

# Relations with Non-Federal Entities

**Standards of Conduct Office  
DoD General Counsel**

*Feat. Outside Activities and Use of Government Resources*

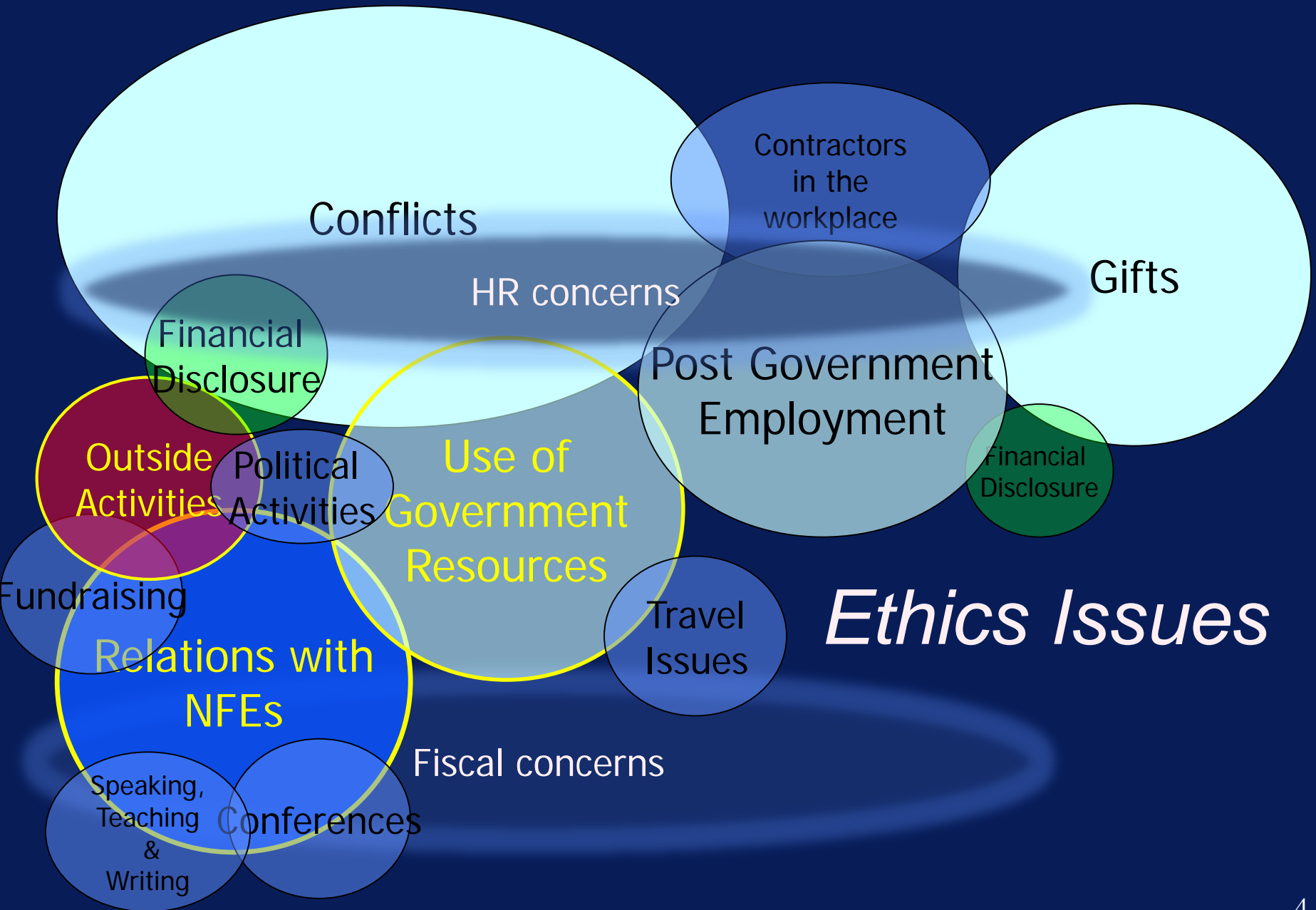
# ***Why Non-Federal Entities?***

→ SJA's tell us:

- Toughest issues
- Lots of questions about lots of NFEs
- High pucker-factor (GO/FO *personal* interest)

# *Goals of Presentation*

- Introduce framework for analysis
  - Where does this fit?
  - Where do I start???
- Tackle common problems together



# ***What is an NFE?***

Any organization or individual other than the U.S. Government.

- Charities and not-for-profit groups.
- Professional associations.
- Local and state governments.
- Spouses' clubs.
- Commercial enterprises.

# *Examples of NFEs*

- AUSA, Navy League, Air Force Association
- Spouses' clubs
- USO/American Red Cross
- Chambers of Commerce
- Military relief societies
- Commercial vendors

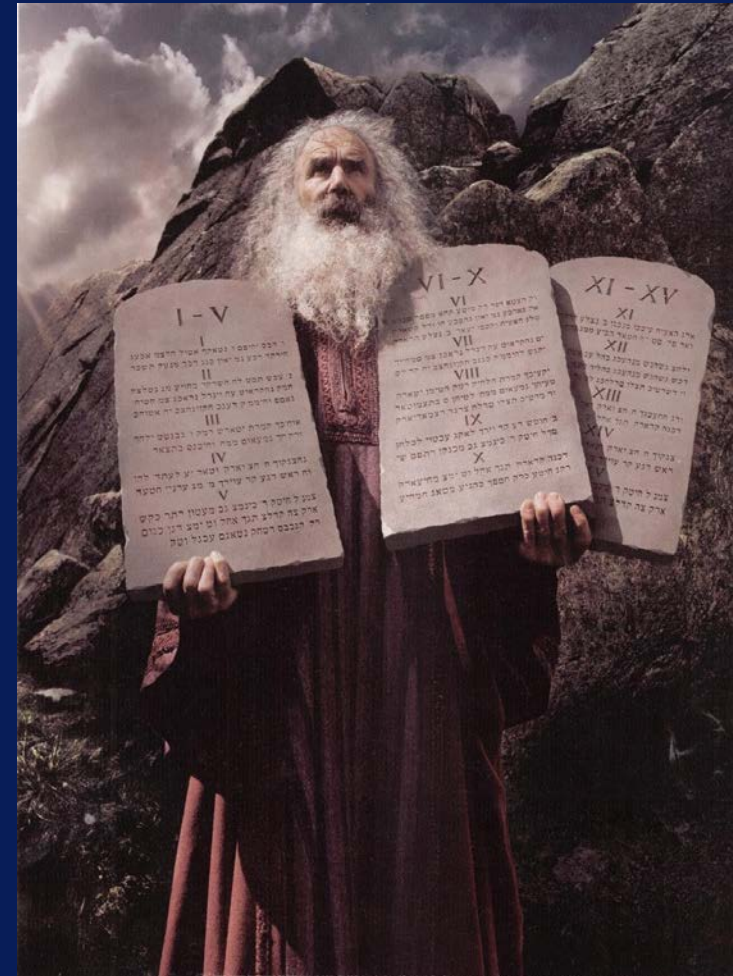


# ***What do NFEs Want?***

- Government property (things)
- Government personnel
- Official endorsement
- Official sanction (Use of Seal)
- Information

# Principles

- Use Gov't property for **authorized purposes only**
- May not use public office for **private gain**
- **Preferential treatment** prohibited
- No official actions that **conflict** with personal financial interests



# ***Authorities to Render Support: Use of Gov't Resources***

- Government resources, time, or equipment may not be used for unauthorized purposes  
(31 U.S.C. 1301)
- (Teaching point: It's the taxpayers' money, Stupid!)

# ***NFE Issues Breakdown***

## ***First concern***

### **Outside Activities**

#### **“Human Resources”**

#### **→ Participation with NFEs**

- ✧ Attending meetings
- ↓ Representing Agency
- ↓ Advising
- ↓ Active participation
- ✧ Managing

## ***Second Concern***

### **Use of Government Resources**

#### **“Fiscal Authority”**

#### **→ Support to NFEs**

- ✧ Authorized purpose
- ✧ Consider nature of event
  - “mission essential”
- Vs.
- “outreach” or “community relations”
- ✧ Logistical support
- ✧ Financial support
- ✧ Speaking support

# *Participation Analysis*

- official or personal capacity
- increasing levels of relationship
  - ⌘ mere meeting attendance
  - ⌘ representing DoD to NFE
  - ⌘ advising NFE
  - ⌘ actively participating with NFE
  - ⌘ managing NFE

# *Attending Meetings*

## → Official Capacity

- ✧ Supervisors **may** authorize attendance in an official capacity at Government expense when it serves official purpose
- ✧ Even if no cost, purpose must be legitimate—watch for limited audience/special access

## → Personal Capacity – Must be clear

# Representing DoD



## → Official Capacity

- ❧ Serving on Boards, Councils, etc
- ❧ If directly serve, duty of loyalty
- ❧ Solution – Liaisons, JER 3-201
  - Heads of DoD organizations may appoint when there is a **significant and continuing** DoD interest
  - Represent DoD's interests to the NFE

# *Official Liaison*

- No fiduciary duty, so no conflict of interest
- Discuss mutual interests and non-binding
- Official duty, so
  - ❧ Official time and resources
  - ❧ Use official title & position
- **NO management!!**
- Limited personal liability
- YES! YES! YES! YES! YES!

# *Serving With NFEs*

## → Personal Capacity *concerns*

- ⌘ When hold position of trust, 208 disqualification
- ⌘ When active participation, 502 disqualification
- ⌘ Do not represent NFE to the Feds
- ⌘ Do not solicit subordinates or prohibited sources

# *Serving With NFEs*

## → Personal Capacity *cautions*

- ❧ No preferential treatment
- ❧ No endorsement, no use of titles
- ❧ No coercion
- ❧ No use of resources
- ❧ No disclosure of non-public info
- ❧ Disclosure of position
- ❧ Personal liability

*Official/Personal Capacity special circumstance #1:*

# **Community Support Activities**

- Promote civic awareness
- Uncompensated public service
- Supervisors may grant **excused absence** – JER 3-300.c
  - Voter registration drives
  - Blood drives
  - Emergency support



*Official/Personal Capacity special circumstance #2:*

# ***Professional Associations***

→ Supervisors may grant **excused absence**

❧ Non-profit, reasonable time

→ May also grant **support services**

❧ Papers published in professional journals or presented at events

❧ If they relate to official duties, benefit agency, do not interfere with duties

➤ Compensation barred by  
5 CFR 2635.807

# *Use of Gov't Resources*

- Supervisors may grant DoD personnel limited use of resources, **NOT** personnel
- DoD personnel may use to support their personal activities with NFEs
- NFEs may not use directly

# Advise NFEs

## → Official Capacity

☞ Generally, DoD does NOT advise DoD contractors!!

- Conflicts of interest
- Preferential treatment
- Non-public information

☞ User groups/customer panels

- Include consultation in the contract



# *Advising NFEs*

## → Personal Capacity

- ❧ Exclusively outside the scope
- ❧ Strongly discourage with DoD contractors
  - Academic/professional associations may be ok, even when they are DoD contractors

# *Participating With NFEs*

## *Professional/Standard Setting*

### → Official Capacity

- ⌘ Head of DoD organization may authorize active participation
- ⌘ Must concern the mission
- ⌘ Vote, but not manage

### → Personal Capacity

- ⌘ Exclusively outside the scope



# Management of NFEs

# *Management of NFEs*

## Official Capacity

DoD personnel are generally **prohibited** from managing or serving in position of trust with NFEs

# ***Management of NFEs***

→ Acting in an Official Capacity

→ Problems:

➤ Conflict of Interest (18 U.S.C. 208)

- Fiduciary duty to NFE

- Oath of Government office

➤ Confusing allegiance

➤ Confused public

# ***Management of NFEs***

Exception **ONLY** by statute and with DoD GC approval

→ Official Capacity authorizations

⌘ Limited for military (10 U.S.C. 1033)

⌘ Limited for Civilians (10 U.S.C. 1589)

→ Written request to the DoD GC

⌘ *Very limited circumstances*

# *Official Capacity Management of NFEs*

- Designated Entities - JER 3-202  
+ OGE exemption at 5 C.F.R.  
2640.203(m) **alleviates** conflict  
- **not** separate authority to serve
- Service Secretaries, with DoD GC  
concurrence, may authorize  
managing entities meeting criteria

# *Management of NFEs*

## → Personal Capacity

- ❖ Except for JER 3-210 organizations, may not serve *if offered because of assignment/position*
- ❖ Must be exclusively outside the scope of duties
  - ❖ Cannot let personal activity disqualify from official duties!

# *Board of Directors*

## → Personal Capacity

- ✧ Genuinely personal

- ✧ No conflict with official duties

## → Special rules for Flag and General Officers...

# *Board of Directors Policy*



- ❖ FO and GO may not accept compensation for boards of directors
- ❖ O-7 to O-10 Regular and Reserve members & installation leaders O-6 thru E-9 may not serve if NFE is DoD contractor or focuses business on military members

# *Board of Directors Policy*

## *waivers*

- Ethics official may grant waiver for O-6 and below and E-9 members upon finding of *no endorsement*
- Reserve Officer O-8 and O-7, under certain conditions, may continue on Board if ethics official determines no endorsement or sanction
- (P&R Policy 11/30/2012)



# Support of NFEs

# *Authorized Support to NFEs*

→ Generally, prohibited!

- ⌘ May not use DoD resources, time, equipment for unauthorized purpose
- ⌘ No preferential treatment
- ⌘ No endorsement
- ⌘ Improper use of appropriated funds

# *Support Authorized by Statute*

Exceptions that can appear  
to eat the rule!

## → Statutory authorizations

- ⌘ Particularized support
- ⌘ List in DoDI 1000.15
- ⌘ Medical
- ⌘ Scouting
- ⌘ National Military Associations ...



# *Support Authorized by Statute*

- Annual DoD Authorization Act
- Annual DoD Appropriations Act

E.g.,

youth organizations

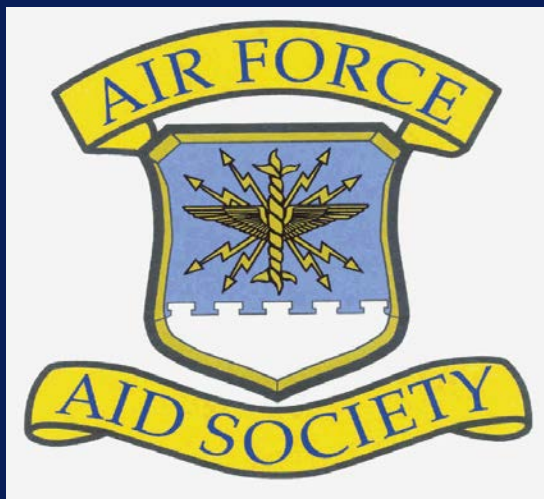
D-Day museum – opening

Currently **hot**: transition support

- jobs/education/assistance

# ***Military Relief Societies***

- Authority to endorse membership drives and fundraising (when among own members) – JER 3-210
- Support in service regulations



# ***Private Organizations on DoD Installations***

- DoDI 1000.15 imposes requirements
- No special privileges (JER applies)
- Must not appear to be official
- Require approval by installation commander

# *Other Support to NFEs*

## *General Restrictions*

- DoD Seals, emblems, logos
  - ❧ NFE event not official, so can't use



# ***General Restrictions Endorsements***

Official endorsements are



(in most circumstances)

# *Endorsements*

- Using official title, position, organization name or other authority
- NFE, event, product, service, etc.
- Know it when you see it!
- Allowed when authorized by statute or documenting compliance or recognition

*Why  
are endorsements  
Prohibited?*

# ***Endorsements***

- They state or suggest official certification or approval (FDA-like)
- They portray the item as public rather than commercial
- They give preferential treatment
- They may improperly coerce DoD personnel



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REPLY TO  
ATTENTION OF:

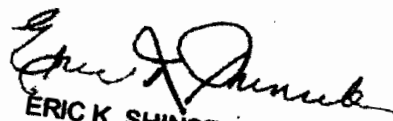
MEMORANDUM FOR THE ARMY

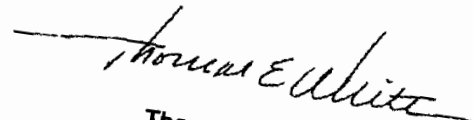
SUBJECT: Private Organization Membership Campaigns

As the world's premier ground fighting force, the United States Army is well-organized, equipped, and trained to succeed in any mission it is asked to perform both today and in the future, even as an already complex strategic environment continues to adapt and evolve. Many private organizations have been supporters of our success. These organizations tirelessly advocate to help in a variety of ways from shaping defense policy to positively improving the professional and personal well-being of soldiers, civilians, and their families. These private organizations enjoy close, historical ties with the military community. Many are composed largely of serving and retired military and civilian personnel from all of the components. As you know, official Army support to private organizations is strictly regulated (see DoD 5500.7-R, *Joint Ethics Regulation* and AR 600-20, *Army Command Policy*).

In spite of our best efforts, many soldiers perceive that they are being coerced to join certain organizations and that their membership in such organizations is tracked. Any coercion, real or perceived, is unacceptable and does not befit this magnificent Army. Any practice that involves or implies compulsion, coercion, undue influence, or reprisal in the conduct of membership campaigns is strictly prohibited. This prohibition includes holding repeated orientations or meetings, or counseling those who have decided not to join after being provided information about the organization. It also includes using membership statistics when evaluating an individual's duty performance. While you may discuss the general merits and benefits of joining and participating in private organizations, without showing favoritism for one organization over another, all of your actions must be done within the limits of the standards of conduct principles discussed above.

Senior leaders will ensure that the chain of command implements and abides by the standards of conduct involving private organization membership campaigns so that soldiers' rights are protected. Ethics counselors are available to assist with training regarding these rules.

  
ERIC K. SHINSEKI  
General, U.S. Army  
Chief of Staff

  
Thomas E. White  
Secretary of the Army

# ***Requests for Endorsement***

1. Explicit Endorsement
2. Implied Endorsement
  - Honorary Chairman
  - Presenting an Award
3. OGE 5 CFR 2635.702(c) and JER 3-209 and 300.a(1)

**NO ENDORSEMENTS!**

# Think a women's college won't prepare you for the *real world*?



Candy Crowley '70  
Senior Political Correspondent  
CNN



Carolyn Aldigé '67  
Founder and President  
Cancer Research Foundation  
of America



Suzanne Patrick '77  
Deputy Under Secretary of Defense  
for Industrial Policy

First, let's define our terms. In the *real world*, women often earn less than men—sometimes significantly less—for comparable work. They also hold far fewer senior positions in business, and in governing and legislative bodies. That's the *real world*.

Now consider this: while only 2% of all female college graduates attended women's colleges, they make up 20% of the women in Congress and nearly a third of a *Business Week* list of rising women stars. The first woman named as United States Secretary of State? First woman selected as the CEO of a commercial airline? First woman appointed to a presidential cabinet post? All women's college graduates.

The bottom line? Randolph-Macon Woman's College won't just prepare you for the real world.

*We'll prepare you to change it.*

# *Other Support to NFE Events*

## *Non-Fundraising, Non-Training Events*

### → Authorized Purposes Only

- ✧ Must be of benefit to DoD

- E.g. Community Relations

### → Logistical Support on **limited** basis

- ✧ DoD facilities and equipment

→ Heads of DoD organizations and commands may provide **logistical support** when they determine all of the following:  
(JER 3-211)

# ***Logistical Support***

- No interference with official duties
- Supports public affairs or community relations
- Appropriate for DoD association
- In the interest of, or benefit to, DoD or community
- ***Willing and able to provide comparable support to similar organizations***

# *Logistical Support*

## *(cont.)*

- Not barred by statute or regulation
- Admission:
  - Free, or
  - *Reasonably* covers only
    - costs of event or
    - portion of event in which DoD participates, or
  - Exceeds costs of event, but support is reduced from limited to incidental

# ***Logistical Support***

## *(cont.)*

- So what's reasonable?
  - \$721 a day for attendees [rule of thumb]
  - May adjust up by % increase that location's per diem exceeds DC's
  - Will be adjusted every three years by minimal value under Foreign Gifts
- So what's incidental?
  - Negligible or minimal impact

# *Requests for DoD Property*

- Use JER 3-211 analysis
- Meeting rooms, Naval vessels for parties, medical supplies, etc.



- Don't forget!! Applicable regulations for motor vehicles, MWR facilities (golf courses), GSA buildings, etc.

# ***Personnel Support***

## Speaking in *Official* Capacity

- ➔ Mission need/policy speech allowed by JER 3-211(c) — no “support” analysis
- ➔ Outreach speaking combines JER 3-211(a) and Public Affairs regulations
  - ☞ “Incidental” if DoD speaker support is 20% or less of total speakers — no limit on fees charged
    - If event meets reasonable costs, support may exceed incidental
    - If substantial management, consider co-sponsorship (co-managed event)

# *Personnel Support*

→ Other than speaking



- Bands – generally patriotic opener only. *Statute* prohibits use at activity not paid for by appropriated funds.
- Menial purposes prohibited (ushers, guards, escorts) (DoD 5410.18, 4.2.16)

# *Personnel Support*

- Speaking in *Personal* Capacity
- Teaching, Speaking, Writing rules
  - ⌘ No compensation allowed if matter related to Official Duties
  - ⌘ Education/expertise exception

# *Other Support to NFE Events*

## *Co-Located Events*

- Official DoD Event and NFE event held at the same time at the same location
- If not co-managed, then not the exact same space at the same time!
- Separate and distinct – perform the appropriate ethics evaluation for each

# Official Support Summary

## Official Policy Speakers

Core mission  
“messaging”  
(> ComRel)

JER 3-211(c)  
*not* 3-211(a)

Only limits are  
**avoiding**  
endorsement &  
fundraising

## Speaker Support

“substantial”  
>50% DoD  
presenters or  
attendees

“reasonable” if no  
admission or  
“reasonable fee”

“incidental”=  
<20% DoD  
speakers

## Other Logistical Support

“substantial”=  
***not*** justified by  
ComRel

“reasonable”=  
serves ComRel  
needs

“incidental”=  
minimal effect on  
public event