

PROC 10 FAQs

1. Within the context of Procedure 10, Undisclosed Participation (UDP) in Organizations, what does “maintain” mean in paragraph 3.10.f.(1)(b)?

Answer: Paragraph 3.10.f.(1)(b) permits participation in an organization solely for the purpose of obtaining or renewing membership status, but does not allow any further activities to maintain or enhance cover without specific approval. The intent was to allow the employee to conduct activities necessary to renew the account or keep the account current and, accordingly, active. For example, a gym membership may require the payment of monthly dues.

It’s important to note that the purpose of participating in an organization in this context is solely to establish a cover, not to collect intelligence. Thus, “maintain” is used in reference to the cover, not the membership. So, activities such as payment of monthly dues or social network activity necessary to keep the account active are renewal activities. Activities to maintain or enhance the cover are additional measures that go beyond membership and require approval. If there’s any doubt or confusion, including membership renewal procedures in the cover plan would meet the requirement for approval in paragraph 3.10.f.(2).

2. Paragraph 3.10.g.(3) requires the Defense Intelligence Component (DIC) to maintain a written record of any disclosure of intelligence affiliation required by Procedure 10, including the name and title of the person to whom disclosure was made. However, many times registration will occur online and there will be no interaction with a human being. How should these events be recorded?

Answer: If the online registration site does not provide a name and position of an individual as a point of contact, the DIC should record the name of the organization with whom they register as well as how they registered (e.g., through an online form) and how the affiliation was disclosed. The record should also include the event name, the purpose for which they registered, and the date/time group when the registration and disclosure occurred. DICs should maintain a record of registering online for events and keep it in the files in which undisclosed participation (UDP) approval records are kept. A screen shot may suffice to meet the intent of the manual.

3. When intelligence personnel are performing a mission that is expressly excluded by DoDM 5240.01, is it correct that none of the Manual's Procedures are triggered?

Example: Intelligence personnel participating in a Disaster Response Conference sponsored by the American Red Cross are not bound by the intelligence affiliation disclosure requirements of Procedure 10.

Answer: Correct. If the activities fall outside the scope of DoDM 5240.01, i.e. they meet the specifications in paragraph 3.1.a.(3), then none of the Procedures apply unless the participants are collecting intelligence or conducting other intelligence activities.

4. If intelligence personnel engage in excluded undisclosed participation (UDP) activities (3.10.b) or engage in activities where no specific approval is required (3.10.f (1)) is there a requirement to maintain an official record of these activities?

Example: Intelligence personnel attend a conference on behalf of the intelligence component to enhance their professional skills under a UDP that did not require a specific approval, and do not officially record the UDP activity.

Answer: There is no requirement under DoD Manual 5240.01 to maintain an official record of activities excluded by paragraph 3.10.b. or for which no specific approval is required in accordance with paragraph 3.10.f.(1). However, if questioned, you should be able to substantiate that the participation met the criteria in these sections. There may be other documentation requirements beyond those required by DoD Manual 5240.01.

5. General Requirements 3.10.d and Disclosure Requirements 3.10.g. (1)-(3) - If a team of intelligence personnel operating under an authorized intelligence mission join an organization to conduct foreign intelligence or counterintelligence activities, and the team leader discloses his/her intelligence affiliation to a senior official of the organization IAW 3.10.g, do the identities of all members of the team have to be disclosed to the official?

Example: The intelligence team leader operating under a cover plan discloses his or her intelligence affiliation to a cooperative U.S. organization official and acknowledges that a specific number of unidentified intelligence team members will also participate in the organization on behalf of the intelligence component. Is that sufficient to meet the disclosure requirements, or are all team members required to disclose their individual intelligence affiliation?

Answer: All members of the team must disclose their intelligence affiliation or obtain approval for undisclosed participation (UDP) in accordance with Procedure 10. The cover plan does not exempt an individual from compliance with the requirements in Procedure 10. The requirement in DoDM 5240.01, paragraph 3.10.g.(1) applies to each person who is acting on behalf of the Defense Intelligence Component. If it is necessary to conceal the identity of a member of the intelligence team, then an appropriate UDP approval must be granted in accordance with paragraph 3.10.f.

6. DoDM 5240.01, paragraph 3.10.f.(3)(c), states "A Defense Intelligence Component head or a single delegee may approve the following types of UDP: ... To collect information inside the United States necessary to identify a U.S. person as a potential source of assistance to foreign intelligence or CI activities." The previous version of this guidance, DoD 5240.1-R, stated: "... To collect information necessary to identify U.S. persons as potential sources of assistance to foreign intelligence and counterintelligence activities." Changing the U.S. person phraseology from plural to singular has resulted in some confusion. In interpreting the current version, some Components may believe they must identify a specific individual as the collection target or can only collect on one specific individual at an organizational event.

Answer: The change in phraseology was not intended to alter the original meaning. DoDM 5240.01, paragraph 3.10.f.(3)(c) authorizes a Defense Intelligence Component head or single delegate to approve UDP to collect information on multiple, unspecified U.S. persons as potential sources of assistance to foreign intelligence or CI activities.

7. Is there a difference between the phrases "open to the public" and "publicly available," as they are used in DoDM 5240.01?

Answer: Yes. The term "open to the public" is used primarily in the context of participation (Procedure 10), while the term "publicly available" is used primarily to describe criteria for the collection, permanent retention, and dissemination of information (Procedures 2, 3 and 4).

The term "publicly available information" is defined in DoDM 5240.01. "Publicly available" is used to describe a class of information and is not defined. "Open to the public" is a term used in Procedure 10 to distinguish certain public forums (meetings, seminars, social networking sites, etc.) from other forums where the general public is not welcome to participate. The definition of "publicly available information" includes the term "open to the public."

The term "publicly available" appears in Procedures 2, 4 and 10, and indirectly in Procedure 3. It is used in Procedure 2 to describe criteria for: intentional collection of USPI, least intrusive means, and limitations on collection. It is used indirectly in Procedure 3 (section 3.3.e.(1)) (Permanent Retention), which provides that USPI may be permanently retained if it meets a category for intentional collection category from Procedure 2 and meets other criteria. It is used in Procedure 4 to describe dissemination criteria. It is used in Procedure 10 to exclude the collection of publicly available information on the Internet from the procedure.

Although the term "open to the public" is not defined in the Glossary, it is used three times in Procedure 10 to describe criteria for approving undisclosed participation in organizations. In an intelligence activity, the DIC would need to determine if an organization, existing online or otherwise, is open to the public or not. In making this determination, it is irrelevant if admission requires agreement to terms of usage, as long as any member of the public can gain admission by agreeing to the terms.

8. Does Procedure 10 apply to the use of social media or a networking website (e.g., LinkedIn, video chat, Facebook Messenger, Blackberry Messenger) for communications related to intelligence activities?

Answer: Regardless of the type of intelligence activity, Procedure 10 applies to the participation by anyone acting on behalf of a Defense Intelligence Component who participates in any organization in the United States or any organization outside the United States that constitutes a U.S. person.

It is a two part test. In determining whether Procedure 10 applies to social media, or a group active on social media, the first question to ask is whether the social media constitutes an "organization," "organization in the United States," or "organization outside the United States that constitutes a U.S. person"; these definitions also include organizations that primarily meet and communicate "on the Internet or through the use of other technologies." Consultation with your servicing legal office is key in making this determination. If the social media in question meets the requirements for one or more of these definitions, you should consult Procedure 10 to determine the level of approval required.

The second part of the test is to determine if the communications amount to "participation," in the organization as defined in the manual. The use of video chat, Blackberry Messenger, and other internet-based videotelephony services that do not require you to join an organization is the modern equivalent of using a telephone, and does not, in and of itself, fall within the scope of Procedure 10. However, if you are required to join a group to gain access to the videotelephony service, and one is using the service to communicate with its members within the structure or framework of the organization, then Procedure 10 would apply. Moreover, if videotelephony is being used by an organization as a way to meet or conduct business, taking part in such communications would also require compliance with Procedure 10. Consulting with your legal office is key to determining whether Procedure 10 is applicable.