

INDIAN AFFAIRS MANUAL

1.1 Purpose. This chapter documents Indian Affairs' (IA) policy and procedure for executing a lease under the authority of the Indian Self-Determination Education and Assistance Act (ISDEAA), 25 U.S.C. § 5324(l) ("105(l) lease").

1.2 Scope. This policy applies to all offices under the authority of the Assistant Secretary - Indian Affairs (AS-IA), including offices reporting to the AS-IA, the Bureau of Indian Affairs (BIA), and the Bureau of Indian Education (BIE).

1.3 Policy. It is IA's policy to process 105(l) lease requests in a timely manner, and to comply with all related requirements in the ISDEAA.

1.4 Authority.

A. Statutes and Regulations.

- 1) 25 U.S.C. §§ 5301 *et seq.*, ISDEAA
- 2) P.L. 100-297, Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988
- 3) 25 CFR 900 Subpart H - Lease of Tribally-Owned Buildings by the Secretary

B. Guidance.

- 1) 105(l) Facility Lease Program Technical Assistance Guidance¹

1.5 Responsibilities.

A. AS-IA or the designated Approving Official is responsible for executing (signing) 105(l) lease agreements on behalf of IA.

B. Deputy Assistant Secretary - Management (DAS-M) acts as the designated Approving Official on behalf of IA for executing 105(l) lease agreements, and is responsible for overseeing IA's 105(l) leasing program.

C. Director, Office of Facilities, Property and Safety Management (OFPSM), DAS-M is responsible for reviewing final lease proposals and recommending approval by the AS-IA or designated Approving Official, on behalf of IA. The Director has approval and signing authority on annual renewals without any modifications.

¹ This document, along with other 105(l) lease guidance, is located on the Office of Tribal Leases' webpage here: <https://www.bia.gov/as-ia/ofpsm/otl>

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- D. Office of Tribal Leases (OTL), OFPSM** is responsible for administering the 105(l) lease program as provided for under the ISDEAA, including:
- 1) serving as the primary point-of-contact for the Tribe or Tribal Organization (T/TO) in negotiating a 105(l) lease, and for providing technical assistance for the 105(l) lease process and compensation;
 - 2) overseeing the review of 105(l) lease proposals from T/TOs to ensure they are sufficient to form the basis for eligibility;
 - 3) coordinating with the appropriate IA, BIA, and BIE program offices to confirm and verify the programs, functions, services, or activities (PFSAs) administered in the proposed 105(l) facility are contained in applicable funding agreements;
 - 4) ensuring documents and supporting information provided by the T/TO are complete and sufficient to form the basis for compensation for an ISDEAA 105(l) Facility Lease;
 - 5) developing the budget and annual congressional appropriations request for the ISDEAA 105(l) leasing program;
 - 6) tracking and reporting all leases from initial notification through the negotiations, lease execution, and distribution of funds; and
 - 7) preparing additional funds requests for the U.S. Department of Treasury for ultimate distribution to the T/TO.
- E. Director, IA Office of Self-Governance (OSG)** is responsible for implementing the Tribal Self-Governance Act of 1994, as amended, to negotiate and award Title IV self-governance agreements with federally recognized Tribes.
- F. OSG Awarding Official (OSG AO)** is responsible for Title IV self-governance funding awards, and:
- 1) confirming that a proposed 105(l) lease supports the PFSAs that are operated under the approved funding agreement;
 - 2) incorporating the executed 105(l) lease into the funding agreement by amending the funding agreement and attaching the lease; and
 - 3) distributing funds to Tribes.
- G. BIA Regional Office** is responsible for:
- 1) verifying with OTL that the PFSAs administered, or to be administered, in the 105(l) leased facility [located in their region] are contained in the approved funding agreement;

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- 2) referring any inquiries or requests for a 105(l) lease to OTL and, if applicable, transferring 105(l) lease funds to the appropriate AO to be awarded for the lease;
 - 3) reviewing a funding agreement proposal upon receipt to determine whether the proposal includes a request for a 105(l) lease (or compensation under 105(l));
 - 4) forwarding any funding agreement proposals with requests for a 105(l) lease immediately to OTL for review and consideration;
 - 5) confirming that a proposed 105(l) lease supports the PFSA's that are operated under the approved funding agreement; and
 - 6) incorporating a resulting 105(l) lease agreement into the funding agreement by amending the funding agreement and attaching the 105(l) lease.
- H. Deputy Bureau Director (DBD), Office of Indian Services (OIS), BIA is responsible for providing direction and support for the execution and coordination of BIA's implementation of the ISDEAA.**
- I. Chief, Division of Self-Determination (DSD), OIS is responsible for monitoring, guidance, technical support, and advisory services, including the development of BIA processes and procedures for Self-Determination (SD) pursuant to governing statutes and policies.**
- J. BIE Education Program Administrator (EPA) (or designated Grant Specialist) is responsible for P.L. 100-297 grant ("297 grant") funding agreements, and:**
- 1) verifying with the OTL that the PFSA's administered, or to be administered, in the 105(l) leased facility are contained in the applicable grant;
 - 2) working with OTL on finalizing 105(l) leases and signing the funding agreement to include the lease funds; and
 - 3) distributing funds to the T/TO.
- K. BIE Associate Deputy Director for Tribally Controlled Schools (or designee) is responsible for 297 grant funding agreements for Tribally controlled schools, and:**
- 1) confirming that 105(l) lease proposals support the operation of a Tribally controlled school under a funding agreement; and
 - 2) working with OTL on finalizing 105(l) leases, and signing the funding agreement to include the lease funds.

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- L. **PFSA-owner program office** is the office, program, or regional office with the PFSA for which a T/TO is requesting a 105(l) lease, and is responsible for working with OTL, OSG (as applicable), OIS DSD (as applicable), and/or the appropriate BIA regional office to:
- 1) determine whether the lease request serves to carry out PFSA included in an approved funding agreement;
 - 2) determine whether any funding requested for the lease is duplicative;
 - 3) provide timely responses to the AO such that the AO may respond to funding agreement requests within applicable timelines; and
 - 4) transfer the associated funds to the appropriate AO to be awarded for the lease.
- M. **Affected IA program office(s)** is the office, program, or regional office that is not the PFSA-owner program office but is otherwise affected by the 105(l) lease), and is responsible for providing timely responses to OTL and the AO as needed.
- N. **Office of the Solicitor (SOL), Division of Indian Affairs (SOL-DIA)** assists OTL in determining whether the proposed lease expenses are allowable pursuant to 25 CFR 900.69-70. Upon request, SOL-DIA will conduct a review for legal sufficiency prior to providing a recommendation to the respective IA office on its decision pertaining to the execution of a 105(l) lease.

1.6 Definitions.

- A. **105(l) lease** is a lease between the Secretary of the Department of the Interior (DOI) and a T/TO for a facility in which the T/TO holds title, has a leasehold interest, or has a trust interest, that is used for the administration or delivery of services under a P.L. 93-638 contract or funding agreement, a P.L. 100-297 grant, or incorporated in a 477 program. The 105(l) lease compensates the T/TO for facility expenses, which may include rent, depreciation, principal and interest, operation and maintenance, and other reasonable expenses.
- B. **Funding agreement** means an approved ISDEAA Title I contract, Title IV self-governance funding agreement, or P.L. 100-297 grant for a qualified PFSA.

1.7 Standards, Requirements, and Procedures.

Lease terms and provisions are subject to negotiation between IA and the T/TO. However, there are certain requirements and compensation elements that must be included. For example, a 105(l) lease must include compensation as provided in section 105(l)(2) of the ISDEAA, and other reasonable expenses that the Secretary determines to be allowable (per

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25 CFR 900.69-900.74). Lease compensation must be reasonable and may not be duplicative with other funding the T/TO may be receiving, e.g., indirect or direct costs or facilities operation and maintenance funding.

The following sections provide specific guidance related to the review and processing of 105(l) leases.

A. Receipt and processing of a T/TO request. The OTL at IA Central Office receives T/TO requests and supporting documentation for 105(l) leases for review and approval. OTL must provide timely notification of the request to the OIS DSD, OSG, and/or BIE (as applicable), the PFSA-owner program office, and any affected IA program office.

If a BIA regional or other office receives the T/TO request, that office will immediately notify OTL and forward the T/TO request to OTL to process.

OTL will work with OIS DSD, OSG, and/or BIE (as applicable), the PFSA-owner program office, and any affected IA program office throughout the review of the request and subsequent negotiations.

OTL must have a copy of the Tribal Resolution designating a T/TO official to act on behalf of the T/TO.

B. Information OTL will review when negotiating a 105(l) lease. OTL should review the following information when negotiating a T/TO 105(l) lease:

- 1) **The funding agreement on which to base a lease.** A copy of the approved funding agreement or a 297 grant which the lease will support, and the PFSAs to be delivered or administered in the facility.
- 2) **Lease compensation.** The OTL reviews the compensation documentation provided by the T/TO to confirm that no element is duplicative. At least one of the following elements must be included in the lease compensation documentation:
 - a) fair market rental, as documented by the prevailing rental prices in the geographic area, compared to similar structures or similarly located structures if the facility is unique to the location;
 - b) paragraphs (a) through (h) of 25 CFR 900.70 only, as documented by evidence of such costs and certification from its authorized Tribal representative; or
 - c) a combination of fair market rental and paragraphs (a) through (h) of 25 CFR 900.70 (with the documentation required for each), provided that no element of expense is duplicated in the fair market rental.

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- 3) **Facility description.** The OTL reviews the following information for sufficiency:
 - a) location and address (each address is its own lease, whether it's one building or multiple buildings);
 - b) a floor plan that clearly identifies all spaces and types of use, and square footage for all floors;
 - c) in-service date of the facility (i.e., certificate of occupancy date);
 - d) identification of all PSFAs, non-PSFAs, common areas, shared space and other tenants within the facility;
 - e) recent photos of the facility's interior and exterior; and
 - f) a recent inspection report of the condition of the facility.

- 4) **Proof of ownership.** OTL ensures that the proof of T/TO ownership status includes one of the following:
 - a) proof of mortgage, title, or loan;
 - b) quitclaim or warranty deed;
 - c) proof of trust interest; or
 - d) lease agreement if sub-leasing.

- 5) **Guidance on lease cost components.** IA will rely on 25 CFR 900.69-70 in assessing and reviewing the compensation components proposed by T/TOs for 105(l) leases. If a T/TO is requesting compensation for principal and interest (P&I), then OTL must confirm a certified copy of the loan agreement as documentation. If a T/TO is seeking depreciation, then OTL must confirm the age of the facility and a depreciation schedule based on a 39-year useful life of the facility.

The OTL must also ensure there are no duplicative costs claimed regarding other federal funding, including indirect costs and contract support costs (CSC) considerations for the building identified in the lease.

C. Preparation for lease execution. The following tasks must be performed prior to lease execution:

- 1) OTL will work with the PSFA-owner program office and the appropriate AO to ensure the leased facility meets necessary program requirements and the purpose indicated in the Tribal request for the space.

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- 2) In the absence of a specific appropriation for this purpose, financing of 105(l) leases is unique because IA must fund 105(l) leases at the request of Tribes, subject to appropriations law and congressional reprogramming requirements. OTL will request a copy of the existing funding agreement and verify with the BIA Regional Director, DBD OIS, BIE EPA/BIE Associate Deputy Director (as appropriate), or OSG Director (as appropriate) that the PFSA(s) administered, or to be administered, in the facility are contained in the approved funding agreement.
- 3) The SOL-DIA Central Office will conduct a legal sufficiency review on all leases exceeding \$500,000 prior to execution.

D. Lease review and execution. The Director, OFPSM, will conduct a final review of the lease and transmit the lease to the AS-IA or designated Approving Official for signature. Each lease will be signed by the authorized T/TO representative and the AS-IA or designated Approving Official. Additionally:

- 1) OTL will share copies of the executed lease with the PFSA-owner program office and/or affected IA program office and AO within three days of execution.
- 2) The AO responsible for the funding agreement will transfer the funding to the T/TO so that they can address the lease costs pursuant to the signed agreement in place.

E. Reassumption or retrocession of PFSAs. In the event that a PFSA is reassumed or retroceded in accordance with applicable reassumption or retrocession provisions of ISDEAA, and a lease or a portion of a lease is based upon that PFSA, the lease or the portion of the lease terminates automatically upon the reassumption or retrocession of the PFSA.

Each lease must be negotiated in a manner that clearly attributes lease compensation to the PFSA upon which it is based, and each lease document must contain a provision that terminates a lease, or a portion thereof, upon reassumption or retrocession of the associated PFSA.

Approval

JASON FREIHAGE  Digitally signed by JASON
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Jason Freihage
Deputy Assistant Secretary – Management

Date