Exempt Review and Limited IRB Review

What is exempt review?

Some minimal risk human subjects research may be exempt. 'Exempt' does not always mean a submission is exempt from all the requirements of 45 CFR 46. The research is still considered human subjects research, but must fit the description of an exempt category and not include nonexempt research activities. Some exempt categories (e.g. categories 7 and 8) identify specific criteria that must be met (e.g. limited IRB review, broad consent) as a condition of being exempt from other regulatory requirements. Research activities involving human subjects that are exempt from the federal requirements are identified in the federal regulations at 45CFR46.101(b)(1)-(6).

The IRB may not create new categories of exempt research. The Human Protections Administrator (HPA) will determine if a research protocol meets the qualifications for exempt review upon initial submission:

- The research activity presents no more than minimal risk to participants
- The research fits into one or more of the exempt categories described below

The IRB Chair will verify this qualification upon review of the study and will determine which of the categories the protocol satisfies in order to obtain exempt status. If the IRB Chair has a conflict of interest in reviewing the protocol, the IRB Vice-Chair will conduct the review. Investigators do not have the authority to make an independent determination that research involving human subjects is exempt and must contact the IRB concerning the status of proposed research or changes in ongoing research.

Submitting a study for exempt review

All studies, regardless of the type of review, should be submitted using an Initial Study Submission Form with the appropriate study materials included, as outlined in the research submission requirements. Submission of a signed CV and completion certificates for CITI training by investigators are not required for exempt studies.

Review of exempt studies

Requests for exemption must be approved prior to initiation of the research or contact with human subjects. The initial study should be submitted to the HPA, who will forward the request for Research and Development Committee (R&D) review, and then to the IRB Chair. If there is a conflict of interest with the IRB Chair performing the review, the study will be reviewed by the IRB Vice-Chair. The IRB Chair will review the investigator's request for exemption within two weeks after receiving the R&D review report and the investigator will be notified of the determination in writing. The IRB Chair may also request additional information. If the

submitted proposal is an activity in a multi-institution project, it will not qualify for an exemption unless the overall project qualifies for an exemption.

The IRB Chair (or Vice Chair) will review the exempt study to determine that it meets ethical standards:

- The research involves no more than minimal risk
- The selection of subjects is equitable
- If private health information is recorded, there are provisions for confidentiality
- If a consent form is required, all elements are satisfactory:
    - That the activity involves research
    - A description of the study procedures
    - A statement that participation is voluntary
    - Contact information for the study team
    - Adequate provisions to maintain privacy and confidentiality

Exempt review notification

The investigator will be notified in writing of any request for additional information and/or the outcome of the review. If the proposed research activities do not meet the criteria for exemption, the IRB Chair will convey to the investigator in writing any additional information and the proper category for review (expedited or full board). If the IRB Chair approves the exemption request, IRB members will be notified of the approved review on the next IRB meeting agenda. Once a proposal has been determined to qualify for exempt status by the IRB Chair, the proposal does not need to be periodically reviewed by the IRB; however, an annual status inquiry from by the Woman's Hospital Research Center staff will be sent to the investigator.

Revisions to exempt studies

All changes that are made to the approved exempted proposal must be submitted for review by the IRB prior to implementation. Some changes to research of an approved exempted proposal may require that the investigator to submit an application for either (i) expedited review, or (ii) full board review. Examples of changes that qualify for either expedited or full board IRB review are listed in the Revisions and Amendments to Approved Research Studies policy.

Limited IRB Review

Exempt review may also be used when conducting limited IRB review as required by the exemptions 2, 3, 7, and 8 at 45CFR46.014, when the research is minimal risk and eligible for one of these four categories of exempt review. The ethical standards for exempt studies will apply to exempt studies reviewed with limited IRB review. The IRB Chair or other delegated IRB member reviewer conducting limited IRB review has the discretion to refer the limited IRB review to the full board, but may not disapprove the study. The IRB retains the authority to

suspend or terminate approval of research with limited IRB review. As with all research approved under the exempt review process, studies approved under exempt categories 2, 3, 7, or 8 do not require continuing review. Note: Woman's IRB does not allow exempt categories 7 and 8 at this time.

For submission of research eligible for limited IRB review (fitting categories 2, 3, 7, and 8), the investigator should submit:

- An Initial Study submission form
- Study protocol
- Consent form (if applicable)
- Any other associated study materials (recruitment materials, advertisements, etc)

Applicability of Exemptions to Subparts B, C, and D of 45CFR46

Subpart B (Additional Protections for pregnant women, human fetuses, neonates of uncertain viability, or nonviable neonates):

All exemptions in 45CFR46.104 may be applied to research conducted under subpart B if the exemption criteria are met.

Subpart D: (Additional Protections for Children Involved as Subjects in Research):

Exemptions 1 and 4 - 8 may be applied under subpart D if the exemption criteria are met. In category 2, educational tests and observation of public behavior may only be exempt when children are participants if the investigators do not participate in the activities being observed. Category 2, option 3, cannot apply to research in which children are participants.

CFR SUBPARTS IN EXEMPT RESEARCH		
Subpart B	Pregnant women, fetuses, neonates	eligible for exemption under all 8 categories
Subpart D	Children	Children allowed in exemption categories 1,4,5,6,7, & 8; Limitations/exclusion of children in category 2 & 3

Exempt research and FDA regulations

Per FDA regulations, emergency use of a test article, provided that such use is reported to the IRB within five working days, is exempt from IRB review. Any subsequent use of the test article is subject to IRB review. Exempt research under FDA regulations is explained per category of exemption below.

Categories of research eligible for exempt review

A chart summary follows these descriptions.

Research is exempt from review by the IRB if all research activities belong in one or more of the following eight categories:

1. Research conducted in established or commonly accepted educational setting, involving normal educational practices that are not likely to adversely impact students' opportunity to learn required educational content or assessment of educators who provide instruction, such as the following: a. research on regular and special education instructional strategies, or b. research on the effectiveness of or comparison among instructional techniques, curricula or classroom management methods.

This exemption is not allowed if the research is regulated by the FDA.

2. Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures, or uninfluenced/un-manipulated observation of public behavior (including visual or auditory recording), if at least one of three criteria are met:

a. Information obtained is recorded in such a manner that the identity of the human subjects cannot be readily ascertained, directly or indirectly, through identifiers linked to the subjects;

This exemption is not available for research involving children for surveys and interviews. The exemption can apply to children for educational tests or observations of public behavior when the investigators do not participate in the activities being observed.

b. any disclosure of the human subjects' responses outside the research would not reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, educational advancement, or reputation;

This exemption is not available for research involving children for surveys and interviews. The exemption can apply to children for educational tests or observations of public behavior when the investigators do not participate in the activities being observed.

c. the information obtained is recorded by the investigator in such a manner that the identity of human subjects can readily be ascertained, directly or through identifiers linked to the subjects, and an **IRB conducts a limited review** to make the determination required by 45CFR46.111(a)(7) (which relates to adequate provisions for protecting privacy and maintaining confidentiality of identifiable data) AND the research is not subject to subpart D (research with children).

This exemption is not allowed if the research is regulated by the FDA.

3. Research involving benign behavioral interventions in conjunction with the collection of information from adult subjects through verbal or written responses (including data entry) or audiovisual recording if the subject prospectively agrees to the intervention and information collection and at least one of the following criteria is met:

a. The information obtained is recorded by the investigator in such a manner that the identity of the human subjects cannot readily be ascertained directly or through identifiers linked to the subjects, OR

b. Any disclosure of the subjects' responses outside the research would not reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, educational advancement, or reputation; OR

c. The information obtained is recorded by the investigator in such a manner that the identity of the human subjects can readily be ascertained directly or through identifiers linked to the subjects, and an IRB conducts a limited IRB review to make the determination required by 45CFR46.111(a)(7) (which relates to adequate provisions for protecting privacy and maintaining confidentiality of identifiable data)

"Benign behavioral interventions" are defined as being "brief in duration, harmless, painless, not physically invasive, not likely to have a significant adverse lasting impact on the subject, and the investigator has no reason to think the subjects will find the interventions offensive or embarrassing (45CFR46.104)."

This category includes authorized deception research (45CFR46.104(d)(3)(ii), if the subject authorizes deception through a prospective agreement to participate in research in which the subject will be informed the he or she will be unaware or misled regarding the nature or purpose of the research.

This exemption is not allowed if the research is regulated by the FDA.

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

a. The identifiable private information or identifiable biospecimens are publicly available, OR

b. The information, including information about biospecimens, is recorded by the investigator in such a way that the identity of the subjects cannot readily be ascertained directly or through identifiers linked to the subjects, and the investigator does not contact subjects, and investigator will not re-identify subjects, OR

c. The research involves only information collection and analysis involving the investigators' use of identifiable health information when that use is regulated under HIPAA (i. e., the use is

regulated for purposes of "health care operations" or "research" or for "public health activities and purposes" as those terms are defined at 45CFR46 part 164), OR

d. The research is conducted by or on behalf of a federal department or agency using government-generated or government-collected information obtained for non-research activities, if the research generates identifiable private information that is or will be maintained on information technology that is subject to and in compliance with certain federal statutes (section 208(b) of the E-Government Act of 202, 44 UC 350, or Privacy Act of 1974, 5 US 552a, and the information was collected subject to the Paperwork Reduction Act of 1995, 44 USC 3501).

This category does not apply to primary collection of information or biospecimens and does not apply to research regulated by FDA. There is no requirement that the information or biospecimens exist at the time of the beginning of the study. There is no consent requirement.

5. Evaluation of public benefit service programs

Research and demonstration projects that are conducted or supported by a federal department or agency, or otherwise subject to the approval of department or agency heads (or the approval of the heads of bureaus or other subordinate agencies that have been delegated authority to conduct the research and demonstration projects), and that are designed to study, evaluate, improve, or otherwise examine public benefit or service programs, including Redline of Unofficial Final Revised Common Rule (January 18, 2017) Against Health and Human Services Common Rule at 45 C.F.R. Part 46, Subpart A 15 procedures for obtaining benefits or services under those programs, possible changes in or alternatives to those programs or procedures, or possible changes in methods or levels of payment for benefits or services under those programs.

The research must be conducted pursuant to a specific statutory authority of the US federal government. There should be no statutory requirement that an IRB review the research.

Such projects include, but are not limited to internal studies by Federal employees, and studies under contracts or consulting arrangements, cooperative agreements, or grants. Exempt projects also include waivers of otherwise mandatory requirements using authorities such as sections 1115 and 1115A of the Social Security Act, as amended. (i) Each Federal department or agency conducting or supporting the research and demonstration projects must establish, on a publicly accessible Federal website or in such other manner as the department or agency head may determine, a list of the research and demonstration projects that the Federal department or agency conducts or supports under this provision. The research or demonstration project must be published on this list prior to commencing the research involving human subjects.

The research may not involve any significant physical invasion or intrusions of privacy and this category does not apply to research regulated by FDA.

6. Taste and food quality evaluation and consumer acceptance studies if: a. wholesome foods without additives are consumed; OR

b. if a food is consumed that contains a food ingredient at or below the level found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe by the FDA or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the United States Department of Agriculture.

FDA-regulated research is allowed in this category.

Categories 7 and 8

Woman's IRB does not allow exempt categories 7 or 8 to be implemented at this time. Research plans for storing and maintaining identifiable private information and/or specimens for secondary research with broad consent use or research plans to for secondary research that involves the use of identifiable private information or identifiable biospecimens that have been stored or maintained for research use should be reviewed by the full board.

7. Storing and Maintaining Identifiable Private Information and/or Specimens for Secondary Research with Broad Consent Use

Limited IRB is required.

Broad consent for storage, maintenance, and secondary research use of identifiable private information or identifiable biospecimens is obtained in accordance with the requirements of 45CFR46.116(a)(1)-(4), and (a)(6), and (d); Broad consent is appropriately documented or waiver of documentation is appropriate, in accordance with 45CFR46.117; and If a change is made for research purposes in the way the identifiable private information or identifiable biospecimens are stored or maintained, adequate provisions must be in place to protect the privacy of subjects and to maintain the confidentiality of data.

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

This category does not apply to research regulated by the FDA.

8. Secondary research that involves the use of identifiable private information or identifiable biospecimens that have been stored or maintained for research use, provided the following criteria are met:

a. Broad consent for storage, maintenance, and secondary research use of the identifiable private information or identifiable biospecimens was obtained in accordance with 45CFR46.116(a)(1-4), (a)(6), and (d);

b. Documentation of informed consent or waiver of documentation of consent was obtained in accordance with 45CFR46.117

c. An IRB conducts a limited IRB review to make the determination required by 45CFR46.111(a)(7), and to make the determination that the research to be conducted is within the scope of the broad consent; AND

d. The investigator does not include returning individual research results to subjects as part of the study plan; however, it is permissible under the exemption to return individual results when required by law regardless of whether or not such return is described in the study plan.

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

This category does not apply to research regulated by the FDA.

If a change will be made for research purposes in the way the identifiable private information or identifiable biospecimens are stored or maintained, the IRB must determine that when appropriate, adequate provisions are in place to protect the privacy of subjects and to maintain the confidentiality of data. For example, if information or biospecimens are moved from one electronic or physical storage location to another due to considerations related to research plans; if information or biospecimens will be stored for longer than they otherwise would have been for the original purpose; if information or biospecimens are placed in a research registry or repository created to serve as a resource for investigators; or investigators are given electronic or physical access to the information or biospecimens, then the IRB should find, before those changes go into effect, whether there are adequate provisions to protect the privacy of subjects and maintain the confidentiality of data.

Summary of Exempt Categories and Conditions/Allowances

Category	Description	Limited IRB Review	Conditions/Allowances
1	**Research conducted in established or commonly accepted educational setting**	N/A	• Not likely to adversely impact students' opportunity to learn required educational content or assessment of educators • No FDA-regulated studies
2	**Research involving the use of educational tests (cognitive,**	N/A	• No FDA-regulated studies

	diagnostic, aptitude, achievement), survey procedures, interview procedures, or uninfluenced/un-manipulated observation of public behavior (including visual or auditory recording), if <u>ONE</u> of the following criteria is met:		
	a). Information obtained is recorded in such a manner that the identity of the human subjects cannot be readily ascertained, directly or indirectly, through identifiers linked to the subjects, OR	N/A	• Surveys and interviews: NO CHILDREN • limited to educational tests or observation of public behavior when the investigators do not participate in the activities being observed: MAY INCLUDE CHILDREN
	b). Any disclosure of responses outside of the research would not reasonably place the subject at risk (criminal, civil liability, financial, employability, educational advancement, or reputation), OR	N/A	• Surveys and interviews: NO CHILDREN • limited to educational tests or observation of public behavior when the investigators do not participate in the activities being observed: MAY INCLUDE CHILDREN
	c). Information is recorded with identifiers and the IRB conducts Limited Review	YES	• NO children
3	**Research involving benign behavioral interventions in conjunction with the collection of information from adult subjects through verbal or written responses (including data entry) or audiovisual recording if the subject prospectively agrees to the intervention and information collection and at least <u>ONE</u> of the following criteria is met:**	N/A	• NO children • No FDA-regulated studies • Must meet the definition of Benign Behavioral Intervention • includes authorized deception research (45CFR46.104) (d)(3)(ii), if the subject authorizes deception through a prospective agreement
	a). The information obtained is recorded by the investigator in such a manner that the identity of the	N/A	

	human subjects cannot readily be ascertained directly or through identifiers linked to the subjects, OR		
	b). Any disclosure of the subjects' responses outside the research would not reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, educational advancement, or reputation; OR	N/A	
	c). The information obtained is recorded by the investigator in such a manner that the identity of the human subjects can readily be ascertained directly or through identifiers linked to the subjects, and an IRB conducts a limited IRB review	YES	
4	**Secondary research uses of identifiable private information or identifiable biospecimens for which consent is not required, if at least one of the following criteria is met:**	N/A	• does not apply to primary collection of information or biospecimens • No FDA-regulated studies • no requirement that the information or biospecimens exist at the beginning of the study. • no consent requirement
	a). The identifiable private information or identifiable biospecimens are publicly available, OR	N/A	
	b). The information, including information about biospecimens, is recorded by the investigator in such a way that the identity of the subjects cannot readily be ascertained directly or through identifiers linked to the subjects,	N/A	

	and the investigator does not contact subjects, and investigator will not re-identify subjects, OR		
	c). The research involves only information collection and analysis involving the investigators' use of identifiable health information when that use is regulated under HIPAA (i. e., the use is regulated for purposes of "health care operations" or "research" or for "public health activities and purposes" as those terms are defined at 45CFR46 part 164), OR	N/A	• for data only (not biospecimens) • HIPAA still applies; authorization or waiver required • All study team members are from covered entities • No PHI is disclosed to non-covered entities
	d). The research is conducted by or on behalf of a federal department or agency using government-generated or government-collected information obtained for non-research activities, if the research generates identifiable private information that is or will be maintained on information technology that is subject to and in compliance with certain federal statutes	N/A	• Subject to federal privacy laws if research generates identifiable information
5	**Research and demonstration projects that are conducted or supported by a federal department or agency**	N/A	• Must be posted on a federal Web site • may not involve any significant physical invasion or intrusions of privacy • No FDA-regulated studies
6	**Taste and Food Quality**	N/A	• FDA-regulated research allowed
7	**Storing and Maintaining Identifiable Private Information and/or Specimens for Secondary Research with Broad Consent Use**	YES	• Category is not allowed at Woman's at this time
8	**Secondary research that involves the use of identifiable private information or identifiable biospecimens that have been stored or maintained for research**	YES	• Category is not allowed at Woman's at this time

	use		