

University of California
Office of the President

Senior Vice President—
Business and Finance

Research Administration Office

Memo

Operating Guidance

No. 04-11
November 23, 2004

CONTRACT AND GRANT OFFICERS

Subject: National Science Foundation Cyber Security Clause

The National Science Foundation (NSF) is now required to add a new "Cyber Security" clause in awards which are funded under the Cyber Security Research and Development Act (P. L. #107-305). Our office has reviewed this NSF clause (provided below) and determined that it is acceptable.

The clause states:

In accordance with the Cyber Security Research and Development Act (P. L. #107-305), the grantee is responsible for ensuring that no grant funds are provided directly or indirectly to:

- (a) any individual who is in violation of the terms of his or her status as a non-immigrant under section 101(a)(15)(F), (M), or (J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F), (M), or (J)).
- (b) any alien from a country that is a state sponsor of international terrorism, as defined under section 306(b) of the Enhanced Border Security and VISA Entry Reform Act (8 U.S.C. 1735(b)), unless the Secretary of State determines, in consultation with the Attorney General and the heads of other appropriate agencies, that such alien does not pose a threat to the safety or national security of the United States.
- (c) any institution of higher education or non-profit institution (or consortia thereof) that has:
 - (1) materially failed to comply with the recordkeeping and reporting requirements to receive nonimmigrant students or exchange visitor program participants under section 101(a)(15)(F), (M), or (J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F), (M), or (J)), or section 641 of the Illegal Immigration Reform and Responsibility Act of 1996 (8 U.S.C. 1372), as required by section 502 of the Enhanced Border Security and VISA Entry Reform Act (8 U.S.C. 1762); or
 - (2) been suspended or terminated pursuant to section 502(c) of the Enhanced Border Security and VISA Entry Reform Act (8 U.S.C. 1762(c)).

Because a student or visitor is issued a visa by the United States government to enter the U. S., the visa constitutes *prima facie* evidence that "the Secretary of State determines, in consultation with the Attorney General and the heads of other appropriate agencies, that such alien does not pose a threat to the safety or national security of the United States." Accordingly, acceptance of the clause does not violate University policy regarding nondiscrimination because any student who has been admitted to

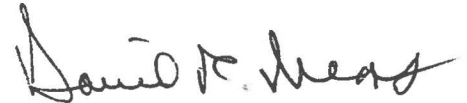
*Note: The addressees above represent the standard distribution of Contract and Grant Memos. Additional addressees, if any, may be added based on the subject of the Memo. See cc's.

the U.S. to study and any visitor who has a visa that permits employment can be employed on the NFS-funded project without regard to citizenship or nationality. In particular, students and visitors from a country defined as "a country that is a state sponsor of international terrorism" need be treated no differently than any other persons with regard to employment or participation in University research. Acceptance of the clause does not require differential treatment of students, post-docs, or others from the designated countries.

University policy does not allow discrimination against individuals on the basis of citizenship status or nationality. The University has refused clauses which require us to treat individuals differently on that basis. However, with regard to the NSF Cyber Security clause, the visa approval process satisfies the conditions of the clause. As long as an individual has a valid U.S. government issued visa, which, under the University's employment process, is verified at the time of employment, the University is not required to undertake any special process in the employment of individuals from a country that is a state sponsor of terrorism. As such, no special screening, clearance, review, or other treatment of individuals is necessary to be employed on NSF grants that contain this clause.

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