

## **The Scripps Research Institute's Policy on Compliance with the Foreign Corrupt Practices Act**

### **Overview**

It has been and continues to be The Scripps Research Institute ("TSRI")'s policy to conduct activities in foreign countries in full compliance with the Foreign Corrupt Practices Act ("FCPA"). The FCPA makes it unlawful for a company or its employees or agents to bribe foreign government officials to obtain or retain any business. TSRI and its employees or agents shall not pay or offer to pay money or anything of value to a foreign government official, a foreign political party or official thereof or candidate for foreign political office (collectively "Foreign Official") with the intent of inducing such Foreign Official to misuse his/her official position to direct or maintain any business for TSRI or to another person. Payments to consultants or other third parties who you know will pay a portion thereof to a Foreign Official are also not allowed.

Violations of the FCPA may result in substantial criminal and civil fines and imprisonment to TSRI and the individual violators, and a suspension of our ability to do business with the NIH and other federal agencies. TSRI will also take all necessary disciplinary actions, including dismissal, against employees who violate this Policy.

### **Summary of Foreign Corrupt Practices Act**

The FCPA generally prohibits payments that are made with the corrupt intent to induce a Foreign Official to misuse his/her official position to assist a company in obtaining or retaining business with any person or directing business to any person. The following elements must be present to violate the FCPA:

1. **Who Commits the Acts.** The FCPA applies to TSRI and any officer, trustee, employee or agent of TSRI. It is a violation if you make or offer the corrupt payment yourself or authorize or assist someone else to violate the FCPA. Liability will be found if such prohibited acts occur either inside or outside the United States.

2. **Corrupt Intent.** The person making or authorizing the payment must have a corrupt intent: the payment must be intended to induce the Foreign Official to misuse his/her official position to direct business to the payer or to another person. The FCPA prohibits corrupt payments intended to influence or induce a Foreign Official to do or not do any act or decision as part of their job or in violation of their job, to secure any improper advantage, or to induce a Foreign Official to use his/her influence improperly to influence the act or decision of another Foreign Official. You do not have to actually get the business or make the payment to the Foreign Official in order to violate the FCPA; the offer or promise of a payment with the intent or purpose to corruptly influence a decision or act is sufficient.

3. **Payment.** The FCPA prohibits paying, offering, promising or authorizing to pay or give money or anything of value. Payments can include gifts, dinners, entertainment, loans, charitable donations or other benefits whose purpose is to influence a decision or act to get or retain business, instead of being ordinary and legitimate business expenditures. TSRI also prohibits employees from using personal funds to provide payments to Foreign Officials.

An exception under the FCPA permits "facilitating payments" for "routine governmental action". These are payments to facilitate or expedite an action that is commonly performed by a Foreign Official in obtaining permits, licenses or other official documents; processing governmental papers, such as visas; loading and unloading cargo; and similar actions, except any decision or act to get or retain business for TSRI. The FCPA may also allow reimbursement of payments for reasonable travel and lodging expenses incurred by a Foreign Official that are directly related to the promotion or demonstration of products or services, or the performance of a contract with a foreign government or agency. Nevertheless, no facilitating payments or reimbursements to Foreign Officials can be made under this Policy without the prior TSRI approvals described below.

4. **Business.** The FCPA forbids TSRI to make corrupt payments to assist it in obtaining or retaining business or having business directed to it or to another person. The Department of Justice interprets "obtaining or retaining business" very broadly, which encompasses more than the award or renewal of a

contract and could include any research funding or other benefit to TSRI. The business sought to be achieved can be with anyone and does not need to be only with a foreign government.

#### 5. Recipient.

a. Foreign Official. Corrupt payments must be made to a Foreign Official. A Foreign Official is any officer or employee of a foreign government or department, agency or instrumentality thereof (regardless of rank or position), or any person acting in an official capacity for such government, department, agency or instrumentality, or a foreign political party or party official or candidate for foreign political office. An official of a state or government owned or operated business, research institute or university may also be considered a Foreign Official.

b. Third Parties. The FCPA also prohibits corrupt payments made through intermediaries. Payments to consultants, joint venture partners, attorneys, suppliers and other third parties violate the FCPA if made while “knowing” that all or a portion of such payments will be directly or indirectly offered or given to a Foreign Official in order to direct business to TSRI or to another person. You will be deemed to “know” when you are aware or have a firm belief that a prohibited transaction is substantially certain to occur or when you deliberately disregard or ignore relevant circumstances that would tend to show that such third party will direct a portion of your payment to a Foreign Official.

Fees paid to foreign consultants may subject TSRI to liability under the FCPA even if such fees are initially designed to pay for the consultant’s services, but are really for efforts to persuade Foreign Officials to take actions favorable to TSRI’s future business operations, particularly where it is common knowledge that such officials may expect payments before taking favorable action. TSRI and its employees should conduct reasonable due diligence to ensure that they have formed a business relationship with reputable and qualified partners and representatives. Such due diligence may include investigating potential foreign consultants and partners to determine whether they have personal or professional ties to the foreign government, a history of corruption in the country, lack of transparency in expenses or accounting records, refusal to certify that they will not take any action that will cause TSRI to violate the FCPA or refusal to agree to an audit of their records or other contractual controls requested by TSRI to ensure compliance with the FCPA.

Penalties. A violation of the FCPA could subject TSRI to criminal and civil penalties of the greater of up to \$2,000,000 or twice the benefit sought to be obtained by making the corrupt payment. Individuals are subject to fines of the greater of \$100,000 or twice the benefit sought to be obtained and imprisonment of up to five years. Please note that fines imposed on individuals cannot be paid by their employer. In addition, a violation of the FCPA could result in the debarment or suspension of TSRI or its employees from obtaining grants or otherwise doing business with the Federal Government. Please also note that a violation of the FCPA could result in the termination of your employment at TSRI.

#### **Required Prior Approvals**

Any “payments” to Foreign Officials must first be approved by TSRI’s FCPA Compliance Committee (Kevin A. Cahill, TSRI’s FCPA Chief Compliance Officer; Thomas Northrup, TSRI’s General Counsel; and Emily Holmes, TSRI’s Vice President, Research Services). Similarly, no foreign consultants or intermediaries should be retained and no payments should be made to such third party consultants or intermediaries that may be questionable with respect to the above guidelines without obtaining the prior consent of TSRI’s FCPA Compliance Committee. If you have any questions or concerns regarding this Policy or the FCPA, please contact Kevin A. Cahill, TSRI’s FCPA Chief Compliance Officer, at [kcahill@scripps.edu](mailto:kcahill@scripps.edu) or (858) 784-7577. In addition to discussing any potential FCPA matter with TSRI’s Chief Compliance Officer, any employee may also contact TSRI’s Anonymous Telephone Hotline System provided by EthicsPoint, Inc., an independent third party, at (866) 493-1847 to confidentially report any potential violation of this Policy or of the FCPA. A prompt investigation will then be conducted by TSRI’s FCPA Compliance Committee. TSRI will take reasonable steps to ensure that an employee who makes a report is not subject to retaliation with respect to their employment or other status at TSRI and will review reported instances of alleged retaliation for appropriate action.