

116TH CONGRESS
1ST SESSION

S. 3095

To develop voluntary guidelines for accessible postsecondary electronic instructional materials and related technologies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 18, 2019

Mr. SCHUMER (for Ms. WARREN (for herself, Mr. BENNET, Mr. SULLIVAN, Mr. TESTER, and Ms. ERNST)) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To develop voluntary guidelines for accessible postsecondary electronic instructional materials and related technologies, 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. DEFINITIONS.**

8 In this Act:

1 (1) ANNOTATED LIST OF INFORMATION TECH-
2 NOLOGY STANDARDS.—The term “annotated list of
3 information technology standards” means a list of
4 existing national and international accessibility
5 standards relevant to student use of postsecondary
6 electronic instructional materials and related tech-
7 nologies, and to other types of information tech-
8 nology common to institutions of higher education
9 (such as institutional websites and class registration
10 systems), annotated by the commission established
11 pursuant to section 3 to provide information about
12 the applicability of such standards in higher edu-
13 cation settings. The annotated list of information
14 technology standards is intended to serve solely as a
15 reference tool to inform any consideration of the rel-
16 evance of such standards in higher education con-
17 texts.

18 (2) DISABILITY.—The term “disability” has the
19 meaning given such term in section 3 of the Ameri-
20 cans with Disabilities Act of 1990 (42 U.S.C.
21 12102).

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

1 (4) NONCONFORMING POSTSECONDARY ELEC-
 2 TRONIC INSTRUCTIONAL MATERIALS OR RELATED
 3 TECHNOLOGIES.—The term “nonconforming mate-
 4 rials or related technologies” means postsecondary
 5 electronic instructional materials or related tech-
 6 nologies that do not conform to the voluntary guide-
 7 lines to be developed pursuant to this Act.

8 (5) PILOT TESTING.—The term “pilot testing”
 9 means a small-scale study or project to determine
 10 the efficacy of a postsecondary electronic instruc-
 11 tional material or related technology in a postsec-
 12 ondary instructional setting to inform an institu-
 13 tional decision about whether to implement the ma-
 14 terial or technology more broadly across the institu-
 15 tion’s instructional settings.

16 (6) POSTSECONDARY ELECTRONIC INSTRU-
 17 TIONAL MATERIALS.—The term “postsecondary elec-
 18 tronic instructional materials” means digital cur-
 19 ricular content that is required, provided, or both
 20 recommended and provided by an institution of high-
 21 er education for use in a postsecondary instructional
 22 program.

23 (7) RELATED TECHNOLOGIES.—The term “re-
 24 lated technologies” refers to any software, applica-
 25 tions, learning management or content management

1 systems, and hardware that an institution of higher
2 education requires, provides, or both recommends
3 and provides for student access to and use of post-
4 secondary electronic instructional materials in a
5 postsecondary instructional program.

6 (8) TECHNICAL PANEL.—The term “technical
7 panel” means a group of experts with extensive,
8 demonstrated technical experience in the develop-
9 ment and implementation of accessibility features for
10 postsecondary electronic instructional materials and
11 related technologies, established by the Commission
12 pursuant to section 4(d), which will assist the com-
13 mission in the development of the voluntary guide-
14 lines and annotated list of information technology
15 standards authorized under this Act.

16 (9) VOLUNTARY GUIDELINES.—The term “vol-
17 untary guidelines” means a set of technical and
18 functional performance criteria to be developed by
19 the commission established pursuant to section 3
20 that provide specific guidance regarding both the ac-
21 cessibility and pedagogical functionality of postsec-
22 ondary electronic instructional materials and related
23 technologies not addressed, or not adequately ad-
24 dressed, by existing accessibility standards.

1 **SEC. 3. COMMISSION STRUCTURE.**

2 (a) ESTABLISHMENT OF COMMISSION.—

3 (1) IN GENERAL.—

4 (A) PURPOSES.—The Speaker of the
5 House of Representatives, the President pro
6 tempore of the Senate, and the Secretary of
7 Education shall establish an independent com-
8 mission to carry out the activities described in
9 subparagraph (B) (referred to in this Act as
10 the “commission”) in order—

11 (i) to ensure students with disabilities
12 are afforded the same educational benefits
13 provided to nondisabled students through
14 the use of electronic instructional materials
15 and related technologies;

16 (ii) to inform better the selection and
17 use of such materials and technologies at
18 institutions of higher education; and

19 (iii) to encourage entities that produce
20 such materials and technologies to make
21 accessible versions more readily available
22 in the market.

23 (B) DUTIES.—The commission shall—

24 (i) develop voluntary guidelines for ac-
25 cessible postsecondary electronic instruc-
26 tional materials and related technologies;

1 (ii) review applicable national and
2 international information technology acces-
3 sibility standards, which the commission
4 shall compile and annotate as an additional
5 information resource for institutions of
6 higher education and companies that serv-
7 ice the higher education market; and

8 (iii) develop a model framework for
9 pilot testing postsecondary electronic in-
10 structional materials and related tech-
11 nologies in postsecondary instructional set-
12 tings to facilitate exploration and adoption
13 of such materials and technologies.

14 (2) MEMBERSHIP.—

15 (A) IN GENERAL.—The commission shall
16 be composed of 19 members. The commission
17 shall include members of the stakeholder groups
18 described in subparagraph (B), students with a
19 disability, faculty at institutions of higher edu-
20 cation, and individuals with technical expertise
21 in the development and implementation of ac-
22 cessible postsecondary electronic instructional
23 materials, each of whom shall be appointed in
24 accordance with subparagraph (C).

(B) 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 non-profit organizations that provide accessible electronic materials to these communities.

(ii) HIGHER EDUCATION.—Higher education leadership, which includes an institution of higher education's president, provosts, deans, vice presidents, deans of libraries, chief information officers, and other senior institutional executives.

(iii) INDUSTRY.—Developers of postsecondary electronic instructional materials and manufacturers of related technologies.

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

(i) Six members, 2 from each category described in subparagraph (B), shall be ap-

1 pointed by the Speaker of the House of
2 Representatives, 3 of whom shall be ap-
3 pointed on the recommendation of the ma-
4 jority leader of the House of Representa-
5 tives and 3 of whom shall be appointed on
6 the recommendation of the minority leader
7 of the House of Representatives, with the
8 Speaker ensuring that 1 developer of post-
9 secondary electronic instructional materials
10 and 1 manufacturer of related technologies
11 are appointed. The Speaker shall also ap-
12 point 2 additional members, 1 student with
13 a disability and 1 faculty member from an
14 institution of higher education.

15 (ii) Six members, 2 from each cat-
16 egory described in subparagraph (B), shall
17 be appointed by the President pro tempore
18 of the Senate, 3 of whom shall be ap-
19 pointed on the recommendation of the ma-
20 jority leader of the Senate and 3 of whom
21 shall be appointed on the recommendation
22 of the minority leader of the Senate, with
23 the President pro tempore ensuring that 1
24 developer of postsecondary electronic in-
25 structional materials and 1 manufacturer

1 of related technologies are appointed. The
2 President pro tempore shall also appoint 2
3 additional members, 1 student with a dis-
4 ability and 1 faculty member from an insti-
5 tution of higher education.

6 (iii) Three members, each of whom
7 must possess extensive, demonstrated tech-
8 nical expertise in the development and im-
9 plementation of accessible postsecondary
10 electronic instructional materials, shall be
11 appointed by the Secretary of Education.
12 One of these members shall represent post-
13 secondary students with disabilities, 1 shall
14 represent higher education leadership, and
15 1 shall represent developers of postsec-
16 ondary electronic instructional materials.

17 (D) ELIGIBILITY TO SERVE ON THE COM-
18 MISSION.—Federal employees are ineligible for
19 appointment to the commission. An appointee
20 to a volunteer or advisory position with a Fed-
21 eral agency or related advisory body may be ap-
22 pointed to the commission so long as the ap-
23 pointee's primary employment is with a non-
24 Federal entity and the appointee is not other-
25 wise engaged in financially compensated work

1 on behalf of the Federal Government, exclusive
2 of any standard expense reimbursement or
3 grant-funded activities.

4 (b) AUTHORITY AND ADMINISTRATION.—

5 (1) AUTHORITY.—The commission's execution
6 of its duties shall be independent of the Secretary of
7 Education, the Attorney General, and the head of
8 any other agency or department of the Federal Gov-
9 ernment with regulatory or standard setting author-
10 ity in the areas addressed by the commission.

11 (2) ADMINISTRATION.—

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

14 (B) LEADERSHIP.—Commission members
15 shall elect a chairperson from among the 19 ap-
16 pointees to the commission.

17 (C) ADMINISTRATIVE SUPPORT.—The
18 Commission shall be provided administrative
19 support, as needed, by the Secretary of Edu-
20 cation through the Office of Postsecondary
21 Education of the Department of Education.

22 **SEC. 4. DUTIES OF THE COMMISSION.**

23 (a) PRODUCE VOLUNTARY GUIDELINES.—Not later
24 than 18 months after the date of enactment of this Act,
25 subject to a 6-month extension that the commission may

1 exercise at its discretion, the commission established in
2 section 3 shall—

3 (1) develop and issue voluntary guidelines for
4 accessible postsecondary electronic instructional ma-
5 terials and related technologies; and

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

8 (A) establish a technical panel pursuant to
9 subsection (e) to support the commission in de-
10 veloping the voluntary guidelines;

11 (B) develop criteria for determining which
12 materials and technologies constitute postsec-
13 ondary electronic instructional materials and re-
14 lated technologies as defined in paragraphs (6)
15 and (7) of section 2;

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

21 (D) identify and address any unique peda-
22 gogical and accessibility requirements of post-
23 secondary electronic instructional materials and
24 related technologies that are not addressed, or

1 not adequately addressed, by the identified, rel-
2 evant existing accessibility standards;

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

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

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

17 (F) ensure that the voluntary guidelines
18 are consistent with the requirements of section
19 504 of the Rehabilitation Act of 1973 (29
20 U.S.C. 794) and titles II and III of the Ameri-
21 cans with Disabilities Act (42 U.S.C. 12131 et
22 seq.; 42 U.S.C. 12181 et seq.);

23 (G) ensure that the voluntary guidelines
24 are consistent, to the extent feasible and appro-
25 priate, with the technical and functional per-

1 formance criteria included in the national and
 2 international accessibility standards identified
 3 by the commission as relevant to student use of
 4 postsecondary electronic instructional materials
 5 and related technologies;

6 (H) allow for the use of an alternative de-
 7 sign or technology that results in substantially
 8 equivalent or greater accessibility and usability
 9 by individuals with disabilities than would be
 10 provided by compliance with the voluntary
 11 guidelines; and

12 (I) provide that where electronic instruc-
 13 tional materials or related technologies that
 14 comply fully with the voluntary guidelines are
 15 not commercially available, or where such com-
 16 pliance is not technically feasible, the institution
 17 may select the product that best meets the vol-
 18 untary guidelines consistent with the institu-
 19 tion's business and pedagogical needs.

20 (b) PRODUCE ANNOTATED LIST OF INFORMATION
 21 TECHNOLOGY STANDARDS.—Not later than 18 months
 22 after the date of the enactment of this Act, subject to a
 23 6-month extension that the commission may exercise at
 24 its discretion, the commission established in section 3
 25 shall, with the assistance of the technical panel established

1 under subsection (e), develop and issue an annotated list
 2 of information technology standards.

3 (c) DEVELOP MODEL FRAMEWORK FOR PILOT TEST-
 4 ING POSTSECONDARY ELECTRONIC INSTRUCTIONAL MA-
 5 TERIALS AND RELATED TECHNOLOGIES.—Not later than
 6 18 months after the date of enactment of this Act, subject
 7 to a 6-month extension that the commission may exercise
 8 at its discretion, the commission shall develop a model
 9 framework that institutions of higher education may uti-
 10 lize on a voluntary basis, consistent with their obligations
 11 under the Rehabilitation Act of 1973 (29 U.S.C. 701 et
 12 seq.) and the Americans with Disabilities Act of 1990 (42
 13 U.S.C. 12101 et seq.), for pilot testing the use of postsec-
 14 ondary electronic instructional materials and related tech-
 15 nologies in postsecondary instructional settings to facili-
 16 tate exploration and adoption of such materials and tech-
 17 nologies.

18 (d) REQUIREMENT FOR SUPERMAJORITY AP-
 19 PROVAL.—Issuance of the voluntary guidelines, annotated
 20 list of information technology standards, and model frame-
 21 work for pilot testing postsecondary instructional mate-
 22 rials and related technologies shall require approval of not
 23 less than 15 of the 19 members of the commission.

24 (e) ESTABLISH TECHNICAL PANEL.—Not later than
 25 1 month after the commission’s first meeting, the commis-

1 sion shall appoint and convene a panel of 12 technical ex-
 2 perts, each of whom shall have extensive, demonstrated
 3 technical experience in developing, researching, or imple-
 4 menting accessible postsecondary electronic instructional
 5 materials or related technologies. The commission has dis-
 6 cretion to determine a process for nominating, vetting, and
 7 confirming a panel of experts that fairly represents the
 8 stakeholder communities on the commission. The technical
 9 panel shall include a representative from the United
 10 States Access Board.

11 **SEC. 5. PERIODIC REVIEW AND REVISION OF VOLUNTARY**
 12 **GUIDELINES.**

13 (a) IN GENERAL.—Not later than 5 years after
 14 issuance of the voluntary guidelines, annotated list of in-
 15 formation technology standards, and pilot testing frame-
 16 work described in this Act, and every 5 years thereafter,
 17 the Secretary of Education shall publish a notice in the
 18 Federal Register requesting public comment about wheth-
 19 er there is a need to reconstitute the commission to update
 20 the voluntary guidelines, annotated list of information
 21 technology standards, or pilot testing framework to reflect
 22 technological advances, changes in postsecondary elec-
 23 tronic instructional materials and related technologies, or
 24 updated national and international accessibility standards.

1 (b) REPORT.—Following the request for public com-
2 ment described in subsection (a), the Secretary of Edu-
3 cation shall submit a report to Congress summarizing the
4 public comments and presenting the Secretary’s decision
5 about whether to reconstitute the commission based on
6 those comments.

7 (c) RECONSTITUTED COMMISSION.—If the Secretary
8 of Education decides to reconstitute the commission, the
9 Secretary may implement that decision 30 days after the
10 date on which the report was submitted to Congress by
11 requesting the appointment of commission members as de-
12 scribed in section 3.

13 **SEC. 6. RULES OF CONSTRUCTION.**

14 (a) NONCONFORMING POSTSECONDARY ELECTRONIC
15 INSTRUCTIONAL MATERIALS OR RELATED TECH-
16 NOLOGIES.—Nothing in this Act shall be construed to re-
17 quire an institution of higher education to require, pro-
18 vide, or both recommend and provide, postsecondary elec-
19 tronic instructional materials or related technologies that
20 conform to the voluntary guidelines. However, an institu-
21 tion that selects or uses nonconforming postsecondary
22 electronic instructional materials or related technologies
23 shall otherwise comply with obligations under section 504
24 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and
25 titles II and III of the Americans with Disabilities Act

1 (42 U.S.C. 12131 et seq.; 42 U.S.C. 12181 et seq.) to
2 provide access to the educational benefit afforded by such
3 materials and technologies through provision of appro-
4 priate and reasonable modification, accommodation, and
5 auxiliary aids or services.

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

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

15 (2) to expand, limit, or alter the remedies or de-
16 fenses under the Americans with Disabilities Act of
17 1990 and the Rehabilitation Act of 1973;

18 (3) to supersede, restrict, or limit the applica-
19 tion of the Americans with Disabilities Act of 1990
20 and the Rehabilitation Act of 1973; or

21 (4) to limit the authority of Federal agencies to
22 issue regulations pursuant to the Americans with
23 Disabilities Act of 1990 and the Rehabilitation Act
24 of 1973.

1 (c) VOLUNTARY NATURE OF THE PRODUCTS OF THE
2 COMMISSION.—

3 (1) VOLUNTARY GUIDELINES.—

4 (A) IN GENERAL.—It is the sense of Con-
5 gress that use of the voluntary guidelines devel-
6 oped pursuant to this Act is and should remain
7 voluntary. The voluntary guidelines shall not
8 confer any rights or impose any obligations on
9 commission participants, institutions of higher
10 education, or other persons. Thus, no depart-
11 ment or agency of the Federal Government may
12 incorporate the voluntary guidelines, whether
13 produced as a discrete document or electronic
14 resource, into regulations promulgated under
15 the Rehabilitation Act of 1973 (29 U.S.C. 701
16 et seq.), the Americans with Disabilities Act of
17 1990 (42 U.S.C. 12101 et seq.), or any other
18 Federal law.

19 (B) STANDARDS AND RESOURCES.—The
20 restriction under subparagraph (A) applies only
21 to the voluntary guidelines as a discrete docu-
22 ment or resource, and does not impose a limita-
23 tion on Federal use of standards or resources to
24 which the voluntary guidelines may refer.

25 (2) ANNOTATED LIST.—

1 (A) IN GENERAL.—It is the sense of Con-
2 gress that use of the annotated list of informa-
3 tion technology standards developed pursuant
4 to this Act is and should remain voluntary. The
5 annotated list shall not confer any rights or im-
6 pose any obligations on commission partici-
7 pants, institutions of higher education, or other
8 persons. Thus, no department or agency of the
9 Federal Government may incorporate the anno-
10 tated list, whether produced as a discrete docu-
11 ment or electronic resource into regulations pro-
12 mulgated under the Rehabilitation Act of 1973
13 (29 U.S.C. 701 et seq.), the Americans with
14 Disabilities Act of 1990 (42 U.S.C. 12101 et
15 seq.), or any other Federal law.

16 (B) STANDARDS AND RESOURCES.—The
17 restriction under subparagraph (A) applies only
18 to the annotated list of information technology
19 standards as a discrete document or resource,
20 and does not impose a limitation on Federal use
21 of standards or resources to which the anno-
22 tated list may refer.

23 (3) PILOT TESTING FRAMEWORK.—

24 (A) IN GENERAL.—It is the sense of Con-
25 gress that use of the model framework for pilot

1 testing postsecondary instructional materials
2 and related technologies developed pursuant to
3 this Act is and should remain voluntary. The
4 pilot testing framework shall not confer any
5 rights or impose any obligations on commission
6 participants, institutions of higher education, or
7 other persons. Thus, no department or agency
8 of the Federal Government may incorporate the
9 pilot testing framework, whether produced as a
10 discrete document or electronic resource into
11 regulations promulgated under the Rehabilita-
12 tion Act of 1973 (29 U.S.C. 701 et seq.), the
13 Americans with Disabilities Act of 1990 (42
14 U.S.C. 12101 et seq.), or any other Federal
15 law.

16 (B) STANDARDS AND RESOURCES.—The
17 restriction under subparagraph (A) applies only
18 to the pilot testing framework as a discrete doc-
19 ument or resource, and does not impose a limi-
20 tation on Federal use of standards or resources
21 to which the pilot testing framework may refer.

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