American Bar Association Section of Legal Education and Admissions to the Bar

MEMORANDUM

DATE: March 7, 2012

TO: Deans of ABA-Approved Law Schools

University Presidents

Chief Justices of State Supreme Courts

Bar Admissions Authorities

Deans of Unapproved Law Schools

Leaders of Other Organizations Interested in ABA Standards

Student Bar Association Presidents

FROM: Hulett H. Askew, Consultant on Legal Education

SUBJECT: Amendments to Interpretation 510-2 [Student Loan Programs], Rule 3

[Accreditation Committee Consideration], Rule 5(a) [Jurisdiction of the

Accreditation Committee], and Rule 22 [Teach-out Plan and Agreement and Law

School Closure].

At its meeting on February 6, 2012, the ABA House of Delegates concurred in changes to the ABA Standards and Rules of Procedure for Approval of Law Schools. The changes became effective immediately.

Following are a brief explanation of the changes and a redlined version of the amended Standards and Rules of Procedures.

Commentary

At its meeting on February 6, 2012, the ABA House of Delegates concurred in changes to Interpretation 510-2 and Rules 3, 5(a), and 22 of the *Standards and Rules of Procedure for Approval of Law Schools*. These changes were made in order to comply with United States Department of Education ("DOE") regulations.

The changes to Rule 3 were approved by the Council at its meeting on August 18, 2011 to be circulated for Notice and Comment. A public hearing was held on September 22, 2011, and the Council approved the changes at its meeting of December 3, 2011.

The changes to Interpretation 510-2, Rule 5, and Rule 22 were approved by the Council at its meeting on October 25, 2011 to be circulated for Notice and Comment. A public hearing was held on November 17, 2011, and the Council approved the changes at its meeting of December 3, 2011.

Rule 3

The change to Rule 3 implements the DOE requirement that the Accreditation Committee undertake regular interim monitoring of schools to ensure compliance with the Standards between regular site visits. The change to Rule 3 provides a general framework for such monitoring, which will be based on data provided by schools in the Annual Questionnaire.

While every school will undergo the interim monitoring, only in those instances where the monitoring raises significant questions about possible noncompliance with one or more of the Standards would a school be contacted. As stated in the Rule, the monitoring will cover a number of items, including bar passage, resources available to the law school, graduate placement, entering class credentials, changes in enrollment, and academic attrition.

<u>Interpretation 510-2</u>

Standard 510 requires law schools to take reasonable steps to minimize student loan defaults. This Interpretation applies only to independent law schools because the DOE does not provide default rates for individual programs within a university. To comply with DOE requirements, this new Interpretation sets a maximum default rate and requires a school that exceeds the maximum to submit a plan to be approved by the Accreditation Committee for reducing the default rate.

<u>Rules 22 and 5(a)</u>

Rule 22 governs teach-out plans and teach-out agreements in the event of the closure of a law school. The change to Rule 5(a) assigns to the Accreditation Committee jurisdiction to recommend approval of a school's teach-out plan to the Council.

Amendments to Standards and Rules of Procedure

Rule 3. Accreditation Committee Consideration

- (a) Upon completion of the procedures provided in Rule 2, the Accreditation Committee shall consider the application or the status of the law school based upon a record consisting of the law school's application (in the case of a school seeking provisional or full approval), the site evaluation report, any written material submitted by the school, and other relevant information.
- (b) The Committee shall make findings of fact and state conclusions with respect to the law school's compliance with the Standards. If the matter falls within the provisions of Rule 5(a), the Committee also shall make recommendations to the Council. The Committee also may request (1) that the law school provide the Committee with specific information or (2) that the law school take specific actions, including reporting back to the Committee concerning actions that the law school has taken to bring itself into compliance with the Standards.
- (c) In addition to the duties of the Committee set forth in subparts (a) and (b), the Committee shall monitor the accreditation status of law schools on an interim basis using a school's annual questionnaire submissions, other information requested by the Committee, or information otherwise deemed reliable by the Committee for its review. In conducting interim monitoring of law schools, the Committee shall consider at a minimum: the resources available to the law school [Standard 201], efforts and effectiveness in facilitating student career placement [Standard 511], bar passage [Interpretation 301-6], and student admissions including student credentials, size of enrollment and academic attrition [Standard 501]. Other Standards and Interpretations may be considered as the Committee deems appropriate. This monitoring may result in action by the Committee, including requests for additional information from a school, appointment of a fact finder or other mechanism to ensure compliance by schools with one or more Standards.
- (e) (d) The Consultant shall inform the president and the dean of the law school of the Committee's decision or recommendation in writing.

Standard 510. STUDENT LOAN PROGRAMS

A law school shall take reasonable steps to minimize student loan defaults, including provision of debt counseling at the inception of a student's loan obligations and prior to graduation.

Interpretation 510-1

The student loan default rates of a law school's graduates, including any results of financial or compliance audits and reviews, shall be considered in assessing the extent to which a law school complies with this Standard.

Interpretation 510-2

For law schools not affiliated with a university, the school's student loan cohort default rate shall be sufficient, for purposes of Standard 510, if it is not greater than 10% for any of the three most recently published annual cohort default rates. If the school's cohort student loan default rate is not sufficient under this Interpretation, the school must submit a plan for approval by the Accreditation Committee for coming into compliance with this requirement.

Failure to comply with title IV or having a student loan cohort default rate greater than the rate permitted by title IV is cause for review of a law school's overall compliance with the Standards. Schools shall demonstrate that they have resolved all areas of deficiency identified in financial or compliance audits, program reviews or other information provided by the United States Department of Education.

Interpretation 510-2-3

The law school's obligation shall be satisfied if the university, of which the law school is a part, provides to law students the reasonable steps described in this Standard.

Rule 22. Teach-out Plan and Agreement and Law School Closure

- (a) A provisional or fully approved school must submit a teach-out plan for approval by the Accreditation Committee and Council upon occurrence of any of the following events:
 - (1) The school notifies the consultant's office that it intends to cease operations entirely or close a separate location in which a student can earn all of the necessary credits to earn the J.D. degree;
 - (2) The Accreditation Committee recommends or the Council acts to withdraw, terminate, or suspend the accreditation of the school;
 - (3) The U.S. Secretary of Education notifies the Consultant's Office that the Secretary has initiated an emergency action against an institution, in accordance with section 487(c)(1)(G) of the HEA, or an action to limit, suspend, or terminate an institution participating in any title IV, HEA program, in accordance with section 487(c)(1)(F) of the HEA, and that a teach-out plan is required;
 - (4) A State licensing or authorizing agency notifies the Consultant's Office that an institution's license or legal authorization to provide an educational program has been or will be revoked.
- (b) As soon as the decision to close an approved law school or branch is made, the school shall make a public announcement of the decision and shall notify the Consultant of the decision, the appropriate State Licensing authority and the U.S. Department of Education.
- (c) The school shall submit the teach-out plan for the school or branch being closed as required by paragraph (a) to the Consultant's office within such time specified by the Consultant. The Consultant's Office, in consultation with the Accreditation Committee leadership, may require a school to enter into a teach-out agreement as part of its teach-out plan.
- (d) The Accreditation Committee will promptly review the teach-out plan. The Committee may recommend approval of the plan to the Council, which shall consider the recommendation in accordance with Rule 8. The Accreditation Committee or the Council may deny approval of a plan, or condition approval of the plan on the school making specified changes to the plan. The Committee's decision not to recommend approval of a plan to the Council is final and may not be appealed to the Council. To be approved by the Accreditation Committee and Council, the teach-out plan must satisfactorily address the items identified in paragraph (e), and, if applicable, the teach-out agreement must satisfactorily address the items identified in paragraph (f). If the Accreditation Committee or the Council denies approval of a school's teach-out plan, the school must revise the plan to meet the deficiencies identified by the Committee or Council; and resubmit the plan as soon as possible and no later than 30 days after receiving notice of the decision.
- (be) To be approved by the Accreditation Committee and Council, tThe teach-out plan must be submitted on Official Form A of these Rules writing and must and provide for the equitable treatment of its own students and, at a minimum, address each item in the Form.

- (f) If a school voluntarily enters into a teach-out agreement or if the Consultant requires a school to submit a proposed teach-out agreement as part of a teach-out plan, the school must submit a copy of the agreement in the form of Official Form B to these Rules approved by the Council, demonstrate each of the substantive criteria specified by the Form.
- (c) The Consultant's Office, in consultation with the Accreditation Committee leadership, may require a school to enter into a teach out agreement as part of its teach out plan.
- (d) If the school enters into a teach-out agreement, either on its own accord or as required by the Consultant's Office, the agreement must be recommended by the Accreditation Committee and approved by the Council and must comply with all federal and state laws, including regulations of the United States Department of Education. At a minimum, the agreement must be with a law school approved by the Accreditation Committee and Council for this purpose, must provide students access to the program and services without requiring them to move or travel substantial distances, and must provide students with information about additional charges, if any.
- (e) The teach-out institution must have the necessary experience, resources and support services to provide a program of legal education that is reasonably similar in content, structure and scheduling to that provided by the institution that is subject to any of the occurrences that are set out in (a)(1-4) above. Additionally, the teach-out institution must be financially stable and able to carry out its mission and meet all of its obligations to its students and must demonstrate that it can provide students access to its program and services without requiring them to move or travel substantial distances and that it will provide relocated students with information about additional charges, if any.
- (fg) If the Accreditation Committee recommends and the Council approves Upon approval by the Council of a teach-out plan that includes a program that is accredited by another recognized accrediting agency, the Consultant's Office must shall notify that accrediting agency within 30 days of its approval.
- (h) Upon approval of a law school's teach-out plan by the Council, the Consultant shall notify within 30 days all recognized agencies that accredit other programs offered by the institution of which the law school is a part.
- (g) In the event of closure or cessation of operation, an approved law school and its parent institution, if any, must agree to provide an opportunity for currently enrolled students to complete their degrees under the terms of a closure plan which meets at least the conditions set out below. As soon as the decision to close an approved law school is made, the institution shall make a public announcement of the decision and shall notify the Consultant of the decision, the appropriate State Licensing authority and the U.S. Department of Education.
- (mi) In the event a School closes without an approved teach-out plan or agreement, the Consultant's office will work with the U.S. Department of Education and the appropriate

- State agency, to the extent feasible, to assist students in finding reasonable opportunities to complete their education without additional charges.
- (h) Upon deciding or being required to close or cease operations, the law school shall promptly submit a closure plan, which shall be reviewed by the Accreditation Committee and must be approved by the Council.
- (i) The conditions to be met by a closure plan shall include the following:
 - (1) The law school shall not thereafter admit or enroll any student (including a transfer or nondegree candidate) who was not a student at the time when the decision to close is announced.
 - (2) The governing body of the institution shall take all necessary steps to retain degree granting authority for sufficient time to allow completion of degrees by those students who are degree candidates at the time the decision to close is announced and who complete degree requirements either at the law school or at another ABA approved law school in the normal period of time required for that student's course of study.
 - (3) The law school shall use its best efforts to assist students in transferring to, or acquiring visiting status at, another ABA approved law school for completion of their degree requirements.
 - (4) Until the date of closing the law school shall maintain:
 - (i) an educational program that is designed to qualify its graduates for admission to the bar:
 - (ii) a library collection and services adequate to support the curriculum, either on-site or through arrangements with other law libraries in the immediate vicinity;
 - (iii) a faculty adequate to maintain a sound educational program;
 - (iv) an adequate administrative staff to handle student problems and recordkeeping along with support of the academic program; and
 - (v) its existing physical facilities unless prior approval of the Accreditation Committee is obtained.
- (j) If the school discontinues instruction or makes a decision to do so prior to the end of the normal period for completion of degrees by current students, then:
 - (1) The school shall take all reasonable steps to avoid closing during an academic year. If the closing occurs during an academic year, then the school shall make adequate arrangements for students to enroll in other law schools for that current year at no additional cost to the student.

- (2) The school shall permit currently enrolled students to complete their degree requirements at other ABA approved law schools by entering into "teach out" agreements with other law schools. Credit earned at other law schools shall be received as transfer credit toward the degree of the closing school.
- (3) Students transferring credit back to the law school shall not be charged fees beyond a reasonable administrative fee for processing of records.
- (4) The Consultant shall notify the Council of the school's decision and the date at which the school intends to cease operations.
- (k) The law school or the governing body of the institution shall make satisfactory arrangements for the continuation of legal representation undertaken during the operation of a law school skills training program.
 - (1) The governing body of the institution shall make arrangements for permanent retention and availability of student records.

Rule 5. Jurisdiction of the Accreditation Committee

- (a) The Committee has the jurisdiction to make recommendations to the Council concerning:
 - (1) the granting of provisional approval or the extension of the period of provisional approval under Standard 102;
 - (2) the granting of full approval under Standard 103;
 - (3) the granting of acquiescence in major changes under Standard 105, except that the Committee has jurisdiction to make decisions concerning acquiescence in the types of major changes specified in Interpretation 105-6; and
 - (4) the granting of variances under Standard 802.; and
 - (5) approval of a teach-out plan under Rule 22.