Report on
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News and Analysis for Colleges, Universities, AMCs and Other Non-Federal Entities

Contents

Chatting Online May Help, Hurt Participants; SACHRP Highlights Planning, IRB Involvement

People are naturally inquisitive, and those who enroll in clinical and other trials might be more so than most. But what happens if that curiosity prompts them to turn to the internet for information or answers? Particularly for those in blinded studies, learning too much—such as the research arm they might be in—could threaten the integrity of the trial.

On the other hand, after comparing notes with fellow research participants, individuals might discover a nettlesome pain or rash is really an adverse reaction they need to report.

Recognizing more of the potential perils than positives from participants' use of social media, the HHS Office for Human Research Protections (OHRP) asked its advisory committee to look into the issue, including whether it might be appropriate to ban participants from talking about their study on social media.

Such a prohibition could be imposed, but only rarely, and should be addressed in consent forms, according to new recommendations approved by the Secretary's Advisory Committee on Human Research Protections (SACHRP) at its recent meeting.[1]

The recommendations accompany SACHRP's answers to seven questions OHRP posed about research participants and social media. They were drafted by a SACHRP subcommittee co-chaired by David Forster, chief compliance officer for WIRB-Copernicus Group, who led members through the document prior to adoption on Oct. 19.

continued on p. 8

Attacked at the War's Start, Ukrainian Univ. Relocates, Perseveres—for the Second Time

The university in the eastern Ukrainian city of Severodonetsk was shelled Feb. 24—the first day Russian forces invaded. The attack destroyed most of the research enterprise of Volodymyr Dahl East Ukrainian National University's home campus, which was relocated and rebuilt following a previous Russian bombardment just eight years earlier.

But, under the direction of Rector Olga Porkuian, who also lost her house in the recent invasion, the university has continued to hold classes online and in a trio of cities to which it evacuated some thousands of staff, students and residents—a massive and dangerous undertaking.

As Porkuian explained during a recent meeting of the Federal Demonstration Partnership, Volodymyr Dahl East Ukrainian National University was founded in 1920 in Luhansk, the center of the easternmost region of Ukraine.[1] Following the meeting, Porkuian provided *RRC* additional information via email about the academic and living situation facing university staff and students during this crisis.

They are not safe.

After escaping from Severodonetsk to Kamianets-Podilskyi, Dnipro and Kyiv, those cities remain under attack or are occupied. "Yesterday, October 10, it was very dangerous here and in Dnipro city," Porkuian wrote to *RRC* from Kyiv, where

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she said "most of the leaders of the university are located. Fortunately, none of my colleagues were hurt. Today the situation is quieter but it is still not good." Kamenetz-Podolsky, she said that day, was "much safer" but also had a smaller number of evacuees.

They are suffering.

"Truly speaking it is a really very difficult time for our university now. We are forced to rent premises for work, and buy computers and other equipment. It all happened as a result of war actions, because our campus is destroyed, the city is occupied, and laboratories were looted," Porkuian told *RRC.* "Most of our students are residents of the occupied territories and, therefore, are also in a difficult financial situation. [Those who] left, like all university staff, [left] with a minimum of things. They and their parents are deprived of their usual sources of income as only a very small part of the business was evacuated and continue to survive on safe territories."

They are carrying on.

"We all continue to work, although it is difficult in the face of daily shelling," Porkuian said in an email, adding, "I am also in touch with rectors of other universities."

Now the fall period with online courses and students has begun. "If there are problems with communication, we reschedule classes for another time, but we try to conduct them on the time according to the timetable. Most of the lecturers and professors are now in Kyiv," Porkuian said.

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"Professors and other teachers are not required to go to the front, they are in the military reserve. But they can, by virtue of their convictions, voluntarily join the armed forces and defend Ukraine with weapons in their hands," she added. "There are such people, probably, in all higher educational institutions. We are very proud of them, as well as our Ukrainian army."

In September, she estimated enrollment had declined about 10%. When the war began in February, the university had approximately 7,000 students and 500 faculty.

Just eight years ago, the numbers were three times higher.

To understand the university's history—and the cumulative harm from war that ripples out still today—it is necessary to go back to Russia's first attack on the campus in 2014. This tale of relocation and rededication also explains how the university came to be in Severodonetsk, and the fresh sense of loss and grief Porkuian and others felt leaving it.

First Attack Was in Summer 2014

"In 2014, there were in Ukraine 17 such displaced universities," she said. "And now in 2022, this number has increased significantly: about 30 universities, 40 colleges and 65 educational institutions [have been] forced to move to new places."

Prior to the Russian invasion in 2014, the university's "main areas of research and educational activity were technical sciences, economics, psychology, philology, sociology, law and others," said Porkuian during her presentation. The university was "one of the largest educational institutions in the country in terms of the number of students, the number of teaching staff, with a powerful material and technical, laboratory and scientific base located in 57 educational and laboratory buildings."

She added that there was an "extensive network of 10 branches located in Crimea, Luhansk and Kherson regions," with "more than 2,000 teachers [and] more than 30,000 students, including 1,500 foreign students."

Prior to the first invasion, "the university had 110 branches of departments in production [and] 40 research laboratories," Porkuian said, and "always held leading positions in the national rankings of scientific and educational activities of Ukraine. The university community was focused on development, research and social activity."

In the summer of 2014, "the premises of the base university in Luhansk were seized by the occupiers and looted. Anti-aircraft guns were installed in the courtyard of the student dormitories," she said at the meeting. "Also, all branches were seized, except for one—in the city of Severodonetsk."

So that was where the "university staff, most of the teachers and students, were transferred," she said. This left many employees "in a very difficult psychological state, due to the fact that they lost all their property, their

housing," Porkuian said. "Many elderly or sick parents could not leave; they remained in the occupied territory."

A University 'Is Not About Buildings'

The lesson that all absorbed in 2014 was that the university "is not about buildings, walls and equipment, but, first of all, it is people, human potential," she said. "For many, the university became that nucleus around which one could rally, and which motivated one to think about the future, plan something in a new place, reevaluate one's life and priorities."

By this year, the "dedicated work of employees" had launched "educational and scientific activities, create[d] new sites and laboratories" and the university had "significantly improved its national rankings," Porkuian said. "Just [in] the last eight years, the university has implemented more than 50 international and national projects, created 16 new laboratories and modern multifunctional educational spaces with the help of our international partners and sponsors."

She added special thanks to "the participation and support of the American people," via the U.S. Agency for International Development, for support after the 2014 attack. Porkuian said new offers of help would be welcomed and that a foundation had been created to accept them. She can be reached directly via her email for more information.

Porkuian also spoke fondly of Severodonetsk, a city she called "cozy and compact." The area included approximately 150,000 residents and "research institutions and knowledge-intensive industries functioned in it, cooperation with which greatly contributed to the organization of high-quality education for students of technical specialties after the loss of the research base."

Labs, Partnerships Are Gone

Then came Feb. 24. Russian military attacks completely or partially destroyed many university buildings and its labs. University officials "with the support of volunteers" undertook the task of evacuation, "under shelling" and without "humanitarian corridors." This meant "official authorities could not ensure the safe removal of people, take responsibility for their lives," Porkuian recalled.

People, she said "walked through the whole city, under fire, to the hostel, where buses were waiting for them to take them out of the city." The evacuation took three weeks; some 5,000 residents of the region were relocated.

Porkuian specifically mentioned the university's permanent partnership with "the research and production enterprise Impuls, a leading Ukrainian manufacturer of highly reliable control systems for nuclear energy and railways"—a type of relationship that many U.S. research institutions strive to establish on their own campuses.

"The company's products [are] used in many countries and, of course, in Ukraine, and in particular, at the Zaporizhia nuclear power plant occupied by the Russian army," she said. At Impuls "our students underwent practical training and internships." The Russian military destroyed Implus' research and production base, Porkuian said, adding "the rest of the university's partner enterprises are in a similar situation."

As of her talk in September, Porkuian said there was no "complete data on the destruction and loss of the scientific and educational infrastructure of Ukraine as a result of the war." But data at that time indicated "90 of the 213 scientific institutions of the National Academy of Sciences of Ukraine are damaged, 20 universities and colleges were destroyed, and 140 were damaged."

But the damage doesn't end with the bricks and mortar, Porkuian said, noting the "difficult psychological state of teachers, scientists and students due to the loss of loved ones, housing, property, constant danger and uncertainty."

'Serious Crisis' in the Scientific Field

Another challenge is that the "dispersion of scientific personnel throughout the country and abroad may lead to the collapse of scientific schools," she added. "A certain number of participants in the educational process remained in the occupied territories, unable to leave, unable to study or work due to lack of connection with these territories."

According to survey data, few Ukrainian researchers and students were able to relocate to Poland, other neighboring countries or even the United States through programs with American universities and temporary changes in immigration rules, Porkuian said.

Forty-seven percent of scientists surveyed were still in Ukraine and had not changed their residence because of the war, 38% were still in Ukraine but had moved as a result and approximately 15% "were abroad," she said.

The lack of financial support is also fueling the "serious crisis…in the scientific field as a result of the war," Porkuian said.

In the same survey, nearly 30% of scientists "who worked on certain projects, noted that their project was stopped because of the war. This is primarily due to the deprivation of funding from the National Research Fund. As of today, Ukraine has not yet held a single competition for financing scientific research," she pointed out. "For all of us, the main priority is to support the armed forces of Ukraine."

There is also worry about the "loss of traditional customers of scientific developments and scientific and

technical services by universities in connection with the closing of industrial enterprises, their destruction or the impossibility of evacuating business from the occupied territories," Porkuian said.

'We Will Rebuild Our Cities'

Data also show further disruptions. When asked whether it is "possible to engage in scientific activity to the same extent as in pre-war times," Porkuian reported that "only a partial third of the respondents gave a positive answer. Among the reasons that do not allow the rest to work fully, psychological ones prevail: 'I do not feel safe, which prevents me from working' and 'lack of interest, apathy.'"

Turning back to her university, Porkuian told *RRC* officials had "approved a new strategy for the university [and] created an anti-crisis committee." She also expressed confidence in Ukraine's victory and stressed that the war is about more than democracy in Ukraine.

"Until the liberation of the…region and the restoration of our campus in Luhansk, we will work in Kyiv. After liberation, we will rebuild our cities and return to Luhansk," she said. "The most important thing for all Ukrainians is international support for our country in this war. No matter how dramatic it may sound, we believe that this is not just a war for the independence and integrity of our country, but for justice, freedom and the future of all human civilization."

Contact Porkuian at porkuian@snu.edu.ua. ✧

Endnotes

1. Olga Porkuian, "The Ukrainian Crisis and its Effect on the Research Enterprise," Federal Demonstration Partnership September 2022 meeting, https://bit.ly/3DqLxXN.

Focus on 'Friction Points' to Facilitate Research Award Management Tasks

Oversight and management of an HHS grant that funds care for individuals with substance use disorders, for example, differs from what's required for an award that supports a research lab investigating how normal cells become cancerous or probing for new treatments for epilepsy.

But exactly how service awards and research grants vary may be instructive to new compliance officials, as Scott Sheffler, a partner with Feldesman Tucker Leifer Fidell LLP, explained in a webinar,[1] and can serve as a refresher to those with more experience.

Managing research awards versus service delivery awards "will be very different," said Sheffler, as oversight of service delivery awards "is very focused on issues of scope of project, beneficiary eligibility, the nature of the services furnished," as well as "potentially generating program income."

He called management of research awards "fairly straightforward" but not necessarily simpler.

There may be more "flexibility from a grant management standpoint, but then [the awards] will be more complicated from a managing personnel and personality standpoint," along with "really significant ancillary compliance requirements that can be layered on, depending on the nature of the research that you're doing," Sheffler said.

These ancillary requirements may necessitate specialized knowledge and expertise, Sheffler said.

However, "the good news" is that awardee universities and other institutions generally "have very well-developed systems around each of these ancillary areas. And so there's a support system in place," he said.

Oftentimes an official managing service awards is "really on your own."

Sheffler emphasized that, while he is a practicing attorney, the webinar is not legal advice and that institutions should consult their own counsel when necessary.

In Sheffler's experience, there are five areas of concern or "friction points" when it comes to the oversight of research awards. These are federal management parameters and potential research flexibilities; human subjects research; data rights and intellectual property; financial conflicts of interest; and collaborative research. This article will address the first two. A story in the December issue of *RRC* will discuss the other three, as well as issues related to contract management.

He referred to these topics as "the things that people are worried about" and are "trying to work through when managing a research award."

Sheffler's comments referred mostly to grants and cooperative agreements versus procurement contracts governed by the federal acquisition regulations (FAR). However, it is possible to have a mix of funding sources in one project, Sheffler pointed out, adding that management principles will be "very similar."

Comparing the three primary federal awarding agencies, Sheffler said the Department of Defense (DoD) has "very robust standard terms and conditions." NIH "provides the fewest terms and conditions," while the National Science Foundation (NSF) is "kind of in the middle," he said.

The general grant or underlying crosscutting regulations are contained in 2 C.F.R. § 200, which applies to non-Public Health Service (PHS) funding and 45 C.F.R. § 75 for PHS, including NIH. Still, "they don't apply in the same way," Sheffler said.

Other regulations that apply regardless of whether the award is for service delivery or research include 2 C.F.R. § 180, which addresses suspension and debarment, and 45 C.F.R. § 85 and § 93.

'Guidance is King'

Sheffler also stressed that "in the research context, agency guidance is really particularly important" because awards from NIH, NSF and DoD don't typically have "programmatic regulations. All the regulations will relate to those ancillary requirements that I mentioned. And so agency guidance then becomes king."

He noted that NIH "has a very robust branch policy statement," while "NSF has a very robust policy and procedure guide."

NSF's Proposal & Award Policies & Procedures Guide "addresses from a sort of soup-to-nuts, from beginning-to-end, NSF's interpretation of the various research requirements," Sheffler said. "Another very helpful comparative resource is the Department of Defense standard terms and conditions for research awards, which are administered by the Office of Naval Research."

Sheffler views NIH's grants policy statement as useful for interpreting other agencies' awards as well as its own. "When I'm researching a research-related requirement, I will start with the NIH grants policy statement to see what NIH is doing…because it's so well written and so comprehensive," he said.

"When it comes to regulations, we've got the Uniform Guidance (UG)" but other than that, "we are really talking about ancillary compliance requirements," Sheffler said.

Components of Direct Costs

Financial management of federal awards is governed by the cost principles in 2 C.F.R. Part E. In order of expenditure, grants will generally be spent, and key considerations and issues (in parentheses) involved among total direct costs, are:

- Personnel (time and effort, incentive compensation; UG imposed stricter standards)
- Fringe benefits (paid time off allocation, fringe rates)
- Travel (policy required)
- Equipment (prior approval/federal interest—which may be waived)
- Supplies
- Contracts
- Construction (prior approval/federal interest)

Special Requirements Govern Purchases

Indirect costs are the other portion of federal award spending. Concerns with these include application of the negotiated indirect cost rate allowance and use of a de minimis or a direct allocation. Scheffler said institutions "may have multiple rates and it will be important to be sure that you're using the right rate for the activity that's being funded under the particular agreement."

He added that, as a secondary matter, most institutions of higher education will have on-campus and off-campus rates that will need to be adhered to.

Commonly used time-and-effort methods to account for personnel include quarterly personal activity reports, reporting every six months, or reporting at the end of each semester or the end of summer. "If you're working with institutions of higher education, just be mindful that their culture of time and effort will likely be different," he said.

After overseeing personnel performance, "all the stuff that you buy" is the second challenge in managing a federal award, Sheffler said. Purchases need to comply with federal procurement requirements.

In sum, for purchases over $250,000, "you'll use a widely publicized RFP [request for proposals] or invitation for bids that is widely publicized…and you'll have a written evaluation plan…so that as proposals come in, you'll be able to evaluate" bids, he said.

For purchases "under $250,000 down to $10,000, or if you've had clean audits and you've elected a higher threshold, maybe put it at $50,000," simplified acquisition procedures apply, which give institutions more freedom, Sheffler said.

Don't Forget the False Claims Act

Audits aren't the only government action to be concerned about. There are False Claims Act (FCA) implications with managing federal funds. Institutions must be certain the research they conduct matches the award, and "when you report the results of your research…those results are truthful," Sheffler said, adding they are at risk of government action.

Institutions of higher education "are an easy and attractive target for the Department of Justice" to bring an FCA case because they are "big name" organizations, he said. "Secondarily, you have a lot of employees and…you'll have disgruntled employees, and your research awards will tend to be fairly large."

Disgruntled employees are "incentivized to become whistleblowers," as they may be able to share in penalties imposed in a successful FCA suit, he said.

Also relevant to personnel is the need to get prior agency approval when a principal investigator (PI) is added or removed from an award. Sheffler often adds a provision to subawards specifying that "if their PI leaves, they'll work with the PI and with me to ensure that the research can be efficiently transferred to the new institution."

Be Alert to New Terms, Conditions

Revised terms and conditions, agreed to by various agencies and managed by NSF, are another area for grants managers to be aware of. These are found at https://www.nsf.gov/awards/managing/rtc.jsp.

Sheffler called special attention to these terms and conditions, saying "you won't find [them] in federal regulation" and noting the list is "a very persuasive guidance document."

These provide "additional flexibilities," such as automatic prior approval of certain pre-award costs and no-cost extensions, he said.

Institutional Salary Policy a Must

He added that "when it comes to your salary expense, there is a really important additional policy that you should have," namely, "you should be setting your institutional base salary [IBS] and explaining what's included in your institutional base salary. All the research funding entities will look to what is your

FDA Seeks Comment on Two NPRMs

With one still awaiting finalization since 2018, the Food and Drug Administration (FDA) has published two additional proposed rules implementing portions of the 2016 Cures Act as well as making other somewhat technical corrections to its regulations.

Nov. 28 is the comment deadline on both notices of proposed rulemaking (NPRM), which were published Sept. 28. Some of the changes would harmonize certain FDA regulations with some parts of the revised Common Rule, but the agency is not adopting the concept of broad consent, for example.

The NPRMs are "Protection of Human Subjects and Institutional Review Boards" (IRBs)[1] and "Institutional Review Boards; Cooperative Research."[2]

If finalized as proposed, the human subjects and IRBs NPRM would revise 21 C.F.R. § 50, specifically "the content, organization, and presentation of information included in the informed consent form and process to facilitate a prospective subject's decision about whether to participate in the research," Ann Meeker-O'Connell, director of the FDA Office of Clinical Policy explained during a recent meeting of an HHS advisory committee.[3]

The terms that will have new or revised definitions include legally authorized representative, written or in writing, private information, identifiable private information and identifiable biospecimen.

New Biospecimen Consent Language Proposed

"One subtle difference from the Common Rule in our proposed definition of both identifiable private information and identifiable biospecimens is that...we propose to add sponsors in addition to investigators as parties who may reasonably or readily ascertain information or the identity of the subject," she said. "These terms—sponsor, investigators—are used throughout our regulations to describe different responsibilities of distinct parties involved in FDA regulated research."

She noted FDA's proposed rule requires consent forms to include "a description of how information or biospecimens may be used for research or distributed to another investigator for future research."

In contrast, Meeker-O'Connell said, the Common Rule requires a statement specifying that biospecimens either will be used for future research without obtaining additional consent or that they will not.

"This proposal is really intended to incorporate flexibility as to the description that an investigator would provide to each potential subject or their legally authorized representative to help ensure that they are informed regarding possible future uses of information or biospecimens that are collected from their participation in research," Meeker-O'Connell said.

"This flexibility is needed, as the ways in which information and biospecimens are used relevant to FDA regulated products really continue to evolve," she said. "We also believe that the inclusion of a description of how information and biospecimens may be used for future research or distributed to another investigator for such research will help potential participants to identify the types of planned future research using their information or using their biospecimens that they might deem objectionable, recognizing that the specific details of potential future studies may be unknown."

FDA officials, she added, "think the research community would be able to develop informed consent forms and processes that comply with both sets of regulations when applicable."

Continuing Review Provisions Differ

Other changes are proposed to 21 C.F.R. § 56. FDA would add a "provision that would allow IRBs to eliminate continuing review of research in certain circumstances" and revise "IRB recordkeeping requirements for certain determinations related to the need for continuing review."

Further, FDA is "proposing to add language that would require an IRB to document the rationale for conducting continuing review to the extent they determine that continuing review remains necessary when it otherwise wouldn't be required," she said.

However, Meeker-O'Connell noted that FDA is not planning to "eliminate continuing review for the current list of research qualifying for expedited review" nor for "research reviewed by the IRB in accord with limited review." she said. The latter "implicates other revised Common Rule provisions, such as broad consent, that we don't propose to adopt," but which may be under consideration in the future.

Another proposed addition to this part of the regulation would be to insert references "in multiple places to tribal law or of American Indian or Alaskan Native tribes to clarify that, where we reference federal, state, or local law, that's intended to also include tribal law," Meeker-O'Connell explained.

IBS, because your IBS will be the cost of that person that should be allocated in some way to the awards."

However, it is "not entirely uncommon in a research institutional setting" to provide "extra pay" to faculty members conducting research, he said.

Yet, such payment "would have to be for some set of extraordinary or additional duties that are defined as being outside the institutional base salary," and the purpose or type needs to be specified, such as summer pay or "extra duty pay for internal institutional consulting, etc." He added that the IBS "is really important [and] should be your starting place."

He clarified that even though the FAR will govern procurement contracts, for nonprofits "the FAR cost

This NPRM also would revise 21 C.F.R. § 812, which addresses investigational drug exemptions, to align "submission of progress reports with revisions to continuing review requirements in Part 56."

FDA: Additional sIRB Exceptions 'Appropriate'

The second NPRM, on IRBs and cooperative research, would mimic requirements in the Common Rule for the use of a single IRB (sIRB) of record when there is more than one site involved. But FDA is less enamored of the sIBR concept than is, for example, NIH, which believes a mandate to use an sIRB is necessary, versus a voluntary recommendation, Meeker-O'Connell said.

However, "we don't believe that the benefits of single IRB review outweigh the potential associated burdens in every circumstance," she said, so FDA is proposing four exceptions to the mandate—three more than the Common Rule allows.

"We are proposing specific exceptions that, again, we think reflect circumstances where it may not be appropriate or may not yield the anticipated efficiencies for the research we regulate," according to Meeker-O'Connell.

The first exception mirrors the Common Rule, which exempts cooperative research for "which more than a single IRB is required by law, including tribal law passed by the official governing body of an American Indian or Alaska Native tribe," she said.

The second proposed exception relates to cooperative research "involving a highly specialized FDA regulated medical product, such as a device requiring a highly specialized surgical training. Expertise for these…unique products, in fact, is often limited to only a few specialists across the country at sites where the local IRB may be unable to serve as a single IRB of record," she said. "We think in these limited instances that mandating the use of single IRB review could be an obstacle to initiating important research when the localized expertise to conduct the trial is readily available. But none of the IRBs associated with the investigational sites have the operational capacity to serve as the single IRB of record."

The two other proposed exceptions "capture FDA regulated drug and device studies that do not require an" investigational new drug application or investigational device exception "submission to FDA," Meeker-O'Connell added. "Studies within these proposed exceptions are research involving drugs or devices that are already lawfully marketed and that are not being conducted for the purposes of supporting a new product clearance or approval."

In another break from the Common Rule, FDA "is not proposing to require that the reviewing IRB be identified by the federal department or agency supporting or conducting the research or by the lead institution, subject to acceptance by a federal department or agency supporting the research," she said. "It's not practical for us to adopt that same requirement because unlike research subject to the revised Common Rule, as just mentioned…most of the research that we regulate is not conducted or supported by either FDA or any federal department or agency."

Feedback Sought on sIRB Policies

Finally, the NPRM contains a series of questions about some of the operational issues of an sIRB mandate, such as whether additional exceptions should be permitted for studies with a small number of sites and for other reasons.

As noted, these are the second and third NPRMs FDA has issued in service of the Cures Act requirement for agencies to reduce duplication, increase harmonization and minimize regulatory burden on research institutions and investigators.

The first NPRM, "Institutional Review Board Waiver or Alteration of Informed Consent for Minimal Risk Clinical Investigations," was published Nov. 15, 2018. After an extension and a reopening, the comment period closed March 7, 2019. FDA expected to publish a final rule in September but did not meet that timeframe.[4]

Meeker-O'Connell did not predict when the final rule would be published, saying only that it is "in the process of harmonization." A final rule by FDA on this topic does not appear on the government website that tracks regulations under review.

Endnotes

1. Protection of Human Subjects and Institutional Review Boards, 87 Fed. Reg. 58,733 (September 28, 2022), https://bit.ly/3TJ4VEH.
2. Institutional Review Boards; Cooperative Research, 87 Fed. Reg. 58,752 (September 28, 2022), https://bit.ly/3gpAxAR.
3. Ann Meeker-O'Connell, "Proposed Rules: Institutional Review Boards; Cooperative Research and Protection of Human Subjects and Institutional Review Boards," Secretary's Advisory Committee for Human Research Protections, October 19, 2022, https://bit.ly/3TPm0wZ.
4. The U.S. Department of Health & Human Services/Food and Drug Administration, "Institutional Review Board Waiver or Alteration of Informed Consent for Minimal Risk Clinical Investigations," RIN 0910-AH52, Office of Information and Regulatory Affairs, 2022 Spring Regulatory Agenda, https://bit.ly/3DlVPbA.

principles…say generally, you should be operating under the Uniform Guidance cost principles. The FAR cost principles actually cross-reference you back into the Uniform Guidance."

Nuances of FWAs, sIRB Requirements

Compliance with human subjects regulations will be necessary when "the phenomenon in your research is one that requires you to interact with, or observe in an identifiable way, the data or the activities of human subjects…then you are conducting human subjects research." Such research is governed by a "robust set of regulations" called the Common Rule, Sheffler said.

He pointed out that NIH's relevant regulations are found at 45 C.F.R. § 46.

Organizations conducting human subjects research have to register with HHS and obtain a federalwide assurance (FWA) number attesting to the commitment to follow the Common Rule and generally that "you will manage the human subjects research in such a way to care for the safety of the human subjects and respect the privacy of the human subjects and of the data that you generate from those human subjects," said Sheffler.

Each location where the research is conducted "should have [its] own FWA number," he said.

Having an FWA also commits the organization to establish an institutional review board (IRB) "comprised of no less than five people and representative of both scientific interests and disciplines and non-scientific interests and disciplines," Sheffler added, "the purpose of which is to oversee the safety [and] the privacy rights of those human subjects."

Most institutions of higher education have an internal IRB, but "if you're another type of nonprofit that's doing human subject research, there's a high likelihood you will contract for an IRB," he said.

Sheffler also pointed out that some research might be exempt from IRB oversight but that such a determination must be "an official decision by someone with a certain level of authority within your organization."

A relatively new development regarding IRBs and human subjects research is the requirement that collaborative research—which involves more than one organization—have a single IRB (sIRB) of record, with few exceptions.

The Food and Drug Administration has a proposed rule open for comment until the end of this month that would impose a similar requirement on research it regulates but provides more exceptions (see story, p. 6).[2]

Organizations need to sign an agreement indicating whether they are the of-record IRB or will be relying on that IRB, Sheffler said. NIH funded the development of "a platform designed to ease common challenges associated with initiating multisite research" that also provides a "roadmap" for compliance with the single IRB requirement. This can be found at https://smartirb.org.

However, in his experience, "every institution is still running all the research through their own IRBs," Sheffler said. "There's no rule against that, but you can't charge the cost of those IRBs," which he called "the big difference" resulting from the sIRB mandate.

Big Role for HIPAA

Specific agreements will also be required to safeguard protected health information in compliance with HIPAA rules, he added, particularly if the research organizations are covered entities or business associates. This may involve agreements that call for deidentification or the use of limited data sets.

If deidentification is mandated, it must be done in compliance with HIPAA, which requires the removal or masking of "really almost anything that could potentially be used to identify a person, including admission date, discharge date…all [this] has to be scrubbed out of the data," Sheffler said.

"If you're interacting with entities that are actually seeing patients and gathering the data that way, HIPAA…and the data use issues will be a major piece of your negotiation," Sheffler cautioned.

He added that managing data is "a lot easier" if it's been deidentified by the time it gets to the researchers, although this isn't always possible.

The webinar is part of Feldesman Tucker's series on managing federal grants. Two more are scheduled before the end of the year. These address cost share and program income (scheduled for Nov. 10) and corporate structure and IRS issues for federal grantees (Dec. 8). For more information, visit https://bit.ly/3F4W9wS.

Contact Sheffler at ssheffler@ftlf.com. ✧

Endnotes

1. Scott Sheffler, "Managing Research Grants," recorded webinar, April 28, 2022, https://bit.ly/3TSiXUv.
2. Theresa Defino, "FDA Seeks Comment on Two NPRMs," *Report on Research Compliance* 19, no. 11 (November 2022).

SACHRP: Plan for Online Chatting

continued from page 1

In the introduction, SACHRP notes that research participants "finding one another and communicating about their experiences" isn't new; this occurred with AIDS activists in the 1980s, for example. But now there is "increasing attention as a result of the steady growth of the use of social media platforms."

Forster credited Janet Freeman-Daily, a lung cancer patient advocate whose term on SACHRP ended in June, with "changing this from just concentrating on the possible negative effects to also including the possible benefits of subjects communicating on social media about research studies they're participating in."

Overall, the document addresses three themes regarding the impact of social media: how it may affect participants' safety, concerns related to scientific validity and potential positive outcomes when used by research subjects.

Social media may be an issue for a variety of trial types, from biomedical to social and behavioral, SACHRP said.

"Most of the concern with scientific validity is going to have to do with multi-arm blinded studies where potentially either the research subjects or the research staff, through the social media discussions, can realize which arm they're on [or staff could] identify which arm various subjects are on," Forster explained. "Maybe it's discussion of what the placebo looks like or the taste, or a side effect of the drug, something like that."

The recommendations note that "this could include any type of disease state, include adult or pediatric studies, and could occur in small or large studies. A particular area where such concerns could arise is rare disease trials, as the patients or their parents are often well-connected in social media even before the study begins."

In a psychological study that used deception, for instance, an "early" participant could go online and say, "Hey, you know, here's what they asked me in the debriefing, here's what they told me," Forster said. This could make completion of the study difficult, if not impossible, he said.

Understand the Risks, Benefits

"Subject safety could be negatively impacted in several ways" through social media, the recommendations say. "Based on discussions of experience or information in online discussions, subjects may react to information in a manner that places them at greater risk, or negatively impacts the likelihood of benefit."

SACHRP listed negative outcomes that could "theoretically" result in risks to the safety of subjects. Study participants may obtain information via social media that could:

- "Affect a subject's decision to complete or drop out of [a] study when such a decision is not in their best interest.
- "Provide misinformation about the possible benefits or adverse effects of the study drug.
- "Give rise to incorrect inferences about a subject's treatment assignment, and therefore influence a subject to pursue other treatments, medications, or supplements, or exit the study.
- "Lead a subject to provide personal information about themselves without realizing how broadly or to whom the information might become available, in both clinical and social-behavioral research.
- "Lead a subject to conceal or fail to disclose information that would make them ineligible to participate in the research, or to fail to disclose adverse event information once they are enrolled so that they are not removed from the study."

As mentioned earlier, social media exchanges may also threaten the scientific validity of trials by exposing study arms to both participants and trial staff. Participants could also negatively affect the trial if they:

- "Discuss eligibility criteria, so that potential subjects can conceal or fail to disclose information that would disallow their participation in the research.
- "Share adverse event information, thus discouraging other subjects from reporting such events so that they are not removed from the study."
- "Inappropriately alter" outcomes they report to study staff because they have been "influenced" by other trial participants.

In addition to identifying "negative…effects of the study article," SACHRP pointed out that positive effects may also emerge.

"Subject communication could also result in better recruitment if potential subjects read encouraging posts on social media, or if there appears to be a sense of community and positivity among the research subjects who are discussing the research," the recommendations state. "Such discussions may also result in better retention if subjects feel that they are part of a community."

Further, participants "may also feel a sense of altruism if the discussions lead them to believe that they are contributing to curing or mitigating a disease that affects them. They may also be more inclined to stay in the research if the discussions lead them to believe that they are likely to receive personal medical benefit."

Recommended Management Strategies

Funding agencies, investigators, staff of human research protection programs, organizations such as The Center for Information and Study on Clinical Research Participation, and institutional review boards (IRBs) "could take several steps to address the issue of subjects using social media to discuss ongoing research," according to the recommendations.

Suggestions include:

- Creating and distributing "general" educational materials "for research subjects and staff about the use of social media to discuss ongoing research, which could include discussion of the pros and cons of using social media for this purpose, and general suggestions on whether to" and how to appropriately use social media. These "could address the concerns with unblinding a research study."
- Implementing educational programs "for specific research studies, either proactively or in response to an online discussion beginning."

- Addressing the use of social media in the consenting process as well as revising consent forms to include the topic.
- Requesting or requiring research participants to "refrain from discussing certain aspects of the trial on social media."
- Imposing "penalties for discussing certain issues, up to termination of participation." SACHRP said this "should be a limited practice, and only used where there is a strong compelling rationale such as not being able to conduct the research." The recommendations note that participants "may view it as an infringement on their autonomy and their right to pursue the gathering of information to further their own health. Moreover, it could give subjects the impression that the researchers are being secretive, which could lead subjects to view it suspiciously."
- Instituting the "Social Media ADEPT" framework. ADEPT stands for: "Assess when and how social media are likely to pose risks for a study and plan accordingly, Design studies to minimize these risks, Educate participants about their responsibilities to promote study success and avoid harmful social media use, Preempt problems by offering alternative mechanisms for participants to have their concerns addressed, and Take additional steps if necessary."
- Considering "possible solutions, including prior risk assessments by sponsors and investigators of the possibility of discussions on social media affecting the research, educational language in consent forms, and the use of moderated online fora so that the content of the discussion can be controlled," as proposed in "Clinical Trials and Social Media: Friends or Foes?"
- Establishing a "dedicated social media platform" for discussions, which would be moderated by research staff or an individual representing the study. This individual would "identify troubling directions in the conversations" and could correct misinformation and remind "subjects about the importance of the integrity of the data."

Drawing a Hard Line

While online conversations can be benign, on the other end of the spectrum, they could damage a study and lead, for example, to a drug or device failing to win approval from the Food and Drug Administration, SACHRP said. Mitigation strategies could fail or not be as successful as hoped, which underscored OHRP's question to SACHRP regarding a potential ban on social media use.

With these concerns in mind, SACHRP said, "there may be circumstances where it is appropriate for an investigator to monitor subjects' use of social media, but SACHRP believes they should be rare and used only when there are significant potential negative effects on either subject safety or scientific validity."

Additionally, "any such monitoring should be disclosed in the consent process. The IRB would need to consider the privacy of the subjects and subjects' ability to control the level of information necessary to protect their privacy," SACHRP said. "The IRB should also consider the potential risks and benefits, both to the subjects and the research, in such a proposal. It is worth noting that research staff involvement in social media communications might also provide enhanced participation and retention in the research."

OHRP also asked SACHRP to address whether investigators and IRBs could "condition study participation on an agreement to refrain from sharing study information on social media" and to identify circumstances that could warrant this and what an IRB should "consider when encountering such a proposal."

According to the recommendations, imposing such a condition "would only be warranted in a limited number of situations as it involves a limitation on the subjects' autonomy and the right to seek out and consider information about research participation, both in the initial consent process and during ongoing participation in the study."

Bans Imposed When 'Direct Effect' Feared

A ban on social media use "might be warranted when it is difficult to blind the study, for instance, when a study article or control has very noticeable identifiers, such as taste, appearance, or mode of delivery," SACHRP said. But it warned again that this "should rarely be used, and only when it is necessary for the conduct of the research to be possible."

SACHRP acknowledged that "there are other conditions imposed on research subjects for their continued participation," such as pregnancy or the use of "prohibited co-medications," but stressed that these "are usually based on a direct effect on the safety of the research subject or the validity of the research results. In the case of the use of social media to discuss ongoing research, the nexus to subject safety and research validity is not as direct and is counterbalanced by the potential benefits of such discussions," the recommendations say.

Investigators and IRBs will also need to consider "whether a prohibition on sharing information on social media is just a request, or if there will be penalties such as potential [of] being removed from the study," SACHRP said. "Regardless of which it is, such intentions should be communicated to the IRB for consideration during the IRB approval process." ✧

Endnotes

1. The Secretary's Advisory Committee on Human Research Protections, "Use of Social Media by Research Subjects: Ethical and Regulatory Considerations for the Protection of Human Research Subjects," October 19, 2022 (subject to finalization as formal letter), https://bit.ly/3DqINcT.

In This Month's E-News

◆ **NIH is unable to "ensure grants have appropriate cybersecurity provisions" and should make nearly a half-dozen changes, according to auditors for the HHS Office of Inspector General (OIG).** Yet, NIH said it had already made the recommended improvements—an assertion auditors disputed. CliftonLarsonAllen LLP "reviewed NIH's policies and procedures to determine if NIH includes cybersecurity provisions as part of the pre-award risk assessment process and to determine the extent of current cybersecurity requirements." Auditors also "reviewed a sample of 75 grants to determine if risk-based cybersecurity provisions were included for the grants" and "completed a review of 3 grantees to determine if post-award monitoring of grantee cybersecurity compliance by NIH was taking place." Auditors found NIH has "an inadequate pre-award risk assessment process because it does not consider cybersecurity and has no special term and condition addressing cybersecurity risk in the Notice of Award," and also has "inadequate policies because the *NIH Grants Policy Statement* [NIHGPS] does not include specific, risk-based provisions on cybersecurity." The agency also lacks "post-award monitoring to ensure grantees maintain effective cybersecurity," according to the report.

Auditors said NIH "relies solely on its grantees to design, implement, maintain, and monitor the effectiveness of their cybersecurity controls in protecting the confidentiality, integrity, and availability of data. As a result, NIH may not be able to identify potential problems with protecting sensitive and confidential data (e.g., proprietary information, personal health information, personally identifiable information, detailed genomic data from human subjects) and NIH's intellectual property. Without identifying those potential problems, NIH may not be able to provide timely technical assistance." Among the recommendations are that NIH should "determine which grants should require additional cybersecurity protections due to research potentially including sensitive and confidential data or NIH intellectual property or both" and what those controls should be; "establish clear and measurable standards for cybersecurity protections"; and "strengthen its post-award process to confirm that cybersecurity protections have been implemented to adequately safeguard sensitive and confidential data." However, auditors wrote that NIH "considers the five recommendations closed and implemented. Based on our review of NIH's comments, we determined that the actions described do not sufficiently address the identified cybersecurity risks," the report states. "As such, we maintain that our findings and recommendations are accurate and valid. We encourage NIH to implement our recommendations to enhance cybersecurity controls over its grant program." (*10/20/22*)

◆ **In a little more than a month after her appointment was announced, Renee Wegrzyn was sworn in by HHS Secretary Xavier Becerra as the first director of the Advanced Research Projects Agency for Health (ARPA-H).** "Throughout my career, my motivation has always been focused on 'How do we create health solutions that can be implemented in the real world?' And that's what ARPA-H aims to do," Wegrzyn said in a statement HHS issued Oct. 18. "My hope is not to nudge the needle on health, but to create an agency that sparks transformational solutions to improve the health of all Americans." Before joining ARPA-H, Wegrzyn held positions at Ginkgo Bioworks "focused on applying synthetic biology to outpace infectious diseases—including COVID-19—through biomanufacturing, vaccine innovation, and biosurveillance of pathogens," the statement said. Wegrzyn also "comes to the new agency with experience at two of the institutions that inspired the creation of ARPA-H," the Defense Advanced Research Projects Agency (DARPA) and the Intelligence Advanced Research Projects Activity. "While serving as a program manager at DARPA, Wegrzyn's portfolio tackled infectious disease, protecting the bioeconomy, and enhancing biosecurity. She has also led technical teams in the private sector in the areas of biosecurity, gene therapies, emerging infectious disease, neuromodulation, synthetic biology, and other areas," HHS said. (*10/20/22*)

◆ **Zhengdong Cheng, a former NASA-funded researcher and Texas A&M University professor, will pay a fine of $20,000 and restitution of $86,876, according to a court order entered on Oct. 6 by Judge Andrew S. Hanen of the Southern District of Texas.** Hanen also sentenced Cheng to time served; he was imprisoned for 13 months after his arrest in August 2020 on charges related to undisclosed employment and support from Chinese institutions. Indicted on charges of wire fraud, making a false statement and conspiracy on Sept. 22 Cheng pleaded guilty to violating NASA regulations and making a false statement, according to court records reviewed by *RRC*.

Also last month, former University of Kansas (KU) professor Feng "Franklin" Tao won dismissal of three charges of wire fraud for which a jury convicted him in a related case in April. Tao was the recipient of

In This Month's E-News

awards from the Department of Energy (DOE) and the National Science Foundation (NSF). Prosecutors said Tao was employed by Fuzhou University in China but did not disclose this information to KU. Julie A. Robinson, senior district judge for the District of Kansas, ruled that the government "presented insufficient evidence to sustain his convictions for wire fraud" and that his "conduct did not constitute a scheme to defraud, because no reasonable jury could have concluded that he induced either DOE, NSF, or KU to give him money or property that it would not have had it known the truth, and DOE, NSF and KU received all that they bargained for." The jury acquitted him of four other charges; he was tried on a total of eight. Robinson has not sentenced Tao on the false statement charge. Both cases were part of the Trump administration's China Initiative, which sought to crack down on academic researchers believed to be accepting federal research funds while also supported by Chinese or other foreign entities. Researchers were accused of either withholding such involvement from their employers or lying about it.(*10/13/22*)

◆ **In its fifth and sixth determination letters issued so far this year, the HHS Office of Human Research Protections (OHRP) said it "does not foresee a future risk for individuals becoming research subjects,"** ending its investigation of a now-deceased investigator from Southern Illinois University (SIU). It also provided recommendations to improve Leland Stanford Junior University institutional review board (IRB) operations. Both letters are dated Sept. 16. According to its letter to SIU, concerns first came to OHRP's attention in 2017 but dated back to experiments that began in 2011 and ultimately involved the "use of an HSV-2 vaccine on humans during 2016, without IRB approval and oversight." Nor were the studies, conducted by an unidentified researcher, approved by the Food and Drug Administration (FDA). In a long chronicle of events, OHRP said there was disagreement with SIU about whether OHRP had jurisdiction over the research, some of which was conducted in St. Kitts. In addition to no related foreseeable risks from the researcher at issue, OHRP said "it would be quite difficult to obtain additional information regarding the alleged activities conducted by this researcher. As noted above, the researcher died in 2017. The staff associated with the researcher left SIU shortly after the researcher died. At this time, there should be no need for further involvement by our office in this matter. Please notify us if you identify new information which might alter this assessment," the agency concluded. (*10/13/22*)

◆ **The University of Wyoming (UW) will repay all costs questioned by the National Science Foundation (NSF) OIG following NSF's resolution of the January 2021 audit of two Established Program to Stimulate Competitive Research awards.** Auditors questioned $90,000 in an unsupported cost transfer, $7,908 in unsupported and unallowable promotional expenses, $15,207 in unallowable activity expenses, $24,773 in unallowable indirect cost charges, $864 for unallowable meal expenses and $117,599 in unsupported subrecipient expenses, for a total of $256,000. At the time of the audit, UW agreed to repay most of the flagged costs but argued that $11,057, which was for direct expenses for UW's Summer Research Apprentice Program, should be allowed. (*10/6/22*)

◆ **Investigators wishing to study children should design trials "to maximize the amount of information gained and minimize the number of subjects involved" and consider the prospect of direct benefit as well as the scientific necessity of the research,** according to draft guidance FDA issued Sept. 26. Open for comment for 90 days, the draft guidance seeks to encourage inclusion of children who have "historically" been excluded from trials "because of a misperception that [this] was in fact protecting them. This resulted in many FDA-approved, licensed, cleared or authorized drugs, biological products, and medical devices lacking pediatric-specific labeling information," FDA said in its announcement. (*9/29/22*)

◆ **The HHS Office of Research Integrity, which investigates fabrication, falsification and plagiarism in Public Health Service-funded research, has two job openings: scientist-investigator and education and integrity specialist,** the agency said in a blog post Sept. 26. The scientist-investigator candidate should have "strong project management, interpersonal communication, and decision-making skills, and the ability to work well both independently and as part of a team," according to the post. "The candidate is expected to utilize their scientific knowledge and expertise to perform scientific and administrative reviews and analyses of institutional research misconduct proceedings, including investigation reports, for completeness and consistency, as defined by 42 C.F.R. § 93, and to evaluate evidence and prepare cases to support findings of research misconduct and recommend administrative actions." Other requirements apply. (*9/29/22*)