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Congress of the United States
House of Representatives
Washington, DC 20515–2107

July 30, 2012

Nicolas Loris
The Heritage Foundation
214 Massachusetts Ave NE
Washington DC 20002-4999

Dear Mr. Loris:

I write to clarify an apparent miscommunication regarding the "No More Solyndras Act," a bill that your organization has indicated its support for on the grounds that "we don't need to fix the energy subsidy programs. We need to abolish them."

The co-authors of this bill have asserted that the legislation "will phase out the Department of Energy's mismanaged loan guarantee program" and "ensure taxpayers are never again on the hook for risky government bets." [1] Neither statement is accurate.

The "No More Solyndras Act" leaves intact the Department of Energy's (DOE's) authority to issue $34 billion in additional loan guarantees to any company that submitted its application prior to December 31, 2011. According to information provided by DOE, it is currently performing due diligence on 48 applications worth a combined total of more than $62 billion, including applications for about $38 billion worth of nuclear loan guarantees, $11 billion worth of fossil energy loan guarantees, and $10 billion worth of renewable loan guarantees. DOE has already conditionally awarded two loan guarantees for nuclear projects worth a combined total of $10.33 billion[2]. Nothing in the "No More Solyndras Act" would preclude the DOE from awarding any of these pending applications. In fact, the "No More Solyndras Act" is so broadly drafted that even those applications received by December 31, 2011, that have *not* entered due diligence but have also not been rejected or withdrawn would still be eligible to receive loan guarantees in the future. This means that the pool of nuclear project applications alone that would remain eligible for loan guarantees under the "No More Solyndras Act" is more than $100 billion.[3]

While the "No More Solyndras Act" requires the Department of Treasury to provide written feedback regarding an application to DOE prior to the issuance of a loan guarantee, it does not require DOE to follow any recommendations or guidance that may be provided.

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[1] Press Release, Energy and Commerce Committee, Subcommittee Approves "No More Solyndras Act": Legislation Will Terminate Mismanaged Loan Guarantee Program to Protect Taxpayers (July 25, 2012) (online at http://energycommerce.house.gov/News/PRArticle.aspx?NewsID=9736).
[2] https://lpo.energy.gov/?page_id=45
[3] https://lpo.energy.gov/?p=843

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Moreover, during the July 25 Subcommittee markup of this legislation, Republicans repeatedly rejected amendments that were designed to ensure that DOE did not award loan guarantees to failing companies or companies whose projects were already significantly over budget. For example, an amendment that would prevent a loan guarantee from being awarded to a company that has been threatened with being de-listed from a stock exchange was defeated by a vote of 15-8[4]. Additionally, an amendment that would prevent loan guarantees from being awarded to companies that a) had lost more than a net of $535 million in the last calendar year[5] or b) applied for a loan guarantee for a project that is already more than $535 million over budget[6] was also defeated by a vote of 15-8.

I encourage you to further examine the "No More Solyndras Act" in order to determine whether the legislation actually lives up to either its name or its stated goal. I additionally would welcome your organization's input regarding amendments that impose real constraints on the DOE's authority to award further loan guarantees to companies whose projects or finances indicate a potential taxpayer exposure far greater than that of Solyndra.

Thank you very much for your consideration. For more information, please contact Dr. Michal Freedhoff of my staff at 202-225-2836.

Sincerely,

Edward J. Markey

Edward J. Markey

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[4] The United States Enrichment Corporation (USEC) is a current $2 billion DOE loan guarantee applicant under such a threat. According to its filing with the Securities and Exchange Commission, http://yahoo.brand.edgar-online.com/EFX_dll/EDGARpro.dll?FetchFilingHtmlSection1?SectionID=8584800-201512-212845&SessionID=7NyBFCxxrrlx1p2 the result of delisting could require USEC "to repurchase our convertible notes for cash and trigger a default under our credit facility."

[5] The United States Enrichment Corporation is a current $2 billion DOE loan guarantee applicant that lost $540.7 million in 2011.

[6] The Georgia Power Company has already received a conditional commitment for a $8.33 billion loan guarantee from DOE to build two nuclear reactors, but has recently announced that the project is almost $1 billion over budget, see for example http://www.bizjournals.com/atlanta/morning_call/2012/05/vogtle-nuclear-plant-faces-900m-in.html