

PATTY MURRAY, WASHINGTON, CHAIRMAN

RON WYDEN, OREGON
BILL NELSON, FLORIDA
DEBBIE STABENOW, MICHIGAN
BERNARD SANDERS, VERMONT
SHELDON WHITEHOUSE, RHODE ISLAND
MARK R. WARNER, VIRGINIA
JEFF MERKLEY, OREGON
CHRISTOPHER A. COONS, DELAWARE
TAMMY BALDWIN, WISCONSIN
TIM KAINE, VIRGINIA
ANGUS S. KING Jr., MAINE

JEFF SESSIONS, ALABAMA
CHARLES E. GRASSLEY, IOWA
MICHAEL B. ENZI, WYOMING
MIKE CRAPO, IDAHO
LINDSEY O. GRAHAM, SOUTH CAROLINA
ROB PORTMAN, OHIO
PAT TOOMEY, PENNSYLVANIA
RON JOHNSON, WISCONSIN
KELLY AYOTTE, NEW HAMPSHIRE
ROGER F. WICKER, MISSISSIPPI

EVAN T. SCHATZ, STAFF DIRECTOR
ERIC UELAND, REPUBLICAN STAFF DIRECTOR
www.budget.senate.gov

United States Senate

COMMITTEE ON THE BUDGET

WASHINGTON, DC 20510-6100

November 18, 2013

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

Dear Secretary Lew:

Section 1603 of the American Recovery and Reinvestment Act of 2009 (ARRA) created a program that allowed companies to convert solar tax credits from the investment tax credit (ITC) to cash grants. The management of the program, according to reports, caused the Treasury Department's Inspector General to launch an investigation into whether certain companies have been allowed to misrepresent the fair market value of the solar products they are producing and reap financial benefits at the expense of the American taxpayers. Although the cash conversion program has ended, a 30% tax credit will continue to be provided until 2016 and 10% afterwards.

SolarCity, according to reports, has been at the forefront of the investigation. SolarCity and other companies have been receiving a tax credit equal to 30% of their investment, based on the "fair market value" of their solar systems. Importantly, the "fair market value" is established by the company, not the Treasury Department. SolarCity might have overestimated the value of its solar products. According to a recent article in *Barron's*, "SolarCity appears to use a more complex measurement than some other solar installers. While analysts estimate that SolarCity's costs are about \$4 per watt, the company's reported fair market value often exceeds \$6. The higher the "fair value," the larger the tax credit."¹

Over-inflating the cost of solar products is not only detrimental to the government, but to investors as well. *Barron's* questioned whether SolarCity's economic outlook or market value was adequately reflected through its stock prices, raising the question of whether its survival is reliant on political support, rather than investors' belief in the company's prospects. In simple terms, there is concern that SolarCity might

¹ *Barron's*, "Dark Clouds Over SolarCity," August 31, 2013, available at <http://online.barrons.com/article/SB50001424052748704719204579025283044181654.html>

become the next Solyndra—a company propped on the back of the taxpayers, not the product produced. *Barron's* summarized the company's financial state in this way: "[SolarCity] has lost \$322 million since 2008, including \$91.6 million last year, on \$128.7 million in revenue. Analysts expect SolarCity to lose \$1.84 a share this year on \$146.1 million in revenue." The article notes that although there is a divide on SolarCity's net worth, "what analysts can agree on is that Solar City will need more financing, particularly as federal tax credits fall to 10% in 2017."

It is my understanding that over \$2.7 billion in cash has been issued under Section 1603, with approximately \$10 billion still available for future cash grants or tax credits. There are some concerns on the market that these cash grants or tax credits are being used to prop up otherwise unviable clean energy programs. This is perhaps why subsidiaries of SolarCity recently pursued litigation against the federal government over tougher guidelines in calculating the fair market value of solar energy systems. The subsidiaries allege that Treasury regulations are cutting into the amount of tax credits they are due to receive, which total \$8 million thus far.

The financial pressures related to a private company's survival should not cause the federal government to modify its policies or place additional taxpayer money at risk. I want to be sure that SolarCity and other companies involved in litigation against the government do not profit at the expense of the taxpayers. To that end, I would appreciate your response to the following.

1. Please explain the logic behind allowing companies that take advantage of Section 1603 of ARRA to establish the fair market value of their solar product instead of establishing a set value. If Treasury provides guidance to firms to calculate fair market value, please provide that information.
2. Treasury allows these companies to use a proxy for installation cost. Often times, the companies, to their financial benefit, provide a number that is higher than established, already-available data. Please explain the reason for allowing proxy data and what actions the government is taking to prevent the use of fraudulently inflated proxy data.
3. How many companies have received a tax credit under Section 1603? Please provide each company and the amounts received, per year, in an itemized fashion.
4. Are any other companies simultaneously in litigation against the government regarding the calculation of solar installation tax credits and receiving Section 1603 tax credits?
5. How long are these tax credits allowed to stay on the books, shielding tax liability?
6. Please provide a list of solar companies that have received federal loans in addition to tax credits.

Please have your staff provide this information both in hard copy and in an electronic, searchable format no later than December 18, 2013, to William Smith on the Senate Committee on the Budget. If you have any questions, please contact me or have your staff contact Mr. Smith at [REDACTED], or [REDACTED].

Very truly yours,



Jeff Sessions
Ranking Member

JS:ws