



## Frequently Asked Questions and Answers (FAQs) Regarding the Fair Market Value (FMV) Analysis for the External Sales Approval Process (ESAP)

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### **QUESTION: Why does the ESAP Request require a FMV Analysis?**

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

1. 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.
2. 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.

### **QUESTION: Is there federal guidance on FMV?**

**ANSWER:** No, federal government regulations do not establish specific requirements for how to conduct FMV analyses. We are following general principles for FMV analyses.

### **QUESTION: How will Yale determine whether a Requestor's proposed rate for a service is at least FMV?**

**ANSWER:** Our FMV analysis for a specific service will involve gathering comparable rates charged by for-profit companies and then determining whether the Requestor's proposed rates fall within that range.

### **QUESTION: What if we cannot find data on comparable services for a FMV analysis?**

**ANSWER:** We acknowledge that data on comparable services for a FMV analysis is sometimes limited—because competitors do not publish rates, because no one else provides the services or because there is not enough information to know whether the services listed by competitors are comparable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 based upon the situation and what is available. The Requestor must document the data and search efforts so others, including federal auditors, can confirm that the data and search efforts are reasonable.

### **QUESTION: What does “reasonable data using reasonable efforts” mean?**

**ANSWER:** Following are some guidelines:

- Reasonable efforts involve searching online for data from company websites or other online sources (e.g. Science.com or Science Exchange). It is not necessary to email or telephone competitors for prices.

- In cases comparing costs of separated services to bundled services, requestors may add the costs of their separate services to facilitate comparison to prices of competitors' bundled services.
- If comparable prices are not available to permit a FMV analysis for every individual service, then one FMV analysis for a group of similar services may be reasonable.
- The for-profit competitors can be local, regional, or national companies depending on the market, the services offered, and available information.

**QUESTION: How should a FMV analysis be documented?**

**ANSWER:** The FMV analysis must be well-documented, which means including, for example:

- [Form 1410 FR.05: External Sales FMV Analysis Template](#) to document at least three comparable for-profit rates for each service, where available. If there are fewer than two comparable for-profit company rates for a service and the proposed external customer rates for that service do not meet the pricing expectations outlined in the Provost's Office Guidance Regarding Pricing for External Customers (linked on the [External Sales Resource](#) website), the rates of three non-profits and other academic institutions should be provided as additional data points.
- Narrative explanation to include:
  - explanations of the search method (terms and platforms) used to find the data;
  - explanations of the competitors' prices and how they do and do not match the Requestor's 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 (included at [External Sales Resources](#));
  - other explanations as necessary to "tell the story" of why the proposed rates are reasonable.
- Dated screen shots of competitors' rates with the URL of the website used.

**QUESTION: What if the service only has few or no comparables?**

**ANSWER:** We provide the following guidelines:

- Provide evidence that the uniqueness of our service is why there are few or no competitors. Explanations may include Yale's novel technology or Yale's novel operational model for delivering service. Include information about the closest functional alternatives for comparison. (Note: The IRS views comparability broadly in this context. For example, if a different service could provide an alternative pathway to achieve the same goal, the IRS will take that into account in auditing FMV.)
- At a minimum, establish that:
  - When there are only a small number of customers, there are no individual or institutional conflicts of interest (COI) between the University and the external customer(s).
  - The prices are above marginal costs, defined as the cost of producing one additional unit.

**QUESTION: What if I have other questions?**

**ANSWER:** Contact the ESAP Process Owner, Danielle Feldman, at [danielle.feldman@yale.edu](mailto:danielle.feldman@yale.edu).