**Florida State University**
**Office of Research**
**Guidance on the Foreign Corrupt Practices Act**

## Introduction

Florida State University (FSU or University) extends its influence and shares its contributions to the world through faculty and student exchange programs, intercollegiate consortia, sponsored research, research collaborations, work with nonprofit organizations, joint ventures, international foundations, trusts, various field work, and more. University researchers often collaborate in remote countries high on the Transparency International's Corruption Perception Index and may find themselves or their associates making logistical arrangements involving local officials.

The Foreign Corrupt Practices Act (FCPA) is an American legislation designed to prevent corrupt payments to foreign government officials and others considered to be "instrumentalities of a foreign government." The FCPA applies to U.S. companies and institutions, as well as foreign companies, institutions or persons with a nexus to the United States, and their affiliates. The FCPA has two components: (1) provisions prohibiting bribery and (2) provisions requiring maintenance of accurate books, records, and internal controls so bribes cannot be hidden.

## Safe Harbor

Payments made in the ordinary course of business to obtain permits, expedite service, reserve space etc., are not bribes as long as they are payments that all persons have the option of making for the same service regardless of the official who is processing the request.

## Applicability to Universities

According to the U.S. Department of Justice's FCPA Guide, the FCPA's anti-bribery provisions apply broadly to three categories of persons and entities:

1. U.S. and foreign public companies listed on stock exchanges in the U.S. or which are required to file periodic reports with the Securities and Exchange Commission (issuers) and their officers, directors, employees, agents, and shareholders;
2. U.S. persons and businesses (domestic concerns) and their officers, directors, employees, agents, and shareholders; and
3. Certain persons and entities, other than issuers and domestic concerns, acting while in the territory of the United States.

A "domestic concern" is any individual who is a citizen, national, or resident of the United States, or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship that is organized under the laws of the United States or its states, territories, possessions, or commonwealths or that has its principal place of business in the United States. Officers, directors, employees, agents, or stockholders acting on behalf of a domestic concern, including foreign nationals or companies, are also covered. Thus, depending on the circumstances, the FCPA may apply to FSU and anyone working for FSU or on its behalf—including its contractors, suppliers, and consultants.

## Foreign Officials

The FCPA defines “foreign official” broadly. The official need not be high-ranking and the designation applies also to the relatives and friends of the official. In addition to including officials, agents and employees of a foreign government, the following persons would also qualify as foreign officials:

- Professors of state universities.
- Advisors to ministries, government agencies or government officials.
- Members of government committees or panels.
- Healthcare professionals at government-owned or controlled hospitals.
- Employees of a public international organization (such as the World Bank).
- Members of a royal family.

**What the FCPA Prohibits**

A violation of the FCPA consists of a payment, offer, authorization, or promise to pay money or anything of value—

… to a foreign government official (including a party official or manager of a state-owned concern, or other instrumentality of a foreign government), or to any other person, knowing that the payment or promise will be passed on to a foreign official or instrumentality

… with a corrupt motive

… for the purpose of . . .

    … influencing any act or decision of that person,

    … inducing such person to do or omit any action in violation of his lawful duty,

    … securing an improper advantage, or

    … inducing such person to use his influence to affect an official act or decision in order to assist in obtaining or retaining business for or with, or directing any business to, any person.

**Pitfalls for Universities**

Because FSU is a domestic concern, the FCPA applies to all personnel and operations worldwide, regardless of location or nationality. Risks associated with violation of the FCPA and other anti-bribery laws include criminal, regulatory, and reputational risks. The following is a partial list of pitfalls for universities:

- The definitions of “payment” and “foreign official” are sufficiently broad to cover a wide range of benefits conferred on someone in a position to affect that person’s dealings with a foreign government or instrumentality. Non-monetary benefits, including travel and entertainment, fall within these broad definitions.

- Employees of state-owned foreign institutions and enterprises, including faculty at foreign universities, may be considered “foreign officials” for purposes of the FCPA.

- The Act contains no minimum monetary threshold. Even the smallest benefits conferred are prohibited, and a corrupt payment need not actually be paid or delivered. The FCPA prohibits the offer, authorization, or promise to make a corrupt payment, in addition to the actual payment.

- The liability for the acts of third parties who act on FSU's behalf. The FCPA expressly prohibits corrupt payments made through third parties or intermediaries. Specifically, it covers payments made to "any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly," to a foreign official.

- Charitable donations in the foreign country may constitute a violation of the FCPA, if they are intended to corruptly assist the University to obtain the necessary government approvals to operate in the region.

- Significant fines and imprisonment are possible for FCPA violations.

- An individual or company that violates the FCPA or other criminal statutes may be barred from doing business with the federal government.

**Safeguards**

The FCPA Guide offers the following non-exhaustive list of safeguards that may be helpful in evaluating whether a particular expenditure is appropriate or may risk violating the FCPA:

- Do not select the particular officials who will participate in the party's proposed trip or program or else select them based on pre-determined, merit-based criteria.
- Pay all costs directly to travel and lodging vendors and/or reimburse costs only upon presentation of a receipt.
- Do not advance funds or pay for reimbursements in cash.
- Ensure that any stipends are reasonable approximations of costs likely to be incurred and/or that expenses are limited to those that are necessary and reasonable.
- Ensure the expenditures are transparent, both within the company and to the foreign government.
- Do not condition payment of expenses on any action by the foreign official.
- Obtain written confirmation that payment of the expenses is not contrary to local law.
- Provide no additional compensation, stipends, or spending money beyond what is necessary to pay for actual expenses incurred.
- Ensure that costs and expenses on behalf of the foreign officials will be accurately recorded in the company's books and records.

**Fines and Penalties - Criminal**

For each violation of the anti-bribery provisions, the FCPA provides that corporations and other business entities are subject to a fine of up to $2 million. Individuals, including officers, directors, stockholders, and agents of companies, are subject to fines of up to $250,000 and imprisonment for up to five years.

For each violation of the accounting provisions, the FCPA provides that corporations and other business entities are subject to fines of up to $25 million. Individuals are subject to fines of up to $5 million and imprisonment for up to 20 years.

**Fines and Penalties - Civil**

For violations of the anti-bribery provisions, corporations and other business entities are subject to civil penalties of up to $16,000 per violation. Individuals, including officers, directors, stockholders, and agents of companies, are similarly subject to civil penalties of up to $16,000 per violation, which may not be paid by their employers or principals.

For a violation of the accounting provisions, the SEC may impose a civil penalty not to exceed the greater of (a) the gross amount of the pecuniary gain to the defendant as a result of the violations or (b) a specified dollar limitation. The specified dollar limitations are based on the egregiousness of the violation, ranging from $7,500 to $150,000 for an individual and $75,000 to $725,000 for a company. The SEC may obtain civil penalties both in actions filed in federal court and in administrative proceedings.

**Red Flags**

International activities must be undertaken with an awareness of these risks. Organizations and individuals may be subject to prosecution for corrupt payments even if they have no actual knowledge that bribes or corrupt benefits are being paid. Criminal sanctions are imposed on persons who pay money to third parties with a reckless disregard for circumstances that suggest the money is being used for corrupt purposes. Thus, if a university researcher hires a local in-country advisor, consultant, or coordinator who in turn pays money to a government official in exchange for official actions that benefit the researcher, or which enable a research program to proceed, the university employee and the university may be targeted by the U.S. Department of Justice for violating the FCPA even absent actual knowledge of the corrupt payment. Additional red flags may include:

- Unusual payment patterns or financial arrangements,
- A history of corruption in the country (see the Transparency International's Corruption Perception Index),
- Apparent lack of qualifications or resources by local agents despite effectiveness,
- Unusually high commissions for "getting things done",
- Lack of transparency in expenses and accounting records, and
- Payment of expenses in advance.

**Reporting of Possible FCPA Violations**

Each member of the University community has the responsibility to ask questions, seek guidance, and report suspected violations of the FCPA or any other applicable law or regulation, contractual or other obligation of the University, or of University policy or procedure. Individuals are encouraged to report possible FCPA violations through standard management channels, such as to their immediate supervisor or other appropriate University officials. However, an individual who for any reason feels uncomfortable reporting a suspected violation through established channels may file an anonymous report through FSU's Ethics & Compliance Hotline. Reports of suspected violations may be made confidentially, and even anonymously, although the more information that is given, the easier it is to investigate the reports. A report of a suspected violation is a service to the University and will not in itself jeopardize employment with the University. That is, no person who makes a good faith report of a suspected violation will be reprimanded or retaliated against for making the report. The Sarbanes-Oxley Act of 2002 and the Dodd-Frank Act of 2010, contain provisions protecting whistleblowers who report FCPA violations.

**References**

Foreign Corrupt Practices Act

A Resource Guide to the U.S. Foreign Corrupt Practices Act

Securities and Exchange Commission FCPA website

FSU 4-OP-C-13 Policy Against Fraudulent, Unethical and Other Dishonest Acts

**Acknowledgement**

FSU acknowledges and appreciates the University of California for granting FSU permission to use and alter selected portions of their FCPA information for FSU's purposes.