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September 16, 2021

Matthew Soldner  
Institute of Education Sciences  
U.S. Department of Education  
400 Maryland Avenue SW  
Washington, DC 20202-7240

Docket ID: ED-2021-IES-0118

Dear Dr. Soldner:

This letter contains SPARC's response to the Institute of Education Sciences' Request for Information on the Department's 2022-2026 Learning Agenda. Representing more than 240 academic and research libraries, SPARC is a global advocacy organization working to make research and education open and equitable by design—for everyone. We thank the Department for the opportunity to provide input on evidence-building activities.

## **Background**

Access to high quality, effective course materials is an essential component of the learning process. Yet, particularly at the postsecondary level, the cost of course materials stands in the way of equitable access and student success. The cost of college textbooks is a significant but often overlooked barrier to achieving equity in higher education. Over the last two decades, the cost of textbooks has risen 151%, far outpacing inflation.<sup>1</sup> Recent studies say that the majority of students have skipped buying one or more of their required textbooks due to cost, risking harm to their grades.<sup>2</sup> The COVID-19 pandemic has exacerbated these challenges for many students, especially those facing food insecurity or limited internet access.<sup>3</sup>

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<sup>1</sup> <https://www.aei.org/carpe-diem/chart-of-the-day-or-century-5/>

<sup>2</sup> <https://dlss.flvc.org/colleges-and-universities/research/textbooks>

<sup>3</sup> <https://studentpirgs.org/2021/02/24/fixing-the-broken-textbook-market-third-edition/>

Efforts to increase affordability and equity in higher education too often overlook the impact of course materials costs on student access and success. While it is not the largest expense most students face, it has a disproportionate financial impact. Unlike the cost of tuition, textbook costs vary by course and are thus difficult to predict from semester to semester. If the cost of a textbook is the last financial straw for a student, lack of access to course materials can diminish the entire value of an education by causing them to do poorly in a course or seek an alternative field of study. Moreover, 30 percent of students said they had used financial aid to pay for textbooks, which could work out to \$1.5 billion per semester.<sup>4</sup>

The postsecondary course materials market is currently split between two models. First, there is the burgeoning field of Open Educational Resources (OER), which are free, openly licensed materials available for use by institutions and students. Second, there is the traditional textbook market dominated by legacy firms and rife with high costs. SPARC has divided our comments to address these two areas separately.

### **Open Educational Resources**

Open Educational Resources (OER) are course materials—from supplemental content to entire textbooks—that are free for people everywhere to use and repurpose under an open copyright license. Created at educational institutions across the globe, OER can be freely and legally downloaded from a variety of online databases, content libraries and established sources. OER offer faculty more flexibility than traditional textbooks, including opportunities to make courses more culturally relevant to the students they serve.

The use of OER has already saved students more than a billion dollars.<sup>5</sup> According to national surveys, 15% of faculty report using OER as a required material in at least one course, and more than half of faculty are aware of OER as a course material option.<sup>6</sup> A meta-analysis of withdrawal rates of 78,593 students across 11 studies found that courses with open textbooks had withdrawal rates that were 29% lower than courses with commercial textbooks.<sup>7</sup> A national OER Degree initiative organized by Achieving the Dream supported the redesign of more than 600 courses to use OER, and the project's final report

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<sup>4</sup> <https://uspig.org/reports/usp/covering-cost>

<sup>5</sup> <https://openstax.org/press/openstax-surpasses-1-billion-textbook-savings-wide-ranging-impact-teaching-learning-and-student-success>

<sup>6</sup> <https://www.bayviewanalytics.com/reports/digitaltextsintimeofcovid.pdf>

<sup>7</sup> <https://journals.sagepub.com/doi/full/10.1177/2332858419872212>

found that students who took multiple OER courses on average earned more college credits over time than otherwise similar students who took no OER courses.<sup>8</sup>

OER has been leveraged at the state, system, and institutional level as a strategy to increase access to course materials, reduce costs to students, and make educational experiences more equitable for all. For example, North Dakota invested \$110,000 in an OER program in 2015, and a study by the State Auditor in 2018 found that the program had saved students ten to twenty times the amount invested by the legislature.<sup>9</sup> Several other states have invested funding in programs to support OER, including \$8 million in annual funding from New York,<sup>10</sup> and California's recent \$115 million investment in the development of Zero Textbook Cost (ZTC) degree and certificate pathways at the state's community colleges.<sup>11</sup>

The Department's own Open Textbook Pilot grant program has awarded 15 grants to projects at institutions of higher education that create or expand the use of open textbooks to achieve savings for students. Funded by Congress annually since Fiscal Year 2018, the funded projects offer numerous examples of how OER can advance the Department's Learning Agenda. For example, the Department awarded approximately \$2 million to a project led by West Hills College Lemoore to develop OER to support culturally relevant teaching at Hispanic Serving Institutions in California's community college system.

The Department also supports the development of OER through its open licensing requirement for competitive grant programs (34 CFR § 3474.20). Adopted in 2016, this rule requires that recipients of competitive grants apply an open license and have a plan to publicly disseminate educational resources and other works created with grant funds, with some exceptions. This policy has ensured a wide variety of high quality grant deliverables are available to the public whose taxpayer dollars were used to create them, although more can be done to promote the discoverability and usability of these resources.

Overall, there is significant potential for OER to benefit the Department's Learning Agenda, and SPARC offers the following specific recommendations.

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<sup>8</sup> [https://www.achievetheiream.org/sites/default/files/initiatives/oer\\_degree\\_initiative\\_final\\_report.pdf](https://www.achievetheiream.org/sites/default/files/initiatives/oer_degree_initiative_final_report.pdf)

<sup>9</sup> <https://www.nd.gov/auditor/2018-north-dakota-university-system-open-educational-resources>

<sup>10</sup> <https://www.governor.ny.gov/news/governor-cuomo-announces-8-million-open-educational-resources-initiative-suny-and-cuny-cut-high>

<sup>11</sup> <https://marketbrief.edweek.org/marketplace-k-12/new-california-law-pours-money-open-educational-resources/>

Area 2. Promoting equity in student access to educational resources, opportunities, and welcoming, safe, and inclusive environments

(1) Questions about which evidence should be built:

- How can OER be leveraged to promote equity in student access to educational resources at all levels of education?
- How can OER be leveraged to improve access to educational resources and opportunities for students with disabilities?
- How can OER be leveraged to support culturally relevant teaching?
- How can OER be leveraged to support Minority Serving Institutions and their students?
- How have the projects funded by the Department's Open Textbook Pilot grant program contributed to this area of the Learning Agenda, and what best practices can other institutions learn from?
- How can the openly licensed grant deliverables under the Department's open licensing requirement for competitive grant programs (2 CFR § 3474.20) contribute to this area of the Learning Agenda, and what might the Department do to increase their discoverability and impact?

(2) Evidence building activities:

- Ensure that the Department's postsecondary surveys and programs, including those offered through the National Center for Education Statistics (NCES), collect data about OER and course material access, cost, and use.
- Conduct a comprehensive review and analysis of OER programs and policies in higher education—including institutions, systems, and states—and how OER programs and policies contribute to improving equity in access to educational resources.
- Conduct a comprehensive review and analysis of student use of open educational resources in higher education, including an assessment of the impact on learning outcomes across student characteristics such as race, gender, Pell eligibility, disability, and parental education level.
- Support research that evaluates the impact of OER and culturally responsive teaching on student learning outcomes.
- Conduct an evaluation of the projects funded under the Open Textbook Pilot grant program to measure the impact of these programs on equitable access to educational resources.

- Conduct a comprehensive review of grant deliverables openly licensed under 2 CFR § 3474.20 and their use.

Area 4. Increasing postsecondary education access, affordability, completion, and post-enrollment success.

(1) Questions about which evidence should be built:

- How can OER be leveraged to increase postsecondary education access, affordability, completion, and post-enrollment success?
- How many institutions have implemented OER programs or policies, and what is the nature of these programs and policies?
- How do the student outcomes of programs that offer a Zero Textbook Cost degree or certificate pathway compare to those that do not include a Zero Textbook Cost degree or certificate pathway?
- How do student outcomes of courses that use OER compare to student outcomes in courses that do not use OER?
- What is the average cost of course materials to students?
- How might OER impact economic growth and post-pandemic recovery when used to reduce cost and increase access for students enrolled in career and technical education programs?
- How have the projects funded by the Department's Open Textbook Pilot grant program contributed to this area of the Learning Agenda, and what best practices can other institutions learn from?
- How can the openly licensed grant deliverables under the Department's open licensing requirement for competitive grant programs (2 CFR § 3474.20) contribute to this area of the Learning Agenda, and what might the Department do to increase their discoverability and impact?

(2) Evidence building activities:

- Conduct a comprehensive review and analysis of OER programs and policies in higher education—including institutions, systems, and states—and how OER programs and policies contribute to improving equity in access to educational resources.
- Conduct a comprehensive review and analysis of student use of educational resources in higher education.

- Ensure that the Department’s postsecondary surveys and programs, including those offered through the National Center for Education Statistics (NCES), collect data about OER and course material access, cost, and use.
- Collect salary data for students who have completed career and technical education programs in high-need areas (as defined by the Department of Labor) which use OER materials.
- Conduct an evaluation of the projects funded under the Open Textbook Pilot grant program to measure the impact of these programs on equitable access to educational resources.
- Conduct a comprehensive review of grant deliverables openly licensed under 2 CFR § 3474.20 and their use.

### **Traditional Textbook Market**

In contrast to the Open Educational Resources (OER) field, the traditional textbook market has continued to present challenges for students, faculty, and institutions. Dominated by three major firms for the last four decades, the college textbook market is known for skyrocketing prices, tactics to undermine the cheaper used book market, and, more recently, shifting to subscription-based digital materials. Often referred to as “access codes,” these materials are single-use accounts that students activate at the beginning of the course and typically expire by the end.<sup>12</sup> Courseware activated by access codes may include e-textbooks, but also includes homework software that students must purchase in order to complete assignments that are part of their grade.

The industry’s strategy shifted substantially in 2015 following the Department’s revisions to its Cash Management rules. Specifically, the Department changed longstanding regulations that required institutions to obtain consent from students or parents before automatically billing the cost of books and supplies through tuition and fees. However, under 34 CFR § 668.164(c)(2), institutions were given permission to charge books and supplies costs to tuition and fees without consent, provided that, among other provisions, the institution has an “arrangement with a book publisher or other entity” to offer materials at “below competitive market rates” and establishes a policy under which students may opt out.

This regulatory change opened the door to the model known as “inclusive access.” Inclusive access, also known as automatic textbook billing, is a textbook sales model that includes the cost of course content in a student’s tuition and fees. Some studies estimate that as

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<sup>12</sup> <https://studentpirgs.org/2016/09/21/access-denied/>.

many as one in three students have now been impacted by this model, but less than three out of five students were satisfied with it.<sup>13</sup> The three largest publishers and two major bookstore chains recently faced a class action lawsuit from students and independent booksellers for alleged antitrust activity pertaining to inclusive access.<sup>14</sup> A report by U.S. PIRG analyzed inclusive access contracts and found numerous problematic provisions, including quotas designed to penalize institutions if too many students opt out, hidden pricing structures, and the lack of any caps on future price increases.<sup>15</sup>

The rapid shift to online teaching and learning during the pandemic has only accelerated the transition to inclusive access and other digital materials. It has also become increasingly clear that digital course materials are not just about the subscription fee students pay, but they are also a tool for gathering and processing data on students. This data can be fed into algorithms that can analyze and make assumptions about students. While some of these uses could be construed as helpful, the same data can also be used in ways that are harmful—from mischaracterizing an individual's abilities to potential data breaches.<sup>16</sup>

The equity implications of the use of algorithms are documented widely, including the inherent biases that disproportionately harm people of color, people from lower socioeconomic statuses, people with disabilities, neuroatypical people, and more.<sup>17</sup> The use of online exam proctoring tools such as Proctorio take these problems to the next level by subjecting students to surveillance. The use of these tools skyrocketed during the pandemic, and higher education is only beginning to reckon with the harms they cause to student privacy, mental health, and academic success.<sup>18</sup> Moreover, these tools are increasingly becoming integrated with digital course materials, such as the partnership with the nation's second largest textbook publisher, McGraw-Hill, and Proctorio.<sup>19</sup>

Overall, the traditional textbook industry's trajectory poses significant challenges for several parts of the Department's Learning Agenda. SPARC strongly recommends that the Department undertake evidence building activities to understand both the impact of its regulatory changes to 34 CFR § 668.164 and the industry at large.

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<sup>13</sup> <https://www.nacs.org/nacs-student-watch-report-use-of-digital-course-materials-is-up>

<sup>14</sup> <https://www.edsurge.com/news/2021-06-17-with-textbook-lawsuit-dismissed-platinum-equity-inks-4-5b-deal-to-buy-mcgraw-hill>

<sup>15</sup> <https://uspig.org/feature/usp/automatic-textbook-billing>

<sup>16</sup> <https://www.wsj.com/articles/pearson-hack-exposed-details-on-thousands-of-u-s-students-11564619001>

<sup>17</sup> <https://nyupress.org/9781479837243/algorithms-of-oppression/>

<sup>18</sup> <https://sparcopen.org/news/2021/higher-education-reckons-with-concerns-over-online-proctoring-and-harm-to-students/>

<sup>19</sup> <https://www.mheducation.com/highered/connect/proctorio.html>

## Area 2. Promoting equity in student access to educational resources, opportunities, and welcoming, safe, and inclusive environments

### (1) Questions about which evidence should be built:

- Does including textbook costs in tuition and fees under 34 CFR § 668.164 impact equity in student access to educational resources?
- What percentage of students exercise each institution's opt out policy established under 34 CFR § 668.164, and are there any significant differences across student demographics and income bands?
- How does the use of algorithms in online homework software and other digital course materials harm equity in student access to educational opportunities?
- How does the use of remote proctoring harm equity in student access to welcoming, safe, and inclusive learning environments?
- Do students have accurate and transparent information about the cost of textbooks for the institutions, programs and courses in which they may potentially enroll?

### (2) Evidence building activities:

- Conduct a comprehensive national study on institutions that include books and supplies in the cost of tuition and fees and the extent to which the opt out policies required under 34 CFR § 668.164 have a disproportionately negative impact on underserved students.
- Conduct a literature review of research on algorithmic bias and its impact on student learning outcomes.
- Conduct a literature review of research on the impact of digital surveillance and online proctoring on student learning outcomes, mental health, and equity.

## Area 4. Increasing postsecondary education access, affordability, completion, and post-enrollment success.

### (1) Questions about which evidence should be built:

- What is the projected impact on the cost of tuition, fees, and federal financial aid over the next ten years if most or all institutions include the cost of books and supplies in tuition and fees under 34 CFR § 668.164?
- What methodology are institutions using to ensure that materials are offered to students at "below competitive market rates" under 34 CFR § 668.164(c)(2), and how much below market rates are the materials being offered?
- To what extent are institutions marking up the price of books and supplies automatically charged to students under 34 CFR § 668.164(c)(2)?



- What percent of students exercise their right to opt out of being automatically charged for books and supplies under 34 CFR § 668.164, and what factors correlate with higher and lower opt out rates?
- To what extent are students who opt out of being automatically charged for books and supplies under 34 CFR § 668.164(c)(2) able to obtain their materials from other sources?
- To what extent are students informed of the price they are automatically charged for books and supplies under 34 CFR § 668.164 in the online course schedule as required under 20 U.S. Code § 1015b(d)?
- How does the use of online homework software that is required in order to earn a portion of the course grade impact student access, affordability, and completion?

(2) Evidence building activities:

- Conduct a comprehensive national study on institutions that include books and supplies in the cost of tuition and fees, including an analysis of whether the prices charged to students are lower than used books and other options.
- Revise the relevant Integrated Postsecondary Education Data System (IPEDS) surveys to ensure that they capture the true cost of books and supplies that may be automatically billed to tuition and fees.
- Conduct an economic analysis of the projected impact of including books and supplies in tuition on the overall cost of tuition and fees, and federal financial aid programs.

Area 6. Improving Federal student aid programs.

(1) Questions about which evidence should be built:

- What is the projected impact on the cost of tuition, fees, and federal financial aid over the next ten years if most or all institutions include the cost of books and supplies in tuition and fees under 34 CFR § 668.164?

(2) Evidence building activities:

- Conduct an economic analysis of the projected impact that shifting the cost of books and supplies into tuition and fees will have on the ability of the Pell Grant and other student financial aid programs to cover the cost of attendance at postsecondary institutions

## **Conclusion**

SPARC would like to reiterate our thanks for the opportunity to comment on the Institute of Education Sciences' Request for Information relating to the Department's 2022-2026 Learning Agenda. Please do not hesitate to contact us if we can provide further information on any of the background information, research questions, or evidence-building activities contained in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicole Starr Allen".

Nicole Starr Allen  
Director of Open Education

A handwritten signature in black ink, appearing to read "Kaitlin M. Steen".

Kaitlin (Katie) Steen  
Manager of Public Policy & Advocacy