

116TH CONGRESS
1ST SESSION

H. R. 5312

To authorize the creation of a commission to develop voluntary accessibility guidelines for electronic instructional materials and related technologies used in postsecondary education, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 5, 2019

Mr. DAVID P. ROE of Tennessee (for himself and Mr. COURTNEY) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To authorize the creation of a commission to develop voluntary accessibility guidelines for electronic instructional materials and related technologies used in postsecondary education, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Accessible Instruc-
5 tional Materials in Higher Education Act” or the “AIM
6 HIGH Act”.

7 **SEC. 2. COMMISSION STRUCTURE.**

8 (a) ESTABLISHMENT OF COMMISSION.—

1 (1) IN GENERAL.—The Speaker of the House of
2 Representatives, the President pro tempore of the
3 Senate, and the Secretary of Education shall estab-
4 lish an independent commission, comprised of key
5 stakeholders, to develop voluntary guidelines for ac-
6 cessible postsecondary electronic instructional mate-
7 rials and related technologies in order—

8 (A) to ensure students with disabilities are
9 afforded the same educational benefits provided
10 to nondisabled students through the use of elec-
11 tronic instructional materials and related tech-
12 nologies;

13 (B) to inform better the selection and use
14 of such materials and technologies at institu-
15 tions of higher education; and

16 (C) to encourage entities that produce such
17 materials and technologies to make accessible
18 versions more readily available in the market.

19 In fulfilling the duties set forth in subparagraphs
20 (1)(A), (1)(B), and (1)(C), the commission shall re-
21 view applicable national and international informa-
22 tion technology accessibility standards, which it will
23 compile and annotate as an additional information
24 resource for institutions of higher education and
25 companies that service the higher education market.

1 The commission will also develop a model framework
2 for pilot testing postsecondary electronic instruc-
3 tional materials and related technologies in postsec-
4 ondary instructional settings to facilitate exploration
5 and adoption of such materials and technologies.

6 (2) MEMBERSHIP.—

7 (A) STAKEHOLDER GROUPS.—The com-
8 mission shall be composed of representatives
9 from the following categories:

10 (i) DISABILITY.—Communities of per-
11 sons with disabilities for whom the accessi-
12 bility of postsecondary electronic instruc-
13 tional materials and related technologies is
14 a significant factor in ensuring equal par-
15 ticipation in higher education, and non-
16 profit organizations that provide accessible
17 electronic materials to these communities.

18 (ii) HIGHER EDUCATION.—Higher
19 education leadership, which includes: uni-
20 versity presidents, provosts, deans, vice
21 presidents, deans of libraries, chief infor-
22 mation officers, and other senior institu-
23 tional executives.

24 (iii) INDUSTRY.—Relevant industry
25 representatives, meaning—

- 1 (I) developers of postsecondary
2 electronic instructional materials; and
3 (II) manufacturers of related
4 technologies.

5 (B) APPOINTMENT OF MEMBERS.—The
6 commission members shall be appointed as fol-
7 lows:

8 (i) Six members, 2 from each category
9 described in subparagraph (A), shall be ap-
10 pointed by the Speaker of the House of
11 Representatives, 3 of whom shall be ap-
12 pointed on the recommendation of the ma-
13 jority leader of the House of Representa-
14 tives and 3 of whom shall be appointed on
15 the recommendation of the minority leader
16 of the House of Representatives, with the
17 Speaker ensuring that 1 developer of post-
18 secondary electronic instructional materials
19 and 1 manufacturer of related technologies
20 are appointed. The Speaker shall also ap-
21 point 2 additional members, 1 student with
22 a disability and 1 faculty member from an
23 institution of higher education.

24 (ii) Six members, 2 from each cat-
25 egory described in subparagraph (A), shall

1 be appointed by the President pro tempore
2 of the Senate, 3 of whom shall be ap-
3 pointed on the recommendation of the ma-
4 jority leader of the Senate and 3 of whom
5 shall be appointed on the recommendation
6 of the minority leader of the Senate, with
7 the President pro tempore ensuring that 1
8 developer of postsecondary electronic in-
9 structional materials and 1 manufacturer
10 of related technologies are appointed. The
11 President pro tempore shall also appoint 2
12 additional members, 1 student with a dis-
13 ability and 1 faculty member from an insti-
14 tution of higher education.

15 (iii) Three members, each of whom
16 must possess extensive, demonstrated tech-
17 nical expertise in the development and im-
18 plementation of accessible postsecondary
19 electronic instructional materials, shall be
20 appointed by the Secretary of Education.
21 One of these members shall represent post-
22 secondary students with disabilities, 1 shall
23 represent higher education leadership, and
24 1 shall represent developers of postsec-
25 ondary electronic instructional materials.

1 (C) ELIGIBILITY TO SERVE ON THE COM-
2 MISSION.—Federal employees are ineligible for
3 appointment to the commission. An appointee
4 to a volunteer or advisory position with a Fed-
5 eral agency or related advisory body may be ap-
6 pointed to the commission so long as his or her
7 primary employment is with a non-Federal enti-
8 ty and he or she is not otherwise engaged in fi-
9 nancially compensated work on behalf of the
10 Federal Government, exclusive of any standard
11 expense reimbursement or grant-funded activi-
12 ties.

13 (b) AUTHORITY AND ADMINISTRATION.—

14 (1) AUTHORITY.—The commission’s execution
15 of its duties shall be independent of the Secretary of
16 Education, the Attorney General, and the head of
17 any other agency or department of the Federal Gov-
18 ernment with regulatory or standard setting author-
19 ity in the areas addressed by the commission.

20 (2) ADMINISTRATION.—

21 (A) STAFFING.—There shall be no perma-
22 nent staffing for the commission.

23 (B) LEADERSHIP.—Commission members
24 shall elect a chairperson from among the 19 ap-
25 pointees to the commission.

1 (C) ADMINISTRATIVE SUPPORT.—The com-
2 mission shall be provided administrative sup-
3 port, as needed, by the Secretary of Education
4 through the Office of Postsecondary Education
5 of the Department of Education.

6 **SEC. 3. DUTIES OF THE COMMISSION.**

7 (a) PRODUCE VOLUNTARY GUIDELINES.—Not later
8 than 18 months after the date of enactment of this Act,
9 subject to a 6-month extension that it may exercise at its
10 discretion, the commission established in section 2 shall—

11 (1) develop and issue voluntary guidelines for
12 accessible postsecondary electronic instructional ma-
13 terials and related technologies; and

14 (2) in developing the voluntary guidelines, the
15 commission shall—

16 (A) establish a technical panel pursuant to
17 subsection (d) to support the commission in de-
18 veloping the voluntary guidelines;

19 (B) develop criteria for determining which
20 materials and technologies constitute “postsec-
21 ondary electronic instructional materials” and
22 “related technologies” as defined in paragraphs
23 (5) and (6) of section 7;

24 (C) identify existing national and inter-
25 national accessibility standards that are rel-

1 evant to student use of postsecondary electronic
2 instructional materials and related technologies
3 at institutions of higher education;

4 (D) identify and address any unique peda-
5 gogical and accessibility requirements of post-
6 secondary electronic instructional materials and
7 related technologies that are not addressed, or
8 not adequately addressed, by the identified, rel-
9 evant existing accessibility standards;

10 (E) identify those aspects of accessibility,
11 and types of postsecondary instructional mate-
12 rials and related technologies, for which the
13 commission cannot produce guidelines or which
14 cannot be addressed by existing accessibility
15 standards due to—

16 (i) inherent limitations of commer-
17 cially available technologies; or

18 (ii) the challenges posed by a specific
19 category of disability that covers a wide
20 spectrum of impairments and capabilities
21 which makes it difficult to assess the bene-
22 fits from particular guidelines on a cat-
23 egorical basis;

24 (F) ensure that the voluntary guidelines
25 are consistent with the requirements of section

1 504 of the Rehabilitation Act of 1973 (29
2 U.S.C. 794) and titles II and III of the Ameri-
3 cans with Disabilities Act (42 U.S.C. 12131 et
4 seq.; 42 U.S.C. 12181 et seq.);

5 (G) ensure that the voluntary guidelines
6 are consistent, to the extent feasible and appro-
7 priate, with the technical and functional per-
8 formance criteria included in the national and
9 international accessibility standards identified
10 by the commission as relevant to student use of
11 postsecondary electronic instructional materials
12 and related technologies;

13 (H) allow for the use of an alternative de-
14 sign or technology that results in substantially
15 equivalent or greater accessibility and usability
16 by individuals with disabilities than would be
17 provided by compliance with the voluntary
18 guidelines; and

19 (I) provide that where electronic instruc-
20 tional materials or related technologies that
21 comply fully with the voluntary guidelines are
22 not commercially available, or where such com-
23 pliance is not technically feasible, the institution
24 may select the product that best meets the vol-

1 untary guidelines consistent with the institu-
2 tion's business and pedagogical needs.

3 (b) PRODUCE ANNOTATED LIST OF INFORMATION
4 TECHNOLOGY STANDARDS.—Not later than 18 months
5 after the date of the enactment of this Act, subject to a
6 6-month extension that it may exercise at its discretion,
7 the commission established in section 2 shall, with the as-
8 sistance of the technical panel established under sub-
9 section (d), develop and issue an annotated list of informa-
10 tion technology standards.

11 (c) DEVELOP MODEL FRAMEWORK FOR PILOT TEST-
12 ING POSTSECONDARY ELECTRONIC INSTRUCTIONAL MA-
13 TERIALS AND RELATED TECHNOLOGIES.—Not later than
14 18 months after the date of enactment of this Act, subject
15 to a 6-month extension that it may exercise at its discre-
16 tion, the commission shall develop a model framework that
17 institutions of higher education may utilize on a voluntary
18 basis, consistent with their obligations under the Rehabili-
19 tation Act of 1973 (29 U.S.C. 701 et seq.) and the Ameri-
20 cans with Disabilities Act of 1990 (42 U.S.C. 12101 et
21 seq.), for pilot testing the use of postsecondary electronic
22 instructional materials and related technologies in postsec-
23 ondary instructional settings to facilitate exploration and
24 adoption of such materials and technologies.

1 (d) REQUIRE SUPERMAJORITY APPROVAL.—Issuance
2 of the voluntary guidelines, annotated list of information
3 technology standards, and model framework for pilot test-
4 ing postsecondary instructional materials and related tech-
5 nologies shall require approval of at least 75 percent (at
6 least 15) of the 19 members of the commission.

7 (e) ESTABLISH TECHNICAL PANEL.—Not later than
8 1 month after the commission’s first meeting, it shall ap-
9 point and convene a panel of 12 technical experts, each
10 of whom shall have extensive, demonstrated technical ex-
11 perience in developing, researching, or implementing ac-
12 cessible postsecondary electronic instructional materials or
13 related technologies. The commission has discretion to de-
14 termine a process for nominating, vetting, and confirming
15 a panel of experts that fairly represents the stakeholder
16 communities on the commission. The technical panel shall
17 include a representative from the United States Access
18 Board.

19 **SEC. 4. PERIODIC REVIEW AND REVISION OF VOLUNTARY**
20 **GUIDELINES.**

21 Not later than 5 years after issuance of the voluntary
22 guidelines, annotated list of information technology stand-
23 ards, and pilot testing framework described in subsections
24 (a), (b), and (c) of section 3, and every 5 years thereafter,
25 the Secretary of Education shall publish a notice in the

1 Federal Register requesting public comment about wheth-
2 er there is a need to reconstitute the commission to update
3 the voluntary guidelines, annotated list of information
4 technology standards, and pilot testing framework to re-
5 flect technological advances, changes in postsecondary
6 electronic instructional materials and related technologies,
7 or updated national and international accessibility stand-
8 ards. The Secretary shall submit a report to Congress
9 summarizing the public comments and presenting the Sec-
10 retary's decision on whether to reconstitute the commis-
11 sion based on those comments. If the Secretary decides
12 to reconstitute the commission, the Secretary may imple-
13 ment that decision 30 days after the date on which the
14 report was submitted to Congress. That process shall
15 begin with the Secretary requesting the appointment of
16 commission members as detailed in section 2(a)(2)(B).

17 **SEC. 5. CONSTRUCTION.**

18 (a) NONCONFORMING POSTSECONDARY ELECTRONIC
19 INSTRUCTIONAL MATERIALS OR RELATED TECH-
20 NOLOGIES.—Nothing in this Act shall be construed to re-
21 quire an institution of higher education to require, pro-
22 vide, or both recommend and provide, postsecondary elec-
23 tronic instructional materials or related technologies that
24 conform to the voluntary guidelines. However, an institu-
25 tion that selects or uses nonconforming postsecondary

1 electronic instructional materials or related technologies
2 must otherwise comply with existing obligations under sec-
3 tion 504 of the Rehabilitation Act of 1973 (29 U.S.C.
4 794) and titles II and III of the Americans with Disabil-
5 ities Act (42 U.S.C. 12131 et seq.; 42 U.S.C. 12181 et
6 seq.) to provide access to the educational benefit afforded
7 by such materials and technologies through provision of
8 appropriate and reasonable modification, accommodation,
9 and auxiliary aids or services.

10 (b) RELATIONSHIP TO EXISTING LAWS AND REGU-
11 LATIONS.—With respect to the Americans with Disabil-
12 ities Act of 1990 (42 U.S.C. 12101 et seq.) and the Reha-
13 bilitation Act of 1973 (29 U.S.C. 701 et seq.), nothing
14 in this Act may be construed—

15 (1) to authorize or require conduct prohibited
16 under the Americans with Disabilities Act of 1990
17 and the Rehabilitation Act of 1973, including the
18 regulations issued pursuant to those laws;

19 (2) to expand, limit, or alter the remedies or de-
20 fenses under the Americans with Disabilities Act of
21 1990 and the Rehabilitation Act of 1973;

22 (3) to supersede, restrict, or limit the applica-
23 tion of the Americans with Disabilities Act of 1990
24 and the Rehabilitation Act of 1973; or

1 (4) to limit the authority of Federal agencies to
2 issue regulations pursuant to the Americans with
3 Disabilities Act of 1990 and the Rehabilitation Act
4 of 1973.

5 (c) VOLUNTARY NATURE OF THE PRODUCTS OF THE
6 COMMISSION.—

7 (1) VOLUNTARY GUIDELINES.—It is the intent
8 of the Congress that use of the voluntary guidelines
9 developed pursuant to this Act is and should remain
10 voluntary. The voluntary guidelines shall not confer
11 any rights or impose any obligations on commission
12 participants, institutions of higher education, or
13 other persons. Thus, no department or agency of the
14 Federal Government may incorporate the voluntary
15 guidelines, whether produced as a discrete document
16 or electronic resource, into regulations promulgated
17 under the Rehabilitation Act, the Americans with
18 Disabilities Act, or any other Federal law or instru-
19 ment. This restriction applies only to the voluntary
20 guidelines as a discrete document or resource; it im-
21 poses no limitation on Federal use of standards or
22 resources to which the voluntary guidelines may
23 refer.

24 (2) ANNOTATED LIST.—It is the intent of Con-
25 gress that use of the annotated list of information

1 technology standards developed pursuant to this Act
2 is and should remain voluntary. The annotated list
3 shall not confer any rights or impose any obligations
4 on commission participants, institutions of higher
5 education, or other persons. Thus, no department or
6 agency of the Federal Government may incorporate
7 the annotated list, whether produced as a discrete
8 document or electronic resource into regulations pro-
9 mulgated under the Rehabilitation Act, the Ameri-
10 cans with Disabilities Act, or any other Federal law
11 or instrument. This provision applies only to the an-
12 notated list as a discrete document or resource; it
13 imposes no limitation on Federal use of standards or
14 resources to which the annotated list may refer.

15 (3) PILOT TESTING FRAMEWORK.—It is the in-
16 tent of Congress that use of the model framework
17 for pilot testing postsecondary instructional mate-
18 rials and related technologies developed pursuant to
19 this Act is and should remain voluntary. The pilot
20 testing framework shall not confer any rights or im-
21 pose any obligations on commission participants, in-
22 stitutions of higher education, or other persons.
23 Thus, no department or agency of the Federal Gov-
24 ernment may incorporate the pilot testing frame-
25 work, whether produced as a discrete document or

1 electronic resource into regulations promulgated
2 under the Rehabilitation Act, the Americans with
3 Disabilities Act, or any other Federal law or instru-
4 ment. This provision applies only to the pilot testing
5 framework as a discrete document or resource; it im-
6 poses no limitation on Federal use of standards or
7 resources to which the pilot testing framework may
8 refer.

9 **SEC. 6. DEFINITIONS.**

10 In this Act the following definitions apply:

11 (1) ANNOTATED LIST OF INFORMATION TECH-
12 NOLOGY STANDARDS.—The term “annotated list of
13 information technology standards” means a list of
14 existing national and international accessibility
15 standards relevant to student use of postsecondary
16 electronic instructional materials and related tech-
17 nologies, and to other types of information tech-
18 nology common to institutions of higher education
19 (such as institutional websites and class registration
20 systems), annotated by the commission established
21 pursuant to section 2 to provide information about
22 the applicability of such standards in higher edu-
23 cation settings. The annotated list of information
24 technology standards is intended to serve solely as a
25 reference tool to inform any consideration of the rel-

1 evance of such standards in higher education con-
2 texts.

3 (2) DISABILITY.—The term “disability” has the
4 meaning given such term in section 3 of the Ameri-
5 cans with Disabilities Act of 1990 (42 U.S.C.
6 12102).

7 (3) INSTITUTION OF HIGHER EDUCATION.—The
8 term “institution of higher education” has the
9 meaning given such term in section 101 of the High-
10 er Education Act of 1965 (20 U.S.C. 1001).

11 (4) NONCONFORMING POSTSECONDARY ELEC-
12 TRONIC INSTRUCTIONAL MATERIALS OR RELATED
13 TECHNOLOGIES.—The term “nonconforming mate-
14 rials or related technologies” means postsecondary
15 electronic instructional materials or related tech-
16 nologies that do not conform to the voluntary guide-
17 lines to be developed pursuant to this Act.

18 (5) PILOT TESTING.—The term “pilot testing”
19 means a small-scale study or project to determine
20 the efficacy of a postsecondary electronic instruc-
21 tional material and/or related technology in a post-
22 secondary instructional setting to inform an institu-
23 tional decision about whether to implement the ma-
24 terial and/or technology more broadly across the in-
25 stitution’s instructional settings.

1 (6) POSTSECONDARY ELECTRONIC INSTRU-
2 TIONAL MATERIALS.—The term “postsecondary elec-
3 tronic instructional materials” means digital cur-
4 ricular content that is required, provided, or both
5 recommended and provided by an institution of high-
6 er education for use in a postsecondary instructional
7 program.

8 (7) RELATED TECHNOLOGIES.—The term “re-
9 lated technologies” refers to any software, applica-
10 tions, learning management or content management
11 systems, and hardware that an institution of higher
12 education requires, provides, or both recommends
13 and provides for student access to and use of post-
14 secondary electronic instructional materials in a
15 postsecondary instructional program.

16 (8) TECHNICAL PANEL.—The term “technical
17 panel” means a group of experts with extensive,
18 demonstrated technical experience in the develop-
19 ment and implementation of accessibility features for
20 postsecondary electronic instructional materials and
21 related technologies, established by the commission
22 pursuant to section 3(d), which will assist the com-
23 mission in the development of the voluntary guide-
24 lines and annotated list of information technology
25 standards authorized under this Act.

1 (9) VOLUNTARY GUIDELINES.—The term “vol-
2 untary guidelines” means a set of technical and
3 functional performance criteria to be developed by
4 the commission established pursuant to section 2
5 that provide specific guidance regarding both the ac-
6 cessibility and pedagogical functionality of postsec-
7 ondary electronic instructional materials and related
8 technologies not addressed, or not adequately ad-
9 dressed, by existing accessibility standards.

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