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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Accessible Instructional Materials in Higher Education Act” or the “AIM HIGH Act”.

SEC. 2. COMMISSION STRUCTURE.

(a) Establishment of Commission.—
(1) IN GENERAL.—The Speaker of the House of Representatives, the President pro tempore of the Senate, and the Secretary of Education shall establish an independent commission, comprised of key stakeholders, to develop voluntary guidelines for accessible postsecondary electronic instructional materials and related technologies in order—

(A) to ensure students with disabilities are afforded the same educational benefits provided to nondisabled students through the use of electronic instructional materials and related technologies;

(B) to inform better the selection and use of such materials and technologies at institutions of higher education; and

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

In fulfilling the duties set forth in subparagraphs (1)(A), (1)(B), and (1)(C), the commission shall review applicable national and international information technology accessibility standards, which it will compile and annotate as an additional information resource for institutions of higher education and companies that service the higher education market.
The commission will also develop a model framework for pilot testing postsecondary electronic instructional materials and related technologies in postsecondary instructional settings to facilitate exploration and adoption of such materials and technologies.

(2) MEMBERSHIP.—

(A) STAKEHOLDER GROUPS.—The commission shall be composed of representatives from the following categories:

(i) DISABILITY.—Communities of persons with disabilities for whom the accessibility of postsecondary electronic instructional materials and related technologies is a significant factor in ensuring equal participation in higher education, and nonprofit organizations that provide accessible electronic materials to these communities.

(ii) HIGHER EDUCATION.—Higher education leadership, which includes: university presidents, provosts, deans, vice presidents, deans of libraries, chief information officers, and other senior institutional executives.

(iii) INDUSTRY.—Relevant industry representatives, meaning—
(I) developers of postsecondary electronic instructional materials; and

(II) manufacturers of related technologies.

(B) APPOINTMENT OF MEMBERS.—The commission members shall be appointed as follows:

(i) Six members, 2 from each category described in subparagraph (A), shall be appointed by the Speaker of the House of Representatives, 3 of whom shall be appointed on the recommendation of the majority leader of the House of Representatives and 3 of whom shall be appointed on the recommendation of the minority leader of the House of Representatives, with the Speaker ensuring that 1 developer of post-secondary electronic instructional materials and 1 manufacturer of related technologies are appointed. The Speaker shall also appoint 2 additional members, 1 student with a disability and 1 faculty member from an institution of higher education.

(ii) Six members, 2 from each category described in subparagraph (A), shall
be appointed by the President pro tempore of the Senate, 3 of whom shall be appointed on the recommendation of the majority leader of the Senate and 3 of whom shall be appointed on the recommendation of the minority leader of the Senate, with the President pro tempore ensuring that 1 developer of postsecondary electronic instructional materials and 1 manufacturer of related technologies are appointed. The President pro tempore shall also appoint 2 additional members, 1 student with a disability and 1 faculty member from an institution of higher education.

(iii) Three members, each of whom must possess extensive, demonstrated technical expertise in the development and implementation of accessible postsecondary electronic instructional materials, shall be appointed by the Secretary of Education. One of these members shall represent postsecondary students with disabilities, 1 shall represent higher education leadership, and 1 shall represent developers of postsecondary electronic instructional materials.
(C) Eligibility to Serve on the Commission.—Federal employees are ineligible for appointment to the commission. An appointee to a volunteer or advisory position with a Federal agency or related advisory body may be appointed to the commission so long as his or her primary employment is with a non-Federal entity and he or she is not otherwise engaged in financially compensated work on behalf of the Federal Government, exclusive of any standard expense reimbursement or grant-funded activities.

(b) Authority and Administration.—

(1) Authority.—The commission’s execution of its duties shall be independent of the Secretary of Education, the Attorney General, and the head of any other agency or department of the Federal Government with regulatory or standard setting authority in the areas addressed by the commission.

(2) Administration.—

(A) Staffing.—There shall be no permanent staffing for the commission.

(B) Leadership.—Commission members shall elect a chairperson from among the 19 appointees to the commission.
(C) **Administrative Support.**—The commission shall be provided administrative support, as needed, by the Secretary of Education through the Office of Postsecondary Education of the Department of Education.

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

(a) **Produce Voluntary Guidelines.**—Not later than 18 months after the date of enactment of this Act, subject to a 6-month extension that it may exercise at its discretion, the commission established in section 2 shall—

(1) develop and issue voluntary guidelines for accessible postsecondary electronic instructional materials and related technologies; and

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

(A) establish a technical panel pursuant to subsection (d) to support the commission in developing the voluntary guidelines;

(B) develop criteria for determining which materials and technologies constitute “postsecondary electronic instructional materials” and “related technologies” as defined in paragraphs (5) and (6) of section 7;

(C) identify existing national and international accessibility standards that are rel-
evant to student use of postsecondary electronic
instructional materials and related technologies
at institutions of higher education;

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

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

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

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

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

(G) ensure that the voluntary guidelines are consistent, to the extent feasible and appropriate, with the technical and functional performance criteria included in the national and international accessibility standards identified by the commission as relevant to student use of postsecondary electronic instructional materials and related technologies;

(H) allow for the use of an alternative design or technology that results in substantially equivalent or greater accessibility and usability by individuals with disabilities than would be provided by compliance with the voluntary guidelines; and

(I) provide that where electronic instructional materials or related technologies that comply fully with the voluntary guidelines are not commercially available, or where such compliance is not technically feasible, the institution may select the product that best meets the vol-
untary guidelines consistent with the institution’s business and pedagogical needs.

(b) PRODUCE ANNOTATED LIST OF INFORMATION TECHNOLOGY STANDARDS.—Not later than 18 months after the date of the enactment of this Act, subject to a 6-month extension that it may exercise at its discretion, the commission established in section 2 shall, with the assistance of the technical panel established under subsection (d), develop and issue an annotated list of information technology standards.

(c) DEVELOP MODEL FRAMEWORK FOR PILOT TESTING POSTSECONDARY ELECTRONIC INSTRUCTIONAL MATERIALS AND RELATED TECHNOLOGIES.—Not later than 18 months after the date of enactment of this Act, subject to a 6-month extension that it may exercise at its discretion, the commission shall develop a model framework that institutions of higher education may utilize on a voluntary basis, consistent with their obligations under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), for pilot testing the use of postsecondary electronic instructional materials and related technologies in postsecondary instructional settings to facilitate exploration and adoption of such materials and technologies.
(d) REQUIRE SUPERMAJORITY APPROVAL.—Issuance of the voluntary guidelines, annotated list of information technology standards, and model framework for pilot testing postsecondary instructional materials and related technologies shall require approval of at least 75 percent (at least 15) of the 19 members of the commission.

(e) ESTABLISH TECHNICAL PANEL.—Not later than 1 month after the commission’s first meeting, it shall appoint and convene a panel of 12 technical experts, each of whom shall have extensive, demonstrated technical experience in developing, researching, or implementing accessible postsecondary electronic instructional materials or related technologies. The commission has discretion to determine a process for nominating, vetting, and confirming a panel of experts that fairly represents the stakeholder communities on the commission. The technical panel shall include a representative from the United States Access Board.

SEC. 4. PERIODIC REVIEW AND REVISION OF VOLUNTARY GUIDELINES.

Not later than 5 years after issuance of the voluntary guidelines, annotated list of information technology standards, and pilot testing framework described in subsections (a), (b), and (c) of section 3, and every 5 years thereafter, the Secretary of Education shall publish a notice in the
Federal Register requesting public comment about whether there is a need to reconstitute the commission to update the voluntary guidelines, annotated list of information technology standards, and pilot testing framework to reflect technological advances, changes in postsecondary electronic instructional materials and related technologies, or updated national and international accessibility standards. The Secretary shall submit a report to Congress summarizing the public comments and presenting the Secretary's decision on whether to reconstitute the commission based on those comments. If the Secretary decides to reconstitute the commission, the Secretary may implement that decision 30 days after the date on which the report was submitted to Congress. That process shall begin with the Secretary requesting the appointment of commission members as detailed in section 2(a)(2)(B).

SEC. 5. CONSTRUCTION.

(a) NONCONFORMING POSTSECONDARY ELECTRONIC INSTRUCTIONAL MATERIALS OR RELATED TECHNOLOGIES.—Nothing in this Act shall be construed to require an institution of higher education to require, provide, or both recommend and provide, postsecondary electronic instructional materials or related technologies that conform to the voluntary guidelines. However, an institution that selects or uses nonconforming postsecondary
electronic instructional materials or related technologies must otherwise comply with existing obligations under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131 et seq.; 42 U.S.C. 12181 et seq.) to provide access to the educational benefit afforded by such materials and technologies through provision of appropriate and reasonable modification, accommodation, and auxiliary aids or services.

(b) Relationship to Existing Laws and Regulations.—With respect to the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), nothing in this Act may be construed—

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

(2) to expand, limit, or alter the remedies or defenses under the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973;

(3) to supersede, restrict, or limit the application of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973; or
(4) to limit the authority of Federal agencies to issue regulations pursuant to the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973.

(e) Voluntary Nature of the Products of the Commission.—

(1) Voluntary Guidelines.—It is the intent of the Congress that use of the voluntary guidelines developed pursuant to this Act is and should remain voluntary. The voluntary guidelines shall not confer any rights or impose any obligations on commission participants, institutions of higher education, or other persons. Thus, no department or agency of the Federal Government may incorporate the voluntary guidelines, whether produced as a discrete document or electronic resource, into regulations promulgated under the Rehabilitation Act, the Americans with Disabilities Act, or any other Federal law or instrument. This restriction applies only to the voluntary guidelines as a discrete document or resource; it imposes no limitation on Federal use of standards or resources to which the voluntary guidelines may refer.

(2) Annotated List.—It is the intent of Congress that use of the annotated list of information
technology standards developed pursuant to this Act is and should remain voluntary. The annotated list shall not confer any rights or impose any obligations on commission participants, institutions of higher education, or other persons. Thus, no department or agency of the Federal Government may incorporate the annotated list, whether produced as a discrete document or electronic resource into regulations promulgated under the Rehabilitation Act, the Americans with Disabilities Act, or any other Federal law or instrument. This provision applies only to the annotated list as a discrete document or resource; it imposes no limitation on Federal use of standards or resources to which the annotated list may refer.

(3) PILOT TESTING FRAMEWORK.—It is the intent of Congress that use of the model framework for pilot testing postsecondary instructional materials and related technologies developed pursuant to this Act is and should remain voluntary. The pilot testing framework shall not confer any rights or impose any obligations on commission participants, institutions of higher education, or other persons. Thus, no department or agency of the Federal Government may incorporate the pilot testing framework, whether produced as a discrete document or
electronic resource into regulations promulgated under the Rehabilitation Act, the Americans with Disabilities Act, or any other Federal law or instrument. This provision applies only to the pilot testing framework as a discrete document or resource; it imposes no limitation on Federal use of standards or resources to which the pilot testing framework may refer.

SEC. 6. DEFINITIONS.

In this Act the following definitions apply:

(1) Annotated list of information technology standards.—The term “annotated list of information technology standards” means a list of existing national and international accessibility standards relevant to student use of postsecondary electronic instructional materials and related technologies, and to other types of information technology common to institutions of higher education (such as institutional websites and class registration systems), annotated by the commission established pursuant to section 2 to provide information about the applicability of such standards in higher education settings. The annotated list of information technology standards is intended to serve solely as a reference tool to inform any consideration of the rel-
evance of such standards in higher education contexts.

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

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

(4) NONCONFORMING POSTSECONDARY ELECTRONIC INSTRUCTIONAL MATERIALS OR RELATED TECHNOLOGIES.—The term “nonconforming materials or related technologies” means postsecondary electronic instructional materials or related technologies that do not conform to the voluntary guidelines to be developed pursuant to this Act.

(5) PILOT TESTING.—The term “pilot testing” means a small-scale study or project to determine the efficacy of a postsecondary electronic instructional material and/or related technology in a post-secondary instructional setting to inform an institutional decision about whether to implement the material and/or technology more broadly across the institution’s instructional settings.
(6) **POSTSECONDARY ELECTRONIC INSTRUCTIONAL MATERIALS.**—The term “postsecondary electronic instructional materials” means digital curricular content that is required, provided, or both recommended and provided by an institution of higher education for use in a postsecondary instructional program.

(7) **RELATED TECHNOLOGIES.**—The term “related technologies” refers to any software, applications, learning management or content management systems, and hardware that an institution of higher education requires, provides, or both recommends and provides for student access to and use of postsecondary electronic instructional materials in a postsecondary instructional program.

(8) **TECHNICAL PANEL.**—The term “technical panel” means a group of experts with extensive, demonstrated technical experience in the development and implementation of accessibility features for postsecondary electronic instructional materials and related technologies, established by the commission pursuant to section 3(d), which will assist the commission in the development of the voluntary guidelines and annotated list of information technology standards authorized under this Act.
(9) VOLUNTARY GUIDELINES.—The term “voluntary guidelines” means a set of technical and functional performance criteria to be developed by the commission established pursuant to section 2 that provide specific guidance regarding both the accessibility and pedagogical functionality of postsecondary electronic instructional materials and related technologies not addressed, or not adequately addressed, by existing accessibility standards.