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Re: OMB Control Number 1615-0009 Comments on the 60-Day Notice of Information Collection Under Review: Form I-129, Petition for Nonimmigrant Worker

To Whom It May Concern,

I am writing on behalf of the Association of University Export Control Officers (AUECO), an association of senior export practitioners with export compliance responsibilities at sixteen accredited institutions of higher learning in the United States. As expressed in its founding charter, AUECO is committed to monitoring changes in the administration of export laws and regulations that could affect international transactions and collaborations in academia. As a result, AUECO is providing the following comments in response to the United States Citizenship and Immigration Service's (USCIS) proposed addition of a "Deemed Export Acknowledgement" section to the I-129 Form.

AUECO would first like to express its concerns with the nature of the proposed Deemed Export Acknowledgement section as it would affect academic institutions, particularly since the vast majority of university-based research activity is not subject to export control regulation. Recognizing that a nexus can indeed exist between national security and academic research, universities in general are now investing in the development of export control compliance programs despite declining endowments and reductions in state funding. Requiring universities to complete the proposed Deemed Export Acknowledgement section places an additional burden on very limited resources. AUECO asserts that the proposed changes will create a disproportionate administrative burden on academic institutions without providing a clear benefit to national security or deemed export compliance due to the low volume of licensable activity at universities, the large number of employees working under H1B visas, as well as the applicability of this section to all H1B applicants regardless of their involvement in a scientific or technical field.

Evaluating the Propriety and Practical Utility of the Collection of Information

AUECO would like to express its concerns with using the I-129 form to collect deemed export information. The U.S. Department of Commerce's Bureau of Industry and Security (BIS) is the cognizant agency for deemed export licensing requirements which have been in existence and administered by the BIS since 1996¹. It is unclear as to why this information is necessary for the USCIS to evaluate a visa applicant's eligibility, particularly since the form is used to petition for authorization for employment in the United States. Therefore, AUECO's position is that using the I-129 form to collect information about deemed export licenses is not necessary for the proper performance of the functions of the USCIS.

Additionally, the USCIS's proposed change requires reporting of information far in excess of that which BIS collects to enforce export laws in the United States. Specifically, the proposal requires reporting of Export

¹ See 61 Fed. Reg. 12714 (Mar. 25, 1996).

Control Classification Numbers (ECCNs) for technolog(ies) the petitioner may access - in the United States or outside of it - including some that would not require an export license. For example, an employer can hire an Indian foreign national to work in India and provide that foreign national with employee access to technology subject to ECCN 3E991 (technology relating to electronic test equipment controlled under ECCN 3A992) without an export license or other government approval; no reporting to the United States Government is required for this activity. Similarly, the same Indian alien can have access to 3E991 technology in the United States under a tourist visa with no deemed export license or government reporting requirement.

AUECO concludes that information collected by USCIS on this form regarding access to technology that requires neither license nor government reporting to BIS is irrelevant to the determination of the alien's eligibility for the benefit sought.

Finally, institutions that sponsor H1B visas are already required to comply with the deemed export provisions found in the Export Administration Regulations (EAR)². Requiring completion of this new section does not serve any practical utility in ensuring compliance with BIS's deemed export regulations. AUECO therefore questions the utility in gathering the information either for the purposes of evaluating the visa application or enhancing deemed export compliance under the EAR.

Evaluating the Accuracy of the Agency's Estimate of the Burden of the Collection of Information

AUECO has found that the Agency's estimate on the amount of time and resources necessary to respond to this information collection is inaccurate. Budget and other constraints at most colleges and universities only allow for export control compliance to be handled by one individual. It is unrealistic to assume that gathering the information needed to respond to the Deemed Export Acknowledgment could be done by a single individual. Instead, it likely will require effort from the individual responsible for completing the I-129 form, and also from faculty, departmental employees, and the responsible export compliance officer and visa counsel (which may or may not be in house). Each step in this process requires additional time, cost and effort, and the resulting burden creates a disproportionate impact upon academic institutions of any size.

It is also noteworthy that the nature of research and knowledge-based inquiry does not lend itself to accurate predictions of the likelihood of deemed export issues at the point that H1B visa applications are being prepared. Academic research is a fluid enterprise – projects, and their specific technologies come and go, sometimes within months. As a result, the burden of completing the Deemed Export Acknowledgment not only impacts the initial visa application process, but may also necessitate filing amended petitions to accommodate the evolving nature of both research and the regulations. This will further increase the resources required and will place additional strain on the academic community.

Several AUECO members have reported that, after surveying their institutions, the public burden per petition for institutions of higher learning is more likely to be 8-14 man-hours rather than the 2.75 burden proposed in USCIS-2005-0030-197-1. Additionally, AUECO members report that the labor rate for professionals involved in the preparation of the deemed export acknowledgement in the petition process will be many times the \$10/hr proposed by USCIS.

The proposed changes will also create another significant burden for US employers by necessitating serial filing of export license applications (USDoC Form BIS-748P) and the USCIS I-129 petition; while the customary use and practice in industry is to file simultaneously. Requiring that the export license be appended to the I-129 will preclude this practice and introduces further delays in obtaining visas.

² 15 C.F.R. 730-774

Enhancing the Quality, Utility, and Clarity of the Information To Be Collected

AUECO has found that, apart from its questionable utility and burdensome nature, the proposed changes to the I-129, do not allow for an accurate collection of information on deemed export licensing. Should the proposal be adopted, it is imperative to define the term “technology” per 15 C.F.R. 772 for those completing the Deemed Export Acknowledgement. This will enhance the quality, utility, and clarity of the information being collected and make it consistent with BIS’s existing regulations. It has long been established that “technology” is uniquely defined under the EAR. In contrast to the common definition for this term, the EAR definition is precisely crafted to capture the deemed export issues that can arise when dealing with dual use technologies. Therefore, AUECO strongly recommends that either the instructions for completing the I-129 or the form itself specify that for the purpose of completing the Deemed Export Acknowledgement, the term “technology” is defined in 15 C.F.R. 772.

Similarly, when acknowledging that “No Deemed Export License [Is] Required”, respondents must have the option of indicating whether the alien will have access to technology that is subject to the EAR. As currently written, the form presupposes that the visa applicant will have access to technology, and then forces the respondent into an evaluation process that only permits a determination that no deemed export license is required if the technology is not subject to the EAR. In reality, a significant number of visa applicants within academia may not require a license because their employment is limited to the conduct of publicly available fundamental research. In general, the conduct and results of fundamental research are outside the scope of the EAR per Part 734.8 of those regulations. AUECO would like to emphasize that changing the text of the Deemed Export Acknowledgement would greatly improve the quality, utility, and clarity of the information collection, both for the USCIS and for the respondent.

It is AUECO’s recommendation that the first step in the Deemed Export Acknowledgement be rephrased so that this issue is addressed. We suggest the inclusion of the phrase “Will the alien access technology that is subject to the Export Administration Regulations (EAR)?” for the first available response under the acknowledgment that “No Deemed Export License [Is] Required”. This way, all respondents will be allowed to provide information that accurately reflects the issues that are relevant to deemed exports. If a respondent answers this question in the affirmative, then the following series of questions can appropriately capture information about Export Control Classification Numbers (ECCNs), whether the applicant self-classified the technology, etc.

Such changes would read as follows:

- ☐ 1. No Deemed Export License Required
 - ☐ a. The alien will not access technology that is subject to the EAR. Please explain [Insert box for explanation]; OR
 - ☐ b. The alien will access technology that is subject to the Export Administration Regulations (EAR). If b. is checked, please answer the following questions:
 - i. List the Export Control Classification Number for the technology
ECCN(s): [Insert line for this info.]
 - ii. Did you self-classify this technology? ☐ No ☐ Yes
 - iii. Did the U.S. Department of Commerce classify this technology? ☐ No ☐ Yes – If
“Yes” give CCATS Number: [Insert box for CCATS #]

iv. Did a third-party classify this technology? ☐ No ☐ Yes – If "Yes" give name of third-party: [Insert box for name of third-party and CCATS # if available]

☐ 2. Deemed Export License Required – Provide License Number [Insert Line for License #]

Particularly in an academic setting, making this simple change in the language of the Deemed Export Acknowledgement will lessen the potential for any disparate impact on universities, while improving the ability of the USCIS to gather the information they seek.

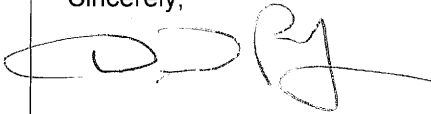
Minimizing the burden of the collection of information on those who are to respond

AUECO has identified three methods by which USCIS could minimize the burden on respondents for the collection of information on this form should the proposed Deemed Export Acknowledgement be adopted. First, USCIS can obtain deemed export license copies from the cognizant agency BIS, rather than from the respondent. BIS has an automated export license processing system, SNAP-R; it should be feasible to provide access to approved licenses to USCIS at the same time it is provided to the employer. This would avoid employers being burdened with the requirement to send one government agency's information to another government agency.

Second, USCIS should not require ECCNs to be reported for technologies for which BIS itself does not require reporting when deemed export licensing requirements are absent. There is no practical utility for USCIS to collect this information as a condition of employment. To minimize the delay for employers that need to rapidly hire critically skilled workers into time sensitive positions, USCIS should amend the I-129 form to allow parallel application of deemed export license and form I-129.

In closing, AUECO would like to express its appreciation for the opportunity to provide comments on these proposed changes. Deemed export licensing requirements in the context of the visa application process is a sensitive and inherently complex topic, and AUECO would like to thank the USCIS taking the time necessary to consider the impact of the proposed changes to the I-129 form. It is AUECO's position that the proposed changes are unnecessary and unduly burdensome, particularly for the academic community. However, should the USCIS choose to proceed with the proposed changes, AUECO would strongly encourage the USCIS to clearly define the term "technology", and to consider the proposed changes which would significantly reduce the unnecessary reporting burden.

Sincerely,

A handwritten signature in black ink, appearing to be "D. R.", written over a horizontal line.