



UNIVERSITY OF WISCONSIN - MADISON

EXPORT CONTROL

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Guidance Document on the Foreign Corrupt Practices Act February 15, 2017

The Foreign Corrupt Practices Act (FCPA), administered by the Department of Justice under 15 USC 78 §§ 78dd-1 et seq., is designed to ensure that bribery of foreign officials does not occur either inside or outside the U.S. The FCPA covers payments that are intended to influence a foreign official to use their position in order to assist someone in procuring items of value, including contracts, agreements, permits etc. Payments must be made with the intention of inducing the official to misuse his or her position for the benefit of the paying party. A person cannot ask a third party to place a bribe in an attempt to shield themselves from direct involvement in the corruption. Nor may they employ a policy to not ask questions or ignore red flags that may arise in the course of business.

A bribe need not solely be cash but can include anything of value including gifts, trips etc. However, small gifts and tokens given out in the normal course of business are not considered bribes, but they must not be of high value or specially made for a particular person.

Payments made in the ordinary course of business to obtain permits, expedite service, reserve space etc. are not bribes as long as they are payments that all persons have the option of making for the same service regardless of the official who is processing the request. If the official is willing to exhibit behavior that provides a benefit for the recipient that they would not otherwise provide without special recompense, than that is a bribe. An unofficial request for payment, fees that are not government-mandated, or request placed in the context of an official providing a favor not open to others without special compensation beyond what is normally required are red flags that it may be a bribe.

Violation of the FCPA can lead large fines for both the individual as well as the UW and potential jail time.