

Pitfalls for Nonprofits that Receive Federal Funds: Lessons Learned from ACORN

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Overview

- The ACORN Case
- The GAO's Review of the Case
- GAO's Findings – Area #1 Volume of Federal Funding
- GAO's Findings – Area #2 Agency Monitoring
- GAO's Findings – Area #3 Federal Investigations/Prosecutions
- GAO's Findings – Area #4 Implementation of Federal Funding Restrictions
- Lessons Learned
- Questions/Discussion



The ACORN Case

- The Association of Community Organizations for Reform Now (“ACORN”), established in 1970, advocated on behalf of low income families
- In early 2009, allegations arose over voter registration fraud and videotapes of questionable behavior by ACORN employees
- These allegations raised concern about the ethical conduct of the nonprofit organization
- As a result of these allegations, in an FY2010 appropriations bill, Congress prohibited the awarding of federal funds to ACORN or ACORN related organizations



The GAO's Review of the Case

- At Congress's request, the Government Accountability Office ("GAO") performed a review of the conduct of those agencies that awarded federal funds to ACORN and potentially related organizations
- Specifically, GAO examined four areas:
 - How much federal funding was awarded to ACORN (and its related organizations) for fiscal years 2005 through 2009 and the purpose of such funding
 - The extent to which federal agencies' monitoring of these awards detected issues identified by audits
 - The nature and results of any federal investigations or prosecutions conducted of these organizations from fiscal years 2005 through 2009
 - How federal agencies implemented provisions prohibiting the award of federal funds



GAO's Findings – Area #1 Volume of Federal Funding

- During fiscal years 2005 through 2009, ACORN or potentially related organizations received more than \$44.6 million in federal grant funds, primarily for housing-related purposes
- These funds were awarded by 17 federal agencies, most predominantly:
 - Neighborhood Reinvestment Corporation (aka Neighborhood Works), a federal nonprofit
 - The Office of Housing and Urban Development
- With respect to sub-awards during the fiscal years 2005 through 2009 time period, GAO identified \$3.8 million awarded to ACORN or potentially related organizations



GAO's Findings – Area #2 Agency Monitoring

- Determination to monitor ACORN awards primarily based on
 - Award amount
 - Available resources
- Form of monitoring ranged from reviewing progress reports to conducting site visits
- Agencies monitoring these awards generally did not detect issues identified by inspectors general or internal audits
- Agency that conducted audits of direct awards identified problems with the way ACORN managed federal funds
 - In only one case was this issue detected by agency monitoring processes
 - In this case, the agency recommended the ACORN for suspension and debarment
- Agency officials stated to GAO that they plan to use the findings of audits to modify their monitoring processes for future grants



GAO's Findings – Area #3 Federal Investigations/Prosecutions

- The allegations of voter registration fraud and wage violations resulted in 22 investigations carried out by three agencies – DOJ, FEC and DOL
- Most cases were closed without prosecution
- DOJ investigated eight matters and one case resulted in a guilty plea by eight defendants
- FEC investigated five matters and one case resulted in a conciliation agreement with a penalty
- DOL investigated eight wage and hour disputes and a delinquent reporting matter, all of which resulted in corrective action with applicable requirements



GAO's Findings – Area #4 Implementation of Federal Funding Restrictions

- The FY2010 federal funding restriction of ACORN was applicable to 27 of the 31 federal agencies
- All 27 of these agencies took some measure of action to ensure compliance with the funding restriction
 - Most agencies altered staff via email, written memoranda or oral communications
 - Some agencies altered awardees
 - Two agencies (HUD and NSF) provided guidance on the restriction



Lessons Learned

- While a few bad actors do not speak for an organization, they can cause irreparable harm to that organization
- The federal government, as a whole, has become particularly attuned to addressing fraud:
 - Executive Agencies – investigations and prosecutions
 - Congress – statutory funding restrictions
 - The use of the media to win public support
- Congress's action is particularly telling as it shows an inclination to enforce the law, notwithstanding it being the province of executive agencies. This includes the severe action of imposing statutory funding restrictions, as well as consistent efforts to impose mandatory suspension/debarment actions for certain violations



Lessons Learned *cont'd*

- Be prepared with appropriate compliance and ethics programs
 - Regardless of requirements, organizations should have compliance and ethics programs reasonable for their size and sophistication
 - Depending on the size and sophistication of the organization, these programs should include:
 - Documented policies
 - Training
 - Internal monitoring
 - Channels for reporting potential issues
- When potential compliance or ethics issues arise, it is important to raise them within the organization and potentially to consults/counsel with experience in the particular area



Questions/Discussion?

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