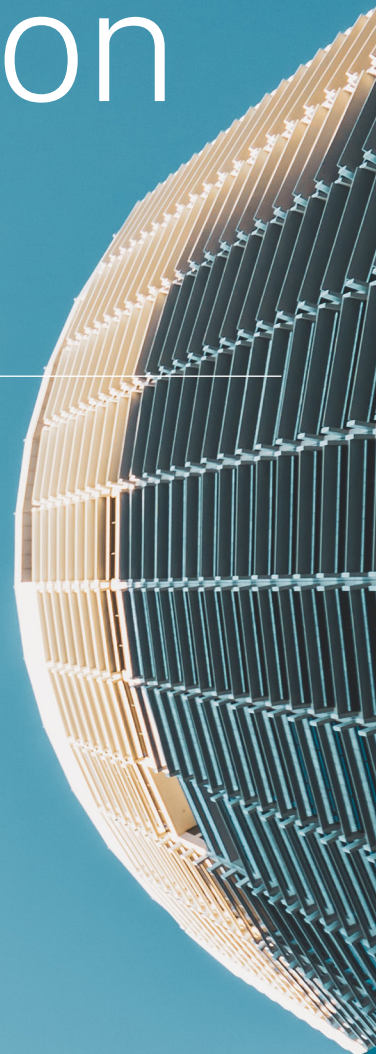

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Anti-Corruption 2025

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USA: Trends and Developments

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Trends and Developments

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Alvarez & Marsal

Alvarez & Marsal has a disputes and investigations practice that includes former prosecutors, compliance experts, forensic accountants, and technologists who support multinational companies and their counsels in high-profile and time-sensitive matters. A recognised leader in investigations and corporate compliance, A&M regularly appears before US regulators to discuss investigative findings and the effectiveness of corporate compliance programmes on matters under active investigation. With 600+ disputes and investigations professionals spread across five continents and seven forensic data

centres, A&M is well-positioned to support its clients across all stages of the investigation life cycle – from data preservation, to forensic analysis including data analytics and forensic accounting, interviewing, remediation, and expert testimony. In recent years, A&M has brought its unique perspective gained from serving as the forensics provider to four different government-appointed monitors to help its clients design and implement measured, risk-based solutions that effectively mitigate risk without unduly burdening the business.

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Steve Spiegelhalter is a former federal prosecutor, in-house counsel, and compliance officer who now leads Alvarez & Marsal's investigations practice. He specialises in investigating

alleged improper payments to government officials, commodities market manipulation and other market conduct violations, asset misappropriation, money laundering, bank and wire fraud, false claims, and other alleged criminal activity and regulatory violations. Mr Spiegelhalter also independently tests corporate compliance programmes and counsels clients on their compliance programmes, including companies under government investigation, external monitorship, and self-reporting requirements. Mr Spiegelhalter has led the forensic team on four independent compliance monitorships since 2021.



Bridget Johnson specialises in forensic data analytics at Alvarez & Marsal, helping clients navigate compliance, legal, and regulatory challenges. Her expertise spans large-scale

monitorships, investigations, and proactive compliance programmes. Bridget routinely leads teams to analyse complex and disparate data, with a focus on anti-corruption and sanctions risks. Her notable engagements include supporting multiple FCPA monitorships, leading a fraud risk assessment for a major disaster relief services organisation, and overseeing key data workstreams on an export controls monitorship of a telecommunications company.

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Anti-Corruption Trends and Developments in the US

While legal and policy experts scramble to read the tea leaves on how a second Trump presidency might reshape enforcement priorities, the past year of US anti-corruption developments has, by contrast, been strikingly predictable. Time will tell whether the Biden administration has fully realised its lofty enforcement ambitions – after all, such outcomes often take years to materialise – but 2024 has nonetheless been defined by the steady progression of messaging and policy decisions the administration has been building over the past four years.

When President Biden took office in 2021, [he named corruption as a central priority of his administration](#), framing it as a “threat to national security, economic equity, global anti-poverty and development efforts, and democracy itself.” Shortly after assuming her role, Deputy Attorney General Lisa Monaco emerged as the administration’s lead advocate for criminal enforcement, setting a bullish tone and vowing to hold corporations accountable for misconduct.

In the ensuing years, the government – the Department of Justice (DOJ) in particular – has refined a “carrot-and-stick” approach to corpo-

rate enforcement. On the “carrot” side, the DOJ introduced a variety of new incentives to encourage companies to behave in a manner that aligns with the DOJ’s enforcement priorities, including voluntarily disclosing misconduct, maintaining a robust compliance programme, and clawing back compensation from culpable employees. For “sticks”, the DOJ has raised its standards for company co-operation in investigations and homed in on the prosecution of individuals. The DOJ has also imposed corporate compliance monitors with greater frequency.

The government has been particularly active in its communication campaign, notably with respect to disseminating its compliance programme expectations to companies. The DOJ releases updated guidance on its evaluation of compliance programmes each year and broadcasts its expectations for companies via other channels like public speeches and memoranda.

Altogether, the government’s approach has been to move toward a self-policing environment by setting clear compliance programme standards and compelling companies to “do the right thing”. This past year can be seen as a measured step forward in this pursuit.

Continued guidance and emphasis on compliance

The current administration has made it clear that robust compliance programmes are a critical tool in mitigating corporate misconduct and promoting a self-policing environment. The DOJ's expectations for companies are ever-increasing as risk landscapes evolve and technology becomes more sophisticated.

The Evaluation of Corporate Compliance Programs (ECCP) guidance is one of the channels through which the DOJ relays its compliance expectations to companies. While the ECCP exists to guide federal prosecutors in assessing defendants' compliance programmes, it has also become an essential reference for companies seeking to design, implement, and continuously improve their compliance programmes. The DOJ's updates to the guidance over the past several years have broadly focused on the use of data and technology in compliance programmes, the continuous improvement and adaptation of compliance programmes, and leadership's role in fostering an ethical corporate culture.

The 2024 update to the ECCP, released in September, is a natural evolution of these priorities. The update includes substantial revisions that reflect growing concerns around emerging technologies, such as artificial intelligence and the importance of data analytics and monitoring as part of an effective programme. The update also bolsters the DOJ's expectations around whistle-blower programmes, including whether companies' training regimes and policies adequately encourage whistle-blowing and safeguard whistle-blowers. Finally, the 2024 ECCP revisions emphasise the importance of incorporating "lessons learned" into companies' compliance programmes – internal lessons and ones learned from other companies in related indus-

tries or geographies. The DOJ expects companies to systematically track and integrate these lessons and to keep an eye on their peers for emerging risks.

The DOJ continues to experiment with incentives

Over the past several years, the US government introduced several policies designed to align company incentives with enforcement priorities. These efforts have included expanding corporate self-disclosure programmes and establishing clearer benefits for companies that take proactive steps to identify and address misconduct. This year, the government continued its focus on incentivising corporate compliance, with new and updated policies aimed at promoting transparency, accountability, and stronger co-operation between the private sector and enforcement agencies.

The [DOJ's Corporate Whistleblower Awards Pilot Program](#) is the most notable new initiative. Launched in August 2024, the programme aims to build on the success of existing whistleblower programmes like those maintained by the Securities and Exchange Commission (SEC) and Commodities Futures Trading Commission (CFTC), while also filling in gaps between those programmes – or, as [Lisa Monaco described](#) them, a "patchwork quilt that doesn't cover the whole bed." The DOJ designed the new programme to financially incentivise individuals to report violations of US law, with a specific focus on corporate wrongdoing. The programme is particularly focused on combating both foreign and domestic corruption, including violations of the Foreign Corrupt Practices Act (FCPA) and the new Foreign Extortion Prevention Act (FEPA), which was introduced in December 2023 and is designed to target the "demand" side of foreign corruption: misconduct by foreign officials.

In parallel with the whistle-blower rewards programme, the DOJ amended its [Corporate Enforcement and Voluntary Disclosure \(VSD\) policy](#). Under the revised policy, companies that voluntarily disclose misconduct within 120 days – whether prompted by a whistle-blower complaint or internal findings – enjoy a presumption of declination, meaning they are less likely to face criminal charges, even if the misconduct has already been reported to the DOJ by a whistle-blower.

Compliance as a key factor shaping criminal resolutions

In recent years, compliance has evolved into a primary factor shaping the resolution process. US regulators have increasingly considered their targets' compliance programmes – both when the misconduct happened and as the programme existed at the time of resolution – when deciding whether to pursue charges or civil penalties, as well as the severity of those penalties. For companies with well-established, actively managed compliance programmes, the DOJ has shown a greater willingness to reduce penalties or offer more favourable resolutions, including, in some cases, avoiding charges altogether. On the other hand, companies that fail to take compliance seriously – whether by maintaining weak programmes or failing to remediate misconduct – face more substantial penalties and, in some cases, the imposition of corporate monitors.

This trend toward emphasising compliance in resolutions is consistent with the administration's broader objective of incentivising companies to invest in systems that deter misconduct before it happens. By tying the effectiveness of compliance programmes to enforcement outcomes, the DOJ aims to create stronger incentives for companies to self-police and invest in long-term corporate integrity.

The year 2024 has seen a clear continuation of these trends. The DOJ's Fraud Section issued two Corporate Enforcement Policy declinations in the last year. Both declination letters cited specific substantial improvements to the companies' compliance programmes, including "significant investment in designing, implementing, and testing a risk-based and sustainable compliance program" and "formalizing employee training and vendor/client screening protocols", among reasons for the declinations. Companies that already have a robust compliance programme in place or quickly and credibly remediate during the government's investigation often win a better resolution. Even when a company cannot avoid prosecution altogether, it can avoid an independent monitor by re-evaluating and improving its compliance programme. One such company recently entered a deferred prosecution agreement and avoided a monitor because it engaged in timely remedial measures, including "reviewing, enhancing, and testing its broader internal controls for pricing and other transactions with the assistance of a forensic accounting firm."

On the other hand, the DOJ has cited deficiencies in the company's compliance programme as a reason to impose large penalties and require an independent compliance monitor. In a landmark and widely reported USD1.8 billion settlement with a large bank, the DOJ said the company's "pervasive and systematic failure to maintain an adequate AML compliance program" contributed to the harsh penalty. Additionally, in an October 2024 Deferred Prosecution Agreement with a major defence contractor found to have violated the FCPA, False Claims Act, and International Traffic in Arms Regulations (ITAR), the DOJ stated that the company required a monitor because "certain of the Company's compliance

enhancements are new and have not been fully implemented or tested.”

Even the DOJ’s post-resolution self-reporting periods have become more rigorous and compliance-focused. Companies that resolve with the DOJ’s Fraud Section, for instance, must now create workplans, test and review their compliance programmes, and report to the DOJ on progress for a period of years – akin to a monitoring but carried out internally. These now-common requirements signal the DOJ’s concerted focus on compliance and its belief that a financial penalty alone can be insufficient to prevent future misconduct; a dynamic, sustainable, and tested compliance programme is the best measure of prevention.

Conclusion

The Biden administration has made corruption a policy and enforcement priority, a focus that has been evident throughout the past four years. In the past year alone, the government introduced fresh compliance guidance to address evolving risks and technologies, codified new incentives to encourage whistle-blowing and promote voluntary self-disclosure, and considered compliance as both a factor in deciding the severity of

penalties and a requirement to comply with the agreement. While there has not been a marked uptick in enforcement actions, it is possible that the impact of these new policies – particularly those meant to boost reporting – could take several years to show themselves in data.

With the Trump administration poised to return to office in January 2025, shifts in policy positions and messaging are expected, including potentially a reversion to reducing the imposition of independent corporate compliance monitors. Nevertheless, given the considerable delay between most criminal conduct and the government’s resolution of charges, corporate compliance failings over the next four years are likely to come to the attention of prosecutors after the Trump administration has come and gone. The DOJ’s compliance focus – which has now survived several presidents – is likely to persist.

Irrespective of who occupies the White House, global risks and domestic pressures will continue to shape anti-corruption efforts. Businesses and individuals alike should therefore stay vigilant, adapt to shifting regulations, and anticipate the potential for policy changes that could impact compliance strategies.

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