Managing Director’s Guidance Memo

Demonstrating Compliance with First-Time Bar Passage
August 2016

Fully approved schools

In order to demonstrate compliance with first-time bar passage under Standard 316, 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 demonstrate compliance with first-time bar passage under Standard 316, 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**

School 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.

**Determining First-Time Bar Passage Rate**

When 70 percent or more of a school’s graduates take the bar exam in the same
jurisdiction, a law school's bar passage rate is easy to compute. (See Illustration 1 below.)

For some schools, however, graduates may sit for the bar exam for the first-time in a variety of jurisdictions, and the percent taking the bar exam in any one jurisdiction may be less than 70 percent of the cohort. In this situation, a law school must report first-time bar passage data from as many jurisdictions as necessary to account for at least 70 percent of its graduates, as described above. The combined weighted average of the results in each jurisdiction will determine whether a school complies with the Standard. (See Illustration 2 below.)

Illustration 1: Consider the following chart reflecting hypothetical annual first-time bar exam pass rates from 2010 to 2014, for a school being reviewed in 2015 where 70 percent or more of its graduates sit for the exam in a single jurisdiction.

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>Law School's First-time Bar Passage Rate</th>
<th>Passage Rate for Graduates of ABA-approved Law Schools</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>73</td>
<td>79</td>
<td>-6</td>
</tr>
<tr>
<td>2013</td>
<td>63</td>
<td>81</td>
<td>-18</td>
</tr>
<tr>
<td>2012</td>
<td>70</td>
<td>77</td>
<td>-7</td>
</tr>
<tr>
<td>2011</td>
<td>67</td>
<td>84</td>
<td>-17</td>
</tr>
<tr>
<td>2010</td>
<td>71</td>
<td>78</td>
<td>-7</td>
</tr>
</tbody>
</table>

In three of the five years, the school’s annual (combined February/July of the same year) first-time bar pass rate is no more than 15 points below the average first-time bar passage rates for graduates of ABA-approved law schools taking the bar exam in the same jurisdiction.

Illustration 2: Assume a school had 250 graduates in a given year who took the bar exam for the first-time, 90 in State A, 45 in State B, 45 in State C, 30 in State D, and the other 40 scattered in multiple jurisdictions. The 90 from State A represent 36% of the graduates. The additional 45 each from States B and C would bring the number of graduates taking the bar in these three states to 72% of the graduates (180 of 250, or 72%). Thus, this school would have to report the bar exam pass data for its graduates taking the exam in States A, B, and C, but not for those taking the bar exam in State D or other jurisdictions.

A determination of compliance requires a comparison of the weighted average first-time pass rate for the 180 graduates of this school who took the bar exam in States A, B, and C, with the comparable weighted average of the overall first-time pass rate for graduates of ABA-approved law schools in the same three states. The following table for 2014 illustrates how the weighted averages for the school and for the states would be calculated.

**Calendar Year 2014**

<table>
<thead>
<tr>
<th></th>
<th>State A</th>
<th>State B</th>
<th>State C</th>
<th>Weighted Average</th>
</tr>
</thead>
</table>

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The weighted average for the school is calculated by taking the pass rate for the school in the three states and weighting it in proportion to the number of students taking the bar exam in the three states. Here, of the 180 graduates taking the bar exam in these three states, 50% took the exam in State A, 25% took the exam in State B, and 25% took the exam in State C. So, by multiplying the pass rate for the school in each state by its proportional weight, and adding those results together, one arrives at a weighted average pass rate of 70 percent for graduates of the school who took the bar exam in these three states.

The school can demonstrate compliance by showing that it is no more than 15 points below the overall first-time taker pass rates for graduates of ABA-approved law schools in these states (i.e., in the example above, states A, B and C) using the same weighted average formula. Using the hypothetical data in the example above for 2014, in order to compare the 70% pass rate for the school’s graduates with the performance of all first-time takers from ABA-approved law schools in these three states, one must take the overall first-time taker pass rates for graduates of ABA-approved schools in these states and calculate a weighted average, based on the same weighting applied to determine the school’s weighted average pass rate. So, by multiplying the overall pass rate in each state by the proportional weight determined by looking at the number of the school’s graduates who took the exam in each state (here, 50%, 25%, and 25%), and adding those results together, one arrives at a weighted average pass rate of 80 percent for all first-time takers from ABA-approved law schools in these three states.

For this hypothetical year the school’s weighted average for its graduates taking the bar in these three states is not more than 15 points below the first-time ABA weighted average for these same states. Compliance with the Standard would be determined by doing a similar calculation for the most recently completed five calendar years to ascertain whether the school could meet the “not more than 15 points below” standard in each of at least three of those five years.

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

<table>
<thead>
<tr>
<th># takers from school</th>
<th>90</th>
<th>45</th>
<th>45</th>
</tr>
</thead>
<tbody>
<tr>
<td>% takers from school</td>
<td>50</td>
<td>25</td>
<td>25</td>
</tr>
<tr>
<td># passers from school</td>
<td>81</td>
<td>27</td>
<td>18</td>
</tr>
<tr>
<td>Pass rate for school</td>
<td>90%</td>
<td>60%</td>
<td>40%</td>
</tr>
<tr>
<td>Weighted average for school</td>
<td>45%</td>
<td>15%</td>
<td>10%</td>
</tr>
<tr>
<td>ABA pass rate for states</td>
<td>90%</td>
<td>80%</td>
<td>60%</td>
</tr>
<tr>
<td>Weighted average for states</td>
<td>45%</td>
<td>20%</td>
<td>15%</td>
</tr>
</tbody>
</table>
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.