further discussions, and then 13 days later, it seems like it's full steam ahead.

But I'm concerned about the Dow Jones news wires on December 11, 2009. You were quoted, we've been told that it's imminent that

they're -- Solyndra -- going to announce this, and that the loan is theirs as long as they get the additional capital that's required by statute. Then following, or on that date, a DOE employee from the loan program emailed, quote, no idea where Dr. Chu's info on the equity raise is coming from, but the conclusion that, quote, the loan is theirs, end quote, doesn't help our negotiation.

So the question here is, where did you get the information that the equity loan or the equity is imminent and that the loan is theirs? Those are two separate questions.

Secretary Chu. First, I would -- I was being informed about the progress of the loan through Matt Rogers, who was a special assistant reported to me on the Recovery Act. The issue there, I believe, was that the career employee -- what the Department of Energy tries to do is to get as favorable a bargain or an agreement that protects the assets of the --

Mr. Terry. Where did you get the information, that was what the employee --

Secretary Chu. From Matt Rogers.

Mr. Terry. From Matt Rogers. Does Matt Rogers report and communicate to the White House during this time period?

Secretary Chu. No, he reports to me.

Mr. Terry. So where would Matt Rogers get the information that the equity is forthcoming and that they will get the loan?

Secretary Chu. My understanding, since he was in charge of assisting in the Recovery Act in the Department of Energy, that was

his role in the Department of Energy, as a special assistant to me, he was certainly in communication with the loan people.

Mr. Terry. So his understanding that the loan, that they will get the loan, came from you?

Secretary Chu. No, no.

Mr. Terry. To Matt Rogers.

Secretary Chu. It goes the opposite.

Mr. Terry. This seems to be a little circular. He's the one supposed to be telling you, but I can't figure out who's telling Matt Rogers --

Secretary Chu. Exactly.

Mr. Terry. -- that they're going to get the loan and that they have the equity?

Secretary Chu. No, no, excuse me. Matt Rogers is overseeing the Recovery Act, which included the loan program. I was not communicating directly with the people in the loan program. I communicated with Matt Rogers, who then talks to people in the loan program.

Mr. Terry. So that it was the people in the loan program that told Matt Rogers that the equity is coming and they will get the loan?

Secretary Chu. Well, I'm not -- it's the people in the loan program -- I think my -- again, what is happening is this person in the loan, who is -- the career folk in the loan program are always trying to get the best position possible for the Federal Government.

Mr. Terry. I'm not sure that answers the question, but my time is up.

Mr. Stearns. The gentleman's time has expired.

The gentleman from Pennsylvania, Mr. Murphy, is recognized for 5 minutes.

Mr. Murphy. Thank you, Mr. Chairman.

Mr. Secretary, on June 27th of this year, you were briefed in advance of your meeting with President Obama by advisers on Solyndra. Were you specifically briefed about the company's financial health and were you told the company was on a path to bankruptcy at that time?

Secretary Chu. When was the date again?

Mr. Murphy. June 27, 2001, before you met with --

Secretary Chu. 2011?

Mr. Murphy. Of 2011, yes, before you met with the President, sir, were you briefed about the financial problems of the company on a path to bankruptcy?

Secretary Chu. I certain -- by around that time, I was certainly aware of the fact that --

Mr. Murphy. They were going to go bankrupt?

Secretary Chu. That they were -- well, that they were in deep trouble.

Mr. Murphy. Did you speak with the President about that time about the status of Solyndra's financial problems.

Secretary Chu. No, I didn't. When you meet with the President, it's not about a particular transaction. It was actually a much higher level discussion about --

Mr. Murphy. I appreciate that. Let me ask a little bit more,

then.

Mr. Secretary, when Solyndra came to DOE in the fall of 2010 and explained it was running out of cash, did DOE consider at anytime just letting the company go bankrupt?

Secretary Chu. I think this is always something that we consider if it looks that --

Mr. Murphy. So that was an option? That was an option?

Secretary Chu. It is -- every time we're disbursing funds, if a company, if any company looks like it has a high probability of going into bankruptcy, you -- one goes into another mode where you say, what will be the best pay for --

Mr. Murphy. Right. As the law said, the original 2005 bill said that you shouldn't be giving loans to companies that appear they can't pay back the principal and interest, you're aware of that, that part?

Secretary Chu. Absolutely.

Mr. Murphy. Okay. Now, yet you made a decision, even though you're aware that's an option, just let them go bankrupt, you made a decision to move forward anyway?

Secretary Chu. Sorry --

Mr. Murphy. Was there a specific wording in any law that says you don't have to follow the law that says you can't give the money if they can't make it?

Secretary Chu. If you're talking about in the original loan, we made a decision to fund Solyndra. The credit subsidy score would reflect the probability of the loan.

Mr. Murphy. I understand, but you can't give the money if they're not going to pay it back.

Secretary Chu. Pardon?

Mr. Murphy. Yeah, but the law says you can't give them money if they're not going to pay it back, and I'm asking is there some law you're citing that gave you permission to override the law that says you don't have to --

Secretary Chu. We're not -- we weren't going against the law. The law said --

Mr. Murphy. Well, I hope -- sir, I'm asking if you can cite something for me and get back to us to show us where in the law it says you don't have to pay attention to the law? That's what I want to know. Sir, let me ask you this.

Secretary Chu. We paid very close attention to the law. The law says that we can only make a loan where there's a likelihood of being paid back.

Mr. Murphy. I understand, but it sounds like you're saying a subjective decision was here --

Secretary Chu. No.

Mr. Murphy. Based upon things you're citing about China and solar power, et cetera. But let me ask about this.

So you testified, quote, I approved restructuring of the loan guaranteed to give taxpayers the best chance of recovery; you just made a decision here. Did you weigh in with Jonathan Silver and tell him to restructure the loan?

Secretary Chu. No.

Mr. Murphy. Now, on September 14th, I asked Mr. Silver during our hearing about the decision to restructure. I said, and I quote, did the Secretary of Energy have anything to do with this decision? And he said, not to my knowledge. So my question is, Silver says you were not, you say you were involved with the decision, who's telling the truth here?

Secretary Chu. Sorry, the decision to restructure was something the loan program developed and brought to me for approval, and so that's the precise nature of what was going on.

Going back to making a loan and thinking that there is a high chance of recovery or a reasonable prospect of recovery, which is what the law states, I have to say that given the credit subsidy risk, the loan loss reserve for this particular loan was 7.8 percent. That's roughly speaking, it gives us 7.8 percent probability that the loan will get into trouble.

Mr. Murphy. 7.8 percent.

Secretary Chu. 7.8 percent, so that's a high likelihood --

Mr. Murphy. We have Treasury, OMB, people from Solyndra, and people from the White House who said the government is a crappy venture capitalist, so that sounds like a number of people are sending information on to you, but we have established in my previous question of you, I'm not sure that even your chief of staff has told you about meetings that were taking place.

Now, sir, you're a scientist and I'm also trained in science, and

one of the things that we are trained in is do not avoid, in fact seek out information which may contradict your paradigms and your premises, that's important, that's how science moves forward in this. But here you're aware now the Treasury Department suggests that DOE get a legal opinion on the restructuring of this loan, and you're aware that other Federal agencies are recommending this, but now what puzzles me, sir, is it sounds like you've acknowledged that this is a subjective decision for other reasons, even though the law says you can't give money if they can't pay it back, and with this subjective decision and with your background in science, and even though staff around you knew this, you're saying that you didn't have this information or you didn't seek out this information to make that decision? I don't understand what goes into subjective decision then.

Secretary Chu. First let me go back to the determination if the OMB, which is very independent of us, makes a credit subsidy determination and comes up with 7.8 percent, that's effectively saying --

Mr. Murphy. But I'm saying the Treasury said you should have consulted --

Secretary Chu. Oh, you're --

Mr. Murphy. Get a legal opinion on the subordination.

Secretary Chu. -- citing two issues, one is when we make the loan in the first place, and we would not make a loan if there was not a reasonable chance of being paid back.

Mr. Murphy. Sir, but other people are telling you that there's

a strong chance you won't get paid back, even a memo that says this company is going to go bankrupt, the liquidity is gone by September 2011, and that's when they did. That's more than a 7.8 percent chance. My concern is that with this, you had a lot of information coming at you. Even though the law says you cannot give money if they're not going to pay it back, but you made a subjective decision which I think runs against the law.

I yield back.

Mr. Stearns. The gentleman's time has expired. Just caution all members, I think votes are coming up. I would like to get through the second round, and so I'm going to have to hold all of you to your 5 minutes.

Mr. Waxman.

Okay, I'll take the next one. Mr. Waxman will take it later.

Dr. Burgess is recognized for 5 minutes.

Dr. Burgess. I thank the chairman.

Mr. Secretary, again, thank you for your indulgence today. I'm going to ask you a series of questions that pertain to tabs 32, 34, and 35 in your binder, those are a series of emails, and I'm just telling you that for reference. I'll give you the background information.

First off, there was the inability to proceed with the IPO from Solyndra, and Chris Gronet, former CEO of Solyndra, suggested that they go to the Bank of Washington. I guess that means the Federal Government.

Secretary Chu. Excuse me, I've lost my train of thought because

I was looking for tabs 32, 34, and 35. I don't seem to have them.

Dr. Burgess. We'll get them to you. The tabs themselves -- I'll give you the information. But so Bob Peck was contacted by Secretary Silver, Bob Peck being the commissioner of public buildings of the GSA, connecting him with the CEO, former CEO of Solyndra, Chris Gronet, asking him to meet with Solyndra, Silver, Secretary Silver said he would personally appreciate it. Now, did you approve of that exchange?

Ms. DeGette. Mr. Chairman, I would ask that the Secretary be given these documents --

Dr. Burgess. The Secretary has the documents.

Ms. DeGette. -- before he's expected to answer.

Mr. Stearns. The tab was pointed out to the Secretary, the staff has shown it, so --

Secretary Chu. Okay.

Mr. Stearns. Continue Dr. Burgess.

Secretary Chu. It turns out to be tab A, so let me catch up. And it was not 32, 34, and 35.

Mr. Stearns. All right, I understand.

Secretary Chu. So now, sir, can you continue with the question?

Dr. Burgess. Here's the deal. Secretary Silver connected Chris Gronet from former CEO of Solyndra with Bob Peck, the commissioner of public buildings of the General Services Administration. They've lost the ability to do the IPO. They want to come to the Bank of Washington. So was it appropriate for Secretary Silver to connect those two entities, the CEO of Solyndra and the head of the General Services

Administration public buildings?

Secretary Chu. Well, this is the first time I've been made aware of this -- I've seen this email, and so --

Dr. Burgess. Well, I was going to ask you, did you speak with anyone at General Services Administration or Department of Defense --

Secretary Chu. No.

Dr. Burgess. -- about purchasing Solyndra panels.

Secretary Chu. Did I? No.

Dr. Burgess. And did you speak to anyone at the White House about this?

Secretary Chu. No.

Dr. Burgess. Okay. Then, following, on August 10th, Tom Baruch, the former member of one of the venture capitalists and an investor in Solyndra, emailed one of his colleagues, quote, getting business from Uncle Sam is a principal element of Solyndra's energy strategy. When President Obama visited Solyndra, Chris Gronet spoke very openly to the President about the need for installation of Solyndra's rooftop solar on U.S. Government buildings. I heard the President actually promise Chris that he would look into it when he returned to Washington.

Do you know about these conversations and do you know of any follow-up conversation that was then contained within that?

Secretary Chu. No, I didn't know about that conversation, and certainly the President --

Dr. Burgess. Can you see why the committee would be interested

in the follow -- if that conversation occurred and the follow-up?

Secretary Chu. Well, certainly, first, the President didn't talk to me about Solyndra regarding government installations, things of that nature, and I was not aware of the then CEO of the company Solyndra talking to the President regarding he felt the need to have government buildings install his panels. I was not aware of that.

Dr. Burgess. Okay, so there was -- you were aware, then, that the --

Secretary Chu. I was not aware of that conversation.

Dr. Burgess. But you were aware that there was at least a business model to pursue the funding from the Bank of Washington and getting a government purchase of these panels?

Secretary Chu. No. These details of these 38 loan transactions are -- I am not aware of. What I view my job is to do is to set in the Department of Energy those measures that guarantee that we make the best judgments possible when we decide that we make a loan and that it has a probability of being paid back.

Dr. Burgess. I appreciate that. I'll stipulate that you had the best of intentions. I just want to follow up on what Mr. Barton ended his questioning. I mean, it was his opinion that the part of the Energy Policy Act that prevented subordination was, in fact, violated, and that is my opinion as well, and I rather suspect that's a fairly broadly held opinion across from sea to shining sea today. So given that fact, do you feel you owe it to your boss a discussion with him in light of the fact that it appears I may have broken the law?

Secretary Chu. No, I --

Dr. Burgess. That you should not continue in your employment?

Secretary Chu. Respectfully, our legal staff, our General Counsel's Office, Susan Richardson, others, the OMB looked at what our decision, our pending decision would be, did not object to it, and so I would say I would rather take the opposite opinion, that when you have independent people looking at this loan outside the Department of Energy as well as a very thorough discussion within the Department of Energy, it is not --

Dr. Burgess. But if you had the opportunity to make the same decision again today, say, with Beacon, you wouldn't make it, would you?

Secretary Chu. Well, what -- let me step back and say that, again, should --

Mr. Stearns. The gentleman's time has expired, but you can complete your answer.

Secretary Chu. Okay, thank you. The issue is, should there be a stress in a loan going forward. We -- I would love to work with this committee and with Congress in how to guarantee that we can recover as much as possible.

Mr. Stearns. Okay.

The gentleman from California, Mr. Waxman, is recognized for 5 minutes.

Mr. Waxman. Thank you, Mr. Chairman.

Well, on that last point, if you don't have the flexibility to

deal with a loan that you want repaid, you're just going to pull the rug out, and then the money's lost for sure. So sometimes allowing the subordination will hopefully save the situation. There ought to be that flexibility.

Secretary Chu. You need some flexibility once a loan has become stressed, and I agree absolutely with you, and this happens all the time in the private sector, and to protect the taxpayer interests, you need some flexibility to guarantee as much pay back as possible.

Mr. Waxman. Well, the Republicans have accused you of acting illegally in subordinating the loan, but I just don't think that's a case they can sustain. Your general counsel signed off on the subordination, and when we asked a former general counsel of her opinion, general counsel at the Department of Energy, her opinion, she agreed it was lawful.

One of my colleagues earlier said, well we ought to change the law, that's what we thought we were doing. That's a good lesson for Members of Congress to take heart. If you think you know what you're doing, you better be sure you've done it because that isn't what the law provides.

The Republicans accused you of granting the Solyndra loan to benefit a campaign donor, George Kaiser, but the record before this committee shows you acted on the merits. Steve Iskowitz, a Bush appointee, who was your chief financial officer, said the process was never compromised. David Frantz, who was a career official, who was also the director of the loan office, told us he did not even know who

Mr. Kaiser was. Matt Rogers, who was your senior adviser on these loans, told us he had no idea Mr. Kaiser had given any political contributions and his name never came up. You told us today that you also did not know Mr. Kaiser had contributed to President Obama until you read about it in the newspapers after the fact.

So that should put to rest that allegation, that you were influenced by political considerations.

The only other allegation that remains is that someone may have asked Solyndra to delay announcing a plant closure for a few days until after the 2010 election. Now, I don't condone this action if it's true, but let's keep this in perspective: Asking Solyndra to delay its announcement did not put any taxpayer dollars at risk. It didn't change Solyndra's business decisions. It had nothing to do with any of the loan guarantee decisions. It's all that our committee has found after reviewing hundreds of thousands of pages of documents and interviewing countless witnesses, and it's really small potatoes.

Now, you've been here this whole day, and you've been very forthright in answering a lot of questions, and there's been a lot of posturing by the Republicans who think this is a scandal. We have lost the money, it's unfortunate, but there's no scandal there, there's nothing there.

I want to put this in perspective, Dr. Chu. You've been trying to move our Nation to a clean energy economy, and that's essential to protect American families from fires and droughts and floods and other extreme weather that climate change will bring, and it's essential to

our future economic growth. As you've repeatedly said, we want to be selling the clean energy technologies of the future, not buying them from the Chinese.

Now, on the other side, my Republican colleagues on this committee have been trying to block these efforts every step of the way. Republicans in Congress and their allies in the coal and oil industry oppose efforts to put a price on carbon pollution. They oppose funding research into new clean energy technologies. They oppose investments in clean energy companies, which, like Solyndra, would produce new power, but we hope, unlike Solyndra, will be successful.

You're on the right side of this debate, and I think you are on the right side of history. The Republicans are on the wrong side, and I think what they're doing is leading us astray. But my message to my colleagues is to stop dancing on Solyndra's grave. You're trying to -- they're trying to manufacture a scandal where there is none. This is a distraction from the work that we should be doing.

What Congress ought to be spending its time doing is trying to get Americans jobs and back to work and get the economy moving again. What Congress should be doing in energy policy is to encourage development of new energy sources so that we don't have to rely on oil and coal and nuclear so we can have a more diversified portfolio, we can be more independent as a Nation, we can produce greater economic benefit, and we can stop the terrible consequences of global warming.

So I thank you for all that you've done. I do not see that you've done anything wrong. If anything, you're trying to do exactly the

right thing, and I commend you for it.

Mr. Stearns. Thank you.

The gentleman's time has expired.

Mr. Waxman. Did you want to respond?

Mr. Stearns. Sure, yeah, go ahead.

Secretary Chu. Can I make a comment?

Mr. Stearns. Sure, absolutely. Go ahead.

Secretary Chu. First, let me just say, thank you for those comments. Many, many years ago, it seems forever now, I had left Stanford University to head the directorship of Lawrence Berkeley Lab because I felt that we were running -- if we continued -- we in the United States and the world, if we continued on this path, we would, there will be serious risks in climate change, and then as I got into this and began to encourage the folks at Lawrence Berkeley Lab to look at renewable energy, I began to also see an incredible economic opportunity that is in the direct sweet spot of the best that America has to offer, our research and development and our entrepreneurial system and the ability to manufacture things like high tech --

Mr. Stearns. Mr. Secretary, I need you to wrap up. We've got a vote, and we also want to get a couple members in.

Secretary Chu. So I would agree with you, this has a lot to do with America's economic prosperity and future as well as the legacy we leave to our children.

Mr. Waxman. Thank you.

Mr. Stearns. The gentlelady from Tennessee is recognized for 5

minutes.

Mrs. Blackburn. Thank you, Mr. Chairman.

And I have to tell you, Mr. Secretary, it's really troublesome to me the number of times I've heard you say today that this is the first time you've been made aware of something or that you know something now, you didn't know it then, so it leads me to believe that maybe you had some staff that was kind of keeping you out of the loop on some decisions.

Let me ask you this: Did anyone from DOE talk to anyone from the White House about restructuring or subordination? Was there any communication between DOE and the White House about the restructuring and the subordination of that loan?

Secretary Chu. Certainly at the time that we were discussing this, I was aware of no communication whatsoever with the White House.

Mrs. Blackburn. Are you aware of any communication now?

Secretary Chu. I was made aware of it as of yesterday.

Mrs. Blackburn. That there was communication between DOE and the White House on the restructuring and the subordination?

Secretary Chu. Well, there are some communications, again, about the restructuring. This is something which is the responsibility of the Department of Energy, and again, we were looking out for the taxpayers.

Mrs. Blackburn. Would you like to provide us with the information of who that communication was between?

Secretary Chu. Yes, I will.

Mrs. Blackburn. Thank you.

Did the White House approve of or sign off on in any way, did they approve of or sign off on the restructuring and the subordination of this loan?

Secretary Chu. Again, my understanding is that this was within the responsibility of the Department of Energy, it was our responsibility within the interpretation --

Mrs. Blackburn. Mr. Secretary, let me ask it another way. If you all had communication and the White House was made aware that you were going to subordinate this loan, then --

Secretary Chu. Oh, absolutely --

Mrs. Blackburn. Then did they sign off on this?

Secretary Chu. Well, as I said before, the OMB looked, knew what we were doing, and they went ahead and said, they said -- they did not say, no, you cannot do this.

Mrs. Blackburn. Anybody in the White House other than OMB?

Secretary Chu. Other than OMB concerning what?

Mrs. Blackburn. The subordination or the restructuring.

Secretary Chu. There may have been other opinions, and we can get that information back to you, but I'm saying --

Mrs. Blackburn. I would like to know the names of anyone in the White House that was involved in that process.

Secretary Chu. Right.

Mrs. Blackburn. Let's go back to the board observer. Did you approve the board observer, or did anyone from the White House or the

Vice President's Office, did anyone else have input into who that board observer would be?

Secretary Chu. I didn't approve of the choice of the board observer.

Mrs. Blackburn. Who approved the choice?

Secretary Chu. I would imagine it was part of the loan program and Jonathan Silver.

Mrs. Blackburn. Okay. Could you provide that information to me?

Secretary Chu. Sure.

Mrs. Blackburn. Okay. Did that board observer report to you on the interactions and the conversations and the contents of the meetings?

Secretary Chu. No, that board observer was there. It's an observer so that we could have a closer eye on the events that were happening in Solyndra.

Mrs. Blackburn. Correct, okay.

Secretary Chu. As part of our due diligence in moving forward with the loan.

Mrs. Blackburn. Sir, you did not appoint them until after you had restructured that loan, that was my understanding.

Secretary Chu. That was part of the condition of restructuring, that we needed --

Mrs. Blackburn. Okay. Now who did they report to of their interactions?

Secretary Chu. I would say that the board observer would be reporting to the loan program.

Mrs. Blackburn. To the loan program, to Mr. Silver?

Secretary Chu. Well, I can get back to you on exactly, but --

Mrs. Blackburn. Okay. That would be great. Did the board observer inform you or anyone at DOE of the impending bankruptcy filing?

Mrs. Blackburn. The -- well, as I said, the board observer doesn't report to me; he reports to someone in the loan program. And certainly as the events rapidly changed, both the board observer and the board of Solyndra were notified of a rapidly changing condition by the management of Solyndra and --

Mrs. Blackburn. Did anyone from DOE report to either the loan program, Treasury, OMB, the White House or DOJ that there would be an impending bankruptcy filing from Solyndra?

Secretary Chu. I think by that time, this is very late in the game, when, especially when Solyndra the company in a board call meeting said that they're making different projections of when they would go into the black.

Mrs. Blackburn. Okay. Well, I find it -- and I think you need to realize our frustration with having people from DOE or from Solyndra come up here as late as July and saying things were fine and then to know that there was a board observer that had been approved by DOE that was sitting in on those meetings that may know, may have known that things were not going well, and yet we were being given different information. I see a certain amount of -- well, let me just say that

is very troublesome to me, and I would hope that it is very troublesome to you.

Secretary Chu. Well, my -- as I've been made aware of this, both, as I said before, the board observer with the board were equally surprised, and the fact that we have a board observer and the board itself being surprised that very suddenly the projections of the company Solyndra to the board --

Mrs. Blackburn. Then who was choosing to keep us all in the dark?

Secretary Chu. Well, look, I'm not going to speculate on that. I'm only just saying that both the board and the board observer learned about these events together.

Mr. Waxman. Point of order, Mr. Chairman.

Mr. Stearns. Yes, point of order.

Mr. Waxman. Mr. Chairman, the Secretary has been here for over 4 hours --

Mr. Stearns. I think you have got a good point there.

Mr. Waxman. We have a vote on the House floor that is going to take us 45 minutes.

Mr. Stearns. I agree. All right, the gentlelady's time --

Mr. Waxman. Just a minute, Mr. Chairman.

Mr. Stearns. Sure.

Mr. Waxman. The Secretary has been here. I think it's abusive to have the Secretary, any Cabinet level Secretary here and then make him wait another 45 minutes to have members ask a second round. There's no entitlement to a second round of questioning.

Mr. Stearns. All right.

Mr. Waxman. And I think we ought to let the witness go about his job.

Mr. Stearns. All right.

Mr. Waxman. And adjourn this meeting.

Mr. Stearns. All right, I appreciate your opinion.

The gentlelady's time has expired, and I think you finished answering her question.

We want to complete the second round for those members that are interested, so, Mr. Secretary, we are going to take a half hour break, come back at 2:45.

Mr. Waxman. Mr. Chairman, I move the committee do now adjourn.

Mr. Stearns. The gentleman has a motion on the floor that the committee adjourn.

Is there objection?

Mr. Scalise. Objection.

Mrs. Blackburn. Objection.

Mr. Stearns. Objection. So we'll call the roll. Is that correct? While we're waiting for the clerk, Mr. Secretary, can we, if we adjourn for 2:45 and come back, could you --

Mr. Waxman. I guess the question to the Secretary, it's up to you, but it seems to me you've done more than you could possibly do to answer every question. The questions are getting to be quite repetitive, and I don't think it's fair to the Secretary.

Mr. Stearns. Okay, that's your opinion.

Mr. Secretary, we have a few members who want to come back right after, it would be less than a half hour. Can you stay for that?

Ms. DeGette. No, it won't be.

Mr. Chairman, it's going to be 45 minutes.

Mr. Stearns. Are you willing to come back or stay for a second round?

Mr. Waxman. Mr. Chairman, is the Secretary willing to respond in writing to those members that have additional questions?

Mr. Stearns. No, I think we have a hearing here, we want to continue.

Are you receptive to 30 minutes?

Secretary Chu. Mr. Chairman, certainly, you know, I really have nothing to hide, but I think Mr. Waxman is correct; these questions are going over and over and over again of old territory.

Mr. Stearns. Oh, I understand.

Secretary Chu. If they want to continue that --

Mr. Stearns. Well, I think we have about --

Mr. Scalise. Mr. Chairman, I have some questions that haven't been asked, unlike some who had the opportunity to have a second round, I haven't. I would appreciate that opportunity.

Mr. Stearns. Normally in an oversight committee, we have at least two rounds, so I'm asking you to consider --

Ms. DeGette. No.

Mr. Stearns. -- to come back or just to delay for another less than 30 minutes, we'll be back and we have three or four members that

will finish up and then we'll wrap up. So with your indulgence, would that be okay? Could you accept that? Good, we'll do that.

Mr. Waxman. Well, Mr. Chairman, I don't -- you are again being abusive of the witness.

Mr. Stearns. We have a motion on the floor, but as I understand it --

Mr. Waxman. Is this the only thing you have to do today, Mr. Secretary?

Secretary Chu. No, I have other, I have other business, of course.

Ms. DeGette. Mr. Chairman --

Mr. Waxman. So you've been asked about all these issues.

Ms. DeGette. As a compromise, I would like to suggest a compromise.

Mr. Stearns. Okay.

Ms. DeGette. The compromise I would like to suggest is that we release the Secretary no later than 3:30 this afternoon. So we can go vote, we can come back.

Mr. Stearns. I think that's reasonable.

Ms. DeGette. Thank you, let's do that.

Mr. Stearns. Let's do that. We'll do that.

And as I understand this motion to adjourn, and we object to it, I think is --

Mr. Waxman. Mr. Chairman, I'll withdraw the motion.

Mr. Stearns. Okay. So we're going to adjourn -- it's temporary

adjourn, and -- recess, we're going to temporarily recess, and we'll be back here in less than 30 minutes at 2:45, and we'll try to get you out of here at 3:30.

[Recess.]

RPTS DEAN

DCMN HOFSTAD

[2:55 p.m.]

Mr. Stearns. The subcommittee will come to order, and we will resume our second round of questioning.

And the gentleman from California is recognized for 5 minutes.

Mr. Secretary, are you ready?

Secretary Chu. Yes, I am.

Mr. Stearns. Thank you for coming back and offering us the opportunity.

Mr. Bilbray, you are recognized for 5 minutes.

Mr. Bilbray. Thank you.

For the record, Mr. Secretary, I supported you when you were appointed, and I support you now. I think you have the greatest potential to fulfill the promise of the Energy Department that has been so lacking for so long, and because I feel that you have a basis in science, not in politics. So I just wanted to say that for the record.

I do have a concern, though, as I say that, that foot for foot, square foot by square foot, you think that the three basic divisions of photovoltaics are created equal. Because there must be some information out there that is not available to the general public. You know, there are distinct advantages, historically, with poly and mono over thin film, not just in its initial performance but in its longevity.

And that is a big reason why I was very suspect when I saw Solyndra propose a 20-year warranty on a technology that has only been able to really deliver a 4- or 5-year guarantee. And you may not agree, but I think you would understand why I would have those concerns.

Secretary Chu. Well, if you would allow me to explain, if you look at the thin-film technologies, there are two thin-film technologies -- cad telluride, what we refer to as CIGS -- and how does it stack up against both single crystal silicon and polycrystalline silicon.

Mr. Bilbray. Well, let me just stop and say, you still say that you think the three are equal and that there is not -- the thin film was not a more risky venture as opposed to the other two?

Secretary Chu. I think that thin film has great promise. And this is the reason why General Electric today is investing in a solar --

Mr. Bilbray. Okay. I understand General Electric. We also keep referring to China, and you know exactly where they have laid their bets.

My biggest thing is that I worry that the way this moved was moved not by criminal intent but through naivete or wishful thinking that all solar energy was created equally and that anything green must be good. And I think we have seen the mistake of that with the application 15 years ago of ethanol, and now we have seen the problems that that has created, both environmentally and economically. And my concern was this naive, almost religious approach that if it is green, it must be good and it is going to work out.

But that aside, you know, my concern is that when we approach the technologies, was the concept that because the Chinese weren't going at this that we could have a quantum leap in technology that is so far ahead of where we have been before, that the Chinese would be left behind because of our research, and this breakthrough would make a technology that they had basically left behind themselves, weren't willing to invest in, that we could jump ahead of the Chinese at that time?

Secretary Chu. If you would allow me to finish, what I am trying to say here is that in the thin-film technology, like cad telluride, there are certain results of efficiency in the laboratory of companies and then there are certain production efficiencies. When they started in production, they were getting roughly 11 percent efficiency. Silicon was higher; silicon was roughly 14 or 15 percent efficiency. They both have -- so what you had in silicon is, you had less, what I would call, headroom to improve the technology.

Now, since we have started in cad telluride, as an example, companies are now achieving results and beginning to go into production where they are expecting something on the scale of 14 percent efficiency. That is a huge improvement --

Mr. Bilbray. I am sorry to interrupt. But, historically, the advantage of thin film was a lower cost even though it was, like, 15 to 20 percent less efficient initially and had a higher degrading level in the first year of application.

Secretary Chu. Well, what is happening is, it is certainly much lower cost, and in the instance of cad telluride it is actually

beginning to rapidly approach the efficiency of silicon. And so this is a good thing. This --

Mr. Bilbray. When you say "rapidly approaching," wait a minute, you know, we are looking at 20 percent historically. We have closed that to 10 percent, 5 percent?

Secretary Chu. The dominant silicon being sold today is what is called poly silicon, and --

Mr. Bilbray. Right.

Secretary Chu. -- that is roughly about 15 percent efficiency. And, as I said, cad telluride started at 11 percent, and they are making great advances in the efficiency. And so --

Mr. Bilbray. Okay. Getting back to the -- you were thinking, though, that this would be a bet to be able to have a quantum leap so we could jump over where the Chinese were going?

Secretary Chu. They -- sorry. We weren't making bets. There were companies that were investing in this and applied for a loan. And we think, going forward, that cad telluride, some of these thin-film technologies, can be very competitive.

Mr. Bilbray. Okay. I just need to interrupt because of my time. Because my concern is this issue, that we can jump so far ahead that we will be able to -- production, when we are paying twice the price for electricity as China, when they can get the permits, when they have the access. You know, we talk about wind energy. They have 98 percent of the rare earth, and we haven't opened up our public lands for rare earth so we could produce it domestically, so we would have to buy the

rare earth because of the permanent magnet technology. All of these things are tied together.

And I would like to see the Energy Department be able to talk to our colleagues; that if they want to see wind generation, then they have to change regulations to allow access to rare earth. If they want to talk about these technologies being made available, they have to be able to make it legal for us to produce it competitively.

My only problem is, if we make this quantum leap, we spend all the taxpayers' money to develop the technology, the Chinese will take that technology and outproduce us because of our government regulation obstructionism.

I yield back.

Mr. Stearns. The gentleman's time has expired.

And I recognize the gentleman from Georgia for 5 minutes.

Dr. Gingrey. Dr. Chu, Mr. Secretary, I want to associate myself with the initial remarks my colleague from California just made in regard to you being in the right position at the right time.

You know, I do question, though, your judgment in regard to the restructuring of the loan. I feel that that essentially was throwing good money after bad. I think the decision should have been made to cut our losses, advance no further loan proceeds to the company, and try to recover as much of the $530 million under a structured bankruptcy sale of assets for the taxpayer.

You know, in fact, the investors that were coming behind with the $75 million, I am sure many of those were involved in the original

billion-dollar investment to start the company up, and so they were in the same kind of position.

But be that as it may, I just think that maybe the advice from the Justice Department over the question of whether or not it was legal to restructure and put the taxpayer in a secondary position, you would have gotten the right answer, and that would have avoided that trap.

The ranking member of the overall committee said earlier before we broke that, you know, it is time quit dancing on the grave of Solyndra, and, you know, we are talking about small potatoes, it is a non-issue. In fact, the President, himself, was quoted as saying, well, hey, you win some, you lose some. I made a football analogy in my first round of questions, and you win some, you lose some in football. But in a situation like this, you know, you don't lose $535 million and maybe win a $15 million investment. The balance is just not there. And, quite honestly, half a billion dollars, to most of us, is not small potatoes.

Let me just ask you a few questions in the remaining time that I have left. And this is about the issue of the second loan guarantee application, so-called Fab 3. I am not sure many of us even realized until here lately that there was the possibility of Solyndra getting yet another loan.

When were you first made aware of Solyndra's pursuit of a second loan guarantee?

Secretary Chu. Recently. But, just for the record, when we have an announcement of application for loans, companies apply for a loan.

That doesn't mean the company was going to get a loan. And, in fact --

Dr. Gingrey. Well, Mr. Secretary, I understand that. Of course, in January of 2010, executives from Solyndra appear to have met with DOE officials, including Mr. Jonathan Silver, gone now, and Matt Rogers, on several occasions to discuss the idea. And you were aware of those meetings -- were you aware of those meetings?

Secretary Chu. I believe I was aware of an application for a third fab plant, but that really, as you know, progressed nowhere.

Dr. Gingrey. Right. Right. So is it safe to say that you did have conversations with Jonathan Silver and/or Matt Rogers before or after these meetings regarding the second loan?

Secretary Chu. No. In an -- I am not informed of applications for all loans. There are many, many applications. When I am brought in is when it comes time to approve the loan, because that is my responsibility. Many applications go into the Department and then the loan people determine that they are not going get a loan.

Dr. Gingrey. Yeah. Well, here again, some of the other folks, the band of brothers that you fell in with, inadvertently I guess we could say.

According to one Solyndra executive, on February 9th, another meeting with Solyndra executives, Jonathan Silver appeared to acknowledge that they would, quote, "likely move to the due diligence stage when he directly engaged in a discussion of the potential political challenges that a second Solyndra loan guarantee would present." And that is the end of his quote.

He then asked for Solyndra's assistance in crafting answers to four questions that he anticipated receiving about this second loan guarantee. One of these questions was why DOE should give additional loan guarantees to a company that had not yet achieved significant milestones of success with the first loan.

Did Jonathan Silver ever present to you reasons why he thinks Solyndra should get a second loan guarantee, when there are, as you point out, a lot of other companies desperate wanting -- renewable energy companies, with good plans, wanting to have a first bite at the apple, and here he was sort of pushing for Solyndra to get a second bite of the apple? What did he say to you?

Secretary Chu. Well, I am not sure he was pushing to get a second bite of the apple. What I do know is that this did not come before me to the point where there was serious consideration to give Solyndra the second loan.

Dr. Gingrey. And they subsequently did not get that second loan.

Secretary Chu. We did not.

Dr. Gingrey. Right. Thank you, Mr. Secretary.

And, Mr. Chairman, I will yield back.

Mr. Stearns. The gentleman's time has expired.

The gentleman from Louisiana, Mr. Scalise, is recognized for 5 minutes.

Mr. Scalise. Thank you, Mr. Chairman. I appreciate you letting us have a second round of questions.

And I disagree with the comment you made earlier, that a lot of

these are redundant questions that are being asked. Because, frankly, I think there a lot of questions that have been asked that we haven't been able to get answers to.

In fact, when the chairman, Mr. Stearns, at the beginning of the second round, asked you some very specific questions about other loans out there, what other loans are in trouble, I am surprised that you can't give an answer to that question.

Can you get us, this committee, an answer to that question of what other loans are in trouble right now?

Secretary Chu. As I said before, we watch all the loans. We, in learning from the experience of Solyndra, we are now watching the loans at a minimum of every month and sometimes weekly. But --

Mr. Scalise. So can you tell, if you are watching them weekly, how many are in trouble? Obviously you are watching them weekly. There are a lot more out there. How many are in trouble right now?

If you are watching them, you have to know. It is either none or some number in between none and the total number that are still out there.

Secretary Chu. I --

Mr. Scalise. What is that answer?

Secretary Chu. What, that --

Mr. Scalise. I don't think that is an unreasonable question, Mr. Secretary. How many loans that you are watching -- you are watching them weekly -- how many loans are in trouble that are still outstanding?

Secretary Chu. Again, we watch --

Mr. Scalise. A number. I am asking you for a number.

Secretary Chu. All right. We have two loans that are in trouble, Solyndra and Beacon.

Mr. Scalise. Well, they went bankrupt. Those aren't -- what other ones are in trouble besides those two? Is it just those two?

Secretary Chu. No, I -- we would be glad to look at and tell you our procedures and give you, not in this forum -- but we would be glad to work with you and --

Mr. Scalise. Well, a public forum. I mean, it ought to be -- there has to be transparency in what is going on here. We are trying to get to the facts, and we have been having a hard time getting those answers. So I would appreciate if you would get the committee that information on what loans are in trouble, starting with Solyndra and Beacon, if there are any others.

When we talk about the subordination -- and I know it is going to come back to this a few times because I still don't think this issue is resolved. And, frankly, you know, I disagree with you, and, obviously, a lot of us on this committee disagree with your interpretation. I more share the concerns of another part of the Obama administration, in Treasury, where they said the Justice Department ought to be involved. You chose not to get involved with the Justice Department.

I am asking for the Justice Department to get involved. And, frankly, what I would like to see is for the Justice Department to challenge, right now, to challenge the subordination of the taxpayer.

Because, frankly, it is the only way that we have a shot at getting that first $75 million of taxpayer money back.

Mr. Stearns. Would the gentleman yield just for a second?

Mr. Scalise. I would yield.

Mr. Stearns. I think he is asking a very legitimate question. He is asking you not the company names; he is just asking the number.

And staff has advised me we sent a letter some time ago asking for a list of all the companies, and we have not got a reply yet. So I think the gentleman's question of "what is the number" is a legitimate question.

If you are looking at it weekly, can you tell --

Secretary Chu. We believe that most of the loans are in good shape. We would be glad to talk about this with you and tell you what process we have in place. We have given you a lot of company confidential information. You have respected that confidentiality; we appreciate that. We would be willing to continue do that.

Mr. Stearns. We are not asking for the names.

Ms. DeGette. Would the gentleman yield?

Mr. Stearns. All he is asking for -- as I understand, Mr. Scalise, you are asking for just the number.

Mr. Scalise. A number is all I ask for right now. And, obviously, we would like to follow up once we see a number. But, you know, maybe the number is just two; maybe it is just Solyndra and Beacon. But if it is more than Solyndra and Beacon, then clearly we would want to look more into that.

Ms. DeGette. Will the gentleman from Louisiana yield?

Mr. Scalise. I would be happy to.

Ms. DeGette. Thank you.

Mr. Secretary, is part of your reticence in saying how many companies you think might be in trouble or which ones they are in this public forum this concern about proprietary information?

Secretary Chu. There is always concern that we would have, as you would understand. But in terms -- because we will tell you what we know of the companies and how we found out about it in detail, but not in a public forum.

Ms. DeGette. So --

Secretary Chu. But we believe -- I will say that we believe the majority of the portfolio seems to be in good shape.

Ms. DeGette. So, Mr. --

Secretary Chu. In fact, a large majority.

Ms. DeGette. So I would suggest -- I think that is a legitimate concern. You don't want to -- we have already been contacted, for example, by a company that is actually in Mr. Gardener's district, and they are concerned, because of the adverse publicity around the Solyndra loan, that it is hurting their ability to get capital and financing, and they are an ongoing company.

So perhaps we could get -- we could get a number -- we could try to get a number, but then any additional --

Mr. Scalise. Right. And that was the gist. Reclaiming my time, I never asked for any specific names, but, clearly, I would like

the numbers.

But then the next question I have regards going back to the restructuring. You know, I want to see the Justice Department go back and challenge the legality of the restructuring, whether or not the taxpayer should have been subordinated. Because that gives us the best chance to protect taxpayer money.

Would you agree that the Department of Justice should go and challenge that?

Secretary Chu. As I said, we have gone through this in great detail with our lawyers within the Department of Energy. This went to --

Mr. Scalise. And ignored other legal opinions that contradicted it.

Secretary Chu. No.

Mr. Scalise. Including the Treasury.

Secretary Chu. The Treasury, as I said before, did not offer a legal opinion. They did not say that --

Mr. Scalise. This is a letter from Treasury. I would imagine you have seen it. It said that you all should go to the Department of Justice before you do this. I mean, I don't know if you want to call that a legal opinion. You have attorneys telling you, go to the Department of Justice before you do this, and you didn't do that. Now, whether it is a legal opinion or just a personal opinion, it was sent on their stationery, it was sent in their email form, on a government email, so I would imagine it is in their official capacity.

But let's just say, right now -- and, you know, I don't want names -- are there any loans that you are currently considering restructuring that are in your portfolio right now?

Secretary Chu. I think I have answered that before. But we are -- before us, no loans that we are considering --

Mr. Scalise. I would hope, if any did come before you, you would absolutely not subordinate the taxpayer. That is a whole other issue.

But when we go back to some of the other things that were going on around you -- and you gave testimony that you weren't aware of those, some of the things that were very political in nature: you know, in your department, encouraging people to -- encouraging Solyndra to delay firing people. Again, they weren't concerned, in anything I have seen, that 1,100 people were going to lose their job; they just wanted to make sure it happened after the election. And it did happen after the election, so, obviously, the folks in your agency were listened to.

Are you going to do the due diligence to go and find out who did that and hold them accountable? And what kind of things would you do to hold them accountable?

Secretary Chu. Well, we certainly will, as I said before, investigate actually the facts in this matter and take appropriate actions as we find out what actually happened.

Mr. Scalise. And I would hope you would share that with our committee. Would you be willing to do that?

Secretary Chu. Yes.

Mr. Scalise. Now, a final question, because I see I am running

out of time.

The President, himself, has described this -- when we talked about the loan program early off, he was asked and he said, basically, he said, we place bets. Now, would you view this as betting? Because, I mean, clearly, there are a lot of other loans out there. There are $4.7 billion of loans that went out on the last day of this loan program. Just on that last day $4.7 billion went out.

Knowing all of the problems now that happened with Solyndra -- and that was the very first one that went bust -- have you changed any processes? When you, on that last day -- I would imagine you approved all of those. So how many loans were approved on that last day, accumulating to $4.7 billion? And did you use a different methodology, a different formula to assess whether or not those were bets, as the President said, that were good for the taxpayer or not, or did you use the same process that failed for Solyndra?

Secretary Chu. Well, let me step back and tell you about the last several months of the loan program, the 1705 loan program.

There were, I think in May or June, roughly May of this year, we told many of the loan applicants there was no time to complete due diligence and that we are sorry, even though some of these applications were being considered and before us for a year or more. And so, at that time, we said, we cannot have the time to do due diligence.

On the last of the loans, there were many of the loans where we also felt on those last days we could not make the deadline and do the due diligence. And so what we were deciding was which ones can we

complete the due diligence. Under no circumstances was anyone ever in the loan program trying to rush it by cutting corners, not doing the due diligence.

And so what happened is, you used the maximum time possible. There were another set of loans that we were working with companies that we did not -- we were not able to complete our due diligence, and those loans were not made.

Mr. Scalise. But the specific question I asked you was --

Mr. Stearns. The gentleman's time has expired.

Mr. Scalise. -- how many loans were approved on the last day, and did you use the same process that you used under Solyndra for that $4.7 billion package?

Secretary Chu. As you know, we have a very rigorous process in our --

Mr. Scalise. How many? And yes or no?

Mr. Stearns. The gentleman's time has expired.

Secretary Chu. Well, I believe I agree with you that there were four, and there were a number of loans that were not -- and the last day, we said, we are sorry, to those companies, we cannot complete these loans. So under no circumstances were we rushing.

Mr. Stearns. All right. Thank you, Mr. Scalise.

Mr. Scalise. And did you use the same process?

Mr. Stearns. And the gentleman from Virginia --

Mr. Scalise. He won't answer that question. I am just asking if he can answer that question.

Mr. Stearns. The gentleman from Virginia is recognized.

Mr. Scalise. Did you use the same process as under Solyndra for those last $4.7 billion of loans?

Secretary Chu. Well, actually, I would imagine, as time goes on, our processes were being strengthened. As we get better at doing these things, we were actually improving the processes, just as we will continually improve the process in looking at how the loans are going forward in the disbursements. This is a process where we would hope to have continuous improvement, and --

Mr. Stearns. All right. The gentleman from Virginia is recognized for 5 minutes.

Mr. Griffith. Thank you, Mr. Chairman.

Secretary Chu, can you tell me, do you know what the value of the building that Solyndra owns, the one that was built, do you know what the value of that is, as far as the bankruptcy court is concerned, or what the sales price might be?

Secretary Chu. No, I don't.

Mr. Griffith. All right. And here is my concern. Eight to 11 months ago, when you were making the decision to subordinate, you said that you thought it was better, instead of calling it quits in December and not giving them the additional $95 million, and instead of subordinating -- or, you all made the decision you were going to subordinate because you thought it would put the taxpayers in a better position.

The problem is, you told me earlier you didn't know the value of

the intellectual property and the patents that the company might own. You don't know the value of the building. If you don't know those things in a fire sale or in a situation like this, how can you make a determination just 8 to 11 months ago that it was in the taxpayers' best interest to subordinate? I think it is a rhetorical question because I don't know that you can answer that.

And let me move on to the next question that I have, because we also talked earlier -- Mr. Barton brought it up first, and then I brought it up -- this legal analysis by Morrison & Foerster. And all we have is the draft. And I don't think that you have intentionally misled the committee, but I think that there may never have been a legal opinion from Morrison & Foerster on this, a written legal opinion.

Do you know if there was actually a written legal opinion made?

Secretary Chu. I do know that there was an email, a determination by Morrison & Foerster of what -- and they concurred with us in an email, in a final email, saying that this was a reasonable interpretation of the law, and they concurred with it.

Mr. Griffith. Because I don't believe we have seen that. And so, if you could provide that email for us, I would greatly appreciate it, because we just haven't seen it. And so, you know, we have a draft that says -- it has a whole section entitled "You Can't Subordinate," basically. It says subordination is not allowed. So that is of great concern.

And if all there was was an email and there originally was going to be a full legal memo, can you find out why there was not a full legal

memorandum done from Morrison & Foerster in regard to the subordination issue? Can you do that for us?

Secretary Chu. Yes. Well --

Mr. Griffith. And let me say that the reason that I question this is that you have referred to it a number of times today, but it appears that you, you know, relied on maybe some casual communication with them but never got the formal opinion, even though one was started. And it appears you relied significantly and exclusively on your own folks.

But a lot of times, you know, when you are trying to make an important decision, just as when you are making an important decision for your children, you consult other people before you decide, okay, are they too young to have a new car or what about that cell phone. And, in this case, you have acknowledged that you were making a very significant decision on the subordination of this loan, and yet you didn't consult with Justice, you didn't pay attention to other folks, OMB and Treasury.

And it appears -- I mean, if my kids did that to me and that is what they were saying, "Well, we didn't check" -- it appears that the Department of Energy adopted the policy of, well, it is better to ask for forgiveness than to make sure we get the answer right in the first place because we are afraid they will come back and say we can't do it.

And it is true that without that subordination you knew that this company would go bankrupt last December. Isn't that true?

Secretary Chu. Well, let me first step back and tell you what

I know of the interactions with Morrison & Foerster.

There was an initial email that said, we have to step back and look at this. And then there was a final determination by Morrison & Foerster in an email that was sent to us that said, the determination made by the counsel's office in the --

Mr. Griffith. Did you not see their full draft, which was pages long, in which one section said -- it highlighted and flagged that subordination was not allowed? You didn't see that? All you saw were a couple little brief emails?

Secretary Chu. No. What I said is that certainly the subordination of the initial loan was not allowed, and they made that very clear. But in the end, the final email --

Mr. Griffith. Let's get to that point, then. I understand what you are saying. And if there is something more than that, we would like to have it. And if I could have that email.

Here is my problem with that. At the beginning, you know, the initiation of the loan, if you read the memorandum -- did you read the Susan Richardson memorandum?

Secretary Chu. Yes.

Mr. Griffith. Okay. If you read that and you read it closely, including the footnote, I believe it is the second footnote in that memorandum, you will see that the conclusion was that we can do it -- we don't have to have an excuse of default; we can do it at any time subsequent to the original closing of the loan.

And so I ask you -- because you are a very bright man, much

brighter than I am; you know, I know you didn't leave your brain at the door -- I ask you if it makes sense to you that Congress would pass a bill that says at 10 o'clock in the morning you can't subordinate the loan to anybody else, but after eating lunch and reflecting on it, at 2 o'clock in the afternoon of that very same day, you legally could subordinate the loan. Because that is the opinion that Susan Richardson puts forward, if you take it to its natural conclusion, and particularly when you look at that footnote.

Does that make sense to you, as a thinking, intelligent man?

Secretary Chu. As a thinking, intelligent man, it was very clear that, at the time of the origination of the loan, we could not subordinate -- we did not subordinate.

Mr. Griffith. But 2 hours later, based on the opinion that you are relying on today and that you have relied on this whole time, you could have. Do you really think that makes sense, that that would have been Congress' intent?

Secretary Chu. Well, if you mean by "2 hours later" you mean --

Mr. Griffith. I mean 4 hours later, but 2 hours later is the same. I am just giving you an example, that you ate lunch and you reflected on it and you had a new opinion.

Secretary Chu. Well, then when the loan became stressed and in trouble --

Mr. Griffith. But there was nothing in the Richardson opinion, am I not correct -- I am correct, but I will just tell you -- there is nothing in there that says it had to be stressed. In fact, they

talked about that and said it didn't have to be stressed, that you could do it at any time that you wanted to once the original loan had taken place, which means you could circumvent the entire law based on the reading of the law that your department decided to take.

And I submit to you that, as a thinking, intelligent man, if you weren't sitting here on the hot seat today, you would have to admit that that does not make sense and, clearly, what you all did violated the intent of Congress and, I believe, the letter of the law, as well.

Thank you. I yield back my time.

Mr. Stearns. The gentleman yields back his time.

We offer the gentleman from Illinois 5 minutes.

Mr. Barton. Mr. Chairman, before you -- could I ask unanimous consent to speak out of order just for 1 minute to read this email, which apparently is the email that they are --

Mr. Stearns. By unanimous consent, so ordered.

Ms. DeGette. Which email is it?

Mr. Barton. It is the email that Secretary Chu is referring to, where he alleges that Morrison --

Ms. DeGette. What is the date on it?

Mr. Barton. It is dated January the 13th, 2011. It is from Panagiotis Bayz to Frederick Jenney.

May I read that?

Mr. Stearns. Sure. How long is it going to take?

Mr. Barton. Thirty seconds.

Mr. Stearns. Okay, go ahead.

Mr. Barton. It is very quick.

It says, "Rick, red line to the prior version of the memo attached. The only substantive comment" -- this is relating to the memo that the Department of Energy has sent for their comments -- "is that 19(c)(4) discussion. This reads a bit tortured, so I added a note for Ken to consider deleting." Here is the key phrase: "Otherwise, I think it makes the best case possible based on a reasonable interpretation, supported by the restructuring policy arguments."

That does not say that it is legal. It says it makes the best case possible based on a reasonable interpretation. And, apparently, that is what the Secretary is relying on to say that the internal Department of Energy memo is okay.

Mr. Stearns. Thank you.

And the gentleman from Illinois for 5 minutes. Go ahead.

Mr. Secretary, you wanted to say -- well, go ahead, Mr. Secretary. By unanimous consent, go ahead.

Secretary Chu. I think the email from Morrison & Foerster said that it was a reasonable interpretation. Is that not correct?

Ms. DeGette. Yes.

Mr. Chairman, I ask unanimous consent to put that email in the record so it is clear.

And it does, in fact, say that, Mr. Secretary.

Mr. Stearns. But just because it is reasonable does not mean it is the correct interpretation. You would agree with that?

Secretary Chu. It was a reasonable interpretation of the law --

Ms. DeGette. It says "reasonable interpretation."

Mr. Stearns. Well, the long and short of it, we have had this discussion, and it appears that you have your opinion, and of course we have ours.

Ms. DeGette. Mr. Chairman, I renew my request to put this document in the record.

Mr. Stearns. Sure. By unanimous consent.

Mr. Barton. Yeah. I want it in the record.

Mr. Stearns. Mr. Barton is asking for unanimous consent to put it in the record. And it will be put in the record.

Mr. Barton. I concur with Ms. DeGette.

[The email follows:]

******** COMMITTEE INSERT ********

Mr. Stearns. And, Mr. Illinois, you are on.

Mr. Kinzinger. "Mr. Illinois." Thank you.

Thank you, Mr. Secretary. Obviously, when we deal with this amount of money, it is important to get all these questions out. And we appreciate you being here. We appreciate your service. And thank you for coming before us today.

Let me ask you -- and I know you have addressed it already, to an extent, but I want to ask you, did the stimulus deadlines accelerate the review of Solyndra's case, specifically? The deadlines put in by the stimulus, did it accelerate the review of the case?

Secretary Chu. No, it did not. You know, from the time of the completed application to the time we closed on the loan, it was about 980 days. I would not consider that --

Mr. Kinzinger. Okay. Because in congressional testimony dated March 19th, 2009, DOE stimulus advisor Matt Rogers stated that you "directed us to accelerate the process significantly and deliver the first loans in a matter of months, while maintaining the appropriate oversight and due diligence."

Did you direct the loan programs officer to speed up the process?

Secretary Chu. Yes. We wanted very much -- so that the loans would not all be taking 980 days. That is correct.

Mr. Kinzinger. But you didn't -- so you wanted it sped up after the acceleration of the -- or, after the Solyndra loan, is what you are saying.

Secretary Chu. No. As I said, when I was before Congress in the

confirmation hearing, there was on both sides of aisle much concern that the loan program was not getting the loans out. Again, the economy was in free-fall. Hundreds of thousands of jobs were being lost each month. And it was considered by both sides of the aisle that this loan program was an effective way of getting capital and helping that capital be invested in energy projects, renewable energy and those things.

And so, it was the concern -- and, as said, nearly 500 letters from Members of Congress on both sides of the aisle, saying --

Mr. Kinzinger. Okay. Thank you.

And, in January of 2009, DOE documents show that the Loan Programs Office credit policy group listed 14 outstanding issues that needed to be resolved on the Solyndra deal, including analyzing the parents' working capital needs and evaluating the parents' funding requirements and financial health. A market report for Solyndra had yet to be submitted. One staff member reviewing the engineering reports listed eight different questions about its findings, including about Solyndra's plans to scale up production.

Yet, on March 17th, DOE offered a conditional commitment to Solyndra, just a few weeks later. So you are telling me that DOE was able to resolve, in that short amount of time, all 14 credit policy issues?

Secretary Chu. I think if you are talking about these issues in the beginning of January versus March -- and we resolved many of those issues when we offered our conditional commitment, then these -- before the loan disbursements start, that the company will have to resolve

all issues. And that is what a conditional commitment means: There will be additional conditions before we actually disburse any funds.

Mr. Kinzinger. Let me ask you also, too, being as how this is all, you know, stimulus-related, stimulus-financed, how would you define the concept of shovel-ready projects? And do you think we realized those goals?

Secretary Chu. I think what we were looking for, what Congress was looking for, what the administration was looking for, were those projects that could put Americans back to work in a very, very desperate time. And I think many of the loans -- for example, if you consider the Ford loan --

Mr. Kinzinger. Right.

Secretary Chu. -- which we think is a big success, saving some 30,000-plus jobs and --

Mr. Kinzinger. So "shovel-ready" is, even at the cost of million of dollars a job, putting people back to work?

Secretary Chu. No. As very clearly stated in the law and clearly state in what we do, we wanted to make sure that there is a reasonable chance of payback. And in all our loans going forward, that is --

Mr. Kinzinger. Thank you.

Secretary Chu. And that probability of being paid back is reflected in credit subsidy scores.

Mr. Kinzinger. Okay. Thank you.

And with my time left, I would like to yield my remaining time

to Dr. Burgess from Texas.

Dr. Burgess. And I thank Mr. Illinois for yielding.

Secretary, again, your indulgence today is commendable. Like other members of the committee, we all stipulate that you are probably the smartest man in town, and that is why some of this is so baffling to us.

One of the things that grabbed a lot of headlines a few weeks ago was the amount of money spent on legal bills by Solyndra and, by implication, the fact that there were big loans going to this company that was money that we were paying for Solyndra's legal bills. And I think the figure given was $2.4 million spent in the 2-1/2 years of Solyndra's tortured existence.

You are following the loans very carefully now, you are looking at things weekly, you are looking at balance sheets and expenditures and burn rates. Is this number of dollars for legal fees that Solyndra went through, is that unusual in this portfolio?

Secretary Chu. I can't actually speak to that. But, certainly, one doesn't want -- you know, I can't actually address why Solyndra was spending those amounts of funds on legal matters and legal bills.

Dr. Burgess. There was a man on your staff whose wife worked for the law firm --

Secretary Chu. Right.

Dr. Burgess. -- that was representing Solyndra. That, obviously, gets some attention.

You know, I mean, here is the thing. At the end of this day, you

are the Secretary of Energy. You are the holder of the Nation's nuclear secrets. You are the civilian manager of the Nation's nuclear arsenal. And many of these decisions that were made in this loan guarantee program seem to be almost the kind of decisions you would expect a riverboat gambler to make.

I really ask, again, that you talk to your employer --

Ms. DeGette. Mr. Chairman? The gentleman's time has expired, and he is badgering the witness. I would ask that you suspend this hearing.

Dr. Burgess. -- you talk to the President, and you need to have that honest conversation with him.

Mr. Stearns. The gentleman's time has expired.

Mr. Secretary, we are done. And, as we agreed upon in the committee, we have 3:30 in mind to end.

I want to ask the ranking gentlelady from Colorado if she has any concluding comments, and then I have just a very short concluding comment.

Ms. DeGette. Mr. Chairman, I just want to thank the Secretary for coming.

As I said in my opening statement, I have been on this subcommittee for 15 years. I don't believe that I have ever seen a Secretary, a Cabinet Secretary, of either party in any of the three administrations I have served under patiently give us so much time.

And so I just want to thank you. It helps us begin to understand the basis for this loan program, what we can do. And I hope that we

can work with you to improve this program in the future so that we can support solar energy.

Thank you.

Mr. Stearns. I thank the gentlelady.

And, by unanimous consent, I would put the document binder in our record.

So ordered.

[The information follows:]

******** COMMITTEE INSERT ********

Mr. Stearns. Mr. Secretary, also, I would echo the ranking member's comments. But I would say, in conclusion, that after listening to you for almost 3-1/2, almost 4 hours, you seemed to fail to monitor the loan guarantee program; failed to heed the warning sign of the Treasury Department, OMB, and even your own legal counsel; you ignored subsequent Solyndra bankruptcy predictions 2 years by your staff; you disregarded the ongoing possibility that you should have got Department of Justice's opinion. The legal opinion you got in an email is really not credible.

And I think even most Members on both of sides agree, Mr. Green pointed out, from Texas, that illegal subordination of taxpayers to two hedge funds I think shows a high degree of mismanagement and ineptitude. And I would think, under the circumstances, that it could have been done a lot better.

Don't you feel, in retrospect, that this was poorly managed?

Secretary Chu. I think, as I look back at the events and at the time and what did we know and when we knew it, decisions were made -- competent decisions were made by the people in the loan program.

And, again, going back, this is very important, that the United States be supporting these innovative technologies. The wisdom of Congress in that bill supported that. And, again, they acknowledged that there were risks in supporting innovative companies and innovative projects, and that is why there was this large loan loss reserve that would set aside and appropriated. That money could have been appropriated for other things.

Mr. Stearns. Well, I will conclude by saying, I don't know how many loan risks of a half a billion dollars we can afford to lose as taxpayers.

And, with that, the subcommittee is adjourned.

[Whereupon, at 3:35 p.m., the subcommittee was adjourned.]