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**MEMORANDUM**

**FROM: BARRY CURRIER, MANAGING DIRECTOR**

**DATE: JUNE 30, 2015**

**RE: ABA EMPLOYMENT QUESTIONNAIRE REPORTING OF LAW-  
SCHOOL-FUNDED POSITIONS – CONTINUING MATTER AND  
INVITATION TO COMMENT FURTHER**

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At its July 31, 2015 meeting in Chicago, the Council of the Section of Legal Education and Admissions to the Bar will consider additional proposals to reform the reporting of law school/university-funded positions in the annual ABA Employment Questionnaire. The pending proposals are attached to this memorandum. One is a revised report and recommendations from the Data Policy and Collection Committee to the Council (Attachment A), and the second is a proposed amendment to the Committee's prior recommendations by Dean Paul Mahoney, a member of the Council (Attachment B).

Any interested party is invited to comment on the pending proposals. Comments should be sent to Scott Norberg, Accreditation Project Director for Data Policy and Collection, at [Scott.Norberg@americanbar.org](mailto:Scott.Norberg@americanbar.org) by July 16, 2015. There were a number of comments that were submitted on the DPCC recommendations (now revised based on some of those comments) that were on the agenda of the Council meeting on June 5-6, 2015. Those comments will be included in the materials for the July 31 meeting, and it is not necessary to resubmit them.

**BACKGROUND**

***March***

In March 2015, the DPCC submitted three recommendations to the Council for its consideration: (1) to move the reporting of law-school-funded positions "above the line" on the Employment Summary Report, so that they are reported as a separate category of Employment Status (along with "Employed—Bar Passage Required," "Employed—J.D. Advantage," etc.); (2) to revise the definitions to require that law-school-funded positions be reported as short-term; and (3) to eliminate the

detailed breakdown of law-school-funded positions in the existing Employment Summary Report.

These recommendations reflected the Committee's view that school-funded jobs are not generated by the market (they are open only to graduates of the school reporting the positions), and are, in most instances, not "long-term" as that term is ordinarily understood because they are, in reality, very modestly paid interim positions that neither the law school nor the graduate expect to last for a year or more. Before meeting to formulate its recommendations, the Committee invited and received numerous comments on various alternative proposals to improve the reporting of law-school-funded positions.

The Committee therefore recommended that the Council conclude that reporting law-school-funded positions in the "long-term, full-time, bar passage required" category would be "misleading to a reasonable law school student or applicant" and inconsistent with Standard 509(a).

At its March meeting, the Council shared the Committee's concern that prospective students be fully informed about positions that are funded by the law school itself. It, therefore, accepted the Committee's recommendation to report all school-funded positions in a separate "above the line" category; but it rejected the proposal to eliminate the detailed breakdown, deciding to move that table below the line. The Council also did not agree with the approach of defining almost all such positions as "short-term."

The Council also requested that the Committee further consider, *inter alia*, whether public service fellowships could be appropriately and non-misleadingly distinguished from other school-funded positions.

### ***June***

As directed, the DPCC met again in May, and submitted further recommendations (a prior version of what is now Attachment A) for consideration by the Council at its June 5-6 meeting. In the days leading up to that meeting, the Council received about 25 comments on the DPCC's further recommendations. The comments that were received in time to circulate them to the Council were circulated; however, the DPCC did not have an opportunity to read and consider them.

Several of these comments contended that the Committee's recommendation would mislead prospective students by treating some one-year positions, such as clerkships, as "long-term," but other positions of a similar duration as "short-term." Commenters also expressed concern that the proposed revisions to the Employment Summary Report would reduce the amount of information reported. Other comments noted that some school-funded positions consist of public service fellowships. These fellowships, according to the commenters, facilitate entry into public service careers, attract students who have other employment opportunities, and are considered successful employment outcomes – often preferred employment outcomes – by the graduates who receive them.

At the Council's June meeting, Dean Mahoney made a motion to amend the DPCC's recommendations (Attachment B), which motion was seconded. Thereafter and in light of the many comments received, there was a motion to table the matter to (a) give the Council sufficient time to study the comments it had received shortly before the meeting, (b) give the DPCC time to consider the comments and Dean Mahoney's proposed amendment, and (c) invite further comment on the matter from interested parties. In light of a number of the comments submitted to the Council and the discussion at the June Council meeting, the DPCC revised its June recommendation to the Council (Attachment A).

A mock-up of the new Employment Summary Report as approved by the Council in March is attached as Appendix C. Absent further action by the Council, this is the format in which employment outcomes for the class of 2015 will be reported.

#### JULY 31 COUNCIL MEETING

When the Council meets on July 31, it will start with consideration of Dean Mahoney's motion to amend, which was pending at the time of the motion to table the matter until the next meeting of the Council. The discussion will include consideration of the DPCC's further report (Attachment A), and the comments received prior and subsequent to the June Council meeting.

Those wishing to submit additional comment should do so as directed at the beginning of this memo. Comments received will be posted [HERE](#).

**MEMORANDUM**

**TO: ABA COUNCIL OF THE SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR**

**FROM: CHRISTOPHER M. PIETRUSZKIEWICZ, CHAIR, DATA POLICY AND COLLECTION COMMITTEE**

**DATE: JUNE 29, 2015**

**RE: ADDITIONAL RECOMMENDATIONS ON REPORTING OF LAW-SCHOOL-FUNDED POSITIONS**

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This memorandum from the Data Policy and Collection Committee (the Committee) to the Council replaces an earlier memorandum dated May 15, 2015.

At its March 2015 meeting, the Council approved one of the recommendations of the Committee regarding the reporting of law-school-funded positions in the Standard 509-mandated Employment Summary Report by creating a separate, above-the-line reporting for Law School/University-Funded Positions, beginning with the reporting by all law schools on March 15, 2016. The Committee believes that this is the most important step in providing clarity in reporting employment. In addition to this critical step in providing accurate information within the context of Standard 509 reporting, the Council asked the Committee to consider several additional related matters. The Committee deliberated on those matters, and made additional recommendations by memorandum dated May 15, 2015.

At its meeting in Minneapolis on June 5, 2015, the Council considered the recommendations of the Committee as well as a proposal offered by Paul G. Mahoney, Dean of the University of Virginia School of Law and a member of the Council. The Council received comments regarding the Committee's recommendations from a number of interested parties and, in order to fully consider the various recommendations and comments, the Council tabled the matter, expecting to revisit the matter at its meeting in Chicago beginning on July 31, 2015.

In light of comments received regarding the Committee's earlier recommendations, discussion by the Council, and the proposal of Dean Mahoney, the Committee amends its recommendations as described in this revised memorandum. The revised recommendation has two components -- (1) a minor adjustment to the definition of "long-term employment" and (2) the creation of an exception to the definition of "Law School/University-Funded Positions."

***Definition of Long-Term Employment.***

Several years ago, the Committee recommended and the Council adopted the current definition of "long-term employment." That definition has worked well in some respects, but not in others. As currently defined –

[A] long-term position is one that does not have a definite or indefinite term of less than one year. It may have a definite length of time as long as the time is one year or longer.

It may also have an indefinite length as long as it is expected to last one year or more. The possibility that a short-term position may evolve into a long-term position does not make the position a long-term position.

As applied by a number of law schools, the current definition is being distorted to spur the creation of jobs that theoretically last for a year and a day for purposes of being called “long-term.” In actuality, many of these law-school-funded jobs often last much shorter than one year because of the incentives for both the law school and the law graduate. From the perspective of the law school, actively assisting the graduate to find market-based employment limits the financial exposure to law schools. From the perspective of the graduate, they are actively seeking market-based employment that provides a salary above the stipends of \$1,000 - \$1,500 provided by many law schools for these law-school-funded positions. The Committee believes that these jobs may well serve a useful purpose in many cases but we also believe that counting them as “long-term jobs” sends a misleading signal to prospective students.

The Committee proposes a simple fix to this dilemma that focuses on the expectations of the employer and the employed graduate and provides a financial threshold that mimics the marketplace for entry-level public interest positions. The proposal also simplifies significantly the definition of “long-term” –

A long-term position is one that both the employer and the employee expect to last at least one year or more. A law-school-funded position that the law school and graduate expect to last at least one year or more may be considered long-term for purposes of this definition if the graduate is paid at least \$40,000 per year. The possibility that a short-term position may evolve into a long-term position does not make the position a long-term position.

By requiring that both the employer and the employee expect the position to extend a full year or more, the definition excludes the bridge-to-practice jobs (sometimes labeled as fellowships). In the bridge-to-practice jobs, neither the law school nor the graduate has any intention, or at least a clear desire, that the position will extend a full year, even where the law school has committed to funding it for that period if necessary.

Significantly, this definition distinguishes between those jobs that are similar to market-funded jobs and those that are not. This definition would treat as short-term those jobs that are indeed short-term. In our March 2015 memorandum to the Council, we provided salary information helpful in understanding the nature of most of the law-school-funded positions. NALP reports that the 25<sup>th</sup>, 50<sup>th</sup>, and 75<sup>th</sup> percentile monthly stipends for full-time school-funded positions were \$1,000, \$1,500, and \$2,000, respectively, with 90% of the reported stipends falling between \$1,000 and \$2,405 per month. Annualized, the range for 90% of all salaries is \$12,000 to \$28,860, with a median of \$18,000.<sup>1</sup> This definition would treat as short-term those positions that are not designed to be long-term although they could technically meet the current definition. This definition would also treat as long-term those jobs that that are analogous to Skadden

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<sup>1</sup> Schools reported 289 full-time stipends.

Fellowships, Equal Justice Works Fellowships, Honors positions in the U.S. Government, and similar positions, but are funded by the law schools themselves.

***Exception to the Definition of Law-School/University-funded.***

In its initial set of recommendations to the Council, the Committee recommended an exception to the definition of law-school-funded positions, which may have been overlooked in the debates over the larger issues of the definition of “long-term” and moving the reporting of law-school-funded positions “above the line.” The proposed exception would resolve the long-standing problem with the definition of law-school-funded positions that has required long-term, full-time, bar-passage-required jobs, such as positions in a university counsel’s office that are open to graduates of any ABA-approved law school, to be reported as law-school-funded positions. The Committee recommends the following language be added to the definition of “law-school-funded” in the Employment Questionnaire Definitions and Instructions:

For purposes of reporting under this Section, however, a position is not considered "law-school/university funded" if it meets both of the following criteria:

- (a) meets the definition of a “long-term” position; and
- (b) the position and funding are open to qualified graduates of all ABA-approved law schools.

For example, a position in the office of a university’s general counsel with no expected end date, or a position as a professor with no expected end date, are likely examples of positions that would not be considered “Employed -- Law-School/University Funded” despite the technical status of the graduate on the payroll of the law school or university.

The Committee believes that its recommendations address the many comments submitted by interested parties. The classification of Skadden Fellowships, Equal Justice Works Fellowships, U.S. Government Honors positions, and similar positions are not impacted by these definitions – those all are full-time, long-term, bar passage required positions under this set of definitions. Moreover, true long-term positions at a law school or university with market-like salary commitments are treated as long-term while bridge-to-practice-type programs are treated as short-term because they are designed to be – and are in practice – short-term positions to assist graduates in preparing for a marketplace job.

The Committee also believes that its recommendations has advantages over the proposal offered by Dean Mahoney. Dean Mahoney proposes to create another category “above-the-line” and call it qualified public service fellowship. Under Dean Mahoney’s proposal –

A “qualified public service fellowship” is a school-funded position that:

- (a) Compensates the graduate for full-time, bar passage required employment with a public interest or government employer unaffiliated with the law school;
- (b) Commits the law school to provide funding for at least one year;
- (c) Pays the graduate at least \$40,000 per year; and

(d) Qualifies the student to participate in the law school’s loan forgiveness program.

The primary disadvantage of Dean Mahoney’s proposal is that it uses “commits to funding” language which is the primary way in which schools are distorting the current definition of long-term and is precisely what the Committee seeks to remedy in its current recommendations by focusing instead on the expectations of both the employer and the graduate. Dean Mahoney’s proposal also creates another “above the line” category by bifurcating positions that are similar – a qualified public serve fellowship *is* funded by the law school – perhaps creating a perception that the funding is from an entity other than the school itself. The proposal also ties the position to a school’s loan forgiveness program which does not appear to have any meaningful relationship to determining whether a position should be classified as long-term or short-term, would preference those schools with robust loan forgiveness programs, and would be very difficult to administer given differences in loan forgiveness programs across schools.

The revised recommendations of the Committee are simple and address the concerns raised in many of the comments as well as taking into account some features of Dean Mahoney’s proposal such as a minimum financial threshold. Moreover, the Committee’s recommendation provides for an exception to the University-funded definition if the position is open to all law school graduates, addressing some additional concerns raised by a few law schools.

Finally, we provide some additional data on the number of law school/university funded positions that was not available in our first recommendation to demonstrate that the proposed changes impact only a relatively small number of law schools some of which are using the current definitions in a way that distorts their Standard 509 reports.

***Class of 2014 data on law-school-funded positions.***

Since the time of the Council meeting in March, schools have submitted and the ABA has released the data concerning the class of 2014 employment outcomes. While the total number of all law-school-funded positions decreased, the number of full-time, long-term, bar-passage-required, law-school-funded positions increased, both as a percentage of total jobs and in raw numbers. As a percentage of all full-time, long-term, bar-passage-required jobs, the increase was more marked because the number of graduates in the class of 2014 decreased by almost 6.5%. Law-school-funded positions accounted for nearly 3.2% of all long-term, full-time, bar-passage-required jobs, up from 2.9% last year. Moreover, the number of positions increased from 772 full-time, long-term, bar-passage-required jobs to 835 jobs, an increase of 8.2% from the class of 2013.

The following chart details the number of law-school-funded, bar-passage-required positions law schools reported in the last three reporting cycles. As shown, the numbers of full-time, long-term positions have increased steadily, while the numbers of short-term and part-time positions have decreased.

**Law-School-Funded, Bar-Passage Required Positions, 2012-2014**

	FT, LT	FT, ST	PT, LT	PT, ST	Total
Class of 2012	517	264	74	411	1,266
Class of 2013	772	291	35	295	1,343

Class of 2014	835	184	33	147	1,199
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As in the past, a relatively small number of schools account for the bulk of all full-time, long-term, bar-passage-required, law-school-funded positions. For the class of 2014, 25 schools reported 10 or more such positions, accounting for 81% of all such positions. At these 25 schools, full-time, long-term, bar-passage-required, law-school-funded positions comprised from 4.9% to 23.2% of the total number of full-time, long-term, bar-passage-required positions reported by the schools.

Importantly, beginning in the March 15, 2016 reporting cycle, these positions will be reported separately as Employed – Law School/University Funded positions instead of included within the current reporting categories. The Committee recommendations do not change this important step. Instead, they provide for a definitional change to long-term and create an exception for law school-funded positions that can be reported as non-law school funded if the positions are open to all law school graduates.

MEMORANDUM

**TO: COUNCIL OF THE ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR**

**FROM: PAUL MAHONEY**

**DATE: June 2, 2015**

**RE: PROPOSED AMENDMENT TO THE RECOMMENDATION OF THE DATA POLICY AND COLLECTION COMMITTEE**

At its March meeting, the Council considered a recommendation from the Data Policy and Collection Committee that would have defined all school-funded positions as “short term” regardless of the actual duration of employment. The recommendation reflected the Committee’s view that these positions are not “best case” employment outcomes and it is therefore misleading to categorize them alongside other jobs that by assumption represent successful outcomes.

The Council did not approve that recommendation but, instead, decided to report school-funded positions in a separate “above the line” category. The Council also suggested that the Committee consider distinguishing certain public service fellowship programs from “bridge to practice” and similar programs designed to aid graduates who have not yet found suitable employment. While both types of programs serve a need, fellowship programs are different in two critical respects. They attract accomplished students who have other desirable job options. They also play an essential role in closing the justice gap by encouraging graduates to forego law firm employment in favor of public service:

The Committee’s new recommendation, while different in the details, is substantively similar to its prior proposal that the Council declined to adopt. In response to the Council’s request, the Committee identified one difference between public service fellowships and bridge to practice programs (salary), but recommends that the Council not try to distinguish the two.

We should of course consider carefully the Committee’s view that the Council reached the wrong outcome in March and should now reverse course. The Council might conclude, however, that it reached the right outcome in March and has only one question left to resolve—should it distinguish public service fellowships from other school-funded positions and, if so, how? Rather than try to draft at a meeting, I have undertaken to provide such a proposal in advance. I intend at our meeting to offer it as an amendment to the Committee’s recommendation that would replace it in full.

I propose that the Council maintain the reporting system it approved at the March meeting but add a definition of a “qualified public service fellowship” as follows:

A “qualified public service fellowship” is a school-funded position that:

- (a) Compensates the graduate for full-time, bar passage required employment with a public interest or government employer unaffiliated with the law school;
- (b) Commits the law school to provide funding for at least one year;
- (c) Pays the graduate at least \$40,000 per year; and
- (d) Qualifies the student to participate in the law school’s loan forgiveness program.

A job that is a “qualified public service fellowship” would be identified above the line separately from other “Law School/University Funded” positions and classified as “full time, long term.”

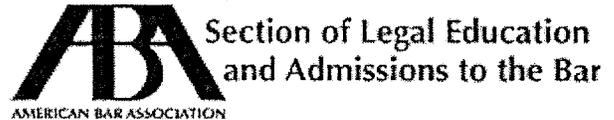
The motivation behind the Council’s suggestion in March and my responsive proposal is that fellowships meeting the above criteria serve as a vital tool for launching talented law school graduates into public service careers. Because many public interest and government employers do not hire at the entry level, graduates who wish to work for those organizations can either work first for a law firm for a brief period to gain experience, pursue a widely-available third-party fellowship (such as a Skadden Fellowship), or pursue a school-specific fellowship.<sup>1</sup> The first path may be suboptimal for both the graduate and the law firm—and it often results in the graduate becoming financially “locked in” to private sector employment. The second is ideal but very limited; if law firms were willing to fund hundreds of these fellowships per year, there would be no need for law schools to step up and provide them. Thus the third option is often the best way to put a graduate on the very career path he or she came to law school to pursue.

Failing to distinguish qualified public service fellowships from other school-funded positions will mislead prospective students by implying that graduates who accept such fellowships could not find other employment. It will also send the wrong message to many current students by stigmatizing the very programs that hold out the best hope of putting them on their desired career path. The proposal above is designed to serve a core mission of the ABA by encouraging schools to use their financial resources to close the justice gap and by conveying to students the message that the profession applauds rather than denigrates their decision to forego other employment to serve the public interest.

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<sup>1</sup> Even some fellowships generously funded by third party organizations are not “open generally to qualified graduates of any ABA-approved law school,” to use the Committee’s phrase. For example, the Kirkland & Ellis New York City Public Service Fellowships are highly sought-after competitive fellowships funding employment in public service in New York City. However, they are available only to Columbia and NYU graduates.

Law School



Phone :

Location :

Website :

**EMPLOYMENT SUMMARY FOR 2015 GRADUATES**

EMPLOYMENT STATUS	FULL TIME LONG TERM	FULL TIME SHORT TERM	PART TIME LONG TERM	PART TIME SHORT TERM	NUMBER
Employed - Bar Passage Required	245	3	3	1	252
Employed - J.D. Advantage	25	1	2	1	29
Employed - Professional Position	4	0	1	0	5
Employed - Non-Professional Position	0	0	0	1	1
Employed - Law School/University Funded	40	0	2	0	42
Employed - Undeterminable	0	0	0	0	0
Pursuing Graduate Degree Full Time					5
Unemployed - Start Date Deferred					1
Unemployed - Not Seeking					3
Unemployed - Seeking					16
Employment Status Unknown					2
Total Graduates					356

EMPLOYMENT TYPE	FULL TIME LONG TERM	FULL TIME SHORT TERM	PART TIME LONG TERM	PART TIME SHORT TERM	NUMBER
Law Firms					
Solo	1	0	0	0	1
2 - 10	19	1	1	1	22
11 - 25	9	0	0	0	9
26 - 50	6	0	0	0	6
51 - 100	6	0	0	0	6
101 - 250	12	0	0	0	12
251 - 500	18	0	0	0	18
501 +	67	0	0	0	67
Unknown Size	1	0	0	0	1
Business & Industry	22	1	1	2	26
Government	49	1	1	0	51
Public Interest	28	1	1	0	30
Clerkships - Federal	18	0	0	0	18
Clerkships - State & Local	11	0	0	0	11
Clerkships - Other	0	0	0	0	0
Education	6	0	1	0	7
Employer Type Unknown	1	0	0	0	1
Total	274	4	5	3	286

LAW SCHOOL/UNIVERSITY FUNDED POSITIONS	FULL TIME LONG TERM	FULL TIME SHORT TERM	PART TIME LONG TERM	PART TIME SHORT TERM	NUMBER
Employed - Bar Passage Required	38	0	1	0	39
Employed - J.D. Advantage	2	0	1	0	3
Employed - Professional Position	0	0	0	0	0
Employed - Non-Professional Position	0	0	0	0	0
Total Employed - Law School/University Funded	40	0	2	0	42

EMPLOYMENT LOCATION	STATE	NUMBER
State - Largest Employment		0
State - 2nd Largest Employment		0
State - 3rd Largest Employment		0
Employed in Foreign Countries		0