

112TH CONGRESS
2D SESSION

H. R. 6213

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2012

Received; read twice and referred to the Committee on Energy and Natural
Resources

AN ACT

To limit further taxpayer exposure from the loan guarantee
program established under title XVII of the Energy Pol-
icy 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “No More Solyndras
3 Act”.

4 **SEC. 2. FINDINGS.**

5 The Congress makes the following findings:

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

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

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

25 (4) Loan guarantees issued under such title
26 XVII were required to provide a reasonable prospect

1 of repayment and were expressly required to be sub-
2 ject to the condition that the obligation is not subor-
3 dinate to other financing.

4 (5) The stimulus package expanded such title
5 XVII by adding section 1705 to include projects that
6 use commercial technology for renewable energy sys-
7 tems, electric power transmission systems, and lead-
8 ing-edge biofuels projects and by appropriating
9 \$6,000,000,000 in funding to pay the credit subsidy
10 costs for section 1705 loan guarantees for projects
11 that commence construction no later than September
12 30, 2011.

13 (6) The Department of Energy, since the enact-
14 ment of the stimulus package, has issued loan guar-
15 antees under such title XVII for 28 projects totaling
16 \$15,100,000,000 under the section 1705 program,
17 and, according to the Government Accountability Of-
18 fice, issued conditional loan guarantees for four
19 projects totaling \$4,400,000,000 under the section
20 1705 program and four projects totaling
21 \$10,600,000,000 under the section 1703 program.

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

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

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

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

20 (11) The Inspector General of the Department
21 of the Treasury concluded that it was unclear wheth-
22 er the Department of Energy's consultation require-
23 ment with the Secretary of the Treasury on the
24 Solyndra loan guarantee was met; that the consulta-
25 tion that did occur was rushed with the Department

1 of the Treasury expressing that “the train really has
2 left the station on this deal”; and that no docu-
3 mentation was retained as to how the Department of
4 the Treasury’s serious concerns with the loan guar-
5 antee were addressed.

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

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

23 (14) A January 2012 report conducted at the
24 request of the Chief of Staff to the President con-
25 cluded that the portfolio of projects the Department

1 of Energy included in the loan program were higher
2 risk investments that private capital markets do not
3 generally invest in.

4 (15) The Department of Energy's section 1705
5 program has expired but the Department of Energy
6 has announced that it will continue to consider ap-
7 plications for loan guarantees under the section
8 1703 program.

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

13 **SEC. 3. SUNSET.**

14 (a) NO NEW APPLICATIONS.—The Secretary of En-
15 ergy shall not issue any new loan guarantee pursuant to
16 title XVII of the Energy Policy Act of 2005 (42 U.S.C.
17 16511 et seq.) for any application submitted to the De-
18 partment of Energy after December 31, 2011.

19 (b) PENDING APPLICATIONS.—With respect to any
20 application submitted pursuant to section 1703 or 1705
21 of the Energy Policy Act of 2005 before December 31,
22 2011:

23 (1) No guarantee shall be made until the Sec-
24 retary of the Treasury has provided to the Secretary
25 of Energy a written analysis of the financial terms

1 and conditions of the proposed loan guarantee, pur-
2 suant to section 1702(a) of the Energy Policy Act
3 of 2005 (42 U.S.C. 16512(a)).

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

9 (3) Before making a guarantee under such title
10 XVII, the Secretary of Energy shall take into con-
11 sideration the written analysis made by the Sec-
12 retary of the Treasury under paragraph (1).

13 (4) If the Secretary of Energy makes a guar-
14 antee that is not consistent with the written analysis
15 provided by the Secretary of the Treasury under
16 paragraph (1), not later than 30 days after making
17 such guarantee the Secretary of Energy shall trans-
18 mit to the Committee on Energy and Commerce and
19 the Committee on Science, Space, and Technology of
20 the House of Representatives and the Committee on
21 Energy and Natural Resources of the Senate a writ-
22 ten explanation of any material inconsistencies.

23 (c) TRANSPARENCY.—

24 (1) REPORTS TO CONGRESS.—Not later than
25 60 days after making a guarantee as provided in

1 subsection (b), the Secretary of Energy shall trans-
 2 mit to the Committee on Energy and Commerce and
 3 the Committee on Science, Space, and Technology of
 4 the House of Representatives and the Committee on
 5 Energy and Natural Resources of the Senate a re-
 6 port that includes information regarding—

7 (A) the review and decisionmaking process
 8 utilized by the Secretary in making the guar-
 9 antee;

10 (B) the terms of the guarantee;

11 (C) the recipient; and

12 (D) the technology and project for which
 13 the loan guarantee will be used.

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

20 **SEC. 4. RESTRUCTURING OF LOAN GUARANTEES.**

21 With respect to any restructuring of the terms of a
 22 loan guarantee issued pursuant to title XVII of the En-
 23 ergy Policy Act of 2005, the Secretary of Energy shall
 24 consult with the Secretary of the Treasury regarding any
 25 restructuring of the terms and conditions of the loan guar-

1 antee, including any deviations from the financial terms
2 of the loan guarantee.

3 **SEC. 5. RESTATING THE PROHIBITION ON SUBORDINATION.**

4 Section 1702(d)(3) of the Energy Policy Act of 2005
5 (42 U.S.C. 16512(d)(3)) is amended by striking “is not
6 subordinate” and inserting “, including any reorganiza-
7 tion, restructuring, or termination thereof, shall not at any
8 time be subordinate”.

9 **SEC. 6. ADMINISTRATIVE ACTIONS AND CIVIL PENALTIES.**

10 (a) IN GENERAL.—Any Federal official who is re-
11 sponsible for the issuance of a loan guarantee under title
12 XVII of the Energy Policy Act of 2005 in a manner that
13 violates the requirements of such title or of this Act shall
14 be—

15 (1) subject to appropriate administrative dis-
16 cipline provided for under title 5 of the United
17 States Code, or any other applicable Federal law, in-
18 cluding, when circumstances warrant, suspension
19 from duty without pay or removal from office; and

20 (2) personally liable for a civil penalty in an
21 amount of at least \$10,000 but not more than
22 \$50,000 for each violation.

23 (b) DEFINITION.—For purposes of this section, the
24 term “Federal official” means—

1 (1) an individual serving in a position in level
2 I, II, III, IV, or V of the Executive Schedule, as pro-
3 vided in subchapter II of chapter 53 of title 5,
4 United States Code; and

5 (2) an individual serving in a Senior Executive
6 Service position, as provided in subchapter II of
7 chapter 31 of title 5, United States Code.

8 **SEC. 7. GAO STUDY OF FEDERAL SUBSIDIES IN ENERGY**
9 **MARKETS.**

10 (a) IN GENERAL.—The Comptroller General shall
11 conduct a study of the Federal subsidies in energy mar-
12 kets provided from fiscal year 2003 through fiscal year
13 2012.

14 (b) FOCUS.—The study required under subsection (a)
15 shall have particular focus on Federal subsidies in energy
16 markets provided in support of—

17 (1) electricity production, transmission, and
18 consumption;

19 (2) transportation fuels and infrastructure;

20 (3) energy-related research and development;

21 and

22 (4) facilities that manufacture energy-related
23 components.

24 (c) REPORT.—Not later than 1 year after the date
25 of enactment of this Act, the Comptroller General shall

1 submit to the Committee on Energy and Commerce and
2 the Committee on Science, Space, and Technology of the
3 House of Representatives and the Committee on Energy
4 and Natural Resources of the Senate a report that de-
5 scribes the results of the study conducted under subsection
6 (a), including an identification and quantification of—

- 7 (1) costs to the United States Treasury;
- 8 (2) impacts on United States energy security;
- 9 (3) impacts on electricity prices, including any
10 potential negative pricing impact on wholesale elec-
11 tricity markets;
- 12 (4) impacts on transportation fuel prices;
- 13 (5) impacts on private energy-related industries
14 not benefitting from Federal subsidies in energy
15 markets;
- 16 (6) any Federal subsidies in energy markets
17 that are provided to foreign persons or corporations;
18 and
- 19 (7) subsidies and direct financial interest any of
20 the 15 foreign countries with the largest gross do-
21 mestic product are providing to support energy mar-
22 kets in their respective countries.

23 (d) DEFINITION.—For purposes of this section, the
24 term “Federal subsidies” means Federal grants, direct
25 loans, loan guarantees, and tax credits, and other pro-

- 1 grammatic activities targeted at energy markets and re-
- 2 lated sectors, relating to specific energy technologies.

Passed the House of Representatives September 14,
2012.

Attest:

KAREN L. HAAS,

Clerk.