



Independent Monitors Benchmarking Group Best Practices Paper

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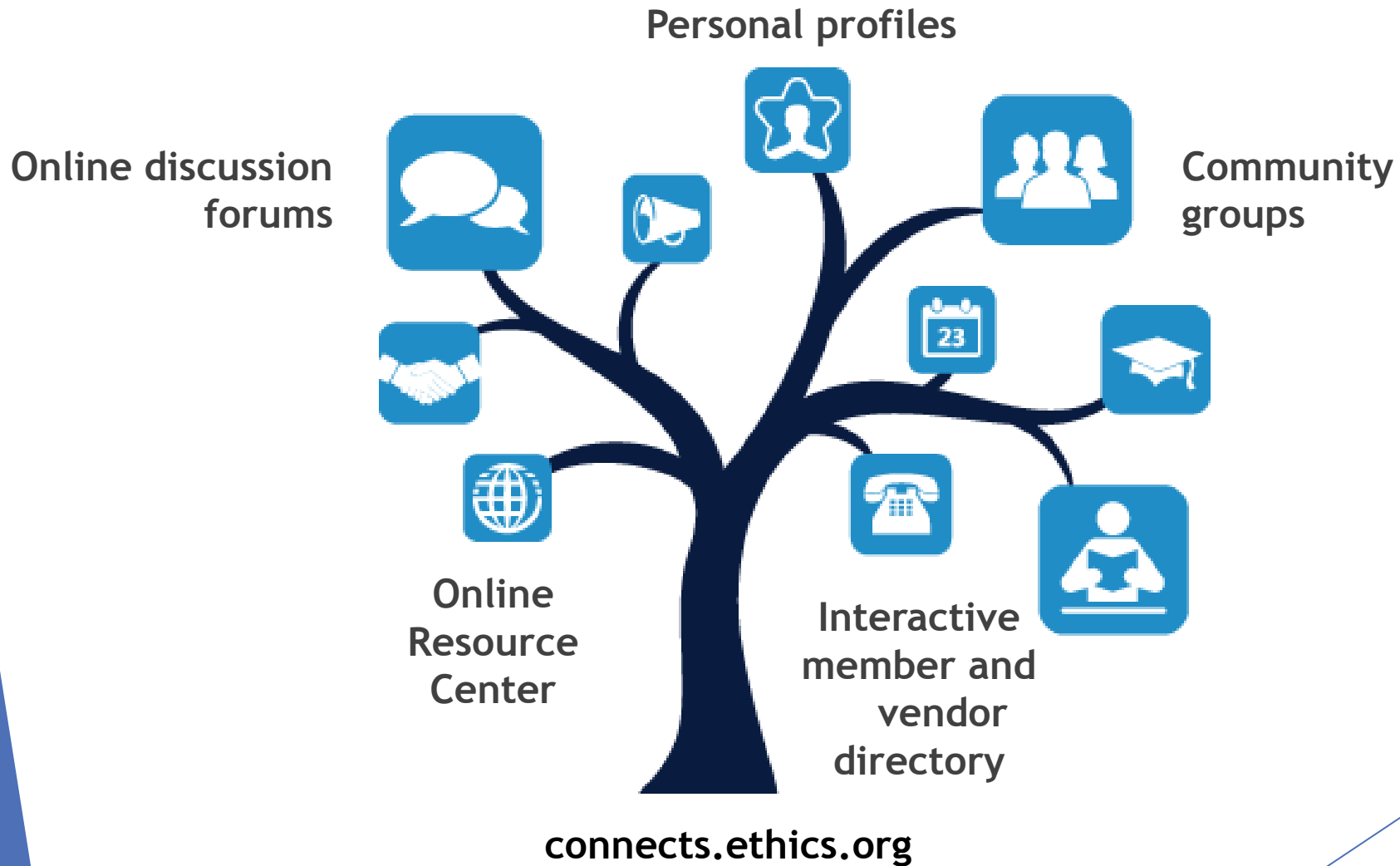
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We are grateful to Affiliated Monitors, Inc. whose support helped to make this report and webcast possible.



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Today's Presenters and Group Co-Chairs



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Topics

- ▶ **Current State of Monitoring**
- ▶ **Types of Monitoring**
- ▶ **Monitor Selection**
- ▶ **Monitoring Agreement**
- ▶ **Planning for the Monitoring Engagement**
- ▶ **Performance of Work**
- ▶ **Addressing Issues and Disputes**
- ▶ **Close Out and Transition of Engagement**

Poll

Please choose all of the following that apply.

- ▶ I work for a company that had a monitor in the past.
- ▶ I work for a company that currently has a monitor.
- ▶ I work for a company that is considering hiring a monitor.
- ▶ I dialed the wrong number. How do I order a pizza?
- ▶ None of the above.

Recent Trends in Monitoring

- ▶ Typical types of enforcement matters – federal, state, international
 - ▶ Approach of new administration
- ▶ New uses of monitoring requirement by government
- ▶ Company/organization-initiated monitoring
- ▶ “Professionalization” of monitoring
- ▶ Noteworthy cases



Common Reasons Companies Engage Monitors

Overview

Mandatory Monitoring

- ▶ Deferred prosecution agreement (DPA)
- ▶ Non-prosecution agreement (NPA)
- ▶ Administrative agreement
- ▶ Other settlements

Voluntary Monitoring

- ▶ Strategic planning
- ▶ Proactive risk assessment
- ▶ Issue assessment
- ▶ Response to incident

Mandatory Monitoring

- ▶ Independent Monitoring Role

- ▶ Oversight
- ▶ Protect government
- ▶ Ensure remedial actions completed

- ▶ “Morford Memo”

- ▶ “[a] monitor’s primary responsibility is to assess and monitor a corporation’s compliance with the terms of the agreement specifically designed to address and reduce the risk of recurrence of the corporation’s misconduct, and not to further punitive goals.”
- ▶ The monitor should “oversee a company’s commitment to overhaul deficient controls, procedures and culture.”

Even in cases of mandatory monitoring when the company may not have final decision making authority over the monitor, it should still be substantively involved in the selection process.

Voluntary Monitoring

- ▶ **Defined by Company/Organization**
- ▶ **Engagements can vary**
 - ▶ **Board**
 - ▶ **Executive Management**
 - ▶ **Compliance**
 - ▶ **Law Department**

Engagement Lifecycle



Selecting a Monitor

Mandatory Monitoring

- ▶ **Best Practices for Agencies to Consider**
 - ▶ Roster of approved monitors
 - ▶ Pre-negotiated monitoring terms
 - ▶ Role of company in selection
- ▶ **Diligence by Company**
 - ▶ Experience and capability
 - ▶ Approach of monitor
 - ▶ Rates/rate structure
- ▶ **Dialogue between Government and Company prior to selection**

Selecting a Monitor

Voluntary Monitoring

- ▶ Philosophy – culture vs. controls focus; alignment with management
- ▶ Reputation
- ▶ Experience with regulator
- ▶ Staffing and timelines
- ▶ Willingness to perform under attorney-client privilege.
- ▶ Rate structure

QUESTIONS TO ASK WHEN SELECTING A MONITOR

- » Do you view ethics and compliance primarily through the lens of culture and behavior or as part of business processes and controls?
- » Will you conduct a complete evaluation before discussing findings or utilize a more iterative and collaborative process?

Monitoring Agreement

- ▶ In addition to customer professional services terms ...
 - ▶ Review process for reports
 - ▶ Scope of work and permitted additional work
 - ▶ Confidentiality and records
 - ▶ Attorney-client privilege issues
 - ▶ Dispute resolution

Monitors are not subject to professional regulation on data handling, work papers and record keeping in the same way that lawyers or audit firms are. [Consider] how confidential information, work papers and reports will be managed and the retention/disposal period for such documents.

Managing the Monitoring Engagement

- ▶ Establishing trust at the outset
 - ▶ Communications – protocol, expectations, points of contact
 - ▶ Duration of monitoring
- ▶ Detailed Work Plan
 - ▶ Reasonable deadlines
 - ▶ Document review requirements
 - ▶ Surveys, focus groups, site visits – employee access
- ▶ Project Team
 - ▶ Project Executive – Steering Committee
 - ▶ Project Manager – Working Group
 - ▶ Regular Points of Contact

The most important document for the successful launch of a monitoring engagement is a detailed work plan.

Managing the Monitoring Engagement

Reporting and Resolving New Issues

- ▶ Mandatory – government requirements
- ▶ Voluntary – scope issues
- ▶ Monitor's duties
 - ▶ Examples:
 - ▶ Ongoing vs. past misconduct
 - ▶ Employee concerns raised to monitor
 - ▶ Issues uncovered by monitor

In the course of performing the monitoring services, it is likely that new issues – potentially completely unrelated to the subject of the monitoring – will be identified.

Maximizing Value Related to the Monitorship

Best practices to consider incorporating

- ▶ Engaging with government to create safe environment to address issues
- ▶ Focus on broader objectives rather than specific actions
- ▶ Provide at least equal focus on culture as to controls and process.
- ▶ Set realistic timelines for change

Managing Disagreements

Practices that can be employed

- ▶ Governance structures and processes to address legitimate issues that arise while preserving a productive relationship
- ▶ Some practices that can be employed include:
 - ▶ Escalation process
 - ▶ Mediation
 - ▶ Other dispute resolution process

Transitioning out of a monitoring relationship

- ▶ Opportunities for early termination of mandatory monitoring
- ▶ Plan for final set of activities the monitor will conduct
- ▶ To prepare for the close out, the company and the monitor should identify whether:
 - ▶ Certain areas will be re-assessed
 - ▶ To re-conduct focus groups
 - ▶ To conduct any final process and control testing

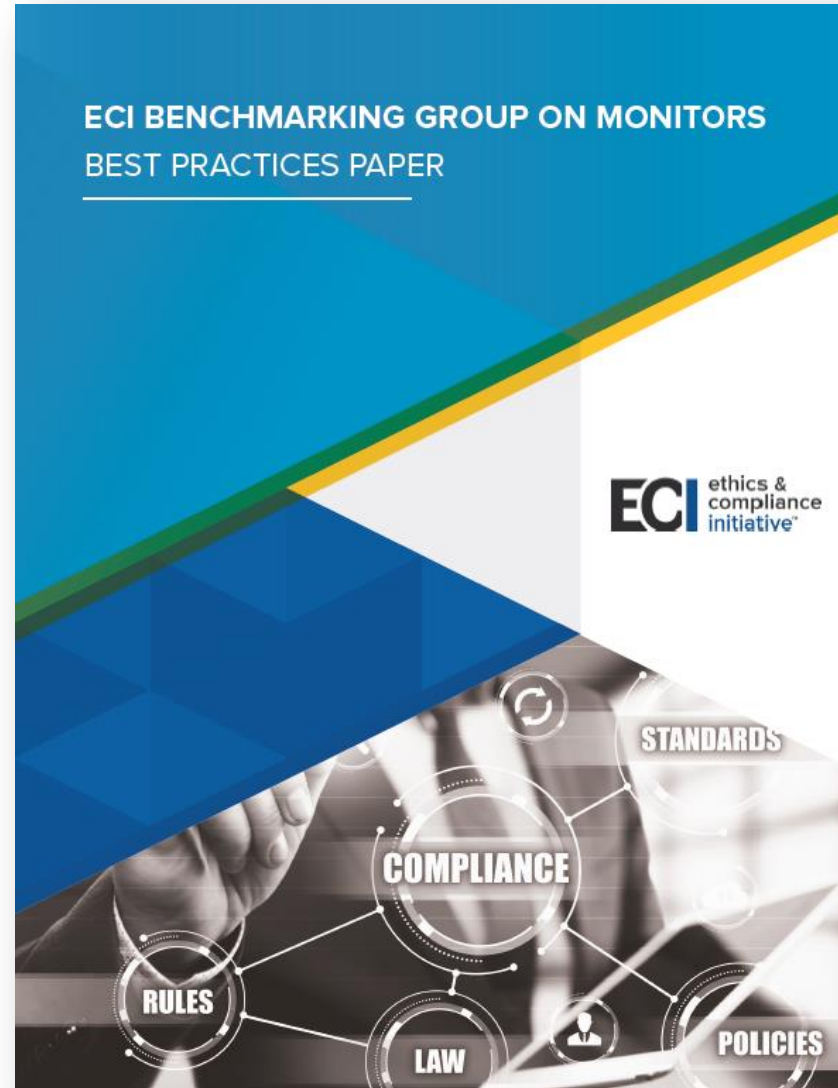
Transitioning out of a monitoring relationship

Final Reporting

- ▶ **Mandatory Monitoring:**
 - ▶ Prepare well in advance of expiration of DPA, NPA, AA
 - ▶ If permitted, executive meetings
- ▶ **Voluntary Monitoring:**
 - ▶ Detail progress and risk areas
 - ▶ Close-out meetings held with the company's executives and, if appropriate, board members

Questions

Final thoughts



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