



New Procedure 10 Undisclosed Participation (UDP) In Organizations



Agenda

- **Review provisions of the new Procedure 10**
- **Highlight changes from DoD 5240.01-R**
- **Discuss basis and application**



Participation in Organizations

- **Procedure 10 governs the participation of a Defense Intelligence Component (DIC) and anyone, including sources, acting on behalf of a DIC in any organization in the United States or any organization outside the United States that constitutes a U.S. person.**



Procedure 10 Structure

- **Definitions of organization (in and outside U.S.), participation**
- **Limitations on the conduct of UDP**
- **Participation that is excluded from UDP procedures**
- **(1) Participation requiring no specific UDP approval**
- **(2) Participation requiring Head of the DIC or a delegee approval**
- **(3) Participation requiring Head of the DIC or a single delegee approval**
- **(4) Other UDP approvals (USD(I) with SIOO notification)**
- **Written approval requirements**
- **Disclosure of intelligence affiliation requirements**
- **Records of disclosures or UDP approvals**



Key Definitions

- **Organization:** An association of two or more individuals formed for *any lawful purpose* whose existence is formalized in some manner (e.g., by having a defined leadership, holding meetings, publishing a charter, or requiring dues). The term “organization” includes corporations, other commercial entities, and associations formed for a social, political, fraternal, professional, business, academic, ethnic-affinity, or religious purpose, including those that meet and communicate through the use of technologies. The term “organization” does not include a loose group of friends, social contacts, or business associates who may share common interests but whose association lacks any formal structure. For example, the Rotary Club is an organization; a group of friends who play poker or meet at a gym for athletics every weekend is not.
- **Organization:** *Includes corporations and other commercial organizations, academic institutions, clubs, professional societies, associations, and any other group whose existence is formalized in some manner or otherwise functions on a continuing basis.*



Key Definitions

- **Organization In the United States:** An organization physically located in the United States, whether or not it constitutes a U.S. person. Thus, a branch, subsidiary, or office of an organization in the United States that is physically located outside the United States is not an organization in the United States. Conversely, a branch, subsidiary, or office of a foreign organization, or one substantially made up of foreign persons that is physically located in the United States, is an organization in the United States. **An organization in the United States includes an organization that primarily meets and communicates on the Internet or through the use of other technologies and is substantially composed of persons who are located in the United States.**
- **Organization in the United States:** *All organizations physically located within the geographical boundaries of the United States whether or not they constitute U.S. persons. Thus, a branch subsidiary, or office of an organization within the United States, which is physically located outside the U.S., is not considered as an organization within the U.S.*



Key Definitions

- **Organization outside the United States that constitutes a U.S. person:** An organization physically located outside the United States that is substantially composed of U.S. persons. This definition includes an organization that primarily meets and communicates on the Internet or through the use of other technologies and *is substantially composed of U.S. persons who are located outside the United States.*
- **Domestic Activities.** Activities that take place within the U.S. that do not have a significant connection with either an agent of a foreign power or a foreign power, organization, or person.



Key Definitions

- **Participation.** *Taking part in an organization’s activities and interacting with its members within the structure or framework of the organization.* Such activities may include one or more of the following: acquiring membership, attending or taking part in organizational meetings, events, activities, or other forums sponsored or conducted by the organization; conducting the work or functions of the organization; serving as a representative or agent of the organization; or contributing funds to the organization other than in payment for goods or services. Actions taken outside the organizational structure or framework, however, do not constitute participation.

Attendance at meetings or social gatherings that involve the organization’s members, but are not functions or activities of the organization itself, is not participation.

Participation is “on behalf of” a DIC when a person is tasked or asked to participate in an organization for the benefit of the DIC. Such a person may already be a member of the organization or may be asked to join. Actions undertaken for the benefit of the DIC may include collecting information, identifying potential sources or contacts, or establishing or maintaining cover.

Participation “for the purpose of influencing the activities of an organization or its members” is any action taken with the intention of causing a significant effect on the organization’s agenda, course of business, core activities, or future direction. Simply voting or expressing an opinion on these matters as a member generally will not fall within this definition.



General UDP Approval Requirement

- **Anyone acting on behalf of a DIC may join, become a member of, or otherwise participate in an organization in the United States, or in any organization outside the United States that constitutes a U.S. person, if his or her intelligence affiliation is disclosed to an appropriate official of the organization. Without such disclosure, the other provisions of this procedure must be applied to authorize UDP.**



UDP Procedures

- **Exclusions. (Don't need to obtain a Procedure 10 approval)**
- **Personal Participation.**
 - **Activities conducted within an organization solely for personal purposes (i.e., activities undertaken upon the initiative and at the expense of a person for personal benefit). Voluntarily Provided Information.**
 - **Activities conducted within an organization by any person who is already a member of the organization, or who joins on his or her own behalf, and later volunteers information to a Defense Intelligence Component not in response to a specific request or Defense Intelligence Component tasking.**
- **Publicly Available Information on the Internet. (e.g. Google Search) Collection of publicly available information on the Internet in a way that *does not require a person to provide identifying information (such as an email address) as a condition of access and does not involve communication with a human being.***



UDP Procedures

- **Limitations on UDP.**
- **Lawful Purpose.** All UDP must be essential to achieving a lawful foreign intelligence or CI purpose, as determined by the Defense Intelligence Component head or delegee, within the assigned mission of the Defense Intelligence Component.
- **Domestic Activities.** UDP may not be authorized for the purpose of collecting information on the *domestic activities* of U.S. persons.
- **Coordination.** All UDP must be coordinated with FBI, CIA, or any other appropriate agency in accordance with E.O. 12333 and applicable policy and agreements.
- **UDP for Foreign Intelligence Purposes in the United States.** UDP may not be authorized in the United States to collect foreign intelligence from or about a U.S. person, or to collect information necessary to assess a U.S. person as a potential source of assistance to foreign intelligence activities. This limitation does not preclude the collection of information about such persons, when volunteered by sources participating in an organization to which such persons belong, if otherwise permitted by Procedure 2.
- **Duration of UDP.** Authorization to conduct UDP that requires specific approval under this procedure will be limited to the duration of the intelligence activity it is supporting or 12 months, whichever is shorter. If specific approval is required by this procedure, an appropriate official must review and re-approve participation for more than 12 months on an annual basis in accordance with this procedure.



UDP Procedures

- **Limitations (cont.)**
- **Participation for the Purpose of Influencing the Activities of an Organization or Its Members.** UDP may not be authorized for the purpose of influencing the activities of an organization within the United States, or any organization outside the United States that constitutes a U.S. person, or the members of such organizations **who are participating for lawful purposes**, unless either:
 - Such participation is undertaken on behalf of the FBI in the course of a lawful investigation, or
 - The organization concerned is composed primarily of individuals who are non-U.S. persons and the organization is reasonably believed to be acting on behalf of a foreign power.
- UDP for such purposes must be forwarded through the GC DoD to the USD(I) for approval, setting forth the relevant facts justifying such participation and explaining the nature of its contemplated activity.
- **The prohibition on influencing the activities of an organization's members does not apply to non-U.S. persons who are located outside the United States, provided that the approving authority has considered the possible impact on *domestic activities*.**



UDP Procedures

- **(1) No approval under this procedure is required for the following types of UDP:**
- **Education or Training.** Attending a course, meeting, seminar, conference exhibition, trade fair, workshop, symposium or participation in educational or professional organizations for the sole purpose of obtaining training or enhancing professional skills, knowledge, or capabilities of DIC employees. *Directing or tasking employees to conduct intelligence activities is not authorized under this category of UDP.*
- **Cover Activities.** Participation in an organization solely for the purpose of obtaining or renewing membership status in accordance with DoD cover policy. *Once membership is acquired, any further activities on behalf of the DIC to maintain or enhance cover requires approval under this procedure.*
- **Published or Posted Information.** Participation in an organization whose membership is open to the public solely for the purpose of obtaining information published or posted by the organization or its members and generally available to members. *The method of obtaining this information must not involve elicitation.*
- **Public Forums – Employment Affiliation Not Required and No Elicitation of USPI.** Participation in meetings, seminars, conferences, exhibitions, trade fairs, workshops, symposiums, or similar events sponsored or conducted by an organization, in person or through technical means (e.g., social networking sites, websites, or forums) provided that all of the following conditions are met:
 - The activity is open to the public;
 - Participation is for the purpose of collecting CI or significant foreign intelligence that is *not focused on a specific U.S. person;*
 - *Providing employment affiliation is not a condition of access; and participation does not involve the elicitation of USPI.*
- **Foreign Entity.** Participation in an organization that is an entity openly acknowledged by a foreign government to be directed or operated by that foreign government or is reasonably believed to be acting on behalf of a foreign power, and the organization is reasonably believed to consist primarily of individuals who are non-U.S. persons.



UDP Procedures

- (2) UDP May Be Approved by a Defense Intelligence Component Head or Delegee:
- Non-U.S. Persons as Sources of Assistance. To collect information necessary to *identify and assess* a non-U.S. person as a potential source of assistance to foreign intelligence or CI activities.
- Public Forums – Employment Affiliation Required or Elicitation of USPI May Be Authorized. Participation in meetings, seminars, conferences, exhibitions, trade fairs, workshops, symposiums, or similar events sponsored or conducted by an organization, in person or through technical means (e.g., social networking sites, websites, or forums), provided that all of the following conditions are met:
 - The activity is open to the public;
 - Participation is for the purpose of collecting CI or significant foreign intelligence that is *not focused on a specific U.S. person*; and
 - *One or both of the following applies: Providing employment affiliation is a condition of access; or participation may involve the elicitation of USPI.*
- Cover Activities. Participation in an organization beyond obtaining or renewing membership for the purpose of maintaining or enhancing cover that is approved in accordance with DoD cover policy. *However, directing or tasking a Defense Intelligence Component to collect foreign intelligence or CI from or about the organization or its members requires a separate approval.*
- U.S. Person Organizations Outside the United States. Participation in organizations outside the United States that constitute U.S. persons, to collect foreign intelligence or CI outside the United States from or about a non-U.S. person located outside the United States.



UDP Procedures

- **(3) UDP may Be Approved by a Defense Intelligence Component Head or a *Single Delegee*:**
- To collect foreign intelligence outside the United States from or about a *specific U.S. person* or from or about a *specific non-U.S. person* in the United States.
- To conduct authorized CI activities not addressed elsewhere in this procedure in or outside the United States, after required coordination with the FBI or CIA.
- 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. To collect information outside the United States necessary to assess a U.S. person as a potential source of assistance to foreign intelligence or CI activities.
- **(4) Other UDP Approvals.** UDP that is not specifically addressed in this procedure may be authorized by the USD(I) or a Defense Intelligence Component head with notice to the DoD SIOO.



UDP Procedures

- Standards for Review and Approval.
- The official approving UDP must make all of the following determinations:
 - The potential benefits to national security from the UDP outweigh any adverse impact on civil liberties or privacy of U.S. persons. A factor in this determination will be whether the Defense Intelligence Component will use appropriate safeguards, including limits on duration and scope of the UDP;
 - The proposed UDP complies with the limitations requirements of Procedure 10; and
 - The proposed UDP is the least intrusive means feasible and conforms to the requirements of Procedure 2.



UDP Procedures

- **Disclosure Requirement.**
- **General.**
- **Disclosure of the intelligence affiliation of the person who is acting on behalf of the DIC will be made to an executive officer of the organization in question, or to an official in charge of membership, attendance, or the records of the organization. Such disclosure must be sufficient to apprise the official of the fact of the person's affiliation with the DIC (e.g., by identifying the particular DoD Component where the name of the Component (e.g. DA G2, INSCOM) itself reveals the intelligence affiliation or by stating the fact of intelligence affiliation where the name does not reveal the underlying affiliation).**
- **Serving as an Official of the Organization.**
- **If the official to whom disclosure would be made is also acting on behalf of the Defense Intelligence Component, his or her knowledge alone does not meet the disclosure requirement unless that person is the most senior official within the organization. Where the person is not the most senior official in the organization, disclosure must be made to an additional official with actual or apparent authority to act on behalf of the organization in order for the participation not to be UDP.**
- **Records.**
- **The DIC will maintain a written record of any disclosure of intelligence affiliation required by this procedure, including the name and title of the person to whom the disclosure was made.**



Procedure 10

UDP Procedures

Take Aways

- Using tools to search publically available information on the Internet is not UDP unless identifying information or communication with a human is required to conduct the search
- Becoming a member or joining an organization solely to obtain cover, or to obtain published products requires no specific UDP approval
- Attending meetings or joining public forums in person or through the internet requires no specific UDP approval as long as employment affiliation is not required for access and USPI will not be elicited
- Attending meetings or joining public forums in person or through the internet requires Head of DIC or delegee approval if employment affiliation is required for access, and/or USPI will be elicited
- Attending meetings or joining public forums in person or through the internet requires Head of DIC or a single delegee approval if the participation is focused on a specific individual (e.g. CI investigation of a subject)
- Written UDP approvals with specific content is required



Procedure 10

UDP Procedures

Questions?



Procedure 10

UDP Procedures

Backup Slides



DoD 5240.1-R UDP Procedures

- C10.3.1. Limitations On Undisclosed Participation
- C10.3.1.1. Lawful Purpose. No undisclosed participation shall be permitted under this procedure unless it is essential to achieving a lawful foreign intelligence or counterintelligence purpose within the assigned mission of the collecting DoD intelligence component.
- C10.3.1.2. Limitations On Use of Undisclosed Participation for Foreign Intelligence Purposes Within the United States. Undisclosed participation may not be authorized within the United States for the purpose of collecting foreign intelligence from or about a United States person, nor to collect information necessary to assess United States persons as potential sources of assistance to foreign intelligence activities. This does not preclude the collection of information about such persons, volunteered by cooperating sources participating in organizations to which such persons belong, however, if otherwise permitted by Procedure 2.
- C10.3.1.3. Duration of Participation. Authorization to participate under subparagraphs C10.3.2.1., and C10.3.2.2., shall be limited to the period covered by such participation, which shall be no longer than 12 months. Participation that lasts longer than 12 months shall be re-approved by the appropriate official on an annual basis in accordance with this procedure.
- C10.3.1.4. Participation for the Purpose of Influencing the Activities of the Organization or Its Members. No participation under this procedure shall be authorized for the purpose of influencing the activities of the organization in question, or its members, unless such participation is undertaken on behalf of the FBI in the course of a lawful investigation, or the organization concerned is composed primarily of individuals who are not United States persons and is reasonably believed to be acting on behalf of a foreign power. Any DoD intelligence component that desires to undertake participation for such purpose shall forward its request to the Deputy Under Secretary of Defense (Policy) setting forth the relevant facts justifying such participation and explaining the nature of its contemplated activity. Such participation may be approved by the DUSD(P) with the concurrence of the General Counsel, DoD.



DoD 5240.1-R UDP Procedures

- C10.3.2.1. Undisclosed Participation That May Be Approved Within the DoD: Undisclosed participation on behalf of a DoD intelligence component may be authorized with such component under the following circumstances:
 - C10.3.2.1.1. Participation in meetings open to the public. For purposes of this section, a seminar or conference sponsored by a professional organization that is open to persons of a particular profession, whether or not they are members of the organization itself or have received a special invitation, shall be considered a meeting open to the public.
 - C10.3.2.1.2. Participation in organizations that permit other persons acknowledged to the organization to be employees of the U.S. Government to participate.
 - C10.3.2.1.3. Participation in educational or professional organizations for the purpose of enhancing the professional skills, knowledge, or capabilities of employees.
 - C10.3.2.1.4. Participation in seminars, forums, conferences, exhibitions, trade fairs, workshops, symposiums, and similar types of meetings, sponsored by organizations in which the employee is a member, has been invited to participate, or when the sponsoring organization does not require disclosure of the participants' employment affiliations, for the purpose of collecting significant foreign intelligence that is generally made available to participants at such meetings, and does not involve the domestic activities of the organization or its members.



DoD 5240.1-R UDP Procedures

- C10.3.2.2. Participation That May Be Approved By Senior Intelligence Officials. Undisclosed participation may be authorized by the Deputy Under Secretary of Defense (Policy); the Director, Defense Intelligence Agency; the Assistant Chief of Staff for Intelligence, Department of Army; the Commanding General, U.S. Army Intelligence and Security Command; the Director of Naval Intelligence; the Director of Intelligence, U.S. Marine Corps; the Assistant Chief of Staff, Intelligence, United States Air Force; the Director, Naval Investigative Service; the Commanding Officer, Air Force Office of Special Investigations; or their single designees, for the following purposes:
 - C10.3.2.2.1. To collect significant foreign intelligence outside the United States, or from or about other than United States persons within the United States, provided no information involving the domestic activities of the organization or its members may be collected.
 - C10.3.2.2.2. For counterintelligence purposes, at the written request of the Federal Bureau of Investigation.
 - C10.3.2.2.3. To collect significant counterintelligence about other than United States persons, or about United States persons who are within the investigative jurisdiction of the Department of Defense, provided any such participation that occurs within the United States shall be coordinated with the Federal Bureau of Investigation.
 - C10.3.2.2.4. To collect information necessary to identify and assess other than United States persons as potential sources of assistance for foreign intelligence and counterintelligence activities.
 - C10.3.2.2.5. To collect information necessary to *identify* United States persons as potential sources of assistance to foreign intelligence and counterintelligence activities.
 - C10.3.2.2.6. To develop or maintain cover necessary for the security of foreign intelligence or counterintelligence activities.
 - C10.3.2.2.7. Outside the United States, to assess United States persons as potential sources of assistance to foreign intelligence and counterintelligence activities.