

**TO: Program offices administering grant competitions**

**RE: Allowable uses of the generic application package**

**DATE: September 2020**

This memo updates and supersedes the May 15, 2019 memo regarding allowable uses of the generic application package. The Department's generic application package can be used in a wide variety of Department discretionary grant programs. This document summarizes the situations when a program office may and may not use the generic application package. OGC and the Strategic Collections and Clearance office have reviewed and approved the information in this document, and the Strategic Collections and Clearance office is updating the internal "Guide to the Information Collection Clearance Process" to reflect the information in this document. If a program office has questions about a particular situation, they should consult with the Strategic Collections and Clearance office and their program attorney.

A. Application package using only forms that have previously been approved by OMB and selection criteria from the list below: If an application package is using only standard Department- or Federal-wide grant applications forms that have already been approved by OMB, and selection criteria from the following sources (including combinations of the following sources),<sup>1</sup> the program office may use the generic application package:

1. Selection criteria from 34 CFR 75.210
2. Selection criteria based on statutory provisions, as authorized under 34 CFR 75.209
  - Example of a selection criterion based on a statutorily required use of funds (statutory language is underlined (Section 6133(e)(1)(B) of the Elementary and Secondary Education Act of 1965): The Secretary will evaluate the quality of the applicant's plan to provide professional development for teachers and, as appropriate, staff and administrators to strengthen the overall language and academic goals of the school that will be served by the grant program.
  - This is an example of a selection criterion based on a statutory allowable use, but under 34 CFR 75.209, a program could create selection criteria from other statutory language including application requirements, program purposes, or other pre-award and post-award conditions.

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<sup>1</sup> In general, an application package that uses application requirements would or would not be able to use the generic clearance process under the same conditions as set out for application packages using various types of selection criteria. Whether the use of application requirements would implicate the Paperwork Reduction Act (and, therefore, the generic clearance process) needs to be determined on a case-by-case basis that considers if the application requirements introduce any new, substantive elements that have not been previously approved by OMB.

3. Selection criteria based on regulatory provisions and there is an ICR accompanying that regulatory provision that has undergone notice and comment, as authorized under 34 CFR 75.209
  - Example of a selection criterion based on a requirement from the CFR (regulatory requirement is underlined (34 CFR 263.11(a)): The Secretary will consider the quality of the applicant's plan to, prior to providing funds or services to a participant, conduct a payback meeting with the participant to explain the costs of training and payback responsibilities following the training.
  - This is an example of a selection criterion based on a regulatory allowable use of funds, but under 34 CFR 75.209, a program could create selection criteria from other regulatory language including application requirements, program purposes, or other pre-award and post-award conditions.
  - NOTE: The generic process is available for application packages using recently established regulatory provisions<sup>2</sup> that are the basis of the selection criteria only where there was a separate ICR accompanying the recently established regulations that was submitted to OMB simultaneously with the proposed rule and the ICR has undergone its own notice and comment and OMB has approved the ICR before it is used as a selection criterion.
  
4. Selection criteria from regulatory provisions and the accompanying ICR has undergone notice and comment
  - Example: 34 CFR 263.6(a): (a) *Need for project*. In determining the need for the proposed project, the Secretary considers one or more of the following:  
The extent to which the proposed project will prepare personnel in specific fields in which shortages have been demonstrated through a job market analysis.
  - Note that most programs do not have regulatory provisions (i.e., provisions in the CFR) containing selection criteria.
  - NOTE: The generic process is available for application packages using recently established selection criteria from regulatory provisions only where the separate ICR accompanying the recently established regulations has been submitted to OMB simultaneously with the proposed rule and the ICR has undergone its own notice and comment and OMB has approved the ICR before it is used as a selection criterion.
  
5. Selection criteria that have been developed through a notice of final priorities (NFP) and the accompanying ICR has undergone notice and comment

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<sup>2</sup> A regulatory provision is "recently established" where it has not been used in a discretionary grant competition previously.

- Example: [Final Priorities, Requirements, Definitions, and Selection Criteria- Expanding Opportunity Through Quality Charter Schools Program; Grants to Charter Management Organizations for the Replication and Expansion of High-Quality Charter Schools](#)
- NOTE: The generic process is available for application packages using recently established selection criteria<sup>3</sup> developed through an NFP only where there was a separate ICR accompanying the recently established NFP that was submitted to OMB simultaneously with the NFP and the ICR has undergone its own notice and comment and OMB has approved the ICR before it is used as a selection criterion.

Some programs have program-specific priorities, application requirements, or other types of requirements that are established through the rulemaking process or in the notice inviting applications based on statute or regulations. As long as these priorities or requirements do not require a program-specific form in order for applicants to comply, a program office may use the generic application package. This is true regardless of the source of authority for these requirements (e.g., requirements based on statute or regulations).

- Example: A notice inviting applications using selection criteria from the list above includes a requirement based on statutory language that applicants must assure to meeting certain requirements, but does not need a particular form for applicants to meet this requirement (applicants determine how to include this “assurance” in their individual applications).

- B. Application package involving selection criteria that have been developed using a waiver of rulemaking (“GEPA waiver”): When the Department runs the first competition under a new or substantially revised program authority, section 437(d)(1) of the General Education Provisions Act (GEPA) allows the Department to waive the notice-and-comment rulemaking requirements that normally apply. Programs that establish program-specific selection criteria through this process may not use the generic application package, and instead must go through the streamlined discretionary grants clearance process. This involves a 60-day clearance process in which OMB will review the program-specific form in conjunction with the accompanying notice. Please consult with the Strategic Collections and Clearance office for more information about clearance procedures.

If a competition uses the GEPA waiver to establish priorities or requirements that apply to the competition, but not selection criteria (and instead uses only selection criteria from section A above), and these program-specific priorities or requirements do not involve program-specific forms, it may use the generic application package.

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<sup>3</sup> A selection criterion is “recently established” where it has not been used in a discretionary grant competition previously.

- Example: A notice inviting applications uses the GEPA waiver to establish an application requirement, but this requirement does not require the use of a program-specific form. The notice inviting applications uses only selection criteria from 34 CFR 75.210. This program may use the generic application package.

However, if the selection criteria established pursuant to a GEPA waiver do not require the collection of additional information from applicants because the data are collected under a separate approved OMB ICR, the program may use the generic application (unless these criteria require the use of a program-specific form) because these criteria do not introduce any new burden on applicants.

Example: A notice inviting applications from institutions of higher education uses the GEPA waiver to establish new selection criteria to evaluate applications based on “Need” where “Need” is assessed based on the percentage of students enrolled at the institutions of higher education who are Pell recipients. If the Department plans to use the data available in the NCES IPEDS data collection to apply these criteria, then the new criteria do not introduce any new burden or require the collection of any new information. Consequently, this program can use the generic application.

- C. Application package involving program-specific forms: If an application package involves program-specific forms that are required for an application but are not covered by the standard ED or Federal-wide grant applications forms, the program office may not use the generic application clearance process and must go through the streamlined discretionary grants clearance process (see explanation in section B above).
- Example: The GEAR UP program has “GEAR UP Program-Specific Forms” that are cleared under a separate information collection than the ED generic application (OMB Control Number: 1840-0821; latest notice available here: <https://www.federalregister.gov/d/2019-08932>). This is done because GEAR UP requires a separate eligibility form for State applicants, there are three ways to implement GEAR UP (cohort model, priority students model, and a mix of both), and the application has various charts regarding planned numbers of students served at each grade level that are not included in the ED generic application.

### **Relevant EDGAR Language**

§75.200 How applications for new grants and cooperative agreements are selected for funding; standards for use of cooperative agreements.

(a) *Direct grant programs*. The Department administers two kinds of direct grant programs. A direct grant program is either a discretionary grant or a formula grant program.

(b) *Discretionary grant programs*. (1) A discretionary grant program is one that permits the Secretary to use discretionary judgment in selecting applications for funding.

CROSS REFERENCE: See §75.219 Exceptions to the procedures under §75.217.

(2) The Secretary uses selection criteria to evaluate the applications submitted for new grants under a discretionary grant program.

(3) To evaluate the applications for new grants under the program the Secretary may use:

(i) Selection criteria established under §75.209.

(ii) Selection criteria in program-specific regulations.

(iii) Selection criteria established under §75.210.

(iv) Any combination of criteria from paragraphs (b)(3)(i), (b)(3)(ii), and (b)(3)(iii) of this section.

(4) The Secretary may award a cooperative agreement instead of a grant if the Secretary determines that substantial involvement between the Department and the recipient is necessary to carry out a collaborative project.

(5) The Secretary uses the selection procedures in this subpart to select recipients of cooperative agreements.

(c) *Formula grant programs.* (1) A formula grant program is one that entitles certain applicants to receive grants if they meet the requirements of the program. Applicants do not compete with each other for the funds, and each grant is either for a set amount or for an amount determined under a formula.

(2) The Secretary applies the program statute and regulations to fund projects under a formula grant program.

§75.209 Selection criteria based on statutory or regulatory provisions.

The Secretary may establish selection criteria and factors based on statutory or regulatory provisions that apply to the authorized program, which may include, but are not limited to criteria and factors that reflect—

(a) Criteria contained in the program statute or regulations;

(b) Criteria in §75.210;

(c) Allowable activities specified in the program statute or regulations;

(d) Application content requirements specified in the program statute or regulations;

(e) Program purposes, as described in the program statute or regulations; or

(f) Other pre-award and post-award conditions specified in the program statute or regulations.