

University of California
Office of the President

Senior Vice President—
Business and Finance

Research Administration Office

Memo

Operating Guidance

No. 04 - 02
April 19, 2004

CONTRACT AND GRANT OFFICERS (CAMPUS AND LAB)*
VICE CHANCELLORS--ADMINISTRATION
VICE CHANCELLORS--RESEARCH

Subject: Provision of Information on Citizenship, Visa Status, Nationality or Country of Origin:
Federal and State Law and Regulation

The University policy prohibiting “Acceptance of Funds Restricted to U.S. Citizens” in research contracts was initially adopted by the Council of Chancellors in 1988 and promulgated by *Contracts and Grant Operating Guidance Memo 90-03*. [See <http://www.ucop.edu/raohome/cgmemos/90-03.html>] The policy was reaffirmed in a memo from the Vice Provost for Research in 1999. The 1999 memo further states that, consistent with the policy as established in 1988, “it is University practice that access to University classrooms, libraries, laboratories, and specialized research facilities is open, without regard to citizenship, residency status, or Visa category. Questions regarding citizenship status may not be asked of those entering such facilities, unless the Chancellor and the President have approved an exception to the policy. At present, the only exception is for classified research conducted at the UC/DOE Laboratories and selected off-campus locations.” *Contract and Grant Operating Guidance Memo 00-05* distributed the reaffirmation of University policy on “Unacceptable Controls Based on Citizenship Status”. [<http://www.ucop.edu/raohome/cgmemos/00-05.html>]

Recently, new terms requesting the citizenship, “country of origin,” or nationality of employees under an award are beginning to appear in Requests for Proposals, proposal application forms, and award documents. This Memo provides the OP Research Administration Office guidance for responding to such requests from a sponsor. The Office of General Counsel has reviewed this Memo.

Overview:

The provision of information regarding citizenship, nationality, country of origin, or visa status to any sponsor, other than the U.S. Citizenship and Immigration Services (USCIS) [formerly the Immigration and Naturalization Service (INS)], the Department of Labor or “to a governmental entity when required by State or Federal law” is a violation of the Immigration Reform and Control Act of 1986 (P. L. 99-603) and the California Information Practices Act of 1977 (Civil Code Section 1798 et seq.).

The Immigration Reform and Control Act of 1986 prohibits using the documentation collected by an employer to verify eligibility to work for any purpose other than to comply with the Act and to disclose such documentation to the INS and the U.S. Department of Labor. The California Information Practices Act of 1977 (Civil Code Section 1798-1798.78) limits the collection and dissemination of personal information to that which is relevant and necessary to accomplish a purpose authorized by the California Constitution or statute or mandated by the federal government. A notice must be provided

*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.

at the time the information is collected as to how the information will be used and disclosed and individuals must generally be provided with an accounting of all permitted disclosures.

In addition, the California Public Records Act (Government Code Section 6254 et seq.) exempts certain types of personal information from disclosure, where disclosure would constitute an "unwarranted invasion of personal privacy". [*UC Business and Finance Bulletin RMP-8*, "Legal Requirements on Privacy of and Access to Information" sect. 1798.24, <http://www.ucop.edu/ucophome/policies/bfb/rmp8.html>] Finally, Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment on the basis of national origin.

A summary of the applicable sections of the federal and State regulations and University implementing policy with regard to this issue is provided below. Detailed information from these regulations is provided in the Attachment to this Memo.

U.S. Citizenship and Immigration Service Regulation and Federal Privacy Act:

Under the Immigration Reform and Control Act of 1986, employers are required to obtain documentation proving that an individual is eligible to work in the United States. However, the Act also prohibits the use of this documentation for any other purpose and prohibits discrimination on the basis of citizenship status. Accordingly, documentation of eligibility to work collected and used for the specific requirements set forth in the implementing regulation cannot be collected and used for other purposes. [8CFR part 274a.2.(b)(2)(iii) http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/cfr_2002/janqtr/pdf/8cfr274a.2.pdf]

In addition to restrictions on the use of information under the USCIS regulation, the USCIS Form I-9, "Employment Eligibility Verification" provides a Privacy Act Notice under the federal Privacy Act. [<http://uscis.gov/graphics/formsfee/forms/files/i-9.pdf>] Under the federal Privacy Act, federal agencies may only maintain records about an individual as necessary to accomplish a purpose of the agency required to be accomplished by statute or Executive Order of the President. The agency must establish a system of records that is published in the *Federal Register* describing the categories of individuals and information to be maintained, the users and purposes of the use, and the practices regarding storage, access controls, retention, and disposal of the records. Finally, under the federal Privacy Act, the agency must inform each individual on the form used to collect the information of the authority which authorizes the collection, the purpose for which the information will be used, and the routine uses that may be made of the information as described in the system of records for the information collection. The Office of Management and Budget has approved the USCIS Form I-9; the Privacy Act Notice on the I-9 states, in part: "This information will be used by employers as a record of their basis for determining eligibility of an employee to work in the United States. The form will be kept by the employer and made available for inspection by officials of the U.S. Immigration and Naturalization Service, the Department of Labor and the Office of Special Counsel for Immigration Related Unfair Employment Practices." The personally identifiable information collected on an approved federal form such as the I-9 cannot be provided to other government agencies or private organizations for purposes other than those originally stated in the Privacy Act Notice provided at the time of the information collection.

State Information Practices Act, California Public Records Act, and University Policy:

Business and Finance Bulletin RMP-7, "Privacy of and Access to Information Responsibilities," summarizes general policy and establishes responsibilities in this area. The Bulletin can be found at: <http://www.ucop.edu/ucophome/policies/bfb/rmp7.html> More detailed information about the legal requirements regarding privacy as well as access to records can be found in *Business and Finance Bulletin RMP-8*, "Legal Requirements on Privacy and Access to Information." This Bulletin can be found at: <http://www.ucop.edu/ucophome/policies/bfb/rmp8toc.html>

RMP-8 includes a summary of the California Information Practices Act of 1977 and the California Public Records Act. The California Information Practices Act of 1977 parallels the federal Privacy Act. It limits the scope of personal information that can be collected and requires that a Notice be provided to the individual describing why the information is being collected and how it will be used. Accordingly, the University has provided a State Privacy Notice on the I-9 form in addition to the OMB approved federal Privacy Act Notice. The University developed a cover page for the federal I-9 form that includes the State Privacy Notice, which states in part: "The principal purpose for requesting the information on this form is to verify the individual's eligibility for employment in the United States. University policy and federal statute authorize the maintenance of this information. Furnishing all information requested on this form is mandatory—failure to provide such information may result in a determination that the applicant is ineligible for employment. Information furnished on this form will be made available for inspection for United States Immigration and Naturalization Service or Department of Labor Officers."

In addition to limiting the amount of information that may be collected about an individual and requiring a Privacy Notice at the time such information is collected, under the State Information Practices Act, the University is precluded from releasing certain personal information about its employees. *RMP-8*, "Legal Requirements on Privacy of and Access to Information", section VII. B. sets forth categories of information and disclosure restrictions associated with each category. The category "Personal Information (Section B.4) includes Citizenship, along with items such as birth date, social security number, home address and home telephone number. Section B. states "Full access to personal information is provided to the individual to whom the information pertains, but very limited disclosure of it is allowed to other persons or agencies." *RMP-8*, Section G.4., establishes 14 circumstances under which the University will disclose personal information "in a manner that would link the information disclosed to the individual to whom it pertains...." Among the exceptions allowing the University to disclose such personal information include "the prior written voluntary consent of the individual to whom the record pertains" and "to a governmental entity when required by State or Federal law." (Information Practices Act section 1798.24(a) and (f).)

Conclusions:

Under the USCIS regulation and the federal Privacy Act Notice on the I-9 form, only representatives of USCIS, the Department of Labor, and the Special Counsel for Immigration Related Unfair Employment Practices may inspect the I-9. Inspection or collection of this information by other federal

agencies is prohibited under the Immigration Reform and Control Act, section 1324a(b)(5), "Limitation on Use of Attestation Form," which states:

A form designated or established by the Attorney General under this subsection and any information contained in or appended to such form, may not be used for purposes other than for enforcement of this Act. [<http://frwebgate1.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=83907112626+0+0+0&WAISaction=retrieve>access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=83907112626+0+0+0&WAISaction=retrieve]

Allowing other federal agencies to inspect the I-9, or copying and submitting the I-9 and the supporting documentation to other federal agencies or private organizations, also contradicts the statements in the Privacy Act Notice on the I-9 form regarding the purpose, use, and disclosure of the information. Any other federal agency would need to establish that it has a right to collect the information under the federal Privacy Act prior to implementation of any collection of information about an individual's citizenship, VISA, or nationality status. The California Information Practices Act also generally prohibits the distribution of personal information without the consent of the individual, and limits the permitted uses to those listed in the State Privacy Notice. The University has previously notified the individual at the time the citizenship and VISA status information was collected that it would be used for the limited purpose of determining eligibility for employment and would only be released to the federal INS and Department of Labor.

To the extent that a copy of the I-9 form or information provided on it is requested to be sent to a federal agency, then the system of records being created by the federal agency would also contain Social Security number, driver's license number, date of birth, mother's maiden name, and address of the individual. Prior to establishing a system of records to collect citizenship, VISA, or nationality information, or collection of the other information contained on the I-9, the federal agency would need to justify that maintaining this information about the individual "is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President." [5USC552a(e)(1) <http://frwebgate5.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=840569364517+0+0+0&WAISaction=retrieve>]

At present, the U.S. Citizenship and Immigration Services (USCIS) within the federal Department of Homeland Security is responsible for administration and enforcement of the Immigration Reform and Control and the Immigration and Nationality Acts. Other federal agencies are not responsible for monitoring employer's compliance with USCIS regulations.

Recommendations:

- 1) Notify any federal or private agency requesting personal information about University employees to be assigned to a project, particularly citizenship, visa status, nationality or country of origin, that the University is precluded under federal and State laws, including the Immigration Reform and Control Act of 1986 and the California Information Practices Act, from providing such information; that providing the information is also contrary to the federal Privacy Act Notice on the Office of Management and Budget approved form I-9, Employment Eligibility Verification, issued by the U.S. Citizenship and Immigration Services which forms the basis for the collection of such

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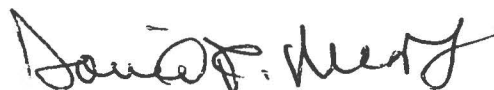
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information, so that providing such information could also constitute a violation of the federal Privacy Act of 1974.

- 2) Inform the agency that the University can provide assurance of compliance with the Immigration Reform and Control Act of 1986; that we will certify that documentation of Employment Eligibility Verification has been secured for all persons employed by the University; and that we would be happy to allow agents of the U.S. Citizenship and Immigration Services as well as the Department of Labor or the Office of Special Counsel for Immigration Related Unfair Employment Practices, to inspect such documentation, consistent with the federal Privacy Act Notice on the information collection I-9 form.
- 3) If the agency persists, indicate that we can provide a description of the types of documents collected to assure compliance with the eligibility to work requirements of the USCIS regulations, but could not provide copies of such documents to the agency. Further, the University can provide general demographic information about its workforce. However, if the agency can provide a copy of the system of records which the agency has established under the federal Privacy Act of 1974, and has an OMB approved form for collection of the information containing a federal Privacy Act Notice, then the University may consider whether a collection of information under the California Information Practices Act could be constructed so that the University could collect the information and disclose it to the agency under the conditions and restrictions of the approved federal and State system of records.

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Subject: 14
Organization: U-115



David F. Mears
Director

Attachment

Cc: Vice Provost Coleman
University Academic Council
University Committee on Research Policy
Council of Vice Chancellors for Research