

## SUMMARY OF PROPOSED AMENDMENTS TO THE HIGHER EDUCATION ACT (February 2018)

The nation's 36 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. In addition to some changes to the current TCU-Title III-A program, TCUs seek the authorization of two additional programs within Title III-A to help address time-critical Native language vitalization and training programs at TCUs and the continuing need for expanded support services for our students to help ensure their persistence and success in completing their courses of study.

Recommended amendments to Title IV of the Higher Education Act (HEA) include: (1) keeping participation in Federal student loan program voluntary; (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 seeking to update this critically important legislation.

The following are requests and justification of changes sought during the HEA reauthorization.

### **TITLE III: INSTITUTIONAL AID** **(Technical Amendments)**

**Technical amendments:** (1) remove a senseless requirement that the U.S. Department of Education impose a burdensome and unnecessary pre-application process on the clearly defined, and therefore strictly limited, pool of participants in the Tribal Colleges and Universities Title III-A program (Sec. 316); (2) extend for five years the 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, and (3) increase the authorized funding level for the TCU Title III-A program to allow equitable participation by new TCUs without penalizing existing colleges.

#### **1. ELIMINATE PRE-APPLICATION PROCESS**

**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.”

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 is formula-funded, and therefore, it is not necessary or relevant to impose the pre-application process. It is worth noting that the Historically Black Colleges and Universities Title III program, which has always been formula-funded, is not subject to the pre-application process in order to be eligible to receive a grant under said 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)). We are seeking this legislative change, which will help to streamline and simplify the process and to ensure that the needless step is permanently eliminated from the process of administering the TCU Title III formula-funded grant program.

## **2. EXTENTION OF GRANT CARRYOVER TIME LIMIT**

**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.”

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.

## **3. Additional Information Regarding Technical Amendments:**

Issues with Section 312(b), which specifies the eligibility criteria for participation in Title III-A programs, as applied to the TCUs’ Title III-A program, include:

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.

Another example of the irrelevancy of the requirement is that 27 of the TCUs are funded under Title I of the Tribally Controlled Colleges and Universities Assistance Act (TCCUAA), and thus receive an IDENTICAL amount of funding, per student, for “educational and general expenditures,” therefore, section 312(b)(1)(B) is essentially irrelevant to these TCUs. To receive this funding, they must meet the federal definition for a Tribal College.

Further, included in the eligibility application is a waiver option for TCUs for both the needy student and the educational and general expenditures (E&G) requirements, which make it clear that the Department recognizes that this additional step in the application process is irrelevant for Tribal Colleges.

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, (a) directs the Secretary to “streamline and simplify the application process” for the TCU program, and (b) exempts the TCU program from the 2-year wait-out period applicable to the general Title III-A program. Most recently, the TCU program was changed from a competitive to a formula-funded program.

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

**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.”

Currently, the statutory formula for distributing funding under Title III-A §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 and not one faction of its students. Therefore, all students, and not just enrolled members/children of enrolled members of federally recognized tribes, 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. RESOURCES FOR LOCAL RECRUITMENT ACTIVITIES**

**AMENDMENT LANGUAGE:** The Higher Education Act of 1965 is amended as follows:

In Title III-A Sec 316 (c)(2)(L) by inserting before the semicolon the following “, and conducting other recruitment activities”

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 their local recruitment efforts. 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 Title III-A Sec 316 (c)(2)(L) be amended to clarify that the colleges may use their Title III grant funds to produce materials or events regarding the benefits of college and attending a TCU, as part of community outreach programs.

**TITLE III: INSTITUTIONAL AID**  
**(Funding Authorization Amendments)**

**6. Authorization of Appropriations at \$35 million (Part A: Discretionary Funding)**

We are requesting a \$35 million authorization for fiscal year 2019 and “such sums” for each succeeding fiscal year. We are looking to increase funding authority to a level adequate to continue to support those 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.

**7. Authorization of Appropriations at \$35 million (Part F: Mandatory Funding)**

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

In 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 2019 through 2028”; and

(B) in the second sentence, by striking “2019” and inserting “2028”; 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”.

The Part F program – which funds more than 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. We are requesting a \$35 million authorization for fiscal year 2019 through 2028 to continue this critical funding.

**TITLE III: INSTITUTIONAL AID**  
**(New Authorizing Amendments)**

**1. 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 Native American 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 the following:

**“SEC. NATIVE AMERICAN LANGUAGE VITALIZATION AND TRAINING PROGRAM.**

“(a) DEFINITIONS.—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) ESTABLISHMENT.—

“(1) IN GENERAL.—The Secretary shall establish a program, to be known as the ‘Native American Language Vitalization and Training Program’, under which the Secretary shall provide grants to tribal colleges or universities to promote the preservation, revitalization, relevancy, and use of Native American languages.

“(2) REQUIREMENTS.—

“(A) BASIS.—The Secretary shall provide grants under paragraph (1) on a competitive basis.

“(B) TERM.—The term of a grant under paragraph (1) shall be not more than five years.

“(3) APPLICATION.—

“(A) IN GENERAL.—To be eligible to receive a grant under this subsection a Tribal College or University shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may reasonably require.

“(B) 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.

“(C) 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—

“(i) a description of a 5-year strategy of the tribal college or university for meeting the needs of American Indians or Alaska Natives, as appropriate, in the area served by the tribal college or university;

“(ii)(I) an identification of the population to be served by the Tribal College or University; and

“(II) an 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;

“(iii) a description of the services to be provided under the program, including the manner in which the services will be integrated with other appropriate activities; and

“(iv) a description, to be prepared in consultation with the Secretary, of the performance measures to be used to assess the performance of the tribal college or university in carrying out the program.

“(D) REQUIREMENT.—A program plan under subparagraph (C) shall be consistent with the purposes of this section, as determined by the Secretary.

“(c) USE OF FUNDS.—A Tribal College or University may use a grant provided under this section to carry out activities, including—

“(1) curriculum development and academic 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; and

“(3) innovative Native American language programs for students in prekindergarten through grade 12, including language immersion programs.

“(d) APPLICABILITY OF OTHER PROVISIONS.—

“(1) CONCURRENT FUNDING.—A Tribal College or University that receives a grant under this section may concurrently receive funds under section 316.

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

“(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$15,000,000 for each of fiscal years 2019 through 2024.”

**Explanation of Request:** Tribal Colleges and Universities are engaged institutions of higher education created by American Indians/Alaska Natives for American Indians/Alaska Natives primarily on rural and

isolated Indian reservations, which were virtually excluded from the rest of this nation's system of higher education.

Tribal Colleges and Universities and their students contribute significantly to the economic and social health of reservation communities. The TCUs offer a variety of social services for students and community members and often serve as community centers, libraries, tribal archives, career and business centers, economic development centers, public meeting places, and childcare and wellness centers. The nation's 36 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.

## **2. NEW: TRIBAL COLLEGES AND UNIVERSITIES SUPPORT SERVICES FOR STUDENTS PROGRAM.**

An amendment creating a new section under Title III-A to establish and expand student support services programs that will allow for more efficient and effective application and administration of such programs addressing the unique population of students at Tribal Colleges.

**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 the following:

### **“SEC. TRIBAL COLLEGES AND UNIVERSITIES SUPPORT SERVICES FOR STUDENTS.**

“(a) DEFINITIONS.—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) ESTABLISHMENT.—

“(1) IN GENERAL.—The Secretary shall establish a program, to be known as the ‘Tribal Colleges and Universities Student Success Program’ to establish and expand support services for students that will allow for more efficient and effective application and administration of such programs addressing the unique population of students at Tribal Colleges and Universities.

“(2) REQUIREMENTS.—

“(A) BASIS.—The Secretary shall provide grants under paragraph (1) on a competitive basis.

“(B) TERM.—The term of a grant under paragraph (1) shall be not more than five years.

“(3) APPLICATION.—

“(A) IN GENERAL.—To be eligible to receive a grant under this subsection a tribal college or university shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may reasonably require.

“(B) 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.

“(C) 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 —

“(i) a description of a 5-year strategy of the Tribal College or University for meeting the unique needs of American Indian/Alaska Native students;

“(ii) the number of students to be served for each year of the grant;

“(iii) a description of the services to be provided under the program; and

“(iv) a description, to be prepared in consultation with the Secretary, of the performance measures to be used to assess the performance of the Tribal College or University in carrying out the program.

“(D) REQUIREMENT.—A program plan under subparagraph (C) shall be consistent with the purposes of this section, as determined by the Secretary.

“(c) USE OF FUNDS.—A Tribal College or University may use a grant provided under this section to carry out activities, including—

“(1) academic tutoring, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects;

“(2) advice and assistance for students in navigating –

(A) course selection

(B) mentoring programs

(C) student financial aid programs, including scholarships and assistance in completing public and private financial aid applications

(D) education or counseling services designed to improve financial and economic literacy

(E) application for admission to, and securing financial assistance for, enrollment in four-year and/or graduate programs

- (F) other activities proposed in the application that contribute to carrying out the intent of this program as described in subsection (b) and are approved by the Secretary as part of the review and acceptance of such application

“(d) APPLICABILITY OF OTHER PROVISIONS.—

“(1) CONCURRENT FUNDING.—A Tribal College or University that receives a grant under this section may concurrently receive funds under section 316.

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

“(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$10,000,000 for each of fiscal years 2019 through 2024.”.

**Explanation of Request:** Tribal Colleges must find stable funding for student support services to achieve their collective goal to increase participation, retention, and completion rates of American Indian/Alaska Native students in postsecondary education. Among institutions of higher education, TCUs have a disproportionate number of students in need of developmental/remedial education and other services that can only be addressed through a sustained and comprehensive student support program. The penultimate TRIO student support services (SSS) competition (2005) resulted in a 26 percent drop in the number of SSS grants being awarded to TCUs. In 2010, the number of TCUs with SSS grants dropped again by 11.8 percent; and this year (2015) the number of TCUs with SSS grants dropped by 14.3 percent. The drop is not an indication of inferior proposals. On the contrary, it illustrates the extreme need for such programs and a lack of adequate funds available for such vital grant programs nationwide. The grant scoring cut off of these SSS competitions is exceedingly high, further illustrating the dearth in available resources and leaving many worthy programs unfunded. Clearly institutions such as Tribal Colleges and Universities will be hard pressed to compete with larger, more developed institutions that have the stable resources and are in a position to hire professional grant writers. Prior experience points, complexity of application, and lack of adequate resources have kept TCUs from being able to participate in this critical program, at even a fraction of need. Tribal colleges propose this competitive program to afford the TCUs a solid opportunity to secure funds to build stable student support programs at their respective institutions. The continued drop in grant awards to TCUs is most unfortunate and needs to be reversed so that TCUs can continue to provide access and foster success in quality higher education opportunities for the Native and non-Native students enrolled at the nation’s Tribal Colleges and Universities.

#### **TITLE IV: STUDENT ASSISTANCE**

##### **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.