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Expedited Review
Office for Human Research Protections
The Tower Building
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To Whom It May Concern:

On behalf of the American Historical Association (AHA), I thank the Office for Human Research Protections for inviting comments on “Categories of Research That May Be Reviewed by the Institutional Review Board Through an Expedited Review Procedure” [Federal Register: October 26, 2007 (Volume 72, Number 207)]. The AHA is the primary professional association for historians in the United States, incorporated by Congress in 1889 for the promotion of historical studies and the dissemination of historical research. In that capacity, we write on behalf of the 15,000 members and 3,000 institutions we represent to express our concern about the changes proposed in expedited review category 5, and ask that “oral history” be removed from the language in expedited review category 7.

We approach the proposed changes with deep concern. Not because we doubt the good intentions of the staff at OHRP or the members of Secretary's Advisory Committee on Human Research Protections who have offered this proposal, but based on our long and unhappy experience with the way these policies have been implemented. In that light, we find the proposed changes to category 5 deeply troubling for the discipline of history and fear that, if implemented, the changes would severely limit our ability to collect information about the present and recent past for historians in the future.

As we read the proposal, the change to category 5 could potentially bring the collection of oral histories as well as web-based archival collection projects such as George Mason University's September 11 Digital Archive (online at <http://911digitalarchive.org>) more firmly under IRB purview. The current language, as we read it (and judging from discussions with scholars in our field, as some IRB's understand it), leaves an opening to view such projects as exempt. The new language appears to remove that exemption by failing to include category (c)—“Research involving materials (data, documents, records,

or specimens) that...will be collected solely for nonresearch purposes”—among the items that may be exempt from the regulations for the protection of human subjects. At the same time, this also seems to invite further scrutiny and oversight over the use of materials gathered by other scholars and projects, and placed on deposit in an oral history archives. Within our discipline, the research/nonresearch distinction that OHRP makes in this category is not appropriate to oral history. The proposed change also seems to contradict current regulations, insofar as they state that “research involving the collection or study of existing data” is exempt from review (paragraph 46.101 (b) (4)).

In 1998, the AHA joined a number of other historical organizations in proposing the inclusion of oral history among the expedited categories. After seeing how the addition of oral history has been implemented in practice, we now deeply regret that recommendation and ask that it be reversed. In practice, many oral historians have discovered that IRBs are typically comprised of faculty with no expertise in oral history methods, and who insist on scrutinizing oral history projects using standard scientific protocols. As a result, oral historians report that IRBs are applying rigid research criteria that are fundamentally at odds with oral history practices—insisting on specific sets of questions, for instance (and thereby suppressing the opportunity for dialogue, which is a vital part of the interview process), and occasionally insisting on the confidentiality of the sources (even though the interviewee’s particular knowledge is often the purpose of the interview and precisely why it would be of value to current and future historians). This is made even more troubling by the application of vague and inconsistent notions about the potential harm that can be done by oral history interviews. In some cases the IRBs suggest it is the trauma of reliving a bad experience, in others, the potential personal or legal jeopardy to interviewees or their surviving relatives. Over the past seven years, the AHA has made a number of efforts to clarify or reverse the policy of using IRBs to regulate oral history, first by working with OHRP to clarify their policy, and then by encouraging history departments to engage the IRBs at their home institutions and clarify these policies at the local level. Despite all these efforts, an AHA staff survey in 2006 found a patchwork of institutional policies that reflect substantial problems in the way federal policies are translated into practice at the college and university level.¹

As implemented by many institutional review boards, expedited review of oral history and elements of the Common Rule conflict with the essential canons of our practice. At times information in an interview, if made public, could indeed, in the language of 45 CFR 46, “reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects’ financial standing, employability, or reputation.” Yet historians’ deepest responsibility is to follow the evidence where it leads, to discern and make sense of the past in all its complexity; not to protect individuals from the possible

¹ Our previous studies were reported in Robert B. Townsend et al., “Oral History and Review Boards: Little Gain and More Pain,” *Perspectives* (February 2006) available online at <http://www.historians.org/perspectives/issues/2006/0602/0602new1.cfm>. and Robert B. Townsend and Mériam Belli, “Oral History and IRBs: Caution Urged as Rule Interpretations Vary Widely,” *Perspectives* (December 2004) available online at <http://www.historians.org/Perspectives/Issues/2004/0412/0412new4.cfm>.

repercussions of past mistakes or misdeeds. In this we are akin to journalists and unlike medical professionals, who are indeed enjoined to do no harm.

We believe that “oral history” should therefore be removed from category 7 and explicitly exempted from IRB review. Given our research into the way these policies are infringing on historical research that poses minimal risk of harm, we side with the recent recommendation from the American Association of University Professors, that “research on autonomous adults whose methodology consists entirely in collecting data by surveys, conducting interviews, or observing behavior in public places, be exempt from the requirement of IRB review—straightforwardly exempt, with no provisos, and no requirement of IRB approval of the exemption.”² However well meaning and well intentioned the original decision to include oral history in Category 7, in practice, the application of these rules to oral history are not appropriate and fundamentally impede and abridge scholarly work in our discipline. The proposed changes to category 5 seem to increase the likelihood that the harm being done to current members of our profession will be extended to future generations, as the simple gathering and use of such materials will become more circumscribed and difficult.

We thank you for inviting comments on the proposed revisions, and are available for any further comments or clarifications of these remarks.

Sincerely,

Arnita Jones

Executive Director

² The report from the AAUP, “Research on Human Subjects: Academic Freedom and the Institutional Review Board (2006)” is available online at <http://www.aaup.org/AAUP/comm/rep/A/humansubs.htm>.