



OFFICE OF
INSPECTOR GENERAL

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

May 10, 2016

OIG-CA-16-020

The Honorable Jeff Flake
United States Senator

The Honorable Lisa Murkowski
United States Senator

The Honorable Jeff Sessions
United States Senator

The Honorable John Barrasso, M.D.
United States Senator

The Honorable Mike Lee
United States Senator

The Honorable John McCain
United States Senator

The Honorable James Lankford
United States Senator

Dear Senators:

This responds to your April 11, 2016, letter addressed to me and to Treasury Inspector General for Tax Administration J. Russell George concerning allegations of overpaid claims for energy grants under the Section 1603 Program authorized by the American Recovery and Reinvestment Act of 2009 and administered by the Department of the Treasury (Treasury).

Your letter asks about the status of an "overall program assessment" that my office had planned to conduct earlier in the life cycle of the Section 1603 Program. Additionally, it presents a series of questions about aspects of the program and its administration.

By email on April 20, 2016, my Counsel advised Helen Heiden and Kris Kiefer of Senator Flake's staff of our plans regarding these matters, and provided some preliminary responses to certain of the questions. This letter expands on that email.

First, our original intent to conduct an overall program assessment was changed by our actual experience in auditing the program. We found over time that the actual administration of the grant application and payment process as well as the controls in place were sufficient that in our risk-based audit program, such an assessment was no longer considered a pressing project for our audit office. This is not to say that we did not find problems, including questionable claim amounts, in our audits of Section 1603 Program grant recipients. Following is a summary of our audit approach and what we found in the audit work that we have completed.

We reviewed Section 1603 Program grant awards totaling \$1.7 billion that, at the time, comprised approximately 33 percent of \$5.2 billion of the total amount disbursed in 2009 and 2010. The cumulative grant award amounts through this program increased rapidly, and as mentioned earlier, we used a risk-based approach to audit the program. Initially, we assessed Treasury's stand-up of this new and complex energy program and its readiness to review applicants' claims and determine appropriate payments. In August 2009, we reported that Treasury had made progress in implementing the Section 1603 Program but noted implementation delays and the need for Treasury to identify programs risks and workforce requirements. Treasury's actions, taken and planned, met the intent of our report recommendations.¹

Treasury established two key controls prior to disbursing funds to applicants. First, through a memorandum of agreement with the Department of Energy (DOE), Treasury obtained technical assistance from DOE's National Renewable Energy Laboratory (NREL), to review all Section 1603 Program applications and advise Treasury on award decisions. Specifically, NREL reviewed the eligibility and reasonableness of applicants' claimed costs based on industry standards for each energy property. Second, Treasury required applicants with claims of \$500,000 or more to obtain an independent certified public accountant's attestation of each energy property's eligible costs applying professional attestation standards promulgated by the American Institute of Certified Public Accountants.

Our audit approach also included reviewing specific claims by recipients that were selected based on high dollar payments made primarily for wind property, and high concentration of smaller payments made for solar property. For the selected claims,

¹ Office of Inspector General (OIG), *Treasury Has Made Progress in Implementing the Specified Energy Property Grant Program* (OIG-09-040; August 9, 2009).

our audit objectives were to determine whether the energy property existed, the property was placed in service within the eligible timeframe, and the award amount was appropriate. We issued reports on 10 recipients that received, in total, \$620 million of Section 1603 Program grants. We found no issues regarding the existence and placed in-service dates for these claims. Overall, we questioned a total of \$3 million of payments to 4 of the 10 recipients based on costs that we found to be ineligible according to Treasury's program guidance. For example, we questioned the eligibility of certain interest payments, advisory fees, extended warranties, office furniture, and other minor costs that were not part of making the property operational. In one instance, we questioned the ownership requirements for one solar company. Our audits also led to three referrals to our Office of Investigations.

To expand on the investigative summary provided in our April 20 email, of the eight matters referred to the Department of Justice (DOJ), two subjects have pled guilty to charges and one subject is pending charges; in a third matter a civil judgment in excess of \$380,000 has been obtained. Three other related cases involving large companies are also pending evaluation by DOJ. Our Office of Investigations continues to review all 1603 Program Award recipients referred to our office. Since the inception of the program, we completed reviews and closed cases on an additional 48 recipients. Of those reviewed, we referred 23 award recipients to DOJ for criminal prosecution and 18 for civil prosecutorial consideration. Of the 23 criminal prosecution referrals, 15 were declined. Of the 18 civil prosecution referrals, 11 were declined. We are disappointed that more of the cases we developed were not accepted; however, we will continue to work with DOJ to prioritize the prosecution of our 1603 cases going forward.

Of the 13 questions posed in your letter, which are provided in an appendix to this letter, the first 8 questions relate to Internal Revenue Service (IRS)-specific matters, and we will defer to TIGTA. I understand that TIGTA has directly communicated with you on these questions.

The questions relating to benchmarks used to evaluate the cost basis of property and to awardees' program compliance (questions 9 through 12), we are providing Treasury's response to our inquiry regarding them. Please note, the following responses were not subject to audit, and as such, we provide no assurances related to them.

With the respect to questions 9 through 11 concerning benchmarks to evaluate the cost basis of property, we sought and received from Treasury the following information, which is unaudited:

"The Section 1603 review team, comprised of Treasury and NREL personnel, initially used certain benchmarks to assist in its evaluation of claimed cost basis in Section 1603 applications. Specifically, benchmarks were an administrative tool, serving as one of several factors that Treasury considers in assessing whether to require additional information from an applicant to support its claimed basis prior to awarding payment. In a document entitled "Evaluating Cost Basis for Solar Photovoltaic Properties" (ECB Document), which was released on June 30, 2011, Treasury made publicly available a set of these benchmarks and explained their purpose.² Treasury established the published benchmarks by drawing on relevant publicly available information and analyses by various experts, data from existing 1603 applications, and the Section 1603 review team's experience with solar photovoltaic properties.

"As noted in the ECB Document, these benchmarks reflected Treasury's understanding of typical market pricing for differently sized solar systems, only at a national level and only at a single, specified time. The ECB Document acknowledged that the true cost basis of particular systems could fall above or below these benchmarks, noting that technology choice, regional market differences, and differences in size all affect cost. Treasury ultimately determined that it would not be useful to continue publishing benchmarks, and it has not published an update to the benchmarks set forth in the ECB Document.

"Although Treasury no longer publishes benchmarks of typical market pricing, such as those described in the ECB Document, it continues to compare applicants' claimed basis with screening thresholds that consider typical market pricing as well as other factors. Like the previous benchmarks, these screening thresholds are an administrative tool that serves as one of several factors that Treasury considers in assessing whether to require additional information from an applicant to support its claimed basis prior to awarding payment. Treasury has updated its screening thresholds periodically, with the frequency of updates responsive to factors such as changes in market pricing.

"As noted above, screening thresholds are not the only determinant of whether additional scrutiny is applied to an applicant's claimed basis, and award determinations are based on a careful analysis of

² The EBD document is available on Treasury's website at [https://www.treasury.gov/initiatives/recovery/Documents/N%20Evaluating Cost Basis for Solar PV Properties%20final.pdf](https://www.treasury.gov/initiatives/recovery/Documents/N%20Evaluating%20Cost%20Basis%20for%20Solar%20PV%20Properties%20final.pdf). (Accessed by OIG on May 10, 2016)

application-specific facts and circumstances besides comparisons with typical market pricing or screening thresholds. Given this, we believe the Section 1603 program is properly safeguarded against the concerns expressed in your question regarding potential conflicts of interest.”

With respect to question 12, we sought and received from Treasury the following information, which is unaudited:

“The 97% figure cited in your question has been updated to 98.5% as of April 21, 2016. As of April 21, 2016, out of 3,969 awards for which the five-year compliance period is complete, 3,910 (98.5%) are fully compliant with the program’s post-award requirements or have returned funds due to noncompliance. Of those, 3,858 submitted all required annual reports and reported that the property continued to qualify as specified energy property, and 52 awards returned funds because the energy property ceased to be specified energy property. The amount that has been returned is \$1,460,860. For the remaining 59 awards (1.5%), the program’s post-award requirements have not been met. Treasury has initiated action to recapture funds with respect to these awards, and collection efforts are ongoing.”

As to question 13 regarding policy recommendations, we believe that Treasury developed suitable controls, as discussed above, over the disbursement of Section 1603 Program funds. Post-award, Treasury requires that program recipients certify annually for a period of 5 years following the energy property’s in-service date that the property has not been sold, transferred, or disposed of to a disqualified person and that the property continues to qualify as specified energy property. As the program winds down, Treasury must continue to monitor grant recipients’ post-award compliance, and recapture funds in the event of non-compliance.

With respect to concern over Section 1603 Program grant recipients potentially claiming the Investment Tax Credit (ITC), TIGTA issued an inspection report with a recommendation that

“...the Commissioners for the Small Business/ Self-Employed Division and Large Business and International Division evaluate the feasibility of establishing an indicator on taxpayers’ accounts for taxpayers that received Recovery Act Section 1603 grants. This indicator could be established and updated based on the Section 1603 grant recipient file sent by the Department of the Treasury quarterly and annually. This

indicator would provide permanent notice on the IRS files that this taxpayer has received a Section 1603 grant and therefore caution should be taken in processing any amended returns that claim the ITC."³

We believe this recommendation, if implemented, would be an effective control for identifying potential fraud, waste, and abuse by taxpayers attempting to claim the same energy property through Treasury's Section 1603 Program and the ITC. We defer to TIGTA regarding further inquiry of this report. We similarly defer to TIGTA regarding the advisability of using the tax laws and tax-based programs to accomplish these national energy priorities.

Before closing, I do want to assure you that our office had complete, unfiltered, and timely access to all information and materials available to Treasury in conducting our audit and investigative oversight of the Section 1603 Program. We will be pleased to provide a briefing on our oversight activities and our response to your letter. Please call me on 202-622-1090, or your staff can coordinate with my Counsel, Rich Delmar, on 202-927-3973 or delmarr@oig.treas.gov.

Sincerely,



Eric M. Thorson
Inspector General

cc: The Honorable J. Russell George
Treasury Inspector General for Tax Administration

³ TIGTA, *Review of Section 1603 Grants In Lieu of Energy Investment Tax Credit* (2014-IE-R006; Dec. 17, 2013).

Questions in Congressional Request Letter of April 11, 2016

1. How many taxpayers have claimed the ITC since 2005?
2. What is the total value of the ITC claims filed since 2005?
3. Of the ITC claims filed since 2005, how many has the IRS adjusted because the claimant either sought to include ineligible costs or overstated the cost basis of the property?
4. What is the value of the ITC adjustments the IRS made because the claimant either sought to include ineligible costs or overstated the cost basis of the property?
5. How much money has the IRS recouped in improperly claimed ITCs since 2005 because the taxpayer claimed ineligible costs or overstated the cost basis of the property?
6. What is the value of those improperly claimed ITCs that the IRS has identified, but thus far been unable to recoup since 2005?
7. What is the IRS doing to recoup those funds?
8. Is the ITC subject to the same reporting requirements as the Section 1603 Program grants?
9. How does the Department of Energy, through the National Renewable Energy Laboratory or NREL, and the Department establish benchmarks to evaluate the cost basis of property that might be eligible for the ITC or the 1603 Program?
10. How often are those benchmarks updated?
11. If industry experts and confidential sources are used to establish the benchmarks, what safeguards are in place to ensure that those sources do not have a conflict of interest, such as an incentive to push for higher benchmarks?

Questions in Congressional Request Letter of April 11, 2016

12. In its March 2016 response letter, the Department states that 97% of 1603 Program awardees "have fully complied with the program's post-award requirements or have returned funds owed due to noncompliance."
 - a. What is the status of the remaining 3% of awardees?
 - b. What portion of the 97% of awardees was required to return funds "due to noncompliance?"

13. The Administration expects to spend approximately \$650 million in FY17 on Section 1603 Program grants and more on the ITC. Please provide policy recommendations to protect taxpayers from waste, fraud, and abuse in both the ITC and the 1603 Program.