



Dear Dr. Menikoff,

RE: Canadian Association of Research Ethics Boards (CAREB)'s response to the "Federal Policy for the Protection of Human Subjects"  
HHS-OPHS-2015-0008

We thank OHRP for this opportunity to respond to the above-named notice for proposed rulemaking. CAREB's membership of over 300 individuals represents over 350 research ethics boards (REBs), the Canadian equivalent of the institutional review board (IRB), and, as such, has much experience in the ethics review process. More importantly, many of the REBs represented are from research institutions holding federal-wide assurances, and are therefore responsible for ensuring that American regulations, in addition to Canadian requirements, are upheld throughout the REB process and execution of the research.

We support the overall aims of the proposed changes, to increase the control and protection of human subjects and reduce regulatory burden of the IRB system and hope that by doing so, public trust in research can be strengthened. While some of the proposed changes are likely to meet these objectives, others appear problematic, with the potential of increasing bureaucracy, while reducing the decision-making controls of IRBs for research they are overseeing. We respectfully provide the following comments:

#### General

The use "subject" and "human subject" should be changed to "participant" and "human participant".

There are several items for later consideration. It is difficult to assess the proposed changes with so much left undetermined.

Several of the proposed changes involve removing responsibilities or control by institutions or IRBs and replacing them with processes to be created and controlled by the Secretary or HHS. The tone of these changes reflects a lack of trust in IRB decision-making and/or the assumption that they are working under systems that are highly inefficient and ineffective. While there is significant room for improvement, many of the inefficiencies that have arisen are because of adherence to tight regulations, not in spite of them. It is therefore expected that with the progress of ethical standards and loosening of administrative requirements, IRB decision-making will become more effective and inefficiencies will diminish. Adding additional bureaucratic processes involving government, as proposed throughout the NPRM, will hinder, not benefit the ethics review system.

Equivalent protections for research in other countries that receive US government agency funding have not been discussed in the NPRM. This is truly unfortunate.

### Biospecimens

We support the definition of human participant research to include secondary use of non-identified biospecimens for research, and the requirement for broad consent. However, broad consent is not ideal, as it is binary. Tiered consent would be preferable, indicating research areas or fields.

The 10 year limit appears arbitrary and could be problematic for emergent technologies or the use archival clinical information. The rationale requires further elaboration, or determination of use beyond 10 years should be left to the IRB on a case-by-case basis.

The process for re-consenting adults after 10 years or children once reaching adulthood is not explained and may prove difficult or impracticable. Waiver of consent for continued use should be left to the discretion of the IRB on a case-by-case basis.

### Exemptions

As discussed in our response to the ANPRM, we are concerned with the assumption that risk may be determined by method or intervention alone, and therefore exempt from IRB review. Vulnerability of the participant group (including capacity to consent) and sensitivity of the information sought may also need to be taken into consideration. From our collective experiences, the principal investigator may not always be in the best position to assess these.

The tool to determine exemption is not yet available for comment. However, several tools are used in our institutions, and they usually require an experienced IRB administrator to evaluate, as many decisions hinge on a specific detail. It is not in the best interest of the researcher to self-evaluate. A wrong call can result in an inability to publish his/her study.

### Consent

We agree with the notion of simplifying consent forms to contain required elements in the main form, with other information provided as appendices. However, we await the Secretary's consent template to determine whether the practical application will provide the level of improvement we need. In addition, it is well recognized that consent is a process, not just a form. Simplifying the form alone may not result in a significant increase in comprehension. Standards regarding the consent process and establishing the participant's comprehension of the study should be included.

Use of verbal consent should be considered a valid alternative to written consent for all levels of research risk, as, in some circumstances, it can provide greater protection to the participant or group than written consent. This may involve a distinct cultural group, or may be related to the research topic. IRBs should be able to use their discretion to approve verbal consent (and other alternatives to written consent), on a case-by-case basis.

IRBs should not be required to report the use of waiver of consent for use of biospecimens or for any other purpose to HHS.

### Privacy

HIPAA standards are likely inappropriate for the majority of research data that are collected. We await the Secretary's proposal on what standards should be used. As the sensitivity of data differs with type and application, we expect the standards to be dynamic and proportionate to what those sensitivities may be.

### Cooperative Research

Single IRB review should be strongly encouraged, but not mandated, as there can be good reason for more than one IRB to review a cooperative multi-site study. How this model would apply to research involving more than one jurisdiction (e.g. US and Canada) has not been explained. As Equivalent Protections has not been discussed in the NPRM, regulations and standards for both jurisdictions would need to be followed. This would likely require ethics review in both places.

### Promotion of effectiveness and efficiency

While we agree that effectiveness and efficiency need to be promoted, the elimination of continuing review beyond acknowledgement of the study continuing does neither of these things. There will still be the need for the IRB office to review and/or record the acknowledgement and seek response from those researchers who do not respond, while the IRB has no idea what is happening on the ground. The continuing review process should be streamlined to request minimal, meaningful information. Similarly, full board studies that are in the analysis phase should have a pared-down continuing review process that is meaningful.

Finally, requiring IRB members to justify why full board review should be conducted for an expeditable study or why continuing review should be required for a specific minimal risk study call into question (once again), the decision-making of the IRB. This proposed requirement should be scrapped.

### IRB Operations

IRBs should have the discretion to propose that the researcher consider a plan for the return of individual research result.

On behalf of CAREB, we would like to thank you, once again, for giving us the opportunity to respond. We hope that our comments will be useful to further revisions of the US regulations.

Sincerely yours,



Rachel Zand, Ph.D.  
Past President, CAREB