Background:
The University of California is a global organization. The University extends its influence and shares its contributions to the world through faculty and student exchange programs, intercollegiate consortia, research collaborations, work with nongovernmental organizations (NGOs), joint ventures, international foundations, trusts, field work, and more. University researchers often collaborate in remote countries high on Transparency International’s Corruption Perception Index and may find themselves or their associates making logistical arrangements involving local officials.

The Foreign Corrupt Practices Act (FCPA):
The FCPA is an American law that contains anti-bribery prohibitions and compliance requirements designed to prevent inappropriate payments to foreign government officials. FCPA applies to U.S. companies and institutions, as well as foreign companies, institutions, or persons with a nexus to the United States, as well as their affiliates. FCPA has two components, anti-bribery provisions and books, records, and internal control provisions requiring accurate books and records so bribes can’t be hidden. Although the prohibition against corrupt payments appears simple and straightforward, the Act and its recent enforcement reflect significant pitfalls that are challenging.

What the FCPA Prohibits:
A violation of the FCPA consists of the following elements:
- a payment, offer, authorization, or promise to pay money or anything of value
- to a foreign government official (including a party official or manager of a state-owned concern), or to any other person, knowing that the payment or promise will be passed on to a foreign official
- with a corrupt motive
- for the purpose of
  - influencing any act or decision of that person,
  - inducing such person to do or omit any action in violation of his lawful duty,
  - securing an improper advantage, or
  - inducing such person to use his influence to affect an official act or decision
- in order to assist in obtaining or retaining business for or with, or directing any business to, any person.

Challenges for universities:
Because the University of California is a U.S. legal institution, the FCPA applies to all personnel and operations worldwide, regardless of location or nationality. Risks associated with violation of the FCPA and other anti-bribery laws include criminal, regulatory and reputational risks. Challenges include:
- The definitions of “payment” and “foreign official” are sufficiently broad to cover virtually any benefit conferred on someone in a position to affect a person’s business dealings with a foreign government. Nonmonetary benefits, including travel and entertainment, fall within the FCPA’s definition.
- Employees of state-owned enterprises including faculty at foreign universities, may be considered “foreign officials” for purposes of the FCPA.
- The statute contains no monetary threshold; even the smallest bribes are prohibited, and a bribe need not actually be paid, -- FCPA prohibits the offer, authorization, or promise to make a corrupt payment, in addition to the actual payment.
- For global institutions such as the UC, pitfalls include liability for the acts of third parties and due diligence expectations.
Even “charitable donations” in the foreign country may be a violation of the FCPA, if it is intended to corruptly assist the University to obtain the necessary government approvals to operate in the region. Significant fines and imprisonment are possible for FCPA violations.

Red Flags:
Organizations and individuals may be subject to prosecution for corrupt payments even if they have no actual knowledge that bribes are being paid. Criminal sanctions are imposed on persons who pay money to third parties with a ‘reckless disregard for circumstances’ that suggests the money is being used for corrupt purposes. Thus, if a university researcher hires a local in-country advisor, consultant, or coordinator who in turn pays money to a government official in exchange for official actions that benefit the researcher, the university employee and the university may be targeted by the Department of Justice for violating the FCPA even absent actual knowledge of the corrupt payment. Additional red flags may include:

- Unusual payment patterns or financial arrangements
- A history of corruption in the country
- Apparent lack of qualifications or resources by local agents
- Unusually high commissions for “getting things done”
- Lack of transparency in expenses and accounting records
- Payment of expenses in advance

UC Response:
ECAS has taken the following proactive steps address these concerns:
- Produced an interactive online training and education program available to all campuses through the Learning Management System (LMS). This training is intended to be used as an important core of all pre-international travel briefings.
- Subscribed to a proprietary database able to identify foreign individuals and foreign organizations as “instrumentalities of a foreign government.”
- Issued a Compliance Briefing - International Activities Edition throughout the UC System which provided detailed information on FCPA as well as other concerns for international activities
- Conducted system-wide webinars on the topic

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