Cyberseminar Transcript
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Session: Overview of the Revised Common Rule and Its Impact on the IRB
Presenter: Soundia Duche, MA, MS

Soundia: Good Afternoon everyone and welcome to today's training on the Overview of the revised Common Rule and Its Impact on the IRB. My name is Soundia Duche, and I'll be presenting today. And assisting me in the room are my colleagues Lucinda Shouse who's with CSR&D, Dr. Karen Jeans who is with CSR&D as well, Dr. Petrice Longenecker with me in PRIDE and, remotely, we have Dr. Kristina Borror who's with ORO. So I have many hands on deck here ready to answer, we hope, lots of good questions. We know you know we're marching towards implementation of the revised Common Rule and we really hope that this training, and all our other trainings that we've been doing, will be helpful, have been helpful, in getting you all ready for the transition. And this training, in particular, will be focused on providing an overview of the significant changes that specifically impact the IRB. That's where we're going to focus. We have a lot of content. This is a long presentation so I'm going to be talking a little faster than usual. Forgive me but in order to get through the content and make sure we have sufficient time for you all to ask as many questions and so that we can answer them, we're going to kind of move rapidly. The other thing, second apology, we're not going to have case studies today. We know you love case studies. We always get such great feedback from you all on our case studies and the surveys that you complete, that everybody completes, right at the end of the training and we honestly love doing and creating the case studies but, again, too much content today. If we included case studies I'd have you guys here well into the early evening and can't do that. So expect to see case studies in our next presentation. Also, just want to say upfront that tomorrow, Dr. Kristina Borror will be conducting another training in this series on Exempt and Limited IRB Review. And so most of you should have received the information to register for that training but if you haven't please reach out to Kristina because that's, again, such a timely topic. Exempt Review and the Exempt Categories are huge in the revised Common Rule. That's a really significant difference to what we've been used to operating under. Let me show my screen in slide show mode, perfect.

All right. So today I'm going to give you, start with giving you a brief status update on the revised Common Rule as well as VHA Handbook 1200.05 and then, as I mentioned, focus on significant changes to the revised rule. And then at different points in the presentation, two or three points, where we're going to really talk about considerations and strategies that your IRB can use to implement the revised Common Rule. And I'm going to say upfront these are just suggestions. You don't have to do anything, but I hope that they'll get you to start thinking about how best to tackle some of these changes and things that you might want to consider as you're walking towards the implementation.

So where are we? It is September 18th. We are just shy of four months out from January 21st, 2019 which is the compliance date with the revised Common Rule. We often refer to it as the 2018 requirement. Why? Well because originally it was supposed to be implemented this year. The original effective date and compliance date was January 19th, 2018, but there've been a

series of delays, two specifically, that delayed it out a year. There were two six month delays. And so where we are now is January 21st, 2019, is the date that all new studies approved on or after that date, or deemed exempt on or after that date, have to meet all of the requirements of the revised Common Rule, or interchangeably you'll hear me refer to them as the 2018 requirements. The only thing you will not have to be in compliance with is the cooperative research provisions which have a compliance date of January 20th, 2020. So we have some time there. The current Common Rule, I'm going to be referring to it as the pre-2018 requirement. So again, you're going to see these terms a lot and so just try to remember them as pre-2018 as the same as current Common Rule, 2018 requirement is the same as revised Common Rule and I kind of use these interchangeably.

All right when we announced the second six month delay back in June, OHRP and the other federal agencies, VA included, as signatories of the Common Rule implemented a final rule that allowed institutions to decide whether they want to introduce three burden reducing provisions for research. And so what does that mean? As of July 19, 2018, institutions have the option, you are not required, but they have the option of starting to introduce certain burden reducing provisions in advance of the compliance date of January 21st , 2019. Now these three requirements are requirements that will be found in the 2018 requirements. So come January, everyone will be using these three requirements, but for certain research, some types may decide that it makes sense to start implementing some of these provisions ahead of time during what we call the delay period. If you elect to implement any of these, those studies must transition to be compliant with all of the 2018 requirements come January 21st, 2019. Not before, not after, as of or on January 21st, 2019. Now Petrice did a wonderful presentation, she did two of them actually, on the burden reducing provisions back in June and July. Those are recorded along with all of our other trainings, and so if you missed those, you can find them on the PRIDE website. Very briefly, the burden reducing provisions are, you can start applying the revised definition of research which deems four categories of activities not research. I'm going to talk about that in just a little bit. Another provision that you can start employing is, you can eliminate the requirement that the IRB review the grant application that is no longer a requirement in the 2018 Common Rule, 2018 requirement, and so that's an option that you can start introducing early. And then the third option, which is not available to VA institutions because our policy does not allow it, but the third option was eliminating continuing review for studies approved by expedited review and studies that have reached a certain point in the research. And so that will be an option come January 21st, 2019, to eliminate the IRBs continuing review but right now, that is not something that you can implement early.

Where are we with VHA handbook 1200.05? Now some of you may have seen the first draft because it went out to the field for comments and we appreciated all those comments. We've worked very hard to revise and respond to the comments and right now, the handbook is in the process of undergoing final review and we hope will be entering the final concurrence process soon. It will be reissued as VHA directive 1200.05 and much like the current VHA handbook, the 2014 version that we are operating under, our goal is to continue to harmonize as much as possible with the requirements in the revised Common Rule. We started that in 2014, we will continue that with this next iteration. That said, we are VA. We do have certain VA specific

requirements. But similarly, to what you saw in 2014, we are trying our best to reduce those as much as possible. There will be some, but our goal is that it's going to harmonize as closely as possible to the Common Rule unless, of course, they can't because of our own requirement.

Our timeline. Our hope is, we're working towards late October, early November issuance. We will have a series of trainings for it. We are working on various guidance documents right now. OHRP is also working on various documents right now, guidances that can all help support the implementation of the revised Common Rule. Now the revised Common Rule ,some of those changes will impact some of the other handbooks, namely VHA handbook 1200.01, the Research and Development Committee and that's in the process of undergoing revision, as well as VHA handbook 1200.12 Use of Data and Data Repositories. We're in the process of updating that right now as I speak. So that gives you a brief status update of where things are with the handbook. You keep hearing me say transition. Burden reducing provisions, if you implement them then you have to transition your research. What does this all mean for you all? Big picture. Any new study, as I mentioned, approved or deemed exempt on or after January 21st, 2018, 2019, oh my, has to meet all of the 2018 requirements. Any research approved or deemed exempt from IRB review prior to January 21, 2019, will have to continue to comply with the current Common Rule requirements, what we call the pre-2018 requirements, unless that study is transitioned to the 2018 requirements. And to transition it, the IRB has to document this decision. There are going to be a number of things you will need to do in order to transition it. But short of transitioning it, those studies that were currently in your research portfolio will continue to follow the current Common Rule requirements. And then finally, as I mentioned, any research where you utilize one of the eligible burden reducing provisions must transition to meet all of the requirements of the revised Common Rule on January 21st, 2019, with the exception of the Cooperative Research provision.

All right. Implications for the IRB. We will likely be operating under two sets of requirements for the foreseeable future. This is important to realize. And so as you approach your SOPs, as you approach your forms, always keep that in mind and figure out how best, when it makes sense when you can combine both sets of requirements into one form or SOP and when, honestly, it may make sense, it may be cleaner to keep them separate. Some studies will be eligible for a transition. Some studies it may not make sense to transition. Some studies, honestly, you may just not have time to transition them as early as you would like to. When you're thinking about how best to manage your transition process, think about as an IRB who will initiate these requests. Will it be the PI or will it be the IRB? And who will ultimately determine whether a protocol should be transitioned, and when? Administratively we all have a lot of on our plate so how best do you manage that process? Do you do it at continuing review? Do you do it in groups? Do you figure out which protocols it makes sense to transition based on the exemptions? And then once you finished that you go to another group. Do you transition at the time of an amendment? All of these things you really want to start thinking about how to manage this whole process. Because the fact of the matter is while all of this is going on, you still have your research portfolio that's under the current Common Rule that you have to make sure you meet all of the necessary requirements for the current Common Rule. And then finally how will you document and track that a protocol has been transitioned so that

you make sure that any requirements under the current Common Rule continue to be met and then the protocol that had transitioned meets the requirements under the new Common Rule. In terms of what is required to transition a protocol and/or approve a new protocol under the revised Common Rule, you're going to have to think about what consent form changes will be needed, what waivers, what IRB approval criteria, all of those things. And my hope is that through this presentation, we're going to give you some guidelines and steps and just, you know, good things to think about as you're trying to manage that process.

All right. So let's get started. Let's talk about the significant changes. And what I did, the way I approached this is I just took the revised Common Rule, I started at the beginning, worked my way through, and tried to pick up and hone in on the significant changes that affect the IRB. So you're not going to see everything mentioned here. You're not going to see sometimes the extensive detail that you'll see in some of our other trainings that we've conducted or will conduct, but it's really to highlight what has changed. So if we start with definitions. Human subject. What has changed in the definition of human subject? And you have the definition there. Throughout this presentation when you see something highlighted in red, what I tried to was highlight in red the changes or what's in the revised Common Rule. So if you see a red citation that will refer to the revised Common Rule for the 2018 requirements. Typically when you see black that means the current Common Rule. I tried my best to do this consistently but, you know, I may have missed one or two instances. But the revisions to the definition of human subjects were really just clarifications. I don't think anything has changed that will materially affect how we view human subjects and, therefore, how it affects our research and what we determine to be human subjects research. One revision is that now you see the inclusion of biospecimens in the definition of human subjects. So it's not just about obtaining or using information but also biospecimens. This is nothing new. I think we've all operated under this premise so that's just a clarification that's been added. And then secondly now, you see that they've added the word uses, studied, analyze, or generates identifiable information or identifiable biospecimen. Essentially that clarification is to show that if you're using, studying, analyzing, not just obtaining, but any of those, that it would qualify as human subjects research or human subject if it meets these other requirements in this definition. Again, this is nothing new. This is typically how we've looked at this. And so these are just clarifications. But of course for purposes of your SOP's, you're going to go through your SOP's, change the definition of human subject to make it consistent but this should not materially affect how we review human subject and, therefore, human subjects research. The regulations stipulate that federal agencies will re-examine the meaning of identifiable within one year of implementation of the revised Common Rule and then every four years thereafter. And really that's because with changing technologies something that you once considered not identifiable with the advent of new technology, that makes it easier and quicker to be able to re-identify things, they may need to adjust kind of how we view identifiability.

Next definition, research. Really there's no change to the definition, the core definition of research itself. It remains that research means a systematic investigation including research development, testing, and evaluation that's designed to develop or contribute to generalizable knowledge. So the core stays the same. What has changed is that they've added to the

regulatory text that for purposes of this part, this definition, the following activities are deemed not to be research, and there are four activities that are listed on this slide; scholarly and journalistic activities, public health surveillance activities, collection and analysis of information, biospecimens, or records for activities authorized by law or court order for criminal justice investigative purposes, and then authorized operational activities in support of intelligence, homeland security, defense. Again these are things that because of the nature of the definition of research they would not have qualified as research, particularly for our purposes and the nature of research that we do here at the VA. But again, clarification, because for other agencies that may have struggled with this based on the nature of the research they conduct, by adding this clarification to the definition, the hope was that it would make it clearer for those institutions that struggle with this. But again, for us, we're not really going to see this affect or impact. You'll need to change your SOPs, make the definition consistent, but you should not see it affecting the way you conduct your day-to-day business.

A new definition. Clinical trial. This was not included in our current Common Rule definition. And so you have the definition here. It is a bit broader then how we typically looked at clinical trials but they've made it similar, not identical, but very similar to the definition in clinicaltrials.gov. It's been expanded a bit to also include behavioral health related outcomes so if there's, I'll just read it. 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. That "behavioral health related outcomes", I don't think that's included in the clinicaltrials.gov definition so it does expand it somewhat to encompass more than we may typically consider a clinical trial. What's important to note, at least as far as the regulations, the Common Rule requirement, the only time this definition is really applicable and relevant to our 2018 requirements is if there's a requirement to post a copy of a consent form for clinical trials conducted or supported by federal department or agencies. That's the only time our regulations are referring to this definition of clinical trial. So for your purposes, while it is broader, really it deals with the requirements of posting consent forms and we'll talk briefly, very briefly, about this later but I think Kristina did cover it in her training on informed consent.

A number of additional definitions that have changed, I'm not going to go into them. But you can go through your list and see what you may need to change in your SOPs. I put the citations in red. These are the new definitions in the revised Common Rule, all right.

The Federal Wide Assurance. So the revised Common Rule no longer requires institutions to designate IRBs on their FWA. Currently as part of the FWA approval process, you need to designate an IRB on it as part of OHRP issuing you your assurance. You also typically had to submit up-to-date IRB member rosters to OHRP as part of the assurance process. Both of these requirements have been removed from the revised Common Rule. However, the requirement that the institution themselves maintain these lists or, for example, for the IRBs that the institution still remain responsible for ensuring that any IRBs that they rely on, they're registered appropriately with OHRP and they're appropriately constituted. So the institution, the IRB is still required to do these things. The only thing that changed is that as part of the

assurance granting process you do not have to submit that. Now here at the VA, ORO handles that and so, honestly, they may not make any changes to what they require be submitted to them. That's totally in their prerogative and perfectly acceptable so don't run and start changing anything. Let's wait to hear from them if there will be any changes to their process, if at all. We may not see any changes. In terms of the section on Federal Wide Assurance, it also addresses the grants that IRBs no longer have to review grant applications. That's all I'm going to say about that because Petrice covered that excellently in her presentation earlier this summer.

Exempt Research. This is big. This is huge. I am going to move fast through this. I'm going to try to cover and touch on all the key things but, again, Kristina's going to go into great detail tomorrow on this. But exempt research is kind of a game changer. So let's start with the easy, the low lying fruit in a sense. What's been deleted? What's stayed exactly the same?

In the current Common Rule Exempt Category 3 is no longer found in the revised Common Rule. It's been replaced with a new Exempt Category 3. Currently Exempt Category 3, that's the category that deals with educational tests, surveys, interviews, all these things related to observing public behavior involving elected or appointed officials or candidates for public office or in cases where federal statutes require that the identifiable information remain confidential throughout the life of the research. So you will not find this exemption anymore as written in the revised Common Rule. Reason being that the majority of this research would now be eligible for exempt category 2 under the 2018 requirement. We'll talk about exempt category 2 in a second. What stays exactly the same? Exempt Category 6. That's the category that deals with taste and food quality evaluations and consumer acceptance studies. No changes there whatsoever. The current Common Rule has six Exempt Categories. The new Common Rule has eight. We've already talked about two of them. The remaining four categories in the current Common Rule have all undergone revisions, some significant, some not so significant.

So Exempt Category 1. Let's start with that. That's our category that deals with research conducted in established or commonly accepted educational settings involving normal educational practices, okay? This exemption has been revised to clarify that the educational practices cannot, or are not likely to, adversely impact student's opportunity to learn the required content or the assessment of the educators who provide the instruction. So it's a small clarification but it is a clarification. I don't think it will fundamentally change the way we look at Exempt Category 1. I don't know how often you use it here in the VA, but you'll need to make sure that you have the exempt category listed according to the revised Common Rule for research subject to those requirements. Slight change for Exempt Category 1.

Exempt Category 2. This is our exempt category that we really use for surveys and interviews. This is the one that talks about research involving the use of educational tests, survey procedures, interview procedures or observation of public behavior. Now under the current Common Rule two criteria had to be met, or there were options for two criteria to be met to utilize this exemption. Those two criteria have not changed so those are still there. A third criteria has been added in the revised Common Rule and that's where this third criteria allows

the recording of identifiable information without having to really factor in whether any disclosure of the subjects responses outside the research would place the subject at risk. So it allows some flexibility but in order to use that option, if you want to use that third criteria then to make your project exempt using that third criteria, the IRB must conduct a limited IRB review. This concept of limited IRB review is new. We'll talk about that some more. But essentially they must conduct this limited IRB review to determine that adequate measures exist to ensure the privacy and maintain the confidentiality of the subject's data. So that's the main change there for Exempt Category 2. There's a third option that you can use for Exempt Category 2 but it requires limited IRB review to use that third option.

Exempt Category 4. This is our category that we use for a lot of secondary research involving existing data. In fact there was a requirement that the information was existing and/or that they, well, one, the information had to be existing. It also had to be recorded such that subjects could not be identified if it wasn't publicly available. Now this category has been re-labeled as secondary research for which consent is not required. Nothing's really changed. Second, consent was not required to be obtained to use that exempt category because the information was not identifiable and it was existing. There were two requirements to use that exemption which are still there but now there are an additional two requirements that have been added and, on top of that, the big change is the information does not have to be existing. That was always one of the points of contention for this exemption in the revised Common Rule, the information does not have to be existing in order to use Exempt Category 4. The two new criteria that have been added is you have the option of using Exempt Category 4 if the research involves use of identifiable health information that's regulated by HIPAA. This is going to be huge for us here at the VA since we are a covered entity. And then also you can use this exempt category for certain federal research that uses government generated or collected information that's obtained for non-research activities. That's your Exempt Category 4.

Exempt Category 5. Really there was just a very, very minor clarification. This was our category that dealt with research and demonstration projects that were conducted by or subject to the approval of department or agency heads and they were designed to evaluate public benefit or service programs. This was our public benefit or service program exemption. Minor clarification where there's the word improve has been added to clarify that the government conducts these activities to improve the benefits. And then a requirement that now in order to use this exemption, in order to use exempt category 5, federal departments or agencies must publish a list of projects that the department or agency will support under Exempt Category 5 prior to commencing research. So that is a new requirement,.

Our New Exemptions. To recall, I mentioned to you that Exempt Category 3 in the current Common Rule has been deleted. It has been replaced with a completely new exemption. It's still going to be called Exempt Category 3 but this exemption deals with benign behavioral interventions that an adult subject prospectively agrees to. This whole concept of the benign behavioral intervention is new, so something we're all going to have to get used to. But the regulations define them or give examples of things that would characterize the benign behavioral intervention. Things such as their duration, they're harmless, they're painless, not

physically invasive, not offensive, things like that. They also give examples in the regulation on asking the research subject to do simple tasks like puzzles or doing certain actions under different scenarios, maybe with the conditions of the light being on versus the light being off. Benign types of activity. In order to use this exemption or qualify for this exemption, there are three criteria options for applying this exemption and those three criteria are very similar to the criteria for Exempt Category 2. 1) One option is the information obtained is recorded such that the identity of the subjects cannot readily be ascertained. Second option is that any disclosure of the subject's responses would not place them at risk of criminal or civil liability or be damaging to their standing, employability, and such. And then three, the third option is, if you use identifiable information, so if identifiable information was collected, then the IRB would have to conduct the limited IRB review to make sure that there are adequate measures to protect the privacy of individual and the security of their data. So same three options as we saw in category, Exempt Category 2 in order to use Exempt Category 3, provided it meets the criteria for benign behavioral interventions. There's a caveat here for research involving deception whereby subjects have to agree in advance to being deceived if there's deception incorporated in this type of research in order to qualify for this exempt category.

Our last two exempt categories are specific to secondary storage and use of data and biospecimens when broad consent was obtained. So broad consent is a new term. Kristina covered it very well during her training in July on informed consent. I'll just touch on it briefly here. But Exempt Category 7 deals with the storage or maintenance of identifiable private information or identifiable biospecimens for potential secondary use. Category 8 is the category that deals with actually using it. So Exempt Category 7 allows for the storage and maintenance. Exempt Category 8 involves actually using the identifiable data for secondary use. In both instances, the IRB has to make certain determinations using the limited IRB review process prior to granting the exemption. And in brief, they have to make sure that there's privacy and security protections in place. And then that broad consent, there's certain determinations they have to make pertaining to broad consent.

All right. So applying the exempt categories to research involving pregnant women, prisoners, and children. In the current Common Rule for pregnant women, if your research involves pregnant women and it meets the criteria in one of our six exemptions, you can use that exemption. In the revised Common Rule the same applies. You can use any of the exemptions for pregnant women, research involving pregnant women, provided the criteria have met. For prisoners, currently, you cannot apply any of the exemptions to research involving prisoners. There's been a change to that in the revised Common Rule. You can, but only apply it if the research is being done involving a broader subject population that only incidentally includes prisoners, okay? Now for children, currently for exempt research, it can apply to research involving children for some of the categories exemptions. I've listed them here; 1, 4, 5, and 6 under the current Common Rule requirement. For category 2, there's some limitations to using it. But if those limitations are met, you can use it for children. In the revised Common Rule for children, similarly, there's some categories of exempt research that can be used for research involving children. For category 2, there's some caveats there. We can see these on the slide.

So some strategies for dealing with exempt research. I want to start off saying there have been significant changes to the exempt categories. And this is going to be new for you all. This is new for us. One of the key things you really want to remember when dealing with exempt research is that you're operating under two sets of requirements. So research that was approved prior to the revised Common Rule being implemented, so under the pre-2018 requirements still is subject to the pre-2018 requirements That means that any re-reviews, any amendments, anything you process where you have to assess and determine does this study still meet the exempt criteria? The exempt criteria you're looking at are the pre-2018 requirements for research that is governed under the pre-2018 requirement, unless that research is transitioned. For your 2018 requirement governed research, research approved or deemed exempt on or after January 21st 2019, you'll be looking at our revised categories, categories 1 through 8. It is very confusing in my opinion to try to merge these two. They are just so different. So our advice, what we, the approach we're taking here in ORD with the handbook even is to have one list, call it appendix A, appendix 1, whatever you want to call it, that covers all the exempt categories under the pre-2018 requirements. And then appendix B would cover all the exempt categories under the 2018 requirements. And then your SOPs could just really just refer to whichever; appendix 1 if the research is subject to this, or appendix 2 if the research is subject to that. Makes it cleaner. Similarly for your exempt forms, your applications, and your reviewer forms. That's the case where you may just want to keep things separate because when you start trying to combine it, it can get really messy. The good thing is that in terms of the process to conduct exempt review, it's very similar under both requirements. So the process, who can do exempt reviews, all of that, that hasn't really changed. It's just the categories that qualify for it that has changed. So just something to keep in mind.

IRB membership functions and review of research. IRB membership, really there aren't any significant changes in terms of the constitution of the IRB. The regulation still requires that IRB memberships reflect members of varying backgrounds and diversity, including gender. Nothing's changed there. There have been some semantic changes but the requirement is still there that you have to have a diverse IRB. You still have to include members that have knowledge and experience working with vulnerable populations if you review such research. So that hasn't changed. But what has changed is, and you'll see this under IRB membership and anywhere else where vulnerable populations are referred to in the revised Common Rule, both pregnant women and handicapped individuals have been removed from the category of subjects considered vulnerable, okay? And the term mentally disabled has been replaced with the term individuals with impaired decision making capacity which, honestly, we tend to use in the VA anyway, individuals with impaired decision making capacity. But again, as you're looking over your SOPs and figuring out what has to change keep that in mind. But in terms of your constitution of your IRB membership, fundamentally nothing has changed in terms of how you go about ensuring that you have an appropriately constituted membership roster.

In terms of IRB functions and operations, how the IRB functions. The fact that you have to have policies and procedures for certain things. The fact that you have to maintain an IRB membership roster. You have to have adequate meeting space. Nothing has changed in terms

of those requirements. The location where you can find that requirement, that's shifted. In the current Common Rule you can find that in one section, section 103(b)2-5. And in the revised Common Rule it's been moved to section 108(a) but fundamentally, nothing's changed.

Continuing review. Now back in April I conducted an in-depth training on continuing review, the requirements for both the current Common Rule as well as the revised Common Rule. So I encourage you, that was an hour plus presentation, so there's a lot more information. I'm going to cover it in one slide here. But continuing review is no longer required under the 2018 requirement. So this is specific to research that's under the new requirement. It's no longer required for research that's eligible for expedited review, and research that's reviewed by limited IRB review. And remember, you need to conduct limited IRB review for certain exempt research in order to deem it exempt. And also for research that has progressed to the point that it only involves one or both of the following; data analysis and accessing follow-up clinical data from procedures that subjects would undergo as part of clinical care. I think I mentioned this before, data analysis including analysis of identifiable private information. Before, remember, if the information was identifiable, you still had to conduct continuing review. That's no longer the case if it's subject to the 2018 requirements; for research that is in the stage where it only requires access to follow up clinical data obtained from procedures that subjects undergo as part of clinical care. So for research, newly approved research or research that's transitioned to the 2018 requirement, and when I said newly approved research I meant newly approved research on or after January 21st, 2019, you will no longer, the IRB, let me say the IRB, will no longer have to conduct continuing review. If the IRB chooses, elects to conduct continuing review on such research that, per the regulations don't require it, the IRB has to justify that and that justification has to be documented in the study files.

Expedited review. So the list of expedited review categories, there has been no change to that at this point. It remains exactly the same. There're nine categories, expedited review categories. Currently in order to determine that a study is eligible for expedited review, you have to first; you get the research study, you look at the research, you have to first determine that the research activities are minimal risk. And once you determine that they're minimal risk, then you look and you try to make sure, you have to make sure, not try, but you make sure that one or more of the activities, all of the activities fall into one or more of the expedited review categories, okay? What's changed is now, the regulations state that research that is found on that list or research in one of those categories of expedited review, are presumed to be minimal risk by their nature of being on that list [sic]. So you don't have to first assume or determine if it's minimal risk. They're presumed to be minimal risk. And because of that, if the IRB now deems a study that involves activities on that list, that's only involving activities on that list, if they deem it to be greater than minimal risk and they want to then have to take it for a review by the convened board, the IRB has to justify why they found it to be minimal risk, okay? That's one of the big changes there. You have to justify why you feel a study is minimal risk if it's on the list. Again this is for research subject to the 2018 requirement. Limited IRB review can be done by expedited review.

IRB approval criteria. There's been a minor change there to the IRB approval criteria concerning equitable selection of subjects. That's approval criteria 111a(3) and that's really because remember I mentioned vulnerable populations, pregnant women and handicapped individuals have been removed from the category of subjects considered vulnerable and so you will not find them anymore in that approval criteria. So that's something you're going to have to make a tweak to your SOPs. And then, again, the term mentally disabled has been replaced with individuals with impaired decision making capacity and many of you may already have that because we tended to use that terminology here in the VA already.

The other change is limited IRB review. As I mentioned, it's required, limited IRB review is required in order to exempt certain research. The new approval criteria is 111(a)(8) in the revised Common Rule. And what it basically states is that for research that has to undergo limited IRB review, the IRB does not have to ensure that all of the 111 approval criteria are met. Instead IRB review is limited to 1) Determining that there are adequate provisions to protect the privacy of subjects and maintain the confidentiality of their data, that those provisions exist. And in certain cases, specifically exempt category 7 and 8, you also have to determine through limited IRB review, that broad consent was appropriately obtained and documented, or a waiver of documentation of consent was approved. And there might be some additional things there as well but all surrounding limited IRB review. Now this is new. We're all going to have to really become acquainted with what it means and what we're looking for when we're looking at particularly the privacy and confidentiality to make sure that there adequate provisions. The regulations state that the Secretary of HHS is supposed to issue guidance on what to look for and so we hope that that guidance will be forthcoming.

In terms of suspensions and terminations. Remember I'm just kind of walking through the Common Rule. There have been no changes to the requirements for suspension and terminations of IRB approval.

Cooperative research. As I mentioned, the compliance date is January 20th, 2020. So we have some time. Our plan is to kind of shift gears and focus on that some more in terms of what VA requirements will be in terms of which IRBs would be allowed, we would be allowed to rely on. But right now the regulations state that single IRB review and approval is required for any institution that's located in the U.S. that is engaged in cooperative research with the following exceptions; 1) When more than a single IRB review is required based on law, and that can include tribal law or, 2) When a federal agency determines and documents that use of a single IRB is not appropriate.

In terms of IRB records, walking through the revised Common Rule, I've already mentioned the changes surrounding records so I won't go in to too much. But it's really just talking about these justifications that we talked about just a few minutes ago. The justifications that are required if you conduct continuing review when it's not required, if you determine something is greater than minimal risk and it appears on the expedited review list, and then I already mentioned, you are still required to maintain a list of IRB members and their qualifications.

So strategy, suggestions for implementing some of these changes. Continuing review. So your SOPs are really going to have to do a, well, it's easy to include in your SOP that, you know, for research subject to the 2018 requirements you're going to follow this, research subject to the pre-2018 requirements you're going to follow, you know, our current requirement. That's the easy part. You can do that. The harder part is making sure you figure out the systems to track this. That's going to be challenging because you don't want in this process for anything that requires continuing review to fall through the cracks. And then especially if you're dealing with three pots, right; research that's nearly approved post January 21st, research that you're going to transition, and then research that still is following the pre-2018 requirement. So start thinking now about what and how you're going to track this to make sure that, you know, you have all your I's dotted and your T's crossed. You reviewer forms, you're going to need to tweak your reviewer form in order to include, remember I mentioned those justifications, in order to have the justifications part of your protocol file, you'll need to include that somewhere. If it goes to the convene board, sure you can include it in the minutes. If you use the reviewer form, I would also include it there because the reviewer forms are always part of the protocol file and so that's a good way of making sure that that justification is on file. Same with expedited review. If you have to do something that's on the Secretary's list that the IRB feels is greater than minimal risk, the reviewer form is a great place that you can document the justification. So you would revise your reviewer forms accordingly.

Limited IRB review. Totally new concept. You'll need to revise your SOPs accordingly to include that. You'll need to revise your IRB approval criteria to include this new 111(a)(8) requirement for limited IRB review when applicable. Remember it only applies to certain exempt categories, okay? You may want to consider revising your reviewer forms to include the criteria required for limited IRB review when applicable. And then your exempt applications, and your reviewer forms for the exempt application, will also need to include some information you want to capture that either the investigator, the study team submits so that the IRB can adequately ensure that these criteria have been met for broad consent, when applicable, or for the privacy and security, and then that the IRB reviewer forms can document that the limited IRB review took place. Remember limited IRB review can be done by expedited review, okay? So you won't always have your minutes to rely on. So you really want them in both places and my preference is always to include things in your reviewer forms because it's part of your documentation.

All right informed consent. I think I mentioned this already, but I'll say it again. We conducted two trainings as part of this joint ORD/ORO collaboration on informed consent. Kristina Borror conducted a training on informed consent and broad consent and that's been recorded and I provided the link at the end of the presentation. And then we here in ORD, we conducted a training on waivers. Now that covered both the Common Rule, FDA regulations, and the Privacy Rule waivers, both their current requirements as well as the revised Common Rule requirements, the 2018 requirements.

The general requirements for informed consent. First thing I'm going to mention is with the exception of broad consent, any research that's subject to the 2018 requirement, let's say that

any research approved on or after January 21st, 2019, the consent process has to include a concise summary at the beginning of the ICF that presents key information that the subject should know about the research. Now this is new and, honestly, I think we all can benefit from maybe some more information on what that key information needs to include. I believe OHRP is working on some guidance on that and so expect to hear something, you know, in the near future on that. But that, I think, is one of the biggest changes when it comes to the new informed consent form and process, this key information. And so I totally respect and understand that you probably need some guidance on that. In terms of the elements themselves though, I think it's very straight forward. The eight basic elements of informed consent remain unchanged from what we are operating under now. There's been one new additional element under the revised Common Rule and that's related to studies that involve the collection of identifiable private information or identifiable specimens. For those studies you have to include the statement on whether your specimen, if subsequently de-identified, will be used for future research on that. So you'll need to revise your templates to include that. Under the revised Common Rule, the six additional elements of informed consent, remember those are the elements that you include when applicable, those remain unchanged, exactly the same as what we're using now. What has changed is that the revised Common Rule introduces three new additional elements when research involves biospecimens and so I've included them here. There's a couple of statements that have to be included and information provided to the subject as part of the informed consent process. So those are really the changes when you're dealing with general requirements for informed consent.

And now broad consent is a whole new beast. It is again, remember it's specific to storage, maintenance, and secondary use of identifiable data or specimens. It's an option. You don't have to use it. You can continue to use your current informed consent process. There's nothing wrong with that. It's an alternative that the rights afford to be able to get consent from subjects to specifically use their information going forward and store their information going forward for additional research. One of the key things is it's a template or it's information that has to be provided, there're elements, there are a lot of elements, there are 12 elements. You have to provide these elements. The IRB cannot waive or alter these elements if you're going to obtain broad consent. The first four elements on this list are from the basic elements of informed consent similar to what we're using now. Elements five and six are from the additional elements of informed consent in the 2018 requirements. So if you remember I mentioned there are a couple of additional elements that were added when you're using biospecimens. That information, now saying five and six, all have to be provided as part of the broad consent process. And then the remaining elements, seven through 12, are new and specific to broad consent. I'm not going to read them out. You have them here and, again, you can refer to Kristina's training on broad consent.

Waivers. Waiving and altering informed consent. There are two options for waiving and altering informed consent presently under our current requirements. Those two options remain[unintelligible 49:46], okay? The first option is for research where it involves public benefit and service programs that are conducted or subject to the approval of state or local government. That remains substantially unchanged. The core of that, what's required to waive

consent under that option, no change. The second option is for research involving minimal risk and currently there are four criteria that have to be met in order to waive consent or alter consent if the study is minimal risk. Those four criteria remain unchanged, they're still there. In the revised requirements, revised Common Rule, there's an additional criteria that's been added and I've highlighted it in yellow. They've moved it up. It's now in three, element 3 instead of, you know, five, but still it's just one additional requirement that has to be met and that is specific for research involving identifiable private information or identifiable biospecimens. The IRB has to determine that the research could not practicably be carried out without using such information or biospecimen in an identifiable format. So your waiver forms will need to be changed and you'll need to make sure that you ask the right questions from your investigators for research that's going to be subject to the 2018 requirements because you have to make this requirement for research subject to the 2018 requirements if you want to waive or alter informed consent under the minimal risk option.

There are some caveats in the revised Common Rule to waiving and altering consent. The first one is that, and I think I already mentioned this but just in case I didn't, for broad consent, the IRB cannot waive or alter any of the elements required for broad consent. So those 12 elements that I mentioned, if you're going to be obtaining broad consent, you have to give all of that information to the prospective subject. The other thing is if you approach a subject and you try to obtain their broad consent and they refuse, the IRB cannot subsequently go and disregard essentially what the subject has said and waive consent for use of their information. You cannot waive consent if a subject has refused to agree to broad consent. Now this creates an [unintelligible 52:03] honestly some very interesting tracking issues that the investigator is going to have to be responsible for. But the IRB is going to have to ensure that they have a way of tracking this, at least in their application that they told you that they planned on tracking refusals because somehow the IRB will have to ensure that research, where subjects have refused broad consent, is not submitted to them for subsequent waiver or that the pool of participants does not include subjects who have refused to agree to broad consent. So but with the exception of broad consent, the IRB can approve a complete waiver of informed consent if required criteria have been met.

In terms of altering informed consent, there's a caveat now in the revised Common Rule which basically says that if the IRB approves the informed consent process, the IRB cannot alter some of the general requirements of informed consent. Essentially these are kind of the fundamental aspects of informed consent that really pertain to the Belmont principle of respect for persons. Essentially that you're going to be giving subjects information, prospective subjects, and sufficient information to make a decision. You're going to be providing them that information in a manner in which you minimize coercion, undue influence, you give them information in a language they can understand, you do not include an exculpatory language through which the subjects, or the LARs waive any of their rights, those types of things. So the IRB cannot alter, if you're going to obtain consent, the IRB is not allowed to alter these general requirements. The elements can be altered. The general requirements that really support respect for persons of the informed consent process cannot be changed. The IRB also cannot approve an alteration of

the short summary of key information that has to now be provided upfront as part of the consent process. Remember that's something new.

In the revised Common Rule there is now a new option, actually, whereby the IRB can approve the investigators, the study team's use of identifiable information or identifiable specimens without the subjects consent for purposes of screening or recruiting or determining eligibility. That's something new. Typically and right now, we have to get a waiver of informed consent to do this. But under the revised Common Rule, the IRB will be able to approve this as part of their approval process and provided that certain requirements are met; 1) That the investigator obtains information through oral or written communications with the prospective subjects so that essentially, that the investigator's in communication with the subject and the subject themselves, are the ones providing them the information. There's an implicit consent there that the subject would not provide that information unless they were willing to do so. Or the investigator obtains this identifiable private information or identifiable biospecimens by accessing records or stored identifiable biospecimens, okay? So if either of those conditions are met, the IRB can approve this without having the investigator submit and request a waiver of informed consent. So this is good. This is an option. It doesn't mean you still can't get waiver of informed consent for recruitment purposes or recruitment as one of your many other activities that you're requesting waivers for because sometimes you're requesting a waiver for a number of things, this is just an alternative. One thing to mention, we are a covered entity so for the privacy rule, we're subject to the privacy rule and so we do have to still obtain, you still have to obtain a waiver of HIPAA in order to be able to access identifiable information for these purposes.

With respect to documentation of consent, really there's no material change to the long form, informed consent form. The regulations do now stipulate that a written copy shall be given to the person signing the form instead of just a copy shall be given and that was one of the new definitions written and written refers to both paper or electronic format, okay? And then the only change to the short form ICF is that there has to now be included a statement that key information, that's now required under the new requirements under the 2018 requirements, that that key information was presented to the subject prior to presenting any other information.

All right posting clinical trial consent forms. We talked about that. Remember there's a new definition of clinical trials. Any research that meets that definition, the federal department conducting or supporting the research or the sponsor must upload one IRB approved informed consent form to a federal website and OHRP has or will specify the acceptable federal website. I think they specify two right now where that information can be uploaded. But they have to upload that information no later than 60 days after the last study visit by any subject. So that's probably going to be something that's more on the sponsor or grantee but we'll see how that plays out. And if guidance is needed, we'll make sure you all get the appropriate guidance.

Waiver of documentation of consent. If you're waiving documentation of consent, if the IRB is waiving documentation of consent, currently there are two options for waiving documentation

of informed consent. Those two options are retained verbatim in the revised Common Rule. The major change is that there is now a third option for waiving documentation of consent and that is that if the subjects or their legally authorized representatives, are members of a distinct cultural group or community in which signing forms is not the norm, and the research presents no more than minimal risk of harm to subjects and there is an appropriate alternative mechanism for documenting that informed consent was obtained, you have this option now. If that criteria is met, that is another option the IRB can use to waive documentation of consent. So three options.

So what does that mean in terms of how best to kind of approach this whole topic of the informed consent template, the informed consent process. As I mentioned, your regular informed consent, the regular informed consent form, the template, there's some new elements. There are not that many so it's very easy to change and add those elements. What might prove a little more difficult, however, or challenging, is that under the new requirements, remember there's that key summary of information that has to be provided up front at the beginning and so that will have to be factored into your informed consent template and you may need additional information in terms of what needs to be included there really in order to revise your template. But you can go ahead and start revising it and then hopefully once that guidance is out then it's really about just putting in that information. One thing to mention is, the requirements for the regular informed consent template, I did not see anything in there that contradicts with our current requirement for our informed consent form, nor VHA policy for informed consent form. So really there's nothing that prevents you from starting to update your informed consent template now and starting to use it and have it consistent with the 2018 requirements. But for that key information where if you really don't have enough information and, I'll be honest, I don't have enough information really right now to guide you on that. I would just hold off until we get some more information on that in terms of finalizing your informed consent template. For broad consent, it's very straight forward when it comes to the template. You put the information in the template. You make sure you have all your elements and you do not start to approve research using broad consent before January 21st, 2019. With broad consent the issue is not the template. The issue is some of the other things that really one has to start giving some thought to and consideration on how best to track the refusal on what it all means to get broad consent. What the investigators say in terms of the extent of research that's going to be covered. How specific do they need to be? Those are some of the things, the more nuances that are not as straight forward and so, again, that's an area where you may want to start thinking and talking with your IRB, with your research office about these types of things. And of course, again, there will be upcoming guidance from both OHRP and, if needed, if additional guidance is needed on top of what OHRP has provided, then the VA ORD will be providing some of those as well.

Again you'll need to revise your SOPs, to incorporate changes to both the informed consent and the waiver requirements specifically as it relates to waivers. Remember in all cases with the waivers, the original requirement that we are currently operating under, the pre-2018 requirements, those have not changed, right, the criteria for informed consent waivers. What has changed is under the revised Common Rule, they've added one or two additional

requirements. And so as your thinking about how best to handle this, I personally believe that this is one of the areas where you could have one waiver form, you add the additional new criteria, but you have to make it very clear, you highlight or asterisks or something that this additional waiver criteria is only applicable when research is subject to the 2018 requirements. So I think, unlike exemptions, where I really suggest that you keep things separate. I think when it comes to waivers I do think you could figure out a way to very easily kind of merge that information into one form that you use but it does have to highlight any stipulations that are specific to the 2018 requirements. And you'll need to revise your SOPs accordingly for any changes in the criteria for waivers. When it comes to this new approval for using identifiable information or biospecimens without consent for screening or recruitment purposes, you'll need to revise your SOPs, you may need to revise some reviewer forms. And also think if there's anything you need to add to your application form, your protocol application form, so that the IRB has the information in order to make the determinations and approve this.

All right. I told you there was a lot. And I told you ahead of time I'd be talking a little fast but I really wanted us to have a good half an hour for questions. So very quickly I'm just going to summarize. Big takeaways here, again, manage the process. I cannot stress to you how important I think this will be. Really take some time to think through how you, as an IRB, are going to handle requests for transition? How you are going to ensure that you all can properly manage the burden, the administrative burden, that comes with operating under these two requirements for the foreseeable future. I would suggest that you might want to think about creating a cheat sheet that contains a list of these requirements that any new protocol needs to meet as well as the requirements that you would need to meet to transition a protocol, and this could be something that you would have check boxes just to make sure you've covered yourself. This is something honestly that you can keep in the protocol file itself as well. You might find it helpful. In terms of rolling out new forms, you may decide to start rolling out some forms immediately or you may decide that you need to wait and determine that by a certain date all new submissions must use the revised form. So you may say that by December 1st anything that comes in will have to be using our new application that has all these revisions on or by January 1st or whatever your date is. Remember all studies approved or deemed exempt on or after January 21st, 2019, must meet all of the 2018 requirements. This may mean that you may have a week or so where you say the week before January 21st we have a number of protocols that are ready to go. You know, we make sure that they've had all the new criteria but it's not January 21st yet and we're just going to sit on them. And maybe we'll convene a special IRB meeting on January 21st or on January 22nd where we can approve those studies. Again all studies that are under the current Common Rule requirements, the pre-2018, have to continue to meet those requirements until they are transitioned, or they may not be transitioned.

In terms of revising documents, I think we've kind of already talked about this so I'm not going to go over this slide. It's here for your information but I hope we've given you some strategies and things to think about during this process.

Resources. I've included some links here for you. Here is a list of the trainings that we've done as part of the ORD/ORO collaborative effort on the revised Common Rule. Tomorrow Kristina is doing a training on exempt reviews. Here is where you can find all of the recorded Cyberseminars that have been done so far. So if you weren't able to attend or rather you just feel now it's time to revisit some of the topics, you're able to go and listen and hear.

All right we are at 3:06. So we have about half an hour. We are trying to end at 3:30 today so I hope I've left sufficient time. I've got everybody here, Kristina, Lucinda, Karen, Petrice and myself. Heidi we're ready for questions.

Heidi: Fantastic. I'm just scrolling up to the top because we have received a lot of questions here. So I'm just going to start at the top and we'll work our way down. I see that the phrase obtain information about individuals is no longer part of the definition of human subjects. Previously we were able to distinguish human subjects from key stakeholders or subject matter experts because the former were providing information about themselves while the later were providing information about a subject matter or organization, for example. Can we still make this distinction under the new definition?

Dr. Karen Jeans: So hi this is Karen. I apologize in advance for my Lurch voice. So the answer is yes. Excellent question by the way. And really the key difference between the definition of human subjects under the pre-2018 requirements and the 2018 requirements is directly related to biospecimens. Biospecimens is absent from, as Soundia called current Common Rule, pre-2018 requirements, and so that is a deficit that is now addressed in the 2018 requirements of the revised Common Rule. So the answer to your question is yes it has not changed that aspect of, that critical aspect that your [unintelligible 1:07:34] right now. So no it doesn't change, conceptually the definition of a human subject at all. It's the same definition it just has clarification under the current Common Rule. Thank you for that.

Dr. Kristina Borror: Oh this is Kristina, I just want to point out that the definition says a human subject means a living individual about whom an investigator obtains information or obtains biospecimens or so it really hasn't, as Karen mentioned, really hasn't changed.

Soundia: Thanks Kristina.

Heidi: Great. Thank you. Okay. The next question I have here. The wording for new category 2 states research that only includes interactions involving educational tasks. Emphasis added on the word only. Does this mean that this category cannot be used in conjunction with any of the other exempt categories? For example, a study that involves both survey's eligible under category 2 and records review eligible under category 4.

Soundia: No remember with the exemptions as long as your research fits into one or more of the exempt categories you are fine. Where you run into problems is if you have research activities that do not fit into any of the exempt categories then you are not able to use the

exempt review route. And I'm going to ask Kristina if you want to add to that at all because this is your topic coming up tomorrow.

Dr. Kristina Borror: I agree 100% what you just said.

Soundia: Perfect. Thank you.

Heidi: Thank you. The next question that I have here. What if a study was eligible for expedited but received initial full review. Does it need continuing review?

Soundia: So remember now, if a study was, and you're talking a new study, I guess my first clarification are you talking about a study that's approved under the pre-2018 requirements or a study that's going to be approved under the 2018 requirements? That would help.

Dr. Karen Jeans: But this is Karen as well. I also, I think the question is really good because expedited review both is an option, it's not a mandate. So indeed even under the 2018 requirements, if you don't want to do it under expedited review, you just have to give a rationale if it was eligible for expedited review. So it's an optional [unintelligible 1:10:19].

Dr. Kristina Borror: And I want to point out that the requirement states that continuing review is not required if the research is eligible for expedited review. So if it was eligible for expedited review and the IRB still conducted a convened IRB review, that doesn't negate the fact that it was eligible for expedited review and, therefore, it wouldn't require continuing review the following years.

Soundia: Excellent. Thank you.

Heidi: Thank you. The next question I have here. Can there be a general justification for an institution to conduct CR for studies not requiring CR or must there be study specific justifications?

Soundia: That's a great question and I'm not sure.

Dr. Karen Jeans: So this is Karen. The intent of the regulation is study specific. Now one thing that we as a Common Rule agency group is doing, and this VA along with HHS along with all the other, you know, EPA, is looking at these type of issues before it gets implemented. And this is one of those where, indeed, you may have a certain category when you think about it where you may want to do it [unintelligible 1:11:39] now, but that was not the intent of the regulations. So I'm going to kind of not answer this with a yes or no because this was one where I would like to bring this back to other Common Rule agencies and see so that we could all get a consistent answer on this. One of the big deals about this rollout of the 2018 requirements is that guidance that we each issue, including VA and HHS, is circulated among all of us so that we are all giving the same answers. Because that's not fair to the research community, for example, for HHS to have a different answer than VA except when there is

something that's a statutory requirement or there's certain agency decision. So this is one of those where I would like to come back with. The intent of the regulation was study specific but please hold on, that's an excellent question, and we will come back to that one and get a firm answer for him.

Heidi: Great. Thank you. The next question I have here. Per exempt protocol, when would we transition from the pre-2018 to the 2018 requirements? For example, if you have an exempt study open over several years?

Soundia: Well remember if you have an exempt study open, that study is not subject to IRB review and so there's really no reason to transition a study that's already been deemed exempt. Where transitioning becomes very interesting is if you have studies that were reviewed under expedited review, for example, or eligible for expedited review and that now may meet some of the new exempt categories where previously they wouldn't but now the exempt categories have changed so now maybe it qualifies for one of the new exempt categories based on just meeting the criteria or it meets one of those criteria's where a limited IRB review would make it exempt. That's where you get into the interesting things of wanting to transition a protocol to the new exempt categories. But if a study is already exempt, I don't see any reason why you would need to change it from one exempt category to another exempt category.

Dr. Karen Jeans: That's fine. Again this is Karen. Soundia is right is that, you know, if it's exempt now transitioning's not going to change the exempt status. But what is interesting is what Soundia was referencing. A great example of a study that now requires, under the pre-2018 requirements, the current Common Rule, and it requires IRB review with approval, is surveys obtaining individually identifiable data. And if you do those surveys and you do get individually identifiable information, there's no question under the current Common Rule it requires IRB review and approval. However under the revised Common Rule, the 2018 requirements, now that activity can fall into an exempt category with a limited IRB review required. And so transitioning those studies has major implications because, under an exempt category, you don't have an IRB consent that is reviewed and approved by an IRB. So these are the type of issues, and you will see VA specific, again, we don't want to discuss at this point what will be in policy because we don't know if right now in terms of what will be the final issued policy, but these are the issues that VA will be addressing both in guidance and in policy.

Dr. Kristina Borror: And this is Kristina. I just wanted to add to those excellent responses that if you have started a study before January 21st, 2019, and you're talking about maybe wanting to transition that study after January 21st, 2019, to the 2018 requirements that can really be done at any time after January 21st, 2019. There's no hurry to do it right away. You certainly could do it that day but I think a lot of institutions are probably going to think let's maybe phase in to see which studies are most important for us to transition and some, as was mentioned, may never get transitioned.

Soundia: Thanks Kristina.

Heidi: Great. Thank you. The next question I have here, regarding your slides, for the new element of informed consent, a statement whether clinically relevant results will be disclosed to subjects. Can you explain if a clinically significant lab result from non-CLIA certified lab could be provided to subjects? I read that per HIPAA a subject has a right to access their own PHI even if a lab is not CLIA certified. However, per CMS, I think non-CLIA certified labs cannot release results to subjects.

Dr. Karen Jeans: So hi, this is Karen again. So the issue is, under HIPAA, under the last omnibus, if a research, if PHI is part of a designated record set, then under HIPAA the individual has a right to the information, PHI, and their designated record set. And in VA research data is part of the designated record set. Now then that conflicts, of course, with CLIA. Now CLIA has a, basically, but I won't get into details of CLIA, basically you don't release lab results unless they're from a CLIA certified lab because it doesn't have the quality controls in place. And this is a conflict that's been in place since the omnibus was passed through HIPAA, these two conflicting regulations. This is an issue that OCR is discussing right now with CLIA because back and forth, you know, you have two conflicting laws; which one supersedes which. But the bigger issue is that, indeed, clinically relevant results. When you're talking about clinically relevant results and you're not doing that in a CLIA certified lab, then the question is how can it be clinically significant when you haven't applied the [unintelligible 1:18:16] that are required by CLIA for the quality assurance requirements for the validity that is required under CLIA. So there's a big discussion here regarding, in terms of when you look at this regulation and this policy requirement, what does it mean to be disclosing clinically relevant results? There's a lot that goes into that because just giving someone a bunch of their, for example let's say we do genotyping, just giving them a bunch of their GWAS, is that clinically significant? Not necessarily. So it's part of a larger issue that is something that the, oh gosh I'm blanking right now, but there was a recent discussion about this from one of the reports that was issued I think from the National [unintelligible 1:19:00] and ION. But this is something we're working actively with among all the federal agencies on dealing with this conflict between the two [unintelligible 1:19:11]. Thank you.

Soundia: Thanks Karen. Great, great response.

Heidi: Thank you. The next question I have here. I heard you say that it would be best to keep things separate during the transition. Instead of creating an SOP that refers to separate appendices would it make sense to keep two SOPs, one for pre-2018 requirements and one for the new 2018 requirements?

Soundia: Okay so let me clarify. What I said was there's certain instances where it would make sense to keep things separate and I think the example I gave, because this is one I personally believe in, is for exempt research. And I was specifically talking about the categories because it gets very messy since you're operating under both. I don't subscribe to a belief that you need to keep separate SOPs. I think you can very easily, especially when you go through, you know, and highlight what has changed. Many of the things can be applied to research conducted

under both requirements. There's certain additional things, like the waivers, where there's one additional waiver criteria that's specific to 2018 requirements. You can include that in your SOP under the waiver criteria and highlight that this is applicable, you use it as applicable, it's applicable to research under the 2018 requirements. So no, I would not advise keeping separate SOPs. I don't think that's necessary. I think even forms can be combined as long as you do it very clearly. I think you will see through our presentation that some of the changes are very minimal. There's some big changes, conceptually, right, exempt, limited IRB review, broad consent. But the other stuff we're talking about a change of a word here, we're talking about an additional criteria there. So, so no I wouldn't advise separate SOPs.

Dr. Karen Jeans: Yeah. And this is Karen again. And this is why again we're trying to get 1200.05 out as quickly as possible because there's not two versions of 1200.05 and you'll see when that gets issued how we have, indeed, merged the requirements so that it's very clear when something applies to 2018, when something applies to pre-2018 requirements. And so I think it will make more sense when we see that. But no, absolutely concur with you. Do not have two sets. I would recommend against it.

Soundia: Thanks Karen.

Heidi: Great. Thank you. The next question here. Where is the Secretary's list that describes less than minimum risk activities?

Soundia: Yeah. So it's interesting. So the Secretary's list is our expedited review list. That's the official terminology. But it's the list that we all look at when we're looking at expedited reviews, our nine categories of expedited review. Remember the expedited review list was never published in the Common Rule. It references it but the list itself of expedited reviews is the Secretary of HHS's list.

Dr. Karen Jeans: From 1998.

Soundia: Yeah. So you can google it but I know you have it because I know you see it and you use it, you may just not realize that's the terminology, that's the official name for the list of expedited review categories. Great question. Thanks.

Heidi: Thank you. The next question I have here. As far as subjects not agreeing to broad consent, how does VA envision being able to track this when there are VA wide studies that are using data that a subject may have told a specific researcher that they cannot use under broad consent?

Soundia: So you may need to rephrase the question. I think we're mixing things a little bit. Broad consent, the requirement is that if a subject is approached for broad consent for a particular research or use, then you cannot, the IRB cannot, subsequently waive that use if the subject has not agreed. So this would largely be on the investigator to have to track. There are

some [unintelligible 1:23:18] but I think you're mixing up what subjects when they just don't agree to a consent process now or that's not quite the same as this refusal for broad consent.

Dr. Karen Jeans: And one of the caveats which is where you really would not ever want to use a broad consent is for the patient who is coming into the hospital and coming into the VA facility and you hand them a broad consent and say hey we want to use your data for research projects and this is where that tracking, I think, we talk about would happen. Where if you did it that way you're going to get data for clinical purposes and if the subject says no then the VA facility would have to track forever, you know, because medical records basically say for 75 years after the last encounter of the patient that there would be no ability, that it would be basically prohibited from using that data. So broad consent should definitely not be used in terms of our recommendations, for the clinical setting, you know. You're really looking at best implications are for de novo when you're collecting data specifically for research purposes.

Dr. Kristina Borror: So I think this question really points out one of the big drawbacks of using broad consent, and those exemptions seven and eight is that you really do have to track that. And that for many facilities it's just going be too onerous and I think a lot of even large institutions that do a lot of research are saying this is just going to be difficult for us to track.

Soundia: Thanks Kristina. I hope we answered your question. I think those were some great answers.

Heidi: Hopefully. Thank you. The next question I have here is the January 19th, 2019, approval date IRB approval or RDC approval?

Soundia: The question was is the January 21st, 2019 date when you have to meet the requirements is that IRB or R&D approval? That's IRB approval of the research. I hope that was your question.

Heidi: Okay the next question I have here. If a protocol was not transitioned to the 2018 new Common Rule and the PI submits an amendment to the ICD or waivers, are we required to transition that protocol to the new waiver or ICD requirements? Or can we keep the pre-2018 version of the document?

Soundia: Right. No. You only, you're never required to transition a protocol. So that's the first thing and that's why it's very important to realize unless you consciously decide to transition and document and make sure you then meet all the requirements that are necessary for the 2018 requirements, that protocol remains under the pre-2018 requirements. And therefore, for your informed consent waivers, the waivers under the pre-2018 requirements would apply, okay? And so that's why I suggest that, I do believe you can have one waiver form. I still do believe that. If you make it very clear that only that that additional criteria that's required for the 2018 requirement is highlighted, red, starred, and that you only take that into consideration when you're dealing with research subject to the 2018 requirements. But no, that research would continue to have to operate under the pre-2018 requirements in place.

Heidi: Okay. Great. Thank you. The next question here, what is meant by limited IRB review? Will this be something other than our current IRB subcommittee?

Soundia: Right. So it's going to be the IRB that's going to review it but they don't have to meet all of the criteria that they currently have to. They only have to meet a select few criteria. And Kristina is going to be talking about this tomorrow in her lecture so I'm going to defer in-depth response because she is going to be talking about this. And in the off chance that you're not able to attend her training, it will be recorded as well. But it's still review conducted by the IRB. It's just a more limited, only a few aspects have to be reviewed. Thank you.

Heidi: Great. Thank you. The next question here. Where can we find the definition of biospecimen?

Soundia: Oh boy.

Dr. Karen Jeans. This is Karen. The Common Rule doesn't define what a biospecimen is because a biospecimen is not data and so the Common Rule is silent on that just like FDA is silent on that. Because a biospecimen can be tissue, it can be serum, it can be whole blood. So it's different types of different non-data. So that is something that we can work on guidance but [unintelligible 1:28:35].

Soundia: Yeah. I think that's a great, yeah. And I said oh boy because I was like, oh boy, we don't have a definition. None of the regs [sic] have a definition but we can work on some guidance for you. Great question. All right we are one minute to go. Heidi where are we on our questions.

Heidi: We have a lot of questions left.

Soundia: What um, we will not be able to address any more questions because we are going to wrap up on time at 3:30 today. I will be getting the results of a survey of this presentation maybe about a week or so after the training. And what we can do is we will go through your questions and it will definitely be helpful to us to figure out where we might need to, you know, focus our guidance efforts on. Kristina, well, if you have questions for Kristina that pertain to exempt and limited IRB reviews, you can even submit some of the questions to her now and then those then could probably, you know, get to the forefront of her list when she gets to her Q&A session. Sorry to put you on the spot like that Kristina but that's specific to exempt and limited IRB review.

Dr. Karen Jeans: And they can [unintelligible 1:29:42] to the regulatory box.

Soundia: That is true, yes.

Dr. Karen Jeans: And we would really like those.

Soundia: Yeah. Yeah. But we will do our best to get to those questions. I'm sorry we don't have more time today. We're just really going to stick to a 3:30 cut off and there was a lot of information here but we made our best effort to get through it. At the end of the presentation, as always, a survey is going to pop up. Please do fill it out because it gives us some valuable information and, you know, we can even consider it for our next training, you know, if we need to pick up where we left off on certain aspects. That might be something that we might need to do. That might be a good way to kind of handle this.

Dr. Karen Jeans: We may just have a session for questions.

Soundia: We just may have a session for questions to follow up on this training, so yeah. So anyway, complete those surveys. Thank you for participating. And we will definitely figure out the best way to get everybody the information that's needed and the questions answered and I think we have some good proposals already from this. Thank you again, Heidi, for moderating this session, we really appreciate it. And thank you Kristina, Karen, Petrice, to everybody participating on our end. We appreciate everyone participating. Have a great evening.

Dr. Karen Jeans: Thank you. Thank you Kristina.

Heidi: Thank you everyone for joining us. As Soundia said, when I close the meeting you will be prompted with the feedback form. Please take a few moments to fill that out. Thank you everyone for joining us and we look forward to seeing you at a future session. Thank you.

[END OF AUDIO]