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American Law Deans Association Supplemental Public Comment On The Application Of The American Bar Association ("ABA") For Reaffirmation Of Recognition By The Secretary Of Education ("Secretary") As A Nationally Recognized Accrediting Agency In The Field Of Legal Education.

On March 8, 2006 the American Law Deans Association ("ALDA") submitted comments respecting the reaffirmation of the recognition of the ABA as a nationally recognized accrediting agency in the field of legal education ("Comments"). In essence, ALDA asked that the ABA not be reaffirmed unless and until it removes from its standards for accreditation all requirements of terms and conditions of employment for law school employees. ALDA affirms that position.

However, we want the Committee to be aware of certain actions that have taken place since the submission of our Comments which we believe bear on the Secretary's treatment of the ABA's petition for reaffirmation. As discussed more fully below, we believe these actions appear to indicate a willingness on the part of the ABA to consider certain of the concerns that we and others have raised in this proceeding. We therefore urge that the Committee defer action on the reaffirmation of the ABA's recognition pending the outcome of this initiative.

The Chair of the ABA Section on Legal Education and Admissions to the Bar is in the process of appointing a Task Force to study the rules and processes that govern ABA accreditation in light of prevailing practice among similar accrediting bodies. The Task Force, which will be directed to report to the ABA Council at its summer meeting, in June, 2007, is very clearly a direct result of continuing discomfort among many accredited law schools regarding important aspects of the ABA's accreditation process including the issue of required terms and conditions of employment as well as concern over the implications of these contentious issues on the reaffirmation process.

As we have urged in our Comments, the ABA appears to be increasingly alone among recognized accrediting commissions in imposing requirements specifically including, but not limited to, terms and conditions of employment that are not relevant to the maintenance of a quality educational program, intrude on

institutional autonomy and add unnecessary cost to the student and the public. We are hopeful that the appointment of the Task Force represents an awakening recognition on the part of the ABA that its accrediting standards and procedures require an open and intensive review to bring them into line with contemporary practice.

We believe the outcome of this process will accurately determine whether the ABA has taken seriously the concerns that have been raised from many quarters, or whether it will continue to operate in outside of the mainstream of the quality assurance movement. We believe the Secretary has a material interest in the successful outcome of this process, and therefore should do everything possible to encourage its completion. The pending reaffirmation process gives the Secretary a unique opportunity to increase the urgency and seriousness of the work of the Task Force and subsequent consideration by the ABA Council.

We therefore urge that this Committee defer consideration of the ABA's petition until the Task Force has considered the many concerns that have been voiced and, taking into account those concerns, has issued its recommendations to the ABA Council respecting appropriate modification of its practices, standards and procedures, and the ABA Council has taken substantive action to rectify the deficiencies in its accrediting standards and their application. Such an action by this Committee will send a clear signal to the ABA that the Secretary expects each accrediting commission she recognizes to strike an appropriate balance between diligent quality assurance and protection of institutional autonomy.

We also believe that it is essential for this Committee to provide the ABA with a specific deadline by which to accomplish such changes. Absent such a deadline, we know from past experience that when law school accreditation is involved, the internal politics of the ABA accreditation process will inevitably result in a long delay before an actual decision is made. In addition, we believe it appropriate for the Committee to urge the ABA to defer any accreditation action that would require compliance with the terms and conditions of employment standards until the Council acts on these concerns. The Committee should understand that requiring law schools to comply with these standards will cause them to incur irreversible obligations and therefore irreparable harm as a result of their being forced to enter into long-term, tenure-like contracts with covered individuals.

Specifically, we ask this Committee to:

- Defer the reaffirmation of the recognition of the ABA until the December, 2007 meeting of the Committee, at which time the ABA should be required to demonstrate that it has removed those standards that inappropriately dictate terms and conditions of employment.
- Urge the ABA not to enforce the standards dictating terms and conditions of employment until the Council has acted and until this Committee has had an opportunity to review those actions.

We look forward to the opportunity to share our concerns and recommendations in person at the upcoming National Advisory Committee on Institutional Quality and Integrity meeting in Washington in December. In the interim, please do not hesitate to contact either of us if you have any questions regarding our comments.

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