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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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March 15, 2016

The Honorable Jacob Lew
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20229

The Honorable John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Secretary Lew and Commissioner Koskinen:

Through the enactment of the American Recovery and Reinvestment Act of 2009 (Recovery Act), Congress created the Section 1603 grant program to subsidize “green energy” through cash grants in lieu of production and investment tax credits. As of January 1, 2016, the Treasury Department had awarded approximately \$25 billion in Section 1603 grants. While this program has expired, both the potential for fraud and need for oversight remain.

Section 1603 of the Recovery Act allows taxpayers to elect to receive an initial grant for renewable energy projects in lieu of claiming an investment tax credit (ITC) later. However, the Treasury Inspector General for Tax Administration (TIGTA) found that the Internal Revenue Service did not have a means of systematically labeling the taxpayer accounts of those who received Section 1603 grants, potentially leaving the door wide open for grant recipients to later amend their tax returns to claim ITCs or claim them in another year.¹ Furthermore, TIGTA found that the IRS did not have sustained oversight in this area, instead electing to institute a temporary Compliance Initiative Project (CIP) which was then temporarily extended.²

I also question the Department’s efforts to adequately review Section 1603 grant applications *prior* to their being awarded to taxpayers. While I am encouraged to see some reports of the Department reducing grant amounts when instances of ineligible properties or incorrect basis calculations are found (indicating some level of Departmental review), I am concerned that the

¹ The Internal Revenue Code allows qualified taxpayers to use ITC’s for up to five years prior and 20 years after the ITC was originally claimed.

² A CIP is any activity involving contact with specific taxpayers and the collection of taxpayer data within a group, to identify potential areas of noncompliance within the group for the purpose of correcting this noncompliance.

Department may have failed to properly review other Section 1603 grant applications. In 2011 the IRS Office of Chief Counsel issued a memo clarifying that the IRS may review whether the amount of a Section 1603 payment was appropriate.³ Such a memo is unlikely to have been issued unless the IRS encountered this matter within examinations, raising the question of why these problems were not discovered by the Department when the grant applications were initially reviewed. This program is far too large with the potential for far too much fraud to simply be left without coordinated and sustained oversight by both the Department and the IRS.

Given these concerns, I ask that you respond to the following questions:

1. What mechanisms for oversight do the Department and IRS each have in place to ensure the integrity of the Section 1603 grant program?
2. Describe the communication and coordination between the Department and the IRS when overseeing Section 1603 grants and ITCs.

Questions to the Department:

3. In 2009, the Treasury Inspector General raised concerns about the staffing of the 1603 grant program, finding that the Office of the Fiscal Assistant Secretary only assigned four part-time staff to the program and planned to outsource the application receipt and review process to the Department of Energy (DOE). Furthermore, the Department responded that it did not have plans to hire additional staff or contractors to run the program.
 - a. How many Department staff does the program currently have, and how many did it have at the close of the previous five fiscal years?
 - b. How many, if any, contractors or federal employees outside the Department (such as DOE employees) have you or are you using? What are their roles within the program?
 - c. Please provide organizational charts for each year of the program beginning in 2009 through the present.
4. How many grants does the Department anticipate paying out between now and the end of the program? What is their total dollar value?
5. How many Section 1603 grant applications has the Treasury Department received and of those, how many of them were accepted and paid out by the Department to date? Of those paid out, how many grants were less than the total dollar amount initially requested by the applicant?
6. Does the Department provide the IRS with a list of Section 1603 grant recipients? If so, how often and what information is provided? Please provide copies from 2009 to present.
7. Describe the Section 1603 grant application review process conducted by the Department prior to the grants being paid.
 - a. What method is used to determine fair market value for projects under the grant program? Is the method varied depending on sector (residential, commercial, industrial, utility) or geographic region?
 - b. How does the Department obtain information for determining fair market value?

³ C.C.A 2011-004 (Sept. 30, 2011).

8. Provide an overview of any oversight or follow-up conducted by the Department regarding a grant that has been paid. How long will the Department continue to conduct oversight of these grants?
9. When the Department receives the annual reports from Section 1603 grant recipients, how are these reports used?
 - a. How many 1603 grant recipients have failed to submit these reports to the Department in a timely manner during the course of this program? What actions has the Department taken when this occurs? How many of these instances resulted in the recapture of some or all of the 1603 grant funds and what is their total dollar amount?
 - b. Are these reports shared with the IRS?
 - c. If a recipient answers yes to question 3.1 in their annual report regarding tax credits, what actions does the Department take?
10. Has the Department sought to recapture any Section 1603 grants?
 - a. If so, how many times has this occurred and how many of those instances were successful?
 - b. What is the total dollar amount to date of the recaptured grants?
 - c. In each of these recaptures, what was the reason for recapture?

Questions to the IRS:

11. Describe the IRS' review process of taxpayers receiving Section 1603 grants.
 - a. When a Section 1603 grant was received, in how many cases did the IRS disagree with the calculated basis or property eligibility determination by the taxpayer?
 - b. During the course of an exam, when the IRS disagrees with the calculated basis or property eligibility, does the IRS routinely communicate their findings to the Department? If so, how and what information is provided?
 - c. What actions, if any, does the Department take based on the IRS' findings?
 - d. Apart from the CIP on Section 1603 grants, does the IRS have any other means of continuing oversight in this area to adequately identify taxpayers who may later seek to fraudulently use ITCs?
12. Has the IRS CIP on Section 1603 grants been extended beyond June 30, 2015? If so, what is the new end date?
 - a. Has the scope of the IRS CIP been expanded? If so, please describe the new scope.
 - b. Please provide the results of any and all CIPs conducted on Section 1603 grants to date.
13. Has the IRS established an indicator on taxpayer accounts that received Section 1603 grants? If not, what was the reason for not doing so? What alternative was put in place and when was it put in place?

Thank you in advance for your prompt response to this request. I ask that you provide this information to the Committee no later than April 1, 2016. If

Sincerely,

A handwritten signature in blue ink that reads "Orrin Hatch". The signature is written in a cursive style with a large initial "O".

Orrin G. Hatch
Chairman