

**EPA Notices to EPA Assistance Agreement Recipients**  
**Re: ACORN Funding Prohibitions**

**August 17, 2010 Update on ACORN litigation:** This notice provides an update to EPA Assistance Agreement Recipients since our previous notice of May 27, 2010, regarding the status of the ACORN litigation. On August 13, 2010, the Second Circuit Court of Appeals issued an opinion which holds that the provision in EPA's Fiscal Year 2010 appropriation act prohibiting distribution of federal funds to ACORN and its subsidiaries is not an illegal bill of attainder. Consequently, EPA's prohibition on awarding EPA funds to ACORN and its subsidiaries remains in effect.

**May 27, 2010 Message to EPA Assistance Agreement Recipients:**

On March 24, 2010, we notified EPA Assistance Agreement Recipients that the restrictions on distributing Fiscal Year 2010 EPA funds to the Association of Community Organizations for Reform Now (ACORN) and its subsidiaries were removed. The purpose of this email is to inform you that as a result of a recent appellate court ruling, those restrictions have been restored.

The United States Court of Appeals for the Second Circuit has granted the Government's motion for a stay of a District Court injunction that prohibited enforcement of the ACORN-related funding restrictions. Because of the stay, the restrictions on funding ACORN and its subsidiaries are back in effect. This means that recipients of EPA grants and cooperative agreements may not use funds from EPA's FY 2010 appropriations to enter into procurement contracts or provide subawards of financial assistance to ACORN and its subsidiaries.

We will keep you advised if circumstances change. If you have any questions about the funding restrictions, please contact your EPA grants specialist and include your grant number with the question.

**March 24, 2010:**

On December 9, 2009 EPA, as instructed by the Office of Management and Budget (OMB), provided notice to grantees about restrictions contained in appropriation acts that included prohibitions on funding the Association of Community Organizations for Reform Now (ACORN) and its subsidiaries. In the notice, we advised grantees that we would inform them if there were any changes to this prohibition.

Accordingly, and as required by OMB's March 16, 2010 memorandum (see attached), we are notifying you that on March 10, 2010, the Federal District Court in New York issued a permanent injunction concluding that the funding prohibitions were unconstitutional (see attached) and that, among other things, prohibits EPA from enforcing the ACORN funding restrictions contained in EPA's FY 2010 Appropriations Act. Therefore, at this time, the ACORN funding restrictions identified in the December 2009 notice that

applied to grants and cooperative agreements are no longer in effect or enforceable. It is our understanding that the Department of Justice may be filing an appeal of the District Court decision and if circumstances change upon appeal we will promptly notify you. If you have any questions about the ACORN funding prohibitions, please contact your EPA grants specialist and include your grant number with your question. Thank you for your cooperation.

[Office of Management and Budget Memorandum Re: United States District Court ruling on Appropriations Provisions regarding the Association of Community Organizations for Reform Now \(ACORN\), 03-16-2010](#)

**December 9, 2009:**

Re: ACORN Funding Prohibition

Attached below please find the Office of Management and Budget's (OMB) guidance for implementing the funding prohibition contained in the Continuing Appropriations Resolution (2010) (CR) affecting the Association of Community Organizations for Reform Now (ACORN) and its subsidiaries, affiliates and allied organizations. The CR is currently in effect until December 18, 2009 and we will inform you if Congress removes or alters the prohibition. However, EPA's enacted Fiscal Year 2010 Appropriation Act also includes a prohibition on funding ACORN and its subsidiaries.

The restrictions Congress established expressly prohibit federal agencies from providing funds to ACORN and its associated organizations directly through grants and cooperative agreements (financial assistance). OMB has advised federal agencies that the prohibition also extends to subgrants/subawards and procurement contracts awarded by financial assistance recipients. Your organization must comply with these restrictions and ensure that it does not enter into any transactions with ACORN or its associated organizations that are funded with EPA financial assistance. If there is uncertainty regarding whether an organization is associated with ACORN we recommend that you ask the organization whether it is an ACORN affiliate, subsidiary or allied organization before entering into the transaction. In addition, please notify your EPA grants specialist of any existing subgrants/subawards or contracts you have with ACORN or its associated organizations under the grant and what action you plan to take to comply with the funding prohibition with respect to those agreements.

Please note that the U.S. Department of Justice has concluded that the prohibition on providing federal funds to ACORN or its associated organizations does not encompass payments for services ACORN performed prior to October 1, 2009, under contracts in effect at that time.

**If you have any questions about the ACORN funding prohibitions please contact your EPA grants specialist and include your grant number with your question. Thank you for your cooperation.**

Attachment: OMB Guidance

[http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda\\_2010/m10-02.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-02.pdf)