

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”). A 105(l) lease is a lease between the Secretary of the Department of the Interior (DOI) and a Tribe or Tribal Organization (“T/TO”) for a facility in which the T/TO holds title, has a leasehold interest, or has a trust interest, for the administration or delivery of services under a funding agreement. For the purposes of this policy, “funding agreement” means an approved ISDEAA Title I contract, Title IV self-governance funding agreement (for Title IV compacts or contracts) or Public Law (P.L.) 100-297 grant (“297 grant”).

1.2 Scope. This policy applies to all IA headquarters, field, and program offices under the authority of the Office of the Assistant Secretary – Indian Affairs (AS-IA), including the Bureau of Indian Affairs (BIA), the Bureau of Indian Education (BIE), and the Bureau of Trust Funds Administration (BTFA).

1.3 Policy. It is IA’s policy to timely process 105(l) lease requests in compliance with all laws, regulations, and policy requirements.

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 900.69-900.74, Contracts under the Indian Self-Determination Education and Assistance Act

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 (DASM) 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) is responsible for reviewing final lease proposals and recommending approval by the AS-IA, or designated Approving Official, on behalf of IA.

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- D. Real Property Leasing (RPL), OFPSM, DASM** is responsible for:
- 1) overseeing the review of 105(l) lease proposals from T/TOs;
 - 2) serving as the primary point-of-contact for the T/TO in negotiating the 105(l) lease, and for questions about 105(l) lease compensation; and
 - 3) coordinating with the BIA Division of Self-Determination (DSD), IA Office of Self Governance (OSG), and/or BIE Education Program Administrator or Associate Deputy Director for Tribally Controlled Schools (as applicable) on finalizing 105(l) lease proposals in conjunction with funding agreements.
- E. Director, IA OSG** is responsible for Title IV self-governance agreements with Tribes and therefore verifies with RPL that the programs, functions, services, or activities (PFSAs) administered, or to be administered, in the facility are contained in the applicable funding agreement.
- 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) working with RPL and the PFSA-Owner Program Office to review lease proposals and supporting documentation;
 - 3) working with RPL on finalizing 105(l) leases for facilities used for administering PFSAs under funding agreements; and
 - 4) incorporating the executed 105(l) lease into the funding agreement by amending the funding agreement and attaching the lease.
- G. BIA Regional Director** is responsible for verifying with RPL that the PFSA(s) administered, or to be administered, in the 105(l) leased facility located in his/her region are contained in the approved funding agreement.
- H. BIA Regional Office** is responsible for referring any inquiries or requests for a 105(l) lease to RPL and, if applicable, transferring 105(l) lease funds to the appropriate AO to be awarded for the lease.
- I. Deputy Bureau Director (DBD), Office of Indian Services (OIS), BIA** is responsible for Title I self-determination funding agreements and verifies with the RPL that the PFSA(s) administered, or to be administered, in the 105(l) leased facility are contained in the approved funding agreement.

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- J. OIS DSD AO (DSD AO)** is responsible for Title I self-determination funding agreements, including:
- 1) 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));
 - 2) immediately forwarding any funding agreement proposals with requests for a 105(l) lease to RPL for review and consideration;
 - 3) working with RPL to address the 105(l) portion of the proposal while continuing to process the remainder of the funding agreement proposal in accordance with 25 CFR 900 in order to promote consistency; and
 - 4) incorporating any resulting 105(l) lease agreement into the funding agreement by amending the funding agreement and attaching the 105(l) lease.
- K. BIE Education Program Administrator (EPA) (or designated Grant Specialist)** is responsible for 297 grant funding agreements and for:
- 1) verifying with the RPL that the PFSA(s) administered, or to be administered, in the 105(l) leased facility are contained in the applicable funding agreement;
 - 2) working with RPL in reviewing 105(l) lease submissions associated with funding agreements; and
 - 3) working with RPL on finalizing 105(l) leases, and signing the funding agreement to include the lease funds.
- L. BIE Associate Deputy Director for Tribally Controlled Schools (or designee)** is responsible for 297 grant funding agreements for Tribally controlled schools and for:
- 1) confirming that 105(l) lease proposals support the operation of a Tribally controlled school under a funding agreement;
 - 2) working with RPL in reviewing 105(l) lease submissions when the lease submissions proposes to support the operation of a Tribally controlled school; and
 - 3) working with RPL on finalizing 105(l) leases and signing the funding agreement to include the lease funds.
- M. PFSA-Owner Program Office** (i.e., the office, program, or regional office with the PFSA for which a Tribe is requesting a 105(l) lease) will work with RPL, OSG (as applicable), OIS DSD (as applicable), and/or the appropriate regional office, to:
- 1) determine whether the lease request serves to carry out PFSAs included in an approved funding agreement;
 - 2) determine whether any funding requested for the lease is duplicative;

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- 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.
- N. Affected IA Program Office(s)** (i.e., the office, program, or regional office that is not the PFSA-Owner Program Office but is otherwise affected by the 105(l) lease) is responsible for providing timely responses to RPL and the AO as needed.
- O. Office of the Solicitor, Division of Indian Affairs (SOL-DIA)** assists RPL in determining whether the proposed lease expenses are allowable pursuant to 25 CFR 900.69-70. 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 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. A section 105(l) lease must include compensation as provided in section 105(l)(2) of the ISDEAA, and such other reasonable expenses that the Secretary determines, by regulation (25 CFR 900.69-900.74), to be allowable. 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 provides more specific guidance related to the review and processing of 105(l) leases.

- A. Request of a T/TO.** The RPL at Central Office receives T/TO requests and supporting documentation for 105(l) leases for review and approval. RPL 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 region or Central Office directorate receives the T/TO request, those offices will immediately notify RPL and forward the T/TO request to RPL to process. RPL 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 negotiations.

- B. Information RPL will Review in Negotiating a 105(l) Lease.** RPL should review the following information when negotiating a T/TO request for an 105(l) lease:

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- 1) **The funding agreement vehicle on which to base a lease.** A copy of the approved funding agreement which the lease will support, and the PFSAs to be delivered or administered in the facility.
- 2) **Method for calculation of lease compensation.** The basis for lease compensation must be one of the following:
 - a) fair market rental, as documented by the prevailing rental prices in the geographic area with a comparison of similar structures or similarly located structures if the facility is unique to the location;
 - b) 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; or
 - c) paragraphs (a) through (h) of 25 CFR 900.70 only, as documented by evidence of such costs and a certification from its authorized Tribal representation (RPL must have a copy of the Tribal Resolution designating this official to act on behalf of the T/TO in this instance).
- 3) **Any federal funds received (or to be received) by the T/TO.** The T/TO must identify any federal funds it received previously and any federal funds it is currently receiving for the requested facility, including Secretarial Amount funding (a.k.a. "106(a)" funding), Contract Support Costs (CSC), CSC startup costs, operations and maintenance, and indirect cost pool. The T/TO must also provide documentation supporting any federal funding (including grants, loans, or any other funds provided by the federal government) received to fund construction of the facility.
- 4) **Facility description.** The following information about the proposed leased facility must be included:
 - a) location and address;
 - b) an architectural floorplan showing gross square footage for all floors;
 - c) in service date of the facility (i.e., certificate of occupancy date);
 - d) Certificate of Occupancy, which may have been provided to the requesting Tribe to ensure the facility conforms to OFPSM safety standards;
 - e) identification of all programs/departments on the floor plan, and if more than one tenant occupies the facility, identification of square footage used in performance of the funding agreement;

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- f) a certified copy of the loan agreement, and principal and interest (P&I) payment schedule for the duration of the loan if requesting: (1) depreciation, and/or (2) P&I.
 - g) recent photos of facility interior and exterior;
 - h) a recent inspection report of the condition of the facility; and
 - i) Tribal information regarding CSC considerations for the building identified in the lease to ensure no duplicative costs are claimed.
- 5) **Proof of ownership.** Proof of T/TO ownership status:
- a) proof of mortgage, title, or loan;
 - b) quitclaim or warranty deed; or
 - c) lease agreement if sub-leasing to IA.
- 6) **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.

C. Preparation for Lease Execution.

- 1) **Scope and Purpose of lease.** RPL will work with the PSFA-Owner Program or Office and the appropriate AO to ensure the leased facility meets necessary program requirements, dimensions, square footage, and the purpose indicated in the Tribal request for the space.
- 2) **Availability of appropriations, existing funding, and PFSA.** In the absence of a specific appropriation for this purpose, financing of 105(l) leases is unique because 105(l) leases must be funded by IA at the request of Tribes, subject to appropriations law and congressional reprogramming requirements. RPL 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) **Legal sufficiency review.** The SOL-DIA, Central Office will conduct a legal sufficiency review 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

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signature. Each lease will be signed by the authorized T/TO representative and the AS-IA or designated Approving Official.

- 1) **Copies of executed lease.** RPL will share copies of the executed lease with the PFSA-Owner Program Office and Affected IA Program Office and AO within three days of execution.
- 2) **Necessary documentation.** The RPL will provide all necessary documentation required by the AO to transfer funding to the T/TO within three days of execution of the lease.
- 3) **Initial lease cost.** The AO responsible for the funding agreement will transfer the funding to the T/TO to address the lease costs pursuant to the signed agreement in place.

E. Reassumption or Retrocession of PFSA's.

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

Approval

JASON FREIHAGE Digitally signed by JASON FREIHAGE
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Jason Freihage
Deputy Assistant Secretary – Management (DAS-M)

Date