

Questions Regarding the Policy Statement

The recently announced policy excluding most oral history interviewing projects from Institutional Review Board review according to federal regulations governing research involving human subjects (codified as 45 CFR 46 and generally referred to as the Common Rule) has raised a number of questions about oral history and ethics. Following are brief answers to some of the most common questions. For further information, see the bibliography, "[Historians and Institutional Review Boards](#)": [Brief Bibliography](#).

1. The new policy excludes oral history from IRB review. What's the difference between "exclusion" and "exemption"?

The operative word in the policy statement is "exclude" rather than "exempt." Until now, researchers had to submit protocols for oral history projects to Institutional Review Boards, which then decided whether to "exempt" oral history from review according to categories of exemption outlined in the Common Rule. The U.S. Department of Health and Human Service's Office for Human Research Protection has now agreed that oral history as the practice has been professionally defined does not meet the regulatory definition of "research" and therefore is excluded entirely from IRB review, without seeking formal exemption. If oral historians deem that their oral history projects do not meet the regulatory definition of research, they can proceed without consultation with an IRB. If a project does meet the regulatory definition of research, it could still be "exempted" by an IRB, but that must be determined by the IRB. [For the regulatory definitions, see: <http://ohrp.osophs.dhhs.gov/humansubjects/guidance/45cfr46.htm>]

2. Within their institutions, whom should historians inform about this policy statement?

Rather than going to an IRB, oral historians should take the policy statement to their chairs, deans, provosts or other administrators responsible for institutional compliance with federal regulations.

3. Does the regulatory definition of research mean that oral history is not research?

The policy statement does not say that oral history is "not research." It says that oral history does "not involve research as defined by the HHS regulations." The OHRP has affirmed that federal regulations were designed with biomedical research in mind, as well as behavioral and social scientific research that uses standard questionnaires with often anonymous sources to produce quantitative information that aims at "generalizable knowledge." Since that is not the way oral historians operate, the **type of research** they do is now excluded from IRB review. The OHRP has no authority to define what constitutes legitimate research in any field, only what research is covered by federal regulations.

4. Why did oral historians seek exclusion from IRB review?

Years of complaints from historians at colleges and universities across the country have amply documented rulings that directly contradicted the professional standards of oral history. IRB members with backgrounds largely in the medical and behavioral sciences applied their research practices to the humanities. IRBs have required oral historians to submit questions in advance, not to ask questions about sensitive or difficult topics, not to use interviewees' real names (despite their willingness-even eagerness-to be identified), and not to save the tapes once the project is completed, requests that directly contradict historians' professional standards. IRBs have eventually exempted most oral history from review, but only after the filing of considerable paperwork and protracted deliberations that have delayed course work and research and also have had the unintended effect of weakening IRBs' overall credibility. Rulings have been inconsistent from university to university, and sometimes from board to board within the same institution. Some historians chose not to conduct interviews to avoid the frustrations of dealing with IRBs, suggesting the chilling effect IRBs were having on legitimate research. It was because of these mounting professional complaints that representatives of the Oral History Association and American History Association met with government regulators to develop the policy statement.

5. Does exclusion of most oral history from IRB review mean that historians need not be sensitive to ethical issues?

Not at all. It only means that oral historians are freer to act in accordance with ethical and legal standards appropriate to oral history, not biomedical or behavioral research. For decades, oral historians have promulgated high ethical and professional standards, including their ethical requirement to gain informed consent prior to conducting an interview, and a signed legal release at the conclusion of the interview. These issues are codified in the Oral History Association's *Principles and Standards and Evaluation Guidelines*:

http://omega.dickinson.edu/organizations/oha/pub_eg.html. The OHRP took these standards into consideration when assessing whether oral history met the criteria for federal regulation.

6. Why do interviewers still need to get informed consent and secure legal releases? Doesn't that inhibit historians' right to free inquiry?

Simply talking with someone for background is not oral history. Oral history involves interviews for the record, explicitly intended for preservation as a historical document. Informed consent means that those being interviewed fully understand the purposes and potential uses of the interview, as well as their freedom not to answer some questions, and their identification in research and writing drawn from the interview. Legal releases are linked to issues of evidence and copyright. If a researcher makes explicit use of an interview in written work (both in direct quotation and paraphrase), the interview should be cited in a footnote, so that others can identify and locate that information within the framework of extant evidence. Recorded interviews involve copyright, and interviewees must sign an agreement that establishes access for those who use the interview in any way. If the interviews are deposited in a library or archives, legal releases will establish ownership of the copyright and the terms of access and reproduction. If the interviews are published, legal releases will satisfy publishers' concerns over copyright. [For further information see: John A. Neuenschwander, *Oral History and the Law*: http://omega.dickinson.edu/organizations/oha/pub_ps.html]



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