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MS. EVELYN KAPPELER: Our next panel here is a conversation about how you engage as grantees with the federal government. So we're shifting gears significantly here. But this is a very important session. A lot of important information about both the grants management aspects of the work you're doing as well as some of the legal requirements for the work that you're doing.

We have a very distinguished panel with us this morning. We have Roscoe Brunson, who is the Senior Grants Management Specialist in the Office of the Assistant Secretary for Health's Office of Grants Management. We also have Jocelyn Mendelsohn. Jocelyn is our Program Attorney. I've worked with her for many years. And if I want wisdom and counsel, she's the one that I go to. And I know that I can rely upon her for the best advice.

She has with her two of her colleagues, Lou Woolford from the Administration from Children and Families and Asim Akbari, also here to talk to us about some legal issues with grants. So with that, I'd like to introduce our panel. And we'll take questions at the end of this session. Thank you. We're going to start with Roscoe. Do you want to come up here or do you want to sit there?

FEDERAL PANEL

MR. ROSCOE BRUNSON: Good morning, everyone. [Good morning.]

Welcome to warm, wonderful Washington, D.C. That's for you coming from the north. What I'd like to do before I start, I want to identify two individuals here in the audience with me from the Office of Grants Management. And they'll be managing and they already have started working with your Tier One grants, Ms. Deborah Hayes and Ms. Dixie Perez. Stand up, wave your hand. [applause] These are your assigned grants management specialists. So they'll be your key points of contact. And, of course, I'll always be there to help and assist as needed.

Okay. This morning, I'm going to sort of rewind and go back a little bit. And I think I had an opportunity to speak to some of you in December, talked a little bit about prior approval requirements. And we're going to review as well today the Notice of Grant Award. Other than just the dollar amount that you receive, I'm going to talk a little bit about some important aspects of the Notice of the Grant Award that you actually have.

First of all, I'll talk about the prior approval requirements. This is sort of an abbreviated version. I think I talked about six areas back in December timeframe.

FEDERAL PANEL

But this is sort of an abbreviated version. Because these are some of the key prior approval requirements that we've seen since the beginning of your grant award period. So I'll talk briefly about the change of scope and the requirements associated with the question of change of scope, what's required for significant budgeting, change for program director and carryover requests. I'll just briefly discuss carryover requests because we'll come back and talk to you at a later time this year about that as well.

Okay. What's change in scope? This is sort of a general definition of the change of scope. And it's a change that occurs when the recipient proposes to change the objective and the purposes identified in your approved application. And we have already received some requests for changes of scope. And we've actually approved those. I think some changes were actually in the program model. There were changes, I believe, in maybe the targeted population and then some of the third party groups that were identified in your application. I think you proposed some changes and we approved some of those as well. So those are just some possible changes of scope that you can consider submitting a request.

FEDERAL PANEL

What's needed? Of course, no action can be taken until we have an opportunity to take a look at your proposal and consider it for approval. You need to provide a detailed explanation of the proposal. We want to see the before and after. We need to identify with how the change will impact existing objectives, aims and purposes that were listed in the original approved application.

If the proposal requires significant re-budgeting and it's over 25 percent of the total awarded amount, we're going to need a revised budget narrative justification, along with an SF424A, which is a budget that sort of lists your cost, your total cumulative costs, based on your key object class category such as salary, supplies, equipment, contractual costs, travel or other and indirect as well.

Okay. You also need to send those to your grants management specialist, your assigned OAH project officer. And, of course, it's going to need to be signed by the authorized business official. And please reference your grant number on your correspondence. It really helps us. Because, as you can see, we're tracking quite a few grants.

FEDERAL PANEL

Significant re-budgeting. This is what significant re-budgeting is defined as. It's defined as when under a federal grant which exceeds \$100,000, and everybody exceeds \$100,000 in the amount that has been awarded to you, when those transfer the cumulative transferred among cost categories for the budget period exceeds 25 percent of the total amount, that bottom line dollar amount that's listed on your grant that you've been awarded, if you are requesting to re-allocate or re-budget it, 25 percent or more of that dollar amount, which includes your total direct and indirect, that's charged to a federal grant or \$250,000. And that's for you who may have received over \$1 million in awarded funding. Then you're going to need to submit prior approval requests for significant re-budgeting.

What's required? Same as before. We need a written justification. It needs to be signed. You need to reference the grant number information. We'll need to see the before and after. So we'll definitely need a revised budget narrative justification, outlining those various costs that you're re-allocating those monies to. And then you need to sign it, send it to both the grants and cc a

FEDERAL PANEL

copy to your project officer. So we can review it and get back to you as soon as possible.

Move onto the change in program director. The recipient is required to notify the Grants Office of the PD in the Notice of Grant Award withdraws from the project entirely, be absent during any continuous period of three months or more or reduce time devoted to the project by 25 percent from a level that was approved in your Notice of Grant Award.

What's required for a change in PD? Before I go on let me say when you submitted your applications and we've had to revise and change some of the PDs that were listed on your Notice of Grant awards. Because the data that's populated when you submit your application, if the person who's on the application name is not really your PD, it may have populated in there. And when we send out your Notice of Grant Award, many of you will come back and let us know that that name that's in there is incorrect. You know, just let us know and provide us that information. So we can make sure we make that necessary correction. You won't need to submit what's required for a change of PD for that,

FEDERAL PANEL

as long as we can verify that that indeed is the program director for your grant.

What's required? Again, a written justification signed for the change. We need to know and identify what the time that the PD is going to devote. If it will change from what was previously listed by the prior PD, we'll need to know that in your request. We'll need a CV and a resume to support that request. And not often the change in PD will require or impact a need for significant re-budgeting. But if so, we'll need that additional justification, a supportive document. And again, send it to our grants management staff and project officer. So we can get it back to you, review it. Any changes, we'll definitely let you know, or revisions. Or if it won't be approved, we'll let you know as well.

Carryover requests. I'm going to touch on this briefly because requests for carryover will not really come into play until the end as we approach the end of the budget period. But I'll just briefly mention the carryover request. Because I'll have a chance to talk to you again I guess somewhere towards the end of this current budget period. Bu this is the definition of carryover. It's

FEDERAL PANEL

basically a carryover of unobligated funds from one budget period, which is year one we're in now, as we move into year two next year.

The unobligated balance that we'll identify from will be the financial status report that you'll be submitting. That SF269, the amount that's listed there is an unobligated balance, is what should match on your request for carrying over that unobligated balance.

Two things I want to mention that are important when it comes to carryover requests, over obligation and under obligating the funds. If you over obligate funds, you can't use monies from the next year to pay for those obligations. You will have to dig into your pockets within your organizations and pay back to the government those monies that you over obligate. So please, as you move throughout the year, those who have access to the Division of Payment Management and what funds are available, make sure you just keep track of where you're at dollar-wise.

Purposely under obligating funds. There's a possibility you can under obligate funds. That's the purpose of the carryover. But do not purposely under obligate funds. The

FEDERAL PANEL

monies that's been awarded and listed in your grant and has been approved is for your expenditures due on the current year. So we'd expect as you move throughout the year that you attempt to spend those funds based on what you've outlined in your application.

Again, do not purposely under obligate funds with the intent of carrying over for uses, because carryover is not guaranteed. We look at those on a case-by-case basis. Possible those funds could be offset. That's not what we're looking at, wanting to do. But please understand it is not a guarantee that you'll be allowed to carryover an obligated balance.

But what's required of a carryover request? SF269 is going to match that budget justification. We need a justification indicating why that unobligated balance exists. I already mentioned the budget justification. That's SF424A. And it should list what the grantee is planning to do with those unobligated funds during year two award period.

It should break down both the federal and non-federal. Some of you will have actually provided any kind of support

FEDERAL PANEL

to the grant. I some of those funds are going to be carried over to year two, we'll need to know now only what you're asking for the federal, but the non-federal in kind of you're going to carry those funds over as well. So we'll make sure we list that and you know it's a grant award if it's approved. And again, send it to the grants and project officer for review.

Review to know it's a grant award briefly. Again, other than that dollar figure that's on there, it's important that you take a look at it and know it's a grant award. NDA is a legal document, is a contract, issued to the receiving organization that indicates an award has been made and that funds made will be requested from the designated HHS payment management system which the system that you use or should already have setup to draw down funds for usage during this current budget period.

Some key areas of consideration in the NGA is the grant identification number. And we'd ask you to ensure that you include that on all your correspondence back and forth with grants and program. Statutory authority of the award and any applicable program regulations. There is some sort of fine print that we see on most contracts. But on your face

FEDERAL PANEL

page, there's probably about five or six different regulations and statutory authorities that's listed on there. It's in fine print. So I ask you to look closely at that. And, of course, that's why we're here in case you have problems interpreting and understand, please consult with us and let us know how we can help you better understand what you're looking at.

Name of the recipient organization and name of the PD. Again, as I said, it's important that the name of the PD is actually on your Notice Of Grant Award and the correct title for your organization, if it was incorrectly spelled, please let us know. So that we can next time we create a Notice of Grant Award, we can make those appropriate changes.

Approved project period and budget period, start and end dates. It's a five year project period. So you'll see a five year period. September 1, 2010 through August 31st, 2015 should be your project period. Your budget period should be September 1, 2010 to August 31st, 2011. Your budget periods are listed in annual increments. So next year, you'll see from 2011 to 2012, but your project period should be consistent.

FEDERAL PANEL

The amount of federal funds authorized for obligation. You'll see that on your Notice of Grant Award. Amount of matching or cost-sharing. If you had matching requirements or you provided in kind as a precautionary, that amount should be listed on your Notice of Grant Award. And amount of anticipated future year commitments is also what's subject to availability of funding what will be awarded to you possibly during future out years. It's on the Notice of Grant Award as well.

Names of the awarding office. You'll see your assigned project officer in your Notice of Grant Award. You should see the assigned grants management specialist. Dixie and Deborah will probably be listed on there. And then our Director of Grants Management Officer who's the signatory on the Notice of Grant Award, her name is on the bottom. Ms. Karen Campbell should be there.

Applicable terms and conditions of the awards. When you turn that face page, and I'm sure you have, you'll see the terms and conditions of the award. Many of you had special conditions and requirements that you needed to meet. And I think just about everyone has met all of those terms and

FEDERAL PANEL

conditions. But please look further beyond the face page and see what's required and expected during the budget period for this particular Notice of Grant Award that you received.

And then finally, the assigned HHS EINEN number which was based on the EI number that the IRS assigned to your organization. And that allows you to draw down funds to through the payment management system. We've had to make some corrections on a few of your Notice of Grant Award. So again, you need to make sure that information is current.

Just mention the reporting requirements briefly. You must submit a continuation application and your progress report and financial status reports within these timeframes that you see listed above. Your continuation application will be 90 days prior to. And then your annual progress report and the financial status report will be up to ninety days after the end of the current budget period. We will provide guidance at a later time on other submission requirements and what's needed to probably submit your continuation application, your annual progress report and financial status report.

FEDERAL PANEL

This is some general information on payment procedures. By now, you all should have set up an account so that you can draw down funds from the payment management system. If not, here's the link. Here's the phone number and address. If you have problems and encounter any challenges, please let me know, let our office know, what challenges you're encountering. So we can make sure that you're set up properly to draw down those funds from the payment managing system.

Auditing requirements. As it states, an audit is required for all entities which expend over \$500,000 of federal funds. Okay. That's total federal funds. Whatever reports that you may have received, if it's less than \$500,000, if there's other federal dollars that you have received cumulatively over \$500,000, you should be submitting an audit, annual audit. Here is the phone number. You should be submitting to the Federal Audit Clearinghouse, that first link on the bottom. It takes you to the website. The second is a brochure and it gives you general information and some general guidance in terms of submitting your audit.

FEDERAL PANEL

Okay. Last but not least, I'm going to take questions later on. But here's my information. There's our office phone number. And here are some key references that help support and provide some guidance for you as grantees with your grant. That concludes my briefing. Was that a little bit early? Thank you, everyone. [applause]

EVELYN: Thank you, Roscoe. We're going to hold off questions until the end of the panel session. So if you have questions, if you want to mark them down and we'll take them at the end. At this point, we're going to transition into a presentation by staff from the Office of General Counsel and Jocelyn Mendelsohn, who is the Senior Attorney, will be talking about legal aspects of your Office of Adolescent Health Grant.

JOCELYN MENDELSON: Okay. As Evelyn just said, I'm going to just talk very briefly and generally about some of the legal aspects of grants management. And then I'm going to turn the mike over to Lou who is going to speak in some detail about the restrictions related to religion. And then Asim is going to speak about restrictions related to lobbying.

FEDERAL PANEL

First, I just wanted to tell you a little bit about the Office of General Counsel. We have more than 400 attorneys nationwide. We have ten regional offices throughout the country and eight divisions of OGC here in the Washington-Baltimore area, as well as the immediate Office of the General Counsel.

I work for the Public Health Division of OGC. Lou is in the Children, Families and Aging Division. Asim is in the Ethics Division. And examples of other divisions are the General Law Division, CMS Division, Food and Drug Division. And we all worked together to advise the Secretary of HHS and the agencies to which the Secretary has delegated her authority to provide legal advice on a variety of issues. What we can't do and what we don't have the authority to do, however, is to provide legal advice to outside entities such as grantees and contractors.

If grantees do have legal issues, and we suspect that you probably do, related to privacy matters ... and that could be intellectual property issues or perhaps an employment issue related to grantee staff ... we encourage you to contact private counsel. If you have questions that are not private matters and they're related to whether your

FEDERAL PANEL

activities are within the scope of your grant requirements or if you're complying with federal law or regulation, we encourage you highly to contact your project officer to have a discussion about what you can do to be in compliance. And when these questions do have legal implications for OAH, then they will consult with us and we can work together to figure out how to proceed.

I just wanted to talk for a minute about the documents related to your grant award, which Roscoe did a great summary of. In addition to the Notice of Grant Award, there was the application that you filled out, which was probably a while ago at this point. But there were certifications and assurances in that application. And I wanted to point out just a couple of those to you.

There was an assurance, it's number eighteen. And it requires that all grantees comply with all applicable requirements of federal law, Executive Order, regulation and policies governing your program. And I refer to that as the catchall assurance which essentially means that you need to comply with all federal law. That will include all of the regulations and restrictions related to religion

FEDERAL PANEL

which Lou will speak about even though there was not any separate condition attached to your award about that.

There was also a certification in your application requiring you to comply with lobbying restrictions. And there's also a special condition in your Notice of Grant Award relating to lobbying restrictions which Asim will speak about in a moment.

If there is any violation of your grant application assurances and certifications or in addition any of the terms and conditions of your grant award, this could result in a corrective action plan for you. And there's actually a variety of grant enforcement mechanisms available to OAH and OGM. And they start small and they can hopefully not, but could, grow larger. And they include imposing a special condition on your award, a draw down restriction, a disallowance of funds and ultimately even a termination of the award.

And in addition to the requirements associated with your grant, there could be other penalties for violating federal law regulations. So again, we just want to emphasize if you have any questions or concerns to please reach out to

FEDERAL PANEL

your OAH project officer or your grants management specialist if you have any questions. And with that, I want to turn the microphone over to Lou.

LOU WOOLFORD: Thank you. Thank you very much, Jocelyn. As Jocelyn was mentioning, in the Office of General Counsel, our role is primarily geared towards giving advice to OAH and different components of the Department of Health and Human Services. And while we typically are providing advice and working on providing some background support as the agency's working on regulations and defending the agency in litigation, those sort of things, the most fulfilling thing that I really get a chance to do is to come out and speak at conferences at events like this and talk to grantees.

Because, in my view, all the rules and regulations aren't really going to be too helpful unless the grantees understand them, they know what they mean, they know that they exist. And the opportunity to sort of come out and make sure that we get a chance to really give you a real, just concise and simple, summary of some of the most important rules, and to answer your questions is really valuable. So that we can avoid a lot of the non-compliance

FEDERAL PANEL

issues that can result that Jocelyn was talking about when you don't know the rules or when you know the rules and don't abide by the rules.

What I want to talk about are the rules that pertain specifically to religious organizations and religious activities. So let me just ask at the outset whether any of you work with faith-based organizations, whether you work for a faith-based organization or whether you are working on a project that is affiliated with a faith-based organization? Okay. There's some. Okay.

All right. Well, these rules will be particularly relevant to you. But really the rules pertain to everybody. Because you might find that if you ever work on any activities at a faith-based organization, provide services in a church, whether you are a religious organization or not. Or you have somebody from a faith-based organization come and present during your project. Or you have somebody who has some religious views working on staff. These rules will help you know the sort of things that you can and cannot do.

FEDERAL PANEL

And I have about ten or fifteen minutes to talk. And when I looked at my notes just before coming up to the podium here, I realized that in about ten or fifteen minutes, if I talk fast, if I stay on point, if I summarize, then I can probably get through my introduction. And so, Option B is to skip the introduction altogether and just sort of go straight to the presentation.

But with that, I have to state, one thing I do have to state is my disclaimer which is that because, as Jocelyn was indicating earlier, because we don't really have authority to provide authorities to outside entities. And that's really not our role. Everything that we say here does not constitute a legal opinion of the Office of General Counsel. And it's not official legal advice from the department. It's merely a summary that will help assist you hopefully. So that's the disclaimer.

Now, with that, let me just begin by telling you what we're going to be going over. You see these rules at 45 CFR Part 87. And these are the rules that apply across the discretionary grant programs that HHS administers, including your grants. And they're general rules that sort of give you some indication of what you can and can't do

FEDERAL PANEL

with federal funds when there's really religious issues involved.

And I'm just going to go through what I see as the five or six most basic principles that come from those rules and try to just sort of explain them very succinctly and quickly.

The first one is that funding decisions may not be influenced by an organization's religious character. And generally what this means is that, when the department was awarding grants, they weren't considering whether or not you are a religious organization or whether you work with a religious organization. They were just looking at whether or not you had the ability under the criteria in the funding opportunity announcement, whether or not you had an ability to effectively carry out the services. Didn't make any difference whether or not you were affiliated with a religious group or not.

But likewise what that means for you all is that if you plan to contract out with other organizations or in any way become affiliated with other organizations in implementing your projects, you cannot take into account whether or not

FEDERAL PANEL

those organizations are or are not religious. In other words, you shouldn't be providing favorable consideration to religious organizations. Or by the same token, you shouldn't disfavor religious organizations. You should look at what organizations are best capable of helping you carry out your project. And that should be whatever those criteria are. Those should be the criteria that you should consider that are neutral to religion.

Now, this doesn't mean if you are a faith-based group and you want to provide preferential consideration to groups that you have some prior experience with and those happen to be religious groups, then you can do so. You can provide favorable consideration to groups with which you've had prior experience. But the one decisive factor shouldn't be whether or not they are religious or not per se.

The second basic principle is that organizations receiving direct financial assistance ... and we say direct financial assistance, really that encompasses all of your grants. Those are grants that go directly to organizations. You cannot engage in inherently religious activities as part of your programs. And this is probably the biggest issue that

FEDERAL PANEL

we get in the Office of General Counsel is what is an inherently religious activity? And what activities can you have in your federally funded programs?

I'll start by saying in looking through your funding opportunity announcements, that as I understand you've got a couple of areas that you work primarily. And one is youth development. And when you talk about youth development activities, the main point here is that you simply shouldn't be taking ... the persons who come in for services shouldn't be taking them to church or to programs that are designed to help promote or endorse a religious perspective.

Now, if you have people attending your programs that have questions about religion, you can provide a succinct response to a question and tell them that you'll talk to them more about it after the federally funded program is over. And you can do that if you have discrete hours for your program. So it starts at a particular time, ends at a particular time. A child asks you or a teen asks you a question that's related to religion, you can give them a brief answer and say, but I can talk to you more about that after the program is over.

FEDERAL PANEL

And so when we talk about youth development activities, that's sort of the easier area. You can simply get more, if you wanted to give them an opportunity to talk about after the program is over, you can do so.

The trickier area is when you talk about curriculum-based approaches to services, when you actually have youth that are coming in to receive a curriculum-based lesson of some sort. And there when we look at the curricula, what we're basically looking at to determine whether or not it's inherently religious is does the curricula tend to promote or endorse a religious perspective in some way? Does it seek to change the religious views of the people who are reading it or the people who are learning this curricula?

And we're primarily concerned here about what's handed out in the program and what you tell people verbally who come in for the services. If you want to sort of convey any religious message, if your point is to try to instill a sense of religion in anybody who comes in for services, you have to do that under a separate distinct program. And I can talk a little bit more about that in a moment.

FEDERAL PANEL

But the main issue here is that what I really hope to do is just enable you to at least know and be aware that if you have some question about whether or not the curricula that you intend to use appears to be discussing religion in some way that might tend to favor religious perspective, at least flag that so that you can raise it with your project officer. And that's one of the points that's been made a couple of times earlier here is that when you have questions, please at least know that there is an issue here that's worthy of bringing to the attention of your project officer.

So, there's a lot of grey areas here. Much of the curricula that we've seen in other types of programs like abstinence education programs and things tends to either talk about spirituality or anecdotal accounts about how beneficial religion is in the lives of people. Or a lot of times, curricula gives statistical accounts about how people who are religious tend to fare better in one respect or another.

These are all sort of grey areas that I'm not really going to get into too much detail and overwhelm you with a lot of detail on right now. But what my real point here is just

FEDERAL PANEL

to let you know that if you do see some religious content in your curricula that you think might tend to favor religious perspectives, at least raise that with your project officers.

And I should mention here also that it doesn't make a difference whether or not ... when we talk about curricula, it doesn't make a difference whether or not the curricula's paid for out of your federal grant or whether you pay for it out of your private funds or matching funds or any other funds. You simply cannot use inherently religious curricula in a federally funded program irrespective of how it's paid for. That's the second basic point.

The third, and I touched on this earlier, is that you can conduct religious activities with private funds if it's in a separate program. And the program has to be separate in time or location. It has to be voluntary for the program participants. And it has to be privately funded. So those are the three main points to keep in mind. And each of these is in the regulations.

But anybody who wants to either, whether we're talking about a teen pregnancy prevention program that has a

FEDERAL PANEL

religious component to it or whether you're talking about any religious program if it's just church, you can invite people to attend those sorts of services, but they have to be separate in time or location.

And by separate in time or location, we mean that separate in time simply means after your program has concluded, there has to be some meaningful break. After the federally funded program is concluded, there has to be some meaningful break between that and when any religious services start. You simply can't say now we're finished talking about this teen pregnancy prevention program. Now on to the religious issues. It's a meaningful break. People are allowed an opportunity to leave. And they can come back in if they want to start another program.

Separate in location. It doesn't have to be in a separate building. It can be in separate rooms. So if you have your services in the same building, one has a religious component, one is a federally funded program, they can be in rooms right next to each other. And, of course, they have to be voluntary, meaning there's no penalty if you don't attend the religious services. And privately funded is pretty self-explanatory.

FEDERAL PANEL

So another point that's sort of one of the basic points that we get issues on is cost allocation. A lot of times we get the question of suppose I want to purchase something that was in my budget ... and you heard earlier about staying on point with what's in your budget. But if you want to pay for something that's in your budget that is going to be used in your federally funded program, but it's also going to be used in some other program.

And here it could be another program with religious content. It could be another program that is a state funded program or a privately funded program. Any other program, this rule applies. You can use the federal funds to pay for that item. Let's say you're talking about a piece of audio/video equipment, for example. You can use federal funds. If you know you're going to use that piece of audio equipment in the federally funded program and in another program, and it's in our budget, then you can use federal funds to pay for that item in proportion to how much the item will be used in the federally funded program.

So, for example, if you know you're going to use it one day a week in the federally funded program and two days a week

FEDERAL PANEL

and another program, you can pay for probably one-third out of the federal grant funds. And again, this is all conditioned upon whether or not this cost is in your initial budget and whether it's been approved by grants management. But assuming it has, you should allocate costs for things that are going to be used in different programs.

If you're talking about employees, staff time is pretty straight forward. You should keep timesheets. So that it's clear that you're only paying people for the time that they're working on the federally funded program, if they're also going to be working on another program as well.

So that's the point about cost allocation. Another simple point is that you're free to maintain your religious character. So any of you faith-based organizations out there, you can have services in a church. You don't have to take down any religious icons and that sort of thing. You don't have to change your bylaws, your mission statement. If you have priests who wear a collar when they come and teach, they don't have to change clothes. Anything that really constitutes your religious character, you can keep that. You can maintain that.

FEDERAL PANEL

What we're really concerned about is the curricula that you hand out in the program or what you say in the federally funded program, or anybody, your staff who are working on the program, what they tell people who come to participate. That's the only thing that we're really concerned about.

And then the religious hiring exemption. Basically, religious organizations have an exemption in the law, Title IX of the ... excuse me, Title VII of the Civil Rights Act of 1964 that basically allows religious organizations to consider the religious orientation of people that they hire. They can still do that if they're hiring people to work in the federal grant program.

The opposite applies when you're talking about people who come in for services. You're talking about beneficiaries, teens who are going to come in and receive services, you cannot consider their religious orientation. You can have different eligibility criteria. But whether or not they are or not religious should not weigh in.

And I think I've actually covered the main points under the wire here. The main point that I wanted to get across here is that at least with these simple basic points, if you

FEDERAL PANEL

remember these, you'll know enough to know when you have an issue or concern that warrants raising them with your project officer.

And the PowerPoint is in your materials. But also the regulation is in your materials as well. And if you want to look at your regulations, that's really what we recommend the most when you have an issue before you go to your project officer.

Because the regulations have these rules and requirements in more specific detail than I've outlined here today. And that's really the pivotal source that you're going to be relying on when you make these decisions about what you can and cannot do. And that's why also I had this disclaimer at the outset because it's the regulations that you need to rely on, not necessarily what you hear federal staff say from a podium at a conference.

So those are the basic points. And as I started to say at the outset, I think that your role as grantees is really critical in helping to ensure that all the projects are carried out in a way that conforms with the rules and regulations. And I really appreciate the opportunity to

FEDERAL PANEL

come out and talk to you to make sure that you at least are onto the information you need to do so and we don't have any compliance concerns further down the road. So thanks a lot. I appreciate your time. [applause]

ASIM: Good afternoon, everyone. My name is Asim Akbari. I'm an attorney in the Ethics Division at the Office of General Counsel. And, first of all, I'll be talking about lobbying restrictions for HHS grantees. And I'd also like to thank all my fellow panelists for leaving me a little time. I think I have five minutes. Usually, I'm the fourth leg of this panel. I thought maybe I just have like thirty seconds. I have to say don't lobby and run off the stage. But I do actually do have a few minutes to cover some things.

This is a really complicated issue. Lobbying. What is lobbying? There are a number of definitions of what lobbying means. It really depends upon where the money's coming from. Is it the general appropriations, HHS appropriations? Is it the Affordable Care Act? There is funding through the Recovery Act? Who's conducting the activity? Is it a federal employee? Is it a grantee contractor? What type of individual? Is it a nonprofit

FEDERAL PANEL

organization? Is it a state and local entity? And who's being lobbied? Is it the state government or state legislature? Or is it the federal ... is it Congress?

So you play with all these different variables, you get a lot of different rules. I'm going to keep it simple, because again, I only have a few minutes, and just tell you what the rules are that apply to you. And I've highlighted them in red. So we have a few definitions. I don't know if you all have heard of the Anti-Lobbying Act that applies, the restriction that prohibits grassroots lobbying, that applies to federal employees.

For you, the restrictions are in the consolidated appropriations under Section 503(b). This is the most broad restriction on lobbying. It covers not only grassroots lobbying as a federal employee subject to ... prohibited from grassroots lobbying. But it also covers indirect lobbying. The standard is essentially it prohibits any payment related to any activity designed to influence legislation or appropriations pending before Congress or a state legislature. So the whole design to influence is the restriction. It's not just please contact your Congressman to do such and such.

FEDERAL PANEL

It covers many other things. It covers indirect lobbying like an educational campaign designed to influence legislation pending at the state or local government. So it's not really just please contact your Congressman. Even things that would encourage the public on these issues that involves again pending legislation. So this is a broader restriction than the one that applies to federal employees. So you should really understand that.

And one other thing that you should know is if you do have other funding, that's not subject to these restrictions. If you can somehow segregate your funds and if you would like to engage in some sort of lobbying, and to the extent you can segregate your funds and use those financial resources to engage in lobbying, you can do that. But you can't do it with these federal funds.

Now, there are some other restrictions. In addition to the general appropriations rider, we have something called the Byrd Amendment. And I think Jocelyn mentioned earlier that you had to fill out some ... there was an appendix. I think you all have a copy of the HHS regulations that apply to lobbying activities. This really is something that is

FEDERAL PANEL

mimicking the Byrd Amendment. And I think those HHS regulations require a certification that you are complying with these lobbying restrictions and a disclosure. If you do somehow violate these restrictions, you need to notify the agency.

But essentially, the Byrd Amendment prohibits the recipients of federal funds, whether it be a grant, contract, cooperative agreement or a loan, to use those funds in connection with the award, extension, continuation, renewal, amendment or modification of the funding mechanism under which the monetary assistance was received.

So again, I really just wanted to cover those two things that I highlighted in red earlier. You are covered by the most broad restriction on lobbying. It's direct and indirect lobbying under the general appropriations and also this Byrd Amendment. And if you have any questions regarding this, you know, please contact your project officer. And if it's something that they don't understand, they can contact our office and we can provide you advice. We'd rather you get the appropriate advice than to actually violate some of these restrictions. That could be

FEDERAL PANEL

problematic for both you and the agency. So, thank you very much. And I think I'll leave it to Evelyn.

EVELYN KAPPELER: I want to thank all of our panelists. And we do have some time for questions and answers. I also want to point out that we planned for this panel because these are very important issues. They are issues that will impact your grant. They're issues that have been raised in the past in other grant programs. And there is a lot of detailed departmental guidance in these areas. And we want to make sure that as part of our planning year that you are all aware of what the requirements are with regard to religious activities and projects, lobbying and what the grant requirements are for your particular project.

So I can't reiterate enough the importance of having ongoing conversations with your project officers. If you have questions in any of these areas, it's important to raise them early on so that your project officer can seek guidance and give you the best advice available. We are taking questions. If you'd come up to the mike. Please state your name and question.

FEDERAL PANEL

JUDITH CLARK: Judith Clark, Hawaii Youth Services Network. If I am invited by a legislature to provide factual information about the incidents and the causes of teen pregnancy in my state and that legislature has the intention of then crafting a bill related to teen pregnancy based on the information I provide, is that lobbying?

LOU WOOLFORD: Yes, as I mentioned, there are some various definitions of lobbying. There would be an exception for that type of activity for someone like myself, like a federal employee under the anti-lobbying act. But as I mentioned, this restriction that is under the general appropriations that applies to you as a grantee is much broader. And that type of activity would not be permitted.

JUDITH CLARK: So even though I am not supporting or opposing a bill or telling them what to put in the bill, the fact that I am providing factual information about the rate of teen pregnancy in my state or the amount of sex education that's provided in the schools is lobbying.

LOU WOOLFORD: To the extent that you are using federal funds to do that. If you're not using federal funds, then it wouldn't be a problem.

FEDERAL PANEL

MS: I'll take that question one step further. I'm part of a state agency and I'm charged to serve at the discretion of the servants who make the decisions. And if they ask me to come in and report what activities I am doing and the benefits of the activity I'm doing, no matter who the funding source is, I'm required as a state employee to provide that information. So what is the difference between education and carrying out due diligence of your job and lobbying?

ASIM: Okay. So you are from the state government and you're saying that you have some sort of obligation under the state to ...

MS: Report the activities that I do as a state employee.

ASAM: To?

MS: To both the state legislature, the federal legislature and other federal elected officials.

ASIM: Well, again, this is a restriction that involves pending legislation. So if it's designed to influence pending legislation, if you're just really reporting on the funding

FEDERAL PANEL

that you have, I don't see how that would be a problem. But if it's designed to influence pending legislation, then that is something ...

MS: But if they're requesting it no matter what their activity is, then I'm just carrying out whatever their request is. If I'm not doing anything to relate to that law, but just carrying out their request specifically to me, then I would not be ... would be doing exactly what you're saying, correct?

ASIM: I'm sorry?

MS: Okay. In other words, I don't ask them their intent of why they're asking me for the information. If they're asking for information, I just provide the information they're asking for. I can't determine whether it's for or not for pending legislation. They don't ask me that opinion.

ASIM: Well, I mean, again if you are obligated to report to the funding that you have, I don't see that's a problem. But if your communication to the state of federal legislature is designed to influence some sort of pending legislation, if you're just saying that, well, I'm just reporting back

FEDERAL PANEL

to my state government for something that I'm obligated to do under state law, that wouldn't be as much of a problem as it's involving pending legislation.

MS: Thank you.

EVELYN: Do we have other questions? Over here.

MS. ESTELLE RABONI: Hi, I'm Estelle Raboni with Morris Heights Health Center in New York City. One question that comes up is it sounds like no grassroots organizing is allowable under the current definitions of lobbying. So if we're implementing a program that includes a service-learning component and we try to incorporate organizing or grassroots organizing among students, twelve to eighteen years old, is that also not allowable under the lobbying rules?

LOU WOOLFORD: Okay. Another question for me. So you are organizing students to do what exactly?

MS. ESTELLE RABONI: Part of the service-learning component allows for opportunities for young people to advocate for particular issues that affect them. So, you know, food

FEDERAL PANEL

legislation or nutrition legislation or sex ed or whatever is affecting their particular issues. And so one of the things that we were thinking about is to incorporate some advocacy work or grassroots organizing in the service learning component for young people. But it sounds like that's not possible under these lobbying rules.

LOU WOOLFORD: Again, these are very specific components to this restriction. We'd have to first understand is there some sort of legislation that's pending that you're organizing some students to contact Congress or whatever, if that's the grassroots component? If that's what the intention is, if there's some sort of pending legislation, yes, that's something that's going to be prohibited. Even if it's some sort of education campaign. That's what I mentioned earlier. But if it's really more programmatic related, you know, telling ... trying to help kids understand certain issues, I'm not entirely sure exactly what. But if it's not involving any sort of communication towards Congress, then that wouldn't be a problem.

MS. ESTELLE RABONI: Okay. Thank you.

FEDERAL PANEL

EVELYN: And I would just point out I think this is a perfect example of an instance in which conversation with your project officer is very important, because the individual circumstances will vary project-to-project. And your project officer can help you think through what it is that you ultimately want to accomplish and whether or not it's consistent with federal rules. And if it's not consistent, advise you of that fact and provide some technical assistance and guidance on how you might reach that same goal through another means. Do we have other questions? Well, if not, I very much want to thank our panel. This is a critical piece. [applause]

(END OF TRANSCRIPT)