

**NWX-DEPT OF INTERIOR-NBC**

**June 29, 2020  
12:00 pm CT**

Coordinator: Thank you for standing by. At this time all participants are in a listen-only mode until the question and answer session of today's conference. At that time you may press star 1 on your phone to ask a question. I would like to inform all parties that today's conference is being recorded. If you have any objections, you may disconnect at this time. I would now like to turn the conference to your host, Mr. Mark Cruz. Thank you, you may begin.

Mark Cruz: Thank you operator and thank you to everybody on the line. Welcome to the first of two listening sessions on the development of Indian Affairs 105(l) Lease Program Framework. Before we begin I want to point out that this listening session is not intended for the press for media use. And we respectfully ask that if you're a member of the press or media that you reach out to the department's Office of Public Affairs and disconnect now.

Before we begin my name is Mark Cruz and I have the privilege of serving as the Deputy Assistance Secretary for Policy and Economic Development for Indian Affairs here at the U.S. Department of Interior. I'm also an enrolled member of the (unintelligible) and it's a pleasure to be here on behalf of Secretary Bernhardt and Assistant Secretary Sweeney.

Our administration in Indian Affairs recognizes the importance of 105(l) leases as a mechanism for infrastructure development in Indian country. As an example of this recognition, the FY2021 budget -- president's budget -- includes an indefinite appropriation requests for 105(l) leases.

Similar to contract support costs 105(l) lease cost can be difficult to project in the out years. Should Congress include the indefinite appropriation authority request in the president's budget request, it would greatly help Indian affairs with managing these uncertain and unpredictable costs in the out years.

Roughly a year ago we signed our first 105(l) lease for the Gila Crossing Elementary School in Arizona. Since then we have also entered into leases with the Red Lake Band of Chippewa Indians for a public safety and justice facility as well as fire halls. And are currently working with other tribes on several new requests.

What we are presenting today is a representation of what we have learned from our successful lease negotiation and builds off of our previous presentation - one earlier this year NCAI and another at an (ATIBIC) meeting. A couple of my notes that I'd like to share is that having been involved in the first two successful lease negotiations are a couple thoughts.

First, is how do you specificity in the tribal request will greatly help our interior team better understand the requests and be able to act on the tribe's request in a more timely fashion.

Second is operating with the spirit of cooperation during the negotiation. A big reason we're here today is that the statute and the accompanying regulations don't account for what should be included to process a request.

Hence using what we both learned at practice we believe our framework is grounded in experience and favorable to both parties.

Third and final is remaining flexible. Our team works as quickly as possible to forward incoming information and respond to the tribe's request. Given the lack of nonexisting framework, multiple requests coming in and several different staff offices contributing to the final product ultimately requires flexibility in both a change of information and time for both parties.

So with that, I'd like to now turn it over to my friend and colleague (Jason Freihage) who serves as the Deputy Assistant Secretary for Management within Indian Affairs. (Jason).

Jason Freihage: Great thank you, Mark. As Mark noted the 105(l) Program is really a new program for us. And we have a relatively new team working on 105(l) leases. Given as a goal today is to provide the information you have been asking for and need to understand the technical requirements and connect you with the individuals who will work with you on lease proposals. But you just need the basics such our planning or if you're close to formally requesting a lease, this presentation should help you move forward.

As Mark noted about the importance of specificity and cooperative work especially getting details on the technical requirements really helped us all get on the same page as soon as possible so that we can keep things moving forward. I'd like to introduce you to our core team of folks working on this as you begin to engage with us on 105(l) leases.

First, Judith Wilson the Director of the Office of Facilities, Property and Safety Management for Indian Affairs who's office manages the 105(l) Program. She'll be leading the next section of our call today walking through

the presentation and the materials. As you've viewed with us further too Bryan Shade an attorney from our office of the Solicitor of Division of Indian Affairs will be actively working with us and supporting us as we work through the negotiation process for 105(l) leases.

Now I will turn over the phone to Miss Wilson who will walk you through the presentation on Indian Affairs 105(l) leases. Judith.

Judith Wilson: Good afternoon everybody. I'm (Judi) Wilson Director, Office of Facilities, Property and Safety Management. It's a mouthful. We call it OFPSM. I am one of those relatively new team members working on the 105(l). I joined Indian Affairs in the end of October. So I haven't had the opportunity to meet with many of you but hope to in the future.

One of the things I wanted to do before I got to the presentation was to make sure that you were able to actually access the presentation on the Indian Affairs Web site. If you go to [www.dia.gov](http://www.dia.gov) and select AS-IA. And then on the bottom - towards the bottom on the left-hand side RACA - R-A-C-A regulations development and/or under review.

If you click on that hotlink or tab if you will you should see Section 105(l) leases and that's where the PowerPoint presentation's located if you've not yet had a chance to find that. The presentation today is pretty simple and straightforward. We're going to review what is the Section 105(l) lease and then provide a framework approach that we can use for 105(l) leases here in Indian Affairs.

So first what is a 105(l) lease? Well these are leases under and we put the under in air quotes. These are leases under Section 105(l) of Public Law 93638. They're not traditional leases. They are facility cost agreements that

compensate the tribe or the tribal organization owner for a facility's operational expenses associated with using the facility to administer or to deliver Public Law 93638 or is via Indian Self-Determined Education and Assistance contracted and/or compacted services.

Regulatory requirements for 105(l) leases are at 25 CFR 900 Sub Part H which is lease of tribally owned buildings by the secretary which consists of Section 900.69 to 900.74. A tribe or a tribal organization must have one of the following to enter into a 105(l) lease negotiation. And that is title to the facility, a leasehold interest in the facility or a trust interest in the facility. And secondly, the facility must be used to carry out an ISDEAA compact for contract.

One zero five (l) proposals must request that compensation be based on one of the following. Either fair market rental, a combination of cost elements listed in 25 CFR Section 900.70 and fair market rental or the cost elements listed in Section 900.70 only.

The cost elements at 900.70 Section A through H include things, like, rent, depreciation, reserve, principal and interest, operations and maintenance, unscheduled and scheduled maintenance, security services, management fees and other reasonable costs. So to underscore costs included in the compensation must be reasonable and not duplicative. And by that we mean not already federally funded under another agreement.

Interior has signed 105(l) agreements as Mark noted with the Gila River for the Gila Crossing Community School and the Red Lake Band of Chippewa Indians for a criminal justice center. These two significant and successful negotiations provided an opportunity to focus on two very different facility types and apply the statutory and regulatory requirements. The review of

materials in both cases were actually quite similar. And they afforded us at Indian Affairs an opportunity to develop a framework while anticipating future 105(l) requests.

Indian Affairs is defining an internal framework for accepting and reviewing lease requirements to be mindful of the 90-day agreement requirement and to address items such as the funding agreement vehicle in which the lease is based, a method for lease calculation of lease compensation, facility description, scope and purpose of lease, review of the materials, negotiation, a legal sufficiency review and then finally lease execution.

The Indian Affairs office and program staff work with the Office of Self-Governance, the Office of Self-Determination, the Bureau of Indian Affairs or the Bureau of Indian Education staff is applicable to serve the regional office to identify the funding agreement vehicle by determining whether the 105(l) lease request is for a facility that serves the carryout program services functions and activities - PSFAs included and approved is the agreement or 297 grant. And any funding requested for the 105(l) lease is duplicative. So those are the two things I mentioned in the previous slide that you'd be looking for.

So the method of calculation. Lease compensation calculation of the 105(l) lease compensation what do we do. Indian Affairs relies on Section 900.69 to 70 in assessing and reviewing proposed compensation components. We developed Excel spreadsheets with built-in formulas for compensation calculation. This was based on our experience with the previous 105(l) lease negotiations. Those spreadsheets have a summary page if you will summarizing each one of the tabs.

And the individual tabs address rent if it's subleased, depreciation and use

allowance based on the useful life of the facility, based on acquisition costs not financed as federal funds, contributions to a reserve for replacement of facilities, principal and interest paid or accrued, operation and maintenance expenses, repairs to buildings and equipment, alterations needed to meet contract requirements and other reasonable expenses.

So if I might just for a moment. In terms of let's talk about perhaps depreciation. There's a specific formula for depreciation that we use that is based on I have to make sure I get this right. The depreciation and creating reserve accounts and for principal and interest.

These all are applicable for each of the requested compensation areas. And it's intended to address those allowances. For example depreciation and use allowances based on useful life of the facility based on the acquisition costs not financed with federal funds.

So for example, if a building was constructed for \$10 million with 50% cost share with the federal organization, then only the \$5 million provided by the tribe could be depreciated. If the building was constructed for \$10 million and 100% was funded by the tribe, that full amount of construction could be depreciated. So it's just a way of giving you an example of how those are going to be handled on a case-by-case basis depending on the tribe and its situation.

The facility description will include things, like, the location and address of the facility and architectural floor plans showing gross square footage of all the floors, the in-service date of the facility it's available - the certificate of occupancy date.

Some of the buildings may have pre-dated the requirement for a certificate of

occupancy. So they may not necessarily be available. Identification of all the programs or departments and the floor plan and if more than one tenant occupied the facility and identification of the square footage that's actually used in the performance of the agreement or that 297 grant.

Additionally, for facility description, the certified copy of the loan agreement and principal and interest payment scheduled for the duration of the loan is requesting depreciation and/or principal and interest. Recent photos of the facility interior and exterior and any recent inspection report of the condition of the facility.

We also would like included in a facility's description and any tribal information regarding contract support costs, consideration for the building identified in the lease to ensure there were no duplicative costs or claims. And then proof of ownership as we noted up front in one of the earlier slides which would be a proof of mortgage, a title, a loan, a quitclaim or warranty deed or a lease agreement if subleasing for Indian Affairs.

When it comes to the scope and purpose Indian Affairs will work with the office or the program being contracted or compacted and the appropriate awarding official to ensure that the lease facility meets the necessary program requirements, dimensions, square footage and the purpose indicated in the tribal request for the space.

When we review the materials of Indian Affairs Office of Facilities, Property and Safety Management -- my organization -- and the Real Property and Leasing Branch that's under me will oversee the review of the 105(l) lease proposals from the tribes or the tribal organization.

Will serve as the primary point of contact for questions about 105(l) lease



compensation. And we're responsible for coordinating with Bureau of Indian Affairs Office of Self-Determination, Office of Self-Governance or Bureau of Indian Education on finalizing those 105(l) lease proposals and ensuring that we have reasonable and non-duplicative lease compensation.

And then in addition the Office of the Solicitor Division of Indian Affairs' headquarters office conducts a legal sufficiency review prior to any execution of a lease. With respect to lease execution, the lease agreement will be executed by the designated approving official, a real property and leasing representative, the IA Program Office and the tribe or tribal organization.

We do have what we've developed from our first two successful lease negotiations is essentially a lease template - a generic template that we're more than happy to share to give folks an idea of what that might look like. So the awarding official will incorporate the 105(l) lease agreement into the ISDEAA Agreement or 297 Grant by amending the ISDEAA Agreement or 297 Grant and attaching the 105(l) lease to the ISDEAA Agreement or 297 Grant.

So that's just a high-level overview of the framework that we've been developing to help us kind of work through the negotiations based on the first two. We try to address any of the specificity in the requirements. But also we're trying to be flexible and working in cooperation with the individual tribes or tribal organization to really further look into how's the best way to exchange information and perhaps using this framework that we're trying to develop to make it as efficient a process as possible.

So I think at this time we would be - if the operator I believe would be opening the lines for any questions we want to give you time and an opportunity to ask questions of us. And if there's questions that too difficult

for us to answer during this call, we'll try to answer them in the call coming up on Wednesday. And if you have tribal specific questions you may also want to note those. Thank you.

Mark Cruz: Thank you, Director Wilson. Operator if you want to go ahead and open up the lines for questions. And because this is a listening session it will these in first come, first served.

Coordinator: Thank you. We will now begin the question and answer session. If you would like to ask a question please press Star 1, unmute your phone and record your name. Your name is required to introduce your question. If you need to withdraw your question please press star 2. Again to ask a question please press star 1. It will take a few moments for the questions to come through. Ray your line is open.

Ray Teran: Hi yes I have a quick question. Where does the funding for these leases come from number one? And number two if will not prevent any of the BIA or other funding coming to us anyway if we do get into one of those leases. And those are my two questions. I'll listen offline.

Mark Cruz: Sir can we get your name and tribal affiliation for the record?

Ray Teran: Okay sure I just gave it to the machine here. But my name is Ray Teran and I'm with the Viejas Tribal Government.

Mark Cruz: Great, thanks Ray.

Judith Wilson: I'll take that first one. We are working on the congressional appropriation for these lease agreements.

Ray Teran: Right.

Jason Freihage: And Judith if I could just add to that. I think as we propose in the President's 2021 budget about \$21 million in an indefinite appropriation account which would allow us to cover the cost of these leases. Unless Congress in the past has specifically targeted funding for this, we haven't had a specific line for 105(l) leases. So what we're hoping to do - hoping that through the appropriations process Congress will support the proposal in the president's budget so that will be able to cover the cost of leases.

As, you know, Mark mentioned in his opening points 105(l) leases are a little bit, like, contract support costs in that it can be hard to predict the exact level that will be necessary because as the tribes come in and request them, we work with them to try and fund them. And sometimes that means that we can't always predict when a tribe will be coming in. So we're hoping that the indefinite appropriation proposal will be supported so that it will allow us to meet the need for 105(l) leases.

Ray Teran: Okay could I have just some follow up with that. Who do we start the discussions with proceed down this path?

Jason Freihage: So at the back of the PowerPoint presentation there's contact information for Judith Wilson who just did the majority of this presentation so our Director of OSTSM. And Bryan Shade is our supporting attorney from the Office of the Solicitor Division of Indian Affairs. So the two of them would be your primary contact points. And their information is at the back of the PowerPoint presentation here.

Ray Teran: Very well thank you very much. Those are my questions.

Jason Freihage: Thank you.

Coordinator: Dan Harris our line is open.

Dan Harris: Yes this is Dan Harris with Southeast Regional Health Consortium in SouthEast Alaska. So my question is on timing. So if we get approval for - if we want approval for a fiscal year '20 or a 2020 lease, what's the deadline for that? That was my question.

Jason Freihage: Yes. At this point in the year, we're often looking a bit closer to 2021 to allow us to have time to be able to plan for - of being able to fund these leases. So I guess probably the best thing to do is just to contact us and we'll start looking through the requirements and seeing what is possible.

But given the later in the year it goes the harder it is for us to fund. As we were saying that's why we're requesting the indefinite appropriation authority because that will better allow us to have sufficient time to be able to plan and fund the leases.

Mark Cruz: Right. And yes we know we really look at the date of the tribe submission as the starting point. So we've not done retroactive agreements. And so obviously the further you get into a fiscal year the more challenging things get for our budget staff to appropriately fulfill any of these requests. And so, you know, down the road there may be a time when we start asking for more predictable dates. But right now the law provides for requests to come in at any time.

Coordinator: Cheryl Andrews-Maltais your line is open.

Cheryl Andrews-Maltais: Thank you this Chairwoman Cheryl Andrews-Maltais calling from the Wampanoag Gay Head Aquinnah. Thank you for the opportunity for this

listening session and whatnot. I wanted to go back to the question about the funding. I just wanted to find out is there a limit on how many tribes are going to be able to enter into this 105(l) leasing program is my first question.

The second one is how will it be funded in perpetuity or beyond a one, five-year commitment if we're unable to get it in the HUD funding nondiscretionary type of appropriations from Congress is my second question. And my third question is if we could get the PowerPoint presentation sent to us. I was unable to get to it. So I'd really appreciate having that as well.

Mark Cruz: Thank you Chairwoman I'll take a stab at three and one. Yes, the lease is up on our Web site or excuse me the presentation. And so if you have any issues getting to that one of us can send that to you.

In terms of one, I think the only real limit would be the total number of folks that are currently engaged in 638. So there's been no discussion here to have any sort of cap or limit the number of requests that come in. But, you know, there's a lot of newness.

And so we feel being transparent about our process for approving these is the best thing and tribes can select to go this route or not. So we're really early in that education phase. And really try to make sure that we set a reasonable precedent for processing these requests. But, you know, it's always limited by the number of active 638 PSFAs that we have. And then in terms of budget Jason do you want to get into that one?

Jason Freihage: Yes. I mean, you know, I think what we'd all really like to get to is that point where we have this funded sustainably, right? And it is, you know, our appropriation process now it's, if this is, you know, on the discretionary side of the budget ledger, as you know is an annual process.

We do have two-year funding, but it's an annual process. and that's kind of our hope in being able to get to that point where we're able to have the indefinite appropriation of authority was to reflect the challenge of funding. And we see the sense kind of a step forward in saying that because it's hard to predict just is giving Congress an amount and hoping we can hit that exact amount isn't oh so great.

You know, watched how IHS dealt with these and, you know, talked with them about. And so we feel like it definitely is a step forward. And so obviously if we don't get that we do have a budget estimate of at least 21 million in the 21 budget which would hopefully cover the cost that we need.

And, you know, we just until we had that indefinite or some other more sustainable approach really it's just going to be actively working with Congress to and the administration and everyone just to make sure that they know what the latest costs are and we have the best estimate.

So, you know, other until we get something like the investment in place it's really just doing the best we can to ballpark what it is and make sure we have enough funding to cover those costs. So I don't have a perfect answer right now but we see the definite proposal at least as a step forward in the right direction. Does that address the question?

Cheryl Andrews-Maltais: Yes or maybe - and maybe I missed it and do apologize because I was a little tardy to the call or is there a maximum amount of years that you would be able to go into that lease that at least if we were looking at it and projecting what that cost is going to be so that you can get that either allocated or encumbered for the entire lease because what we don't want to do is go into a lease and then find that we can't service that lease or loan.

Jason Freihage: So actually so you're asking is, is it no - not - as a practical matter of implementing these that there's not an exact cap. We do tend to sign these leases on one, and so far sort of one- or two-year terms. But I think somewhat, so we are limited kind of fairly one to two-year terms just in terms of the signing the lease just because of our spending authority for our budget authority.

Cheryl Andrews-Maltais: Okay.

Jason Freihage: However because - so I think that's the key now on a lease by lease basis in terms. I think what you're saying though is you don't want to start down the road and get stopped. And so I think it does - I believe it's somewhat of a - the amount that we entered into is somewhat of a negotiation for your funding agreements in future years though. I think that's what you're saying. You're just worried about starting and then it's getting pulled out, right?

Cheryl Andrews-Maltais: Yes, similar to how we start programs and services grant-based.

Jason Freihage: Right.

Cheryl Andrews-Maltais: And then when those rent dollars dry up we've something we had no way of continuing to fund and - what's our Plan B. And if we're, you know, if Congress doesn't do what it is that we all hope that they do, which is appropriate funds for this type of program so that it, you know, that concern, we just - it's just another factor to put into the mix and weighing the options.

Jason Freihage: No, I understand. I think I'm accurate in saying but I may need to follow-up that this is the 105 (Allogard) tied to contracts and the funding agreements and the funding periods you have. But so it's not grant-based like that. It's not

grant-based in a way that it would be pulled out. This would just be another basing element under is the agreement which isn't quite like the— like a one-time cost that disappears immediately.

Cheryl Andrews-Maltais: Okay great. Thank you very much for that clarification.

Coordinator: We show no further questions at this time.

Mark Cruz: Operator can you share the instructions for how to submit questions for the listeners?

Coordinator: Please press Star 1, unmute your phone and record your name. To withdraw your question, please press star 2. (Lana), your line is open.

Lona Stewart: Thank you. My is Lona Stewart. I'm with the Sault Ste. Marie Tribe of Indians. I work in the police department. I think my question's answered but so this is just a maximum of a two-year lease program which we could plan around but I just wanted to make sure I understood that right?

Man 1: Yes that's the longest we've signed into a lease agreement in part due to our spending authority.

Lona Stewart: Okay, and another one I have is so we have a couple of departments within our tribe. We're rather large that would possibly be eligible for this program. Would we have to submit one application process or can each department do it individually?

Man 1: We can have multiple programs in one lease. The key, you know, I think that things may be and this sort of thinking we haven't had like a very, a real mix yet, but a few things to keep in mind I suppose. One, obviously the funding



provided has to be directly linked to the program function service or activity.so that's key. You need to track the square footage five program so we need to know exactly how much square footage per program if they're having happening multiple programs in one lease.

And then the other thing probably to take into account in terms of keeping things moving is you probably want to show up with making sure your different departments or programs have similar level of detail. And then just thinking it through it'd just be a shame for the process to do all the work putting it together if, you know, one element has a lot more of the detail and information needed and another one needs to work things through It may just process-wise it could slow down the process some.

But we - that's the type of thing if you initially are thinking about going down that road we can find talk with you more about the requirements and help you plan which, you know, which scenario works best for you and talk about your unique situations.

Lona Stewart: Okay, I know health division is working on something but we- I'm in the police department but we have a judicial complex that includes our court, us and the prosecutor. So that would be the group because we'd want to do it for the whole facility and it's just judicial services in here. So we would want to submit one thing for us but I think we have to keep it separate from the health division what they're doing so it's different programs, I guess.

Man 1: Right.

Lona Stewart: But then when you talk about the federal funds making sure they're not duplicated and I guess specifically for depreciation and use allowance our facility was built with I want to say Department of Justice grant funds. our

recent addition was definitely grant funds from DOJ. Are you talking and federal funds or just the BIA, BIE, anything under the DOI umbrella?

Man 1: Primarily any federal funds.

Lona Stewart: Okay.

Man 1: And to your comments earlier I think you mentioned health. You know, we can only include BIA programs.

Lona Stewart: Okay.

Man 1: I assume the health thing would be funded by IHS.

Lona Stewart: Okay, I was wondering about that. I'll talk to them when we get done with a phone call. Thank you very much. That was all of the questions that I had.

Man 1: Thank you.

Coordinator: We show no further questions at this time. Okay Philip your line is open.

Philip Baker-Shenk: Hi federal team, Phil Baker-Shenk on behalf of Red Lake Nation. Thank you for this explanation for the benefit of other tribes. Perhaps for future response, I'd like to suggest and command to your consideration some additional application on recurring funding of leases.

Obviously as Judith mentioned, as Ms. Wilson mentioned, the eligibility for these leases only extends to the extent that they house 638 functions assumed by the tribe which of course are recurring funding with some exceptions for one year related expenditures. and likewise, the leases are sheltering those

recurring operations with recurring funds.

And it would seem to be useful tribes if the lessors could be assured that entering into these lease agreement has some as much I should say certainty of recurring funding as do other operation of Indian program funds that are contracted for. So just a thought for your consideration and you can always exclude as you do in contracts and funding agreements one-time, one-year special funds that populate these leases across elements as well.

Mark Cruz: Great thank you. We'll just include that.

Coordinator: Okay. We show no further questions at this time. To ask a question please press star 1. To remove your question please press star 2. We show no questions at this time. Thank you.

Mark Cruz: Okay operator. We'll give it another minute. In the interim, as you on the line that may know colleagues or others in Indian country that were unable to make today's listening sessions, we'll be holding a second session on Wednesday at the same time 1:00 pm Eastern. Again, that's in two days. And so we will give the same presentation that was given here today. And we will be available for questions and answers from 1:00 to 3 o'clock on Wednesday.

So if you want to if you know anybody who was unable to make today's session please share that information. Again, the dear tribal leader letter, as well as the presentation, are up on our Web site. And if you have any further questions or specific questions as it relates to your tribal community, Director Wilson and our solicitor Bryan Shade's contact information is on that presentation. So you can find their phone numbers and emails there.

But with that, I'll be respectful of everybody's time. Operator if there are no

further questions we'll go ahead and end today's listening session. And we'll be back on this Wednesday at 1 o'clock for our second listening session.

Coordinator: Thank you. We will now end the call. If you have any questions please press star 1. Okay, this concludes today's conference. You may disconnect at this time. Host, please stand by for your post-conference and your line count. Thank you.

END