

From: Jason Lorgan, Negotiator for Public Four-Year Institutions of Higher Education [Primary]
To: Program Integrity and Institutional Quality Committee
Date: February 8, 2024
Re: Books and Supplies as Part of Tuition and Fees (668.164(c) and (m))

During the two decades leading up to 2016, the cost of books, course materials, supplies, and equipment for college courses increased by 88 percent,¹ more than nearly any other college student expense. As a result of increasing costs, many students chose not to purchase required materials, contributing to poor academic outcomes. According to a 2014 survey by U.S. PIRG, 65 percent of students decided not to buy a textbook because of the cost² and 94 percent of those students worried it would negatively affect their grade.

In response to this crisis of cost and the related impact on student outcomes, many institutions have implemented affordable access programs – often referred to as “Inclusive Access” or “Equitable Access” – that deliver instructors’ selected materials to students on the first day of class at a significant discount to the price a student would pay to purchase the same material at retail. The cost of course materials are included in students’ tuition and fees with these programs, eliminating the need for students to pay out of pocket. Institutions communicate fees to students and provide easy, web-based paths to opt out of the program. To further reduce cost, many of these institutions also encourage adoption of open education resources (OER) to be utilized alongside paid materials.

In 2016, the U.S. Department of Education, under the Obama-Biden Administration, explicitly revised federal cash management regulations (34 e-C.F.R. §668.164 2016) to allow the cost of books and supplies to be included in tuition and fees in settling ledger accounts as long as colleges and universities (a) provide students the ability to opt-out, and (b) ensure textbooks are priced “below competitive market rates.” These regulatory changes have proven to be astoundingly successful. In under a decade, the cost of course materials have dropped significantly and student outcomes have improved. In fact, affordable access programs have contributed to a 57 percent decline in student spending on course materials over the past decade, while other college costs such as tuition and student housing have continued to rise³. Students have also benefited academically from having access to affordable materials on the first day of class, rather than spending up to several weeks seeking alternatives and falling behind in class as a result.

Given the success of these programs, we have strong concerns with the regulatory language proposed by the Department of Education because it removes the very provisions that have been so crucial to improving the affordability of course materials and guaranteeing student access. The proposed language would result in the elimination of many innovative programs across the country and undermine shared goals to improve affordability and student outcomes in higher education.

¹ Tracy A. Hurley and Amir Fekrazad. *Inclusive Access and Open Educational Resources E-Text Programs in Higher Education*. P. 177. June 2020. Link: [E-Textbooks, Inclusive Access, and Academic Performance | SpringerLink](#).

² U.S. PIRG. *Fixing the Broken Textbook Market: How Students Respond to High Textbook Costs and Demand Alternatives*. P. 4. January 2014. Link: [Fixing Broken Textbooks Report.docx \(publicinterestnetwork.org\)](#).

³ Student Watch. *Attitudes and Behaviors Toward Course Materials*. June 2023. Link: [Student Watch Reports a 57% Decline in Student Spending on Course Materials over a Decade - AAP \(publishers.org\)](#)

With that said, it has been eight years since the rules governing these innovative affordability programs were developed, and best practices have emerged to ensure the promised value is being delivered to students. Therefore, there are ways to improve the existing regulations to raise standards for everyone.

We urge the Department to consider common-sense modifications to the current cash management regulations to enhance transparency and protections for students without undermining institutions' ability to continue offering programs that reduce course materials costs.

Affordable Access Programs Have Reduced the Cost of Textbooks

Affordable access programs have contributed to a significant drop in the cost of textbooks for students, particularly for low-income students.⁴ Multiple studies have demonstrated the impact of these programs on affordability. According to independent research by Student Watch, total course material spending for required materials in the 2022-2023 school year fell to \$285 per student, approximately 60 percent less than spending in 2007-2008 when students paid \$701, on average, for course materials.⁵ Additionally, current student spending has also declined 57 percent over the past decade.⁶ Confirming this important trend, the College Board's 2023 Trends in College Pricing and Student Aid Report found that students now spend an average of just \$310 on textbooks annually.⁷

Affordable access programs have demonstrated significant apples-to-apples savings compared to alternate purchase models for the same course materials, as institutions can utilize the power of bulk purchasing and other means to secure considerably lower prices on behalf of students. A study of nearly 27,000 courses across institution types from Fall Term 2023 found that students in affordable access programs saved an average of \$24 per material, a 30 percent savings compared to prevailing market pricing for the same material. – i.e., the access program cost of the required digital courseware or e-textbook was much lower than the retail market price for the same digital courseware or e-textbook.

These savings have been secured in an increasingly robust and competitive market among publishers participating in affordable access programs. As of fall 2023, at least 550 publishers and learning tool providers offered discounted affordable access program pricing, up from only 25 publishers in 2017. Importantly, we expect these trends to continue as competition from smaller publishers and new market entrants complements pressure from other low- and no-cost material initiatives, driving large publishers to continue providing lower pricing to students in affordable access programs.

Affordable Access Programs Improve Academic Achievement, with Strong Student Support

In addition to reducing student costs, affordable access programs ensure students have required course materials on the first day of class, allowing them to engage in learning, discussions, and assignments from the outset. Several studies examining the effectiveness of affordable access programs have shown statistically significant increases in student success rates.

⁴ Michael R. Moore. *Inclusive Access Course Materials: An Analysis of Waukesha County Technical College's Inclusive Access Program*. *Journal of the Scholarship of Teaching and Learning*, Vol. 23, No. 3. September 2023, pp.58-73. doi: 10.14434/josotl.v23i3.34262

⁵ Student Watch. *Attitudes and Behaviors Toward Course Materials*. June 2023. <https://www.nacs.org/nacs-student-watch-report-course-materials-spending-dropped-increase-in-digital-preference>.

⁶ *ibid*

⁷ College Board. *Trends in College Pricing*. 2023. <https://research.collegeboard.org/trends/college-pricing/highlights>

In a 2020 book by Tracy Hurley and Amir Fekrazad, researchers found that students enrolled in affordable access programs experience higher success rates at lower cost than students outside the program:

The data from this study supports the hypothesis that institutional e-textbook programs – which ensures students have access to required course content by the first day of class – are effective in increasing student success rates. In addition, historical price information confirms that [affordable access] e-textbook programs are effective at reducing the costs associated with textbooks and, accordingly, the cost of higher education.⁸

Recent independent academic research has also shown that these programs particularly benefit underserved student populations with substantial increases in course completion rates among at-risk groups, including Black students (up 21 percent) and students over the age of 25 (up 6 percent).⁹

The combination of cost savings, academic impact, and convenience offered by affordable access programs has generated strong student support for these programs. A recent survey of over 100 campuses across two-year and four-year institutions gauging student perspectives on affordable access programs¹⁰ found:

- 86 percent of students stated they were better prepared for the academic term.
- 83 percent of students stated affordable access programs had a positive impact on their success in the current term.
- 75 percent of students stated such programs helped them achieve better grades in the current term.
- 78 percent stated that affordable access programs increase the likelihood they will continue their education at the school.
- 91 percent of students stated that they found it convenient to have their course materials bundled by the institution.

Reflective of this broad student support, several student associations have taken action to formally ratify or endorse these important access programs. For example, The Senate of the Associated Students of California State University, Long Beach approved Resolution #2023-03 stating:

...in order to advance affordability, accessibility, predictability, and sustainability of textbooks at CSULB...the Associated Students Inc. Senate and Board of Directors supports the implementation of Equitable Textbook Access and the evolution of textbook affordability at CSULB...¹¹

⁸ Hurley, T. A., & Fekrazad, A. (2020). E-Textbooks, Inclusive Access, and Academic Performance. In T. Hurley (Ed.), *Inclusive Access and Open Educational Resources E-text Programs in Higher Education*. pp. 177-184. Springer, Cham. https://doi.org/10.1007/978-3-030-45730-3_15

⁹ Michael R. Moore. *Inclusive Access Course Materials: An Analysis of Waukesha County Technical College's Inclusive Access Program*. *Journal of the Scholarship of Teaching and Learning*, Vol. 23, No. 3. September 2023, pp.58-73. doi: 10.14434/josotl.v23i3.34262

¹⁰ Barnes & Noble Education, Inc. *New Study Highlights the Positive Impact on Student Outcomes of Barnes & Noble Education's First Day® Complete Equitable Access Program; Results Driving Rapid Growth of the Model across Colleges and Universities*. July 2023.

¹¹ <https://www.csulb.edu/sites/default/files/2023/documents/D1TA%20Resolutionpdf>

Affordable Access Programs are Complementary to OER Initiatives

Affordable access programs preserve the academic freedom of instructors to teach from whatever course materials they would like, whether commercially developed or through no-cost OER. Many campuses have strong OER programs that operate alongside affordable access programs that further minimize the cost of commercial content options.

Iowa State University's Open & Affordable Education Committee captures the complementary nature of these programs on its website:

We promote the use of free and low-cost instructional materials such as: open educational resources (OER), Immediate [Inclusive] Access materials, library-licensed content, and other affordable course materials for our students.¹²

Similarly, California State University's Affordable Learning Solutions, a leader in innovative strategies for reducing course materials expenses, cites "Immediate Access" programs as a valuable asset to containing costs for students, noting:

Digital textbooks in these programs may be discounted 60 percent or more from print rental and print purchase price or discounted up to 25-60 percent from the already low digital rental price.¹³

Affordable access and OER programs can and do thrive alongside one another, and have both contributed to the declines in student spending described above.

Opt-Out Affordable Access Programs are More Beneficial to Students than Opt-In Programs

Prior to the emergence of affordable access programs, course materials purchasing was effectively "opt-in," putting the responsibility on students to find and purchase their own materials. The emergence of "opt-out" affordable access programs gave institutions the bulk purchasing power to drive down costs and ensure course materials access for many students who might not otherwise be able to afford or easily obtain required course materials.

Opt-out programs are the most effective way to provide students access to all of their required course materials on or before the first day of class. This approach gives students free access to all their course materials throughout the add/drop period (usually two weeks), although they may choose to opt out of the program at any time up to the end of that period. In contrast, "opt-in" programs require that the student proactively sign up for the program before they are provided with digital access or sent any physical books. In practice, this means that many students may not have the required books for much of the add/drop period. Worse still, some will not get access to those books at all.

Opt-out and opt-in affordable access programs would likely have markedly different pricing and student participation profiles, with opt-in programs eliminating much of the cost reduction and outcomes progress associated with these programs as they stand today. With lower opt-in participation rates, prices will likely be higher for both participating and non-participating students and more students will

¹² <https://www.oer.iastate.edu/>

¹³ https://als.calstate.edu/lower_cost_course_materials

go without the required course materials that are essential to their learning – with particularly detrimental impact to the most disadvantaged students.

Students would also feel increased costs given that reclassifying part of tuition and fee costs to exclude books and supplies will reduce students' ability to claim the Lifetime Learning Tax Credit (only available through tuition and fees) and sales tax relief in the majority of states that tax course material transactions outside of these programs. Moreover, the mechanics of an opt-in program would challenge the predictability for program administrators that is central to keeping costs low for students and third-party payers such as school districts for concurrent enrollment programs. With greater uncertainty as to how many students and which course materials will be included, institutions will be required to secure significantly more physical inventory – further driving up prices for all students.

In short, moving back to the opt-in-centric market would result in dramatically increased costs and reduced timely access to books and supplies, which will be felt acutely by the neediest students. Rather than continue the opt-out approach that treats all students equitably, the Department's proposal will once again ensure there are two classes of students – those who can afford their textbooks at whatever the cost and those student financial aid recipients who cannot and will therefore be at an even greater disadvantage.

Recommendations to the Department - Areas for Clarification and Alternate Language

As with any innovative new program, there has been some differentiation in how affordable access programs have been implemented across the country. We are strongly in favor of enhancing the existing regulations to address concerns about “bad actors.” We recommend any changes focus on the following areas of improvement:

- **Increasing timely access to materials:** Ensure institutions provide students with the ability to obtain books and supplies in tuition and fees by the first day of class but no later than the seventh day of a payment period.
- **Increasing cost transparency:** Require institutions to disclose to students the cost of the fee or the prorated amount if books and supplies are included in tuition.
- **Expanding opt-out capabilities:** Require institutions to provide students ample time to opt-out of affordable access programs. Students should have the opportunity to opt out through the institution deadline by which they must decide about enrollment in a course. Institutions should also be required to have a web-based opt-out capability that is featured prominently for ease of access and usability through the add/drop period.

We also recommend the following additions:

- **Reinforcing price disclosures:** Remind institutions of their obligations under 20 U.S. Code § 1015b even when course materials are included in tuition and fees. This is the requirement for institutions of higher education, college bookstores, and publishers to provide pricing and other critical information to help students purchase course materials.
- **Preserving student choice:** Preserve (m)(3) to ensure students continue to have the option of opting out of the method an institution provides for students to obtain or purchase books and

supplies by the 7th day of the payment period. The Department's reasoning for this provision in 2010, which was affirmed in 2015, remains sound and the language should be retained.

We believe that these themes include common-sense improvements to the current cash management regulations that will increase protections for and transparency to students, while continuing to provide them with critically important course materials that are high-quality, affordable, and essential to being able to learn effectively from the first day of school.