

## University Policy: Foreign Corrupt Practices Act Policy

**Policy Category:** Ethics, Integrity and Legal Compliance Policies

**Subject:** Compliance with the Foreign Corrupt Practices Act of 1977, as amended

**Office Responsible for Review of this Policy:** Office of Finance and Treasurer

**Procedures:** FCPA Guidance Document

**Related University Policies:** Ethics and Integrity Policy

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### I. SCOPE

It is American University's policy to comply with the anti-bribery provisions of the Foreign Corrupt Practices Act of 1977, as amended ("FCPA" or the Act"). Each officer, manager, and employee of the University has the responsibility for compliance with the FCPA within his/her area of authority and for immediately reporting any violations to the CFO, Vice President and Treasurer.

### II. POLICY STATEMENT

The provisions of the Act that make it a criminal offense for an officer, director, employee, or agent acting on AU's behalf to make an offer, payment, or gift of money or other item of value, directly or indirectly, to (i) a foreign official, (ii) a foreign political party, (iii) a party official or (iv) a candidate for foreign political office for the corrupt purpose of obtaining or retaining business for the University or for the purpose of directing business to any other person. FCPA violations can, and often do, occur even if the prohibited activity takes place entirely outside the United States. For this reason, University employees who deal with or are responsible for overseas programs must be knowledgeable about all related activity, including activity that takes place thousands of miles away from main Campus.

### III. DEFINITIONS

*Corrupt Purpose:* The term is taken to mean any activity, including the provision of meals, lodging or entertainment, which is intended to influence the recipient and is done for the stated illegal purposes.

*Foreign Official:* Any officer or employee of a foreign government or any department, agency, or any person acting in an official capacity for or on behalf of a foreign government, government entity or of a public international organization, any foreign political party or party official, or any candidate for foreign political office.

*Cash and Non-Cash Payments – "Anything of Value":* Any item of pecuniary value; including,

- gifts
- investment opportunities in other than an arm's length transactions for demonstrated fair market value
- contracts or other business opportunities awarded to an organization in which a foreign officer holds a beneficial interest
- medical, educational or living expenses
- travel, meals, lodging, shopping or entertainment expenses

*Prohibited Payments:* Payments made in a business context to obtain or retain business or to secure any other improper advantage. For example:

- influencing any act or decision of a foreign official in his official capacity, including a decision to fail to perform his official functions
- to obtain a license or other authorization from a government where the issuance involves the foreign official's or his/her government's discretion
- to obtain confidential information about business opportunities, bids or the activities of competitors
- to obtain relief from government controls
- to resolve governmental disputes (e.g., the resolution of tax deficiencies or a dispute of duties payable)
- to affect the nature of foreign regulations or the application of regulatory provisions

*Accommodation Payments:* Narrow exception provided in the FCPA for payments to a foreign official, foreign political party, or party official intended to hasten or secure the performance of a routine governmental action. Accommodation payments are amounts paid to non-U.S. government agencies to expedite a service or routine administrative action that these agencies normally perform and are permitted under the laws of that country. Examples include:

- obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country
- processing governmental papers, such as visas or work orders
- providing police protection, mail pick-up and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across country
- providing phone service, power and water supply, loading and unloading supplies, or protecting perishable products or commodities from deterioration

#### **IV. POLICY**

1. The use of American University funds or assets for any unlawful or improper purpose is strictly prohibited. No payment shall be made to, or for the benefit of, government employees for the purpose of, or otherwise in connection with, securing or obtaining favorable action by a government agency. Gifts of substantial value to or lavish entertainment of government employees are prohibited since they can be construed as attempts to influence government decisions in matters affecting AU. Any entertaining of public officials or the furnishing of assistance in the form of transportation or other services should be such that the official's integrity or reputation will not be compromised.
2. The offer, payment or promise to transfer in the future American University funds or assets or the delivery of gifts or anything else of value to foreign officials, foreign political parties or officials or candidates of foreign political parties for the purpose of influencing any act or

decision of any such person in his or her official capacity, including the decision to fail to perform his or her official functions or to use such persons or party's influence with a foreign government or instrumentality in order to affect or to influence any act or decision of such government or instrumentality in order to assist the University in obtaining or retaining business for or with, or directing business to any person or entity, is strictly prohibited.

3. Accommodation payments, as defined in Section III, provide a narrow exception to the FCPA. Any such accommodation payments must be thoroughly and accurately documented, with the record retained for a period of 5 years.
4. No political contribution shall be made, directly or indirectly, with University funds or assets regardless of whether the contributions are legal under the laws of the country in which they are made.
5. The officers, directors, managers, and employees of the University are responsible for enforcement and compliance with this Policy. This includes:
  - The necessary communication to inform all employees of their duties and obligations
  - Periodic review of these matters.

#### **Reporting Potential Violations**

Suspected violations of the FCPA should be reported to the CFO, Vice President and Treasurer.

#### **V. EFFECTIVE DATE AND REVISIONS:**

This Policy is effective as of 6/1/2010. Reviewed and updated August, 2014.