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## United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

June 25, 2012

Dr. Stephen Chu  
Secretary  
Department of Energy  
1000 Independence Avenue, SW  
Washington, DC 20585

Dear Secretary Chu:

On September 22, 2009, in a Department of Energy (DOE) press release touting the DOE's loan to Fisker Automotive, you said, "This investment will create thousands of new American jobs and is another critical step in making sure we are positioned to compete for the clean energy jobs of the future."

Now, almost two and a half years after this announcement, it appears that Fisker has experienced difficulty creating American jobs and questions have been raised regarding the decision to loan Fisker over half a billion dollars of tax payer money.

We initially wrote to you on April 20, 2012, to raise concerns regarding the Government Accountability Office's (GAO) evaluation of the Fisker loan, the DOE's Fisker statistics, and the underlying wisdom of the Fisker loan. The response which you appear to have delegated to Mr. David Frantz, however, raises more questions than it answers. We would appreciate a response from you to the questions raised by Mr. Frantz's letter and clarification of some of Mr. Frantz's statements.

Please respond to the following questions:

1. Is it correct that the job creation and retention information on DOE's website is entirely self-reported?
  - a. If so, is there any incentive for applicant companies to inflate job creation and retention statistics?
  - b. Would it be prudent for DOE to randomly audit applicants' job creation and retention statistics for accuracy?

2. What methodology has DOE promulgated to ensure that applicants accurately and uniformly submit job creation and retention estimates?
3. According to Mr. Frantz's response to our April 20, 2012, letter to you, the current statement posted on DOE's website, that the DOE's loan to Fisker Automotive would result in the equivalent of 30,000 fewer cars on the road, is currently incorrect and Fisker is revising its estimate. Does the DOE plan to remove this incorrect statement from its website?

- a. If not, why not?

4. In Mr. Frantz's response, he asserts:

Like the due diligence performed on all ATVM loan applications, the Department's due diligence for the Fisker loan was extensive – the rigorous financial, technical, legal and market analysis conducted over many months by DOE's internal professional staff, including qualified engineers and financial experts, and outside experts. The Loan Program's underwriting and due diligence standards are as rigorous as, or more rigorous than, those in the private sector.

Our concern is that Mr. Frantz offers no support for these assertions. To support these statements, please provide the following:

- a. The names of all companies retained by DOE to assist in reviewing/vetting Fisker loan.
  - b. The contracts signed by DOE with those companies.
  - c. The specific "financial, technical, legal, and market analysis conducted" by DOE staff.
  - d. The analysis performed by DOE which allows Mr. Frantz to assert that the ATVM's underwriting and due diligence standards are "as rigorous as, or more rigorous than, those in the private sector."
5. If DOE's internal staff is capable of conducting this "rigorous" analysis, why was it necessary to contract for these services?
  6. On April 30, 2012, our staff asked for details on the DOE's contract with Houlihan Lokey and for additional information on which firms DOE is contracting with to monitor these loans and the cost of these contracts. Your staff responded, in part, "How these consultants are paid is complicated..." Your staff went on to explain that DOE "employs multiple approaches to minimize costs" and that "to the extent any consultant is paid with Recovery Act funding, the details of those awards are available at Recovery.gov." However, beyond stating that the cost of loan contracts was "complicated" your staff did not detail who else DOE was contracting with and how much these contracts cost.

Accordingly, please explain the compensation arrangements DOE has with its contractors.

7. Fisker Automotive's loan application to the DOE notes that it is in part owned by the Qatar Investment Authority. In Mr. Frantz's response to our earlier letter he noted, "The automobile industry is global; like Fisker, nearly all major automobile companies have overseas operations." Mr. Frantz neglected to state however, that a substantial portion of Fisker was owned by a foreign government's sovereign wealth fund.
  - a. Why should the American taxpayer have to accept the credit risk of a company owned by a foreign government?
8. In his letter to us Mr. Frantz appears not to have responded to the following question, please answer this question: Why did the Department choose a classification for the Karma which, in the words of Fisker's officials, was not "accurate"?
9. In his letter to us Mr. Frantz appears not to have responded to the following question, please answer this question: According to the February 28, 2011, GAO report, the Department has chosen not to create "targeted levels of performance" for Department loans. According to GAO, creating such metrics would protect taxpayer financial interests. Why did the Department decide not to create these targets?
10. In his letter to us Mr. Frantz appears not to have responded to the following question, please answer this question: On June 9, 2011, the GAO released another report which stated that the Department disagreed with the GAO's recommendations that the Department: "[A]ccelerate efforts to engage engineering expertise and develop sufficient, quantifiable performance measures." The report states that the Department "disagreed with the recommendations" and as a result the recommendations had not been implemented. Has the Department taken any steps since this report was issued to comply with GAO's recommendations? If so, what are they? If not, why not?
11. How will the recall of \$52 million worth of A123 batteries intended for the Fisker Karma impact DOE's decision making with regards to distributing the outstanding portion of A123's \$249 million DOE grant?
12. In April 2012, DOE granted A123 additional time, through December 2014, to claim the remaining portion of the \$249 stimulus million grant that was approved in 2009. How much of this grant is currently outstanding, and will DOE consider A123's ongoing financial struggles before distributing the rest of the grant?

Thank you for your cooperation and attention in this matter. When responding to this letter, please number your answers in accordance with our questions. We would appreciate a response by July 2, 2012. If you have any questions, please do not hesitate to contact Chris Lucas for Senator Grassley at (202) 224-5225 and Brendon Plack for Senator Thune at (202) 224-2321.

Sincerely,



Charles E. Grassley  
Ranking Member  
Committee on the Judiciary



John R. Thune  
United States Senator