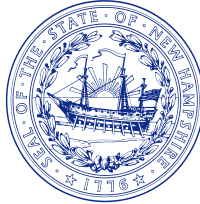


**STATE OF NEW HAMPSHIRE
OFFICE OF PROFESSIONAL
LICENSURE AND CERTIFICATION
REAL ESTATE COMMISSION**

**PERFORMANCE AUDIT REPORT
SEPTEMBER 2017**



State of New Hampshire

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To The Fiscal Committee Of The General Court:

We conducted a performance audit of the New Hampshire Real Estate Commission (NHREC) to address the recommendation made to you by the joint Legislative Performance Audit and Oversight Committee. We conducted this audit in accordance with generally accepted government auditing standards. Those standards require we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions. The evidence we obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

The purpose of the audit was to determine whether NHREC operated efficiently and effectively between July 1, 2013 and December 31, 2016.

Office of Legislative Budget Assistant

Office Of Legislative Budget Assistant

September 2017

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**STATE OF NEW HAMPSHIRE
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NEW HAMPSHIRE REAL ESTATE COMMISSION**

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ABBREVIATIONS AND GLOSSARY OF TERMS

DAS	Department Of Administrative Services
L2K	License 2000
CE	Continuing Education
MLO	MyLicense® Office
OPLC	Office Of Professional Licensure And Certification
NHREC	New Hampshire Real Estate Commission
ROI	Report Of Investigation
SFY	State Fiscal Year
Technical Division	OPLC Division Of Technical Professions

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EXECUTIVE SUMMARY

For part of the audit period, the New Hampshire Real Estate Commission (NHREC) was a separate organizational entity with its own Executive Director and staff. However, in 2015, it was consolidated into the newly-created Office of Professional Licensure and Certification (OPLC), transferring responsibilities of its Executive Director to the OPLC Director. The consolidation was considerably turbulent, creating an acrimonious relationship between the two entities from the start. One month after consolidation, a bill was introduced to remove NHREC from OPLC, which was unsuccessful. Despite this tense environment, we found varying degrees of efficiency and effectiveness within NHREC operations even though it functioned with few documented policies and procedures, especially for critical functions.

Licensing was performed efficiently with over 90 percent of applications being approved within two weeks of receipt. Licenses taking longer to process were mostly due to a delay in receiving the applicant's criminal background check or applicants with criminal convictions requiring additional scrutiny by Commissioners who met monthly. Nevertheless, licensing functions were not properly supervised as one staff member assumed responsibility for granting most licenses without supervisory review. Additionally, Commissioners expressed preference for broker applicants to first obtain New Hampshire real estate sales experience before being granted a broker license, yet at least eight out-of-state brokers with no prior New Hampshire sales experience were granted licenses without any evidence of Commissioner review.

Despite weak supervisory controls over licensing, we found the process to be generally effective. Consumers filed few complaints against licensees and the majority, after investigation, were determined not to be a violation of State law or rule, indicating an effectively regulated industry where licensees maintained the minimum standards for licensure and public confidence. In fact, we found the number of complaints filed in relation to the number of licensees regulated was very small. During State fiscal year (SFY) 2016, only 43 complaints were filed against the over 12,000 licensees, resulting in complaints filed against approximately one-third of one percent of licensees.

Complaints took approximately six months to resolve, with over 80 percent of complaints resolved within one year of receipt. While most complaints were handled efficiently, we found some lingered for several months without any activity during various phases. While we found some were stalled during the investigation phase, the most concerning were complaints in which Commissioners had determined a violation occurred, but no disciplinary action had been initiated against the licensee. We also found several factors, including State law, may have prevented the complaint process from being more efficient. Laws outlined a specific process for resolving complaints including requiring all complaints be investigated regardless of jurisdiction or merit. Additionally, Commissioners provided little guidance regarding the scope of an investigation, or when an investigation should expand. As a result, additional concerns discovered were included in the investigation regardless of whether it was pertinent to the original complaint, potentially contributing to delays during the investigation phase. Disciplinary action against licensees found in violation of laws and rules appeared to deter future non-compliance, as few licensees received multiple complaints resulting in a violation.

NHREC could benefit from reviewing its fees, especially examination fees which in SFY 2016 collected over 200 percent of the program's operating costs. NHREC was required to set fees sufficient to recover 125 percent of its direct operating costs. It was also required to set examination fees to cover the direct cost of the examination program separate from its other operating expenses. OPLC was required to establish a cost allocation methodology to equitably allocate costs to all regulatory entities under its purview. However, at the end of the audit period, this process was only in the preliminary stages. During the audit period, OPLC did not provide any information on revenues collected or corresponding expenses. Additionally, OPLC's allocation methodology comingled NHREC's general operating expenses with examination expenses, preventing a separate analysis of these two types of fees. Consequently, for at least one and a half years, NHREC did not have any financial information from OPLC to set its fees accordingly and ensure it was fulfilling its statutory and fiduciary responsibility.

Consolidation, which occurred in the middle of the audit period, was intended to promote efficiency in business processing, record-keeping, and other administrative functions. However, the process faced challenges from its inception. While we found concerns with some NHREC and OPLC administrative practices, the ability to timely rectify these issues may have been attributable to organizational turbulence and tension experienced within the first few months of consolidation. Consolidation provided NHREC benefits through increased access to previously unavailable expertise, increased tracking of administrative rules and complaint activities, and much needed documentation of policies and procedures. After the audit period, OPLC management started reviewing NHREC practices and instituted new procedures, including a more robust complaint tracking system and reporting financial information to Commissioners. As the relationship matures and roles and responsibilities of each party are solidified, NHREC and its licensees could benefit further from consolidation.

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RECOMMENDATION SUMMARY

Observation Number	Page	Legislative Action Required?	Recommendations	Agency Response
1	12	Yes	<p>New Hampshire Real Estate Commission (NHREC) should review whether brokers should be granted reciprocal licenses, codify the salesperson reciprocity process in rule, ensure rules reflect statutory authority, and ensure reciprocity agreements with other states are properly approved.</p> <p>If necessary, NHREC may consider seeking legislative amendment to allow brokers licensed in other jurisdictions to receive a reciprocal New Hampshire broker license.</p>	NHREC: Concur In Part
2	15	No	NHREC should adopt rules defining equivalent experience for obtaining a broker license.	NHREC: Do Not Concur
3	16	No	NHREC should evaluate the necessity of collecting information regarding an applicant's adverse financial history. If the information is necessary to ensure public confidence, NHREC should establish minimum standards and level of review, and codify the process to ensure compliance.	NHREC: Concur
4	17	No	<p>NHREC and Office of Professional Licensure and Certification (OPLC) should conduct a risk assessment of licensing activities and identify types of applications requiring additional review.</p> <p>OPLC should update and formalize licensing policies and procedures.</p>	NHREC: Concur OPLC: Concur

Recommendation Summary

Observation Number	Page	Legislative Action Required?	Recommendations	Agency Response
5	25	No	NHREC should improve complaint processing by establishing timeframes for when each phase of the process should be completed, tracking each phase, comparing actual performance to established timeframes, and periodically reporting information to Commissioners.	NHREC: Concur
6	27	Yes	NHREC should review the complaint resolution process to determine whether existing statutes offer sufficient flexibility, and seek amendment to statute if necessary. NHREC should also establish policies and procedures clarifying the contents of a complaint file and scope of investigation.	NHREC: Concur
7	34	No	<p>NHREC should periodically review revenue and expenses, and ensure fees are sufficient to collect 125 percent of the previous fiscal year's expenses.</p> <p>OPLC should develop a cost allocation method more reflective of the cost to operate each board and commission, track examination expenses separately from other NHREC expenses, ensure funds carried forward into another fiscal year are properly authorized or lapse to the General Fund, and provide periodic financial reports to Commissioners outlining restricted and unrestricted revenue and associated expenses.</p>	<p>NHREC: Concur In Part</p> <p>OPLC: Concur</p>

Observation Number	Page	Legislative Action Required?	Recommendations	Agency Response
8	38	Yes	NHREC and OPLC should periodically track rule status, only enforce requirements contained in valid rules, adopt rules required by statute, and amend rules to grant reciprocal licenses only to salesperson applicants. If NHREC determines brokers licensed in another jurisdiction should be permitted to receive a reciprocal broker license, it should seek legislative amendment.	NHREC: Concur OPLC: Concur
9	41	No	NHREC should ensure all requests for declaratory rulings receive a documented response, clearly indicate applicability to the petitioner, and are properly filed with the Director of Legislative Services. NHREC should also ensure informal requests for clarification of statute or rules are handled through the declaratory ruling process, and consider adopting administrative rules for declaratory rulings applicable to all licensees or the general public.	NHREC: Concur In Part

Recommendation Summary

Observation Number	Page	Legislative Action Required?	Recommendations	Agency Response
10	42	Yes	NHREC should discontinue the practice of issuing temporary bans to applicants, letters of concerns, and temporary exemption from licensure; document meetings attended telephonically with a roll call vote; require alternative Commissioners to approve minutes timely; include a description of complaints discussed in non-public minutes; ensure all NHREC business is conducted within a duly constituted meeting; issue laws and rules to all new licensees; and file biennial reports. If NHREC determines the authority to issue temporary bans, letters of concerns, or temporary exemptions from licensure is necessary, NHREC should seek legislative changes.	NHREC: Concur In Part
11	45	No	NHREC should establish and codify record retention policies. OPLC should develop procedures to implement NHREC policies.	NHREC: Concur OPLC: Concur
12	47	No	NHREC and OPLC should clarify its relationship by further defining roles and responsibilities through a formal agreement, and corresponding policies and procedures.	NHREC: Concur OPLC: Concur
13	50	No	NHREC should work with OPLC to develop a performance measurement system to monitor achievement of goals and objectives. NHREC and OPLC should codify benchmarks and expectations, and periodically report on performance.	NHREC: Concur OPLC: Concur

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BACKGROUND

Regulation of the real estate industry began in 1947 when brokers and salespersons were allowed to voluntarily register with the Insurance Commissioner, and in 1959, when real estate agents were required to be licensed. In 1967, the Legislature created a separate Real Estate Board consisting of five directors and an executive director. It was re-established as the Real Estate Commission (NHREC) in 1969 with expanded powers to issue, refuse, suspend, or revoke licenses. NHREC was re-codified into its current form in 1993 under the *New Hampshire Real Estate Practice Act* (RSA 331-A) to regulate real estate brokers and salespersons, and ensure they meet and maintain minimum standards for promoting public understanding and confidence in real estate transactions.

NHREC Membership And Staffing

NHREC was comprised of five volunteer Commissioners appointed by the Governor and Council to five-year terms. Members included two licensed real estate brokers, one licensed real estate salesperson, one attorney, and one public member, who had the authority to set fees, issue licenses, hold hearings, issue orders and subpoenas, and initiate rulemaking. To assist with administering real estate laws, prior to State fiscal year (SFY) 2016, NHREC had the power to appoint an executive director to oversee NHREC staff, which consisted of an administrative assistant, investigator, licensing coordinator, account technician, counter clerk, and a vacant program assistant position. At that time, NHREC was administratively attached to the office of the Secretary of State.

In November 2015, NHREC was consolidated into the newly created Office of Professional Licensure and Certification's (OPLC) Division of Technical Professions (Technical Division) and NHREC staff were placed under the supervision of the OPLC Executive Director. As part of the consolidation, all administrative, clerical, and business processing functions of NHREC were transferred to OPLC. The OPLC Executive Director also became responsible for all duties previously assigned to NHREC's Executive Director including: issuing and denying licenses, conducting hearings on license denials, hiring staff, recordkeeping, and maintaining a consumer education program. In addition to the duties of the NHREC's Executive Director, State law also assigned OPLC responsibility for performing administrative, clerical, and business processing functions; supervising, coordinating, and assisting with rulemaking; retaining the official record of applicants and licensees; and maintaining confidentiality of NHREC information.

Under the consolidation, NHREC retained responsibility for overseeing and regulating the real estate profession in the State including setting fees, establishing the scope of the real estate examination, and conducting disciplinary hearings. Direct support to NHREC included one investigator assigned to investigate complaints against licensees, and two support staff responsible for processing licenses and renewals, scheduling licensing examinations, and approving continuing education courses. The law creating OPLC allowed NHREC to retain its unclassified Executive Director; however, the position would be converted to a classified position when the incumbent vacated the position. The NHREC's Executive Director retired in January 2017 and the position was converted to an administrator position with responsibility for

NHREC and one other board. In addition, NHREC received assistance from a Department of Justice attorney and, starting in December 2016, received assistance with rulemaking from an OPLC attorney.

Consolidation into OPLC was still in transition during the audit period, and according to NHREC and OPLC staff, the consolidation was turbulent. There were significant changes in OPLC management, with three people serving in the Executive Director position between November 2015 and December 2016. Turnover in NHREC support staff also occurred with the departure of the NHREC's Executive Director at the end of January 2017, and the administrative assistant in April 2017.

Real Estate Agent Licensing

State law prohibits anyone from acting as a real estate broker or salesperson without a license. Licensed real estate brokers can list, negotiate, sell, purchase, rent, or lease real estate on behalf of themselves or another person. Licensed salespersons can perform the same functions, but must work under the supervision of a licensed broker. Candidates applying for an original real estate salesperson license must be at least 18 years old, pass a two-part licensing exam, complete 40 hours of pre-licensing study, demonstrate no record of unprofessional conduct, and comply with a criminal record check. Applicants for a broker license must comply with the above conditions but are required to complete 60 hours of pre-licensing study. Additionally, broker applicants must show evidence of at least six separate real estate transactions for which they were compensated; obtain a surety bond if applying for a managing or principle broker license; and have been employed full-time by a licensed broker for at least one year, worked at least 2,000 hours as a licensed real estate salesperson, or show equivalent experience.

Applicants meeting statutory licensing requirements may be issued a license by staff without Commissioner action. However, Commissioners may review the file if it contains irregularities or if an applicant has a criminal background. Although statute authorizes the OPLC Executive Director to conduct a hearing on a license denial, in practice, NHREC still holds show cause hearings to consider, and in some cases, deny license applications.

Licenses expire two years from the date of issue. To renew a license, licensees must certify they have completed at least 15 hours of continuing education. Licensees who want to preserve their license but do not engage in real estate activities may request their license be placed in inactive status. Licensees with inactive licenses are still required to renew the license every two years; however, they do not need to fulfill all of the continuing education requirements, maintain a place of business, or maintain a surety bond, if a broker. Inactive licensees can petition to have their license placed back in active status by complying with the requirements for active licensees. As shown in Table 1, as of January 2017 NHREC had over 12,300 active and inactive licensees.

Table 1

**NHREC Licensees,
As Of January 2017**

License Type	Active	Inactive	Total¹
Salesperson	4,681	1,883	6,564
Broker	3,338	511	3,849
Firm	1,087	46	1,133
Trade Name	785	3	788
Total	9,891	2,443	12,334
Note: ¹ An additional 569 licenses were expired, but could be reinstated within a six-month grace period.			
Source: LBA analysis of unaudited NHREC licensing data.			

Continuing Education Accreditation

Continuing education instructors were required to have their course accredited by NHREC prior to offering them. To approve a course, NHREC assessed the content to ensure it enhanced licensees' knowledge, skills, and competence. Courses must directly relate to real estate practice in New Hampshire and must be designed to keep licensees abreast of changing laws, rules, and practices affecting the interest of their clients or customers.

Complaints Against Licensees

State law allows NHREC to investigate the actions of anyone engaging in the activities of, or acting as, a real estate agent and impose sanctions, if appropriate. State law required NHREC to investigate any complaints received. There was one investigator responsible for any complaints filed against the NHREC's over 12,000 licensees.

Once the investigation was complete, the complaint file was forwarded to a Commissioner who evaluated it, presented it to the rest of the NHREC, and made a written recommendation on whether to hold a hearing to consider disciplinary action. If NHREC voted to schedule a disciplinary hearing, the evaluating member was prohibited from participating in the hearing panel which must consist of at least three Commissioners.

If the licensee was found in violation, State law allows NHREC to suspend, revoke, or deny the renewal of a license; levy fines; or require additional education courses. During SFY 2016, NHREC received 43 complaints; of these, 21 resulted in no action, three resulted in a hearing, four resulted in a settlement agreement, two were withdrawn, and one resulted in other types of disciplinary action. The remaining 12 complaints filed in SFY 2016 were still being investigated or pending NHREC evaluation as of June 2017. In the first six months of SFY 2017 alone, 46 complaints had already been filed with the NHREC.

Fees

NHREC must establish fees to generate 125 percent of its direct operating costs and is authorized to establish fees, in administrative rules, for licensing, license renewal, late renewal, continuing education course accreditation, and other fees. Further, statutes allow NHREC to establish and charge a reasonable fee to cover the cost of administering the examination program. These fees must be equivalent to 125 percent of the direct expense of the examination and commissions are prohibited from expending funds exceeding the direct expenses of the examination. OPLC is authorized to collect reimbursement for the costs of services it provides “with such costs allocated equitably...” among the boards and commissions under its purview.

Information Technology

During the audit period, the NHREC used License 2000 (L2K) and MyLicensing® Office (MLO) to track Commission activities. L2K was used until spring 2016 when all boards and commissions in the OPLC migrated to MLO. MLO contained modules for licensing and tracking enforcement action. While MLO was used exclusively for processing license applications, NHREC staff also utilized a separate database program and spreadsheet files to track complaints resolution and licensing exam registration.

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LICENSING ACTIVITIES

Did the New Hampshire Real Estate Commission (NHREC) process licenses, exam registrations, and continuing education course accreditations efficiently and effectively?

State law requires real estate brokers and salespersons obtain a license to practice real estate in New Hampshire. Both statutes and rules adopted by NHREC establish minimum standards a licensee must meet and maintain to continue to practice real estate in the State. Licensing standards ensure qualified individuals practice real estate by requiring applicants to demonstrate education, experience, competency, and professionalism. NHREC assessed these skills by requiring new applicants provide specific documentation and references, administering a licensing exam, and performing a criminal background check. Administering effective licensing activities ensures only qualified individuals receive licensure.

Licensing Examination

Prior to applying for licensure, applicants must pass the licensing exam, which consisted of two portions. The national portion tested knowledge of general real estate concepts, while the State portion tested applicants' knowledge of New Hampshire-specific laws and rules.

To register for the exam, applicants must submit a registration form to NHREC. Staff logged the information from the registration form and submitted it to the exam vendor, who then contacted the applicant to schedule a date for the exam. The applicant determined when to schedule their exam. Applicants failing one or both portions of the exam were required to re-take it by submitting a new registration form and fee. The cost to take the exam was \$170 for the broker exam and \$155 for the salesperson exam. Rules require applicants pass both parts of the exam within one year and limits the number of examinations an applicant could take to eight in one year. Those not passing the exam within one year or who failed it eight times were required to re-take a pre-licensing course.

We found NHREC generally processed examination registrations timely and we encountered few instances of non-compliance with exam registration requirements. Almost two-thirds of exam registrants we reviewed took their exam within 30 days of submitting their registration and over a quarter of applicants took the exam within one week, indicating the process was fairly timely. The majority of licensees offering an opinion on our survey question reported the registration process was handled timely and they were satisfied with the process.

Licensing

Even though NHREC did not have a goal for how long it should take to process a license, we found licenses were processed timely during the audit period. The median number of days to process an original broker or salesperson license was six days, while renewals took a median of two days to process. We found ninety-one percent of license applications, both original and renewals, were processed within two weeks of receipt and few experienced processing delays. Delays we found in the licensing process were mainly due to NHREC waiting for the State

Police to return the criminal records check or the applicant had a criminal conviction which required additional scrutiny.

We found no significant fluctuations in processing time between 2014 (prior to NHREC joining the Office of Professional Licensure and Certification (OPLC)) and 2016, when it had been consolidated into OPLC for approximately one year. The median number of days to process an original license application increased slightly from six days in 2014 to 6.5 days in 2016; however, the median number of days to process a renewal application decreased. Licensees we surveyed also reported having few issues with the timeliness of both initial licensing and renewals.

However, license applications were not always granted in accordance with State laws and administrative rules. Some were granted despite information missing from the application, or granted without the applicant submitting all required documentation.

Continuing Education Course Accreditation

To obtain an original or to renew a license, applicants and licensees were required to obtain a specific number of continuing education (CE) hours. Applicants for an original salesperson and broker license were required to complete 40 and 60 hours of pre-licensing study, respectively. Licensees renewing an active license were required to complete 15 hours of CE every two years, including a three-hour core class designed to review statutory and rule changes, and 12 elective CE hours in a variety of topics. Those renewing an inactive license were only required to complete the three-hour core class.

CE instructors were required to submit their courses for accreditation annually prior to offering them, and as of June 2017, NHREC had accredited just under 500 elective, 13 core, and 18 pre-licensing courses. During part of the audit period, Commissioners and staff reported CE providers expressed concern about the timeliness of course accreditation. Of the five CE providers we contacted, one expressed dissatisfaction with the timeliness of the accreditation process. For the applications we were able to calculate elapsed days for, we found the accreditation process took, on average, one month to complete with 25 of 57 applications taking longer than 30 days. Seventy-seven percent of courses we reviewed (ten of 13) applying for *initial* accreditation during the audit period were approved within 30 days, while only fifty percent of those applying for re-accreditation (22 of 44) were approved within the same timeframe. After the audit period, staff reported to the Commissioners that changes to the process had reduced the re-accreditation time from four weeks to one week.

Observation No. 1

Review The Process For Granting Reciprocal Licenses

NHREC may have issued reciprocal New Hampshire real estate licenses to brokers without clear statutory authority, and did not codify a process in administrative rules to approve reciprocal real estate licenses for salespersons.

Brokers

During our review of 225 licensees' files, we found eight real estate brokers who appear to have received a New Hampshire broker license through reciprocity. These licenses were approved by NHREC staff; Commissioners did not review any of these applications. However, statutes governing NHREC did not seem to allow real estate brokers licensed in another state to obtain a New Hampshire real estate broker license through reciprocity. In addition to meeting other requirements, statutes allow an applicant who holds an active real estate license in good standing, and issued by examination in another jurisdiction, to apply for an original license by taking the New Hampshire portion of the licensing exam, as long as the jurisdiction has entered into a licensing reciprocity agreement with the NHREC. It further states, "[t]his section applies to nonresident *salesperson* applicants only when such applicants are applying for an original New Hampshire *salesperson* license." [emphases added]

NHREC rules also appeared inconsistent with statute as they allowed brokers to obtain a reciprocal New Hampshire broker license. Rea 301.03(c) requires candidates applying "for the broker examination based on being licensed in another state for at least one calendar year..." to submit a certificate of good standing from the state in which they were licensed. However, statutes only seemed to allow for reciprocity for salespersons. Additionally, even if this rule was applied to brokers, we found NHREC approved three who were not licensed as brokers for one calendar year before obtaining their broker license in New Hampshire. Two had just been licensed as a broker in another state four months before obtaining a New Hampshire broker license.

Salespersons

While a reciprocal real estate salesperson license appeared to be statutorily allowable, NHREC had not codified the process to obtain one in its administrative rules. Rea 304.01 states, "[r]eciprocity requirements regarding licensing shall be as specified in Rea 301.03(c)." However, this rule only addressed reciprocity for real estate brokers.

Finally, statute allows reciprocity for applicants holding a real estate salesperson license in another state, provided the jurisdiction "previously entered into a licensing reciprocity agreement which has been approved by the commission..." We found applicants were processed through reciprocity from Massachusetts, Vermont, and Maine. However, NHREC staff could not provide copies of its reciprocity agreements or provide the dates when these agreements were approved by the NHREC.

Recommendations:

We recommend NHREC review its process for granting reciprocal real estate licenses by:

- **determining whether brokers are statutorily authorized to receive reciprocal licenses,**
- **codifying the process for granting reciprocal salesperson licenses in administrative rules,**

- **ensuring administrative rules for licensing brokers accurately reflect its legislative authority, and**
- **ensuring reciprocity agreements with other states are properly approved, retained, and remain valid.**

If NHREC determines real estate brokers licensed in another jurisdiction should be permitted to obtain a reciprocal New Hampshire broker license, and it finds the statute allowing reciprocity for broker applicants is unclear, it should seek legislative action to amend its statute.

NHREC Response:

We concur in part. As a result of NHREC's merger with OPLC, OPLC and NHREC staff continued to follow the past practice of NHREC by offering applicants reciprocity with four specified states that was understood to have a reciprocity agreement with the NHREC, subject to the applicant meeting other licensing requirements. To date, the NHREC has not been able to locate any documentation of reciprocity with any state.

The Commission reviewed its statutes and determined it has statutory authority to grant reciprocal licenses to brokers. RSA 331-A:11-a says that "If an applicant holds an active real estate license in good standing [from another jurisdiction], that applicant may apply for an original New Hampshire license." The statute then goes on to say that "This section applies to nonresident salesperson applicants only when such applicants are applying for an original New Hampshire salesperson license."

There are two license types in NH that could generally be described as an "entry-level" license as a salesperson and an "advanced/expanded" license as a broker. What this last sentence of the statute means is that, if you are a salesperson in another state, you are only eligible to obtain the reciprocal license as a salesperson in NH, and not the "advanced/expanded" license of a broker. A broker in another state, however, could receive either a salesperson or broker license on a reciprocal basis. The last sentence of the section does not restrict reciprocity only to salespersons, but rather ensures that an applicant only obtain the same scope of license he or she had in the other state. In light of that reading of that sentence, the section does allow the Commission to grant reciprocity to brokers.

This reading of the statute is consistent with other sections of the Real Estate Practice Act. Specifically, RSA 331-A:23 entitled "Denial of Reciprocity," provides that "No broker or salesperson applicant whose license as a broker or salesperson is under revocation or suspension in another state shall be granted a license as a broker or salesperson in this state." This section recognizes that the Commission has the authority to grant reciprocity to Brokers and provides a basis for the Commission to deny such reciprocity requests.

The Commission agrees:

- Administrative rules will be amended to codify the process for granting reciprocal salesperson licenses;*
- Reciprocity agreements will be drafted, approved, retained and renewed in accordance with the expiration date.*

Observation No. 2

Adopt Rules For Equivalent Experience

Statute requires applicants seeking a broker license demonstrate experience in one of three ways: 1) one year of full-time employment with an active principal broker in New Hampshire, 2) at least 2,000 part-time hours as a licensed salesperson in New Hampshire, or 3) demonstrate equivalent experience. Statute requires NHREC to adopt rules relative to what constitutes adequate proof of the qualifications for licensure, including what constitutes equivalent experience. However, NHREC lacked rules and policies to define or clarify experiences which could be considered equivalent for those without one year of full-time experience or 2,000 part-time hours.

Meetings we observed indicated at least two Commissioners consistently voted to deny an equivalency petition from applicants without prior New Hampshire real estate sales experience. While the other three Commissioners voted to approve equivalency applications most of the time, they too expressed concerns about petitioners' lack of New Hampshire sales experience. Of the five petitions for licensure through equivalent experience we observed, one was denied solely for not having prior New Hampshire real estate sales experience despite having real estate sales experience in another state. However, of the four granted petitions, only one had prior New Hampshire sales experience, while the other three did not.

Without clear standards for what constitutes equivalent experience, NHREC risked inconsistency in handling petitions for broker licenses based on their experience. Commissioners reported a lack of clarity existed in statute and another Commissioner was unsure what standards applied to applicants seeking licensure through equivalent experience.

Recommendation:

We recommend NHREC adopt rules to better define what constitutes equivalent experience for licensure for those without New Hampshire sales experience.

NHREC Response:

We do not concur. We are frequently faced with candidates for licensure who have varying degrees of past or current experience in the industry. No two applicants are exactly alike. Trying to define "equivalent experience" will be at the least difficult, and could hamstring our ability to judge candidates based on our collective knowledge (over 100 years) of real estate practice and law. Perhaps in this climate seeking a reduction in government oversight and few regulations, we should not be concerned and allow it to remain as is. We would encourage the auditors to strongly consider this in their final recommendations.

Observation No. 3

Improve Review Of Applicants Disclosing Adverse Financial History And Liabilities

NHREC and OPLC lacked consistent follow-up, documentation, and review of real estate licensees disclosing information pertaining to their financial history and on-going financial liabilities. Initial licensing and renewal applications for both salespersons and brokers asked applicants whether they had any undischarged liens or court judgments against them, and whether they have had a bankruptcy, insolvency, or made a compromise with their creditors. If the applicant answered “Yes,” they were required to provide additional information. However, neither OPLC staff nor NHREC Commissioners appeared to use this information to assess whether applicants should receive an initial license, or whether licensees should be able to renew their license.

In our review of 225 licensee files, we found two salespersons applying for an initial license and one broker applying for a license renewal had responded “Yes” to at least one of the questions pertaining to the financial history or on-going financial liabilities, but did not provide additional information as required. Additionally, we found 14 original salespersons and two brokers applying for their initial license, and one salesperson and one broker applying for a renewal of their license disclosing information relative to their financial history or on-going financial liabilities. However, we found no evidence of review or assessment by OPLC personnel or NHREC Commissioners of these applications.

NHREC was required to ensure real estate applicants for licensure met the minimum standards and provided evidence of a reputation with integrity, trustworthiness, and honesty. However, NHREC had not established minimum standards to assess the degree of financial liability, which would require further scrutiny by Commissioners or OPLC staff. We found applicants disclosed bankruptcies ranging from tens of thousands to hundreds of thousands of dollars without evidence of any further review or documented follow-up. Without a minimum standard established by NHREC, OPLC staff was either unable to verify standards were met and the public was adequately protected, or applicants were potentially required to disclose information, which had no bearing on the approval or denial of their application.

Recommendations:

We recommend NHREC evaluate the necessity of questions on the application relative to court judgments, liens, bankruptcy, insolvency, and creditors. If the evaluation finds the questions are necessary for ensuring public confidence in the industry of real estate, then establish minimum standards and level of review required by NHREC, and codify practices in policy.

We recommend NHREC establish a process to ensure applicants comply with rule and submit all required documentation.

NHREC Response:

We concur. Questions regarding adverse financial history will be evaluated for necessity. If the NHREC finds the question(s) are necessary, a policy will be established to define minimum standards and levels of approvals. This should be a matter of administrative review unless the financial history includes issues of fraud and dishonesty.

A process will be established to ensure applicants comply with rule and submit all required documentation.

Observation No. 4

Improve Supervision Over Licensing Activities

NHREC and OPLC lacked procedures to allow for supervision and review over the licensing process. One staff member approved initial and renewal licenses with limited supervisory review from OPLC and minimal review by Commissioners. Additionally, staff reported infrequently waiving some licensing requirements without a process to include Commissioner input. NHREC and OPLC lacked current formal policies and procedures to guide licensing activities. Consequently, we found noncompliance with statute and rule within NHREC licensing, renewal, and examination registration activities.

NHREC was established to ensure brokers and salespersons achieved minimum professional standards, and OPLC was responsible for issuing licenses to applicants who met the minimum standards. Management establishes the organizational structure, documents internal controls through policy and procedures, and delegates the authority required to achieve organizational objectives. Management only delegates authority as necessary and assesses segregation of duties to ensure an individual does not control all aspects of one activity or transaction. During the audit period, the multiple supervisors with real estate licensing directly within their purview reportedly performed no supervisory review of licensing. By concentrating all license approval into one individual with limited oversight and no formalized policies, NHREC and OPLC increased the risk of granting licenses to applicants who do not meet the minimum standards for licensure. While NHREC maintained responsibility for over 12,000 licenses (including salesperson, brokers, firms, and trade names), NHREC did not fully assess which licensing activities or applications presented a high risk to the public and required increased supervisory review.

Salesperson And Broker Applications

Twenty-eight percent (40 of 141) of initial and 16 percent (27 of 168) of renewal applications we reviewed were not compliant with requirements in statute or rule when they were approved. Noncompliance with statute and rule included:

- nineteen original license applications and twenty renewal applications were missing required information;

- fourteen applications were notarized over 30 days before submission, even though rule prohibited signatures be notarized more than 30 days prior;
- three applicants were licensed more than six months after passing the exam, even though statute requires applicants become licensed within six months or re-take the exam;
- five renewals were submitted after the license expired, but were not charged the required late fee;
- eight out-of-state brokers may have received a reciprocal broker license without clear statutory authority as discussed in Observation No. 1;
- three initial broker applications were missing documentation of a criminal background check being performed;
- one initial broker application submitted a certification issued over five years before the date of exam, even though rules only allow certifications obtained within five years; and
- one broker renewal licensee did not provide proof of a surety bond.

In addition to the items noted above, as discussed in Observation No. 3, we also found no review of applicants disclosing adverse financial histories and liabilities.

Firm Applications

Forty-four percent (12 of 27) of firm applications were approved without the required elements in statute or rule, including:

- four were missing all information on the officers participating in the brokerage,
- one did not provide evidence of a surety bond,
- three were missing information about any branch offices,
- three were missing information on whether their trade name was registered with the Secretary of State,
- two were missing certificates from the Secretary of State showing the trade name was registered, and
- one was missing a documented power of attorney.

Exam Registrations

While the vast majority (97 percent or 134 of 138) of initial exam registration forms we reviewed contained all requirements in statutes and rules, we found some noncompliance, including:

- two files were missing at least one exam registration form,
- one applicant took the exam more than three months after the registration form was received without submitting a new registration and fee as required by rule,
- one file showed evidence of three exam fees paid, but the candidate took the exam four times, and
- one file allowed a broker exam to be substituted for a salesperson exam.

We also found those registering to re-take the licensing exam rarely submitted new registration forms as discussed in Observation No. 11.

Recommendations:

We recommend NHREC conduct a risk assessment of licensing activities and identify those activities which may require additional supervisory or Commissioner review.

If NHREC determines some requirements may be waived, it should establish a process in administrative rules.

We recommend OPLC update and formalize licensing policies and procedures and consider implementing a risk-based, secondary review of licensing applications.

NHREC Response:

We concur. A review of the licensing process will be conducted. As a result of that review, NHREC will:

- a) Identify those activities which may require additional supervisory or Commissioner review. It is unclear what role the Commissioners have or should have in that process as it appears to be an administrative function.*
- b) In concert with OPLC will develop a process to grant waivers for specific extenuating circumstances and codify in administrative rules. If we allow waivers, there must be defined standards because otherwise it opens the door for inconsistency.*
- c) In concert with OPLC will review licensing policies and appropriately update for secondary review of licensing applications. This appears to be an administrative function.*

OPLC Response:

We concur. OPLC will review current licensing policies and procedures and will update such policies and procedures as appropriate to include secondary review of license applications.

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**STATE OF NEW HAMPSHIRE
OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION
NEW HAMPSHIRE REAL ESTATE COMMISSION**

COMPLAINT RESOLUTION

Did the New Hampshire Real Estate Commission (NHREC) process complaints efficiently and effectively?

State law allows NHREC to investigate the actions of anyone engaging in the practice of real estate and impose sanctions, if appropriate. NHREC can suspend, revoke, or deny the renewal of a license; levy fines; or require additional education courses against licensees found in violation of laws or rules.

We found NHREC could improve its complaint resolution process. Of the 125 complaints we reviewed, NHREC resolved 82 percent within one year of receipt and 93 percent within 18 months. However, we found some complaints were not processed timely, and at times, experienced delays of several months without any progress. NHREC could benefit from a more flexible complaint resolution process, better tracking of the phases within the process, improved records retention practices, and better defined policies and procedures. Additionally, NHREC could improve complaint processing by establishing timeframes for, and completion of, each phase, as well as the complaint resolution process as a whole to identify delayed complaints. Figure 1 illustrates the process for handling complaints during the audit period.

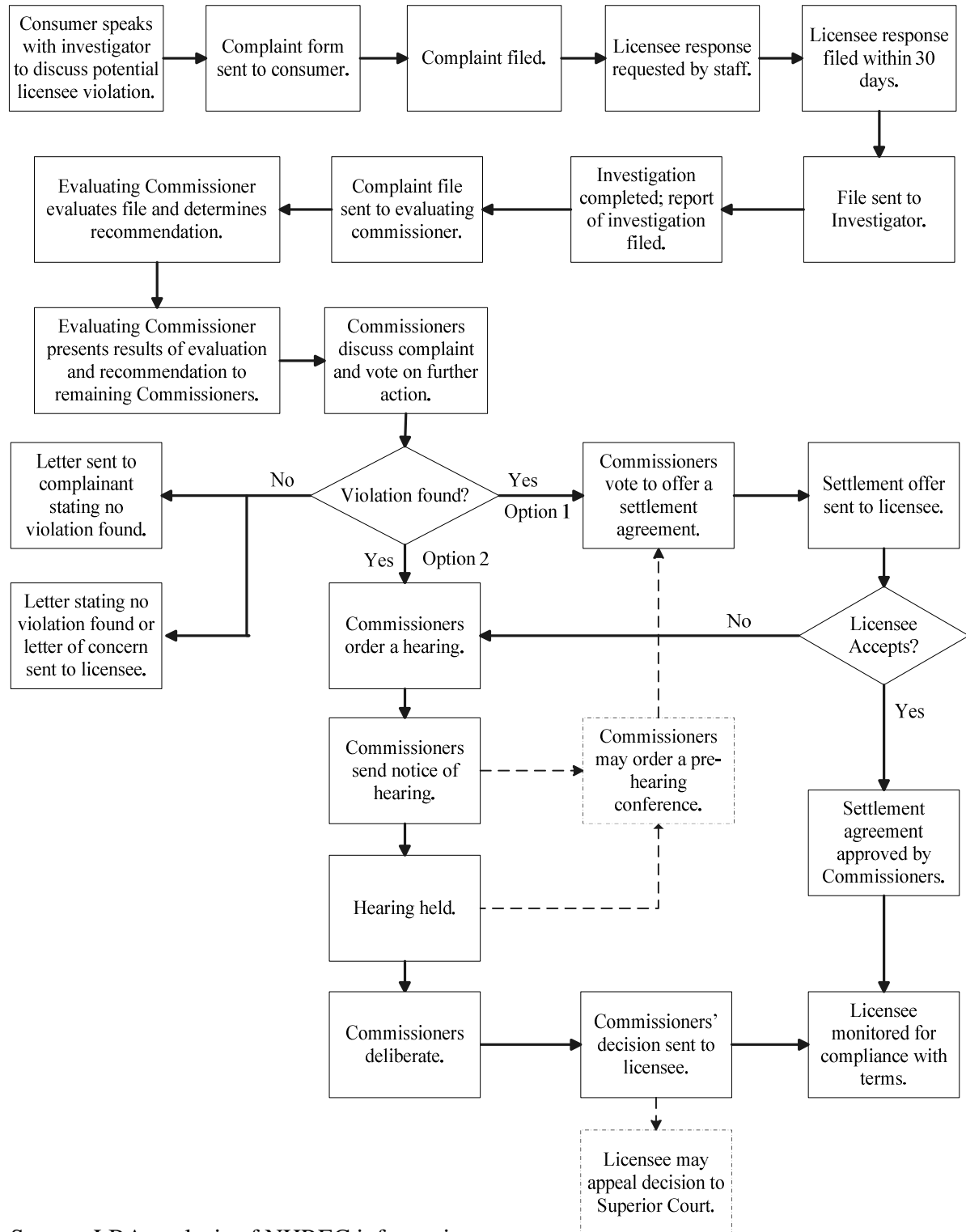
Complaint Resolution Process

During the audit period, consumers wanting to file a complaint were required to contact the NHREC investigator to discuss the alleged actions and request a complaint form. If the investigator determined the alleged actions could be a violation of laws or rules, the consumer was sent a complaint form.

State law requires NHREC to investigate all complaints it receives. NHREC rules require the complainant use an NHREC complaint form, include citations of the specific law or administrative rule the complainant alleges may have been violated, and sign the form in the presence of a notary or justice of the peace. When NHREC received a completed complaint form, support staff sent a letter to the licensee against whom the complaint was filed, requesting a response within 30 days. A letter acknowledging receipt of the complaint was also sent to the complainant. If the complaint form was incomplete (e.g., missing a notarized signature or citations of law or rule), the form was sent back to the complainant requesting the missing information.

Figure 1

NHREC Complaint Resolution Process



Source: LBA analysis of NHREC information.

Once the licensee's response was received, the complaint file was transferred to the investigator to complete the investigation. The investigation process included reviewing transaction records, gathering additional information, and speaking with parties and witnesses involved in the transaction. NHREC employed one investigator who was responsible for conducting investigations on any complaint filed against over 12,000 licensees. At the completion of the investigation, the investigator produced a report of investigation (ROI) which, along with the complaint file, was transferred to a Commissioner to evaluate and make a recommendation for further action. The evaluating Commissioner was required to present the results of the evaluation to the remaining Commissioners with a written recommendation on whether to dismiss the complaint if the investigation found no violation, offer a settlement agreement for any violations found, or hold a hearing to further consider disciplinary action.

If the Commissioners determined the licensee's actions did not constitute a violation, support staff sent letters informing both the complainant and licensee the investigation found no violation. In some instances, if the investigation found no violation, but Commissioners had concerns about the licensee's actions, Commissioners issued a confidential letter of concern.

If the Commissioners determined the licensee's actions were in violation of NHREC laws or rules, they could offer a settlement agreement as an alternative to a hearing. The licensee could voluntarily accept the terms of the settlement agreement, and once approved by Commissioners, staff would monitor the case until the terms of the settlement agreement were fulfilled. If the licensee did not accept the settlement offer, or did not respond within 30 days, NHREC scheduled the case for a hearing. Prior to consolidation into OPLC, the investigator and the NHREC Executive Director drafted settlement offers. After consolidation, the Director of the Division of Technical Professions (Technical Division) assumed this responsibility.

If Commissioners voted to schedule an adjudicative hearing or the licensee did not accept the settlement offer, the evaluating member was prohibited from participating in the hearing panel which must consist of at least three Commissioners. Rules require NHREC issue a notice of hearing at least 14 days prior to the scheduled hearing. Commissioners could also order a pre-hearing conference to discuss a settlement offer or deal with procedural issues. Prior to consolidation, the NHREC Executive Director drafted the notice of hearing. After consolidation, this task became the responsibility of the Technical Division Director.

The NHREC investigator served as the prosecutor during adjudicative hearings. Hearings allowed each side to present witnesses and evidence, as well as the cross examination of witnesses. Commissioners were also permitted to ask questions. At the conclusion of the hearing, the hearing panel was required to deliberate the facts of the case and make its decision, which was sent to the licensee and monitored for compliance with ordered sanctions. Licensees could appeal the decision to the Superior Court. Prior to consolidation, the Executive Director or investigator drafted NHREC decisions. After consolidation, this task was performed by the Technical Division Director.

Complaint Timeliness

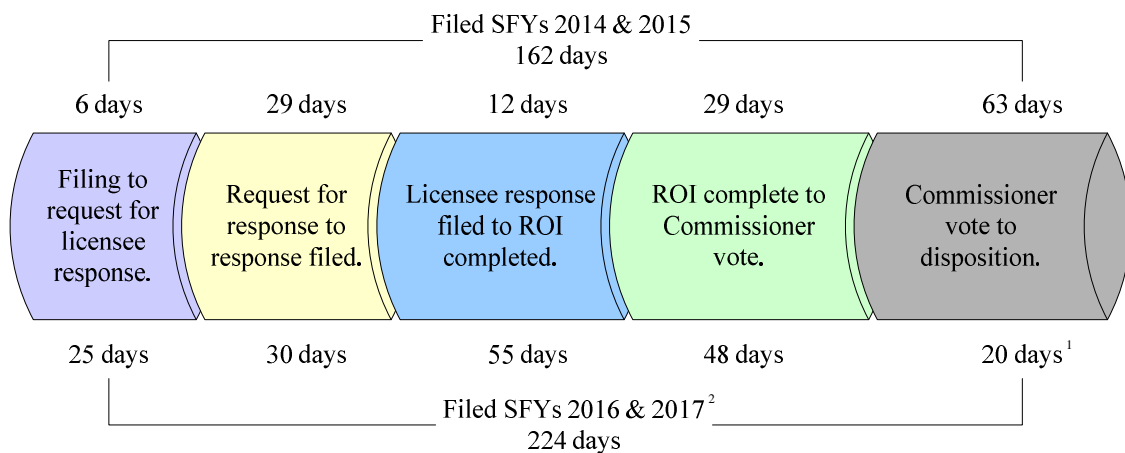
Our review of 104 closed complaints filed during the audit period found complaints took a median of 184 days to process from the time it was filed until Commissioners approved a

settlement agreement, or issued a decision, letter of concern, or letter of no violation. The majority of complaints (82 percent or 85 of 104) were closed within one year, and 93 percent (97 complaints) were closed within 18 months of filing. Seventeen cases filed in or after SFY 2016 were still pending and had been open for a median of one year as of May 31, 2017.

We found significant fluctuations in the processing time between complaints filed in SFYs 2014 and 2015 versus those filed in SFY 2016 and after. Figure 2 shows the median number of days to process each phase for complaints filed in SFYs 2014 and 2015 compared to those filed in SFYs 2016 and after. The median number of days to process a complaint filed in SFY 2014 and 2015 was 162 days, while complaints filed in SFY 2016 and beyond took a median of 224 days to close out. In early 2015, NHREC’s investigator of over 22 years retired and a new investigator was hired in April. The change in experience levels during these timeframes could have accounted for some of the increase in processing time. However, we found increases in processing times for other phases of the complaint process as well. For example, we found it took over four times as long to request a response from the licensee for complaints filed in SFYs 2016 and 2017 compared to those filed in SFYs 2014 and 2015, and one and a half times as long for Commissioners to evaluate and vote on the complaint once the ROI was completed.

Figure 2

Median Days Between Complaint Phases By Fiscal Year Filed



Notes:

¹ Seventeen cases were still in progress as of May 31, 2017. However, we were able to calculate the number of days these cases have been in progress since the date of Commissioner evaluation or completion of the ROI. Three cases did not have a completed ROI and were not included in this figure. One case has been in progress for one year, while two have been open for over two years.

² SFY 2017 includes complaints filed on or before December 31, 2016.

Source: LBA analysis of a sample of complaints filed between July 1, 2013 and December 31, 2016.

Observation No. 5

Better Track Complaint Processing

During the audit period, NHREC did not have a process to effectively track the status of complaints. As a result, we found delays in the following steps, which may have contributed to some complaints not being processed timely.

- *Requesting A Licensee Response:* While NHREC did not establish a timeframe for sending a request for a licensee response, this was generally the first step in initiating the investigation. While staff sent requests for a response within two weeks in more than half of the 120 complaints we reviewed, we found 25 complaints in which this process took over one month to complete. Six complaints were not sent to the licensee for a response until at least 4 months after NHREC received the complaint and one was not sent out for response until 210 days after.
- *Licensee Response:* NHREC rules require the licensee file the response within 30 days of receipt. We found 30 of 117 responses which had a date of return (26 percent) exceeded this time limit, with eight licensees taking over two months and four taking over four months to submit their response. One licensee took 264 days to respond.
- *Investigation:* Once the licensee filed the response, we found investigations took approximately one month to complete. However, we found 14 investigations took over three months, with eight of those taking over six months or more. Two investigations took over two years. We also found the following problems during the investigation phase:
 - One investigation where, as of May 31, 2017, no action had been taken since January 2016 when the licensee requested additional information about the complaint.
 - One investigation where no action was taken between September 2016 and April 2017.
 - One investigation where no action was taken between September 2015 and April 2017, when NHREC filed an additional complaint against the licensee. The original issue outlined in the consumer complaint filed in July 2015 has not been resolved.
- *Commissioner Evaluation:* Once the investigation was complete, we found the complaint was evaluated by a Commissioner within 40 days. However, four were not evaluated until at least three months after the investigation was complete, with all four taking between ten months and one year to be evaluated.
- *Adjudication:* After a Commissioner evaluated the complaint, we found they were disposed within one month. Complaints requiring a hearing or settlement agreement took longer, approximately four months, to adjudicate. However, we found 18 complaints took over six months to adjudicate, including ten which required a hearing. Additionally, we found the following issues:
 - One case where a hearing notice was not sent until seven months after Commissioners voted to schedule a hearing.

- Three cases where settlement agreements were sent out between ten and 13 months after Commissioners voted to offer a settlement. In one case, the settlement was sent out one month after the complainant inquired about the status of their complaint, which had been filed almost three years prior.
- Four cases where, as of May 31, 2017, there had been no action despite Commissioners voting for a hearing or a settlement offer at least five months prior.
- *Issuing An Order After A Hearing:* In nine of the 16 cases which went to hearing, we found NHREC issued orders within 90 days. However, the remaining seven cases took between 147 and 182 days to issue the order.

Delays in one or more of these phases could result in complaints not being processed timely, hindering NHREC's role in protecting the public. During the audit period, NHREC was consolidated into OPLC, a process which was described as turbulent and challenging. Oversight of the investigation process may have been negatively affected by this transition. In February 2017, OPLC implemented a process to better track complaint progress by capturing information including the dates of: request for licensee response, licensee response, complaint being sent to the investigator, Commissioners' review, hearing, and date of decision.

Recommendations:

We recommend NHREC improve complaint processing by continuing to track each phase of the process to ensure complaints are progressing timely, and report this information to Commissioners on a periodic basis. NHREC should use the tracking system to monitor progress to ensure:

- **complaints are sent to licensees for response timely upon its receipt;**
- **licensee responses are filed within 30 days of receipt, and a follow-up process established to handle responses not received when expected;**
- **investigations are transmitted to an evaluating Commissioner timely after the report of investigation is completed;**
- **hearing notices and settlement agreements are prepared and sent out to licensees timely; and**
- **orders are issued timely.**

If not already established, we also recommend NHREC establish goals for when each phase should reasonably be completed. NHREC should evaluate actual performance against these timeframes to ensure complaints falling outside of these expectations are identified and acted upon timely.

NHREC Response:

We concur. The prior complaint process was not conducted in a timely manner which allowed for the errors found during the audit process. Starting in February 2017 the NHREC developed and implemented a comprehensive tracking system that monitors each complaint from start to finish, tracks the length of time every case is open, and graphs each complaint's timeline to easily identify longer than expected cases. Additionally, all of the non-investigatory processes

were assigned to an OPLC staff person who has developed an extensive follow up process to ensure documents are timely distributed and received, investigation reports are tracked and completed, evaluations distributed and reported back to the Commission, hearings scheduled, and orders issued and monitored.

The NHREC will further establish reasonable goals for each phase of the complaint process and incorporate those goals within the tracking system.

Observation No. 6

Improve Complaint Resolution Process

NHREC's complaint and investigation process lacked policies and procedures, did not define or offer guidance regarding the scope of investigations, and was possibly constrained unnecessarily by its statutory requirements.

Restrictive Complaint Processes Required By Statute

Statutes outlining complaint investigation procedures restricted NHREC from establishing a process to determine whether complaints were within its jurisdiction to investigate. Statutes require NHREC investigate all complaints upon receipt. Therefore, NHREC still had to investigate complaints about issues beyond its jurisdiction.

To mitigate the number of complaints filed which may fall outside of NHREC's jurisdiction, consumers were required to contact the NHREC investigator to discuss the alleged actions and request a complaint form. During the audit period, the complaint form was not posted on NHREC's website and the only way to obtain one was to contact NHREC staff. The investigator reportedly spent a significant amount of time screening complaints to ensure they were within NHREC's jurisdiction before sending a complaint form to the consumer. Even if the investigator assessed the alleged actions may not be within the jurisdiction of the NHREC, a consumer could still request a complaint form. We could not determine the number of complaints filed which were outside of NHREC's jurisdiction, as there was no process to track the complaints which were found to have jurisdictional issues.

Regulatory bodies developing processes to screen out complaints for lack of jurisdiction or merit was an industry standard. OPLC management reported all the other regulatory bodies within the Technical Division have a process for board and commission members to screen complaints for jurisdictional issues before investigation.

Composition Of Complaint Files

Upon completion of the investigation, statute requires the complaint file be presented to an evaluating Commissioner tasked with presenting a recommendation on further action to the remaining Commissioners. The evaluating Commissioner received a copy of the entire complaint file which included every document collected during the investigation. Commissioners reported the files were too lengthy and contained duplicate or triplicate documentation. NHREC did not have a policy defining the contents of a complaint file. Consequently, we observed many

complaint files were several inches thick and contained several copies of the original complaint, the licensee's response, emails, and other documents. The statutory requirement that each "complaint file" be presented to an evaluating Commissioner may have limited the ability of NHREC to streamline the evaluation process and mitigate the amount of duplicate documentation Commissioners reviewed.

Scope Of Investigation

NHREC lacked a formal policy defining the scope of investigation or determining when it merited expansion. NHREC did not have policies and procedures to guide the investigation process; therefore, the investigator had considerable discretion in the direction and scope. For instance, the investigation into allegations made by the complainant could identify additional concerns not pertinent to the original allegation. NHREC had not provided formal guidance on whether staff should further investigate these issues as part of the original complaint, or if staff should file a new complaint against the licensee regarding these additional concerns. By not defining the scope of an investigation or developing policies and procedures guiding when expansion of the scope is warranted, investigations may not have been efficiently targeted towards high-risk practices while ensuring minor issues did not consume an inordinate amount of resources.

Some Commissioners expressed frustration about time spent investigating and evaluating complaints which did not have merit. However, Commissioners had not provided guidance regarding prioritization of resources or practices they considered high-risk. Other boards and commissions had a process to identify whether a complaint had merit to warrant an investigation. In these boards, once the licensee's response was received, one board or commission member worked with the investigator to determine, based on the licensee's response, whether further investigation may be warranted instead of requiring an investigation of all complaints filed.

Recommendations:

We recommend NHREC collect information on complaints which have been found to lack jurisdiction or those which could have been dismissed sooner for lack of merit. NHREC should use this information to review its investigation process and determine whether existing statutes are too restrictive to allow for efficient complaint processing. This review should include determining whether NHREC could benefit from a process to dismiss complaints for lack of jurisdiction, and whether allegations lacking merit should be investigated. If NHREC determines investigation procedures established in statute are too restrictive, it should seek amendment to its statute to facilitate a more flexible and efficient process.

We recommend NHREC establish policies defining the contents of a complaint file. These policies should consider what type of documentation should be included in the file and how to handle multiple copies of documents.

We also recommend NHREC establish policies and procedures clarifying the scope of investigations. Policies should provide additional guidance as to when it may be appropriate to limit the scope of an investigation, when expansion of an investigation may

be warranted, when a complaint requires prioritization, and under what circumstances staff should initiate a new complaint against a licensee.

NHREC Response:

We concur. Starting in February 2017 the NHREC initiated a review of its complaint process and opened a dialogue with other investigators within the Technical Division and OPLC to discuss best practices. A new complaint process is under development and will be presented to the Commission for further review and approval. Accordingly, the NHREC will review applicable laws and rules to determine if changes are needed to implement the new process, and will seek such changes if needed.

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STATE OF NEW HAMPSHIRE
OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION
NEW HAMPSHIRE REAL ESTATE COMMISSION

ADMINISTRATIVE OPERATIONS

For an organization to effectively achieve its mission and ensure compliance with laws and regulations, it must establish management controls to implement operations and perform administrative functions. Management controls include the plans, policies, procedures, oversight, and objectives necessary for organizational effectiveness. To remain effective, management must continuously review its control system to adapt and address changes, risks, and priorities. The five volunteer Commissioners were responsible for establishing a management control structure over New Hampshire Real Estate Commission (NHREC), its staff, and its operations. However, most reported having little knowledge of staff activities and reported relying on staff to implement operations effectively without their involvement or oversight.

The *New Hampshire Real Estate Practice Act* (RSA 331-A) established NHREC to regulate real estate brokers and salespersons, ensuring they meet and maintain minimum standards in their practice, and promote public confidence and understanding of the profession. As the entity responsible for regulating the practice of real estate, statutes required NHREC to perform several administrative functions to implement the *Real Estate Practice Act*. In addition, other statutes affecting all boards and commissions require public transparency, adequate records management, compliant licensing processes, and proper administrative procedures.

Responsibility to implement statutory requirements was primarily vested with NHREC. However, for part of the audit period, support staff and resources were transferred to the supervision of the Office of Professional Licensure and Certification (OPLC), causing some confusion regarding roles and responsibilities. When it was created at the beginning of State fiscal year (SFY) 2015, statute transferred the responsibility for all administrative, business, and clerical processes from NHREC to OPLC, creating the necessity for a cooperative relationship if both entities were to fulfill their statutory and administrative responsibilities. During the audit period, the consolidation was still in transition, and according to NHREC and OPLC staff, the merger was turbulent.

NHREC Merger With OPLC

Consolidating NHREC into OPLC faced challenges from its inception. Legislation creating OPLC passed into law in September 2015, but was retroactively effective July 1, 2015. NHREC did not move its operations into the OPLC building until late November 2015.

Efforts to effectively consolidate the two entities were hindered by organizational turmoil. Both staff and Commissioners reported issues with lack of cooperation, coordination, and communication during and after consolidation. In early January 2016, a bill was introduced to remove NHREC from OPLC after only one month of consolidation. Further exacerbating the issue, OPLC experienced significant turnover among managerial staff, with three people serving in the Executive Director position between November 2015 and December 2016. Staff supporting NHREC also experienced turnover with the departure of the NHREC's Executive Director at the end of January 2017, and an administrative assistant in April 2017.

Fiscal Management

NHREC operations were funded by both general funds and restricted revenues. Fees paid for licensing, relicensing, continuing education accreditation, and other miscellaneous fees were deposited as unrestricted revenues. These fees were used to reimburse the general fund for activities associated with general operations of NHREC, with the exception of activities associated with the licensing examination. Fees paid by applicants registering to take the licensing exam were deposited as restricted revenue and were required by statute to be used only for exam-related expenses. NHREC was required to establish fees to recover 125 percent of its direct expenses for each of its revenue sources. Therefore, revenue for each of these two accounts should have been tracked separately, with expenses attributable to each revenue source also tracked separately.

OPLC lacked a fully developed cost allocation methodology to allocate expenses attributable to NHREC. Therefore, in an effort to assess NHREC's compliance with requirements to recover 125 percent of its direct expenses, we developed separate cost estimates for all identifiable expenses attributable to NHREC's restricted and unrestricted revenue sources. Our methodology included first separating expenses attributable to NHREC from those attributable to other boards. We then separated expenses attributable to the licensing exam from all other NHREC expenses. These are reported as expenses attributable to NHREC's restricted revenue, while the remaining costs are reported as expenses attributable to NHREC's unrestricted revenue.

A more detailed discussion of our cost allocation methodology can be found in our Scope, Objectives, and Methodology section in Appendix A.

Unrestricted Revenue And Expenses

Fees paid by applicants and licensees to obtain an original or renew their license, accredit continuing education courses, and other miscellaneous fees were deposited as unrestricted revenues. As shown in Table 2, NHREC consistently collected approximately \$700,000 in unrestricted revenue annually. We estimated expenses were between approximately \$450,000 and \$530,000 annually. Between SFYs 2014 and 2017, we estimated NHREC collected between 136 percent and 152 percent of its operating expenses.

Although NHREC's estimated expenses increased after consolidation into OPLC, NHREC benefited from additional services not previously available. Prior to the merger, NHREC's Executive Director tracked and drafted administrative rules, but under OPLC, NHREC had access to an attorney specializing in drafting administrative rules. Additional administrative support included centralized human resource, procurement, and accounting services. NHREC also accrued increased costs to standardize and reorganize NHREC licensing and complaint records for consistency with the rest of OPLC's records. Once this process is complete and all NHREC records are standardized, these costs should be reduced or eliminated. Finally, OPLC introduced additional layers of management into NHREC without reducing the cost of the previous management structure.

Table 2

**NHREC Unrestricted Revenue And Estimated Expenses,¹
SFY 2014 To SFY 2017**

	2014	2015	2016	2017
Personnel Costs	\$ 391,000	\$ 383,000	\$ 426,000	\$ 454,000
Non-Personnel Costs ²	<u>66,000</u>	<u>69,000</u>	<u>69,000</u>	<u>73,000</u>
Total Estimated Expenses	\$ 457,000	\$ 452,000	\$ 495,000	\$ 527,000
Revenue	\$ 692,000	\$ 688,000	\$ 682,000	\$ 720,000
Percent Of Revenue To Expenses	151 %	152 %	138 %	137%
Revenue Required ³	\$ 571,000	\$ 565,000	\$ 619,000	\$ 659,000
Revenue In Excess Of Required	\$ 121,000	\$ 123,000	\$ 63,000	\$ 61,000
Notes:				
¹ Expenses calculated based on the LBA cost allocation methodology described in Appendix A.				
² Includes building rent, supplies, consumables, equipment, information technology, utilities, and maintenance.				
³ Revenue required for NHREC to collect 125 percent of its direct operating expenses.				
Source: LBA analysis of unaudited State financial data.				

Statutes consolidating NHREC with OPLC retained the NHREC Executive Director until the incumbent vacated the position. This, coupled with the salaries and benefits of additional management layers already in place at OPLC, increased NHREC's expenses for SFYs 2016 and part of SFY 2017. At the end of January 2017, the NHREC Executive Director retired. The position was reclassified and filled with a part-time administrator at a reduced salary, eliminating the cost of benefits for this position. This reclassification should result in future cost savings to NHREC's management structure.

Restricted Revenue And Expenses

Fees paid by applicants taking the licensing examination were deposited as restricted revenue. NHREC was also required to set examination fees to recover 125 percent of the direct expenses of administering the examination program. As shown in Table 3, NHREC collected between approximately \$320,000 and \$430,000 in examination fees and had estimated expenses of between approximately \$180,000 and \$215,000 from SFYs 2014 to 2017. Increased revenue during SFYs 2016 and 2017 were attributed to a stronger housing market, resulting in more applicants seeking licensure. The largest increase was a result of increased payments to the exam vendor for the increased number of applicants taking the exam. We estimated NHREC collected between 172 percent and 201 percent of the cost of administering the exam between SFYs 2014 and 2017.

Table 3

**NHREC Restricted Revenue And Estimated Expenses,¹
SFY 2014 to SFY 2017**

	2014	2015	2016	2017
Personnel Costs	\$ 49,000	\$ 51,000	\$ 35,000	\$ 33,000
Non-Personnel Costs ²	<u>131,000</u>	<u>134,000</u>	<u>163,000</u>	<u>180,000</u>
Total Estimated Expenses	\$ 180,000	\$ 185,000	\$ 198,000	\$ 213,000
Revenue	\$ 327,000	\$ 318,000	\$ 398,000	\$ 428,000
Percent Of Revenue To Expenses	182 %	172 %	201 %	201%
Revenue Required ³	\$ 225,000	\$ 231,000	\$ 248,000	\$ 266,000
Revenue In Excess Of Required	\$ 102,000	\$ 87,000	\$ 150,000	\$ 162,000

Notes:

¹ Expenses calculated based on the LBA cost allocation methodology described in Appendix A.

² Includes vendor payments, building rent, utilities, maintenance, supplies, information technology, consumables, and equipment.

³ Revenue required for NHREC to collect 125 percent of the direct expense of the licensing exam.

Source: LBA analysis of unaudited State financial data.

Observation No. 7

Improve Fiscal Management

OPLC lacked a fully developed cost allocation system, did not separately track examination-related expenses, and carried forward restricted revenue without proper authority. We also found OPLC did not provide NHREC with detailed financial information, hindering its ability to fulfill its statutory responsibility to establish fees.

Development Of A Cost Allocation Methodology

Statute requires NHREC to reimburse OPLC for the cost of services. However, it requires these costs to be “allocated equitably” among the boards and commissions under the OPLC’s purview. During the audit period, OPLC was in the process of developing a cost allocation methodology to track all commission and board expenses. OPLC’s method required all expenses to be allocated based on the percentage of *revenue* each board or commission collected, instead of the *cost* each board or commission accrued. Consequently, under this methodology higher-earning boards or commissions were responsible for a larger portion of OPLC’s costs. Basing a cost allocation methodology on revenues collected does not appear to be an equitable method to recover operating costs. Methods including tracking actual resources used or the number of licensees regulated may be more equitable. OPLC did not provide NHREC with its cost

allocation for SFY 2016, and in preceding years, NHREC was responsible for tracking its own expenditures and revenues.

After the audit period, OPLC started developing methods to track rent, information technology, payroll, and current expenses based on each board or commission's usage. However, these methodologies were still being developed.

Limited Separate Tracking Of Examination-Related Expenses

Statutes require NHREC charge a reasonable fee to cover the cost of administering the licensing examination. Statutes further require examination fees be equivalent to 125 percent of the expense. They also allow NHREC to expend "funds for such examinations... not to exceed the direct expense of the examination;" therefore, restricting these revenues to only examination-related expenses. However, we found not all examination-related expenses were tracked separately from those attributed to the rest of NHREC's operating expenses. In fact, we found real estate licensing exam costs were included in the costs allocated among all boards and commissions within the Division of Technical Professions (Technical Division). In other words, all boards and commissions under the Technical Division paid a portion of NHREC's examination expenses.

Restricted Revenue Carried Forward Without Statutory Authority

Statute did not establish the examination revenue account as a non-lapsing fund; therefore, any unexpended funds lapsed to the General Fund unless specific statutory authority existed to carry the funds forward into another fiscal year. State policy allows agencies to request the Department of Administrative Services (DAS) for authority to carry forward funds to cover valid current year charges. However, these requests "must represent **legally enforceable obligations**..." [emphasis in the original] We found at the end of SFY 2016, NHREC carried forward \$238,000 from the examination fund, improperly citing the authority of another board. After being informed of the improper carrying forward of funds, OPLC staff reported working with DAS to rectify the issue.

According to the former NHREC Executive Director, starting in SFY 2008, revenues collected for examinations did not cover the cost of the examination program. Therefore, revenues collected through licensing and other fees were used to supplement the cost of the examination program and in SFY 2012, NHREC increased its examination fees. At the beginning of SFY 2014, the restricted revenue account designated for examination fees had a deficit of approximately \$130,000. To address this deficit, NHREC carried forward funds left over after all other examination-related expenses were paid, and by the end of SFY 2015, NHREC had eliminated this deficit. However, after the deficit was eliminated, this practice of carrying forward the balance in the examination revenue account continued, resulting in \$238,000 in examination revenues being carried forward into SFY 2017.

Lack Of Financial Information

Without information on its operating expenses, NHREC could not adequately fulfill its responsibility to establish fees. Statute requires NHREC set its fees to produce revenues equal to

125 percent of the direct operating expense of the previous fiscal year. Licensing (including initial, renewal, amendment, and late fees), continuing education course accreditation, and bounced check fees were deposited as unrestricted revenue and used to reimburse the general fund for NHREC's operations.

Based on our estimates of NHREC expenses, fees established consistently generated revenues slightly above 125 percent during the audit period. However, we found examination fees collected exceeded the 125 percent statutory requirement. Our estimates of examination expenses during the audit period found fees generated between approximately 170 and 200 percent of the direct cost of examination-related expenses. As discussed above, NHREC had increased its examination fee to make up for prior-year deficits due to the reduction in the number of applicants taking the exam during the recession. The deficit was eliminated by the end of SFY 2015; however, the fees had not been re-adjusted. NHREC charged the highest examination fee among the New England states. New Hampshire's examination fees were nearly three times as much as the lowest fee in New England. Further, a high examination fee may have created a barrier of entry for those seeking to enter the profession.

Once consolidated, OPLC was responsible for tracking all of NHREC's revenues and allocating expenses. NHREC was responsible for setting fees sufficient to produce revenues equal to 125 percent of the previous fiscal year's direct operating expenses. NHREC was also responsible for setting examination fees equivalent to 125 percent of the direct expense of the examination, which could only be used for expenses related to administering the examination. However, during the audit period, OPLC did not provide NHREC with any reports regarding its operating expenses or expenses related to the examination program. Without sufficiently detailed financial information and periodic financial reporting from OPLC to Commissioners, NHREC was limited in its ability to adequately perform its fiscal responsibilities.

Recommendations:

We recommend OPLC help NHREC improve its fiscal management responsibilities by:

- **developing a cost allocation method more reflective of the cost to operate each board and commission;**
- **tracking expenses related to the examination program separately from other NHREC expenses;**
- **ensuring funds carried forward into another fiscal year are properly authorized, or lapse to the General Fund; and**
- **providing periodic financial reports to NHREC Commissioners outlining both restricted and unrestricted revenues as well as their associated expenses.**

We recommend NHREC periodically review and monitor its licensing, accreditation, and examination fees and expenses, and establish its fees sufficient to collect 125 percent of the previous fiscal year's expenses.

NHREC Response:

We concur in part. A question asked during the audit focused on the duties and responsibilities of the Commissioners for administrative functions and financial management. The question was never answered. We are unclear as to what responsibility Commissioners have for the financial performance of the NHREC. If the Commissioners are receiving financial reports, it implies they have a duty to review them and assume financial responsibility. We have never been provided with a P&L Statement or financial statements. The statute states the Director reports to the Commissioners but it does not discuss financial matters. During the OPLC merger, a legislator commented that the Commissioners have financial oversight. We need a clear specific response to this question: What responsibility do the Commissioners have for the financial performance and the administrative function of the REC? If we have financial responsibility, we should be reviewing P&L's and financial statements at each meeting. If we have administrative functions, how deep?

Going forward, we will continue to request monthly financial information from the OPLC.

We have an ongoing complaint relative to fees generated by the licensee testing process that result in a revenue surplus in excess of our 125% obligations. How can the surplus ever be transferred to the OPLC or to the general fund without being considered an unconstitutional tax? When a portion of licensee fees are paid over to the general fund, it results in the licensees paying more than their fair share to operate the government (or to subsidize other OPLC agency fees). Our feeling is if a surplus is generated it must always be carried over to the following year for the benefit of the licensees or otherwise rebated to the licensees.

OPLC Response:

- a. We concur. The OPLC is working with Department of Administrative Services to develop a cost allocation plan that works with all boards and we will share with the boards once finalized;*
- b. We concur. The cost of examinations is tracked when invoiced by the vendor however, personnel cost relating to exams is not at this time;*
- c. We concur. We researched the laws to see if we could find a justification to carry forward the restricted revenue and found nothing to substantiate this so we agree with this part and as of the end of FY 17 all restricted revenue lapsed; and*
- d. We concur. When provided ample information relative to the expenditures we do track by board. We started this tracking process beginning late March 2016. Per OPLC policy, expenditure reports will be provided to the EMT (Executive Management Team) every three months. It will be up to the Division Directors to share this information with their boards.*

Observation No. 8

Review Administrative Rules

We found NHREC's rules inconsistently conformed to the requirements of the *Administrative Procedure Act*. Many of NHREC's rules were expired for the last six months of the audit period, and were enforced while expired without corresponding statutory requirements. We found rules required by statute were inconsistently adopted and some conflicted with statute or NHREC policy.

Expired Administrative Rules

To be valid and enforceable, rules must be properly adopted and must not have expired. When valid, rules are binding on persons they affect and have the force of law. Expired rules cannot be enforced unless duplicate statutory provisions exist. Many of NHREC's rules expired between July and October 2016, rendering them unenforceable. Notably, rules affecting the following activities were expired for portions of the audit period:

- requirements for initial licensure for salespersons, brokers, and firms;
- license renewal procedures and continuing education requirements;
- licensing exam registration requirements, the minimum score for passing the exam, procedures for re-taking the exam in the event the applicant fails one or both portions, requirements to submit a new registration and fee for those failing to show up for a scheduled exam, time limitations for passing both portions of the exam, as well as requirements for re-taking the pre-licensing course under certain circumstances; and
- procedures for filing and investigating a complaint against a licensee.

Our review of 225 NHREC licensee files found 82 initial applications, 59 renewals, 13 firm applications, and 24 exam registrations were approved under expired rules without specific corresponding statutory authority. Our review of 125 complaint files also found 19 were processed under expired rules. While statutes require NHREC investigate all complaints, activities such as requiring a complainant use a specific complaint form, requiring the complaint form and licensee response be notarized, and requiring the licensee to respond within a specific time period were not outlined in statute.

Prior to consolidation into OPLC in November 2015, NHREC staff were responsible for ensuring administrative rules remained valid. Statutes consolidating NHREC into OPLC transferred the responsibility for supervising, coordinating, and assisting with rulemaking to the OPLC Executive Director. In December 2016, OPLC staff assumed responsibility for tracking NHREC administrative rules and NHREC started revising its expired rules. In December 2016, rules pertaining to initial licensing and renewal applications were adopted on an interim basis. However, interim rules affecting complaint processing were not re-adopted until after the audit period.

Statutorily Required Rules Not Adopted

We found the following rulemaking requirements contained in the *Real Estate Practice Act* had not been established in NHREC's rules:

- RSA 331-A:7, II requires NHREC set all required fees in its administrative rule. However, NHREC had not established fees for obtaining a temporary license even though the requirement had been in place since 1993. Twelve licensees had temporary broker licenses during the audit period.
- RSA 331-A:9 requires NHREC establish a code of ethics containing at least four provisions. However, the provision prohibiting NHREC employees from holding an active real estate license was not included in NHREC's code of ethics. This requirement had been in place since 2005.
- RSA 331-A:22-a, IV(e) requires NHREC to establish penalties "in addition to any other penalty under this chapter..." for violating a cooperative broker agreement and also requires the establishment of procedures to appeal NHREC's decision. While rules exist outlining sanctions for violating the provisions of the *Real Estate Practice Act*, this statute requires the establishment of sanctions *in addition to* those already established. Additionally, while there were general provisions for appealing all NHREC decisions to the Superior Court, there were none specific to cooperative agreements. These requirements had been in place since 1999.

Potential Conflict Between Administrative Rules And Statutory Authority

Administrative rules are required to be consistent with statute. As discussed in Observation No. 1, we found a potential conflict between a law allowing reciprocal licensure for salespersons and a rule allowing brokers to obtain reciprocal licensure. Rules allow brokers to apply to take the broker exam if they submit a certificate of good standing from the state in which they were licensed. However, statutes governing reciprocity only appear to apply to salespersons.

Conflict Between Administrative Rules And Continuing Education Policies

Rules established requirements for three types of preparatory and continuing education classes: pre-licensing courses before applicants could qualify for licensure, core courses to review changes in New Hampshire laws and rules, and elective credits in areas designed to assist the licensee in serving the interest of their clients. We found several requirements established in policy were either inconsistent or missing from rule, including:

- establishing different requirements for accreditation and re-accreditation without separate processes designated in rule;
- requiring a course outline for elective and core courses even though rules only require one for pre-licensing courses;
- restricting distance learning education for elective courses even though rules only limit the number of distance learning hours for pre-licensing courses;

- requiring instructors to sign a form accepting responsibility to keep materials current with changes to law or rule; and
- requiring instructors to provide attendance, cancellation, and refund policies although this requirement was not in rule.

Recommendations:

We recommend NHREC, with the support of OPLC, improve its rules and adoption of rules by:

- **ensuring rules remain valid and enforceable by continuing to periodically track their status;**
- **enforcing only requirements contained in valid rules;**
- **ensuring administrative rules are adopted as required by statute;**
- **ensuring Rea 301.03 (c) pertaining to granting reciprocal licenses reflects statutory authority, or seek legislative amendment to RSA 331-A:11-a if it determines brokers licensed in another jurisdiction should be permitted to receive a reciprocal New Hampshire real estate broker license; and**
- **ensuring the continuing education policies are consistent with rules.**

NHREC Response:

We concur. Over the past few months OPLC's rules attorney greatly assisted NHREC to draft and eventually adopt rules. We are pleased to report rules 300 – 700 were approved by JLCAR in June 2017, and rules 100 – 200 are nearly complete. Specifically:

- a. The OPLC rules attorney monitors rules for all OPLC boards, including NHREC, and timely provides notification of upcoming deadlines and initiates appropriate action;*
- b. NHREC will review and enforce requirements contained within valid rules;*
- c. The coordinated effort between the OPLC rules attorney and NHREC has, and will continue to improve the process that rules are adopted as required by statute;*
- d. Please see the NHREC's response to observation #1; and*
- e. NHREC will review the rules regarding continuing education courses and amend as needed to address current practice.*

OPLC Response:

We concur. The OPLC's attorney is now tasked with monitoring administrative rules on an agency wide basis and tracks these rules' future expiration dates. As previously expired rules are readopted, the OPLC further plans on reviewing rules with individual boards for statutory compliance. As part of this process the OPLC will work with NHREC to both amend Rea 301.03(c) or RSA 331-A:11-a as needed to ensure continuing education policies are consistent with rules.

Observation No. 9

Improve Declaratory Ruling Process

NHREC lacked compliant policies and practices to formally handle requests for interpreting statute and rule. During the audit period, NHREC received multiple requests for interpretation or clarification of statute or rule without applying a uniform process to these requests. Further, NHREC may have improperly used the declaratory ruling process to supplant the rulemaking process.

Declaratory Ruling Applicability

NHREC had the authority to interpret statute by either clarifying through the rulemaking process or by issuing a declaratory ruling. Rulemaking codifies and interprets statutes and has general applicability to the public. Unlike rules, declaratory rulings only provide explicit applicability to the petitioner's case and cannot substitute for the rulemaking process. Subsequently, declaratory rulings cannot be universally applied.

During the audit period, NHREC published six declaratory rulings on their website, two of which were issued during the audit period and pertained to the definition of phrases used in statute or administrative rule. One of these declaratory rulings made no mention of the petitioner or the circumstances of the individual case to indicate the specific applicability of the ruling. Two rulings issued before the audit period implied they held general applicability by including language stating the ruling was considered "Commission Policy" or was intended "to provide specific guidelines for consumers and licensees to follow." Additionally, we found three continuing education courses which included an NHREC declaratory ruling as part of its course materials. However, these rulings were developed outside of the rulemaking process and did not possess binding general applicability to the profession or public.

Further, no rulings issued or published by NHREC were filed with the Director of Legislative Services as required by statute and no process or policy existed to ensure rulings were filed after issuance. Therefore, the rulings lacked a legislative branch review and were not published for general circulation and public consumption outside of the NHREC's website or meeting minutes.

Process For Interpreting Statute And Rule

NHREC rules required all petitions for declaratory ruling receive a written response. During the audit period, NHREC received eight requests for a declaratory ruling, seven were answered at NHREC meetings and one was denied because the request was too broad. However, only two of the seven receiving a response were published as declaratory rulings on the NHREC website.

The only process established by NHREC to handle licensee requests for clarification regarding provisions of statute or rule was through the declaratory ruling process. However, in addition to formal petitions for declaratory rulings, NHREC received 17 requests seeking clarification on implementing a statute or rule. During the audit period, nearly half of these requests were licensees seeking clarification on how many branch offices or licensees a broker could oversee.

While NHREC answered all 17 requests during their monthly meetings, these requests were handled outside both the declaratory ruling and rule making processes, and did not result in written responses. Therefore, licensees who may have requested clarification for a similar issue did not have a convenient location to see if NHREC had already provided clarification.

NHREC reported receiving individual informal requests to interpret statute or rule by the public. By not consistently using the formal declaratory ruling or rulemaking process when necessary, real estate agents seeking guidance from NHREC did not consistently receive an official and well-documented response. Therefore, licensees may have been less equipped or informed to implement their practice in accordance with statute and rule.

Recommendations:

We recommend NHREC better define the declaratory ruling process in administrative rules and policy, by:

- **ensuring all requests for declaratory rulings receive an official and documented response,**
- **ensuring all declaratory rulings clearly indicate specific applicability to the petitioner,**
- **ensuring informal requests for clarification of statutes or rules are handled through the declaratory ruling process, and**
- **ensuring all declaratory rulings are filed promptly with the Director of Legislative Services.**

We also recommend NHREC file all existing declaratory rulings with the Director of Legislative Services and consider promulgating administrative rules for declaratory rulings with general applicability to all licensees or the public.

NHREC Response:

We concur in part. Our attorney member has concerns with the text of the audit report regarding Declaratory Ruling actions. The report appears to encourage the Board to consider almost any licensee question as a Declaratory Ruling. He feels that is dangerous as we will be the legal advisors to the real estate community. There must be criteria for considering a matter as a Declaratory Ruling, for example ambiguity in a rule in conflict with a rule or statute.

Observation No. 10

Improve Statutory Compliance

NHREC did not consistently implement administrative statutes and certain sections of the *Real Estate Practice Act*. We found NHREC lacked compliance with enforcement and licensing actions taken, the Right-to-Know law, and ensuring all new licensees received a copy of relevant laws and rules.

Enforcement And Licensing Actions Taken Without Statutory Authority

NHREC inconsistently used enforcement actions against licensees and non-licensees without statutory authority. During the audit period, NHREC denied a license to two applicants for not disclosing a prior criminal conviction on their application, and prohibited them from re-applying for 120 days, temporarily banning them from the profession. The authority of NHREC over non-licensed individuals was limited to issuing a cease and desist order, imposing a fine, or seeking criminal prosecution against those engaging in the unlawful practice of real estate brokerage. It did not include a temporary ban from the profession.

Additionally, our file review found NHREC issued four letters of concern to licensees during the audit period without statutory authority. Statutes allow NHREC to suspend, revoke, or deny a license; levy a fine; or require the person to complete a course. However, it does not authorize NHREC to issue a non-disciplinary confidential letter of concern.

We also found in one instance during the audit period, NHREC allowed for the temporary exemption from licensure for an organization to “engage in rental activities...” for a period of six months due to another organization experiencing changes in their rental agent. Exemption from real estate licensure was defined in statute and not temporary. Therefore, NHREC may have enabled unlicensed and unregulated real estate activity.

Right-to-Know Law

Although NHREC mostly complied with the requirements of the Right-to-Know law, some areas needing improvement were lacking procedures or compliant practices. For example, NHREC’s practices included:

- not consistently documenting minutes with a roll call vote when at least one Commissioner attended telephonically,
- waiting 77 and 126 days to approve minutes of a meeting held by alternate Commissioners,
- not documenting a brief description of the discussion or subject matter of complaints in non-public minutes, and
- reportedly conducting NHREC business outside a duly constituted public meeting which involved more than one Commissioner.

Compliance with the Right-to-Know law ensures transparency and public accountability. After the audit period, we observed instances of NHREC and OPLC making an effort to improve practices to comply with the Right-to-Know law through training and education. Additionally, in July 2017, OPLC implemented a policy addressing approval of board and commission meeting minutes.

Publishing Of Laws And Rules

Statute required all new licensees to receive a copy of the laws and rules with which the licensee must comply. Initial licensure procedures and practices did not include providing a copy of applicable rules or laws. Instead, new active licensees were only given a license. Renewal and new inactive licensees received an hyperlink to the NHREC website, but no copy or hyperlink of the law and rules were provided to licensees upon receiving their initial license. By not implementing this statutory requirement, NHREC missed an opportunity to further educate new licensees.

Publishing Biennial Reports

Prior to consolidation into OPLC in 2015, statute required NHREC make a biennial report to the Governor and Council by September 1 of every odd-numbered year. Once consolidated, the responsibility was transferred to OPLC. Reports required in 2013 and 2015 were not filed. The next biennial report is due by September 2017 and according to OPLC staff, it will include NHREC.

Recommendations:

We recommend NHREC improve compliance with statutes by:

- **ceasing the practice of issuing temporary bans to applicants, letters of concerns, and temporary exemption from licensure;**
- **documenting meetings attended telephonically with a roll call vote, requiring alternative Commissioners to approve minutes timely, including a description of complaints discussed in non-public minutes, and ensuring all NHREC business is conducted within a duly constituted meeting;**
- **issuing a copy of the laws and rules, or sending a hyperlink to all new licensees; and**
- **filing biennial reports as required.**

If NHREC determines authority to issue temporary bans, letters of concern, or temporary exemptions from licensure is necessary to fulfill its mission, it should seek legislative authority to do so.

NHREC Response:

We concur in part. The NHREC will review its licensing practices and statutory authority in consultation with the Attorney General's Office. We like to be able to make a decision that is between approve or deny. Having a person wait for 6 months for a decision or re-application is better than getting denied and losing an opportunity at a real estate career. This change will lead to more denials which is not necessary.

The NHREC does not concur. NHREC reviewed its authority and determined it has authority to issue a letter of concern. RSA 331-A:28, I and RSA 331-A:28, I-a defines the authorized sanctions in the event of a hearing and finding of a violation of the Real Estate Practice Act. In

addition, RSA 331-A:30 and RSA 541-A:30, II requires notice and a hearing before imposing a sanction against a licensee. However, a letter of concern is not a sanction. Rather, it is a confidential communication that concludes a complaint investigation process where the Commission determines no discipline action is warranted. The letter advises the licensee that the complaint is closed with no further action, but also cautions the licensee that future similar actions may run afoul of the Real Estate Practice Act. This is a service to the licensee and the public to provide licensees warning of potentially harmful conduct. From a macro analysis, our power is so limited for all but revocation cases which are rare (education, nominal fines) there should be a human factor involved in the decision making. If the Commissioners believe it is a close call or sufficient facts are in the complaint but a witness fails to co-operate, we are doing a service to the licensee...and the public... by giving a warning.

Observation No. 11

Improve Records Management

OPLC and NHREC lacked a fully developed records management program. Prior to November 2015, NHREC was responsible for establishing its own records management program. In November 2015, OPLC became responsible for performing record keeping duties, while NHREC was required to establish record keeping policies. However, NHREC and OPLC lacked record retention schedules, policies, and procedures. Consequently, we found multiple issues with missing documentation during our review of NHREC files.

NHREC records were primarily organized in three activity areas: licensing, complaints, and continuing education course accreditation. We reviewed 225 licensing, 120 complaint, and 67 continuing education course accreditation files submitted during the audit period. However, staff could not locate two complaint files and four of the most recent continuing education course accreditation applications. We also found missing documents in all three types of files we reviewed, including:

- thirteen reports of investigation were missing from complaint files,
- nine evaluation forms documenting Commissioners' recommendations for further action were missing from complaint files,
- four letters requesting a licensee response or acknowledging the receipt of the complaint were missing from complaint files,
- four applications for licensure from previous licensing periods were missing from licensing files, and
- documented evidence of instructors' teaching or work experience were missing from 49 continuing education course accreditation files.

We found some requirements were inconsistently implemented. For example, those registering to re-take the broker or salesperson examination rarely submitted a new registration form. Instead, NHREC allowed applicants to submit the score report from their failed exam as their new registration. However, rules require candidates submit a registration form which includes the

school at which they took their pre-licensing course and their signature. The score report did not include these elements. Rules further prohibit NHREC from mailing a notice allowing the candidate to schedule an exam “unless and until a completed registration form... [has] been received....” Additionally, we found amendment notification and change request forms required by rule were inconsistently utilized by licensees to document changes impacting a license. Instead, we found new licenses were issued based on letters, email notification, or upon receipt of a licensee’s original license.

During the audit period, OPLC oversaw the transfer of records from NHREC to OPLC. This transfer of records reportedly resulted in misplaced documents and the misfiling of current and historical documents. Further, some files were stored in temporary boxes or within two different facilities. Therefore, access to files was, at times, inefficient and files were inconsistently complete. In July 2017, OPLC implemented policies which included discussion of retention of board and commission meeting minutes, orders, and directives.

A records management program promotes the efficiency and integrity of the day-to-day record-keeping activities, and facilitates government operations. Proper documentation of NHREC policies, functions, and transactions protects the legal and financial rights of the State and of persons affected by NHREC activities. By not having a fully developed records management program, OPLC and NHREC experienced the loss of potentially valuable documentation to support decisions and operations.

Recommendations:

We recommend NHREC establish and codify record retention policies including the type of documents which should be retained for each of its activities, and retention schedules.

We also recommend OPLC develop procedures to implement NHREC policies and facilitate the development of a records management program.

NHREC Response:

We concur. This is an administrative function.

OPLC Response:

We concur. The Observation was addressed in an OPLC agency policy effective July 1, 2017.

Observation No. 12

Further Clarify And Document NHREC And OPLC Roles And Responsibilities

We found roles and responsibilities between NHREC and OPLC were not clearly defined through policies, procedures, or a formal agreement. Roles and responsibilities within an organization and between different entities should be clearly defined and understood by all parties. Defined responsibilities provide accountability, enable compliance with law, and allow management to define reporting lines within different internal and external levels of the organization.

Statute assigned OPLC the responsibility to support NHREC by performing administrative and business processing duties, issuing licenses to applicants meeting the minimum qualifications, maintaining records, helping with rulemaking, supervising staff, and implementing a consumer education program. NHREC was statutorily responsible for establishing licensing standards, administering examinations, conducting adjudicatory and investigatory procedures, establishing fees, issuing licenses, adopting rules, and several other administrative responsibilities required of a State regulatory body. Although statute required some responsibilities to be shared or dependent upon the cooperation of both NHREC and OPLC, these responsibilities were not further defined in a formal agreement. We found areas where NHREC and OPLC duties intersected and lacked fully developed lines of responsibility, including:

- *Licensing Activities:* The responsibility to approve, issue, and ensure applicants met the minimum qualifications for licensure was a shared and co-dependent responsibility between OPLC and NHREC. In Observations No. 1, No. 3, and No. 4, we discuss issues within the licensing process, including granting licenses to potentially ineligible applicants, applicants not providing all required documentation, and those not meeting all requirements. We also found insufficient policies and supervisory review over licensing activities during the audit period. In July 2017, OPLC implemented a policy addressing a timeframe for approving licenses.
- *Complaint Activities:* NHREC maintained primary responsibility for overseeing the complaint process. However, NHREC relied on OPLC staff to perform multiple activities including investigating, prosecuting, negotiating, and tracking complaint progress. As discussed in Observations No. 5 and No. 6, we found a lack of policies and inadequate tracking in the complaint process. Additionally, responsibility for some complaint-related activities was unclear. Prior to consolidation, the NHREC Executive Director was responsible for drafting settlement agreements, issuing notices of hearing, and issuing hearing orders. After consolidation, staff reported it was unclear who maintained responsibility for these tasks. OPLC staff and management reported differing views of who was responsible for these tasks, likely resulting in some settlement agreements and notices of hearing not being drafted timely. In July 2017, OPLC implemented a policy addressing responsibility for drafting and issuing orders, directives, and notices of appearance.
- *Fiscal Management:* As described in Observation No. 7, we found NHREC was unable to fulfill its fiscal management responsibilities due to a lack of quality financial information

from OPLC. Commissioners reported a lack of clarity and transparency existed in the area of fiscal management.

- *Administrative Management:* Administrative tasks, such as recordkeeping and rulemaking, had some overlap in responsibilities between OPLC and NHREC. Observations No. 8 and No. 11 found expired and un-adopted administrative rules; documents missing from licensing, complaint, and course accreditation files; and lack of record keeping policies, all of which may have been magnified from unclear roles and responsibilities. We also found other areas such as compliance with statutes regarding declaratory rulings, generating required reports, Right-to-Know, and compliance with general statutes could benefit from defined policies, procedures, and tracking as we discuss in Observations No. 9 and No. 10. In July 2017, OPLC implemented a policy addressing record keeping for board and commission meeting minutes.
- *Staff Supervision:* The responsibility to supervise staff shifted from NHREC to OPLC upon consolidation of the two organizations. As discussed in Observations No. 1, No. 3, No. 4, and No. 5, the licensing and complaint functions could benefit from additional supervisory review. Additionally, in Observation No. 13, we discuss the lack of a performance measurement system to direct staff in achieving NHREC goals and objectives.
- *Consumer Education:* The authority to implement a consumer education program was delegated to OPLC upon the transfer of duties from the Executive Director of NHREC to the Executive Director of the OPLC. However, during the audit period, neither executive director implemented a consumer education program.

NHREC was consolidated into OPLC during the audit period. Therefore, roles and responsibilities were changing between the two organizations and the organization structure was still being developed. Organizational turbulence may have hindered NHREC and OPLC from establishing a clearly defined relationship.

Recommendation:

We recommend NHREC and OPLC clarify its relationship by further defining each entity's roles and responsibilities through a formal agreement. Once established, these roles and responsibilities should be codified in corresponding policies and procedures.

NHREC Response:

We concur. This is an administrative responsibility with input from the NHREC Commissioners.

OPLC Response:

We concur. The Observation was addressed in an OPLC agency policy effective July 1, 2017.

Performance Measurement

Performance measurement is a process where organizational objectives are articulated in measurable goals. Performance Measurements aid an organization in defining what it wants to accomplish through formally measurable goals and objectives while allowing management to track progress towards achieving goals. Additionally, performance measures enable policy makers, administrators, and those responsible for governance with information to improve decision making. One way to develop a performance measurement system involves breaking down program resources, activities, and results into measureable components known as inputs, outputs, and outcomes. Inputs are the resources NHREC uses to achieve goals. Outputs are the product of processes used to meet program goals, and outcomes are the impact of the service provided. After performance measures are established, the organization should set clear performance targets.

Figure 3 illustrates an example of how performance measures could be used to evaluate NHREC complaint processing activities for timeliness and effectiveness. NHREC’s mission is to provide consumer protection by fairly settling disputes within the real estate profession. Disposing of cases timely and ensuring compliance with ordered sanctions supports NHREC’s goal of protecting the public by mitigating the possibility of future consumers interacting with licensees not maintaining professional standards. Appendix E contains more detailed examples on how performance measures link to NHREC missions, goals, and objectives.

Figure 3

Example Of Potential NHREC Performance Measures

Inputs	Outputs	Outcomes
<p>Number of:</p> <ul style="list-style-type: none"> • complaints filed • licensee responses to complaints filed • time spent by staff and commissioners investigating, processing, evaluating, and hearing complaints filed 	<p>Number of:</p> <ul style="list-style-type: none"> • requests for licensee response sent within a specified timeframe • licensee responses filed within 30 days • investigations completed within a specified timeframe • complaints disposed • complaints disposed within a specified timeframe • complaints disposed resulting in no violation, settlement agreement, or hearing • settlement agreements approved within a specified timeframe • hearings conducted within a specified timeframe • orders issued after a hearing • licensees compliant with sanctions • appeals filed • orders upheld on appeal 	<p>Percent of:</p> <ul style="list-style-type: none"> • requests for licensee responses sent within specified timeframe • licensees responding within 30 days • investigations completed within a specified timeframe • complaints disposed within specified timeframe • complaints resulting in no violation, settlement agreement, or hearing • licensees compliant with sanctions issued • NHREC orders upheld on appeal

Source: LBA analysis of NHREC and OPLC information.

Observation No. 13

Establish A Performance Measurement System

NHREC did not have a system to evaluate whether activities were contributing to its overall mission. According to the orientation manual for new Commissioners, the purpose of NHREC was “to ‘serve in the interest of consumers’ and to provide consumer protection to the general public through the regulation of real estate licensees.” NHREC further defined its purpose and responsibility to provide a fair method to settle disputes within the profession of real estate, to regulate all licensees fairly and with due process, and to ensure no barriers existed for those seeking to enter the profession. Although NHREC outlined its general responsibilities and objectives, no defined goals or system existed to measure whether goals and objectives were achieved, or whether its activities were contributing to its overall mission of ensuring public confidence and understanding of the real estate profession. Additionally, NHREC did not establish goals or objectives for staff to implement its mission.

A performance measurement system enables management to evaluate the effectiveness of an organization by comparing actual performance levels with pre-established targets to determine whether program results are achieved. By utilizing performance measures, a program can define objectives through formally articulated goals and monitor progress made towards goals. In addition to tracking progress towards achieving goals, an organization can use performance measures to monitor compliance with laws, react to stakeholder expectations, and report quality information to those responsible for decision making.

NHREC’s primary operational tasks included processing license applications, investigating complaints, accrediting continuing education (CE) courses, and registering applicants to take the examination for licensure. These major operational activities did not have goals or measures attached to them, and we found the following:

- *Processing License Applications:* NHREC did not have a formal goal for how long it should take to process a license application; however, one Commissioner reported the expectation was to process a license within ten business days. Staff reported Commissioners had not communicated a goal but inquiries from applicants or Commissioners would receive follow-up. While we found 91 percent of licenses were processed within 14 calendar days, some applications exceeded the Commissioner’s reported expectation. In July 2017, OPLC implemented a policy defining timeframes for processing license applications.
- *Complaint Processing:* NHREC did not establish goals for processing a complaint, or benchmarks for each stage in the complaint process. NHREC did not have a system in place to actively identify cases which were stalled in various stages. Additionally, effective January 2015, statute required NHREC to issue a notice of hearing within two years of the notice of complaint. As discussed in Observation No. 5, our file review found fluctuations in the different stages of the complaint process, including two complaints which took more than two years to dispose and eight open complaints which, as of May 31, 2017 have been open for at least one year. Our file review also found NHREC, in one instance, was two months away from not being able to issue a notice of hearing. This

complaint was filed in July 2015 and was still active as of May 2017. The prolonged steps within the complaint process potentially jeopardized the ability of NHREC to pursue unlawful practices and protect the public timely. In July 2017, OPLC implemented policies establishing timeframes for sending out board and commission notices of appearance, orders, and directives.

- *Continuing Education:* Our file review found over three-fourths of initial accreditation and reaccreditation of CE courses took over 14 calendar days. Out of the five CE providers we contacted, one expressed dissatisfaction with timeliness of the accreditation process. However, no expectation or standard existed for the accreditation or reaccreditation of continuing education providers to better mitigate potential consumer dissatisfaction and ensure educational courses were available to licensees timely.
- *Examination Registrations:* NHREC had no comprehensive method or available data to measure the timeliness of processing examination registration. However, our file review found nearly three-fourths of examination registrations took the examination within 30 days of registering, which suggested a timely process.

Staff and Commissioners reported receiving complaints about the timeliness of license processing during the consolidation of NHREC into OPLC. Additionally, staff and Commissioners reported concerns with the backlog of complaint investigations and CE accreditation approval. While NHREC and OPLC were aware of these concerns, no data was collected to determine the scope and magnitude of these issues, and no performance measurement system existed to monitor problems before they developed into consumer complaints.

OPLC was established to promote the efficiency, economy, and customer service level of NHREC. By not developing a performance measurement system, OPLC may have been less effective at achieving its own mission, as well as ensuring NHREC achieved its mission.

Recommendations:

We recommend NHREC, in conjunction with OPLC, develop a performance measurement system with corresponding measures and benchmarks, to monitor achievement with its goals and objectives. Performance measures should include expectations for when key activities and sub-components should be completed.

We also recommend NHREC and OPLC establish policies and procedures codifying its benchmarks and performance expectations, establish a process to evaluate actual performance against these benchmarks, and periodically report on its performance.

NHREC Response:

We concur. This is an administrative responsibility.

OPLC Response:

We concur. The Observation was addressed in an OPLC agency policy effective July 1, 2017.

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**STATE OF NEW HAMPSHIRE
OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION
NEW HAMPSHIRE REAL ESTATE COMMISSION**

OTHER ISSUES AND CONCERNS

In this section, we present issues we considered noteworthy, but did not develop into formal observations. The New Hampshire Real Estate Commission (NHREC), Office of Professional Licensure and Certification (OPLC), and the Legislature may wish to consider whether these issues deserve further study or action.

Develop A Plan For Consumer Education

Statutes required the NHREC Executive Director to implement and administer a consumer education program. Upon the consolidation of NHREC into OPLC, this responsibility was transferred to the OPLC Executive Director. Besides a consumer brochure posted online, no other specifically planned efforts were made to educate consumers about the responsibility of real estate agents, the consumer's rights, or how to better protect themselves when participating in the real estate marketplace. According to one Commissioner and staff, NHREC did not have a program to educate the public. Instead, NHREC consumer education was focused on educating real estate licensees who would educate their clients. Other states' real estate regulatory bodies educated consumers by providing instructional guides for consumers participating in real estate transactions, posting hyperlinks to consumer resources online, developing public service announcements, and notifying consumers of potential fraudulent scams.

Plans assist an organization in achieving objectives and could help NHREC develop an education strategy and implement a consumer education program. A consumer education strategy may consider focusing education efforts on potentially vulnerable populations (for example elderly or first-time home buyers) or target a particular area of concern within an industry. Our survey of 140 real estate licensees found over half of licensees reported NHREC did a fair or poor job in educating the general public about real estate practices. Over half of licensees also reported the following as a high priority for a consumer education program targeted at the general public: prohibited conduct; dual agent disclosure; seller and buyer duties; and licensee's responsibilities of loyalty, obedience, disclosure, confidentiality, reasonable care, and due diligence.

We suggest NHREC and OPLC develop a consumer education program including developing a plan to target education efforts towards areas of high priority and vulnerable populations.

NHREC Response:

We concur but believe that the position of Education Coordinator be the priority.

Improve Customer Service For Continuing Education Program

Continuing education providers we contacted had mixed responses regarding service provided for continuing education course accreditation. Two of the five education providers we contacted expressed concerns over the lack of communication and decline in customer service since the education coordinator position was eliminated. For example, two education providers expressed concern over OPLC not updating the website timely to reflect the most recent continuing education courses available to licensees.

When the education coordinator position was eliminated, responsibility for managing the continuing education program was assigned to multiple individuals. Additionally, no policy existed to ensure the website was updated periodically.

OPLC management reported it was in the process of drafting policies to ensure more frequent updating of course information online. We suggest OPLC and NHREC continue efforts to facilitate better customer service in continuing education accreditation and alleviate the administrative workload by switching to a two year accreditation cycle.

NHREC Response:

This has caused a backlog, and a situation in which staff with no background or knowledge of real estate are in positions to make decisions on programs and CE credits on which they have no knowledge. We believe that the Education Coordinator position should be reinstated. This should be done as soon as practical so that the NHREC can offer to the licensees those programs, through our instructors, that are pertinent and timely as the rules and statute changes directly affect the practice of real estate

Review Span Of Control

The Division of Technical Professions (Technical Division) has a narrow span of control in parts of its supervisory structure. Span of control is the number of subordinates reporting directly to a single supervisor. We found the Technical Division had five personnel in supervisory positions, excluding the Division Director. The five personnel supervised between one and four staff, with one supervising four staff, one supervising three staff, two supervising two staff, and one supervising one staff.

During the merger, NHREC's six personnel were reassigned to two divisions within OPLC. Four were assigned to the Technical Division and two into the Division of Administration. However, one position was vacated after the audit period, and pursuant to State law, was re-classified to an administrator position. At the end of the audit period, the three remaining personnel who performed activities supporting NHREC were primarily supervised by one administrator working part-time and one supervisor working full-time. The administrator, who was also the sole staff person supporting one other small board, oversaw one employee. The supervisor oversaw two employees and was also responsible for processing licenses for another board.

Management must consider multiple factors when determining the appropriate amount of supervisory responsibilities assigned, including the nature of work, degree of standardization, complexity of activities, and degree of interdependency between the supervisor and staff. Given the narrow span of control over personnel supporting NHREC activities, we suggest OPLC review the assignments and needs of supervisory responsibilities within the OPLC.

NHREC Response:

We concur. The NHREC has lost 3 personnel during the merger into OPLC. With retirements and adjustments within OPLC, the NHREC, is left with no staff with any real estate knowledge or background....including but not limited to the Investigator, the NHREC Administrator, the OPLC Division Director, and the OPLC Executive Director. Knowledge of our business will be a great aid in negotiating favorable settlement agreements, which we are in favor of when appropriate. However, we do not condone efforts to secure a settlement agreement against the vote or direction of the Commissioners. We need staff with an understanding of the intricacies and functioning of the real estate business to enable the NHREC to best serve the people of NH and our licensees.

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**STATE OF NEW HAMPSHIRE
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**APPENDIX A
SCOPE, OBJECTIVES, AND METHODOLOGY**

Scope And Objectives

In May 2016, the Fiscal Committee approved a joint Legislative Performance Audit and Oversight Committee recommendation to conduct a performance audit of the Real Estate Commission (NHREC). We held an entrance conference with NHREC and the Office of Professional Licensure and Certification (OPLC) in late December 2016 and obtained legislative approval for the scope of this audit in March 2017. Our performance audit was designed to answer the following question:

Did the New Hampshire Real Estate Commission operate efficiently and effectively between July 1, 2013 and December 31, 2016?

Specifically, we focused on determining whether the NHREC:

- efficiently and effectively processed licenses, complaints, examination registrations, and continuing education accreditations;
- maintained adequate controls over its administrative operations; and
- efficiently and effectively regulated the real estate industry in New Hampshire.

Methodology

To gain an understanding of NHREC activities and its management controls, we:

- interviewed all five Commissioners, the NHREC Executive Director, and the four staff supporting NHREC operations to gain an understanding of NHREC activities pre- and post-consolidation;
- interviewed OPLC management to gain a better understanding of OPLC duties pertaining to NHREC, including the OPLC Executive Director, the Technical Division Director, the former OPLC Acting Director, an administrator overseeing NHREC activities, and OPLC staff responsible for financial reporting;
- met with members of the New Hampshire Association of Realtors, which represents the interest of realtors in New Hampshire, to gain an understanding of the licensees' perspective of NHREC and OPLC;
- attended eight NHREC monthly meetings and one public hearing on administrative rules;
- reviewed data extracted from MyLicensing® Office (MLO) and other systems used to track NHREC activities;
- reviewed relevant State laws, administrative rules, policies, procedures, and guidelines;
- reviewed other states' audits and evaluations and one prior LBA financial audit;
- reviewed NHREC and OPLC organizational charts and supplemental job descriptions;
- observed licensing processing;
- researched and contacted other states' real estate regulatory bodies to compare fees; and
- reviewed and analyzed NHREC complaint, licensing, continuing education provider, and financial data and records.

To determine the effectiveness and efficiency of NHREC we:

- reviewed samples of licensing, examination registration, complaint, and continuing education (CE) course accreditation files;
- analyzed NHREC financial information;
- conducted a survey of a randomly selected sample of real estate brokers and salespersons licensed by NHREC, the results of which can be found in Appendix D;
- contacted five CE providers to understand their perspective on the timeliness of course accreditation and organizational changes;
- reviewed minutes and documented actions taken by NHREC;
- reviewed orders and settlement agreements issued by NHREC;
- analyzed administrative rules and declaratory rulings for compliance with the *Administrative Procedures Act*; and
- reviewed and analyzed the licensing and complaint resolution processes.

Review Of NHREC Files

We reviewed four types of NHREC files to assess compliance with laws, rules, and timeliness of NHREC activities in May 2017.

Review Of Licensing Files

We reviewed a random, stratified sample of 225 of the 967 license applications filed with NHREC in November and December 2014, and November and December 2016. We stratified the sample by separating initial applications from renewals filed in November and December of 2014 and 2016. We selected November and December of these two years to control for organizational turbulence before and after the merger of NHREC into OPLC in November 2015 and to account for seasonal fluctuation in workload. The periods selected represented one year pre- and one year post-merger, allowing time for processes to stabilize after the merger.

We further focused the sample to select more files containing initial license applications than renewals, anticipating some original license applications filed in November or December of 2014 would also contain a renewal application in November or December of 2016. Of the 225 files we sampled, we selected approximately two-thirds from the population of original applications (155 files) and one-third from the population of renewal applications (70 files).

We reviewed all documents in each licensing file received during the audit period. Consequently, we captured some applicants' initial salesperson application as well as their broker application. Our review collected data on 78 initial and renewal broker licenses, 231 initial and renewal salesperson licenses, and 27 firm licenses. Our analysis focused on comparing two points in time and was not projected back to the entire population of license applications.

Review Of Exam Registration Files

We used the same sample selected for our review of licensing files to review exam registrations filed during the audit period. We captured information on 138 examination registrations. We did not project the results to the entire population of exam registrations.

Review Of Complaints Files

In order to review the NHREC complaint handling process, we selected a random sample of 120 complaints files out of population of 213 filed or in progress during the audit period. The sample selected was based on an 80 percent confidence level and margins of error of within +/- 2.5 percentage points. OPLC staff could not find two of the 120 complaint files selected so we did not include them in our analysis.

In the rare instance where one complaint filed against multiple licensees resulted in NHREC taking different actions against each licensee, we recorded these actions separately for each licensee and included them as separate records in our data. These instances occurred five times in the files we reviewed. Consequently, we collected data for 123 complaints. Due to the missing files and additional files we encountered and reviewed, we did not project our results to the entire population of complaints but were able to comment on NHREC handling of over half of the complaints filed or in process during the audit period.

Review Of CE Course Accreditation Files

In order to review the timeliness of CE course approval, we selected 67 CE courses for our review of continuing education course accreditations including: a random selection of 55 elective courses out of a population of 388 elective courses; a non-random selection of six pre-licensing courses out of a population of 17; and a non-random selection of six core courses out of a population of 13. Most course files only contained one accreditation period, but six elective courses contained two accreditation applications. We collected data for all accreditation applications we found in the file. Therefore, our review collected data on 73 course applications. Because we did not select all courses randomly, we did not project our results to the entire population, but were able to comment on NHREC's handling of CE course approval in general.

Allocating NHREC Expenses

Prior to its merger into OPLC in the beginning of State fiscal year (SFY) 2016, NHREC was appropriated a separate budget. When it was consolidated into OPLC, its appropriations, along with those for other boards and commissions, were combined into the OPLC's Division of Technical Professions (Technical Division) appropriations. We were able to obtain NHREC's pre-consolidation expenses directly from its statement of appropriations for SFYs 2014 and 2015. We were not able to obtain the expenses for SFY 2016 and the first half of SFY 2017; therefore, we developed methodologies to estimate these expenses.

When expenses exclusively attributed to NHREC could be found, we used those expenses. Some expenses were shared among multiple boards, commissions, and OPLC divisions. To parse out shared expenses, we developed a methodology to attribute these expenses based on the number of licensees within OPLC. We obtained licensee data for OPLC boards and commissions using statistics gathered by the New Hampshire Employment Security, Economic and Labor Market Information Bureau for SFY 2015. The data showed NHREC had 7,903 active salespersons and brokers and did not include NHREC's inactive licensees, firms, or trade names. These data also reported only active licensees for other professions; therefore, we used these data as they were reported to standardize licensee data for all OPLC boards and commissions. We found NHREC

licensees represented an estimated 6.74 percent of the approximate 117,256 licensees within the OPLC and an estimated 22.32 percent of the approximate 35,403 licensees within the Technical Division.

All NHREC Expenses

To isolate NHREC's SFYs 2016 and 2017 expenses from the rest of the boards and commissions within OPLC, we used the following methodology:

- *NHREC Personnel:* The cost of salaries, benefits (e.g., health insurance, dental insurance, and retirement, when applicable), and payroll taxes of staff performing activities exclusively for NHREC were attributed at a rate of 100 percent towards NHREC expenses. Personnel expenses for the four employees working exclusively on NHREC activities was approximately \$299,000 in SFY 2016 and \$259,000 in SFY 2017.
- *Technical Division Personnel:* Eight OPLC employees within the Technical Division performed various tasks to support NHREC activities, including providing management oversight, drafting settlement agreements, assisting with processing licensing applications, staffing monthly meetings, processing and sorting mail, filing documents, and recording financial transactions. We contacted these employees to obtain the percent of time they estimated working on NHREC activities. The employee's SFYs 2016 and 2017 salary, benefits, and payroll taxes were multiplied by these percentages to calculate the estimated cost of their time spent working on NHREC activities. These eight Technical Division employees' personnel costs were approximately \$103,000 in SFY 2016 and \$180,000 in SFY 2017.
- *Division of Administration Personnel:* NHREC received general administrative support and management from Division of Administration personnel including: OPLC executive management, rulemaking assistance, human resources, accounting, and clerical services. Since these expenses were distributed among all regulatory boards and commissions, we attributed 6.74 percent of these expenses to NHREC. An estimated \$59,000 in administration personnel expenses was attributable to NHREC in SFY 2016 and \$48,000 in SFY 2017.
- *Exam Vendor:* NHREC contracted with a vendor to administer the real estate licensing examination. The cost was based on the number of applicants registering for the exam and in SFY 2016, NHREC paid approximately \$153,000. In SFY 2017, NHREC paid approximately \$169,000.
- *Building:* OPLC staff calculated the square footage used by each regulatory board and commission within the OPLC. In the OPLC analysis, square footage was either directly assigned to a regulatory body (e.g., NHREC) or assigned broadly to the three OPLC Divisions. The analysis attributed 2.4 percent of the building's square footage to NHREC. An additional 18.6 percent was assigned to the Technical Division, and 31.7 percent was assigned to the Division of Administration. We applied these rates to OPLC's building expenses for SFYs 2016 and 2017. Expenses calculated for NHREC's occupancy rate were all included in our analysis. We attributed 22.32 percent to NHREC's portion of the Technical Division's expenses and 6.74 percent to NHREC's portion of Division of Administration based on number of licensees within the purview of

each Division. Total building expenses for NHREC were estimated at \$18,000 in SFY 2016 and \$21,000 in SFY 2017.

- *Information Technology:* OPLC staff calculated information technology expenses owed to the Department of Information Technology (DoIT) based on the number of computers assigned within OPLC. Of the 90 computers within OPLC, four were assigned to staff exclusively supporting NHREC, seven to the Technical Division, and twelve to the Division of Administration. OPLC's SFYs 2016 and 2017 expenses were allocated based on computer assignment. Expenses for computers assigned to staff exclusively performing duties for NHREC were all attributed to NHREC, while expenses attributed to the Technical Division and Division of Administration were calculated based on 22.32 percent and 6.74 percent, respectively. We estimate NHREC spent \$13,000 for information technology support in SFY 2016 and \$12,000 in SFY 2017.
- *Equipment Rent And Consumables:* All expenses coded as current expenses and rented equipment within the Technical Division and Division of Administration were allocated based on 22.32 percent and 6.74 percent, respectively. We found an additional \$2,300 in current expenses recorded under the NHREC prior to the merger in November 2015, which we attributed only to NHREC. We estimate the NHREC spent \$40,000 on consumable and equipment rental expenses in SFY 2016 and \$43,000 in SFY 2017.
- *Other Expenses:* Other expenses including organizational dues, other agency transfers, travel, and Commissioners' stipends were assumed to be similar to the previous year's recorded expenses. We estimate NHREC spent \$8,000 on these expenses in SFYs 2016 and 2017.

NHREC Examination Costs

Once estimated expenses attributable to NHREC were calculated, we separated expenses associated with the licensing exam from all other expenses. We contacted OPLC staff and asked them to estimate their time spent performing tasks directly associated with the licensing exam including time spent registering applicants and answering questions about the exam. These personnel costs were attributed based on the percent of time staff estimated spending on activities related to the licensing exam.

Indirect costs associated including management oversight of staff processing examination registrations, accounting staff processing exam fees, and non-personnel costs also supported the licensing exam. We developed a method to allocate these costs based on the number of exam registrations received compared to all NHREC licensing and course accreditation activities. We estimated the approximately 2,400 exam registrations received in SFY 2016 accounted for approximately 12.6 percent of NHREC's 18,800 licenses and course accreditations.

We attributed the following expenses to the administration of the licensing examination:

- *Exam Vendor:* NHREC paid its exam vendor approximately \$121,000 in SFY 2014, \$124,000 in SFY 2015, \$153,000 in SFY 2016, and \$169,000 in SFY 2017.
- *Exam-Related Personnel:* Salaries, benefits, and payroll taxes were attributed based on the percent of time staff estimated working on exam-related activities. These expenses

were approximately \$30,000 in SFY 2014, \$32,000 in SFY 2015, \$26,000 in SFY 2016, and \$24,000 in SFY 2017.

- *Administrative Personnel:* Costs associated with management oversight and accounting were calculated based on 12.6 percent of each person's salary, benefits, and payroll taxes. These expenses were approximately \$19,000 in SFYs 2014 and 2015, and \$9,000 in SFYs 2016 and 2017.
- *Non-Personnel:* In addition to vendor expenses, non-personnel expenses included consumables, equipment rent, organizational dues, information technology, building costs, interagency transfers, Commissioners' stipends, and travel expenses. These expenses were allocated to the examination program at 12.6 percent of total estimated non-personnel costs. These expenses were estimated at \$10,000 in SFYs 2014, 2015, and 2016. In SFY 2017, these expenses were approximately \$11,000.

Data Limitations

After discussions with Commission staff and a preliminary review of the data, we determined we could not reasonably rely on the complaint data extracted from MLO to perform data analysis. Further, the complaint data extracted from MLO did not contain all the information needed to perform our analyses of timeliness of complaint resolution, which Commissioners had identified as an area of concern or needing improvement. We decided to collect needed complaint data by reviewing a sample of complaint files.

MLO licensing data was more accurate than MLO complaint data. However, licensing data extracted from MLO did not contain all the information needed to determine timeliness or compliance with State laws or administrative rules. For example, RSA 331-A outlines specific qualifications for someone to obtain a salesperson or broker license including a criminal records check, verification of continuing education hours, evidence of passing the licensing exam. The extracted data from MLO did not contain these data. We decided to collect needed licensing data by reviewing a sample of licensing files.

STATE OF NEW HAMPSHIRE
OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION
NEW HAMPSHIRE REAL ESTATE COMMISSION

APPENDIX B
NHREC RESPONSE TO AUDIT

OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION
STATE OF NEW HAMPSHIRE
DIVISION OF TECHNICAL PROFESSIONS
121 South Fruit Street, Suite 201
Concord, N.H. 03301-2412
Telephone 603-271-2219 · Fax 603-271-6990

PETER DANLES
Executive Director

LINDA CAPUCHINO
Division Director



Daniel S. Jones, Broker Member
William E. Barry, Broker Member
Paul A. Lipnick, Public Member

John G. Cronin, Attorney Member
Calley Milne, Salesperson Member

August 30, 2017

The Honorable Neal M. Kurk, Chairman
Fiscal Committee of the General Court
and Members of the Committee
State House
Concord, NH 03301

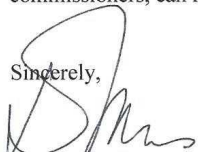
Dear Chairman Kurk and Members of the Committee:

On behalf of the 5 Commissioners of the New Hampshire Real Estate Commission, I want to thank Vilay Skidds and her audit team for the comprehensive review of our agency. As noted in the observations, we have been struggling through the transition of being absorbed by the OPLC, and the related loss of several key administrative personnel. We clearly had been functioning without sophisticated structure, but still managed to conduct the business of overseeing licensing, education, and behavior of over 11,000 licensees with a minimum of apparent problems. If at times our decisions and actions did not comply with the letter of the law, we relied...and continue to rely on guidance from the commission...and now OPLC staff to properly advise us.

We concur with the majority of the findings in the audit, with several noted exceptions or qualifications.

The consolidation with the OPLC had turned the corner and promised efficiencies were evident. I believe that all of the commissioners were feeling positive about the progress, and confidence in the OPLC staff was growing. The recent revelation of behind the scenes interference in the reappointment of one of our valued commissioners has significantly undermined our relationship with OPLC leadership, and has resulted in our questioning the motivation behind their recommendations and policy decisions. The extent to how quickly we, or any future commissioners, can rebuild that trust is very unclear at this date.

Sincerely,


Dan Jones
Chairman, NHREC

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**STATE OF NEW HAMPSHIRE
OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION
NEW HAMPSHIRE REAL ESTATE COMMISSION**

**APPENDIX C
OPLC RESPONSE TO AUDIT**

OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION
STATE OF NEW HAMPSHIRE
DIVISION OF TECHNICAL PROFESSIONS
121 South Fruit Street
Concord, N.H. 03301-2412
Telephone 603-271-2219 · Fax 603-271-6990

PETER DANLES
Executive Director

LINDA CAPUCHINO
Division Director



September 1, 2017

Stephen C. Smith, MS, CPA
Director of Audits
State of New Hampshire
Office of Legislative Budget Assistant, Audit Division
State House, Room 102
Concord, New Hampshire 03301

RE: Audit of New Hampshire Real Estate Commission

Dear Director Smith:

Thank you for conducting the comprehensive performance audit for the New Hampshire Real Estate Commission (Commission) within the Division of Technical Professions of the Office of Professional Licensure & Certification (OPLC). As you know, the OPLC is tasked with improving the administrative efficiency of all boards, councils, and commissions within its administration; this performance audit has, therefore, been as useful for the OPLC as it has been for the Commission.

In reviewing the audit report and recommendations, I notice a major theme centering on the relationship of OPLC with the Commission and the extent to which the OPLC can and should be involved in Commission operations. I see this theme extending beyond the scope of this particular audit and into the OPLC's relationship with all the boards, commissions, and councils within its administration. I am hopeful that in the future the OPLC is empowered with the administrative autonomy to implement policies to accomplish these recommendations on an office-wide scale.

Any initial trepidation of helping the Commission through this process was ameliorated by the diligence and professionalism of your team. I look forward to the opportunity to work with your office again in furtherance of the OPLC's statutory mandate to improve the efficiency of all boards, commissions, and councils within its administration.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Danles".

Peter Danles
Executive Director

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**STATE OF NEW HAMPSHIRE
OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION
NEW HAMPSHIRE REAL ESTATE COMMISSION**

**APPENDIX D
SURVEY OF LICENSED REAL ESTATE BROKERS AND SALESPERSONS**

We randomly selected a sample of 600 licensed real estate salespersons and brokers from a universe of 10,691 licensees after removing 249 licensees without an email address and the three Commissioners. We received 140 responses for a 23.3 percent response rate. Due to the low response rate, we did not project our results to the general population of licensees.

When respondents stated they had “no opinion,” “did not remember,” or “did not know,” we excluded this response when calculating response percentages. We combined and simplified similar answers to open-ended questions and presented them in topical categories; multipart responses were counted in multiple categories where applicable. Some totals in the following tables may not add up to 100 percent due to rounding or where respondents could respond multiple times to the same question.

Question 1. What type of New Hampshire real estate license do you currently hold?		
Answer Options	Count	Percent
Salesperson	79	56.4
Broker	61	43.6
<i>answered question</i>		140
<i>skipped question</i>		0

Question 2. Select the calendar year you received your current license in New Hampshire.		
Answer Options	Count	Percent
2016	26	19.0
2015	11	8.0
2014	5	3.6
Prior to 2014	95	69.3
I do not remember	3	N/A
<i>answered question</i>		140
<i>skipped question</i>		0

Question 3. How would you describe the timeliness of the exam registration process?		
Answer Options	Count	Percent
Good	32	86.5
Fair	3	8.1
Poor	2	5.4
No opinion	9	N/A
<i>answered question</i>		46
<i>skipped question</i>		94

Question 4. From the time you submitted your exam registration to the NHREC, how long did it take until you received an email from the testing vendor to schedule the exam?		
Answer Options	Count	Percent
Less than one week	0	0.0
One to two weeks	1	100.0
Two to three weeks	0	0.0
More than three weeks	0	0.0
I do not remember	0	N/A

answered question **1**
skipped question **139**

Question 5. How would you describe your satisfaction with the NHREC's exam registration process?		
Answer Options	Count	Percent
Satisfied	31	86.1
Neither satisfied nor unsatisfied	5	13.9
Unsatisfied	0	0.0
No opinion	7	N/A

answered question **43**
skipped question **97**

Question 6. Why are you unsatisfied with the NHREC's exam registration process? (Select all that apply)		
Answer Options	Count	Percent
Commission staff did not properly communicate the next steps to schedule the exam date.	0	0.0
Commission staff provided poor customer service.	0	0.0
I did not receive timely communication from the vendor to schedule my exam.	0	0.0
The exam was too expensive.	0	0.0
Other	0	0.0

answered question **0**
skipped question **140**

Question 7. How would you describe the timeliness of the initial licensing process?		
Answer Options	Count	Percent
Good	30	83.3
Fair	6	16.7
Poor	0	0.0
No opinion	7	N/A

answered question **43**
skipped question **97**

Question 8. From the time you submitted your complete application to the NHREC, how long did it take to receive your original real estate license?		
Answer Options	Count	Percent
Less than one week	0	0.0
One to two weeks	0	0.0
Two to three weeks	0	0.0
More than three weeks	0	0.0
I do not remember	0	0.0

answered question **0**
skipped question **140**

Question 9. How would you describe your satisfaction with the NHREC's initial licensing process?		
Answer Options	Count	Percent
Satisfied	27	75.0
Neither satisfied nor unsatisfied	8	22.2
Unsatisfied	1	2.8
No opinion	7	N/A

answered question **43**
skipped question **97**

Question 10. Why are you unsatisfied with the NHREC's initial licensing process? (Select all that apply)		
Answer Options	Count	Percent
Commission staff did not properly communicate the next steps needed to finish my application timely.	1	100.0
Commission staff were not able to provide answers to my questions about licensing requirements.	0	0.0
Commission staff provided poor customer service.	0	0.0
Commission staff did not get back to me timely.	0	0.0
My application required additional documentation, but Commission staff were not able to provide me with information on how to proceed.	0	0.0
The license was too expensive.	0	0.0
Other	0	0.0

answered question **1**
skipped question **139**

Question 11. Have you renewed your license?		
Answer Options	Count	Percent
Yes	123	87.9
No	17	12.1

answered question **140**
skipped question **0**

Question 12. How would you describe the timeliness of the license renewal process?		
Answer Options	Count	Percent
Good	99	80.5
Fair	23	18.7
Poor	1	0.8
No opinion	0	N/A
<i>answered question</i>		123
<i>skipped question</i>		17

Question 13. From the time you submitted your complete renewal application, how long did it take to receive your license?		
Answer Options	Count	Percent
Less than one week	0	0.0
One to two weeks	0	0.0
Two to three weeks	0	0.0
More than three weeks	0	0.0
I do not remember	1	N/A
<i>answered question</i>		1
<i>skipped question</i>		139

Question 14. How would you describe the NHREC's efforts to educate licensees about their responsibilities?		
Answer Options	Count	Percent
Good	102	76.7
Fair	29	21.8
Poor	2	1.5
No opinion	7	N/A
<i>answered question</i>		140
<i>skipped question</i>		0

Question 15. Please select the option that best describes your opinion of the NHREC's efforts to educate licensees about the following topics:					
Answer Options	More education is needed in this area	Education is sufficient in this area	Education is not needed in this area	Don't know	Response Count
Advertising	36 (27.5%)	84 (64.1%)	11 (8.4%)	9 (N/A)	140
Escrow account requirements	23 (18.0%)	96 (75%)	9 (7.0%)	12 (N/A)	140
Supervision of real estate offices requirements	30 (24.4%)	87 (70.7%)	6 (4.9%)	17 (N/A)	140
Cooperative agreements between brokers of different jurisdictions	52 (43.0%)	65 (53.7%)	4 (3.3%)	19 (N/A)	140
Licensee's responsibilities of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, etc.	32 (23.2%)	96 (69.6%)	10 (7.2%)	2 (N/A)	140
Seller/Buyer agent duties	37 (26.8%)	92 (66.7%)	9 (6.5%)	2 (N/A)	140
Designated agent duties	40 (29.6%)	87 (64.4%)	8 (5.9%)	5 (N/A)	140
Facilitator duties	45 (33.3%)	86 (63.7%)	4 (3.0%)	5 (N/A)	140
Prohibited conduct	41 (29.9%)	90 (65.7%)	6 (4.4%)	3 (N/A)	140
Penalties for violation	43 (31.9%)	86 (63.7%)	6 (4.4%)	5 (N/A)	140

answered question **140**
skipped question **0**

Question 15. Text Responses, Other areas for consumer education (please specify):	Count
These topics are covered in pre-licensing and core	1
People should hear constantly about ethics.	1
Coming Soon listings	1
Keeping licenses updated with legislative changes.	1
Buyer Broker Representation	1
Comply with current laws given emerging technology	1

provided comment **6**

Question 16. How would you describe the NHREC's efforts to educate the general public about real estate practices in New Hampshire?		
Answer Options	Count	Percent
Good	30	27.8
Fair	55	50.9
Poor	23	21.3
No opinion	32	N/A

answered question **140**
skipped question **0**

Question 17. Below is a list of potential topic areas a real estate education campaign might cover to better inform the general public about real estate practices in New Hampshire. Please select the degree of priority you believe the topic areas merit. (Consider both the general public’s existing knowledge in the subject matter and the severity of risk if the general public is not adequately educated)

Answer Options	High priority for a consumer education program	Medium priority for a consumer education program	Low priority for a consumer education program	Not needed in a consumer education program	Don’t know	Response Count
Advertising	29 (23.2%)	36 (28.8%)	46 (36.8%)	14 (11.2%)	15 (N/A)	140
Escrow account requirements	32 (24.2%)	53 (40.2%)	30 (22.7%)	17 (12.9%)	8 (N/A)	140
Supervision of real estate offices’ requirements	13 (10.0%)	51 (39.2%)	41 (31.5%)	25 (19.2%)	10 (N/A)	140
Cooperative agreements between brokers of different jurisdictions	26 (20.3%)	42 (32.8%)	35 (27.3%)	25 (19.5%)	12 (N/A)	140
Licensee’s responsibilities of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, etc.	81 (60.4%)	41 (30.6%)	10 (7.5%)	2 (1.5%)	6 (N/A)	140
Seller/Buyer agent duties	82 (60.7%)	44 (32.6%)	7 (5.2%)	2 (1.5%)	5 (N/A)	140
Dual agent disclosure	76 (56.3%)	44 (32.6%)	11 (8.1%)	4 (3.0%)	5 (N/A)	140
Designated agent duties	66 (48.9%)	54 (40.0%)	11 (8.1%)	4 (3.0%)	5 (N/A)	140
Facilitator duties	61 (45.5%)	53 (39.6%)	14 (10.4%)	6 (4.5%)	6 (N/A)	140
Prohibited conduct	71 (52.6%)	41 (30.4%)	20 (14.8%)	3 (2.2%)	5 (N/A)	140
How to file a complaint against a licensee	47 (34.8%)	62 (45.9%)	20 (14.8%)	6 (4.4%)	5 (N/A)	140

answered question **140**
skipped question **0**

Question 17. Text Responses, Other areas for consumer education (please specify):	Count
All explained while working with consumer	1
These should be the priority of the licensees	1
Benefits to consumer on their agency choices	1
More education for sellers and commission splits	1
Benefits/risk-reduction with broker vs. self-representation	1

provided comment **5**

Question 18. On a scale of 1-10 with 1 being “very unlikely” and 10 being “very likely,” how likely is it that the following could occur in New Hampshire?		
Answer Options	Average Response Given	Response Count
An unlicensed agent is advertising as a real estate agent.	3.6	140
An unlicensed agent has fabricated a counterfeit license.	2.8	140
A licensed agent did not disclose a criminal conviction to the Commission during license renewal.	4.3	140
A real estate agent holding a license in multiple states does not disclose a disciplinary action taken on their license in another jurisdiction during renewal.	4.6	140
A licensed real estate agent cheated on the licensing exam.	2.7	140
A broker licensed through the equivalency standards is unqualified in performing their responsibilities.	4.4	140
A licensed real estate agent failed to present a disclosure form timely.	5.9	140
<i>answered question</i>		140
<i>skipped question</i>		0

Question 19. Overall, How would you rank the effectiveness of the NHREC at ensuring brokers and salespersons meet and maintain minimum standards which promote public understanding and confidence in the business of real estate brokerage?		
Answer Options	Count	Percent
Very effective	29	20.7
Effective	82	58.6
Neither effective nor ineffective	25	17.9
Ineffective	3	2.1
Very ineffective	1	0.7
<i>answered question</i>		140
<i>skipped question</i>		0

Question 20. Why did you rank the NHREC as ineffective? (Select all that apply)		
Answer Options	Count	Percent
Lack of transparency to public	1	25.0
Poor communication to licensees	2	50.0
Inadequate regulations	1	25.0
Inadequate education requirements	0	0.0
Lack of consumer education efforts	2	50.0
Poor customer service	0	0.0
Ineffective complaint process	0	0.0
Ineffective disciplinary actions	2	50.0
Other	1	25.0
<i>answered question</i>		4
<i>skipped question</i>		136

Question 20. Text Responses, Other:	Count
Brokerages are too big to oversee licensees.	1
<i>provided comment</i>	1

Question 21. Are there any areas where the NHREC could improve operations?		
Answer Options	Count	Percent
No, I cannot think of any areas needing improvement.	107	76.4
Yes.	33	23.6
<i>answered question</i>	140	
<i>skipped question</i>	0	

Question 21. Text Responses, If yes, please describe:	Count
Improve online license renewal.	5
Communicate changes to licensees.	3
Enforce rules & address issues with “teams.”	3
Praise for NHREC.	3
Be more proactive in the industry.	2
Keep website updated & user-friendly.	2
Slow office response; unfriendly/unhelpful staff.	2
More education.	2
Allow online courses for applicants and renewals.	1
I have no idea.	1
Everything mentioned.	1
There is always room for improvement in any industry.	1
Give back the original Northern New England Real Estate Network.	1
Promote high standards and knowledge that New Hampshire Real Estate Licensees have completed their required continuing real estate education program.	1
Education is key regarding the public having a clearer understanding of what we do and how our actions are closely governed by the NHREC. We do care deeply and work hard for our paychecks.	1
Agents showing property before the property is on the market.	1
State-sponsored financing options for first time home buyers educate consumers about representation like the NHREC disclosure does, only in a PSA format.	1
Many realtors are PT or very busy & hire unlicensed help or newly licensed agents to help them. These people are not educated or trained well. Some firms are too big to oversee their licensees. Too many careless realtors.	1
Reinforcement that agents should understand they need to respond to other agents in a timely and professional manner.	1
Better education of the real meaning of a “Buyer Broker Contract” & the responsibilities that the contract puts on the agent as well as the client.	1
Investigations. Increasing standards for applicants subject to “show cause” hearings. Higher standards for education.	1
If a licensee puts their license into an active state, they should not be required to take the core class, the 12 elective credits, and pay the fee again less than a year later.	1
Initial licensing test for reciprocal agents is difficult (multi-step with poor instructions). There should be an easier way. Regarding question 1: Was that date relative to initial license or renewed license? Initial license 2014 Renewal 2016.	1
The continuing education requirement is extremely onerous – more hours required than in other states in which I am licensed. Once you’ve been doing this for many years it is not necessary to devote two entire days to continuing education.	1

provided comment

35

Question 28. If you would like to receive a link to our report when it becomes public, please provide the email address where you would like to receive the link. (We will not report or retain this email address after the report is made public.)		
Answer Options	Count	Percent
No, thank you.	83	59.3
Yes (Please provide e-mail address)	57	40.7

answered question **140**
skipped question **0**

**STATE OF NEW HAMPSHIRE
OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION
NEW HAMPSHIRE REAL ESTATE COMMISSION**

**APPENDIX E
POTENTIAL NHREC PERFORMANCE MEASUREMENT SYSTEMS**

Performance measurement focuses on whether a program achieved its goals and objectives, which are expressed as measurable performance standards. A performance measurement system facilitates comparing actual performance levels to pre-established targets (i.e., goals and objectives) to determine whether program results were achieved. Performance measurement systems require identifying the agency's mission (i.e., what it wants to accomplish), establishing measurable goals and objectives for achieving the mission (i.e., how it will accomplish the mission), and establishing output and outcome measures to gauge agency progress towards its goals and objectives.

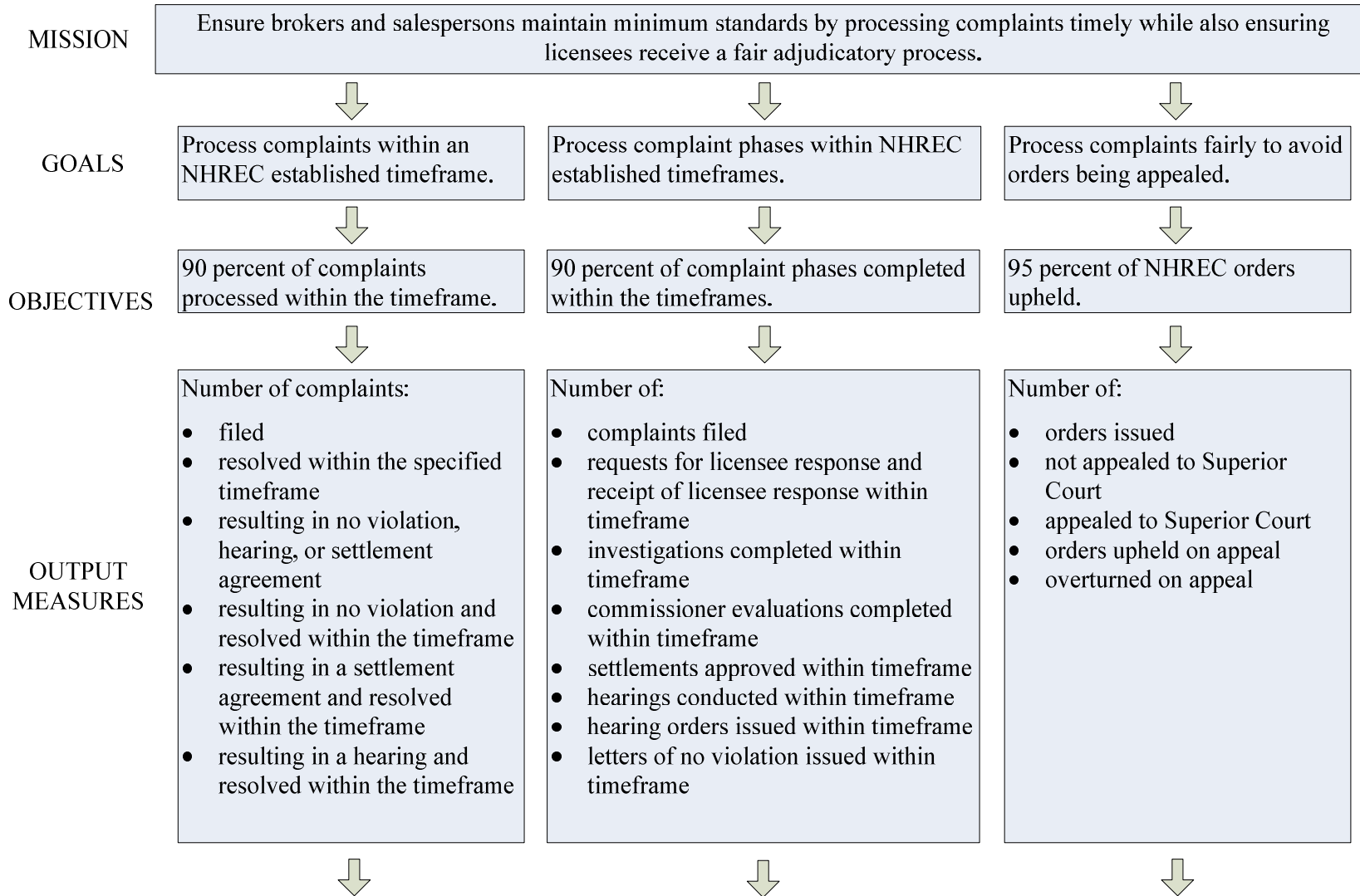
Figures 4 and 5 show example missions, with supporting goals, objectives, performance measures, and outcomes applicable to New Hampshire Real Estate Commission (NHREC) for demonstration purposes. The mission is represented as the results the program intends to achieve, while goals define the specific activities conducted to achieve the mission. Objectives define the standards to which the agency will compare its results, and the measures quantify the results the agency produced. Outcomes define the results the organization expects to achieve and the final outcomes show the activity's link to the mission.

For example, Figure 4 identifies goals, objectives, and measures intended to ensure brokers and salespersons maintain minimum qualifications and NHREC implements a fair and timely complaint process. Goals include processing complaints within an established timeframe, processing complaint phases within an established timeframe, and processing complaints fairly to mitigate orders being appealed. Objectives may include, for example, processing 90 percent of complaints within an established timeframe, 90 percent of complaint phases completed within established timeframes, and 95 percent of orders upheld if appealed. To measure this, NHREC must establish timeframes and track when each complaint phase is complete. Additionally, NHREC would need to track the final status of the complaint including if the order was appealed or upheld. Any complaints found outside the established standard could be identified and reviewed for NHREC to participate in continuous process improvement.

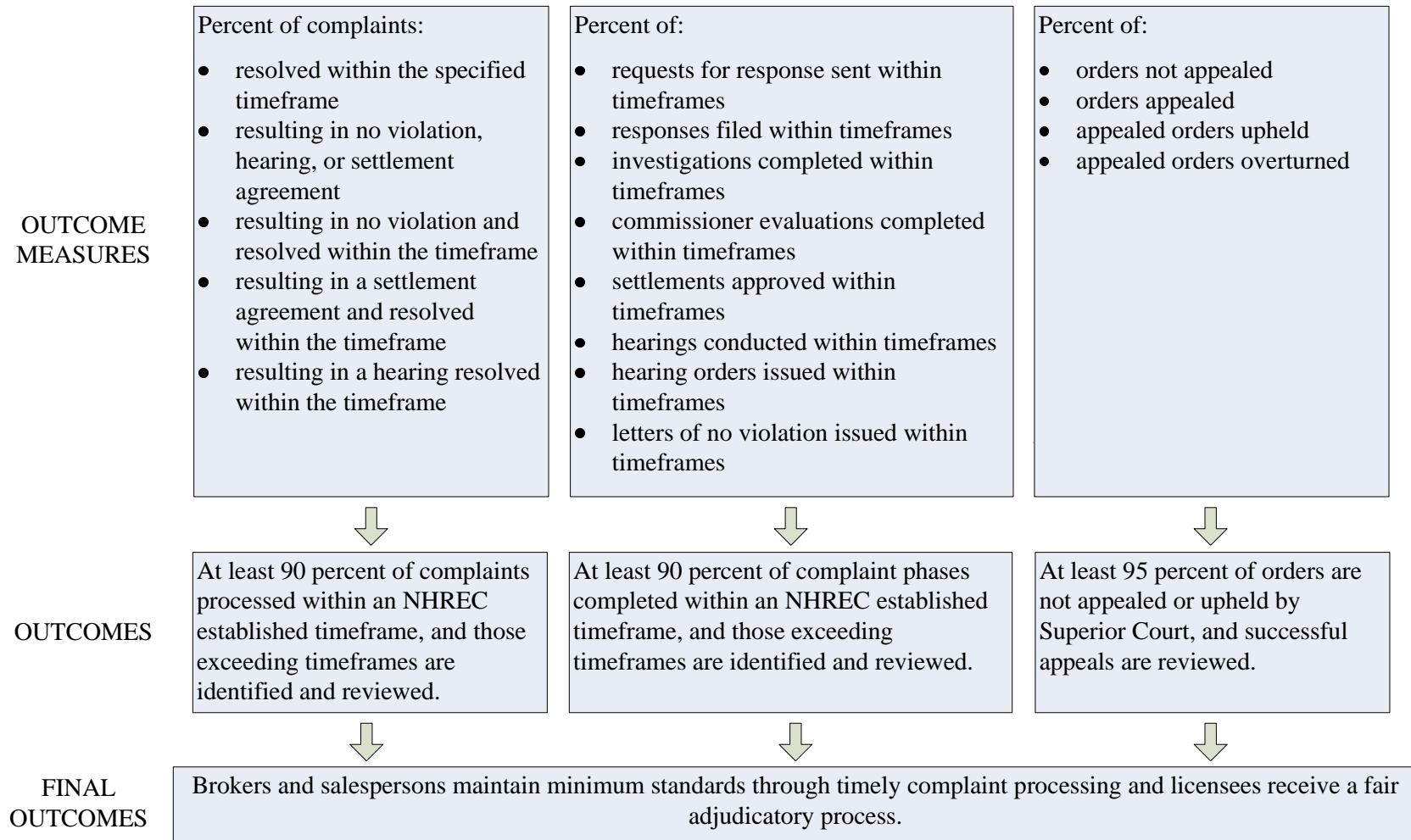
Figure 5 identifies goals, objectives, and measures designed to ensure licensees and continuing education (CE) providers meet and maintain minimum qualifications through timely licensure and course accreditation approval. Goals include initial licensure, renewal licensure, and course accreditation applications processed within NHREC established timeframes. In this hypothetical model, NHREC could have an objective to process 90 percent of applications meeting the minimum standards for licensure or course accreditation within an NHREC established timeframe and 90 percent of applications require the involvement of Commissioners to receive a review within an established timeframe. To measure these objectives, NHREC would need to establish timeframes for applications which meet the minimum standards and for applications requiring Commissioner review. By the end of the process, the final outcome would result in qualified licensees practicing real estate or providing real estate course instruction without unnecessary delays.

Figure 4

**Potential Performance Measurement Model:
Ensure Timely And Fair Complaint Processing**



E-3

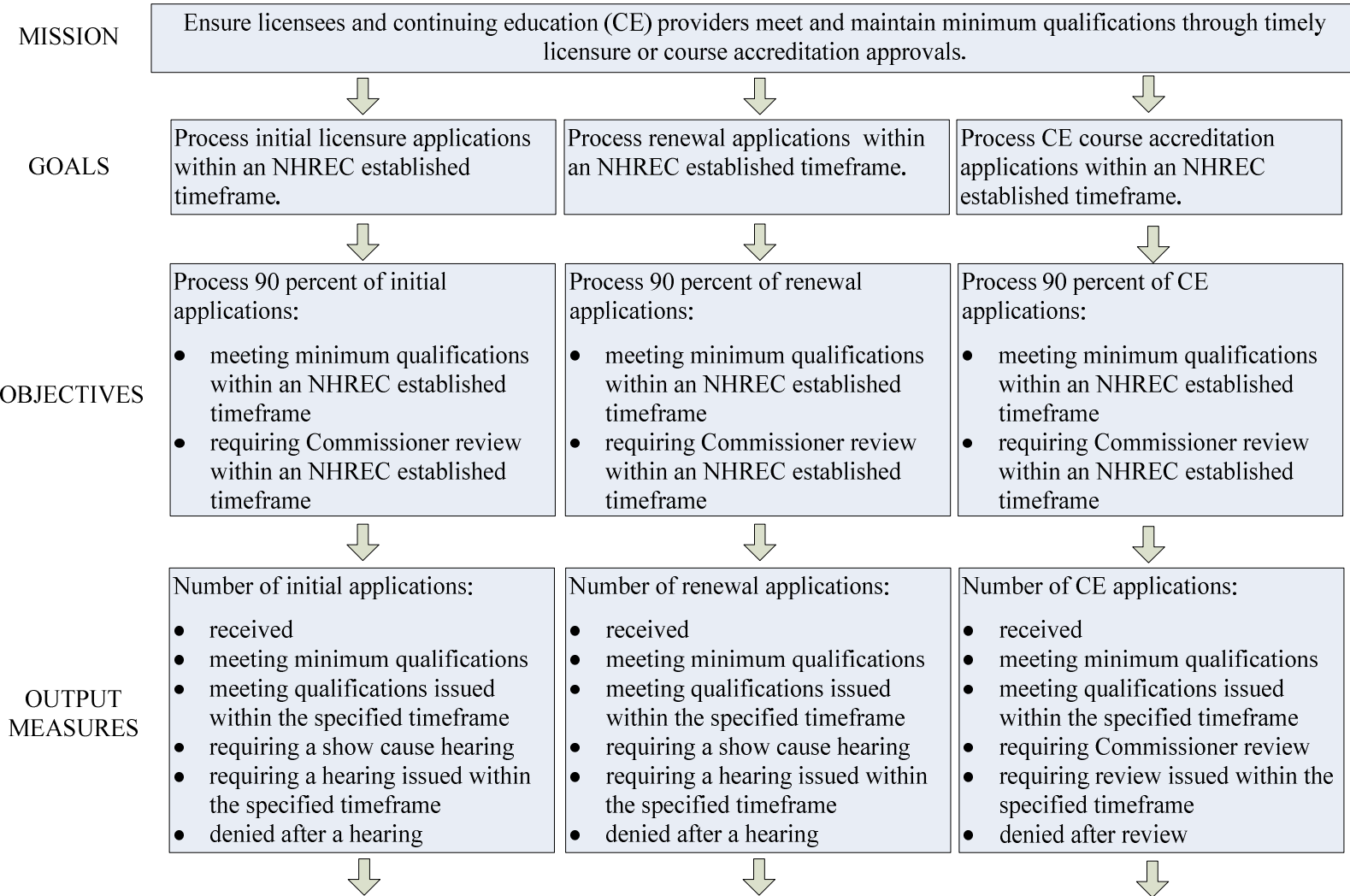


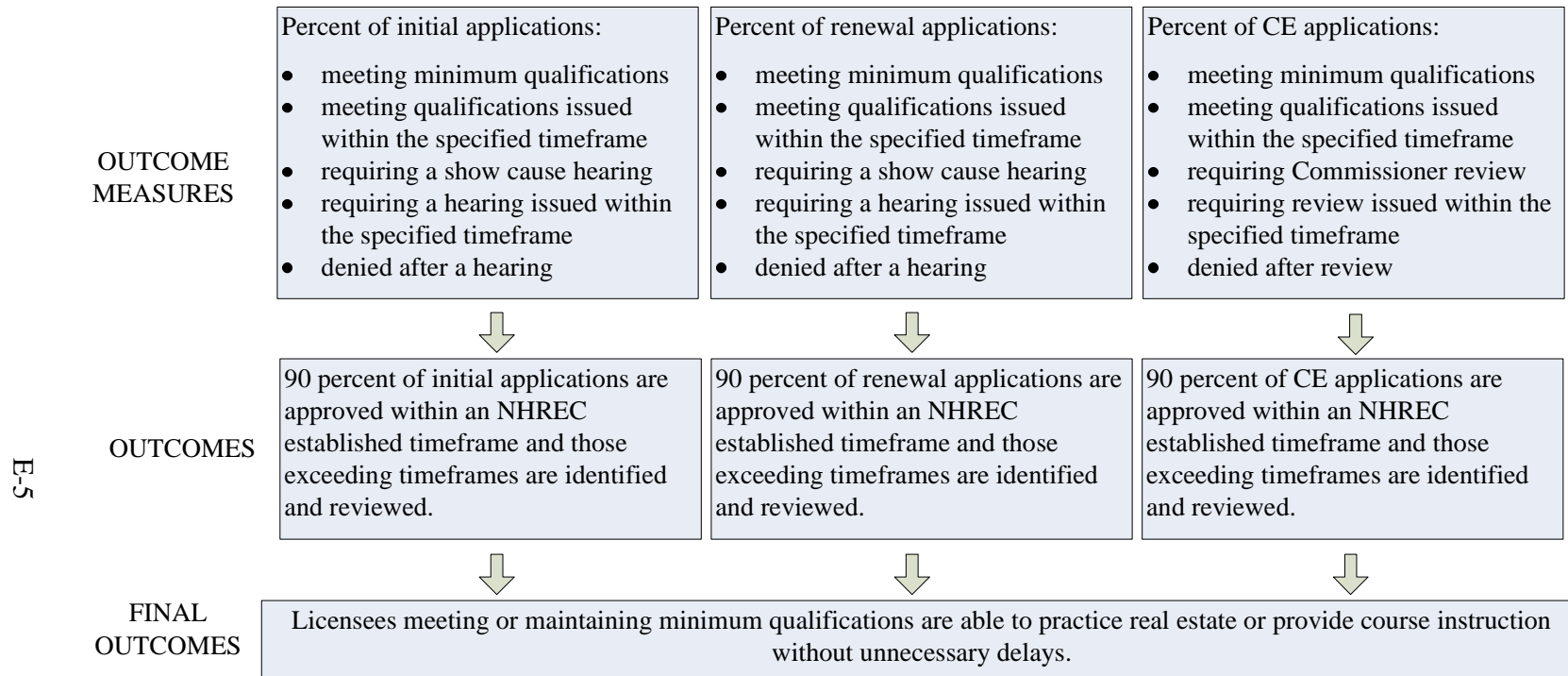
Source: LBA analysis of NHREC documents and interviews with NHREC staff, OPLC staff, and Commissioners.

Figure 5

**Potential Performance Measurement Model:
Ensure Timely Licensure And CE Processing**

E-4





Source: LBA analysis of NHREC documents and interviews with NHREC staff, OPLC staff, and Commissioners.

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**STATE OF NEW HAMPSHIRE
OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION
NEW HAMPSHIRE REAL ESTATE COMMISSION**

**APPENDIX F
STATUS OF PRIOR AUDIT FINDINGS**

The following is the status of three observations applicable to this audit found in our prior LBA report for the ten months ended April 30, 1996, entitled *Department Of State And Related Boards And Commissions*. A copy of the prior report can be accessed on-line at our website <http://www.gencourt.state.nh.us/LBA/default.aspx>.

<u>No.</u>	<u>Title</u>	<u>Status</u>		
19.	Administrative Rules (See current Observation No. 8)	●	○	○
20.	Ethics Code (See current Observation No. 8)	●	●	○
21.	Biennial Report (See current Observation No. 10)	○	○	○

Status Key

Fully Resolved	●	●	●
Substantially Resolved	●	●	○
Partially Resolved	●	○	○
Unresolved	○	○	○

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