Title: IRB Non-Compliance and Protocol Deviations
SOP # 14
Department: Office of Research Compliance & Integrity
Issue Date: August 2, 2021
Subject: IRB Non-compliance

The following is the University of California, Merced (UCM) Institutional Review Board (IRB) Standard Operating Procedure for noncompliance investigation procedures, in accordance with the Department of Health and Human Services (HHS), Office for Human Research Protections (OHRP), and the IRB's Federal Wide Assurance (FWA). Non-Compliance is a failure to comply with the requirements of an applicable law, regulation, or institutional policy pertaining to the protection of human subjects, and/or with the requirements or determinations of an IRB that results in harm to subject's rights, safety or welfare, or on the integrity of the data. Non-compliance results from the action or inaction of anyone conducting protocol procedures.

Reported incidents will be considered *possible* noncompliance until a final determination is made by the IRB. The IRB will assess the severity of the event and, if necessary, require corrective action. Serious and continuing noncompliance will be reported to the appropriate institutional officials and regulatory agencies.

Definitions:
Non-Compliance - Failure to comply with applicable laws, regulations, or UCM institutional policies pertaining to the protection of human subjects, and/or with the requirements or determinations of an IRB, including deviation from the IRB-approved/exempt study procedures.

Continuing Non-Compliance - A pattern of non-compliance that indicates an inability or unwillingness to comply with applicable laws, regulations, or institutional policies pertaining to the protection of human subjects and/or with the requirements or determinations of an IRB.

Serious Non-Compliance - Non-compliance that has a significant adverse impact either on the rights or welfare of participants or on the integrity of the study data.

Procedures:

Reporting Requirements:
Protocol deviations and noncompliance should be reported to the IRB as soon as possible. An initial report should be made to the IRB Office by email (irboffice@ucmerced.edu) within one (*1) week* (7 calendar days) of when the investigator became aware of the adverse event. Any adverse event involving serious injury or danger to the subject must be reported immediately. The initial report must be followed by a formal Adverse Event submission in Cayuse Human Ethics within no more than two (*2) weeks* (fourteen (14) calendar days) of when the investigator became aware of the event. Reports of possible noncompliance should include a complete description of the event and include sufficient detail to allow the IRB to make an assessment.

In some cases, reporting requirements may be met by submitting a preliminary report to the IRB Office, IRB, and other officials/agencies involved, with a follow-up report submitted at a later date when more information is available. These determinations will be made on a case-by-case basis, with the IRB Chair, Research Compliance & Integrity Director, institutional official(s) and/or others involved as appropriate.

The primary consideration in making these judgments will be the need to take timely action to prevent avoidable harms to research subjects and others.

Whenever possible, reports should be submitted via the investigator. However, if the reporting party deems it necessary and/or wishes to remain anonymous to the investigator, they may contact the IRB Office directly. Protocol deviations and/or noncompliance incidents may be discovered by IRB Office staff as part of continuing review of nonexempt protocols, or audit activity, or an incidental awareness (e.g., due to a news article, errant email or incidental finding of recruitment material). Such discoveries must be promptly reported to the Research Compliance & Integrity Director.

IRB Reporting Requirements
Unanticipated problems involving risks to subjects or others; any serious and/or continuing noncompliance; any suspension or termination of IRB approval are reportable to the appropriate federal department or agency head(s) and to the UC Merced Institutional Official. The Institutional Official may need to report the suspension to OHRP or another regulatory agency. HHS regulations require that any suspended human participant research that is conducted or supported by HHS be reported to OHRP immediately (HHS regulations, 45 CFR 46.103(a) and (b)(5)).

Investigation:
Upon receipt of the noncompliance report the IRB Office will notify the IRB Chair and Vice Chair of the alleged noncompliance and determine if the report requires further investigation with immediate action, further investigation but no immediate action or no action. The IRB will attempt to resolve alleged instances of noncompliance without interrupting the conduct of the study, especially if the rights, safety, and welfare of subjects may be jeopardized by the interruption. All reports of potential noncompliance as well as the outcome of investigations that are substantiated will be noted in the protocol record.

If a determination of further investigation with immediate action is made an emergency IRB meeting will be scheduled to:

- discuss an allegation of noncompliance and/or serious adverse event;
- or determine whether an activity should be suspended. The UCM IRB may appoint a delegate and/or subcommittee to proceed with an investigation.

If an investigation is warranted, the IRB may collect information through:

- interviews with people affiliated with the allegation;
- interviews with human participants or participating organizations; and
- consent records, data records, and any other relevant documentation.

If the IRB Chair has an actual or perceived conflict of interest, the Institutional Official will delegate the responsibility of the investigation to an IRB member who does not have a conflict of interest. The Institutional Official, legal counsel, complainant, and the person against whom the allegation is being made may be invited to participate in the investigation.

The IRB will fully investigate and review reports of possible noncompliance to determine if the adverse event was not noncompliance, simple noncompliance, serious noncompliance, or continuing noncompliance. If necessary, the IRB will require corrective action.

If the IRB finds that no noncompliance occurred because: (1) the reported noncompliance was unsubstantiated, (2) the investigator deviated from the protocol in order to eliminate immediate and

apparent hazards to subjects, or (3) continued participation of enrolled subjects in research for which approval has expired was necessary to protect the best interests of enrolled subjects, the following actions by the IRB may include but are not limited to:

- Requiring no further action.
- Requiring submission of an amendment to the protocol or consent form.
- Requiring submission of a continuing review application.
- Permitting or disallowing use of data collected during (2) and (3) above).

If simple noncompliance is found to have occurred, action by the IRB Chair may include but are not limited to:

- Requiring no further action.
- Requiring remedial training (e.g., online educational program, attendance at workshop, one-on-one training).
- Requiring re-consent of subjects.
- Requiring the submission of an amendment to the protocol or consent form.

Whenever appropriate, investigators will be assisted so that they can achieve compliance without the need for sanctions. However, if the investigator fails to cooperate with IRB requests to correct minor noncompliance, this inaction will be treated as continuing noncompliance.
If serious and/or continuing noncompliance is found to have occurred, actions by the IRB may include but are not limited to:

- Establishing a corrective action plan.
- Asking the Investigator to voluntarily halt the research until the investigator is in compliance.
- Requiring the Investigator to participate in and complete further training.
- Requiring more frequent review of the project.
- Permitting or disallowing use of the data collected during noncompliance.
- Not permitting publication or dissemination of the results of the research.
- Limiting the investigator's human subject research privileges.
- Writing letters of censure.
- Making recommendations to the Institutional Official (IO) for further sanctions, stipulations, or restrictions to the Investigator's privilege to conduct human subjects research.
- Sharing information of noncompliance with other institutional units as deemed necessary.

The IRB and, when appropriate, the institution will act promptly to ensure remedial action regarding any breach of regulatory or institutional human subject protection requirements. The IRB also has the authority to suspend or terminate approval of research that is not being conducted in accordance with the IRB policies, is not in compliance with federal regulations, or deviates from the approved protocol. (Add UC Policy to this list?)
All serious and/or continuing noncompliance must be reported promptly to the Assistant Vice Chancellor for Research (AVC), the Institutional Official (IO) and, for federally funded research, the appropriate department, agency head or sponsor. Reports will only be made to OHRP for research that is regulated by these oversight agencies per UCM's Federalwide Assurance (FWA).

Outcomes of an Investigation
It is the responsibility of the IRB Chair, in consultation with the IRB Office, to compile a final report for the Institutional Official. The Institutional Official may need to submit the final report to OHRP. The final report to OHRP must include:

- the name of the institution;
- the research project title and/or grant proposal that was originally suspended;
- the name of the principal investigator of the protocol;

- the research project number assigned by the IRB; and
- any corrective actions the institution is taking to remediate the immediate problem and ensure that the incident will not happen again with that principal investigator or with other researchers.

In the report, the IRB will determine one of the following actions:

- There was no evidence to support the allegation.
- The allegation was not supported; however, it may require additional action by administration.
- The allegation was valid and requires additional action.

HHS Policy requires that the Institutional Official report any serious or continuing noncompliance to OHRP. The Institutional Official will share the outcome with any appropriate institutional authorities.

Regulatory Background:

HHS regulations at 45 CFR 46.103(a) and (b)(5) require that institutions have written procedures to ensure that the following incidents related to regulatory requirements pertaining to research conducted under an OHRP- approved assurance are promptly reported to OHRP:

a. Any unanticipated problems involving risks to subjects or others;
b. Any serious or continuing noncompliance with this policy or the requirements or determinations of the IRB; and
c. Any suspension or termination of IRB approval.

References:
45 CFR 46