

## SUMMARY OF PROPOSED AMENDMENTS TO THE HIGHER EDUCATION ACT (Updated: February 2023)

The nation's 35 accredited 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 the Higher Education Act of 1965 (HEA). In addition to technical changes to the current TCU-Title III-A program, the TCUs seek authorization of two new programs within Title III-A to: (1) provide urgently needed Native American languages vitalization and training programs at TCUs; and (2) strengthen graduate-level programs for AI/AN students in high-demand fields.

Recommendations to Title IV of the Higher Education Act include: (1) ensuring voluntary and flexible participation in Federal student loan program; and (2) a more equitable disbursement process for Federal Supplemental Educational Opportunity Grants (FSEOG) and Work-Study Grants.

Additionally, AIHEC is proposing a series of amendments to update the Tribally Controlled Colleges and Universities Assistance (P.L. 95-471) (25 USC 1801 note), which are outlined in a separate document.

### TITLE III – INSTITUTIONAL AID

#### SECTION 316 – TRIBALLY CONTROLLED COLLEGES AND UNIVERSITIES

##### **1. UPDATE AUTHORIZED ACTIVITIES**

Several updates to the authorized activities are needed to align with current needs of the TCU communities. Currently, TCU Title III grant funds can be used to support academic instruction in Tribal governance and public policy. We request that language be added to expand instruction to support Native American languages, Tribal history, and Tribal sovereignty.

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

##### **In section Sec 316(c)(2)—**

- In subparagraph (D), strike “Indians,” and all that follows through “policy” and insert the following:  
“American Indians and Alaska Natives are underrepresented, instruction in Native American languages, and instruction and programs to support Tribal Governance, Tribal Public Policy, and Tribal History and Sovereignty,” \*
- In subparagraph (L), strike “outreach,” and all that follows through “education” and insert the following:  
“outreach and recruitment activities and programs that encourage American Indian and Alaska Native elementary school students, secondary school students, and adults to develop the academic skills and the interest to pursue and succeed in postsecondary education;” \*

*\*This section of amendments included in the College Affordability Act (H.R. 4674—116<sup>th</sup> Congress)*

**Justification:** With enrollments dropping at many, if not most, IHEs and increasing high school dropout rates for AI/AN youth, TCUs are looking for resources to increase and expand their local recruitment efforts to reach adult AI/ANs. 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 language be amended to clarify that the colleges may use their Title III grant funds for outreach to adult AI/ANs, and to produce materials or host events regarding the benefits of college and attending a TCU, as part of community outreach programs.

## 2. ENDOWMENT FUND

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

**In section Sec 316(c)(3)—**

- Strike subparagraph (B).
- At the end thereof, insert—  
“(D) Scholarships.—An eligible institution that uses grant funds provided under this section to establish or increase an endowment fund may use the interest proceeds from such endowment to provide scholarships to students for the purposes of attending such institution.” \*

*\*This section of amendments included in the College Affordability Act (H.R. 4674—116<sup>th</sup> Congress)*

**Justification:** These amendments allow for the long-term investment of TCUs through the development of institutional endowment funds. By eliminating the match requirement and allowing for interest to be used for student scholarships, TCUs will be able to plan for future generations of students. The use of interest to provide scholarship funds is consistent with similar provisions under the Department of Education’s Endowment Challenge Grant Program and the endowment program for Historically Black Colleges and Universities.

## 3. ELIMINATE THE TCU PRE-APPLICATION PROCESS

Eliminate a nonsensical, burdensome, and unnecessary “pre-application process” imposed on the already clearly defined, and therefore strictly limited, pool of participants in the Tribal Colleges and Universities Title III-A program (Sec. 316).

**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.” \*

*\*This section of amendments included in the College Affordability Act (H.R. 4674—116<sup>th</sup> Congress)*

**Justification:** 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 has been formula-funded, and therefore, it is not necessary or relevant to impose the pre-application process. The Historically Black Colleges and Universities Title III program, which has always been formula-funded, does not require a pre-application process to be eligible to receive a grant under the 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)).

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 FY 2008, 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 FY 2008 competition. The FY 2008 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 the 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 an ED official stating that it was eligible to compete.

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 directs the Secretary to “streamline and simplify the application process” for the TCU program; and the second exempts the TCU program from the two-year wait-out period applicable to the general Title III-A program.

#### **4. EXTENSION OF GRANT CARRYOVER TIME LIMIT**

Provide a five-year extension to TCUs to allow additional 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.

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

**At the end of Title III-A Sec 316(d)(3),** insert the following new subparagraph:

“(C) 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.” \*

*\*This section of amendments included in the College Affordability Act (H.R. 4674-116<sup>th</sup> Congress)*

**Justification:** 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 time extensions to expend Title III grant funds intended for long-term projects.

### **TITLE III – NEW TCU PROGRAM AUTHORIZING AMENDMENTS**

#### **5. NEW: TRIBAL COLLEGE & UNIVERSITY NATIVE AMERICAN LANGUAGE VITALIZATION AND TRAINING PROGRAM**

An amendment creating a new section under Title III-A to provide grants to TCUs and Alaska Native- and Native Hawaiian-serving institutions to promote the preservation, revitalization, relevancy, and use of endangered 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 thereof the following new section:

#### **SEC. \_\_\_: TRIBAL COLLEGE & UNIVERSITY NATIVE AMERICAN LANGUAGE VITALIZATION AND TRAINING PROGRAM.**

(a) DEFINITIONS.—In this section:

(1) ELIGIBLE INSTITUTION—The term ‘eligible institution’ means—

(A) a Tribal College or University, as defined in section 316.

(B) an Alaska Native-serving institution, as defined in section 317.

(C) a Native Hawaiian-serving institution, as defined in section 317; or

(2) NATIVE AMERICAN LANGUAGE—The term ‘Native American language’ has the same meaning given in the section 103 of the Native American Languages Act of 1990.”

(b) PURPOSE.—The purpose of this section is to support eligible institutions in preserving and revitalizing endangered Native American languages through curriculum development, instruction, student support, and innovative early childhood education programs and community-based partnerships.

(c) PROGRAM AUTHORIZED.—The Secretary shall establish the ‘Tribal College & University Native American Language Vitalization and Training Program’ to award grants, on a competitive basis, to eligible institutions to enable such institutions to carry out the authorized activities described in subsection (e).

(d) AUTHORIZED ACTIVITIES.—Grants awarded under this section shall be used for one or more of the following activities:

(1) Curriculum development and academic and community-based instruction, including educational activities, programs, and partnerships relating to students in early childhood education programs through grade 12;

(2) Professional development for faculty and in-service training programs for early childhood education programs through grade 12 instructors and administrators;

(3) Innovative Native American language programs for students in early childhood education programs through grade 12, including language immersion programs;

(4) Other activities proposed in the application submitted pursuant to subsection (b) that –  
(A) Contribute to carrying out the purposes of this section; and  
(B) Are approved by the Secretary in the review and acceptance of such application.

(e) APPLICATION, DURATION, AND OTHER PROVISIONS.—

(1) APPLICATION.—An eligible institution may apply for a grant under this section by submitting an application to the Secretary at such time and in such manner as the Secretary may require, consistent with the purpose of this section.

(2) 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.

(3) INCLUSIONS.—An application under this paragraph shall include a plan for the program proposed to be carried out by the eligible institution using the grant, including—

(A) A description of a five-year strategy of the eligible institution for meeting the needs of American Indians, Alaska Natives, Native Hawaiians, or Native American Pacific Islanders, as appropriate, in the area served by the institution, and how such plan is consistent with the purposes described in paragraph (1);

(B)(i) An identification of the population to be served by the eligible institution; 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;

(C) 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 of the relevant community; and

(D) A description, to be prepared in consultation with the Secretary, of the performance measures to be used to assess the performance of the eligible institution in carrying out the program.

(4) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to institutions receiving funding under section 316 in fiscal year 2019.

(5) DURATION.—Grants under this section shall be awarded for a period not to exceed five years.

(6) CONCURRENT FUNDING.—

- (A) Tribal College or University—An eligible Tribal College or University may, concurrently, receive a grant under this section and funds under section 316.
- (B) Alaska Native-serving Institution or Native Hawaiian-serving institution—An eligible institution that is an Alaska Native-serving institution or Native Hawaiian-serving institution may, concurrently, receive a grant under this section and funds under section 317.

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

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$40,000,000, of which \$35,000,000 shall be available for Tribal Colleges or Universities and \$5,000,000 shall be available for the institutions described in subparagraphs (B) and (C) of subsection (a)(1) for each of fiscal years 2023 through 2028.” \*

*\*Modified version of this program included in the College Affordability Act (H.R. 4674—116<sup>th</sup> Congress)*

**6. NEW: GRADUATE OPPORTUNITIES AT TRIBAL COLLEGES AND UNIVERSITIES PROGRAM**

An amendment establishing a modest program to assist TCUs in strengthening graduate degree programs and professional certificate programs in high-demand fields vital to Tribal Nation building and economic development in rural America and in fields critical to addressing health and other challenges facing American Indians and Alaska Natives.

**Justification:** Once a language is gone, the traditional knowledge it carries is lost forever. The U.S. faces an endangered languages emergency – barely 15 percent of Native American languages in the U.S. still are spoken as first languages, and several languages are only used by only a handful of speakers. AIHEC proposes a new competitive grant program to promote the preservation, revitalization, relevance, and use of endangered American Indian, Alaska Native, and Native Hawaiian languages. Language and culture are at the heart of the mission of each TCU, and they are among the earliest leaders of Native American language preservation and vitalization efforts in the U.S. However, despite the promise shown by TCU American Indian/Alaska Native (AI/AN) language preservation efforts, minimal federal and private section resources are available to support these critical activities and explore new innovative strategies. AIHEC recommends the establishment of a new program to provide resources to TCUs and Alaska Native- and Native Hawaiian-serving institutions.

**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 thereof the following new section:

**SEC. \_\_\_\_: GRADUATE OPPORTUNITIES AT TRIBAL COLLEGES AND UNIVERSITIES.**

“(a) DEFINITIONS.—In this section:

“(1) TRIBAL COLLEGE OR UNIVERSITY.—The term ‘Tribal College or University’ has the meaning given the term in section 316(b) of this title.

(b) PURPOSES. The purposes of this section are to—

(1) Expand professional and graduate educational opportunities for, and improve the academic attainment of, American Indians and Alaska Natives in high-demand fields and fields in which American Indians and Alaska Natives are underrepresented; and

(2) Strengthen and enhance the quality of graduate programs at Tribal Colleges and Universities.

(c) PROGRAM AUTHORIZED.—The Secretary shall award grants, on a competitive basis, to eligible institutions to enable such institutions to carry out the authorized activities described in subsection (e).

(d) ELIGIBILITY.—For the purposes of this section, an “eligible institution” means an institution of higher education that—

(1) is a Tribal College or University; and

(2) offers a postbaccalaureate certificate or postbaccalaureate degree-granting program.

(e) AUTHORIZED ACTIVITIES.—Grants awarded under this section shall be used for one or more of the following activities:

(1) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes;

(2) Construction, maintenance, renovation, and improvement of classrooms, libraries, laboratories, and other instructional facilities, including purchase or rental of telecommunications technology equipment or services;

(3) Purchase of library books, periodicals, technical and other scientific journals, microfilm, microfiche, and other educational materials, including telecommunications program materials;

(4) Support for American Indian and Alaska Native students including outreach, academic support services, mentoring, scholarships, fellowships, and other financial assistance to permit the enrollment of such students in postbaccalaureate certificate or postbaccalaureate degree-granting programs;

(5) Establish or improve a development office to strengthen and increase contributions from graduate alumni and the private sector;

(6) Assist in the establishment or maintenance of an institutional endowment to facilitate financial independence pursuant to section 331;

(7) Postbaccalaureate certificate or postbaccalaureate degree program funds and administrative management, and the acquisition of equipment, including software, for use in strengthening such funds management and management information systems;

- (8) Acquisition of real property that is adjacent to the campus in connection with the construction, renovation, or improvement of, or an addition to, campus facilities essential to postbaccalaureate certificate or postbaccalaureate degree-granting program;
- (9) Education or financial information designed to improve the financial literacy and economic literacy of professional and graduate students, especially with regard to student indebtedness and student assistance programs under Title IV;
- (10) Tutoring, counseling, and student service programs designed to improve academic success;
- (11) Support of faculty exchanges, faculty development, faculty research, research publication and dissemination, curriculum development, academic instruction, and student research mentoring;
- (12) Create and improve facilities for broadband or other distance education technologies, including purchase or rental of telecommunications technology equipment or services;
- (13) Collaboration with other institutions of higher education to expand postbaccalaureate certificate or postbaccalaureate degree offerings;
- (14) Financial support to graduate students planning to pursue academic careers who desire to become faculty at Tribal Colleges and Universities;
- (15) Career services in preparing for an academic career and identifying opportunities;
- (16) Developing partnerships between Tribal Colleges and Universities to facilitate connections between graduate students and hiring institutions;
- (17) Faculty recruitment efforts with an emphasis on graduates from Tribal Colleges and Universities;
- (18) Recruitment and retention incentives to allow Tribal Colleges and Universities to make competitive offers to potential faculty, including use of funds for student loan repayment;
- (19) Research support for early-career faculty;
- (20) Other activities proposed in the application submitted pursuant to subsection (f) that—
  - (A) contribute to carrying out the purposes of this section; and
  - (B) are approved by the Secretary as section of the review and acceptance of such application.

**(f) APPLICATION, DURATION, AND OTHER PROVISIONS**

- (1) APPLICATION.—An eligible institution may apply for a grant under this section by submitting an application to the Secretary at such time and in such manner as the Secretary may require. Such application shall demonstrate how the grant funds will be



used to strengthen graduate and professional opportunities for American Indian and Alaska Native students at Tribal Colleges and Universities.

(2) 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.

(3) DURATION.—Grants under this section shall be awarded for a period not to exceed five years.

(4) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to institutions receiving funding under section 316 in fiscal year 2019.

(5) CONCURRENT FUNDING.—A Tribal College or University that receives a grant under this section may concurrently receive funds under section 316 of this title; however, no Tribal College or University shall receive more than one grant under this section in any fiscal year.

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

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$10,000,000 for each of fiscal years 2023 through 2028. \*

*\*Modified version of this program included in the College Affordability Act (H.R. 4674—116<sup>th</sup> Congress)*

**Justification:** In the 1970s through 1990s, as Tribal Colleges and Universities were being established and growing in number, the academic focus of most of these place-based, under-resourced, and rural institutions was to help their chartering Tribes meet local workforce needs through vocational and technical programs and to serve as bridge institutions to regional state public universities. In recent years, the capacity of TCUs to provide necessary culturally and place-based research has grown, as have the capacity and needs of the Tribes that TCUs serve. More and more TCUs are beginning to develop master's degree programs in limited, but vitally needed, fields including elementary/secondary education administration, environmental science, Tribal governmental policy and management, industrial and electrical engineering, and fine arts.

Over time, important graduate and professional degree support programs have been established for Historically Black Colleges and Universities and Hispanic Serving Institutions. We believe that Tribal Colleges and Universities have been overlooked. Unfortunately, this is consistent with the creation of all federal programs for TCUs. For example, the Strengthening Institutions-TCU program was established decades after the Congress established the Strengthening Institutions-HBCU program and nearly one decade after the Strengthening Institutions-HSI program was created. It is time that Congress recognize the irreplaceable role TCUs play in strengthening their Tribal nations, protecting Tribal lands, and preparing a 21<sup>st</sup> century Native workforce. Through a modest investment in critically needed graduate and professional programs, Tribal Colleges, particularly mission-based and longstanding TCUs, can help strengthen economic and workforce development throughout rural America.

## **TITLE IV: STUDENT ASSISTANCE – RECOMMENDATIONS**

### **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.)