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To: 2024 Negotiated Rulemaking
Program Integrity and Institutional Quality Committee

Date: January 10, 2024

Re: Automatic Textbook Billing

Books and supplies are a significant driver of college costs, averaging over $1,000 a year for students. One model pushed by textbook publishers, termed "inclusive access" automatic textbook billing, automatically opts students into digital course materials that get charged to their tuition and fees, forcing students to spend their limited federal aid dollars on materials that may not be as affordable as they are elsewhere. During yesterday's negotiating session, the scope of the textbook industry's investment in automatic billing became clear. Given that, we felt it might be helpful to negotiators to provide some additional information and resources on automatic billing practices.

Prior to the 2016 cash management regulations, colleges were not permitted to apply federal financial aid funds to charges for books and supplies without students first providing permission. Changes to those regulations, however, opened the door to automatic billing practices, in which institutions can include books and supplies in tuition and fee charges under some circumstances.

While the intent of this provision was ostensibly to provide students with lower-cost options for textbooks (by requiring that such automatic billing could be used only when the books or supplies were provided at below competitive market rates), that has not always been the reality. Instead, students have been forced to pay high costs for textbooks and other supplies even when they could have found them cheaper elsewhere.

To address these challenges, the Department proposed to eliminate the provision that allows institutions to include books and supplies as part of tuition and fees. This would effectively require these "inclusive access" programs to operate on an opt-in basis, where students choose to participate, rather than using their Title IV aid without consent. We strongly support this change, and believe that the resources included here provide further evidence of the need for this change.

Negative Impacts on Students

Unwanted charges. As these so-called "inclusive access" automatic billing programs have taken off, students have criticized the lack of transparency and unexpected charges. For instance, students at one four-year college reported being charged for textbooks that they weren't even aware they were receiving and didn't know how to access. In some cases, the textbooks weren't even being regularly used in class. Similarly, a survey of more than 13,000 students in Florida's public colleges, for instance, found that more than half of students who participated in such programs did not believe that the program had reduced their overall textbook costs. In some cases, these "savings" may only be relative to the sky-high sticker prices that publishers charge for printed textbooks, which few students ever buy. And though some industry representatives have claimed that automatic billing helps students use their financial aid to acquire books, this guarantee is set already by separate regulations (34 CFR 668.164(m)) that do not rely on forcing students to pay. Publishers often bill "inclusive access" programs as cost-saving for students, but the reality is not so clear.

Restricted access. Automatic billing programs also often provide access to the publisher's electronic course materials for only a limited time period, meaning students lose access to the materials after the course is finished. That means as they progress into higher-level classes in the field, they don't have access to foundational resources. These digital course materials also require students to cede significant amounts of data to the companies that produce these materials, including their locations, academic performance, and study habits.

Dubious marketing. "Inclusive access" proponents make claims of improved student outcomes, but these are often backed by narrow case studies rather than published research. A peer-reviewed study of a statewide automatic billing pilot found no statistically significant changes in student outcomes, whether for students overall or for those classified as non-White, Pell eligible, or adult learners over the age of 25. To the extent these programs are achieving positive outcomes in some places, there is no reason that cannot continue under an opt-in model consistent with the Department's proposed change. A number of institutions, including the University of Central Florida, already do this.

U.S. PIRG Study Exposes Contracting Practices

A February 2020 report from U.S. PIRG explored dozens of contracts for "inclusive access" automatic textbook billing programs across 31 colleges that enroll more than 700,000 undergraduate students. The report identified common and deeply concerning problems across many of the contracts. Specifically, the report notes that:

- Almost half of automatic billing contracts failed to disclose their discount structure to students -- meaning that students couldn't decipher how significant of a discount they were receiving through the program.

- More than two in five (42 percent) contracts placed limitations on advertising these partnerships. Under these restrictions, publishers could influence how institutions present the discounts to students, or how students can opt out of the arrangement.
- One third of the contracts potentially allow for uncapped annual price increases. Twenty-one percent potentially allow for twice-annual increases. Just one of the institutions reviewed capped price increases.

Even with a federal requirement to allow students to opt-out, contractual terms with publishers may pressure institutions to restrict it. More than two-thirds of the contracts (68 percent) included a clause where the discount would be eliminated or reduced if the institution missed their quota for the number of students enrolled in the automatic billing program -- a quota that could be set as high as 90 percent of a course.

In other words, textbook publishers have set egregiously restrictive terms for automatic billing contracts as a way to guarantee market share and prevent students from accessing the textbooks via more affordable sources. And institutions have played along, willingly handing over control to the textbook publishers, and effectively limiting transparency and choice for students while increasing their costs.

The full report is available here: https://publicinterestnetwork.org/wp-content/uploads/2022/07/USPIRG_Textbook-Automatic-Billing_Feb2020_v3-2.pdf.

A library of textbook billing contracts is also available here: https://sparcopen.org/our-work/automatic-textbook-billing/contract-library/

Recommendations to the Department

As noted, we strongly support the Department's efforts to revise this section of the federal rules to make them more student-friendly and ensure that students can get the full value of the aid they are entitled to. We urge the Department to move forward with eliminating §668.164(c)(2)(i) as proposed, and to go even further and eliminate §668.164(c)(2) in its entirety. While (i) eliminates the most significant concerns for students, the remaining two exceptions under (ii) and (iii) create unnecessary loopholes that the textbook industry could exploit. As came up in discussion during negotiations, there is ambiguity over what a compelling health or safety reason would be or how to determine whether materials are available elsewhere. Students should have the right to choose how their Title IV aid is used and where they will purchase their course materials, period.