

105 (I) Lease Program



ADVISORY
GROUP



**GETTING STARTED
GUIDE FROM FSA-AG**

TABLE OF CONTENTS

- 02** PROGRAM OVERVIEW
- 04** ELIGIBILITY & COMPENSATION
- 05** ESTABLISHING 105(I) LEASES
- 05** HOW FSA-AG CAN HELP
- 06** NEXT STEPS



PROGRAM OVERVIEW



A 105(L) LEASE IS AN AGREEMENT BETWEEN INDIAN AFFAIRS OR INDIAN HEALTH SERVICE AND A FEDERALLY RECOGNIZED TRIBE TO COMPENSATE A TRIBE FOR FACILITY OPERATIONAL EXPENSES RELATING TO THE USE OF A FACILITY TO OPERATE CONTRACTED OR COMPACTED PROGRAMS, FUNCTIONS, SERVICES, AND ACTIVITIES (PFSA).

105(l) refers to Section 105(l) of the Indian Self Determination and Education Assistance Act of 1975 (ISDEAA) that establishes Indian Affairs may enter into a lease agreement with a tribe to provide compensation for these activities. Lease compensation for this program became available in 2014 following successful litigation establishing the obligation of the Federal Government to fund – however there was little utilization of this program until 2019, when additional tribes sought compensation.

In FY 2022, the program was amended to provide mandatory funding by the federal government. In August of that year, the Indian Self-Determination and Education Assistance Act 105(l) Facility Lease Technical Assistance Guidebook was published.

Since 2022 and into the future, this program is expected to provide substantial funding to tribes for continued operation of PFSAs.

WHAT IS A 105(I) LEASE?

**NOT A TRADITIONAL LEASE,
RATHER, A COST AGREEMENT.**

Section 105(I) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 5324(1)) provides that Tribes and Tribal Organizations (T/TOs) carrying out Federal functions under a self-determination contract or self-governance compact may enter into a lease agreement with Indian Affairs for the tribally owned or rented facility used to carry out those functions.

- 105(I) refers to Section 105(I) of the Indian Self-determination and Education Assistance Act
- Facility cost agreements
- Statutory requirement

HERE'S AN EXAMPLE:

IHS Use Case – Self-Governance
Communication and Education
Tribal Consortium

- Facility degradation, complaints from patients about the condition of the facility
- Not enough in maintenance for repairs in AFA

105(I) proposed revenue source for facility

- Cost share agreement with IHS
- To administer PFSA it took over in contract
- Identifies PFSA
- Calculate sq footage to administer PFSA
- Floor plan markup
- Compensation method decision
- Appraisal scheduled
- Ownership/warranty documentation
- Address deferred maintenance issues
- Focus time and energy on serving patients



ELIGIBILITY & COMPENSATION

IDENTIFYING ELIGIBLE PROGRAMS & FACILITIES

A tribe must hold title, a leasehold interest, or a trust interest in the facility used to carry out an established PFSA. For mixed used facilities, common and shared spaces that do not directly support the PFSA may be compensated at a reduced rate.

To determine program eligibility, FSA consults the BIA Greenbook, Indian Affairs' congressional budget justification document, providing justifications for all Indian Affairs programs and performance data.

The Program, Function, Service, or Activity must be in an approved Indian Self-Determination and Education Assistance Act contract, Self-Governance compact, or a Public Law 100-297 grant.



COMPENSATION DETAILS AND COST ELEMENTS

Compensation is intended to cover facility operating expenses and include rent, depreciation, reserve funds, principal and interest, and operational/maintenance expenses, and may be calculated based on fair market rental comparison, direct cost elements supported by actual costs incurred, or a combination of both. A tribe may not receive duplicative funding and any amounts received from federal or state sources (including indirect cost rate compensation) must be subtracted.

ESTABLISHING 105(I) LEASES



UPON RECEIVING THE NECESSARY DOCUMENTATION:

Indian affairs estimates leases may be executed within 90 days, subject to additional documentation requirements – however, lease compensation will be back-dated to the date of the initial request. Once a lease is approved, it must be renewed on an annual basis but is not subject to renegotiation if there are no changes.

Lease funding received may be used at the discretion of the tribe and is not restricted to use by the PFSA receiving it. Tribes may use funding broadly to fund or finance other infrastructure, including pledging amounts for loans or bond issuances.

HOW FSA-AG CAN HELP



FSA-AG CAN HELP DETERMINE ELIGIBILITY FOR ALL FACILITIES, PROVIDE ACCURATE CALCULATIONS FOR FUNDING, AND ENSURE COMPLIANCE WITH ELIMINATION OF DUPLICATE AMOUNTS DUE TO FUNDING FROM OTHER SOURCES. FSA CAN ASSIST WITH THE ENTIRE PROCESS FROM LEASE PROPOSAL THROUGH APPROVAL, FUNDING, AND RENEWAL.

FSA Advisory Group's team of professionals, with extensive tribal administration and finance experience, is dedicated to providing Tribal Administrative Consulting Services to Tribal Nations.

Specialized lines of service now include 105(l) leases, in addition to Grant & Finance Compliance, COVID-19 Grant Administration Services and Third-Party Revenue Administration.

ADDITIONAL RESOURCES:

- [105\(l\) Facility Lease Program Technical Assistance Guidebook](#)
- [Office of Facilities, Property and Safety Management](#)
- [Indian Self-Determination and Education Assistance Act Final Rule](#)
- [Self-Governance Communication and Education Tribal Consortium](#)
- [ISDEAA Listening Session](#)



READY FOR MORE? WATCH TODAY!



The FSA difference is centered around the way we serve and execute for our clients.

CONTACT US

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