MEMORANDUM

TO: Interested Persons and Entities

FROM: Diane Bosse, Council Chair
       Barry A. Currier, Managing Director of Accreditation and Legal Education

DATE: December 10, 2019

SUBJECT: ABA Standards and Rules of Procedure – Matters for Notice and Comment

At its meeting held on November 21-23, 2019, the Council of the Section of Legal Education and Admissions to the Bar approved for Notice and Comment proposed revisions to the Standards and Rules of Procedure of the ABA Standards and Rules of Procedure for Approval of Law Schools that appear below. These changes are required by the new Department of Education regulations that were released on November 1, 2019 and become effective on July 1, 2020.

1. Retroactive application of accrediting decisions
   - Rule 2
2. Provisional approval
   - Rule 22
   - Rule 29
   - Standard 102
   - Standard 103
3. Substantive change
   - Rule 24
   - Standard 105
4. Appeal
   - Rule 39
5. Other
   - Rule 27
All proposed revisions and accompanying explanations are published on the Section’s website: https://www.americanbar.org/groups/legal_education/resources/notice_and_comment/.

We solicit and encourage written comments on all the proposals listed above. A hearing on the proposed changes is scheduled for Wednesday, February 19, 2020 at 1 p.m. The hearing will be held at Le Meridian Tampa (601 N. Florida Ave., Tampa, FL 33602).

Please address written comments on the proposals to Diane Bosse, Council Chair. Please send comments and requests to speak at the hearing to Mary Kearin (mary.kearin@americanbar.org) by Monday, January 13, 2020.

Requests to speak at the hearing received after January 13, 2020, will be accommodated if possible. Written comments received after January 13, 2020, may not be included in the materials considered by the Council at its February 20-22, 2020 meeting.

**Changes to Standards and Rules:**

1. **Retroactive Application of Accrediting Decisions**

   **Explanation of Changes:**

   The Department now wants all accreditors to publish any policies for retroactive application of an accredititing decision. Since the Council does not have retroactive application, the Council is clarifying that its decisions are not retroactive.

   **Redline:**

   **Rule 2: Council Responsibility and Authority with Regard to Accreditation Status**

   (a) The Council has authority to determine compliance with the Standards. The Council has authority to:

      (1) grant or deny an application of a law school for provisional approval or full approval; withdraw provisional or full approval;
      (2) grant or deny applications for acquiescence in a substantive change, as provided in the Standards;
      (3) grant or deny applications for variances;
      (4) grant or deny an application for approval of a foreign program, and the continuance of a foreign program as set forth in the Criteria for Foreign Summer and Intersession Programs offered by ABA-Approved Law Schools in a Location Outside the United States; the Criteria for Approval of Foreign Semester and Year-Long Programs; and the Criteria for Accepting Credit for Student Study at a Foreign Institution;
      (5) approve or deny approval of a teach-out plan;
(6) impose sanctions and/or direct specific remedial action; and set fees for services and activities related to accreditation; and
(7) set fees for services and activities related to accreditation.

(b) A determination by the Council shall be effective upon issuance and is not retroactive.

2. Provisional Approval

Explanation of Changes:

In the past the Council has taken the position that it does not preaccredit law schools. The new Department regulations include the following revised definition:

Preaccreditation means the status of accreditation and public recognition that a nationally recognized accrediting agency grants to an institution or program for a limited period of time that signifies the agency has determined that the institution or program is progressing toward full accreditation and is likely to attain full accreditation before the expiration of that limited period of time.

Given the revised definition, the Council believes that provisional approval is preaccreditation, requiring it to meet additional requirements under the Department regulations including, requiring all provisionally approved schools to submit a teach-out plan, allowing schools that are denied provisional approval to maintain accreditation in order to teach out students, and preventing schools from moving from accredited status to preaccredited status. This will require changes to Rule 22 and Standards 102 and 103.

Redline:

Rule 22: Application for Provisional or Full Approval

(a) A law school seeking provisional or full approval shall file with the Managing Director a written notice of intent to seek approval.

(1) The notice shall be filed no later than March 15 in the academic year prior to the academic year in which the law school will apply for approval and shall indicate the law school’s preference for a fall or spring site evaluation visit.

(2) Upon receipt of written notice of a law school’s intent to seek provisional or full approval, the Managing Director shall arrange for a site evaluation as provided under Rule 4.

(3) A law school may not apply for provisional approval until it has completed the first full academic year of operating a full-time program of legal education.
(4) A provisionally approved law school may apply for full approval no earlier than two years after the date that provisional approval was granted.

(5) Upon notice to the Managing Director of its intent to seek provisional approval, a law school seeking provisional approval shall comply with Standard 102(f) regarding communication of its status.

(b) The application for provisional or full approval is due at least eight weeks prior to the scheduled site evaluation visit and must contain:

(1) A letter from the dean certifying that the law school has completed all of the requirements for seeking provisional or full approval or that the law school seeks a variance from specific requirements of the Standards and that the law school has obtained the concurrence of the president in the application;

(2) All completed forms and questionnaires, as adopted by the Council;

(3) In the case of a law school seeking provisional approval, a copy of a feasibility study that evaluates the nature of the educational program and goals of the law school, the profile of the students who are likely to apply, and the resources necessary to create and sustain the law school, including relation to the resources of a parent institution, if any;

(4) In the case of a law school applying for provisional approval, the law school must submit a teach-out plan in accordance with Rule 29, that includes the names of other law schools that could enter into a teach-out agreement with the law school.

(45) A copy of the self study;

(56) Financial operating statements and balance sheets for the last three fiscal years, or such lesser time as the institution has been in existence. If the applicant is not a publicly owned institution, the statements and balance sheets must be certified;

(67) Appropriate documents detailing the law school and parent institution’s ownership interest in any land or physical facilities used by the law school;

(78) A request that the Managing Director schedule a site evaluation at the law school’s expense; and

(89) Payment to the Section of any required fee.

(c) A law school must demonstrate that it or the university of which it is a part is legally authorized under applicable state law to provide a program of education beyond the secondary level.

(d) A law school shall disclose whether an accrediting agency recognized by the United States Secretary of Education has denied an application for accreditation filed by the law school, revoked the
accreditation of the law school, or placed the law school on probation. If the law school is part of a university, then the law school shall further disclose whether an accrediting agency recognized by the United States Secretary of Education has taken any of the actions enumerated above with respect to the university or any program offered by the university. As part of such disclosure, the law school shall provide the Managing Director with information concerning the basis for the action of the accrediting agency.

Rule 29. Teach-Out Plan

(a) If a provisional or fully approved law school decides to cease operations or close a branch campus, the law school shall promptly make a public announcement of the decision and shall notify the Managing Director, the appropriate state licensing authority, and the United States Department of Education of the decision.

(b) A provisional or fully approved law school must submit a teach-out plan for approval upon occurrence of any of the following events:

(1) The law school notifies the Managing Director’s Office that it intends to cease operations or close a branch campus;

(2) The Council acts to withdraw, terminate, or suspend, the accreditation of the law school;

(3) The United States Secretary of Education notifies the Managing Director’s Office that the Secretary has initiated an emergency action against an institution, in accordance with section 487(c)(1)(G) of the HEA, or an action to limit, suspend, or terminate an institution participating in any Title IV, HEA program, in accordance with Section 487(c)(1)(F) of the HEA, and that a teach-out plan is required;

(4) A state licensing or authorizing agency notifies the Managing Director’s Office that an institution’s license or legal authorization to provide an educational program has been or will be revoked.

c) A law school applying for provisional approval under Rule 22 must submit a teach-out plan for approval with its application, that includes the names of other law schools that could enter into a teach-out agreement with the law school.

d) The law school shall submit the teach-out plan for the law school or branch being closed as required by paragraph (b) to the Managing Director’s Office within the time specified by the Managing Director. The Managing Director’s Office, in consultation with the Chair of the Council, may require a law school to enter into a teach-out agreement as part of its teach-out plan.

e) A law school must submit the “Teach-Out Plan Approval Form,” as adopted by the Council, and address each item in the form.

f) If a law school voluntarily enters into a teach-out agreement or if the Managing Director requires a law school to submit a teach-out agreement as part of a teach-out plan, the law school must submit
the “Teach-Out Agreement Approval Form,” as adopted by the Council, and address each criterion in the form.

(gf) The Council shall either approve or deny the teach-out plan submitted in accordance with (b) and (c).

(1) Approval of the teach-out plan may be conditioned on specified changes to the plan.

(2) If the teach-out plan is denied, the law school must revise the plan to meet the deficiencies identified and resubmit the plan no later than 30 days after receiving notice of the decision.

(hg) Upon approval of a teach-out plan of a law school or branch that is also accredited by another recognized accrediting agency, the Managing Director’s Office shall notify that accrediting agency within 30 days of its approval.

(jh) Upon approval of a teach-out plan, the Managing Director shall within 30 days notify all recognized agencies that accredit other programs offered by the institution of which the law school is a part.

(jj) In the event a law school closes without an approved teach-out plan or agreement, the Managing Director’s office will work with the United States Department of Education and the appropriate State agency, to the extent feasible, to assist students in finding reasonable opportunities to complete their education without additional charges.

Standard 102. PROVISONAL APPROVAL

(a) The Council shall grant provisional approval to a law school if at the time the school seeks such approval it demonstrates that it has achieved substantial compliance with the Standards and presents a reliable plan for bringing the law school into full compliance with each of the Standards within three years after receiving provisional approval. In order to demonstrate that it has a reliable plan to come into full compliance with the Standards within three years after receiving provisional approval, a law school must clearly state the specific actions that it plans to take to bring the school into full compliance and demonstrate that there is a reasonable probability that such actions will be successful. A provisionally approved law school may apply for full approval no earlier than two years after receiving provisional approval and must obtain full approval within five years after receiving provisional approval.

(b) The Council may withdraw provisional approval if the Council determines that the law school is no longer in substantial compliance with the Standards, is not making adequate progress toward achieving full compliance with each of the Standards, or is no longer able to demonstrate that there is a reasonable probability that the school will achieve full compliance with each of the Standards within the allotted time frame.

(c) If five years have elapsed since the law school was provisionally approved and the Council has not granted full approval, provisional approval shall terminate, except that the Council may extend provisional approval to allow the law school to complete a teach-out plan. Before the end of the five-year period in an extraordinary case and for good cause shown, the Council may extend the time within which the law school must obtain full approval.
(d) A provisionally approved law school shall not offer a post-J.D. degree program or other non-J.D. degree program, offer a program in a country outside the United States, or seek to establish a separate location.

(e) A provisionally approved law school shall state that it is provisionally approved in all of its printed and electronic materials describing the law school and its program and in any other publication that references the law school’s approval by the Council.

(f) A law school seeking provisional approval shall make its status clear in any printed and electronic materials describing the law school and its program and in any other publication that references the law school’s approval status. At a minimum, the law school shall state the following in all such communications:

The law school is not currently approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association and makes no representation to any applicant that it will receive approval from the Council before the graduation of any matriculating student.

(g) A law school seeking provisional approval shall not delay conferring a J.D. upon a student in anticipation of obtaining approval. An approved law school may not retroactively grant a J.D. degree as an approved school to a student who graduated from the law school before its approval.

Standard 103. FULL APPROVAL

(a) The Council shall grant full approval to a provisionally approved law school if at the time the school seeks such approval it demonstrates that it is in full compliance with each of the Standards. Plans to achieve full compliance with any Standard are not sufficient to demonstrate full compliance.

(b) A law school granted approval under this Standard remains approved unless the Council withdraws that approval.

(c) Once a law school is granted full approval, the Council shall not reclassify the law school as a provisionally approved law school unless, following the loss of approval, the law school reapply for provisional approval.

3. Substantive Change

Explanation of Changes:
The Department has added two items (the addition of graduate programs of study by an institution that previously offered only undergraduate programs or certificates, and the addition of each direct assessment program) that must be included in the definition of substantive change. Until we receive clarification from the Department that we are not required to include these items as they would not be applicable to law schools, the items must be added. Finally, the Department added additional items of substantive change requiring a school on probation or equivalent status to seek prior approval. The proposed language prevents a school on probation or a school that has received a finding of significant non-compliance with one or more standards under Rule 11(a)(4), from applying for a substantive change.

**Redline:**

**Rule 24: Application for Acquiescence in Substantive Change**

(a) Substantive changes requiring application for acquiescence include:

1. Acquiring another law school, program, or educational institution;

2. Acquiring or merging with another university by the parent university where it appears that there may be substantial impact on the operation of the law school;

3. Transferring all, or substantially all, of the program of legal education or assets of the approved law school to another law school or university;

4. Merging or affiliating with one or more approved or unapproved law schools;

5. Merging or affiliating with one or more universities;

6. Materially modifying the law school’s legal status or institutional relationship with a parent institution;

7. A change in control of the law school resulting from a change in ownership of the law school or a contractual arrangement;

8. A change in the location of the law school that could result in substantial changes in the faculty, administration, student body, or management of the law school;

9. Establishing a branch campus;

10. Establishing a separate location other than a branch campus;

11. A significant change in the mission or objectives of the law school;
(12) The addition of courses or programs that represent a significant departure from existing offerings or method of delivery since the latest site evaluation including instituting a new full-time or part-time division, or establishing a new or different program leading to a degree other than a J.D. degree;

(13) The addition of a permanent location at which the law school is conducting a teach-out for students at another law school that has ceased operating before all students have completed their program of study;

(14) Contracting with an educational entity that is not certified to participate in Title IV, HEA programs, that would permit a student to earn 25 percent or more of the course credits required for graduation from the approved law school;

(15) The addition of graduate programs of study by an institution that previously offered only undergraduate degrees or certificate programs, establishing a new or different program leading to a certificate or degree other than the J.D. degree;

(16) A change in program length measurement from clock hours to credit hours; and

(17) A substantial increase in the number of clock or credit hours required for graduation; and

(18) The addition of each direct assessment program.

(b) An application for acquiescence in a substantive change shall consist of the following:

(1) All completed forms and questionnaires, as adopted by the Council;

(2) A letter from the dean certifying that the law school has completed all of the requirements for requesting acquiescence in a substantive change and that the law school has obtained the concurrence of the president in the application;

(3) A copy of the law school’s most recent self study or an updated self study if the most recent self study is more than three years old where the application is for acquiescence in a substantive change described in Rule 24(a)(1) through 24(a)(13);

(4) A description of the proposed change and a detailed analysis of the effect of the proposed change on the law school’s compliance with the Standards;

(5) Payment to the Section of the application fee.

(c) The Managing Director shall appoint a fact finder in connection with an application for acquiescence in a substantive change, except that no fact finder is required if the Managing Director and the Chair of the Council determine that the application does not require additional information to assist Council determination of the question of acquiescence.
(d) When the Council grants acquiescence in a substantive change under Rules 24(a)(1) through 24(a)(9), the Managing Director shall appoint a fact finder subsequent to the effective date of acquiescence as provided in Rule 25(e). The Council also may direct appointment of a fact finder subsequent to the effective date of acquiescence in a substantive change under Rules 24(a)(10) through 24(a)(17) for purposes of determining whether the law school remains in compliance with the Standards. When the Council grants acquiescence under Rule 24(a)(10) in a separate location at which the law school offers more than 50% of the law school’s program of legal education, the Managing Director shall appoint a fact finder to conduct a visit within six months of the effective date of acquiescence or in the first academic term subsequent to acquiescence in which students are enrolled at the separate location.

(e) In addition to satisfying the requirements of Rule 24(b), an application for acquiescence shall contain information sufficient to allow the Council to determine whether the substantive change is so significant as to constitute the creation of a new or different law school. If the Council determines that the substantive change constitutes the creation of a new or different law school, then it shall require that the school apply for provisional approval under the provisions of Standard 102 and Rule 22. Factors that shall be considered in making the determination of whether the substantive change is so significant as to constitute the creation of a new or different law school include, without limitation:

1. the financial resources available to the law school;
2. a significant change, present or planned, in the governance of the law school;
3. the overall composition of the faculty and staff at the law school;
4. the educational program offered by the law school; and
5. the location or physical facilities of the law school.

(f) A law school’s approval status remains unchanged following acquiescence in any substantive change.

(g) A law school’s request for acquiescence in the proposed substantive change in organizational structure shall be considered under the provisions of Rule 25, and will become effective upon the decision of the Council. The decision of the Council may not be retroactive.

(h) A Law School shall not receive an acquiescence in a substantive change if the law school is on probation or receives a finding of significant non-compliance with one or more Standards under Rule 11(a)(4), has been subject to such action by the Council over the prior three academic years, or is under a provisional certification under Title IV of the Higher Education Act of 1965, as amended.

**Standard 105. Acquiescence for Substantive Change in Program or Structure**

(a) Before a law school makes a substantive change in its program of legal education or organizational structure, it shall obtain the acquiescence of the Council for the change. A substantive change in program or structure that requires application for acquiescence includes:
(1) Acquiring another law school, program, or educational institution;

(2) Acquiring or merging with another university by the parent university where it appears that there may be substantial impact on the operation of the law school;

(3) Transferring all, or substantially all, of the program of legal education or assets of the approved law school to another law school or university;

(4) Merging or affiliating with one or more approved or unapproved law schools;

(5) Merging or affiliating with one or more universities;

(6) Materially modifying the law school’s legal status or institutional relationship with a parent institution;

(7) A change in control of the school resulting from a change in ownership of the school or a contractual arrangement;

(8) A change in the location of the school that could result in substantial changes in the faculty, administration, student body, or management of the school;

(9) Establishing a branch campus;

(10) Establishing a separate location;

(11) A significant change in the mission or objectives of the law school;

(12) The addition of courses or programs that represent a significant departure from existing offerings or method of delivery since the latest site evaluation including instituting a new full-time or part-time division, or establishing a new or different program leading to a degree other than a J.D. degree;

(13) The addition of a permanent location at which the law school is conducting a teach-out for students at another law school that has ceased operating before all students have completed their program of study;

(14) Contracting with an educational entity that is not certified to participate in Title IV, HEA programs, that would permit a student to earn 25 percent or more of the course credits required for graduation from the approved law school;

(15) The addition of graduate programs of study by an institution that previously offered only undergraduate degrees or certificate programs. Establishing a new or different program leading to a degree other than the J.D. degree;

(16) A change in program length measurement from clock hours to credit hours; and

(17) A substantial increase in the number of clock or credit hours required for graduation; and

(18) The addition of each direct assessment program.
(b) The Council shall grant acquiescence only if the law school demonstrates that the change will not detract from the law school’s ability to remain in compliance with the Standards.

(c) A law school may not apply for acquiescence in a substantive change if the law school is on probation or receives a finding of significant non-compliance with one or more Standards under Rule 11(a)(4), has been subject to such action by the Council over the prior three academic years, or is under a provisional certification under Title IV of the Higher Education Act of 1965, as amended.

4. Appeal

Explanation of Changes:

The Department proposed to remove reversal as an option available to the appeals panel to ensure that an accreditor’s board is able to fully re-evaluate its original decision upon remand, whereas a reversal prohibits that re-evaluation.

Redline:

Rule 39: Decision of the Proceeding Panel (Currently Rule 36)

(a) The Proceeding Panel shall issue a written decision no later than 30 days following the hearing. The decision shall state specifically the grounds upon which it is based.

(b) The Proceeding Panel, following a hearing, has the authority to:

(1) Affirm the decision of the Council;

(2) Reverse the decision of the Council and enter a new decision;

(23) Amend the decision of the Council; or

(34) Remand the decision of the Council for further consideration.

(c) The decision of the Proceeding Panel shall be effective upon issuance. If the Proceeding Panel remands a decision for further consideration or action by the Council, the Proceeding Panel shall identify specific issues that the Council must address.

(d) Decisions by the Proceeding Panel under (b)(1), (2) and (3) are final and not appealable.
(e) When the only remaining deficiency cited by the Council in support of an adverse decision is a law school’s failure to meet the Standards dealing with financial resources for a law school, the law school may request a review of new financial information that was not part of the record before the Council at the time of the adverse decision if all of the following conditions are met:

(1) A written request for review is filed with the Office of the Managing Director within 30 days after the date of the letter reporting the adverse decision of the Council to the law school;

(2) The financial information was unavailable to the law school until after the adverse decision subject to the appeal was made; and

(3) The financial information is significant and bears materially on the financial deficiencies that were the basis of the adverse decision by the Council.

(f) The request to review new financial information will be considered by the Council at its next meeting occurring at least 30 days after receipt of the request.

(g) A law school may request review of new financial information only once and a decision made by the Council with respect to that review does not provide a basis for appeal.

5. Other

Explanation of Changes:

At its August 2019 meeting, the Council approved changes to merge the Criteria for Foreign Summer and Intersession Programs Offered by ABA-Approved Law Schools in a Location Outside the United States and the Criteria for Approval of Foreign Semester and Year-Long Study Abroad Programs Established by ABA-Approved Law Schools into one set of criteria called Criteria for Programs Offered by ABA-Approved Law Schools in a Location Outside the United States. As a result, Rule 27 needs to be updated to reflect this change.

Redline:

Rule 27: Application for Approval of Foreign Program
(a) A law school may apply for approval of programs in accordance with the procedures set forth in
the following Criteria:

(1) Criteria for Foreign Summer and Intersession Programs Offered by ABA-Approved Law
Schools in a Location Outside the United States; or

(2) Criteria for Approval of Semester and year-Long Study Abroad Programs Established by ABA-
Approved Law Schools; or

(3) Criteria for Accepting Credit for Student Study at a Foreign Institution.