**Frequently Asked Questions on the**

**Accessible Instructional Materials in Higher Education Act (HR 6122)**

**Q: Will colleges and universities have to follow the guidelines?**

A: No, the guidelines are one hundred percent voluntary. Colleges and universities are indeed required under Titles II and III of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act to provide equal access to students with disabilities, but these mandates lack criteria defining what accessibility means. The AIM HE Act creates the missing criteria in the form of voluntary guidelines, and then rewards schools that follow those guidelines with a safe harbor from litigation. Offering safe harbor from litigation as a reward means the guidelines will offer one path to compliance with the law, but will not be the only path. Some schools may ignore the guidelines or develop their own, but they forfeit the legal protection of a safe harbor by choosing those alternate routes.

**Q: How will this work – the guidelines will be created, and then schools will have to change all of the technology on campus?**

A. No. The AIM HE Act does not require retrofitting; in fact, the AIM HE Act does not require anything. Remember: schools are currently required to use accessible materials, and will be required to do so whether the AIM HE Act passes or not. If a school needs to retrofit its materials or revise its procurement policies, it is because it is not complying with the equal access requirement. The mandate to use materials that are accessible to students with disabilities, or provide accommodations to facilitate equivalent access, is not altered, strengthened, or removed by the AIM HE Act.

Rather, the AIM HE Act guidelines will be a tool for schools to use to identify what material is accessible and what material is not, informing decisions that should facilitate better compliance with that equal access mandate. We expect many schools will request AIM HE Act-compliant material from vendors, and that streamlined demand will be met by manufacturers looking to sell products to schools. Hopefully, this transformation will result in such systemic change that schools never have to retrofit materials, change the technology they use, or provide accommodations, because mainstream access is built in from the start and already deployed across campus.

**Q: Does this mean schools will need to have something readily available for a student with a severe disability who does not even attend the school?**

A: Schools will not “have” to do anything that they are not already required to do when it comes to a student with a severe disability. The AIM HE Act will make it easier for schools to identify which items are accessible to that student and which are not, and will hopefully shift the paradigm from the ad-hoc accommodations model to a mainstream access approach. Widespread use of AIM HE Act-compliant material will create a situation where the arrival of a student with a particular disability does not call for any reaction because the school will already be deploying fully and inherently accessible material across the campus.

This question overlooks something more critical: how does the school intend to provide accessible materials to this student when he or she gets there? Society would never accept temporary ramps that are only deployed when a student with a physical disability arrives on campus; students with severe disabilities deserve the same expectation of permanent equal access.

**Q: Will guidelines inhibit innovation? Why should schools not be discouraged from using a cool piece of technology just because it is not accessible?**

A. First, accessibility and innovation are not mutually exclusive; in fact, the very first digital book was created by a blind person! Some of the most innovative products on the market (e.g., Apple devices) are the most accessible, and we expect the AIM HE Act guidelines to stimulate more production of those kinds of materials. Since the passage of the ADA, we have seen the mainstream benefits of universal design and accessibility. Curb cuts that were originally designed for people with physical disabilities now benefit parents with strollers and travelers with luggage. Similarly, stimulating accessible technology can only enhance innovation, because an increase in the former will generate benefits for all well beyond the intended scope.

Furthermore, in the unlikely event that an emerging technology is totally inaccessible even after the AIM HE Act passes, a school will still be allowed to deploy the technology as long as the school provides equivalent access through an alternative method or accommodation. If an adequate alternative method or accommodation cannot be found, the school is prohibited from deploying that technology – not because of the AIM HE Act, but because current law already prohibits that kind of discrimination. It is because of this requirement that, in the end, a decision to reject the guidelines and allow the market to stay saturated with inaccessible materials is what will hinder the success of students with disabilities, and ultimately discourage innovation.

**Q: What do the schools think about this?**

A: Schools recognize the need for, and value of, national guidelines to ensure compliance with national accessibility mandates. Increasingly, presidents of institutions of higher education are writing letters to the Chairman of the House Education and Workforce Committee, as well as the Senate Health, Education, Labor and Pensions Committee expressing their strong support for the AIM HE Act. As of today, those institutions include The Ramapo College of New Jersey and Wake Forest University. The legal obligation to provide accessible electronic instructional materials already exists, the AIM HE Act seeks to stimulate the marketplace by making accessible electronic instructional materials more readily available. A solution that schools recognize is necessary and practical. For this reason, the AIM HE Act has been endorsed by the American Council on Education, Educause®, and other leading organizations in the higher education community.

**Q: Why can’t each state, or each school, create its own guidelines?**

A: Equal access mandates are national mandates, and the instructional material market is a national market. This calls for national guidelines. Every state could develop individual guidelines, but no manufacturer would make fifty different product lines, and there is no guarantee that federal agencies would even accept each state’s criteria as sufficient. Furthermore, only Congress can authorize the safe harbor. Most importantly, blind students deserve equal access across the country, not just at a few select schools or in a few select states.

**Q: Aren’t schools doing a good job of providing accommodations already?**

A: In the last five years, there have been more than a dozen lawsuits over schools’ use of inaccessible instructional materials, and the problem is escalating. The best way to curb the problem is to help institutions of higher education in their quest to comply with the mandate to use accessible material, which means giving direction for how to do so. Other than a handful of schools, the overwhelming majority of colleges and universities are still confused about how to accommodate students with disabilities in a digital world. Consequently, most resort to the ad-hoc accommodations model, a model that only worked in the print world. Just because a school has incorporated mainstream accessibility for facilities, like wheelchair ramps on campus, or provides accommodations, like the extra test time for students with learning disabilities, does not mean the school is doing an amazing job of meeting all requirements across the board.

**Q:** **What about those instances where accessible digital options are not yet available? What are schools expected to do then?**

A: Remember, schools are already being required to provide equal access to students with disabilities under Titles II and III of the Americans with Disabilities Act and Section 504 of the Rehabilitation act. The AIM HE Act encourages institutions to only use technology that conforms to the voluntary guidelines by providing a safe harbor from litigation under existing disability law. However, for those instances in which accessible digital solutions are not yet available, instances that will diminish as schools increase the demand for accessible instructional materials, schools can qualify for a limited safe harbor under the AIM HE Act. In order to qualify for the limited safe harbor, schools must comply with existing disability law, and meet several requirements as described by the AIM HE Act. The limited safe harbor does not mean that a student loses the right to demand accessibility through litigation, but rather that litigation under the limited safe harbor is restricted to declaratory and injunctive relief as well as attorney’s fees. Monetary damages are not awarded under this defense aligning with Title III of the ADA, which has no monetary damages component.

**Q: How much is this going to cost?**

A: There is no score, but the bill will likely call for a very small number, less than $100,000, to fund the commission’s development of the guidelines. We do not anticipate the development of guidelines will be an expensive endeavor. Not only is this a modest undertaking, that amount of money will be miniscule compared to the amount taxpayers lose to enforcement actions, investigations, and lawsuits against schools that are failing to comply with the mandate.

Worse, every time a blind student changes majors, delays his or her education, or drops out of school, taxpayers take another major hit. People with disabilities have an eighty percent unemployment rate, and many of those people rely on government assistance for survival. There is no way to measure the untapped talents and lost productivity that results when an entire population fails to reach its potential, but tangible change can be made with this small investment.

**Q: Where did the idea for guidelines come from?**

A: In 2008, Congress authorized the Advisory Commission on Accessible Instructional Material in Postsecondary Education for Students with Disabilities (AIM Commission). The AIM Commission examined the status of accessible educational technology and the impact it was having on students with disabilities, and then developed recommendations for how to address the matter. The final report found that students with disabilities experience a daunting assortment of challenges, including blocked access to educational opportunities and even failure to graduate, solely because of inaccessible materials. The commission also found that “there is still persistent unmet need” and that steps must be taken to stimulate the creation of a viable accessible digital marketplace. Of the commission’s nineteen recommendations, the first one calls for Congress to authorize the creation of accessibility guidelines.

**Q: How do you make something accessible?**

A: There are countless accessibility solutions that are being embraced by a few manufacturers. In fact, if you have an Apple iPhone, it is fully accessible right out of the box to blind users. Often, all it takes is adding an audio output (i.e. speakers or a phone jack) or labeling images properly so that they can be read by a text-to-speech screen reader. The guidelines will offer some answers, but accessibility is easily and readily achievable, and a viable digital marketplace will emerge as soon as there is enough demand for it.

**Q: Who opposes the AIM HE Act?**

A:Currently, no organizations oppose the creation of voluntary guidelines as called for by the AIM HE Act, but rather, the AIM HE Act has garnered broad stakeholder support. Endorsing organizations include leading disability advocacy organizations, associations representing developers and manufacturers of postsecondary instructional materials, nonprofit organizations that service the community of persons with disabilities, higher education associations, as well as institutions of higher education themselves. The AIM HE Act is a collaborative legislative initiative of the National Federation of the Blind, the American Council on Education, the Association of American Publishers, Educause®, and the Software and Information Industry Association.

**Q: Who are the sponsor and the lead cosponsor for the AIM HE Act?**

A: The AIM HE Act, (HR 6122) is being sponsored in the US House of Representatives by Congressman Phil Roe, (R-TN) along with Congressman Joe Courtney, (D-CT) as the lead cosponsor. We are actively working with Senate offices to identify a sponsor and lead cosponsor in that chamber for this critical piece of legislation.

**Q: Where can I learn more about the Accessible Instructional Materials in Higher Education Act?**

A: To learn more visit: https://nfb.org/aim\_he.

**Q: Where can I send my letter of support?**

A: Please send your letter of support to the following House and Senate contacts.

Chairwoman Virginia Foxx

Committee on Education and the Workforce

United States House of Representatives

Address: 2262 Rayburn House Office Building Washington, DC 20515

Phone: (202) 225-2071

Fax: (202) 225-2995

Chairman Lamar Alexander

Health, Education, Labor and Pensions Committee

United States Senate

Address: 455 Dirksen Office Building, Washington, DC 20510

Phone: (202) 224-4944

Fax: (202) 228-3398