COGR

An Association of Research Institutions

August 30, 2022

Submitted electronically to: http://www.regulations.gov

Natalie Klein, Ph.D.
Director, Division of Policy and Assurances
Office for Human Research Protections
1101 Wootton Parkway, Suite 200
Rockville, MD 20852

RE: Comments in Response to HHS-OASH-2022-0011, "Use of a Single Institutional Review Board for Cooperative Research," Draft Guidance

To Whom It May Concern:

The Council on Governmental Relations (COGR) is an association of over 200 public and private U.S. research universities and affiliated academic medical centers and research institutes. COGR concerns itself with the impact of federal regulations, policies, and practices on the performance of research conducted at its member institutions. One area of significant interest and expertise among COGR member institutions is the ethical conduct of research involving human participants. We write today to submit comments in response to the Office for Human Research Protections' (OHRP) issuance of the July 1, 2022, draft guidance document *Use of a Single Institutional Review Board for Cooperative Research* ("Guidance"). We appreciate OHRP's issuance of this Guidance and the opportunity to offer our comments.

General Comments: Before turning to specific provisions of the Guidance, we note that institutions have been operating under the single IRB (sIRB) review mandate since January 20, 2020 (and even longer in the case of studies funded by NIH).[1] During this period, institutions developed practices and models for compliance with this mandate. One example of such an initiative that received federal funding is the Streamlined, Multisite, Accelerated

[1] *See*, NIH, Single IRB for Multi-Site or Cooperative Research webpage (last updated Mar. 29 2022), including notices and statements cited therein.

Resources for Trials IRB Reliance platform ("SMART IRB"), which provides a master reliance agreement and system for tracking reliance arrangements.[2] Given that SMART IRB currently has 1,014 participating institutions,[3] COGR urges OHRP to specifically acknowledge SMART IRB in the Guidance as a model that meets regulatory requirements for sIRB review of cooperative research. Along these same lines, we note that Common Rule agencies have issued guidance on single IRBs that pre-dates the Guidance,[4] and in some cases, this agency guidance does not fully align with draft OHRP Guidance. For example, the *Final NIH Policy on the Use of a Single IRB for Multi-Site Research* calls for the local site "to communicate relevant information necessary for the sIRB to consider local context issues and state/local regulatory requirements during its deliberations," while Section 7 of draft OHRP Guidance, calls for the sIRB to "access and apply relevant State and local law." As noted below, we believe that informing IRBs of local laws and requirements is appropriately the responsibility of the local site, and we would recommend that OHRP reflect this same process in the proposed Guidance. More broadly, we urge OHRP to work with other Common Rule agencies, particularly Public Health Service agencies, to ensure that all guidance regarding single IRBs is harmonized and that any inconsistent or pre-2018 Common Rule regulation guidance is revised or retired.

Comments Concerning Guidance Item 2, *When must an institution rely on a single IRB for approval of cooperative research?*

(a) As Item 2 notes, the Common Rule provides only two exceptions to the sIRB review requirement:

- When required by law per 45 C.F.R. § 46.114(b)(2)(i); and
- When a federal department or agency supporting or conducting the research determines/documents that use of a single IRB is not appropriate per 45 C.F.R. § 46.114(b)(2)(ii).

COGR supports these exceptions, but it requests that OHRP consider developing other exceptions as well. For example, in cases where the research falls under an expedited review category and involves five or fewer sites, mandating the negotiation of a reliance arrangement results in much greater institutional administrative burden, without a corresponding increase in substantive protections for participants. Completing the steps of entering into a reliance agreement,

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[2] Harvard College, SMART IRB webpage (accessed Aug. 16, 2022).
[3] *Id.*
[4] *See, e.g.*, NASA, HRP-100-SOP: *Establishing Reliance Acknowledgements* (Jul. 7, 2020); NIH, NOT-OD-16-094, *Final NIH Policy on the Use of a Single Institutional Review Board for Multi-Site Research* (Jan. 25, 2018).

undertaking local context reviews, and issuing the single IRB decision can often take longer than institutions utilizing their existing infrastructure. Similarly, in cases in which a small number of sites are involved and local issues predominate in the research (e.g., research in areas in which there are substantial differences among sites in the local laws/regulations and/or community attitudes concerning the research), then requiring review by an sIRB may, in fact, lessen meaningful participant protections that a local review would capture. Further, local reviews provide important context on how language in a consent, or possible screening for pre-existing issues, may fit within that local community. Finally, we also suggest that OHRP consider incorporating an exception for longitudinal studies that were transitioned to sIRB review only because of new funding. Moving these "transitioned" studies to sIRB review is exceedingly burdensome, without any commensurate benefit. COGR encourages OHRP to consider such situations and develop additional exceptions to the sIRB review requirement for these classes of research.

(b) Item 2 sets forth the following example of when a federal agency may issue an exception to the sIRB review requirement in cases that involve multiple federal agencies and the agency issuing the exception does not have jurisdiction over each of the institutions conducting the cooperative research:

> For example, assume that Agency X and Agency Y are involved in a cooperative research study. Agency X has jurisdiction over only one institution (e.g., it owns a hospital); Agency Y is funding all involved institutions (and, therefore, has jurisdiction with respect to the cooperative research provision of the Common Rule over all the institutions). Agency X issues an exception to the single IRB mandate for its institution. This exception would apply only to the one institution over which Agency X has jurisdiction. Alternatively, Agency Y could issue an exception applicable to all institutions over which it has jurisdiction, including the one institution which has shared jurisdiction with Agency X.

This example bears a close resemblance to a situation that often arises when one of the sites at which research funded by a federal agency (e.g., National Institutes of Health) is being conducted at a hospital operated by the Veterans Administration (VA). If this is the case, we suggest that the Guidance directly address the VA's unique circumstances and make explicit in the Guidance that if one federal agency exercises its right under Section 46.114(b)(ii) to exempt a study from sIRB review, then the entire study becomes exempt from sIRB review. To do otherwise, defeats the purpose of the single IRB rule.

Comments Concerning Guidance Item 5, *Can an institution involved in cooperative research choose to conduct its own IRB review of the research even though review is required by a single IRB that is located elsewhere?*

Item 5 states that "[a]n institution may conduct additional internal IRB reviews of the research activities in which the institution is engaged, although such reviews would not have any regulatory status in terms of compliance with the 2018 Requirements." This reference to "internal IRB" review is confusing given its context in Guidance regarding sIRB review. Yet, we appreciate the intended point, i.e., that an institution's human research protections program (HRPP) may determine that a protocol that has been approved by an sIRB cannot be safely or ethically conducted at its site without additional changes to address local context. To promote clarity, we suggest that OHRP consider revising the text of Item 5 to read as follows:

> Yes. An institution, through its human research protections program (HRPP), may conduct additional, concurrent reviews of the research activities in which the institution is engaged, for local suitability and determination as to whether the research can be conducted at the local site, and/or requires additional changes to reflect local circumstances, local standards of care, and context. Although such HRPP reviews do not constitute IRB review, the institutional HRPP may determine whether the institution will participate in the research approved by the single IRB. Further, the institutional HRPP should report its determinations to the sIRB, and the sIRB may determine if the research must include additional changes to address local context.

Comments Concerning Guidance Item 7, *What are some of the operational capacities an IRB should have in order to serve as a single IRB?*

We agree with the operational capacities specified in Item 7 but note that certain of these operations are best performed in partnership with the HRPP at the local site. Specifically, the sIRB and local HRPP must closely cooperate to efficiently and effectively carry-out both access to/application of relevant state and local law and monitoring/auditing research at the local site. Accordingly, we suggest that the text of this item be modified to read as follows (revision shown in ***bold, italicized text***):

> An IRB designated as the single IRB for review of cooperative research should have the capacity to manage review and oversight of multiple research institutions and site investigators. The following are some, but not all, of the activities that might be performed by the single IRB, ***noting, however, that items such as***

> ***accessing/applying State and local law and monitoring/auditing research should be conducted in close cooperation with the human research protections program at each local site***:

Comments Concerning Guidance Item 8, *What are the responsibilities of the single IRB with respect to information pertaining to sensitivity to community attitudes and the local context for proposed research?*

COGR appreciates the examples of factors that can be considered as part of local context, but the definition of what constitutes an appropriate "review" for local context should be clarified. Additionally, we strongly believe that state and local laws should be included as a key local context factor. As made clear by the fall-out from the recent Supreme Court decision in *Dobbs v. Jackson's Women's Health Organization* overruling prior federal law on the right to abortion, state and local law can and does change rapidly and in ways that may significantly impact research protocols. It is neither reasonable, nor appropriate, for an sIRB to be required to locate and research these laws, which may be changing literally from month to month. Rather, the local site's HRPP should be prepared to flag and educate the sIRB on state/local laws that bear on the research. Similarly, there may be differences in local standards of care (e.g., standard testing for hepatitis C in communities with widespread opioid use) that are well-known to the local HRPP but are difficult for the sIRB to identify. Accordingly, we urge OHRP to modify the second sentence in the second paragraph of Item 8 to read as follows (revision shown in ***bold, italicized text***):

> In general, the relying institution should provide information on local context, as appropriate, consistent with the responsibilities that the relying institution and the single IRB have agreed upon and documented (e.g., reliance agreements might include provisions relating to informing the single IRB about such local contextual issues), ***and such information provided by the relying institution should include information about state and local laws and standards of care pertinent to the research.***

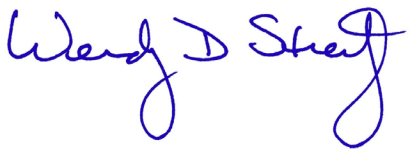
Conclusion:

Although the mandate for sIRB review yields benefits in many cases, there are, and continue to be, areas in which local laws, community attitudes, standards of care, and other elements of local context will have tremendous impact on whether a research protocol can be carried out safely and ethically at a specific location. We appreciate OHRP's recognition in this Guidance of the importance of local context, and we urge OHRP to take this recognition to

the next level by explicitly acknowledging in the Guidance that an sIRB must partner with each local HRPP to ensure the sIRB can accurately discern the local context for the research.

Thank you again for the opportunity to submit comments regarding the Guidance, and should you have any questions regarding letter, please contact Kris West, Director, Research Ethics & Compliance at KWest@cogr.edu.

Sincerely,



Wendy D. Streitz
President