Dear Mr. Currier:

We write in opposition to proposed Standard 505. By capping the number of “advanced standing” credits at 29, including both credits from non-US legal studies and credits from ABA-accredited LLM programs, the proposed standard would seriously undermine the University of Arizona’s established “Advanced JD program for Non-US Lawyers.” More generally, it would limit the ability of non-US lawyers to take the step from an LLM—the most common degree for non-US lawyers—to the JD.

In brief, our Advanced JD Program allows highly-qualified lawyers holding both a non-US law degree and an LLM at an ABA-accredited law school to receive up to 29 units for their non-US legal studies and up to an additional 17 units for LLM study at an ABA-accredited law school. These additional 17 units are, however, by no means automatic. To the contrary, we only permit credit for courses taken for grades, where the student has achieved a B. We also do not give credit for LLM courses designed only for LLM candidates or, with rare exceptions, for those that are graded pass/fail. In other words, as a guiding principle, credit is only granted to the extent that the course was a “JD course”, taken for a grade, and the student performed well.

This highly-selective program – which the Council’s memorandum in support of the new standard 505 recognizes is permissible under current ABA rules – permits qualified students to earn their JD in three semesters beyond the LLM, provided they successfully complete all required courses for the JD degree, including the entire first-year curriculum. While these students spend three semesters in the JD program, when combined with a prior year in an LLM program, they graduate with a total of at least 5 semesters (or 2.5 years) of study at an ABA-accredited law school, which is only one semester less than what is now the typical JD program. These 2.5 years of US-based legal study are also typically combined with 4 to 5 additional years of legal training in the student’s home country.

Moreover, a number of our current and admitted Advanced JD students – including those from England, Canada, Australia, Hong Kong, Singapore, India, Ireland and New Zealand – come from common law jurisdictions and thus graduate from our program with a total of 5 to 8 years of common law legal training in the English language, including study in their home country, US-based LLM programs, and our JD program. Limiting across the board the number of advanced standing credits to 29 units serves no conceivable pedagogical purpose for these
students. Moreover, from our experience, we believe that most students from civil law jurisdictions are also more than adequately prepared to pass the bar exam and practice law in the US after a total of 2.5 years of study at an ABA-accredited law school (combining LLM and JD training), especially given that many of our students come with significant international practice experience in addition to years of civil law training.

Beyond the fact that the proposed standard does not appear to be responding to any evidence-based pedagogical need, the change seems inappropriate at a time when many changes in JD education are being considered or implemented, including allowing students to sit for the bar exam after only 2.5 years of law school, two-year JD programs, and/or JD programs that can be partially satisfied through distance learning. In this context, it seems striking that the ABA would single out advanced-standing JD programs for foreign lawyers and effectively increase the amount of time and expense that one segment of the JD population – foreign lawyers – will be required to incur.

To bring this point home, consider the following: US law students in an ABA-accredited JD program may spend up to a year studying abroad at a foreign law school. They are thus able to earn their JD with only two-years of study in residence at a US law school. Given the global nature of the practice of law, and the value of exposure to different legal systems, this is how it should be. Yet, the proposed standard would require foreign lawyers, many with significant international practice experience on top of years of legal training, to spend 2.5 years studying at a US law school if they choose to begin their study in an LLM program instead of a JD program. Those foreign lawyers going directly to a JD program – like US law students who spend a year abroad – would, however, be able to earn a JD after 2 years in residence at a US law school. This result seems contrary to good policy and common sense, especially given that our experience is that foreign lawyers who first spend a year in an LLM program come to JD programs much better prepared and much better able to take advantage of the opportunity provided by the Advanced JD Program. They also, on average, outperform their US and international counterparts.

Whether or not it is the intention of the proposed change, such a discriminatory result will give some the impression that it is by design and effect protectionist, by making it even more difficult for a foreign lawyer to sit for the bar in the majority of states. For many years the ABA has encouraged state bars not to permit the LLM graduates of ABA-approved institutions to sit for the bar. Accordingly, some law schools chose to offer what is surely a preferred alternative, the JD long permitted under ABA Standard 507 and Interpretation 304-7. We, at least, have seen no evidence that this standard is not working properly, or that the lawyers enrolled in our Advanced JD program, whether for 1.5 or 2 years, are any less likely to pass the bar exam as those who have been enrolled for three years.

Finally, to change the rules now would be unfair and prejudicial to our current and admitted Advanced JD students who have relied upon current rules in making important life decisions. We currently have approximately 14 students in our Advanced JD Program with prior LLM degrees, have admitted and accepted seat deposits from approximately 15 more with LLMs into our JD program for this fall, and have admitted several LLM students for the fall with the promise that they could enter our Advanced JD Program in a year if they successfully complete and perform well in our LLM program (our “2.5 LLM/JD program”). These students applied,
paid seat deposits, and – in the case of current students – have enrolled with the promise that they could complete the JD program in 1.5 years. Moreover, this expectation is entirely justified, given that, as noted above, the Council’s memorandum in support of the new standard 505 recognizes that the 1.5 year program is permissible under current ABA rules and interpretations.

Thus, at the absolute minimum, the proposed standard 505 should be amended to include a three-year grandfather clause in order to protect the justified expectations of current and admitted students who have relied on current ABA rules in investing significant resources, and in many cases leaving existing jobs, to apply and enroll in a JD or LLM/JD program.

While such a grandfather clause would avoid the gross unfairness of changing the rules midstream, Standard 505 should be rejected altogether. The proposed standard serves no evidence-grounded need to limit current Advanced JD Programs, runs counter to other reforms in legal education, and singles out international lawyers who begin their US legal studies in LLM programs for disparate treatment.

Sincerely,

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