

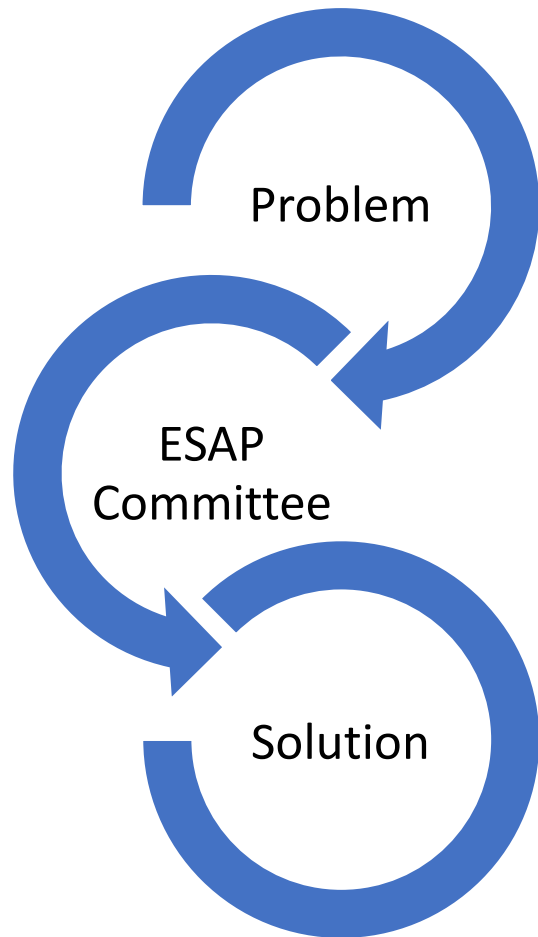


Introduction to the External Sales Approval Process (“ESAP”)

Fall 2023

Intro to ESAP

External Sales Approval Process (“ESAP”) Origin Story



Problem:

- Units selling without approved contracts
- No unit was responsible for oversight of external sales

ESAP Committee formed:

- Provost’s Office, Office of General Counsel (OGC), Office of Sponsored Projects (OSP), Controller’s Office, and YSM

Solution:

- New External Sales Approval Process (ESAP), which ***created a support structure but added no new requirements***, except for Provost’s new pricing policy

Intro to ESAP

ESAP Committee

<u>Provost's Office</u>	<u>Controller's Office</u>	<u>Environmental Health & Safety</u>
Lisa D'Angelo	Shannon Smith	Kevin Charbonneau
Ben Myers	Mike Damone (Tax)	
	Lisa Varni	<u>Export Controls</u>
<u>Office of General Counsel</u>	Mike Jarosz	Mark Stomski
Alyssa Greenwald	Jenna Milman	
	Jie Liu	<u>Yale School of Medicine</u>
<u>Office of Sponsored Projects</u>	Danielle Feldman (ESAP Owner)	Amy Blanchard
Lisa Mosley		Jess Caponigro
		Sara Verderame

Intro to ESAP

ESAP Goals

Ensure compliance with all federal, state, and local rules and regulations, and Yale policies

Be as easy as possible for both Requestors and Reviewers

Provide approved Terms & Conditions to eliminate review & approval of each contract

Good news: These goal can be achieved with the following process...

Intro to ESAP

Procedure 2100 PR.02: *External Sales Approval Process*

“This Procedure is for those units wanting to sell technical, research, and professional services to external parties. There are two situations in which the External Sales Approval Process (“ESAP”) Owner will direct such units to use this Procedure:

- The unit has followed the instructions in Section 4 Service Agreements of [Procedure 2100 PR.01 Executing Revenue Agreements](#) and has been informed that it must go through ESAP; - **OR** –
- The unit has been selling externally and the ESAP Owner has informed the unit that it must go through ESAP.”

Intro to ESAP

Procedure 2100 PR.02: *External Sales Approval Process*

“The ESAP Owner will direct you to this procedure, Procedure 2100 PR.02, if your proposed sales meet BOTH of the following criteria:

Criterion #1: Either:

- You are in a Yale unit that wants to sell the services it provides within the University to external customers; - **OR** -
- You, as a Yale faculty member, or a Yale faculty member in your unit wants to provide professional services to external parties under the auspices of Yale, meaning that Yale would be the contracting party and time spent performing these services would be considered in support of Yale and not part of the 1/7th of a faculty member’s time that can be spent on non-Yale work.

- **AND** -

Criterion #2: The desired external sales are not being done *primarily* to further Yale’s research, education and patient-care mission. Yale’s mission might, however, benefit in some secondary way from the external sales. Sales are not considered to be related to the mission merely because the profits from the sale are used to support the mission.”

Intro to ESAP

ESAP Implementation Schedule

Must go through ESAP before selling:

- Faculty professional services where Yale signs the contract
- Units that have never or rarely sold externally
- New services not previously sold externally
- Any unit that wants to go through ESAP may do so

May continue selling externally; will be asked to go through ESAP:

- “Grand-parented” USPs selling externally prior to FY2018. Units may continue to sell externally until contacted by ESAP Owner, but they are responsible for complying with all federal, state, local and Yale rules. Until then, OSP will continue to assist those units.

Intro to ESAP

ESAP Request Materials

Request
Form

- Captures information needed for ESAP reviewers

Rate
Sheet

- Shows cost to provide service & external customer rates

FMV
Analysis

- Demonstrates if pricing meets Provost's Guidance
- Includes template, memo, & screen shots when applicable

ESAP Standard Request Form



Standard Request Form

- Description of services in layman terms
- Reason for selling externally
- Anticipated customer base, including international customers
- How services will be marketed
- How use of resources will be balanced with internal use
- Yale space to be used to provide services, including offices
- All fixed and MEI equipment used to provide services
- General description of materials and supplies with funding source
- Technology used to provide services
- Persons providing services
- Explanation for non-Yale persons coming on campus
- Non-Yale Research materials brought on campus

Intro to ESAP

University Service Provider Rate Sheet

USP Rate Sheet

- Non-profit external customer rates
- For-profit external customer rates
- Whether the external for-profit customer rate exceeds Break-even and is subject to UBTI reporting.

For Tax Purposes	
F&A = 72.2%	
Cost to Deliver Service with Depreciation or "FULLY-COSTED EXTERNAL RATES at 72.2% F&A" BREAK-EVEN	External Customer Rate is Above Fully Costed External Rate at 72.2% F&A?
\$20.02	Yes
\$24.19	Yes
\$18.75	Yes
\$6.31	Yes
\$151.07	No
\$241.49	No
\$47.62	Yes
\$274.25	No
\$121.31	Yes
\$123.17	Yes
\$200.43	Yes
\$266.27	No

Intro to ESAP

Provost's Office Guidance Regarding Pricing for External Customers

The University has two expectations for rates charged to external customers (“external rates”):

1. External rates must at least include the full direct cost to provide the service plus 30% (the “calculated rate”); and
2. The external rate should fall within the range of fair market values for similar services.

Intro to ESAP

Pricing for External Customers

USP RATE FOR EXTERNAL FOR PROFIT CUSTOMERS							
Refer to the Provost's Guidance on External Pricing linked on the Instructions tab Reminder: sales taxes may need to be collected when invoicing for services provided. If you have any questions concerning sales tax obligations, please contact the University Tax Department at tax@yale.edu.	External For Profit Units	Type of Unit	F&A = 30%*	F&A = 30%*	EXTERNAL FOR PROFIT CUSTOMER RATES	If a Cancellation Fee may be charged for the service, please indicate the amount below.	External Customer Rate Equal to or Greater than Fully Costed Rate?
			Cost to Deliver Service with Depreciation or "FULLY-COSTED EXTERNAL RATES at 30% F&A"	Cost to Deliver Service without Depreciation (Operational Cost + 30% F&A)			
	10	hour	\$5,744.61	\$2,711.27	\$5,745.00		Yes
	0	hour	\$5,189.35	\$2,156.01			
	25	hour	\$2,693.62	\$1,392.91	\$4,500.00		Yes
USP RATE FOR EXTERNAL NON-PROFIT CUSTOMERS							
Refer to the Provost's Guidance on External Pricing linked on the Instructions tab	External Non-Profit Units	Type of Unit	F&A = 30%*	F&A = 30%*	EXTERNAL NON-PROFIT CUSTOMER RATES	If a Cancellation Fee may be charged for the service, please indicate the amount below.	External Customer Rate Equal to or Greater than Fully Costed Rate?
			Cost to Deliver Service with Depreciation or "FULLY-COSTED EXTERNAL RATES at 30% F&A"	Cost to Deliver Service without Depreciation (Operational Cost + 30% F&A)			
	50	hour	\$5,744.61	\$2,711.27	\$5,745.00		Yes
	0	hour	\$5,189.35	\$2,156.01			
	38	hour	\$2,693.62	\$1,392.91	\$2,700.00		Yes

ESAP Fair Market Value (“FMV”) Analysis



FMV Analysis

- Use [Form 1410 FR.05](#) FMV template to document at least three comparable for-profit rates
- Dated screen shots of competitors’ rates with the URL of the website used
- Narrative to “tell the story” of the FMV analysis performed.

Why is a Fair Market Value analysis important?

There are two primary legal requirements for a FMV analysis when selling to external parties:

1. As a matter of general 501(c)(3) law, our tax exemption is conditioned on not giving away charitable resources to others. This is measured by FMV.
2. When we use federally funded equipment, because those equipment costs are not included in rate calculations, we must price at FMV to avoid the perception of using federal grants to undercut industry.

What is FMV?

Federal government regulations do not clearly define fair market value for external sales or establish specific requirements for how to conduct a fair market value analysis.

Yale follows general principles for FMV analysis. Our FMV analysis for a specific service will involve gathering comparable rates charged by for-profit companies and then determining whether the proposed rates for that service fall within that range.

Performing the FMV Analysis

We acknowledge that data on comparable services for a FMV analysis is sometimes limited because:

- competitors do not publish rates,
- because no one else provides the services, or
- because there is not enough information to know whether the services listed by competitors are comparable to our services.

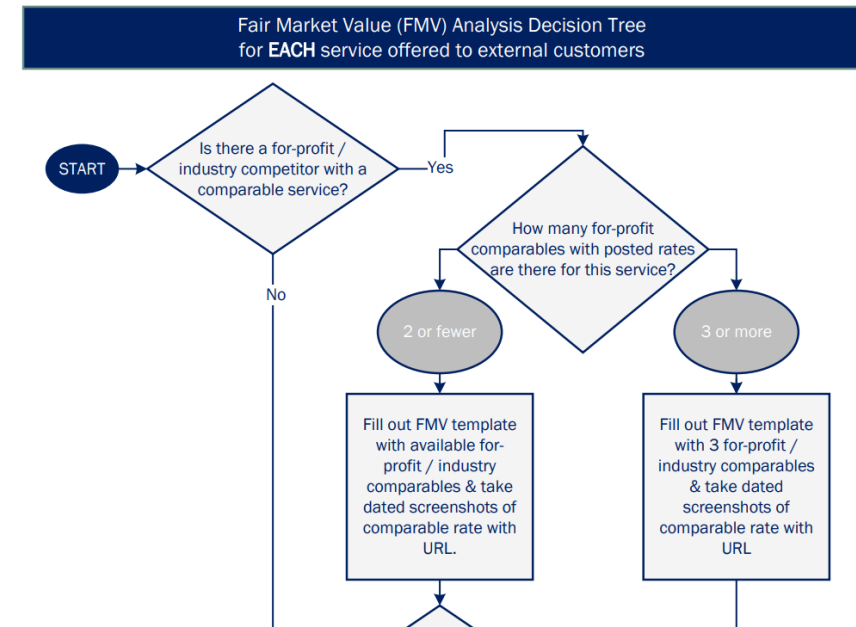
We understand these challenges. The requestor will:

- gather **reasonable data using reasonable efforts**, and
- must **document** the data and search efforts so others, including federal auditors, can confirm that the data and search efforts are reasonable.

Intro to ESAP

What does “reasonable data using reasonable efforts” mean?

- Do I need to call or email for quotes?
No; reasonable efforts involve searching online for data from competitor websites or other online sources (e.g., Science.com or Science Exchange).
- What if there aren't comparable rates for every Yale service we offer?
A FMV analysis for a group of similar services may be reasonable.
- How many comparables do I need? What if there are few or no For-Profit comparables? When should I use Non-profit peer comparables?
See FMV Decision Tree



Preparing the FMV Narrative

- Explanations of the search method (terms and platforms) used;
- Explanations of the competitors' prices and how they do and do not match the proposed external rates for each service;
- Explanations for instances where there are few or no comparable rates
- Explanations for instances where rates are not in accordance with the Provost's Office Guidance Regarding Pricing for External Sales; and
- Other explanations as necessary to “tell the story” of why the proposed external customer rates are reasonable.

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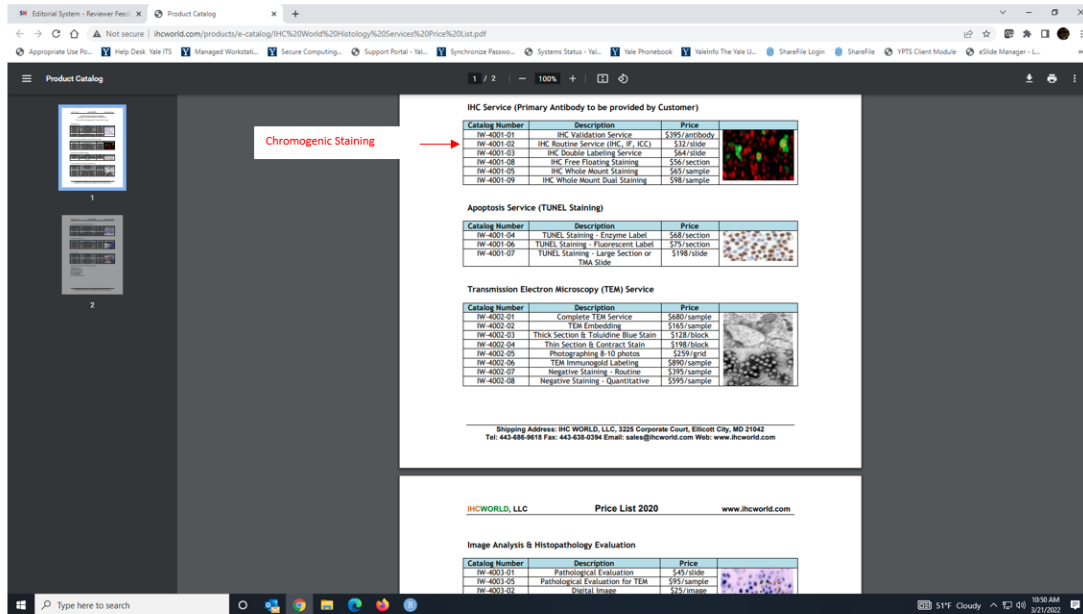
FMV Template

A template is available to assist with preparing the FMV analysis.

FAIR MARKET VALUE ANALYSIS		Prepared by: Danielle Feldman							
ISP999 ABC Cleanroom		Date prepared: 11/19/2021							
Service	Service ABC		Service DEF		Service GHI		Service JKL		
USP Internal Customer Fully Costed Rate (The calculated cost-to-deliver service rate per unit)	\$5,024.84		\$1,500.00		\$172.47		\$253.10		
USP Internal Customer User Rate	\$1,000.00		\$600.00		\$60.00		\$45.00		
	For-Profit Customer	Non-Profit Customer	For-Profit Customer	Non-Profit Customer	For-Profit Customer	Non-Profit Customer	For-Profit Customer	Non-Profit Customer	
USP External Customer Fully Costed Rate (The calculated cost-to-deliver service rate per unit) plus F&A at 30%	\$6,543.35	\$6,543.35	\$1,790.00	\$1,790.00	\$224.21	\$224.21	\$145.00	\$145.00	
USP External Customer Proposed User Rate	\$5,800.00	\$2,900.00	\$3,600.00	\$1,800.00	\$300.00	\$150.00	\$300.00	\$150.00	
Proposed User Rate as Percent of the Fully Costed Rate	88.6%	44.3%	201.1%	100.6%	133.8%	66.9%	206.9%	103.4%	
Data Summary									
For-Profit Seller Comparables	Range of Customer Rates		Range of Customer Rates		Range of Customer Rates		Range of Customer Rates		
Fair Market Value Range per Comparables	\$0.00 to \$0.00		\$1,200.00 to \$1,755.00		\$265.00 to \$265.00		\$0.00 to \$0.00		
Does proposed External Rate fall below the FMV range?			Yes		Below Range				
Non-Profit Seller Comparables	For-Profit Customer	Non-Profit Customer	For-Profit Customer	Non-Profit Customer	For-Profit Customer	Non-Profit Customer	For-Profit Customer	Non-Profit Customer	
NP Peer Value Range per Comparables	\$5,440.00 to \$6,844.79	\$2,680.00 to \$4,409.44	\$0.00 to \$0.00	\$0.00 to \$0.00	\$250.00 to \$315.00	\$200.00 to \$265.00	\$0.00 to \$0.00	\$0.00 to \$0.00	
Does proposed External Rate fall below the NP peer rate range?	Yes	Yes			Yes	Below Range			

Intro to ESAP

Screenshots of Comparable Rates



CCMR Shared Facility Rates - Academic Use (Effective February 2021)

Some rates consist of a fixed charge plus an hourly rate or a minimum charge.

For academic users, use exceeding \$10k in the calendar year will be charged at 60% of the normal instrument use fee.

Manager Labor Rate (may be charged in addition to instrument rates below for assisted use)

Academic Rate
\$100.00 /hr

Electron Microscopy

Arctica-S/TEM

\$35.00 /hr

Cryo-S/TEM

\$62.50 /hr

\$52.00 /hr

FEI F20 TEM STEM

\$62.50 /hr

\$52.00 /hr

NION UltraSTEM 100

\$62.50 /hr ‡

FEI Strata 400 STEM FIB

\$88.50 /hr

\$73.00 /hr

Thermo-Helios-G4-UX-FIB

\$88.50 /hr

\$73.00 /hr

FEI Tecnai 12 BioTwin TEM

\$67.50 /hr

after hours rate
(if different)

Include: 1) URL/website, 2) date retrieved/effective date of rates, and 3) identifying which rates correlate to Yale's services. Make sure the amounts agree to the FMV template!

Rates should be "refreshed" at least every 2 years.

Who approves my external customer rates & FMV analysis?

- USPs will submit their FMV analysis with their annual USP registration and rate calculation schedule. These should be reviewed internally prior to submission.
- A review of external customer rates and the FMV analysis will be performed by the USP Rate Reviewers, but this does not indicate approval of external customer rates.
- Approval of external customer rates is done through a formal External Sales Approval Process (ESAP) review.
- Grand-parented USPs are still responsible for complying with all federal, state, Yale and other rules, as stated in Procedure 2100 PR.02.

Intro to ESAP

What comes next?



Intro to ESAP

Approval Plan

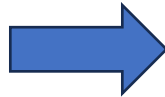
Review and Approval Process for Yale Example USP Sales to External Customers

Prepared by Danielle Feldman, External Sales Approval Process Owner, 8/1/2023.

Approved by Name: Ben Myers
Position: Director of Research Cores, acting as Dean's Designee
Date: 8/5/2023

Approved External Sales of Yale Example USP

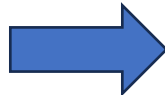
Yale Example USP (ISPEXP) has been approved to sell the following services to external non-profit customers, where Yale employees use Yale facilities and equipment to perform work/research for external customers (all services are full-service, there are no self-service options where the customer will use Yale equipment):



- Service A
- Service C

ISPEXP's Responsibilities Regarding External Sales:

Rates:



The rates to be charged must be equal to or greater than the external fully costed rate + 30% F&A for FY2023 and thereafter, as long as these rates remain in the range of Fair Market Values (FMV), if available.

Intro to ESAP

External Sales Annual Reapproval Process

- Annually, the Requestor must confirm that the proposed fee schedule for the next year is appropriate and in line with the Provost's Office approval of their rates, and that no circumstances have arisen which would cause a reevaluation of the Requestor's authorization to sell externally.
- The ESAP Owner, in consultation with other units and Reviewers as necessary, reviews and approves this annual confirmation.
- Do not wait to submit changes that will require a review. Any significant changes need to be reviewed and approved prior.
- [Form 2100 FR.03](#) *External Sales Annual Reapproval Form*

Intro to ESAP

External Sales Post-Approval Process

- Once a Requestor receives approval for external sales, and prior to executing any contract to sell to a specific external customer, the Requestor must confirm that none of the changes listed in have occurred since the Requestor's original approval or reapproval. While it is not required that this form be completed and submitted, it serves as a good checklist for the Requestor. If the Requestor cannot confirm any of the listed statements, the Requestor must notify the ESAP Owner prior to executing the contract.
- [Form 2100 FR.04](#) *External Sales Compliance Checklist*

Intro to ESAP

ESAP is a Win-Win

Win for Requestors:

Fill out one request form with all the information that the Reviewers need. The ESAP Owner will coordinate the reviews across all compliance areas for you.

Win for Reviewers:

The combination of the ESAP standard request form, USP rate sheet, and FMV analysis template, narrative and screenshots, provides the information needed to complete their review, usually with minimal to no follow-ups.

Win-Win for Requestors and Reviewers:

At end of ESAP, you have an approved contract template and Approval Plan to use for current & future sales with no further approvals other than annual renewals.

Intro to ESAP

External Sales Resources

[Procedure 2100 PR.02](#) – External Sales Approval Process (ESAP)

[Form 2100 FR.02](#) – External Sales Approval Request - Standard Form

[Form 2100 FR.05](#) – FMV Analysis Template

The following are housed on the [External Sales Resources Page](#):

- [Provost's Office Guidance Regarding Pricing for External Customers](#)
- Recorded [Fair Market Value Analysis Training](#)
- [FAQs Regarding the Fair Market Value \(FMV\) Analysis for ESAP](#)
- [FMV Template Example](#)
- [FMV Decision Tree](#)

Thank you