AMERICAN BAR ASSOCIATION

Legal Education and Admissions to the Bar

Memorandum

To: Interested Parties and Entities

From: David A. Brennen, Council Chair
Jennifer Rosato Perea, Managing Director of Accreditation and Legal Education

Date: August 28, 2024

Re: Matters for Notice and Comment: Arbitration Policy Required by USDE and Revisions to Definitions, Standards, and Rules to align with USDE changes to its Definitions of "Additional Location" and "Branch Campus" – **Deadline: September 30, 2024**

At its meeting on August 15-16, 2024, the Council of the Section of Legal Education and Admissions to the Bar (the "Council") approved for Notice and Comment proposed revisions as follows:

- **Part I:** Arbitration Policy required by the U.S. Department of Education (USDE)
- **Part II:** Definitions (1) and (4), Standards 105 and 106, and Rules 24 and 25 to align with changes to the USDE's Definitions of "Additional Location" and "Branch Campus"

All proposed revisions and accompanying explanations are published on the Section's website at https://www.americanbar.org/groups/legal_education/resources/notice_and_comment/.

We solicit and encourage written comments on all the proposals listed above. ***Please note the changes to the submission instructions as follows:*** All written comments should be addressed to David A. Brennen, Council Chair, and sent electronically as an .pdf attachment to NoticeandComment@americanbar.org **by September 30, 2024.** Early submission of written comments is strongly encouraged. Written comments received after September 30, 2024, will not be able to be included in the materials considered by the Council at its November 2024 meeting. All written comments received will be posted publicly on the Section's website at https://www.americanbar.org/groups/legal_education/resources/notice_and_comment/.

Part I: Arbitration Policy required by the U.S. Department of Education (USDE)

In Fall 2023, the USDE reminded all USDE-recognized accreditors of the need to have a policy requiring that any accreditation disputes between an accreditor and an accredited institution involving adverse action be submitted to arbitration before the initiation of any other legal action. The USDE's rationale for requiring initial, non-binding arbitration before other legal action is to help encourage accrediting agencies to take swift accreditation action when necessary, absent threat of immediate litigation. This information was communicated to accreditors in a letter which is available at:

https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2023-11-03/regulations-governing-recognition-accrediting-agencies-institutional-eligibility-and-arbitration-updated-dec-5-2023.

For the Council, this means that it must have an arbitration policy requiring a law school to undergo initial, non-binding arbitration after the Appeals Panel's Proceeding Panel (as described in Rule 32 of the *ABA Standards and Rules of Procedure for Approval of Law Schools*) renders its decision on a law school's appeal of a Council decision to deny provisional approval, deny full approval or withdraw provisional or full approval before the law school initiates any other legal action.

The USDE's letter to accreditors on the required arbitration policy (linked above) explained that in determining whether accreditor arbitration policies and procedures meet the regulatory requirements and due process considerations (34 CFR 602.20(e) and 34 CFR 602.25, respectively), the USDE may consider whether the accreditor's policy and procedures contains information in nine specified areas. The arbitration policy below was carefully drafted to ensure coverage of all nine areas communicated by the USDE:

- **Description and notice of arbitration process:** The policy should provide notice of the process by which an institution may submit an arbitration demand; whether there is a single arbitrator or an arbitration panel; how the arbitrator or arbitration panel is selected; the required qualifications of arbitrators; whether and under what circumstances the rules of outside arbitration bodies, such as the American Arbitration Association (AAA) or JAMS (f/k/a Judicial Arbitration and Mediation Services, Inc.) may be used; and the process by which an institution may legally challenge an arbitration decision.
- **Applicability to adverse actions:** The policy should specify that the arbitration requirement applies to all adverse actions, as that term is defined in 34 C.F.R. §602.3, including the denial, withdrawal, suspension, revocation, or termination of accreditation or preaccreditation, or any comparable accrediting action an agency may take against an institution or program.
- **Due process:** The policy must provide due process in all aspects of the arbitration.
- **Avoidance of agency advantage:** The policy should avoid giving an agency an advantage over an institution in any aspect of the arbitration process.
- **Equal input on arbitrator/arbitration panel:** The policy should provide for equal input from the agency and the institution in selecting and approving the arbitrator or arbitration panel.
- **Prevention of conflicts of interest:** The policy should include effective controls to prevent conflicts of interest between the arbitrator or the arbitration panel and the agency or institution.
- **Status as a decision-making body:** The policy should state that the arbitrator or arbitration panel is not a decision-making body of the agency.
- **Initial and non-binding arbitration:** The policy should state the arbitration is initial and non-binding.
- **Timeframe:** The policy should provide a transparent and reasonable timeframe for resolution of the arbitration.

To create this Arbitration Policy for the Council, expertise outside the Managing Director's Office staff was needed. After considering expertise both inside and outside the ABA, the Managing Director's Office staff worked with the American Arbitration Association (AAA) to create the Arbitration Policy below. AAA is a service and education-oriented, not-for-profit organization with offices across the U.S., including in Chicago. Other arbitration providers tended to focus more on arbitration for commercial clients or for disputes in a particular geographic area. Additionally, in looking at other USDE-recognized accreditor arbitration policies, the Higher Learning Commission (HLC)'s policy encourages parties to arbitration to

consider arbitrators from the JAMS Neutral Directory or the AAA National Rosters of Arbitrators and Mediators. The New England Commission of Higher Education (NECHE)'s policy requires that the arbitration be administered by an arbitrator selected from AAA's National Roster of Commercial Arbitrators, and this policy also includes requirements for filing paperwork with AAA, appointing an AAA arbitrator (and AAA's role in the appointment of an arbitrator), and payment of AAA-specified fees and usage of published AAA fee schedules. Because AAA is the largest provider of arbitration with offices throughout the U.S., has depth of experience in arbitration, is a not-for-profit organization focused on service and education, and its services are used or recommended by other accreditors, it is the best choice for the Council.

It is noted that Council Member and Immediate Past Council Chair, Bridget McCormack, is currently the President and CEO of AAA. She was not involved in the drafting or review of the Council's Arbitration Policy and has recused and will recuse herself from discussing or voting on this Arbitration Policy.

Policy on Arbitration following Adverse Action by the Council and Decision by Appeals Panel's Proceeding Panel following an Appeal

The U.S. Department of Education requires, pursuant to 34 C.F.R. Part 602, Subpart B, the Criteria for Recognition, all adverse actions regarding accreditation are subject to the arbitration requirements of the Higher Education Act of 1965, as amended, ("HEA"), at Section 496(e), 20 U.S.C. § 1099b(e). Further, the U.S. Secretary of Education does not recognize the accreditation or preaccreditation of an institution unless that institution agrees to submit any dispute regarding an adverse accreditation action to arbitration before initiating any other legal action (34 C.F.R. § 600.4(c), § 600.5(d), and § 600.6(d)).

To comply with the requirements of 20 U.S.C. § 1099b(e) regarding initial arbitration, the Council of the ABA Section of Legal Education and Admissions to the Bar ("Council") has adopted the process below for initial, non-binding arbitration of disputes regarding adverse accreditation actions between the Council and a law school it accredits prior to the law school's pursuit of other legal action. All law schools that are fully or provisionally approved by the Council must agree to submit any dispute involving an adverse accreditation action by the Council to arbitration prior to initiating other legal action. These arbitration procedures apply to all adverse actions, as that term is defined in 34 C.F.R. § 602.3. Specifically, the Council's adverse accreditation actions are denial of provisional approval, denial of full approval or withdrawal of provisional or full approval. Only these Council decisions can be appealed to the Appeals Panel, as stated in Rule 3 of the ABA Standards and Rules of Procedures for Approval of Law Schools. Any arbitration can occur only after the Appeals Panel's Proceeding Panel (as described in Rule 32 of the ABA Standards and Rules of Procedures for Approval of Law Schools) renders its decision on a law school's appeal. As the arbitrator's decision is non-binding, if a party to an arbitration is dissatisfied with the arbitrator's decision, that party may file suit in the relevant court and jurisdiction.

Any arbitrator appointed pursuant to these procedures is not a decision-making body of the Council.

R-1 Filing Requirements

(a) Before initiating legal action, a law school disputing any adverse action by the Council shall initiate non-binding arbitration in the following manner:

1. The law school shall initiate an arbitration by filing with the American Arbitration Association (AAA), within thirty (30) days from the date the of the Proceeding Panel's decision regarding a law school's appeal of an adverse accreditation action taken by the Council against the law school, a Demand for Arbitration, and the administrative filing fee

as set forth in the AAA Commercial Fee Schedule.

2. The filing party shall file in the following manner:
   - **i.** through AAA WebFile®, located at www.adr.org;
   - **ii.** by filing the completed Demand for Arbitration with any AAA office, regardless of the intended locale of hearing (current office location information can be found at: https://www.adr.org/OfficeLocations); or
   - **iii.** by emailing the completed Demand for Arbitration to casefiling@adr.org, with payment to follow as directed by the AAA.

3. The party filing the arbitration shall simultaneously provide a copy of the Demand for Arbitration and any supporting documents to all other parties to the arbitration, including the Managing Director of Legal Education and Accreditation in the ABA Section of Legal Education and Admissions to the Bar.

4. The Demand for Arbitration shall include:
   - **i.** The name of each party;
   - **ii.** The address for each party, including, if known, telephone numbers, and email address;
     1. The address for the Council is: 321 N. Clark Street, 19th Floor, Chicago, IL 60654.
   - **iii.** If applicable, the names, addresses, telephone numbers, and, if known, email addresses of the known representative for each party;
   - **iv.** A copy of the Proceeding Panel's Decision at issue and a statement regarding the errors alleged; and
   - **v.** The filing fee.

(b) The AAA shall provide notice to the parties (or their representatives if so named) of the receipt of the Demand for Arbitration when the filing requirements have been satisfied. The date on which the filing requirements are satisfied shall establish the date of filing the arbitration for administrative purposes. The AAA has the authority to make an administrative determination whether the filing requirements set forth in this Rule have been met.

If the filing does not satisfy the filing requirements, the AAA shall acknowledge to all named parties receipt of the incomplete filing and inform the parties of the filing deficiencies. If the deficiencies are not cured by the due date specified by the AAA, the filing shall be returned to the filing party. However, the filing party can refile.

R-2. Qualifications of Arbitrator

(a) The arbitrator shall be selected from the AAA's Appellate Panel.

(b) No person shall serve as an arbitrator in any dispute in which that person is precluded from serving under the applicable code of ethics governing the appointment of arbitrators. Prior to accepting an appointment, the prospective arbitrator shall disclose to the AAA any conflicts of interest or circumstances likely to create a presumption of bias or prevent a prompt resolution of the arbitration. Upon receipt of such information, at its discretion the AAA either shall replace the arbitrator or shall immediately communicate the information to the parties for their comments. In the event that the parties disagree as to whether the arbitrator shall serve, the AAA has the authority to make the decision as to whether the arbitrator shall serve or whether another arbitrator shall be appointed. The AAA is authorized to appoint another arbitrator if the appointed arbitrator is unable to serve promptly.

R-3. Disclosure

(a) Any person appointed or to be appointed as an arbitrator, as well as the parties and their representatives, shall disclose to the AAA any circumstance likely to give rise to justifiable doubt as to the arbitrator's impartiality or independence, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives. Such disclosure obligation shall remain in effect throughout the arbitration. Failure on the part of a party or a representative to comply with the requirements of this Rule may result in the waiver of the right to object to an arbitrator.

(b) Upon receipt of such information from the arbitrator or another source, the AAA shall communicate the information to the parties and, if it deems it appropriate to do so, to the arbitrator and others.

(c) Disclosure of information pursuant to this Rule is not an indication that the arbitrator considers the disclosed circumstance likely to affect impartiality or independence.

R-4. Disqualification of Arbitrator

(a) Any arbitrator shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for:

1. partiality or lack of independence,
2. inability or refusal to perform his or her duties with diligence and in good faith, and
3. any grounds for disqualification provided by applicable law.

(b) Upon objection of a party to the continued service of an arbitrator, or on its own initiative, the AAA shall determine whether the arbitrator should be disqualified on the grounds set out above, and shall inform the parties of its decision, which decision shall be conclusive.

R-5. Appointment of Arbitrator

The arbitrator will be appointed in the following manner:

(a) After the AAA determines the filing law school has satisfied the filing requirements for an arbitration under these Rules, the AAA shall send simultaneously to each party to the dispute an identical list of five (5) names of persons chosen from the AAA's Appellate Panel. The parties are encouraged to agree to the arbitrator from the submitted list and to advise the AAA of their agreement.

If the parties are unable to agree upon the arbitrator, each party shall have seven (7) days from the list transmittal date in which to strike names objected to, number the remaining names in order of preference, and return the list to the AAA. Each party is limited to two strikes.

If a party does not return the list to AAA within the time specified, all persons named therein shall be deemed acceptable to that party.

From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of the arbitrator to serve.

If the parties fail to agree on the arbitrator from the persons named, or if the acceptable arbitrator is unable to act, or if for any other reason the appointment cannot be made from the submitted lists,

the AAA shall have the power to make the appointment from among other members of the AAA's Appellate Panel without the submission of additional lists.

(b) If the parties have requested an arbitrator with specific qualifications, the AAA will consider such requests when creating the list of the arbitrators. Such requests shall be made by the filing party in its Demand for Arbitration and by the respondent within three (3) days of receipt of the Demand for Arbitration.

(c) The appointed arbitrator is not a decision-making body of the Council.

R-6. Vacancies

If an arbitrator shall become unwilling or unable to serve, the AAA shall administratively appoint a substitute arbitrator.

R-7. Preliminary Conference Call

(a) Within seven (7) days of the AAA's confirmation of the arbitrator's appointment, a preliminary conference call will be scheduled with the parties, the arbitrator, and the AAA case manager to review and formalize the briefing schedule, set a deadline for the submission of the record from the proceedings before the Council and the Proceeding Panel, and address any other procedural issues consistent with these rules and the objectives for an expedited, cost effective, and just arbitration process.

(b) The arbitrator shall enter an order reflecting any briefing schedules, and any other timeframes and administrative matters determined during the preliminary conference call.

(c) The arbitrator may require a detailed specification of issues in advance of the parties' submission of briefs and may direct or limit the parties to certain areas or issues in their briefing or request additional briefing subject to the limitations in R-10.

R-8. Absent Parties

The arbitrator shall proceed with the arbitration in the absence of a party if the arbitrator determines that due notice was provided, and the absent party is provided with a copy of the order from the preliminary conference call.

R-9. Jurisdiction

The arbitrator shall have the power to rule on their own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration process.

R-10. Issues Subject to Arbitration

The filing party shall seek review only as to whether the decisions of the Council and the Proceeding Panel were arbitrary and capricious and not supported by the evidence on record or inconsistent with the ABA Rules of Procedure and that inconsistency prejudiced the decision.

R-11. Deposits, Arbitration Compensation, and Allocation

(a) Within seven (7) days after the AAA's confirmation of the arbitrator's appointment, the AAA will require the parties to advance deposits of such sums of money as AAA deems necessary to cover the expense of the arbitration, including the arbitrator's compensation and expenses, if any. AAA shall render an accounting to the parties and return any unexpended deposit balance at the conclusion of the case. At its discretion, the AAA will allocate the deposits among the parties and will establish due dates for the collection of those deposits.

(b) The arbitrator's decision may include a reallocation of a party's share of the fees and costs, including arbitrator compensation and expenses, of the arbitration. If the arbitrator determines the filing party is not the prevailing party, the arbitrator may assess or reallocate to the filing party some or all of the respondent's costs of arbitration, including respondent's share of arbitrator compensation and expenses and other reasonable costs of the respondent excluding attorneys' fees (unless a statute provides for an award of attorneys' fees), incurred after the commencement of the arbitration.

(c) A party's failure to timely pay the deposits required in this rule shall automatically place the arbitration in suspension for a period of seven (7) days. If the arbitration has been suspended by operation of this rule and the parties have failed to make the full deposits requested fourteen (14) days from the date of suspension, the arbitration will terminate on its own accord. Any such termination shall be without prejudice to a party's re-filing the arbitration.

R-12. Interpretation of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. All other rules shall be interpreted and applied by the AAA.

R-13 Scope of Proceeding

(a) All arbitrations will be determined upon the written documents submitted by the parties unless the arbitrator otherwise directs or any party requests oral argument before or during the scheduling conference with the arbitrator.

(b) If oral argument is provided, the argument shall be scheduled to take place within fourteen (14) days of filing of the last brief, unless the arbitrator determines there is good cause shown for a later date for oral argument.

(c) Oral argument shall take place in Chicago, Illinois, at a time and place designated by the arbitrator. The parties and the arbitrator also may agree that oral argument may take place virtually.

R-14. Arbitration Record

(a) The parties shall cooperate in compiling the record for the arbitration, which shall consist solely of the record for the proceedings before the Council and the Proceeding Panel. In lieu of the full, complete record before the Council and the Proceeding Panel, the parties may submit agreed excerpts of certain parts of the record for the arbitrator's convenience.

(b) A party shall not present for the first time in the arbitration any issues, facts, information, documents, or other evidence that was not part of the record before the Council or the Proceeding Panel. Any disputes concerning whether a document or piece of evidence is part of the record for the arbitration shall be determined by the arbitrator. The parties shall submit the record for the arbitration by the deadline determined by the arbitrator at the preliminary conference.

R-15. Arbitration Briefs

Unless otherwise agreed by the parties and approved by the arbitrator, or determined by the arbitrator as a necessary deviation, the following briefing schedule shall apply:

(a) The filing party's Initial Brief shall be served no later than fourteen (14) days after the preliminary conference call with the arbitrator and limited to 30 double-spaced, typed pages in Arial font, size 11.

(b) The respondent's Answer Brief shall be served no later than fourteen (14) days after service of the filing party's Initial Brief and limited to 30 double-spaced, typed pages in Arial font, size 11.

(c) The filing party's Reply Brief to respondent's Answer Brief, if any, shall be served within seven (7) days of service of the respondent's Answer Brief and limited to 10 double-spaced, typed pages in Arial font, size 11.

(d) For good cause shown, each party is entitled to request a single seven (7)-day extension for filing a brief that is to be served under these rules, with such extension request to be decided by the arbitrator. In extraordinary circumstances, the arbitrator in their sole discretion may grant an additional extension of no more than seven (7) days.

R-16. Service of Documents

(a) Service of notices, briefs, answers, and replies can be accomplished through AAA WebFile or by emailing all parties to the arbitration and the AAA case manager, provided all parties and the AAA case manager who are to receive copies are served contemporaneously in the same manner.

(b) Unless the rule provides a different method of calculating time periods, all deadlines under these Rules shall be determined by calendar days. If the last day of the time period is a legal holiday or weekend day, the period shall be extended until the first business day that follows.

R-17. Arbitrator's Decision

(a) Within thirty (30) days of service of the last brief, or within thirty (30) days of oral argument if one is held, the arbitrator shall take one of the following actions:

1. affirm the decision of the Proceeding Panel in full or in part, or
2. reverse the decision of the Proceeding Panel in full or in part, or
3. request additional briefing and notify the parties of the arbitrator's exercise of an option to extend the time to render a decision, not to exceed fourteen (14) days.

The arbitrator shall not order a new hearing before, or send the case back to, the Council or the Proceeding Panel.

(b) The initial thirty (30)-day time frame may be modified for good cause or if oral argument is to take place and it has not yet occurred. In the event the extension is because of oral argument, the initial thirty (30) days for rendering a decision will commence the day following the conclusion of the oral argument.

(c) The arbitrator's decision shall be in writing and shall include a concise summary of the decision and an explanation for the decision, unless the parties agree otherwise.

(d) The arbitrator's decision shall be non-binding.

R-18. Confidentiality

Rule 47(a) of the ABA Standards and Rules of Procedure for Approval of Law Schools states that, except where provided, all matters relating to the accreditation of a law school shall be confidential. The parties and the arbitrator shall maintain the confidentiality of these proceedings except in the case of a judicial challenge or court order concerning the proceeding, or as otherwise required by law.

R-19. Applications to Court and Exclusion of Liability

(a) Neither the AAA nor any arbitrator in a proceeding under these rules is a necessary or proper party in judicial proceedings relating to the arbitration.

(b) Parties to an arbitration under these rules shall be deemed to have consented that neither the AAA nor any arbitrator shall be liable to any party in any action for damages or injunctive or declaratory relief for any act or omission in connection with any arbitration under these rules.

(c) Parties to an arbitration under these rules shall not call an arbitrator, the AAA, or AAA employees as a witness in litigation or any other proceeding relating to the arbitration. The arbitrator, the AAA, and AAA employees are not competent to testify as witnesses in any such proceeding.

Administrative Fee Schedule

The AAA administrative fees for arbitration under these rules are pursuant to the nonmonetary claims tier of the Standard Fee Schedule of the Commercial Arbitration and Mediation Procedures Administrative Fee Schedules in effect as of the filing the Demand for Arbitration. The administrative fees consist of an initial filing fee and, where relevant, a final fee. The filing party will pay the initial filing fee. If oral argument is allowed, the party requesting oral argument will pay the final fee; however, if either both parties to an arbitration request oral argument or the arbitrator directs that oral argument take place, the parties will evenly split the final fee. As provided in these rules, the arbitrator may reallocate the administrative fees in their decision. The administrative fees do not include the compensation and expenses of the arbitrator. The arbitrator shall be compensated at a rate consistent with the arbitrator's stated rate of compensation at the time their AAA resume is presented to the parties for consideration, unless otherwise determined by the AAA.

Information about the AAA Fees can be found at:
https://www.adr.org/sites/default/files/Commercial_Arbitration_Fee_Schedule_1.pdf.

Please contact the AAA for additional information or visit www.adr.org/Rules.

Part II: Definitions (1) and (4), Standards 105 and 106, and Rules 24 and 25 to align with changes to the USDE's Definitions of "Additional Location" and "Branch Campus"

Due to updates to USDE definitions in 34 C.F.R 600.2, revisions were made to the Council's definitions of "Additional Location" and "Branch Campus" to align them with the USDE definitions (these USDE definitions are attached as Appendix A). A few revisions were made to Standards 105 and 106 and Rules 24 and 25 to align with the revisions to "Additional Location." Also, the USDE regulations occasionally use the phrase "at least 50 percent of an education program." This was clarified so law schools know its equivalence as applied to a J.D. program when used in the definition of "Additional Location."

Definition (1): Additional Location

Summary: A few changes have been made to align the Council's definition of "Additional Location" with the USDE's updated definition. The updated USDE definition is included in Appendix A. First, "physical" was added to describe the type of facility that an additional location must be. Second, it was added that the additional location must be within the same ownership structure as the law school as a whole. Third, a sentence noting that an additional location may qualify as a branch campus was deleted. (The USDE deleted references to "additional location" in its "branch campus" definition as well.) New

text was included regarding the additional location's access to Title IV, HEA programs, coming only through the main campus of the law school and that correctional institutions in which students receive instruction primarily through distance education or correspondence courses are considered additional locations. Finally, while the USDE language of "at least 50 percent of an education program" was initially included as "at least 50 percent of the J.D. program," in the Council's definition, this phrasing leaves questions as to what exactly constitutes "at least 50 percent of the J.D. program." For purposes of clarity and consistency, "at least 50 percent of the J.D. program" has been replaced with "50 percent or more of the credit hours required for the J.D. degree" to mirror the language in Standard 105(a)(12)(ii) regarding one of the distance education limits ("….(ii) changing academic policies to allow a student to earn 50 percent or more of the credit hours required for the J.D. degree through Distance Education Courses;)

Redline Version: Definition (1): Additional Location

(1) "Additional location" means a physical facility that is within the United States and geographically ~~apart~~ separate from the main campus of the law school and within the same ownership structure of the law school, at which the law school offers 50 percent or more of the credit hours required for the J.D. degree. ~~at least 50 percent of its J.D. program. An additional location may qualify as a branch campus.~~ An additional location participates in the Title IV, HEA programs only through the certification of the main campus of the law school. A federal, state, or local penitentiary, prison, jail, reformatory, work farm, juvenile justice facility, or other similar correctional institution is considered to be an additional location even if a student receives instruction primarily through distance education or correspondence courses at that location.

Clean Version: Definition (1): Additional Location

(1) "Additional location" means a physical facility that is within the United States and geographically separate from the main campus of the law school and within the same ownership structure of the law school, at which the law school offers 50 percent or more of the credit hours required for the J.D. degree. An additional location participates in the Title IV, HEA programs only through the certification of the main campus of the law school. A federal, state, or local penitentiary, prison, jail, reformatory, work farm, juvenile justice facility, or other similar correctional institution is considered to be an additional location even if a student receives instruction primarily through distance education or correspondence courses at that location.

Definition (4): Branch Campus

Summary: A few changes were made to align the Council's definition to the USDE's updated definition of "Branch Campus." (The updated USDE definition is included in Appendix A). First, "physical" was added to describe the type of facility that a branch campus must be. The reference to "additional location" was deleted in the "Branch Campus" definition (as was a reference to "branch campus" in the "Additional Location" definition) to match the USDE's updated definition. Just as in the "additional location" definition, text was added that the branch campus must be within the same ownership structure as the law school as a whole. Finally, and most importantly, there is a new requirement that the branch campus be approved by the Secretary of the USDE as a branch campus, which has been incorporated into the Council's definition.

Redline: Definition (4): Branch Campus

(4) "Branch campus" means a~~n additional location of a law school~~ physical facility that is within the United States and geographically ~~apart and independent~~ separate from ~~of~~ the main campus of the law school and within the same ownership structure of the law school. A branch campus is also approved by

the Secretary of the U.S. Department of Education as a branch campus and ~~A location of a law school~~ is independent ~~of~~ from the main campus of the law school, meaning ~~if~~ the location ~~(1)~~ is permanent in nature,~~;~~ ~~(2)~~ offers courses in educational programs leading to a J.D. degree,~~;~~ ~~(3)~~ has its own faculty and administrative or supervisory organization,~~;~~ and ~~(4)~~ has its own budgetary and hiring authority.

Clean Version: Definition (4): Branch Campus
(4) "Branch campus" means a physical facility that is within the United States and geographically separate from the main campus of the law school and within the same ownership structure of the law school. A branch campus is also approved by the Secretary of the U.S. Department of Education as a branch campus and is independent from the main campus of the law school, meaning the location is permanent in nature, offers courses in educational programs leading to a J.D. degree, has its own faculty and administrative or supervisory organization, and has its own budgetary and hiring authority.

Standards 105: Acquiescence for Substantive Change in Program or Structure and Standard 106 Additional Locations and Branch Campuses

Background: Since the USDE deleted the sentence "An additional location may qualify as a branch campus" in its updated definition of "Additional Location," all references in the Standards and Rules to "an additional location other than a branch campus" have been changed to "an additional location" to reflect that an additional location can no longer be a branch campus. This change was made in Standards 105(a)(10) and 106(a).

Redline Version: 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:
…
(10) Establishing an additional location ~~other than a branch campus~~;
…

Redline Version: Standard 106: Additional Locations and Branch Campuses

(a) A law school that offers an additional location ~~other than a branch campus~~ shall provide:
…

Rule 24: Application for Acquiescence in Substantive Change and Rule 25: Substantive Changes Requiring a Reliable Plan

Background: Since the USDE deleted the sentence "An additional location may qualify as a branch campus" in its updated definition of "additional location," all references in the Standards and Rules to "an additional location other than a branch campus" have been changed to "an additional location" to reflect that an additional location can no longer be a branch campus. This change was made in Rule 24(a)(10) and (d) and Rule 25(f). Finally, a change was made to resolve a small inconsistency in Rule 24 – one sentence suggests that a fact finder may be appointed to visit an additional location; the next sentence requires a fact finder's visit. Rule 24 has been clarified to require a fact finder's visit for an additional location by simply changing "Rules 24(a)(10) through 24(a)(18)" to "Rules 24(a)(11) through 24(a)(18)."

Redline Version: Rule 24: Application for Acquiescence in Substantive Change

(a) Substantive changes requiring application for acquiescence include:
…

(10) Establishing an additional location ~~other than a branch campus~~;
…

(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~~11) through 24(a)(18) 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 an additional location ~~other than a branch campus~~, 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 additional location.

Redline Version: Rule 25(f): Substantive Changes Requiring a Reliable Plan
…

(f) In the case of the establishment of a branch campus under Rule 24(a)(9) or an additional location ~~other than a branch campus~~ under Rule 24(a)(10), the fact-finding visit required in accordance with (e) shall be conducted 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 branch campus or additional location to verify that the branch campus or additional location satisfies the requisites of (b)(2).

Appendix A: Updated U.S. Department of Education Definitions in 34 C.F.R 600.2

Additional Location:

(1) A physical facility that is geographically separate from the main campus of the institution and within the same ownership structure of the institution, at which the institution offers at least 50 percent of an educational program. An additional location participates in the title IV, HEA programs only through the certification of the main campus.

(2) A Federal, State, or local penitentiary, prison, jail, reformatory, work farm, juvenile justice facility, or other similar correctional institution is considered to be an additional location even if a student receives instruction primarily through distance education or correspondence courses at that location.

Branch Campus:

A physical facility that is geographically separate from the main campus of the institution and within the same ownership structure of the institution, and that also—

(1) Is approved by the Secretary as a branch campus; and

(2) Is independent from the main campus, meaning the location—
- (i) Is permanent in nature;
- (ii) Offers courses in educational programs leading to a degree, certificate, or other recognized education credential;
- (iii) Has its own faculty and administrative or supervisory organization; and
- (iv) Has its own budgetary and hiring authority.