April 9, 2010

Stephen Tarragon
Deputy Chief
Regulatory Products Division Clearance Office
U.S. Citizenship and Immigration Services
Department of Homeland Security
111 Massachusetts Avenue, N.W. Suite 3008
Washington, D.C. 20529-2210

Re: OMB Control Number 1615-0009

Dear Mr. Tarragon:

We are responding on behalf of the Association of American Universities (AAU) and the Council on Governmental Relations (COGR) to the February 8, 2010 Federal Register notice concerning the United States Citizenship and Immigration Services' (USCIS) proposal to add a "Deemed Export Acknowledgement" question to the Form I-129.

AAU represents 60 leading U.S. public and private research universities and is devoted to maintaining a strong national system of academic research and graduate education. COGR is an association of 182 U.S. research-intensive universities, affiliated hospitals, and research institutes that is specifically concerned with the impact of government regulations, policies, and practices on the performance of research conducted at its member institutions. We appreciate this opportunity to express our serious concerns about USCIS' proposal to add a question to the Form I-129 filed by H-1B visa petitioners that requires them to state whether or not they will be required to have a deemed export control license. We believe the proposal does little or nothing to augment national security, is poorly timed, and reflects a lack of understanding of the nature and scope of existing deemed export requirements, particularly as they affect our member institutions. If enacted, the new requirement will result in substantial burdens on our members with, as noted, little or no benefit for national security.

In recent years, AAU and COGR have worked closely with the responsible federal agencies, including the Departments of Commerce and State, to ensure that our universities are in full compliance with deemed export control requirements and to improve these export control policies. During the Bush Administration, for example, we worked closely with the Department of Commerce's Bureau of Industry and Security (BIS) to review and begin the process for reforming the nation's deemed export control policies. As part of our efforts, we provided input to BIS as it empanelled the Deemed Export Advisory Committee (DEAC) and provided specific recommendations to that Committee for improving deemed export control policies. The Department of Commerce since has established an Emerging Technology and Research Advisory Committee (ETRAC) in furtherance of the DEAC recommendations and is currently examining deemed export control policies.

Given our longstanding interest in the deemed export control issue, and our engagement with the present and past Administrations on this issue, we were quite pleased when President Obama announced on August 13 plans to review the nation's export control policies. According to the White House statement on that occasion, "the President extended the authority of the Department of Commerce-administered export controls. In addition the President directed the NEC/NSC to launch a broad-based interagency process for reviewing the overall export control system." In his January 2010 State of the Union Address, President Obama reiterated the importance of reforming the nation's export control systems so that they are consistent with national security needs while not compromising national economic objectives.

Given the current reviews of export control policies and, specifically, deemed export control policies by the Administration, USCIS' proposal to amend the Form I-129 to address deemed exports seems both ill-timed and

premature. From our perspective, the addition of this new question to the Form I-129 is inappropriate at any time but particularly now, when the Administration is seriously considering changing current export control policies.

We also question the appropriateness of USCIS' usage of the Form I-129 for the collection of this type of information. After all, the purpose of the Form I-129 is for an employer to petition for a foreign worker to come to the U.S. temporarily to perform services, not to collect information concerning deemed export licenses. We do not understand how USCIS plans to use this information or how it is appropriate or necessary for the visa process. We also question USCIS' authority in this area, given that the Export Administration Act of 1979 and subsequent extensions of the Act by Presidential executive order clearly grant the Department of Commerce regulatory authority over dual use exports. Indeed, USCIS has no responsibility for export control enforcement or compliance. Thus, we do not believe that USCIS is the appropriate agency or that the Form I-129 is the appropriate mechanism to collect information concerning the need for deemed export licenses, and we do not understand USCIS' need or rationale for soliciting this information. Our understanding is that under the Visa Mantis program the State Department already provides extra screening of visa applicants who are seeking to study or work in certain fields that are deemed to have national security implications. The proposed change to Form I-129 therefore appears redundant and unnecessary.

The proposal also overlooks the fact that most research conducted by foreign nationals at our member institutions is fundamental research, which is excluded from export control requirements. Whether or not technology is subject to the EAR is irrelevant if a foreign national is performing fundamental research. Because of the fundamental research exclusion, there would likely be very few instances where deemed export control licenses would be required for foreign nationals employed at our universities on H-1Bs. However, to ensure our compliance with this new requirement, we would have to do significant additional review for I-129 submissions to confirm that this was indeed the case, an exercise that would be above and beyond what we already do to ensure compliance with the existing Department of Commerce deemed export rules.

The inclusion of the "Deemed Export Acknowledgment" would therefore make filling out the Form I-129 and the H1-B application process much more complicated for H-1B visa petitioners and their university employers. Officials from our universities' international affairs and human resources offices typically complete and file the Form I-129 for potential H-1B visa employees. However, to respond correctly to a such a narrow question concerning deemed exports licenses, other university officials from the office of sponsored programs and technology licensing, campus compliance officers, and sponsoring faculty would have to become intimately involved in the petition to hire temporary employees. This would dramatically increase the time it takes university staff to complete the Form I-129, and could have an impact on overall processing time for H-1B visa applications, and discourage further international scientists from working in the United States.

We further believe that in a research environment, it is unrealistic to expect that export-control issues and technologies connected to a particular line of research will remain static from the time the Form I-129 is completed to the end of the overall visa application process. We are not readily able to predict where scientific inquiry will take our researchers, and many of the actual technologies involved in conducting their research may change during the course of the research project as findings and discoveries progress. Thus, it would be easy for a university inadvertently to respond to this question in a way that would turn out to be inaccurate. This, too, reduces the value of this information to USCIS, and it demonstrates, in our view, a lack of understanding of the nature of research and the research process at our member institutions.

For these reasons, we question the appropriateness and value of this proposal to our nation's security, the authority of USCIS to request and collect this information and the unnecessary potential costs it would impose on our institutions. We urge you to withdraw the proposed new requirement.

Sincerely,

Robert M. Berdahl
President
Association of American Universities

Anthony DeCrappeo
President
Council on Governmental Relations