From: Hommel, Carolyn - OC
Sent: Wednesday, July 07, 2004 5:23 PM
To: [Redacted]
Subject: RE: GCP Question
[Redacted]--

I checked FDA's Information Sheets to see how they addressed payments to study subjects. The Information Sheets are guidance (and therefore not binding), but they will provide some insights that may be helpful as you talk to your sponsor and the sites.

IRBs are supposed to be able to make a determination as to whether "recruitment incentives" are appropriate or so high as to be coercive or unduly influence a potential subject's participation in a study. While the informed consent form must describe risks and benefits to the subjects, payment is not considered a benefit, but rather a "recruitment incentive."

That said, in order for the IRB to determine whether "recruitment incentives" are appropriate or too high, the IRB would need to know about them. Generally, the information about payments to subjects are included in the informed consent form, and that is what FDA has said in its information sheet: "***All information concerning payment, including the amount and schedule of payment(s), should be set forth in the informed consent document."*** [Excerpt from "Payment to Research Subjects".] If the site does not want to put a statement about payments into the consent form, it would be important to find out how sites are informing the IRB about the compensation that will be paid so that the IRB can make the determination about the appropriateness of the amount(s) and method(s) of payment.

I've pasted some sections of the information sheets into this e-mail that may be helpful to you. All of FDA's Information Sheets are available at: http://www.fda.gov/oc/ohrt/irbs/default.htm .

Payment to Research Subjects

The Institutional Review Board (IRB) should determine that the risks to subjects are reasonable in relation to anticipated benefits [21 CFR 56.111(a)(2)] and that the consent document contains an adequate description of the study procedures [21 CFR 50.25(a)(1)] as well as the risks [21 CFR 50.25(a)(2)] and benefits [21 CFR 50.25(a)(3)]. It is not uncommon for subjects to be paid for their participation in research, especially in the early phases of investigational drug, biologic or device development. Payment to research subjects for participation in studies is not considered a benefit, it is a recruitment incentive. Financial incentives are often used when health benefits to subjects are remote or non-existent. The amount and schedule of all payments should be presented to the IRB at the time of initial review. The IRB should review both the amount of payment and the proposed method and timing of disbursement to assure that neither are coercive or present undue influence [21 CFR 50.20].

Any credit for payment should accrue as the study progresses and not be contingent upon the subject completing the entire study. Unless it creates undue inconvenience or a coercive practice, payment to subjects who withdraw from the study may be made at the time they would have completed the study (or completed a phase of the study) had they not withdrawn. For example, in a study lasting only a few days, an IRB may find it permissible to allow a single payment date at the end of the study, even to subjects who had withdrawn before that date.

While the entire payment should not be contingent upon completion of the entire study, payment of a small proportion as an incentive for completion of the study is acceptable to FDA, providing that such incentive is not coercive. The IRB should determine that the amount paid as a bonus for completion is reasonable and not so large as to unduly induce subjects to stay in the study when they would otherwise have withdrawn. ***All information concerning payment, including the***

amount and schedule of payment(s), should be set forth in the informed consent document. (Emphasis added).

Recruiting Study Subjects

FDA requires that an Institutional Review Board (IRB) review and have authority to approve, require modifications in, or disapprove all research activities covered by the IRB regulations [21 CFR 56.109(a)]. An IRB is required to ensure that appropriate safeguards exist to protect the rights and welfare of research subjects [21 CFR 56.107(a) and 56.111]. In fulfilling these responsibilities, an IRB is expected to review all the research documents and activities that bear directly on the rights and welfare of the subjects of proposed research. The protocol, the consent document and, for studies conducted under the Investigational New Drug (IND) regulations, the investigator's brochure are examples of documents that the IRB should review. The IRB should also review the methods and material that investigators propose to use to recruit subjects.

A. Media Advertising:

Direct advertising for research subjects, i.e., advertising that is intended to be seen or heard by prospective subjects to solicit their participation in a study, is not in and of itself, an objectionable practice. Direct advertising includes, but is not necessarily limited to: newspaper, radio, TV, bulletin boards, posters, and flyers that are intended for prospective subjects. Not included are: (1) communications intended to be seen or heard by health professionals, such as "dear doctor" letters and doctor-to-doctor letters (even when soliciting for study subjects), (2) news stories and (3) publicity intended for other audiences, such as financial page advertisements directed toward prospective investors.

IRB review and approval of listings of clinical trials on the internet would provide no additional safeguard and is not required when the system format limits the information provided to basic trial information, such as: the title; purpose of the study; protocol summary; basic eligibility criteria; study site location(s); and how to contact the site for further information. Examples of clinical trial listing services that do not require prospective IRB approval include the National Cancer Institute's cancer clinical trial listing (PDQ) and the government-sponsored AIDS Clinical Trials Information Service (ACTIS). However, when the opportunity to add additional descriptive information is not precluded by the data base system, IRB review and approval may assure that the additional information does not promise or imply a certainty of cure or other benefit beyond what is contained in the protocol and the informed consent document.

FDA considers direct advertising for study subjects to be the start of the informed consent and subject selection process. Advertisements should be reviewed and approved by the IRB as part of the package for initial review. However, when the clinical investigator decides at a later date to advertise for subjects, the advertising may be considered an amendment to the ongoing study. When such advertisements are easily compared to the approved consent document, the IRB chair, or other designated IRB member, may review and approve by expedited means, as provided by 21 CFR 56.110(b)(2). When the IRB reviewer has doubts or other complicating issues are involved, the advertising should be reviewed at a convened meeting of the IRB.

FDA expects IRBs to review the advertising to assure that it is not unduly coercive and does not promise a certainty of cure beyond what is outlined in the consent and the protocol. This is especially critical when a study may involve subjects who are likely to be vulnerable to undue influence. [21 CFR 50.20, 50.25, 56.111(a)(3), 56.111(b) and 812.20(b)(11).]

When direct advertising is to be used, the IRB should review the information contained in the advertisement and the mode of its communication, to determine that the procedure for recruiting subjects is not coercive and does not state or imply a certainty of favorable outcome or other

benefits beyond what is outlined in the consent document and the protocol. The IRB should review the final copy of printed advertisements to evaluate the relative size of type used and other visual effects. When advertisements are to be taped for broadcast, the IRB should review the final audio/video tape. The IRB may review and approve the wording of the advertisement prior to taping to preclude re-taping because of inappropriate wording. The review of the final taped message prepared from IRB-approved text may be accomplished through expedited procedures. The IRB may wish to caution the clinical investigators to obtain IRB approval of message text prior to taping, in order to avoid re-taping because of inappropriate wording.

No claims should be made, either explicitly or implicitly, that the drug, biologic or device is safe or effective for the purposes under investigation, or that the test article is known to be equivalent or superior to any other drug, biologic or device. Such representation would not only be misleading to subjects but would also be a violation of the Agency's regulations concerning the promotion of investigational drugs [21 CFR 312.7(a)] and of investigational devices [21 CFR 812.7(d)].

Advertising for recruitment into investigational drug, biologic or device studies should not use terms such as "new treatment," "new medication" or "new drug" without explaining that the test article is investigational. A phrase such as "receive new treatments" leads study subjects to believe they will be receiving newly improved products of proven worth.

Advertisements should not promise "free medical treatment," when the intent is only to say subjects will not be charged for taking part in the investigation. Advertisements may state that subjects will be paid, but should not emphasize the payment or the amount to be paid, by such means as larger or bold type.

Generally, FDA believes that any advertisement to recruit subjects should be limited to the information the prospective subjects need to determine their eligibility and interest. When appropriately worded, the following items may be included in advertisements. It should be noted, however, that FDA does not require inclusion of all of the listed items.

1. the name and address of the clinical investigator and/or research facility;
2. the condition under study and/or the purpose of the research;
3. in summary form, the criteria that will be used to determine eligibility for the study;
4. a brief list of participation benefits, if any (e.g., a no-cost health examination);
5. the time or other commitment required of the subjects; and
6. the location of the research and the person or office to contact for further information.

B. Receptionist Scripts.

The first contact prospective study subjects make is often with a receptionist who follows a script to determine basic eligibility for the specific study. The IRB should assure the procedures followed adequately protect the rights and welfare of the prospective subjects. In some cases personal and sensitive information is gathered about the individual. The IRB should have assurance that the information will be appropriately handled. A simple statement such as "confidentiality will be maintained" does not adequately inform the IRB of the procedures that will be used.

Examples of issues that are appropriate for IRB review: What happens to personal information if the caller ends the interview or simply hangs up? Are the data gathered by a marketing company? If so, are names, etc. sold to others? Are names of non-eligibles maintained in case they would qualify for another study? Are paper copies of records shredded or are readable copies put out as trash? The acceptability of the procedures would depend on the sensitivity of the data gathered, including; personal, medical and financial.

Also see these FDA Information Sheets:
"A Guide to Informed Consent Documents"

"Payment to Research Subjects"
Also see these FDA Information Sheets:

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This is from FDA's "Frequently Asked Questions" Information Sheet:

"50. May the "compensation" for participation in a trial offered by a sponsor include a coupon good for a discount on the purchase price of the product once it has been approved for marketing?

"No. This presumes, and inappropriately conveys to the subjects, a certainty of favorable outcome of the study and prompt approval for marketing. Also, if the product is approved, the coupon may financially coerce the subject to insist on that product, even though it may not be the most appropriate medically."

It's not particularly explicit, but I hope the above helps.

Regards,

Carolyn

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This communication does not constitute a written advisory opinion under 21 CFR 10.85, but rather is an informal communication under 21 CFR 10.85(k) which represents the best judgment of the employee providing it. This information does not necessarily represent the formal position of FDA, and does not bind or otherwise obligate or commit the agency to the views expressed.

-----Original Message-----
From: [Redacted]
Sent: Wednesday, July 07, 2004 2:02 PM
To: carolyn.hommel@oc.fda.gov
Subject: GCP Question

Hi Carolyn,

I tried to reach you at the office earlier today, again now and was just told you are working from home. Please call me asap for one of our short discussions/confirmations on the information I am giving to a client.

Thanks,
[Redacted]