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WESTERN REGIONAL ETHICS ADVISORY

Subj: OVERVIEW OF EMPLOYMENT, OPERATIONAL CONTROL PROTOCOL, AND GIFT
ACCEPTANCE/COST REIMBURSEMENT FOR MUSICAL UNITS

- Ref:
- (a) MCO 5000.18 of 10 May 2013
 - (b) SECNAVINST 5720.44C of 21 Feb 2012
 - (c) DoDD 5410.18 of 20 Nov 2001
 - (d) DoDI 5410.19 of 13 Nov 2001
 - (e) MCO 5720.77 of 8 Jul 2010
 - (f) MARADMIN 643/15 of 15 Dec 2015
 - (g) Assistant to the Secretary of Defense Memorandum, "DoD Public Affairs Outreach Guidance for Fiscal Years 2016-2017" of 17 Nov 2015
 - (h) DoD FY16-FY17 Public Affairs Outreach Guidance "Connecting Americans to their Military" of 1 Oct 2015
 - (i) 10 U.S.C. 974
 - (j) Office of the Assistant Secretary of Defense (Public Affairs) memorandum, "Department of Defense Community Outreach in Local Areas for Fiscal Year 2015" of 8 Oct 2014
 - (k) Under Secretary of Defense (Comptroller) memorandum, "Gifts to Benefit Military Musical Units," of 9 Mar 2015
 - (l) SECNAV Memorandum, "Delegation of Acceptance Authority for Gifts to Benefit Military Musical Units" of 12 Aug 2015
 - (m) SECNAVINST 4001.2J of 12 Aug 2009
 - (n) MCO P5800.16A of 31 Aug 1999
 - (o) Office of Counsel for the Commandant's Band Information Paper Regarding the Authority to Participate in Community Outreach Events
 - (p) Administrative Aide to the Secretary of the Navy memorandum, "Change to SECNAVINST 4001.2J"

- Encl: (1) Community Outreach Approval Authority Matrix
(2) Gift Acceptance Authority Matrix

1. **Purpose.** To provide an ethics advisory regarding the employment of Marine Corps musical units, the appropriate approval authority for musical units engaged in community relations (ComRel) activity, and for gifts given for the benefit of a musical unit.

2. **Background.** There are currently three Marine Corps Bands within the Western Region. Each band is collocated with its respective commander at MCAS Miramar, 1st Marine Division on MCB Camp Pendleton, and MCRD San Diego. The bands routinely receive requests to perform at Official DoD Events, Public Events, events sponsored by NFEs, and for other events. These requests for musical unit support oftentimes require a legal review from an ethics counselor on authorized level of support for a particular type of event. This advisory outlines the references and factors for Staff Judge Advocates to evaluate a request for musical support.

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Generally, the two issues involved in a request are: (1) participation criteria and approval authority, and (2) gift acceptance authority. Operational Control (OpCon) of a musical unit can shift depending on the request, therefore, determining the appropriate approval authority to authorize support and to accept gifts for the benefit of musical units is an important first step. OpCon is the authority to commit a musical unit to a particular mission/event. A Commanding General's OpCon of a musical unit for a particular event is the approval authority, and thus the terms "approval authority" and "OpCon" are nearly synonymous. Factors that shift OpCon, discussed at length below, include but are not limited to: (1) additional cost to the government, (2) prominence of the event, and (3) distance of the event from a unit's home installation. These factors shift OpCon of the band from the local installation commander to a higher approval authority; this advisory outlines when a shift is triggered. Enclosure (1) summarizes these triggers with respect to the types of events and authorized support. Enclosure (2) summarizes the gift acceptance authority for gifts to musical and ceremonial units. References (a)-(o) apply.

3. **Executive Summary.** Per reference (a), the Band Officer of a Marine Corps band functions as a special staff officer of the Commanding General by providing information and recommendations on use, current capabilities, and standing procedures and policies that govern the operations of the band. The Band Officer is the sole advisor on the use of the band unless an ethics counselor must provide a legal review. Commands exercising OpCon retain the sole committing authority for band missions. Per section 4.8.18 of reference (c), when evaluating requests for military musical and ceremonial support to events sponsored by organizations other than the Department of Defense, or for requests for performances beyond a unit's local area of responsibility, the military services and their subordinate commands must ensure that the requirements of section 4.8.18 are met before accepting the request. Reference (c) and enclosures 8 and 13 of reference (d) are the primary references used to determine the eligibility of requests for musical support.

4. **Discussion**

a. **General Parameters of Community Relations Support.** Reference (c) details the general DoD eligibility requirements to provide any type of community relations (ComRel) support. Support by musical units, a subpart of ComRel support, is even more limited than the general ComRel guidelines found in references (c) and (d) primarily due to Congressional concerns over competition with local musicians. ComRel support must be confined to those activities that are of "common public interest" and are of benefit to a local, state, regional, national, or a broad represented community, unless support is specifically authorized by statutes or Executive Orders (EOs). These types of events can include, but are not limited to, the following examples from reference (c).

(1) Nonpartisan patriotic events open to the general public usually are of common interest and benefit.

(2) Events where attendance is only by invitation may also be considered to be of common interest and benefit if invitations are extended to a cross section of a broad community, as defined in enclosure 2 of reference (c) (E2.1.4, "Community"). For example, an association convention representing an entire industry could be considered of common interest. A meeting of representatives from only one organization, firm, or business in

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that industry, however, won't be considered of common interest.

(3) Nonpartisan events sponsored by local, state, or federal governments; schools, civic organizations, veterans associations, or recognized organizations whose primary purpose is to foster public service, stimulate patriotism, promote understanding of national security issues, or foster public appreciation of our national heritage are generally considered to be in the common public interest.

(4) Testimonials, tributes, or honors to individuals are not generally of common interest or benefit to the community at large.

(5) Community relations support to events sponsored by organizations with a narrow membership base or interest, such as commercial enterprises, religious or sectarian organizations, ideological organizations, and political organizations and campaigns, may occasionally be considered to be in the common public interest when it is clear that the support primarily benefits the community at large, rather than the sponsoring organization. Examples of such instances include the use of a:

a. Church as a site for a public concert, speech, or display, when the activity is not part of a religious service.

b. Shopping mall as a site for an event when the site is made available as a community service and not as a promotion.

c. Local airport for an aviation event. Air shows are of general community interest.

b. Types of Supportable Events. Per enclosure 2 of reference (d), there are five types of supportable events, or combinations thereof, as defined below.

(1) *Official Civic Event*. A public event sponsored and conducted by Federal, State, county, or municipal government, using appropriated funds, including corresponding authorities of a host nation in overseas areas. Events include inaugurals, dedications of public buildings and projects, ceremonies for officially invited governmental visitors, and the convening of legislative bodies. (Community or civic celebrations, such as banquets, dinners, receptions, carnivals, festivals, opening of sports seasons, and anniversaries are not considered official civic events or ceremonies even though sponsored or attended by civic or governmental dignitaries.)

(2) *Official DoD Event*. An event sponsored by the Department of Defense, a DoD Component, or a command, using appropriated funds, conducted in support of an assigned mission, including purposes of esprit de corps, primarily for active duty personnel and civil service personnel, dependents, and guests. Official DoD Events are supportable on or away from a military installation, but the applicable commander must certify that the requirements in section E8.3.3 of reference (d) (relating to the unsuitability of installation facilities to host the event) are met when an Official DoD Event is held away from an installation.

(3) *Official Federal Government Event*. An event sponsored solely by an element of the Federal Government and paid for solely with appropriated funds, in which officials of any branch of the Federal Government are involved in the performance of their official duties. (See subparagraph

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4.8.15. of reference (c)).

(4) *Public Event*. An event, to include ceremonies, exhibitions, expositions, athletic contests, fairs, air shows, conventions, meetings, symposia, or similar programs, not connected with the military functioning of the Department of Defense and intended primarily for non-military audiences. (Exercises, movements, maneuvers, or operations, even though incidentally observed by the general public, are not considered public events.)

(5) *Fundraising Event*. An event or activity with the purpose of soliciting money or materiel for charitable, civic, or educational organizations, organizational operations, or similar purposes, by any means, beyond that necessary to cover the reasonable costs of the event. "Fund-raising events" are distinct from "Commercial Activities," defined in paragraph E2.1.9 of reference (d), that involve the conduct of business to make a profit.

c. Criteria for Identifying Events Generally Eligible for ComRel Activity. Per enclosure 13 of reference (d), ComRel activity may be approved only for events that meet the minimum criteria in EACH of the following four categories:

(1) *Activity*. Activity receiving ComRel support must meet at least one of the criteria of section E13.3.11 of reference (d). If any of the conditions in section E13.3.1.2 of reference (d) is met, the event is ineligible for ComRel support.

(2) *Sponsor*. Sponsorship of an activity eligible to receive ComRel support must meet at least ONE of the conditions in section E13.3.2.1 of reference (d). If ANY of the conditions in section E13.3.2.2 of reference (d) is met, the event is ineligible for community relations support.

(3) *Site*. An eligible site for a community relations activity must be one of those listed in section E13.3.3.1 of reference (d). If ANY of the conditions in section E13.3.3.2 are met, the event is ineligible for community relations support.

(4) *Program*. Programs eligible to receive community relations support must meet at least ONE of the conditions in section E13.3.4.1. If ANY of the conditions in section E13.3.4.2 are met, the event is ineligible for community relations support.

d. Additional Restrictions on ComRel Activity Involving Musical Units. Per enclosure 8 of reference (d), the Assistant Secretary of Defense for Public Affairs [ASD(PA)] establishes policy under reference (c) for the conduct of all DoD musical support in the public domain. Musical support includes, but is not limited to, parades, concerts, choral presentations, patriotic openers or presentations, and other events where a band or band detachment or component performs.

(1) *Musical units are authorized to support ComRel activity*. Musical units may be used to support ComRel programs in accordance with section 4.2 of reference (c). Such units shall be used to maximize the number of ComRel events that may be supported. Accordingly, no event shall receive the support of more than one band and/or choral group without prior approval of the ASD(PA). Commands receiving requests for support must ensure that other DoD musical units are not scheduled to support the same event.

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(2) *Musical units and Non-Federal Entity events.* Per section 4.2.4.2 of reference (c), a musical unit is not logistical support, and is generally not available to support non-federal entity (NFE) events. Providing support at events sponsored by NFEs by military service members in uniform, performing in a musical unit, is particularly inappropriate because they convey in that context a strong visual appearance of endorsement of the NFE, its event, or its goals. When determined to be in the Department's best interest, a musical unit may be provided for Ceremonial Support of NFE events that are not used for fund-raising. Military musicians shall not be placed in competition with commercial musicians.

(3) *Musical units unavailable for NFE fundraisers.* Per section 4.2.5.3 of reference (c), a musical unit is not a resource available for loan as logistical support to a charitable fund-raising event sponsored by a NFE.

(4) *Background/Social music not authorized for NFE sponsored events.* Background, dinner, dance, or other social music is not authorized for programs sponsored by NFEs for events, whether they are held either on a military installation or away from a military installation. Such use of military musical units in public events places military musical units in direct competition with commercial musicians. Authorized programs are limited to public concerts, parade participation, and short (approximately 15 to 20 minutes in duration) patriotic presentations.

(5) *Background/Social music is authorized for certain Official Functions.* Background, dinner, dance, or other social music programs may be authorized for official DoD Events, even if the location of the event is not on or distant from a military installation, when the performance is in support of an official DoD event or function. Musical selections normally consist of a medley of military or patriotic music focusing on the themes of national pride or recognition of service to the nation, and music to accompany the presentation of the American Flag by a color guard. In addition, per reference (d), DoD support for official Federal Government events also may be authorized for background, dinner, dance or other social music programs on or off military installations, but, requests for those types of musical support shall be submitted to the ASD(PA) for approval.

(6) *Support for memorial services.* Musical units shall only support memorial services if the deceased is authorized a state funeral, customary military honors, or if approved by the ASD(PA).

e. Operational Control/Approval Authority. In order to maximize the use of musical resources and vet certain types of request for musical support, ASD(PA) has retained the majority of approval authority for ComRel activities. Certain approval authority for ComRel activity has been delegated to local commanders as outlined below.

(1) *OpCon within the Area of Responsibility/Local Area.* Per reference (a), local commanders are delegated approval authority for requests for participation in ComRel and Official DoD events that are within their area of operations (AO) subject to the limitations found in section 0501 of reference (b), and guided by the criteria for supportable events in references (b)-(e). Per references (a), (f), (j), and (o), the AO extends to the geographical area in which an installation, its units, and personnel have an economic or social impact, and is considered to extend up to 150 miles beyond the installation's borders or within 1 day of round trip travel from

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the installation.

(2) *OpCon outside the Area of Responsibility/Local Area.* Per reference (e), local commanders will determine the eligibility of requests for musical support in accordance with references (c), (d), (h) and (j). Per references (a), (b), (c), (e), (f), (j), and (o), OpCon for all events outside the AO, otherwise reserved for higher approval, or those events incurring a cost to the government in excess of \$5,0000, shifts to Headquarters, Marine Corps, Division of Public Affairs (PAC-20), or to the ASD(PA) via PAC-20. (See enclosure 1 for a quick reference chart summarizing approval authorities).

(3) *Evaluating requests from non-DoD sources or from outside an AO.* Per section E8.3.12 of reference (d), when evaluating requests for military musical and ceremonial support to events sponsored by organizations other than the Department of Defense, or for requests for performances beyond a unit's local area of responsibility (AOR), the Military Services and their subordinate commands shall ensure the following prior to accepting requests:

a. A completed DD Form 2536, "Request for Armed Forces Participation in Public Events (Non-Aviation)," shall accompany each request for musical or ceremonial support.

b. Participation shall be in the best interest of the DoD. Public attendance shall be free or at a cost that meets the restrictions addressed in subparagraph 4.2.4.1 of reference (c).

c. Events shall be open to the public, and shall not be part of any unauthorized fund-raising effort.

d. DoD participation shall be at no additional cost to the Government. The requesting organization shall agree to fund all expenses for the trip. Such expenses include all travel from the home station of the musical unit, per diem expenses for the requested unit, accommodations, and all local travel. Per reference (a), for purposes of computing the cost to the government for supporting an event, costs that would have existed had the Marine Corps not participated in the event are not included. Examples include, but are not limited to, regular pay and allowances and small incidental expenses.

e. The Military Service shall confirm that no similar military resource more local to the event is available to meet the request, and that the type of military musical or ceremonial unit and the number of military personnel requested is appropriate to the event.

f. The Military Service shall confirm that no other military band resources are participating in the event (one band and/or choral group per event in block 9 of DD Form 2536). If that data has not been entered, the military services must determine from the event sponsor whether participation by other military musical resources has been requested or arranged. Requests for DoD support in excess of one military musical and/or ceremonial group shall be forwarded, through applicable military service channels, to the ASD(PA), with justification and recommendation, for an exception to policy prior to making any commitment to the sponsor.

g. The military service shall ensure all opportunities for local area public concerts have been met prior to a band or chorus accepting

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performance requests outside its local area of responsibility. Rather than relying on invitations from local organizations, military musical and ceremonial units shall make every effort, especially during holiday periods, to initiate free public concerts within their AOR as part of their community relations mission.

h. The Military Service shall confirm that no invitations from possible audiences or invitations around the home station of the musical or ceremonial unit are being declined or canceled to allow the requested unit to accept an invitation that is away from the home station of the unit, especially during U.S. holiday periods.

i. Each military service shall confirm that its musical and ceremonial resources are being scheduled to the greatest extent possible. All effort must go into ensuring that the American public receives the greatest number of opportunities to hear community relations performances by DoD musical and ceremonial resources when those resources are not supporting internal military ceremonial, morale and esprit de corps, and military recruiting activities. A full schedule during any given year is defined as an average of at least two daily performances, particularly in public venues, except on travel days. Each military service's musical and ceremonial units shall give special attention to scheduling free concerts in its local AOR during national U.S. holidays and other broadly based civic and patriotic observances.

f. ComRel Funding. Per section 4.9 of reference (c), funding programmed and expended for public affairs activities is an integral part of the Operations and Maintenance (O&M) fund account of each DoD component.

(1) *No additional cost to the government requirement*. Except for those programmed O&M funds, community relations activities shall not involve any additional cost to the Government. Programming funds for community relations programs shall be the responsibility of each DoD component and its commands, and shall be kept to the minimum necessary to accomplish the DoD objectives. O&M funds may be advanced for incidental costs associated with un-programmed, but otherwise appropriate, community relations activities when the sponsor agrees to reimburse the Federal Government for those costs (e.g., travel, meals, lodging, and per diem). (See section E9.2.3 of reference (d)).

(2) *Absorption of un-programmed costs*. Public affairs activities must be planned and budgeted to the greatest extent possible. The DoD Components shall absorb all un-programmed costs of supporting those community relations programs that are specifically authorized by statute, executive order, or the SECDEF, and the following types of programs when they are in the primary interest of the DOD:

- a. Official Federal Government events.
- b. DoD or civic-sponsored observances of U.S. or host-country national holidays.
- c. Official civil ceremonies and functions.
- d. Speaking engagements as addressed in enclosure 4 of reference (d).

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e. Events considered to be of national interest or of a professional, scientific, or technical interest of a DoD component or element, when approved by the ASD(PA).

g. Gift Acceptance Authority Which Benefit Marine Corps Musical Units. The following section outlines the authority to accept gifts for the benefit of a Marine Corps musical unit on behalf of the Marine Corps.

(1) *Authority to accept gifts for the benefit of musical units.* Reference (i) authorizes the relevant service secretary to accept gifts to benefit military musical units under their command. Reference (j) establishes DoD policy for accepting and reporting gifts to benefit musical units. Reference (k) exempts commanders from the requirement to seek OASD(PA) approval for events that are not listed on the current FY Outreach Plan if the additional cost of the event to the Federal Government does not exceed \$5,000, the event meets ComRel criteria, and the location is within the unit's AO. Reference (l) delegates the authority to accept gifts to musical units to the senior Marine Corps personnel listed in paragraph 5(b)(1)-5(b)(2) of reference (m), and notes that further delegation is authorized. Reference (n) delegates authority to accept gifts, including gifts for the benefit of a musical unit, on behalf of the Marine Corps.

(2) *Gift Acceptance approval authorities.* Per reference (n) as amended by reference (p), Special Court Martial Convening authorities may accept gifts on behalf of the Marine Corps valued at \$1,500 or less; General Officers in command may accept gifts valued at \$10,000 or less; the Director, Marine Corps Staff (DMCS) may accept gifts valued at \$100,000 or less; and the Secretary of the Navy may accept gifts valued in excess of \$100,000. Per reference (k), the provision of a performance venue and associated performance support services by a requestor is not considered a gift. (See enclosure 2 for a quick reference chart of gift acceptance authorities).

(3) *Reporting requirements for gift acceptance or rejection.* Acceptance or rejection of a gift for the benefit of a musical unit on behalf of the Marine Corps must be reported in conformance with the requirements of reference (k).

5. **Conclusion.** Many prominent events, requests from other Federal Government entities, and events outside of the Commanding General's AO which request band participation must be approved by HQMC Public Affairs (PAC-20). References (c), enclosures 8 and 13 of reference (d), and reference (h) are the primary references used to determine the eligibility of requests for musical support. For further information, please email the Western Regional Civil Law Office at LSST_CAMPEN_CIVLAW@usmc.mil.


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Enclosure 1

Community Outreach Approval Authority Matrix

<i>If the Event</i>	<i>And Cost is</i>	<i>And Location is (from Installation)</i>	<i>And Travel (round trip)</i>	<i>Then</i>
Is NOT included in the FY DoD Outreach Plan or Music Outreach Board	> \$5k	N/A	N/A	<ul style="list-style-type: none"> • OASD(PA) approval required (VIA HQMCPA (PAC-20))
	≤ \$5k	< 150 miles	N/A	<ul style="list-style-type: none"> • Commander may approve
		> 150 miles	Can be completed w/in 1 day	<ul style="list-style-type: none"> • Commander may approve
				CANNOT be completed w/in 1 day
Is included in the FY DoD Outreach Plan or Music Outreach Board	N/A	N/A	N/A	<ul style="list-style-type: none"> • No further DoD approval required.

* If the event falls under the Commander's approval authority but will garner national or international media attention, notify OASD(PA)/CPO through public affairs channels for awareness and support.

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Enclosure 2

Gift Acceptance Authority Matrix

Unit Requested	Authorized	Not Authorized	Gift Amount	Approval Authority
Ceremonial Unit (other than Musical)	Personal Property and \$ (Including Food)	<i>Services</i> (lodging, transport)	< \$1.5k	SPCMCA
			< \$10k	General Officer in Command
			≤ \$100k	Director, Marine Corps Staff (DMCS)
			> \$100k	SECNAV
Musical Unit	Personal Property, \$, and <i>Services</i>	N/A (gift must always be appropriate and for the benefit of the service)	< \$1.5k	SPCMCA
			< \$10k	General Officer in Command
			≤ \$100k	Director, Marine Corps Staff (DMCS)
			> \$100k	SECNAV

* All Gifts or gift refusals to benefit musical units must be reported in accordance with Financial Management Regulation, Volume 12 as per reference (j).