

# Potential Pitfalls to Avoid: NRC's Pre-investigation ADR Settlement Agreement Review Process

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September 22, 2010

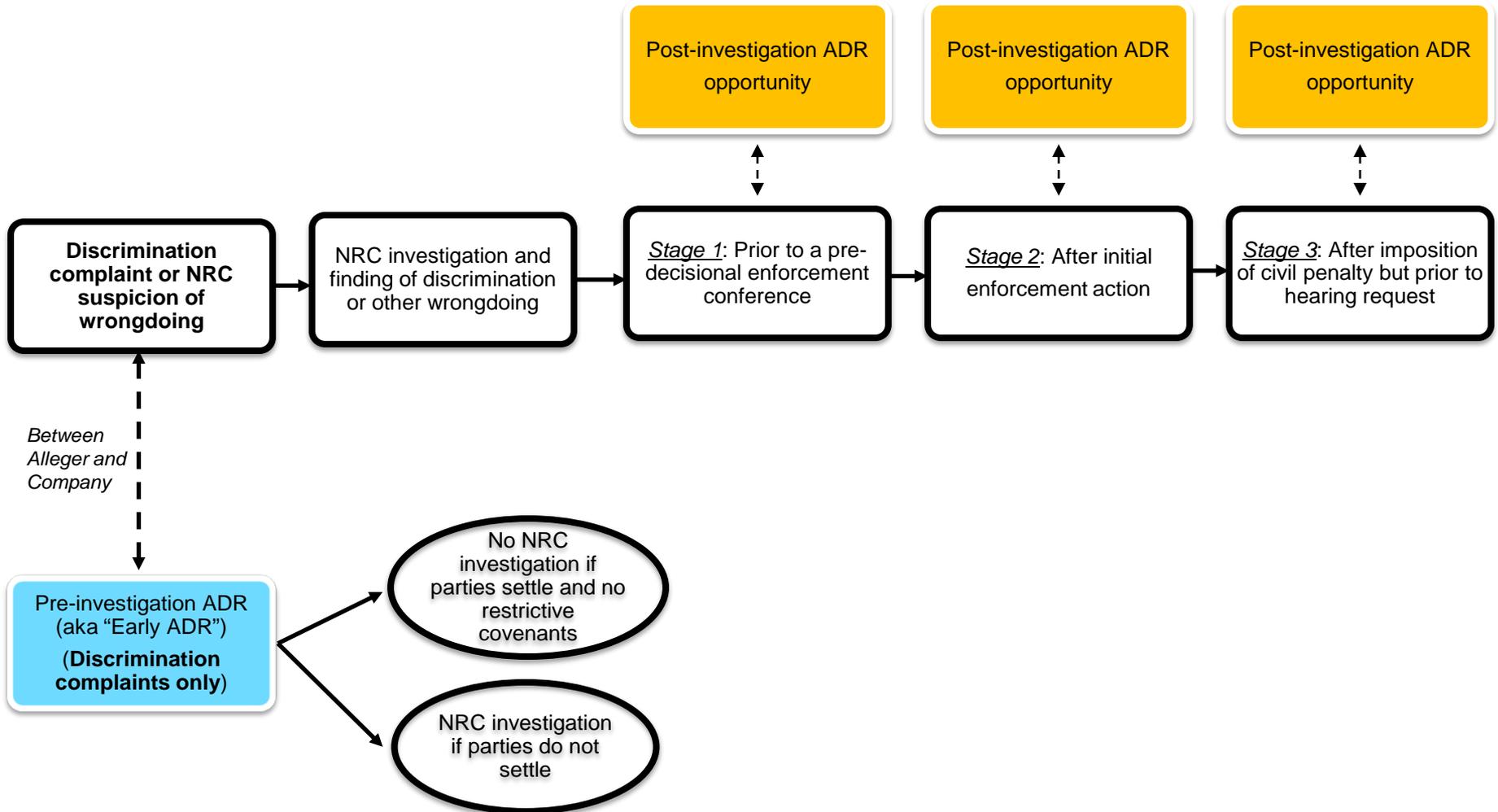
**National Association of Employee Concerns  
Professionals  
Attorneys' Group Breakout Session  
Fall 2010 Conference  
Annapolis, Maryland**



# Agenda

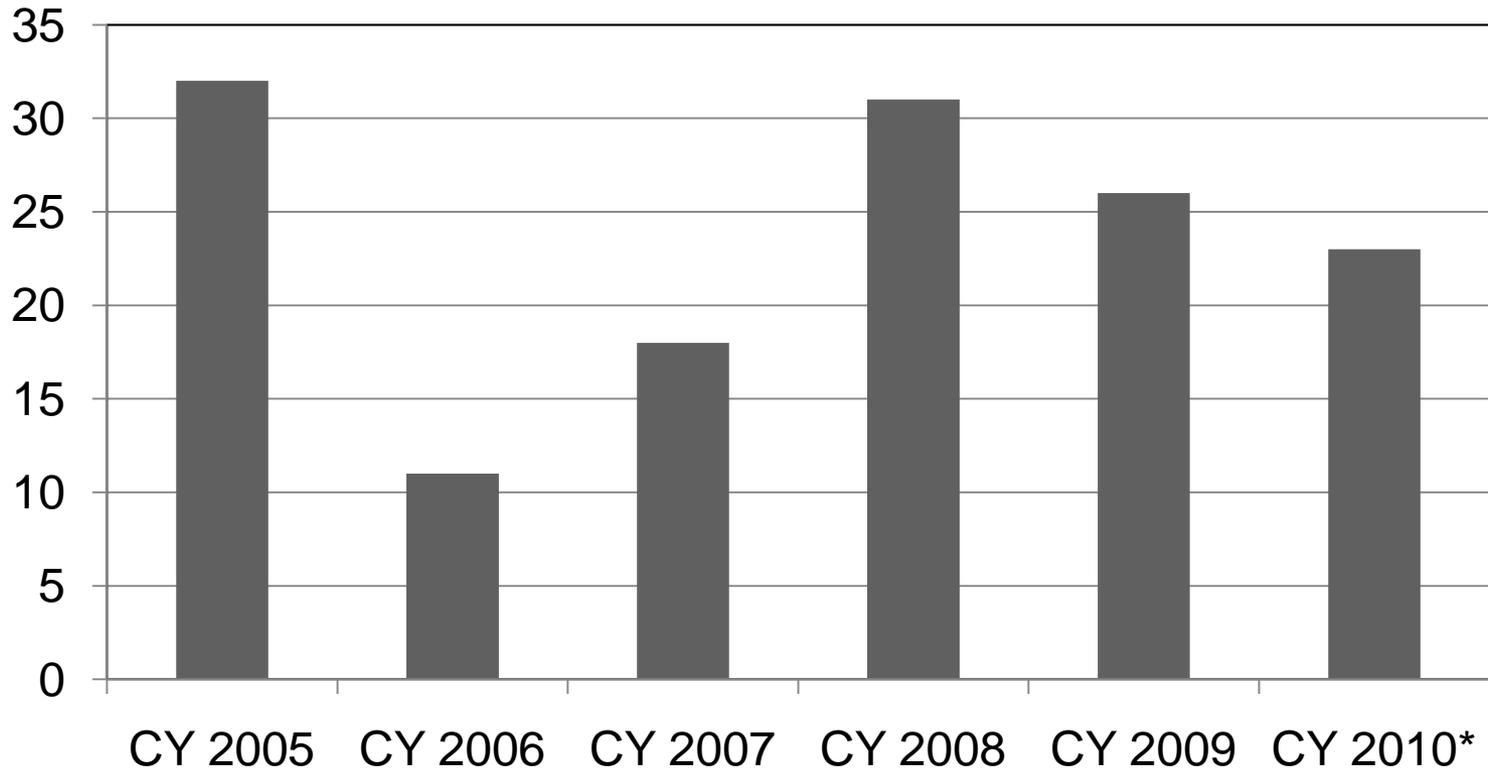
- Brief summary of the ADR Program
- Brief summary of the settlement agreement review process
- Potential Pitfalls to Avoid

# Basic ADR Flow Chart



# Early ADR

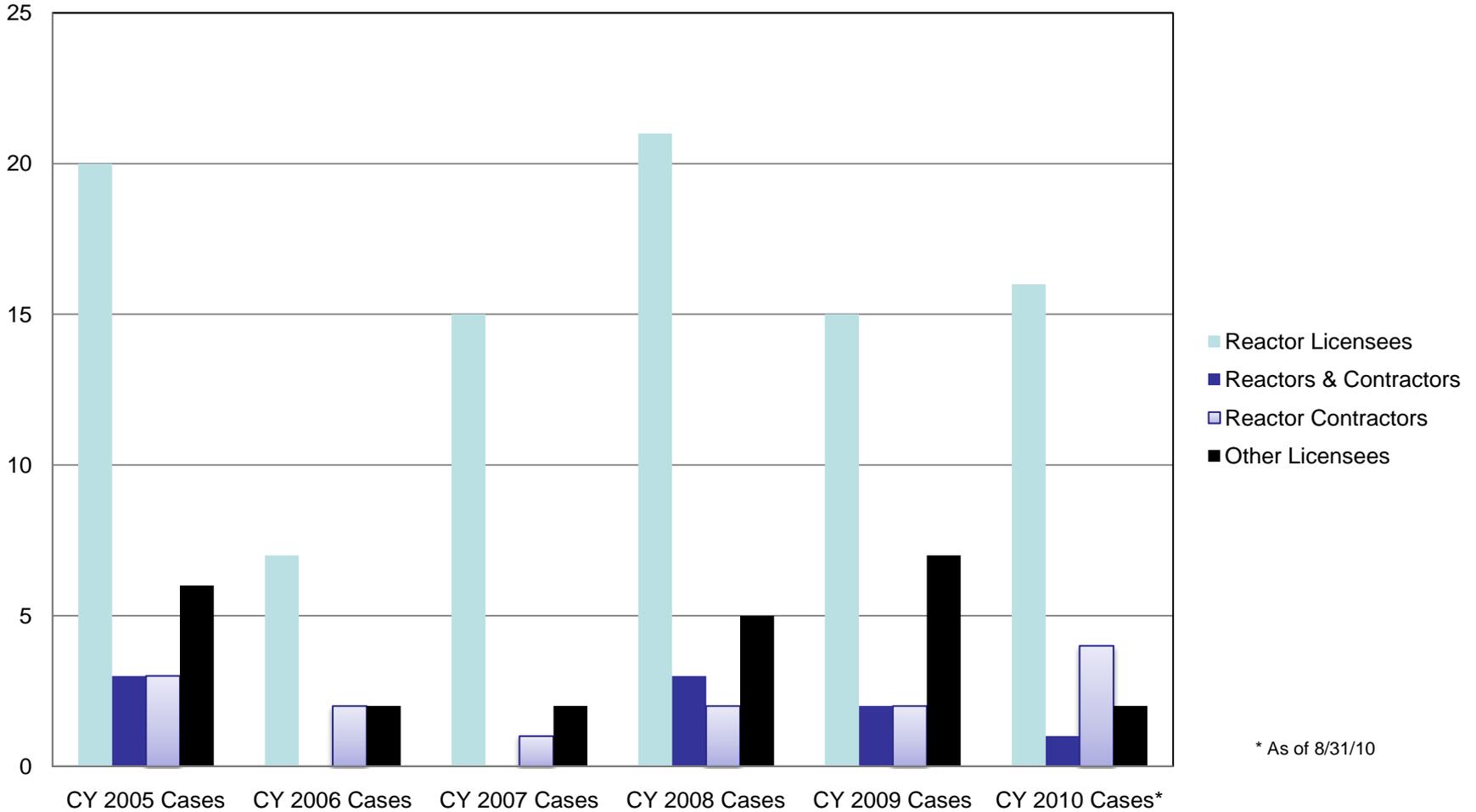
## Cases Opened



\* As of  
8/31/10

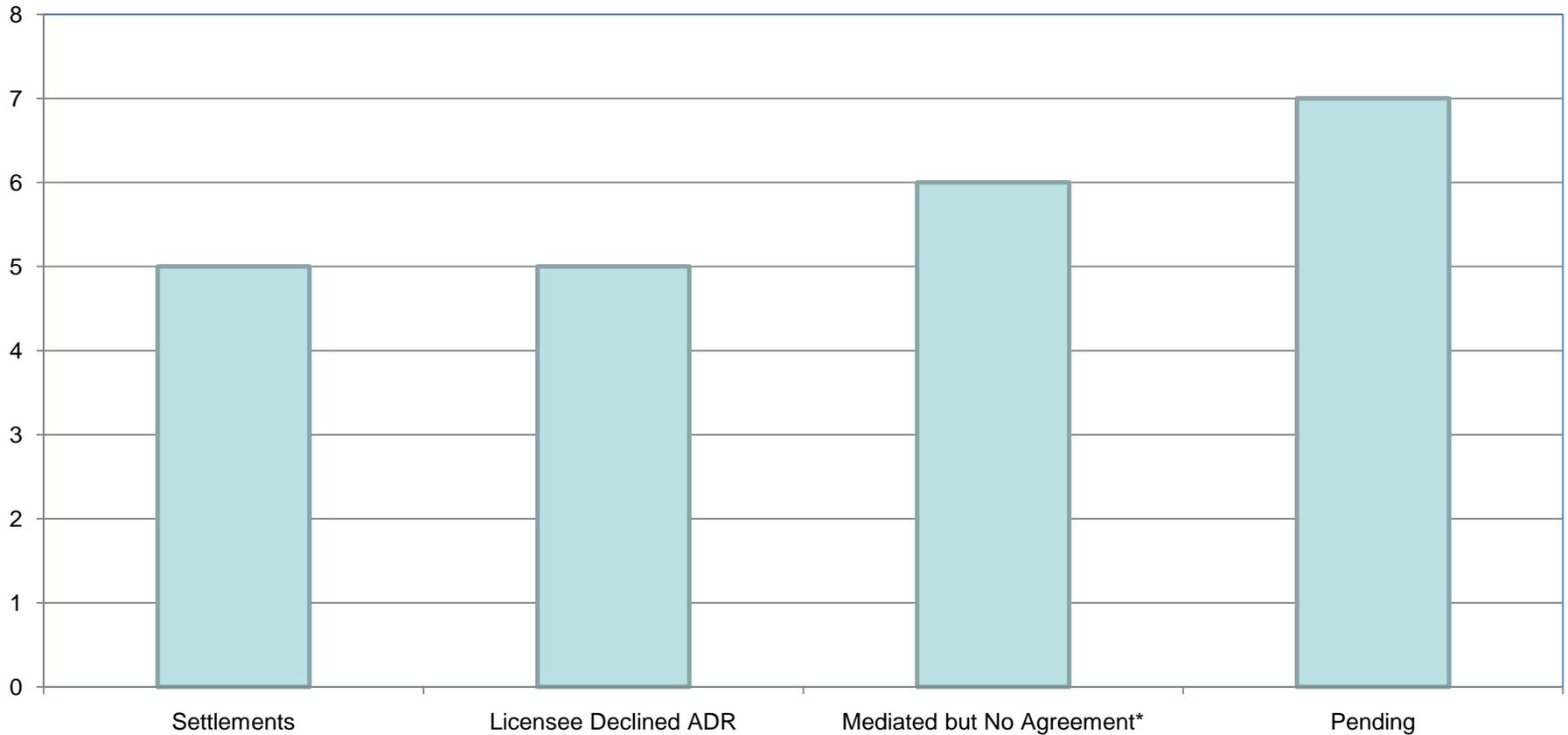
# Early ADR

## Defendant Type



# Early ADR

## CY 2010 Outcomes as of 8/31/10





# Settlement Agreement Review Process

1. A party provides the settlement agreement to
  - Cornell University administers the day-to-day activities of the program;
  - The regional office; or
  - The NRC ADR Program Manager
2. The NRC ADR Program Manager coordinates with OGC in reviewing the settlement agreement
  - OGC review typically takes 10 business days
3. If no restrictive covenants exist, the ADR Program Manager will issue settlement agreement close-out letters to the complainant and licensee/company
4. If modifications needed, the ADR Program Manager (sometimes OGC counsel) will contact one of the parties to rectify issue
  - Upon modification of the settlement agreement, the ADR Program Manager issues settlement agreement close-out letters to the complainant and licensee/company



# Potential Pitfalls to Avoid

1. Submission of the settlement agreement to the wrong office
  - Consider sending the settlement agreement directly to the ADR Program Manager (Shahram Ghasemian)
  
2. A party lacking incentive to cooperate in agreement modification
  - Consider conditioning the parties' performance on the completion of the NRC review
  
3. An apparent disconnect between waiver/release/not to sue clause and the right to communicate with the NRC clause
  - Consider explicitly conditioning this clause on the clause that affirms the individual's right to communicate with the NRC or engage in a protected activity



# Potential Pitfalls to Avoid

**Case study:** Section X. Except as may be required by law, employee agrees that [s/he] has not and will not make any disparaging statements to current, former or prospective customers, contractors . . . or governmental organizations about [licensee], its parent, its affiliates, subsidiaries, shareholders, their officers, directors or employees, regardless of whether employee regards the statement to be true.

A disparaging statement was defined as “any communication, oral or written, which is intended, or would tend, to cause the recipient of the communication to question the business condition, quality of products and services, legal compliance, integrity, competence, fairness or good character of [licensee], its parent, subsidiaries, affiliates or successors or the person to whom the communication relates.”

4. Overly broad non-disparagement clause may be interpreted to encompass prohibition of certain protected activities
  - Consider explicitly conditioning this provision to the complainant’s right to communicate with the NRC or engage in a protected activity or otherwise limiting its scope



## Potential Pitfalls to Avoid

5. NRC not being notified of the settlement agreement or discussions in a timely manner
  - Consider pros/cons of notifying the NRC of on-going settlement discussions or provision of the settlement agreement to the NRC
  
6. Don't assume that the DOL settlement agreement approval process replaces the NRC's review process



**THE END**