

ant to section 1864 of this title, the Secretary shall distribute to each tribally controlled postsecondary career and technical institution selected for the fiscal year under subsection (a)(1) an amount equal to the greater of—

(A) the total amount appropriated for the tribally controlled postsecondary career and technical institution for fiscal year 2006; or

(B) the total amount appropriated for the tribally controlled postsecondary career and technical institution for fiscal year 2008.

**(2) Excess amounts**

If, for any fiscal year, the amount made available pursuant to section 1864 of this title exceeds the sum of the amounts required to be distributed under paragraph (1) to the tribally controlled postsecondary career and technical institutions selected for the fiscal year under subsection (a)(1), the Secretary shall distribute to each tribally controlled postsecondary career and technical institution selected for that fiscal year a portion of the excess amount, to be determined by—

(A) dividing the excess amount by the aggregate Indian student count (as defined in section 2327(h) of title 20) of such institutions for the prior academic year; and

(B) multiplying the quotient described in subparagraph (A) by the Indian student count of each such institution for the prior academic year.

(Pub. L. 95–471, title V, §502, as added Pub. L. 110–315, title IX, §941(j)(1), Aug. 14, 2008, 122 Stat. 3463.)

**§ 1863. Applicability of other laws**

**(a) In general**

Paragraphs (4) and (8) of subsection (a), and subsection (b), of section 1801 of this title, sections 1805, 1808, 1811, 1812 and 1813 of this title, subchapters II and III of this chapter, and title II<sup>1</sup> shall not apply to this subchapter.

**(b) Indian self-determination and education assistance**

Funds made available pursuant to this subchapter shall be subject to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).<sup>1</sup>

**(c) Election to receive**

A tribally controlled postsecondary career and technical institution selected for a fiscal year under section 1862(b) of this title may elect to receive funds pursuant to section 1862 of this title in accordance with an agreement between the tribally controlled postsecondary career and technical institution and the Secretary under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)<sup>1</sup> if the agreement is in existence on August 14, 2008.

**(d) Other assistance**

Eligibility for, or receipt of, assistance under this subchapter shall not preclude the eligibility of a tribally controlled postsecondary career and technical institution to receive Federal financial assistance under—

(1) any program under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.);

(2) any program under the Carl D. Perkins Career and Technical Education Act of 2006 [20 U.S.C. 2301 et seq.]; or

(3) any other applicable program under which a benefit is provided for—

(A) institutions of higher education;

(B) community colleges; or

(C) postsecondary educational institutions.

(Pub. L. 95–471, title V, §503, as added Pub. L. 110–315, title IX, §941(j)(1), Aug. 14, 2008, 122 Stat. 3464.)

REFERENCES IN TEXT

Title II, referred to in subsec. (a), is title II of Pub. L. 95–471, Oct. 17, 1978, 92 Stat. 1329, known as the Navajo Community College Assistance Act of 1978, which enacted former section 640c–1 of this title, amended former section 640c of this title, and enacted provisions set out as notes under former sections 640a and 640c–1 of this title.

The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), referred to in subsecs. (b) and (c), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, which was classified principally to subchapter II (§450 et seq.) of chapter 14 of this title prior to editorial reclassification as chapter 46 (§5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Higher Education Act of 1965, referred to in subsec. (d)(1), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, which is classified generally to chapter 28 (§1001 et seq.) of title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Carl D. Perkins Career and Technical Education Act of 2006, referred to in subsec. (d)(2), is Pub. L. 88–210, Dec. 18, 1963, 77 Stat. 403, as amended generally by Pub. L. 109–270, §1(b), Aug. 12, 2006, 120 Stat. 683, which is classified generally to chapter 44 (§2301 et seq.) of title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

**§ 1864. Authorization of appropriations**

There are authorized to be appropriated such sums as are necessary for fiscal year 2009 and each fiscal year thereafter to carry out this subchapter.

(Pub. L. 95–471, title V, §504, as added Pub. L. 110–315, title IX, §941(j)(1), Aug. 14, 2008, 122 Stat. 3465.)

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<sup>1</sup> See References in Text note below.

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### § 1901. Congressional findings

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

(1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power \* \* \* To regulate Commerce \* \* \* with Indian tribes"<sup>1</sup> and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

(Pub. L. 95-608, § 2, Nov. 8, 1978, 92 Stat. 3069.)

SHORT TITLE

Pub. L. 95-608, § 1, Nov. 8, 1987, 92 Stat. 3069, provided: "That this Act [enacting this chapter] may be cited as the 'Indian Child Welfare Act of 1978'."

### § 1902. Congressional declaration of policy

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

(Pub. L. 95-608, § 3, Nov. 8, 1978, 92 Stat. 3069.)

### § 1903. Definitions

For the purposes of this chapter, except as may be specifically provided otherwise, the term—

(1) "child custody proceeding" shall mean and include—

(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 1606 of title 43;

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the

<sup>1</sup> So in original. Probably should be capitalized.