

[DISCUSSION DRAFT]

JULY 16, 2012

112TH CONGRESS
2D SESSION

H. R. _____

To limit further taxpayer exposure from the loan guarantee program established under title XVII of the Energy Policy Act of 2005.

IN THE HOUSE OF REPRESENTATIVES

Mr. UPTON introduced the following bill; which was referred to the Committee on _____

A BILL

To limit further taxpayer exposure from the loan guarantee program established under title XVII of the Energy Policy Act of 2005.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “No More Solyndras
5 Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress makes the following findings:

1 (1) President Obama took office amidst a weak
2 economy and high unemployment, yet he remained
3 committed to advancing an expansive “green jobs”
4 agenda that received substantial funding with the
5 passage of the American Recovery and Reinvestment
6 Act of 2009, commonly known as the stimulus pack-
7 age.

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

13 (3) Such title XVII authorized the Secretary of
14 Energy to issue loan guarantees for projects that
15 avoid, reduce, or sequester air pollutants or green-
16 house gases and employ new or significantly im-
17 proved technologies compared with commercial tech-
18 nologies in service at the time the guarantee is
19 issued.

20 (4) Loan guarantees issued under such title
21 XVII were required to provide a reasonable prospect
22 of repayment and were expressly required to be sub-
23 ject to the condition that the obligation is not subor-
24 dinate to other financing.

1 (5) The stimulus package expanded such title
2 XVII by adding section 1705 to include projects that
3 use commercial technology for renewable energy sys-
4 tems, electric power transmission systems, and lead-
5 ing-edge biofuels projects and by appropriating
6 \$6,000,000,000 in funding to pay the credit subsidy
7 costs for section 1705 loan guarantees for projects
8 that commence construction no later than September
9 30, 2011.

10 (6) The Department of Energy, since the enact-
11 ment of the stimulus package, has issued loan guar-
12 antees under such title XVII for 28 projects totaling
13 \$15,100,000,000 under the section 1705 program,
14 and, according to the Government Accountability Of-
15 fice, issued conditional loan guarantees for four
16 projects totaling \$4,400,000,000 under the section
17 1705 program and four projects totaling
18 \$10,600,000,000 under the section 1703 program.

19 (7) Three of the first five companies that re-
20 ceived section 1705 loan guarantees for their
21 projects, Solyndra, Inc., Beacon Power Corporation,
22 and Abound Solar, Inc., have declared bankruptcy.

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

1 (9) The investigation of the Solyndra loan guar-
2 antee by the Committee on Energy and Commerce
3 has demonstrated that the review in 2009 of the
4 Solyndra application by the Department of Energy
5 and the Office of Management and Budget was driv-
6 en by politics and ideology and divorced from eco-
7 nomic reality where the Department of Energy ig-
8 nored concerns about the company's financial condi-
9 tion and market for its products.

10 (10) Despite an express provision in such title
11 XVII prohibiting subordination of the United States
12 taxpayers' financial interest, the Department of En-
13 ergy restructured the Solyndra loan guarantee in
14 February 2011, resulting in the taxpayers losing pri-
15 ority to Solyndra's investors in the event of a de-
16 fault.

17 (11) The Inspector General of the Department
18 of the Treasury concluded that it was unclear wheth-
19 er the Department of Energy's consultation require-
20 ment with the Secretary of the Treasury on the
21 Solyndra loan guarantee was met; that the consulta-
22 tion that did occur was rushed with the Department
23 of Treasury expressing that "the train really has left
24 the station on this deal"; and that no documentation
25 was retained as to how the Department of Treas-

1 ury’s serious concerns with the loan guarantee were
2 addressed.

3 (12) The Government Accountability Office con-
4 cluded that the Department of Energy Loan Guar-
5 antee Program under title XVII has treated appli-
6 cants inconsistently; that the Department of Energy
7 did not follow its own process for reviewing applica-
8 tions and documenting its analysis and decisions, in-
9 creasing the likelihood of taxpayer exposure to finan-
10 cial risk from a default; and that the Department of
11 Energy’s absence of adequate documentation made
12 it difficult for the Department to defend its deci-
13 sions on loan guarantees as sound and fair.

14 (13) A memorandum prepared for the President
15 dated October 25, 2010, from Carol Browner, Ron
16 Klain, and Larry Summers, principal advisors to the
17 President, noted the risk presented by loan guar-
18 antee projects because most of the projects had little
19 “skin in the game” from private investors.

20 (14) A January 2012 report conducted at the
21 request of the Chief of Staff to the President con-
22 cluded that the portfolio of projects the Department
23 of Energy included in the loan program were higher
24 risk investments that private capital markets do not
25 generally invest in.

1 (15) The Department of Energy's section 1705
2 program has expired but the Department of Energy
3 has announced that it will continue to consider ap-
4 plications for loan guarantees under the section
5 1703 program.

6 (16) The Department of Energy has approxi-
7 mately \$34,000,000,000 in remaining lending au-
8 thority to issue new loan guarantees under the sec-
9 tion 1703 program.

10 **SEC. 3. SUNSET.**

11 (a) NO NEW APPLICATIONS.—The Secretary of En-
12 ergy shall not issue any new loan guarantee pursuant to
13 title XVII of the Energy Policy Act of 2005 (42 U.S.C.
14 16511 et seq.) for any application submitted to the De-
15 partment of Energy after December 31, 2011.

16 (b) PENDING APPLICATIONS.—With respect to any
17 application submitted pursuant to section 1703 or 1705
18 of the Energy Policy Act of 2005 before December 31,
19 2011:

20 (1) No guarantee shall be made until the Sec-
21 retary of the Treasury has reviewed the proposed
22 guarantee and made a written recommendation to
23 the Secretary of Energy on the merits of the guar-
24 antee.

1 (2) The Secretary of the Treasury shall trans-
2 mit the written recommendation required under
3 paragraph (1) to the Secretary of Energy not later
4 than 30 days after receiving the proposal from the
5 Secretary of Energy.

6 (3) Before making a guarantee under such title
7 XVII, the Secretary of Energy shall take into con-
8 sideration the written recommendation made by the
9 Secretary of the Treasury under paragraph (1).

10 (4) If the Secretary of Energy makes a guar-
11 antee that does not conform to the written rec-
12 ommendation made by the Secretary of the Treasury
13 under paragraph (1), not later than 30 days after
14 making such guarantee the Secretary of Energy
15 shall transmit to the Committee on Energy and
16 Commerce of the House of Representatives and the
17 Committee on Energy and Natural Resources of the
18 Senate a written explanation of the Secretary's rea-
19 sons for deviating from the Secretary of the Treas-
20 ury's recommendation.

21 (c) TRANSPARENCY.—

22 (1) REPORTS TO CONGRESS.—Not later than
23 60 days after making a guarantee as provided in
24 subsection (b), the Secretary of Energy shall trans-
25 mit to the Committee on Energy and Commerce of

1 the House of Representatives and the Committee on
2 Energy and Natural Resources of the Senate a re-
3 port that includes information regarding—

4 (A) the review and decisionmaking process
5 utilized by the Secretary in making the guar-
6 antee;

7 (B) the terms of the guarantee;

8 (C) the recipient; and

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

11 (2) PROTECTING CONFIDENTIAL BUSINESS IN-
12 FORMATION.—A report under paragraph (1) shall
13 provide all relevant information, but the Secretary
14 shall take all necessary steps to protect confidential
15 business information with respect to the recipient of
16 the loan guarantee and the technology used.

17 **SEC. 4. RESTATING THE RESTRUCTURING OF LOAN GUAR-**
18 **ANTEES.**

19 With respect to any restructuring of the terms of a
20 loan guarantee issued pursuant to title XVII of the En-
21 ergy Policy Act of 2005, the Secretary of Energy—

22 (1) shall consult with the Secretary of the
23 Treasury regarding any restructuring of the terms
24 and conditions of the loan guarantee, including any

1 deviations from the financial terms of the loan guar-
2 antee; and

3 (2) shall not subordinate the interests of the
4 United States Government to any other financing
5 for the project.