

PRACTICAL TIPS RE: U.S. AND INTERNATIONAL ANTI-BRIBERY LAWS AND STANFORD'S ANTI-BRIBERY POLICY

What are these laws, who is covered and what are the consequences of violations?

- The U.S. Foreign Corrupt Practices Act (“FCPA”) and the U.K. Bribery Act are criminal laws prohibiting bribery and corruption in international activities. The FCPA particularly focuses on improper payments to foreign government officials.
- Penalties can include large fines and jail time for organizations and individuals.
- Stanford has enacted an anti-bribery policy and these guidelines to protect you and Stanford from potential violations: <https://adminguide.stanford.edu/chapter-12/subchapter-1/policy-12-1-2>

High Risk Countries

- Most African countries, Middle East, China, India, Latin America, Eastern Europe and Russia
- Check the Transparency International Corruption Perceptions Index: www.transparency.org/cpi2013results

Definition of Bribery

- **A bribe doesn't have to be cash. It can be anything of value.**
- Gifts, travel/entertainment and favors can also be considered bribes if they are given or received to obtain or retain business or gain an improper advantage
- Examples:
 - payment or gift to border official when traveling between countries, to customs official to expedite processing, payment to facilitate obtaining a needed permit for research, or to local law enforcement if you are stopped on the road
 - gifts or entertainment to or from an employee of a public university, policy institute, international organization, or hospital, when applying for funding or seeking favors
 - Payments do not need to be made in that country to be covered (e.g., gifts, entertainment or favors for visiting foreign officials could be a problem.)

Definition of a Foreign Official

- **The definition of a foreign official is very broad. It includes:**
- An employee of a foreign government, governmental agency, or public institution
- A member of a public international organization, such as the WHO
- A political party member or candidate, judge or legislator
- A private person acting in an official capacity, such as a delegation from the government to carry out governmental duties
- An employee of a foreign government-owned or affiliated company or organization, such as a public university or hospital, customs bureau or state-owned airline (**Keep in mind, in many countries this universe is quite large.**)
- A family member of any of the above

Before giving or receiving a gift, or paying or reimbursing someone for meals or entertainment, remember:

- **Do not give or receive cash**
- For anything else, consider:
 - What is the purpose? Is it directly related to the project or transaction?

- Is it requested or received openly?
- Is it small and reasonable, or lavish or extravagant?
- Would you be comfortable if it were reported on the front page?
- Is there any decision pending before the recipient?
- For reimbursements, insist on proper receipts.

What should you do if you receive a request for an improper payment?

- Ask the person to put the request in writing or show you where it shows up on their written fee structure. This may diffuse the situation.
- If they persist, say no. Tell them you think the payment would violate U.S. (and possibly local) law, and Stanford's anti-bribery policy.
- If a related third party is involved, explain that they are not authorized to make the payment on Stanford's behalf, and explain that Stanford cannot continue to do business with them if they make the payment.
- Be clear that your refusals are absolute and do not come with a "wink and a nod."
- Make a record of the request, and report the request to OGC.

Watch out when dealing with third parties:

- You or Stanford could be liable for bribes paid by third parties acting on your behalf, **even if you were not aware of and did not authorize the payment.**
- Examples: customs broker, travel agency in foreign country, research partner
- If you are hiring a third party in a foreign country, look out for red flags. What are they being hired to do and are they qualified? Are they offering to help get or arrange something for you that you might not otherwise be entitled to? Were they recommended by or do they have any connection to a government official?
- Make sure you check to see if they are under any U.S. Government restrictions such as the U.S. Department of Commerce Denied Parties List.
<http://www.bis.doc.gov/index.php/the-denied-persons-list>
- Inform them of Stanford's anti-bribery policy. Contract should include anti-bribery provisions.
- Require documentation before paying expenses, and do not pay cash for services.

Be extra careful when:

- Hiring a third party to perform services in a high risk country
- Contracting with or through a foreign official
- Contracting with a third party who will have contact with a foreign official on your or Stanford's behalf
- Teaming up with a third party in an international transaction such as in a partnership, joint venture or research collaboration

Monitoring third parties:

- Require documentation or justification before paying expenses.
- Question unusual or excessive expenses.
- Refuse to pay a third party and notify OGC if you suspect that the third party has or will make illicit or questionable payments or gifts.