112TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 112–652
Part 1

NO MORE SOLYNDRAS ACT

SEPTEMBER 10, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 6213]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 6213) to limit further taxpayer exposure from the loan guarantee program established under title XVII of the Energy Policy Act of 2005, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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19–006

AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "No More Solyndras Act".

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) President Obama took office amidst a weak economy and high unemployment, yet he remained committed to advancing an expansive "green jobs" agenda that received substantial funding with the passage of the American Recovery and Reinvestment Act of 2009, commonly known as the stimulus package.

(2) The stimulus package allocated $90 billion to various green energy programs, and related appropriations provided $47 billion for loan guarantees authorized under title XVII of the Energy Policy Act of 2005 (42 U.S.C. 16511 et seq.).

(3) Such title XVII authorized the Secretary of Energy to issue loan guarantees for projects that avoid, reduce, or sequester air pollutants or greenhouse gases and employ new or significantly improved technologies compared with commercial technologies in service at the time the guarantee is issued.

(4) Loan guarantees issued under such title XVII were required to provide a reasonable prospect of repayment and were expressly required to be subject to the condition that the obligation is not subordinate to other financing.

(5) The stimulus package expanded such title XVII by adding section 1705 to include projects that use commercial technology for renewable energy systems, electric power transmission systems, and leading-edge biofuels projects and by appropriating $6,000,000,000 in funding to pay the credit subsidy costs for section 1705 loan guarantees for projects that commence construction no later than September 30, 2011.

(6) The Department of Energy, since the enactment of the stimulus package, has issued loan guarantees under such title XVII for 28 projects totaling $15,100,000,000 under the section 1705 program, and, according to the Government Accountability Office, issued conditional loan guarantees for four projects totaling $4,400,000,000 under the section 1705 program and four projects totaling $10,600,000,000 under the section 1703 program.

(7) Three of the first five companies that received section 1705 loan guarantees for their projects, Solyndra, Inc., Beacon Power Corporation, and Abound Solar, Inc., have declared bankruptcy.

(8) The bankruptcy of the first section 1705 loan guarantee recipient, Solyndra, Inc., could result in a loss to taxpayers of over $530,000,000.

(9) The investigation of the Solyndra loan guarantee by the Committee on Energy and Commerce has demonstrated that the review in 2009 of the Solyndra application by the Department of Energy and the Office of Management and Budget was driven by politics and ideology and divorced from economic reality where the Department of Energy ignored concerns about the company's financial condition and market for its products.

(10) Despite an express provision in such title XVII prohibiting subordination of the United States taxpayers' financial interest, the Department of Energy restructured the Solyndra loan guarantee in February 2011, resulting in the taxpayers losing priority to Solyndra's investors in the event of a default.

(11) The Inspector General of the Department of the Treasury concluded that it was unclear whether the Department of Energy's consultation requirement with the Secretary of the Treasury on the Solyndra loan guarantee was met; that the consultation that did occur was rushed with the Department of the Treasury expressing that "the train really has left the station on this deal"; and that no documentation was retained as to how the Department of the Treasury's serious concerns with the loan guarantee were addressed.

(12) The Government Accountability Office concluded that the Department of Energy Loan Guarantee Program under title XVII has treated applicants inconsistently; that the Department of Energy did not follow its own process for reviewing applications and documenting its analysis and decisions, increasing the likelihood of taxpayer exposure to financial risk from a default; and that the Department of Energy's absence of adequate documentation made it difficult for the Department to defend its decisions on loan guarantees as sound and fair.

(13) A memorandum prepared for the President dated October 25, 2010, from Carol Browner, Ron Klain, and Larry Summers, principal advisors to the President, noted the risk presented by loan guarantee projects because most of the projects had little "skin in the game" from private investors.

(14) A January 2012 report conducted at the request of the Chief of Staff to the President concluded that the portfolio of projects the Department of Energy included in the loan program were higher risk investments that private capital markets do not generally invest in.

(15) The Department of Energy's section 1705 program has expired but the Department of Energy has announced that it will continue to consider applications for loan guarantees under the section 1703 program.

(16) The Department of Energy has approximately $34,000,000,000 in remaining lending authority to issue new loan guarantees under the section 1703 program.

SEC. 3. SUNSET.

(a) NO NEW APPLICATIONS.—The Secretary of Energy shall not issue any new loan guarantee pursuant to title XVII of the Energy Policy Act of 2005 (42 U.S.C. 16511 et seq.) for any application submitted to the Department of Energy after December 31, 2011.

(b) PENDING APPLICATIONS.—With respect to any application submitted pursuant to section 1703 or 1705 of the Energy Policy Act of 2005 before December 31, 2011:

(1) No guarantee shall be made until the Secretary of the Treasury has provided to the Secretary of Energy a written analysis of the financial terms and conditions of the proposed loan guarantee, pursuant to section 1702(a) of the Energy Policy Act of 2005 (42 U.S.C. 16512(a)).

(2) The Secretary of the Treasury shall transmit the written analysis required under paragraph (1) to the Secretary of Energy not later than 30 days after receiving the proposal from the Secretary of Energy.

(3) Before making a guarantee under such title XVII, the Secretary of Energy shall take into consideration the written analysis made by the Secretary of the Treasury under paragraph (1).

(4) If the Secretary of Energy makes a guarantee that is not consistent with the written analysis provided by the Secretary of the Treasury under paragraph (1), not later than 30 days after making such guarantee the Secretary of Energy shall transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a written explanation of any material inconsistencies.

(c) TRANSPARENCY.—

(1) REPORTS TO CONGRESS.—Not later than 60 days after making a guarantee as provided in subsection (b), the Secretary of Energy shall transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report that includes information regarding—

(A) the review and decisionmaking process utilized by the Secretary in making the guarantee;

(B) the terms of the guarantee;

(C) the recipient; and

(D) the technology and project for which the loan guarantee will be used.

(2) PROTECTING CONFIDENTIAL BUSINESS INFORMATION.—A report under paragraph (1) shall provide all relevant information, but the Secretary shall take all necessary steps to protect confidential business information with respect to the recipient of the loan guarantee and the technology used.

SEC. 4. RESTRUCTURING OF LOAN GUARANTEES.

With respect to any restructuring of the terms of a loan guarantee issued pursuant to title XVII of the Energy Policy Act of 2005, the Secretary of Energy shall consult with the Secretary of the Treasury regarding any restructuring of the terms and conditions of the loan guarantee, including any deviations from the financial terms of the loan guarantee.

SEC. 5. RESTATING THE PROHIBITION ON SUBORDINATION.

Section 1702(d)(3) of the Energy Policy Act of 2005 (42 U.S.C. 16512(d)(3)) is amended by striking "is not subordinate" and inserting ", including any reorganization, restructuring, or termination thereof, shall not at any time be subordinate".

SEC. 6. ADMINISTRATIVE ACTIONS AND CIVIL PENALTIES.

(a) IN GENERAL.—Any Federal official who is responsible for the issuance of a loan guarantee under title XVII of the Energy Policy Act of 2005 in a manner that violates the requirements of such title or of this Act shall be—

(1) subject to appropriate administrative discipline including, when circumstances warrant, suspension from duty without pay or removal from office; and

(2) personally liable for a civil penalty in an amount of at least $10,000 but not more than $50,000 for each violation.

(b) DEFINITION.—For purposes of this section, the term "Federal official" means—

(1) an individual serving in a position in level I, II, III, IV, or V of the Executive Schedule, as provided in subchapter II of chapter 53 of title 5, United States Code; and

(2) an individual serving in a Senior Executive Service position, as provided in subchapter II of chapter 31 of title 5, United States Code.

SEC. 7. GAO STUDY OF FEDERAL SUBSIDIES IN ENERGY MARKETS.

(a) IN GENERAL.—The Comptroller General shall conduct a study of the Federal subsidies in energy markets provided from fiscal year 2003 through fiscal year 2012.

(b) FOCUS.—The study required under subsection (a) shall have particular focus on Federal subsidies in energy markets provided in support of—

(1) electricity production, transmission, and consumption;

(2) transportation fuels and infrastructure;

(3) energy-related research and development; and

(4) facilities that manufacture energy-related components.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report that describes the results of the study conducted under subsection (a), including an identification and quantification of—

(1) costs to the United States Treasury;

(2) impacts on United States energy security;

(3) impacts on electricity prices, including any potential negative pricing impact on wholesale electricity markets;

(4) impacts on transportation fuel prices;

(5) impacts on private energy-related industries not benefitting from Federal subsidies in energy markets;

(6) any Federal subsidies in energy markets that are provided to foreign persons or corporations; and

(7) subsidies and direct financial interest any of the 15 foreign countries with the largest gross domestic product are providing to support energy markets in their respective countries.

(d) DEFINITION.—For purposes of this section, the term "Federal subsidies" means Federal grants, direct loans, loan guarantees, and tax credits, and other programmatic activities targeted at energy markets and related sectors, relating to specific energy technologies.

PURPOSE AND SUMMARY

H.R. 6213, the "No More Solyndras Act," was introduced by Representative Fred Upton (together with Reps. Stearns, Pitts, Terry, Stivers, Latham, Scott, Gingrey, Ellmers, Lance, Rogers, Whitfield, Burgess, Sullivan, Blackburn, Pompeo, Myrick, Harper, Flake and Olson) on July 26, 2012. The legislation limits further taxpayer exposure from the Department of Energy (DOE) loan guarantee program established under Title 17 of the Energy Policy Act of 2005. Key provisions of the bill:

- Prohibits DOE from issuing any Title 17 loan guarantees for applications submitted after December 31, 2011.
- Provides that Title 17 applications submitted prior to December 31, 2011, remain eligible to receive a DOE loan guarantee if certain conditions are satisfied.
- Requires written consultation from the Department of the Treasury evaluating the financial terms and conditions prior to initial issuance of a Title 17 loan guarantee.
- Provides for greater transparency by requiring that for any new guarantee issued pursuant to Title 17, DOE must, within 60 days of issuance, report to Congress on: (i) the review and decision-

making process utilized by DOE in issuing the guarantee; (ii) the terms of the guarantee; (iii) the recipient; and (iv) the technology and project.

• Reaffirms that any loan guarantee obligation made pursuant to Title 17, including any reorganization, restructuring, or termination thereof, shall not, at any time, be subordinate to other financing and requires Department of Treasury consultation with respect to any restructuring.

• Subjects senior-level Federal officials and appointees to administrative actions and civil penalties for violations of any requirements of Title 17 of the Energy Policy Act of 2005 or the "No More Solyndras Act."

• Requires the Government Accountability Office to complete a study of the Federal subsidies in energy markets from FY 2003 through FY 2012.

BACKGROUND AND NEED FOR LEGISLATION

There is no dispute that the Nation would benefit from an all-of-the-above energy policy that includes alternative as well as conventional energy sources. Nor is there much doubt that the energy mix will change over time to take advantage of new technological breakthroughs. But there is a right way and a wrong way to diversify the Nation's energy supply, and heavy-handed government attempts to pick winners and losers have a long and unsuccessful history. Nonetheless, this was the approach taken by the Obama Administration in the 2009 stimulus package, which allocated $90 billion dollars for the so-called green energy economy. The results of the stimulus spending are largely in, and they are no better than Washington's past efforts to spur energy innovation and jobs by favoring specific companies and technologies. Particularly disappointing is the Administration's record on the loan guarantee program established under Title 17 of the Energy Policy Act of 2005.

THE HISTORY OF THE TITLE 17 LOAN GUARANTEE PROGRAM

Section 1703 of the Energy Policy Act of 2005 authorized the Department of Energy (DOE) to issue loan guarantees to projects investing in either innovative clean technologies or commercial-scale renewable energy that meet the following two criteria; (1) the projects "avoid, reduce, or sequester air pollutants" and (2) "employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued." The Act listed ten different types of project categories that were eligible for funding, including renewable energy systems, advanced fossil energy technology, hydrogen fuel cell technology, advanced nuclear facilities, and efficient electrical generation and transmission. The goal of the program is to assist companies with promising projects meeting these criteria that are unable to attract sufficient private investment—hence the need for a Federal loan guarantee.

However, the Bush Administration did not approve any loan guarantees under the program. This was due partly to the fact that the DOE office implementing the program was slow in being set up, and that program funding only became available in 2007. But

even after the Bush DOE had the program up and running, it ran into difficulties finding applicants whose energy projects are meritorious, but unable to secure private financing absent loan guarantees. At a July 12, 2012, legislative hearing before the Energy and Power Subcommittee, Dr. David Kreutzer, Research Fellow in Energy Economics and Climate Change with the Heritage Foundation, testified about this inherent contradiction in the loan guarantee program. He stated that "a program that seeks to fund projects that are both market viable and unable to get private financing will have to settle for projects that meet just one or neither of those criteria. That is, the projects are likely to fail, or they could have gotten private financing."

In retrospect, the Bush Administration's reluctance to approve any loan guarantees was fully justified. Nonetheless, the incoming Obama Administration treated the lack of approvals not as an indication of a flawed program but as a Bush DOE failing that needed to be corrected. The Obama DOE immediately accelerated the pace by which applications were processed. In addition, the American Recovery and Reinvestment Act of 2009 (the stimulus package) created a new section 1705 to include for loan guarantees projects that use commercial technology for renewable energy systems, electric power transmission systems, and leading-edge biofuels projects. Further, the law appropriated $6 billion dollars in funding to pay the credit subsidy costs for projects that commence no later than September 30, 2011—further reducing the amount of private investment (i.e. "skin in the game") at risk on these projects. Shortly after passage of the stimulus package, subsequent related appropriations provided $47 billion for Title 17 loan guarantees.

Within two years, more than $15 billion dollars in loan guarantees were approved for 28 projects, mostly related to solar and wind energy.

THE CASE OF SOLYNDRA

None of the 28 projects can definitively be called a success at this time, but the single biggest failure thus far is Solyndra, the California-based solar panel maker that received a $527 million dollar loan guarantee in 2009, but went bankrupt nonetheless. Prior to Solyndra's bankruptcy—indeed right up to it—the company was the centerpiece of the Obama Administration's loan guarantee program, if not the entire stimulus package. In numerous public announcements, the Administration hailed the company as an important component of America's energy future and a source of green jobs. During a May 2010 visit to the company, the President explained that "the true engine of economic growth will always be companies like Solyndra," and that "in a few months, Solyndra expects to hire a thousand workers to manufacture solar panels and sell them across America and around the world."

In reality, by the time of the President's visit to Solyndra, an independent audit had questioned the ability of the company to continue as a going concern. A few weeks after, Solyndra had to cancel its initial public offering. A year later—and only six months after a restructuring of the loan guarantee that subordinated the government's interest to Solyndra's private investors and thus put taxpayers at risk for more of the losses—the company went bankrupt and laid off the rest of its 1,900 employees.

After an extensive 18 month investigation undertaken by the Oversight and Investigations Subcommittee, the Committee issued a Majority Staff Report, *The Solyndra Failure*, which documents serious problems throughout the Obama Administration's handling of the Solyndra loan guarantee.[1] This report notes that Solyndra was one of the loan guarantee applications that the Bush Administration had expressed reservations about, but nonetheless it was the first one approved under the Obama Administration. In fact, the Bush DOE presciently raised doubts about Solyndra's financial condition and whether its solar panel designs gave the company any real advantage over competing products, but these concerns were quickly swept aside by the incoming Obama team.[2] The report also provides evidence that safeguards built into the loan guarantee program were sidestepped, including required reviews of applications by the Office of Management and Budget (OMB) and the Department of the Treasury.[3] In several instances, corners were apparently cut at the urging of the White House for the purpose of completing loan guarantee approvals ahead of planned public announcements. For example, one internal email from an OMB official to a policy advisor to Vice President Biden stated that "[w]e have ended up in the situation of having to do rushed approvals on a couple of occasions (and we are worried about Solyndra at the end of the week). We would prefer to have sufficient time to do our due diligence reviews and have the approval set the date for the announcement rather than the other way around." [4]

The report also documents many potential improprieties, such as the influence exerted by George Kaiser, Solyndra's largest investor.[5]

Further, internal documents reveal that after Solyndra's precarious position became evident to the Administration, it considered additional costly steps to try to bail out the company rather than attempt to limit any further taxpayer liability.[6] A second loan guarantee was proposed, as was large-scale government purchases of Solyndra's solar panels. Though neither was eventually pursued, DOE did agree to a restructuring of the loan that subordinated the taxpayers' interest to that of private investors, skirting statutory language that precluded subordination.[7] Solyndra nonetheless went bankrupt in September of 2011, and the restructuring served only to raise the cost to the public.

OTHER LOAN GUARANTEE FAILURES

Solyndra cannot be dismissed as the sole failure in an otherwise successful program to expand America's energy sources. Two others, Abound Solar and Beacon Power, have also gone bankrupt. Thus, three of the first five loan guarantee recipients have already failed, despite the large infusions of cash. Dr. Kreutzer categorizes

[1] Committee on Energy and Commerce, Majority Staff Report, *The Solyndra Failure,* August 2, 2012, at *http://energycommerce.house.gov/Media/file/PDFs/Solyndra/solyndrareport.pdf;* See also U.S. Government Accountability Office, GAO–10–627, *Department of Energy: Further Actions Needed to Improve DOE's Ability To Evaluate and Implement The Loan Guarantee Program,* July 2012, at *http://www.gao.gov/new.items/d10627.pdf.*
[2] Id. at 10–15.
[3] Id. at 23–47.
[4] Id. at 44.
[5] Id. at 144–145.
[6] Id. at 48–106.
[7] Id. at 70–106.

these projects as those that "were not market viable, as demonstrated by subsequent economic performance. . . ." Other defaults and bankruptcies may follow once the loan guarantee money runs out.

Many loan guarantee recipients are avoiding bankruptcy not because their clean energy projects are paying off, but because their ownership interests include multi-billion dollar companies. Among those benefitting directly or through subsidiaries are Google, General Electric, Exelon, Goldman Sachs, Brookfield Asset Management, Sempra Energy, NextEra Energy Resources, Prologis, Abengoa, and others. Putting aside the question why such well-financed entities qualified for taxpayer-backed low-interest loans in the first place, it is difficult to describe any of their energy projects as Title 17 successes since they clearly could have been funded without government assistance.

In fairness, many of these loan guarantee projects are still underway, and in most cases it is premature to conclusively call them failures. Indeed, twelve companies were approved for loan guarantees as recently as September of 2011, which was the last month of eligibility under section 1705. It is worth noting that several were approved after Solyndra's announced bankruptcy that month, which should have put the Administration on notice that there were serious problems with its program.

Nonetheless, the outlook for outstanding loan guarantee projects is not particularly good, and there is little indication that any are likely to achieve significant technological breakthroughs or appreciably contribute to the Nation's energy supply. In contrast, a genuinely transformative energy success story has emerged over the time that the Title 17 program has been in existence—the innovations in drilling technologies that have led to substantial increases in domestic natural gas and oil production—but this occurred without loan guarantees or other Federal subsidies.

Part of the failure may be due to loan guarantees being awarded for reasons other than merit. Indeed, *The Solyndra Failure* documents potential improprieties in the Administration's choice of Solyndra and in its handling of the company's loan guarantee application. But the bigger issue is whether elected officials and bureaucrats should assume the role of venture capitalists, and whether they are capable of making the best choices even if acting in good faith. As Dr. Kreutzer noted, "loan guarantees are based on the false premise that the Department of Energy can systematically discover commercially viable investment projects that private investors have overlooked."

The Federal government has played a constructive role in energy policy in the conduct of basic energy research, and it is here that DOE and the national energy laboratories have a decades-long record of significant contributions. However, the loan guarantee program represents a departure from this core competency. The experience with loan guarantees argues against a Federal role in financing specific companies at the commercialization stage.

THE TRUE COST OF THE LOAN GUARANTEE PROGRAM

The cost of the loan guarantee failures goes well beyond the tax dollars needed to repay the loans in default. The real cost is the damage to the goal of energy innovation. By choosing certain en-

ergy companies for special treatment, the loan guarantee program hinders other companies, including ones that may be pursuing more promising and innovative ideas. Indeed, the history of such programs is that they discourage private investment in energy projects bypassed by the government.[8] The former head of a loan guarantee recipient admitted that "the existence of an 800-pound gorilla putting massive capital behind select start-ups is sucking the air away from the rest of the venture capital ecosystem."[9] Dr. Kreutzer warned that "loan guarantees can misallocate capital and reduce overall output."

This is also why the loan guarantee program has failed as a job creator. Clearly, the bankrupt companies no longer support any jobs, and the solvent ones do so at great cost—$12.8 million per permanent job.[10] But when one considers the potential job losses as resulting from capital being siphoned away from the rest of the economy, the program may well be a net job destroyer.[11]

Thus, the damage done by Title 17 loan guarantees is two-fold—the Federal government invariably wastes money picking losers like Solyndra, and the program makes it harder for potential winners to emerge. The end result is counterproductive to achieving the nation's energy goals.

SUPPORTERS OF THE LEGISLATION

Supporters of the legislation include American Commitment, American Conservative Union, American Energy Alliance, Americans for Prosperity, Americans for Tax Reform, Cost of Government Center, Citizens Against Government Waste, Heritage Action, and Let Freedom Ring.

HEARINGS

On July 12, 2012, the Subcommittee on Energy and Power and the Subcommittee on Oversight and Investigations held a joint legislative hearing on a discussion draft of the "No More Solyndras Act" and received testimony from:

- Mr. David G. Frantz, Acting Executive Director, Loan Guarantee Program Office, U.S. Department of Energy;
- Dr. David W. Kreutzer. Research Fellow in Energy Economics and Climate Change, Heritage Foundation;
- Ms. Diana Furchtgott-Roth, Senior Fellow, Manhattan Institute for Policy Research; and
- Mr. Kenneth Berlin, General Counsel & Senior Vice President for Policy and Programming, Coalition for Green Capital.

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[8] Statement of Monte Canfield, Jr., Director, Office of Special Programs, General Accounting Office, before Committee on Banking, Housing and Urban Affairs, United States Senate, April 12–14, 1976, p. 134, at *http://fraser.stlouisfed.org/docs/historical/congressional/197605sen—energyindact1975.pdf* p. 134.

[9] Wall Street Journal, *Venture Capitol: New VC Force*, by Neil King, Jr., at *http://online.wsj.com/article/SB126074549073889853.html.*

[10] DOE Loan Guarantee Program Office, "Our Projects," available at: *https://lpo.energy.gov/?page—id=45.*

[11] See Committee on Energy and Commerce, Majority Staff Report, Not Very Green, *Not Many Jobs: An Assessment of the Obama Administration's Green Jobs Agenda,*" June 2012, at *http://energycommerce.house.gov/Media/file/PDFs/062212GreenJobsReport.pdf.*

COMMITTEE CONSIDERATION

Representatives Upton and Stearns released a discussion draft of the "No More Solyndras Act" on July 9, 2012. On July 12, 2012, the Subcommittee on Energy and Power and the Subcommittee on Oversight and Investigations held a joint legislative hearing on the discussion draft. A revised discussion draft was released on July 16, 2012.

On July 25, 2012, the Subcommittee on Energy and Power favorably reported the discussion draft, as amended, to the full Committee by roll call vote of 14 ayes and 9 nays. During the markup, 6 amendments were offered of which 1 was adopted.

On July 26, 2012, H.R. 6213, the "No More Solyndras Act" was introduced by Representative Upton (together with Reps. Stearns, Pitts, Terry, Stivers, Latham, Scott, Gingrey, Ellmers, Lance, Rogers, Whitfield, Burgess, Sullivan, Blackburn, Pompeo, Myrick, Harper, Flake and Olson).

On July 31, 2012, and August 1, 2012, the Committee on Energy and Commerce met in open markup session. During the markup, 12 amendments were offered of which 4 were adopted. On August 1, 2012, the Committee ordered H.R. 6213 favorably reported to the House, as amended, by roll call vote of 29 ayes and 19 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following are the recorded votes taken on amendments offered to the measure, including the names of those Members voting for and against. A motion by Mr. Upton to order H.R. 6213, reported to the House, as amended, was agreed to by a record vote of 29 ayes and 19 nays.

COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE #123

BILL: H.R. 6213, the "No More Solyndras Act"

AMENDMENT: An amendment offered by Mr. Green, No. 1, to place a moratorium on the Title 17 program until DOE provides a report on Title 17 with recommendations to Congress.

DISPOSITION: NOT AGREED TO, by a roll call vote of 24 yeas and 25 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Barton	X			Mr. Dingell	X		
Mr. Stearns		X		Mr. Markey	X		
Mr. Whitfield		X		Mr. Towns	X		
Mr. Shimkus		X		Mr. Pallone	X		
Mr. Pitts		X		Mr. Rush	X		
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green	X		
Mr. Rogers		X		Ms. DeGette	X		
Mrs. Myrick				Mrs. Capps	X		
Mr. Sullivan				Mr. Doyle	X		
Mr. Murphy		X		Ms. Schakowsky	X		
Mr. Burgess		X		Mr. Gonzalez	X		
Mrs. Blackburn		X		Ms. Baldwin			
Mr. Bilbray	X			Mr. Ross	X		
Mr. Bass	X			Mr. Matheson	X		
Mr. Gingrey				Mr. Butterfield	X		
Mr. Scalise		X		Mr. Barrow	X		
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers		X		Mrs. Christensen	X		
Mr. Harper		X		Ms. Castor			
Mr. Lance		X		Mr. Sarbanes	X		
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE #124

BILL: H.R. 6213, the "No More Solyndras Act"

AMENDMENT: An amendment offered by Mr. Waxman, No. 2, to continue the Title 17 program.

DISPOSITION: NOT AGREED TO, by a roll call vote of 17 yeas and 29 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Dingell	X		
Mr. Stearns		X		Mr. Markey			
Mr. Whitfield				Mr. Towns			
Mr. Shimkus		X		Mr. Pallone			
Mr. Pitts		X		Mr. Rush	X		
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green	X		
Mr. Rogers		X		Ms. DeGette	X		
Mrs. Myrick		X		Mrs. Capps	X		
Mr. Sullivan				Mr. Doyle			
Mr. Murphy		X		Ms. Schakowsky	X		
Mr. Burgess		X		Mr. Gonzalez	X		
Mrs. Blackburn		X		Ms. Baldwin			
Mr. Bilbray	X			Mr. Ross		X	
Mr. Bass	X			Mr. Matheson		X	
Mr. Gingrey		X		Mr. Butterfield	X		
Mr. Scalise		X		Mr. Barrow		X	
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers				Mrs. Christensen	X		
Mr. Harper		X		Ms. Castor	X		
Mr. Lance		X		Mr. Sarbanes	X		
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith		X					

08/01/2012

COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE #125

BILL: H.R. 6213, the "No More Solyndras Act"

AMENDMENT: An amendment offered by Mr. Rush, No. 4, to allow new applications in the Title 17 program only to power plants that comply with the EPA's new NSPS GHG standards.

DISPOSITION: NOT AGREED TO, by a roll call vote of 18 yeas and 30 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Dingell	X		
Mr. Stearns		X		Mr. Markey	X		
Mr. Whitfield		X		Mr. Towns	X		
Mr. Shimkus		X		Mr. Pallone	X		
Mr. Pitts		X		Mr. Rush	X		
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green	X		
Mr. Rogers		X		Ms. DeGette	X		
Mrs. Myrick		X		Mrs. Capps			
Mr. Sullivan		X		Mr. Doyle			
Mr. Murphy		X		Ms. Schakowsky	X		
Mr. Burgess		X		Mr. Gonzalez	X		
Mrs. Blackburn		X		Ms. Baldwin			
Mr. Bilbray		X		Mr. Ross		X	
Mr. Bass	X			Mr. Matheson			
Mr. Gingrey		X		Mr. Butterfield	X		
Mr. Scalise		X		Mr. Barrow		X	
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers		X		Mrs. Christensen	X		
Mr. Harper		X		Ms. Castor	X		
Mr. Lance		X		Mr. Sarbanes	X		
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner							
Mr. Pompeo		X					
Mr. Kinzinger							
Mr. Griffith		X					

08/01/2012

COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE #126

BILL: H.R. 6213, the "No More Solyndras Act"

AMENDMENT: An amendment offered by Mr. Stearns, No. 5, to reaffirm that subordination is prohibited at any time.

DISPOSITION: AGREED TO, by a roll call vote of 34 yeas and 14 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton	X			Mr. Waxman		X	
Mr. Barton	X			Mr. Dingell		X	
Mr. Stearns	X			Mr. Markey		X	
Mr. Whitfield	X			Mr. Towns			
Mr. Shimkus	X			Mr. Pallone		X	
Mr. Pitts	X			Mr. Rush		X	
Mrs. Bono Mack	X			Ms. Eshoo		X	
Mr. Walden	X			Mr. Engel		X	
Mr. Terry	X			Mr. Green	X		
Mr. Rogers	X			Ms. DeGette		X	
Mrs. Myrick	X			Mrs. Capps		X	
Mr. Sullivan	X			Mr. Doyle			
Mr. Murphy	X			Ms. Schakowsky		X	
Mr. Burgess	X			Mr. Gonzalez			
Mrs. Blackburn	X			Ms. Baldwin			
Mr. Bilbray	X			Mr. Ross	X		
Mr. Bass	X			Mr. Matheson	X		
Mr. Gingrey	X			Mr. Butterfield		X	
Mr. Scalise	X			Mr. Barrow	X		
Mr. Latta	X			Ms. Matsui		X	
Mrs. McMorris Rodgers	X			Mrs. Christensen		X	
Mr. Harper	X			Ms. Castor		X	
Mr. Lance	X			Mr. Sarbanes			
Mr. Cassidy	X						
Mr. Guthrie	X						
Mr. Olson	X						
Mr. McKinley	X						
Mr. Gardner	X						
Mr. Pompeo	X						
Mr. Kinzinger							
Mr. Griffith	X						

08/01/2012

COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE #127

BILL: H.R. 6213, the "No More Solyndras Act"

AMENDMENT: An amendment offered by Mr. Markey, No. 6, to eliminate the Title 17 program including all existing applications.

DISPOSITION: NOT AGREED TO, by a roll call vote of 3 yeas, 39 nays, and 1 present.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman		X	
Mr. Barton		X		Mr. Dingell		X	
Mr. Stearns		X		Mr. Markey		X	
Mr. Whitfield		X		Mr. Towns			
Mr. Shimkus		X		Mr. Pallone		X	
Mr. Pitts		X		Mr. Rush			
Mrs. Bono Mack		X		Ms. Eshoo			X
Mr. Walden		X		Mr. Engel			
Mr. Terry		X		Mr. Green		X	
Mr. Rogers				Ms. DeGette		X	
Mrs. Myrick		X		Mrs. Capps		X	
Mr. Sullivan		X		Mr. Doyle		X	
Mr. Murphy				Ms. Schakowsky		X	
Mr. Burgess	X			Mr. Gonzalez			
Mrs. Blackburn				Ms. Baldwin			
Mr. Bilbray		X		Mr. Ross		X	
Mr. Bass		X		Mr. Matheson		X	
Mr. Gingrey		X		Mr. Butterfield			
Mr. Scalise	X			Mr. Barrow		X	
Mr. Latta		X		Ms. Matsui		X	
Mrs. McMorris Rodgers		X		Mrs. Christensen			
Mr. Harper		X		Ms. Castor		X	
Mr. Lance		X		Mr. Sarbanes			
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo	X						
Mr. Kinzinger		X					
Mr. Griffith		X					

08/01/2012

COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE #128

BILL: H.R. 6213, the "No More Solyndras Act"

AMENDMENT: An amendment offered by Mr. Markey, No. 10, to prohibit loan guarantees from being issued to a company that has ever had troubled common stock.

DISPOSITION: NOT AGREED TO, by a roll call vote of 14 yeas and 25 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman			
Mr. Barton				Mr. Dingell	X		
Mr. Stearns		X		Mr. Markey	X		
Mr. Whitfield		X		Mr. Towns			
Mr. Shimkus		X		Mr. Pallone	X		
Mr. Pitts		X		Mr. Rush	X		
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel			
Mr. Terry		X		Mr. Green	X		
Mr. Rogers				Ms. DeGette	X		
Mrs. Myrick				Mrs. Capps	X		
Mr. Sullivan				Mr. Doyle			
Mr. Murphy		X		Ms. Schakowsky			
Mr. Burgess	X			Mr. Gonzalez			
Mrs. Blackburn		X		Ms. Baldwin			
Mr. Bilbray				Mr. Ross	X		
Mr. Bass		X		Mr. Matheson	X		
Mr. Gingrey		X		Mr. Butterfield	X		
Mr. Scalise		X		Mr. Barrow		X	
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers		X		Mrs. Christensen	X		
Mr. Harper		X		Ms. Castor			
Mr. Lance		X		Mr. Sarbanes			
Mr. Cassidy							
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith		X					

08/01/2012

COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE #129

BILL: H.R. 6213, the "No More Solyndras Act"

AMENDMENT: An amendment offered by Mr. Markey, No. 11, to prohibit loan guarantees from being issued where project costs would exceed the original budget or if the applicant experiences significant net losses.

DISPOSITION: NOT AGREED TO, by a roll call vote of 13 yeas and 31 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman			
Mr. Barton		X		Mr. Dingell	X		
Mr. Stearns		X		Mr. Markey	X		
Mr. Whitfield		X		Mr. Towns			
Mr. Shimkus		X		Mr. Pallone	X		
Mr. Pitts		X		Mr. Rush			
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green		X	
Mr. Rogers				Ms. DeGette	X		
Mrs. Myrick				Mrs. Capps	X		
Mr. Sullivan				Mr. Doyle			
Mr. Murphy		X		Ms. Schakowsky	X		
Mr. Burgess	X			Mr. Gonzalez			
Mrs. Blackburn		X		Ms. Baldwin			
Mr. Bilbray		X		Mr. Ross		X	
Mr. Bass		X		Mr. Matheson		X	
Mr. Gingrey		X		Mr. Butterfield	X		
Mr. Scalise		X		Mr. Barrow		X	
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers		X		Mrs. Christensen	X		
Mr. Harper		X		Ms. Castor	X		
Mr. Lance		X		Mr. Sarbanes			
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith		X					

08/01/2012

COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE #130

BILL: H.R. 6213, the "No More Solyndras Act"

AMENDMENT: An amendment offered by Mr. Markey, No. 12, to require applicants to certify that at least 75% of the project materials are produced in the U.S.

DISPOSITION: NOT AGREED TO, by a roll call vote of 19 yeas and 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Dingell	X		
Mr. Stearns		X		Mr. Markey	X		
Mr. Whitfield		X		Mr. Towns			
Mr. Shimkus		X		Mr. Pallone	X		
Mr. Pitts		X		Mr. Rush	X		
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden				Mr. Engel	X		
Mr. Terry		X		Mr. Green	X		
Mr. Rogers				Ms. DeGette	X		
Mrs. Myrick				Mrs. Capps	X		
Mr. Sullivan				Mr. Doyle	X		
Mr. Murphy		X		Ms. Schakowsky	X		
Mr. Burgess		X		Mr. Gonzalez			
Mrs. Blackburn		X		Ms. Baldwin			
Mr. Bilbray		X		Mr. Ross	X		
Mr. Bass		X		Mr. Matheson		X	
Mr. Gingrey		X		Mr. Butterfield	X		
Mr. Scalise		X		Mr. Barrow	X		
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers		X		Mrs. Christensen	X		
Mr. Harper		X		Ms. Castor	X		
Mr. Lance		X		Mr. Sarbanes			
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith	X						

08/01/2012

COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE #131

BILL: H.R. 6213, the "No More Solyndras Act"

AMENDMENT: A motion by Mr. Upton to order H.R. 6213 favorably reported to the House, as amended. (Final Passage)

DISPOSITION: AGREED TO, by a roll call vote of 29 yeas and 19 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton	X			Mr. Waxman		X	
Mr. Barton	X			Mr. Dingell		X	
Mr. Stearns	X			Mr. Markey		X	
Mr. Whitfield	X			Mr. Towns			
Mr. Shimkus	X			Mr. Pallone		X	
Mr. Pitts	X			Mr. Rush		X	
Mrs. Bono Mack	X			Ms. Eshoo		X	
Mr. Walden				Mr. Engel		X	
Mr. Terry	X			Mr. Green		X	
Mr. Rogers				Ms. DeGette		X	
Mrs. Myrick				Mrs. Capps		X	
Mr. Sullivan	X			Mr. Doyle		X	
Mr. Murphy	X			Ms. Schakowsky		X	
Mr. Burgess	X			Mr. Gonzalez			
Mrs. Blackburn	X			Ms. Baldwin			
Mr. Bilbray		X		Mr. Ross	X		
Mr. Bass		X		Mr. Matheson	X		
Mr. Gingrey	X			Mr. Butterfield		X	
Mr. Scalise	X			Mr. Barrow	X		
Mr. Latta	X			Ms. Matsui		X	
Mrs. McMorris Rodgers	X			Mrs. Christensen		X	
Mr. Harper	X			Ms. Castor		X	
Mr. Lance	X			Mr. Sarbanes		X	
Mr. Cassidy	X						
Mr. Guthrie	X						
Mr. Olson	X						
Mr. McKinley	X						
Mr. Gardner	X						
Mr. Pompeo	X						
Mr. Kinzinger	X						
Mr. Griffith	X						

08/01/2012

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE, GOALS, AND OBJECTIVES

H.R. 6213, the "No More Solyndras Act," limits further taxpayer exposure from the loan guarantee program established under Title 17 of the Energy Policy Act of 2005.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 6213, the "No More Solyndras Act," would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARKS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 6213, the "No More Solyndras Act," contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

SEPTEMBER 4, 2012.

Hon. FRED UPTON,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 6213, the No More Solyndras Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kathleen Gramp.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 6213—No More Solyndras Act

CBO estimates that implementing H.R. 6213 would cost about $1 million over the 2013–2017 period, assuming appropriation of the necessary amounts. Pay-as-you-go procedures would apply to this

legislation because it would affect direct spending and revenues. CBO estimates, however, that those impacts would be insignificant over the 2013–2022 period.

H.R. 6213 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

H.R. 6213 would revise the terms and conditions governing the Department of Energy's (DOE's) loan guarantee program for advanced energy technologies, which was established under title 17 of the Energy Policy Act of 2005. It would restrict eligibility for future guarantees to projects that submitted applications before December 31, 2011, require the Secretary of the Treasury to review those guarantees, and direct DOE to consult with the Treasury regarding any changes in the terms and conditions of a loan guarantee. The bill also would impose certain administrative sanctions and civil penalties on federal officials who violate the requirements of the title 17 program and would direct the Government Accountability Office (GAO) to prepare a comprehensive report on federal energy subsidies.

Based on the cost of similar activities, CBO estimates that preparing the GAO study on federal energy subsidies required by H.R. 6213 would cost about $1 million, assuming appropriation of the necessary amounts. CBO estimates that other provisions in the bill would have no significant impact on spending subject to appropriation. Although limiting eligibility for new loan guarantees could affect the need for future appropriations, CBO has no basis for projecting a change in DOE's program costs under this bill because the title 17 program received no funding or obligational authority in fiscal year 2012 and could use its existing obligational authority for projects that applied for loan guarantees prior to December 31, 2011.

Similarly, CBO estimates that implementing H.R. 6213 would have a negligible impact on spending by the Department of the Treasury because the new procedural requirements in this legislation would apply to a small number of projects and involve assessments similar to those done under current law. Most of the Treasury's expenditures would be subject to annual appropriations, but any costs incurred by the Federal Financing Bank (FFB) would affect direct spending because the FFB's operations are funded by fees that can be spent without further appropriation.[1] CBO estimates, however, that any such effects on direct spending would be minimal over the 2013–2022 period.

Finally, H.R. 6213 would make certain federal employees personally liable for civil penalties ranging from $10,000 to $50,000 for each violation of any of the requirements of the laws governing the title 17 program. CBO estimates that the amounts collected from such civil penalties, which are recorded in the budget as revenues, would not be significant over the 2013–2022 period.

The CBO staff contact for this estimate is Kathleen Gramp. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

[1] The FFB is a government corporation under the supervision of the Secretary of the Treasury that is responsible for various federal financial activities, including purchasing obligations fully guaranteed by other agencies such as DOE.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF LEGISLATION

Section 1: Short title

Section 1 provides the short title of "No More Solyndras Act."

Section 2: Findings

Section 2 sets forth findings regarding the Department of Energy (DOE) Loan Guarantee Program under Title 17 of the Energy Policy Act of 2005, and highlights key findings of the Energy and Commerce Committee's investigation into the loan guarantee issued to Solyndra Corporation.

Section 3: Sunset

Section 3(a) prohibits DOE from issuing any loan guarantees pursuant to Title 17 of the Energy Policy Act of 2005 for applications submitted after December 31, 2011.

Section 3(b) provides that, with respect to any application submitted pursuant to Title 17 of the Energy Policy Act of 2005 prior to December 31, 2011:

- No guarantee shall be issued until the Secretary of the Treasury (Treasury) has provided DOE a written analysis of the financial terms and conditions of the proposed loan guarantee.
- Treasury shall submit its written analysis to DOE not later than 30 days after receiving the proposal from DOE.
- Before DOE makes a guarantee under Title 17, it shall take into consideration the written analysis made by Treasury.
- If DOE makes a loan guarantee that is not consistent with the written analysis provided by Treasury, DOE must, within 30 days of issuance, provide a written report to Congress explaining any material inconsistencies.

Section 3(c) provides that for any new guarantee issued, DOE must, within 60 days of issuance, report to Congress on: (i) the review and decision-making process utilized by DOE in issuing the guarantee; (ii) the terms of the guarantee; (iii) the recipient; and (iv) the technology and project.

Section 4: Restructuring of loan guarantees

Section 4 provides that, with respect to any restructuring of the terms of a loan guarantee issued pursuant to Title 17 of the Energy

Policy Act of 2005, DOE shall consult with Treasury regarding any restructuring of the terms and conditions of the loan guarantee, including any deviations from the financial terms of the loan guarantee.

Section 5: Restating the prohibition on subordination

Section 1702(d)(3) of the Energy Policy Act of 2005 provides that "the obligation shall be subject to the condition that the obligation is not subordinate to other financing." It is the position of the Committee that this language unambiguously establishes that subordination of the loan guarantee obligation to other financing is prohibited at any time. Section 5 amends section 1702(d)(3) to reaffirm that the loan guarantee obligation, including any reorganization, restructuring, or termination thereof, shall not at any time be subordinate to other financing.

Section 6: Administrative actions and civil penalties

Section 6 subjects Federal officials serving in a position in level I, II, III, IV, or V of the Executive Schedule or serving in a Senior Executive Service position to administrative actions and civil penalties for violations of any requirements of Title 17 of the Energy Policy Act of 2005 or the "No More Solyndras Act."

Section 7: GAO study of Federal subsidies in energy markets

Section 7(a) requires the Government Accountability Office (GAO) to complete a study of the Federal subsidies in energy markets from FY 2003 through FY 2012. The term "federal subsidies" is defined as "Federal grants, direct loans, loan guarantees, and tax credits, and other programmatic activities targeted at energy markets and related sectors, relating to specific energy technologies."

Section 7(b) requires the study to have a particular focus on federal subsidies in energy markets provided in support of electricity production, transmission, and consumption; transportation fuels and infrastructure; energy-related research and development; and facilities that manufacture energy-related components.

Section 7(c) requires that GAO submit to Congress within a year of enactment of the "No More Solyndras Act" a report that describes the results of the study, including an identification and quantification of: costs to the United States Treasury; impacts on United States energy security; impacts on electricity prices, including any potential negative pricing impact on wholesale electricity markets; impacts on transportation fuel prices; impacts on private energy-related industries not benefitting from federal subsidies in energy markets; any Federal subsidies in energy markets that are provided to foreign persons or corporations; and subsidies and direct financial interest any of the 15 foreign countries with the largest gross domestic product are providing to support energy markets in their respective countries.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

ENERGY POLICY ACT OF 2005

* * * * * * *

TITLE XVII—INCENTIVES FOR INNOVATIVE TECHNOLOGIES

* * * * * * *

SEC. 1702. TERMS AND CONDITIONS.

(a) * * *

* * * * * * *

(d) REPAYMENT.—

(1) * * *

* * * * * * *

(3) SUBORDINATION.—The obligation shall be subject to the condition that the obligation **[**is not subordinate**]**, *including any reorganization, restructuring, or termination thereof, shall not at any time be subordinate* to other financing.

* * * * * * *

DISSENTING VIEWS

I. PURPOSE OF LEGISLATION

The bill's supporters have claimed that this legislation will terminate the Department of Energy's (DOE) Title XVII loan guarantee program. On July 19, 2012, Chairman Whitfield, referring to the relevant sections of Title XVII, said: "We are totally committed to ending this 1703, 1705 program." Similarly, at the August 1, 2012, full committee markup of the bill, Chairman Whitfield stated: "I just philosophically think we need to stop this program. We have an opportunity to do it with this bill." At the same full committee markup, Chairman Stearns stated: "We need to get the government out of the venture capitalist business, and we can start by getting rid of Title XVII." He claimed that the bill "will phase out DOE's flawed loan guarantee program under Title XVII of the Energy Policy Act of 2005."

This description of the bill's purpose and effect is misleading and inaccurate. The bill does not terminate, end, or phase out the loan guarantee program. Under this bill, DOE can use its existing authority to issue $34 billion in new loan guarantees. DOE can issue those loan guarantees tomorrow, next year, or twenty years from now. The bill establishes no end date for the program. As explained in more detail below, the bill would prohibit DOE from considering any applications for loan guarantees submitted after December 31, 2011.

At the July 12, 2012, legislative hearing, David Frantz, the Acting Executive Director of DOE's Loan Programs Office, explained that the bill does not terminate the loan guarantee program. At the July 25, 2012, Energy and Power Subcommittee markup of the bill, Committee counsel confirmed that the bill does not terminate the program and that, under the bill, DOE could use its existing authority to issue $34 billion in additional loan guarantees at any time in the future. Chairman Whitfield conceded this point during the August 1, 2012, full committee markup, stating:

> So while it is appealing to end the project right now, let us just end the program right now, not consider any of these pending applications, I think the better view is, let us let the Department of Energy go through the remainder of these applications that are already pending and let them make that decision. But there is only $34 billion left.

A vote on an amendment offered by Rep. Markey during the full committee markup demonstrated that the purpose of the legislation is not to terminate the loan guarantee program. Rep. Markey's amendment would have expressly prohibited DOE from issuing any new Title XVII loan guarantees without exception, effectively terminating the program. The amendment was overwhelmingly de-

feated on a bipartisan basis by a vote of 3 to 39. Twenty-five Republican members of the Committee, including Chairmen Upton, Stearns, and Whitfield, voted against the amendment.

II. BILL SUMMARY: H.R. 6213, NO MORE SOLYNDRAS ACT

A. INACCURATE AND MISLEADING FINDINGS

Section 2 of the bill includes several misleading and inaccurate statements. For example, finding number 9 states that the Committee's investigation into Solyndra "has demonstrated that the review in 2009 of the Solyndra application by the Department of Energy and the Office of Management and Budget was driven by politics and ideology and divorced from economic reality where the Department of Energy ignored concerns about the company's financial condition and market for its products." This statement is not supported by the evidence before the Committee.

The Department of Energy awarded the loan guarantee to Solyndra in 2009 after more than two years of thorough due diligence carried out by reputable independent third party experts and career professionals working at DOE through the Bush and Obama Administrations. The findings suggest that no one but short-sighted officials at the Department of Energy thought Solyndra had a chance of succeeding, but this is revisionist history. While, in hindsight, failed investments may look obvious, in 2009 there were many astute investors and market observers who thought that Solyndra was a smart investment. The company had raised nearly $1 billion from sophisticated private investors, including Argonaut Ventures, Madrone Capital, Redpoint Ventures, and Rockport Capital Partners. Moreover, in 2010 after Solyndra was awarded the loan guarantee, the Massachusetts Institute of Technology's *Technology Review,* ranked Solyndra as one of the "50 Most Innovative Companies in the World" and the *Wall Street Journal* ranked Solyndra number one on its list of "The Next Big Thing: Top 10 Venture Backed Clean Technology Companies."[1] The career officials at DOE stress tested Solyndra's financial projections by estimating the impact of a 40% drop in solar prices. Solyndra passed this stress test, but went bankrupt when solar prices dropped a staggering 70% in a two year period—largely because of intense Chinese competition.

There is no evidence before the Committee that the decision to award the loan was "driven by politics and ideology." Instead, the voluminous record before the Committee, including over 300,000 pages of documents and more than 60 hours of interviews with the key officials who reviewed the loan guarantee reveals that all decisions on the loan were made on the merits after thorough and independent review, and that political considerations did not affect the key decisions on the loan guarantee.

The Committee interviewed 14 individuals involved in the Solyndra loan guarantee, including White House officials, OMB officials, Energy Department officials, and private investors. The Committee also heard testimony from six additional officials in-

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

volved in the guarantee, including the Secretary of Energy. Many of these individuals were career officials; one was a Bush Administration appointee. Every individual was asked whether political contributions played a role in the decisions on Solyndra. They unanimously said there was no political influence in these decisions. At the July 12, 2012, legislative hearing, David Frantz, a career civil servant who was the first employee and director of the loan guarantee program in 2007 under the Bush Administration, testified: "To the very best of my knowledge, through the whole history of the program from its inception to today, it has not been driven by any political considerations whatsoever."

The Committee report compounds the problems with this misleading finding by stating that there were "potential improprieties" in the Solyndra loan process "such as the influence exerted by George Kaiser, Solyndra's largest investor," that "corners were apparently cut at the urging of the White House" during the Obama Administration's review of the Solyndra loan guarantee, and that upon taking office the Obama Administration "quickly swept aside" the Bush Administration's concerns about Solyndra's viability and awarded the loan guarantee. These claims are inaccurate and ignore key exculpatory evidence received by the Committee.

The Committee report's unfounded claims about "potential improprieties" related to George Kaiser ignore the fact that the key White House officials who were supposedly involved told Committee staff that they were unaware of Mr. Kaiser's contributions to the President until they became public through the Committee's investigation. These same White House officials also told Committee staff that they did not seek to "cut corners" in the review of the Solyndra loan guarantee nor did they have any involvement in the substance of the decisions about the loan guarantee. The career staff at DOE and OMB confirmed that they felt no White House pressure related to their decisions on the loan guarantee, that their decisions were made purely on the merits, and that no corners were cut. Finally, career officials and a Bush Administration political appointee who worked on the Solyndra loan at DOE in both the Bush and Obama Administrations told Committee staff that advancing the first loan guarantee was a key priority of both Administrations and that Solyndra's application was not improperly accelerated at the start of the Obama Administration.

Finding number 10 states that "despite an express provision . . . prohibiting subordination of the United States taxpayers' financial interest, the Department of Energy restructured the Solyndra loan guarantee." The Committee's investigation revealed that when Solyndra faced severe financial strain, it required new capital from investors in late 2010 and early 2011. DOE looked carefully at the text of the Title 17 loan guarantee statute and concluded that although subordination was not allowed during the origination process for the loan guarantee, it was permitted in the event that a loan needed to be restructured. The most senior lawyers at DOE, the Loan Program's outside counsel, and the top legal counsel at OMB all agreed with this decision. When the Democratic staff of the Committee sought an outside opinion from the former general counsel at DOE, she concurred with DOE's analysis. Furthermore, the independent consultant Herb Alison, who reviewed the DOE

loan program, stated that DOE "should have some flexibility to subordinate because that may be the best way . . . to recover some money for taxpayers. Because by subordinating, it may make it possible to attract additional funding . . . which can help that project succeed." [2]

Finding number 12 states that a Government Accountability Office (GAO) report found that the DOE loan guarantee program "has treated applicants inconsistently." The record before the Committee has provided no evidence of political favoritism in the loan guarantee program, and the GAO report provides no evidence that any "inconsistent treatment" impacted the decision to grant a loan guarantee or was in any way connected to political considerations.[3] DOE responded to the GAO report by stating, in part, that "within each solicitation the rules have been applied consistently and no applicants have been disadvantaged." [4]

The findings give the misleading impression that the DOE loan programs have been a failure. But this is not true. The projects already financed by the program are expected to support nearly 60,000 jobs and save nearly 300 million gallons of gasoline per year. The program has supported six power generation projects that are already complete and nine projects that are sending power to the electricity grid. The program is funding one of the world's largest wind farms, the world's largest concentrated solar generation project, the world's largest photovoltaic solar power plant, and the nation's first two all-electric vehicle manufacturing facilities. The program has allowed private investors to come off the sidelines to invest tens of billions of dollars and create thousands of jobs.

After the Solyndra bankruptcy, the White House retained Herb Allison to conduct an independent review of the loan guarantee program. Mr. Allison previously served as the Assistant Secretary of the Treasury for Financial Stability, President and CEO of Fannie Mae after it was placed into conservatorship, Chairman, President and CEO of TIAA-CREF, and National Finance Committee Chair for Senator John McCain's presidential campaign. His report, which was conducted free from any Department or White House influence, examined the overall loan guarantee portfolio.

Mr. Allison found that the Department's loan guarantee program is fulfilling Congress' intent to fund "innovative alternative energy projects employing technologies that [have] not reached commercial maturity and involved more risk than is typical for project and corporate debt financing." [5] In fact, Mr. Allison found that the overall loan portfolio is significantly less risky than both the Department and Congress expected. The report estimated potential losses in the portfolio and found them to be $2 billion less than the Department had previously estimated and $7 billion less than the reserve

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[2] Senate Committee on Energy and Natural Resources, Testimony of Herb Allison, Independent Consultant, *Hearing on the Allison Report on DOE Loan Guarantee Program*, 112th Cong. (Mar. 13, 2012).

[3] Government Accountability Office, *Further Actions Are Needed to Improve DOE's Ability to Evaluate and Implement the Loan Guarantee Program* (July 2010) (GAO–10–627).

[4] *Id.* at 26.

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

amount that Congress set aside to cover losses.[6] According to Mr. Allison, some losses in the portfolio were anticipated, but overall the portfolio is performing well.

B. PICKING WINNERS AND LOSERS

Section 3 provides that DOE shall not issue any new loan guarantees for any applications submitted after December 31, 2011. DOE is permitted to issue new loan guarantees with existing or future loan guarantee authority but only for applications submitted by that date. According to DOE, approximately 50 applications were submitted by December 31, 2011, and were not withdrawn, rejected, or awarded a final loan guarantee. Under the bill, only this arbitrary pool of applications would be eligible for new loan guarantees. Even though the purpose of the loan guarantee program is to foster innovative technologies, DOE would be prohibited from issuing new solicitations or considering new applications for innovative nuclear, fossil, or renewable energy technologies. As a result, tens of billions of dollars of new loan guarantees can be issued in the years to come, but those guarantees may not be used to support the most innovative and promising technologies. As David Frantz, the Acting Executive Director of DOE's Loan Programs Office, explained at the July 12, 2012, legislative hearing: "going forward, the Department would increasingly be unable to guarantee loans with the newest and most innovative technologies, particularly in the area of nuclear and renewable projects."

For example, DOE currently has $10.2 billion in uncommitted loan guarantee authority for nuclear generation projects. Under the bill, this loan guarantee authority and any additional future loan guarantee authority for nuclear projects could only be used to award guarantees to the nuclear project applications submitted prior to December 31, 2011. If a new applicant has a ground-breaking small modular reactor or next generation nuclear technology, DOE would be prohibited from providing support for such a project.

At the July 25, 2012, Energy and Power Subcommittee markup of the bill, supporters of the bill claimed that the bill was drafted to allow DOE to issue $34 billion more in loan guarantees to grandfathered applicants who submitted applications prior to December 31, 2011, because DOE might incur liability if it did not issue loan guarantees to applicants with conditional commitments or even applicants that had merely begun due diligence. There is no support for this claim. The text of the loan guarantee program regulations, solicitations, and term sheets makes it clear that DOE can decide not to issue a loan guarantee for any reason at any time.[7] There is no contractual obligation to issue a final loan guarantee.

C. PERSONAL CIVIL LIABILITY FOR FEDERAL EMPLOYEES

Section 6 was added by a subcommittee amendment offered by Rep. Burgess and modified by a full committee amendment offered by Rep. Burgess. It provides that "any federal official who is responsible for the issuance of a loan guarantee" under the program

[6] *Id.* at 32.

[2] *See, e.g.,* 10 C.F.R. 609.2 (stating: "the Secretary may terminate a Conditional Commitment for any reason at any time prior to the execution of the Loan Guarantee Agreement").

in a manner that violates the requirements of Title XVII or this bill shall be (1) subject to appropriate administrative discipline and (2) personally liable for a civil penalty of at least $10,000 and up to $50,000 for each violation. During the full committee markup, Rep. Burgess described the provision as giving "real teeth toward ensuring that the egregious activities which occurred during the lead-up to the subordination of taxpayer dollars will never occur again."

This broad provision subjects federal employees to punitive personal civil liability penalties. The provision defines the term "federal official" as an individual serving in an Executive Schedule or Senior Executive Service position, including career civil servants. However, the provision does not define or provide any limits on the term "who is responsible for the issuance of a loan guarantee." It is unclear whether "any federal official who is responsible for the issuance of a loan guarantee" includes the Secretary of Energy, the members of the Credit Review Board, the members of the Credit Committee, the Executive Director of the Loan Programs Office, or officials at the Office of Management and Budget. The inclusion of career Senior Executive Service employees in the definition of "federal official" suggests that a large number of individuals could be subject to civil liability penalties under this provision.

The uncertainty about which federal employees are potentially subject to this new civil liability is exacerbated by the breadth of the civil liability itself. The language of the provision does not limit liability to individuals who knowingly or intentionally violate a requirement of Title XVII. Under this provision, any federal official who unintentionally violates a requirement of Title XVII or who relies in good faith on legal advice from DOE attorneys when making a decision that is later determined to violate a requirement of Title XVII would face personal liability for substantial civil penalties.

Moreover, the language of the provision does not appear to apply to the restructuring of a loan guarantee, which was the stated purpose of the provision's author. On its face, the provision applies to federal officials responsible for the issuance of a loan guarantee in a manner that violates the requirements of Title XVII, not federal officials responsible for the restructuring of a previously-issued loan guarantee.

D. SKEWED GAO STUDY

Section 7 was added by a full committee amendment offered by Rep. Pompeo. It requires a GAO study of federal subsidies in energy markets provided in fiscal years 2003 through 2012. The term "federal subsidies" is defined to include grants, direct loans, loan guarantees, and tax credits.

This definition of "federal subsidies" would skew the GAO analysis by excluding consideration of significant subsidies that oil companies have received for decades. Under this provision, the study would exclude analysis of key tax policies that benefit the oil industry, such as certain tax deductions, accelerated depreciation, and master limited partnerships. Such an analysis would provide an incomplete and inaccurate picture of U.S. energy subsidies.

A second-degree amendment offered by Rep. Waxman during the full committee markup would have expanded the definition of "federal subsidies" to include these longstanding "tax policies" but was

defeated. The second-degree amendment also would have ensured that the study examined the economic importance of U.S. leadership in clean energy technology development and manufacturing.

For the reasons stated above, we dissent from the views contained in the Committee's report.

HENRY A. WAXMAN.
BOBBY L. RUSH.
DIANA DEGETTE.

EXCHANGE OF LETTERS

RALPH M. HALL, TEXAS
CHAIRMAN

EDDIE BERNICE JOHNSON, TEXAS
RANKING MEMBER

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September 10, 2012

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
2123 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Upton:

I am writing to you regarding H.R. 6213, the No More Solyndras Act. This legislation was referred initially to both the Committee on Energy and Commerce and the Committee on Science, Space, and Technology. H.R. 6213 was marked up by the Committee on Energy and Commerce on July 31, 2012.

I recognize and appreciate your desire to bring this legislation before the House of Representatives in an expeditious manner, and accordingly, I will waive further consideration of this bill in Committee. This, of course, being conditional on our mutual understanding that language negotiated with the Science, Space, and Technology Committee will be included in this or any similar legislation considered on the House floor. However, agreeing to waive consideration of this bill should not be construed as waiving, reducing, or affecting the jurisdiction of the Committee on Science, Space, and Technology.

Additionally, the Committee on Science, Space, and Technology expressly reserves its authority to seek the appointment of conferees during any House-Senate conference that may be convened on this, or any similar legislation. I ask for your commitment to support any request by the Committee for conferees on H.R. 6213 as well as any similar or related legislation.

I ask that a copy of this letter and your response be included in the report on H.R. 6213 and also be placed in the Congressional Record during consideration of the bill on the House floor.

I look forward to working with you as we prepare to pass this important legislation.

Sincerely,

Ralph M. Hall

Ralph M. Hall
Chairman
Committee on Science, Space, and Technology

Enclosure

cc: The Hon. John Boehner, Speaker
The Hon. Eric Cantor, Majority Leader
The Hon. Eddie Bernice Johnson, Ranking Member, Committee on Science, Space, and Technology
The Hon. Henry Waxman, Ranking Member, Committee on Energy and Commerce
The Hon. Thomas J. Wickham, Jr., Parliamentarian

FRED UPTON, MICHIGAN
CHAIRMAN

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September 10, 2012

The Honorable Ralph M. Hall
Chairman
Committee on Science, Space, and Technology
2321 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Hall,

Thank you for your letter regarding H.R. 6213, the "No More Solyndras Act." As you noted, there are provisions of the bill that fall within the Rule X jurisdiction of the Committee on Science, Space, and Technology.

I appreciate your willingness to forgo action on H.R. 6213, and I agree that your decision should not prejudice the Committee on Science, Space, and Technology with respect to the appointment of conferees or its jurisdictional prerogatives on this or similar legislation, for which you will have my support.

I will include a copy of your letter and this response in the report on H.R. 6213 and the *Congressional Record* during consideration of H.R. 6213 on the House floor.

Sincerely,

Fred Upton
Chairman

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