When Continuing Review Is Not Required During the 6-Month Delay Period of July 19, 2018 through January 20, 2019: 2018 Requirements

***NOTE**: This guidance is consistent with the 2018 Requirements (the revised Common Rule) effective July 19, 2018.*

Draft

This guidance, when finalized, will represent the Office for Human Research Protections's (OHRP's) current thinking on this topic. This guidance does not create or confer any rights for or on any person and does not operate to bind OHRP or the public. OHRP guidance should be viewed as recommendations unless specific regulatory requirements are cited. The use of the word "must" in OHRP guidance means that something is required under the Department of Health and Human Services (HHS) regulations at 45 CFR part 46. The use of the word "should" in OHRP guidance means that something is recommended or suggested, but not required. An institution may use an alternative approach if the approach satisfies the requirements of 45 CFR part 46. OHRP is available to discuss alternative approaches by telephone at 240-453-6900 or 866-447-4777, or by email at ohrp@hhs.gov.

Date: July 19, 2018

Scope:

This guidance document applies to nonexempt research involving human subjects that is conducted or supported by HHS. It provides guidance on the HHS regulations for the protection of human research subjects at 45 CFR part 46 related to the circumstances in which continuing review of research is not required. In particular, this guidance applies to research that transitions to comply with the 2018

Requirements during the 6-month delay period from July 19, 2018 through January 20, 2019. This guidance only applies during the 6-month delay period.

Note: After the delay period ends, that is, on and after January 21, 2019, the circumstances for when continuing review is not required will change for research conducted in compliance with the 2018 Requirements. Specifically, on and after January 21, 2019, unless an IRB determines otherwise, continuing review will not be required in the following circumstances: (1) research that is eligible for expedited review in accordance with 45 CFR 46.110; (2) research that is reviewed by an IRB in accord with the limited IRB review described in 45 CFR 46.104(d)(2)(iii), d(3)(i)(C), (d)(7), or (8); or (3) research that has progressed to the point that it involves only one or both of the following, which are part of the IRB-approved study: (a) data analysis, including analysis of identifiable private information or identifiable biospecimens, or (b) accessing follow-up clinical data from procedures that subjects would undergo as part of clinical care. In addition, on or after January 21, 2019, compliance will be required with the requirement to document the IRB's rationale for conducting continuing review that is not otherwise required (45 CFR 46.115(a)(8)).

Target Audience:

Institutional Review Boards (IRBs), investigators, HHS funding agencies, and others that may be responsible for the review, conduct, or oversight of human subjects research conducted or supported by HHS.

Regulatory Background:

In this guidance, the term "pre-2018 Requirements" refers to the Common Rule as published in the 2016 edition of the Code of Federal Regulations (i.e., the Federal Policy for the Protection of Human Subjects, originally published on June 18, 1991 and subsequently amended on June 23, 2005).[1]

The term "2018 Requirements" refers to the Federal Policy for the Protection of Human Subjects requirements published in the Federal Register on January 19, 2017 (82 FR 7149) and further amended on January 22, 2018 (83 FR 2885) and June 19, 2018 (83 FR 28497).[2] The 2018 Requirements may also be referred to as the "revised Common Rule."

The 2018 Requirements have several provisions pertinent to continuing review of research, including the following:

- An IRB must conduct continuing review of research at intervals appropriate to the degree of risk, but not less than once per year (45 CFR 46.109(e)). Exceptions to this general rule are included in 45 CFR 46.109(f), as described in the next bullet.

- Unless an IRB determines otherwise, continuing review of research is not required in the following circumstances (45 CFR 46.109(f)(1)(i) and (iii)):

    i. Research eligible for expedited review in accordance with 45 CFR 46.110 of the pre-2018 Requirements, which means that the IRB reviewer(s) will be required to determine that the research involves no more than minimal risk and appears on the pre-2018 Requirements' expedited review list (see Note below);

    ii. Research that has progressed to the point that it involves only one or both of the following, which are part of the IRB-approved study:

        A. Data analysis, including analysis of identifiable private information or identifiable biospecimens, or

        B. Accessing follow-up clinical data from procedures that subjects would undergo as part of clinical care.

Note: During the delay period, the reference to "[r]esearch eligible for expedited review in accordance

with §46.110" in §46.109(f)(1)(i) of the 2018 Requirements will be interpreted to refer to §46.110 of the pre-2018 Requirements. On and after January 21, 2019, this language refers to 45 CFR §46.110 of the 2018 Requirements.

Guidance

Introduction

The pre-2018 Requirements require that an IRB conduct continuing review of research covered by the regulations at intervals appropriate to the degree of risk, but not less than once per year. Except when an expedited review procedure is used, continuing review of research is to occur at convened meetings at which a majority of the IRB members are present, including at least one member whose primary concerns are in nonscientific areas.

For research that transitions to comply with the 2018 Requirements, and that no longer requires continuing review under the 2018 Requirements, institutions have flexibility to determine how to maintain appropriate oversight of such research. Note that under the 2018 Requirements, investigators would still have the current obligations to report various incidents to the IRB, such as unanticipated problems involving risks to subjects or others, and to seek prospective approval from the IRB for amendments to the research. For research not subject to continuing review, the 2018 Requirements do not require investigators to provide annual confirmation to the IRB that such research is ongoing or that no changes have been made that would require the IRB to conduct a review of such changes, which must occur before those changes are made.

Research for Which Continuing Review Is Not Required

For the categories of research described below, unless the IRB determines otherwise, continuing review is not required. If the 2018 Requirements indicate that continuing review is not required for a study and the IRB does not determine otherwise, the IRB does not need to document that fact. However, when the IRB determines that continuing review is required, even though the regulations would not otherwise require such review, sections 45 CFR 46.109(f) and 46.115(a)(3) of the 2018 Requirements require that an IRB documents why it has determined that such continuing review is necessary. During the delay period, OHRP's interpretation is that these documentation requirements are not applicable. Note that this documentation will be required on and after January 21, 2019, for studies that comply with the 2018 Requirements. In other words, during the delay period (i.e., July 19, 2018 through January 20, 2019), an IRB does not have to document why it has determined that continuing review is necessary when the 2018 Requirements would not otherwise require the review (see 45 CFR 46.101(l)(4)).

If the IRB determines that continuing review is required, that continuing review must be performed in accordance with 45 CFR 46.111(a) and (b).

1. Studies Eligible for Expedited Review

As stated at 45 CFR 46.109(f)(1)(i), during the 6-month delay period, continuing review is not required for studies that are eligible for expedited review in accordance with 45 CFR 46.110 under the pre-2018 Requirements. This means that during the delay period, the IRB reviewer(s) will still be required to determine that the research involves no more than minimal risk, as well as that the research appears on the pre-2018 Requirements' expedited review list (available at https://www.hhs.gov/ohrp/regulations-and-policy/guidance/categories-of-research-expedited-review-procedure-1998/index.html).

Note that a research project that was not eligible at initial review to be considered through the expedited review procedure usually also will not qualify for an expedited review procedure at the time of continuing review.

2. Nonexempt Research that Has Progressed to a Certain Point

As stated at 45 CFR 46.109(f)(1)(iii), for studies initially reviewed by a convened IRB, once certain specified procedures are all that remain for the study, continuing review is not required unless an IRB determines otherwise. This includes research that has progressed to the point that it involves only one or both of the following, which are part of the IRB-approved study:

(a) Data analysis, including analysis of identifiable private information or identifiable biospecimens, or (b) Accessing follow-up clinical data from procedures that subjects would undergo as part of clinical care. For example, if the IRB approved a research activity involving the insertion of an investigational knee prosthetic, and the follow-up phase included a 3-year period of collecting data from the subjects' medical records for any readmissions or treatments for knee infections or knee pain, the follow-up activities do not require continuing review by the IRB unless the IRB determines otherwise.

Reviews Not Required by the Regulations

The regulations do not preclude or prohibit institutions from conducting reviews of research even when such reviews are not required by the regulations. Institutions that choose to require some accounting of ongoing research not subject to continuing review have flexibility in how they implement their own requirements.

In summary, during the 6-month delay period, unless an IRB determines otherwise, continuing review is not required in two circumstances: (1) studies eligible for expedited review under the pre-2018 Requirements; and (2) research that has progressed to a certain point (see Table).

Research Activities Generally Not Requiring Continuing Review

Category of Activity	Regulatory Citation	Regulatory Topic
Research Eligible for Expedited Review in Accordance with 45 CFR 46.110 of the pre-2018 Requirements	45 CFR 46.109(f)(1)(i)	Continuing review is eliminated for all studies that are eligible for expedited review in accord with 45 CFR 46.110 of the pre-2018 Requirements, unless an IRB determines otherwise.
Research that has Progressed to a Certain Point	45 CFR 46.109(f)(1)(iii)	Research that has progressed to the point that it involves only one or both of the following, which are part of the IRB-approved study: (a) Data analysis, including analysis of identifiable private information or identifiable biospecimens, or (b) Accessing follow-up clinical data from procedures that subjects would undergo as part of clinical care.

If you have specific questions about how to apply this guidance, please contact OHRP by phone at (866) 447-4777 (toll-free within the United States) or (240) 453-6900, or by e-mail at ohrp@hhs.gov.

[1] The pre-2018 Requirements can be viewed at the following Government Printing Office link: https://www.gpo.gov/fdsys/pkg/CFR-2016-title45-vol1/pdf/CFR-2016-title45-vol1-part46.pdf - PDF

[2] 82 FR 7149, available at: https://www.gpo.gov/fdsys/pkg/FR-2017-01-19/pdf/2017-01058.pdf - PDF, 83 FR 2885, available at: https://www.gpo.gov/fdsys/pkg/FR-2018-01-22/pdf/2018-00997.pdf - PDF, 83 FR 28497, available at https://www.gpo.gov/fdsys/pkg/FR-2018-06-19/pdf/2018-13187.pdf - PDF.

Content last reviewed on July 20, 2018