



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Official Audit Report – Issued November 4, 2016

Board of Registration of Hearing Instrument Specialists

For the period July 1, 2014 through December 31, 2015





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Mr. Mark Battite, Chair
Board of Registration of Hearing Instrument Specialists
1000 Washington Street, Suite 710
Boston, MA 02118

Dear Mr. Battite:

I am pleased to provide this performance audit of the Board of Registration of Hearing Instrument Specialists. This report details the audit objectives, scope, and methodology for the audit period, July 1, 2014 through December 31, 2015. My audit staff discussed the contents of this report with management of the agency, whose comments we considered in drafting this report.

I would also like to express my appreciation to the Board of Registration of Hearing Instrument Specialists for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMBump".

Suzanne M. Bump
Auditor of the Commonwealth

cc: Mr. Michael Hawley, Executive Director, Board of Registration of Hearing Instrument Specialists

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LIST OF ABBREVIATIONS

BRHIS	Board of Registration of Hearing Instrument Specialists
CE	continuing education
CMR	Code of Massachusetts Regulations
DPL	Division of Professional Licensure
HIS	hearing-instrument specialist
MEFA	Massachusetts Educational Financing Authority
MMARS	Massachusetts Management Accounting and Reporting System
OSA	Office of the State Auditor

EXECUTIVE SUMMARY

The Board of Registration of Hearing Instrument Specialists (BRHIS) was established by Chapter 321 of the Acts of 1998, which added Sections 93 and 94 to Chapter 13 of the Massachusetts General Laws to ensure that registered hearing-instrument specialists (HISes) are properly licensed and trained to dispense hearing aids.

In accordance with Section 12 of Chapter 11 of the General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of BRHIS for the period July 1, 2014 through December 31, 2015. The purpose of our audit was to determine whether BRHIS properly administered certain activities, including granting licenses; monitoring licensees' compliance with continuing-education requirements; complying with Section 61 of Chapter 112 of the General Laws by canceling, suspending, or revoking the licenses of HISes who had defaulted on loans from the Massachusetts Educational Financing Authority; and investigating complaints against licensees.

Our audit revealed no significant instances of noncompliance that must be reported under generally accepted government auditing standards.

OVERVIEW OF AUDITED ENTITY

The Board of Registration of Hearing Instrument Specialists (BRHIS) was established under Section 93 of Chapter 13 of the Massachusetts General Laws for the licensure of hearing-instrument specialists (HISes), who dispense or fit hearing aids. BRHIS is a five-member board, with members appointed by the director of the Division of Professional Licensure (DPL) for three-year terms, that is authorized to issue and administer licenses and license renewals, administer apprenticeships, and resolve complaints against HISes. BRHIS is overseen by DPL, an agency within the Office of Consumer Affairs and Business Regulation. According to its website,

DPL oversees 28 boards of registration, which license and regulate more than 387,000 individuals and businesses to practice some 50 trades and professions in Massachusetts. . . .

[DPL's mission is] to protect the public health, safety and welfare by licensing qualified individuals and businesses to provide services to consumers, and by fair and consistent enforcement of the licensing laws and regulations.

DPL's investigation and prosecution units assist BRHIS with complaint resolution.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor (OSA) has conducted a performance audit of certain activities of the Board of Registration of Hearing Instrument Specialists (BRHIS) for the period July 1, 2014 through December 31, 2015.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is a list of our audit objectives, indicating each question we intended our audit to answer; the conclusion we reached regarding each objective; and, if applicable, where each objective is discussed in this report.

Objective	Conclusion
1. Does BRHIS grant licenses in accordance with the requirements of Section 197(f) of Chapter 112 of the General Laws and Section 3.00 of Title 265 of the Code of Massachusetts Regulations (CMR)?	Yes
2. Does BRHIS monitor continuing-education (CE) requirements for all licensed hearing-instrument specialists (HISes)?	Yes
3. Does BRHIS, as required by Section 61 of Chapter 112 of the General Laws, receive a written list of names of educational-loan defaulters from the Massachusetts Educational Financing Authority (MEFA)? Does BRHIS take appropriate action against licensed HISes who are in default on such loans?	No; see <u>Other Matters</u>
4. Does BRHIS investigate complaints and conduct hearings as required by 265 CMR 8.00?	Yes

To achieve our objectives, we gained an understanding of the internal controls at BRHIS that were related to our audit objectives and tested the operating effectiveness of controls over HIS licensing, CE requirements, and complaints received as well as any hearings conducted in response to such complaints.

In addition, we performed the following procedures:

- We reviewed the records of all 29 people who were granted licenses during our audit period to determine whether BRHIS granted licenses in accordance with Section 197(f) of Chapter 112 of

the General Laws and 265 CMR 3.00. We did this by reviewing license applications and checking whether each was complete, signed, and notarized and whether each one contained all required supporting documentation. We also determined whether each applicant was at least 18 years old, had a high-school diploma, had validation of required apprenticeship and documentation of passing the required HIS exam, and had paid the required fee.

- We judgmentally selected a nonstatistical sample of 20 out of a population of 142 current licensee renewal files to determine whether BRHIS had adequately monitored each selected licensee to ensure the completion of his/her CE requirements and compliance with 265 CMR 5.02. Specifically, we determined whether each licensee had signed a renewal certificate every two years, under the penalty of perjury, attesting to CE completion. In addition, we determined whether each licensee's file had been reviewed by BRHIS staff for CE completeness and, if not, whether each one had been sent a formal "Notification of Noncompliance" letter.
- We tested all 142 current licensees to determine whether any had defaulted on loans obtained through MEFA and, if so, whether appropriate action had been taken in accordance with Section 61 of Chapter 112 of the General Laws to ensure that no licensed HISes practiced while in default.
- We tested all 13 of the consumer complaints filed against BRHIS licensees during our audit period to determine whether BRHIS investigated these complaints and conducted hearings as required by 265 CMR 8.00. Specifically, we reviewed each complaint file to determine whether it contained an official complaint form and a response by the HIS, whether the complaint had been referred to the prosecution department, whether any board action was taken, whether there was evidence in the BRHIS meeting minutes of any such action, and whether the final result of any action had been reviewed and signed off on by BRHIS and the chief investigator of the complaint.

Based on OSA's most recent data-reliability assessment of the Massachusetts Management Accounting and Reporting System (MMARS) and our current comparison of source documentation with MMARS information, we determined that the information obtained from MMARS for our audit period was sufficiently reliable for the purposes of our audit work.¹ We generally relied on hardcopy source documents for other data needs.

We used nonstatistical sampling to help us achieve our audit objectives and therefore did not project our results to the various populations.

1. In 2014, OSA performed a data-reliability assessment of MMARS. As part of this assessment, we tested general information-technology controls for system design and effectiveness. We tested for accessibility of programs and data as well as system change management policies and procedures for applications, jobs, and infrastructure.

OTHER MATTERS

The Board of Registration of Hearing Instrument Specialists is not being provided with the information necessary to identify licensees who have defaulted on certain loans.

Section 61 of Chapter 112 of the Massachusetts General Laws requires boards within the Division of Professional Licensure (DPL), including the Board of Registration of Hearing Instrument Specialists (BRHIS), to determine whether any licensee has defaulted on a Massachusetts Educational Financing Authority (MEFA) loan and, if so, to administer appropriate sanctions against the licensee/s once it receives the loan-default information from MEFA. Section 61 of Chapter 112 of the General Laws states,

Each . . . board of registration or examination [under DPL], upon receiving a written list of names of educational loan defaulters from the Massachusetts Education Financing Authority . . . shall suspend, revoke or cancel a professional or occupational certificate, registration, license, or authority issued by it if the holder is so listed as being in default on an educational loan made under any of the programs administered by such authority or corporation. . . . Any such holder whose certificate, registration, license or authority is suspended, revoked or canceled pursuant to this paragraph because of such holder's default on an educational loan shall be informed by the applicable board of registration of the availability of the review procedure.

During our audit, we found that because of a lack of effective communication between MEFA and DPL, MEFA has never submitted the names of people who have defaulted on MEFA loans to DPL. Therefore, DPL could not provide this information to its various boards, including BRHIS, which in turn did not have the opportunity to impose appropriate sanctions.

Officials at MEFA stated that they had never sent a list of loan defaulters to DPL because DPL had never requested a list. In contrast, in an email to the Office of the State Auditor (OSA) dated June 27, 2016, DPL's general counsel asserted that it was MEFA's responsibility to send this information to DPL and that DPL was under no obligation to request it:

M.G.L. c. 112, § 61 was enacted on or about December 30, 2004 pursuant to Chapter 450 of the Acts of 2004 (the Act). The Act became effective in and around March 29, 2005. Section 61 of the statute states, in relevant part, that "[e]ach board of registration or examination, upon receiving a written list of names of educational loan defaulters from the Massachusetts Education Financing Authority [MEFA] . . . shall suspend, revoke or cancel a professional or occupational certificate, registration, license or authority." . . . Section 61 goes on to state that a licensee who is notified by the board that his/her license, registration or authority has been suspended, revoked or canceled "may request the loan agency [MEFA] which notified the board of registration of the default . . ." to conduct a review of the applicant's alleged loan default. In addition, once the loan agency

receives a request to review the default in question, "the loan agency shall notify the board" that the applicant has requested a review. . . . At this point, the board shall cancel the suspension, revocation, or cancellation until the Board is notified by MEFA of the disposition of the review.

The plain and logical reading of the statute makes it incumbent upon MEFA to first notify the specific board at DPL of who defaulted. The statute further requires MEFA to notify the board of the status of its internal review process. The statute does not contemplate nor require DPL to request from MEFA a list of loan defaulters who might also have a license issued by one of DPL's 28 boards of registration. The statute places that obligation upon MEFA. This is a logical interpretation of the statute since MEFA is the agency that controls and has access to who defaulted; not DPL.

As far as I am aware, DPL has not received any list and/or request from MEFA to suspend, revoke or cancel a license because an individual defaulted on his/her MEFA loan.

DPL's general counsel also stated that he had contacted MEFA about obtaining information on loan defaulters in April 2014 and that MEFA's then-executive director told him that the agency's default rate was less than 2% and that it did not intend to pursue the matter with licensees who had defaulted.

However, in OSA's opinion, because the state Legislature, in passing Chapter 112, intended BRHIS to impose sanctions on licensees who were in default on MEFA loans, BRHIS should encourage DPL to work with MEFA and establish a process to obtain loan-default information periodically. DPL could provide this information, once it was obtained, to its various boards, including BRHIS, which could then appropriately sanction any licensees who are in default.

After we discussed this matter with DPL's general counsel, he gave us a copy of a letter dated September 1, 2016, which he said he had sent to MEFA's executive director requesting that MEFA give DPL a list of all loan defaulters. He also gave us a copy of a response letter from MEFA's executive director, dated September 22, 2016, in which the executive director indicated that MEFA would not comply with this request:

Chapter 112, section 61 does not mandate that MEFA provide a list of education loan defaulters to the Division of Professional Licensure ("DPL"). . . . It is purely discretionary for MEFA whether it wishes to provide a list to DPL and, if so, who it includes on such list and when it provides one.

Since the statute's enactment in 1991 MEFA has not had to utilize this discretionary tool to revoke borrowers' licenses as it has maintained, and continues to maintain, one of the best default rates in the country. . . .

MEFA takes seriously its mission to assist families and students with college financing. When a payment default takes place MEFA works with the borrowers to develop a plan for repayment. If

notwithstanding such efforts a borrower does not agree to or adhere to a consensual repayment plan acceptable to MEFA, MEFA utilizes the judicial system, which allows the borrower(s) and MEFA an independent review.

Revoking a borrower's license automatically in response to a loan payment default is not in the best interest of the Commonwealth, MEFA or the citizens of Massachusetts. Borrowers default for a host of reasons from military service, medical issues, disability, bankruptcy, loss of employment and even death. Having a borrower gainfully employed, and working with borrower versus against the borrower, is the best way for MEFA to secure repayment of its loans. . . .

MEFA appreciates the availability of the tool the legislature has provided, and may consider invoking it in specific situations, if any, where, in its view, the threat of delicensing could be productive from a loan repayment perspective. But the legislature did not intend that MEFA be obligated to initiate an automatic delicensing process for every licensed borrower who has payment difficulties, and if MEFA were to provide the list you have requested, that would be the result.

It should be noted that during our audit, we obtained loan-default information from MEFA and determined that at the time of our analysis, no licensed hearing-instrument specialist was in default on a MEFA loan.