Department of Energy
Washington, DC 20585

August 25, 2014

The Honorable Tim Murphy
Chairman
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
U. S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

On May 30, 2014, Peter W. Davidson, Executive Director, Loan Program Office, testified regarding "Department of Energy Oversight: Status of Loan Programs."

Enclosed are the answers to 13 questions submitted by you and Representative Gene Green for the hearing record.

Also enclosed are 4 Inserts that were requested by you and Representatives Marsha Blackburn, Michael C. Burgess, and Gene Green to complete the hearing record.

If we can be of further assistance, please have your staff contact our Congressional Hearing Coordinator, Lillian Owen, at (202) 586-2031.

Sincerely,

Christopher E. Davis
Principal Deputy Assistant Secretary
for Congressional Affairs
Congressional and Intergovernmental Affairs

Enclosures

cc: The Honorable Diana DeGette, Ranking Member

QUESTIONS FROM REPRESENTIVE TIM MURPHY

Q1. What is the estimated cost of the 5 defaults and what does that represent as a percentage of the $5.2 billion in credit subsidy appropriations that has been used.

A1. The current expected loss of the five defaults is $779 million. Overall, losses to date represent approximately 2 percent of the entire portfolio.

Q2. DOE has had loans and guarantees since 2009 and most of its $30 billion portfolio has been made by 2011. DOE plans to expand that portfolio significantly, however, according to concerns expressed in the recent GAO report, DOE still does not have a fully-developed organization structure or assurance that it is completing critical loan monitoring functions. Why has it taken so long to establish a complete monitoring program and when will DOE complete the actions recommended by GAO?

A2. LPO's process documents are continually being reviewed and updated to reflect best practices, lessons learned, and new approaches, both from industry and from within the government lending sphere. We agree with the GAO report that we need to improve the documentation of these policies and procedures and we are currently working on that effort as noted in the GAO report.

These policies are complex and we want to ensure that they are documented appropriately so that they can inform the operations of the LPO moving forward. The LPO plans to complete the actions recommended by GAO this calendar year.

Q3. According to information provided to staff, the Loan Program Office has 83 federal staffers. At the height of the stimulus spending, in 2011, it had about 90 employees. It appears that you have roughly the same number of employees as DOE had when processing stimulus applications. Please describe how the employee functions have change as the office transitioned form *(sic)* reviewing and approving the project finance deals to monitor the portfolio?

A3. The Department takes its responsibility to the American taxpayer very seriously. That is why we appreciate the work of the Independent Consultant, the GAO, and the IG and use their reports to continuously improve our program management and risk analysis. These reports all recommended filling key positions and expanding the risk and portfolio management functions of the LPO.

As a result, the Department has hired a number of experienced professionals across the organization I ncluding a new Executive Director, a Director of Risk Management, a permanent Chief Counsel, and several new senior Portfolio Managers.

The program has the ability to adjust the level of outside contracted services that it uses in its work, but a core staff of Federal employees is necessary for continuity and appropriate oversight of taxpayer funds. Moving forward, the program will continue its ongoing efforts to recruit and expand its staff for both the portfolio monitoring and risk management functions.

Q4. Mr. Davidson: In DOE's FY 2015 budget presents the program's administrative operations at $42 million. Yet the budget request for the Loan Program is $7 million dollars, because of offsetting receipts, which appear to be from program participants.

a. Explain the source of these receipts and how they are calculated?
b. What happens to offsetting receipts once DOE stops issuing new loans and loan guarantees?
c. What future additional funding may become necessary for Congress to consider if future receipts decline?

A4. Title XVII of the Energy Policy Act of 2005 requires the Secretary of Energy to charge and collect fees for loan guarantees issued pursuant to this authority sufficient to cover applicable administrative expenses. To comply with this statutory requirement, the LPO publishes the applicable fees in its solicitations to inform potential applicants.

These fees include application fees, closing fees, and annual portfolio maintenance fees. As a result, the Department only collects application and closing fees if it is receiving new applications and issuing loan guarantees. However, the annual portfolio maintenance fees are collected on loan guarantees in the existing portfolio for the full tenor of those obligations. The Department will include any future funding requests in its annual budget request to Congress necessary to maintain the functions of the LPO and protect taxpayer interests.

Q5. What is the number and role of outside contractors in reviewing applications or monitoring the portfolio?

a. Are contractors subject to the Department's policies and procedures?
b. Has DOE completed any kind of analysis or validation of the reports being provided by outside contractors to determine if they are accurate, thorough, or useful?

A5. The LPO utilizes a variety of outside consultants to provide expert input on loan underwriting and portfolio management. This includes outside legal counsel, independent engineers, financial advisors, and others. Numerous audit reports, including the Independent Consultant's report, have recognized the importance of utilizing these outside consultants to gain independent views and expert analysis on transactions.

While LPO benefits from this expert analysis, all decisions related to loan underwriting, Issuing loan guarantees, and portfolio management are made by LPO staff, who are subject to the Department's policies and procedures.

Q6. Why did DOE choose to sell the defaulted notes for Fisker and VPG when it did? Could DOE have recouped more money if it had instead foreclosed on the loan and sold Fisker?

A6. The Department chose to sell the Fisker and VPG notes rather than pursue alternative remedies such as foreclosure, because DOE determined, after close consultation with its outside financial advisor, and pursuant to the procedures set forth in the Debt Collection Improvement Act, that selling the notes at auctions offered the best possible recoveries for the taxpayer.

Q7. At present, DOE has about $12 billion allotted to additional advanced nuclear loan guarantees. What are DOE's plans for using that remaining authority?

a. You mention in your testimony that supporting Vogtle is facilitating the broader deployment of new advanced nuclear reactors in the United States. Do you have pending nuclear related loan applications?
b. What analyses about the prospects for new nuclear development in the United States have you taken into account for your planning concerning the nuclear related loans?

A7. The Department is evaluating whether to issue a future solicitation to allow new applications for either all, or a portion, of the remaining nuclear energy loan guarantee authority. However, we continue to have pending applications from the prior nuclear solicitations issued in 2008. Should any of these applicants signal their desire and ability to resume loan underwriting, LPO could restart due diligence as these projects remain eligible under the prior solicitation.

Nuclear power continues to have an important role to play in our nation's clean energy future. Currently, there are a number of projects and reactor designs pending regulatory approval from the Nuclear Regulatory Commission (NRC). As one of the few carbon-free sources of energy available for deployment today, this loan guarantee authority could enable our nation to increase its capacity for safe, secure nuclear power.

QUESTIONS FROM REPRESENTIVE GENE GREEN

Q1. In the most recent solicitation released by your office for Advanced Fossil Energy projects, an "eligible project" could apply as an "Advanced Resource Development" project. These projects include "Projects that employ new or significantly improved technologies to economically develop, recover, and produce traditional fossil energy resources with reduced greenhouse gas emissions." Just for clarification, an eligible project could involve either hydraulic fracturing as a technology or natural gas as a traditional resource, correct?

A1. Yes. Hydraulic fracturing and natural gas development are eligible fossil energy activities under the Advanced Fossil Energy Projects Loan Guarantee Solicitation. Individual applications are evaluated on a case-by-case basis to ensure they meet all relevant eligibility criteria. Under the Section 1703 loan guarantee program, eligible projects must use an innovative technology, reduce, avoid, or sequester greenhouse gas emissions, be located in the United States, and have a reasonable prospect of repaying the loan and interest.

Q2. Under the ATVM program, Secretary Moniz has stated the Department of Energy would specifically reach out to component manufacturers. Has DOE reached out to similar technology companies in the hydraulic fracturing sector?

A2. The Loan Programs Office has conducted extensive outreach to educate potential applicants following the release of the Advanced Fossil Energy Projects Loan Guarantee Solicitation in December 2013. This has included presentations at industry conferences and events covering the hydraulic fracturing industry.

Q3. Finally, in Texas, our refining industry produces petroleum coke. In my district of East Harris County, we have lots of it. Thus far, we have exported that product to other countries. Would the Loan Program consider a project that included petroleum coke as an "eligible project," if it were to receive an application? Why or why not?

A3. Yes. Petroleum coke is an eligible fossil energy resource under the Advanced Fossil Energy Projects Loan Guarantee Solicitation. Individual applications are evaluated on a case-by-case basis to ensure they meet all relevant eligibility criteria. Under the Section 1703 loan guarantee program, eligible projects must use an innovative technology, reduce, avoid, or sequester greenhouse gas emissions, be located in the United States, and have a reasonable prospect of repaying the loan and interest.

Q4. I also want to ask about the 'Areas of Improvement' mentioned in the Independent Review conducted at the request of the White House. The Inspector General (IG) released their most recent audit report in May 2014. In that report, the IG stated that the Department of Energy had made significant progress on four of the twelve recommendations made by the Independent Review. However, the Department of Energy took issue with this and said that DOE had made significant progress on six of the twelve recommendations. Can you explain why DOE believed there was a discrepancy?

A4. The Office of Inspector General's (OIG) report shows that the Loan Programs Office has taken the independent consultant's (the "Allison") report seriously and addressed its recommendations. The LPO concurred with the OIG's assessment that it has completed actions to address four of the Allison report's twelve recommendations and has initiated actions in response to the remaining eight recommendations. In addition, it is the LPO's view that two additional recommendations have been fully implemented, and that the implementation of one the recommendations always will be, by its very nature, ongoing. Overall, the OIG found that in cases where the Department had not implemented a specific recommendation from the Allison report, it considered the recommendations and addressed the issue with a different approach. Further, the Department provided strong rationales for pursuing the alternative actions and the OIG did not object.

Q5. In this committee, we've heard testimony from Secretary Moniz and others about the FY2015 budget request. DOE has been under constant budgetary pressure since FY2011 and has had to continue operations under these constraints. Many of the risks cited by the IG and GAO were related to staffing and rulemaking. Can you give us a sense of what effects budgetary constraints and hiring freezes have had on implementation and staffing issues in the Loan Programs Office?

A5. The Department takes its responsibility to the American taxpayer very seriously. That is why we appreciate the work of the Independent Consultant, the GAO, and the IG and use their reports to continuously improve our program management and risk analysis. These reports all recommended filling key positions and expanding the risk and portfolio management functions of the LPO.

As a result, the Department has hired a number of experienced professionals across the organization including a new Executive Director, a Director of Risk Management, a permanent Chief Counsel, and several new senior Portfolio Managers.

Moving forward, the program will continue its ongoing efforts to recruit and expand its staff for both the portfolio monitoring and risk management functions. However, these efforts will be affected by the program's available administrative budget and ability to hire experienced and professional staff.

Q6. A lot has been made of DOE's alleged mismanagement of the Loan Program. However, according to GAO, participants from industry stated that their main concerns were not mismanagement but burdensome applications and lengthy review timeframes. As you know, businesses looking to invest in new technology or infrastructure need investment certainty. Industry builds in extra time because they know that dealing with the government will not be an expedited process. But in some cases, even the extra time isn't enough to meet development requirements. Do you believe this uncertainty has led businesses to shy away from the loan guarantee program because DOE is too slow or risk averse? What has your office done to provide more certainty to applicants?

A6. The Department of Energy takes its responsibility to the American taxpayer very seriously. As a result, the LPO underwrites and structures its loans and loan guarantees to protect the interests of taxpayers and maximize prospects for full repayment. Before making a loan or loan guarantee, the LPO conducts extensive due diligence on the application, with rigorous financial, technical, legal and market analysis by DOE's professional staff, including qualified engineers, financial experts, and outside advisors.

At the same time, the Loan Programs Office is committed to being responsive to applicants and ensuring timely processing of all applications. As a result, we have adopted a number of improvements including launching an online application portal, streamlining the application process, adding transparency to the approval process, clarifying authorities, and developing a state-of-the-art workflow management system.

Mr. Davidson. The Secretary and I meet on a quarterly basis.

Mr. Murphy. Two years ago this committee asked the DOE to submit a list of projects that applied for loan guarantees. Can you tell me how many of the active loan guarantee applications are still in the queue?

Mr. Davidson. We have been providing that to certain areas of Congress. I'm not sure it did this committee, but we're happy to do that.

Mr. Murphy. Do you have any idea how many are still in the queue, by any chance?

Mr. Davidson. Our total applicants?

Mr. Murphy. Yes.

Mr. Davidson. We have a number of applicants still in the queue. We have -- as we shut down, as the 1705 program ended, all those that were still in the queue were allowed to proceed if they had been active. So of that, we have a number of active applications. We don't disclose the number exact, but there are a handful of active applications. On the renewable side, there are a handful of active applications from earlier fossil solicitations we did in 2008.

Mr. Murphy. Can you describe the nature of those fossil solicitations in general?

Mr. Davidson. Well, Mr. Chairman, if I can go back, I'll go back. As I know many of you on the committee are aware, we did a

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While the Department doesn't comment on the status of pending active loan guarantee applications in order to protect the confidentiality of its applicants, the Loan Programs Office (LPO) currently has several applicants that are undergoing due diligence.

solicitation in 2008 which was really a coal gasification. It was a very specific solicitation. At that time a number of applications came in, I think 10 or so at the time. Some of those have remained active. And are still in the queue, and are still being pursued, and are in due diligence. Many of those projects, the sponsors withdrew the projects primarily because of what's happened with natural gas. And the decrease in the cost of natural gas has made those products not -- those projects not economically viable, so the developers have withdrawn.

Mr. <u>Green.</u> Thank you, Mr. Chairman.

Mr. Davidson, just off the top of my head, why are the number of applications privileged, that you can't share with a congressional committee?

Mr. <u>Davidson.</u> The -- I believe it's our DOE policy. We just -- we state the number of applicants who have -- the specific number of applicants we try not to release because there are competitive -- potential competitive issues involved. We try and really safeguard the privacy information of those people that apply, trade secrets, those type issues, and the feeling is if people know how many applied for a certain type of solicitation, it could determine if there are competitors applying or things of that nature.

Mr. <u>Green.</u> I understand that, and I -- you know, obviously I want business records and proprietary information, but it seems like a public loan would be -- at least the information for the number -- I'm not talking about the names even, but that would be helpful, of someone who's applied, but that's separate from my line of questions. I just didn't know they were -- even the number of applications, I never had somebody say we can't tell you how many we have. That just -- it just bothers me as a Member of Congress.

In the most recent solicitations released by your office for advanced fossil energy projects, an eligible project could apply as an advanced resource development project. These projects include projects that employ new or significantly improved technologies to economically develop and recover and produce traditional fossil energy resources with reduced greenhouse gas emissions. Just for clarification, an eligible project could involve either hydraulic fracking as a technology or natural gas as a traditional resource; is that correct?

Mr. Davidson. Correct.

Mr. Green. Because coming from Texas, I also know we have some issues that we need to do. If we want to continue the successful development of natural gas, we need to use technology, whether it's private sector or public sector, to be able to safely get that product out of the ground and as clean as we can do. Is the Department of Energy open to something like that as a grant project?

Mr. Davidson. Yeah. Thank you, Congressman, for that question.

First of all, on the prior point, let me just say we're happy

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Mrs. Blackburn. So you do have a total of 33 that are out there, and you're actively monitoring those. And the amount of those loans, is it about $28 billion?

Mr. Davidson. It's a little closer to 30 billion now.

Mrs. Blackburn. Okay. So it's closer to 30 billion.

And how much of your total loan funds have been disbursed?

Mr. Davidson. Well --

Mrs. Blackburn. By percentage.

Mr. Davidson. We have -- well, the short answer is we have approximately 26 million in the 1703 authorization still available and 16 billion in the ATVM available.

Mrs. Blackburn. Okay.

Mr. Davidson. So, a little over $40 billion still remaining.

Mrs. Blackburn. Okay. All righty. And let me ask you this. What I'd like to know, since we've had so many questions about due diligence and how the program goes about its due diligence, describe for me how the LPO actually monitors that portfolio.

Mr. Davidson. Thank you, Congresswoman, for that. First let me say, as you mentioned, I had been in the private sector for a number of years. I was in the banking business for a while, so -- and I've been now in government for the last 5 years, State government and now here, and I just would like to reassure you, from what I've seen in the private sector and what I've seen at the LPO in my 1 year there, I think our processes, the way we go through our due diligence, the way we involve both our staff and outside

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The Department takes its responsibility to protect taxpayers' interests very seriously. All applications must undergo a rigorous due diligence process to ensure that there is a reasonable prospect of repayment. We also have strong portfolio management practices after the loan is approved to further safeguard taxpayers from the risk of a company being unable to meet its obligations.

Specifically, the Department's Loan Programs Office (LPO) has improved, and will continue to improve, processes and systems for proactive monitoring, loan administration, compliance, and reporting, all of which contribute to the Department's comprehensive early warning system. The Program monitors market, regulatory, and counterparty risks that can affect credit performance and develops periodic reports for each transaction which provides an in-depth analysis of the risks.

As a result of LPO's rigorous due diligence and robust project monitoring, the Department's overall loan portfolio is performing very well. Currently, the LPO manages a diverse portfolio of approximately $30 billion in loans, loan guarantees, and commitments covering more than 30 projects nationwide. These projects include one of the world's largest wind farms; several of the world's largest solar generation and thermal energy storage systems; and more than a dozen new or retooled auto manufacturing plants across the country. Losses to date represent approximately 2 percent of the overall loan portfolio.

RPTS ZAMORA

DCMN HERZFELD

[10:18 a.m.]

Mr. Davidson. Thank you for that question. I'm very confident that is not occurring now. And I'm currently -- as one of the missions I had when I came in, as I mentioned, I had a real business background, and I think it's very important that you be responsive to applicants. And I think that was an issue we had before. We now are trying to move very quickly to be responsive to all those in our pipeline and all future applicants. We are very focused on quickly turning around part 1s, letting applicants know if they will move into part 2 or will they be out of the process.

Dr. Burgess. There's a semiannual report to Congress from April 1, 2012, from the Office of Inspector General from the Department of the Treasury. In that report, on the Department of Treasury's inspector general's consultation on the Solyndra loan guarantee, Department of Treasury pledged to work with Department of Energy to define the circumstances that constitute a deviation from the material financial terms and conditions of the loan guarantee and Treasury's consultative role.

So has the Department of Energy reached a full understanding with Treasury so that these definitions are now established, and a plan for cooperation and respective roles formulated and made public?

Mr. Davidson. Congressman, I have to say I'm not familiar with that issue, so if it's okay with you, I'll research and get back to you on that.

Dr. Burgess. So do you and Treasury talk?

Mr. Davidson. We have a very robust interagency process. Prior to our loans, we meet with OMB to discuss our deals, and Treasury is invited to that meeting.

Dr. Burgess. With all due respect, the information that this committee and the committee staff uncovered during the Solyndra investigation, it really didn't seem that there was a robust relationship between Department of Treasury and Department of Energy, and really that's what led to some of the concerns that are outlined in this report.

I'm quoting here: "We found that Treasury did perform a consultation on the terms and conditions of the Solyndra loan guarantee. However, whether that consultation met the intent of applicable law and regulation is not clear because Treasury's consultative role was not sufficiently defined."

Have we moved past that point?

Mr. Davidson. Congressman, I can't speak to the time before I was here which that report indicates, but I'm very pleased now with the relationship we have on an interagency basis with both Treasury and the Office of Management and Budget. We meet with them regularly. They are aware of our portfolio.

Dr. Burgess. I would like for you for the record to go back

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The Loan Programs Office (LPO) consults routinely with U.S. Treasury on individual transactions, portfolio management, and policy matters related to the terms and conditions of loans that are backed by a Department of Energy - issued loan guarantee, consistent with Title XVII and the recommendations of the U.S. Treasury's Office of Inspector General Report (OIG-12-048). This relationship is governed by a Memorandum of Understanding (MOU) that was signed by the Department of Energy and Treasury in December 2012.