

[Date]

VIA EMAIL AND U.S. MAIL

Assistant Secretary – Indian Affairs  
U.S. Department of the Interior  
1849 C Street NW  
Washington, DC 20240

Re: Request to Waive 25 CFR § 900.74 under 25 CFR Part 900, Subpart K, to Authorize a USPAP-Compliant Cost Approach Appraisal as an Additional Compensation Method for § 105(l) Facility Leases (Ref. Indian Self Determination and Education Assistance Act (ISDEAA), Public Law 93-638, § 105(l) (Jan. 4, 1975), as amended; codified at 25 U.S.C. § 5324(l)) [hereinafter “Section 105(l) or §105(l) facility leases”].

Dear Assistant Secretary [Name]:

On behalf of [Tribe/Tribal Organization], we respectfully request, pursuant to 25 CFR Part 900, Subpart K, a waiver of 25 CFR § 900.74 to authorize a fourth compensation method—a USPAP-compliant Cost Approach appraisal—for our § 105(l) facility lease(s). Subpart K provides that, upon tribal request, the Secretary may waive provisions of Part 900 when the waiver is in the best interest of the Indians served by the contract or is consistent with the policies of the Indian Self-Determination and Education Assistance Act (ISDEAA) and not contrary to statutory law; Subpart K also requires a written decision within 90 days, with deemed approval if a waiver does not issue.

Under § 900.74, lease compensation is currently limited to three methods: (a) fair-market rental; (b) fair-market rental combined with § 900.70(a)–(h) (no duplication); or (c) § 900.70(a)–(h) only. Our service area features special-purpose facilities and thin/remote markets where credible market-rent evidence is limited or unreliable. Adding a carefully controlled Cost Approach option would provide a defensible, consistent valuation aligned to actual facility utility and cost, while preserving § 900.70’s non-duplication rule.

Our requested waiver would result in an additional appraisal methodology to § 900.74: “Lease compensation may be supported by a USPAP-compliant Cost Approach appraisal prepared by a Certified General Appraiser, estimating value as Replacement Cost New minus all forms of depreciation (physical, functional, external) plus supported land value. Any compensation derived from the Cost Approach would be reconciled to § 900.70(a)–(h) and would not duplicate costs already included under those elements.”

To ensure discipline and audit readiness, we will apply the attached Cost Approach Guardrails, which establish conditions for use, documentation standards, and review/approval requirements (including the 200-mile comparable search threshold, prohibition on hybrid appraisals, detailed

cost/depreciation/land support, and mandatory technical review). In addition, we will apply a market-reasonableness guardrail: Cost Approach-supported compensation shall not exceed 110% of independently supported FMV rent unless expressly justified by the appraiser and accepted during technical review.

We believe granting this waiver is in the best interest of the Indians served, as it furnishes credible, supportable compensation for facilities delivering essential Programs, Functions, Services, and Activities (PFSAs)—especially in special-purpose and remote-market contexts—mitigating underfunding risk and supporting service continuity. The waiver is consistent with ISDEAA and Part 900 policy, supplements rather than alters the existing § 900.74 options, and honors § 900.70’s non-duplication requirements through the required crosswalk and technical review.

We respectfully request approval within Subpart K’s 90-day period; if a decision is not issued in this time, the waiver is deemed approved.

Thank you for your consideration and continued partnership. Please contact [Primary Contact Name/Title] at [Phone/Email] with any questions.

Sincerely,

[Signature]

[Authorized Tribal Official]

[Title]

[Tribe/Tribal Organization]

[Address]

[Phone/Email]

Enclosures:

- Enclosure A – Waiver Support Form (Cost Approach, § 105(l))
- Cost Approach Guardrails (adopted)
- Supporting appraisal and documentation

## Enclosure A — Form Completion Instructions

*(To support a waiver request under 25 CFR Part 900, Subpart K, adding a Cost Approach option to § 105(l) lease compensation)*

Before you start:

1. Confirm the waiver pathway. Subpart K is a tribal-request process and requires a written decision within 90 days; if no decision is issued, the waiver is deemed approved.
2. Know the baseline regulation. § 900.74 currently offers three compensation methods; you are requesting a fourth (Cost Approach) via waiver. Keep your form and attachments focused on why the Cost Approach is necessary and credible for your facility.
3. Honor the non-duplication rule. § 900.70's elements (e.g., rent, depreciation/use allowance, O&M, reserves) cannot be double-counted. Your crosswalk must show what's included in the appraisal vs. claimed under § 900.70(a)–(h).
4. Use a traditional Cost Approach. The appraisal must be USPAP-compliant, estimating Replacement Cost New minus total depreciation + supported land value—no “hybrid” methods.

### Section-by-Section How-To

#### Section 1 — Contact & Scope

- Enter the Tribe/TO, contact, ISDEAA agreement number(s), facility name(s)/address(es), PFSA(s), and lease term as they will appear in the lease file and in the waiver letter.

#### Section 2 — Comparable-Market Limitations (200-mile threshold)

- Check the applicable box and document your search: list data sources (e.g., MLS, CoStar, local brokers, public records), the radius (up to 200 miles), the time window, and why each comparable is not reliable (special-purpose features, remote location, volatility). Attach your search map and data sheets. *(The 200-mile guardrail is from your internal Cost Approach Guardrails.)*
- Explain why market-rent is insufficient for your facility and how the Cost Approach will produce a more credible indication of value.

#### Section 3 — Appraiser & USPAP Compliance

- Identify your Certified General Appraiser and attach the USPAP certification page. Include a short paragraph on the appraiser's special-purpose/institutional experience. *(USPAP governs the development and reporting standards you must follow.)*

#### Section 4 — Construction Cost Evidence

- State the primary cost source(s) used for Replacement Cost New (RCN)—e.g., Marshall & Swift/Swift Estimator, and/or actual invoices/bids. Provide publication/date, the specific tables or report references, and regional multipliers applied.
- Explicitly choose replacement vs. reproduction cost and explain your rationale (e.g., modern functional equivalent vs. exact replica). Summarize depreciation (physical, functional, external) and land value support (sales, allocation/abstraction).

#### Section 5 — Cost-Index Documentation (time/region adjustments)

- Enter the index name/provider (e.g., Marshall & Swift RCN Index), index type, base date/value and current date/value. Compute the time-adjustment factor (*current ÷ base*) and list regional/location multipliers. Attach the index tables or provider report.
- Briefly note update frequency (monthly/quarterly) and why the series is appropriate for your occupancy/construction class.

#### Section 6 — Freight/Logistics Documentation (remote/seasonal impacts)

- Record carrier(s), origin/route, distance/mode, invoice numbers/dates, and rate basis—plus surcharges (fuel, oversize, winter road) and seasonal constraints (freeze-up, ice roads, storm windows). Attach bills of lading, invoices, route maps, weather logs; total the freight cost included in RCN/O&M.

#### Section 7 — Market-Reasonableness Guardrail (110% of FMV Rent)

- Enter the independently supported FMV rent (amount + source/date), the Cost Approach indication, and the percent difference.
- Calculate the cap:  $FMV \times 1.10$  (i.e., 110%). If your adjusted request exceeds the cap, attach the appraiser's written justification and secure the reviewer's acceptance in Section 9. (*This guardrail keeps compensation aligned with any credible market signal while allowing justified exceptions.*)

Example (fill on the form):

$FMV = \$500,000 \rightarrow \text{Cap} = \$500,000 \times 1.10 = \$550,000.$

Cost Approach (reconciled) = \$565,000 → exceeds cap by \$15,000 (3%).

Attach justification (e.g., extraordinary freight/weather costs) + reviewer acceptance.

#### Section 8 — § 900.70 Non-Duplication Crosswalk

- Build a line-by-line crosswalk showing which amounts in the appraisal would correspond to § 900.70(a)–(h) elements (e.g., O&M, reserves, depreciation/use allowance,

principal/interest, rent/sublease). Exclude those amounts from your final compensation schedule to avoid double counting.

#### Section 9 — Technical Review & Oversight

- Name the reviewing authority (OTL or independent approving authority designated by OTL) and the planned review date(s). Use this space to record reviewer acceptance if you exceed the 110% cap. (*Guardrails require technical review; OTL may conduct on-site inspections and mandate corrective actions.*)

#### Section 10 — Proposed Compensation Schedule (final)

- Present your appraisal indication, subtract duplicated § 900.70 elements, and enter the adjusted request. Show the cap calculation ( $FMV \times 1.10$ ) and check “within cap” or “exception with reviewer acceptance.”

#### Section 11 — Program Impacts (if denied)

- Provide a succinct narrative of impacts on PFSA delivery (access, staffing, health/safety, continuity) to support the best-interest finding under Subpart K.

#### Section 12 — Certification

- Sign and date; ensure your attachments are complete and numbered. The certification attests that the data meet Subpart K criteria, § 900.74 context, and § 900.70 non-duplication requirements.

#### Required attachments (check before you submit)

- USPAP-compliant Cost Approach appraisal (Certified General Appraiser).
- Comparable search evidence and map (up to 200 miles).
- Cost-index tables/provider reports and regional multipliers (e.g., Marshall & Swift).
- Freight invoices/bills of lading/route maps/weather logs (if remote/seasonal drivers apply).
- Depreciation analyses and land value support.
- § 900.70 non-duplication crosswalk, FMV guardrail (110%) reconciliation, and reviewer acceptance (if applicable).

**Enclosure A – Waiver Support Form For § 105(l) Cost Approach**  
*Complete all applicable fields. Attach supporting documentation.*

Section 1: Contact & Scope

- Tribe/Tribal Organization: \_\_\_\_\_
- Primary Contact (Name/Title): \_\_\_\_\_
- Phone/Email: \_\_\_\_\_
- ISDEAA Agreement(s) (contract/compact #): \_\_\_\_\_
- Facility Name(s)/Address(es): \_\_\_\_\_
- PFSA(s) Delivered: \_\_\_\_\_
- Proposed Lease Term (start/end, mm/dd/yyyy): \_\_\_\_\_
- Facility Type/Special-Use Attributes (e.g., clinic, cultural, utility): \_\_\_\_\_

Section 2: Comparable-Market Limitations (200 miles)

Check all that apply and provide documentation:

- Fewer than three reliable comparable rentals found within 200 miles after reasonable, documented search efforts.
- Facility is special-use/unique; comparables unreliable due to volatility, atypical characteristics, or extreme remoteness.

Comparable search narrative (sources/dates/geography): \_\_\_\_\_.

Data sources checked (MLS, CoStar, brokers, gov't records, etc.): \_\_\_\_\_.

Search radius (miles) & map attached: \_\_\_\_\_.

Reasons comparables are unreliable: \_\_\_\_\_.

Section 3: Appraiser & USPAP Compliance

- Appraiser Name/Firm: \_\_\_\_\_.
- License Type/Number/State: \_\_\_\_\_.
- USPAP Certification Included: [ ] Yes [ ] No → If No, explain: \_\_\_\_\_.
- Appraiser experience with special-purpose/institutional facilities: \_\_\_\_\_.

*(USPAP governs development/reporting; a Cost Approach must summarize methods, depreciation, land support, and reconciliation when necessary for credible results.)*

Section 4: Construction Cost Evidence

- Cost source(s) (e.g., Marshall & Swift/Swift Estimator; invoices; bid tabs): \_\_\_\_\_

- Source publication/date & page/report reference: \_\_\_\_\_.
- Regional/location multipliers applied: \_\_\_\_\_.
- Replacement vs. reproduction cost—choice & rationale: \_\_\_\_\_.
- Depreciation (physical/functional/external)—methods & calculations: \_\_\_\_\_.
- Land value method(s) (sales, allocation/abstraction) & support: \_\_\_\_\_.

*(Marshall & Swift provides validated replacement-cost data and localized multipliers used widely for Cost Approach analyses.)*

Section 5: Cost-Index Documentation (time/region adjustments)

- Index name/provider (e.g., Marshall & Swift RCN Index): \_\_\_\_\_.
- Index type (Residential/Commercial/Segregated/Unit-in-Place): \_\_\_\_\_.
- Base date/value: \_\_\_\_\_. Current date/value: \_\_\_\_\_.
- Computed time-adjustment factor (current ÷ base): \_\_\_\_\_.
- Regional/location multiplier(s) applied: \_\_\_\_\_.
- Index tables/provider report attached:  Yes  No

*(If using Swift Estimator or similar, include the series name and local factors.)*

Section 6: Freight/Logistics Documentation (remote/seasonal impacts)

- Carrier(s)/vendor(s): \_\_\_\_\_.
- Origin/route; distance (miles) & mode (truck/rail/air/sea/barge): \_\_\_\_\_.
- Bills of lading / pro # / invoice # and dates: \_\_\_\_\_.
- Freight rate basis & surcharges (fuel, oversize, winter road): \_\_\_\_\_.
- Seasonal/weather constraints (freeze-up, ice roads, storms): \_\_\_\_\_.
- Total freight cost applied to RCN or O&M (\$): \_\_\_\_\_.
- Supporting docs attached (invoices, route maps, weather logs):  Yes  No

Section 7: Market-Reasonableness Guardrail (115% of FMV rent)

- Independently supported FMV rent (\$) & source/date: \_\_\_\_\_.
- Cost Approach indication after reconciliation (\$): \_\_\_\_\_.
- Percent difference vs. FMV (%): \_\_\_\_\_.
- FMV × 1.15 (cap) (\$): \_\_\_\_\_.
- **\*\*Within \*115%\* cap:\*\***  Yes  No
- **\*\*Justification (if exceeding \*115%\* cap):\*\*** \_\_\_\_\_.

*(Attach appraiser's written justification and obtain reviewer acceptance in Section 9.)*

Example: FMV = \$500,000 → Cap = \$500,000 × 1.15 = \$575,000.

Cost Approach (reconciled) = \$585,000 → exceeds cap by \$10,000 (1.74%).

Section 8: § 900.70 Non-Duplication Crosswalk (required)

*(Identify any amounts in the appraisal that correspond to § 900.70(a)–(h) elements—O&M, reserves, principal/interest, rent/sublease—and exclude them from the compensation schedule.)*

- Elements potentially duplicated: \_\_\_\_\_.
- Items excluded to prevent duplication: \_\_\_\_\_.

Section 9: Technical Review & Oversight

- Reviewing authority (OTL or independent approving authority designated by OTL): \_\_\_\_\_.
- Planned review date(s): \_\_\_\_\_.
- Reviewer acceptance for any >115%\*\* FMV exception:\*\*  Accepted  N/A

*(Use of the Cost Approach triggers technical review; OTL may conduct on-site inspections or require corrective actions.)*

Section 10: Proposed Compensation Schedule (final, after non-duplication)

- Cost Approach indication (from appraisal) (\$): \_\_\_\_\_.
- Less duplicated elements per § 900.70(a)–(h) (\$): \_\_\_\_\_.
- Adjusted lease compensation request (\$): \_\_\_\_\_.
- \*\*FMV × \*1.15\* (cap) shown (\$):\*\* \_\_\_\_\_.
- Adjusted request within cap?  Yes  No  
*(If “No,” ensure Section 7 justification is attached and Section 9 reviewer acceptance is checked.)*

Section 11: Program Impacts if Waiver Denied

Describe anticipated impacts on PFSA delivery (access, staffing, patient care, safety, operations):

\_\_\_\_\_.

Section 12: Certification

I certify the information provided is true and complete to the best of my knowledge and that the attached documentation supports this waiver request in accordance with Subpart K (waiver criteria & 90-day decision/deemed approval), § 900.74 (existing compensation options), and § 900.70 (non-duplication).

- Signature (Authorized Tribal Official): \_\_\_\_\_ Date: \_\_\_\_\_
- Printed Name/Title: \_\_\_\_\_

Section 13: Attachments Checklist (check all attached)

- USPAP-compliant Cost Approach appraisal (Certified General Appraiser)
- Comparable-search evidence & map (up to 200 miles)
- Cost-index tables/provider reports & regional multipliers (e.g., Marshall & Swift/Swift Estimator)
- Freight invoices/bills of lading/route maps/weather logs (if remote/seasonal drivers apply)
- Depreciation analyses & land value support (within appraisal work file)
- § 900.70(a)–(h) non-duplication crosswalk (line-by-line)
- FMV guardrail (115%) reconciliation & reviewer acceptance (if applicable)