



The State Bar of California

OPEN SESSION

AGENDA ITEM III.A.

MARCH 2024

COMMITTEE OF BAR EXAMINERS

DATE: March 15, 2024

TO: Members, Committee of Bar Examiners

FROM: Audrey Ching, Program Director, Office of Admissions
Cody Hounanian, Program Director, Office of Admissions
Amy Nuñez, Program Director, Office of Admissions

SUBJECT: Update on Cost Reduction Initiatives Related to the Bar Exam, Beginning with the February 2025 Administration

EXECUTIVE SUMMARY

The Office of Admissions is confronted with a structural budget problem that will see the Admissions Fund become insolvent in 2026. The largest drivers of expenses are bar exam-related costs, exacerbated by testing facility and proctor challenges. In 2023, the Board of Trustees approved a 26 percent and 32 percent increase in the bar exam application fee for students and attorneys, respectively, to cover growing exam costs. The State Bar recognizes that these fees, along with other Admissions fees such as registration and moral character fees, present a challenge for applicants and, despite the fee increase, the Admissions Fund still faces insolvency.

In an effort to continue to responsibly manage the budget and avoid any future cost escalation for applicants, staff, in consultation with psychometricians, are exploring developing exam questions with a new vendor, including multiple-choice questions to replace the Multistate Bar Examination (MBE) and mirror the MBE in content, difficulty, and scope. Currently, the National Conference of Bar Examiners (NCBE) develops the MBE and requires the MBE to be delivered in a “jurisdiction-run facility,” like the large convention centers that are currently used to administer the bar exam. NCBE prohibits the MBE from being delivered remotely or in a vendor-owned test center. Developing and owning its own bank of multiple-choice questions would allow the State Bar to adopt an alternative cost-effective exam administration approach for the February 2025 bar exam and beyond. In this item, staff seek feedback from the

Committee of Bar Examiners to guide further research and discussions with potential vendors as staff consider independent question development.

BACKGROUND

As the committee is aware, the Admissions Fund faces a significant structural deficit resulting from a combination of factors including higher prices for testing facilities post-pandemic, difficulties in securing proctors, and reliance on costly staffing agencies. In 2023, the actual cost to administer the bar exam, including the cost of MBE materials, was nearly \$10 million.

To address escalating costs, the Board approved a series of fee increases in September 2023, including a 26 percent rise in the bar exam application fee for students and a 32 percent increase for attorney applicants.¹ Even with these adjustments, if exam administration continues as-is the Admissions Fund is projected to be insolvent by the end of 2026.²

In June 2023, the committee directed staff to research a one-day remote exam model as a potential cost-saving measure.³ While a remote exam was deemed unfeasible for the July 2024 exam, recent developments, such as the identification of additional remote exam vendors and the possibility of utilizing vendor-owned test centers, suggests there are other cost-effective alternatives to administer the entirety of the bar exam. These options are being explored by staff. Realizing the benefits of these opportunities is contingent on independence from the NCBE and its exam administration requirements.⁴

CURRENT LIMITATIONS

Having conducted research regarding potential cost savings measures, staff believe the greatest benefits would be achieved if the State Bar had the flexibility to administer the entirety of the exam at a vendor-owned test center, remotely, or a combination of the two. However, the NCBE prohibits remote or vendor-owned test-center administration of the MBE, severely limiting the State Bar's ability to choose a more cost-effective exam administration approach.

Considering these challenges, Admissions posted a Request for Information (RFI) in January 2024, seeking information from possible vendors who could develop both multiple-choice, MBE-like questions as well as written essays and performance tests, with a goal of adopting an

¹ State Bar of California Board of Trustees, Agenda Item Number: 701 (September 2023). <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000031535.pdf>.

² State Bar of California Board of Trustees, Agenda Item Number: 701 (February 2024). <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000032180.pdf>.

³ Committee of Bar Examiners (June 2023). <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000031129.pdf>.

⁴ In May 2023, the Board advanced recommendations from the Blue Ribbon Commission on the Future of the Exam which, if approved by the Supreme Court, would result in the development of a California-specific exam and a separation from the NCBE irrespective of the present initiative. Here staff seeks to accelerate that independence to achieve much-needed costs savings.

alternative, cost-effective exam administration approach starting with the February 2025 bar exam.

DISCUSSION

As staff explore exam-related cost-saving measures, it is important to note that no alteration of the exam itself is being proposed. The only proposal on the table is to change the vendor used for exam development to allow for alternative exam administration methods. The format and content will not change, and therefore no substantial modification of the training or preparation for passage of the examination will be necessary such that two years notice of the change would be required.^{5,6}

Based on staff's research and review of vendor responses to date, it appears that developing multiple-choice questions with a new vendor can be achieved at a cost comparable to the current costs of procuring the MBE alone or the entirety of the exam. Although staff is early in its discussions with possible vendors, and it would jeopardize negotiations to publicly disclose the details of preliminary discussions underway, staff is confident that an alternate to the MBE or the entire exam could be developed and psychometrically validated as being equivalent to the current exam in time for the February 2025 exam administration. Costs cited indicate that the State Bar would save money on exam development going this route, particularly when taking into account the entirety of the exam as opposed to just the MBE. The greater benefit, however, will be realized through changed exam administration which staff estimates will generate up to \$2 million in savings per exam administration.

Staff are cognizant that questions developed with a new vendor must maintain the exam's standards of validity and reliability. Admissions has vetted this change and has been working closely with its psychometrician, Chad Buckendahl, who has identified methods that would preserve the reliability of exam scores and ensure there is no impact on necessary exam preparation. Staff are further assured that reliable, new questions can be developed using the same content validation methodology implemented in 2023 for the refresh of the multiple-choice questions used for the First-Year Law Students' Examination. More specifically, the questions would be analyzed using Item Response Theory (IRT), a methodology that facilitates the evaluation of the statistical properties of questions and is the same methodology used by the NCBE to ensure consistency in the interpretation of MBE scores from one exam to the next.⁷

EXAM ADMINISTRATION METHOD

With the development of its own multiple-choice questions, Admissions can consider various alternative exam administration methods to achieve cost savings. Staff has identified three options for exploration:

⁵ CA Rules of Court, rule 9.6.

⁶ CA Bus & Prof Code § 6046.6.

⁷ Item Response Theory (IRT) is a set of psychometric methods that can be used to evaluate the statistical properties of questions in a way that is sample independent.

Fully Remote: At the direction of the committee, extensive research has been conducted on remote exam models. In January 2024, staff recommended to the Board a continuation of in-person exams through at least July 2024 to allow additional time to address concerns related to technological failure, compatibility with testing accommodations, and scalability.⁸ Continued research is underway, including engagement with additional remote exam vendors and attending exam industry trade conferences to learn more about available options.

Test Centers: Vendor-owned test-center exam administration presents an appealing option for cost savings and operational efficiency enhancements. Under a vendor-owned test-center model, Admissions would eliminate labor-intensive tasks such as securing and managing large exam facilities and recruiting and compensating proctors. Other expenses would be reduced including: contracting and managing hotel and convention center sites; infrastructure, equipment, and technology; and travel and logistics. Early discussions have taken place with a leading test-center vendor with an extensive network across California.

Combining Remote and Test Centers: Enhanced flexibility could enable Admissions to adopt a hybrid approach combining remote and test-center administration methods. Various options are under consideration, including allowing applicants to choose their preferred method, providing remote exam administration as a testing accommodation, or having a fixed capacity for both options.

COMMITTEE FEEDBACK AND NEXT STEPS

Given the significant facilities costs in administering the bar exam, and the continuing financial concerns, Admissions aims to finalize an alternative bar exam administration method for the February 2025 exam. Feedback from the committee is crucial to address concerns and prepare a recommendation to the Board. Additionally, staff seek committee liaisons to provide ongoing input, and guide stakeholder engagement to ensure comprehensive consideration of all perspectives.

Staff propose the following timeline, which would enable a new administration model by February 2025:

- *March committee meeting:* Volunteer liaisons solicited to assist staff in exploring the development of exam questions, including MBE-like multiple-choice questions, and alternative administration methods.
- *March-April:* Staff and liaisons seek input from stakeholders regarding proposed changes.
- *April committee meeting:* Staff and liaisons present recommendations for committee

⁸ State Bar of California Board of Trustees, Agenda Item Number: 703 (January 2024).
<https://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000032055.pdf>

feedback.

- *May Board meeting:* Staff presents recommendations to the Board for adoption.

FISCAL/PERSONNEL IMPACT

The Office of Finance's final 2024 budget forecasts deficit spending of \$3.8 million, and the Admissions Fund is projected to end 2024 with \$3.3 million of reserves. The final budget states, in part, that bar exam administration cost-saving measures will need to be adopted in order for the Admission Fund to remain solvent in 2026.

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

None – core business operations

RECOMMENDATIONS

None

ATTACHMENT(S) LIST

None