



University System of Maryland Report on the Textbook Law of 2009

The University System of Maryland, in response to the reporting requirements of the Maryland Textbook Law of 2009, provides the following report on the steps taken by USM and its constituent institutions to reduce the cost of textbooks to students and to address other matters outlined in the law.

I. BACKGROUND

The Maryland Textbook Law, which was signed by the Governor following its introduction and passage during the 2009 legislative session, built upon work that had been ongoing within higher education for a number of years. The University System of Maryland and its constituent institutions have long recognized the burden that textbook prices have placed on students and have made significant strides in addressing this issue. In addition, USM reported in November 2007 to the Department of Legislative Services on the cost of textbooks and proposed initiatives to reduce that cost. (See Appendix A.) Discussions among the Council of University System Faculty, the University System of Maryland Student Council, the Academic Affairs Advisory Council (the provosts' group), and the USM Presidents resulted in the development of a Board of Regents policy (see Appendix B) that predates the legislation and includes many of the stipulations that the sponsors of the Maryland textbook legislation believed were critical strategies in lowering textbook costs.

The implementation of the USM policy and of the requirements of both Maryland and federal law concerning textbook affordability have moved forward rapidly many significant initiatives with regard to controlling textbook costs. It is clear that the issue of textbook costs remains in the forefront and that USM institutions are following both the letter and the spirit of the law. Faculty members are getting information about the textbooks they will be requiring out earlier, that information is being posted on appropriate websites, and students are becoming increasingly aware of options for obtaining course materials and are able to take advantage of alternatives to the campus bookstores.

The USM has been examining the textbook issue within the context of its very successful Effectiveness and Efficiency model. Institutions are sharing best practices, but it is clear that there is no "one-size-fits-all" solution to the problem of high-cost instructional materials.

II. STUDY ELEMENTS

USM institutions recognize the importance of utilizing strategies to provide students with affordable textbooks. A variety of approaches are being employed, from implementing textbook rental programs to maximizing the pool of used textbooks. Following are the details on these efforts throughout the University System of Maryland. The elements discussed in this report are guided by the principles of the protection of academic freedom; the promotion of competition among publishers, bookstores, and other textbook vendors; the empowerment of faculty and students to access information about options which will strengthen their market power; and the exploration of alternative approaches used in other universities, states, and countries as well as new and still-emerging technologies.

Market Power of Faculty and Students to Drive Down Prices.

USM institutions have embraced a recognition that the "earliness" factor is critical to driving down textbook prices, since it permits faculty and students to bargain-hunt for both new and used books. Giving students the ISBN number as early as possible promotes opportunities for savings. Letting students know how textbook prices are set/negotiated empowers them; providing content information

to students at the earliest possible time encourages faculty to select texts early and to use the same text for multiple semesters.

All USM institutions are in compliance with the legal requirements of early posting; it is important to note, however, that there is a substantial administrative burden to ensure that selection dates in the law are observed. One challenge to early notification of textbook choice is the movement of both faculty and students – often absent in summer, new students and faculty in the fall were not there the previous spring when deadline occurred, etc. An issue related to juniors and seniors is whether or not an institution/department will offer a particular upper-division course at all; this is not always known very early.

It is important to recognize that university contracts with publishers and bookstores are negotiated taking into account the best interests of students as well as institutional interests. Negotiation with bookstore contractors for those institutions that do not operate their own stores can result in lower textbook prices for students. The industry standard for textbooks is a 25% mark-up over cost. University contracts with Barnes & Noble or Follett, for example, specify that the bookstore will sell textbooks at the retail price and no higher. However, UMCP has negotiated a 5% discount on the price to students, such that B+N sells textbooks at 20% mark-up instead of 25%; BSU has a similar arrangement with Follett (5% discount on 25% standard mark-up).

University of Maryland University College, along with other Maryland System institutions, requires that each publisher provides full disclosure of all required textbook specifications, ISBNs, and prices, including detailed split-out of bundled course materials, and identification of alternative course materials. This information is posted on the University's Textbook Website four months prior to the start of class to allow students ample time to search for the best price. In addition, UMUC further enhances its purchasing market power by using the same textbook for all sections of a course, thereby securing a volume leverage with the publishers.

UMUC has instituted a mandatory competitive selection process. This formal process requires publishers to enter into Long-Term Educational Material Agreements and submit on an established annual cycle - multi-year, fixed priced competitive bids in response to UMUC specified course material request. The competitive bids are then comparatively evaluated by the responsible Academic Director and an award made based on academic quality and price. The key to UMUC's success is having a single negotiator to deal with the publishers; institutions in which individual faculty members order books do not have that amount of clout. UMUC's complex market place, with classes offered at sites all over the globe and a large number of geographically dispersed adjunct faculty, makes the arrangement it has forged for itself ideal. No other USM institution has the volume of UMUC to utilize even if book-ordering were to be consolidated.

Strategies to Increase the Use of Used Textbooks.

Several institutions are collecting data on the use of textbooks through multiple semesters. Information regarding the planned re-use of textbooks lets students know that their textbooks (new or used) will definitely be used again, increases the availability of used textbooks, and facilitates comparison shopping by students for the lowest prices.

USM bookstores are employing a variety of strategies to maximize the availability of used textbooks, which include the following:

- Conducting “book buyback” (i) throughout the year and (ii) at the end of each semester at both the bookstore and residence halls to make it convenient for students. Information about buyback is available on the bookstore website.
- Posting a partial buy-back list with prices for the fall and spring term buys to encourage students to sell back their books.
- Contacting a variety of wholesalers to maximize the pool of used books
- Double-checking used books against subsequent textbook adoptions prior to sending them back to the wholesaler. This extra effort adds to the pool of available “used” books.
- Following up with faculty members on textbook adoption before specific buyback sessions.
- Providing “prompters” for faculty on the textbook adoption form such as:
 - A space where faculty members can advise if the textbook will be used for subsequent semesters. (This information allows the bookstore to commence obtaining used copies of these textbooks and allows the bookstore to advise students of this when they make their purchase for the current semester; that is, that the bookstore will buy their book back at the end of the semester).
 - A space where faculty members can advise the bookstore as to all acceptable editions of a textbook; previous editions can be obtained in the used textbook market for students.

The Creation of Textbook Rental Programs.

Virtually all of the USM institutions are engaged in textbook rental programs.

BSU uses both textbook rentals and e-books when possible. BSU currently has 800 titles, 35-40% of which are available through a rental program operated entirely by Follett. BSU notes that there are different negotiations for “national” and “local” titles. The university’s arrangement with its bookstore means that BSU does not have to get involved with the rental process, with ensuring return of textbooks after the rental period, and other administrative details. Students have the option to buy at the end of the rental period for the difference between the rental fee and the regular new/used price of the textbook. UMES has the same arrangement with Follett, and UMCP currently has a rental program with its bookstore, Barnes & Noble, for books in 2200 sections.

FSU currently offers rental books through an agreement with Follett, which is an exclusively on-line offering of a majority of the titles that the FSU bookstore carries; FSU is in the process of upgrading its POS system to institute its own in-store rental program.

Towson and UMBC both operate their own bookstores. Towson started with 200 titles available for rental in a pilot program. The program has exploded, and there are now about 4,000 books out for rental. Towson is heavily into on-line availability of textbooks as well. UMBC’s bookstore has implemented a textbook rental program for nine courses; these courses were selected due to their high enrollments. UMBC is currently working on the expansion of this program to other courses and provides course materials in the e-format, when available. The cost of textbook rental to the student averages 55% of the cost of a new book and 73% of the cost of a used book.

Several USM institutions have been involved in a review of other institutions’ textbook rental programs and have prepared a preliminary report recommending further research. As one of the Maryland institutions involved in the preparation of that report, UMUC became particularly interested in the potential for a UMUC-Textbook Rental Company Partnership. Based on this preliminary report and

some added discussion with major textbook rental companies, UMUC is currently preparing a competitive RFP for a textbook rental partnership.

In addition to using programs at the institutions they attend, students can also be encouraged to investigate on their own rental options beyond university-bookstore-sponsored programs; there are many available on line.

Increasing Faculty Awareness of Textbook Costs and Options for Reducing Textbook Costs.

No changes to textbook purchasing at the USM institutions, already implemented or planned for the future, are inconsistent with the principles of academic freedom or the primary role of the faculty in the selection of instructional materials that they believe are appropriate. Textbook selection is still the responsibility of the faculty member, although as a result of educational initiatives and changes in book-ordering procedures, faculty members are certainly more aware of the non-academic aspects of the materials, such as initial cost to the student, likelihood of resale, and supplemental materials that might be bundled with the primary text. In most instances, materials are still selected by the individual faculty member, although there is movement toward viewing book purchases across courses, programs and departments in order to determine whether economies of scale might be realized.

For example, at UMCP, faculty in some departments have begun conversations about whether to use the same edition (perhaps an older one) of a particular text – or for the whole department to agree to use the same textbook – across multiple sections/semesters. UMUC, whose faculty are organized differently than faculty at other more traditional institutions, uses the same book across all sections; in this case, academic freedom is not violated because it is the faculty (as a group, though not as individuals) who meet with the department heads to select course materials.

University policy and state and federal law all require that faculty acknowledge that they are aware of the cost of materials when they place their orders. The focus at the University of Baltimore has been on documenting faculty awareness of what it costs students to purchase course materials and how best practices help reduce costs. TU faculty cannot order course materials unless they acknowledge, using a check-off system similar to that used in agreements to terms required to utilize software, that they are aware of the cost of the materials.

FSU faculty must acknowledge that they have read and understand the policy of the Higher Education Opportunity Act (HEOA) by clicking a box on the website when electronically submitting their requisitions. The policy is outlined on the website in the same location as the acknowledgement button. If a faculty member chooses to submit a paper form for the book order, there is also a box that must be checked before the textbook manager will enter the adoption.

UMCP uses a web-based acknowledgement form that faculty must complete each semester. UMCP notes that with the Barnes and Noble ordering template, it is not possible at this time to do what TU does (TU operates its own bookstore – most institutions do not). The institution is working with its bookstore management, but the solution involves coordination with the B&N national office that manages the web-based book adoption program on a company-wide basis. BSU notes that the faculty acknowledgement form it uses includes detailed information about cost as well.

Due to the vast number of geographically separated adjunct faculty, UMUC has a unique arrangement where individual faculty members do not select textbooks. Academic freedom is protected by representative adjunct faculty meeting with the Program/Academic Director and reaching a consensus

on the course materials to be used for all sections of each course. UMUC puts textbook prices on the acknowledgement forms to assure that faculty members are aware of price when discussing which course materials to use for courses.

At UMBC, bookstore representatives meet periodically with department heads, directors, and the Faculty Senate to educate them about textbook costs; memos from the Provost and the President of Faculty Senate go out each semester; and the recently revised textbook order form includes a link to what the faculty member is acknowledging by placing an order. FSU notes that as its faculty members become more aware that there is a growing interest in the rising cost of textbooks, they have been asking the bookstore about the options that are available concerning older editions, bundles, and e-books.

Minimizing Impact of Publishers' "Planned Obsolescence" Marketing Strategies

The work that has been done throughout the System to inform faculty members about the high cost of textbooks is a means of getting them to think more actively about their relationships with publishers and perhaps to consider products that have less planned obsolescence. The life of textbooks in some fields is of course shorter than in others.

Textbook authors, especially in rapidly changing fields, are compelled to come up with a new edition every few years; if new editions are not published and the used book market becomes even more robust, there will no longer be any publishers in business. Faculty authors will have no incentive to do the work of revision. It is the first year of publication that brings in royalties to the author; second-year royalties are about 30-40% of first-year royalties, and by the third year there are close to no royalties at all because new book sales are minimal.

Institutions are still working to ensure that any change of edition is approached thoughtfully and not automatically, however. At BSU, faculty members have been engaged in discussions about what is meant by "substantial content revision." The mathematics department at TU has a rule, as do other departments elsewhere, that faculty cannot switch editions until the following fall semester, thus ensuring that students in the spring semester and summer sessions have early information and can purchase used books.

A major complaint among students surveyed at USM institutions is a shortage of used books. Further, there is an issue with the lack of availability of separately packaged supplemental course CDs for used books (CDs with new books come with single-use access codes, thus rendering the CD useless with the used book). There is no incentive for publishers to modify this practice.

One method of mitigating both the planned obsolescence and assuring increased availability of used textbooks is to enter into a fixed-price multi-year commitment period with publishers. While this is not always feasible, UMUC has effected such an arrangement through its competitive textbook selection, which has been successful to date.

Cost-Effective Substitution of Content-Licensing for Textbook Purchasing

Custom course packs are in widespread use across the USM. While this can at times be cost-effective, it is important to make students and faculty aware of the legal requirements and the costs of obtaining, extracting, and licensing materials for inclusion in course packets. Many institutions go through outside agencies such as Kinko's to prepare and market course packets. TU, which has a department that creates custom course packs in house, notes that students are often unaware of the realities of licensing

fees, as well as costs of materials and reproduction. The department fielded a recent student complaint about the high cost of a particular pack (\$125); TU was able to provide the student with a review of the cost if the materials extracted had been purchased separately (\$500+) and the student was satisfied. It is clear that further education about content licensing is needed.

TU does both course packs and custom textbooks. In some cases there is no profit but in other cases, custom texts cost more than regular, standard, texts. They may involve royalties unless faculty members are willing to work for free, and the small quantities increase the unit cost of production.

UMUC puts three chapters (usually the first three) of each textbook online; these can be obtained in pdf format from the publisher. This is particularly helpful in case students cannot get a book in time for the start of classes or in case a course only uses a few chapters of a book (in which case student need not purchase the book at all). The use of sometimes as many as three chapters may be free from the publishers. Copyright laws apply.

In addition, information related to bundling and unbundling course materials (costs for individual items in a bundle) has been made available to faculty. Publishers have been responsive in providing unbundled options (required of them by law). The FSU bookstore lists all available components of any bundle adopted to give the students more options for purchase; FSU has seen a marked drop in the sale of bundles where the individual parts are available.

In addition, the USM is seeing a gradual shift in the way that course materials are offered to take advantage of new technologies; national studies and pilot projects at institutions across the nation have demonstrated that technology has not yet arrived at a perfect solution. Students have the ability to drive the agenda, but it is not clear that all or even most students are ready to move away from traditional printed books.

Coppin State University has an arrangement with Barnes and Noble for the operation of both an on-campus bookstore and an on-line bookstore for faculty to order textbooks for courses; students have the option of purchasing digital textbooks in many cases. FSU notes that there has been an increase in pressure from publishers for students to order directly through them at a discount, especially for e-books and online access codes. Some publisher representatives are marketing this strategy directly to faculty.

USM institutions have been experimenting with different delivery methods, including E-readers. UMCP is currently experimenting with iPads. A few other institutions have been experimenting with the Sony e-reader. It should be noted, however, that a recent study conducted at Towson University showed that fewer than 3% of students took advantage of e-versions of books when offered. The success of any experiment with non-traditional textbooks will depend on how much students are willing to embrace them. While we think of students as very technology-savvy, faculty report that student knowledge is often limited to social interaction and does not carry over into instructional technologies (programming a financial calculator, for example).

Ensuring That Any and All Electronic Textbooks and Supplemental Material Shall Be Accessible to Blind and Print-Disabled Students and Faculty Members.

With respect to providing course material to blind and print disabled students, the Association on Higher Education and Disability (AHEAD) is a professional organization that provides Americans-with-Disability-Act resources for University disability professionals, faculty, and bookstore staff as well as e-textbook

solutions for print-disabled students and faculty. USM institutions take full advantage of these resources.

Many textbooks are now being made available as e-textbooks, but the jury is still out regarding the accessibility to people with print disabilities. In this respect, electronic does not necessarily equate to accessible. Digital textbooks were originally created as a lower cost alternative to Braille texts. Digital texts became less accessible as e-readers, like the Kindle and Sony, came out on the market, especially when digital rights management was introduced to protect content.

USM institutions will continue to tap both internal and external expertise. Professor Jonathan Lazar of Towson University specializes in adapting electronic materials for the blind. USM is also studying some of the initiatives implemented at Montgomery College to determine what best practices might be emulated. The TU bookstore customizes course materials for each student working with the disabilities support services office.

At UMCP students with print disabilities who need accessible reading materials are provided assistance through the Disability Support Service (DSS) in the University Counseling Center. Accessible materials are available four (4) ways. (1) The Maryland State Library for the Blind and Physically Disabled in Baltimore will work with publishers to obtain electronic versions of textbooks. This service is available, however the DSS has not availed itself to it as of yet. (2) DSS Reading Coordinators will also contact publishers directly to obtain electronic versions of textbooks. (3) The DSS has a membership with Readings for the Blind and Dyslexic (RFB&D) and borrows accessible materials from them each semester if they have requested textbooks in accessible format. (4) And, DSS has the ability to convert text into electronic formats as well. This process is as follows: The DSS purchases the textbook, cuts the spine off, runs the textbook through a high speed scanner (which transfers the printed material to the computer) and converts the information transferred to the computer into an accessible format (MP3 file or CD to listen to on the computer or CD player, etc.) for the student. In addition, the University Book Center will work with publishers on behalf of students to obtain large-print textbooks or electronic versions as needed.

Other.

One approach that institutions have pursued to lower textbook costs for students is to ensure that campus libraries put textbooks on reserve (both physical and electronic when possible). While this approach taxes the already strained budgets of our libraries, such costs might be mitigated by encouraging faculty members to donate extra books to the libraries for reserve use.

Another approach is to ensure that financial aid packages include realistic amounts for book allowances and course materials. Several institutions have been working with vendors to provide scholarships for the purchase of books.

III. CONCLUSIONS/NEXT STEPS.

The USM and its institutions have been making continuous improvements to address this issue.

The printing and availability dates for the schedule of classes have been moved up to accommodate earlier textbook notification dates. Institutions are increasing reliance where possible on pre-registration to determine which upper-level offerings will be made. FSU's bookstore has worked with the Registrar's Office and has integrated textbook information with the class schedules at the time of registration. Students can see when they are making their class selections what books are required for

each class and the cost of each book. The availability of this information will help drive faculty to adopt earlier and to keep costs down, as well as providing students with even more time to search for cheaper options.

At UMBC, the bookstore has teamed up with the Student Government Association to develop a textbook buying guide for students. This guide has been put it up on the UMBC bookstore website (search for “textbooks”); it is free, not copyrighted, and available to be used by other institutions.

UMBC’s Bookstore also includes information on the “textbook tax credit” on its website. The National Association of College Stores and the Internal Revenue Service have teamed up on a new website designed to help make students aware that they can now recoup some of what they spend on textbooks and other course materials thanks to an expanded tax credit enacted by Congress as part of economic recovery legislation in February 2010. The site, textbookaid.org, provides information about how college students can take advantage of the American Opportunity Tax Credit, which temporarily expands the Hope College Tax Credit in multiple ways, including by including textbooks and other course materials as reimbursable expenses for the first time.

Students can in most cases provide feedback on textbooks as part of course evaluations. While the difference between evaluation of the course and evaluation of the instructor must be emphasized, the information about course materials promises to be of help to both students and faculty.

Institutions will continue to explore the use of new and emerging technologies to provide students with alternate ways to access textbooks. More extensive discussion and study of e-texts is ongoing, as is investigation of the feasibility of using open texts in those courses for which they are available.

As noted in the USM textbook policy, this issue is monitored regularly by the Council of University System Presidents (CUSP), the Academic Affairs Advisory Council (AAAC), the University System of Maryland Student Council(USMSC), and the Council of University System Faculty (CUSF), who work together to provide to the Chancellor periodic reports on the impact and effectiveness of the policy.

APPENDIX A.

**THE COST OF TEXTBOOKS AND PROPOSED INITIATIVES
THE UNIVERSITY SYSTEM OF MARYLAND**

**OFFERED TO THE DEPARTMENT OF LEGISLATIVE SERVICES
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THE UNIVERSITY SYSTEM OF MARYLAND THE COST OF TEXTBOOKS AND PROPOSED INITIATIVES

The cost of textbooks has been and continues to be a perennial issue for college students and their parents. In the 21st century textbook costs have become more at issue as universities, legislatures and students and their parents struggle to find answers to the rising overall cost of education. Just a casual web search will reveal hundreds of sites discussing the cost of higher education in general and the cost of textbooks in particular.

In response to this concern, legislatures and colleges and universities have invested considerable effort into finding solutions.

One of the early studies was completed in 2005 by the State Council of Higher Education for Virginia (SCHEV) that had been directed by the Virginia General Assembly to "... study both the costs of textbooks and the textbook purchasing practices of the public institutions of higher education in the Commonwealth." The SCHEV was to look at best practices and consider what is being done at institutions of higher education in Virginia and other states to reduce textbook costs to students. Some of the recommendations made in the Virginia study, completed in January 2006, included: 1). Increase early adoptions, 2) ensure supplemental materials are necessary; 3). Establish textbook financing initiatives; 4). Create new tax credits while continuing sales tax exemption; and 5) the use of digital textbooks and custom publishing when cost effective. These recommendations as well as others were made in collaboration with students, faculty, booksellers and book publishers.

In late 2006 the Connecticut Department of Higher Education (CT DHE) completed a textbook cost study that included recommendations similar to other such reports, but made a distinction between what the state can do and what can be done at the college and university level. The report recommended that states can create need-based grants for textbook and study material costs and can include textbook costs as part of the total cost of education. The institutional level, the CT DHE report suggested each university campus to "... form an ad hoc textbook committee to investigate pricing on their campus ..." and "... to assist faculty members, campus bookstores should establish a process by which information about the prices of various textbooks will be provided to faculty member." Included among the recommendations were those seen in other studies such as improving the used book market, encouraging faculty to use textbooks for multiple academic years and publishing ISBN numbers in order for students to make better choices in how and what textbooks to purchase.

The University of North Carolina Board of Governors published its *Report and Recommendations of the Subcommittee Reviewing the Cost of Textbooks* in January 2006. In March of 2007, the University issued a report outlining the implementation of the report recommendations. Several of the recommendations successfully implemented include the creation of a "Buyback Consortium" of UNC bookstores thereby increasing used book availability and returning more money to the hands of students. All of its campuses have established committees to evaluate issues related to the cost of textbooks and making available information on ways to control and/or reduce textbook costs. At UNC Charlotte, 100% of the faculty has placed their textbook adoptions on time. The 100% success rate was a collaborative effort. Bookstores more aggressively provided adoption deadline information in multiple

venues including emails and websites; departmental assistants played a “liaison” role with the bookstores to improve adoption timeliness; and meeting were held with deans and department chairs.

At the national level, the U.S. congress has become an active participant in the search for solutions to the rising cost of textbooks. In May 2007 the Federal Advisory Committee on Student Financial Assistance completed its report *Turn The Page: Making College Textbooks More Affordable*. The report makes many recommendations that have been seen elsewhere. These include: 1). Strengthen the used book market; 2). Submit book orders on time; 3). Increase library resources; 4). Implement a textbook rental programs; and 5). Establish need-based loan and grant programs for the purchase of textbooks and other short-term recommendations.

The advisory committee report keystone recommendation however, is to make better use of 21st century technology in a way that creates a demand side marketplace. The report identifies structural imperfections in the present textbook market place that renders it supply driven rather than demand driven whereby the consumer does not play a role in establishing “ . . . price, format or quality of the product.” The report suggests the creation of a “ . . . national digital marketplace – that can meet the needs of all stakeholders, particularly students and families.” Such a marketplace would establish an infrastructure of transactions whereby all stakeholders could participate in the acquisition and distribution of textbook content in a more efficient and less costly environment. The study cited California State University who is developing electronic versions of textbooks and creating interactive web-based text as a starting point for a “national digital marketplace.”

In the state of Maryland colleges and universities and the state legislature have also struggled with the same question – how do we reduce what students and their families pay for textbooks?

The Maryland General Assembly passed House Bill 204 during the 2007 legislative session. This bill directed the Department of Legislative Services (DLS) to compile information regarding the retail price of textbooks, the factors that impact pricing, the affect of posting textbook information online and the impact of requiring the cost of textbooks be included in the cost of tuition. The University System of Maryland (USM) has placed itself at the disposal of DLS during this data collection period. Each degree granting institution in the USM has completed, for DLS, a questionnaire focused on textbook cost, distribution and purchasing behaviors.

During its 2005 Session, the Maryland General Assembly passed House Bill 70, which stated in part that “the University System of Maryland Office or its designee shall coordinate the purchase and distribution of textbooks and other educational supplies to participating institutions . . . Participation in the University textbook consortium by constituent institutions is voluntary.” House Bill 70 recognized that the cost of textbooks can be burdensome to university students and mandated the creation of a University System operated and managed bookstore consortium as a mechanism to leverage bulk buying to reduce textbook costs. As the University System considered ways to create, operate and manage, a consortium the following were considered:

- A. On-campus bookstore operations and participation in a consortium
- B. University System resources available to operate and manage a consortium
- C. Antitrust Implications

A. On-Campus Bookstores and Consortium Participation

The University System has experienced success in leveraging its buying power to reduce contract costs for certain services and commodities. Computer hardware and software, research supplies and equipment and energy are examples of collaborative procurement efforts among University System institutions that increased the size of purchases and, thereby, reduce costs. The common threads among these contracts are competition and full or near full institution participation.

Unlike purchasing of certain services and commodities such as those listed above, faculty adopt a textbook and once designated for order by faculty the product may often be only available from a single publisher. This significantly reduces the opportunity to leverage the buying power of a potential consortium, absent control over faculty adoptions.

In addition, to encourage vendors to offer meaningful price reductions it is also important that significant institution participation can be demonstrated. Textbooks are neither paid for nor consumed by the University System; they are sold at retail to individual students through campus stores managed by either the campus or contract leaseholders (in some cases books are purchased on-line. In this regard, eighty percent of the bookstore operations within the University System are outsourced. These contracts have in some instances reduced overhead and institutional operating costs and in some cases produced revenue that can be returned to student services. The current remaining contract commitments between University System institutions that outsource bookstore operations and management and the outsource bookseller ranges from between two years and 13 years. We would anticipate one of two outcomes necessary to the success of a University System operated and managed bookstore consortium: 1) the termination of existing contracts between institutions and the outsource booksellers or 2) the participation by the outsource booksellers in the consortium. Neither of these outcomes is likely. In the first case, University System institutions have a responsibility to meet their contractual commitments and in the second case major booksellers, such as Barnes and Noble College Booksellers and Follett Corporation, have already leveraged their buying power and infrastructure on a national basis through established relationships with publishers. There is no incentive for the national bookseller to participate.

B. Creation of a Consortium: The Business Decision

Particular expertise is needed to manage a bookselling operation. Each of the University System universities already has mature infrastructure in place to support textbook acquisition and distribution, either through outsourced or in-house operations. The textbook adoption process is very complex with course material selections left to the discretion of each professor, or in some cases, departments.

A consortium would have to duplicate that infrastructure to be successful or maintain the existing infrastructure and attempt to negotiate more favorable textbook prices with publishers. The Association of American Publishers alone represents 260 publishers. The magnitude of re-creating what college stores already have in place would be an enormous task that in the end would probably not have the desired result – reducing the amount students spend on their textbooks. The consortium would have to employ experienced staff whose duties would include working with individual faculty and departments at each of the 11 universities to formulate book lists and place textbook orders to publishers. In addition, the consortium would require mechanisms for storage, textbook distribution and collection of money from the individual purchasers. The collective costs for these management and

operational functions would likely exhaust any potential savings.

C. Federal Antitrust Implications

The Robinson-Patman Act passed by Congress in 1936 was intended to protect small independent retailers from “ . . . unfair competition from vertically integrated, multi-location chain stores.” The relevance of Robinson-Patman to the University System and the creation of a bookstore consortium is that it prohibits suppliers from offering different pricing of its products to resellers and thereby creating unfair competition. There are circumstances under which lower pricing would not run afoul of Robinson-Patman. One example is functional discounts. These are discounts given to purchasers equal to actual costs incurred by the purchaser to provide certain services to the publisher such as marketing and advertising. These functional discounts would not translate into reduced pricing of books.

The University System asked the Maryland Office of the Attorney General (OAG) to comment on the implications of the Robinson-Patman Act on the creation of a textbook consortium. In identifying broad legal issues the OAG stated in part that “ . . . the applicable antitrust law, Robinson-Patman Price Discrimination Act, 15 U.S.C.A. Subsection 13(a) (the Act) may have implications for the successful implementation of the textbook cooperative. The Act does not bar the USM from establishing such a cooperative, and it is possible that the USM may itself be immunized from antitrust liability because the consortium would operate under a legislative mandate. However, the Act’s prohibitions may apply to the sale of textbooks to the consortium. Moreover, litigation under the Act affecting many of the nation’s largest publishers and booksellers has resulted in major settlement agreements that could limit the ability and willingness of those publishers to offer cost advantages to a USM cooperative.” The OAG did go on to say that an assessment of the Act’s specific impact on a consortium would “ . . . require considerable, additional analysis.”

Going Forward

The University System of Maryland is supportive of the Maryland General Assembly’s commitment to help reduce the amount students pay for their textbooks. USM student government representatives and faculty have echoed this support. However, the USM believes that there are practical, expense, and legal barriers to the successful implementation of a textbook consortium. As an alternative, the System suggests that a collaborative effort among all the stakeholders would result in decreasing the amount student pay for textbooks and increasing access.

The University System established a textbook workgroup (see attached Exhibit A) with stakeholder representation from students through the USM Student Council, faculty through the Council on University System Staff, institution bookstores, libraries and publishing through the Association of American Publishers and booksellers through and the National Association of College Stores.

The purpose of this workgroup was to identify best practices and initiatives that are achievable and measurable resulting in reducing the burden of textbook costs on students and their families. What we have learned from our meetings is there is not “silver bullet.” Reducing the amount students pay for textbooks is a complex endeavor requiring cooperation among all who are affected by the selection, selling and purchasing of textbooks. Improving processes and practices takes time, effort and continued commitment. Some of the best practices and initiatives the workgroup has identified as feasible and is currently pursuing options for implementation are:

- 1). making better use of opportunities to acquire licensing rights in order to copy portions of textbooks to create course packets and custom books for distribution to students at lower cost. The USM library system holds licenses for certain titles and have made selected materials available to students at a lesser cost;
- 2). providing greater transparency for faculty on price options for available textbooks and supplemental materials including digital and custom books and the estimated edition cycle. Pricing needs to become an integral part of the textbook selection process;
- 3). making book adoptions timely to improve student sell back value and improve the availability of lower cost used books and supplies;
- 4). centralizing book lists to make the used book market more accessible to students. Students have indicated that their greatest cost savings are found in the used book market. Collaboration among all stakeholders including students, faculty and booksellers is critical;
- 5). investigating opportunities for common titles in “survey” courses across the University System of Maryland. Publishers may be encouraged to establish favorable pricing for such initiatives. There can be a fine line between affecting efficiencies and cost savings in textbook selection and acquisition and imposing upon faculty prerogative to establish course content. However, collaboration among stakeholders may find opportunities to establish common titles for some course offerings, maintaining course content integrity and reducing textbook costs;
- 6). encouraging faculty and academic departments making textbook choices to work more closely with the publishing and bookselling communities to evaluate the efficacy of bundled options and new editions. Students are seeking the flexibility of choice. They are asking for the opportunity to play a role in selecting the study materials they purchase. Unbundling study materials from textbooks can provide that flexibility; and
- 7) eliminate sales tax on required and recommended textbooks and course materials. Although tax credits can have an overall greater cost savings (depending on income, tax bracket and the value of textbooks purchased), the elimination of sales tax would result in a point-of-sale savings that accrues directly to students.

The USM agrees with the approach taken by the Federal Advisory Committee on Student Financial Assistance to "...focus not on who is responsible for rising prices, but rather on a search for solutions...." Each stakeholder has a unique voice and view and is a valuable contributor to the larger conversation toward finding solutions.

During its 2007 legislative session, the General Assembly considered establishing a task force to consider the question of the rising cost of textbooks. With the Department of Legislative Services completing its data collection, with study results from various organizations and higher education institutions such as those cited above and with the Federal Advisory Committee on Student Financial Assistance completing its report and recommendations, the timing may be right to assemble those unique voices.

**THE COST OF TEXTBOOKS AND PROPOSED INITIATIVES
THE UNIVERSITY SYSTEM OF MARYLAND
WORKGROUP PARTICIPANTS**

The individuals mentioned below participated in the text book workgroup and/or provided advice and counsel to identify issues associated with the cost of textbooks and to recommend initiatives that would be responsive to those issues. Their participation is greatly appreciated.

Aragon, Nicolas: Student, USM Student Council
Bailey, Brian: Student, USM Student Council
Bruszewski, Roger: Officer, Frostburg State University
Bryce, Joe: Officer, University System of Maryland
Collins, John: Faculty, University of Maryland Biotechnology Institute
Ellis, Devin: Student USM Student Council
Featherstone, Henry: Officer, Coppin State University
Goedert, Joanne: USM Counsel, Office of the Attorney General
Goldstein, Irv: Officer, University System of Maryland
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Hershman, Richard: Director of Government Relations, National Association of College Stores
Hildebrandt, Bruce: Executive Director for Higher Education Association of American Publishers
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11/26/2007

APPENDIX B.



UNIVERSITY SYSTEM OF MARYLAND

III - 10.00 - POLICY ON TEXTBOOK AFFORDABILITY MEASURES (Approved by the Board of Regents February 13, 2009)

I. Purpose

The University System of Maryland Board of Regents recognizes that the rising cost of textbooks must be addressed in order to maintain access and affordability for USM students. Therefore each degree-granting institution shall implement the measures outlined in the following policy.

II. Policy

1. All University System of Maryland degree-granting institutions shall post on the institutional website ISBN, title, author, publisher, and edition for required course material as soon as faculty members and the bookstore have finalized the textbook selection but no later than May 1 for the fall semester and December 1 for the spring semester. In the case that a course has not been assigned a faculty member by the given deadline, textbook selection shall be conducted and communicated to enrolled students expeditiously upon selection of the materials.
2. Institutional bookstores shall provide faculty members who are placing book orders with current information about the retail price of selected course materials.
3. Faculty teaching the same course for multiple semesters are encouraged to use the same textbooks and course materials for multiple semesters to the extent practicable and educationally sound.
4. Faculty should be encouraged to order new editions of textbooks only if necessary and if older editions are not of comparable educational content. Faculty should list information pertinent to previous editions which are of acceptable use, as described in Section 1.
5. Institutions shall make faculty aware of the option to request unbundled versions of textbook and course materials and of the price differential.
6. Faculty should order textbook bundles only if the supplements included with textbooks are necessary to the curriculum and instruction.
7. In the case that a faculty member assigns bundled materials, the bookstore shall make available both bundled and unbundled versions of the materials for purchase. Institutions and bookstores shall clarify on the bookstore website that in the case of the assignment of bundled materials, students should purchase either the bundled package or all required portions of the bundle individually.
8. Faculty should permit students to purchase electronic versions of textbooks when available.

9. Faculty members should incorporate into course instruction the use of online resources wherever feasible and prudent.
10. Institutions shall seek ways to lessen the financial hardship of college textbook purchases, such as targeted scholarship and financial aid funds, consideration of textbook rentals for introductory courses, consideration of placing selected course materials on reserve in campus libraries when practicable, and development of customized course materials.

III. Implementation

This policy shall be effective beginning with the course materials assigned for the Fall 2009 semester.

Institutions shall include in course evaluations, questions concerning the use and value of assigned textbooks and other course materials.

Institutions should make faculty aware of the provisions in this policy each semester.

The Council of University System Presidents (CUSP), the Academic Affairs Advisory Council (AAAC), the University System of Maryland Student Council(USMSC), and the Council of University System Faculty (CUSF) shall work together to provide to the Chancellor periodic reports on the impact and effectiveness of this policy.

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