October 11, 2022

The Honorable Jennifer Granholm  
Secretary of Energy  
U.S. Department of Energy  
1000 Independence Avenue, Southwest  
Washington, DC 20585

Dear Secretary Granholm,

We write with regard to the Department of Energy’s (DOE) implementation of new programs and spending authority provided in the reconciliation legislation enacted this past August and the infrastructure legislation enacted in November 2021. All told, these two spending laws, enacted in less than a year and with little Congressional scrutiny of long-term taxpayer risks, appropriated more than $100 billion to the Department for use across its applied energy, electricity, and efficiency programs and provided new authorities for $350 billion in loan guarantees.

As an initial step, we seek information concerning DOE’s plans for implementing new authorities and taxpayer subsidies through the Department’s loan programs. The spending laws created an entire new category of loans eligible for Department guarantees, massively increased the amount of loans DOE could guarantee, and appropriated almost $12 billion to subsidize the cost of the loan guarantees. The net effect has been to transform a loan program office focused on guaranteeing upwards of $40 billion in loans for the deployment of new, first-of-a-kind technologies to a program that could commit to guarantee $350 billion in loans, largely for commercial energy technologies and infrastructure, even if such borrowers have ample private sector funding opportunities.

The scope and scale of this expanded loan authority, related credit subsidies, and rapid four-year timeline for making commitments, raise questions about increased risks of waste, fraud and abuse, especially if the administration uses the program for its rush-to-green agenda. Under

1 P.L. 117-58 and P.L. 117-169
the Obama administration, DOE’s loan program failed to put taxpayer interests first, and the Secretary allowed a political agenda to take over decision-making.

Ten years ago, the Energy and Commerce Committee completed an investigation into the Department’s decision-making behind the $500 million loan guarantee to Solyndra Inc. That investigation into the bankrupt project revealed a series of failures within the Department’s loan program that undermined taxpayer interests: DOE paid the borrower’s credit subsidy cost, thereby removing the borrower’s “skin in the game,” DOE rushed spending to accelerate lending without conducting due diligence, DOE yielded to inappropriate White House political involvement and pressure to make guarantees, DOE disregarded Solyndra’s default and failed to properly notify other agencies in accordance with the law, DOE failed to adhere to the ban on subordination, and DOE failed to conduct oversight sufficient to recover taxpayer dollars.

In 2020, Congress passed legislation to reform DOE’s loan program. The legislation incorporated lessons-learned from the Solyndra scandal by increasing taxpayer protections; however, it is far from clear whether those provisions have been implemented or will be sufficient going forward, especially with the massive increase in subsidies, expanded eligibility, and the new focus of the program.

Accordingly, we ask that you assist Committee oversight of the loan program by providing a monthly briefing to Committee staff and by responding to the following requests in writing by October 25th, 2022:

1) Provide a list of all current loan and loan guarantees in the Loan Program Office portfolio, including the specific borrowers, the statutory program under which commitment for loan or loan guarantee was made, technology sector, project status, disbursement status, repayment status, and any information pertinent to the current ability of the borrowers to repay the loans.

2) Provide a list of all open funding and financing opportunities, by statutory category, and include the number of applicants and technology in each category, including whether the applicants seek guarantees for first-of-a-kind technology.

3) Describe and list what funding and financing opportunities the Department plans to open in response to recent spending bills P.L. 117-58 and P.L. 117-169, eligibility requirements for applicants, and the statutory category of the opportunity.

4) Describe the staffing requirements you anticipate are necessary to implement the new loan guarantee authorities and new Sec. 1706 energy infrastructure reinvestment financing.


5) Describe what DOE has done to implement Sec. 1702 of the Energy Policy Act, including the provisions in subsection (m) requiring Secretary of Treasury analysis of loan decisions. Provide a list of all guarantees in which the Secretary of Treasury was consulted and provided written analysis of the financial terms and conditions of the proposed guarantee to DOE.

6) Explain how the provisions of Sec. 1702, including subsections (d) and (m), will apply to the new loan authorities, including Sec. 1706 authorities.

7) Explain how you will implement the new provisions requiring Presidential certification on loan guarantee commitments, how the review process will work, what category of loans will be subject to this certification, and whether this certification process will substitute for the requirements Sec. 1702.

8) Explain what the Department has done to address the four major risk areas to the Loan Program identified by the DOE Inspector General Special Report issued this past June 7, 2022.4

9) Explain the Department review process for loan guarantee decisions, including for approval by the Secretary, and the role of independent departmental reviews and risk oversight.

10) Identify specific measures or requirements the Department implements to ensure loan guarantees will protect intellectual property, and not subsidize loss of intellectual property to China or other American adversaries.5

We look forward to your prompt response to this request. Please contact Peter Spencer and Alan Slobodin of the Minority Committee staff to establish a briefing schedule and to answer questions concerning this request at (202) 225-3641.

Sincerely,

Cathy McMorris Rodgers
Republican Leader
House Committee on Energy and Commerce

Fred Upton
Republican Leader
Subcommittee on Energy

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4 See “Special Report: Prospective Considerations for the Loan Authority Supported Under the Loan Program Office to Improve Internal Controls and Prevent Fraud, Waste, and Abuse,” June 2022, DOE-OIG-22-34.

5 See Courtney Flatt and Laura Sullivan, “The U.S. made a breakthrough battery discovery — then gave the technology to China,” NPR, August 3, 2022.
Morgan Griffith  
Republican Leader  
Subcommittee on Oversight and Investigations