

## SUMMARY OF PROPOSED AMENDMENTS TO THE HIGHER EDUCATION ACT (February 2019)

The nation's 37 Tribal Colleges and Universities (TCUs), who together are the American Indian Higher Education Consortium (AIHEC), respectfully request that the following amendments be included in legislation to reauthorize of the Higher Education Act of 1965 (HEA). In addition to technical changes to the current TCU-Title III-A program, the TCUs seek authorization of two new programs within Title III-A to: (1) address time-critical Native language vitalization and training programs at TCUs; and (2) strengthen workforce oriented professional and graduate programs for AI/AN students in high demand fields.

Recommendations to Title IV of the Higher Education Act include: (1) ensuring voluntary and flexible participation in Federal student loan program; (2) restoring eligibility for Federal financial aid to disenfranchised populations; and (3) a more equitable disbursement process for Federal Supplemental Educational Opportunity Grants (FSEOG) and Work-Study Grants.

Additionally, the Tribally Controlled Colleges and Universities Assistance Act will be reauthorized in conjunction with the HEA. AIHEC is proposing several updates to this important legislation.

The following are requests and justifications for changes sought during the HEA reauthorization.

### TITLE III: INSTITUTIONAL AID

#### 1. **Authorization of Appropriations at \$45 million (Part A: Discretionary Funding) Authorization of Appropriations at \$35 million (Part F: Mandatory Funding)**

**Part A:** AIHEC requests a \$45 million authorization for fiscal year 2020 and "such sums" for each succeeding fiscal year for Part A of Section 316. We seek to increase funding authority to a level adequate to continue to support the growing number of TCUs that are eligible for formula funding under this program.

**Part F:** The Part F program is slated to end after FY2019 if Congress does not authorize new funding. Failure to fund the program would be devastating to the TCUs, which by any definition truly are developing institutions. We request funding of \$35 million, for fiscal years 2020 through 2030 to continue this critical program.

**Amendment Language:** In the Higher Education Act of 1965 is amended as follows:

"Section 371(b) (20 U.S.C. 1067q(b)) is amended—

(1) in paragraph (1)(A)—

(A) in the first sentence, by striking "appropriated," and all that follows through "2019" and inserting the following: "appropriated, \$300,000,000 for each of the fiscal years 2020 through 2030"; and

(B) in the second sentence, by striking "2019" and inserting "2030"; and

- (2) in paragraph (2)—
  - (A) in subparagraph (A)—
    - (i) in clauses (i) and (ii), by striking “\$100,000,000” each place it appears and inserting “\$117,500,000”; and
    - (ii) in clause (iii), by striking “\$55,000,000” and inserting “\$65,000,000”; and
  - (B) in subparagraph (D)—
    - (i) in clause (i), by striking “\$30,000,000” each place it appears and inserting “\$35,000,000”;
    - (ii) in clause (ii), by striking “\$15,000,000” each place it appears and inserting “\$18,000,000”; and
    - (iii) in clauses (iii) and (iv), by striking “\$5,000,000” each place it appears and inserting “\$6,000,000”.

**Justification:** For Part A, we seek to increase funding authority to a level adequate to continue to support institutions currently qualified to apply for funding under the TCU program, as well as to accommodate a number of identified emerging TCUs. These new TCUs will further expand access to and completion of quality higher education opportunities for American Indian and Alaska Native peoples. In the past few years, at least three new TCUs have joined the formula-funded program.

The Part F program, which funds nearly half of the TCU Title III program, is slated to end after FY2019 if Congress does not authorize new funding. Failure to fund the program would be devastating to the TCUs, which by any definition truly are developing institutions. TCUs have used this funding to develop and implement career training programs, vitally needed facilities and laboratory modernization, information and technology maintenance and expansion, student support services; to improve data collection and reporting; and to institute financial management systems and practices.

## **2. ELIMINATE THE TCU PRE-APPLICATION PROCESS**

Eliminate a nonsensical, burdensome, and unnecessary “pre-application process” imposed on the already clearly defined, and therefore strictly limited, pool of participants in the Tribal Colleges and Universities Title III-A program (Sec. 316).

**Amendment Language:** The Higher Education Act of 1965 is amended as follows:

“Strike Title III-A Sec 316(d)(1) and redesignate the subparagraphs accordingly.”

**Justification:** The eligibility requirement is intended to define and narrow the pool of applicants that may compete in the general Title III Strengthening Institutions grant program. Since 2008, the TCU-Title III program has been formula-funded, and therefore, it is not necessary or relevant to impose the pre-application process. The Historically Black Colleges and Universities Title III program, which has always been formula-funded, does not require a pre-application process to be eligible to receive a grant under the program. While the Department has agreed that this is not a necessary step and has suspended the requirement, until the statutory language is removed, the Department can, at any time, return to the prior practice and require that all TCUs go through an annual process of applying for eligibility, *months prior to* submitting an application for participation. This unnecessary and often confusing step is contrary to existing statutory language which directs the Department to “simplify and streamline the process of applying for grants” under the TCU Title III program (Sec. 316(d)(2)(B)).

**Additional Information Regarding Pre-Application Requirement:** Under current law, this eligibility criterion applies to all programs authorized under Title III-A of the Higher Education Act that are not specifically exempted from all or part of Section 312(b), regardless of whether the program was formula-driven or not. Over the years, the Department has imposed the requirement on all TCUs one year, and then reversed the policy in other years. The arbitrary imposition and enforcement of the eligibility application process on TCUs has led to several TCUs being excluded from this vitally needed program. For example, in FY2008, Navajo Technical University (NTU) in Crownpoint, New Mexico was excluded from participating in the program simply because its name had changed (from Crownpoint Institute of Technology) between the time that it last filed an eligibility application and the FY2008 competition. The FY2008 competition was especially important, because it included a one-time solicitation for \$60 million in mandatory construction funding under the College Cost Reduction and Access Act (CCRAA), specifically for TCUs. Without notifying the institution or asking a single question about the new name, Department of Education staff simply threw out its application, thus leaving NTU out of the competition for \$60 million in construction funding, as well as the smaller discretionary TCU construction program. Another TCU (Fort Peck Community College in Montana) also was arbitrarily excluded from the program, even though the institution received a letter signed by a Department official stating that it was eligible to compete.

Since enactment of the TCU Title III program, two legislative changes have been made to the statutory language in recognition of the small and clearly defined pool of eligible applicants and the burdensome application process. The first directs the Secretary to “streamline and simplify the application process” for the TCU program; and the second exempts the TCU program from the 2-year wait-out period applicable to the general Title III-A program.

### **3. EXTENSION OF GRANT CARRYOVER TIME LIMIT**

Provide a five year extension to TCUs to allow additional time to expend funds obligated during the initial five-year grant period, as currently provided for in the HBCU Title III formula funded grant awards.

**Amendment Language:** The Higher Education Act of 1965 is amended as follows:

At the end of Title III-A Sec 316(d)(3)(B) insert the following new subparagraph:

“(iii) Use of Unexpended Funds. Any funds paid to an institution and not expended or used for the purposes for which the funds were paid during the five-year period following the date of the initial grant award, may be carried over and expended during the succeeding five-year period, if such funds are obligated for a purpose for which the funds were paid during the five-year period following the date of the initial grant award.”

**Justification:** In some cases TCUs have significant balances remaining at the end of a five-year grant period, particularly related to funds awarded in years four and five of said period. This is because grant funds are intended for long-term projects, such as construction, which often takes years to complete due to remoteness and climate. However, the Department of Education has now decided that it does not have the authority to extend the time TCU-Title III grant funds must be formally obligated or encumbered beyond the five-year limit of the grant. Should the remaining funds not be spent or at least formally obligated by the end of the grant, the funds will revert to the U.S. Treasury and be lost to the program. AIHEC successfully worked with the Department to address this issue previously; however, the Department has stated repeatedly that a long-term fix is needed and should be included in the HEA reauthorization. The language

sought is the same as that already included in the Title III program for HBCUs, which is the other formula-funded Title III program. By adding this same language to the TCUs program, the Department will be afforded the authority and direction needed to grant for time extension to expend Title III grant funds intended for long-term projects.

#### **4. USE FTE RATHER THAN ISC (INDIAN STUDENT COUNT) IN DISTRIBUTION FORMULA**

Increase the authorized funding level for the TCU Title III-A program to allow equitable participation by new TCUs without penalizing existing colleges.

**Amendment Language:** The Higher Education Act of 1965 is amended as follows:

In Title III-A Sec 316(d)(3)(B)(i)(I) strike “based on the respective Indian student counts (as defined in section 2(a) of the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801(a)) of the Tribal Colleges and Universities.” And insert in lieu thereof “based on the full-time equivalent (FTE) of all students.”

**Justification:** Currently, the statutory formula for distributing funding under Title III-A Sec 316 to Tribal Colleges is based on each institution’s Indian student count, which includes only those students who are enrolled in a federally recognized tribe, or the biological child of an enrolled tribal member. However, the TCU Title III program is intended to benefit of the entire college community. Therefore, all students should be counted for the purpose of calculating each institution’s annual share of available funds. This amendment would correct the formula components by using each institution’s FTE students rather than its Indian student count.

#### **5. UPDATE AUTHORIZED ACTIVITIES**

Several updates to the authorized activities are needed to align with current needs of the TCU communities. Currently, TCU Title III grant funds can be used to support academic instruction in tribal governance and public policy. We request that language be added to expand instruction to support Native languages; tribal history, and tribal sovereignty.

**Amendment Language:** The Higher Education Act of 1965 is amended as follows:

Section Sec 316(c)(2) is amended --

- (1) In subparagraph (D) by striking “Indians,” and all that follows through “policy” and inserting the following: “American Indians and Alaska Natives are underrepresented, instruction in Native American languages, and instruction and programs to support Tribal Governance, Tribal Public Policy, and Tribal History and Sovereignty,”
- (2) In subparagraph (L) by striking “outreach,” and all that follows through “education” and inserting the following: “outreach and recruitment activities and programs that encourage American Indian and Alaska Native elementary school students, secondary school students, and community members to develop the academic skills and the interest to pursue and succeed in postsecondary education;”

**Justification:** With enrollments dropping at many if not most IHEs and high school dropout rates for AI/AN youth growing, TCUs are looking for resources to increase and expand their local recruitment efforts to

reach adult AI/ANs. TCU Title III grant funds may be used to establish “community outreach programs that encourage Indian elementary and secondary school students to develop the academic skills and the interest to pursue postsecondary education.” We request that language be amended to clarify that the colleges may use their Title III grant funds for outreach to adult AI/ANs, and to produce materials or host events regarding the benefits of college and attending a TCU, as part of community outreach programs.

### **TITLE III: NEW TCU PROGRAM AUTHORIZING AMENDMENTS**

#### **6. NEW: TRIBAL COLLEGE OR UNIVERSITY NATIVE AMERICAN LANGUAGE VITALIZATION AND TRAINING PROGRAM.**

An amendment creating a new section under Title III-A to provide grants to tribal colleges or universities to promote the preservation, revitalization, relevancy, and use of endangered American Indian and Alaska Native languages.

**Amendment Language:** Part A of Title III of the Higher Education Act of 1965 (20 U.S.C. 1057 et seq.) is amended by adding at the end thereof the following new section:

#### **SEC. \_\_\_ NATIVE AMERICAN LANGUAGE VITALIZATION AND TRAINING PROGRAM.**

(a) DEFINITION.—In this section:

(1) TRIBAL COLLEGE OR UNIVERSITY.—The term ‘tribal college or university’ has the meaning given the term ‘Tribal College or University’ in section 316(b).

(b) PURPOSE.—The purpose of this section is to support Tribal Colleges and Universities in preserving and revitalizing endangered Native American languages through curriculum development, instruction, student support, and innovative pre-K-12 and community-based partnerships.

(c) PROGRAM AUTHORIZED.—The Secretary shall establish the ‘Native American Language Vitalization and Training Program’ to award grants, on a competitive basis, to eligible institutions to enable such institutions to carry out the authorized activities described in subsection (e).

(d) ELIGIBILITY.—For the purposes of this section, an “eligible institution” means an institution of higher education that is a Tribal College or University.

(e) AUTHORIZED ACTIVITIES.—Grants awarded under this section shall be used for one or more of the following activities:

(1) Curriculum development and academic and community-based instruction, including educational activities, programs, and partnerships relating to students in prekindergarten through grade 12;

(2) Professional development for Tribal College and University faculty and in-service training programs for prekindergarten through grade 12 instructors and administrators;

(3) Innovative Native American language programs for students in prekindergarten through grade 12, including language immersion programs;

(4) Other activities proposed in the application submitted pursuant to subsection (--) that –  
(A) Contribute to carrying out the purposes of this section; and  
(B) Are approved by the Secretary in the review and acceptance of such application.

(f) APPLICATION, DURATION, AND OTHER PROVISIONS.—

(1) APPLICATION.—An eligible institution may apply for a grant under this section by submitting an application to the Secretary at such time and in such manner as the Secretary may require, consistent with the purpose of this section.

(2) STREAMLINED PROCESS.—The Secretary shall establish application requirements in such a manner as to simplify and streamline the process for applying for grants under this section.

(3) INCLUSIONS.—An application under this paragraph shall include a plan for the program proposed to be carried out by the Tribal College or University using the grant, including—

(A) Description of a 5-year strategy of the Tribal College or University for meeting the needs of American Indians or Alaska Natives, consistent with the goals and plans of a relevant Indian tribe or tribal community;

(B)(i) Identification of the population to be served by the Tribal College or University; and

(ii) Identification of the status of Native American language understanding and use within that population and a description of the manner in which the program will help preserve and revitalize the relevant Native American language;

(C) Description of the services to be provided under the program, including the manner in which the services will be integrated with other appropriate activities of the relevant Indian tribe or tribal community; and

(D) Description of the performance measures to be used to assess the performance of the Tribal College or University in carrying out the program.

(4) DURATION.—Grants under this section shall be awarded for a period not to exceed five years.

(5) CONCURRENT FUNDING.—A Tribal College or University that receives a grant under this section may concurrently receive funds under section 316 of this title; however, no Tribal College or University shall receive more than one grant under this section in any fiscal year.

(f) EXEMPTION.—Sections 312(b) and 313(d) of this title shall not apply to a Tribal College or University that receives a grant under this section.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$15,000,000 for each of fiscal years 2020 through 2025.”

**Justification:** Tribal Colleges and Universities are engaged institutions of higher education created by American Indians and Alaska Natives for American Indians and Alaska Natives, primarily on rural and isolated Indian reservations, which were virtually excluded from the rest of this nation’s system of higher education.

TCUs are ideal forums for advancing the time-sensitive efforts to rescue Native languages from extinction. Of the 155 Indigenous languages still being spoken in the United States, 135 of these are spoken only by elders. Native languages have rich oral cultures with stories, songs, and histories passed on to younger generations, but many have no written forms. When a language is lost, it is lost forever, and with it an entire culture is lost. Language and culture are at the heart of the mission of each Tribal College and University, and these institutions play a strong leadership role in Native language immersion. Indeed, TCUs are responsible for the majority of the 50 or so Native language immersion programs in the United States. Despite the proven success of TCU Native language preservation and vitalization efforts, only minimal federal and private sector resources are directed toward these critical activities. Because many Native languages are on the verge of extinction, we do not have the luxury of time. We must address this critical issue now, before it is too late.

**7. NEW: STRENGTHENING PROFESSIONAL & GRADUATE OPPORTUNITIES AT TRIBAL COLLEGES AND UNIVERSITIES PROGRAM.**

An amendment establishing a modest program to assist TCUs in strengthening graduate degree programs and professional certificate programs in high demand fields vital to tribal nation building, economic development in rural America, and in fields critical to addressing health and other challenges facing American Indians and Alaska Natives.

**Amendment Language:** Part A of Title III of the Higher Education Act of 1965 (20 U.S.C. 1057 et seq.) is amended by adding at the end thereof the following new section:

**Sec. \_\_\_\_: STRENGTHENING PROFESSIONAL AND GRADUATE OPPORTUNITIES AT TRIBAL COLLEGES AND UNIVERSITIES.**

“(a) DEFINITIONS.—In this section:

“(1) TRIBAL COLLEGE OR UNIVERSITY.—The term ‘Tribal College or University’ has the meaning given the term in section 316(b) of this title.

(b) PURPOSES. The purposes of this section are to—

(1) Expand professional and graduate educational opportunities for, and improve the academic attainment of, American Indians and Alaska Natives in high demand fields and fields in which American Indians and Alaska Natives are underrepresented; and

(2) Strengthen and enhance the quality of professional and graduate programs at Tribal Colleges and Universities.

(c) PROGRAM AUTHORIZED.—The Secretary shall award grants, on a competitive basis, to eligible institutions to enable such institutions to carry out the authorized activities described in subsection (e).

(d) ELIGIBILITY.—For the purposes of this section, an “eligible institution” means an institution of higher education that—

(1) is a Tribal College or University; and

(2) offers a professional certificate or graduate degree program.

(e) AUTHORIZED ACTIVITIES. -- Grants awarded under this section shall be used for one or more of the following activities:

(1) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes;

(2) Construction, maintenance, renovation, and improvement of classrooms, libraries, laboratories, and other instructional facilities, including purchase or rental of telecommunications technology equipment or services;

(3) Purchase of library books, periodicals, technical and other scientific journals, microfilm, microfiche, and other educational materials, including telecommunications program materials;

(4) Support for American Indian and Alaska Native students including outreach, academic support services, mentoring, scholarships, fellowships, and other financial assistance to permit the enrollment of such students in professional certificate programs and graduate degree programs;

(5) Establish or improve a development office to strengthen and increase contributions from professional and graduate alumni and the private sector;

(6) Assist in the establishment or maintenance of an institutional endowment to facilitate financial independence pursuant to section 331;

(7) Professional and graduate program funds and administrative management, and the acquisition of equipment, including software, for use in strengthening such funds management and management information systems;

(8) Acquisition of real property that is adjacent to the campus in connection with the construction, renovation, or improvement of, or an addition to, campus facilities essential to a professional certificate program or graduate degree program;

- (9) Education or financial information designed to improve the financial literacy and economic literacy of professional and graduate students, especially with regard to student indebtedness and student assistance programs under title IV;
- (10) Tutoring, counseling, and student service programs designed to improve academic success;
- (11) Support of faculty exchanges, faculty development, faculty research, research publication and dissemination, curriculum development, academic instruction, and student research mentoring;
- (12) Create and improve facilities for broadband or other distance education technologies, including purchase or rental of telecommunications technology equipment or services;
- (13) Collaboration with other institutions of higher education to expand graduate degree programs and professional certificates;
- (14) Other activities proposed in the application submitted pursuant to subsection (f) that—
  - (A) contribute to carrying out the purposes of this section; and
  - (B) are approved by the Secretary as section of the review and acceptance of such application.

(f) APPLICATION, DURATION, AND OTHER PROVISIONS

(1) APPLICATION.—An eligible institution may apply for a grant under this section by submitting an application to the Secretary at such time and in such manner as the Secretary may require. Such application shall demonstrate how the grant funds will be used to strengthen graduate and professional opportunities for American Indian and Alaska Native students at Tribal Colleges and Universities.

(2) STREAMLINED PROCESS.—The Secretary shall establish application requirements in such a manner as to simplify and streamline the process for applying for grants under this section.

(3) DURATION.—Grants under this section shall be awarded for a period not to exceed five years.

(4) CONCURRENT FUNDING.—A Tribal College or University that receives a grant under this section may concurrently receive funds under section 316 of this title; however, no Tribal College or University shall receive more than one grant under this section in any fiscal year.

(5) EXEMPTION.—Sections 312(b) and 313(d) of this title shall not apply to a Tribal College or University that receives a grant under this section.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$5,000,000 for each of fiscal years 2020 through 2025.

**Justification:** In the 1970s through 1990s, as Tribal Colleges and Universities were being established and growing in number, the academic focus of most of these place-based, under-resourced, and rural institutions was to help their chartering tribes meet local workforce needs through vocational and technical programs and to serve as bridge institutions to regional state public universities. In recent years, the capacity of Tribal Colleges to provide necessary culturally- and place-based research has grown, as has the capacity and needs of the tribes that TCUs serve. More and more TCUs are beginning to develop master's degree programs in limited, but vitally needed fields including elementary/secondary education administration; environmental science; tribal governmental policy and management; industrial and electrical engineering; and fine arts.

At that time that important graduate and professional program support programs were established for Historically Black Colleges and Universities and Hispanic Serving Institutions, we believe that Tribal Colleges were overlooked. Unfortunately, this is consistent with the creation of all federal programs for TCUs. For example, the Strengthening Institutions-TCU program was established decades after the Congress established the Strengthening Institutions-HCU program and nearly one decade after the Strengthening Institutions-HSI program was created. It is time that Congress recognize the irreplaceable role that TCUs play in strengthening their tribal nations, protecting tribal lands, and preparing a 21<sup>st</sup> century Native workforce. Through a modest investment in critically needed graduate and professional programs, Tribal Colleges can help strengthen economic and workforce development throughout rural America.

#### **TITLE IV: STUDENT ASSISTANCE - RECOMMENDATIONS**

##### **1. Maintain voluntary participation in Federal student loan program**

TCUs are the most affordable institutions in higher education and only two TCUs currently participate in federal student loan programs. Some TCUs are beginning to explore the federal loan programs, as more are offering an increasing number of bachelor's and master's degrees. However, TCUs work hard to keep tuition low to allow their students, especially those planning to seek advanced degrees, to graduate without debt. That goal, along with limited institutional resources to administer loan programs, has led the vast majority of TCUs to avoid participating in federal student loans. Mandating loan program participation and tying institutional Title IV eligibility to loan performance metrics will unnecessarily impede Native and other low-income students from pursuing, let alone achieving, higher education goals that may be necessary for securing and advancing their career objectives. TCUs need flexibility to create aid programs that meet the unique needs of their students and communities.

##### **2. Federal Supplemental Educational Opportunity Grants (FSEOG) and Work-Study**

In addition to increasing authorization levels for these campus-based programs, changes are needed in order to create a system closer to parity between older institutions (those institutions in existence prior to 1979) that continue to benefit from "hold harmless" provisions in the law and newer institutions. Currently, aid disbursements for FSEOG and Work-Study programs fund older institutions at levels that are much higher than institutions established after 1979, even though student need is equal or greater at the newer institutions.

We do not believe that institutions should be penalized when documented student need is equal *or greater*, simply because they were not in existence when a program was originally established or modified. We urge

reevaluation of the current funding and distribution processes for these programs in order to create a system that is fair to all students in need, regardless of the age of the institution they attend.

One possible solution would be to stipulate that for the disbursement of new funds, priority for full funding shall be given to institutions with high rates (75 percent or higher) of students in financial need. (The Pell grant threshold could be used for FSEOG and Work-Study.)

### **3. Restore eligibility for Federal financial aid to disenfranchised populations**

The elimination of aid for prisoners and individuals with non-violent, drug-related convictions represents an excessive and imprudent penalty for individuals who are already paying their debt to society. To help ensure that these individuals will become productive, taxpaying citizens, efforts must be made to promote their rehabilitation and positive contribution to the Nation. Restoring eligibility for Federal financial aid would be a step toward breaking recurring negative patterns and promoting rehabilitation among this population.