To: Council of the ABA Section of Legal Education and Admissions to the Bar

Re: Proposed changes to Standard 503

Dear Colleagues:

We, the undersigned Admissions Deans and Directors of 22 ABA accredited law schools write to offer comment on the proposed elimination of Standard 503 by the Council of the ABA Section of Legal Education and Admissions to the Bar. This letter reflects our personal opinions; we do not purport to represent an official position of our employers.

While we do not offer an opinion on whether the Council should ultimately decide to eliminate Standard 503, we hope that the Council only proceeds in doing so with a keen awareness of the immediate consequences that such a decision would have on the nature and quality of consumer disclosures currently required under Standard 509. We worry that the rescission of Standard 503 will have unintended side effects, most notably to the currently high levels of consumer data transparency found in the required “509 Report.”

Since the 2012 adoption of revisions to Standard 509, in conjunction with the creation of the Law School Admissions Council’s matriculant data certification service, the current-day “509 Report” provides confidence in the accuracy and reliability of law school-reported consumer information. As part of the mandated disclosures, the uniform presentation of LSAT and UGPA data helps prospective applicants, pre-law advisors and admissions counselors to assess the competitiveness of an applicant in the context of a particular law school’s admissions pool. The requirement that all law schools present their data in the same structured and methodical form also enables fair and equitable comparisons of the credentials of student populations within different institutions.

The elimination of Standard 503 would, without a doubt, require changes to the “509 Report.” Consider the following scenarios, all which raise complex questions not currently addressed in the revisions to the Standards currently being considered:
We recognize that the Council might decide to eliminate Standard 503 and simply not collect any information about standardized test scores, at all. The consequence of such a decision to consumer transparency would be immediate. Each individual law school would begin to report test score data in a form and fashion that they chose, selectively deciding which test score data to publicize or distribute. In such an environment, how then would the Council enforce compliance with Standard 509(a)? Suppose 80% of students at one law school took the LSAT, and only 20% took the GRE or another type of test. Can that school decide to not report any information about GRE scores, claiming that it is not a significant enough sample size? Will this be deemed “complete and accurate” information under Standard 509(a)? Perhaps the Council will conclude that the “509 Report” should continue to collect and distribute standardized test score data. What will this new form look like? One law school might decide to become “test optional” for certain types of applicants. Alternatively, a different law school will decide to accept test scores from the LSAT, GMAT, GRE and the MCAT. Will the new “509 Report” continue to require complete and comprehensive test score data for all matriculants that present test scores of any kind? How will that consumer disclosure be structured so that it remains meaningful whether a school requires one test, one of four different tests, or maybe no test at all? Will there be a column in the report for every type of test accepted for admission? If so, should there be a minimum number of matriculants with a particular test score type that triggers mandatory reporting (in order not to implicate student privacy concerns)? What will the disclosure requirement be for reporting test scores data when an individual applicant submits scores from multiple test types? Will law schools be required to report data based on all of these scores, the most recent test taken, or perhaps based on the highest score? What exactly would be the definition of “highest score” if different test scores or percentiles cannot be properly normed or equated with each other?

1 Interpretation 503-3’s “safe-harbor” currently allows law schools to admit and enroll some students under a test-optional policy. Even if this Interpretation is taken off the books, law schools who have used this Interpretation effectively may still be inclined to consider an expansion of its use. While the Council has posited that law schools requiring an admissions test “will remain the norm”, there is no reason to assume that many law schools will continue to innovate with broader test-optional policies that have been previously approved by their accreditor.
• We note that the current version of Standard 503 requires using a test for “first-year J.D. admissions” but the proposed revision to Standard 501 does not distinguish “first-year” versus “transfer” or “advanced standing” admissions. Might this then inform the Council’s position on the relevance of mandatory consumer disclosures beyond the first-year admissions process? Might schools be asked to disclose test score data for all incoming students, including transfer and advanced standing students? What is in the best interest of prospective applicants in such situations?

• Despite no official guidance on the subject, some ABA accredited law schools are already accepting scores from the GRE program. We anticipate that the elimination of Standard 503 will likely encourage more law schools to consider doing the same. If use of the GRE is permitted, how should schools be reporting GRE score data in a way that is compliant with Standard 509(a)? Unlike the LSAT, which provides a single score measurement, the GRE is actually a battery of separate tests which produces four scores that are not directly related to one another.² If a law school ultimately decides to use less than the full set of scores provided by an applicant on a GRE score report, can that school decide to selectively report only the GRE scores or subscores that it found to be valid and reliable in relation to its particular admissions program? And once again, we wonder: What is in the best interest of prospective applicants?

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In response to a recent attempt to make revisions to the “Employment Summary Form”, the Council received a letter (dated January 8, 2018) from a group of “Interested Deans and Career Services Professionals”. They wrote, in relevant part:

² ETS, the creator of the GRE, states that “[t]he Verbal Reasoning, Quantitative Reasoning and Analytical Writing scores should be treated as three separate and independent pieces of information. They should not be combined into a single score. Scores on the Analytical Writing measure should be expressed on the 0–6 scale on which the measure is scored. They should not be equated to the scores on the Verbal Reasoning and Quantitative Reasoning measures because the scales are not comparable.”
https://www.ets.org/gre/institutions/scores/guidelines/board_guidelines
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). 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.3

We endorse this position and contend that it is not applicable only to employment forms, but to all decisions that mandate or change consumer disclosures, particularly admissions data from high-stakes testing programs. If the Council wishes to proceed with approval of the elimination of Standard 503, we hope that this change does not take immediate effect without an appropriate opportunity for a notice and comment period for the inevitable (and potentially controversial) changes to the “509 Report” that would certainly follow.

Submitted for your consideration4,

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3 https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/February2018CouncilOpenSessionMaterials/F2b_interested_deans_and_career_services_professionals_memo.authcheckdam.pdf

4 Title and employer school names are listed for affiliation purposes, only.
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