

University of Kentucky Office of Research Integrity (ORI)
KEY REGULATORY CHANGES UNDER THE REVISED COMMON RULE

The Federal Policy for the Protection of Human Subjects (commonly referred to as “*the Common Rule*”), provides ethically based regulations for the review and conduct of human research studies. The Department of Health and Human Services (HHS) Office for Human Research Protections (OHRP) issued the changes to modernize, strengthen, and streamline the IRB regulations. Most changes went into effect on January 21, 2019.

While much of the changes affect IRB review operations, the following summarize key updates pertinent for human subject research investigators and staff.

Activities Deemed not to be research that do not require IRB review:

There has been no change in the process for determining what activities meet the federal of research and human subject and require IRB review. Investigators are encouraged to consult [ORI guidance and contact ORI for questions or a “Not Human Subject Determination”](#). The revised rule has provided determinations on select activities that are considered “not human research and do not require IRB review”. These instances are included in the table guidance ["When do activities involving human subjects need Institutional Review Board \(IRB\) review and approval?"](#)

For additional resources, see the “What Research Activities Need Institutional Review Board (IRB) Review?” Fast Pass Video [[YouTube Video](#)] or [What Needs IRB Review](#) website for additional information.

Informed Consent Documentation & Process:

General requirements:

The revised rule shifts the focus of informed consent to the potential subject with:

- Information that a “Reasonable Person” would want in order to make an informed decision;
- Changes to facilitate subject’s understanding of the key reasons he/she would or would not choose to participate in research; and
- Requirements that Key Information essential to that decision be presented first in the document and discussion.

In preparation for the change, the UK ORI implemented revised informed consent templates a year in advance of the Revised Rule compliance date. The changes focus on a reasonable person standard and encourages creating consent documents that facilitate understanding. This involves formatting to fit the context of the study and the study population’s needs, rather than prescriptive reliance on template language. The [UK Consent Form Template FAQ](#) provides guidelines for improving the consent documents and process.

New required & additional consent elements:

The rule includes a new required element for studies that collect identifiable information or identifiable specimens. The element informs subjects regarding intent to conduct future research with the identifiable information or specimens collected as part of the initial research. Specifically, whether or not identifiers will be removed and material used

or shared with others for future research, without the subject's additional consent. There are also three additional elements, which the investigator must include when applicable. The three elements inform subjects regarding potential commercial profit, whole genome sequencing, and return of research results. To ensure your consent documents include all required elements, use the [UK Federally Required Elements of Informed Consent](#) Checklist.

FDA clarified in the [2018 Guidance](#), that the Revised Common Rule provisions related to content, organization, and presentation of the consent form and process are not inconsistent with FDA's current policies. The clarification is in effort to avoid the need for sponsors or investigators to develop, and IRBs to review, two separate informed consent forms.

General Waiver of Informed Consent:

The IRB may waive the requirement or approve alteration of elements of informed consent if it finds and documents that the research meets certain conditions. In addition to the current criteria for waiving or altering consent, the rule adds consideration of a fifth condition. This new requirement is that the research could not practicably be carried out without accessing or using information or biospecimens in an identifiable format. See the Waiver of Informed Consent/Assent Process and Documentation Video for additional information. [[YouTube Video](#)]

Waiver of Documentation of Informed Consent:

The IRB may waive the requirement to obtain a signed consent document for some or all of the subjects if certain conditions are met. In addition to the current conditions for waiving documentation, a waiver may be granted for international research where the signature on the informed consent form is not culturally appropriate. See the Waiver of Informed Consent/Assent Process and Documentation Video for additional information. [[YouTube Video](#)]

Screening or Determining Eligibility:

An IRB may approve a research proposal in which an investigator will review information or results from previously collected biospecimens for the purpose of screening or determining the eligibility of prospective subjects without obtaining informed consent if either of the following conditions are met:

- 1) The investigator will obtain information through oral or written communication with the prospective subject or legally authorized representative, or,
- 2) The investigator will use identifiable private information or identifiable biospecimens by accessing records or stored identifiable biospecimens.

This allowance does not change the IRB's policy prohibiting "cold calls" to potential research participants. Also, study personnel reviewing identifiable information for recruitment, must have legitimate authorization and access to records. See "[A Principal Investigator's Guide to Identification and Recruitment of Human Subjects for Research](#)" for UK IRB policies and guidance on recruitment.

Exempt Review (Non-FDA-Regulated New Exemption Categories):

The Final Rule establishes new exempt categories of research. In addition to making the exempt certification determination, the IRB reviewers are required to conduct a

limited review for select exempt categories, in order to ensure there are adequate provisions to protect the privacy of subjects and maintain confidentiality of data.

Certain research that required Expedited IRB review under the old rule, may now be eligible for Exempt IRB review under the revised rule. For instance, a record review qualifying for the new Exemption Category 4, will allow both prospective and retrospective review of records, whereas in the past, only retrospective reviews qualified for Exempt review.

See the [UK ORI Exemption Categories Tool](#) for an overview of the six categories available at UK, and associated conditions, allowances and limitations.

The [Issues to be Addressed When Conducting Exempt Review](#) guide provides details and describes the UK IRB's interpretations for applying the new and revised exempt categories.

Investigators are encouraged to review the above resources and if unsure, contact ORI before submitting an application in E-IRB. Since the E-IRB system does not allow switching review types (i.e., expedited to exempt) once the application is created, changing review type would require creating a new application.

Expedited Review (Non-FDA-Regulated):

- The expedited categories have not been updated by OHRP as of yet.
- Select Social Behavioral Education research that required initial Expedited Review may now be eligible for Exempt review (see above) under the revised rule.
- Non-FDA Regulated Expedited research will undergo an Abbreviated Administrative Review (consisting of four questions), instead of a continuing review.

Continuing Review:

Continuing review provides the IRB with an opportunity to determine whether there is new information that represents a significant new finding and whether the finding warrants communicating to subjects who have already enrolled in the research.

Comprehensive Continuing Review is no longer required in select minimal risk research (see Expedited Review section above).

Investigators with Full/Convened review or FDA-regulated protocols will complete a continuing review application to allow for substantive IRB review.

Non-FDA regulated, Expedited review protocols will undergo with an Abbreviated Annual Review (AAR). The abbreviated review maintains open lines of communication between the investigator and the IRB, while streamlining reporting appropriate to minimal risk research.

Clinical Trials Definition:

In order to harmonize with other agencies' definition of a clinical trial, the revised rule definition is, "a research study in which one or more human subjects are prospectively assigned to one or more interventions (which may include placebo or other control) to

evaluate the effects of the interventions on biomedical or behavioral health-related outcomes”.

Federally- Funded Awardee Requirement for Posting of Clinical Trial Consent Form:

There is a new requirement for clinical trials conducted or supported by a Common Rule department or agency (e.g., National Institutes of Health) for posting the consent form on a publicly available federal website. The intent of this mandate is to increase transparency and accountability and promote the development of improved consent models and process.

Scope: applies ONLY to clinical trials conducted or supported by HHS. The consent form must:

- have been used in enrolling participants;
- be posted on the Federal website after the clinical trial is closed to recruitment; and
- be posted no later than 60 days after the last study visit by any subject, as required by the protocol.

This is a one-time requirement to post one version of the consent for trials meeting the above scope. Federal agencies supporting the trial may permit redactions of proprietary information.

At this time, two publicly available federal websites will satisfy the consent form posting requirement:

- ClinicalTrials.gov; and
- a docket folder on Regulations.gov (Docket ID: HHS-OPHS-2018-0021).

HHS and other Common Rule agencies are developing guidance about [this posting requirement](#) that will shape the University of Kentucky's Policies and Procedures.

Staying Informed:

Information contained in this document will be updated as additional information is available, and if/when OHRP issues guidance or announcements regarding the revised Common Rule. We will communicate via [ORI website](#), [ORI News & Announcements webpage](#), and the [IRB listserv](#) and [education sessions/materials](#).

Email general questions to IRBsubmission@uky.edu or contact the ORI main line at 859-257-9428.

For protocol specific questions, contact the ORI main line at 859-257-9428, with the protocol number to connect with the ORI Professional Associate managing your protocol.

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