

# AUDIT REPORT



CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
BUREAU OF FINANCIAL AUDIT  
**WILLIAM C. THOMPSON, JR., COMPTROLLER**

## **Audit Report on Pensioners of the New York City Police Department Working for the City after Retirement January 1, 2003—December 31, 2003**

*FL05-098A*

**June 30, 2005**



THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
1 CENTRE STREET  
NEW YORK, N.Y. 10007-2341

WILLIAM C. THOMPSON, JR.  
COMPTROLLER

**To the Citizens of the City of New York**

Ladies and Gentlemen:

In accordance with the responsibilities of the Comptroller contained in Chapter 5, § 93, of the New York City Charter, my office conducted an audit to identify New York City Police Department Pension Fund (POLICE) retirees who may be illegally re-employed (“double-dippers” or “disability violators”), and to quantify the amounts of any improper payments to individuals who appear to be violators of New York State Retirement and Social Security Law, § 210 through § 216, or New York City Charter § 1117, during calendar year 2003.

The results of our audit, which are presented in this report, have been discussed with POLICE officials, and their comments have been considered in preparing this report.

Audits such as this provide a means of ensuring that pensioners are complying with all laws pertaining to public service re-employment and that appropriate steps are taken to recoup improper payments to individuals after retirement.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please contact my audit bureau at 212-669-3747 or e-mail us at [audit@Comptroller.nyc.gov](mailto:audit@Comptroller.nyc.gov).

Very truly yours,

A handwritten signature in cursive script that reads "William C. Thompson, Jr.".

William C. Thompson, Jr.

WCT/gr

**Report:** FL05-098A  
**Filed:** June 30, 2004

*The City of New York  
Office of the Comptroller  
Bureau of Financial Audit*

**Audit Report on Pensioners of the  
New York City Police Department  
Working for the City after Retirement  
January 1, 2003 – December 31, 2003**

**FL05-098A**

**AUDIT REPORT IN BRIEF**

The Comptroller's Office performed an audit to identify New York City Police Department pensioners who may be illegally re-employed ("double-dippers" or "disability violators"), and to quantify the amounts of any improper payments to individuals who appear to be violators of New York State Retirement and Social Security Law § 211 and § 212, or New York City Charter § 1117 during calendar year 2003.

**Audit Findings and Conclusions**

The audit found that 12 pensioners received \$80,135 in pension payments during 2003 that appear to violate applicable sections of State and City laws. These individuals were in apparent violation of RSSL § 211 or §212 because they were under age 65 and received City wages exceeding the limitations without having a waiver on file, or were in violation of the New York City Administrative Code Volume 3, Title 13, Chapter 2, §13-254 (Disability Safeguards) or § 1117 of the New York City Charter because they were collecting disability pensions and received City wages exceeding the applicable earnings limitations.

**Audit Recommendations**

POLICE should:

- Investigate those individuals identified as concurrently receiving pensions while being re-employed in public service. POLICE officials should also commence prompt recoupment action against those individuals found to be illegally collecting pensions.
- Forward to the Department of Investigation, if the circumstances warrant such action, the name of individuals found to be illegally collecting pensions.

- Ascertain whether previous pension overpayments have been recouped and whether current pensions have been suspended for those individuals who have been cited in previous audits as “double-dippers” or “disability violators.”
- Send special reminders to service retirees under the age of 65, and to all disability retirees, that clearly state their responsibilities regarding public service re-employment.

## **INTRODUCTION**

### **Background**

A New York City Police Department service retiree who is re-employed by the State or any of its political subdivisions may not continue to collect pension benefits, except in accordance with conditions established by the New York State Retirement and Social Security Law (RSSL), § 210 through § 216. In the case of New York City Police Department disability retirees, the governing regulations are the New York City Administrative Code (Volume 3, Title 13) and the New York City Charter (§ 1117). If a post-retirement employee does not comply with relevant laws, the practice is termed “double-dipping.”

Pursuant to RSSL § 211, a service retiree (a person receiving an ordinary service retirement rather than a disability retirement) who is re-employed in New York public service and who exceeds the § 212 salary limitations may have his or her pension benefits denied unless the prospective employer has requested a waiver from the State or municipal Civil Service Commission or other authorized agency setting forth the reasons for such request, and has then obtained a waiver from that agency.

New York State law grants the authority to issue waivers to the following seven agencies:

- New York State Civil Service Commission (NYS)
- Commissioner of Education (NYS)
- New York City Civil Service Commission (NYC)
- Chancellor of the Department of Education (NYC)
- Board of Higher Education (CUNY) (NYC)
- Chancellor of State University (SUNY) (NYS)
- Administrator of Courts (NYS-NYC)

To obtain a waiver for an employee, the prospective employer of the retiree must show that the person’s skills are unique and in the best interests of the government service, and that no other qualified persons are readily available for recruitment to perform the duties of the position to be filled. Initial or renewed waivers may be for periods of up to two years.

An exception to this restriction is provided by RSSL § 212, which permits a service retiree to be re-employed in New York public service if the retiree earns no more than the amount prescribed by that section and files a “Section 212 Statement of Election” with his or her retirement system (see below). This earnings limitation does not apply after the retiree reaches the age of 65.

There are five New York City retirement systems that provide benefits for their employees and the employees of various City agencies. They are:

- New York City Board of Education Retirement System (BERS)
- New York City Employees' Retirement System (NYCERS)
- New York City Fire Department Pension Fund (FIRE)
- New York City Police Department Pension Fund (POLICE)
- New York City Teachers' Retirement System (TRS)

For calendar year 2003, the earnings limitation for a service retiree who filed a Statement of Election under § 212 was \$25,000. Accordingly, any service retiree earning more than \$25,000 in 2003 should have received a § 211 waiver to prevent suspension of the retirement allowance during that year. Failure to comply with these requirements can result in the forfeiture of pension benefits in subsequent years.

Disability retirees are not subject to RSSL § 211 and § 212. However, the New York City Administrative Code (Volume 3, Title 13, Chapter 2, § 13-254), provides for the re-employment of New York City Police Department disability retirees in New York public service. These provisions (also known as "Disability Safeguards") apply up to only the minimum period for service retirement elected by the employee (usually 20 years, but 25 years may be elected), subject to the following conditions: (1) the retiree undergoes a medical examination, (2) the Board of Trustees of the retirement system agrees with the medical board report and certification of the extent to which the retiree is able to work (the Board must then place the retiree's name on a civil service list as a "preferred eligible"), and (3) the Board reduces the retiree's pension to an amount which, when added to the retiree's salary, does not exceed the current maximum salary for the next higher title than that held by the person at retirement.

After the minimum (20- or 25-year) period for service retirement has expired, disability retirees in New York City are subject to the New York City Charter § 1117, which prohibits a retiree from earning more than \$1,800 a year (including pension payments) in New York public service unless the retiree's disability pension is suspended during the time of such employment. Waivers superseding this provision may not be granted.

### **Objective**

The objective of this audit was to identify those New York City Police Department pensioners who may be illegally re-employed ("double-dippers" or "disability violators"), and to quantify the amounts of any improper payments to individuals who appear to be violators of RSSL § 211 and § 212, or New York City Charter § 1117 during calendar year 2003.

## **Scope and Methodology**

Our audit period was January 1, 2003, through December 31, 2003. We met with officials of the New York City Police Department Pension Fund (POLICE) to review their monitoring processes for individual pensioners.

To discover the extent to which retired City employees were being improperly re-employed by City agencies, we asked the Audit Bureau's EDP Unit to perform a computer match of the approximately 272,000 New York City pensioners against a listing of all City workers (approximately 424,000) who received a W-2 wage statement from the Financial Information Services Agency (FISA) for the year 2003.<sup>1</sup> This matching process identified 2,064 individuals under age 65 who either received more than \$25,000 in 2003 (service retirees), or \$1,800 in 2003 (disability retirees). We then sorted these lists by retirement system and investigated the reasons those individuals received a pension check and a payroll check concurrently.

Among the valid reasons individuals received both pension checks and payroll checks are the following: some had been granted waivers; some had their pensions suspended at the appropriate times; and some were not actually employed during 2003, but instead received lump-sum payments for accrued vacation and sick leave or for having selected an early retirement program that provided subsequent cash payments in 2003. Although we did not match the New York City retirees against local government employees paid by systems other than those integrated with FISA, we are presently conducting year 2003 (BERS, NYCERS, FIRE, POLICE, and TRS) matches of City pensioners against the 250,000 State workers; the results of this match will be covered in a separate report (Audit # FL05-104A).

Of the 2,064 matches, 489 consisted of individuals collecting POLICE pensions. For those 489 individuals, we obtained additional detailed information about their individual year 2003 pension and payroll payments. We analyzed the timing, and to some extent, the types of payments received. We also verified the amounts shown on the computer-match listing. In addition, we met with retirement system representatives, who assisted us in searching their files for waivers and other relevant information.

For those pensioners who appeared to lack valid reasons for receiving both pension and payroll checks, we calculated the apparent pension overpayments, based on our analyses of when re-employed pensioners reached the legal earnings limitation of \$25,000 for service retirees, and \$1,800 for disability pensioners. The annuity portions of the pension payments, if any, are not affected by RSSL § 211 and § 212, and New York City Charter § 1117, and therefore, should be excluded from the overpayments cited in this report. The annuity portions, which are estimated to be less than five percent of the total overpayments, can be determined only by POLICE officials.

In accordance with §13-202 of the New York City Administrative Code, a board of trustees heads the New York City Police Department Pension Fund. The Comptroller is one of

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<sup>1</sup> A separate audit report will be issued for each of the five New York City retirement systems; the other four audits are FL05-099A (FIRE), FL05-100A (NYCERS), FL05-101A (BERS), and FL05-102A (TRS).

the 12 trustees and is entitled to cast one and a half of the 12 board votes. The Comptroller sits on the Board through a designee. The Comptroller's designee was not involved in planning or conducting this audit, or in writing or reviewing the audit report.

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS), and included tests of records and other auditing procedures considered necessary. The audit was performed in accordance with the City Comptroller's audit responsibilities as set forth in Chapter 5, § 93, of the New York City Charter.

### **Discussion of Audit Results**

The matters covered in this report were discussed with POLICE officials during and at the conclusion of this audit. A preliminary draft report was sent to POLICE officials and the applicable employing and waiver-issuing agencies, and discussed at an exit conference. On June 17, 2005, we submitted a draft report to POLICE officials with a request for comments.

In their response, POLICE officials described the actions they have taken to address the report's recommendations. The full text of the POLICE response is included as an addendum to this report.

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Our previous audit covering POLICE pensioners for calendar year 2002 (#FL04-112A, issued June 25, 2004), reported that there were 14 POLICE retirees who were in apparent violation of RSSL § 211 or § 212, or § 1117 of the New York City Charter. These individuals received improper pension payments of approximately \$107,228.

## FINDINGS

### Overpayment of Pension Benefits

This audit identified 12 POLICE retirees who received \$80,135 in pension payments during 2003 that appear to violate applicable sections of State and City laws. (See Appendices I through III for details concerning the retirees and their current employers.)

These 12 individuals were in apparent violation of RSSL § 211 or §212 because they were under age 65 and received City wages exceeding the limitations without having a waiver on file at POLICE, or were in violation of the New York City Administrative Code Volume 3, Title 13, Chapter 2, § 13-254 (Disability Safeguards) or § 1117 of the New York City Charter because they were collecting disability pensions and received City wages exceeding the applicable earnings limitations. These 12 individuals received improper pension payments of approximately \$80,000, as follows:

	<u>Number of Individuals</u>	<u>Total Improper Payments</u>
§ 211/212 Violators	8	\$24,689
§ 13-254 /§ 1117 Violators	<u>4</u>	<u>55,446</u>
Total	<u>12</u>	<u>\$80,135</u>

Our total represents the amount of improper 2003 pension payments based on an analysis of when the re-employed pensioners reached the legal earnings limitations (\$25,000 for service retirees, and \$1,800 for disability pensioners). Allowances were made for those retirees who worked only part of that year. Additionally, the annuity portions of the pension payments, if any, are not affected by RSSL § 211 and § 212, and New York City Charter § 1117, and, therefore, should be excluded from the overpayments cited in this report. The annuity portions, which are estimated to be less than five percent of the total overpayments, can be determined only by POLICE officials. Immediate action by POLICE and the employing City agencies is needed to investigate and recoup where appropriate any improper payments made to these retirees.

The following is an example of a POLICE service retiree who was found to be working at a City agency during calendar year 2003:

**CASE #1:** A Police Officer who retired in June 2002 collected seven pension checks (January through July) in calendar year 2003 totaling \$20,510. He was reinstated in June 2003; therefore, it appears that two pension checks (June and July 2003) totaling \$5,860 may have been improperly received and cashed in calendar year 2003.



The following is an example of a POLICE disability retiree who was found to be working at a City agency during calendar year 2003:

**CASE #2:** A Police Officer who retired in May 1996 on a disability pension, collected 12 pension checks (one each month) in calendar year 2003, totaling \$40,586. At the same time she worked as an Assistant District Attorney for the Manhattan District Attorney collecting a \$56,080 salary. Because the Police Officer began working for the Police Department in 1989, she qualifies for "Disability Safeguards," which permit her to collect salary and pension payments amounting to the current maximum salary for the next higher title than the one she held at retirement. Under the provision, she would be allowed to collect a total of \$69,300 in pension and salary. However, her cumulative earnings totaled \$96,666. Therefore, it appears that she may have improperly received \$27,366 in pension payments.

## RECOMMENDATIONS

New York City Police Department Pension Fund officials should:

1. Investigate those individuals identified as concurrently receiving pensions while being re-employed in public service. POLICE officials should also commence prompt recoupment action against those individuals found to be illegally collecting pensions.

**POLICE Response:** "The Police Pension Fund is in total agreement that recoupment of pension benefits received in violation of the law should be commenced immediately. It should be noted, however, that this retirement system does not exercise control over its pension payroll data tape. We are requesting that the Comptroller's Office, as custodian of Police Pension payroll records, supply a list to my Office on a semi-annual basis of all retirees found to be "double-dipping." This will afford the Police Pension Fund an opportunity to fully investigate all identified violators on a timely basis.

"Regarding the 15 retirees listed by the Comptroller's Office in the May 23, 2005 audit report as possible violators, the Police Pension Fund will investigate all members in question to determine if they are in violation of Section 1117 of the New York City Charter. Those in violation will be given the opportunity to obtain retro-active 211 waivers, as the currently law permits. Should such approval be denied, this Retirement System will recover all pension moneys received from the period in question."

2. Forward to the Department of Investigation, if the circumstances warrant such action, the name of individuals found to be illegally collecting pensions.

**POLICE Response:** "The Police Pension Fund concurs with recommendation #2, however, no retiree investigated was deemed appropriate for such a referral."

3. Ascertain whether previous pension overpayments have been recouped and whether current pensions have been suspended for those individuals who have been cited in previous audits as “double-dippers” or “disability violators.”

**POLICE Response:** “The Police Pension Fund has in the past and will continue to suspend or reduce the pension benefit of all identified service or vested interest retirees who elect to continue employment with the City of New York without the benefit of Section 211. Additionally, as noted in our response to previous audits, this fund has recovered over six hundred thousand dollars from members of this System identified as violators of these statutes.”

4. Send special reminders to service retirees under the age of 65, and to all disability retirees, that clearly state their responsibilities regarding public service re-employment.

**POLICE Response:** “Upon retirement, each member receives the restrictions on employment after retirement in a special handout of the retirement package. In 2001, a letter outlining this policy were prepared and mailed to all retirees. In addition, the Police Pension Fund’s website provides a special reminder to all retirees with access to the internet and this topic is covered in depth at all retirement seminars conducted by Police Pension Fund personnel as well as in the plan summary description provided to all members.”

**APPENDIX I  
PENSION OVERPAYMENTS - NYC POLICE DEPARTMENT PENSION FUND  
2003 MATCHES (LACK OF WAIVERS)**

Pension Number	Date Retired	2003 Pension	Months Overpaid	Amount Overpaid	2003 Employer	Payroll Code	2003 Salary	Waiver Issuing Agency	Waiver in 2003
<b>CASE # 1 P-051399-0</b>	<b>6/30/2002</b>	<b>20,510</b>	<b>2</b>	<b>5,860</b>	<b>POLICE DEPT</b>	<b>056</b>	<b>56,533</b>	<b>DCAS</b>	<b>NO</b>
P-051489-0	7/26/2002	18,480	2	5,280	POLICE DEPT	056	31,782	DCAS	NO
P-052039-0	10/23/2002	14,940	1	4,980	POLICE DEPT	056	105,222	DCAS	NO
P-051359-0	6/28/2002	18,340	1	2,620	POLICE DEPT	056	41,202	DCAS	NO
P-050357-0	2/6/2002	4,680	1	2,340	POLICE DEPT	056	74,521	DCAS	NO
*P-046887-0	5/24/2000	10,740	9	1,800	DEP	826	104,823	DCAS	NO
					JOHN JAY COLL ADJ	70061		CUNY	NO
P-039237-0	7/1/1991	7,572	10	1,000	DOE	740	162,152	DOEC	NO
P-044558-0	2/28/1997	8,107	1	809	DOF	836	136,191	DCAS	NO

Total: \$ 24,689

**NOTES:**

CUNY Board of Higher Education (City University of New York)  
DCAS Department of Citywide Administrative Services  
DEP Department of Environmental Protection  
DOE Department of Education  
DOEC Department of Education Chancellor's Office  
DOF Department of Finance  
JOHN JAY COLL ADJ John Jay College Adjunct  
POLICE DEPT Police Department

\* This individual was also cited in our prior audits for 2002

**APPENDIX II  
PENSION OVERPAYMENTS - NYC POLICE DEPARTMENT PENSION FUND  
2003 MATCHES (DISABILITY RETIREES)**

Pension Number	Date Retired	2003 Pension	Months Overpaid	Amount Overpaid	2003 Employer	Payroll Code	2003 Salary	Appointment Year
<b>CASE #2</b> P-043922-0	5/31/1996	40,586	DS	27,366	DA-MANHTN	901	56,080	1989
P-040704-0	4/30/1993	41,711	DS	19,722	DA-KINGS CO	903	48,811	1985
P-044671-0	4/30/1997	49,322	DS	6,866	DOE	742	26,844	1983
					DOE	747		
P-015445-0	10/31/1978	17,714	1	1,492	DOE	742	4,797	1968

**Total:                              \$     55,446**

**NOTES:**

**DA-KINGS CO**               District Attorney - Kings County  
**DA-MANHTN**               District Attorney - Manhattan  
**DOE**                         Department of Education  
**DS**                          Disability Safeguards

RE-EMPLOYED POLICE PENSIONERS

TOTALS BY CURRENT EMPLOYER

Current Employer

<u>Department of Education (DOE)</u>	<u>Payroll Code</u>	<u>Total</u>
DOE (Administrative)	740	1
DOE (Full-Time Teachers)	742	2
DOE (Per-Session Teachers)	747	1

Other Agencies

New York Police Department	056	5
Department of Environmental Protection	826	1
Department of Finance	836	1
District Attorney – Manhattan	901	1
District Attorney – Kings County	903	1
John Jay College Adjunct	70061	1

**Total** **14**



# New York City Police Pension Fund<sup>1 of 3</sup>

ADDENDUM I

233 BROADWAY  
NEW YORK, NEW YORK 10279  
(212) 693-5100

Executive Director-Michael D. Welstone

June 11, 2005

**Greg Brooks**  
**Deputy Comptroller**  
**Policy, Audits, Accountancy & Contracts**  
**Executive Offices**  
**1 Centre Street**  
**New York, NY 10007-2341**

**Re: Audit Report on Pensioners of the NYC**  
**Police Department working for New**  
**York City after their retirement**  
**January 1, 2003 – December 31, 2003**  
**FL05-098A**

**Dear Mr. Brooks:**

In regards to the above referenced audit report, the following status report is forwarded.

### **Recommendation #1**

Investigate those individuals identified as concurrently receiving pensions while being re-employed in public service. POLICE officials should also commence prompt recoupment action against those individuals found to be illegally collecting pensions.

### **Response**

The Police Pension Fund is in total agreement that recoupment of pension benefits received in violation of the law should be commenced immediately. It should be noted, however, that this retirement system does not exercise control over its pension payroll data tape. We are requesting that the Comptroller's Office, as custodian of Police Pension payroll records, supply a list to my Office on a semi-annual basis of all retirees found to be "double-dipping." This will afford the Police Pension Fund an opportunity to fully investigate all identified violators on a timely basis.

-2-

Regarding the 15 retirees listed by the Comptroller's Office in the May 23, 2005 audit report as possible violators, the Police Pension Fund will investigate all members in question to determine if they are in violation of Section 1117 of the New York City Charter. Those in violation will be given the opportunity to obtain retroactive 211 waivers, as the currently law permits. Should such approval be denied, this Retirement System will recover all pension moneys received from the period in question.

**Recommendation #2**

Forward to the Department of Investigation, if the circumstances warrant such action, the name of individuals found to be illegally collecting pensions.

**Response**

The Police Pension Fund concurs with recommendation #2, however, no retiree investigated was deemed appropriate for such a referral.

**Recommendation #3**

Ascertain whether previous pension overpayments have been recouped and whether current pensions have been suspended for those individuals who have been cited in previous audits as "double-dippers" or "disability violators."

**Response**

The Police Pension Fund has in the past and will continue to suspend or reduce the pension benefit of all identified service or vested interest retirees who elect to continue employment with the City of New York without the benefit of Section 211. Additionally, as noted in our response to previous audits, this fund has recovered over six hundred thousand dollars from members of this System identified as violators of these statutes.

**Recommendation #4**

Send special reminders to service retirees under the age of 65, and to all disability retirees, that clearly state their responsibilities regarding public service re-employment.

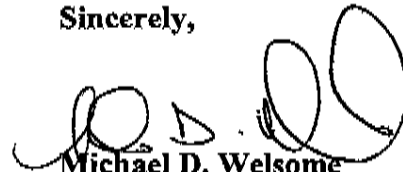
-3-

**Response**

Upon retirement, each member receives the restrictions on employment after retirement in a special handout of the retirement package. In 2001, a letter outlining this policy were prepared and mailed to all retirees. In addition, the Police Pension Fund's website provides a special reminder to all retirees with access to the internet and this topic is covered in depth at all retirement seminars conducted by Police Pension Fund personnel as well as in the plan summary description provided to all members.

I hope this response will aid in the development of a program to insure the integrity of all City Retirement System.

Sincerely,

A handwritten signature in black ink, appearing to read "M. D. Welsome", written in a cursive style.

**Michael D. Welsome  
Executive Director  
Police Pension Fund**

MDW:hdm