Common Bioresearch Monitoring Violations: Updates from FY 2021 to Now



The Bioresearch Monitoring Program (BIMO), run by the U.S. Food and Drug Administration (FDA), oversees the conduct of on-site inspections and data audits of FDA-regulated research in support of new product development and marketing approvals. As a follow up to our **July 2021 post**, we highlight here the most common violations FDA's BIMO identified in Fiscal Year (FY) 2021 along with those we have seen so far in FY 2022. Our review focuses on BIMO's clinical investigator, sponsor, and contract research organization (CRO) inspection outcomes across 516 inspections conducted in FY 2021, as these comprised nearly 85 percent of all BIMO inspections.

Amongst these, 81 percent did not result in any findings of noncompliance. Eighteen percent resulted in findings of noncompliance but without recommending regulatory action, and about one percent resulted in findings of noncompliance recommending official regulatory action. In FY 2021, the most common violations leading FDA to issue a Form FDA 483, FDA's official form for documenting noncompliant inspection findings, included:

- **Failure to submit an IND application.** For example, FDA issued several Warning Letters for investigations of dietary supplements or foods determined by the FDA to be drugs. FDA found that the study designs demonstrated the investigational products were intended to cure, mitigate, and/or treat a disease or condition, triggering application of FDA's drug authorities and requiring an Investigational New Drug (IND) application to be in place before conducting the research.

- **Failure to follow the investigational plan and implement corrective or preventive action plans.** For example, in one **Warning Letter** resulting from a BIMO inspection, the FDA noted that the investigator failed to exclude subjects according to the study's exclusion criteria and did not identify any procedures in place to prevent future violations.

- **Inadequate or inaccurate recordkeeping (including case histories, study records, and drug disposition records).** For example, in one recent **Warning Letter** following a BIMO inspection, the FDA noted that a study site failed to retain necessary documents for 2 years following marketing approval when it could not locate informed consent forms and case report forms, amongst others, from a study for which a Biologics License Application was pending.

Of note, these continue to be the most frequently cited violations in BIMO Warning Letters issued to date in 2022. To avoid these missteps and better understand the scope of their respective

responsibilities before, during, and after a clinical trial, sponsors, CROs and investigators should review **FDA's BIMO Compliance Program Guidance Manuals** and ensure adoption of standard operating procedures (SOPs) that provide an infrastructure for regulatory compliance. Sponsors and investigators should also ensure that they understand when an IND application is required, and review the requirements for appropriate recordkeeping during and after a clinical trial. Finally, sponsors and CROs should have mechanisms in place to both promote protocol adherence and promptly respond to any deviations when they inevitably occur. Sponsors receiving BIMO Form FDA 483s should respond with a detailed explanation of their root cause findings, corrective actions, and their plan to prevent similar missteps in the future. The Goodwin FDA team works closely with sponsors to apply FDA's Good Clinical Practice requirements and to resolve BIMO inspection findings when they occur.

Connect with our Goodwin FDA team to learn more.

*Maura Friedlander, a 2022 summer associate in Goodwin's Washington, D.C. office, contributed to this post.