

**SUMMARY OF PROPOSED AMENDMENTS TO THE
TRIBALLY CONTROLLED COLLEGES AND UNIVERSITIES ASSISTANCE ACT**
(REAUTHORIZED IN CONJUNCTION WITH THE HIGHER EDUCATION ACT)
(February 2018)

The Tribally Controlled Colleges and Universities Assistance Act of 1978 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 the following amendments to the Tribal College Act, in any HEA reauthorization bill ultimately enacted.

The following 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.

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

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

2. Amendment Section: Strike Section 1801(b)(1) and insert in lieu thereof "Such number shall be calculated on the basis of the number of Indian students enrolled at the conclusion of the third full week of each academic term; or 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. Amendment Section: In the last sentence in Section 1801(b)(3) insert "solely" before "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. Amendment: Following Sec. 1801(b)(5) insert a new subparagraph as follows:
"(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.

5. **Amendment:** In Sec. 1804(3) strike "If in operation more than one year, has" and insert "On-campus, has" before "students a majority of whom are Indians".

Justification: To be eligible to receive a grant under this Act requires that the college has 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.

6. **Amendment:** Delete Sec. 1804a.

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

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

Justification: Tribal colleges have a wide array of technical assistance needs, some specific to a few colleges and other issues of almost universal concern. The Bureau of Indian Education (BIE) has determined that it is much more efficient and cost effective to deliver technical assistance by contracting with an organization chosen by the stakeholders (TCUs) themselves. In doing so, all TCUs can benefit from the experiences of others through networking with peers, relevant workshops and professional development opportunities, as well as wide dissemination of best practices and problem solving methods and valuable information about federal and private grant opportunities.

8. **Amendment:** In Sec.1806(a) - Strike "Bureau of Indian Affairs" and insert "Bureau of Indian Education"

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

9. **Amendment:** 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.

10. Amendment: In Sec. 1806(c)(2) strike “5 per centum” and insert “\$20,000”

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

11. Amendments: Delete Sec. 1807(c) and redesignate the subsequent subsection

Justification: Redesignation of the subsections is simply that, correcting the numbering. The subsection (c) that lays out priority of number of grants was applicable when the legislation was first enacted, but is no longer relevant.

12. Amendment: In section 1807, 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 are focused on and are experts in Tribal higher education.

13. Amendment: In section 1808(a), strike “(2) Exception” and insert in lieu thereof “(2) Exceptions”

14. Amendment: In section 1808, insert a new subparagraph (A) as follows, and designate the subsequent paragraph as “(B):

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

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

15. Amendment: 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.

16. Amendment: In 1808(c)(2) strike “, in consultation with the National Center for Education Statistics,” and insert “either directly or by contract,”

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

17. Amendment: In 1808(c)(2) Strike “or universities” and insert “and universities”

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

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

19. Technical Corrections to Sec. 1810:

In subsection (a) strike “2009” each place it occurs and insert “2018”;
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”

20. Technical Correction to Sec. 1811:

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

21. Technical Corrections to Sec. 1812:

In subsection (a) strike “or universities” and insert “and universities”;
In subsection (a) strike “2009” each place it occurs and insert “2018”;
In subsection (c)(1) strike “Navajo Community” and insert “Diné”; and
In subsection (c)(2)(B) strike “or universities” and insert “and universities”

22. Amendments to Sec. 1813:

In subparagraph (b)(1), strike “section 105 or 107” and insert “this Act”;
In subparagraph (b)(2) is amended to read as follows:

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

In subparagraph (c)(1), strike all after “the cost of such construction” through the end of the sentence.

Justification: The proposed language updates the law to current practice and holds TCUs seeking institutional operating grants to a higher standard than original law, by requiring formal accreditation candidacy status and eliminating subjective waivers based on the Secretary expectations of an institution being granted accreditation within 18 months. Additional language ensures that all TCUs funded under the Act may participate in section 1812 and 1813 programs.

23. Technical Correction: In section 1814(a), at the beginning of the first sentence, strike “The Navajo Tribe” and insert in lieu thereof “Except as provided in sections 1812 and 1813, the Navajo Tribe”

24. Technical Amendment: Strike Sec. 1815

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

25. Amendment Section: Strike “and” at the end of Sec. 1832(b)(4), as redesignated, and strike the period at the end of Sec. 1832(b)(5), as redesignated and insert in lieu thereof “; and

(c) Term of Grants: The period of a grant under this section shall be not more than 20 years.

During the grant period, an institution may withdraw and expend interest income generated by the endowment for any operating or academic purpose. An institution may not withdraw or expend any of the endowment fund corpus. After the termination of the grant period, an institution may use the endowment fund corpus for any operating or academic purpose.

(d) Repayment provisions

(1) Repayment: If at any time during the grant period an institution withdraws part of the endowment fund corpus, the institution shall repay to the Secretary an amount equal to 150 percent of the withdrawn amount. The Secretary may use up to 75 percent of such repaid funds to make additional endowment grants to, or to increase existing endowment grants at, other eligible institutions.

(2) Waiver: The Secretary may waive the requirements of subsection (c) if the institution demonstrates such an expenditure is necessary because of (I) a financial emergency, such as a pending insolvency or temporary liquidity problem; (II) a life-threatening situation occasioned by a natural disaster or arson; or (III) any other unusual occurrence or exigent circumstance.”

26. 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”