

Building an Accessible, Affordable, and High-Quality Legal Education: Developing Objective Criteria to Evaluate the Effectiveness of Regulatory Interventions

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INTRODUCTION

The rule of law is foundational in American society, its politics, and its economy.¹ In the face of 21st century challenges, including socioeconomic inequality, deepening political divisions, and the long-term impacts of a global pandemic and climate change, lawyers are needed to protect the interests of different groups, resolve conflicts, and examine changes to the law.

Pursuing a legal career requires passing a state bar exam for licensure as a professional attorney following three years of legal education (law school) and completion of a bachelor's degree.² Most legal education is delivered by 199 institutions accredited by the American Bar Association (ABA) to provide instruction sufficient for licensing in all 50 states, the District of Columbia, and U.S. territories.³ While there are U.S. law schools that operate without ABA accreditation, some states do not allow graduates of non-ABA accredited universities to take the bar exam.⁴

The ABA Section on Legal Education and Admissions to the Bar is authorized by the Department of Education to conduct accreditation for law school programs.⁵ The ABA maintains strict accreditation standards, including requirements for admission, minimum credit hours, full-time faculty-to-student ratios, and standards for on-campus facilities.⁶ Accredited institutions must also

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1. Letter from George Washington to Edmund Randolph (Sept. 28, 1789), in *GEORGE WASHINGTON PAPERS, SERIES 2, LETTERBOOKS 1754–1799: LETTERBOOK 22, 177* (Library of Congress).

2. *Steps to Become an Attorney/Lawyer*, LAWYEREDU, <https://www.lawyeredu.org/> [https://perma.cc/SJ65-D8UM] (last visited Mar. 15, 2021).

3. ABA Approved Law Schools, A.B.A., https://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools/ [https://perma.cc/B7KP-U25S] (last visited Dec. 15, 2021).

4. *NonABAApprovedLaw Schools*, LAW SCH. ADMISSIONS COUNCIL, <https://www.lsac.org/choosing-law-school/find-law-school/non-aba-approved-law-schools> [https://perma.cc/SW36-H97F] (last visited Dec. 15, 2021).

5. *Standards and Rules of Procedure for Approval of Law Schools*, A.B.A. (2020), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2020-2021/2020-21-aba-standards-and-rules-for-approval-of-law-schools.pdf [https://perma.cc/Y2XR-T9M2].

6. *Id.* at 1–2.

regularly submit data and questionnaires in the “form, manner, and time frame specified” by the section’s Council.⁷

Ideally, every reasonably qualified student would be able to obtain a legal education sufficient for pursuing the career of their choice without taking on a burdensome debt load. In this perfect world, more students would have access to quality legal education at a reasonable cost, freeing future attorneys to take on a wider array of career challenges without concerns about repaying education debt.

Inefficiencies in the market for legal education result in high costs, insufficient quality standards, and barriers to access. This Note will 1) examine how the current legal education system fails to provide accessible, quality legal education at a reasonable price; 2) diagnose key deficiencies in the market; 3) offer criteria for analyzing policy choices; and 4) propose regulatory solutions to move closer to a world in which every reasonably qualified student can become a lawyer free of onerous debt.

I. THE AMERICAN LEGAL EDUCATION SYSTEM FAILS TO PROVIDE STUDENTS WITH ACCESS TO REASONABLY PRICED EDUCATION THAT ADEQUATELY PREPARES THEM FOR WORK IN THE FIELD

The legal education market answers to two beneficiaries: students pursuing a juris doctorate degree and employers who rely on law schools to produce employees who can adequately perform. American legal education is failing both beneficiaries in three ways: 1) high tuition costs limit students’ career choices and disincentivize entry into lower-paying fields of law; 2) insufficient quality standards leave students unprepared for practice; and 3) access barriers disproportionately prevent minority and low-income students from enrolling in law school.

A. THE HIGH COST OF LAW SCHOOL LEAVES STUDENTS WITH A BURDENSOME DEBT LOAD THAT CONSTRAINS FUTURE CAREER CHOICES

The average cost to attend law school as an out-of-state student is \$47,300 as of 2021.⁸ For the top-ten nationally-ranked law schools, the average cost rises to \$69,600.⁹ More than 74 percent of law students graduate in debt, with an average balance of \$160,000 at graduation.¹⁰ After graduation, 17 percent of law students report taking a job with a better chance of loan forgiveness over the job of their choice.¹¹ The pressure for students to pursue employment that can support debt repayment may lead fewer graduates to enter low-paying legal fields. In the class

7. *Id.* at 7.

8. Ilana Kowarski, *10 Most Expensive Law Schools*, U.S. NEWS & WORLD REP. (June 7, 2021, 2:40 PM), [usnews.com/education/best-graduate-schools/the-short-list-grad-school/articles/most-expensive-law-schools](https://perma.cc/S3PP-HMX9) [https://perma.cc/S3PP-HMX9].

9. *Id.*

10. Melanie Hanson, *Average Law School Debt*, EDUCATIONDATA.ORG (July 10, 2021), <https://educationdata.org/average-law-school-debt> [https://perma.cc/3HNY-W4FJ].

11. *Id.*

of 2019, 55 percent of graduates went into private practice compared with 8 percent who pursued public interest work.¹² The median starting salary for a legal-services worker in 2018 was \$48,000 compared with \$115,000 for a new attorney at a private mid-size firm.¹³

B. STUDENTS AND EMPLOYERS REPORT THAT RECENT LAW SCHOOL GRADUATES ARE NOT EQUIPPED WITH THE SKILLS NECESSARY FOR EMPLOYMENT IN THE LEGAL PROFESSION

Recent law school graduates express dissatisfaction with the quality of their education.¹⁴ In a 2019 Gallup poll, just 23 percent of recent graduates strongly agreed that law school was worth the cost and just 20 percent strongly agreed that law school prepared them for post-graduate life.¹⁵ Employers of recent law school graduates are similarly concerned that law students are not prepared for the workforce.¹⁶ In one 2015 study, 95 percent of surveyed hiring partners and associates believed that recent graduates lacked key practical skills at the time of hiring.¹⁷ The 2015 study also reported that the average law firm pays almost \$19,000 per new associate for training programs to fill new hires' skill gaps, particularly in advanced legal writing, drafting, and transactional work.¹⁸

The quality concerns that students and employers report have not always been sufficiently investigated by the ABA, which has led the organization to be rebuked for failing to implement effective achievement standards and audit procedures, including failing to appropriately place failing schools on probation.¹⁹

C. LOW-INCOME AND MINORITY STUDENTS ARE UNDERREPRESENTED IN THE LAW SCHOOL POPULATION

Barriers to access in legal education for low-income and minority students first become apparent during the admissions process; the mean score on the Law School Admissions Test (LSAT)—the pre-admissions standardized test—was

12. Danielle A. Taylor, *Class of 2019 Attains Highest Employment Rate in 12 Years as Uncertainty Looms for the Class of 2020*, NAT'L ASS'N FOR L. PLACEMENT (2020), <https://www.nalp.org/uploads/Classof2019SelectedFindings.pdf> [<https://perma.cc/WX3J-9KJZ>].

13. Deborah Cassens Weiss, *Median Pay for Public Interest Lawyers Rises Modestly*, NALP Reports, A.B. A. J. (July 10, 2018), https://www.abajournal.com/news/article/median_pay_for_public_service_lawyers_rises_modestly_nalp_reports [<https://perma.cc/77UQ-997H>].

14. Zac Auter, *Few MBA, Law Grads Say Their Degree Prepared Them Well*, GALLUP (Feb. 16, 2018), <https://news.gallup.com/poll/227039/few-mba-law-grads-say-degree-prepared.aspx> [<https://perma.cc/BVK6-7JLA>].

15. *Id.*

16. *Hiring Partners Reveal New Attorney Readiness for Real World Practice*, LEXIS NEXIS (2015), https://www.lexisnexis.com/documents/pdf/20150325064926_large.pdf [<https://perma.cc/R7NE-LTZK>].

17. *Id.* at 1.

18. *Id.* at 6.

19. Paul Fain, *Accreditor on Life Support*, INSIDE HIGHER EDUC. (June 24, 2016), <https://www.insidehighered.com/news/2016/06/24/federal-panel-votes-terminate-acics-and-tightens-screws-other-accreditors> [<https://perma.cc/AT2J-MWU4>].

142 for Black students and 153 for White students as of 2013.²⁰ Only 5 percent of students at top law schools hail from the bottom 50 percent of the socioeconomic spectrum.²¹ Despite the ABA Council for Diversity in the Education Pipeline, all ethnic minorities except for Asian-Americans are underrepresented in law schools relative to the general population; as of 2019, the student population was around 12 percent Hispanic and 8 percent Black compared with a general population that is around 19 percent Hispanic and 12 percent Black.²² The gap is wider in the top 30 law schools, where the student population is just 9 percent Hispanic and 6 percent Black.²³

II. THE LEGAL EDUCATION MARKET OVEREMPHASIZES PROGRAM DESIGN WITHOUT SUFFICIENTLY ASSESSING WHETHER PROGRAMMATIC DECISIONS RESULT IN IMPROVED QUALITY, ACCESS, AND COST METRICS

The key deficiency in the legal education market is an overreliance on program design, such as curricular requirements, without sufficient review of whether this design results in objective access, quality, and cost improvements. Three examples of this deficiency are: 1) the overregulation of curricular requirements, which limit program differentiation and subsequently decrease competition in the market; 2) the concentration of rankings data in the hands of a private media organizations with no incentive to improve student outcomes; and 3) unconditional funding of legal education by the federal government through student loans.

A. STRICT CURRICULAR REQUIREMENTS FOR LAW SCHOOL ACCREDITATION REINFORCE ENTRENCHED CONSUMER PREFERENCES BY LIMITING OPPORTUNITIES FOR MARKET DIFFERENTIATION

While students and potential employers have preferred top-ranked universities for almost a century, over-regulation of curricular requirements required for ABA accreditation limit the ability of smaller universities to differentiate themselves from higher-ranked peers.²⁴

20. *Law School Enrollment by Race and Ethnicity (2018)*, ENJURIS, <https://www.enjuris.com/students/law-school-race-2018.html> [<https://perma.cc/4SZW-DMNB>] (last visited Dec. 15, 2021).

21. Richard H. Sander, *Class in American Legal Education*, 88 DEN. L. REV. 631, 639 (2011).

22. Gabriel Kuris, *What Underrepresented Law School Applicants Should Know*, U.S. NEWS & WORLD REP. (June 8, 2020), <https://www.usnews.com/education/blogs/law-admissions-lowdown/articles/what-underrepresented-law-school-applicants-should-know> [<https://perma.cc/J7GX-3XJ5>]; Eric Jensen et al., *2020 U.S. Population More Racially and Ethnically Diverse than Measured in 2010*, U.S. CENSUS BUREAU (August 12, 2021), <https://www.census.gov/library/stories/2021/08/2020-united-states-population-more-racially-ethnically-diverse-than-2010.html> [<https://perma.cc/WS35-YG54>].

23. Kuris, *supra* note 22.

24. Richard Schmalbeck, *The Durability of Law School Reputation*, 48 J. LEGAL EDUC. 568, 569 (1998).

1. ENTRENCHED PREFERENCES FOR “T-14” UNIVERSITIES PRECEDE THE MODERN-DAY RANKINGS SYSTEM

The stagnation of law school rankings—the same schools are consistently considered the best—has created an entrenched preference for high-performing students to attend and top employers to hire from the same subset of top schools. Since *U.S. News and World Report* (*U.S. News*) began consistently ranking law schools in 1990, the same 14 schools have almost exclusively occupied the top 14 spots.²⁵ These “Top 14” (“T-14”) schools are: Columbia, Cornell, Duke, Georgetown, Harvard, New York University, Northwestern, Stanford, University of California at Berkeley, University of Chicago, University of Michigan, University of Pennsylvania, University of Virginia, and Yale. (Georgetown is the only school that has fallen out of the T-14 during this time).²⁶ There is evidence that the T-14 hierarchy precedes the modern ranking system; members of the T-14 are identified on top rankings lists going back to 1928.²⁷

The entrenched employer preference for top-tier graduates limits access to employment opportunities for those who do not attend a T-14 institution. National law firms focus recruiting at highly-ranked law schools, resulting in graduates of high-ranked programs receiving a disproportionate number of job offers compared with lower-ranked schools.²⁸ Since top legal institutions have a smaller share of Hispanic and Black students compared with bottom-tier legal institutions, students of color are disproportionately shut out of top tier firms as first-year associates following graduation.²⁹

2. STRICT REGULATION OF CURRICULAR REQUIREMENTS REQUIRED FOR AMERICAN BAR ASSOCIATION ACCREDITATION LIMIT OPPORTUNITIES FOR MARKET DIFFERENTIATION AND INCREASE COMPETITION

The entrenched consumer preference for T-14 law schools is reinforced by the ABA’s strict accreditation standards, which prevent lower-tier law schools from differentiating themselves from the T-14 to increase competition in the market.³⁰ For example, the ABA mandates that all law schools require at least 83 credits to graduate, which equates to three academic years of full-time study.³¹ Lower ranked law schools cannot differentiate by offering curricula that takes fewer credits to complete even if they demonstrate that graduates of a shorter programs

25. *Id.* at 572.

26. *Id.* at 570.

27. See Olufunmilayo B. Arewa et al., *Enduring Hierarchies in American Legal Education*, 88 IND. L. J. 942, 998 (2014).

28. *Id.* at 1010.

29. Kuris, *supra* note 22.

30. Kenneth Costello, *Some Basic Concepts of Market Power for State Public Utility Commissions to Consider*, NAT’L REG. RES. INST. 5 (July 2009), <https://pubs.naruc.org/pub/FA864A8C-C9E9-DD50-D449-44D2B7990B8D> [<https://perma.cc/4YBS-M9HS>].

31. *Standards and Rules of Procedure for Approval of Law Schools*, *supra* note 5, at 22.

are still able to pass the bar exam, obtain employment, and practice law at the same level as a graduates of traditional three-year programs.³² Some ABA curriculum requirements can be expensive to implement, which leaves fewer funds for smaller universities to develop innovative programs to attract students. For example, library systems at accredited institutions are required to own a large array of legal materials, including all reported federal court decisions, all federal codes, all published treaties and international agreements of the United States, and all currently published regulations.³³ For a smaller-scale institution with limited funds, the high cost of obtaining and maintaining these materials takes away from other resources, such as scholarships, that are used to attract and retain students.

B. THE AMERICAN BAR ASSOCIATION HAS FAILED TO PUBLISH RANKINGS DATA COMPARING LAW SCHOOLS, CEDING INFLUENCE TO PRIVATE MEDIA ORGANIZATIONS THAT HAVE NO INCENTIVE TO IMPROVE STUDENT OUTCOMES

The American Bar Association does not publicly share data collected from law schools or publish rankings. Since the 1990s, U.S. News, an American media company, has filled the gap in publicly reported data by publishing their own ranking of “Top Law Schools.”³⁴ Relying on a private media organization to publish law school data and rankings is problematic because 1) the methodology of the U.S. News rankings weighs peer feedback and program “inputs” more heavily than student outcomes and 2) university administrators subsequently make programmatic decisions to improve their rankings at the expense of improving student outcome metrics.

1. THE U.S NEWS AND WORLD REPORT METHODOLOGY IS OVERLY RELIANT ON PEER REVIEW AND FACULTY QUALITY AT THE EXPENSE OF OBJECTIVE MEASURES OF STUDENT SUCCESS

The methodology used to generate the rankings relies heavily on external review and inputs criteria (such as university funding and selectivity) at the expense of outcomes criteria (such as bar passage rates) that reflect the impact of the education received on the student’s post law-school performance.³⁵ Forty percent of the ranking is based on “expert opinion,” 25 percent from a peer assessment score from deans of other universities, and 15 percent from an assessment by lawyers and judges. Nearly half of the rankings score is based on the subjective opinions of external actors who are not regularly on campus.³⁶ Of the

32. *Id.*

33. *Id.* at 41.

34. Arewa et al., *supra* note 27, at 969.

35. Robert Morse et al., *Methodology: 2022 Best Law School Rankings*, U.S. NEWS & WORLD REP. (Mar. 29, 2021), <https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology> [<https://perma.cc/K9RJ-X5H7>].

36. *Id.*

remaining 60 percent, 35 percent focus on inputs that are not reflective of student success as a result of their legal education, including standardized admissions test score, student undergraduate GPA, law school acceptance rate, university spending, student faculty ratio, and library operation.³⁷ “Outputs” that reflect the outcomes of students’ legal educations—including employment outcomes, bar passage rate, and loan debt—total around 25 percent of the methodology.³⁸

2. LAW SCHOOL RANKINGS PUBLISHED BY *U.S. NEWS AND WORLD REPORT* HOLD OUTSIZE INFLUENCE OVER CONSUMER BEHAVIOR AND INCENTIVIZE UNIVERSITIES TO MAKE DECISIONS BASED ON THE RATINGS’ IMPACT

In a study of law firm representatives conducted by the National Association for Law Placement, around 84 percent reported consulting the rankings and around 72 percent stated that the rankings impacted or changed their perception of law schools.³⁹ In the undergraduate context, studies have shown that undergraduate rankings have a statistically significant effect on the number of students who apply to a school overall, the number of “top” students in an applicant pool, and the number of students who decide to matriculate.⁴⁰

Pressure to increase rankings drives the decisions of university administrators.⁴¹ The input-focused methodology incentivizes universities to take actions that negatively impact students such as increasing spending (which translates into higher tuition) or increasing selectivity (which reduces access) while similar incentives to improve bar passage rates or lower student debt levels are not as high.⁴² Law schools have sent promotional materials to legal academics and practicing lawyers who participate in the U.S. News peer review process, a decision that sways rankings but gives no value to students.⁴³ In the most egregious cases, law schools have been caught inflating employment statistics or LSAT scores to improve their rankings. In 2011, for example, the ABA faced congressional pushback following several instances of universities inflating their law-school reporting numbers to increase their rankings.⁴⁴

37. *Id.*

38. *Id.*

39. WENDY NELSON ESPELAND & MICHAEL SAUDER, ENGINES OF ANXIETY 155 (2016).

40. *Id.* at 55.

41. Jeffrey Evans Stake, *The Interplay Between Law School Rankings, Reputations, and Resource Allocation: Ways Rankings Mislead*, 81 *IND. L. J.* 229, 232–40 (2006).

42. *Id.* at 242.

43. *Id.* at 240.

44. BRIAN Z. TAMANAHA, FAILING LAW SCHOOLS 71–75 (2012).

C. THE FEDERAL FUNDING OF LEGAL EDUCATION THROUGH STUDENT LOANS IS AN UNCONDITIONED SUBSIDY TO LAW SCHOOLS THAT CONTRIBUTES TO HIGH STUDENT DEBT AND INCREASED TUITION COSTS

The federal government's practice of funding legal education via student loans from the Department of Education (DOE) serves as an unconditional subsidy to educational institutions because 1) the DOE does not require any data from law schools in which borrowers enroll and 2) law students' ability to borrow up to the cost of attendance incentivizes law schools to raise tuition.

1. THE DOE CURRENTLY SUBSIDIZES LEGAL EDUCATION THROUGH FEDERALLY BACKED LOANS PROVIDED DIRECTLY TO STUDENTS BUT DOES NOT PUBLICLY REQUIRE ANY DATA FROM THE UNIVERSITIES IN WHICH THESE STUDENTS ENROLL

The DOE offers two types of federally backed loans to prospective law students. The Federal Direct Unsubsidized Loan allows borrowing up to \$20,500 per year, and the Federal Direct PLUS Loan for Graduate Students (GradPlus) allows prospective and current students with no adverse credit to borrow up to the cost of financial attendance (minus any other outstanding financial aid).⁴⁵ Loans are directly offered by the government, with billing outsourced to a federally contracted loan servicer.⁴⁶ Payments are deferred for the period that the student is enrolled in school.⁴⁷

The only requirement that the federal government places on borrowing related to institutions themselves is a requirement that student borrowers attend an "eligible institution."⁴⁸ An eligible institution is defined by the Federal Student Aid Office as a "program of organized instruction or study of a certain length that leads to an academic, professional, or vocational degree or certificate, or other recognized education credential," but there is no other publicly available information on whether an institution must apply to become eligible or if additional data reporting is required to remain eligible.⁴⁹

2. THE ABILITY FOR LAW STUDENTS TO BORROW UP TO THE COST OF ATTENDANCE INCENTIVIZES LAW SCHOOLS TO RAISE TUITION PRICES, CREATING A CYCLE OF INCREASED COST OF ATTENDANCE AND SUBSEQUENT INCREASES IN STUDENT DEBT

Studies at the undergraduate level show that a rise in federal education loans correlates with an increase in tuition, and law school tuition data implies the

45. *Financial Aid Options*, LAW SCH. ADMISSIONS COUNCIL, <https://www.lsac.org/choosing-law-school/paying-law-school/financial-aid-options> [<https://perma.cc/FG3Z-Q6BS>] (last visited Dec. 15, 2021).

46. *Id.*

47. *Id.*

48. *Eligible Program*, FED. STUDENT AID, <https://studentaid.gov/helpcenter/answers/topic/glossary/article/eligible-program> [<https://perma.cc/AJF4-HX4H>] (last visited Dec. 15, 2021).

49. *Id.*

same correlation.⁵⁰ Research from the Center for College Affordability and Productivity shows that, if the growth rate of undergraduate tuition was at 1978 levels—approximately the turning point in the ubiquity of federal loans—today’s undergraduate tuition rates would be 40 percent lower.⁵¹ The GradPlus program was introduced for graduate borrowers, including law students, in 2006.⁵² From 2006 to 2015, the average public law school saw just under a 20 percent increase in tuition for non-residents, from \$29,921 to \$37,725.⁵³ The increase in tuition was 16 percent for private schools in the same period, from \$36,305 to \$43,338.⁵⁴ From 1999-2020, the average amount of student law debt more than doubled from \$58,900 to \$160,000.⁵⁵

III. WHAT FACTORS DO REGULATORS NEED TO CONSIDER WHEN ANALYZING IMPROVEMENTS TO THE LEGAL EDUCATION MARKET?

The three most important factors to be considered when analyzing solutions for solving market deficiencies in legal education are 1) actor cooperation, 2) timeline for implementation, and 3) implementation cost.

A. THE LEGAL EDUCATION MARKET HAS MANY ACTORS THAT NEED BUY-IN FOR A SOLUTION TO BE EFFECTIVE

The legal education market has a high number of participant actors. For a solution to be effective, it is not enough to get buy-in from law school administrators. Depending on the solution, cooperation would also be needed from the ABA, U.S. News, the Law School Admissions Council, and the federal government. For the purposes of analyzing criteria, “high cooperation” will refer to solutions where all relevant actors would be reasonably expected to buy in; “moderate cooperation” will refer to solutions where at least 50 percent of actors would reasonably be expected to buy in; and “low cooperation” will refer to solutions where fewer than 50 percent of actors would be reasonably expected to buy in.

50. Community College Access Program, *The Bennett Hypothesis Confirmed - Again*, FORBES (Jul. 21, 2015, 2:03 PM), <https://www.forbes.com/sites/ccap/2015/07/21/the-bennett-hypothesis-confirmed-again/?sh=6cae9fef794a> [<https://perma.cc/SKQ7-AETC>].

51. *Id.*

52. *Higher Education: Characteristics of Graduate PLUS Borrowers*, U.S. GOV’T ACCOUNTABILITY OFF., <https://www.gao.gov/assets/gao/18392r.pdf> [<https://perma.cc/8BVC-PLCY>] (last visited Dec. 15, 2021).

53. Matthew Leichter, *Law School Cost Data (1996)*, <https://lawschooltuitionbubble.wordpress.com/originalresearchupdated/thelstbdata/#ABA%20Tuition%20Data%201985> [<https://perma.cc/LE4L-XEEU>] (last visited Dec. 15, 2021).

54. *Id.*

55. Melanie Hanson, *Average Law School Debt*, EDUC. DATA INITIATIVE (Dec. 5, 2021), <https://educationdata.org/average-law-school-debt> [<https://perma.cc/DFS9-KKT8>].

B. A QUICK INITIAL IMPLEMENTATION PERIOD IS NECESSARY TO
COUNTERACT THE LONG TIME IT WILL TAKE TO MEASURE THE IMPACT
OF ANY POLICY ON STUDENTS AND EMPLOYERS

Given that a juris doctorate degree requires three years to complete, even an immediately actionable solution requires three years of implementation to get a full sense of its impact on students.⁵⁶ Additional implementation is required to determine the impact of the solution on employers, since employer impact cannot be measured until law school graduates have started to work. Since every additional year spent on planning and implementation lengthens an already extended timeframe, solutions that can be implemented quickly are preferred. For the purposes of this analysis, “short timeline for implementation” is less than two calendar years, “moderate timeline for implementation” is two to four calendar years, and “long timeline for implementation” is five or more calendar years.

C. A LOW-COST IMPLEMENTATION IS PREFERRED TO AVOID PASSING
IMPLEMENTATION COSTS ON TO STUDENTS IN THE FORM OF
INCREASED TUITION

Solutions that are expensive to implement should be avoided because of the potential for high implementation costs to be passed on to students as tuition increases. Since a full budget analysis of potential solutions is outside the scope of this paper, cost are estimated for the purpose of analyzing criteria. “High-cost” refers to large-scale projects that would involve multiple actors and complex procedural requirements; “moderate-cost” refers to projects that involve multiple actors or procedural requirements but are less technically complex; and “low-cost” refers to projects that involve single actors or small changes with few procedural requirements.

IV. REGULATORY SOLUTIONS MUST FOCUS ON DEVELOPING CRITERIA
FOR IMPROVING COST, ACCESS, AND QUALITY THAT CAN BE USED AS A
BENCHMARK FOR MEASURING THE IMPACT OF FEDERAL LOAN PROGRAMS
AND CHANGES TO CURRICULUM REQUIREMENTS

To correct deficiencies in the legal education market, the ABA must first develop objective metrics for tracking improvements in the access, quality, and cost of legal education. With these metrics in place, regulators can condition access to federal loan programs and allow for more flexibility in curriculum requirements based on whether these changes lead to improved outcomes.

56. *Standards and Rules of Procedure for Approval of Law Schools*, *supra* note 5, at 22.

A. THE AMERICAN BAR ASSOCIATION SHOULD USE EXISTING DATA TO DEVELOP ITS OWN CRITERIA FOR MEASURING COST, QUALITY, AND ACCESS TO LEGAL EDUCATION FOR STUDENTS

While the First Amendment right to free speech precludes any direct regulation of the U.S. News ranking system⁵⁷, the ABA can develop its own objective metrics for evaluating law school quality and student outcomes. A flaw in the U.S. News metrics is an overreliance on external review and university inputs that measure investment prior to a student's education at the expense of weighing outputs that accurately measure the impact of education.⁵⁸ The ABA should emphasize outputs in its own ranking by basing at least 75 percent of ranking criteria on student outcomes, which include graduation rates, employment rates, and bar passage rates. The ABA can also incorporate student experience into the ranking methodology by having recent graduates evaluate their alma maters. While there is no guarantee that an ABA ranking system would supplant U.S. News in the eyes of consumers, the ABA can use the data collected for these rankings in future accreditations.

1. ACTOR COOPERATION IS LOW TO MODERATE

While students would benefit from additional rankings outlets and more transparent data on student outcomes, universities, the ABA, and U.S. News would not support a change to the status quo. Law schools would prefer the current rankings system because it affords them a higher degree of control⁵⁹; it is easier for universities to control changes to inputs than to make long-term, systematic changes to improve student outcomes. The ABA could potentially be concerned about taking on the additional responsibility of publishing its own rankings and the associated public accountability required if more transparent rankings reveal serious flaws in legal education. U.S. News would not likely cooperate with any ABA rankings system that breaks their current monopoly.

2. IMPLEMENTATION TIMELINE IS MODERATE

The time to implement new rankings would be moderate because much of the data the ABA would use in a new ranking's methodology already exists.⁶⁰ Output data such as bar passage rates, employment outcomes, and graduation rates are already tracked by law schools⁶¹, leaving the ABA to decide which criteria to use in its methodology and how to weigh each. The ABA would also have to develop a protocol for surveying students on their experience.

57. U.S. CONST. amend. I.

58. Morse et al., *supra* note 35.

59. Arewa et al., *supra* note 27, at 969.

60. 2020 Raw Data Law School Rankings, PUB. LEGAL (Spring 2019), <https://www.ilrg.com/rankings/law/> [<https://perma.cc/DP5Q-6AE6>].

61. *Id.*

3. COST IS LOW TO MODERATE

Since the ABA is already communicating with universities via the accreditation process, costs to add more transparent data collection and a rankings system would be low.⁶² While there are some costs associated with creating a new survey methodology, its development would not involve multiple actors or be particularly complex. Distribution of the new survey can be completed using existing communication channels between the ABA and accredited law schools.

4. FURTHER RESEARCH IS NEEDED TO DETERMINE HOW THE ABA CAN BEST QUANTIFY THE OUTPUTS OF LEGAL EDUCATION AND INTEGRATE COLLECTED DATA INTO THE REACCREDITATION PROCESS

More work needs to be done to determine how the ABA can best quantify the outputs of legal education to accurately reflect whether a university is high performing and how universities would communicate data to university administrators, students, and employers.

The existence of two competing rankings systems could also create confusion among students, universities, and employers, diminishing the singular authority of rankings as a recruiting tool. The ABA can wield its power as an accreditor by integrating the data it collects into the reaccreditation process. Universities would be incentivized to focus on improving ABA metrics and rankings if it was clear that failure to make improvements would result in loss of accreditation.

B. THE FEDERAL GOVERNMENT SHOULD REQUIRE UNIVERSITIES ENROLLING LAW STUDENTS WHO RECEIVE GRADPLUS LOANS TO REPORT DATA RELATED TO COST, QUALITY, AND ENROLLMENT OF LOW-INCOME AND MINORITY STUDENTS

The current federal funding model for legal education is based around providing DOE loans to law students.⁶³ There are no known requirements placed on universities for their students to participate even though loan money ultimately passes to schools when students pay tuition.⁶⁴ The model also encourages schools to raise tuition because the government offers loans up to the full price of attendance.⁶⁵ To solve this inefficiency without limiting access to capital for students who need to borrow, the federal government should place conditions on administrators in exchange for graduate students to participate in GradPLUS. As permitted under DOE regulatory structures, the federal government should require institutions to 1) submit yearly data on average cost of attendance; 2) limit GradPLUS at institutions where costs exceed a fixed percentage of the average tuition in their respective category (private, public out-of-state, and public in-

62. *Standards and Rules of Procedure for Approval of Law Schools*, *supra* note 5, at 7.

63. *Financial Aid Options*, *supra* note 45.

64. *Eligible Program*, *supra* note 48.

65. See statistics cited *supra*, notes 44–50.

state); 3) require additional data reporting and screening for universities that raise tuition prices beyond the Consumer Price Index; and 4) offer a tuition breakdown to students taking out GradPLUS loans detailing the approximate allocation of tuition dollars among faculty salaries, administrator salaries, classroom facilities, and non-classroom facilities. Requiring institutions to be transparent about tuition would incentivize them to answer for high-cost expenditures that do not improve student outcomes.

1. ACTOR COOPERATION IS LOW TO MODERATE

Of the actors directly involved in changes to GradPLUS (federal government, students, and university administrators), the federal government would be expected to cooperate, while it is unclear whether students would cooperate and universities would not be expected to cooperate. The government has an incentive to create more value for federal dollars funneled into GradPLUS; there is the potential to realize cost savings if universities lower tuition because of increased oversight. Student cooperation is unclear because changes to GradPLUS offer both positives and negatives. Students would directly benefit from lower tuition costs and increased transparency but also may lose choice if some institutions became inaccessible to GradPLUS students. University administrations would not willingly cooperate with changes to the GradPLUS as the model assures most students have a funding stream to cover high tuition prices.⁶⁶

2. SPEED OF IMPLEMENTATION IS MODERATE

Changes to GradPLUS can be implemented moderately quickly so long as law schools have sufficient time to prepare for data collection requirements. Since changes to GradPLUS would be largely related to data reporting, the requirements could be implemented in a short amount of time. Implementation may be slowed by phasing out current GradPLUS loan holders, who would keep their existing loan agreements. The implementation process would take at least three years since it would take that long for the last class of loan participants under the former model to graduate from law school.

3. COSTS ARE HIGH

Placing conditions on the GradPLUS loan program is a large project that would involve multiple actors and complex procedural requirements. The costs to the federal government of overseeing data collection, screening and monitoring universities that raise tuition costs beyond the Consumer Price Index, and educating students about changes to the program would be high. University administrators would also pay for implementing new reporting requirements as well as lose revenue if the policy results in capping tuition increases.

66. *Financial Aid Options*, *supra* note 45.

4. FUTURE RESEARCH SHOULD FOCUS ON UNCOVERING MORE DATA RELATED TO GRADPLUS LOANS AND DETERMINING HOW TO SET COSTS WITHOUT ENCOURAGING INFLATIONARY BEHAVIOR

More data are required on the GradPLUS program, including total outstanding debt, changes in interest rates over time, and the connection between changes in GradPLUS loan usage and the increase in law school tuition (mirroring similar studies that have been done at the undergraduate level).⁶⁷ An indisputable link between changes in loan take-up rates and the cost of tuition would create additional buy-in to compel changes to GradPLUS.

Determining how to set costs without encouraging inflationary behavior is a challenge that the government would face in implementing changes to the federal loan program. A decision to peg tuition rate increases to a percentage of the average rate may push universities to raise tuition just prior to implementation. The government would have to consult historical data to determine the initial average and would probably face pushback from university administration regardless of the final number.

C. THE ABA SHOULD RECONSIDER ITS STRICT REQUIREMENTS FOR ACCREDITATION BY ALLOWING SCHOOLS TO EXPERIMENT WITH CURRICULAR CHANGES TO DIFFERENTIATE LOWER RANKED SCHOOLS FROM THE “T-14”

Once the ABA determines how to best measure legal education outputs and creates a data collection and rankings system that incentivizes university administrators to improve them, additional work can begin on giving law schools regulatory flexibility to maximize these outputs through innovative changes in program design. An entrenched preference for T-14 institutions has endured since the 1930s.⁶⁸ To increase competition, the ABA should allow flexibility in their strict accreditation standards relating to admissions requirements, program format, and curriculum design to allow universities to experiment with program models that differentiate them from other institutions. In admissions requirements, for example, the ABA can expand on its previous decision to allow use of the GRE as a “valid and reliable alternative” to the LSAT in admissions or allow programs make such tests optional.⁶⁹ In program format, the ABA can make it easier for universities to implement part-time or online-only programs. For example, the ABA currently limits credits received in online classes to a third of the total degree credit hours; a requirement that can be waived.⁷⁰ The ABA approved the first ever online J.D. program, at St. Mary’s University, in 2021, but the school

67. See Leichtner, *supra* note 53.

68. Arewa et al., *supra* note 27, at 998.

69. *Providing Choice for Law Schools*, EDUC. TESTING SERVS., https://www.ets.org/s/gre/pdf/gre_law_school_flyer_providing_choice.pdf [<https://perma.cc/3VM8-C6WX>] (last visited Dec. 15, 2021).

70. *Distance Education*, A.B.A. (Jan. 21, 2022), https://www.americanbar.org/groups/legal_education/resources/distance_education/ [<https://perma.cc/AY3F-VLNQ>].

was required to get a waiver.⁷¹ Allowing more room for experimentation in program admissions and design would increase differentiation *and* increase the number of factors students can use to compare programs, *allowing* lower-ranked schools to obtain their own competitive advantages over the T-14.

1. ACTOR COOPERATION IS MODERATE TO HIGH

Loosening ABA accreditation restrictions on program admissions and design would be a positive development for students and lower-ranked universities but would be met with pushback from the ABA and higher ranked universities that do not want to lose their reputational advantage. Students will likely be receptive to the new options that law schools would offer even if some continued to prefer for the traditional T-14. These changes would especially benefit non-traditional law students such as those who want to attend school while balancing other commitments. Law schools outside of the T-14 would also welcome opportunity to differentiate themselves in the law school market, potentially giving them access to a new pool of students, increasing their reputation, and improving their admissions statistics. Universities that currently benefit from strict accreditation requirements such as the T-14 may also oppose lowering accreditation standards.

2. IMPLEMENTATION TIMELINE IS LONG

Given the number of decisions that would need to be made by both the ABA and universities, changes to accreditation criteria would take at least five years to implement. If the ABA made the decision to lower accreditation standards, they would have to manage process changes internally. Once these changes were approved and published, universities would have to decide how to respond; their changes would have to be re-approved by the ABA before being offered to students. Universities may also be slow to implement untested changes; the use of pilot programs to gauge students' experience has the potential to expediate implementation of diversified program models.

3. COST IS MODERATE TO HIGH

While flexibility to make fundamental program changes would come with high costs to universities, many would see these costs offset by increased tuition dollars if these changes result in increased admissions. Given that the ABA is already doing regulatory and accreditation work, adding flexibility to accreditation standards would be estimated to not generate additional costs.

For universities, the upfront cost of programmatic changes may be high; creating new program options (such as developing online programs), re-designing

71. Karen Sloan, *First ABA-approved Online JD Program to Debut Next Fall*, REUTERS (Sept. 14, 2021, 5:07 AM), <https://www.reuters.com/legal/legalindustry/first-aba-approved-online-jd-program-debut-next-fall-2021-09-14/> [<https://perma.cc/SU94-6VY>].

curricula, and running pilot programs require dedicated funding and time from administrators and faculty. These costs can be offset if new programs bring an increase in competition; for example, a university that previously did not compete with the T-14 on traditional metrics may be able to attract different students based on part-time options or the omission of certain graduation requirements.

4. FUTURE RESEARCH NEEDS TO FOCUS ON THE DEVELOPMENT OF MINIMUM ACCREDITATION STANDARDS TO ENSURE THAT REGULATORY FLEXIBILITY DOES NOT LEAD TO A “RACE TO THE BOTTOM”

The process of increasing flexibility in ABA accreditation requirements would require balancing the need for increased competition against threats of a “race to the bottom,” where schools prioritize novel programmatic changes to attract students over features that assure students are adequately prepared to pursue a career in law. Universities designing new curricula may not adequately prepare students for work as an attorney. Any changes to accreditation requirements must be accompanied by sufficient minimum standards to assure that students are receiving an education sufficient for bar passage and practice.

CONCLUSION

The public interest vision for legal education is a world where every reasonably qualified student would be able to obtain legal education sufficient for pursuing the career of their choice without taking on a burdensome debt load. This Note does not cover all changes with the potential to improve the value gained from a legal education; the LSAT, the firm recruiting process, and the bar exam are just a few elements of legal education worthy of examination. To determine the best starting point for improving the accessibility, quality, and cost of legal education, the development of outcome-focused data metrics plus the use of these metrics to measure changes to federal student loans and curriculum requirements can bring us closer to building a legal profession equipped to meet the challenges of the 21st century.