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House of Representatives
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MEMORANDUM

October 3, 2011

To: Democratic Members of the Subcommittee on Oversight and Investigations

Fr: Subcommittee on Oversight and Investigations Democratic Staff

Re: Additional Documents Relating to the Solyndra Loan Guarantee

On Friday, September 30, 2011, the Subcommittee on Oversight and Investigations received additional document productions of 685 pages from the Office of Management and Budget and 27 pages from the White House in response to Subcommittee requests. This memorandum discusses the information received in the document productions and places these documents in context with previous document productions.

In public statements and at the Subcommittee's hearings on Solyndra, Republican members of the Committee have alleged that the White House rushed the review and approval of the Solyndra loan guarantee in September 2009 because one of the leading private investors in Solyndra had ties to a campaign contributor. Republican members have also insinuated that the loan to Solyndra was restructured in February 2011 on terms favorable to the private investors for the same reason.

The documents the Committee has received do not support the allegations of political favoritism. They show (1) there was vigorous internal debate among officials at the Department of Energy and the Office of Management and Budget about the Solyndra loan guarantee; (2) this debate was appropriately elevated to senior officials in the White House; and (3) the decisions involving Solyndra were made on the merits with no regard to the identity of the private investors.

Some of the language used in the documents is colorful. OMB staff called staff at DOE "completely oblivious" in one email and predicted that because of DOE's inadequacies "[b]ad days are coming" in another. When a private investor emailed Lawrence Summers, the Director of the National Economic Council, about his concerns about the government's investment in Solyndra, Mr. Summers responded: "I relate well to your concern that gov is a crappy vc and if u were closer to it you'd feel more strongly."

The documents show that the concerns raised about Solyndra and the loan guarantee program were not ignored. Before the President visited Solyndra in May 2010, Ron Klain, Chief of Staff to Vice President Biden, wrote to Valerie Jarrett, Senior Advisor to the President, that “we clearly need to make sure that they are stable and solid.” After reviewing information about the status of Solyndra, Mr. Klain emailed Ms. Jarrett that “there are some risk factors here – but that’s true of any innovative company that POTUS would visit. It looks like it is OK to me.” In a follow up email, Mr. Klain further observed that risk-taking was an inherent feature of the loan guarantee program:

The reality is that if POTUS visited 10 such places over the next 10 months, probably a few would be belly-up by election day 2012 – but that to me is the reality of saying that we want to help promote cutting edge, new economy industries.

While Mr. Summers expressed doubts about the government’s ability to act as a venture capitalist, he also recognized – in the same email – that there are “externalities to renewable investments” that need to be taken into account. In October 2010, he joined Mr. Klain and Carol Browner, the Director of the White House Office of Energy and Climate Change, in elevating concerns about the loan guarantee program and the conflict between DOE and OMB to the President. In their memorandum, these three senior advisors presented four options to the President, ranging from significantly curtailing OMB’s involvement on one extreme to terminating the loan guarantee program on the other.

In hindsight, it is apparent that the predictions of officials at OMB about Solyndra were right and those of the officials at DOE were wrong. But that does not mean the decision to rely on DOE’s advice was wrong at the time. By law, any loan guarantees awarded under Title 17 of the Energy Policy Act had to be for projects that “employ new or significantly improved technologies,” which meant that the projects would necessarily entail risk. The documents show that senior officials were aware of Solyndra’s risks, that they consulted with the relevant officials, and that they made their decisions based on their assessment of the merits, not political influence. Whether one thinks the decisions were right or wrong, there appears to be no basis for questioning the integrity of the decisionmakers.

I. THE DISPUTE BETWEEN DOE AND OMB

Before the loan guarantee to Solyndra could be issued, both DOE and OMB needed to sign off on elements of the project. Under the applicable statutes, DOE needed to approve the guarantee and OMB needed to approve the credit subsidy score. This occurred in September 2009. Although OMB officials expressed some concerns about Solyndra during this time period, these concerns were addressed when OMB increased the credit subsidy score for the loan guarantee. As Jeffery Zients, the Deputy Director for Management at OMB, testified:

[OMB] staff was very comfortable and had no hesitation as to its final determination of the credit subsidy score, which... actually increased as a result of OMB's analysis and

DOE concurred with that. So the credit subsidy score was made more conservative in that period of time as it was signed off in preparation for closing of the loan.¹

Initially, there were positive signs at Solyndra. The company claimed to have a \$2 billion back-log of orders.² Moreover, while it was still reporting losses, Solyndra's revenue had risen from \$6 million in 2008 to over \$100 million in 2009.³

By 2010, however, OMB officials began to express significant concerns about DOE's oversight of Solyndra. Throughout the spring of 2010, OMB officials expressed frustration with DOE's monitoring of Solyndra's cash flow and the technical performance of Solyndra's solar panels. Internal emails and reports from OMB's weekly calls with DOE repeatedly mention the lack of a robust monitoring system at DOE. One OMB official wrote: "DOE's 'system' for monitoring loans is quite problematic (barely any review of materials submitted, no synthesis for program management, inherent conflicts in origination team members monitoring the deals they structured, etc) and does not seem to be a program priority."⁴

DOE officials disagreed with this assessment. DOE staff assured OMB that Solyndra's construction of a new manufacturing plant was "progressing on time and on budget."⁵

In March 2010, an independent audit by PriceWaterhouseCoopers raised questions whether Solyndra could survive on its own.⁶ This audit heightened OMB concerns. On April 2, 2010, two OMB analysts exchanged a series of emails about the audit, stating:

- "Interesting in light of DOE's recent statement to OMB staff that Solyndra project was on schedule and on budget. I eager await DOE's monitoring system."
- "Possible to close and default on one before closing on a second??? Could be a new record."
- "DOE ... has one loan to monitor and they seem completely oblivious to this issue – and to make it worse it was the key thing I said they needed to watch."⁷

¹ House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, Testimony of Jeffrey Zients, *Solyndra and the DOE Loan Guarantee Program*, 112th Cong. (2011).

² U.S Department of Energy, *Event Memo* (Sept. 4, 2009).

³ U.S. Securities and Exchange Commission, *Amendment No. 1 to Form S-1 Registration Statement, Solyndra, Inc.* (Mar. 16, 2010).

⁴ E-mail from OMB Staff to OMB Staff (Mar. 1, 2010).

⁵ E-mail from OMB Staff to OMB Staff (Mar. 31, 2010).

⁶ U.S. Securities and Exchange Commission, *Amendment No. 1 to Form S-1 Registration Statement, Solyndra, Inc.* (Mar. 16, 2010).

⁷ E-mail from OMB Staff to OMB Staff (Apr. 2, 2010).

In a separate e-mail exchange that occurred on the same day, one OMB official wrote to express the view that DOE's problems were programmatic: "what's terrifying is that after looking at some of the ones that came next, this one started to look better. . . . Bad days are coming."⁸

DOE officials took a decidedly different view than the OMB officials. In an internal memorandum, they explained that "[t]he statement from the auditors confirms Solyndra's status as a development stage corporation reliant on outside sources for capital . . . and should not be viewed as unusual for a high-growth company like Solyndra at this stage in its development."⁹ According to the DOE memorandum, "Portfolio Management believes that the Project continues to be successfully developed in accordance with the overall business plan," explaining that construction was proceeding on time and on budget, that Solyndra had raised the nearly \$200 million in equity capital required by the Department, and that Solyndra had complied with the terms of the loan guarantee.¹⁰

II. THE PRESIDENT'S SITE VISIT

In May 2010, White House officials began to organize a trip for President Obama to visit the Solyndra factory that ultimately occurred on May 25, 2010. One White House official began to search for site to host President Obama, writing "Rahm was very pleased, and everyone agrees we should keep on with the Main Street tour."¹¹ After reviewing the Solyndra site, a White House official wrote, "POTUS could meet with workers/make remarks at the new building site, which is very construction/new jobs heavy. 400+ union labor workers in hard hats using heavy machinery both indoors and outdoors."¹²

News of this visit prompted one OMB official to note, "Hope doesn't default before then."¹³ Another OMB official wrote "I am increasingly worried that this visit could prove embarrassing to the Administration in the not too distant future, given 1) what we just heard today from DOE that Solyndra is delaying their IPO at least until the end of the year, and 2) what the auditors said about Solyndra making it through the year absent new financing."¹⁴

Valerie Jarrett, Senior Advisor to President Barack Obama, was contacted by Steve Westly, Managing Partner of the Westly Group, who raised concerns about whether a visit to Solyndra by the President was a good idea in light of an audit report on the company. Mr.

⁸ E-mail from OMB Staff to OMB Staff (Apr. 2, 2010).

⁹ Memorandum from DOE Staff to DOE Staff (Apr. 6, 2010).

¹⁰ *Id.*

¹¹ E-mail from White House Staff to White House Staff (May 19, 2010).

¹² E-mail from White House Staff to White House Staff (May 19, 2010).

¹³ E-mail from OMB Staff to OMB Staff (May 21, 2010).

¹⁴ E-mail from OMB Staff to OMB Staff (May 24, 2010).

Westly wrote: “A number of us are concerned that the president is visiting Solyndra. ... [T]here is an increasing concern about the company because their auditors, Coopers and Lybrand, have issued a ‘going concern’ letter. ... Many of us believe the company’s cost structure will make it difficult for them to survive long term.”¹⁵ Mr. Westly continued: “Could you perhaps check with DOE to make sure they’re comfortable with the company? I just want to help protect the president from anything that could result in negative or unfair press. If it’s too late to change/postpone the meeting, the president should be careful about unrealistic/optimistic forecasts that could haunt him in the next 18 months if Solyndra hits the wall, files for bankruptcy, etc.”¹⁶

Ms. Jarrett responded to these concerns by contacting Ron Klain, Chief of Staff to Vice President Joe Biden. Mr. Klain responded that he would look into the issue, writing: “we clearly need to make sure that they are stable and solid.”¹⁷ Mr. Klain then contacted officials at the Department of Energy to inquire about the stability of Solyndra.

A Department of Energy official responded to Mr. Klain with a defense of Solyndra. The official wrote that “[t]he ‘going concern’ letter is standard for companies pre-IPO” and he predicted that “the company should be strong going into the fall with their new facilities on line.”¹⁸ Another Department of Energy official wrote: “Bottom line is that we believe the company is okay in the medium term, but will need some help of one kind or another down the road.”¹⁹

Mr. Klain forwarded the response from Department of Energy officials to Ms. Jarrett and gave her his assessment, which acknowledged the inherent risks of the project but recommended the President participate. He wrote:

Sounds like there are some risk factors here – but that’s true of any innovative company that POTUS would visit. It looks like it is OK to me, but if you feel otherwise, let me know.²⁰

¹⁵ E-mail from Steve Westly, Managing Partner, The Westly Group to Valerie Jarrett, Senior Advisor to President Barack Obama, The White House (May 24, 2010).

¹⁶ *Id.*

¹⁷ E-mail from Ronald Klain, Chief of Staff, Vice President Joe Biden, The White House, to Valerie Jarrett, Senior Advisor to President Barack Obama, The White House (May 24, 2010).

¹⁸ E-mail from Matt Rogers, Senior Advisor to the Secretary for Recovery Act Implementation, Department of Energy, to Rod O’Connor, Chief of Staff, Department of Energy (May 24, 2010).

¹⁹ E-mail from Rod O’Connor, Chief of Staff, Department of Energy, to Ronald Klain, Chief of Staff, Vice President Joe Biden, The White House (May 24, 2010).

²⁰ E-mail from Ronald Klain, Chief of Staff, Vice President Joe Biden, The White House, to Valerie Jarrett, Senior Advisor to President Barack Obama, The White House (May 24, 2010).

Ms. Jarrett responded, “I’m comfortable if you’re comfortable.”²¹ Mr. Klain then sent an e-mail to Ms. Jarrett stating: “The reality is that if POTUS visited 10 such places over the next 10 months, probably a few will be belly-up by election day 2012 – but that to me is the reality of saying that we want to help promote cutting edge, new economy industries.”²²

In the same time period, White House officials were receiving positive reports from Solyndra representatives on the company’s current success and growth potential. In a July 21 e-mail to staff at the White House Office of Communications, Solyndra’s representatives at the Glover Park Group passed along a set of “Solyndra Messages” under the headings “Strong Future,” “Growth Market,” and “Made in the USA.” Specifically, Solyndra’s representatives pointed to the company’s \$200 million in annual revenue which they expected to double to \$400 million the following year, making them cash flow positive. The e-mail also refers to Solyndra’s aims to triple capacity by 2013, the fact that the company was “having big success with large big-box retail, distribution, warehousing and commercial real estate owners including recent installations including Anheuser Busch, Coca Cola, Costco and others,” and that the product was “ideally positioned ... [with] a long term sustainable competitive advantage.”²³

III. MR. SUMMERS’S CONCERNS

The documents also include an email chain reflecting a conversation between Lawrence Summers, the Director of the National Economic Council, and Brad Jones of Redpoint Ventures, an investment firm whose investments included Solyndra.

In December 2009, Mr. Summers e-mailed Mr. Jones in an effort to seek input on a range of economic issues, asking for “year end views” and saying he was “[i]nterested in left coast perspectives on economy markets and econ policy and especially advice.”²⁴ Mr. Jones replied by providing an analysis of various types of stimulus spending the government had done, including the following comments specifically regarding clean energy investment:

The allocation of spending to clean energy is haphazard; the government is just not well equipped to decide which companies should get the money and how much. ... One of our solar companies with revenues of less than \$100 million (and not yet profitable) received

²¹ E-mail from Valerie Jarrett, Senior Advisor to President Barack Obama, The White House, to Ronald Klain, Chief of Staff, Vice President Joe Biden, The White House (May 24, 2010).

²² E-mail from Ronald Klain, Chief of Staff, Vice President Joe Biden, The White House, to Valerie Jarrett, Senior Advisor to President Barack Obama, The White House (May 24, 2010).

²³ E-mail from Ryan Cunningham, Senior Vice President, Glover Park Group, to White House staff (July 21, 2010).

²⁴ E-mail from Lawrence Summers, Director, National Economic Council, The White House, to Brad Jones, Redpoint Ventures (Dec. 24, 2009) (WH SOL 909).

a government loan of \$580 million; while that is good for us, I can't imagine it's a good way for the government to use taxpayer money.²⁵

Mr. Summers replied: "I relate well to your view that gov is a crappy vc [venture capitalist] and if u were closer to it you'd feel more strongly. But suppose we think there are all kinds of externalities to renewable investments. What should we do?"²⁶

Mr. Summers's concerns about how to balance the challenges of direct government investment and the need to support renewable investments were given thoughtful consideration. In October 2010, he joined Carol Browner, the Director of the Office of Energy and Climate Policy, and Mr. Klain in drafting a six-page memorandum to the President about the loan guarantee program. This memorandum, which has previously been released, explains the benefits and risks of the loan guarantee program. It also discusses the conflicts between DOE and OMB, stating that "the back and forth consumes a significant amount of staff time, thereby making it challenging to move several transactions forward simultaneously."²⁷ The memorandum then presents the President with four options. On one extreme, one option would "eliminate the deal-by-deal review" by OMB.²⁸ On the other extreme, another option would terminate the loan guarantee program and seek congressional approval to move the funds into a DOE grant program. The Vice President's office recommended a middle option, which would "Streamline and Accelerate OMB/Treasury Reviews with Project Prioritization."²⁹

IV. CONCLUSION

The documents produced Friday, like the other documents received by the Subcommittee to date in the Solyndra investigation, do not contain evidence that government decisions relating to Solyndra were influenced by considerations relating to campaign donations. Rather, the documents show that there was internal disagreement within the Administration about Solyndra's viability and the effectiveness of the loan guarantee program throughout the process. According to the documents, the decisions relating to Solyndra were made on the merits after vigorous debate and with awareness of the risks involved.

²⁵ E-mail from Brad Jones to Lawrence Summers, Director, National Economic Council, The White House (Dec. 26, 2009) (WH SOL 910).

²⁶ E-mail from Lawrence Summers, Director, National Economic Council, The White House, to Brad Jones (Dec. 26, 2009) (WH SOL 912).

²⁷ Memorandum for the President from Carol Browner, Ron Klain, and Larry Summers, The White House, *Renewable Energy Loan Guarantees and Grants* (Oct. 25, 2010).

²⁸ *Id.*

²⁹ *Id.*