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June 4, 2015

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Accreditation Project Director for Data Policy and Collection

American Bar Association  
Section of Legal Education and Admissions to the Bar  
321 North Clark Street  
Chicago, IL 60654-7958

Dear Barry and Scott,

We are writing on behalf of the NALP Board of Directors to provide comments on possible revisions to the 2016 Employment Questionnaire relating to law school-funded positions as described in the May 15, 2015 memorandum to the Council from the Data Policy and Collection Committee. We understand the Council will be taking action on this set of recommendations this weekend and we wish to raise several concerns we have about the proposal in order to more fully inform the Council's deliberations.

First, and most importantly, it is overbroad and sweeps into its definition many jobs which are not school-funded and which are indeed open generally to qualified graduates of any ABA-approved school. Namely, we believe that the refinement of the definition of "long-term" as proposed would exclude nearly all public service fellowships, including for instance the prestigious Skadden and Equal Justice Works fellowships, as well as most government honors program fellowships, including for instance the US Attorney General's Honors Program and the prestigious Presidential Management Fellows Program. (For the Class of 2014, NALP employment data from the law schools show that there were 241 long-term fixed duration jobs that were grant funded by a source other than a law school, and there were 132 federal government



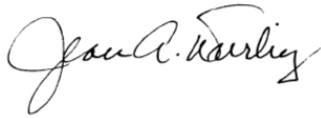
honors program fellowships that were also of fixed duration.) In fact these jobs are coveted and highly sought after employment opportunities that are comparable in every way to the judicial clerkships that are carved out as a special exception under the proposed definition. Even the proposed alternate paragraph (d), which introduces the \$40,000 starting salary safety net, would not return these jobs to the long-term category because as drafted it pertains only to school-funded positions. At this time when so much scrutiny is being given to law school outcomes it would ill-serve law students, law schools, and public interest/public sector legal employers to artificially label all of these highly desirable law school outcomes as short-term in nature, especially as they are not materially different in any way from judicial clerkships. We can find no rationale for sweeping some of the most highly competitive and highly desired employment outcomes into the short-term category.

Second, and more generally, we believe it ill-serves transparency and the duty to provide clear consumer information to have such a complex (with its four parts and three sub-parts) and highly lawyered definition of the simple term “long-term.” Law students and graduates filling out their employment questionnaires cannot be expected to appropriately and consistently categorize these jobs under the proposed definition, and it will require that law school career services professionals re-categorize the information in almost every instance. Nor should prelaw students be expected to be able to parse and understand exactly which jobs such a complex definition does and does not include. While there are drafting solutions that could cure some of the objections raised above about public service and government fellowships, we feel the best solution is to retain the current definition of long-term jobs as those which last for a year or longer.

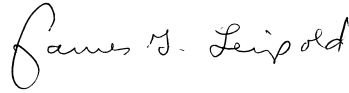
Third, we are fundamentally troubled by the rubric that jobs must be “provided by the market” in order to be considered successful outcomes for students (or for law schools for that matter). Such a conceit ignores the reality of all public interest work, a bedrock of our legal system and a fundamental component of justice in our society. Because there are virtually no paying clients in the public interest world, funding for all public interest lawyers, including entry-level lawyers, has always been provided by sources outside the market, whether they be philanthropic or government sources. There is no employment market for public interest lawyers but for the money that is provided by these outside sources to fund what is essentially a charitable endeavor that fills gaps created by the market. Moreover, it is widely accepted that the need for public interest lawyers far outstrips the funding available and that virtually every public interest organization welcomes any and all additional funding, including funding from law schools. Jobs funded in this way are no less legitimate than those that bubble up from the market, and the proposed definition of long-term, if adopted, would create perverse disincentives for students, law schools, alumni donors, and university budget overseers (or CFOs) to engage in the ongoing battle to close the access to justice gap in this country. The Council may consider that access to justice issues are beyond its purview, but this proposed action would, in fact, have a very real impact on the availability of access to justice.

In closing we note that there has been no direct outreach to law schools on this matter and this proposal only came to our attention serendipitously at the beginning of this week. While we have outlined three problems with the proposal, there may well be other unintended consequences which we have not had the time to identify. Thank you for taking the time to consider our comments as you consider the proposal from your Data Policy and Collection Committee.

Sincerely,

Handwritten signature of Jean A. Durling in cursive script.

Jean A. Durling  
President

Handwritten signature of James G. Leipold in cursive script.

James G. Leipold  
Executive Director