



THE JOHN MARSHALL LAW SCHOOL

Anti-Bribery and Foreign Corrupt Practices Act Compliance Policy (with accompanying FAQ)

1. Purpose and Scope:

- a. Members of The John Marshall Law School (“John Marshall” or “law school”) community are required to act ethically and honestly, with integrity, and comply with applicable laws at all times when conducting the law school’s activities within the United States or abroad. This includes compliance with the anti-bribery provisions of U.S. Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1 et seq. (“FCPA”),¹ and similar applicable anti-bribery laws of countries in and with which John Marshall conducts international activities.
 - b. This Policy is intended to assist members of the John Marshall community to satisfy their FCPA obligations. This Policy supplements, but does not replace or otherwise alter, the principles and obligations set forth in other John Marshall handbooks and policies.
2. **Applicability:** The FCPA, and thus this Policy, applies to the law school as an institution and to (a) full-time and adjunct faculty and other academic appointees, (b) full-time and part-time staff, (c) students, (d) members of the The John Marshall Law School Board of Trustees; (e) members of The John Marshall Law School Foundation Board of Trustees, (f) consultants, vendors, contractors and third parties doing business with, or on behalf of, John Marshall and its affiliates; and (g) volunteers associated with John Marshall (collectively “members of the John Marshall community”).
3. **FCPA Overview:** The FCPA is a federal anti-corruption law jointly enforced by the U.S. Department of Justice and the Securities Exchange Commission. The FCPA prohibits bribing a foreign official. More specifically, the FCPA prohibits payments, gifts, or offers of anything of value to a foreign official for the

¹Foreign translations of the FCPA are available at <https://www.justice.gov/criminal-fraud/statutes-regulations>.

purpose of influencing an official, an official act, decision, or otherwise securing an improper advantage in obtaining, retaining or directing business.²

4. Definitions

- a. **“Bribery”:** Bribery under the FCPA is construed broadly. “Bribery” means directly or indirectly (i.e., through a third party) (i) offering, giving, directing, or promising to another person (including a foreign official’s family member) anything of value with the intent to induce or reward a foreign official to (a) undertake an official act or decision, (b) violate his or her official duties, (c) use influence to affect a government act or decision, or (d) give an improper advantage; *or* (b) engaging in the activities in Section 4(a)(i) without the intent to induce or reward, but which could reasonably be interpreted as such an inducement or reward.
 - b. **“Foreign official” defined:** A “foreign official” means any (i) employee, officer, or agent of a foreign government, (ii) political candidate of a foreign party, or (iii) employee of a (a) foreign-government owned or controlled commercial enterprise, university, research institution, health-care facility, or instrumentality, (b) public international organization, or (c) foreign political party.
5. **Bribery Prohibited:** John Marshall prohibits anyone from bribing a foreign official in connection with law school business or activities. Individuals and entities covered by this Policy must also be aware of, and comply with, applicable anti-bribery laws of the foreign countries with which they carry out international activities on the law school’s behalf. Because some countries’ laws are stricter than the FCPA, please consult with the law school’s General Counsel regarding the specific requirements of these foreign anti-bribery laws before initiating business or activities in a foreign country.
6. **Activities That Might Trigger the FCPA:** Any person or entity conducting business on the law school’s behalf should consult this Policy before engaging in any activity that may trigger one of the FCPA’s prohibitions. These activities include, but are not limited to:
- a. Collaborations with foreign institutions owned or run by a foreign government;
 - b. Events hosted by John Marshall (on campus, off campus, or abroad) that include foreign officials;

²For a detailed overview of the FCPA and how it applies to John Marshall, please review the FAQs in Appendix 1.

- c. Projects that involve interacting with foreign officials (e.g., projects requiring government-issued licenses, approvals or permits);
 - d. Activities that involve hiring agents consultants who will interact with foreign officials; or
 - e. John Marshall educational programs (on campus, off campus, or abroad) in which foreign government officials may enroll.
7. **Prohibited Actions:** The law school prohibits any individual or entity from giving money or anything else of value to a foreign official for the purpose of influencing an official action to benefit John Marshall. Accordingly, certain types of entertainment and gifts are never acceptable. These include:
- a. Any gift of cash or a cash substitute;
 - b. Anything that is offered as a *quid pro quo*;
 - c. Any gift or entertainment that is illegal under the foreign country's laws, or known to be prohibited by the foreign official's department, agency, or organization;
 - d. Anything that may have, or may be perceived as having, a benefit to any John Marshall activity, in the sense that the gift could be perceived as influencing the decision of anyone considered to be a foreign official;
 - e. Anything given to foreign officials associated with a tender or competitive bidding process where John Marshall is involved;
 - f. Any inappropriate entertainment (such as entertainment that is illegal under local law or U.S. law); and
 - g. Any travel, entertainment, or gifts to family members of foreign officials.

8. **Acceptable Gifts and Expenses:**

- a. Consistent with John Marshall's other policies and procedures, small gifts and entertainment expenses may be incurred in the following instances:
 - i. When the expense is otherwise permissible under all applicable U.S. and foreign laws;
 - ii. When the expense is not within any category of prohibited gift or entertainment in Section 7;

bribery laws. Please consult the law school's General Counsel before initiating contract discussions with this type of third party.

- 10. Risk Assessment and Mitigation:** John Marshall community members must assess the risk of bribery in the international activities under their purview and take appropriate care to prevent and detect bribery and ensure compliance with law school policies. Certain countries have a high incidence of corruption, and particular care should be taken when undertaking activities in or involving those countries. For information regarding high-risk countries, see the Transparency International Corruption Perceptions Index available at <http://www.transparency.org/research/cpi/>. Depending on the individual circumstances, appropriate steps may involve (a) additional training of employees and other third-parties concerning this Policy, (b) conducting appropriate due diligence before engaging third-party vendors, agents or partners, (c) ensuring that contracts contain anti-bribery and compliance provisions, and (d) requesting guidance from the law school's General Counsel before expanding operations into a new geographic location or with a new potential collaborator. Failing to take appropriate steps to prevent and detect bribery creates legal risk for the law school and potential personal liability for the individuals involved.
- 11. Facilitating Payments:** "Facilitating payments" are small payments paid to foreign officials to expedite or facilitate nondiscretionary actions or services, such as obtaining an ordinary license or business permit; processing government papers such as visas; providing police protection; providing telephone, power, or water service; or loading or unloading cargo. Under the FCPA, what constitutes an appropriate facilitating payment is narrowly construed. Accordingly, this Policy prohibits any facilitating payment absent express, advance approval of the law school's General Counsel.
- 12. Record-keeping Requirements:** John Marshall community members must comply with the law school's record-keeping requirements and its financial controls for cash and non-cash transactions.
- 13. Consequences of Violations:** Violations of this Policy may result in appropriate disciplinary action up to and including termination of employment or other relationships with the law school. Conduct constituting a violation may also expose the law school and John Marshall community members to criminal or civil penalties in the United States and abroad.
- 14. Non-Retaliation:** The law school prohibits retaliation against any person for cooperating in an investigation in connection with this Policy, or for reporting an alleged violation of this Policy, even if sufficient evidence is not found to substantiate the report. John Marshall will take appropriate action against

anyone determined to have engaged in retaliatory conduct, including, but not limited to, termination of employment.

15. Questions and Reporting Concerns: For further information regarding this Policy, contact the law school's General Counsel or Associate General Counsel and Director of Compliance. In general, if you are not sure whether a particular action may violate this Policy, you should avoid that action unless otherwise advised by the General Counsel or Dean. Known or suspected violations of this Policy must be reported to the Dean, General Counsel, or Compliance Hotline (312-994-1100).

16. Certification and Training.

- a. All members of the John Marshall community will be given a copy of this Policy as soon as practicable after implementation and will be required to acknowledge receipt by signing a certification statement indicating that they have read and understood this Policy. Human Resources will provide each new employee or volunteer with a copy of this Policy, and the individual will be required to acknowledge receipt of the policy by signing a certification statement.
- b. The General Counsel will conduct or arrange for regular training relating to this Policy.

Policy of The John Marshall Board of Trustees approved on April 12, 2018; effective immediately.

Cross-reference: Ethics and Compliance Hotline Policy

Appendix 1

FAQs Regarding the Foreign Corrupt Practices Act

1. What are the FCPA's core elements?

The FCPA is violated when (1) A payment or something of value is offered, promised, or given (2) to a foreign official, political party, party official, or candidate (3) for a corrupt purpose.

2. What is "something of value"?

"Something of value" is broader than simply cash payments. It extends to things like unreasonably expensive gifts, meals, travel expenses, and entertainment. In the law school context, and depending on the circumstances, other examples of things that may constitute "something of value" under the FCPA might include:

- Paying per diems or daily allowances for foreign officials;
- Training and scholarships for foreign officials;
- Conference and event scholarships for foreign officials;
- Favors for foreign officials, including but not limited to:
 - Offering employment (e.g., paid internship for the child of a foreign official or providing externs, interns, or seconded employees to a foreign official or affiliated entity);
 - Hiring a vendor owned by the foreign official or a member of the official's family; or
 - Admitting to an educational program a candidate because of his or her relationship to a foreign official.
- Using certain vendors (e.g., a vendor owned by a foreign official);
- Donating to a charity favored by the foreign official; and
- Allowing uncompensated use of law school facilities or property.

3. Does "something of value" mean "anything of value"?

Yes, if coupled with corrupt intent. The FCPA does not include a *de minimis* exception. Therefore, even items of lesser value could violate the FCPA if they are given with a corrupt purpose. Moreover, "something of value"

includes not only the objective value of whatever is given, but the subjective value the foreign official attaches to that item. When deciding whether a particular item of value is appropriate, consider any past, pending, or future business or administrative matters that are within the recipients' realm of influence. For example, taking administrators of a state-run foreign university or government agency to a high-end meal or expensive entertainment event while a decision is pending on whether to collaborate with JMLS on a program that could generate revenue for JMLS may violate the FCPA.

The timing and context when something of value is given must also be evaluated when assessing whether what is given could be perceived as a bribe or inducement. For example, a foreign official who has influence over a business decision impacting JMLS might find it extremely important that his nephew receive a partial academic scholarship, not for the tuition break but for the prestige of having received a scholarship. In this example, the objective value of the benefit is lower, but the subjective value to the decision-maker is extremely high.

4. Is it ever possible to entertain a foreign official without violating the FCPA?

Yes. Under certain circumstances, it is possible to incur bona fide hospitality business expenses provided they are consistent with federal, state and local laws and regulations in addition to John Marshall's policies and procedures. Specific guidance on what constitutes acceptable and unacceptable gift, meals, entertainment, travel expenses, business expenses, or hospitality can be found in Sections 7 and 8 of the Policy.

5. Who qualifies as a "foreign official"?

The FCPA defines "foreign official" broadly. It includes employees and agents at all levels of a foreign government, state-owned or state-controlled company or instrumentality (such as a public utility or hospital), foreign political party, or public international organization (such as the World Bank). The FCPA applies to payments to any public official, regardless of rank or position, and focuses on the purpose of the payment instead of the particular duties of the official receiving the payment. The "foreign official" designation also applies to relatives and friends of the official. In addition, the following also would qualify as foreign officials:

- Professors and staff of foreign state universities;
- Employees of foreign government offices, agencies, and ministries;
- Advisors to foreign ministries, government agencies or government officials;

- Members of foreign government committees or panels;
- Members of a royal family;
- Customs officials; and
- Police officers.

6. When does someone act with a “corrupt purpose”?

“Corrupt” means that the offer of payment, promise, or gift must be intended to induce the recipient to misuse his or her official position. Thus, someone acts with a corrupt purpose when that person offers, promises, or provides something of value to a foreign official (either directly or through a third party) to improperly influence the foreign official to obtain, retain, or direct business or to secure any improper business advantage.

7. How is “obtaining or retaining business” interpreted?

The phrase “obtaining or retaining business” is interpreted broadly and encompasses more than whether a payment was made to trigger a contract award or renewal. The FCPA also applies to payments made to foreign officials to secure an improper competitive advantage. Although the FCPA certainly covers a payment in exchange for direct action by a foreign official (a clear *quid pro quo*), the FCPA also covers other payments made in connection with obtaining or retaining business. Importantly, the FCPA does not require that the corrupt act succeed in its purpose. For example, an individual can violate the FCPA if something of value has been given with a corrupt purpose in an effort to obtain a license that is later denied.

8. What are some ways I might mitigate the risk of violating the FCPA and otherwise comply with this Policy?

Below are some mitigation strategies you might consider when engaging in law school business or activities foreign officials:

- Consult with the General Counsel and Dean before (a) contacting any foreign official to start, expand, or renew any law school program or activity; (b) visiting a foreign country to interact with a foreign official; (c) inviting a foreign official to the law school; or (d) giving any sort of gift or value to a foreign official (this includes scholarships).
- Maintain accurate and current financial records of any payments to foreign officials, including detailed invoices and receipts;

- Present any approved gifts opening and transparently, and never give cash or a *quid pro quo* gift;
- When providing reasonable lodging or meals for a foreign official, pay the costs directly to vendors and do not give cash directly to the foreign official; and
- Ensure that stipends are reasonable estimates of expected costs and do not provide any additional compensation or money to foreign officials;

9. How might FCPA liability arise through third parties?

The FCPA applies to more than direct interaction with a foreign official. An individual or entity can also violate the FCPA through third parties. In other words, the FCPA prohibits you from circumventing its provisions by using a third-party to make a payment to a foreign official for a corrupt purpose. For example, it is a violation under the FCPA to retain and pay a third-party where you know or should know from the facts and circumstances that a portion of the payments made to that third party will be passed on to a foreign official as an inducement to influence that foreign official in seeking to obtain or retain business or to secure an improper advantage.

10. What are ways to reduce FCPA liability related to third parties?

To avoid liability for improper payments made by third parties to foreign officials, John Marshall must carefully choose its business partners—including agents, consultants, vendors—and conduct adequate due diligence before retaining a third-party agent to work on its behalf in a foreign country. The Department of Justice has identified several “red flags” to consider before retaining a third-party, including:³

- The third party will be working in a country known for corrupt payments;
- The third party has a close family, personal, or professional relationship to a foreign official or relative of a foreign official;
- The third party objects to anti-corruption representations in its consulting agreement or contract with John Marshall;⁴

³The Department of Justice has issued helpful guidance on the FCPA, which can be accessed for free at <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/01/16/guide.pdf>.

⁴All third-party contracts or consulting agreements must be approved by the law school’s General Counsel.

- The third party requests unusual contract terms or payment arrangements that raise local law issues, such as a payment in cash, payment in another country's currency, or payment in a third country;
- The third party is suggested by a government official, particularly one with discretionary authority over the business at issue;
- The third party's commission or fee exceeds fair and reasonable compensation for the work to be performed; and
- A lack of transparency in expenses and accounting records.

In all cases, regardless of whether any of these red flags are present, the law school's General Counsel must approve any arrangement with a third party that will have contact with a foreign official on behalf of John Marshall.

11. What are the penalties for violating the FCPA and this Policy?

Individuals who violate the FCPA and this Policy are subject to:

- Up to \$250,000 fine per violation;
- Up to 5 years prison sentence per violation;
- Termination of employment or other disciplinary measures; and
- Reputational damage and negative publicity.

The consequence to the law school can include:

- Monetary penalties;
- U.S. and foreign investigations and ongoing oversight of John Marshall operations; and
- Reputational damage and negative publicity.

Appendix 2: Sample Provision for Third-Party Vendors

Compliance with Anti-Corruption Laws. [Third Party] must comply with all applicable anti-bribery and corruption laws, including but not limited to the U.S. Foreign Corrupt Practices Act and the laws of any country in which [Third Party] will be providing services on behalf of The John Marshall Law School (collectively, “Anti-Corruption Laws”). [Third Party] must not, in connection with any activities contemplated in this Agreement, transfer anything of value, directly or indirectly, to a foreign official or government official (as such term is defined by the Anti-Corruption Laws) or other private (nongovernment) persons or entities working on behalf of any government to obtain any improper benefit or advantage for the The John Marshall Law School or for [Third Party] on The John Marshall Law School’s behalf. [Third Party] warrants that no compensation paid or payable to [Third Party] has been or will be used to pay any bribe or kickback in violation of Anti-Corruption Laws.