September 27, 2011

Gene L. Dodaro
Comptroller General
U.S. Government Accountability Office
441 G Street, NW
Washington, D.C. 20548

Dear Mr. Dodaro:

The Freedom Through Justice Foundation is a 501(c)(3) nonprofit, nonpartisan public interest entity that uses public policy and legal reform strategies to ensure greater transparency in government, protect taxpayer interests and promote civil and economic freedoms.

A recent investigation by the Freedom Through Justice Foundation has revealed that the U.S. Department of Housing and Urban Development (“HUD”) issued a $350,000 grant on September 2, 2011 and a $300,000 grant on August 8, 2011,1 to Affordable Housing Centers of America (“AHCOA”), an apparent allied organization of the now-defunct Association of Community Organizations for Reform Now (“ACORN”).2 These grants are potentially in violation of the Continuing Appropriations Resolution signed into law on December 16, 2009.3 Notably, USASpending.gov, an official government website that makes federal awards accessible to the general public, lists AHCOA as holding the same Data Universal Numbering System (“DUNS”) number as ACORN Housing Corporation Inc., which received a grant of $461,086 in January.4

HUD justifies the issuance of grants to AHCOA under a September 29, 2010 opinion issued by the Government Accountability Office (“GAO”), which found that AHCOA was not

3 Id.
4 The DUNS number is 965998347. See Prime Award Spending Data, USASPENDING.GOV, (Sept. 27, 2011), available at http://usaspending.gov/search?query=&searchtype=&formFields=eyJidWVudCI6IjA1NTg5OTM0NTQ5IiwicmF0ZGJvbmRvd3MiOiJjczZuaHZtb3RyaWZvcnkiLCJ0b29scyI6eyJpZGVudGl0eSI6eyJ0ZXh0Ijoicml0ZSIsInVpZCI6IjE2ODUwODY4OSIsInZpZGVudGFjdF9jYXJkIjoiaHR0cHM6Ly9hcnJ5LXJvdXJyZS9kaXN0b3IvY3JlZ29yZS9jYXJkIiwicG9pbnRzIjoiIn0=
Q%3D%3D (search “965998347” in “Search Term”).
an “affiliate,” “subsidiary,” or “allied organization” of ACORN. In that decision, which was part of an appropriations decision from the GAO to NeighborWorks America (“NeighborWorks”), a congressionally-created national nonprofit organization, GAO General Counsel Lynn H. Gibson determined that AHCOA was not barred from receiving federal funds, including grants from NeighborWorks. GAO’s decision runs contrary to section 418 of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act of 2010, which prohibits the issuance of funds “to the Association of Community Organizations for Reform Now (ACORN), or any of its affiliates, subsidiaries, or allied organizations.” Ms. Gibson concluded that AHCOA, as then-configured, did not fall within the scope of section 418. The GAO’s decision noted that AHCOA had taken measures to sever ties with ACORN, and therefore, did not fall under the purview of the statute.

Recent investigative reports detailing new facts and legal principles relevant to the relationship between AHCOA and ACORN emerged after the issuance of GAO’s opinion. Given these new developments, we write to request that the GAO re-examine the relationship between ACORN and AHCOA, formerly known as the ACORN Housing Corporation (“AHC”). Specifically, we request that the GAO reconsider the opinion issued in September 2010 given the recent developments with respect to ACORN and AHCOA.

Our request for reconsideration by GAO is based on the following evidence, much of which was only recently uncovered:

1. The internal audits that AHCOA submitted to GAO failed to identify any internal deficiencies. The HUD OIG, however, found on September 21, 2010 that AHCOA (then-AHC) did not use HUD grant funds in compliance with grant agreement requirements. The HUD OIG found that “the [AHCOA] auditor should have identified non-compliance material to the financial statements and cited material internal control weaknesses.” Unfortunately, GAO had relied upon these inaccurate assurances and subsequently concluded that AHCOA was not an affiliate or an allied organization of ACORN.

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6 Id.
8 NeighborWorks Letter, supra note 5.
11 E-mail from Assistant Special Agent in Charge, HUD Office of General Counsel, to congressional staff (Oct. 13, 2010) (emphasis added).
2. Michael Shea, AHCOA’s executive director, certified to HUD and GAO that there was no relationship between AHCOA and ACORN. As executive director, however, Mr. Shea lacked the authority to speak on behalf of AHCOA as per AHCOA’s own Articles of Incorporation. Additionally, Mr. Shea was the only representative of AHCOA who provided an affidavit to GAO concerning AHCOA’s relationship with ACORN.

3. AHCOA is not a new corporation. In fact, AHCOA was previously called ACORN Housing Corporation, and has merely been renamed. Under the law of corporations, a formerly allied organization or affiliate is considered presently allied or affiliated unless that corporation has been dissolved or has had its status revoked. AHCOA, however, met neither of these conditions. Applying these principles to the instant case, AHCOA should still be considered an affiliate of ACORN.

4. AHCOA is presently affiliated with corporations that are owned or controlled by ACORN, including Beverly Homes, LLC and the Texas ACORN Housing Corporation. AHCOA presently maintains “Organizational Solidarity” with ACORN, and its bylaws state that the “organization and ACORN will work together[.]” AHCOA remains “financially or organizationally intertwined with

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12 Letter from General Counsel, HUD to Ass’t General Counsel, GAO, Your Request B-320329: Availability of Appropriations for Grants to Affordable Housing Centers of America, (Aug. 30, 2010) [hereinafter “HUD Letter”], Attachment B.
13 PHILLIP I. BLUMBERG, et al., BLUMBERG ON CORPORATE GROUPS, §§ 103.14[B], 118.02[D], 97.07[B], & 103.06[B] (2009)
14 See e.g., BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, LETTER TO MICHAEL SHEA (ACORN HOUSING CORPORATION), July 1, 1997, at 1, available at http://www.federalreserve.gov/infoletters/1997/jul/199707012.pdf; HUD Report, supra note 10, at ii (identifying that the “ACORN Housing Corporation, Inc.” is “now operating as Affordable Housing Centers of America.”).
15 Communications Workers v. AT&T, 828 F. Supp. 73, 76 (D.D.C. 1993) (Determining that the term “associated or allied company” is synonymous to “former[ly] associated or allied company” or “former affiliates.”). See also Held v. Crosthwaite, 260 F. 613, 619 (2d Cir. N.Y. 1919) (citing Lessee of Frost v. Frostburg Coal Co., 65 U.S. 278, 284 (U.S. 1861)).
17 The legislative history of H.R. 3571, the Defund ACORN Act, defines “affiliate” as any organization that shares independent contractors with ACORN. Section 2(c) of the Defund ACORN Act, defines “organization” as ACORN and any ACORN-related affiliate. H.R. 3571.
19 HUD Letter, supra note 12 at Attachment A, Bylaws, Article Seven, “Organizational Solidarity.” See also Community Organizing Strategies to Promote Homeownership, Fight Predatory Lending and Prevent Foreclosures, NeighborWorks Training Institute, Course No. CB240, at 39, available at
ACORN with respect to federal grants or contracts." Furthermore, audits from 2009 and 2010 reveal that AHCOA works with twenty-three ACORN-related entities.21

5. AHCOA spent $132,524 on lobbying fees for the Raben Group. In its most recent Lobbying Disclosure Act filing, the Raben Group described AHCOA as formerly known as “ACORN Housing Corporation.”

6. AHCOA has made misleading statements to federal agencies. AHCOA certified to HUD that it had withdrawn from for-profit housing construction and rehabilitation work. This claim is belied by its Articles of Incorporation, which make clear that AHCOA will continue to develop and rehabilitate for-profit housing projects.

7. Internal ACORN documents suggest that ACORN authorized AHCOA to conduct foreclosure mitigation activities with federal funds granted to AHCOA. This relationship indicates a level of shared corporate control that goes beyond a mere contractual agreement.26

8. On December 17, 2010, NeighborWorks issued a special audit report on AHCOA’s use of federal grant dollars. The special audit found that “[a]lthough AHC (and ACORN) might be incorporated as separate entities in form and structure, the financial transactions noted below evidence extensive relationships

http://www.nw.org/Network/training/CB240_Manual.pdf.pdf (“ACORN and ACORN Housing have been working with servicers to set up best practices which reduce foreclosures, preserve the wealth of low- and moderate-income homeowners, and curb predatory lending practices.”).

20 Id.

21 See Paciera, Gautreau & Priest, LLC, Independent Auditor’s Report, ACORN Housing Corporation, Inc. and Subsidiaries, (Mar. 29, 2010) at 1-2, 10, 14-16; Paciera, Gautreau & Priest, LLC, Independent Auditor’s Report, Affordable Housing Centers of America, Inc. and Subsidiaries, (Dec. 30, 2010) at 1-2, 16-17 [hereinafter “AHCOA Audit”].


23 Letter from Bruce Dorpalen (AHCOA) to William Apgar (HUD) (Jan. 27, 2010).

24 AMENDMENTS TO ARTICLES OF INCORPORATION OF ACORN HOUSING CORPORATION, INC., THE NAME OF WHICH IS AMENDED TO BE AFFORDABLE HOUSING CENTERS OF AMERICA, AMENDED ARTICLE 2 (Jan. 8, 2010).

25 Document entitled “ACORN NeighborWorks Tracking Sheet.xls” obtained from ACORN’s Tulsa, Oklahoma office, authored by Lez Trujillo (Deputy Director, AHCOA) (Apr. 16, 2008) (“Instructions: Fill in all fields for all clients. . . . Please send documents to AHC as soon as you get them.”).

26 See E-mail from Investigator, Louisiana Department of Justice, to congressional staff (Jan. 8, 2010) (“The grants are given many names. . . . The hurricane disaster relief for example will have both private and federal funds comingled like many of the grants. Acorn Housing receives state, private and federal funds, all used together for what ever purpose Acorn chooses. . . . Everything Acorn does as it relates to its organizational structure and the use of and flow of money is mired in what I believe to be intentionally structured mass confusion[.]. . . You have 700 Acorn related bank accounts for 351 named Acorn related entities from which money is transferred back and forth based on the need or crisis of the moment[.]”) (emphasis added).
between both organizations that may undermine claims of an ‘arm’s length relationship’ between them.” The audit also found the following:

a. Although AHCOA and ACORN are incorporated as separate entities in form and structure, the financial transactions between them evidence extensive relationships between both organizations. Some of these financial transactions include gifts and grants received from ACORN.

b. AHCOA’s issuance of multiple contracts to ACORN gives the appearance that contracts have been distributed among separate entities, “when they are actually one and the same, sharing the same federal tax identification number and receiving payments routed in the same manner.”

c. AHCOA used a non-competitive procurement of accounting and legal services, office leases, and employee benefits. Five contracts were executed with ACORN, totaling $3.5 million. While AHCOA did solicit bids for referral services, the only bid received was from ACORN. AHCOA’s method of awarding contracts to ACORN violates the intent of 24 CFR Part 84 ‘organization conflict of interest’ requirements because AHCOA failed to ensure competition and was unable to show cost analyses or documentation to justify those contracts.

d. AHCOA’s contractual awards to ACORN were “highly material in that significant shares (44% and 17% for Rounds 1 and 2, respectively) of total funding from NeighborWorks America were outsourced to ACORN.”

In its investigation, NeighborWorks determined that AHCOA and ACORN were in fact affiliated. In the NeighborWorks report “AHC (ACORN Housing Corporation) argued that [it] was not an affiliate of ACORN.” However, NeighborWorks stated that it “did not receive any documentation from AHC or its external auditors to substantiate that statement.” As noted in the report, “AHCOA’s response has made numerous claims to dispute these observations; however, after careful consideration (including reviews of recent opinions issued by other government organizations), our observations remain the same[].”

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28 Id. See also id. at Appendix P.
29 Id.
30 Id. See supra note 10 at ii-iii.
31 Id.
32 Id. at 10-12.
33 HUD Report, supra note 30 at 13.
34 NeighborWorks Report, supra note 27.
35 Id.
36 Id.
37 Id. at Appendix P. (emphasis added).
GAO’s conclusion that AHCOA is not affiliated with ACORN has serious consequences. For one, it contravenes the Continuing Appropriations resolution banning federal dollars to ACORN and its affiliates. Congress and the American public were outraged by some of the conduct exhibited by employees of ACORN. The law specifically prohibits ACORN from rebranding itself in order to continue to obtain federal dollars. Under the GAO’s opinion, ACORN can continue to function as previously, simply with a new name.

Furthermore, GAO’s decision further enables the federal government to fund an affiliate of ACORN, a corporate enterprise alleged to have violated the law on numerous occasions. AHCOA has received more than $25.8 million in National Foreclosure Mitigation Counseling (NFMC) grants from NeighborWorks America, with which ACORN, under AHCOA’s authorization and in contravention of the law, conducted various foreclosure mitigation activities. Additionally, AHCOA has misused and failed to account for more than $3.25 million in taxpayer funds. In consideration of the aforementioned facts and legal arguments, we request that the GAO review its prior appropriations opinion.

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact us immediately via Amber Taylor (Amber.Taylor@ftjfoundation.org) or Will Hild (Will.Hild@ftjfoundation.org) or at 703-875-8625. Thank you for your cooperation.

Sincerely,

Daniel Epstein
Executive Director
Freedom Through Justice Foundation

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39 Id. at 6.
40 Document entitled “ACORN NeighborWorks Tracking Sheet.xls” obtained from ACORN’s Tulsa, Oklahoma office, authored by Lez Trujillo (Deputy Director, AHCOA) (Apr. 16, 2008) (“Instructions: Fill in all fields for all clients. . . . Please send documents to AHC as soon as you get them.”).
41 HUD Report, supra note 10 at iii, 7, 10-11, 12, 19.