

Policy Number: 53

Title: Noncompliance

Date of Last Revision: July 27, 2007

I. General Requirements

The Department of Health and Human Services (DHHS) requires that institutions have “written procedures for ensuring prompt reporting to the IRB, appropriate institutional officials, and the department or agency head of (i) any unanticipated problems involving risks to subjects or others or any serious or continuing noncompliance with this policy or the requirements or determinations of the IRB; and (ii) any suspension or termination of IRB approval” [45 CFR 46.103(b)(5)].

The Food and Drug Administration (FDA) requires that institutions follow “written procedures for ensuring prompt reporting to the IRB, appropriate institutional officials, and the FDA of: (1) Any unanticipated problems involving risks to human subjects or others; (2) any instance of serious or continuing noncompliance with these regulations or the requirements or determinations of the IRB; or (3) any suspension or termination of IRB approval” [21 CFR 56.108(b)].

II. Definitions

Noncompliance: Failure to comply with federal regulations, or the requirements or determinations of the Institutional Review Board.

Allegation of Noncompliance: An unproven assertion of noncompliance.

Report of Noncompliance: A proven assertion of noncompliance.

Serious Noncompliance: Instances that pose an increased risk to the safety, rights and welfare of human research subjects, when investigators either avoid or ignore IRB policies, significant failure to comply with federal regulations, failure to comply with IRB requirements or determinations, or systemic failure of the institution to implement practices and procedures contained in the institution's human research Assurance and policies.

Continuing Noncompliance: Repeated instances of noncompliance by the same investigator. Repetition may be of the same or different instance or in the same or different protocols of a single investigator.

III. Policies

- A. UCLA personnel, including investigators, research team, faculty, staff, administration or students are responsible for the protection of the rights and welfare of human research subjects. To this end, all parties are responsible for reporting serious or continuing noncompliance with applicable human research regulations or requirements, determinations, or policies of the IRB.
1. Investigators must report to the IRB any self-identified events of noncompliance to the IRB immediately upon discovery and no later than ten days from the occurrence.
 - a. The report of noncompliance should include the following information: description of the noncompliance, explanation of how the noncompliance occurred and was discovered, description of any problems regarding the rights of subjects, such as recruitment, informed consent process, etc., or potential or resulting risks to subjects, and a proposed action plan to avoid similar reoccurrence in the future.
 2. Information regarding previously reviewed incidents of noncompliance may also be contained in materials submitted to the IRB for review. This includes, but is not limited to, continuation and addendum applications, quality assurance audit reports and protocol violation reports.
- B. All incidents of noncompliance reported to the IRB will be reviewed by the IRB, the IRB Chair, or his or her designee, and a determination will be rendered to include any actions and/or recommendations, to be presented to the investigator.
1. If the noncompliance is identified upon review of an incident report, protocol violation or unanticipated problem, the review will also proceed as described in the appropriate policy. See OPRS/IRB Policies on *Protocol Violations* ([Policy 55](#)), *Unanticipated Problems* ([Policy 57](#)), and *Incident Reporting* ([Policy 56](#)).
- C. Allegations of noncompliance with applicable regulations and/or requirements/determinations of the IRB shall be reviewed by the IRB.
1. If the allegation of noncompliance is identified upon review of a subject complaint, the review will also proceed as described in the appropriate policy (see [OPRS/IRB Policy 58: Subject Complaints](#)).
 2. The IRB shall provide an investigator with opportunity to respond to subject complaints. The IRB will determine what actions and/or recommendations, if any, will be presented to the investigator.
- D. IRB determinations of serious or continuing noncompliance shall be reported according to the procedure described in [OPRS/IRB Policy 60: Reporting Procedures for Unanticipated Problems, Noncompliance, Suspension or Termination](#).

IV. Procedures

- A. **Review of Allegations of Noncompliance:** The OPRS Director/Assistant Director, in collaboration with the IRB Chair/Vice Chair, determines whether allegations of noncompliance have a basis in fact. If there is no basis in fact, no further action is taken. Otherwise, the matter is handled as a report of noncompliance.
- B. **Review of Reports of Noncompliance:** Upon receipt, evaluation and review of a report of noncompliance, the IRB staff will direct the review to the OPRS Director/Assistant Director and IRB Chair/Vice Chair.
1. The Director/Assistant Director in collaboration with the IRB Chair/Vice Chair will review all of the information, including the PI's response.
 2. If the OPRS Director/Assistant Director, in collaboration with the IRB Chair/Vice Chair, determines that the reported noncompliance is neither serious nor continuing, the IRB Chair/Vice Chair, in collaboration with the OPRS Director/Assistant Director, will determine the course of action in compliance with University policy and federal regulations.
 3. Otherwise, the noncompliance is reviewed by the full Committee at the next scheduled meeting of the appropriate Board.
 4. If the noncompliance is such that the safety, rights and welfare of subjects is at immediate risk, the IRB Chair/Vice Chair will contact the PI in order to institute interim measures and call an emergency meeting of the IRB, if necessary, in order to review the noncompliance.
- C. The IRB Chair/Vice Chair will request additional information from the principal investigator regarding the noncompliance in order to facilitate a fair and complete review at the convened IRB meeting.
- D. Review by a convened IRB meeting (Full Committee review).
1. All members, at a minimum, will receive copies of the correspondence from the investigator and the most recent versions of the completed IRB application and consent documents (or, if applicable, past versions of those documents in effect at the time of noncompliance).
 - a. If available, all members will also receive a summary of any previous noncompliance or safety information relevant to the noncompliance.
 - b. Other materials may be provided as appropriate to the circumstances.

2. The primary reviewers will receive the same materials as all members. In addition, the entire study file will be provided or made available by OPRS staff in a manner appropriate to the reviewers' schedules and the size of the study file.
3. The Board may request additional information from the principal investigator regarding the reported noncompliance in order to facilitate an adequate review before a final determination is made.
4. The Board may determine that a Sub-Committee, comprised of selected IRB members and IRB staff, is necessary to further investigate and review the reported/alleged noncompliance, with a final report and recommendations presented to the full Committee for final determination.
5. The IRB makes one of the following determinations:
 - a. There is no noncompliance.
 - b. There is noncompliance, but the noncompliance is neither serious nor continuing.
 - c. There is noncompliance that is serious and/or continuing.
6. An action determination shall be made by the Board. Multiple determinations may be made. The determination(s) may include, but is not limited to the following:
 - a. **No further action required.**
 - b. **Submission of a corrective action plan from the principal investigator to avoid reoccurrence in the future.** Staff will notify the investigator of the Board's request to review and approve a corrective action plan to avoid reoccurrence in the future. The Chair/Vice Chair will review and approve the correspondence prior to investigator notification. Upon receipt of the investigator's response, staff will prepare an evaluation of the response to include any regulatory or administrative guidance for Board. The process may repeat until the response is ready for approval.
 - c. **IRB recommended corrective action plan.** Such actions shall be appropriate to the nature and degree of the noncompliance and may include but are not limited to the following: educational intervention for investigator and support staff, modification of continuing review cycle, subject status reports, monitoring of the research and consent monitoring. Staff shall notify the investigator of the Board's recommended corrective action plan to avoid reoccurrence in the future. The Chair/Vice Chair will review and approve the correspondence prior to investigator notification. Upon receipt of the investigator's response, staff will prepare an

evaluation of the response to include any regulatory or administrative guidance for the Board. The process may repeat until the response is ready for approval.

e. **Modification to the research protocol.** Staff shall notify the investigator of the Board's request for a modification to the research protocol. The Chair/Vice Chair will review and approve the correspondence prior to investigator notification. Upon receipt of the investigator's response, staff will prepare an evaluation of the response to include any regulatory or administrative guidance for the Board. The process may repeat until the response is ready for approval.

f. **Modification of the informed consent document.** Staff shall notify the investigator of the Board's request to review and approve a modification to the informed consent document. The Chair/Vice Chair will review and approve the correspondence prior to investigator notification. Upon receipt of the investigator's response, staff will prepare an evaluation of the response to include any regulatory or administrative guidance for Board. The process may repeat until the response is ready for approval.

g. **Notification of current and past subjects of new information.** Such information may relate to a current subject's willingness to continue participation in the research. Staff shall notify the investigator of the Board's request to inform current and past subjects of the new information. The Chair/Vice Chair will review and approve the correspondence prior to investigator notification. Upon receipt of the investigator's response, staff will prepare an evaluation of the response to include any regulatory or administrative guidance for the Board. The process may repeat until the response is ready for approval.

h. **Referral of noncompliance to other institutional entities.** The IRB may refer information about noncompliance to department chairs, research administrators or the Institutional Official. The purposes of such referral would vary by the type of noncompliance, but could include seeking assurances regarding resources available to a given investigator or group, or to allow institutional entities to conduct complementary investigations, particularly when concerns may extend beyond human subject protections.

i. **Monitoring of other research projects** that are conducted by the same investigator or in the same place or by same research staff involved in the reported non-compliance.

j. **Educational training sessions for investigators and research staff.**

k. **Suspension of research to new subject enrollment and/or suspension of entire study, including follow-up and data analysis.** Please see [*OPRS/IRB Policy 59: Suspension and Termination of Research.*](#)

Note: action determinations c-g will require further review and approval by the IRB prior to implementation.

7. If the Board determines that the noncompliance is serious or continuing, the noncompliance will be reported according to [OPRS/IRB Policy 60: Reporting Procedures for Unanticipated Problems, Noncompliance, Suspension or Termination.](#)

Regulations:

45 CFR 46.103(b)(5)(i)
45 CFR 46.116(b)(5)
21 CFR 56.108(b)(2)
21 CFR 50.25(b)(5)

References:

U.S. Office for Human Research Protections' (OHRP, formerly OPRR) *Protecting Human Research Subjects Guidebook* (1993).

OHRP, *Compliance Oversight Activities: Significant Findings and Concerns of Noncompliance*, October 12, 2005. <http://hhs.gov/ohrp/compliance/findings.pdf>

OHRP, *Guidance on Reporting Incidents to OHRP*, May 27, 2005. http://hhs.gov/ohrp/policy/procedures_for_reporting_052505.pdf

OHRP, *Guidance on Written IRB Procedures*, January 15, 2007. <http://hhs.gov/ohrp/humansubjects/guidance/irbgd107.pdf>

FDA, *IRB Information Sheet- Continuing Review After Study Approval*, September 1998. <http://www.fda.gov/oc/ohrt/irbs/review.html>