



**Section of Legal Education
and Admissions to the Bar**

Managing Director's Guidance Memo

**Standard 316
August 2016**

Standard 316. BAR PASSAGE

(a) A law school's bar passage rate shall be sufficient, for purposes of Standard 301(a), if the school demonstrates that it meets any one of the following tests:

(1) That for students who graduated from the law school within the five most recently completed calendar years:

(i) 75 percent or more of these graduates who sat for the bar passed a bar examination; or

(ii) in at least three of these calendar years, 75 percent of the students graduating in those years and sitting for the bar have passed a bar examination.

In demonstrating compliance under sections (1)(i) and (ii), the school must report bar passage results from as many jurisdictions as necessary to account for at least 70 percent of its graduates each year, starting with the jurisdiction in which the highest number of graduates took the bar exam and proceeding in descending order of frequency.

(2) That in three or more of the five most recently completed calendar years, the school's annual first-time bar passage rate in the jurisdictions reported by the school is no more than 15 points below the average first-time bar passage rates for graduates of ABA-approved law schools taking the bar examination in these same jurisdictions.

In demonstrating compliance under section (2), the school must report first-time bar passage data from as many jurisdictions as necessary to account for at least

70 percent of its graduates each year, starting with the jurisdiction in which the highest number of graduates took the bar exam and proceeding in descending order of frequency. When more than one jurisdiction is reported, the weighted average of the results in each of the reported jurisdictions shall be used to determine compliance.

(b) A school shall be out of compliance with this Standard if it is unable to demonstrate that it meets the requirements of paragraph (a)(1) or (2).

(c) A school found out of compliance under paragraph (b) and that has not been able to come into compliance within the two-year period specified in Rule 14(b) of the Rules of Procedure for Approval of Law Schools, may seek to demonstrate good cause for extending the period the law school has to demonstrate compliance by submitting evidence of:

(1) The law school's trend in bar passage rates for both first-time and subsequent takers: a clear trend of improvement will be considered in the school's favor, a declining or flat trend against it.

(2) The length of time the law school's bar passage rates have been below the first-time and ultimate rates established in paragraph A: a shorter time period will be considered in the school's favor, a longer period against it.

(3) Actions by the law school to address bar passage, particularly the law school's academic rigor and the demonstrated value and effectiveness of its academic support and bar preparation programs: value-added, effective, sustained and pervasive actions to address bar passage problems will be considered in the law school's favor; ineffective or only marginally effective programs or limited action by the law school against it.

(4) Efforts by the law school to facilitate bar passage for its graduates who did not pass the bar on prior attempts: effective and sustained efforts by the law school will be considered in the school's favor; ineffective or limited efforts by the law school against it.

(5) Efforts by the law school to provide broader access to legal education while maintaining academic rigor: sustained meaningful efforts will be viewed in the law school's favor; intermittent or limited efforts by the law school against it.

(6) The demonstrated likelihood that the law school's students who transfer to other ABA-approved schools will pass the bar examination: transfers by students with a strong likelihood of passing the bar will be considered in the school's favor, providing the law school has undertaken counseling and other appropriate efforts to retain its well-performing students.

(7) Temporary circumstances beyond the control of the law school, but which the law school is addressing: for example, a natural disaster that disrupts operations or a significant increase in the standard for passing the relevant bar examination(s).

(8) Other factors, consistent with a law school's demonstrated and sustained

mission, which the school considers relevant in explaining its deficient bar passage results and in explaining the school's efforts to improve them.

Background

This memo provides guidance on demonstrating compliance with Standard 316 of the *ABA Standards and Rules of Procedure for Approval of Law Schools*. Standard 316 provides three different methods to demonstrate compliance; two methods focus on ultimate bar passage rates and one method focuses on first-time bar passage rates.

Law schools are required to report annual bar passage rates every year in the Annual Questionnaire. The Managing Director's Office monitors bar passage rates through the site evaluation process (Rule 5) and through regular monitoring between site evaluations (Rule 6).

***NOTE:** Detailed instructions on demonstrating compliance with ultimate and first-time bar passage rate can be found on the Section's [Guidance Memos page](#) and must be reviewed before completing the bar passage section of the Annual Questionnaire: See *Guidance Memo on Demonstrating Compliance with Ultimate Bar Passage* and *Guidance Memo on Demonstrating Compliance with First-Time Bar Passage**

Overview of Methods of Demonstrating Compliance

Fully approved schools

In order to comply with Standard 316 using **ultimate bar passage** rates, a fully approved law school must demonstrate either of the following:

(1) for the most recently completed five calendar years, 75 percent or more of the school's students who graduated during this period and sat for a bar examination, passed a bar examination; or

(2) in each of at least three of those same five calendar years, 75 percent or more of the law school's students who graduated during those years and sat for a bar examination, passed a bar examination.

In order to comply with Standard 316 using **first-time bar passage** rates, a fully approved law school must demonstrate that in each of at least three of the most recently completed five calendar years, the school's bar passage rate is not more than 15 points below the first-time bar passage rate for graduates of ABA-approved law schools taking the bar exam in the same jurisdiction(s) in the relevant years.

Provisionally approved schools

In order to comply with Standard 316 using **ultimate bar passage** rates, a provisionally approved law school seeking full approval must demonstrate either of the following:

(1) for students who graduated from the law school *since provisional approval was received*, at least 75 percent of these graduates who sat for a bar examination have passed a bar examination; or

(2) in each of at least *two* calendar years since the school received provisional approval, 75 percent or more of the law school's students who graduated during those years and sat for a bar examination, passed a bar examination.

In order to comply with Standard 316 using **first-time bar passage** rates, a provisionally approved law school must demonstrate that in each of at least two years since the law school received provisional approval the school's bar passage rate is not more than 15 points below the first-time bar passage rate for graduates of ABA-approved law schools taking the bar exam in the same jurisdiction(s) in the relevant years.

Calendar Years

Fully approved schools

The five-year look-back is a rolling time frame. For example, if a school has a sabbatical review in 2015, the time frame would be 2010-2014. If the school was not in compliance with Standard 316 at that time and came before the Accreditation Committee again in 2016, the look-back period for demonstrating compliance would be 2011-2015.

Provisionally approved schools

For provisionally approved law schools, only those who graduated after the law school received provisional approval may be counted. Thus, if a school received provisional approval in February 2014, only those who graduated and took a bar examination after that date would be reported by the school.

In determining calendar years, if the first opportunity for a provisionally approved law school's graduates to take the bar is in July 2014, then 2014 would count as the first calendar year. Subsequent calendar years would, of course, include the entire January – December period. Note that schools that receive full approval undergo a site visit three years after full approval and at that point they must meet the five-year look-back required for fully approved law schools.

Report on at least 70 percent of graduates

Schools must report bar passage results from as many jurisdictions as necessary to account for at least 70 percent of its graduates starting with the jurisdiction in which the highest number of graduates took the bar examination and proceeding in descending order of frequency until *at least* 70 percent of the school's graduates in the relevant time period are accounted for.

A school may provide data on additional jurisdictions (i.e., beyond 70 percent) but must continue to do so from highest number of takers to lowest number of takers. (For example, suppose in reporting 70 percent of takers a school is not in compliance but by showing data on 80 percent of takers it would be in compliance. The school may do this as long as the additional jurisdictions included are a continuation of the descending order of frequency of takers.)

Schools must report on all students in the reported jurisdictions (even those for whom their passage status is unknown). Once a jurisdiction is included in the computation for a given year, all of the school's graduates taking the bar in that jurisdiction in that year must be reported, even if a student's status is unknown and even if it results in the school reporting on more than 70 percent of its graduates taking a bar examination.

First-Time Takers

Only those taking the bar examination for their first time may be counted as a first-time taker. While a person might take a bar examination in successive administrations in different jurisdictions and may be taking the examination for the first time in each of those jurisdictions, a person is only reported as a first-time taker when taking the examination for the first time in any jurisdiction.

Reporting on Graduates who take the Bar Examination in a UBE Jurisdiction

A graduate who takes the bar examination in a UBE jurisdiction is counted as a first-time taker in the jurisdiction where the examination was taken. The graduate must be reported as having passed or failed as a first-time taker in that jurisdiction. If a second UBE jurisdiction accepts the score of a graduate who failed in the first jurisdiction, that graduate is not considered a first-time taker in the second jurisdiction but can be counted as a passer for reporting ultimate bar passage results.

Reporting on Graduates who take the Bar Examination Twice in One Administration

Where a graduate took the bar examination twice in one administration (e.g., the Connecticut and Massachusetts bar exams in July 2013), the graduate shall be reported only once. The graduate shall be reported as having passed the bar if the graduate passed the exam *in either or both* of the jurisdictions, provided that the school is reporting bar pass results for a jurisdiction in which the graduate passed. If the graduate failed the bar exam in both jurisdictions, the graduate shall be reported once as not having passed, again provided that the school is reporting bar pass results for a jurisdiction in which the graduate did not pass.

The following examples illustrate the reporting on bar exam passage for graduates who took the bar exam for the first time twice in one administration.

Scenario 1 assumes that the graduate took the bar exam for the first time in both jurisdictions X and Y, and that the *school is reporting both jurisdictions*.

Scenario 1

	Jurisdiction X (reporting) [higher number of graduates being reported]	Jurisdiction Y (reporting) [smaller number of graduates being reported]	Report Graduate As:
Graduate A	Passed	Failed	A person who passed in Jurisdiction X
Graduate B	Passed	Passed	A person who passed in Jurisdiction X
Graduate C	Failed	Failed	A person who failed in Jurisdiction X
Graduate D	Failed	Passed	A person who passed in Jurisdiction Y

Scenario 2 assumes that the graduate took the bar for the first time in both jurisdiction X and Y, and that the *school is reporting jurisdiction X but not Y*.

Scenario 2

	Jurisdiction X (reporting) [higher number of graduates being reported]	Jurisdiction Y (not reporting) [smaller number of graduates being reported]	Report Graduate As:
Graduate A	Passed	Failed	A person who passed in Jurisdiction X
Graduate B	Passed	Passed	A person who passed in Jurisdiction X
Graduate C	Failed	Failed	A person who failed in Jurisdiction X
Graduate D	Failed	Passed	A person who failed in Jurisdiction X

Scenario 3 assumes that the graduate took the bar for the first time in both jurisdiction X and Y, and that the school is reporting on **neither** jurisdiction X nor jurisdiction Y.

Scenario 3

	Jurisdiction X (not reporting)	Jurisdiction Y (not reporting)	Report Graduate As:
Graduate A	Passed	Failed	Graduate not reported
Graduate B	Passed	Passed	Graduate not reported
Graduate C	Failed	Failed	Graduate not reported
Graduate D	Failed	Passed	Graduate not reported

Noncompliance

If a school is unable to demonstrate compliance with Standard 316, in accordance with Rule 14, the school has a maximum of two years to demonstrate compliance unless the Accreditation Committee or Council “extends the period for demonstrating compliance for good cause shown.” This two-year limitation is mandated by DOE regulations (34 CFR 602.20). If a school fails to demonstrate compliance with a Standard within two years (unless the time for achieving compliance is extended for good cause) the Accreditation Committee must recommend to the Council that the school’s provisional or full approval be withdrawn.

Standard 316(c) sets out the types of evidence the school may use to seek to demonstrate “good cause” for extension of time to come into compliance. Examples of this evidence include: the trend (up or down) in the school’s bar passage rates; the length of time the school’s bar passage rate has been marginal or poor; effectiveness and value of the school’s academic support and bar preparation programs; and efforts by the school to facilitate bar passage of its

graduates who were unsuccessful in their attempts to pass the bar in previous attempts. Schools that rely on second or subsequent bar passage rates in order to demonstrate compliance must not only track their graduates but they may also be asked to provide information regarding post-graduation support programs they offer to their graduates who are unsuccessful in their first attempt to pass the bar. Note that a good cause extension is not automatic nor is it indefinite in its duration.

Rule 7 of the *Rules of Procedure for Approval of Law Schools* permits the Accreditation Committee and Council to require a school to report-back on its bar passage status. Thus, if a school were otherwise in compliance but was near noncompliance or had shown a pattern of decline in bar passage results, the Accreditation Committee or Council may require the school to report back so that the school's continued compliance can be tracked.

The Managing Director's Office will issue Guidance memoranda from time-to-time when new Standards or Interpretations have been adopted or when, in the course of the Office's dealings with schools about compliance with the Standards, a number of schools are asking for clarification or direction regarding a particular Standard, Interpretation or reporting requirement. The Office does its best to provide helpful guidance, but we remind schools that we do not have the authority to bind either the Council or the Accreditation Committee. That said, the Council and the Accreditation Committee understand the necessity of providing guidance and will take that guidance into account in any determination about a school's operating in compliance with the Standards.