112TH CONGRESS
2D SESSION

H. R. 6213

AN ACT

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''No More Solyndras Act''.

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) President Obama took office amidst a weak economy and high unemployment, yet he remained committed to advancing an expansive ''green jobs'' agenda that received substantial funding with the passage of the American Recovery and Reinvestment Act of 2009, commonly known as the stimulus package.

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

(3) Such title XVII authorized the Secretary of Energy to issue loan guarantees for projects that avoid, reduce, or sequester air pollutants or greenhouse gases and employ new or significantly improved technologies compared with commercial technologies in service at the time the guarantee is issued.

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

of repayment and were expressly required to be subject to the condition that the obligation is not subordinate to other financing.

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

(6) The Department of Energy, since the enactment of the stimulus package, has issued loan guarantees under such title XVII for 28 projects totaling $15,100,000,000 under the section 1705 program, and, according to the Government Accountability Office, issued conditional loan guarantees for four projects totaling $4,400,000,000 under the section 1705 program and four projects totaling $10,600,000,000 under the section 1703 program.

(7) Three of the first five companies that received section 1705 loan guarantees for their projects, Solyndra, Inc., Beacon Power Corporation, and Abound Solar, Inc., have declared bankruptcy.

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

(9) The investigation of the Solyndra loan guarantee by the Committee on Energy and Commerce has demonstrated that the review in 2009 of the Solyndra application by the Department of Energy and the Office of Management and Budget was driven by politics and ideology and divorced from economic reality where the Department of Energy ignored concerns about the company's financial condition and market for its products.

(10) Despite an express provision in such title XVII prohibiting subordination of the United States taxpayers' financial interest, the Department of Energy restructured the Solyndra loan guarantee in February 2011, resulting in the taxpayers losing priority to Solyndra's investors in the event of a default.

(11) The Inspector General of the Department of the Treasury concluded that it was unclear whether the Department of Energy's consultation requirement with the Secretary of the Treasury on the Solyndra loan guarantee was met; that the consultation that did occur was rushed with the Department

of the Treasury expressing that ‘‘the train really has left the station on this deal’’; and that no documentation was retained as to how the Department of the Treasury's serious concerns with the loan guarantee were addressed.

(12) The Government Accountability Office concluded that the Department of Energy Loan Guarantee Program under title XVII has treated applicants inconsistently; that the Department of Energy did not follow its own process for reviewing applications and documenting its analysis and decisions, increasing the likelihood of taxpayer exposure to financial risk from a default; and that the Department of Energy's absence of adequate documentation made it difficult for the Department to defend its decisions on loan guarantees as sound and fair.

(13) A memorandum prepared for the President dated October 25, 2010, from Carol Browner, Ron Klain, and Larry Summers, principal advisors to the President, noted the risk presented by loan guarantee projects because most of the projects had little ‘‘skin in the game’’ from private investors.

(14) A January 2012 report conducted at the request of the Chief of Staff to the President concluded that the portfolio of projects the Department

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

(15) The Department of Energy's section 1705 program has expired but the Department of Energy has announced that it will continue to consider applications for loan guarantees under the section 1703 program.

(16) The Department of Energy has approximately $34,000,000,000 in remaining lending authority to issue new loan guarantees under the section 1703 program.

SEC. 3. SUNSET.

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

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

(1) No guarantee shall be made until the Secretary of the Treasury has provided to the Secretary of Energy a written analysis of the financial terms

and conditions of the proposed loan guarantee, pursuant to section 1702(a) of the Energy Policy Act of 2005 (42 U.S.C. 16512(a)).

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

(3) Before making a guarantee under such title XVII, the Secretary of Energy shall take into consideration the written analysis made by the Secretary of the Treasury under paragraph (1).

(4) If the Secretary of Energy makes a guarantee that is not consistent with the written analysis provided by the Secretary of the Treasury under paragraph (1), not later than 30 days after making such guarantee the Secretary of Energy shall transmit to the Committee on Energy and Commerce and the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a written explanation of any material inconsistencies.

(c) TRANSPARENCY.—

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

subsection (b), the Secretary of Energy shall transmit to the Committee on Energy and Commerce and the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report that includes information regarding—

(A) the review and decisionmaking process utilized by the Secretary in making the guarantee;

(B) the terms of the guarantee;

(C) the recipient; and

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

(2) PROTECTING CONFIDENTIAL BUSINESS INFORMATION.—A report under paragraph (1) shall provide all relevant information, but the Secretary shall take all necessary steps to protect confidential business information with respect to the recipient of the loan guarantee and the technology used.

SEC. 4. RESTRUCTURING OF LOAN GUARANTEES.

With respect to any restructuring of the terms of a loan guarantee issued pursuant to title XVII of the Energy Policy Act of 2005, the Secretary of Energy shall consult with the Secretary of the Treasury regarding any restructuring of the terms and conditions of the loan guarantee, including any deviations from the financial terms of the loan guarantee.

SEC. 5. RESTATING THE PROHIBITION ON SUBORDINATION.

Section 1702(d)(3) of the Energy Policy Act of 2005 (42 U.S.C. 16512(d)(3)) is amended by striking ''is not subordinate'' and inserting '', including any reorganization, restructuring, or termination thereof, shall not at any time be subordinate''.

SEC. 6. ADMINISTRATIVE ACTIONS AND CIVIL PENALTIES.

(a) IN GENERAL.—Any Federal official who is responsible for the issuance of a loan guarantee under title XVII of the Energy Policy Act of 2005 in a manner that violates the requirements of such title or of this Act shall be—

(1) subject to appropriate administrative discipline provided for under title 5 of the United States Code, or any other applicable Federal law, including, when circumstances warrant, suspension from duty without pay or removal from office; and

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

(b) DEFINITION.—For purposes of this section, the term ''Federal official'' means—

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

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

SEC. 7. GAO STUDY OF FEDERAL SUBSIDIES IN ENERGY MARKETS.

(a) IN GENERAL.—The Comptroller General shall conduct a study of the Federal subsidies in energy markets provided from fiscal year 2003 through fiscal year 2012.

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

(1) electricity production, transmission, and consumption;

(2) transportation fuels and infrastructure;

(3) energy-related research and development; and

(4) facilities that manufacture energy-related components.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Energy and Commerce and the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report that describes the results of the study conducted under subsection (a), including an identification and quantification of—

(1) costs to the United States Treasury;

(2) impacts on United States energy security;

(3) impacts on electricity prices, including any potential negative pricing impact on wholesale electricity markets;

(4) impacts on transportation fuel prices;

(5) impacts on private energy-related industries not benefitting from Federal subsidies in energy markets;

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

(7) subsidies and direct financial interest any of the 15 foreign countries with the largest gross domestic product are providing to support energy markets in their respective countries.

(d) DEFINITION.—For purposes of this section, the term ''Federal subsidies'' means Federal grants, direct loans, loan guarantees, and tax credits, and other programmatic activities targeted at energy markets and related sectors, relating to specific energy technologies.

Passed the House of Representatives September 14, 2012.

Attest:

Clerk.

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