

To: Council, ABA Section of Legal Education and Admissions to the Bar
Standards Review Committee, ABA Section of Legal Education and Admissions to
the Bar

From: Interested Deans and Career Services Professionals

Date: January 8, 2018

Re: Proposed Revisions to Employment Summary Form

This memorandum/white paper aims to assist the American Bar Association Council on Legal Education and the Standards Review Committee, along with interested stakeholders, in the examination of proposed revisions to the Employment Summary Form. It results from a meeting of over 200 participants representing 130 law schools and several nationally relevant associations that took place on December 4, 2017.

This above-described meeting and this document find their genesis in discussions that began in the summer of 2017. During that time, the ABA Council adopted revisions to the Employment Summary Form. Following that action, some law schools provided comments to the Council in support of the revisions, and other law schools and NALP urged the Council to reconsider the decision and allow additional time for discussion through a notice and comment process. Several deans expressed their support for a meeting dedicated to the topic.

After the ABA Council revisited its decision and deferred action on changes to the Employment Summary Form, a working group of deans, led by Dean Laura Rosenbury at the University of Florida and Dean Bo Rutledge at the University of Georgia, organized the conference that took place on December 4, 2017. In an effort to accommodate schedules and to be as inclusive as possible, the working group decided to host the conference at the University of Florida in Gainesville and at six other remote locations connected via interactive video link. These locations included California (Pepperdine Law School), New Mexico (University of New Mexico Law School), Illinois (John Marshall Law School), Pennsylvania (Villanova Law School), Massachusetts (Suffolk Law School), and New York (Cardozo Law School). In addition to deans and career services professionals from the participating law schools, attendees included senior leadership from the ABA Section on Legal Education, NALP, and LSAC, as well as a representative of Law School Transparency.

A copy of the meeting agenda is attached to this memorandum/white paper. In an effort to facilitate candor, the meeting was subject to the Chatham House Rule. That Rule, as was explained, provided that participants could utilize the information received at the meeting but would not, thereafter, attribute statements to particular attendees or their affiliated institution. This Rule allowed for candid, open, honest, and transparent discussion of the issues and competing viewpoints. After this rich discussion, participants decided to produce this document as a “roadmap” for the ABA and other stakeholders as they decide how (or even whether) to revise the Employment Summary Form. The document has been circulated to all participants for comment and incorporates to the best of our abilities all comments received.

This document intentionally does not take a position on any of the issues described herein, with one exception: *participants agreed that employment outcomes should be reported clearly and transparently and that the ABA should be consultative about the best way to do so.* Although the ABA has traditionally taken the position that forms do not reflect policy-laden judgments and, therefore, should not undergo the same notice and comment treatment as other proposed changes (such as a revision to an accreditation standard), the December 4 stakeholder meeting demonstrated that employment forms are sufficiently important for law schools that notice and comment is appropriate. Whether intended or not, revisions to forms, particularly those that are published to the public, inevitably reflect important policy judgments and, thus, should take place (if at all) only after sufficient opportunity for notice and comment.

Subject to that exception, we offer here a common analytical framework by which a stakeholder may examine her or his position on the issues, as well as reflect on how the Standards Review Committee and Council might approach its examination of the issues:

I. Should the Employment Summary Form approved by the ABA in 2015 be revised?

- Several arguments support revising the form:
 - Preparation of the form is burdensome and costly due to the time expended gathering the data and making classificatory judgments.
 - The numerous boxes and categories in the present form (including the many zeroes) confuse prospective law students and other users.
 - The confusing nature of the 2015 form led to misrepresentations of law school employment by the national media and others.
 - Some schools believe that the manner of reporting long-term, full-time law school-funded positions on the 2015 form mischaracterizes those positions by not treating them the same as other full-time employment. Some of these schools favor the recommendations set forth in Dean Paul Mahoney’s May 30, 2017 memorandum to the Council (“Mahoney memo”), or an alternative similar set of modifications, because they believe that the current form’s separation of law school- or university-funded jobs delegitimizes important post-graduate public interest fellowships and disincentivizes the funding of them.
- Other arguments counsel against any revision:
 - Proposed simplifications do not significantly reduce costs or burdens. Law schools would still have to report the same data even if the form is simplified.
 - The ABA developed the form in response to criticism (including lawsuits) claiming that the prior form was misleading for prospective law students because it masked pertinent data.

- Consistency has value. Consistency enables the ABA, member schools, and external stakeholders such as NALP to engage in multi-year assessments of data utilizing a common baseline. Since schools are required to publish several years of data on their websites, changes in the form will confuse, rather than help, prospective applicants.
- The boxes on the form, even those containing zeroes, matter. While some boxes have zeroes for certain schools, those same boxes contain important data for other schools. The current form enables schools to tell a story, and proposed simplifications to the form may confuse prospective students and reduce their ability to differentiate between schools.
- One possibility might be to agree to leave the form unchanged for a period of time (such as three or five years), with a declared intention to revisit the form after the expiration of this period. This would allow sufficient time for schools to develop experience with the form and to provide better input based upon that experience. Not all schools are supportive of this approach, however. Some strongly believe that the current form should be revised without delay.

II. If the 2015 Employment Summary Form should be revised, how should it be revised?

- Although participants agreed that employment outcomes should be reported clearly and transparently, many diverse and diverging views emerged about the best ways to achieve that goal. Working within the framework and structure adopted by the ABA for such reporting, participants focused on possible changes to the columns and rows of the form.
- Possible changes to the columns of the form:
 - **Reduce the number of columns:** the categories of short-term and part-time jobs could be eliminated. A revised form could instead break out full-time long-term jobs and then collapse part-time and short-term jobs into an “other” category. This would enable schools to focus their reporting on the categories of jobs most important to prospective law students. Some schools believe that this change would meaningfully simplify the form while not significantly reducing transparency, as it is sometimes difficult to gain clear and accurate information from those students who are at jobs that are short-term, part-time, or both.
 - **Add one column to include percentages:** A column could be added to reflect not only the raw number of jobs in any particular category but also percentages (which may be more meaningful to prospective law students).

- **Create drop-down menus for each column:** The addition of drop-down menus for columns (whatever the number) would enable prospective students to see more detailed information about the data included in those columns.
- Possible changes to the rows of the form:
 - **University-funded jobs.** A key area of discussion was whether and how the form should reflect jobs funded by law schools and/or their affiliated universities. The points below are separate and apart from the U.S. News effects of any approach to such jobs (which are discussed later in Parts III and IV).
 - Some schools believe that separating out law school-funded positions “above the line” mischaracterizes those positions by not treating them the same as all other full-time employment. These schools point out that a high percentage of graduates who secure highly competitive school-funded public interest fellowships ultimately obtain permanent public interest positions upon completion of their fellowships. The schools further stress that the purpose of the ABA form is to accurately reflect the number of graduates who are fully employed, and the separation of law school-funded positions is inconsistent with that goal.
 - These schools also emphasize that public interest employers, who lack sufficient funding to support entry-level attorney salaries despite the significant need for their services, rely heavily on fellows funded by law schools to support the needs of low-income clients. They emphasize that law schools should be working to increase the proportion of their graduates considering public interest and government jobs, given law schools’ collective education missions. The treatment of these jobs by the ABA (or U.S. News) may affect schools’ decisions about whether to continue to offer these critically important opportunities.
 - Other schools emphasize that separating out law school-funded positions “above the line” is essential to providing accurate consumer information to prospective law students. This approach differentiates between jobs available on the open market and those available only to graduates of the schools funding such positions. These schools believe that separately reporting law school-funded jobs is inexorably tied to transparency, and, if the ABA were to again combine these jobs with all other jobs, the legal profession would face a negative backlash.
 - One approach is to follow the recommendations set forth in the Mahoney memo or otherwise revise the form to include year-long, reasonably paid school-funded positions in the “category” in which they would otherwise apply.

- Another approach that may address most of these concerns would be to revert to the form approved by the ABA for reporting employment outcomes for the class of 2014 while also incorporating the 2015 definitions of long-term and law school-funded jobs (or the definitions on the form to be used for the class of 2017). On the form used for the class of 2014, law school-funded jobs were reported in the relevant job category for which they qualified “above the line” (i.e., full-time, long-term, bar passage required, etc.) and simultaneously separately identified “below the line.” This approach provides transparency to the consumer regarding university-funded positions while also enabling schools to accurately report their graduates who secure long-term, full-time competitive fellowships as fully employed.
 - Still others believe that the 2015 Employment Summary Form should not be revised because including school-funded positions in the “above the line” totals does not sufficiently reflect the differences between employment obtained on the competitive job market and employment provided by school funding.
 - A related issue was whether all university-funded jobs should be treated equally for reporting purposes. Many participants noted that stakeholders might differentiate between university-funded positions that support work in government or public interest organizations and those that support jobs within the law school or university itself.
 - A final issue related to university-funded jobs is the salary threshold. The \$40,000 salary threshold arguably fails to reflect cost-of-living differences across the country (where, in some places, prosecutors, public defenders, and judicial clerks may have lower starting salaries, such as \$28,000 to \$30,000). Moreover, the salary threshold may “discriminate against” schools that are committed to public interest jobs but lack the discretionary resources to support them because, for example, they instead charge a lower tuition. On the other hand, the absence of any salary threshold could enable schools to report school-funded minimum-wage positions as equivalent to full-time, long-term competitive market positions, even though few graduates or prospective students would view those as equivalent. For example, prior to imposing the \$40,000 minimum, graduates receiving \$1,000 monthly stipends to perform otherwise unpaid work were countable as employed in full-time, long-term positions.
- **Other changes to the rows:** Several other changes to the rows on the Employment Summary Form might be considered.
- A number of schools suggested that the ABA rethink the categories of “J.D. Advantage” and “Professional.” These categories could be changed

to allow for more nuanced definitions of the jobs that currently fall within them.

- Some schools noted that collapsing the professional and non-professional employment categories (as did the revised form originally adopted by the ABA in the summer of 2017) would provide less information to consumers. That approach arguably equates employment as a state department analyst or an architect with a barista. Several schools emphasized that this does a disservice to all: to potential consumers of information; to the law school graduates who choose jobs properly categorized as “professional”; and to career services professionals, for whom the Employment Summary Form is often a report card on their office’s performance. This is particularly relevant to schools with part-time programs because students in such programs may have no plans to quit their day jobs but see a J.D. as an advantage.
 - Another suggestion is to eliminate the category of “Pursuing Graduate Degree Full Time” and remove students enrolled in graduate school from the class size denominator altogether. Law school graduates who pursue further education do so with longer-term career goals for which they need additional education, most often careers in academia or advanced tax practice. Several participants expressed the view that the employment outcomes for these graduates should be reported after the graduate program is completed. Others felt this was appropriate for Ph.D. candidates but expressed concern that this might incentivize a school to admit its J.D. graduates into its own LLM program even when those graduates would not necessarily benefit from an LLM.
 - Another suggestion is to eliminate or simplify some (or all) of the firm-size categories on the theory that those categories are not as material to prospective law students. This suggestion received both positive and negative responses.
 - Some schools expressed concern that the current form does not fully count students receiving positions with the Judge Advocate General Corps, which often start after the reporting deadline. Some judicial clerkships also begin after the reporting deadline. Given situations like these, there was interest by some schools in including “start date deferred” within the “fully employed” categories across all reporting categories, so long as the deferred start date is within a reasonable period of time.
- **Minor changes in terminology:**
 - “Unemployed start date deferred” might be changed to “employed start date deferred” in an effort to reflect more accurately the actual status of the graduate who has a job that simply has not yet begun by the deadline.

- “Bar passage required” might be changed to “J.D. required” to better communicate that many legal jobs begin before students pass, or sometimes even take, a bar examination. Others believe, however, that “bar passage required” is the better descriptor because all of these jobs, except for judicial clerkships, ultimately require bar passage.
- **A drop-down menu or dual publication:** One option for trying to simplify the number of rows while preserving the full panoply of currently collected information would be to create an interactive form that provided click-through links. For example, the “Law Firms” rows on the Employment Summary Form might be collapsed into a single line with a link. A prospective student interested specifically in this data point would then click on the “Law Firm” line, thereby revealing the more granular forms of data already captured in the Employment Summary Form. Alternatively, the summary report could be simplified but accompanied by separate pages with more granular data. The detailed data would include more of the data already collected by law schools for the ABA.

III. When undertaking any revision, what uses of the Employment Summary Form should be considered? What other factors should be considered?

- The ABA has indicated that the goal of the Employment Summary Form is to provide consumer information to prospective law students.
- At the same time, other stakeholders make use of the reported information, which may in turn influence prospective law students.
- Such collateral users of the information on the Employment Summary Form include, among others, NALP, Law School Transparency, U.S. News, and other media outlets. Several schools emphasized, however, that these organizations may (and often do) request their own data independent of the ABA’s approach to data collection and reporting.
- Schools agreed that the Employment Summary Form is often interpreted as a “report card” of school performance. The categories produce incentives and disincentives for various substantive decisions and for choices about a school’s priorities and investments. The activities of career services professionals will inevitably be affected by the categories; for example, collapsing professional and non-professional into a single category may lessen the difference to career services offices and thereby impact students.
- While none of the schools expects the ABA to relax the underlying reporting requirements, consideration should be given to the time and effort career services offices spend compiling the required information. Some schools emphasize that

publicly disclosing more of the information compiled would yield a higher return on the investment of time and effort.

- Many schools urged the ABA to normalize its terminology with that of other organizations requesting the same information, such as NALP.

IV. As a specific elaboration on Point III, how do revisions to the Employment Summary Form interface with use of the data by U.S. News?

- While the focus of the meeting was on the Employment Summary Form, discussion invariably turned to U.S. News, both with respect to its methodology for reporting employment outcomes as well as the relationship between the data gathered for the Employment Summary Form and data gathered for the U.S. News survey. Issues, some of which already have been noted above, include:
 - **The “discount” or “deflator” that U.S. News applies to university-funded jobs.** For each law school, U.S. News provides the percentage of graduates employed “at graduation” and the percentage employed 10 months after graduation. When calculating its overall law school rankings, U.S. News “discounts” or “deflates” law school-funded positions in some undisclosed manner.
 - Some schools hope that an Employment Summary Form that does not separate out school-funded public interest fellowships above a certain salary threshold (such as that proposed in the Mahoney memo) will discourage U.S. News from applying this deflator. As already emphasized above, such fellowships are often awarded competitively to graduates who could secure jobs in the broader marketplace but instead want to pursue particular forms of public interest work. Discounting the weight given to such positions disincentivizes schools from offering these fellowships or from seeking outside financial support for them. These disincentives will ultimately contract the number of public interest positions available to new law school graduates nationwide and reduce legal services provided to underserved populations.
 - Other schools believe that separating out school-funded public interest fellowships (notwithstanding the discount or deflator) is evidence of law schools’ steadfast commitment to serving the public interest. Capturing such jobs on the Employment Summary Form enables law schools to tell a story about that commitment.
 - Some schools make a substantive distinction between a discount and a deflator. According to this view, the term “deflator” is loaded in the context of law school-funded jobs because such jobs are not deflated by U.S. News but instead are appropriately discounted much like some other

categories of jobs (such as short-term or part-time) are. These schools point out that some school-funded jobs may be awarded to graduates who are unable to find paying positions and thus do not reflect job outcomes that most prospective students would consider successful. For example, the number of school-funded positions exploded during the last economic downturn. In such situations, school-funded jobs should not be treated the same as full-time, long-term legal jobs secured on the competitive job market.

- Finally, several schools emphasized that the ABA cannot dictate the data that U.S. News requests. Even if law school-funded jobs are not separated out on a (future) Employment Summary Form, U.S. News may still request that data and discount or deflate it.
- **The “discount” or “deflator” that U.S. News applies to students who pursue graduate school after completing their law studies.** When calculating its overall law school rankings, U.S. News also “discounts” or “deflates” students pursuing graduate study, generally counting them as unemployed. Some schools report that ten or more of their graduates are pursuing such studies immediately following graduation, which artificially lowers their effective employment rate.
- **The need for ABA oversight in defining the “employed at graduation” metric used by U.S. News.** The ABA does not require schools to capture employment at graduation, but U.S. News asks schools to report that data. Because there is no ABA oversight, there is no definition of the graduation date, and schools have adopted their own, varying definitions. If U.S. News continues to request this data, clear guidance on the relevant date for “at graduation” should be provided.
- **The treatment of graduates “not seeking” employment.** Some schools believe that graduates not seeking employment should be eliminated from the U.S. News denominator (just as individuals not seeking employment are not included in national unemployment rates) so long as schools can defensibly document that these graduates are, in fact, not seeking employment. This change would avoid penalizing schools for graduates’ decisions to opt out of the labor market. Other schools expressed concern that such a change, concerning a phenomenon that affects all law schools, might be subject to manipulation.