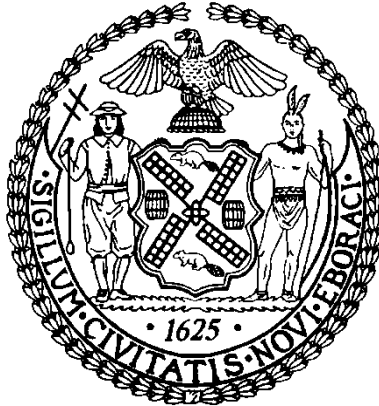


**CITY OF NEW YORK
OFFICE OF THE COMPTROLLER**

**John C. Liu
COMPTROLLER**

BUREAU OF FINANCIAL AUDIT

**H. Tina Kim
Deputy Comptroller for Audit**



**Audit Report on Pensioners of the
New York City Police Department
Working for the City after Retirement
January 1, 2008–December 31, 2008**

FL10-118A

June 30, 2010

<http://comptroller.nyc.gov>



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

John C. Liu
COMPTROLLER

June 30, 2010

To the Residents of the City of New York:

My office has audited the New York City Police Department Pension Fund (POLICE) to identify retirees who may be reemployed by a City agency and illegally collecting a pension, 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 2008. Audits such as this provide a means of ensuring that pensioners are complying with all laws pertaining to public service reemployment and that appropriate steps are taken to recoup improper payments to individuals after retirement.

The audit found that four pensioners received \$22,202 in pension payments during 2008 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.

The audit recommended that POLICE officials investigate the cited pensioners, forward their names to the Department of Investigation should circumstances warrant such action, recoup any previous pension overpayments, and send reminders to retirees that state their responsibilities regarding public service reemployment.

The results of the audit have been discussed with POLICE officials, and their comments have been considered in preparing this report. Their complete response is attached to this report.

If you have any questions concerning this report, please e-mail my audit bureau at audit@Comptroller.nyc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Liu".

John C. Liu

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*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, 2008—December 31, 2008**

FL10-118A

AUDIT REPORT IN BRIEF

The objective of this audit was to identify New York City pensioners who may be reemployed by a City agency and illegally collecting a pension from the New York City Police Department Pension Fund (POLICE)—known as “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 2008.

Audit Findings and Conclusions

The audit found that four pensioners received \$22,202 in pension payments during 2008 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. Two of these four individuals were cited in prior audit reports.

Audit Recommendations

The audit makes four recommendations, that POLICE officials should:

- Investigate those individuals identified as receiving pensions while being reemployed 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 names 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 reemployment.

INTRODUCTION

Background

A New York City Police Department service retiree who is reemployed 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 reemployed in New York public service and who exceeds the §212 salary limitations may have his or her pension benefits denied, unless the service retiree requests that the prospective employer apply for a waiver from the State or municipal Civil Service Commission or other authorized agency. The prospective employer must set forth the reasons for the application and obtain 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)
- Municipal Civil Service Commission of the City of New York (NYC)
- Chancellor of the New York City 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 serve the best interests of the government service, and that no other persons qualified to perform the duties of the position to be filled are readily available for recruitment. 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 reemployed 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 2008, the earnings limitation for a service retiree who filed a Statement of Election under §212 was \$30,000. Accordingly, any service retiree earning more than \$30,000 in 2008 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 reemployment 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 title next higher to 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 pensioners who may be reemployed by a City agency and illegally collecting a pension from the New York City Police Department Pension Fund—known as "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 2008.

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS) except for organizational independence as disclosed in the following paragraph. 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. This audit was performed in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

We are issuing a modified GAGAS compliance statement because of the Comptroller's mandated non-audit responsibility in connection with the New York City Police Pension Fund Board. In accordance with §13-202 of the New York City Administrative Code, the Comptroller is one of twelve trustees of the New York City Police Pension Fund Board. The Comptroller is represented on the Board by a designee. The Comptroller's designee was not involved in planning or conducting this audit or in writing or reviewing this audit report. Accordingly, we feel that the above issue has had no impact on the objectivity of this audit or on the conclusions and associated findings disclosed in this report.

Our audit period was January 1, 2008, through December 31, 2008. We met with officials of the New York City Police Department Pension Fund to review their monitoring processes for individual pensioners.

To discover the extent to which retired City employees were being improperly reemployed by City agencies, the Audit Bureau's IT Division performed a computer match of the approximately 277,047 New York City pensioners against a listing of all City workers (approximately 407,216) who received a W-2 wage statement from the Financial Information Services Agency (FISA) for the year 2008.¹ This matching process identified 1,819 individuals under age 65 who either received more than \$30,000 in 2008 (service retirees), or \$1,800 in 2008 (disability retirees). These individuals were then sorted by retirement system and investigated to determine the reasons these 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 2008 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 2008. Although the match did not include local government employees paid by systems other than those integrated with FISA, we are presently conducting 2008 matches of City pensioners (BERS, NYCERS, FIRE, POLICE, and TRS) against the approximately 355,00 State workers; the results of this match will be covered in a separate report (Audit # FL10-119A).

¹ A separate audit report will be issued for each of the five New York City retirement systems; the other four audits are FL10-114A (FIRE), FL10-117A (NYCERS), FL10-115A (BERS), and FL10-116A (TRS).

Of the 1,819 matches, 1,151 consisted of individuals collecting POLICE pensions. For all 1,151 individuals, we:

- obtained additional detailed information about their individual year 2008 pension and payroll payments;
- analyzed the timing, and to some extent, the types of payments received;
- verified the amounts shown on the computer-match listing; and
- 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 reemployed pensioners reached the legal earnings limitation of \$30,000 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 addition, we followed up on the implementation status of the recommendations from last year's audit report—*Pensioners of the New York City Police Department Working for the City after Retirement January 1, 2007–December 31, 2007*, FL09-118A, issued June 30, 2009—by reviewing provided correspondence from POLICE.

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 on May 10, 2010, and discussed at an exit conference on May 25, 2010. We submitted a draft report to POLICE officials with a request for comments and received a written response from them on June 14, 2010. 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.

FINDINGS

Overpayment of Pension Benefits

This audit identified four POLICE retirees who received \$22,202 in pension payments during 2008 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.) Two of these four individuals were cited in prior audit reports.

These four 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 four individuals received improper pension payments of approximately \$22,202 as follows:

	<u>Number of Individuals</u>	<u>Total Improper Payments</u>
§211/212 Violators	2	\$ 10,261
§13-254 /§1117 Violators	<u>2</u>	<u>11,941</u>
Total	4	<u>\$ 22,202</u>

Our total represents the amount of improper 2008 pension payments based on an analysis of when the reemployed pensioners reached the legal earnings limitations (\$30,000 for service retirees, and \$1,800 for disability pensioners). Allowances were made for those retirees who worked only part of that year. Moreover, the annuity portions of the pension payments, if any, are not affected by RSSL §211 and §212 or 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, if appropriate, any improper payments made to these retirees.

The following is an example of a POLICE disability retiree who was found to be working at a City agency during calendar year 2008:

CASE #1: A Police Officer who retired in February 2003, on a disability pension, collected 12 pension checks (January through December) in calendar year 2008, totaling \$17,228. At the same time, this individual worked as a Teacher for the Department of Education for eight months (January to July, and October) and collected a salary of \$18,958. This individual became a member of POLICE in 1986 and therefore does not qualify for “Disability Safeguards” provisions beyond 2006. Accordingly, any earnings

above \$1,800 for 2008 make the disability pension payments for the year improper. Therefore, it appears that seven pension checks (February to July, and October) totaling \$10,027, may have been improperly received and cashed in 2008. This individual was cited in our prior audits for calendar years 2006 and 2007.

It should be noted that in their correspondence concerning the implementation status of the recommendations from last year's audit of 2007, POLICE officials advised us that all of the audit recommendations are being implemented.

RECOMMENDATIONS

POLICE officials should:

1. Investigate those individuals identified as receiving a pension while being reemployed in public service. POLICE officials should also commence prompt recoupment action against those individuals found to be illegally collecting a pension.

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.

“Regarding the 5 retirees listed by the Comptroller’s Office in the June 8, 2010 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.² Those in violation will be given the opportunity to obtain retro-active 211 waivers, as current law permits. Should such approval be denied, this Retirement System will recover all pension monies 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 pension.

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 well over a million 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 reemployment.

² It should be noted that one pensioner was eliminated from the final report because he was granted a retroactive waiver.

POLICE Response: “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. Upon retirement, each member receives the restrictions on employment after retirement in a special handout of the retirement package. In 2010, a letter outlining this policy was prepared and mailed to all NYS retirees and finally, a letter from the NYC Police Pension Fund was sent to the NYC Department of Education requesting that any Police Department retiree seeking employment with the NYC Department of Education be reminded of the statutory restrictions on employment.

“I hope this response will aid in the development of a program to ensure the integrity of all City Retirement Systems.”

APPENDIX I
2008 PENSION OVERPAYMENTS - POLICE DEPARTMENT PENSION FUND
SERVICE RETIREES

Pension Number	Date Retired	2008 Pension	Months Overpaid	Amount Overpaid	2008 Employer	Payroll Code	2008 Salary	Waiver Issuing Agency	Waiver in 2008	Waiver Period
P-058340-0	7/24/2005	\$33,637	1	\$5,259	CC	102	\$132,545	DCAS	NO	NO
*P-051464-0	7/21/2002	30,012	2	5,002	DPR	846	32,150	DCAS	NO	NO

Total Individuals: 2

Total: \$10,261

NOTES:

- CC - City Council
- DPR - Department of Parks and Recreation
- DCAS - Department of Citywide Administrative Services

* This individual was cited in our prior audit report for calendar year 2006.

APPENDIX II
2008 PENSION OVERPAYMENTS - POLICE DEPARTMENT PENSION FUND
DISABILITY RETIREES

Pension ID#	Date Retired	2008 Pension	Months Overpaid	Amount Overpaid	2008 Employer	Payroll Code	2008 Salary	Disability Safeguards (DS)
Case #1 *P-052990-0	2/28/2003	\$17,228	7	\$10,027	DOE	746	\$18,958	NO
P-044435-0	7/9/1995	22,732	1	1,914	DOE	746	3,410	NO

Total Individuals: 2

Total: \$ 11,941

NOTES:

DOE

Department of Education

* This individual was cited on our prior audits for calendar years 2006 and 2007

APPENDIX III

RE-EMPLOYED POLICE PENSIONERS

TOTALS BY CURRENT EMPLOYER

Current Employer

	<u>Payroll Code</u>	Total Number of Individuals <u>Paid Under Code</u>
<u>Department of Education (DOE)</u>		
DOE Per Diem Teachers	746	2
<u>Other Agencies</u>		
City Council	102	1
Department of Parks and Recreation	846	<u>1</u>
<u>Total</u>		<u>4</u>



New York City Police Pension Fund

233 Broadway
New York, NY 10279
(212) 693-5100

Anthony J. Garvey
Executive Director

June 14, 2010

H. Tina Kim
Deputy Comptroller
Audits, Accountancy & Contracts
Office of the Comptroller
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, 2008 – December 31, 2008
FL10-118A

Dear Ms. Kim:

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

Recommendation #1

Investigate those individuals identified as receiving pension while being reemployed in public service. POLICE officials should also commence prompt recoupment action against those individuals found to be illegally collecting a pension.

Response

The Police Pension Fund is in total agreement that recoupment of pension benefits received in violation of the law should be commenced immediately.

Regarding the 5 retirees listed by the Comptroller's Office in the June 8, 2010 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 current law permits. Should such approval be denied, this Retirement System will recover all pension monies 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 pension.

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 well over a million dollars from members of this System identified as violators of these statutes.

Recommendation #4

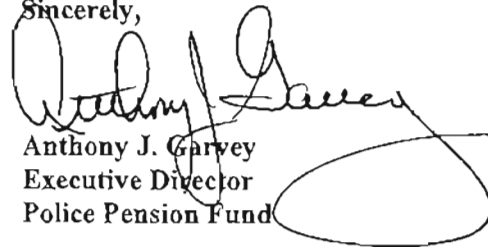
Send special reminders to service retirees under the age of 65, and to all disability retirees, that clearly state their responsibilities regarding public service re-employment.

Response

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. Upon retirement, each member receives the restrictions on employment after retirement in a special handout of the retirement package. In 2010, a letter outlining this policy was prepared and mailed to all NYS retirees and finally, a letter from the NYC Police Pension Fund was sent to the NYC Department of Education requesting that any Police Department retiree seeking employment with the NYC Department of Education be reminded of the statutory restrictions on employment.

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

Sincerely,



Anthony J. Garvey
Executive Director
Police Pension Fund

AJG:br