

Washington University in St. Louis

FCPA (Anti-Corruption) Policy

1. Overview

The Foreign Corrupt Practices Act (FCPA) was enacted in 1977 in order to halt improper payments to foreign officials, restore public confidence in the U.S. business system, and promote more reliable foreign legal environments. The FCPA prohibits corrupt payments to foreign officials for the purpose of obtaining or retaining business or obtaining an improper advantage. The FCPA is enforced by the U.S. Department of Justice. Any individual who violates these laws may be subject to personal fines and/or criminal prosecution.

2. Applicability and Statement of Policy

Washington University is committed to the highest ethical and professional standards of conduct as an integral part of its mission, the promotion of learning. Members of the “Washington University community” subject to this Policy include:

- Individuals who are paid by Washington University when they are working for the university (including Faculty and Staff);
- Consultants, vendors and contractors who do business with the University; and
- Individuals who perform services for the University as volunteers.

All members of the Washington University community should demonstrate ethical behavior, honesty, integrity, good judgment, and respect for the rights of others. The university and each community member must transact university business in compliance with all laws, regulations and university policies related to their positions and areas of responsibility. Each community member is accountable for his/her actions.

Terms in quotations below are defined in Section 4 of this document.

3. Policy

Members of the Washington University community, as defined above as well as in the University Code of Conduct, must comply with the anti-corruption requirements of the FCPA and of anti-corruption laws of other countries in which the University conducts business. “Improper Payments” in violation of these laws are strictly prohibited (no *de minimis* exception), including Improper Payments to “Foreign Officials” and Improper Payments which violate commercial-bribery prohibitions of non-U.S. laws.

- a. Third-Party due diligence. When entering into a relationship with a third-party, the University’s due diligence should at a minimum include, and documentation should be retained, regarding: knowledge of the third parties’ personal or professional ties to a Foreign Official; knowledge of the size and reputation of the potential associate’s clientele; and knowledge of the potential associate’s reputation with the U.S. Embassy/Consulate and other clients/business associates. Discovery of items such as: unusually high commissions/fees, unusual payment patterns, request that payment be made outside the country, request for payments to third parties, or the potential

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associates' reputation for corruption/paying bribes requires, at a minimum, further scrutiny.

- b. **Accounting.** In addition, members of the Washington University community must keep books, records, and accounts which accurately and fairly reflect any transactions of the University. Refer to the University's Guide to Internal Controls for additional information regarding transaction processing/bookkeeping.
- c. **Individual Responsibility.** Every member of the WU Community must actively monitor WU activities and be alert to indicators that an FCPA violation may occur and must take appropriate care to prevent and detect bribery. Failure to do so may produce potential personal liability for the individuals involved and create legal risk for the University. Such due diligence will typically involve periodic reviews of the corruption reputations of nations in which Washington University is doing business, ensuring that contracts with foreign parties contain anti-corruption provisions, and performing due diligence prior to establishing a relationship with a foreign intermediary.

4. Definitions

- a. **"Improper Payments"** are anything of value used to corruptly influence Foreign Officials. The FCPA prohibits paying, offering/promising to pay, or authorizing the payment of money or anything of value to a "foreign official" with the "corrupt intent" of inducing the "foreign official" to misuse his or her position for the University to obtain an improper advantage or obtain/retain business. The FCPA prohibits even unsuccessful attempts to make Improper Payments. Examples of things of value which could be Improper Payments include:
 - o Cash and cash equivalents;
 - o Charitable donations;
 - o Unreasonable gifts, travel/entertainment expenses;
 - o Scholarships;
 - o Offers of employment;
 - o Uncompensated use of University services or facilities;
 - o Kickbacks; and
 - o anything else of value.
- b. **"Foreign Officials,"** as defined under the FCPA, include:
 - i. All government officers and employees despite rank or status,
 - ii. Non-government employees acting for or on behalf of a foreign government,
 - iii. Officers and employees of government owned or controlled businesses (*often includes universities*),
 - iv. Members of a royal family,
 - v. Private businesses in which a foreign government has a financial interest,

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- vi. Officials of foreign political parties,
 - vii. Candidates for foreign political office,
 - viii. Officials of public international organizations (UN, EU, World Bank, etc.),
 - ix. Third parties/agents, with knowledge or purpose that all or a portion of such payment will be offered, given, or promised directly or indirectly to any of the above.
- c. **“Corrupt Intent”**. The FCPA prohibits payments made with “Corrupt Intent,” which includes intent to secure an improper competitive advantage; influence a foreign official in his official capacity; induce a foreign official to violate the law; or induce a foreign official to use their influence to assist in obtaining or retaining business. U.S. Courts have determined Corrupt Intent in hindsight, whereby the court will presume the payment was corrupt even if a specific business opportunity didn’t materialize until after payment.

5. Reporting Violations or Concerns

In addition to the federal civil and criminal fines and penalties imposed by the U.S. Department of Justice for violations to the U.S. FCPA, violators of this policy may also be subject to disciplinary measures imposed by the University which may include termination.

If you have any violations or concerns that you would like to report, please refer to the “Procedures for Reporting Violations or Concerns” included in the Washington University Code of Conduct. Reporting is confidential and University policies prohibit retaliation for good faith reporting.

For any questions regarding this Policy or to seek additional information on this Policy, you may contact the **Associate VC for Finance and Controller** (Mike Dunlap) at 314-935-9853.

