

**ADDENDUM TO
MONTEREY COLLEGE OF LAW AND EMPIRE COLLEGE SCHOOL OF LAW
MAJOR CHANGE REQUEST**

Originally filed November 15, 2021.

Addendum filed March 24, 2022.

The following Addendum to the Monterey College of Law - Empire College School of Law Major Change Proposal (See Attachment A.) filed November 15, 2021 provides specific responses to the March 15, 2022 Committee of Bar Examiners Staff Memo. This addendum provides the specific text of the staff memo, followed in each section by additional information to address areas of concern raised in the staff memo. ***Please note that the staff memo did not raise any issues related to the proposal's compliance with the Accredited Rules and Guidelines, financial projections, marketing analysis, administrative resources, faculty resources, academic support services, or academic curriculum as addressed in the major change request.*** However, due to possible miscommunication or lack of clarity on several key issues raised by staff in the areas of ACICS accreditation and consumer protection, the law schools are providing more detailed responses. These responses and supplemental information are provided below and in the attachments to the addendum.

INTRODUCTION

Monterey College of Law ("MCL") and Empire College School of Law ("ECSOL") are long-standing California Accredited Law School ("CALS") programs that have much in common. For almost 50 years, both law schools have been the only graduate legal education programs serving their respective rural California coastal regions. They are respected evening programs that have built strong regional reputations based on using local lawyers and judges as faculty with graduates who serve their region as judges, prosecutors, public defenders, public attorneys, private lawyers, and community leaders. The schools also have similar curriculum, admission standards, student-faculty ratios, tuition rates, and bar pass rates. Perhaps most importantly, the schools share the mission of opportunity law schools that reflect the diversity and values of the local communities that they serve. Finally, both programs have been in compliance with the mandatory 40% five-year cumulative minimum bar pass rate since its inception.

Empire College, Inc. ("Empire College") owns ECSOL and is accredited by ACICS and Title IV eligible for its existing Master of Legal Studies ("MLS") program. The Committee of Bar Examiners ("Committee") acquiesced in ECSOL's 2014 major change request to offer the MLS degree as part of the MLS/JD concurrent law degree program and has reviewed and approved the program as part of ECSOL's annual reporting and subsequent accreditation site visit. Given the threat of termination of ACICS recognition by the U.S. Department of Education, Empire College seeks a means to continue the ECSOL legacy through acquisition by MCL of rights to the ESCOL name and certain assets related to the ESCOL program. In turn, adding an Empire College

of Law (“ECL”) branch campus within the MCL family of schools is a particularly good fit from an operational, as well as community standpoint, because MCL has experience in successfully managing and operating branch campus locations that maintain the identity and character of each of its local communities. As a 501(c)3 nonprofit, MCL already supports three successful regional campus locations -- Monterey College of Law, San Luis Obispo College of Law, and Kern County College of Law. MCL has also developed a successful hybrid online J.D. program that provides the resources to expand the ECSOL academic service area more broadly throughout Northern California. Finally, MCL has a comprehensive academic support and bar studies program that would enhance the current ECSOL academic program.

LAW SCHOOLS’ RESPONSE TO MARCH 15, 2022 CBE STAFF MEMO

MCL proposes to open a branch campus to be called Empire College of Law (ECL) starting this summer. The branch campus would be located in the facilities currently used by ECSOL.

(CORRECT. See Attachment A. Major Change p. 1. MCL would lease back space to Empire College, which operates ECSOL, as needed for ECSOL to complete a teach-out of its MLS law program.)

MCL will purchase ECSOL’s facilities and intellectual property and execute new at-will employment agreements with ECSOL’s staff, but have them teach MCL’s curriculum used across all its branch campuses. *(CLARIFICATION. ECSOL law faculty who teach the courses in the proposed MLS teach-out program will remain Empire College employees as required by ACICS standards and be provided with supplementary faculty support by MCL through a Management Services Agreement (“MSA”). Upper division law faculty who do not teach in the MLS law program and who are therefore not critical to the MLS program teach out will be offered new MCL faculty contracts. See Attachment F. Draft Asset Purchase Agreement, Attachment A. Major Change p. 2, and Attachment G. Draft Management Services Agreement.)*

At the same time, Empire College would continue to operate on a limited basis, teaching the first two years of the JD program, which are also the courses in the MLS program. This would continue for a limited period, expected to be about 18 months, until Empire College is no longer eligible to participate in Title IV federal loan programs. *(CLARIFICATION. During the MLS teach-out period, Empire College would remain in control of the MLS program and retain its separate ACICS accreditation and Title IV participation subject to ACICS and DOE regulations. See Attachment A. Major Change p. 8, 14, Attachment E. Letter from ACICS to Natalie Leonard, and Attachment B. ACICS guidelines regarding programing provided by non-Title IV institutions.)*

If a campus is closing, ACICS must be assured that provision is made for presently enrolled students to complete the program of instruction for which they have enrolled, either at that institution or at another acceptable institution.

2-2-300 – CLOSING OF A CAMPUS

In all instances of termination of activity at either main or nonmain campuses, ACICS must be assured that provision is made for presently enrolled students to complete the

program of instruction for which they have enrolled, either at that institution or at another acceptable institution. In addition, ACICS must be assured that student academic transcripts are safely stored and protected and that the transcripts will be accessible to students and alumni indefinitely. ACICS and the appropriate regulatory agency must be notified of the arrangements made in this regard.
(ACICS Accreditation Criteria, Revised February 2022)

The Empire College MLS program is accredited by the Accrediting Council of Independent Colleges and Schools (ACICS), an accreditor authorized to accredit only through the master's degree level. Due to this [ACICS] accreditation, students in the MLS/JD joint degree program at ECSOL can participate in Title IV federal student loan programs during the first two years of study. Students in the joint MLS/JD program attend one set of classes, earning credit toward both the two-year MLS and the first two years of the JD program at the same time.

(CLARIFICATION. Student enrollment in Empire College's ECSOL joint degree program provides eligibility for Title IV federal student grants and loans. The concurrent MLS/JD program has also been approved for the past eight (8) years by CBE as part of the CBE accreditation approval/acquiescence process. See Attachment E. ACICS Letter to Natalie Leonard and Attachment A. Major Change pages 4, 8.)

The law school's Master of Legal Studies (MLS) degree, offered concurrently with the J.D. degree, qualifies under the college's ACICS accreditation for Title IV federal student loans. However, since ACICS does not accredit professional doctoral programs, Title IV federal loans are not available for Empire law school courses beyond the two-year MLS degree. (See Major Change p. 4)

Empire will retain its ACICS and Committee accreditation during the period that the approximately 25-30 law students who are currently enrolled in Empire's MLS/JD concurrent degree program and are relying on Title IV federal student loans for completion of the two-year MLS portion of Empire's concurrent MLS/JD program. (See Major Change p. 8)

During the transition period described in the proposal, students enrolled in the ECL branch JD program and students enrolled in the ECSOL MLS/JD program will attend classes together in the same classroom with the same instructors, but ECL branch students will only receive credit for the JD program while ECSOL MLS/JD students will receive credit toward two degrees.

(CORRECTION. ECL students will also be enrolled in MCL's MLS/JD concurrent degree program and be receiving the same credit as ECSOL MLS/JD concurrent degree students but will not be eligible for Title IV funding. During the teach-out of the MLS program, ECSOL 1L and 2L students will remain in their own separate cohort with ECSOL law faculty. ECSOL students may be eligible to participate in ECL elective courses being provided by a non-Title IV institution under contract between Empire College and MCL if approved by ACICS. See Guideline 2-2-505. ACICS guidelines provide the following two options regarding curriculum provided by non-Title IV institutions. See Attachment B. ACICS guidelines regarding programing provided by non-Title IV institutions.)

An ACICS institution may enter into a contract with a non-Title IV institution for delivery of up to 25 percent of a program of study by providing a copy of the contract to ACICS.

2-2-505. Contracts with Unaccredited Institutions or Entities. An institution may enter into a contract with an unaccredited institution or entity for the delivery of up to 25 percent of a program of study. The institution must submit the contract and provide the following information to ACICS for review and approval prior to the contract's initiation:

- (a) a full catalog description of the program and the services to be provided by the contractor;
- (b) a systematic plan for administrative and student evaluations of instructors provided by the contractor;
- (c) evidence of the qualifications of faculty to teach the contracted courses;
- (d) a description of the instructional facilities provided by the contractor; and
- (e) plans for the completion of the program should the contractor fail to provide contracted services.

(ACICS Accreditation Criteria, Revised February 2022)

ECSOL would continue to operate and admit new students into the MLS/JD program so long as it qualifies to participate in Title IV student loan programs. *(CORRECTION. Empire College will not be admitting new 1L students into the ECSOL MLS law program upon the opening of the ECL branch campus and start of the ACICS approved teach-out period. ECSOL will only continue to provide educational services to **current MLS law students** through their completion of the MLS degree portion of their concurrent MLS/JD program. See Attachment A. Major p. 8, 14.)*

*Empire will retain its ACICS and Committee accreditation during the period that the approximately 25-30 law students who are **currently enrolled** in Empire's MLS/JD concurrent degree program and are relying on Title IV federal student loans for completion of the two-year MLS portion of Empire's concurrent MLS/JD program.*

*Subject to the DOE requirements that Empire maintain a maximum 90/10 ratio of students participating in the federal loan program, Empire may be required to **continue enrollment** of a percentage of non-Title IV loan students during the anticipated 18-month transitional period. (See Major Change p. 8)*

*During the period that Empire **concurrently enrolled law students** are completing the MLS portion of the program, Empire will continue to operate under the accreditation requirements of both the Committee and ACICS. The law school is currently in compliance with both accreditors and intends to continue fully compliant operations. Empire will also remain in compliance with the DOE Title IV loan requirements, retain responsibility for filing all required accreditation and regulatory reports, maintain student and business records, and provide financial record keeping and reporting, including audits and tax reporting. (See Major Change p. 14)*

Because it will have sold its assets to MCL and the teachers would be employed by MCL, MCL would operate ECSOL under a management service agreement. *(CLARIFICATION. Law faculty who teach the courses in the proposed MLS teach-out program will remain Empire College faculty with faculty support provided by MCL through a Management Services Agreement (MSA). Upper division law faculty who do not teach in the MLS program will be offered new MCL faculty contracts. See Attachment F. Draft Asset Purchase Agreement, Attachment A. Major Change p. 2, Attachment G. Draft Management Services Agreement, and Attachment B. ACICS guidelines regarding programing provided by non-Title IV institutions.)*

2-2-505. Contracts with Unaccredited Institutions or Entities. *An institution may enter into a contract with an unaccredited institution or entity for the delivery of up to 25 percent of a program of study. The institution must submit the contract and provide the following information to ACICS for review and approval prior to the contract's initiation:*

- (a) a full catalog description of the program and the services to be provided by the contractor;*
- (b) a systematic plan for administrative and student evaluations of instructors provided by the contractor;*
- (c) evidence of the qualifications of faculty to teach the contracted courses;*
- (d) a description of the instructional facilities provided by the contractor; and*
- (e) plans for the completion of the program should the contractor fail to provide contracted services.*

(ACICS Accreditation Criteria, Revised February 2022)

If it is determined that more than 25 percent of the program needs to be delivered by MCL, ACICS provides that option, subject to pre-approval of a substantive change filing by the institution.

2-2-101. List of Substantive Changes. *The following institutional changes will be considered substantive and require Council approval before they can be included in the institution's scope of accreditation:*

- (j) the entering into a contract under which an institution or organization not certified to participate in Title IV, HEA programs offers **more than 25 percent** of one or more of the accredited institution's educational programs (see Section 2-2-505);*

(ACICS Accreditation Criteria, Revised February 2022)

ECSOL's ability to participate in Title IV federal financial aid programs is in jeopardy because its accreditor, ACICS, has lost its recognition from the US Department of Education. As a result, if ACICS is not successful in its pending appeal, ECSOL will not be able to continue to participate in Title IV federal loan programs. *(CLARIFICATION. Empire College, as the ACICS accredited institution, provides eligibility for its ECSOL MLS students to participate in Title IV federal financial aid programs. Empire College will be unable to continue in the Title IV federal loan program if ACICS's appeal to the US Secretary of Education is denied and AFTER a designated period of time has elapsed, anticipated to be 18 months after ACICS notifies institutions of loss*

of DOE recognition. However, no determination has been made as of this time. See link below to ACICS statement and Attachment E. Letter from ACICS to Natalie Leonard.)

<https://www.acics.org/news/acics-files-appeal-to-the-secretary-of-education-of-the-senior-department-official-decision-to-terminate-agency-recognition>

Once Empire College students are ineligible for Title IV federal loans, Empire College and its operation of Empire College School of Law will close permanently. *(CORRECT. See Attachment A. Major Change p. 2, 9.)*

Upon successful completion of the MLS portion of their concurrent MLS/JD degree program, these students will transfer to the ECL branch campus and Empire will discontinue offering a law school program. (See Major Change p. 2)

Empire will discontinue its law school program at the point that the law students who are currently enrolled in Empire's MLS/JD concurrent degree program have exhausted their approved federal loan proceeds and completed their MLS degree. (See Major Change p. 9)

Students attending ECSOL at that time – i.e., those in the first two years of the joint MLS/JD program – will need to transfer to another law school to complete their legal education. *(CLARIFICATION. It is the law schools' intent that all ECSOL MLS/JD concurrent degree program students will be able to fully complete the Title IV eligible MLS degree portion of their concurrent MLS/JD degree program during the teach-out period and receive their MLS degree. Upon completion of the MLS degree portion of the MLS/JD program, students will be eligible to transfer to other law schools to complete their JD degree program, including the ECL branch campus MLS/JD program, the MCL hybrid online MLS/JD program, or any other law school that accepts JD transfer students in good academic standing. See Attachment A. Major Change p. 8.)*

To facilitate the transition for Empire students who are currently relying on Title IV guaranteed federal loans, Empire will continue their first- and second-year concurrent MLS/JD law school classes for approximately 18-months to permit these law students to complete the MLS degree portion of the Empire concurrent MLS/JD program. See Major Change p. 8)

Students at ECSOL are not guaranteed admission to ECL, particularly if they are on probation, as discussed below. *(CORRECTION. All ECSOL students in good academic standing or in compliance with ECSOL academic probation will be eligible to transfer to ECL at any point in time. In accordance with the Accredited Law School Rules and Guidelines, students who are not in good academic standing will not be eligible to transfer to ECL unless they qualify under the "fresh start" guidelines. See clarification to Attachment A. p. 9. below.)*

(c) *[Empire College will] enter into an [articulation] agreement with [MCL] that allows current ECSOL students who:*

(i) are in good academic standing to transfer to the ECL branch campus J.D. program without loss of academic credit and to retain their cumulative GPA earned at ECSOL;

(ii) complete the MLS program in good academic standing to transfer to the ECL branch campus J.D. program without loss of academic credit and to retain their cumulative GPA earned at ECSOL; and

(iii) are not initially in good academic standing, but who are proceeding under ECSOL's probationary conditions, and who qualify under MCL and State Bar accreditation rules and guidelines for one year of academic probation, to transfer to MCL under the same conditions as they were under at ECSOL and be allowed to finish their probationary period as though still enrolled at ECSOL. The probationary transfer must require that the student achieve the required minimum academic standards within one year or be academically dismissed pursuant to MCL academic policies and State Bar accreditation rules and guidelines.

APPLICABLE AUTHORITY

This request was submitted on November 15, 2021 and filed under the prior accredited law school rules and guidelines in effect until December 31, 2021. Unless otherwise stated, rules and guidelines referenced in this memorandum are those prior accredited law school rules and guidelines.

When considering a major change, a law school must seek prior approval under accredited law school rules 4.164 and 4.165 as follows: “[a]n accredited law school contemplating a major change must notify the Committee . . . [and t]he notice must explain in detail any effect the change might have on the law school’s compliance with the rules.” (Rule 4.164).

The joint proposal includes opening a branch campus of MCL under Rule 4.164, as defined by Rule 4.165(B), and detailed in Rule 4.160(H) and Guidelines 15.1 – 15.4 (Division 15. Opening and Operating a Branch or Satellite Campus) of the Guidelines for Accredited Law Schools Rules (guidelines).

The guideline requirements applicable to branch campuses are summarized below.

Guideline 15.2(A) describes the elements of the branch campus that must be established in advance, including both the rationale for opening the campus and logistics of doing so. Specifically, “[n]o less than 180 days before the proposed first day of classes of a branch or satellite campus, the law school must provide the Committee with notice of its intention to open a new branch or satellite campus,” including the type, location, name, and proposed opening date of the new campus. It must also provide the Committee a “comprehensive explanation” for its decision to open the new campus, that includes: “a) a narrative discussing any research or planning regarding the new campus; b) projected financial impact of the new campus on the law

school; and c) proposed resources to be allocated to the new campus.” The school must ensure that each new branch campus operates with a qualified administrator who, under Guideline 4.1(B), must be a graduate of either an ABA-approved or Committee-accredited law school. Under this Guideline, if a branch opens with 30 or fewer students and offers only first or second year classes, it may operate with only a part-time administrator.

Finally, the Dean must certify that “upon its opening,” the new campus will be in substantial compliance with all relevant academic and operational requirements” as set out in the rules and guidelines. At the same time, MCL overall must maintain compliance with the governing rules.

Guideline 15.2(B) requires the Committee, “[n]o less than 120 days before the proposed first day of classes at the branch or satellite campus, [to] approve or deny the law school’s proposal.”

After the Committee’s initial approval, the law school must take additional steps as provided by Guideline 15.2(C), “within 90 days of the first day of classes of the branch or satellite campus,” to submit a report “certified by the Dean,” confirming that the new campus is in “substantial compliance.”

Under Guideline 15.3, an approved branch campus is considered “provisionally approved” until it is shown to be in full compliance with “all accreditation standards and operational requirements” of the rules and guidelines.

Finally, under Guideline 15.3(C), “[w]ithin two years of operating a provisionally-approved branch campus, the law school must seek confirmation from the Committee that the campus is in compliance with all accreditation standards” found in the Rules and Guidelines. To make this determination, the Committee will conduct an inspection to determine whether the branch campus is to be “deemed approved, continue to be provisionally approved or denied continued provisional approval.”

MCL and ECSOL presented a Major Change Request on November 15, 2021 that is in full compliance with the above applicable authority. The March 15, 2022 staff memo did not delineate any issues of noncompliance with the above applicable authority.

EMPIRE COLLEGE SCHOOL OF LAW’S ACCREDITATION

Empire College School of Law is a California accredited law school located in Santa Rosa that has been operating since the early 1970’s and accredited by the State Bar since 1981. The school offers both Juris Doctor and Master of Legal Studies programs. The law school teaches in both fixed-facility and a recently launched hybrid format. ECSOL’s authority to grant the JD degree stems from its California accreditation through the Committee. The Committee has also acquiesced to ECSOL’s MLS program, but does not regulate that program directly.

(CLARIFICATION: Empire College School of Law (“ECSOL”) is operated by Empire College, Inc. Empire College is accredited by ACICS, approved by the California Bureau of Private Postsecondary Education, and its ECSOL MLS program is Title IV eligible.)

According to ECSOL's 2021 Annual Report, it enrolled 61 students, including 26 first-year students and 13 second year students. ECSOL's Minimum, Cumulative Bar Passage Rate (MPR) was 59.3 percent in 2021. The law school was last inspected in 2017 and found to be compliant. *(CORRECT)*

During the past year, the law school received approval from the Committee to transition from for-profit to non-profit status. The law school confirmed it never made this change. The law school also added a hybrid JD program in addition to its classroom program, which was also approved by the Committee. *(CLARIFICATION. ECSOL began the transition process from a for-profit to a non-profit but was notified that the DOE had indefinitely paused applications for for-profit change of status. As explained in an email exchange between ECSOL and Natalie Leonard, approval of the major change request achieves the intent of transitioning ECSOL from a for-profit to the new ECL non-profit branch of MCL. See Attachment D. Email Correspondence.)*

EMPIRE COLLEGE SCHOOL OF LAW'S ACCREDITATION BY ACICS

ECSOL'S authority to grant the JD degree stems from its California accreditation through the Committee, which has also acquiesced to the law school's MLS program. In addition, Empire College's MLS program is accredited and Title IV eligible through the Accrediting Council for Independent Colleges and Schools (ACICS), an accreditor that is not authorized to accredit beyond the master's degree level. Because the MLS program is accredited by ACICS, students enrolled in that program can apply for Title IV federally guaranteed student loans to pay for the MLS degree. Therefore, ECSOL's students tend to enroll jointly in the MLS program and the JD program in order to participate in the Title IV federal loan program for the first two years of study. ECSOL confirms that there is complete overlap between the MLS and the JD programs; no courses are unique to the MLS. *(CORRECT)*

STATUS OF THE ACCREDITING COUNCIL FOR INDEPENDENT SCHOOLS AND COLLEGES

In June 2021, the Department of Education ceased its recognition of ACICS. Unless ACICS is successful in its pending appeal [with the US Secretary of Education], the schools it accredits, including Empire College, will no longer be able to offer Title IV federal loans. The law schools project this will happen within 18 months. Until then, institutions accredited by ACICS must maintain compliance with its requirements and those of the Department of Education in order to maintain accreditation and the ability to offer access to Title IV loans. *(CORRECT. See Attachment E. Letter from ACICS to Natalie Leonard.)*

MONTEREY COLLEGE OF LAW DOES NOT PARTICIPATE IN TITLE IV LOAN PROGRAMS

MCL is a California accredited law school and a 501(c)3 California nonprofit corporation. It offers both fixed-facility and hybrid JD programs, as well as Master of Laws (MSL) and LLM programs. MCL has campuses in Seaside (near Monterey), Kern County (Bakersfield), and San

Luis Obispo, and it previously operated a Santa Cruz two-year satellite campus, until it voluntarily closed that campus. (CORRECT)

According to the September 2021 disclosure document, MCL enrolls 213 students across its three campuses, including 68 first-year students and 64 second-year students. MCL's 2021 MPR was 55.4 percent. The law school was last inspected in 2018 and found to be compliant. (CORRECT)

Because Monterey College of Law is only accredited by the State Bar of California, its students are not entitled to participate in Title IV federal loan programs. (CORRECT)

While MCL has begun the process of seeking accreditation by the Western Association of Schools and Colleges and it was recently declared a candidate for accreditation, the process can take years and accreditation is not guaranteed. MCL is not eligible to offer its students participation in Title IV federal loan programs. (CLARIFICATION. MCL was granted "Eligibility" by WSCUC on October 15, 2021. It is in the process of continuing the WSCUC accreditation process that is likely to take several years as part of the normal WSCUC accreditation process. If MCL achieves "Candidacy", a process that is anticipated to take 18-24 months, it will be eligible to apply for Title IV status and to participate in federal student aid programs.)

DISCUSSION

MONTEREY COLLEGE OF LAW'S BRANCH CAMPUSES

Monterey College of Law currently operates two branch campuses in addition to its main campus. The law school has systems in place to share administrative services and classes across the campuses while providing support at each individual campus. The law schools' major change application discusses many of the elements of the branch campus requirements noted above. For example, the law school explains how it has sustained successful branch campuses to date, notes the market opportunity if ECSOL plans to close, and asserts that the programs of the two law schools are very similar, suggesting that the MCL program will appeal to students who live in that region. MCL also plans to purchase and use the facilities and staff of the existing ECSOL campus. Given these similarities and MCL's experience, MCL believes it can open the campus in at least substantial compliance. (CORRECT)

Monterey College of Law would use its existing approved curriculum at the ECL branch and begin enrolling first-year students with the term starting on July 25, 2022 and would also accept transfer students to start at that time. To ensure sufficient staffing, the MCL ECL branch plans to hire several employees from ECSOL, including ECSOL's current dean and registrar and an additional supporting dean. The school also plans to hire faculty from ECSOL. Administrative services will be centralized and offered through MCL's existing systems under the leadership of the current dean and registrar. (CLARIFICATION. Due to the delays caused by the ACICS appeal process and the CBE major change process, MCL does not intend to admit 1L students into the ECL branch campus program until Spring Semester 2023. However, the ECL branch campus

proposes to accept 3L and 4L transfers from ECSOL into the ECL branch campus starting in the Fall 2022 semester in order to provide an uninterrupted transition for ECSOL MLS/JD students who have completed the MLS portion of their MLS/JD degree program at ECSOL.)

Monterey also plans to offer its own MSL and LLM programs at the ECL campus. The Committee has previously acquiesced as to these programs. (CORRECT)

ACICS CRITERIA RELATED TO CAMPUS CLOSURE AND TEACH-OUTS

The application raises a number of issues regarding the preservation of ECSOL's accreditation by ACICS and resulting access to Title IV federal loans for its students. The application indicated that Empire College, the law school's parent university, previously worked closely with ACICS as part of a lengthy process to ensure the proper closure of its other programs such as its business school, leaving only the law school. (CLARIFICATION. As previously noted, Empire College is the ACICS accredited institution under which ECSOL MLS/JD students are eligible to participate in the Title IV federal student aid programs. See Attachment E. ACICS Letter to Natalie Leonard.)

Because of the close coordination required when closing the business school, the State Bar asked the law schools whether ACICS and the US Department of Education had taken a position regarding the proposed changes in the law school's current request to the Committee. While the State Bar does not regulate the law school's compliance with ACICS or Department of Education requirements, it does require that schools be in compliance with all applicable federal, state and local laws and regulations. (Rule 4.160(A)). (See Attachment E. ACICS Letter to Natalie Leonard. ECSOL and MCL have stipulated that the proposed transaction will not be completed until appropriate review and/or approval, if required, is completed with ACICS and DOE. The law schools agree that any approval by the CBE specifically related to compliance with the Accredited Rules and Guidelines should be contingent on the appropriate review and/or approval, if required by ACICS and the DOE. See Attachment A. Major Change p. 3, 8, 14. There are currently 41 MLS students utilizing Title IV loans.)

Subject to the Committee's approval, the transition of Empire into ECL is proposed as a multi-step process that begins during the Spring 2022 Semester in order to meet the accreditation application, approval, and/or acquiescence requirements of the Committee, the Accrediting Council of Independent Colleges and Schools (ACICS), and the WASC Senior College and University Commission (WSCUC). (See Major Change, p. 3)

Empire will retain its ACICS and Committee accreditation during the period that the approximately [25-30 41] law students who are currently enrolled in Empire's MLS/JD concurrent degree program and are relying on Title IV federal student loans for completion of the two-year MLS portion of Empire's concurrent MLS/JD program. Coincidentally, this period will conclude at the same time that the Title IV eligibility provided by ACICS accreditation will terminate. (See Major Change p. 8)

During this period, Empire will remain in compliance with the DOE Title IV loan requirements, retain responsibility for filing all required accreditation and regulatory reports, maintain student and business records, and provide financial record keeping and reporting, including audits and tax reporting. (See major Change p. 8)

During the period that Empire concurrently enrolled law students are completing the MLS portion of the program, Empire will continue to operate under the accreditation requirements of both the Committee and ACICS. The law school is currently in compliance with both accreditors and intends to continue fully compliant operations. Empire will also remain in compliance with the DOE Title IV loan requirements, retain responsibility for filing all required accreditation and regulatory reports, maintain student and business records, and provide financial record keeping and reporting, including audits and tax reporting. (See Major Change p. 14)

The law schools responded that they are not required to advise the accreditor at this time or seek advance approval since there has not been a change in control at ECSOL. *(CORRECT. See Attachment E, ACICS Letter to Natalie Leonard and Attachment A. Major Change p. 3. Once the purchase agreement is signed, the parties would meet with both ACICS and the U.S. Department of Education to confirm any pre-closing approval requirements prior to closing.)*

Subject to the Committee's approval, the transition of Empire into ECL is proposed as a multi-step process that begins during the Spring 2022 Semester in order to meet the accreditation application, approval, and/or acquiescence requirements of the Committee, the Accrediting Council of Independent Colleges and Schools (ACICS), and the WASC Senior College and University Commission (WSCUC). (See Major Change, p. 3)

Instead, if the Committee approves this major change, the law schools plan to execute a formal purchase agreement and then notify ACICS at that time that ECSOL's assets are being acquired and that Empire College seeks to continue to operate through a wind-down period that will include any Title IV transition period determined to be available to students subject to the anticipated formal announcement of the discontinuation of ACICS as a regional accreditor. *(CORRECT. See Attachment F. Draft Asset Purchase Agreement.)*

In an abundance of caution, the State Bar contacted ACICS to learn more about the criteria related to the winding down of operations. Because ACICS did not have a specific request before it from ECSOL, and was otherwise unaware of this proposal, it could only point to the relevant governing regulations. According to ACICS, the proposal raises several issues. *(CORRECTION. The original ACICS emails referenced in the March 15, 2022 staff memo appear to have included an incomplete description of the proposal or provided a mischaracterized summary of the proposed major change proposal. The comments by ACICS' CEO contained in Attachment E. and as part of further discussions with Empire's attorneys, do not indicate any objection to the plan as currently presented. Based on these discussions between Empire's attorneys and ACICS representatives, our proposed major change proposal, teach-out plan, and Management Service Agreement are designed to meet the ACICS requirements and will be*

subject to formal application with ACICS at the point that a teach-out proposal is required. See Attachment E. ACICS Letter to Natalie Leonard.)

In our recent discussions with Empire and its counsel, we have been informed by Empire College that the asset transfer will involve the Juris Doctor program assets only, which has no impact on ACICS standards given that ACICS accredits the MLS program only. It is also our understanding that Empire plans to retain the assets necessary for students receiving Title IV aid to complete their MLS program. Empire has also informed us that a Campus Closure Application/Teach-Out Plan to teach out the MLS program utilizing current Empire curriculum, faculty, and facilities will be submitted after the asset purchase agreement is executed by the parties. A teach-out plan submitted by Empire will be reviewed by ACICS and will include an “end date” and cessation of new enrollments as of the submission date. Should the institution choose to execute a teach-out agreement with another accredited institution, the signed agreement must be submitted to and approved by the Council prior to implementation. Empire has informed us that they intend to conduct their own orderly teach-out of currently enrolled students.

The law schools’ application describes ECSOL’s status in several ways. The application discusses a transition, a winding down of operations, “enter[ing] into a teach out” agreement with ECSOL, and ECSOL’s closure, likely within 18 months. (Application, p. 10, Attachment B). Regardless of the term used, it appears that the law school will close soon. *(CORRECTION. Empire College will be required to present and have approved by ACICS and the DOE a specific teach-out plan for the ECSOL MLS program that meets the ACICS and DOE rules and statutes. At the current time, Empire College is not required to submit a proposed teach-out plan because ACICS has not notified its institutions of the status of its appeal to the U.S. Secretary of Education. However, upon notification, Empire College will present a teach-out plan that meets the following criteria. See Attachment B. ACICS guidelines regarding programing provided by non-Title IV institutions.)*

2-2-303. Teach-out. *If an institution closes or announces its intent to close, the Council will work with the USDE and the appropriate state regulatory agencies to the extent feasible to ensure that students are given reasonable opportunities to complete their education without additional charge. An institution that closes without completing its contractual training obligations to students must refund all unearned revenue.*

Teach-out agreements must include the following:

- (i) A complete list of students currently enrolled in each program at the institution and the program requirements each student has completed;*
- (ii) A plan to provide all potentially eligible students with information about how to obtain a closed school discharge and, if applicable, information on state refund policies;*
- (iii) A record retention plan to be provided to all enrolled students that delineates the final disposition of teach-out records (e.g., student transcripts, billing, financial aid records);*
- (iv) Information on the number and types of credits the teach-out institution is willing to accept prior to the student’s enrollment; and*

(v) A clear statement to students of the tuition and fees of the educational program and the number and types of credits that will be accepted by the teach-out institution.

(d) Teach-out agreements will be approved only if the teach-out institution

(i) has the necessary experience, resources, and support services to provide an educational program that is of acceptable quality and reasonably similar in content, delivery modality, and scheduling to that provided by the institution that is ceasing operations either entirely or at one of its locations; however, while an option via an alternate method of delivery may be made available to students, such an option is not sufficient unless an option via the same method of delivery as the original educational program is also provided;

(ii) has the capacity to carry out its mission and meet all obligations to existing students; and

(iii) demonstrates that it

a. can provide students access to the program and services without requiring them to move or travel for substantial distances or durations; and

b. will provide students with information about additional charges, if any.

(ACICS Accreditation Criteria, Revised February 2022)

On page 10 of the application, until ECSOL closes, “Empire College may continue to enroll any new law students into the MLS/JD program during the term of the Management Services Agreement and will terminate the Management Services Agreement at the point that the law students who are currently enrolled in the ECSOL MLS/JD concurrent degree program as of the date this agreement takes effect have completed their MLS degrees; any students enrolled in the MLS/JD program thereafter will be allowed to transfer to MCL.” When this scenario was presented to ACICS, they advised that “this would not be allowed.” *(CLARIFICATION. ECSOL will not be admitting new 1L students upon the opening of the ECL branch campus and start of the teach-out period. ECSOL will only continue to enroll current MLS students through the completion of the MLS degree portion of their concurrent MLS/JD program. See Attachment A. Major Change p. 8, 14.)*

*Empire will retain its ACICS and Committee accreditation during the period that the approximately 25-30 law students who are **currently enrolled** in Empire’s MLS/JD concurrent degree program and are relying on Title IV federal student loans for completion of the two-year MLS portion of Empire’s concurrent MLS/JD program.*

*Subject to the DOE requirements that Empire maintain a maximum 90/10 ratio of students participating in the federal loan program, Empire may be required to **continue enrollment** of a percentage of non-Title IV loan students during the anticipated 18-month transitional period. (See Major Change p. 8)*

*During the period that Empire **concurrently enrolled law students** are completing the MLS portion of the program, Empire will continue to operate under the accreditation requirements of both the Committee and ACICS. The law school is currently in*

compliance with both accreditors and intends to continue fully compliant operations. Empire will also remain in compliance with the DOE Title IV loan requirements, retain responsibility for filing all required accreditation and regulatory reports, maintain student and business records, and provide financial record keeping and reporting, including audits and tax reporting. (See Major Change p. 14)

ACICIS indicated that there are “standards relative to a campus closure/teach-out but neither of those would allow for continued admissions.” Here, the law school plans to admit new students into the MLS/JD program at ECSOL, as long as students can participate in Title IV loan programs, and then ECSOL will close. *(CORRECTION. Prior to initiation of an ACICS approved teach-out program, ECSOL is admitting new students to the MLS/JD program with the NOTICES provided in Attachment C. However, no new 1L students will be admitted into the ECSOL MLS program upon the opening of the ECL branch campus and the start of the teach-out program. See Attachment C. Student Notices.)*

NOTICE RELATING TO FINANCIAL AID AVAILABILITY FOR EMPIRE COLLEGE SCHOOL OF LAW MASTER OF LEGAL STUDIES (MLS) STUDENTS.

The accrediting agency for our MLS program, Accrediting Council for Independent Colleges and Schools (ACICS), is currently defending against recommendations that its authority be revoked by the U.S. Department of Education. If that happens, it would mean the loss of the institution’s eligibility to offer Title IV federal grants and loans for Empire’s MLS program. If that happens, there should be an 18-month period following that decision within which Title IV eligible students already enrolled in the MLS program will remain eligible for that funding. That means, in essence, in all probability, that no matter the decision regarding our accreditor, our students who are currently enrolled in the Financial Aid program (1Ls and 2Ls) as of the August 30, 2021 start date will likely be able to access Title IV funds for which they are eligible as needed to complete their programs.

The Department of Education also has the authority, if it chooses, to require that the institution cease enrolling new students utilizing Title IV aid going forward as of the date the decision becomes final as to ACICS, meaning that the 18-month “grace” period may not apply to any new students coming in now. We don’t know for sure what the Department will do with respect to new students, but please be advised if you are an incoming new student for [Fall/Spring/Summer 2021] or thereafter, we cannot guarantee that Title IV grants and loans will be available in the spring, summer or fall of [2021/2022] when you would first become eligible for them.

Empire’s Financial Aid department will be happy to work with you to investigate the availability of other loans, such as Sallie Mae or other funding support and to answer any questions you may have. We are committed to keeping you updated as to any new information we receive about our accreditation status. Please feel free to contact me with any questions.

MANAGEMENT SERVICE AGREEMENT

ACICS accreditation criteria state that no more than 25 percent of a program can be offered through a management service agreement from an institution that is not permitted to participate in Title IV federal loan programs. *(CLARIFICATION. ACICS Guidelines 2-2-201 provides for a provision where more than 25 percent of a non-Title IV program may be approved through the ACICS substantive change process. However, Empire College and MCL do not currently anticipate entering into an MSA that exceeds the 25 percent limit. ACICS guidelines 2-2-505 and 2-2-101 address the options of contracts with non-Title IV institutions. See Attachment B. ACICS guidelines regarding programing provided by non-Title IV institutions.)*

2-2-505. Contracts with Unaccredited Institutions or Entities. *An institution may enter into a contract with an unaccredited institution or entity for the delivery of **up to 25 percent** of a program of study. The institution must submit the contract and provide the following information to ACICS for review and approval prior to the contract's initiation:*

- (a) a full catalog description of the program and the services to be provided by the contractor;*
- (b) a systematic plan for administrative and student evaluations of instructors provided by the contractor;*
- (c) evidence of the qualifications of faculty to teach the contracted courses;*
- (d) a description of the instructional facilities provided by the contractor; and*
- (e) plans for the completion of the program should the contractor fail to provide contracted services.*

2-2-101. List of Substantive Changes. *The following institutional changes will be considered substantive and require Council approval before they can be included in the institution's scope of accreditation:*

- (j) the entering into a contract under which an institution or organization not certified to participate in Title IV, HEA programs offers **more than 25 percent** of one or more of the accredited institution's educational programs (see Section 2-2-505);*

(ACICS Accreditation Criteria, Revised February 2022)

Here, MCL would deliver 100 percent of the program under a management services agreement. As discussed earlier, MCL is not permitted to participate in Title IV federal loan programs. MCL's status as a candidate for accreditation with the Western Association of Schools and Colleges does not allow MCL to participate in Title IV federal loan programs. In addition, the management services agreement must be approved by ACICS in advance, but no approval request is pending. *(CLARIFICATION. Empire College and MCL will enter into an MSA that meets the requirements of ACICS under guidelines 2-2-101 or 2-2-505 (See Attachment G Draft Management Services Agreement.) Under this agreement, significant resources, such as dean, MLS faculty, Title IV loan advisors, registrar, and business services may remain as full- or part-time Empire College employees until the teach-out program is completed. No determination has been made as of this time as to when the U.S. Secretary of Education will make a decision*

regarding ACICS's appeal, therefore no teach-out agreement has been filed by Empire College with ACICS. See Attachment E. Letter from ACICS to Natalie Leonard.)

THE US DEPARTMENT OF EDUCATION'S 90-10 RULE

ECSOL has not contacted the Department of Education regarding this request. *(CLARIFICATION. Empire College is currently in compliance with the 90/10 rule.)*

ECSOL acknowledges that the US Department of Education requires schools to demonstrate that they do not receive more than 90 percent of their revenue from federal funds. At least 10 percent of revenue must come from other sources. *(CLARIFICATION. Empire College is currently in compliance with this rule.)*

Here, the law schools acknowledge the requirement, but do not demonstrate how ECSOL will meet it. If ECSOL does not comply with this requirement, they would not be in compliance with federal legal requirements and, as a result, would not be able to participate in the federal loan program for two years. *(CORRECTION. Empire College currently meets the 90/10 rule. It is anticipated that the ongoing enrollment of current Empire College students in the ECSOL MLS program will continue to meet this rule. If it does not, then Empire College may be required to transition out of the Title IV program based on a negotiated plan approved by ACICS and DOE. It is not possible at this time to calculate a future 90/10 ratio because Empire College does not know when, or if, ACICS will discontinue as an accreditor. This is an issue that will be resolved between Empire College, ACICS, and the DOE and is not part of the California Accredited Law School Rules. See Attachment A. Major Change p. 8.)*

*Subject to the DOE requirements that Empire maintain a maximum 90/10 ratio of students participating in the federal loan program, Empire may be required to **continue enrollment** of a percentage of non-Title IV loan students during the anticipated 18-month transitional period. (See Major Change p. 8)*

If the Committee approves the law school's pending request, ECSOL will begin winding down operations and will stop offering some of the courses required to earn a JD. Students will be free to transfer to other schools, including the ECL branch that would be located onsite. Given the importance of the rule, the law schools must demonstrate how they will comply. *(CLARIFICATION. ECSOL will continue to provide the courses necessary for current students to complete the first two years of the MLS/JD concurrent program as part of the teach-out program. Students who have completed the MLS portion of the concurrent MLS/JD program will be eligible to transfer their earned credits to another law school, including the ECL branch campus, the MCL hybrid online JD, or another law school that accepts JD transfer students in good academic standing. See Attachment A. Major Change p. 8, 15.)*

To facilitate the transition for Empire students who are currently relying on Title IV guaranteed federal loans, Empire will continue their first- and second-year concurrent MLS/JD law school classes for approximately 18-months to permit these law students to

complete the MLS degree portion of the Empire concurrent MLS/JD program. See Attachment A. Major Change p. 8)

From the ECL law student standpoint, there should be very little change in the initial transition from Empire to ECL. The ECL law school tuition will be guaranteed to remain at the same rate that law students would be paying at Empire. Law students will attend the same required substantive bar-tested law school courses taught by the same law school adjunct faculty at the same campus facility. The law school dean and administrative staff who supported them at Empire will remain as the ECL branch campus dean and administrators. See Attachment A. Major Change p 15.)

CONSUMER PROTECTION

The proposal also raises a number of consumer protection concerns related to transparency, honesty, and integrity. *(CORRECTION. See answers below.)*

ECSOL will offer only the first two years of the 4-year JD curriculum. For years 3 and 4, students must transfer to another school such as MCL. *(CORRECT. ECSOL MLS/JD students will be provided all of the courses necessary to complete the MLS portion of the concurrent MLS/JD program. See Attachment A. Major Change p. 8.)*

To facilitate the transition for Empire students who are currently relying on Title IV guaranteed federal loans, Empire will continue their first- and second-year concurrent MLS/JD law school classes for approximately 18-months to permit these law students to complete the MLS degree portion of the Empire concurrent MLS/JD program. See Attachment A. Major Change p. 8)

MCL states that it retains the option to reject ECSOL transfer students, especially those on academic probation at the time of transfer. *(CORRECTION. All ECSOL students in good academic standing or in compliance with ECSOL academic probation will be eligible to transfer to ECL at any point in time. In accordance with the Accredited Law School Rules and Guidelines, students who are not in good academic standing will not be eligible to transfer to ECL unless they qualify under the “fresh start” guidelines. See clarification of Attachment A. Major Change p. 9.)*

(c) *[Empire College will] enter into an [articulation] agreement with [MCL] that allows current ECSOL students who:*

(iii) are not initially in good academic standing, but who are proceeding under ECSOL’s probationary conditions, and who qualify under MCL and State Bar accreditation rules and guidelines for one year of academic probation, to transfer to MCL under the same conditions as they were under at ECSOL and be allowed to finish their probationary period as though still enrolled at ECSOL. The probationary transfer must require that the student achieve the required minimum academic standards within one year or be

academically dismissed pursuant to MCL academic policies and State Bar accreditation rules and guidelines.

Given the tight relationship between MCL and ECSOL, and that the transfer to MCL is necessary only because ECSOL will no longer offer third and fourth year classes, MCL should accept all transfers from ECSOL without exception, subject to the existing ECSOL probation rules.

(CORRECT. See clarification below to Attachment A. Major Change p. 9.)

(c) [Empire College will] enter into an [articulation] agreement with [MCL] that allows current ECSOL students who:

(i) are in good academic standing to transfer to the ECL branch campus J.D. program without loss of academic credit and to retain their cumulative GPA earned at ECSOL;

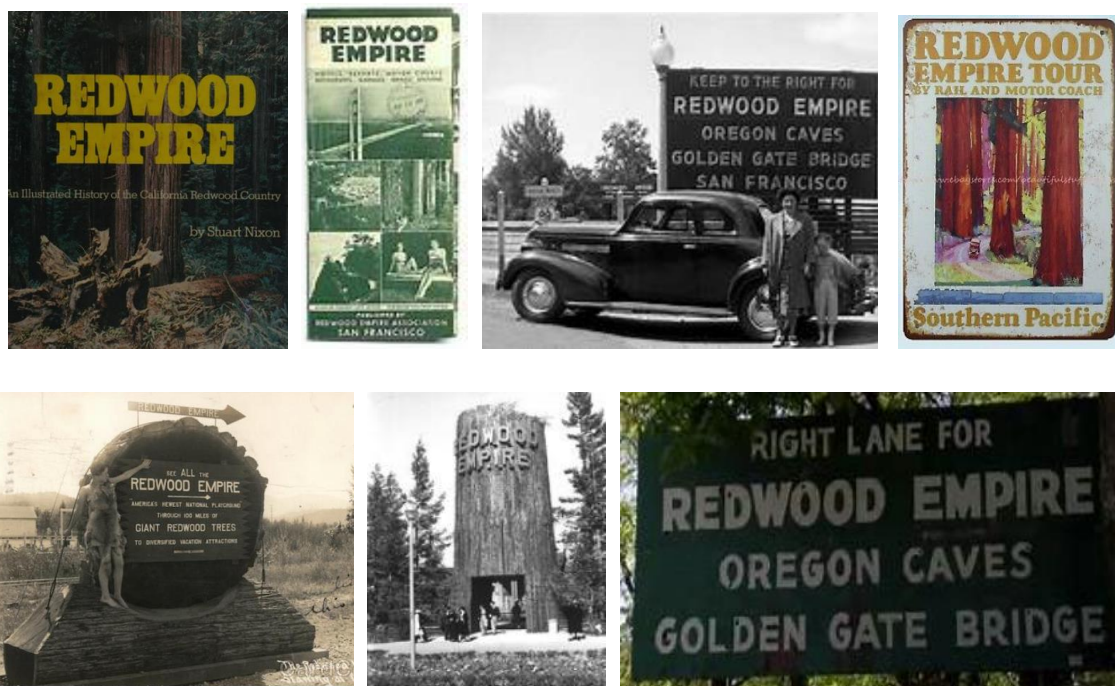
(ii.) complete the MLS program in good academic standing to transfer to the ECL branch campus J.D. program without loss of academic credit and to retain their cumulative GPA earned at ECSOL; and

(iii) are not initially in good academic standing, but who are proceeding under ECSOL's probationary conditions, and who qualify under MCL and State Bar accreditation rules and guidelines for one year of academic probation, to transfer to MCL under the same conditions as they were under at ECSOL and be allowed to finish their probationary period as though still enrolled at ECSOL. The probationary transfer must require that the student achieve the required minimum academic standards within one year or be academically dismissed pursuant to MCL academic policies and State Bar accreditation rules and guidelines. (See Attachment A. Major Change p. 9)

The proposed name of MCL's new branch campus is confusingly similar to the name of the current law school: Empire College of Law versus Empire College School of Law. The potential for confusion is exacerbated by the fact that the law schools will be sharing facilities, resources, and staff. *(CLARIFICATION. The major change proposal reflects that MCL is acquiring the name, good will, intellectual property, and assets of Empire College School of Law. The name "Empire College School of Law" will be discontinued for all outward-facing purposes upon completion of the transaction. The only continuation of ECSOL as a business entity will be for the purpose of completing the ACICS and DOE teach-out. See Attachment A. Major Change p.1 and Attachment F. Draft Asset Purchase Agreement.)*

. . . the name of the branch campus will follow the naming protocol of MCL's other branch locations and will be "Empire College of Law" (ECL). The new ECL branch campus shall be owned and operated by MCL, a 501(c)3 California non-profit corporation located in Seaside, California. Similar to MCL's other branch campus locations, ECL will operate as a "DBA" of MCL, registered with the city of Santa Rosa and county of Sonoma, not as a separate legal entity. (See Attachment A. Major Change p. 1)

The application indicates that the naming convention is consistent with the names of MCL's current branches, but those branches are named based on the geographic region where they are located: Monterey College of Law; San Luis Obispo College of Law; and Kern County College of Law. The proposed name of this branch, Empire College of Law, does not include the town or county where the branch would be located. *(CORRECTION. **Empire College School of Law** is named specifically in reference to the geographical regional identity historically known since the 1930's as the "Redwood Empire". Note: If the CBE is regulating law school names, staff should identify which Accredited Law School Rule or Guideline stipulates how CALS are to be named. For example: "Northwestern California University School of Law" – there is no Northwestern University; "Glendale University College of Law" – there is no Glendale University; "JFK School of Law at Northcentral University" – located in San Diego is not "northcentral" related to any known geography.)*



1930's and 1940's Images of "Redwood Empire" Designation

... the name of the branch campus will follow the naming protocol of MCL's other branch locations and will be "Empire College of Law" (ECL). The new ECL branch campus shall be owned and operated by MCL, a 501(c)3 California non-profit corporation located in Seaside, California. Similar to MCL's other branch campus locations, ECL will operate as a "DBA" of MCL, registered with the city of Santa Rosa and county of Sonoma, not as a separate legal entity. (See Attachment A. Major Change p. 1)

[ECSOL] will discontinue its law school program at the point that the law students who are **currently enrolled** in Empire's MLS/JD concurrent degree program have exhausted their approved federal loan proceeds and completed their MLS degree. (See Attachment A. Major Change p. 9)

Consumer protection requires that the law schools be clear and transparent and communicate with integrity. The proposal has the potential to confuse students and the public, and to leave students who believed they could access Title IV federal funds without the ability to do so on short notice. *(CORRECTION. Prior to issuing the March 15, 2022 staff memo, no inquiry or request was made by staff regarding the written notices already being provided by ECSOL to prospective applicants or currently enrolling students. On its own initiative, ECSOL began providing the following written notices for October 2021, January 2022, February 2022, and May 2022 entering classes. (See ATTACHMENT C. Notices to Students.)*

**NOTICE RELATING TO FINANCIAL AID AVAILABILITY FOR EMPIRE COLLEGE
SCHOOL OF LAW MASTER OF LEGAL STUDIES (MLS) STUDENTS.**

The accrediting agency for our MLS program, Accrediting Council for Independent Colleges and Schools (ACICS), is currently defending against recommendations that its authority be revoked by the U.S. Department of Education. If that happens, it would mean the loss of the institution's eligibility to offer Title IV federal grants and loans for Empire's MLS program. If that happens, there should be an 18-month period following that decision within which Title IV eligible students already enrolled in the MLS program will remain eligible for that funding. That means, in essence, in all probability, that no matter the decision regarding our accreditor, our students who are currently enrolled in the Financial Aid program (1Ls and 2Ls) as of the August 30, 2021 start date will likely be able to access Title IV funds for which they are eligible as needed to complete their programs.

The Department of Education also has the authority, if it chooses, to require that the institution cease enrolling new students utilizing Title IV aid going forward as of the date the decision becomes final as to ACICS, meaning that the 18-month "grace" period may not apply to any new students coming in now. We don't know for sure what the Department will do with respect to new students, but please be advised if you are an incoming new student for [Fall/Spring/Summer 2021 or thereafter, we cannot guarantee that Title IV grants and loans will be available in the spring, summer or fall of [2021/2022] when you would first become eligible for them.

Empire's Financial Aid department will be happy to work with you to investigate the availability of other loans, such as Sallie Mae or other funding support and to answer any questions you may have. We are committed to keeping you updated as to any new information we receive about our accreditation status. Please feel free to contact me with any questions.

ECSOL will sell its assets and its current staff will work for another employer, while ECSOL holds itself out as a school that continues to operate. *(CORRECTION. Empire College will continue to operate during the term of the ECSOL MLS teach-out agreement pre-approved by ACICS. Certain law faculty and staff who are needed to operate the MLS program during the teach-out period will remain employed by Empire College and not MCL. However, ACICS guidelines also provide for a provision where a non-Title IV program may contract with Empire College to provide up to twenty-five percent of program services. MCL and Empire College will be entering into an MSA*

(See Attachment G. Draft Management Services Agreement) to provide certain administrative and academic support services that are anticipated to fall within the 25 percent limitation of ACICS Guideline 2-2-505 for contracts with non-Title IV institutions. See Attachment B. ACICS guidelines regarding programing provided by non-Title IV institutions.)

*During the period that Empire **concurrently enrolled law students** are completing the MLS portion of the program, Empire will continue to operate under the accreditation requirements of both the Committee and ACICS. The law school is currently in compliance with both accreditors and intends to continue fully compliant operations. Empire will also remain in compliance with the DOE Title IV loan requirements, retain responsibility for filing all required accreditation and regulatory reports, maintain student and business records, and provide financial record keeping and reporting, including audits and tax reporting. (See Attachment A. Major Change p. 14)*

2-2-505. Contracts with Unaccredited Institutions or Entities. *An institution may enter into a contract with an unaccredited institution or entity for the delivery of **up to 25 percent** of a program of study. The institution must submit the contract and provide the following information to ACICS for review and approval prior to the contract's initiation:*

- (a) a full catalog description of the program and the services to be provided by the contractor;*
- (b) a systematic plan for administrative and student evaluations of instructors provided by the contractor;*
- (c) evidence of the qualifications of faculty to teach the contracted courses;*
- (d) a description of the instructional facilities provided by the contractor; and*
- (e) plans for the completion of the program should the contractor fail to provide contracted services.*

Because it will have sold its assets to MCL and the teachers would be employed by MCL, MCL would operate ECSOL under a management service agreement. *(CLARIFICATION. Law faculty who teach the courses in the proposed ECSOL MLS teach-out program will remain Empire College faculty with faculty support provided by MCL through a Management Services Agreement (MSA). Upper division law faculty who do not teach in the MLS program will be offered new MCL faculty contracts. See Attachment F. Draft Asset Purchase Agreement, Attachment A. Major Change p. 2, Attachment G. Draft Management Services Agreement, and Attachment B. ACICS guidelines regarding programing provided by non-Title IV institutions.)*

*(c) As a condition of the Management Services Agreement, it is anticipated that Empire College will discontinue current employment agreements with Empire College professional staff and adjunct faculty and MCL shall negotiate new employment at-will agreements, subject to terms that are mutually acceptable, with those Empire College professional staff and faculty who wish to continue employment with MCL. MCL shall agree that, in performing the services under the Management Services Agreement, **it shall allocate to the performance of such services sufficient personnel with appropriate experience, knowledge and competence and perform such services at a performance***

level equal to the level at which MCL is then providing the same or similar services with respect to its own business and operations, and consistent with Empire College's accreditation requirements. (See Attachment A. Major Change p. 10)

MCL does not guarantee admission for current students of ECSOL into the new branch campus in particular if the students are on valid probation plans, even though other alternatives are not available in the region. *(CORRECTION. All ECSOL students in good academic standing or in compliance with ECSOL academic probation will be eligible to transfer to MCL's ECL at any point in time. In accordance with the Accredited Law School Rules and Guidelines, students who are not in good academic standing will not be eligible to transfer to ECL unless they qualify under the "fresh start" guidelines. See Attachment A. Major Change p.9.)*

(c) [MCL will] Enter into a teach out/articulation agreement with ECSOL that allows current ECSOL students who:

(i) are in good academic standing to transfer to the ECL branch campus J.D. program without loss of academic credit and to retain their cumulative GPA earned at ECSOL;

(ii.) complete the MLS program in good academic standing to transfer to the ECL branch campus J.D. program without loss of academic credit and to retain their cumulative GPA earned at ECSOL; and

(iii) are not initially in good academic standing, but who are proceeding under ECSOL's probationary conditions, and who qualify under MCL and State Bar accreditation rules and guidelines for one year of academic probation, to transfer to MCL under the same conditions as they were under at ECSOL and be allowed to finish their probationary period as though still enrolled at ECSOL. The probationary transfer must require that the student achieve the required minimum academic standards within one year or be academically dismissed pursuant to MCL academic policies and State Bar accreditation rules and guidelines.

The proposal appears to include elements that conflict with both ACICS and the US Department of Education requirements. *(CORRECTION. See Attachment E. ACICS Letter to Natalie Leonard that indicates that Empire College has acknowledged that the major change proposal and subsequent filings with ACICS will need to meet the requirements of ACICS and DOE.)*

ADDENDUM SUMMARY

MCL and ECSOL understand that the proposed major change is complicated and involves multiple accreditors and other regulators. The law schools indicated in the major change that the process would require submitting specific requests to multiple accreditors, including the Committee and the WASC Senior College and University Commission (WSCUC) on behalf of the law schools, and the Accrediting Council for Independent Colleges and Schools (ACICS) and the United States Department of Education (DOE) on behalf of Empire College. As specifically

referenced in the major change request, the intent of the parties at all times was not to complete the proposed transaction until all appropriate regulators have reviewed and, where required, approved the proposed transaction.

The law schools are submitting this major change and addendum to the State Bar as our primary accreditor, prior to submitting subsequent filings with the other accreditors and agencies. As such, we request that the Committee review the relevant issues related to compliance with the California Accredited Rules and Guidelines.

ECSOL and MCL are pleased to have the opportunity to respond and resolve each of the issues raised in the March 15, 2022 staff memo. We would be remiss not to comment that we would have preferred that Committee staff had raised these issues as part of the four-month review process (*See Email Correspondence Attachment D.*) and not presented them without notice or prior discussion in a memo presented to the Committee only three days prior to the initially scheduled Committee agenda item. However, we sincerely hope that the above addendum and attachments have fully and successfully addressed all of the issues necessary for the Committee to approve the law school's major change request, subject to all appropriate regulators reviewing and, where required, approving the proposed transaction.

REQUEST

MCL and ECSOL request that the Committee receive and file the joint Request for Major Change and Addendum from Monterey College of Law and Empire College School of Law, and approve the request ***subject to subsequent confirmation that the proposed transaction has been reviewed and, where required, approved, by the Accrediting Council of Independent Colleges and Schools (ACICS) and the US Department of Education (DOE) as related to the impact of the proposed transaction on Empire College.***

PROPOSED MOTION

Should the Committee of Bar Examiners agree with this addendum to our major change proposal, we request that the following motion be made and approved:

MOVE, that the ***Committee of Bar Examiners*** receive and file Monterey College of Law and Empire College School of Law's Joint Request for Major Change "to transition Empire College School of Law from a stand-alone, private California accredited law school into an accredited branch campus of MCL," as set forth in the November 15, 2021 Major Change Request and March 24, 2022 Addendum be approved.

ATTACHMENT LIST

- A. Monterey College of Law - Empire College School of Law
November 15, 2021 Major Change Request
- B. Applicable ACICS Guidelines RE: Teach-out and Contracts with
Non-Title IV Institutions
- C. Notice to Students re: ACICS and Title IV Loan Availability
- D. Email Correspondence between Committee Staff, ECSOL, MCL,
and ACICS
- E. Letter from ACICS regarding current accreditation status and
future teach-out agreement.
- F. Draft Asset Purchase Agreement – ECSOL/MCL [CONFIDENTIAL]
- G. Draft Management Services Agreement – ECSOL/MCL
[CONFIDENTIAL]