

Anti-Bribery and FCPA Guideline

Effective Date: October 12, 2022
Function: Office of Compliance Services
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Guideline Recommendations

As reflected in the RF's [Anti-Bribery Policy](#) and [Code of Conduct](#), RF Employees, Representatives, and Agents are expected to act ethically, honestly, and with integrity, as well as comply with applicable laws when conducting RF or SUNY activities. The purpose of this document is to provide guidance for ensuring compliance with the RF's [Anti-Bribery Policy](#) and additional information relevant to the [Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-1, et seq. \("FCPA"\)](#), which prohibits bribery of Foreign Officials in order to obtain or retain business, or otherwise secure an improper advantage. The FCPA is the law most relevant to the RF's international activities, however many countries have their own anti-bribery laws which may be applicable should the RF engage in overseas activities. Please contact the RF's [Office of Compliance Services](#) or the [Office of General Counsel and Secretary](#) for information regarding other anti-bribery and corruption laws of foreign jurisdictions.

RF Employees, Representatives, and Agents should 1) recognize and appropriately address situations that may involve Bribery, 2) understand specific obligations under FCPA regarding Foreign Officials, and 3) ensure that transactions, activities, and payments are approved, documented, and processed through routine RF and/or SUNY channels.

Recognize and appropriately address situations that may involve Bribery

If any RF Employee, Representative, or Agent has a question or concern about a situation that they suspect may involve or appear to involve Bribery, they should discuss it with the RF's [Office of Compliance Services](#) or the [Office of General Counsel and Secretary](#). The best practice is to discuss the situation in advance and receive clearance for any action taken, but it is understood that situations may arise where advance approval is not obtained or is not obtainable. In such cases an individual should report the situation and seek guidance from the RF's Office of Compliance Services or the Office of General Counsel and Secretary as soon as possible after the transaction or event occurs.

Under the FCPA, the RF and individual Employees or Representatives may be held liable for Bribery committed by an Agent or other intermediary if the RF or individual Employee knows such Bribery will occur or has reason to know that the Agent is engaging in Bribery. The term "Knowing" includes a firm belief that a third party will engage in Bribery, an awareness of facts that create "substantial certainty" of such Bribery occurring, and also includes the concepts of "conscious disregard," "deliberate ignorance," and "willful

blindness.” This means if signs of potential bribery, or “Red Flags,” are reasonably evident in a transaction and nothing is done to resolve the red flags, the RF and individual Employees or Representatives may be subject to liability. Thus, it is imperative to conduct appropriate due diligence before engaging with third party partners, especially when suspicious conditions are present. All Employees and Representatives therefore should assess the risk of Bribery in their international activities and must be alert to potential Red Flags in transactions with third parties. Red Flags include, but are not limited to:

- A history of corruption in the country;
- An unusual payment pattern or financial arrangement;
- A party’s refusal to agree in writing not to violate applicable anti-corruption laws;
- Lack of transparency in expenses and accounting records;
- Apparent lack of qualifications to perform the services offered; and
- Proposed selection of a vendor or service provider based on the recommendation of a governmental official or other person with responsibility for or influence over the award of a grant, contract, or Gift.

Understand specific obligations under FCPA regarding Foreign Officials

The RF’s [Anti-Bribery Policy](#) prohibits Bribery in all circumstances, but under FCPA there is a particular prohibition against Bribery to Foreign Officials. The FCPA prohibits payment of Anything of Value to Foreign Officials to influence their acts or decisions or to secure any other improper advantage in retaining or obtaining business. No “di minimis” exception exists under FCPA allowing gifts under a small dollar amount. The FCPA defines Foreign Officials to include:

- Any officer or employee of a foreign government or any department, agency, or instrumentality thereof; or
- Any officer or employee of a Public International Organization (as defined in the FCPA; e.g., United Nations, World Bank; see [List of Public International Organizations, USAID](#)); or
- Any person acting in an official capacity for or on behalf of any such foreign government, or department, agency, or instrumentality or for or on behalf of a Public International Organization.
- The FCPA also applies to foreign political parties and candidates for foreign political office.

RF Employees, Representatives, and Agents must take particular care when engaging with organizations with ties to foreign governments, which can include government-supported foreign universities.

Ensure that transactions, activities, and payments are approved, documented, and processed through routine RF and/or SUNY channels.

The FCPA prohibits the mischaracterization or omission of any transaction on a company’s books, as well as the failure to maintain control over a company’s financial records such that a mischaracterization may result. In compliance with the FCPA, the RF and its affiliates must keep accurate books and records that reflect transactions and asset dispositions in reasonable detail, supported by a proper system of internal accounting controls. These requirements are implemented through the RF’s standard accounting rules and

procedures, which all personnel are required to follow without exception. Special care must be exercised when transactions may involve payments to Foreign Officials. Off-the-books accounts should never be used.

Change History

Date	Summary of Change
October 12, 2022	New document.

Feedback

Was this document clear and easy to follow? Please send your feedback to webfeedback@rfsuny.org.