Date: January 18, 2024

To: U.S. Department of Education

From: Erika Linden and Scott Dolan, Private-Nonprofit Institutions of Higher Education

Re: Issue Paper 1— Cash Management

Rationale

From Wikipedia: "Open educational resources (OER) are teaching, learning, and research materials intentionally created and licensed to be free for the end user to own, share, and in most cases, modify." While the textbooks and resources created are free or low-cost to students, they are not free to develop and maintain. Some institutions that have adopted open educational resources are currently charging students a small fee per course to fund the development and maintenance of these resources. In most cases this fee is minimal, no more than $10 per course.

Examples of such a fee can be found at several public Kansas universities. For example, Emporia State University charges a $5 student fee that funds faculty grants for the development and revision of open educational resources and OER infrastructure. Kansas State University charges students enrolled in a course using open or alternative resources that don't require purchase by a student a $10 per course fee. Similarly, Wichita State University also charges students a $10 per course fee for those courses using open or alternative textbooks.

We are strong believers in the importance and value of open educational resources as a way to improve student affordability. We are cognizant, however, that these resources must be created and maintained—activities that require financial support. We do not believe that the Department means to eliminate small fees associated with the development and maintenance of open educational resources, especially given the savings to students. We urge the Department to make the allowability of such fees explicit.

Here is a draft alternative (NOTE: The Department's proposed language is in blue and our proposed language is in red, which is appended to the Dom Chase proposal submitted on January 18th):

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§668.164 (c)(1), (2) and (3) - Crediting a student's ledger account[1]

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(c) Crediting a student's ledger account.

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(2) An institution may include the costs of books and supplies as part of tuition and fees under paragraph (c)(1)(i) of this section if –

[1] Proposal in this section is to restore institutional ability to include books and supplies as part of tuition and fees, provided that, among other requirements including an opt out, that the amount of the charge for books and supplies is distinct on the student's bill from tuition and other institutional fees.

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

(ii) *The institution charges a student fee for the support of institution-led activities to create and maintain books or instructional materials via open educational resources. The books and materials are available to the student for no additional charge. Open educational resources are defined as educational materials that use any form of open copyright license;*

(iii) The institution demonstrates there is a compelling health or safety reason; or

(iv) The institution has an arrangement with a book publisher or other entity that enables it to make those books or supplies available to students below market competitive rates; provided that –

(A) The cost of books and supplies included as part of tuition and fees is specifically disclosed to the student as a distinct institutional charge on any tuition and fee disclosure, billing invoice or ledger account associated with the applicable payment period;

(B) The institution and book publisher or other entity provide a way for a student to obtain those books and supplies by the first day of the payment period, but no later than the seventh day of a payment period;

(C) The institution has a policy under which the student may opt out of the way the institution provides for the student to obtain books and supplies under paragraph (c)(2)(iii), for which any opt out shall also be considered an opt out under paragraph (l)(3) of this section;

(D) The institution permits a student to opt out under paragraph (c)(2)(iii)(C) at any time before the seventh day of the applicable payment period.

(E) ~~Has an arrangement with a book publisher or other entity that enables it to make those books or supplies available to students below market competitive rates;~~

(F) ~~Provides a way for a student to obtain those books and supplies by the seventh day of a payment period; and~~

(G) ~~Has a policy under which the student may opt out of the way the institution provides for the student to obtain books and supplies under paragraph (c)(2). A student who opts out under this paragraph (c)(2) is considered to also opt out under paragraph (m)(3) of this section~~

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

~~(iii) The institution demonstrated there is a compelling health of safety reason.~~

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§668.164(l) and (m) – Returning Funds and Provision for books and supplies[2]

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(~~m~~l) Provisions for books and supplies.

(1) An institution must provide a way for a student who is eligible for title IV, HEA program funds to obtain or purchase, by the seventh day of a payment period, the books and supplies applicable to the payment period if, 10 days before the beginning of the payment period—

(i) The institution could disburse the title IV, HEA program funds for which the student is eligible; and

(ii) Presuming the funds were disbursed, the student would have a credit balance under paragraph (h) of this section.

(2) The amount the institution provides to the student to obtain or purchase books and supplies is ~~the lesser of~~ the presumed credit balance under this paragraph ~~or the amount needed by the student, as determined by the institution~~.

(3) The institution must have a policy under which the student may opt out of the way the institution provides for the student to obtain or purchase books and supplies under this paragraph (~~m~~l). A student who opts out under this paragraph is considered to also opt out under paragraph (c)(2)(iii)(C) of this section;

(4) If a student uses the method provided by the institution to obtain or purchase books and supplies under this paragraph, the student is considered to have authorized the use of title IV, HEA funds and the institution does not need to obtain a written authorization under paragraph (c)(1)(ii) of this section and § 668.165(b) for this purpose.

[2] Proposal in this section is to revise paragraph (l)(2) to require credit balance equal to the amount that would otherwise have been charged as part of tuition and fees, and not some lower amount as seemingly permitted by current regulation. Paragraphs (l)(3) and (l)(4) reflect restorations of current regulatory text that was struck by the Department's issue paper and initial proposed revisions.