

FRED UPTON, MICHIGAN  
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA  
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

February 9, 2012

Ms. Kathryn Ruemmler  
Counsel to the President  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20500

Cynthia C. Hogan  
Counsel to the Vice President  
Office of the Vice President  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20500

Dear Ms. Ruemmler and Ms. Hogan:

We write to you regarding the subpoenas for documents served on the White House Chief of Staff, then William M. Daley, and Chief of Staff to the Vice President Bruce Reed, on November 3, 2011, by the Committee on Energy and Commerce in relation to the loan guarantee issued to Solyndra, Inc., (Solyndra) by the Department of Energy (DOE).

Pursuant to Rule X of the U.S. House of Representatives, the Committee on Energy and Commerce is investigating the DOE loan guarantee issued to Solyndra. Our reasons for doing so are clear, and have been explained to you numerous times. Under the House rules, matters relating to “[e]xploration, production, storage, supply, marketing, pricing, and regulation of energy resources, including all fossil fuels, solar energy, and other unconventional or renewable energy resources” and the “[g]eneral management of the Department of Energy” are within the jurisdiction of this Committee. This Committee drafted the Energy Policy Act of 2005, which authorized the creation of the DOE Loan Guarantee Program. Solyndra was part of the Section 1705 loan guarantee program, which was funded in part by the American Recovery and Reinvestment Act (Recovery Act). This Committee adopted the energy-related provisions of the Recovery Act, including the Section 1705 program, in a markup on January 22, 2009.

Solyndra was the first recipient of a DOE loan guarantee in September 2009. Within one year of receiving the loan guarantee, the company experienced significant financial problems that resulted in the layoff of approximately 135 temporary and 40 full-time employees, in November 2010. Less than one year after that, the company filed for Chapter 11 bankruptcy and laid off its remaining

workforce of approximately 1,000 individuals. Solyndra is not the only portion of the DOE loan portfolio to attract significant concern; the Government Accountability Office (GAO) has issued two reports criticizing the DOE Loan Programs Office's review and approval process for applications for the Section 1705 loan guarantee program.

This information, combined with the fact that this Committee had not previously conducted any oversight of the DOE Loan Guarantee Program, prompted the Committee to open its investigation. As Committee staff has repeatedly explained to you and your staff, the Committee's investigation of the Solyndra loan guarantee directly relates to the Committee's legislative functions. The process by which this Administration awarded over half a billion dollars to Solyndra and subsequently restructured and subordinated the loan and the management of the DOE Loan Guarantee Program, including the extent of the White House's influence in the management of that program, are but a few of the important issues which are squarely within this Committee's constitutional oversight responsibilities. The facts and information the Committee uncovers as a result of this investigation will inform its ongoing oversight of the Loan Guarantee Program. This information will also inform the Committee's legislative agenda, should the Committee consider legislation to fix some of the problems identified by our investigation of the Administration's handling of the Solyndra loan guarantee. It is of the utmost importance for the Committee to fully understand how the 1705 loan guarantee program was managed and what influence the White House and other Executive Branch agencies did or did not exert in the management of that program.

It has now been more than five months since the Committee first requested documents from the White House relating to the Solyndra loan guarantee, and over three months since the Committee was forced to issue subpoenas to the Executive Office of the President and the Office of the Vice President for this information. During that time, the Committee and its staff have repeatedly sought to engage your staff in substantive discussions regarding any concerns you may have regarding the subpoenas. During these discussions, your staff has repeatedly refused to discuss even such basic information as the nature or quantity of responsive documents in your possession. Moreover, when asked to describe the basis of their concerns, your staff has simply repeated vague assertions that: 1) the subpoenas are "overly broad" and 2) somehow the documents requested by the Committee are not related to the Committee's "legitimate oversight interests." At no time have you or your staff ever explained how the subpoenas are overly broad or why the Committee's investigation into the loss of over half a billion dollars through the Department of Energy Loan Guarantee Program is not within the Committee's legitimate oversight interest.

Nonetheless, in an attempt to move the investigation forward, the Committee has repeatedly accommodated the White House in our negotiations. When your staff indicated that it would be burdensome to produce publicly available documents, such as press releases, Committee staff agreed that you would not have to produce such documents. In order to accommodate the White House's concern that searching for the requested documents would also be burdensome, the Committee repeatedly offered to discuss schedules for production and ways to prioritize the documents the Committee needed in its investigation. At your request, and in response to your complaint that the document requests in the subpoenas were overly broad, the Committee narrowed its requests for documents as set forth in the subpoenas by providing a list of eleven specific document categories to the White House Counsel's office on December 12, 2011 (Attachment A). The White House claimed that even these narrowed document request categories were too broad. Without consulting the Committee, your office unilaterally narrowed even those categories in a manner which purposefully excluded important documents and information. The White House then relied on this unilaterally

revised language as a basis for producing just 66 pages of documents to the Committee, on January 13, 2012. Those documents, and the 136 pages of documents produced by the White House on November 11, 2011, do not provide any substantive information about certain key events regarding the Solyndra loan guarantee, even though information uncovered by the Committee suggests that the White House played a role in those events.

The Administration has not reciprocated the Committee's good faith efforts to negotiate. Three months after the deadline for the production of documents, the White House still has not complied with the subpoenas. The White House has repeatedly rebuffed the Committee's efforts and has carefully selected only a very limited number of documents for production. It is clear to us that the Administration has no genuine intention of complying with the subpoenas, but rather is waging a public relations war in an effort to delay long enough to withhold from production the most relevant documents. For example, the White House continues to withhold documents that provide information about its involvement in the restructuring and subordination of the Solyndra loan guarantee, even though certain documents demonstrate that the White House approved the restructuring. The White House has not asserted any privilege to justify its refusal to produce these, and other, responsive documents. If, as the Administration has repeatedly asserted, it did nothing wrong and has nothing to hide, why not simply produce all of the documents responsive to the Committee's narrowed document requests, without further delay?

In the White House's responses to the Committee's document requests, you have routinely cited the number of documents produced by other Executive Branch agencies as support for your argument that this Committee's requests for documents from the White House are unnecessary. Your duty to respond to the Committee's subpoenas, however, is not satisfied by the production of documents by other Executive Branch agencies. None of the documents produced by DOE, the Office of Management and Budget (OMB), or the Department of the Treasury has allowed the Committee to answer some of the fundamental questions regarding the Solyndra loan guarantee. For example:

1. What was the extent of the White House's involvement in the restructuring of the Solyndra loan guarantee in late 2010 and early 2011 (and the related subordination of the taxpayer's money to two private investors)? Was the White House aware that OMB and Treasury had questioned the advisability of the restructuring?
2. Who instructed Solyndra to delay its announcement of job layoffs until after the 2010 midterm elections? Who made the decision that such a directive should be given to Solyndra? What was the extent of the White House's involvement in the discussion relating to that issue?
3. Solyndra was a small company, and just one of the twenty-seven companies that received a loan guarantee under the Section 1705 program at DOE. Why did this particular company receive so much attention from the White House, including discussions by many of the most senior advisors to the President? How did this high level of White House attention affect the management of the 1705 loan guarantee program?
4. What factors contributed to the White House's decision to go forward with a presidential visit to Solyndra's manufacturing facilities in May 2010, shortly after the company's worsening financial condition was made public in an Amended S-1 statement, and in the midst of efforts by the company to raise capital?

These are important questions that still have not been answered simply because the Administration has continued to stonewall our inquiry. Frankly, our patience is at an end. These unanswered questions go to the heart of the Committee's constitutionally mandated oversight responsibilities. Only documents and information currently in the possession of the White House will allow the Committee to fully answer these questions. Without this information, the Committee cannot complete its investigation. Further, your office's failure to comply with the Committee's requests will prevent both Congress and the Executive Branch from learning lessons that might improve the operations of the DOE Loan Guarantee Program, prevent further losses of taxpayer money, and inform the drafting of legislation that will address these matters.

Throughout our negotiations, the Committee has done its best to accommodate your concerns while also being mindful of our duty under the Constitution to conduct oversight. We appreciate that your office finally agreed on January 23, 2012, to conduct a search for the eleven narrowed document categories that Committee staff provided to you on December 12, without further revision or restriction on your part. However, rather than commence a search for all materials responsive to the eleven categories, your office proposed to search one category at a time beginning with the first category — documents relating to the conditional commitment. After agreeing to search for those materials on January 23, it took you nearly two weeks to provide approximately 300 pages of responsive materials for just one of the eleven categories of document requests. Your offices have also failed to propose any specific production schedule for the remaining ten categories of documents.

We simply will not allow the White House to endlessly delay its response to duly authorized subpoenas. The Committee has been investigating the Solyndra loan guarantee for almost one year. You have been aware of the Committee's requests for White House documents relating to the Solyndra loan guarantee for at least the last five months, and were involved in coordinating the response of the various Executive Branch agencies well before that. Your offices have already identified the appropriate White House staff whose work related to the Solyndra loan guarantee and who may possess responsive documents. In the three months since the subpoenas were served, the White House has had more than enough time to complete a meaningful search for, and production of, documents responsive to the Committee's requests.

An attachment to this letter sets forth in greater detail the comprehensive history of the Committee's negotiations with you relating to the Solyndra investigation. Together with the events we have described in this letter, this chronology demonstrates to us that the White House's efforts thus far have been dedicated primarily to delaying the Committee's investigation.

Unfortunately, relevant and duly subpoenaed documents are not the only information you are denying to Congress. OMB and the White House have thus far refused to make certain OMB employees available to the Committee in any forum, including hearings. This refusal has obstructed the Committee's ability to carry out its oversight function. While OMB initially claimed that it is "OMB policy" to provide only "supervisory" OMB personnel for interviews or as witnesses in Congressional hearings, OMB subsequently admitted that no such formal policy exists.

OMB instead offered interviews with two OMB staff members who had supervised the individuals whom the Committee had sought to interview. OMB represented that these two supervisors would be able to answer all of the Committee's questions about the agency's review of Solyndra. The Committee thus accepted OMB's offer. Unfortunately, the two supervisory employees were unable to answer the vast majority of the Committee's questions. In short, these interviews were

a poor substitute for interviews with the individuals who performed the underlying work on the Solyndra loan guarantee. Again, if there is nothing to hide, you should not have a problem allowing Committee staff to interview this small number of crucial witnesses.

For these reasons, we request that you make available certain staff in the Executive Office of the President who were involved in reviewing and monitoring the Solyndra loan guarantee and its restructuring, for interviews to be conducted by Committee staff. The names of the requested witnesses, which include three OMB employees and two White House employees, are as follows: (1) Kevin Carroll; (2) Kelly Colyar; (3) Fouad Saad; (4) Heather Zichal; and (5) Aditya Kumar. If OMB does not agree by February 17, 2012, to provide the aforementioned individuals for staff interviews, the Committee will convene a business meeting on that day to authorize the issuance of subpoenas to these individuals for their testimony in a hearing before the Subcommittee on Oversight and Investigations.

Likewise, for the reasons stated in this letter, all documents responsive to the Committee's December 12, 2011, list of prioritized document categories must be produced no later than 12:00 p.m. on February 21, 2012.

To date, you have not asserted executive privilege, so we assume this is not the basis for withholding materials responsive to the Committee's subpoenas. Vague assertions that the Committee's requests "implicate longstanding Executive Branch institutional interests," are not valid reasons for withholding responsive documents from the Committee. If you intend to claim executive privilege, or any other privilege with respect to any responsive documents, you must explicitly make such an assertion and produce a privilege log to the Committee on February 21, 2012.

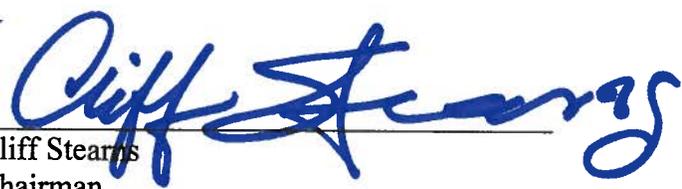
Without your complete compliance with the subpoenas by February 21, you will compel us to pursue all options available to the Committee under its rules and the rules of the United States House of Representatives to address such obstructive behavior. We are fully prepared to do so.

Please do not hesitate to contact Committee staff with any questions about this letter.

Sincerely,



Fred Upton  
Chairman



Cliff Stearns  
Chairman  
Subcommittee on Oversight and Investigations



Joe Barton  
Chairman Emeritus



Paul Ryan

Eric Bickel

Phil King

John F. King

Steve Scalise

Tim Murphy

Garth Blackburn

Tom Graves

Sue Myrick

K. Morgan Luttrell

Attachments

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member  
Subcommittee on Oversight and Investigations

**List of Signatories**

Fred Upton  
Joe Barton  
Michael C. Burgess  
Phil Gingrey  
Steve Scalise  
Marsha Blackburn  
Sue Myrick

Cliff Stearns  
Lee Terry  
Brian Bilbray  
John Sullivan  
Tim Murphy  
Cory Gardner  
H. Morgan Griffith

## ATTACHMENT A

### PROPOSED PRIORITIZATION OF DOCUMENT REQUESTS<sup>i</sup>

#### Categories of Documents<sup>ii</sup>

1. All documents referring or relating to the conditional loan commitment to Solyndra **(I, II, III)**.
2. All documents referring or relating to the closing of the Solyndra loan guarantee. **(III)**
3. All documents referring or relating to the restructuring and/or subordination of the Solyndra loan guarantee **(IV)**.
4. All documents referring or relating to government contracts for Solyndra, or to Solyndra's applications for, or potential applications for, government contracts.
5. All documents referring or relating to Solyndra's announcements of job layoffs.
6. All documents referring or relating to Solyndra's plans for an initial public offering, or to the cancellation of an initial public offering by Solyndra **(IV)**.
7. All documents referring or relating to Solyndra's Amended S-1 filing (filed March 16, 2010), and auditor's report by PricewaterhouseCoopers of March 2010.
8. All documents referring or relating to Solyndra and the October 25, 2010, memorandum to the President from Ron Klain, Carol Browner, and Lawrence Summers **(II, III, IV)**.
9. All documents referring or relating to Solyndra's September 6, 2011, Chapter 11 bankruptcy filing **(IV)**.
10. All documents referring or relating to Solyndra investors, including Mr. George Kaiser **(I)**.
11. All documents produced or otherwise made available to Mr. Herb Allison as he conducts the 60-day review of the Loan Guarantee Program.
12. Custodians of documents. At a minimum, the search for responsive documents should include the following custodians, in addition to any other relevant custodians known to the White House.
  - a. Office of the Chief of Staff
    - i. Peter Rouse
    - ii. William "Bill" Daley
    - iii. Rahm Emanuel
    - iv. Aditya Kumar
  - b. Offices of the Deputy Chiefs of Staff for Policy
    - i. Nancy-Ann DeParle (Policy)
    - ii. Alyssa Mastromonaco
    - iii. Jim Messina (Operations)

- a. Office of the Vice President
  - i. Terrell McSweeney
  - ii. Elizabeth Oxhorn
  - iii. Ron Klain
  - iv. Bruce Reed
- b. National Economic Council
  - i. Lawrence Summers
  - ii. Gene Sperling
  - iii. Jason Furman
  - iv. Scott Buckhout
  - v. Matthew Vogel
  - vi. Christine Kornonide
  - vii. Jacob Leibenluft
  - viii. Brian Deese
- c. Office of Climate Change and Energy Policy
  - i. Carol Browner
  - ii. Heather Zichal
  - iii. Gregory Nelson
  - iv. Joseph Aldy
  - v. Dan Utech
  - vi. Nathaniel (Nat) Keohane
- d. Office of Public Engagement
  - i. Valerie Jarrett
- e. Office of Science and Technology Policy
  - i. John Holdren
  - ii. Tom Kalil
  - iii. Phil Larson

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<sup>i</sup> The Committee on Energy and Commerce reserves all rights to documents requested by the Committee's November 3, 2011, subpoena as currently worded.

<sup>ii</sup> Code corresponding to the categories of documents defined by the White House Counsel's Office:

- I: The influence of campaign contributions on the decision whether or not to grant or restructure the Solyndra loan guarantee
- II: Involvement by the White House in the decision whether or not to make a conditional commitment to Solyndra for its loan guarantee
- III: Involvement by the White House in the decision whether or not to close the Solyndra loan guarantee
- IV: Involvement by the White House in the decision to subordinate the government's interest as part of the restructuring of the Solyndra loan guarantee



# THE COMMITTEE ON ENERGY AND COMMERCE

## INTERNAL MEMORANDUM

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TO: Fred Upton, Chairman

FROM: Committee Majority Staff

RE: Update on White House's Failure to Comply with the Committee's  
November 3, 2011, Subpoenas

You have asked Committee staff to set forth in a memorandum the chronology of the Committee's negotiations with the Office of the White House Counsel to obtain documents relating to the loan guarantee issued to Solyndra, Inc. (Solyndra) by the Department of Energy (DOE) and the current status of those negotiations.

### *I. White House Involvement in the Solyndra Loan Guarantee*

One important goal of the Committee's investigation is understanding the nature and extent of the involvement of the White House and the various federal agencies in the review, approval, and monitoring of the Solyndra loan guarantee and its subsequent restructuring. The Committee has proceeded deliberately on this point. The Committee first issued a document request to DOE on February 17, 2011, in order to understand DOE's role with respect to the review of the Solyndra loan guarantee application and the restructuring.

The Committee followed this letter with a document request to the Office of Management and Budget (OMB) on March 14, 2011, as OMB plays a critical role in reviewing the credit subsidy costs associated with the DOE loan guarantees. Ultimately, the Committee was forced to issue a subpoena to OMB in July 2011 after that agency refused to produce any communications relating to Solyndra. OMB has also refused to grant the Committee any access to certain OMB staff who worked closely on the Solyndra loan guarantee.

The Committee has also sent document requests to other parties who played a role in the Solyndra loan guarantee, including certain Solyndra investors such as Argonaut Ventures I (Argonaut), Madrone Capital Partners (Madrone); the Department of the Treasury; the General Services Administration; the Department of Defense; and DOE's independent consultants on the Solyndra loan guarantee, R.W. Beck. During the course of the Solyndra investigation, Committee staff has convened numerous briefings and conducted interviews of several witnesses.

Information gathered during the course of the Committee's investigation demonstrates that the White House has been involved in the Solyndra loan guarantee throughout its lifetime, even though the White House does not have a statutory role under the Energy Policy Act in the review, approval, or monitoring of DOE loan guarantees. The White House's involvement in matters relating to the Solyndra loan guarantee is a critical question in this investigation, where the various federal agencies charged with reviewing the loan guarantee repeatedly raised questions and concerns with DOE and with the White House regarding Solyndra and the loan guarantee review process. Moreover, our investigation has revealed that Treasury was deliberately left out of the decision-making process, which is a violation of the Energy Policy Act and its regulations. Finally, our investigation has shown that DOE ignored Treasury's recommendation to consult the Department of Justice with regard to its decision to subordinate its interest in the loan guarantee to two of Solyndra's investors.

The documents and information provided to the Committee raise several key questions about the circumstances surrounding the White House's involvement in the Solyndra loan guarantee. These questions have not yet been answered or addressed by the documents provided by the White House or by the other federal agencies to which the Committee has directed document requests. We describe some of the most important open questions below:

1. Shortly after the loan guarantee closed in September 2009, Solyndra began experiencing severe financial problems which were made public in an auditor's letter included as part of the company's Amended S-1 statement filed on March 16, 2010. In anticipation of President Obama's scheduled visit to Solyndra in May 2010, senior White House advisors, including Valerie Jarrett and Ron Klain, discussed the financial condition of the company and the wisdom of going forward with the President's visit.

This visit came at a critical juncture for Solyndra, as it was attempting to raise \$175 million in capital from existing investors due to the cancellation of its initial public offering, which had been planned for June 2010. In addition, during this time, OMB and Treasury staffs were discussing their concerns about the company's financial position and DOE's ability to monitor the company. What documents and information does the White House have in its possession regarding this issue? Why did the White House decide to press forward with this event, and what information was the White House provided about the company's financial position? What impact did the fact that the company's largest investor was also a contributor to the President play in the White House decision to go forward with the visit to the Solyndra plant?

2. By October 2010, Solyndra informed DOE that if its loan guarantee was not restructured, the company would run out of cash by the end of the year. On October 26, 2010, the Chief of Staff to DOE Secretary Steven Chu informed Carol Browner, Director of the White House Office of Energy and Climate Change Policy, that Solyndra was planning to announce the layoff of approximately 200 employees. Staff in the White House Office of Energy and Climate Change Policy spoke to Secretary Chu's Chief of Staff, and by the following morning, a decision had been made to postpone the announcement. Emails produced to the Committee by a Solyndra investor state that DOE directed Solyndra to

postpone the layoff announcement until after the 2010 midterm elections. What documents and information does the White House have in its possession regarding this issue? What was the extent of White House involvement in the discussion regarding this issue?

3. Documents produced to the Committee show that the White House was involved in DOE's negotiations and decision to restructure the loan guarantee agreement. An email from a White House staffer in the Office of Energy and Climate Change Policy dated August 12, 2011, recounted the events surrounding the restructuring and stated that "[a]t the time, [White House] (our shop, OMB, NEC) reluctantly went with DOE's course of action to embrace the restructuring." What other documents and information does the White House have in its possession regarding the restructuring and subordination of the loan guarantee? What was the White House's role? When was the White House involved? What information was it provided, and what factors did it consider when approving DOE's course of action, even though Treasury and OMB raised serious concerns about the restructuring?
4. The largest investor in Solyndra was also a major financial contributor to the President who visited the White House numerous times during the time periods in which Solyndra's loan application was under review and being monitored. When first questioned about this relationship by the press, both the investor/contributor and the White House claimed that they had never discussed Solyndra. When emails subsequently came to light which demonstrated that Solyndra had been discussed at a meeting between the investor/contributor and staff for the Vice President, the investor/contributor and the White House altered their response. In the altered response, the White House claimed that while Solyndra had in fact been discussed with the investor/contributor in the White House, those discussions had no effect on the Administration's handling of the Solyndra loan guarantee. What other documents and information is in the possession of the White House regarding this investor/contributor? Was this relationship with Solyndra's investor a factor in the White House decisions to go forward with appearances and trips to Solyndra's facilities by Secretary Chu, Vice President Biden and President Obama and to support the restructuring and subordination of the Solyndra loan guarantee?

## ***II. The Committee's Document Requests to the White House***

On September 1, 2011, the Committee sent its first document request to the White House, seeking certain communications between Solyndra or its investors and the White House. The Committee's request was focused on those communications in order to examine a particular question raised by the Committee's investigation: whether the fact that certain Solyndra investors were also donors to the President had played any role in the Solyndra loan guarantee. At the request of the White House Counsel's office, the Committee provided the White House with a list of investment firms which had invested in Solyndra and officials at those firms, in order to assist the White House in its search.

Only after the September 1, 2011, letter was sent to the White House did the Committee receive additional documents from DOE and OMB that showed close White House involvement and monitoring of the review of the Solyndra loan guarantee application by senior White House advisors such as Ron Klain, Valerie Jarrett, and Rahm Emanuel. For this reason, the Committee sent a second document request to the White House on October 5, 2011, requesting internal White House documents and communications relating to the Solyndra loan guarantee.

The Committee's October 5, 2011, letter specifically requested that the White House Counsel contact the Committee to discuss a schedule for production, so that staff for the Committee and the White House Counsel could begin a productive discussion about the Committee's requests. The White House Counsel, however, never contacted Committee staff. Instead, the White House Counsel sent a letter dated October 14, 2011, stating that the Committee's request "implicates longstanding and significant institutional Executive Branch confidentiality interests" and explained that document productions from DOE, OMB, and the Department of the Treasury should "satisfy the Committee's stated objective" in understanding the White House's role in the Solyndra loan guarantee. This letter did not indicate whether the White House had conducted any searches for information or documents in response to the Committee's request, and the White House did not claim executive privilege or cite any other justification for refusing to produce the information the Committee requested.

In an effort to engage in a discussion with the White House, the Committee sent a second letter to the White House Counsel on October 18, 2011, to reiterate its willingness to work on a schedule for production and again asked that the White House Counsel contact Committee staff to discuss the document request. No one from the White House contacted the Committee. Rather, the White House Counsel sent another letter on October 25, 2011, stating that the Administration "will continue to cooperate with legitimate Congressional requests for information," and noting that the "accommodation process" between the executive and legislative branches "requires that both branches work to accommodate each other's needs and interests." This letter provided no information about the quantity or type of documents in possession of the White House, and did not explain what specific steps should be taken as part of the "accommodation process."

In an attempt to move the investigation forward, Committee staff contacted the White House legislative affairs staff on October 27, 2011, to try to schedule a call with the White House Counsel's office to discuss the Committee's request. The call was never returned. Chairman Fred Upton then called White House Chief of Staff William Daley that same day to ask that the White House Counsel's office contact Committee staff to discuss the document requests. Once again, no one contacted Committee staff.

### *III. The Committee's Subpoenas*

After trying — and failing — to engage the White House Counsel in a discussion about the Committee's document requests, on November 1, 2011, the Committee scheduled a business meeting for November 3, 2011, to consider authorizing the issuance of subpoenas to the

Executive Office of the President and the Office of the Vice President on the Solyndra matter. With this, a meeting finally took place on November 2, 2011, between the White House Counsel, members of the White House Counsel's office, Chairman Upton, Oversight Subcommittee Chairman Cliff Stearns, Ranking Member Henry Waxman, Oversight Subcommittee Ranking Member Diana DeGette, and Committee staff.

At that meeting, Chairman Upton noted that the Committee was sensitive to the President's concerns about the confidentiality of his personal communications. Chairman Upton explained that the Committee was willing to discuss reasonable accommodations if the White House would engage in a conversation with the Committee regarding the scope and nature of the documents in the Counsel's possession. In turn, the White House Counsel acknowledged that the Committee's investigation of the Solyndra loan guarantee was legitimate, but that the White House was concerned with the "breadth" of the Committee's request.

In order to engage in a discussion about how to target or prioritize the Committee's request, Committee staff asked the White House Counsel about the volume and type of responsive documents in her possession. The White House Counsel indicated that she would not engage in a discussion of that "granularity." Rather, the White House Counsel stated that Committee staff must first narrow the Committee's document requests in the absence of that information. Committee staff explained that it was impossible to properly narrow the Committee's requests without basic information about which White House officials were involved and the volume of Solyndra-related documents they possessed — information which was solely within the possession of the White House.

Committee staff had two more conversations with White House Counsel's office staff on November 2, 2011, relating to the Committee's requests. During those discussions, the staff of the White House Counsel refused to answer any questions regarding the type or quantity of documents in the White House's possession, or the scope of the White House's search for responsive documents. Instead, the White House Counsel's office staff proposed narrowing the Committee's October 5, 2011, request to four categories. Committee staff asked that the White House share its proposed language by 4:30 p.m. that afternoon, in time for a meeting of the Members on the Subcommittee on Oversight and Investigations, so that the Members could consider this language and determine whether to go forward with the business meeting scheduled for the following day. The White House's proposal for narrowing the Committee's document request arrived two hours after the meeting of Subcommittee Members. In the absence of such language, the Subcommittee Members decided to proceed with the business meeting on November 3, 2011.

At the business meeting, the Subcommittee on Oversight and Investigations voted to authorize the issuance of two subpoenas to White House Chief of Staff Bill Daley and Vice President Joseph Biden's Chief of Staff Bruce Reed, or the appropriate custodians of records, for documents relating to the Solyndra loan guarantee. Committee staff incorporated a significant amount of the White House's proposed language into the document requests contained in the subpoena. The subpoenas were served that evening. The subpoenas set a document production deadline of noon on November 10, 2011.

#### ***IV. The White House's Response to the Committee's Subpoenas***

Following the issuance of the subpoenas, the Committee did not hear from the White House Counsel's office. On November 9, 2011, the Committee Chairman and Subcommittee Chairman Stearns sent a letter to the White House Counsel asking whether she had conducted a review of the White House's involvement in the Solyndra loan guarantee in order to determine the quantity and type of documents that existed and were responsive to the Committee's subpoenas. The Committee also indicated that the chairmen and the Committee staff remained willing to engage in further discussions regarding the Committee's requests.

On November 10, 2011, White House Counsel's office staff contacted Committee staff and stated that the White House Counsel would be sending a letter that day with some responsive materials. That letter, dated November 11, 2011, and 136 pages of documents revealed that the White House had not conducted a search for the documents as requested in the Committee's subpoenas. Instead, the White House Counsel unilaterally devised four different categories of documents that the White House would produce, using language that ensured that only a small amount of documents would fall into those categories. The White House Counsel did so without consulting Committee staff, even though Committee staff had stated prior to the business meeting that, should a subpoena be issued, the Committee staff remained willing to discuss production issues with the White House staff.

According to the White House Counsel's November 10 letter, the White House could not find any documents responsive to three of the four categories it had defined. The documents that the White House did produce contained notable gaps. For instance, the White House did not produce or otherwise make available any documents from the time period in which DOE was negotiating with Solyndra's investors to restructure the Solyndra loan guarantee, even though certain documents made available in an *in camera* review indicated that White House staff had monitored the situation and agreed to the restructuring. Nonetheless, the White House Counsel stated that this production would "satisfy any legitimate interest of the Committee."

The Committee Chairman and Subcommittee Chairman sent the White House Counsel a letter on December 1, 2011, expressing the Committee's concerns about the manner in which the White House had unilaterally narrowed the Committee's document requests as set forth in the November 3, 2011, subpoenas, and again asked that the White House Counsel contact Committee staff no later than December 2, 2011, to discuss the White House's response to the Committee's subpoenas. Once again, the White House failed to do so. Instead, at Chairman Upton's direction, Committee staff called the White House Counsel's office on December 5, 2011, to inquire as to the reasons for the White House's failure to respond. Committee staff was told that "the White House is a busy place" and that the White House would respond at some point in the future.

On December 6, 2011, the White House Counsel sent a letter to the Committee acknowledging for the first time that the White House possessed internal communications

relating to Solyndra that it had not produced. Without providing any information about these materials aside from the fact that some of them were press clippings, the White House Counsel maintained that these documents were "not tied to the Committee's legitimate oversight interests." The White House Counsel did not explain the White House's understanding of the Committee's "legitimate oversight interests," nor did the letter describe why the White House found Committee staff's repeated descriptions of the Committee's interests and the purpose of the Solyndra investigation to be inadequate. The letter did indicate, however, that the White House Counsel's office was "willing to move the discussion forward in a productive manner to the extent that any legitimate issues remain," and asked Committee staff to contact the White House Counsel. The Committee staff's efforts to do just that had largely been rebuffed or ignored by the White House in the two months since the Committee sent its October 5, 2011, document request. As legitimate issues remained, however, that had not been addressed by the White House's November 11, 2011, production of documents, the Chairman directed Committee staff to try again to engage in discussions with the White House.

#### *V. The Committee's Submission of Prioritized Categories of Documents*

On December 8, 2011, Committee staff and staff from the White House Counsel's office held a conference call to discuss a path forward. Committee staff indicated during that call, as we had indicated prior to the issuance of the subpoenas, that the Committee was willing to prioritize certain substantive categories for production to assist the White House in its search. In turn, to assist the Committee in identifying these categories, Committee staff asked for basic information regarding the documents in the possession of the White House relating to Solyndra and assurances about the search the White House had conducted for this information. As before, the White House Counsel refused to accommodate the Committee's request for this information.

On December 12, 2011, at the request of the White House, Committee staff met with staff from the White House Counsel's office at the Eisenhower Executive Office Building. Pursuant to the White House's request that the Committee identify substantive areas of concern, Committee staff provided a list of eleven prioritized document categories to the White House Counsel's office. Committee staff spent considerable time with White House staff explaining why it had identified these eleven categories, how they were relevant to the Committee's investigation, and the Committee's outstanding questions about the White House's involvement in the Solyndra loan guarantee. The Deputy White House Counsel acknowledged that the categories the Committee had identified were "substantive," although the White House Counsel staff continued to assert that even these narrowed categories were "overbroad," albeit without articulating why they believed that to be so. In addition, staff for the White House Counsel provided some information about which offices it had searched, but did not provide any information about the responsive documents that had been identified and were in the possession of the White House. At the conclusion of the meeting, staff from the White House Counsel's office requested additional time to review the Committee's prioritized list, and agreed to contact Committee staff no later than December 15, 2011, to let the Committee know whether it would conduct a search for documents relating to the eleven categories.

On December 15, 2011, staff from the White House Counsel's office indicated that they had not had sufficient time to discuss or review the Committee's prioritized list. Committee staff requested a phone call on December 16 to receive an update on the White House's progress, but was informed that the White House would not be in a position to discuss the Committee's prioritized document categories until December 19. During the call on December 19, the White House Counsel's office staff stated that they had "given some thought" to the Committee's categories, "but were not as far along" as they had hoped to be. Staff from the White House Counsel's office indicated that they would begin to conduct searches for four of the eleven document categories identified by the Committee, but they needed additional time to consider the Committee's prioritized categories relating to the conditional commitment to Solyndra, the closing of the loan guarantee, and its restructuring. White House Counsel's office staff stated that they would follow up with the Committee in one week regarding those requests.

Accordingly, on December 22, 2011, Committee staff contacted the White House to schedule a call for December 27 to discuss the White House response to the Committee's prioritized requests. White House Counsel's office staff informed Committee staff that no one from their office was available for a call to discuss the Committee's prioritized requests due to holiday vacation schedules. Committee staff contacted the White House Counsel's office on January 1, 2012, and stated that the White House's continued delay in responding to the Committee's narrowed document requests suggested that the White House was not making a good faith effort to comply with the subpoenas (Attachment 1).

On January 5, 2012, Committee staff again participated in a conference call to discuss the White House's response to the prioritized document categories that the Committee had provided three weeks before. During the course of the call, Committee staff informed the White House Counsel's office that staff was concerned that the White House was attempting to further improperly narrow, or redefine, the prioritized document categories the Committee had provided on December 12. Committee staff, therefore, requested that the White House Counsel describe in a cover letter accompanying the document production the kinds of searches the White House had conducted, and how they differed from the Committee's prioritized document categories. Staff from the White House Counsel's office agreed to do so, and stated that the White House would produce additional documents responsive to the Committee's prioritized document categories no later than January 13, 2012. White House Counsel's office staff further explained that this production would include only email communications, as the search for responsive paper documents was a "different process."

#### ***VI. White House Production of Documents Responsive to the Committee's Prioritized Categories of Documents***

On January 13, 2012, the White House produced an additional 66 pages of documents in response to the Committee's prioritized categories of documents. In the letter accompanying the production, the White House Counsel maintained that even the Committee's prioritized categories of documents were somehow "overbroad," and "unreasonably intrude[s] on

longstanding institutional interests of the White House," Although, once again, the White House Counsel did not explain why.

The White House's January 13 letter revealed that it had once again substantially redefined and unilaterally limited even the Committee's narrowed categories of document requests. Like the November 11, 2011, production, the documents in this production provided little information about the White House's review or involvement in the Solyndra loan guarantee, or other questions central to the Committee's investigation. Approximately half of the production was copies of the same email and attachment — a Daily Recovery Act Memo dated March 6, 2009 — reproduced multiple times to show who had received the memo. The bulk of the remaining documents related to the decision to postpone the announcement of Solyndra job layoffs in October 2010 until after the midterm elections. While these documents provide some information about who was informed of the upcoming announcement, they do not indicate how the decision to postpone the announcement came about, or how the White House was involved in that issue. It seems clear that the White House possesses other documents regarding this important issue.

After reviewing the White House's January 13, 2012, letter, and the related documents, the Committee was concerned that the White House had once again sharply limited its searches in a way that would necessarily exclude responsive information about its involvement in events related to the Solyndra loan guarantee. For this reason, the Committee Chairman directed Committee staff to contact the White House Counsel to discuss the White House's search for responsive materials, especially with regard to documents relating to the restructuring of the Solyndra loan. With regard to those documents, the Committee had requested that the White House search for "[a]ll documents referring or relating to the restructuring and/or subordination of the Solyndra loan guarantee. In the White House's letter, the White House Counsel explained that the White House had limited this category to "[e]mails regarding the decision-making whether or not to restructure the Solyndra loan guarantee and/or subordinate the government's interest, dated prior to the signing of the restructured loan on February 23, 2011."

During the January 19 call, White House Counsel's office staff explained that while DOE had approved the restructuring, the "White House had voiced concerns about the advisability" of doing so. Yet, the White House has provided no documents to substantiate this point, or any other documents that show what information the White House had considered or had been provided about the restructuring. Indeed, the only White House document that Committee staff has seen regarding this point indicates the exact opposite — that the White House approved the restructuring and subordination (as related above, the White House has refused to produce this document). This is a significant matter in our investigation, as OMB and Treasury had expressed strong concerns about DOE's decision to restructure the loan guarantee. Any White House involvement in the face of disagreement among Executive Branch agencies about the wisdom of proceeding with the restructuring is critical to the Committee's understanding of the facts and circumstances surrounding the Solyndra loan guarantee, as well as the processes and management of the DOE loan guarantee program generally.

After further discussing the document request category relating to restructuring, and the other ways in which the White House had improperly limited the Committee's prioritized document categories, Committee staff again requested that the White House search for documents based on the document request categories the Committee provided to the White House Counsel in December 2011. Committee staff explained that if the White House had objections to doing so, the White House Counsel's office needed to explain with particularity why these requests were not appropriate beyond blanket assertions that they were "extremely overbroad." Committee staff asked the White House Counsel's office to provide an answer to the Committee's request no later than January 23, 2012.

During a January 23, 2012, conference call, staff from the White House Counsel's office informed Committee staff that the White House Counsel had agreed to conduct searches for materials responsive to the eleven prioritized document categories as defined by the Committee on December 12, 2011, adding that they would need one week to consider how to conduct these searches. Committee staff and staff from the White House Counsel's office agreed to talk again on January 30, 2012.

On January 25, 2012, Committee staff contacted staff from the White House Counsel's office to inform them of a meeting of the Republican Members on the Committee on February 1, 2012, to discuss the status of the White House's response to the Committee's subpoenas and document request. Committee staff stated that it was the preference of the Committee to receive materials responsive to the subpoenas ahead of this meeting. The White House Counsel's office staff acknowledged the Committee's request, but did not commit to doing so.

On January 30, 2012, Committee staff and staff from the White House Counsel's office participated in a conference call to discuss a schedule for production. The White House Counsel's office staff stated that in the intervening week, it had focused its efforts and searches on only the first of the eleven categories identified by Committee staff on December 12, 2011: the documents referring or relating to the conditional commitment to Solyndra. Staff from the White House Counsel's office stated that they would make a production of materials relating to this category no later than February 3, 2012; however, certain documents in this category presented "unique concerns." For example, the White House's search identified multiple ARRA reports that contained information about the conditional commitment for Solyndra. To accommodate the White House Counsel's office's concern that producing each of these reports would be too burdensome, Committee staff proposed that the White House provide only those pages that referenced Solyndra. In a February 1, 2012, email to Committee staff, staff from the White House Counsel's office agreed to the Committee's proposed accommodation, and stated that the White House would provide the report pages by the end of the week. Finally, the White House Counsel's office staff stated that, once the White House had produced documents relating to the Solyndra conditional commitment, it would then move on to conducting searches for the remaining ten categories. Committee staff related to the White House Counsel's office its concern, and the concern of the Committee Members, that the White House must produce responsive documents more quickly.

On February 3, 2012, the White House produced just over 300 pages of documents. In the production cover letter, the White House Counsel stated that the White House remained "willing" to search for documents responsive to the eleven, narrowed categories Committee staff presented on December 12, although the White House Counsel continued to assert that the Committee's requests are overly broad. Once again, the White House Counsel did not explain why, even after agreeing to search for these categories of documents, the White House considered the request to be overly broad. In addition, the White House Counsel noted that the White House had withheld some documents from production due to "long-standing Executive Branch institutional interests," although the White House Counsel did not claim executive privilege for these documents.

----- Original Message -----

From: Harrison, Todd

Sent: Sunday, January 01, 2012 06:26 PM

To: 'Edward\_N\_Siskel' [REDACTED]

Cc: Christian, Karen

Subject: Subpoena response

Ed:

In response to your last email, we will call you on January 5 at 11 am. However, we must warn you that this further delay clearly indicates to us that the White House Counsel's Office is not making a good faith effort to comply with the Committee's subpoena.

On Monday, December 12, at your request, we handed you a narrowed list of document requests for you to focus on and prioritise. The list represented an effort, on our part, to target our requests in order to assist you in your search. We reviewed the entire list with you during our meeting on that day. You then stated that you needed to discuss it internally. We told you that we needed an answer as to whether you would agree to conduct a search for those narrowed requests for documents as soon as possible, but no later than Thursday, December 15.

On Friday, December 16, you left us a voicemail stating that the White House Counsel's Office hadn't had time to review our list, and wouldn't be ready to discuss the list until the following week. We then had a conference call on Monday, December 19. At that meeting you said that the White House Counsel's Office still had not had enough time to fully review the list.

It is clear that your strategy is simply to delay our discussions as long as possible. The White House Counsel's Office could have, and should have, reviewed the Committee's list and given the Committee an answer within one day. Assuming that you actually give us a final answer on January 5, you will have taken nearly one month to review the list (which we submitted at your request). This is not acting in good faith.

Your response to our narrowed list of document request categories also indicates to us that you are not acting in good faith. As mentioned above, during our meeting on December 12, we reviewed the Committee's list of prioritised document requests with you. For some of the document request categories, you asked us to further explain our basis for asking for such categories of documents. In an effort to accommodate you, at times in our response we referred to specific emails already in our possession. We did this at your request, in a good faith effort to help you understand the categories of documents that we were looking for. During our conference call on December 19, however, in reference to one of our document request categories, you stated that you would only produce documents directly related to a specific email we had cited on December 12, rather than producing all of the responsive documents in that category. In other words, after we submitted the prioritised list of document requests to you (at your request) and then engaged in discussions with you in which we fully described our reasons for requesting such documents and provided you with specific examples of emails already in our possession, you are now attempting to use our good faith efforts against us by producing only documents directly related to a specific email that we discussed with you as an illustrative example. This

is not acting in good faith, and we request that you reconsider your position in advance of our conference call on January 5.

In addition, in the face of all of our good faith efforts to explain to you what we are looking for and why, you have steadfastly refused to give us any of the basic information that we have requested, such as information relating to the scope of your search for documents or the quantity and type of documents in your possession. This is also unacceptable and, once again, we ask you to reconsider your decision prior to our conference call on January 5.

Sincerely, Todd Harrison

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Todd Harrison  
Chief Counsel  
Oversight and Investigations  
Energy and Commerce Committee  
U.S. House of Representatives  
[REDACTED]