

Financial Services Manual (FIN)

FIN 401-05: Foreign Corrupt Practices Act (FCPA) Compliance

Effective: 1/6/2015

Revised: 3/1/2017

Purpose

To familiarize individuals working for or on behalf of Arizona State University (ASU) with the Foreign Corrupt Practices Act (FCPA) and to provide guidance on preventing FCPA violations.

Sources

The Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1, et seq.

Financial Services

Policy

No individual or business working for or on behalf of ASU, including ASU faculty, staff, students, volunteers, and third party contractors, shall provide payment of a bribe to a foreign official for the purpose of obtaining, retaining, and/or directing business.

A payment to a foreign official does not always constitute a bribe. In some cases, a payment is a routine governmental action or a reasonable and bona fide expenditure. Furthermore, a payment is not a bribe when it is lawful under the written laws and regulations of the foreign official's country.

Applicability

The FCPA prohibits the payment of bribes to foreign officials for the purpose of obtaining, retaining, and/or directing business. The FCPA consists of two parts: the anti-bribery provisions, enforced by the Department of Justice, and the accounting provisions, enforced by the Securities and Exchange Commission. The anti-bribery provisions of the FCPA apply to all US persons. They also apply to any foreign national or business who causes, directly or indirectly, a corrupt payment within the US. The accounting provisions of the FCPA do not apply to ASU.

Definitions

Foreign Official

A foreign official is any person acting in an official capacity for or on behalf of a foreign government or a public international organization. A foreign official can also be any foreign political party, foreign political party official, or foreign political office candidate.

Bribe

A bribe is any offer, payment, promise to pay, or authorization of the payment of money or anything of value, whether provided directly or indirectly, to a foreign official for the purpose of obtaining, retaining, and/or directing business. A payment is a bribe when it is made for one of the following purposes:

1. to influence any act or decision of such foreign official in his official capacity,
2. to induce such foreign official to do or omit to do any act in violation of the lawful duty of such official,

3. to secure any improper advantage, or
4. to induce such foreign official to use his influence with a foreign government to affect or influence any act or decision of such government in order to obtain, retain, or direct business.

Routine Governmental Action

A payment is a routine governmental action when it is made for one of the following purposes:

1. to obtain permits licenses, or other official documents to qualify a person to do business in a foreign country,
2. to process governmental papers such as visas and work orders,
3. to provide police protection, mail pick-up and delivery, or schedule inspections associated with contract performance or inspections related to transit of goods across country,
4. to provide phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration, or
5. any actions of a similar nature to those listed above.

Reasonable and Bona Fide Expenditures

A payment is a reasonable and bona fide expenditure when it is directly related to:

1. the promotion, demonstration, or explanation of products or services, or
2. the execution or performance of a contract with a foreign government.

Examples include travel and lodging expenses.

Procedures

Preventing Violations

To prevent violations of the anti-bribery provisions of the FCPA, take the following actions as appropriate:

1. Review this policy prior to conducting international business, including traveling abroad and/or making payments to foreign officials.
2. Follow all applicable ASU procurement policies and procedures even when abroad.
3. Ensure that any party acting on behalf of ASU is familiar with the FCPA and is aware of this policy and ASU's commitment to FCPA compliance.
4. If a foreign official asks for a bribe, say no. Inform the foreign official of the FCPA and this policy, and promptly notify your supervisor of the situation.
5. If an evaluation is needed to determine whether or not a payment is lawful under the FCPA and the laws of a specific country, contact [Global Operations](#) for assistance.

Questions

For questions regarding the FCPA or this policy, contact [Global Operations](#), or call the ASU Hotline at 1-877-786-3385.

Penalties for Violations

The anti-bribery provisions of the FCPA include penalties for both individuals and entities.

Penalties for Individuals

- Civil penalty up to \$10,000
- Criminal fine up to \$250,000 and or imprisonment up to 5 years

- Under the Alternative Fines Act, the fine may be increased to twice the gain or loss resulting from the corrupt payment
- A criminal fine imposed on an individual cannot be paid directly or indirectly by the company on whose behalf the person acted
- Suspension or debarment from contracting with the federal government

Penalties for Entities

- Civil penalty up to \$10,000
- Criminal fine up to \$2 million
- Under the Alternative Fines Act, the fine may be increased to twice the gain or loss resulting from the corrupt payment
- Suspension or debarment from contracting with the federal government

Additional Information

For additional information, see the following links:

<https://www.sec.gov/spotlight/foreign-corrupt-practices-act.shtml>

<https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act>