

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143

Majority (202) 225-5051
Minority (202) 225-5074

August 11, 2009

The Honorable Steven T. Walther
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Commissioner Walther:

The Committee staff has been investigating the Association of Community Organizations for Reform Now's ("ACORN") lack of compliance with various federal laws. Recently, I released a staff report entitled, "*Is ACORN Intentionally Structured As a Criminal Enterprise?*" ("ACORN Report").

The ACORN Report documents ACORN and its affiliates' fundraising for several Congressmen and a former Governor.¹ The Report also found that ACORN, a taxable state-registered nonprofit corporation, directs the activities of Project Vote, a tax-exempt 501(c)(3).² Citizens Consulting Inc. ("CCI"), a taxable state-registered nonprofit corporation, appears to control the accounts of both politically active and non-political ACORN affiliates, many of which are tax-exempt.³ I am concerned ACORN has failed to comply with the Federal Election Campaign Act ("FECA") and other Federal Election Commission ("FEC") regulations.

Our investigation has led to additional questions regarding ACORN's compliance with FECA. It appears that ACORN, a taxable non-exempt corporation, has intentionally used gaps in the Internal Revenue Code and FECA to engage in activities that would be subject to either prohibition or taxation under any reasonable contemplation of FECA and the Internal Revenue Code.

¹ See Minority staff report, *Is ACORN Intentionally Structured As a Criminal Enterprise?* COMM. OVERSIGHT AND GOV'T REFORM (2009) at 57, available at: <http://republicans.oversight.house.gov/media/pdfs/20090723ACORNReport.pdf>.

² *Id.* at 49-50, 57.

³ *Id.* at 59.

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FECA⁴ generally prohibits corporations from making a contribution or expenditure in connection with any election to any political office⁵ and from using treasury funds to pay for electioneering communications.⁶ However, there are several exceptions to FECA's general prohibition on corporations making contributions or expenditures. Under 2 U.S.C. § 441b(b)(2), corporations may make expenditures: (1) to communicate with stockholders and executive or administrative personnel and their families; (2) to engage in nonpartisan voter registration or get-out-the-vote campaigns aimed at stockholders and executive or administrative personnel and their families; and (3) to establish, administer, and solicit contributions to a separate segregated fund for political purposes.

I understand that these exceptions to the prohibition on corporations making independent expenditures and electioneering communications apply only to "qualified nonprofit corporations ("QNCs")."⁷ The FEC defines a QNC as a tax-exempt § 501(c)(4) corporation whose (1) only express purpose is the promotion of political ideas, which (2) does not engage in business activities, (3) has no shareholders or other persons with an ownership interest or claim on the organization's assets, and (4) was not established by and does not accept donations from business corporations.⁸

It is my understanding that tax-exempt 501(c) organizations may lobby, but it is not clear whether those lobbying activities are limited to FECA's listed exceptions. It is also not clear whether tax-exempt organizations must pay taxes on their political activities excepted by FECA. Additionally, I have not been able to determine whether FEC exceptions apply to taxable nonprofit corporations.

I understand that, for purposes of applying FECA, the FEC does not distinguish between tax-exempt nonprofit corporations like Project Vote and taxable nonprofit corporations like ACORN. However, the Congressional Research Service has informed me "for the purposes of determining whether a corporation is exempt from certain FECA prohibitions, the tax-exempt status of a corporation is relevant."⁹ These ambiguities create the concern that ACORN is permitted to engage in lobbying activities the FEC may wrongly believe are exempt. In addition to the difficulty my staff has faced in obtaining information concerning FECA, the apparent gap in the rules of the FEC and the IRS signals an increased need for inter-agency communication and coordination.

To ensure that ACORN and ACORN-affiliated entities are complying with both FECA and FEC regulations, please provide the following information and documents on or before August 20, 2009:

⁴ 2 U.S.C. § 431 *et seq.*

⁵ 2 U.S.C. § 441(a).

⁶ 2 U.S.C. § 441b(b)(2).

⁷ 11 C.F.R. § 114.10(d)(2).

⁸ 11 C.F.R. § 114.10(c).

⁹ Memorandum from L. Paige Whitaker, Legislative Attorney, Congressional Research Service and Erika Lunder, Legislative Attorney, Congressional Research Service to House Committee on Oversight and Government Reform, 3 (Aug. 4, 2009) (on file with author).

1. It is my understanding that FECA or FEC regulations require political funds to be separate and segregated from other corporate accounts. The ACORN Report disclosed an audit by ACORN's outside counsel, finding ACORN and its political affiliates lack protective walls separating their various activities¹⁰ and Communities Voting Together ("CVT"), a § 527 organization, is "treated like a pot of money available to ACORN to carry out state-level political work."¹¹ Does ACORN's lack of protective walls and use of § 527 funds as a "pot of money" constitute violations of FECA?
2. Citizens Consulting Inc. ("CCI"), a taxable nonprofit, simultaneously managed the accounts of political and private donor-funded organizations.
 - a. Does CCI's co-management of various tax-exempt and non-exempt affiliate accounts, many of which receive federal funds and some of which are 527s, violate FECA?
 - b. If so, has the FEC taken steps to prevent CCI's co-management of affiliate accounts that are legally required to be separate and segregated?
3. How does the FEC classify ACORN? Is it a qualified nonprofit corporation ("QNC") under FECA? Are any of ACORN's affiliates QNCs?
4. Identify the number of times the FEC has:
 - a. Conducted a formal investigation or Commission audit, issued a committee report, responded to complaints, referrals from other government agencies, or issued an enforcement decision or matter under review ("MUR") concerning ACORN or its affiliates from 2004 to the present.
 - b. For each identified, summarize the subsequent allegations and action by the FEC, including penalties, fines, reports, memoranda or other assessments made against ACORN.
 - c. Provide any documents reflecting ACORN's response to any FEC Commission audit, committee report, complaint, referral, enforcement decision or MUR.
5. Produce relevant audits, reports, complaints, referrals, enforcement decisions and MURs determining whether ACORN, a taxable nonprofit corporation, and its 501(c) and non-501(c) affiliates, comply with § 441(b) of FECA.

¹⁰ Memorandum from Harmon, Curran, Spielberg, & Eisenberg, LLP [HCSE] on Organization Review to ACORN Beneficial Association, ACORN Housing Corporation, ACORN Institute, ACORN Votes, American Institute for Social Justice, Association of Community Organizations for Reform Now, Citizens Consulting, Inc., Citizens Services Inc., Communities Voting Together, Pennsylvania Institute for Community Affairs, Inc., Project Vote/Voting for America, Inc. (June 19, 2008) at 6 (ACORN_004936).

¹¹ *Id.* at 8.

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6. Provide all documents showing ACORN/CCI's transfer of political contributions and dues met the requirements that
 - a. The § 501(c) uses procedures that satisfy federal and state campaign laws;
 - b. The § 501(c) organization maintains adequate records to show the transferred monies and political contributions and dues (not investment income); and
 - c. The transferred monies were not used to earn investment income for the § 501(c) organization.¹²

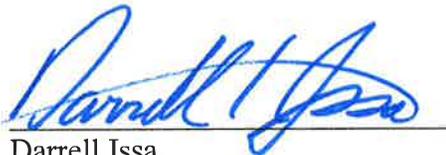
7. On February 13, 2009, the FEC requested that ACORN produce an updated FORM 7 concerning ACORN's \$13,096 spent on communications to its members in support of Barack Obama for President of the United States.¹³ Provide a copy of ACORN's updated FEC FORM 7.

For purposes of your response to this letter, ACORN and its affiliates includes but is not limited to: ACORN, Project Vote/Voting for America, Inc., CCI, Citizens Services Inc. ("CSI"), ACORN Housing Corporation ("AHC"), ACORN Community Labor Organizing Center ("ACLOC"), American Institute for Social Justice ("AISJ"), SEIU Local 100, SEIU Local 880, ACORN Institute, ACORN Votes, and Communities Voting Together ("CVT").

The Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives and has broad oversight jurisdiction as set forth in House Rule X.

Thank you for your attention to this matter. If you have any questions regarding this request, please contact Daniel Epstein of the Committee staff at (202) 225-5074.

Sincerely,



Darrell Issa
Ranking Member

cc: The Honorable Edolphus Towns, Chairman

¹² Treas. Reg. § 1.527-6(e).

¹³ Letter from Kaitlin Eger, Campaign Finance Analyst, FEC to Elizabeth Wolff, Treasurer, ACORN (Feb. 13, 2009) (on file with author).