

**2021 Online KT Conference:
Research Results for Policy Outcomes**

Restrictions on Lobbying for Federal Grantees

Barbara Shumar

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KATHLEEN MURPHY: So, we're going to move into our first presentation today. And as I've mentioned, we're joined today by Barbara Shumar. She's a consultant with Grants Management--with Management Concepts. That's the name of the firm, is Management Concepts. And she also works for the Gulf Coast Ecosystem Restoration Council after a long career as a federal employee, so she has a lot of experience and expertise to share with us today.

So, her presentation is going to cover the basic federal legislation and rules that govern lobbying for people, like the Center on KTDRR staff, who are recipients of US federal funds. And she's going to discuss the difference between lobbying, which we're not allowed to do, and sharing of information.

So once again, if you do have questions during the presentation, go ahead and ask them in the chat box. I'm trying to keep an eye on that, and we'll address them either as we can, or get to them and at the end of the presentation. So, Barbara, are you ready to begin?

BARBARA SHUMAR: I'm ready.

KATHLEEN MURPHY: Thanks so much for being a little bit early.

BARBARA SHUMAR: Oh, not a problem.

KATHLEEN MURPHY: Yeah. Ever ready.

BARBARA SHUMAR: Ready to go. Maybe. Hi, my name is Barbara Shumar. I use she/her pronouns. I'm sitting in gorgeous St. Pete Beach today, where the weather is absolutely lovely. I hear it's not so good around the rest of the country. I'm in my early 60s. I have blondish hair, and I'm happy to be with you and share a little bit about lobbying. So next slide, please. We

Have a couple of objectives that we hope to hit on today. Understanding general lobbying restrictions and how they apply to you as recipients of federal funds, talk about what's the difference between legitimate communication and improper lobbying practices. In other words, where will you cross that line instead of communicating your awesome results, you've now crossed over into lobbying, which makes it a no-no. And then discuss other considerations on lobbying activities.

So, before we start, we probably need to define lobbying. So, what is it? Here we are with the Black's Law Dictionary definition of lobbying. I'm not going to read it all to you. But it's your personal solicitation of a member of the legislative body during a session thereof, or by private interview, letter, or message or other means, and appliances not addressed solely to the judgment, to favor or oppose, means and appliances not-- opposed or to vote for or against any bill, resolution, report, claim pending, or to be introduced by either branch thereof by any person who misrepresents the nature of his interest.

OK, so that is a really legal definition of lobbying. So basically, you don't want to go up on the Hill and talk to any member of Congress, any member of his staff, any member of any agency, any federal agency, and ask them for money. Now, when I say-- and be paid by the grant to do this. Either your travel or your time.

Now, can you lobby? Absolutely. Please do not walk away from this presentation and think you can't lobby. Because that is not true. You can lobby all you want. You just can't use your grant money to do it. Meaning, you can't pay for the person who's doing the lobby's salary, nor can you pay for their travel, if they're actually going up to the Hill to do face-to-face meetings. So, I just want to be really clear about that.

But you can use your grant funds to go up to the Hill and tell them what an awesome job you're doing. Telling them that you've used your grant funds and you've had excellent results on whatever. So that's important. You'll only overstep or cross that line if you say, OK, because we've done all this, if you would only give us another \$2 million, we could do this more.

At that point, you've crossed the line, and you're lobbying. So that's kind of the big difference. Talk about your results, and hopefully they'll get the message that you could do much more if you had more funding. But you can't ask. You can't ask them for more funding, you can't ask them to maintain your funding, which in this day and age, is a big win if you maintain your funding.

You can only talk about your results if you are being paid or using your grant's money for the trip and the salary for the individual. If you're using your organization's personal funds, you can go up on the Hill and talk about anything you want. Nobody cares.

So why do you lobby? OK, well of course you need to lobby. Every government agency across the world-- I see your question. I'll get right back to you after I finish this thought-- are going to lobby. You need to ask about money. You need to tell them great things that you can do with your money. Like I said, there is nothing wrong with that. You just can't use your federal funds. Now, we did have a question in the chat.

KATHLEEN MURPHY: The question is, what about talking about your results and need to include policy that covers technology demonstrated to be effective and safe as part of a Medicare benefit for beneficiary access? So, I think this is from Laura Cohen. It does involve funding, right?

BARBARA SHUMAR: Right. So, because-- and I'm assuming-- just you know, I spent almost 30 years in agriculture, and now I work on coastal restoration. So, I'm not an expert in the disability field. However, I'm thinking that that probably would lead to lobbying, because it's not already a part of the benefit. So, you're asking them to change a law, and to change the benefits for Medicare.

So that would step over. Telling your results is fine. Stepping over to say you need the bill to be changed to include additional benefits, then you stepped over the line. Not a law, a policy.

Policy is the same. When you're asking them to change policy, that is considered lobbying. Yes. OK. You're welcome, Lauren. So, we'll talk a little bit about the laws, the background on restrictions. So, it's a law. Try to hang in here with me. So how did we get to this point? Back in 1990, there was the Byrd Amendment to the Department of Interior Appropriations bill that tightened up the restrictions on lobbying.

And once that was done, our friends at HHS implemented this new requirement in 45 CFR Part 93, calling it the New Restrictions on Lobbying. So, like I talked about earlier, that includes spending federal funds to influence an officer, an employee of any agency or congressional members staff regarding federal funds. So, you can't use federal funds to do that.

Also included in that is failing to submit your SFLL certification and disclosure. And there's an example of that on the slide, if you can-- not very clear, but it's up there. Then using your grant

funds to provide nonprofit organizations or institutes of higher education to influence election, contributed to partisan organizations or influence enactment or modification of any pending federal or state legislation.

So, if there is somebody running for Congress who is very supportive of your programs, you can't use your federal funds to encourage your recipients or your colleagues or your beneficiaries of your program to vote for him or her.

You also cannot make any or influence any modification of legislation. We talked about that. And then you can't expend the funds for any federal, state, or local officials. So don't use it as political contributions. And I'm sure you all know that.

This is just a reminder that if you've filled out your disclosure requirements and there's been a change in your disclosure requirements-- in other words, the person that's doing your lobbying has changed, or you're spending \$25,000 more than you reported that you would be spending in lobby, if there's been a change in your lobbying budget, then you have to redo your disclosure form. And you want to be careful about that, and make sure you follow up with that.

So, we have some other considerations, because we're Management Concepts, and we're all about managing your federal grants correctly. And I think you have someone on the agenda later that's going to talk about conflict of interest. But we want to make sure that you have your non-federal entities, make sure you have your conflict-of-interest policies and they align with your federal agency policies, and they have your policy in writing on how you're going to disclose in writing in any potential conflict of interest to the granter.

So, if you find out that someone has slipped up and there has been a conflict of interest, you want to make sure you report it. And we have some helpful hints about from the Grant Professionals Associations, about things that you want to think about.

Your ethical standards, making sure you obey all your state, local professionals, federal laws. Avoid criminal offense and professional misconduct. Disclose any relationships about conflict of interest. Make sure members not be associated directly or indirectly with any service product, individuals, or organizations in a way that they know is misleading. Don't abuse any relationship with a donor, prospect, volunteer, employee.

Recognize that your individual boundaries, your competence and are forthcoming and truthful about your professional experience knowledge and expertise. Like I disclosed that I'm not an

expert in your program field. And members should continually strive to improve your professional competence.

And then, that's it. I saw one more question pop up.

KATHLEEN MURPHY: Yes, thank you, Barbara. So, we do have some questions. Some have been coming to me personally. So let me just scroll back. So, I think a lot of these questions, people are just wanting to really clearly delineate not only between lobbying and sharing information, but other components related to that process.

So, for example, the first one is asking-- this is also from Laura Cohen-- how do you distinguish and make it clear to yourself, oh no, I'm lobbying as an independent citizen, versus now I am sharing information as a NIDILRR or a federal grantee. So, what are the delineations between those two autonomous roles? How do you know when you're doing one and doing the other, right?

BARBARA SHUMAR: So, I'm not sure what Laura does. But if she's involved in managing a grant-- and I know that we have individuals who do both. I personally have a friend who has a child who's severely disabled. And she works for the Pennsylvania Association for Retarded Citizens Arc, and she does both.

So, I know that he keeps it-- thank you, Laura, I see you popped up. She keeps it separately. So as a researcher and a clinical advocate, I think if you're talking about a change that you want made on a project that you are working on, that is lobbying. Because it affects you. That would be lobbying. If it's something totally personal that has nothing to do with any project you're working on, then that could be personal.

It's an enabling consumer access. OK. Once again, that consumer access is involved in a change in the policy and procedures of the federal organization or a change to the bill, that would automatically be lobbying. Because you're asking for a change of how business is being done.

So, you can ask for the change. You just can't be doing it and being paid as an employee or your travel being paid as an employee from the federal grant. You can still lobby all you want. You just can't be paid to do that lobbying. Not being paid from grant, then it's not lobbying. Period.

You can lobby all you want. You just cannot use federal funds to doing it. So as long as your time is not being paid by the federal grant to lobby, then it's not lobbying. Then it's lobbying, but it's not disallowed.

KATHLEEN MURPHY: OK. So that's clarifying roles and a distinction between the content of the communication with the policymaker. So, the one other thing you talked about-- and I have a printout of slides here. So, it was on the slide where you have, the header is Federal Lobbying Restrictions on Grant Recipients. And so, you really emphasize the point about not asking for money for anything.

No spending federal funds to influence an officer, employee, regarding federal awards, using grant funds. So that's thinking about money. But what about this last bullet that you had? It said expending federal funds to influence federal, state, or local officials, or legislation. So, it's not funding, per se, necessarily. But are you lobbying if you go in and talk to a member of Congress, asking for a specific change in legislation?

BARBARA SHUMAR: Yes, it's lobbying. Whether you can do it or not depends on whether your salary is being paid from the federal grant or your travel is being paid by the federal grant. It's all about who's paying for your time. If it's a grant money paying for the time, then it's not allowed. You can lobby for changes to federal law and for your state, local, and federal officials. That's fine.

You just can't use the grant money to do it. It's not about whether you can do it or you can't do it. You can do it all the time. It's just who's paying. You can't use grant money to pay for the travel or the salaries of the individual doing the lobbying, or for the materials that you give out to them.

If you have a nice little brochure that talks about the benefits of your program and you give that to the guy on the Hill and it was paid with federal funds, that's a problem. Technically. I've seen it done. In the real world.

KATHLEEN MURPHY: So as long as you're not being paid by the grant-- and just to confirm, again, this is a comment from Laura. You can say you did research and share your results, and then advocate for coverage if not paid by the grant. So just reiterating that point, which I think--

BARBARA SHUMAR: Right. Yeah, as long as your visit, any part of your visit, is not being paid-- your salary is not being paid by the grant-- you can talk about anything you want. If the grant is paying for a portion of the trip, then that's where it gets leery. So, you either have to go 100% and do all your lobbying in one trip and then talk about your results too. But that would be a lobbying trip if you're asking for money, also.

KATHLEEN MURPHY: People want to ask you this right. Our center has hosted a workshop that grantees use grant money to travel to present results or to participate in. So, what if they come to DC. They go to a conference that's related to NIDILRR work, they go to our workshop, and while they're in DC, they go up to the Hill.

BARBARA SHUMAR: Mm-hmm. So, it all depends on how they charge their time. I mean technically, the travel for the day they're visiting the Hill should not be charged to the grant. Technically. Nor should the time they're spending on the Hill, if they're asking for money, should not be charged to the grant. In a perfect world. I'm just going to leave it at that.

So, I can tell you that several years ago, I attended a meeting in DC with a group of recipients that were visiting USDA and attending a conference. And as I went out to do their annual review that year, I found that they were charging the attendance to that conference. That was a conference run by the lobbying organization. And we do not allow them to use federal funds.

So, for the organizations who paid for that, I disallowed those costs, because they were attending a lobbying event. That was the purpose of the-- we attended also, but that was the purpose of the event. And so, they couldn't use the funding. Would somebody catch it? Probably not. But if they did, it is wrong. How's that? I don't want to be wishy-washy on it.

KATHLEEN MURPHY: No, I mean we can see. It's just obviously, people don't want to violate the terms of their grant. And people do have project officers and they can run these things by them ahead of time. And probably they would already have an appointment with someone on the Hill and it's not going to be just a last-minute stop. So, Jessica Lukefahr had a question also. I think it was just, more generally, about congressional processes.

Can Congress grant additional monies on their own? So, thinking about if they are in the process of granting additional monies, or what is the point of intervention. If you do want something to happen, how can you share your information in a timely or particular way that it is going to be most relevant? Jessica, if I'm not really getting at your question properly, please let me know in the chat.

BARBARA SHUMAR: OK, so if you have information you need to share, if you've heard through the grapevine that they're looking to upping funding for certain things and you have information that you think would be helpful, I will contact the person on staff with the Congressman who's sponsoring the bill's staff. Find out who's actually working on that project

and contact him with your information. Because it's the guy who's writing the bill. And the Congressman sponsors it.

I'm not a lobbyist, so-- but you're going to want to drill it down to the level of the person who's actually putting the bill together and contact him and provide the information. Include your congressman, absolutely. But talk to the guy who's working on the bill to get the information, or to share the information that you think will be helpful and provide the most benefit.

KATHLEEN MURPHY: And I will put in a little plug because I think it can be maybe a little hard to know what particular members of Congress are up to. And we do have on the KTDRR.org site under the Resources tab, what we call a Policy Portal. And it's a directory of organizations that do lobbying.

Another way to handle this whole issue, we were thinking, in putting together this Policy Portal, is that anyone could contact these organizations and share the research with them, so that then you have a proxy and it's not actually going to do the advocacy work.

So, there's another question here from Salimah LaForce. What if an agency releases a notice of proposed rulemaking? And they're asking for input on whether a policy should be changed, and you have data supporting change in a specific direction. Would sharing that data and recommending change be lobbying?

BARBARA SHUMAR: No. If they're asking you for comments on proposed rulemaking, you can certainly share what you want to share. That is not lobbying. We've all frozen up?

KATHLEEN MURPHY: No, sorry, I'm just scrolling through. So, Jessica commented, thank you so much for making these available. She meant she has another question about the slides. After they have given grant money, you cannot ask for more. Can the other person give you more on their side through their own choice? So, I am not 100% sure, Jessica, who the they is. So, I'm assuming it means--

BARBARA SHUMAR: The agency?

KATHLEEN MURPHY: Mhmm. And maybe she's asking the person you're lobbying, can a member of Congress choose to somehow donate to your project.

BARBARA SHUMAR: Generally, no. Generally, Congress does not get down into the level of-- they might send a letter to ask a couple of technical questions. But they're probably not going to

get down into the-- if you were disappointed with the funding you got on the grant, they're probably not going to force the agency to make a difference.

I don't know about HHS appeals questions. But they provided criteria on how they're going to evaluate you. I'm assuming it's a competitive grant. I'm assuming these are competitive grants, not mandatory. And so, they rated you based on that criteria. And once again, not knowing HHS policies, I'm assuming they awarded them in ranked order based on the criteria they rated them against. And that's how funding was doing it, was based on a criteria that was established.

So generally, as long as they followed that criteria and they can support it, there'll not be any change in some funding. And you need to remember that unfortunately, there's a lot of people vying for the funding, and a lot of times, federal agencies can't give you everything you want. But we try to give you some. That's just the land we live in these days.

KATHLEEN MURPHY: Yes. So that is why people try to push for more, for example. Because I did hear Dr. Forber-Pratt on a call last week talk about how many fantastic proposals they get in the door that get scored in the 90s. But you only have so much money, you can't fund all of them. So yes, we definitely encourage people who live in whatever state to support the disability-oriented causes with your members of Congress on your own.

Here's a comment from Beth Houlihan, who I'm pretty sure is an NIDILRR ideal grantee as well. She says, in light of COVID, we had a federal competitive grant, and the funder, the Health Research Services Administration, which is often called HRSA, asked us if we did get a supplemental year of funding, what would we do with it. They then put out a formal request for information to that end, and we got funded. So, do you think, Barbara, this is a typical scenario, or are we just like, nah, that's because of COVID?

BARBARA SHUMAR: That's because of COVID. Once again, not working for an agency that was really affected by COVID other than our projects are delayed because offices were closed and you couldn't get permits. But you know, in the health industry, there was a lot of money put out because services that were generally available were no longer available.

Daycare centers that you'd send your children to or a daycare center. So, a lot of those were closed down. So, there was more money to take care of in-home care and stuff that went out. So, I would say that was a COVID thing. And we want COVID to end, so hopefully we won't see it again.

KATHLEEN MURPHY: Although I do remember-- this is years ago. I mean, there are sometimes these instances where the federal administration decides to make something a priority. Like there was Biden's Cancer Moonshot. So, you know--

BARBARA SHUMAR: Right. Yes Yeah. When something comes up that's a priority, you might see it again. Or there could be a new funding appropriation for a new program, and you'll get more money that way. But generally, that comes out. They said, could you do more money, and they actually put out proposals to give you more money. You still had to apply for it. You didn't just get it. You had to give them some kind of information about what you're going to do with it, and I'm sure they had criteria they evaluated against, if I was a betting woman.

KATHLEEN MURPHY: Sure. And I can say, just in my own experience, obviously it's hard to track all of this, as people who have jobs other than tracking legislation. So, one way that I found really great is, some of those organizations that are on that Policy Portal, I just put the link in the chat. You can sign up for their newsletters because that is their job, to be tracking these pieces of policy or legislation within their topical area of expertise. So, then you can see what kind of calls they're putting out for support for disability-oriented initiatives.

And maybe your research really would help to inform policy. Because that's what this Center is about, is promoting the use and uptake of NIDILRR-funded research. And this week, talking particularly in the policy domain.

Pentra is noting, this is not something grantees have to worry about since it's action initiated by the agency, not grantees. And I think she means when they put out a request for comment. So, we have I'm guessing, Jamani Moore, is asking, how about a team of unpaid interns or volunteers? Because you really stressed, don't use the grant funds, that have been tasked with lobbying for an organization to local congressional offices.

Because the interns are volunteers themselves, aren't receiving any payments coming directly from the grant, even if the grant will provide the funds for them to become a paid employee in the future.

BARBARA SHUMAR: As long as they're not being paid at the time they're doing the lobbying, it's OK.

KATHLEEN MURPHY: OK and I would just kind of add on, having run an internship program, I'm assuming you can't charge your time to the grant that it takes to manage that task or the interns.

BARBARA SHUMAR: That is true. Yeah. If there's interns and you're managing those interns and they're doing lobbying, then you can't charge your time to the grant to manage those interns. That's correct.

KATHLEEN MURPHY: I think we have covered all of the questions in the chat. Doing a little scroll up here. OK, so seeing no more questions, we will go ahead and move to the next presentation.