

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

(Reauthorized in conjunction with the Higher Education Act)

(Updated: February 2020)

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), remove ambiguities, and address issues that have arisen over the past few years with respect to the 40-year-old legislation. This document contains 22 sets of amendments.

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. Technical Correction: Reference to Tribally Controlled Colleges *and* Universities

Amendment Text:

In sections 101, 102(a), 105(a)(1) and (2), 107(a), 108(c)(2), 109(b)(1), 110(a)(4), 111(a)(2), 301, 302(a), and 402(a) [25 USC 1801 et. seq.] and the headings for Title I, Title II, and section 107, strike “tribally controlled college or university” and “tribally controlled colleges or universities” in each place that such terms occur and insert in lieu thereof “tribally controlled college and university” or “tribally controlled colleges and universities”, respectively.

In section 105(a)(1) [25 USC 1805(a)(1)], strike “a tribally controlled college or university which is receiving” and insert “tribally controlled colleges and universities which are receiving”.

Justification: In several places throughout the Act, the word “or” is used when referring to tribally controlled colleges *and* universities. This technical correction simply strikes “or” in favor of “and” where appropriate.

2. Clarification of Annual Payments: Title I

Amendment Text:

In sections 101, 102, 107, 108(a)(2), 109, and 111 [25 USC 1801 et. seq.] and in the heading for sections 102, 103, 107, 108, and 111, strike “grant” and “grants” in each place that such terms occur and insert in lieu thereof “payment” or “payments”, respectively.

In section 108(a)(1), strike “grant” and insert in lieu thereof “make available”.

In section 111(c), strike “grantee” and insert in lieu thereof “recipient” and strike “grantees” and insert in lieu thereof “recipients”.

Justification: Throughout the Act, the terms “grant” and “payment” are used interchangeably. This amendment improves consistency in the Act by using one term to describe the annual formula-driven operating payments under the Act. Section 102(b) [25 USC 1803], states “grants made under this title *shall go into the general operating funds of the institution to defray, at the determination of the tribally controlled college or university...*” making clear that the annual payments are not intended to be treated as competitive grants.

3. Clarification of Annual Payments: Title I

Amendment Text:

In section (2)(a)(4) [25 USC 1801(a)(4)], strike “or has been formally sanctioned, or chartered” and insert in lieu thereof “and has been formally sanctioned or chartered” *

**This amendment included in the College Affordability Act (H.R. 4674)*

Justification: This amendment clarifies the the original intent of the Tribally Controlled Colleges and Universities Assistance Act regarding tribal control (federally recognized Indian tribes), which may become difficult to readily recall with the passage of time. When the TCU Act was established in the late 1970s, Congress recognized the right of an Indian tribal government to establish its own institution of higher education, as an act of the tribe’s sovereignty and to strengthen and preserve the tribe’s culture, language, history, lands, and people. Under the TCU Act, “tribally controlled” means chartered *and* controlled by federally recognized Indian tribes, as opposed to programs such as the Native American serving non-Tribal institutions program under title III of the Higher Education Act, which provides funding for non-Tribal institutions.

4. Definitions: Clarify “Indian Student Count” and Delete “Satisfactory Progress”: Section 2

Amendment Text:

In section (2)(a)(8) [25 USC 1801(a)(8)], strike “credit hours of” and insert in lieu thereof “credits hours earned by”;

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

**This amendment included in the College Affordability Act (H.R. 4674)*

Justification: The current definition of “Indian Student Count,” which is used in the formula for calculating annual TCU payments, is updated to current practice (“earning credits”). Further, 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.

5. Revise Indian Student Count Calculation Dates: Section 2

Amendment Text:

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 at each of the following times—

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

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

**This amendment included in the College Affordability Act (H.R. 4674)*

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.

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

Amendment Text:

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

**This amendment included in the College Affordability Act (H.R. 4674)*

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.

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

Amendment Text:

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, an Indian individual who is 16 years of age or older and is an enrolled member in a federally recognized Indian tribe or the biological child of

an enrolled member and who earns continuing education units in an approved continuing education program of a Tribal College or University shall be included in determining the sum of all credit hours earned, subject to paragraphs (5) and (6).

- (5) An approved continuing education program of a Tribal College or University shall--
- (A) Provide 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; and
 - (B) Be exempt from the enrollment requirement of paragraph (a)(8) and the requirements of paragraphs (b)(1) and (b)(3).
- (6) For purposes of the calculation contained in subsection (a)(8), the following shall apply—
- (A) One continuing education unit comprises 10 contact hour.
 - (B) One academic credit hour for every three continuing education units comprise one academic credit hour for institutions on a semester system (which may be adjusted by the Secretary, if necessary, for institutions using academic periods other than semesters, such as trimesters or quarters).
 - (C) Schedule for inclusion in an eligible institution's Indian student count:
 - (i) September 1-December 31: Fall academic term
 - (ii) January 1-May 31: Spring academic term
 - (iii) June 1-August 30: Summer academic term.
 - (D) Inclusion of continuing education units shall be limited to ten percent of the Indian student count of a Tribal College or University.” *

**Modified version of this section included in the College Affordability Act (H.R. 4674)*

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.

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.

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

Amendment Text:

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

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

**This amendment included in the College Affordability Act (H.R. 4674)*

Justification: Each year the distribution of operating payments 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.

9. Replace Obsolete Planning Grants with Annual Report on Emerging Tribal Colleges: Section 104

Amendment Text:

Strike section 104 [25 USC 1804a] and insert the following in lieu thereof:

“Sec.104. Annual Report on Emerging Tribally Controlled Colleges and Universities.—No later than December 31 of each year, the Secretary shall submit a report to the Senate Committee on Indian Affairs, the Senate Committee on Health, Education, Labor, and Pensions, the House Committee on Natural Resources, the House Committee on Education and Labor, the Senate Appropriations Subcommittee on the Interior, and the House Appropriations Subcommittee on the Interior on developing and emerging tribally controlled colleges and universities. Such report shall include information on---

- (1) Inquiries received by the Secretary from federally recognized Indian Tribes and tribal organizations regarding the process for establishing a tribally controlled college or university;
- (2) Status of ongoing efforts to establish a tribally controlled college or university;
- (3) Geographic location, current and projected size, and anticipated application timeframe of each reported institution; and
- (4) Such other data as the Secretary may deem relevant.” *

**This amendment included in the College Affordability Act (H.R. 4674)*

Justification: This section was 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. For planning purposes by both the Congress, the Department, and the Office of Management and Budget, an annual report on emerging tribal colleges would be very helpful.

10. Update Reference to “Bureau of Indian Education; Clarify Wait-out Period and Eligibility Studies: Section 106

Amendment Text:

In section 106 [25 USC 1806]:

- In subsection (a), strike “Bureau of Indian Affairs” and insert “Bureau of Indian Education”.*
- In subsection (b), strike the last sentence and insert in lieu thereof:
“Such a positive determination shall be effective for the second fiscal year succeeding the fiscal year in which such determination is made.” *
- In subsection (c), strike all after “may be drawn from” and insert:
“the general administrative appropriations to the Secretary.” *

**This amendment included in the College Affordability Act (H.R. 4674)*

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.

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.

Finally, procedures and criteria for determining a prospective tribal college’s eligibility to receive funding under the Act have long been delineated. A site visit 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, while the average cost of such visit is likely closer to \$1,500 and consistent with other travel costs, should come from the BIE’s administrative budget, rather than TCU operating funding. .

11. Technical Corrections & Modification of Outdated Payment Priority for “Existing” TCUs: Section 107

Amendment Text:

In section 107 [25 USC 1807]:

- In subsection(a), strike “a eligibility study” and insert “an eligibility study”; and
- In subsection (c), strike all after “institutions” and insert in lieu thereof:
“which received payments under this title in fiscal year 2019 or were affiliated with an institution which received payments under this title in fiscal year 2019.” *

**This amendment included in the College Affordability Act (H.R. 4674)*

Justification: This section sets forth a priority of payments to existing TCUs, but after 40 years, the reference point is outdated and should be updated to reflect current funding and support levels.

12. Designation of National Indian Higher Ed Organization: Section 107(d)

Amendment Text:

In section 107(d) [25 USC 1807(d)], insert “higher education” after “national Indian” *

**This amendment included in the College Affordability Act (H.R. 4674)*

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 Payments: Section 108

Amendment Text:

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:

“(A) If the sum appropriated for any fiscal year for payments 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.” *

**This amendment included in the College Affordability Act (H.R. 4674)*

Justification: A new exception is warranted to provide direction for implementation of the existing priority in section 107. The provision provides a “hold harmless” for those TCUs currently funded under the Title I of the Act by directing the Secretary to first allocate available funds to existing TCUs before any new payments are awarded. This is to ensure some stability in operating budgets for the colleges currently funded under Title I.

14. Revise Payment Distribution Dates Due To Forward Funding: Section 108

Amendment Text:

In section 108(b) [25 USC 1808]:

- In the Heading, strike “Advance Installment Payments” and insert “Payments”;
- In Section (b)(1), strike all after “make payments,” and insert in lieu thereof “pursuant to applications under this Act, of all funds available for allotment no later than July 1 of that fiscal year.” *
- Strike subsection (b)(2) and redesignate the section accordingly.

**Included according to House language format in the College Affordability Act (H.R. 4674)*

Justification: In FY2010, forward funding of payments under Title I of the Act was initiated. Now, the Title I funded TCUs receive their operating payments in July prior to the start of the new academic year. Therefore, additional installment payments are no longer needed for these payments, and the timetable for dissemination of funds shifts from the federal fiscal year to that of the academic year.

15. Technical Corrections & Updates: Sections 109 through 112

Amendment Text:

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 “2021”;
- strike “such sums as may be necessary” in the second place in which it occurs in each of subparagraphs (2) and (3).

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

Amendment Text:

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 Congressional Committees.— A report on the results of the study required in subsection (a) shall be submitted to the Senate Committee on Indian Affairs, the Senate Committee on Health, Education, Labor, and Pensions, the House Committee on Natural Resources, the House Committee on Education and Labor, the Senate Appropriations Subcommittee on the Interior, and the House Appropriations Subcommittee on the Interior not later than 18 months after the enactment of this Act.” *

**This amendment included in the College Affordability Act (H.R. 4674)*

Justification: The report required under existing law is outdated and contains irrelevant provisions that reference obsolete facility options. Further, the existing language does not include all TCUs, including those funded under Titles II and V of this Act. For a more complete picture of the facilities and infrastructure status of TCUs, the scope of the study should be broadened to include all TCUs.

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

Amendment Text:

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.—Notwithstanding any other provision of law, 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\(b\)](#)), except that such institution shall have been in operation as a Tribal College or University in fiscal year 2019 or shall have been operating for a period of not less than four consecutive years through an affiliation with a tribally controlled college or university that received payments under this title in fiscal year 2019.

(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 \$35,000,000 for fiscal year 2021 and for each of the five succeeding fiscal years.” *

**Modified version of this section included in the College Affordability Act (H.R. 4674)*

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 41 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.

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

Amendment Text:

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” *

**This amendment included in the College Affordability Act (H.R. 4674)*

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

19. Repeal Obsolete Rules and Regulation: Sec. 115

Amendment Text:

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

20. Clarification of Endowment Program

Amendment Text:

At the end of section 302 [25 USC 1832], add the following new subsection:

“(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.” *

In section 306, strike “2009” and insert in lieu thereof “2021”.

**This amendment included in the College Affordability Act (H.R. 4674)*

Justification: This small endowment program is outdated and should be streamlined. In addition, provisions of the section are inconsistent with endowment programs administered by the U.S. Department of Education. This amendment would streamline the program and to the extent possible, ensure that it is consistent with the Education endowment program for other institutions.

TITLE IV – TRIBAL ECONOMIC DEVELOPMENT

AND

TITLE V – TRIBALLY CONTROLLED POSTSECONDARY CAREER AND TECHNICAL INSTITUTIONS

21. Fiscal Year Authorizations for Titles IV and V

Amendment Text:

In section 403 [25 USC 1852] and sections 502 and 504 [25 USC 1862 et.seq.], strike “2009” in each place that it appears and insert in lieu thereof “2021”.

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

22. Exemptions: Consistency with Current Practice and Proposed Amendments

Amendment Text:

In section 503 [25 USC 1863], strike subsection (a) and insert in lieu thereof the following:

“(a) Institutions eligible to receive funds under this Title shall not be eligible to participate in sections 2(a)(4), 2(a)(8), 2(b), 108, and 111 and Title II of this Act.” *

**Included according to House language format in the College Affordability Act (H.R. 4674)*

Justification: This amendment is consistent with proposed amendments to the construction/infrastructure provisions of the Act (which would include all TCUs) and is consistent with current BIE practice regarding technical assistance.