



SUMMARY OF PROPOSED AMENDMENTS TO THE TRIBALLY CONTROLLED COLLEGES AND
UNIVERSITIES ASSISTANCE ACT
(REAUTHORIZED IN CONJUNCTION WITH THE HIGHER EDUCATION ACT)
(Winter 2016)

The Tribally Controlled Colleges and Universities Assistance Act of 1978 is reauthorized under Title IX (Amendments to Other Laws) of the Higher Education Act. During the 114th Congress reauthorization of the Higher Education Act, the presidents of the nation's Tribal Colleges and Universities (TCUs), who together are the American Indian Higher Education Consortium (AIHEC), seek inclusion of the following amendments to the Tribal College Act, in any HEA reauthorization bill ultimately enacted.

Technical Amendments to update statutory language: Changes made to the law subsequent to its initial enactment have not been cross-checked throughout the Act.

The following amendments, many of which are technical, are intended to update the legislative language, much of which is no longer relevant, and to remove ambiguities therein.

(1) Technical Amendment: Delete Sec. 1801(a)(9)

Justification: The language regarding Indian students making satisfactory progress in determining an institution's Indian Student Count (ISC), which is the measure used for disseminating a TCU institutional operating funds under Title I of the Act, was removed in the last reauthorization of the Act (Pub. Law 110-315). However, the definition of "satisfactory progress" related to the provision was not also removed at that time.

(2) Amendment: In Sec. 1809(3) strike "If in operation more than one year, has" and insert "Has"

Justification: This is truly a technical amendment to update the legislation from its first enactment in 1978, when the idea of TCUs -- The Tribal College Movement -- was just starting to take hold. Today, eligibility to receive any grant funding under this Act requires that the college has a majority American Indian/Alaska Native enrollment.

(3) Amendment: Delete Sec. 1804a.

Justification: This section was also included in the initial legislation to help define considerations for determining the feasibility of a tribe establishing a tribal college; the procedures for submitting and reviewing applications for planning grants; and the reservation of appropriated funds to do so. Today, there is a prescribed process for establishing a tribal college. For a tribe to seriously consider chartering a tribal college, they must be prepared to support the college until it is accredited and thereby eligible for Tribal College Act funding.

(4) Amendment: In Sec. 1805(a)(2) strike "tribally controlled college or university" and insert "tribally controlled colleges and universities"

Justification: Tribal colleges have a wide array of technical assistance needs, some specific to a few colleges and other issues of almost universal concern. The Bureau of Indian Education (BIE) has determined that it is much more efficient and cost effective to deliver technical assistance by contracting

with an organization chosen by the stakeholders (TCUs) themselves. In doing so, all TCUs can benefit from the experiences of others through networking with peers, relevant workshops and professional development opportunities, as well as wide dissemination of best practices and problem solving methods, and valuable information about federal and private grant opportunities.

(5) Amendments to Sec. 1806

a. In Sec.1806(a) - Strike "Bureau of Indian Affairs" and insert "Bureau of Indian Education"
Justification: In 2006, the Office of Indian Education Programs was renamed and the Bureau of Indian Education (BIE) established to reflect the parallel purpose and organizational structure BIE has in relation to other programs within the Office of the Assistant Secretary for Indian Affairs.

b. The last sentence in Sec. 1806(b) is amended to read: "Such a positive determination shall not be effective before the fiscal year succeeding the fiscal year in which such determination is made."

Justification: A wait-out period is necessary to allow for adequate funding to be secured for any new TCU that becomes eligible for funding under Title I of the Tribal College Act so as to not negatively impact those institutions currently receiving operations funding under the Act.

c. In Sec. 1806(c)(2) strike "5 per centum" and insert "\$20,000"

Justification: Procedures and criteria for determining a prospective college's eligibility to receive funding under the Act have long been delineated. A site visit of the prospective college is the final step in determining the institutions eligibility for funding under this section. The number of colleges and therefore the level of funding have increased considerably since the Act was initially funded in FY 1981. In FY 2015, 5 percent of the appropriation for operating Title I institutions would provide \$3.45 million to conduct a site visit of an applicant college. Therefore, we recommend that the amount be limited to \$20,000, which should be more than adequate to conduct a site visit or even multiple visits should there be more than one viable application submitted in a single funding cycle.

(6) Amendments to Sec. 1807

a. Strike "(c)" and insert "(b)"

b. Delete Sec. 1807(d) and redesignate the subsequent subsection accordingly.

Justification: Redesignation of the subsection is simply that, correcting the numbering. The subsection (d) that lays out priority of number of grants was applicable when the legislation was new. This subsection is no longer relevant and therefore, unnecessary.

c. In the newly redesignated subsection (c) insert "higher education" after "national Indian"

Justification: As this legislation only impacts Tribal institutions of higher education, consultation should be conducted with national Indian organizations that focus on and are experts in Tribal higher education.

(7) Amendments to Sec. 1808

- a. In subsection (a), strike "(2) Exception" and insert "(2) Exceptions"
- b. Insert a new subparagraph (A) as follows, and designate the subsequent paragraph as "(B):

"(A) If the sum appropriated for any fiscal year for grants under this section is not sufficient to pay in full the total amount that approved applicants are eligible to receive under this section for such fiscal year, the Secretary shall first allocate to each such applicant that received funds under this part for the preceding fiscal year an amount equal to 100 percent of the product of the per capita payment for the preceding fiscal year and such applicant's Indian student count for the current program year, plus an amount equal to the actual cost of any increase to the per capita figure resulting from inflationary increases to necessary costs beyond the institution's control."

Justification: A new exception is warranted to provide a "hold harmless" for those TCUs currently funded under the Title I of the Act. With the new exception, the Secretary is directed to first allocate available funds to existing TCUs before any new grants are awarded. This is to ensure some stability in operating budgets for the colleges currently funded under Title I.

- c. In the heading for Sec. 1808(b) strike "Advance installment payments" and insert "Payments";
In Sec. 1808 (b)(1) strike "funds available for allotment by October 15 or no later than 14 days after appropriations become available," and insert "amounts appropriated for any fiscal year on July 1 of that fiscal year," ; and
Strike "January" and insert "September"

Justification: In FY2010, forward funding of grants under Title I of the Act was initiated. Now the Title I funded TCUs receive their operating grants in July prior to the start of the new academic year. Therefore advanced installment payments are no longer applicable to these grants, and the timetable for dissemination of funds shifts from the federal fiscal year to that of the academic year.

- d. In the 1808(c)(2)
 - strike ", in consultation with the National Center for Education Statistics," and insert "either directly or by contract,"

Justification: The Integrated Postsecondary Education Data System (IPEDS), widely recognized as a critically flawed system, is a product of the NCES. Current law states that proposed the data collection system is for the purpose of “obtaining information with respect to the needs and costs of operation and maintenance of tribally controlled colleges and universities.” Given the unique nature of Tribal higher education institutions, consultation with the NCES seems ill-advised and most unnecessary.

- Strike “or universities” and insert “and universities”

(8) Amendments to Sec. 1809:

In the heading for Sec. 1809(b) and in the first sentence in Sec. 1809(c), strike “Indian Affairs” and insert “Indian Education”; and correct subsection numbering accordingly.

Justification: In 2006, the Office of Indian Education Programs was renamed and the Bureau of Indian Education (BIE) established to reflect the parallel purpose and organizational structure BIE has in relation to other programs within the Office of the Assistant Secretary for Indian Affairs.

(9) Technical Corrections to Sec. 1810:

In subsection (a) strike “2009” each place it occurs and insert “2016”;
Strike “such sums as may be necessary” in second place it occurs in each of subparagraphs (a)(2) and (a)(3); and
In subparagraph (a)(4) strike “or universities” and insert “and universities”

(10) Technical Correction to Sec. 1811:

In subsection (a)(2) strike “or universities” and insert “and universities”

(11) Technical Corrections to Sec. 1812:

In subsection (a) strike “or universities” and insert “and universities” ;
In subsection (c)(1) strike “Navajo Community” and insert “Diné”; and
In subsection (c)(2)(B) strike “or universities” and insert “and universities”

(12) Amendments to Sec. 1813:

Subparagraph (b)(2) is amended to read as follows:

“(2) must be accredited or determined to be a candidate for accreditation, by a nationally recognized accrediting agency listed by the Secretary of Education pursuant to the last sentence of section 1001 of title 20. In any case where a grant is awarded to an institution that is a candidate for accreditation, such grants under this section shall be available only for planning and development of proposals for construction.”

Justification: The proposed language updates the law to current practice and holds TCUs seeking institutional operating grants to a higher standard than original law, by requiring formal accreditation candidacy status and eliminating subjective waivers based on the Secretary expectations of an institution being granted accreditation within 18 months.

(13) Technical Amendment: Strike Sec. 1815

Justification: This section was relevant in the initial legislation but is no longer applicable and is therefore, unnecessary.

(14) Technical correction to Sec. 1851

In subsection (a) strike "or universities" and insert "and universities"; and

In subsections (a) and (c) strike "Navajo Community" and insert "Diné"