



POLICY FLASH 2010-36

DATE: March 25, 2010

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: Rescind Policy Flashes 2010-04 “Cease All Funding of the Association of Community Organizations for Reform Now (ACORN)” and 2010-06 “Additional Documentation Regarding Policy Flash Number 2010-04”

SUMMARY: The purpose of this flash is to inform you that on March 10, 2010, the United States District Court for the Eastern District of New York issued an opinion regarding ACORN. In its opinion, the District Court concluded that the funding prohibitions regarding ACORN and related entities in FY 2010 Continuing Resolution and in several of FY 2010 appropriations acts are unconstitutional “bills of attainder” under Article I, Section 9 of the United States Constitution. (See attached Office of Management and Budget (OMB) M-10-12, March 16, 2010 and United States District Court Eastern District of New York case ACORN vs. United States of America). This impacts the policies in Flashes 2010-04 and 2010-06 restricting funds that can be used for ACORN related awards.

While the Department of Justice is filing an appeal of the District Court’s decision and seeking a stay pending appeal, The Department of Energy (DOE) must take the following actions in accordance with the District Court’s permanent injunction:

- ACORN associated Policy Flashes 2010-04 and 2010-06 and associated attachments are hereby rescinded.
- Note that the District Court has declared the legislative provisions unconstitutional, and has enjoined enforcement of the provisions by defendant agencies (Department of Housing and Urban Development, Treasury, Commerce and Defense, and the Environmental Protection Agency).

- Please advise your contractors and grantees that the above-listed legislative provisions have been declared unconstitutional by the District Court for the Eastern District of New York.
- Contracting Officers should consult their local counsel in cases when issues discussed in the OMB memo and/or the District Court's Opinion are applicable to their procurement actions.

This flash and its attachments will be available online at the following website:
http://management.energy.gov/policy_guidance/policy_flashes.htm.

Questions concerning this policy flash should be directed to Rose Johnson at (202) 287-1552 or rosemary.johnson@hq.doe.gov.



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Attachments