

Indian Health Service ISDEAA - P.L. 93-638 Section 105(I) Leases

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All 105(I) Lease Proposals must be sent directly to Mr. Weaver in order to be officially accepted by IHS.



105(I) Lease Growth – As of 7/28/2021

Fiscal Year	Total Lease Amount	No. of Leases	Type of Proposals	No. of Leases
2012	\$172,000	1	Option (a) FMR:	209
2016	\$424,058	2	Option (b) Combo:	13
2017	\$5.9	37	Option (c) a-h:	120
2018	\$20.8	76	Undecided:	3
2019	\$99.3	201		
2020	\$122.8	291		
2021	\$150.1 +	345		



105(I) IHS Area Count – As of 7/28/2021

IHS AREA OFFICES	NO. 105(I) LEASES
ALASKA	136
ALBUQUERQUE	1
BEMIDJI	39
BILLINGS	8
CALIFORNIA	44
GREAT PLAINS	2
NASHVILLE	24
NAVAJO	5
OKLAHOMA	40
PHOENIX	30
PORTLAND	16
TOTAL	345



Section 105(l) Authority

- Under the authority of Section 105(l) of the Indian Self-Determination and Education Assistance Act (ISDEAA) at 25 U.S.C. § 5324(l) (previously 25 U.S.C. § 450j(l)) and the regulations at 25 C.F.R. Part 900, Subpart H.
- 25 C.F.R. Part 900, Subpart H, §§ 900.69 through 900.74



§ 900.69 – Purpose of Subpart

Section 105(*l*) of the Act requires the Secretary at the request of an Indian Tribe or Tribal Organization (T/TO) to enter into a lease with an T/TO for a building owned or leased with the T/TO [that is used for administration](#) or [delivery of services](#) under the Act.

§ 900.70 – Compensation Elements included in a 105(*l*) lease – Known as “(a) through (h)”
(discussed more in detail later in presentation)

§ 900.71 – Reserve Funds (fixed or building services equipment) set aside. – Funds received from 105(*l*) lease for reserves are set aside for future replacement of fixed equipment.

§ 900.72 – Guardian of reserve funds – The tribe is the guardian of the reserve fund and determines when to use the funds to replace fixed equipment.

§ 900.73 – Other methods to recover types of cost described in § 900.70 – 106(a) of the Act as direct or indirect

§ 900.74 – Options for Lease compensation – (a) FMR, (b) FMR/a-h, (c) a-h



Consolidate Appropriations Act of 2021

P.L. 116-260

IHS annual appropriation now includes a new indefinite appropriation account for 105(I) leases, plus guidance in section 431 of the general provisions.

SEC. 431. (a) Notwithstanding any other provision of law, in the case of any lease under section 105(I) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5324(I)), **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(I) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5324(I)) on how to implement a consistent and transparent process for the payment of such leases.



105(I) Lease Requirements

- The facility must be used to support programs, services, functions and activities, including administrative functions assumed by a T/TO under a Pub.L. 93-638 compact or contract
- Tribe/Tribal Organization (T/TO) must have one of the following ownership documentation:
 - 1) Title to the facility or equivalent
 - 2) A leasehold interest in the facility that allows subleasing to IHS
 - 3) Bill of Sale
 - 4) Other forms of ownership



IHS 105(/) Lease Team

- Director, DES and Chief DES Acquisitions
- Area Director and/or Executive Officer
- Area cost reviewer, typically Realty Officer and/or Facility Director
- Area Agency Lead Negotiator
- Area Staff from – Office of Tribal Government, Finance, OEHE
- IHS Headquarters & Regional Attorneys
- Alaska Area Technical Advisor



105(I) Lease Principles

- IHS 105(I) leases one-year leases. Tribe must request renewal each year. Lease payments are made in one lump sum
- 105(I) leases are not eligible for M&I funds, but are eligible for Tribal Equipment Funds
- IHS uses a 39-year straight line depreciation method divided by value of facility
- Reserve costs are defined as major fixed and building services equipment
- Principal and Interest compensation are only for loans of major fixed equipment and not construction loans or mortgages.
- In lieu of T/TO providing copies of invoices/payments, IHS will accept a Tribal general ledger summary. Copies of actual payment may be requested if GL summary is unclear.



IHS 105(I) Lease Reviewer

- Lease proposal reviewed by IHS area staff w/guidance from AK Technical Advisor
- Reviewer contacts Tribe and identify additional documents or information required. Usually works directly with Tribal CFO.
- Reviewer is also known as a technical advisor to the T/TO
- Works with tribe to ensure lease proposal is processed for IHS approval without any unresolved issues.
- Reviewer makes recommendations to IHS ALN, but is not authorized to negotiate lease amounts.
- Identifies any facility related amounts paid through the FA that are duplicate to lease proposal. These amounts are offset from final lease amount.



Section 105(I) Lease Proposal (Letter)

All 105(I) lease proposals must be addressed and submitted to Mr. Weaver, IHS ALN for official acceptance by IHS.

- Provide brief description of health or administrative program for each facility.
- Identify which option to base lease review on (FMR, FMR/a-h, a-h).
- If requesting lease based on Option (a) or (b), provide fair market rent analysis
- Amount of Request
- Point of contact for Tribe; Name of Signatory on Lease
- Unsigned IHS draft lease
- Language amendment to AFA/FA (optional)



105(I) Document Checklist

- Proof of Ownership – Bill of Sale, General Ledger Expenses for new construction, Appraisal, Tribal Resolution attesting to ownership
- Architectural floorplan w/measurements, gross square footage
- Exterior/interior photos, recent inspection report
- Fair Market Rent (FMR) Appraisal (if applicable)
- Attachment A summarizing (a) – (h) expenses (if applicable)



§ 900.74 – Options

How may an Indian Tribe or Tribal Organization propose a lease to be compensated for the use of facilities? There are three options available:

Option (a) – Fair Market Rent (appraisal)

Option (b) – Combination of fair market rent and paragraphs (a) through (h) of § 900.70

Option (c) – paragraphs (a) through (h) of § 900.70 only



Option (a): Fair Market Rent

- If T/TO elects to use Option (a) as the basis to be compensated on, an appraisal must be included with the 105(I) lease proposal submitted to IHS.
- Appraisal must be prepared by a professional appraiser.
- The FMR is based on cost per square foot, the tribe works with the appraiser to provide the most accurate floorplan.
- Appraiser looks at comparable size facilities that are either “Full-Service” or “Triple Net Leases”.



Option (b): Combination FMR & (a)-(h)

Tribes can request option (b) known as “Combo Leases”. These leases are a combination of the FMR and some actual expenses listed in paragraphs (a) through (h) of § 900.70, if the following conditions are met:

- A majority of the comparable facilities were based on “Triple Net” leases. Triple Net is where the Lessee pays for all expenses (utilities, maintenance, cleaning, etc.) and “Full-Service” is where the owner pays all facility related expenses.
- To request a combo lease, the tribe must show how the FMR would not be sufficient to cover all operation and maintenance costs to run the facility.



PRESENTATION OF A-H ELEMENTS



Option (c): Compensation Elements (a)-(h)

To the extent that no element is duplicative, the following elements may be included in the lease compensation: **(will be discussed more in detail)**

<ul style="list-style-type: none"> (a) Rent (Sublease) (b) Depreciation (c) Reserves (d) Principal & Interest (e) Operation & Maintenance <ul style="list-style-type: none"> (1) Water/Sewer (2) Utilities (3) Fuel (4) Insurance (5) Custodial Mgmt. (6) Janitorial/Supplies (7) Pest Control (8) Site Maintenance (9) Trash and Medical Waste 	<ul style="list-style-type: none"> (10) Fire Protection (11) Preventive Maintenance <ul style="list-style-type: none"> (i) HVAC (ii) Plumbing (iii) Elevators (iv) Boilers (v) Fire Safety (vii) Security System (viii) Roof, Foundation, Walls, Floors (12) Unscheduled Maintenance (13) Scheduled Maintenance (14) Security Services (15) Management Fees 	<ul style="list-style-type: none"> (16) Maintenance Costs <ul style="list-style-type: none"> (i) Maintenance Salary (ii) Maintenance Supplies (f) Repairs to Buildings (g) Alterations Required (h) Other Reasonable Expenses
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(a) Rent (Sublease)

- If a T/TO entered into a lease with a private owner for space to provide service identified in § 900.69, the T/TO may be compensated for rent up to 12 months.
- The lease must authorize subleasing to the IHS and if not, the lease must be amended or provide a letter from the owner approving of the sublease arrangement to IHS. Tribe must provide a copy of the most current lease agreement.
- IHS will review the lease agreement against the lease proposal for duplication.



(b) Depreciation

- Depreciation may be requested if the T/TO has full ownership of the facility.
- IHS uses a straight line depreciation method based on 39-year useful life.
- Tribe provides proof as to the value of the facility; The annual depreciation is calculated by dividing the facility value/39 years to establish the depreciable base. Tribe will receive same amount each year unless a capital improvement is made to facility.
- Value of Facility: Appraisal of facility, bill of sale, or if newly constructed, tribal general ledger expenses.
- All sources of funds used to construct the facility must be identified. Depreciation can only be claimed on non-federal funds.



(c) Contribution to Reserves

Option 1 – Annual Reserve

- IHS may compensate for each singular piece of fixed or building services equipment based on useful life and present date replacement costs. (Replacement cost/useful life = Annual Reserve)

Option 2 – One Time Expense – Reserve Replacement

- Alternative to Option 1, Tribe may request replacement of individual reserve item by providing current quote and justification for replacement. If approved, IHS may compensate 100% in advance if Tribe will commit to installation of reserve in the respective lease year. This is a one-time expense and will be removed from the next lease period.



Reserves Option 1 - Example

Item	Reserve Equip.	Useful Life	Present Day Replace. Cost	Annual Reserve Amount
1	General Lighting	10	\$	\$
2	Emergency Lighting	10	\$	\$
3	Emergency Generator	30	\$	\$
4	Hot water storage tank	20	\$	\$
5	Sprinkler System	20	\$	\$
6	HVAC System	15	\$	\$
7	Boiler	10	\$	\$
8	Fuel System	15	\$	\$
9	Fire Alarm	10	\$	\$
			Annual Reserve	\$



Types of Reserves

HVAC System

- Air Conditioning
- Boilers (Old Fired)
- Blowers
- Chiller
- Compressor
- Condensate Tank
- Controls
- Cooler
- Dehumidifier
- DDC System
- Fan Air H&V Sys.
- Fuel System
- Furnaces
- Heat Exchangers
- Heat Pump & Ground Source Piping

Fire Protection System

- Fire Alarm/Security System
- Fire Pump
- Smoke & Heat Detectors
- Magnetic Door Holders

Plumbing System

- Booster Pumps
- Hot Water Heaters
- Medical Gas, Sewage Lift, Sprinkler & Snow Melt Sys.
- Piping Replacement
- Water Storage Tank, Wells, Fountains, Treatment Equipment

Electrical System

- General & ATM Emergency Lighting & Power System
- Emergency Generator & Switchgear
- Paging Systems,
- Service & Distribution Panels
- Transformers
- Building Controls
- Elevators



Source – “Estimated Useful Lives of Depreciable Hospital Assets”

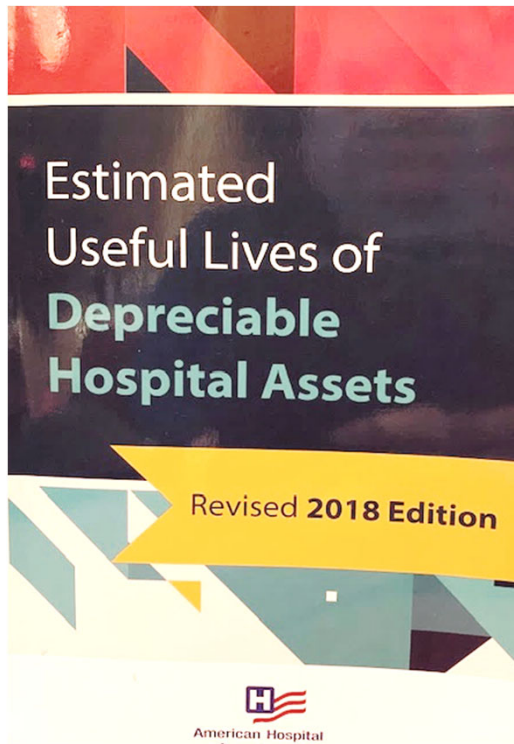


TABLE 4 Fixed Equipment

Fixed equipment includes assets that are permanently affixed to the building structure and are not subject to movement, but which have shorter useful lives than that of the building. The asset cost would include a proportionate share of architectural, consulting, and interest cost.

ITEM	YEARS	ITEM	YEARS
Benches, bins, cabinets, counters, and shelving, built-in	15	Laminar flow system	15
Cabinet, biological safety	15	Lockers	
Canopy, ventilating, for laundry ironer	15	Built-in	15
Cart washer, walk-in	15	Freestanding	12
Coat rack	20	Mailboxes, built-in	20
Conveyor system, laundry	10	Medicine preparation station	15
Cooler, walk-in	15	Mirrors, traffic and/or wall-mounted	10
Curtains and drapes	5	Narcotics safe	20
Emergency generator set	20	Nurses' counter, built-in	15
Generator controls	12	Pass-through boxes	15
Freezer, walk-in	15	Patients' wardrobes and vanities, built-in	15
Headwall system, patient console unit	15	Projection screen, fixed	10
Hood, fume	15	Sink and drainboard	20
Fire protection in hoods	10	Sterilizer, built-in	15
ICU and CCU counters	15	Telephone enclosure	10
Illuminator			
Multifilm	10		
Single	10		

TABLE 5 Building Services Equipment

Building services equipment refers to mechanical components or systems designed for the building(s), including air conditioning, electrical, elevators, heating, lighting, plumbing, sprinklers, and ventilating. The asset cost would include a proportionate share of architectural, consulting, and interest cost for newly constructed or renovated facilities.

ITEM	YEARS	ITEM	YEARS
Air-conditioning equipment		Air curtain	15
Centrifugal chiller	15	Antenna system	10
Compressor, air	15	Boiler	20
Condensate tank	10	Boiler deaerator system	15
Condenser	15	Boiler smokestack, metal	20
Controls	10	Clean-air equipment	15
Cooler and dehumidifier	10	Clock system, central	15
Cooling tower, concrete	20	Co-generation plant, generator powered	15
Cooling tower, wood frame	10	Door alarm	10
Duct work	20	Door-closing devices, for fire alarm system	15
Fan, air-handling and ventilating	20	Electric lighting and power	
Piping	20	Composite	18
Precipitator	10	Conduit and wiring	20
Pump	10	Emergency lighting system	15
Air-conditioning system		Feed wiring	20
Large (over 20 tons)	10	Fixtures	10
Medium (5–20 tons)	10	Switchgear	15
Small (under 5 tons)	5	Transformer	30



(d) – Principal & Interest paid or accrued

This cost item is applicable for loans for facility equipment costs including major fixed and building services equipment. Does not apply to facility construction loans or mortgage.



Utilities & Insurance

IHS may compensate up to 12 months of utilities for the following using actual expenses from the prior year to determine cost reasonableness. (Prefer GL summary provided in MS Excel Worksheet.)

- (e)(1) – Water, Sewage
- (e)(2) – Electricity
- (e)(3) – Fuel
- (e)(4) – Insurance – Insurance for building only.
- (e)(7) – Pest Control
- (e)(9) – Trash Removal – Includes medical waste

For new facilities with no prior year utility expenses, estimates will be accepted for the 1st year only.



(e)(5) – Building Mgmt. Custodial Services

Compensation for this element is allowed if T/TO have a custodial contract that includes supervision all janitorial staff and janitorial supplies, with T/TO paying contractual amount.



(e)(6) – T/TO Janitorial Staff & Supplies

T/TO may request compensation for Tribal Janitorial salary/fringe for up to 12 months, based on prior year expenses.

- Provide name of Janitorial Staff – Used to compare against T/TO general ledger summary
- If tribal janitorial staff provide janitorial service to additional buildings including the 105(I) lease facility, compensation will be provided for the percentage of time spent cleaning the 105(I) leased facility.
- Various methods of determining percentage (i.e., based on square footage, number of hours, etc.)



(e)(8) – Site Maintenance

T/TO may request compensation for site maintenance to keep area around facility clean and safe.

- General bed maintenance (weeding, ground cover trimming, controlling debris removal)
- Spring/Fall Clean-up
- Pruning/Hedging
- Tree removal (directly impacting clinic)

This element does not include costs for major site improvements & landscaping, tree maintenance, installation of pavers or new paved parking lots.



(e)(10) – Fire Protection/Fire Fighting Svcs.

In high risk fire zones, compensation may be provided for specialized fire protection and fire fighting equipment in cases of emergency.

- Fire hose
- Fire Blankets
- Fire Buckets
- Any other additional fire fighting protection tools



Monitoring & Preventive Maintenance

This compensation element is for annual services provided under a contract for various types of preventive maintenance such as **(provide copy of maintenance contract)**:

- (e)(11)(i) – Heating/ventilation/air conditioning
- (e)(11)(ii) – Plumbing,
- (e)(11)(iii) – Electrical
- (e)(11)(iv) – Elevators
- (e)(11)(v) – Boilers
- (e)(11)(vi) – Fire safety system
- (e)(11)(vii) – Security Systems



(e)(11)(viii) – Roof, Foundation, Walls, Floors

Option 1 – Compensation for repair expenses

- Expenses associated with repair projects for roof, foundation, walls and floors may be compensated under this element.

Option 2 – One Time Expense – Roof, Foundation, Walls, Floors

- Alternative to Option 1, Tribe may request one time expense item associated with this compensation element by providing current quote and justification for repair project. If approved, IHS may compensate 100% in advance if Tribe will commit to completion of project in the respective lease year. This is a one-time expense and will be removed from the next lease period.



Unscheduled and Scheduled Maintenance

(e)(12) - Unscheduled Maintenance

- Unplanned maintenance, replacement and repair that has not been scheduled or budgeted for that is totally unexpected. Any type of reactive maintenance or “breakdown maintenance” may be compensated as part of the lease.

(e)(13) - Scheduled Maintenance

- Maintenance that occurs at repeating intervals such as changing air filters every 60 days or inspection of fixed equipment every 90 days. Scheduled maintenance can also be a one-time work order.



(e)(14) – Security Services

- Professional security guard service, monitoring systems and installation of security systems may be compensated under the 105(I) lease.
- T/TO staff who provide security service to other tribally owned buildings, including the 105(I) leased facility, compensation may be provided for the percentage of time security service is provided to the 105(I) leased facility.
- A portion of salary for T/TO security guards who work in a hospital and dedicate a certain number of hours monitoring offsite 105(I) leased clinics.



(e)(15) – Management Fees

IHS may compensate management fees for:

- Full-time onsite Facility Manager: One who is responsible for the nuts and bolts of keeping the facility running smoothly; schedules repair projects.
- Staff Member who serves as Facility Manager in addition to their regular duties.
- Staff from local tribal hospital who dedicate a portion of time managing repair projects in 105(/) leased locations outside of hospital.
- Roaming Facility Manager who provides services to more all tribally owned buildings including the 105(/) leased facility.



(e)(16) – Maintenance Staff & Supplies

- IHS may compensate for salary/fringe for maintenance staff who work full or part-time in the 105(I) leased facility.
- IHS may compensate for roaming maintenance staff who provide service to more than one facility which include the 105(I) leased facility.
- Maintenance Material/Supplies: Compensate for items associated with repair projects such as: tools, material, freight.
- Maintenance training for specialized repair of fixed equipment
- Other program related expenses such as: Cell phones, clothing, computers, vehicles, etc. are not allowable expenses.



(f) – Repairs to Buildings & Equipment

Expenses associated with building repair and maintenance to maintain proper condition of buildings such as, but not limited to:

- Repair of doors, windows, walls
- Repairing electrical wiring, gas pipes, water pipes, plumbing services
- Building of walls, plastering/painting
- Repairing cracked flooring



(g) Alterations needed to meet contract requirements

Compensation may be provided if IHS requires the T/TO to alter the facility in order to meet new IHS contract/compact requirements. Prior approval by IHS required before beginning alteration project.

- Describe the new IHS contract/compact requirement
- Describe the required alteration
- Provide an quote



(h) Other reasonable expenses

If requesting other reasonable expenses, provide general ledger summary that describes each item and expense, not otherwise provided under compensation elements (a) – (g) above.



