

FOREIGN CORRUPT PRACTICES ACT

FAQs

1. What is the Foreign Corrupt Practices Act (FCPA)?

The FCPA is a federal law, enforced by the U.S. Department of Justice, which prohibits payments, gifts, or even offers of “anything of value” to a “foreign official” for the purpose of influencing the official or otherwise “securing any improper advantage” in obtaining, retaining or directing business.

2. Does the FCPA apply to universities (like Princeton)?

Certain provisions of the FCPA apply to all “domestic concerns” and their officers, employees and agents. Thus, depending on the circumstances, the FCPA may apply to Princeton, and anyone working for Princeton or on behalf of Princeton -- including our vendors and consultants. (A “domestic concern” under the statute can include U.S.-based non-profits, NGOs, and educational institutions.)

3. The FCPA only applies when I am in a foreign country, right?

No. The FCPA applies both to the conduct of a U.S. citizen while that citizen is in a foreign country, as well as to actions taken in the U.S. “in furtherance of” the corruption of a foreign official.

4. What are the elements of a FCPA violation?

For an act to violate the FCPA, three elements must be present: (1) A payment or something of value is offered, promised, or given (2) to a foreign official (3) for a corrupt purpose.

5. What is a “foreign official” under the FCPA?

A “foreign official” is defined very broadly under the FCPA. The official can be employee or agents of a foreign government; an official need not be high-ranking. The following persons would likely qualify as foreign officials:

- Administrators and faculty at foreign 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.

The proscriptions of the FCPA also extend to bribery of a “foreign political party or official thereof or any candidate for foreign political office.”

6. How is “anything of value” defined under the FCPA?

“Anything of value” is broadly construed and may include cash payments, non-cash gifts or other benefits, including:

- Travel, meals, entertainment or gifts, including for friends or relatives of a foreign official.
- Training, scholarships, internships.
- Employment (*e.g.*, paid internships for the child of an official).
- A promise to use certain vendors or intermediaries (*e.g.*, a vendor owned or selected by a foreign official).
- Conference and event scholarships.
- Charitable donations.

7. What is a “corrupt purpose”?

One is acting with a corrupt purpose if he/she offers, promises, or provides something of value to a foreign official -- either directly or through a third party -- **to improperly influence the foreign official in order to obtain, retain, or direct business or to secure any improper business advantage.** Princeton’s activities (*e.g.*, research, teaching) are considered business under the FCPA.

8. Can I pay a foreign official for legitimate services provided?

Yes, payments for legitimate services are acceptable. But care should be given to avoid payments that could be construed as having a corrupt purpose.

To that end, each payment for goods or services should follow the University’s Purchasing policies and processes and be documented with the appropriate detail so such that it is clear that the transaction was *bona fide* in all respects.

9. When hosting a foreign official, what are ways to reduce the risk that an act is viewed as having a “corrupt purpose”?

When hosting a foreign official, it may be appropriate to pay for the official’s reasonable lodging and dining expenses – so long as these payments are not being done to improperly influence the foreign official. (Activities such as giving a lavish meal or a gift that does not have a Princeton connection (*e.g.*, tickets to the World Series) or providing benefits to family members of an official (*e.g.*, travel costs) may not be considered reasonable, and, therefore, may be more likely to be construed as having a corrupt purpose.)

In addition, expenses for University guests also must comply with the Business Expense Policy and the Travel Policy of Princeton’s Office of Finance and Treasury.

10. Does the FCPA really prevent me from providing gifts to my foreign colleagues?

The FCPA applies to any and all “things of value,” including gifts. Whether giving a gift may be seen as a violation of the FCPA requires a factual analysis of the circumstances under which the gift is given. In addition, gifts beyond a modest value may not be given to nonemployees under the University’s Business Expense Policy. It is prudent to check with your supervisor and appropriate University offices before giving gifts to persons who might be considered foreign officials.

11. Can a payment be made to a third party as a way to avoid a violation of the FCPA?

No. One cannot make a payment to a third party if he/she knows (or should know) that some or all of that payment will be used in a way that violates the FCPA. In other words, you cannot ask or hire someone else to do something you are not legally allowed to do yourself.

12. Are there any payments to foreign officials that fall outside the FCPA?

Yes, there are certain limited situations where payments to foreign officials may be acceptable under the FCPA. One of those exceptions is referred to as “facilitation payments” – these are payments to a foreign official for purposes of facilitating or expediting or securing the performance of routine government action. For example, it may not be a violation of the FCPA to make a payment to a foreign official to expedite the granting of a permit or license that you are otherwise entitled to receive. These payments are for nondiscretionary, ministerial government actions.

In addition, payment to a foreign official may be acceptable when it is necessary to prevent imminent personal injury or harm—for instance, if a colleague requires emergency medical care and a payment will expedite the dispatch of an ambulance.

Extreme caution should be used when determining whether a payment fits within these exceptions, and you should consult with your supervisor and the Office of General Counsel.

13. What are the potential penalties for violating the FCPA?

The penalties for FCPA violations are stiff and enforcement activity by the U.S. government is on the rise. Individuals who violate the FCPA’s anti-bribery provisions face penalties up to \$100,000 fine per violation, and up to a 5-year prison sentence per violation. (Note: Wherever the government pursues criminal charges, it may seek additional fines under the Alternative Fines Act (“AFA”). Accordingly, pursuant to the AFA, all criminal fines imposed under the FCPA may be increased to twice the improper gain obtained or twice the loss incurred by another person.)

14. What is an example of how the FCPA may be applied to our work?

Example 1: You would like to enter into a collaborative research agreement with a foreign state-controlled institution because of their outstanding faculty in your field and because the institution is ideally situated for the particular research. Officials at the foreign institution are on the fence about the collaboration but would like to visit you in the United States to discuss it. You advise them that you have made reservations and arranged payment for them and their spouses (who are not

affiliated with the institution) at the Waldorf Astoria in Manhattan, a driver and limousine to transport them to campus, and tickets for them to attend a Yankee game while in town.

Analysis: In determining whether the arrangements you have made may violate the FCPA, you should consider whether: (1) A payment or something of value is offered, promised, or given (2) to a foreign official (3) for a corrupt purpose. In this case, (1) and (2) seems to be met. Even if you were to deny that you had a corrupt motive of offering the items of value, your motive may be determined from a consideration of the circumstances. Under these facts, someone could conclude that the stay at the Waldorf Astoria, the limousine and the Yankee tickets were extravagant and not reasonably related to the purpose of the visit and therefore must have been offered in order or to improperly induce the foreign officials from the state-controlled university to enter into the agreement. The arrangement appears even less reasonable because expenses for the officials' spouses are also being covered and yet their presence is unrelated to the business purpose of the trip.

Example 2: As part of your planning to conduct field research next month, you learn that each member of the research team must obtain a research permit from the government of the foreign country where the research is to be performed. Each of you has completed the application process, submitted the required documents and paid the necessary fees. However, as a result of a backlog at the permitting office, you learn that your permits will not be issued for several months. You have contacted an agent in the foreign country and he advises that he can make a one-time small cash payment to a clerk in the permitting office to ensure that the clerk files and stamps the research permit applications for expeditious review. The clerk has no discretion about whether to file and stamp the research permit applications once the requisite filing fees have been paid. A week later, you receive a call from the agent, who tells you that the applications are being reviewed, and the government officials have grave concerns about the research in light of its potential environmental impact. The agent tells you that he is good friends with the director of the permitting office and it would only take a modest cash payment to the director and the "problem would go away." You authorize the payment and the research permits are issued without delay.

Analysis: **Was the payment to the clerk a violation of the FCPA?**

Probably not. Under these circumstances, the payment to the clerk would likely qualify as a facilitating payment, since it is a one-time, small payment to obtain a routine, non-discretionary governmental service that you are entitled to receive (*i.e.*, the stamping and filing of the permit application). However, while the payment may qualify as an exception to the FCPA's anti-bribery provisions, it may violate other laws, both in the foreign country and elsewhere.

Was the payment to the director a violation of the FCPA?

Yes. The payment to the director of the permitting office violates the FCPA, since it was designed to corruptly influence a foreign official into improperly approving a permit. The issuance of the research permit was a discretionary act, and one that the government had serious concerns about granting.

15. Have any universities been found to have violated the FCPA?

We have not identified any instances where a university or its employees have been found to have violated the FCPA. But with universities increasing their business activities abroad, it is important for us to be aware of the legal requirements.

16. What are some ways I might mitigate the risk of violating the FCPA?

- Refer to the relevant policies of the Office of Finance and Treasury, including the Business Expense Policy and Travel Policy, before engaging in purchasing or payment activity.
- Maintain accurate and current financial records of any payments to foreign officials, including detailed invoices and receipts.
- Consult with the Office of the General Counsel when considering presenting a gift to a foreign official, noting that gifts to foreign officials must not be extraordinary and should solely be motivated to express esteem or gratitude (and not corrupt intent). Gifts should be presented openly with transparency, and they should not be in the form of cash.
- In covering lodging or meals when appropriate for a foreign official, pay the costs directly to vendors and do not give cash directly to the foreign official.
- Ensure that stipends are reasonable estimates of expected costs and do not provide any additional compensation or money to foreign officials.
- Do not condition payments on any specific action by a foreign official.
- Before engaging third-parties to act on behalf of Princeton in dealing with foreign officials, conduct due diligence to determine the third-party's awareness and compliance with provisions of the FCPA. Consider adding provisions to contracts stating (1) that the contractor understands the prohibitions of the FCPA and will ensure compliance with them, and (2) any payments to foreign officials on behalf of Princeton must be expressly authorized by Princeton.

17. Which office can help me should I have questions?

For questions related to purchasing and payment related policies and procedures, contact the Financial Service Center at 609-258-3080 or finance@princeton.edu. For general questions, contact the Office of the General Counsel at 609-258-2500.