NAFSA

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Chief, Regulatory Products Division
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U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
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EMAIL: rfs.regs@dhs.gov

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

To Whom It May Concern:

I write on behalf of NAFSA: Association of International Educators, the world's largest association of international education professionals with 10,000 members at approximately 3,500 colleges and universities throughout the United States and abroad, in response to the above-referenced collection of information notice to revise Form I-129, Petition for Nonimmigrant Worker, to include a "deemed export acknowledgement" question on the form. Our membership includes those who advise significant numbers of international faculty and researchers at institutions of higher education in the United States, and whose work in this area would be significantly impacted by this proposed change. We greatly appreciate the opportunity to comment.

NAFSA questions the appropriateness, timing, and value of adding a deemed export acknowledgement question to a USCIS form. At present, both the Administration and Congress are undertaking an extensive review of export control policies, including deemed export control policies. We strongly believe that process should be completed in order to properly determine how the immigration process relates to the deemed export control process. Linking the complicated requirements of export control rules to a form governed by an agency that is not involved in the administration of those rules is not an adequate way to bring the export control system into the 21st century. We also question the use of this form as an appropriate mechanism for collecting this type of information when the information is already collected by the Department of Commerce, the agency with authority over export control under the Export Administrative Act of 1979, and subsequent extensions. If implemented as proposed, the new requirement will only serve to unnecessarily burden the H-1B and O-1 application processes, with little measurable benefit to national security.

U.S. colleges and universities rely on the H-1B and O-1 visa categories to hire the best and brightest researchers and faculty from around the world to teach or conduct research. This contributes significantly to the ability of U.S. colleges and universities to produce innovative research, to educate the next generation of Americans, and remain competitive particularly in critical areas of science and technology. Including a "deemed export acknowledgement" question to this application form adds unnecessary complexity to the H-1B or O-1 application process, and will seriously impact the ability of U.S. colleges and universities to compete and innovate.

We are particularly concerned with regard to those U.S. educational institutions that use the H-1B or O-1 category and are not involved in areas of sensitive research or technology. In order to accurately respond "no" to the proposed deemed export acknowledgement, schools would still be required to go through the complicated assessment required by the Export Administration Regulations (EAR), regardless of whether they are in an industry or occupation that is likely to be subject to the EAR. For example, a small school of art, a seminary, or a high school, is not likely to have an export control compliance unit, and would thus be charged with making complicated determinations in a field of compliance that is not applicable to them in any other respect.

Furthermore, adding a blanket attestation to a general form that is used for all occupations is overbroad. In its response to a September 2002 report by the U.S. Government Accountability Office on export controls [GAO-02-972, p, 24], the Department of Commerce stated that "the vast majority of individuals applying for H-1B visas would not be employed in jobs that would give them access to technology controlled under U.S. export control laws. INS regulations specify that H-1B visas may be issued to foreign nationals seeking to work in such fields as fashion modeling, architecture, medicine and health, education, accounting, law, theology, and the arts. The likelihood of foreign nationals working in such fields requiring deemed export licenses is remote." The change as proposed by USCIS would require a school to determine applicability of the EAR to a professor of theology just as it would have to make a determination for an electrical engineer. This would burden the school's export control compliance unit with the time-consuming task of vetting requests from academic departments that should have no reason to request such clearance, and interfere with the school's compliance efforts by taking resources that would otherwise be focused on the school's real compliance tasks.

In summary, NAFSA strongly believes that the I-129 form is not an appropriate mechanism for collecting deemed export license compliance information, and that placing a deemed export attestation on the form will yield little or no measurable benefit to national security. If implemented as proposed, this change will unnecessarily burden the H-1B and O-1 application process, and add to the work of campus export compliance offices, which will have to vet every I-129 form, not just ones likely to be subject to the EAR.

Thank you for the opportunity to comment.

Sincerely,

Marlene M. Johnson
Executive Director and CEO