

To: 2024 Negotiated Rulemaking Program Integrity and Institutional Quality Committee

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RE: Issue Paper 1: Cash Management

The Department's issue paper provided to the committee in advance of Session 1 noted concerns with current 34 CFR § 668.164(c) and (m), which since July 1, 2016 have permitted an institution – under specified conditions – to credit a student's title IV, HEA program funds to institutional charges for books and supplies. The concerns specifically referenced by the Department as rationale for proposed regulatory changes were the lack of sufficient disclosures and transparency, which in turn can limit a student's ability to assess whether the institution's method of providing books and supplies is the most affordable option.

The Department's proposed language to date, however, addresses its stated concerns by effectively eliminating the ability of institutions to offer inclusive access programs for books and supplies. Negotiators representing institutions of higher education across a variety of constituencies have been negotiating in good faith and are providing alternative language to address the Department's stated concerns, while also seeking to maintain the benefits of inclusive access models and the robust evidence that institutional negotiators have submitted to support student success by providing timely and accessible course content to all students at affordable prices.

The proposal set forth below therefore maintains the option for institutions to use inclusive access programs for books and supplies. The proposed language assures that the elements of an inclusive access program are clearly and conspicuously disclosed to students on a regular cadence, upon enrollment and throughout their matriculation at the institution, both on the student's account and via the institution's website and catalog. It ensures affordability by requiring institutions to certify to the Department that the institutional charge for books and supplies is below market cost. It enhances the opt out provisions of current regulation to require more explicit instructions to students about how to opt out. The language below also clarifies that institutions must, for students who opt out, directly

provide to such students the title IV, HEA funds that would otherwise have been applied to the institutional charge for books and supplies.

§ 668.164 (c)(1) and (2) - Crediting a student's ledger account

(c) Crediting a student's ledger account.

(1) An institution may credit a student's ledger account with title IV, HEA program funds to pay for allowable charges associated with the current payment period. Allowable charges are

(i) The amount of tuition, fees, and institutionally provided food and housing assessed the student for the payment period or, as provided in paragraph (c)(5) of this section, the prorated amount of those charges if the institution debits the student's ledger account for more than the charges associated with the payment period;

(A) An institution may only include costs of books and supplies as a part of tuition and fees if—

(1) The institution demonstrates there is a compelling health or safety reason to do so;

(2) The institution documents on a current basis that the books or supplies, including digital or electronic materials, are not available or accessible to students enrolled in the program, in the same or a substantially similar form, from sources other than those provided or authorized by the institution; or

(3) The institution—

(i) Has an arrangement with a supplier of books and supplies that enables it to make those books and supplies available to students at or below competitive market rates;

(ii) Certifies to the Department on an annual basis that the institution is offering books and supplies to students at or below the competitive market rates;

(iii) Provides a way for a student to obtain those books and supplies by the first day of a payment period, but no later than the seventh day of the payment period;

(iv) Specifies the included costs of books and supplies as a separate institutional charge on a student's account and related billing correspondence for each applicable payment period;

(v) Has a policy and procedure, which must be clearly and conspicuously disclosed on the institution's website and catalog, under which a student may opt out of the institutional charge for books and supplies, including:

(a) direct, written notice to the student at the time of enrollment, and again at least two weeks before the start of each academic term, that the student may opt out of the institutional charge, including clear and conspicuous instructions for opting out and an explanation that the student bears the obligation to options to find alternate sources for the books and supplies upon opting out of the institutional charge;

(b) a prominent web-based opt-out capability that is available to the student through the first day of the course or the last date of the add/drop period, whichever is later; and

(c) within 14 days of the student opting out of the institutional charge, provision to the student of the title IV, HEA program funds that would otherwise have been applied to the institutional charge.
