



# 2014

Differing Professional Opinions  
Program 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. The Commission's policy on this subject appears in Management Directive [\(MD\) 10.159, "The NRC Differing Professional Opinions Program,"](#) revised and issued on May 16, 2004.

In accordance with the assessment responsibilities outlined in section 037 of MD 10.159, the Differing Professional Opinions Program Manager (DPO PM) is responsible for periodically assessing the DPO process, reporting the results of the assessment to the Executive Director for Operations (EDO) and the Commission, and recommending modifications to the DPO process.

The DPO PM and staff in the Office of Enforcement (OE) have been in an ongoing process of gaining insights from implementation experience and employee feedback since 2004. OE supplemented this information with additional data from various sources to provide a comprehensive review of the DPO Program and guidance to support a proposed revision of MD 10.159.

OE analyzed data from numerous collection activities to form the basis of its planned actions, including formative evaluation from employee feedback, previous program reviews, the NRC's periodic Safety Culture and Climate Survey (SCCS), a Business Process Improvement (BPI) study, external benchmarking, a targeted survey, feedback on proposed revised DPO guidance, DPO record reviews, and additional NRC guidance on differing views.

The collected data showed that the DPO is a valuable tool that adds value to the decisionmaking process and is an acceptable method for addressing differing views. The DPO Program provides another option for raising concerns in addition to the Open Door Policy and the Non-Concurrence Process (NCP). The DPO Program also serves as a valuable knowledge management tool for challenging issues and their resolution. In some areas, the collected data for the DPO Program showed slightly more positive results than the results for the NCP included in the recent [NCP Assessment](#). This may be attributed to process improvements from previous DPO Program assessments. It also may reflect that the DPO Program includes an independent review and engagement by the highest levels of management (i.e., office directors, regional administrators, and the EDO (or the Commission for those offices reporting to the Commission)). The collected data showed that the vast majority of employees are aware of the DPO Program, and the majority support the DPO Program and would be willing to use it to raise differing views in appropriate circumstances.

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. OE recognizes 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 on which the NRC should continue or further increase its focus to ensure a strong DPO Program were identified: (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 DPO Program.

Based on results and insights collected, NRC staff has developed planned actions for strengthening the NRC's DPO Program, some of which are already underway. The planned high-level actions 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 DPO Program that will foster continued employee engagement and support safe and effective regulatory decisionmaking for the NRC.

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

## II. BACKGROUND

The NRC must often make difficult decisions regarding the regulation of nuclear power and the civilian uses of nuclear materials—decisions that can have profound impacts on public health and safety and the environment. In making important decisions, the NRC must have the best information available. To successfully meet its regulatory responsibilities, the NRC must ensure that the decisionmaking process considers all points of view and that the organizational climate promotes open discussion.

The NRC Open Door Policy (first communicated to NRC employees in 1976) and the NRC Differing Professional Opinions Policy (formally established in 1980) illustrate the NRC's commitment to the free and open discussion of professional views. These policies permit employees at all levels to provide professional views on virtually all matters pertaining to the NRC's mission.

In 1987, a Commission-appointed panel conducted an extensive review of these policies. As a result of the panel's findings and recommendations (published in [NUREG-1290, "Differing Professional](#)

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[Opinions](#)”), the NRC issued Inspection Manual Chapter 4125, “Differing Professional Views or Opinions,” and Inspection Manual Chapter 4126, “Open Door Policy,” on September 30, 1988.

In December 1989, the EDO appointed a special review panel (SRP) to assess the revised process for raising differing views and opinions, including (1) how well employees understand the process, (2) its effectiveness, and (3) the organizational climate for having such views aired and properly decided. The NRC published the panel’s findings in [NUREG-1414, “Differing Professional Views or Opinions.”](#) As a result of the panel’s findings and the conversion of policy into directives, the NRC issued MD 10.159, “Differing Professional Views or Opinions,” and MD 10.160, “Open Door Policy,” on March 20, 1991.

In July 1994, the EDO appointed an SRP to assess the Differing Professional View (DPV) and Differing Professional Opinions (DPO) processes. The NRC published the findings of this panel in [NUREG-1518, “Differing Professional Views or Opinions.”](#) The panel recommended eliminating standing DPV panels, instead forming panels on an ad hoc basis depending on the technical issue, and changing the DPO process to require the establishment of ad hoc review panels similar to those recommended for the DPV process.

In March 2001, the EDO established an SRP to evaluate the DPV/DPO process and to make recommendations on the interim policy guidance issued in response to a September 2000 audit by the Office of the Inspector General (OIG). As a result of this panel’s findings and recommendations (published in [NUREG-1763, “Differing Professional Views or Opinions”](#)), the NRC issued a revised MD 10.159 on May 16, 2004. The revised DPO Program established (1) an NRC-level program manager, (2) eliminated the DPV step, simplified the appeal step, (3) set a new timeliness goal, (4) defined roles and responsibilities for communication points in the process, and (5) required informal discussions before an employee submits a DPO (or required justification for why the employee cannot discuss the issues with his or her supervisor).

In May 2004, the EDO assigned oversight of the DPO Program to OE and identified a DPO PM (now known as the Senior Differing Views Program Manager). The DPO Program supports the NRC’s goal of promoting a work environment where all NRC employees and NRC contractors are encouraged to promptly raise concerns and differing views without fear of retaliation. The DPO Program provides another option for raising concerns in addition to the Open Door Policy and the NCP.

### III. OVERVIEW OF DPO PROGRAM

The NRC has a policy to maintain a working environment that encourages employees and NRC contractors to make known their best professional judgments, even though they may differ from the prevailing staff view, disagree with a management decision or policy position, or take issue with a proposed or established practice involving technical, legal, or policy issues. The DPO Program emphasizes that the NRC will not tolerate retaliation, harassment, or intimidation of individuals who raise DPO concerns.

The following provides an overview of the DPO Program:

- The DPO Program exists as a formal process that all NRC employees and contractors can use to have their differing views on established positions considered by appropriate office directors and regional administrators (office managers).
- MD 10.159 describes the DPO Program.
- A DPO can cover a broad range of concerns provided the opinion is related to the NRC's mission and to the strategic goals and organizational excellence objectives that support the mission: safety, security, openness, effectiveness, timeliness, and operational excellence.
- The DPO Program emphasizes the importance of informal discussions between the employee and his or her immediate supervisor as a possible means of resolution.
- If an informal resolution is unsuccessful, an employee can file a formal DPO with the DPO PM by using NRC Form 680, "Differing Professional Opinion."
- Disposition of the DPO is assigned to the office manager responsible for overseeing the concern described in the DPO.
- To review the DPO, the office manager normally establishes a three-person panel of knowledgeable employees who have not been involved with the issue. The employee who submitted the DPO may nominate one member of the panel.
- The panel writes its conclusions and recommendations in a report to the office manager, and the office manager subsequently issues a DPO Decision to the submitter.
- If the submitter does not believe the DPO Decision adequately addressed the concerns, he or she may submit a DPO Appeal to the EDO (or the Commission, depending on to whom the individual reports) through the DPO PM.

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- The EDO or Commission reviews the concerns and issues a DPO Appeal Decision to the submitter.
- A summary of the DPO and its disposition is posted on the NRC public Web site (in the Weekly Information Report) when the process is complete. If the submitter requests public release of DPO records, management performs a releasability review to support discretionary release of the DPO Case File.

### IV. PURPOSE

The assessment objective was to determine if the DPO Program is operating as intended and identify potential areas of improvement to support recommended modifications to the DPO MD.

### V. SCOPE AND METHODOLOGY

To obtain an accurate and comprehensive assessment of the DPO Program and the potential opportunities for improvement, staff analyzed data from the last DPO MD revision in 2004. The results and planned actions in this report are based on insights from eight data-gathering activities and multiple sources of information.

#### A. Previous Program Reviews

In accordance with Section 037(a) of MD 10.159, in-depth annual program reviews of the DPO Program were conducted in [2005](#), [2006](#), and [2007](#). Because the process is infrequently used, on April 30, 2009, the EDO approved combining the requirement for in-depth annual program reviews with the requirement for periodic assessments and recommending modifications into a single review for efficiency and effectiveness (NRCwide Documents Access and Management System (ADAMS) accession number ML090920526). The in-depth annual program reviews concluded that, with the exception of the timeliness goals for DPOs, the DPO Program generally met its objectives for the DPOs completed during the review periods. The reviews collectively identified high-level areas for improvement in the DPO process including: (1) guidance, (2) training, and (3) accountability. OE has been in an ongoing effort to implement process improvements consistent with these themes within the scope of the DPO MD.

#### B. 2012 NRC Safety Culture and Climate Survey (SCCS)

In fall 2012, OIG conducted the NRC's periodic SCCS. The SCCS is designed 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 SCCS was sent to all 3,755 employees and 2,981 responded, yielding a 79 percent response rate. The 2012 SCCS included 132 questions and six questions were directly related to the DPO Program. On January 8, 2013, results of the voluntary survey were provided to the staff. Particularly noteworthy is that 91 percent of the responding employees are aware of the DPO Program. In addition, the majority of employees indicated that they would be willing to use the DPO process. Fifty-two percent of employees believe that the DPO Program is effective (34 percent don't have an opinion on the effectiveness of the DPO Program and 14 percent believe that the DPO Program is not effective). Appendix A includes the NRC-level results for the questions and results of related questions.

In March 2013, the staff developed NRC-level action plans in response to five NRC-level themes from the SCCS. Staff developed an NRC-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. Business Process Improvement Study**

In September 2013, OE requested support from the Office of the EDO (OEDO) to perform a Business Process Improvement (BPI) study on the DPO Program. The BPI Team is comprised of specialists in OEDO with Lean Six Sigma Black Belt certification. A BPI study uses a structured process improvement methodology to focus on process complexity and achieving sustainable outcomes. On March 31, 2014, members of the BPI Team presented the results of its study to OE. The BPI team found the DPO process provides an effective means for ensuring employees have an opportunity to share their views with NRC management. The DPO process also provides management an opportunity to hear different perspectives they may not have otherwise heard. However, the BPI team identified opportunities for improvement within the DPO Program including: (1) providing additional and readily accessible guidance, (2) improving written and verbal communications throughout the process, and (3) improving resource management. The study proposed recommendations intended to improve the overall process and experience for all participants. A consolidated list of recommendations is included in Appendix B.

### **D. Views of DPO Submitters, Panel Members, and Decisionmakers**

Since the DPO Program was last revised in 2004, OE has been exercising a formative evaluation approach to obtain ongoing feedback on the process from submitters, panel members and office managers (DPO decisionmakers) and implementing process improvements within the scope of the guidance included in the DPO MD. To supplement this information, on October 31,

2013, OE administered a voluntary targeted survey to current employees who have submitted DPOs and DPO participants (i.e., panel members and DPO decisionmakers) since the program was last revised in 2004.<sup>1</sup> Although the data sample is limited (more than half of the DPO submitters, panel members, and decisionmakers have left the NRC), the results indicate that the majority of respondents feel that the DPO Program adds value to the decisionmaking process, is an acceptable method for addressing differing views, and that they would use the DPO process. The data indicated that the overwhelming majority of submitters believed that the DPO Panel wrote a timely, credible report and that they were heard and understood by management before a final decision was made. Notwithstanding these positive results, the data indicated that a third of responding submitters believed that the rationale for the final decision was not clearly documented and some of the responding submitters believed they experienced negative consequences as a result of submitting a DPO. Appendix C includes specific survey questions as well as charts with the breakdown of responses from the DPO submitters, panel members, and decisionmakers.

### **E. Benchmarking Activities**

Over the years, the NRC has conducted benchmarking activities on policies and processes to address differences of opinion and alternative views from employees and to identify best practices.

The Department of Energy (DOE) has an NRC-level DPO process described in a directive that applies to all employees and DOE contractors. The process was established in 2006 and modeled, in part, after the NRC's DPO Program. The DOE DPO process was established to compliment the Employee Concerns Program (ECP) and the DOE Ombudsman. The DOE directive was last updated in 2011 and focuses on technical concerns related to environment, safety, and health that cannot be resolved using routine processes. DOE employees must first seek to resolve the issue with their first line supervisor or use established concern or complaint resolution systems. The DPO manager (DPOM) is responsible for screening the submittal within 10 working days of receiving a DPO. The applicable Under Secretary (or Deputy Secretary where there is no Under Secretary) assigns the DPO to a Final Decision Manager within 15 working days of accepting a DPO. Where practicable, the Final Decision Manager must be at a level above or independent from the manager who made the contested decision. Within 25 working days of accepting a DPO, the DPOM (in consultation with the Final Decision Manager) appoints an ad

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<sup>1</sup> Out of 12 surveys issued to submitters, 9 responded (75 percent response rate); out of 47 surveys issued to panel members, 31 responded (66 percent response rate); and out of 7 surveys issued to decisionmakers, 3 responded (43 percent response rate).

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hoc panel normally consisting of three employees, one suggested from the submitter. The panel issues recommendations in a report within 65 working days of accepting the DPO. (Because of the preceding steps, the panel has 25 working days to evaluate the DPO and issue a report.) The Final Decision Manager issues a decision to the submitter within 15 working days of receipt of the panel's report. An employee can appeal the decision to the appropriate Under Secretary, but only after a required meeting with the Final Decision Manager. If the employee still wants to pursue an appeal, the Under Secretary has broad discretion for conducting the review and issues a decision within 45 working days after receipt of the appeal. DOE processes approximately six DPOs per year.

The U.S. Department of State has a process called the Dissent Channel that is reserved for consideration of dissenting or alternative views on substantive foreign policy matters. Because the Dissent Channel is not a routine channel and its messages are handled at the highest levels of the Department, employees are instructed to ensure that their views are well-grounded and well-argued, and that *no* other channel is available to them. The process is overseen by the Secretary's Policy and Planning Staff (S/P), which is outside the line organization. S/P is also responsible for providing a substantive reply, normally within 30-60 working days. The OIG is responsible for investigating *all* reports of improprieties related to the use of the Dissent Channel, including allegations of reprisal against its users.

Several operating reactor licensees have DPO processes that resemble NRC's process. The DPO process in these organizations complements an ECP and Corrective Action Program. Oversight for the process is usually within the ECP or the engineering or performance assurance organization. Feedback on the usefulness of the process was mixed, with several organizations reporting that it isn't used very much because employees typically use the Corrective Action Program or the ECP.

In 2010, the U.S. Food and Drug Administration (FDA), Center for Devices and Radiological Health (CDRH), engaged a contractor to conduct a benchmarking study, including examination of how other Federal agencies address differences of opinions and/or disputes over scientific or regulatory authority and how they foster workplace environments of trust and open communication. CDRH's contractor interviewed four organizations for the study, including: DOE, the Environmental Protection NRC (EPA), the National Aeronautics and Space Administration (NASA), and the NRC.<sup>2</sup> Using this information, the contractor identified themes that emerged, as well as individual best practices the contractor felt were noteworthy in the

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<sup>2</sup> The study identified the NRC's diverse approach to addressing differing views as a best practice (i.e., Open Door Policy, NCP, and DPO Program), as well as highlighting the value of NRC Team Player awards.

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areas described above. Appendix D includes a more detailed discussion of the themes and best practices.

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) NASA, (2) Federal Aviation Administration (FAA), Air Traffic Organization (ATO), (3) Pfizer and (4) 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 NASA and FDA had processes similar to the NRC's DPO process.

NASA's process is outlined in a formal process called the Dissenting Opinions Process. The process involves identifying the facts both parties agree upon, the differing positions with rationale and impacts, and individual recommendations for resolution. When appropriate, the concern is documented, approved by the representative of each view, concurred by affected parties, and provided to the next higher level in the appropriate management chains with notification to the second higher level of management. Management's decision is documented and provided to the dissenter and to the notified managers, and becomes part of the program record. If the dissenter is not satisfied with the process or outcome, the dissenter may appeal to the next higher level of management. The dissenter has the right to take the issue upward in the organization, even to the NASA Administrator, if necessary. The process does not identify time frames for the steps in the process.

The CDER's DPO process includes an independent Ombudsman. The Ombudsman is the focal point for receiving managing, and facilitating the DPO process. The Ombudsman coordinates with the FDA's Chief Mediator and Ombudsman's office and also receives complaints from regulated industry, health associations, and the public. The Ombudsman screens DPO submittals and can reject a submittal if the consequences of the decision in question are not potentially serious enough. If the DPO is accepted, the CDER Director appoints a chairperson for an ad Hoc Review Panel and the chairperson appoints members of the panel, including a member recommended by the submitter. The panel issues a written recommendation to the CDER Director in 35 business days. Once the CDER Director receives the panel's recommendation, the CDER Director issues a decision to the submitter within 5 business days. If the disputant does not agree with the DPO decision made at the Center level, he or she can appeal at the FDA level. The review at the appeal stage is limited to whether or not the Center followed the correct process and not about the issue itself.

In the broader context of best practices to support a healthy environment for raising concerns (which would foster effective DPO processes), the LinkVisum Consulting Group 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.

Unlike the DPO Program, none of the processes reviewed as part of the benchmarking activities makes the records public or available to the staff. In addition, none of the organizations conducts surveys to determine if the staff is aware of the process for raising a differing opinion and whether they would be willing to use it.

### **F. Feedback on Draft DPO MD 10.159**

On July 15, 2011, OE solicited comments on a revision of the DPO MD. The proposed revisions to the MD reflected insights from numerous sources including: (1) previous program reviews, (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), and (6) best practices from MD 1.1, "NRC Management Directives System." The revision of the DPO MD was temporarily put on hold to focus on the finalization of the NCP MD 10.158, because the NCP is used more frequently than the DPO Program and OE wanted to finalize the draft guidance. On August 13, 2014, OE solicited comments on the draft revision of the DPO MD because additional changes were made in response to insights from the 2012 OIG SCCS, a BPI study, a voluntary targeted survey of DPO users, and a benchmarking study. This revision is also consistent with the guidance included in the NCP MD that was issued on March 14, 2014. A list of revisions is included in Appendix E. 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 revision to the draft MD through their office. OE intends to actively engage all internal stakeholders in a high-level of coordination and communication to address comments. Resolution of comments will be addressed in accordance with the Office of Administration's (ADM) MD revision guidance and forwarded to the OEDO along with the draft MD for issuance.

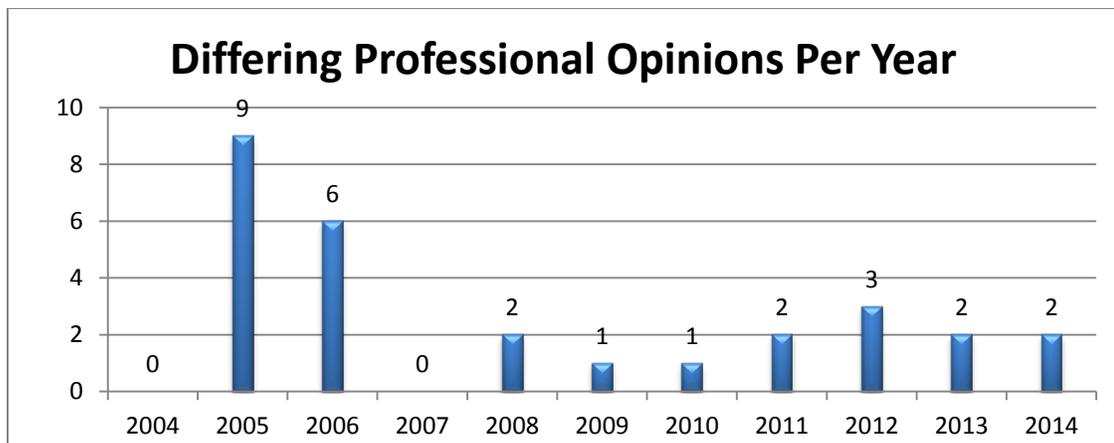
### **G. DPO Cases and Records**

All active and closed DPO cases from the last DPO MD revision in 2004 were reviewed. The review evaluated whether the DPO was implemented in accordance with guidance included in MD 10.159. The review also examined record-keeping associated with the process to determine the consistency and accuracy by which the DPO Case Files were completed, profiled in ADAMS,

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and posted on the DPO Web site. To date, 28 DPOs have been submitted under the process, with an average of two to three cases per year since the DPO MD revision in 2004. To date, 24 DPO Decisions have been issued and 10 DPO Decisions have been appealed. Given the complexities of the issues often associated with DPOs, it is not unusual for a case to be opened in one year and closed in another. One DPO case was withdrawn in 2005. The drop in DPOs after 2006 may be attributable to the issuance of the NCP in November 2006 and indicate an increased awareness of less formal processes that can be used to use to pursue differing views and the benefits associated with them.



### H. Additional NRC Guidance on Resolving Differing Views

OE identified and reviewed the following additional NRC guidance on resolving differing views included in documents and posted on Web sites to ensure consistency with the guidance in MD 10.159.

- 48 CFR Part 20, [“Nuclear Regulatory Commission Acquisition Regulation \(NRCAR\)”](#)
- 48 CFR Part 20, [2052.242-70, “Resolving Differing Professional Opinions”](#)
- 48 CFR Part 20, [2052.242-71, “Procedures for Resolving Differing Professional Views”](#)
- [MD11.1, “NRC Acquisition of Supplies and Services”](#)

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- Office of New Reactors (NRO), [NRO PM Handbook, Open and Collaborative Work Environment and Differing Views Processes](#)
- Inspection Manual Chapter 1245, ["Qualification Program for the Office of Nuclear Reactor Regulation Programs"](#)
- NRR Office Instruction ADM-504, GEN-SA-6, ["Diversity of Opinion and Staff"](#)
- Office of Nuclear Materials, Safety and Safeguards (NMSS), "Policy and Procedure Letter 1-8 - Differing Professional Views and Opinions" (Eliminated)
- NMSS, ["Division of High-Level Waste Repository Safety Guidance for Resolving Technical or Policy Issues Involving Differing Professional Judgments \(P&PL 02\)"](#) (ML052760346)
- [Office of Research \(RES\), PRM-011, Rev. 1, "Handling Contractor Concerns About RES Programs"](#)
- RES, "Office Instruction No. COM-008, Rev.0, "Addressing Staff Concerns and the Differing Professional Opinions Program" (Eliminated)
- 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>
- Office of the Chief Financial Officer (OCFO), 2011 ["OCWE Awareness Training - Non-Concurrence Process"](#)
- Region II, Regional Office Instruction No. 2230, Rev. 2, " Supervisory Actions on NRC Staff Concerns" (Eliminated)
- Region II, Regional Office Instruction No. 2304, Rev. 5, "Resolution of Differing Professional Opinions" (Incorporated in Office Instruction No. 2307)
- 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>

### VI. RESULTS

The collected data showed that the DPO Program is a valuable tool that allows employees to be heard, understood, and responded to on established NRC positions. The DPO Program also serves as a valuable knowledge management tool on challenging issues and their resolution. The DPO Program provides another option to raise concerns in addition to the Open Door Policy and the NCP. Because the NCP supports early engagement in the decisionmaking process, fewer DPOs may have been submitted.<sup>3</sup> In addition, in some areas, the collected data for the DPO Program showed slightly more positive results than the results for the NCP included in the recent [NCP Assessment](#). This may be attributed to process improvements from previous assessments. It also may reflect that the DPO Program includes an independent review and engagement by the highest levels of management (i.e., office directors, regional administrators, and potentially the EDO (or the Commission for those offices reporting to the Commission)).

As previously noted, data from the SCCS indicates that the overwhelming majority of employees (91 percent) are aware of the DPO Program. This represents a nine percent improvement from 2005. The majority of employees (69 percent) indicated that they would be willing to use the DPO process. Only a small number of employees (15 percent) indicated that they would be not willing to use the DPO process, while 17 percent of employees indicated that they were not sure. Limitations in the questions in the SCCS prevent a greater understanding of why employees may not be willing to use the DPO Program. Fifty-two percent of employees believe that the DPO Program is effective. It is important to note that a high percentage of employees (34 percent) don't have an opinion on the effectiveness of the DPO Program and a small number of employees (14 percent) believe that the DPO Program is not effective. This likely reflects that few employees have first-hand experience with the process (the process is only used two or three times per year) and presents an opportunity for improvement through outreach and education. The majority of employees (59 percent) believe senior management supports the DPO Program (32 percent don't have an opinion and nine percent responded unfavorably). Thirty-six percent of employees believe that using the DPO Program will not have a negative effect on career development, up from 27 percent in 2005. A large number of employees are uncertain (46 percent) about the effect on career development and a small number (18 percent) believe that using the DPO Program will have a negative effect on career development. The high number of employees who are uncertain about whether using the DPO Program will have a negative effect on career development presents an opportunity for improvement through outreach and education.

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<sup>3</sup> The NCP was established at the end of 2006. Nine DPOs were submitted in 2005 and six were submitted in 2006. The average number of DPOs submitted over the last five years is two. The average number of NCPs opened since 2006 is 11 per year.

Data from the targeted DPO Program survey indicates that the majority of respondents feel that the DPO Program adds value to the decisionmaking process (79 percent) and that it is an acceptable method for addressing differing views (83 percent). Seventy-eight percent of submitters indicated that they would use the DPO Program in the future (versus 69 percent of employees who responded to the SCCS that they would be willing to use the DPO Program). The more favorable response from submitters may not be surprising because they have already demonstrated their willingness to use the process. The data indicated that the overwhelming majority of submitters (89 percent) believed that the DPO Panel performed an independent, thorough, and timely review. The majority of submitters believed that their views were heard by management (100 percent), the reason for the DPO were well understood (89 percent), and that they were treated fairly (89 percent).

Although the data validated that the DPO Program is generally sound, the data indicated that there are areas of improvement associated with implementation of the process including employee behaviors and attitudes. For example, many employees who have used the process said that the DPO Program was OK, but commented that it wasn't always implemented in the spirit in which it was written. Many employees said that using the DPO Program was an emotional journey. In addition, many employees over the years said that there is a negative stigma associated with the DPO Program. OE recognizes that there are inherent challenges associated with a process of this nature. In particular, because an employee is challenging an established position, there could be possible preconceived views going into the DPO Program. The NRC prides itself on making sound regulatory decisions and there could be staff concerns with the "being wrong" or undermining previous decisionmakers. Further, an employee can use the DPO Program if they are not satisfied with the outcome of the NCP, thereby increasing the potential for additional emotional energy from previous interactions. Recognizing and managing the dynamics and psychology associated with implementation of the DPO Program will be necessary to support continuous improvement.

To foster sustained employee engagement that supports achieving the NRC's 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 NRC 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 DPO Program.

Feedback from employees identified multiple themes about management support, or lack thereof, of the DPO Program, including concerns of credibility, honesty, and lack of

independence. For example, several employees commented that they thought management was just going through the motions. Many employees commented that they thought the process was biased because the process challenged an existing position and the decisionmaking stayed within the same organization. Many employees recommended that the process would be more credible if it was more independent like an ECP or overseen by an Ombudsman.

Data from the SCCS indicates that the majority of employees (59 percent) believe senior management supports the DPO Program (32 percent don't have an opinion and 9 percent responded unfavorably).

The results of the targeted DPO Program survey indicate that although 74 percent of the DPO Panel members surveyed believe that their management would be supportive if they submitted a DPO, only 44 percent of submitters believe that their management would be supportive if they submitted a DPO. Data from the targeted survey reflects an employee perception that management may encourage the use of the DPO Program in support of the NRC's values, but there is a negative stigma associated with using it. 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 DPO Program, noting that it contributes the necessary authority, adds credibility to the initiative, recognizes the DPO Program as a priority, dedicates resources to the initiative, normalizes use of the DPO Program by encouraging it, and encourages a dialogue about the topic.

### **B. Guidance, Implementation Tools, and Process Support**

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

Previous reviews identified that the current guidance in MD 10.159 and the DPO Forms (NRC Forms 680 and 690) was not always clear, consistent, or complete. For example, the timeliness goal for the DPO Panel report is not clear. In one section of the MD it states that the DPO Panel should normally take no more than 30 days after meeting with the submitter to issue the DPO report. Another section of the MD indicates that the DPO Panel has 30 days to write the report from clarification of issues. Although NRC contractors can submit a DPO, the guidance is not currently included in MD 10.159. Specific guidance for handling DPOs raised by NRC contractors is provided in a contract clause in the NRC Acquisition Regulations (NRCAR), and addressed in

MD 11.1. After MD 10.159 was revised in 2004, the staff worked with the Office of Administration (ADM) and the Office of the General Counsel (OGC) to ensure that the NRCAR clause was consistent with the goals and objectives identified in MD 10.159. A temporary contract clause was successfully developed to ensure consistency and minimize the need for conforming revisions to MD 10.159 (e.g., revised timeliness goals). The current, proposed revision of MD 10.159 includes guidance for NRC contractor DPOs.

Based on a review of additional NRC records, several procedures were not always consistent with the guidance included in the MD. In other cases, procedures merely duplicated guidance in the MD. The existence of multiple DPO guidance documents can lead to different expectations, misunderstood responsibilities, and inconsistent implementation. It can also result in employee and management frustration and increased negative perceptions about the DPO Program. Although offices are not precluded from establishing internal implementing procedures and guidance can be addressed in more than one MD, relying on the guidance in MD 10.159 would ensure that all employees are implementing consistent, controlling NRC guidance and would eliminate the need to review and update lower tiered office instructions and other MDs when guidance in MD 10.159 is revised.

Although MD 10.159 includes guidance and expectations for activities and deliverables, feedback from employees participating in the process identified the need for additional detailed implementation guidance beyond the type of guidance normally included in a MD. Additional guidance and tools have been developed and refined over the years to aid the staff in implementing the DPO process, such as templates for DPO correspondence and handling strategies and instructions for DPO records. In addition, because employees may not be familiar with process, the DPO PM has routinely been available to support participants throughout the process. Over the years, feedback from DPO submitters, panel members, and decisionmakers has been positive on the DPO PM's support.

Feedback from employees over the years covered a range of issues, including applicability of the DPO Program, scope of the DPO review, independence and knowledge of the DPO Panel, clarity of the DPO Decision, timeliness of the DPO process, the process of requiring extension requests, record handling, and management accountability.

For example, many employees do not understand that the DPO Program applies to administrative and corporate support issues. There was also confusion about which issues do not qualify for review under the DPO Program, including issues that are currently under staff review, those under evaluation through other NRC processes, and issues outside the NRC's jurisdiction. Several employees commented that issues were raised during the process that went beyond the scope of the submitted DPO. Concerns were raised by some employees that

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the DPO Panel was not sufficiently independent or knowledgeable. Some employees recommended that the DPO Panel not be established by the DPO decisionmaker.

Several submitters commented that the evaluation of his or her DPO and the rationale for the final NRC position was not responsive or well-articulated. (This is consistent with the results of the targeted survey that indicate that 67 percent of submitters thought the rationale for the decision was clearly articulated, while 33 percent of responding submitters did not. It is also 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.)

There was also confusion on the availability of DPO records once the process was complete. Some interpreted the guidance as giving the DPO submitter too much authority for the decision on public release of the DPO Case File. Many confused the concept of discretionary release with the requirements under the Freedom of Information Act. In addition, notwithstanding requisite training, several employees commented that his or her office OCWE Champion<sup>4</sup> 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.

As previously noted, timeliness has been a recurring theme. A review of all closed DPO cases found that none of the 24 completed DPO cases or 10 closed appeals was completed in accordance with the timeliness expectations in MD10.159. Appendix F includes specific data on the timeliness for decisions on DPOs and DPO appeals. MD 10.159 states, "All routine DPO cases are expected to be completed within 60 days of acceptance of the issue as a DPO, and all complex cases within 120 days." The guidance does not explain the distinction between "routine" and "complex" and does not indicate whether the timeframe is in calendar days or working days. MD 10.159 provides that a decision on an appeal be rendered "normally within 30 calendar days of receipt of the DPO appeal" and "should not exceed 60 calendar days." The issue of timeliness has been raised in previous reviews and identified the following contributing factors: (1) lack of complete timeliness guidance, (2) subject matter complexity, (3) competing work assignments, (4) scheduling conflicts of DPO participants, (5) issue expansion during the process, and (6) little perceived consequence to exceeding timeframes at an NRC level.

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<sup>4</sup> 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.

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Experience has shown that most issues pursued through the DPO process are not simple, straightforward issues. They are technically challenging, complex, and often controversial. (Appendix G includes summaries for all closed DPO cases.) Furthermore, while several DPOs have focused on discrete issues or events, others have focused on broader issues, some with precedent-setting implications. The DPO process recognizes that some DPOs may be so specialized and complex that it may be necessary to seek a person outside the NRC to serve as a consultant to the DPO Panel in order to provide independence and credibility. The process of contracting services in and of itself can be a time-consuming issue. The 787-day review for one of the DPOs (DPO-2005-002) is an outlier that reflects the extra time for using contractor assistance to support the DPO Panel review.

Scheduling conflicts of DPO participants can also contribute to timeliness. The DPO process relies on specific employees to fulfill key activities (e.g., perform the DPO Panel review, issue the DPO Decision, and possibly render a final DPO Appeal Decision). Unlike other duties, individuals cannot delegate their DPO responsibilities to other employees. As a result, individual scheduling conflicts (both professional and personal) can contribute to the timeliness. Scheduling issues should be considered when DPO Panel members are selected. However, it is recognized that some scheduling issues are unpredictable and unavoidable. Office directors and regional administrators (DPO decisionmakers) are routinely challenged in managing their schedules to meet the needs of the NRC. The timeliness of the DPO appeal process is affected because the EDO may meet with the DPO Panel or a DPO submitter before rendering a decision on a DPO appeal.

Timeliness goals must be recognized as *goals* rather than hard dates. Flexibility is crucial to the success of the process. The DPO Program should not result in a schedule-driven process that fails to recognize the safety significance and complexity of the issues. Similarly, the DPO Program should recognize the priority of other work in the NRC. The DPO Program should emphasize that DPOs should be dispositioned in a *timely* manner that factors in a number of circumstances, including 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 in the NRC and affecting the availability of DPO participants. OE considered recommending increasing the timeliness goals for the DPO and DPO appeal processes, but concluded that doing so could result in a perception that the DPO Program is not important. Instead, the staff believes it is appropriate to emphasize that timeframes for completing process milestones are identified strictly as *goals*—a way of working towards reaching the overall DPO timeliness goal of 120 calendar days. In addition, the staff is proposing adjustments to some process milestones, such as increasing the timeliness to establish a DPO Panel from 8 calendar days to 14 calendar days and the timeliness for issuing a DPO Decision from 10 calendar days to 21 calendar days. To reflect the importance of and management commitment to the DPO Program, all extensions

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beyond 120 calendar days must be approved by the EDO. Appendix H includes proposed milestones and timeliness goals for the DPO and DPO appeal processes.

Based on a review of DPO cases and records, several DPO Case Files were not properly included in ADAMS. This stems, in part, from record keeping issues associated with the existing guidance and resource issues associated with correcting it. For example, the existing guidance provides that records not be included in ADAMS until the process is closed. As previously noted, DPOs can take substantial time to complete. Failure to include documents in ADAMS and declare them as official NRC records when they are issued can lead to recordkeeping errors. In addition, several cases were not posted on the internal Web site because DPO Case Files had not been reviewed for discretionary release. Currently, there is no timeliness goal for offices to perform releasability reviews.

Feedback from offices and employees on the proposed revision of MD 10.159 in 2011 were factored into the proposed revision issued for comment on August 13, 2014. Sixteen offices responded to OE's request with over 200 comments. Six offices had no comments, favorable comments, or minimal comments, and two offices had the majority of comments. Two offices raised concerns on the timeliness goal, with one of the offices recommending that the 120 day goal be eliminated and replaced with a case specific goal. Several offices recommended clarification on what constitutes an established position and how to address issues pending before the Commission. All office comments (including resolution) will be documented and addressed in accordance with ADM's MD revision guidance and forwarded to the OEDO. OE also received comments from the National Treasury Employees Union and approximately 35 comments from employees. Several employees commented that the process should be more independent. For example, several employees recommended that the DPO Panel not be selected by the DPO decisionmaker. Another employee commented that having oversight in OE was a conflict of interest because the OE office director would be the DPO decisionmaker in certain enforcement-related DPO submittals.

The targeted survey specifically asked DPO submitters, panel members, and decisionmakers what changes they would make to improve the DPO Program. Several submitters and panel members indicated that the process is fine and that improvement could be made by focusing on other issues, such as training, accountability, and culture. Issues raised by submitters and participants were similar to issues previously identified through employee feedback, including clarifying who can use it, and timeliness expectations. One submitter recommended that the DPO Panel be established by an independent person, rather than the DPO decisionmaker. Several DPO Panel members raised the issue of independence, and recommended solutions such as having another office address the concern or having an independent individual review the issue as a required step prior to submitting a DPO. Several submitters commented that

followup actions were not timely and that management was not held accountable for completing commitments identified by the DPO decisionmaker. One DPO decisionmaker suggested that the DPO Program be reserved for technical issues, rather than regulatory compliance or process issues.

Results from the BPI study included several recommendations to improve the guidance in MD 10.159 and the DPO Forms. The study also recommended developing additional implementation tools, such as a process map and sample deliverables and emphasized the use of “plain language” in the DPO submittal, the DPO Panel report, and the DPO Decision.

Benchmarking activities also identified that policies and procedures for the DPO Program 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 91 percent of employees are aware of the DPO Program, data from other sources indicates that employees do not always understand the process, including its purpose and the roles and responsibilities of employees and managers when engaging in the DPO Program. This is consistent with the infrequent use of the process.

Previous reviews of the DPO Program identified the merits of appropriate awareness and training, especially for new employees and new supervisors. As previously indicated, many employees do not understand that the DPO Program applies to administrative and corporate support issues as well as technical, legal, and policy issues. In addition, many employees do not understand that the DPO Program is intended to address concerns on established staff positions. There is also a perception that the DPO Program can only be used for “significant” safety issues. Many employees do not understand that they can use the DPO Program if they are not satisfied with the outcome of the NCP. 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 DPO. Most employees are not aware that summaries of closed cases can be found on the NRC’s public Web site (as part of the [Weekly Information Report](#)) and that DPO Case Files are available on the internal Web site.

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. 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 DPO Program training be available.

Benchmarking activities also identified that training on the DPO Program 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 DPO Program if they need it.

DPO Program training is not currently required for staff or supervisors. The DPO Program is briefly addressed as part of an Individual Study Activity in the Inspector Qualification Program. It is also briefly addressed in the online course “NRC: An NRC Overview,” that OCHCO is currently developing.

### **D. Concerns of Potential Negative Consequences**

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

Feedback from some employees who have submitted DPOs includes 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 DPO. In particular, 22 percent of respondents (two employees) believed that they were relocated or reassigned to a different job, 22 percent (two employees) felt they were excluded from work activities, and 11 percent (one employee) believed that their performance evaluations were adversely affected. These results are more positive than comparable results from the NCP Assessment. This may be attributed to the fact that the DPO Program includes an independent review and engagement by the highest levels of management (i.e., office directors, regional administrators, and the EDO (or the Commission for those offices reporting to the Commission)). Conversely, the NCP typically includes engagement, evaluation, and resolution with the employee’s immediate supervisor, and the immediate supervisor has direct impact on the employee’s work activities, training

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opportunities, and performance evaluation. Complete results are included on page 11 in Appendix C.

Notwithstanding the survey results indicating that several of the responding 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, OE 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 DPO Program.

Data from the SCCS shows that almost half of employees (46 percent) are uncertain about whether the DPO Program will have a negative effect on career development at the NRC. The large number likely reflects the infrequent use of the DPO Program and represents an opportunity to garner support for the DPO Program through leadership commitment, training, and outreach. Thirty-six percent of employees do not believe that the DPO Program will have a negative effect on career development at the NRC and 18 percent of employees who responded believe it will have a negative effect on career development. Sixty-one percent of employees believe that the NRC 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 A.)

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

- Ensure employees are aware of, understand and can easily follow complaint processes.
- 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 DPO 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 NRC's safety culture, questions in the SCCS, and the value and importance of effective communication.

#### **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, employees have commented they felt pressure to meet schedules at the expense of safety. 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 DPO Program 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., 34 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 NRC actions.

#### **C. Communication**

Data from multiple sources indicates the need for continued focus on the value and importance of effective communication. Employee feedback from implementation of the process and revision of the DPO Program guidance suggests the merits of developing additional guidance on informal discussions during the deliberative decisionmaking process. Several DPO submitters

and panel members from the targeted survey commented that more effective communications during the decisionmaking process (e.g., listening, clarifying, verifying) might have negated the need for the DPO. Although offices may have guidance and best practices for effective conversations, NRC-level guidance does not exist. Cross communications can be especially challenging between offices and regions. The BPI study included a recommendation to develop communication guidelines to encourage communication consistent with the NRC's "Open and Collaborative Work Environment and NRC Values." Employee feedback also included the concern that the existing guidance doesn't effectively address who should be involved in communications and the extent of involvement (e.g., consultation, coordination, collaboration), including who should be on concurrence. One submitter commented that if they had been on concurrence they might not have needed to submit a DPO. Current NRC-level guidance on the concurrence process is limited to MD 3.57, "Correspondence Management." It may be beneficial for the NRC to modify the guidance to include additional information on who should be included on concurrence.

### **VIII. PLANNED ACTIONS**

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

#### **A. Demonstrate Leadership Commitment**

Leadership commitment is a key factor to the success of the DPO Program. OE will continue to support managers in emphasizing their personal commitment to the sharing of differing views and the value of using the DPO Program in support of sound regulatory decisionmaking. OE recognizes the benefit of management repeatedly reinforcing the acceptability of using the DPO Program through their actions as well as their words. The DPO Program will gain greater support and credibility if its use is seen as a positive way to address concerns in an NRC process rather than a weakness in resolving concerns through informal communications. Management should demonstrate this clearly and frequently through their actions and communications. OE 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." OE 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, OE will continue to support recognition initiatives that can showcase management's support for the DPO Program.

### **B. Issue Improved Guidance and Dedicate Centralized Process Support**

OE has taken and plans to take multiple actions to address the feedback on the clarity of guidance and availability of resources. As previously noted, additional guidance and tools have been developed and refined over the years to aid the staff in implementing the DPO process, such as templates for DPO correspondence and handling strategies and instructions for DPO records, including releasability review procedures. Actions are being taken to ensure that DPO Case Files are placed in ADAMS, reviewed for discretionary release, and posted on the internal Web site. In addition, because employees may not be familiar with the process, the DPO PM has routinely been available to support participants throughout the process.

OE is developing and coordinating a comprehensive revision of the DPO MD 10.159. The revision of MD 10.159 will be 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.

OE intends to create multiple implementation tools for the internal Web site, including an interactive flowchart, revised DPO and DPO Appeal Forms, Releasability Review Procedures, FAQs (Frequently Asked Questions), and a simplified Overview of the DPO Program. OE has already contacted the Office of Information Services to establish a direct link to the DPO Program Web site from the Employee Resources Web page. OE will contact offices with procedures to ensure alignment with NRC-level guidance when the DPO Program MD is issued. Additional guidance and tools have been developed and refined to aid employees and managers engaged in the DPO and the DPO appeal processes.

OE has taken actions to dedicate centralized DPO Program process support. OE has already dedicated resources for the DPO Program, including a DPO PM and a backup DPO PM. The Senior Differing Views PM currently functions as the NCP PM and the DPO PM. The DPO Program is a specialized process that includes detailed instructions and involves high-level managers. Support for implementing the DPO Program requires specialized skills. Therefore, in March 2014, OE retired the initiative for OCWE Champions to be available to support the DPO Program. The decision was made at the same time it was decided to retire the initiative for OCWE Champions to be available to support the NCP. OE concludes that centralizing process support through the DPO PM and backup DPO PM will provide necessary oversight and help ensure effective customer support for the DPO Program.

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

OE 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. OE 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 develop a diverse training strategy to ensure that timing and delivery methods are appropriate and aligned with the needs of each target audience. The training strategy is likely to be consistent with the training strategy that OE and OCHCO are currently developing for the NCP in response to the NCP Assessment. In particular, online training will be considered for the DPO program, similar to the online NCP training that exists in iLearn. OE and OCHCO will evaluate including key messages for the DPO Program into existing training for all employees and supervisory training. In addition, the DPO Program will be briefly addressed in the online course “NRC: An NRC Overview,” that OCHCO is currently developing. OE 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 DPO Program record handling requirements.

**D. Address Concerns of Potential Negative Consequences**

OE has taken and plans to take multiple actions to address the perception that engaging in the DPO Program could result in some type of negative consequence. OE 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 DPO Program. As previously noted, attitudes and behaviors can play a significant role in the successful implementation of the DPO Program. OE 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 DPO Program.

As previously noted, OE plans on evaluating the merits of infusing DPO Program key messages into existing training, including reinforcing 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 DPO Program.

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

OE also plans on hosting panel discussions including previous DPO submitters, DPO Panel members, and DPO decisionmakers to share experiences and normalize the use of the DPO Program.

OE will continue to promote DPO Program success stories through various forms of communication, such as EDO Updates, all-hands meetings, and articles in the *NRC Reporter* and office-level newsletters.

Concerns of retaliation and chilling effect for raising differing views (including engaging in the DPO Program) will be addressed in the broader assessment of the environment for raising issues due to the Commission later this year.

### **IX. APPENDICES**

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

- A. Results from the 2012 Safety Culture and Climate Survey**
- B. Results of Business Process Improvement Study**
- C. Results of Targeted Survey**
- D. Best Practices and Key Factors from Benchmarking Activities**
- E. Summary of Revisions in the DPO MD and Handbook**
- F. Timeliness of DPO Cases**
- G. Summary of Closed DPO Cases**
- H. Proposed Milestones and Timeliness Goals**

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## APPENDIX A: 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. Out of 3,755 NRC employees who received the survey, 2,981 responded (79% response rate).

The 2013 SCCS included 132 questions. Six questions were directly related to the DPO. Four additional questions were included in the categories of communication, empowerment and elevating concerns, which have a correlation to the DPO. 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 91% of employees are aware of the DPO. This represents an increase of 8% from 2006 and 6% from 2009.

Sixty-nine percent of staff would be willing to use the DPO in appropriate circumstances as compared to 70% in 2009.

Fifty-two percent of employees believe that the DPO is effective, which represents a slight decrease of 2% from 2009.

Thirty-six percent of employees believe that use of the DPO does not have a negative effect on career development at the NRC, which represents a statistically significant improvement of 9% from 2005.

In response to a new question that was included in the 2012 survey, 59% of employees believe that management supports the DPO.

It is important to note that a high percentage of employees (34%) don't have an opinion on the effectiveness of the DPO and 48% don't know whether or not the process functions properly. Thirty-two percent don't have an opinion about management's support of the DPO and 46% don't know if using the DPO has a negative impact on career development. These figures reflect that few employees have first-hand experience with the process (the process is only used around three times per year).

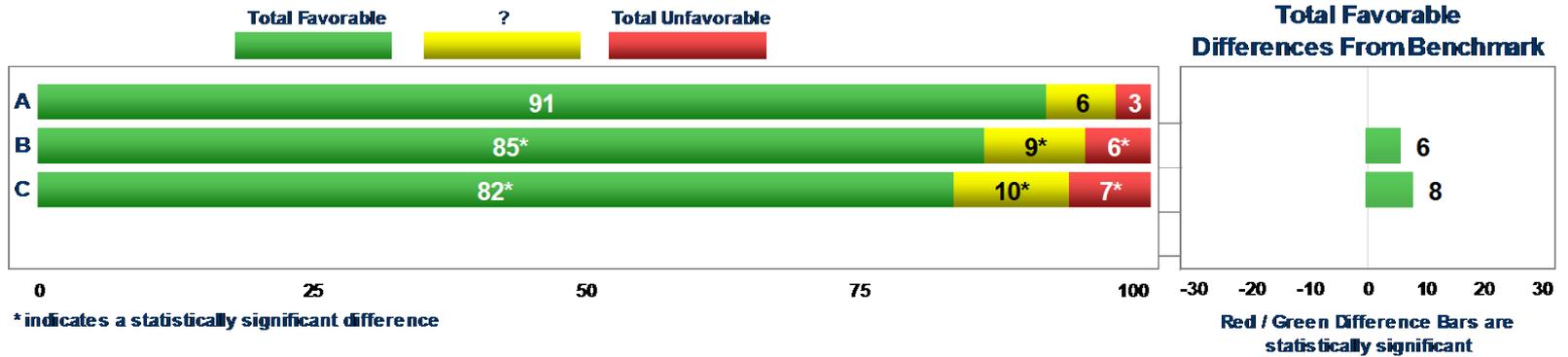
# DPO/Non-Concurrence Items

NRC OVERALL (N=2,981)

vs. 2 Benchmarks

## Category 5: DPO/Non-Concurrence

17b. I am aware of the following methods to raise a concern: The Differing Professional Opinions [DPO] Process



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

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

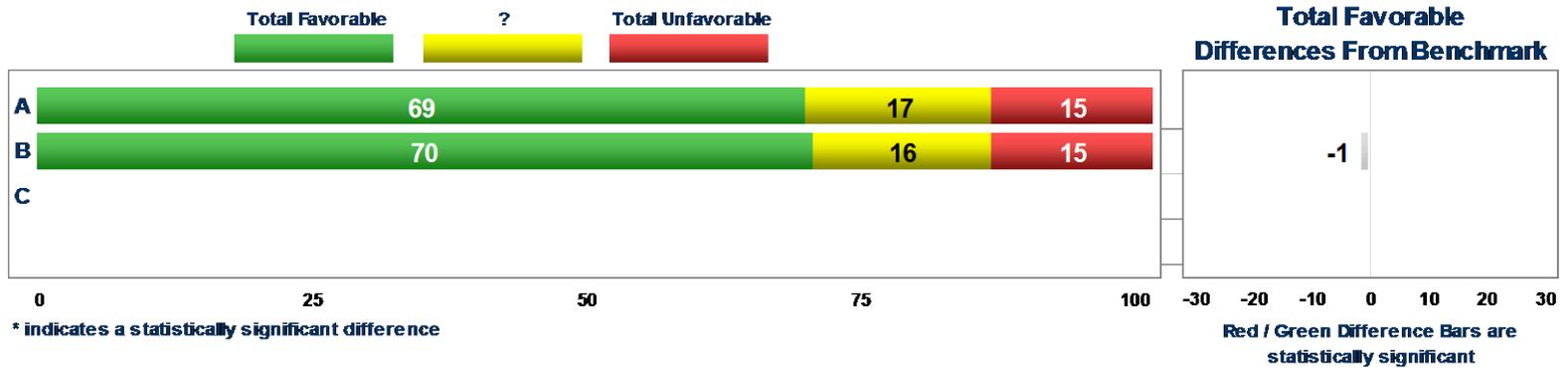
# DPO/Non-Concurrence Items

NRC OVERALL (N=2,981)

vs. 2 Benchmarks

## Category 5: DPO/Non-Concurrence

71. I think I would be willing to use the Differing Professional Opinions [DPO] Program in appropriate circumstances.



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

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

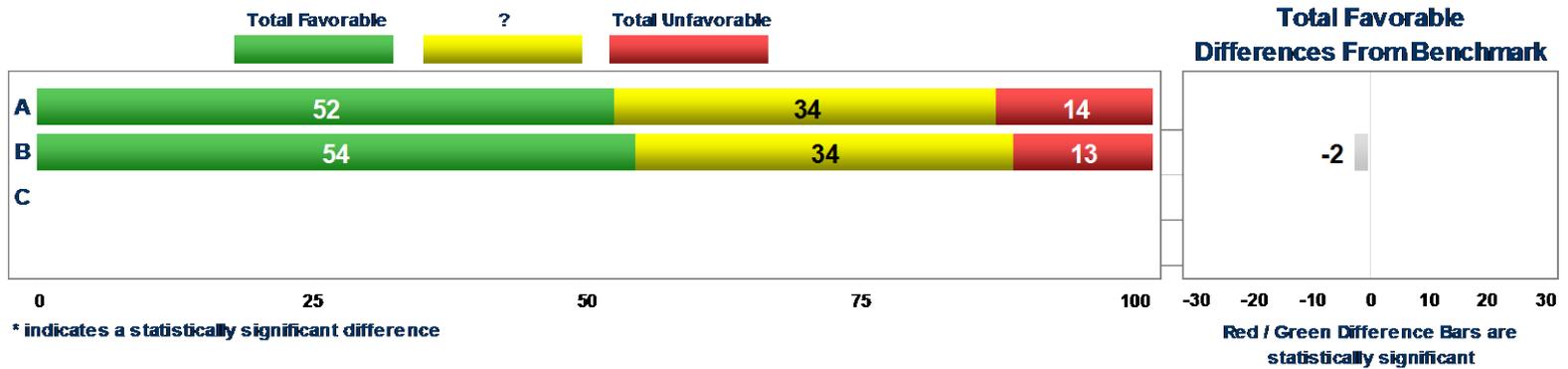
# DPO/Non-Concurrence Items

NRC OVERALL (N=2,981)

vs. 2 Benchmarks

## Category 5: DPO/Non-Concurrence

65. From what I know or have heard, the Differing Professional Opinions [DPO] Program is effective.



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

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

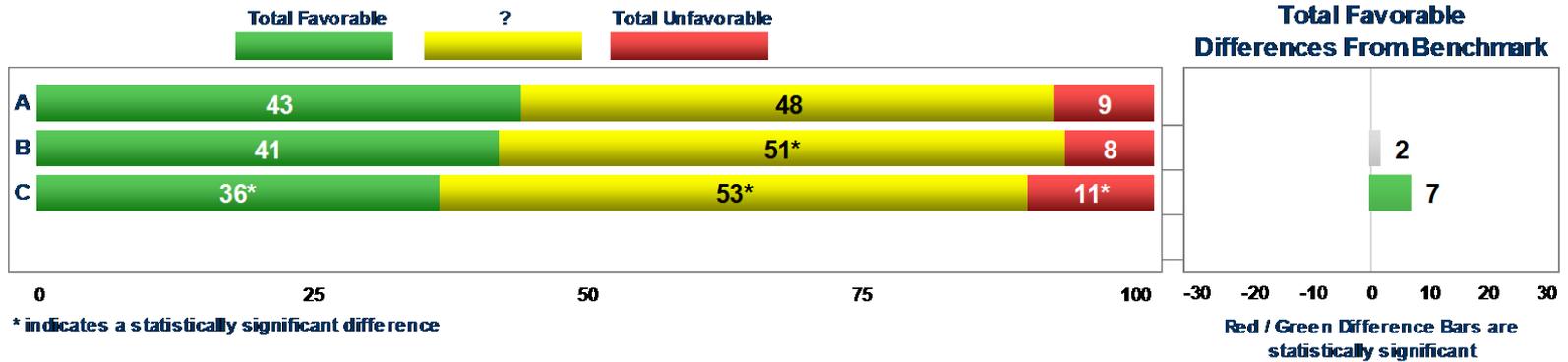
# DPO/Non-Concurrence Items

NRC OVERALL (N=2,981)

vs. 2 Benchmarks

## Category 5: DPO/Non-Concurrence

73a. Regarding the Differing Professional Opinions [DPO] Program: It functions properly



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

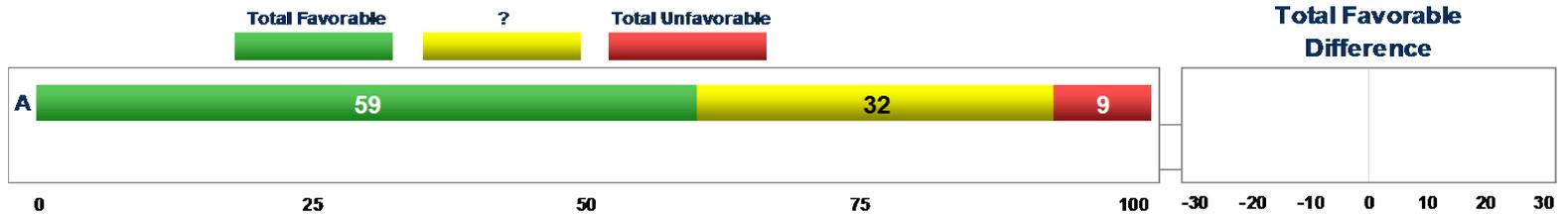
C. NRC OVERALL 2005 (N=2,269)

# DPO/Non-Concurrence Items

NRC OVERALL (N=2,981)

## Category 5: DPO/Non-Concurrence

73c. Regarding the Differing Professional Opinions [DPO] Program: Senior management supports it



A. NRC OVERALL (N=2,981)

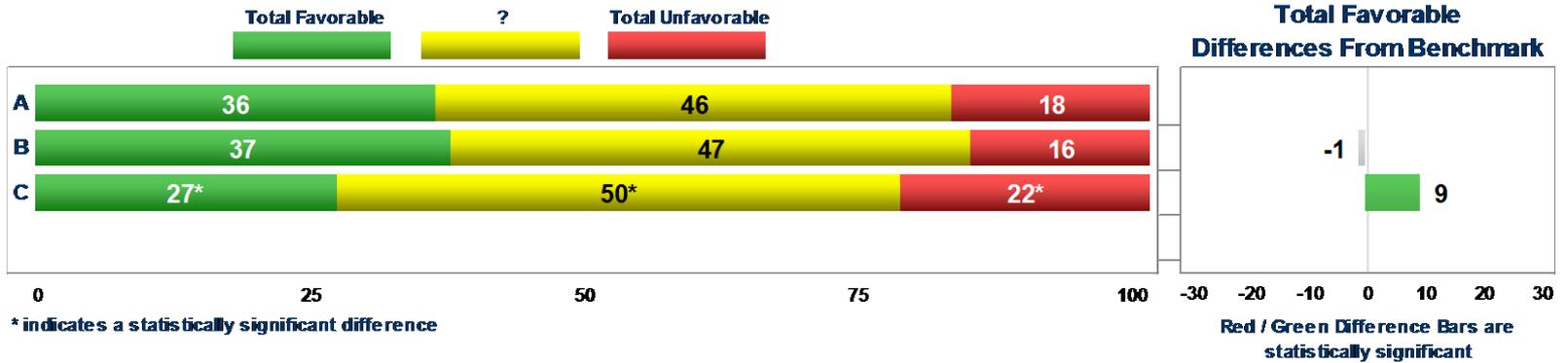
# DPO/Non-Concurrence Items

NRC OVERALL (N=2,981)

vs. 2 Benchmarks

## Category 5: DPO/Non-Concurrence

73b. Regarding the Differing Professional Opinions [DPO] Program It has no negative effect on career development at the NRC



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

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

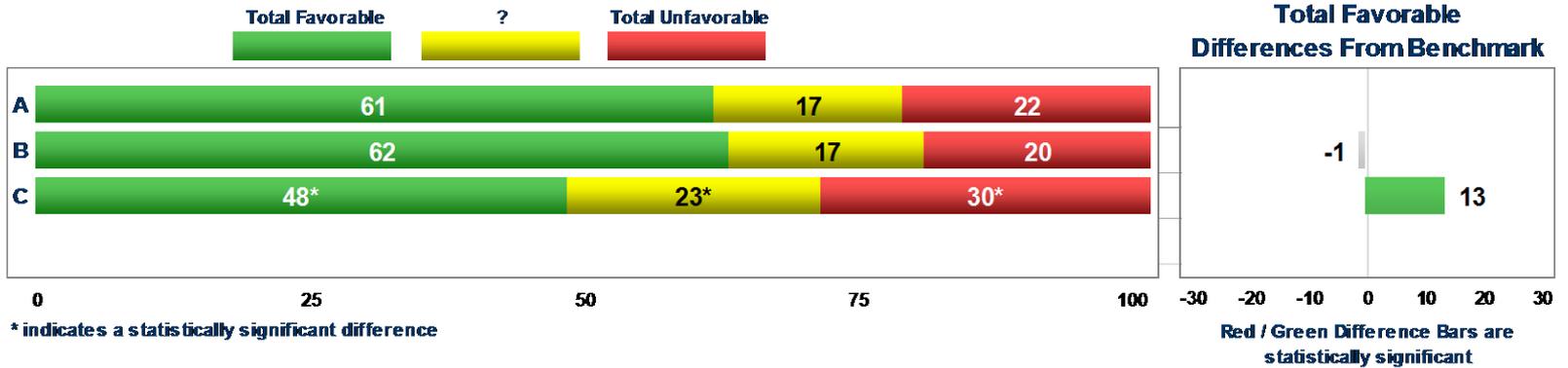
# Empowerment Items

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.



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

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

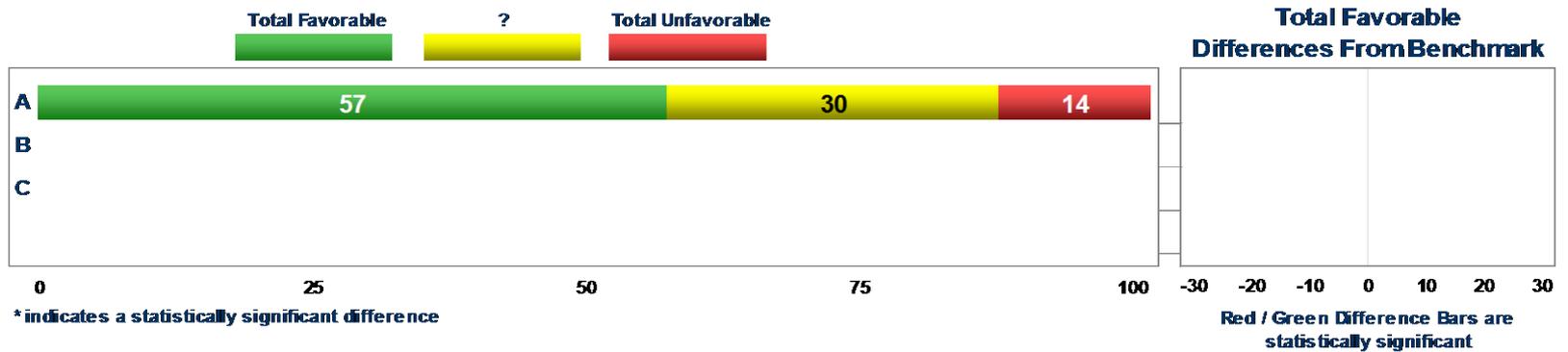
# Elevating Concerns Items

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.



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

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

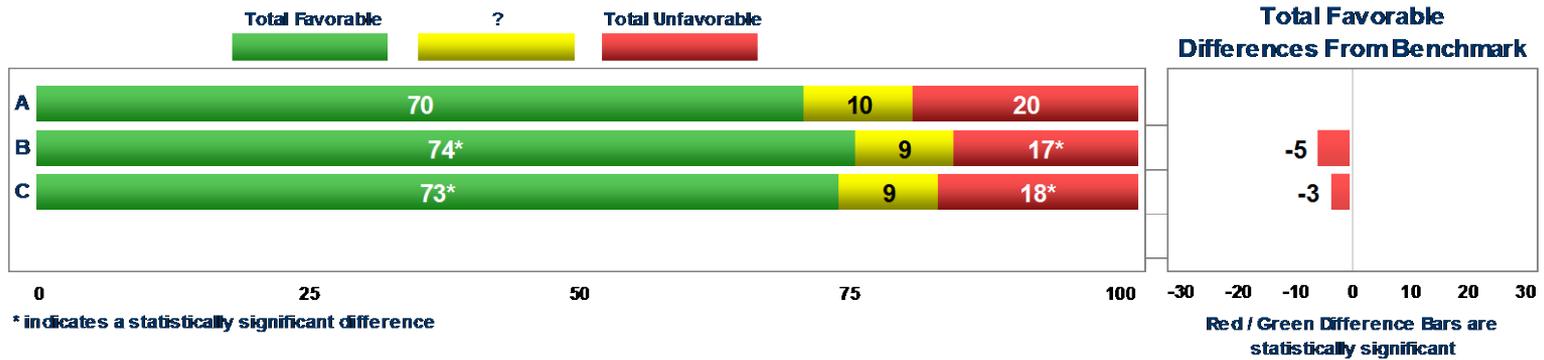
# Empowerment Items

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.



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

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

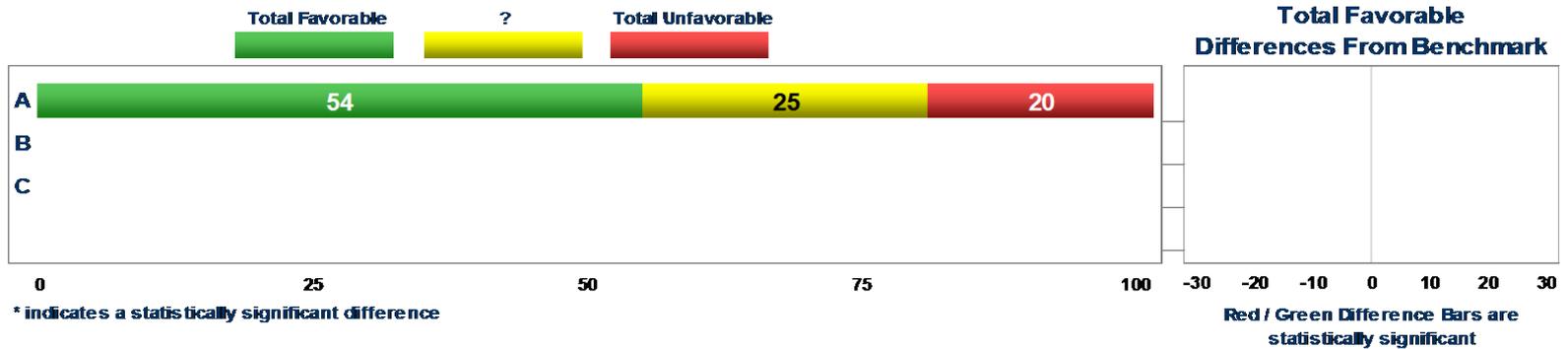
# Communication Items

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.



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

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

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**APPENDIX B: Business Process Improvement (BPI) Study Recommendations**

The BPI study on the DPO Program included data from DPO related documentation, closed DPO case files, interviews with 15 DPO participants and the internal NRC DPO Web site. As a result of their research, the BPI team proposed the following 14 recommendations.

	<b>Business Process Improvement Recommendations</b>
<b>Guidance</b>	
1. Develop a process map with a “swim-lane” for each role, include each step of the process, and make the map readily available to all DPO participants.	
2. Increase awareness of and real-time access to guidance, templates, and examples of deliverables by creating a SharePoint site.	
3. Improve the clarity and quality of DPO submissions by developing and providing detailed guidance to the DPO submitter on how to write the DPO in plain language so that the DPO clearly, concisely, and completely states the issue.	
4. Review and revise inconsistencies between the Management Directive 10.159 and the Handbook and resolve the chronological sequence of the process steps and instructions in the Handbook.	
5. Revise the instructions on Form 680 to reflect the process in the draft Handbook.	
6. Improve the Panel reports by emphasizing the use of “plain language” writing techniques to the panel members to ensure that their decision is clearly stated.	
7. Offer an orientation session to the panel participants to review their responsibilities and to increase their awareness and location of information resources, e.g., templates, and sample deliverables.	
8. Maintain the integrity of the independent and impartial DPO Panel report by having the OD or RA provide a written request for additional information or to ask clarifying questions to the DPO Panel, rather than returning the DPO Panel’s report to the DPO Panel for revision.	

***Communications During the DPO Process***

9. Consider revising Management Directive 10.159 and the Handbook to suggest that the DPO panel meet with the DPO submitter to develop the summary of issues (SOI), especially for complex cases, instead of emailing them to the DPO submitter for his/her comments.

10. Consider revising Management Directive 10.159 to suggest the OD or RA to meet one-on-one with the DPO submitter to deliver the final decision on the DPO.

11. Improve follow up action(s) status updates to the DPO submitter.

12. Develop communication guidelines to encourage communication consistent with the NRC's "Open and Collaborative Work Environment and NRC Values."

***DPO Scope and Resource Management***

13. Improve collaboration between the OD or RA and the DPOPM when identifying the scope and determining resources necessary to review the DPO by having the OD or RA consult with the DPOPM to provide information and advice on ways management can address resource issues earlier in the process.

14. Develop a SharePoint site that panel members could use to manage and collaborate during the DPO panel review process.

### APPENDIX C: Results of Targeted Survey

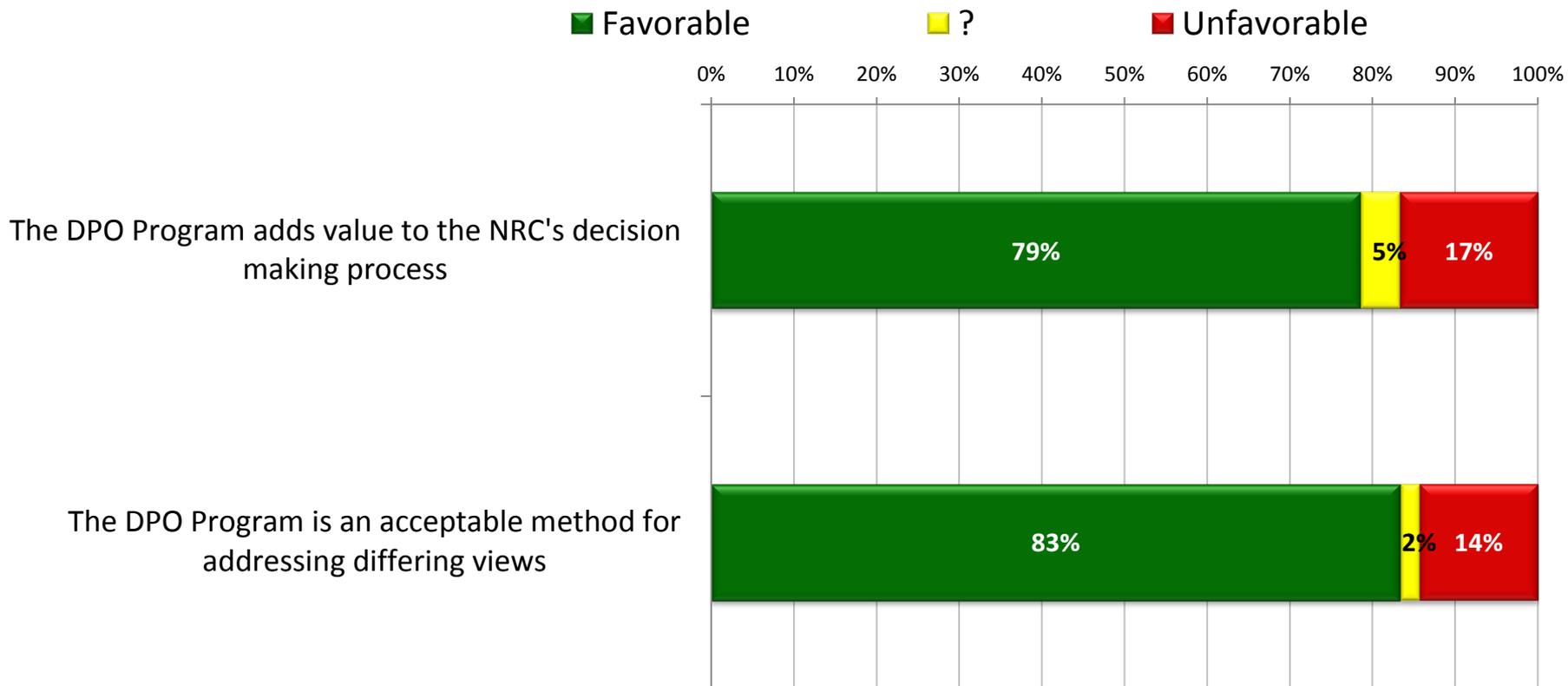
In October of 2013, the Office of Enforcement conducted 3 targeted surveys issued to previous differing profession opinion submitters, panel members, and decision makers. The anonymous feedback provided focused insight on multiple issues such as (1) effectiveness of the process, (2) timeliness of the process, (3) management support for the process, and (4) results of participating in the process (positive and negative).

The survey was issued to 12 submitters and 9 responded (75%). Forty-seven panel members received the survey and 31 responded (66%). Seven office managers (DPO decisionmakers) received the survey and 3 responded (43%). Collectively, 66 surveys were issued with a combined return rate of 65%.

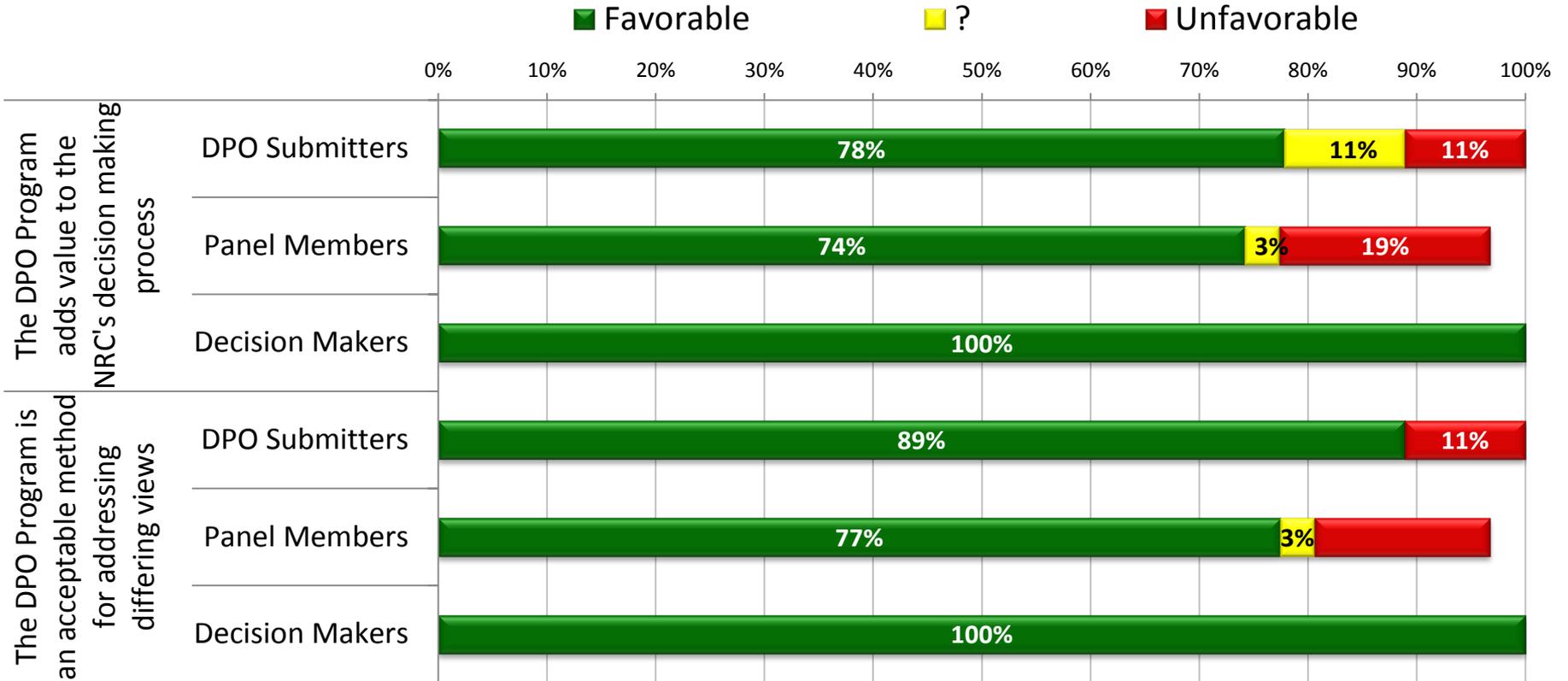
The displays of data in these charts highlight the Favorable, Unfavorable or “I don’t know” responses to each question asked of the differing profession opinion participants. Percent Favorable scores are identified in **green**, Unfavorable scores are **red** and “I don’t know” responses are **yellow**.

The results of the DPO Targeted Survey indicate that the majority of respondents feel that the DPO Program adds value to the decisionmaking process (79%) and the majority of respondents (62%) would use the DPO in the future. The data indicated that the overwhelming majority of submitters believed that the DPO Panel performed a timely, credible report (89%) and that they were heard and understood by management before a final decision was made (100%). Notwithstanding these positive results, the data indicated that a third of submitters believed that the rationale for the final decision was not clearly documented (67%) and some believed that they experienced negative consequences as a result of submitting a DPO.

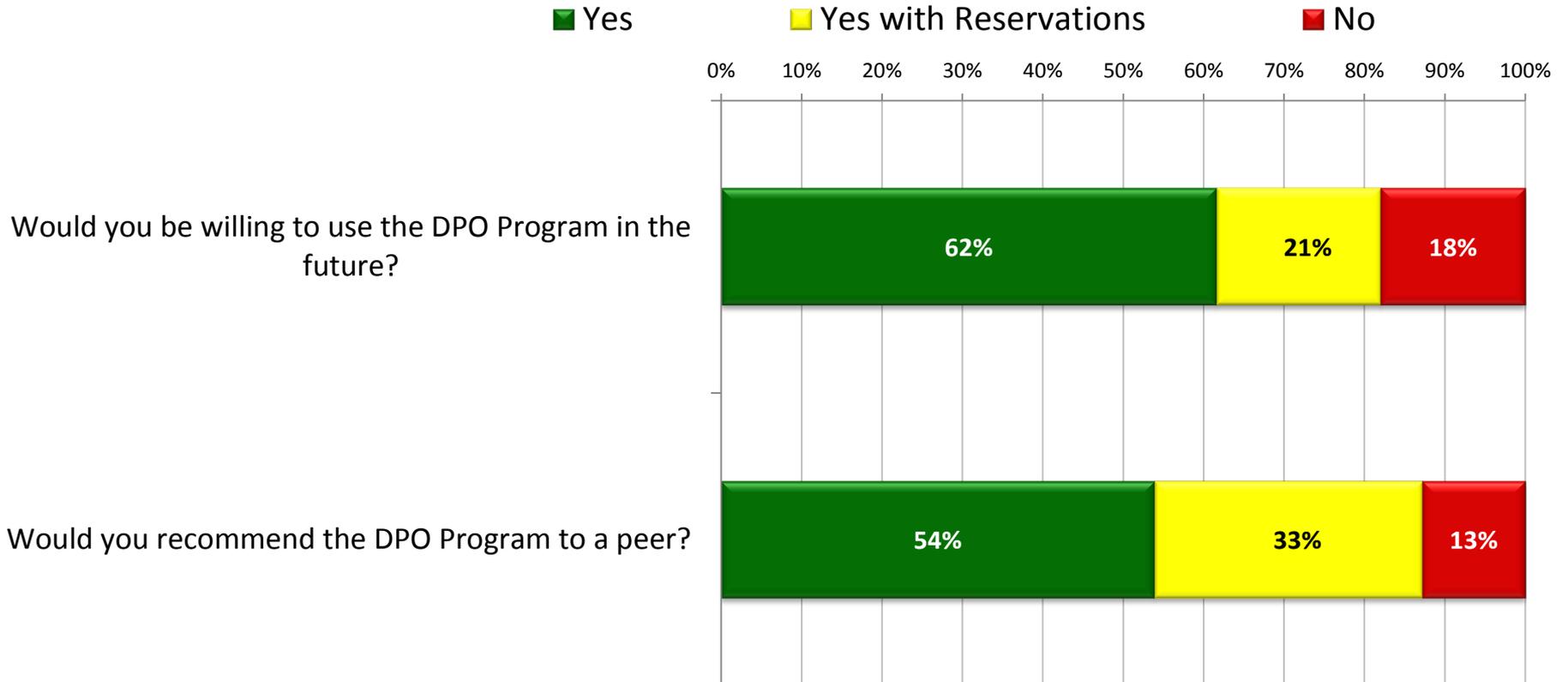
## DPO Feedback Survey: Composite Results



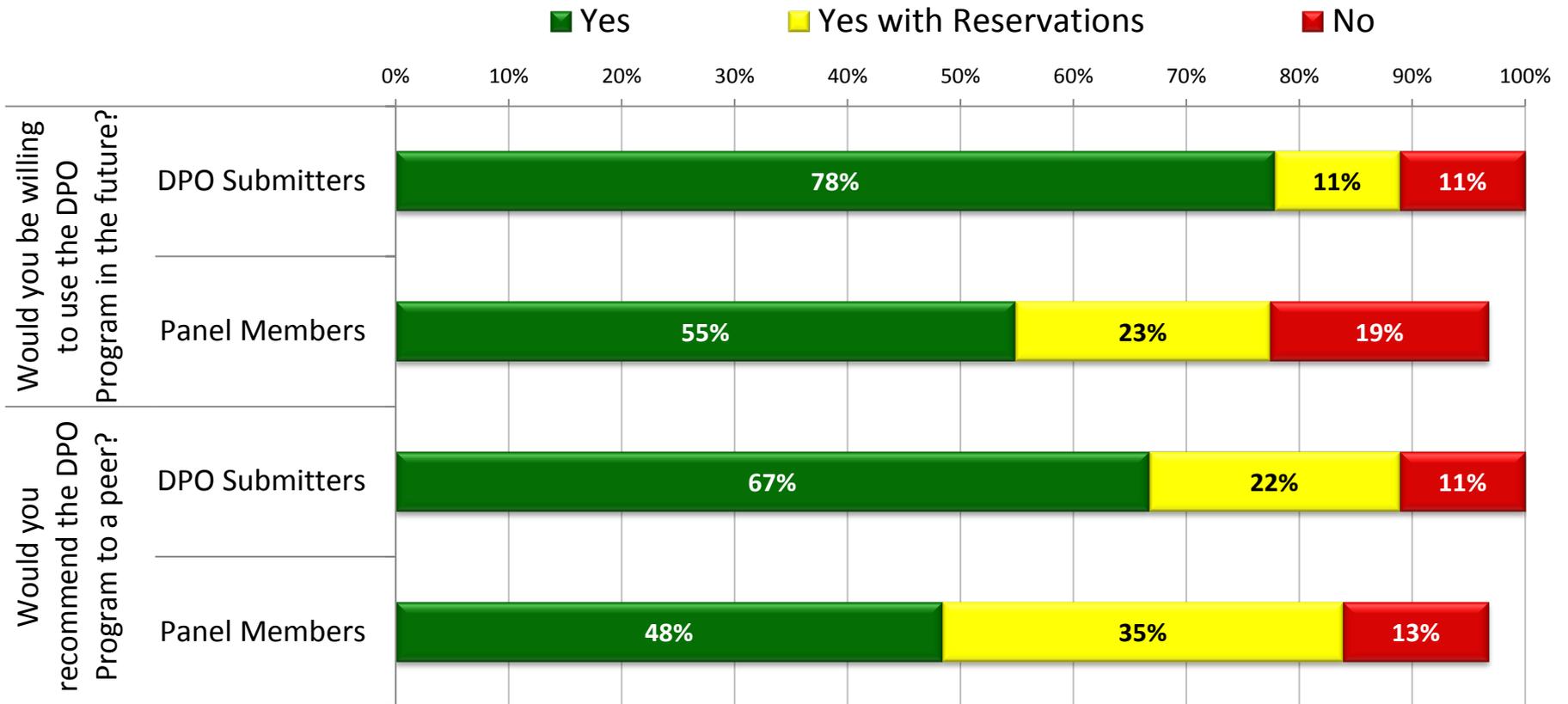
## DPO Feedback Survey: Results Comparison



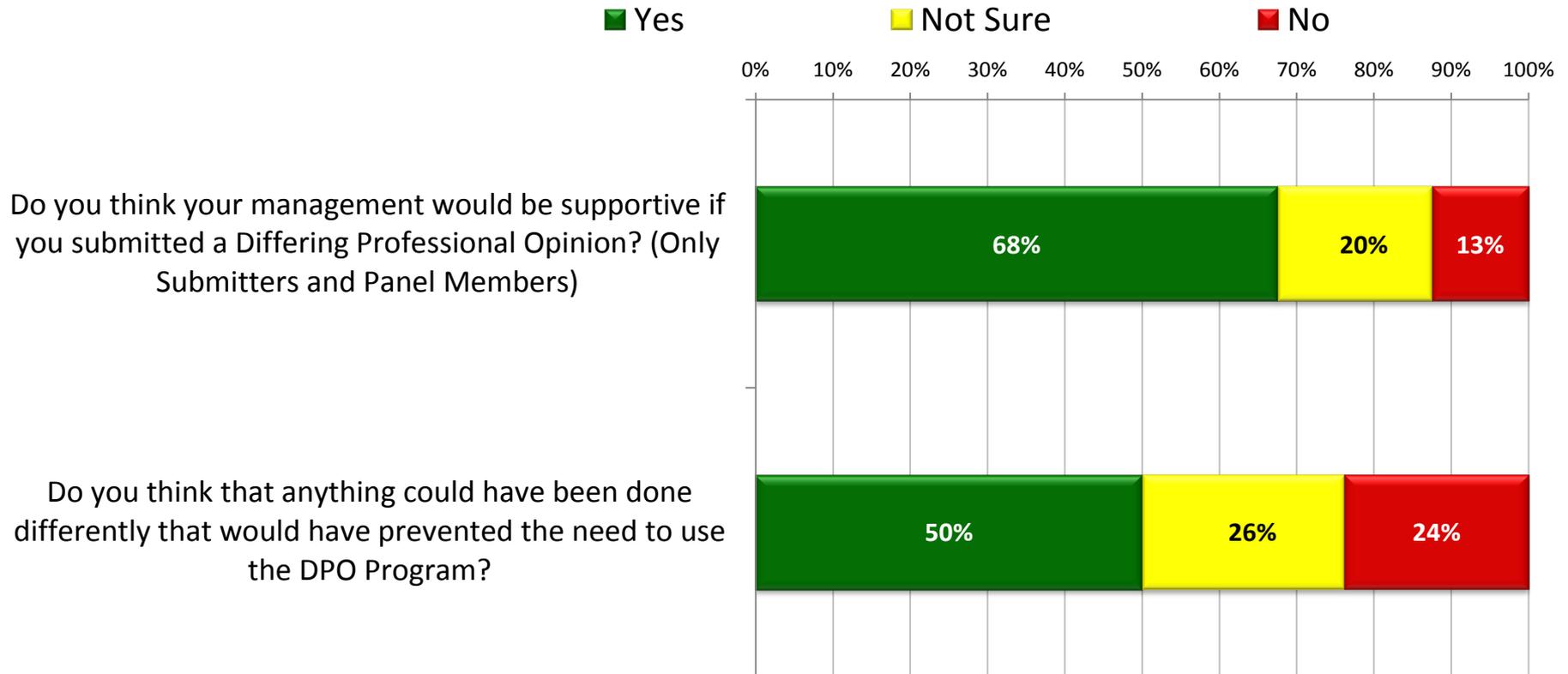
## DPO Feedback Survey: Composite Results



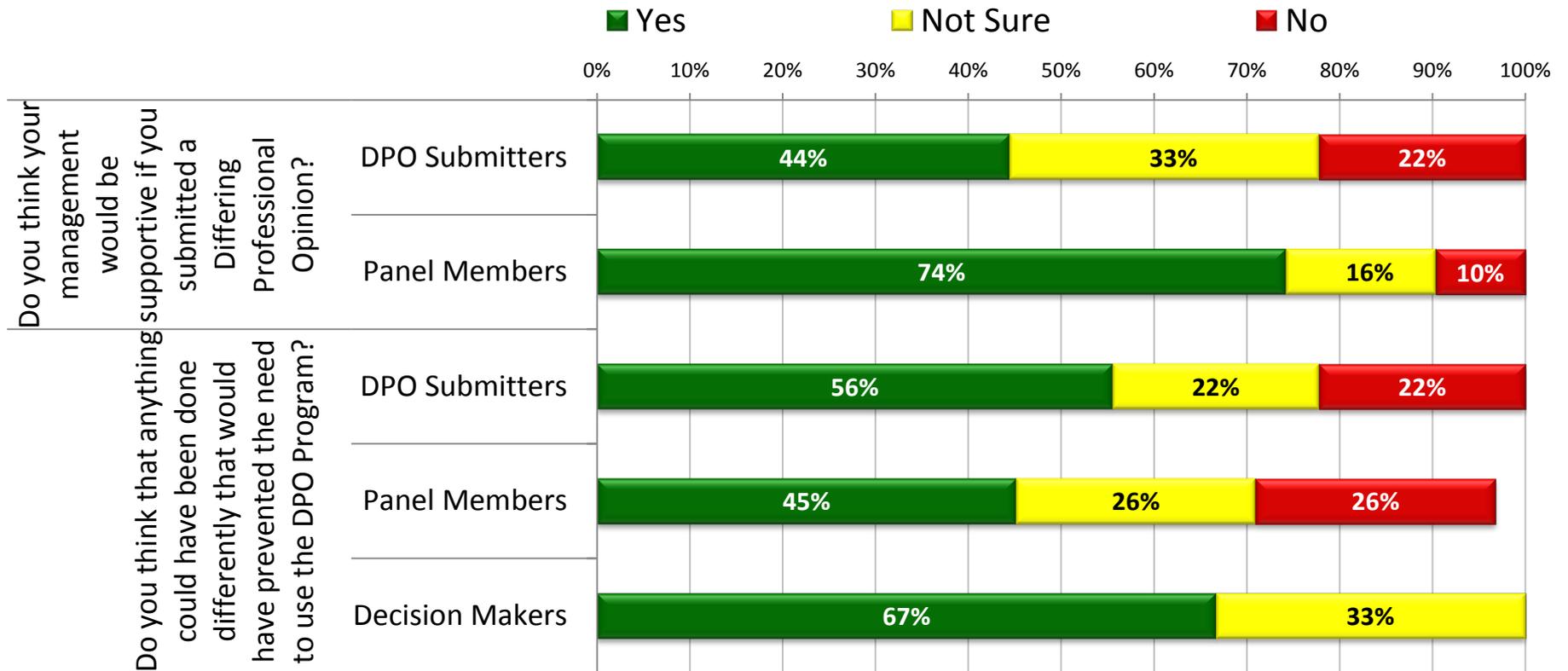
## DPO Feedback Survey: Results Comparison



## DPO Feedback Survey: Composite Results

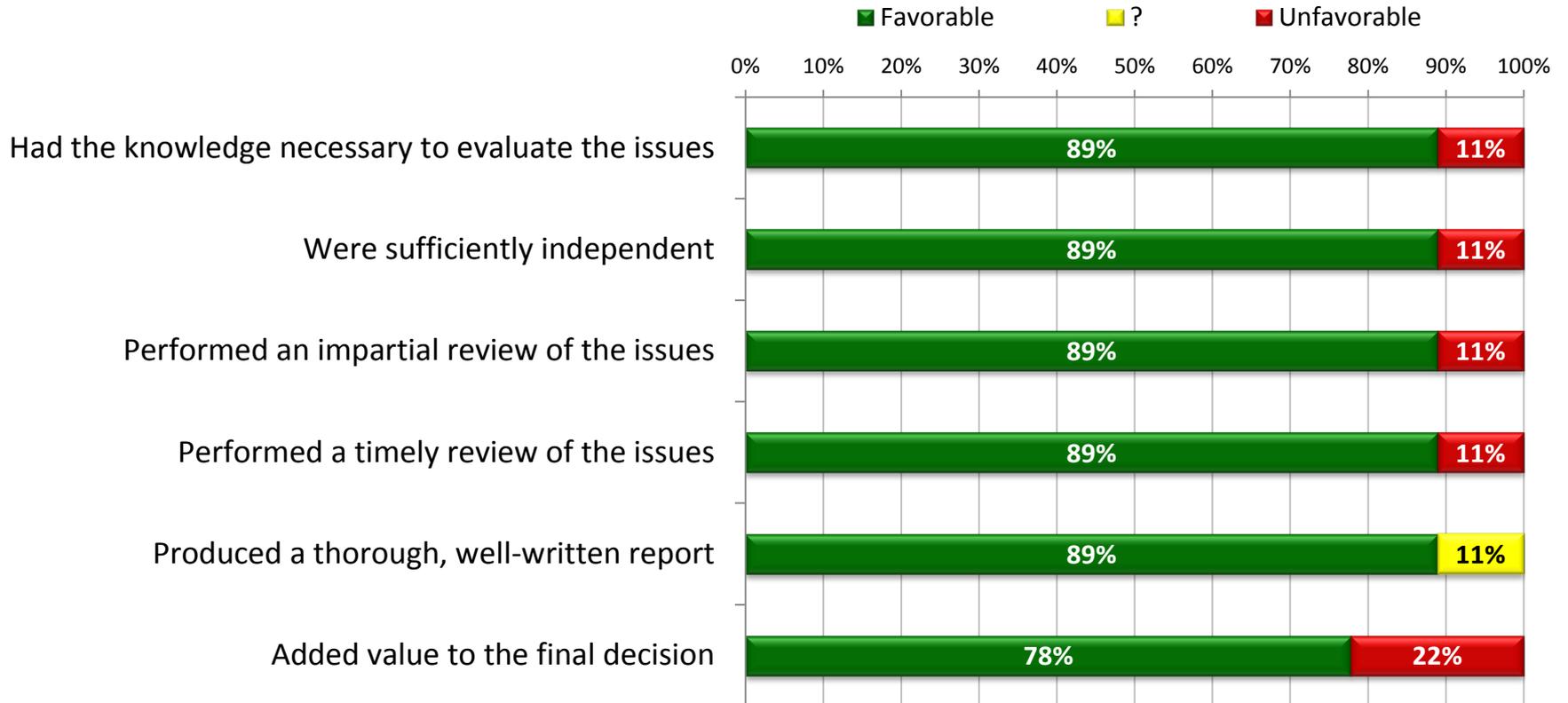


## DPO Feedback Survey: Results Comparison



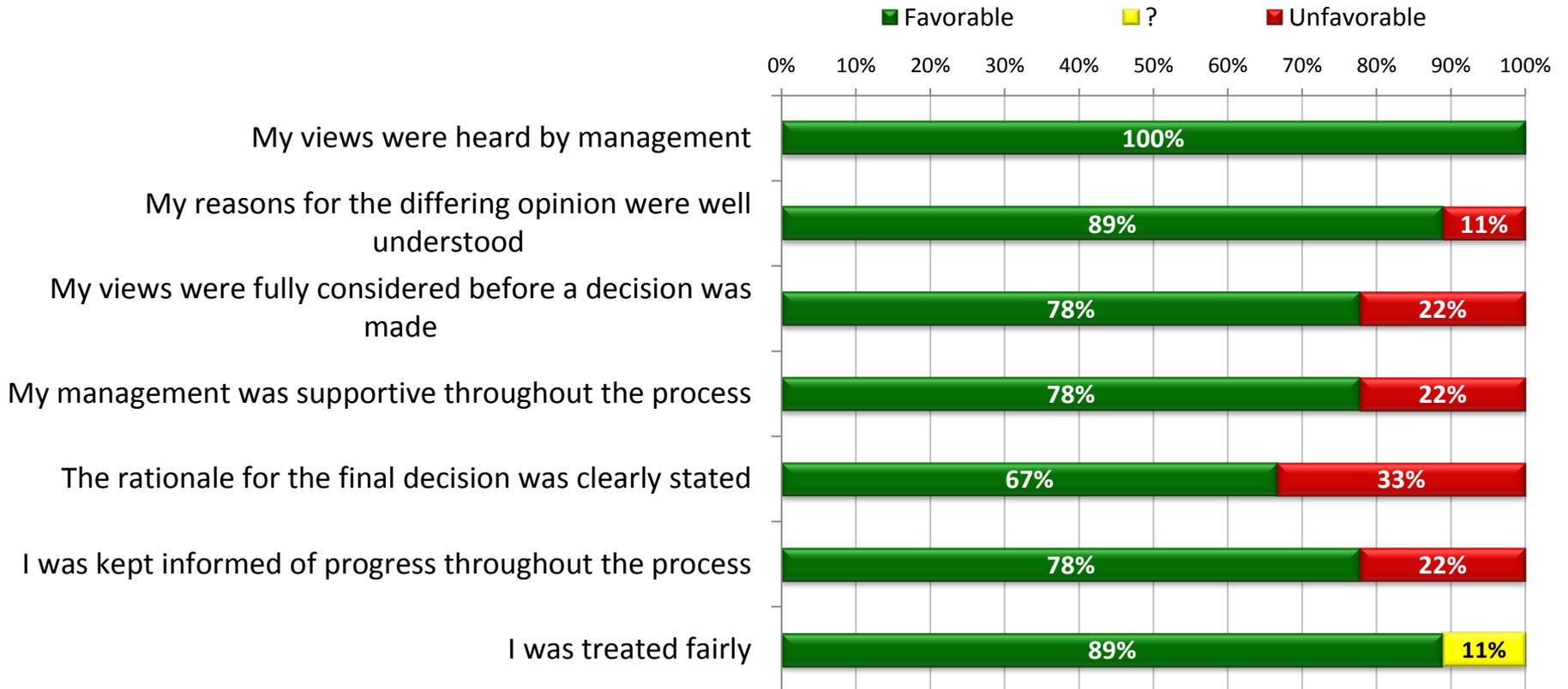
## DPO Feedback Survey: Submitters

In my experience, I think the DPO Panel members...



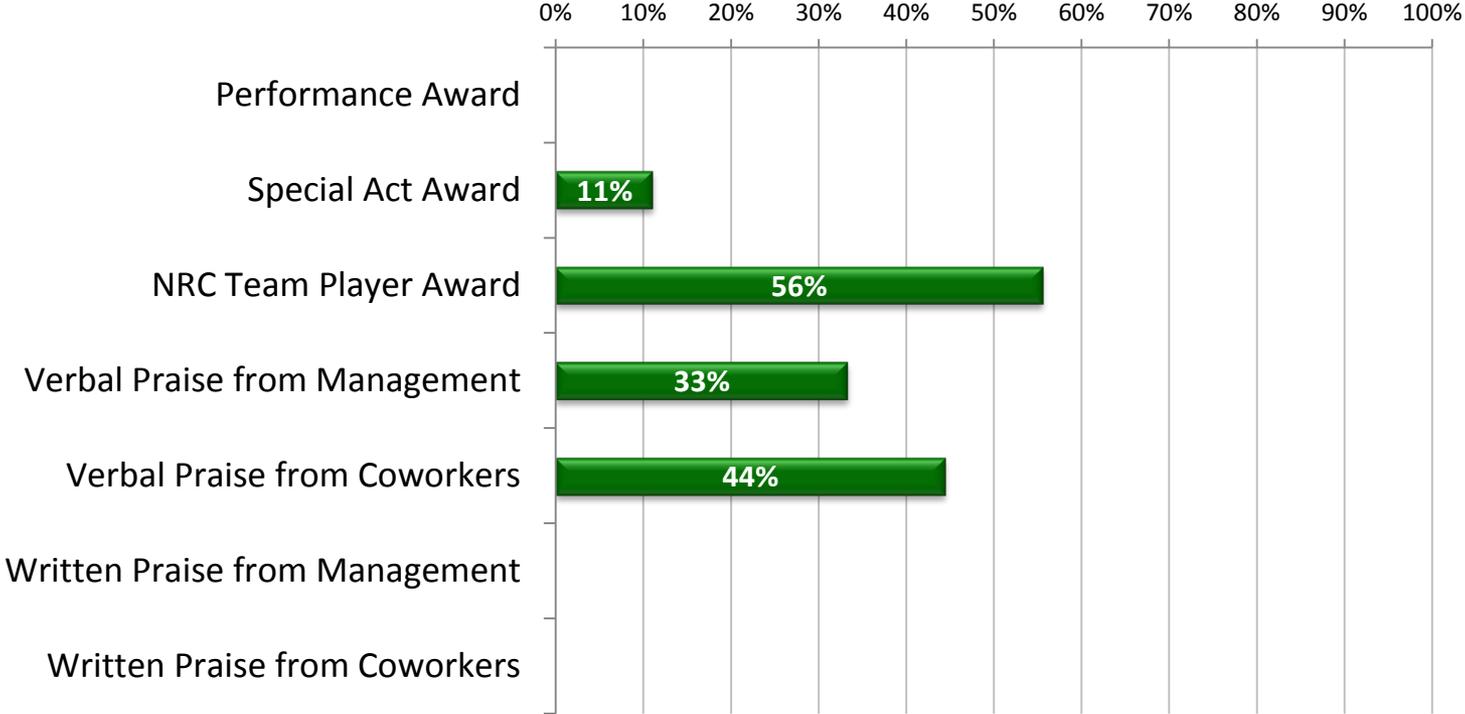
## DPO Feedback Survey: Submitters

### When using the DPO Program I believe...



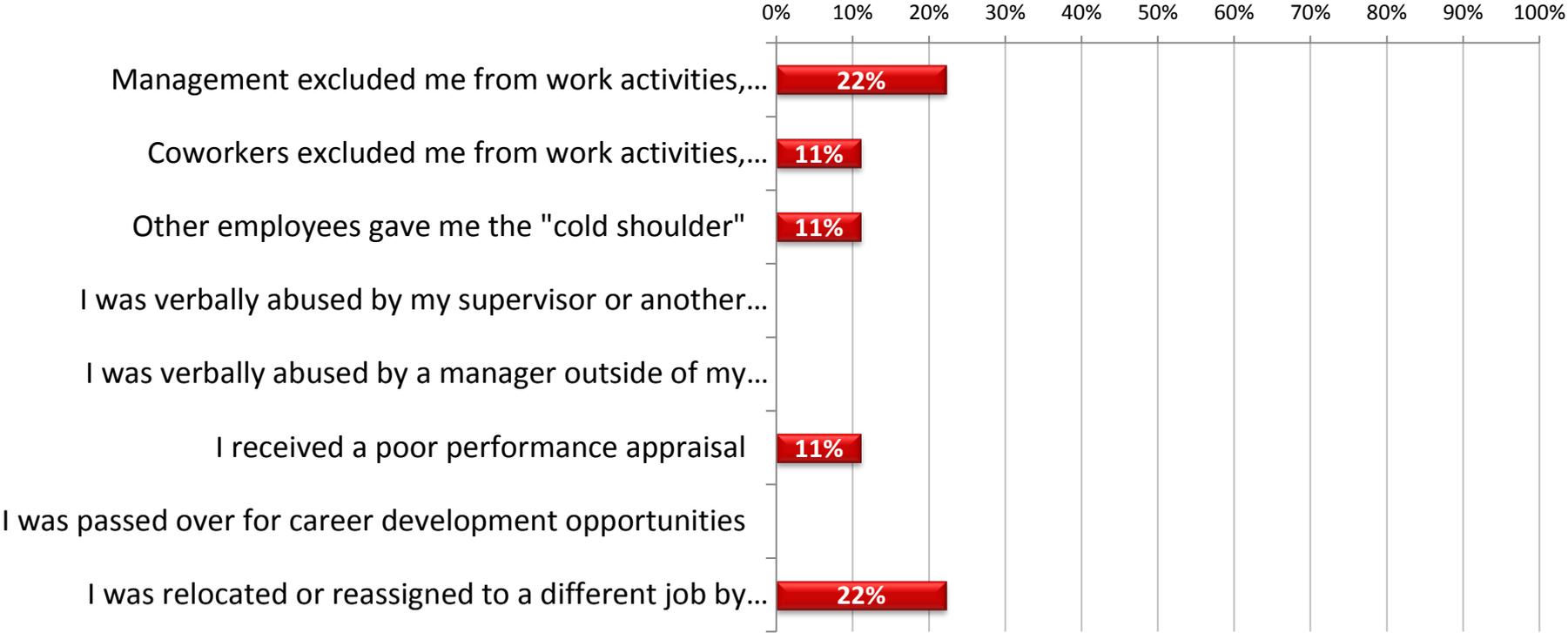
### DPO Feedback Survey: Submitters

Did you receive any of the following forms of recognition as a result of participating in the DPO Program? (select all that apply)



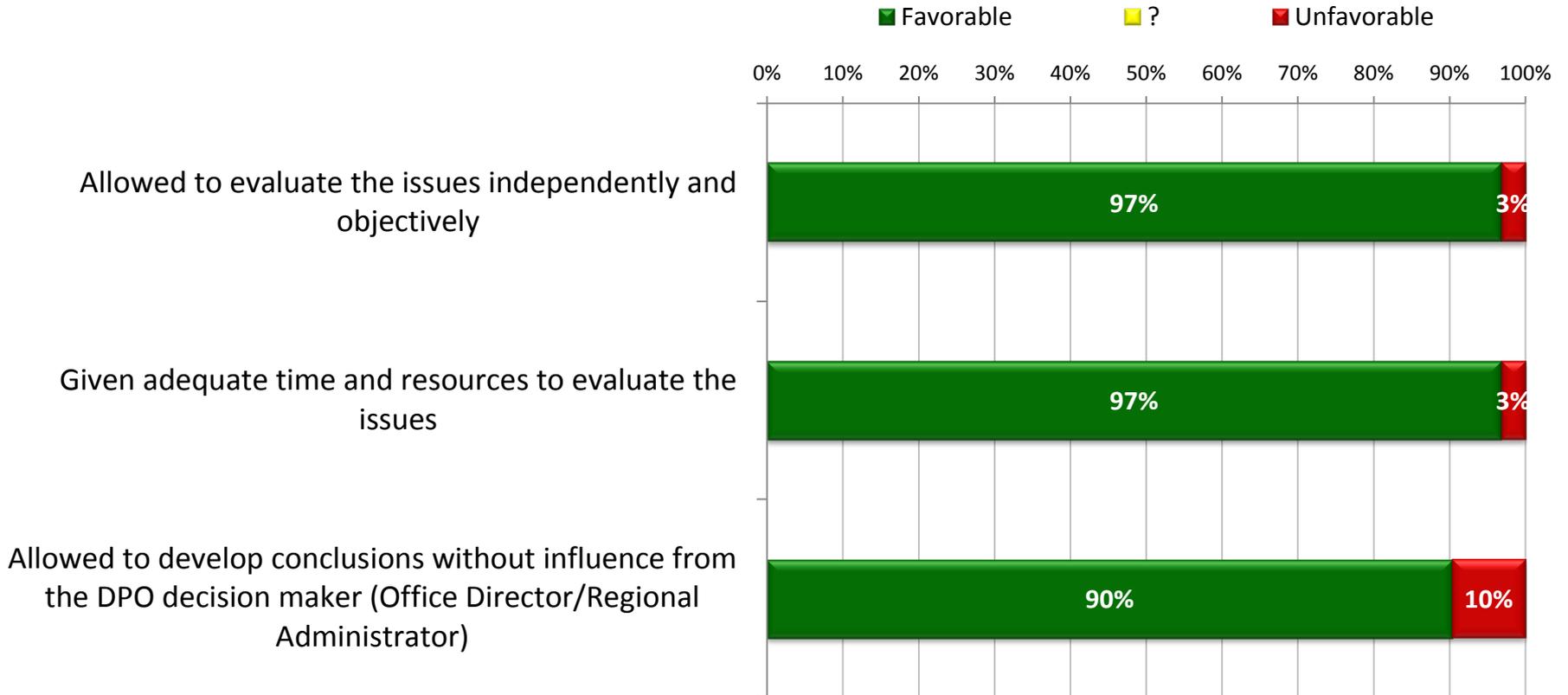
# DPO Feedback Survey: Submitters

Did you experience any of the following consequences as a result of participating in the DPO Program? (select all that apply)



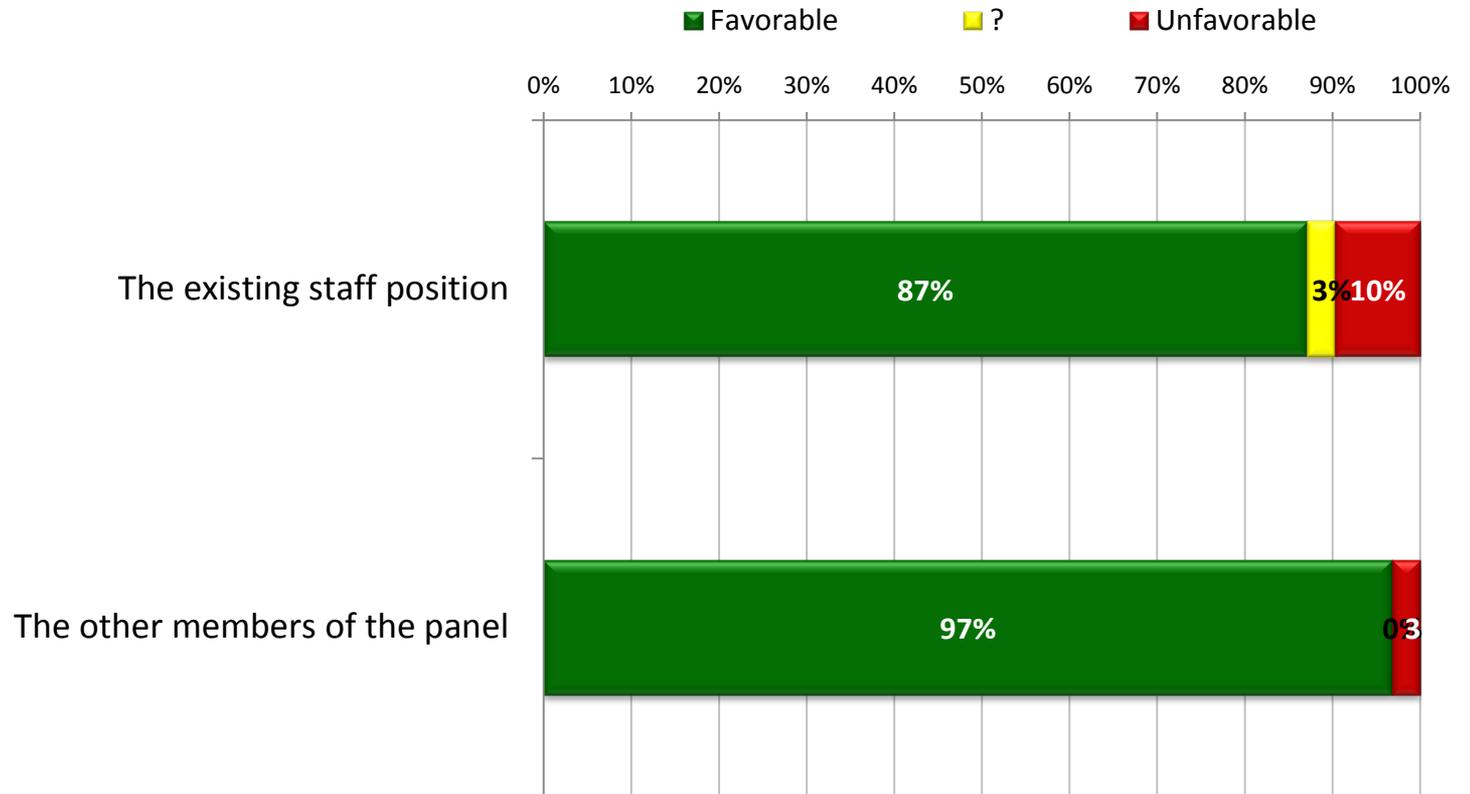
## DPO Feedback Survey: Panel Members

As a Differing Professional Opinions (DPO) Program Panel member, I believe the DPO Panel was...



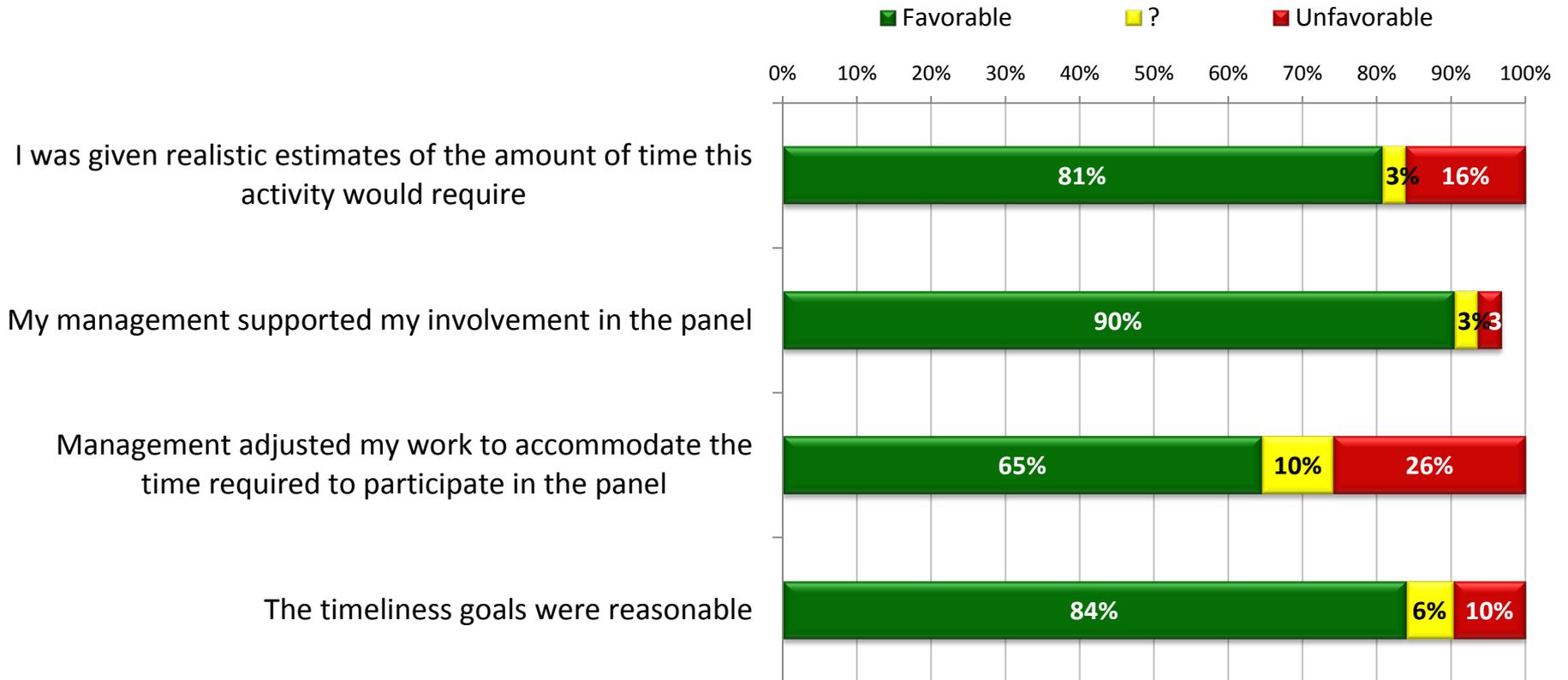
## DPO Feedback Survey: Panel Members

While on the DPO Panel, I did not feel pressure to agree with...



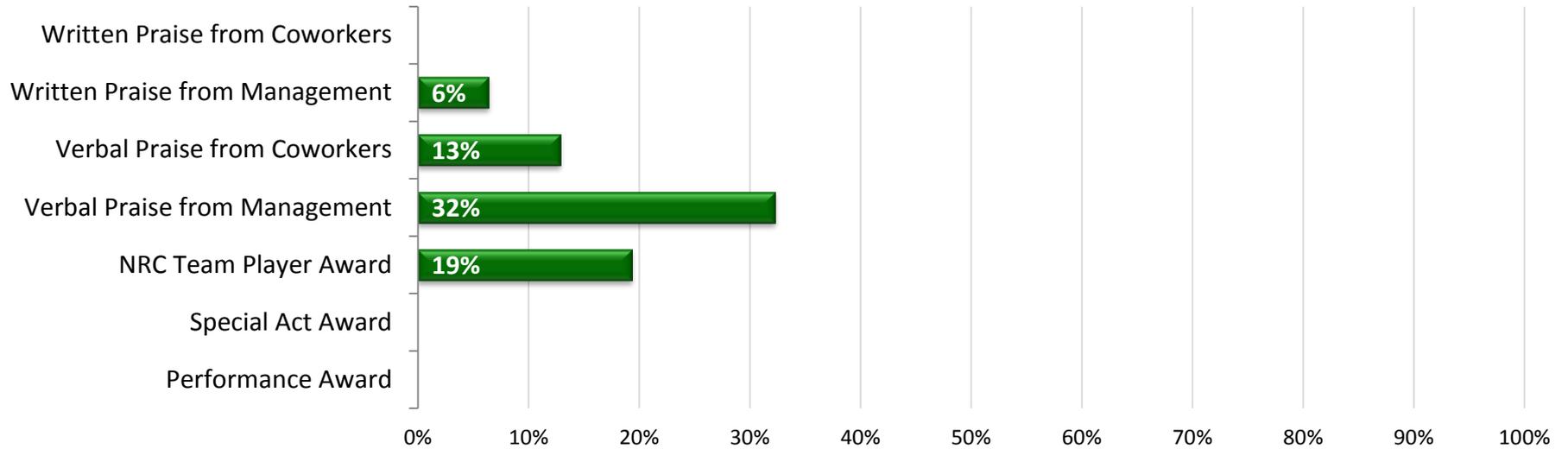
## DPO Feedback Survey: Panel Members

### In my experience as a DPO Panel member...



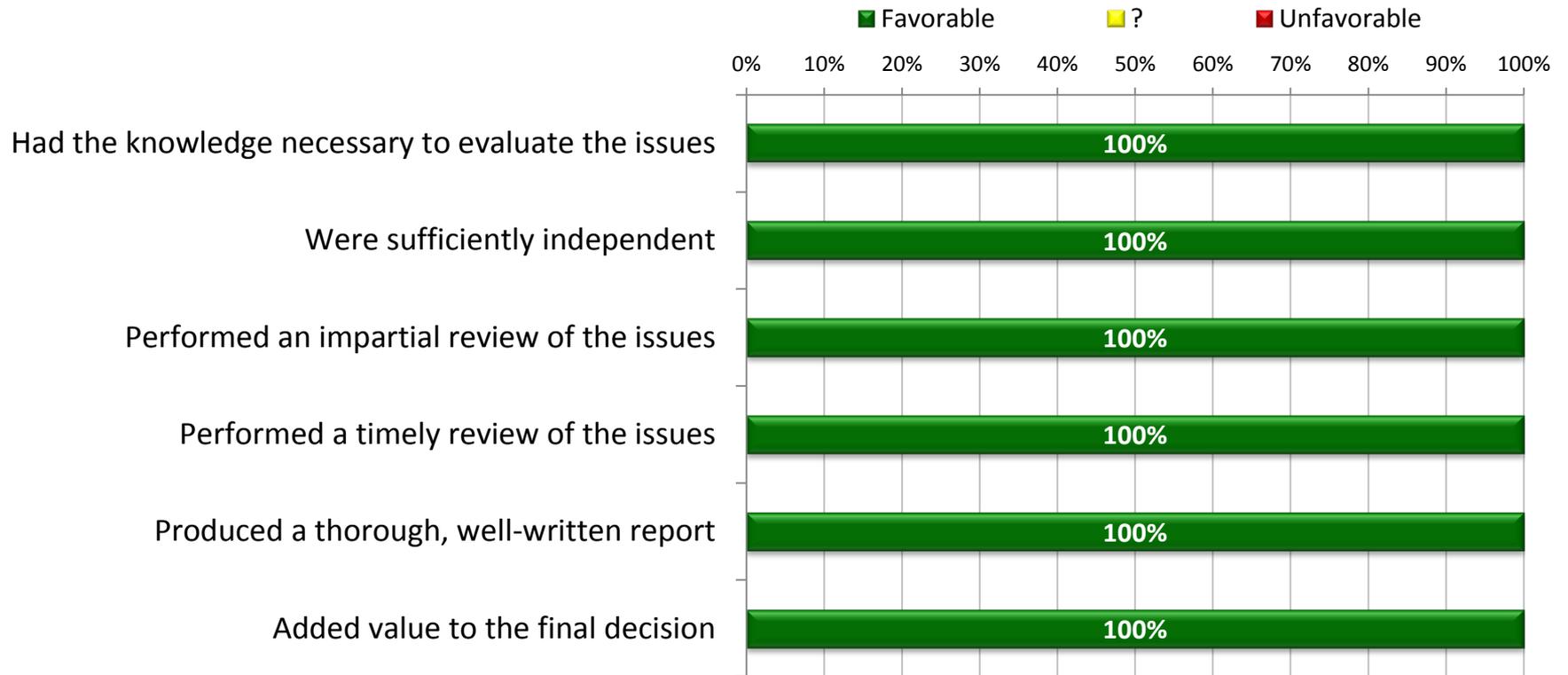
## DPO Feedback Survey: Panel Members

Did you receive any of the following forms of recognition as a result of participating in the DPO Program?



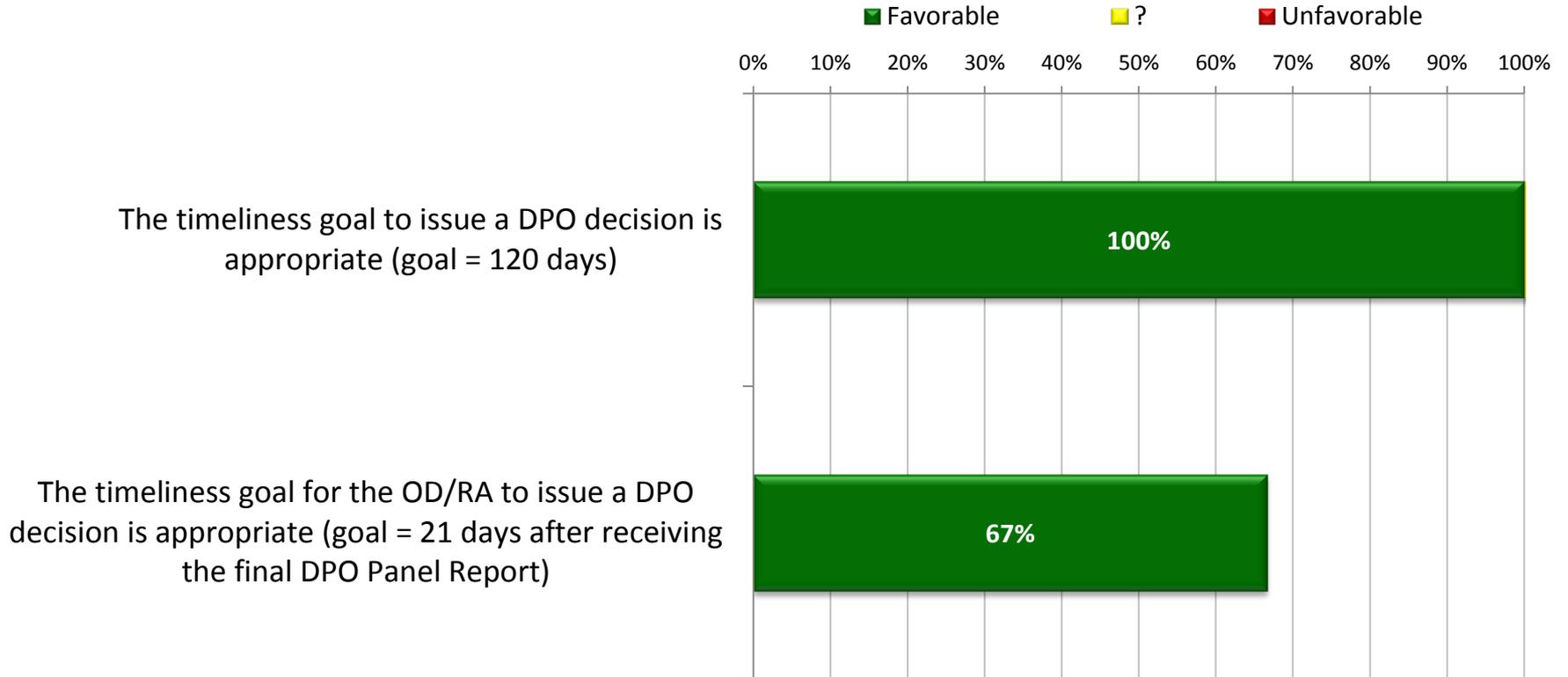
## DPO Feedback Survey: Decision Makers

In my experience, I think the DPO Panel members...



## DPO Feedback Survey: Decision Makers

As a Decision Maker (OD/RA) in the Differing Professional Opinions (DPO) Program, I believe...



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### **APPENDIX D: Best Practices and Key Factors from Benchmarking Activities**

In March 2010, a contractor the U.S. Food and Drug Administration (FDA), Center for Devices and Radiological Health (CDRH) presented the results of a benchmarking study. The purpose of the study included an examination of how other Federal agencies address differences of opinions and/or disputes over scientific or regulatory authority and how they foster workplace environments of trust and open communication. Based on information received in the benchmark study, the contractor identified the following potentially transferable best practices: (1) make documentation of all dispute management processes easily available online; (2) provide multiple channels for expressing scientific differences; (3) incorporate expressing scientific differences as a routine component of the review process; (4) create on-demand training so employees can access information about dispute policies as needed; (5) set realistic expectations about dispute management processes; (6) provide tools and strategies for the early resolution of conflicts; (7) use electronic database to store, track, and manage disputes; (8) educate employees about dispute management policies through marketing; and (9) encourage an environment of open communication and trust through a broad spectrum of efforts such as “brown bag” style lunches, newsletters, an Open Door Policy, and formal recognition for collaboration.

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 Differing Professional Opinions revised 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 differing professional opinion programs: (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 differing professional opinion program. 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 differing professional opinion programs:

- 1) **Leadership Commitment** - In order to have successful differing views program 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  Use varied communication vehicles to discuss ethical behavior, differing views programs, and personal accountability  Encourage employees to use the differing views program  Publicly acknowledge and reward employees who pinpoint ethical issues	Contributes the necessary authority  Adds credibility to the initiative  Recognized as a priority  Dedicates resources to the initiative  Normalizes use of the differing views program by encouraging it  Encourages a dialogue about the topic

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

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

- 3) ***Open, Honest, and Clear Communication*** – An open and positive organizational safety culture is one in which employees feel empowered and safe to use differing views program. 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 differing views program 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 differing views programs, 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 differing views programs</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 differing views programs 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 differing views programs if need be</p>

- 5) **Set Process** – In order to know whether differing views programs 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
<p>Gather input from the field when developing differing views programs</p> <p>Gather both quantitative and qualitative data when evaluating the processes</p> <p>Share performance data with employees</p> <p>Set performance goals to match aspects of the differing view</p>	<p>Employees will have a different perspective from management who may be involved in developing differing views programs; gathering input from employees about differing views programs will enhance the final product</p> <p>Gathering both quantitative and qualitative data will produce a more comprehensive picture of the program and will better identify areas for improvement</p> <p>Sharing performance data with employees will highlight the value of the differing views programs and increase employees’ confidence in the processes</p> <p>Setting performance goals helps focus and prioritize employees’ work</p>

### **Draft Revision of Management Directive 10.159**

Summary of revisions (in the order that they appear in the MD and handbook):

#### MD

- Modified policy to emphasize expectations for maintaining an environment for raising concerns and the various ways individuals (including contractors) can raise differing views.
- Added objective to affirm that the DPO Program strengthens the NRC and is a potential source of valuable ideas.
- Modified objective to emphasize that the DPO Program helps inform management’s decision.
- Modified the previous objective that addressed “prompt” review and added the expectation that DPOs be reviewed and dispositioned 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.
- Modified the previous objective that addressed the protection of employees from retaliation to one that emphasizes that reprisal (harassment, intimidation, retaliation, and discrimination) by management or peer-to-peer against employees or contractors for expressing a differing opinion or participating in the DPO Program is inappropriate and will not be tolerated.
- Deleted objective for agencywide oversight because it is appropriately addressed as a responsibility rather than an objective.
- Added responsibilities for the Executive Director for Operations (EDO) to ensure that sufficient resources are available to administer an effective DPO Program and affirm the value of the DPO Program, 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 DPO Program are coordinated with OE.
- Transferred the responsibilities for the Deputy Executive Director for Operations and the Assistant for Operations to the Director, Office of Enforcement (OE).
- Added roles and responsibilities for the General Counsel (GC), the Inspector General (IG), the Director, OE, 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 DPO Program.
- Added roles and responsibilities for the Director, Office of Administration (ADM) to address DPOs submitted by NRC contractors.

- 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 in DPO records.
- Added roles and responsibilities for team leaders, supervisors and managers to ensure that they take actions to support an environment for raising concerns, including making employees aware of various processes, that they support informal discussions that cross organizational boundaries, that they include submitters in appropriate discussions, they support DPO Panel members in their organizations, 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 DPO submitter 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 DPO Program and chilling effect concerns related to the DPO Program.
- Revised the format of roles and responsibilities of the DPO PM for clarity and streamlined the assessment responsibilities consistent with management direction.
- Added roles and responsibilities for all employees and contractors to emphasize the importance of raising concerns in good faith, ensuring that DPO records that include (SGI, PCII, and SUNSI) are appropriately handled, marked, and protected in accordance with agency policies and procedures, and added new requirements to perform assigned tasks associated with the final position and decision on his or her DPO even though they disagree, 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 DPO Program.
- Moved the Definitions section to a new Glossary section in the handbook.
- Modified the Applicability section to include the long-standing applicability of the DPO process to NRC contractors. (Current guidance is included in MD 11.1 and OE coordinated NRCAR clause revisions in 2007 with Division of Contracts.)
- Included additional references: 48 CFR Part 20, “Nuclear Regulatory Commission Acquisition Regulation (NRCAR),” 48 CFR Part 20, 2052.242-70, “Resolving Differing Professional Opinions,” 48 CFR Part 20, 2052.242-71, “Procedures for Resolving Differing Professional Opinions,” 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), MD 11.1, “NRC Acquisition of Supplies and Services,” Rights and Protections Regarding Whistleblower Protection, Anti-Discrimination And Retaliation, Agency Policy on Appropriate 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

## 2014 DIFFERING PROFESSIONAL OPINIONS PROGRAM ASSESSMENT – APPENDIX E

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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.
- Added new guidance to address the relationship of the DPO Program to the Open Door Policy and the Non-Concurrence process (NCP).
- Created a new section on applicability of the program to clarify that it applies to all employees and all established, mission-related issues. Includes clarified guidance on which issues do not qualify for review under the DPO Program, including issues that are currently under staff review, those under evaluation through other agency processes, and issues outside the NRC’s jurisdiction.
- Added 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 DPO Program, and that engaging in the DPO Program does not preclude the continuation of informal discussions.
- New guidance was included to address communications while the process is underway, including that new DPO cases will be acknowledged on the Web site as “pending,” that employees should limit discussions involving the DPO to NRC employees and notify the DPO PM of outside inquiries, that the DPO submitter should be included in discussions when warranted, and that engaging in the DPO Program does not preclude the continuation of informal discussions.
- Added guidance on timeliness, including the DPO timeliness goal as 120 calendar days between the DPO acceptance and the date of the DPO Decision and the DPO appeal timeliness goal as 80 calendar days between the DPO appeal acceptance and the date of the DPO Appeal Decision.
- Expanded guidance on submitting a DPO; including a discussion of the safety or security significance; indication of whether the issue may be directly relevant to a decision pending before the Commission; when and who was involved in informal discussions; 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 DPO Form (if applicable); whether the submitter would like the DPO Case File to be non-public or public; and the need to

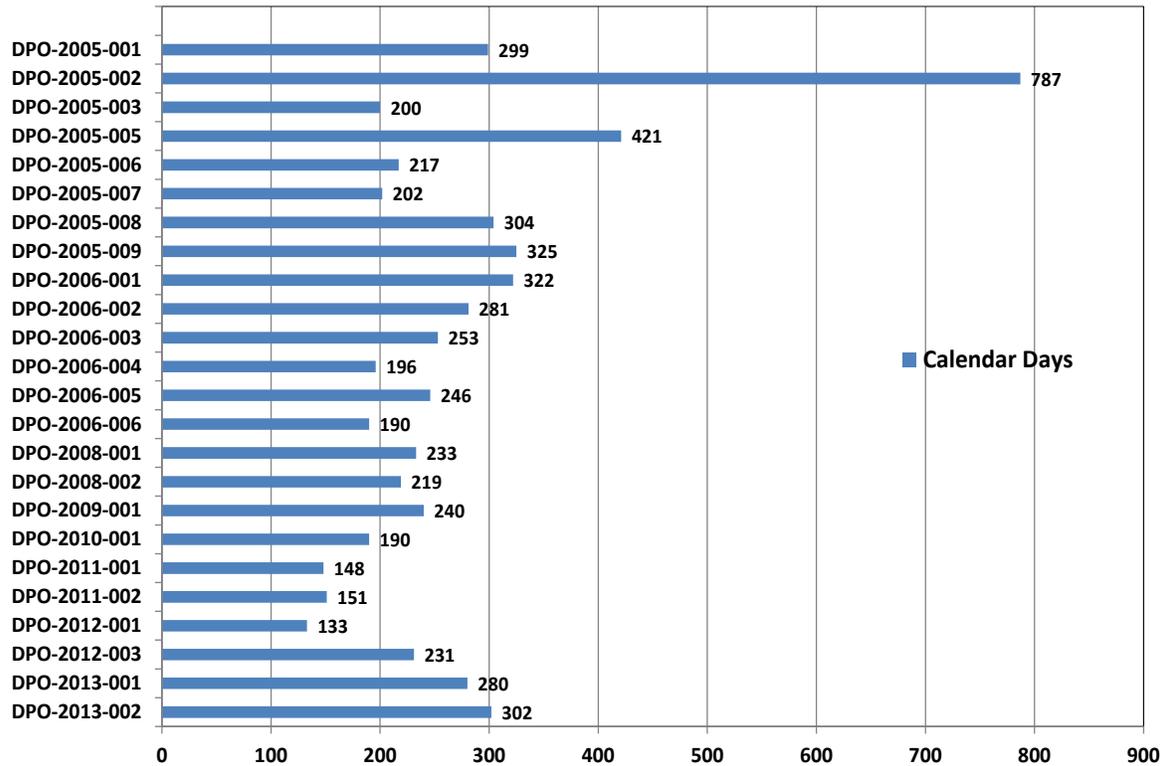
write DPO submittals in plain language consistent with NRC's Plain Language guidance on NRC's internal Web site so that submittals are complete, concise, and easy to read.

- Clarified guidance on confidential submittals.
- Modified guidance on screening to include that the DPO PM coordinate the screening of DPO submittals with the Director, OE. Added guidance on the DPO PM encouraging continued informal discussions before accepting the DPO and steps if issue is resolved. Expanded the guidance when an issue is not accepted for review, including advise how to pursue concern. Created additional guidance to streamline and improve dispatching and tracking, including the support from OEDO to track the DPO Decision, a summary for the Weekly Information Report, and a memorandum tasking follow up actions (if any).
- Created new section “Receipt of DPO” to include considering a kickoff meeting with the DPO PM, identification of a point of contact (POC) to support implementation, and the ability of the OD or RA to forgo a DPO Panel and issue a DPO Decision when they fully agree with the submitter.
- Modified previous guidance to include three new sections to provide detailed guidance on how the DPO Panel should be established, how the DPO Panel should conduct the review (including developing an agreed upon Summary of Issues (SOI) between the DPO Panel and the DPO submitter to ensure a common understanding of the issues and to define the scope of the review), and how the DPO Report should be issued. Also, included language suggesting that the DPO Panel Chair should consider arranging a meeting with the panel members and the DPO PM to help the DPO Panel understand the DPO process and the roles and responsibilities associated with it. Also clarified that any new issues outside the scope of the agreed upon SOI should be handled through informal discussions between the submitter and his or her immediate supervisor or the management chain responsible for the issue, through the initiation of a new DPO, or through a separate tasking from the OD or RA.
- Expanded guidance on the DPO panel report to include the need to write the DPO panel report in plain language consistent with NRC's Plain Language guidance on NRC's internal Web site so that submittals are complete, concise, and easy to read; and that if the DPO Panel identifies additional issues or additional recommendations beyond the scope of the DPO, the DPO Panel should provide the information to the OD or RA in a separate memorandum.
- Enhanced previous guidance on the DPO Decision, including recognition that office managers may consider additional discussions with the submitter, the DPO Panel, or other knowledgeable staff, as necessary, to assist them in their consideration of the DPO. Modified guidance to address that an office manager may request an addendum to the DPO Panel report only if they believe it is incomplete, unclear, or they need additional information to make a decision and that this approach must first be discussed with the DPO PM and the submitter. Added that a DPO Decision be sufficiently detailed so that an independent reader can understand the basis for the decision and outcome and be in plain language consistent with NRC's Plain Language guidance on NRC's internal Web site so that submittals are complete, concise, and easy to read.

- Modified guidance on the DPO Appeal Process to include new and improved guidance to clarify the process steps—submittal, screening and dispatching, review, and decision. Added that the EDO consider a kickoff meeting with the DPO PM and identify a POC to support implementation. Added that the EDO should consider meeting with the submitter before issuing a decision and that a DPO Appeal Decision be sufficiently detailed so that an independent reader can understand the basis for the decision and outcome and be in plain language consistent with NRC's Plain Language guidance on NRC's internal Web site so that submittals are complete, concise, and easy to read.
- Revised the timeliness goal for the DPO Appeal Decision to 80 days to reflect the time associated with process steps (screening, assignment, statement of views from the office manager) and the need for flexibility to address scheduling issues with the EDO or the Commission.
- Added guidance on submitting documents to the Commission that include a DPO to ensure that DPO Case Files 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 consolidated and enhanced guidance on handling DPO records, including guidance for handling records during the process and guidance for creating a DPO Case File when the DPO process is closed, including performing a releasability review in accordance with the NRC Policy For Handling, Marking, and Protecting Sensitive Unclassified Non-Safeguards Information (SUNSI) and MD 3.4, "Release of Information.
- Improved guidance on followup actions, including the requirement for tracking and the requirement to handle all followup action records in ADAMS to ensure association with the DPO case file records and that the office manager is responsible for ensuring that actions are completed and that the DPO submitter is informed, that the office manager 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 DPO 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 DPO and shall include the ADAMS accession number for the DPO Case File. The office manager has the discretion to include a synopsis of the issues included in the non-concurrence and the agency's evaluation and outcome.
- Modified guidance to address resources available to assist individuals engaging in the DPO Program, including process support from the DPO PM.

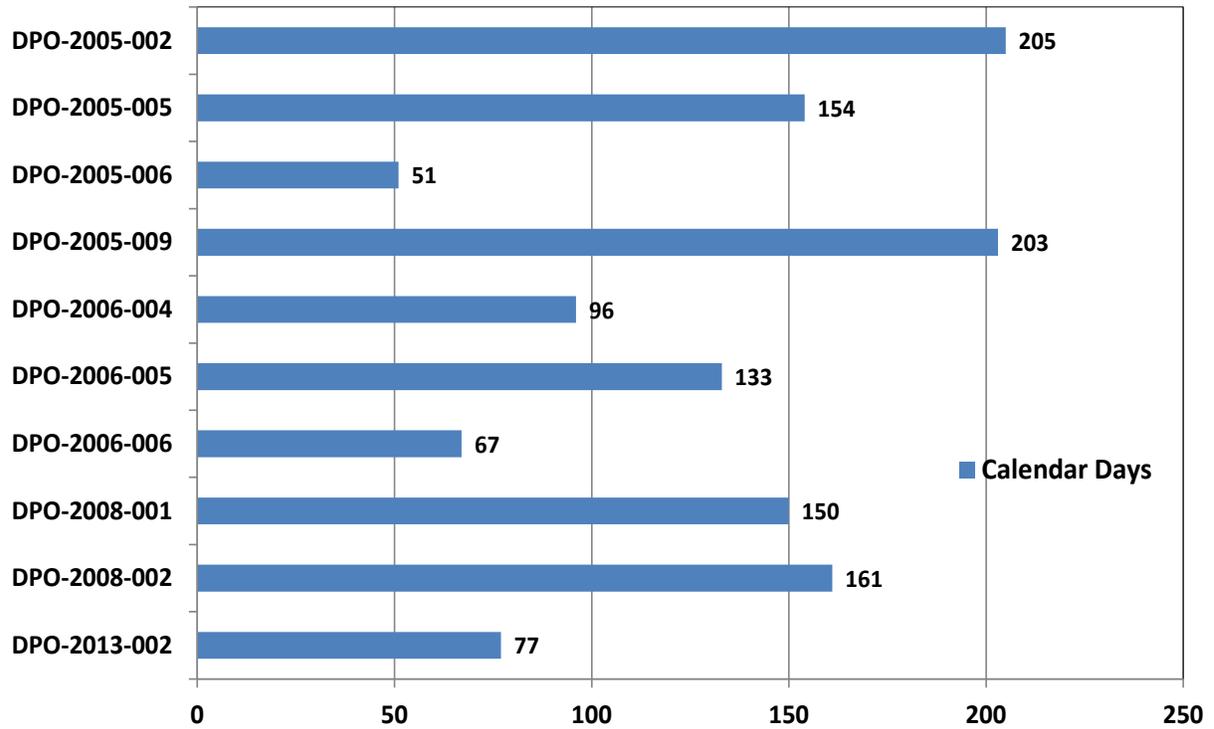
- Modified previous section to address broader issue of reprisal; added that discouraging the use of the DPO Program could be grounds for an employee grievance, a whistleblower complaint under the Energy Reorganization Act, or a complaint under the Office of Special Counsel, added that managers should ensure that proposed personnel actions involving non-concurring individuals are not being taken in retaliation for involvement in the DPO Program and that performance appraisals do not reflect negatively on the use of the DPO Program, added that managers should take appropriate action in response to allegations of reprisal and chilling effect related to the DPO Program, 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 DPO Program. 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 DPO Program have several avenues available to them, including the administrative grievance procedure, DOL/OSHA Whistleblower Protection, and the U.S. Office of the Special Counsel.
- Added new section including guidance to address the DPO process for NRC contractors. (Requirements are included in 48 CFR Part 20 and MD 11.1.)
- Added new section to include information on the internal Web site, including flow charts and FAQs, DPO Milestones and Timeliness Goals and DPO Appeal Milestones and Timeliness Goals.
- Moved previous definitions section and created a new glossary, including new definitions for chilling effect, confidential submittal, DPO Case File, DPO Appeal Form, DPO Form, Non-Concurrence Process, reprisal, retaliation, and surrogate submitter.
- Modified definition of DPO definition to clarify that it includes administrative or corporate support issues and that it can cover a broad range of concerns provided the opinion is related to the agency's mission and to the strategic goals and objectives that support the mission as addressed in the NRC's Strategic Plan.
- Deleted the abbreviated guidance included Exhibit 1 to avoid the potential for conflicting or incomplete guidance.
- Deleted Exhibit 2 and included flow charts on internal Web site.

### Timeliness of DPO Decisions



**NOTE:** Timeliness for a DPO decision is calculated using calendar days from the date a DPO submittal is accepted for review until the date a DPO Decision is issued.

### Timeliness of DPO Appeal Decisions



**NOTE:** Timeliness for a DPO appeal decision is calculated using calendar days from the date a DPO submittal is accepted for review until the date a DPO appeal decision is issued.

## **APPENDIX G: Summaries of DPO Decisions and DPO Appeal Decisions Issued from 2005-2014**

### **DPO Decision (DPO-2005-001)**

#### **Force-on-Force Evaluation Criteria**

On November 7, 2005, the Director, Office of Nuclear Security and Incident Response (NSIR), issued a decision on a DPO involving Force-on-Force (FOF) evaluation criteria (DPO-2005-001). On January 6, 2005, an NRC employee submitted a DPO that focused on the adequacy of NRC's assessment of licensee performance during the conduct of FOF exercises; specifically, whether there is too much focus on success or failure in protecting critical equipment (target sets) at the detriment of identifying licensee performance weaknesses and areas for improvement. On October 4, 2005, an Ad Hoc Review Panel provided the results of its independent review to the Director, NSIR. The panel concluded that certain aspects proposed by the submitter have merit and, if applied, would allow the NRC to more reliably assess the capability of a protective force to execute an effective defensive strategy. The panel further concluded that a revised FOF program that retains the goal of protecting target sets and applies the performance assessment tools and techniques proposed by the submitter is viable, comports with the principles of the NRC Reactor Oversight Process, and would be more effective in both assessing and improving licensee performance. Based on a review of the panel's report and additional comments by the DPO submitter, the Director, NSIR agreed with the panel's conclusions and recommendations.

### **DPO Decision (DPO-2005-002)**

#### **Red Oil Events at the Proposed Mixed-Oxide Fuel Fabrication Facility**

On March 23, 2007, the NMSS Director issued his decision on a DPO on Red Oil Events at the Proposed Mixed Oxide (MOX) Fuel Fabrication Facility. The Director agreed with the DPO Panel Report. Specifically, the Director agreed that the construction authorization for the MOX Fuel Fabrication Facility does not have to be revisited. The applicant for the facility has committed to provide additional information regarding its proposed approach for controlling red oil events in support of the review of the Operating License application. As part of the Operating License application review process, it is the applicant's responsibility to demonstrate adequate protection of the public health and safety and the environment with respect to preventing or mitigating red oil runaway reactions.

### **DPO Appeal Decision (DPO-2005-002)**

#### **Red Oil Events at the Proposed Mixed-Oxide Fuel Fabrication Facility**

On November 9, 2007, the EDO issued his decision on a DPO appeal involving the adequacy of information pertaining to the prevention and mitigation of potential red oil explosion events in a MOX construction authorization request. The construction authorization request was submitted for NRC approval in accordance with 10 CFR 70.23(b). While the EDO agreed with the DPO safety concerns (i.e., a MOX plant red oil explosion could have high consequences), the EDO also supported the conclusions made by the independent DPO Panel in its final panel report as well as the conclusions made by the Director, NMSS on both the DPO Decision and the contested issues. Specifically, the EDO agreed with the conclusions: (1) that the NRC staff, Advisory Committee on Reactor Safeguards, and independent

DPO Panel all recognize that these concerns need to be addressed by the applicant through the results of their research, the integrated safety analysis results, or modifications and backfitting, as appropriate; and (2) that the technical issues associated with the DPO and the Center for Nuclear Waste Regulatory Analyses' questions need to be resolved at the license application review stage.

**DPO Decision (DPO-2005-003)  
Oconee Pipe Whip Restraints**

On September 6, 2005, the Regional Administrator, Region II, issued a decision on a DPO involving Oconee feedwater pipe whip restraints (DPO-2005-003). On February 16, 2005, an NRC employee submitted a DPO that focused on the adequacy of the licensee's fatigue analysis, the adequacy of the staff's review of the licensee's calculation, and whether the staff's application of the Reactor Oversight Process was appropriate. On July 19, 2005, an Ad Hoc Review Panel provided the results of its independent review to the Regional Administrator, Region II. The panel concluded that pipe failure was unlikely, the issue was appropriately dispositioned in an inspection report, and that the staff's review of the issue was appropriate. The panel also recommended that improvements in the significance determination process and inspection documentation guidance be considered, and that the corrective actions for the pipe whip restraint issue be included as a sample in a future Problem Identification and Resolution inspection. Based on a review of the panel's report and additional comments from the DPO submitter, the Regional Administrator, Region II, agreed with the panel's conclusions and recommendations.

**DPO Decision (DPO-2005-004) - WITHDRAWN  
NRR Declination of TIA on MSIV Local Leak Rate Testing**

**DPO Decision (DPO-2005-005)  
Chemical Consequence Levels at the Proposed Mixed-Oxide Fuel Fabrication Facility**

On August 25, 2006, the Director, NMSS, issued a decision on a Differing Professional Opinion (DPO) involving chemical consequence levels at the proposed MFFF (DPO-2005-005). On June 21, 2005, an NRC employee submitted a DPO that focused on chemical consequences from some potential events at the proposed MFFF, the applicant's proposed mitigative strategies for such events, using limits based on Temporary Emergency Exposure Limits (TEELs) from DOE, and whether the NRC staff's position accepting the use of TEELs would endorse limits that do not provide adequate assurance of safety.

On April 4, 2006, an Ad Hoc Review Panel provided the results of its independent review to the Director, NMSS. The Panel concluded that there is no basis for reversing the NRC position on the use of TEELs, chemical consequence limits do not need to be reopened, and the applicant need not submit additional information on the docket regarding the use of TEELs. The Panel also concluded that establishment of an expert NRC panel to develop values to be substituted for the TEEL values is not justified, and that a rulemaking process to promulgate NRC's own chemical consequence limits would not be cost-effective, based on safety considerations. However, the Panel recommended that a review of chemical consequence limits be conducted before the issuance of the operating license.

Based on a review of the Panel's report, the Director, NMSS, agreed with, and adopted, most of the Panel recommendations. However, he did not agree with, and did not adopt, the recommendation that a review of chemical consequence limits should be conducted before the issuance of the operating license. He noted that NRC had already reviewed and approved the TEEL values as the design bases of the principal structures, systems, and components, and stated that to reopen that review, after NRC had already approved the final design bases, without some supporting contrary safety finding, would constitute an inconsistent and unstable regulatory approach, contrary to NRC's principles of good regulation.

#### **DPO Appeal Decision (DPO-2005-005)**

##### **Chemical Consequence Levels at the Proposed Mixed-Oxide Fuel Fabrication Facility**

On March 1, 2007, the EDO issued a decision on an appeal to an August 25, 2006, DPO Decision issued by the Director, NMSS. The appeal related to a June 21, 2005, DPO submitted by an NRC employee on the adequacy of chemical consequence limits proposed by a license applicant. The submitter requested in the original DPO that: (1) the management/staff decision to accept the use of the chemical consequence limits for the proposed facility be revised; (2) an issue on chemical consequence limits identified during the NRC's review of the license application be reopened; (3) the applicant be requested to submit on the docket adequate justification for its use of chemical consequence values; (4) a task force with credentials and experience in chemical consequence assessment and exposure limits be formed to establish an NRC staff position; and (5) a rulemaking process be conducted that presents these proposed limits to the licensees and the public such that consistent guidance for license and applicants can be developed. The EDO agreed with the DPO Decision that a sufficient basis does not exist to reverse the NRC decision on the use of the proposed chemical consequence limits and take the actions proposed by the submitter. However, the EDO acknowledged that the staff is currently developing a guidance document which addresses, in part, the appropriate standards to use in setting chemical limits which will provide additional clarity on the appropriate considerations in review of chemical consequence limits. The EDO also recognized the efforts of the submitter in raising the concerns and the contribution of the employee in ensuring the agency's safety goals are achieved.

#### **DPO Decision (DPO-2005-006)**

##### **Publication of a Draft NUREG on Fire Model Verification and Validation for Public Comment**

On February 13, 2006, the Director, Office of Research (RES), issued the subject decision. The DPO focused on whether the draft NUREG should be published without publishing certain benchmark exercise research reports which addressed potential issues and limitations with two of the five fire models in the V&V. An Ad Hoc Review Panel determined that it was acceptable to publish the draft NUREG for public comment. Based on a review of the panel's report and additional comments provided by the DPO submitter and staff, the Director, RES, agreed with the panel, and concluded that the issues and/or limitations of the fire models had already been successfully addressed by the RES staff in development of the draft NUREG.

**DPO Appeal Decision (DPO-2005-006)**

**Publication of a Draft NUREG on Fire Model Verification and Validation for Public Comment**

On June 23, 2006, the Executive Director for Operations (EDO) denied the appeal of the decision previously made by the Director of the Office of Nuclear Regulatory Research (RES). The DPO focused on whether draft NUREG-1824, which was issued for public comment in January 2006, should be published without first publishing certain benchmark exercise research reports which addressed potential issues and limitations with two of the five fire models in the verification and validation. An Ad Hoc Review Panel determined that it was acceptable to publish the draft NUREG for public comment. The EDO found that it was acceptable to publish the draft NUREG for public comment without first publishing the results of the eight benchmark exercises because all of the information from the research was appropriately considered.

**DPO Decision (DPO-2005-007)**

**Farley Control Rod Technical Specifications**

On March 8, 2006, the Regional Administrator, Region II, issued a decision on a Differing Professional Opinion (DPO) regarding the application of Technical Specifications at Farley (DPO-2005-007). On August 2, 2005, an NRC employee submitted a DPO regarding the appropriate application of Technical Specifications on June 17, 2005, when two control rods in a shutdown bank did not return to the full out position following the performance of a surveillance procedure, and the appropriate documentation of the issue in an inspection report. On February 15, 2006, the panel provided the results of its independent review to the Regional Administrator, Region II. The panel concluded that Farley was in compliance with the Technical Specifications for the plant conditions related to the control rod system on June 17 and 18, 2005, and no enforcement action is warranted. The panel also concluded that the inspection report should have contained documentation of the inspection activities performed for this issue. The panel recommended that management have discussions with the staff on (1) the importance of reviewing the background information and bases for major amendments and licensing actions, (2) the documentation requirements of Inspection Manual Chapter 0612 regarding what information should be included in inspection reports to ensure expectations are clear and future reports accurately document all inspections performed by the staff, and (3) the availability and purpose of regional instructions on available alternatives for resolving disagreements on technical issues. Based on a review of the panel's report and additional comments from the DPO submitter, the Regional Administrator, Region II, agreed with the panel's conclusions and recommendations. The actions to respond to the panel's recommendations will be completed on May 18, 2006.

**DPO Decision (DPO-2005-008)**

**Emergency Preparedness for Day Care Centers and Nursery Schools**

On July 14, 2006, the Director, Office of Nuclear Security and Incident Response, issued a decision on a Differing Professional Opinion (DPO) involving emergency preparedness for day care centers and nursery schools (DPO-2005-008). On September 7, 2005, an NRC employee submitted a DPO that focused on the adequacy of preplanned evacuation resources and preplanned relocation centers for day care centers and nursery schools within the Commonwealth of Pennsylvania ("Commonwealth") and on whether the Commonwealth and the Federal Emergency Management Agency (DHS/FEMA) have failed

to comply with DHS/FEMA guidance. On June 8, 2006, an Ad Hoc Review Panel provided the results of its independent review to the Director, NSIR. The panel concluded that DHS has arrived at a defensible finding of reasonable assurance that children at day care facilities and nursery schools would be evacuated in the event of a radiological emergency at a power plant in the Commonwealth. The panel also concluded that the DHS/FEMA finding is consistent with the relevant regulations and guidance documents as well as legal implementation of Federal, State, and local requirements. The panel also recommended that NSIR continue to work with DHS/FEMA, as it undertakes an across-the-board review of their guidance documents, to emphasize the value of clear guidance to the public and others outside of the radiological emergency preparedness community. Based on a review of the panel's report, the Director, Office of Nuclear Security and Incident Response, agreed with the panel's conclusions and recommendations.

### **DPO Decision (DPO-2005-009)**

#### **Issuance of Differing Professional Opinion (DPO) on Solvent Flammability Limits for the Proposed Mixed Oxide Fuel Fabrication Facility**

On August 25, 2006, the Director, NMSS, issued a decision on a DPO involving solvent flammability limits at the proposed MFFF (DPO-2005-009). On September 23, 2005, an NRC employee submitted a DPO that focused on the applicant's proposed approach to the use of controls to reduce the likelihood of solvent-fire explosion events at the proposed MFFF, and whether the NRC staff's position accepting the applicant's approach would provide adequate assurances of safety, as well as a concern that the staff did not contact the National Fire Protection Association (NFPA) 69 Committee for clarification of the NFPA 69 code.

On June 2, 2006, an Ad Hoc Review Panel provided the results of its independent review to the Director, NMSS. The Panel concluded that the DPO did not raise any safety concerns that have technical or legal implications for the staff's approval of the Construction Authorization Request (CAR). The Panel noted that the applicant made the business decision to proceed with the two-step licensing process, knowing the associated uncertainties and potential risks. The Panel concluded that the staff's approval of the CAR was in accordance with relevant regulations for the two-step licensing process, and is therefore consistent with the regulatory framework, and is not precedent-setting. The Panel recommended that, if the staff finds the applicant's safety strategies and controls ineffective during the operating licensing phase, the staff should consider appropriate Agency regulatory processes, such as backfit, to ensure the protection of public health and safety. With respect to the consultation with the NFPA Committee for code clarification, the Panel determined that the NMSS staff, based on professional expertise and experience, has the authority to evaluate and make determinations on appropriate code application during the review process. Therefore, the Panel did not recommend any additional action.

Based on a review of the Panel's report, the Director, NMSS, agreed with, and adopted, the Panel's recommendations, subject to the clarification that, with regard to the backfit process, if the staff becomes aware of the need for significant changes to safety strategies and controls, or other issues that would call into question its conclusions in the CAR, during the operating licensing phase, this new information would be reviewed at that time, consistent with backfit requirements, to the extent they are applicable.

**DPO Appeal Decision (DPO-2005-009)**

**Issuance of Differing Professional Opinion (DPO) on Solvent Flammability Limits for the Proposed Mixed Oxide Fuel Fabrication Facility**

On April 19, 2007, the Executive Director for Operations (EDO) issued a decision on an appeal to an August 25, 2006, decision made by the Director of the Office of Nuclear Materials Safety and Safeguards (NMSS). The appeal related to a September 23, 2005, DPO submitted by an NRC employee on the adequacy of chemical consequence limits proposed by a license applicant. The original DPO focused on five issues surrounding the lower flammability limit of chemical combustion concentrations, how it was applied in the MOX Construction Authorization Request (CAR), and compliance with the regulations. The EDO agrees with the DPO decision that DPO submitter did not raise any safety concerns that have technical or legal implications on the staff's approval of the CAR. Most the concerns are related to the inherited issue with the two-step licensing process. The applicant made the business decision to proceed with the two-step licensing process knowing the associated uncertainties and potential risks. The NMSS staff approved the CAR in accordance with relevant regulations for the two-step licensing process. Upon receipt of the DPO appeal, the EDO initiated an extensive review of related information. In order to fully understand the issues, the EDO also met with the members of the DPO panel and the DPO Submitter.

Based on all the available information reviewed, the EDO agrees with the DPO panel decision that no safety concerns that have technical or legal implications on the staff's approval of the CAR were raised. As such, there is no need to re-open the DPO on Solvent Flammability Limits at the Proposed Mixed-Oxide Fuel Fabrication Facility (DPO-2005-009), and the follow up actions taken by the staff in response to the DPO are adequate. The EDO also recognized the efforts of the submitter in raising the issues concerns and the contribution of the employee in ensuring the agency's safety goals are achieved.

**DPO Decision (DPO-2006-001)**

**Point Beach Problem Identification and Resolution Substantive Cross-Cutting Issue**

On March 1, 2007, the Region III Regional Administrator issued a decision on a DPO regarding the NRC's closure of the substantive cross-cutting issue in the area of problem identification and resolution at the Point Beach Nuclear Plant during the 2005 end-of-cycle performance assessment. The DPO questioned whether the NRC's decision to close the issue was correct. The DPO Panel concluded that the decision to close the cross-cutting issue did not result in a reduction of inspection effort or a reduction in safety at the Point Beach Plant. After reviewing the DPO Panel's report and Manual Chapter 0305, the Regional Administrator agreed with the panel's conclusions.

**DPO Decision (DPO-2006-002)**

**Oconee ECCS Sump Screens**

On February 17, 2007, the NRR Director issued his decision on a DPO regarding the use of leak-before-break (LBB) technology in the design of a facility modification involving installation of new emergency core cooling system (ECCS) recirculation sump strainers at Oconee, Units 1 and 2.

On May 3, 2006, an NRC employee submitted a DPO that focused on the concern that ECCS sump strainer modification should not have been approved by the NRC nor implemented by the licensee. This

contention stemmed from the submitter's interpretation of Commission policy that LBB technology cannot be used if the dynamic effects of the pipe rupture adversely affect ECCS and containment. On November 13, 2006, the DPO Panel provided the results of its independent review to the NRR Director. The panel concluded that the submitter's concern regarding inappropriate application of LBB technology in the ECCS recirculation sump strainer modification at Oconee, Units 1 and 2, was based on an incorrect understanding of the Commission's regulations and policy on the use of LBB technology in the design of the ECCS. The regulations and policy support the staff's decision to authorize the application of LBB technology to this modification. The panel also recommended that the staff should develop a knowledge management document clearly describing the NRC's policy and practice on the application of LBB. The submitter did not have any comments with regards to the panel's report issued on November 13, 2006. Based on the review of the panel's report and other background information, including the submitter's comments when the panel met with the submitter on July 20, 2006, to obtain clarification on certain details of his concerns and his confirmation on the panel's summary of the issues, the NRR Director agreed with the panel's conclusions and recommendations.

**DPO Decision (DPO-2006-003)**  
**Oconee Use of Leak Before Break in ECCS**

On January 20, 2007, the NRR Director issued a decision on a DPO regarding the use of leak-LBB technology in the design of a facility modification involving the emergency core cooling system (ECCS) at Oconee, Units 1, 2 and 3.

On May 3, 2006, an NRC employee submitted a DPO that focused on the concern that the cross-connect modification between the redundant discharge lines of the low pressure injection (LPI) system inside the containment building should not have been approved by the NRC nor implemented by the licensee because the LPI system, as modified, would not meet requirements in 10 CFR Part 50. This contention stemmed from the submitter's interpretation of Commission policy that LBB cannot be used if the dynamic effects of the pipe rupture adversely affect the ECCS. On December 5, 2006, a DPO Panel provided the results of its independent review to the Director of NRR. The panel concluded that the submitter's concern regarding inappropriate application of LBB technology in the LPI cross-connect modification at Oconee, Units 1, 2 and 3 was based on an incorrect understanding of the Commission's regulations and policy on the use of LBB technology in the design of the ECCS. The staff's decision to authorize the application of LBB technology to this modification was appropriate and conforming to NRC's policy and regulations. The panel also recommended that the staff should develop a knowledge management document clearly describing the NRC's policy and practice on the application of LBB. Based on a review of the panel's report and additional comments from the DPO submitter, including those when the panel met with the submitter on July 20, 2006, to obtain clarification on certain details of his concerns and his confirmation on the panel's summary of the issues, the NRR Director agreed with the panel's conclusions and recommendations.

**DPO Decision (DPO-2006-004)**

**Davis Besse's Reply to the NRC's April 21, 2005, Notice of Violation**

On December 18, 2006, the Director, Office of Enforcement, issued a decision on a Differing Professional Opinion (DPO) regarding First Energy Nuclear Operating Company's (FENOC or licensee) September 14, 2005, response to the Notice of Violation and Proposed Imposition of Civil Penalties that was issued to the Davis Besse Nuclear Plant on April 21, 2005 (DPO-2006-004). On May 22, 2006, an NRC employee submitted a DPO that focused on the licensee's response to one of five escalated violations cited in the Agency's April 21, 2005, Notice of Violation (NOV) and the manner in which the staff addressed concerns regarding the completeness and accuracy of this response and associated violations. On October 18, 2006, an Ad Hoc Review Panel provided the results of its independent review to the Director, OE. The Panel concluded that the licensee's reply to the Notice of Violation did not constitute an additional violation of 10 CFR 50.9 and that the Agency's final determination concerning this issue was appropriate. Based on a review of the Panel's report, the Director of the Office of Enforcement agreed with the Panel's conclusions and recommendations.

**DPO Appeal Decision (DPO-2006-004)**

**Davis Besse's Reply to the NRC's April 21, 2005, Notice of Violation**

On May 3, 2007, the EDO issued a decision on an appeal to a December 18, 2006, DPO Decision made by the Director, OE. The appeal was related to an NRC employee who submitted a DPO, dated May 5, 2006, on the accuracy of the September 14, 2005, FirstEnergy Nuclear Operating Company's (FENOC) response to the NRC's Notice of Violation (NOV). The original DPO contended that the FENOC submittal was incomplete and inaccurate and should have been a cited violation of 10 CFR 50.9, "Completeness and Accuracy of Information." The DPO raised concerns with the agency's decision that the FENOC statement was not material and therefore, not a violation, and the agency's lack of regulatory action.

On receipt of the DPO appeal, the EDO reviewed relevant documents, met with the DPO Panel, conferred with OGC, and met with the DPO submitter. The technical concerns addressed the NRC decision not to issue a violation based on the inaccurate statements in the FENOC submittal. After careful review and deliberation the EDO concluded that the actions taken by staff in response to the DPO are adequate. The EDO agreed with the DPO Panel decision that based on the staff's prior understanding of the factual backdrop which attended FENOC's submittal that no additional 10 CFR 50.9 violation occurred. Additionally, the EDO verified that the Panel's recommendation, to release the initial correspondence from FENOC's general counsel addressing FENOC's submittal publicly, was carried out.

As such, the EDO found there was no need to reopen the DPO on the "Davis Besse Reply to a Notice of Violation." The EDO also recognized the efforts of the submitter in raising the issues and concerns, and the contribution of the employee in ensuring the agency's safety goals are achieved.

**DPO Decision (DPO-2006-005)**

**Management Policy on Licensing New Fuel Cycle Facilities**

On July 24, 2007, the Director, NMSS issued a decision on a DPO involving a management policy on licensing new fuel cycle facilities. On November 15, 2006, several NRC employees submitted a DPO that focused on the acceptability of the staff's approach in licensing new fuel cycle facilities, including whether an August 4, 2006, memorandum that provided guidance to staff reviewers was consistent with NRC requirements in 10 CFR Part 70 and associated staff review guidance. On March 30, 2007, a DPO Panel provided the results of its independent review to the Director, NMSS. The panel concluded that a programmatic review, as described in the August 4, 2006, memorandum was consistent with the requirements of Part 70. The panel also recommended that licensing review guidance and the NRC's oversight program for fuel facilities be revised to clarify aspects identified in the review. Based on a review of the panel's report and additional comments from the DPO submitters, the Director, NMSS, agreed with the panel's conclusions and recommendations and tasked the Division of Fuel Cycle Safety and Safeguards to review and revise licensing guidance and inspection guidance, as well as develop and execute a communications plan regarding the clarifications and revisions.

**DPO Appeal Decision (DPO-2006-005)**

**Management Policy on Licensing New Fuel Cycle Facilities**

On January 9, 2008, the EDO rendered a decision on an appeal to a DPO decision issued by the Director, NMSS. The DPO involved the staff's concerns regarding United States Enrichment Corporation (USEC) providing incomplete design and Integrated Safety Analysis (ISA) information necessary to review USEC's license application for the American Centrifuge Plant (ACP). On August 29, 2007, NRC employees submitted this appeal addressing the fact that the DPO Panel did not address two broad issues regarding the completeness of the design and completeness of the ISA. The submitters also raised concerns related to the NMSS Director's tasks in the July 24, 2007, DPO Decision and concerns on commitment to resources and contents of communication plans necessary to resolve the issue. Based on a review of the relevant information and meetings with the DPO Panel and the submitters, the EDO supported the DPO Decision that a programmatic review is consistent with the requirements of Part 70 and that the Standard Review Plan (SRP) can be interpreted to allow a programmatic review when considered along with the rule itself and the Statement of Considerations for the rule. To ensure consistency during reviews of future materials facilities applications, the EDO's decision clarified previous staff commitments to: (1) review and revise, as necessary and appropriate, the NRC's licensing guidance (e.g. NUREG-1520) to incorporate guidance on the information needed for the licensing of fuel facilities in accordance with 10 CFR Part 70 (2) review and revise, as necessary and appropriate, inspection guidance for conducting the operational readiness review required in 10 CFR 70.32 (k), and (3) develop a process or mechanism to ensure that all installed Items Required for Safety are reflected in the ISA summary.

**DPO Decision (DPO-2006-006)**  
**Westinghouse Crossflow Instrument**

On June 29, 2007, the Director, NRR, issued a decision on a DPO regarding the Westinghouse/AMAG (W/AMAG) Crossflow Ultrasonic Flow Meter (UFM). On December 13, 2006, an NRC employee submitted a DPO where he indicated that the W/AMAG CROSSFLOW Ultrasonic Flow Meter (UFM), when installed in accordance with the guidelines in the NRC-approved topical report CENPD-397-P, Revision 1, will function within its claimed accuracy as specified in the topical report. The submitter was concerned that the NRC staff's November 2006 draft safety evaluation for suspending the previous approval of the W/AMAG CROSSFLOW topical report does not provide a sufficient basis for the staff's proposed suspension. Furthermore, the submitter believed the staff did not respond satisfactorily to the issues presented in his October 2006 non-concurrence of the suspension safety evaluation. On June 12, 2007, a DPO Panel provided the results of its independent review to the Director, NRR. The panel reached the following overall conclusions: (1) the cross-correlation technology used by the W/AMAG CROSSFLOW UFM is capable of measuring fluid flow rate, but the basis for the estimation and maintenance of CROSSFLOW's accuracy has not been adequately established; (2) the previously approved CROSSFLOW topical report and the subsequent information provided by W/AMAG does not provide sufficient information for the user to ensure that the CROSSFLOW UFM will function within its claimed accuracy; (3) the NRC staff's November 2006 draft safety evaluation for suspending the previous approval of the CROSSFLOW topical report provides a sufficient basis for the proposed suspension.

Regarding the staff's response to the submitter's non-concurrence on the November 2006 draft safety evaluation for suspending the CROSSFLOW topical report, the staff followed the established NRC process for responding to non-concurrences. The staff satisfactorily responded to the key technical issues presented in the submitter's non-concurrence.

The submitter did not have any comments with regard to the panel's report issued on June 12, 2007. Based on the review of the panel's report and other background information including the submitter's comments when the panel met with the submitter on February 28, 2007, and the e-mails exchanged between the submitter and the panel on March 7, 2007, and April 12, 2007, the Director of NRR agreed with the panel's conclusions.

**DPO Appeal Decision (DPO-2006-006)**  
**Westinghouse Crossflow Instrument**

On September 25, 2007, the EDO rendered a decision on an appeal to an August 2, 2007, DPO Decision issued by the Director, NRR. The DPO involved the staff's preparation of a draft safety evaluation suspending approval of topical report CENPD-397-P, "Improved Flow Measurement Accuracy Using Crossflow Ultrasonic Flow Measurement Technology." On July 18, 2007, an NRC employee submitted this appeal addressing the fact that they did not believe the staff had a sufficient basis for suspending approval of topical report CENPD-397-P. The employee had initially submitted a DPO on the subject on December 18, 2006. Based on a review of the relevant information and meetings with the involved individuals, the EDO concluded that the actions taken by the staff in response to the DPO were adequate; therefore, the appeal was denied.

**DPO Decision (DPO- 2008-001)**

**Closure Process for Generic Safety Issue 191**

On May 27, 2009 the Director, Office of Nuclear Reactor Regulation issued a decision on a Differing Professional Opinion (DPO) concerning the NRC staff closure process for Generic Safety Issue (GSI)-191, including associated activities to review licensee submittals in response to Generic letter (GL) 2004-02 (DPO-2008-001). On October 1, 2008 an NRC employee submitted a DPO that focused on the staff procedure and process outlined in a March 25, 2008 memorandum has resulted in a review that is unnecessarily focused on compliance versus a determination that the underlying safety issue has been satisfactorily addressed. It also indicated that the staff's approach is inconsistent with Commission guidance provided in two Staff Requirements Memoranda and that the staff's review process is inefficient and may result in focusing on non-safety significant issues. On March 29, 2009, an Ad Hoc Review Panel provided the results of its independent review to the Director, Office of Nuclear Reactor Regulation. The Panel agreed with the first concern that the resolution of GSI-191 is focused on compliance versus a determination that the underlying safety issue has been satisfactorily addressed. However, the Panel stated that compliance with the regulatory requirements presumptively assures that adequate safety is maintained and, therefore, the current approach is appropriate. The Panel also found that the staff is not assessing all possible scenarios and that through the establishment of an integrated review team (IRT), a holistic review is being conducted on a plant-by-plant basis, balancing the safety margins among the various technical review areas. Lastly the Panel agreed that the staff's approach has been inefficient as detailed guidance has evolved as staff and licensees have learned from ongoing industry and NRC-sponsored testing. Based on a review of the Panel's report and additional comments from the DPO submitter, (include any other documents or meetings with involved individual) the Director, Office of Nuclear Reactor Regulation, agreed with the Panel's conclusions and recommendations.

**DPO Appeal Decision (DPO- 2008-001)**

**Closure Process for Generic Safety Issue 191**

On November 20, 2009, the Executive Director for Operations (EDO) issued a decision on the appeal of Differing Professional Opinion (DPO) 2008-001. The DPO submitted on October 1, 2008, stated that the closing approach to Generic Safety Issue (GSI) -191 has resulted in an unnecessary review focused on compliance instead of the determination of the underlying safety issue. Furthermore, the DPO stated that the approach is inconsistent with Commission guidance on efficiency and focus on non-safety significant issues. The DPO suggested that the NRC should defer compliance determination until a later date and that GSI-191 should be effectively closed.

To address GSI-191 closure, the NRC issued Generic Letter (GL) 2004-02 which required licensees to conduct analysis and perform modifications as necessary to assure long term recirculation capacity of the emergency core cooling and core spray systems. The NRR DPO Panel concluded that the staff's approach for resolving GSI-191 was appropriately focused and consistent with Commission guidance. In his decision, the EDO stated that the approach could have been better and there are lessons to be learned. The EDO concluded that the staff continues to make progress towards the ultimate closure of GSI-191, and there is no compelling reason to change agency's approach.

**DPO Decision (DPO- 2008-002)**

**First Energy Nuclear Operating Company's (FENOC) Response to NRC Request for Information**

On May 29, 2009, the Regional Administrator, Region III, issued a decision on a Differing Professional Opinion (DPO) regarding whether a violation of 10 CFR 50.9 occurred when First Energy Nuclear Operating Company (FENOC) omitted a certain document from its May 2, 2007, response to a Request for Information (RFI) (DPO-2008-002). On October 15, 2008, an NRC employee submitted a DPO that disagreed with the conclusion of two Allegation Review Boards (ARBs) in case number RIII-2007-A-0046, which found that the omission did not render the RFI response materially incomplete or inaccurate.. On May 15, 2009, an Ad Hoc Review Panel provided the results of its independent review to the Regional Administrator. The Panel concluded that the ARBs reasonably decided not to pursue a violation of 10 CFR 50.9 against FENOC for omitting a document from its RFI response because the omitted document was not material to the NRC. The Panel also recommended that some changes to the ARB process in Region III be considered. Based on a review of the Panel's report and additional comments from the DPO submitter, the Regional Administrator agreed with the Panel's conclusions and recommendations.

**DPO Appeal Decision (DPO- 2008-002)**

**First Energy Nuclear Operating Company's (FENOC) Response to NRC Request for Information**

On December 1, 2009, the Executive Director for Operations (EDO) issued a decision on the appeal of Differing Professional Opinion (DPO) 2008-002. The DPO submitted on October 15, 2008, stated that FENOC's May 2, 2007, response to Request for Information (RFI) was materially incomplete, and violated 10 CFR 50.9, "Completeness and Accuracy of Information." The DPO further stated that although the NRC's preceding letter specifically requested any assessment of the Exponent Report, FENOC did not provide a consultant's assessment of the Exponent Report.

The above concern was addressed by an Allegations Review Board (ARB) which concluded that the consultant's report was not material to the NRC. The DPO submitter disagreed with the ARB conclusion. A DPO Panel was established on November 13, 2008. The DPO Panel concluded that the omission of the consultant's report from FENOC's response to the RFI did not constitute a violation of 10 CFR 50.9. The Region III Regional Administrator issued its decision on May 29, 2009, supporting the Panel's findings.

A DPO appeal was submitted on June 18, 2009. In the DPO appeal decision, the EDO stated that he supports both the DPO Panel technical conclusion and Region III Regional Administrator technical decision. The EDO found that the regulatory actions the NRC took to confirm that the licensee's commitments and corrective actions, which were designed to ensure that information of potential regulatory significance is recognized and communicated to the NRC in a timely and effective manner, were adequate. The EDO further stated that the information included in the consultant's report would not have changed the agency's technical decisions and regulatory actions. Nevertheless, the EDO stated that the DPO submitter was right in questioning the basis for the staff's decision, given the language of the RFI and that the concerns raised by the DPO submitter regarding the allegation process did bring to light improvements to the process.

**DPO Decision (DPO-2009-001)**

**Fire Protection (NFPA 805) additional risk associated with previously approved recovery actions March 25, 2010**

On March 25, 2010, the NRR Director issued a decision on a Differing Professional Opinion (DPO) involving proposed language for Regulatory Guide (RG) 1.205, “Risk-Informed, Performance-Based Fire Protection for Existing Light-Water Nuclear Power Plants,” Revision 1 (DPO -2009-001). On July 24 and July 27, 2009, two NRC employees submitted DPOs that focused on the July 2009 version of the RG that asked the licensee to evaluate the additional risk from recovery actions, but the NRC staff was precluded from evaluating acceptability of any risk increases. Because the issues included in the DPOs were similar, both employees agreed to combine the issues in a single DPO.

On February 1, 2010, an Ad Hoc Review Panel (the Panel) provided the results of its independent review to the NRR Director. The Panel concluded that the submitters’ issue was valid and that the proposed revisions to RG 1.205 were not compliant with Title 10, Section 50.48(c), of the Code of Federal Regulations (10CFR50.48(c)) and the referenced 2001 Edition of NFPA-805. However, prior to the completion of the DPO Panel’s deliberation, the submitters and their management worked collaboratively to develop alternative language that was incorporated into Revision 1 of RG-1.205. The RG was issued in December 2009, and as a result, the concerns raised in the DPO have been resolved.

The Panel also concluded the root cause of the differing view stemmed from varying interpretations of how an existing licensing basis is affected when a licensee adopts an alternative rule and recommended that a consistent Office interpretation be developed and documented so as to minimize the potential for similar differing views. Based on a review of the Panel’s report and additional comments from the DPO submitters, the NRR Director agreed with the Panel’s conclusions and recommendations and tasked the staff to consider the need to establish clear guidance concerning the transition to alternative rules and its effect on the affected plant’s current licensing basis.

**DPO Decision (DPO-2010-001)**

**Interpretation of Categorical Exclusions in 10 CFR Part 51**

On May 13, 2011, the General Counsel issued a decision on a Differing Professional Opinion (DPO) involving the applicability of the categorical exclusions in 10 CFR Part 51 to an exemption request from a measurement requirement in 10 CFR § 74.59(d)(1) (DPO-2010-001). On October 28, 2010, four NRC employees submitted a DPO that focused on whether the Office of General Counsel’s (OGC’s) conclusion that the categorical exclusions in Part 51 were not applicable to a facility’s exemption request from a measurement requirement in 10 CFR § 74.59(d)(1) was the only reasonable interpretation of the provisions. On April 21, 2011, an Ad Hoc Review Panel provided the results of its independent review to the General Counsel. The Panel concluded that the concurrence process between staff and OGC was prematurely ended, and that the staff’s interpretation of the regulations in question was also a reasonable interpretation. The Panel also recommended that the lines of communication between offices be strengthened and not closed by the filing of a DPO and that the staff and OGC regroup to decide whether the policy goals and legal requirements are met by the current language of the

categorical exclusion provisions, or whether further refinement of the rule text is warranted. Based on a review of the Panel’s report, the interview reports and additional documentation by the attorneys and staff involved, the General Counsel agreed with the Panel’s conclusions and recommendations.

### **DPO Decision (DPO-2011-001)**

#### **Enforcement Policy Issues**

On June 28, 2011, the Director, Office of Enforcement, issued a decision on a Differing Professional Opinion (DPO) involving how enforcement decisions were made related to a materials licensee. On January 24, 2011, an NRC employee submitted a DPO that focused on 1) a major enforcement action being taken without prior communication between agency management and the licensee, and 2) NRC escalated enforcement actions should refrain from revoking the general license granting ownership (vice possession and use) unless a nexus to safety and security can be established. Further, the agency could have met its safety and security goals with fewer unintended consequences if an Order had been drafted more carefully. On May 11, 2011, an Ad Hoc Review Panel provided the results of its independent review to the Director, OE. The Panel concluded that: 1) the agency’s decision to issue orders without first offering a pre-decisional enforcement conference or issuing a Demand for Information satisfied the guidelines of the Enforcement Policy, and 2) the decision to ban owning licensed material was reviewed, deliberated, and agreed upon in accordance with normal enforcement processes. The decision was tied to staff concerns about the potential safety consequences of allowing the control over licensed material. The Panel recommended that guidance to staff (and possibly licensees) regarding the scope and meaning of the phrase “licensed activities” is needed. Further the Panel recommended that guidance to staff on how to draft orders in a manner that avoids unintended consequences may be warranted. Based on a review of the Panel’s report and additional comments from the DPO submitter, the Director, OE agreed with the Panel’s conclusions and recommendations. Also, the Director, OE agreed with the DPO submitter that it is highly unusual to take a major enforcement action without providing the licensee the opportunity to respond to the findings; however, in this case the action was deemed necessary to protect public health and safety.

### **DPO Decision (DPO-2011-002)**

#### **NRC Inspection Access at LES Gas Centrifuge Facility**

On April 2, 2012, the Director, Office of Nuclear Material Safety and Safeguards (NMSS) issued a decision on a Differing Professional Opinion (DPO) involving inspection access at the LES gas centrifuge facility (DPO-2011-002). On November 1, 2011, an NRC employee submitted a DPO that focused on NRC inspector access at LES, “need-to-know” decision making for NRC staff, NRC staff training, and documentation in inspection reports and inspection planning, among other issues. On March 2, 2012, an Ad Hoc Review Panel provided the results of its independent review to the Director, NMSS. The Panel concluded that a number of the contentions in the DPO were supported, and the Panel made six specific recommendations to address the Panel’s findings. In addition, the Panel made its own finding and recommendation, raised during the course of the review. The Panel’s recommendations ranged from the need for training on access to facilities and expectations during/after inspections, including: pre-inspection planning, understanding provisions or agreements in place at a facility, following protocol, and preparing inspection reports, to evaluating the process for establishing need-to-know and the individual responsible for authorization; from evaluating the expectations for the licensee’s criticality

safety program to providing training to staff on the different centrifuge technologies located at the facilities. Based on a review of the Panel's report and additional comments from the DPO submitter, the Director, NMSS, agreed with the panel's recommendations.

**DPO Decision (DPO-2012-001)**

**Applicability of Reporting Requirements in 10 CFR 70.72 for Shaw AREVA MOX Services**

On November 16, 2012, the General Counsel issued a decision on a Differing Professional Opinion (DPO) regarding the applicability of the requirements in 10 C.F.R. § 70.72 to Shaw AREVA MOX Services, LLC (MOX Services) for reporting changes to its mixed-oxide fuel fabrication facility, currently under construction, that do not require prior NRC approval (DPO-2011-001). On June 29, 2012, an NRC employee filed a DPO that questioned an OGC opinion that § 70.72 applied, by its terms, to licensees but not license applicants. NMSS had relied on this opinion in evaluating the applicability of § 70.72 to MOX Services. On October 25, 2012, an Ad Hoc Review Panel provided the General Counsel with the results of its independent review. The Panel concluded that changes related to construction performed under MOX Services' construction authorization are subject to § 70.72. Consequently, the Panel recommended that NMSS engage MOX Services to evaluate potential changes during construction to determine whether NRC approval is required prior to their implementation, consistent with the requirements of § 70.72, and should submit an annual summary of facility changes made in the previous calendar year, consistent with § 70.72(d)(2). The Panel also recommended that OGC request NMSS work with MOX Services to revise the change process identified in the current license application to ensure it is consistent with § 70.72. Based on a review of the Panel's report, the General Counsel agreed with the Panel's conclusions and agreed to implement its recommendations.

**DPO Decision (DPO-2012-003)**

**Protection from External Flooding at Watts Bar Unit 1 (G20120589)**

On July 17, 2012, a Differing Professional Opinion (DPO) was filed concerning external flooding at Watts Bar Nuclear (WBN) Unit 1. A DPO Review Panel was convened to examine the submission. The DPO Panel concluded that there was not an immediate safety concern associated with the WBN flood issue when the staff issued the Confirmatory Action Letter (CAL) to Tennessee Valley Authority. The conclusion on the immediate safety question was tempered to a degree, however, because the staff did not develop and document a common understanding of either the significance of the flood issue itself or the safety basis for continued operation of WBN. The Panel also concluded that the staff's decision to issue the CAL met the applicable regulatory policy and guidance, was consistent with past practice, and was a reasonable regulatory decision. Finally, they concluded that the staff's decision to continue to work on the known flood issue at WBN1 in parallel with its work on post-Fukushima activities was appropriate. Nevertheless, the DPO highlighted two issues that would have helped the development of this issue, those being (1) the staff should have performed a risk assessment of the issue and prepared a clear safety bases for continued operations of WBN, and (2) the staff should have followed an established and structured process to fully assess and document the significance of the WBN issue.

**DPO Appeal Decision (DPO-2013-002)**

**Diablo Canyon Seismic Issues**

On September 9, 2014, the Executive Director for Operations (EDO) issued a decision on the appeal of DPO 2013-002, concerning seismic issues at the Diablo Canyon Nuclear Power Plant (DCNPP). The EDO's decision on the appeal supported both the DPO panel's independent technical conclusions and subsequent Office of Nuclear Reactor Regulation (NRR) Director's decision that there was not a significant or immediate concern with seismic safety at DCP, and that the licensee and staff had followed appropriate processes for technical specification operability of plant equipment and Title 10 Code of Federal Regulations 50.59 evaluations with a reasonable technical and safety rationale. The EDO noted that the DPO raised awareness of the complexity of the DCNPP seismic licensing basis, but also illustrated the need for the agency to ensure there are clear guidelines for staff and licensees regarding how changes in natural hazards should be evaluated for all licensees

**DPO Milestones and Timeliness Goals**

<b>DPO Milestones</b>	<b>Timeliness Goals*</b>
Individual submits DPO (NRC Form 680)	None
DPO PM screens, accepts, and dispatches DPO to appropriate OD or RA	10 days
OD or RA establishes DPO Panel	14 days
DPO Panel conducts review and issues report <ul style="list-style-type: none"> <li>– meets with submitter (≈7 days)</li> <li>– establishes Summary of Issues (≈7 days)</li> <li>– completes review (≈ 54 days after start of review)</li> <li>– writes report (≈21 days after completion of review)</li> </ul>	75 days
OD or RA issues DPO Decision	21 days
<b>DPO TIMELINESS GOAL</b>  (time from acceptance of DPO to DPO Decision)	120 days

\*The timeframes for completing process milestones are expressed in calendar days and are identified strictly as goals—a way of working towards reaching the Differing Professional Opinions (DPO) timeliness goal of 120 calendar days. All extensions beyond 120 days must be approved by the EDO.

**DPO Appeal Milestones and Timeliness Goals**

<b>DPO Appeal Milestones</b>	<b>Timeliness Goals*</b>
Individual submits DPO appeal (NRC Form 690)	NLT 21 days of DPO Decision
DPO PM screens, accepts, and requests statement of views from OD or RA	4 days
OD or RA provides statement of views to DPO PM	14 days
DPO PM provides DPO appeal package to EDO	2 days
EDO issues DPO Appeal Decision	60 days
<b>DPO APPEAL TIMELINESS GOAL</b>  (time from acceptance of appeal to DPO Appeal Decision)	80 days

\*The timeframes for completing process milestones are expressed in calendar days and are identified strictly as goals—a way of working towards reaching the Differing Professional Opinions (DPO) Appeal timeliness goal of 80 calendar days.