

Foreign Corrupt Practices Act (FCPA) Guidance Document

Common myths associated with FCPA:

The FCPA doesn't apply to conduct that takes place entirely outside of the United States without U.S. parent organization involvement

False. FCPA applies to improper payments made by U.S. organizations and citizens that take place wholly outside of the United States.

The FCPA applies only to public companies—not private organizations

False. While it is true that the FCPA's books and records and internal control provisions apply only to companies with securities traded on a U.S. stock exchange or otherwise required to file periodic report with the SEC, the FCPA's anti-bribery provisions apply to the international business activity of private U.S. organizations.

FCPA compliance risks are present only in emerging third-world markets

False. FCPA non-compliance can just as easily occur in more mature and transparent markets as it can in third world markets. Accordingly, University leaders must ensure FCPA compliance in all international locations, not just those locations perceived to be high risk, emerging, third-world markets.

The FCPA applies only to improper payments to obtain or retain foreign government contracts or business

False. There have been several FCPA enforcement matters where the improper payment to a foreign official (e.g., to lower custom duties) was not alleged to have influenced any government contract or business, but rather to have provided the organization an improper advantage compared to competitors doing business in the foreign country.

The FCPA applies only to interaction with foreign government officials

False. Recent FCPA enforcement actions demonstrate that the enforcement agencies consider employees of state-owned or state-controlled entities (SOEs) to be foreign officials under the FCPA's anti-bribery provisions. Given the broad interpretation of the foreign official element by the enforcement agencies, it is important that university personnel in every foreign country inquire whether