

# *Relations with Non-Federal Entities*

Mr. Dean Raab

Standards of Conduct Office

DoD Office of General Counsel

October 2020

# *Agenda*

- Define NFEs
- Applicable Rules/Principles
- Participation
  - Official
  - Personal
- Official Support
- Analysis and Examples

# *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*

- National Military Associations
- 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
  - Use of seal/emblem
- 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



# *NFE Issues Breakdown*

- Participation with NFEs

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

- Support to NFEs

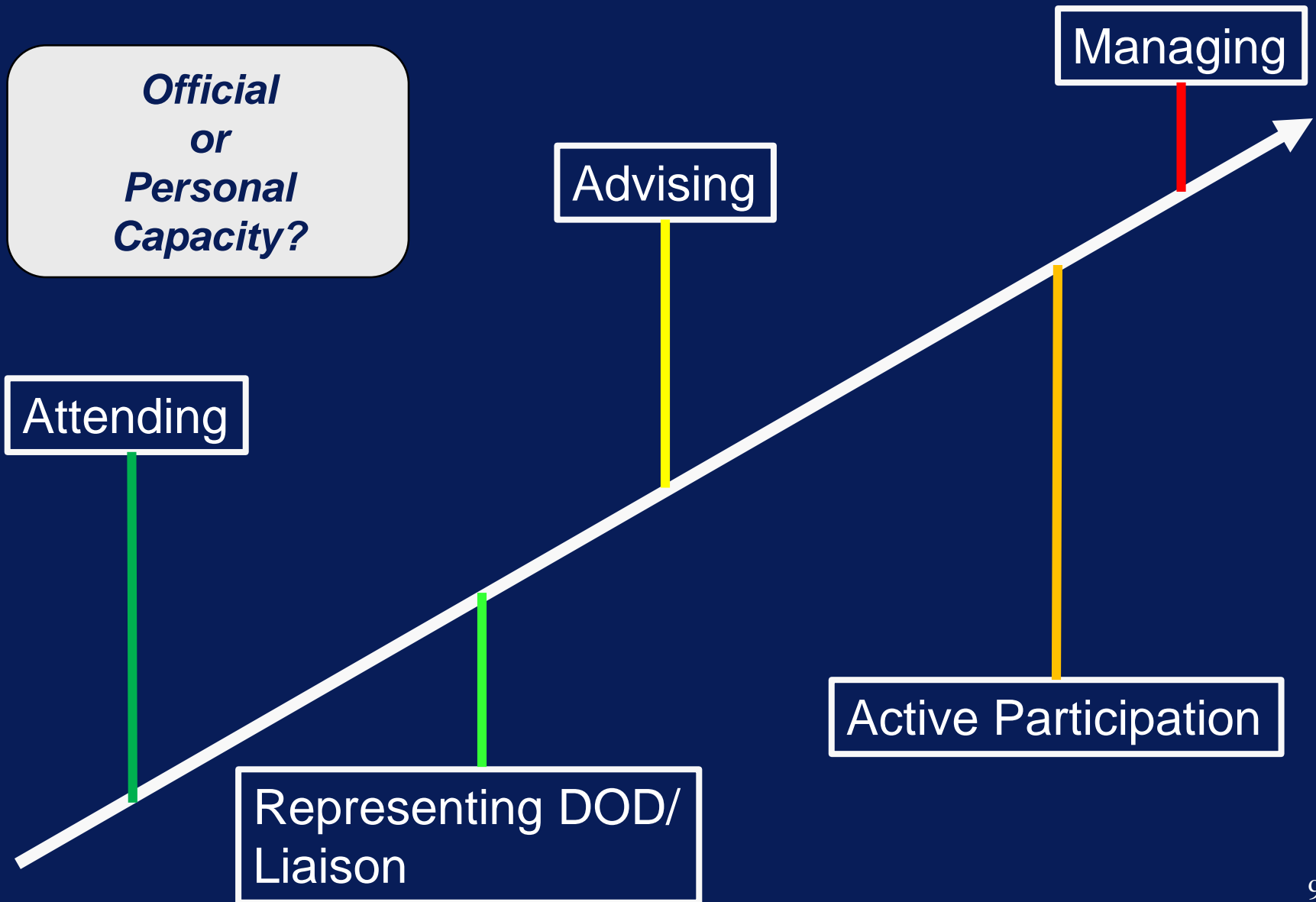
- Authorized purpose (fiscal)
- Consider nature of event
  - “mission essential”
    - vs.
  - “outreach” or “community relations”
- Logistical support
- Financial support
- Speaking support

# *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



# Participation Analysis



# *Personal Capacity*

- 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

# *Personal Capacity*

- Personal Capacity *cautions*
  - No preferential treatment
  - No endorsement, no use of titles
  - No coercion (membership drives)
  - No use of official resources
  - No disclosure of non-public info
  - Disclosure of position
  - Personal liability

# *Personal Capacity*

- Advising
  - Exclusively outside the scope of your official duties
  - Strongly discourage with DoD contractors
    - Academic/professional associations may be ok, even when they are DoD contractors

# *Official Capacity*

- Attending Meetings
  - 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

# *Official Capacity*

- Liaison (Representing DOD)
  - Serving on Boards, Councils, etc
  - Problem: To whom is your fiduciary duty and loyalty?
  - Solution: **Official Liaison**, 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 Capacity*

- 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!!**

# *Official Capacity*

- Active Participation
  - Head of DoD organization may authorize active participation
  - Must concern the mission
  - Vote, but not manage
- Examples
  - Standard setting organizations



# *Official Capacity*

- Management (or position of trust)
  - Generally prohibited
- Exception **ONLY** by statute and with DoD GC approval
  - Military (10 U.S.C. 1033)
  - Civilian (10 U.S.C. 1589)
- Written request to the DoD GC *and* Federal Register notice
  - *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

## 65 FR 10478

Vol. 65, No. 39, Monday, February 28, 2000

### Notices

Reporter  
65 FR 10478

*Federal Register* > 2000 > February > Monday, February 28, 2000 > Notices > DEPARTMENT OF DEFENSE (DOD) -- Department of the Army (DA)

**Title:** Appointment to the Board of Advisors and Board of Managers of Army Emergency Relief

**Action:** Notice.

### Agency

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DEPARTMENT OF DEFENSE (DOD) > Department of the Army (DA)

### Synopsis

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**SUMMARY:** The Army Chief of Staff (General Eric K. Shinseki and his successors) has been authorized to serve as Chairman of the Board of Advisors of Army Emergency Relief. The Army Vice Chief of Staff (General John M. Keane and his successors) and Major General Charles W. Thomas have been authorized to serve as members of the Army Emergency Relief Board of Managers.

### Text

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**SUPPLEMENTARY INFORMATION:** The Joint Ethics Regulation, DoDD 5500.7-R, allows the Secretary of the Army, with the concurrence of the Department of Defense General Counsel, to authorize employees to participate in their official capacities in the management of certain non-federal entities. 10 U.S.C. 1033(b) and 1589(b). Army Emergency Relief has been designated as a non-federal entity that employees may serve without compensation as directors, officers, or trustees, pursuant to the regulation. The required authorization and concurrence have been obtained.

Robert L. Swann,

*Chief, Standards of Conduct Office.*

[FR Doc. 00-4645 Filed 2-25-00; 8:45 am]

BILLING CODE 3710-08-P

# *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!
  - Same COI analysis as with former employer, financial holdings

# *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
- Does not constitute endorsement or COI

# *Boards of Directors*

- Personal Capacity
  - Genuinely personal
  - No conflict with official duties
- Special rules for Flag and General Officers
  - 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*

- 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
- Authority: P&R Policy Memorandum 11/30/2012

# Support to NFEs



## MARYLAND FLEET WEEK & AIR SHOW BALTIMORE

September 9 - 15, 2020





# 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



# *Official Support to NFEs*

- Generally Rule: Prohibited.
  - Is this an authorized use of government property or misuse of appropriated funds?
  - Are you improperly endorsing a NFE or showing preferential treatment to one NFE?
  - Is there a conflict of interest between your official duties and the duties you owe to the NFE?

# *Exceptions*

- Support authorized by statute
  - Military Relief Societies
- Private Organizations on DOD Installations
- Other official purpose
  - Community Relations

# *Exception: Support Authorized by Statute*

- Medical
- Scouting
- National Military Associations
- Annual DoD Authorization/Approp. Act
- Transition support/assistance
- NFEs authorized to operate on DoD installations
- Military Relief Societies

# *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
  - No logos
  - Name OK, but disclaimer required
- Require approval by installation commander



Bragg Rugby  
Football Club  
@BraggRFC



Society of the 3rd  
Infantry Division  
@Society3rdID



Naval Officers'  
Spouses' Club of  
Okinawa (NOSCO)  
*uses. Service. Sea.*



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



8th Air Force Historical Society

# 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**





### Department of the Army

Director, Army Trademark Licensing Program  
2530 Crystal Drive, Suite 4150  
Arlington, VA 22202-3934

Email: [usarmy.trademark.licensing.mil@mail.mil](mailto:usarmy.trademark.licensing.mil@mail.mil)



### United States Marine Corps

U.S. Marine Corps Trademark & Licensing Program  
Headquarters United States Marine Corps  
925 Corporate Drive  
Stafford VA, 22554

Office: 703-784-6887

Email: [trademark\\_licensing@usmc.mil](mailto:trademark_licensing@usmc.mil)

Website:  
<https://www.hqmc.marines.mil/ousmcc/Units/Marine-Corps-Trademark-Licensing-Program/>



### Department of the Navy

Office of Naval Research  
Office of Counsel, Code 00CC  
ATTN: Trademark Licensing Office  
875 N. Randolph Street  
Arlington, VA 22203-1995

Office: 703-696-4002 / 703-696-2683

Fax: 703-696-6909

Email: [onr\\_tmlicense@navy.mil](mailto:onr_tmlicense@navy.mil)

Website: <https://www.navy.mil/trademarks/>



### Department of the Air Force

Air Force Public Affairs Agency  
ATTN: Air Force Branding and Trademark Licensing  
555 E Street East, Suite 3, Room 113  
Joint Base San Antonio Randolph, TX 78150

Office: 210-652-6058

E-mail: [licensing@us.af.mil](mailto:licensing@us.af.mil) or [AFPAA.HQ.TL@us.af.mil](mailto:AFPAA.HQ.TL@us.af.mil)

Website: <https://www.trademark.af.mil/>

Request form available at <https://www.trademark.af.mil/licensing/Applications/Public-Use/>

Companies holding an official U.S. Air Force license: <https://www.trademark.af.mil/licensing/Current-Licensees/>



### United States Coast Guard

Office of External Outreach and Heritage  
Attn: Trademark Licensing  
2703 Martin Luther King Jr. Avenue, SE  
Washington, DC 20593-7103

Office: 202-372-4640

Email: [uscg\\_licensing@uscg.mil](mailto:uscg_licensing@uscg.mil)

Website: <https://www.uscg.mil/Community/trademark/>

# *Endorsements*

- Prohibited
- 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

# *Typical 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)

# *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)

# *JER 3-211a*

- (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, DoD or community
- *(5)Willing and able to provide comparable support to similar organizations*

## *JER 3-211a (cont.)*

- (6) Not barred by statute or regulation
- (7) 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

## *JER 3-211a (cont.)*

- So what's reasonable?
  - *\$804 a day for attendees [SOCO ADV 20-01]*
  - *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
- Examples:
  - Meeting rooms, Naval vessels for parties, medical supplies, etc.
- Don't forget: Applicable regulations for motor vehicles, MWR facilities (golf courses), GSA buildings, etc.
- No competition with local commercial entities



# 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*

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

# 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)

# Recent Issue



SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000

JUN 19 2020

MEMORANDUM

Moving forward, the Department will no longer provide non-reimbursable support of any nature to other Federal, State, Territorial, Tribal, or local government entities; private groups and organizations; foreign governments; and international organizations (hereinafter non-DoD entity or entities), unless such support is required by statute or if discretionary non-reimbursable support is authorized but not required by statute, such support: (1) is authorized by the DoD Joint Ethics Regulation or DoD Public Affairs guidance; or (2) is provided after approval of an exception under the process prescribed below.

DIRECTORS OF DOD FIELD ACTIVITIES

SUBJECT: Reimbursable Activities in Support of Other Entities

The National Defense Strategy (NDS) focuses the DoD on great power competition against China and Russia, in three lines of effort: Increasing Lethality, Strengthening allies and Partners, and Reform. I have also added a personal focus on taking care of our people. All of these priorities require resources.

Over the decades, DoD has been perceived too often by non-DoD departments, agencies, and entities, both domestically and internationally, as an available resource for funding and other support in a variety of contexts. Some are under the impression that DoD's budget is big enough to allow for in-kind or non-reimbursable support or even the creation of non-DoD programs, which has resulted in DoD spending resources on things that are outside of DoD's missions and especially its NDS focus. Therefore, it is important we keep in mind that any non-reimbursable support provided by the Department results in time, money, and manpower that are then unavailable for a core warfighting task, including critical NDS priorities. Moreover, even if DoD is reimbursed for its support, such assistance often results in Service members not being able to perform training or readiness actions for DoD missions and sometimes requires these Service members and civilian employees to spend additional time away from their home station.



OSD014806-201CM0000384-20

- The heads of all other DoD Components not listed above will submit their exception requests through the Chief Management Officer.

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days to update issuances and policies to conform to this memorandum.

The point of contact for this matter is the Acting Under Secretary of Defense (Comptroller).

Attachment:  
As stated

# Recent Issue



PERSONNEL AND  
READINESS

UNDER SECRETARY OF DEFENSE  
4000 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-4000

SEP 18 2020

MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP (SEE DISTRIBUTION)  
COMMANDERS OF THE COMBATANT COMMANDS  
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Reimbursable Activities in Support of Other Entities

The June 19, 2020 Secretary of Defense Memorandum, "Reimbursable Activities in Support of Other Entities," provides that "the Department will no longer provide non-reimbursable support of any nature to other Federal, State, Territorial, Tribal, or local government entities; private groups and organizations." This memorandum exempts from the prohibition support required by statute, or discretionary non-reimbursable support permitted but not required by statute that is authorized by the DoD Joint Ethics Regulation (JER) or DoD Public Affairs guidance.

Many organizations provide valuable support to Service members and their families, as well as to DoD community relations. The June 19, 2020 memorandum does not alter the discretion the head of a DoD command or other organization has under the DoD JER or DoD Public Affairs regulations to approve or disapprove non-reimbursable support to non-DoD entities. Heads of DoD commands and other organizations, working with their legal counsel, must continue to determine whether the support requested is: (1) required by statute; or (2) permitted by statute and may, as a matter of discretion, be approved under the JER or DoD Public Affairs Guidance.

A handwritten signature in black ink, appearing to read "Matthew P. Donovan".

Matthew P. Donovan

DISTRIBUTION:  
Chief Management Officer of the Department of Defense  
Secretaries of the Military Departments  
Chairman of the Joint Chiefs of Staff

# 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

# *Practice Tips*

- Coordinate with Public Affairs
- Have a checklist/questionnaire to ensure you receive enough information to properly analyze question
- Coordinate with other ECs in geographic area