



The Director

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

OCT 17 2009

The Honorable Charles E. Grassley
Ranking Member
U.S. Senate Finance Committee
135 Hart Senate Office Building
Washington, DC 20510-1501

Dear Senator Grassley:

Thank you for your September 22, 2009, letter regarding ACORN and its affiliated organization, the ACORN Institute, Inc. In your letter, you requested that the ACORN Institute, Inc., as well as any other ACORN affiliate, be prohibited from participating in the Combined Federal Campaign (CFC). You stated that it has come to light that certain offices of ACORN have been engaged in conduct that appear to further illegal activity, and that these acts should not be supported with CFC dollars.

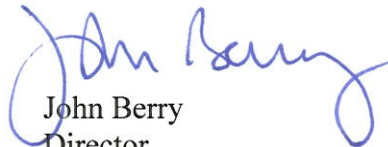
The ACORN Institute is the only ACORN affiliated organization that participates in the CFC. For the reasons set forth below, the activities of certain offices of ACORN that have been reported in the media do not provide a legal basis for excluding the Institute from the CFC. Nor is such a basis provided by the recent continuing resolution which prohibits Federal funding of ACORN or its affiliates, because the ACORN Institute does not receive Federal funds by virtue of its participation in the CFC.

In accordance with the CFC's regulations at 5 C.F.R. § 950.603(a)(1), my authority to exclude or otherwise impose sanctions or penalties on a federation, charitable organization or Principal Combined Fund Organization is limited to those circumstances where the entity has violated of CFC regulations, other applicable provisions of law, or any directive or instruction from the Director. Regardless of the merits of the allegations of unlawful conduct lodged against several offices of ACORN, the ACORN Institute, Inc., is a legally separate organization from ACORN, holding section 501(c)(3) status under the Internal Revenue Code. Because I have no evidence establishing that the ACORN Institute, Inc., has violated any CFC regulations, other applicable law, or directive/instruction, I have no basis for lawfully excluding the ACORN Institute from the 2009 CFC campaign under this regulation.

Second, my staff has reviewed the Continuing Appropriations Resolution set forth at section 163 of Public Law 111-68 (CR). It states that "none of the funds made available by this joint resolution or any prior Act may be provided to the Association of Community Organizations for Reform Now (ACORN), or any of its affiliates,

subsidiaries, or allied organizations.” The ACORN Institute’s participation in the CFC does not violate this provision because the CFC program does not obligate, award or pay Federal funds to its participants. Instead, the CFC provides an annual opportunity for Federal employees to make personal donations of their own funds to participating non-profit organizations, either by way of cash, personal check or payroll deduction. Donations to participating organizations are Federal employees’ personal dollars, and do not constitute Federal funds. While Federal monies are, of course, used to accomplish the mission and operations of OPM and other agencies as they execute payroll allotments and perform duties related to the CFC, Federal monies are not “provided to” the ACORN Institute, Inc., within the meaning or scope of the CR. As a result, we do not believe that the CR prohibits the ACORN Institute from participating in the CFC.

Sincerely,



John Berry
Director