

2014

Non-Concurrence Process Assessment

Office of Enforcement



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I. EXECUTIVE SUMMARY

A free and open discussion of alternative approaches and differing professional views is essential to the development of sound regulatory policy and decisions. Therefore, since 1976, the U.S. Nuclear Regulatory Commission (NRC) has provided ways for employees to bring their alternative positions and differing views to the attention of the highest levels of management. On November 29, 2006, the Executive Director for Operations (EDO) issued [draft Management Directive \(MD\) and Handbook 10.158, "NRC Non-Concurrence Process,"](#) as interim policy to provide agencywide instructions and guidance for processing non-concurrences on documents in the concurrence process. As a new employee process, the MD was issued as draft to provide an opportunity for process improvement through use and additional employee feedback. The EDO assigned oversight responsibility of the Non-Concurrence Process (NCP) to the Office of Enforcement (OE).

Consistent with direction from the EDO in 2006, OE has been in an ongoing process of gaining insights from implementation experience and employee feedback. Staff supplemented this information with additional data from various sources to provide a comprehensive review of the process and guidance to support finalization of the MD. The comprehensive review is also responsive to a recommendation from the Office of the Inspector General (OIG) to perform periodic assessments of the NCP.

Staff analyzed data from numerous collection activities to form the basis of its planned actions, including formative evaluation from employee feedback, an audit conducted by the OIG, the NRC's periodic Safety Culture and Climate Survey (SCCS), external benchmarking, a targeted survey, feedback on proposed revised NCP guidance, NCP record reviews, and additional agency guidance on differing views.

The collected data showed that the NCP is a valuable tool that allows employees to be heard, understood, and responded to on concerns associated with draft documents in concurrence. The NCP provides another option for raising concerns between the Open Door Policy and the Differing Professional Opinions (DPO) Program. Because the NCP supports early engagement in the decisionmaking process, fewer DPOs may have been submitted. The NCP also serves as a valuable knowledge management tool on challenging issues and their resolution. The collected data showed that the vast majority of employees are aware of the NCP, and the majority support the NCP and would be willing to use it to raise alternative views to support the agency's decisionmaking process.

Although the data validated that the process itself is generally sound, the data indicated that there are areas of improvement associated with implementation of the process including employee behaviors and attitudes. It is recognized that there are inherent challenges associated with a process of this nature and that continuous leadership commitment is vital to the success of the process. In particular, the following high-level themes were identified on which the agency should continue or further increase its focus to ensure a strong NCP: (1) leadership commitment; (2) guidance, implementation tools, and process support;

(3) understanding and training; and (4) continuing concerns of potential negative consequences for using the NCP.

Based on results and insights collected, staff have developed planned actions for strengthening the NRC's NCP, some of which are already underway. The planned actions, at a high level, are as follows:

1. Demonstrate leadership commitment.
2. Issue improved guidance and dedicate centralized process support.
3. Increase understanding (including roles and responsibilities) through training and communication.
4. Address concerns of potential negative consequences.

Taken together, the planned actions address the identified themes of concern and aim to create effective, lasting improvements to the NCP that will foster continued employee engagement and support safe and effective regulatory decisionmaking for the agency.

In addition to these high-level themes, this report discusses notable insights from collection activities related to the agency's safety culture, questions in the SCCS, and guidance for the concurrence process.

II. BACKGROUND

In early 2006, the EDO tasked OE with leading the development of an agencywide NCP. Although several NRC offices had non-concurrence procedures in place (some for many years), there were no standard procedures that applied to all NRC employees. The NCP was developed to promote discussion and consideration of differing views on draft documents, provide a non-concurrence option for individuals with concerns who had a role in creating or reviewing draft documents, and provide a uniform approach for processing non-concurrences. The NCP was intended to complement the Open Door Policy and the Differing Professional Opinions (DPO) Program and emphasize early employee engagement in the decisionmaking process.

A multi-office task group was formed to develop draft guidance. The task group solicited feedback from offices and also solicited feedback from employees because of the importance of employee engagement. The task group presented draft Management Directive (MD) and Handbook 10.158, "NRC Non-Concurrence Process," to senior management in November 2006. As a new employee process, the task group recommended that the guidance be issued in draft to provide an opportunity for process improvement through use and additional employee feedback.

On November 29, 2006, the EDO issued [draft MD and Handbook 10.158](#) as interim policy to provide agencywide instructions and guidance for processing non-concurrences on documents in the concurrence process. In the [Yellow Announcement](#) introducing the NCP, the EDO directed staff to follow the requirements in the interim directive and handbook, which were to supersede any existing office-level non-concurrence procedures.

The EDO assigned oversight of the NCP to OE and identified the DPO Program Manager (now known as the Senior Differing Views Program Manager) as the employee contact.

The NCP is part of the agency's Differing Views Program and supports the agency's goal of promoting an open, collaborative work environment (OCWE) where all employees and contractors are encouraged to raise concerns and differing views without fear of retaliation.

III. OVERVIEW OF NON-CONCURRENCE PROCESS

The NCP applies to all documents in the concurrence process. The NCP applies equally to administrative issues, policy issues, and technical concerns.

Non-concurrence is part of the normal NRC document review and concurrence process. The NCP does not set separate schedules for documents involving non-concurrences. The NCP does not require independent review like the DPO Program; non-concurrences are addressed by the individuals normally responsible for documents in concurrence.

The NCP is a three-part process consisting of: (1) the initiation of a non-concurrence, (2) the review of the non-concurrence, and (3) the final approval of the disposition of the non-concurrence before the subject document is issued.

To facilitate the process, non-concurring individuals and those responding to non-concurrences use NRC Form 757, "Non-Concurrence Process," (NCP Form) located in the NRC Forms Library.

The NCP is open to those on document concurrence, and to document reviewers and contributors provided they were assigned by supervisors to perform these roles.

Employees also may request to be removed from concurrence. However, document sponsors are responsible for assuring the adequacy of the concurrence chain and make document signers aware of important concerns that resulted in the request.

IV. PURPOSE

The assessment objective was to determine if the NCP is operating as intended and identify potential areas of improvement to support finalization of the NCP MD.

V. SCOPE AND METHODOLOGY

To obtain an accurate and comprehensive assessment of the NCP and the potential opportunities for improvement, staff analyzed data from when the process was first established in 2006. The results and planned actions in this report are based on insights from a series of data-gathering activities and multiple sources of information.

A. Audit of NRC's Non-Concurrence Process

On October 7, 2010, the OIG issued an [audit report of the NCP](#). The OIG concluded that the NCP is a valuable tool in facilitating discussion of differing views between staff and management and is generally implemented as it was intended. However, OIG identified two opportunities for improvement within the NCP including: (1) agency guidance and training, and (2) capture and review of operating experience. The report included eight recommendations to improve the guidance and training pertaining to and oversight of the NCP. A consolidated list of these recommendations is included in Appendix A. Actions associated with five of the recommendations are complete. In particular, the OIG concluded that the draft NCP MD issued for comment on December 10, 2012 (see more information in Section V.D), satisfied the recommendation to include detailed guidance on five specific areas.

B. 2012 NRC Safety Culture and Climate Survey

In Fall 2012, OIG conducted the NRC's periodic SCCS. The SCCS is intended to: (1) measure NRC's safety culture and climate to identify areas of strength and opportunities for improvement, (2) understand the key drivers of engagement, (3) compare the results of the SCCS against results of previous SCCSs, and (4) provide, where practical, benchmarks for the findings against other similar organizations and high performing companies. The 2012 SCCS included 132 questions and two questions were directly related to the NCP. On January 8, 2013, results of the voluntary survey were provided to the staff. Eighty-eight percent of the responding employees are aware of the NCP. This represents a 47 percent increase from the 2005 survey. Forty-nine percent of employees believe that the NCP is effective (37 percent don't have an opinion on the effectiveness of the NCP and 14 percent believe that the NCP is not effective). Appendix B includes the agency-level results for the questions and results of related questions.

In March 2013, the staff developed agency-level action plans in response to five agency-level themes from the SCCS. Staff developed an agency-level action plan for the theme focusing on the Open Door Policy, the NCP, and the DPO Program. The action plan includes goals, planned activities, resource needs, and projected schedules.

C. Views of NCP Submitters, Participants, and Other NRC Employees

Since the NCP was first established in 2006, staff has been exercising a formative evaluation approach in obtaining ongoing feedback on the process from submitters, participants, and other NRC employees and implementing process improvements within the scope of the guidance included in the interim NCP MD. To supplement this information, on March 19, 2013, staff administered a voluntary targeted survey to employees who have submitted non-concurrences and employees who have responded to non-concurrences (i.e., participants).¹ Although the data sample is limited, the results indicate that the majority of respondents feel that the NCP adds value to the decisionmaking process and the overwhelming majority of respondents would use the NCP. Notwithstanding these positive results, the data indicated that less than half of respondents thought it was easy to use and more than half of submitters are concerned about management's support of the NCP. In addition, the majority of submitters believed that the rationale for the outcome was not clearly documented and that they experienced negative consequences as a result of submitting a non-concurrence. Appendix C includes the specific survey questions as well as charts with the breakdown of responses from both the NCP submitters and participants.

D. Benchmarking Activities

In 2012, OE engaged a contractor (LinkVisum Consulting Group) to perform benchmarking research on policies and processes to address differences of opinion and alternative views from employees and to identify best practices. LinkVisum benchmarked with four organizations for the study, including: (1) National Aeronautics and Space Administration (NASA), (2) Federal Aviation Administration (FAA), Air Traffic Organization (ATO), (3) Pfizer and (4) U.S. Food and Drug Administration (FDA), Center for Drug Evaluation and Research (CDER). The final benchmarking study was completed in March, 2013. Although all of the organizations had processes to address employee concerns, differences of opinion, and alternative views from employees, only the FAA and FDA had processes similar to the NRC's NCP. FDA's process is limited to the CDER and includes written evaluations in response to employees' concerns and the

¹ Out of 39 surveys issued to submitters, 24 responded (62 percent response rate); out of 62 surveys issued to participants, 17 responded (27 percent response rate).

ability to escalate concerns up through the organization, with written evaluations at each level. If alignment is not reached, the concern is addressed within FDA's DPO process. FAA's NCP is limited to the ATO and guidance included in MDs. Unlike the NCP, neither process provides for making the records public. In the broader context of best practices to support a healthy environment for raising concerns (which would foster effective non-concurrence processes), the research identified five key factors: (1) leadership commitment, (2) clear policies and procedures, (3) communication, (4) training and education, and (5) process assessment. Appendix D includes a more detailed discussion of the factors.

E. Feedback on Draft NCP MD 10.158

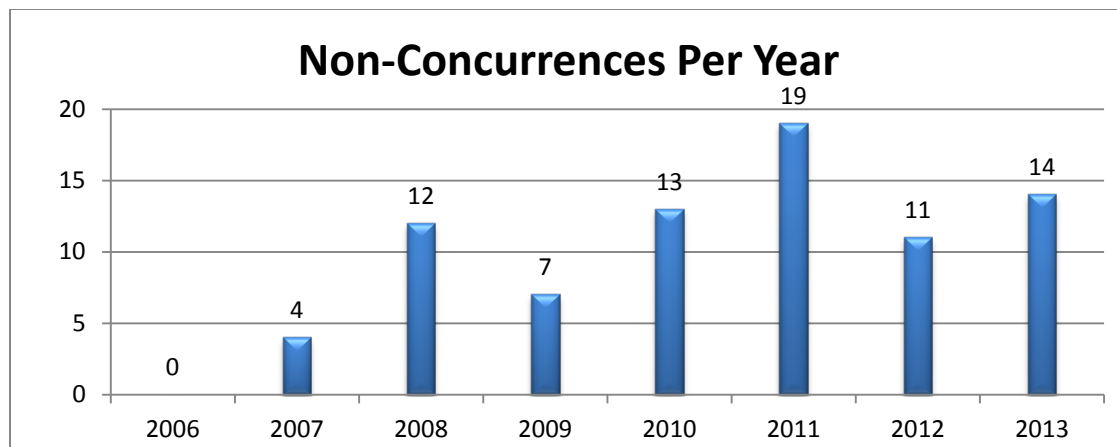
On December 10, 2012, OE issued a request to all offices for comment on proposed revisions to the interim guidance that would support finalization of MD 10.158. Because of the nature of the guidance and the importance of employee engagement and support for the process, all employees were encouraged to comment on the proposed revisions to the draft MD through their office. The proposed revisions to the draft MD reflected insights from numerous sources including: (1) lessons learned from implementation of the interim policy, (2) insights from employee feedback, (3) the [2009 Internal Safety Culture Task Force Report](#) (including focus group feedback), (4) the 2009 OIG SCCS (including additional focus group feedback), (5) the Issues Resolution Task Group (including a [contractor report](#) and participant feedback), (6) an [OIG audit of the process](#), and (7) best practices from MD 1.1, "NRC Management Directives System." Twenty-four offices responded to OE's request with over 300 comments. Ten offices had no comments, favorable comments, or minimal comments, and three offices had the majority of comments. OE also received comments from the National Treasury Employees Union (NTEU) and approximately 35 comments from employees. OE actively engaged all internal stakeholders in a high-level of coordination and communication to address comments. Resolution of comments was addressed in accordance with the Office of Administration's (ADM) MD revision guidance and forwarded to the Office of the Executive Director for Operations (OEDO) along with a draft MD for issuance (Agencywide Documents Access and Management System (ADAMS) Accession No. ML13176A371).

F. NCP Cases and Records

All active and closed NCP cases since the process was established in 2006 were reviewed. The review evaluated whether the NCP was implemented in accordance with guidance included in the MD 10.158 (posted on the internal Web site) and process improvement guidance (included on the NCP Form). The review also examined record-keeping associated with the process to determine the consistency and accuracy by which the forms were completed, profiled in ADAMS, and posted on the NCP Web site.

2014 NON-CONCURRENCE PROCESS ASSESSMENT

To date, 80 non-concurrences have been submitted under the process, with an average of around 11 cases per year since 2006. One case was subsequently discontinued because it addressed personnel issues and the draft MD guidance was modified to reflect this exclusion.



G. Additional Agency Guidance on Resolving Differing Views

OE identified and reviewed additional agency guidance on resolving differing views included in documents and posted on Web sites to ensure consistency with the guidance in MD 10.158.

- Office of New Reactors (NRO), NRO PM Handbook, Open and Collaborative Work Environment and Differing Views Processes
<http://epm.nrc.gov/KNOW/PM%20Handbook/Wiki%20Pages/Open%20and%20Collaborative%20Work%20Environment%20and%20Differing%20Views%20Processes.aspx>
- Office of Administration (ADM), Policy and Procedures, HelpfulTools: “Ways to Raise Differing Views”
<http://www.internal.nrc.gov/ADM/policiesprocedures/Ways%20to%20Raise%20Differing%20Views.pdf>
- <http://www.internal.nrc.gov/ADM/DAS/cag/RM01/procedures/rulemakingncp.html>
- Region IV, PG 4052.2, “Document Concurrence” ADAMS Accession No. [ML12165A373](#)

- Region II, Regional Office Instruction No. 2307, “Fostering an Open Collaborative Work Environment”
<http://portal.nrc.gov/edo/rii/ROIs/2300 - Regional Counsel/2307.pdf>
- Office of the Chief Financial Officer (OCFO), 2011 “OCWE Awareness Training - Non-Concurrence Process”
http://portal.nrc.gov/OCM/ocfo/ocfo_admin/Shared%20Documents/Forms/AllItems.aspx?RootFolder=%2fOCM%2focfo%2focfo%5fadmin%2fShared%20Documents%2fPresentations&FolderCTID=0x012000B32DBEB604551145AC7C55CD167E5B5B&View=%7b6AA06180%2d753A%2d4194%2dAB51%2d3CD75CF04A40%7d

VI. RESULTS

The collected data showed that the NCP is a valuable tool that allows employees to be heard, understood, and responded to on concerns associated with draft documents in concurrence. The NCP provides another option to raise concerns between the Open Door Policy and the Differing Professional Opinions (DPO) Program (which is reserved for concerns on established positions). Because the NCP supports early engagement in the decisionmaking process, fewer DPOs may have been submitted. The NCP also serves as a valuable knowledge management tool on challenging issues and their resolution.

As previously noted, data from the SCCS indicates that the overwhelming majority of employees (88 percent) are aware of the NCP, which represents an increase of 47 percent from 2006. Forty-nine percent of employees believe that the NCP is effective, which represents a statistically significant improvement of 5 percent from 2009 and is included within the top 10 improvement areas from the previous SCCS. It is important to note that a high percentage of employees (37 percent) don’t have an opinion on the effectiveness of the NCP and a small number of employees (14 percent) believe that the NCP is not effective. This reflects that few employees have first-hand experience with the process (the process is only used around a dozen times per year) and presents an opportunity for improvement through outreach and education. Data from the targeted NCP survey indicates that the majority of respondents believed that the NCP added value and the overwhelming majority of respondents (86 percent) would be willing to use the NCP. The majority of submitters believed that their views were heard by management (77 percent), their reason for non-concurrence were well understood (73 percent), and that they received verbal praise from coworkers as a result of using the NCP (64 percent).

Although the data validated that the process itself is generally sound, the data indicated that there are areas of improvement associated with implementation of the process including employee behaviors and attitudes (i.e., “soft skills”). For example, many employees said the NCP was OK, but commented that it wasn’t always implemented in the spirit in which it was written. Many employees said that using the NCP was an emotional journey. It is

recognized that there are inherent challenges associated with a process of this nature. In particular, because differences of opinion were not resolved informally, there could be residual emotional energy from previous interactions and possible preconceived views going into the NCP. Recognizing and managing the dynamics and psychology associated with implementation of the NCP will be necessary to support continuous improvement.

To foster sustained employee engagement that supports achieving its mission, the assessment focused on data collection and analysis activities to identify areas of enhancement. Based on a review of all the data, staff identified four high-level themes as areas where the agency should continue or further increase its focus. The themes were developed based on converging supporting information from multiple data sources.

A. Leadership Commitment

Data from several sources indicates that many of the responding employees are still uncertain about management's support of the NCP.

Feedback from several employees using the process commented that they thought management was just going through the motions. Many employees commented that they thought the process was biased because the decisionmaking stayed within the same organization. Many employees recommended that the process would be more credible if it was more independent like the DPO Program or like an Ombudsman or an Employee Concerns Program. Several supervisors using the process indicated that they were concerned management would view it as a negative reflection on them, as a supervisor, to resolve issues informally if one of their employees submitted a non-concurrence.

The results of the targeted NCP survey indicate that 48 percent of the non-concurrence submitter respondents perceive that their management is supportive of the NCP. Data from the targeted survey reflects an employee perception that management may encourage the use of the NCP in support of the agency's values, but management may not always demonstrate support when they are engaged in the process. When asked what they would do to improve the process, several participants commented that they wouldn't change the process, but instead would focus on demonstrating strong management support for the process to help employees grow more comfortable with using it.

Benchmarking activities also identified leadership commitment as a key factor in a successful NCP, noting that it contributes the necessary authority, adds credibility to the initiative, recognizes NCP as a priority, dedicates resources to the initiative, normalizes use of the NCP by encouraging it, and encourages a dialogue about the topic.

The OIG audit recommended that management define its expectations regarding the NCP and clearly communicate them to staff.

B. Guidance, Implementation Tools, and Process Support

Data from several sources indicates concerns about the clarity of guidance and the availability of resources.

Feedback from employees using the process covered a range of issues, including confusion on the process, roles and responsibilities, timeliness expectations, use of the NCP Form, and availability of the completed NCP Form. In particular, the position of “document sponsor” was not well-understood and several managers wanted flexibility in identifying the person best positioned to coordinate the review of the issues in the non-concurrence. Several submitters commented that the evaluation of his or her non-concurrence and the rationale for the final agency position was not responsive or well-articulated on the NCP Form. (This is consistent with SCCS data that indicates that 54 percent of employees believe that management does not effectively communicate decisions when differences of opinion have been expressed and 25 percent are uncertain.) Several managers questioned how long an employee had to submit a non-concurrence once they had voiced a concern. Many employees commented that the NCP Form wasn’t easy to find and wasn’t easy to use. Several employees also noted that the implementation guidance on the NCP Form² didn’t always seem to match the guidance in the MD. There was also confusion on the availability of NCP Forms once the process was complete. Some interpreted the guidance as giving the non-concurring employee too much authority for the decision on public release of the NCP Form. Many confused the concept of discretionary release with the requirements under the Freedom of Information Action. In addition, notwithstanding requisite training, several employees commented that his or her office OCWE Champion³ didn’t seem familiar with the implementation guidance and didn’t always give them the best advice or accurate information on addressing a differing view.

Based on a review of NCP cases and records, approximately one-third of closed cases included some type of record-keeping error. For example, several NCP Forms did not include final signatures in Section C and many NCP Forms failed to check off the block

² The NCP Form was revised in 2011 based on process improvements stemming from an OIG audit of the NCP, including the requirement for a tracking number and the inclusion of implementation guidance. The revisions remained within the scope of the guidance included in the interim NCP MD.

³ In 2008, the EDO established OCWE Champions (previously called Differing Views Office Liaisons) in each office to help proactively communicate the expectations for establishing an environment that supports differing views and to support processes for addressing differing views, including the Open Door Policy, the NCP, and the DPO Program. OE requires employees to complete OCWE Champion training in iLearn within 4 weeks of being appointed.

indicating the applicable outcome and whether the submitter wanted the NCP Form public or non-public. In addition, many subject documents failed to include the non-concurring submitter on the concurrence block of the subject document. Many NCP Forms were not profiled properly in ADAMS.

Based on a review of additional agency records, several procedures were not always consistent with the guidance included in the MD and on the NCP Form. In other cases, procedures merely duplicated guidance in the MD.

The OIG audit identified the need for clarified guidance on issues including roles and responsibilities of key NCP personnel, timeliness expectations, a status feedback mechanism, and the availability of process support.

Feedback from offices and employees on the proposed revision of the MD yielded over 300 comments. All comments (including resolution) were documented and addressed in accordance with ADM's MD revision guidance and forwarded to the OEDO. Several offices commented that the proposed guidance was well written and NTEU specifically complimented the staff for a balanced, much improved NCP that would promote a more open environment for raising concerns. Two offices recommended simplification of the process, with one of the offices recommending that the formal process be eliminated in lieu of informal discussions. Another office recommended an additional step to allow another round of employee feedback. Based on the limited number of Senior Executive Service (SES) managers, three offices expressed concern about the existing requirement that an SES manager be required to serve as the final reviewer and sign the NCP Form before a subject document is issued. Two offices commented that there appeared to be too much emphasis and guidance on retaliation.

The targeted survey specifically asked submitters and participants what changes they would make to improve the NCP. Several submitters and participants indicated that the process is fine and that improvement could be made by focusing on other issues, such as training, accountability, and culture. Suggestions from submitters and participants were similar to issues previously identified through employee feedback, including clarifying when and how the NCP should be used, who can use it, and timeliness expectations. One submitter recommended that the non-concurring employee be allowed to attach additional reasons for continuing to non-concur on the final document. Several submitters recommended providing greater visibility, such as adding a link for the NCP on the internal NRC website's "Employee Resources" page under "Employee Concerns."

Benchmarking activities also identified that policies and procedures for the NCP must be clear and accessible for employees to understand. Employees need to know what resources are available and where to go for support.

C. Understanding and Training

Data from multiple sources addresses the desire for greater understanding about the process and the merits of training.

Although data from the SCCS indicated that 88 percent of employees are aware of the NCP, data from other sources indicates that employees do not always understand the process, including the roles and responsibilities of employees and managers when engaging in the NCP. This is consistent with the infrequent use of the process.

Feedback from employees using the process identified that many submitters believed that they had an equal role in the decisionmaking process (as opposed to providing an input for management's final decision). Some participants implemented the process in a manner suggesting a belief that consensus and concurrence was an objective of the process (as opposed to being a vehicle to validate an employee's concern and inform the decisionmaking process). Many employees in the corporate offices did not understand that the NCP applies to all documents and many employees did not appreciate that they were eligible to use the NCP if they were tasked with reviewing or providing input to a document. In addition, several employees commented that they believed there was a certain mystique associated with engaging in the process and it wasn't always clear who you could talk to about the issues in the non-concurrence.

Data from the targeted survey also highlighted the need for clear understanding of the goals and objectives of the process. For example, one submitter commented that there seems to be an unrealistic expectation that at the end of the process everyone will be happy with the outcome. The submitter noted that sometimes managers need to make unpopular decisions. A participant from the targeted survey commented that the program needs criteria for success and that once the criteria have been met, the process should move along. The participant noted that employees spend too much time trying to reach agreement. Data from the targeted survey also addressed the merits of training. For example, one submitter commented that the process is fine, but unfamiliarity with the process impacted its usefulness and its efficiency.

When asked to comment on the proposed revision of the guidance, several offices and several employees recommended that formal NCP training be available.

Benchmarking activities also identified that training on the NCP helps ensure employees understand the process, know how to use it; normalizes the use of the process and makes it familiar, increasing the chance employees will use the NCP if need be.

The OIG audit noted that without timely training, the NCP will continue to be inconsistently implemented and staff will perceive the process as ineffective and

inefficient. Specifically, training is not delivered in accordance with recognized best practices that state training is most effective when the timing and delivery method is appropriate and aligned with the needs of the target audience. Although limited training opportunities are provided and the NCP PM is available to offer counsel on an individual basis, employees need to be provided with a general introduction to the NCP.

NCP training is not currently required for staff or supervisors. The NCP is briefly addressed as part of an Individual Study Activity in the Inspector Qualification Program and indirectly referenced in the New Employee Orientation Checklist ("OCWE & Ways to Raise Differing Views" is included on a list of information Web sites).

D. Concerns of Potential Negative Consequences

Data from multiple sources indicates the continuing concern by employees that engaging in the NCP could result in negative consequences.

Feedback from some employees who have submitted non-concurrences included claims of negative consequences, such as lowered performance appraisals, reassignments, and being shunned by co-workers.

Data from the targeted survey indicates that many of the submitters believed they experienced some type of negative consequence as a result of submitting a non-concurrence. In particular, 75 percent believed that their performance evaluations were adversely affected, 63 percent felt they were excluded from work activities, and 25 percent thought they were passed over for career development. Complete results are included on page 11 in Appendix C. Notwithstanding the survey results indicating that many submitters believed they experienced some type of negative consequence, OE is not aware of how many grievances, complaints, or claims of retaliation were initiated, how many were evaluated, and how many were substantiated. Regardless of whether negative consequences actually occurred, staff recognizes that the perception of negative consequences can have a chilling effect on employees and can potentially inhibit them from raising concerns and using the NCP.

The OIG audit followed up on claims from some employees that their performance evaluations were lowered because they filed non-concurrences. OIG substantiated that in several instances, the filer received a lower score for the rating period immediately following submittal of a non-concurrence. Although OIG could not substantiate a direct correlation between the lower rating and the submittal of a non-concurrence, the OIG noted that these instances support some agency staff's belief that there is a negative stigma attached to the NCP. The OIG also noted that without improvement, the negative stigma may become more widespread and staff will be reluctant to use the NCP.

Data from the SCCS reflects that 61 percent of employees believe that the agency has established a climate where truth can be taken up the chain of command without fear of retaliation (17 percent offered no opinion). This question was identified as a key driver influencing sustained employee engagement. Fifty-seven percent of employees believe that management actively seeks to detect and prevent retaliation for raising concerns (30 percent offered no opinion). (See additional information in Appendix B.)

Data from the benchmarking activities identified best practices for addressing concerns of retaliation, including:

- Ensure employees are aware of complaint processes, understand them and can easily follow them.
- Ensure supervisors are trained on the anti-retaliation policy and understand expectations of upholding the policy.
- Dedicate an impartial individual or department to periodically review and implement anti-retaliation policies and procedures, conduct investigations, and provide training.
- Implement disciplinary action consistently and fairly.
- Carefully document all performance appraisals and disciplinary actions to retain proof that your practices are fair and lawful.
- Regularly check in with the employee during and after the investigation.

Despite maintaining these best practices for anti-retaliation policies, the benchmarking report noted that retaliation is difficult to prove and employees may be hesitant to use the NCP for fear of retaliation. The best remedy for this is to work proactively to develop an open organizational safety culture, where employees take personal responsibility for their actions, there is a communal feel to the environment, and everyone is working toward the same goals.

VII. ADDITIONAL INSIGHTS

In addition to the four high-level themes, this report discusses notable insights from collection activities related to the agency's safety culture, questions in the SCCS, and guidance for the concurrence process.

A. NRC Safety Culture

Data from multiple sources indicates the need for continued focus on safety culture, including the goal of safety as an overriding priority. For example, many responding employees commented they felt pressure to meet schedules at the expense of quality. Several employees believed some decisions were driven by Commission direction or political agendas, rather than safety. Some employees expressed frustration with management's failure to make timely safety decisions.

B. Questions in the Safety Culture and Climate Survey

Feedback from employees assigned to review the results of the NRC's periodic SCCS and develop action plans indicated the desire to revise the NCP survey questions to yield more meaningful results. In particular, the employees recommended that questions focus more on whether employees would be willing to use the process rather than on its effectiveness. As previously noted, because the process is not frequently used, asking questions that result in a high percentage of "I don't know" (e.g., 37 percent don't have an opinion on the effectiveness of the process) results in lower positive scores, which may not be as helpful in understanding where to focus agency actions.

C. Guidance on the Concurrence Process

Employee feedback from implementation of the process and revision of the NCP guidance suggests the merits of developing additional guidance on the concurrence process. Current agency-level guidance on the concurrence process is limited to MD 3.57, "Correspondence Management." Most employees are not familiar with the guidance and the guidance may not be broad enough to cover the complexities of the concurrence process for some documents, such as Safety Evaluation Reports and rulemaking packages that include coordination amongst several organizations and iterative interactions. Several employees expressed frustration in situations when they provided technical input on documents and found out after the fact that their input was significantly revised. Feedback from the SCCS indicates that 70 percent of employees believe they have an opportunity for input before changes are made which will affect their work. This represents a 5 percent statistically significant decrease from the previous survey. The guidance in MD 3.57 does not require that documents be re-circulated for concurrence when substantive changes have been made to the document.

In addition, current practices for including employees on concurrence may inhibit the use of the NCP. Staff has observed that many documents do not include all document contributors on concurrence. The NCP includes a provision that allows document contributors to use the NCP even if they are not included on concurrence. Despite education and outreach, employees may not appreciate their right to use the NCP in this

situation. In fact, several employees provided feedback that they would have used the NCP but missed the opportunity to do so because they were not on concurrence and therefore, did not have the opportunity to review the final document before issuance.

VIII. PLANNED ACTIONS

Based on results and insights collected, staff has taken or plans to take multiple actions for strengthening the NRC's NCP. The planned actions are consistent with the recommendations from the OIG NCP audit, the EDO's response to the OIG's recommendations, and with the goals and activities included in the agency-level action plan from the SCCS. Senior management support of the following planned actions can create effective, lasting improvements to the NCP that will foster continued employee engagement and support safe regulatory decisionmaking for the agency.

A. Demonstrate Leadership Commitment

Leadership commitment is a key factor to the success of the NCP. Staff will continue to support managers in emphasizing their personal commitment to the welcoming of sharing differing views and the value of using the NCP in support of sound regulatory decisionmaking. Staff recognizes the benefit of management repeatedly reinforcing the acceptability of using the NCP through their actions as well as their words. The NCP will gain greater support and credibility if its use is seen as a positive way to address concerns in an agency process rather than a weakness in resolving concerns through informal communications. Management should demonstrate this clearly and frequently through their actions and communications. Staff is encouraged by the Behaviors Matter initiative and believes that implementation of Phase II will provide an opportunity for improvement in the use of "soft skills". Staff will continue to support a variety of outreach activities and communication tools, such as EDO Updates, monthly senior management meetings, all-supervisor meetings, senior leadership meetings, Yellow Announcements, all-hands meetings, brown bag lunches, seminars, and articles in the *NRC Reporter* and office-level newsletters. In addition, staff will continue to support NRC Team Player awards that can showcase management's support for the NCP.

B. Issue Improved Guidance and Dedicate Centralized Process Support

Staff has taken and plans to take multiple actions to address the feedback on the clarity of guidance and availability of resources. Staff developed and coordinated a comprehensive revision of the interim guidance and delivered a proposed final NCP MD to the OEDO (ML13176A371). The OIG concluded that the revised guidance satisfied the audit recommendation for clarified guidance. The proposed final NCP MD is also consistent with the January 27, 2014, memorandum from the EDO clarifying roles and

responsibilities for NRC's organizational culture (ML13170A517). A summary of the revisions in the proposed MD is included in Appendix E.

Staff also created multiple implementation tools for the internal Web site, including an interactive flowchart, a revised NCP Form, Releasability Review Procedures, FAQs (Frequently Asked Questions), and a simplified Overview of the NCP. Staff will work with the Office of Information Services to establish a direct link to the NCP Web site from the Employee Resources Web page. Staff will contact offices with procedures to ensure alignment with agency-level guidance when the NCP MD is issued.

Staff has taken and plans to take actions to dedicate centralized NCP process support. OE has already dedicated resources for the NCP, including an NCP Program Manager (PM) and a backup NCP PM. The Senior Differing Views PM currently functions as the NCP PM and the DPO PM. Because use of the NCP is infrequent and guidance for the process is detailed, staff plans on retiring the initiative for OCWE Champions to be available to support the NCP. Staff concludes that centralizing process support through the NCP PM and backup NCP PM will provide necessary oversight and help ensure effective customer support for the NCP.

C. Increase Understanding (Including Roles and Responsibilities) through Training and Communication

Staff has taken and plans to take multiple actions to address feedback on the desire for greater understanding about the process and the merits of training. Staff will continue to support understanding through multiple outreach activities and communication tools, such as EDO Updates, monthly senior management meetings, all-supervisor meetings, senior leadership meetings, Yellow Announcements, all-hands meetings, brown bag lunches, seminars, and articles in the *NRC Reporter* and office-level newsletters.

OE plans on collaborating with the Office of the Chief Human Capital Officer (OCHCO) to evaluate the merits of a diverse training strategy to ensure that timing and delivery methods are appropriate and aligned with the needs of each target audience. OE and OCHO have already taken steps to support the recommendations from the OIG to develop online NCP training. In addition, the NCP will be briefly addressed in the online course "NRC: An Agency Overview," that OCHCO is currently developing. Staff will evaluate including key messages for the NCP into existing training for all employees and supervisory training. Staff also plans on working with the Administrative Assistant (AA) Qualification Program and the AA Challenge Working Group to look for ways to increase the awareness of special NCP record-handling requirements.

D. Address Concerns of Potential Negative Consequences

Staff has taken and plans to take multiple actions to address the perception that engaging in the NCP could result in some type of negative consequence. Staff recognizes that proactively fostering an environment that encourages and supports differing views can reduce the possible fear of speaking up and raising concerns and engaging in the NCP. As previously noted, attitudes and behaviors can play a significant role in the successful implementation of the NCP. Staff is encouraged by the Behaviors Matter initiative and believes that implementation of Phase II and its emphasis on all employees being accountable for the outcomes of their interactions will ultimately benefit the NCP.

As previously noted, staff plans on evaluating the merits of infusing NCP key messages into existing training, including reinforcing that supervisors and managers will be held accountable for their actions. In particular, staff will consider training for all supervisors to address concerns of retaliation and chilling effect for engaging in the NCP.

Staff will continue to be available to managers to provide potential responses to perceptions of retaliation and chilling effect for engaging in the NCP.

Staff also plans on hosting panel discussions including previous NCP submitters and participants to share experiences and normalize the use of the NCP.

Staff will continue to promote NCP success stories (such as endorsement of and support for NRC Team Player awards) through various forms of communication, such as EDO Updates, all-hands meetings, articles in the *NRC Reporter*, and office-level newsletters.

Consistent with the goals and activities included in the agency-level action plan from the SCCS, staff plans on evaluating the merits of establishing an anti-retaliation policy and procedures to address concerns of retaliation and chilling effect for engaging in the NCP.

IX. APPENDICES







The appendices to this assessment include more detailed information and data.

- A. Recommendations from OIG Audit of NCP**
- B. Results from 2012 Safety Culture and Climate Survey**
- C. Results of Targeted Survey**
- D. Key Factors from Benchmarking Report**
- E. Summary of Revisions in NCP MD and Handbook**

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APPENDIX A: Recommendations from OIG Audit of NCP

The October 7, 2010, OIG Report (OIG-11-A-02) included the following eight recommendations to improve the guidance and training pertaining to and oversight of the NCP. Five of the recommendations are complete.

	Recommendations	Status
1.	Define management's expectations regarding the non-concurrence process and clearly communicate them to staff.	
2.	Revise MD 10.158 to include detailed guidance on: <ul style="list-style-type: none"> a. Dispositioning of non-concurrences to include a feedback mechanism on the status of the non-concurrence; b. Timeliness expectations; c. Completion and processing of Form 757; d. Roles and responsibilities of key non-concurrence process personnel; e. The availability of the Differing Views Office Liaisons. 	
3.	Finalize MD 10.158 by the end of 2011.	
4.	Make non-concurrence process training available in an on-demand format to all staff and managers.	
5.	Routinely update the Office of Enforcement Open Collaborative Work Environment contact Web page to reflect current Differing Views Office Liaison assignments.	
6.	Identify and track all Forms 757 submitted to date and store them in a central repository.	
7.	Develop a formalized system to promote consistent and routine capture and review of submitted Forms 757.	
8.	Perform regularly scheduled comprehensive assessments of the non-concurrence process.	

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APPENDIX B: Results from 2012 Safety Culture and Climate Survey

In the fall of 2012, OIG conducted the NRC’s periodic Safety Culture and Climate Survey (SCCS). The SCCS is intended to: (1) measure NRC’s safety culture and climate to identify areas of strength and opportunities for improvement, (2) understand the key drivers of engagement, (3) compare the results of the SCCS against the results of previous SCCS’s, and (4) provide, where practical, benchmarks for the findings against other similar organizations and high performing companies.

The 2013 SCCS included 132 questions. Two questions were directly related to the NCP. Five additional questions were included in the categories of communication, empowerment and elevating concerns, which have a correlation to the NCP. The displays of data in these charts highlight the Favorable, Unfavorable or “I don’t know?” responses to each question in the survey. Percent Favorable scores are identified in **green**, Unfavorable scores are **red** and “I don’t know?” responses are **yellow**.

The results of the SCCS indicate that 88% percent of employees are aware of the NCP. This represents an increase of 47% from 2006 and 10% from 2009.

Forty-nine percent of employees believe that the NCP is effective, which represents a statistically significant improvement of 5% from 2009 and is included within the top 10 improvement areas from the previous SCCS.

It is important to note that a high percentage of employees (37%) don’t have an opinion on the effectiveness of the NCP. This reflects that few employees have first-hand experience with the process (the process is only used around a dozen times per year) and presents an opportunity for gain through outreach and education.

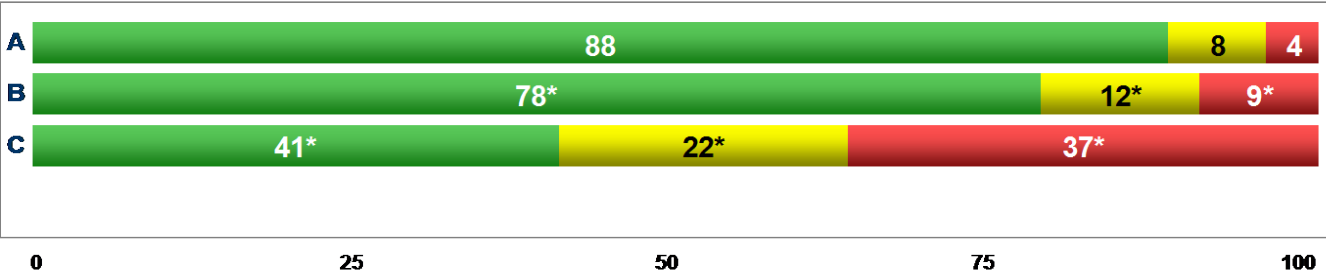
DPO/Non-Concurrence Items

NRC OVERALL (N=2,981)

vs. 2 Benchmarks

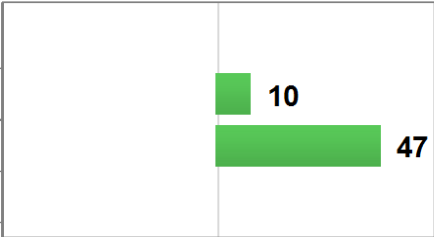
Category 5: DPO/Non-Concurrence

17a. I am aware of the following methods to raise a concern: The Non-Concurrence Process



* indicates a statistically significant difference

Total Favorable
Differences From Benchmark



Red / Green Difference Bars are statistically significant

A. NRC OVERALL (N=2,981)
B. NRC OVERALL 2009 (N=3,404)

C. NRC OVERALL 2005 (N=2,269)

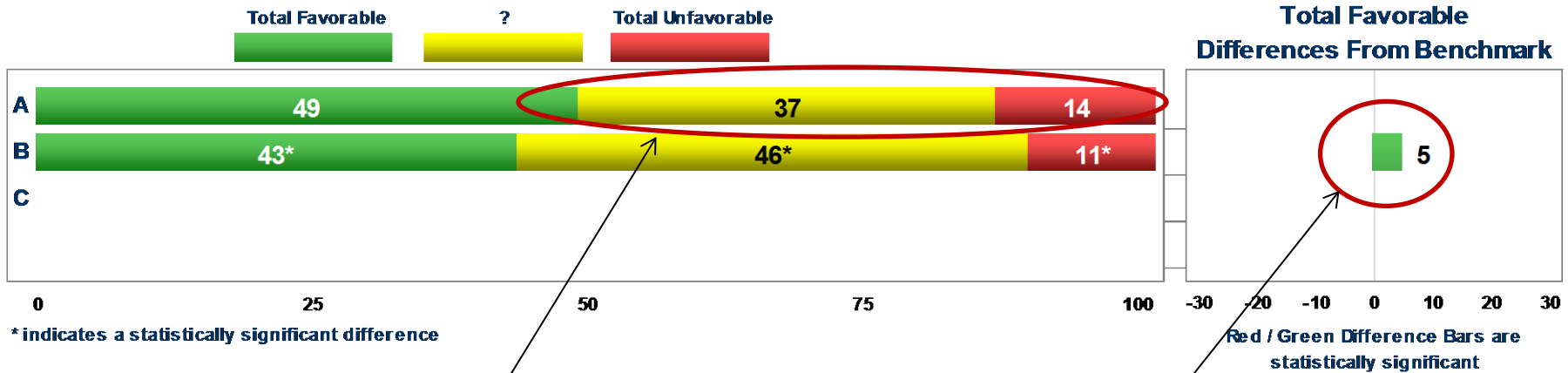
DPO/Non-Concurrence Items

NRC OVERALL (N=2,981)

vs. 2 Benchmarks

Category 5: DPO/Non-Concurrence

58b. From what I know or have heard, I think the: The Non-Concurrence Process is effective



High "I don't know" score and low positive score —good opportunity for gain through outreach and education.

Statistically significant-- included in top 10 improvements from previous survey.

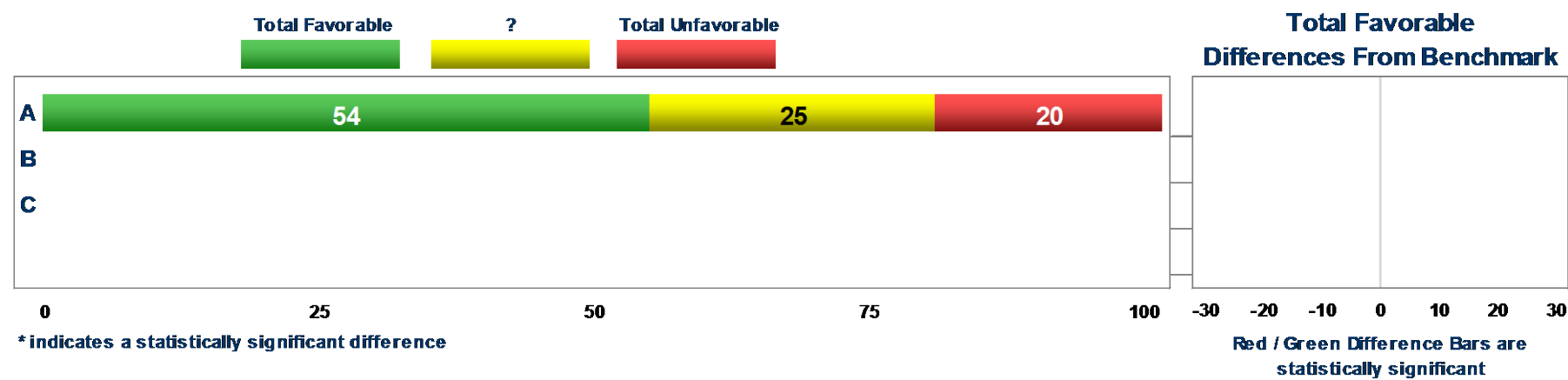
Communication Items

NRC OVERALL (N=2,981)

vs. 2 Benchmarks

Category 2: Communication

60. When decisions are made that are contrary to my opinion, the NRC communicates effectively why the decision was made.



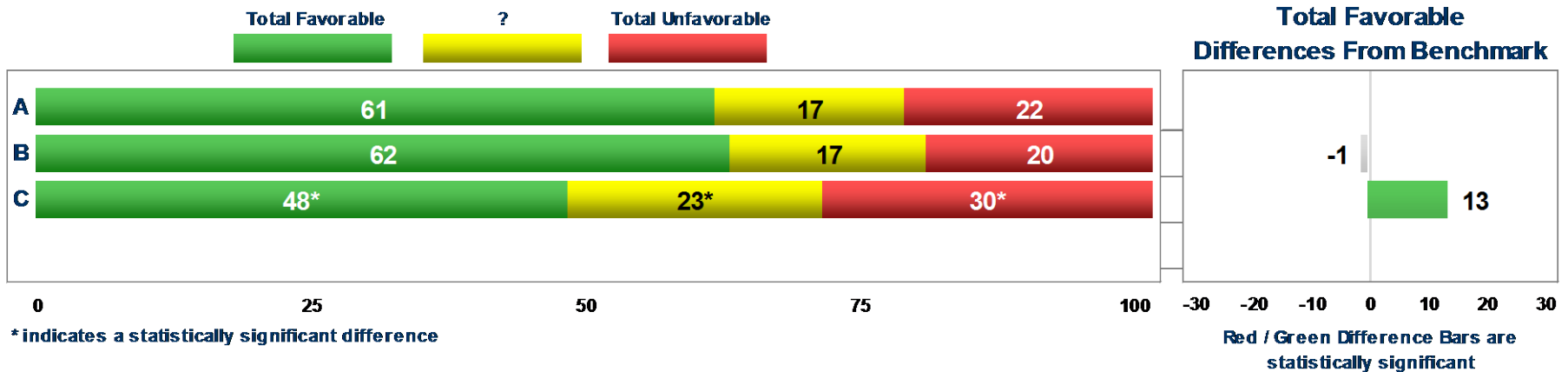
Empowerment Items

NRC OVERALL (N=2,981)

vs. 2 Benchmarks

Category 7: Empowerment

72. This Agency has established a climate where the truth can be taken up the chain of command without fear of reprisal.



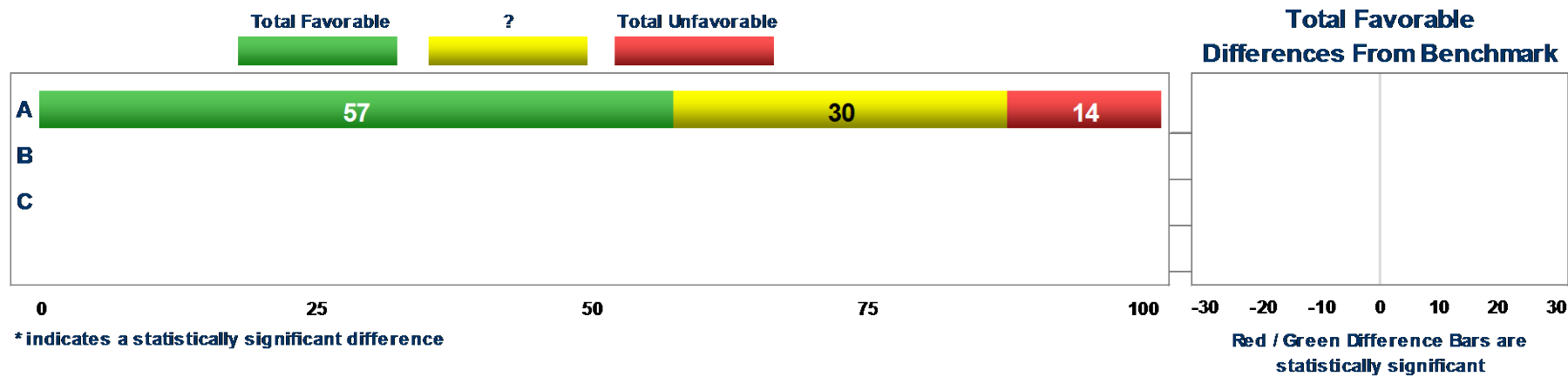
Elevating Concerns Items

NRC OVERALL (N=2,981)

vs. 2 Benchmarks

Category 6: Elevating Concerns

14. My Office/Region management actively seeks to detect and prevent retaliation for raising concerns.



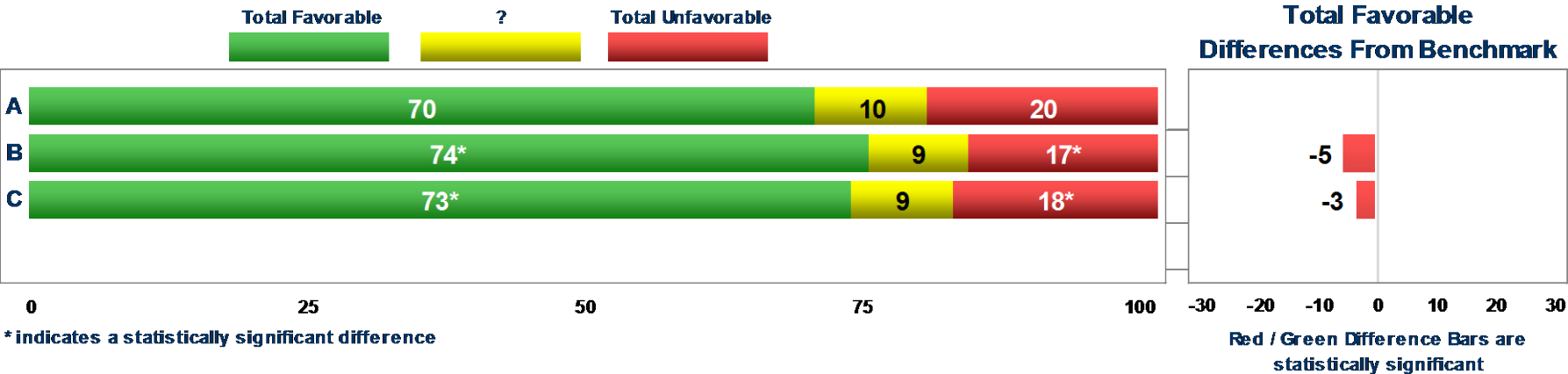
Empowerment Items

NRC OVERALL (N=2,981)

vs. 2 Benchmarks

Category 7: Empowerment

51. I have the opportunity for input before changes are made which will affect my work.



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APPENDIX C: Results of Targeted Survey

In April of 2013, the Office of Enforcement conducted 2 targeted surveys issued to previous non-concurrence submitters and participants. The anonymous feedback provided focused insight on multiple issues such as (1) effectiveness of the process, (2) quality of guidance, (3) management support for the process, and (4) results of using the process (positive and negative).

The survey was issued to 39 submitters and 24 responded (62%). Sixty-two participants received the survey and 17 responded (27%). Collectively, 101 surveys were issued with a combined return rate of 41%.

The displays of data in these charts highlight the Favorable, Unfavorable or “I don’t know” responses to each question asked of the non-concurrence submitters and participants. Percent Favorable scores are identified in **green**, Unfavorable scores are **red** and “I don’t know” responses are **yellow**.

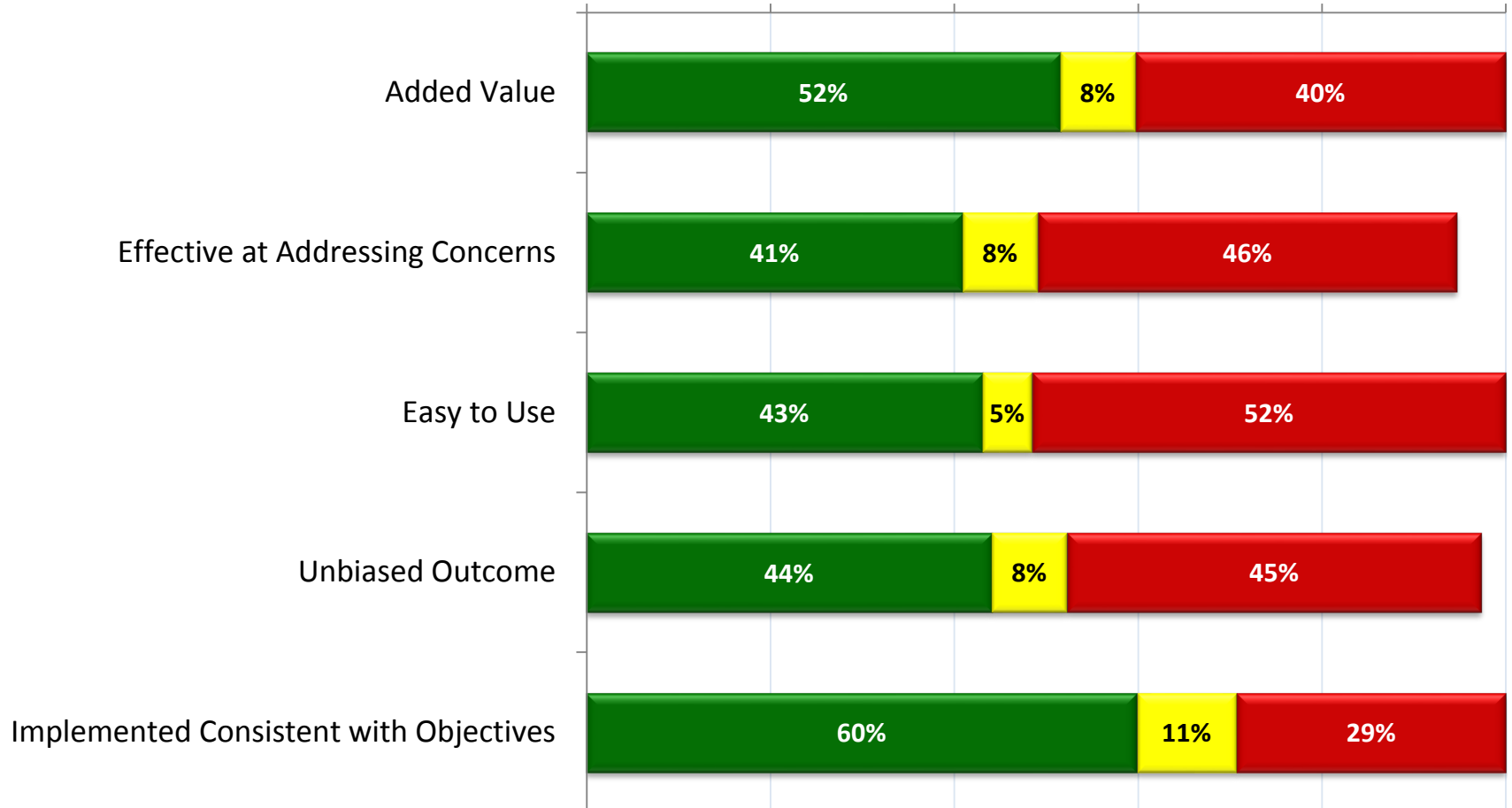
The results of an NCP Targeted Survey indicate that the majority of respondents feel that the NCP adds value to the decisionmaking process and the overwhelming majority of respondents (86%) would use the NCP. Notwithstanding these positive results, the data indicated that less than half of respondents thought it was easy to use and more than half of submitters are concerned about management’s support of the NCP. In addition, the majority of submitters believed that the rationale for the outcome was not clearly documented and that they experienced negative consequences as a result of submitting a non-concurrence.

NCP Survey Composite (Submitters and Participants)

In my experience, I think the Non-Concurrence Process...

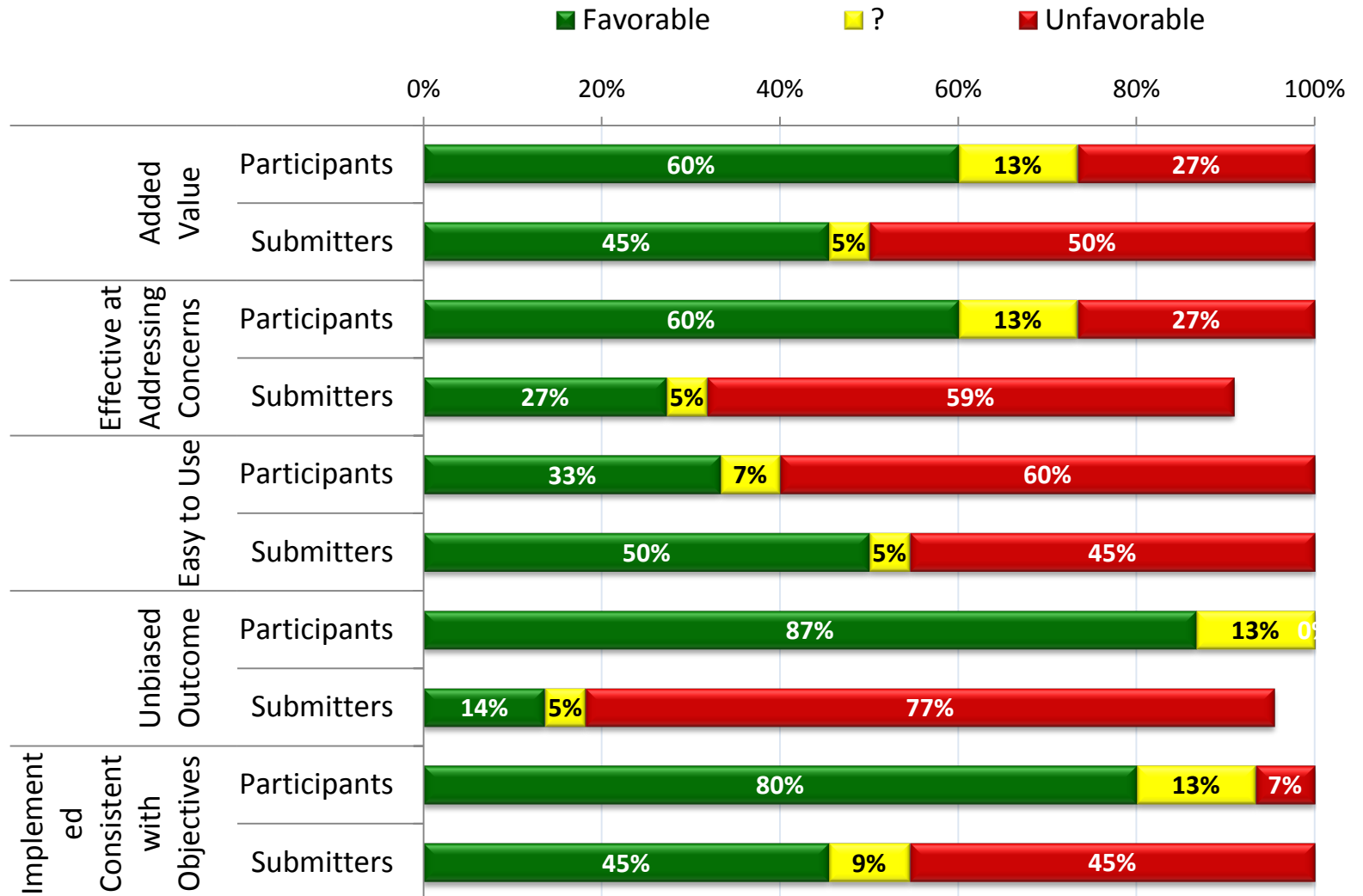
■ Favorable ■ ? ■ Unfavorable

0% 20% 40% 60% 80% 100%

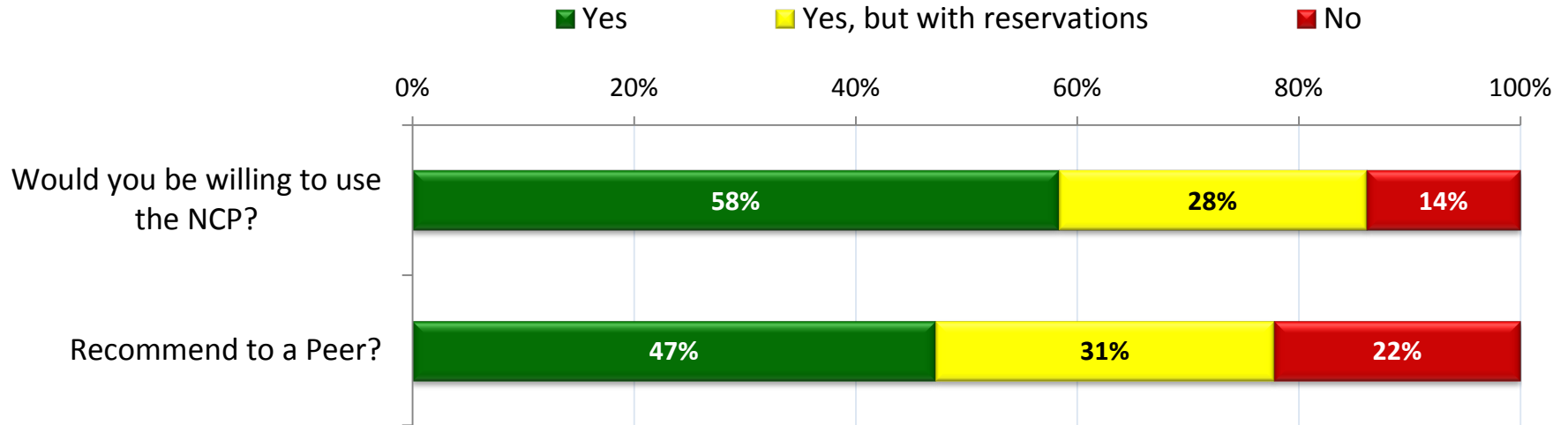


NCP Survey Comparisons

In my experience, I think the Non-Concurrence Process...

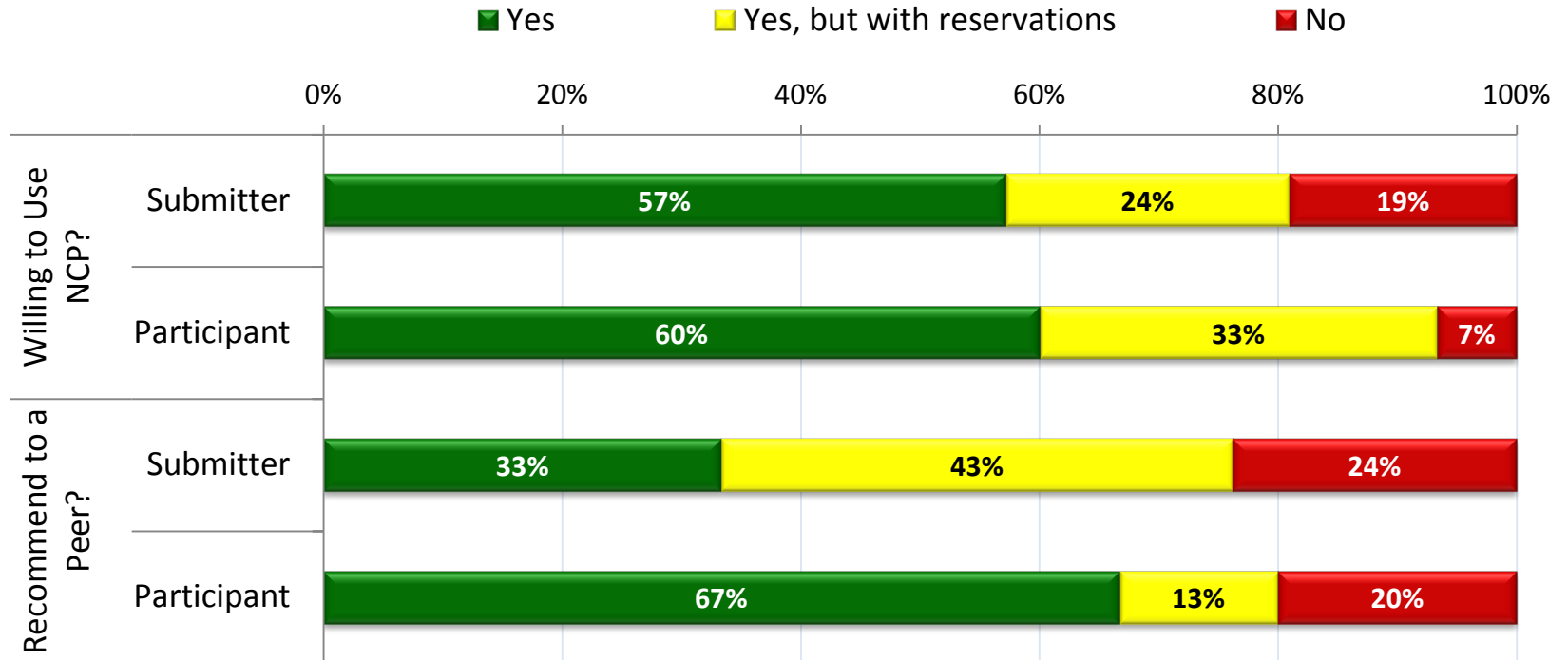


NCP Survey Composite (Submitters and Participants) Having gone through the Non-Concurrence Process...



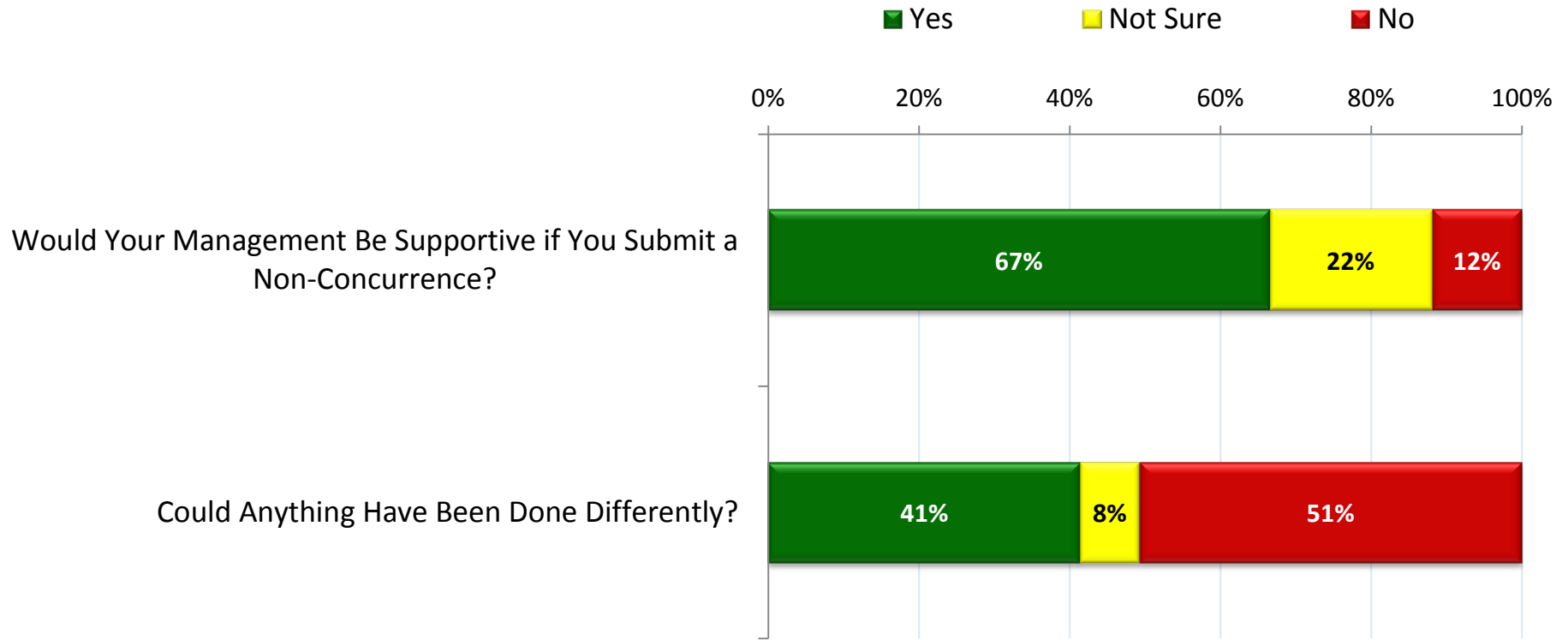
NCP Survey Comparison

Having gone through the Non-Concurrence Process...



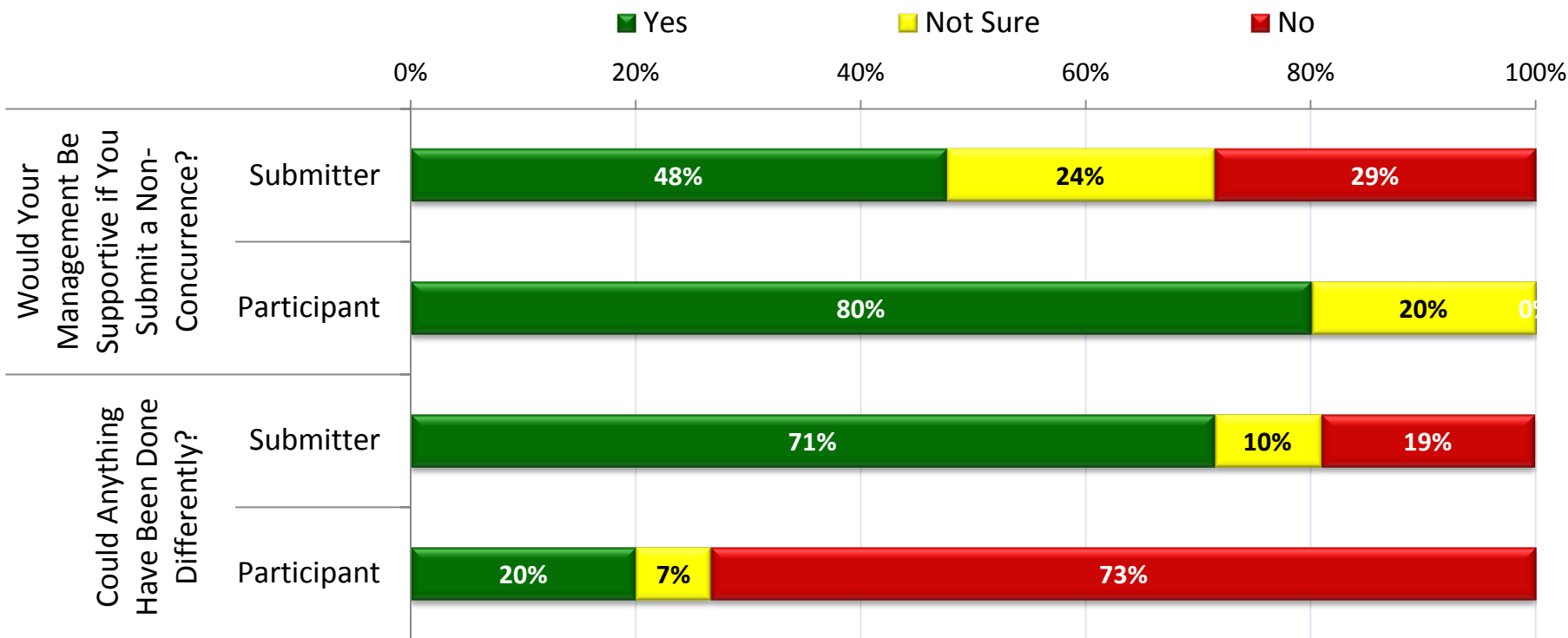
NCP Survey Composite (Submitters and Participants)

In your opinion...



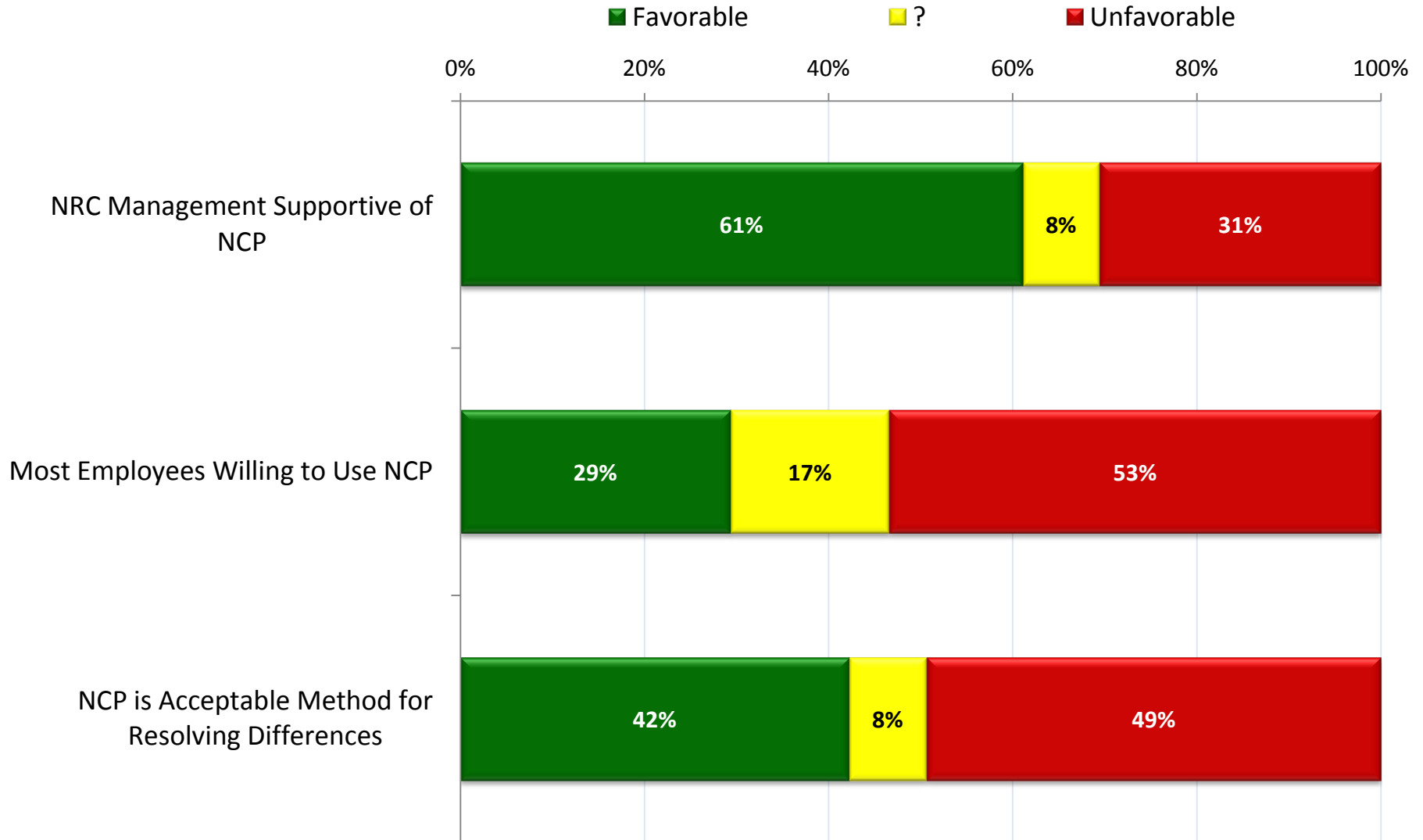
NCP Survey Comparison

In your opinion...



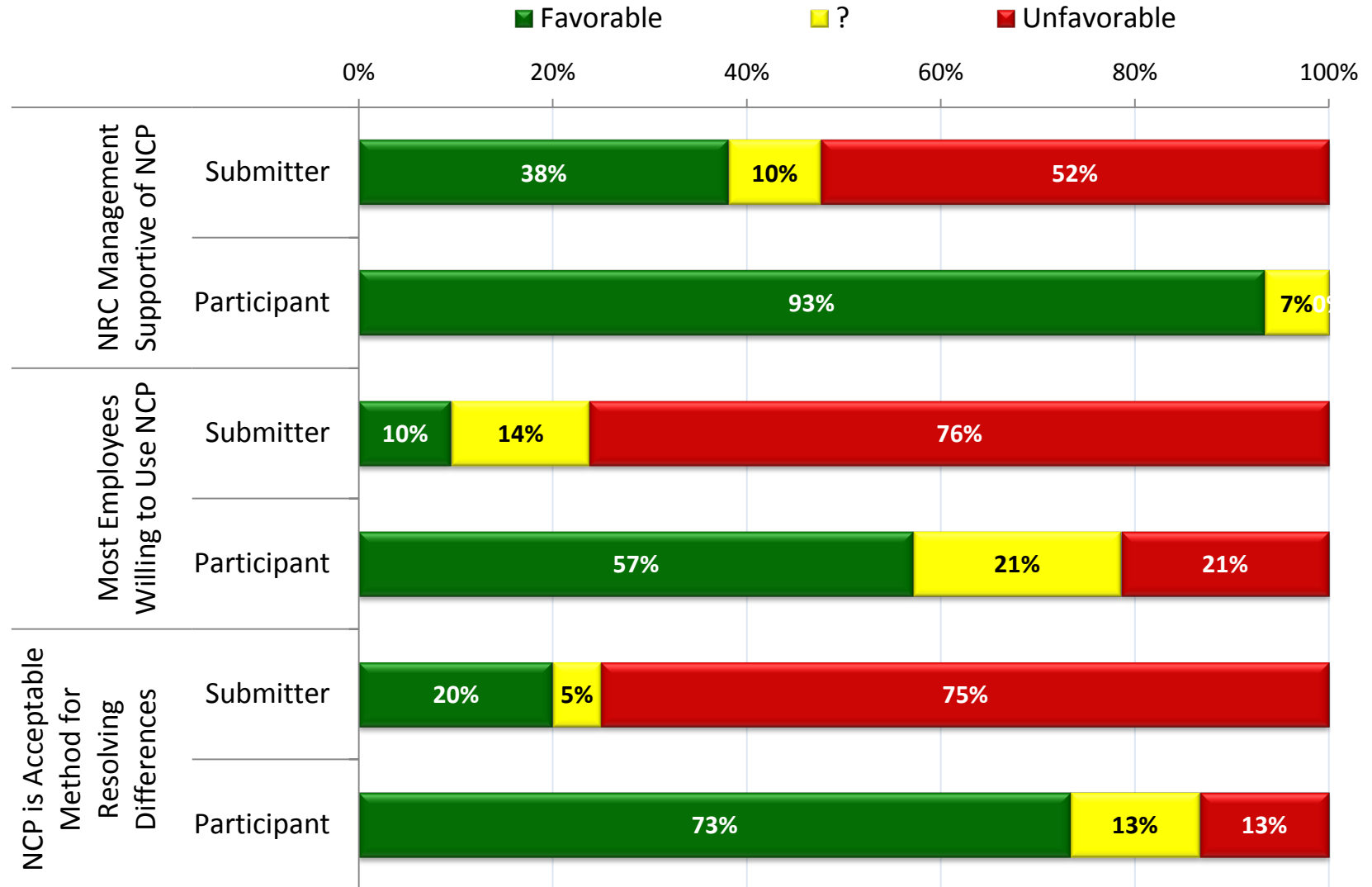
NCP Survey Composite (Submitters and Participants)

Overall, I believe that...



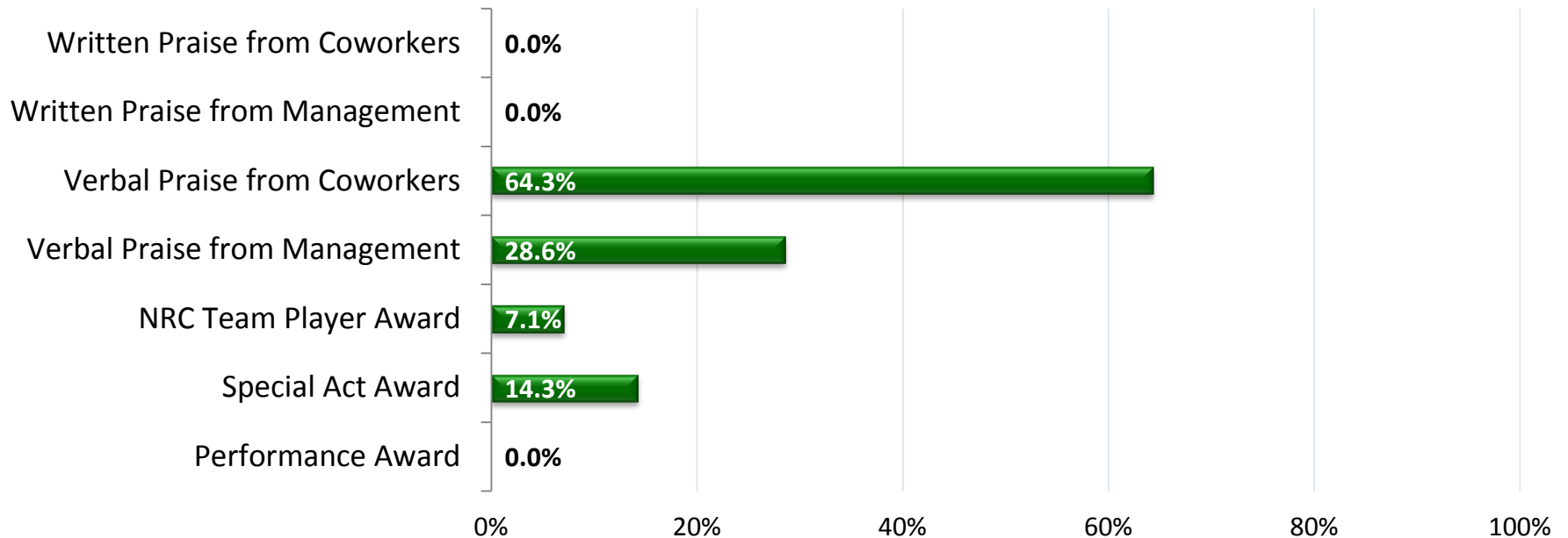
NCP Survey Comparisons

Overall, I believe that...



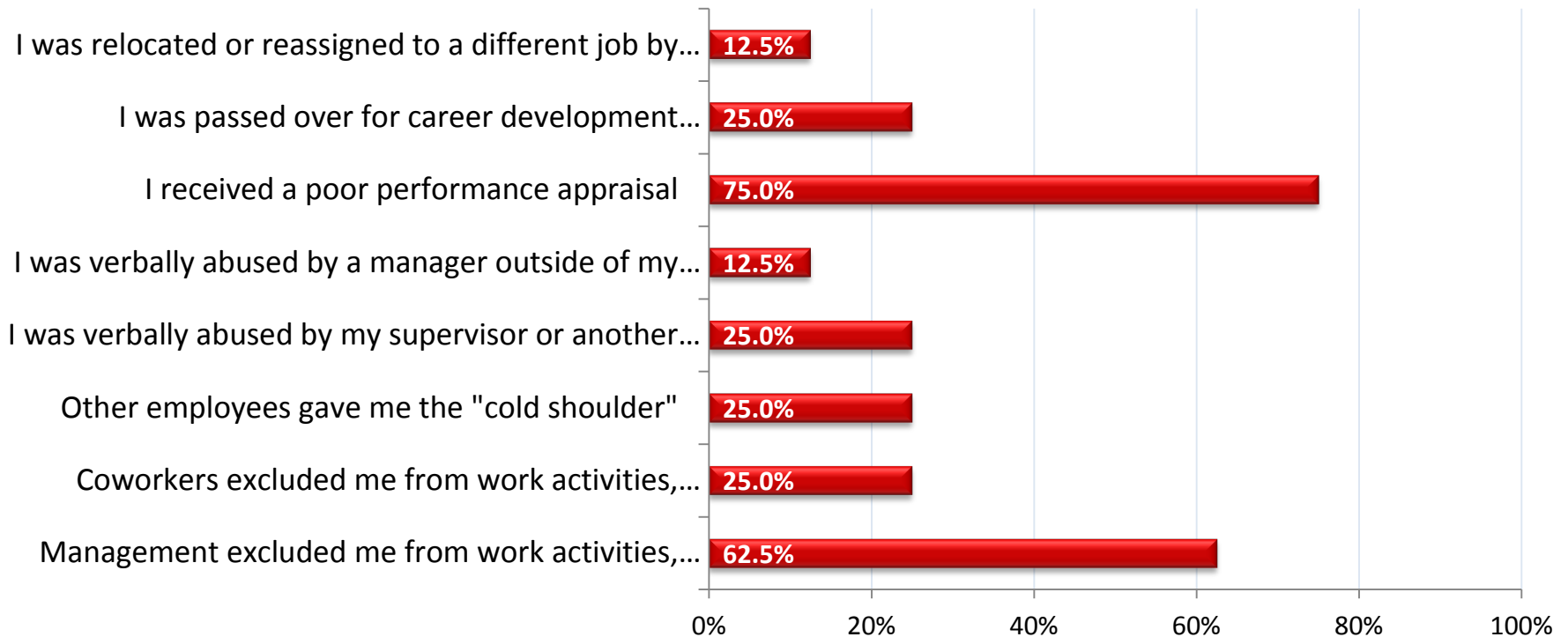
NCP Submitter Survey

Did you receive any of the following forms of recognition as a result of using the Non-Concurrence Process? (select all that apply)



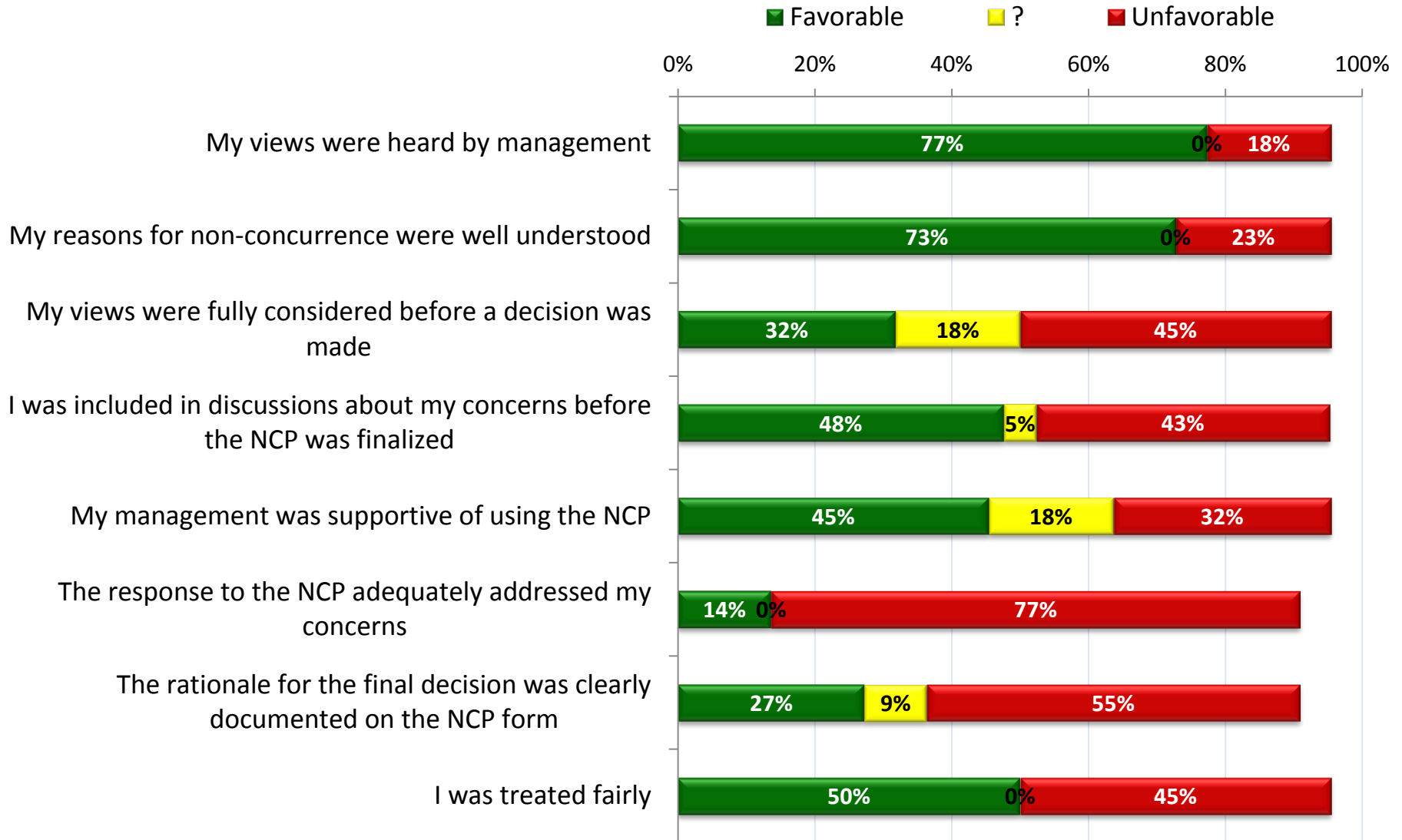
NCP Submitter Survey

Did you experience any of the following consequences as a result of using the Non-Concurrence Process? (select all that apply)



NCP Submitter Survey

When using the Non-Concurrence Process, I believe...



APPENDIX D: Key Factors from Benchmarking Report

In March, 2013, LinkVisum Consulting Group presented the findings of a Safety Culture Continuous Learning and Improvement, Differing Views Processing Benchmark Report. The objective of this project was to provide benchmarking research in order to understand: differing views policies and processes; implementation of differing views processing; and best practices of other organizations. This information served to gain greater insight into other organization's safety culture while providing detailed information about their differing views programs. In addition, it helped validate and enhance modifications to the NRC's Non-Concurrence Process and final draft Management Directive.

The final benchmarking study was completed in March, 2013. The results indicated that there are 5 key factors in developing an open organizational culture with effective non-concurrence processes: (1) leadership commitment, (2) clear policies and procedures, (3) communication, (4) training and education, and (5) Evaluation methods. These factors create a top-down and a bottom-up approach to developing an open organization culture that supports a successful non-concurrence process. Developing these 5 key factors is a proactive approach to creating an environment where employees take personal responsibility and act accordingly whether management is present or not.

Five key factors in developing an open organizational culture with effective non-concurrence processes:

- 1) **Leadership Commitment** - In order to have successful non-concurrence processes in an organization, leadership commitment to the issue must be demonstrated; this focuses employee' priorities and channels resources to the initiative. Best practices and rationale include:

Best Practices	Rationale
Communicate the vision for the organization and its culture	Contributes the necessary authority
Use varied communication vehicles to discuss ethical behavior, non-concurrence processes, and personal accountability,	Adds credibility to the initiative
Encourage employees to use the non-concurrence process	Recognized as a priority
Publicly acknowledge and reward employees who pinpoint ethical issues	Dedicates resources to the initiative
	Normalizes use of the non-concurrence process by encouraging it
	Encourages a dialogue about the topic

- 2) **Clear Policies and Procedures** - Policies and procedures for non-concurrence process must be clear and accessible for employees to understand, know what resources are available and where to go for support.

Best Practices	Rationale
Include independent parties to facilitate non-concurrence	Neutral parties investigating the matter ensure independent review
Process should be transparent	Transparent process gives employees more confidence
Timeframe should be timely	Timely investigation increases employees' confidence in process
Process includes ways to hold employees accountable	Clear, enforceable consequences encourage employees to act in accordance with policies and reduces impetus to retaliate
Process includes option to remain anonymous	Using non-concurrence process anonymously increases likelihood of employees using the resource

- 3) ***Open, Honest, and Clear Communication*** – An open and positive organizational safety culture is one in which employees feel empowered and safe to use non-concurrence processes. Communication represents both a top-down and bottom-up approach to developing an open and positive organizational safety culture.

Best Practices	Rationale
<p>Communication about non-concurrence processes are frequent and delivered via varied communication vehicles</p> <p>Communication is two-way; employees have the opportunity to provide feedback and have their opinions heard</p> <p>Communications are clear and offer information the employees need and want to know</p> <p>There is a well-established open-door policy</p> <p>There are feedback mechanisms to determine whether the intended message was received</p>	<p>Frequent communications via varied communication vehicles better ensures the employee receives the information, and receives it in a format that relates to how the employee best receives and retains information</p> <p>Two-way communication opportunities, including an open-door policy, give the employee a sense of belonging in the organization and increases his/her personal accountability for a positive, open environment, and makes the employee feel respected when he/she can offer his/her opinion and be heard</p> <p>Clear communications keeps the employees informed, consequently developing better attitudes among the employees</p> <p>Receiving feedback on communications provides the opportunity to revise future communications as needed</p>

- 4) **Training** – In order for employers to expect employees to complete their job functions properly, as well as feel comfortable using non-concurrence processes, training should be accessible.

Best Practices	Rationale
<p>Offer frequently scheduled training on enhancing skills needed for current job role</p> <p>Develop a learning plan with employees to map out employee development goals in areas that will complement current skills</p> <p>Offer varied trainings, in different formats, on aspects of non-concurrence processes</p>	<p>Developing employees' current skills and providing opportunities to learn new ones enhances employees' self-esteem and feelings of value in the workplace</p> <p>Training on non-concurrence processes ensure employees understand processes, know how to use them; normalizes the use of the processes and makes them less unfamiliar, increasing the chance employees will use non-concurrence processes if need be</p>

- 5) **Set Process** – In order to know whether non-concurrence processes are working, and what revisions to the processes must be made, a set process must be in place to evaluate the processes' effectiveness.

Best Practices	Rationale
Gather input from the field when developing non-concurrence processes	Employees will have a different perspective from management who may be involved in developing non-concurrence processes; gathering input from employees about non-concurrence processes will enhance the final product
Gather both quantitative and qualitative data when evaluating the processes	Gathering both quantitative and qualitative data will produce a more comprehensive picture of the program and will better identify areas for improvement
Share performance data with employees	Sharing performance data with employees will highlight the value of the non-concurrence processes and increase employees' confidence in the processes
Set performance goals to match aspects of the non-concurrence	Setting performance goals helps focus and prioritize employees' work

APPENDIX E: Summary of Revisions in NCP MD and Handbook

The following summary of proposed revisions is listed in the order they appear in the Management Directive and handbook:

Management Directive

- Modified policy to emphasize expectations for maintaining an environment for raising concerns and the various ways individuals can raise differing views. (Guidance is consistent with the language in the DPO MD.)
- Modified objective to emphasize that the NCP applies to documents that include administrative or corporate support issues and those documents that require review and concurrence by multiple NRC offices before issuance.
- Added objective to affirm that the NCP strengthens the NRC and is a potential source of valuable ideas.
- Modified objective to emphasize that the NCP helps inform management's decision.
- Modified objective to emphasize that the NCP ensures that non-concurrences are heard, understood, and considered by all employees included in the concurrence process to inform and support the decisionmaking process.
- Added objective to ensure that the NCP is executed in a timely manner consistent with the importance of prompt action on the issue, the safety significance of the issue, the complexity of the issue, and the priority of other work activities affecting the availability of participants. (Responsive to OIG audit and consistent with the guidance in the DPO MD.)
- Added objective to emphasize that reprisal (harassment, intimidation, retaliation, and discrimination) by management or peer-to-peer against employees for participating in the NCP is inappropriate and will not be tolerated. (Consistent with the guidance in the DPO MD.)
- Added objective to provide for recognition of individuals whose expression of differing views in the NCP results in an improved outcome or made a valuable contribution to the decisionmaking process. (Consistent with the guidance in the DPO MD.)
- Added responsibilities for the Executive Director for Operations (EDO) to ensure that sufficient resources are available to administer an effective NCP and affirm the value of the NCP, that employees should be comfortable using it without fear of harassment, intimidation, retaliation, or discrimination, and that results of employee survey and action plans coordinated by the ODO that address the NCP are coordinated with OE.
- Added roles and responsibilities for the General Counsel (GC), the Inspector General (IG), the Chief Human Capital Officer (CHCO), the Director, Office of Information Services (OIS), and Office Directors and Regional Administrators to more accurately reflect current activities and

leadership expectations with respect to environment for raising concerns and the NCP. Transferred Office Director and Regional Administrator responsibility for releasability review to manager approving disposition of the non-concurrence and added responsibility to serve as NCP Approver for documents being signed out by EDO. (Consistent with the guidance in the DPO MD.)

- Added that Director, Division of Security Operations (DSO), Office of Nuclear Security and Incident Response will provide advice, as requested, on handling, marking and protecting classified and Safeguards Information on NCP Forms.
- Moved responsibilities for team leaders, supervisors and managers from the handbook to the MD to emphasize the importance and added new requirements that they ensure that NCP Forms that include SGI, PCII, and SUNSI (SGI, PCII, and SUNSI) are appropriately handled, marked, and protected in accordance with agency policies and procedures and are saved in appropriate recordkeeping system, ensure that releasability reviews are performed in accordance with the NRC Policy For Handling, Marking, and Protecting Sensitive Unclassified Non-Safeguards Information (SUNSI), MD 3.4, “Release of Information to the Public,” and MD 3.1, “Freedom of Information Act,” if a non-concurring individual requests discretionary release to the public, and that they take appropriate action in response to allegations of harassment, intimidation, retaliation, or discrimination against non-concurring individuals and other participants in the NCP and chilling effect concerns related to the NCP. (Responsive to OIG audit and consistent with the guidance in the DPO MD.)
- Added roles and responsibilities for the new position of the NCP PM for greater oversight of the NCP. (Responsive to the OIG audit and consistent with the roles and responsibilities of the DPOPM in the DPO MD.)
- Moved responsibilities for all employees from the handbook to the MD to emphasize the importance of raising concerns in good faith, ensuring that NCP Forms that include (SGI, PCII, and SUNSI) are appropriately handled, marked, and protected in accordance with agency policies and procedures, and added new requirements to review NCP Forms included in document concurrence packages that they are asked to review and that they should treat employees respectfully and not harass, intimidate, retaliate, or discriminate against any other employee for expressing a differing view or participating in the NCP. (Responsive to the OIG audit.)
- Revised the applicability section to clarify that the NCP does not apply to employees on NRC Limited (Excepted) appointment (by reason of the confidential, policy-making, policy-determining, or policy advocating nature of the position), and Commissioners.
- Moved the Definitions section to Section XII (Glossary) of the handbook.
- Included additional references: MD 3.1, “Freedom of Information,” MD 3.2, “Privacy Act,” MD 3.4, “Release of Information to the Public,” NRC Policy For Handling, Marking, and Protecting Sensitive Unclassified Non-Safeguards Information (SUNSI), Rights and Protections Regarding Whistleblower Protection, Anti-Discrimination And Retaliation, Agency Policy on Appropriate

2014 NON-CONCURRENCE PROCESS ASSESSMENT – APPENDIX E

Disciplinary Action for Engaging in Prohibited Personnel Practices, and the OIG safety culture and climate survey, NUREG-0910, “NRC Comprehensive Records Disposition Schedule,” Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. I), Freedom of Information Act of 1966 (5 U.S.C. 552), Prohibited Personnel Practices,” Merit System Principles (5 U.S.C. 2302(a)(2)(A)), and the Privacy Act of 1974 (5 U.S.C. 552a).

- Added web links to several references for convenience.

Handbook

- Modified introductory guidance to emphasize the value of differing views and the importance of addressing differing views in a timely manner. (Responsive to OIG audit.)
- Added new section to address relationship of NCP to concurrence process and emphasized that the NCP is a secondary, supporting process for the concurrence process.
- Moved guidance on removing individuals from document concurrence to clarify that it is consistent with an employee’s right not to concur and that it is an option to use instead of the NCP and that the NCP is voluntary. Section emphasizes the expectation for all employees to promptly raise concerns and makes it the supervisor’s responsibility to make document signers aware of any important concerns (versus the eliminated document sponsor position).
- Added guidance to address that an individual’s request to be removed from concurrence does not release the individual from the obligation to perform assigned tasks associated with the processing of the document that he or she does not agree.
- Added guidance that clarifies that using the Open Door Policy is not part of the NCP or a precondition, although exercising the Open Door Policy during the NCP is not prohibited and that using the NCP does not prohibit an individual from raising the same concerns in the DPO Program after the NCP is complete and the subject document is issued.
- Emphasized that the NCP applies to documents that include administrative or corporate support issues and that it applies to employees in administrative or corporate support positions. Added guidance to address that the NCP does not apply to documents that address personnel actions or issues that involve individual employees, or groups of employees (e.g., awards, promotions, disciplinary actions, reorganizations, or determinations about security clearances and access for national security reasons). Added that the NCP applies to an individual expected to review or contribute to the document as a part of their normal position and responsibilities, such as an individual in a backup or actin position.
- Expanded previous guidance to include that individuals who are not eligible to use the NCP can request to engage in the NCP if they believe that they have information that could enhance the decisionmaking process, that document signers can ask individuals who have expressed concerns if they would like to engage in the NCP, and that document signers may exercise

discretion and add any individual to document concurrence for the purpose of allowing the individual to engage in the NCP.

- Expanded previous guidance on informal discussions to emphasize that they are the normal process to resolve disagreements between individuals and between offices that normal barriers should not constrain the process of seeking resolution, that informal discussions are a precondition for engaging in the NCP, and that engaging in the NCP does not preclude the continuation of informal discussions.
- New guidance was included to address communications while the process is underway, including that new NCP cases will be acknowledged on the Web site as “pending,” that employees should limit discussions involving the non-concurrence to NRC employees, and that the non-concurring individual should be included in discussions when warranted.
- Expanded previous guidance on timeliness to emphasize that the concurrence process establishes timeliness goals and added that individuals have a responsibility to notify their supervisor as soon as they decide to engage in the NCP and that the amount of time afforded to an individual to develop information related to a non-concurrence should be based on agreement between the individual and his or her immediate supervisor (ideally within 1 week of the verbal notification of the intent to engage in the NCP). Although no specific time limit for completing the NCP exists, timeliness goals have been included for various stages of the process, recognizing that the content of non-concurrences can vary widely, thereby affecting completion times.
- Expanded guidance on initiation of the NCP to address that NCP can only be initiated when a formal document package has been routed and that the amount of time afforded to an individual to develop information related to a non-concurrence should be based on agreement between the individual and his or her immediate supervisor.
- Expanded guidance on documenting non-concurrences on NCP Forms to address the need for document marking (if required); the need to avoid using proper names and the need to refrain from making statements that could be interpreted as derogatory, inappropriate, or otherwise unprofessional; the ability to include more than one individual on the NCP Form (if applicable), and the choice of whether or not they would like a written evaluation of their non-concurrence and the rationale for the final agency decision (i.e., completion of Sections B and C).
- Added a new section and specific guidance to address NCP tracking numbers to improve implementation and tracking and included guidance to allow individuals to appeal the decision by the NCP PM not to issue an NCP tracking number to the Director, OE. (Responsive to OIG audit.)
- Added a new section providing specific guidance on submitting NCP Forms, including that they be e-mailed to all others on concurrence, and that they should ideally be submitted within 1 week of the verbal notification of the intent to engage in the NCP.

2014 NON-CONCURRENCE PROCESS ASSESSMENT – APPENDIX E

- Clarified guidance on the supervisor's role in offering comments for consideration in the disposition of the non-concurrence, the requirement to sign all NCP Forms, regardless of whether a written evaluation is requested to verify that they have read the non-concurrence and that they ideally be submitted within 3 to 5 days of receiving Section A of the NCP Form.
- Clarified guidance on who has responsibility for final review of the non-concurrence by introducing the NCP Approver (normally the document signer) and providing specific responsibilities for the NCP Approver.
- Eliminated the role of document sponsor and introduced the role of the NCP Coordinator. The guidance includes specific responsibilities, notes that the NCP Approver has the responsibility to identify the NCP Coordinator to assist in the review of the non-concurrence and the flexibility to assume the role except in the case where the EDO is the NCP Approver, in which case the lead office identifies the NCP Coordinator.
- Expanded the guidance on reviewing the non-concurrence to include that the NCP Coordinator should consider arranging a meeting with the non-concurring individual, his or her immediate supervisor, other employees on concurrence, and other interested stakeholders to help support an understanding of the issues included in the non-concurrence and that the NCP PM may be invited to attend to help employees understand the NCP and the roles and responsibilities associated with it. The NCP Coordinator should have an alignment meeting with the SES NCP Approver early in the process, that the NCP Approver may choose to notify other managers about the non-concurrence and may seek input from other managers within or outside their organization, and that the NCP Coordinator should keep the non-concurring individual updated on the status and progress of the NCP. (Responsive to OIG audit.) The guidance also addresses if the non-concurring individual subsequently concurs.
- Added a new section to address documenting the evaluation of the non-concurrence on the NCP Form, including the need to develop a succinct agreed upon summary of issues (SOI) to ensure a common understanding of the individual's concerns. This section includes timeliness goals for developing the SOI, that a SOI should be agreed upon before the review, and that any new issues outside the scope of the SOI should be handled through informal discussions or through the initiation of a new non-concurrence. This section addresses the need to provide a sufficient level of detail in the evaluation so that an independent reader can understand the basis for the decision and that the documentation should address any issues that the non-concurring individual agrees with. The guidance also provides the NCP Approver with the discretion to decide how to continue the concurrence process and that all employees on concurrence have a responsibility to review the NCP Form to support informed decisionmaking. It also addresses actions if the non-concurring individual subsequently decides that they no longer want a written evaluation.
- Expanded the guidance on the final review of the non-concurrence, including that if the non-concurring individual raises issues that go beyond the issues in the subject document, then NCP Approver has the discretion to decide whether to address the additional issues in Section C of the NCP Form and emphasizing that the NCP Form must be complete prior to the issuance of the

document. Added that the NCP Approver has the discretion to speak with the non-concurring individual about the outcome of the review and/or choose to allow the non-concurring individual an opportunity to review the “Evaluation of Non-Concurrence and Rationale for Decision” part of Section C before the process is complete and that a written response is not expected nor included as part of the NCP. Added that NCP Approver must sign and date all NCP Forms, regardless of whether or not the non-concurring individual has requested a written evaluation or whether the process has been discontinued as verification that they have read the non-concurrence.

- Clarified that the unless there is a compelling reason, the document signer does not sign the subject document until the evaluation of the non-concurrence is complete and Section C is signed by the NCP Approver.
- Clarified guidance on finalizing the NCP Form.
- Added that an employee’s non-concurrence does not release the employee from the obligation to perform assigned tasks associated with the final position and decision with which he or she does not agree.
- Revised guidance on submitting documents to the OEDO or Commission to require that the lead office director will serve as the NCP Approver and will identify the NCP Coordinator and the non-concurrence will be evaluated before being forwarded in the concurrence package to the EDO and the EDO will still continue to have responsibility for reviewing the NCP Form before signing out the subject document. This section was also revised to include that NCP Forms be included as an enclosure versus being included in the background information to ensure compliance with the Commission’s intent expressed in Internal Commission Procedures, “SECY papers and action memoranda coming to the Commission should include any significant differing opinions that arose during the process.”
- Created enhanced guidance on handling NCP records, including guidance for handling NCP Forms during the process and guidance for performing a releasability review in accordance with in accordance with current agency practices and guidance, including the NRC Policy For Handling, Marking, and Protecting Sensitive Unclassified Non-Safeguards Information (SUNSI), MD 3.4 and MD 3.1 and the procedures for “Releasability Review of NCP Forms” on the NCP web site if the non-concurring individual requests public release of the NCP Form. (Consistent with guidance in DPO MD.) NCP Forms that do not include a written evaluation are made non-public.
- Added new guidance to address followup actions, including that the NCP Approver is responsible for ensuring that actions are completed and that the non-concurring individual is informed, that the NCP Approver is responsible for deciding what actions or communications are necessary, including the need to issue a board notification to the ASLBP.
- Created new section to address that if a non-concurrence is associated with a document that the NRC is seeking public comment on (such as a proposed rule, policy, or other draft technical

document) or is associated with a final document that the NRC has sought public comments on (including final NUREGs), then the *Federal Register* notice shall include a reference to the non-concurrence and shall include the ADAMS accession number for the NCP Form. The NCP Approver has the discretion to include a synopsis of the issues included in the non-concurrence and the agency's evaluation and outcome.

- Added a new section to address resources available to assist individuals engaging in the NCP, including the ability to use official time, process support from the NCP PM and legal assistance, as appropriate, if the non-concurring individual is called to testify before a licensing board or a presiding officer. (Responsive to OIG audit and consistent with guidance in DPO MD.)
- Modified previous guidance to clarify the responsibilities associated with discontinuing the NCP and included that the NCP Form will be retained as an official agency record, will be limited to internal use only, and will not be posted on the internal Web site.
- Modified previous section to address broader issue of reprisal; added that discouraging the use of the NCP could be grounds for an employee grievance, a whistleblower complaint under the Energy Reorganization Act, or a complaint under the Office of Special Counsel, added that managers should ensure that proposed personnel actions involving non-concurring individuals are not being taken in retaliation for involvement in the NCP and that performance appraisals do not reflect negatively on the use of the NCP, added that managers should take appropriate action in response to allegations of reprisal and chilling effect related to the NCP, added that the guidance in this handbook does not preclude supervisors from initiating, pursuing, or continuing to pursue unrelated personnel actions affecting individuals who have used the NCP. Included a comprehensive list of avenues available to employees who believe that they have been harassed, intimidated, retaliated against, or discriminated against because of engaging in the NCP have several avenues available to them, including the administrative grievance procedure, DOL/OSHA Whistleblower Protection, and the U.S. Office of the Special Counsel.
- Deleted graphic of NCP included in Exhibit 1.
- Added new section to describe guidance that is available on the web, including a flowchart of the NCP.
- Moved previous definitions section in Section XII (Glossary), including new definitions for chilling effect, differing professional opinion, discontinuing NCP, document signer, NCP Approver, NCP Coordinator, NCP Form, and reprisal.