

119TH CONGRESS
2D SESSION

AMENDMENT NO. _____

Offered by Mr. OWENS of Utah

**An Amendment to H.R. 8870, the Building Unrivaled Infrastructure and
Long-term Development for America's 250th Act (BUILD America 250
Act)**

At the appropriate place in Title V (Motor Carriers), insert the following new section:

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SEC. 5____. TRANSPORTATION WORKFORCE EDUCATION OPTIMIZATION.

(a) FINDINGS.—Congress finds the following:

(1) The United States is experiencing a critical shortage of commercial motor vehicle operators, diesel technicians, logistics coordinators, and other transportation workforce professionals essential to the functioning of the national surface transportation system.

(2) The American Trucking Association reported that the trucking industry must hire approximately 1,100,000 new drivers over the next decade, or roughly 110,000 drivers per year, to meet current and projected demand.

(3) The average age of a professional truck driver in the United States is 55 years, approximately 10 years higher than comparable industries, meaning retirements are outpacing new entrants into the field.

(4) More than 70 percent of all goods consumed in the United States are transported by commercial motor vehicle, including food, fuel, and healthcare supplies essential to public health and national security.

(5) Proprietary institutions authorized under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) are among the most flexible, accessible, and responsive providers of commercial driver's license (CDL) training, diesel technology, transportation management, and logistics programs, particularly for working-class, first-generation, and adult learners. Nationwide, 45 percent of CDL certificate graduates earn their operating credential at a Title IV participating proprietary institution of higher education.

(6) The 90/10 rule under section 487(a)(24) of the Higher Education Act of 1965 (20 U.S.C. 1094(a)(24)), as currently structured, may restrict the capacity of high-performing proprietary institutions to enroll and serve students in transportation workforce programs by penalizing institutions that serve students who rely primarily on Federal education assistance.

(7) It is in the national interest to ensure that high-performing proprietary institutions with proven student outcomes and clean regulatory records are not impeded from training the transportation workers that America's infrastructure depends upon.

(b) PURPOSE.—The purpose of this section is to establish safeguard from the adverse application of the 90/10 rule under the Higher Education Act of 1965 for proprietary institutions that demonstrate high student outcomes in transportation workforce programs and that have maintained clean regulatory records, thereby supporting national surface transportation workforce development.

(c) DEFINITIONS.—In this section:

(1) ADVERSE ACTION.—The term 'adverse action' means any of the following actions taken by the Secretary of Education with respect to an institution:

(A) A final program review determination resulting in a finding of institutional liability.

(B) A finding of misrepresentation under section 487(a)(20) of the Higher Education Act of 1965 (20 U.S.C. 1094(a)(20)).

(C) A denial, suspension, or revocation of eligibility to participate in programs under title IV of the Higher Education Act of 1965.

(2) ELIGIBLE INSTITUTION.—The term 'eligible institution' means a proprietary institution of higher education, as defined in section 102(b) of the Higher Education Act of 1965 (20 U.S.C. 1002(b)), that—

(A) is participating in programs under title IV of the Higher Education Act of 1965;

(B) offers one or more qualifying transportation workforce programs; and

(C) meets the performance and compliance thresholds set forth in subsection (d).

(3) QUALIFYING TRANSPORTATION WORKFORCE PROGRAM.—The term 'qualifying transportation workforce program' means a postsecondary educational program—

(A) that leads to a certificate, diploma, or associate degree in an occupation classified under one or more of the following Standard Occupational Classification (SOC) codes, or their successors:

(i) SOC 53-3032 (Heavy and Tractor-Trailer Truck Drivers);

(ii) SOC 53-3033 (Light Truck Drivers);

(iii) SOC 53-3099 (Motor Vehicle Operators, All Other);

(iv) SOC 49-3031 (Bus and Truck Mechanics and Diesel Engine Specialists);

(v) SOC 11-3071 (Transportation, Storage, and Distribution Managers);

(vi) SOC 43-5011 (Cargo and Freight Agents);or

(vii) any other transportation or logistics occupational classification designated by the Secretary of Transportation, in consultation with the Secretary of Labor, as critical to meeting national surface transportation workforce needs; and

(B) that is approved by the applicable State licensing or approving agency for veterans' education benefits, or that leads to a credential recognized by the Federal Motor Carrier Safety Administration or a State commercial driver's license authority.

(4) 90/10 RULE.—The term '90/10 rule' means the requirement under section 487(a)(24) of the Higher Education Act of 1965 (20 U.S.C. 1094(a)(24)) that not more than 90 percent of the revenues of a proprietary institution of higher education shall be derived from funds provided under title IV of such Act.

(d) PERFORMANCE THRESHOLDS.—An eligible institution qualifies for the revenue calculation established under subsection (e) if the institution demonstrates, with respect to each qualifying transportation workforce program, that—

(1) the program's graduation rate, as calculated pursuant to section 485(a)(1)(L) of the Higher Education Act of 1965 or applicable successor regulations, is not less than 70 percent for the most recently completed award year for which data are available;

(2) the program's job placement rate—defined as the percentage of graduates who are employed in a transportation, logistics, or distribution occupation within 12 months of program completion, as verified through State wage records, employer attestation, or equivalent documentation—is not less than 70

percent for the most recently completed award year for which data are available; and

(3) the institution has not been subject to any final adverse action during the 5-year period immediately preceding the award year for which the safe harbor is claimed.

(e) HIGH-PERFORMING EDUCATION PROVIDER PROTECTION FROM 90/10 ADVERSE CONSEQUENCES.—

(1) IN GENERAL.—Notwithstanding any other provision of law, for purposes of calculating compliance with the 90/10 rule, revenues derived from students enrolled in a qualifying transportation workforce program at an eligible institution that meets the thresholds under subsection (d) shall not be treated as revenues derived federal education assistance under section 487(d) (5) (C) of the Higher Education Act of 1965.

(2) LIMITATION.—The treatment of revenues under paragraph (1) shall apply only to revenues attributable to students enrolled in qualifying transportation workforce programs, as distinguished from students enrolled in other programs offered by the same institution.

(3) NO EFFECT ON OTHER TITLE IV REQUIREMENTS.—Nothing in this section shall be construed to exempt an eligible institution from any other requirement under title IV of the Higher Education Act of 1965, including accreditation requirements, student consumer information requirements, or any student outcome accountability standard.

(4) ANNUAL CERTIFICATION.—To claim the safe harbor under this subsection, an eligible institution shall certify annually to the Secretary of Education, no later than 90 days after the close of each award year, that the institution meets the thresholds under subsection (d), and shall make the underlying program-level graduation and placement data publicly available on the institution's website.

(f) VERIFICATION AND AUDIT.—

(1) The Secretary of Education, in consultation with the Secretary of Transportation, shall establish procedures for verifying the accuracy of graduation and placement data

submitted by institutions claiming the safe harbor under this section.

(2) An institution that submits materially false or misleading data in connection with a safe harbor certification under subsection (e)(4) shall—

(A) be ineligible to claim the safe harbor under this section for the subsequent 5 award years; and

(B) be subject to applicable civil and administrative penalties under title IV of the Higher Education Act of 1965.

(g) INTERAGENCY COORDINATION.—The Secretary of Transportation shall—

(1) coordinate with the Secretary of Education to identify qualifying transportation workforce occupations and update the list of Standard Occupational Classification codes under subsection (c)(3)(A)(viii) not less frequently than every 3 years, with priority given to occupations experiencing documented workforce shortages;

(2) include in the biennial report to Congress required under section 5508 of title 49, United States Code (or equivalent successor provision), a description of the role of proprietary institutions in meeting national surface transportation workforce needs and an assessment of the utilization of the revenue treatment established by this section; and

(3) in coordination with the Secretary of Labor and the Administrator of the Federal Motor Carrier Safety Administration, develop and publish guidance for institutions seeking to qualify programs under subsection (c)(3) within 180 days of the date of enactment of this Act.

(h) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to—

(1) require the Secretary of Education to amend, waive, or modify the 90/10 rule for any institution other than an eligible

institution with respect to qualifying transportation workforce programs that meet the thresholds under subsection (d); or

(2) limit the authority of Congress to further modify the 90/10 rule through the reauthorization of the Higher Education Act of 1965.

(i) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act and shall apply to award years beginning on or after July 1 of the calendar year following such date of enactment.

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