



Getting Started with 105(l) leases

Presentation for COLT

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Creating Space for Collaborative Action and Results

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Agenda

Legal Authorities

Trends in Demand and Funding

Core Requirements & Process

- **Eligibility Requirements**
- **Types of Compensation**
- **How to Start the Process**
- **Required Documents**
- **Lease Terms & Renewals**

Best Practices for Getting Started

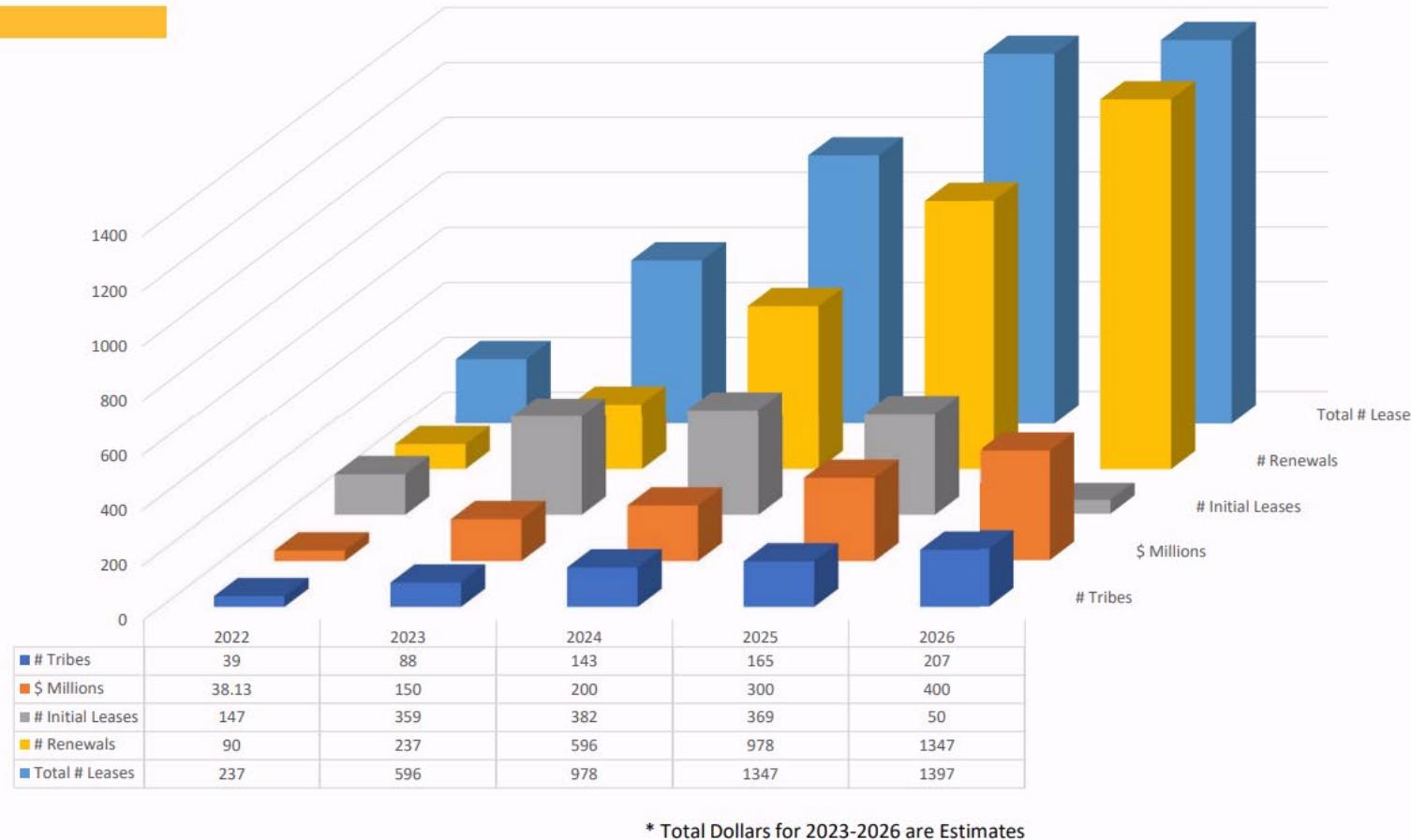
Resources

ISDEAA Authority for 105(l)

- Upon request of a Tribe or Tribal organization, ISDEAA requires the Secretaries of the Department of the Interior and the Department of Health and Human Services to enter into a facility lease agreement for facilities used to support Programs, Functions, Services, or Activities (**PFSAs**) assumed under ISDEAA.
- The requirement for the Secretaries of the Interior and HHS to fund the 105(l) lease upon the request of the Tribe has been confirmed in two court decisions:
 - *Maniilaq Association v. Burwell*, 72 F. Supp. 3d 227 (D.D.C. 2014) (“Maniilaq I”)
 - *Maniilaq Association v. Burwell*, No. 15-152 (D.D.C.) (“Maniilaq II”)

105(l) Program is Growing Quickly

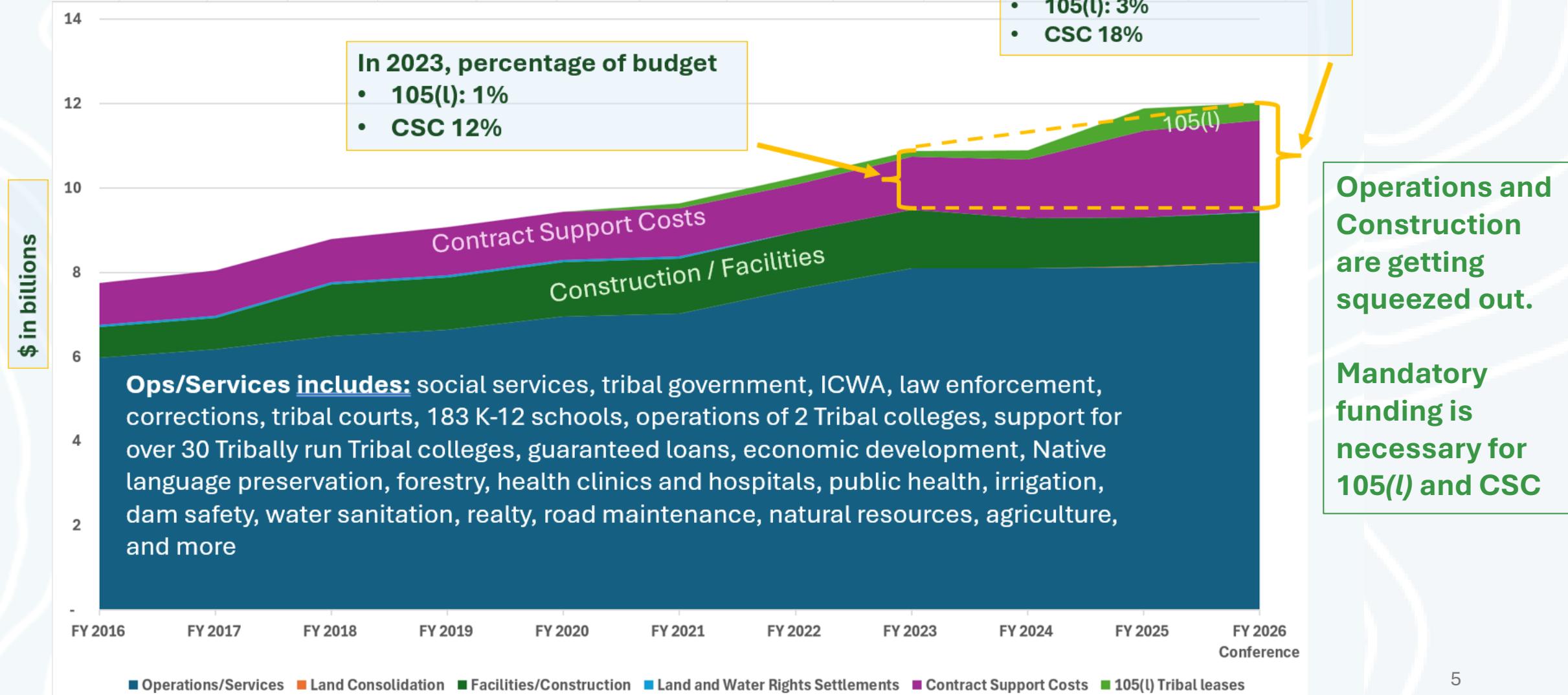
Program Overview FY26 Q1



- Indian Affairs chart shows Tribal demand for 105(l) is growing.
- Indian Affairs challenge is getting funding to staff sufficient positions to process leases.
- They can currently process about \$100 million a year in leases.

105(l) and CSC Have a Major Impact on the Budget

Long Term Budget Trends for IHS and Indian Affairs Budgets



What is a 105(l) Lease?

- They are not traditional leases.
- They are facility cost agreements that compensate the Tribes for facility operational expenses associated with using the facility to administer ISDEAA contracted/compacted services.

Eligibility

- Tribe must hold title to the facility; or
- A leasehold interest in the facility; or
- A trust interest in the facility.
 - Proof of Interest: Trust Title, Quitclaim or Warranty Deed, Lease or Rental Agreement.
- The facility must be occupied, the space must be used for a qualified program function or activity, and the PFSA must be in an approved ISDEAA Self-Determination contract, Self-Governance compact, or Public Law 100-297 grant.

Types of Compensation

Options for compensation

- Fair Market Rental
- Cost Elements listed in 25 CFR Section 900.70 (a) – (h) only
- Combination of Fair Market Rental and Cost Elements

Cost Elements listed in 25 CFR Section 900.70 (a) – (h)

To the extent that no element is duplicative, the following elements may be included:

- (a) Rent (sublease).
- (b) Depreciation of the useful life of the facility based on acquisition costs not financed with federal funds.
- (c) Contributions to a reserve for replacement of facilities.
- (d) Principal and interest paid or accrued.
- (e) Operation and maintenance expenses, to the extent not otherwise included in rent or use allowances.
- (f) Repairs to buildings and facility equipment (no furnishings or office equipment).
- (g) Alterations that are needed to meet program requirements (Tenant improvements).
- (h) Other reasonable expenses (Tribe must provide written justification).

Obtaining a Fair Market Rental Analysis

IA Lease Guide calls for:

- Three comparable estimates of similar properties by an appraiser or real estate broker.
- Comparable FMR estimates can be hard to obtain in very rural areas, like where many COLT Tribes are located.
- Lease Guide indicates that if no comparable facilities are in the immediate area, the following can be done:
 - Appraiser may expand the search area as needed.
 - Appraiser may apply a mathematical adjustment with proper justification.

Initiating the Process and Next Steps

1. On Tribal letterhead, submit a letter of intent to ISDEAA105L@BIA.GOV which includes:

- Identification of each facility, including the address.
- List the approved ISDEAA PFSAs in each facility.
- The type of compensation the Tribe is seeking.
- A statement of ownership interest.
- Identify whether the Tribe operates on fiscal or calendar year.

Next Steps and Required Documents

- 2. Office of Tribal Leases can provide technical assistance upon request.**
- 3. Tribe then submits the following documents:**
 - Letter of Intent
 - Floor plans and recent photos, interior and exterior
 - Proof of ownership
 - Compensation/Financial Documents
 - Certificate of occupancy
 - Financial certification
 - Tribal resolution
 - 638 funding agreement, 477 program, or 297 grant. The Realty Specialist must confirm that the PFSAs qualify.
- 4. IA OTL completes draft lease using Self Determination, Self Governance or 297 Grant (School) lease template**
- 5. Tribe Reviews the lease for concurrence**
- 6. Documents finalized and signature process started.**

Addressing the Backlog and Period of Lease Coverage

Question: Indian Affairs has a significant backlog, so if it takes them a while to process the lease, what period does the payment cover?

- The initial lease will be backdated to the date Indian Affairs receives the complete approved 105(l) lease package. (*New requirement for FY 2026*)
- If the Tribe is not able to provide all required approved documents within the year of application, the Tribe will need to reapply in the current year.

Calculating Payments for Common and Shared Spaces

Interior and HHS can only compensate for space that supports PFSAs, but they do take into account Common Spaces and Shared Spaces.

Common Space

- Includes stairwells, corridors, restrooms, conference rooms, mechanical rooms, etc.
- 100% compensation for these spaces.

Shared Space

- Includes space for administrative functions (human resources or finance departments) that serve ISDEAA and non-ISDEAA Activities.
- Tribes are automatically compensated for 50% of Shared Spaces.
- Tribes can receive more than 50% if they have documentation to support costs.



Using 105(l) to Finance New Construction

- Tribe may obtain a construction loan to plan, design, and build a new facility and receive principal and interest for the loan.
- Pre-approval materials (not required, but recommended):
 - Floor plans for facilities and conceptual design, supporting PFSAs, Estimated cost, estimated completion date, and written justification for the facility.
- 105(l) Payments will not be made until a certificate of occupancy is received for the facility.
 - This means the Tribe is responsible for covering upfront costs such as interest payments on the loan until the facility is complete.
 - New Construction lease approvals are not in the general lease approval queue because of the obligations related to the loan.

Using 105(l) to Finance New Construction

- Indian Affairs and IHS do not play a direct role in obtaining a loan.
- 105(l) can be newer to some financing entities, and the payment is a stable income source, but is not considered a full guarantee, so other factors like the financial health of the Tribal organization are important.
- Where possible, work with financial institutions that have some familiarity with 105(l) and Tribal Governments.
- Explore USDA Rural Development finance tools, contacts are:
 - **Josiah Griffin**, Office of Tribal Relations, josiah.griffin@usda.gov
 - **Jamie Davenport**, Deputy Administrator for Community Facilities, jamie.davenport@usda.gov

Reserve Fund Cost Element

- Set of savings to cover unexpected future costs (replace a boiler), not part of the regular operating budget.
- Compensation can also be used for building replacement downpayment up to 20% of cost to construct new facility.
- Tribes encouraged to keep Reserve Funds in a liquid, interest-bearing account, such as a savings or money market account, so that funds are available to cover unexpected expenses.

105(l) Lease Renewals

- **Why?** Planning ahead for a renewal saves a lot of time, as approvals happen much faster than for full lease reviews.
- **Timing:**
 - Tribes need to provide notice of intent to renew three months prior to lease expiration.
 - Renewals are for two calendar or fiscal years.
- **Changes in funding level based on the type of compensation:**

Type of Lease Compensation	Lease Renewal Action
Based on Fair Market Rental analysis	Consumer Price Index adjustment will be calculated
Based on cost elements, or Fair Market Rental and cost elements	Tribe must submit documentation to justify the lease renewal amount, along with CFO certification

- **Resolutions:** If the initial Tribal resolution is time-specific or does not include wording for renewals, a new resolution must be submitted.

Best Practices



Focusing on upfront work to nail down details, will save time in the long run, and Indian Affairs is more likely to process your lease sooner.



Start with a simpler lease for an existing facility, and get O&M and other operating costs. Then move on to new construction or larger facilities.



Establish a central, key contact to coordinate across Tribal government or organization entities (e.g., CFO, Tribal council, facilities team)

Identify a supporting team that meets regularly through lease implementation.

Resources to Move Forward with a 105(l)

- **Indian Affairs 105(l) Lease Guide** is a great step-by-step, “how-to” for the process
- Indian Affairs OTL has site with templates for the following:
 - Letter of Intent
 - Lease Template Self Determination (Title I)
 - Lease Template Self Governance (Title IV)
 - Lease Template – Tribally Controlled School
 - Lease Renewal Request
 - Financial Certification
 - Tribal Resolution
 - Financial Template (2026)
 - Floor Plan Example
- **Contacts:**
 - **Indian Affairs:** Cody Seaton, Chief, Office of Tribal Leases, ISDEAA105l@bia.gov
 - **IHS:** Work through your Regional Office contacts

Questions and Discussion

Follow-up contact information:

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