Overarching Concerns

- **The proposed rule offers few benefits or opportunities for burden reduction.** HHS has suggested that the revised human subjects regulations will "strengthen protections for research subjects while facilitating valuable research and reducing burden, delay, and ambiguity for investigators," and that the risks of not implementing the rule are that "human subjects research will not be modernized, strengthened or made more effective."[1] COGR maintains that very little of what was proposed will strengthen protections or reduce burden.
- **Stakeholders and experts have called for the withdrawal of what is considered a deeply flawed and confusing proposed rule.** Analyses of the NPRM comments found significant opposition to most major proposals.[2,3] A number of responses suggested that the proposed rule was overly complex, poorly written, and not supported by data, and noted that provisions that could have a substantial impact on a final rule were not included (e.g., security safeguards, consent template, list of minimal risk studies, and decision tool). The HHS Secretary's Advisory Committee on Human Research Protections (SACHRP) has recommended that "HHS conduct a comprehensive re-write of the NPRM." The National Academies recommended that the executive branch withdraw the revised rule and called for an independent, free-standing national commission to recommend regulatory approaches to unresolved questions.[4]
- **Revised rules can be published during the next administration.** The fact that Federal agencies struggled to move from proposed to final rules is due to the very controversial nature of the proposed changes and a failure to respond to stakeholder concerns and guidance. Moving forward hastily with a flawed final rule simply to get it done before the next administration begins will introduce unnecessary costs and inefficiencies without improving protections and may represent a missed opportunity to truly modernize, streamline and make more effective human subject regulations.
- **The costs to implement this rule will be great, and the savings negligible.** Proposed costs to implement the regulations are $13.3 billion over ten years. No persuasive evidence has been provided to suggest the new rule would introduce cost-saving efficiencies.

Major Concerns

[1] HHS Unified Agenda Fall 2016
[2] COGR-APLU Analysis of NPRM Comments.
[3] OHRP Review of Public Comments on the Common Rule NPRM
[4] Optimizing the Nation's Investment in Academic Research

- **De-identified data or biospecimens should not be considered inherently identifiable and subject to regulation.**
  - The current definition of "human subject" and practices regarding biospecimens should not be altered. The proposed changes would result in a significant loss of research without improving protections.
  - The Presidential Commission for the Study of Bioethical Issues suggested that the proposals "will stall certain kinds of research using deidentified biospecimens that pose no risk to human subjects and are unlikely to impact participants' autonomy interests." SACHRP suggested that "To the extent that the NPRM's core proposal is meant to ensure that subjects provide meaningful consent to future research with biospecimens and to prevent biospecimen re-identification, the NPRM would do nothing of the sort."
  - Risk to participants is addressed by removing identifiers and through the use of institutions' security safeguards and can be further mitigated by prohibiting unauthorized re-identification and imposing sanctions if it were to occur.

- **The use of central IRBs for multi-site studies should not be mandated. It can be implemented on an award or agency basis and is most appropriate for large-scale clinical studies.**
  - There is no evidence that what was proposed will result in greater efficiency and reduce burden, and we anticipate no cost savings despite suggested cost benefits in the NPRM of over $1.1 billion over 10 years. The NCI Central IRB cannot be cited as evidence of greater efficiency because expanded use of a federal central IRB, which would be supported by universities and medical centers, is not the model proposed. What was proposed is use of a patchwork of potentially hundreds of central IRBs that has not been piloted on a large scale.
    - IRB review is included in the indirect cost calculation, although most institutions are significantly over the administrative cap. These costs will continue to be accrued for single and primary review and additional costs for an institution or other entity to provide secondary review for other sites will be added. At this time, no additional funding has been committed for these costs and they will be charged to the grant or absorbed by the institution leaving less funding for research and education. Further, there are significant IT infrastructure costs to implement use of a single IRB with no apparent mechanism for reimbursement. These additional costs shift funding from research to compliance.
    - Because of the significant cost of conducting a multi-site review, for many studies an agreement may not be made and a review not conducted until after an award has been made. Administrative work and costs will

increase and we do not yet have data to show that the single IRB model reduces start-up time, partly because it is only one factor in how quickly a study can initiate. Additional responsibilities for investigators and their study teams inherent to this proposal may not reduce the time investigators spend administering the study.

- There is no obvious advantage to single IRB review for studies other than large-scale clinical trials. Studies involving primarily social/behavioral interventions and studies involving just a few sites should not be required to defer to a central IRB. The increased administration and cost surely would outweigh any potential benefits.

- **The Common Rule should not apply to non-federally funded research**
  - Most institutions with an FWA apply the Common Rule principles to all research regardless of funding but use the existing flexibility to explore innovative alternatives for human research protections and reduce investigator burden.
  - Extending the Common Rule to non-federally funded research would also lead to mandated use of a single IRB for non-federally funded trials and does nothing to reach those organizations currently operating outside the regulations.

- **Data security and information protection standards should not be mandated.**
  - IRBs and IT departments currently determine what data security measures are needed on a study-by-study basis. This ensures that measures are stringent enough where needed, but not overly stringent for low-risk studies.
  - Many studies subject to the Common Rule already abide by data security standards set-forth by the Health Insurance Portability and Accountability Act (HIPAA) and Federal Information Security Management Act (FISMA) provisions.

- In summary, we are deeply concerned that a final rule is being reviewed when the proposed rule contained so many controversial changes and omitted critical information and with no transparency about which of the proposed changes are moving forward. Per the recommendations of SACHRP, the National Academies and others, we believe the rule should be withdrawn; that another opportunity for stakeholders to review, and provide critical feedback on, a revised rule is warranted; and that greater stakeholder engagement will lead to an improved final rule.