



Advocates for Government Accountability

A 501(c)(3) NONPROFIT CORPORATION

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October 21, 2011

Douglas Shulman, Commissioner
Internal Revenue Service
111 Constitution Avenue, NW
Washington, DC 20224

**RE: REQUEST FOR INVESTIGATION FISCAL SPONSORSHIP & 501(c)(3)
ORGANIZATIONS**

Dear Mr. Shulman:

We write on behalf of Cause of Action, an independent 501(c)(3) public interest firm that uses public policy and advocacy tools to ensure greater transparency in government, protect taxpayer interests and promote economic freedoms.

Specifically, we write to request that the IRS open an investigation into the Association of Community Organizations for Reform Now ("ACORN"), a non-exempt organization, and several of its 501(c)(3) affiliates including New York Agency for Community Affairs, Inc., ACORN Institute, Inc., American Institute for Social Justice, and the Affordable Housing Centers of America (formerly ACORN Housing). Evidence uncovered tends to suggest that ACORN instructed its affiliates to funnel tax-deductible and/or taxpayer dollars to ACORN over a forty year period.

I. GENERAL PRINCIPLES

As the IRS has stated, a "fiscal sponsorship" occurs "when one or more charities choose to financially support another charity or nonexempt project."¹ According to Gregory Colvin, a

¹ 94 TNT 71-46.

leading exempt organizations attorney who is counsel to the Alliance of Californians for Community Empowerment (“ACCE”), the rebranded California ACORN chapter, these arrangements “typically arise when a person or group (we will call this a project) wants to get support from a private foundation, a government agency, or tax-deductible donations from individual or corporate donors,” and “[b]y law or preference, the funding source will only make payments to organizations with 501(c)(3) tax status.”² Fiscal sponsorships have also been known as “fiscal agents,” but practitioners disagree on the proper nomenclature.³

A fiscal sponsorship relationship can be effectively and lawfully utilized in a variety of situations where a person or group intending to engage in charitable activities wishes to attract tax-deductible contributions without having official exemption by the IRS under § 501(c)(3) of the Internal Revenue Code.⁴ For example, “[f]iscal sponsorship is often temporary, used for that period before a new organization obtains its own tax exemption. Other variations occur when a small 501(c)(3) group needs a larger 501(c)(3) organization to manage its financial affairs or seeks IRS classification as a public charity based on its relationship with the sponsor.”⁵

While the IRS has yet to produce concrete guidance on the issue, it has indicated approval of fiscal sponsorships by 501(c)(3) organizations only if certain conditions are satisfied. Specifically, a 501(c)(3) organization is allowed to accept tax-deductible funds on behalf of a non-501(c)(3) entity if the following three conditions are satisfied:⁶

1. The project being carried out by the non-501(c)(3) organization is “in furtherance of [the 501(c)(3)’s] own exempt purposes”;
2. The 501(c)(3) organization “retains control and discretion as to the use of the funds”;
3. The 501(c)(3) organization “maintains records establishing that the funds were used for section 501(c)(3) purposes.”

The Service has provided examples of appropriate uses of fiscal sponsorships:

1. C, an individual, desires to start a tutoring program in the inner city but does not have sufficient resources or the sophistication needed to apply for tax exemption. C submits a grant application to X Community Foundation for financial support for the tutoring program. X approves the grant, establishes a fund called the C Fund, and solicits contributions for this fund. X is C's fiscal sponsor.
2. X community foundation approaches S Private Foundation soliciting for C's fund. S makes a grant to X designated for the C Fund. S, in the instrument of transfer, gives X full control over the investment decisions

² GREGORY L. COLVIN, FISCAL SPONSORSHIP: 6 WAYS TO DO IT RIGHT, 3 (1993) [hereinafter “COLVIN”].

³ *Id.* For clarity, we will refer to such arrangements as fiscal sponsorships.

⁴ TAX ECON. CHAR. GIVING § 3.02

⁵ COLVIN, *supra* note 2 at 4.

⁶ Rev. Rul. 68-489, 1968-2 C.B. 210.

concerning the grant and full discretion in determining how much and when distributions from the fund will be made.

3. X Community Foundation receives a grant request from Z Charity. X reviews and approves the request. X establishes the Z Fund, and solicits contributions for this fund.

In each of the above situations, X acts as a fiscal sponsor; notice that in the second situation, S, a private foundation, is relieved of exercising expenditure responsibility because it gave X full control over the grant's income and corpus.⁷

II. MISUSE OF FISCAL SPONSORSHIP

Several legal experts have opined that fiscal sponsorship can be misused by organizations wishing to skirt various Federal laws. For instance, such arrangements can be used as a “passthrough, or conduit, or laundering arrangement where the (c)(3) is really doing no more than receiving money from a donor or foundation and passing it on to a person or an organization that does not have (c)(3) status.”⁸ John Edie, a leading nonprofit tax attorney, described a fiscal agent as a “laundering agent,” and added, “[i]f you're going to use a fiscal agent, to me you're saying, ‘Well, I'm going to launder the money through somebody.’”⁹

According to Lee Sheppard, an editor at Tax Analysts, “[a] fiscal agent is a money laundry. People who want to finance projects that would not, if separately incorporated, have a charitable purpose often form an exempt organization . . . to act as a conduit[] for the money used to finance the project so that its backers can claim a charitable deduction.”¹⁰ Sheppard noted that “fiscal sponsorship. . . is a common practice, and one that the IRS should shut down.”¹¹

Even Gregory Colvin, a leading proponent of fiscal sponsorship relationships, has voiced concerns over their misuse: “[i]f the control mechanisms are not administered properly, [a fiscal sponsorship arrangement] can collapse into a ‘conduit’ or ‘step transaction’ in which the IRS will disregard the role of the sponsor and declare that the funding source has, in effect, made a payment directly to a non-501(c)(3) project.”¹²

Distressingly, fiscal sponsorships can and have been used as conduits for political activity. I.R.C. §501(c)(3) prohibits 501(c)(3) organizations from engaging in political activity.¹³

⁷ 94 TNT 71-46.

⁸ COUNCIL ON FOUNDATIONS, TOP TEN WAYS FOUNDATIONS GET INTO TROUBLE (2008) *available at* http://www.washingtongrantmakers.org/s_wash/images/client/TopTenTrouble.pdf

⁹ Various speakers, *Transcript of the Winter ABA EO Committee Meeting: Panel Six: The Use and Misuse of Fiscal Sponsorship Arrangements*, 7 EXEMPT ORG. TAX REV. 570, 571

¹⁰ Lee Sheppard, *Charitable Money Laundering*, 8 EXEMPT ORG. TAX REV. 645 (1993).

¹¹ *Id.*

¹² COLVIN, *supra* note 2, at 28.

¹³ See I.R.C. 501(c)(3) (1986) (providing that an organization qualifies for exemption only if it “does not participate in, or intervene in (including the publishing or distributing of statements) any political campaign

However, the IRS itself has recognized the potential for misuse of fiscal sponsorships, particularly by using a 501(c)(3) organization as a conduit for an improper transaction, and has provided potential examples:

1. X, a philanthropist, wants to give to Z, an individual who is poor. X knows that a transfer directly to Z lacks the necessary public benefit to be considered charitable. X would not be entitled to a charitable tax deduction. To avoid this result, X donates money to Y Community Foundation with instructions to distribute it to Z. Y has no discretion as to the distribution of the funds. Here, Y is nothing more than a conduit. X is not entitled to a deduction.
2. C, a private foundation, wishes to support a nonexempt charitable project. (A nonexempt project, as used in this context, is a charitable activity of an organization that does not have an IRS determination letter.) C does not want the burden of exercising expenditure responsibility, but wishes to maintain continuing supervision of the project. C gives the money to Y Community Foundation after Y has agreed that C will maintain continuing control and that the money will be used solely for the project.
3. S, a fledgling organization, is struggling to maintain public charity status. T, a wealthy donor, wants to give S a large contribution. If T gives it directly to S, the contribution will be subject to the two percent of total support limitation and S would fail the public support test. To avoid this, T "earmarks" the money for S and runs it through the Y Community Foundation. Y has no discretion but to distribute the money to S.

In the preceding three examples, Y Community Foundation has no control over the donations. Y is acting as a mere conduit in a transfer between the donor and the ultimate recipient. The donor and the recipient are the only beneficiaries in these transactions.¹⁴

According to Professor Frances Hill, 501(c)(3) organizations can be attractive for political donors because of the tax deduction they provide. She wrote, "the most likely [corporate-candidate] conduit, and the one offering the greatest benefits, is a 501(c)(3) organization that is absolutely prohibited from supporting or opposing candidates for public office."¹⁵ As Professor Hill noted, 501(c)(3) organizations are attractive due to lax reporting standards: "Because 501(c)(3) contains the absolute prohibition, 501(c)(3) organizations are not subject to the tax reporting requirements imposed on other 501(c) organizations by 527 and they are not required to register with and report to the FEC."¹⁶ In other words, a donor wishing to engage in political activities could funnel his money through a 501(c)(3) fiscal sponsor to a third

on behalf of (or in opposition to) any candidate for public office").

¹⁴ 94 TNT 71-46.

¹⁵ Frances R. Hill, *Corporate Philanthropy and Campaign Finance: Exempt Organizations As Corporate-Candidate Conduits*, 41 N.Y.L. SCH. L. REV. 881, 927 (1997).

¹⁶ *Id.* at 927-928.

organization and still potentially receive a tax deduction for his contribution and, barring an audit, none would be the wiser.

Such arrangements have been used in the past for all types of dubious purposes, including sponsoring illegal activities. For instance, on May 31, 2010, a flotilla organized in part by the Free Gaza Movement was intercepted by Israeli Defense Forces as it attempted to break an Israeli naval blockade of Gaza.¹⁷¹⁸ According to Israel's Turkel Commission, the Free Gaza Movement has long attempted to break the naval blockade through "civil resistance."

FGM [Free Gaza Movement] is an organization registered in Cyprus as a human rights organization, with its headquarters located in Nicosia. The organization was founded in 2006, and its website states that it has 28 branches throughout the world. The organization's charter provides that its purpose is to break the siege on the Gaza Strip by means of, *inter alia*, "civil resistance and non-violent direct action", which will establish a permanent sea lane between the Gaza Strip and the rest of the world. The organization began dispatching flotillas to the Gaza Strip in 2008, and was behind the dispatching of eight flotillas, five of which succeeded in reaching the Gaza Strip (in August 2008, in October 2008, in November 2008, and two in December 2008), whereas three were stopped by the navy (the *Dignity yacht*, which attempted to reach the Gaza Strip at the end of December 2008, and the *Spirit of Humanity* vessel, which attempted to reach the Gaza Strip in January 2009 and again in June 2009). Another organization operates within the framework of the FGM, under the name of the "International Solidarity Movement" (hereafter: ISM), which has adopted the goal of supporting Palestinian popular resistance activities and opposing Israeli policy in the West Bank and Gaza Strip.¹⁹

The confrontation led to the deaths of nine passengers and injuries to three members of the IDF.²⁰ Further, such activity by the Free Gaza Movement potentially violated the U.S. Neutrality Act, particularly 18 U.S.C. §960 entitled Expedition Against Friendly Nation.

Not surprisingly, the Free Gaza Movement operates as a fiscal sponsorship of the American Educational Trust, the publisher of the *Washington Report on Middle East Affairs*.²¹

¹⁷ Richard Spencer, *Gaza flotilla: the Free Gaza Movement and the IHH*, LONDON TELEGRAPH, May 31, 2010, available at <http://www.telegraph.co.uk/news/worldnews/middleeast/israel/7790919/Gaza-flotilla-the-Free-Gaza-Movement-and-the-IHH.html>

¹⁸ According to a United Nations report, the blockade was a legitimate exercise of Israeli authority: "The naval blockade was imposed as a legitimate security measure in order to prevent weapons from entering Gaza by sea and its implementation complied with the requirements of international law." See UNITED NATIONS: REPORT OF THE SECRETARY-GENERAL'S PANEL OF INQUIRY ON THE 31 MAY 2010 FLOTILLA INCIDENT (2011), available at http://www.un.org/News/dh/infocus/middle_east/Gaza_Flotilla_Panel_Report.pdf

¹⁸ THE FREE GAZA MOVEMENT WEBSITE: U.S. TAX-DEDUCTIBLE DONATIONS, available at <http://www.freegaza.org/en/usa-donations> (last visited October 17, 2011).

¹⁹ REPORT OF THE PUBLIC COMMISSION TO EXAMINE THE MARITIME INCIDENT OF 31 MAY 2010 ("The Turkel Commission") (January 23, 2011) available at <http://www.mfa.gov.il/NR/rdonlyres/5363AE02-4677-4E72-B13A-9519827543C3/0/TurkelCommission.pdf>

²⁰ UNITED NATIONS: REPORT OF THE SECRETARY-GENERAL'S PANEL OF INQUIRY ON THE 31 MAY 2010 FLOTILLA INCIDENT (2011), available at http://www.un.org/News/dh/infocus/middle_east/Gaza_Flotilla_Panel_Report.pdf

The Free Gaza Movement states on its website that “[t]hrough the American Educational Trust you can make U.S. tax-deductible donations to us either with PayPal or by check.”²² However, we are unsure how contributions to the American Educational Trust can be tax-deductible as the Trust is apparently recognized by the IRS as a 501(c)(4) organization. Further, according to the American Educational Trust’s 2009 Form 990, filed November 16, 2010, the Trust made no grants or similar expenses.²³ Thus, it appears that the American Educational Trust may not be reporting the fiscal sponsorship arrangement to the IRS, raising questions as to the sponsorship’s authenticity.

Yet, as egregious as this fiscal sponsorship may be, it pales in comparison to the scheme engineered by ACORN.

III. ACORN’S MISUSE OF FISCAL SPONSORSHIPS

ACORN presents a unique case study of fiscal sponsorship abuse because ACORN is a taxable nonprofit corporation at the center of a network of subsidiary organizations affiliated with it, such as ACORN Housing (“AHC”), American Institute for Social Justice (“AISJ”), and Project Vote. According to a Congressional investigation, “ACORN has dozens of subsidiaries’ and ‘[s]ome get federal funds.’”²⁴ Further, “ACORN moves money around among the subsidiaries’ and ACORN’s mismanagement ‘essentially gives them a cloak that prevents people from seeing really how they’re spending money that comes, in some cases, from the taxpayers, in other cases, comes from members of their organization who pay dues.’”²⁵ “ACORN engages in a shell-game of corporate financing, in which money is transferred from affiliate organizations receiving federal money to a national ACORN organization that engages in partisan political activities.”²⁶

Congressional investigators uncovered the ways in AHC, AISJ, and Project Vote funneled money to ACORN. “Over a six year period, from 1999-2004, ACORN received a net total of \$15,729,825.86 from three of its 501(c)(3) organizations, whose funds are supposed to be kept separate from taxable nonprofit corporations like ACORN.”²⁷ Specifically the investigators noted, “ACORN received a net total of \$369,375.58 from AHC, which is funded by the

²¹ THE FREE GAZA MOVEMENT WEBSITE: U.S. TAX-DEDUCTIBLE DONATIONS, *available at* <http://www.freegaza.org/en/usa-donations> (last visited October 17, 2011).

²² *Id.*

²³ AMERICAN EDUCATIONAL TRUST, RETURN OF ORGANIZATION EXEMPT FROM INCOME TAX 2009, *available at* <http://www.guidestar.org/FinDocuments/2009/521/255/2009-521255580-06a81d45-90.pdf>

²⁴ MINORITY STAFF OF H. COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM, 111TH CONG., IS ACORN INTENTIONALLY STRUCTURED AS A CRIMINAL ENTERPRISE? *available at* http://oversight.house.gov/images/stories/Reports/20091118_ACORNREPORT.pdf [hereinafter “ACORN REPORT 1”] (*quoting Peter Overby, ACORN Has Long Been In Republicans’ Cross Hairs*, NAT’L PUB. RADIO, Oct. 15, 2008, *available at* <http://www.npr.org/templates/story/story.php?storyId=95696267>).

²⁵ *Id.*

²⁶ MINORITY STAFF OF H. COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM, 111TH CONG., FOLLOW THE MONEY: ACORN, SEIU AND THEIR POLITICAL ALLIES, *Available at* <http://republicans.oversight.house.gov/images/stories/Reports/20100218followthemoneyacornseiuandtheirpoliticalallies.pdf>

²⁷ *Id.*

Department of Housing and Urban Development and \$14,299,061.37 from AISJ. From 1999-2003, ACORN received a net total of \$1,061,388.91 from Project Vote.”²⁸

Further, the investigators found that the three affiliates were giving an enormous amount of their unrestricted revenues to ACORN, creating potential 501(c)(3) issues.

Nearly 40% of the disbursements from three of ACORN’s 501(c)(3) affiliates to ACORN’s national organization come in the form of gifts and grants for which no real reason is given for the transfer of funds. Between 1999 and 2004, AHC gave 3.10%, Project Vote gave 29.91%; and AISJ gave 75.94% of their respective unrestricted revenues to ACORN. In the same time period, AHC also gave 16.02% of its unrestricted revenue to AISJ, which gives large percentages of its own revenue to ACORN. The fact that ACORN’s 501(c)(3) organizations transferred such a substantial amount of money to ACORN’s national organization while receiving far less in return creates enormous concern about the transparency of these transactions involving federal funds and charitable donations.²⁹

Because the Internal Revenue Code imputes the activities of the fiscal client to the fiscal agent, any organization that acted as a fiscal sponsor for ACORN therefore engaged in political activity.³⁰

AISJ

AISJ, which gave 75.94% of their unrestricted revenues to ACORN between 1999 and 2004, admitted in an audit that it merely acted as a fiscal agent (or fiscal sponsor) for the group: “According to audit statements of AISJ, AISJ acts as a ‘fiscal agent for other organizations’ that ‘[f]or certain gifts and grants . . . receives the funds and then remits the amount received to the designated organization.’ However, AISJ’s primary fiscal client is ACORN.”³¹ In fact, AISJ’s 1999-2000 audit states “AISJ served as a fiscal agent for . . . [the] Association of Community Organizations for Reform Now,” its 2000-2001 audit states that ASJ “served as a fiscal agent for the . . . Association of Community Organizations for Reform Now,” its 2002-2003 audit states that AISJ “served as a fiscal agent for the . . . Association of Community Organizations for Reform Now,” and its 2003-2004 audit noted that AISJ “served as a fiscal agent for the . . . Association of Community Organizations for Reform Now.”³²

A November 2009 report from the Office of Inspector General (OIG), U.S. Department of Justice (DOJ) entitled, “Review of Department of Justice Grants to the Association of Community Organizations for Reform Now, Inc. (ACORN) and its Affiliated Organizations,” found “AISJ’s IRS Form 990 in 2002, the year AISJ received DOJ grant funds, showed that it

²⁸ *Id.*

²⁹ *Id.*

³⁰ ACORN’s political activities were numerous and well-known and need not be recited here. For a brief overview, see ACORN REPORT 1, *supra* note 17.

³¹ *Id.*

³² Excerpts from Audit Reports of American Institute for Social Justice (2000-2004) (attached hereto in Exhibits as p. 1-5).

had gross income of \$2.529 million and provided ACORN with \$1.684 million in grants, 67 percent of AISJ's gross income," in 2006 "AISJ provided \$4.95 million, 56 percent of its \$8.84 million gross revenue, in grants to ACORN, and in 2007 \$165,644 in contractual payments to ACORN."³³

Under the Internal Revenue Code a 501(c)(3) may not direct a "substantial part" of its funds to lobbying and political activities. However, sixty-seven and fifty-six percent, being majorities, appear to meet the burden under the IRC, reflecting potential IRS violations by ACORN and AISJ.

ACORN Housing

The DOJ OIG also found ACORN Housing to be affiliated with ACORN:

[T]he OIG determined that ACORN Housing was affiliated with ACORN based on the following information. According to ACORN Housing's website, it was established in 1986 by ACORN to build and preserve housing assets. ACORN Housing refers to ACORN throughout its website as a partner and a sister organization. Moreover, according to ACORN's 2006 Annual Report, ACORN Housing Corporation was listed as an example of the "Best of ACORN Organizing" in 2006. Louisiana state corporate records show that ACORN Housing's domicile address matches the address at which ACORN maintains its principal business office. The same office address was published on both the ACORN and ACORN Housing websites.³⁴

Congressional investigators found that ACORN Housing "is able to attract a significantly larger amount in public donations and federal grants than any of the other corporations in the ACORN organization."³⁵ The investigators noted how ACORN Housing funnels its money to ACORN for political activities:

As a result of its large pool of receipts, AHC has the ability to give money to AISJ and still conduct its day-to-day activities. AISJ can then, as ACORN's fiscal agent, give this money in the form of gifts and grants to ACORN's national organization. This set of transactions allows funds given to AHC from private banks or the federal government to be used for whatever purposes ACORN's national organization chooses, all while

³³ U.S. DEPARTMENT OF JUSTICE, OFFICE OF INSPECTOR GENERAL: REVIEW OF DEPARTMENT OF JUSTICE GRANTS TO THE ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW, INC. (ACORN) AND ITS AFFILIATED ORGANIZATIONS (2009) (attached hereto in Exhibits, p. 6)

³⁴ *Id.*

³⁵ MINORITY STAFF OF H. COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM, 111TH CONG., FOLLOW THE MONEY: ACORN, SEIU AND THEIR POLITICAL ALLIES *Available at* <http://republicans.oversight.house.gov/images/stories/Reports/20100218followthemoneyacornseiuandtheirpoliticalallies.pdf>

avoiding the allegations of impropriety that may arise if AHC were to give this money directly to ACORN's national organization.³⁶

In other words, ACORN Housing received federal and private funds, remitted funds to AISJ, who in turn gave funds to ACORN.

ACORN Uses 501(c)(3) Money for Lobbying and Political Activities

While lobbying may not be a "substantial part" of a 501(c)(3)'s activities,³⁷ the fact that ACORN is a registered client under the Lobbying Disclosure Act Database and its 501(c)(3) corporations distribute the majority of their funds to ACORN yields a strong presumption that lobbying is a substantial part of the ACORN-sponsoring 501(c)(3)s' activities.³⁸

ACORN reported over \$700,000 in lobbying expenses for just one of its registrant lobbyists, Citizens Consulting, Inc (CCI).³⁹ The investigators identified CCI as fully controlled and funded by ACORN.⁴⁰ Michael McCray, a "former national board delegate for the Association of Community Organizations for Reform Now (ACORN),"⁴¹ noted that "Wade Rathke constructed the by-laws so that he maintained complete control over all ACORN financial matters through a financial intermediary, i.e., Citizen Consulting Inc. (CCI)."⁴² McCray became an "ACORN whistleblower following the multi-million embezzlement by Dale Rathke and subsequent cover-up by his brother Wade Rathke."⁴³ McCray reviewed the audits "of ACORN, Citizen's Consulting Inc. and several other ACORN related entities."⁴⁴ McCray also assisted with the internal investigation of ACORN following discovery of the embezzlement, and also assisted the U.S. House of Representatives Committee on Oversight and Government Reform as well as the Louisiana Attorney General's investigation of ACORN.⁴⁵

In his affidavit, McCray noted that "Wade Rathke was the co-founder and Chief Organizer of ACORN and his brother Dale Rathke controlled ACORN's finances as CFO of Citizen's Consulting Inc., which was ACORN's financial management division."⁴⁶

Importantly, McCray stated "CCI was a registered lobbying organization" and "**[a]ll monies flowed through CCI before being distributed to ACORN or its affiliated entities - including 501(c)(3) donations, and federal contract receipts.**"

During a hearing before the House Judiciary Committee, Heather Heidelbaugh testified to essentially the same thing: money given to ACORN or any of its affiliates gets funneled to CCI,

³⁶ *Id.*

³⁷ ACORN REPORT 1, *supra* note 17

³⁸ *Id.*

³⁹ QUERY THE LOBBYING DISCLOSURE DATABASE, *available at*:

<http://soprweb.senate.gov/index.cfm?event=submitSearchRequest> (search "community organizations reform").

⁴⁰ ACORN REPORT 1, *supra* note 17

⁴¹ McCray Aff. 2.

⁴² McCray Aff. 9.

⁴³ McCray Aff. 3.

⁴⁴ McCray Aff. 7.

⁴⁵ McCray Aff. 5 & 6.

⁴⁶ McCray Aff. 14.

where it is used for lobbying and political activities. Specifically, Heidelbaugh stated, “[a]ll donations to ACORN or any of its approximately 175 affiliates are deposited into bank accounts held by CCI. Thereafter, CCI transfers money into various affiliates, one being Project Vote.”⁴⁸ Project Vote, as its name implies, was a project engineered in order to register specific individuals to vote. Heidelbaugh noted, “Project Vote in 2007 had a \$28 million dollar budget which was funded by CCI, an affiliate of ACORN. . . .”⁴⁹

Beth Kingsley, of the Washington, D.C.-based law firm Harmon, Curran, Spielberg & Eisenberg, LLP prepared an internal report for ACORN and eleven separate (c)(3) ACORN affiliates to “conduct a review of the operations and inter-relationships” and the “legally appropriate ways of structuring their relationships.”⁵⁰ Kingsley’s own legal analysis reveals that CCI, a taxable corporation, had control of donor-provided funds. Such control would violate the Internal Revenue Code restrictions on fiscal sponsorship relations, which requires that the tax-exempt corporation have “discretion and control” over the donor funds:

[Citizens Consulting Inc., (“CCI”)], which controls the bank accounts, must be instructed not to disburse funds without appropriate approval. . . . An example where this comes up is when organizations have agreements to work jointly on a project, or for one to provide grant funding to the other. A contract or grant letter is necessary to establish that relationship, but not sufficient to authorize a payment. Just as with outside parties, only a person with legal authority for a payor should disburse its funds. I have seen at least one instance where that did not happen, although the payment was for a 501(c)(3)-permissible project, and one that apparently the 501(c)(3) in question was participating in. The point is that general agreement to provide funding to a project is not the same as making payments, and the other organization seeking funds should not be the one to control the making of payments. Otherwise, there is danger that we cannot demonstrate that 501(c)(3) funds are always disbursed for 501(c)(3)-appropriate purposes.⁵¹

In fact, Kingsley observed that ACORN had legal control over one of its most prominent fiscal sponsors, Project Vote, a distinctly political organization:

Project Vote has on paper a procedure to select regions where it will do voter registration, but [we] have heard reports in the past that in practice those decisions may be communicated to [Project Vote] from ACORN. . . . Project Vote (and PICA, the other voter registration corporation) needs to really be in charge of deciding where 501(c)(3) resources will be focused. The [Project Vote] and PICA Executive Director(s) must be charged with implementing the procedures (or supervising that work) to set strategic priorities for the organization without answering to any other entity or

⁴⁸ *What went wrong with the 2008 election?: Hearing Before the H. Judiciary Comm.*, 111TH CONG. 5 (2009) (statement of Heather Heidelbaugh) (emphasis added).

⁴⁹ *Id.*

⁵⁰ ACORN REPORT 1, *supra* note 17

⁵¹ *Id.*

person. These corporations and their chief staff people must control their own funds; the ED must report only to her/his own board, unless a formal, legally vetted written agreement appropriately delegates that authority elsewhere. And the ED must not be wearing other 'hats' that jeopardize her ability to act solely in the interest of these 501(c)(3)s.⁵²

The fact that CCI holds financial control over all of ACORN's and its affiliates' transactions reveals the degree to which ACORN's activities are imputed to its (c)(3) fiscal sponsors, making the majority of such transactions impermissible by law.

The Lobbying Disclosure Act of 1995 ("LDA") states, "[a] person or entity whose employees act as lobbyists on its own behalf is both a client and an employer of such employees." The fact that donations flowed through tax-exempt ACORN affiliates to a registered lobbying organization, CCI, is disconcerting. Further, the Congressional staff found that 501(c)(3) sponsoring organizations, including AISJ, AHC, Project Vote, and the ACORN Institute, failed to comply with § 501(c) and § 527(f) of the Internal Revenue Code. ACORN filed Form 1120 corporate income tax with the IRS, had no tax-exempt status with the IRS, and was registered in multiple states as a nonprofit corporation.⁵³ ACORN, a taxable non-exempt corporation, appeared to intentionally use 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 application of FECA and the IRC.

In the words of McCray, "ACORN failed to declare tens if not hundreds of millions of dollars of corporate gift/grant revenue from ACORN income tax returns."⁵⁴ "ACORN has routinely under-reported millions of dollars of taxable income for years if not decades."⁵⁵

IV. SOLUTIONS

The Internal Revenue Service should consider both temporal and monetary restrictions on fiscal sponsorships.

As noted above, ACORN is a fiscally sponsored non-exempt corporation that has existed for over 40 years. While fiscal sponsorships make sense for "temporary" projects, such as those seeking 501(c)(3) status from the IRS or working on a temporary project, the IRS has not set rules to define these limits. Accordingly, we ask that the IRS set guidelines that limit the amount of time a project can be fiscally sponsored, lest the sponsoring relationship collapses into a money laundry.

Moreover, another valid purpose of fiscal sponsorship arrangements is to support the incubation of poorly funded organizations by better funded ones. However, the use of 501(c)(3)

⁵² *Id.*

⁵³ ACORN REPORT 1, *supra* note 17.

⁵⁴ McCray Aff. 24.

⁵⁵ McCray Aff. 26.

organizations to fiscally sponsor wealthy organizations like ACORN, which at one time had over \$50 million in revenue, is inimical to this purpose.

The IRS currently requires 501(c)(3) organizations with gross receipts between \$50,000 and \$200,000 and total assets less than \$500,000 to file Form 990-EZ whereas organizations with gross receipts below \$50,000 must file a Form 990N (the "e-Postcard"). IRS protocol set these limitations to reflect the heightened risk of abuse that results when 501(c) corporations hold receipts in excess of \$50,000. Because non-exempt clients of sponsoring organizations share similar risks, 501(c) revenue limits should apply to fiscal sponsorships arrangements as well. Once a fiscally sponsored non-exempt organization reaches gross receipts above \$50,000, the 501(c)(3) sponsoring organization should disclose this information in its Form 990 and the client organization should either apply for 501(c)(3) status or terminate its fiscal sponsorship arrangement.

V. CONCLUSION

The IRS has set forth general principles for fiscal sponsorship, which serve to assist startup charitable organizations and various short-term projects, among others. However, various and assorted vagabond groups such as ACORN and their affiliates have coopted this beneficial practice and turned it into a shameful method of deception. The IRS should take immediate steps to end this tradition of trickery by imposing a monetary and temporal limit on fiscal sponsorships. The IRS should also investigate ACORN and its allies for tax fraud, and thereby send a message that this sham will not be tolerated.

Should you have any questions, comments, or concerns, please do not hesitate to contact Keith Gates at (703)-875-8625 or Keith.Gates@ftjfoundation.org. Thank you for your attention to this matter.

Sincerely,



J. KEITH GATES
Senior Attorney

Encl.: Exhibits

Appendices

AMERICAN INSTITUTE FOR SOCIAL JUSTICE, INC.
NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 2000 AND 1999

2. TRANSACTIONS WITH AFFILIATED ORGANIZATIONS: (Continued)

During 2000 and 1999, the organization leased office space from Elysian Fields Corporation. Rent was accrued at \$700.00 per month each month for a total of \$8,400.00. The payable amount of \$8,400.00 and \$8,400.00 at December 31, 2000 and 1999, respectively, reduced the amount of receivable from Elysian Fields Corporation.

The organization incurred \$3,053.16 and \$2,616.32 in costs associated with COUNCIL Health Plan, a ERISA health plan established to assist individuals who directly pursue philanthropic endeavors for the years ended December 31, 2000 and 1999, respectively. Employees can cover family members at their own expense.

The organization incurred \$1,560.76 and \$1,386.18 during 2000 and 1999, respectively, in cost associated with COUNCIL Beneficial Association, a qualified ERISA retirement plan established for the purpose of providing retirement benefits to eligible employees in accordance with the Plan and Trust. (See also Note 8.)

The organization incurred \$138.74 and \$3,513.10 in costs associated with Fifteenth Street Corporation for copying services for the years ended December 31, 2000 and 1999, respectively. The organization also incurred \$0 and \$84.52 in cost associated with Peoples Equipment Resource Corporation for copying services for the years ended December 31, 2000 and 1999, respectively.

The organization receives much of its support in the form of gifts and grants. It also acts as a fiscal agent for other organizations. For certain gifts and grants, the organization receives the funds and then remits the amount received to the designated organization. AISJ served as a fiscal agent for the following organizations:

	2000		
	<u>Received</u>	<u>Paid</u>	<u>Payable</u>
Association of Community Organizations for Reform Now	\$2,791,688.22	\$2,926,385.25	\$257,789.00
	1999		
	<u>Received</u>	<u>Paid</u>	<u>Payable</u>
Association of Community Organizations for Reform Now	\$2,547,737.25	\$2,539,958.40	\$392,486.03

AMERICAN INSTITUTE FOR SOCIAL JUSTICE, INC.
 NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 2001 AND 2000

2. TRANSACTIONS WITH AFFILIATED ORGANIZATIONS: (Continued)

The organization incurred \$2,957.92 and \$1,560.76 during 2001 and 2000, respectively, in cost associated with COUNCIL Beneficial Association, a qualified ERISA retirement plan established for the purpose of providing retirement benefits to eligible employees in accordance with the Plan and Trust. (See also Note 8.)

The organization incurred \$4,195.35 and \$138.74 in costs associated with Fifteenth Street Corporation for copying services for the years ended December 31, 2001 and 2000, respectively. The organization also incurred \$122.27 and \$0 in cost associated with ACORN Housing Corporation, Inc. for copying services for the years ended December 31, 2001 and 2000, respectively.

The organization receives much of its support in the form of gifts and grants. It also acts as a fiscal agent for other organizations. For certain gifts and grants, the organization receives the funds and then remits the amount received to the designated organization. AISJ served as a fiscal agent for the following organizations:

	<u>2001</u>		
	<u>Received</u>	<u>Paid</u>	<u>Payable</u>
Association of Community Organizations for Reform Now	<u>\$3,665,880.23</u>	<u>\$3,645,614.01</u>	<u>\$278,055.22</u>
	<u>2000</u>		
	<u>Received</u>	<u>Paid</u>	<u>Payable</u>
Association of Community Organizations for Reform Now	<u>\$2,791,688.22</u>	<u>\$2,926,385.25</u>	<u>\$257,789.00</u>

These amounts received and paid are not included in the statement of activities as revenue and expense.

American Institute for Social Justice made gifts and grants to the following affiliated organizations:

	<u>2001</u>	<u>2000</u>
ACORN Fair Housing, Inc.	\$ --	\$ 19,000.00
ACORN Tenants' Union	--	--
ACORN Associates, Inc.	100.00	--
Association of Community Organizations for Reform Now	1,119,534.53	913,320.56
Citizens Action Research Project	--	267.00
Citizens for Campaign Finance Reform	--	26.00

AMERICAN INSTITUTE FOR SOCIAL JUSTICE, INC.
 NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 2004 AND 2003

2. TRANSACTIONS WITH AFFILIATED ORGANIZATIONS: (Continued)

The organization incurred \$1,850 and \$-0- during 2004 and 2003, respectively, in cost associated with Association of Community Organizations for Reform Now for convention/conference expenses.

The organization incurred \$1,280 and \$-0- during 2004 and 2003, respectively, in cost associated with Association of Community Organizations for Reform Now for recruitment and advertising expenses.

The organization received reimbursements for copying expenses in the amount of \$325 and \$-0- during 2004 and 2003, respectively from Service Employees International Union, AFL-CIO, Local 880.

The organization receives much of its support in the form of gifts and grants. It also acts as a fiscal agent for other organizations. For certain gifts and grants, the organization receives the funds and then remits the amount received to the designated organization. AISJ served as a fiscal agent for the following organizations:

	<u>2004</u>		
	<u>Received</u>	<u>Paid</u>	<u>Payable</u>
American Home Day Care Workers Association, Inc.	\$ <u>119,750</u>	\$ <u>92,250</u>	\$ <u>27,500</u>
Association of Community Organizations for Reform Now	\$ <u>3,375,529</u>	\$ <u>4,292,682</u>	\$ <u>993,282</u>
Baltimore Organizing and Support Center, Inc.	\$ <u> --</u>	\$ <u> --</u>	\$ <u> --</u>
Community and Labor United for Baltimore's Organizing	\$ <u> --</u>	\$ <u> --</u>	\$ <u> --</u>
	<u>2003</u>		
	<u>Received</u>	<u>Paid</u>	<u>Payable</u>
American Home Day Care Workers Association, Inc.	\$ <u>79,500</u>	\$ <u>79,500</u>	\$ <u> --</u>
Association of Community Organizations for Reform Now	\$ <u>5,482,904</u>	\$ <u>3,785,479</u>	\$ <u>1,910,435</u>
Baltimore Organizing and Support Center, Inc.	\$ <u>10,000</u>	\$ <u>10,000</u>	\$ <u> --</u>
Community and Labor United for Baltimore's Organizing	\$ <u>50,000</u>	\$ <u>50,000</u>	\$ <u> --</u>

ACORN INSTITUTE, INC.
NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 2005

2. TRANSACTIONS WITH AFFILIATED ORGANIZATIONS: (Continued)

The organization incurred expenses for copying and printing services, postage and supplies during 2005 as follows:

Association of Community Organizations for Reform Now	<u>\$ 5,976</u>
--	-----------------

At December 31, 2005, the organization shared a consolidated billing arrangement with various other nonprofit organizations for long distance, e-mail and credit card charges. People's Equipment Resource Corporation (PERC) received a bill each month with separate totals for each organization. PERC paid the total bill and was then reimbursed by each organization. The amount incurred for reimbursement to PERC was \$33,013 with prepaid expenses of \$20,506.

The organization receives much of its support in the form of gifts and grants. It also acts as a fiscal agent for other organizations. For certain gifts and grants, the organization receives the funds and then remits the amount received to the designated organization. ACORN Institute, Inc. served as a fiscal agent for the following organizations:

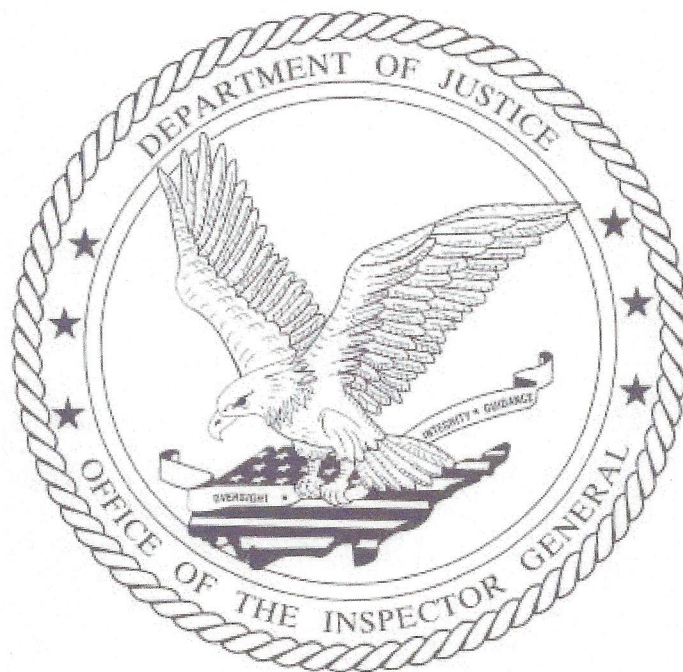
	2005		
	Received	Paid	Payable
ACORN International, Inc.	\$ <u>50,000</u>	\$ <u>50,000</u>	\$ <u> --</u>
Association of Community Organizations for Reform Now	\$ <u>263,585</u>	\$ <u>263,585</u>	\$ <u> --</u>

These amounts received and paid are not included in the statement of activities as revenue and expense.

ACORN Institute, Inc. made gifts and grants to the following affiliated organizations during 2005:

Association of Community Organizations for Reform Now	\$ 56,327
ACORN Associates, Inc.	1,125
ACORN Services, inc.	310,637
American Home Day Care Workers Association, Inc.	1,000
American Institute for Social Justice, Inc.	6,819
Citizens' Consulting, Inc.	9,951
Elysian Fields Corporation	71,418
Fifteenth Street Corporation	4,340
Greenwell Springs Corporation	50,673
Peoples Equipment Resource Corporation	<u>37,090</u>
	<u>\$ 549,380</u>

**Review of Department of Justice Grants to the
Association of Community Organizations for
Reform Now, Inc. (ACORN) and its
Affiliated Organizations**



November 2009

In addition, we identified one direct grant of DOJ funds to an ACORN affiliate, the New York Agency for Community Affairs, Inc. (NYACA). We considered NYACA to be an affiliate of ACORN because it acted as a fiscal agent for ACORN, engaged in substantial financial transactions with ACORN, and DOJ grant documentation showed that ACORN was a major partner in the grant program being funded. In FY 2005, NYACA received a grant of \$138,130 resulting from a congressional earmark. The purposes of the grant to NYACA were to provide youth leadership training to students at select New York City schools; form "ACORN Youth Union" chapters; and coordinate student campaigns to address issues such as school funding, neighborhood safety, and school governance.

We also determined that three DOJ grantees entered into sub-agreements with ACORN affiliates. First, in December 2007 the ACORN Institute, Inc., received a \$13,000 sub-award from a \$200,000 grant to Operation Weed and Seed – St. Louis, Inc., to canvass designated neighborhoods in the St. Louis area in an effort to recruit community members to participate in Weed and Seed program activities.

Second, another DOJ grantee, the city of Phoenix's Neighborhood Services Department, entered into a sub-award agreement with the ACORN Institute to receive \$8,539 from its \$150,000 Weed and Seed grant to canvass residents and increase awareness of the Earned Income Tax Credit and free tax preparation for residents of designated neighborhoods in the city of Phoenix. However, as of November 16, 2009, the city of Phoenix had not paid any of the sub-award funds to the ACORN Institute and had put the sub-award on hold due to poor reporting by the ACORN Institute regarding another project not related to DOJ grant funds. According to the DOJ's Office of Justice Programs (OJP), the city of Phoenix was planning to seek approval from its steering committee to terminate the sub-award with the ACORN Institute and use the funds for other program needs.

Third, in July 2002 another DOJ grantee, the National Training and Information Center (NTIC) in Chicago, Illinois, entered into a \$20,000 sub-award agreement with an ACORN affiliate, the American Institute for Social Justice (AISJ). The grant program was called the Community Justice Empowerment Project and, according to grant documents, the congressional earmark award to NTIC was to provide training, technical assistance, and funding to community-based organizations nationwide to address problems of crime, violence, and substance abuse, and to assist in the revitalization and redevelopment of communities. NTIC paid AISJ the full sub-award amount of \$20,000. However, neither NTIC nor AISJ provided evidence of what specific activities the sub-award was expected to fund or the purposes for which the funds were ultimately used.

We determined that DOJ components that issued the grants had not audited or otherwise reviewed the use of funds awarded to and disbursed to ACORN or their affiliates. However, the OIG issued an audit in 2008 of the grant to NTIC. The OIG audit found that the NTIC did not properly manage the grant and did not adequately monitor some of its 36 sub-grantees, including the AISJ. We included the \$20,000 sub-award to the AISJ in the total amount of questioned costs identified in our audit.

Finally, we identified five applications for DOJ grant funds submitted to DOJ components by ACORN affiliates from FY 2003 to FY 2009 that were denied.

The details of our review are provided in the remainder of this report.

BACKGROUND

According to its website, ACORN is a non-profit social justice organization with national headquarters in New York, New Orleans, and Washington, D.C., and more than 1,200 neighborhood chapters in about 75 cities across the country. The website states that ACORN provides assistance with voter registration, free preparation of tax returns, first-time homeowner mortgage counseling, foreclosure prevention assistance, and low income housing development.

ACORN received widespread attention in September 2009 as a result of disclosure of hidden camera videos allegedly depicting ACORN employees providing advice on operating an illegal business, tax evasion, and money laundering.¹ Following disclosure of the videos:

- The U.S. Census Bureau terminated its partnership with ACORN for the 2010 census.
- The Internal Revenue Service (IRS) released a statement that it had removed ACORN from its Volunteer Income Tax Assistance Program.
- Some states and localities, including New York and Maryland, initiated reviews or investigations of ACORN, while others terminated business relations with the organization.

¹ The videos were of events in Baltimore, Maryland; Washington, D.C.; Brooklyn, New York; San Diego, California; and San Bernardino, California. According to ACORN press releases, ACORN terminated the employees involved in the events depicted in the videos.

us that, according to CCNYC, CCNYC had informed ACORN either to remove the fringe benefit cost from the reimbursement request or amend its budget to include the fringe benefits. OJP also told the OIG that it understood that CCNYC intended to provide ACORN with the grant funds if ACORN satisfied one of these requirements.

According to OJP's Grant Management System, OJP has not conducted any audits, financial reviews, or site visits relating to this grant.

Direct Grant of DOJ Funds Awarded to an ACORN Affiliate, the New York Agency for Community Affairs

We identified one grant of DOJ funds directly to an ACORN affiliate, the New York Agency for Community Affairs, Inc. (NYACA). According to its financial statement, the mission of NYACA is to educate the public about rights, privileges, and opportunities in the area of housing. Its financial statement also stated that the NYACA is one of a number of nonprofit organizations run by independent boards of directors who share common functions, costs, and operate under "common controls by individuals who could exercise influence over their day-to-day decisions."

The OIG determined that NYACA was affiliated with ACORN based on the following information. First, the NYACA's 2005-2006 financial statement identified ACORN as an "affiliated organization." In addition, according to its IRS Form 990, in 2007 NYACA provided 97 percent of its \$730,334 gross income to ACORN for "contractual services." The NYACA's 2005-2006 financial statement also stated that the NYACA acts as a fiscal agent for ACORN by remitting to ACORN certain gifts and grants that NYACA receives.¹⁹

¹⁹ NYACA was also listed as the fiscal agent for ACORN on a sub-award agreement between the Citizens Committee for New York City, Inc., and ACORN as discussed previously in this report.

solicitation describes ACORN and the ACORN Institute as two separate but related legal entities, each with a different tax status.²⁶ However, the ACORN Institute was listed as an "Allied Organization" on ACORN's website.²⁷ ACORN's registered trademark appears on the ACORN Institute's website, indicating collective membership according to ACORN's trademark documentation maintained by the U.S. Patent and Trademark Office.²⁸ The two organizations share a common address in New Orleans, Louisiana, according to the ACORN Institute's 2007 IRS Form 990 and ACORN's Louisiana state corporate records. Moreover, according to the ACORN Institute's publicly available 2006 IRS Form 990, the ACORN Institute provided approximately \$2.1 million of its \$3.56 million gross income (59 percent) to ACORN and ACORN Services, Inc., in the form of grants and contracts.²⁹ According to its 2007 IRS Form 990, the ACORN Institute gave 41 percent, approximately \$1.15 million, of its \$2.8 million gross income to ACORN and ACORN Services, Inc., as grants and payments for contract services.

We found that the ACORN Institute received two sub-awards of DOJ grant funds. In addition, the ACORN Institute submitted four applications for DOJ funds that were denied. These sub-awards and applications are discussed below.

²⁶ The website describes ACORN as a non-profit organization with no special tax status that is free to participate in direct legislative lobbying; it notes that donations to ACORN are not tax-deductible. The ACORN Institute, however, is described as a 501(c)(3) organization that is not involved in direct legislative lobbying and represents that all donations to the ACORN Institute are tax-deductible.

²⁷ A cached version of an ACORN web address, <http://www.acorn.org/news/index.php?id=12375>, as it appeared on September 4, 2009, was accessed through a website caching service. This website was not functional as of October 10, 2009.

²⁸ The U.S. Patent and Trademark office defines a collective mark as a trademark or service mark used, or intended to be used, in commerce, by the members of a cooperative, an association, or other collective group or organization, including a mark that indicates membership in a union, an association, or other organization.

²⁹ While we did not review the full extent of the association between ACORN Services, Inc., and ACORN, according to 2003 tax forms for ACORN available through the Arizona Corporation Commission Public Access System, ACORN identified ACORN Services, Inc., as a member of an affiliated group of corporations filing a consolidated return.

ACORN Institute's Application to the Civil Rights Division in 2004

Also in May 2004, the ACORN Institute located in New Orleans, Louisiana, submitted another application to the Civil Rights Division's Office of Special Counsel for Immigration-Related Unfair Employment Practices seeking the same amount of funding, \$73,412.³⁸ This application was in connection with the ACORN Institute's "Maricopa County Hispanic and Immigrant Employment Discrimination Outreach Project," and the geographic target area for this application was Maricopa County, Arizona. According to the application, the ACORN Institute proposed to work in conjunction with Arizona ACORN in the project's implementation.

The application was denied. The Civil Rights Division stated that the application was not selected for funding because it did not score high enough relative to other applications.

Sub-Award of DOJ Grant Funds to an ACORN Affiliate, the American Institute for Social Justice

We found that the American Institute for Social Justice (AISJ) received one sub-award from a DOJ grant.

According to its website, the American Institute for Social Justice (AISJ) provides training and technical assistance in organizing principles and methods and is a center for research and training on issues of concern to low and moderate income people.

The OIG determined that AISJ was affiliated with ACORN based on the following information. In 2002 when AISJ received the sub-grant described below, ACORN listed the AISJ on its website as being an ACORN affiliate. ACORN currently states on its website that it works with AISJ to provide training programs to transform poor communities.³⁹ AISJ's IRS Form 990 in 2002, the year AISJ received DOJ grant funds, showed that it had gross income of \$2.529 million and provided ACORN with \$1.684 million in grants, 67 percent of AISJ's gross income. More recently, in 2006 AISJ provided \$4.95 million, 56 percent of its \$8.84 million gross revenue, in grants to ACORN, and in 2007 \$165,644 in contractual payments to ACORN.⁴⁰ In addition, the contact information for AISJ on its website shows that it has

³⁸ Civil Rights Division application number OSC-04-42.

³⁹ <http://acorn.org/index.php?id=917> (accessed October 19, 2009).

⁴⁰ AISJ's 2007 IRS Form 990 identified \$4.51 million in total grants, but did not identify the individual recipients of those grants.

the same address and fax number as the ACORN office in the District of Columbia. AISJ's addresses listed on its 2002, 2003, and 2006 IRS Forms 990 are the same as ACORN's address listed on its 2003 Tax Returns available on Arizona's corporate database. Similarly, AISJ's Louisiana state corporate records show as its principal business address the same address provided on ACORN's Louisiana state corporate records.

AISJ's Sub-Award from an OJP grant in 2002

We determined that between April 6, 2000, and December 31, 2003, OJP's Bureau of Justice Assistance awarded the National Training and Information Center (NTIC) in Chicago, Illinois, an initial earmark grant and three supplemental earmark grants totaling \$3,162,580.⁴¹ According to grant documents, the purpose of the grants was to provide training, technical assistance, and funding to community-based organizations through sub-awards nationwide to address problems of crime, violence, and substance abuse, and to assist in the revitalization and redevelopment of their communities. The program was called the Community Justice Empowerment Project.

On July 2, 2002, NTIC provided a sub-award to AISJ in the amount of \$20,000. Although the contract for the sub-award was between NTIC and AISJ and payment of the funds was made to AISJ, NTIC documents identified "Toledo ACORN" as the recipient of this sub-award, which we determined to be the ACORN organization located in Toledo, Ohio.

NTIC's agreements with its sub-recipients required them to: (1) provide semi-annual financial reports or reimbursement requests that detailed how the money was spent, and (2) maintain supporting documentation at its place of business.

In March 2008, the DOJ OIG issued an audit report on the Community Justice Empowerment Project grant awarded by OJP to NTIC.⁴² In brief, our audit revealed significant irregularities in NTIC's grant activities, significant weaknesses in NTIC's grant management practices and internal control system, and various instances of unallowable, unsupported, and unapproved

⁴¹ OJP grant number 2000-DD-VX-0014. The conference reports that accompanied the FY 2000, 2001, and 2002 DOJ appropriation statutes (106-479, 106-1005, and 107-278, respectively) directed that NTIC receive these grant funds. We refer to these congressionally designated projects as "earmarks."

⁴² U.S. Department of Justice Office of the Inspector General, *Community Justice Empowerment Project Grant Administered by the National Training and Information Center*, Audit Report GR-50-08-005 (March 2008).

expenses. As a result of the significant grant irregularities, we questioned the entire award amount of \$3,162,580.⁴³ Due to the significance of our findings and the questionable nature of some of NTIC's activities, the OIG Investigations Division conducted a criminal and civil investigation related to this grant.

As a result of the criminal investigation, the Executive Director of NTIC pled guilty to intentionally misapplying federal funds and received a prison sentence of 5 months, 5 months of home confinement, 24 months of probation, a fine of \$5,000, and a restitution order of approximately \$46,000. Pursuant to a subsequent False Claims Act case, NTIC paid \$550,000 to the U.S. government.

The OIG's audit focused principally on NTIC's grant management, but it also reviewed NTIC's oversight of sub-recipients of grant funds. During our review, in 2003 we attempted to contact NTIC's 36 sub-recipients by letters and telephone calls. Only 2 of the 36 sub-recipients were not responsive to our efforts. One of the two non-responsive sub-recipients was identified by NTIC as Toledo ACORN, although as noted above the written sub-award agreement was between NTIC and AISJ.

During our audit of NTIC, we found no evidence that NTIC officials had ever visited Toledo ACORN or AISJ. Moreover, NTIC's files did not contain the required expenditure reports for Toledo ACORN or AISJ, and NTIC did not have any supporting documentation for the sub-recipient's expenditures. Accordingly, our audit could not determine how the grant funds paid to AISJ were spent. Because we were not able to contact Toledo ACORN, and their records were not available for audit, we questioned the total funds paid to this sub-recipient by NTIC, which amounted to \$20,000.

Application for DOJ Grant Funds by ACORN Housing Corporation, Inc., Denied

Our review found that one application from ACORN Housing Corporation, Inc. (ACORN Housing) in FY 2003 for a DOJ grant was denied.

ACORN Housing is a national non-profit organization providing free mortgage and housing counseling to low and moderate income home owners and prospective buyers. Although ACORN Housing contains the acronym ACORN in its name, it has a different Employer Identification Number from

⁴³ In some instances, we questioned costs for more than one reason, resulting in the total questioned costs being in excess of grant receipts. Our total dollar-related findings amounted to \$4,325,292.

ACORN and, unlike ACORN, is identified as a charitable organization by the IRS.

However, the OIG determined that ACORN Housing was affiliated with ACORN based on the following information. According to ACORN Housing's website, it was established in 1986 by ACORN to build and preserve housing assets. ACORN Housing refers to ACORN throughout its website as a partner and a sister organization. Moreover, according to ACORN's 2006 Annual Report, ACORN Housing Corporation was listed as an example of the "Best of ACORN Organizing" in 2006. Louisiana state corporate records show that ACORN Housing's domicile address matches the address at which ACORN maintains its principal business office. The same office address was published on both the ACORN and ACORN Housing websites.

Financial documents of ACORN Housing identified ACORN as one of its "affiliated organizations" and showed that ACORN Housing received gifts and grants from ACORN totaling \$216,316 in 2006. The financial statement also identified gifts and grants from the "ACORN Partnership" totaling \$244,500 for 2007 and \$520,228 in 2006. In addition, ACORN Housing's 2007 IRS Form 990 identified \$119,509 in notes and loans receivable from ACORN. ACORN Housing's financial statement also identified several transactions between ACORN Housing and the AISJ, another ACORN affiliate identified in our review.⁴⁴ Specifically, ACORN Housing received \$100,000 in gifts and grants from AISJ and provided \$1.4 million in gifts and grants to AISJ between the 2 years covered by the financial statement.

We identified one application for DOJ grant funds submitted by ACORN Housing in FY 2003. According to the Civil Rights Division's Office of Special Counsel for Immigration-Related Unfair Employment Practices, ACORN Housing in Chicago, Illinois, submitted an application for a FY 2003 Civil Rights Division grant. The application was denied. The Civil Rights Division told the OIG that it could not locate the application or provide the amount of the funding request. We found no further information relating to this application.

CONCLUSION

Our review did not find any DOJ direct grants to ACORN. However, we found that one recipient of DOJ grant funds entered into a sub-agreement with ACORN for program activities. In addition, we identified one direct grant of DOJ funds to an affiliate of ACORN. We also identified three

⁴⁴ The AISJ received a DOJ sub-award discussed previously in this report.

instances in which a DOJ grantee entered into a sub-award with an ACORN affiliate. Thus, in total we found that ACORN and its affiliates received one direct grant and four sub-awards totaling approximately \$200,000 between FYs 2002 and 2009. Three of the grants have closed while two others remain open. For the two open grants, funds have not been disbursed to ACORN as of November 2009.⁴⁵

In addition, we determined that ACORN affiliates submitted five applications for DOJ grant funds from FY 2003 to 2009 that were denied.

We also determined that DOJ did not conduct any audits, financial reviews, or site visits of the five grants that were awarded to ACORN or its affiliates, either directly or as a sub-award recipient. We identified one Single Audit Act report of ACORN affiliate NYACA that covered calendar years 2005 and 2006. In addition, the OIG issued an audit report in 2008 of a DOJ grantee that provided a sub-award to an ACORN affiliate – the 2002 sub-award to the American Institute of Social Justice – and found that the DOJ grantee mismanaged the grant and did not properly oversee the sub-award to the ACORN affiliate.

⁴⁵ The grantee for one open grant is seeking approval to use the funds for another purpose. The grantee for the other open grant is awaiting documentation from ACORN to disburse the funds.

7. In this capacity, I reviewed the annual audit report's of ACORN, Citizen's Consulting Inc. and several other ACORN related entities.

Common Control

8. ACORN co-founder, Wade Rathke constructed the by-laws so that he maintained absolute and complete control over all ACORN staff/employees as its Chief Organizer.

9. Wade Rathke constructed the by-laws so that he maintained complete control over all ACORN financial matters through a financial intermediary, i.e., Citizen Consulting Inc. (CCI).

10. CCI held itself out as providing legitimate bookkeeping services, but CCI was actually the financial management and accounting division of ACORN.

11. Consequently, CCI ultimately reported to the Chief Organizer of ACORN, i.e., Wade Rathke.

12. Dale Rathke was the CFO/Comptroller for CCI until the embezzlement in 1999-2000.

13. Thus, Wade Rathke exercised absolute control over ACORN because he controlled the staff and he controlled the finances—the national board and membership were merely ceremonial.

Money Laundering

14. Wade Rathke was the co-founder and Chief Organizer of ACORN and his brother Dale Rathke controlled ACORN's finances as CFO of Citizen's Consulting Inc., which was ACORN's financial management division.

15. ACORN Chapters were prohibited from any fundraising activities or raising any money directly at the local level.

16. CCI was a registered lobbying organization

17. All monies flowed through CCI before being distributed to ACORN or its affiliated entities—including, 501(c)(3) donations, and federal contract receipts.

18. By design, neither the membership nor the board of directors exercised any financial management control or oversight of ACORN funding.

Tax Evasion

19. I have cooperated in an investigation of ACORN by the Louisiana Attorney General's Office as an ACORN insider and expert witness.

20. In order to prevent the disclosure of its strong-arm tactics and financial information, ACORN operated as a non-exempt charitable (non profit) organization.

21. ACORN engaged in tax evasion because it failed to declare and refused to pay taxes on taxable income for many years (if not decades) since ACORN engaged in charitable

activities which could have been tax exempt ~~if~~ ACORN had tax exempt status.

22. The accounting firm of Duplantier, Hrapmann, Hogan & Maher, LLP aided and abetted this scheme by supporting this false supposition in ACORN financial statements (not unlike Arthur Anderson and Enron).

23. ACORN's accountant's Duplantier, Hrapmann, Hogan and Maher opined in annual audit(s) that since ACORN's activities constituted charitable purposes and that no taxes were due.

24. Consequently, ACORN failed to declare tens if not hundreds of millions of dollars of corporate gift/grant revenue from ACORN income tax returns.

25. This is illegal because although ACORN holds itself out as a charitable organization ~~at best a 501(c)(4)~~ it definitely is not a tax exempt organization and ACORN has never sought nor received federal tax exempt status.

26. Therefore, ACORN has routinely under-reported millions of dollars of taxable income for years if not decades.

27. I have previously reported this/similar malfeasance to the Internal Revenue Services in claim numbers: Claim No. 2011-009535 (ACORN); Claim No. 2011-009536 (AISJ); Claim No. 2011-009537 (ACORN International Inc.); Claim No. 2011-009538

(Citizen's Consulting Inc.); Claim No. 2011-009539 (Wade Rathke); and Claim No. 2011-009541 (Dale Rathke)

I, Michael McCray, swear to truthfulness of the foregoing statements concerning the substance and chronology of events related to Wade Rathke, Dale Rathke and the Association of Community Organizations for Reform Now (ACORN) the best of my knowledge and belief and attest to the same under penalty of perjury.

Dated 10/19/11

Respectfully submitted,

Michael McCray

Michael McCray, Affiant

6307 Ridgewood Drive
Pine Bluff, AR 71603

(870) 543-0024

Subscribed and sworn before
me this 19th day
of October, 2011

Garienne Smith

Notary Public

My commission expires:

