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# United States Senate

COMMITTEE ON FINANCE  
WASHINGTON, DC 20510-6200

CHRIS CAMPBELL, STAFF DIRECTOR  
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June 9, 2016

The Honorable Jacob Lew  
Secretary  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Dear Secretary Lew:

Pursuant to the Committee's inquiry into the use of certain energy-related tax provisions, I write concerning the Treasury Department's ("the Department") administration of Section 1603 Payments for Specified Energy Property in Lieu of Tax Credits ("Section 1603 program / Section 1603 payments") program. Last March, I wrote to you and Commissioner Koskinen about the Section 1603 program and appreciate the Department's response of May 11. In light of this response, as well as the ongoing inquiry by the Committee, I write today to request additional information on the administration of the Section 1603 program and the question of overlapping federal subsidies.

In an October 25, 2010 memorandum for the President,<sup>1</sup> Carol Browner, Ron Klain, and Larry Summers detailed concerns over "double dipping" and a lack of "skin in the game" by recipients of overlapping renewable energy subsidies, including the Section 1603 program and Department of Energy ("DOE")-administered Sections 1703 and 1705 energy loan guarantee programs ("energy loans"). The memo noted Office of Management and Budget and Department questions regarding "the total government subsidy for loan guarantee recipients, which have exceeded 60%... [and] the relatively small private equity (as low as 10%) developers put into projects...."

To assist the Committee in its ongoing inquiry, I ask that you provide the following information by no later than Thursday, June 30, 2016:

1. The Department's response stated that the review process uses "risk-based criteria" to apply additional scrutiny to certain applications.
  - a. Please explain further what components are included within the "risk-based screening criteria" that trigger an additional review.
  - b. How many Section 1603 applications warranted additional screening through this "risk-based screening criteria"?

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<sup>1</sup> Memorandum from Carol Browner, Ron Klain, Larry Summers to the President (Oct. 25, 2010).

- c. Other Department guidance states that “in order to ensure that a Section 1603 applicant’s claimed cost basis reflects the eligible property’s fair market value, basis is more closely scrutinized in cases involving related parties, related transactions, or other unusual circumstances.” Is this level of screening performed by the Department or elsewhere?
2. According to Department documents, the Section 1603 review team evaluates a project’s claimed basis by comparing the basis against certain market-based benchmarks.
  - a. Provide the benchmarks used since this review method was established.
  - b. What system characteristics does the team consider in evaluating an applicant’s claimed basis against these benchmark prices?
  - c. What factor(s) does the team consider in evaluating whether a transaction is conducted at arm’s length or involves related parties or transactions?
3. An independent accountant’s report is required for projects with a claimed basis over \$500,000.
  - a. Of the 104,733 awarded applications to date, how many required an independent accountant’s report?
  - b. Does the Department have the ability to verify accountant independence or qualifications? If so, how are these verified?
4. The Department’s response stated that of the 104,733 Section 1603 payments, 29,249 awards have been reduced from the amounts requested.
  - a. Were these reductions made during the initial review of the application (prior to the grant being awarded) or after the award?
  - b. What were common reasons for these reductions?
5. Public records indicate that numerous Section 1603 payments were used to repay DOE energy loans.
  - a. Does the Department have a view on the use of Section 1603 payments to repay loans from other government entities?
  - b. Is a Section 1603 payment recipient (“recipient”) required to file a Notice of Assignment when the recipient uses a Section 1603 payment to repay a federal loan, similar to the requirement when the payment is assigned to a financial institution?
6. How do the Department and DOE coordinate when awarding Section 1603 grants?
  - a. Is there a total combined percentage of the basis which DOE and the Department seek not to exceed when providing loans and grants? Public records indicate that, in numerous cases, federal financing provided appears to exceed the basis value of a given property.
  - b. The 2010 memorandum stated that “Treasury and OMB believe that clear policy principles – and associated metrics for evaluation – should be developed for the energy loan guarantee program. These principles would ... address issues like

double dipping [and] skin in the game...” Has the Department instituted similar policy principles and metrics for the Section 1603 program? Please provide any supporting policies, procedures, or any other written documentation.

7. Department guidance requires the recapture of a portion of a Section 1603 payment if the energy property ceases to be a “specified energy property” or is transferred to a “disqualified person” within five years of the property being placed into service.
  - a. Describe how the Department monitors recipients to determine whether either of these events has occurred within the specified period.
  - b. What actions does the Department take if it determines a portion of Section 1603 payment is eligible for recapture?
8. What actions, if any, does the Department take to authenticate claims on Section 1603 program participant annual performance reports?
9. Please provide a list of the 177 Section 1603 grant recipients who have not submitted annual reports for 981 projects as of the end of March of this year. Please include the company name, property or facility name, award amount, award date, and status of collection proceedings at a minimum.
10. Is the Department taking any actions to monitor the financial stability of energy companies who receive taxpayer assistance through programs such as the Section 1603 grant program?

I also ask that you provide your answers on a question by question basis, indicating which question you are answering

Sincerely,



Orrin G. Hatch  
Chairman