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Comptroller General
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United States Government Accountability Office
Washington, DC 20548

B-320329

September 29, 2010

Mr. Jeffrey T. Bryson
General Counsel
NeighborWorks America
1325 G Street NW, Suite 800
Washington, DC 20005

Subject: *NeighborWorks America—Availability of Appropriations for Grants to Affordable Housing Centers of America*

Dear Mr. Bryson:

This letter responds to your request for our views on whether NeighborWorks's appropriations are available for grants to Affordable Housing Centers of America (AHCOA). Letter from General Counsel, NeighborWorks, to Acting General Counsel, GAO, *Re: Request for an Appropriations Decision, related to funding Affordable Housing Centers of America (formerly known as ACORN Housing Corporation, Inc.)*, Aug. 2, 2010 (Request Letter). Specifically, you asked whether NeighborWorks is barred from granting federal funds to AHCOA under section 418 of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2010: "None of the funds made available under this Act 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." Pub. L. No. 111-117, div. A, title IV, 123 Stat. 3034, 3112 (Dec. 16, 2009).¹ After reviewing the

¹ The bill for the Transportation, Housing and Urban Development, and Related Appropriations Act, 2011, includes an identical prohibition. H.R. 5850, 111th Cong. § 416 (2010). In the event that Congress enacts a continuing resolution for fiscal year 2011, the prohibition in the fiscal year 2010 appropriations act would likely remain in effect during the pendency of the continuing resolution. *See, e.g.,* GAO, *Continuing Resolutions: Uncertainty Limited Management Options and Increased Workload in Selected Agencies*, GAO-09-879 (Washington, D.C.: Sept. 24, 2009), at 3 (explaining that continuing resolutions "typically incorporate by reference the conditions and restrictions contained in prior years' appropriations acts or the appropriations bills currently under consideration"). *See also* B-316533, July 31, 2008 (concluding that a fiscal year 2007 appropriations restriction was still in effect in fiscal year 2008 while the agency operated under a continuing resolution).

record, it is our view that AHCOA, as presently configured, does not fall within the scope of section 418 because it is not an affiliate, subsidiary, or allied organization of ACORN.²

In reaching our conclusion, we developed our record by soliciting and receiving factual information and legal views from NeighborWorks, AHCOA, and the Department of Housing and Urban Development (HUD).³ Because section 418 applies to HUD's appropriations as well, HUD previously addressed the applicability of the prohibition to AHCOA. HUD determined that AHCOA is not an affiliate, subsidiary, or allied organization of ACORN.⁴ We also reviewed AHCOA's consolidated financial statements and a letter from the Internal Revenue Service (IRS) regarding AHCOA's tax-exempt status.⁵

BACKGROUND

Neighborhood Reinvestment Corporation, doing business as NeighborWorks America (NeighborWorks), is a national nonprofit organization created by Congress to provide financial support, technical assistance, and training for community-based revitalization efforts. 42 U.S.C. §§ 8101–8107. In establishing NeighborWorks, Congress specified that “[NeighborWorks] shall not be considered a department,

² GAO issued a preliminary report in June 2010 on agency awards of federal funding to ACORN or potentially related organizations from fiscal years 2005 to 2009, oversight mechanisms agencies used when monitoring awards to ACORN or potentially related organizations, and federal investigations and prosecutions of ACORN or potentially related organizations. GAO, *Preliminary Observations on Funding, Oversight, and Investigations and Prosecutions of ACORN or Potentially Related Organizations*, GAO-10-648R (Washington, D.C.: June 14, 2010) (GAO ACORN Report). In accordance with a congressional mandate and three congressional request letters, GAO is currently working on a final report. See Pub. L. No. 111-117, div. B, title V, § 535; GAO ACORN Report, at 2.

³ See GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/legal/resources.html.

⁴ Letter from General Counsel, HUD, to General Counsel, AHCOA, June 1, 2010 (HUD Letter to AHCOA). See also Letter from General Counsel, HUD, to Assistant General Counsel for Appropriations Law, GAO, *Re: Your Request B-320329; Availability of Appropriations for Grants to Affordable Housing Centers of America*, Aug. 30, 2010 (HUD Letter to GAO).

⁵ AHCOA, *Consolidated Financial Statement, Years Ended June 30, 2008 and 2007*, July 13, 2009; AHCOA, *Consolidated Financial Statement, Years Ended June 30, 2009 and 2008*, Mar. 29, 2010 (FY 2009 Consolidated Financial Statement); Letter from Manager, IRS, to AHCOA, Mar. 1, 2010.

agency, or instrumentality of the Federal Government.” 42 U.S.C. § 8104(e). Nevertheless, Congress appropriates funds each year to NeighborWorks for, among other things, mortgage foreclosure mitigation activities. *See, e.g.*, Pub. L. No. 111-117, div. A, title III, 123 Stat. at 3107–08. In this regard, NeighborWorks administers the National Foreclosure Mitigation Counseling (NFMC) Program and makes grants to HUD-approved housing counseling intermediaries, State Housing Finance Agencies, and NeighborWorks organizations that advise homeowners with mortgages in default or in danger of default. *See id.*, 123 Stat. at 3108.

One such grantee under the NFMC Program was AHCOA. Request Letter, at 2. AHCOA is a national nonprofit and nonstock organization incorporated in Louisiana.⁶ AHCOA was founded in 1985 by members of ACORN and operated for decades as “ACORN Housing Corporation, Inc.” (ACORN Housing).⁷ AHCOA has taken measures to sever its ties with ACORN. For instance, AHCOA previously contracted with ACORN offices to provide outreach services.⁸ Under these agreements, ACORN referred eligible homeowners to AHCOA and gathered intake documents for mortgage foreclosure intervention and counseling.⁹ AHCOA terminated its contract with ACORN in September 2009 and certifies that the contract will not be renewed.¹⁰

In December 2009, AHCOA changed its name from ACORN Housing and amended its Articles of Incorporation and By-Laws to reflect the name change.¹¹ Upon AHCOA’s request, ACORN also recently sent the unpaid balance of an advance it received under a contract with AHCOA.¹² AHCOA and ACORN formerly both used Citizens

⁶ *Amended Articles of Incorporation of Affordable Housing Centers of America*, Mar. 2, 2010, at 1–2 (AHCOA Amended Articles of Incorporation).

⁷ Letter from General Counsel, AHCOA, to General Counsel, NeighborWorks, *Statement of Affordable Housing Centers of America, showing that it is not precluded from receiving federal funds*, July 29, 2010 (AHCOA Statement). ACORN is an organization with over 400,000 members in more than 1,200 neighborhood chapters in about 75 cities across the country. ACORN, *Who is ACORN?*, available at www.acorn.org/about (last visited Sept. 29, 2010).

⁸ Executive Director, AHCOA, *Certifications by Affordable Housing Centers of America*, July 27, 2010, at No. 24 (AHCOA Certifications).

⁹ FY 2009 Consolidated Financial Statement, at 16.

¹⁰ Letter from General Counsel, AHCOA, to General Counsel, ACORN, *Re: Termination of ACORN Housing – ACORN Vendor Contract*, Sept. 25, 2009 (AHCOA Letter to ACORN); AHCOA Certifications, at No. 24.

¹¹ AHCOA Certifications, at No. 28.

¹² Letter from Director of Operations, AHCOA, to Chief Executive Officer, ACORN, *Re: Past Due balances owed to Acorn Housing Corporation*, May 14, 2010; E-mail from CEO, ACORN, to Executive Director, AHCOA, *Re: Debt Invoice*, May 21, 2010.

Consulting, Inc. (CCI) for financial, accounting, legal, and human resources services, but AHCOA terminated its relationship with CCI over the course of 2007 and 2008.¹³

NeighborWorks has awarded over \$25 million in federal funds to AHCOA since 2008.¹⁴ After the enactment of section 418 of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2010, NeighborWorks suspended its disbursement of NFMF funds to AHCOA. Request Letter, at 2.

DISCUSSION

Although NeighborWorks is a public, nonprofit corporation, not a federal agency, NeighborWorks is similar to a federal agency in some respects. It is funded through annual appropriations;¹⁵ its Board of Directors consists of presidential appointees subject to Senate confirmation or their statutorily designated representatives;¹⁶ it is required to submit an annual report to the President and Congress;¹⁷ its financial transactions are subject to audit by the Government Accountability Office;¹⁸ and it must submit an annual budget to the Office of Management and Budget, which the President may modify, amend, or revise.¹⁹ NeighborWorks's appropriations are also subject to restrictions in appropriation acts. With this legal landscape, we turn to the question presented: whether AHCOA, as presently configured, falls within the scope

¹³ AHCOA Certifications, at No. 18.

¹⁴ NeighborWorks, *NFMF Legal Assistance Awards by Award Amount*, Dec. 2008, available at www.nw.org/network/nfmcp/documents/NFMCLegalAssistanceAwardsbyAwardAmount.pdf; NeighborWorks, *NFMF Round 2 Counseling Awards by State*, Dec. 2008, available at www.nw.org/network/nfmcp/documents/NFMCRound2CounselingAwardsbyState.pdf; NeighborWorks, *National Foreclosure Mitigation Counseling Program, Awardees by Award Amount*, Feb. 24, 2008, available at www.nw.org/network/nfmcp/documents/AwardeesbyState-FinalforWebsite.pdf (all references last visited Sept. 29, 2010).

¹⁵ See, e.g., Pub. L. No. 111-117, div. A, title III, 123 Stat. at 3107–08 (“For payment to the Neighborhood Reinvestment Corporation for use in neighborhood reinvestment activities, as authorized by the Neighborhood Reinvestment Corporation Act (42 U.S.C. 8101–8107), \$133,000,000 . . .”).

¹⁶ 42 U.S.C. § 8103.

¹⁷ 42 U.S.C. § 8106(a).

¹⁸ 42 U.S.C. § 8106(c).

¹⁹ 42 U.S.C. § 8107(d).

of section 418, which bars the distribution of federal funds to “affiliates,” “subsidiaries,” or “allied organizations” of ACORN.²⁰ See Pub. L. No. 111-117.

Our analysis begins with the language of the statute and the meaning of the words “affiliates,” “subsidiaries,” and “allied organizations.” See B-318831, Apr. 28, 2010; B-303845, Jan. 3, 2006. When a word is not legislatively defined, courts tend to construe it in accord with its ordinary, dictionary meaning. *Smith v. United States*, 508 U.S. 223, 228 (1993) (“In the search for statutory meaning, we give nontechnical words and phrases their ordinary meaning.”); *Perrin v. United States*, 444 U.S. 37, 42 (1979) (“A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning.”).

However, if a word has a specific legal meaning, courts tend to apply that meaning when interpreting a statute. *United States v. Nason*, 269 F.3d 10, 16 (1st Cir. 2001) (stating that “we presume, absent evidence to the contrary, that Congress knew and adopted the widely accepted legal definitions of meanings associated with the specific words enshrined in the statute,” and referring to *Black’s Law Dictionary* for the “most widely accepted legal meaning” of a term). If the plain meaning of a word is unambiguous, then our statutory interpretation ends there. *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004); B-288658, Nov. 30, 2001. Therefore, we look to the common meaning of “affiliate,” “subsidiary,” and “allied organization.”

Affiliate

Black’s Law Dictionary defines an affiliate as a “corporation that is related to another corporation by shareholdings or other means of control.” *Black’s Law Dictionary* 67 (9th ed. 2009). See *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 955 (9th Cir. 2009) (noting that the *Black’s Law Dictionary* definition of “affiliate” is supported by the plain and ordinary meaning of “affiliate”). Congress and federal agencies, in defining “affiliate” in other substantive areas of law, similarly provide that an “affiliate” is an entity (a) controlled by another entity; (b) in control of

²⁰ ACORN, ACORN Institute, Inc., and New York Acorn Housing Company, Inc., filed a lawsuit in the U.S. District Court for the Eastern District of New York challenging the constitutionality of section 418 and similar restrictions in other fiscal year 2010 appropriations acts. *ACORN v. United States*, 692 F. Supp. 2d 260 (E.D.N.Y. 2010). On appeal, the U.S. Court of Appeals for the Second Circuit held that the restrictions were not unconstitutional bills of attainder and remanded the case to the federal district court for further proceedings as to the plaintiffs’ First Amendment and due process claims. *ACORN v. United States*, Docket Nos. 09-5172-cv; 10-0992-cv (2nd Cir. Aug. 13, 2010), available at www.ca2.uscourts.gov/decisions/isysquery/913bc4ac-c159-4cb5-8f7a-b6b2c7c3a0cb/1/doc/09-5172-cv_opn.pdf (last visited Sept. 29, 2010).

another entity; or (c) under common control with another entity by a third party.²¹ “Control,” in turn, is defined as the “direct or indirect power to govern the management and policies of a person or entity, whether through ownership of voting securities, by contract, or otherwise; the power or authority to manage, direct or oversee.” *Black’s Law Dictionary* 378. Federal statutes and regulations defining “affiliate” for other purposes offer other indicia of control, including influence over the election of the majority of the other entity’s Board of Directors;²² sharing the majority of its Board of Directors with another entity;²³ interlocking management or ownership,²⁴ shared facilities and equipment,²⁵ or common use of employees.²⁶

The record does not show AHCOA to be directly or indirectly under the control of ACORN. AHCOA is not related to ACORN by shareholdings. Because AHCOA is organized as a nonstock corporation, ACORN cannot own shares in AHCOA. AHCOA Amended Articles of Incorporation, at 2. AHCOA also does not own any shares of ACORN. E-mail from General Counsel, AHCOA, to Staff Attorney, GAO, *Re: AHCOA Statement*, Sept. 20, 2010. Further, AHCOA certifies the following facts:

- Neither ACORN nor any other organization has the authority to control the makeup of the AHCOA Board of Directors.²⁷
- No member of the AHCOA Board is also a member of the ACORN Board.²⁸
- While AHCOA and ACORN previously occupied offices in the same building, the two corporations no longer share the same facility.²⁹
- No employee of AHCOA is also an employee of ACORN.³⁰

²¹ See, e.g., 7 U.S.C. § 1635i (Agriculture); 11 U.S.C. § 101 (Bankruptcy); 12 U.S.C. §§ 221a, 1462, 1841, 4502 (Banking); 15 U.S.C. §§ 2801, 3603, 6809 (Commerce and Trade); 21 U.S.C. §§ 379g, 379i (Federal Food, Drug, and Cosmetic Act); 28 U.S.C. § 3301 (Judicial Procedure); 33 U.S.C. § 1502 (Navigation and Navigable Waters); 42 U.S.C. §§ 8302, 16451 (Public Health and Welfare); 2 C.F.R. § 180.905 (Office of Management and Budget guidance on debarment and suspension); 48 C.F.R. § 9.403 (Federal Acquisition Regulation guidance on debarment and suspension).

²² 12 U.S.C. § 221a; 15 U.S.C. § 3603.

²³ 12 U.S.C. § 221a.

²⁴ 2 C.F.R. § 180.905; 48 C.F.R. § 9.403.

²⁵ *Id.*

²⁶ *Id.*

²⁷ AHCOA Certifications, at No. 2.

²⁸ AHCOA Certifications, at No. 3.

²⁹ AHCOA Certifications, at No. 25.

³⁰ AHCOA Certifications, at No. 8.

The Executive Director of AHCOA “declare[d] under penalty of perjury” that these certifications were “true and correct.” AHCOA Certifications, at 5.³¹ We see no reason, therefore, to disregard or discount them, and conclude that AHCOA is not an “affiliate” of ACORN. We note that HUD, relying on these certifications as well as information in its possession as a result of its grant relationship with AHCOA, found no basis to contradict these certifications either.

Subsidiary

The definition of “subsidiary” is narrower than the definition of affiliate. A subsidiary is a “[s]ubordinate; under another’s control.” *Black’s Law Dictionary* 1565. As stated above, we concluded that AHCOA is not presently under the direct or indirect control of ACORN.

The word “subsidiary” is sometimes used as a shortened form of the term “subsidiary corporation.” *Id.* A subsidiary corporation, in turn, is defined as a corporation in which a parent corporation has a controlling share, usually through ownership of more than half of the voting stock. *See Black’s Law Dictionary* 393–94. AHCOA is organized as a nonstock corporation. AHCOA Amended Articles of Incorporation, at 2. Consequently, it is not possible for any individual or organization, including ACORN, to own any share of AHCOA. Thus, AHCOA is not a “subsidiary” of ACORN.³²

³¹ AHCOA’s certifications may be compared to an affidavit, or a “voluntary declaration of facts written down and sworn to by [a] declarant before an officer authorized to administer oaths.” *Black’s Law Dictionary* 66 (noting that a “great deal of evidence is submitted by affidavit” in a typical legal proceeding).

³² The auditor’s report of AHCOA’s financial statements for fiscal year 2009 lists four corporations as subsidiaries of AHCOA. FY 2009 Consolidated Financial Statement, at 10. It appears that the auditor may have used a different definition of “subsidiary” than the legal definition we use here. According to AHCOA’s General Counsel, three of the four corporations were nonstock entities. Telephone Conversation, General Counsel, AHCOA, Assistant General Counsel for Appropriations Law and Staff Attorney, GAO, Sept. 27, 2010. Accordingly, AHCOA could not have owned a majority share of these corporations. One of the four corporations was a stock entity at that time and AHCOA owned 100 percent of the shares. *Id.* That corporation has since bought back the stock from AHCOA and converted itself into a nonstock corporation. *Id.* AHCOA’s General Counsel stated that these four corporations may be more properly described as “affiliates” because AHCOA exercises some degree of control over them. *Id.* For example, at least one AHCOA employee is a member of the Board of Directors of each corporation. *Id.* The question here, however, is whether AHCOA is an affiliate, subsidiary, or allied organization of ACORN, not its relationship with these four corporations.

Allied Organization

Section 418 did not define the term “allied organization,” nor did we identify any legislative history that may help ascertain its meaning. Also, we did not find the term “allied organization” in legal or general dictionaries. Therefore, we turn to other canons of statutory construction to help us understand the meaning of “allied organization” in section 418.

The meaning of a term that appears ambiguous in isolation may become clear when analyzed in light of the terms that surround it. *Smith*, 508 U.S. at 229. A word in a list, in particular, is given more precise content by the neighboring words with which it is associated. *United States v. Williams*, 553 U.S. 285, 294 (2008). *See also Securities Industry Association v. Board of Governors of the Federal Reserve System*, 468 U.S. 207, 218 (1984) (stating that it is a “familiar principle of statutory construction that words grouped in a list should be given related meaning”); *Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961) (“a word is known by the company it keeps”). Courts often turn to the principle of *ejusdem generis* as well, which states that general words in a list should be construed as similar to more specific words in the list. *In re Eilbert*, 162 F.3d 523, 527 (8th Cir. 1998).³³

With these canons of construction in mind, we turn back to the term “allied organization.” The term appears in a list after the words “affiliates” and “subsidiaries.” We have previously defined “affiliate” and “subsidiary” to be a corporate entity that is somehow related to another corporate entity. Thus, applying the canons above, we can understand “allied organization” in this context, that is, corporations that are financially or organizationally related. We note that at the time Congress enacted section 418, there were widespread allegations of misconduct by ACORN and organizations working with ACORN.³⁴ In this regard, we think it is reasonable to interpret “allied organization” to mean any corporation with whom

³³ *See also Black’s Law Dictionary* 594 (“For example, in the phrase *horses, cattle, sheep, pigs, goats, or any other farm animals*, the general language *or any other farm animals* — despite its seeming breadth — would probably be held to include only four-legged, hooved mammals typically found on farms, and thus would exclude chickens.”).

³⁴ In September 2009, widely publicized videotapes reportedly showed ACORN and AHCOA employees at various offices giving improper advice to a woman and man posing as a prostitute and her boyfriend. AHCOA Statement, at 8. Four AHCOA employees appeared in the videotapes. Letter from General Counsel, AHCOA, to Assistant General Counsel for Appropriations Law, GAO, *Re: AHCOA’s response to videotapes*, Aug. 20, 2010, at 1. Following the release of the videotapes, AHCOA fired the four employees, retained an outside firm to conduct an ethics seminar, issued a new ethics code of conduct, and appointed an Ethics Officer. *Id.*, at 2. The videotapes were subsequently reviewed by officials in New York and California. Both offices declined to take legal action after conducting investigations.

ACORN had a financial or organizational relationship, for example, through contracts and grants. This interpretation is consistent with the position taken by the United States in its brief in the *ACORN* case. Federal Defendants' Memorandum in Opposition to Plaintiffs' Motion for Preliminary Injunction, at 28 (No. 7) (Dec. 1, 2009), *ACORN*, 692 F. Supp. 2d 260 ("Here, the terms 'affiliates' and 'allied organizations' appear next to 'subsidiaries,' in a funding statute, suggesting that Congress intended to reach only those entities financially or organizationally intertwined with ACORN with respect to federal grants.").

In the past, after AHCOA received grant funds, it contracted with various offices of ACORN to provide outreach services for AHCOA. AHCOA Certifications, at No. 24. AHCOA and ACORN also used the same entity—CCI—for financial, accounting, legal, and human resources services. AHCOA Certifications, at No. 15. In fact, ACORN itself listed AHCOA as an "allied organization" on an earlier iteration of its Web site. ACORN, *Allied Organizations*, available at <http://web.archive.org/web/20080822090025/www.acorn.org/index.php?id=12375> (archived on Aug. 22, 2009). However, for purposes of the question at issue in this opinion, it is not necessary to determine whether AHCOA, when formerly operating as ACORN Housing, may have been financially or organizationally related to ACORN.

At issue here is whether AHCOA is presently an allied organization of ACORN. AHCOA has terminated its vendor contract with ACORN and certifies that the contract will not be renewed. AHCOA Letter to ACORN; AHCOA Certifications, at No. 24. ACORN recently returned to AHCOA the unpaid balance of an advance it received under the vendor contract. Letter from Director of Operations, AHCOA, to Chief Executive Officer, ACORN, *Re: Past Due balances owed to Acorn Housing Corporation*, May 14, 2010; E-mail from CEO, ACORN, to Executive Director, AHCOA, *Re: Debt Invoice*, May 21, 2010. AHCOA also no longer acquires services from CCI. AHCOA Certifications, at Nos. 15.–23. For these reasons, we do not believe AHCOA is presently an allied organization of ACORN.

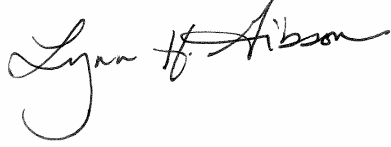
CONCLUSION

After reviewing the record, it is our view that AHCOA is not presently an affiliate, subsidiary, or allied organization of ACORN. Accordingly, AHCOA does not currently fall within the scope of section 418 of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2010.

NeighborWorks has a continuing responsibility in its grantmaking and oversight capacity to monitor any changes that might implicate the prohibition and our conclusion here. We do not opine on AHCOA's eligibility for any particular grant program or the economy, efficiency, or effectiveness of making grants to AHCOA.

If you have any questions, please contact Susan A. Poling, Managing Associate General Counsel, at (202) 512-2667, or Thomas H. Armstrong, Assistant General Counsel for Appropriations Law, at (202) 512-8257.

Sincerely,

A handwritten signature in black ink, reading "Lynn H. Gibson". The signature is written in a cursive style with a large, looping "L" and a distinct "H" and "G".

Lynn H. Gibson
Acting General Counsel