

STATEMENT OF THE HONORABLE JEFFREY D. ZIENTS
DEPUTY DIRECTOR FOR MANAGEMENT
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES

SEPTEMBER 14, 2011

Chairman Stearns, Ranking Member DeGette, Members of the Subcommittee,

Thank you for inviting me here to testify today on OMB's role in the implementation of the Department of Energy's loan guarantee program. The program aims to accelerate the domestic commercial deployment of innovative and advanced clean energy technologies at a scale sufficient to contribute meaningfully to the achievement of our national clean energy objectives – including job creation; reducing dependency on oil; improving our environmental legacy; and enhancing American competitiveness in the global economy of the 21st century. Authorized by Congress in Title XVII of the Energy Policy Act of 2005, the program has received continuing bipartisan congressional support, including repeated appropriations actions.

This program is a key part of the Administration's efforts to promote economic growth, create jobs across the country, and jumpstart the clean energy economy. The Recovery Act, which aimed to support rapid job creation and other economic activity, appropriated credit subsidy funds for Title XVII loan guarantees in the credit-constrained economy. The Administration is making every effort to ensure that the program's implementation increases economic growth and promotes clean energy, while protecting the taxpayers' interests.

Since its inception in the last Administration, the Title XVII program has supported a wide variety of energy projects, including 19 solar projects, 5 wind projects, and 3 geothermal projects across the country. OMB has reviewed each of the deals DOE has submitted to OMB for loan closing or a conditional commitment. As of September 12, 2011, 18 loan guarantees have closed and another 18 projects have received conditional commitments.

As you know, OMB engages in general oversight of the programs being executed by federal agencies, particularly the implementation of such critical initiatives as the

Recovery Act. Therefore, OMB has been a participant in interagency discussions about major milestones in DOE's implementation of Title XVII, helping to ensure they are consistent with the statutory framework and Administration policy. These interagency discussions are an important forum for asking tough questions and pressure-testing assumptions, respectful of DOE's statutory authority to make final programmatic decisions on Title XVII loan guarantees.

OMB also has a particular statutory role in the Title XVII program under the Federal Credit Reform Act of 1990, known as FCRA. Pursuant to Section 503 of FCRA, OMB reviews and must approve credit subsidy cost estimates for all loan and loan guarantee programs, including the credit subsidy cost estimates generated by DOE for the Title XVII program, to ensure that costs are accounted for appropriately. The Title XVII program provides relatively large-dollar guarantees and because their characteristics, terms, and risks vary greatly from project to project, OMB assesses cost estimates on a loan-by-loan basis. This is the same approach OMB uses for loans or loan guarantees of other similar programs that involve large deals or varied structures, such as those administered by the Overseas Private Investment Corporation and the Export-Import Bank.

In performing its statutory role under FCRA, OMB delegates the modeling of credit subsidy costs to agencies, and issues implementing guidance to ensure consistent and accurate estimates of cost. For new programs or programs issuing their first loans or loan guarantees, such as the Title XVII program in 2009, OMB works closely with agencies to create or revise credit subsidy models. Based on these models, OMB reviews and exercises final approval authority over credit subsidy costs to ensure that the costs of direct loans and loan guarantees are presented, and reflect estimated risks, consistently across Federal agencies so that taxpayer funds are invested in a prudent and effective fashion. By contrast, the final decision on whether to issue the loan or guarantee rests with the agency implementing the applicable program – DOE in the case of Title XVII.

With respect to the Solyndra loan guarantee, OMB's approval of DOE's proposed credit subsidy cost was conducted in August and September of 2009. While I was not directly involved in this aspect of the transaction, what I have learned since indicates that the approval process reflected a thorough examination and analysis of DOE's calculation of this estimated cost. In particular, it is my understanding that OMB's review of the cost estimate was informed by the terms and conditions of the loan guarantee agreement, a credit rating report from an independent credit rating agency, additional independent reports on the engineering aspects of and market conditions surrounding Solyndra's proposal, and a proposed credit subsidy cash flow analysis by DOE. OMB staff addressed with DOE a series of specific questions about its analysis, including those focusing on the financial relationship between Solyndra and its project finance subsidiary, the liquidation analysis underlying DOE's proposed estimates, the

customer contracts Solyndra had lined up, the market trends in prices for solar panels, and field testing of greater efficiencies and lower installation costs associated with the unique design of Solyndra's panels. Based on these discussions, OMB and DOE ultimately agreed on the credit subsidy cost, and OMB ensured it was budgeted and accounted for appropriately. The loan guarantee was then issued in September 2009.

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

Since then, a challenging global solar market has continued to affect a number of solar manufacturers, including Solyndra. The company's recent announcement that it was suspending operations and filing for bankruptcy is without a doubt, a very unfortunate outcome, and one that will limit the Government's recovery of funds loaned to the company. While DOE maintains primary responsibility for monitoring the specifics of each loan guarantee, OMB has discussed with DOE the status and implications of Solyndra's financial condition, and worked diligently with DOE to ensure that changes in market conditions and other factors that have affected this deal have been appropriately accounted for in the budget through the annual re-estimate process, as is done with all federal loan guarantees.

Congress designed the Title XVII loan guarantee program to fund innovative clean energy projects that might not otherwise receive the necessary capital for deployment. The program envisions that while some of these projects might not succeed, others will contribute to the United States' ability to achieve its clean energy goals. OMB will continue to work diligently with DOE to help make the Title XVII program a success, and to ensure that the costs associated with the inherent risks in the program are budgeted and accounted for to protect taxpayers' interests.

Mr. Chairman and Members of the Subcommittee, I would be pleased to answer any questions you may have.