



## Legislative Bulletin.....September 14, 2012

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H.R. 6213 – No More Solyndras Act

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### H.R. 6213 – No More Solyndras Act (Upton, R-MI)

**Order of Business:** The bill is scheduled to be considered on September 14, 2012, under a closed rule, H.Res. 779. The rule provides for the consideration of H.R. 6213 in the Committee of the Whole House on the state of the Union.

The rule provides for 90 minutes of general debate that is equally divided by the chair and ranking minority member. After debate, the legislation shall be considered for amendment under the five minute rule. The rule makes in order only those amendments that are printed in Rules Committee Report 112-31. After amendment debate, the Committee shall rise and report the legislation to the House. At that time, any Member may demand a separate vote on any amendment that was adopted in the Committee of the Whole. The rule also provides for one motion to recommit, with or without instructions. The text of the rule can be [found here](#).

**Summary:** H.R. 6213 terminates the Department of Energy’s ability to issue any new loan guarantee (under Title XVII of the 2005 Energy Policy Act) for any application that was submitted after December 31, 2011.

With respect to pending applications, the Secretary is prohibited from guaranteeing the loan until the Secretary of the Treasury has provided a written analysis of the financial terms and conditions of the proposed loan. The Secretary of Treasury shall submit this analysis to the Secretary of Energy within 30 days after receiving the proposal. If the Secretary of Energy makes a loan guarantee that is not consistent with the written analysis of the Secretary of Treasury, then the Secretary of Energy shall, within 30 days, submit to Congress a written explanation of any inconsistencies.

**Report to Congress:** Within 60 days of making a loan guarantee on a pending application, the Secretary of Energy shall transmit to Congress a report detailing:

- the review and decision making process utilized by the Secretary in making the guarantee;
- the terms of the guarantee;
- the recipient; and
- the technology and project for which the loan guarantee will be used.

**Loan Restructuring:** The Secretary of Energy is required to consult with the Secretary of the Treasury when restructuring the terms and conditions of any loan guarantee, including any deviations from the financial terms.

**Restating the Prohibition on Subordination:** The 2005 Energy Policy Act states that the repayment obligation of loan guarantee “is not subordinate to other financing.” This legislation amends and restates that clause in an attempt to strengthen the legal obligation that taxpayers and the government be paid back first, before the private investors. The House Energy and Commerce Committee found that the Department of Energy decided to subordinate taxpayers to private investors in the ill-fated Solyndra project. More information can be [found here](#).

**Civil Penalties:** The legislation establishes civil penalties for any federal official who is responsible for issuing a loan guarantee that is inconsistent with this legislation. The penalties may include suspension from duty without pay, termination of employment, and individuals may be found personally liable for a civil penalty of at least \$10,000, but not more than \$50,000.

**GAO Study:** The GAO shall conduct a study of the federal subsidies in energy markets provided from fiscal year 2003 through fiscal year 2012. The study shall focus on subsidies 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.

The report is due to Congress within one year after enactment. The report shall also identify any:

- 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.

**Additional Information:** The legislation does not address loans guarantees that were issued by the Department of Energy after January 1, 2012. Additionally, the Department of Energy is not soliciting for any new applications. Reportedly, there are approximately 50 projects that applied before January 1, 2012, and are currently pending approval.

Title XVII of the 2005 Energy Policy Act (P.L. 109-58) authorizes the Secretary of Energy to provide loan guarantees for technologies that reduce emissions. According to the legislation’s findings, the “stimulus” bill, P.L. 111-5, 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.). 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. Three of the first five companies that received section 1705 loan guarantees for their 8 projects, Solyndra, Inc., Beacon Power Corporation, and Abound Solar, Inc., have declared bankruptcy. The bankruptcy of the first section 1705 loan guarantee recipient, Solyndra, Inc., could result in a loss to taxpayers of over \$530,000,000.

Much more information has been compiled by the House Committee on Energy and Commerce, and can be [viewed here](#).

**Outside Groups:** The following groups support passage of H.R. 6213:

- Competitive Enterprise Institute
- Heritage Action for America
- National Taxpayers Union

**Amendments Made In Order:**

1. *DeGette (D-CO)*: The amendment adds the following findings:

- “The Department of Energy estimates that projects funded under the title XVII program are expected to create 60,000 jobs;
- “An investigation by the Subcommittee on Oversight and Investigation of the Committee on Energy and Commerce of the House of Representatives determined that the Solyndra loan determination was based on the best professional judgment of career Department of Energy and Office of Management and Budget officials, without political or ideological interference from Obama Administration political appointees or career officials; and
- “Department of the Treasury officials testified before the Subcommittee on Energy and Power of the Committee on Energy and Commerce of the House of Representatives on October 14, 2011, and stated that their consultation on the Solyndra loan guarantee was not rushed. In interviews conducted by the Subcommittee on Oversight and Investigation of the Committee on Energy and Commerce of the House of Representatives, Office of Management and Budget officials indicated that their review of the Solyndra loan, and the review of Department of Energy officials, was thorough, complete, and fair, and based on reasonable economic assumptions about the company’s future.”

Additionally, the amendment rewrites another finding and states that the Department of Energy based their loan to Solyndra on the “best professional judgment” and “without political or ideological interference from Obama Administration.” The underlying finding states that the Committee’s investigation found the exact opposite.

The amendment also rewrites another finding dealing with the subordination of loans from Title XVII. The amendment can be [viewed here](#).

2. **Waxman (D-CA):** The amendment strikes the section of the underlying bill that prohibits the Secretary of Energy from issuing new loan guarantees pursuant to title XVII. This section in the underlying bill is arguably the main section. The amendment can be [viewed here](#).

**Committee Action:** H.R. 6213 was introduced on July 26, 2012, and was referred to the House Energy and Commerce Subcommittee on Energy and Power. The full committee held a markup on July 31, 2012, and the legislation was approved by a [roll call vote of 29-19](#). The legislation was also referred to the House Science, Space, and Technology Committee, which took no public action.

**Administration Position:** No Statement of Administration Policy is available.

**Cost to Taxpayers:** CBO estimates that implementing H.R. 6213 would cost about \$1 million over the 2013-2017 period, subject to appropriation. CBO associates these costs with the GAO study. CBO's report can be [viewed here](#).

**Does the Bill Expand the Size and Scope of the Federal Government?:** No. The legislation prohibits the Secretary of Energy from providing new loan guarantees under title XVII of the Energy Policy Act of 2005, thereby reducing the size and scope of the federal government.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** 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.

**Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** The legislation does not contain earmarks, limited tax benefits, or limited tariff benefits.

**Constitutional Authority:** Rep. Upton states: "Congress has the power to enact this legislation pursuant to the following: This bill is enacted pursuant to the power granted to Congress under Article I, Section 8, Clause 3 of the United States Constitution." The statement can be [found here](#).

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