GUIDELINE FOR DETERMINING HUMAN SUBJECT RESEARCH

According to the Office for Human Subject Protection (OHSP) Policy 301 Research Subject Review Board (RSRB) Scope and Authority, the RSRB has the authority to determine whether a project meets the criteria for human subject research and therefore requires Institutional Review Board (IRB) review.

When the RSRB office is consulted to discuss the proposed activity, or when a project is submitted for RSRB review, RSRB staff make the determination whether HHS or FDA criteria for review apply. Investigators, study teams and RSRB staff will consider the definitions provided and then follow the procedures below for confirming this determination. The **Research vs QI Determination Checklist** may be used as a tool, as well as the HHS **Human Subject Regulations Decision Charts**.

Definitions

Human subject: *a living individual about whom an investigator (whether professional or student) conducting research (1) obtains information or biospecimens through intervention or interaction with the individual and uses, studies, or analyzes the information or biospecimens, OR (2) obtains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens.*

a. ***Living Individual*** means specimens/data/information collected from living subjects. Cadavers, autopsy specimens or specimens/information from subjects now deceased does not meet the definition of human subject.

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

c. ***Interaction*** includes communication or interpersonal contact between investigator/research team and subject. This includes fact-to-face, e-mail, and phone interaction, as well as other modes of communication.

d. ***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 (e.g., public restroom, waiting room), and information that has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (e.g., medical, psychological, employment and educational records).

e. ***Identifiable Biospecimen*** means biospecimens for which the identity of the subject is or may readily be ascertained by the investigator or associated with the biospecimen.

f. ***Identifiable Private Information*** means information for which the identity of the subject is or may readily be ascertained by the investigator or associated with the information (e.g., date of birth, social security number).

- **Note:** Projects based on data that contain individual identifiers, but are also publicly available, might not constitute human subject research (i.e., identifiable but not private). However, the term "publicly available" is intended to refer to data sets that are readily available to the broad public, such as census data, federal health, labor, or educational statistics, and might also apply to information posted on social media sites such as Facebook, Twitter and Instagram.

g. ***Research*** is a *systematic investigation*, including research development, testing, and evaluation, designed to develop or contribute to *generalizable knowledge*. The activities are described in a formal protocol that set forth an objective or hypothesis and a set of procedures to reach that objective.

a. ***Systematic*** is an activity that involves a methods of data collection (either quantitative or qualitative), and analysis of that data to answer a question.

b. ***Investigation*** is an activity that involves development, testing a hypothesis, evaluation, or search for information.

c. ***Generalizable knowledge*** is an outcome or result that might draw general conclusions, inform policy, or is universally or widely applicable; contributing to generalizable knowledge typically involves public dissemination of that information, for example:
- Knowledge is disseminated with the intent to influence behavior or practice.
- Publication, presentation, or other distribution of the results is intended to inform the field of study.
- The results are expected to be generalized to be applicable to a larger population beyond the site of data collection or population studied.
- The results are intended to be, or may be, replicated in other settings.

Research results do not have to be published or presented to qualify the experiment or data gathering as research. The intent to contribute to "generalizable (scholarly) knowledge" makes an experiment or data collection research, regardless of publication. Research that never is published is still research and subjects deserve protection, regardless of the intent to publish. Conversely, ***the intent to publish alone does not qualify a project as "research"*** *(as defined by federal regulations)*.

- **Note:** Thesis or dissertation projects involving human subjects, that are conducted to meet the requirement of a graduate degree, are considered generalizable and require RSRB review. If an instructor determines there is a possibility a student's proposed research project might result in a formal presentation or publication, they should advise the student to submit the project for RSRB review ***before beginning the study***.

Review Procedures

1. **Assess Criteria for "Human Subject"**
   RSRB staff will consider the definition of "human subject" under the following **HHS 45 CFR 46.102(e)** definitions. Applications that include FDA regulated activities will be reviewed under the FDA definition of human subject according to **21 CFR 56.102(e).**

2. **Assess Criteria for "Research"**
   RSRB staff will consider the definition of "research" under the following **HHS 45 CFR 46.102(l)** definition that includes two elements: 1) systematic investigation, and 2) generalizable knowledge. Projects that include FDA regulated activities will be reviewed under the FDA definition of clinical investigation according to **21 CFR 56.102(c).**

3. **Do Pilot (Feasibility) or Concept Activities Require RSRB Review?**
   a. ***A pilot project*** includes activities tested or "piloted" on relatively few subjects so preliminary data can be collected, and parameters can be assessed before a larger study is developed or to support a grant submission.

   b. ***Conducting Research at a Pilot or Feasibility Phase:*** Investigators sometimes conduct a preliminary *investigation* of the feasibility of study activities using *human subjects*, usually on a small scale and exploratory in nature. The protocol *includes a systematic investigation,* and activities are *designed* to help the Investigator refine data collection procedures and instruments, or prepare a more precise research design. Although data collected through pilot or feasibility studies (including those involving only one human subject) may not be used in research reports and publications, pilot studies represent part of the research process that leads to the development of or contribution to *generalizable knowledge*. Therefore, these activities meet the regulatory definition of "research" and require the same regulatory oversight as full-scale research studies. Pilot studies should be identified as such in the protocol and the consent document should clearly identify the project as a pilot or feasibility study.

   c. ***Developmental Proposals – Concept Review:*** Funding agencies might be unwilling to consider proposals in the development or concept stage without IRB approval, yet given the early stage of the project, the Investigator may not be able to provide a complete protocol or consent document. In these situations, the Investigator should submit a copy of the grant/funding proposal to the RSRB for review. Once the full study protocol and all supporting materials have been fully developed, they need to be submitted for additional review, as a new submission. Research activities involving human subjects cannot begin until the fully developed protocol has been approved by the RSRB. For additional information, see the **RSRB's Concept Studies** webpage.

4. **Activities Generally *Not* Human Subject Research**
   The following are examples of activities that generally do not require RSRB review; however, the RSRB should be consulted as needed:
   a. ***Scholarly and Journalistic Activities:*** These activities are designed to create a record of specific historical events and might include, for example, oral history, journalism, biography, literary criticism, legal research, and historical scholarship. These activities may include the collection

and use of information that focus directly on the specific individuals about whom the information is collected.

b. ***Case Report:*** A case report is an account of what occurred as part of clinical care. The information collected may include medical history and other relevant information which was initially collected for the purposes of diagnosing the individual's condition and/or for educational purposes. This information was not created or collected with any intent to test hypotheses or to produce "generalizable" knowledge (e.g., using statistical methods for subgroup comparisons), therefore, the activity does not meet the criteria for "research" **[45 CFR 46.102(l)].**

The following exceptions should be considered to ensure appropriate RSRB oversight when necessary:

- The situation might yield a Case Series, which is a group of case reports that includes information on more than one individual. However, this only rises to the level of a systematic investigation when analysis is planned to contribute to "generalizable" knowledge (i.e., the activity meets the regulatory criteria for "research").
- There is a protocol/study plan to perform the treatment on some individuals but not on others.
- Investigational drug(s) or device(s) are involved (off-label use of an approved drug or device is permissible).
- There is a clear intent to use procedures to systematically collect data that wouldn't ordinarily be collected in the course of clinical/educational practice in reporting and publishing the case.
- There is intent to manipulate the environment and/or medications, including randomization, (even utilizing FDA-approved medications) to determine maximum effectiveness, or to test if they work consistently well.
- Extra tests are conducted for analysis or reporting purposes.
- Separate sets of records or data sheets are maintained (particularly with identifiers).
- The primary purpose is to answer a research question, not to provide care.

c. ***Program Evaluations:*** The systematic collection and analysis of information about the effectiveness of the program in order to make judgments about the program, improve program effectiveness, and/or inform decisions about future program development. The intent of these projects is to inform the organization/institution/corporation about the program's effectiveness and needs rather than to contribute to generalizable knowledge, and, as such, are not considered research. However, should the feedback be extended to public presentation or publication beyond the 'internal' program/organization, this may be considered generalizable knowledge and, therefore, considered "research".

d. ***Quality Assurance and Quality Improvement (QA/QI) Projects:*** In general, the intent of QA/QI projects involve assessing a local practice, service, or program to identify immediate improvements and/or to determine whether establish standards have been adhered to. These types of activities do not typically require RSRB review, because the intent is to *inform* local practice only. However, RSRB review may be required when the aims of the project include collecting

information that extend beyond the intent of QA/QI. For additional information see the QI Determination Checklist.

Of note, publication of a quality assurance project does not, per se, render that project "research;" however, if the outcome of a quality assurance project is published, attention should be given to avoid any reference to "research" in the publication. If a QA/QI project is published, the following statement must be included in the manuscript: ***"This project was undertaken as a QI initiative, and as per the University of Rochester's Guideline for Determining Human Subject Research did not meet the definition of research according to 45 CFR 46."***

e. ***Educational Activities:*** Those activities conducted as an assigned class course. The purpose of these courses is to train students and provide them with a closer view of social, educational, or psychological processes, and an opportunity to practice various educational methods. The data won't result in a master's thesis, doctoral dissertation, poster session, abstract, or other publication or presentation. The students or other individuals are informed that the activities are for instructional purposes and not actual research according to the federal definition.

f. ***Deidentified private information or biological specimens:*** When data or specimens collected for purposes other than the currently proposed project, and the Investigator does not have access to or cannot link the data/specimens back to an individual, either directly or indirectly, the project does not involve human subjects and therefore is not considered human subject research.

g. ***Research performed on individuals who have been declared legally dead and/or research involving the collection of tissues from deceased individuals.***

h. ***Public Health Surveillance Activities:*** Includes the collection and testing of information or biospecimens by a public health authority and limited to those activities necessary to allow a public health authority to identify, monitor, assess, or investigate potential public health signals, onsets of disease outbreaks, or conditions of public health importance.

i. ***Collection and analysis of information, biospecimens, or records by or for a criminal justice agency for activities authorized by law or court order solely for criminal justice or criminal investigative purposes.***

j. ***Authorized operational activities (as determined by the relevant federal agency) in support of intelligence, homeland security, defense, or other national security missions.***

5. **Completing an CLICK IRB Submission or Consulting the RSRB Office**
Investigators proposing new projects that might meet the federal and institutional criteria for human subject research, as defined above, or required by a funding agency to obtain documentation of an IRB determination, should complete an application through the RSRB online review system to receive an RSRB review determination. For additional information, see **Preparing Your RSRB Submission**.
Researchers may also consult the RSRB to determine whether a project qualifies as human subject research, and therefore requires IRB review. The RSRB staff may be able to address inquiries by phone;

however, staff might need to provide written materials and/or might need to discuss the proposal at a face-to-face or Zoom meeting.

Note: If a funding agency requires documentation of an IRB determination, complete the RSRB online application **(CLICK IRB)** and an RSRB notification will be generated for your records.

6. **RSRB Determination of Review Level**
   RSRB staff may request additional information from the Investigator or study staff in order to ensure an appropriate determination is made as to whether the activity involves human subject research. At any point during the review process, RSRB staff may determine the activity qualifies as human subject research, in which case additional reviews will be applied to determine whether the activity qualifies under an exemption determination as defined by the federal regulations (see ***Guideline for Determining Exempt Research***), or that the research activity needs to be considered for additional RSRB review (e.g., expedited review – see ***Guideline for Expedited Review***).

7. **RSRB Confirmation/Notification of Review Determination**
   Upon RSRB review of the activity (e.g., through the online application), the Investigator will be notified of the review determination.

   Note: Activities that receive a "Not Human Subjects Research" determination (i.e., activity does not involve humans or is not research according to the respective regulatory definitions) are not under the oversight of the RSRB. Therefore, such activities, and personnel conducting those activities, are under the oversight and responsibility of the respective department or school, and other relevant Institutional policies and regulations.