

## The University of Chicago FCPA Policy

**Purpose:** As reflected in the University’s Code of Business Conduct, University community members are required to act ethically, honestly and with integrity and comply with applicable laws at all times when conducting University activities within the United States or abroad. This includes compliance with the anti-bribery provisions of U.S. Foreign Corrupt Practices Act (“FCPA”) and similar applicable anti-bribery laws of other countries with which the University conducts international activities. As a general matter, the FCPA prohibits bribery of foreign officials in order to obtain or retain business or otherwise secure an improper advantage. Although this basic prohibition appears straightforward, the terms used in the FCPA have specific definitions that apply more broadly than this general statement suggests. Accordingly, this Policy is intended to assist University members with satisfying their FCPA obligations and supplements, but does not replace or otherwise alter, the principles and obligations set forth in the University’s Code of Business Conduct and existing policies.

### **Policy Statement:**

#### ***Bribery Prohibited***

University Community Members are prohibited from engaging in Bribery of a Foreign Official in connection with University business or other University activities. University Community Members must also be aware of, and comply with, applicable anti-bribery laws of the foreign countries with which they carry out international activities. Such foreign laws may include, but are not limited to, the U.K. Bribery Act, The Prevention of Bribery Ordinance of Hong Kong, and India’s Prevention of Corruption Act. Since some of these foreign laws are in certain instances stricter than their FCPA counterpart, University Community Members should consult with the Office of Legal Counsel regarding the specific requirements of these foreign anti-bribery laws as needed.

“Facilitating” payments to Foreign Officials (i.e., payments that increase the speed at which Foreign Officials perform their functions) are permitted under the FCPA but may nonetheless violate local anti-bribery laws of the foreign jurisdiction (e.g., the U.K. Bribery Act). Therefore, facilitating payments are not permitted under this Policy unless (i) the payment is necessary to prevent risk of injury or harm to oneself or another person or (ii) the Office of Legal Counsel has determined the specific payment is permissible under the FCPA and the applicable laws of the local jurisdiction.

#### ***Key Definitions***

“*Bribery*” means the direct or indirect (i.e., through a third party) (a) offering, giving, directing or promising to another person (including a Foreign Official’s family member) anything of value with the intention to induce or reward a Foreign Official to (i) undertake an official act or decision, (ii) violate his or her official duties, (iii) use his or her influence to affect an act or decision of the government or (iv) give an improper advantage; or (b) engaging in (a) without the aforementioned intention to induce or reward, but which nonetheless could reasonably be interpreted as such an inducement or reward. See the FAQs that follow this Policy for examples of common forms of bribery.

“*Foreign Official*” means any (a) employee, officer or agent of a foreign government, (b) political candidate of a foreign party, or (c) employee of a (i) foreign government owned or controlled commercial enterprise, university, research institution, health care facility, or instrumentality, (ii)

public international organization (e.g., United Nations, World Bank, World Health Organization), or (iii) foreign political party.

“*University Community Member*” means (a) faculty, other academic appointees, postdoctoral appointees, staff, and other employees of the University and its affiliates; (b) University students; (c) members of the Board of Trustees or Directors of the University and its affiliates; (d) consultants, vendors, contractors and third parties doing business with, or on behalf of, the University and its affiliates; and (e) volunteers associated with the University.

### ***Due Diligence of Agents, Vendors and other Third Parties***

When entering into a relationship with a third party that may interact with a Foreign Official on behalf of the University, University Community Members should complete sufficient due diligence to confirm that the retained individual or organization does not have a history of corrupt payments, and understands and agrees that they are not authorized to engage in bribery on the University’s behalf. The level of due diligence required will vary depending on the level of risk involved in the underlying arrangement or transaction (e.g., whether the third party will be interacting directly with Foreign Officials on behalf of the University or whether the services will occur in a country that involves a high risk of corruption).

University Community Members should ensure that the third parties described above do not have a history of violations of anti-bribery laws, provide them with a copy of this Policy, and regularly audit their activities to ensure ongoing compliance. Any agreements with these types of third parties should include provisions that they will comply with the FCPA and all other applicable local anti-bribery laws. A sample agreement provision is included here as Exhibit A.

### ***Risk Assessment and Mitigation***

University Community Members must assess the risk of bribery in the international activities under their purview and take appropriate care to prevent and detect bribery and ensure compliance with University policies. Certain countries have a high incidence of corruption, and particular care should be taken when undertaking activities in or involving those countries. For information regarding high risk countries, see the Transparency International Corruption Perceptions Index available at <http://www.transparency.org/research/cpi/>.

Depending on the individual circumstances, appropriate steps may involve (i) additional training of employees and other third parties concerning this Policy, (ii) conducting appropriate due diligence before engaging third party vendors, agents or partners, (iii) ensuring that contracts contain anti-bribery and compliance with law provisions, and (iv) requesting guidance from the Office of Global Engagement and the Office of Legal Counsel before expanding operations into a new geographic location. See the FAQs that follow this Policy for additional suggested strategies to mitigate risk of an FCPA or other Policy violation.

Failure to take appropriate steps to prevent and detect bribery creates legal risk for the University and potential personal liability for the individuals involved.

### ***Procurement and Record Keeping Requirements***

University Community Members must comply with the University’s procurement and record keeping requirements as well as its financial controls for cash and non-cash transactions.

### ***Consequences of Violations***

Violations of this Policy may result in appropriate disciplinary action up to and including termination of employment or other relationships with the University. Conduct constituting a violation may also expose the University and its Community Members to criminal or civil penalties in the United States and abroad.

### ***Non-Retaliation***

The University prohibits retaliation against any person for making a report in good faith or cooperating in an investigation in connection with this Policy. Individuals who take retaliatory action will be subject to corrective action up to and including termination of employment.

### **Questions and Reporting Concerns:**

For further information regarding this Policy, contact the Office of Legal Counsel at (773) 702-7237. In general, if you are not sure whether a particular action may violate this Policy, you should avoid that action unless otherwise advised by the Office of Legal Counsel. Known or suspected violations of this Policy must be reported to the “Point of Contact” or Hotline (800-971-4317 within the U.S.; 770-776-5641 outside the U.S.) in accordance with the [University Whistleblower Policy](#), or directly to the Office of Legal Counsel.

### **Additional Information:**

Additional University of Chicago policies may provide further guidance on issues or activities addressed in this Policy including, but not limited to, [Business Conduct at the University of Chicago](#), [Gifts to Non-Employees](#), [Gifts to Other Not-for-Profit and Charitable Organizations](#), [Policy of Procurement and Engagement of Services](#) and [Financial Services Policies](#). See also the FAQs that follow this Policy.

**Exhibit A**  
**Sample Provisions for Third Party Providers**

***Compliance with Anti-Corruption Laws.*** [Third Party] shall comply with all applicable anti-bribery and corruption laws, including but not limited to the U.S. Foreign Corrupt Practices Act and the laws of any country in which [Third Party] will be providing services on behalf of the [University] (collectively, “Anti-Corruption Laws”). [Third Party] shall not, in connection with any activities contemplated in this Agreement, transfer anything of value, directly or indirectly, to a foreign official or government official (as such term is defined by the Anti-Corruption Laws) or other private (non-government) persons or entities working on behalf of any government in order to obtain any improper benefit or advantage for the [University] or for [Third Party] on the [University]’s behalf. [Third Party] warrants that no compensation paid or payable to [Third Party] has been or will be used to pay any bribe or kickback in violation of Anti-Corruption Laws.

## **Frequently Asked Questions: FCPA Policy**

### **1. What anti-bribery laws are applicable to the University's international activities?**

The law most relevant to University international activities is the U.S. Foreign Corrupt Practices Act ("FCPA"), but many countries and jurisdictions also have their own anti-bribery laws, which may be more restrictive than the FCPA. You should be aware of any applicable local anti-bribery laws before engaging in these activities with individuals or entities located overseas (even if you remain within the U.S. while conducting such activities). Anti-bribery laws of the jurisdictions in which the University conducts activities include but are not limited to: (i) U.K. Bribery Act; (ii) the Prevention of Bribery Ordinance of Hong Kong; (iii) the Criminal Law and Anti-Unfair Competition Law of the People's Republic of China; (iv) the Prevention of Corruption Acts of each of India and Bangladesh; and (v) the Egyptian Penal Code. Contact the Office of Legal Counsel for more information about the respective anti-bribery and corruption laws of foreign jurisdictions that may apply to University activities.

### **2. What is the 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.

### **3. How does the FCPA apply to the University?**

Certain provisions of the FCPA apply to all "domestic concerns" (e.g., U.S.-based non-profits, NGOs, and educational institutions) and their officers, employees and agents. Thus, the FCPA applies to the University, its employees, and all third parties working on the University's behalf, such as vendors and consultants.

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

No. The FCPA prohibits direct and indirect payments. Therefore, one cannot make a payment to a third party if he or she knows (or should know) that some or all of that payment will be used in a way that violates the FCPA.

### **5. Are there any payments to foreign officials that fall outside the FCPA?**

The FCPA permits "facilitation payments" to a foreign official for purposes of facilitating or expediting or securing the performance of routine, nondiscretionary government action. However, because applicable local anti-bribery laws may not include such an exception and given the difficulty in determining when this exception is available under the FCPA, the University Policy prohibits the making of facilitation payments unless the Office of Legal Counsel has determined the payment is permissible or where necessary to prevent personal injury or harm (e.g., if a colleague requires emergency medical care and a payment will expedite the dispatch of an ambulance).

## **6. For which types of University activities do I most need to consider the University's FCPA Policy?**

University members should consult the FCPA Policy when engaging in activities comparable to the examples below or other activities involving foreign officials.

- Collaborations with foreign institutions where the partner institution is owned or run by its government;
- Events hosted by the University (on campus or overseas) that include foreign officials;
- Projects, sponsored or otherwise, that involve interactions with foreign officials (e.g., projects requiring government-issued licenses, approvals or permits);
- Activities that require the hiring of agents or consultants who will interact with foreign officials; or
- University educational programs (on campus or overseas) in which foreign officials may enroll.

## **7. Who qualifies as a "foreign official" under the FCPA and University Policy?**

A "foreign official" is defined very broadly under the FCPA. It includes employees and agents, at all levels, of a foreign government, state owned or controlled company or instrumentality (i.e., public utility or hospital), foreign political party or public international organization (e.g., the World Bank) as well as a candidate for foreign political office. The following are deemed "Foreign Officials" for purposes of the University's FCPA Policy:

- 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/health care facilities;
- Members of a royal family;
- Police officers; and
- Customs officials.

## **8. Can I pay a foreign official for provision of legitimate services?**

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 Procurement policies and processes and be documented with the appropriate detail such that it is clear that the transaction was bona fide in all respects.

## **9. What are some examples of common forms of bribery?**

Anything of value can serve as the basis of a bribe. Examples of common forms of payments or benefits that may constitute a bribe if coupled with an intent to improperly influence or reward the beneficiary include, but are not limited to:

- Unreasonable gifts, meals, entertainment, travel expenses or other hospitality;
- Unwarranted rebates or excessive commissions;
- Unwarranted allowances or expense reimbursements;

- Charitable contributions to organizations owned or recommended by a foreign official or owned by his or her family members;
- Contributions to a foreign political party or candidate for political office at the request of a third party;
- Uncompensated use of University services or facilities; and
- Promises of admission or acceptance to the University with respect to the foreign official or his or her family member.

A payment or benefit may be deemed unreasonable, unwarranted or inappropriate under the FCPA and the University's Policy if (i) the arrangement violates other applicable University policies and/or (ii) a third party could reasonably perceive that the purpose of the arrangement is to influence a foreign official's decision or reward the improper performance of his or her duties.

#### **10. 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 official. Activities such as giving a lavish meal or a gift that does not have a University connection (e.g., expensive theater tickets) 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.

When presenting a gift, be sure to refer to the University's Policy on [Gifts to Non-Employees](#) and consider presenting the gift publicly, making clear that it is an expression of University hospitality and/or token of its appreciation.

#### **11. Does the Policy prevent me from giving gifts to my foreign colleagues?**

Gifts beyond a modest value (i.e., \$100 or less) may not be given under the University's Policy on [Gifts to Non-Employees](#). Check with your supervisor and/or the Office of Legal Counsel before giving larger gifts to persons who might be considered foreign officials.

#### **12. What are examples of how the FCPA and the University Policy apply to University activity?**

Example 1: You would like to enter into a collaborative research agreement with a foreign state-controlled institution. The foreign officials have not yet agreed to enter into the collaboration but would like to visit you at the University to discuss it further. You advise them that you have made reservations and arranged payment for them and their spouses (who are not affiliated with the institution) at a luxury hotel in Chicago, a driver and limousine to transport them to campus, and tickets for them to attend a Chicago sports event while in town.

In determining whether the arrangements you have made may violate the FCPA and University Policy, 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 or improper purpose. In this case, (1) and (2) appear to have been satisfied. Even if you did not have a corrupt intent, the same may be determined from a consideration of the circumstances. Specifically, someone could reasonably conclude that the luxury hotel accommodations, limousine service and tickets were extravagant and not reasonably related to the purpose of the visit and therefore must have been offered in order to improperly induce the foreign officials to enter into the agreement. Covering the

expenses for the officials' spouses, whose presence is unrelated to the business purpose of the trip, is also suggestive of improper motive.

Example 2: As part of your planning to conduct field research next month in a foreign country, you learn that the research team must obtain a research permit from the foreign government. You have 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 permit will not be issued for several months. A local agent in the foreign country advises you that he can make a one-time 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 with respect to filing and stamping the research permit application once the filing fees have been paid. A week later, the agent informs you that the application is being reviewed, and the government officials have concerns about the research in light of its subject matter. The agent says he is a friend of the director of the permitting office and can "make the problem go away" with a modest cash payment to the director. You authorize the agent to pay the director and the research permit is then promptly issued.

Was the indirect payment to the clerk a violation of the FCPA? Under these circumstances, this payment would likely qualify as a "facilitating payment" under the FCPA, 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, this payment may violate local laws of the foreign jurisdiction and may only be made if payment is consistent with the University's FCPA Policy, including prior consultation with the Office of Legal Counsel.*

Was the payment to the director a violation of the FCPA and University Policy? Yes. Since the payment was designed to corruptly influence a foreign official into improperly approving a permit, the payment to the director violates the FCPA and University Policy. Issuance of the research permit was a discretionary act, and one that the government had expressed concerns about granting.

### **13. What are some ways I might mitigate the risk of violating the FCPA and otherwise comply with the University's FCPA Policy?**

There are several risk mitigation strategies that you should consider when engaging in University activities involving foreign officials and foreign entities, including the following:

- Refer to the relevant Financial Services and Procurement policies before engaging in purchasing or payment activity with foreign officials or foreign entities;
- Maintain accurate and current financial records of any payments to foreign officials, including detailed invoices and receipts;
- Consult with the Office of Legal 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;
- When providing reasonable lodging or meals 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; and

- Before engaging third parties that will interact with foreign officials and entities on behalf of the University, conduct due diligence to determine the third-party's awareness and compliance with provisions of the FCPA and similar laws. Provide them with a copy of the University's FCPA Policy and consider adding provisions to contracts stating (1) that the contractor understands the prohibitions of the applicable anti-bribery laws and will ensure compliance with them, and (2) that any payments to foreign officials on behalf of the University must be expressly authorized by the University.

#### **14. Which University Offices can help me should I have questions?**

For questions related to purchasing and payment related policies and procedures, contact the Financial Services at 773-702-1944 or [finserv-help@lists.uchicago.edu](mailto:finserv-help@lists.uchicago.edu). For general questions, contact the Office of Legal Counsel at (773) 702-7237.