

SUMMARY OF PROPOSED AMENDMENTS TO THE TRIBALLY CONTROLLED COLLEGES AND UNIVERSITIES ASSISTANCE ACT

(Reauthorized in Conjunction with the Higher Education Act)
(February 2019)

The Tribally Controlled Colleges and Universities Assistance Act of 1978, P.L. 95-471 [25 USC 1801 note], is reauthorized under Title IX (Amendments to Other Laws) 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), respectfully request that the following amendments to the Tribal College Act be included in the final HEA reauthorization bill.

These amendments, many of which are technical, are intended to update the legislative language, much of which is no longer relevant, to remove ambiguities, and address issues that have arisen over the past few years with respect to the 40-year-old legislation.

Amendments:

The Tribally Controlled Colleges and Universities Assistance Act of 1978 ([25 U.S.C. 1801 note](#)) is amended as follows:

TITLE I – TRIBALLY CONTROLLED COLLEGES AND UNIVERSITIES

1. Repeal “Satisfactory Progress” Language: Section 2

Amendment Language:

Delete Section 2(a)(9) [25 USC 1801(a)(9)] and correct section accordingly.

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. Revise Indian Student Count Calculation Dates: Section 2

Amendment Language:

Strike Section 2(b)(1) [25 USC 1801(b)(1)] and insert in lieu thereof:

“Such number shall be calculated on the basis of the number of Indian students enrolled—

(A) at the conclusion of the third full week of each academic term; or

(B) on the fifth day of a shortened program beginning after the third full week of an academic term.”

Justification: TCU administrators have expressed concern that credits earned by students enrolled in shortened academic programs (either block or compressed) that do not begin at the start of a “regular” term cannot be counted in an institution’s ISC. This amendment is to clarify that academic credits earned for courses that begin at any time during a regular scheduled semester or quarter (term), can be included in an institution’s ISC.

3. Inclusion of Dual Credit in Indian Student Council Calculation: Section 2

Amendment Language:

In the last sentence in Section 2(b)(3) [25 USC 1801(b)(3)], insert “solely” before “for the purpose of obtaining a high school degree”

Justification: The law currently does not allow TCUs to count students that are enrolled in dual credit programs. As more and more institutions and students are seeking to complete degrees as early as possible, dual credit programs are growing. Dual credit students are garnering college credit as they finish their secondary education requirements. This amendment would permit colleges to make dual credit students part of the ISC.

4. Clarification & Corrections to Continuing Education Credits, Based on the IACET Standard: Section 2

Amendment Language:

Strike Subsection 2(b)(4) through the end of Subsection (5) [25 USC 1801(b)(4) and (5)] and insert in lieu thereof the following:

“(4) Notwithstanding any other provision of this section, Indian individuals who self-identify as Indian or Alaska Native and earn credits in any continuing education program of a Tribal College or University shall be included in determining the sum of all credit hours, subject to paragraph (5).

(5) Eligible credits earned in a continuing education program shall be--

(A) For participation in an organized continuing education experience offered under responsible sponsorship, capable direction and qualified instruction, as described in the criteria established by the International Association for Continuing Education and Training;

(B) Exempt from the enrollment requirement of paragraph (a)(8) and the admission requirement set forth in paragraph (b)(3);

(C) Offered at any time during the academic year, notwithstanding the requirements of paragraph (b)(1), and shall be including in an eligible institution’s Indian Student Count according to the following annual schedule:

(i) September 1-December 31: Fall academic term

(ii) January 1-May 31: Spring academic term

(iii) June 1-August 30: Summer academic term; and

(D) Determined as one credit for every 10 contact hours in the case of an institution on a semester system, or a corresponding number of contact hours in the case of an institution on a quarter system, as determined by the Secretary.”

Justification: Representatives from the Tribal Colleges and Universities, the Bureau of Indian Education, and AIHEC have met on several occasions with International Association for Continuing Education and Training (IACET) officials, including participation in intensive 2-day IACET training. The purpose of our meetings and training was to help ensure compliance with section 2(b)(5) and more important, to ensure that Tribal College continuing education programs are of the highest quality and benefit to our tribal communities. Based on a thorough review of the IACET Standard, consultation with IACET leadership and national/regional continuing education providers, and attempts to practically implement and interpret section (2)(b)(4) and (5), we have determined that the current section: (a) contains errors; (b) is inconsistent with the IACET Standard and practice; and (c) lacks clarity regarding whether certain requirements for academic credit should apply to continuing education credits.

For example: paragraph (2)(b)(5)(A) requires that institutions on a semester calendar system calculate one continuing education unit (CEU) for every 15 contact hours. However, the national, international, and IACET standard for semester-based CEUs is one CEU for 10 contact hours. This means that a TCU would have to offer a nursing professional development seminar, for example, 1.5 times *longer* than a regional community college would to award participants the same number of CEU credits. Clearly, this puts TCUs at a disadvantage vis-à-vis other providers. We propose amending Section 2(b)(5)(A) to be consistent with standard practice.

Additionally, it is overly burdensome, costly, counter-productive, and unnecessary to hold TCUs to the same enrollment and certification requirements for continuing education participants as they are held to for *academic* students. Continuing education, by its very nature, is not typically pursued by students enrolled in degree programs. Rather, these same students would engage in continuing education *after* completing a degree or certificate program, to meet various licensure requirements, stay abreast of industry advancements, and to broaden their knowledge and skills.

5. Use of Prior-Prior Year Data for Funding Calculations: Section 2

Amendment Language:

At the end of Section 2(b)(5) [25 USC 1801(b)(5)], insert the following new subparagraph:

“(6) Enrollment data from the prior-prior academic year shall be used.”

Justification: Each year the distribution of operating grants is held up while the BIE gathers and confirms the immediate prior year’s average ISC. TCUs are unable to accurately budget for the coming year, because the per student distribution figure is not available. If the BIE used the prior-prior year’s average ISC, the numbers would be available, the BIE could do the necessary calculation to determine the per Indian student funding level earlier in the year. TCUs would know the amount that they would be receiving on July 1, and the BIE should be in a position to get the funds out the door the first week of July.

6. Use of “On Campus” Student Count for Funding, versus ALL Students: Section 103

Amendment Language:

Strike Section 103(3) [25 USC 1804(3)] and insert in lieu thereof the following:

“(3) the majority of students who are enrolled in on-campus courses are Indian; and”.

Justification: To be eligible to receive a grant under this Act requires that the college must have a majority American Indian/Alaska Native enrollment, irrespective of when the college was established. By establishing an institution’s eligibility to receive funding under Title I of the Tribally Controlled Colleges and Universities Assistance Act based on its on-campus students, will allow the TCUs to expand their outreach to non-reservation Indians and others, through online programs.

7. Repeal Obsolete Planning Grants: Section 104

Amendment Language:

Delete Section 104 [25 USC 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 seriously to consider chartering a tribal college, it must be prepared to support the college until it is accredited and thereby eligible for Tribal College Act funding.

8. Update Technical Assistance Language: Section 105

Amendment Language:

In Section 105(a) [25 USC 1805(a)]:

- In (a)(1), strike “tribally controlled college or university which is receiving” and insert “tribally controlled colleges and universities which are receiving”; and
- In (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.

9. Update Reference to “Bureau of Indian Education”: Section 106

Amendment Language:

In Section 106(a) [25 USC 1806(a)(1)], 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.

10. Update BIE Eligibility Study Funding Authority: Section 106

Amendment Language:

In Section 106(c) [25 USC 1806(c)], strike all after “may be drawn from” and insert:

“the general administrative appropriations to the Secretary.”

Justification: Procedures and criteria for determining a prospective tribal 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 tribal colleges -- and therefore the level of funding authorized -- have increased considerably since the Act was initially funded in FY 1981. In FY 2018, 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.

11. Technical Corrections & Outdated Grant Priority for “Existing” TCUs: Section 107

Amendment Language:

In Section 107 [25 USC 1807]:

- Correct heading to be “Grants to Tribal Colleges and Universities”
- In subsection(a):
 - strike “tribally controlled community college or university” and insert “Tribal Colleges and Universities
 - strike “a eligibility study” and insert “an eligibility study”; and
- Delete subsection (c) and redesignate the subsequent subsection.

Justification: The subsection that lays out a priority of number of grants to existing TCUs was applicable when the legislation was first enacted, but is no longer relevant; also, the section’s reference to Tribal Colleges needs to be updated.

12. Designation of National Indian Higher Education Organization: Section 107

Amendment Language:

In Section 107(d) [25 USC 1807(d)] (*to be redesignated as subsection (c)*), insert “higher education” after “national Indian”

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

13. Hold Harmless Language for Existing TCU Grant Funding: Section 108

Amendment Language:

In Section 108(a) [25 USC 1808(a)]:

- Strike “(2) Exception” and insert in lieu thereof “(2) Exceptions”
- Insert a new subparagraph (A) as follows, and redesignate the subsequent paragraph accordingly:

“(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.

14. Revise Grant Distribution Dates to Reflect Forward Funding: Section 108

Amendment Language:

In the heading for Section 108(b) [25 USC 1808], strike “Advance Installment Payments” and insert “Payments”; and

In Section 108 (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 1” and insert “September 30”.

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.

15. Repeal Requirement re NCES and Update Reference to TCUs: Section 108

Amendment Language:

In Section 108(c)(2) [25 USC 1808(c)(2)]:

- Strike “, in consultation with the National Center for Education Statistics,” and insert “either directly or by contract,” and
- Strike “or universities” and insert “and universities”.

Justification: The Integrated Postsecondary Education Data System (IPEDS), widely recognized as a critically flawed system, is a product of the National Center for Education Statistics (NCES). Current law states that the proposed data collection system is for “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 unnecessary. Finally, the use of “and” is preferable to “or” when referring to Tribal Colleges and Universities (TCUs).

16. Series of Technical Corrections & Updates: Sections 109 through 112

Amendment Language:

In the heading for Section 109(b) [25 USC 1809(b)] and in the first sentence of the first section 109(c), strike “Indian Affairs” and insert “Indian Education”; and correct subsection numbering accordingly.

In Section 110(a) [25 USC 1810(a)]:

- strike “2009” each place it occurs and insert “2020”;
- strike “such sums as may be necessary” in the second place in which it occurs in each of subparagraphs (2) and (3); and
- In subparagraph (4) strike “or universities” and insert “and universities”.

In Section 111(a)(2) [25 USC 1811(a)(2)]:

- strike “or universities” and insert “and universities”.

In Section 112 [25 USC 1812]:

- In subsection (a), strike “or universities” and insert “and universities”;
- In subsection (a), strike “2009” each place it occurs and insert “2020”;
- In subsection (c)(1), strike “Navajo Community” and insert “Diné”; and
- In subsection (c)(2)(B), strike “or universities” and insert “and universities”.

17. Simplification & Modernization of Required TCU Facilities Report: Section 112

Amendment Language:

Strike Section 112 [25 USC 1812], and insert in lieu thereof the following:

“SEC. 112. REPORT ON TRIBAL COLLEGE & UNIVERSITY FACILITIES.

(a) Study on the Condition of Tribal College and University Facilities.—The Secretary shall provide for the conduct of a study on the condition of Tribal College and University facilities, which for purposes of this section shall include Tribal Colleges and Universities as defined in section 316(b) of the Higher Education Act of 1965 ([20 U.S.C. 1059c\(b\)](#)). Such study shall identify the need for new construction, renovation, and infrastructure enhancements of the Tribal Colleges and Universities.

(b) Contract.—The study required in subsection (a) may be conducted directly by the Secretary or by contract.

(c) Report to Congress.— A report on the results of the study required in subsection (a) shall be submitted to the Congress not later than 18 months after the enactment of this Act.”

Justification: The report required under existing law is outdated and contains irrelevant provisions that reference obsolete facility options.

18. Updates to Section on TCU Construction/Infrastructure: Section 113

Amendment Language:

Strike Section 113 [25 USC 1813] and the heading, and insert in lieu thereof the following:

“SEC. 113. TCU INFRASTRUCTURE IMPROVEMENT.

(a) DEFINITIONS.—In this section:

(1) CONSTRUCTION.—The term ‘construction’ includes any effort to address the facility construction, maintenance, renovation, reconstruction, and replacement needs of a Tribal College or University.

(2) TRIBAL COLLEGE OR UNIVERSITY.—The term ‘Tribal College and University’ has the meaning given the term in section 316(b) of the Higher Education Act of 1965 ([20 U.S.C. 1059c\(b\)](#)).

(b) GRANTS.—With respect to eligible Tribal Colleges and University that identify a need for construction, the Secretary shall, subject to the availability of appropriations and subsection (c), provide grants for the construction in accordance with this section.

(c) APPLICATION.—Each Tribal College and University desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

(d) ELIGIBLE ACTIVITIES.—Activities eligible for a grant under this section shall be activities that address a wide variety of facilities and infrastructure needs, including—

- (1) building of new facilities, including—
 - (A) classrooms;
 - (B) administrative offices;
 - (C) libraries;
 - (D) health/fitness and cultural centers;
 - (E) day care centers;
 - (F) technology centers;
 - (G) housing for student, faculty, and staff; and
 - (H) other facilities necessary to an institution of higher education;
- (2) renovating or expanding existing or acquired facilities;
- (3) providing new and existing facilities with equipment and infrastructure, including—
 - (A) laboratory equipment;
 - (B) computer infrastructure and equipment;
 - (C) broadband infrastructure and equipment;
 - (D) library books;
 - (E) furniture; and
- (4) property acquisition.

(e) NO MATCH REQUIREMENT.—A recipient of a grant under this section shall not be required to make a matching contribution for Federal amounts received.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$31,000,000 for each of fiscal years 2020 through 2024.”

Justification: In 2018, AIHEC conducted a survey of 22 TCUs, which revealed a list of chronic facility-related needs, including student housing, faculty housing, classrooms, libraries, laboratories, administrative offices, cafeterias, and student wellness/community fitness centers. The 22 TCUs surveyed have an estimated combined total need of **\$332.5 million in Deferred Maintenance and Rehabilitation costs and \$558 million to complete existing Tribal College Master Plans**. Established 40 years ago, this essential TCU construction program has never been funded. This amendment updates the current TCU construction program to support facilities construction, campus renovation, IT infrastructure updates, and housing on TCU campuses.

19. Technical Correction to Conform to Current Law: Sec. 114

Amendment Language:

In Section 114(a), at the beginning of the first sentence, strike “The Navajo Tribe” and insert in lieu thereof “Except as provided in sections 112 and 113, the Navajo Tribe”

Justification: These exceptions are necessary to ensure that all Tribal Colleges, whose primary operating funding comes from Titles I and II of the Tribal College Act, are eligible to participate in the facilities program.

20. Repeal Obsolete Rules and Regulation: Sec. 115

Amendment Language:

Strike Section 115 [25 USC 1815].

Justification: This section was relevant when the legislation was first enacted; but it is no longer applicable and is therefore, unnecessary.

TITLE III – TCU ENDOWMENT PROGRAM

21. Termination & Waiver Authority for Modest Endowment Program

Amendment Language:

Strike Section 301 through the end of 306 [25 USC 1831 et. seq.]; and insert in lieu thereof the following:

“TRANSITION—

(A) IN GENERAL.—Subject to subparagraph (B), title III of the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1831 et seq.), as such title was in effect on the day before the date of enactment of this Act, shall apply with respect to any endowment fund established or funded under such title before such date of enactment, except that:

- (i) The Secretary of the Interior may not make any grants or Federal capital contributions under such title after such date; and
- (ii) The Secretary may waive the requirements of subparagraph (A) if the Secretary determines that such a waiver is warranted due to (I) a financial emergency, such as a pending insolvency or temporary liquidity problem; (II) natural disaster or arson; or (III) any other unusual occurrence or exigent circumstance.”

(B) TERMINATION.—Subparagraph (A) shall terminate on the date that is 10 years after the date of enactment of this Act. On or after such a date, Tribal Colleges and Universities may use the corpus (including the Federal and institutional capital contributions) of any endowment fund described in such subparagraph to pay any expenses relating to the operation of academic programs of such colleges and universities.”

Justification: This small endowment program has been appropriated at approximately \$103,000 for at least two decades. The cost of program administration, to the Bureau of Indian Education and the TCUs themselves, easily exceeds the awards to individual TCUs. Further, TCUs may use funding authorized

under Titles I and II to support endowments along with funding they receive from the U.S. Department of Education's Strengthening Institutions-TCU Program (Section 316 of the Higher Education Act of 1965.)

TITLE IV – TRIBAL ECONOMIC DEVELOPMENT

22. Technical Corrections & Updates to Economic Development Grants

Amendment Language:

In Section 402(a) [25 USC 1801 note], strike “or universities” and insert “and universities”; and

In Sections 402 (a) and 402(c), strike “Navajo Community” and insert “Diné”.

Justification: These updates are consistent with other updates throughout the Act.