THE COMMITTEE ON ENERGY AND COMMERCE

MEMORANDUM

May 28, 2014

TO: Members, Subcommittee on Oversight and Investigations

FROM: Committee Majority Staff

RE: Hearing on "Department of Energy Oversight: Status of Loan Programs"

On Friday, May 30, 2014, at 9:15 a.m. in 2123 Rayburn House Office Building, the Subcommittee on Oversight and Investigations will hold a hearing entitled "Department of Energy Oversight: Status of Loan Programs." The hearing will examine recent developments and the current status of the programs managed by the Department of Energy (DOE) Loan Programs Office (LPO).

I. WITNESSES

- The Honorable Peter W. Davidson, Executive Director of the Loan Programs Office, Department of Energy;
- Mr. Rickey Haas, Deputy Inspector General for Audits and Inspections, Department of Energy; and,
- Mr. Frank Rusco, Director, Energy and Science Issues, U.S. Government Accountability Office.

II. BACKGROUND

The DOE LPO is responsible for administering DOE's loan programs. According to the DOE LPO website, the DOE loan programs "enable DOE to work with private companies and lenders to mitigate the financing risks associated with clean energy projects, and thereby encourage their development on a broader and much-needed scale."[1]

The LPO has approximately $40 billion in remaining authority and has made over $30 billion in loans and loan guarantees. The DOE LPO currently manages two programs for which it receives and reviews applications: the Section 1703 loan guarantee program and the Advanced Technology Vehicles Manufacturing (ATVM) loan program. In addition, the LPO continues to

---

[1] *See* http://energy.gov/lpo/about-us.

monitor loans issued under the Section 1705 program. According to DOE, the LPO has eighty-three Federal employees and fifty-five full time equivalent contractors to support the office's functions, which include origination, review, loan guarantee and closing, and monitoring of loans and loan guarantees.[2]

Set forth below is a description of each LPO program, including its statutory authority and any existing budget authority.

A. The Section 1703 Program

Section 1703 of Title XVII of the Energy Policy Act of 2005 authorized the Secretary of DOE to make loan guarantees to companies investing in either innovative clean technologies or commercial-scale renewable energy projects.

Under Title XVII, the credit subsidy cost of the loan guarantee must be paid either by the applicant or covered by Congressional appropriation. At present, with the exception of $169 million in appropriated credit subsidy for renewable energy and energy efficiency projects, credit subsidy costs for all remaining loan authority under Section 1703 must be paid by the loan guarantee recipients. The credit subsidy cost represents the cost of the loan to the taxpayer if the recipient of the guarantee defaults on the loan and reflects several factors, including the cash flows of the loan recipient; the rate of recovery the government expects from the assets pledged as security for the loan; and the risk of default.

DOE has finalized two loan guarantees totaling $6.1 billion under the Section 1703 program. Both guarantees relate to the Vogtle nuclear generation facility in Georgia. One guarantee was issued to Georgia Power Company for $3.462 billion and the other to Oglethorpe Power Corporation for $3.057 billion. Before the closing of the Vogtle loan guarantees, the DOE LPO had not issued a loan or loan guarantee under any program since September 2011.

Currently, DOE has $23.7 billion in existing loan guarantee authority. That authority is allocated among the following programs: $8 billion in loan guarantee authority for Advanced Fossil Energy (currently accepting applications); $1.5 billion in loan guarantee authority and $169 million in credit subsidy for Renewable Energy & Energy Efficiency; $2 billion in loan guarantee authority for mixed use projects (i.e., any eligible technology under Section 1703); $12.2 billion in loan guarantee authority for nuclear generation and front end nuclear. While the Energy Policy Act requires that loan guarantee recipient pay a credit subsidy cost at closing, the 2011 Continuing Resolution provided $169 million in appropriated credit subsidy available for renewable energy and energy efficiency projects. In addition, two conditional commitments currently are pending: a $2 billion guarantee for a front-end nuclear generation program operated by AREVA and a $1.8 billion guarantee to Municipal Electric Authority of Georgia for the

[2] The number of current Federal employees in the LPO is equivalent to the number employed at the height of the American Reinvestment and Recovery Act, or stimulus, in 2011 when the LPO was reviewing Section 1705 loan guarantee applications. At that time, DOE informed Committee staff that the LPO had ninety Federal employees.

Vogtle facility. As of January 2013, nine loan guarantee applications were in the due diligence stage, and twenty-seven were considered "inactive" by the LPO.[3]

The only active loan guarantee solicitation under the Section 1703 program is the $8 billion Advanced Fossil Energy Projects Loan Guarantee Solicitation. This solicitation was issued in December 2013. On April 16, 2014, DOE issued a draft Renewable Energy Projects Loan Guarantee Solicitation for public comment.

B. The ATVM Program

The ATVM program was authorized in 2007 though the Energy Independence Security Act (EISA) of 2007, which authorized $25 billion in subsidized loans. In 2009, Congress appropriated $7.5 billion to cover the subsidy costs for the loans, meaning that ATVM loan recipients do not pay these costs.

The DOE LPO has issued six loans under the ATVM program: Fisker, $529 million; Ford Motor Company, $5.9 billion; Nissan North America, $1.5 billion; Tesla, $465 million; and The Vehicle Production Group LLC for $50 million. Due to financial problems at Fisker, DOE auctioned the loan note prior to the company filing for bankruptcy. At the time the loan was sold for $25 million, DOE had disbursed $192 million of the loan and recovered $53 million from the company, resulting in a loss of $114 million. The Vehicle Production Group went bankrupt as well; at the time the company filed for bankruptcy, DOE had disbursed $49.48 million of the loan and recovered approximately $8 million, resulting in a $41 million loss. Of the remaining loan recipients, Tesla repaid its entire loan in May 2013, nine years ahead of schedule.

Currently, DOE has $16.6 billion in remaining loan authority under the ATVM program and $4.2 billion available in credit subsidy appropriations. The ATVM program accepts applications on a rolling basis. In a March 2013 report, the U.S. Government Accountability Office (GAO) stated that the DOE LPO "was not actively considering any applications" for the remaining ATVM funding.[4] GAO also reported that manufacturers and potential ATVM applicants had informed the GAO that the "costs of participating [in the ATVM program] outweigh the benefits."[5] Some of the costs of the program include its technical and financial eligibility requirements and the application and review processes. According to the GAO, DOE officials stated that the department was "not likely to use the remaining ATVM loan authority given the current eligibility requirements."[6]

Since the March 2013 GAO report, DOE has received one additional ATVM application for $200 million that, as of February 2014, was in due diligence review.[7] In a report issued last

---

[3] *See* GAO, *Department of Energy: Status of Loan Programs*, GAO 13-331R (Washington, DC: Mar. 2013) at 17, available at http://www.gao.gov/assets/660/653064.pdf.

[4] GAO, *Department of Energy: Status of Loan Programs*, GAO 13-331R (Washington, DC: Mar. 2013) at 3, available at http://www.gao.gov/assets/660/653064.pdf.

[5] *Id.*

[6] *Id.*

[7] *See* GAO, *2014 Annual Report: Additional Opportunities to Reduce Fragmentation, Overlap, and Duplication and Achieve Other Financial Benefits*, GAO-14-343SP (Washington, DC: April 2014) at 109, available at http://www.gao.gov/assets/670/662327.pdf.

month, GAO stated that DOE had conducted outreach to potential ATVM applicants and that DOE reported receiving "several expressions of interest."[8] Even so, GAO stated in an April 2014 report that Congress "may wish to consider rescinding all or part of the remaining $4.2 billion in credit subsidy appropriations." DOE objected to DOE's recommendation, stating that its "new outreach efforts . . . will increase awareness and interest in the program and lead to additional applications in 2014."[9]

C. The Section 1705 Program

In 2009, the American Reinvestment and Recovery Act (ARRA or stimulus) appropriated approximately $6 billion in funding to pay for the credit subsidy costs of the DOE loan guarantees for certain renewable energy, electric transmission, and leading edge biofuels systems. The DOE Loan Guarantees that were eligible for stimulus funding for their credit subsidy costs are commonly referred to as "Section 1705" loan guarantees. The 1705 program expired on September 30, 2011.

Under this program, DOE closed thirty-one Section 1705 loan guarantees for twenty-eight projects, totaling $15.7 billion. Six of these projects are no longer active because the applicant either withdrew prior to drawing loan guarantee funds (AES ES Westover LLC, Poet Project Liberty, LLC); the funding was deobligated prior to the recipient drawing funds (Prosun Project Company, LLC known as Project AMP/Photon and Solopower, Inc.) or the project defaulted or went bankrupt (Abound Manufacturing Solar, LLC, and Solyndra, Inc.).

After the Section 1705 program's expiration in September 2011, the LPO continues to monitor the loan guarantee portfolio's performance.

The GAO issued a report this month finding that DOE has not "fully developed or consistently adhered to loan monitoring policies for its loan programs," including the Section 1703, Section 1705, and ATVM programs.[10] In those cases where GAO found that DOE had adhered inconsistently or not at all to its policies, GAO cited the fact that the LPO was "still developing its staffing, management and reporting software, and policies."[11] The DOE Inspector General also issued an audit report on May 7, 2014, reviewing the LPO.[12] The IG's report focused on the extent to which the LPO had implemented the recommendations set forth in a January 2012 report by Herbert Allison, which was requested by White House Chief of Staff

---

[8] *Id.*at 110.
[9] *Id. See also* Letter from Peter W. Davidson, Executive Director, Loan Programs Office, to Ann Wilson, Senior Vice President, Motor & Equipment Manufacturers Association, (Apr. 2, 2014), available at http://energy.gov/sites/prod/files/2014/04/f14/ATVM%20Response%20to%20MEMA.pdf.
[10] GAO, *DOE Loan Programs: DOE Should Fully Develop Its Loan Monitoring Function and Evaluate Its Effectiveness*, GAO-14-367 (Washington, DC: May 2014) at 5.
[11] *Id.*
[12] *See* DOE OIG, *Audit Report on "Implementation of Recommendations from the January 2012 Independent Consultant's Review of the Department of Energy Loan and Loan Guarantee Portfolio*, DOE/IG-0909 (Washington, DC: May 2014) available at http://energy.gov/sites/prod/files/2014/05/f15/DOE-IG-0909.pdf.

William Daley.[13] The IG found that the LPO had addressed four of the report's twelve recommendations and had "initiated actions" to complete the remaining eight recommendations. The IG also noted that the LPO had been "generally responsive" to the Allison report's recommendations, but also identified additional areas for improvement, including finalizing policies and procedures; adopting a formal adjudication process for resolving "differences of opinion between divisions" in the LPO; and addressing potential conflicts of interest within the LPO Risk Committee.[14]

III. ISSUES

The following issues may be examined at the hearing:

- What has DOE done to improve management and oversight of its loan portfolio?
- What more should be done to improve program management?
- Can DOE sustain effective program management and oversight?
- What is the status of DOE's recent efforts to attract new loan applicants?

IV. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Peter Spencer or Karen Christian of the Committee staff at (202) 225-2927.

---

[13] *See* Herbert Allison, *Report of the Independent Consultant's Review with Respect to the Department of Energy Loan and Loan Guarantee Portfolio* (Washington, DC: January 31, 2012) available at http://www.whitehouse.gov/sites/default/files/docs/report_on_doe_loan_and_guarantee_portfolio.pdf.

[14] *Id.* at 5. The report noted that the LPO accepted the IG's recommendation with respect to potential conflicts of interest and changed the membership of the Risk Committee.