

SUMMARY OF PROPOSED AMENDMENTS TO THE TRIBALLY CONTROLLED COLLEGES AND UNIVERSITIES ASSISTANCE ACT OF 1978

[REAUTHORIZED IN CONJUNCTION WITH THE HIGHER EDUCATION ACT]

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 upcoming reauthorization of the Higher Education Act, the Tribal Colleges and Universities (TCUs) seek inclusion of the following amendments to the TCU Act.

Technical Amendments to Update Statutory Language: Many of the following amendments are technical in nature. During previous reauthorizations, changes were made that were not cross-checked with other sections of the Act. The following amendments will provide consistency throughout the Act; update legislative language -- much of which is no longer relevant; and remove ambiguities.

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

Justification: This amendment would delete one definition. The Act's original language regarding Indian students making "satisfactory progress" as a factor in the TCU funding formula was removed in the last reauthorization of the Act (Pub. Law 110-315). However, the definition of "satisfactory progress" was not also removed at that time. This amendment will eliminate confusion that has resulted from retaining the definition.

2. **Amendments to Sec. 1804:**

- a. In (3) on the list in Sec. 1804, strike "If in operation more than one year, has" and insert "Has"

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

- b. 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. Tribes considering doing so are expected to support the college until it is accredited and therefore eligible for Tribal College Act funding. Congress has not funded this section for more than three decades.

3. **Amendment to Section 1805:** 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 universal to them all. The Congress and Department of the Interior have determined that it is much more efficient, cost effective and beneficial to deliver such 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, workshops and professional development opportunities specifically tailored to TCU needs, access culturally-relevant best practices and targeted dissemination of important information on federal and private sector grant and leveraging opportunities.

4. 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 to the Bureau of Indian Education (BIE), 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.

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

Justification: This subsection, which has been unchanged since 1978, authorizes BIE site visits to applicant colleges, as the final step in determining the institutions eligibility for funding under this section. In 1981, when the Act was first funded, 5 percent of the total appropriation was only a few thousand dollars. Today, it represents \$3.45 million, which is far in excess of the funding needed to conduct a site visit of an applicant college. We recommend that the amount be limited to \$20,000, which is more than adequate to conduct multiple visits, should there be more than one viable applications submitted in a single funding cycle. The estimated cost of one site visit is less than \$5000.

5. Amendments to Sec. 1807:

- a. Strike "(c)" and insert "(b)"
- b. Delete Sec. 1807(d) and redesignate the subsequent subsection accordingly.

Justification: This simply corrects an error in numbering and eliminates an outdated and irrelevant subsection. Specifically, the instruction in subsection (d) on priorities in grant making was applicable when the legislation was new, but it 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.

6. 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 approved applicant that received funds under this part in the preceding fiscal year an amount equal to 100 percent of the product of the per capita payment made under this section in the preceding program 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: This new exception would “hold harmless” TCUs currently funded under the Title I of the Act from future growth in the number of eligible Tribal Colleges. Under the new exception, the Secretary is directed to first allocate available funds to existing TCUs, before making new grant awards. This will help ensure some stability in operating budgets for the colleges currently funded under Title I and will encourage new TCUs to work with the Administration and Congress to secure new funding for operations.

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 Sec. 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 and collects data on first-time, full-time, degree- or certificate-seeking undergraduate students. 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, as well as the fact that TCUs are primarily 2-year and certificate granting institutions that serve a vast number of students who attend part-time and who may have been previously enrolled in a mainstream institution of higher education, consultation with the NCES is ill-advised and unnecessary.

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

7. Amendment to Sec. 1809:

- a. In the heading for Sec. 1809(b) and in the first sentence in Sec. 1809(c), strike “Indian Affairs” and insert “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. Strike “(1)” each time it appears; and
- c. Correct numbering of subsection.

8. 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”

9. Technical Correction to Sec. 1811:

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

10. 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”

11. 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.”

Justification: The proposed language updates the law to current practice by the BIE and is consistent with other federal higher education laws. Further, it 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.

12. Technical Correction: Strike Sec. 1815

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

13. 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”

Justification: Navajo Community College officially changed its name to Diné College in 1997 to better reflect the college’s mission as an institution of higher learning for the Diné (Navajo) people.