HB 4058 Textbook Affordability Report to the Oregon Legislature

Executive Summary

Submitted by the Higher Education Coordinating Commission (HECC) Textbook Affordability Work Group

November 1, 2012



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Executive Summary

Introduction

The Higher Education Coordinating Commission (HECC) was charged in HB 4058 to, "[convene] a workgroup to examine and recommend adoption of strategies for making textbooks more affordable for student's at all post-secondary institutions in this state." The group was charged with:

- Analyzing the successes and shortcomings of ORS 337.500 to 337.506, which address bundling of instructional materials;
- Assessing the effect of Section 112 of the federal Higher Education Opportunity Act of 2008 (HEOA)[1] regarding textbook bundling and price disclosure for textbooks and;
- Examining lists of policy changes that have the potential of reducing textbook prices in Oregon.

The Textbook Affordability Work Group was convened on July 12, 2012 and held three public meetings on August 23, September 13, and October 4, 2012. Participation was solicited from students, faculty, book store managers, and publishers associated with Oregon's public, private non-profit, and private for-profit institutions of higher education.

In addition to this testimony, the work group conducted research on similar initiatives in other states. Summaries of this research can be found in the main report.

Early in the process, it became clear that if the work group conceived of the charge with a narrow definition of textbooks, either in print form or electronically, it would not be able to address some fundamental cost drivers and make real changes in the costs students face. Our report would be very similar to those produced by the other states where instead of addressing fundamental change, cost reduction strategies were frequently "encouraged" and information was, "made available."

To this end, the work group has interpreted the HECC charge to be a broader examination of the costs of instructional materials, which includes a wide variety of print and digital materials as well as instructional services, e.g., textbooks, exam banks, course management systems, computer mediated tutorials, and lecture slides.

Theoretical Framework

The procurement and provision of instructional materials is enmeshed in a web of misaligned incentives. Decisions made by one party, for example the instructor's choice of a textbook, are frequently paid for by another party, in this case the student. In this example, the instructor making the decisions can improve his or her own outcomes by:

- Choosing a better text, which improves course outcomes, but not perhaps by enough to warrant

[1] Section 112 of HEOA 2008 is an amendment to Part C of Title I (20 U.S.C.1015) by creating and adding section 133 to the existing part of 20 U.S.C 1015.

the additional cost;

- Choosing a text with a better exam bank, which saves faculty time but at a higher cost to students;
- Choosing a text with a well developed course management system, which saves grading time, but typically comes at a higher cost to students; or
- Choosing a text with well constructed lecture materials, which saves preparation time but again typically comes with a higher cost to students.

Faculty are observed to make changes in instructional materials and delivery based upon changes in school-provided resources, e.g., the number of teaching assistants or the course management system, and changes in class size. In each case, students have the final responsibility for payment when others change resource allocations.

Misaligned decisions as a result of incentives such as these are common in other facets of higher education. For example, universities and community colleges hire contingent faculty (adjuncts) because they are less expensive and provide greater flexibility, but the price of that flexibility is partially reflected in the costs of learning materials for students. Labor flexibility for departments often results in higher costs for students.

What follows is an outline of the work group's responses to specific areas of investigation mandated by HB 4058.

Directed Topics

HEOA 2008

The Higher Education Opportunity Act of 2008 included provisions for "enhancing transparency and disclosure with respect to the selection, purchase, sale, and use of course materials." These provisions include timely publication of all titles and ISBNs of required course materials so that students may make informed decisions about how and where they purchase these materials.

An informal study of OUS and Community College institutions and their bookstores indicates that timely submission of textbook orders (which enables compliance with HEOA Sec.112 provisions) is uneven across institutions and departments due to a number of factors. These include:

- A lack of uniform textbook adoption policies;
- Last-minute faculty hiring and;
- Few if any means of ensuring faculty compliance with the law.

According to the bookstore managers who were consulted as part of this work group's research, late ordering on the part of faculty is a primary driver of cost increases. When the required materials are ordered mere days before the start of the term, ISBNs cannot be published on the bookstore's website or other publicly available forum in time for students to search for lower cost options. In public testimony, students clearly expressed that they cannot avail themselves of the existing used and lower-cost textbook markets without sufficient lead time to research those options.

Recommendation: The work group proposes a sample policy to increase HEOA compliance (see "A Proposed Policy Mechanism" on page 9).

The work group further recommends this or a similar mechanism be adopted as policy by the State Board of Higher Education, and recommends adoption by community colleges through the Oregon Community College Association (OCCA), which provides advisory services to Community College Boards.

Bundling

HEOA 2008, section 112 provides that any publisher who offers textbook "bundles" (two or more instructional materials sold as a single unit) must also offer these same materials separately.

ORS 337.506 makes the same provision regarding textbook bundles as HEOA 2008. ORS 337.506 further provides that any publisher of textbooks must also disclose the availability of textbook items for separate purchase, as well as in bundles.

Bundling, where items packaged together are priced lower than the sum of their individual prices , is a common marketing technique for instructional materials and other goods with low marginal costs of production relative to price. Software is a common example.

It is most effective for sellers when purchasers have diverse opinions about the value of the bundled materials. In the context of learning materials this means that it is effective if, for example, some of the students value textbooks very highly and others value workbooks more highly.

While the practice is widespread, the work group was unable to find a policy lever to address the practice in the textbook market. There are extremely remote possibilities that the practice is a violation of Sherman Antitrust Act Section 1 or Clayton Antitrust Act Section 3, but such a determination is beyond the capabilities of this work group.

Cost Reduction Techniques

HB 4058 mandates the examination of a number of different cost-reduction techniques. The work group researched and solicited testimony on all of these, and our findings are summarized below:

(A) Statewide bulk purchasing of textbooks –
Recommendation: No Action

According to a number of bookstore managers, statewide purchasing would add an unnecessary layer of bureaucracy and delay. They regularly report processing hundreds of new textbook adoptions in the weeks before classes start because of late faculty hiring and non-compliance with provisions of the HEOA, as outlined above. In addition, the Robinson-Patman Act prohibits the extension of discounts to state institutions and their affiliated bookstores.

(B) Statewide used book exchanges –
Recommendation: No Action

Secondary markets for used and new books already exist on a national scale (e.g., Amazon, Craigslist, Half.com) and continue to be robust alternatives that are already used by students—when students have ample time to research the availability of required materials. In addition, many bookstores host book exchanges on their websites free of charge to students.

(C) Use of lower cost instructional materials, such as open source textbooks and other open source materials –
Recommendation: State Board of Higher Education, State Board of Education, or Legislative action.

The work group saw examples and heard testimony on the increasing availability of Open Educational Resources (OER). The basic idea of OER is that faculty authors and other experts either create new content, or collect and add value to existing content, and publish on the web or other internet platform. OER materials exist under more granular licensing models that allow for easier sharing and use of materials.

The work group explored a number of Open Educational Resource models, and we make detailed recommendations below.

(D) Promotion of instructor-created open source textbooks by Oregon faculty or teams of Oregon faculty –
Recommendation: State Board of Higher Education action.

Along with the alternatives examined under section (C) above, we discuss this possibility under "Proposals for Further Study," including promotion of faculty-authored textbooks where the author maintains a traditional relationship with respect to copyright.

(E) Use of statewide licenses for textbooks –
Recommendation: Further Study

Statewide licensing for online texts and other materials from publishers could be an efficient way to lower the cost of access to required materials for many students. However, any licensing initiative could not require that faculty use any licensed material, so that faculty retain academic choice and freedom. Licensing with publishers to obtain access to not just one text, but the texts in an entire discipline or all publications by a publisher, has the potential to reduce costs for some students.

(F) Use of shared online materials; and (G) Creation of a statewide central repository allowing instructors to locate and use free or low-cost materials –
Recommendation: Both of these areas are discussed below as pertaining to (C), (D), and (E).

(H) Use of textbook rentals –

Recommendation: No Additional Action

In addition to the for-profit rental services (e.g., Chegg and Amazon),all OUS campus bookstores have rental programs. Renting can be cost effective for use of many types of instructional materials—generally materials from lower division courses where the texts are not kept as reference. Rental services must be combined with other initiatives to be effective in reducing costs to all students.

(I) Facilitation of peer-to-peer textbook sales –
Recommendation: No Action

As stated in (B) above, there are robust secondary markets for textbooks. There is a small niche for custom textbooks that are specific to schools or instructors, but experience has shown that these thin markets are difficult to maintain without a market maker willing to buy and sell texts at posted prices and absorb all inventory costs and risks.

(J) Use of print on demand services for book publishing –
Recommendation: No Action

Print on Demand (POD) services exist at Portland State University and other institutions. POD has high startup costs and may not reduce costs to students. Publishers maintain the power to set prices and, absent a long-term commitment to drastically lower prices, POD texts are frequently priced the same as traditionally printed books.

This is a classic "holdup problem." One party, in this case the publisher, is able to capture most of the cost reduction benefits of another party's investment, in this case the bookstore, after the other party commits to the investment.

Creative Commons licensed or public domain texts may be less expensive using POD services, but such texts must constitute a much larger fraction of the material for POD to be cost effective for students. The ability of publishers to alter licensing fees after the bookstores have invested in POD services is what eliminates potential cost savings.

(K) Partnering with other state, regional and national organizations in adopting textbook cost-savings strategies;
Recommendation: Further Study

This has not been explored in detail, but the work group recommends it for further study.

Partnering on Other Open Source Initiatives

There are a multitude of open source textbook initiatives, some government funded, some not. These initiatives are distinguished from others in that they are open to participation and funding by outside groups.

Very recently, California passed SB 1052, which established an open education resource council that is responsible for funding and supervising the creation of fifty textbooks under one of the Creative Commons licenses. The companion legislation, SB 1053 creates—but does not fund—a digital open source library of Creative Commons licensed course materials. It is intended that the educational resources created under SB 1052 will be housed in the library created under SB 1053.

This initiative and others like it represents an opportunity to learn from and leverage others' efforts to procure open source instructional materials. In this example, The California Digital Open Source Library is encouraged to seek private funds. This specific case may require a memorandum of understanding (MOU) between an Oregon agency or commission (possibly the HECC) and the Regents of the UC System because, as of the drafting of this report, it is unclear if even the non-profit institutions in California will have access.

Access to this library, and others like it, combines many of the methods suggested during public meetings of providing lower cost instructional materials.

A Proposed Policy Mechanism for Ensuring Greater HEOA Compliance

While late textbook orders may seem inconsequential to the cost of textbooks— they are a significant cost-driver. Textbook prices, particularly used textbook prices, vary from day-to-day and are seasonal, with price spikes at common times for semester and quarter schedule schools. Buying at these peak periods, even without rush shipping charges, can result in a 30% increase in retail textbook price.

It is the considered opinion of this workgroup that there are insufficient incentives for faculty and their academic units to submit textbook orders in a timely fashion. As noted above, timely textbook orders allow full HEOA compliance, thus "decreasing costs to students and enhancing transparency and disclosure" of the price of instructional materials.

A 2010 report found OUS institutional compliance with HEOA Section 112 "to the maximum extent practicable."[2] In the interval since that report was published, campus bookstores and other policy advocates have continued to study this issue and propose new solutions. While full academic unit-level compliance with HEOA provisions may not be achievable, this work group has concluded that more can be done now that the work group has access to several years' worth of information regarding compliance.

The current policy of institutional responsibility is ineffective. Consultation with faculty representatives showed that mandatory faculty level responsibility would also engender resistance.

Recommendation: The work group recommends that a policy similar to the one below be adopted by the State Board of Higher Education and that communication be made with the Oregon Community College Association and other Community College leadership groups to encourage adoption by member boards. Additional communication with The Oregon Alliance of Independent

[2] Appendix __ to this report.

Colleges and Universities should be made to encourage adoption of similar policies in the private college sector.

The sample policy is intended to create a set of default textbook adoptions at the lowest level possible—the academic unit larger than an individual faculty member—to account for the major causes of non-compliance with the HEOA textbook provisions.

> *The smallest academic unit larger than an individual faculty member shall designate a committee responsible for timely adoption and publication of course materials. Rules shall be established for publication of the course material information, including publication of default course materials, by the due date when:*
>
> - *The assigned faculty member has failed to make an adoption for a new course by the established deadline;*
> - *The assigned faculty member has failed to make an adoption for a course previously taught and;*
> - *When a faculty member has not been assigned to the course.*

Clearly, there are many policies that will produce similar results; this is merely a sample which may be applied.

The legislature may also consider a change to ORS 348.205, which covers the operation of the Oregon Opportunity Grant Program, to require reporting of adherence rates for all institutions and subunits from all institutions with students receiving grants under that program.

This is not intended to be a new requirement but a mechanism that will promote compliance with existing law by extending what is practicable.

Incentives and Mechanisms to Encourage Faculty to Reduce Costs

Recommendation: The work group recommends adding incentives for cost reductions.

Given the misaligned incentives around adoption decisions of instructional materials, the strong possibility that faculty are incompletely informed about all the instructional materials, and the belief that the cost of instructional materials is not always indicative of quality, the work group recommends adding incentives for cost reductions. This can take several forms and take place at several levels—including the State Board of Higher Education, State Board of Education, Legislature, and possibly Oregon Education Investment Board (OEIB).

Institutions should assess the total instructional materials cost to students, per course and per sequence, as determined by the materials submitted under the HEOA requirement. A small grant should be made available to faculty members if they are willing to reduce the per student cost by a minimum of 25% for six academic terms or four semesters, by making changes in their instructional materials including:

- Use of alternate textbooks and instructional materials, e.g., lower cost texts, Creative Commons licensed books and online resources;
- Making judicious use of the Fair Use exemption under US copyright law;
- Making fuller use of institutionally licensed online resources like JSTOR;
- Using the university-provided, rather than publisher-provided, Course Management System;
- Committing to multi-year custom textbook agreements with publishers;

- Other methods to be determined.

The grant should provide the faculty member with a consultant who can guide the faculty member to lower costs materials, and help to facilitate their use. The cost of the consultant and grant should not exceed the expected aggregate cost savings to students.

Similar systems are already in place at some of Oregon's private non-profit institutions. Funding and implementation of this may take place though several channels. First, the legislature may enact this as a grant administered by the HECC and available to all institutions in the state.

Second, the HECC can make textbook costs one of its key metrics to monitor.

Third, the State Board of Higher Education, Department of Education and Community College Boards may consider grant programs like these to make more efficient use of student aid allocations.

Recommendations for Further Study

Recommendation: The work group recommends reauthorizing the work for one additional year.

Given the short time frame for this initial report, we recommend re-authorizing the work group for one additional year. Our research into the work completed in other states on textbook cost reductions showed that those groups had a least a year to develop recommendations. While we have been able to produce actionable recommendations to the legislature, State Board of Higher Education, State Board of Education and the Oregon Educational Investment Board, there are many other potential legislative and policy recommendations that warrant investigation.

The list below represents some of the more promising options that would require greater resources and time than the work group had available. It does not represent all the options that we considered.

1. Altering the tuition and fee formula at OUS schools so that fees include the instructional materials for the course. This is similar to the system use in the Western Governors University and would require changes in fee setting rules within institutions and legislative limits on those fees. A cost sharing rule could realign incentives.
2. Creation of Open Educational Resource web archive or wiki (created and vetted by Oregon faculty) for the largest enrollment courses might increase faculty awareness of the rich array of low-cost or free high-quality instructional materials available.
3. Creation of the a cost of instructional material index for each institution using the HEOA required data and standard methodology for weighting and combining costs by a weighted geometric mean. This would replace the misused expenditure surveys that are frequently used.
4. Review and strengthening of existing textbook affordability policies created by OUS and the Board of Higher Education. Similar to HEOA, these policies may not have strong enough enforcement mechanisms.
5. A cost-benefit analysis of the use of library reserves of required texts. There are several pilot

programs and data on the cost effectiveness of these programs can only be made after an initial trial period.

6. Explore cost savings from promoting the production of instructional materials, not just textbooks, with both creative commons and traditional copyright and licensing rights. Faculty are often faced with high costs to create these materials, support, in the form of course releases for example, compensated by non-cost licensing to Oregon institutions could result in higher quality, lower cost instructional materials.
7. Use of statewide licenses, not for individual textbooks, but for full access to a publisher's library. This is essentially taking the Netflix model of movie rental and applying it to books. Such licensing arrangements are currently offered by major college textbook publishers.