# Foreign Corrupt Practices Act (FCPA) Explained: Anti-Bribery & Accounting Rules (CMA Study Guide)

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The Foreign Corrupt Practices Act (FCPA), enacted in 1977, grew out of the Watergate investigations, which revealed that some 400 U.S. companies had made illegal payments — totaling around $300 million — to foreign officials to gain unfair advantage. The FCPA is designed to prevent secret payments of corporate funds for purposes Congress deemed contrary to public policy, such as bribing foreign officials.

## The anti-bribery provisions: who and what is covered

The FCPA prohibits offering or authorizing corrupt payments to:

- A foreign official
- A foreign political party or an official of that party
- A candidate for political office in a foreign country

Key points examiners test:

- Only payments to foreign government officials are prohibited — payments to foreign business owners or corporate officers are not covered by the FCPA.
- A 'corrupt payment' is one intended to cause the recipient to misuse an official position to wrongfully direct business to the payer — whether or not the payment succeeds.
- A mere offer or promise of a bribe violates the FCPA even if never completed.
- Anything of value counts, except de minimis gifts (about $100 or less — tokens of hospitality).
- Liability attaches if the payer knew — or should have known — the payment would be used to influence a government official.

## What is NOT a corrupt payment

- Payments to clerical or ministerial employees — e.g., paying a clerk to expedite goods through customs (facilitating payments).
- Payments that are lawful under the written law of the foreign country.

## The accounting provisions: books, records & internal controls

Beyond bribery, the FCPA reaches every American business through its accounting rules:

- All public companies — regardless of foreign operations — must keep books, records, and accounts in reasonable detail that accurately and fairly reflect transactions and asset dispositions.
- Companies registered under the 1934 Securities Exchange Act must maintain a system of internal accounting control giving reasonable assurance (not absolute assurance) that: transactions are executed per management's authorization; financial statements conform to GAAP; access to assets is authorized and accountability maintained; and physical assets are verified at reasonable intervals with differences investigated.

## Penalties

- Individuals: up to $100,000 fine and/or up to 5 years' imprisonment per criminal violation of the anti-bribery provisions.
- Corporations: up to $2,000,000 fine per violation.

- Fines imposed on individuals may not be paid directly or indirectly by the employer.

Because of the FCPA's reach, a written code of ethics and conduct is a practical necessity — communicated to employees, monitored by internal auditors, and often backed by written employee acknowledgments.

## Exam tips: how CMA tests this topic

- The favorite trick: payments to foreign BUSINESS people are NOT covered — only foreign government officials, parties, and candidates.
- Facilitating (grease) payments to clerical staff are the classic 'which of these is permitted?' answer.
- 'Reasonable assurance, not absolute assurance' — the same phrase as COSO; it links the two topics.
- Fines cannot be reimbursed by the employer — a memorable exam fact.

## Frequently asked questions

**What does the FCPA prohibit?**
Offering or authorizing corrupt payments — bribes — to foreign government officials, political parties, or candidates, to obtain or retain business.

**Does the FCPA cover bribes to foreign business executives?**
No — only foreign government officials, political parties/party officials, and candidates for foreign political office.

**What are facilitating payments under the FCPA?**
Small payments to clerical or ministerial employees to expedite routine actions (e.g., customs processing) — these are not prohibited corrupt payments.

**What do the FCPA's accounting provisions require?**
Accurate books and records in reasonable detail, plus a system of internal accounting control giving reasonable assurance over authorization, GAAP reporting, asset accountability, and asset verification.

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