

# Reducing Debt and Increasing Access to the Profession: An Empirical Study of Graduate Debt at U.S. Law Schools

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## I. Introduction

Legal education in the United States is in crisis because it is so costly and the number of law school graduates has consistently exceeded the number of entry-level law jobs by a wide margin, while starting salaries are low in comparison to student loan debt for most graduates.<sup>1</sup> This article contributes to the work of addressing the current challenges by reporting the results of an empirical study of the nature and scope of law graduate debt across U.S. law schools. We statistically analyzed the correlations between the average (mean) amount borrowed by class of 2018 graduates who borrowed some amount to attend law school and a range of other law school characteristics, from tuition

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1. See, e.g., Scott F. Norberg, *J.D.s and Jobs: The Case for an ABA Accreditation Standard on Employment Outcomes*, 67 J. LEGAL EDUC. 1035, 1040-45, 1049-51 (2018) (presenting data on law graduate legal employment rates, entry-level salaries, and tuition rates and average amount borrowed by graduates who borrowed some amount); ABA TASK FORCE ON THE FUTURE OF LEGAL EDUCATION, REPORT AND RECOMMENDATIONS (2014), [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/report\\_and\\_recommendations\\_of\\_aba\\_task\\_force.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.pdf); Jerome M. Organ, *Reflections on the Decreasing Affordability of Legal Education*, 41 WASH. U. J. L. & POL'Y 33 (2013). The spread between number of graduates and number of graduates who had law jobs at ten months after graduation has improved in the past two years, almost entirely because the number of graduates has decreased. 72.1% of the graduating class of 2019 had obtained long-term, full-time bar passage required positions as of 10 months after graduation, and another 8.5% had obtained long-term, full-time J.D. advantage jobs. ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, EMPLOYMENT OUTCOMES AS OF APRIL 2020 (CLASS OF 2019 GRADUATES), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/2019-law-graduate-employment-data.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2019-law-graduate-employment-data.pdf) (updated May 28, 2020).

and estimated living expenses to entering-class credentials and employment outcomes. Included are analyses of the relationships between borrowing and the racial, ethnic, and gender composition of law school student bodies. In light of our findings, we highlight several potential reforms to reduce borrowing and increase access to legal education and the legal profession.

We focus on findings in two areas. First, the data indicate that the legal education system places a greater financial burden on less affluent, minority and women students than on non-Hispanic white male students. The cost of attendance, average amount borrowed, percentage of the class that borrowed, and percentage of students paying full tuition are all higher at schools with lower LSAT/UGPA medians and larger percentages of minority, women and part-time graduates. These findings confirm and expand upon what other surveys and studies have found.<sup>2</sup>

This state of affairs is the product of a system that allocates both enrollments and scholarships based primarily on applicants' LSAT scores and UGPAs.<sup>3</sup> LSAT scores and UGPAs are determined to a significant degree

2. ABA PROFILE OF THE LEGAL PROFESSION 2020, at 28 (2020), <https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf> (finding in a survey of young lawyers that the average cumulative student law school debt of 2016 graduates was \$198,760 for Black graduates, \$149,573 for Hispanic graduates, \$100,510 for white graduates and \$120,406 for all graduates); Bernard A. Burk et al., *Competitive Coping Strategies in the American Legal Academy: An Empirical Study*, 19 NEV. L.J. 583, 629 (2018) (“The Cost of Legal Education Has Been Imposed More and More Disproportionately on Those Least Likely to Be Able to Bear It”); LSSSE, 2016 ANNUAL SURVEY RESULTS: LAW SCHOOL SCHOLARSHIP POLICIES: ENGINES OF INEQUITY 12 (2017) (showing that Black and Latino respondents to the survey were significantly less likely to receive merit scholarships than white and Asian students, and more likely to expect to incur over \$100,000 in law school debt compared with white and Asian respondents); CJ Ryan, *Guest Post: Paying for Law School and the Public Service Loan Forgiveness Program*, LSSSE BLOG (June 14, 2019), <http://lsse.indiana.edu/blog/guest-post-paying-for-law-school-and-the-public-service-loan-forgiveness-program/> [<https://perma.cc/JS4Z-UWB4>]; Aaron N. Taylor, *Robin Hood, In Reverse: How Law School Scholarships Compound Inequality*, 47 J.L. & EDUC. 41, 48 (2018) (analyzing LSSSE data, concluding that “law school scholarships flow most lucratively to students who tend to come from privileged backgrounds, contributing, most notably, to increased student loan debt among students from disadvantaged backgrounds”). See also ABA COMM’N ON THE FUTURE OF LEGAL EDUC., PRINCIPLES FOR LEGAL EDUCATION AND LICENSURE IN THE 21<sup>ST</sup> CENTURY 7 (2020), <https://www.americanbar.org/content/dam/aba/administrative/future-of-legal-education/cfle-principles-and-commentary-feb-2020-final.pdf> (stating that “[h]igh tuition rates and differential discounting . . . reduce inclusiveness and diminish access to legal services”); Aaron N. Taylor, *The Marginalization of Black Aspiring Attorneys*, 13 FIU L. REV. 489, 501-08 (2019); Jerome M. Organ, *Net Tuition Trends by LSAT Category from 2010 to 2014 with Thoughts on Variable Return on Investment*, 67 J. LEGAL EDUC. 51, 72 (2017) (“[s]tudents of color and women make up much larger percentages of students in law schools with lower median LSATs. The average net tuition trends . . . suggest that [they] are being disproportionately impacted by the net tuition pricing differentials.”).
3. ABA TASK FORCE ON THE FIN. OF LEGAL EDUC., REPORT 8 (2015), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/reports/2015\\_june\\_report\\_of\\_the\\_aba\\_task\\_force\\_on\\_the\\_financing\\_of\\_legal\\_education.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/2015_june_report_of_the_aba_task_force_on_the_financing_of_legal_education.pdf) [<https://perma.cc/TE9S-PAXS>] (stating that “[w]ith respect to the allocation of discounts, more money goes to pure merit

by socioeconomic status, race, ethnicity, and gender.<sup>4</sup> Because less affluent, minority, and women applicants have lower average LSAT scores and UGPAs,<sup>5</sup> they make up a larger proportion of the matriculants and graduates of the least selective law schools. And it is these schools, which are heavily tuition dependent,<sup>6</sup> that have the most regressive scholarship policies, awarding the vast majority of grants based on the LSAT and UGPA credentials instead of need (or both credentials and need).<sup>7</sup> (We use “credential-based aid” to refer to all aid based on criteria other than pure need).<sup>8</sup> The fact that the cost of attending a school tended to go up as the percentage of minority and women graduates increased suggests that the subsidy of better-credentialed students by lesser-credentialed students is especially large at these less selective schools.<sup>9</sup>

Our findings, together with enrollment and borrowing trends over the past decade, suggest that less affluent, minority, and women graduates have increasingly subsidized graduates from more affluent socioeconomic backgrounds. The proportion of less affluent, minority, and women students attending law school has increased (as total enrollments have decreased) since

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(i.e., solely on LSAT scores) than to pure, demonstrated financial need”).

4. See *infra* Part III.A (reporting findings that percentage of graduates of a law school who borrowed is strongly negatively correlated with LSAT score and UGPA). See also Ezekiel J. Dixon-Román et al., *Race, Poverty and SAT Scores: Modeling the Influences of Family Income on Black and White High School Students' SAT Performance*, 115 TEACHERS COLL. REC. April 2013, at 2 (“[r]esults suggest the effects of family income on SAT scores, though relatively modest in contrast to high school achievement, are substantial, non-linear, and nearly twice as large for Black students. Moreover, the unstandardized direct effect of high school achievement on SAT performance is not enough to address the substantial effects of poverty for Black students.”).
5. SUSAN P. DALESSANDRO ET AL., LAW SCH. ADMISSION COUNCIL, LSAT TECHNICAL REPORT SERIES 12-03: LSAT PERFORMANCE WITH REGIONAL, GENDER, AND RACIAL/ETHNIC BREAKDOWNS: 2005–2006 THROUGH 2011–2012 TESTING YEARS (2012), <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.258.4820&rep=rep1&type=pdf>; *infra* Part III.A (reporting findings on the negative correlations between entering class credentials and percentage of class that borrowed to attend law school).
6. ABA TASK FORCE ON THE FIN. OF LEGAL EDUC., *supra* note 3, at 22 (reporting that lowest-tier private schools received an average of 95% of revenue from tuition in AY 2012-13).
7. *Id.* at 30 (reporting that lowest-tier schools awarded 83% of grants based only on credentials in 2009-2010).
8. We use “credential-based aid” instead of “merit-based aid” because credentials do not necessarily equate to merit. A true “merit-based” policy might well include factors other than credentials, including many of the factors like obstacles overcome, family history, etc., that some schools use in more nuanced and sensitive evaluation of candidates for admission. Indeed, it is ironic that schools use these factors to determine admission but then abandon them or diminish them in considering the award of financial support. “Discounting,” which could be used instead of “merit-based aid,” is perhaps a more pejorative term that connotes the rankings-based strategies that many or most law schools use in awarding aid. Some law schools actually produce and publish a chart that shows how much tuition discount an applicant will received based on LSAT or UGPA scores. Thus, “credential-based aid,” while not a term that is commonly used, is used here to make clear the current practice at many law schools.
9. See *infra* Part III.B.

2010.<sup>10</sup> At the same time, the overall proportion of students who borrow has decreased markedly over the past ten years.<sup>11</sup> The decrease in the percentage of graduates who borrow to attend law school is likely due mostly to increased tuition discounting, which has grown significantly over the past ten years,<sup>12</sup> but because discounts are allocated based mainly on LSAT scores and UGPAs, they flow disproportionately to more affluent and non-Hispanic white male students.

Not only do the schools with higher proportions of minority and women graduates report higher costs and more debt, they also have weaker employment outcomes. We also find that on average schools with lower LSAT/UGPA medians and more women and minority graduates and graduates who borrowed placed fewer graduates in full-time, long-term law jobs within ten months after graduation.<sup>13</sup>

Second, we also investigated the relationship between cost of attendance and debt. As to be expected, the data show that the average amount borrowed by graduates who borrowed to attend law school increased as the cost of attendance increased. Tuition, net tuition, and estimated living expenses are all significantly correlated with average amount borrowed. We also see that different schools located in areas with comparable costs of living sometimes list very different estimated living expenses. At the same time, some schools with comparable costs of attendance report significantly different average amounts borrowed.<sup>14</sup> Thus, it appears that there are differences in school practices, policies, and cultures apart from costs of attendance that may impact borrowing levels.

Part II provides an overview of law graduate debt across all law schools over the past decade. Parts III, IV, and V provide a detailed account of the key findings summarized in this Introduction. Appendix 1 reports on additional findings from our empirical study.

In light of our findings, Part VI concludes by highlighting several proposals for returning to a legal education financing model that distributes scholarships based primarily on need instead of LSAT scores and UGPAs in order to reduce

10. See *infra*, note 32 and accompanying text.

11. See *infra*, notes 17-18 and accompanying text.

12. From 2011 to 2019, the average percentage of law schools' student bodies receiving a scholarship has increased by almost twenty-five percentage points, from approximately 50% to approximately 75%, and the average percentage of students receiving full or full-plus scholarships has increased from about 4.6% to about 8.2%. Over the same time, the percentage increase in the average of median grant amounts (54%, from about \$13,000 to more than \$20,000) was more than double the increase in tuition (25%, from about \$32,000 to over \$40,000). *Section of Education – ABA Required Disclosures: 509 Required Disclosures*, ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, <http://abarequireddisclosures.org/Disclosure509.aspx> (under Compilation—All Schools Data, Select Year (2011 and 2019) and Section (Grants and Scholarships and Tuition and Fees)).

13. See *infra* Part III.C.

14. See *infra* Part V.

law student borrowing and to promote access to law school and the profession. Our findings provide additional support for and give renewed urgency to several previous calls for reforming how law schools allocate scholarship aid. In addition, Part VI urges greater attention to how institutions set estimated living expenses, provide debt counseling, and otherwise influence student borrowing; and suggests an updated approach to enforcing ABA Standard 507, which requires law schools to “demonstrate reasonable steps to minimize student loan defaults.”<sup>15</sup>

## II. Overview of Law Graduate Debt Across ABA Schools<sup>16</sup>

Table 1 below reports the weighted averages of the average amount borrowed by students who borrowed some amount to attend law school and graduated in 2010–2018. (Figures 1 and 2 graphically present the trends in average amount borrowed and percentage of graduates who borrowed over the nine-year period.) The meta-average of the average amounts borrowed by 2018 law graduates across schools was approximately \$115,481. The average of the average amounts borrowed by graduates who attended a private law school was significantly higher than for graduates who attended a public school, \$130,373 versus \$91,803. The total amount borrowed by class of 2018 graduates was \$2.96 billion.

15. ABA, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2020-2021, *Standard 507: Student Loan Programs* (2020).
16. This overview is based largely on the presentation of the available data by Law School Transparency on its “LST Data Dashboard” under “Law School Costs,” <https://data.lawschooltransparency.com/costs/>. LST’s source for most of the data on average amount borrowed is U.S. News & World Report, which in its annual survey asks law schools to report the average amount borrowed by the previous year’s graduates who borrowed any amount to attend law school. The data presented by LST on tuition, net tuition, conditional scholarships, bar results, and job outcomes are from the ABA, which collects the information in its Annual Questionnaire, annual Employment Outcomes Questionnaire, and annual Bar Passage Questionnaire and publishes it in annual Standard 509 Information Reports, Employment Summary Reports, and Bar Passage Outcomes Reports at <http://www.abarequireddisclosures.org>. LST uses a weighted average based on cohort size in calculating the overall average amount borrowed, and also corrects the numbers incorrectly reported by several schools to U.S. News.

The data on average amount borrowed are mostly but not entirely complete and accurate. Fifteen of 202 ABA-approved law schools did not report their figure to U.S. News for the class of 2018. (We have also run our statistical analyses in Parts III-V using the most recently reported average amount borrowed by the twelve non-Puerto Rico schools that did not report in 2018, and the results are consistently very close.) Further, the reported average amounts borrowed understate graduates’ actual debt by about 13% because they do not include interest that accrues during law school and up to the time the first payment is due six months after graduation. The reported average amount borrowed is also understated to the extent that there are graduates who transferred from another law school whose borrowings at the first school attended are not included.

There is no correlation between the percentage of graduates of a school who borrowed and the average amount they borrowed.  $r(186) = .021, p = .773$ .

As further reported in Table 1, the average of the average amounts borrowed by law school graduates who borrowed any amount increased by 15% between 2010 and 2018. The amount increased in each year except for the past two years (for the graduating classes of 2017 and 2018), when the amount decreased by almost 4%.

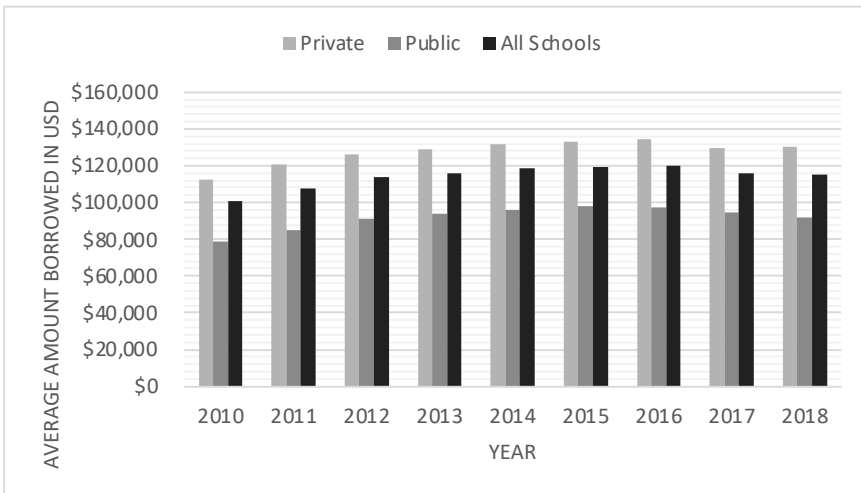
At the same time, the average of the percentage of law school graduates at each school who borrowed has declined by nearly ten percentage points since 2010, from 84.4% of all graduates in 2010 to 75.5% in 2018.<sup>17</sup> Much of the drop is likely attributable to increased tuition discounting, but some of it may be because an increasing proportion of students are more affluent.<sup>18</sup> From 2011 to 2019, the average of the percentage of students receiving grants across all schools has increased by nearly twenty-five percentage points, from about 50% to about 75%. The mean of the percentage of students receiving full tuition and more than full tuition grants has nearly doubled, up more than four percentage points from about 4.7% to 8.8%. The average of the median grant amount across all schools has increased by about 55%, from about \$13,100 to \$20,300 (while average sticker price has increased about 25%).<sup>19</sup> It appears that as schools have awarded more full scholarships and increased tuition discounts, some students no longer need to borrow.

17. The percentage of law graduates who borrowed has decreased every year since 2011, while the average amount borrowed increased every year except 2017 and 2018. At first glance, this suggests that increased tuition discounting is not a primary cause of the decline in percentage of graduates who borrowed. However, the rate of increase in average amount borrowed slowed appreciably after 2012, perhaps reflecting the increases in tuition discounting that were taking place.
18. About half of the decrease in the average percentage of graduates who borrowed occurred in one year, from the graduating class of 2014 to 2015. Most of the graduating class of 2015 started law school in 2012, the second year of the steep declines in law school enrollments that began with the entering class of 2011.
19. See *Section of Education - ABA Required Disclosures: 509 Required Disclosures*, ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, <http://abarequireddisclosures.org/Disclosure509.aspx> (select Compilation—All Schools Data, Grants and Scholarships and 2011, 2019). See also *Organ, Net Tuition*, *supra* note 2; *Burk, et al., supra* note 2, at 636 (Table A.I.3). If this hypothesis is correct, that the increase in full scholarships and tuition discounting has led to the decrease in the percentage of students who borrow some amount to attend law school, it suggests that students with the least need are receiving the most lucrative discounts. If a full scholarship is enough to render a loan unnecessary, the student likely did not have especially significant financial need in the first place.

**Table 1. Average Amount Borrowed and Percentage of Graduates Who Borrowed, 2010-2018**

Average of the Average Amounts Borrowed by Students at:	Private Schools	Public Schools	All Schools	Average of the Percentage of Graduates Who Borrowed
2010	\$112,328	\$78,959	\$100,401	84.4%
2011	\$120,718	\$85,241	\$107,917	85.0%
2012	\$126,443	\$91,125	\$114,086	84.2%
2013	\$128,909	\$93,959	\$115,935	82.8%
2014	\$131,766	\$95,800	\$118,670	82.0%
2015	\$133,182	\$98,186	\$119,480	77.2%
2016	\$134,388	\$97,611	\$119,999	76.3%
2017	\$129,599	\$94,533	\$115,736	75.5%
2018	\$130,373	\$91,803	\$115,481	75.0%

**Figure 1. Average Amount Borrowed, Private, Public and All Schools, 2010-2018**



**Figure 2. Percentage of Graduates Who Borrowed, 2010–2018**

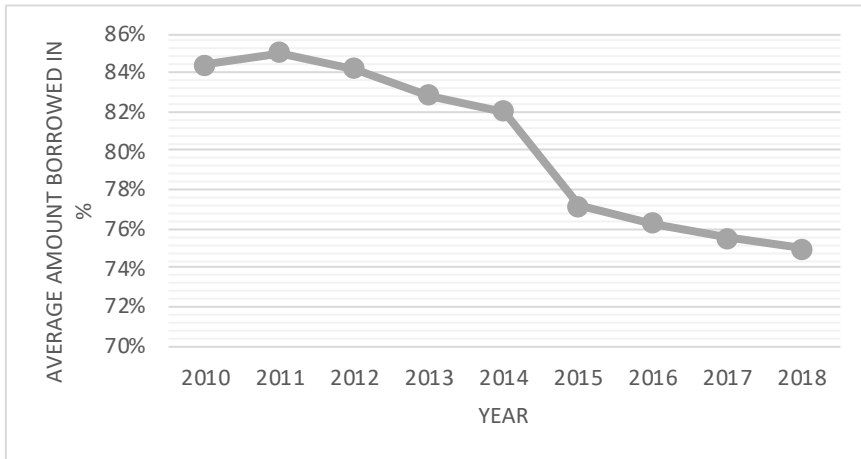


Table 2 breaks into quartiles the average amount borrowed in 2018 by law schools’ graduates and the percentages of graduates who borrowed across law schools. The range for average amount borrowed was vast, from \$50,902 at Georgia State University College of Law in Atlanta to \$212,576 at Southwestern Law School in Los Angeles. Of course, the average amount borrowed by students at each reporting school also obscures that many students borrow much more or much less than the average. At the high end, some students borrow as much as \$250,000 or more to attend law school.<sup>20</sup>

There is also wide variation across law schools in the percentage of graduates who borrow some amount to attend, from a low of 34% to a high of 100%, with an average of 76%. The schools with lower percentages tend to be elite schools, but some are not. Of twenty-two schools where more than a third of the 2018 graduating class did not borrow any amount to attend law school, six were T14 law schools. At the high end, there are ten schools where more than 90% of the class borrowed some amount, including three HBCUs and some of the least selective schools in the country.

20. Twenty-four law schools (or almost 12% of ABA-approved schools) reported tuition and off-campus living expenses of more than \$80,000 a year in 2018. Students at these schools who borrow the maximum permitted in federal student loans would incur more than \$240,000 in debt before adding interest that accrues during law school. ABA Section of Legal Educ. and Admissions to the Bar, *Section of Education - ABA Required Disclosures*, STANDARD 509 DISCLOSURE, <http://abarequireddisclosures.org/Disclosure509.aspx> (under Compilation—All Schools Data, Select Year (2018) and Section (Tuition and Fees)).



**Table 2. Average Amount Borrowed and Percentage of 2018 Graduates Who Borrowed, Range and Percentiles, 2018**

Average of the Average Amounts Borrowed by Students at:	Low	25%	Median	75%	High
Private Schools	\$56,903	\$105,868	\$123,932	\$144,718	\$212,576
Public Schools	\$50,902	\$75,558	\$87,249	\$97,062	\$156,437
All Schools	\$50,902	\$83,837	\$108,925	\$128,497	\$212,576
Percentage of Graduates Who Borrowed	34%	70%	76%	82%	100%

Student debt has a major negative impact on the lives of many law school graduates. In a recent survey of young lawyers conducted by the ABA, 48% said they have postponed or decided not to have children, 29% said that have postponed or decided not to get married, 56% said they have postponed or decided not to buy a house, and 37% said they chose a job that pays more instead of a job they really wanted because of their debts. The survey further showed that Black and Hispanic new lawyers were more likely than white new lawyers to postpone or decide not to get married or to buy a house because of their debt, and that about two-thirds of Black respondents reported that their student loan debt was higher at the time of the survey than at graduation.<sup>21</sup>

### **III. Borrowing and: Matriculant Credentials; Socioeconomic Status; Race, Ethnicity, and Gender; Costs of Attendance; Scholarships; Employment Outcomes**

We find evidence of pervasive inequities in the prevailing financial model in legal education, which allocates most scholarship aid based on matriculants' LSAT scores and UGPAs instead of financial need. This "enrollment management" strategy is common across higher education generally, although law schools may be using it especially aggressively. New America Foundation recently released the results of a survey finding that public universities have followed the lead of private universities and increasingly engaged in an enrollment management "arms race," tripling the amount of merit-based scholarships from \$1 billion to \$3 billion from 2001 to 2017.<sup>22</sup> The upshot is that financial aid tends to be funneled to more affluent and non-Hispanic white

21. ABA PROFILE OF THE LEGAL PROFESSION 2020, *supra* note 2, at 24-26.

22. Stephen Burd, *Crisis Point, How Enrollment Management and the Merit-Aid Arms Race Are Derailing Public Higher Education*, NEW AMERICA, <https://www.newamerica.org/education-policy/reports/crisis-point-how-enrollment-management-and-merit-aid-arms-race-are-destroying-public-higher-education/> (last updated Feb. 13, 2020) [<https://perma.cc/Z3JT-Z5SZ>].

students and away from students with greater need and minority students.<sup>23</sup> Our statistical analyses of this practice at law schools indicate clear interrelationships between borrowing and: matriculant credentials; socioeconomic status; race, ethnicity, and gender; costs of attendance; percentage of students who receive scholarships/pay full tuition; and employment outcomes.<sup>24</sup> More students borrowed more money but obtained worse employment outcomes at schools with lower entering-class credentials and more minority and women graduates, while fewer students borrowed less money and obtained better employment outcomes at schools with higher entering-class credentials and more non-Hispanic white students.

#### A. Borrowing and Entering-Class Credentials

The relationship between LSAT score and socioeconomic status (as measured by educational attainment of the matriculants' parents) has been well documented.<sup>25</sup> Our analyses support this relationship at the school (as opposed to individual student) level. We find that the percentage of a school's graduates who borrowed tended to increase as its entering-class credentials went down. Stated the other way around, the percentage of a school's graduates who borrowed went down as entering-class credentials increased. As reported in Table 3, there is a strong negative correlation between the percentage of a school's graduating class that borrowed to attend law school and the school's 25/50/75 percentile LSAT scores and UGPAs. These findings strongly indicate that matriculants with lower LSAT scores and UGPAs tend to come from

23. See sources cited in *supra* note 2.
24. The results of our statistical analyses are reported in terms of  $r$  and  $p$ -values, with  $r$  as the correlation coefficient, which ranges from  $-1$  to  $1$ . The strength of the association of a coefficient value of  $0.1$  to less than  $0.3$  is small, of a coefficient value of  $0.3$  to less than  $0.5$  is medium/moderate, and of a coefficient value greater than  $0.5$  is large/strong. The  $p$ -value is the probability of obtaining an effect at least as extreme as the one in the sample data. A correlation coefficient is considered statistically significant if it is less than  $0.05$ . The number in parentheses is the  $N-2$  degrees of freedom for correlation between two variables, with  $N$  being the number of schools in the calculation.
25. See Jerome M. Organ, PowerPoint Presentation at Wolters Kluwer Leading Edge Conference (July 8, 2008) (slide # 8, slide deck on file with the author) (reporting unpublished LSSSE data that 58% of matriculants in 2011–2014 whose parents had a master's or Ph.D. degree had LSAT scores above 160, while just 32% had scores below 151; and that 33% of matriculants whose parents had no college degree had LSAT scores below 151, compared to only 11% who had scores above 160). See also LSSSE, 2016 ANNUAL SURVEY RESULTS: LAW SCHOOL SCHOLARSHIP POLICIES: ENGINES OF INEQUITY 10 (2017) (reporting that 65% of 2016 LSSSE respondents for whom at least one parent had a bachelor's degree or higher received a merit scholarship compared to 52% of respondents for whom neither parent had more than a high school diploma). These data are consistent with more extensive and sophisticated analyses of the strong correlations between socio-economic status and SAT scores. See, e.g., Ezekiel Dixon-Román, Howard T. Everson & John McArdle, *Race Poverty and SAT Scores: Modeling the Influences of Family Income on Black and White High Schools Students' SAT Performance*, TCHRS COLL. REC., Apr. 2013, at 1, [https://www.researchgate.net/publication/280232788\\_Race\\_Poverty\\_and\\_SAT\\_Scores\\_Modeling\\_the\\_Influences\\_of\\_Family\\_Income\\_on\\_Black\\_and\\_White\\_High\\_School\\_Students'\\_SAT\\_Performance](https://www.researchgate.net/publication/280232788_Race_Poverty_and_SAT_Scores_Modeling_the_Influences_of_Family_Income_on_Black_and_White_High_School_Students'_SAT_Performance).

lower socioeconomic positions, and that students with higher LSAT scores and UGPAs tend to come from higher socioeconomic positions. (As noted above, the schools with the lowest borrowing rates tend to be elite schools, while the schools with the highest borrowing rates include HBCUs and some of the least selective schools.)

**Table 3. Correlations Between Percentage of Class That Borrowed and Entering-Class Credentials**

Entering-Class Credentials	Percentage of Graduating Class That Borrowed
25 <sup>th</sup> percentile LSAT Score	$r(186) = -.563, p < .001$
50 <sup>th</sup> percentile LSAT Score	$r(186) = -.585, p < .001$
75 <sup>th</sup> percentile LSAT Score	$r(186) = -.587, p < .001$
25 <sup>th</sup> percentile UGPA	$r(186) = -.546, p < .001$
50 <sup>th</sup> percentile UGPA	$r(186) = -.567, p < .001$
75 <sup>th</sup> percentile UGPA	$r(186) = -.556, p < .001$

Moreover, at public schools (but not at private schools or across all schools combined), average amount borrowed tended to go up as median LSAT score went down. There is a statistically significant moderate correlation between average amount borrowed and median LSAT score at public law schools.  $r(79) = .442, p < .001$ . (The correlations are almost the same for 25<sup>th</sup> and 75<sup>th</sup> percentile LSAT scores as well).

Given the significant differences between the average LSAT scores of minority and women law school matriculants<sup>26</sup> and non-Hispanic white males, and the strong correlations between entering-class credentials and percentage of the graduating class that borrowed, we expected that there would be clear, statistically significant correlations between schools' entering-class credentials and percentage of minority and women students. Indeed, we do find a moderate correlation between median LSAT score and percentage of Black graduates,  $r(188) = .324, p < .001$ , which is even more pronounced at public law schools,  $r(79) = -.491, p = .008$ . We also find a statistically significant small correlation between median LSAT score and percentage of women graduates,  $r(188) = -.199, p = .006$ . However, we do not find any statistically significant correlations between LSAT score and total minority students or Hispanic students, although we do find small statistically significant correlations between schools' median UGPAs and percentage of Hispanics and all minorities in the graduating

26. See also Taylor, *Marginalization*, *supra* note 2, at 496-97 (in the 2016-2017 admissions cycle, the average LSAT score for Black test-takers was 142, compared with 153 for white test-takers; 72% of Black test-takers had scores below 150 compared with 36% overall, 26% for Asians, 49% for Latino/as, and 27% for white test-takers).

class.<sup>27</sup> The larger differential between Black and white matriculants' LSAT scores and the dispersal of the relatively small numbers of minority students across law schools might explain the statistical results.

*B. Race, Ethnicity, and Gender and Costs of Attendance, Borrowing, and Scholarships*

As the percentage of minority graduates of a law school increased, the cost of attendance (as measured by net tuition plus off-campus living expenses), the percentage of the student body paying full tuition, average amount borrowed, and percentage of graduates who borrowed all tended to go up. Similarly, as the percentage of women graduates went up, so did cost of attendance, average amount borrowed, and percentage of graduates who borrowed. By contrast, as the percentage of non-Hispanic white graduates of a law school went up, the cost of attendance, percentage of the student body paying full tuition and average amount borrowed tended to go down.<sup>28</sup>

27.

**Correlations Between LSAT/UGPA Medians and Percentages of Minority and Women Graduates**

	Median LSAT	Median UGPA
Percentage Minorities/All Schools	No significant correlation	$r(188) = -.234, p = .001$
Percentage Minorities/Private Schools	No significant correlation	$r(108) = -.230, p = .017$
Percentage Minorities/Public Schools	No significant correlation	No significant correlation
Percentage Black/African American/All Schools	$r(188) = -.324, p < .001$	$r(188) = -.310, p < .001$
Percentage Black/African American/Private Schools	$r(108) = -.243, p = .011$	$r(108) = -.207, p = .032$
Percentage Black/African American/Public Schools	$r(79) = -.473, p < .001$	$r(79) = -.491, p = .008$
Percentage Hispanic/All Schools	No significant correlation	$r(188) = -.151, p < .001$
Percentage Hispanic/Private Schools	No significant correlation	$r(108) = -.264, p = .006$
Percentage Hispanic/Public Schools	No significant correlation	No significant correlation
Percentage of Women/All Schools	$r(188) = -.199, p = .006$	$r(188) = -.236, p = .001$
Percentage of Women/Private Sch.	$r(108) = -.242, p = .011$	$r(108) = -.252, p = .008$
Percentage of Women/Public Schools	No significant correlation	No significant correlation

28. These correlations between average amount borrowed and race and ethnicity appear to be confirmed by the moderate negative correlation between full tuition plus costs and the percentage of white students (e.g., full-time tuition plus on-campus living expenses,  $r(159) = -.368, p < .001$ , and a small positive correlation between tuition plus costs and the percentage of minority students (e.g., full-time tuition plus on-campus living expenses,  $r(159) = .187, p < .005$ ).

As reported in Table 4 below, there are notable moderate correlations between the percentage of minority graduates of a school and the percentage of the school's student body paying full tuition and cost of attendance. In addition, there are small correlations between percentage of minority graduates and average amount borrowed and percentage of the graduating class that borrowed. Conversely, we find moderate negative correlations between the percentage of non-Hispanic white graduates and cost of attendance, percentage paying full tuition, and average amount borrowed.

There is a moderate statistically significant correlation between the percentage of women in a law school's graduating class and average amount borrowed; and small statistically significant correlations between the percentage of women graduates and cost of attendance and percentage of graduates who borrowed.

**Table 4. Correlations Between Borrowing and the Race, Ethnicity, and Gender Composition of Schools**

Percentage of:	Total Minority Graduates	Non-Hispanic White Graduates	Women Graduates
Cost of Attendance (Net Tuition + Off-Campus Expenses)	$r(188) = .400, p < .001$	$r(188) = -.442, p < .001$	$r(188) = .195, p = .007$
Percentage of Students Paying Full Tuition	$r(188) = .417, p < .001$	$r(188) = -.375, p < .001$	No significant correlation
Average Amount Borrowed	$r(187) = .264, p < .001$	$r(187) = -.348, p < .001$	$r(187) = .367, p < .001$
Percentage of Graduates Who Borrowed	$r(186) = .195, p = .008$	No significant correlation	$r(186) = .180, p = .014$

*C. Employment Outcomes, Entering-Class Credentials, and Race, Ethnicity, Gender*

Not only did law schools with lower entering-class credentials have larger proportions of students who borrowed to attend and, at public schools, higher average amounts borrowed, they also had decidedly worse employment outcomes at ten months after graduation. As reported in Table 5, as a school's entering-class profile decreased, the percentage of its graduates who obtained law jobs also decreased. There are strong correlations between a school's

median UGPA and LSAT score and the percentage of its graduates who obtained full-time (FT), long-term (LT), bar-passage-required (BPR) jobs. At the same time, as a school’s entering-class profile increased, its percentage of graduates obtaining FT, LT, J.D. advantage (JDA) jobs tended to decrease.<sup>29</sup> (The correlations are very similar at the 25<sup>th</sup> and 75<sup>th</sup> percentile UGPA and LSAT scores.) We find moderate or nearly moderate negative correlations between median LSAT score and UGPA and the percentage of the class that obtained FT, LT, JDA jobs.

Likewise, as the percentage of the graduating class who borrowed increased, the percentage of the class who obtained law jobs dropped markedly. Stated conversely, as the percentage of graduates who borrowed decreased, the percentage who obtained FT, LT, law jobs increased. There is a strong negative correlation between the percentage of the graduating class who borrowed and the percentage of the class who obtained FT, LT, BPR, and JDA jobs.<sup>30</sup>

**Table 5. Employment Outcomes and Median LSAT Score**

	Percentage of Class in FT, LT, BPR Jobs	Percentage of Class in FT, LT, JDA Jobs	Percentage of Class in FT, LT, BPR + JDA Jobs
Median LSAT Score	$r(186) = .761, p < .001$	$r(186) = -.345, p < .001$	$r(188) = .684, p < .001$
Median UGPA	$r(186) = .770, p < .001$	$r(186) = -.291, p < .001$	$r(186) = .740, p < .001$
Percentage of Graduates Who Borrowed	$r(186) = -.547, p < .001$	$r(186) = .166, p = .024$	$r(186) = -.568, p < .001$

Further, while women and minority graduates were more likely to attend schools with higher percentages of students paying full tuition, higher average amount borrowed and higher percentages of students who borrowed, these same schools also tended to place fewer graduates in FT, LT law jobs. As the percentage of minority and women graduates increased, the percentage of graduates who obtained law jobs decreased. As reported in Table 6 below, we find moderate and almost moderate negative correlations between the

29. There are small and moderate negative correlations between a school’s median (and 25/75) percentile UGPA and LSAT scores and the percentage of graduates who obtained FT, LT JDA jobs. For example, the correlation between median LSAT score and percentage of the graduating class in FT, LT JDA jobs is  $r(186) = -.345, p < .001$ . At schools with higher median LSAT scores, graduates were more likely to obtain the most desirable (FT, LT, BPR) jobs, and less likely to take the less desirable JDA jobs.

30. This correlation was somewhat more pronounced at private schools than at public law schools.

percentages of women,<sup>31</sup> total minority and Black graduates and the percentage of graduates who obtained FT, LT, BPR and JDA positions within ten months after graduation. There is a corresponding small positive correlation between the percentage of non-Hispanic white graduates in the class and the percentage of FT, LT law jobs.<sup>32</sup>

**Table 6. Employment Outcomes and Race, Ethnicity, and Gender**

Percentage of Class Comprising:	Percentage of Class in FT, LT, BPR Jobs	Percentage of Class in FT, LT, BPR + JDA Jobs
Women Graduates	$r(186) = -.328, p < .001$	$r(188) = -.335, p < .001$
Total Minority Graduates	$r(186) = -.293, p < .001$	$r(188) = -.352, p < .001$
Black Graduates	$r(186) = -.339, p < .001$	$r(188) = -.292, p < .001$
Non-Hispanic White Graduates	$r(186) = .177, p = .015$	$r(188) = .252, p < .001$
Part-Time Students	$r(186) = -.453, p < .001$	$r(188) = -.368, p < .001$

#### IV. Correlations Between Graduate Borrowing and Cost of Attendance

This part examines the relationship between average amount borrowed and the cost of attending law school. Not surprisingly, there are close, statistically significant correlations between average amount borrowed and tuition (sticker price) and net tuition. In addition, average amount borrowed is strongly and significantly correlated with estimated living expenses. Where the analyses involve tuition rate, net tuition, or the allocation of scholarships, we break them down by all schools, private schools, and public schools. The available data do not include the numbers of students paying in-state vs. out-of-state tuition or the allocation of scholarships between in-state and out-of-state students at

31. DEBORAH JONES MERRITT & KYLE McENTEE, *THE LEAKY PIPELINE FOR WOMEN ENTERING THE LEGAL PROFESSION* 3 (2016), [https://www.lstradio.com/women/documents/MerrittAndMcEnteeResearchSummary\\_Nov-2016.pdf](https://www.lstradio.com/women/documents/MerrittAndMcEnteeResearchSummary_Nov-2016.pdf) (finding that “the correlation between the percentage of women enrolled at a law school and the percentage of that law school’s graduates obtaining FTLT jobs” in the class of 2015 that require bar passage was  $-.520, p < .001$ ).
32. The correlations are comparable across private and public law schools, except that the negative correlation between percentage of Black graduates and percentage of graduates obtaining entry-level law jobs becomes strong among public schools,  $r(79) = -.600, p < .001$ , while the correlation between percentage of Hispanic graduates and percentage of graduates in law jobs becomes weak and not statistically significant. At the same time that percentage of graduates who borrowed is clearly and inversely related to BPR and BPR plus JDA graduate employment rates, there are small positive correlations between percentage of graduates who borrowed and percentage of graduates who obtained FT, LT, JDA jobs. These jobs are generally less desired than BPR jobs and are disproportionately taken by graduates of schools with higher borrowing rates.

public law schools.<sup>33</sup> As a result, the private school analyses involving these data points are somewhat more accurate because the tuition rate is the same for all students.

#### *A. Average Amount Borrowed and Cost of Attendance*

As reported in Table 7 below, across all law schools the average amount borrowed is strongly and most highly correlated with sticker price (using in-state tuition as the tuition figure for public law schools<sup>34</sup>) and sticker price plus estimated costs of living on campus, off campus, and at home. Further, there is a moderate correlation between average amount borrowed and net tuition, and a strong correlation between average amount borrowed and net tuition plus estimated living expenses across all law schools.<sup>35</sup>

33. While BYU is a private law school, it charges differential tuition rates to LDS members and non-members like a public law school differentiates between resident and non-resident students. Therefore, we categorized BYU as a private school when all schools are analyzed together and as a public school when public and private schools are analyzed separately.
34. The correlation between average amount borrowed and full-time tuition using out-of-state tuition as the tuition figure is strong,  $r(198) = .560$ ,  $p < .001$ , albeit not as strong as between average amount borrowed and full-time tuition using in-state tuition as the tuition figure for public law schools,  $r(198) = .721$ ,  $p < .001$ . There are eighty-one public law schools. The stronger correlation found using the in-state tuition figure likely simply reflects the fact that the large majority of students at a large majority of public law schools are in-state students.
35. These correlations are even stronger for private schools and somewhat weaker at public schools, likely reflecting the greater precision in the calculation of net tuition for private schools. At private schools, net tuition and net tuition plus estimated living expenses are somewhat more strongly correlated with average amount borrowed than sticker price and sticker price plus estimated living expenses; at public schools, sticker price and sticker price plus estimated living expenses are somewhat more strongly correlated with average amount borrowed than net tuition and net tuition plus estimated living expenses.

At private schools, the average amount borrowed tended to decrease as the percentage the student body receiving a scholarship increased. There is a moderate negative correlation between average amount borrowed and the percentage of the student body who received a scholarship at private schools. ( $r(107) = -.432$ ,  $p < .001$ ). This stands to reason, because students who pay full freight ordinarily must borrow more to attend and thus bring up a school's figure for average amount borrowed; the greater the proportion of students paying full tuition, the higher the average amount borrowed.

There is not a statistically significant relationship between average amount borrowed and the percentage of students receiving scholarships at public law schools,  $r(79) = .124$ ,  $p = .276$ . This difference between the relationship between average amount borrowed and percentage of the student body receiving scholarships at private and public schools is consistent with the stronger correlation between net tuition and average amount borrowed at public schools and the stronger correlation between sticker price and average amount borrowed at public schools. Perhaps the difference is that the available data do not include information on the allocation of scholarships between in-state and out-of-state students at public schools. It may also be in part attributable to the generally lower tuition rates at public schools compared with private schools. A lower tuition rate is the equivalent of a scholarship. The higher tuition discount rate at private law schools also may be a factor. Finally, public law schools may be more likely to focus their scholarships on the top half of the class; as discussed below, there is a significant correlation between LSAT/UGPA and percentage of the student body receiving scholarships at public schools, but not at private schools.



Estimated living expenses standing alone are also strongly correlated with average amount borrowed (the correlation is moderate for estimated expenses of living at home) across all law schools. Except for estimated cost of living at home among public schools, these correlations are somewhat weaker when private and public law schools are considered separately. The next section takes a closer look at estimated living expenses.

**Table 7. Correlations Between Average Amount Borrowed and Costs of Attendance**

	<b>All Schools</b>	<b>Private Schools</b>	<b>Public Schools</b>
<b>Tuition/sticker price</b>	$r(187) = .740, p < .001$	$r(107) = .492, p < .001$	$r(79) = .648, p < .001$
<b>Estimated living expenses</b>			
Estimated cost of living on campus	$r(153) = .599, p < .001$	$r(80) = .496, p < .001$	$r(72) = .339, p = .004$
Estimated cost of living off campus	$r(187) = .529, p < .001$	$r(107) = .493, p < .001$	$r(79) = .245, p = .030$
Estimated cost of living at home	$r(176) = .384, p < .001$	$r(99) = .228, p < .001$	$r(76) = .426, p < .001$
<b>Tuition/sticker price plus estimated living expenses</b>			
Tuition plus cost of living on campus	$r(159) = .772, p < .001$	$r(85) = .585, p < .001$	$r(73) = .634, p < .001$
Tuition plus cost of living off campus	$r(187) = .759, p < .001$	$r(107) = .571, p < .001$	$r(79) = .620, p < .001$
Tuition plus cost of living at home	$r(176) = .765, p < .001$	$r(99) = .522, p < .001$	$r(76) = .738, p < .001$
<b>Net tuition</b>	$r(186) = .466, p < .001$	$r(107) = .676, p < .001$	$r(78) = .377, p = .001$
<b>Net tuition plus estimated living expenses</b>			
Net tuition plus cost of living on campus	$r(151) = .654, p < .001$	$r(79) = .750, p < .001$	$r(71) = .556, p < .001$
Net tuition plus cost of living off campus	$r(187) = .608, p < .001$	$r(107) = .722, p < .001$	$r(79) = .473, p < .001$
Net tuition plus cost of living at home	$r(187) = .520, p < .001$	$r(107) = .612, p < .001$	$r(79) = .482, p < .001$

Given the obvious and clear association between cost and debt, it is no surprise that there is also a large and statistically significant difference between the average amount borrowed at private and public law schools. The average amount borrowed by 2018 graduates who attended private law schools was \$123,388 (SD=\$2626), compared with \$86,859 (SD=\$2078) by 2018 graduates who attended public law schools. The mean difference was \$36,529 (SD=\$3348).<sup>36</sup>

These data make the obvious point that the key to bringing down graduate indebtedness is to bring down the cost of attendance for those who must borrow to pay those costs.

*B. A Closer Look at Average Amount Borrowed and Estimated Living Expenses*

As noted above, there are clear, statistically significant correlations between average amount borrowed and estimated living expenses. Table 8 below reports the ranges, percentiles, and averages for law schools’ estimated costs of living off campus, on campus (when applicable) and at home.

**Table 8. Law School Estimated Costs of Living**

Estimated Cost of:	Living on campus (n = 156)	Living off campus (n = 201)	Living at home (n = 188)
Range	\$10,188-\$37,527	\$10,188-\$37,527	\$4,381-\$37,527
25 <sup>th</sup> percentile	\$18,004	\$18,600	\$10,896
50 <sup>th</sup> percentile	\$20,734	\$21,350	\$15,931
75 <sup>th</sup> percentile	\$24,128	\$24,399	\$19,950
Average	\$21,253	\$21,832	\$16,160

These fairly sizable ranges across schools in estimated costs of living elucidate the clear correlations reported above between average amount borrowed and estimated living costs. Further, the quartiles allow for relative comparisons among schools. While location obviously plays a very large role in estimated living costs (tuition, net tuition, and living expenses all tend to be much higher on the coasts than elsewhere), there are a number of examples of schools where the costs appear high (or low) relative to other schools located in cities with lower (or higher) costs of living. To cite a few examples, Georgia State, located in Atlanta, Georgia, lists \$16,730 for off-campus living expenses while Elon, located in Greensboro, North Carolina, lists \$29,060 and Faulkner, located in Montgomery, Alabama, lists \$28,000.<sup>37</sup>

36. These figures differ from LST’s figures reported in Table 1 because LST uses weighed averages based on cohort size. That makes sense for calculating a national average amount borrowed based on individual schools’ average amounts borrowed, although not for the present purpose of analyzing variables that may correlate with average amount borrowed at individual schools.

37. Salary.com’s cost-of-living calculator in 2018 estimates that the cost of living in Atlanta is

Further, while the cost of living can be different in different areas of the same city, and therefore comparisons among multiple schools in the same city must be taken with a grain of salt, it is worth noting that there are sometimes significant differences in living costs among schools in the same city. In Atlanta, the range for estimated costs of living off campus is \$16,730 (at Georgia State) to \$27,425 (Atlanta's John Marshall). In Los Angeles, the range is \$23,194 (at USC) to \$31,240 (at Loyola-CA). In Chicago, it is \$21,030 (at Northwestern) to \$27,969 (at University of Chicago). In Baltimore, where the two law schools are within walking distance of one another, estimated off-campus living expenses are \$19,950 and \$23,020.

### V. The Wide Variation in Average Amount Borrowed Across Schools with Similar Costs

As Tables 9 and 10 below reflect, notwithstanding the strong and moderate correlations between average amount borrowed and net tuition or sticker price plus living expenses, discussed above, there are substantial variations in the average amount borrowed by students who attend schools with roughly similar costs of attendance. We placed schools into four quartiles using net tuition plus off-campus living expenses as the measure of cost of attendance. (We also analyzed the data using full tuition, full tuition plus on-campus living expenses, full tuition plus off-campus living expenses, full tuition plus at-home-living expenses, net tuition, net tuition plus on-campus living expenses, and net tuition plus at-home-living expenses as the measure of cost of attendance, and very similar variability in average amounts borrowed were seen.) The variability is especially dramatic in the highest quartile for cost. In the first table, comparing quartiles across all schools, the range is from \$82,246 to \$139,512. In the second table, comparing quartiles across private schools only, the range is from \$58,958 to \$135,873.

**Table 9. Quartile Comparisons—All Schools**

	Quartile 1	Quartile 2	Quartile 3	Quartile 4
Net Tuition + Off-Campus Expenses	L-\$36,491	\$36,492-\$44,535	\$44,536-\$51,526	\$51,527-H
Average Amount Borrowed	\$59,442-\$155,981	\$50,902-\$133,148	\$59,789-\$196,607	\$73,064-\$212,576
<b>Range</b>	<b>\$96,539</b>	<b>\$82,246</b>	<b>\$136,818</b>	<b>\$139,512</b>
SD	\$20,594	\$21,466	\$30,825	\$30,189
Trimmed mean	\$92,556	\$94,953	\$111,360	\$132,361

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2.5% above the national average, while the costs of living in Greensboro, North Carolina, and Montgomery, Alabama, are 8.4% and 8.3%, respectively, below the national average. *Cost of Living Calculator*, <https://www.salary.com/research/cost-of-living/>.

**Table 10. Quartile Comparisons—Private Schools Only**

	Quartile 1	Quartile 2	Quartile 3	Quartile 4
Net Tuition + Off-Campus Expenses	L-\$36,491	\$36,492-\$44,535	\$44,536-\$51,256	\$51,257-H
Average Amount Borrowed	\$75,861-\$155,981	\$74,190-\$133,148	\$103,669-\$196,607	\$76,703-\$212,576
<b>Range</b>	<b>\$80,120</b>	<b>\$58,958</b>	<b>\$92,938</b>	<b>\$135,873</b>
SD	\$21,434	\$16,297	\$21,698	\$27,168
Trimmed mean	\$103,801	\$109,040	\$132,804	\$144,131

In Table 11 below, we have selected ten sets of schools that have very similar cost profiles and substantial differences in average amount borrowed. Tentatively, the next step in this project is to survey these schools to try to ascertain what policies, practices, and cultures might explain their favorable and less favorable average amounts borrowed.

**Table 11. Schools with Similar Costs of Attendance and Significantly Different Average Amounts Borrowed, 2018<sup>38</sup>**

School	Net Tuition + Off-Campus Living Expenses	FT Tuition	FT Tuition + On-Campus Living Expenses	Average Amount Borrowed	Median LSAT Score
Wayne State	\$30,354	\$31,956	\$53,911	\$66,521	157
Regent	\$31,370	\$36,140	\$58,390	\$116,965	152
Creighton	\$35,694	\$38,744	\$55,699	\$115,643	152
Cincinnati	\$35,143	\$24,010	n/a	\$63,728	155

38. We used Net Tuition + Estimated Off-Campus Living Expenses as the primary indicator of cost of attendance. We also looked at FT Tuition and FT Tuition + Estimated On-Campus Living Expenses because these figures were somewhat more strongly correlated with average amount borrowed than Net Tuition + Estimated Off-Campus Living Expenses. Further, it is possible that some of the difference could derive from the makeup of the student body. Florida State and New England Law Boston, for example, have very similar costs of attendance/ Net Tuition + Off-Campus Living Expenses and very different average amounts borrowed (much less for Florida State graduates), but may have very different groups of students in terms of family wealth as implied from the different LSAT profiles of their student bodies. Thus, we have used median LSAT score as an additional criterion in identifying schools to potentially survey.

Virginia	\$60,503	\$58,300	\$77,398	\$156,437	168
Connecticut	\$62,578	\$29,410	n/a	\$84,379	156
South Carolina	\$55,832	\$28,858	\$47,425	\$99,118	154
Southwestern	\$64,427	\$52,090	\$78,520	\$212,576	152
Nova	\$62,969	\$39,830	\$61,747	\$151,344	149
Vanderbilt	\$55,450	\$55,083	\$80,901	\$120,622	166
Boston College	\$55,250	\$52,850	n/a	\$80,113	162
Denver	\$49,022	\$49,022	\$67,705	\$138,513	157
San Diego	\$47,996	\$52,571	\$75,160	\$119,264	159
Colorado	\$47,216	\$31,989	\$52,512	\$98,290	161
Arkansas	\$45,743	\$16,117	\$32,713	\$66,659	154
NYLS	\$45,501	\$50,718	\$79,793	\$142,715	152
Brooklyn	\$45,341	\$50,706	\$75,105	\$116,352	155
USF	\$59,481	\$49,130	\$79,917	\$174,825	152
UC Hastings	56,937	\$44,326	\$70,834	\$126,829	159
Loyola LA	\$56,647	\$55,110	n/a	\$138,926	159

## VI. Reducing Borrowing and Increasing Access

### *A. Reducing Borrowing but Possibly Decreasing Access by Capping Grad PLUS Loans*

As discussed in Part IV, cost is the primary driver of debt. Reducing cost will reduce debt. That said, private schools have generally been unwilling to set prices below what the market, which is subsidized by the federal student loan program, will permit. U.S. News further exacerbates the incentive to maximize revenues by using expenditures per student in its ranking formula, and has fueled the shift from need-based to credential-based aid by using median LSAT score and UGPA in the formula.

Capping Grad PLUS loans, which some think Congress will do sooner or later, would quickly force many schools to reduce costs, even dramatically,

depending on where the cap is set.<sup>39</sup> Indeed, a cap could put a number of the schools with weak employment outcomes out of business. Currently, these schools educate a large share of aspiring lawyers who are less affluent, minority and women. Their demise could substantially reduce access to the profession, at least where they have decent graduate legal employment rates.<sup>40</sup>

*B. Reducing Borrowing and Increasing Access by Bringing Back Need-Based Scholarships*

If legal education could create a financial aid model from scratch, it would reject the existing model out of hand. Over the years, American higher education,<sup>41</sup> including legal education,<sup>42</sup> has gradually shifted from a primarily need-based to a primarily credential-based system for allocating scholarships. The changes from year to year may have been incremental, but the cumulative result is a collective moral failure. A return to a financial aid model that distributes scholarships based mostly on need rather than credentials will simultaneously increase access to legal education and the profession and reduce amounts borrowed to attend law school.<sup>43</sup> Moreover, it would likely decrease the average price of attending law school, further reducing borrowing.<sup>44</sup>

The legal profession is the least diverse of the major professions in the United States,<sup>45</sup> even though all of the leading professional and legal education

39. For instance, the PROSPER Act of 2017 would have capped Grad PLUS loans at \$28,500. H.R. 4508, 115th Cong. (2017).
40. See *supra* Part III.C (reporting findings on Employment Outcomes, Entering Class Credentials, and Race, Ethnicity, Gender).
41. See RUPERT WILKINSON, *AIDING STUDENTS, BUYING STUDENTS: FINANCIAL AID IN AMERICA* 152-53 (2005); Amanda L. Griffith, *Keeping Up with the Joneses: Institutional Changes Following the Adoption of a Merit Aid Policy*, 30 *ECON. EDUC. REV.* 1022, 1022-23, 1025 (2011).
42. See LSSSE, 2016 ANNUAL SURVEY RESULTS: LAW SCHOOL SCHOLARSHIP POLICIES: ENGINES OF INEQUITY 5 (2017) (“over the years at an accelerating pace, American higher education has departed from need-based financial aid. Among law schools, the unprecedented decrease in applicants hastened this trend.”); ABA TASK FORCE ON THE FIN. OF LEGAL EDUC., REPORT 8 (2015), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/reports/2015\\_june\\_report\\_of\\_the\\_aba\\_task\\_force\\_on\\_the\\_financing\\_of\\_legal\\_education.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/2015_june_report_of_the_aba_task_force_on_the_financing_of_legal_education.pdf) [https://perma.cc/TE9S-PAXS] (reporting ABA data on the decline in need-based aid and increase in credential-based aid between 2005-05 and 2009-10).
43. See also Rodney Andrews & Kevin Stange, *Price Regulation, Price Discrimination, and Equality of Opportunity in Higher Education: Evidence from Texas* (Univ. of Mich., Working Paper 08-2016, Feb. 2017), <http://www-personal.umich.edu/~kstange/papers/AndrewsStange2016.pdf> [https://perma.cc/PPC9-D3NG] (study finding that mandating aid based on need increases enrollment by minority and low-income students).
44. See, e.g., Deborah Jones Merritt & Andrew Lloyd Merritt, *Agreements to Improve Student Aid: An Antitrust Perspective*, 67 *J. LEGAL EDUC.* 17, 33 (2017) (citing researchers who have demonstrated that limiting price discrimination reduces average prices for students attending college).
45. In 2019, 86.6% of persons employed as lawyers in the United States were white, compared with 72.0% of physicians and surgeons, 74.3% of dentists, 80.3% of civil engineers and 82.6% of architects. BUREAU OF LABOR STATISTICS, CURRENT POPULATION SURVEY: HOUSEHOLD DATA ANNUAL AVERAGES tbl.II (2019), <https://www.bls.gov/cps/aa2019/cpsaat11.pdf>. Only 5% of

groups, including the ABA, ABA Section of Legal Education and Association of American Law Schools, have long-standing strong commitments to access, diversity and inclusion. While there are no easy solutions, to date none of them has mounted any serious or sustained effort to reform the legal education financing model to bring down costs and borrowing and address the greater financial barriers faced by underrepresented groups. And as long as cost and debt continue to be a major barrier to access to legal education, the profession will continue to look as it does. The issues of distributive fairness are not unique to legal education—they prevail across higher education writ large.<sup>46</sup> But legal education and the broader profession have a unique obligation to lead reforms of the financial model that will expand access to the profession.

[The] professional practice of law . . . is a public function, in a sense that the practice of other . . . professions . . . is not. Practicing lawyers . . . are part of the governing mechanism of the state.<sup>47</sup>

\* \* \*

The organization of educational machinery especially designed to abolish economic handicaps—intended to place the poor . . . , so far as possible, on equal footing with the rich—constitutes one of America’s fundamental ideals. It is particularly important that the opportunity to exercise an essentially governmental function should be open to the mass of citizens.<sup>48</sup>

\* \* \*

In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. All members of our heterogeneous society must have confidence in the openness and integrity of the educational institutions that provide this training.<sup>49</sup>

In the following paragraphs, we highlight and briefly elaborate on three proposals for reform that Deborah Jones Merritt, Andrew Lloyd Merritt and Kyle McEntee have advocated to address the maldistribution of law school scholarships.

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lawyers in the United States are African American, although African Americans comprise 13% of the population. ABA PROFILE OF THE LEGAL PROFESSION 2020, *supra* note 2, at *i*.

46. *See, e.g.*, Burd, *supra* note 22.

47. Alfred Z. Reed, *Training for the Public Profession of the Law: Historical Development and Principal Contemporary Problems of Legal Education in the United States with Some Account of Conditions in England and Canada*, BULL. CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING, no. 15, at 3 (1921).

48. *Id.* at 398.

49. *Grutter v. Bollinger*, 539 U.S. 306, 332 (2003).

### 1. The Existing Federal Antitrust Law Exemption

In an important article published three years ago in the *Journal of Legal Education*,<sup>50</sup> Deborah Jones Merritt and Andrew Lloyd Merritt discussed the origins of an existing antitrust law exemption that permits “institutions of higher education . . . to agree . . . to award . . . financial aid only on the basis of demonstrated financial need” provided that all students are admitted “on a need-blind basis.”<sup>51</sup> Institutions that are part of such an agreement may “use common principles of analysis for determining the need of such students for financial aid.”<sup>52</sup> Congress first enacted the exemption at the behest of Ivy League schools in the Higher Education Act in 1992 shortly after the Department of Justice concluded a civil action against them (and MIT) alleging that they had violated the Sherman Act by agreeing to award aid based only on need according to common guidelines.<sup>53</sup>

To date, no group of law schools has used the exemption. The major drawback is that the exemption requires that schools award all financial aid based on need. The Ivy League or T14 law schools are the obvious place to start with the formation of these groups, given their ample resources, market dominance, large overlap in applications, and the fact that some of them already award aid based solely on need.<sup>54</sup> Certainly, admitting students only on a need-blind basis should not be an issue. The outsize part that these schools have played in empowering the U.S. News rankings suggests that their use of the exemption could set an example that other schools would follow.

In determining “common principles of analysis for determining need,” groups could adopt or adapt the criteria now in effect at the few schools that cover need and do not give credential-based aid. The primary challenge is that at the graduate level it is commonly assumed that all students are independent

50. Merritt & Merritt, *Agreements*, *supra* note 44.

51. *Id.* at 19, quoting 15 U.S.C. § 1 note (Application of Antitrust Laws to Award of Need-Based Educational Aid).

52. *Id.*

53. *Id.* at 22–25. Congress put an expiration date on the exemption but has continually renewed it. It is next scheduled to expire in September 2022. 15 U.S.C. § 1 note (Application of Antitrust Laws to Award of Need-Based Educational Aid).

54. As Merritt & Merritt observed:

Need-based aid is so effective at lowering costs, increasing access, enhancing diversity, and developing human capital that law schools should at least explore agreements to abandon all merit-based aid. Those agreements would risk no antitrust liability. Note that the statutory exemption does not require *all* schools to participate in an agreement. A subset of schools could lead the way by agreeing to award financial aid solely on the basis of need. Shifting scholarship practices as part of a group carries less rankings risk than acting unilaterally. Indeed, if schools publicize their shared commitment to lowering costs and addressing need, they might increase the quantity and quality of their applicants.

Merritt & Merritt, *Agreements*, *supra* note 43, at 44.



of their families and therefore would qualify for full need-based funding except in the relatively rare instance of a student who is independently wealthy. At Harvard, a financial aid committee considers dozens of data points related to parental income and assets, decreasing the weight of these factors as the student nears age 29 and then considering only the student's income and assets after age 29.<sup>55</sup> Stanford uses the College Board application (known as the CSS Profile application, which is otherwise used mostly by undergraduate schools) and likewise ends consideration of parental income and assets when a student reaches 29.<sup>56</sup>

## 2. An ABA Accreditation Standard Limiting Credential-Based Scholarships

Merritt and Merritt also made the case that the ABA Section of Legal Education and Admissions to the Bar could enact an accreditation standard limiting merit-based aid without running afoul of federal antitrust law. As they described it,

An accreditation standard could establish a uniform guidepost for all law schools while leaving significant flexibility to each school. A standard requiring that need-based aid at least equal merit-based aid, for example, would not require law schools to award particular levels of aid—or any aid at all. Nor would that type of standard dictate the type of “merit” recognized by law schools, the particular students receiving aid, or the amounts of those awards. Law schools would make all of the latter decisions unilaterally.<sup>57</sup>

They acknowledged, however, that the question is not settled.<sup>58</sup> If the Council of the Section of Legal Education and Admissions to the Bar, the Section's governing body, determines that adopting such a standard is too risky or costly, it could ask Congress to approve an exemption, as Merritt and Merritt suggested.<sup>59</sup> Ideally, the council could enlist the “big ABA” and other higher education associations and accrediting bodies to aggressively lobby Congress for the exemption.

A standard that prohibited credential-based aid likely would not lead schools to convert most of their credential-based scholarships to need-based scholarships. Many schools might simply reduce their credential-based scholarships without replacing them with need-based awards. There would be

55. *Should I Apply for Grant Aid*, HARVARD LAW SCH., <https://hls.harvard.edu/dept/sfs/financial-aid/apply-for-aid/should-i-apply-for-grant-aid/> [https://perma.cc/K5G6-M5W].

56. *J.D. Financial Support*, STANFORD LAW SCH., <https://law.stanford.edu/apply/tuition-financial-aid/jd-financial-support/> [https://perma.cc/8G2N-H43W]. Stanford considers parental income and assets only if the student is dependent.

57. Merritt & Merritt, *Agreements*, *supra* note 44, at 47. Such a standard would probably need to bar consideration of need in admissions decisions so that schools could not limit the number of students with need that they enroll and thereby gain a competitive advantage by reducing their budgets for need-based aid.

58. *Id.*

59. *Id.*

an incentive to award scholarships to students with both strong credentials and need, but that would violate a standard barring credential-based scholarships. With lower scholarship budgets, schools could reduce tuition for all students, but that may be unlikely for the economic and rankings reasons discussed above. While less affluent students would no longer subsidize more affluent students, their costs of attendance would not necessarily be reduced except where a school sought to compete for students by lowering tuition for all.

A standard that limited credential-based aid to one-half or somewhat more of the total amount of scholarships that a school grants would incentivize schools to replace credential-based scholarships with need-based (assuming that the budget for the former was larger than for the latter) or even to increase their scholarship budgets to award more merit-based aid.

An ABA standard could define need as do the law schools that currently award aid based only on need. Another approach would be to prohibit or limit credential-based aid but leave the task of defining need to individual schools. Credential-based aid is any aid that is not need-based—for example, aid that is awarded based on LSAT score, UGPA, civic contributions, leadership or the like. The ABA would monitor compliance with the standard by comparing a school's stated criteria for need with how aid is actually distributed among students with different LSAT scores and UGPAs. Schools could use one of the existing school models mentioned above or use criteria such as receiving Pell Grants as an undergraduate, qualifying for subsidized school lunches in high school, or obtaining a waiver of the fee for taking the LSAT. Along similar lines, eligibility could be based on whether parent has a college degree, an often-used proxy for socioeconomic status.

### 3. Transparency in Law School Scholarship Policies and Practices

Short of a standard limiting or barring credential-based scholarships, more and better disclosure of schools' scholarship policies and practices would ensure that law schools themselves are aware of how their financial aid policies impact different groups of students, and give the council a better understanding of the nature and scope of the problem (which it could also get by collecting data from a representative group of schools as part of its consideration of a new standard or fuller enforcement of Standard 206). If published, the information would become a factor in some applicants' decisions on where to attend.<sup>60</sup> Kyle McEntee and Law School Transparency have drafted a detailed

60. Another approach to the problem that McEntee has suggested is to more fully enforce ABA Standard 206(a). Kyle McEntee, *More Transparency, Please*, 13 FIU L. REV. 465, 480 (2019). The Standard requires schools to “demonstrate by concrete action a commitment to diversity and inclusion by providing *full* opportunities for the study of law and entry into the profession by members of underrepresented groups” (emphasis added). AM. BAR ABA, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2020-2021, *Standard 206(a): Diversity and Inclusion* (2020). Law schools that allocate scholarships in a way that places greater financial burdens on women and minorities manifestly are not “providing *full* opportunities for the study of law and entry to the profession by members of underrepresented groups,” even if

proposal for requiring schools to disclose how they distribute aid across the different demographic groups in the student body.<sup>61</sup>

### *C. Reduce Borrowing by Focusing on Living Expenses*

As discussed in Part V, estimated living expenses are closely correlated with borrowing. Further, different schools located in similar cost-of-living areas sometimes use very different living expense estimates, and some schools with similar costs of attendance have very different average amounts borrowed. These findings suggest that it may be possible to reduce debt by better managing living expense estimates and student borrowing to pay such expenses.

The Higher Education Act defines the costs of attendance (which include tuition, fees, and estimated living expenses) that may be paid with federal financial aid, but it does not specify how institutions are to determine the amounts.<sup>62</sup> Likewise, the ED has issued a directive on allowable costs, but it does not prescribe how those costs are to be estimated.<sup>63</sup> The National Association of Student Financial Aid Administrators (NASFAA) has published detailed guidance on determining cost of attendance (COA) that is used throughout higher education.<sup>64</sup> The guidance explains that

COAs should reflect reasonable and realistic costs that a typical student in a given set of circumstances will incur, within a moderate lifestyle, to attend an institution for a given period of time. Different “typical” COAs can be constructed for different sets of circumstances that occur among the school’s population of students. Properly

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there is no discriminatory purpose. *Id.* A more burdensome, less than equal opportunity is not a full opportunity. Enforcing Standard 206 in this way deserves careful consideration but may be too difficult to implement effectively. It likely raises the same antitrust concerns as a standard limiting credential-based scholarships; but even if it did not, it would create a troubling incentive to limit minority enrollments. Further, while it might not be too hard at most schools to compare the amount of aid given to underrepresented groups of students and white students, it would be very difficult to oversee how the aid is distributed among students from different underrepresented groups. In addition, perhaps schools could game the standard by giving more scholarship dollars to a few minority students with exceptional credentials but no need. There might also be problems with defining which groups are underrepresented; at different schools or different areas of the country, this might differ.

61. See McEntee, *More Transparency, Please*, *supra* note 60, at 484; KYLE MCENTEE, A WAY FORWARD: TRANSPARENCY IN 2018 (2018), [https://data.lawschooltransparency.com/documents/2018\\_Report.pdf](https://data.lawschooltransparency.com/documents/2018_Report.pdf). Merritt & Merritt urged the same idea in broad outline in their JLE article. Merritt & Merritt, *Agreements*, *supra* note 44, at 49-50.
62. Higher Education Act § 472, 20 U.S.C. § 1087ll.
63. See FED. STUDENT AID, U.S. DEP’T EDUC., FEDERAL STUDENT AID HANDBOOK 2019-2020, at 3-42 to 54 (2020), <https://ifap.ed.gov/sites/default/files/attachments/2020-05/1920FSAHbkActiveIndex.pdf>.
64. NAT’L ASS’N STUDENT FIN. AID ADM’RS, MONOGRAPH 24, DEVELOPING THE COST OF ATTENDANCE (2018), [https://www.nasfaa.org/uploads/documents/monograph24\\_7th.pdf](https://www.nasfaa.org/uploads/documents/monograph24_7th.pdf).

constructed budgets help ensure equity in financial aid decisions by allowing FAAs to differentiate students according to their various degrees of financial aid eligibility, within categories of appropriately similar circumstances.

COA construction is a separate function from packaging student financial aid. Inclusion of expenses in a budget does not imply the ability or willingness of the institution to fund the costs using financial assistance. COAs are not intended to be used to attract students by suggesting low costs or to ration financial aid or limit borrowing through understated COAs or to increase financial aid eligibility by inflating costs. An overstated or understated budget inhibits the student's ability to establish and maintain an accurate planning of expenses.<sup>65</sup>

The amount that a student may borrow is determined by two numbers: the COA (consisting of tuition and fees as well as living expenses) and expected family contribution (EFC), which is derived from the student's Free Application for Federal Student Aid (FAFSA). As noted above, for graduate students, the EFC would almost always be zero. The financial aid award is the COA minus EFC and the amount of any scholarship. In the large majority of cases, the student is approved to borrow this standard budget amount, but HEA gives financial aid administrators the authority to use their professional judgment to accommodate exceptional circumstances warranting an increase or decrease in the standard budget. The loan funds are disbursed in installments at the beginning and again later in the enrollment period, and students may draw less than the full approved loan amount.

At independent law schools, it is of course the law school itself that determines the estimated living expenses. At institutions with multiple colleges and programs, the central university commonly determines estimated living expenses for all of its different units, with little if any input from individual units. As noted in the NASFAA guidance, it would be appropriate for a university to construct different COAs for "different sets of circumstances that occur among the school's population of students." Thus, if a law school that is part of a larger university made special housing or other living expense arrangements that lowered their students' estimated living expenses, it could have its own COA.

Two aspects of our data suggest that the ED and/or the ABA, acting pursuant to the accreditor recognition criterion that requires an accreditor to ensure that accredited schools or programs seek to minimize loan defaults,<sup>66</sup> should take a more active approach to reviewing how institutions estimate living

65. *Id.* at 2.

66. 20 U.S.C. § 1099b(a)(5)(J); 34 C.F.R. § 602.16(a)(1)(x) (2020) (stating that accreditation standards must assess an institution's "record of compliance with its program responsibilities . . . based on the most recent loan default rate data . . .").

expenses. First, as discussed above, there are some significant differences in estimated living expenses among schools that are located in areas with similar or identical costs of living. Second, we see that nearly half of all law schools set identical dollar amounts for the estimated costs of living off campus, living at home, and, where applicable, living on campus.<sup>67</sup> Living at home would normally be a lot less expensive than living off or on campus. More than half of law schools listed lower amounts for living at home than living off or on campus (where there is an on-campus living option). Granting students who are living at home the same line of credit as students who are living off campus would seem to facilitate unnecessary borrowing in many cases. The point is that asking schools to explain their estimates where there is reason to question them would provide some level of accountability and encourage careful estimates, which are highly correlated with debt.

ABA Standard 507 requires law schools to provide debt counseling to students at both the inception of their loans and at graduation. The counseling provided at inception is an obvious opportunity to advise students about how to borrow less than the standard budget amount, a topic that is addressed in the next section.

#### *D. Identify Law School Policies, Practices and Cultures that Impact Borrowing Levels*

Our findings that some law schools with apparently comparable costs of attendance report very different average amounts borrowed invite further research into whether and what policies, practices, and cultures at these schools may explain the differences in average amount borrowed. In particular, some schools may do a better job counseling their students about lifestyle choices, living arrangements, and other strategies that would reduce what they need to borrow.

HEA and the corresponding ED regulations only obliquely touch on the subject of debt counseling. To be recognized as an accreditor by the ED, an accreditor must have standards that assess an accredited school's "record of compliance with its program responsibilities . . . based on the most recent loan default rate data . . ." <sup>68</sup> ABA Standard 507 implements this mandate by requiring law schools to "demonstrate reasonable steps to minimize student loan defaults, including provision of debt counseling at the inception

67. Some 157 schools list an estimated cost for living on campus, which we take to mean that they have such an option. Of these schools, seventy-one list the same estimated costs for living on campus, living off campus, and living at home; and another three schools list the same amounts for living off campus and living at home. Forty-four schools do not list an estimated cost of living on campus. Of these, thirteen list the same amount for living off campus and living at home, and eleven do not list any amount for living at home, which we take to mean that the amount is the same as for living off campus.  $71+3+13+11=98$  of 201 schools. Forty-four schools listed different amounts for living at home, living off campus and living on campus (where applicable). *ABA Required Disclosures*, STANDARD 509 DISCLOSURE, *supra* note 20.

68. 20 U.S.C. § 1099b(a)(5)(J); 34 C.F.R. § 602.16(a)(1)(x) (2020).

of a student's loan obligations and again before graduation."<sup>69</sup> Certainly, consistent with the open-ended ED regulation, the ABA could go further in encouraging schools to reduce student debt.

The ABA could play a role in developing and promoting best practices in student debt counseling by reframing how it applies Standard 507. Interpretations 507-1 and 507-2 specifically refer to student loan default rates as relevant to assessing compliance with the standard.<sup>70</sup> Given the income-based repayment options that graduates have today, default rates are minimal and essentially meaningless. Instead, the ABA could assess compliance with the standard by asking schools to report average amount borrowed (by graduates and by class) and the number of students who borrow the full standard estimated living expense amount as well as data on how scholarships are allocated among the different demographic groups in the student body, as discussed above. Further, the ABA could ask schools during their sabbatical reviews for a description of the debt counseling that they provide and instruct site visit teams to interview students and financial aid administrators on its effectiveness. By comparing these data with data from previous years and from other schools, the ABA may be able to identify policies and practices, including counseling protocols that impact borrowing levels. Where data indicate that improvements might be possible, the ABA could ask the schools to investigate and make changes based on the investigation.

### **Appendix I - Additional Statistical Analyses**

In addition to the key findings discussed in the main paper, we also investigated numerous other correlations concerning pricing—costs of attendance and scholarships/tuition discounting. They are reported here.

#### *A. Percentage of Student Body Receiving Scholarships and Entering-Class Credentials*

At public schools, the percentage of the student body receiving scholarships increased as a school's UGPA and LSAT score percentiles increased. As shown in Table 1 below, there are almost uniformly moderate correlations between the percentage of the student body receiving scholarships and the 25<sup>th</sup>, 50<sup>th</sup>, and 75<sup>th</sup> percentile UGPAs and LSAT scores at public law schools. There are no such correlations at private law schools, and the correlations are quite small and mostly not statistically significant across all law schools.

Thus, at public law schools the percentage of students receiving scholarships tends to increase as entering-class credentials increase (and the percentage of students receiving aid tends to decrease as entering-class credentials go

69. ABA, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2020-2021, *Standard 507: Student Loan Programs* (2020).

70. *Id.*

down), while private schools tend to grant scholarships to students in similar proportions regardless of where the school ranks in terms of entering-class credentials. Perhaps the tuition advantage held by many public schools forces private schools to compete more aggressively for students with scholarship offers. The discount rate at private schools is somewhat higher than it is at public law schools,  $r(64) = .206$ ,  $p = .103$ . But the fact that public schools tend to give more scholarships when they have higher LSAT and UGPA percentiles perhaps suggests that they are particularly regressive in terms of access, that they more often play the rankings game or play it especially vigorously. On the other hand, the percentage of students receiving scholarships does not say anything about how much the scholarships are.

**Table 1. Correlations Between Percentage of Student Body Receiving Scholarships and Entering-Class Credentials**

Entering-Class Credentials	Percentage of Students Receiving Scholarships at All Schools	Percentage of Students Receiving Scholarships at Public Schools
75 <sup>th</sup> percentile UGPA	$r(188) = .164$ , $p = .025$	$r(79) = .412$ , $p < .001$
50 <sup>th</sup> percentile UGPA	$r(188) = .157$ , $p = .031$	$r(79) = .409$ , $p < .001$
25 <sup>th</sup> percentile UGPA	$r(188) = .117$ , $p = .117$	$r(79) = .367$ , $p = .001$
75 <sup>th</sup> percentile LSAT	$r(188) = .108$ , $p = .139$	$r(79) = .418$ , $p < .001$
50 <sup>th</sup> percentile LSAT	$r(188) = .131$ , $p = .073$	$r(79) = .458$ , $p < .001$
25 <sup>th</sup> percentile LSAT	$r(188) = .110$ , $p = .134$	$r(79) = .452$ , $p < .001$

We also find that schools that did not use conditional scholarships tended to award scholarships to a greater proportion of their student bodies than schools that use conditional scholarships. There is a small negative correlation between the percentage of students who received a scholarship and whether the law school used conditional scholarships,  $r(188) = -.207$ ,  $p = .004$ . This makes sense given that the budgetary purpose of conditional scholarships is to be able to use the same dollars to recruit students in successive entering classes. (The correlations were comparable when broken down by private schools but were not statistically significant for public schools.)

#### *B. Pricing and the Percentage of the Class Who Borrowed*

While higher costs are associated with increased borrowing, they are also associated with lower percentages of graduates who borrowed and lower

percentages of the student body who received a scholarship. At first blush, these findings seem counterintuitive; it might be expected that the percentage of graduates in a class who borrowed or received a scholarship would increase as the cost of attendance increased. At the margin, higher cost would lead to more students needing to borrow to attend the school. Similarly, higher cost might require a school to offer scholarships more broadly across the entering class to effectively compete for students.

To the contrary, however, as reported in Table 2 below, there are small and moderate negative correlations between the percentage of graduates who borrowed some amount to attend law school and stated tuition (sticker price), stated tuition plus costs of living on campus, and stated tuition plus costs of living off campus across all law schools and at private law schools, respectively, although not at public law schools. As these amounts increased, the percentage of the graduating class that borrowed tended to go down. There is also a moderate negative correlation between percentage of graduates who borrowed and stated tuition plus at-home living expense at private law schools, but not at public schools or across all law schools.

Further, there are moderate and small negative correlations between the percentage of graduates who borrowed and net tuition plus costs of living on campus and net tuition plus costs of living off campus, respectively, at private law schools, although not at public schools or across all law schools.<sup>71</sup>

Although counterintuitive at first blush, these negative correlations between cost of attendance and the percentage of graduates who borrowed suggest that cost is indeed a factor in an applicant’s decision whether to attend a school. As a law school’s cost of attendance increases, a greater proportion of applicants who cannot afford to attend (a private school) without borrowing choose to enroll elsewhere (more likely a public law school) or not to go to law school, while proportionately more students who can afford to attend do enroll.

**Table 2. Correlations Between Percentage of Graduates Who Borrowed and Costs of Attendance**

	All Schools	Private Schools	Public Schools
<b>Tuition/sticker price</b>	$r(186) = -.174, p = .017^{72}$	$r(106) = -.489, p < .001$	No significant correlation

- 71. As also reported in the bottom row of Table 2, there is a small negative correlation between percentage of graduates who borrowed and the estimated cost of living on campus standing alone at private schools, and a nearly statistically significant small negative correlation across all law schools and at public schools (and no significant relationship with estimated on-campus or living-at-home living expenses at private or public law schools or across all schools).
- 72. There is also a slightly larger but still small negative correlation between percentage of graduates who borrowed and stated tuition/sticker price where the out-of-state nonresident



Tuition plus cost of living on campus	$r(159) = -.170, p = .032$	$r(85) = -.496, p < .001$	No significant correlation
Tuition plus cost of living off campus	$r(186) = -.167, p = .023$	$r(106) = -.443, p < .001$	No significant correlation
Tuition plus cost of living at home	No significant correlation	$r(98) = -.388, p < .001$	No significant correlation
<b>Net Tuition</b>			
Net tuition plus cost of living on campus	No significant correlation	$r(79) = -.324, p = .004$	No significant correlation
Net tuition plus cost of living off campus	No significant correlation	$r(106) = -.244, p = .012$	No significant correlation
Net tuition plus cost of living on at home	No significant correlation	No significant correlation	No significant correlation
Estimated cost of living on campus	$r(153) = -.157, p = .053$	$r(80) = -.257, p = .021$	$r(72) = -.229, p = 0.53$

As noted above,<sup>73</sup> there is no correlation between average amount borrowed and the percentage of a school's graduates who borrowed some amount to attend law school.

### *C. Pricing and Percentage of Students Receiving Scholarships*

Further, as net tuition plus estimated costs of living on campus, off campus and at home increased, the percentage of the student body receiving aid decreased.<sup>74</sup> Stated conversely, as net tuition plus living expenses decreased, the percentage of the student body receiving aid increased. As reported in Table 3, the data reveal moderate and strong negative correlations between net

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tuition rate is used instead of the in-state tuition rate.  $r(186) = -.281, p < .001$ .

73. *Supra* note 16.

74. There is also a small statistically significant negative correlation between the percentage of full-time students who received a grant or scholarship and the stated tuition (with out-of-state tuition rate used for public schools).

tuition plus living expenses and the proportion of the student body receiving scholarships. These negative correlations were somewhat stronger among private schools, and a bit weaker (but still moderate) at public schools (again likely reflecting the effect of using in-state tuition at public schools in the calculations although out-of-state students are typically charged a higher rate). In a similar vein, there are moderate negative correlations between percentage of students receiving scholarships and the estimated costs of living on and off campus at private schools (but not at public schools; indeed, there is a small positive correlation between the percentage of students receiving scholarships and estimated cost of living on campus at public schools).

As with the negative correlations between cost of attendance and the percentage of graduates who borrowed discussed immediately above, these correlations suggest that cost impacts applicants' decisions whether to attend a law school, and that as a law school's cost of attendance increases, more applicants who cannot afford to attend without borrowing choose to enroll elsewhere or not to go to law school, while proportionately more students who can afford to attend do enroll. It may also be that schools with higher costs of attendance are able to spread their scholarship dollars only among a smaller proportion of students. These intuitions are seemingly confirmed by the small positive correlation between a school's use of conditional scholarships and the percentage of graduates who borrowed (discussed above). In addition, these data may confirm that at higher-cost law schools, which tend to be those at the high and low ends of the rankings,<sup>75</sup> there are fewer tuition discounts and more students with below-median credentials who pay full freight, whereas schools in the middle of the rankings tend to charge less and grant more tuition discounts.<sup>76</sup>

Across all law schools and at public law schools, the percentage of the student body receiving scholarships tended to increase as sticker price increased. There is a small positive correlation between sticker price and percentage of the students receiving scholarships across all law schools, and a medium correlation at public schools. There is no such statistically significant correlation at private schools when considered separately. (To the contrary, as noted in the previous paragraph, there are moderate negative correlations between proportion of the class receiving scholarships and the estimated costs of living on and off campus.) These data perhaps indicate that schools with higher sticker prices compete by offering more scholarships, which are paid for with the higher tuition.

There are no significant correlations between the percentage of students receiving scholarships and estimated costs of living across all law schools, or estimated cost of living at home at private, public, or all law schools.

75. See Organ, *supra* note 1, at 57.

76. *Id.* at 62-64.

**Table 3. Correlations Between Cost of Attendance and Percentage of Student Body Receiving Scholarships**

Costs of Attendance	Percentage of Students Receiving Aid at All Schools	Percentage of Students Receiving Aid at Private Schools	Percentage of Students Receiving Aid at Public Schools
Tuition/sticker price	$r(188) = .177, p = .015$	No significant correlation	$r(79) = .436, p < .001$
Estimated cost of living on campus	No significant correlation	$r(81) = -.329, p = .003$	$r(72) = .256, p = .030$
Estimated cost of living off campus	No significant correlation	$r(108) = -.389, p < .001$	No significant correlation
Estimated cost of living at home	No significant correlation	No significant correlation	No significant correlation
Net tuition	$r(187) = -.467, p = .015$	$r(108) = -.533, p < .001$	$r(78) = -.403, p < .001$
Net tuition plus cost of living on campus	$r(152) = -.404, p < .001$	$r(80) = -.530, p < .001$	$r(71) = -.330, p = .005$
Net tuition plus cost of living off campus	$r(188) = -.443, p < .001$	$r(108) = -.568, p < .001$	$r(79) = -.343, p = .002$
Net tuition plus cost of living at home	$r(188) = -.393, p < .001$	$r(108) = -.447, p < .001$	$r(79) = -.375, p = .001$

*D. Average Amount Borrowed and Conditional Scholarships*

Graduates of schools that used conditional scholarships tended to incur more debt than graduates of schools that guarantee renewal of a scholarship award for the term of a student's enrollment ( $r(187) = .182, p = .013$ ). The mean amount borrowed by 2018 graduates from schools that used conditional scholarships was \$115,587, compared with \$104,079 borrowed by students at schools that do not use conditional scholarships. The mean difference was \$11,508. This difference may be magnified by a small but not statistically

significant increase in average amount borrowed as the percentage of students whose conditional scholarships are reduced or eliminated increases.

Further, a higher percentage of graduates of schools that used conditional scholarships borrowed to attend law school than schools that did not use conditional scholarships. There is a small correlation between use of conditional scholarships and the percentage of graduates who borrowed ( $r(186) = .199, p = .007$ ). This stands to reason, in that students who attend a school at least in part because they will receive a scholarship would be more likely to borrow when the scholarship is reduced or not renewed.

Conditional scholarships are part of the picture concerning the inequitable allocation of scholarships. They are more often used at less selective schools; there are moderate negative correlations between median LSAT score (and UGPA) and whether a school uses conditional scholarships ( $r(188) = -.338, p < .001$ ). Further, they tend to be used at schools with larger percentages of minority students ( $r(188) = .149, p = .041$ ).

*E. Average Amount Borrowed and Percentage of Part-Time Students,  
and On-Campus Living Option*

As the percentage of part-time students in the student body increased, the average amount borrowed by graduates also increased. As reported in Table 4 below, there is a small positive correlation between average amount borrowed and the percentage of part-time students at a school. This may perhaps be explained by the fact that part-time students take longer to graduate, so that those who are borrowing to attend are borrowing living expenses for an extra year or two compared with full-time students. That said, the correlation is quite small, and part-time students typically receive little if any scholarship aid.<sup>77</sup>

Also, the percentage of minority graduates at a law school increased as the percentage of part-time students increased. As further reported in Table 4, there is a small correlation between the percentage of part-time students and the percentage of minority graduates, and a corresponding small negative correlation between the percentage of part-time students and the percentage of white graduates.

77. The explanation does not appear to be that a smaller percentage of part-time students borrow to attend law school; there is a small positive correlation between the percentage of part-time students at the school and the percentage of the graduating class that borrowed some amount to attend law school ( $r(183) = .241, p = .001$ ).

**Table 4. Correlations Between Percentage of Part-Time Students, Average Amount Borrowed, and Percentage of Minority Students**

	Average Amount Borrowed	Percentage of Minority Graduates	Percentage of White Graduates
Percentage of Part-Time Students	$r(198) = .156, p = .028$	$r(200) = .290, p < .001$	$r(200) = -.248, p < .001$

As the percentage of part-time students at a school increased, the percentage of graduates who obtained FT, LT, BPR jobs decreased. There is a moderate negative correlation between the percentage of part-time students in the study body and the percentage of graduates who obtained FT, LT, BPR jobs within ten months after graduation. There is also a moderate negative correlation between the percentage of part-time students in the student body and the percentage of the 2018 graduating class that obtained FT, LT, BPR and JDA jobs combined. At the same time, there is a small/almost moderate positive correlation between the percentage of part-time students in the study body and the percentage of 2018 graduates who obtained FT, LT, JDA jobs. These findings suggest that part-time students are less likely to obtain BPR jobs, and more likely to take JDA jobs, than full-time students.

There is no statistically significant association between average amount borrowed by a law school's 2018 graduates and the law school's offer of an on-campus living option. This may suggest that schools with an on-campus living option generally do not offer it as a way to help reduce the costs of attendance.

#### *F. Average Amount Borrowed and Employment Outcomes*

Average amount borrowed increased slightly as the percentage of the graduating class that obtained full-time, long-term law jobs decreased. There is a small negative correlation between average amount borrowed and the percentage of the graduating class that had full-time, long-term, bar-passage-required and JDA jobs at ten months after graduation ( $r(187) = -.164, p = .025$ ). This finding appears to confirm what Organ and Taylor have found, that graduates of schools with higher debt levels tend to obtain worse employment outcomes than graduates of schools with lower debt levels.<sup>78</sup>

#### *G. Multiple Regression*

A multiple regression was run to predict average amount borrowed from school type (public vs. private/for profit), percentage of 2018 graduating class that borrowed some amount to attend law school, the use of guaranteed

78. See Taylor, *Marginalization*, *supra* note 2, at 510; Organ, *supra* note 1, at 66-68.

tuition, estimated cost of living off campus while in school, net tuition plus estimated cost of living off campus, total number of students enrolled, percentage of part-time students, percentage of total students receiving grants or scholarships, the use of conditional scholarships, percentage of students whose scholarships were reduced or eliminated, percentage of total minority students, percentage of total white students, percentage of women, and median LSAT score. The multiple regression model statistically significantly predicted average amount borrowed,  $F(14, 49) = 10.479, p < .001, \text{adj. } R^2 = .678$ . Two variables (school type and net tuition plus off-campus living expenses) added statistically significantly to the prediction,  $p < .001$ . Regression coefficients and standard errors are reported in Table 5 below.<sup>79</sup>

**Table 5. Summary of Multiple Regression Analysis**

Variable	<i>B</i>	SE <sub><i>B</i></sub>	$\beta$
Intercept	-19377.485	134251.562	
Public/Private	36239.722	6479.057	0.565 *
Percentage of Class That Borrowed	9451.544	41266.814	0.028
Tuition Guarantee (Y/N)	-303.729	11208.677	-0.002
Est. Off-Campus Living Expenses	0.142	0.888	0.022
Net Tuition + Off-Campus Living Exp.	1.904	0.473	0.506 *
Total Students in Student Body	-14.585	13.452	-0.115
Percentage Part-T Students	167.862	238.625	0.069
Percentage Receiving Scholarships	58.375	205.876	0.030

79. There was linearity as assessed by partial regression plots and P-P plot. There was independence of residuals, as assessed by a Durbin-Watson statistic of 1.877. There was homoscedasticity, as assessed by visual inspection of a plot of studentized residuals versus unstandardized predicted values. There was no evidence of multicollinearity, as assessed by tolerance values greater than 0.1. There was one studentized deleted residuals greater than  $\pm 3$  standard deviations, two leverage values greater than 0.5, and no values for Cook's distance above 1. After review of the unusual points, it was decided to keep these values in the model as issues were not noted across all methods for unusual point inspection. The assumption of normality was met, as assessed by plotting studentized residuals against the unstandardized predicted values.

School Uses Cond'l Scholarships (Y/N)	-938.324	22487.210	-0.004
Percentage Reduced or Eliminated	3137.133	18528.838	0.014
Percentage Minority Students	11160.565	45257.801	0.054
Percentage White	1392.579	42048.996	0.007
Percentage Women	22182.338	68318.546	0.036
Median LSAT Score	-2.635	795.259	0.000

\*  $p < .001$ ;  $B$  = unstandardized regression coefficient;  $SE_B$  = standard error of the coefficient;  $\beta$  = standardized coefficient