FOREIGN CORRUPT PRACTICES ACT (FCPA)

WHAT YOU NEED TO KNOW (IN A NUTSHELL)

The FCPA is a federal law that prohibits a U.S. university, its affiliates, or its employee (University) from “bribing” a foreign government or its representative. There is no bright line test under the law, but we know from staff enforcement rulings that payments and gifts are always viewed within the overall context of the transaction. Violations of the FCPA invite criminal and civil penalties.

What we know:

• A “bribe” is a payment or giving something of value to a foreign official to influence or secure an improper advantage.

   Examples: A payment to a foreign official to induce him to award new business to or continue business with a University is considered a “bribe.”
   In contrast, a gift of a token item with Duke’s marks/logo generally will not be considered a “bribe.”

• A “bribe” does not include a small payment to a foreign official (usually a low-level government functionary/clerk) to “grease” or “facilitate” the performance of a “routine government action”.

   Example: A “bribe” does not include payments to obtain permits or to process governmental papers such as visas.

• A “bribe” does not include payment of a foreign official’s meals, entertainment, travel and lodging expenses when the University can prove that they are reasonable and are bona fide expenses that enable the University to show its services or ability to perform or execute a contract.

What to do:

Because expenditures must be viewed in context of the overall circumstances, before making any proposed offer or payments to foreign officials, including “grease” payments and travel expenditures, consider consulting with Christy Parrish-Michels at the Office of International Strategy [919.684.2910] and/or Daniel Vick at the Office of Export Controls [919.668.2711]. Reviewing travel itineraries and purpose in advance can be helpful. These offices will consult with Office of Counsel as needed.