Monmouth University

Standard Operating Procedures
Human Research Protection Program/Institutional Review Board
Effective September 1, 2020
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1. Human Research Protection Program

Monmouth University (hereinafter referred to as “MU” or “University”) fosters a research environment that respects the rights and welfare of individuals recruited for, or participating in, research conducted by or under the auspices of MU. In the review and the conduct of research, actions by MU will be guided by the principles (i.e., respect for persons, beneficence, and justice) set forth in the Ethical Principles and Guidelines for Protection of Human Subjects of Research (also referred to as the Belmont Report). The actions of MU will also confirm to all applicable university policies and procedures, international, federal, state, and local laws and regulations, (including tribunal laws passed by the official governing body of an American Indian or Alaska Native tribe).

1.1 Mission

The mission of the HRPP is to:

- Safeguard and promote the health and welfare of human research subjects by ensuring that their rights, safety, and well-being are protected;
- Provide guidance and support to the research community in the conduct of research with human subjects;
- Assist the research community in ensuring compliance with relevant regulations;
- To provide timely and high-quality education, review, and oversight of human research projects; and
- To facilitate excellence in the conduct of human subjects research.

The HRPP includes mechanisms to:

- Monitor, evaluate, and continually improve the protection of human research participants
- Exercise responsible oversight of human subjects research
- Educate IRB members, investigators, and staff about their ethical responsibility to protect research participants
- When appropriate, intervene in research and respond directly to concerns of research participants.

1.2 University Authority

MU HRPP operates under the authority of MU’s “Institutional Human Research Protection Program (HRPP) Policy”. As stated in that policy, the operating procedures in this document “…serve as the governing procedures for the conduct and review of all human research conducted under the auspices of MU.” The HRPP Policy and these operating procedures are made available to all MU investigators.
and research staff and are posted on the Human Research Protection Program and Faculty Council websites as well as the MU Portal.

1.3 Definitions

Human Subject Research. Human Subject Research means any activity that meets the definition of “research” and involves “human subjects” as defined by the Common Rule or other applicable regulations (e.g., FDA).

Note: The terms “subject” and “participant” are used interchangeably in this document and have the same definition.

Minimal Risk. Minimal risk means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

Common Rule. The Common Rule refers to the “Federal Policy for the Protection of Human Subjects” adopted by a number of federal agencies. Although the Common Rule is codified by each agency separately, the text is identical to DHHS regulations in 45 CFR 46 Subpart A. For the purposes of this document, references to the Common Rule will cite the DHHS regulations. The Common Rule was updated in 2018, throughout this manual references to the “pre-2018 Common Rule” (or requirements) apply to studies approved or determined exempt prior to January 21, 2019 that have not been transitioned to comply with the 2018 Common Rule. References to the “2018 Common Rule” (or requirements) or the “revised Common Rule” apply to studies approved or determined exempt on or after January 21, 2019.

Pre-2018 Common Rule Definitions:

Research. The Common Rule defines research as a systematic investigation, including research development, testing, and evaluation designed to develop or contribute to generalized knowledge. Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

For the purposes of these policies and procedures, a “systematic investigation” is an activity that involves a prospective study plan that incorporates data collection, either quantitative or qualitative, and data analysis to answer a study question. Investigations designed to develop or contribute to generalizable knowledge are those designed to draw general conclusions (i.e., knowledge gained from a study may be applied to populations outside of the specific study population), inform policy, or generalize findings.

Human subject. Human subject means a living individual about whom an investigator (whether professional or student) conducting research obtains

(1) Data through intervention or interaction with the individual, or
(2) Identifiable private information.

**Intervention.** Intervention includes both physical procedures by which data are gathered (for example, venipuncture) and manipulations of the subject or the subject’s environment that are performed for research purposes.

**Interaction.** Interaction includes communication or interpersonal contact between investigator and subject. Please note that per OHRP interaction includes indirect means of communication such as via completion of a web-based survey.

**Private Information.** Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information that has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a medical record).

**Identifiable.** Identifiable information means information that is individually identifiable (i.e., the identity of the subject is or may readily be ascertained by the investigator or associated with the information).

**2018 Common Rule Definitions** (Applies to studies approved or determined exempt on or after January 21, 2019):

**Clinical Trial.** Per the 2018 Common Rule and NIH Policy, clinical trial means a research study in which one or more human subjects are prospectively assigned to one or more interventions (which may include placebo or other control) to evaluate the effects of the interventions on biomedical or behavioral health-related outcomes. FDA regulations refer to “clinical investigations” (see definition of “research” below).

**Research.** The Common Rule defines research as a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalized knowledge. Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities. For purposes of this part [the Common Rule], the following activities are deemed not to be research: (1) Scholarly and journalistic activities (e.g., oral history, journalism, biography, literary criticism, legal research, and historical scholarship), including the collection and use of information, that focus directly on the specific individuals about whom the information is collected. (2) Public health surveillance activities, including the collection and testing of information or biospecimens, conducted, supported, requested, ordered, required, or authorized by a public health authority. Such activities are limited to those necessary to allow a public health authority to identify, monitor, assess, or investigate potential public health signals, onsets of disease outbreaks, or conditions of public health importance (including trends, signals, risk factors, patterns in diseases, or increases in injuries from using consumer products). Such activities include those associated with providing timely situational awareness.
and priority setting during the course of an event or crisis that threatens public health (including natural or man-made disasters). (3) Collection and analysis of information, biospecimens, or records by or for a criminal justice agency for activities authorized by law or court order solely for criminal justice or criminal investigative purposes. (4) Authorized operational activities (as determined by each agency) in support of intelligence, homeland security, defense, or other national security missions. [45 CFR 46.102(l)]

For the purposes of these policies and procedures, a “systematic investigation” is an activity that involves a prospective study plan that incorporates data collection, either quantitative or qualitative, and data analysis to answer a study question. Investigations designed to develop or contribute to generalizable knowledge are those designed to draw general conclusions (i.e., knowledge gained from a study may be applied to populations outside of the specific study population), inform policy, or generalize findings.

Human Subject. A human subject as defined by the Common Rule is a living individual about whom an investigator conducting research: (i) Obtains information or biospecimens through intervention or interaction with the individual, and uses, studies, or analyzes the information or biospecimens; or (ii) Obtains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens. [45 CFR 46.102(e)(1)]

Intervention means both physical procedures by which information or biospecimens are gathered (for example, venipuncture) and manipulations of the subject or the subject’s environment that are performed for research purposes. [45 CFR 46.102(e)(2)]

Interaction means communication or interpersonal contact between investigator and subject. Please note that per OHRP interaction includes indirect means of communication such as via completion of a web-based survey.

Private information means information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a medical record).

Identifiable private information means private information for which the identity of the subject is or may readily be ascertained by the investigator or associated with the information. [45 CFR 46.102(e)(5)]. Note: This definition is within the 2018 Common Rule. For a discussion of identifiability under HIPAA, please see Section 25.

Identifiable biospecimen means a biospecimen for which the identity of the subject is or may readily be ascertained by the investigator or associated with the biospecimen [45 CFR 46.102(e)(6)]

Legally authorized representative means an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject’s participation in the procedure(s) involved in the research. If there is no applicable law addressing this issue,
legally authorized representative means an individual recognized by institutional policy as acceptable for providing consent in the non-research context on behalf of the prospective subject to the subject’s participation in the procedure(s) involved in the research.

**Public health authority** means an agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, an Indian tribe, or a foreign government, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate.

**Food & Drug Administration (FDA) Definitions:**

**Research.** The FDA has defined “research” as being synonymous with the term “clinical investigation.” A clinical investigation, as defined by FDA regulations, means any experiment that involves a test article and one or more human subjects, and that either must meet the requirements for prior submission to the Food and Drug Administration under section 505(i) or 520(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act), or need not meet the requirements for prior submission to the Food and Drug Administration under these sections of the Federal Food, Drug, and Cosmetic Act, but the results of which are intended to be later submitted to, or held for inspection by, the Food and Drug Administration as part of an application for a research or marketing permit. The terms research, clinical research, clinical study, study, and clinical investigation are synonymous for purposes of FDA regulations. [21 CFR 50.3(c), 21 CFR 56.102(c)]

Experiments that must meet the requirements for prior submission to the Food and Drug Administration under section 505(i) of the Federal Food, Drug, and Cosmetic Act means any use of a drug other than the use of an approved drug in the course of medical practice. [21 CFR 312.3(b)]

Experiments that must meet the requirements for prior submission to the Food and Drug Administration under section 520(g) of the Federal Food, Drug, and Cosmetic Act means any activity that evaluates the safety or effectiveness of a device. [21 CFR 812.2(a)]

Any activity in which results are being submitted to or held for inspection by FDA as part of an application for a research or marketing permit is considered to be FDA-regulated research. [21 CFR 50.3(c), 21 CFR 56.102(c)]

**Human Subject.** Human subject means an individual who is or becomes a participant in a clinical investigation, either as a recipient of the test article or as a control. A subject might be either a healthy individual or a patient. For research involving medical devices a human subject is also an individual on whose specimen an investigational device is used or tested or used as a control (regardless of whether the specimens are identifiable). [21 CFR 50.3(g), 21 CFR 312.3(b), 21 CFR 812.3(p)]
Test Article. Test article means any drug (including a biological product for human use), medical device for human use, human food additive, color additive, electronic product, or any other article subject to regulation under the act or under sections 351 and 354-360F of the Public Health Service Act [42 U.S.C. 262 and 263b-263n]. [21 CFR 50.3(j)]

Test articles covered under the FDA regulations include, but are not limited to:

1. **Human drugs** – A drug is defined as a substance recognized by an official pharmacopoeia or formulary; a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; a substance (other than food) intended to affect the structure or any function of the body; a substance intended for use as a component of a medicine but not a device or a component, part or accessory of a device. Biological products are included within this definition and are generally covered by the same laws and regulations, but differences exist regarding their manufacturing processes (chemical process versus biological process). The primary intended use of a drug product is achieved through chemical action or by being metabolized by the body.

2. **Medical Devices** - A device is "an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including a component part, or accessory which is: recognized in the official National Formulary, or the United States Pharmacopoeia, or any supplement to them; intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals; or intended to affect the structure or any function of the body of man or other animals, and which does not achieve any of its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of any of its primary intended purposes."

The 21st Century Cures Act amended the FD&C Act to specifically exclude certain software functions from the definition of medical device. Summarized, these include exclusions for software functions intended for administrative support of a health care facility; for maintaining or encouraging a healthy lifestyle; to serve as electronic patient records; for transferring, storing, converting formats, or displaying clinical laboratory tests or other device data and results and related information; and for displaying, analyzing, or printing medical information, for supporting or providing recommendations to a health care professional, and enabling the health care professional to independently review the basis for such recommendations. Additional information regarding the application of these exclusions is available on FDA’s “Guidances with Digital Health Content” website.

3. **Human Cells, Tissues, or Cellular or Tissue-based Products (HCT/P’s)** – HCT/P’s means articles containing or consisting of human cells or tissues that are intended for implantation, transplantation, infusion, or transfer into a human recipient. Examples of
HCT/Ps include, but are not limited to, bone, ligament, skin, dura mater, heart valve, cornea, hematopoietic stem/progenitor cells derived from peripheral and cord blood, manipulated autologous chondrocytes, epithelial cells on a synthetic matrix, and semen or other reproductive tissue.

The following articles are not considered HCT/P’s: vascularized human organs for transplantation; whole blood or blood components or blood derivative products subject to listing under parts 607 and 207, respectively; secreted or extracted human products, such as milk, collagen, and cell factors; except that semen is considered an HCT/P; minimally manipulated bone marrow for homologous use and not combined with another article (except for water, crystalloids, or a sterilizing, preserving, or storage agent, if the addition of the agent does not raise new clinical safety concerns with respect to the bone marrow); ancillary products used in the manufacture of HCT/P; cells, tissues, and organs derived from animals other than humans; in vitro diagnostic products as defined in 809.3(a); blood vessels recovered with an organ, as defined in 42 CFR 121.2, that are intended for use in organ transplantation and labeled "For use in organ transplantation only."

4. **Biological Products** - include a wide range of products such as vaccines, blood and blood components, allergenics, somatic cells, gene therapy, tissues, and recombinant therapeutic proteins. Biologics can be composed of sugars, proteins, or nucleic acids or complex combinations of these substances, or may be living entities such as cells and tissues. Biologics are isolated from a variety of natural sources — human, animal, or microorganism — and may be produced by biotechnology methods and other cutting-edge technologies. Gene-based and cellular biologics, for example, often are at the forefront of biomedical research, and may be used to treat a variety of medical conditions for which no other treatments are available.

5. **Dietary Supplements** – A dietary supplement is a product taken by mouth that is intended to supplement the diet and that contains one or more "dietary ingredients." The "dietary ingredients" in these products may include vitamins, minerals, herbs or other botanicals, amino acids, and other substances found in the human diet, such as enzymes. When a dietary supplement meets the definition of drug, it is regulated as such.

6. **Medical Foods** – A medical food, as defined in section 5(b) of the Orphan Drug Act (21 U.S.C. 360ee (b) (3)), is a food which is formulated to be consumed or administered enteraly under the supervision of a physician and which is intended for the specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation.
7. **Mobile Medical Apps** - Mobile apps are software applications that can be executed on a mobile platform or a web-based software application that is tailored to a mobile platform but is executed on a server. Mobile medical apps are a subset of mobile apps that medical devices that meet the definition of a medical device and either are intended to be used as an accessory to a regulated medical device; or to transform a mobile platform into a regulated medical device.

8. **Radioactive Drugs** – The term radioactive drug means any substance defined as a drug which exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any nonradioactive reagent kit or nuclide generator which is intended to be used in the preparation of any such substance but does not include drugs such as carbon-containing compounds or potassium-containing salts which contain trace quantities of naturally occurring radionuclides. The term "radioactive drug" includes "radioactive biological product".

9. **Radiation-Emitting Electronic Products** - a radiation-emitting electronic product as any electrically-powered product that can emit any form of radiation on the electromagnetic spectrum. These include a variety of medical and non-medical products such as mammography devices, magnetic resonance imaging (MRI) devices, laser toys, laser pointers, liquid crystal displays (LCDs), and light emitting diodes (LEDs).

**Institutional Review Board (IRB). Please refer to Section 8.**

**Institutional Official (IO). Please refer to Section 1.10.1**

### 1.4 Ethical Principles

Monmouth University is committed to conducting research with the highest regard for the welfare of human subjects. With the exception of transnational research, where consideration of alternative ethical principles may apply (see Section 27), Monmouth University upholds and adheres to the principles of *The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects in Research* by the National Commission for the Protection of Human Subjects in Biomedical and Behavioral Research. These principles are:

1. **Respect for Persons**, which involves the acknowledgment and support of autonomy, and protection of those with diminished autonomy, i.e., speaking to informed consent, and additional protections for those who cannot give informed consent (i.e., vulnerable populations).

2. **Beneficence**, which involves ensuring that possible benefits of research are maximized, and possible harms are minimized.
3. **Justice**, which involves the fair distribution of the benefits and burdens of research through the equitable selection of subjects.

MU HRPP, in partnership with its research community, is responsible for ensuring the ethical and equitable treatment of all human subjects in research conducted under its auspices.

### 1.5 Regulatory Compliance

The HRPP facilitates compliance with applicable international, federal, state and local laws and regulations, and university policies and procedures (including tribal laws passed by the official governing body of an American Indian or Alaska Native tribe). Human subjects research at Monmouth University is conducted in accordance with applicable regulations and requirements including, but not limited to, the following:

Research conducted, supported, or otherwise subject to regulation by any federal department or agency which adopts the **Common Rule** is reviewed and conducted in accordance with the Common Rule. Although the Common Rule is codified by each agency separately, the text is identical to DHHS regulations in **45 CFR 46 Subpart A**. For the purposes of this document, references to the Common Rule will cite the DHHS regulations (45 CFR 46).

Monmouth University also applies the Common Rule standards to all human subjects research it engages in except for research that is solely regulated by the FDA or by the Department of Justice (i.e., research that is not also regulated by the Common Rule) and as otherwise noted within this manual. Research subject to **FDA regulations** is reviewed and conducted in accordance with applicable regulations including, but not limited to, **21 CFR 50**, **21 CFR 56**, **21 CFR 312** and **21 CFR 812**.

Research involving the use of Protected Health Information is reviewed and conducted in accordance with the **Health Insurance Portability and Accountability Act** (HIPAA), **45 CFR Part 160**, **162**, and **164**.

Research conducted or supported by the U.S. **Department of Education (ED)** is subject to the Common Rule with regulations published at **34 CFR 97**. In addition to the Common Rule, human subjects research involving education records conducted at institutions receiving ED funding must comply with additional requirements, including the Family Educational Rights and Privacy Act (**FERPA**) (34 CFR 99) and the Protection of Pupil Rights Amendment (**PPRA**) (34 CFR 98). Investigators should consult these regulations and **resources provided by ED** when developing their research protocol. The IRB will evaluate the research in accordance with these regulations when applicable. See the Special Topics section of this manual for more information.

Research supported by the **Department of Defense (DoD)** is reviewed and conducted in compliance with **32 CFR 219**, **10 USC 980**, applicable parts of title **21 CFR** (50, 56, 312, 600, 812), **DoD Instruction 3216.02**, **DoD Directive 3210.07**, and applicable additional requirements from respective DoD component(s). The IRB will evaluate the research in accordance with these regulations when applicable. See the Special Topics section of this manual for more information.
Research conducted or supported by the Department of Justice (DOJ) is subject to the pre-2018 Common Rule with regulations published at 28 CFR 46. The DOJ has established additional requirements for research conducted with the federal Bureau of Prisons (28 CFR 512) and research involving the National Institute of Justice (28 CFR 22). Investigators should consult these regulations and resources provided by NIJ when developing their research protocol. The IRB evaluates the research in accordance with these regulations when applicable. See the Special Topics section of this manual for more information.

1.5.1 Management of pre-existing studies subject to the Common Rule

For research subject to the Common Rule (whether due to support or university policy) the following outlines when the pre-2018 rule or the revised rule will apply to research conducted at Monmouth University.

A. Research subject to the pre-2018 Common Rule requirements. The pre-2018 requirements will apply to the following studies, unless a study is transitioned to comply with the revised rule as described in Section B below.
   - All studies initially approved, waived under .101(i), or determined exempt before January 21, 2019 will be subject to the pre-2018 requirements through the close of study.
   - Studies subject to Department of Justice (DOJ) regulations at 28 CFR 46.

B. Research subject to the revised Common Rule (2018 requirements). The 2018 requirements will apply to the following studies.
   - All studies initially approved, waived under .101(i), or determined exempt on or after January 21, 2019 will be subject to the 2018 requirements.

1.6 International Conference on Harmonization-Good Clinical Practice (ICH-GCP)

Monmouth University voluntarily applies the International Conference on Harmonization (ICH) Good Clinical Practices (GCP) Guidelines (sometimes referred to as ICH-GCP or E6) to clinical trials of drugs when required by a sponsor or funding agency. Monmouth University applies the ICH-GCP guidelines only to the extent that they are compatible with FDA, DHHS, and other applicable regulations. See the Special Topics section of this manual for more information.

1.7 Federalwide Assurance (FWA) and IRB Registration

The federal regulations require that federally-funded human subject research only be conducted at facilities covered by a Federalwide Assurance (FWA) approved by the DHHS Office for Human Research Protections (OHRP). An FWA is an institution’s assurance to the federal government that human subject research conducted at that site complies with federal regulations pertaining to the protection
of human subjects. Monmouth University maintains an FWA on file with OHRP and ensures that it remains current. The FWA designates the Institutional Review Board that will review and oversee the research, specifies the ethical principles under which the research will be conducted, and names the individuals who will be responsible for the proper conduct of the research.

When human subjects research is not subject to the Common Rule or FDA regulations, Monmouth University ensures that human research subjects benefit from equivalent protections by applying the Common Rule standards, with purposeful deviations that do not meaningfully diminish protections as noted within this manual. Likewise, federal regulations require IRBs to register with DHHS if they will review human subjects research conducted or supported by DHHS or research subject to FDA regulations. Monmouth University’s HRPP/IRB office maintains its FWA and IRB registration(s) in accordance with applicable regulations and guidance provided by OHRP and FDA.

The HHS registration system database can be used to verify the status of Monmouth University’s FWA, IORG, and IRB registration.

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<tr>
<th>Monmouth University’s Federal Registration Numbers</th>
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<tr>
<td>FWA</td>
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<td>IORG</td>
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<td>IRB Registration</td>
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1.8 Research Under the Auspices of Monmouth University

Research under the auspices of Monmouth University includes research conducted at or using any property or facility of Monmouth University, conducted by or under the direction of any employee or agent of Monmouth University (including students) in connection with his or her Monmouth University position or responsibilities, or involving the use of Monmouth University's non-public information (e.g., medical records) to identify, contact, or study human subjects. The research may be externally funded, funded from internal sources, or conducted without direct funding.

All human subjects research under the auspices of Monmouth University is under the jurisdiction of the MU HRPP. Human subjects research that Monmouth University is engaged in (per OHRP or FDA guidelines) is under the jurisdiction of the Monmouth University IRB, unless Monmouth University chooses to rely upon another IRB for review and ongoing IRB oversight of the research (the IRB of record for the research).

**Employee or Agent.** For the purposes of this document, employees or agents refers to individuals who: (1) act on behalf of the university; (2) exercise university authority or responsibility; or (3) perform university-designated activities. “Employees and agents” can include staff, students, contractors, and volunteers, among others, regardless of whether the individual is receiving compensation.
**Engagement.** The Department of Health and Human Services (DHHS) regulations [45 CFR 46.103[a]] require that an institution “engaged” in human subject research conducted or supported by a Federal Department or Agency provide the Office for Human Research Protection (OHRP) with a satisfactory assurance of compliance with the DHHS regulations, unless the research is exempt under 45 CFR 46.101(b) (pre-2018 rule) or 45 CFR 46.104 (2018 rule). “In general, an institution is considered engaged in a particular non-exempt human subjects research project when its employees or agents for the purposes of the research project obtain: (1) data about the subjects of the research through intervention or interaction with them; (2) identifiable private information about the subjects of the research; or (3) the informed consent of human subjects for the research.” Institutions that receive an award through a grant, contract, or cooperative agreement directly from DHHS for the non-exempt human subjects research (i.e. awardee institutions), are also considered engaged in research even where all activities involving human subjects are carried out by employees or agents of another institution.

FDA regulations are oriented to the responsibilities of IRBs, investigators, and sponsors as opposed to institutions. In general, FDA-regulated research conducted in Monmouth University facilities or by Monmouth University Principal or Sub-Investigators (as defined on the FDA 1572 or equivalent, or the delegation of responsibilities log) requires review by a Monmouth University-designated IRB. Exceptions to this requirement may be granted on a case-by-case basis (e.g., when Monmouth University’s involvement in the research is limited to the provision of a common diagnostic procedure and associated reading or analysis).

When external organizations and researchers wish to conduct research that is under the auspices of Monmouth University, the external organization or researchers must consult with the Monmouth University HRPP or IRB staff prior to initiating any research activities at or involving Monmouth University.

The Director of the Office of Research Compliance (ORC Director), IRB Chair, and Vice Chair, with the assistance of the IRB/IACUC Coordinator and staff and the Office of the General, as needed, are authorized to determine whether Monmouth University is engaged in a particular research study. Investigators and other institutions may not independently determine whether Monmouth University is engaged in a particular research study.

When Monmouth University is engaged in research, the Institutional Official may choose to enter into an agreement to cede review to an external IRB. See Section 6 for details concerning IRB Reliance.

For additional information on engagement please refer to OHRP’s [Guidance on Engagement on Institutions in Human Subjects Research](https://www.hhs.gov/ohrp/policy-engagement/index.html).

### 1.9 Written Procedures

These Standard Operating Procedures (SOPs) for Human Research Protection detail the procedures, standards, and requirements for research with human subjects under the auspices of Monmouth
University and the requirements of the Monmouth University IRB. This is not a static document. The SOPs are reviewed at a minimum of annually and (if applicable) revised by the ORC Director, the IRB Chair(s), the Office of the General Counsel, the Chair of Faculty Council, and others as deemed necessary. The Institutional Official, the Cabinet and Faculty Council shall approve all substantive revisions of the SOPs.

The Monmouth University HRPP will keep the research community apprised of new information that may affect the human research protection program, including laws, regulations, policies, procedures, and emerging ethical and scientific issues on its website, through email, and other forums. These SOPs will be available on the Monmouth University HRPP website and within the IRB’s electronic system. Changes to the SOPs are communicated to investigators, research staff, IRB members, and IRB staff by way of email notification and notification on the MU HRPP website, Faculty Council website, and the MU portal.

1.10  Monmouth University HRPP Structure

The HRPP consists of individuals, departments, and committees with responsibilities for human research protections such as the Institutional Official, the ORC Director, the IRB, IRB/IACUC Coordinator, Office of the General Counsel, investigators, and research staff. The objective of this system is to assist the university in meeting ethical principles and regulatory requirements for the protection of human subjects in research.

The following officials, administrative units and individuals have primary responsibilities for human subject protections:

1.10.1  Institutional Official

The ultimate responsibility of the HRPP resides with the Provost & Senior Vice President for Academic Affairs, who serves as the Institutional Official (IO) of the program. The IO is legally authorized to represent Monmouth University. The IO is the signatory of the FWA and assumes the obligations of the FWA. The IO is responsible for ensuring that the Monmouth University HRPP and IRB(s) have the resources and support necessary to fulfill their responsibilities and to comply with the regulations and requirements that govern human subject research. Such resources include, but are not limited to:

- Staffing commensurate with the size and complexity of the research program;
- Appropriate office space, meeting space, equipment, materials, and technology;
- Resources for the production, maintenance, and secure storage of HRPP and IRB records;
- Resources for auditing and other compliance activities and investigation of noncompliance;
- Access to the Office of the General Counsel; and
• Ensuring that the IRB, investigators, and staff receive training related to human research protections.

At a minimum of annually, the IO reviews HRPP and IRB functions, requirements, and resources and makes adjustments as needed.

The IO is also responsible for:

• Fostering, supporting, and maintaining a culture that supports the ethical conduct of research involving human subjects and compliance with applicable regulatory and other requirements;
• Ensuring that the IRB functions independently by, among other mechanisms, being directly accessible to the IRB Chair(s) and members if they experience undue influence or if they have concerns about the function of the IRB;
• Oversight of the Institutional Review Board (IRB);
• Oversight over the conduct of human subjects research under the auspices of Monmouth University;
• Providing training and educational opportunities for IRB members and staff to support their ability to review research in accordance with ethical standards and applicable regulations;
• Providing training and educational opportunities for investigators and research staff to support their ability to conduct research in accordance with ethical standards and applicable regulations; and
• Taking action as necessary to ensure the protection of human subjects and compliance with regulatory and other requirements.

The IO has the authority to suspend, terminate, or disapprove research or take other actions, such as sanctions or restrictions of research privileges or uses of research data, as necessary, to ensure the proper conduct of research, the protection of human subjects, the autonomy and authority of the IRB, compliance with regulatory and other requirements, or to protect the interests of Monmouth University. However, the IO may not approve research that has been disapproved (or not yet approved) by the IRB.

The IO must complete the OHRP Human Subject Assurance Training, and CITI Training for IOs. The HRPP Office will support the continuing education of the IO by providing information and updates on topics related to human research protections.

The IO is made known to employees of the university and is accessible by phone, email, in person or other methods of communication. The ORC Director and IRB Chair have direct access to the IO for any concerns or issues related to the HRPP or IRB.
In the performance of these duties, the IO has the authority to delegate such activities as may be necessary in order to effectively administer the program. However, the IO is ultimately responsible and is expected to be knowledgeable about human subject protections and research at the university.

1.10.2 Director of the Office of Research Compliance (ORC Director)

The MU HRPP is situated within the Office of Research Compliance. The Office reports to IO, who has overall responsibility for its operations. The day to day operations of the office is the responsibility of the Director of ORC who also has administrative responsibility for the animal welfare program, research misconduct program, training requirements for the responsible conduct of research, university’s biosafety program, and overseeing conflict of interests (including financial conflicts of interest) in research.

The ORC Director is selected by and reports to the Institutional Official (IO) and is responsible for:

- Developing, managing and evaluating policies and procedures that ensure compliance with state and federal regulations and Monmouth University policies. This includes monitoring changes in regulations and policies that relate to human research protection and overseeing the administration of the IRB;
- Advising the IO on key matters regarding human subjects research;
- Implementing the university’s HRPP SOPs;
- Overseeing the administration of the HRPP and IRB, including the supervision of staff,
- Overseeing the administration of IRB Reliance Agreements and Independent Investigator Agreements;
- Overseeing the use of the IRB electronic management system for compliant documentation of all reviews by the IRB
- Submitting, implementing, and maintaining an approved FWA through the IO and the Department of Health and Human Services Office of Human Research Protection (OHRP);
- Managing the finances of the Monmouth University HRPP and IRB;
- Assisting the IRB in its efforts to review research and ensure the protection of human subjects, including initial review and screening of the research proposals prior to their review by the IRB;
- Assisting investigators in their efforts to carry out the university’s research mission;
- Developing and implementing needed improvements and ensuring follow-up of actions, as appropriate, for the purpose of managing risk in the research program;
- Developing training requirements as required and as appropriate for IRB members, investigators, and staff, and ensuring that training is completed on a timely basis;
● Coordinating and/or conducting training and education initiatives for MU researchers.
● Serving as the primary contact at Monmouth University for the Office for Human Research Protections (OHRP) of the U.S. Department of Health and Human Services, the Food & Drug Administration (FDA), and other regulatory agencies on matters of human research protections; and
● Serving as MU’s internal expert resource for questions and other matters regarding the protection of human subjects.

1.10.3 IRB/IACUC Coordinator

In addition to the leadership structure described above, the staffing for the HRPP and IRB includes an IRB/IACUC Coordinator. The HRPP and IRB staff for MU must comply with all ethical standards and practices. The duties and responsibilities for all staff are found in their respective job descriptions, and their performance is evaluated on an annual basis. The MU HRPP and IRB staff report to the ORC Director, who has day-to-day responsibilities for its operations.

1.10.4 Institutional Review Board (IRB)

Monmouth University has one internal IRB. The IRB prospectively reviews and makes decisions concerning all non-exempt human subjects research under the auspices of Monmouth University unless it has been determined that Monmouth University is not engaged in the research or Monmouth University has entered into agreement with an external IRB to serve as the IRB of record. The IRB is responsible for the protection of the rights and welfare of human research subjects, through review and oversight of safe and ethical research. It discharges this duty by complying with the requirements of federal and state regulations, the FWA, and university policies and procedures.

The IRB functions independently of, but in coordination with, other university committees and officials. The IRB, however, makes independent determinations whether to approve, require modification in, or disapprove research based upon whether human subjects are adequately protected.

Research that has been reviewed and approved by the IRB may be subject to review and disapproval by officials of the university. However, those officials may not approve human research that has not been approved or has been disapproved by the IRB.

Monmouth University also uses the services of external IRBs, as appropriate. Monmouth University may enter into reliance agreements for other reasons, for example, when required as a term or condition of a grant.
1.10.5 Office of the General Counsel

The Monmouth University HRPP relies on the MU’s Office of the Counsel for the interpretation of state law and the laws of other jurisdictions where research is conducted as they apply to human subjects research. Counsel is available to provide guidance on other relevant topics as needed, including, but not limited to, the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA).

1.10.6 Principal Investigators

The Principal Investigator (PI) is ultimately responsible for the protection of the human subjects participating in research they conduct or oversee. The PI is expected to abide by the highest ethical standards when developing a research plan and to incorporate the principles of the Belmont Report. The PI is expected to conduct research in accordance with the IRB approved research plan and to personally conduct or oversee all aspects of the research. In addition to complying with all applicable regulatory policies and standards, PIs must comply with university and administrative requirements for conducting research. The PI is responsible for ensuring that all investigators and research staff complete all university required trainings as well as training for their specific responsibilities in any given research study. When investigational drugs or devices are used, the PI is responsible for ensuring an appropriate plan for their storage, security, dispensing, accounting, and disposal.

The IRB reviews investigator qualifications when reviewing research and may determine that an investigator may not serve as PI or may require the addition of other investigators to supplement the expertise available on the research team or to conduct or oversee certain aspects of the research.

The PI for human subjects research under the auspices of Monmouth University must be a full-time faculty member or administrator. Adjuncts or visiting faculty may serve as a Co-investigator (Co-I) only if the Department Chair and School Dean agree, and there is a full-time faculty member serving as a PI. Undergraduate and graduates can serve as Co-investigators with a full-time faculty member as PI. Individuals who are not affiliated with the University may serve as a Co-I with a full-time faculty member or administrator serving as PI.

Individuals who are debarred, disqualified, or otherwise restricted from participation in research or as a recipient of grant funds for research by a federal, state, or other agency may not serve as PI.

Individuals with a history of compliance issues related to the conduct of research (e.g., recipients of an FDA Warning Letter) will be considered on a case-by-case basis. Factors to consider include whether corrective actions have been accepted as adequate, whether information from an audit or quality review indicates that the issues have been resolved, and similar considerations.
1.10.7 Other Related Units

1.10.7.1 The Office of Grants and Contracts (OGAC)

The Office of Grants and Contracts (OGAC) reviews all research agreements with grantors and sponsors including federal, foundation, industry, and non-profit. This review ensures that all terms of the award (grant or contract) are in compliance with university policies. Funding proposals shall have completed and routed the Internal Approvals for Grant or Contract Proposals form. Research agreements on behalf of the university shall be signed by the Provost & Senior Vice President for Academic Affairs or their designee after they are approved by the Office of the General Counsel.

OGAC initiates contact with the IRB Office upon receipt of a grant or contract that proposes use of human subjects or human data or tissue to confirm that an IRB submission has been received. If it has not, the IRB Office will reach out to the researcher accordingly. OGAC and the IRB Office coordinate efforts to confirm that grants are consistent in content with the IRB submission, and research contracts and consent documents are consistent in terms of costs to subjects, who pays in case of injury, and to ensure that all applicable individuals have filed appropriate COI disclosures to meet investigator COI policies.

When the grant or contract agreement includes human research activities that will be conducted by investigators who are not employees or agents of Monmouth University, a subcontract is executed between Monmouth University and the collaborating institution. The subcontract includes the requirement for the collaborating institution to assure compliance with federal regulations for the protection of human subjects in research and to provide documentation of current and ongoing IRB approval. The collaborating institution must also ensure that key personnel involved in human subject research are in compliance with the National Institutes of Health (NIH) policy on education in the protection of human research subjects and provide documentation of education of key personnel to Monmouth University. (https://grants.nih.gov/grants/guide/notice-files/NOT-OD-00-039.html)

1.10.8 Study-Specific Coordination

In addition to IRB approval, depending on the nature of the research activity, PIs may need to obtain and document the approval, support, or permission of other individuals and departments or entities impacted by the research, including, but not limited to:

- Office of the General Counsel for studies involving student records and studies involving health information (HIPAA)
- Vice President for Student Life and Leadership Engagement, for use of MU student emails for research recruitment
- Provost for approval to involve MU employees or students in research activities that do not otherwise engage Monmouth in the activity.
Other approval as required.

When applicable, a letter of support, collaboration, permission, or approval from the designated authority, should be included in the Initial Study Application to the IRB. The application will be reviewed in the IRB Office to ensure that all necessary letters are included. The IRB may request review by or consultation with any of the above listed or other university committees or components even when such review or consultation is not required by policy.

If the research sites, or research personnel, are also under the jurisdiction of another IRB, documentation of the external IRB’s approval or agreement to cede or waive review is required.

Other committees and officials may not approve research involving human subjects to commence that has not been approved or has been disapproved by the IRB.
2 Quality Assurance

MU performs Quality Assurance and Improvement activities for the purposes of monitoring the safety of ongoing studies and measuring and improving human research protection effectiveness, quality, and compliance with university policies and procedures and applicable federal, state, and local laws.

2.1 External Monitoring, Audit, and Inspection Reports

The HRPP and the Office of the General Counsel’s Office should be notified in advance, whenever possible, of upcoming audits or inspections of research whether the study is reviewed by the MU IRB or an external IRB on MU’s behalf. HRPP representatives may participate in entrance and exit interviews and otherwise observe or support the audit or inspection. Likewise, MU representatives may assist in the development of any responses to audits or inspections.

When research is under the oversight of the MU IRB, all reports from external monitors, auditors, or inspectors must be submitted to the IRB for review. The IRB Chair or designee will review such reports to monitor for issues that could impact the rights or welfare of human subjects and for issues indicative of possible serious or continuing noncompliance. If such issues are identified, the report will be forwarded to the convened IRB to determine what additional actions are necessary, if any.

When MU is engaged in research reviewed by an external IRB, all reports from audits or inspections must be submitted to the HRPP for review. The HRPP may require corrective and preventative actions (CAPA), a follow up review, or other actions as needed to ensure the protection of human subjects and to support compliance.

2.2 Investigator Compliance Reviews

The ORC Director, or on occasion, other internal or external staff, conduct post-approval directed (for cause) and routine (not for cause) compliance reviews of human subjects research conducted under the auspices of MU. Additionally, the IRB may appoint a subcommittee for the purpose of conducting a for-cause or not for-cause compliance review of one or more research plans under its jurisdiction. The subcommittee may be composed of IRB members and staff from within, or individuals from and outside of the university.

Compliance reviews are conducted to assess investigator compliance with federal, state, and local law, and MU policies, and to identify areas for improvement, and to provide recommendations based on existing policies and procedures. The results of compliance reviews will be reported to the ORC Director, the internal IRB (when the internal IRB is the IRB of record), the investigator, and other MU leadership, as appropriate. Any IRB reporting and evaluation of noncompliance will be handled according to the procedures of the IRB of record.
If it is identified during the course of a review that subjects in a research project may have been exposed to unexpected serious harm or risk of harm, the reviewer will promptly report such findings to the ORC Director and the IRB of record.

If issues are identified that indicate possible misconduct in research, the procedures in the Monmouth University Responding to Allegations of Research Misconduct Policies and Procedures will be initiated.

Compliance reviews may include:

- Requesting progress reports from investigators
- Examining investigator-held research records and records held by pharmacy or other ancillary services
- Reviewing source documentation
- Reviewing the recruitment process and materials
- Reviewing consent materials and the documentation of consent
- Observing the consent process and other research activities
- Verifying HIPAA authorization
- Interviewing investigators and research staff
- Interviewing research subjects

Reviewing projects to verify from sources other than the investigator that no unapproved changes have occurred since previous review.

Conducting other monitoring or auditing activities as deemed appropriate by the HRPP or IRB.

### 2.3 IRB Compliance Reviews

The ORC Director, or, on occasion, other internal or external staff, will periodically review the activities of the IRB to assess compliance with regulatory requirements and to identify areas for improvement; this will include a review of IRB records at least annually.

Review activities may include:

- Review of the IRB minutes to evaluate whether adequate documentation of the meeting discussion and any required determinations has occurred, and that quorum was met and maintained
- Reviewing IRB files to evaluate whether adequate documentation of exemptions, expedited review, and other outside of committee reviews has occurred
- Reviewing consent forms to evaluate whether all required elements are included
- Reviewing the IRB databases to evaluate whether all required fields are completed accurately
- Verifying IRB approvals for external sites or investigators
- Reviewing metrics (for example, time from submission to first review) to evaluate the quality, efficiency, and effectiveness of the IRB review process
- Reviewing the workload of the IRB and IRB staff
- Other review activities as appropriate

The ORC Director and IRB Chair will review the results of IRB compliance reviews with the IRB and the Institutional Official. Results of the IRB compliance reviews shall also be included in the yearly report to Faculty Council. If substantive deficiencies are identified in the review, a corrective action plan will be developed by the ORC Director and approved by the IO. The ORC Director will have responsibility for implementing and reporting progress on the corrective action plan, the results of which will be evaluated by the IO.

### 2.4 HRPP Quality Assessment and Improvement

The ORC Director is responsible for establishing ongoing quality assessment/improvement (QA/QI) initiatives to assess the compliance, quality, efficiency, and effectiveness, of the HRPP.

The ORC Director will periodically meet with relevant HRPP stakeholders to identify opportunities for improvement, and will then evaluate whether the respective goals were achieved, and determine if any additional actions or monitoring are necessary. If at any time substantive or concerning issues or trends are identified, the ORC Director will report those issues or trends to the IO and together they will address a mitigation plan.
3 Education & Training

3.1 Training / Ongoing Education of IRB Chair(s), Members, and Staff

Recognizing that a vital component of a comprehensive human research protection program is an education program, MU is committed to providing training and on-going education for IRB members and the staff of the HRPP and IRB, related to ethical concerns and regulatory and university requirements for the protection of human subjects.

Orientation

New IRB members, including alternate members, will meet with the ORC Director for an orientation session. At the session, IRB processes, regulations, and resources will be reviewed, and the member will be provided with copies of the following and other relevant information:

- Belmont Report
- MU HRPP SOPs
- Federal regulations relevant to the IRB
- Tools used by IRB reviewers (checklists etc.)
- IRB Meeting Schedule
- Contact Information for ORC Director and IRB Office

Initial Education

IRB members, HRPP, and IRB staff must complete the required modules in the CITI Course in the Protection of Human Research Subjects (IRB member and biomedical or social behavioral), or other training determined to be equivalent by the ORC Director.

New members are required to complete orientation and the Initial Education requirement before they may serve as Primary Reviewer.

Continuing Education

To ensure that oversight of human research is ethically grounded, and the decisions made by the IRB are consistent with current regulatory and policy requirements, training is continuous for IRB members throughout their service on the IRB.

In addition to CITI training, MU also uses the following activities as a means for offering continuing education to IRB members and HRPP and IRB staff:

- In-service training at IRB meetings
Training workshops
Webinars
Email distribution of articles, announcements, presentations, and other materials relevant to human subject protections

IRB members, HRPP, and IRB staff are also required to complete CITI basic or refresher training and associated modules every 3 years or other training determined to be equivalent by the ORC Director. (Please refer to IRB website for specific training requirements.)

The activities for continuing education vary on a yearly basis depending on areas of need, as determined by the ORC Director. Whenever possible, the HRPP provides support for staff and IRB members to attend PRIM&R, OHRP, and other relevant conferences.

The ORC Director determines minimum attendance requirements for continuing education and tracks participation. Fulfillment of training requirements is included as part of the evaluation of the performance of IRB members, alternates, and staff. Continuing failure to complete training may result in a member’s service being discontinued or not renewed.

3.2 Training / Ongoing Education of Investigators and Research Team

As stated previously, a vital component of a comprehensive human research protection program is an education program for all individuals with human subject responsibilities. MU is committed to providing training and on-going education for investigators and research staff members on human subject protections and other relevant topics.

3.2.1 Initial Education

Investigators and research staff who interact or intervene with subjects, or who use subject’s identifiable information or biospecimens for the purposes of research, must complete MU’s CITI basic or refresher training and associated modules. (Please refer to the IRB website for specific requirements.) Researchers who are currently trained under the NIH’s training program will be required to satisfy MU’s CITI requirements once their NIH training certification has expired.

Evidence of current training (date of completion within 3 years of application date) for each member of the research team (PIs, Co-PIs, research assistants, etc.) must be included with every new study application, continuing review, and applications to add study personnel. New study applications and additions of study personnel will not be moved forward for IRB review without evidence of training.

Waiver of Initial Education

If individuals can provide documentation verifying that they have successfully completed human subject research training equivalent to MU’s CITI Course requirement, they may request a waiver of MU’s specific training requirements for the CITI Course. The ORC Director will review the
documentation and determine if it satisfies university standards. In all cases, the individual will be required to confirm that they have familiarized themselves with, and location on the MU website of, these standard operating procedures. MU’s specific course requirement shall not be waived.

3.2.2 Continuing Education

Initial training is considered current for a period of 3 years by which time investigators and research staff must complete basic or refresher CITI training (including the required modules) or provide evidence of equivalent training as described above. There is no exception to this requirement.

Training will be verified at the time of continuing review or research status report (i.e., when continuing review is not required by regulation) and with applications to add study personnel. If training has not been completed or has lapsed and is not completed in a timely manner, the investigator or staff member may be removed from the study or otherwise restricted from participating in the research.

In addition to the basic requirements described above, MU will periodically provide training on topics relevant to human subject protections, regulations, policies and standards, and IRB submission processes and requirements. Training may be provided via in-service, workshops, webinars, e-Learning, or through the distribution of articles, presentations, and other materials. Investigators and staff may request training or offer training suggestions by contacting the ORC Director.

4 “Human Subjects” and “Research” Determinations

The responsibility for initial determination whether an activity constitutes “research” rests with the individual with primary responsibility for the activity. This individual should make this determination based on the definitions of “research” and “clinical investigation” as provided by the Common Rule and FDA regulations (See definitions in Section 1.3). Since Monmouth University will hold them responsible if the determination is not correct, investigators shall request a confirmation that an activity does not constitute human subjects research from the HRPP Office. Requests shall be made through a formal written communication to the ORC Director/IRB Office. All requests shall include sufficient documentation of the activity to support the determination. Determinations as to whether an activity is human subjects’ research will be made according to the definitions of Section 1.3 using the Human Subjects Research Determination Checklist. Based on the checklist, determinations regarding the activities that are clearly or not clearly human subjects research may be made by the ORC Director or their designee. Determinations regarding less clear-cut activities will be referred to the IRB Chair who may make the determination or refer the matter to the full IRB. Documentation of all determinations made through the HRPP Office will be recorded and maintained in the HRPP Office. Formal submissions will be responded to in writing and a copy of the submitted materials and determination and letter will be kept on file.
Because the analysis can be complex, individuals with any questions regarding the applicability of the regulations to their activities shall request a determination that an activity does or does not involve research, as defined by the Common Rule, or other applicable regulations (e.g., FDA). Such requests should be submitted via the completion of an HRPP Initial Application, utilizing the online application system (i.e. Axiom). However, if the software is not available, Investigators shall submit the application and required attachments via email to the HRPP Office irb@monmouth.edu.

Similarly, the responsibility for the initial determination of whether research involves “human subjects” rests with the investigator. Under the Common Rule information is considered identifiable, and thus involving human subjects, when the identity of the subject is or may readily be ascertained by the investigator or associated with the information. It should be noted that this definition differs significantly from de-identified in accordance with HIPAA standards. FDA regulations do not incorporate the concept of “identifiability” in the evaluation of whether an activity is a clinical investigation (or research) subject to FDA regulations. For example, the use of de-identified human specimens to evaluate the safety or effectiveness of a diagnostic device is considered human subjects research subject to FDA regulations. The Investigators are urged to submit for a determination whenever they are uncertain if a research study involves “human subjects” as defined by the Common Rule or FDA. Such requests should be submitted via email to the IRB office irb@monmouth.edu or the IRB electronic system (as applicable).

Investigators may not self-determine that research involving the use of coded private information or specimens does not involve “human subjects”. Such determinations may only be made by the HRPP staff or IRB using the process described above. The only exception to this policy is when the research is not subject to FDA regulations and the coded private information or specimens are to be obtained from an MU IRB-approved repository and the rules of that repository forbid the release of identifiable information, the key or code that would enable re-identification, or the release of sufficient information that investigators could readily ascertain the identity of subjects.

Human Subjects Research Determinations must be submitted, and determined, prospectively (i.e., before the proposed activity or research begins). Conducting human subjects research without IRB approval or exemption is noncompliance and will be managed as described in Section 17.
5 Exempt Determinations

Limited IRB Review Reminder: For Exemptions 2(iii) and 3(i)(C) limited IRB review is required for privacy and confidentiality protection under 45 CFR 46.111(a)(7).

HIPAA Reminder: When the IRB is responsible for reviewing waivers or alterations of HIPAA authorization, this review must be by the IRB using expedited or convened review even when the research is otherwise exempt.

All research using human subjects must be approved by MU. Although certain categories of human subject research are exempt from IRB oversight (i.e. continuing review), at MU the determination of exempt status must be made by ORC Director, IRB Chair, IRB Vice Chair, or IRB/IACUC Coordinator, or a designated member of the IRB. MU may also choose to accept an exempt determination made by an external IRB. MU will consider such requests on a case by case basis and require a relevant agreement to be in place.

Individuals involved in making the determination of an IRB exempt status of a proposed research project cannot be involved in the proposed research. Reviewers must not have any apparent conflict of interest.

Unless otherwise required by law or by Federal department or agency heads, exempt studies are exempt from the requirements of the Common Rule (e.g., exempt from meeting federally mandated approval criteria, specific required and applicable informed consent elements, etc.) other than as specified within the regulations (e.g., the conditions that permit exemption, and when limited IRB review is required). However, exempt research is not exempt from ethical considerations, such as honoring the principles described in the Belmont Report, such as requiring prospective consent/agreement when interactions with subjects are proposed. The ORC Director, IRB/IACUC Coordinator, IRB Chair, IRB Vice-Chair, or designated member of the IRB, who makes the determination of exemption will determine whether to require additional protections for subjects in keeping with ethical principles (e.g., requiring disclosure/consent, etc.).

5.1 Limitations on Exemptions

The following limitations on exemptions apply to research under the auspices of MU.

Children: Exemption #2(i) and (ii) for research involving survey or interview procedures or observations of public behavior does NOT apply to research in children, except for research involving observations of public behavior when the investigator does not participate in the activities being observed. Exemption #2(iii), where identifiable information is obtained and the IRB conducts a limited IRB review, is NOT applicable to research in children. Exemption #3 does NOT apply to research involving children. [45 CFR 46.104(b)(3)]

Prisoners: Exemptions do not apply except for research aimed at involving a broader subject population that only incidentally includes prisoners. [45 CFR 46.104(b)(2)]
5.2 Categories of Exempt Research

With the above-referenced limitations and any other limitations or restrictions due to applicable law, regulation, or agency policy, research activities not regulated by the FDA (see Section 5.3 for FDA Exemptions) in which the only involvement of human subjects is determined to be in one or more of the following categories may be determined exempt:

1. Research, conducted in established or commonly accepted educational settings, that specifically involves normal educational practices (see [LINK] for further guidance on what constitutes normal education practices) that are not likely to adversely impact students’ opportunity to learn required educational content or the assessment of educators who provide instruction. This includes most research on regular and special education instructional strategies, and research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

2. Research that only includes interactions involving educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures, or observation of public behavior (including visual or auditory recording) if at least one of the following criteria is met:
   i. The information obtained is recorded by the investigator in such a manner that the identity of the human subjects cannot readily be ascertained, directly or through identifiers linked to the subjects;
   ii. Any disclosure of the human subjects’ responses outside the research would not reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects’ financial standing, employability, educational advancement, or reputation; or
   iii. The information obtained is recorded by the investigator in such a manner that the identity of the human subjects can readily be ascertained, directly or through identifiers linked to the subjects, and an IRB conducts a limited IRB review to make the determination required by .111(a)(7): When appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.

3. (i) Research involving benign behavioral interventions in conjunction with the collection of information from an adult subject through verbal or written responses (including data entry) or audiovisual recording if the subject prospectively agrees to the intervention and information collection and at least one of the following criteria is met:
   A. The information obtained is recorded by the investigator in such a manner that the identity of the human subjects cannot readily be ascertained, directly or through identifiers linked to the subjects;
B. Any disclosure of the human subjects’ responses outside the research would not reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects’ financial standing, employability, educational advancement, or reputation; or

C. The information obtained is recorded by the investigator in such a manner that the identity of the human subjects can readily be ascertained, directly or through identifiers linked to the subjects, and an IRB conducts a limited IRB review to make the determination required by .111(a)(7): When appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.

(ii) For the purpose of this provision, benign behavioral interventions are brief in duration, harmless, painless, not physically invasive, not likely to have a significant adverse lasting impact on the subjects, and the investigator has no reason to think the subjects will find the interventions offensive or embarrassing. Provided all such criteria are met, examples of such benign behavioral interventions would include having the subjects play an online game, having them solve puzzles under various noise conditions, or having them decide how to allocate a nominal amount of received cash between themselves and someone else.

(iii) If the research involves deceiving the subjects regarding the nature or purposes of the research, this exemption is not applicable unless the subject authorizes the deception through a prospective agreement to participate in research in circumstances in which the subject is informed that he or she will be unaware of or misled regarding the nature or purposes of the research.

4. Secondary research for which consent is not required: Secondary research uses of identifiable private information or identifiable biospecimens, if at least one of the following criteria is met:

   i. The identifiable private information or identifiable biospecimens are publicly available;

   ii. Information, which may include information about biospecimens, is recorded by the investigator in such a manner that the identity of the human subjects cannot readily be ascertained directly or through identifiers linked to the subjects, the investigator does not contact the subjects, and the investigator will not re-identify subjects;

   iii. The research involves only information collection and analysis involving the investigator’s use of identifiable health information when that use is regulated under 45 CFR parts 160 and 164, subparts A and E, for the purposes of “health care operations” or “research” as those terms are defined at 45 CFR 164.501 or for “public health activities and purposes” as described under 45 CFR 164.512(b); or

   iv. The research is conducted by, or on behalf of, a Federal department or agency using government-generated or government-collected information obtained for nonresearch activities, if the research generates identifiable private information that is or will be maintained on information technology that is subject to and in compliance with section...
208(b) of the E-Government Act of 2002, 44 U.S.C. 3501 note, if all of the identifiable private information collected, used, or generated as part of the activity will be maintained in systems of records subject to the Privacy Act of 1974, 5 U.S.C. 552a, and, if applicable, the information used in the research was collected subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq.

5. Research and demonstration projects that are conducted or supported by a Federal department or agency, or otherwise subject to the approval of department or agency heads (or the approval of the heads of bureaus or other subordinate agencies that have been delegated authority to conduct the research and demonstration projects), and that are designed to study, evaluate, improve, or otherwise examine public benefit or service programs, including procedures for obtaining benefits or services under those programs, possible changes in or alternatives to those programs or procedures, or possible changes in methods or levels of payment for benefits or services under those programs. Such projects include, but are not limited to, internal studies by Federal employees, and studies under contracts or consulting arrangements, cooperative agreements, or grants. Exempt projects also include waivers of otherwise mandatory requirements using authorities such as sections 1115 and 1115A of the Social Security Act, as amended.
   i. Each Federal department or agency conducting or supporting the research and demonstration projects must establish, on a publicly accessible Federal website or in such other manner as the department or agency head may determine, a list of the research and demonstration projects that the Federal department or agency conducts or supports under this provision. The research or demonstration project must be published on this list prior to commencing the research involving human subjects.

6. Taste and food quality evaluation and consumer acceptance studies:
   i. If wholesome foods without additives are consumed, or
   ii. If a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

Exemption categories 7 & 8 (‘Broad Consent’) have not been adopted by MU.

5.3 FDA Exemptions

The following categories of clinical investigations are exempt from the requirements for prior IRB review and approval:

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1. Emergency use of a test article, provided that such emergency use is reported to the IRB within 5 working days. Any subsequent use of the test article is subject to IRB review. [21 CFR 56.104(c)]

See Section 15.7 for detailed discussion of this exemption.

2. Taste and food quality evaluations and consumer acceptance studies, if wholesome foods without additives are consumed or if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural, chemical, or environmental contaminant at or below the level found to be safe, by the FDA or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture. [21 CFR 56.104(d)]

### 5.4 Procedures for Exemption Determination

To request an exempt determination, investigators submit the following materials to the HRPP Office via irb@monmouth.edu:

1. A completed Human Research Protection Program (HRPP) Initial Application
2. The study protocol;
3. Any subject materials such as recruitment materials, information sheets, consents, scripts, and questionnaires, diaries, or surveys;
4. Letters of permission from any non-MU sites; or, when applicable, documentation of IRB approval or exemption from the external site;
5. The grant application, when applicable;
6. If researchers on the application are currently trained via the NIH human research training program, proof of current training (those trained on the CITI program do not have to submit proof)

The ORC Director, IRB Chair, Vice Chair, or IRB/IACUC Coordinator reviews all requests for exemptions and determines whether the request meets the criteria for exempt research. The reviewer’s determination is documented on the **Exemption Determination Checklist** and emailed to irb@monmouth.edu or completed through the online application system. If the request does not appear to meet the definition of human subject research, the reviewer evaluates the proposal as described in Section 4 (Human Subjects and Research Determinations).

When the research requires limited IRB review or a HIPAA determination (i.e., waivers or alterations of the requirement for HIPAA authorization), the review may be conducted using expedited review procedures by the IRB Chair or an experienced Chair-designated member of the IRB. As with all other research subject to IRB review requirements, when conducting limited IRB review the IRB has the authority to approve, require modifications in (to secure approval), or disapprove all research activities;

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and to suspend or terminate IRB approval. Actions of disapproval may only be made by the convened IRB (also referred to as “full committee review”). [45 CFR 46.109(a), 45 CFR 46.110]

Proposed modifications to exempt research must be submitted to, and approved by, the IRB Office (or IRB if the exemption was granted by limited IRB review) prior to implementation, except when necessary to eliminate apparent immediate hazards to the subject(s), in which case the change must be promptly reported to the IRB (i.e., within 3 business days). [45 CFR 46.108(a)(3)(iii)]

Continuing review is generally not required for research determined to be exempt, even when that research is subject to limited IRB review. However, the IRB may determine that continuing review is required for a particular study subject to limited IRB review, in which case it shall document the reasons for its determination in the IRB record and communicate the requirement to the investigator in the IRB determination letter. [45 CFR 46.109(f)(ii), 45 CFR 46.115(a)(3)]

The individual making the determination of exemption will determine whether to require additional protections for subjects in keeping with the guidelines of the Belmont Report.

The ORC Director or IRB/IACUC Coordinator will email a determination letter to the investigator. The exempt application, review documentation, and determination letter are maintained in the same manner and for the same length of time as other IRB review documentation.

Exempt determinations will include a termination date, with the maximum time allotted being 3 years. If the investigator wants the research to extend beyond the termination date, the investigator must request another exemption determination. This process will allow the investigator and the University the opportunity to review and update the research activity, confirm human research protection training of researcher(s), and determine whether it still qualifies for exemption.

Investigators must report any proposed additions to study personnel so that CITI training can be verified and Conflict of Interest (COI) evaluated prior to their involvement with the research. Proposed modifications to the research itself must be submitted for a determination of whether the research still qualifies for exemption. Finally, investigators must submit a closure report when an exempt research project is complete so that the university can maintain an accurate database of research activities.

When research qualifies for exemption (and continuing review by the IRB is not required for an exemption requiring limited IRB review), a research status report must be filed (via the IRB website and/or online application system) with the HRPP office annually so that the currency of CITI training of involved investigators/staff may be verified, so that COI may be evaluated, and so that MU can maintain an accurate database of research activities. The HRPP electronic management system will issue reminders of the requirement to facilitate compliance.
6 IRB Reliance

When engaged in multi-site research, research involving external collaborators, or research that is otherwise under the jurisdiction of more than one IRB, MU acknowledges that each organization is responsible for safeguarding the rights and welfare of human subjects and for complying with applicable federal regulations. MU may choose to review the research in its entirety, only those components of the research MU is engaged in, rely on the review of another qualified IRB, or make other arrangements for avoiding duplication of effort. When MU is the prime awardee on an HHS grant, it will ensure that at least one IRB reviews the research in its entirety.

When relying upon another IRB or when serving as the reviewing IRB for an outside organization or external investigator, a formal relationship must be established between MU and the outside organization or investigator through an IRB Reliance Agreement, Investigator Agreement, a Memorandum of Understanding, or other such written agreement. The written reliance agreement must be executed before MU will accept any human research proposals from the outside organization or investigator or rely on the review of an external IRB.

IRB reliance agreements establish the authorities, roles, and responsibilities of the reviewing IRB and the relying organization. The procedures for reliance, including for communication, information-sharing, and reports, may be outlined in the reliance agreement, in SOPs, or other written materials. The HRPP Office utilizes a checklist to ensure that reliance agreements and any accompanying materials address all requirements and are consistent with MU’s standards. To support compliance, MU will make every effort to ensure as much consistency as possible across reliance agreements.

Requests for MU to either rely upon an external IRB or to serve as the IRB of record for an external organization or investigator should be directed to the HRPP Office (phone call, or email to irb@monmouth.edu) as early as possible in the grant/contract process.

6.1 MU Serving as Reviewing IRB

Generally, MU IRB does not serve as the IRB of record for an external organization unless MU is also engaged in the research or has a master agreement in place with the external organization. The ORC Director evaluates the following factors, and others as appropriate, when considering a request for the MU IRB to serve as the IRB of record for a particular study or studies:

1. The terms of the external organization’s FWA;
2. Prior experience with the external organization and investigators;
3. The accreditation status of the external organization’s HRPP;
4. The compliance history of the external organization and investigators (e.g., outcomes of prior audits or inspections, corrective actions);
5. The research activities conducted by or at the external organization;
6. The willingness of the external organization to accept MU’s reliance terms and procedures;
7. The ability of the organizations to collaboratively provide meaningful oversight of the proposed research, taking into account factors such as:
   a. The risks and procedures of the research;
   b. The resources available at each organization and ability to accommodate or collaborate with each other in observing the consent process, performing compliance reviews, investigations of potential noncompliance, and similar matters;
   c. The expertise and experience of the MU IRB with the proposed research, subject population, and applicable regulations;
   d. The familiarity of the MU IRB with the relevant local context considerations of the external organization; and/or
   e. The willingness or ability of the external organization to provide information and respond to questions regarding investigator qualifications, conflicts of interest, university requirements, local context, and other matters that may inform the IRB review.

When the MU IRB serves as the reviewing IRB for another organization, the requirements and procedures outlined throughout this manual apply unless an alternative procedure has been agreed to in the reliance agreement or outlined in a companion document.

For example, alternative procedures may be used for any of the following:
   1. Management and documentation of scientific review, other ancillary reviews, and institutional permissions for research;
   2. Training requirements and verification of qualifications and credentials for external investigators and staff;
   3. For-cause and not-for-cause compliance reviews;
   4. The disclosure and management of conflicts of interest. In all cases, any COIs and Conflict Management Plans (CMPs) identified and developed by the relying organization will be communicated to the reviewing IRB. The reviewing IRB will determine the acceptability of the plan in accordance with their policies and procedures.
   5. Review and management of matters such as site-specific consent language, HIPAA (e.g., authorizations, waivers, alterations), noncompliance, unanticipated problems, and federal reports;
   6. Ensuring concordance between any applicable grant and the IRB application/protocol.
   7. Procedures for and type of IRB review (e.g., expedited, convened) of additional sites after the research protocol is IRB-approved;
   8. Procedures for submission and review of interim reports and continuing review materials; and/or
   9. The communication of IRB determinations and other information to external investigators and organizations.
6.2 External IRB Review of MU Research

All non-exempt human subject research (or exempt research for which limited IRB review takes place pursuant to § __.104(d)(2)(iii) or (d)(3)(i)(C)) that MU is engaged in must be reviewed and approved by the MU IRB or an external IRB that MU has agreed to rely upon prior to the initiation of the research. See Section 1.8 for information regarding engagement.

MU may also choose to enter into an agreement to rely upon other external IRBs, most commonly when required as a condition of a grant or contract. Investigators should contact the HRPP Office as early in the grant/contract process as possible to discuss this request.

The ORC Director evaluates the following factors, and others as appropriate, when considering a request to rely upon an external IRB:

1. The accreditation status of the proposed IRB;
2. The compliance history of the IRB (e.g., outcomes of prior audits or inspections, corrective actions);
3. Prior experience with the IRB;
4. The federal IRB registration and organizational FWA, as applicable;
5. The expertise and experience of the proposed IRB (e.g., with reviewing the type of research, research procedures, and subject population(s));
6. The research activities that will be conducted at or by MU;
7. The risks and complexities of the proposed research;
8. The proposed reliance terms and procedures including the procedures for collaborative management of matters such as conflicts of interest, noncompliance, unanticipated problems, and federal reports;
9. The plan for review and allowance of the incorporation of site-specific consent language; and
10. The plan for incorporation of other relevant local requirements or context information in the review process.

The external IRBs that serve as the IRB of record for MU research have the same authority as the MU IRB and all determinations and requirements of the external IRBs are equally binding. Investigators must be familiar with and comply with the external IRB’s policies and procedures and any additional requirements or procedures outlined in the IRB reliance agreement or companion materials (e.g., reliance SOPs). MU will support compliance with the terms of reliance agreements by providing investigators with information relevant to their responsibilities, such as a copy or summary of the agreement, an information sheet, or reliance SOPs.

Regardless of which IRB is designated to review a research project, MU is responsible for the conduct of the research in which it engages. Research reviewed by external IRBs remains subject to review, approval, and oversight by MU and must adhere to all applicable policies, procedures, and requirements, including those of the MU HRPP.
6.2.1 Registration of Studies Reviewed by External IRBs

Investigators must register studies that will be reviewed by an external IRB by submitting basic information about the research to the HRPP office e.g., by completing the External IRB questions as directed in the IRB electronic system and attaching a copy of the proposed protocol and consent document(s), when applicable. The HRPP staff will review the information and verify that CITI training, COI review, and any other applicable MU approvals or requirements have been completed, and determine the need for relaying local context information to the reviewing IRB in accordance with the reliance agreement.

When applicable, and when the external IRB is not responsible for reviews of requests for waivers or alterations of HIPAA authorization, the HRPP staff will forward requests for waiver or alteration of HIPAA authorization and any relevant materials to the internal IRB Chair or a designated expedited reviewer for review. The HRPP staff will notify the investigators once the proposed research has been cleared for submission to the external IRB via email. Once approved by the external IRB, investigators must email a copy of the approval notice and any approved consent document(s) to irb@monmouth.edu. If the protocol was modified during the external IRB review process, the approved version of the protocol should be provided as well.

6.2.2 Post-Approval Requirements

Investigators approved through external IRB review must still report local unanticipated problems, complaints, and any noncompliance to the MU HRPP Office via email to irb@monmouth.edu in addition to reporting to the external IRB. Copies of the report submitted to the external IRB are generally acceptable, but additional information may be requested on an as-needed basis. Investigators must also submit copies of continuing review reports, updated protocols, updated consent forms, study closures, and the corresponding IRB approval or acknowledgment.

Changes in PI and the addition of other research team members must be submitted to the HRPP/IRB office via email to irb@monmouth.edu prior to the new PI or research team member assuming any study responsibilities. The HRPP Office must verify CITI training, COI review, and any other applicable requirements.

Notices about and reports from external monitors, auditors, or inspectors must be provided to the HRPP Office as described in Section 2.1 of this manual.

Investigators are reminded that other MU reporting requirements, such as to Compliance, Privacy, and Risk Management, remain applicable in addition to HRPP reporting requirements.

6.3 NIH Single IRB (sIRB) for Multi-Site Research

In June 2016, the National Institutes of Health (NIH) released a final policy requiring domestic awardees and domestic sites of NIH-funded multi-site research to use a single IRB (sIRB) for review of
non-exempt human subject research unless there is justification for an exception. This policy is intended to streamline the IRB review process and reduce inefficiencies and redundancies while maintaining and enhancing subject protections. The policy does not apply to career development, research training, or fellowship awards, nor to sites that are not conducting the same protocol as the other sites (e.g., sites providing statistical support or laboratory analysis only) or to foreign sites.

Exceptions to the policy are automatic when local IRB review is required by federal, tribal, or state law/regulation/policy and when the proposed research is the “child” of a grant that predates the requirement for sIRB review. Such exceptions and the basis (and information regarding the “parent” study, when applicable) should be cited in the proposed sIRB plan and, when the exception is based on law/regulation/policy, apply only to the site(s) to which the law/regulation/policy applies. Other exceptions will be considered when there is compelling justification. The site(s) and justification for why the site(s) cannot rely on the single IRB of record should be included in the proposed sIRB plan. The NIH will consider the exception request and inform the applicant of the outcome.

6.3.1 Selection and Designation of a sIRB

MU’s investigators submitting applications for NIH-funded multi-site research must describe the sIRB plan in the funding proposal (grant application or contract proposal). Contact the Director of the Office of Grants and Contracts for information to include in the proposal regarding direct costs. Requests for an alternative IRB option when MU would be the prime awardee should be directed to the ORC Director. The ORC Director will consult with others within the organization as needed and make a recommendation to the IO for consideration. When MU will not be the prime awardee, investigators should, as early in the process as possible, submit a request for MU to rely upon an external IRB as the sIRB by emailing the IRB office at irb@monmouth.edu to initiate required processes.

6.3.2 Reliance Agreements for sIRB Studies

A Reliance Agreement (or “Authorization Agreement”) between the sIRB and the participating sites is required. The Reliance Agreement documents the respective authorities, roles, responsibilities, and communication between an organization providing the ethical review and a participating organization relying on a reviewing IRB.

Reliance Agreements should describe the responsibilities of all parties and how communication between parties will occur, for example, notifications of the outcome of regulatory review and management of federally-mandated reports such as reports of unanticipated problems, serious or continuing noncompliance, and suspensions or terminations of IRB approval. When IRB certification requirements apply (e.g., for NIH Genomic Data Sharing), the agreement or written procedures should indicate who is responsible for meeting the certification requirements.
The agreement or written procedures should also specify points of contact and contact information for the sIRB and relying institution(s).

The institution that is awarded the funding for the research is responsible for maintaining all agreements and for ensuring that adequate and appropriate communication channels between the sIRB and participating sites are in place. Participating sites are responsible for maintaining copies of the site agreement in accordance with the terms of their FWA.

### 6.3.3 Responsibilities

The sIRB will be responsible for compliance with the regulatory requirements for IRBs specified in the federal regulations (i.e., [45 CFR 46](https://www.hhs.gov/cfr/index.html#section_46) and other applicable regulations) and for any other responsibilities outlined in the reliance agreement and/or procedures. Participating sites (Relying institutions) are responsible for providing relevant local context information to the sIRB, ensuring that the research is conducted in accordance with applicable regulations and the determinations and requirements of the sIRB, and for other responsibilities, as outlined in the reliance agreement and/or procedures.

When an external IRB serves as the sIRB for a study MU is engaged in, investigators must register the study with MU prior to submission to the external IRB following the procedures outlined in Section 6.2.1. Post-approval requirements are summarized in Section 6.2.2.

Research reviewed by external IRBs remains subject to review, approval, and oversight by MU and must adhere to all applicable policies, procedures, and requirements, including those of the MU HRPP.
7  Research Previously Approved by Another IRB

When an investigator transfers human subjects research to MU that was previously approved by another IRB, the investigator must:

- For research previously granted exemption at the previous institution, submit the research for review by the internal IRB for confirmation of exemption determination; or
- For nonexempt research:
  - submit a request for MU to rely upon the existing IRB of record (such requests must be approved by both organizations via a reliance agreement); or
  - Submit a new protocol application as if it were undergoing initial review.

Research determined to be exempt at the previous institution will be reviewed according to the procedures in Section 5. All other research must be submitted as if it were undergoing initial review and will be reviewed under expedited review or by the convened IRB, or if continued reliance on the previous institution is acceptable to both institutions, the registration requirements in Section 6.2.1 must be followed. These research activities, now under the auspices of MU, cannot commence until all necessary approvals are in place including approval by the internal IRB or an IRB reliance agreement is executed (and the transferred activities are approved by the IRB of record).

For research transfers where stopping research interventions or procedures might harm subjects, the investigator can request permission from both organizations to continue the research under the oversight of the prior organization’s IRB until final MU IRB approval is obtained.

8  MU Institutional Review Board

MU has established an Institutional Review Board (IRB) to ensure the protection of human subjects in research conducted under its auspices.

The following describes the authority, role, and the procedures of the IRB.

8.1  IRB Authority

The IRB derives its authority from MU policies and procedures, as cited in Section 1.2. Under the federal regulations, IRBs have the authority:

1. To approve, require modifications to secure approval, or disapprove human subjects research activities, including exempt research activities under 45 CFR 46.104 of the revised Common Rule for which limited IRB review is a condition of exemption (under 45 CFR 46.104(d)(2)(iii), (d)(3)(i)(C), and (d)(7), and (8));
2. To require that informed consent is obtained and documented in accordance with regulatory and policy requirements unless the criteria for the waiver or alteration of such requirements has been satisfied and approved by the IRB. The IRB may require that information, in addition to that specifically mentioned in the regulations, be given to the subjects when in the IRB's judgment the information would meaningfully add to the protection of the rights and welfare of subjects;

3. **For research subject to the revised Common Rule (2018 requirements):** To conduct continuing review of research requiring review by the convened IRB at intervals appropriate to the degree of risk of the research, but not less than once per year, except as described in Section 10.5;

   When research is subject to other regulations (e.g., pre-2018 Common Rule, FDA, DOJ) or requirements (e.g., grant or contract terms) that require continuing review, the IRB will conduct continuing review of research at intervals appropriate to the degree of risk of the research, but not less than once per year.

4. To suspend or terminate approval of research not being conducted in accordance with the IRB’s requirements or that has been associated with unexpected serious harm to participants;

5. To observe, or have a third party observe, the consent process; and

6. To observe, or have a third party observe, the conduct of the research.

The IRB functions independently. Attempts to coerce or otherwise unduly influence the actions of the IRB are forbidden by policy and are to be reported as described in Section 8.6. Likewise, the IRB must remain free from the influence of financial and other university interests. No individual with responsibility for the business and financial interests of the university may serve on the IRB.

Research that has been reviewed and approved by the IRB may be subject to review and disapproval by officials (i.e., Institutional Official (IO) or administration of MU). However, those officials may NOT approve research if it has not been approved or has been disapproved by the IRB. Reviewing officials may strengthen requirements and/or conditions, or add other modifications before approval, or may require approval by an additional committee, office, or person. Previously approved research proposals and/or consent forms must be re-approved by the IRB before initiating any changes or modifications that result from such additional university reviews.

### 8.2 Roles and Responsibilities

#### 8.2.1 Chair of the IRB

The IO (in consultation with Faculty Council and ORC Director) appoints a Chair of the IRB. Any change in appointment, including reappointment or removal, requires written notification to the IRB member serving as Chair. The Chair is appointed for initial one-year term, and may be re-appointed for an
additional two years to complete an initial three-year term. The Chair may be appointed thereafter for subsequent renewable three-year terms.

The IRB Chair should be a highly respected tenured faculty member, from within Monmouth University, fully capable of managing the IRB and the matters brought before it with fairness and impartiality. (In the event that the IO (in consultation with Faculty Council and the ORC Director) determines that there is no tenured faculty member eligible to be appointed as Chair, the IO may appoint a non-tenured full-time faculty member.) The task of making the IRB a respected part of the research community falls primarily on the shoulders of the Chair. The IRB Chair and IRB must be perceived to be fair, impartial, and immune to pressure by administration, the investigators whose research plans are brought before it, and other committees and departments.

In addition to assuming responsibilities of the IRB member, the Chair is responsible for the following roles and responsibilities:

--conducted human research and exemption determinations, as well as expedited reviews, including during summer months of July and August;

-leading convened IRB meetings;

-ensuring the communication of Committee decisions in professional and timely manner;

-ensuring that IRB members with a conflict of interest are not present for the discussion and vote on the research where he/she has a conflict;

-conducting preliminary review of IRB minutes, when requested;

-work with HRPP office to conduct the annual evaluation of the effectiveness of the IRB Committee;

-in collaboration with the ORC director, perform evaluation of the IRB Committee members’ performance (to be included in the annual report) and advise Faculty Council and IO about IRB members performance;

-provide annual report outlining activities of the IRB Committee, identifying any existing issues, and provide recommendations for improvement of the Committee’s work. Annual report will be submitted simultaneously to the IO and Chair of the Faculty Council (by June 30th).

The IRB Chair is authorized to take immediate action to suspend a study or studies if subjects may be at risk of harm, when serious noncompliance may have occurred, or for any other reason where such action would be deemed appropriate. Such action requires subsequent notice to and review by the convened IRB.

The IRB Chair may designate other experienced IRB members to perform duties such as expedited reviews and other IRB functions.
The performance of IRB Chair will be reviewed on an annual basis by the ORC Director in consultation with the IO and Faculty Council. Assessment will be based on 5 criteria: 1) leadership, 2) participation, 3) technical knowledge, 4) teamwork, and 5) communication.

Feedback from this evaluation will be provided to the Chair. If the Chair is not acting in accordance with the IRB’s mission, following policies and procedures, has an undue number of absences, or not fulfilling the responsibilities of the Chair, they may be removed.

8.2.2 Vice Chair of the IRB

The IO (in consultation with Faculty Council and the ORC Director) appoints a Vice-Chair of the IRB. The Vice-Chair should be a highly respected tenured faculty member, from within Monmouth University, fully capable of assisting the Chair in managing the IRB and the matters brought before it with fairness and impartiality. (In the event that the IO (in consultation with Faculty Council and the ORC Director) determines that there is no tenured faculty member eligible to be appointed as Vice-Chair, the IO may appoint a non-tenured full-time faculty member.) The IRB Vice-Chair is appointed for initial one-year term, and may be re-appointed for an additional two years to complete an initial three-year term. The Vice-Chair may be appointed thereafter for subsequent renewable three-year terms.

The Vice Chair serves as the Chair of the IRB in the absence of the Chair and has the same qualifications, authority, and duties as the Chair.

The performance of IRB Vice Chair will be reviewed on an annual basis by the ORC Director in consultation with the IO, ORC Director, and Faculty Council. Assessment will be based on 5 criteria: 1) leadership, 2) participation, 3) technical knowledge, 4) teamwork, and 5) communication. Feedback from this evaluation will be provided to the Vice Chair. If the Vice Chair is not acting in accordance with the IRB’s mission, following policies and procedures, has an undue number of absences, or otherwise not fulfilling their responsibilities, they may be removed.

8.2.3 IRB Members

The role of an IRB member is to ensure that human research activities comply with federal regulations, state and local laws, and university policies and procedures, by:

- Completing member education and training, both initial and on-going (See Section 3.1).
- Maintaining the confidentiality of IRB deliberations and research reviewed by the IRB in accordance with the terms and conditions of the university’s IRB Member Confidentiality Agreement.
• Providing detailed, thorough and timely reviews of assigned applications, whenever possible ahead of the scheduled meeting to allow IRB Chair and HRPP staff to prepare for the meeting as well as seek any additional information that may be needed.

• Assisting with review of research by expedited procedures when needed, including during July and August.

• Attending IRB meetings as scheduled. If attendance is not possible, IRB member will notify the IRB Chair in a timely manner so that the alternate member may be called to attend.

• Recusing self from reviewing or voting on research when they has a conflict of interest. (See Section 23.2).

• Participating in subcommittees of the IRB if requested and available.

• All IRB members receive and are expected to review all studies, not just those assigned as primary or secondary reviewer.

• Conducting themselves in a professional and collegial manner.

The performance of IRB members will be reviewed on an annual basis by the ORC Director and the IRB Chair. Assessment will be based on 4 criteria: 1) participation, 2) technical knowledge, 3) teamwork, and 4) communication. Feedback from this evaluation will be provided to IRB members. For members who are not acting in accordance with the IRB’s mission, not following policies and procedures, have an undue number of absences, or otherwise not fulfilling the responsibilities of membership, The ORC Director and IRB Chair will make recommendation to Faculty Council, and IO and/or their designee for removal of the member. IO and/or their designee and Faculty Council shall consult and IO shall make determination of removal.

8.2.4. Alternate members

The appointment and function of alternate members is the same as that for primary IRB members. An alternate's expertise and perspective should be comparable to those of the primary member. The role of the alternate member is to serve as a voting member of the IRB when the regular member is unavailable to attend a convened meeting, in part or in full, or when the regular member has a conflict of interest with respect to a protocol under review. When an alternate member substitutes for a primary member, the alternate member will receive and review the same materials prior to the IRB meeting that the primary member would have received.

The IRB roster identifies the primary member(s) or class of members (e.g., physician scientist) for whom each alternate member may substitute. When both the regular member and the alternate is in attendance at an IRB meeting, only one may be counted towards quorum and vote. The IRB minutes will document when an alternate member replaces a primary member.

Experienced alternate members may be designated by the Chair to conduct expedited reviews.
8.2.5. Subcommittees of the IRB

The IRB Chair, in consultation with the ORC Director, may appoint one or more other IRB members to a subcommittee of the IRB to review issues and to make recommendations to the IRB (e.g., to supplement the IRB’s review of research proposals or to review of reports of potential unanticipated problems or noncompliance). The size and composition of the subcommittee shall depend on the scope of duties delegated by the IRB Chair. Any such subcommittee cannot approve research or issue determinations that require review by the convened IRB.

8.3 Composition of the IRB Membership

The IRB must promote respect for its advice and counsel in safeguarding the rights and welfare of the research that comes before it and possess the professional competence necessary to review specific research activities. The structure and composition of the MU IRB is based upon regulatory requirements and the characteristics of the research it reviews. A member of the IRB may fill multiple membership position requirements (e.g., nonscientific and unaffiliated).

- The IRB will have at least five full-time faculty members with varying backgrounds to promote complete and adequate review of research activities commonly conducted by the University. The IRB shall not consist entirely of members of one profession. In addition, IRB will include a non-scientist (serves as ex-officio voting member) and a member of surrounding community who is not affiliated with the University and who is not part of the immediate family of a person who is affiliated with the University. If and when necessary, the unaffiliated community member could also fulfill the role of the non-scientist.

- The IRB will be sufficiently qualified through the experience and expertise of its members, and the diversity of the members, including consideration of race, gender, and cultural backgrounds and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects.

- In addition to possessing the professional competence necessary to review specific research activities, the IRB will be able to ascertain the acceptability of proposed research in terms of university commitments and regulations, applicable law, and standards of professional conduct and practice. The IRB will therefore include persons knowledgeable in these areas.

- The IRB will include members who are knowledgeable about and experienced working with subjects vulnerable to coercion or undue influence (e.g., children, prisoners, pregnant women, individuals with impaired decision-making capacity, or economically or educationally disadvantaged persons) that are regularly included in the research under its review.

- Every nondiscriminatory effort will be made to ensure that the IRB does not consist entirely of men or entirely of women, including the university's consideration of qualified persons of both sexes, so long as no selection is made to the IRB solely on the basis of gender.
• The IRB includes at least one member whose primary concerns are in scientific areas and at least one member whose primary concerns are in nonscientific areas

• The IRB includes at least one member who is not otherwise affiliated with the university and who is not part of the immediate family of a person who is affiliated with the university.

At the discretion of the IO, Faculty Council and ORC Director, IRB staff may be appointed as IRB members.

Individuals from MU’s Office of Grants and Contracts, University Advancement, University Cabinet members, the Chair or Vice Chair of Faculty Council, and administrators with faculty status (including, but not limited to, the Associate Vice Provost, Deans, Associate and Assistant Deans, Chairs, Program Directors) may not serve as members of the IRB or carry out day-to-day operations of the IRB. Individuals from these offices may provide information to the IRB and attend IRB meetings when invited as guests (and who sign a guest confidentiality agreement) but shall not be present in the room during IRB member deliberations and voting.

On an annual basis, the IRB Chair and the ORC Director review the membership and composition of the IRB to determine if it continues to meet regulatory and university requirements. Any determination that it does not meet regulatory and university requirements shall be reported to the Chair of Faculty Council and IO, with recommendations to rectify the issue. The IO shall determine if regulatory and university requirements are being met.

8.3.1 Appointment of Members to the IRB

The Faculty Council will make recommendations to the IO for IRB member appointment. Faculty Council will solicit nominations for vacant seats as needed.

In the nomination process, Faculty Council will adhere to the Federal Regulations [45 CFR 46.107 and 21 CFR 56.107] and criteria outlined in section 1.3. No department that conducts human subjects’ research should have more than one appointed member; however, in the event that there are insufficient nominations, Faculty Council may recommend to the IO that there are two members may be from the same school area provided that it adheres to the federal regulation requirements of IRB member composition.

Faculty Council will forward their recommendations for appointments to IO who will review recommendations and make the final determination about the appointments. The IO shall also issue appointment letters.

Appointments of IRB members are made for renewable three-year terms.

Any change in appointment, including reappointment or removal before the end of a member’s term, requires written notification to the member from Faculty Council and IO.
Members may resign by written notification to the IO, ORC Director, IRB Chair, and Faculty Council.

The ORC Director will ensure that changes in IRB membership are reported via the federal IRB registration in accordance with the instructions provided on OHRP’s website.

### 8.4 Liability Coverage for IRB Members

The MU insurance coverage applies to employees and any other person authorized to act on behalf of MU for acts or omissions within the scope of their employment or authorized activity.

### 8.5 Use of Consultants

When necessary, the IRB Chair, ORC Director, or HRPP Administrator may solicit individuals from within or outside the university with the expertise to assist in the review of research or issues which require expertise beyond or in addition to that available on the IRB. The HRPP Office will ensure that all relevant materials are provided to the consulting reviewer prior to the convened meeting or expedited review, including the signing of a guest confidentiality agreement.

The ORC Director or designee reviews the COI policy for IRB members with consultants and consultants must confirm that they do not have a conflict of interest prior to review. Individuals who have a conflicting interest or whose spouse or immediate family members have a conflicting interest will not be invited to provide consultation.

The consultant’s findings will be presented to the IRB for consideration either in person or in writing. If in attendance at an IRB meeting, consultants may provide information and assist in the IRB’s deliberations, but may not participate in the vote and shall leave the meeting while the vote is conducted.

Written statements from consultants will be kept in the IRB records. Information provided by consultants at IRB meetings will be documented in the minutes. Ad hoc or informal consultations requested by individual members (rather than the convened board) will be managed in a manner that protects the investigator’s confidentiality and that complies with the IRB COI policy.

### 8.6 Reporting and Investigation of Allegations of Undue Influence

If an IRB Chair, member, or staff person feels that the IRB has been unduly influenced by any party, they shall make a confidential report to the ORC Director, who will address with the IO and Faculty Council Chair, as appropriate. The IO in consultation with ORC Director and Faculty Council will ensure that a thorough investigation is conducted and, if the allegation is determined valid, that corrective
action is taken to prevent additional occurrences. In the event that the allegation is regarding the IO, the matter will be referred to MU’s Office of the General Counsel for investigation and any necessary action. In the event that the allegation is against ORC Director, Faculty Council Chair or IRB Chair, the confidential report shall be made directly to the IO.

Undue influence means attempting to interfere with the normal functioning and decision-making of the IRB, or to attempt to influence an IRB member or staff member or any other member of the research team, outside of the established processes or normal and accepted methods in order to obtain a particular result, decision, or action by the IRB or one of its members or staff.
9 IRB Actions, Failure to Respond, Appeals

9.1 IRB Actions

In conducting its review of research, the IRB may take any of the following actions. With the exception of disapproval, the actions listed below may be used for either expedited or convened board review, including limited IRB review under the 2018 requirements. An action of disapproval can only be taken at a convened IRB meeting.

**Approval.** The research, proposed modification to previously approved research, or another item is approved. The IRB has made all of the determinations required for approval (i.e., approval criteria and any applicable special determinations (e.g., waivers, alterations, vulnerable population determinations, etc.)). No further action is needed.

**Modifications Required to Secure Approval.** The research, proposed modification to the previously approved research, or other item is approved but conditions must be satisfied before the approval becomes effective.

The IRB may approve research with conditions if, given scope and nature of the conditions, the IRB is able, based on the assumption that the conditions are satisfied, to make all of the determinations required for approval (i.e., approval criteria and any applicable special determinations (e.g., waivers, alterations, vulnerable population determinations, etc.). Any time the IRB cannot make one or more of the determinations required for approval, the IRB may not approve the study with conditions.

The IRB may require the following as conditions of approval of research:

1. Confirmation of specific assumptions or understanding on the part of the IRB regarding how the research will be conducted (e.g., confirmation that research excludes children);
2. Submission of additional documentation (e.g., certificate of training);
3. Precise language changes to the study, consent, or other study documents; or
4. Substantive changes to the study, consent, or other study documents along with clearly stated parameters that the changes must satisfy.

When the IRB approves research with conditions, the conditions will be documented in the IRB minutes for research reviewed at a convened meeting or in the applicable reviewer checklist for research reviewed under an expedited review procedure.

When the convened IRB approves research with conditions, the IRB will designate the IRB Chair, another IRB member, or IRB staff to review responsive materials from the investigator and determine that the conditions have been satisfied. If the conditions have not been satisfied, or are only partially satisfied, the responsive materials must be referred to the convened IRB for review. When an expedited reviewer approves research with conditions, the original expedited reviewer (and/or other qualified individual(s)) will receive the response materials.

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After verification, the following will be documented in IRB records and written communication to the investigator:

1. The date when verification was made that all IRB conditions have been satisfied (i.e., the “approval date”), and;
2. For initial approval and continuing reviews, the date by which continuing review must occur (i.e., the “expiration date”)

The IRB will be informed of the outcome of the review of the investigator’s response through the electronic submission process.

**Defer.** This action is taken by the IRB when modifications are required of the nature or amount that the full IRB cannot make or specify exact changes or parameters, or additional information or clarification is needed in order to determine that one or more criteria for approval are satisfied (e.g., the risks and benefits cannot be assessed until additional information is provided.).

The deferral is documented in the IRB minutes (for convened review) or reviewer checklist (for expedited review) and is communicated to the investigator in writing by the IRB/IACUC Coordinator on behalf of the IRB Committee.

When the convened IRB defers approval, the responsive materials from the investigator will be provided to the convened IRB for review at a subsequent meeting. When an expedited reviewer defers approval, the original expedited reviewer will review the response materials whenever possible. When the original expedited reviewer is unavailable, the response will be reviewed by the IRB Chair or other qualified IRB member who has been designated to conduct expedited review.

**Disapprove.** This action is taken when the convened IRB determines that the proposed research activity does not satisfy the criteria for approval and that it cannot be modified to render it approvable (or the sponsor or investigator will not make necessary modifications that would render the research approvable).

**Tabled.** This action is taken when the IRB cannot review a study on the meeting agenda. For example, quorum for the meeting is lost, or the primary and/or secondary reviewer are not present, or a study document is missing and review cannot be conducted without it (e.g., consent form, protocol etc.).

### 9.2 Failure to Respond

Upon review of a research study, the IRB may require changes or request certain information from an investigator. Failure to respond to IRB required changes or requests for information within 60 days (or less if the IRB determines that the information must be submitted earlier to ensure protection of the research subjects) may result in suspension or termination of IRB approval for the study. For studies that have not yet been approved, the study submission may be administratively withdrawn. At its discretion, the IRB Committee may grant an extension beyond 60 days if the investigator contacts the...
IRB office prior to the deadline and presents sufficient cause for delay. Such justification shall be made to the ORC Director in writing.

9.3 Reporting IRB Actions

All IRB actions are communicated to the investigator, and/or designated contact person for the research study, via email within ten (10) working days, whenever possible, of the review. When applicable, a stamped copy of the approved consent form, parental permission form, and/or assent form will also be published. For IRB actions of conditions required for approval or deferral, the notification will include a listing of the conditions or requirements that must be satisfied or responded to. For a disapproval, suspension, or termination, the notification will include the basis for the action and will offer the investigator an opportunity to respond in person or in writing.

The IRB reports its findings and actions to the University in the form of its minutes, which are distributed by IRB staff to the MU IO.

9.4 Appeal of IRB Decisions

When the IRB suspends, terminates, or disapproves research, the IRB letter communicating the decision will include the basis for the action and will offer the investigator the opportunity to respond in person or in writing. Additionally, whenever an investigator disagrees with an IRB requirement or decision or believes that providing the IRB with additional information may result in a different outcome, they may request that the IRB reconsider its decision by submitting a memo and other supportive materials via the IRB email system (irb@monmouth.edu) or the IRB electronic system, as applicable. The investigator may be invited to attend the IRB meeting to discuss the request and provide information but will be asked to leave prior to the IRB’s final deliberations and vote.
10 IRB Review Process

The MU IRB will review and ensure that research under its oversight meets all required ethical and regulatory criteria for initial and continuing review and any modifications of approved research. The IRB may conduct their review using the following review methods:

- Expedited Review
- Review by Convened IRB

10.1 Expedited Review

An IRB may use the expedited review procedure to review the following:

- For research subject to the revised Common Rule (2018 requirements):
  - When the research activities involve only procedures appearing on the federal register list of categories of research eligible for expedited review and found by the reviewer(s) to involve no more than minimal risk. If the reviewer determines that the research involves more than minimal risk, the reviewer must document the rationale for the more than minimal risk determination and the research must be reviewed by the convened IRB.
  - Research for which limited IRB review is a condition of exemption under 45 CFR 46.104(d)(2)(iii) and (d)(3)(i)(C).

- For research subject to the pre-2018 Common Rule, or FDA or DOJ regulations or other requirement that requires reviewer determination of minimal risk:
  - When the research activities involve only procedures appearing on the federal register list (or when applicable, the FDA list) of categories of research eligible for expedited review and found by the reviewer(s) to involve no more than minimal risk

- Minor changes in research previously approved by the convened IRB. Note: review of minor changes does not alter the end-date of study approval.

The standard requirements for informed consent (or its waiver, alteration, or exception) apply regardless of the type of review--expedited or convened--used by the IRB.

10.1.1 Definitions

Minimal Risk. Minimal risk means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.
**Minor Change.** A minor change is one which, in the judgment of the IRB reviewer, makes no substantial alteration in:

1. The acceptability of the risk-to-benefit analysis (i.e., the change does not increase the level of risk);
2. The research design or methods (adding procedures that are not eligible for expedited review (See Section 10.1.2) would be considered more than a minor change);
3. The number of local subjects to be enrolled in the research (usually not greater than 10% of the total requested);
4. The qualifications of the research team (i.e., the change does not negatively impact the expertise available to conduct the research);
5. The facilities available to support safe conduct of the research; or
6. Any other factor which would warrant review of the proposed changes by the convened IRB.

Minor changes also include the addition of sites to a protocol approved by the convened IRB so long as the investigator(s)/site(s) do not have a conflict of interest, potential compliance concerns (e.g., a FDA Form 483 that has not been adequately resolved), or any other investigator or site-specific concerns (e.g., qualifications, facilities, or resources to safely conduct the research).

### 10.1.2 Categories of Research Eligible for Expedited Review

MU applies the categories of research eligible for expedited review, which were published in the Federal Register on November 9, 1998 (Common Rule: notice 63 FR 60364-60367; FDA: notice 63 FR 60353).

The categories in this list apply regardless of the age of subjects, except as noted in category 2.

The expedited review procedure may not be used where identification of the subjects and/or their responses would reasonably place them at risk of criminal or civil liability or be damaging to the subjects financial standing, employability, insurability, reputation, or be stigmatizing, unless reasonable and appropriate protections will be implemented so that risks related to invasion of privacy and breach of confidentiality are no greater than minimal.

The expedited review procedure may not be used for classified research (i.e., sensitive information to which access is restricted by law or regulation. A formal security clearance is required to handle classified documents or access classified data.)

**Expedited Categories one (1) through seven (7) may be used for both initial and continuing review:**

1. Clinical studies of drugs and medical devices only when condition (a) or (b) is met.
   
   a. Research on drugs for which an investigational new drug application (21 CFR Part 312) is not required. (Note: Research on marketed drugs that significantly increases the risks or
decreases the acceptability of the risks associated with the use of the product is not
eligible for expedited review.)

b. Research on medical devices for which (i) an investigational device exemption
application (21 CFR Part 812) is not required; or (ii) the medical device is
cleared/approved for marketing and the medical device is being used in accordance
with its cleared/approved labeling.

2. Collection of blood samples by finger stick, heel stick, ear stick, or venipuncture as follows:

a. From healthy, nonpregnant adults who weigh at least 110 pounds. For these subjects,
the amounts drawn may not exceed 550 ml in an 8 week period and collection may not
occur more frequently than 2 times per week; or

b. From other adults and children, considering the age, weight, and health of the subjects,
the collection procedure, the amount of blood to be collected, and the frequency with
which it will be collected. For these subjects, the amount drawn may not exceed the
lesser of 50 ml or 3 ml per kg in an 8 week period and collection may not occur more
frequently than 2 times per week. (Note: Children are defined as "persons who have not
attained the legal age for consent to treatments or procedures involved in the research,
under the applicable law of the jurisdiction in which the research will be conducted.)

3. Prospective collection of biological specimens for research purposes by noninvasive means.

Examples: (a) hair and nail clippings in a nondisfiguring manner; (b) deciduous teeth at time of
exfoliation or if routine patient care indicates a need for extraction; (c) permanent teeth if
routine patient care indicates a need for extraction; (d) excreta and external secretions
(including sweat); (e) uncannulated saliva collected either in an unstimulated fashion or
stimulated by chewing gum base or wax or by applying a dilute citric solution to the tongue; (f)
placenta removed at delivery; (g) amniotic fluid obtained at the time of rupture of the
membrane prior to or during labor; (h) supra- and subgingival dental plaque and calculus,
provided the collection procedure is not more invasive than routine prophylactic scaling of the
teeth and the process is accomplished in accordance with accepted prophylactic techniques; (i)
mucosal and skin cells collected by buccal scraping or swab, skin swab, or mouth washings; (j)
sputum collected after saline mist nebulization; (k) vaginal swabs that do not go beyond the
cervical os; rectal swabs that do not go beyond the rectum; and nasal swabs that do not go
beyond the nares.

4. Collection of data through noninvasive procedures, not involving general anesthesia or
sedation, routinely employed in clinical practice, excluding procedures involving x-rays or
microwaves. Where medical devices are employed, they must be cleared/approved for
marketing. (Note: Studies intended to evaluate the safety and effectiveness of the medical
device are not generally eligible for expedited review, including studies of cleared medical
devices for new indications.)
Examples: (a) physical sensors that are applied either to the surface of the body or at a distance and do not involve input of significant amounts of energy into the subject or an invasion of the subject’s privacy; (b) weighing or testing sensory acuity; (c) magnetic resonance imaging; (d) electrocardiography, electroencephalography, thermography, detection of naturally occurring radioactivity, electroretinography, ultrasound, diagnostic infrared imaging, Doppler blood flow, and echocardiography; (e) moderate exercise, muscular strength testing, body composition assessment, and flexibility testing where appropriate given the age, weight, and health of the individual.

5. Research involving materials (data, documents, records, or specimens) that have been collected, or will be collected solely for nonresearch purposes (such as medical treatment or diagnosis). (NOTE: Some research in this category may be exempt from the DHHS regulations for the protection of human subjects. This listing refers only to research that is not exempt.)

6. Collection of data from voice, video, digital, or image recordings made for research purposes.

7. Research on individual or group characteristics or behavior (including, but not limited to, research on perception, cognition, motivation, identity, language, communication, cultural beliefs or practices, and social behavior); or research employing survey, interview, oral history, focus group, program evaluation, human factors evaluation, or quality assurance methodologies. (NOTE: Some research in this category may be exempt from the DHHS regulations for the protection of human subjects. This listing refers only to research that is not exempt.

Categories 8 and 9 apply only to continuing review.

8. Continuing review of research previously approved by the convened IRB as follows:
   a. Where (i) the research at MU is permanently closed to the enrollment of new subjects; (ii) all subjects have completed all research-related interventions; and (iii) the research remains active only for long-term follow-up of subjects (Note: “Long-term follow-up” includes research interactions that involve no more than minimal risk to subjects (e.g., quality of life surveys); and collection of follow-up data from procedures or interventions that would have been done as part of routine clinical practice to monitor a subject for disease progression or recurrence, regardless of whether the procedures or interventions are described in the research study, but not interventions that would not have been performed for clinical purposes, even if the research interventions involve no more than minimal risk.); or
   b. Where no subjects have ever been enrolled at MU and no additional risks have been identified (Note: “no additional risks have been identified” means that neither the investigator nor the IRB has identified any additional risks from any institution engaged in the research project or from any other relevant source since the IRB’s most recent prior review.); or
c. Where the remaining research activities at MU are limited to data analysis. (Note: Simply maintaining individually identifiable private information without using, studying, or analyzing such information is not human subject research and thus does not require continuing review.

9. Continuing review of research previously approved by the IRB at a convened meeting that meets the following conditions:
   a. The research is not conducted under an investigational new drug application (IND) or an investigational device exemption (IDE); and
   b. Expedited review categories (2) through (8) do not apply to the research; and
   c. The IRB has determined and documented at a convened meeting that the research, or the remaining research activity involving human subjects, involves no greater than minimal risk to the subjects; and
   d. No additional risks of the research have been identified. (Note: “no additional risks have been identified” means that neither the investigator nor the IRB has identified any additional risks from any institution engaged in the research project or from any other relevant source since the IRB’s most recent prior review.)

10.1.3 Expedited Review Procedures

Under an expedited review procedure, IRB review is carried out by the IRB Chair or by one or more reviewers designated by the Chair from among experienced members and alternate members of the IRB. Designated reviewers must be professionally competent (i.e., experienced with and having demonstrated the ability to apply IRB review requirements and with appropriate scientific or scholarly expertise) to conduct expedited reviews.

IRB members do not participate in the review of research in which they have with a conflict of interest (see Section 23.2) but may answer questions about the research if requested.

When reviewing research under an expedited review procedure, the IRB Chair, or designated reviewer, will receive and review the same materials that would be reviewed if the research were to be reviewed by the convened IRB, and for previously approved research, will have access to the study history. The reviewer evaluates and documents whether the research qualifies for expedited review using a checklist. When a reviewer determines that research subject to the revised Common Rule (the 2018 requirements) falls within the expedited categories but involves more than minimal risk, the reviewer will document the rationale for that determination in the checklist and refer the research for review by the convened IRB. If the research otherwise does not meet the criteria for expedited review, then the reviewer will indicate that the research requires review by the convened IRB and the submission is placed on the next available IRB meeting agenda.
In reviewing the research, expedited reviewers will apply the same criteria for review and approval of research described throughout this manual and may exercise all of the authorities of the IRB except that the reviewers may not disapprove the research. A research activity may only be disapproved by the convened IRB.

Reviewers will use the appropriate reviewer checklist (e.g., initial, modification, continuing) to assess the criteria for approval and to document their review. For initial and continuing reviews, the documentation will include the category(ies) under which the research qualifies for expedited review. The checklist is maintained in the IRB email system. When expedited review is carried out by more than one IRB member and the reviewers disagree, the IRB Chair may make a final determination or refer the submission to the convened IRB for review.

A letter documenting the outcome of the review will be prepared by the IRB staff and provided to the investigator.

10.1.4 Informing the IRB

Members of the IRB will be apprised of expedited review approvals, including limited IRB reviews conducted using expedited review procedures, by means of a list in, or attached to the agenda for the next scheduled meeting. Provided that there is no conflict of interest, any IRB member can request to review the materials for any study by contacting the HRPP Office.

10.2 Convened IRB Meetings

Except when an expedited review procedure is used, the IRB will conduct initial and continuing reviews of all non-exempt research, and exempt research subject to limited IRB review, at convened meetings at which a quorum of the members is present.

10.2.1 IRB Meeting Schedule

The IRB meets on a regular basis throughout the school year (usually once per month; with the exception of July and August). The schedule for the IRB may vary due to holidays, lack of quorum, or other reasons. Dates for IRB monthly meetings are determined annually for the following year and are published publicly at the HRPP website. Special meetings may be called as needed by the Chair or the ORC Director.

10.2.2 Preliminary Review

The IRB/IACUC Coordinator will perform a preliminary review of all submissions for determination of completeness and accuracy, including an elements of consent checklist, when applicable. Only complete submissions will be placed on the IRB agenda for review. The investigator will be informed via e-mail of missing materials and any recommended changes. If an investigator is submitting for the
first time or is not be well-versed in submission procedures, consultations can be arranged with the ORC Director or IRB/IACUC Coordinator.

10.2.3 Primary and Secondary Reviewers

After it has been determined that a submission is complete, the IRB/IACUC Coordinator, with the assistance of the IRB Chair as needed, will assign submissions for review paying close attention to the subject matter of the research, the potential reviewer’s area(s) of expertise, and representation for any vulnerable populations involved in the research. A “primary reviewer” will be assigned to each submission and will receive and review the full submission materials. When the IRB is presented with a research study which may be outside of the knowledge base or representative capacity of the IRB members, an outside consultant will be sought (See Section 8.5). Research studies for which appropriate expertise cannot be obtained for a given meeting will be deferred to another meeting when appropriate expertise is available.

Primary reviewers are responsible for:

- Performing an in-depth review of the submission materials and having a thorough understanding of the details
- Leading the discussion at the IRB meeting, by providing a summary and leading the IRB through the regulatory criteria for approval and any required determinations
- Completing all applicable IRB reviewer checklists

One or more “secondary” reviewers may be assigned in addition to the primary reviewer. A secondary reviewer may be assigned to review the full submission materials as well or may be asked to review specified sections of the submission (e.g., the consent process and form(s)).

All IRB members receive and are expected to review all studies, not just those assigned as primary or secondary reviewer, and contribute to the discussion of the application during the meeting.

When it can be anticipated that the primary reviewer may be absent from the meeting, a new primary reviewer will be assigned if possible, providing that they have the necessary expertise and sufficient time to review the materials in advance of the meeting. Absent reviewers can submit their written comments for presentation and consideration at the convened meeting. If an absent reviewer submits comments, those can indicate a recommendation regarding approval, but such recommendation will not be counted as a vote.

10.2.4 Materials received by the IRB

All required materials need to be emailed to the HRPP office (via email and/or online system) 14 business days prior to the IRB meeting date published on the HRPP website for inclusion on the IRB agenda. On occasion, when a review is time-sensitive, the IRB office may make an exception to this rule provided that there is still sufficient time for all members to review the submission materials.
The meeting agenda will be prepared by the IRB/IACUC Coordinator in consultation with the IRB Chair. All IRB members receive the IRB agenda, prior meeting minutes, applicable business items, and research submission materials at least 7 business days before the scheduled meeting to allow sufficient time for review. On occasion, a time-sensitive item may be added to the agenda less than 7 business days in advance if circumstances warrant and the IRB staff have contacted the IRB members and verified that they will have sufficient time for review.

All IRB members are provided with all materials submitted for all studies on the agenda, which include the following, as applicable:

- The complete protocol
- The application or submission form (e.g., initial, continuing review, modification request, interim report)
- The proposed and/or previously approved Consent/Parental Permission/Assent Form(s)
- Proposed recruitment materials, including advertisements intended to be seen or heard by potential study participants
- Documented approval from research sites for access to potential participants (including access to emails).
- Any other subject materials, such as questionnaires, diaries, or intervention materials
- The grant application(s)

Additionally, for HHS-supported multicenter clinical trials, the IRB should receive and review a copy of the HHS-approved sample consent form(s) and the complete HHS-approved protocol, if they exist.

If an IRB member requires additional information to complete the review, they may contact the HRPP office or the investigator. Any additional information should be provided to the other members.

Primary reviewers will complete any applicable reviewer checklists, which serve as a guide for the review and a tool for summarizing recommendations prior to board discussion.

### 10.2.5 Quorum

A quorum of the IRB consists of a majority (more than half) of the voting membership, including at least one member whose primary concern is in a non-scientific area. When research involving an investigational new drug is on the agenda for review, a physician should be included in the quorum. At meetings of the IRB, a quorum must be established and maintained for the deliberation and vote on all matters requiring a vote.

The IRB Chair, with the assistance of the IRB/IACUC Coordinator, will confirm that quorum is present before calling the meeting to order. The IRB Chair, with the assistance of the IRB/IACUC Coordinator, will be responsible to ensure that the IRB meeting remains appropriately convened. If a quorum is not...
maintained, either by losing a majority of the members, or losing all non-scientific members or another required member, the IRB may not take votes until quorum is restored. When IRB members leave the meeting room, the IRB/IACUC Coordinator will document the time of departure and notify the IRB Chair if a quorum is not present.

In addition to the required attendance of at least one “non-scientist” member, it is generally expected that at least one scientific member and one unaffiliated member (one individual can serve in more than one capacity) will be present at all IRB meetings. The IRB may, on occasion, meet without this representation; however, this should be the exception (i.e., no more than 20% of meetings).

When the IRB regularly reviews research that involves subjects vulnerable to coercion or undue influence, such as children, prisoners, pregnant women, individuals with impaired decision-making capacity, or economically or educationally disadvantaged persons, one or more individuals (e.g., IRB members, alternate members, or consultants) who are knowledgeable about and experienced with such subjects should be present during the review of the research.

IRB members are considered present and participating at a duly convened IRB meeting when either physically present or participating through electronic means (e.g., teleconferencing or video conferencing) that permits them to listen to and speak during IRB deliberations and voting. When not physically present, the IRB member must have received all pertinent materials prior to the meeting and must be able to participate actively and equally in all discussions.

Opinions of absent members may be considered by the attending IRB members but may not be counted as votes or to satisfy quorum requirements for convened meetings.

10.2.6 Meeting Procedures

The IRB Chair will call the meeting to order, once it has been determined that a quorum is in place. The Chair will remind IRB members to recuse themselves from the discussion and votes by leaving the room when they have a conflict. The IRB will review and discuss the minutes from the prior meeting and determine if there are any revisions/corrections to be made. If there are no changes to be made, a vote to approve the minutes will be conducted, and if the motion passes, the minutes will be considered final. If major revisions/corrections are necessary, the minutes will be amended and presented at the following IRB meeting. Minor revisions/corrections may be verified by the IRB Chair or Vice Chair outside of the meeting.

The IRB reviews submissions for initial and continuing review, requests for modifications to previously approved research, and other business items, as applicable (e.g., potentially serious noncompliance). The Primary and Secondary Reviewer presents an overview of the submission and assists the Chair in leading the IRB through the evaluation of the regulatory criteria for approval or other required determinations using their checklist(s) as a guide. IRB/IACUC Coordinator presents materials relevant to the board’s review and discussion to facilitate the review process. For the research to be approved,
or any motion on a business item of the agenda to pass, it must receive the approval of a majority of those voting members present at the meeting.

IRB/IACUC Coordinator is responsible for taking minutes at each IRB meeting.

10.2.7 Guests

Investigators and research staff may be invited to the IRB meeting, at the discretion of the IRB, to make a brief presentation or to answer questions about proposed or ongoing research. The investigator/research staff may not be present for the deliberations or vote on the research and must leave the room prior to deliberations and vote.

The ORC Director and IRB/IACUC Coordinator regularly attend IRB meetings and may participate in the IRB discussion and deliberations but may not vote unless attending as a member or alternate.

Other guests may be permitted to attend IRB meetings at the discretion of the IRB Chair and the ORC Director. Such guests will be required to sign a confidentiality agreement and complete a conflict of interest statement and do not participate in discussion unless requested by the IRB; under no circumstances may they vote.

10.3 Criteria for IRB Approval of Research

For the IRB to approve human subjects research, either through expedited review or by the convened IRB, it must determine that the following requirements are, or remain, satisfied.

1. Risks to subjects are minimized: (i) by using procedures which are consistent with sound research design and which do not unnecessarily expose subjects to risk, and (ii) whenever appropriate, by using procedures already being performed on the subjects for diagnostic or treatment purposes.

2. Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects, and the importance of the knowledge that may reasonably be expected to result. In evaluating risks and benefits, the IRB should consider only those risks and benefits that may result from the research (as distinguished from risks and benefits of therapies subjects would receive even if not participating in the research). The IRB should not consider possible long-range effects of applying knowledge gained in the research (for example, the possible effects of the research on public policy) as among those research risks that fall within the purview of its responsibility.

3. Selection of subjects is equitable. In making this assessment the IRB should take into account the purposes of the research and the setting in which the research will be conducted and should be particularly cognizant of the special problems of research involving subjects vulnerable to coercion or undue influence, such as children, prisoners, pregnant women (pre-2018 Common Rule, FDA), individuals with impaired decision-making capacity, or economically or educationally disadvantaged persons.
4. Informed consent will be sought from each prospective subject or the subject’s legally authorized representative, in accordance with, and to the extent required by the Federal Regulations [45 CFR 46.116/21 CFR 50].

5. Informed consent will be appropriately documented, in accordance with, and to the extent required by the Federal Regulations [45 CFR 46.117/21 CFR 50].

6. When appropriate, the research plan makes adequate provision for monitoring the data collected to ensure the safety of subjects.

7. When appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.

When some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as children, prisoners, pregnant women, mentally disabled persons, individuals with impaired decision-making capacity, or economically or educationally disadvantaged persons, additional safeguards have been included in the study to protect the rights and welfare of these subjects.

10.3.1 Risk/Benefit Assessment

The goal of the assessment is to ensure that the risks to research subjects posed by participation in the research are justified by the anticipated benefits to the subjects or society. Toward that end, the IRB must:

• Judge whether the anticipated benefit, either of new knowledge or of improved health or other direct benefit for the research subjects, justifies asking any person to undertake the risks; and

• Disapprove research in which the risks are judged unreasonable in relation to the anticipated benefits.

The assessment of the risks and benefits of proposed research involves a series of steps:

1. **Identify the risks** associated with the research, as distinguished from the risks of activities, diagnostic tests, treatments, or therapies the subjects would receive or undergo even if not participating in the research;

2. **Determine whether the risks will be minimized** to the extent possible by evaluating the necessity of procedures that impart risk and whether the data could be gained by procedures that are already being performed for other purposes or by alternative procedures that impart less risk;

3. **Identify the anticipated benefits** to be derived from the research, both direct benefits to subjects and possible benefits to society, science and others;

4. **Determine whether the risks are reasonable in relation to the benefits**, if any, and assess the importance of the knowledge that can reasonably be expected to result from the research.
In evaluating risks and benefits, the IRB should consider only those risks and benefits that may result from the research - as distinguished from risks and benefits subjects would receive even if not participating in the research.

The IRB should not consider possible long-range effects of applying knowledge gained in the research (e.g., the possible effects of the research on public policy) as among those research risks and benefits that fall within the purview of its responsibility.

The IRB should not consider any compensation that subjects may receive to be a benefit of the research.

When research subjects are assigned to different arms or otherwise undergo differing interventions, procedures, or exposures, the evaluation of risk and benefit should be made for each subject group (i.e., a “component analysis’). This is especially important when a subset of subjects will have no possibility of direct benefit but will be exposed to greater than minimal risks.

10.3.2 Scientific or Scholarly Review

In order to assess the risks and benefits of proposed research, the IRB must determine that:

- The research uses procedures consistent with sound research design; and
- The research design is sound enough to yield the expected knowledge.

In making this determination, the IRB may draw on its own knowledge and expertise, or the IRB may draw on the knowledge and expertise of others outside of the IRB. When scientific or scholarly review is conducted by an individual or entity external to the IRB, documentation of the outcome and details of that review must be provided to the IRB for review and consideration.

At MU, the IRB application asks whether scientific or scholarly review has been performed, and, if yes, for a copy of that review to be provided with the submission.

10.3.3 Equitable Selection of Subjects

The IRB evaluates whether the selection of subjects is equitable with respect to gender, age, class, etc. by reviewing the IRB application, protocol, and other materials and information. The IRB will not approve a study that does not provide adequately for the equitable selection of subjects or has not provided an appropriate scientific and ethical justification for excluding classes of persons who might benefit from the research. In making this determination, the IRB evaluates:

- The purposes of the research;
- The setting in which the research occurs;
- Scientific and ethical justification for including vulnerable populations or subjects vulnerable to coercion or undue influence such as children, prisoners, pregnant women, mentally disabled
persons, individuals with impaired decision-making capacity, or economically or educationally disadvantaged persons;

• The scientific and ethical justification for excluding classes of persons who might benefit from the research; and

• The inclusion/exclusion criteria, and the procedures/materials intended for use for the identification and recruitment of potential subjects.

At the time of the continuing review the IRB evaluates whether subject selection has been equitable.

10.3.3.1 Recruitment of Subjects

The investigator will provide the IRB with a plan for recruitment of potential subjects. All recruiting materials will be submitted to the IRB, including advertisements, flyers, scripts, information sheets and brochures. The IRB should ensure that the recruitment plan and materials appropriately protect the rights and welfare of the prospective subjects (e.g., do not present undue influence). See Section 10.4.9 for a discussion of IRB review of advertisements and Section 10.4.10 for a discussion of IRB review of payments.

10.3.4 Informed Consent

The IRB will ensure that informed consent will be sought from each prospective subject or the subject’s legally authorized representative (LAR), in accordance with, and to the extent required by 45 CFR 46.116 and 21 CFR 50.20. In addition, the IRB will ensure that informed consent will be appropriately documented, in accordance with, and to the extent required by 45 CFR 46.117 and 21 CFR 50.27. The IRB will ensure, as part of its review, that the information in the consent document and process is consistent with the research plan, and, when applicable, the HIPAA authorization. See Section 13 for a detailed discussion on informed consent.

10.3.5 Data and Safety Monitoring

For research that is more than minimal risk, the investigator should submit a data and safety monitoring (DSM) plan. The plan should describe the procedures for safety monitoring, reporting of unanticipated problems involving risks to subjects or others, descriptions of interim safety reviews and the procedures planned for providing DSM findings to the IRB. DSM may be performed by a researcher, medical monitor, safety monitoring committee, or other means.

The IRB reviews the safety monitoring plan and determines if it makes adequate provision for monitoring data to ensure the safety of subjects and for addressing problems that may arise over the course of the study. If a plan was not submitted, the IRB determines whether a plan is required, and, depending on the circumstances, what the plan should include. The overall elements of the monitoring plan depend on the potential risks, complexity, and nature of the research study.
The principles the IRB applies in evaluating the adequacy of a proposed DSM plan include:

- Monitoring should be commensurate with the nature, complexity, size, and risks of the research
- Monitoring should be timely. Frequency should be commensurate with risk. Conclusions are reported to the IRB
- For low risk studies, continuous, close monitoring by the study investigator or an independent party may be an adequate and appropriate format for monitoring, with prompt reporting of problems to the IRB, sponsor, and regulatory bodies, as applicable
- For greater than minimal risk studies that do not include a plan for monitoring by a Data Safety Monitoring Board (DSMB) or Data Monitoring Committee (DMC), and that are blinded, multi-site, involve vulnerable populations, or involve high-risk interventions or procedures, the IRB will carefully evaluate the proposed DSM plan and may require establishment of a DSMB, DMC, or other methods to enhance the monitoring and management of participant safety

Data and Safety Monitoring plans should specify:

- The entity or person(s) who will perform the monitoring, and the independence or affiliation that the entity or person(s) has with the sponsor or investigator
- The safety information that will be collected and monitored, including serious adverse events and unanticipated problems
- The frequency or periodicity of review of safety data
- The procedures for analysis and interpretation of the data
- The procedures for review of scientific literature and data from other sources that may inform the safety or conduct of the study
- The conditions that trigger a suspension or termination of the research (i.e., stopping rules), when appropriate
- The procedures for reporting findings to the IRB, including a summary description of what information, or the types of information, that will be provided

For a Data Safety Monitoring Board (DSMB) or Data Monitoring Committee (DMC), the plan should also describe the composition of the board or committee. Generally, a DSMB or DMC should be composed of experts in all scientific disciplines needed to interpret the data and ensure subject safety. Clinical trial experts, biostatisticians, bioethicists, and clinicians knowledgeable about the disease/condition and treatment under study should be part of the monitoring group or be available if warranted.

The National Institutes of Health (NIH) requires the establishment of DSMBs for multi-site clinical trials involving interventions that entail potential risk to the participants.
When DSMBs or DMCs are used, IRBs conducting continuing review of research may rely on a current statement, or the most recent report, from the DSMB or DMC which indicates that it has and will continue to review study-wide adverse events, study wide interim findings, and any recent literature that may be relevant to the research, in lieu of requiring that this information be submitted directly to the IRB.

10.3.6 Privacy and Confidentiality

The IRB will determine whether adequate procedures are in place to protect the privacy of subjects and to maintain the confidentiality of the data.

10.3.6.1 Definitions

**Privacy.** Having control over the extent, timing, and circumstances of sharing oneself (physically, behaviorally, or intellectually) with others. It is the state or condition of being free from unauthorized intrusion, being observed or disturbed by other people.

**Confidentiality.** Methods used to ensure that information obtained by investigators about subjects is not improperly divulged.

**Private information.** Information that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a medical record).

**Sensitive Information.** Data or information, on any storage media or in any form or format, which requires protection due to the risk of harm that could result from inadvertent or deliberate disclosure, unauthorized access, misuse, alteration, or loss or destruction of the information (e.g., could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subject’s financial standing, employability, or reputation).

**Identifiable information.** Information where the identity of the subject is or may readily be ascertained by the investigator or associated with the information.

10.3.6.2 Privacy

The IRB must determine whether the activities in the research appropriately protect the privacy of potential and enrolled subjects. In order to make that determination, the IRB must obtain information regarding how the investigators plan to access subjects or subjects’ private, identifiable information, and the subjects’ expectations of privacy in the situation. Investigators must have appropriate authorization to access the subjects or the subjects’ information.

In developing strategies for the protection of privacy, consideration is given to the:
• Methods used to identify and contact potential participants
• Settings where recruitment and research activities will occur
• Appropriateness of personnel and others present for research activities
• Methods to verify the identity of subjects prior to disclosing information (e.g., with phone calls)
• Methods used to obtain information about participants, and the nature of the requested information, including whether the data is the minimum necessary to achieve the aims of the research
• Information that is obtained about individuals other than the “target subjects”, (e.g., a subject provides information about a family member for a survey) and whether such individuals meet the regulatory definition of “human subject”

10.3.6.3 Confidentiality

The IRB must determine if appropriate protections are in place to minimize the likelihood that information about subjects or their participation in research will be inappropriately accessed or divulged. Safeguards designed to protect confidentiality should be commensurate with the potential of harm from unauthorized, inappropriate or unintentional disclosure.

The IRB assesses whether there are adequate provisions to protect data confidentiality by evaluating the methods used to obtain, record, share, and store information about individuals who may be recruited to participate in studies and about subjects. The investigator will provide the IRB with a plan regarding the procedures to be taken to protect the confidentiality of research data and sensitive information. The investigator will provide information regarding information security procedures and plans to address the protection of paper documents, other physical media (e.g., audio or videotapes), and electronic data, and information regarding the use, maintenance, storage, and transmission of information. The IRB will review the information received from the investigator and determine whether the confidentiality of research data is sufficiently protected. In some cases, the IRB may also require that a Certificate of Confidentiality is obtained to protect data from compelled disclosure (See Section 26.3).

In reviewing confidentiality protections, the IRB shall consider whether or not the data or other information accessed or gathered for research purposes is sensitive, and the nature, probability, and magnitude of harms that would be likely to result from a disclosure of collected information outside the research. The IRB will evaluate the effectiveness of proposed de-identification techniques, coding systems, encryption methods, methods of transmission, storage facilities, access limitations, and other relevant factors in determining the adequacy of confidentiality protections. In reviewing confidentiality protections, the IRB will also consider regulations and university requirements and policies regarding the use of information and information security.
Research regulated by the FDA that involves the use of electronic data collection/storage systems must comply with the requirements of 21 CFR Part 11.

10.3.7 Vulnerable Populations

Certain individuals, by nature of their age or mental, physical, economic, educational, or other circumstances, may be more vulnerable to coercion or undue influence than others. At the time of initial review, and when a proposed modification includes the involvement of vulnerable subject populations, the IRB will consider the scientific and ethical reasons for including vulnerable subjects in research. When appropriate, the IRB may determine and require that additional safeguards be put into place for vulnerable subjects, such as those without decision-making capacity.

For an extensive discussion about the IRB’s review process for specific populations of vulnerable subjects, please refer to Section 14.

10.4 Additional Considerations

10.4.1 Determination of Risk Level

At the time of initial review, the IRB will make a determination regarding the risks associated with the research. Risks associated with the research will generally be classified as either “minimal” or “greater than minimal” with additional classifications as required by the various subparts or FDA regulations. Risk determinations may vary over the life of a research study depending on the procedures and risks that subjects will be exposed to as the research progresses. Because of this, the IRB may reevaluate the risk determination with modifications to the research, at continuing review, and when new information becomes available. The level of risk associated with the research influences eligibility for expedited review. The meeting minutes will reflect the convened IRB’s determination regarding risk levels; expedited reviewers will document the determination of risk level on the reviewer’s checklist.

10.4.2 Period of Approval

At the time of initial review and at continuing review, the IRB will make a determination regarding the period of approval.

For research subject to the pre-2018 Common Rule, or FDA regulations: The IRB will conduct continuing review of research at intervals appropriate to the degree of risk but not less than once per year.

For research subject to the revised Common Rule (2018 requirements): The IRB will conduct continuing review of research requiring review by the convened IRB at intervals appropriate to the degree of risk of the research, but not less than once per year, except as described in Section 10.5.
In some circumstances, a review interval shorter than one-year (e.g., semi-annually, quarterly, or after accrual of a specific number of participants) may be required (see below). The meeting minutes will reflect the convened IRB’s determination regarding the period of approval; when applicable, expedited reviewers will document the period of approval on the reviewer’s checklist.

IRB approval is considered to have lapsed at midnight of the day of the expiration date of the approval (i.e., the expiration date is the last day research can be conducted). For a new study reviewed by the IRB, the approval commences on the date (approval date) when it has been verified that the requirements of the IRB have been satisfied following an action of “Conditions Required for Approval”. When continuing review is required, the expiration date, which is the date by which continuing review must occur, is:

- For expedited reviews, no later than one year from the date that the expedited reviewer last approved the study (without conditions)
- For studies reviewed by the convened the IRB, no later than one year from the date that the full board conducted its last initial, or continuing, review of the study (i.e., which may have resulted in either approval or conditional approval)

The approval date and approval expiration date, when applicable, are clearly noted on IRB determination letters and must be strictly adhered to. Investigators should allow sufficient time for development and review of continuing review submissions. As a courtesy, the IRB electronic system will send reminders to the investigator prior to the study’s expiration date, notifying him or her that the study is due for a continuing review or when approval has expired.

IRB review of a proposed modification to research ordinarily does not alter the date by which continuing review must occur. This is because continuing review is review of the full research project, not simply a change to it.

The regulations make no provision for any grace period extending the conduct of research beyond the expiration date of IRB approval. Therefore, continuing review and re-approval of research must occur before midnight of the date when IRB approval expires. If the IRB performs continuing review within 30 days before the IRB approval period expires, the IRB may retain the anniversary date as the date by which the continuing review must occur.

### 10.4.3 Review More Often Than Annually

The following factors will be considered when determining which studies require review more frequently than on an annual basis:

1. The probability and magnitude of anticipated risks to subjects;
2. The likely medical/psychological/social/legal/educational condition of the proposed subjects;
3. The overall qualifications of the investigator and other members of the research team;
4. The specific experience of the investigator and other members of the research team in conducting similar research;
5. The nature and frequency of adverse events observed in similar research at this and other institutions;
6. The novelty of the research making unanticipated adverse events/unanticipated problems more likely;
7. The involvement of especially vulnerable populations likely to be subject to undue influence or coercion (e.g., terminally ill);
8. A history of serious or continuing noncompliance on the part of the investigator; and
9. Any other factors that the IRB deems relevant.

In specifying an approval period of less than one year, the IRB may define the period with either a time interval or a maximum number of enrolled subjects. If a maximum number of subjects is used to define the approval period, it is understood that the approval period in no case can exceed one year (unless the study does not require continuing review). If an approval period of less than one year is specified by the IRB for research that is subject to continuing review, the reason for more frequent review must be documented in the minutes or the expedited reviewer’s checklist.

10.4.4 Independent Verification That No Material Changes Have Occurred

The IRB recognizes that protecting the rights and welfare of subjects sometimes requires that the IRB use sources other than the investigator to independently verify that no material changes have occurred since previous IRB review.

In support of this requirement, the MU IRB requires the submission of Other Reportable Information (See Section 19) including reports from external monitors, auditors, or inspectors (See Section 2.1). The IRB will also determine the need for verification from outside sources on a case-by-case basis. The following factors will be considered when determining which studies require independent verification:

1. The nature, probability, and magnitude of anticipated risks to subjects;
2. The degree of uncertainty regarding the risks involved;
3. Whether the research involves novel therapies or procedures;
4. The vulnerability(ies) of the subject population;
5. The projected rate of enrollment;
6. The experience and expertise of the investigators;
7. The IRB’s previous experience with the investigators or the sponsor (e.g., compliance history, complaints from subjects, etc.);
8. The probable nature and frequency of changes that may ordinarily be expected in the type of research;

9. Whether the research undergoes routine independent monitoring;

10. Whether concerns about possible material changes occurring without IRB approval have been raised based on information provided in continuing review reports or from other sources; and

11. Any other factors that suggest independent verification is warranted.

In making determinations about independent verification, the IRB may prospectively require that such verification take place at predetermined intervals or may require such verification at the time of any other review (e.g., continuation, modifications, interim reports) or when a complaint, concern, or allegation is received.

If any material changes have occurred without IRB review and approval, the IRB will decide the corrective action to be taken (see Section 17 on Noncompliance).

10.4.5 Consent Monitoring

In reviewing the adequacy of informed consent procedures for proposed research, the IRB may on occasion determine that monitoring of the consent process by an impartial observer (e.g., consent monitor) is required in order to reduce the possibility of coercion and undue influence, ensure that the approved consent process is being followed, or ensure that subjects are truly giving informed consent.

Such monitoring may be particularly warranted for:

1. High risk studies;

2. Studies that involve particularly complicated procedures or interventions;

3. Studies where recruitment will occur in situations or circumstances that may negatively impact the consent process (e.g., the Emergency Room);

4. Studies involving highly vulnerable populations (e.g., ICU patients, children who are wards);

5. Studies involving study staff with minimal experience in administering consent to potential study participants; or

6. Other situations when the IRB has concerns that the consent process may not be/is not being conducted appropriately (e.g., prior investigator noncompliance, etc.).

Monitoring may also be appropriate as a corrective action where the IRB has identified problems associated with a particular investigator or a research project.

If the IRB determines that consent monitoring is required, the IRB may consult with the ORC Director, IRB Chair, and others to develop an appropriate plan. The consent monitoring may be conducted by HRPP or IRB staff, IRB members, or another appropriate designee. The investigator will be notified of
the IRB’s determination and the reasons for the determination. Arrangements will be made with the investigator for the monitoring of the consent process, typically for a specified number of subjects. When warranted, the investigator may not be notified until after the observation has occurred. When observing the consent process, the monitor will evaluate whether:

1. The informed consent process was appropriately conducted and documented;
2. The participant had sufficient time to consider study participation, and to ask questions and have them answered;
3. The consent process involved coercion or undue influence;
4. The information was accurate and conveyed in understandable language; and
5. The subject appeared to understand the information and provided their voluntary consent.

Following the monitoring, a report of the findings will be submitted to the IRB, which will determine the appropriate action to be taken, if any.

10.4.6 Investigator Qualifications

The IRB reviews credentials, curriculum vitae, resumes, or other relevant materials to determine whether investigators and members of the research team are appropriately qualified to conduct the research. The IRB may rely upon other MU processes (e.g., credentialing) to inform this determination.

10.4.7 Significant New Findings

During the course of research, significant new knowledge or findings about the research, the test article, and/or the condition under study may develop. The investigator must report any significant new findings to the IRB and the IRB will review them and evaluate the impact on the subjects’ rights and welfare. When the new knowledge or findings may affect the risks or benefits to subjects or subjects' willingness to continue in the research, the IRB may require that the investigator contact subjects to inform them of the new information. The IRB will communicate this requirement to the investigator. If the study is still enrolling subjects, the consent document should be updated. The IRB may require that the currently enrolled subjects be re-consented or otherwise provided with the new information. When appropriate, the IRB may also require that former subjects be provided with the new information (e.g., late emerging safety information).

10.4.8 Conflicts of Interest (COI)

The IRB research application solicits information about investigator and research staff COI disclosure and whether any conflict management plans are in place. As part of its review process, the IRB will make a final determination as to whether any COI is adequately addressed and protects the human subjects in the research. Likewise, when there is a university COI, the IRB has final authority to...
determine whether the conflict and the management plan, if any, allow the study to be approved. (See Section 23 for a more detailed discussion of COI).

10.4.9 Advertisements and Recruitment Materials

The IRB must review and approve all advertisements and recruitment materials prior to posting, use, or distribution. The IRB will review:

- The information contained in the advertisement/recruitment material
- The mode/method of its communication;
- The final copy of printed advertisement/recruitment material
- The proposed script and final version of any audio/video advertisements/recruitment materials

This information must be submitted to the IRB with the initial application, or, if proposed after study approval, as a modification request.

The IRB reviews the material to assure that the material is accurate and is not coercive or unduly optimistic, creating undue influence on potential subjects to participate. This includes, but is not limited to the following (as applicable):

1. Statements implying a certainty of favorable outcome or other benefits beyond what was outlined in the consent form and the research plan;
2. Claims, either explicit or implicit, that the test article (drug, biologic or device) or intervention is safe or effective for the purposes under investigation;
3. Claims, either explicit or implicit, that the test article or intervention is known to be equivalent or superior to any other drug, biologic, device, or intervention;
4. Using terms like “new treatment,” “new medication,” or “new drug” without explaining that the test article or intervention is investigational;
5. Promising “free medical treatment” when the intent is only to say participants will not be charged for taking part in the investigation;
6. Emphasis on payment or the amount to be paid, such as bold type or larger font on printed media;
7. Offers for a coupon good for a discount on the purchase price of an investigational product once it has been approved for marketing; and
8. The inclusion of exculpatory language.

Recruitment materials should be limited to the information prospective subjects need to determine their eligibility and interest. When appropriately worded, the following items may be included:
1. The name and address of the investigator and/or research facility;
2. The condition being studied and/or the purpose of the research;
3. In summary form, the criteria that will be used to determine eligibility for the study;
4. The time or other commitment required of the subjects;
5. The location of the research and the person or office to contact for further information;
6. A clear statement that the activity is research and not treatment;
7. A brief list of potential benefits (e.g., no-cost health exam).

Once approved by the IRB, advertisements and recruitment materials cannot be altered or manipulated in any way without prior IRB approval.

Directory listings of research such as ClinicalTrials.Gov are not considered advertisements and therefore do not require IRB review and approval if the listing is limited to the following basic trial information: title, purpose of the study, summary description of the research, basic eligibility criteria, study site location(s), and how to contact the study site for further information.

The first contact prospective study subjects make is often with a person who follows a script to determine basic eligibility for the specific study. The IRB should review the script and procedures to ensure that the screening procedures adequately protect the rights and welfare of the prospective subjects.

10.4.10 Payments to Research Subjects

Payments to research subjects are commonly proposed as an incentive for participation in recognition of the time, effort, inconveniences, and discomforts that participation in the proposed research may entail. In contrast to payments, reimbursement is provided to cover actual costs incurred by subjects as a result of participation (e.g., travel, parking, lodging, etc.). Payment arrangements should be managed separately from reimbursement whenever possible because the ethical considerations differ (as well as the potential tax implications). Reimbursement offsets costs and may decrease financial risks associated with participation and in doing so may facilitate equitable selection of subjects. In contrast, the amount, timing, and nature of payments may unduly influence potential subjects’ decision-making, influencing them to accept discomforts or risks that they otherwise would find unacceptable and interfering with truly voluntary informed consent. Payment arrangements may also create issues with equitable selection of subjects, including the societal distribution of research risks and benefits and the generalizability of the research results.

The IRB must consider the proposed amount of payment, the method and timing of disbursement, the subject population, the recruitment methods and materials, and the information provided within the proposed consent form in order to evaluate the acceptability of a proposed payment plan. The IRB
does not consider payment as a benefit when weighing the risks and benefits of the research, payment is an incentive not a benefit of the research.

Investigators who wish to pay research subjects must include in their application to the IRB the amount and schedule of all payments and the justification or basis for payment. Such justification should substantiate that proposed payments are reasonable and commensurate with the time and inconveniences associated with study participation and do not constitute (or appear to constitute) undue pressure on the potential subject to volunteer for the research study.

When research involves multiple visits or interactions, payment should be prorated and not be contingent upon the participant completing the entire study. Further, any amount paid as a bonus for completion of the entire study should not be so great that it could unduly induce subjects to remain in the study when they otherwise would have withdrawn.

The consent form must describe the terms of payment including the amount and schedule of payments and any conditions under which subjects would receive partial payment (e.g., if they withdraw from the study before their participation is completed) or no payment.

Plans to reimburse subjects for incurred expenses must also be outlined in the application to the IRB and described within the consent.

MU has policies in place to address how and what information is collected and reported for subjects who receive the amount of compensation required to be reported to the Internal Revenue Service (IRS). Please see Section 10.4.12 for additional information. When applicable, the consent form must disclose the information that will be collected (e.g., Social Security Number), who will be provided or have access to the information, and the circumstances that necessitate IRS reporting.

10.4.11 Non-Monetary Gifts and Incentives

Similar to financial incentives, non-monetary gifts or incentives can also present problems of undue influence or coercion that impact a potential subject’s ability to fully and freely consider participation in research.

If subjects will be provided with non-monetary gifts or tokens of appreciation, such as course credit, totes, books, toys, or other non-monetary gifts or incentives, the approximate retail value must be described to the IRB and the IRB will be provided with a description, photo, or sample product to review.

The IRB will review all gifts and incentives being particularly sensitive to the influence of power or authority, whether perceived or actual, over free decision-making. Overt coercion (e.g., threatening loss of credit, or access to services or programs, to which the potential subjects are otherwise entitled) is never appropriate. Moreover, it must be clear that choosing to not participate will not adversely affect an individual’s relationship with the university or its staff or the provision of services in any way (e.g., loss of credits or access to programs).
Investigators should carefully structure incentives and methods of disbursement so that while the incentives may serve as a factor in a subject’s decision to participate, that they have not served to unduly influence participation.

10.4.12 MU Policies and Procedures regarding Payments and Non-Monetary Gifts and Incentives to Research Subjects

**Human research subject payment and Internal Revenue Service (IRS) reporting requirements**

Payments to human research subjects may be in the form of cash, cash equivalents (prepaid credit cards or gift cards) or small gifts of modest value. For small gifts, the items must be assessed a dollar value and counted towards the IRS $600 threshold.

Principal Investigators must establish controls to ensure that cash equivalents and small gift items are secured and used for their intended purpose. Upon receipt of the cash equivalents and small gift items the PI should document the items purchased/received. These items should be stored in a secure locked location at all times until distribution to research participants. When distributing the cash equivalents and small items a receipt log should be maintained including the participant’s name, address, the amount/value of the items and date of payment. Due to the sensitivity of the information on the receipt logs, they should be stored in a secure locked location at all times. All receipt logs must be submitted to the Controller’s Office.

**Human research subject payments to U.S. Citizens, Resident Aliens, and Permanent Residents**

If the cumulative amount of payments from all Monmouth University research studies, and other areas, in a calendar year is greater than $600 or more, IRS rules require the University to issue a Form 1099-MISC, Miscellaneous Income to any U.S. Tax Resident. In order to fulfill its tax due diligence and reporting responsibilities, the University requires all U.S. Citizen or Resident Alien research subjects to complete IRS Form W-9, Request for Taxpayer Identification Number and Certification. The W-9 form and instructions can be found on the IRS website at: https://www.irs.gov/pub/irs-pdf/fw9.pdf and https://www.irs.gov/instructions/iw9

**Human research subject payments to Non-Resident Aliens**

A nonresident alien is an individual who is not a U.S. citizen or a resident alien. A resident of a foreign country under the residence article of an income tax treaty is a nonresident alien for tax reporting and withholding purposes. All payments, regardless of the amount, made during a calendar year to a research subject who is a nonresident alien must be reported on Form 1042-S, Foreign Person’s U.S. Source Income Subject to Withholdings, and will be subject to 30% federal income tax withholding. The form and instructions can be found on the IRS website at: https://www.irs.gov/pub/irs-pdf/f1042s.pdf and https://www.irs.gov/instructions/i1042s

All nonresident alien research subjects are required to complete IRS Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting-Individuals. All

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payments to nonresident aliens must be processed through the Accounts Payable department in the form of check. Payments in the form of cash equivalents (prepaid credit cards or gift cards) or small gifts of modest value are prohibited. The form and instructions can be found on the IRS website at: https://www.irs.gov/pub/irs-pdf/fw8ben.pdf and https://www.irs.gov/pub/irs-pdf/iw8ben.pdf

Human Research Subject Payments to University Employees

Payments made to human research subjects who are also employees of the University are subject to the procedures detailed in this policy. Research study payments to a University employee can be made through Accounts Payable when the research study activities are separate and distinct from the employee’s job responsibilities. If the research study activities are not separate and distinct from the employee’s job responsibilities, research study payments must be made through the Payroll System.

Confidential Studies

For confidential studies, the procedures for obtaining the funds for payment are the same as described above. However, if collection of personal information of the research subject is reasonably likely to hinder the study or research subject participation an exception must be obtained by the IRB and University General Counsel in advance of the study commencing. Please take note in the following considerations as they relate to confidential human research studies:

- Payments may not be made in the total amount of $600 or more to any human research subject in a single calendar year, unless arrangements are made to obtain a completed W-9 or W-8BEN to enable the University to meet its tax reporting obligations.
- In lieu of providing a confidential human subject’s name on supporting paperwork, an identifying code or number must be assigned to each human research subject within the IRB that will be paid. A cross-reference list of the coded identification, including the human research subjects name and amount received, must be maintained on file in a secured manner by the Principal Investigator and the IRB office.

10.4.13 State and Local Laws

The IRB considers and adheres to all applicable state and local laws in the jurisdictions where the research is taking place. The HRPP and IRB rely on MU’s Office of the General Counsel for the interpretation and application of New Jersey law and the laws of any other jurisdiction where research is conducted as they apply to human subjects research. The IRB will ensure that consent forms are consistent with applicable state and local laws.

10.5 Continuing Review

For research subject to the pre-2018 Common Rule, FDA or DOJ regulations, and any research where continuing review is required by applicable regulations, policy, or other requirements: The IRB will conduct continuing review of research at intervals appropriate to the degree of risk but not less than
once per year. The date by which continuing review must occur will be recorded in the MU Study Report/in the IRB electronic system and on initial and continuing review approval letters. There are no exceptions to the requirement for continuing review in the pre-2018 Common Rule, or in FDA or DOJ regulations.

For research subject to the revised Common Rule (2018 requirements): The IRB will conduct continuing review of research requiring review by the convened IRB at intervals appropriate to the degree of risk of the research, but not less than once per year, except as described below. When applicable, the date by which continuing review must occur will be recorded in the MU Study Report/in the IRB electronic system and on initial and continuing review approval letters.

Unless an IRB determines otherwise, continuing review of research subject to the 2018 Common Rule (the revised Common Rule) is not required in the following circumstances:

- Research eligible for expedited review in accordance with 45 CFR 46.110;
- Research reviewed by the IRB in accordance with the limited IRB review described in Section 5.4;
- 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:
  - Data analysis, including analysis of identifiable private information or identifiable biospecimens, or
  - Accessing follow-up clinical data from procedures that subjects would undergo as part of clinical care.

MU IRB may determine that continuing review is required for any research protocol that falls within the above criteria. For example, the IRB may determine that continuing review is required when:

1. Required by other applicable regulations (e.g., FDA);
2. Required by the terms of a grant, contract, or other agreement;
3. Recommended by Federal guidance (e.g., OHRP recommends that IRBs require continuing review of research that falls within expedited categories 8(b) and 9);
4. The research involves topics, procedures, or data that may be considered sensitive or controversial;
5. The research involves particularly vulnerable subjects or circumstances that increase subjects’ vulnerability;
6. An investigator has minimal experience in research or the research type, topic, or procedures; and/or
7. An investigator has a history of noncompliance.
When the MU IRB determines that continuing review is required for such research, it will document the rationale in the IRB record and communicate the requirement to the investigator in the IRB determination letter.

Studies for which the IRB has determined that continuing review is not required are still subject to prompt reporting requirements (e.g., proposed amendments, unanticipated problems involving risk to subjects or others, protocol deviation/violations/non-compliance). They will also require submission of an annual progress report that will collect information regarding status of the research activity. Investigators will receive courtesy reminder e-mail notices for completion of the progress report. The ORC Director will review the report for compliance with university policies and procedures (verification of human subjects training, COI review, etc.). Failure to submit an annual progress report as required will constitute non-compliance with these SOPs and may result in suspension of the study until compliance with this policy is confirmed.

10.5.1 Continuing Review Process

As a courtesy to investigators, the HRPP Office will send out reminder notices to investigators three months, two months and again one month in advance of the expiration date; however, it is the investigator’s responsibility to ensure that the continuing review of ongoing research is approved prior to the expiration date. By federal regulation, no extension to that date can be granted.

Investigators must submit the following for continuing review, as applicable to the research:

1. The Continuing Review Application (this serves as the progress report);
2. The current protocol;
3. The current consent document and the most recent signed consent document (with the subject name and any other identifiers blacked-out);
4. Any updated risk information;
5. The most recent report from the Data Safety Monitoring Board, or Data Monitoring Committee, if required at time of initial IRB approval;
6. The most recent annual report or progress report to the FDA and/or funding agency;
7. Any proposed modifications to the research including any changes to materials;
8. Any previously un-submitted publications or presentations resulting from the research; and
9. Any previously un-submitted reports identified while completing the Continuing Review Application.
The IRB/IACUC Coordinator attends the convened meetings and will ensure that all members have access to the complete study files for each study on the agenda. IRB members can also request the study file or any additional materials from the IRB staff prior to the meeting.

In the case of expedited review, the reviewer may request that the IRB/IACUC Coordinator provides them with any additional materials required for their review.

10.5.2 IRB Considerations for Continuing Review

In order to re-approve research at the time of continuing review, the IRB must determine that the regulatory criteria for approval continue to be satisfied. Because the research was previously found to satisfy the criteria for approval, the IRB focuses its considerations at the time of continuing review on whether any new information is available that would affect the IRB’s prior determination that the criteria for approval are satisfied. The IRB pays particular attention to four aspects of the research:

1. Risk assessment and monitoring;
2. Adequacy of the informed consent process;
3. Local investigator and university issues; and
4. Research progress.

10.5.3 Convened Board Review

In conducting continuing review of research not eligible for expedited review, IRB members are provided all of the materials listed in Section 10.2.4 and are responsible for reviewing, at a minimum, the Continuing Review Application, the current IRB-approved consent form(s) (when applicable), and any proposed modifications to the research or consent form(s). The complete IRB file and relevant IRB meeting minutes are available to IRB members upon request. The Primary Reviewer is responsible for reviewing the complete materials submitted for continuing review and completing a reviewer checklist to facilitate the review and discussion at the meeting. At the meeting, the Primary and Secondary Reviewer (when assigned) assists the Chair by providing a summary of the research, their evaluation of the research and continuing review materials, and recommendations.

10.5.4 Expedited Review

In conducting continuing review under expedited procedures, the IRB Chair or designated reviewer(s) receive all of the previously noted materials. The reviewer(s) complete the continuing review checklist to determine whether the research meets the criteria allowing continuing review using the expedited procedure, and if so, whether the research continues to meet the regulatory criteria for approval.

For research subject to the pre-2018 Common Rule, or FDA or DOJ regulations:

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Generally, if research did not qualify for expedited review at the time of initial review, it does not qualify for expedited review at the time of continuing review, except in the limited circumstances described by expedited review categories (8) and (9) (see Expedited Review Categories in Section 10.1.2). It is also possible that research activities that previously qualified for expedited review, have changed or will change, such that expedited continuing review would no longer be permitted.

For research subject to the revised Common Rule (2018 requirements):
Generally, if research did not qualify for expedited review at the time of initial review, it does not qualify for expedited review at the time of continuing review, unless it has progressed to the point that it involves only one or both of the following:

- Data analysis, including analysis of identifiable private information or identifiable biospecimens, or
- Accessing follow-up clinical data from procedures that subjects would undergo as part of clinical care;

and in limited circumstances described by expedited review categories (8) and (9) (see Expedited Review Categories in Section 10.1.2).

When continuing review is not required (See Section 10.5) for research subject to the 2018 Common Rule and the IRB reviewer determines that continuing review is required, the reviewer shall document the rationale in the checklist.

10.5.5 Possible IRB Actions after Continuing Review

As with Initial Review, at the time of Continuing Review, the convened IRB or IRB Member(s) conducting expedited review may take any of the actions described in Section 9.

If an IRB member conducting expedited review believes that continuation of the research should be disapproved, they will refer the continuing review to the convened board for review. If the IRB has significant concerns the IRB may vote to suspend or terminate the research (See Section 11 for a detailed discussion of suspensions and terminations).

If a research study receives conditional approval at the time of the continuing review, the IRB will specify whether any conditions need to be satisfied before an investigator can continue particular research activities related to those conditions or requirements that must be adhered to until the conditions of approval have been satisfied. For example, if at the time of continuing review, the IRB requires the investigator to change the research protocol to include a specific new procedure for screening prospective subjects, the IRB could approve the research with the following condition: “Research activities involving currently enrolled subjects may continue, but no new subjects may be enrolled until a designated IRB member reviews a revised protocol and verifies that the protocol includes the new screening procedure”. Additionally, the IRB may specify a time period, such as 1, 2, or

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3 months, for the condition(s) to be satisfied as long as the activity with conditions is not begun or restarted until final approval is granted.

10.5.6 Lapses in Continuing Review

The regulations permit no grace period or approval extension after expiration of approval. Research that continues after the approval period has expired is research conducted without IRB approval. If re-approval does not occur within the time set by the IRB, all research activities must stop, including recruitment (media advertisements must be withdrawn), enrollment, consent, interventions, interactions, and data collection. This will occur even if the investigator has submitted the continuing review materials before the expiration date. Therefore, investigators must submit their continuing review materials enough in advance of expiration to allow sufficient time for IRB review before the expiration date.

When the IRB approves research with conditions at the time of continuing review before the expiration date of the preceding IRB approval period, IRB approval does not lapse if the investigator needs additional time – beyond the date on which the preceding IRB approval would have expired – to satisfy some or all of the IRB’s conditions. However, the investigator and the IRB should make every effort to resolve any conditions and finalize approval in as timely a manner as possible.

In the event that study approval does expire, the HRPP Office via email or electronic system sends a notification to the investigator noting the expiration of approval and instructions that all research activities must stop. If the investigator fails to respond to the notification and does not submit continuing review materials or a closure report within 60 days, the IRB/IACUC Coordinator may refer the matter to the IRB Chair to evaluate as possible noncompliance (See Section 17).

The lapse of IRB approval due to a failure to complete continuing review and obtain re-approval prior to expiration of the prior approval does not ordinarily constitute a suspension or termination of IRB approval, for federal reporting purposes; however, the failure to meet continuing review obligations may be grounds for suspension or termination of the research. If the IRB notes a pattern of noncompliance with the requirements for continuing review (e.g., an investigator repeatedly or deliberately neglects to submit materials for continuing review in a timely fashion or the IRB itself is not meeting the continuing review dates), the IRB should determine the reasons for the non-compliance and take appropriate corrective actions. When research is subject to federal reporting mandates, the IRB must report to FDA/OHRP any instance of serious or continuing noncompliance with FDA regulations or IRB requirements or determinations.

10.5.6.1 Management of Enrolled Subjects During Lapse

While enrollment of new subjects cannot occur after the expiration of IRB approval, the IRB recognizes that temporarily continuing participation of already enrolled subjects may be necessary or appropriate, for example, when the research interventions hold out the prospect of direct benefit to the subjects, or
when withholding those interventions or safety monitoring procedures would place subjects at increased risk. In these instances, the investigator must, at the earliest opportunity, contact the IRB office and submit a request to continue those research activities that are in the best interests of subjects. Such a request should specifically list the research activities that should continue, provide justification, and indicate whether the request applies to all or only certain subjects. The IRB Chair or designee will review the request and provide a determination regarding what activities, if any, may continue during the lapse. Such a determination may include a time limit or other conditions or restrictions. If the IRB decides that already enrolled subjects should continue to receive the interventions that were being administered to subjects under the research project, data collection (especially safety information) should also continue for such subjects.

When there is insufficient time to obtain an IRB determination (e.g., the study regimen includes daily administration of an investigational agent), the investigator may make an initial determination in consultation with the subjects' treating physician, if appropriate. In such cases, the investigator must, as soon as possible, contact the IRB office and submit a request for confirmation that the IRB agrees with the determination. The IRB Chair or designee will review the request and provide a determination. In the event that the IRB does not agree with the investigator's determination, or only agrees in part (e.g., agrees that some but not all of the activities are in the best interests of subjects), the IRB will notify the investigator who must then comply with the IRB’s requirements or request a re-review of the determination by providing additional justification or information that the IRB may not have considered.

10.6 Modification of an Approved Protocol

Investigators may wish to modify or amend approved research. **Investigators must obtain IRB approval before making any changes, no matter how minor, in approved research** unless the change is necessary to eliminate an apparent immediate hazard to the subject (in which case the IRB must then be notified at once).

Investigators should consider whether the proposed changes to the research alter the original scope, purpose, or intent of the research. When the research itself is fundamentally changed, the IRB will typically require a new study application rather than allow such changes to be made through a modification to the existing research plan.

10.6.1 Procedures

Investigators proposing to modify a study must submit a Modification Request Form and all supporting documents identified in the form via email to irb@monmouth.edu (or the IRB Electronic System, as applicable) for review. The modifications may not be implemented until the IRB has reviewed and approved the proposed changes. When the modification involves the addition of investigators or study personnel, the investigators/personnel may not assume any study responsibilities involving human subjects or their identifiable data until the IRB has approved their participation.
The IRB/IACUC Coordinator will review the submission and make an initial determination whether the proposed changes may be approved through an expedited review process (i.e., changes to expedited research that do not alter the eligibility of the research for expedited review or minor changes to convened board studies) or whether the modification warrants convened board review. The IRB reviewer(s) using the expedited procedure has the ultimate responsibility to determine that the proposed changes may be approved through the expedited review procedure and, if not, must refer the research study for convened board review.

10.6.2 Convened Board Review of Modifications

When a proposed change in a convened board research study is not minor, or when a proposed change to an expedited study renders it no longer eligible for expedited review, the IRB must review and approve the proposed change at a convened meeting before the change can be implemented. The only exception is implementation of a change necessary to eliminate apparent immediate hazards to the research subjects. In such a case, the IRB must be promptly informed of the change following its implementation and will review the change to determine whether it was consistent with ensuring the subjects' continued welfare.

All IRB members are provided and review all documents provided by the investigator. The complete IRB file and relevant IRB meeting minutes are available to IRB members upon request. The Primary Reviewer completes a review checklist to facilitate the review process and discussion at the meeting.

At the meeting, the Primary Reviewer presents an overview of the proposed modifications and assists the IRB Chair in leading the IRB through the criteria for approval and evaluating whether the modification alters any previous determinations (e.g., the risk determination), or necessitates any additional determinations (e.g., for vulnerable populations).

When the IRB reviews modifications to previously approved research, the IRB considers whether information about those modifications might relate to subjects’ welfare or willingness to continue to take part in the research, and, if so, whether to provide that information to future, current, or past subjects.

10.6.3 Expedited review of Modifications

An IRB may use expedited review procedures to review changes to expedited research (as long as the proposed changes would not make the research no longer eligible for expedited review) and for minor changes to studies normally subject to convened IRB review. An expedited review may be carried out by the IRB Chair or the experienced members that have been designated by the Chair to conduct expedited reviews.

Expedited reviewer(s) complete a reviewer checklist to determine whether the modifications meet the criteria allowing review using the expedited procedure, and, if so, whether the research with the proposed modifications continues to meet the regulatory criteria for approval. The reviewer(s) will
also evaluate whether the modification alters any previous determinations (e.g., a Subpart determination), or necessitates any additional determinations (e.g., for vulnerable populations).

The reviewer will also consider whether information about the modifications might relate to future, current, or past subjects’ welfare or willingness to continue to take part in the research, and, if so, whether to provide that information to subjects.

10.6.4 Possible IRB Actions after Modification Review

As with initial review, the convened IRB or IRB Member(s) conducting expedited review may take any of the actions described in Section 9.

If an IRB member conducting expedited review believes that the proposed modifications should be disapproved, they will refer the proposed modification to the convened board for review. If the proposed changes raise significant concerns on the part of the IRB, the IRB may vote to suspend or terminate the research (See Section 11 for a detailed discussion of suspensions and terminations).

10.6.5 Protocol Exceptions

Protocol exceptions are circumstances in which the investigator wishes to deviate from eligibility criteria or one or more of the specific procedures called for in a research plan. Unlike modifications that apply to all subsequent subjects in the research, a protocol/research plan exception only applies to a specific subject or group of subjects.

Exceptions are planned, and the investigator gets approval from the IRB ahead of time. For sponsored research, prior approval from the sponsor is generally required. Depending on the nature of the exception, an expedited review may be possible. For an exception to be approved under expedited review, the research as a whole must be eligible for expedited review, or, for convened board research, the proposed exceptions must not increase risk or decrease benefit, negatively impact the risk/benefit analysis, negatively affect the participant’s rights, safety, or welfare, or negatively affect the integrity of the resultant data.

Procedures for exceptions are the same as for a Protocol Modification. The investigator must submit a “Modification Request Form” along with any new or revised materials, and documentation of sponsor approval, if applicable.

The only time a protocol/Research Plan exception would not require prior sponsor or IRB approval is when the exception is necessary to avoid an apparent immediate hazard to the subject(s). In such cases, the exception must be submitted to the IRB as soon as possible.

10.7 Closure of Research Studies

The completion or early termination of the study is a change in research activity and must be reported to the IRB. Although subjects will no longer be "at risk" under the study, a final report to the IRB allows
it to close its files as well as providing information that may be used by the IRB in the evaluation and approval of related studies.

Studies may be closed when the involvement of human subjects ceases (interventions, interactions, observations, and the gathering, use, study, and analysis of identifiable private information, including specimens, are all complete).

For multi-center research, the study may be closed once all research activities (as above) are complete at MU and any sites for which the IRB is serving as the “IRB of record”. If the investigator is serving as the lead investigator or the site is the coordinating center, the study must remain open as long as the lead investigator or coordinating center is still receiving, studying, using, or analyzing identifiable private information from other sites (even if local interventions, interactions, observations, and data gathering is complete).

Investigators may submit study closures to the IRB on a Continuing Review/Study Closure Form. With closure submissions, the investigator must provide a summary of the research activity and any findings available at that time.

Investigators may maintain the data that they collected, including identifiable private data, if this is consistent with the IRB-approved research plan. However, investigators may not conduct any additional analysis of identified data without applying for IRB approval or exemption. Investigators must continue to protect the confidentiality of the data as described to the IRB and honor any other commitments that were agreed to as part of the approved research including, for example, future use of data or specimens, provision of research results to subjects, and provision of any outstanding payments or compensation.

The IRB will review study closure reports, typically by expedited review, and either approve the closure of the study or request additional information or confirmation of facts from the investigator.

11 Suspensions and Terminations

11.1 Suspension/Termination

IRB approval may be suspended or terminated if research is not being conducted in accordance with IRB or regulatory requirements or has been associated with unexpected problems or serious harm to subjects. (See Section 16 for a discussion of unanticipated problems and Section 17 for a discussion of noncompliance.) The IRB’s authority to suspend or terminate research applies to all research subject to IRB approval, including exempt research with limited IRB review and research for which continuing review is no longer required.

The Institutional Official and ORC Director has the authority to suspend or terminate the university’s approval for research. Such actions will be promptly reported to the IRB so that the IRB can review the circumstances and take any necessary actions relevant to IRB review and oversight.
Suspension of IRB approval is a directive of the convened IRB or IRB Chair to temporarily stop some or all previously approved research activities. The IRB Chair may temporarily suspend IRB approval, in part or in full, when the available information suggests that actions must be taken to protect human subjects or the integrity of the research, prior to the next convened meeting of the IRB. Temporary suspensions by the Chair will be reported to the convened IRB at the next scheduled meeting at which time the convened IRB will determine if the suspension should continue, be lifted, or be modified. Suspended research studies remain open and require continuing review. Investigators must continue to provide reports to both the IRB and sponsors just as if there had never been a suspension (i.e., all items that need to be reported during a study need to continue to be reported during the suspension period).

When approval of some or all research activities is suspended by the IRB, the IRB will consider whether subjects should be notified and any actions necessary to ensure that the rights, safety, and welfare of subjects are appropriately protected.

The IRB will notify the investigator of suspensions in writing; a call or email may precede the written notice when appropriate. Written notices of suspensions will include a statement of the reason(s) for the IRB’s action and any requirements or conditions associated with the suspension (e.g., notification of subjects). The investigator will be provided with an opportunity to respond in person or in writing.

Suspensions of IRB approval must be reported promptly to the IO, sponsors including federal department or agency heads, and federal oversight agencies as applicable. See Section 20 for a detailed discussion of reporting requirements.

Termination of IRB approval is a directive of the convened IRB to permanently stop all activities in a previously approved research study. Terminated research studies are closed and no longer require continuing review. Terminations of IRB approval of research studies must be made by the convened IRB.

When study approval is terminated by the IRB, in addition to stopping all research activities, the IRB will consider notification of subjects and any actions necessary to ensure that the rights, safety, and welfare of subjects are appropriately protected.

The IRB will notify the investigator of terminations in writing; a call or email may precede the written notice when appropriate. Written notices of terminations will include a statement of the reasons for the IRB’s action and any requirements associated with the termination (e.g., notification of subjects). The investigator shall be provided with an opportunity to respond in person or in writing.

Terminations of IRB approval must be reported promptly to the IO, sponsors including federal department or agency heads, and federal oversight agencies as applicable. See Section 20 for a detailed discussion of reporting requirements.
11.2 Protection of Currently Enrolled Participants

Before a termination or suspension is put into effect the IRB Chair or convened IRB considers whether any additional procedures need to be followed to protect the rights and welfare of current participants. Such procedures might include:

- Transferring subjects to another investigator/site
- Making arrangements for clinical care outside the research
- Allowing continuation of some research activities under the supervision of an independent monitor
- Requiring or permitting follow-up of subjects for safety reasons
- Requiring adverse events or outcomes to be reported to the IRB and the sponsor
- Notification of current subjects
- Notification of former subjects
12 Documentation and Records

MU prepares and maintains adequate documentation of the IRB’s activities. All records are accessible for inspection and copying by authorized representatives of the FDA, OHRP, sponsors, and other authorized entities at reasonable times and in a reasonable manner. Such audits shall be conducted during normal business hours and in such a manner as to not interfere unreasonably with the operations of the university.

12.1 IRB Records

IRB records include, but are not limited to:

1. Written operating procedures;
2. IRB membership rosters;
3. IRB member files including documentation of appointments, experience, education/training, and expertise;
4. IRB correspondence including reports to regulatory agencies;
5. IRB Protocol Files (See Section 12.2);
6. Documentation of exemptions including exemptions related to emergency uses and when limited IRB review is a condition of exemption)
7. Convened IRB meeting minutes;
8. Documentation of review by an external IRB, when appropriate;
9. Documentation of IRB reliance and cooperative review agreements;
   a. For nonexempt research involving human subjects covered by the 2018 revised Common Rule (or exempt research for which limited IRB review takes place as described in Section 5.4) that takes place at an institution in which IRB oversight is conducted by an IRB that is not operated by the university, the university and the institution operating the IRB shall document the university’s reliance on the IRB for oversight of the research and the responsibilities that each entity will undertake to ensure compliance with the requirements of this policy [the Common Rule] (e.g., in a written agreement between the university and the IRB, by implementation of an university-wide policy directive providing the allocation of responsibilities between the university and an IRB that is not affiliated with the university, or as set forth in a research protocol);
10. Documentation of independent or external investigator agreements;
11. Federal Wide Assurances;
12. Federal IRB Registrations; and  
13. Documentation of complaints and any related findings and/or resolution.

12.2 IRB Protocol Files

The IRB maintains a separate file for each protocol (including expanded access), Humanitarian Use Devise (HUD), emergency use, or report it receives for review in the IRB electronic system under a unique identification number assigned by the system. As applicable, protocol files include, but are not limited to the following:

1. The initial application and all associated documents and materials;
2. Modification requests and all associated documents and materials;
3. Continuing review/progress reports and all associated documents and materials, including the rationale for conducting continuing review of research that otherwise would not require continuing review under the revised Common Rule as described in Section 10.5;
4. Closure reports and all associated documents and materials;
5. Reports submitted after study or HUD approval including reports of significant new findings, data and safety monitoring reports, protocol violation reports, complaints, noncompliance, and reports of injuries to subjects including reports of potential unanticipated adverse device events and unanticipated problems involving risks to subjects or others;
6. IRB-approved consent, parental permission, and assent forms;
7. DHHS-approved sample consent form and protocol;
8. DHHS grant application
9. IRB reviewer forms and checklists (when expedited and full review procedures are used);
10. Documentation of scientific or scholarly review (if available);
11. Documentation of the type of IRB review. For exempt determinations and expedited review, this will include the category or basis under which the review is allowed;
12. For expedited review, documentation of any findings and determinations required by the regulations and study-specific findings supporting those determinations, including, but not limited to, waiver or alteration of consent, waiver of documentation of consent, research involving pregnant women, fetuses, and neonates, research involving prisoners, and research involving children. For research reviewed by the convened board these findings and determinations are recorded in the minutes;
13. **For research subject to the pre-2018 Common Rule, or FDA or DOJ regulations:** For expedited review, documentation of the risk determination and period of approval. For research reviewed by the convened board these determinations are recorded in the minutes;

14. **For research subject to the revised Common Rule (2018 requirements):** For expedited review, the rationale for an expedited reviewer’s determination under 45 CFR 46.110(b)(1)(i) that research appearing on the expedited review list described in 45 CFR 46.110(a) is more than minimal risk. For research reviewed by the convened board the risk determination and period of approval, when applicable, are recorded in the minutes.

15. Documentation of all IRB review actions;

16. Notification of expiration of IRB approval to the investigator;

17. Notification of suspension or termination of research;

18. Letters to investigator informing them of IRB review outcomes;

19. IRB correspondence to and from investigators related to the protocol;

20. All other IRB correspondence related to the research;

21. For studies evaluating the safety or effectiveness of medical devices, documentation of the device determination (exempt, non-significant risk, significant risk);

22. Reports of unanticipated problems involving risk to subjects or others; and

23. Any statements of significant new findings provided to subjects.

### 12.3 The IRB Minutes

Draft minutes of IRB meeting proceedings are written and generally available for review and approval by the IRB members by the next regularly scheduled IRB meeting. Once reviewed and approved by the members, a copy is sent to the IO. Changes may not be made to finalized minutes without re-review by the IRB to verify accuracy.

Minutes of IRB meetings must contain sufficient detail to show the following, as applicable:

1. **Attendance**
   a. Each member’s (or alternate’s) full name;
   b. Each member’s (or alternate’s) representative capacity (e.g., scientist, non-scientist, unaffiliated)
   c. The names of members or alternate members who are participating through videoconference or teleconference and documentation that those attending
remotely received all pertinent material prior to the meeting and were able to actively and equally participate in all discussions;

d. Names of alternates attending in lieu of specified (named) absent members. (Alternates may substitute for specific absent members or categories of members only as designated on the official IRB membership roster);

e. Names of any consultants present, a brief explanation of their expertise, and documentation to support that the consultant(s) did not vote;

f. The names of non-members and guests in attendance, such as IRB staff, investigators, and study coordinators

Note: The minutes will indicate, by name, those members who enter or leave the meeting. The vote on each action will reflect the numbers of members present for the vote on that item.

2. The presence of a quorum throughout the meeting, including the presence of one member whose primary concern is in a non-scientific area;

3. When both a member and an alternate are present, the minutes will reflect if and when the alternate substituted for the member. Generally, the member votes, but an alternate may substitute when appropriate (e.g., the member has a conflict of interest, the alternate has needed expertise, etc.);

4. Business Items discussed, and any education provided;

5. Actions taken, including separate deliberations, actions, and votes for each submission undergoing review by the convened IRB;

6. Vote counts on these actions (Total Number Voting; Number voting for; Number voting against; Number abstaining; Number of those recused). When a member is recused due to conflict of interest, the name of the member and reason for the recusal will be noted;

7. Basis or justification for actions disapproving or requiring changes in research;

8. Summary of controverted issues and their resolution;

9. Approval period for initial and continuing reviews, when applicable, including identification of research that warrants review more often than annually and the basis for that determination;

10. The rationale for requiring continuing review of research that otherwise would not require continuing review as described in Section 10.5;

11. Risk determination for initial and continuing reviews, and modifications when the modification alters the prior risk determination;
12. Justification for deletion or substantive modification of information concerning risks or alternative procedures contained in the DHHS-approved sample consent document;

13. Study-specific findings supporting that the research meets each of the required criteria when approving a consent procedure that does not include or that alters some or all of the required elements of informed consent, or when waiving the requirement to obtain informed consent altogether;

14. Study-specific findings supporting that that the research meets each of the required criteria when the requirements for documentation of consent are waived;

15. Study-specific findings supporting that the research meets each of the criteria for approval for vulnerable populations under any applicable Subparts;

16. Exempt/significant risk/non-significant risk device determinations and the basis for those determinations;

17. Determinations related to conflicts of interest and acceptance or modification of conflict management plans;

18. Identification of any research for which there is need for verification from sources other than the investigator that no material changes are made in the research;

19. Review and determinations related to interim reports (e.g., unanticipated problems or safety reports, serious or continuing noncompliance, suspensions or terminations, etc.);

20. A list of research approved under expedited review procedures, including limited IRB reviews conducted using expedited procedures, since the time of the last such report;

21. An indication that, when an IRB member or alternate has a conflicting interest (see Section 23.2) with the research under review, the IRB member or alternate was not present during the final deliberations or voting; and

22. Key information provided by consultants will be documented in the minutes or in a report provided by the consultant.

12.4 IRB Membership Roster

A membership list of IRB members will be maintained; it will identify members sufficiently to describe each member’s chief anticipated contributions to IRB deliberations. The list will contain the following information about members:

1. Name;

2. Earned degrees;
3. Employment or other relationship between each member and the university (i.e., affiliated or non-affiliated with the university). To be categorized as non-affiliated, neither the member nor an immediate family member of the member may be affiliated with MU.

4. Status as scientist or non-scientist. Members whose training, background, and occupation would incline them to view scientific activities from the standpoint of someone within a behavioral or biomedical research discipline are considered a scientist for the purposes of the roster. Members whose training, background, and occupation would incline them to view research activities from a standpoint outside of any biomedical or behavioral scientific discipline are considered a nonscientist. Physicians, nurses, and pharmacists are considered scientists;

5. Indications of experience, such as board certifications, licenses, and areas of practice sufficient to describe each member's chief anticipated contributions to IRB deliberations;

6. Representative capacities of each IRB member; including which IRB member(s) is a prisoner representative, and which IRB members are knowledgeable about or experienced in working with children, pregnant women, adults with impaired decision-making capacity, and other vulnerable populations or other subjects vulnerable to coercion or undue influence commonly involved in MU research;

7. Role on the IRB (Chair, Vice-Chair, etc.);

8. Voting status; and

9. For alternate members, the primary member or class of members for whom the member could substitute.

The IRB office must keep the IRB membership list current. Changes in IRB membership are reported to OHRP and FDA on the federal IRB registration within 90 days of the change.

12.5 Documentation of Exemptions

Documentation of verified exemptions consists of the reviewer’s citation of a specific exempt category and written concurrence that the activity described in the investigator’s request satisfies the conditions of the cited exempt category as detailed in Section 5. When an exemption includes limited IRB review under the revised Common Rule (2018 requirements), the documentation will include this fact and the IRB action taken on those aspects of the research subject to limited IRB review in accordance with the procedures described for the review procedures used (expedited or convened board) elsewhere in this manual.
12.6 Documentation of Expedited Reviews

IRB records for initial and continuing review by the expedited procedure must include the reviewer’s verification that the study qualifies for expedited review including the specific permissible category(ies) or status as exempt but requiring limited IRB review, documentation that the activity satisfies the criteria for approval, the period of approval (when applicable), and any determinations required by the regulations including study-specific findings justifying the following determinations:

1. Approving a procedure which waives or alters the informed consent process;
2. Approving a procedure which waives the requirement for documentation of consent;
3. Approving research involving pregnant women, human fetuses, or neonates;
4. Approving research involving prisoners;
5. Approving research involving children.

12.7 Access to IRB Records

IRB protocol files are secured in the IRB electronic system with administrative access controlled by the IRB office. Likewise, investigators control access to investigator records in the electronic system. All other IRB records (e.g., membership rosters) are kept secure in a limited access file on MU’s servers, locked filing cabinets or locked storage rooms.

Ordinarily, access to IRB records is limited to the IO, ORC Director, IRB/IACUC Coordinator, IRB members, authorized university officials, and officials of federal and state regulatory agencies (e.g., OHRP and FDA). Research investigators are provided reasonable access to files related to their research. Appropriate accreditation bodies are provided access.

Records are accessible for inspection and copying by authorized representatives of federal regulatory agencies during regular business hours.

IRB member rosters are only provided to regulatory agencies, accreditation bodies, and persons or offices within MU with a legitimate need (e.g., Office of the General Counsel, Office of Compliance, Office of Internal Audit). A memorandum documenting compliance with pertinent federal rules and regulations, IRB membership requirements, and with MU’s Federalwide Assurance is available and will be provided to sponsors and others upon request.

All other access to IRB records is limited to those who have legitimate need for them, as determined by the IO, ORC Director, or IRB/IACUC Coordinator.
12.8 Record Retention

In order to comply with the requirements of OHRP, FDA, and HIPAA, IRB records are maintained for at least six (6) years after completion of the research.

IRB records for research cancelled without participant enrollment will be retained for at least three (3) years after closure.

IRB minutes are retained until all of the studies that were reviewed at that meeting have been completed for at least three (3) years.

After the noted times, IRB records may be shredded or otherwise securely destroyed.
13 Obtaining Informed Consent from Research Subjects

The requirement to obtain the legally effective informed consent of individuals before involving them in research is one of the central protections provided for by the federal regulations and MU’s HRPP. Investigators are required to obtain legally effective informed consent from a subject or the subject’s legally authorized representative (LAR) unless the requirement has been waived by the IRB of record. When informed consent is required, it must be sought prospectively, and properly documented. Except as provided in Sections 13.10 and 13.11 of these procedures, informed consent must be documented using a written consent form approved by the IRB.

The IRB will evaluate both the consent process and the procedures for documenting informed consent to ensure that adequate informed consent is obtained from participants. The informed consent process involves three key features: (1) disclosing to the prospective human subject information needed to make an informed decision; (2) facilitating the understanding of what has been disclosed; and (3) promoting the voluntariness of the decision about whether or not to participate in the research. The informed consent process is the critical communication link between the prospective human subject and an investigator, beginning with the initial approach by an investigator and continuing through the completion of the research study. The process of obtaining informed consent must allow for a dialogue so that the potential subject has the opportunity to ask questions and receive responses. Investigators must obtain consent prior to entering a subject into a study, gathering data about a subject, and/or conducting any procedures required by the research plan, unless consent is waived by the IRB. See Section 13.10.1 for an exclusion for certain screening and recruitment activities.

If someone other than the principal investigator obtains consent, the investigator needs to formally delegate this responsibility, and the person so delegated must have received appropriate training to perform this activity. Consent delegates must be knowledgeable about the research to be conducted and the consent process and must have the expertise be able to answer questions about the study including those regarding risks, procedures, and alternatives. The MU IRB application solicits information regarding who will obtain consent; proposed changes to the personnel authorized to obtain consent must be submitted to the MU IRB for approval.

Sample or draft consent documents may be developed by a sponsor or network. However, the IRB of record is the final authority on the content of the consent documents that are presented to prospective subjects.

The following procedures describe the requirements for obtaining consent from subjects in research conducted under the auspices of MU. When the MU IRB is serving as the IRB of record for external sites or personnel, the below requirements may be adapted as appropriate based upon the local context where the research will occur (e.g., who may serve as a LAR).
13.1 General Requirements

Except as provided elsewhere in these Standard Operating Procedures:

For research subject to the pre-2018 Common Rule, or FDA or DOJ regulations:

No investigator may involve a human being as a subject in research unless the investigator has obtained the legally effective informed consent of the subject or the subject's LAR. An investigator shall seek such consent only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. The information that is given to the subject or the representative shall be in language understandable to the subject or the representative. No informed consent, whether oral or written, may include any exculpatory language through which the subject or the representative is made to waive or appear to waive any of the subject's legal rights, or releases or appears to release the investigator, the sponsor, the institution or its agents from liability for negligence.

For research subject to the revised Common Rule (2018 requirements):

1. Before involving a human subject in research, an investigator shall obtain the legally effective informed consent of the subject or the subject’s LAR.

2. An investigator shall seek informed consent only under circumstances that provide the prospective subject or the LAR sufficient opportunity to discuss and consider whether or not to participate, and that minimize the possibility of coercion or undue influence.

3. The information that is given to the subject or the LAR shall be in language understandable to the subject or the LAR.

4. The prospective subject or the LAR must be provided with the information that a reasonable person would want to have in order to make an informed decision about whether to participate, and an opportunity to discuss that information.

5. Informed consent must begin with a concise and focused presentation of the key information that is most likely to assist a prospective subject or LAR in understanding the reasons why one might or might not want to participate in the research. This part of the informed consent must be organized and presented in a way that facilitates comprehension.

6. Informed consent as a whole must present information in sufficient detail relating to the research, and must be organized and presented in a way that does not merely provide lists of isolated facts, but rather facilitates the prospective subject’s or LAR’s understanding of the reasons why one might or might not want to participate.
7. No informed consent may include any exculpatory language through which the subject or the LAR is made to waive or appear to waive any of the subject’s legal rights, or releases or appears to release the investigator, the sponsor, the institution, or its agents from liability for negligence.

These informed consent requirements are not intended to preempt any applicable federal, state, or local laws (including tribal laws passed by the official governing body of an American Indian or Alaska Native tribe) that have additional requirements for informed consent to be legally effective.

Access to Medical Research Act, N.J.S.A §26:14-1 et. seq.):

1. For medical research on persons with cognitive impairments, lack of capacity, or serious physical or behavioral conditions and life-threatening diseases that are approved by the IRB that either: (a) offers the prospect of direct benefit to the individual subject, provided that the institutional review board has determined that the risk is justified by the anticipated benefits to the subject and that the relation of the anticipated benefit to the risk is at least as favorable to the subject as that presented by available alternative approaches. If a currently recognized treatment exists, the subject or his guardian or authorized representative, as applicable, shall be presented with the choice of the recognized treatment and the research protocol; or (b) does not offer the prospect of direct benefit to the individual subject, provided that the institutional review board has determined that it: (i) is likely to yield generalizable knowledge about the subject's disorder or condition; (ii) by its very nature cannot be conducted without the participation of decisionally incapacitated persons as subjects; and (iii) involves no more than a minor increase over minimal risk.

“Minimal risk” means that the probability and magnitude of harm or discomfort anticipated in the research are not greater than those ordinarily encountered in daily life or during the performance of routine physical or psychological exams or tests.

2. Informed Consent means authorization given to participate in medical research performed on a subject after each of the following conditions are met:

   a. The subject or his guardian, or authorized representative, as applicable, is informed both verbally and within the written consent form, in nontechnical terms and in a language in which the subject or the subject's guardian or authorized representative is fluent, of the following facts that include:

   (1) an explanation of the procedures to be followed in the research and any drugs or devices to be utilized, including the purposes of the procedures, drugs, or
devices and, when applicable, the use of placebo controls and the process by which persons will be assigned to control groups;

(2) a description of any attendant discomfort and reasonably foreseeable risks to the subject;

(3) an explanation of any potential direct benefits to the subject. If no such direct benefits are reasonably expected, that fact should be made clear;

(4) a disclosure of any appropriate alternative procedures, drugs or devices that might be advantageous to the subject, and their relative risks and benefits;

(5) an estimate of the expected duration of the research procedure or study;

(6) an offer to answer any inquiries concerning the research or the procedures involved and an explanation of whom to contact for answers to pertinent questions about the research and the research subject’s rights, and whom to contact in the event of a research-related injury;

(7) an instruction to the subject or his guardian or authorized representative, as applicable, that he is free to withdraw his prior consent to the medical experiment and discontinue participation in the research at any time, without prejudice to the subject;

(8) the name, institutional affiliation, if any, and address of the person or persons actually performing and primarily responsible for the conduct of the research;

(9) the name of the sponsor or funding source, if any, or manufacturer if the research involves a drug or device, and the organization, if any, under whose general aegis the research is being conducted;

(10) the name, address, and phone number of an impartial third party, not associated with the research, to whom the subject may address complaints about the research and the contact information for the institutional review board connected with the research; and

(11) the material financial stake or interest, if any, that the investigator or research institution has in the research. For purposes of this section, “material” means $10,000 or more in securities or other assets valued at the date of disclosure, or in relevant cumulative salary or other income, regardless of when it is earned or expected to be earned or as otherwise determined by the research institution.

b. The subject or his guardian or authorized representative, as applicable, has signed and dated a written consent form.

c. The written consent form is signed and dated by a person, who is not the subject, his guardian or authorized representative, or the researcher, and who can attest that the requirements for informed consent to the medical research have been satisfied.

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d. Consent is given voluntarily and freely by the subject or his guardian or authorized representative without the intervention of force, fraud, deceit, duress, coercion or undue influence.

3. Consent by persons unable to give consent; Surrogate Consent

a. For purposes of obtaining informed consent required for medical research, if a person who may be the subject of the research is unable to consent and does not express dissent or resistance to participation, surrogate informed consent may be obtained from an authorized representative with reasonable knowledge of the subject, who shall include any of the following persons, in the following descending order of priority:

   (1) the guardian of the subject who has the authority to make health care decisions for the subject;
   (2) the health care representative of the subject pursuant to an advance directive for health care;
   (3) the spouse or civil union partner, as applicable, of the subject;
   (4) the domestic partner of the subject;
   (5) an adult son or daughter of the subject;
   (6) a custodial parent of the subject;
   (7) an adult brother or sister of the subject;
   (8) an adult grandchild of the subject;
   (9) an available adult relative with the closest degree of kinship to the subject.

b. Inability to consent shall mean that a subject is unable to consent if he is unable to voluntarily reason, understand, and appreciate the nature and consequences of proposed health research interventions, including the subject's diagnosis and prognosis, the burdens, benefits, and risks of, and alternatives to, any such research, and to reach an informed decision.

All adults are presumed to have the ability to consent unless determined otherwise pursuant to this law or other provisions of State law.

A determination that a subject is unable to consent, as well as the extent of his incapacity and the likelihood that he will regain decision-making capacity, shall be made by an attending physician with no connection to the proposed research and shall be made to a reasonable degree of medical certainty.

A determination of incapacity shall promptly be given to the subject and to at least one person at the highest level reasonably available on the list of surrogates. Notwithstanding a determination of incapacity made pursuant to this section, a subject's objection to a determination of incapacity or objection to the proposed research intervention shall be binding, unless a court of competent jurisdiction determines that the subject lacks decision-making capacity.

c. For the purposes of this law:
(1) when there are two or more available persons who may give surrogate informed consent and who are in the same order of priority, if any of those persons expresses dissent as to the participation of the person in the research, consent shall not be considered as having been given; and
(2) when there are two or more available persons who are in different orders of priority, refusal to consent by a person who is a higher priority authorized representative shall not be superseded by the consent of a person who is a lower priority authorized representative.

d. An authorized representative as described in this law shall make decisions about participation in accordance with the subject's individual health care instructions, if any, and other wishes, to the extent known to the authorized representative. If the authorized representative does not have knowledge of any health care instructions or other wishes of the subject, or if the instructions or wishes do not clearly indicate what decision should be made, he shall make the decision in accordance with the subject's personal values and his best estimation of what the subject would have chosen if he were capable of making a decision.

e. The requirement for obtaining informed consent for medical research pursuant to this act shall not apply to any medical research with respect to a person who is subject to a life-threatening emergency in accordance with the conditions set forth in 21 C.F.R. §50.24.

f. The requirements for obtaining informed consent for medical research pursuant to this act may be altered or waived in accordance with the conditions set forth in 45 C.F.R. §46.116(d).

g. A person who provides surrogate consent pursuant to this section may not receive financial compensation for providing the consent.

h. Except as otherwise provided by law, the provisions of this section shall not override an advance directive for health care executed pursuant to N.J.S.A. §26:2H-53 et seq.

13.2 Additional Requirements

Informed consent must be obtained under the following circumstances:

1. Informed consent may only be obtained from subjects who have the legal and mental capacity to give consent. For subjects without that capacity, permission must be obtained from a legal guardian with appropriate authority to make decisions regarding the activities called for in the research or a legally authorized representative (LAR);

2. The informed consent information must be presented in language that is understandable to the subject (or LAR/guardian). To the extent possible, the language should be understandable by a person who is educated to 8th grade level and layman's terms shall be used in the description of the research. The IRB may require or allow
different readability standards based upon the characteristics of the target subject population;

3. For subjects with **Limited English Proficiency** (LEP), informed consent must be obtained in a language that is understandable to the subject (or LAR/guardian). In accordance with this policy, the MU IRB requires that informed consent discussions include a reliable interpreter when the prospective subject does not understand the language of the person who is obtaining consent, and, in most circumstances, that consent materials are translated; and

4. The investigator is responsible for ensuring that each prospective subject is adequately informed about all aspects of the research and understands the information provided.

### 13.3 Legally Authorized Representative (LAR)

A Legally Authorized Representative (LAR) is defined by [45 CFR 46.102(c)](https://www.hhs.gov/healthcare/privacy/laws-regulations/index.html) and [21 CFR 50.3](https://www.accessdata.fda.gov/cfrifr2.html) as “an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject's participation in the procedure(s) involved in the research.” If there is no applicable law addressing this issue, LAR means an individual recognized by institutional policy as acceptable for providing consent in the nonresearch context on behalf of the prospective subject to the subject’s participation in the procedure(s) involved in the research.

Except as set forth in the **Access to Medical Research Act, N.J.S.A §26:14-1 et. seq.**, New Jersey law does not specifically address informed consent by LARs of incapacitated persons for participation in clinical research. Thus, the applicable guidelines for determining the most appropriate LAR for research are based upon the guidelines that apply in the clinical setting.

For legally incompetent adults who are unable to make medical decisions, a legal representative (court appointed guardian) or durable power of attorney for health care must provide informed consent for non-emergent medical treatment. The legal guardian must be authorized by the court to make decisions regarding the types of activities, procedures, or treatments called for in the research to serve as LAR.

When the MU IRB serves as the IRB of record for external sites and the use of LARs is proposed, information regarding relevant state law and local policy will be sought (local context information) and applied.

LARs should be well informed regarding their roles and responsibilities when asked to provide surrogate consent. In addition to the consent information, LARs should be informed that their obligation is to try to determine what the potential subject would do if able to provide consent, or if the potential subject’s wishes cannot be determined, what they think is in the person's best interest.
Investigators must describe the intended use of LARs in their submission to the IRB. The IRB determines whether the use of LARs is appropriate for a given research study.

Further discussion and procedures for assessment of capacity and inclusion of adults with impaired decision-making capacity in research are described in Section 14.7.

### 13.4 Basic Elements of Informed Consent

To be valid, the consent process must provide the following basic elements of information to potential subjects:

1. A statement that the **study involves research**, an explanation of the **purposes** of the research and the **expected duration** of the subject's participation, a description of the **procedures** to be followed, and identification of any **procedures which are experimental**;

2. A description of any reasonably foreseeable **risks or discomforts** to the subject;

3. A description of any **benefits** to the subject or to others which may reasonably be expected from the research;

4. A disclosure of appropriate **alternative procedures** or courses of treatment, if any, that might be advantageous to the subject;

5. A statement describing the extent, if any, to which **confidentiality** of records identifying the subject will be maintained;

6. **For research involving more than minimal risk**, an explanation as to whether any compensation **and** an explanation as to whether any medical treatments are available if injury occurs **and**, if so, what they consist of, or where further information may be obtained;

7. An **explanation of whom to contact** for answers to pertinent questions about the research and research subjects' rights, **and** whom to contact in the event of a research-related injury to the subject;

8. Contact information for the research team for questions, concerns, or complaints.

9. Contact information for someone independent of the research team for problems, concerns, questions, or input.

10. A statement that participation is **voluntary**, refusal to participate will involve **no penalty or loss of benefits** to which the subject is otherwise entitled, and the subject may **discontinue participation** at any time without penalty or loss of benefits to which the subject is otherwise entitled;
11. For research subject to the revised Common Rule (2018 requirements): One of the following statements about any research that involves the collection of identifiable private information or identifiable biospecimens:

   a. A statement that identifiers might be removed from the identifiable private information or identifiable biospecimens and that, after such removal, the information or biospecimens could be used for future research studies or distributed to another investigator for future research studies without additional informed consent from the subject or the legally authorized representative, if this might be a possibility; or

   b. A statement that the subject’s information or biospecimens collected as part of the research, even if identifiers are removed, will not be used or distributed for future research studies.

12. For FDA-regulated studies, a statement that notes the possibility that the Food and Drug Administration may inspect the records;

13. For applicable FDA-regulated clinical trials, and for NIH-funded studies that fall within the scope of NIH’s registration & dissemination policy, the following statement must be included verbatim:

   “A description of this clinical trial will be available on http://www.ClinicalTrials.gov, as required by U.S. Law. This Web site will not include information that can identify you. At most, the Web site will include a summary of the results. You can search this Web site at any time.”

13.5 Additional elements of informed consent to be applied, as appropriate:

   1. A statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) which are currently unforeseeable;

   2. Anticipated circumstances under which the subject’s participation may be terminated by the investigator without regard to the subject’s consent;

   3. Any additional costs to the subject that may result from participation in the research;

   4. When applicable, the amount and schedule of all payments;

   5. The consequences of a subject’s decision to withdraw from the research and procedures for orderly termination of participation by the subject;
6. A statement that significant new findings developed during the course of the research which may relate to the subject’s willingness to continue participation will be provided to the subject;

7. The approximate number of subjects involved in the study;

8. **For research subject to the revised Common Rule (2018 requirements)-As Applicable:**
   a. A statement that the subject’s biospecimens (even if identifiers are removed) may be used for commercial profit and whether the subject will or will not share in this commercial profit;
   b. A statement regarding whether clinically relevant research results, including individual research results, will be disclosed to subjects, and if so, under what conditions;
   c. For research involving biospecimens, whether the research will (if known) or might include whole genome sequencing (i.e., sequencing of a human germline or somatic specimen with the intent to generate the genome or exome sequence of that specimen).

### 13.6 MU Requirements

In addition to the federal elements of consent described above, MU has defined specific additional information that must be included in consent documents when applicable to the research (e.g., 1099 language). They include:

If Payments, Non-Monetary Gifts and Incentives with be provided to research participants, language requiring completed Internal Revenue Tax forms must be included in the consent forms. Please refer to Section 10.4.12. If you have any questions regarding which language should be included, please contact the Office of the General Counsel for assistance.

### 13.7 Subject Withdrawal or Termination

A subject enrolled in a research study may decide to withdraw from the research, or an investigator may decide to terminate a subject’s participation in research regardless of whether the subject wishes to continue participating. Investigators must plan for the possibility that subjects will withdraw from research and include a discussion of what withdrawal will mean and how it will be handled in their research plans and consent documents.

When seeking informed consent from subjects, the following information regarding data retention and use must be included:
1. For FDA-regulated clinical trials: When a subject withdraws from a study, the data collected on the subject to the point of withdrawal remain part of the study database and may not be removed. This should be disclosed in the consent; or

2. For research not subject to FDA regulations: The investigator should inform subjects whether the investigator or study sponsor intends to either: (1) retain and analyze already collected data relating to the subject up to the time of subject withdrawal; or (2) honor a research subject’s request that the investigator or study sponsor will destroy the subject’s data or that the investigator or study sponsor will exclude the subject’s data from any analysis.

When a subject’s withdrawal request is limited to discontinuation of the primary interventional component of a research study, research activities involving other types of participation for which the subject previously gave consent may continue. Investigators should ask a subject who is withdrawing whether the subject wishes to participate in continued follow-up and further data collection subsequent to their withdrawal from the interventional portion of the study. Under this circumstance, the discussion with the subject would distinguish between study-related interventions and procedures and continued follow-up in person, by phone, or via records review.

If a subject withdraws from the interventional portion of the study but agrees to continued follow-up as described in the previous paragraph, the investigator must obtain the subject’s informed consent for this limited participation in the study (assuming such a situation was not described in the original consent document). IRB approval of consent documents for these purposes would be required.

If a subject withdraws from the interventional portion of a study and does not consent to continued follow-up, the investigator must not access or gather private information about the subject for purposes related to the study. However, an investigator may review study data related to the subject collected prior to the subject’s withdrawal from the study, and may consult public records, such as those establishing survival status.

13.8 Documentation of Informed Consent

Except as provided in Sections 13.10 and 13.11 of these SOPs, informed consent must be documented by the use of a written consent form approved by the IRB.

1. Informed consent is documented by the use of a written consent form approved by the IRB and signed (including in an electronic format) and dated by the subject or the subject’s LAR at the time of consent;

2. A written copy of the signed and dated consent form must be given to the person signing the form. The investigator should retain the signed original in the research records.
The consent form may be either of the following:

1. **For research subject to the pre-2018 Common Rule, or FDA or DOJ regulations:** A written consent document that embodies the basic and required additional elements of informed consent. The consent form may be read to the subject or the subject’s LAR, but the subject or LAR must be given adequate opportunity to read it before it is signed;

2. **For research subject to the revised Common Rule (2018 requirements):** A written consent document that embodies the basic and required additional elements of informed consent. The investigator shall give either the subject or the subject’s LAR adequate opportunity to read the informed consent form before it is signed; alternatively, this form may be read to the subject or the subject’s LAR;

### 13.9 Special Consent Circumstances

#### 13.9.1 Enrollment of persons with Limited English Proficiency

1. **Expected enrollment:** In some studies, the investigator may be able to anticipate enrollment of persons who do not speak or read, or have limited proficiency in, oral or written English. When the target subject population includes such persons or the investigator or the IRB otherwise anticipates that consent will be conducted in a language other than English, the IRB requires a translated consent document and other subject materials, as applicable. Generally, translated consent forms should not be prepared until the final approved version of the English-language version is available. To ensure that translated documents are accurate, the IRB may choose to require a certified translation, to have an independent back-translation, or to have a review of the translated documents by an IRB member or other person who is fluent in the language.

2. **Unexpected enrollment:** If a person who does not speak or read, or has limited proficiency in, English unexpectedly presents for possible enrollment, an IRB-approved translated version of the written consent document may not be available for use. Investigators should carefully consider the ethical and legal ramifications of enrolling subjects when a language barrier exists. If the subject does not clearly understand the information presented during the consent process or in subsequent discussions, their consent may not be informed or legally effective.

3. **Use of interpreters in the consent process:** Unless the person obtaining consent is fluent in the prospective subject’s language, an interpreter will be necessary to facilitate the consent discussion. Preferably someone who is independent of the subject (i.e., not a family member) should assist in presenting information and obtaining consent. Whenever possible, interpreters should be provided copies of the translated consent.
and the IRB-approved consent script (typically the English-language version of the consent document), well before (24 to 48 hours if possible) the consent discussion with the subject. If the interpreter also serves as the witness, they may sign the translated consent as the witness and should note “Interpreter” under the signature line.

13.9.2 Braille consent

For blind subjects who read Braille, the IRB may approve a consent document prepared in Braille. To ensure that a Braille consent document is accurate, the IRB may require a transcription into print text or review of the document by an IRB member or other person who reads Braille. If possible, the subject will sign the Braille consent; otherwise oral consent will be obtained, witnessed and documented as described under “Oral Consent” (see Section 13.9.4).

13.9.3 Obtaining Consent using American Sign Language (ASL)

For deaf subjects who are fluent in ASL, the IRB may approve a consent process using ASL and the IRB-approved written consent form. When this process is approved, the individual authorized to consent prospective subjects must use a certified interpreter fluent in ASL to conduct the consent process and the documentation of the consent process must conform to the requirements set forth in Section 13.8.

13.9.4 Oral Consent

When subjects are unable to read a written consent form (such as blind or illiterate subjects), the IRB may approve an oral consent process, provided the subject (1) has the ability to understand the concepts of the study and evaluate the risks and benefits of being in the study when it is explained orally and (2) is able to indicate approval or disapproval to study entry. For research that is no more than minimal risk, documentation of consent may be waived according to the criteria in Section 13.11.

For greater than minimal risk research, the consent form must be read to the subjects and the subjects must be given an opportunity to ask questions. A recording approved by the IRB may also be used. If capable of doing so, the subject signs, or marks an X to signify consent. If that is not possible, the subject will provide oral consent. The person obtaining consent and a witness will sign the written study consent form with a statement that documents that an oral process was used and that the subject gave oral consent or made their mark. The consent process will also be documented in the subject’s research record. Signed copies of the consent form are given to the subject and, whenever possible, these documents should be provided to the subject on the recording.
13.9.5 Physically-Challenged Subjects

A person who is physically challenged (e.g., physically unable to talk or write) can enroll in research if competent and able to indicate voluntary consent to participate. Whenever possible, the subjects should sign the consent form or make their mark by initialing or making an X. As with oral consent, a witness to the consent process is recommended and the circumstances and consent process should be carefully documented in the research records.

13.10 Waiver or Alteration of Informed Consent

General Waiver or Alteration:

For research subject to the pre-2018 Common Rule, or FDA or DOJ regulations:

An IRB may approve a consent procedure that does not include, or that alters, some or all of the elements of informed consent; or waive the requirements to obtain informed consent, provided the IRB finds and documents that:

1. The research or clinical investigation involves no more than minimal risk to the subjects;
2. The waiver or alteration will not adversely affect the rights and welfare of the subjects;
3. The research or clinical investigation could not practicably be carried out without the waiver or alteration; and
4. Whenever appropriate, the subjects will be provided with additional pertinent information after participation.

For research subject to the revised Common Rule (2018 requirements):

An IRB may waive the requirement to obtain informed consent, provided the IRB finds and documents that the below criteria are satisfied.

Likewise, an IRB may approve a consent procedure that omits some, or alters some or all, of the basic and additional elements of informed consent (an “alteration”), provided that the IRB finds and documents that the below criteria are satisfied. An IRB may not omit or alter any of the general requirements for informed consent (See Section 13.1):

1. The research or clinical investigation involves no more than minimal risk to the subjects;
2. The research or clinical investigation could not practicably be carried out without requested waiver or alteration;
3. If the research involves using identifiable private information or identifiable biospecimens, the research could not practicably be carried out without using such information or biospecimens in an identifiable format;

4. The waiver or alteration will not adversely affect the rights and welfare of the subjects; and

5. Whenever appropriate, the subjects or LARs will be provided with additional pertinent information after participation.

Public Benefit or Service Programs Waiver or Alterations

For research subject to the pre-2018 Common Rule or DOJ regulations:

(Note: this option is not available to research subject to FDA regulations)

In addition, an IRB may approve a consent procedure that does not include, or that alters, some or all of the elements of informed consent; or waive the requirements to obtain informed consent, provided the IRB finds and documents that:

1. The research or demonstration project is to be conducted by or subject to the approval of state or local government officials and is designed to study, evaluate, or otherwise examine:
   a. Public benefit or service programs;
   b. Procedures for obtaining benefits or services under those programs;
   c. Possible changes in or alternatives to those programs or procedures; or
   d. Possible changes in methods or levels of payment for benefits or services under those programs; and,

2. The research could not practicably be carried out without the waiver or alteration.

For research subject to the revised Common Rule (2018 requirements):

An IRB may waive the requirement to obtain informed consent, provided the IRB finds and documents that the below criteria are satisfied.

Likewise, an IRB may approve a consent procedure that omits some, or alters some or all, of the basic and additional elements of informed consent (an “alteration”) (See Sections 13.4 and 13.5), provided that the IRB finds and documents that the below criteria are satisfied. An IRB may not omit or alter any of the general requirements for informed consent (See Section 13.1).
1. The research or demonstration project is to be conducted by or subject to the approval of state or local government officials and is designed to study, evaluate, or otherwise examine:
   a. Public benefit or service programs;
   b. Procedures for obtaining benefits or services under those programs;
   c. Possible changes in or alternatives to those programs or procedures; or
   d. Possible changes in methods or levels of payment for benefits or services under those programs; and

2. The research could not practicably be carried out without the waiver or alteration.

13.10.1 Screening, recruiting, or determining eligibility

For research subject to the revised Common Rule: An IRB may approve a research proposal in which an investigator will obtain information or biospecimens for the purpose of screening, recruiting, or determining the eligibility of prospective subjects without the informed consent of the prospective subject or the subject’s legally authorized representative, if either of the following conditions are met:

1. The investigator will obtain information through oral or written communication with the prospective subject or legally authorized representative, or

2. The investigator will obtain identifiable private information or identifiable biospecimens by accessing records or stored identifiable biospecimens.

(Note: The provisions described in this section do not apply to research subject to the pre-2018 Common Rule or to DOJ-regulated research)

13.11 Waiver of Documentation of Informed Consent

The IRB may waive the requirement for the investigator to obtain a signed consent form for some or all subjects if it finds any of the following:

1. The only record linking the subject and the research would be the informed consent form and the principal risk would be potential harm from a breach of confidentiality (e.g., domestic violence research where the primary risk is discovery by the abuser). Each subject (or LAR) will be asked whether they want documentation linking them with the research, and their wishes must govern.

   This option does not apply to FDA-regulated research.

OR
2. The research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside of the research context. Procedures such as non-sensitive surveys, questionnaires and interviews generally do not require written consent when conducted by non-investigators (e.g., marketing surveys, telemarketing).

This option **does** apply to FDA-regulated research (most commonly in the context of minimal risk screening activities that are necessary to determine eligibility for enrollment in a clinical trial).

OR

3. If the subjects or LARs are members of a distinct cultural group or community in which signing forms is not the norm, that the research presents no more than minimal risk of harm to subjects and provided there is an appropriate alternative mechanism for documenting that informed consent was obtained.

This option **does not** apply to research subject to the **pre-2018 Common Rule or to FDA or DOJ regulations**.

Unless the IRB has granted a full waiver of the requirement to obtain informed consent, investigators who seek and receive approval for a waiver of documentation of consent still must perform an appropriate consent process.

In cases in which the documentation requirement is waived, the IRB requires the investigator to provide in the application materials a written summary of the information to be communicated to the subject, and the IRB will consider whether to require the investigator to provide subjects with a written statement regarding the research.

### 13.12 Posting of Clinical Trial Consent Forms

For research subject to the revised Common Rule (2018 requirements):

*Note: The provisions in this section **do not apply** to research subject to the **pre-2018 Common Rule or to FDA or DOJ regulations**.*

For each study that meets the definition of “clinical trial” as defined in Section 1 of these SOPs, and is conducted or supported by a Federal department or agency, one IRB approved informed consent form used to enroll subjects **must be posted by the awardee or the Federal department or agency component conducting the trial** on a publicly available Federal Web site that has been established as a repository for such informed consent forms.

If the Federal department or agency supporting or conducting the clinical trial determines that certain information should not be made publicly available on a Federal Web site (e.g.

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confidential commercial information), such Federal department or agency may permit or require redactions to the information posted.

The informed consent form must be posted on the Federal Web site after the clinical trial is closed to recruitment, and no later than 60 days after the last study visit by any subject, as required by the protocol.

At this time, two publicly available federal websites that will satisfy the consent form posting requirement have been identified: ClinicalTrials.gov and a docket folder on Regulations.gov (Docket ID: HHS-OPHS-2018-0021). Additional federal websites that would satisfy the revised Common Rule’s clinical trial consent form posting requirement might be identified in the future.

14 Vulnerable Subjects in Research

When participants in research conducted under the auspices of MU are likely to be vulnerable to coercion or undue influence or have diminished decision-making capacity, the research must include additional safeguards to protect the rights and welfare of these participants. The IRB must ensure that all of the regulatory requirements for the protection of subjects are met and that appropriate additional protections for vulnerable subjects are in place.

14.1 Definitions

Children. Children are persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law of the jurisdiction in which the research will be conducted [45 CFR 46.402(a)].

According to New Jersey State Law, minors are persons under the age of eighteen. The general rule is that a person may sign legally-binding agreements and consent for their own medical care at the age of eighteen. Therefore, MU IRB defines children as persons who are under eighteen years of age. Certain statutes and case law, however, provide minors with "majority" status in some circumstances, giving them the right to consent to their own medical care. New Jersey state law permits minors, in certain circumstances, to seek care for drug addiction,
sexually transmitted diseases, or treatment of mental illness or emotional disorders (sixteen years of age or older) without parental permission. Because New Jersey state law does not specifically address consent of children with majority status to research, MU IRB will review issues of consent related to enrollment of these children in research on a case-by-case basis.

**NOTE:** For research conducted in jurisdictions other than New Jersey, the research must comply with the laws regarding the legal age of consent in the relevant jurisdictions. The Office of the General Counsel will be consulted with regard to the laws in other jurisdictions or such “local context” information will be sought through other mean (e.g., according to the terms of a reliance agreement).

**Guardian.** A guardian is an individual who is authorized under applicable state or local law to consent on behalf of a child to general medical care [45 CFR 46.402(e)].

In New Jersey, a “Kinship Legal Guardian” of a child means a court-appointed person who is willing to assume care of a child due to parental incapacity, with the intent to raise the child to adulthood, and who is appointed the kinship legal guardian of the child by the court and who shall be responsible for the care and protection of the child and for providing the child’s health, education and maintenance. [N.J.S.A. §3B:12A-1 et. seq.]

**NOTE:** For research conducted in jurisdictions other than New Jersey, the research must comply with the laws regarding guardianship in all relevant jurisdictions. The Office of the General Counsel will be consulted with regard to the laws in other jurisdictions or such “local context” information will be sought through other mean (e.g., according to the terms of a reliance agreement).

**Fetus.** A fetus means the product of conception from implantation until delivery [45 CFR 46.202(c)].

**Dead fetus.** A fetus that exhibits neither heartbeat, spontaneous respiratory activity, spontaneous movement of voluntary muscles, nor pulsation of the umbilical cord [45 CFR 46.202(a)].

**Delivery.** Delivery means complete separation of the fetus from the woman by expulsion or extraction or any other means [45 CFR 46.202(b)].

**Neonate.** A neonate is a newborn [45 CFR 46.202(d)].

**Viable.** As it pertains to the neonate, viable means being able, after delivery, to survive (given the benefit of available medical therapy) to the point of independently maintaining heartbeat and respiration [45 CFR 46.202(h)]. If a neonate is viable, then, for the purposes of participation in research, the neonate is considered a child and the rules regarding participation of children in research apply.

**Nonviable neonate.** A nonviable neonate means a neonate after delivery that, although living, is not viable [45 CFR 46.202(e)].
**Pregnancy.** Pregnancy encompasses the period of time from implantation until delivery. A woman shall be assumed to be pregnant if she exhibits any of the pertinent presumptive signs of pregnancy, such as missed menses, until the results of a pregnancy test are negative or until delivery [45 CFR 46.202(f)].

**Prisoner.** Prisoner means any individual involuntarily confined or detained in a penal institution. The term is intended to encompass individuals sentenced to such an institution under a criminal or civil statute, individuals detained in other facilities by virtue of statutes or commitment procedures that provide alternatives to criminal prosecution or incarceration in a penal institution, and individuals detained pending arraignment, trial, or sentencing [45 CFR 303(c)].

### 14.2 Involvement of Vulnerable Populations in Research

When the IRB reviews research that involves categories of participants vulnerable to coercion or undue influence, the review process should include one or more individuals who are knowledgeable about or experienced in working with these participants. When the IRB does not have the relevant expertise among its membership, expertise may be sought through the use of consultants.

45 CFR 46 has additional subparts designed to provide extra protections for certain defined vulnerable populations which also have additional requirements for IRBs.

- **Subpart B** - Additional Protections for Pregnant Women, Human Fetuses and Neonates Involved in Research
- **Subpart C** - Additional Protections Pertaining to Biomedical and Behavioral Research Involving Prisoners as Subjects
- **Subpart D** - Additional Protections for Children Involved as Subjects in Research

Non-exempt DHHS-conducted or supported research that involves any of these populations must comply with the requirements of the relevant subparts. Research regulated by the FDA includes equivalent protections and obligations when research involves children (Subpart D). Research conducted, supported, or otherwise regulated by other federal departments or agencies may or may not be covered by the subparts. See the Special Topics section of this manual for additional information on department or agency requirements.

### 14.3 Procedures

The following policies and procedures apply to all research involving vulnerable populations (subjects vulnerable to coercion or undue influence) under the oversight of the MU IRB regardless of funding. Subsequent sections address additional procedures and requirements that apply to specific populations.
Initial Review of Research Proposal:

1. The investigator identifies the potential to enroll vulnerable subjects in the proposed research at initial review and provides the justification for their inclusion in the study;

2. The investigator describes safeguards to protect the subject’s rights and welfare in the research proposal;

3. The IRB/IACUC Coordinator, in collaboration with the IRB Chair as needed, ensure that the IRB has the relevant expertise with the vulnerable population, and, if necessary, arrange for consultation. When the research involves no more that minimal risk and is eligible for expedited review, the designated reviewer may determine the need for additional expertise to ensure the protection of the vulnerable population(s);

4. The IRB evaluates the proposed inclusion of vulnerable population(s) in the research and the safeguards proposed by the investigator, taking into consideration the following factors, as applicable to the research:
   a. Whether inclusion of vulnerable populations is ethically and scientifically appropriate;
   b. Whether the proposed plans, including the settings and circumstances, for the identification and recruitment of subjects, and for obtaining consent or parental permission, ensure equitable selection of subjects and promote voluntariness;
   c. Whether the proposed research confers any direct benefit, whether the benefit is available outside of the research, and whether access to the benefit may unduly influence participation by vulnerable populations;
   d. Whether any costs or plans for subject reimbursement or compensation, may exclude or unduly influence participation by vulnerable populations;
   e. Whether the provisions for privacy and confidentiality adequately protect vulnerable populations; and
   f. Other relevant considerations as appropriate for the population(s) and the circumstances of the research

5. The IRB will determine whether the inclusion of the vulnerable population(s) is appropriate and whether the proposed plan adequately safeguards the rights and welfare of these subjects. When appropriate, the IRB may restrict or disallow the inclusion of vulnerable subjects or may require modifications to the research plan to enhance protections or to monitor the effectiveness of protections. For example, the IRB could require review more than annually, periodic HRPP QA/QI reviews, independent routine monitoring, or the use of a research subject advocate or consent monitor.

Modifications to Research
1. When an investigator proposes to add inclusion of a vulnerable population after research has already been approved by the IRB, the investigator must submit a modification request to the IRB identifying the population they would like to add, justification for inclusion of the population, and any modifications to the research plan to ensure protection of the subjects’ rights and welfare;

2. The ORC Director, IRB/IACUC Coordinator and IRB will follow the procedures outlined for initial review above.

**Continuing Review**

1. At continuing review, the investigator should identify the number and categories of vulnerable subjects enrolled and any problems that arose relevant to their rights and welfare. When research does not include any interaction or intervention with subjects, and such information is not gathered, this should be noted on the continuing review report;

2. The ORC Director, the IRB/IACUC Coordinator, in collaboration with the IRB Chair as needed, ensure that the IRB has the relevant expertise with the vulnerable population, and, if necessary, arrange for consultation. When the research involves no more that minimal risk and is eligible for expedited review, the designated reviewer may determine the need for additional expertise to ensure the protection of the vulnerable population(s);

3. The IRB reviews the continuing review information, and any relevant information reported to the IRB during the period of approval, and determines whether the inclusion of vulnerable populations and the plans to protect the rights and welfare of vulnerable subjects remains appropriate.

### 14.4 Research Involving Pregnant Women, Human Fetuses and Neonates

The following applies to all research involving pregnant women, human fetuses, and neonates reviewed by the MU IRB. DHHS-specific requirements are noted in the appropriate sections.

If a woman becomes pregnant while participating in a study that has not been approved for inclusion of pregnant women, the IRB must be notified immediately so that the IRB can determine whether the subject may continue in the research, whether additional safeguards are needed, and to make the determinations required by the regulations and these policies.
14.4.1 Research Involving Pregnant Women or Fetuses

14.4.1.1 Research Not Conducted or Supported by DHHS

For research not conducted or supported by DHHS, where the risk to the pregnant women and fetus is no more than minimal, no additional safeguards are required by policy and there are no restrictions on the involvement of pregnant women in research. However, the IRB may determine that additional safeguards or restrictions are warranted for a specific study.

Pregnant women or fetuses may be involved in research not funded by DHHS involving more than minimal risk to pregnant women and/or fetuses if all of the following conditions are met:

1. Where scientifically appropriate, pre-clinical studies (i.e., research that was conducted in animals), including studies on pregnant animals, and clinical studies, including studies on non-pregnant women, have been conducted and provide data for assessing potential risks to pregnant women and fetuses;

2. The risk to the fetus is caused solely by interventions or procedures that hold out the prospect of direct benefit for the woman or the fetus;

3. Any risk is the least possible for achieving the objectives of the research;

4. If the research holds out the prospect of direct benefit to the pregnant woman, the prospect of a direct benefit both to the pregnant woman and the fetus, then the consent of the pregnant woman is obtained in accord with the provisions for informed consent;

5. If the research holds out the prospect of direct benefit solely to the fetus then the consent of the pregnant woman and the father is obtained in accord with the provisions for informed consent, except that the father’s consent need not be obtained if he is unable to consent because of unavailability, incompetence, or temporary incapacity or the pregnancy resulted from rape or incest.

6. Each individual providing consent under paragraph 4 or 5 of this section is fully informed regarding the reasonably foreseeable impact of the research on the fetus or neonate;

7. For children (as defined in Section 14.1) who are pregnant, assent and permission are obtained in accord with the requirements of state law and the IRB;

8. No inducements, monetary or otherwise, will be offered to terminate a pregnancy;

9. Individuals engaged in the research will have no part in any decisions as to the timing, method, or procedures used to terminate a pregnancy; and

10. The IRB may allow individuals whose normal responsibilities include determining the viability of fetuses to be engaged in the research, if their involvement in the determination of viability for an individual fetus cannot be avoided. Confirmation of the
determination regarding viability will be sought from a qualified individual who is not otherwise engaged in the research whenever possible prior to involving the subject(s) in the research. The opinion of the independent qualified individual will be documented and made available upon request to the IRB or ORC Director. When advance confirmation is not possible, the investigator will obtain it as soon as they can after enrollment, but in all cases within 5 business days. The circumstances that prohibited prospective confirmation of viability and the outcome of the subsequent consultation will be reported to the IRB within 10 business days.

14.4.1.2 Research Conducted or Supported by DHHS

For DHHS-conducted or supported research, 45 CFR Subpart B applies to all non-exempt human subject research involving pregnant women, fetuses, and neonates. Pregnant women or fetuses may be involved in research if all of the following conditions are met:

1. Where scientifically appropriate, pre-clinical studies, including studies on pregnant animals, and clinical studies, including studies on non-pregnant women, have been conducted and provide data for assessing potential risks to pregnant women and fetuses.

2. The risk to the fetus is caused solely by interventions or procedures that hold out the prospect of direct benefit for the woman or the fetus; or, if there is no such prospect of benefit, the risk to the fetus is not greater than minimal and the purpose of the research is the development of important biomedical knowledge which cannot be obtained by any other means;

3. Any risk is the least possible for achieving the objectives of the research;

4. If the research holds out the prospect of direct benefit to the pregnant woman, the prospect of a direct benefit both to the pregnant woman and the fetus, or no prospect of benefit for the woman nor the fetus when risk to the fetus is not greater than minimal and the purpose of the research is the development of important biomedical knowledge that cannot be obtained by any other means, then the consent of the pregnant woman is obtained in accord with the provisions for informed consent.

5. If the research holds out the prospect of direct benefit solely to the fetus then the consent of the pregnant woman and the father is obtained in accord with the provisions for informed consent, except that the father’s consent need not be obtained if he is unable to consent because of unavailability, incompetence, or temporary incapacity or the pregnancy resulted from rape or incest.
6. Each individual providing consent under paragraph 4 or 5 of this section is fully informed regarding the reasonably foreseeable impact of the research on the fetus or neonate;

7. For children (as defined in Section 14.1) who are pregnant, assent and permission are obtained in accord with the provisions of permission and assent in Section 14.6.2;

8. No inducements, monetary or otherwise, will be offered to terminate a pregnancy;

9. Individuals engaged in the research will have no part in any decisions as to the timing, method, or procedures used to terminate a pregnancy; and

10. Individuals engaged in the research will have no part in determining the viability of a neonate.

14.4.2 Research involving Neonates of Uncertain Viability or Nonviable Neonates

14.4.2.1 Research Not Conducted or Supported by DHHS

Neonates of uncertain viability and nonviable neonates may be involved in research involving more than minimal risk if all of the conditions listed below are met. The IRB will determine on a case-by-case basis whether safeguards or restrictions should be required for minimal risk research.

1. Where scientifically appropriate, preclinical and clinical studies have been conducted and provide data for assessing potential risks to neonates.

2. Each individual providing consent is fully informed regarding the reasonably foreseeable impact of the research on the neonate.

3. The IRB may allow individuals whose normal responsibilities include determining the viability of neonates to be engaged in the research, if their involvement in the determination of viability for an individual neonate cannot be avoided. In such cases, confirmation of the determination regarding viability must be made by a qualified individual who is not otherwise engaged in the research whenever possible prior to involving the subject(s) in the research. The opinion of the independent qualified individual will be documented and made available upon request to the IRB or the ORC Director. When advance confirmation is not possible, the investigator will obtain it as soon as they can after enrollment, but in all cases within 5 business days. The circumstances that prohibited prospective confirmation of viability and the outcome of the subsequent consultation will be reported to the IRB within 10 business days.

4. The requirements of Neonates of Uncertain Viability or Nonviable Neonates (see below) have been met as applicable.
Neonates of Uncertain Viability. Until it has been ascertained whether a neonate is viable, a neonate may not be involved in research unless the following additional conditions have been met:

The IRB determines that:

1. The research holds out the prospect of enhancing the probability of survival of the neonate to the point of viability, and any risk is the least possible for achieving that objective, or

2. The purpose of the research is the development of important knowledge which cannot be obtained by other means and there will be no added risk to the neonate resulting from the research; and

3. The legally effective informed consent of either parent of the neonate or, if neither parent is able to consent because of unavailability, incompetence, or temporary incapacity, the legally effective informed consent of either parent’s LAR is obtained in accord with the provisions of permission and assent, except that the consent of the father or his LAR need not be obtained if the pregnancy resulted from rape or incest.

Nonviable Neonates. After delivery, nonviable neonates may not be involved in research unless all of the following additional conditions are met:

1. Vital functions of the neonate will not be artificially maintained;

2. The research will not terminate the heartbeat or respiration of the neonate;

3. There will be no added risk to the neonate resulting from the research;

4. The purpose of the research is the development of important knowledge that cannot be obtained by other means; and

5. The legally effective informed consent of both parents of the neonate is obtained in accord with the provisions of permission and assent, except that the waiver and alteration of the provisions of permission and assent do not apply.

However, if either parent is unable to consent because of unavailability, incompetence, or temporary incapacity, the informed consent of one parent of a nonviable neonate will suffice to meet the requirements of this paragraph, except that the consent of the father need not be obtained if the pregnancy resulted from rape or incest. The consent of a LAR of either or both of the parents of a nonviable neonate will not suffice.

14.4.2.2 Research Conducted or Supported by DHHS

Neonates of uncertain viability and nonviable neonates may be involved in research conducted or supported by DHHS if all of the following conditions are met:
1. Where scientifically appropriate, preclinical and clinical studies have been conducted and provide data for assessing potential risks to neonates.

2. Each individual providing consent is fully informed regarding the reasonably foreseeable impact of the research on the neonate.

3. Individuals engaged in the research will have no part in determining the viability of a neonate.

4. The requirements of Neonates of Uncertain Viability or Nonviable Neonates (see below) have been met as applicable.

Neonates of Uncertain Viability. Until it has been ascertained whether a neonate is viable, a neonate may not be involved in research unless the following additional conditions have been met:

1. The IRB determines that:
   a. The research holds out the prospect of enhancing the probability of survival of the neonate to the point of viability, and any risk is the least possible for achieving that objective, or
   b. The purpose of the research is the development of important biomedical knowledge which cannot be obtained by other means and there will be no added risk to the neonate resulting from the research; and

2. The legally effective informed consent of either parent of the neonate or, if neither parent is able to consent because of unavailability, incompetence, or temporary incapacity, the legally effective informed consent of either parent's LAR is obtained in accord with the provisions of permission and assent, except that the consent of the father or his LAR need not be obtained if the pregnancy resulted from rape or incest.

Nonviable Neonates. After delivery, nonviable neonates may not be involved in research unless all of the following additional conditions are met:

1. Vital functions of the neonate will not be artificially maintained;

2. The research will not terminate the heartbeat or respiration of the neonate;

3. There will be no added risk to the neonate resulting from the research;

4. The purpose of the research is the development of important biomedical knowledge that cannot be obtained by other means; and

5. The legally effective informed consent of both parents of the neonate is obtained in accord with the provisions of permission and assent, except that the waiver and alteration of the provisions of permission and assent do not apply.

However, if either parent is unable to consent because of unavailability or incapacity, the informed consent of one parent of a nonviable neonate will suffice to meet the requirements of
14.4.3 Viable Neonates

A neonate, after delivery, that has been determined to be viable may be included in research only to the extent permitted by and in accord with the requirements for research involving children (i.e., a viable neonate is a child for purposes of applying federal research regulations and MU policies).

14.4.4 Research Involving, After Delivery, the Placenta, the Dead Fetus or Fetal Material

Research involving, after delivery, the placenta; the dead fetus; macerated fetal material; or cells, tissue, or organs excised from a dead fetus, must be conducted only in accord with any applicable federal, state, or local laws and regulations regarding such activities.

If information associated with material described above in this section is recorded for research purposes in a manner that living individuals can be identified, directly or through identifiers linked to those individuals, those individuals are research subjects and all pertinent sections of these policies and procedures are applicable.

14.4.5 Research Not Otherwise Approvable

14.4.5.1 Research Not Conducted or Supported by DHHS

If the IRB finds that the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of pregnant women, fetuses or neonates; and the research is not approvable under the provisions described previously in this section, the IRB will consult with a panel of experts in pertinent disciplines (for example: science, medicine, ethics, law). Based on the recommendation of the panel, the IRB may approve the research based on either:

1. That the research in fact satisfies the conditions detailed above, as applicable; or
2. The following:
   a. The research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of pregnant women, fetuses or neonates;
   b. The research will be conducted in accord with sound ethical principles; and
c. Informed consent will be obtained in accord with the requirements for informed consent described in this manual.

14.4.5.2 Research Conducted or Supported by DHHS

DHHS-conducted or supported research that falls in this category must be approved by the Secretary of Health and Human Services. If the IRB finds that the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of pregnant women, fetuses or neonates; and the research is not approvable under the above provisions, then the research will be sent to OHRP for DHHS review.

14.5 Research Involving Prisoners

14.5.1 Applicability

For research not conducted or supported by DHHS, where the risk to prisoners is no more than minimal (as defined in Section 14.5.2), no additional safeguards are required under these policies and procedures. However, the IRB may determine that additional safeguards or restrictions are warranted for a specific study.

For research involving more than minimal risk, and for research conducted or supported by DHHS (unless the research is subject to the revised Common Rule, qualifies for exemption, and only incidentally includes prisoners (See Section 5), the requirements outlined in this section apply.

As applicable, investigators must obtain permission from and abide by the requirements of correctional authorities and federal, state, or local law.

14.5.2 Minimal Risk

Minimal risk, in studies involving prisoners, means the probability and magnitude of physical or psychological harm that is normally encountered in the daily lives, or in the routine medical, dental, or psychological examination of healthy persons.

14.5.3 Composition of the IRB

In addition to satisfying the general membership requirements detailed in other sections of these policies and procedures, when reviewing research involving prisoners, the IRB must also meet the following requirements:

1. A majority of the IRB (exclusive of prisoner members) must have no association with the prison(s) involved, apart from their membership on the IRB;
2. At least one member of the IRB must be a prisoner, or a prisoner representative with appropriate background and experience to serve in that capacity, except that where a particular research project is reviewed by more than one IRB, only one IRB need satisfy this requirement; and

3. The prisoner representative must be a voting member of the IRB. A comment may be added to the roster indicating that the prisoner representative will only count towards quorum when they are in attendance and reviewing studies involving prisoners.

14.5.4 Review of Research Involving Prisoners

Initial Review of Research Proposal

1. The prisoner representative must review research involving prisoners, focusing on the requirements outlined in Subpart C and these policies;

2. The prisoner representative must receive all review materials pertaining to the research (same as primary reviewer); and

3. The prisoner representative must be present at a convened meeting when the research involving prisoners is reviewed. If the prisoner representative is not present, research involving prisoners cannot be reviewed or approved. The prisoner representative may attend the meeting by phone, video-conference, or webinar, so long as the representative is able to participate in the meeting as if they were present in person at the meeting.

4. The IRB must be familiar with the specific conditions in the local prison(s) or jail site(s) that are pertinent to subject protections, before approving the proposal for the local site (45 CFR 46.107(a)).

Modifications to Research

1. Minor modifications to research involving prisoners may be reviewed using the expedited procedure described below;

2. Modifications reviewed by the convened IRB must use the same procedures for initial review including the responsibility of the prisoner representative to review the modification and participate in the meeting (as described above).

Continuing Review

1. Continuing review will follow the same procedures as initial review including the responsibility of the prisoner representative to review the continuing review materials and participate in the meeting (as described above).

Expedited Review
1. Research involving interaction with prisoners may be reviewed by the expedited procedure if a determination is made that the research involves no greater than minimal risk for the prison population being studied and the research falls within the categories of research eligible for expedited review. Whenever possible, the prisoner representative will be consulted to verify that they agree that the research is minimal risk and to conduct (if designated by the IRB Chair as an expedited reviewer) or participate in the expedited review as a consultant. Review of modifications and continuing review will follow these same procedures;

2. Research that does not involve interaction with prisoners (e.g., records review) may be reviewed by the expedited procedure if a determination is made that the research involves no greater than minimal risk for the prison population being studied. Review by a prisoner representative is not required. The prisoner representative may review the research as a reviewer (if designated by the IRB Chair as an expedited reviewer) or consultant. Review of modifications and continuing review will follow these same procedures.

14.5.5 Incarceration of Enrolled Subjects

If a subject becomes a prisoner while enrolled in a research study that was not reviewed according to these procedures, the investigator must promptly notify the IRB and the IRB shall:

1. Confirm that the subject meets the definition of a prisoner;
2. Consult with the investigator to determine if it is in the best interests of the subject to continue participation in the study, in part or in full, and if so, if there are specific study activities which are in the best interests of the subject that should continue until the IRB is able to review the research applying the standards and requirements for research involving prisoners.
3. If the subject should continue, one of two options are available:
   a. Keep the subject enrolled in the study and review the research applying the standards and requirements for research involving prisoners. If some of the requirements cannot be met or are not applicable (e.g., procedures for the selection of subjects within the prison), but it is in the best interests of the subject to remain in the study, keep the subject enrolled and, if the research is DHHS-conducted or supported, inform OHRP of the decision along with the justification; or
   b. Remove the subject from the study and keep the subject on the study intervention under an alternate mechanism such as compassionate use or off-label use.
4. If a subject is incarcerated temporarily while enrolled in a study:
a. If the temporary incarceration has no effect on the study (i.e., there is no need for study activities involving the prisoner subject to take place during the temporary incarceration), keep the subject enrolled.

b. If the temporary incarceration has an effect on the study, follow the guidance outlined above.

### 14.5.6 Additional Duties of the IRB

In addition to the responsibilities of the IRB described in other sections of this manual, the IRB will review research involving prisoners and approve such research only if it finds that:

1. The research falls into one of the following permitted categories [45 CFR 46.306(a)(2)]:
   a. Study of the possible causes, effects, and processes of incarceration, and of criminal behavior, provided that the study presents no more than minimal risk and no more than inconvenience to the subjects;
   b. Study of prisons as institutional structures or of prisoners as incarcerated persons, provided that the study presents no more than minimal risk and no more than inconvenience to the subjects;
   c. Research on conditions particularly affecting prisoners as a class (for example, research on diseases or social and psychological problems much more prevalent in prisons) provided that the study may proceed only after the DHHS Secretary has consulted with appropriate experts in penology, medicine, and ethics, and published notice in the Federal Register of their intent to approve the research;
   d. Research on practices, both innovative and accepted, which have the intent and reasonable probability of improving the health or well-being of the subject. In cases in which those studies require the assignment of prisoners in a manner consistent with protocols/research plans approved by the IRB to control groups which may not benefit from the research, the study may proceed only after the DHHS Secretary has consulted with appropriate experts in penology, medicine, and ethics, and published notice in the Federal Register of their intent to approve the research;
   e. The research qualifies under the HHS Secretarial waiver that applies to certain epidemiological research (68 FR 36929, June 20, 2003). The criteria for this category are that the research must have as its sole purpose (i) to describe the prevalence or incidence of a disease by identifying all cases, or (ii) to study potential risk factor associations for a disease.

2. Any possible advantages accruing to the prisoner through his or her participation in the research, when compared to the general living conditions, medical care, quality of food,
amenities and opportunity for earnings in the prison, are not of such a magnitude that his or her ability to weigh the risks of the research against the value of such advantages in the limited choice environment of the prison is impaired;

3. The risks involved in the research are commensurate with risks that would be accepted by non-prisoner volunteers;

4. Procedures for the selection of subjects within the prison are fair to all prisoners and immune from arbitrary intervention by prison authorities or prisoners. Unless the investigator provides to the IRB justification in writing for following some other procedures, control subjects must be selected randomly from the group of available prisoners who meet the characteristics needed for that particular research proposal;

5. The information is presented in language which is understandable to the subject population;

6. Adequate assurance exists that parole boards will not take into account a prisoner's participation in the research in making decisions regarding parole, and each prisoner is clearly informed in advance that participation in the research will have no effect on their parole; and

7. Where the IRB finds there may be a need for follow-up examination or care of subjects after the end of their participation, adequate provision has been made for such examination or care, taking into account the varying lengths of individual prisoners' sentences, and for informing subjects of this fact.

14.5.7 Certification to DHHS

Under 45 CFR 46.305(c), the institution responsible for conducting research involving prisoners that is conducted or supported by DHHS shall certify to the Secretary (through OHRP) that the IRB has made the seven findings required under 45 CFR 46.305(a) and receive OHRP authorization prior to initiating any research involving prisoners. Certifications, and requests for DHHS Secretarial consultation, do not need to be submitted to OHRP for research not conducted or supported by DHHS.

For all DHHS-conducted or supported research, MU will send to OHRP a certification letter to this effect, which will also include the name and address of the institution and specifically identify the research study in question and any relevant DHHS grant application or protocol/research plan. DHHS-conducted or supported research involving prisoners as subjects may not proceed until OHRP issues its authorization in writing to MU on behalf of the Secretary.

Under its authority at 45 CFR 46.115(b), OHRP requires that the institution responsible for the conduct of the proposed research also submit to OHRP a copy of the research proposal so that
OHRP can determine whether the proposed research involves one of the categories of research permissible under 45 CFR 46.306(a)(2), and if so, which one.

The term “research proposal” includes:

1. The IRB-approved protocol; any relevant DHHS grant application or proposal;
2. Any IRB application forms required by the IRB; and
3. And any other information requested or required by the IRB to be considered during initial IRB review.

OHRP also encourages the institution to include the following information in its prisoner research certification letter to facilitate processing:

1. The OHRP Federalwide Assurance (FWA) number;
2. The IRB registration number for the designated IRB; and
3. The date(s) of IRB meeting(s) in which the study was considered, including a brief chronology that encompasses:
   a. The date of initial IRB review; and
   b. The date of Subpart C review, if not done at the time of initial IRB review.

14.6 Research Involving Children

The following applies to all research involving children, regardless of funding source. The requirements in this section are consistent with Subpart D of 45 CFR 46, which applies to DHHS-funded research and Subpart D of 21 CFR 50, which applies to FDA-regulated research involving children.

14.6.1 Allowable Categories

In addition to the IRB’s normal duties, non-exempt research involving children must be reviewed by the IRB to determine if it fits within and is permissible under one or more federally-defined categories (OHRP/FDA). Each procedure or intervention that the child will undergo for the research must be taken into consideration, and, if the research includes more than one study group assignment (e.g., placebo vs. active, investigational agent vs. comparator) the category determination must be made for each group assignment. In other words, a component analysis must be conducted by the IRB. The categories are as follows:

1. Research/Clinical Investigations not involving greater than minimal risk [45 CFR 46.404/21 CFR 50.51]. Research determined to not involve greater than minimal risk to child subjects may be approved by the IRB only if the IRB finds and documents that
adequate provisions are made for soliciting the assent of the children and the permission of their parents or guardians as set forth in Section 14.6.2.

2. **Research/Clinical Investigations involving greater than minimal risk but presenting the prospect of direct benefit to the individual subjects** [45 CFR 46.405/21 CFR 50.52]. Research in which the IRB finds that more than minimal risk to children is presented by an intervention or procedure that holds out the prospect of direct benefit for the individual subject, or by a monitoring procedure that is likely to contribute to the subject’s well-being, may be approved by the IRB only if the IRB finds and documents that:

   a. The risk is justified by the anticipated benefit to the subjects;
   b. The relation of the anticipated benefit to the risk is at least as favorable to the subjects as that presented by available alternative options; and
   c. Adequate provisions are made for soliciting the assent of children and the permission of their parents or guardians as set forth in Section 14.6.2.

3. **Research/Clinical Investigations involving greater than minimal risk and no prospect of direct benefit to the individual subject, but likely to yield generalizable knowledge about the subject’s disorder or condition** [45 CFR 46.406/21 CFR 50.53]. Research in which the IRB finds that more than minimal risk to children is presented by an intervention or procedure that does not hold out the prospect of direct benefit for the individual subject, or by a monitoring procedure which is not likely to contribute to the well-being of the subject, may be approved by the IRB only if the IRB finds and documents that:

   a. The risk represents a minor increase over minimal risk;
   b. The intervention or procedure presents experiences to subjects that are reasonably commensurate with those inherent in their actual or expected medical, dental, psychological, social, or educational situations;
   c. The intervention or procedure is likely to yield generalizable knowledge about the subjects’ disorder or condition which is of vital importance for the understanding or amelioration of the subjects’ disorder or condition; and
   d. Adequate provisions are made for soliciting the assent of children and the permission of their parents or guardians as set forth in Section 14.6.2.

4. **Research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate serious problems affecting the health or welfare of children** [45 CFR 46.407/21 CFR 50.54]. When the IRB does not believe that the research meets the requirements of any of the above categories, and the IRB finds and documents that the research presents a reasonable opportunity to further the understanding, prevention, or
alleviation of a serious problem affecting the health or welfare of children, the IRB shall refer the research for further review as follows:

a. DHHS-conducted or supported research in this category will be referred for review by the Secretary of Health and Human Services. However, before doing so the IRB must determine that the proposed research also meets all of the requirements of the Common Rule.

b. FDA-regulated research in this category will be referred for review by the Commissioner of Food and Drugs.

c. For research that is not DHHS conducted or supported and not FDA-regulated, the IRB will consult with a panel of experts in pertinent disciplines (for example: science, medicine, ethics, law). Based on the recommendation of the panel, the IRB may approve the research based on either:

   i. That the research in fact satisfies the conditions of the previous categories, as applicable; or

   ii. The following:

      1. The research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children;

      2. The research will be conducted in accord with sound ethical principles; and

      3. Adequate provisions are made for soliciting the assent of children and the permission of their parents or guardians as set forth in Section 14.6.2.

14.6.2 Parental Permission and Assent

14.6.2.1 Parental Permission

The IRB must determine that adequate provisions have been made for soliciting the permission of each child’s parent or guardian.

Parents or guardians must be provided with the basic elements of consent and any additional elements the IRB deems necessary, as described in Section 13.

The IRB may find that the permission of one parent is sufficient for research to be conducted under Categories 1 [45 CFR 46.404/21 CFR 50.51] & 2 [45 CFR 46.405/21 CFR 50.52] above. The IRB’s determination of whether permission must be obtained from one or both parents will be
documented in the reviewer’s notes when a study receives expedited review, and in meeting minutes when reviewed by the convened committee.

Permission from both parents is required for research to be conducted under Categories 3 [45 CFR 46.406/21 CFR 50.53] & 4 [45 CFR 46.407/21 CFR 50.54] above unless:

1. One parent is deceased, unknown, incompetent, or not reasonably available; or
2. When only one parent has legal responsibility for the care and custody of the child.

The IRB may waive the requirement for obtaining permission from a parent or legal guardian if:

1. The research meets the provisions for waiver in Section 13.10; or
2. For research that is not FDA-regulated, if the IRB determines that the research is designed to study conditions in children or a subject population for which parental or guardian permission is not a reasonable requirement to protect the subjects (for example, neglected or abused children) provided that an appropriate mechanism for protecting the children who will participate as subjects in the research is substituted, and that the waiver is not inconsistent with Federal, State, or local law. The choice of an appropriate mechanism would depend upon the nature and purpose of the activities described in the protocol/research plan, the risk and anticipated benefit to the research subjects, and the child’s age, maturity, status, and condition.

Permission from parents or legal guardians must be documented in accordance with and to the extent required by Section 13.8.

**14.6.2.2 Assent from Children**

The IRB is responsible for determining that adequate provisions are made for soliciting the assent of the children, when in the judgment of the IRB the children are capable of providing assent. This judgment may be made for all children to be involved in the study, or for each child, as the IRB deems appropriate.

If the IRB determines that the capability of some or all of the children is so limited that they cannot reasonably be consulted or that the intervention or procedure involved in the research holds out a prospect of direct benefit that is important to the health or well-being of the children and is available only in the context of the research, the assent of the children is not a necessary condition for proceeding with the research. Even where the IRB determines that the subjects are capable of assenting, the IRB may still waive the assent requirement under circumstances in which consent may be waived for research that meets the provisions for a general waiver in Section 13.10.
Because “assent” means a child’s affirmative agreement to participate in research, the child must actively show his or her willingness to participate in the research, rather than just complying with directions to participate and not resisting in any way.

The IRB should take into account the nature of the proposed research activity and the ages, maturity, and psychological state of the children involved when reviewing the proposed assent procedure and the form and content of the information conveyed to the prospective subjects. For research activities involving adolescents whose capacity to understand resembles that of adults, the assent procedure should likewise include information similar to what would be provided for informed consent by adults or for parental permission. For children whose age and maturity level limits their ability to fully comprehend the nature of the research activity, but who are still capable of being consulted about participation in research, it may be appropriate to focus on conveying an accurate picture of what the actual experience of participation in research is likely to be (for example, what the experience will be, how long it will take, whether it might involve any pain or discomfort). The assent procedure should reflect a reasonable effort to enable the child to understand, to the degree they are capable, what their participation in research would involve.

Parents and children will not always agree on whether the child should participate in research. Where the IRB has indicated that the assent of the child is required in order for them to be enrolled in the study, dissent from the child overrides permission from a parent. Similarly, a child typically cannot decide to be in research over the objections of a parent. There are individual exceptions to these guidelines but in general, children should not be forced to be research subjects, even when permission has been given by their parents.

**Documentation of Assent**

When the IRB determines that assent is required, it also is also responsible for determining whether and how assent must be documented. When the research targets the very young child or children unable or with limited capacity to read or write, an oral presentation accompanied perhaps by some pictures with documentation of assent by the person obtaining assent in a research note is likely more appropriate than providing the child a form to sign. In this case, the investigator should provide the IRB with a proposed script and any materials that they intend to use in explaining the research.

When the research targets children who are likely able to read and write, investigators should propose a process and form that is age appropriate and study specific, taking into account the typical child's experience and level of understanding, and composing a document that treats the child respectfully and conveys the essential information about the study. The assent form should:

1. Tell why the research is being conducted;
2. Describe what will happen and for how long or how often;
3. Say it's up to the child to participate and that it's okay to say no;
4. Explain if it will hurt and if so for how long and how often;
5. Say what the child's other choices are;
6. Describe any good things that might happen;
7. Say whether there is any compensation for participating; and
8. Ask for questions.

Whenever possible, the document should be limited to one page. Illustrations might be helpful, and larger type and other age appropriate improvements are encouraged when they have the potential to enhance comprehension. Studies involving older children or adolescents should include more information and may use more complex language.

**14.6.2.3 Children Who are Wards**

Children who are wards of the State or any other agency, institution, or entity can be included in research approved under 45 CFR 46.406/21 CFR 50.53 or 45 CFR 46.407/21 CFR 50.54 (Categories 3 & 4 in Section 14.6.1), only if such research is:

1. Related to their status as wards; or
2. Conducted in schools, camps, hospitals, institutions, or similar settings in which the majority of children involved as subjects are not wards.

If the research meets the condition(s) above, an advocate must be appointed for each child who is a ward (one individual may serve as advocate for more than one child), in addition to any other individual acting on behalf of the child as legal guardian or in loco parentis.

The advocate must be an individual who has the background and experience to act in, and agrees to act in, the best interests of the child for the duration of the child's participation in the research and who is not associated in any way (except in the role as advocate or member of the IRB) with the research, the investigator(s), or the guardian institution.

**14.7 Adults with Impaired Decision-Making Capacity**

When vulnerable populations are included in research, regulations require that additional safeguards are put in place to protect the rights and welfare of these subjects. [45 CFR 46.111(b)/21 CFR 56.111(b)] Adults who lack or who have impaired, fluctuating, or diminishing decision-making capacity (collectively referred to as “adults with impaired decision-making capacity” in this section) are particularly vulnerable. Investigators and IRBs must carefully consider whether inclusion of such subjects in a research study is appropriate; and when it is, must consider how best to ensure that these subjects are adequately protected. The principals
and procedures outlined in this section are intended to assist MU investigators and the IRB with the development and review of research involving adults with impaired decision-making capacity.

14.7.1 Informed Consent

Obtaining legally effective informed consent before involving human subjects in research is one of the central ethical principles described in the Belmont Report and provided for by federal regulations governing research.

As discussed previously, the informed consent process involves three key features: (1) providing the prospective subject the information needed to make an informed decision (in language understandable to him or her); (2) facilitating the understanding of what has been disclosed; and (3) promoting the voluntariness of the decision about whether to participate in the research.

Among other requirements, for consent to be legally effective, the potential subject or their LAR must have the necessary decision-making capacity to make a rational and meaningful choice about whether to participate (or continue participating) in a study.

14.7.2 Decision-Making Capacity

“Decision-making capacity” refers to a potential subject’s ability to make a rationale and meaningful decision about whether or not to participate in a research study. This ability is generally thought to include at least the following four elements:

1. Understanding, i.e., the ability to comprehend the disclosed information about the nature and purpose of the study, the procedures involved, the risks and benefits of participating versus not participating, and the voluntary nature of participating;
2. Appreciation, i.e., the ability to appreciate the significance of the disclosed information and the potential risks and benefits for one’s own situation and condition;
3. Reasoning, i.e., the ability to engage in a reasoning process about the risks and benefits of participating versus alternatives, and;
4. Choice, i.e., the ability to express a choice about whether or not to participate.

“Decision-making capacity” should not be confused with the legal concept of “competence.” While the court may consider information about a person’s decision-making capacity in making a competency determination, the terms are not synonymous. Incompetence is a legal determination made by a court of law. For example, someone who is judged legally incompetent to manage their financial affairs may retain sufficient decision-making capacity to make meaningful decisions about participating in a research protocol. Likewise, people who have normal cognitive functioning and are considered legally competent may be put into
circumstances where their decision-making capacity is temporarily impaired by a physical or mental condition or by alcohol or drugs.

Decision-making capacity is protocol and situation-specific. A person may have capacity to consent to participate in low risk research in usual circumstances, but not have the capacity to consent to a higher risk protocol when they are under significant stress or faced with unfamiliar circumstances.

14.7.3 Inclusion of Adults with Impaired Decision-Making Capacity in Research

Research involving adult subjects without the ability to provide consent or with impaired decision-making capacity should only be conducted when the aims of the research cannot reasonably be achieved without their participation.

Investigators must disclose to the IRB both plans and justification for including adults with impaired decision-making capacity in a given research proposal. If adults with questionable or fluctuating capacity will be included, investigators must specify procedures for assessing capacity prior to providing informed consent and, if appropriate, for re-evaluating capacity during study participation. If a prospective subject’s capacity to consent is expected to diminish, the investigator should consider requesting that the subject designate a future LAR prior to enrollment in the research, including the future LAR in the initial consent process, and obtaining written documentation of the subject’s wishes regarding participation in the research. When the study includes subjects likely to regain capacity to consent while the research is ongoing, the investigator should include provisions to inform them of their participation and seek consent for ongoing participation.

Plans for evaluation of capacity should be tailored to the subject population and the risks and nature of the research. In some instances, assessment by a qualified investigator may be appropriate. However, an independent, qualified assessor should evaluate subjects’ capacity when the risks of the research are more than a minor increase over minimal or the investigator is in a position of authority over a prospective subject. In all cases, the person(s) evaluating capacity must be qualified to do so and use appropriate, validated tools and methods (e.g., University of California, San Diego Brief Assessment of Capacity to Consent [UBACC], MacArthur Competence Assessment Tool for Clinical Research [MacCAT-CR]). Assessments of capacity should be documented in the research record, and when appropriate, in the medical record.

Under some circumstances, it may be possible for investigators to enable adults with a degree of decisional impairment to make voluntary and informed decisions to consent, assent, or refuse participation in research. Potential measures include repetitive teaching, audiovisual presentations, and oral or written recall tests. Other measures might include follow-up questions to assess subject understanding, electronic recording of consent discussions, use of waiting periods to allow more time for the potential subject to consider the information that
has been presented, or involvement of a trusted family member or friend in the disclosure and decision-making process. Electronic recordings, electronic presentations, or written materials used to promote understanding must be provided to the IRB for review and approval prior to use.

When a prospective subject is deemed to lack capacity to consent to participate in research, investigators may obtain informed consent from the individuals’ surrogate or LAR (See Section 13.3). Under these circumstances, the prospective subject should still be informed about the research in a manner compatible with the subjects’ likely understanding and, if possible, be asked to assent to participate. Potential subjects who express resistance or dissent (by word, gesture, or action) to either participation or use of surrogate consent, should be excluded from the study. Some subjects may initially assent but later resist participation. Under no circumstances may an investigator or caregiver override a subject’s dissent or resistance. When assent is possible for some or all subjects, the investigator should provide the IRB with an assent plan that describes when and how assent will be obtained, provisions that will be taken to promote understanding and voluntariness, how assent will be documented, and a copy of the assent form. If the investigator intends to use electronic recordings to document assent, provisions to ensure the security of the recordings should be described to the IRB.

When inclusion of adults with impaired decision-making capacity is not anticipated and a plan for inclusion of such subjects has not been reviewed and approved by the IRB, and an enrolled subject becomes unable to provide consent or impaired in decision-making capacity, the investigator is responsible for promptly notifying the IRB (as soon as possible but within 5 business days). The investigator should consider whether continuing participation is appropriate and, if so, present a plan for surrogate consent from a LAR and, if appropriate, a plan to periodically evaluate capacity and re-obtain consent if possible.

14.7.4 IRB Review

The IRB review process will include at least one member, or a consultant, who is experienced with or otherwise knowledgeable about the population when the research involves greater than minimal risk, or the research is minimal risk but includes interactions with subjects, and the proposed subject population includes adults with impaired decision-making capacity.

In evaluating research, the IRB must be able to determine that the risks to subjects are reasonable not only in relation to any benefits, but also in relation to the importance of the knowledge that may reasonably be expected to result. In considering the risks of research involving adults with impaired decision-making capacity, the IRB should consider whether any components of the research involve risks that are greater for participants with diminished capacity. For example, whether subjects might experience increased sensitivity or discomfort to certain stimuli or may not be able to verbalize or otherwise demonstrate when they are experiencing discomfort or pain.

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As appropriate to the research, the IRB will consider the following in evaluating research involving adults with impaired decision-making capacity:

1. Whether the aims of the research cannot reasonably be achieved without inclusion of the population;
2. Whether the research is likely to improve the understanding of the condition, disease, or issue affecting the subject population;
3. Whether any experimental procedure or interventions have undergone pre-clinical testing or human testing on other populations and whether the data from that testing supports its use in the proposed research;
4. Whether the procedures or interventions that the subject will undergo in the research place them at increased risk and whether appropriate mechanisms are in place to minimize risks, when possible;
5. Whether the data and safety monitoring plan, including any stopping rules, is appropriate given the risks of the research and the vulnerability of the population;
6. Whether the procedures for withdrawing individual subjects from the research are appropriate;
7. Whether the recruitment procedures, consent process, and any plans for financial compensation support voluntariness and minimize the likelihood of undue influence or coercion;
8. Whether the subjects will be exposed to financial or other risks that they might not consider acceptable if they had the capacity to provide consent, and whether appropriate mechanisms have been put into place to minimize these risks;
9. Whether the procedures for determining capacity to provide consent, and for evaluating capacity on an ongoing basis, if applicable, are appropriate;
10. Whether the procedures for informing subjects who regain capacity about their involvement in the research, and for obtaining consent for on-going participation, if applicable, are appropriate;
11. Whether assent should be required when possible, and, if so, if the proposed procedures to obtain and document assent are appropriate;
12. Whether periodic re-evaluation of capacity and/or periodic re-consent should be required; and
13. Whether a research subject advocate or consent monitor should be required, for some or all subjects.
In general, the IRB will only approve research involving subjects unable to provide consent or with impaired decision-making capacity when the aims of the research cannot reasonably be achieved without inclusion of the population, and there are appropriate provisions to: (1) evaluate capacity, (2) obtain consent (and assent if possible), and (3) otherwise protect subjects.

14.8 RESERVED

(Organizations should include additional sections describing procedures for research involving other vulnerable populations that the IRB reviews on a regular basis. For example, research involving economically or educationally disadvantaged persons, employees, students, refugees, undocumented workers, mental health patients under involuntary holds, etc.).
15 FDA-Regulated Research

FDA regulations apply to research that involves an FDA-regulated test article in a clinical investigation involving human subjects as defined by the FDA regulations. For FDA-regulated research, the IRB must apply the FDA regulations at 21 CFR 50 and 21 CFR 56. If the research is conducted or supported by a Common Rule agency or department, or if compliance with the Common Rule is required by state law, or the terms of an FWA, IAA, or an award or contract, then the Common Rule must also be applied.

Clinical investigations of investigational drugs and biological products must be conducted according to FDA’s IND regulations, 21 CFR Part 312, and other applicable FDA regulations. Evaluations of the safety or effectiveness of a medical device must be conducted according to FDA’s IDE regulations, 21 CFR Part 812, and other applicable FDA regulations.

The following procedures describe the review of FDA-regulated research by the MU IRB.

15.1 Definitions

**Biologic.** Biological products include a wide range of products such as vaccines, blood and blood components, allergenics, somatic cells, gene therapy, tissues, and recombinant therapeutic proteins. Biologics can be composed of sugars, proteins, or nucleic acids or complex combinations of these substances, or may be living entities such as cells and tissues. Biologics are isolated from a variety of natural sources — human, animal, or microorganism — and may be produced by biotechnology methods and other technologies. In general, the term "drugs" includes therapeutic biological products.

**Clinical Investigation.** Clinical investigation means any experiment that involves a test article and one or more human subjects and that either is subject to requirements for prior submission to the Food and Drug Administration under section 505(i) or 520(g) of the act, or is not subject to requirements for prior submission to the Food and Drug Administration under these sections of the act, but the results of which are intended to be submitted later to, or held for inspection by, the Food and Drug Administration as part of an application for a research or marketing permit. The term does not include experiments that are subject to the provisions of part 58 of this chapter, regarding nonclinical laboratory studies. [21 CFR 50.3(c)]

**Dietary Supplement.** A dietary supplement is a product taken by mouth that is intended to supplement the diet and that contains a dietary ingredient. The dietary ingredients in these products can include vitamins, minerals, herbs and other botanicals, amino acids, other dietary substances intended to supplement the diet, and concentrates, metabolites, constituents, extracts, or combinations of the preceding types of ingredients. [21 U.S.C. 321(ff)]
Emergency Use. Emergency use is defined as the use of a test article on a human subject in a life-threatening situation in which no standard acceptable treatment is available, and in which there is not sufficient time to obtain IRB approval. [21 CFR 56.102(d)]

Human Cells, Tissues, or Cellular or Tissue-based Products (HCT/P’s) – HCT/P’s means articles containing or consisting of human cells or tissues that are intended for implantation, transplantation, infusion, or transfer into a human recipient. Examples of HCT/Ps include, but are not limited to, bone, ligament, skin, dura mater, heart valve, cornea, hematopoietic stem/progenitor cells derived from peripheral and cord blood, manipulated autologous chondrocytes, epithelial cells on a synthetic matrix, and semen or other reproductive tissue.

The following articles are not considered HCT/P’s: vascularized human organs for transplantation; whole blood or blood components or blood derivative products subject to listing under parts 607 and 207, respectively; secreted or extracted human products, such as milk, collagen, and cell factors; except that semen is considered an HCT/P; minimally manipulated bone marrow for homologous use and not combined with another article (except for water, crystalloids, or a sterilizing, preserving, or storage agent, if the addition of the agent does not raise new clinical safety concerns with respect to the bone marrow); ancillary products used in the manufacture of HCT/P; cells, tissues, and organs derived from animals other than humans; in vitro diagnostic products as defined in 809.3(a); blood vessels recovered with an organ, as defined in 42 CFR 121.2, that are intended for use in organ transplantation and labeled "For use in organ transplantation only."

HCT/P’s may be regulated as drugs, devices, and/or biologics when the use does not qualify for an establishment exception or regulation solely under section 361 of the PHS Act and 21 CFR 1271.

Humanitarian Use Device (HUD). A Humanitarian Use Device is a medical device intended to benefit patients in the treatment or diagnosis of a disease or condition that affects or is manifested in not more than 8,000 individuals in the United States per year.

Investigational Drug. Investigational or experimental drugs are new drugs that have not yet been approved by the FDA or approved drugs that are being studied in a clinical investigation.

Investigational Device. Investigational device means a device (including a transitional device) that is the object of an investigation. Investigation, as it pertains to devices, means a clinical investigation or research involving one or more subjects to determine the safety or effectiveness of a device.

IND. IND means an investigational new drug application in accordance with 21 CFR Part 312.

IDE. IDE means an investigational device exemption in accordance with 21 CFR 812.

In Vitro Diagnostic Product (IVD). In vitro diagnostic products are those reagents, instruments, and systems intended for use in the diagnosis of disease or other conditions, including a
determination of the state of health, in order to cure, mitigate, treat, or prevent disease or its sequelae. Such products are intended for use in the collection, preparation, and examination of specimens taken from the human body. [21 CFR 809.3(a)]

**Non-Significant Risk (NSR) Device.** A non-significant risk device is an investigational device that does not meet the definition of a significant risk device.

**Significant Risk (SR) Device.** Significant risk device means an investigational device that:

1. Is intended as an implant and presents a potential for serious risk to the health, safety, or welfare of a subject; or
2. Is purported or represented to be for a use in supporting or sustaining human life and presents a potential for serious risk to the health, safety, or welfare of a subject; or
3. Is for a use of substantial importance in diagnosing, curing, mitigating, or treating disease, or otherwise preventing impairment of human health and presents a potential for serious risk to the health, safety, or welfare of a subject; or
4. Otherwise presents a potential for serious risk to the health, safety, or welfare of a subject. [21 CFR 812.3(m)]

### 15.2 FDA Exemptions

The following categories of clinical investigations are exempt from the requirements of FDA regulations for IRB review:

1. Emergency use of a test article, provided that such emergency use is reported to the IRB within 5 working days. Any subsequent use of the test article at the institution is subject to IRB review. [21 CFR §56.104(c)]

2. Taste and food quality evaluations and consumer acceptance studies, if wholesome foods without additives are consumed or if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural, chemical, or environmental contaminant at or below the level found to be safe, by the FDA or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture. [21 CFR §56.104(d)]

### 15.3 Investigator Responsibilities

The investigator holds additional responsibilities when conducting a clinical investigation subject to FDA regulations. These responsibilities include, but are not limited to, the following:

1. The investigator is responsible for indicating on the IRB application that the proposed research is FDA-regulated and for providing relevant information regarding the test article.
2. The investigator is responsible for ensuring that a clinical investigation is conducted according to the signed investigator statement for clinical investigations of drugs (including biological products) or agreement for clinical investigations of medical devices, the investigational plan and other applicable regulations, and any requirements imposed by the FDA or IRB.

3. The investigator is responsible for personally conducting or supervising the investigation. When study-related tasks are delegated by an investigator, the investigator is responsible for providing adequate supervision of those to whom tasks are delegated. The investigator is accountable for regulatory violations resulting from failure to adequately supervise the conduct of the clinical study.

4. The investigator must maintain a list of the appropriately qualified persons to whom significant trial-related duties have been delegated. This list should also describe the delegated tasks, identify the training that individuals have received that qualifies them to perform delegated tasks (e.g., it can refer to an individual’s CV on file and/or training conducted by the investigator or sponsor), and identify the dates of involvement in the study. An investigator should maintain separate lists for each study conducted by the investigator.

5. The investigator is responsible for protecting the rights, safety, and welfare of subjects under their care during a clinical trial. This responsibility includes:
   a. Informing subjects that the test articles is being used for investigational purposes and ensuring that the requirements relating to obtaining informed consent are met
   b. Providing or arranging for reasonable medical care for study subjects for medical problems arising during participation in the trial that are, or could be, related to the study intervention
   c. Providing reasonable access to needed medical care, either by the investigator or by another identified, qualified individual (e.g., when the investigator is unavailable, or when specialized care is needed)
   d. Adhering to the protocol so that study subjects are not exposed to unreasonable risks
   e. As appropriate, informing the subject’s primary physician about the subject’s participation in the trial if the subject has a primary physician and the subject agrees to the primary physician being informed.

6. The investigator is responsible for reading and understanding the information in the investigator brochure or device risk information, including the potential risks and side effects of the drug or device.
7. The investigator is responsible for maintaining adequate and accurate records in accordance with FDA regulations and to making those records available for inspection by the FDA. These records include, but are not limited to: correspondence with other investigators, the IRB, the sponsor, monitors, or the FDA; drug and device accountability records; case histories; consent forms; and documentation that consent was obtained prior to any participation in the study. Records must be obtained for a minimum of 2 years following the date a marketing application is approved for the drug for the indication for which it is being investigated; or, if no application is to be filed or if the application is not approved for such. For clinical investigations of medical devices, required records must be maintained for a period of 2 years after the latter of the following two dates: The date on which the investigation is terminated or completed, or the date that the records are no longer required for purposes of supporting a premarket approval application or a notice of completion of a product development protocol. Other regulations, such as HIPAA, university policies and procedures, or contractual agreements with sponsors may necessitate retention for a longer period of time.

8. The investigator is responsible for controlling test articles according to FDA regulations and the Controlled Substances Act, if applicable.

9. For research reviewed by the MU IRB, the investigator proposing the clinical investigation will be required to provide a plan – to be evaluated by the IRB - that includes storage, security, and dispensing of the test article.
   a. The investigator is responsible for investigational drug accountability that includes storage, security, dispensing, administration, return, disposition, and records of accountability. Such details will be provided in the IRB submission and reviewed by the IRB for acceptability.
   b. The investigator may delegate in writing, as part of the IRB submission, the responsibility detailed in ‘a’ above to the consultant (e.g., local medical center that consults research).
   c. Investigational drugs and devices must be labeled in accordance with federal and state standards.
   d. All devices received for a study must be stored in a locked environment under secure control with limited access. When applicable, proper instructions on the use of the device must be provided to the subjects. A log must be kept regarding the receipt, use, and/or dispensing of the device, and the disposition of remaining devices at the conclusion of the investigation.

10. The investigator shall furnish all reports required by the sponsor of the research including adverse events, progress reports, safety reports, final reports, and financial disclosure reports.
11. The investigator will permit inspection of research records by the sponsor, sponsor representatives, HRPP and IRB representatives, the FDA, accrediting bodies, and any other agencies or individuals entitled to inspect such records under regulation, university policies and procedures, or contractual agreement.

15.4 Digital Health

Certain medical and decision support software have been excluded from the definition of medical device under the 21st Century Cures Act and thus are not subject to FDA’s regulations. These include exclusions for software functions:

- Intended for administrative support of a health care facility, including the processing and maintenance of financial records, claims or billing information, appointment schedules, business analytics, information about patient populations, admissions, practice and inventory management, analysis of historical claims data to predict future utilization or cost-effectiveness, determination of health benefit eligibility, population health management, and laboratory workflow;

- Intended for maintaining or encouraging a healthy lifestyle and unrelated to the diagnosis, cure, mitigation, prevention, or treatment of a disease or condition;

- Intended to serve as electronic patient records, including patient-provided information, to the extent that such records are intended to transfer, store, convert formats, or display the equivalent of a paper medical chart, so long as—
  - such records were created, stored, transferred, or reviewed by health care professionals, or by individuals working under supervision of such professionals;
  - such records are part of health information technology that is certified under section 300jj–11(c)(5) of title 42; and
  - such function is not intended to interpret or analyze patient records, including medical image data, for the purpose of the diagnosis, cure, mitigation, prevention, or treatment of a disease or condition

- Intended for transferring, storing, converting formats, or displaying clinical laboratory test or other device data and results, findings by a health care professional with respect to such data and results, general information about such findings, and general background information about such laboratory test or other device, unless such function is intended to interpret or analyze clinical laboratory test or other device data, results, and findings; and

- Not intended to acquire, process, or analyze a medical image or a signal from an in vitro diagnostic device or a pattern or signal from a signal acquisition system; and
15.5 Human Cells, Tissues/Tissue-Based Products (HCT/P)

Generally, research involving HCT/P’s regulated as drugs, devices, and/or biologics will require an IND or IDE depending on how the HCT/P is categorized. Because the regulatory and policy framework for HCT/P’s is complex, consultation with the FDA prior to submission to the IRB is encouraged to appropriately categorize the HCT/P, understand which regulations and requirements apply, and to obtain an IND or IDE if necessary (or FDA determination that such is not required).

15.6 Dietary Supplements

Research involving dietary supplements may or may not fall under FDA regulations. Under the Dietary Supplement Health and Education Act (DSHEA) of 1994, a dietary supplement is not considered a drug and is not subject to the premarket approval requirements for drugs if the intended use for which it is marketed is only to affect the structure or any function of the body.
(i.e., not intended to be used for a therapeutic purpose). Whether a study falls under FDA oversight is determined by the intent of the clinical investigation. If the clinical investigation is intended only to evaluate the dietary supplement’s effect on the structure or function of the body, FDA research regulations do not apply. However, if the study is intended to evaluate the dietary supplement’s ability to diagnose, cure, mitigate, treat, or prevent a disease, then FDA regulations do apply. Studies involving the ingestion of dietary supplements that are not subject to FDA oversight are still research, and therefore must be reviewed by the IRB.

Similarly, whether an IND is needed for a study evaluating a dietary supplement is determined by the intent of the study. If the study is intended only to evaluate the dietary supplement’s effect on the structure or function of the body, an IND is not required. However, if the study is intended to evaluate the dietary supplement’s ability to diagnose, cure, mitigate, treat, or prevent a disease, an IND is required under part 312.

As with any research involving a test article, the investigator must supply the IRB with sufficient information to determine that the criteria for approval are satisfied and to determine or verify whether the research requires an IND. Applications should provide detail consistent with that expected on a drug protocol and consistent with the level of risk associated or anticipated with the research. At a minimum, the research plan should provide the following information regarding the supplement: Name, Manufacturer, Formulation, Dosage, Method/Route of Administration, Mechanism of Action, Known Drug Interactions, Risk Profile, IND number (or justification for why an IND is unnecessary), documentation of approval for use in humans, documentation or certification of Quality or Purity. As with drugs and devices there should be an accountability plan for the product describing where the product will be stored and how it will be dispensed, usage tracked, and disposal or return. If the study entails greater than minimal risk, a plan for Data and Safety Monitoring must be included.

15.7 Clinical Investigations of Articles Regulated as Drugs or Devices

15.7.1 IND/IDE Requirements

For studies evaluating the safety or effectiveness of medical devices or experiments using drugs, biologics, dietary supplements, and other compounds that may be considered a drug or device under FDA regulations, the investigator must indicate on the IRB application whether an IDE or IND is in place, and, if not, the basis for why an IDE or IND is not needed. Documentation must be provided by the sponsor or the sponsor-investigator. Documentation of the IND/IDE could be a:

1. Industry sponsored study with IND/IDE number indicated on the protocol;
2. Letter/communication from FDA;
3. Letter/communication from industry sponsor; or
4. Other document and/or communication verifying the IND/IDE.

For investigational devices, the study may be exempt from IDE requirements (IDE-exempt) or, in the case of Non-significant Risk (NSR) device studies, follow abbreviated IDE requirements which do not require formal approval by the FDA. If a sponsor has identified a device study as IDE-exempt or NSR, then the investigator should include documentation with the submission providing the basis for IDE-exempt or NSR categorization for the IRB’s consideration. If the FDA has determined that the study is IDE-exempt or NSR, documentation of that determination must be provided.

The IRB will review the application and, based upon the documentation provided, determine:

1. That there is an approved IND/IDE in place;
2. That the FDA has determined that an IND is not required or that a device study is IDE-exempt or NSR; or,
3. If neither of the above, whether an IND is necessary, or that a device study is exempt or NSR, or whether the study must be submitted to the FDA, using the criteria below.

The IRB cannot grant approval to the research until the IND/IDE status is determined, and, if necessary, an approved IND or IDE is in place.

15.7.2 IND Exemptions

For drugs, an IND is not necessary if the research falls in one of the following seven (7) categories:

1. **21 CFR 312.2(b)(1)**: The drug being used in the research is lawfully marketed in the United States and all of the following requirements are met:
   a. The research is not intended to be reported to FDA as a well-controlled study in support of a new indication and there is no intent to use it to support any other significant change in the labeling of the drug;
   b. In the case of a prescription drug, the research is not intended to support a significant change in the advertising for the product;
   c. The research does not involve a route of administration, dose, subject population, or other factor that significantly increases the risks (or decreases the acceptability of the risks) associated with the use of the drug product;
   d. The research is conducted in compliance with the requirements for IRB review and informed consent [21 CFR parts 56 and 50, respectively];
e. The research is conducted in compliance with the requirements of 21 CFR 312.7 (i.e., the research is not intended to promote or commercialize the drug product); and

f. The research does not intend to invoke FDA regulations for planned emergency research [21 CFR 50.24].

Please Note: FDA has provided specific guidance for evaluating whether this exemption applies to studies of marketed drugs/biologics for the treatment of cancer.

2. **21 CFR 312.2(b)(2)**: For clinical investigations involving defined (blood grouping serum, reagent red blood cells, and anti-human globulin) in vitro diagnostic biological products, an IND is not necessary if a) it is intended to be used in a diagnostic procedure that confirms the diagnosis made by another, medically established, diagnostic product or procedure; and b) it is shipped in compliance with 312.160

3. **21 CFR 312.2(b)(5)**: A clinical investigation involving use of a placebo is exempt from the requirements of part 312 if the investigation does not otherwise require submission of an IND.

4. **21 CFR 320.31(b) and (d)**: Bioavailability or Bioequivalence (BA/BE) studies if all of the following conditions are met:
   a. The drug product does not contain a new chemical entity [21 CFR 314.108], is not radioactively labeled, and is not cytotoxic;
   b. The dose (single dose or total daily dose) does not exceed the dose specified in the labeling of the approved version of the drug product;
   c. The investigation is conducted in compliance with the requirements for IRB review and informed consent [21 CFR parts 56 and 50, respectively]; and
   d. The sponsor meets the requirements for retention of test article samples [21 CFR 320.31(d)(1)] and safety reporting [21 CFR 320.31(d)(3)].

5. **21 CFR 361.1**: Research using a radioactive drug or biological product if all of the following conditions are met:
   a. It involves basic research not intended for immediate therapeutic, diagnostic, or similar purposes, or otherwise to determine the safety and efficacy of the product;
   b. The use in humans is approved by a Radioactive Drug Research Committee (RDRC) that is composed and approved by FDA;
   c. The dose to be administered is known not to cause any clinically detectable pharmacological effect in humans, and
d. The total amount of radiation to be administered as part of the study is the smallest radiation dose practical to perform the study without jeopardizing the benefits of the study and is within specified limits.

6. FDA practices enforcement discretion for research using cold isotopes of unapproved drugs if all of the following conditions are met:
   a. The research is intended to obtain basic information regarding the metabolism (including kinetics, distribution, and localization) of a drug labeled with a cold isotope or regarding human physiology, pathophysiology, or biochemistry;
   b. The research is not intended for immediate therapeutic, diagnostic, or preventive benefit to the study subject;
   c. The dose to be administered is known not to cause any clinically detectable pharmacologic effect in humans based on clinical data from published literature or other valid human studies;
   d. The quality of the cold isotope meets relevant quality standards; and
   e. The investigation is conducted in compliance with the requirements for IRB review and informed consent. [21 CFR parts 56 and 50, respectively]

15.7.3 IDE Exemptions

For clinical investigations of medical devices, an IDE is not necessary if:

1. The research involves a device, other than a transitional device, in commercial distribution immediately before May 28, 1976, when used or investigated in accordance with the indications in labeling in effect at that time;

2. The research involves a device other than a transitional device, introduced into commercial distribution on or after May 28, 1976, that FDA has determined to be substantially equivalent to a device in commercial distribution immediately before May 28, 1976, and that is used or investigated in accordance with the indications in the labeling FDA reviewed under subpart E of 21 CFR 807 in determining substantial equivalence (a “510k” device);

3. The research involves a diagnostic device, if the sponsor complies with applicable requirements in 21 CFR 809.10(c) and if the testing:
   a. Is noninvasive,
   b. Does not require an invasive sampling procedure that presents significant risk,
   c. Does not by design or intention introduce energy into a subject, and
d. Is not used as a diagnostic procedure without confirmation of the diagnosis by another, medically established diagnostic product or procedure;

4. The research involves a device undergoing consumer preference testing, testing of a modification, or testing of a combination of two or more devices in commercial distribution, if the testing is not for the purpose of determining safety or effectiveness and does not put subjects at risk;

5. The research involves a device intended solely for veterinary use;

6. The research involves a device shipped solely for research on or with laboratory animals and labeled in accordance with 21 CFR 812.5(c);

7. The research involves a custom device as defined in 21 CFR 812.3(b), unless the device is being used to determine safety or effectiveness for commercial distribution.

15.7.4 Significant and Non-Significant Risk Device Studies

A device study is a Non-Significant Risk (NSR) Device study if it is not IDE exempt and does not meet the definition of a Significant Risk (SR) Device study.

Under 21 CFR 812.3(m), an SR device means an investigational device that:

1. Is intended as an implant and presents a potential for serious risk to the health, safety, or welfare of a subject;

2. Is purported or represented to be for use supporting or sustaining human life and presents a potential for serious risk to the health, safety, or welfare of a subject;

3. Is for a use of substantial importance in diagnosing, curing, mitigating, or treating disease, or otherwise preventing impairment of human health and presents a potential for serious risk to the health, safety, or welfare of a subject; or

4. Otherwise presents a potential for serious risk to the health, safety, or welfare of a subject.

If the FDA has already determined a study to be SR or NSR, documentation evidencing such should be provided to the IRB as described in Section 15.7.4. The FDA’s determination is final, and the IRB does not have to make the device risk determination.

Unless the FDA has already made a device risk determination for the study, the IRB will review studies that the sponsor or investigator have put forth as NSR at a convened meeting to determine if the device represents SR or NSR.

The sponsor or sponsor-investigator is responsible for providing the IRB with an explanation describing the basis for their initial determination of NSR and any other information that may
help the IRB in evaluating the risk of the study (e.g., reports of prior investigations of the device).

The IRB will review the information provided by the sponsor and investigator including, but not limited to: the sponsor or investigator’s NSR assessment, the description of the device, reports of prior investigations of the device (if applicable), the proposed investigational plan, and subject selection criteria.

The NSR/SR determination made by the IRB will be based on the proposed use of the device in the investigation, not on the device alone. The IRB will consider the nature of any harms that may result from use of the device, including potential harms from additional procedures subjects would need to undergo as part of the investigation (e.g., procedures for inserting, implanting, or deploying the device). The IRB may consult with the FDA or require the sponsor or investigator to obtain a determination from the FDA. The IRB will document the SR or NSR determination and the basis for it in the meeting minutes and provide the investigator, and sponsor when applicable, with the determination in writing.

Non-significant risk device studies do not require submission of an IDE application to the FDA but must be conducted in accordance with the abbreviated requirements of IDE regulations (21 CFR 812.2(b)). Under the abbreviated requirements, the following categories of investigations are considered to have approved applications for IDE’s, unless FDA has notified a sponsor under 812.20(a) that approval of an application is required:

1. An investigation of a device other than a significant risk device, if the device is not a banned device and the sponsor (or sponsor-investigator):
   a. Labels the device in accordance with 812.5;
   b. Obtains IRB approval of the investigation after presenting the reviewing IRB with an explanation of why the device is not a significant risk device, and maintains such approval;
   c. Ensures that each investigator participating in an investigation of the device obtains from each subject under the investigator's care, informed consent under part 50 and documents it, unless the requirement is waived by the IRB;
   d. Complies with the requirements of 812.46 with respect to monitoring investigations;
   e. Maintains the records required under 812.140(b) (4) and (5) and makes the reports required under 812.150(b) (1) through (3) and (5) through (10);
   f. Ensures that participating investigators maintain the records required by 812.140(a)(3)(i) and make the reports required under 812.150(a) (1), (2), (5), and (7); and
g. Complies with the prohibitions in 812.7 against promotion and other practices.

When the FDA or IRB determines that a study is SR, the IRB may approve the study, but the study cannot begin until an IDE is obtained.
16 Unanticipated Problems Involving Risks to Subjects or Others

Regulations require an institution to have written procedures for ensuring prompt reporting of “unanticipated problems involving risk to subjects or others” (also referred to as UPs, UAPs, and UPIRTSOs).

This section provides definitions and procedures for the reporting of UAPs to the MU IRB. Investigators conducting research under the oversight of an external IRB must comply with the reporting requirements of the external IRB and the internal reporting requirements outlined in Section 6.2.2.

In conducting its review of protocol deviations, noncompliance, subject complaints, and other reportable events, the IRB will also consider whether the event or issue was caused by, contributed to, or otherwise related to an UAP.

16.1 Definitions

Unanticipated problems involving risk to participants or others. Unanticipated problems involving risks to subjects or others (UAPs) refer to any incident, experience, outcome, or new information that:

1. Is unexpected; and
2. Is at least possibly related to participation in the research; and
3. Indicates that subjects or others are at a greater risk of harm (including physical, psychological, economic, legal or social harm) than was previously known or recognized.

UAPs also encompass Unanticipated Adverse Device Effects, as defined below.

Unexpected. The incident, experience or outcome is not expected (in terms of nature, severity, or frequency) given the research procedures that are described in the study-related documents, such as the IRB-approved research protocol/research plan and informed consent documents; and the characteristics of the subject population being studied.

Related. There is a reasonable possibility that the incident, experience, or outcome may have been caused by the procedures involved in the research.

Adverse Event. For the purposes of these policies and procedures, an adverse event (AE) is any untoward or unfavorable occurrence in a human subject, including any abnormal sign (for example, abnormal physical exam or laboratory finding), symptom, or disease, temporally associated with the subject’s participation in the research, whether or not considered related to the subject’s participation in the research. Adverse events encompass both physical and psychological harms. They occur most commonly in the context of biomedical research, although on occasion, they can occur in the context of social and behavioral research.
Unanticipated Adverse Device Effect. An Unanticipated Adverse Device Effect (UADE) means any serious adverse effect on health or safety or any life-threatening problem or death caused by, or associated with, a device, if that effect, problem, or death was not previously identified in nature, severity, or degree of incidence in the investigational plan or application (including a supplementary plan or application), or any other unanticipated serious problem associated with a device that related to the rights, safety, or welfare of subjects [21 CFR 812.3(s)].

16.2 Procedures

16.2.1 Reporting

Adverse events in clinical trials must be reported to the sponsor in compliance with FDA regulations and sponsor requirements. Unless specifically required by the IRB for a given protocol, the MU IRB does not accept reports of adverse events that are not UAPs.

Investigators must report the following events or issues to the IRB as soon as possible but within 7 working days after the investigator first learns of the event using the “Interim Event Report Form” form in the IRB electronic system.

If investigators are uncertain but believe that the event might represent an UAP, a report should be submitted.

Examples of UAPs include:

1. A single occurrence of a serious, unexpected event that is uncommon and strongly associated with drug exposure (such as angioedema, agranulocytosis, hepatic injury, or Stevens-Johnson syndrome);

2. A single occurrence, or more often a small number of occurrences, of a serious, unexpected event that is not commonly associated with drug exposure, but uncommon in the study population (e.g., tendon rupture, progressive multifocal leukoencephalopathy);

3. Multiple occurrences of an AE that, based on an aggregate analysis, is determined to be an unanticipated problem. There should be a determination that the series of AEs represents a signal that the AEs were not just isolated occurrences and involve risk to human subjects (e.g., a comparison of rates across treatment groups reveals higher rate in the drug treatment arm versus a control). A summary and analyses supporting the determination should accompany the report;

4. An AE that is described or addressed in the investigator’s brochure, protocol, or informed consent documents, but occurs at a specificity or severity that is inconsistent with prior observations. For example, if transaminase elevation is listed in the investigator’s brochure and hepatic necrosis is observed in study subjects, hepatic
necrosis would be considered an unanticipated problem involving risk to human subjects. A discussion of the divergence from the expected specificity or severity should accompany the report;

5. A serious AE that is described or addressed in the investigator’s brochure, protocol, or informed consent documents, but for which the rate of occurrence in the study represents a clinically significant increase in the expected rate of occurrence (ordinarily, reporting would only be triggered if there were a credible baseline rate for comparison). A discussion of the divergence from the expected rate should accompany the report;

6. AEs involving direct harm to subjects enrolled by the local investigator which in the opinion of the investigator or sponsor, may represent an UAP;

7. IND Safety Reports from sponsors that meet the criteria for an UAP. Such reports must be accompanied by an analysis from the sponsor explaining why the report represents an UAP and whether it has been reported to the FDA as such;

8. Unanticipated adverse device effects (UADEs);

9. Any other AE or safety finding (e.g. based on animal or epidemiologic data) that indicates subjects or others might be at risk of serious, unanticipated harms that are reasonably related to the research. These would cause the sponsor to modify the investigator’s brochure, study protocol, or informed consent documents, or would prompt other action by the IRB to ensure the protection of human subjects. An explanation of the conclusion should accompany the report.

10. Reports (including reports from DSMBs/DMCs) that indicate that risks are greater than previously known or that indicate that the research should be modified, suspended, or halted.

11. Sponsor or lead investigator/coordinating center-imposed suspension or termination of some or all research activities;

12. An unanticipated event related to the research that exposes subjects to potential risk but that does not involve direct harm to subjects;

13. A breach of confidentiality or loss of research data (e.g., a laptop or thumb drive is lost or stolen);

14. An unanticipated event related to the research that results in actual harm or exposes individuals other than the research subjects (e.g., investigators, research assistants, students, the public, etc.) to potential risk;

15. New information that indicates increased risk, new risk(s), or decrease to potential benefit from what was previously understood. Examples include:
a. An interim analysis or safety monitoring report indicates that the frequency or magnitude of harms or benefits may be different than initially presented to the IRB;

b. A report or publication that indicates the risks, benefits, or merit of the research are different from what was previously understood.

### 16.2.2 Review Procedures

1. Upon receipt of the Event Report, the IRB staff pre-reviews the submission and, if needed, contacts the investigator for corrections or additional information.

2. The IRB Chair or designated reviewer receives and reviews the report and makes an initial determination as to whether the event represents an UAP. If needed, the Chair or designee may request additional information from the investigator, sponsor, or others (including study committees, such as data monitoring committees, data safety monitoring boards, or steering committees).

3. If the reviewer determines that the problem does not meet the definition of an UAP, they will determine whether any additional actions are necessary to ensure the protection of human subjects. As warranted, the reviewer may refer the matter to the convened IRB for review. The results of the review will be recorded in review notes in the electronic system and communicated to the investigator.

4. If the reviewer determines that the event may be an UAP, the report will be referred for review by the convened IRB. The convened IRB will determine whether the event is a UAP and whether any additional actions, such as those outlined below, are necessary to ensure the protection of human subjects. If needed, the IRB may request additional information from the investigator, sponsor, or others (including study committees, such as data monitoring committees, data safety monitoring boards, or steering committees). The results of the review will be recorded in the IRB minutes and communicated to the investigator.

5. Based upon the circumstances, the IRB may take any of the following actions, or others, to ensure the protection of human subjects:

   a. Requiring modifications to the protocol or plan or procedures for implantation of the research (Research Plan) as described in the application and other materials submitted to the IRB;

   b. Revising the continuing review timetable;

   c. Modifying the consent process;

   d. Modifying the consent document;
e. Providing additional information to current participants (e.g., whenever the information may relate to the subject’s rights, welfare, or willingness to continue participation);

f. Providing additional information to past participants;

g. Requiring additional training of the investigator and/or study staff;

h. Requiring that current subjects re-consent to participation;

i. Monitoring the research;

j. Monitoring consent;

k. Reporting or referral to appropriate parties (e.g., the IO, Office of the General Counsel, etc.);

l. Suspending IRB approval;

m. Terminating IRB approval;

n. Other actions as appropriate given the specific circumstances.

When the IRB determines that an event is an UAP, the IRB staff will follow the procedures for reporting to regulatory agencies, sponsors, and university officials in Section 20. When appropriate, a preliminary report may be submitted while more information is obtained to inform the determination or actions.
17 Noncompliance

This section provides definitions and procedures for the reporting and review of known or suspected noncompliance for research under the oversight of the MU IRB. Research under the oversight of an external IRB must comply with the reporting requirements of the external IRB and the internal reporting requirements outlined in Section 6.2.2.

In conducting its review of protocol deviations, unanticipated problems, subject complaints, and other reportable events, the IRB will also consider whether the event or issue was caused by, contributed to, or otherwise related to noncompliance.

17.1 Definitions

Noncompliance is defined as the failure to follow federal, state, or local regulations governing human subject research, institutional policies related to human subject research, or the requirements or determinations of the IRB. Noncompliance may be minor or sporadic or it may be serious or continuing.

Serious Noncompliance is defined as noncompliance that, in the judgment of the convened IRB, creates an increase in risks to subjects, adversely affects the rights, welfare, or safety of subjects, or adversely affects the scientific integrity of the study. Willful violation of policies and/or federal regulations may also constitute serious noncompliance.

Continuing Noncompliance is defined as a pattern of noncompliance that, in the judgment of the convened IRB, suggests a likelihood that instances of noncompliance will continue unless the IRB or institution intervenes.

Allegation of Noncompliance is defined as an unproved assertion of noncompliance.

17.2 Reporting

Investigators and their study staff are required to report instances of possible noncompliance to the IRB within 7 working days of discovery using the Interim Event Report form in the IRB electronic system. Additionally, anyone may report concerns of possible noncompliance to the HRPP or IRB verbally, by email, or other means. In such cases, the reporting party is responsible for making these reports in good faith, maintaining confidentiality and, unless reporting anonymously, cooperating with any subsequent fact-finding in relation to the report.

If an individual, whether investigator, study staff or other, is uncertain whether there is cause to report noncompliance, he or she may contact the ORC Director, IRB/IACUC Coordinator, or IRB Chair directly to discuss the situation informally.
17.3 Review Procedures

1. Upon receipt of the Event Report, the IRB/IACUC Coordinator pre-reviews the submission and, if needed, contacts the investigator for corrections or additional information. If the report came from someone other than the investigator verbally, by email, or by other means, the ORC Director, IRB/IACUC Coordinator, or assigned staff will develop a written report summarizing the available information and will upload the report into the IRB electronic system. If the information provided suggests that subjects may be at risk of harm without immediate intervention or that research misconduct may have occurred, the ORC Director, IRB Chair, and, when appropriate, the IO and/or Research Integrity Officer, will be notified so that they can take any necessary steps to ensure the safety of subjects or investigate the matter.

2. The IRB Chair or designated reviewer receives and reviews the report and makes an initial determination as to whether the event represents noncompliance, and, if so, if the noncompliance may be serious or continuing. If needed, the reviewer may request additional information from the investigator or others. When circumstances warrant, the ORC Director or IRB/IACUC Coordinator may bypass this step and assign the report for convened board review.

3. If the reviewer determines that the event or issue is not noncompliance, or is noncompliance but not serious or continuing, they will review any proposed corrective and preventative action plans and determine if the plan is acceptable as proposed or if modifications to the plan or additional actions are required. As warranted, the reviewer may refer the matter to the convened IRB for review. The results of the review will be recorded in the electronic system and communicated to the investigator.

4. If the reviewer determines that the event or issue may be serious or continuing noncompliance, the report will be referred for review by the convened IRB. The convened IRB will determine whether the event is serious or continuing noncompliance. The IRB will review any proposed corrective and preventative action plans and determine if the plan is acceptable as proposed or if modifications to the plan or additional actions, such as those outline below, are necessary to ensure the protection of human subjects. If needed, the IRB may request additional information from the investigator or others. The results of the review will be recorded in the IRB minutes and communicated to the investigator.

5. When the IRB determines that an event is serious or continuing noncompliance, the IRB may take any of the following actions, or others, to ensure the protection of human subjects:
   a. Requiring modifications to the protocol or research plan
   b. Revising the continuing review timetable
c. Modifying the consent process

d. Modifying the consent document

e. Providing additional information to current participants (e.g., whenever the information may relate to the subject’s willingness to continue participation)

f. Providing additional information to past participants

g. Requiring additional training of the investigator and/or study staff

h. Requiring that current subjects re-consent to participation

i. Monitoring the research

j. Monitoring consent

k. Reporting or referral to appropriate parties (e.g., the IO, Compliance, Risk Management, Privacy)

l. Suspending IRB approval

m. Terminating IRB approval

n. Other actions as appropriate given the specific circumstances

6. When the IRB determines that an event is serious or continuing noncompliance, the IRB staff will follow the procedures for reporting to regulatory agencies, sponsors, and university officials in Section 20. When appropriate, a preliminary report may be submitted while more information is obtained to inform the determination or actions.

7. Investigators may request that the IRB reconsider its determination by following the procedures in Section 9.4.

18 Complaints

The HRPP & IRB will be responsive and sensitive to the complaints or concerns expressed by subjects or others and will respond to all complaints or concerns in a confidential and timely manner. The PI and all other research team members are responsible for the safety and welfare of all subjects enrolled in their studies. When investigators or team members hear complaints or concerns from subjects, he or she will try to resolve them.

Investigators conducting research under the auspices of MU must report complaints to the MU HRPP regardless of who serves as the IRB of record. Investigators conducting research under the oversight of an external IRB must comply with the reporting requirements of the external IRB and the internal reporting requirements outlined in Section 6.2. Investigators conducting research under the oversight of the MU IRB report complaints using the Event Report form in the IRB electronic system. Investigators are encouraged to contact the ORC Director or
IRB/IACUC Coordinator when they are having difficulty resolving a complaint or concern, and whenever circumstances warrant (e.g., immediate attention is needed).

When the HRPP or ORC office is the direct recipient of complaints or concerns, the staff will do the following:

1. Document the complaint or allegation. When appropriate, the staff may request that the subject submit the complaint in writing.
2. Reassure the subject that the HRPP/IRB will take all necessary measures to inquire into the circumstances and to address the issue.
3. Provide written confirmation of receipt of the complaint to the subject, if the subject is willing to provide contact information.
4. Convey the information to the IRB of record in a timely manner.
5. When appropriate, contact the investigator for additional information or to assist with resolution.
6. When appropriate, contact other resources to assist with information-gathering or resolution.

For research under the oversight of the MU IRB, the IRB Chair or designee will consider the complaint or concern and take any reasonable steps necessary to investigate and/or resolve the issue, if appropriate, prior to review and consideration by the IRB. A report will be provided to the IRB at the next available meeting if the research is subject to convened IRB review, or provided to the designated expedited reviewer if the research is eligible for expedited review. When reviewing complaints, the IRB will consider whether the complaint was the result of, or related to, an UAP or noncompliance, and, if so, will follow the relevant procedures. The IRB Chair or designated expedited reviewer may refer any complaint for review by the convened IRB. The IRB minutes, or reviewer comments for expedited reviews, will reflect the action(s) taken and, if necessary, notice to the appropriate officials and/or agencies.

The ORC will maintain written copies of complaints and concerns and will document the investigation and resolution. The complainant will be notified promptly following resolution of the complaint or concern, when appropriate, and if contact information has been provided. If the ORC or IRB receives a complaint, or identifies information while investigating a complaint, that is indicative of possible misconduct in research, ORC Director serving in their capacity as MU’s Research Integrity Officer will be notified immediately.
19 Other Reportable Information

When research is under the oversight of the MU IRB, in addition to UAPs, noncompliance, and complaints, any change to the research implemented without IRB approval and any information that may impact the rights, safety, or welfare of subjects or inform the IRB’s oversight of the research must be reported to the IRB within 7 working days of discovery using the Interim Event Report Form, as applicable. Investigators conducting research under the oversight of an external IRB must comply with the reporting requirements of the external IRB and the internal reporting requirements outlined in Section 6.2.

Other reportable information includes, but is not limited to, the following:

1. Changes made to the research without prior IRB approval to eliminate apparent immediate hazards to the subject(s);
2. Protocol Deviations - any variation from the IRB approved research plan that happens without prior review and approval of the IRB and isn’t necessary to eliminate apparent immediate hazards to the subject(s);
3. Monitoring, audit, and inspection reports in accordance with Section 2.1 of this manual;
4. Sponsor or coordinating center reports;
5. Data Safety Monitoring reports, including reports from DSMBs, DMCs, and others;
6. Enrollment or inclusion of vulnerable populations not previously approved by the IRB for the study (e.g., prisoner, pregnant woman, neonate, child, adult with impaired decision-making capacity);
7. When an existing subject becomes a member of a vulnerable population not previously approved by the IRB for inclusion in the study (e.g., incarceration, pregnancy, or change in decision-making capacity of an already enrolled subject);
8. Holds, suspensions, or terminations of a study, in part or in full, by an investigator, sponsor, or others;
9. Changes that impact the ability of the PI to conduct or supervise the study, temporarily or permanently;
10. Changes that impact the qualifications of investigators or research staff members such as actions taken by regulatory authorities, licensing boards, or credentialing committees;
11. New information that may impact the rights, welfare, or willingness of subjects to continue in the research.
19.1 Review Procedures

1. Upon receipt of the report, the IRB/IACUC Coordinator pre-reviews the submission and, if needed, contacts the investigator for corrections or additional information. If the information provided suggests that subjects may be at risk of harm without immediate intervention or that research misconduct may have occurred, the ORC Director, IRB Chair, and, when appropriate, the IO and/or Research Integrity Officer, will be notified so that they can take any necessary steps to ensure the safety of subjects or investigate the matter.

2. The IRB Chair or designated reviewer receives and reviews the report and if the report may represent an UAP or noncompliance, reviews the report as described in Section 16 or 17. When circumstances warrant, the ORC Director or IRB/IACUC Coordinator may bypass this step and assign the report for convened board review.

3. If the reviewer determines that the event or issue is not noncompliance or an UAP, they will review the event or issue, any proposed corrective and preventative action plans, and determine if any additional actions are needed to ensure the protection of human subjects. As warranted, the reviewer may refer the matter to the convened IRB for review. The results of the review will be recorded in the electronic system and communicated to the investigator.
Federal regulations require prompt reporting to appropriate institutional officials and, as applicable, the federal department or agency (e.g., OHRP, FDA), of (i) any unanticipated problems involving risks to subjects or others; (ii) any serious or continuing noncompliance with the applicable federal regulations or the requirements or determinations of the IRB; and (iii) any suspension or termination of IRB approval. MU IRB complies with this requirement as follows. When research is under the oversight of an external IRB, the terms of the agreement with that IRB will guide reporting.

### 20.1 Procedures

IRB staff will initiate these procedures as soon as the IRB takes any of the following actions:

1. Determines that an event may be considered an unanticipated problem involving risks to participants or others
2. Determines that noncompliance was serious or continuing
3. Suspends or terminates approval of research

The ORC Director or designee is responsible for preparing reports or letters which includes the following information:

1. Reason for the report (Unanticipated problem involving risks to subjects or others, serious or continuing noncompliance, suspension or termination of IRB approval)
2. Name of the involved institution(s)
3. Title of the research project and/or grant proposal in which the problem occurred
4. Name of the investigator on the project
5. Number of the research project assigned by the IRB and the number of any applicable federal award(s) (e.g., grant, contract, or cooperative agreement)
6. A detailed description of the problem including the findings of the university and the reasons for the IRB’s decision
7. Actions the university is taking or plans to take to address the problem (e.g., revise the protocol, suspend subject enrollment, terminate the research, revise the informed consent document, inform enrolled subjects, increase monitoring, etc.);
8. Plans, if any, to send a follow-up or final report by a specific date, upon completion of an investigation, or when a corrective action plan has been implemented;
9. The IRB Chair and the IO review the letter and recommend modifications as needed;
10. The IO is the signatory for the report or letter;

11. The ORC Director or designee sends a copy of the report to:

   a. The IRB Chair
   b. The IO
   c. The Chair of the Faculty Council
   d. Federal departments or agencies, as follows:
      i. OHRP, if the study is subject to DHHS regulations or subject to a DHHS FWA.
      ii. If the study is conducted or supported by a Common Rule agency other than DHHS, the report is sent to OHRP or the head of the federal agency, as required by the agency.
      iii. If the study is conducted or supported by a federal agency that has not adopted the Common Rule, and reporting is required, the report is sent to the party identified by the agency.
      iv. FDA, if the study is subject to FDA regulations.

Reports are not submitted to federal departments or agencies such as OHRP or FDA unless the research is subject to federal regulations or another mandate that necessitates such reporting.

Note: Reporting to a regulatory agency is not required if the event occurred at a site that was not subject to the direct oversight of the university, and the agency has been notified of the event by another party (e.g., sponsor).

   e. Sponsor, if applicable
   f. Investigator
   g. Office of the General Counsel
   h. President of FAMCO
   i. Others as deemed appropriate by the IO

The ORC Director ensures that all steps of this policy are completed within 30 working days of the determination. For more serious actions, the Director expedites reporting. If additional time is needed to gather facts, or determine corrective actions, a preliminary report will be submitted within 30 days, to be followed by a final report as described above.
Investigator Responsibilities

Principal Investigators (PIs) are ultimately responsible for the conduct of research. PIs may delegate tasks to appropriately trained and qualified members of their research team. However, PIs must maintain oversight and retain ultimate responsibility for the proper conduct of the research.

Within the regulations, the term ‘investigator’ refers to individuals involved in the design, conduct, or reporting of the research. Such involvement could include one or more of the following:

- Designing the research
- Obtaining information about living individuals by intervening or interacting with them for research purposes
- Obtaining identifiable private information about living individuals for research purposes
- Obtaining the voluntary informed consent of individuals to be subjects in research
- Studying, interpreting, or analyzing identifiable private information or data for research purposes.

At Monmouth University, if a student is named as PI on a study, it is the faculty mentor who assumes all of the PI responsibilities addressed in this section.

21.1 Responsibilities

Investigators who conduct research involving human subjects must:

1. Develop and conduct research that is in accordance with the ethical principles in the Belmont Report;
2. Develop a research plan that is scientifically sound and minimizes risk to the subjects;
3. Develop a research plan that ensures the just, fair, and equitable recruitment and selection of subjects;
4. When some or all of the subjects are likely to be vulnerable to coercion or undue influence, include additional safeguards in the study to protect the rights and welfare of these subjects;
5. Ensure that the research plan includes adequate provisions for the monitoring of subjects and data to ensure the safety of subjects;
6. Ensure that there are adequate provisions to protect the privacy interests of subjects;
7. Ensure that there are adequate provisions to protect the confidentiality of data;
8. Have sufficient resources necessary to protect human subjects, including:
   a. Access to a population that would allow recruitment of the required number of
      subjects;
   b. Sufficient time to conduct and complete the research;
   c. Adequate numbers of qualified staff;
   d. Adequate facilities;
   e. Necessary equipment;
   f. A plan to ensure proper supervision of the research including a plan for periods
      of absence or decreased availability; and
   g. When appropriate, a plan to ensure the availability of medical, psychological, or
      other services that subjects might require as a result of their participation.

9. Ensure that all procedures in a study are performed with the appropriate level of
   supervision and only by individuals who are licensed or otherwise qualified to perform
   such under the laws of New Jersey and the policies of MU;

10. Ensure that all study personnel are educated in the regulatory requirements regarding
    the conduct of research and the ethical principles upon which they are based;

11. Ensure that all persons assisting with the research are adequately trained and informed
    about the protocol and research implementation plan and their specific duties and
    functions;

12. Promptly report any changes in, addition to, or departure of investigators or research
    staff to the IRB for evaluation and approval (note that investigators and staff may not
    begin work on the research until IRB-approved);

13. Protect the rights, safety, and welfare of participants;

14. Ensure that when PHI is used, legally effective HIPAA authorization is obtained for each
    subject unless a Privacy Board or IRB has approved a waiver of the requirement;

15. Ensure that the language in the consent form is consistent with that in the protocol, any
    associated grant or contract, and, when applicable, the HIPAA authorization;

16. Obtain and document informed consent and ensure that no human subject is involved
    in the research prior to obtaining consent or consent/permission from their LAR, unless
    a waiver of the requirement has been approved by the IRB;

17. Have a procedure to receive questions, complaints, or requests for additional
    information from subjects and respond appropriately;
18. Ensure that all information provided to the IRB is accurate and complete so that the IRB may fulfill its responsibilities to review the research and make the required determinations;

19. Ensure that all research involving human subjects receives IRB review and approval in writing or a determination of exemption before the research begins;

20. Ensure that all required reviews and approvals (e.g., from research sites, from MU Administration to access student records or emails etc.) are in place before initiating the research;

21. Comply with all IRB decisions, conditions, and requirements;

22. Ensure that studies receive timely continuing IRB review and approval;

23. Report unanticipated problems, deviations, complaints, noncompliance, suspensions, terminations, and any other reportable events to the IRB and the organization, as required by regulations and policy;

24. Notify the IRB if information becomes available that suggests a change to the potential risks, benefits, merit, or feasibility of the research;

25. Obtain IRB review and approval before changes are made to the research unless a change is necessary to eliminate apparent immediate hazards to the subject(s);

26. Seek HRPP or IRB assistance when in doubt about whether proposed research requires IRB review;

27. Retain records for the time-period and in the manner described to and approved by the IRB and as required by required by regulations, agreements, and policies;

Additional investigator responsibilities, including specific responsibilities for investigators engaged in FDA-regulated research are described throughout this manual.

21.1.1 Record Retention

Investigator research records, including, but not limited to, signed consent forms and HIPAA authorizations, subject records and data, test article records, IRB records (submission materials, IRB determinations and associated documentation, correspondence to and from the IRB, etc.), and sponsor/grant records must be retained in accordance with regulatory, university, IRB, sponsor or grantor, and journal or publication standards. Records must be maintained securely with limited access. Disposal of investigator records must be done in such a manner that no identifying information can be linked to research data. When research is sponsored or grant-supported, consult the contract, grant terms, or other relevant agreements prior to destroying or transferring any records. If there are questions or allegations about the validity of the data or...
the appropriate conduct of the research, all records must be retained until such questions or allegations have been completely resolved.

The following summarizes a few of the more common regulatory requirements:

1. **OHRP** – research records must be retained for at least 3 years after the completion of the research.

2. **HIPAA** – Research authorizations, or documentation of waivers or alterations of authorization, must be held for a minimum of 6 years after the authorization or waiver/alterations was last obtained or in effect, whichever is later.

3. **FDA – Drugs** (& biologics classified as drugs) - For a period of 2 years following the date a marketing application is approved for the drug for the indication for which it is being investigated; or, if no application is to be filed or if the application is not approved for such indication, until 2 years after the investigation is discontinued and FDA is notified.

4. **FDA – Devices** (& biologics classified as devices) - For a period of 2 years after the latter of the following two dates: The date on which the investigation is terminated or completed, or the date that the records are no longer required for purposes of supporting a premarket approval application or a notice of completion of a product development protocol.

### 21.2 Investigator Concerns

Investigators who have concerns or regarding the conduct of research at MU, MU’s HRPP or IRB, or any external IRBs upon which MU relies should convey them to the ORC Director, the IO or other responsible parties (e.g., Faculty Council, Supervisor, Dean, Department Chair), when appropriate. The recipient of the concern will consider the issue, and when deemed necessary, seek additional information and convene the parties involved to form a response for the investigator or make necessary procedural or policy modifications, as warranted. In addition, the IRB Chair and IRB/IACUC Coordinator are available to address investigators’ questions, concerns, and suggestions.

Anyone with concerns may also report via the Associate General Counsel, cdiana@monmouth.edu or (732) 571-3598.

Consistent with MU policies, there will be no retaliation against any individual who reports concerns in good faith.
22 Sponsored Research

It is MU policy that any sponsored research conducted under the auspices of the MU is conducted in accordance with federal guidelines and ethical standards.

The following describe the procedures required to ensure that all sponsored research meets this requirement.

22.1 Definitions

Sponsor. Sponsor means the company, institution, individual donor, or organization responsible for the initiation, management or financing of a research study.

Sponsored research. Sponsored research means research funded by external entities (public, industry, or private) through a grant or contract that involves a specified statement of work (e.g., the research proposal), including clinical trials involving investigational drugs, devices or biologics.

22.2 Responsibility

Sponsor grants, contracts, and other written agreements will be reviewed for the following by the Office of Grants and Contracts, with consultation with the ORC, as necessary:

1. All sponsor contracts have a written agreement with the Sponsor that addresses medical care for research participants with a research-related injury, when appropriate.

2. In studies where Sponsors conduct research site monitoring visits or conduct monitoring activities remotely, the sponsor contracts have a written agreement with the Sponsor that the Sponsor promptly reports to the MU findings that could affect the safety of participants or influence the conduct of the study.

3. When the Sponsor has the responsibility to conduct data and safety monitoring, the sponsor contracts have a written agreement with the Sponsor that addresses provisions for monitoring the data to ensure the safety of participants and for providing data and safety monitoring reports to the MU.

4. Sponsor contracts have a written agreement with the Sponsor about plans for disseminating findings from the research and the roles that investigators and Sponsors will play in the publication or disclosure of results.

5. When participant safety could be directly affected by study results after the study has ended, the sponsor contracts have a written agreement with the Sponsor that the
investigator or MU will be notified of the results in order to consider informing participants

6. Payment in exchange for referrals of prospective participants from investigators (finder’s fees) is not permitted. Similarly, payments designed to accelerate recruitment that are tied to the rate or timing of enrollment (bonus payments) are also not permitted.
23 Conflict of Interest in Research

Consistent with MU’s Code of Ethics, all employees (faculty, staff, administrators) and students of Monmouth University have an obligation to avoid activities or situations which may result in a conflict of interest. Full-time employees are expected to place their primary professional loyalty with the University. All employees are expected to arrange their outside obligations, financial interests and activities as not to conflict with their commitment to the University. Employees must not use their official positions to secure unwarranted privileges or advantages for themselves or others.

Specifically relating to research activities, it is MU policy to preserve public trust in the integrity and quality of research by reducing actual or perceived conflict of interest in the conduct of research.

Conflicts of interest (COI) in research can be broadly described as any interest that competes with an organization’s or individual’s obligation to protect the rights and welfare of research subjects, the integrity of a research study, or the credibility of the research program. Conflicts of interest can be financial or non-financial.

In the environment of research, openness and honesty are indicators of integrity and responsibility, characteristics that promote quality research and strengthen the research process. Therefore, conflicts of interest should be eliminated when possible and effectively managed and disclosed when they cannot be eliminated.

23.1 Researcher Conflicts of Interest (COI)

Researchers must abide by all MU policies concerning financial conflict of interest (FCOI) and objectivity in research [e.g., Code of Ethics Link, OGAC policy etc.].

This section refers to all researchers named as study team members on submissions to the IRB Office.

Please refer to OGAC-specific FCOI and conflict management requirements [LINK] for applicants of external federal funding. The FCOI Review Team and MU IRB will collaborate to ensure that COI of investigators and research team members (investigators) are identified and managed before the IRB completes its review of any research application.

23.1.1 Procedures

23.1.1.1 Disclosure of Researcher COI

Disclosure of researcher conflict of interest is required for every study team member at the time of new study submission, continuing review, study status update, with the addition of a
new investigator, and whenever an investigator has a new or changed interest. This is achieved through questions on the relevant submission applications. IRB staff notify the ORC Director whenever a submission identifies a potential COI on a submission. The ORC Director contacts the investigator for relevant information, and notifies the IRB staff of the presence or absence of COI. In the event a conflict that requires disclosure or management is identified, the ORC Director will provide the IRB with a written summary describing the conflict and the conflict management plan (CMP). If the ORC Director has not completed their review, the MU IRB will defer the research study review or prohibit participation by the researcher with a potential COI until the IRB receives the review, and considers if the management plan acceptable to permit the study to be approved, as addressed below.

When the research is under an external IRB, any conflicts identified as the result of COI review and any CMP are provided to the external IRB in accordance with the IRB reliance agreement.

23.1.1.2 Evaluation of COI

The IRB will review COIs and CMPs to determine:

1. Whether the COI affects the rights or welfare of research subjects;
2. Whether the COI might adversely affect the integrity or credibility of the research or the research program; and
3. Whether the CMP effectively protects research subjects and the integrity and credibility of the research and the research program.

In evaluating COIs and CMPs, among other factors the IRB will consider:

1. How the research is supported or financed;
2. The nature and extent of the conflict;
3. The role and responsibilities of the conflicted individual in the design, conduct, and reporting of the research; and
4. The ability of the conflicted individual to influence the outcome of the research.

23.1.1.3 Management of COI

The IRB has final authority to determine whether the research, the COI, and the CMP, if any, allow the research to be approved. With regard to the CMP issued by the RCOI Committee, the IRB shall either affirm the CMP or request changes to strengthen it. The IRB can require additional measures to manage a COI so that the research may be approved. However, the IRB cannot weaken a CMP approved by the RCOI Committee.

For example, in addition to the CMP, the IRB may require:
1. Disclosure of the COI to subjects through the consent process;
2. Modification of the research plan or safety monitoring plan;
3. Monitoring of research by a third party;
4. Disqualification of the conflicted party from participation in all or a portion of the research;
5. Appointment of a non-conflicted PI;
6. Divestiture of significant financial interests; and/or
7. Severance of relationships that create actual or potential conflicts.

In the event the conflict cannot be effectively managed, the IRB may disapprove the research.

23.2 IRB Member Conflict of Interest

No IRB member or alternate may participate in the review of any research project in which the member has a COI, except to provide information as requested. It is the responsibility of each IRB member to disclose any COI related to a study submitted for review and recuse themselves from the deliberations and vote by leaving the room.

All members and alternate members of the IRB complete a conflict disclosure when first appointed and annually thereafter or sooner when their circumstances change. These forms are submitted to ORC Director, who reviews the disclosure and determines if a COI exists. To protect the privacy of members, the specific details of the conflict will not be given to staff or other members; however, the type of research where a COI exists will be provided (e.g., studies from X sponsor; studies using X device/drug; studies involving X investigator). The IRB Chair, in turn, ensures that IRB members and alternates are not assigned to conduct reviews of studies for which the member has a conflict and reminds members of conflicts at convened meetings as needed to ensure recusal. IRB Chair may consult with the ORC Director to clarify whether a specific study involves a member COI.

IRB members, alternates, or consultants may be considered to have a conflicting interest requiring recusal when they, or an immediate member of their family, have any of the following:

1. Involvement in the design, conduct, and reporting of the research;
2. Significant financial interests (See MU’s Financial Conflict of Research and Objectivity in Research Policy and Procedures for a definition of significant financial interests) related to the research being reviewed; or
3. Any other situation where an IRB member believes that another interest conflicts with his or her ability to deliberate objectively on a study.
The IRB Chair will ask IRB members at the beginning of each convened meeting if any members have a COI regarding any of the items to be reviewed and reminds members that they must recuse themselves by leaving the room during the discussion and vote of the specific research study. If a conflicted member is participating by conference call, videoconference or web meeting, the member’s participation (connection) is terminated for discussion and voting.

IRB members with a conflicting interest are excluded from being counted towards quorum for the particular review for which they have a conflict. Recusals of members with COIs are recorded in the minutes.

### 23.3 University Conflict of Interest

A ‘University Financial Conflict of Interest” arises in human subjects’ research when a financial interest of Monmouth may affect or appear to affect the design, conduct, reporting, review, or oversight of the human subjects’ research. University financial conflicts of interest are of significant concern when they create the potential for inappropriate influence over research involving human subjects, particularly to the integrity of the research and the rights and welfare of subjects enrolled in the research.

As an organization that conducts and reviews research involving human subjects, Monmouth recognizes its obligation to protect the rights and welfare of those subjects, and to ensure the integrity of the research and the human research protection program. Toward this end, the MU Administration is sensitive to, and manages or eliminates, any financial interests of Monmouth University (e.g., royalties, gifts, financial interests of senior administrative officials, etc.) in order to ensure that meeting that obligation is not jeopardized. As an example, members of the President’s Cabinet and other key employees, as determined by the Vice President and General Counsel, are required to annually file the “Conflict of Interest Questionnaire” to alert the University to any interests that could give rise to conflicts. (see Code of Ethics-LINK)

### 23.4 Recruitment Incentives

Payment arrangements between or among sponsors, organizations, investigators, research personnel, and those referring research participants present a conflict of interest and may place participants at risk of coercion or undue influence or cause inequitable selection. Payment in exchange for referrals of prospective participants (finder’s fees) is not permitted. Similarly, payments designed to accelerate recruitment that is tied to the rate or timing of enrollment (bonus payments) are also not permitted. Bonus payments do not include payments for bona fide items or services.
24 Participant Outreach

MU is committed to ensuring that educational opportunities are offered to research participants, prospective research participants, and community members which will enhance their understanding of human subjects research at MU and provide them the opportunity to provide input, seek information, and express concerns.

The following procedures describe how MU fulfils that responsibility.

24.1 Outreach Resources and Educational Materials

1. The ORC dedicates a section of the website to research participants entitled “For Participants.” This website includes resources, such as Frequently Asked Questions (FAQs), MU designed brochures (Volunteering in Research), and a listing of relevant research-related links.

2. The website includes information regarding how to contact MU with any questions or concerns about specific research projects or research in general.

3. The website includes a “Contact Us” link that allows members of the community to ask questions, express concerns, or provide feedback. Provision of contact information by the person is optional.

4. MU periodically provides presentations related to research to community organizations.

5. MU holds an annual “Scholarship Week” to which members of the public are invited.

24.2 Evaluation

On an annual basis, MU evaluates its outreach activities and makes changes when appropriate. In order to formally evaluate its outreach activities, the ORC Director will review:

1. The specific community outreach activities being used.

2. Whether or not these community outreach activities have an evaluative component (e.g., evaluation instrument distributed to participants), and if so whether the feedback was positive, negative, or neutral and if any suggestions were made that could be used to enhance future activities.

3. The number of times the participants’ website is visited.

4. Feedback provided via the “Contact Us” mechanism on the “Participant Outreach Corner”.

5. Feedback provided from other sources (unaffiliated IRB members, investigators, research staff, students, etc.).
The results of the review will be used to establish both the adequacy of current outreach activities and any additional resources that may be needed to meet the needs of the research community regarding participant outreach.
Health Insurance Portability and Accountability Act (HIPAA)

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) required the creation of a Privacy Rule for identifiable health information. While the primary impact of the Privacy Rule is on the routine provision of and billing for health care, the Rule also affects the conduct and oversight of research.

The Privacy Rule defines individually identifiable health information transmitted or maintained by a covered entity in any form (electronic, written or oral) as “protected health information” (PHI) and establishes the conditions under which investigators may access and use this information in the conduct of research.

Except as otherwise permitted, the Privacy Rule requires that a research subject “authorize” the use or disclosure of his/her PHI to be used in research. This authorization is distinct from the subject’s consent to participate in research, which is required if the research is subject to the Common Rule, FDA regulations, and/or state laws that provide additional protection for research involving certain categories of health information (such as information derived from HIV/AIDS testing, genetic testing, and mental health records). When research consent is not required by regulation or law (e.g., for exempt research) or the requirement for research consent has been waived by an IRB, the requirements for authorization still apply unless an IRB or Privacy Board has determined that the criteria for a waiver of the authorization requirement are satisfied.

25.1 Definitions

Access. Access is the mechanism of obtaining or using information electronically, on paper, or other medium for the purpose of performing an official function.

Accounting of Disclosures. Information that describes a covered entity’s disclosures of PHI other than for treatment, payment, and health care operations; disclosures made with Authorization; and certain other limited disclosures. For those categories of disclosures that need to be in the accounting, the accounting must include disclosures that have occurred during the 6 years (or a shorter time period at the request of the individual) prior to the date of the request for an accounting.

Authorization. An individual’s written permission to allow a covered entity to use or disclose specified PHI for a particular purpose. Except as otherwise permitted by the Privacy Rule, a covered entity may not use or disclose PHI for research purposes without a valid Authorization that includes all of the required elements under the Privacy Rule.

Covered entity. A health plan, a health care clearinghouse, or a health care provider who or that transmits health information in electronic form in connection with a transaction for which DHHS has adopted a standard.
Data Use Agreement. An agreement into which the covered entity enters with the intended recipient of a limited data set that establishes the ways in which the information in the limited data set may be used and disclosed and how it will be protected.

De-identified. Data is considered de-identified under HIPAA when they do not identify an individual, and there is no reasonable basis to believe that the data can be used to identify an individual. The Privacy Rule defines two methods for de-identifying PHI: (1) when the PHI is stripped of all 18 HIPAA-defined identifying elements and the covered entity does not have actual knowledge that the information could be used alone or in combination with other information to identify an individual who is a subject of the information (Safe Harbor method); or (2) when an appropriate expert determines that the risk is very small that the information could be used, alone or in combination with other reasonably available information, by an anticipated recipient to identify an individual who is a subject of the information (Expert Determination method).

Designated Record Set. A group of records maintained by or for a covered entity that includes (1) medical and billing records about individuals maintained by or for a covered health care provider; (2) enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (3) used, in whole or in part, by or for the covered entity to make decisions about individuals. A record is any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for a covered entity.

Disclosure. The release, transfer, provision of access to, or divulging in any manner, of information outside the entity holding the information.

Genetic Information. Genetic information means, with respect to an individual, information about: (i) The individual's genetic tests; (ii) The genetic tests of family members of the individual; (iii) The manifestation of a disease or disorder in family members of such individual; or (iv) Any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by the individual or any family member of the individual.

Genetic information concerning an individual or family member of an individual includes the genetic information of: (i) A fetus carried by the individual or family member who is a pregnant woman; and (ii) Any embryo legally held by an individual or family member utilizing an assisted reproductive technology. Genetic information excludes information about the sex or age of any individual.

Genetic services. A genetic test; genetic counseling (including obtaining, interpreting, or assessing genetic information); or genetic education.

Genetic test means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, if the analysis detects genotypes, mutations, or chromosomal changes. Genetic test does not
include an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition.

**Health Information.** Health Information means any information, including genetic information, whether oral or recorded in any form or medium, that (1) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

**Individually Identifiable Health Information.** Information that is a subset of health information, including demographic information collected from an individual, and (1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (a) that identifies the individual; or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

**Limited Data Set.** Refers to data sets that exclude 16 categories of direct identifiers that are specified in the Privacy Rule. Limited Data Sets may be used or disclosed, for purposes of research, public health, or health care operations, without obtaining either an individual’s Authorization or a waiver or an alteration of Authorization for its use and disclosure, only if the covered entity obtains satisfactory assurances in the form of a Data Use Agreement. Limited Data Sets are not de-identified information under the Privacy Rule.

**Minimum Necessary.** The least PHI reasonably necessary to accomplish the intended purpose of the use, disclosure, or request. Unless an exception applies, this standard applies to a covered entity when using or disclosing PHI or when requesting PHI from another covered entity. A covered entity that is using or disclosing PHI for research without Authorization must make reasonable efforts to limit PHI to the minimum necessary. A covered entity may rely, if reasonable under the circumstances, on documentation of IRB or Privacy Board approval or other appropriate representations and documentation under section 164.512(i) as establishing that the request for PHI for the research meets the minimum necessary requirements.

**Privacy Board.** A board that is established to review and approve requests for waivers or alterations of Authorization in connection with a use or disclosure of PHI as an alternative to obtaining such waivers or alterations from an IRB. A Privacy Board consists of members with varying backgrounds and appropriate professional competencies as necessary to review the effect of the research protocol on an individual’s privacy rights and related interests. The board must include at least one member who is not affiliated with the covered entity, is not affiliated with any entity conducting or sponsoring the research, and is not related to any person who is
affiliated with any such entities. A Privacy Board cannot have any member participating in a review of any project in which the member has a conflict of interest.

**Protected Health Information.** Protected Health Information (PHI) means individually identifiable health information that is transmitted by electronic media; maintained in electronic media; or transmitted or maintained in any other form or medium. PHI excludes individually identifiable health information in education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g; in records described at 20 U.S.C. 1232g(a)(4)(B)(iv); in employment records held by a covered entity in its role as employer; and regarding a person who has been deceased for more than 50 years.

**Psychotherapy Notes.** Psychotherapy notes means notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record. Psychotherapy notes exclude medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: Diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

**Research.** A systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge. This includes the development of research repositories and databases for research.

**Use.** With respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within the covered entity or health care component (for hybrid entities) that maintains such information.

**Waiver or Alteration of Authorization.** The documentation that the covered entity obtains from a researcher or an IRB or a Privacy Board that states that the IRB or Privacy Board has waived or altered the Privacy Rule's requirement that an individual must authorize a covered entity to use or disclose the individual’s PHI for research purposes.

**Workforce.** Employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a covered entity, is under the direct control of the covered entity, whether or not they are paid by the covered entity.

### 25.2 The IRB’s Role under the Privacy Rule

Under the Privacy Rule, IRBs have authority to consider, and act upon, requests for a partial or complete waiver or alteration of the Privacy Rule's Authorization requirement for uses and disclosures of PHI for research. Although the Common Rule and FDA regulations include protections to help ensure the privacy of subjects and the confidentiality of information (as applicable, to research activities that are regulated under those sets of regulations), the Privacy

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Rule supplements these protections where HIPAA is applicable, by requiring covered entities to implement specific measures to safeguard the privacy of PHI. If certain conditions are met, an IRB may grant a waiver or an alteration of the Authorization requirement for research uses or disclosures of PHI.

MU’s internal IRB and, when mutually agreed, the external IRBs it relies upon, fulfill the functions of a Privacy Board for human subject research.

The Privacy Rule does not change the composition of an IRB. When acting upon a request to waive or alter the Authorization requirement, an IRB must follow the procedural requirements of the Common Rule and FDA regulations, if applicable, including using either the normal review procedures (review by the convened IRB) or, as appropriate, the expedited review procedures.

When a request for a waiver or an alteration of the Authorization requirement is considered by the convened IRB, a majority of the IRB members must be present at the meeting, including at least one member whose primary concerns are in nonscientific areas. In order for an approval of a waiver or an alteration of the Privacy Rule’s Authorization requirement to be effective, it must be approved by a majority of the IRB members present at the convened meeting. If a member of the IRB has a conflicting interest with respect to the PHI use and disclosure for which a waiver or an alteration approval is being sought, that member may not participate in the review.

Expedited review of a request for a waiver or an alteration of the Authorization requirement is permitted if the research qualifies for expedited review under Common Rule requirements. 45 CFR 46.110 and 21 CFR 56.110 permit an IRB to use an expedited review procedure to review minor changes in previously approved research. A modification to a previously approved research protocol, which only involves the addition of an Authorization for the use or disclosure of PHI to the IRB-approved informed consent, may be reviewed by the IRB through an expedited review procedure, because this type of modification may be considered to be no more than a minor change to research. If expedited review procedures are appropriate for acting on the request, the review may be carried out by the IRB Chair or by one or more experienced reviewers designated by the Chair from among the IRB members. A member with a conflicting interest may not participate in an expedited review. If an IRB uses expedited review procedures, it must adopt methods for keeping all its members advised of all requests for waivers or alterations of the Authorization requirement as well as those requests that have been granted under an expedited review procedure.

IRB documentation of approval of a waiver or alteration of the authorization requirement includes:

1. The identity of the approving IRB;
2. The date on which the waiver or alteration was approved;
3. A statement that the IRB has determined that the alteration or waiver or authorization, in whole or in part, satisfies the three criteria in the Rule;

4. A brief description of the PHI for which use or access has been determined to be necessary by the IRB to be necessary;

5. A statement that the waiver or alteration was reviewed and approved under either normal or expedited review procedures; and

6. The signature of the IRB Chair or other member, as designated by the Chair, of the IRB, as applicable.

MU will not release PHI to investigators or other third parties without individual authorization or proper documentation of an IRB or Privacy Board approval of a waiver or alteration of the requirement.

### 25.3 Authorization

Except as otherwise permitted, the Privacy Rule requires that a research subject “authorize” the use or disclosure of his/her PHI to be used in research. This authorization is distinct from the subject’s consent to participate in research, which is required for research to which the Common Rule, FDA regulations, and/or state laws regarding certain categories of health information apply (although certain research that is subject to the Privacy Rule may be exempt from Common Rule requirements). Just as a valid consent under Common Rule and FDA regulations must meet certain requirements, a valid authorization must be written in plain language and contain certain statements and core elements [45 CFR 164.508.6(c)]. At MU, the HIPAA authorization is documented in combination with the consent document. All HIPAA authorizations are submitted to the ORC to verify that the appropriate template is used without inappropriate substantive modification.

Once executed, a signed copy must be provided to the individual providing authorization. Signed authorizations must be retained by the covered entity for 6 years from the date of creation or the date it was last in effect, whichever is later. The investigator is responsible for retaining all signed authorizations for 6 years from the date of creation or the date it was last in effect (whichever is later) in order to ensure record retention compliance.

A research subject has the right to revoke their authorization at any time. See Section 25.12 for more information regarding an individual’s right to revoke, procedures, and exceptions.

When an Authorization permits disclosure of PHI to a person or organization that is not a covered entity (such as a sponsor or funding source), the Privacy Rule does not continue to protect the PHI disclosed to such entity. However, other federal and state laws and agreements between the covered entity and recipient such as a Business Associate Agreement (BAA) or Confidentiality Agreement may establish continuing protections for the disclosed information.
Authorization Core Elements:

1. A description of the PHI to be used or disclosed, identifying the information in a specific and meaningful manner;

2. The names or other specific identification of the person or persons (or class of persons) authorized to make the requested use or disclosure;

3. The names or other specific identification of the person or persons (or class of persons) to whom the covered entity may make the requested use or disclosure;

4. A description of each purpose of the requested use or disclosure;

5. Authorization expiration date or expiration event that relates to the individual or to the purpose of the use or disclosure (A statement that there is “no expiration date or event” or that authorization expires at the “end of the research study” or “unless and until revoked” by the individual are permissible for research, including authorizations for future research); and

6. The signature of the individual and date. If the individual’s legally authorized representative signs the Authorization, a description of the representative’s authority to act for the individual must also be provided.

Authorization Required Statements:

1. A statement of the individual’s right to revoke his/her Authorization and how to do so, and, if applicable, the exceptions to the right to revoke his/her Authorization or reference to the corresponding section of the covered entity’s notice of privacy practices;

2. Whether treatment, payment, enrollment, or eligibility of benefits can be conditioned on Authorization (if such conditioning is permitted under the Privacy Rule), including research-related treatment and consequences of refusing to sign the Authorization; and

3. A statement of the potential risk that PHI will be re-disclosed by the recipient. This may be a general statement that the Privacy Rule may no longer protect health information disclosed to the recipient.

25.4 Waiver or Alteration of the Authorization Requirement

Obtaining signed authorization to access and use of PHI for research is not always feasible. The Privacy Rule contains criteria for waiver or alterations of authorization. If a covered entity has used or disclosed PHI for research pursuant to a waiver or alteration of authorization, documentation of the approval of the waiver or alteration must be retained for 6 years from
For research uses and disclosures of PHI, an IRB or Privacy Board may approve a waiver or an alteration of the authorization requirement in whole or in part. A complete waiver occurs when the IRB or Privacy Board determines that no authorization will be required for a covered entity to use and disclose the PHI contemplated to be used or disclosed for that particular research project. A partial waiver of authorization occurs when the IRB or Privacy Board determines that a covered entity does not need authorization for all PHI uses and disclosures for some defined group of research purposes, such as accessing PHI for research recruitment purposes. An IRB or Privacy Board may also approve a request that removes some, but not all, required elements or statements of an authorization (an alteration).

In order for an IRB or Privacy Board to waive or alter authorization, the Privacy Rule (45 CFR 164.512(i)(2)(ii)) requires the IRB or Privacy Board to determine the following:

1. The use or disclosure of protected health information involves no more than a minimal risk to the privacy of individuals, based on, at least, the presence of the following elements:
   a. An adequate plan to protect health information identifiers from improper use and disclosure;
   b. An adequate plan to destroy identifiers at the earliest opportunity consistent with conduct of the research, unless there is a health or research justification for retaining the identifiers or such retention is otherwise required by law; and
   c. Adequate written assurances that the PHI will not be reused or disclosed to (shared with) any other person or entity, except as required by law, for authorized oversight of the research study, or for other research for which the use or disclosure of the PHI would be permitted under the Privacy Rule;

2. The research could not practicably be conducted without the waiver or alteration; and

3. The research could not practicably be conducted without access to and use of the PHI.

The Privacy Rule allows institutions to rely on a waiver or an alteration of Authorization obtained from a single IRB or Privacy Board to be used to obtain or release PHI in connection with a multi-site project.

25.5 Activities Preparatory to Research

Under the preparatory to research provision of the Privacy Rule, a covered entity may permit a researcher to use PHI for purposes preparatory to research such as assessing the feasibility of

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conducting a research project, developing a grant application or protocol, or identifying potential subjects.

The covered entity must obtain from the investigator representations, either in writing or orally, that (1) the use or disclosure of the PHI is solely to prepare a research protocol or for similar purposes preparatory to research, (2) that the investigator will not remove any PHI from the covered entity (e.g., physically taken out of a facility, or downloaded and retained on the investigator’s device) in the course of the review, and (3) the PHI for which access is sought is necessary for the research purpose. [45 CFR 164.512(i)(1)(ii)]

Federal guidance has drawn a distinction between activities that may be undertaken by a researcher who is a member of the covered entity’s workforce, e.g., an employee of the covered entity, and a researcher who is not part of the covered entity’s workforce. This guidance indicates that researchers may use PHI under the preparatory to research provision to identify potential study participants, so long as no PHI is removed from the covered entity and the remaining two representations set forth above can be made. However, the guidance also indicates that researchers may not use PHI obtained pursuant to the “preparatory to research” provision to contact potential study subjects unless (i) the researcher is a member of the covered entity’s workforce, or (ii) the researcher enters into a BAA with the covered entity. Therefore, if the researcher is not a workforce member or business associate of the covered entity, then the researcher may contact potential subjects only pursuant to a partial waiver of authorization from the cognizant IRB or privacy board, or pursuant to the Authorization of the subject.

At MU, this is accomplished by the investigator submitting either a Preparatory to Research Attestation to Health Information Management (for projects in development) or a request for a partial waiver of consent and authorization for screening purposes to the IRB of record.

### 25.6 Research Using Decedent’s Information

The HIPAA Privacy Rule protects the individually identifiable health information about a decedent for 50 years following the date of death of the individual. When a researcher seeks to use PHI from decedents for a research protocol, the researcher must (1) obtain authorization from the personal representative of the decedent (i.e., the person under applicable law with authority to act on behalf of the decedent or the decedent’s estate), (2) obtain a waiver of the requirement to obtain authorization from an IRB or Privacy Board, or (3) attest to the covered entity holding the PHI that the use or disclosure is solely for research on the PHI of decedents, that the PHI being sought is necessary for the research, and, if requested by the covered entity, provide documentation of the death of the individuals about whom information is being sought.
25.7 Storage and Use of PHI for Future Research

The Privacy Rule recognizes the creation of a research database or a specimen repository to be a research activity if the data/specimens to be stored contain PHI. When researchers establish a database or repository containing PHI for the purposes of future research, or intend to maintain PHI following completion of a primary study for potential future research use, individual authorization for the storage of PHI for such future research must be sought unless the IRB has determined that the criteria for a waiver of the authorization requirement are satisfied. See Section 25.4 of this policy manual for a discussion of waivers of authorization.

An authorization for use and/or disclosure of the stored PHI for future research must describe the future research uses and/or disclosures in sufficient detail to allow the potential subject to make an informed decision. The Rule does not require that an authorization describe each specific future study if the particular studies to be conducted are not yet determined. Instead, the authorization must adequately describe future purposes such that it would be reasonable for the subject to expect that their PHI could be used or disclosed for such research. When developing the description of potential future research uses, the investigator should be cognizant of uses of information/specimens that the community may consider particularly sensitive, such as genetics, mental health, studies of origin, and use of tissues that may have cultural significance, including whether any state laws may impose additional consent requirements with respect to any of these sensitive categories of information.

The authorization for future research should be incorporated into the authorization for the establishment of a database or repository or for the primary study, unless the research involves the use or disclosure of psychotherapy notes. Authorizations for the use or disclosure of psychotherapy notes can only be combined with another authorization for a use or disclosure of psychotherapy notes.

The authorization for future research, which is combined with the authorization for the primary study, must be clearly differentiated from the authorization for the primary study; the subject must opt-in to the future research. Opt-outs for future research are not permitted under the Privacy Rule because an opt-out process does not provide individuals with a clear ability to authorize the use of their information/specimens for future research and may be viewed as coercive.

It is important to note that securing a HIPAA authorization for unspecified future research activities may not, by itself, satisfy all applicable legal consent requirements. The Common Rule, FDA regulations, and state laws also must be considered, as applicable, in evaluating whether the information (including PHI) or identifiable biospecimens may be used for future research projects.
25.8 Corollary and Sub-studies

Consistent with the discussion above relating to future uses of research databases or repositories, the Privacy Rule mandates that subject participation in corollary or sub-studies not essential to the primary aims of the research, such as when PHI form an interventional clinical trial is used to create or to contribute to a central research repository, must be on a voluntary, “opt-in” basis. This is particularly important when the primary research offers a potential direct benefit to the research subject, such as treatment, that might compel the potential subject to agree to an ancillary study, even if the subject would prefer not to do so.

HIPAA reinforces this ethical principle by explicitly stating that authorization for “unconditioned” activities, for which there is no associated treatment, benefit or other effect on the individual subject associated with participation, cannot be required. The published preamble to HIPAA Omnibus clarifies the basis for this position, and the requirement that authorization for unconditioned activities involve a clear opt-in mechanism, stating:

“This limitation on certain compound authorizations was intended to help ensure that individuals understand that they may decline the activity described in the unconditioned authorization yet still receive treatment or other benefits or services by agreeing to the conditioned authorization.” and “an opt out option does not provide individuals with a clear ability to authorize the optional research activity, and may be viewed as coercive by individuals.”

As with authorization for future research (which is one form of “unconditioned activity”), it is acceptable to combine in a single document the authorization for a conditioned activity, such as a clinical trial, with authorization for other forms of unconditioned activities such as a corollary or sub-study that does not directly benefit or effect the individual participant, provided that:

1. The authorization clearly differentiates between the conditioned and unconditioned research activities;
2. The authorization clearly allows the individual the option to opt in to the unconditioned research activities; and
3. Sufficient information is provided for the individual to be able to make an informed choice about both the conditioned and unconditioned activities.

Separate authorization must be obtained for research activity that involves the use and disclosure of psychotherapy notes. For example, authorization for the use and disclosure of psychotherapy notes for a clinical trial cannot be combined with an authorization for the use and disclosure of those psychotherapy notes for a corollary research activity.
25.9 De-identification of PHI under the Privacy Rule

Covered entities may use or disclose health information that is de-identified without restriction under the Privacy Rule, because information that has been de-identified consistent with the Privacy Rule requirements is not considered individually identifiable health information. The “Safe Harbor” method permits a covered entity to de-identify data by removing all 18 data elements specified in the Privacy Rule that could be used to identify the individual who is the subject of the information or the individual’s relatives, employers, or household members. To satisfy the Safe Harbor method of de-identification, the covered entity also must have no actual knowledge that the remaining information could be used alone or in combination with other information to identify individuals. Under this method, the identifiers of the individual or his or her relatives, employers, or household members that must be removed are the following:

1. Names;
2. All geographic subdivisions smaller than a state, including street address, city, county, precinct, ZIP Code, and their equivalent geographical codes, except for the initial three digits of a ZIP Code if, according to the current publicly available data from the Bureau of the Census:
   a. The geographic unit formed by combining all ZIP Codes with the same three initial digits contains more than 20,000 people;
   b. The initial three digits of a ZIP Code for all such geographic units containing 20,000 or fewer people are changed to 000.
3. All elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, date of death; and all ages over 89 and all elements of dates (including year) indicative of such age, except that such ages and elements may be aggregated into a single category of age 90 or older;
4. Telephone numbers;
5. Facsimile numbers;
6. Electronic mail addresses;
7. Social security numbers;
8. Medical record numbers;
9. Health plan beneficiary numbers;
10. Account numbers;
11. Certificate/license numbers;
12. Vehicle identifiers and serial numbers, including license plate numbers;
13. Device identifiers and serial numbers;
14. Web universal resource locators (URLs);
15. Internet Protocol (IP) address numbers;
16. Biometric identifiers, including fingerprints and voiceprints;
17. Full-face photographic images and any comparable images; and
18. Any other unique identifying number, characteristic, or code, unless otherwise permitted by the Privacy Rule for re-identification.

Alternatively, a qualified statistician may certify that the risk is very small that the health information could be used, alone or in combination with other reasonably available information, to identify individuals. The qualified statistician must document the methods and results of the analysis that justify such a determination. This analysis must be retained by the covered entity for 6 years from the date of its creation or when it was last acted on, whichever is later.

The Privacy Rule permits a covered entity to assign to, and retain with, the de-identified health information, a code or other means of record re-identification if that code is not derived from or related to the information about the individual and is not otherwise capable of being translated to identify the individual. The covered entity may not use or disclose the code or other means of record identification for any other purpose and may not disclose its method of re-identifying the information.

NOTE: Data that are considered de-identified under HIPAA may still be considered human subject data under the Common Rule and may require IRB review and approval. Removal of HIPAA-identifying elements does not necessarily mean that the identity of the subject is not or may not readily be ascertained by the investigator or associated with the information and thus be considered identifiable private information under the Common Rule. The reverse can also be true (and, in practice, is more likely to occur): information may not be “identifiable” under the Common Rule but, because it contains certain HIPAA identifiers, it is considered identifiable under HIPAA.

25.10 Limited Data Sets and Data Use Agreements

Limited data sets are data sets stripped of certain direct identifiers. Limited data sets may be used or disclosed only for public health, research, or health care operations purposes. Because limited data sets may contain identifiable information, they are still PHI and as such are not considered de-identified under the Privacy Rule. Unlike de-identified data, PHI in limited data sets may include: addresses other than street name or street address or post office boxes, all elements of dates (such as admission and discharge dates) and unique codes or identifiers not
listed as direct identifiers. The following direct identifiers must be removed for PHI to qualify as a limited data set:

1. Names;
2. Postal address information, other than town or city, state, and ZIP code;
3. Telephone numbers;
4. Fax numbers;
5. Email addresses;
6. Social Security numbers;
7. Medical Record numbers;
8. Health Plan Beneficiary numbers;
9. Account numbers;
10. Certificate or license numbers;
11. Vehicle identifiers and license plate numbers;
12. Device identifiers and serial numbers;
13. URLs;
14. IP addresses;
15. Biometric identifiers; and
16. Full-face photographs and any comparable images.

Before disclosing a limited data set, a covered entity must enter into a Data Use Agreement (DUA) with the recipient, even when the recipient is a member of its workforce. The DUA establishes the parameters around the proposed uses and disclosures of the data, who is permitted to have access to the data, and stipulates that no other use or disclosure will be made other than as permitted by the DUA or as otherwise required by law, no attempt will be made to identify or contact individuals whose data are included in the limited data set, that appropriate safeguards are in place to protect the data from unauthorized use or disclosure, that any agents, including subcontractors, to whom the recipient provides the LDS will agree to the same restrictions and conditions that apply to the recipient, and that the recipient will report any uses or disclosures of the information that they become aware of that are not in keeping with the terms of the DUA. Data Use Agreements for the purposes of research are available through the HRPP Office and must be reviewed and approved by the Office of the General Counsel’s Office prior to being signed by the Provost & Senior Vice President for Academic Affairs.
25.11 Research Subject Access to PHI

With few exceptions, the Privacy Rule guarantees individuals’ access to their medical records and other types of health information. One exception is during a clinical trial, when the subject’s right of access can be suspended while the research is in progress. The subject must have been notified of and agreed to the temporary denial of access when providing consent and authorization. Any such notice must also inform the individual that the right to access will be restored upon conclusion of the clinical trial. Language accommodating this exclusion is included in the applicable MU authorization template.

25.12 Revoking Authorization

The Privacy Rule establishes the right for an individual to revoke their authorization for uses and disclosures of PHI for research, in writing, at any time, except to the extent that the covered entity has taken action in reliance on the authorization. [45 CFR 164.508(b)(5)] However, individuals providing authorization should be made aware that revoking authorization does not mean that the individual’s PHI may no longer be used in the research or be used or disclosed for other purposes.

At MU, individual’s may revoke authorization by submitting its decision to revoke their authorization in writing (paper or electronic) to the PI. When an investigator receives a withdrawal of authorization, they should inform MU by submitting the revocation to the ORC Director.

A covered entity may continue to use and disclose PHI that was obtained before the individual revoked authorization to the extent that the entity has taken action in reliance on the authorization. When the research is being conducted by the covered entity, the covered entity is permitted to continuing using or disclosing the already obtained PHI to the extent necessary to maintain the integrity of the research (e.g., to account for a subject’s withdrawal from a study, to report adverse events, or to conduct an investigation of misconduct). A covered entity may also continue to use the PHI for other activities that are permitted under the Rule without authorization (e.g., health care operations such as QA/QI). Additionally, revoking an authorization does not prevent the continued use or disclosure of PHI by a non-covered entity that had already received it pursuant to the authorization.

25.13 Accounting of Disclosures

The Privacy Rule generally grants individuals the right to a written “Accounting of Disclosures” of their Protected Health Information made by a covered entity without the individual’s authorization in the six years prior to their request for an Accounting. A covered entity must therefore keep records of such PHI disclosures for 6 years.
It is important to understand the difference between a use and a disclosure of PHI. In general, the use of PHI means use of that information within the covered entity. A disclosure of PHI means “the release, transfer, provision of access to, or divulging in any manner of information outside of the entity holding the information.” The Privacy Rule restricts both uses and disclosures of PHI, but it requires an accounting only for certain PHI disclosures.

Generally, an Accounting of Disclosures is required for:

1. Routinely Permitted Disclosures (e.g., under public health authority, to regulatory agencies, to persons with FDA-related responsibilities) with limited exceptions (e.g., law enforcement, national security, etc.);
2. Disclosures made pursuant to:
   a. Waiver of Authorization;
   b. Research on Decedents’ Information; or
   c. Reviews Preparatory to Research.

An accounting is not needed when the PHI disclosure is made:

1. For treatment, payment, or health care operations;
2. Under an Authorization for the disclosure;
3. To an individual about himself or herself; or
4. As part of a limited data set under a data use agreement.

The Privacy Rule allows three methods for accounting for research-related disclosures that are made without the individual’s Authorization or other than a limited data set: (1) A standard approach, (2) a multiple-disclosures approach, and (3) an alternative for disclosures involving 50 or more individuals. Whatever approach is selected, the accounting is made in writing and provided to the requesting individual. Accounting reports to individuals may include results from more than one accounting method.
26 Special Topics

26.1 Mandatory Reporting

New Jersey Mandatory Reporting Requirements

**Reportable Communicable Diseases N.J.A.C. 8:57-1.1 et. seq.**

**Summary:**

The State of New Jersey requires health care providers and administrators to report certain confirmed or suspected cases of diseases to local health departments either immediately or within 24 hours. New Jersey also requires health care providers and administrators to immediately report to the New Jersey Department of Health any disease or health condition that may reasonably be a potential case of a public health emergency. For a complete list of specific diseases that require reporting to local health departments of the New Jersey Department of Health, see the attached document. Lastly, an administrator of a general hospital licensed by the New Jersey Department of Health shall, within 30 calendar days at the end of each month, submit to the Department the number of cases of hospital-onset MRSA infections that have occurred in the hospital, the percentage of patients who have a MRSA surveillance test performed on admission to a hospital unit where MRSA testing is being performed, and reporting of AIDS and infection with HIV as set forth in N.J.A.C. 8:57-2.

**Confidentiality:**

The reports submitted to the Department of Health pursuant to this law contain demographic and medical information related to the Department’s investigations and epidemiological studies of communicable diseases and shall not be considered “government records” subject to public access.

**Definitions:**

“Health care provider” means a physician, physician assistant, advanced practice nurse or certified nurse midwife licensed pursuant to Title 45 of the New Jersey Revised Statutes.

“Administrator” shall mean the person having control or supervision over a health care facility, correctional facility, school, youth camp, child care center, preschool, or institution of higher education.
Duty to Warn

N.J.S.A. § 2A:62A-16 Health, mental health, and marriage and family therapy professionals; immunity from liability; duty to warn; disclosure of privileged communications

Summary:

A duty to warn and protect is incurred when an individual communicates a threat of imminent, serious violence against a readily identifiable individual or themselves to any person licensed in the State of New Jersey to practice psychology, psychiatry, medicine, nursing, clinical social work, marriage counseling, or family therapy, and the circumstances are such that a reasonable professional in the practitioner’s area of expertise would believe the patient intended to carry out the threat. At this point, the practitioner must do any one or more of the following:

- Arrange for the patient to be voluntarily or involuntarily committed to a hospital or treatment center.
- Advise the Chief of Police of the local police department of the municipality in which the patient resides of the patient’s identity and potential victim (if any). If the municipality does not have a full-time police department, the practitioner will notify the Superintendent of the State Police.
- Warn the intended victim of the threat, or in the case of the victim who is under the age of 18, warning the parent or guardian of the intended victim.
- Warn the parent or guardian of the patient who communicated the threat if they are under the age of 18.

In the instance that the practitioner advises law enforcement of the patient’s identity, they will then use that information to determine whether the patient has access to firearms and potentially seize them.

Abuse, Abandonment, Cruelty, and Neglect of Child

N.J.S.A. §9:6-1 et. seq. Children Juvenile and Domestic Relations Courts

Summary: In the State of New Jersey, child abuse/neglect occurs when a parent or another individual who is in a caretaker role to the child under the age of 18 does any of the following:

- Inflicts physical injury on the child.
- Creates a situation involving substantial risk to the child.
- Commits sexual abuse on the child.
- Fails to exercise a minimum degree of care for the child.
- Willfully abandons the child.

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- Uses excessive physical restraint against the child.
- Willfully isolates the child from ordinary social contact.
- Inappropriately places the child in an institution with the knowledge that this could lead to harm to the child’s physical or mental well-being.

Any person having a reasonable cause to believe a child has been subjected to child abuse, including sexual abuse, or acts of child abuse should immediately report this information to the Division of Child Protection and Permanency’s Child Abuse Hotline (State Central registry) via the phone number 1-877-652-2873. When possible, the caller should attempt to report the following:

- The names and address of the child’s parent(s) or guardian(s) or other person having custody and control of the child;
- The child’s age (if known);
- The nature and possible extent of child’s injuries, abuse or maltreatment, including any evidence of previous injuries; and
- Any other information that may be helpful with respect to the child abuse and the identity of the perpetrator.

If the child is in immediate danger, 911 should be called as well.

### 26.2 Lead Investigator/Coordinating Center

When MU IRB is serving as the IRB of record for a PI or site who is serving as the lead investigator or lead/coordinating center of a multi-site or collaborative research project, the PI must describe within the protocol and IRB application how the research will be overseen and how issues relevant to the protection of human subjects (e.g., IRB initial and continuing approvals, study modifications, reports of unanticipated problems, interim results, data-safety monitoring, etc.) will be coordinated and communicated among participating sites and investigators. For FDA-regulated clinical trials, the plan should address the plan for study monitoring and for the reporting and evaluation of adverse events, significant new risk information, and any other reports mandated by regulation or policy.

The lead PI or lead/coordinating center is responsible for serving as the liaison with other participating sites and investigators and for ensuring that all participating investigators obtain IRB review and approval prior to initiating the research, maintain approval, and obtain IRB approval for modifications to the research. The MU IRB will evaluate whether the plan for research oversight and management of information that is relevant to the protection of human subjects is adequate.
26.3 Certificates of Confidentiality

Certificates of Confidentiality (CoC) protect research information by prohibiting certain disclosures and conditioning others upon consent from the subject. The protections and requirements of CoCs are outlined in 42 U.S.C. 241(d) and in written policies and requirements of certain Federal agencies such as NIH and CDC and are summarized below.

CoC's are obtained as follows:

- CoCs are issued automatically when research is conducted or supported by NIH and falls within the scope of the NIH policy.
- CoCs are issued automatically when research is conducted or supported by the CDC and involves the collection of identifiable, sensitive information.
- CoCs are issued automatically when research is funded by the FDA in whole or in part and involves the collection or use of identifiable, sensitive information as defined in 42 U.S.C. 241(d).
- Research that is not supported by NIH, CDC, or FDA may still benefit from the protections afforded by CoCs through successful application to the NIH, FDA, HRSA, SAMHSA, or other authorized Federal agencies or departments.

Additional information about CoCs and the application process for research not covered by the NIH policy is available on the NIH CoC Website.

26.3.1 Definitions

Identifiable, sensitive information means information that is about an individual and that is gathered or used during the course of biomedical, behavioral, clinical, or other research and

1. Through which an individual is identified; or
2. For which there is at least a very small risk, as determined by current scientific practices or statistical methods, that some combination of the information, a request for the information, and other available data sources could be used to deduce the identity of an individual.

26.3.2 Protections and Requirements

When a CoC is issued, whether automatically or under an approved application, the person(s) engaged in the research must not disclose or provide the name of a subject or any information, document, or biospecimen that contains identifiable, sensitive information about the subject and that was compiled for the purposes of the research:
1. In any Federal, State, or local civil, criminal, administrative, legislative, or other proceeding, unless the disclosure is made with the consent of the individual to whom the information, document, or biospecimen pertains; or

2. To any other person not connected with the research, unless:
   a. Required by Federal, State, or local laws (e.g., adverse event reporting to the FDA, transmissible disease reporting required under State law), but excluding proceedings as described in “1” above;
   b. Necessary for the medical treatment of the subject to whom the information, document, or biospecimen pertains and made with the consent of the subject;
   c. Made with the consent of the individual to whom the information, document, or biospecimens pertains; or
   d. Made for the purposes of other scientific research that is in compliance with applicable Federal regulations governing the protection of human subjects in research.

Additional Protections

Identifiable, sensitive information protected under a CoC, and all copies thereof, are immune from the legal process, and shall not, without the consent of the individual to whom the information pertains, be admissible as evidence or used in any action, suit, or other judicial, legislative, or administrative proceeding.

Identifiable, sensitive information that has been collected under a CoC, and all copies thereof, are protected for perpetuity. If identifiable, sensitive information covered by a CoC is shared with other researchers or organizations, the researchers or organizations must be informed that the information is covered by a CoC and of their responsibility to protect the information accordingly.

Nothing in the rule (42 U.S.C. 241(d)) may be construed to limit the access of a subject to information about himself or herself collected during the research.

When consent is obtained, the consent should inform subjects that a CoC is in place and describe the protections and limitations.

26.3.3 NIH and CDC

The NIH Policy on CoCs applies to “all biomedical, behavioral, clinical, or other research funded wholly or in part by the NIH, whether supported through grants, cooperative agreements, contracts, other transaction awards, or conducted by the NIH Intramural Research Program, that collects or uses identifiable, sensitive information” that was commenced or ongoing on or after December 13, 2016.
The [CDC requirements for CoCs](#) apply to “CDC supported research commenced or ongoing after December 13, 2016 and in which identifiable, sensitive information is collected, as defined by Section 301(d).”

CoCs are automatically granted, and the requirements of such must be complied with, whenever a NIH or CDC funded activity falls within the scope of the NIH policy or CDC’s requirements. Investigators and institutions are responsible for determining when research with NIH or CDC support are covered by a CoC.

NIH and CDC expand upon 42 U.S.C. 241(d) by explaining that NIH and CDC consider research in which identifiable, sensitive information is collected or used, to include:

- Human subjects research as defined in 45 CFR 46, including research determined to be exempt (except for exempt research when the information obtained is recorded in such a manner that human subjects cannot be identified or the identity of the human subjects cannot readily be ascertained, directly or through identifiers linked to the subjects);
- Research involving the collection or use of biospecimens that are identifiable to an individual or for which there is at least a very small risk that some combination of the biospecimen, a request for the biospecimen, and other available data sources could be used to deduce the identity of an individual;
- Research that involves the generation of individual level, human genomic data from biospecimens, or the use of such data, regardless of whether the data is recorded in such a manner that human subjects can be identified or the identity of the human subjects can readily be ascertained; or

Any other research that involves information about an individual for which there is at least a very small risk, as determined by current scientific practices or statistical methods, that some combination of the information, a request for the information, and other available data sources could be used to deduce the identity of an individual, as defined in subsection 301(d) of the Public Health Service Act

26.3.4 FDA

The FDA requires, as a term and condition of all FDA funding and grant awards, compliance with the requirements of [42 U.S.C. 241(d)](#) when research is funded in whole or in part by the FDA and involves the use or collection of identifiable, sensitive information. Certificates are deemed issued through FDA funding/award terms and conditions and are not issued as a separate document.

Investigators and institutions are responsible for determining when research with FDA support is covered by a CoC and for ensuring compliance with the requirements of 42 U.S.C. 241(d).
Awardees are expected to ensure that any investigator or institution not funded by FDA who receives a copy of identifiable, sensitive information protected by these requirements, understand they are also subject to the requirements of 42 U.S.C. 241(d). Awardees are also responsible for ensuring that any subrecipient that receives funds to carry out part of the FDA award involving a copy of identifiable, sensitive information protected by these requirements understand they are also subject to subsection 42 U.S.C. 241(d).

When research is not funded by the FDA but involves an Investigational New Drug Application (IND) or an Investigational Device Exemption (IDE), the sponsor can request a CoC from the FDA.

### 26.3.5 NIH, CDC, and FDA CoC Determination

At MU, Office of Grants and Contracts (OGAC) staff will, in consultation with the investigator(s) (or Program or Project Director, if applicable), determine if the NIH policy or CDC or FDA requirements apply to research with NIH, CDC, or FDA involvement or support. The questions outlined in the NIH policy and CDC requirements will be used to guide the analysis for research conducted or supported by NIH and CDC. The definitions and text of 42 U.S.C. 241(d) will be used to guide the analysis for research supported by FDA funding/awards. When it has been determined that the NIH policy or CDC requirements do not apply, investigators (or Program or Project Directors, if applicable) are responsible for consulting with Office of Grants and Contracts whenever they are proposing changes to the supported activity that may impact or change the analysis.

The NIH policy and CDC requirements include additional responsibilities and requirements for internal controls and for ensuring that recipients of identifiable, sensitive information protected by a CoC understand that they are also subject to the requirements of subsection 301(d) of the Public Health Service Act. Likewise, FDA requires awardees ensure that recipients of identifiable, sensitive information protected by an FDA CoC understand that they are also subject to the requirements of 42 U.S.C. 241(d).

### 26.3.6 Application Procedures for Research Not Automatically Issued a CoC

Any person engaged in human subjects research that collects or uses identifiable, sensitive information may apply for a CoC. For most research, CoCs are obtained from NIH, an investigator may apply for a CoC through the NIH Institute or Center funding research in a scientific area similar to the project.

When a researcher is conducting a research project that is covered by the Agency for Healthcare Research and Quality (AHRQ) confidentiality statute (42 U.S.C. section 299c-3(c)), a CoC is not needed (AHRQ notice NOT-HS-18-012). While the AHRQ statute does not define
“identifiable”, AHRQ applies the PHS Act definition of “identifiable, sensitive information”. Investigators should consult with AHRQ when they believe that data might be considered “non-identifiable” or when otherwise uncertain whether a research project falls within the scope of the statute.

When a researcher is conducting a research project that is covered by the Department of Justice (DOJ) confidentiality statute, 28 CFR 22, and/or a NIJ Privacy Certificate, a CoC may not be needed. Investigators should consult with DOJ/NIJ to determine whether a CoC should be obtained.

If there is an Investigational New Drug Application (IND) or an Investigational Device Exemption (IDE), the sponsor can request a CoC from the FDA. When FDA funds or conducts research, a CoC is automatically issued.

CoCs may also be issued by other Federal agencies and departments, such as SAMHSA and HRSA.

For more information, see the NIH CoC Website.

26.3.7 IRB Review

Investigators are responsible for clearly representing in the IRB submission that a CoC is in place, or that an application for CoC has been submitted or is pending. When the CoC application is in process or pending, the IRB may condition final approval upon its receipt.

For studies that are already underway, investigators must submit a Modification Request Form to the IRB, along with updated consent language (if applicable), when a CoC is applied for, or when automatically issued under the NIH policy or CDC requirements.

When reviewing research under a CoC, the MU IRB will evaluate whether the research plan is consistent with the obligations to protect information and specimens under a CoC and, when consent will be obtained, whether the proposed consent language or other form of notification properly discloses the CoC and appropriately describes the associated protections and limitations. Sample consent language is available on the NIH CoC Website. The IRB/IACUC Coordinator may assist with appropriate consent language as well.

When research is not under a CoC, the IRB may require an investigator to apply for a CoC if the research includes identifiable, sensitive information and the IRB determines that a CoC is necessary to minimize risks and adequately protect subjects’ privacy and the confidentiality of subjects’ information or specimens.

26.4 Case Reports Requiring IRB Review

Federal regulations at 45 CFR 46.102(d) and 45 CFR 164.501 define research as a systematic investigation, including research development, testing and evaluation, designed to develop or
contribute to generalizable knowledge. The MU IRB does not consider the retrospective review and analysis of medical records for publication of a single case report or a case series involving data from two or three patients to be research, and therefore such a report of 1-3 medical cases does not need to be submitted to the IRB. This is because reporting on such a small number of patients does not involve a systematic investigation, including defining a hypothesis that is then investigated prospectively and systematically, to develop or contribute to generalizable knowledge. The MU regards such limited case report preparation as an educational activity, not research, and thus it is permissible under the Privacy Rule (HIPAA) as a part of health care operations (45 CFR 164.501) when the case report will be used internally, or in other learning environments, for educational purposes. When a larger series of patients is being evaluated for presentation or publication, the commonalities of those patients are typically explored and conclusions are drawn (i.e., a systematic investigation). Such a systematic investigation more closely resembles prospectively designed clinical research and as such requires IRB review and approval. While drawing such a “bright line” to distinguish non-research from research may seem arbitrary, it serves as a guide to those who would prepare case reports. If a researcher ever does intend a report of 1-3 medical cases to develop or contribute to generalizable knowledge, or to otherwise constitute research, the report should be submitted to the IRB with a request for a determination whether the case report constitutes research using the procedures outlined in Section 4. As always, anyone who is unsure whether a project requires IRB review should contact the IRB Chair and/or the IRB/IACUC Coordinator for assistance.

Regardless of the number of cases, providers must comply with all applicable laws and MU policies related to the use and release of health information. Permission from the patients who will be included in the report should be sought whenever possible, and journals may require such as a condition of publication. Providers should consult with the Office of the General Counsel for guidance on patient privacy and HIPAA.

A copy of this policy can be provided to journal editors or others who request confirmation of IRB review or waiver. If needed, the IRB office can provide a letter confirming that submission of single case reports or series of up to 3 cases is not required.

26.5 Databases, Registries, & Repositories

Databases, registries, and biospecimen repositories (all referred to as repositories throughout this section) are used to store data and/or biospecimens for future use.

There are two type of repositories:

- Non-research repositories created and maintained for purposes that are unrelated to research. Such purposes may include diagnosis, treatment, billing, marketing, quality control, and public health surveillance.
• Research repositories created and maintained specifically for research purposes. Such purposes may include databases to identify prospective subjects, patient outcome information to evaluate treatment effectiveness, and tissues samples for future research. Non-research repositories that are altered to facilitate research (e.g., through the addition of data fields not necessary for the core purpose of the repository) are considered research repositories.

26.5.1 Non-research Repositories

Even though repositories were not created for research purposes, they may contain information that is of great interest to researchers. The creation (or operation) of non-research databases or repositories does not involve human subject research and does not require IRB oversight. However, IRB approval is required for the research use of identifiable private information or identifiable human specimens from non-research repositories, and, regardless of identifiability, when specimens will be used to evaluate the safety or effectiveness of a medical device. Research under the auspices of MU that includes the use of coded private information or specimens, must either be submitted for IRB review or for a “Human Subjects Research Determination” (See Section 4).

Researchers submitting an application for research using data or specimens from non-research repositories must describe the source of the data/specimens and any terms, conditions, or restrictions on use. Data/specimens cannot be used for research if the person from whom the data/specimens originated objected to its use for research. Informed consent and HIPAA authorization (when applicable) must be obtained unless the IRB determines that the criteria for a waiver are satisfied.

26.5.2 Research Repositories

Research repositories involve three distinct activities:

1. Collection of data/specimens;
2. Storage and management of data/specimens; and
3. Distribution of data/specimens.

Collection

Informed consent and HIPAA authorization (when applicable) must be obtained unless the IRB determines that the criteria for a waiver are satisfied.

Informed Consent information should include:

• A clear description of
  • What data/specimens will be collected;
Where the data/specimens will be stored, who will have access, and how the data/specimens will be secured;

Whether the data/specimens will be identifiable, coded, or deidentified;

The types of research to be conducted and any limitations or restrictions on such; and

The conditions under which data/specimens will be released to recipient-investigators

- A statement regarding future withdrawal of the data from the study (i.e., state whether subjects may, in the future, request that their data be destroyed or that all personal identifiers be removed from data and how to make such a request)

- When appropriate, the plan for management of incidental findings and sharing of results

**Storage and Management**

Repositories should have written policies describing:

- The conditions under which data/specimens will be accepted (e.g., inclusion criteria)
- Informed consent
- IRB review
- The sources of data/specimens
- Whether data/specimens will be identifiable, coded, or de-identified, and, if coded, management of the linkage key; and
- Physical and procedural mechanisms for the secure receipt, storage, and distribution of data/specimens

**Distribution**

Repositories should have written policies describing:

- How data/specimens may be requested and by whom
- Any requirements associated with a request for data/specimens (e.g., verification of IRB approval or that approval is not required)
- Any limitations or restrictions on how data/specimens may be used
- Whether released data/specimens will be identifiable, coded, or de-identified, and, if coded, any circumstances under which recipient investigators will have access to or be provided with the key or other means to re-identify; and
• Agreements with recipient investigators specifying the terms of use.

26.5.3 IRB Oversight

IRB approval is required for the establishment and operation of a research repository when the data/specimens that are accessed, received, stored, or distributed are identifiable. In general, private information or specimens are considered individually identifiable when the identities of the subjects are known to investigators/repository operators or when the data/specimens can be linked to specific individuals either directly or indirectly through coding systems.

Separate IRB approval is required for the use of data/specimens from a repository when the recipient investigator(s) know or may readily ascertain the identity of individual subjects, and, regardless of identifiability, when specimens will be used to evaluate the safety or effectiveness of a medical device. Research under the auspices of MU that includes the use of coded private information or specimens, must either be submitted for IRB review or for a “Human Subjects Research Determination” (See Section 4). The only exception to this policy is when the coded private information or specimens are to be obtained from an IRB-approved repository and the rules of that repository forbid the release of identifiable information, the release of the key to the code or other means that would allow re-identification, or the release of sufficient information that investigators could readily ascertain the identity of subjects.

26.6 Research Involving or Generating Genetic Information

Research that generates or uses genetic information may create special risks to human subjects and their relatives. These involve medical, psychosocial, legal and economic risks, such as the possible loss of privacy, insurability, and employability, and may result in stigmatization and discrimination. Information about one’s own genetic make-up may also provide information about family members.

In studies involving genetic testing or analysis of genetic information, several questions should be addressed to ensure that potential risks are well understood and that the rights and interests of subjects and their family members are carefully considered and planned for. For example:

1. Is the testing intrinsic to the study? If not, has participation in the genetic testing component been provided as an opt-in?
2. Will test results be given? Is there an appropriate plan for return of results?
3. Will the subject or family member be provided the option to receive or not receive results? How will this decision be recorded?
4. Could the results provide information about individual disease risk? Disease risk for family members?
5. Could other clinically relevant information or incidental findings be uncovered by the study? Is there a plan for the management of such findings?

6. Will testing that could produce clinically relevant information occur in a CLIA-certified lab? If not, are there tests available that could validate or support findings?

7. Could a change in a family relationship be disclosed, such as mistaken paternity?

8. Could/will the research provide information about the origins, ancestry, or natural history of families, indigenous peoples, tribal populations, or other populations? What are the possible risks?

9. Could/will the research generate information that could place subjects or family members at risk or be stigmatizing?

10. Could/will the research generate information of other value or importance to subjects/families?

11. Are there any practical limitations on the subject’s right to withdraw from the research, withdraw data, and/or withdraw biological materials (e.g., specimens, cell lines, extracted genomic DNA)? If so, what are they?

12. How will the information and/or biological materials be protected and who will have access?

13. What is the potential for re-identification of individual subjects (e.g., through the combination of their genetic information and/or materials with other sources of information (e.g., public records))? What measures can be taken to mitigate these risks?

14. Is a Certificate of Confidentiality (CoC) in place or should one be considered? (See Section 26.3)

15. Will the specimens, cell lines, or genetic information be stored and/or made available for future research? Is this provided as an opt-in when not intrinsic to the study?

Investigators should carefully consider the above and other factors relevant to their specific study when developing the protocol, consent process, and consent form. The President’s Bioethics Commission, the National Academies of Sciences, Engineering, and Medicine, and others have produced reports, recommendations, and materials that investigators and the IRB may find helpful in protocol development and review, including:

- Returning Individual Research Results to Participants: Guidance for a New Research Paradigm
- Anticipate and Communicate: Ethical Management of Incidental and Secondary Findings in the Clinical, Research, and Direct-to-Consumer Contexts
- Privacy and Progress in Whole Genome Sequencing
• Genetics Research and American Indian and Alaska Native Communities
• National Human Genome Research Institute:
  o Human Subjects Research in Genomics
  o Return of Research Results
  o Data Sharing and Privacy
  o Informed Consent for Genomics Research

In addition to the ethical considerations, investigators must ensure that research involving genetic testing or use of genetic information is consistent with applicable law (e.g., GINA, HIPAA, EU GDPR, state law) and policy (e.g., NIH).

26.6.1 Genetic Information Nondiscrimination Act (GINA)

GINA generally makes it illegal for health insurance companies, group health plans, and most employers to discriminate against individuals based on their genetic information. This law protects individuals, including research subjects, in the following ways:

• Health insurance companies and health plans are generally prohibited from requesting or requiring genetic information of an individual or their family members, including genetic information generated from research;
• If health insurance companies and health plans do receive such genetic information, they may not use it to make decisions regarding coverage, rates, or preexisting conditions; and
• Employers with 15 or more employees generally may not use genetic information for hiring, firing, promotion, or other decisions regarding terms of employment.

GINA’s protections do not extend to life insurance, disability insurance, or long-term care insurance.

GINA defines genetic information as information about:

• An individual’s genetic tests;
• Genetic tests of an individual’s family members;
• Genetic tests of any fetus of an individual or family member who is a pregnant woman, and genetic tests of any embryo legally held by an individual or family member utilizing assisted reproductive technology;
• The manifestation of a disease or disorder in an individual's family members (family history); or
• Any request for, or receipt of, genetic services or participation in clinical research that includes genetic services (genetic testing, counseling, or education) by an individual or an individual’s family members.
GINA includes a “research exception” that allows health insurers and health plans who are engaged in research to request, but not require, that an individual undergo a genetic test so long as certain requirements are satisfied. Additional information on GINA and this exception are available on this OHRP website.

The MU IRB will consider the protections and limitations of GINA when it assesses the risks of research generating or using genetic information and the adequacy of the measures to protect privacy and maintain confidentiality. Generally, the IRB will also require that the protections and limitations of GINA are disclosed in the consent process when applicable. Sample consent language for GINA is available through the IRB Office.

26.6.2 Genetics and State Law

Investigators must ensure that the research they conduct conforms with applicable law. When developing and conducting research involving genetic testing and genetic information in New Jersey, the following should be considered in accordance with the Genetic Privacy Act [N.J.S.A. §10:5-43 et. seq.]:

The Genetic Privacy Act, regulates genetic testing and the retention and disclosure of information obtained from genetic tests. The bill provides protection from insurance and employment discrimination on the basis of genetic information and from unauthorized genetic testing and the unauthorized use of genetic information.

No person shall obtain genetic information from an individual, or from an individual's DNA sample, without first obtaining informed consent from the individual or the individual's representative.

No person shall retain an individual's genetic information without first obtaining authorization informed consent from the individual or the individual's representative, unless retention of information is for anonymous research where the identity of the subject will not be released and as otherwise set forth in N.J.S.A. §10:5-45.

The DNA sample of an individual from which genetic information has been obtained shall be destroyed promptly upon the specific request of that individual or the individual's representative, unless otherwise directed by N.J.S.A. §10:5-46:

A DNA sample from an individual who is the subject of a research project shall be destroyed promptly upon completion of the project or withdrawal of the individual from the project, whichever occurs first, unless the individual or the individual's representative directs otherwise by informed consent.
An individual or an individual's representative, promptly upon request, may inspect, request correction of and obtain genetic information from the records of the individual unless the individual directs otherwise by informed consent pursuant to N.J.S.A. § 10:5-45.

A person who requires or requests that genetic testing be done or receives records, results or findings of genetic testing shall provide the person tested with notice that the test was performed and that the records, results or findings were received unless otherwise directed by informed consent pursuant to section N.J.S.A. § 10:5-45. The notice shall state that the information may not be disclosed to any person without the written consent of the person tested, unless disclosure is made pursuant to one of the exceptions provided for in section 8 of N.J.S.A. §10:5-47).

When conducting research in other jurisdictions, investigators must ensure that the research conforms with applicable law in that jurisdiction. Investigators should be prepared to provide information on relevant law and their plans to ensure compliance to the IRB of record for the study, whether it is MU IRB or another. Investigators may consult with the Office of the General Counsel as needed.

26.7 Community Based Research

Community based research (CBR) is research that is based in a community and conducted in collaboration with members of that community. Community is often self-defined, but general categories of community include geographic community, a community of individuals with a common problem or issue, or a community of individuals with a common interest or goal.

Where research is being conducted in communities, investigators are encouraged to involve members of the community in the research process, including the design and implementation of research and the dissemination of results when appropriate.

The most significant community involvement is in a subset of CBR called Community Based Participatory Research (CBPR) where there is an equal partnership between the academic investigators and members of a community, with the latter actively participating in all phases of the research process including the design and implementation of research and the dissemination of results when appropriate.

Questions to be considered as CBR studies are developed, and issues that the IRB will consider when reviewing CBR, are as follows:

- How was the community involved or consulted in defining the need for the proposed research (i.e., getting the community’s agreement to conduct the research)?
- How was the community involved or consulted in generating the study research plan?
• How will the research procedures, including recruitment strategies and consent processes be assessed to ensure sensitivity and appropriateness to various communities (e.g., literacy issues, language barriers, cultural sensitivities, etc.)?

• How will the community be involved in the conduct of the proposed research?

• How will community members who participate in the implementation of the research be trained and supervised?

• How have “power” relationships between investigators and community members on the research team, and in subject recruitment strategies been considered to minimize coercion and undue influence?

• What are the risks and benefits of the research for the community as a whole?

• How will boundaries between multiple roles (e.g., investigator, counselor, peer) be maintained, i.e., what happens when the investigator/research staff is the friend, peer, service provider, doctor, nurse, social worker, educator, funder, etc.)

• How will the research outcomes be disseminated to the community?

• Is there a partnership agreement or memorandum of understanding to be signed by the investigator and community partners that describes how they will work together?

26.8 Department of Defense

Research conducted or supported by the Department of Defense (DoD Research) is reviewed and conducted in compliance with part 219 of title 32 CFR, part 980 of title 10 USC, applicable parts of title 21 CFR (50, 56, 312, 600, 812), DoD Instruction 3216.02, DoD Directive 3210.07, and applicable additional requirements from respective DoD component(s). Support of a study generally means the provision of funding, personnel (both military and civilian DoD employees), facilities, and any other resources.

DoD components (e.g., Army, Navy) may have additional requirements. The PI and the ORC Director or IRB should contact the Human Research Protection Official (HRPO) for the DoD Component conducting or supporting the research. In most cases, protocols will also require review, approval and oversight by the DoD component HRPP. DoD review must be conducted before research involving human subjects can begin. The HRPO provides administrative review and approval to confirm the research is compliant with federal and DoD requirements.

MU assures that DoD supported research complies with all relevant DoD human subjects protection requirements, including but not limited to:

• The Belmont Report
• Title 32 Code of Federal Regulations Part 219 (32 CFR 219), Department of Defense Regulations, “Protection of Human Subjects” (DoD adoption of the “Common Rule”)
• Title 21 Code of Federal Regulations 50, 56, 312, and 812, Food and Drug Administration (FDA) Regulations
• DoDD 3216.02, “Protection of Human Subjects and Adherence to Ethical Standards in DoD-supported Research”
• Title 10 United States Code Section 980 (10 USC 980), “Limitation on Use of Humans as Experimental Subjects”
• DoDD 3210.7, “Research Integrity and Misconduct”
• DoDD 6200.2, “Use of Investigational New Drugs in Force Health Protection”

It is the responsibility of the PI to ensure compliance with DoD requirements for human subject protection. IRB/IACUC Coordinator, Chairs and IRB members will use these SOPs, DoDD 3216.02, the DoD Reviewer Checklist, and any relevant DoD component-specific instructions or materials to guide the IRB review and oversight of DoD research.

26.8.1 Key DoD Standards and Requirements

26.8.1.1 Minimal Risk

The definition of minimal risk based on the phrase “ordinarily encountered in daily life or during the performance of routine physical or physiological examination or tests” may not be interpreted to include the inherent risks certain categories of human subjects face in their everyday life. For example, the risks imposed in research involving human subjects focused on a special population should not be evaluated against the inherent risks encountered in their work environment (e.g., emergency responder, pilot, soldier in a combat zone) or having a medical condition (e.g., frequent medical tests or constant pain).

26.8.1.2 Education and Training

All personnel involved in the conduct of DoD research must complete initial and continuing education in the protection of human subjects as described in this manual. Personnel must also familiarize themselves with DoD’s specific requirements by reviewing these SOPs, DoDD 3216.02, and any relevant materials specific to the DoD component. The DoD component may require additional education and/or certification to ensure that personnel are qualified to perform the research. The DoD component may evaluate the training policies of MU to ensure compliance.
the personnel are qualified to perform the research, based on the complexity and risk of the research.

26.8.1.3 Appointment of a Research Monitor

When DoD research involves more than minimal risk, the IRB will require and approve an independent research monitor by name. When research involves no more than minimal risk, an investigator may identify a research monitor or the IRB or IO may appoint a monitor. There may be more than one research monitor (e.g. if different skills or experience are needed). The monitor may be an ombudsman or a member of the data safety monitoring board.

The IRB must approve a written summary of the monitors’ duties, authorities, and responsibilities and the IRB or ORC Director shall communicate with research monitors to confirm their duties, authorities, and responsibilities.

The duties of the research monitor are determined on the basis of specific risks or concerns about the research. The monitor:

- May perform oversight functions (e.g. observe recruitment, enrollment procedures, and the consent process, oversee study interventions and interactions, review monitoring plans and reports of unanticipated problems involving risks to participants or others, oversee data matching, data collection and analysis).

- May discuss the research protocol with researchers, interview human subjects, and consult with others outside of the study.

- The research monitor has the authority to stop a research study in progress, remove individual subjects from the study, and to take whatever steps are necessary to protect the safety and well-being of participants until the IRB can assess the monitor’s report.

- Research monitors are obligated to promptly report their observations and findings to the IRB or other designated official.

26.8.1.4 Additional protections for vulnerable subjects

Non-exempt research involving pregnant women, fetuses, or neonates as subjects must meet the requirements of Subpart B of the Common Rule, with the following modifications:

- The applicability of Subpart B is limited to non-exempt research involving:
  - Pregnant women as human subjects involved in research that is more than minimal risk and that includes interventions or invasive procedures to the woman or the fetus; or
  - Involving fetuses or neonates as subjects.
For purposes of applying Subpart B, the phrase “biomedical knowledge” will be replaced with “generalizable knowledge.”

Fetal research must comply with the US Code Title 42, Chapter 6A, Subchapter III, Part H, 289g.

Research involving prisoners as subjects must meet the requirements of Subpart C of the Common Rule, with the following modifications:

- Research involving prisoners cannot be reviewed by the expedited procedure.
- When the IRB reviews research involving prisoners, at least one prisoner representative must be present for quorum. The prisoner representative may be a prisoner, an employee of the prison, or an individual not affiliated with the prison.
- In addition to the four allowable categories of research involving prisoners in Subpart C, two additional categories are allowable:
  - Epidemiological research that meets the following criteria:
    - The research describes the prevalence or incidence of a disease by identifying all cases or studies potential risk factor association for a disease.
    - The research presents no more than minimal risk
    - The research presents no more than an inconvenience to the participant.
    - Prisoners are not a particular focus of the research
  - Research that would meet the criteria for exemption described at 32 CFR 219.101(b), can be conducted but must be approved by a convened IRB and meet the requirements of subpart C, DoDD 3216.02, and other applicable requirements.
- When a previously enrolled human subject becomes a prisoner and the research was not previously approved for the inclusion of prisoners:
  - The PI must promptly notify the IRB.
  - If the PI asserts to the IRB that it is in the best interest of the prisoner to continue to participate in the research while a prisoner, the IRB Chair may determine that the prisoner may continue to participate until the convened IRB can review the request to approve a change in the research protocol and until the IO and DoD Component office review the IRB’s approval to change the research protocol. Otherwise, the IRB Chair will require that all research interactions and interventions with the prisoner (including obtaining identifiable
private information) cease until the convened IRB can review the request to approve a change in the research protocol.

- The convened IRB, upon receipt of notification that a previously enrolled human subject has become a prisoner, will promptly re-review the research protocol to ensure that the rights and wellbeing of the human subject, now a prisoner, are not in jeopardy. The IRB should consult with a subject matter expert having the expertise of a prisoner representative if the IRB reviewing the research protocol does not have a prisoner representative. If the prisoner can continue to consent to participate and is capable of meeting the research protocol requirements, the terms of the prisoner’s confinement does not inhibit the ethical conduct of the research, and there are no other significant issues preventing the research from continuing as approved, the convened IRB may approve a change in the study to allow the prisoner to continue to participate in the research. This approval is limited to the individual prisoner-subject and does not allow recruitment of prisoners as participants.

- This type of request for change in the research protocol cannot be reviewed and approved by expedited review. The research does not have to meet one of the six allowable DoD categories for research involving prisoners.

- MU will promptly report all decisions in this matter to the component HRPO. The HRPO must concur with the IRB decisions before the human subject can continue to participate while a prisoner.

Research involving **Children** as subjects must meet the requirements of Subpart D of the Common Rule, including that:

- The exemption for research involving survey or interview procedures or observation of public behavior, does not apply to research with children, except for research involving observations of public behavior when the investigator(s) do not participate in the activities being observed.

Research involving **Military Personnel** as subjects must meet the following requirements:

- Service members must follow their command policies regarding the requirement to obtain command permission to participate in research involving human subjects while on-duty and for approving off-duty employment or activities.

- Superiors (e.g., military and civilian supervisors, unit officers, and noncommissioned officers (NCOs)) are prohibited from influencing the decisions of their subordinates (e.g., junior enlisted personnel and equivalent civilians) regarding participation as subjects in research.
• Superiors of Service members (e.g., unit officers, senior NCOs, and equivalent civilians) in the chain of command must not be present at any human subject recruitment sessions or during the consent process in which members of units under their command are afforded the opportunity to participate as research subjects. When applicable, the superiors so excluded shall be afforded the opportunity to participate as research subjects in a separate recruitment session.

• When research involving Service members is greater than minimal risk and recruitment occurs in a group setting, the IRB will appoint an ombudsman. The ombudsman must not be associated in any way to the research and must be present during the recruitment to monitor that the voluntary involvement or recruitment of the Service members is clearly and adequately stressed and that the information provided about the research is clear, adequate, and accurate. The ombudsman may also be the research monitor.

Research involving **DoD Civilians** as subjects must meet the following requirements:

• DoD Civilians must follow their organization’s policies regarding the requirement to obtain permission to participate in research

• Supervisors (e.g., military and civilian supervisors or anyone in the supervisory structure are prohibited from influencing the decisions of their subordinates regarding participation as subjects in research

• Supervisors (e.g., military and civilian supervisors or anyone in the supervisory structure) must not be present at any human subject recruitment sessions or during the consent process in which DoD civilians under their supervision are afforded the opportunity to participate as human subjects. When applicable, supervisors so excluded shall be afforded the opportunity to participate as human subjects in a separate recruitment session

• For research involving civilians as human subjects when recruitment occurs in a group setting, the IRB will discuss appointing an ombudsman. The decision to require the appointment of an ombudsman should be based in part on the human subject population, the consent process, and the recruitment strategy.

Research involving **other vulnerable populations** must meet the following requirements:

• Investigators, IRB, and IO will consider the need for appropriate similar safeguards for other vulnerable populations, such as: research involving human subjects and investigators in supervisor-subordinate relationships, human subjects with decisional or mental impairments, human subjects with a physical disability, or any other kind of human subjects in circumstances that may warrant provision of additional protections.
As appropriate, qualified individuals (e.g., research monitors, ombudsmen, advocates) may be appointed to perform oversight functions or assist the human subjects.

**26.8.1.5 Additional Consent Elements**

When consent is to be obtained, the following additional elements of consent should be provided to potential subjects when applicable unless the requirement is waived by the DoD:

1. A statement that the DoD or DoD component is funding the research; and
2. A statement that representatives of the DoD are authorized to review research records.

**26.8.1.6 Limitation of Waivers and Exceptions from Informed Consent**

For DoD-funded research, if the research meets the definition of “research involving a human being as an experimental subject,” informed consent must be obtained in advance from the experimental subject or their LAR if the subject cannot consent. If consent is to be obtained from a LAR, the IRB must determine that the research intends to benefit the individual subject.

The Assistant Secretary of Defense for Research and Engineering may waive the requirements for consent when all of the following are met:

1. The research is necessarily to advance the development of a medical product for the Military Services;
2. The research may directly benefit the individual experimental subject; and
3. The research is conducted in compliance with all other applicable laws and regulations.

Research involving a human being as an experimental subject is an activity, for research purposes, where there is an intervention or interaction with a living individual for the primary purpose of obtaining data regarding the effect of the intervention or interaction. If the research participant does not meet the definition of “experimental subject,” policies and procedure allow the IRB to waive the consent process.

For classified research, waivers of consent are prohibited.

An exception from consent in emergency medicine research is prohibited unless a waiver is obtained from the Secretary of Defense.

**26.8.1.7 Limitations on Compensation for Human Subjects in Research**

DoDD 3216.02 describes allowable and prohibited compensation for human subjects participating in DoD research and for Federal personnel such as civil servants and Service members. These provisions are intended to ensure compliance with the Dual Compensation Act and 24 U.S.C. 30. Summarized:
• Federal personnel while on duty and non-Federal personnel may be compensated for blood collections for research up to $50 for each blood collection.
• Federal personnel are prohibited from receiving pay or compensation for research during duty hours (except for blood collection as noted above).
• Non-Federal personnel may be compensated for research participation other than blood collections in a reasonable amount, as approved by the IRB according to local prevailing rates and the nature of the research.
• Federal personnel may be compensated for research if the participant is involved in the research when not on duty in the same way as human subjects who are not Federal personnel (i.e., compensated for participation in a reasonable amount as approved by the IRB according to local prevailing rates and the nature of the research). However, payment to off-duty Federal personnel for research participation other than blood draws must not be directly from a Federal source (payment from a Federal contractor or other non-Federal source is permissible).

Additional detail is available in DoDD 3216.02 or by consulting the component HRPO.

26.8.1.8 Reporting Requirements

The University must promptly (no longer than within 30 days) notify the HRPO of the following: when significant changes to the research protocol are approved by the IRB, the results of the IRB continuing review, if the IRB used to review and approve the research changes to a different IRB, when the university is notified by any Federal department or agency or national organization that any part of its HRPP is under investigation for cause involving a DoD-supported research protocol, and all unanticipated problems involving risks to subjects or others, suspensions, terminations, and serious or continuing noncompliance regarding DoD-supported research involving human subjects.

26.8.1.9 Recordkeeping Requirements

Recordkeeping requirements for DOD-supported research with human subjects are longer than the Common Rule’s requirement. DOD may require submitting records to DOD for archiving. Investigators should consult with the HRPO regarding record-keeping requirements for their research.

Records must be made accessible for inspection and copying by representatives of the DoD at reasonable times and in a reasonable manner as determined by the supporting DoD component. The fact that DoD may inspect records should be disclosed in the consent process.
26.8.1.10 Addressing and Reporting Allegations of Non-Compliance with Human Research Protections

MU must report the initiation of all investigations of allegations of non-compliance and report the results of all such investigations (regardless of the findings) to the HRPO.

26.8.1.11 Addressing and Reporting Allegations of Research Misconduct

MU will adhere to the requirements of DODD 3210.7 and the terms of any DoD award when allegations or findings of research misconduct arise.

26.8.1.12 Prohibition of Research with Detainees

Involvement of detainees (e.g. civilian internees, retained persons, lawful and unlawful enemy combatants) as human subjects of research is prohibited. Research involving any person captured, detained, held or otherwise under the control of DoD personnel (military and civilian, or contractor employee) is prohibited. There is an exception for treatment of detainees with an investigational drug or device (described below).

A detainee is defined as any individual captured by, or transferred to the custody or control of, DoD personnel pursuant to the law of war. This does not include persons being held solely for law enforcement purposes, except where the United States is the occupying power.

The prohibition of research involving a detainee does not apply to the use of FDA-regulated investigational new drugs or investigational devices for the purpose of diagnosis or treatment of a medical condition in a patient. Such treatment (e.g., an investigational new drug) may be offered to detainees with the detainees’ informed consent when the medical products are subject to FDA regulations as investigational new drugs or investigational medical devices, and only when the same product would be offered to members of the U.S. Military Services in the same location for the same medical condition and only when consistent with established medical practice involving investigational drugs and devices. Such permitted treatment involving detainees as subjects must comply with all sections of DoDD 3216.02.

26.8.1.13 Classified research

Secretary of Defense approval is required (after IRB approval) for all classified non-exempt research involving human subjects. The involvement of classified information may be limited to information needed for IRB approval and oversight of the research; information needed to inform the human subjects during the consent process; and information provided by the human subjects during the course of the research.

Waivers of informed consent are prohibited.
Informed consent procedures must include:

1. Identification of the DoD as the supporting institution of the research, unless the research involves no more than minimal risk. The Secretary of Defense may grant an exception to this requirement on the grounds that providing this information could compromise intelligence sources or methods; and

2. A statement that the research involving human subjects is classified and an explanation of the impact of the classification.

The IRB will determine whether potential human subjects need access to classified information to make a valid, informed consent decision.

IRB review will be conducted using a full board review and shall include at least one non-affiliated member who is not a Federal employee. Use of an expedited review procedure is prohibited. Any IRB member who disagrees with a majority decision approving a project may appeal the decision to the Secretary of Defense.

26.8.1.14 Additional Requirements for DoD Research

IRB review must consider the scientific merit of the research. The IRB may rely on outside experts to provide an evaluation of scientific merit.

When conducting research with international populations, additional safeguards for research conducted with international populations the organization or researcher must have permission to conduct research in that country by certification or local ethics review. Researchers must follow all local laws, regulations, customs, and practices.

Disclosure regarding the provisions for research-related injury must follow the requirements of the DoD component.

Surveys performed on DoD personnel must be submitted, reviewed, and approved by the DoD component HRPO after the research protocol is reviewed by the IRB. When a survey crosses DoD components additional review may be required by DoD.

When any institution relies upon another institution’s IRB for DoD research, there must be a written agreement defining the responsibilities and authorities of each organization in complying with the terms of each institution’s Federal assurance and DoDD 3216.02.

When conducting multi-site or collaborative research, a formal agreement between organizations is required to specify the roles and responsibilities of each party.

Civilian researchers attempting to access military subjects should seek collaboration with a military researcher familiar with service-specific requirements.
26.9 Department of Education

The U.S. Department of Education (ED) is a signatory to the Common Rule with regulations equivalent to 45 CFR 46 published under 34 CFR 97. Research conducted or supported by ED is reviewed by the MU IRB in accordance with the Common Rule as described throughout this manual with the following variations and additional requirements.

ED has not adopted Subpart B (Pregnant Women, Fetuses, or Neonates) or Subpart C (Prisoners) of the Common Rule.

ED requires reporting of alleged (1) unanticipated problems involving risks to subjects or others; and, (2) serious or continuing noncompliance with the Common Rule or Subpart D (protection of children in research). Other mandated reports, as described in Section 20, are submitted to ED instead of OHRP when the research is funded or sponsored by ED. When applicable, MU will follow the directions for incident reporting provided on ED’s Protection of Human Subjects in Research website.

26.9.1 Family Educational Rights and Privacy Act (FERPA)

The Family Educational Rights and Privacy Act (FERPA) is a Federal law that protects the privacy of student education records at educational entities that receive funds from the ED. In general, schools must have written permission from the parent or eligible student to release any information from a student’s education record. However, FERPA allows schools to disclose personally identifiable information from an education record of a student without consent if the disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to:

1. Develop, validate, or administer predictive tests;
2. Administer student aid programs; or
3. Improve instruction. [34 CFR 99.31(a)(6)]

A written agreement with the receiving organization is required, including:

1. The purpose, scope, and duration of the study(ies);
2. The information to be disclosed;
3. A requirement that the receiving organization uses the personally identifiable information from the educational records only for the purpose(s) of the study as stated in the agreement;
4. A requirement that the receiving organization conducts the study in a manner that does not permit personal identification of students and parents by anyone other than representatives of the organization with legitimate interests; and
5. A requirement that the receiving organization destroys or returns all personally identifiable information when the information is no longer needed for the purposes for which the study was conducted and that specified the time period in which the information must be returned or destroyed.

Education records may be released without consent under FERPA if all personally identifiable information has been removed including:

1. Students’ names and other direct identifiers, such as students’ Social Security Numbers or student numbers;
2. Indirect identifiers, such as the name of students’ parents or other family members, the students’ or families addresses, and personal characteristics or other information that would make the students’ identities easily traceable, and dates and places of birth and mothers’ maiden names;
3. Biometric records, including measurable biological or behavioral characteristics that can be used for automated recognition of an individual, including fingerprints, retina and iris patterns, voiceprints, DNA sequence, facial characteristics, and handwriting; and
4. Other information that, alone, or in combination, is linked or linkable to a student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

At MU, when FERPA applies, investigators must first receive approval from the Office of the General Counsel. Investigators must provide a copy of the approval to the IRB and provide the IRB with information describing how they will ensure compliance with the rule. A letter of support or other documentation from the school supporting the conduct of the research should be provided. The IRB will review the information provided to verify compliance, including verification that permission for the use of the records will be obtained or that it is not required under an allowed use or exception.

26.9.2 Protection of Pupil Rights Amendment (PPRA)

The Protection of Pupil Rights Amendment (PPRA) affords parents of elementary and secondary students certain rights regarding the conduct of survey, collection and use of information for marketing purposes, and certain physical exams. PPRA applies to the programs and activities of a state educational agency (SEA), local educational agency (LEA), and any other recipient of ED funds. These rights transfer from parents to students when they reach the age of 18 or are an emancipated minor. This section is not intended to comprehensively address PPRA as a whole, rather it addresses PPRA requirements as they most commonly relate to research.
26.9.2.1 Definitions:

**Instructional Material** means instructional content that is provided to a student, regardless of its format, including printed or representational materials, audio-visual materials, and materials in electronic or digital formats (such as materials accessible through the Internet). The term does not include academic tests or academic assessments.

**Invasive Physical Examination** means any medical examination that involves the exposure of private body parts, or any act during such examination that includes incision, insertion, or injection into the body, but does not include a hearing, vision, or scoliosis screening.

**Personal Information** means individually identifiable information including: (1) a student’s or parent’s first and last name; (2) a home or other physical address (including a street name and the name of a city or town); (3) a telephone number; or, (4) a Social Security Number.

**Research or Experimentation Program or Project** means any program or project in any program that is designed to explore or develop new or unproven teaching methods or techniques.

26.9.2.2 Rights under PPRA

When research is funded by ED, no student can be required to submit without prior consent to a survey that concerns one or more of the following protected areas:

1. Political affiliations or beliefs of the student or the student’s parent;
2. Mental and psychological problems of the student or his or her family;
3. Sex behavior and attitudes;
4. Illegal, anti-social, self-incriminating, and demeaning behavior;
5. Critical appraisals of other individuals with whom the student has close family relationships;
6. Legally recognized privileged and analogous relationships, such as those of lawyers, physicians, and ministers;
7. Religious practices, affiliations, or beliefs of the student or student’s parent; or
8. Income, other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under a program.

Parents have the right to receive notice and an opportunity to opt a student out of:

1. Any other survey that concerns any of the above protected areas, regardless of funding;
2. Any non-emergency, invasive physical exam or screening required as a condition of attendance, administered by the school or its agent, that is not necessary to protect the...
health and safety of a student, except for hearing, vision, or scoliosis screenings, or any physical exam or screening permitted or required under state law; and

3. Activities involving collection, disclosure, or use of personal information collected from students for marketing or to sell or otherwise distribute the information to others. (This does not apply to the collection, disclosure, or use of personal information collected from students for the exclusive purpose of developing, evaluating, or providing educational products or services for, or to, students or educational institutions.)

Parents also have the right to inspect upon request and before administration or use:

1. Surveys that concern any of the protected areas and surveys created by third parties;

2. Instruments used to collect personal information from students for any of the above marketing, sales, or other distribution purposes;

3. Any instructional material used as part of the educational curriculum for the student; and

4. Instructional material, including teachers’ manuals, films, tapes, or other supplementary instructional material, which will be used in conjunction with any research or experimentation program or project.

26.9.2.3 Procedures

At MU, when PPRA applies, first receive approval from the Office of the General Counsel. Investigators must provide a copy of the approval to the IRB and investigators should review the school’s PPRA policies and must provide the IRB with information describing how they will ensure compliance with the rule and the school’s policies. A letter of support or other documentation from the school supporting the conduct of the research and its compliance with PPRA should be provided. The IRB will review the information provided to verify compliance.

26.10 Transnational Research

The MU IRB reviews transnational research involving human subjects to ensure that adequate provisions are in place to protect the rights and welfare of the subjects. All policies and procedures that are applied to research conducted domestically are applied to research in international settings, as appropriate. Approval of research is permitted if “the procedures prescribed by the foreign institution afford protections that are at least equivalent to those provided in 45 CFR 46.”

For federally conducted or supported research, approval of research for foreign institutions or sites “engaged” in research is only permitted if the foreign institution or site holds an FWA with OHRP and local IRB review and approval is obtained.
Approval of research for foreign institutions or sites “not engaged” in research is only permitted if one or more of the following circumstances exist:

- When the foreign institution or site has an established IRB/EC, the investigator must obtain approval to conduct the research at the "not engaged" site from the site’s IRB/IEC or provide documentation that the site’s IRB/EC has determined that approval is not necessary for the investigator to conduct the proposed research at the site.

- When the foreign institution or site does not have an established IRB/IEC, a letter of cooperation must be obtained demonstrating that the appropriate institutional or oversight officials permit the research to be conducted at the performance site.

- IRB approval to conduct research at the foreign institution or site is contingent upon receiving documentation of the performance site’s IRB/EC determination, or letter of cooperation, as applicable.

The MU IRB seeks sufficient knowledge of the local research context by requesting approval for the project from local IRBs or ethics committees (which may or may not be OHRP-registered) and/or local letters of support. The source of this information will depend on the nature of the study, on the country, and on the resources available to the investigator. Where there is a local IRB/EC, MU IRB must receive and review the foreign institution or site’s IRB/EC review and approval of each study prior to beginning the research at the foreign institution or site. When appropriate, the IRB communicates and coordinates with the local institutions or ethics committees.

In settings where there are no IRBs/ECs, MU IRB may require additional verification and information from people outside the particular research project who are familiar with the customs, practices, or standards of care where the research will be taking place, including other IRBs or committees with experience reviewing research in the region, other MU investigators with knowledge of the region, or a consultant who is an expert on the region, prior to approval. These individuals may either provide a written review of the research protocol or attend an IRB meeting to provide the MU IRB with recommendations based on his or her expertise.

### 26.10.1 IRB Responsibilities

In addition to the IRB review considerations discussed elsewhere in this manual, the IRB will consider the following when reviewing transnational research:

1. The qualifications of the investigator and research staff to conduct research in that country including knowledge of relevant laws, regulations, guidance and custom;

2. Whether the consent process and consent documents are appropriate for the language(s) of the subjects and the subject population, and that arrangements are made
to be able to communicate with subjects throughout the study (e.g., to ask and answer questions);

3. How modifications to the research will be handled;

4. How complaints, noncompliance, protocol deviations and unanticipated problems involving risks to subjects or others are handled;

5. How post-approval monitoring will be managed;

6. Whether the investigator has obtained the appropriate host country approvals and permissions to conduct the proposed research (e.g., institutional, governmental or ministerial, IRB, local, or tribal);

7. When applicable, whether the investigator has provided an appropriate plan, and any necessary supporting documentation, to comply with the requirements of country law for investigational articles; and

8. Mechanisms for communicating with the investigators and research staff when they are conducting the research in other countries.

### 26.10.2 Investigator Responsibilities

The investigator conducting transnational research is responsible for:

1. Ensuring that the resources and facilities are appropriate for the nature of the research;

2. Verifying the qualifications of the investigators and research staff for conducting research in the country(ies);

3. Obtaining all appropriate host country approvals and permissions to conduct research (e.g., institutional, governmental or ministerial, IRB, local, or tribal);

4. Complying with the requirements of country law; including, when applicable, requirements for research involving investigational articles and requirements for data management and privacy such as EU GDPR;

5. Ensuring that the consent process and consent document are appropriate for the language(s) of the subjects and the subject population, and that arrangements are made to be able to communicate with subjects throughout the study (e.g., to ask and answer questions);

6. Ensuring that the following activities will occur:
   
   a. Initial review, continuing review, and review of modifications;
   
   b. Post-approval monitoring of the conduct of the research in accordance with the plan approved by the IRB; and
c. Handling of complaints, noncompliance and unanticipated problems involving risk to subjects or others;

7. Not relying upon an IRB or EC that does not have policies and procedures for the activities listed above;

8. Ensuring that reportable information such as complaints, noncompliance, protocol deviations and unanticipated problems involving risks to participants or other are communicated to the IRB;

9. Notifying the IRB promptly if a change in research activities alters the performance site’s engagement in the research (e.g., performance site “not engaged” begins to obtain consent of research participants, etc.); and

10. Ensuring that there are mechanisms for communicating with the IRB when they are conducting the research in other countries.

26.10.3 Consent Documents

The informed consent documents must be appropriate for and in a language understandable to the proposed subjects. The IRB will review the proposed document in accordance with SOP Section 13.9.1. All documents, including verification of the back translation, are maintained in the IRB file.

26.10.4 Monitoring of Approved Transnational Research

The IRB is responsible for the ongoing review of international research conducted under its jurisdiction through the continuing review or study status process in accordance with all applicable federal regulations. When the IRB and a local ethics committee are both involved in the review of research, there is a plan for coordination and communication with the local IRB/ECs.

The IRB requires documentation of regular correspondence between the MU investigator and the foreign institution or site and may require verification from sources other than the MU investigator that there have been no changes made to the research since its last review.

26.11 Student Research

26.11.1 Course-required projects

Learning how to conduct ethical human subject research is an important part of a student’s educational experience. Activities that are designed as part of a course requirement for purposes of learning experience only, and are not “designed to develop or contribute to
generalizable knowledge”, are not considered ‘research involving human subjects’, and do not require exemption determination or approval.

The course instructor is responsible for ensuring that:

- The student will be taught, and the activity will be conduct in accordance with, the ethical standards of the field’s discipline, and
- All relevant institutional approvals (from Monmouth, and from any external sites at which the activity may be conducted) are obtained prior to initiation of the activity.

Classroom projects will be submitted to the Institution via the HRPP Initial Application, and will address if all of the following criteria are met for the project:

- Involves minimal risk (i.e., the level of risk encountered in daily life) to the participants.
- Does not involve vulnerable populations (e.g., children, adults who cannot consent form themselves, prisoners)
- Involves obtaining voluntary, prospective agreement from participants with whom the student interacts
- Does not involve sensitive topics (e.g., illegal activities, child abuse, sexual assault, drug use etc.)
- Does not involve associating the participants’ identities with their information in any way.

If all these criteria are confirmed, the HRPP/IRB Office will register the activity with the Institution. If one or more of these criteria are not met, the HRPP/IRB Office will review the activity on behalf of the Institution to confirm that the activity provides appropriate protections for participants and their information.

In making a determination of whether or not a class project requires exemption or IRB approval, the instructor should submit an HRPP Initial Application to irb@monmouth.edu (or via the electronic system) for a determination following the procedures outlined in Section 4.

26.11.1.1 Individual Research Projects Conducted by Students

When students conduct, or participate as a research team member, in human subjects research other than class work as described above, they must follow the standard procedures for research described throughout this manual, as applicable to the research. As described in Section 1.10.6, students may not serve as PI on human subjects research conducted under the auspices of MU but may serve as a co-investigator or member of the research team. When students of MU conduct, or participate as a research team member, in research at or with another organization, they must contact the MU HRPP Office to determine if review by the MU IRB is required, or if a reliance agreement is needed, prior to engaging in the activity.

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Note that any human subject research activity that will ultimately contribute to part or all of a thesis or dissertation must go through the IRB review process prior to enrolling subjects and collecting data. IRB review/approval cannot occur after a study has begun.

Students and advisors should contact the HRPP Office with any questions.

26.12 National/State of Emergencies and/or Disasters

In the event of a national/state of emergency or disaster (e.g., public health or weather-related), the procedures in these SOPs may be modified as appropriate for the situation. Such modifications may include alternative meeting procedures, alternative procedures for the submission and review of modifications, alternative procedures or prompt reporting, and any other changes necessary to ensure appropriate ongoing oversight and conduct of research. Because procedural modifications may vary based on the nature of the event, these cannot be anticipated and described in these SOPs. Instead, such procedural modifications will be recorded in an addendum to the SOPs, note-to-file, or other appropriate means of documentation and communicated to the MU research community. This documentation will be maintained in accordance with applicable record retention requirements.