**'Wow' Factors in Compliance & Ethics Programs**

**By Joe Murphy, CCEP**

It is important that corporations and other large organizations take effective steps internally to prevent and detect crimes and other misconduct. This is what compliance and ethics ("C&E") is all about – a management commitment to do the right thing, and management steps to make that happen.

It is essential that those in enforcement and regulation be able to recognize solid programs, and distinguish them from paper or sham programs. The difficult work of those doing C&E work in-house, especially the all-important Chief Ethics and Compliance Officer ("CECO"), depends on government doing this right and hitting the target: recognizing and rewarding those who make serious efforts to prevent and detect misconduct, and not giving credit to those who are not serious. Those who have done this work in-house depend on the leverage provided by knowledgeable and credible government treatment of these programs.

For those in government assessing a compliance and ethics program it is essential to sort the real programs from those that are cosmetic. Here are examples of "wow" factors – steps that would make a compliance and ethics professional take notice because they are strong efforts. These extra credit steps really need as much government encouragement as possible. It can be very tough to get company management and legal counsel to take bold steps, often outside of their usual comfort zones, but these are the kinds of actions that can make all the difference in preventing misconduct.



1 Code of conduct:
    a. The CEO's copy is on his/her desk and shows actual signs of wear. The CEO has referred to it in staff meetings

2 Chief Compliance and Ethics officer:

a. The CECO has a strong employment contract to protect his/her independence/empowerment and can only be discharged by the board.

b. The CECO is bound by a strong compliance and ethics code of professional ethics (e.g., the SCCE Code of Professional Ethics for Compliance and Ethics Professionals), and compliance with this code is included in his or her job requirements

3 CEO/tone at the top:

a. The CEO has asked all his/her direct reports to give an oral report at senior management meetings about what they do to promote the program; the CECO helps critique these reports

b. The CEO personally said all new business proposals must include a compliance risk assessment and management plan

4 Program infrastructure:

a. Each business unit is given a compliance and ethics program goal as part of its business plan and the unit's chief officer is evaluated on it

b. Each business unit has a compliance representative who cannot be removed without the CECO's consent, and the CECO has a say over his/her evaluation

5 The board:

a. The CECO has lunch from time to time with the chair of the audit committee.

b. The board includes a CECO from another company as a member

6 Training and communications:

a. The board and executive management had training on compliance including how to spot red flags and what should be in a state-of-the art compliance program. This was not a high level, deferential "presentation" – it was actual training.

b. Each supervisor is required to renew compliance training messages with his/her people, and this is included in the annual evaluation.

7 Compliance audits:

a. There are unannounced reviews in high risk businesses and locations, including interviews at all levels and searches of computer records, by experts with compliance background

b. The company uses statistical modeling and screening to identify higher-risk audit targets and questionable circumstances for further review. See Abrantes-Metz, Bajari & Murphy, "Antitrust Screening: Making Compliance Programs Robust," http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1648948

c. Managers in higher risk business operations are given specific objectives for carrying out compliance monitoring activities

8 Systems for advice and raising questions

a. The company makes sure its people in activities exposed to compliance risks can get urgent advice on difficult situations, including immediate access to reputable legal counsel.

b. The company added an ombudsman in the EU, since the EU privacy directive only applies when you accumulate personal data and the ombuds office does not do that. The company retains very smart EU legal counsel who understand how important C&E is to the company.

9 Preventing retaliation.

a. The company publicizes actual cases of bosses who retaliated or threatened retaliation and were fired.

b. The company follows up over time with whistleblowers to make sure they aren't retaliated against

10 Evaluating the compliance and ethics program:

a. The company has an outside compliance and ethics expert who had no other relationship to the company evaluate the program, and the report is given to the board without the CECO or other executives having veto power
b. The evaluation used the enforcement agencies' published compliance program standards and those of enforcement authorities in areas where the company did business, and found many ways the program could be improved, and that some of the systems had started to atrophy – all of which was candidly reported to the board and addressed

11 Discipline

a. The company has actual cases of bosses and senior managers losing bonus money because subordinates broke the rules while the supervisors failed to check what was going on; the company imposes discipline for failure to take reasonable steps to prevent and detect violations.
b. The company publicizes actual cases (with identifying information removed) of managers and other employees being disciplined for violations (and not just for stealing from the company)
c. Some top executives lost serious money because they missed the antitrust training and set a bad example.

12 Incentives:

a. Compliance and ethics leadership is evaluated in the performance evaluations, and a manager's overall evaluation cannot be higher than the C&E assessment. This process is regularly audited.
b. Supervisors who do these evaluations of their subordinates on a perfunctory basis (e.g., all of their subordinates get perfect ratings) are not eligible for bonus treatment themselves
c. When the company's incentive and bonus systems are being developed, the CECO is involved and has a say over what is done.

13 Investigations:

a. The company conducts audits and evaluations of investigation and disciplinary files
b. All investigators must be trained and adhere to company investigation standards

14 Industry practice/other standards:

a. In jurisdictions where the company does business it researches guidance from foreign governments and others on what they indicate should be in compliance programs

15 Risk assessment:

a. The company specifically assesses the risk in each high-risk area (i.e., it does not just do an overall risk assessment, but drills down into each high-risk area) and tracks follow-up on the risk assessment mitigation steps and reviews results with the audit committee

16 Mergers and acquisitions:

a. The CEO and board insist on a compliance and ethics risk assessment and management plan for each acquisition, there is a compliance and ethics professional on each due diligence team, and a compliance and ethics program must be instituted in the acquired company right from the start.

17 Trade associations, agents and other business partners:

a. The CECO can veto a trade association membership or any agent or other third party
b. The company rates each trade association, agent or other business partner on compliance and ethics risk using a risk assessment protocol.

c. The company requires each trade association, agent and significant business partner to institute a compliance and ethics program, gives them guidance, and has its CECO train their new CECO.

Joe Murphy is the author of 501 Ideas for Your Compliance and Ethics Program (SCCE; 2008) and A Compliance & Ethics Program on a Dollar a Day: How Small Companies Can Have Effective Programs (SCCE; 2010). He can be reached in Haddonfield, NJ, at joemurphyccep@gmail.com or 1 856-278-1664.