Duke University Anti-Corruption Policy  
Approved: December 3, 2014

I. Introduction

Duke University, Duke University Health System and their controlled support corporations, affiliates and agencies (collectively, “Duke”) engage in activity around the world. As part of its commitment to ethical conduct, those whom Duke has employed or engaged to speak or act on behalf of Duke must comply with the Foreign Corrupt Practices Act (“FCPA”), United Kingdom Bribery Act (“UKBA”), and other applicable anti-bribery and anti-corruption laws and regulations (each an “Anti-Corruption Law” and collectively, “Anti-Corruption Laws”).

Capitalized terms herein are defined in a document maintained by the Office of Export Controls (see below for the role of this office).

II. Statement of Policy

Individuals who act on behalf of Duke, including officers, trustees, employees, and Agents:

- May not give a Bribe to a Foreign Official, or permit/authorize an Agent to do the same, or solicit or accept the same.
- May not give a Bribe to an employee, representative or Agent of a commercial entity related to or doing business with Duke, or permit/authorize an Agent to do the same, or solicit or accept the same.
- May not promise, offer or make “Facilitation” or “Grease” payments, or permit/authorize an Agent to do the same.
- Must comply with Duke’s record keeping requirements and financial controls for cash and non-cash transactions.
- Must conduct an appropriate level of Due Diligence on all Agents (e.g., individuals or third parties with actual or apparent authority to act on behalf of Duke such as program or research partners, affiliates, consultants or advisors) before entering into an agreement or providing any type of payment to the Agent.
- Must seek approval from the Duke University Compliance Program before providing any Hospitality (e.g., gifts above a nominal value such as small Duke-branded items; meals costing over usual and customary amounts based on the location; travel; and entertainment) for a Foreign Official.
- May not provide travel or entertainment for the family members or friends of a Foreign Official without an independent, legitimate business purpose.
- Must promptly report any suspected violations of any Anti-Corruption Law.
- May not retaliate in any form against anyone who makes a good faith report of a suspected violation of an Anti-Corruption Law or this Anti-Corruption Policy.

Duke will investigate all suspected violations of this Anti-Corruption Policy which come to its attention. A violation of Anti-Corruption laws can result in civil prosecution and fines, and when done Willfully, can

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lead to criminal prosecution of both Duke and the individuals involved. Failure to comply with this Anti-Corruption Policy may result in disciplinary action by Duke, up to and including termination of employment or termination of a contract for services.

The Duke University Compliance Program is the owner of this Policy. This Policy will be implemented through the Office of Export Controls, which will

- Implement policies and procedures, and regularly provide training, designed to help individuals identify activity that may implicate this Policy and to promote compliance with it.
- Maintain a website with regularly updated definitions of Bribe and other capitalized terms herein which definitions are necessary to understand and implement the Policy.
- Maintain and update a list of Frequently Asked Questions (FAQs) on this Policy that will guide individuals in efforts to comply with it.
- Be routinely available to the Duke community to provide guidance and oversight upon request.
Duke University Compliance Program

Anti-Corruption Policy Definitions

As called for in the Duke Anti-Corruption Policy, the following Definitions should be used in understanding and complying with the Policy.

Definitions

“Agent” means a person or third party who has been given the actual or apparent authority to speak or act for Duke in connection with transactions with Foreign Officials. Agents can include, without limitation, a research or program partner, affiliate, consultant, or advisor. Agents do not generally include vendors providing Duke with commodities of a modest value or routine office services.

“Anything of Value” means any financial or non-financial benefit. This definition is broadly interpreted and can include, but is not limited to: cash or cash equivalents; gifts; meals, entertainment, and travel; training; political or charitable contributions; or employment opportunities.

“Bribe” means a direct or indirect (i.e., through a third party) (1) Offer to pay, payment, promise to pay or authorization of a payment of; (2) Anything of Value; (3) With Corrupt Intent. Under the FCPA, it is illegal to offer, pay, promise to pay, or authorize a payment to a third party while knowing or being aware that there is a high probability that some or all of that payment will be used as a Bribe to a Foreign Official.

“Corrupt Intent” means acting with an intent, actual or perceived, to induce or influence a Foreign Official to use his or her official position to assist in directing, obtaining or retaining business or a business advantage to or for Duke or a third party; or to secure any other improper advantage. The business or business advantage does not need to directly result from the improper payment. The payment for routine reasonable meals or hospitality associated with visiting foreign research collaborators would generally not be regarded as providing “Anything of Value” with “Corrupt Intent” under this definition because such payments are not usually designed to induce a Foreign Official to take action or misuse his or her position.

“Due Diligence” means an investigation of a depth appropriate to the risk level of the proposed transaction with a prospective Agent.

“Facilitating Payment” or “Grease Payment” means a small payment made to induce or influence a Foreign Official to perform routine governmental functions as to which the Foreign Official has no discretion, such as processing a visa, providing police protection or mail service, and supplying utilities like phone service, power and water. While these are permitted under the FCPA, the area of permission is narrow and confusing, and they are prohibited under the UKBA and other Anti-Corruption Laws. Therefore, Facilitating Payments are prohibited by the Duke Anti-corruption Policy unless failure to pay would create an imminent risk to your or someone else’s personal health or safety. A documented payment for expedited service made to a government agency or entity and based on a published fee schedule is not considered a “Facilitating Payment.”
“Foreign Official” means any officer, employee or agent of a non-U.S. government, any department, agency, or Instrumentality of a non-U.S. government, non-U.S. state-owned enterprise (e.g., public hospital), non-U.S. political party, or public international organization (e.g., United Nations, World Bank, World Health Organization, and International Monetary Fund); a non-U.S. political party; or a candidate for non-U.S. political office; or anyone acting on behalf of any of the above.

“Hospitality” means gifts above a nominal value (e.g. small Duke-branded items are permitted); meals costing over usual and customary amounts based on the location; travel (see FAQ for further guidance); and entertainment. Under no circumstances may Duke or its Agents provide travel or entertainment for the family members or friends accompanying a Foreign Official.

“Instrumentality” means a legal entity owned or controlled by a non-U.S. government or through which a non-U.S. government operates (whether it controls the entity or not).

“Willfully” means with intent or willful blindness and without regard for laws or expectations.
The Duke University Compliance Program

Anti-Corruption FAQs

As called for in the Duke Anti-Corruption Policy, the following FAQs are provided as guidance to be used in understanding and complying with the Policy.

Frequently Asked Questions

Q. Which Anti-Corruption Laws are applicable?

A. The two laws most relevant to Duke activity are the U.S. Foreign Corrupt Practices Act (“FCPA”) and the United Kingdom Bribery Act (“UKBA”). In addition, many countries and jurisdictions have also instituted their own Anti-Corruption Laws. You should become knowledgeable about any local Anti-Corruption Laws before engaging in activity with individuals or entities outside the United States (even if you remain in the United States).

Q. Who do I call with questions?

A. The main point of contact should be the Duke University Office of Export Controls at 919-684-3030. Alternative options are Duke University Compliance Program at 919-684-2475 or the Duke Office of Counsel at 919-684-3955.

Q. How do I report a potential violation of this policy?

A. Report actual or potential violations to your supervisor, or if you are not comfortable with reporting there, contact the Duke Ethics and Compliance Hotline at 800-846-9793.

Q. When do I give a third party actual or apparent authority to be an Agent for Duke?

A. Actual authority is pretty straightforward. It is given in a written document which says that a person can speak for or in the name of Duke.

Apparent authority is trickier. In the collaborative university environment, counterparts are often advancing interests common to Duke and the counterparty. In these circumstances, the counterpart can easily say or write something that might lead a third party to believe that the counterpart is speaking or acting for Duke. At times, a Duke employee may intentionally or accidentally give the counterpart the impression that this is acceptable. In certain circumstances, Duke can be liable for the improper conduct of someone who has the apparent authority to speak or act on behalf of Duke, even if that relationship is not formal or in writing.

Q. Are there special concerns with Advisory Arrangements?

A. Advisory Arrangements, such as those under which Duke is paid for providing its educational expertise or exploring an operations partnership, are a common scenario where agency concerns should
be considered more carefully. The preferred method to manage this risk, when it exists, is having a written and signed document which disclaims this authority. If the intent is to provide such authority, Due Diligence steps are required.

Q. What are reasonable payments to Foreign Officials?

A. Examples of reasonable payments for services include, but are not limited to:

- Payments that are required by a contract with a non-U.S. government or government entity
- Reasonable and *bona fide* expenditures directly related to the promotion of authorized business activities or execution or performance of a contract with a non-U.S. government or government entity

Q. What are common situations that might be Bribes?

A. Examples of common Bribes include:

- Unreasonable or non-bona fide payment of travel expenses
- Unreasonable gifts, entertainment, hospitality, administrative fees
- Contribution to a non-U.S. political party or candidate for non-U.S. political office
- Acceptance of cash or anything of value in excess of modest gifts and hospitality from anyone doing or seeking to do business with Duke
- Contracting with an entity owned or recommended by a Foreign Official or owned by his or her family members
- Charitable contributions to organizations owned or recommended by a Foreign Official or owned by his or her family members
- Conferring titles of honor
- Promises of admission or acceptance to Duke

Q. Who are typical Foreign Officials?

A. Typical examples of Foreign Officials include:

- Professors or employees of public universities
- Employees and contracting agents at government agencies or government-controlled entities
- Doctors in or other employees of government owned or operated medical facilities (clinics, hospitals, etc.)
- Airport employees and local customs officials at country borders or ingress points (such as train stations and airports)
- Public transit employees
- Public dignitaries
- Police officers or investigative bureau agents
Q. What are examples of third parties that are not considered Agents for the purposes of this policy?

A. Examples of third parties that are not considered Agents include:

- U.S.-based third parties engaged to provide goods or services to Duke or to act on Duke’s behalf solely within the United States; and
- U.S. based or non-U.S. based third parties engaged to provide routine office goods, equipment, or services (e.g., janitorial services, hotel accommodations, restaurant meals) to Duke where
  - such goods, equipment, or services are available to the public at the same market terms, conditions and prices being agreed to by Duke;
  - the Duke personnel requesting such goods, equipment, or services has no knowledge or reason to suspect that the vendor is owned by a Foreign Official, was recommended by a Foreign Official, or in which a Foreign Official has a beneficial interest; and
  - such Duke personnel has no intent to influence a Foreign Official with the procurement of the goods, equipment, or services.

Q. What are the limits for meals?

A. Meal expenditures must be modest and reasonable. As a guideline, reasonable expenditures would generally not exceed three times the published U.S. Government Services Administration rates for domestic meals or two times the published U.S. State Department rate for international meals. To find the GSA and State Department rates for meals, use the links below to first find the appropriate M&IE rate (Meals and Incidental Expenses) and then the breakout of the M&IE rate by meal:

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<tr>
<th></th>
<th>M&amp;IE Rate</th>
<th>Per meal allocation</th>
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<tbody>
<tr>
<td>Domestic</td>
<td><a href="http://www.gsa.gov/portal/category/104711">GSA</a></td>
<td><a href="http://www.gsa.gov/portal/content/101518">GSA</a></td>
</tr>
<tr>
<td>International</td>
<td><a href="http://aoprals.state.gov/web920/per_diem.asp">State Dept.</a></td>
<td><a href="http://aoprals.state.gov/content.asp?content_id=114&amp;menu_id=81">State Dept.</a></td>
</tr>
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You must obtain prior written approval from the Duke University Office of Export Controls before providing meals more than 4 times per year to the same Foreign Official.

Q. What does Due Diligence include?

A. At a minimum, Due Diligence should include gathering information to determine the actual and beneficial owners and key employees of an Agent which is an entity; the Agent’s relationships with Foreign Officials; whether an individual Agent or its actual or beneficial owners or key employees of an entity Agent are current or former Foreign Officials or appear on relevant government watch lists; and whether there are any compliance “red flags” that require additional investigation. In addition, Due Diligence should include checking the Agent’s references and verifying its qualifications.
Q. When conducting Due Diligence on potential Agents, what government watch lists should be checked for the names of the actual or beneficial owners of the Agent and its key personnel?

A. The Office of Export Controls can assist with this screening. This office can be contacted by email to export@duke.edu with the names of any government officials, instrumentalities, or organizations thereof. The lists reviewed should include:

- U.S. Department of the Treasury Specially Designated Nationals List (http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx)
- United Nations Security Council List of Individuals, Groups, Undertakings, and Other Entities associated with Al-Qaida (http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml)
- European Union Consolidated list of persons, groups and entities subject to EU financial sanctions (http://eeas.europa.eu/cfsp/sanctions/consol-list_en.htm)
- U.K. Financial Sanctions: Consolidated List of Targets (http://www.hm-treasury.gov.uk/d/sanctionsconlist.htm)

Q. When conducting Due Diligence on potential Agents, what are “red flags”?

A. “Red flags” are compliance issues that must be addressed before proceeding with a transaction. Red flags are very fact-specific, and they are not necessarily violations of the FCPA, but they do require additional investigation and analysis. “Red flags” include:

- Agent is an employee of a public (state-owned or -controlled) hospital or university
- Agent has a close relationship with or is related to a Foreign Official
- Agent was recommended by a Foreign Official or a Foreign Official’s relative
- Agent is politically active
- High level of perceived corruption in the country where Agent would work
- Agent has a reputation for unethical or suspicious business practices or evidence of past violations of local law or policy
- Agent appears to lack qualifications or resources to perform
- Agent is unwilling to enter into written agreement
- Agent refuses to certify that it will comply with applicable Anti-Corruption Laws
- Agent demands fees in cash
- Agent demands discounts, rebates, or commissions higher than the typical market rate
- Agent provides incomplete or inaccurate information
- Agent requests payment be made to third party or in a different country
Q. What limitations exist on how Duke can pay Agents?

A. No payment to any Agent shall be made or delivered (1) in cash (other than documented petty cash disbursements); (2) with corporate checks payable to “cash,” “bearer,” or third-party designees; or (3) to an individual, entity, or account outside the recipient’s country of residency.

Q. What anti-corruption provisions should be included in contracts with Agents?

A. Duke should always execute a written contract with an Agent, approved by the appropriate Duke personnel. The contract should include anti-corruption representations and the Agent’s agreement to comply with applicable anti-corruption laws, audit rights, and the right to terminate the contract as a result of a breach applicable anti-corruption laws or Duke’s anti-corruption policy.

Q. When may Duke provide travel to Foreign Officials?

A. Duke may provide travel to Foreign Officials only if that travel is directly related to the promotion, demonstration, or explanation of Duke’s business or related to Duke’s execution or performance of a contract with a non-U.S. government or agency.

Q. What type of travel may Duke provide to Foreign Officials?

A. All travel must comply with Duke’s travel policy. Duke may not provide a class of travel to Foreign Officials other than the class of travel that would be available to Duke employees under the same circumstances.