



AUTOMATIC TEXTBOOKS BILLING

an offer students can't refuse?

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I EXECUTIVE SUMMARY

ATTENDING COLLEGE IN AMERICA is one of the largest expenses someone will ever have in their lifetime.

For more than 30 years, textbook publishers have added to that financial burden by using their power in the market to drive up textbook costs through a variety of tactics. Three companies – Pearson, Cengage, and McGraw-Hill – control 80 percent of the college textbook market.¹ These publishers have historically driven up prices by issuing new editions with limited changes and taking advantage of a captive market of students who cannot choose an alternative to the assigned textbook. The result is clear: the rapidly increasing cost of textbooks has students now spending over \$3 billion of financial aid dollars each year on course materials.²

In the internet age, students have found new ways to work around high textbook costs. The past decade has seen the creation of a thriving online marketplace that facilitates trading, renting, and selling of books. And, a growing movement of openly licensed textbooks that are free or can be printed at low cost are creating real competition for traditional publishers – and saving students hundreds of millions.³

Requiring students to purchase access codes for a proprietary publisher platform to submit homework or other course materials is crucial for publishers to stay relevant in

this shifting marketplace. These codes lock students into high cost textbooks without significantly increasing educational value. Instead, students continue to struggle to afford critical educational material and often lose access to the materials at a later date. This is a continuation of the broken textbook market, not a radical solution. Rather than making changes that are more consumer-friendly, access codes are a last-ditch attempt from the publishing industry to maintain – and even strengthen – their monopoly.

To increase use of access codes, publishers have sought out partnerships with institutions to steer faculty into these products and automatically bill students for these materials. Various names specific to the publisher, contracts between publishers and institutions set in place the conditions and discounts under which students are automatically charged on their tuition bill via an opt-out charge for each assigned class material.

Under federal law, these materials must be sold to students below market price if they are to be automatically billed, and students must be able to opt out of such charges.⁴ However, are these programs worth the trade-offs on transparency and choice to students, faculty, and institutions? Are discounts significant? Do they last? Do students have real decision making power in opting out? What other conditions exist?

U.S. PIRG Education Fund undertook a first of its kind review of automatic billing contracts across the country at public institutions big and small to help answer these questions, shed light on these programs, create a framework for evaluating such programs and recommend alternatives. The review covered 52 contracts between 31 colleges that represent a cross-section of the nation's higher education institutions, and affect more than 700,000 undergraduate students. **The review found five major problems:**

Nearly half

of automatic billing contracts

we reviewed fail to fully disclose their discount structure. Students and faculty will struggle to tell how significant a discount they are getting. When contracts disclosed the discount, it was undercut by the use of a national automatic billing book list that could be hard for members of the campus community to access.

42%

of institutions

signed at least one contract that put limitations on publicity around these partnerships, which could potentially allow the publisher to veto any campus marketing materials that would inform students and faculty about program value or how to opt-out.

One fifth

of automatic billing contracts

limited the number of students who could purchase print versions of their materials, typically capped at 15 percent of the course.

33%

of publisher contracts

had the potential for annual uncapped price increases, and 21 percent had the potential for twice-annual price increases. Only one institution in our study capped price increases.

68%

of publisher contracts

include a clause where the discount would be eliminated, reduced, or the contract cancelled for a missed quota of students enrolled in the automatic billing program, which could be as high as 90 percent of the course.

In addition to reviewing legal contracts signed by the institution and the course materials provider, we analyze how implementation of automatic billing programs failed to provide students or faculty a chance for input, prevented students from opting out, or otherwise impacted such efforts.

The solution is simple: rather than using automatic billing in college classrooms, colleges should switch to options that preserve faculty and institutional control, and enhance student choice. We urge campus leaders to say no to automatic billing proposals on their campus, and if one is already in place, fight for these changes to improve student and faculty choice:

- 1. Have a clearly marked pricing structure publically available** that shows the original price of the assigned material, the discount off the national list price, and multiple format options.
- 2. Reject attempts to restrict marketing materials** that can be issued by the institution to educate students on their course materials purchasing options.
- 3. Eliminate quotas.** The discounts alone ought to be enough to get students to participate at a high enough level to make the program worthwhile.
- 4. Cap annual price increases** to no more than the rate of inflation, which is currently at 2.3 percent annually.⁵
- 5. End any restrictions** on the number of students who can obtain print copies.
- 6. Have the billing mechanism be opt-in,** and listed as one of many methods of payment alongside credit cards, cash, etc. that students can use at the bookstore. There is nothing wrong with institutions seeking to negotiate bulk discounts for students, but students should be able to choose whether to take advantage of it and how they pay.

We lay out further recommendations and next steps for various stakeholders to engage on the issue of automatic billing, and provide appendices with guiding questions and examples to support their efforts.



A Broken Market Drives Up Textbook Prices

THE COST OF COLLEGE TEXTBOOKS is one of the biggest out-of-pocket expenses that students will face in the pursuit of an already expensive college degree. Many institutions recommend that incoming students budget well over a thousand dollars per year for books and supplies,⁶ contributing to nearly \$3 billion of federal financial aid spent on textbooks annually.⁷ There is little end in sight: course material costs have risen three times faster than inflation over the past two decades.⁸ While in recent years that trend seems to have plateaued, students aren't seeing much actual relief because publishers are introducing new products under the guise of lowered costs, but which actually reduce student choice and freedom in the market.

The move of the major publishers from content creators to software developers has accelerated in recent years. To understand the new face of the broken textbook market, let's review historic trends.

The textbook market is an unusual one, where the usual rules of supply and demand don't

apply. In a normal market, if the consumer thinks that a product is not of sufficient quality or the price is too high, they can shop elsewhere. Not so with textbooks, where the instructor has chosen a specific title that students must purchase or potentially impact their grades. In this captive market, students

ALTERNATIVES TO BUYING NEW TEXTBOOKS

Used books: formally and informally, students have been selling their physical copies of books to other students. Bookstores and online third party sites will buy books back from students at the end of term, and resell to students at the start of the next term. Facebook groups and student government-sponsored exchanges have replaced the more informal bulletin board for-sale signs of the pre-internet era.

Rental books: rather than purchasing a book, students may opt to merely purchase short term access to it for the term. Bookstores and online third party sites offer physical rentals, and most e-textbooks can be considered digital rentals.

Borrowing: under "course reserves" programs, librarians will purchase or faculty will donate copies of the assigned textbook for short-term checkout at the libraries. Students also develop their own informal sharing networks, by partnering with a classmate to buy a book or borrowing it for an hour to do readings.

TEXTBOOK:

A print version of a book or textbook required for class, may be hardback or softback. Includes new, used, rented, digital (often called an "ebook"), and/or borrowed materials. May or may not include an accompanying access code. Pearson has recently announced that they will prioritize digital materials that can be updated immediately without putting out an entire new print edition.⁹

are dictated prices by publishers, and the product by their professor.

To prevent students from turning to the used market for books, publishers have used new editions of textbooks to keep students tied into buying the latest edition. While it is necessary from time to time to publish a new edition of a book when significant new information is uncovered, many revisions are unnecessary. For example, a new textbook may only have cosmetic changes, but if students don't know the extent of the revisions they may be dissuaded from buying a used copy.¹⁰ Or, a custom edition may not actually be different from the base text it was adapted from, but because it is only in use for a single professor (or department) at a single institution, students have fewer options to buy used or make back their money by selling their copy.¹¹

These industry practices allow publishers to keep textbook prices high and push students to purchase new books year after year by eliminating competition and the used book market. Those factors have a measurable ill effect on students: our previous research shows that 65 percent of students have skipped buying books because of cost, and 94 percent of those students thought doing so would hurt their grade.¹²

Creating Affordable Alternatives

To drive down the costs and make sure students have the materials they need to participate in class, advocates pushed for the development and use of open educational resources (OER): teaching, learning, and research materials that are openly licensed for use, adaptation, or redistribution at no cost. These resources are dramatically lowering the cost of learning materials, compared to a \$300 new edition textbook.

So far, open textbooks have saved students, from kindergarten through college over

OPEN EDUCATIONAL RESOURCES (OER):

“Teaching, learning, and research materials in any medium -- digital or otherwise -- that reside in the public domain or have been released under an open license that permits no-cost access, use, adaptation and redistribution by others with no or limited restrictions.”¹⁴ U.S. PIRG Education Fund often uses “open textbooks” as an umbrella term, as it’s more easily understood by someone hearing about the concept for the first time. In this report, however, we’ll use the term OER to encompass the full suite of potential resources that can replace materials that make up access codes and textbooks.

\$1 billion globally.¹³ They also offer access on the first day of class. Any faculty member can tell you how the first week of class is difficult, with students waiting on an Amazon delivery or waiting until the add-drop deadline to buy materials, if they choose to do so. Having a link right in the syllabus to the textbook is game changing.

These resources are growing rapidly. OpenStax, based at Rice University, have been adopted at more than half of American colleges.¹⁵ And, over the past decade, students and third party sellers have found a variety of ways to use the internet to facilitate textbook trading, renting, and reselling. Publishers are feeling the pressure: the “chart of the century,”¹⁶ tracking the consumer price index of textbooks, for the first time wavered, suggesting that OER, rentals, and digital offerings are giving publishers a run for their money. One analysis suggests that if publishers are able to eliminate the used book market (and presumably, also effectively counter these low cost alternatives), they could increase profits by 40 percent.¹⁷

To that end, publishers are actively taking steps to reduce the availability and use of print books on the used market. Pearson CEO John Fallon told the publication *InsideHigherEd* in a 2019 interview that his company will continue to make printed textbooks available for students to rent, but limit the number of copies available for students to purchase. In addition, sale copies will have relatively high prices.¹⁸ Fallon notes that while ebook prices will be \$40 on average, physical book rentals will be at the higher price point of \$60. The already impressive control of the market that Pearson, Cengage, and McGraw-Hill have to change prices and availability of materials in the current market will only be enhanced if they fully transition over to the new face of the broken textbook market: access codes.

Traditional Publishers Push Access Codes

In response to their slipping place in the market, publishers have pivoted to the access code, an online platform accessible through a unique code or login. Access codes could further entrench a broken market by eliminating the used book option entirely. Familiar “brand names” include MyMathLab,¹⁹ WebAssign,²⁰ and MindTap.²¹ Costing \$100 on average, they are cheaper than a new edition print book but are fundamentally different, because they provide homework, quizzes, study aids, and other content that goes beyond what a textbook would provide.²² They also provide “day one” access to materials, once unique to open textbooks, by offering students a free trial window before the add-drop period, where students must finalize their class schedules, ends.

Despite their cheaper up front price, access codes could cost students more in the long-term. Because the access to the platform only works for a single person and eventually expires, students cannot retain the materials or sell them back. Students are essentially renting the materials for a set period of time,

losing access to the content and tools when the code expires. This limits students’ ability to refer back to those materials down the road. In addition, the practice of bundling access codes with print textbooks limits a student’s ability to resell the book, because its value decreases significantly without the access code.

The actual dip in grades as a result of missing the textbook is hard to quantify, but the potential difference is easier to quantify for access codes, which contain essential parts of a student’s overall grade for the course, such as quizzes, homework, and tests. Making the choice to not purchase the access code could mean forgoing fully participating in class. Depending on the way that class is graded, this could be a significant drop in a student’s grade.

Access Codes Overtaking Traditional Textbooks

It is clear that major publishers are planning for access codes to eventually replace all other options. In the summer of 2019, Pearson announced their intent to restrict the availability of print editions in favor of digital-only offerings, which can be updated instantly.²³ Cengage launched a subscription service, bundling their entire digital catalogue for a flat rate.²⁴ These moves fulfilled the vision laid out by multiple publisher executives when access codes first took off: to eliminate the used book market and establish themselves as the sole provider of content via access codes. As Cengage CEO Michael Hansen said in 2014, the rental book market is “a market that should fall by the wayside if we do our job the right way.”²⁵

Which brings us to automatic billing. While publishers are certainly reclaiming lost customers (who would otherwise go without books) in their switch to access codes, they are seeking to set their monopoly in stone with institutional partnerships that will allow them

to remove that choice altogether. Automatic billing is simply the mechanism by which an institution bills students for course materials, typically through an opt-out charge on their tuition bill. This mechanism goes under a variety of names: inclusive access, innovative pricing, all-access, First Day,²⁶ digital discount, and includedED.²⁷ The billing occurs at either the point of registration for class, or at the add-drop deadline. This partnership is set up between the institution and the publisher, with the bookstore sometimes acting as the middleman between the institution and the publisher in negotiations to determine discounts and other considerations.

In 2015, the U.S. Department of Education issued a “cash management” rule setting forth guidelines for partnerships between institutions and outside companies that interact with federal student aid funds.²⁸ The rule allowed charges on the student’s tuition bill for course materials costs assuming three conditions were met: that they be offered below market price under an arrangement with the publisher or other entity, that students receive their materials within seven days, and that students be able to opt-out of such a charge.²⁹

The existence of this rule, if spun by sales representatives as a reason for an administrator interested in student savings to adopt their services, could push institutions to adopt automatic billing. The Department of

Education alluded to this in further guidance on the rule, saying “But, even with an opt out provision, we are concerned that students who would otherwise seek lower cost alternatives will settle, out of sheer convenience, for the price of books and supplies negotiated by the institution. So, we encourage institutions to negotiate agreements with publishers and other entities that provide options for students.”³⁰ Adding further pressure, 6 states have proposed legislation since the 2015 rule went into effect that promotes or requires automatic billing. These efforts range from Virginia, where commercial options are one of several methods colleges may use to tackle high textbook costs, to New York, where legislation would require every public institution to begin automatic billing. We worry that these moves, combined with publisher pressure, could push institutions to ink automatic billing contracts to “stay in compliance” with state and federal rules.

All these efforts have led to rapid adoption of automatic billing programs. At the institutional level, the National Association of College Stores estimates 23 percent of independent campus bookstores use automatic billing.³¹ Additionally, the two largest campus bookstore chains³² each have their own “brand” of automatic billing in the form of includedED and ACCESS for Follett,³³ and First Day for Barnes and Noble.³⁴



A Review of Automatic Billing Contracts

WITH AUTOMATIC BILLING PROGRAMS rapidly transforming the higher educational landscape, it is critical to understand how these contracts are constructed and the potential consequences for students.

U.S. PIRG Education Fund acquired automatic billing contracts for 31 public higher education institutions, out of 52 requests filed through sunshine and open information laws. The institutions covered 17 states and included agreements with 5 publishers, 2 bookstore chains, and 3 vendors that facilitate the opt-out mechanism and allow students to access ebooks.

We examined each contract for information on discount structures, student usage requirements, and whether the institution could communicate details about the program. We also looked at institutions' efforts to engage the student body and faculty in the consideration of automatic billing programs during the initial adoption and renewals.

Our analysis finds automatic billing programs are failing to meet student needs, result in limited choice, and are inadequately transparent to their campus community. While the federally-mandated discounts help alleviate the costs some, the offered discounts are underwhelming or unclear. High quotas were set to maintain discounts, which would disappear if institutions fell below a quota of students charged. Publicity and marketing were restricted, and implementation problems made the problem even worse. These deals exacerbate the underlying problem with the textbook market driving prices higher – publisher control of the latest edition of materials. But perhaps most

importantly for students, the basic product that they are being billed for is unfair. Programs that increase the use of access codes, and that force students to pay to participate in class, cannot be in a student's best interest.

Lack of Price Transparency

The proposition that automatic billing programs present to students, and therefore institutions and professors, is simple: sign up and save money. Such discounts are such a critical component that the Department of Education's cash management rule requires them. Like any sale, a consumer can only evaluate its worth if the savings are clear.

While only 1 contract failed to disclose the discount at all, our review found it hard, if not impossible, for students to evaluate the savings they will receive in many of the publisher contracts reviewed. 54 percent of publisher contracts provided a blanket discount on textbooks off the national list price. Still even this format may be less helpful than it seems for students as the national list price is hard, or impossible, for students to acquire.

Contracts vary in how they lay out costs for their automatic billing partnerships:

- Where contracts in our study generally provided a set price for materials, it was typically \$60-85 for an access code. However, it is unclear if this is a significant discount from the national list price, a crucial piece of information in evaluating the value of the program.
- Blanket discounts in contracts were typically 20 or 25 percent off a national automatic billing book list, which is updated

at a national scale outside of any individual contract. It's worth noting that this is 10 to 20 percent less than CEOs such as Pearson's John Fallon have promised in media interviews.³⁵ Beyond that blanket discount, some Cengage contracts would allow the institution to unlock further discounts of 5 to 35 percent for a higher volume of sales.

Many book price listings are considered proprietary information by publishers, making it impossible for us, students or professors to evaluate.³⁶ This makes it harder for faculty to choose cheaper options for students by comparing publisher options.

This obfuscation, at times during the research phase of this report, seems intentional. Of the 52 records requests we filed, only 33 were returned in time for publication. McGraw Hill told San Diego State University to withhold full pricing information because it was a trade secret, and would hurt them if shared: "McGraw-Hill be disincentivized to continue to offer discounts in the future if these discounts are made public. Ultimately, universities and their students will be denied the opportunity to select products and services at affordable prices based upon fair competition."³⁷ It is possible that students would face similar roadblocks, if they decided to make such a request, and acting at the individual level, would have few resources to pursue greater detail on the discounts or more detailed pricing information for their institution

The 2008 Higher Education Opportunity Act required publishers to disclose the price of books to faculty in their marketing materials, among other provisions to share textbook information.³⁸ However, these measures have not been consistently implemented, and the use of a proprietary price list makes the book selection process even more opaque. Without easy access to this information, faculty can-

not make full and accurate price comparisons when assigning materials and students cannot determine the value of using automatic billing programs.

Limiting Public Communication

A student at California Polytechnic State University's experience with their recently enacted automatic billing program demonstrates how limitations on disseminating information can breed confusion and stick students with a bill they did not agree to. "The time pressure and format of the email makes me believe it is fake. And it went to my junk [folder], so I wouldn't have seen it if not notified by others," he told a reporter for his school newspaper when interviewed about his experiences.⁴⁰ Students were not given proper time to prepare and make an informed decision, and this was likely a contributing factor in the institution extending the opt-out deadline.⁴¹ Such confusion can grow if the publisher uses a unique name for their automatic billing program, students and faculty may not make the connection that this is a program brought to campus as an official partnership with an outside company.

These problems could also be exacerbated by contractual limitations that may limit how, what, and when institutions can provide information about automatic billing programs. Of the institutions in our study, 42 percent had signed at least one contract that appears to give a publisher final say on any public communications about the automatic billing program. It's possible that many publishers have the option to veto language in institutional communications that give students more context and information, such as the amount of the discount that they were getting off the national average or the language of reminders to opt-out.

- Pearson contracts' typical language included: "Customer will not issue any press release or make a public announce-

ment relating in any way whatsoever to the Agreement or the relationship established by the Agreement, without the prior written consent of Pearson.”⁴²

- Under the Cengage contract at Central Washington University, the terms were more specific, and affected ads, sales literature, and “publicity or statements relating to the existence or substance of this agreement.” Furthermore, the institution and publisher were strictly banned from using “names, service marks, or trademarks” in these publicity materials.⁴³
- While we acknowledge that this kind of language limiting communications can be found in contracts governing many other kinds of partnerships, we do have concerns that it could keep information from reaching the people that need it to make a decision about their participation in the automatic billing program. If anything, this kind of language should be putting restrictions on the publisher out of an abundance of caution, not the institution, and in order to give people the most information possible.

High Participation Quotas Create an On-Campus Monopoly

Traditional textbook publishers are using these contracts to further control the market on campus by setting quotas of enrolled, billed students using the program. These mandates can help further entrench a specific publisher on campus and, as the automatic billing trend continues, throughout the country. These clauses were often paired with severe consequences if a university failed to meet the quota, namely the loss of discounts or the termination of the contract.

Overall, 68 percent of the publisher contracts we looked at had a clearly defined quota, which used one of two different systems:

- 24 percent of contracts with quotas set a percentage of billed students in relevant class sections at the census date, usually 85 or 90 percent of the course.
- 44 percent of contracts with quotas set a total number of students that needed to be billed, presumably tied to the estimated enrollment of the class sections at the census date.

Depending on how high these quotas are and if they increase from year to year without specifying new class sections in the contract, they could push the rapid adoption of access codes across the institution, to the detriment of faculty academic freedom.

At the University of Florida, a large four-year institution with 50,000 students, the quota was set at a minimum of 10,400 during the first contract year of 2017, and rose to 47,000 students billed in the second year.⁴⁴ This would require a significant portion of classes offered at the institution to enroll in the automatic billing mechanism within a few years. After this initial push to increase the number of students billed, quotas would be readjusted based on the previous year’s performance.

High quotas may push some institutions to rewrite their contracts in later years. At Trident Technical College, the initial quota was set at 12,291—technically, more students than were actually enrolled in the 2018 school year.⁴⁵ Subsequent amendments to their Pearson contract lowered the quota to 770 students, which would decrease the likelihood of failing to hit the quota in the future.

High numerical quotas don’t give institutions the flexibility for faculty to change their course materials or respond to changes in course enrollment patterns on a semester by semester basis. The lack of flexibility could

make administrations feel pressured to mandate an institution-wide automatic billing program without meaningful faculty opt-in in order to hit the terms of their agreement. This raises significant concerns for student and faculty choice if automatic billing continues to spread. The discounts alone should be enough to get faculty and students to opt in, without the use of these potentially heavy handed quotas.

Missed Quotas Lead to Disappearing Discounts

Discounts are one of the main selling points for automatic billing programs. And federal regulations only allow automatic billing if materials are sold to students below market price.⁴⁶

Our analysis found 68 percent of the publisher contracts in our study stipulated that the discount would be eliminated the contract, calendar, or academic year after the quota was missed. For the contracts that did not specify, many were one year contracts; a failure to meet quota could result in difficulties renewing the contract. Given how high the thresholds are in many contracts, some institutions, and therefore their students, may lose their discount at some point if the contract provisions are enforced. This clause could mean that institutions are signing contracts for a 20 percent discount that may disappear after one year. If that's the case, there is a need for clarification on federal rules to explicitly say that these disappearing discounts do not meet the guidelines set in 2015.

Some Cengage contracts had the discount drop to a lower percentage off for the missed quota. While we're glad that this smaller subset of deals meets the requirement for materials to be sold below market price, these contracts still had the potential for termination because of the missed quota.

Uncapped Price Increases

Under the automatic billing model, there are significant parallels between the textbook and academic and scholarly journal publishing industries. In that market, one of the biggest problems in "big deal" subscription contracts is annual price increases, which cause significant strain to high education library budgets.⁴⁷ There is no reason why prices should go up. Indeed, since it requires minimal effort to distribute materials digitally past the initial program set up period, prices ought to stay flat or even decline

In automatic billing contracts, these policies vary. Only Central Michigan University had a cap on price increases, which was set at an aggregate maximum of 4 percent annually.⁴⁸ Beyond that lone example in our study, 33 percent of contracts had the potential for annual uncapped price increase and 21 percent had the potential for twice-annual uncapped price increases. The remaining half of contracts in our study did not define how often prices could be adjusted. However, most publisher contracts are one or two years long, so prices could simply be adjusted for each contract renewal.

Limits on Printed Versions Restrict Student Choice

At some institutions, automatic billing contracts restrict the choice of students on the format that they access their textbooks in. In 22 percent of the publisher contracts in this study, there was a clause limiting the number of new print copies available for sale at a institution, typically to 15 percent of a given course.⁴⁹ Publishers should not limit a student's ability to choose between a physical or digital copy of a textbook. These restrictions are intended, as previously discussed in the section on access codes overtaking traditional textbooks, to further consolidate market control by killing off one of the publisher's main sources of competition: the used book market. While it's unclear if this will cause issues

for students with differing abilities and needs because of existing laws, it could easily become an issue for the significant number of students⁵⁰ who simply prefer print over digital. Institutions should not place limits on what format students access their textbooks.

Implementation Circumvents Campus Input and Further Reduces Choice

An oft-repeated anecdote from librarians and faculty is that they first hear of automatic billing programs after the campus adopts it, rather than being consulted in advance. If an institution is going to so dramatically switch how their students pay for course materials, then it ought to have a variety of stakeholders at the table to discuss what options exist, including faculty, librarians, administrators, the bookstore, staff, and especially students.

At the University of North Carolina at Chapel Hill, student government leaders and volunteers from NCPIRG Student Chapters only heard secondhand about an automatic billing proposal from Pearson once it was about to be finalized. After student leaders, staff, and professors expressed concerns about the proposal with the administration, it was stopped. After this victory, students discovered some students at the University were already part of a Barnes & Noble automatic billing pilot program used with a few class sections in the 2018-2019 school year.⁵² The first notice that students got about the existence of the program was an email notifying them that they had been assigned an access code. A number of students at UNC expressed confusion, as they had not known that this mechanism even existed.

In some programs, the opt-out process is misleading—or does not exist at all. At institutions such as the University of Hawaii at Manoa and at Post University, students must go through several steps of verification that they want to opt out, with dire warnings about the consequences of doing so, such as being denied extensions on homework while waiting for books or warnings about not being able to find materials elsewhere.⁵² At Rutgers University at New Brunswick, a Barnes & Noble pilot began in fall 2019. At the same time, the institution was transitioning from Sakai to Canvas, learning management systems (LMS) where students submitted assignments and the opt-out process was housed. Students whose classes were still on the older Sakai LMS were unable to opt out of the textbook charge.⁵³ At New Mexico State University, the school bookstore's website added "no opt-out" to the titles of automatically billed materials that were legally required to have an opt-out mechanism.⁵⁴ The automatic billing mechanism's legality is predicated on the ability to opt out if students find better options or simply decline to buy the materials. If a student can't opt out of the charge, the program ought not to exist.

Finally, some automatic billing programs have misled students with a lack of price transparency and information. If students do not know the relative cost or even the full title and edition of their automatically billed course materials, they cannot make an informed choice about opting in or out of the charge. In a lawsuit filed against Trident Technical College, the plaintiff alleges that materials at the school bookstore were adver-

tised as free to students online, when in fact these textbook costs would be added to their tuition bills.⁵⁵ For one biology textbook from Cengage at UCLA, the ISBN provided in contracts was not searchable in Cengage's own website, and could steer students into allowing automatic billing because of their fear of getting the wrong edition of the assigned material.⁵⁶ Records provided by UCLA indicated that approximately half of the course materials using automatic billing assigned a custom edition (either clearly labeled as custom, or presumed custom because it could not be found online with the information provided).⁵⁷ Additionally, more than one in ten course materials using automatic billing was listed above the online price.⁵⁸



| Recommendations

AUTOMATIC BILLING PROGRAMS are being tested across the country with some estimating one-third of institutions are considering starting one.⁵⁹ With the rapidly changing course materials landscape, a prepared educational community can help ensure students interests are protected when such automatic billing programs are proposed.

Based on the findings of this study, and until further research and regulations are implemented, we recommend rejecting any automatic billing program for your institution. These efforts currently lock institutions into contracts with few long-lasting benefits, reduce student choice, and further entrench the monopolistic practices of a few publishers. And, of course, the access code product delivered by these automatic billing programs is itself a bad deal for students. When high quality educational resources are available such as open textbooks, it does not make sense for institutions to prioritize programs that force students to be automatically billed for underwhelming savings.

For campuses already locked into an automatic billing contract, here are starting points to begin negotiating changes that better serve students and faculty:

1. **Have a clearly marked pricing structure publicly available** that shows the original price of the assigned material, the discount off the publisher's retail price, and multiple format options.
2. **Reject attempts to restrict marketing materials** that can be issued by the institution to educate students on their course materials purchasing options.
3. **Eliminate quotas.** The discounts alone ought to be enough to get students to participate at a high enough level to make the program worthwhile.
4. **Cap annual price increases** to no more than 2.3 percent—the current rate of inflation.⁶⁰
5. **End any restrictions** on the number of students who can obtain print copies.
6. **Have the billing mechanism be opt-in,** and listed as one of many methods of payment alongside credit cards, cash, etc. that students can use at the bookstore. There is nothing wrong with institutions seeking to negotiate bulk discounts for students, but students should be able to choose whether to take advantage of it and how they pay.

Different communities on and off campus each have a role in the conversation about course materials and in making sure college classes are affordable. Here are some quick recommendations for partners on next steps to take:

To student leaders: Be cautious about publishers approaching student government as a means for getting access to the student body or the ear of administrators. Be aware that publishers often hire students to do this marketing work,⁶¹ and that they might not have all the pros and cons about the proposal they are pitching you on. Look for verification of the savings claims in publisher marketing materials. Reach out proactively to campus administrators to share your concerns for textbook affordability, and to request support for locally controlled initiatives, rather than those that cede control

to outside companies. Meet with your libraries, IT, and faculty union or senate to hear what supports they need to increase adoption of alternatives to commercial course materials.

To faculty: if you currently use a commercial access code (or use a commercial print textbook, which are likely to be less available from cheap third party sellers in the near future), reach out to your campus library to see what free and open alternatives exist, and what open quizzes and ancillary materials you can use to replace access codes. As part of your union or senate, pass a resolution against access codes and automatic billing. Work with colleagues to develop a longer-term vision for your institution on the teaching and learning experience, and for student affordability.

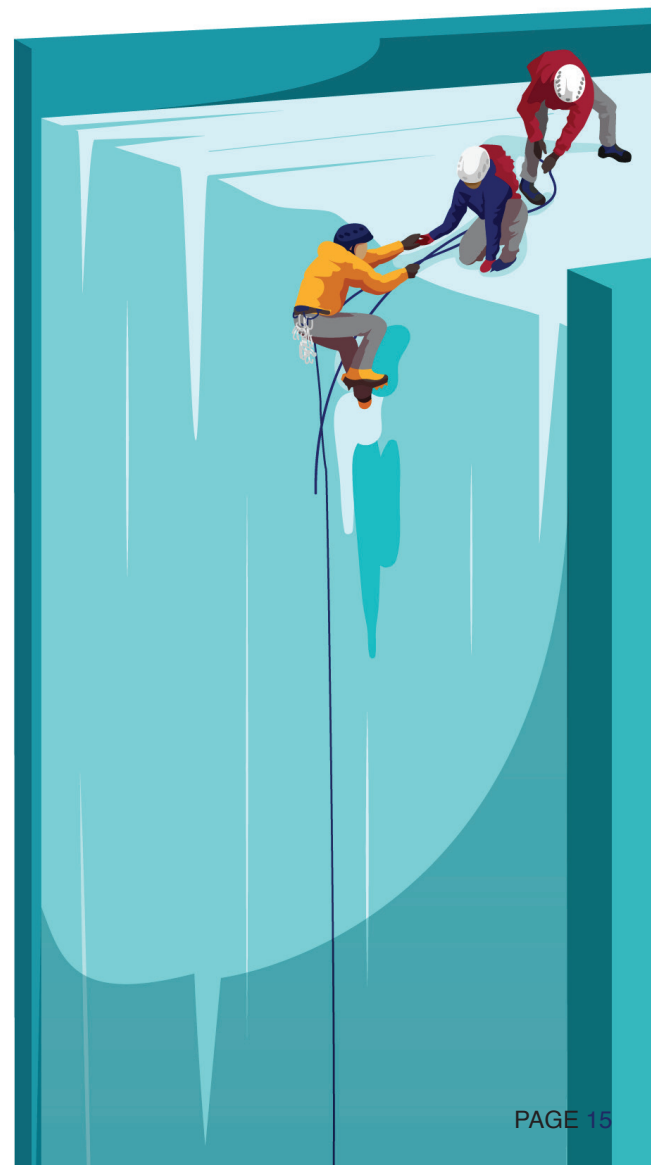
To bookstores, business officers, and other auxiliary service administrators on campus: if you are considering an automatic billing program, think about what other ways you can negotiate price without assessing a textbook charge. If you do end up moving forward with an automatic billing proposal, make sure that the terms of your contract reflect our recommendations above. Push for an opt-in system rather than opt-out, giving students the ability to make informed choices about where to purchase books, and in which format.

To other institutional administrators: ask your faculty, library, and IT department what they need to scale up free and open alternatives on campus. Use your position to push for non-monetary policies that increase affordability, such as increasing price transparency in the class registration portal and considering open textbook adoption and creation for tenure.

To state and federal policymakers: do not write legislation mandating or authorizing institutions to enter into “innovating pricing” arrangements (or any other name for auto

billing) with a publisher. Instead, offer robust funding for programs that enhance local control and provide sustainable savings for students, like open textbook adoption and open educational resource creation. Where possible, pass legislation to block automatic billing in its current form or mandate that it is opt-in.

To the Department of Education: this report has made apparent that many automatic billing programs fail to provide significant and lasting discounts for students, and a meaningful opt out process. The Department should investigate these contracts and publisher actions for compliance with the 2015 cash management rule.



| Methodology

THIS REPORT IS A REVIEW of contracts with a series of third parties that partner with institutions of higher education to provide course materials: publishers, bookstores, and software providers. In total, we reviewed 80 unique documents from 31 institutions.

Except for three institutions where campus community members provided documents to us, the contracts reviewed in this report came from open records requests filed at each institution between May and August 2019. The use of open records requests as a research tool limited the study to only public institutions, and does not consider what differences might exist in automatic billing contracts at private or for-profit institutions.

The size of the study was limited by institutions not replying to our requests in spite of our attempts to follow up. We originally filed records requests at 52 institutions, of which 31 eventually provided the necessary materials for analysis. An additional 2 institutions provided documents that were outside of the scope of study or did not address our key points for comparison with other institutions, and were therefore left out of the study. Some of the barriers to timely fulfillment of requests include requiring high fees in excess of \$4,000 to access the documents and refusing waivers, or significant delays in processing requests. Thus, this report should be viewed as a sampling of available data, and

not a comprehensive review of the potentially thousands of automatic billing contracts that exist at institutions of higher education in the United States.

Finally, despite sending more or less identical language in our requests for documents, institutions interpreted the language differently and in ways beyond our control. We acquired a rich combination of documents that revealed more about automatic billing than could be gleaned from contracts alone, but there was significant variation in the type and scope of documents provided. In our Key Findings section, the term “contract” generally refers to the legal document called a “master agreement” signed by the institution and a publisher or a software provider. In cases where there was an initial agreement or pilot project, followed by addendums, we compiled the information into a single line within our database of what the contract covered. In the case of contracts that listed both blanket discounts and then a handful of select titles at specific price points, we credit the publisher with the broader blanket discount that applied to a greater number of potential titles.

When college enrollment is referenced, all data refers to undergraduate enrollment from the 2018-2019 school year via the National Center for Education Statistics.⁶²

APPENDIX A: Guiding Questions for Course Materials Programs and Adoptions

HERE ARE SOME GUIDING QUESTIONS that campus decision makers of all kinds should answer as they consider automatic billing proposals that increase the use of access codes. These recommendations combine our concerns for student choice, data, and privacy with concerns raised by other open advocates such as those at OpenStax⁶³, OpenOregon⁶⁴, and the University of Arizona Libraries⁶⁵.

Is it affordable?

- What is the wholesale cost of the materials?
- Compared to buying that same digital product direct from the publisher, how much do students save?
- Are there annual price increases baked into the contract? How many years would it take for legally mandated discounts to disappear?
- Do other publishers and ed tech companies offer cheaper alternatives?
- Do students maintain access to content after the course ends? For how long?
- Could an investment in the institution's IT department to help instructors provide course materials for free via the institutional LMS generate similar savings?
- Could switching to open educational resources, with a focus on introductory and high-enrollment courses, generate similar savings?

Does this proposal maintain or enhance student choice?

- Can they choose between paper and digital freely where appropriate, rather than everyone getting an e-text with paper as an optional add-on charge?
- Can students choose to buy full digital access for a variety of time frames?
- Can students with disabilities or restrictions get alternatives easily and at the same cost as their peers?
- Can students print or copy-paste sections of an e-text without restriction?
- Will they be able to see the price of materials before they are billed?
- Are opt-out messages neutral on the pros and cons of opting out, and is there someone on campus they can speak to about the pros and cons?
- Are the refund policies clear? Can students quickly and easily opt out before the textbook charge is assessed?

- How will students be notified of opt-out dates and procedures? Are they able to opt out even if their instructor is not using the institutional LMS for their class?
- Does the institution as a whole have an adequate level of price transparency in the class registration site that students could make a choice between sections of a course based on price?
- Will they be provided with an ISBN number or other details in order to shop at third party sites?
- Is the assigned material a custom edition? Would students be able to find alternatives online from third party sites if they wished?

Does this proposal maintain or enhance academic freedom?

- Will this program encourage “upselling?” That is, will the program push faculty already using lower-cost materials to switch to expiring-access digital materials that are potentially more expensive?
- Do faculty feel pressured to adopt a certain publishers’ materials because it will unlock a greater discount?
- Are faculty able to assign any format of commercial materials and still access a discount?

Is student privacy respected, and is the use and collection of their data clear?

- Do students need to buy access to materials or create a login in order to view the TOS and EULA?
- Does the student own their work, such as essays and short response questions?
- Can students access their work after the end of the course?
- What is the data collected used for? Can it be sold in whole or in part to third parties? Does it follow the same rigor and rules as research done by members of the campus community?
- How does a proposed partner interpret FERPA compliance? How can they restrict the sale or use of student data beyond the scope of FERPA?



APPENDIX B: Contract Terms and Examples

Below are a selection of clauses found in automatic billing contracts cited in this study. The documents can be accessed at <https://uspirmg.org/feature/usp/automatic-textbook-billing>.

Example 1: annual price increases and permanence of discounts

Contract between Central Michigan University and Pearson, signed 3/20/2019

Excerpt from p. 1

C. **Pricing:** The Inclusive Access Prices offered hereunder are conditioned upon Customer achieving the Minimum Usage Rates during the academic years set forth in Section D below. If such Minimum Usage Rates are not met for the applicable academic year (or remaining academic year, as applicable), the Non-Discounted Prices set forth below shall apply to Customer's purchases of Pearson Products during the following academic year. Once Customer achieves the Minimum Usage Rate set forth below during such following or subsequent academic year, the Inclusive Access Prices offered hereunder shall resume for such academic year, provided it remains within the Purchase Period.

Pearson reserves the right to annually adjust the Inclusive Access Prices (and related Maximum Resale Prices) under this Agreement, effective at the start of Customer's next fall academic semester. Pearson agrees to communicate any such upcoming adjusted Inclusive Access Prices (and related Maximum Resale Prices) to Customer during the prior spring academic semester. Any adjustments will not increase more than an aggregate of four percent (4%) annually.

Example 2: publicity limitations

Contract between Central Washington University and Cengage, signed 5/22/2017

Except from page 3

7. **Publicity.** Without the other party's prior written consent as to each use, neither party shall publish any press release, advertising, sales literature or other publicity or statements relating to the existence or substance of this Agreement or the relationship between the parties created by this Agreement. Neither party shall use any of the names, service marks or trademarks of the other in any of its advertising or marketing materials.



Example 3: quotas, discount by materials type, and permanence of discount
Contract between University of Florida and Pearson, signed 5/31/2017
Excerpt from page 8-9

Minimum Usage Rate: Customer agrees that for all Courses in which a Pearson Product has been adopted as of May 1, 2017 and a digital version of such adopted Pearson Product is available, Customer will utilize the digital Pearson Product in such Courses at the terms, prices and conditions set forth in this Ordering Document by Customer's Spring 2018 academic term. Subject to the automatic renewal provision set forth in the "*Purchase Period*" Section of this Ordering Document, Customer agrees it will achieve the following Minimum Usage Rates: --

- **10,400 Enrollments from May 1, 2017 through December 31, 2017;**
- **47,000 Enrollments during the 2018 calendar year; and**
- **The number of Enrollments for the 2019 and each subsequent calendar year during the Purchase Period shall be determined by the Parties pursuant to the annual review described below.**

The Parties agree to perform an annual review, every summer during the Purchase Period, to determine the number of Enrollments in Courses utilizing a Pearson Product hereunder satisfied by Customer during the immediately preceding 12-month period. The Minimum Usage Rate for the 2019 calendar year and each subsequent calendar year will reflect 67% of the number of Enrollments satisfied by Customer during the immediately preceding 12-month period, in addition to any future adoption changes for the following academic year, as determined by such annual review. The eBook, Revel and Package Net Prices offered hereunder are conditioned upon Customer achieving the Minimum Usage Rates (including the Minimum Usage Rates to be determined for the 2019 and subsequent calendar years during the Purchase Period). Should Customer fail to achieve the Minimum Usage Rate in a calendar year, Pearson will have the right to increase the Net Prices to the Non-Discounted Rates set forth below for the following calendar year. Pearson may resume the discounted Net Prices once Customer achieves the Minimum Usage Rate for the subsequent calendar year. The remedy for Customer's failure to achieve the Minimum Usage Rate is as set forth in this Section and the Parties acknowledge that Pearson will not invoice Customer any additional fees should Customer fail to achieve the Minimum Usage Rate in a calendar year.

Net Prices: The Net Prices offered hereunder will apply solely to purchases of Pearson Products by Customer or its Approved Distributor, in each case solely on behalf of Customer's Authorized Users. Approved Distributor will not sell, resell, license,

sublicense, distribute, make accessible, rent or lease the Pearson Products at the Net Prices offered in this Ordering Document to any students, individuals, institutions or third parties who are not Customer's Authorized Users. Neither Customer nor Approved Distributor shall have the right to unbundle any Package and sell the components individually.

- eBooks (delivered via a Pearson Fulfillment Partner, such as Vital Source) will be sold at a Net Price per Enrollment of twenty-five percent (25%) off the then-current Online Purchase Price (or OLP) for the corresponding nationally available eBook.
- Revel will be sold at a Net Price per Enrollment of twenty percent (20%) off the then-current List Price for the corresponding nationally available Revel product.
- Packages (utilized in one Course over one academic term) will be sold at a Net Price per Enrollment of twenty percent (20%) off the then-current List Price for the corresponding nationally available MyLab or Mastering product with embedded eBook.
- Packages (utilized in sequenced Courses over multiple academic terms) will be sold at a Net Price of \$62.67 per Enrollment (per student per academic term) in each sequenced Course.
- **Non-Discounted Rate for eBooks:** eBooks will be sold at a Net Price per Enrollment of twenty-five percent (25%) off the then-current List Price for the corresponding nationally available Print Text version.
- **Non-Discounted Rate for Revel:** Revel products will be sold at the then-current List Price for the corresponding nationally available Revel product per Enrollment.
- **Non-Discounted Rate for MyLabs and Mastering:** MyLab and Mastering products will be sold at the then-current List Price for the corresponding nationally available MyLab or Mastering product per Enrollment.

Example 4: prices, quotas, and price changes

Cape Fear Community College

Contract between Cape Fear Community College and Pearson, signed 4/11/2018

Excerpt from page 2

C. Pricing: Pearson will charge Customer the Net Price for each Pearson Product and Third Party Product, as set forth in each Ordering Document. Net Prices are exclusive of all sales and use taxes applicable to the transactions covered by this Agreement, for which Customer is responsible. Unless otherwise stated in an Ordering Document, Pearson reserves the right to adjust Net Prices twice per year, effective on May 1 and November 1.

Excerpt from page 4, the ordering document

Minimum Usage Rate:

- 1,676 Enrollments from August 1, 2018 through December 31, 2018;
- 3,048 Enrollments during the 2019 calendar year;
- 3,048 Enrollments during the 2020 calendar year;
- 3,048 Enrollments during the 2021 calendar year;
- 3,048 Enrollments during the 2022 calendar year; and
- 1,372 Enrollments from January 1, 2023 through July 31, 2023.

The Pearson Product Net Prices offered hereunder are conditioned upon Customer achieving the Minimum Usage Rates. If such Minimum Usage Rates are not met by the specified timeframes, Pearson will have the right to invoice Customer the Non-Discounted Rates set forth below for the following calendar year. Once Customer achieves the Minimum Usage Rate, the discounted Net Prices offered hereunder shall resume for the subsequent calendar year.

Net Prices:

- Revel products will be sold at a Net Price per Enrollment of twenty percent (20%) off the then-current Online Purchase Price for the corresponding nationally available Revel product.
- Digital Packages will be sold at the following Net Prices:
 - For Digital Packages utilized in one Course during one academic term, a Net Price per Enrollment of twenty percent (20%) off the then-current Online Purchase Price for the corresponding nationally available MyLab and Mastering product contained in a Digital Package.
 - For Digital Packages utilized in sequenced Courses over multiple academic terms, a Net Price of \$65.00 per Enrollment (per academic term) for use in each sequenced Course.

Any customizations of a Pearson Product shall be priced as mutually agreed to by the Parties and shall be set forth in an Ordering Document subsequently executed by the Parties.

Example 5: print copy restrictions

Missouri State University

[Pearson Contract, page 3](#)

G. Print Upgrade Purchases: Provided that a Pearson Title is not a “*Print Rental Only*” title available through Pearson’s Print Rental Program, or a “*Digital Only*” Revel product, Customer may purchase, for use in Course Sections, Print Upgrades of the Digital Versions incorporated into the Digital Learning Applications, at the prices set forth in Paragraph H below. Pearson shall have the right to limit the number of Print Upgrades ordered hereunder to no more than fifteen percent (15%) of the total number of Authorized Student Users enrolled in the Course Section utilizing such Pearson Product.

H. Print Upgrade Pricing: Unless otherwise agreed to in writing by the Parties prior to any Print Upgrade orders being submitted to Pearson, Customer will be invoiced forty dollars (\$40) per unit, plus shipping costs, for a Print Upgrade of a Digital Version incorporated into a MyLab or Mastering Product, and seventeen dollars (\$17) per unit, plus shipping costs, for a Print Upgrade of a Digital Version incorporated into a Revel Product. Pearson reserves the right to annually adjust such Print Upgrade pricing effective at the commencement of each Academic Year.



The educational publishing industry is extremely competitive, with slim margins. Providing McGraw Hill's competitors' access to the confidential pricing discounts McGraw Hill extends to its customers could cause the company significant financial harm. Armed with this information, McGraw Hill's competitors would be at a competitive advantage in any future negotiations with San Diego State University, or any other college or university in the state, or throughout the country. McGraw Hill will be disincentivized to continue to offer discounts in the future if these discounts are made public. Ultimately, universities and their students will be denied the opportunity to select products and services at affordable prices based upon fair competition.

Finally, McGraw Hill goes to great lengths to maintain the confidentiality of its pricing and the discounts it extends to certain customers. For example, McGraw-Hill does not disclose to the public the discounts and discounted fees in the attached agreement. These efforts would be undercut by disclosure of pricing and discount information under the CPRA.

We appreciate your consideration of these very minimal requested redactions.

Respectfully submitted,

A handwritten signature in cursive script that reads "Liz Wildes".

Liz Wildes
VP, Enterprise Solutions/RVP Northeast
McGraw-Hill Education

| APPENDIX C: anatomy of a deal

GLEANED FROM COMMUNICATIONS with stakeholders on the ground and documents from Barnes and Noble at the University of Connecticut at Storrs',⁶⁶ here is a rough outline of the steps to launch an automatic billing program:

1. Publisher networks among department chairs and faculty already using their materials to identify classes to pilot the automatic billing model
2. Publisher approaches institutional business officer or another appropriate administrator, who manages relationships with outsourced contracts such as dining services and the bookstore.
 - a. For some campuses, no further approval is needed if the administrator sees automatic billing as a program already covered by the existing bookstore contract, and managed by the bookstore staff rather than auxiliary services.
 - b. In some places, there will be a formal request for proposal (RFP) process to solicit proposals by publishers.
3. Institution and publisher negotiate terms of a partnership, including but not limited to:
 - a. End date and renewal process of contract
 - b. Duration and terms of student access to materials
 - c. Opt-out quotas and other enrollment benchmarks
 - d. Marketing and messaging of program
4. Contract is signed. Depending on state laws and institutional policies, this partnership may need approval from the president of the university, a board of governors, the university senate, or another combination of stakeholders. However, in some areas, automatic billing may start as a pilot or at full scale without any approval beyond the business administrator that manages outsourced contracts.
5. A number of offices may take action to implement the program:
 - a. IT department develops opt-out option in the institution's learning management system (LMS) and coordinates with faculty to send emails to students with more information
 - b. Bursar's office develops language around the textbooks charge on the tuition bill, collects and distributes payments, and develops an opt out mechanism if applicable.
 - c. Bookstore places final order with publisher and bursar based on enrollment at census date, typically on the add-drop deadline. They'll likely also be working directly with students who have questions or want to opt out.
 - d. Publisher or bookstore does additional outreach to faculty to have them pilot the new billing mechanism for their class.

| Endnotes

- 1 <https://openmarketsinstitute.org/wp-content/uploads/2019/07/Cengage-McGraw-Hill-Merger-Letter.pdf>
- 2 <https://uspirg.org/reports/usp/covering-cost>
- 3 <https://sparcopen.org/news/2018/1-billion-in-savings-through-open-educational-resources/>
- 4 34 CFR § 668.164(c)(2)
- 5 Per U.S. Bureau of Labor Statistics, “From 2018 to 2019, consumer prices for all items rose 2.3 percent.” <https://www.bls.gov/cpi/>
- 6 <https://www.pcapt.org/blog/shining-a-brighter-light-on-textbook-affordability>
- 7 <https://uspirg.org/reports/usp/covering-cost>
- 8 <https://www.aei.org/carpe-diem/chart-of-the-day-or-century/>
- 9 <https://www.insidehighered.com/digital-learning/article/2019/07/16/pearson-goes-all-digital-first-strategy-textbooks>
- 10 <https://studentpirgs.org/2005/02/27/ripoff-101-2nd-edition/>
- 11 <https://www.wsj.com/articles/SB121565135185141235>
- 12 <https://uspirg.org/reports/usp/fixing-broken-textbook-market>
- 13 <https://sparcopen.org/news/2018/1-billion-in-savings-through-open-educational-resources/>
- 14 <https://hewlett.org/strategy/open-educational-resources/>
- 15 <https://openstax.org/press/more-half-all-colleges-and-294-million-students-using-free-openstax-textbooks-year>
- 16 <https://www.aei.org/carpe-diem/chart-of-the-day-or-century/>
- 17 <https://www.anderson.ucla.edu/faculty-and-research/anderson-review/college-textbooks>
- 18 <https://www.insidehighered.com/digital-learning/article/2019/07/16/pearson-goes-all-digital-first-strategy-textbooks>
- 19 <https://www.pearsonmylabandmastering.com/northamerica/>
- 20 <https://www.webassign.net/>
- 21 <https://www.cengage.com/mindtap/>
- 22 <https://studentpirgs.org/assets/uploads/archive/sites/student/files/reports/Access%20Denied%20-%20Final%20Report.pdf>
- 23 <https://www.insidehighered.com/digital-learning/article/2019/07/16/pearson-goes-all-digital-first-strategy-textbooks>
- 24 <https://www.insidehighered.com/news/2017/12/05/cengage-announces-unlimited-digital-subscription>
- 25 <https://www.insidehighered.com/news/2014/04/02/cengage-learning-emerges-bankruptcy-focus-digital-growth>
- 26 <https://investor.bned.com/investor-relations/news-and-events/news/press-release-details/2018/Barnes-Noble-Education-Reports-First-Quarter-Fiscal-Year-2019-Financial-Results/default.aspx>
- 27 <https://www.prnewswire.com/news-releases/new-follett-included-program-accelerates-text-with-tuition-trend-189020081.html>
- 28 34 CFR § 668.164(c)(2)
- 29 34 CFR § 668.164(c)(2)
- 30 <https://www.federalregister.gov/documents/2015/10/30/2015-27145/program-integrity-and-improvement>
- 31 <https://www.insidehighered.com/news/2017/11/07/inclusive-access-takes-model-college-textbook-sales>

32 <https://www.follett.com/BOOKSTORES> and <https://www.bncollege.com/campus-stores/>. Other campus bookstores generally are independent or owned by the university.

33 <https://www.prnewswire.com/news-releases/new-follett-included-program-accelerates-text-with-tuition-trend-189020081.html>, <https://follettaccess.follett.com/>

34 <https://investor.bned.com/investor-relations/news-and-events/news/press-release-details/2018/Barnes-Noble-Education-Reports-First-Quarter-Fiscal-Year-2019-Financial-Results/default.aspx>

35 <https://www.insidehighered.com/digital-learning/article/2019/07/16/pearson-goes-all-digital-first-strategy-textbooks>

36 For example, the standard terms and conditions addendum for Pearson contracts says: “customer acknowledges that the prices being offered to Customer for Pearson Products, and the conditions of such price offers,... is the confidential information of Pearson, and that the public disclosure of such confidential information could cause substantial competitive harm to Pearson.” <https://www.pearson.com/us/additional-terms.html>

37 Appendix B, example 6

38 20 U.S.C. § 1015b.

39 https://www.follett.com/www-media/fo19745-2-2_Advertorial_Real_Costs_of_Textbooks_FINAL.pdf

40 <https://mustangnews.net/new-program-automatically-charges-students-for-textbooks-unless-they-opt-out/>

41 <https://mustangnews.net/automatic-textbook-purchase-program-deadline-extended/>

42 <https://www.pearson.com/us/additional-terms.html>

43 Appendix B, example 2

44 Appendix B, example 3

45 https://www.tridenttech.edu/about/ttc/factbook/enrollment/hc_sctcs_enrollment.htm

46 34 CFR § 668.164(c)(2)

47 <https://www.insidehighered.com/news/2019/05/24/lisu-ends-elsevier-bundled-journal-subscription>

48 Appendix B, example 1

49 Appendix B, example 5

50 <https://www.luther.edu/oneota-reading-journal/archive/2016/digital-age/>

51 Conversation with students by Nick Sengstaken, chief of staff of the UNC Chapel Hill Student Government Association

52 Conversation with Billy Meinke, OER technologist at the University of Hawaii at Manoa, who says that students must go through a three step process to opt out, with discouraging messages at each stage. See also <https://thatpsychprof.com/just-how-inclusive-are-inclusive-access-programs/>.

53 <https://www.dailytargum.com/article/2019/09/rutgers-has-new-financial-aid-system-for-textbooks>, <https://www.facebook.com/groups/RutgersUniversity2020/permalink/977585442585198/>

54 Page 39 of <https://www.bloomberglaw.com/public/desktop/document/CampusBookCompany-IncetalvMcGrawHillGlobalEducationHoldingsLLCetal?1579897394#>

55 https://www.postandcourier.com/news/textbook-scam-alleged-in-federal-lawsuit-against-sc-s-biggest/article_d266c94a-262e-11e9-a6dd-ab6ac37fa3d1.html

56 see documentation package for UCLA at <https://uspirg.org/feature/usp/automatic-textbook-billing>, which contains screenshots that show our failed attempts to identify materials based on the ISBN provided.

57 see documentation package for UCLA at <https://uspirg.org/feature/usp/automatic-textbook-billing>, which contains PDFs of the VitalSource Verba Connect platform with pricing information for automatically billed materials.

58 34 CFR § 668.164(c)(2)

59 <https://www.insidehighered.com/news/2017/11/07/inclusive-access-takes-model-college-textbook-sales>

60 Per U.S. Bureau of Labor Statistics, “From 2018 to 2019, consumer prices for all items rose 2.3 percent.”

<https://www.bls.gov/cpi/>

61 <https://www.mheducation.com/highered/services/student-ambassadors.html>, <https://www.cengage.com/student-ambassador/>, and <https://www.pearson.com/en-us/learner/students/pearson-campus-ambassador-program.html>

62 <https://nces.ed.gov/collegenavigator/>

63 <https://openstax.org/blog/if-inclusive-access-horizon-ask-yourself-these-nine-questions>

64 https://drive.google.com/drive/folders/12VPoYS_bEhnV70EnAB8ziv8hLlwr8XRf

65 <https://open.lib.umn.edu/affordablecontent/chapter/inclusive-access-who-what-when-where-how-and-why/>

66 see documentation package for UConn at <https://uspirg.org/feature/usp/automatic-text-book-billing>, which includes a “First Day Launch Checklist”