STANFORD UNIVERSITY

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VICE PROVOST
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Stephen Tarragon
Deputy Chief
Regulatory Products Division Clearance Office
U.S. Citizenship and Immigration Service
111 Massachusetts Avenue, N.W.
Suite 3008
Washington, D.C. 20529-2210

Re: OMB Control Number 1615-0009

Dear Mr. Tarragon

On behalf of Stanford University, I am writing to respond to the February 8, 2010 Federal Register notice concerning the United States Citizenship and Immigration Service's (USCIS) proposal to add a "Deemed Export Acknowledgement" section to its Form I-129, Petition for Nonimmigrant Worker.

Stanford appreciates this opportunity to express concerns about USCIS's proposal. As written, this Deemed Export Acknowledgement section will require an H-1B or an O-1 visa petitioner to state upon application whether or not their university employment will require a deemed export license.

Please note that Stanford takes the issue of deemed exports very seriously. We have an institutional appreciation of and commitment to this issue. Our President, John Hennessy, served as co-chair of the National Academies' Committee on Science, Security and Prosperity which issued a comprehensive report on deemed export controls and US competitiveness. And in 2006, Stanford was one of the first universities to hire a designated export compliance officer to ensure that its research remains fundamental and unrestricted. Because of our depth of experience with this issue, we believe we are in a position to state that this proposal is ill-timed, given the ongoing Administration review of export control policy, and that it will result in substantial burdens on Stanford with very little benefit to our national security.

First, the proposal overlooks the fact that research conducted by foreign nationals not only at Stanford but the majority of US research universities is fundamental research excluded from export control requirements. Whether or not technology is subject to the EAR is irrelevant when

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a foreign national is performing fundamental research, except in the extremely limited instances where an industrial partner needs to share proprietary technology. To place a deemed export information collection requirement on fundamental research institutions, many of which already have internal processes to avoid deemed export licensing requirements would be costly and disproportionate to the limited benefit to the US defense posture. Moreover, the proposed Deemed Export Acknowledgement section presupposes that regulated technology will be accessed. This is not the case for universities like Stanford that conduct fundamental research, the results of which remain free from controls on dissemination or access by foreign nationals.

Second, those we hire on H-1B or O-1 visas support Stanford University's research and teaching mission. Both our academic calendar and our research environment are time sensitive, and delays to the issuance of H-1B or O-1 status can impact both teaching and research. The inclusion of the "Deemed Export Acknowledgment" would transform what is currently an efficient, straightforward I-129 form and submission process into a very complicated form and process for visa petitioners and institutions such as Stanford. It is important to emphasize that in those limited instances where proprietary technology may be associated with university research, the actual technologies that might be used are rarely known at the time of the H-1B or O-1 visa petition. This is determined once these individuals arrive on our campus and undertake their work; at this point, our university research and compliance offices handle this responsibility. So even when the deemed export rule may apply to certain limited aspects of a research project, information such as Export Control Classification Numbers for specific technologies will not be known at the time of the visa petition. Hence, if this proposal were to be implemented, the task of acquiring the proposed deemed export-licensing information for an H-1B or O-1 visa petitioner or their university employer would be extremely challenging.

Third, USCIS's proposed action related to export control policy would further complicate jurisdiction in a policy area that is currently under a broad inter-agency review. The Export Administration Act of 1979 (EAA) grants the Department of Commerce regulatory authority over dual use exports. Since the expiration of EAA in 2001, the Department of Commerce's authority over dual use export control policies has been extended by Presidents Bush and Obama through annual executive orders. Moreover, the White House statement of August 13th, 2008 clearly reaffirmed the authority of the Department of Commerce to administer these policies by extending Commerce's jurisdiction over dual use exports.

Fourth, as USCIS undoubtedly knows, issues related to export control policies can be extremely complex. Currently jurisdiction and expertise related to these difficult issues reside at the Department of Commerce. If USCIS were to implement this proposal it would necessitate the training of USCIS adjudicators so that they develop extensive expertise in this policy area. We have concerns that H-1B or O-1 petitions will be either denied or returned based on an insufficient understanding of this issue. We also have concerns that possible delays in approval based on this new requirement could impact the issuance of H-1Bs and O-1s under premium processing.

For these reasons, Stanford University urges USCIS to withdraw consideration of the proposed Deemed Export Acknowledgement to the Form I-129. We sincerely appreciate the opportunity to comment on this proposal and hope that you will take our concerns seriously.

Sincerely,

Ann M. Arvin, M.D.
Vice Provost and Dean of Research
Stanford University