Department of Energy
Washington, DC 20585

August 3, 2012

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

Thank you for your June 25, 2012 letter to Secretary Chu regarding the Advanced Technology Vehicles Manufacturing (ATVM) loan program and the program's loan to Fisker Automotive, Inc.

After coming back from the brink of collapse, the American automobile industry has rebounded—reinventing itself with new technology and retooling to make the vehicles of the future. Plants are hiring more workers, manufacturers are returning to profitability, and exports of U.S. vehicles are increasing. Now, in part because of help from the Department of Energy's ATVM loan program, the American automobile industry's prospects are stronger than they have been in more than a decade.

Rigorous Due Diligence to Protect Taxpayers' Interests

In my May 18, 2012, letter to you, DOE wrote that the Loan Programs Office's underwriting and due diligence standards are as rigorous as, or more rigorous than, those in the private sector. These were not DOE's conclusions, but the views of commercial lenders interviewed as part of a March 2012 Government Accountability Office (GAO) report.[1] Specifically, GAO found that:

- "According to private lenders we contacted who finance energy projects, the [Loan Guarantee Program's] established review process is generally as stringent as or more stringent than those lenders' own due diligence processes."

- "Some lenders that sponsored applications under the FIPP [Financial Institution Partnership Program] solicitation said that the [Loan Guarantee Program's] review process was more rigorous than their own."

- "It is noteworthy that the process DOE developed for performing due diligence on loan guarantee applications equals or exceeds those used by private lenders to assess and mitigate project risks."

As part of this process, the Department's Loan Programs Office, which administers the ATVM program, continuously strives to protect taxpayer interests—working as an active manager, continuously

[1] While the March 2012 GAO report focuses on the underwriting and due diligence process for Title XVII loan guarantee program, the Loan Programs Office manages both the Title XVII and ATVM programs and employs similar underwriting and due diligence processes for both programs. A copy of the report is enclosed.

monitoring each project and its market environments, while seizing opportunities to contain exposure to loss. The March 2012 GAO report also included an extensive review of these policies and procedures for reviewing loan guarantee applications.

The Loan Programs Office achieves this level of rigor through the dedication and expertise of a team of highly experienced project finance professionals, whose capabilities, since 2007, have been augmented by engaging a number of consultants to assist with underwriting efforts, such as credit origination and financial analysis, as well as post-closing credit review and compliance. The Department also contracts with outside firms for other facets of its underwriting operations, including the financial, marketing, legal, and technical reports produced during the Loan Programs Office's origination and due diligence process. These large, private sector firms have decades of experience in evaluating, monitoring and overseeing complex vehicle and technology projects.

For the Fisker transaction, DOE's Office of Energy Efficiency and Renewable Energy performed a technical merit review. The Department engaged Booz Allen Hamilton and Grant Thornton as financial advisors, Debevoise & Plimpton LLP as outside legal counsel, and AT Kearney as market advisor. Engaging outside professional advisors to assist in complex financial transactions is standard practice in commercial lending. Moreover, given the volume of applications and complexity of transactions, outside advisors are a cost-effective way to supplement the professional career staff of the Loan Programs Office.

In a recent report, former Assistant Secretary of the Treasury for Financial Stability Herb Allison discussed the Loan Programs Office's use of these consultants. The report recommended that the Loan Program "continue to retain independent outside experts in engineering, project finance, and other relevant disciplines to advise it on an ongoing basis" as part of the Department's efforts to protect taxpayers' interests. While applicants for Title XVII loan guarantees typically pay the fees associated with outside engineering, legal or market analyses, Congress, by statute, limited the amount ATVM applicants are required to pay for these consultants.

Equity Investors in a Global Industry

When Congress created the ATVM program with bipartisan support in 2007, the program's policy goals were to accelerate the domestic development and deployment of fuel-efficient advanced technology vehicles and components. Congress nowhere included any statutory restriction on an equity investor's country of origin as part of this goal.

As stated in my May 18, 2012, letter, the automotive industry is global. Like Fisker, nearly all major automobile companies have overseas investors. Two of the largest loans made by the ATVM program are to Ford Motor Company and Nissan—both of which have small and large investors throughout the world. Fisker has raised more than $1billion in equity financing. As far as we are aware, QIA's equity holding is less than five percent.

Vehicle Classifications, Performance Metrics, and Engineering Expertise

As stated in my May 18, 2012, letter, the Loan Programs Office assessed the projected fuel economy improvements of the Fisker vehicles over vehicles of the same class and, in that assessment, relied on the EPA vehicle classifications, which are the classifications that the ATVM Interim Final Rule requires. These standard EPA vehicle classifications are based on the interior passenger and cargo volume of the vehicle. The ATVM Interim Final Rule also categorizes vehicles by performance.[2]

With respect to GAO's report and testimony on the ATVM program, the Department's letter also noted that GAO's recommendation to use DOE-created performance metrics would greatly expand the scope of the program. The Department also already provided a formal response to GAO's February 2011 report and congressional testimony alongside GAO at the Senate Committee on Energy and Natural Resource's June 9, 2011 hearing; Copies of the Department's response and testimony are enclosed.

On the issue of engineering expertise, the Department regularly engages both internal and external expertise to help oversee borrowers' compliance with loans' technical requirements. DOE's contractors include some of the leading automotive engineers in the country and other leading independent engineering firms to ensure that the projects are being delivered as agreed. It is neither possible nor prudent to subject all ATVM projects to an identical engineering review. Rather, the Loan Programs Office tailors the review for each project to deploy engineering expertise when and where it is most needed in order to achieve the highest confidence in the quality of the project and its ability to repay the loan.

Job Estimates and Statutory Eligibility Requirements

Congress did not include job creation or retention within the statutory eligibility requirements for the ATVM program, nor does the ATVM program's Interim Final Rule (10 C.F.R. 611) include job creation as a part of an applicant's eligibility. If Congress were to amend the Energy and Security Act of 2007 to include job creation or retention within the statutory eligibility requirements for the program, DOE would need to verify the accuracy of these statistics to ensure compliance with eligibility requirements.

A123 and Support for Advance Technology Vehicles

Your letter also asked about lithium-ion battery manufacturer A123Systems, which was founded in 2001 to commercialize a nanostructured lithium iron phosphate electrode technology. A123 currently sells batteries for hybrid electric and plug-in hybrid electric vehicles (HEVs and PHEVs), power tools and stationary energy storage systems.

The Department began supporting A123's development of its LFP cathode material via Small Business Innovative Research contracts awarded in 2002 and 2003. This early support led to A123's initial commercial sales of batteries for power tools in early 2006. Later that year, DOE and U.S. Advanced Battery Consortium awarded A123 a three-year, $15 million contract to develop an advanced and low cost 25kW battery system for HEVs. In March 2008, DOE awarded A123 a three-year, $12.5 million contract towards development of its technology for use in PHEVs. Most recently, in 2009, A123 received a $249.1 million American Reinvestment and Recovery Act grant from DOE to make iron

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[2] As noted in the Interim Final Rule, in order to distinguish between vehicles that are manufactured to achieve higher performance from other similarly sized non-performance vehicles, DOE evaluated the peak horsepower to curb weight ratio for each vehicle by EPA vehicle classification. This additional performance analysis resulted in a total of 17 vehicle classes. The two Fisker models were evaluated under the "subcompact performance sedan" category.

phosphate cathode powder, electrode coatings, battery cells and modules and assembling the complete battery pack systems. All awards are 50 percent cost-shared with DOE.

Every award has its own end date. In the case of A123, the Department worked with the company to set new milestones and end dates that aligned with their business plans while still meeting the goals of the Recovery Act. The A123 grant involves the staged addition of production capacity. The company has experienced significant growth to their business since the original milestone schedule was developed in 2009. However, an adjustment in the schedule for the continued build out of capacity was necessary to better align with the anticipated product demand through December 2014. The project is cost-shared on a dollar-for-dollar basis with A123, which means DOE reimburses a portion of the funds only after A123 expenditures.

The Department is in constant dialogue with A123 to stay abreast of progress, challenges, plans and developments to assure that the project is meeting the objectives as defined in the grant. DOE is also continually monitoring risk and financial conditions.

A123 is Fisker's primary battery supplier. Because of battery reliability concerns, A123 has set aside approximately $50 million to remediate any issues for all of A123's customers. Fisker currently is in the process of engaging with another battery producer and has a sufficient supply of finished goods and work in inventory. As such, the Loan Program believes it is unlikely that any financial difficulty that A123 might encounter will have a major impact on Fisker's finished product delivery.

If we can be of further assistance, please do not hesitate to contact me or Mr. Brad Crowell, in the Office of Congressional and Intergovernmental Affairs, at (202) 586-5450.

Sincerely,

David G. Frantz
Acting Executive Director
Loan Programs Office

Enclosures

cc: The Honorable John Thune
United States Senator