HRPP STANDARD OPERATING PROCEDURE/POLICY APPROVAL & IMPLEMENTATION

OFFICE OF HUMAN SUBJECTS RESEARCH PROTECTIONS

SOP Number: 6

SOP Title: DETERMINATIONS MADE BY THE OFFICE OF HUMAN SUBJECTS RESEARCH PROTECTIONS (OHSRP)

Distribution: Scientific Directors; Clinical Directors; Clinical Investigators, IRB Chairs, IRB Administrators, Protocol Navigators

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SOP 6. DETERMINATIONS MADE BY THE OFFICE OF HUMAN SUBJECTS RESEARCH PROTECTIONS (OHSRP)

6.1 PURPOSE

SOP 6 sets forth policies and procedures for OHSRP determinations of NIH research activities involving human subjects, and human specimens and/or data that do not require IRB approval. These determinations include exemptions under 45 CFR 46.101(b) (1)-(6), as well as OHSRP determinations that IRB review is not needed under NIH policy. (Collectively these two categories are referred to as research "excluded from IRB review.") For activities regulated also by FDA, as applicable, please refer to SOP 15, "Research Regulated by the FDA". Activities that may be IRB exempt under this policy may separately be subject to IRB review under applicable FDA regulations and policy**.**

6.2 POLICY

The Office of Human Subjects Research Protections (OHSRP) has sole NIH responsibility for making determinations to exclude research from IRB review under 45 CFR 46.101(b)(1)-(6) or NIH policy. Research may be excluded from the requirement for IRB review and approval if it involves only specimens/data without individually identifiable information, or if it meets 45 CFR 46 regulatory exemption criteria described below and the proposed research is not FDA-regulated. NIH researchers must follow the procedures set forth in this SOP.

6.3 DEFINITIONS

A. **Coded Data or Specimens**: For the purpose of this SOP, Coded Data or Specimens means that: 1. identifying information about specimens or data (such as name or social security number) that would enable the investigator to readily ascertain the identity of the individual to whom the private information or specimens pertain has been replaced with a number, letter, symbol, or combination thereof (i.e., the code); and 2. a key to decipher the code exists, enabling linkage of the identifying information to the private information or specimens.

B. **Data**: Information related to humans, including demographic, clinical, genetic and other individual information that may be derived from research with human subjects.

C. **Derivatives:** Materials produced by the modification of human specimens or isolation of a component(s) of samples originally obtained from humans. Examples include human stem cell lines, recombinant DNA clones of human genes, and isolated infectious agents from humans.

F**.** **Honest Broker**: A neutral intermediary (person or system) between the individual whose tissue and data are being studied, and the researcher. The honest broker collects and collates pertinent information regarding the tissue source, replaces identifiers with a code, and releases only coded information to the researcher.

G**.** **Human Subjects**: 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.

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

I. **Interaction** includes communication or interpersonal contact between investigator and subject.

J. **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 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). Private information must be individually identifiable (i.e., the identity of the subject is or may readily be ascertained by the investigator or associated with the information) in order for obtaining the information to constitute research involving human subjects.

K. **Individually Identifiable**: Individually identifiable means that the identity of the subject is or may readily be ascertained by the investigator or associated with the information (45 CFR 46.102)

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L. **Material Transfer Agreement (MTA)**: a written document to facilitate the free transfer of materials between NIH scientists and other individuals or institutions. An MTA can be a model agreement such as the NIH Simple Letter Agreement ("SLA"), the Uniform Biological MTA ("UBMTA"), or one specifically developed for the transfer of materials from humans. There is a variety of templates (models) for MTAs at NIH, including the HM-MTA developed for the transfer of human materials from NIH intramural laboratories.

M. **Research:** A systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for purposes of this policy, 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.

N. **Research repository:** A collection of specimens or data for the overall purpose of sharing specimens and data for current and future research. Such research may be general and cover a wide array of diseases and topics, or may be more specific, focusing on a single disease or topic.

O. **Specimens**: A quantity of human tissue, blood, urine or other biologically derived material. A specimen can include everything from subcellular structures (DNA) to cells, tissue (bone, muscle, connective tissue), organs (e.g. liver, bladder, heart, kidney, skin), blood, gametes (sperm and ova), and waste (urine, feces, sweat, hair and nail clippings, shed epithelial cells, and placenta).

6.4 RESEARCH INVOLVING ONLY DATA/SPECIMENS, WITHOUT IDENTIFIABLE INFORMATION, THAT IS EXCLUDED FROM NIH IRB REVIEW

When an NIH research activity involves only the use of specimens and/or data that is either coded (and the NIH researcher/research team has no access to the code key) or is otherwise not individually identifiable, the research cannot begin until the PI has obtained a formal determination from OHSRP that the activity

does not require IRB review[1]. Such a request may involve de-identification of data/specimens by an "honest broker" as defined in this SOP. This requirement applies when data and/or specimens are coming to NIH researchers from outside collaborators, or repositories, as well as when NIH researchers send specimens or data that is either coded or otherwise not individually identifiable to individuals outside NIH.

A. Data and/or specimens received by NIH Researchers from collaborators and/or individuals outside NIH or from a different NIH laboratory.

    1. Data and/or specimens that are not individually identifiable: An NIH researcher who is using data and/or specimens that are not individually identifiable must obtain a determination from OHSRP that the research is excluded from IRB review.

    2. Coded data and/or specimens: An NIH researcher who is using data and/or specimens that are coded (and the NIH researcher/research team have no access to the code key) must obtain a determination from OHSRP that the research is excluded from IRB review.

B. OHSRP makes this determination, generally, when the following conditions are met:
    1. If the data or specimens were collected for research purposes, they must have been collected at a domestic or foreign institution with a Federalwide Assurance (FWA) or with certification that the specimens were collected under the laws and regulations of the foreign country for the protection of human subjects,

    2. The sending institution, if any, and as required by applicable law, has an IRB or Ethics Committee-approved research protocol that specifies what research activity will occur at NIH, and

[1] In this way, NIH exceeds the minimum requirements of 45 CFR 46, which do not expressly mandate OHSRP review in all cases. There are limited exceptions to this requirement (for OHSRP review), and they are set forth in Appendix 1 to SOP 5 describing activities with data and specimens that do not require IRB or OHSRP approval.

3. A written agreement specifies that the NIH researcher will not seek identifiable information or the key to the code linking the data or specimens to the human subjects. (See OHRP "Guidance on Research Involving Coded Private Information or Biological Specimens.") This agreement specifies that the sending institution will not share any identified data, identifiers, the code or means to determine the identities of individuals providing data and specimens with the researchers at the NIH. These terms may be included within a Material Transfer Agreement but can also be documented through e-mail communications.

4. Data and/or specimens provided by NIH researchers to collaborating researchers outside NIH[2] or to NIH researchers in a different NIH laboratory or Institute who are collaborating as part of the research team. Data must be:

    a. Not individually identifiable; or
    b. Not Identifiable through use of a code, i.e. the NIH researcher must not have access to a code key which identifies research subjects.

C. If NIH researchers collaborate with other researchers, pursuant to this SOP, the NIH researcher must not be able to identify the subject.

6.5 EXEMPT RESEARCH UNDER 45 CFR 46.101(b) THAT IS EXCLUDED FROM IRB REVIEW

OHSRP has sole NIH authority to make the determination that a research activity is exempt from the DHHS requirement for IRB review under 45 CFR 46.101(b) (see Appendix 2). Research involving tests, surveys, interviews or observations will not be granted exempt status if it represents a possible intrusion on the privacy of subjects. The OHSRP has discretion to refer a matter to an NIH IRB

[2] For more information about the NIH Office of Technology Transfer (OTT) requirements regarding the transfer of materials from NIH, contact your IC Technology Development Coordinator at http://www.ott.nih.gov/nih_staff/tdc.aspx. Also see the OTT Policy for the Transfer of Materials from NIH Intramural Laboratories at http://www.ott.nih.gov/PDFs/Policy-for-the-Transfer-of-Materials.pdf.

for ethical or policy reasons even if the research activity otherwise qualifies as IRB-exempt, see Section 6.12 below.

6.6 OTHER ACTIVITIES NOT SUBJECT TO THE REQUIREMENTS OF 45 CFR 46 AND THAT ARE EXCLUDED FROM IRB REVIEW

A. OHSRP has authority to determine that other activities involving human data and/or specimens fall outside of the purview of 45 CFR 46 and are excluded from IRB review when a researcher is uncertain about whether an activity is or is not human subjects research. These types of activities may include quality improvement/ assurance projects, case reports, program evaluation, and surveillance activities.

B. Research involving non-living individuals, data on these individuals, or specimens from these individuals is not subject to the requirements of 45 CFR 46, and does not require OHSRP or NIH IRB review. However, this type of research may be subject to other applicable laws and regulations. OHSRP encourages researchers working on research involving non-living individuals to contact their Institute or Center (IC) privacy coordinators prior to initiating this type of research.

Once it is determined that an activity falls into either of the above categories, research participant protection oversight is the responsibility of the IC.

6.7 ACTIVITIES NOT ELIGIBLE FOR EXEMPT RESEARCH AND CONSIDERATIONS FOR SPECIAL POPULATION GROUPS UNDER 45 CFR 46

A. All of the exemption categories in 45 CFR 46.101(b) are potentially applicable to research involving pregnant women, human fetuses and neonates (45 CFR 46, Subpart B).

B. None of the exemption categories of 45 CFR 46.101(b) apply to research when prisoners are research subjects, see (45 CFR 46, Subpart C).

C. Some exempt categories do not apply when children are research subjects, see Subpart D, 45 CFR 46, which states: Exemptions at §46.101(b)(1) and (b)(3) through (b)(6) are applicable to this subpart.

The exemption at §46.101(b)(2) regarding educational tests is also applicable to this subpart. However, the exemption at §46.101(b)(2), for research involving survey or interview procedures or observations of public behavior, does not apply to research with children (45 CFR 46, Subpart D), except for research involving observations of public behavior when the investigator(s) do not participate in the activities being observed. (Exemptions at §46.101(b)(1) and (b)(3) through (b)(6) may apply to research involving children.)

6.8 INVESTIGATOR RESPONSIBILITIES

A. NIH researchers must submit a form *Request for OHSRP Determination* (Attachments 1-3) to OHSRP to request a determination that the activity is exempt from IRB review.

B. Research activities may not begin until a final determination is issued by OHSRP. Studies that are determined to be exempt from IRB review must comply with the ethical criteria described in 6.12.A.

C.

6.9 OHSRP PROCEDURES FOR DETERMINING EXCLUDED STATUS

A. An OHSRP staff member will review each *Request for OHSRP Determination* form and communicate with the investigator if additional information is required. The investigator must respond to all requests for revisions or clarifications requested by OHSRP. After review, OHSRP will render a determination as follows:

   1. “Excluded from IRB Review” in which case applicable NIH institutional requirements may still apply.

   2. “Human Subjects Research Not Excluded from IRB Review”. The investigator must obtain IRB review and approval prior to initiating research.

B. If an activity is determined to be excluded, no further OHSRP action or oversight is required as long as the study is not amended. If the study is amended, the researcher needs to send an e-mail to OHSRP explaining the nature of the amendment and providing the original OHSRP approval number. The email should explain what new activity

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will be included. If coded specimens will be received by a researcher from a different institution, the NIH researcher should provide a written agreement (see Section 6.4.A.3.c above) from the individual at the new institution. Researchers may not make their own determination of whether a change impacts the study's status as exempt or excluded from IRB review.

C. The investigator will need to retain these records in accordance with other research records as described in SOP 4 – HRPP Documentation and Records

D. Amendments to previously-approved activities:

Material changes to research require re-approval by OHSRP. A researcher may request OHSRP to re-approve a previous determination by sending an e-mail request explaining the nature of the amendment and providing the original OHSRP determination number. The request should explain what new activity will be included. If coded specimens will be received by a researcher from a different institution, the NIH researcher should provide a written agreement from the individual at the new institution (see Section 6.4.A.3.c above). Any protocol amendments or new agreements anticipated by NIH researchers (such as an MTA) should be brought to the attention of OHSRP. Researchers may not make their own determination of whether a change impacts the study's status as exempt.

6.10 HONEST BROKER PROCEDURES

An "honest broker" arrangement is a vehicle by which researchers may obtain coded data without a key to the code.

A. An honest broker is a group or an individual other than a member of a research team who protects the link between materials and/or data and identities of subjects. Researchers may use an honest broker to code or unlink specimens or data. The individual or group serving as an honest broker must be prohibited from revealing identifiable information or the key-code to investigators and research team members who work with data and/or specimens.

B. Attachment 3, a model honest broker agreement, attached to this SOP, must be signed by both the honest broker and the NIH PI when an honest broker system is part of NIH research activities approved by the OHSRP.

6.11 NOTIFICATION TO INVESTIGATORS OF OHSRP DETERMINATIONS

Investigators will be notified, via e-mail, of OHSRP's determinations. OHSRP strives to make these determinations within ten (10) working days from the time of receipt as long as no additional information is required from the investigator to support the request. If the request for exempt status is approved, the written notification will describe, if applicable, the category from the regulations allowing the exemption. If the request for exemption is not approved, OHSRP will send written notification of that finding to the investigator with guidance on what steps the investigator would be required to take (e.g., referral to an NIH IRB for review).

6.12 ETHICAL PRINCIPLES

A. The investigator is responsible for assuring that the exempt research is carried out in an ethical manner with appropriate participant protections, as described below:

1. When the research involves direct interaction with subjects, subjects should be informed that their participation is voluntary, and they should be given an opportunity to agree to participate without coercion. OHSRP will determine whether there should be a consent process that will disclose such information as:

    a. That the activity involves research

    b. A description of the procedures

    c. Name and contact information for the researcher

2. Subject selection must be equitable or otherwise justified in the research design.

3. Any associated risk to individuals or society must be minimal.

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4. The research plan must adequately protect the privacy interests of subjects. Research involving tests, surveys, interviews or observations will not be granted exempt status if it represents a possible intrusion on the privacy of subjects.

5. The research plan must provide adequate provisions for confidentiality of study data. Confidentiality of data is ensured by good data practices, including, as applicable, locked file cabinets, storage of electronic data on the campus network that has firewall protection, strong passwords on computer files, and data access only for those involved in the study. For information that is also subject to Privacy Act protections, see NIH's policies on protecting Privacy Act records.

B. The OHSRP has discretion to refer a matter to an NIH IRB for ethical or policy reasons even if the research activity otherwise qualifies for an as IRB exempt.
C. All research personnel engaged in exempt research must complete appropriate training and education as set forth in SOP 25, "Training Requirements for the NIH HRPP".

6.13 RECORDS RETENTION

OHSRP will keep records of any request for IRB exemption and the action taken for 3 years after the indicated completion date for the research study unless otherwise extended. PIs should also keep a copy of these records for 3 years after the completion date of the research. For more information, see SOP 4-HRPP Documentation and Records. The PI will retain all records regarding OHSRP determinations, in accordance with other recordkeeping described in SOP 19 HRPP Documentation and Records

LIST OF APPENDICES

A. APPENDIX 1: APPENDIX 1: DATA THAT MAY CONSTITUTE INDIVIDUALLY IDENTIFIABLE INFORMATION UNDER 45 CFR 46[3]

B. APPENDIX 2: CATEGORIES OF HUMAN SUBJECTS RESEARCH EXEMPT FROM IRB REVIEW.

LIST OF ATTACHMENTS

A. ATTACHMENT 1: REQUEST FORM: OHSRP DETERMINATION FOR RESEARCH-USE OF HUMAN SPECIMENS OR DATA

B. ATTACHMENT 2: REQUEST FORM: OHSRP DETERMINATION FOR RESEARCH-USE OF SPECIMENS OR DATA

C. ATTACHMENT 3: HONEST BROKER AGREEMENT/CERTIFICATION

[3] Please note that this guidance does not address other legal standards (e.g., the Privacy Act) and should not be relied upon on for contexts other than the human subjects regulations at 45 CFR 46.

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APPENDIX 1: DATA THAT MAY CONSTITUTE INDIVIDUALLY IDENTIFIABLE INFORMATION UNDER 45 CFR 46[4]

Points to Consider

The following (either individually or in combination) may constitute 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). The circumstances surrounding a research project may impact whether information is considered individually identifiable. For example, size and location of the research trial (if participants are from the same small town or zip code, age could be identifying); the disease or condition being studied, particularly if a rare disease; place of birth; nationality.

As a general rule, if gaining access to identifiable information is more involved than either using a key that links coded information to identifiers, or combining information that is either already in the possession of the investigator or readily accessible to the investigator, OHSRP may not consider the investigator to be in possession of individually identifiable information.

Brief examples:

A. Research Team A wants to conduct a study with a coded dataset for which they have a key. This dataset consists of only date of birth, medical condition, and length of hospital stay.

   Analysis: In this scenario, the data is may be considered individually identifiable to the researchers since they have access to the key and could presumably use the information in the dataset to readily identify participants.

B. Research Team B receives the same dataset from Research Team A, with Research Team A keeping the key to the code.

   Analysis: Because Research team B is not in possession of additional information about the participants, and this information is not readily accessible to them, date of birth is not likely to be individually identifiable to the investigator.

[4] Please note that this guidance does not address other legal standards (e.g., the Privacy Act) and should not be relied upon on for contexts other than the human subjects regulations at 45 CFR 46.

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The list below includes points to consider and is not intended to be exhaustive. Researchers should consult with OHSRP if they are unsure whether data in a particular research project would be considered individually identifiable.

A. Names or initials

B. Date of birth

C. Social security number

D. Street address

E. Telephone and fax numbers

F. Electronic mail addresses

G. Medical record number

H. Health plan identifier

I. Research study/protocol number

J. Account numbers

K. Certificate/license numbers

L. Vehicle identifiers and serial numbers, including license plate numbers

M. Identifying numbers related to devices, such as serial numbers

N. Internet protocol (IP) address numbers

O. Biometric identifiers, including finger and voice prints

P. Full face photographic images and any comparable images

Q. Pedigree – a diagram or text that indicates which individuals within a family express or carry a genetic trait or medical condition

R. Any other unique identifying number, characteristic, or code when a key to the identifier/characteristic/code is readily accessible to the investigator (see SOPs [5 “NIH Research Activities with Human Data/Specimens”] [and 6 “Determinations, Including Exemptions, Made by the Office of Human Subjects Research Protections (OHSRP) Under 45 CFR 46”] for additional discussions regarding the use of “Coded Specimens or Data” in research.)

S. Any other data or information which, in a given context or circumstance, can be used to make a participant identifiable to the researcher.

APPENDIX 2-- CATEGORIES OF HUMAN SUBJECTS RESEARCH EXEMPT FROM IRB REVIEW (45 CFR 46.101(B))

A. Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as

    1. research on regular and special education instructional strategies, or

    2. research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

B. Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless:

    1. information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and

    2. any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation.

C. Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures, or observation of public behavior that is not exempt under 45 CFR 46.101(b)(2) of this section, if:

    1. the human subjects are elected or appointed public officials or candidates for public office; or

    2. Federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

D. Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these

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sources are publicly available or if the information is recorded by the investigator in such a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

E. Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine:

1. Public benefit or service programs;

2. Procedures for obtaining benefits or services under those programs;

3. Possible changes in or alternatives to those programs or procedures; or

4. Possible changes in methods or levels of payment for benefits or services under those programs[5].

F. Taste and food quality evaluation and consumer acceptance studies, \

1. if wholesome foods without additives are consumed or

2. 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.

[5] In order to invoke this exemption, the following criteria must be satisfied:
1. The program under study delivers a public benefit (e.g., financial or medical benefits as provided under the Social Security Act) or service (e.g., social, supportive, or nutrition services as provided under the Older Americans Act).
2. The research or demonstration project is conducted pursuant to specific federal statutory authority.
3. There is no statutory requirement that an IRB review the project.
4. The research does not involve significant physical invasions or intrusions upon the privacy of subjects.

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ATTACHMENT 1: REQUEST FORM: OHSRP DETERMINATION FOR RESEARCH-USE OF HUMAN SPECIMENS OR DATA

INSTRUCTIONS

Use this form to request a review by OHSRP to determine if your research activity involves the collection or study of data, documents, records or pathological or diagnostic specimens, if these sources are, publicly available, or if the information is recorded by the investigator in such a manner that subjects cannot be identified, directly or through identifiers linked to the subjects. Note two categories not eligible for exemption are listed in the footnote below[6]. In order for a determination to be made:

A. Data/specimens received by NIH researchers must be either:

1. **Unlinked:** Specimens/data that were initially collected from humans with identifiers that, before research use, have been irreversibly stripped of all identifiers by use of an arbitrary random alphanumeric code and the key to the code is destroyed, thus making it impossible for anyone to link the samples and/or data to the sources; OR

2. **Coded:** Use of coded specimens for which the link is retained by the sender; and the following conditions are met:

   a. **FWA:** Data or specimens will be collected or were collected at an institution with a Federalwide Assurance (FWA), or certification that the specimens were collected under the laws and regulations for the protection of human subjects of the foreign country.

   b. **De-identification Agreement:** This agreement specifies that the providing investigator will not share any identifiers or means to determine the identities of individuals who provided the data or specimens, with the recipient investigator.

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[6] The following two situations are not eligible for exemption and must be reviewed by an IRB:
- Research involving specimens or data related to prisoner research
- Research involving test articles regulated by the FDA

B. Data and/or specimens provided by NIH researchers must be:

1. **De-identified:** NIH researchers must de-identify all data or specimens before sharing them. For more information on de-identification, see SOP 6- Appendix 1- "Information that should be removed for data or specimens to be considered de-identified."

2. Note that a Material Transfer Agreement[7] may also be required.

C. For collection of existing data by NIH researchers:

1. Identifiable information may be viewed by the researcher, but only de-identified data may be recorded.

2. An honest broker may be used to de-identify data. For more information or to obtain an Honest Broker Agreement contact OHSRP.

For assistance completing this form, call OHSRP at (301) 402-3444. Submit a PDF of the completed form with required signatures and attachments to: by PDF and E-mail: ohsr_nih_ddir@od.nih.gov, Fax: 301-402-3443 or Interoffice mail: Building 10, Room 2C146

Date of Request: _____

Requestor's name: _____

Email: _____

Role: __Investigator __Administrative support __Other, explain: _____

Name of NIH Senior Investigator:

_____

(*The investigator must be an NIH employee*)

IC _____

_____

[2] For more information contact your IC Technology Development Coordinator at http://www.ott.nih.gov/nih_staff/tdc.aspx

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Laboratory/Branch _____

Building & Room No. _____

Tel. No. _____

FAX No. _____

Is the NIH Senior Investigator an NIH employee (FTE)? ____Yes ____No

Senior Investigator Signature:

_____
(*Signature of Investigator who will conduct research*)

Supervisor Signature:

_____
(*Signature of official for IC, e.g., Lab/Branch Chief*)

Name of NIH investigator conducting research if not the NIH Senior Investigator: *(i.e, junior investigator, contractor investigator, fellow, student)*

_____

Please provide the name and e-mail of any others who should receive a copy of the OHSR determination:

_____

What role will the NIH investigator(s) have in this research project? *(check all that apply)*

___ Analyze samples/data
___ Consultant/advisor to collaborator(s)
___ Author on publication(s)/manuscript(s) pertaining to this research
___ Investigator or the NIH holds an IND/IDE for this research
___ Other, please describe: _____

Title: _____
(Provide a short title to distinguish this activity from other projects that you may have)

Describe in lay terms the research activity that will be performed:

_____

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Proposed start date ___/___/_____

Proposed completion date ___/___/_____

Specify the nature of the specimens or data: *(select all that apply)*

___ iPSC lines ___ hESC ___ Fetal Tissue
___ WES/WGS ___ GWAS
___ Other human specimens *(e.g. tissue, blood, derivatives),*
describe: _____
___ Data *(e.g. clinical or research information or laboratory results)*
describe:_____
___ Other, describe: _____

Will specimens or data be? (*select all that apply*)

Collected Yes__ No__
Received Yes__ No__
Sent Yes__ No__

If receiving or sending, list the collaborating investigator(s**):**

Name:_____
Institution/IC:_____
Address/e-mail:_____
FWA number***:**_____

Do the specimens, data or information:

Already exist? Yes__ No__
If "no", explain:_____

Select the best description that applies to the specimens or data:

___ Specimens, data or information will not contain any identifiable information, and cannot be linked to individual subjects by you or your collaborators.

___ Specimens, data or information will be coded, however that code cannot be used by either the provider or the receiver to identify specific individuals.

___ Specimens, data or information will be coded so that the provider of the samples/data can link them to specific individuals but the receiver will not be able to do so.

If c is selected above, please follow the instructions below:

Projects involving coded research specimens obtained from a non-NIH collaborator will require a de-identification agreement. Please e-mail your collaborator(s) the following agreement language modified to reflect the nature of your collaboration. Attach the completed agreement to this submission.

De-identification Agreement:

Provider of coded specimens or data:

I, [Name] of [Institution], holder of the code-key or cipher for the coded [specimens, data (*specify*)], promise not to release the identity of the subjects from whom the coded [specimens, data (*specify*)] originated, until the subjects decease to [Recipient Name] at [Recipient Institution].

Recipient of coded specimens or data:

I, [Name] of [Institution], recipient of the coded [specimens, data (*specify*)], promise not to request the identity of the subjects from whom the coded [specimens, data (*specify*)] originated, until the subjects decease from [Sender Name] at [Sending Institution].

If data are being extracted from existing records, who will extract the data? (*if applicable*)

___ NIH Investigator
___ non-NIH Collaborator
___ NIH Contractor
___ Other, specify_____
If a or c, will an Honest Broker or data use agreement be used? Yes__ No__

If yes, complete and attach the Honest Broker Assurance or Data Use Agreement to this submission; e-mail ohsr_nih_ddir@od.nih.gov to request the form.

Where are the subjects of this research activity located?

_____

DHHS/NIH/OD/OIR/OHSRP

If human subjects are located elsewhere (not at NIH), will you have direct contact or intervention with them? (For example, as subject's physician, obtaining specimens directly from the subject?) Yes__ No__

Do the specimens, data or information come from:

___ NIH BTRIS
___ NIH Medical Records
___ Repository
If an NIH Repository, specify:_____
___ Pathological waste
___ Autopsy material
___ Publicly available source
___ Originate from an IRB-approved protocol?
___ Other_____

Will the results of the research be returned to the provider(s) of the specimens or data?

___ No, results will not be returned to the provider(s)
___ Yes, aggregated results will be returned to the provider(s)
___ Yes, results that are linked to identifiable individuals, will be returned to provider(s)
___Yes, the results of this project will be returned to an active NIH IRB-approved protocol? If yes, protocol ID: _____

If b or c, is the NIH project consistent with the IRB/EC-approved protocol at the collaborating institution? Yes__ No__

Per NIH guidance, are all conflicts of interest by NIH employees, if any, resolved? _____Yes _____No***

*****A Federalwide Assurance (FWA) is issued by the U.S. Department of Health and Human Services (DHHS)/ Office of Human Research Protections (OHRP) to institutions which receive Federal funds/support to conduct human subjects research. To search for the FWA# for domestic or international institutions go to http://ohrp.cit.nih.gov/search/fwasearch.aspx?styp=bsc*

***If the answer is "No", note that OHSRP will be unable to make a determination and research may not proceed until all conflicts are resolved. For more information, see the October 2011, A Guide to Preventing Financial and Non-Financial Conflict of Interest in Human Subjects Research at NIH. For*

assistance review the list of Ethics Coordinators and find the contact for your IC: http://ethics.od.nih.gov/coord.pdf

ATTACHMENT 2 -- REQUEST FORM: OHSRP DETERMINATION FOR SURVEYS OR INTERVIEW PROCEDURES, PROGRAM EVALUATION, EDUCATIONAL TESTING AND RESEARCH

INSTRUCTIONS

Use this form to request a determination for activities that involve prospective collection of data only, including:

A. Use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior[8]

B. Educational Research: conducted in established or commonly accepted educational settings, involving normal educational practices, such as research on regular and special education instructional strategies, or research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.[9]

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[8] The following activities involving educational tests, survey, interviews or observation of public behavior **are not** eligible for exemption and must be reviewed by an IRB if:

1. the information obtained is recorded such that human subjects can be identified, directly or through identifiers linked to the subjects; and
2. any disclosure of the responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation; or
3. Research including children that involve survey, interview procedures or observation of public behavior (observation of public behavior is allowed if the investigators does not participate in the activities being observed.).

[9] Note that educational research may include children and use identifiable information, however other local or federal regulations may apply such as The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) and/or The Protection of Pupil Rights Amendment (PPRA) (20 U.S.C. § 1232h; 34 CFR Part 98); however OHSRP cannot provide advice on these regulations.

DHHS/NIH/OD/OIR/OHSRP

C. Program evaluation or demonstration project designed to study, evaluate, or otherwise examine:

1. Public benefit or service programs;

2. procedures for obtaining benefits or services under those programs;

3. possible changes in or alternatives to those programs or procedures; or

4. possible changes in methods or levels of payment for benefits or services under those programs,

5. Quality assurance activities

6. Taste and food quality evaluation or consumer acceptance studies

Please attach the survey, questionnaire, interview script or test to the completed form together with the consent language that will be administered before the subject participates in the activity.

For assistance completing the form, call OHSRP at (301) 402-3444. Submit a PDF of the completed form with required signatures and attachments to: PDF and E-mail: ohsr_nih_ddir@od.nih.gov Fax: 301-402-3443 Interoffice mail: Building 10, Room 2C146

REQUEST FORM: OHSRP DETERMINATION FORSURVEYS, INTERVIEW PROCEDURES, PROGRAM EVALUATION, EDUCATIONAL TESTING AND RESEARCH

FORM

Date of Request: _____

Requestor's name: _____

Email: _____

Role: __Administrative support __Investigator __Other, explain: _____

Name of NIH Senior Investigator:
_____
(*The investigator must be an NIH employee*)

IC _____

Laboratory/Branch _____

Building & Room No. _____

Tel. No. _____

FAX No. _____

Is the NIH Senior Investigator an NIH employee (FTE)? ____Yes ____No

Senior Investigator Signature:

_____
(*Signature of Investigator who will conduct research*)

Supervisor Signature:

_____
(*Signature of official for IC, e.g., Lab/Branch Chief*)

Clinical Director Signature:

_____
(*Signature of IC Clinical Director or designee, check w/ICD for IC policy*)

Name of NIH investigator conducting research if not the NIH Senior Investigator: *(i.e, junior investigator, contractor investigator, fellow, student)*
_____

Please provide the name and NIH e-mail of any others who should receive a copy of the OHSRP determination:
_____

What role will the NIH investigator(s) have in this research project? *(check all that apply)*

__ Conduct research activity
__ Analyze samples/data only

__ Consultant/advisor to collaborator(s)
__ Author on publication(s)/manuscript(s) pertaining to this research
__ Other, please describe: _____

Title: _____
(Provide a short title to distinguish this activity from other projects that you may have)

Describe in lay terms the research activity that will be performed:
_____

Proposed start date ___/___/_____

Proposed completion date ___/___/_____

Specify the nature of the data: *(select all that apply)*
__ Interview procedures
__ Survey procedures
__ Educational Test
__ Educational Research
__ Research and demonstration projects regarding public benefit or service programs
__ Observation of public behavior
__ Data, etc., that are publicly available or if the information is recorded by the investigator in such a manner that subjects cannot be identified, directly
__ Research conducted in established or commonly accepted educational settings, involving normal educational practices
__ Other, describe: _____

What kind of data (e.g., responses to questionnaires, test results, recordings) will be collected in your research?
_____

Will data be? (*select all that apply*)

Collected	Yes__	No__
Received	Yes__	No__
Sent	Yes__	No__

If receiving or sending, list the collaborating investigator(s):

Name: _____

Institution/IC: _____

Address/e-mail: _____

FWA number*: _____

Where are the subjects of this research activity located?

Institution: _____

Contact Name: _____

Address: _____

Phone: _____

Will NIH investigator(s) have direct contact or intervention with the subjects of the study? (For example, by interviewing, surveying or recording the subjects?) Yes__ No__

If yes, what is the age range of subjects involved in the research?
___ Children aged < 18 years
___ Adults aged ≥ 18 years

Who will collect the data or information?
___ NIH Investigator
___ non-NIH Collaborator
___ NIH Contractor
___ Other, specify_____

If b or c, will an Honest Broker or data use agreement be used? Yes__ No__

If yes, complete and attach the Honest Broker Assurance or data-use agreement to this submission; e-mail ohsr_nih_ddir@od.nih.gov to request a form.

Select the best description that applies to the human data:

__ Data will not contain any identifiable information, nor can it be linked to individual subjects by you or your collaborators.
__ Data will be recorded in such a manner that subjects can be identified directly or through codes to the subjects
__ Other: (Please describe)_____

Per SOP 21, are all conflicts of interest, if any, resolved?** ___Yes __No

*****A Federalwide Assurance (FWA) is issued by the U.S. Department of Health and Human Services (DHHS)/ Office of Human Research Protections (OHRP) to institutions which receive Federal funds/support to conduct human subjects research. To search for the FWA# for domestic or international institutions go to http://ohrp.cit.nih.gov/search/fwasearch.aspx?styp=bsc*

***If the answer is "No", note that OHSRP will be unable to make a determination and research may not proceed until all conflicts are resolved. For more information, see SOP* 21 "Conflict of Interest Requirements for Researchers and Research Staff". Investigators and staff must comply with A Guide to Avoiding Financial and Non-Financial Conflicts or Perceived Conflicts of Interest in Clinical Research at NIH*.* For assistance contact your IC Deputy Ethics Coordinator at: http://ethics.od.nih.gov/coord.pdf

ATTACHMENT 3 – HONEST BROKER AGREEMENT AND CERTIFICATION

Title of Research Project:
Senior Investigator Name:
OHSRP Determination Number:

Honest Broker Certification

By signing below, I agree/certify that:

1. I have reviewed this project with the Senior Investigator and agree to unlink, de-identify or code (select one) any data and/or specimens that will subsequently be used by the Investigator.

2. I will, under no circumstance, provide the Investigator or any member of the research team with identifying information about the subjects, information that would permit the re-identification of research subjects, or the key to the code (as applicable).

3. As applicable, I will not commence any research activities for this project until proof of IRB approval or an OHSRP Determination has been provided to me by the Investigator conducting the study.

4. I will not intervene or interact with human subjects during the conduct of this research project.

5. I will maintain the confidentiality of research subjects' identifiable information, records or specimens.

6. Once this project is complete I will destroy or return any identifiable information in my custody to its source, as appropriate and permitted by law and NIH policy. I understand that original copies of NIH data are not to be destroyed.

7. I will immediately inform OHSRP of any breaches to this agreement by calling 301-402-3444 or via e-mail at OHSR_NIH_DDIR@nih.gov.

Honest Broker Name:	Date:	
Position:	e-mail:	Phone:
Employer of Honest Broker:		
Honest Broker Signature:		

Investigator Certification

By signing below, I agree/certify that:

1. I will, under no circumstance, request identifying information of, or the key-code regarding, the research subjects from whom the specimens or data originated, from the Honest Broker. I will not otherwise seek out the identifying information about whom the specimens or data originated. The same standards will be explained to, and expected of, my research team.

2. I will submit any revisions to this activity to OHSRP for approval prior to implementing any changes.

3. I will immediately inform OHSRP of any breaches to this agreement by calling 301-402-3444 or via e-mail at OHSR_NIH_DDIR@nih.gov.

Investigator Name:	Date:	
Position:	e-mail:	Phone:
Employer of Investigator:		
Investigator Signature:		

– – – –

Honest Broker Name:	Date:	
Position:	e-mail:	Phone:
Employer of Honest Broker:		
Honest Broker Signature:		

Investigator Name:	Date:	
Position:	e-mail:	Phone:
Employer of Investigator:		
Investigator Signature:		