

**BOARD OF BEHAVIORAL SCIENCES  
INITIAL STATEMENT OF REASONS**

**Hearing Date: February 16, 2016**

**Subject Matter of Proposed Regulations:  
English as a Second Language: Additional Examination Time**

**Section(s) Affected:** Add Section 1805.2 to Division 18 of Title 16 of the California Code of Regulations.

**Background and Identification of the Problem:**

The Board of Behavioral Sciences (Board) licenses marriage and family therapists (LMFTs), educational psychologists (LEPs), clinical social workers (LCSWs), and professional clinical counselors (LPCCs).

All applicants for licensure with the Board must take one or more examinations to demonstrate professional competence, in order to be granted a license.

The Board does not currently offer any type of special examination accommodations for its examinees who speak English as a Second Language (ESL applicants). Numerous applicants for licensure have expressed to the Board that because English is their second language, they struggle to complete the Board's exams in the time allowed because it takes them extra time to interpret the exam questions.

The State of California has a diverse population of consumers seeking mental health services, speaking a wide variety of languages. In many areas of the state, there is a shortage of providers who speak languages other than English. The Board believes it is essential to have a population of licensed mental health populations who speak languages other than English, in order to serve the state's non-English speaking populations. To help meet this need, this regulatory proposal would allow the Board to grant additional time-and-a-half (1.5x) on Board-administered exams to an ESL applicant, if the applicant met specific criteria demonstrating limited English proficiency.

**Specific Changes: Purpose, Factual Basis/Rationale and Anticipated Benefits:**

The changes proposed by this regulatory package are as follows.

**A. ADD SECTION 1805.2 – ADDITIONAL EXAMINATION TIME: ENGLISH AS A SECOND LANGUAGE**

Proposed Change: This proposed new section outlines three different ways that an ESL applicant may qualify for time-and-a-half (1.5x) on a Board-administered examination. The applicant is required to submit a request for additional exam time that states under the

penalty of perjury that English is his or her second language, and provide one of the following:

1. A Test of English as a Foreign Language, Internet Based Test (TOEFL-iBT) certification score of 85 or below; or
2. Documentation from the qualifying Master's degree program that it had granted additional examination time or other allowance due to English as a second language; or
3. Documentation of a foreign qualifying Master's degree that was presented primarily in a language other than English.

Purpose/Rationale: The purpose of this proposal is to ensure that consumers in the State of California have access to a diverse population of qualified mental health professionals who speak a variety of languages. The population of the state is very culturally diverse, and many consumers who speak other languages have difficulty finding a mental health professional who can speak their language. This proposal would allow otherwise qualified applicants for Board licensure, who are having difficulty passing the Board's licensing exams due to a language barrier, the opportunity to be granted extra time in order to interpret the exam.

The three methods by which one can qualify for extra exam time were chosen because they are reliable indicators of limited English proficiency. The TOEFL is widely recognized by over 9,000 colleges, universities and agencies in over 130 countries as measuring language proficiency. Documentation from a degree program that the applicant received and ESL accommodation or that their courses were presented in another language also indicates limited English proficiency.

The time-and-a-half (1.5x) exam time was chosen because the board believed this was a reasonable time extension for ESL applicants, without compromising the integrity of the exam (for example, allowing too much, or unlimited time, may allow for memorization of the questions.) The Psychology Board also recently adopted regulations allowing for a time-and-a-half ESL accommodation.

Anticipated Benefit: Allowing extra time for qualifying ESL applicants may benefit both the mental health consuming public, and applicants for licensure. If time allotted to interpret and take an exam has been a barrier to licensure for an ESL applicant, the extra exam time may remove this barrier and allow him or her to pass the Board-required exam(s). Therefore, such applicants may be more likely to become licensed, resulting in jobs for them. In many areas of the state, there are shortages of bilingual mental health practitioners. If more of these applicants are able to become licensed, the public will benefit because there will be more licensed mental health professionals to serve non-English speaking populations across the state.

## **Underlying Data**

- Educational Testing Service (ETS) Report: *“Test and Score Data Summary for TOEFL Internet-Based and Paper-Based Tests,”* January 2007-December 2007 Test Data; Table 6 *“Percentile Ranks for TOEFL iBT Scores – Applicants for Professional License.”*
- Educational Testing Service (ETS) Website: *“Understanding your TOEFL iBT Test Scores.”*
- Board of Psychology – Recently Approved ESL Regulation Language

### **ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

The Board has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the fact that the proposed regulation does not create any new requirements for potential licensees, and on following facts:

- **Analysis of creation/elimination of jobs:** This regulatory proposal will not eliminate any jobs, and will potentially create a positive impact to the creation of jobs by increasing the number of licensed mental health professionals. If it makes some ESL applicants more likely to pass their exams and become licensed, then they may practice as licensed professionals. This may increase the client base for companies or practitioners in areas that lack bilingual mental health professionals, if they are able to hire a licensee who speaks a language spoken by the client base.
- **Analysis of creation/elimination of businesses.** No businesses will be eliminated as a result of this proposal. Potential creation of business is expected if ESL applicants are passing the exam and becoming licensed.
- **Analysis of expansion of business:** As noted above, this proposal may lead to some expansion of business. If there are more bilingual mental health professionals available for a business to hire, those businesses may gain an increased bilingual client base.
- **Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment:** The Board has determined these regulations may benefit California consumers of mental health services. If the extra examination time reduces barriers to licensure for potential licensees who speak English as a second language, the population of these licensees will increase. This will benefit non-English speaking consumers of mental health services, because there is a shortage of mental health practitioners who speak foreign languages. This proposal will not affect worker safety or the State’s environment.

As part of its Economic Impact Analysis, the Board has determined that its proposal will not affect the ability of California businesses to compete with other states by making it more costly

to produce goods or services, and it will not eliminate any jobs or occupations. This proposal does not impact multiple industries.

Occupations/Businesses Impacted: Allowing extra exam time for ESL applicants may make some of those applicants more likely to pass the Board's licensing exams, if the time allotted to interpret and take the exam has been a barrier to licensure for them. These applicants may be more likely to become licensed, allowing an occupation for them, and increasing the client base for businesses seeking to hire mental health practitioners who speak a language other than English.

Reporting Requirements: The proposed regulations do not impose any reporting requirements on licensees or the public.

Business Reporting Requirement: The proposed regulations do not impose any reporting requirements on businesses.

Comparable Federal Regulations: None

Benefits: This proposal may benefit non-English speaking residents of California who are consumers of mental health services. It is often difficult for these consumers to find a mental health practitioner who speaks their native language. If the extra examination time reduces barriers to licensure for potential licensees who speak English as a second language, the population of these licensees will increase.

### **Business Impact**

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The allowance of qualifying applicants who speak English as a Second Language to be granted extra time on their licensing examinations will not have a negative impact on California businesses. It only affects California businesses indirectly (and not in a negative manner), in that they may later have a better opportunity to hire a bilingual licensed mental health practitioner.

### **Specific Technologies or Equipment**

This regulation does not mandate the use of specific technologies or equipment.

This regulation mandates the use of specific technologies or equipment. Such mandates or prescriptive standards are required for the following reasons:

### **Consideration of Alternatives**

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The alternatives considered were as follows:

1. Not adopt the regulations. This alternative was rejected because the Board believes that the diverse population in California needs mental health practitioners that speak a wide variety of languages in order to meet the population's mental health needs. The Board believes that offering ESL applicants extra examination time will help some non-English speakers become licensed, while still ensuring that they are qualified practitioners.
2. Adopt the regulations. The Board determined that this alternative is the most feasible. It helps non-English speakers by ensuring they have enough time to interpret the questions on the examination, and it upholds public protection because it ensures their knowledge of the mental health profession is still being tested.