

HOWARD UNIVERSITY POLICY

Policy Number: 400-007
Policy Title: CONDUCTING GLOBAL BUSINESS IN COMPLIANCE WITH FOREIGN CORRUPT PRACTICES ACT
Responsible Officer: General Counsel and Chief Compliance Officer
Responsible Office: Office of the General Counsel
Effective Date: May 31, 2012

I. POLICY STATEMENT

It is the policy of Howard University (the “University”) that employees, faculty, staff, agents, and all others, as described more specifically in this policy, working for or on behalf of the University must comply with the anti-corruption laws of the United States and of the foreign countries where the University does business, including the U.S. *Foreign Corrupt Practices Act* (“FCPA”) and other applicable laws governing corruption and bribery, whether public, commercial or both.

The University prohibits any person acting on its behalf from providing bribes of any kind, directly or indirectly, to any person, anywhere at any time for any purpose regardless of foreign custom or practice. Moreover, the University prohibits any person acting on its behalf from accepting or receiving bribes or improper payments or anything else of value contrary to applicable anti-corruption and anti-bribery laws.

No member of the University workforce, or anyone else acting on behalf of the University, may, directly or indirectly, offer, promise, pay, give or authorize any financial or other advantage, or anything else of value, to a foreign official or any other person, with the intent to exert improper influence over the recipient to induce the recipient to violate his or her duties in order to obtain or retain business for the University, direct business to any person or entity or otherwise secure an improper advantage for the University.

The University’s accounting standards apply to all international activities undertaken by the University anywhere in the world, and require that accurate and complete records of transactions be maintained for a minimum period of at least five years from the date of the transaction or for the period prescribed by the University’s policy *400-003 Record Retention and Destruction*, whichever is longer. There is an honest record-keeping requirement under the FCPA, therefore all books and records must always be maintained in an accurate, honest fashion for the University’s financial expenditures. This requires the capture of all receipts, invoices and expense reports. And, documentation should truthfully support expenses incurred. All members of the University workforce must retain all records required by this policy and the related procedures.

The University has determined that strict compliance with this policy and the law is of a greater value to the University than any opportunities that may be delayed or lost as a result of violations.

II. RATIONALE

This policy establishes the University's commitment to abide by the *Foreign Corrupt Practices Act* in conducting business globally, and sets out guidelines to ensure that the University avoids engaging in corrupt business practices. It provides information needed to promote adherence to the law and guidelines to direct University employees, agents and others working for or on behalf of the University on how to conduct business without corruption. This policy is broader than the *Foreign Corrupt Practices Act* in some instances in order to ensure that the University, and those who represent it, act consistently with the University's values and avoid corrupt business practices.

This policy will be most effectively executed if there is a clear expression and understanding of the types of conduct that would violate the policy and the FCPA. Accordingly, in addition to the guidelines provided below, the University shall develop anti-bribery compliance procedures to advise the University workforce of the ethical and legal responsibilities imposed by the FCPA and this policy. The procedures will assist the University workforce in the performance of their duties in an honest and ethical manner, and will help to avoid possible violations of this policy and the FCPA.

III. ENTITIES AND PERSONS AFFECTED BY THIS POLICY

This policy applies to all University operations worldwide, and to all members of the University Workforce, which include full-time and part-time employees, faculty and staff as well as agents, sub-agents, contractors, sub-contractors, vendors, representatives, joint venture partners and others who perform work for or on behalf of the University in its international operations.

If any member of the University workforce is found to have committed an act in violation of this policy, the University will take remedial measures appropriate under the circumstances to discipline or sanction the offender, to mitigate against the potential for recurrence, and to discipline any member of the University community who may have participated in such conduct or failed to stop such conduct when he or she had the authority to do so.

IV. DEFINITIONS

A. **Foreign Corrupt Practices Act ("FCPA"):** The FCPA is a criminal statute that prohibits not only payments, but also promises or offers to pay or transfer anything of value, directly or indirectly, to foreign officials for the purposes of obtaining or retaining business, directing business to any person or entity, or securing any improper advantage. (15 U.S.C. §78-dd-1, et seq.) The FCPA applies to all United States corporations, as well as persons acting on their behalf. Thus, the FCPA applies to the University (defined for purposes of the FCPA as a "Domestic Concern"), as well as its officers, directors, employees, and agents (see definition of University workforce).

B. **Foreign Official:** broadly interpreted and may include:

1. Officers or employees or anyone acting on behalf of:

- a) Any foreign government, including members of the armed forces or any foreign government departments, agencies, or instrumentalities thereof;
 - b) Foreign state-run or state-owned enterprises or entities, including entities partially or wholly owned by a foreign government, or entities in which the foreign government has the power to appoint board members or the power to exercise effective or de facto control;
 - c) Public international organizations;
2. Foreign political parties and their officials;
 3. Candidates for foreign public office; and
 4. Close family members or relatives of any of the persons listed above.

While the above descriptions are the most common examples of *Foreign Officials*, they are not exhaustive and the federal government may interpret the term more broadly at its discretion.

- C. **Domestic Concern:** Any individual who is a citizen, national, or resident of the United States, or any corporation which has its principal place of business in the United States or which is organized under the laws of a state of the United States, or a territory, possession, or commonwealth of the United States. The University is a Domestic Concern subject to the FCPA.
- D. **University Workforce:** Every employee, faculty member, staff, agent, sub-agent, representative, contractors, sub-contractor, vendor, joint venture partner and any other third party that works for or on behalf of the University, in the United States or anywhere else in the world.
- E. **Bribery or Bribe:** In the context of the FCPA and this policy, a payment or anything of value given to a foreign official for the purpose of obtaining or retaining business abroad or securing any improper advantage.
- F. **Improper Payment or Gift** under University policy is broader than a Bribe and means anything of value provided to a foreign official including, as common examples, cash, meals, entertainment, an interest in a business venture, or other gift, unless it is determined by the General Counsel in writing to fall within an exception to the FCPA.
- G. **Allowable Payments or Gifts** are not Improper Payments or Gifts because they fall into an exception to the general FCPA rule prohibiting payments and gifts. See guidance in Section V.
- H. **OGC:** Howard University's Office of the General Counsel. The General Counsel is the University's Chief Compliance Officer.
- I. **Global Business Steering Committee:** This University Committee has been designated by the Board of Trustees to review and authorize or recommend authorization of all proposed international business (non-academic) activities.

- J. **Office of the Internal Auditor:** Howard University's Office of the Internal Auditor which operates under the direction of the University's Internal Auditor.

V. POLICY PROCEDURES

A. ROLES AND RESPONSIBILITIES

1. Every University employee, officer and trustee shall read, understand and comply with this policy.
 - a) *Every University employee, officer and trustee* with any involvement in the University's international activities, as determined by the Office of the General Counsel, shall also:
 - (i) Annually attend training on this policy.
 - (ii) Affirm annually in writing that they are familiar with this policy and its procedures; that they understand it; that they have not violated it or the FCPA in connection with any activities they have undertaken at or for the University (or describe any situation in which they may have done so); and that they agree to abide by the policy, the procedures, and the FCPA.
 - (iii) Ensure that any person who is not a University employee, but who performs work for the University in connection with its international activities, is aware of this policy, becomes familiar with its provisions, understands his/her responsibility to comply with it, and obtains annual training on this policy.
 - b) *Every member of the University workforce* with any involvement in the University's international activities shall:
 - (i) Read, understand and comply with this policy.
 - (ii) Direct any questions regarding obligations or compliance to OGC. In particular, if any member of the University Workforce is unsure whether s/he is being asked to make an Improper Payment or Gift or Bribe, s/he should not make the payment unless approved by General Counsel in accordance with this policy.
 - (iii) Report to the General Counsel or the Internal Auditor any instance, in which he or she becomes aware, that cause him/her to have a good faith belief that a violation of this policy has occurred.
 - c) *The General Counsel or General Counsel's Designee* shall:
 - (i) Ensure that appropriate notice of this policy and its content are distributed to all University employees, members of the University Workforce, and those doing or seeking to do business with the University in international projects.
 - (ii) Provide advice as needed, including specific advice on whether payments or anything else of value to be given to a foreign official falls within an

exception to the rule prohibiting such payments, in accordance with this policy.

- (iii) In coordination with the Internal Auditor, implement measures to monitor compliance and investigate any complaints of violations of this policy.
 - (iv) FCPA compliance training shall be provided to relevant members of the University workforce in a manner determined by the OGC in consultation with the Human Resources Department.
 - (v) The General Counsel may delegate responsibility to empowered officials for management and implementation of the FCPA policy and procedures.
- d) The *Global Business Steering Committee* will:
- (i) Review the budget for an international grant project at inception, and approve anticipated payments to foreign officials that are not susceptible to being viewed as bribes, or that fall in one of the exceptions below.
 - (ii) Ensure the implementation of internal controls and require accurate recordkeeping. While the University does not fall under the accounting provisions of the FCPA, maintenance of proper books and records and internal controls are important in ensuring compliance with the University's obligations. The Global Business Steering Committee is responsible for ensuring that the accounting and recordkeeping for international activities of the University comport with University policies and procedures, including but not limited to procedures for reimbursements, check requests, petty cash, and other University accounting procedures.
 - (iii) Ensure that internal controls exist to guarantee that those responsible for conducting international business on behalf of the University accurately record payments for any services rendered to the University by a foreign official or an officer or official of a foreign government-owned entity, including honorarium payments and reimbursements of expenses. Procedures should be implemented to ensure such payments and reimbursements are made solely to a foreign government agency or instrumentality employing the individual. Such payments should be made by check directly to the foreign government agency or instrumentality, or by wire to its named bank account within the foreign government agency's or instrumentality's country, or by wire to a duly authorized correspondent bank within the United States. Cash payments are prohibited.

B. LIMITED EXCEPTIONS AND PERMISSIBLE PAYMENTS

This Policy contains information on three limited categories of payments that are not prohibited by the FCPA in very narrow circumstances. These include:

1. **Facilitation Payments** – these are not bribes and are not improper payments or gifts.

Under this policy, these are payments approved by the *Global Business Steering Committee* or *OGC* in writing and made to foreign officials in order to facilitate or expedite routine governmental actions, as defined below. A facilitation payment may be made only for something to which the University is already entitled, not to influence the exercise of discretion on the part of any foreign official.

- a) *Routine Governmental Action* for which facilitation payments will be approved:
- (i) obtaining permits, licenses, or other official documents;
 - (ii) processing governmental papers, such as visas and work orders;
 - (iii) providing police protection, mail pick-up and delivery;
 - (iv) providing phone service, power and water supply;
 - (v) loading and unloading cargo, or protecting perishable products; and
 - (vi) scheduling inspections associated with contract performance or transit of goods across country.

Routine Governmental Action does not include any decision by a foreign official to award new business to, or to continue business with, a particular party, or any action taken by a foreign official involved in the decision-making process to encourage a decision to award new business or to continue business with a particular party, or a foreign official's decisions on the terms of such business. These payments cannot be made to influence any discretion on the part of any official.

2. Reasonable and Bona Fide Business Expenses

A payment may be made under the FCPA and this policy if it is a reasonable and good faith business expense such as meals, entertainment, travel or lodging, directly related to the promotion, demonstration or explanation of the University's products or services, or the execution or performance of a contract. However, it is necessary to follow the directions set out in the procedures before making any such payments based on this exception.

3. Payments that are Explicitly Permitted by Local Written Laws

A payment may be made if such payment and the influence it has on the recipient are explicitly permitted or required by the written laws of the country in question. It is not enough that the payment is not prohibited, is customary, or that the country in question does not enforce its anti-bribery laws. Because of the near impracticality of satisfying the requirements of this exception, it is the University's policy to discourage use and reliance on it.

C. CAUTION REGARDING EXCEPTIONS TO GENERAL RULE PROHIBITING PAYMENTS TO FOREIGN OFFICIALS

1. Utmost caution must be exercised in determining an exception allows giving anything

of value, directly or indirectly, to a foreign official. If any doubt exists, do not make the payment or gift; and contact OGC for guidance.

2. The University defines Improper Payment or Gift more broadly than the law because, while payments and gifts are prohibited only if there is “corrupt intent” related to giving them, the agencies that enforce the FCPA often prove corrupt intent from the circumstances of the payment or gift. “Turning a blind eye” to potentially improper payments is not a defense; denying actual knowledge of the improper payment or gift will not always provide a defense if the circumstances indicate the University, or its employee or representative, should have known the facts or circumstances that suggest a risk of a violation of the FCPA. Examples of such “red flags” are provided below in Section VII.
3. Prohibited payments can be direct or indirect. If a third party such as a local consultant or agent makes an improper payment on behalf of the University or a University employee, the University may incur legal liability. For that reason, the University must prevent any improper transfers to agents and others who could funnel the items to foreign officials. Thus, employees, faculty, staff, agents and representatives or other third parties that work for or on behalf of the University should refer to and follow the applicable procedures approved by the Global Business Steering Committee regarding making any payments, giving any gifts, or providing any hospitality to foreign officials.
4. All payments or gifts offered to foreign officials are presumed improper unless they fit within one of the limited exceptions detailed above and further discussed below. No payment, even ones listed herein, are permitted if it could be construed as being made in order to influence any official decision, obtain or retain business, direct business to any person or entity, or provide an improper advantage.

D. COMPLIANCE RED FLAGS

The following provides a non-exhaustive list of possible facts and circumstances that may suggest the risk of a violation of the FCPA or other applicable anti-bribery laws, otherwise known as “Red Flags.”

- The country has a history or reputation for corruption.
- A request for a commission or compensation at a level substantially above the going rate for that type of work in the relevant country.
- A request that the commission or compensation be made in a third country or to a third party.
- A request for payments in cash or a bearer instrument.
- A request for increased compensation during a sales campaign.
- A request for reimbursement of expenses that are poorly documented.
- Lack of experience or expertise in the area for which an agent is being hired.

- Inability to contribute anything to an agreement except influence.
- Family or business ties with persons in a position to grant the University government licenses or approvals, to award the University business, or to otherwise impact the University's operations.
- Refusal to provide representations that the person understands the provisions of this Policy and will comply with them.
- Refusal to enter into a written agreement.
- Transactions are recorded as "cash" or checks are drawn to cash.
- Over-invoicing or lack of standard invoices.
- Refusal to agree to reasonable financial and other controls.

E. COMPLIANCE GUIDELINES

1. **Promotional Visits and Facilities Inspections.** The University may pay or reimburse foreign officials or employees for reasonable and bona fide expenses directly connected with visits to the University's facilities for promotion, demonstration, or explanation of the University's facilities, products, or services, or that are directly connected to the execution or performance of a contract with a government. Reasonable and bona fide expenses, such as meals, hotel accommodations, and travel expenses, are limited to expenses for a direct itinerary from the point of origin to the location of the University's facility. Side trips are prohibited. No expenses will be paid for spouses or family members. The Office of the General Counsel should be consulted if there are any questions pertaining to this provision.
2. **Infrequent Gifts, Meals, and Entertainment of Nominal Value.** Legitimate expenses for meals and entertainment are permitted for foreign officials or employees if they are directly related to a legitimate business purpose, are of nominal value in the locality, infrequent, , and not offered for an improper purpose. Such payments may not be made in return for any favor or benefit or to improperly influence any official decision.

Gifts may be given to foreign officials only if they fall within the above parameters and do not exceed \$25 U.S. dollars.

3. **Payments to Third Parties for Bona Fide Services.** It is permissible to make payments to vendors and other third parties for bona fide services. These payments, however, must not be used as a channel for bribes or other improper payments. Subject to approval from the OGC, it is permissible to make a payment for legitimate services rendered to the University in its foreign operations, provided that such arrangement is legal under the local law, is accompanied by supporting documentation such as invoices and receipts, where appropriate, and that the payments are reasonable in view of the quantity and quality of the services provided.

4. **Gifts and Gratuities.** Maintaining an international presence requires a keen awareness of local customs and etiquette. In some cases, such etiquette requires that gifts be exchanged prior to engaging in certain activities or at the applicable holiday times. It is the University's policy to prevent those situations where the value of gifts or other circumstances could lead to the conclusion that the gift was given to an official in order to gain improper influence, which would violate the FCPA, even if it is a common practice in the local jurisdiction. Cash gifts are prohibited.
5. **Business Meals and Entertainment.** University-related matters are often discussed over a meal or at an entertainment event. If such meals or entertainment extend beyond what is reasonable and customary for a foreign official, then the expense may be determined to be a violation of the FCPA.
6. **Discounts.** Discounts should benefit the person or entity actually paying for the product or service. Discounts, rebates, and free goods given in connection with sales transactions involving the University's products and services must not be used as a channel for bribes or other improper payments.
7. **Duress.** Occasionally, payments may be demanded under duress. Duress may occur where there is actual or threatened violence, imprisonment, or other personal threat intended to coerce someone to make a payment against his/her will. The University does not expect the University Workforce to compromise their safety or security or that of others, but the University does require that a written report of any such incident is provided to the OGC so that appropriate action can be taken to prevent any recurrence. To the extent that a situation involving duress is foreseeable or recurring, please contact the OGC to address the issue and avoid any violations of the FCPA.
8. **Diligence.** Adequate due diligence must be conducted as necessary for compliance purposes before engaging agents or business partners on behalf of the University.
9. **Payment of Travel Expenses to Foreign Officials.** Care should be taken when paying the travel expenses of a foreign official. In some situations, it is appropriate to pay for travel expenses associated with necessary business travel. The University will only reimburse those travel expenses that are necessary to cover the business aspects of any trip. For example, if a foreign official must visit one of the University's facilities to conduct an official inspection in order to issue a permit, and the locality allows the permit seeker to pay for the travel expenses, it may be acceptable for the University to pay for the expense. But:
 - a) The University cannot pay for any expenses that are not related to the necessity of the trip.
 - b) The University cannot be involved in the selection of which foreign official will make the inspection.
 - c) The University cannot pay for side-trips that have a personal benefit to the official.

- d) The class and cost of travel must be consistent with the University's allowances for travel by University personnel.
- e) The University cannot pay for travel expenses for friends or family members.
- f) Employees are also responsible for keeping adequate records to document the reasonableness and legitimacy of these expenses.

These guidelines should be read in conjunction with the University's FCPA compliance procedures which will provide detailed instructions that the University workforce must adhere to and implement in conducting their business activities, including procedures regarding: (1) due diligence in forming and maintaining relationships with any contractor, consultants, joint venture partner, agent or other representative; (2) providing gifts to foreign officials; (3) payments to foreign officials, including gifts, travel, entertainment, and facilitation payments; and (4) record keeping and reporting procedures.

F. COMMUNICATIONS PLAN

This Policy will be posted on the University Policy webpage. The Global Business Steering Committee will implement procedures to identify members of the University Workforce involved in international activities on behalf of the University to be trained annually and to complete annual certifications.

G. COMPLIANCE TRAINING

1. All personnel who have involvement in international operations, as determined by the OGC, will be required to undergo annual training on the University's FCPA policy and procedures.
2. New employees who are anticipated to have involvement in international operations, as determined by the OGC, will be trained within 30 days of their hire or within 30 days of assuming duties involving international operations, whichever is later, and annually while involved with the University's international operations.
3. Existing employees who assume new duties involving international operations, as determined by the OGC, will be trained within 30 days of assuming such duties.
4. General Counsel will maintain documentation of training, including attendance logs and copies of training presentations.

H. COMPLAINTS OF VIOLATIONS

Complaints of violation of this Policy should be directed to the Internal Auditor or General Counsel/Chief Compliance Officer of the University, who shall conduct or cause to be conducted an investigation to determine whether a violation has occurred.

University policies prohibit retaliation for good faith reporting.

VI. SANCTIONS

Substantial legal penalties can result from violations of the FCPA. Even allegations that a company has engaged in an FCPA violation or is under investigation for such concerns can inflict significant reputational harm on the University.

Under the FCPA, institutions may be subject to criminal fines of \$2,000,000, or up to twice the value of the benefit sought through the violation, and up to \$10,000 in civil penalties per violation. Moreover, individuals who are responsible for an institution's violations also face imprisonment for substantial terms as well as civil and criminal penalties.

The Department of Justice has made investigations of individuals under the FCPA a growing priority, with an increasing number of cases in which individuals have been prosecuted, fined and sent to prison. Potential penalties for individuals include civil fines of \$10,000 and criminal fines of \$100,000 and/or imprisonment for up to five years per violation.

Additionally, persons who violate this policy will be subject to disciplinary measures by the University. Penalties for violations will vary with the circumstances, but may include termination.

COMPLIANCE MONITORING AND AUDITS

Under the supervision of the OGC and the Internal Auditor, the University will audit the University's compliance with the FCPA and this Policy and related procedures at least every two years.

The Internal Auditor will provide a detailed written report of the findings of the audit to the OGC and the Global Business Steering Committee and maintain detailed records of each audit for a minimum of five years.

VII. HYPERLINKS

www.howard.edu/policy

<http://www.justice.gov/criminal/fraud/fcpa/docs/lay-persons-guide.pdf>, Department of Justice, Lay-Person's Guide to FCPA