



ISDEAA 105(I) Facility Lease Technical Assistance (TA) Guidebook

June 2023

Background on IA's 105(I) Program

- 2019 - First two lease agreements executed
- 6/19/20 – 7/1/20 – Tribal Listening Sessions.
- 9/11/20 – National Policy Memorandum: Lease of Facilities
- 3/30/21 – Published IA Manual Chapter 80 IAM 7: 105(I) Lease of Facilities
- FY 2021 Omnibus Appropriations Bill:
 - Indefinite Appropriation
 - DOI and HHS to consult with Tribes regarding requirements for leases and how to implement a consistent and transparent process for payment of leases
 - Lease Term shall commence no earlier than date of receipt of lease proposal
- 8/27/21 – IA and IHS held a Joint Tribal Consultation
- 8/2022 – Published ISDEAA 105(I) Technical Assistance Guidebook

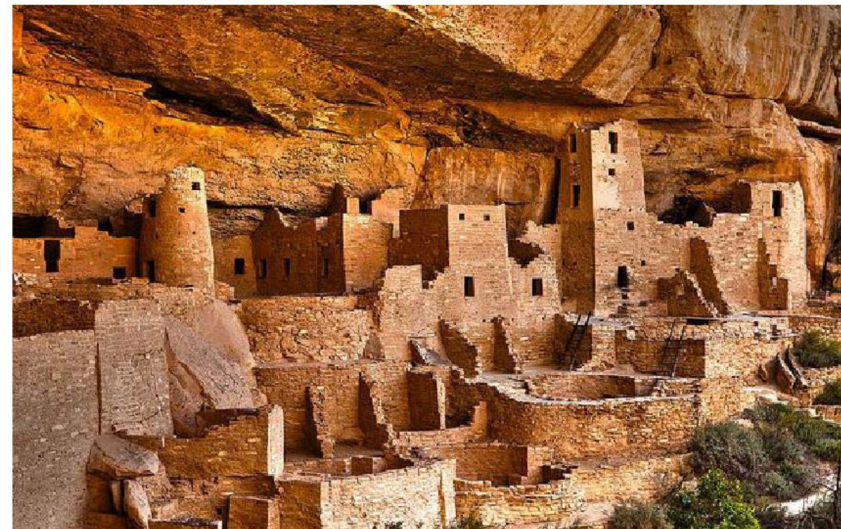
TA Guidebook Overview

- Background
- What is a 105(l) Facility Lease?
- Eligibility requirements
- Types of compensation
- How to start the process
- Facility Details
- Leases and Renewals
- Lease Process Overview

<https://www.bia.gov/as-ia/ofpsm/brpl/105lp>

105(l) Facility Lease Program

Technical Assistance Guidebook



INDIAN AFFAIRS

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Management

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What is a 105(l) Facility Lease?

Chapter 1

- They are not traditional leases.
- They are facility cost agreements that compensate the T/TO owner for facility operational expenses associated with using the facility to administer or deliver P.L. 93-638 (ISDEAA) contracted/compacted services.
- They are a statutory requirement

Eligibility Requirements

- T/TO must have one of the following:
 - (1) title to the facility, or
 - (2) a leasehold interest in the facility, or
 - (3) a trust interest in the facility.
- The facility must be occupied and used by the Tribe to carry out an ISDEAA contract or compact program, 100-297 grant function service or activity – this includes 477 programs incorporated in funding agreements.



The Tribe's Considerations

Eligibility

Types of Compensation

What does the Tribe or Tribal Organization consider when determining eligibility?

-How to document your interest in the facility?

-Is the PFSA in a current, approved ISDEAA Self Determination contract, a Self Governance compact or a P.L. 100-297 grant or a P.L. 102-477 Workforce Development Program incorporated into the ISDEAA agreement? Document/reference that.

The Tribe or Tribal Organization must choose the type of compensation that best suits their needs.

A. Fair Market Rental

B. Cost elements listed in 25 CFR Section 900.70 (a) – (h) only.

C. Combination of Fair Market Value and Cost Elements

Costs included in compensation must be reasonable and not duplicative.

Considering Fair Market Rental Analysis

- A **full-service lease** is typically defined as a lease with one all-inclusive rental rate that includes both the base lease rate and the operating expenses (property taxes, insurance, and common area maintenance) combined into one figure.
- A **modified gross lease** is a type of real estate rental agreement where the tenant pays base rent at the lease's inception. Still, it takes on a proportional share of some of the other costs associated with the property as well, such as property taxes, utilities, insurance, and maintenance.
- In a **triple net lease**, the **tenant** pays for building maintenance, property insurance, and property tax in addition to monthly rent.

Net - Rent + Taxes

Net-Net - Rent + Taxes + Insurance

Net-Net-Net - Rent + Taxes + Insurance + Operating Cost

How to Start the Process

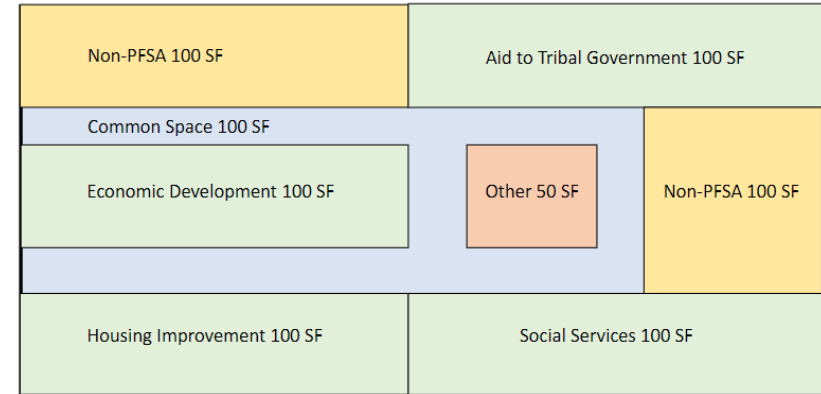
Chapter 2

- Contact us at ISDEAA105L@BIA.GOV
- There is no standard application.
- The lease proposal should confirm:
 - The Tribe holds title to, a leasehold interest in, or a trust interest in a specific facility.
 - The Tribe is using the facility to administer an approved ISDEAA PFSA. List the PFSAs in each facility.
 - The type of compensation the Tribe is seeking.
 - The address of the facilities for which the Tribe requests compensation.
 - The contact information for the Tribal representative.

Facility Lease Details

Items to be included in the facility description:

- The location and address.
- An architectural floor plan that shows gross square footage for all floors. The biggest driver for compensation.
- The date the facility was placed into service.
- The Certificate of Occupancy.
- Recent photos of the facility's interior and exterior.
- A recent inspection report of the condition of the facility if available.
- A floor plan showing all the PFSA's, and any non-PFSA's, or if there are other tenants in the facility.



Facility Lease Details (Continued)



- A 105(I) lease can only compensate for the space associated with IA ISDEAA PFSAs.
- One lease per facility even if multiple PFSAs are operating in the same location.
- A proposal may contain multiple facilities.
- We have lease templates for both Self-Determination (Title I) and Self-Governance (Title IV).

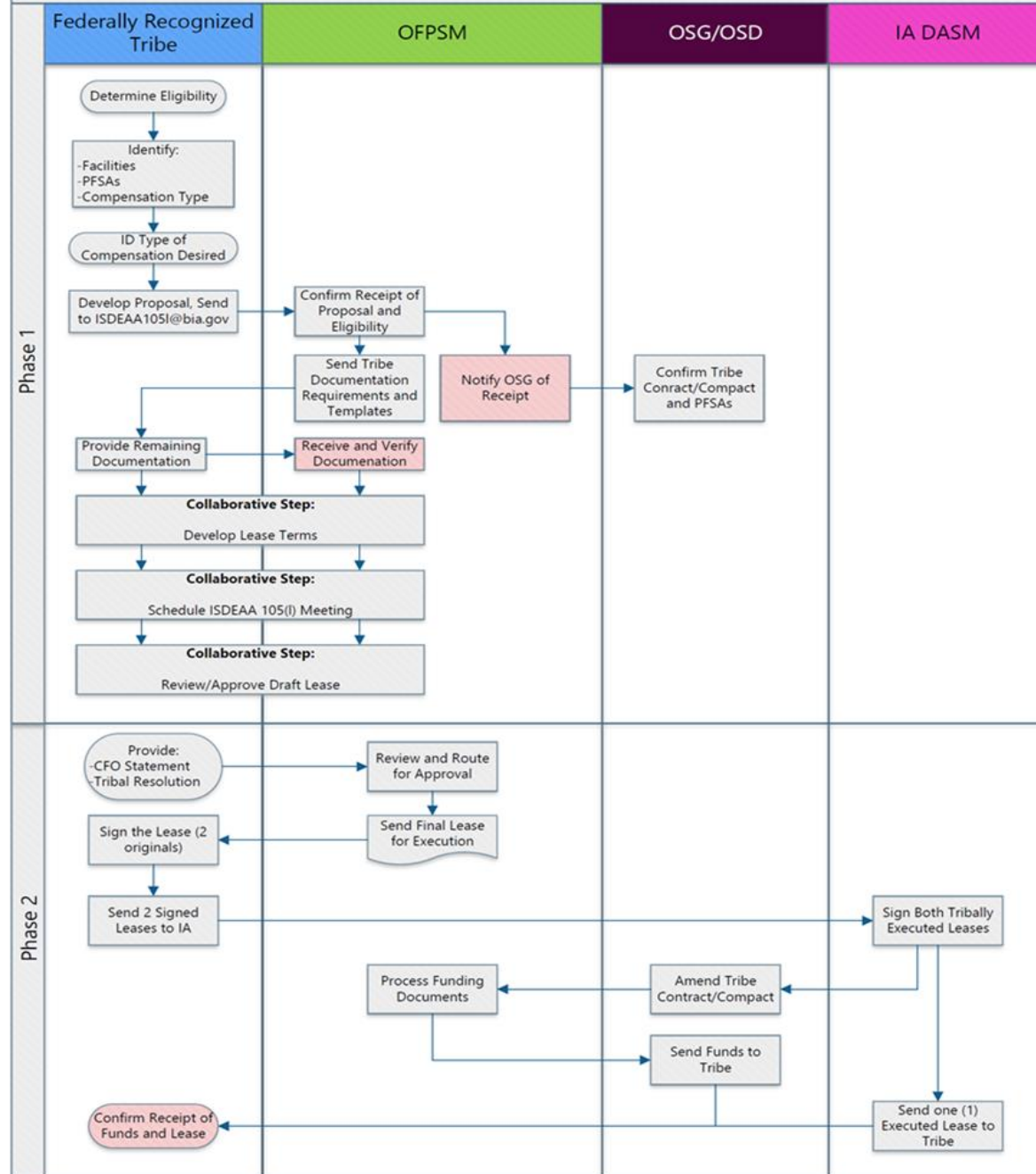
Lease Process Overview

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- Proposal Chapters 1-2
 - Determine eligibility
 - Determining the method of lease compensation
 - Tribe submits proposal to ISDEAA105L@BIA.GOV
 - IA to verify the funding agreement vehicle on which the lease is based
 - Draft and Review Chapters 5-6
 - Review of facility documentation
 - Follow on (Technical Assistance) meetings as needed
 - CFO Certification
 - Legal sufficiency review
 - Approval and Execution Chapter 6
 - Review the draft lease
 - Tribal Resolution
 - Final lease execution and funding

The Process

Documentation
 Collaboration
 Execution
 Funding

105(l) Facility Lease Process Map



The Leases and Renewals

Chapters 6 - 7

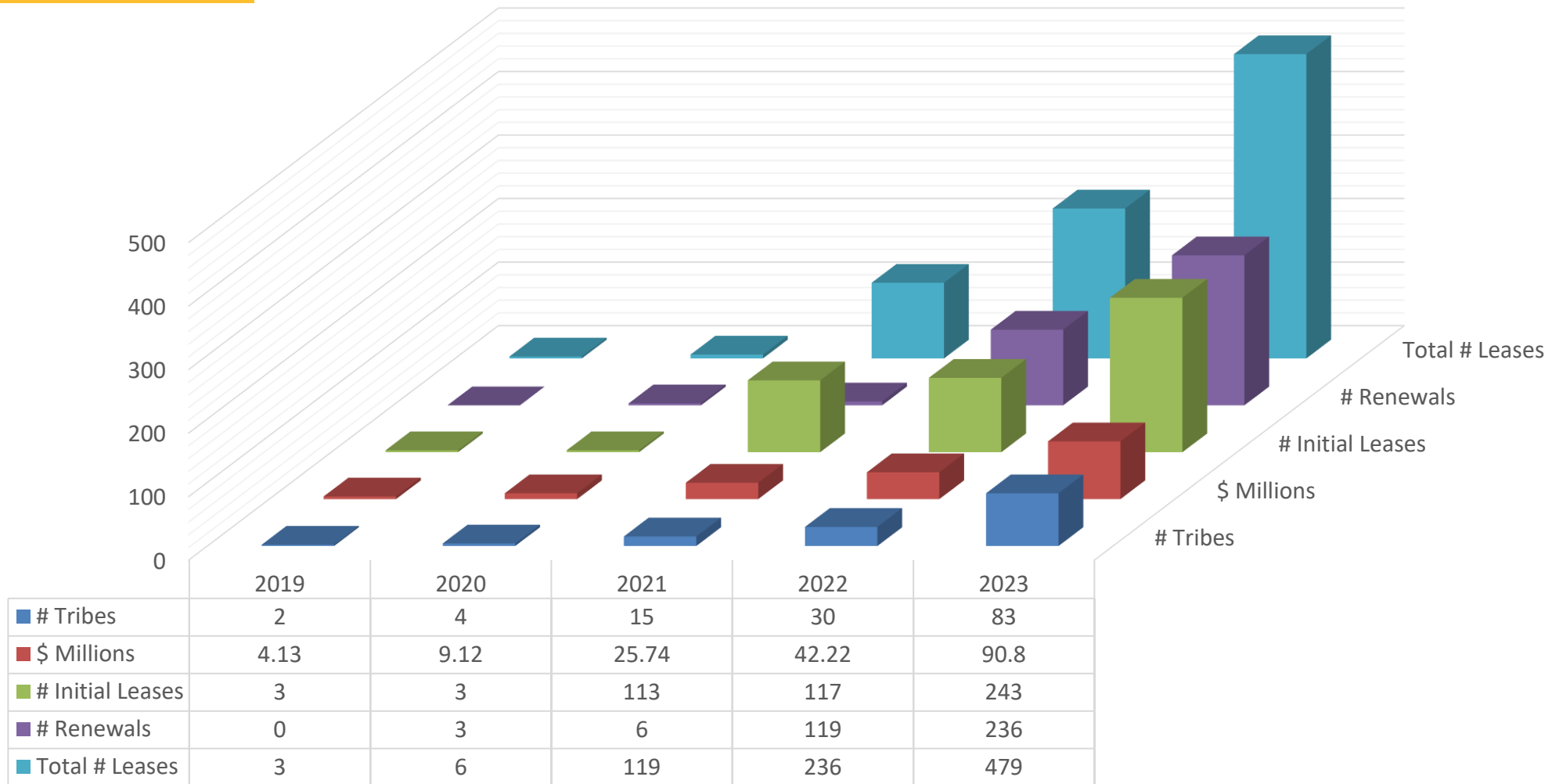
- IA will prorate the initial lease term for either calendar year or fiscal year basis beginning with date of receipt of proposal.
- The lease agreement will be executed by:
 - The T/TO.
 - The IA designated approving official
- The awarding official will incorporate the 105(l) lease agreement into the ISDEAA agreement or 297 grant
- Lease renewals:
- Request 90 days before the expiration of the current lease expires
 - Are for a full calendar year or fiscal year
 - Terms may be renegotiated

The Path Forward



- Contact us at ISDEAA105L@BIA.GOV
- Published Guidebook <https://www.bia.gov/as-ia/ofpsm/brpl/105lp>
- 105(I) team will provide sample templates for required documents
- The 105(I) team will provide technical assistance as needed
- The 105(I) team will coordinate with IHS to ensure no overlaps

Growth of IA's 105(I) Lease Program



Questions and Comments





THANK
YOU!

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