PURPOSE OF THE BILL

A bill to direct the Access Board to develop accessibility guidelines for electronic instructional materials and related information technologies that are used to facilitate the teaching and learning processes in higher education settings.

BACKGROUND AND NEEDS

As part of the Higher Education Opportunity Act of 2008, Congress established an Advisory Commission on Accessible Instructional Materials in Postsecondary Education (“AIM Commission”) to study and make recommendations regarding the problems that postsecondary students with disabilities are currently experiencing in acquiring instructional materials in the accessible formats that they need in order to use the materials in the same ways that such materials are used by students without disabilities.

The AIM Commission’s December 2011 Report to Congress, available on the Department of Education’s website at <http://www2.ed.gov/about/bdscomm/list/aim/meeting/aim-report.pdf>, detailed how, in today’s world of rapid innovation and constantly evolving technologies, instructional materials are increasingly created and distributed digitally while more frequently incorporating multimedia and rich media interactivity. It explains how the current transition away from printed materials to digital materials creates a new opportunity for equality, one that can enable students who are blind, low-vision or otherwise unable to make conventional use of print materials to obtain and utilize the same products as their peers who do not have disabilities. The goal is for individual students who purchase their own materials, as well as institutions of higher education that purchase or require specific delivery systems for instructional materials, to acquire them as accessible products in the market.

In the quickly evolving digital marketplace, the AIM Commission saw both hopeful signs of an accessible mainstream future as well as the danger of increased implementation of inaccessible technologies that erect significant barriers to students with disabilities in the postsecondary environment. On the one hand, it observed that the growth of the digital e-text industry is beginning to eliminate many traditional accessibility barriers and is creating an opportunity for commercial sales of accessible e-text content. On the other, it noted that, even if instructional materials are accessible at their core, students with disabilities will not be able to use them if the delivery systems available to acquire and render these materials are inaccessible. Since the accessibility of these delivery systems is a prerequisite for the accessibility of digital materials, this area was identified by the AIM Commission as a significant priority to enable a functioning market-based approach.

In short, not only does content need to be accessible, content delivery systems also need to be accessible. Developers and manufacturers of e-readers, web applications, social media, productivity software and other key elements of the platforms that facilitate digital content access and consumption must be as pro-active as textbook publishers and other content vendors have been in eliminating the barriers that prevent individuals with disabilities from obtaining the benefits of their product innovations. The lack of adequate progress in this area was clearly illustrated in a series of complaints brought by the National Federation of the Blind and the American Council of the Blind against several colleges and universities that deployed a very popular commercial e- reader for use by students in the classroom setting, despite allegations that the devices did not have text-to-speech capacity for their menu or navigational controls, which prevented blind students from knowing which content they selected or how to access the search, note-taking, or bookmark functions. Following investigations by the Department of Justice’s Office of Civil Rights, the Department reached settlements with the educational institutions in which they agreed not to purchase, require or incorporate into the curriculum any dedicated e-reader unless it is accessible or the educational institution could ensure, through the provision of reasonable accommodations or modifications, that a student with print disabilities could acquire the same information, engage in the same interactions, and enjoy the same services as sighted students with substantially equivalent ease of use. See testimony of the Department of Justice, available at <http://www.help.senate.gov/imo/media/doc/Hill2.pdf>.

Around the same time, the AIM Commission considered testimony from various stakeholders regarding ways in which the quality, diversity and availability of accessible instructional materials had improved through a market-based response. Despite the record of some progress, the Commission concluded that the lack of clear accessibility guidelines has hampered the market’s ability to ensure that commercially-available content and delivery systems for postsecondary instructional materials purchased or otherwise used by students without disabilities are also readily accessible to students with disabilities.

To address this issue, the AIM Commission unanimously recommended that “**Congress should authorize the United States Access Board to establish guidelines for accessible instructional materials that will be used by government, in the private sector and in postsecondary academic settings.”**

**The AIM Commission noted that standards addressing similar issues with respect to the procurement of electronic and information technologies by agencies and departments of the Federal Government under Section 508 of the Rehabilitation Act of 1973, as amended, “have become the default accessibility standard for the industry and for many states and public educational institutions.” It also noted that using the Section 508 guidelines as the basis for developing unified guidelines for the creation of accessible instructional materials and related information technologies for students in postsecondary education settings “is especially appropriate because many technologies are designed for use outside of education, but utilized in education.”**

An ongoing rulemaking proceeding intended to “refresh” or update the current Section 508 standards is expected to ensure harmonization of Section 508 standards with the current version of the Web Content Accessibility Guidelines (“WCAG2”) promulgated by the World Wide Web Consortium. The refreshed Section 508 standards will also elevate the importance of functional requirements related to providing alternate forms of navigation and interaction with digital content in various media types – text, images, audio, and video – providing clearer procedures for those in the content creation field.

To help ensure consistency with the Section 508 standards, the AIM Commission recommended that the U.S. Access Board, which originally authored the 508 standards and is now in the process of “refreshing” them, develop the guidelines for accessible postsecondary instructional materials. Additionally, the U.S. Access Board has a distinguished record of using its expertise to develop accessibility standards and guidelines in a number of areas mandated by various federal statutes that prohibit discrimination against individuals based on their disabilities. Like the standards developed under Section 508 and other federal laws prohibiting discrimination, guidelines for accessible instructional materials “should serve to provide clarity to the market” to bolster commercial availability of accessible instructional materials, as well as accessible platforms and delivery systems. This bill would authorize the U.S. Access Board to undertake the critical task of producing such guidelines.

SUMMARY OF PROVISIONS

The Technology, Equality and Accessibility in College and Higher Education Act, (the “TEACH Act”), will authorize the U.S. Access Board to create a unified set of guidelines that would specify functional criteria for accessible electronic instructional materials and related information technologies used in postsecondary education settings. Like the Section 508 standards established by the Access Board for electronic and information technology that is developed, procured, maintained or used by agencies and departments of the Federal Government, the guidelines developed pursuant to the TEACH Act will help the vendors and purchasers of electronic instructional materials and related information technologies to have a clear understanding of the functional criteria necessary to make such products accessible to higher education students who are blind, low-vision or have other disabilities which prevent them from accessing these materials and technologies in the same way that they are accessed by students without such disabilities.

It is expected that the guidelines will encourage the competitive commercial availability of accessible electronic instructional materials and related information technologies for use in higher education settings.

SECTION-BY-SECTION ANALYSIS

*Section 1. Short Title.*

This section provides that the Act shall be cited as the “Technology, Equality and Accessibility in College and Higher Education Act” or “TEACH Act.”

*Section 2.Guidelines for Accessible Electronic Instructional Materials and Related Information Technologies in Institutions of Higher Education.*

Subsection 2(a) provides that the Access Board “shall develop guidelines for the accessibility of electronic instructional materials and related information technologies in institutions of higher education [which] (1) ensure that those materials and technologies are accessible to blind and other individuals with a disabilities; and (2) build upon an already-established set of specifications for electronic and information technology developed by the U.S. Access Board pursuant to Section 508 of the Rehabilitation Act (29 U.S.C. 794d).” Subsection 2(b) provides that, “in developing the guidelines under subsection (a), the Access Board shall work to ensure harmonization with other accepted national and international accessibility specifications.”

These provisions are intended to directly implement the recommendation of the AIM Commission to create a set of guidelines that are built upon the Section 508 standards developed by the Access Board. Congress intends for the Access Board to consult with stakeholders – including the developers, publishers, manufacturers, vendors, consumers, and users of electronic instructional materials and related information technologies – to develop these guidelines and ensure that they are consistent and compatible with the Section 508 standards. Moreover, in order to fulfill the purpose of this Act to provide clarity in the market to incentivize production of accessible electronic instructional materials and related information technologies, Congress intends compliance with these guidelines, to be a reasonable measure of what constitutes an accessible product in the market.

Subsection 2(c) provides that the Access Board shall review such guidelines three years after their effective date and, as appropriate, amend them to reflect technological advances or changes in electronic instructional materials and related information technologies.

Section 3 provides safe harbor protections for institutions of higher education that use electronic instructional materials and related information technologies that comply with the accessibility guidelines described in Section 2. Specifically, by using such materials and technologies, institutions of higher education will be deemed to be in compliance with the non-discrimination requirements of Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. Sections 12131 et seq).

Section 4 addresses an institution of higher education’s use of electronic instructional materials and related information technologies that are not compliant with the guidelines described in Section 2, providing that nothing in this Act shall be construed to require such an institution to use materials and technologies that conform to this Act’s accessibility guidelines if the institution provides materials or technologies, or an accommodation or modification, that would allow blind or other individuals with a disability covered by this Act to receive the educational benefits of such materials or technologies (1) in an equally effective and equally integrated manner as students without such disabilities; and (2) with substantially equivalent ease of use.

The purpose of this section is to make clear that this Act is not a requirement to use only materials and technologies that conform to the guidelines. Nothing in this Act is intended to change any of the current flexibilities provided in the statutory provisions and implementing regulations of the ADA and the Rehabilitation Act. Furthermore, it is intended that the relevant statutory and regulatory provisions will be applied and construed according to existing legal precedents regarding their application and construction. This includes the statutory and regulatory provisions through which Congress has provided that reasonable and appropriate alternatives to strict adherence to accessibility criteria may still comply with federal statutory nondiscrimination mandates.

These existing flexibilities, unaltered by this Act, are critical to achieving and maintaining accessibility and non-discrimination objectives without erecting barriers to market entry or continued technological innovation with respect to the commercial markets for electronic instructional materials and related information technologies. See, e.g., Joint U.S. Department of Justice and U.S. Department of Education “Dear Colleague” Letter, June 29, 2010, available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20100629.pdf>; U.S. Department of Education “Frequently Asked Questions About the June 29, 2010, Dear Colleague Letter,” May 26, 2011, available at <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-ebook-faq-201105.pdf> Additionally, these flexibilities allow colleges and universities to provide reasonable accommodation or modifications to potentially inaccessible materials or technologies so that disabled users receive all of the educational benefits provided by the instructional material and technologies in an equally effective and equally integrated manner.

By affirming the continuation of these flexibilities in section 4 , it is intended that this Act not inhibit companies that compete in the marketplace from developing, producing and selling electronic instructional materials or related technologies in ways that do not conform to certain elements of the guidelines, provided that the products still allow blind, low-vision, and other individuals covered by this Act to acquire the same information, engage in the same interactions, and enjoy the same services with substantially equivalent or greater ease of use as mainstream users.

*Section 5. Funding.*

Section 5 provides that Congress shall appropriate such sums as may be necessary to carry out Section 2 of this Act.

*Section 6. Definitions.*

Section 6(a) defines the phrase “blind and other individuals with a disability” as “individuals whose blindness or other disability substantially limits such individuals’ ability to access electronic instructional materials or related information technologies.” The term “blind,” as used with respect to an individual within the scope of this phrase, is defined in paragraph (i) of Section 6(a) to mean “”visual acuity of 20/200 or less in the better eye with correcting glasses, or a widest diameter if visual field subtends an angular distance no greater than 20 degrees.” The term “disability,” as used with respect to an individual within the scope of this phrase, is defined in paragraph (ii) of Section 6(a) as having the meaning given such term under Section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

In defining the kinds of “disability” and the class of protected individuals that are intended to be within its scope, Section -64(a) further qualifies its definition of “blind and other individuals with a disability” as meaning individuals who can demonstrate that their impairment substantially limits their ability to access electronic instructional materials and related information technologies in postsecondary education settings.

Section 6(b) defines the term “electronic instructional materials” to mean “digital curricular content, course-assigned books, journals, articles, and web pages, used by students, faculty or administrative personnel of an institution of higher education to facilitate the teaching and learning processes, including all processes within the meaning of Section 103(7) of the Higher Education Act of 1965 (20 U.S.C. 1003(7).”

The focus of the AIM Commission’s study and recommendations, as mandated by Congress, was on problems in connection with the availability of accessible instructional materials and related information technologies for students in higher education settings. Because the processes for obtaining such materials and technologies for use in elementary and secondary education settings are quite different and primarily fall within the responsibility of state and local educational agencies, it is intended that this definition only addresses materials that are assigned as part of the class curriculum in postsecondary education settings. The language in the definition which refers to processes within the meaning of specific provisions of the Higher Education Act is intended to encourage the Access Board to ensure that its accessibility guidelines will be sufficiently flexible and dynamic to take into consideration the likelihood that higher education settings may evolve in connection with new technologies.

Section 6(c): The term “related information technologies” is defined as “any platforms and delivery systems used by students, faculty or administrative personnel in a postsecondary education setting to access electronic instructional materials, including any hardware, firmware, software, and applications required for the manipulation, annotation, and dissemination of such electronic instructional materials.”

This definition is intended to broadly encompass the diverse technological means through which students in higher education settings access and use electronic instructional materials, so that accessibility guidelines created by the Access Board will apply to all such platforms and delivery systems, regardless of the nature, where appropriate.