



Dear Tribal Leader:

The Office of the Assistant Secretary – Indian Affairs (IA) and the Indian Health Service (IHS) invite you to consult on 105(l) lease requirements and payments, with a goal toward consistent and transparent 105(l) lease administration.

### **Background on 105(l) Leases**

Section 105(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 5324(l)) 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 IA or the IHS for the tribally owned or rented facility used to carry out those functions. The 105(l) leases are facility cost agreements to compensate the T/TO owner for facility operational expenses associated with using the facility to administer or deliver the contracted or compacted services.

The FY 2021 Omnibus appropriations included General Provision language for the Department of the Interior (DOI) and the Department of Health and Human Services (HHS) regarding administration of 105(l) leases. This language included direction to conduct Tribal consultations on how to implement a consistent and transparent process for payment of 105(l) leases as follows:

#### **SEC. 431.**

(a) Notwithstanding any other provision of law, in the case of any lease under section 105(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5324(l)), the initial lease term shall commence no earlier than the date of receipt of the lease proposal.

(b) The Secretaries of the Interior and Health and Human Services shall, jointly or separately, during fiscal year 2021 consult with tribes and tribal organizations through public solicitation and other means regarding the requirements for leases under section 105(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5324(l)) on how to implement a consistent and transparent process for the payment of such lease.

Given Congress's direction and the Administration's interest in improving implementation of the 105(l) program, IA and the IHS are seeking to establish as consistent and transparent an approach as possible in their administration of 105(l) leases. To help achieve that goal, IA and the IHS would like your input on the following topics and questions, in addition to any other feedback you may have regarding 105(l) leases.

Questions for Consultation

1. **Process.** Congress directed that a consistent and transparent process be implemented for 105(l) leases.
  - a. How could IA improve Part 80, Chapter 7 of the Indian Affairs Manual (80 IAM 7), which addresses the processing of 105(l) leases?
  - b. What suggestions could be made for the form of any IHS guidelines?
  - c. What constitutes a “lease proposal” as stated in the FY 2021 Omnibus appropriations General Provisions language for DOI and HHS in Section 431 “...the initial lease term shall commence no earlier than the date of receipt of lease proposal.”
2. **Facility Size.** Facility size is the biggest driver of 105(l) lease cost. IA and the IHS therefore seek a consistent and transparent method for determining a reasonable facility size for carrying out federal programs.
  - a. If IA and the IHS were to establish facility-size guidelines for 105(l) leases, how could those guidelines consistently account for a wide variety of programs, services, functions, and activities (PSFAs), for example, law enforcement, schools, and administrative functions?
  - b. What criteria should IA and the IHS use in determining square footage (SF) guidelines for each type of facility participating in the 105(l) lease program?
  - c. What criteria should IA and the IHS use in determining reasonable lease compensation appropriate for IA and IHS programs?
  - d. What, if any, considerations beyond facility-type and capacity should IA and the IHS include in guidelines?
  - e. How can IA and the IHS best support Tribal sovereignty through the use of consistent guidelines?

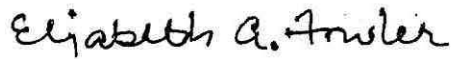
We invite you to join the following consultation session to discuss the above:

| <b>Date</b>             | <b>Time</b>                           | <b>Please Register In Advance at:</b>   |
|-------------------------|---------------------------------------|---|
| Friday, August 27, 2021 | 1:00 p.m. – 4:00 p.m.<br>Eastern Time | <a href="https://www.zoomgov.com/meeting/register/vJIsdeCgrjsvHi4aSWg3V726LCrsX6PxsSk">https://www.zoomgov.com/meeting/register/vJIsdeCgrjsvHi4aSWg3V726LCrsX6PxsSk</a><br><br>After registering, you will receive an e-mail confirmation containing information about joining the meeting. |

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We look forward to discussing this topic with you and welcome your written input by September 13, 2021, to [consultation@bia.gov](mailto:consultation@bia.gov) and [consultation@ihs.gov](mailto:consultation@ihs.gov). If you have any questions about the consultation please contact us at [consultation@bia.gov](mailto:consultation@bia.gov) or [consultation@ihs.gov](mailto:consultation@ihs.gov).

Sincerely,



Elizabeth A. Fowler  
Acting Director, Indian Health Service



Bryan Newland  
Principal Deputy Assistant Secretary – Indian Affairs