



University of California  
Office of the President

University Controller

Research Administration Office

# Memo

## Operating Guidance

No. 90-3  
February 12, 1990

VICE CHANCELLORS — BUSINESS AND FINANCE ADMINISTRATION\*  
CONTRACTS AND GRANTS OFFICERS  
OFFICE OF THE PRESIDENT FUNCTIONAL MANAGERS

**Subject: Acceptance of Funds Restricted to U.S. Citizens**

Enclosure 1 is a copy of the Council of Chancellor's (COC) June, 1988 Agenda Item prepared by the Senior Vice President--Academic Affairs on the subject of Acceptance of Funds Restricted to U.S. Citizens. The COC Item presents a discussion of University policy regarding acceptance of funds by the University either from the Federal government via research grants or from private donors in the form of gifts, such as endowed chairs, which require individuals who are employed by the University and paid from such funds, or hold such chairs, to be United States citizens. The COC Item presents relevant University policy, the rationale for opposing citizenship requirements in employment and appointment to endowed chairs, and trends and recommendations. It concludes by stating:

We recommend the following:

1. It will continue to be University policy that discrimination in employment based on citizenship is unacceptable. Only in selected cases where there are compelling circumstances in support of legitimate public interests bearing on individual job requirements is an exception acceptable. The Chancellor may recommend such an exception to the President for his approval.
2. In the case of endowed chairs, University policy precluding discrimination based on citizenship is extended to the appointment to an endowed chair.

At the June 29, 1988 COC, there was general concurrence that the position incorporated in the COC Agenda Item should be continued. Therefore, Contracts and Grants Offices should use this guidance, as well as the guidance provided in Contract and Grant Memo No. 87-39 on the subject of NASA Restrictions on U.S. Citizenship in University Space Engineering Research Centers when responding to agency requests for proposals.

\*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.

On a related matter, Enclosure 2 is a copy of a June 14, 1988 memoranda to Academic Vice Chancellors about a provision in an agreement requiring U.S. Citizenship for access to the NASA RECON data base. This guidance may be of use to you in the event that a contract or grant is offered which proposes similar restrictions.

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(415) 642-2886

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Subject Index: 01, 11, 14, 20  
Organization Index: U-115



David F. Mears  
University Contracts and  
Grants Coordinator

Enclosures

cc: Vice Chancellors for Research  
Coordinator Cole  
Associate Vice President Moore

ENCLOSURE 1

June 17, 1988

## ACCEPTANCE OF FUNDS RESTRICTED TO US CITIZENS

### I. BACKGROUND

The Los Angeles campus requested a discussion of University policy regarding acceptance of funds by the University either from the Federal government via research grants or from private donors in the form of gifts, such as endowed chairs, which require such individuals who are employed by the University and paid from such funds, or hold such chairs, to be United States citizens. Discussion took place at the March 30, 1988 Council of Chancellors (COC) meeting. Vice President Frazer agreed to review policy and report back to COC.

### II. POLICY AND INTERPRETATION

#### A. University Policy

Academic Personnel Manual 035, Affirmative Action and Non-Discrimination in Employment, provides the general University policy regarding academic appointees. It states, in part: "No person employed by or seeking employment with the University shall be discriminated against because of race . . . national origin; ancestry; . . . or, within the limits imposed by law or University regulations, because of age or citizenship." Similar policies exist for all University employees.

#### B. Interpretation and Guidance to Campuses

Office of the Senior Vice President-Academic Affairs has interpreted this policy to mean that, except in cases where discrimination on the basis of citizenship is specifically authorized by University policy or practice, it is contrary to University policy to accept provisions in sponsored projects or gifts which require discrimination in employment, including discrimination based on citizenship.

Consistent with this interpretation, the Director of Research and Public Policy in the Office of the Senior Vice President-Academic Affairs provided guidance to the University Research Group (October 22, 1987) regarding a recommended response to the National Aeronautics and Space Administration (NASA) University Space Engineering Research Centers program notice. The notice included a provision that individuals receiving direct funding from the NASA program must be U.S. citizens. It was stated in the October 22 letter that such a provision was contrary to University policy. Campuses were advised to submit proposals in response to the program announcement specifying in the proposal that the University does not discriminate on the basis of

citizenship in employment. This guidance was subsequently distributed to campus Contract and Grant offices by Contract and Grant Memo 87-39, dated October 23, 1987.

The NASA program notice also restricts NASA fellowship support for graduate and undergraduate students to U.S. citizens. Although this requirement is poor policy and undesirable, since there is no specific policy precluding this practice, it would not set a precedent, and most importantly the government has a legitimate interest in promoting the training of domestic students, the advice to the University community was that this provision was acceptable.

### III. RATIONALE FOR OPPOSING CITIZENSHIP REQUIREMENT IN EMPLOYMENT AND APPOINTMENT TO ENDOWED CHAIRS

#### A. Research Excellence

It is expected that University researchers will be selected for participation on projects on the basis of merit and ability to contribute to the research project. It is also the case that research support staff are selected on the same basis. To allow an external sponsor to dictate irrelevant criteria, such as the requirement that employees be U.S. citizens, which are unrelated to research objectives, interferes with the quality of research. Such restrictions are unacceptable except under compelling circumstances. Students, professionals and staff from abroad who are not U.S. citizens make a major contribution to the conduct of research at this University.

#### B. Validity of Visa, Fourteenth Amendment and Civil Rights Acts Protections

According to the Alien Immigration and Naturalization Act the University may only employ citizens and individuals with valid visas allowing employment. Permanent resident aliens and certain temporary and student visas permit the holder to accept employment. The University may not under the 14th Amendment and the Civil Rights Act of 1870 and 1964 discriminate arbitrarily against individuals because of citizenship status or national origin.

#### C. Precedent for Accepting Other Government Restrictions

The University has been successful in recent years in identifying and preventing any attempts by the federal government to control employment in research projects and access to research results. This effort has been facilitated by recent government policy in the form of National Security Decision Directive 189 in which President Reagan states that, to the maximum extent possible, the products of fundamental research remain unrestricted. According

to the policy, there should be no controls placed on fundamental research and that where the national security requires control, the mechanism for control is classification. The NASA program notice is inconsistent with the purpose and sense of this national policy direction.

The President of the Association of American Universities (AAU), Robert Rosenzweig, on behalf of 54 AAU institutions wrote to the Administrator of NASA requesting that the notice be withdrawn for these same reasons.

#### D. Impact on International Exchange and Communications

Restrictions based on citizenship could have a chilling effect on the normal international exchanges and communications that take place and could result in retaliatory actions by universities and others in other countries.

#### IV. TRENDS AND RECOMMENDATIONS

To date, the number of instances where federal sponsors have attempted to enforce citizenship requirements for employment in federally-sponsored projects have been limited. We are aware of only three cases that have been brought to our attention (the NASA case cited above and two programs sponsored by the National Security Agency). There does not appear to be a trend in this direction.

The University has not been required to accept such restrictions on employment as a condition of award. In the case of the National Security Agency agreement, the restrictive clause was eliminated from the agreement. We are not aware of any NASA award to UC under the Space Engineering Research Center program; however, it is unlikely that a special provision restricting citizenship would be added by NASA to any award and the standard NASA grant agreement currently contains no such restriction. In a few cases the University has had to reject awards from commercial organizations because of the pass through of various export control language which had the effect of limiting both employment and access to the research results to US citizens. In most of these cases, the commercial contractor was conducting classified research for the federal government. In the case of direct federal support to the University, the government has abided by the NSDD 189 and either classified the award or awarded the agreement without any controls. We believe it is effective to continue with the current practice of resisting such controls in unclassified research agreements.

We recommend the following:

1. It will continue to be University policy that discrimination in employment based on citizenship is unacceptable. Only in selected cases where there are compelling circumstances in support of legitimate public interests bearing on individual job requirements is an exception acceptable. The Chancellor may recommend such an exception to the President for his approval.

2. In the case of endowed chairs, University policy precluding discrimination based on citizenship is extended to the appointment to an endowed chair.

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DAVID PIERPONT GARDNER  
President

OFFICE OF THE PRESIDENT  
BERKELEY, CALIFORNIA 94720

WILLIAM R. FRAZER  
Senior Vice President—  
Academic Affairs

June 14, 1988

## ACADEMIC VICE CHANCELLORS

Dear Colleagues:

In September 1987, I learned from the UCLA library that the agreement for access to the NASA RECON online database contains the following stipulation, which applies to all use of the NASA RECON database, including access to unclassified information:

"Access is permitted only within the U.S., and to U.S. citizens, unless specifically authorized by RMS [RMS Associates is the NASA contractor for RECON service]. If citations are printed out, they must be similarly restricted."

In November, we discovered that the RECON database service was undergoing internal review by NASA, and that this provision might be modified. We have recently learned that the NASA review is completed, and that the restriction will not be changed. A copy of the agreement is enclosed for your information.

This restriction is in conflict with University policy which states in part that the University does not "discriminate on the basis of citizenship, within the limits imposed by law or University policy" in admission, access and treatment in University programs and activities. Also, enforcement would be difficult and might raise significant legal and policy problems regarding privacy and confidentiality of library records. Finally, we are informed by NASA officials that if a search conducted under the terms of this agreement were to lead, however inadvertently, to a violation of federal export control laws, employees of the University might be liable for prosecution under those laws.

We have reviewed the legal and the policy aspects of this situation, and our advice is to avoid entering into an agreement with RMS Associates for access to the NASA RECON database. If you have entered into a contract, we advise you to cancel it at once, informing NASA of the reasons for doing so.

I point out that there is an alternative to NASA RECON, i.e., the Dialog Aerospace Database (File 108). The Dialog database carries no restrictions regarding citizenship (although there are restrictions regarding access by foreign governments and organizations, and "persons acting on their behalf"). However, the

Dialog service does not include some files (holdings of the NASA libraries; pre-1960 NASA reports; reports from NACA, NASA's predecessor, 1915 to 1958; NASA technical briefs, contract records, and research-in-progress reports) that are available only through NASA RECON. Although the Dialog database is more costly, available evidence suggests that total Universitywide outlays for searching Aerospace Database probably do not exceed \$1,500 per year at the present time, and the savings from using NASA RECON would be modest.

We recognize that if this situation arises again, there may not be an alternative service. We are informed that, if the circumstances warrant, there are grounds to question the authority of a federal agency to impose such a restriction in the absence of express congressional authorization. It can be argued that a restriction which limits access to unclassified information in a publicly supported database is inconsistent with Federal policy and has no basis in law or executive action.

We have been advised by the Office of the University Contracts and Grants Coordinator that it would be wise for you to make an effort to coordinate with your campus contracts and grants officers and with your purchasing departments on federal contracts involving access to databases. We will continue to monitor issues such as this, and maintain contacts with organizations such as the Association of American Universities, the Association of Research Libraries and the American Library Association.

I would appreciate your assistance in bringing similar problems to my attention.

Sincerely,



Calvin C. Moore  
Associate Vice President  
Academic Affairs

Enclosure

cc: Senior Vice President Frazer  
Chancellors  
Library Council  
University Contracts and Grants Coordinator Mears  
University Materiel Coordinator Ove  
University Counsel Dorinson  
Director Cole  
Director Smith  
Coordinator Lawrence  
Principal Analyst Yoder

User Organization and RMS Associates NASA Scientific and Technical Information Facility

This agreement between RMS Associates and the User Organization named above is intended to set forth the terms and conditions for each party in connection with the User Organization being permitted access to the NASA/RECON File collections at the NASA STI Facility.

- 1. RMS agrees to provide: a. Access via dial-up terminals to NASA/RECON during the time period 8:00 AM - 7:30 PM ET Monday through Friday, excluding Federal holidays. b. User manuals, user bulletins, vocabulary updates, corporate source updates, and other training/user aids as issued for use with the NASA/RECON system. c. An initial training course free of charge at the NASA STI Facility for one individual. RMS reserves the right to specify the time, length, and type of training. d. Assistance during normal operating hours (8:00 AM - 7:30 PM ET) to resolve operating problems and difficulties. e. A single password that is unique to that organization and site. Separate sites that qualify can be issued separate passwords.

- 2. The user organization agrees to provide: a. Personnel to operate its dial-up terminals. b. Dial-up terminals that are compatible with the NASA/RECON system. c. Installation and service of communications equipment used to access the NASA/RECON system. d. Representation, if desired, at the training courses conducted by RMS, including salaries, travel and other expenses of these personnel during the training period. e. Protection from unauthorized access to and use of the NASA/RECON system or the password is not to be shared with other organizations or sites. Person and organizational unit to which the password is issued will be charged for all use. f. Periodic reports, upon request by RMS, on the use of system, and feedback evaluation forms on the system as required by RMS.

- 3. The user organization agrees to pay: a. System and additional training charges for online usage of NASA/RECON. System and training charges will be subject to periodic review and rate changes shall become effective after the user organization has been given a minimum of 60 days notice. Current charges are as follows:

Table with 2 columns: Description and Price. Includes items like Computer Connect Time (\$24.00), Citation (\$ 0.05), User Enrollment Fee (\$60.00), Annual Maintenance Fee (\$60.00), Telenet (connect hour) (\$ 13.00), Additional NASA/RECON training at the NASA STI Facility (Basic \$100.00, Advanced \$160.00), Off-site NASA/RECON Training (per person negotiable), and Communications charges.

Does your organization have a substantiated need to access references to limited Dept. of Defense and/or classified documents? Yes [ ] No [ ] If the Yes block is checked, please have your security officer complete the attached Form and return it together with this agreement form.

- 5. Access is permitted only within the U.S., and to U.S. citizens.. unless specifically authorized by RMS. If citations are printed out, they must be similarly restricted. 6. The user agrees not to sell or lease any information, data and/or printouts obtained under this agreement unless specifically authorized by RMS. An exemption from this requirement is granted when such information is used as a part of, and is incidental to a scientific report or study. 7. Both parties will designate project officers responsible for the administration of the agreement. 8. This agreement shall remain in effect until amended by mutual consent or terminated by either party upon 30 days written notice. Failure of the user organization to adhere to the terms of this agreement will result in an immediate denial of access to the NASA/RECON system. Should the incumbent Contractor Manager (RMS) be succeeded by another Contractor Manager during the term of this agreement, such successor shall automatically be substituted as the 'Contractor Manager' in this agreement.

For \_\_\_\_\_ Signature \_\_\_\_\_ Name and Title (Typed) (Date)

For RMS Associates Contractor Manager Scientific and Technical Information Facility National Aeronautics and Space Administration

Robert B. Johnson, Vice President/General Manager Date