15.0 Research Funded by the Department of Defense

The following considerations apply to human subjects research supported by a Department of Defense component through a contract, grant, or other arrangement.

A Department of Defense component is a military department, defense agency, DOD field activity, or organization within the Office of the Secretary of Defense. DOD components include but may not be limited to the following: Department of Defense, Army, National Guard, Navy, Air Force, Marines, and U.S. Army Corps of Engineers.

15.1 Definitions as Defined by DOD

DOD subjects: This includes any person captured, detained, held, or otherwise under the control of DOD personnel (military, civilian, or contractor employee). Such persons include: Enemy Combatant, Lawful Enemy Combatant, Unlawful Enemy Combatant, Retained Person, and Civilian Internee. Such persons do not include personnel of the DOD being held for law enforcement purposes. It does not include persons being held primarily for law enforcement purposes, except where the United States is the occupying power. This prohibition does not apply to activities covered by investigational new drug or investigational device provisions. This prohibition does not apply to activities covered by investigational new drug or investigational device provisions the purpose of diagnosis or treatment of a medical condition in a patient. Such treatment (e.g., an investigational new drug) may be offered to detainees with the detainees' informed consent when the medical products are subject to FDA regulations investigational new drugs or investigational medical devices, and only when the same product would be offered to members of the U.S. Military Services in the same location for the same medical condition and only when consistent with established medical practice involving investigational drugs and devices.

DOD Research Involving Interventions or Interactions with Subjects: Research involving a human being as a research subject is an activity, for research purposes, where there is an intervention or interaction with a living individual for the primary purpose of obtaining data regarding the effect of the intervention or interaction. Research involving a human being as a research subject is a subset of research involving human subjects. This definition does not include exempt research involving human subjects.

DOD Research Monitor: The research monitor may be identified by an Investigator or appointed by an IRB or IO for research involving human subjects determined to involve minimal risk. There may be more than one research monitor (e.g., if different skills or experiences are necessary). The monitor may be an ombudsman or a member of the data safety monitoring board. The Heads of the OSD and DOD Components may waive

the requirement to have a research monitor on a case-by-case basis when the inclusion of a research monitor is not necessary to provide additional protections for human subjects. This waiver authority may be delegated to a DOD official, as described in the Component's HRPP management plan, but not at or below the position of the institution's DOD IO.

DOD Ombudsman: independent, impartial resource that provides DOD employees worldwide with a safe harbor for informal and confidential dispute resolution.

DOD Minimal Risk: Minimal risk is based on the phrase "ordinarily encountered in daily life or during the performance of routine physical or physiological examination or tests"; minimal risk shall not be interpreted to include the inherent risks certain categories of human subjects face in their everyday life. For example, the risks imposed in research involving human subjects focused on a special population should not be evaluated against the inherent risks encountered in their work environment (e.g., emergency responder, pilot, soldier in a combat zone) or having a medical condition (e.g., frequent medical tests or constant pain.)

The definition of minimal risk in 32 CFR 219 does not include the inherent occupational risks that certain participants face in their everyday life, such as those:

- Encountered by Service members, law enforcement, or first responders while on duty.
- Resulting from or associated with high-risk behaviors or pursuits.
- Experienced by individuals whose medical conditions involve frequent tests or constant pain.

15.2 Policy

15.2.1 Criteria for Approval Specific to DOD

- When appropriate, research protocols must be reviewed and approved by the IRB prior to the Department of Defense approval. Consult with the Department of Defense funding component to see whether this is a requirement.
- Service members must follow their command policies regarding the requirement to obtain command permission to participate in research involving human subjects while on-duty or off-duty.
- There may be specific educational requirements or certification required by DOD above the educational requirements required by the institution. It is the Principal Investigator's responsibility to ensure that research staff has completed all appropriate educational requirements as mandated by DOD policy. The Department of Defense component may evaluate the education policies to ensure

the personnel are qualified to perform the research, based on the complexity and risk of the research.

- The disclosure regarding provisions for research-related injury follows the requirements of the DOD component. The PI is responsible for informing the IRB, in writing, if there are any additional requirements from the DOD Component regarding the provision of care in the case of a research-related injury.
- When conducting multisite research, a formal agreement is required to specify the roles and responsibilities of each party including a Statement of Work (SOW) and specific assignment of responsibilities.
- Surveys performed on Department of Defense personnel must be submitted, reviewed, and approved by the Department of Defense after the research protocol is reviewed and approved by the IRB. When a survey crosses DoD Components, additional review is required.
- If consent is to be obtained from the research subjects' legal representative, the research must intend to benefit the individual participant.
- The determination that research is intended to be beneficial to the individual research subject must be made by an IRB.
- When Investigators are following ICH-GCP (E6) guidelines, Investigators and research staff must provide all the disclosures and follow the requirements pertaining to consent covered by ICH-GCP (E6).
- The Investigator and research staff are aware of the specific DOD requirements and have been educated about these requirements.
- The research does NOT involve prisoners of war or detainees as subjects.
- The research does NOT involve classified research.
- The research does NOT involve the testing of chemical or biological agents.
- If an IRB at a non-DoD institution reviews DoD-supported research, the IRB must consider the scientific merit of the research, including consideration of feasibility of study completion.
- The IRB may rely on outside experts to provide an evaluation of the scientific merit.
- If the research involves DoD-affiliated personnel as participants, in addition to the basic and required consent disclosures, consent documents must include:
    - If the research involves risks to their fitness for duty (e.g., health, availability to perform job, data breach), the informed consent document (ICD) must inform DoD- affiliated personnel about these risks and that they should seek command or Component guidance before participating.
    - If applicable, a statement of potential risks for the revocation of clearance, credentials, or other privileged access or duty.

- Consent documents for all DoD-conducted and DoD- supported research must include:
    - A statement that the DoD or a DoD organization is funding the study.
    - A statement that representatives of the DoD are authorized to review research records.
- For greater than minimal risk research, consent documents must include the disclosure that participants may, for the duration of the study, be eligible for health care services for research-related injuries at a military treatment facility, and this eligibility for health care services extends beyond participants' participation in the study to such time after the study has ended.
- Written materials must document how institutions will care for participants with research-related injuries, including injuries that are the direct result of activities performed by DoD- affiliated personnel in studies that are collaborative with a non-DoD institution.
- For greater than minimal risk research involving DoD-personnel, when recruitment and consent occurs in a group setting, the IRB must appoint an ombudsperson. The ombudsperson:
- Must not have a conflict of interest with the research or be a part of the research team.
- Must be present during the HSR recruitment, monitoring that the recruitment and informed consent explain that participation is voluntary and that the information provided about the research is consistent with the IRB- approved script and materials, including digitally provided materials.
- Should be available to address DoD-affiliated personnel's concerns about participation.
- If the research involves a "human being as an experimental subject", as defined by DoDI 3216.02, and is supported by DoD-appropriated funds, informed consent must be obtained from the participant in advance, in accordance with 10 USC 980.
- If the participant is unable to provide informed consent and consent will be obtained in advance from the participant's legal representative, the research must be intended to benefit the individual participants.
- Civilian researchers attempting to access military volunteers should seek collaboration with a military researcher familiar with service-specific requirements.

15.2.1.1 The DoD Component

The DoD Component must conduct an appropriate administrative review of DoD-conducted and/or DoD-supported research involving human

participants if the research meets certain criteria. The DoD Component administrative review must be conducted before the research involving human participants can begin to ensure compliance with all applicable regulations and policies. DoD Component administrative reviews must be conducted when:

- Human participant's research is conducted in a foreign country, unless conducted by a DoD overseas institution, or only involves DoD-affiliated personnel who are US citizens. **PBRC does not do foreign research.**
- The research requires a waiver of informed consent pursuant to 10 USC 980, Subsection (b)
- The research is fetal research, as described in 42 USC 289g-289g-2. Large scale genomic data is collected from DoD-affiliated personnel.
- The research constitutes classified research involving human participants, as defined by DoDI 3216.02.
- The research is required to be approved by the DOHRP, in accordance with DoDI 3216.02.
- DoD institutions collaborating with non-DoD institutions may rely on a collaborating non-DoD institution's IRB if the following conditions are met:
    - Each institution engaged in non-exempt human participant research must have a current federal assurance of compliance.
    - The non-DoD institution's IRB is registered in accordance with 45 CFR 46, Subpart E.
    - The DoD institution, non-DoD institution, and the non-DoD institution's IRB have a written agreement defining the responsibilities and authorities of each organization in complying with all legal requirements. This agreement must specify that the non-DoD IRB will apply the DoD requirements specified in DoDI 3216.02.
    - If the research constitutes classified human participant research, the Component Office for Human Research Protections (COHRP), on behalf of the Component's Senior Designated Official, must approve the agreement to rely on the non-DoD institution's IRB.

15.2.2 DOD Criteria for Waiver of Consent

- If non-exempt research is supported by DoD-appropriated funds and involves experimental subjects as defined in DODI 3216.02, consent must be obtained in advance, in accordance with 10 USC 980.
    - An IRB may waive or alter some elements of informed consent for research involving human beings as experimental subjects, as long as it preserves the informed consent of the participant or the participant's legal representative (i.e., the consent indicates that participation in the research is voluntary and the participant/representative is informed of research risks).
- The DOHRP may waive the requirements for prospective consent for research involving human beings as experimental subjects when all of the following are met:
    - The research is necessary to advance the development of a medical product for the Military Services.
    - The research may directly benefit the individual experimental subject.
    - The research is conducted in compliance with all other applicable laws and regulations.

15.2.3 DOD Policy Regarding Payment for Research

- Employees of the Department of Defense (including temporary, part-time, and intermittent appointments) may not be able to legally accept payments to participate in research and should check with their supervisor before accepting such payments. Employees of the Department of Defense cannot be paid for conducting research while on active duty.
- Military personnel will not be paid for research conducted while on duty; however, the personnel can be compensated if involved in the research while not on duty.
- Although federal personnel participating as human subjects in DOD-conducted research while on duty may be compensated up to $50 for each blood draw for scientific and research purposes in connection with the care of any person entitled to treatment at government expense, this IRB allows no such compensation when compensation is otherwise prohibited.
- Military personnel can participate in research off-duty; however, they cannot be paid from federal funds for research conducted while off duty.

- Non-Federal persons may be compensated for research participation other than blood draws in a reasonable amount as approved by the IRB according to local prevailing rates and the nature of the research.

15.2.4 DOD Policy Regarding Recruitment

- Superiors will not influence the decisions of their subordinates regarding participation in research.
- Superiors will not be present at the time of recruitment and consent. When applicable, the superiors so excluded shall be afforded the opportunity to participate as human subjects in a separate recruitment session.
- When recruitment involves a percentage of a unit, an ombudsman, who is independent of both the proposed research as well as the unit must be present to monitor that the voluntary nature of the individual participants is adequately stressed and that the information provided about the research is adequate and correct.
- Research involving minimal risk: The IRB has discussed and determined whether to appoint an ombudsman based in part on the subject population, the consent process, and the recruitment strategy.
- Research involving greater than minimal risk: The IRB has appointed an ombudsman who is unassociated to the research and will be present during the recruitment to monitor that voluntary participation is clearly and adequately stressed and that information provided about the research is clear, adequate, and accurate. The ombudsman may also be the research monitor.
- DoD-affiliated personnel, military and civilian supervisors, officers, and others in the chain of command:
    - Are prohibited from influencing their subordinates to participate in research involving human participants.
    - Must not be present at any human participant recruitment sessions or during the consent process for DoD-affiliated personnel.
    - May participate in separate human participant research recruitment sessions.
- For greater than minimal risk research involving DoD-personnel, when recruitment and consent occurs in a group setting, the IRB must appoint an ombudsperson. The ombudsperson:
    - Must not have a conflict of interest with the research or be a part of the research team.
    - Must be present during the HSR recruitment, monitoring that the recruitment and informed consent explain that participation is voluntary and that the information provided about the research is consistent with the IRB- approved script and materials, including digitally provided materials.

- Should be available to address DoD-affiliated personnel's concerns about participation.

- In conducting or supporting clinical research, the Secretary of Defense shall ensure that:
  - Women who are members of the Armed Forces are included as participants in each project of such research.
  - Members of minority groups who are members of the Armed Forces are included as participants of such research.
  - The Secretary of Defense may waive these requirements regarding women and members of minority groups with respect to a project of clinical research if the Secretary determines that the inclusion, as participants in the project, of women and members of minority groups, respectively:
    - Is inappropriate with respect to the health of the participants,
    - Is inappropriate with respect to the purpose of the research, or
    - Is inappropriate under such other circumstances as the Secretary of Defense may designate.

15.2.5 DOD Research with impaired decision-making capacity individuals

- If the research involves interventions or interactions with individuals with impaired decision-making capacity, there must be an anticipated direct benefit to the subject.

15.2.6 DOD Research Involving Pregnant Women, Prisoners and Children

- Research involving pregnant women, prisoners, and children are subject to the DHHS Subparts B, C. and D.
  - Research involving pregnant women, prisoners, and children are subject to the DHHS Subparts B, C, and D, except where modified by DoDI 3216.02:
    - Research or experimentation may not be conducted, in the United States or in any other country, on a nonviable living human fetus ex utero or a living human fetus ex utero for whom viability has not been ascertained unless the research or experimentation:
      - May enhance the well-being or meet the health needs of the fetus or enhance the probability of its survival to viability; or
      - Will pose no added risk of suffering, injury, or death to the fetus and the purpose of the research or experimentation is the development of important biomedical knowledge

which cannot be obtained by other means.
    - The risk standard must be the same for fetuses which are intended to be aborted and fetuses which are intended to be carried to term.
- For human participant research that would not otherwise be approved but presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of pregnant women, fetuses, or neonates, DoD organizations must demonstrate to the senior designated official that the IRB has fulfilled its duties in accordance with Subpart B. Before human participant research activities may begin, the Senior Designated Official must receive explicit written approval from the DoD Office for Human Research Protections.
- When a previously enrolled human participant becomes a prisoner, and the protocol has not been reviewed and approved by the IRB in accordance with Subpart C, the key researcher must promptly notify the IRB.
    - For DoD-conducted research, the human protections director must notify the Component Office of Human Research Protections.
    - For DoD-supported research, the non-DoD organization must notify the DoD HRPO and other federal agencies.
    - The DOHRP must concur with the IRB before the participant can continue to participate while a prisoner.
- Service members and DoD-affiliated personnel are considered to be vulnerable to coercion and undue influence by the DoD due to the nature of the command structure of the organization. Therefore, additional protections for DoD- affiliated personnel are required, as follows:
    - If the research involves DoD-affiliated personnel as participants and if the research includes any risks to their fitness for duty (e.g., health, availability to perform job, data breach), the informed consent document must inform DoD-affiliated personnel about these risks and that they should seek command or Component guidance before participating.
    - If the research involves DoD-affiliated personnel, the key researcher must receive command or Component approval to execute the research.
    - Military and civilian supervisors, officers, and others in the chain of command are prohibited from influencing their subordinates to participate in research.
    - Military and civilian supervisors, officers, and others in the chain of command must not be present at any participant recruitment sessions or during the consent process for DoD-affiliated personnel. Excluded supervisors or those in the

chain of command may participate in separate recruitment sessions, if applicable.
- Service members and all Reserve Component and National Guard members in a federal duty status are considered to be adults. If a Service member, Reserve Component or National Guard member in federal duty status, student at a Service Academy, or trainee is under 18 years of age, the IRB must carefully consider the HSR recruitment process and the necessity of including such member as a human participant.
- In order to approve research involving DoD-affiliated personnel, the IRB or HRPO must determine whether the following requirements have been satisfied:
    - The consent documentation must include, if applicable, potential risks for revocation of clearance, credentials, or other privileged access or duty.

- For research involving recruitment of DoD-affiliated personnel in research determined to be greater than minimal risk, and when recruitment occurs in a group setting, the IRB must appoint an ombudsperson. The ombudsperson:
    - Must not have a conflict of interest with the research or be a part of the research team.
    - Must be present during the recruitment, monitoring that the recruitment and informed consent explain that participation is voluntary and that the information provided about the research is consistent with the IRB- approved script and materials, including digitally provided materials.
    - Should be available to address DoD-affiliated personnel's concerns about participation.
- Compensation to DoD-affiliated personnel for participation in research while on duty is prohibited in accordance with 5 USC, with particular reference to Subparts G and H, with some exceptions for purposes consistent with 24 USC 30.
- Research involving large-scale genomic data from DoD-affiliated personal requires additional protections:
    - The disclosure of DoD-affiliated personnel's genomic data may pose a risk to national security; accordingly, written materials must describe administrative, technical, and physical safeguards commensurate with risk, including the secondary use or sharing of de- identified data or specimens.
    - All research involving large-scale genomic data collected from DoD-affiliated personnel must have a certificate of confidentiality.
    - Research involving large-scale genomic data collected from DoD-affiliated personnel is subject to DoD Component

security review to ensure the adequacy of the proposed administrative, technical, and physical safeguards, including the secondary use or sharing of de-identified data or specimens.

15.2.6.1 DOD Research – Subpart B – Research with Pregnant Women and Fetuses

- For purposes of applying Subpart B, the phrase "biomedical knowledge" shall be replaced with "generalizable knowledge."
- The applicability of Subpart B is limited to research involving pregnant women as participants in research that is more than minimal risk and included interventions or invasive procedures to the woman or the fetus or involving fetuses or neonates as participants.
- Fetal research must comply with the US Code Title 42, Chapter 6A, Subchapter III, Part H, 289g.

15.2.6.2 DOD Research – Subpart D – Research with Children

- Research involving children cannot be exempt.

15.2.7 DOD Research Involving More Than Minimal Risk

15.2.7.1 DOD Research – Research Monitor

- A research monitor is not required. Researchers may remove the requirement for a research monitor from existing open studies through a modification approved by an IRB.

15.2.8 DOD Research – Non-U.S. Citizens

- If the research involves human subjects who are not U.S. citizens or personnel of the DOD, and is conducted outside the United States, its territories, and its possessions, the IRB will verify:

    - The permission of the host country has been obtained.
    - The laws, customs, and practices of the host country and the United States will be followed.
    - An ethics review by the host country, or local IRB with host country representation, will take place.

15.2.9 DOD Research – Non-Compliance

See the following regarding non-compliance for Department of Defense research:

- Records maintained that document compliance or non-compliance with Department of Defense requirements shall be made accessible for inspection and copying by representatives of the Department of Defense at reasonable times and in a reasonable manner as determined by the supporting DOD component.

15.2.10 DOD Research – Additional Reporting Requirements by Investigator to DOD

- The following shall be promptly reported (within 30 days) to the Department of Defense Human Research Protections Officer by the Investigator:
    - When significant changes to the research protocol are approved by the IRB.
    - Decreased benefit or increased risk to participants is greater than minimal risk research.
    - Addition of vulnerable populations as participants.
    - Addition of DoD-affiliated personnel as participants.
    - The results of the IRB continuing review.
    - Change of reviewing IRB.
    - When a previously enrolled human participant becomes pregnant, or when the researcher learns that a previously enrolled human participant is pregnant, and the protocol was not reviewed and approved by the IRB in accordance with Subpart B.
    - When a previously enrolled human participant becomes incarcerated, or when the researcher learns that a previously enrolled human participant is incarcerated, and the protocol was not reviewed and approved by the IRB in accordance with Subpart C.
    - A DoD-supported study's closure.
    - When the organization is notified by any Federal department, agency or national organization that any part of the HRPP is under investigation for cause involving a DOD-supported research protocol.
    - Any unanticipated problems involving risks to participants or others for any DoD-supported research must be promptly (no longer than within five days) reported to the DoD Office for Human Research Protections.

15.2.11 DOD Research – Additional Reporting Requirements by IRB

- The following must be promptly reported to the Directorate of Human Research Protections (DOHRP):

- Reports of audits of DoD-conducted or DoD-supported human participant research by another federal or state agency, official governing body of a Native American or Alaskan native tribe, other official entity, or foreign government, within 5 business days of discovering that such audit reports exist.
- Allegations of serious or continuing noncompliance related to HSR that are substantiated by investigation, and subsequent actions taken based on the findings, within five business days of completion of the report.
- Unanticipated problems involving risks to human participants or others and subsequent actions taken based on the findings, within five business days of completion of the report.
- Any suspension or termination of DoD-supported research must be promptly (no longer than within five days) reported to the DoD Office for Human Research Protections (DOHRP).
- Substantiated allegations related to classified HSR must be reported immediately (less than five days) to the DOHRP.

15.2.12 DOD Research – Certificate of Confidentiality

- When following DoD requirements:
    - Data or information acquired by the DoD Component under a pledge of confidentiality for exclusively statistical purposes must be used exclusively for statistical purposes and may not be disclosed in identifiable form for any other purpose, except with the informed consent of the respondent.
    - All studies involving large scale genomic data collected on/from DoD-affiliated personnel will apply an HHS Certificate of Confidentiality.