



Soldiers from 2nd Battalion, 23rd Infantry Regiment, 1st Stryker Brigade Combat Team, 4th Infantry Division, serve meals to elderly residents during a People to People International (PTPI) wellness event in Pocheon, South Korea. (Credit: 1LT Jonathan Sauls)

## Practice Notes

# Uniforms and Unity

### Sowing Trust Through Community Outreach Activity with Non-Federal Entities

*By Major Jacob R. Shaffer*

Military lawyers, including judge advocates (JAs), must be ready to advise leaders at echelon on the relevant ethical authorities when engaging with non-Federal entities (NFEs) in both official and personal capacities, while also understanding permissible levels of official support. Military leaders will act and engage with the community.<sup>1</sup> In fact, Department of War (DoW) policy requires it.<sup>2</sup> Even with the best intentions, these same leaders will then suffer the consequences of violating law and policy if unprepared or ill-advised.<sup>3</sup> These leaders, with support and cogent advice from their legal advisors, must understand the rules related to NFE engagement to effectively navigate this mandate.

In considering how—not if—to engage in relations with NFEs in the context of community outreach activities,<sup>4</sup> DoW policy requires leaders to ensure several objectives are met.<sup>5</sup> Community outreach activities must “[i]ncrease public awareness, trust, and understanding of the [DoW],”<sup>6</sup> “[i]nspire patriotism,”<sup>7</sup> “[p]reserve new and enduring overseas relationships,”<sup>8</sup> “[m]aintain a reputation as a good neighbor within communities at home and abroad,”<sup>9</sup> “[s]upport . . . personnel recruiting and retention,”<sup>10</sup> and “[e]ngage, educate, and empower the public . . . to support the [DoW].”<sup>11</sup> The analysis does not stop here, though. When evaluating these potential community outreach activities as part of a public affairs plan,<sup>12</sup> military leaders

must ensure those activities are of common interest to the community<sup>13</sup> and there is a positive return on investment for resources used.<sup>14</sup>

These are all honorable goals that many service-driven leaders in the military would be glad to pursue, but these are not small tasks. To the contrary, in addition to their primary warfighting mission,<sup>15</sup> these same leaders have the weighty assignment of effectively and ethically engaging the community.<sup>16</sup> This intersection of overlapping obligations should highlight the lawyer's role as a key resource for leaders to balance these dual responsibilities.

Military lawyers must affirmatively assist leaders to engage in lawful community outreach activities, as part of any public affairs team,<sup>17</sup> and comply with the ethical principles required of all employees within any executive branch agency.<sup>18</sup> All military members, not just leaders of organizations, must remember that public service is a public trust and that public office is not meant as a method for private gain.<sup>19</sup> Similarly, when engaging with NFEs, there are heightened concerns of improper endorsement by public officials,<sup>20</sup> impartiality, preferential treatment,<sup>21</sup> and the proper use of official time and Government resources.<sup>22</sup>

With these ethical principles in mind, the DoW charge to engage in community outreach activities is critical to strengthening the public's trust in military institutions.<sup>23</sup> How does a military leader manage an organization's primary warfighting mission, community outreach obligations, and ethical requirements? The answer is through careful education of unit personnel and active involvement of military lawyers in planning.<sup>24</sup>

This article will detail the primary authorities governing NFE engagement by military personnel—highlighting situations where ethical issues arise—with a specific focus on Army policy. With their lawyers at the ready, military leaders will meet their obligations while maintaining the ethical footing that makes the public trust the DoW's currency. The first part of this article will set forth a training vignette highlighting certain common scenarios associated with NFE engagement. The next will explain in depth the relevant authorities governing NFE engagement, emphasizing community outreach activities. The final part will then



A Soldier hugs a student goodbye during a community holiday toy drive in Powidz, Poland. (Credit: SPC Julian Winston)

apply these rules to our training vignette and conclude with recommendations to enable military lawyers to deliver principled counsel to our clients.<sup>25</sup>

### Scenario

You have recently arrived as the brigade judge advocate (BJA) for 1st Brigade Combat Team at Fort Swampy and are excited for this new opportunity. The brigade executive officer (XO) comes by and tells you about some upcoming events that the brigade commander wants to prioritize. After the past few years

of tumultuous off-post incidents, the new brigade commander is eager to rebuild the unit's image with the community. The XO asks about any "legal issues" with these outreach opportunities.

The brigade commander is a member of the Infantry Officer Hooah Association (IOHA), a nonprofit organization consisting of current and former infantry officers that highlights developments in infantry tactics, discusses veteran issues, and hosts esprit de corps events. After he took command, he mentioned that members of IOHA were

nominating him to serve as the organization's president. He is excited about the opportunity and told the XO that he plans to brief all the new infantry platoon leaders in the brigade about the many benefits of IOHA at an upcoming unit training meeting. The XO also heard the brigade commander mention to the brigade operations officer (S3) that he will give any interested infantry officers an optional pass next Tuesday to attend an IOHA lunch meeting where he will be giving a speech on leadership.

Next, a local Fort Swampy heritage group, known as the Swampy Descendants, has emailed the brigade commander asking for his support in providing a few tactical trucks and Soldiers for a display at an annual unit and installation history celebration parade and barbecue. The Soldiers and trucks would serve as a static display and be a part of the "meet and greet" at the celebration. The event organizer also wants the brigade commander to make a few remarks. Lastly, the Swampy Descendants organizer promises that the Soldiers will be "well fed" for their efforts.

Finally, the brigade commander told the XO that a famous pastry chef, also a proud military supporter, messaged him on social media asking if the unit's Soldiers and families would be interested in a free dinner and complimentary baking lessons from the chef and his team. The chef indicated his team would provide the food, utensils, and training personnel, but he would need a space to host the event. The chef also wants to confirm if he and his team can tour the installation and unit training areas to show his support for the Soldiers.

## **Overview of Relations with NFEs**

The rules governing participation in NFE activities and official support to NFEs can seem daunting. The analysis starts, however, by defining and identifying an NFE and then moving to evaluating the involvement or support requested.

NFEs are everywhere, and the definition is broad. An NFE is a "self-sustaining non-Federal person or organization, established, operated, and controlled by an individual(s) acting outside the scope of any official capacity as officers, employees, or agents of the Federal Government."<sup>26</sup> NFEs can range from major defense

contractors to state governments and local nonprofit organizations. The definition is intentionally comprehensive to ensure the Federal Government remains impartial in its interactions with both the public and private sectors.<sup>27</sup>

Once the NFE is identified, it is essential to remember that not all NFEs are treated the same.<sup>28</sup> For example, Congress has enumerated certain NFEs that may receive specific forms of official support or have official participation by DoW personnel in their management or operations.<sup>29</sup> Another significant subset of NFEs are private organizations (POs) that are authorized to operate on military installations and have additional support available to them.<sup>30</sup> Therefore, classifying the NFE involved is a critical first step to determining authorized levels of DoW participation and support.

### ***Participation in NFEs by DoW Personnel***

DoW personnel's lawful participation with NFEs initially hinges on whether they are acting in an official or personal capacity.<sup>31</sup> This is consistent with ensuring that the Federal Government's employees are not operating NFEs while they should be performing Government work. Although not expressly defined, a member of the DoW is in their official capacity when performing assigned duties or work with a clear benefit to the DoW's mission and in direct support of their official responsibilities.<sup>32</sup> Personal, volunteer participation with an NFE, by contrast, is not affiliated with the DoW member's status.

The next step is to evaluate the desired level of involvement in the NFE's activities, including hosted events or operations. In some situations, DoW personnel in both official and personal capacities can engage with NFEs consistent with community outreach objectives. A proper understanding of the ethical limits of both the type and level of DoW personnel participation with NFEs is critical to military leaders so they can make informed decisions on how, if at all, their organizations can support these NFE events. Education by military leaders of their personnel is also key to ensuring only authorized participation—either officially or personally—is provided to NFEs.<sup>33</sup>

### ***Official Capacity Participation (The Boss Tells You Where to Go)***

While acting in an official capacity, participation in NFE business or operations is strictly controlled. DoW personnel in their official capacity may not endorse, solicit, or fundraise for an NFE with limited exceptions.<sup>34</sup> The most notable exceptions for Army personnel are those for the Combined Federal Campaign (CFC),<sup>35</sup> Army Emergency Relief (AER),<sup>36</sup> and "By Us, For Us" nonprofit private organizations.<sup>37</sup>

Similarly, DoW personnel may not typically manage<sup>38</sup> or engage in the day-to-day operations of an NFE while in their official capacity.<sup>39</sup> A more likely scenario for official capacity participation is attendance at NFE events to speak, observe a meeting,<sup>40</sup> or represent the DoW in a liaison role.<sup>41</sup> Although restricted from management or control of the NFE, if properly approved,<sup>42</sup> the DoW liaison can attend meetings or functions to represent the DoW's views when there is a "significant and continuing [DoW] interest" in that attendance.<sup>43</sup> In either situation, DoW personnel may not receive a salary or compensation for performing official DoW duties at these NFE engagements.<sup>44</sup> Both situations require certain levels of authorization, but they present viable options for leaders to send DoW personnel to NFE organizational meetings or events.<sup>45</sup>

### ***Personal Capacity Participation (You Just Want to Help)***

While official capacity participation in NFE events is highly restricted, personal capacity participation is generally permissive within some general parameters. DoW personnel have different restrictions on their personal participation in NFEs based on their role in the NFE. On a sliding scale, mere attendance in a personal capacity is rarely an issue, whereas management of NFEs comes with heightened concerns.

DoW personnel are normally permitted to engage in outside employment or volunteer activities as long as it is consistent with the conflict of interest statutes<sup>46</sup> and other service-specific regulatory authorities related to outside activities from employment.<sup>47</sup> This would include attending meetings, serving in organizational positions, and even advising the NFE on matters, as long as it



Three U.S. Air Force helicopters fly over Audi Field in Washington, D.C., during a pregame ceremony at a D.C. United vs. Inter Miami Major League Soccer match. (Credit: SrA Gianluca Ciccopiedi)

is clearly known to the NFE that the DoW employee is acting outside the scope of their official position.<sup>48</sup> DoW personnel serving in positions or advising the NFE must be cautious of a potential conflict of interest with their official duties and any perception of endorsement that can sometimes spring from that involvement and bleed over into official duties. Subject to the same caution, management of NFEs is also permissible with certain additional rank and position restrictions that serve as prohibitions.<sup>49</sup>

#### *A Special Consideration: NFE Participation and Use of Titles and Ranks*

DoW personnel may use their official titles and position when engaging with an NFE in an official capacity,<sup>50</sup> but they need to exercise caution when they are participating with an NFE in a personal capacity.<sup>51</sup>

There is some tension in the policy about permissible limits when having official titles, ranks, or positions listed while conducting activities in a personal capacity. On the one hand, DoW personnel are authorized to use general terms of address, such as military rank or military service, in connection with a personal activity,<sup>52</sup> but use of military rank or reference to service is prohibited when “it could in any way discredit [the DoW] or give the appearance of [DoW] sponsorship, sanction, or endorsement.”<sup>53</sup>

The Joint Ethics Regulation (JER) authorizes the use of titles and ranks when engaged in teaching, speaking, and writing activities,<sup>54</sup> but prohibits the use of official titles, photographs, and positions in connection with most other activities.<sup>55</sup> Although these DoW-affiliated descriptors may be used, military leaders should exercise

caution consistent with the guiding ethical principles to avoid even the appearance of Federal Government endorsement of NFEs.

There is no area where engagement with NFEs collides with the restrictions on use of titles, position, and images more than social media accounts.<sup>56</sup> DoW personnel can—and often do—have a combination of official and personal social media accounts.<sup>57</sup> DoW personnel may use their titles and reference positions or Government employment on social media.<sup>58</sup> When these titles are used, however, social media accounts for DoW personnel create additional concerns for the appearance of Government sanction of communications, disclosure of nonpublic information, and preferential treatment with NFEs.<sup>59</sup> Disclaimers are often used to mitigate these concerns for both official and personal accounts.<sup>60</sup>



Soldiers volunteer with the Salvation Army in Yakutat, AK, during Operation Santa Claus, a community outreach program that provides gifts and supplies to children in remote Alaskan communities. (Credit: SSG Seth LaCount)

Although both official and personal social media accounts give rise to similar concerns of improper endorsement when engaging with NFEs, an official account is easier to manage. Official social media accounts are subject to established policies for operation, and these accounts are considered official public affairs outlets managed by trained personnel.<sup>61</sup> Personal social media accounts raise more ethical issues. These accounts are more common, can sometimes blur the line between official and personal,<sup>62</sup> and more frequently engage with NFEs in a less supervised manner.<sup>63</sup> Even those accounts that use disclaimers can run afoul of the standards of conduct rules, because a disclaimer is not always sufficient.<sup>64</sup> In fact, the DoW takes the position that an official Government photograph on a personal social

media account increases the likelihood of an appearance of an official Government account and, therefore, Government sanction of posted content.<sup>65</sup>

When these quasi-personal social media accounts masquerade as official accounts and then engage with NFEs, it can lead to several problems. The most relevant issue would be damaging community outreach objectives or engaging in unauthorized endorsements that are contrary to the military leader's public affairs obligations. To avoid these prohibitions that may erode public trust,<sup>66</sup> military leaders and their lawyers must affirmatively take steps to educate their DoW personnel on these social media account limitations. Even if a military title could be used, the guiding executive branch ethical principles would prohibit it if doing so would lead to improper endorsement

concerns or confuse the public.

With this proper understanding of the types and levels of NFE participation by DoW personnel—and associated restrictions—in mind, this article will next address the methods by which official support can be provided to NFEs.

#### ***Official Support to NFEs<sup>67</sup>***

The authority and capacity to provide official DoW support to NFEs<sup>68</sup> are inherently limited to official or authorized purposes.<sup>69</sup> Appropriated funds may only be used for the specific purpose for which Congress appropriated them under 31 U.S.C. § 1301(a), known as the Purpose Statute.<sup>70</sup> The two primary methods of official support are congressionally-directed support relationships<sup>71</sup> and community outreach activities.<sup>72</sup>

### *Support Authorized by Statute (Congress Says “Go for It”)*

Congress has determined that official support to certain NFEs is specifically authorized.<sup>73</sup> These NFEs range from civic and youth organizations<sup>74</sup> to national military associations (NMAs).<sup>75</sup> Importantly, these specific statutory relationships have identified parameters of support that should be carefully observed.<sup>76</sup> The support authorized can be broad in scope and range depending on the organization authorized to receive it.<sup>77</sup> For example, support to NMAs may be specific for personnel and equipment for national conferences.<sup>78</sup> At the same time, other statutory schemes may only authorize opportunities for access to military installations for Veterans Service Organizations (VSOs) or the National Red Cross.<sup>79</sup> In all of it, these are still NFEs, and any endorsement and official support needs to be narrowly tailored to the statutory authority to avoid ethical violations.<sup>80</sup>

### *Incidental Support for Community Outreach Activities (Bread and Butter)*

Suppose there is no specific statutory authorization to provide official support to an NFE. The DoW may still support NFE-sponsored or hosted events when there is a valid community outreach purpose and the support is incidental.<sup>81</sup> Any attempt to use community outreach authorities must follow the policies in Department of Defense Instruction (DoDI) 5410.19.<sup>82</sup> Since it was issued in 2021, DoDI 5410.19 is the controlling authority for community outreach activities in the DoW, as further highlighted in the 2024 revision to the JER.<sup>83</sup>

Public affairs officials are essential in this process and must lead the operation to access this authority. Practically, requests for support from NFEs to provide speakers, equipment, or even facilities should be channeled through the command’s public affairs team.<sup>84</sup> Military leaders and their public affairs teams should require that all requests be submitted on the DD Form 2535 or DD Form 2536, depending on the type of support desired,<sup>85</sup> and then evaluate each request using the standardized decision worksheet found in DoDI 5410.19, volume 1, appendix 6A.<sup>86</sup> The authorities relating to different types of DoW resources are widespread, but the decision worksheet is a helpful way to

analyze each request that a unit receives.<sup>87</sup> The remainder of this section will highlight some key parts of the analysis in making this decision on NFE engagement, but not cover everything from the standardized decision worksheet.

In analyzing any request for support to an NFE event, before even considering the specific resource requested, the public affairs team and legal advisor must evaluate the character and nature of the NFE and event. The DoW has made clear that organizations requesting support with restricted admission, membership, and access,<sup>88</sup> or posturing to stage controversies, must be scrutinized.<sup>89</sup> In most cases, these organizations or events are not entitled to support, with limited exceptions.<sup>90</sup> Therefore, the public affairs team and legal advisor should initially screen the requesting organizations to determine if any support is possible.<sup>91</sup>

After vetting the organization and potential event, the analysis turns to whether the request is for logistical support, consistent with the criteria in DoDI 5410.19, volume 2, paragraph 3.2(a),<sup>92</sup> or speaker support, in accordance with DoDI 5410.19, volume 2, paragraph 5.<sup>93</sup> Stated plainly, the NFE may want things, and perhaps the people to operate the things (i.e., logistical support), or the NFE may want DoW personnel to serve as presenters or speakers (i.e., speaker support) at their event.<sup>94</sup> Although each category of support has some of its own specific requirements, DoDI 5410.19 provides the overarching principle that all support to an NFE event must be incidental.<sup>95</sup>

Incidental support to an NFE event for community outreach purposes is not a new concept—but it has seen significant changes. Prior to the 15 May 2024 revisions to the JER, the incidental support language served as a restriction when there was a cost of admission to the supported event and the cost was above the “reasonable amount” threshold.<sup>96</sup> The incidental support language was interpreted as meaning that no more than twenty percent of speakers or other support to the event could be provided by DoW.<sup>97</sup> If the cost for the supported event was under the “reasonable amount” threshold, then support could be more than incidental, but still limited.<sup>98</sup> All of this changed, however, when the 15 May 2024 revisions to the JER

were published. The revised 2024 JER has effectively eliminated its old section related to support to NFEs and directed that all support to NFEs be handled under DoDI 5410.19.<sup>99</sup>

Unlike the pre-15 May 2024 JER’s distinctions related to incidental or limited support based on admission fees to events, DoDI 5410.19 provides that all NFE event support must be incidental.<sup>100</sup> This is a dramatic departure from prior practice, especially considering that DoDI 5410.19 does not provide percentage-of-support guideposts like the pre-15 May 2024 JER, as interpreted by the DoW Standards of Conduct Office (SOCO).<sup>101</sup> Rather, DoDI 5410.19 relies solely on the incidental support language and definition as the limiting factor.

Under DoDI 5410.19, incidental support is defined as providing DoW personnel<sup>102</sup> or resources to support community outreach activities when the “total [DoW] support or participation does not constitute the main component of the planning, scheduling, functioning, or audience draw of the event.”<sup>103</sup> Despite this limitation, DoW support may still “add significant programmatic value or improve the perceived quality, audience draw, or similar aspects of the event or activity.”<sup>104</sup> As long as the NFE event is able “to proceed and function” based on the non-DoW aspects, then the DoW support is likely to be considered incidental.<sup>105</sup> The July 2025 update to DoDI 5410.19, volume 1, also contains helpful new factors in evaluating whether DoW support is incidental.<sup>106</sup> Importantly, incidental support is the standard regardless of whether an admission fee is charged for the event.<sup>107</sup> If the event does charge an admission fee, however, the DoW participation cannot be the primary attraction or used to promote ticket sales, with some limited exceptions for military academy athletic events, band performances, or aerial displays.<sup>108</sup>

There are additional considerations when the requested support comes for official speakers at events, especially senior leaders.<sup>109</sup> It is DoW policy to encourage qualified personnel to speak in their official capacity at events of public interest.<sup>110</sup> These speeches can be authorized to express an official DoW position or in support of a DoW community outreach program.<sup>111</sup> Both

require appropriate supervisory approval, and the remarks must address a subject in the official knowledge or duties of the speaker.<sup>112</sup> Although, generally, the speaker support must be incidental to the NFE event, there is a notable exception related to NFE events where, among other things, DoW speaker support would primarily benefit the DoW.<sup>113</sup> This particular exception seems directed at NMA events and has multiple requirements, including DoW or military Service-level public affairs authorization.<sup>114</sup>

Lastly, another critical aspect of the NFE support analysis for public affairs teams and legal advisors to work through is being a supplier of last resort.<sup>115</sup> DoW support must generally not be provided to NFEs when the support could be “provided reasonably by commercially available resources and services.”<sup>116</sup> Although this criterion is unlikely to play a major role in speaker support because of the unique position of DoW personnel, it could serve as a significant hurdle when it comes to other personnel (e.g., public affairs cameramen) and equipment (e.g., audio equipment or tents). In looking to provide support to an NFE event, public affairs teams and legal advisors must be able to identify whether similar resources are commercially available.

DoW personnel engagement with and support to NFEs will continue to be rife with ethical concerns that demand careful maneuvering by military leaders. Military lawyers must be ready to advise these same leaders proactively to allow for strong community relations. This principled counsel will help mitigate impairment to the DoW’s warfighting mission through avoidable, prolonged investigations and discipline for ethical missteps.

## Conclusion

After the ethics refresher training, how does the new BJA at Fort Swampy navigate these NFE issues from our scenario? First, there is no objection to the brigade commander’s personal participation in IOHA, and he may speak at the future lunch in his personal capacity, but he may want to consider declining the role of president. It appears he was only nominated based on his new official position, and leading that NFE could lead to concerns of preferential treatment among NFEs or the appearance of endorsement.



U.S. Army 1LT Alma Cooper, an intelligence officer and 2025 Miss USA, performs the ceremonial “First Shot” before a Denver Nuggets vs. Philadelphia 76ers game at Ball Arena, Denver, CO. (Credit: Natalie Brutty)

He can certainly let the new platoon leaders informally know about IOHA, but he cannot give them authorized absences to attend the luncheon and should not brief the topic during the official unit training meeting. These actions would give the impression of endorsement and could lead the platoon leaders to believe that joining IOHA or attending the upcoming lunch is mandatory.

Second, the brigade commander can likely support the Swampy Descendants’ request to provide personnel and equipment,

assuming it meets the criteria for limited logistical support and is consistent with the unit’s public affairs plan. The brigade commander can also make remarks consistent with community outreach. The BJA may need more information about the scale of the event to determine if the support is incidental. Still, it appears to be a proper community outreach activity that could be supported. The BJA would also want to confirm that the Soldiers would not perform prohibited menial or demeaning tasks. He further needs

to perform a gift analysis and determine the cost of the food being offered to ensure it is an appropriate amount to be accepted as an exception to the gift prohibition.

Lastly, the brigade commander cannot accept this offered gift of food and baking lessons as a personal gift or gift to the unit. He can propose that the pastry chef speak with the installation's military welfare and recreation (MWR) office, however, about potentially accepting the gift under Army Regulation 215-1, *Military Morale, Welfare, and Recreation Programs and Nonappropriated Fund Instrumentalities*.<sup>117</sup> This would require a detailed gift analysis by the installation's legal counsel, but it could be an event that the MWR may sponsor or co-sponsor with the pastry chef. Even if MWR may accept the gift, the unit and MWR must be concerned with potential improper endorsement and be prepared to offer similar support (i.e., facility space) to other NFEs if requested. If consistent with the unit's public affairs plan and assuming it meets the criteria for limited logistical support, an open house or installation tour may be given to the pastry chef and his team.

Due to the BJA's competent advice, the brigade commander is elated that he can take a step forward in rebuilding his unit's reputation in the community. As seen in this example, a practical method to improve community trust in the military is to openly engage it at each camp, post, or station within the permissible limits. The DoW has public affairs and community relations assets to help educate the community on DoW operations and allow the public to understand the important work that military leaders do daily. To accomplish this mission, legal advisors must understand these authorities and advise their leaders accordingly.

The key to military lawyer success in this area is both educating personnel within the organization and integrating with the relevant staff officers for organizational planning efforts. Importantly, the training must be engaging and include real-life situations or practical vignettes on emerging topics like social media and endorsements. A "train the trainer" model is recommended because legal assets, including paralegal support, can be limited, as it will enable the information to flow to the lowest levels of command.

Similarly, integration in the staff planning process must include early involvement by the legal advisor in engagement working groups or even informal staff syncs where new ideas come about. It is obvious, but a close working relationship with the unit's public affairs official should be a priority when arriving at a new organization. A legal advisor armed with these recommendations and the above-discussed authorities will positively contribute to their organization's success. **TAL**

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## Notes

1. *See, e.g.*, U.S. DEP'T OF ARMY, REGUL. 360-1, THE ARMY PUBLIC AFFAIRS PROGRAM paras.1-6a to 1-6d (8 Oct. 2020) [hereinafter AR 360-1] (providing that the Army will communicate with its own members, the public, and foreign publics and that commanders must then task organize and prioritize communications into all phases of mission planning).
2. *See* U.S. DEP'T OF DEF, DIR. 5122.05, ASSISTANT TO THE SECRETARY OF DEFENSE FOR PUBLIC AFFAIRS (ATSD(PA)) para. 5.1 (7 Aug. 2017) [hereinafter DoDD 5122.05] ("It is the policy of the Department of [War] to make available timely and accurate information so that the public, Congress, and the news media may assess and understand the facts about national security and defense strategy."); *see also* U.S. DEP'T OF DEF, INSTR. 5410.19, COMMUNITY OUTREACH ACTIVITIES: POLICY OVERVIEW AND EVALUATION PROCEDURES vol. 1, para. 3.1 (29 Sep. 2021) (C2, 29 July 2025) [hereinafter DoDI 5410.19-V1] (establishing policy and guidelines for determining event eligibility for DoW support and addressing specific requests for DoW support and materials); U.S. DEP'T OF DEF, INSTR. 5410.19, COMMUNITY OUTREACH ACTIVITIES: OSD OUTREACH PROGRAMS, SPEAKING ENGAGEMENTS, AND SUPPORT TO NON-DOD ORGANIZATIONS vol. 2, para. 1.2c (29 Sep. 2021) (C2, 7 Aug. 2025) [hereinafter DoDI 5410.19-Ñ2] ("[DoW] will seek to develop and maintain good relations with communities at home and abroad . . .").
3. *See* STANDARDS OF CONDUCT OFF., U.S. DEP'T OF DEF, ENCYCLOPEDIA OF ETHICAL FAILURES 92-93 (Jan. 2025) (a senior executive service employee improperly used his title on an NFE website leading to a negative counseling); *id.* at 93-94 (seven senior military officers, including four generals, improperly appeared in uniform for an NFE promotional video).
4. "Community outreach activity" is a term of art when discussing engagement with NFEs. Specifically, it is "an officially planned program, sequence or series of events, or individual action by a [DoW] Component, unit or person designed to conduct community outreach. Community outreach activities are conducted at all levels of command, both in the United States and overseas, on or off military installations." DoDI 5410.19-V1, *supra* note 2, Glossary at 55.
5. *See id.* para. 3-1.
6. *Id.* para. 3.1(a).
7. *Id.* para. 3.1(b).
8. *Id.* para. 3.1(c).
9. *Id.* para. 3.1(d).
10. *Id.* para. 3.1(e).
11. *Id.* para. 3.1(f).
12. Annually, the Assistant to the Secretary of War for Public Affairs (ATSW(PA)), must oversee and publish a DoW Public Affairs Community Engagement Plan that "consolidates the goals of the Military Departments and [Combatant Commands], identifies key events and observances that support a broad [DoW] outreach mission, and establishes overall outreach measurements for the [DoW] Components to determine their return on investment on community outreach efforts." *Id.* para. 2.1(j).
13. Notably, the "common interest" to the community requirement can be defined quite broadly, and military lawyers should evaluate the exact community to which their unit is appealing. *See id.* para. 3.4 ("Community outreach support must be confined to those activities that are of common interest and benefit to a local, [s]tate, regional, national, or broadly representational community . . .").
14. *See id.* para. 3.5. There is substantial discretion here for military leaders, but public affairs officials are given a number of key areas for measurement for a return on investment. Specifically, "physical audience demographics and reach; fiscal value of media coverage, when available; and social media analytics." *Id.*
15. *See, e.g.*, U.S. DEP'T OF ARMY, DOCTRINE PUB. 1, THE ARMY para. 1-1 (31 July 2019) ("The primary responsibility of our Army is to conduct prompt and sustained land combat as part of the joint force.").
16. *See generally supra* note 2 (identifying DoW policies requiring community engagement).
17. *See* U.S. DEP'T OF ARMY, FIELD MANUAL 3-84, LEGAL SUPPORT TO OPERATIONS para. 4-3 (1 Sep. 2023) [hereinafter FM 3-84] (identifying a key task for judge advocates as providing legal support to public affairs and command messaging).
18. *See generally* 5 C.F.R. § 2635.101 (2024) (describing the general principles of ethical conduct for all executive branch employees); *see also* U.S. DEP'T OF DEF., JOINT ETHICS REGULATION (JER) para. 2-101 (15 May 2024) [hereinafter JER] (extending applicability of 5 C.F.R. § 2635 to the National Guard and enlisted members of the military).
19. *See* 5 C.F.R. §§ 2635.101(b)(1)-(7) (2024).
20. *See id.* § 2635.702.
21. *See id.* § 2635.101(b)(8).
22. *See id.* § 2635.101(b)(9).
23. *See, e.g.*, Mohamed Younis, *Confidence in U.S. Military Is Lowest in Over Two Decades*, GALLUP (July 31, 2023), <https://news.gallup.com/poll/509189/confidence-military-lowest-two-decades.aspx> [https://perma.cc/4AW9-KJ39] (highlighting a Gallup poll from June 2023 where public trust in the military is the lowest in over twenty years); Luke West, *Closing the U.S. Military's Public Trust Deficit*, MODERN WAR INST. (Nov. 11, 2024), <https://mwi.westpoint.edu/closing-the-us-militarys-public-trust-deficit> [https://perma.cc/BC3A-ARYQ] (noting the 2023 Reagen National Defense Survey results showing that public trust in the military had dropped to only 45 percent and identifying

potential efforts, including new community engagement strategies, to increase public trust in the military.

24. Education of personnel within a unit's command is paramount to ensuring the DoW is regarded with integrity and fairness. *See* 5 C.F.R. § 2638.103 (2024) ("Supervisors have a responsibility to help ensure that subordinates are aware of their ethical obligations under the Standards of Conduct and that subordinates know how to contact agency ethics officials.") In particular, the authorities related to personal participation in NFEs must be explained and taught to every new member of the DoW and refresher training should be taken seriously to avoid even the perception of a conflict of interest. The unit's lawyer should be leaned on heavily in this effort.

25. *See* The Judge Advoc. Gen. & Deputy Judge Advoc. Gen., U.S. Army, TJAG & DJAG Sends, Vol. 40-16, Principled Counsel—Our Mandate as Dual Professionals (9 Jan. 2020); *see also* FM 3-84, *supra* note 17, at 1-3 & fig. 1-1 (describing the four constants of legal practice).

26. DoDI 5410.19-V1, *supra* note 2, Glossary at 60; *accord* JER, *supra* note 18, app. at A-3.

27. *See* 5 C.F.R. § 2635.101(a) (2024) ("To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee must respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations."); *see also* DoDI 5410.19-V2, *supra* note 2, para. 3.2 ("The potential for creating the perception that the [DoW] is not being a good steward of taxpayers' dollars must also be considered before providing support [to an NFE].")

28. *See* DoDI 5410.19-V2, *supra* note 2, para. 3.6(a), 9 tbl. 1; U.S. Dep't of DEF, INST. 1000.15, PROCEDURES AND SUPPORT FOR NON-FEDERAL ENTITIES AUTHORIZED TO OPERATE ON DoD INSTALLATIONS encl. 3 (24 Oct. 2008) [hereinafter DoDI 1000.15].

29. *See* DoDI 5410.19-V2, *supra* note 2, 9 tbl. 1 (listing various specific statutory authorities and references for support from or to various NFEs).

30. *See* DoDI 1000.15, *supra* note 28, encl. 2; *see also generally* U.S. Dep't of ARMY, REGUL. 210-22, SUPPORT FOR NON-FEDERAL ENTITIES AUTHORIZED TO OPERATE ON DEPARTMENT OF THE ARMY INSTALLATIONS (12 May 2022) [hereinafter AR 210-22]. POs operating on DoW installations do not receive special privileges or official support like military relief societies do, but they are granted authorization to operate in areas that other NFEs do not, so it can be perceived that they are receiving support if proper steps are not taken. POs are common and are granted certain benefits simply by being allowed to operate on installations.

31. *Compare* JER, *supra* note 18, para. 3-100(a)(1)-(2) (prohibiting DoW personnel from holding membership or participating in an NFE in their official capacity unless there is a specific exception), *with id.* para. 3-200 (permitting DoW personnel in their personal capacity to volunteer with NFEs or have outside employment as long as those actions are consistent with other conflict of interest statutes and other ethical requirements).

32. *See* 5 C.F.R. § 2635.705(a) (2024) ("Unless authorized in accordance with law or regulations to use such time for other purposes, employees must use official time in an honest effort to perform official duties."); JER, *supra* note 18, para. 2-300 ("[DoW] personnel may use Federal Government resources, including personnel, equipment, and property, for official

purposes only, except as otherwise permitted in the JER or other applicable authority."); *id.* para. 2-302 ("[DoW] personnel . . . may not be used to support the unofficial activity of other [DoW] personnel whether in support of an individual or [an NFE] . . ."); *id.* para. 2-302(a) ("Work performed by [DoW] personnel must have an obvious benefit to [DoW]'s mission and operations and be in direct support of official responsibilities."). For a thorough discussion on the related topic of using Government property when determining if an event is official, *see* Yolanda A. Schillinger, *Fielding Requests for Use of Government Resources: Is the Event Official or Unofficial?*, ARMY LAW., Apr. 2015, at 5.

33. All new DoW civilian personnel and active-duty officers must receive initial ethics training within thirty days of appointment. *See* JER, *supra* note 18, para.

9-200. Active-duty and Reserve enlisted personnel and Reserve officers must receive initial ethics training within 180 days of joining service. *Id.*

34. *See* JER, *supra* note 18, para. 2-400 (related to fundraising); *id.* para. 2-508 (related to endorsement); *id.* para. 3-102d; U.S. Dep't of ARMY, REGUL. 1-10, FUNDRAISING WITHIN THE DEPARTMENT OF THE ARMY para. 1-8 (16 Dec. 2022) [hereinafter AR 1-10]; 5 C.F.R. § 2635.702 (2024).

35. *See* 5 C.F.R. § 2635.808(b) (2024) (authorizing official capacity fundraising when permitted by statute or other regulation and giving specific mention to the CFC); *see also* JER, *supra* note 18, para. 2-400(a).

36. JER, *supra* note 18, para. 2-400(c).

37. *Id.* para. 2-400(f). The "By Us, For Us" organizations are those composed primarily of DoW personnel and family members when the fundraising is among their own members for the benefit of the organization's members. *See id.*; AR 1-10, *supra* note 34, paras. 1-8 to 1-12.

38. There is a limited management exception in circumstances specified by statute for certain officers to serve in these roles for designated military relief agencies and organizations that regulate athletics for Service academies, but it requires Service department secretary authorization, among other things. *See, e.g.*, 10 U.S.C. §§ 1033(b), 1589; *see also* JER, *supra* note 18, para. 3-100(b). There is a specific process for being designated as such an entity for management support listed in the JER. *See* JER, *supra* note 18, para. 3-101.

39. JER, *supra* note 18, para. 3-100.

40. A supervisor may authorize attendance in an official capacity when there is an official purpose. *See* 5 C.F.R. § 2635.705 (2024). The official purpose may be community or public relations, assuming attendance is consistent with the organization's public affairs mission or plan. The approval for attendance at an NFE event in an official capacity is the method by which many community outreach activities can be authorized as long as they comply with other ethical requirements. In evaluating additional ethics hurdles, it would largely depend on the scope and purpose of employee's attendance. Mere attendance by itself, however, only requires supervisor approval for an official purpose.

41. *See* JER, *supra* note 18, para. 3-100(c).

42. In order for a liaison to be approved, the appointment must be in writing by the "Head of the [DoW] Organization" with the interest, after consultation with an ethics official. *Id.* para. 3-100(c)(1). The "Head of the [DoW] Organization" is "[a] commander, commanding officer, or other military or civilian [DoW] official who exercises command authority or has overall

responsibility for managing a command or organization within a [DoW] Component." *Id.* app. A-3.

43. *Id.* para. 3-100(c). The liaison's representation is strictly construed in accordance with their appointment letter and the liaison may only represent the DoW in discussions related to those areas of appointment. *Id.* These liaisons must also make general disclaimers to NFEs that their opinions are non-binding on the DoW. *Id.* para. 3-100(c)(1). The JER specifically identifies the contents of the authorization letters and additional restrictions on liaison officers. *See id.* paras. 3-100(c)(1)-(2).

44. *See id.* para. 3-100(a)(3); *see also* 18 U.S.C. § 209 (prohibiting Federal employees from being paid by an entity other than the U.S. Government for performing work duties).

45. When sending DoW personnel in an official capacity to an NFE event pursuant to one of these authorities, additional attention by the ethics official should be given to the potential for other standards of conduct issues. These range from gifts of free attendance and a conflict of interest related to covered matters by the attendee to concerns about NFE restricted membership.

46. *See generally* 18 U.S.C. §§ 201-209 *et seq.* (codifying criminal conflict of interest laws).

47. *See* JER, *supra* note 18, para. 3-200; *see also* 5 C.F.R. §§ 2635.801-809 (2024); 5 C.F.R. § 3601.106 (2024) (DoW supplement on outside activities by employees).

48. *See* JER, *supra* note 18, paras. 3-200, 3-201.

49. *Id.* para. 3-202. Regular active-duty officers in the grade of O-7 to O-10 may not serve on the board of directors of entities that do business with the DoW or focus their business efforts on military personnel. *Id.* paras. 3-202(a)-(b). There are different restrictions for Reserve officers in these grades. *See id.* paras. 3-202(a)-(d). Additionally, active-duty officers in the grade of O-6 or noncommissioned officers in the grade of E-9 that serve in installation leadership positions similarly have restrictions on serving on boards of directors, unless a waiver is granted. *Id.* para. 3-202(e).

50. Even with the use of titles in official capacity participation with an NFE, DoW personnel must be vigilant about the appearance of endorsement of NFEs. *See id.* para. 2-508(b) ("[DoW] personnel are prohibited from using their official position to either affirmatively endorse an NFE . . . or by implying [DoW] endorsement through the individual's unauthorized use of their official position or public office."); 5 C.F.R. § 2635.101(b)(8) (2024) ("Employees shall act impartially and not give preferential treatment to any private organization or individual.").

51. *See* 5 C.F.R. § 2635.702(b) (2024).

52. *Id.* § 2635.702(e).

53. *See* JER, *supra* note 18, para. 3-200(b).

54. *Id.* para. 3-200(a); 5 C.F.R. § 2635.807(b) (2024). In an effort to mitigate concerns of endorsement when titles and positions are used with regard to teaching, speaking, and writing activities, "reasonably prominent disclaimers" must be given. *See* 5 C.F.R. §§ 2635.807(b)(2), 3601.105 (2024).

55. *See* JER, *supra* note 18, para. 3-200(a).

56. *See generally* U.S. Dep't of DEF, INSTR. 5400.17, OFFICIAL USE OF SOCIAL MEDIA FOR PUBLIC AFFAIRS PURPOSES (12 Aug. 2022) (C2, 14 Feb. 2025) [hereinafter DoDI 5400.17] (requiring clear distinctions between official and personal social media accounts and providing warnings against personal accounts that reference official titles and positions); *see*

also Memorandum from Gen. Counsel, Office of Gov't Ethics, to Designated Agency Ethics Officials, subject: The Standards of Conduct as Applied to Personal Social Media Use (9 Apr. 2015) [hereinafter OGE Advisory 15-03] (explaining the applicability of the standards of conduct as applied to personal social media accounts); Memorandum from Dir., Off. of Gov't Ethics, to Designated Agency Ethics Officials, subject: The Standards of Conduct and 18 U.S.C. § 208 as Applied to Official Social Media Use (30 Jan. 2023) [hereinafter OGE Advisory 23-03] (explaining the applicability of the standards of conduct as applied to official social media accounts); Memorandum from Acting Dir., Off. of Gov't Ethics, to Designated Agency Ethics Officials, subject: Ethics Guidance on Use of Professional Networking Platforms and Monetizing Social Media Activity (28 Sep. 2023) [hereinafter OGE Advisory 23-13] (discussing monetization of social media accounts); Memorandum from DoD Standards of Conduct Off., subject: Application of Standards of Conduct to Personal Social Media Accounts (5 May 2023) [hereinafter SOCO Advisory 23-03] (specifically discussing DoW official and personal social media accounts and providing illustrative examples).

57. A personal account is defined as a “[n]on-[DoW]-controlled electronic messaging services account intended for personal use and not associated with official [DoW] functions.” DoDI 5400.17, *supra* note 56, Glossary at 28. These electronic messaging services are broadly defined and include social media accounts or other websites. *See U.S. DEP’T OF DEF, INSTR. 8170.01, ONLINE INFORMATION MANAGEMENT AND ELECTRONIC MESSAGING Glossary at 36 (2 Jan. 2019) (C2, 12 Mar. 2025)* (defining electronic messaging services as “[o]nline communication capabilities, including websites, electronic mail, texting, chat, and related online communications methods.”). It is DoW policy that “[DoW] personnel must ensure that all personal social media accounts are clearly identifiable as personal accounts.” *See DoDI 5400.17, supra* note 56, para. 8(a)(1).

58. *See* OGE Advisory 15-03, *supra* note 56; SOCO Advisory 23-03, *supra* note 56; OGE Advisory 23-13, *supra* note 56; OGE Advisory 23-03, *supra* note 56.

59. *See* OGE Advisory 15-03, *supra* note 56; SOCO Advisory 23-03, *supra* note 56.

60. Generally, disclaimers may look different for either official or personal accounts, but serve the same purpose. For official accounts, the disclaimer may say “likes” or “reposts” are not endorsements, whereas for personal accounts, that “views are my own and not those of the DoW” and nothing should be considered an endorsement. *See* OGE Advisory 15-03, *supra* note 56; SOCO Advisory 23-03, *supra* note 56; OGE LA 23-03, *supra* note 56.

61. *See* DoDI 5400.17, *supra* note 56, para. 6.1 (“All [Establishing an Official Presence] and their content represent [DoW], reflect the values of the Department, and serve as official communication platforms to the general public, the news media, and internal audiences of [the DoW].”). Official social media accounts are still rife with ethical concerns, in particular related to use of Government resources (e.g., the social media account is Government property) and a potential conflict of interest (e.g., a covered matter can arise when a decision-maker for paid subscription services for social media also owns stock in certain social media companies). *See* OGE Advisory 23-03, *supra* note 56; DoDI 5400.17, *supra* note 56, sec. 8.

62. A personal social media account that contains

references to the owner’s Government title and position and also posts some official business-related content does not likely cross the line of official Government sanction. *See* OGE Advisory 23-03, *supra* note 56. But, if the bulk of those postings on that same social media account are official, business-related posts, there is likely a greater chance that it would be considered Government endorsement. *See id.* Conducting official business on a personal social media account is also prohibited. *See* DoDI 5400.17, *supra* note 56, para. 8(c).

63. A growing concern addressed by the Office of Government Ethics and DoW Standards of Conduct Office relates to the monetization of social media accounts by members of the Federal Government when those accounts make reference to Government service or use official titles. *See* JER, *supra* note 18, para. 2-508; OGE Advisory 23-13, *supra* note 56; SOCO Advisory 23-03, *supra* note 56. Although those opinions are aimed at Government employees who are earning money as for-profit “brand ambassadors” or the like, it is equally probable that DoW personnel could champion any type of NFE, including those in line with community outreach objectives, and imply Government endorsement of them through their personal social media accounts.

64. Disclaimers are not always sufficient and a multi-factored, content-based analysis is used to determine whether a particular employee’s reference to official titles or positions on a social media account rises to the level where a reasonable person would consider it Government-sanctioned communication. OGE Advisory 15-03, *supra* note 56; SOCO Advisory 23-03, *supra* note 56. Specifically, those factors are:

- Whether the employee states that they are acting on behalf of the Government;
- Whether the employee refers to their connection to the Government as support for the employee’s statements;
- Whether the employee prominently features their agency’s name, seal, uniform or similar items on the employee’s social media account or in connection with specific social media activities;
- Whether the employee refers to their Government employment, title, or position in areas other than those designated for biographical information;
- Whether the employee holds a highly visible position in the Government, such as a senior or political position, or is authorized to speak for the Government as part of the employee’s official duties;
- Whether other circumstances would lead a reasonable person to conclude that the Government sanctions or endorses the employee’s social media activities.

OGE Advisory 15-03, *supra* note 56.

65. *See* SOCO Advisory 23-03, *supra* note 56.

66. The DoW Social Media Policy amplifies this concept by providing, in part, “If social media is mismanaged or mishandled, the U.S. Government’s reputation with the American public; relationships with interagency, international, State, local, and tribal entities; military operations; and reputation for a high ethical and professional standard may be compromised.” DoDI 5400.17, *supra* note 56, para. 3.1.

67. Although not covered in this article, it is recommended that military lawyers are mindful of commercial sponsorships and the role that those NFEs have on military installations. Commercial sponsorships certainly fall within the category of relations with NFEs and play a significant part of any installation or garrison operations. It is key, however, to realize there is a specific regulatory

scheme governing relations with these NFEs. *See generally* U.S. DEP’T OF DEF, INSTR. 1015.10, MILITARY MORALE, WELFARE, AND RECREATION (MWR) PROGRAMS (6 July 2009) (C1, 6 May 2011) [hereinafter DoDI 1015.10] (establishing and implementing policy and procedures for operating MWR programs). In particular, “Commercial sponsorship is authorized only for support of the [DoW] MWR programs . . . .” *Id.* encl. 11, para. 1(a); *see also generally* U.S. DEP’T OF ARMY, REGUL. 215-1, MILITARY MORALE, WELFARE, AND RECREATION PROGRAMS AND NONAPPROPRIATED FUND INSTRUMENTALITIES (24 Sep. 2010) [hereinafter AR 215-1] (providing the Army’s implementing guidance for MWR activities).

68. Official support to NFE fundraisers will not be discussed in this article. Although many of the principles are generally the same, there is some nuance when speaker or logistical support is requested for an NFE-sponsored event that is also a fundraiser. For a thorough discussion on this issue, albeit with some outdated references, see Teresa A. Smith, *Everything You Always Wanted to Know about Official Support to Non-Federal Entity Fundraisers*, ARMY LAW., Feb. 2000, at 1 (offering a five-step model for analyzing official support to NFE fundraisers).

69. *See* JER, *supra* note 18, para. 3-102(a).

70. The Purpose Statute provides that “[a]ppropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.” 31 U.S.C. § 1301(a); *see also* Michael J. Davidson, *Article: Putting the Genie Back in the (Muddy) Bottle: Curing the Potential ADA Violation*, 78 A.F. L. REV. 27, 29 (2018) (describing in more detail the Purpose Statute and the ramifications for violating it). It is beyond the scope of this article for a detailed discussion on fiscal constraints of Government procurement.

71. *See infra* Section titled “Support Authorized by Statute (Congress Says ‘Go for It’)” (identifying some, but not all, of the specific statutory authorities where Congress has provided DoW authority to support to NFEs).

72. *See* JER, *supra* note 18, para. 3-102(b); *see also generally* DoDI 5410.19-V1, *supra* note 2 (providing general policy and identifying additional specific guidance on particular community outreach activities and requirements for each type).

73. *See, e.g.*, 10 U.S.C. § 2012 (authorizing military departments to provide support incidental to military training to certain governmental entities and youth organizations, but not for community outreach); 10 U.S.C. § 2551 (authorizing military departments to provide cots, bedding, and supplies to support state and national conventions or national youth athletic or recreational tournaments); 10 U.S.C. §§ 2554–55 (authorizing support to the Boy Scouts and Girl Scouts of America for national and international events); 10 U.S.C. § 2606 (authorizing military departments to assist scouting organizations with support outside the United States); 10 U.S.C. § 2558 (authorizing military departments to provide support to designated national military associations for annual national conferences); 32 U.S.C. § 508 (authorizes the National Guard to provide support for certain youth and charitable organization).

74. *See* 10 U.S.C. §§ 2551, 2554, 2555.

75. *See* 10 U.S.C. § 2558; *see also* DoDI 1000.15, *supra* note 28, encl. 3; JER, *supra* note 18, para. 2-400 (providing a more robust list of those authorized specific support).

76. See, e.g., 10 U.S.C. § 2558 (relating to military department support to NMA national conferences, specific types of support are listed, including security and transportation).

77. See DoDI 5410.19-V2, *supra* note 2, sec. 3.6.

78. See 10 U.S.C. § 2558.

79. See 10 U.S.C. §§ 2670, 2602; *see also* AR 210-22, *supra* note 30, paras. 2-5, 6-1.

80. See JER, *supra* note 18, para. 3-102(a) (noting that official DoW support to NFEs may only be provided for an official or authorized purposes consistent with 5 C.F.R. § 2635, Subpart G, relating to misuse of positions and resources); JER, *supra* note 18, para. 3-102(d) (highlighting its punitive nature and that DoW personnel may not officially endorse or give preferential treatment to an NFE, except as authorized by statute or regulation).

81. See DoDI 5410.19-V1, *supra* note 2, para. 4.8; DoDI 5410.19-V2, *supra* note 2, para. 3.2(a).

82. See DoDI 5410.19-V1, *supra* note 2, para. 3.1 (stating the overarching outreach guidelines).

83. The 2024 revision to the JER directs that any “support provided to NFEs must be authorized in accordance with the criteria set forth in the [DoW] Community Outreach Activities Instruction, DoDI 5410.19.” JER, *supra* note 18, para. 3-102(b).

84. DoDI 5410.19-V1, *supra* note 2, sec. 6 (discussing the procedure for evaluating outreach support).

85. The DD Form 2535 is specific for requests for aerial support, whereas the DD Form 2536 is for general support requests.

86. DoDI 5410.19-V1, *supra* note 2, para. 6.1(a).

87. It is noteworthy that there is a significant number of specific rules and authorities related to use of ceremonial color guards, aerial assets, and military bands. In fact, an entire volume of DoDI 5410.19 is dedicated to these three categories of resources. *See generally* U.S. DEP’T OF DEF., INSTR. 5410.19, COMMUNITY OUTREACH ACTIVITIES: CEREMONIAL, MUSICAL, AND AERIAL EVENT SUPPORT vol. 4 (29 Sep. 2021) [hereinafter DoDI 5410.19-V4]. In addition to DoW guidance, the Army also has specific guidance governing these resources in Army Regulation 360-1, which governs Army public affairs, Army Regulation 95-1, which governs flight and aviation assets, and Army Regulation 220-90, related to Army bands. *See generally* AR 360-1, *supra* note 1; U.S. DEP’T OF ARMY, REGUL. 95-1, FLIGHT REGULATIONS (22 Mar. 2018); U.S. DEP’T OF ARMY, REGUL. 220-90, ARMY BANDS (9 Nov. 2016). These authorities must be consulted when evaluating these requests for support.

88. DoDI 5410.19-V1, *supra* note 2, sec. 4.

89. *See id.* para. 3.7(a) (“Community outreach is not authorized if it is in support of, or participation in, events or programs in which public confrontation is planned or likely, or where the apparent purpose is to stage controversy.”).

90. *Id.* (prohibiting support if the NFE event is meant to stage controversy). One notable exception to policy would allow support to events sponsored by organizations with restricted membership when (a) the primary beneficiary of the event is the community as a whole, (b) there is no other community organization with non-restrictive membership policy for DoW to effectively engage with, (c) the likelihood of disturbances is minor, and (d) participation will not bring discredit on the DoW. *Id.* para. 4-2(a). However, this is a narrow

exception to a broad rule generally prohibiting support to these types of organizations and events.

91. *See id.* paras. 4.1–4.3 (support options are generally prohibited if admission, seating, or membership are restricted based on race, color, national origin, religion, age, disability, sex, or sexual orientation).

92. DoDI 5410.19-V2, *supra* note 2, para. 3.2(a). In order to provide this support, all of the following criteria must be met:

(1) The logistical support does not interfere with performing other official duties and does not detract from readiness.

(2) [DoW] community outreach with the immediate community or other legitimate [DoW] [public affairs] or military training interests are served by the support.

(3) Associating with the event is in the [DoW]’s best interest.

(4) The event is of interest and benefit to: (a) The local civilian community as a whole. (b) The [DoW] Component providing the support or any other part of the [DoW].

(5) An admission fee, beyond what will cover the reasonable costs of sponsoring the event, will not be charged for the portion of the NFE event receiving [DoW] logistical support.

(6) The [DoW] Component is able and willing to provide similar support to comparable events sponsored by similar NFEs when the events meet the criteria in Paragraphs 3.2a(1) through 3.2a(5).

(7) Logistical support generally must not be provided to NFEs when the support could be provided reasonably by commercially available resources and services. In most instances, the [DoW] must be considered the supplied of last resort. Some exceptions are identified in Table 1.

(8) Logistical support must not be provided to events or programs where the real or apparent purpose is to stage controversy or confrontation.

*Id.* paras. 3.2(a)(1)–(8). Specifically, for logistical support, all eight requirements must be satisfied and any support must be consistent with the JER and other DoW guidance related to NFEs. *Id.* para. 3.2(a) (requiring compliance with the JER, DoDI 1000.15, *supra* note 28, and U.S. DEP’T OF DEF., DIR. 1000.26E, SUPPORT FOR NON-FEDERAL ENTITIES AUTHORIZED TO OPERATE ON DoD INSTALLATIONS (2 Feb. 2007) (C2, 30 Nov. 2022)).

93. DoDI 5410.19-V2, *supra* note 2, para. 5-1.

94. The stark distinction drawn here was not always so clear. In prior versions of both the JER and DoDI 5410.19, there were situations where requested speaker support was evaluated under the logistical support requirements of paragraph 3.2(a) of DoDI 5410.19, volume 2. This often led to confusion as to the proper regulatory framework for evaluating requests for speaker support. In the August 2025 revisions of DoDI 5410.19, this distinction was clarified.

95. DoDI 5410.19-V1, *supra* note 2, para. 4.8.

96. *See* U.S. DEP’T OF DEF., 5500.7-R, JOINT ETHICS REGULATION (JER) para. 3.211(a)(7) (30 Aug. 1993) (C7, 17 Nov. 2011) [hereinafter Expired

JER]; Memorandum from Dep’t of Def. Standards of Conduct Off., subject: Advisory 09-03 (23 Mar. 2009) [hereinafter SOCO Advisory 09-03].

97. *See* SOCO Advisory 09-03, *supra* note 96.

98. *See* Expired JER, *supra* note 96, para. 3-211(a); SOCO Advisory 09-03, *supra* note 96.

99. *See* JER, *supra* note 18, para. 3-102(b).

100. DoDI 5410.19-V1, *supra* note 2, para. 4.8.

101. *See id.* para 4.8, Glossary at 58; *see also* SOCO Advisory 09-03, *supra* note 96 (interpreting that no more than 20 percent of speakers or other support to the event could be provided by DoW).

102. DoW personnel in support of community outreach activities cannot be given demeaning or menial tasks while in uniform. DoDI 5410.19-V1, *supra* note 2, para. 4.6. For example, DoW personnel cannot be ushers, parking lot attendants, or escorts at beauty pageants in support of these types of outreach events. *See id.* paras. 4.6(a)(1)–(2).

103. *Id.* Glossary at 58.

104. *Id.* para 4.8(c).

105. *Id.*

106. The instruction provides that all relevant factors should be considered, including the following:

(1) The event’s overall nature.

(2) Prominence of [DoW] support featured in event promotional materials.

(3) Percentage of total event participants comprised of [DoW] personnel.

(4) Percentage of total event agenda time comprised of [DoW] speakers, musical units, ceremonial units, and equipment demonstrations.

(5) The amount of apparent reliance on [DoW] support for the event or activity to proceed.

*Id.*

107. *See* DoDI 5410.19-V1, *supra* note 2, para. 4.8.

108. *Id.* para. 4.8(b).

109. *See* Memorandum from Dep’t Sec’y of Def. to Sec’y of Mil. Dep’ts et al., subject: Department of Defense Senior Leader Attendance at Outside Events (31 Jan. 2018).

110. DoDI 5410.19-V2, *supra* note 2, para. 5.1.

111. *Id.* para. 5.1(a).

112. DoDI 5410.19-V2, *supra* note 2, para. 5.3(b).

113. *Id.* para 5(j).

114. *Id.*

115. *Id.* para. 3.2(a)(7).

116. *Id.*

117. AR 215-1, *supra* note 67.