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Mr. Tarragon:

This letter responds to the proposed draft of the I-129 Petition for a Nonimmigrant Worker form (OMB 1615-009) as presented in Federal Register 25, February 8, 2010 (pp. 6212-6213). University of Washington is responding in order to comment on Part 7, Deemed Export Acknowledgment. In addition, The University of Washington endorses the comments submitted by the Council on Government Relations (COGR) and the Association of American Universities (AAU).

University of Washington is a research intensive institution committed to diversity of students, professional employees, and faculty. During the past 10 years, University of Washington (UW) has processed, on average, 525 I-129 applications per year for employees and faculty members. With the number of applicants increasing each year, the proposed changes of OMB 1615-0009 form will cause unforeseeable delays in obtaining an H-1B due to the processing time to review the need for and receive an approved "deemed export" license prior to filing the H-1B application. Current UW policy is to obtain the H-1B and, if a "deemed export" license is required, to screen the visa holder from the relevant portion of the project until the export license is obtained. With our current process, the H-1B application, consular visit, and initial move to the U.S. can all occur concurrently with the processing of the export license. The ability to onboard H-1Bs quickly is critical due to the intense research needs of the University.

UW is committed to protecting national security against potential threats related to deemed exports. However, UW believes that changes recommended by the U.S. Citizenship and Immigration Services (USCIS) do not serve the purposes of USCIS and does not provide useful or comprehensive information for those agencies charged with overseeing export controls.

The proposed change to the I-129 applications does not address the use of the Fundamental Research Exclusion as practiced at UW with respect to UW personnel, including those holding a valid H-1B visa. There is no way to document this use of the exclusion on the proposed Deemed Export Acknowledgment section.

In addition, the UW may not be able to foresee the need of a "deemed export" license at the time of the H-1B application, in which case an amended filing may be required, creating cost and time expenditure for the University.

In the following sections of this letter our concerns will be discussed in more detail, as they relate to the evaluation criteria. We appreciate the interest of USCIS in evaluating, through the DHS, the impact of proposed changes to U.S. academic institutions.



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Summary of University of Washington comments in relation to evaluation criteria:

Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:

- a) USCIS is the government agency that oversees lawful immigration to the United States. It is not charged with overseeing deemed export licensing requirements. While the collection of the information in the deemed export acknowledgment may have narrow national security utility, it is not necessary for the proper performance of the functions of USCIS.

Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used:

- a) Part 7 question 1(a) makes an assumption that all known technologies to be used by applicant have export control classification numbers (ECCN) assigned or determined according to the Export Administration Regulations (EAR), if applicable. Currently the visa is good for 3 years with an option to extend. UW cannot foresee all potential export activity of the applicant at the time of the H-1B visa application. Applicants would undergo a guessing game to determine which technologies individuals might access, causing those involved to undergo time-intensive research and export determinations that are theoretical and, in most cases, not based on an actual anticipated deemed export. This would create a collection of information that can take hours, and involve federal agencies, such as BIS or DDTC, when an actual export of such technologies may not transpire.
- b) The current proposed form does not address the likelihood or process for instances when a deemed export is not foreseeable at the time of the I-129 application but such an export situation is foreseeable a year or two after the visa holder arrives to work at UW. The estimate of the burden to collect information, and dedicate resources to filing an amended I-129 is not accounted for in this proposed change to the visa application.
- c) UW employs more than 500 individuals at any given time with an H-1B visa. Currently UW processes more than 250 H-1B applications per year. Every export determination and license application, including those for individuals already employed by the UW, must go through a thorough review and submission by an office separate from the office that handles H-1B visa applications. Implementation of the proposed change would require extensive coordination and implementation of new processes that would only slow down the H-1B visa process unnecessarily, adding up to 3 to 12 weeks to the process, depending on the need for an export license.



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Enhance the quality, utility, and clarity of the information to be collected:

- a) Self-classifying technology, with the exception of certain items containing encryption functionality, is encouraged by US regulatory agencies. Part 7 question 1(c) seems to have a negative connotation on "self classifying" products that are tangible and/or intangible and its relevancy is not apparent. Will this question be used by USCIS and/or other agencies as an auditing and/or assessment tool?
- b) After reviewing OMB 1615-0009 proposed changes, with the instructions, it becomes unclear as to why Part 7 addresses only BIS regulations and does not include US export laws and regulations as found in the ITAR. Currently the US Department of Commerce and State through BIS and DDTC, respectively, regulate and issue export licenses when necessary. The proposed form appears to only be interested with deemed exports which meet criteria of the BIS and EAR. There is no mention of DDTC's requirements and licensing of individuals who are accessing technical data or are provided defense services, as those terms are defined under ITAR.
- c) Question 1 (a) does not acknowledge the use of exclusions afforded to universities that carry out fundamental research. The fundamental research exclusion allows certain technologies that result from research to be accessed by personnel and others when the project meets the definition of "basic and applied research in science and engineering where the resulting information is published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S.". Although the technology would otherwise be subject to the EAR, applicants may have access without the need for an export license. However, USCIS does not anticipate or acknowledge this exclusion within the proposed section of the application.
- d) Question 1(d) is only focused on "technology" receiving a CCATS and there is no mention of "software." Part 7 subsections 1(c) and (d) leave out the option that the classification was provided by a third party or the manufacturer.

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses:

- a) Part 7 of the proposed form requests that export license information be provided at the time of the H-1B visa application. However, when applying for an export license via SNAP-R or D-TRADE, the ability to provide End-User H-1B status is relevant, and can be simply stated in the Letter of Intent (LOI). The same information-gathering attempted to be captured on the proposed changed section of the I-129 application can and is provided more efficiently through these electronic license applications at the time an export is anticipated.



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- b) UW would need to collect information required for an export determination for each H-1B visa application. Due to volume of these visa applications, UW would require a one-size-fits-all automated communication with schools and colleges when a unit has identified an individual to be available on H-1B visa status. This creates a burden on the school, college or department to understand the relevancy and provide information on the individual's possible anticipated access to technologies, if any, and use of a process that is geared towards assisting those who are planning an export. Our current process of identifying and addressing "deemed exports" case-by-case on research and other activities is more productive and effective, and geared towards educational outreach and one-on-one assistance.

Conclusion

In order to be a partner in addressing national security concerns and compliant with export control law, no one at the University has access to controlled technologies, software, or technical data until the proper licensing is in place, including H-1B visa holders. In addition, much of the work undertaken by personnel is within the context of the fundamental research exclusion. All research and other activities are reviewed and considered as part of the overall sponsored research office review and export control unit activity. Requiring the export review even before the applicant is accepted on visa rather than having the anticipated export be the occurrence that triggers the review of applicable controls is not an effective method to carry out the principles and objectives of the agencies charged with overseeing export controls.

We hope that USCIS will consider our concerns, particularly with regard to assessing the burdens that would occur due to implementation of part 7 "Deemed Export Acknowledgement". Universities are strongly committed to supporting national security. However, we believe that the implications of acceptance of the USCIS Proposed I-129 form could hinder our staffing needs and does not support the objectives of USCIS, or BIS and DDTTC.

Sincerely,

A handwritten signature in black ink, appearing to read "Carol Rhodes".

Carol Rhodes
Associate Director
Office of Sponsored Programs
University of Washington