



Written by [Jack Kenny](#) on October 30, 2012

Obama Fundraiser Is Winner in Solyndra Bankruptcy Ruling

A major fundraiser for President Obama's reelection campaign appears to be the biggest winner from a [ruling](#) by the U.S. Bankruptcy Court in Wilmington, Delaware, last week in favor of an exit plan for Solyndra LLC, the failed manufacturer of solar panels and the recipient of a \$535 million government-guaranteed loan under the President Obama's economic stimulus plan, passed by Congress in 2009. Losers include the American taxpayers, whose combined losses from the failed loan and the bankruptcy settlement could be nearly \$850 million, according to the chairman of the House Oversight and Government Affairs Committee.



The October 22 ruling by Judge Mary Walrath left the parent company, 360 Degree Solar Holdings, with net operating loss carryforwards — called “tax assets” by the Internal Revenue Service — of between \$875 million and \$975 million, that may be used as tax writeoffs against future earnings. The reorganization plan was opposed in court by both the Department of Energy, which had approved the loan guarantee, and the Internal Revenue Service, which said the loss carryforwards could result in as much as \$341 million in lost revenue resulting from what the IRS described as a tax avoidance vehicle for 360 Degrees investors. That could push the taxpayer loss from the “green energy” loan to as much as \$849 million, House Oversight Chairman Darrell Issa, (R-Cal) said in a [letter](#) to Secretary of Energy Steven Chu, Issa criticized the Department of Energy for what he called its “last-ditch effort to extend the life” of the solar panel manufacturer by having agreed in 2010 to restructure the loan in exchange for a fresh infusion of capital from the company's major investors.

“Specifically,” wrote Issa, “Solyndra's largest investors, Argonaut Ventures, LLC (Argonaut) and Madron Partners, LP (Madron) loaned \$75 million in return for successfully diminishing DOE's loan priority and eliminating DOE's equity in the case of Solyndra's bankruptcy.” The deal gave the holding company's net operating losses priority over the government's claim on its loan, Issa said.

“DOE is expected to recover a minimal amount on its initial \$535 million loan, while the Internal Revenue Service (IRS) warns that the government may be out up to another \$341 million due to Argonaut-Mardone's tax write offs,” the committee chairman wrote.

Argonaut, the investment division of the George Kaiser Family Foundation, was the largest stockholder in Solyndra, owning 35.73 percent of the company. Madrone was second with 11 percent of the company. In his letter, Issa described George Kaiser, an Okalahoma oil billionaire, as someone who “also happened to be a major fundraising bundler for the campaign to reelect Barack Obama,” According to the *Wall Street Journal*, Kaiser played the same role in Obama's 2008 campaign.



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The holding company “won’t make products or employ workers, but it will get the Solyndra tax offsets,” the *Journal* said in a recent [editorial](#) opposing the plan. The paper also charged the Energy Department’s opposition was “little more than an *ex post facto* double-cross. Energy created the tax avoidance problem in the first place by gifting Argonaut and Madrone the net operating losses to delay the Solyndra crack-up that was fast becoming inevitable. That left taxpayers worse off than if they simply let Solyndra fail.” The U.S. Treasury stands to get back \$27 million at most under the plan, according to the *Journal*.

The U.S. Attorney’s office filed separate objections on behalf of the IRS and the Department of Energy. After upholding the plan, Judge Walgrath granted a motion for a 10-day stay of the decision to allow the government to appeal. “I know they’re going to go across the street anyway,” she said, referring to the U.S. District Court in Wilmington. In her decision, Walgrath rejected the IRS tax-avoidance argument.

“It is clear in this case the bankruptcy and the reorganization dealt with many other things than the value of the NOLs or the preservation of the NOLs,” Walrath said according to [Reuters](#). “Based on the evidentiary record adduced at the confirmation hearing and the court’s findings and conclusions based thereon, the court concludes that there has been no failure of adequate protection as to the DOE,” Walrath also noted, in her confirmation order.

A House Energy and Commerce Committee [report](#) in July said the Energy Department had violated the law by subordinating its claims to those of the private investors. According to the Office of Management and Budget, its original economic analysis of the project assumed that “DOE would maintain a senior secured position in the event of default.” In a December 2010 email, the OMB energy branch chief told DOE officials that they had “stretched” the provision on subordination “beyond its limits.” Treasury Assistant Secretary Mary Miller told DOE officials in an August, 2011 e-mail that in the opinion of Treasury Department legal counsel, both the statute governing the loan program and DOE regulations “require that the guaranteed loan should not be subordinate to any loan or other debt obligation.”

“When DOE agreed to subordinate its obligation to third-party financing, it did so in violation of the law,” the committee report said.

Solyndra, a Fremont, California company, applied for an Energy Development loan under a loan guarantee program signed into law by President George W. Bush, and received final approval from the Energy Department shortly after President Obama took office in 2009. The new President incorporated that and other “green energy” loans into the \$787 economic stimulus package approved by Congress in February of that year. Obama visited the Solyndra plant in May of 2010, hailing it as a success story for the stimulus plan and for the promotion of clean energy to create more jobs in America. By early 2011, however, the startup company was facing stiff competition from abroad, aided by falling prices for materials used by the foreign competition.

Solyndra has also claimed it was been the victim of unfair competition from China. Earlier this month, attorneys for the company filed \$1.5 billion lawsuit against Chinese solar-panel makers, claiming they conspired to fix prices and and flood the U.S. market solar panels priced at below cost to force Solyndra out of business. The Chinese companies have called the claims baseless.

Days before it filed for bankruptcy, the company shut down the plant and fired nearly all of its 1,100 employees. A week later, FBI agents raided Solyndra’s offices and seized files and computer records. The company reached a \$3.5 million settlement with ex-workers, who claimed they didn’t get adequate notice before being fired.



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Solyndra's demise became a political embarrassment for the President and an example Republicans seized as evidence that the Obama stimulus spending was a boondoggle-laden squandering of taxpayer dollars. The Obama campaign, however, has [pointed to](#) the Bush administration role in creating the loan program and including Solyndra among only 16 companies invited to submit a full application. Solyndra was, in the words of an Obama campaign statement, "one of 30 companies in a portfolio that is expected to support more than 60,000 jobs" The administration's investments in clean energy overall were supporting nearly a quarter of a million jobs through the end of 2010, the campaign claimed.

Mitt Romney, the President Republican opponent, signed a similar program into law when he was governor of Massachusetts, creating the Emerging Technology Fund. At least two companies that received loans under that program defaulted on their loans at a cost to Massachusetts taxpayers of more than \$2 million, the Obama campaign said.

The liberal web site, *ThinkProgress.org*, has compiled a [report](#) showing 62 Republican members of Congress sent letters to the Department of Energy requesting money for companies in their states or districts under the loan subsidy program tapped by Solyndra or other programs. Despite their occasional rhetorical bows to free market principles, politicians of both major parties appear to be promoting government subsidies and loan guarantees as a means of choosing winners in the competition for investment dollars and eventual market share. And if a presumed winner also happens to be a well-connected fundraiser for a candidate or party, the American public may be understandably skeptical in regarding that as something more than a coincidence. Investments totally supported by the private sectors often fail, too. But they do so at the investors,' not the taxpayers' risk. That's why it's called free, not coerced, enterprise.

Photo: Solyndra facility in Fremont, California, with a For Sale sign on it.



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