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### **SALT Presents Two-Part Appeal to the American Bar Association Council of the Section on Legal Education and Admission to the Bar:**

#### **(1) Suspend ABA Standard 316**

**and**

#### **(2) Prioritize an Independent Audit and Potential Revision of ABA Standard 206 Based on Principles Enunciated by the AALS Law Deans Antiracist Clearinghouse Project Audit Reporting Framework**

The Society of American Law Teachers [SALT] wrote the ABA Council of the Section on Legal Education and Admission to the Bar four months ago articulating that widespread inequity for bar takers from “COVID-19 disruptions to the 2020 bar exam nationwide necessitates that ABA Standard 316, Bar Passage, be suspended.” The concerns about COVID-19 disruptions to the 2020 bar exam stated at that time have been significantly amplified. Since our last correspondence jurisdictions have changed the dates of the exam, from July to August, to September, to October; changed the length of the exam; changed the substance of the exam to exclude MBE questions entirely in some states; and changed the format of the exam from in-person closed book, to on-line closed book, to on-line open book. None of these changes were done in a uniform manner, but instead on an ad hoc basis.

The recently administered on-line exams suffered from technology instability and disruptions in the exam platform itself. Some jurisdictions have waived the bar exam entirely by granting diploma privilege. Even the diploma privilege rules have varied widely, some states applying it to all registered bar exam applicants, others applying it only to 2020 graduates, and still others applying it only to graduates from schools with a certain ultimate bar passage rate. These irregularities are all due to the global health pandemic of COVID-19, which has created a hardship for all law graduates, especially those in “hot spot” regions, and most greatly impacts graduates that are more vulnerable to the virus itself or the challenges it creates due to race and/or financial resources.

ABA Standard 316 requires “at least 75 percent of a law school’s graduates in a calendar year who sat for a bar examination must have passed a bar examination administered within two years of their date of graduation.” As a graduate’s bar passage from any state applies towards that school’s ultimate bar passage rate, Standard 316 presumes as well as relies upon stable, predictable, and regular administrations of the bar exam in all jurisdictions.

The COVID-19 global pandemic has caused overwhelming disruption to the administration of the bar exam across the nation. **Suspension of Standard 316 has become a necessary accommodation and should be adopted.**

As we previously stated: “Inevitably every law school will have graduates adversely impacted by the pandemic which, based on no individual fault, endangers their bar passage. . . . Additionally, the pandemic data has shown that COVID-19 has affected certain racial groups disproportionately and more severely than others. Thus, law schools with high percentages of graduates disproportionately impacted for whatever reason would be unfairly measured by Standard 316 without a suspension of the rule.”

The New York Times laid bare the extent of disparities in *The Fullest Look Yet at the Racial Inequity of Coronavirus* on July 5, 2020, concluding “Black and Latino people have been disproportionately affected by the coronavirus in a widespread manner that spans the country, throughout hundreds of counties in urban, suburban and rural areas, and across all age groups.”

ABA Standard 316 has no capacity or mandate to disentangle the influence of race and the pandemic from the bar pass rate. **It must be formally suspended indefinitely.**

SALT also notes that the oversight and enforcement of ABA Standard 206, Diversity and Inclusion, stands in stark contrast to ABA Standard 316. Unlike the publicly reported ultimate bar passage data with respect to Standard 316, the public knows almost nothing about the ABA Council’s oversight of Standard 206, nor a law school’s efforts in compliance.

**SALT calls on the ABA Council to make public its standards and practice of review of ABA Standard 206.** How does the ABA Council evaluate evidence of “concrete action” that “demonstrates . . . a commitment to diversity and inclusion” on the part of each law school?

**SALT also calls on the ABA Council to require law schools to include Standard 206 data as part of the Consumer Information required to be reported under ABA Standard 509.** Consumers are equally interest in a school’s record with respect to diversity, inclusion, and anti-racism.

The public record indicates that the current methods of oversight have failed to generate the desired anti-racist impact on and environment in law schools generally. In light of this, **SALT calls on the ABA Council to organize an independent audit of its standard and practices for the enforcement of ABA Standard 206.**

We commend the audit reporting framework presented on the Law Deans Antiracist Clearinghouse (<https://www.aals.org/antiracist-clearinghouse/#audit>), noting that although the ABA Council may collect some of the information included in the audit as part of its oversight, it falls short on the analysis and enforcement. For example, collecting the demographics of a student body or faculty, but failing to review critically the extent to which the school is “achieving representation.” Oddly, under the current configuration of the rules and their enforcement, a law school that is actual achieving diverse representation could fail Standard 206 due to lack of “concrete action.”

In other words, the current rule values form over substance and in effect encourages a continuation of the status quo instead of progress. **The ABA Council should establish an independent body to evaluate Standard 206 and propose revisions to it.** We suggest that the independent body include experts in diversity, equity, and inclusion and voices from both inside and outside of the legal academy.