



COMPLIANCE ALERT



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This Issue's Contents

Feature Articles	1
Audit and Investigations	4
General Compliance	4
Health Science Compliance	4
Human Resources Compliance	4
Research Compliance	4
Policy	5
Privacy	5

Feature Articles

Cuba: Not Open for Business.... Yet

By: Brian Warshawsky (brian.warshawsky@ucop.edu)

On December 17, 2014, U.S. Secretary of State John Kerry announced pending changes to the Cuba Policy. Since that time, substantive changes have begun, with the most significant to date being the removal of Cuba from the list of State Sponsors of Terrorism on May 29th of this year. What does this mean for university researchers and international collaborations? Is Cuba now open for "business"?

Separating Fact from fiction:

While it may be possible to proactively prepare for anticipated policy changes in Washington's relations toward Cuba, as of today, Cuba continues under embargo, and even as companies line up to provide transportation services such as ferry service from American ports, it is critically important to understand that Cuba is not open to Americans for tourist activities (these remain prohibited by statute). 12 categories of travel which are allowed under general license include travel for educational activities, professional meetings, and humanitarian projects as well as others. All travel must fulfill explicit provisions of the general licenses set forth in the regulations. For help understanding these provisions and making appropriate determinations for visits and collaborations, please contact your local campus export control experts.

Upcoming Educational Opportunities

8/12—Demo of Cynergis Tek Services (Webinar)

8/19—Coordination of Complaints Across the Investigational Divide (Webinar)

8/26—The Radius Resource for International Tax Compliance (Webinar)

9/23—The Legal Mind (Webinar)

FIFA, Anti-Corruption, International Collaborations, and FCPA

By: Brian Warshawsky (brian.warshawsky@ucop.edu)

When worldwide news broke of the recent FIFA (international soccer's governing body) corruption scandal, it shed light on recent enforcement efforts by the U.S. and our international partners in confronting corruption and bribery with enforcement actions and criminal penalties. Recent publications have claimed that the FBI alone has tripled the number of agents working these international corruption cases.

What does this increased enforcement mean for international collaborations in our academic setting? What anti-corruption regulations must we be cognizant of, and how does enforcement of these regulations impact overseas activities? Must we be concerned when we host visitors representing foreign universities? What about working with local officials in foreign jurisdictions in promoting global health?

Separating fact from fiction:

Although FIFA officials are not considered foreign officials under the Foreign Corrupt Practices Act (FCPA), the corruption scandal reminds us of the extent to which corruption finds its way into the normal daily business practices in many parts of the world, including locations where academic activities like global health, take part. The University of California is in-



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creasingly involved in international collaborations, ranging from overseas research projects, to student exchanges, to formal affiliations. Failing to manage bribery and corruption risks can be very costly, both from a financial and reputational standpoint, as well as for individual civil and criminal liability. For example, if a university's global health team lead hires local agents to assist in establishing a base for distributing vaccines, and the agents earn their pay by paying bribes to the local officials to allow the project to move forward, the university and its researcher may be criminally liable for the agents' corrupt payments under the FCPA. The pattern of FCPA enforcement actions brought by the Department of Justice (DOJ) and other agencies demonstrates the challenges of compliance, as well as the sanctions faced by violators. The extra-territorial nature of this act is demonstrated by the long enforcement reach which extends far beyond U.S. borders.

The FCPA prohibits the payment or offer to pay anything of value to a foreign official to obtain or retain business (antibribery provisions). Violators of the FCPA face significant penalties. The United States, under the FCPA, has traditionally taken the lead in international prosecutions of foreign bribery, but recently many other countries have joined the anti-corruption campaigns with their own investigations and prosecutions of criminal cases.

Particularly challenging from an academic perspective is the notion that a "foreign official" as defined under the FCPA could be your university colleague at a foreign university. This means that when hosting foreign visitors and establishing programs overseas, academic officials (staff and faculty) must be mindful of the parameters of the law so that they avoid gifts and rewards which could inadvertently trigger violations. Not all violations of the FCPA have financial profit as their motivation. Each situation is different, but for international collaborators, the team approach of working with your local experts provides a level of security in reducing the risk of non-compliance.

In order to assist, The University of California presents a new interactive online course, The Foreign Corrupt Practices Act (FCPA) and Anti-Corruption, which is now available at no charge through your local LMS program.

Who should take this course:

- Faculty who collaborate internationally
- University personnel who travel internationally
- Administrative support staff
- Parties hosting foreign visitors and delegations – even from visiting universities.
- Financial disbursements personnel
- Compliance professionals

If you wish to learn more about this subject, or if you or members of your team are planning foreign travel in support of your academic activities, this resource will help provide you with the information you need to recognize these risks before they occur.

[Do You Know the Difference Between a Conflict of Interests and a Conflict of Commitment?](#)

By: Elizabeth Boyd (elizabeth.boyd@ucop.edu)

A Conflict of Interest exists when a faculty or staff member's consulting or other business activities outside the University could appear to influence their professional judgment or give an unfair competitive advantage to their client or outside interest. We most commonly think of conflicts of interest related to research, but conflict of interest may also arise in the context of procurement, purchasing, or vendor relationships. A Conflict of Commitment occurs when faculty or staff member's involvement in outside activities substantially interferes with their primary commitments to the University.

We have all witnessed or heard of someone who never seems to fulfill their UC responsibilities, but somehow seems to be able to spend a considerable amount of time on their outside commitments. Or, the colleague who spends so much time on an outside activity that seem mentally and/or physically depleted. This may be an indication that the outside activity



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What UC Policies Govern COI and COC?

As UC employees, there are a number of specific policies related to both conflict of interest *and* conflict of commitment. The list below shows highlights many of the policies.

All Staff: The University's Personnel Policy for Staff Members - Conflict of Interest which applies to all staff, simply states that employees shall not engage in any activities which create a conflict of interest between their assigned functions and any other interest or obligation.

Faculty: Policies specific to faculty Some of these policies include APM 025 and 670.

AMP 025 – Conflict of Commitment and Outside Activities of Faculty Members provides specific guidelines to address potential conflicts of commitment arising when a faculty member wishes to undertake compensated outside professional activities. It also provides general guidance for: i) addressing potential conflicts of commitment for uncompensated outside professional activities; ii) addressing compensated and uncompensated outside non-professional activities; and iii) involving students in the outside professional activities of faculty.

APM 025 also imposes limits on the amount of time a faculty member or academic administrator may spend on outside activities and requires prior approval from the Dean or Chancellor for certain types of activities.

APM 670 – Health Sciences Compensation Plan sets the terms under which Health Science faculty may earn income in excess of the base salary pay scale. It defines "Good Standing" (required for participation in the Health Sciences Compensation Plan) and requires departmental, School, and/or Chancellor approval for certain activities and earned income amounts.

Vendor Relations: University of California policy and California state law prohibit certain interactions between UC employees and entities that do business with the University, including, especially vendors of health care-related equipment, products, and services. The Vendor Relations policy prohibits UC employees from receiving gifts from healthcare vendors, including free food, drug samples, or promotional items (such as pens, note pads, and coffee mugs). All UC-sponsored activities must be free from the appearance of favoritism.

Research: Researchers who are funded by outside entities, including federal agencies like the National Institutes of Health or the National Science Foundation, foundations, or private companies (such as a pharmaceutical or biotechnology company) are subject to conflict of interest regulations. Disclosure of outside financial interests (income, equity, gifts, loans, and travel support) is required at the time that a research proposal is submitted.

may have created a conflict of commitment.

As employees of the University of California, it is our responsibility to maintain the highest standards of professionalism and to commit to maintaining the integrity of our relationships with the citizens of California.

If you have questions about your outside activities, contact your supervisor or the Office of Ethics, Compliance, and Audit Services at UCOP.



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[Audit](#)

[Compliance](#)

[Investigations](#)

[Presidential Policies](#)

[Contact](#)



Audit and Investigations

[Sexual Assault Investigations: College Student's Stand Prompts Reforms by Oakland Police](#)

A Mills College student made a formal complaint against the traumatizing treatment she received when reporting to the Oakland Police Department. This led the OPD to make substantive changes to their investigation and interview practices.

General Compliance

[Pomona College Does Damage Control After Sexual Assault Protest at Graduation](#)

The president of Pomona College, which is part of the Claremont College system in Claremont, California, sent out a letter to students and staff explaining an extensive reworking of the school's policy for responding to sexual assault and harassment claims on campus.

Health Science Compliance

[Practical Information From HHS About Privacy, Security and Health IT: ONC's Guide to Privacy and Security of Electronic Health Information](#)

"In the draft [Interoperability Roadmap](#), ONC committed to helping individuals, providers, and the health and health IT community better understand how existing federal law – the Health Insurance Portability and Accountability Act (HIPAA) – supports interoperable exchange of information for health. We take a first step to fulfill that commitment and published the revised [Guide to Privacy and Security of Electronic Health Information](#)."

Human Resources Compliance

[Union Sues Bard College Over Title IX Investigation](#)

"A union that represents professors at Bard College is calling on the school to go into arbitration with a professor they say was unfairly stripped of a department chair."

[NLRB Says Employee Dress Codes Are Out of Style](#)

"Sometimes employers like to tell workers what not to wear, and sometimes that's OK. Most companies don't want an employee wearing a T-shirt with an obscene slogan on it, or one who fails to wear his or her mandatory uniform. However, when it comes to other kinds of messaging on clothing, the National Labor Relations Board is helping to ensure employees can express themselves."

Research Compliance

[In Semi-Annual Report to Congress, NSF OIG Highlights Misconduct, Audit Findings](#)

"During the six-month period that ended March 31, the National Science Foundation Office of Inspector General made 11 new findings of research misconduct, which were among 34 "referrals" it made to NSF for sanctions ranging from debarments to suspensions of awards, according to OIG's new semi-annual report to Congress. OIG also noted the progress of its analysis of 8,000 proposals awarded in 2011. "We opened 34 plagiarism investigations, ten of which have resulted in NSF making findings of research misconduct. From these cases we have recovered \$357,602 in federal funds to date. Ten cases are still pending. One of the pending plagiarism investigations uncovered significant financial issues, and is being pursued for possible civil/criminal prosecution," OIG said in the report. OIG also issued seven audits that questioned approximately \$5.5 million in costs, and reported that NSF followed OIG's recommendation to impose a three-year debarment on a former program official with the agency who had "misused his position."

[Biosafety on the Rise](#)

"Since that 2010 shutdown, the [Northern Arizona University] has passed all of its inspections. Now, with five clean years under its belt, lab director Paul Keim is ready to share what went wrong and how the university got itself back into compliance."



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[Compliance](#)

[Investigations](#)

[Presidential Policies](#)

[Contact](#)

Policy

[New ADA Lawsuits Target Website Accessibility](#)

"Claims asserted under the Americans with Disabilities Act have been a frequent source of litigation for retail, hospitality and food service companies. Under the ADA, companies that offer products or services to the public are required, at their physical locations, to comply with a series of specific architectural requirements that are designed to ensure equal access to these locations by persons with disabilities. When a company's facility is not constructed in accordance with these standards, they can be sued under the ADA and may be forced to modify their property."

Privacy

[Google Tries To Demystify Privacy Controls With New Approach](#)

"Google is making its privacy controls easier to find and understand in an attempt to make the more than 1 billion users of its digital services more comfortable about the personal information that they give the Internet's most powerful company. The simpler approach debuting Monday features a redesigned "My Account" hub where all of Google's key privacy controls can be found."

[California Senate Says Cops Need Warrant To Search Smartphones, Tablets](#)

"The California Senate unanimously approved a bill that requires law enforcement agencies in the state to obtain a search warrant prior to accessing an individual's electronic devices or information stored on remote servers, such as consumer cloud storage. The California Electronic Communications Privacy Act, (SB 178) updates the state's privacy laws which, to date, have not covered electronic devices or digitally stored information. Under Cal-ECPA, law enforcement agencies will have to obtain a warrant from a judge should they wish to access an individual's smartphone, tablet or laptop or any of the emails, text messages and GPS data stored on these devices."

[Which Students Get To Have Privacy?](#)

"It seems that student privacy is trendy right now. At least among elected officials. Congressional aides are scrambling to write bills that one-up each other in showcasing how tough they are on protecting youth."

[The Chief Privacy Officer In Higher Education](#)

"The role of the CPO is evolving as the profession itself has matured, in no small part due to any number of data breaches, 3 in addition to the ever-increasing amount of personal data that is collected by services and devices and the evolution of Big Data," according to Sol Bermann, CPO at the University of Michigan. "In the last 5-10 years, the role has gone from what was often an evangelist to one that is increasingly anchored in defined practices."



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[Investigations](#)

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UC San Francisco: Theresa O'Lonergan

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