

Union Calendar No. 470

112TH CONGRESS
2^D SESSION

H. R. 6213

[Report No. 112-652, Part I]

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

JULY 26, 2012

Mr. UPTON (for himself, Mr. STEARNS, Mr. PITTS, Mr. TERRY, Mr. STIVERS, Mr. LATHAM, Mr. SCOTT of South Carolina, Mr. GINGREY of Georgia, Mrs. ELLMERS, Mr. LANCE, Mr. ROGERS of Michigan, Mr. WHITFIELD, Mr. BURGESS, Mr. SULLIVAN, Mrs. BLACKBURN, Mr. POMPEO, Mrs. MYRICK, Mr. HARPER, Mr. FLAKE, and Mr. OLSON) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Science, Space, and Technology, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

SEPTEMBER 10, 2012

Additional sponsors: Mr. CASSIDY and Mr. BENISHEK

SEPTEMBER 10, 2012

Reported from the Committee on Energy and Commerce with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

SEPTEMBER 10, 2012

The Committee on Science, Space, and Technology discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on July 26, 2012]

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 Act”.*

5 **SEC. 2. FINDINGS.**

6 *The Congress makes the following findings:*

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

14 (2) *The stimulus package allocated \$90 billion to*
15 *various green energy programs, and related appro-*
16 *propriations provided \$47 billion for loan guarantees au-*
17 *thorized under title XVII of the Energy Policy Act of*
18 *2005 (42 U.S.C. 16511 et seq.).*

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

1 (4) *Loan guarantees issued under such title XVII*
2 *were required to provide a reasonable prospect of re-*
3 *payment and were expressly required to be subject to*
4 *the condition that the obligation is not subordinate to*
5 *other financing.*

6 (5) *The stimulus package expanded such title*
7 *XVII by adding section 1705 to include projects that*
8 *use commercial technology for renewable energy sys-*
9 *tems, electric power transmission systems, and lead-*
10 *ing-edge biofuels projects and by appropriating*
11 *\$6,000,000,000 in funding to pay the credit subsidy*
12 *costs for section 1705 loan guarantees for projects that*
13 *commence construction no later than September 30,*
14 *2011.*

15 (6) *The Department of Energy, since the enact-*
16 *ment of the stimulus package, has issued loan guaran-*
17 *tees under such title XVII for 28 projects totaling*
18 *\$15,100,000,000 under the section 1705 program,*
19 *and, according to the Government Accountability Of-*
20 *fice, issued conditional loan guarantees for four*
21 *projects totaling \$4,400,000,000 under the section*
22 *1705 program and four projects totaling*
23 *\$10,600,000,000 under the section 1703 program.*

24 (7) *Three of the first five companies that received*
25 *section 1705 loan guarantees for their projects,*

1 *Solyndra, Inc., Beacon Power Corporation, and*
2 *Abound Solar, Inc., have declared bankruptcy.*

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

6 *(9) The investigation of the Solyndra loan guar-*
7 *antee by the Committee on Energy and Commerce has*
8 *demonstrated that the review in 2009 of the Solyndra*
9 *application by the Department of Energy and the Of-*
10 *ice of Management and Budget was driven by poli-*
11 *tics and ideology and divorced from economic reality*
12 *where the Department of Energy ignored concerns*
13 *about the company's financial condition and market*
14 *for its products.*

15 *(10) Despite an express provision in such title*
16 *XVII prohibiting subordination of the United States*
17 *taxpayers' financial interest, the Department of En-*
18 *ergy restructured the Solyndra loan guarantee in Feb-*
19 *ruary 2011, resulting in the taxpayers losing priority*
20 *to Solyndra's investors in the event of a default.*

21 *(11) The Inspector General of the Department of*
22 *the Treasury concluded that it was unclear whether*
23 *the Department of Energy's consultation requirement*
24 *with the Secretary of the Treasury on the Solyndra*
25 *loan guarantee was met; that the consultation that*

1 *did occur was rushed with the Department of the*
2 *Treasury expressing that “the train really has left the*
3 *station on this deal”;* and that no documentation was
4 *retained as to how the Department of the Treasury’s*
5 *serious concerns with the loan guarantee were ad-*
6 *dressed.*

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

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

24 (14) *A January 2012 report conducted at the re-*
25 *quest of the Chief of Staff to the President concluded*

1 *that the portfolio of projects the Department of En-*
2 *ergy included in the loan program were higher risk*
3 *investments that private capital markets do not gen-*
4 *erally invest in.*

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

10 *(16) The Department of Energy has approxi-*
11 *mately \$34,000,000,000 in remaining lending author-*
12 *ity to issue new loan guarantees under the section*
13 *1703 program.*

14 **SEC. 3. SUNSET.**

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

20 *(b) PENDING APPLICATIONS.—With respect to any ap-*
21 *plication submitted pursuant to section 1703 or 1705 of the*
22 *Energy Policy Act of 2005 before December 31, 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, pursu-*
2 *ant to section 1702(a) of the Energy Policy Act of*
3 *2005 (42 U.S.C. 16512(a)).*

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

8 (3) *Before making a guarantee under such title*
9 *XVII, the Secretary of Energy shall take into consid-*
10 *eration the written analysis made by the Secretary of*
11 *the Treasury under paragraph (1).*

12 (4) *If the Secretary of Energy makes a guarantee*
13 *that is not consistent with the written analysis pro-*
14 *vided by the Secretary of the Treasury under para-*
15 *graph (1), not later than 30 days after making such*
16 *guarantee the Secretary of Energy shall transmit to*
17 *the Committee on Energy and Commerce of the House*
18 *of Representatives and the Committee on Energy and*
19 *Natural Resources of the Senate a written expla-*
20 *nation of any material inconsistencies.*

21 (c) *TRANSPARENCY.—*

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

1 *of Representatives and the Committee on Energy and*
2 *Natural Resources of the Senate a report that includes*
3 *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 the*
10 *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. RESTRUCTURING OF LOAN GUARANTEES.**

18 *With respect to any restructuring of the terms of a loan*
19 *guarantee issued pursuant to title XVII of the Energy Pol-*
20 *icy Act of 2005, the Secretary of Energy shall consult with*
21 *the Secretary of the Treasury regarding any restructuring*
22 *of the terms and conditions of the loan guarantee, including*
23 *any deviations from the financial terms of the loan guar-*
24 *antee.*

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

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

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

8 *(a) IN GENERAL.—Any Federal official who is respon-*
9 *sible for the issuance of a loan guarantee under title XVII*
10 *of the Energy Policy Act of 2005 in a manner that violates*
11 *the requirements of such title or of this Act shall be—*

12 *(1) subject to appropriate administrative dis-*
13 *cipline including, when circumstances warrant, sus-*
14 *pension from duty without pay or removal from of-*
15 *fice; and*

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

19 *(b) DEFINITION.—For purposes of this section, the*
20 *term “Federal official” means—*

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

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

4 **SEC. 7. GAO STUDY OF FEDERAL SUBSIDIES IN ENERGY**
5 **MARKETS.**

6 (a) *IN GENERAL.*—*The Comptroller General shall con-*
7 *duct a study of the Federal subsidies in energy markets pro-*
8 *vided from fiscal year 2003 through fiscal year 2012.*

9 (b) *FOCUS.*—*The study required under subsection (a)*
10 *shall have particular focus on Federal subsidies in energy*
11 *markets provided in support of—*

12 (1) *electricity production, transmission, and con-*
13 *sumption;*

14 (2) *transportation fuels and infrastructure;*

15 (3) *energy-related research and development; and*

16 (4) *facilities that manufacture energy-related*
17 *components.*

18 (c) *REPORT.*—*Not later than 1 year after the date of*
19 *enactment of this Act, the Comptroller General shall submit*
20 *to the Committee on Energy and Commerce of the House*
21 *of Representatives and the Committee on Energy and Nat-*
22 *ural Resources of the Senate a report that describes the re-*
23 *sults of the study conducted under subsection (a), including*
24 *an identification and quantification of—*

25 (1) *costs to the United States Treasury;*

1 (2) *impacts on United States energy security;*

2 (3) *impacts on electricity prices, including any*
3 *potential negative pricing impact on wholesale elec-*
4 *tricity markets;*

5 (4) *impacts on transportation fuel prices;*

6 (5) *impacts on private energy-related industries*
7 *not benefitting from Federal subsidies in energy mar-*
8 *kets;*

9 (6) *any Federal subsidies in energy markets that*
10 *are provided to foreign persons or corporations; and*

11 (7) *subsidies and direct financial interest any of*
12 *the 15 foreign countries with the largest gross domes-*
13 *tic product are providing to support energy markets*
14 *in their respective countries.*

15 (d) *DEFINITION.—For purposes of this section, the*
16 *term “Federal subsidies” means Federal grants, direct*
17 *loans, loan guarantees, and tax credits, and other pro-*
18 *grammatic activities targeted at energy markets and related*
19 *sectors, relating to specific energy technologies.*

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