

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 Douglas Shulman
Commissioner
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, D.C. 20224

Dear Commissioner Shulman:

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 Report¹ found ACORN conspired to defraud the United States by using taxpayer funds for partisan political activities. ACORN submitted false filings to the IRS, in addition to failing to report and pay excise taxes on Dale Rathke's excess benefit transactions. Additionally, ACORN falsified and concealed facts concerning an illegal transaction between related parties in violation of the Employee Retirement Income Security Act of 1974 ("ERISA"). I am concerned ACORN has failed to comply with §§ 501(c), 527(f) of the Internal Revenue Code ("IRC") and other Internal Revenue Service ("IRS") regulations.

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

FECA² generally prohibits corporations from making a contribution or expenditure in connection with any election to any political office³ and from using

¹ See Minority staff report, *Is ACORN Intentionally Structured As a Criminal Enterprise?* COMM. OVERSIGHT AND GOV'T REFORM (2009) at 3-6, available at: <http://republicans.oversight.house.gov/media/pdfs/20090723ACORNReport.pdf>.

² 2 U.S.C. § 431 *et seq.*

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treasury funds to pay for electioneering communications.⁴ 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 § 527(f) of the IRC subjects § 501(c) organizations to tax if they make an expenditure for a § 527 "exempt function." The "influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors . . ." would constitute a § 527 "exempt function" under the IRC.⁵ According to the IRC, if a § 501(c) organization sets up a separate segregated fund, the fund will be treated as a separate § 527 political organization for tax purposes.⁶

However, a § 501(c) organization cannot set up a fund to conduct activities it cannot do – e.g. a §501(c)(3) organization, which is prohibited from engaging in campaign activity under the tax laws, cannot set up a fund to engage in those types of activities.⁷ Treasury Regulation § 1.527-6(b)(1) states that FECA-permitted expenditures are taxable only to the extent provided by regulation. Unfortunately, the Treasury Department has not yet promulgated a regulation stating what that extent is.⁸ According to the Congressional Research Service, "[u]ntil the regulation addresses this matter, it appears a § 501(c) organization may engage in [political] activities without tax consequences under IRC § 527(f)."⁹

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

³ 2 U.S.C. § 441(a).

⁴ 2 U.S.C. § 441b(b)(2).

⁵ IRC § 527(e)(2).

⁶ IRC § 527(f)(3); Treas. Reg. § 1.527-6(f).

⁷ Treas. Reg. § 1.527-6(g).

⁸ Treas. Reg. § 1.527-6(b)(3).

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, 2 (Aug. 4, 2009) (on file with author). See T.D. 7744, 1981-1 C.B. 360 (stating that when the matter is eventually addressed, the regulation will apply on a prospective basis); see also Judith E. Kindell and John Francis Reilly, Election Year Issues, IRS 2002 EO CPE TEXT, at 437 (2002), available at <http://www.irs.gov/pub/irs-tege/eotopic02.pdf>.

prohibitions, the tax-exempt status of a corporation is relevant.”¹⁰ These ambiguities create the concern that ACORN is permitted to engage in lobbying activities the IRC may wrongly believe are exempt. In addition to the difficulty my staff has faced in obtaining information concerning the IRC, the apparent gap in the rules of the IRS and the FEC signals an increased need for inter-agency communication and coordination.

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

1. It is my understanding that the IRC or IRS regulations require political funds to be separate and segregated from tax-exempt accounts. The ACORN Report disclosed an audit by ACORN’s outside counsel, finding ACORN and its affiliates lack an adequately documented delineation of 501(c)(3) from non-501(c)(3) work,¹¹ ACORN cannot prove that 501(c)(3) resources are not being directed to specific regions based on impermissible partisan considerations,¹² 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.”¹³ Does ACORN’s use of 501(c)(3) resources for impermissible partisan considerations and its use of § 527 funds as a “pot of money” constitute violations of the IRC?
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 § 527(f) of the IRC?
 - b. If so, has the IRS taken steps to prevent CCI’s co-management of affiliate accounts that are legally required to be separate and segregated?
3. It is my understanding that ACORN files Form 1120 corporate income tax with the IRS, has no tax-exempt status with the IRS, and is registered in multiple states as a nonprofit corporation.
 - a. If a taxable nonprofit corporation engages in lobbying and political expenditures/contributions, even those exempt under 2 U.S.C. § 441b(b)(2), where does it report those activities?

¹⁰ 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).

¹¹ 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 7 (ACORN_004933).

¹² *Id.*

¹³ *Id.* at 8.

- b. Provide copies of ACORN's 1120's from 2004 to the present.
4. Identify the number of times the IRS has:
 - a. Conducted a criminal investigation ("CI"), civil audit, or examination, reviewed whistleblower-informant claims, found abusive tax schemes, and published alerts or abusive tax scheme investor lists concerning ACORN or its affiliates from 2004 to the present.
 - b. For each identified, summarize the subsequent allegations and action by the IRS, including penalties, fines, reports, memoranda or other assessments made against ACORN.
 - c. Provide any documents reflecting ACORN's response to any IRS criminal investigation, audit, examination, whistleblower-informant claim, alert or publication.
 5. 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. (3) the transferred monies were not used to earn investment income for the § 501(c) organization.¹⁴
 6. The IRS requires exempt organizations to report embezzlements on its federal tax information return (Form 990, Form W-2, or Form 1099) or on an amended federal tax information return.¹⁵ Section 4958 of the Internal Revenue Code imposes an excise tax on excess benefit transactions between a disqualified person and an applicable tax-exempt organization.¹⁶ A disqualified person is liable for a twenty-five percent ("25%") tax on the excess benefit.¹⁷ An organization manager may also be liable for a ten percent ("10%") excise tax on the excess benefit transaction, if he or she "knowingly, willfully, and without reasonable cause" participated in the excess benefit transaction.¹⁸
 - a. Produce all IRS documents concerning fees assessed against Dale Rathke, Wade Rathke and the relevant ACORN-affiliated 501(c) corporations involved in the embezzlement.

¹⁴ Treas. Reg. § 1.527-6(e).

¹⁵ Economic Benefit Transactions, INTERNAL REVENUE SERVICE, available at: <http://www.irs.gov/pub/irs-tege/eotopice04>.

¹⁶ Intermediate Sanctions, *Tax Information for Charitable Organizations*, INTERNAL REVENUE SERVICE, available at <http://www.irs.gov/charities/charitable/article/0,,id=123298,00.html>.

¹⁷ 2007 Instructions for Form 990 and Form 990-EZ, *Tax Information for Charities & Other Non-Profits*, INTERNAL REVENUE SERVICE, available at <http://www.irs.gov/pub/irs-pdf/i990-ez>.

¹⁸ *Id.*

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- b. If no fees were assessed, provide a detailed explanation and any documents explaining why such a transaction is not considered a violation of the excess benefit rule.

7. According to ACORN's outside counsel, ACORN paid its embezzlement-caused deficits through an employee sponsored health fund. Produce all IRS documents concerning penalties assessed against ACORN or any of its affiliates concerning violations of ERISA. If no penalties were assessed, provide a detailed explanation and any documents explaining why such a transaction is not considered a violation of ERISA.

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