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# ***Relations with Non-Federal Entities***

**Dean Raab**

**Standards of Conduct Office**

**DoD Office of General Counsel**

**April 2023**

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# Roadmap

- **Define NFEs**
- **Principles and Rules**
- **Participation in NFE Events**
  - **Personal Capacity**
  - **Official Capacity**
- **Official Support to NFEs**
- **Analysis and Examples**





# *What is a NFE?*

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- **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/](https://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**

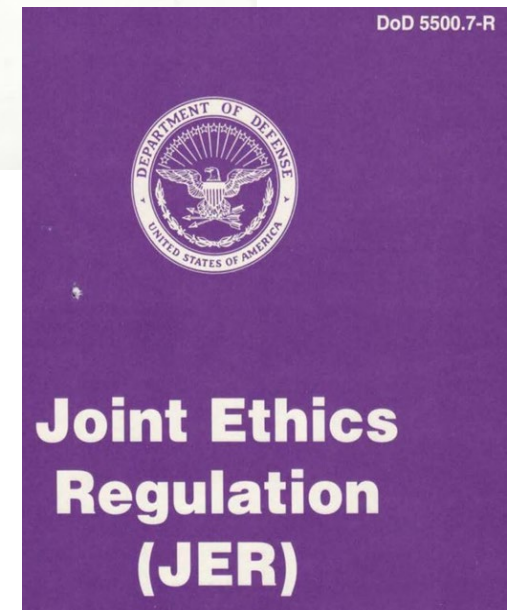
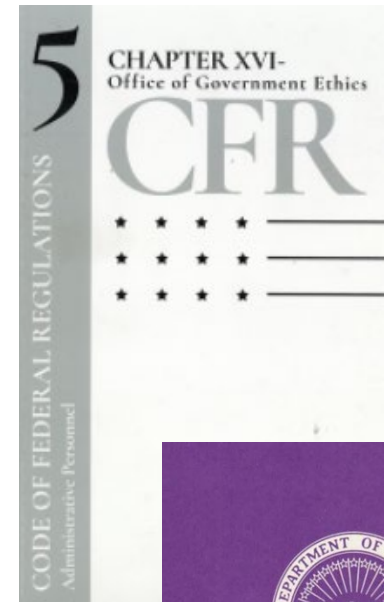






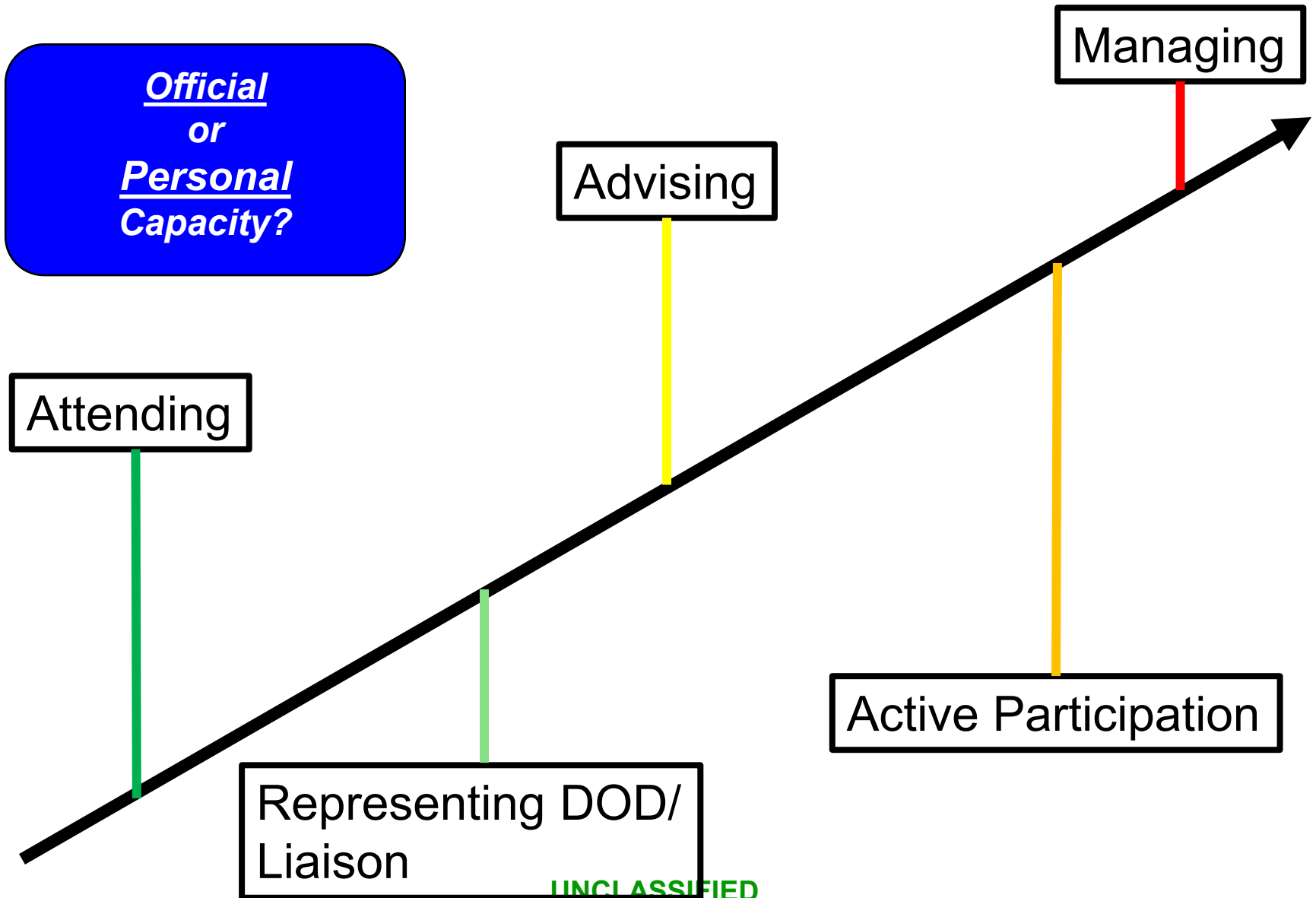
# Rules

- **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

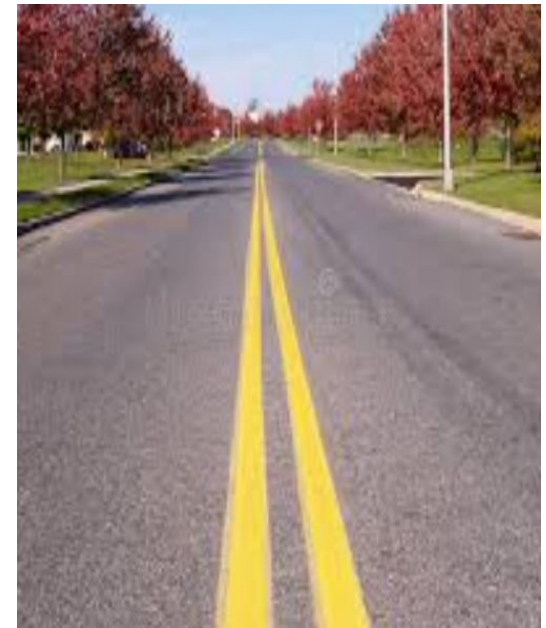


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# *Personal Capacity*

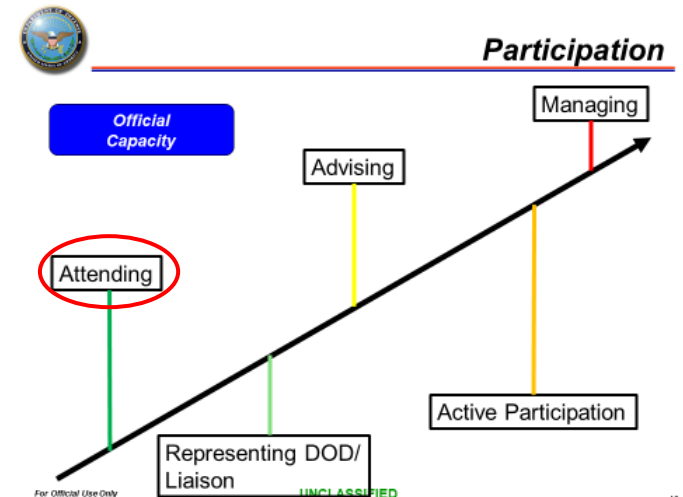
- **Personal capacity: permissible**
  - Must be voluntary and outside scope of official position
  - Use of Military grade/Department (CPT Smith, US Army) permissible but use caution
- **Potential issues:**
  - **Conflict of Interest with official duties?**
    - If holding position of trust, consider 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 (JER 3-200)
  - 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

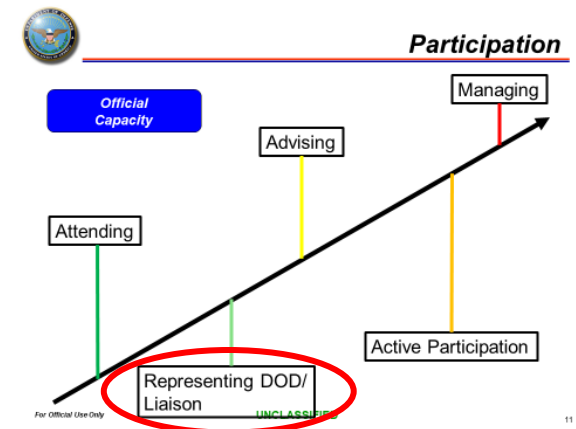


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# Official Capacity

- **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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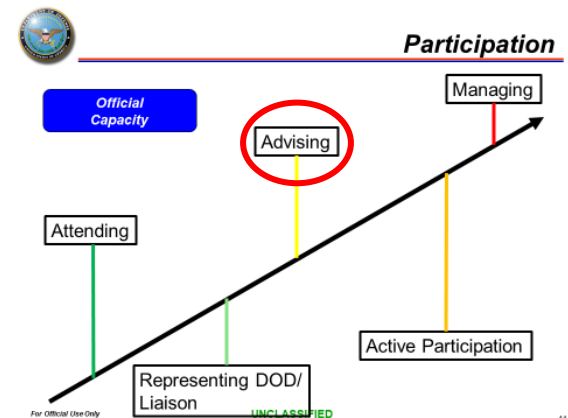


# Official Capacity

- **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



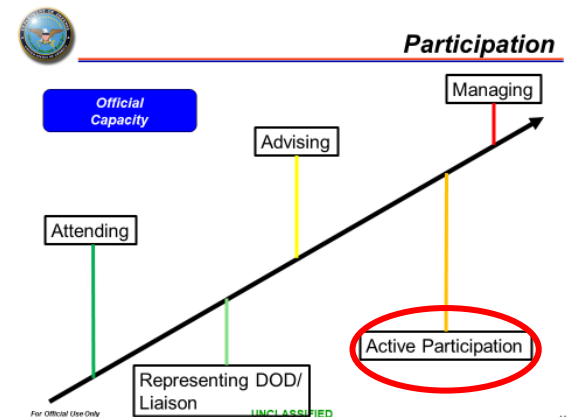
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# Official Capacity

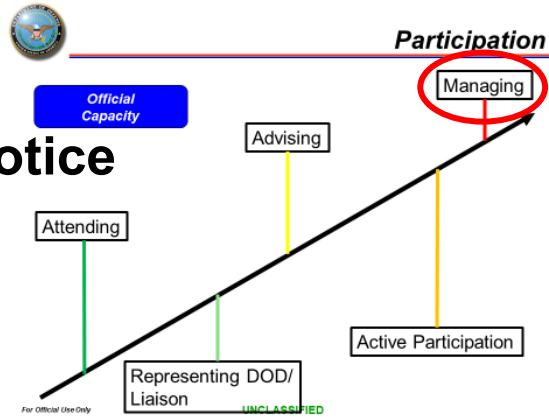
- **Active Participation**
- **Defense Standardization Program (DSP)**
  - Interface with non-Gov't standards bodies on standardization policy issues (interoperability)
  - Participate with defense treaty organizations and multinational organizations/forums on standardization policy
  - May actively 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 3-202)**
  - 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***

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- **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**



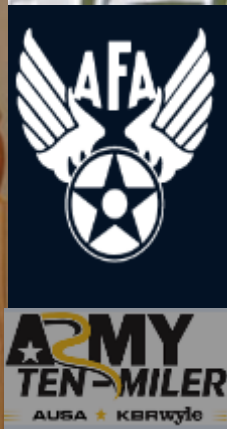
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# Support to NFEs



## 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

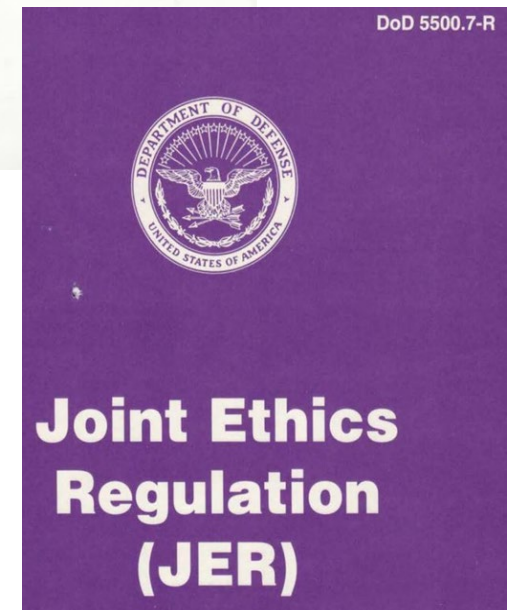
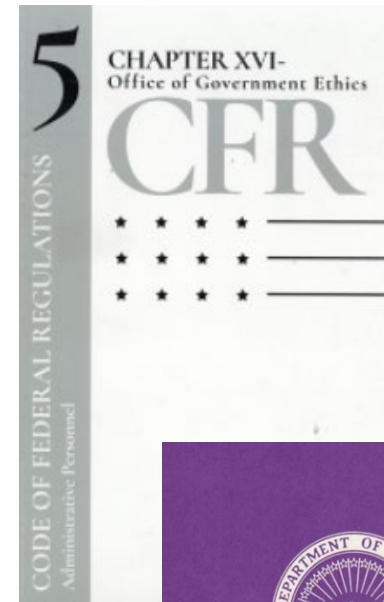
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  - 2635.704, 705 – Use of gov't property and official time
- **JER Chapter 3, Para 3-211**
- **DoDI 5410.19, Vols 1-4 (Sept. 2021)**





# *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 3-210







## ***Ex: Private Orgs. On DoD Installations***

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- **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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# Limited Logistical Support

## JER 3-211(a)

- (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.



# *Requests for DoD Property*

- **Use JER 3-211 analysis**
- **Examples:**
  - **Meeting rooms, Naval vessels for parties, medical supplies, etc.**
- **Additional restrictions:**
  - **Applicable regulations for motor vehicles, MWR facilities (golf courses), GSA buildings, etc.**
  - **No competition with local vendors**





# Speaking

- **Mission need/policy speech**
  - Encouraged by DoD policy
    - JER 3-211(c) and DoDI 5410.19, Vol 2, Sec. 5
  - No JER 3-211(a) “support” analysis needed
  - Gift issues?
- **Community Outreach speech**
  - JER 3-211(a) analysis
  - Public affairs guidance



**VS.**

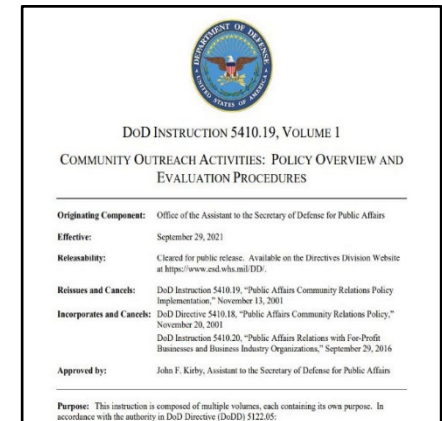


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# Community Outreach

- **An official DoD purpose**
  - Is event part of an approved plan?
- **Coordination with Public Affairs is critical**
- **References:**
  - **DoDI 5410.19, Sept. 29, 2021**
    - **Vol 1: Policy Overview**
    - **Vol 2: Speaking, NFE Support**
    - **Vol 3: Patriotic & Military Observances**
    - **Vol 4: Ceremonial, Musical, Aerial Support**
  - **Vol 1, App. 6A: Standardized Decision Worksheet for Military Support Requests**





# ***Additional Concerns***

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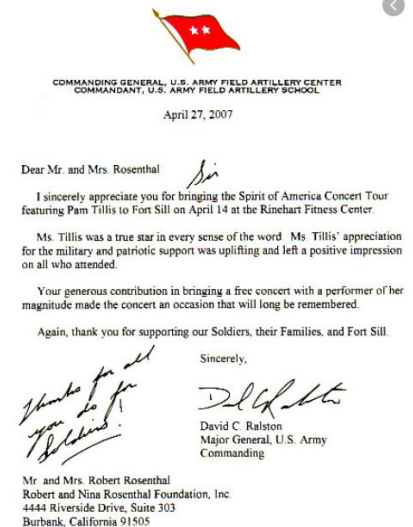
- **Use of logo**
  - **Endorsement**
  - **Protection of Intellectual Property**
- **Restricted access events**
- **DoD can't be the 'draw' for event**
- **Non-public information**
- **Impartiality of agency designee and travel approving official**





# Support ≠ Endorsement

- **General Rule: No endorsement of a NFE, event, product, service. Punitive restriction in JER.**
- **What is an endorsement?**
  - **Explicit (Present award; Honorary Chairperson)**
  - **Implied (Misuse of photo or other protected mark)**
- **Permissible if authorized by statute or documenting compliance or recognition**
  - **e.g., Military Welfare Societies**
- **Cautionary areas:**
  - **Official correspondence (esp. thank you notes), official photographs, social media**
- **Disclaimers**







# *Protecting Intellectual Property*

<https://www.defense.gov/Resources/Trademarks/DOD-Trademark-Licensing-Guide/>

## 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](#)



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

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# Other Personnel Support

- Bands – generally patriotic opener only
  - **Statutory prohibition** against use at activity not paid for by appropriated funds
- Menial purposes prohibited
  - Ushers, guards, escorts, crowd control, caddies/pin holders
  - DoD 5410.19, V1, para. 4.6





# *Final Thoughts*

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- **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 public affairs office**
  - *Standardized Support Worksheet for Military Support Requests*
- **Consider other ethics issues such as gifts**