



Relations with Non-Federal Entities

**Mr. Dean Raab
Standards of Conduct Office
DoD Office of General Counsel**

**Ms. Kyle Combs
Office of the Assistant
to the Secretary of Defense
(Public Affairs)**

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Roadmap

- **Define NFEs**
- **Principles and Rules**
- **Participation in NFE Events**
 - **Personal Capacity**
 - **Official Capacity**
- **Official Support to NFEs**
 - **Public Affairs / Community Outreach**
- **Analysis and Examples**





What is a NFE?

- **Any organization or individual other than the U.S. Government**
 - **Charities and not-for-profit organizations**
 - **Professional associations**
 - **Industry or Trade associations**
 - **State and local governments**
 - **Commercial enterprises**
 - **Clubs and organizations operating on a military installation**
 - **Professional sports teams**



Examples



Depiction ≠ Endorsement

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What do NFEs Request?

- **Government property (things)**
- **Government personnel (support, speakers)**
- **Official endorsement**
 - **Actual**
 - **Implied (e.g., use of seal/emblem)**
- **Information**



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Example



In-person briefings by senior DOD leaders



Opportunities to meet with DOD leaders in one-on-one meetings



A chance to interact and reconnect with peers from across the country



And an opportunity to get plugged back into a fast-changing policy environment



INVITED SPEAKERS



Lloyd J. Austin III
Secretary of Defense



Gen. Charles Brown, Jr.
Chief of Staff of the Air Force



Adm. Michael Gilday
Admiral, Chief of Naval Operations



Gen. James McConville
Chief of Staff of the Army

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defensecommunities.org/reconnect/
June 1, 2021



Concerns

- **Conflicts of interest**
- **Appearance of impartiality (*if active participant*)**
- **Government sanction or endorsement**
- **Preferential treatment**
- **Misuse of official resources**
- **Misuse of personnel**





Principles

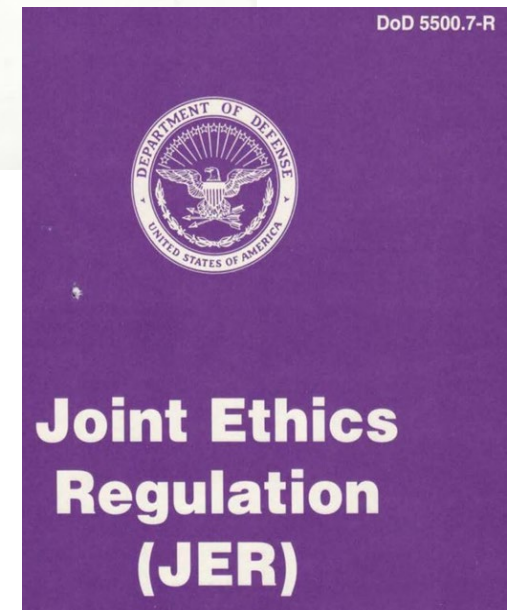
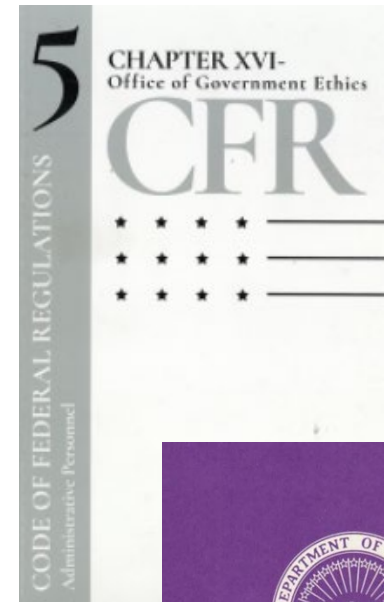
- **5 CFR 2635.101(b)**
 - **#8: Be impartial--no preferential treatment to private org. or individual**
 - **#9: Only use Gov't property for authorized activities**
 - **#7: Do not use public office for private gain**
 - **#2: No official actions that conflict with personal financial interests**





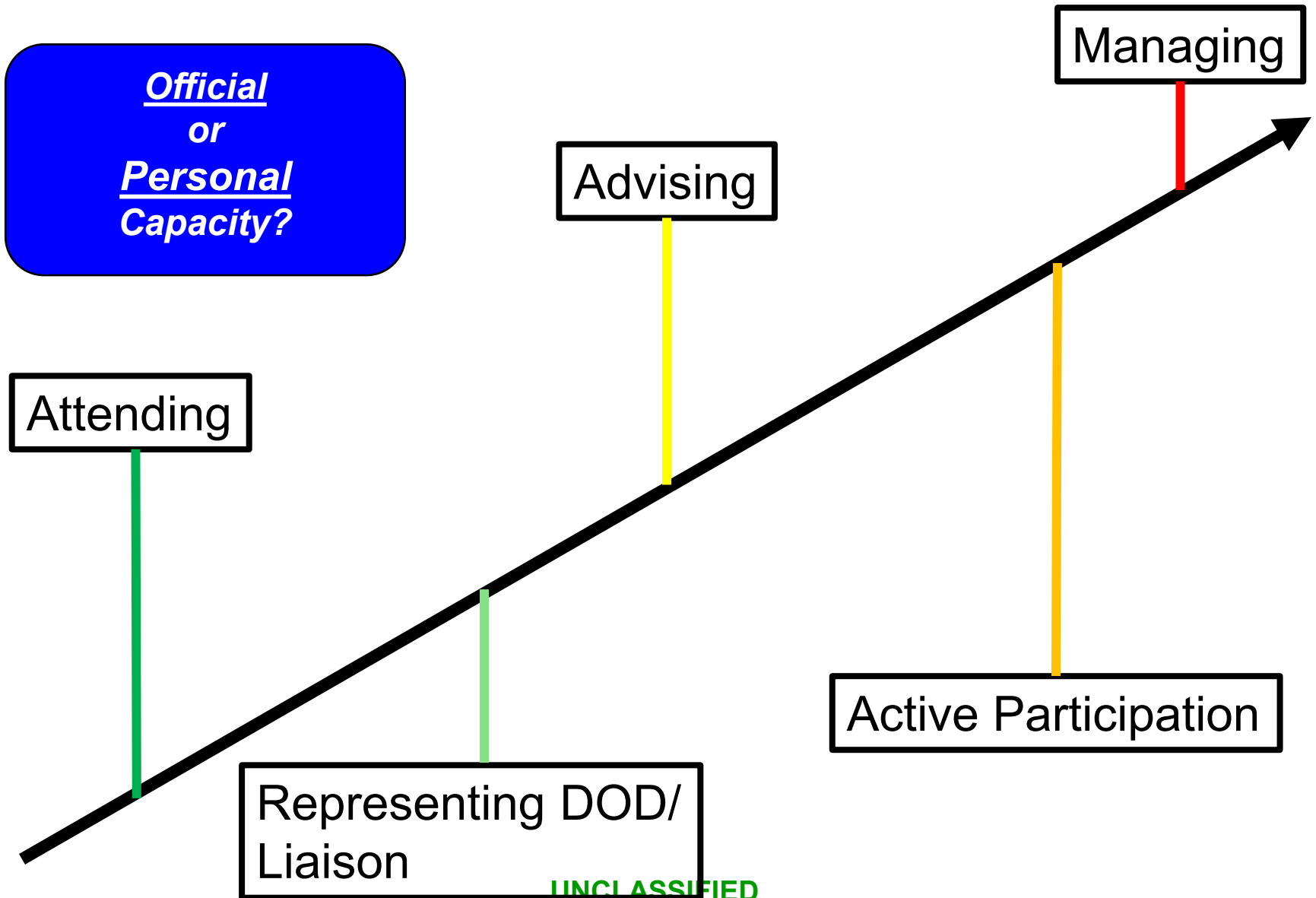
Rules

- **5 CFR 2635, Subpart G—
Misuse of Position**
 - 2635.702 – Private gain, appearance of gov’t sanction, endorsement
 - 2635.704, 705 – Use of gov’t property and official time
- **5 CFR 2635, Subpart H –
Outside Activities**
 - 2635.802 – Conflicting outside employment and activities
 - 2635.807 – Teaching, Speaking, Writing
- **JER Chapter 3**





Participation





Personal Capacity

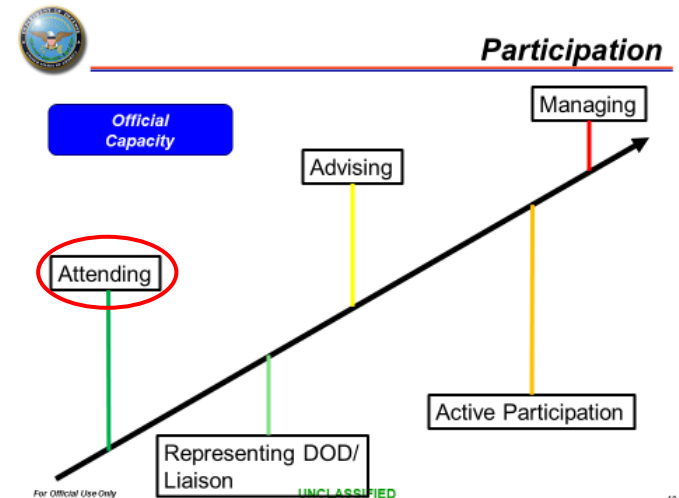
- **Personal capacity: permissible**
 - Must be voluntary and outside scope of official position
 - Use of Military grade/Department (CPT Smith, US Army) permissible but use caution
- **Potential issues:**
 - **Conflict of Interest with official duties?**
 - If holding position of trust, consider 18 USC 208
 - Senior Official limitations
 - **Impartiality?**
 - If active participant, consider 5 CFR 2635.502
 - **Representation?**
 - Prohibited by 18 USC 203/205
- **Cautions**
 - No preferential treatment, endorsement, coercion to join, use of official resources, disclosure of non-public information





Official Capacity

- **Attending NFE meetings: permissible**
 - Supervisors authorize attendance in official capacity when it serves an official purpose
 - Even if no actual cost, there must still be a legitimate purpose—watch for limited audience/special access
 - Other issues: Gifts of free attendance, meals, or travel

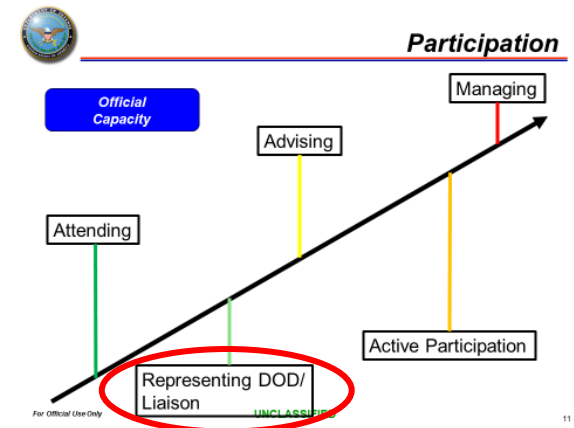


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Official Capacity

- **Representing DoD/Liaison**
 - Appointed by Head of DoD organization
 - If significant and continuing DoD interest served
 - Represent DoD interests to NFE
 - Official duty, but cannot bind DoD
 - No conflict of interest
 - Can use official time; reference title/position
 - No involvement in management of NFE
 - No voting
 - Practice tip: Written appt. memorandum



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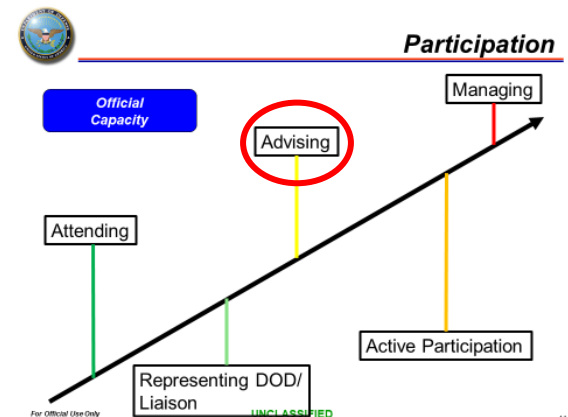


Official Capacity

- **Advising NFEs**
 - DoD personnel, acting in their official capacity, should not serve as advisors, consultants, or serve on advisory boards of NFEs that are DoD contractors
 - Customer focus groups may be permissible if done pursuant to a contract



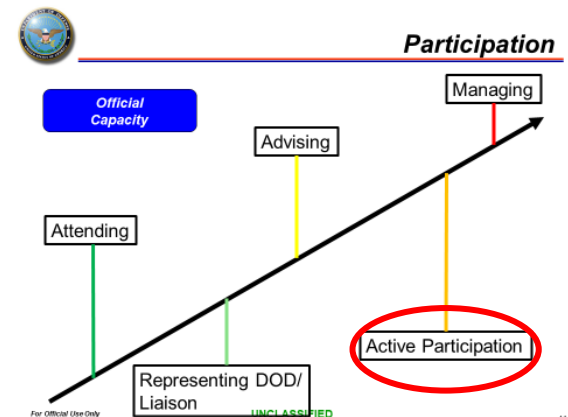
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Official Capacity

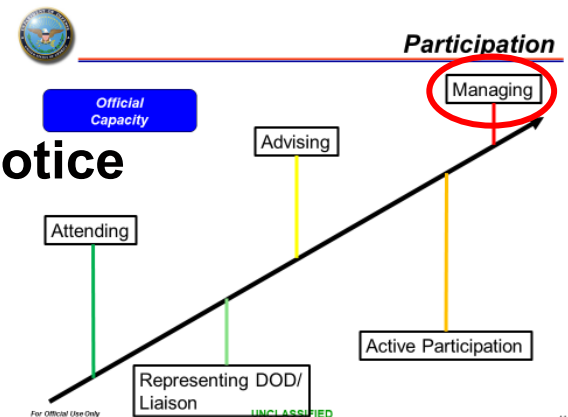
- **Active Participation**
- **Defense Standardization Program (DSP)**
 - Interface with non-Gov't standards bodies on standardization policy issues (interoperability)
 - Participate with defense treaty organizations and multinational organizations/forums on standardization policy
 - May actively participate as members of councils; may vote on behalf of DoD.
 - May not manage or control NFE.
 - DoDI 4120.24, DoDM 4120.24





Official Capacity

- **Management (JER 3-100)**
 - DoD personnel are generally prohibited from managing or serving in positions of trust with NFEs
 - Voting on internal NFE matters; serving as director, board member, trustee or other similar position
- **Exceptions only by statute and with DoD GC approval**
 - 10 USC 1033 (Military); 10 USC 1589 (Civilian)
 - Military Welfare Societies
 - Non-profits that:
 - Regulate performance, standards, and policies of Mil. Healthcare Facilities
 - Regulate athletic programs at service academies
 - Accredit service academies and other mil. schools
 - Other specific statutory authority exists
 - Written request to DoDGC and Fed. Reg. notice
- 5 CFR 2640.203(m) exemption (COI)
- Very limited circumstances





Boards of Directors (BOD) Policy

- **DoD Policy**
 - **No compensation for service on BOD**
 - **No BOD service if NFE is a DoD contractor or focuses its business on military members**
- **Applicability**
 - **General/Flag Officers (Regular and Reserve, but see policy)**
 - **O-6 and below; E-9 serving in installation leadership position**
 - **Ethics official may grant waiver for O-6 and below and E-9 upon finding of no endorsement**
- **Does not preclude if authorized by law or regulation**
- **Authority: USD P&R Memorandum, Nov. 30, 2012**
 - **SOCO website**
 - **JER 3-202**



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Support to NFEs



MARYLAND FLEET WEEK & AIR SHOW BALTIMORE

September 9 - 15, 2020





Concerns

- **Conflicts of interest**
- **Appearance of impartiality (if member)**
- **Government sanction or endorsement**
- **Preferential treatment**
- **Misuse of official resources**
- **Misuse of personnel**





Principles

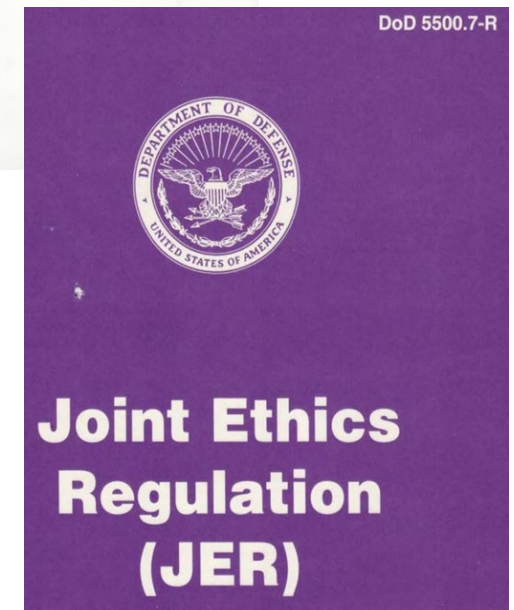
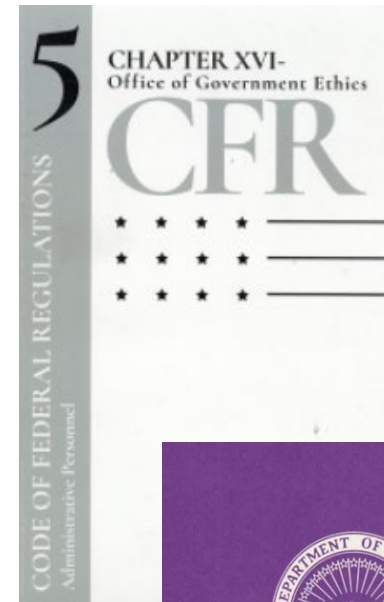
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Rules

- **5 CFR 2635, Subpart G—
Misuse of Position**
 - 2635.702 – Private gain, appearance of gov't sanction, endorsement
 - 2635.704, 705 – Use of gov't property and official time
- **JER Chapter 3, Para 3-211**
- **Very important change!**
- **DoDI 5410.19, Vols 1-4 (Sept. 2021)**





Official Support to NFEs

- **General Rule: Prohibited**
- **Exceptions**
 - Support authorized by statute
 - Military Relief Societies
 - Private organizations on DoD Installations
 - Limited Logistical Support
 - Community Outreach



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Support Authorized by Statute

- For complete list, see
 - *DoDI 1000.15, Encl. 3*
 - *DoDI 5410.19, Vol 2, Table 1*
- **Examples:**
 - Medical (HJF, ARP)
 - Scouting
 - National Military Associations
 - Assistance at Nat'l Conventions only
 - USO
 - American National Red Cross
 - Military Relief Societies
 - Annual NDAA may contain special authority
- **Ensure you are aware of the statutory limits on permissible support; each statute unique**

Airmen provide expertise, medical support at 100th National Boy Scout Jamboree

By Staff Sgt. Jessica Switzer, Defense Media Activity - San Antonio / Published July 30, 2010



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Ex: Military Relief Societies

- **Support authorized within service regulations**
- **Authority to endorse membership and fundraising drives (among own members)**
 - **JER 2-400**



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Ex: Private Orgs. On DoD Installations

- **DoDI 1000.15 requirements must be met**
- **No special privileges (JER applies)**
- **Must not appear to be official**
 - **No logos**
 - **Name OK, but disclaimer required**
- **Requires approval by installation commander**



Examples



CPHS 4th "Golf With a Hero" Charity Golf Tournament



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Former Limited Logistical Support

Old JER 3-211(a) **(REMOVED FROM JER IN 2024)**

- (1) No interference with official duties;**
- (2) Supports public affairs or community relations;**
- (3) Appropriate for DoD association;**
- (4) In the interest of, or benefit to, local community or DoD;**
- (5) DoD willing to provide similar support to similar NFEs;**
- (6) Support not restricted by statute/regulation; and**
- (7) No admission fee (beyond reasonable cost); if fee is excessive (>\$804/day), DoD support to event reduced from “limited” to “incidental.”**

- **See also, DoDI 5410.19, Vol 2, Para. 3.3 (Sept. 29, 2021).**
- **Must still determine whether there is authority to provide support. If no explicit authority, then you may consider community relations, but must look to DoDI 5410.19 for guidance.**

Incidental: Negligible or minimal impact on planning, scheduling, functioning, or audience draw of a public event. <20% DoD speakers.



Public Affairs / Community Outreach

- **PA equities in NFE relations**
- **Key PA policies**
 - **DoDI 5410.19, Volumes 1-4, Community Outreach Activities**
 - ✦ **Vol 1: Policy Overview**
 - ✦ **Vol 2: Speaking, NFE Support**
 - Vol 3: Patriotic & Military Observances**
 - Vol 4: Ceremonial, Musical, Aerial Support**
 - **DoDI 5535.12, DoD Branding and Trademark Licensing Program Implementation**
 - **DoDI 5400.17, DoD Official Use of Social Media**
 - **NEW: DoDI 5400.18, Public Affairs Procedures and Operations for Political Campaigns and Elections**
- **Typical requests**
 - **Speaking engagements**
 - **Flyovers**
 - **Band performances**
 - **Sporting events**



Community Outreach



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Community Outreach

- **An official DoD purpose**
 - Is event part of an approved plan?
- **Coordination with PA is critical**
- **Standardized Decision Worksheet for Military Support Requests**



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Standardized Decision Worksheet for Community Outreach Requests

13-Page Worksheet – can be a required document in the staffing packet, to determine eligibility for support.

PART I: SPONSOR CRITERIA

Has a DD Form 2535 (aviation) or DD Form 2536 (bands, color guards, and other support) been completed?

- If no, stop and have requester complete the appropriate form.
- If yes, proceed to next question.

Is the requesting organization a U.S. Federal agency or official entity of a State or local government?

- If yes, continue to Part I of Section 1.
- If no, continue to Part I of Section 2.

Part I, Section 1: Location of Federal, State, or Local Government Event

Is the Federal, State, or local government event within the NCR?

- If yes, continue to Part I of Section 1a.
- If no, continue to Part I of Section 1b.

Part I, Section 1a: Federal/State/Local Government Events in the NCR

Note: Requests for military participation in official Federal/State/local government events in the NCR are submitted to the U.S. Army Military District of Washington (MDW) Ceremonial and Special Events Office via fax at 202-685-3379 for coordination.

Was the request received by MDW at least 10 working days before the event?

- If no, stop. Generally, such a request is not supportable according to MDW processing timelines.
- If yes, obtain a copy of the event agenda to confirm details of Federal/State/local government sponsorship and eligibility for support as an official Federal/State/local government event. Continue to next question.

Is this an official Federal, State, or local government event? (Must answer yes to questions 1-4 below to receive consideration for support as an official Federal/State/local government event.)

- 1. Is it sponsored in whole or predominately by an element of Federal/State/local government?
- 2. Is the event paid in whole or in part with U.S. Government funds?

Was the request received at least 30 days before the event (or whatever the local installation's request policy states)?

- If no, further review is not required, and the event does not have to be considered. However, further review is subject to Military Department's standard operating procedures.
- If yes, obtain a copy of the event agenda to confirm Federal/State/local government event d

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Is the event o

- 1. An organization that specifically excludes any person from its membership for reasons based on race, color, national origin, religion, age, disability, sex, gender identity, or sexual orientation.

Exception: Support might be permitted for organizations with membership restrictions in limited circumstances when the event is of community-wide

- If no (e.g., event is internal for employees or invited guests only) this event may typically be supported. Proceed to Part IV.
- If yes, this event may typically be supported; however, reviewer should proceed to Part II to ensure program complies with other DoD community outreach policy restrictions.

PART I, Section 2: Non-Federal/State/Local Government Agency Requests

Is this request for a DoD aerial demonstration?

- If yes,
 - Was the request received at least 30 days before the event?
 - If no, this event is not supportable due to insufficient time to properly process the request. Stop.
 - If yes, proceed to the next question about the sponsoring organization.
- If no, proceed to next question.

Is this request for a band, color guard, or other ceremonial unit?

- If yes,
 - Was the request received at least 30 days before the event?
 - If no, further review is not required due to the lack of coordination time. The event does not have to be considered. However further review is subject to Military Department's standard operating procedures; requester's expectations must be managed if support is considered.
 - If yes, proceed to the next question.
- If no, proceed to the next question.

Does the requesting/sponsoring organization fit into any of the categories below?

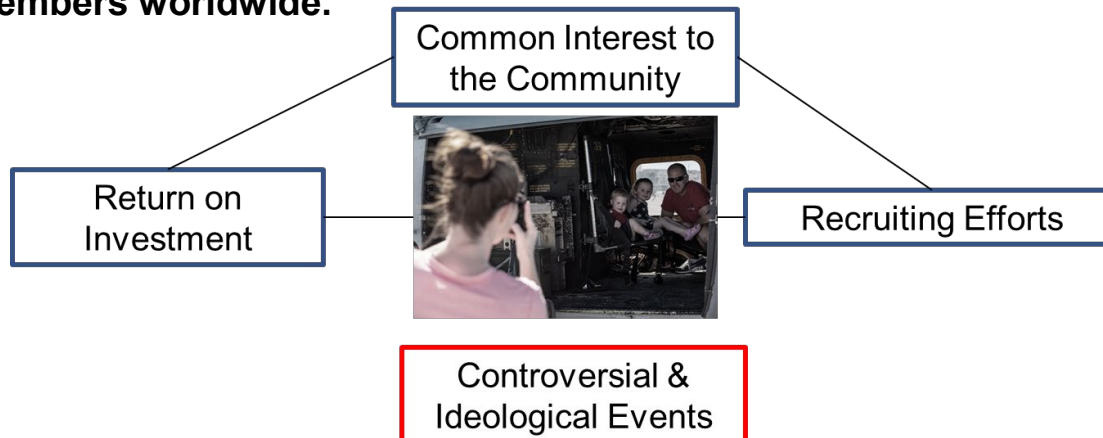
- 1. An organization that specifically excludes any person from its membership for reasons based on race, color, national origin, religion, age, disability, sex, gender identity, or sexual orientation.



Policy Overview and Evaluation Procedures

Community outreach activities implemented by DoD Components will:

1. Increase public awareness, trust, and understanding of the DoD and the Military Departments, including their missions, activities, policies, and requirements.
2. Inspire patriotism through observance of the traditions of the Military Departments and the examples set by Service personnel.
3. Preserve new and enduring overseas relationships with allies, coalition, and multi-national partners.
4. Maintain a reputation as a good neighbor within communities at home and abroad, as well as a respected and professional organization charged with the responsibility of national security.
5. Support the personnel recruiting and retention programs of the Military Departments.
6. Engage, educate, and empower the public, at home and abroad, to support the DoD and Service members worldwide.





Policy Overview and Evaluation Procedures

RESTRICTIONS, REQUIREMENTS, AND ETHICAL CONSIDERATIONS

- 1. Restricted Admission**
- 2. Restricted Membership**
- 3. Restricted Access to Organizational Data**

Community outreach support of events sponsored by organizations whose constitution, bylaws, membership qualifications, or ritual are withheld from the public are not authorized.
- 4. Civilian Visitors Interaction with Military Equipment**
- 5. Surprise Welcome Homecomings and Similar Events**
- 6. Demeaning or Menial Use of DoD Personnel**
- 7. Voluntary Support: Official versus Unofficial Capacity**
- 8. Incidental Participation**
- 9. Participation in Partisan Political Activities**
- 10. Fundraising Events**



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Logistical Support (Broadly)

JER 3-102 (previously 3-211)

- **Support provided to NFEs, including speakers, must be in accordance with DoDI 5410.19 (Volumes 1-4, “Community Outreach Activities”) and DoD Conference Guidance, Version 4.0, as applicable.**
- **DoDI 5410.19, Volume 1, requires support to be incidental:**
 - **Does DoD participation add measurable programmatic value or improvement to the perceived quality, audience draw, or other aspect of the event or activity?**
 - **If proposed DoD support is withheld from the event, would the event still be able to proceed successfully without significant degradation of the perceived quality, audience draw, or other aspect of the event or activity that would have been provided by DoD participation?**
 - **DoD participation in a public event is not necessarily precluded when a general admission fee is charged if DoD participation is incidental.**
 - **DoD participation in an event where there is an admission fee or other type of charge will not be authorized when military participation is a primary attraction (Exceptions: Athletic events of the Military Department academies, performances by aerial demonstration teams, and certain band concerts).**



Limited Logistical Support (Equipment)

In accordance with DoDI 5410.19, Vol 2, Paragraph 3.2.a., these criteria must be met to loan DoD facilities and equipment (and the services of DoD personnel necessary to ensure proper use of equipment):

- (1) No interference with official duties.**
- (2) Supports public affairs or community outreach.**
- (3) Associating with the event is in the DoD's best interest.**
- (4) Event is of interest and benefit to community as a whole and DoD.**
- (5) No admission fee beyond what is reasonable to cover the costs of sponsoring the event may be charged for the portion supported by the DoD. DoD support must be incidental to the entire event.**
- (6) DoD willing to provide similar support to similar NFEs when the events meet the criteria of (1) through (5).**
- (7) In most instances, the DoD must be considered the supplier of last resort. Community outreach support generally must not be provided when support could be obtained reasonably by commercially available resources.**
- (8) No support to events or programs where the real or apparent purpose is to stage controversy or confrontation.**



ATSD(PA) Memo Community Outreach Support to NFEs



ASSISTANT TO THE SECRETARY OF DEFENSE
1400 DEFENSE PENTAGON
WASHINGTON, DC 20301-1400

PUBLIC AFFAIRS

18 AUG 2023

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
CHIEFS OF THE MILITARY SERVICES
CHIEF OF THE NATIONAL GUARD BUREAU
COMMANDERS OF THE COMBATANT COMMANDS

SUBJECT: Community Outreach Support to Events Sponsored by Non-Federal Entities

This memorandum serves as a reminder of Department of Defense (DoD) public affairs policy regarding support to events sponsored by non-Federal entities (NFEs), including fundraisers. Specifically, when support is requested by an NFE, each event must be individually assessed. No prior guidance or approval for support should be used as justification for providing support at NFE-sponsored events.

Section 4.8 of Volume 1 of DoD Instruction (DoDI) 5410.19, "Community Outreach Activities: Policy Overview and Evaluation Procedures," requires commanders, public affairs officers, and legal counsel to ensure DoD participation in NFE-sponsored events is incidental and serves a community outreach purpose. As defined in Volume 1 of DoDI 5410.19, incidental support means the event could proceed undeterred without DoD participation, adding minimal programmatic value, if any.

Section 4.10 of Volume 1 of DoDI 5410.19 provides further guidance regarding DoD support to NFE-sponsored fundraising events. Paragraph 4.10.b prohibits active and visible DoD participation in fundraising events, meaning the collective military support provided to fundraising events may not be the principal draw or attraction for attendees.

Individual Service members who are invited to participate in NFE events in an official capacity to represent the DoD or a specific Military Department must notify their local public affairs and legal offices to receive instructions to ensure compliance with DoD and Military Service public affairs policy as well as Executive Branch and DoD ethics regulations. This does not preclude personnel from participating in a personal capacity, but those who participate in a personal capacity should ensure they comply with the applicable guidance regarding uniform wear, refrain from referring to their official duty position, and ensure that their participation does not imply DoD sanction or endorsement of the event or the NFE sponsor.

I appreciate your efforts to engage and educate the public about DoD missions and those who serve while ensuring compliance with this policy. Please contact Mr. David Nokes in my Directorate of Community Engagement at david.l.nokes.civ@mail.mil with any questions.


Chris Meagher



- **Only incidental support allowed, adding minimal programmatic value, if any.**
- **Participation in an official capacity to represent the DoD:** Coordinate with local PA and legal offices.
- **Participation in a personal capacity:** Follow guidance regarding uniform wear, refrain from referring to official duty position, and ensure participation does not imply DoD endorsement of event or NFE sponsor.

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Voluntary Support: Official vs. Unofficial Capacity

Official Capacity

- Includes responding to a PA call for volunteers
- No indemnification or hold harmless agreements and waivers for use of likeness without consulting local PA and legal counsel



Unofficial Capacity

- Wear of the uniform approved by local, immediate commander (DoDI 1334.01)



- Military chef competitions / events
- Entertainment media (personal capacity)
- Individual participation in parades

Reference: DoDI 5410.19, Vol 1, Section 4.7

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Fundraising Events



A Force of Nearly 600 Celebrates the Northwest's Service Members of the Year and Raises Over \$600,000 at 2019 USO Five-Star Gala



- Any military support in fundraising events must be incidental.
- DoD Components will not actively and visibly participate in fundraising events as proscribed by Subpart 2635.808 of Title 5, CFR.
- Military musical units may perform a patriotic opener at an NFE-sponsored fundraising event.
 1. No Service member or DoD employee will engage in direct appeals for funds.
 2. Musical unit's appearance must not be used as a draw.
 3. Military musical units must depart the premises following the presentation of colors and may not remain for any other portion of a fundraising event.
 4. Military musicians performing in a personal capacity must wear civilian attire and may not be identified by their military service, rank, or unit.



Additional Concerns – Trademarks, Awards, Speaking, Bands

DOD Trademark Licensing Guide

[Part I: Official Military Service Seals & Other Trademarks](#)

[Part II: General Guidance](#)

[Part III: NFE's Use of Military Service Marks](#)

[Part IV: Colleges and Universities Use of Military Service Marks](#)

[Part V: Legislative References](#)



Important Information and Guidelines About the
Use of Department of Defense Seals, Logos,
Insignia, and Service Medals

Use of Logos

- Endorsement
- Protection of Intellectual Property
- DoD Trademark Licensing Guide:
<https://www.defense.gov/Resources/Branding-and-Trademarks/DOD-Trademark-Licensing-Guide/>

NFE Award Presentations

- Avoid DoD personnel presenting NFE awards

Bands (primarily patriotic openers)

- Statutory prohibition against use at activity not paid for by appropriated funds





Additional Concerns – Official Use of Social Media

Use of Social Media

- PA may notify DoD employees of NFE-sponsored events of common interest (DoDI 5410.19, Vol 2, Para. 3.7).
- DoD official accounts and channels may publicize an NFE visit to a DoD installation authorized as community outreach.
- Liking, sharing and re-posting NFE content that recognizes military service, DoD outreach or other effort, with the intent to amplify DoD objectives does not necessarily imply endorsement.
 1. Other factors may also need to be considered to determine if a reasonable person would view as endorsement.
 2. Avoid statements that could be construed as DoD endorsement (e.g., call to action to support NFE).



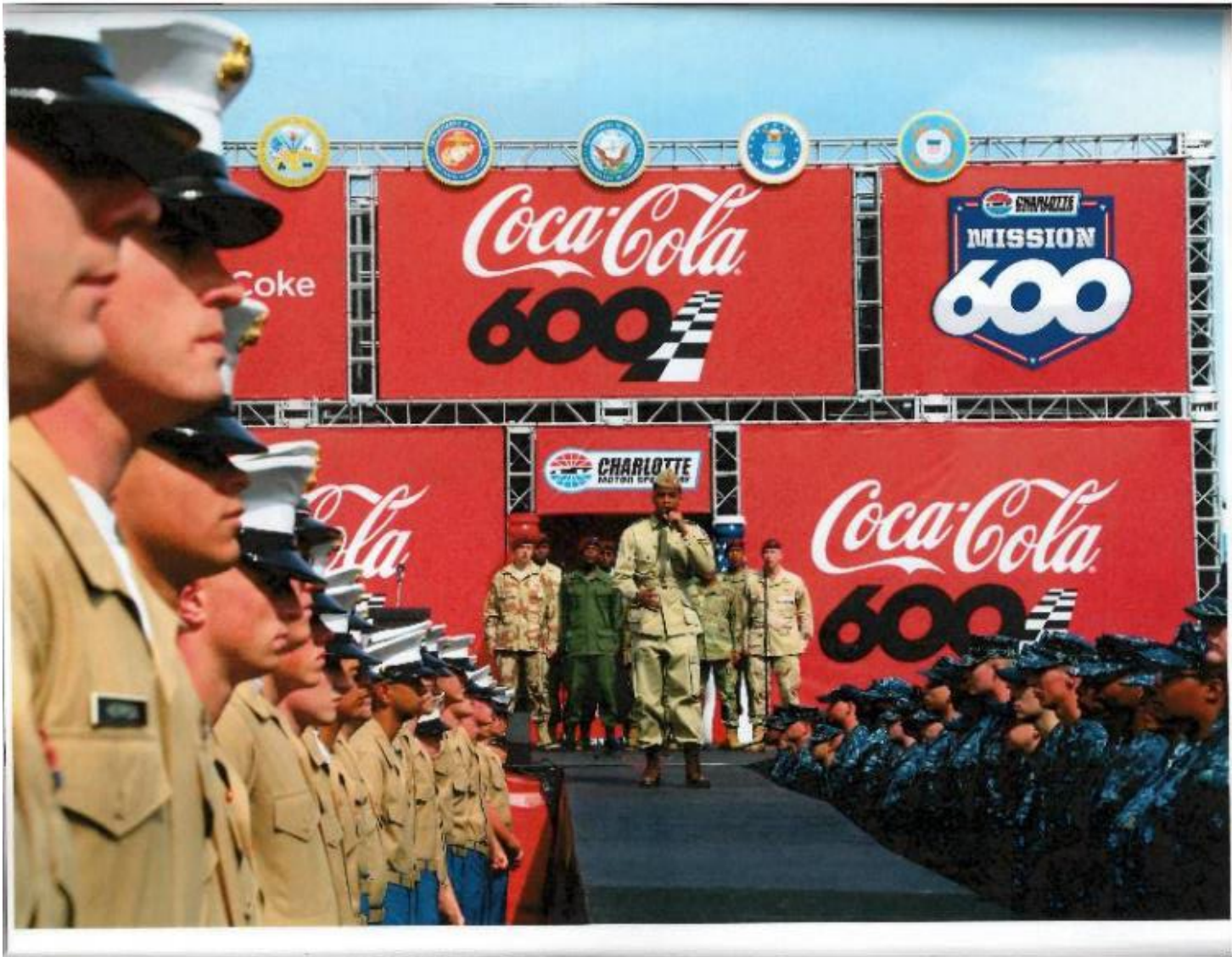


Final Thoughts

- **Engagement with NFEs is permissible**
- **When participating in NFE matters ensure there is no**
 - **Conflict of interest**
 - **Endorsement**
 - **Preferential treatment**
- **When participating in NFE activities in an official capacity, determine authority/approval, and limits of activities**
- **When analyzing requests for NFE support, determine whether authority exists to provide the requested support**
 - **Specific statutory/regulatory authority**
 - **Community outreach**
- **Coordinate closely with your PA office**
 - **Standardized support worksheet for military support requests**
 - **DoDI 5410.19 (Vols 1-4), Community Outreach**
 - **Protect DoD marks from unauthorized use**
 - **Carefully consider how social media is used when referencing NFEs**
- **Consider other ethics issues such as gifts**



Questions?



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