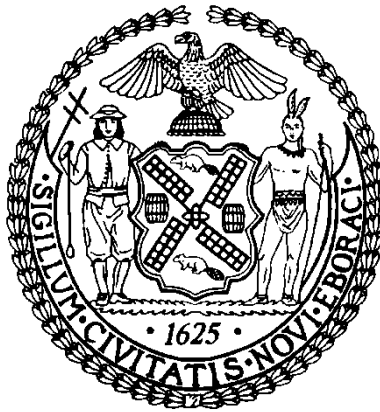


**CITY OF NEW YORK
OFFICE OF THE COMPTROLLER**

**John C. Liu
COMPTROLLER**

BUREAU OF FINANCIAL AUDIT

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



**Audit Report on New York City Pensioners
Working as Consultants for the City after
Retirement
January 1, 2008-December 31, 2008**

FL10-120A

June 30, 2010



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 five New York City retirement systems to identify New York City pensioners who may be reemployed as a consultant and illegally collecting a pension from a New York City retirement system—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 (RSSL) §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 13 individuals who received \$238,490 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 compensation from the City for professional services that exceeded the limitations without having a waiver on file at one of the five retirement systems, or were in violation of §1117 of the New York City Charter because they were collecting disability pensions while earning more than \$1,800 a year (including pension payments) at a New York City agency.

The audit recommended that New York City retirement systems 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 officials from the five New York City retirement systems, 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 New York City Pensioners
Working as Consultants for the City after Retirement
January 1, 2008–December 31, 2008**

FL10-120A

AUDIT REPORT IN BRIEF

The objective of this audit was to identify New York City pensioners who may be reemployed as consultants and illegally collecting a pension from a New York City retirement system—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 (RSSL) §211 and §212 or New York City Charter §1117 during calendar year 2008.

Audit Findings and Conclusions

The audit found 13 individuals who received \$238,490 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 compensation from the City for professional services that exceeded the limitations without having a waiver on file at one of the five retirement systems, or were in violation of §1117 of the New York City Charter because they were collecting disability pensions while earning more than \$1,800 (including pension payments) a year at a New York City agency. Four of the 13 pensioners were cited in our prior audit reports.

Audit Recommendations

The audit made four recommendations, that New York City retirement systems should:

- Investigate those individuals identified as receiving pensions while receiving payments from the City for providing professional services as consultants. City retirement systems 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 all retirees that clearly state their responsibilities when returning to public service after retirement.

INTRODUCTION

Background

A New York City service retiree who is reemployed by New York 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 disability retirees, the governing regulations are the New York City Administrative Code (Volume 3, Title 13) and the New York City Charter (§1117). When a post-retirement employee does not comply with the 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 prospective employer has requested a waiver from the State or municipal Civil Service Commission or other authorized agency setting forth the reasons for the request, and has then obtained a waiver from that agency.

With regard to consultants, RSSL §211, Subdivision 4, (consultant amendment) states:

A retired person who returns to public service on or after January first, nineteen hundred seventy-four, as a consultant shall be subject to the limitations applicable to a reemployed retiree as specified in this section or in any other provision of law.

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. 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 after their retirement. They are:

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

For calendar year 2008, the earnings limitations 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, the New York State Education Law, and the New York City Charter (§1117) provide for the reemployment of New York City disability retirees in New York State public service.

In addition, the New York City Corporation Counsel stated in an opinion that:

[A] retiree of a retirement system maintained by the City, whose last retirement system membership prior to such retirement commenced on or after May 31, 1973, returns to service as a consultant on or after January 1, 1974, . . . will be subject to the provisions of City Charter §1117 as to suspension and forfeiture of the pension portion of his retirement allowance. . . except to the extent that he qualifies under §211 or §212 of the Retirement and Social Security law for an exemption from such suspension and forfeiture.

The following regulations are applicable to each of the five City retirement systems:

POLICE

The New York City Administrative Code (Volume 3, Title 13, Chapter 2, §13-254) provides for the reemployment of POLICE disability retirees in New York public service. These provisions (also known as “Disability Safeguards”) apply only up to 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’s report and certification as to 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 than that held by the person at retirement.

After the minimum (20- or 25-year) period for service retirement has expired, POLICE disability retirees are subject to the New York City Charter (§1117), which prohibits a retiree from earning more than \$1,800 (including pension payments) per year in New York public service, unless the disability pension is suspended during the time of such employment.

TEACHERS

The New York City Administrative Code (Volume 3, Title 13, Chapter 4, §13-553), combined with the New York City Charter (§1117), prohibits a TEACHERS disability retiree from earning more than \$1,800 (including pension payments) per year in New York public service, unless the disability pension is suspended during the time of such employment.

NYCERS

The New York City Administrative Code (Volume 3, Title 13, Chapter 1, §13-171) provides for the reemployment of NYCERS disability retirees in New York State public service. These provisions (also known as “Disability Safeguards”) apply only up to the minimum period for service retirement elected by the employee, 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’s report and certification as to 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 than that held by the person at retirement.

After the minimum period for service retirement has expired, NYCERS disability retirees are subject to the New York City Charter (§1117), which prohibits a retiree from earning more than \$1,800 (including pension payments) per year in New York public service, unless the disability pension is suspended during the time of such employment.

FIRE

The New York City Administrative Code (Volume 3, Title 13, Chapter 3, §13-356 and §13-357) provides for the reemployment of FIRE disability retirees in New York public service. These provisions (also known as “Disability Safeguards”) apply only up to 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’s report and certification as to 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 than that held by the person at retirement.

After the minimum (20- or 25-year) period for service retirement has expired, FIRE disability retirees are subject to the New York City Charter (§1117), which prohibits a retiree from earning more than \$1,800 (including pension payments) per year in New York public service, unless his or her disability pension is suspended during the time of such employment.

BERS:

The New York State Education Law (Title 2, Article 52, §2575), combined with the New York City Charter (§1117), prohibits a BERS disability retiree from earning more than \$1,800 (including pension payments) per year in New York public service, unless the disability pension is suspended during the time of such employment.

With regard to disability retirees of all five New York City retirement systems, waivers that supersede the above provisions may not be granted.

Objective

The objective of this audit was to identify those New York City pensioners who may be reemployed as a consultant and illegally collecting a pension from a New York City retirement system—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 retirement system boards for NYCERS, POLICE, FIRE, and TRS. In accordance with §13-103, §13-202, §13-302, and §13-507 of the New York City Administrative Code, and §2575 of the New York State Education Law, Boards of Trustees head NYCERS, POLICE, FIRE, and TRS. The Comptroller is one of the trustees of NYCERS, POLICE, FIRE, and TRS. The Comptroller is represented on each of these Boards 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 five New York City retirement systems (NYCERS, POLICE, FIRE, TRS, and BERS) to review their monitoring processes for individual pensioners.

To determine how many New York City pensioners returned to public service as City consultants, the Audit Bureau's IT Division performed a computer match of the approximately 277,047 New York City pensioners against a listing of all individuals (approximately 13,974) who received a Form 1099-MISC Box 7 for non-employee compensation for professional services. This matching process identified 36 individuals who received non-employee compensation for professional services from the City as well as City pension checks. Of the 36 matched individuals, 8 were POLICE retirees, 14 were TEACHERS retirees, 13 were NYCERS retirees, and 1 was a FIRE retiree. The computer match did not identify any BERS retirees.

Initial investigations eliminated 23 of these 36 individuals. The remaining 13 individuals appeared to lack valid reasons for being on both lists.

For these 13 individuals, we calculated their apparent pension overpayments based on our determination of the date on which they reached the legal earnings limitations of \$30,000 for service retirees and \$1,800 for disability pensioners. Additionally, the annuity portions of the pension payments, if any, are not affected by RSSL §211 or §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 City retirement system officials.

In addition, we followed up on the implementation status of the recommendations from last year's audit report—*New York City Pensioners Working as Consultants for the City after Retirement January 1, 2007—December 31, 2007*, FL09-122A, issued June 30, 2009—by reviewing provided correspondence from NYCERS and TRS. We also intended to follow up on the implementation status of the recommendations from last year's audit reports for POLICE, FIRE and BERS. However, last year's report made no recommendations to POLICE, FIRE, and

BERS because the audit did not identify any pensioners who received 2007 pension payments that appeared to violate applicable sections of state or City laws.

Discussion of Audit Results

The matters covered in this report were discussed with officials of the five City retirement systems during and at the conclusion of this audit. A preliminary draft report was sent to officials of the five City retirement systems on May 10, 2010, and discussed at exit conferences with officials of two of the five retirement systems on May 25, 2010, and May 26, 2010. BERS, FIRE, and NYCERS officials elected to waive their exit conference. We submitted a draft report to the five City retirement systems with a request for comments. Each of the five retirement systems provided us with separate responses, which are summarized as follows:

POLICE Response: On June 14, 2010, we received a response from the POLICE Executive Director in which he agreed with our recommendations.

NYCERS Response: On June 22, 2010, we received a response from the NYCERS Director of Finance in which he agreed with our recommendations.

TRS Response: On June 24, 2010, we received a response from the TRS Deputy Director stating, "Please be advised that the Teachers' Retirement System (TRS) is in full compliance with all your recommendations."

FIRE Response: On June 21, 2010, we received a response from the FIRE Chief Compliance Officer in which he either agreed to implement or stated that FIRE was already in the process of implementing the report's recommendations.

BERS Response: On June 21, 2010, we received a response from the BERS Director of Operations stating, "We agree with your conclusions, and though no violators have been found in this audit, we will continue to be vigilant in seeking total adherence to aforementioned laws."

The full texts of these written responses are included as addenda to this report.

FINDINGS

Overpayment of Pension Benefits

This audit identified 13 New York City pensioners who returned to public service as consultants and received a total of approximately \$238,490 in pension payments during 2008 that appear to violate applicable sections of State and City laws. Four of the 13 pensioners were cited in our prior audit reports. (See Appendices I through VI for the agency summaries and detailed listings of the 13 pensioners who returned to public service as consultants and their current City agencies.) The breakdown of the 13 pensioners and the improper pension payments they received from three New York City retirement systems are as follows:

<u>Retirement System</u>	<u>Service Retirees</u>	<u>Disability Retirees</u>	<u>Total Retirees</u>	<u>Improper Pension Payments</u>
POLICE	1	6	7	\$ 117,864
NYCERS	3	0	3	\$ 93,201
TRS	<u>3</u>	<u>0</u>	<u>3</u>	<u>\$ 27,425</u>
Total	<u>7</u>	<u>6</u>	<u>13</u>	<u>\$ 238,490</u>

The 13 individuals were in apparent violation of RSSL §211 or §212 because they were under age 65 and received compensation from the City for professional services that exceeded the \$30,000 income limitation for service pensions without having a waiver on file at their retirement system, or were in violation of §1117 of the New York City Charter because they were collecting disability pensions receiving more than \$1,800 (including pension payments) in compensation from the City for professional services and were past their applicable anniversary dates.

Our total represents the amount of improper 2008 pension payments based on our determination of the date on which the pensioners reached the 2008 legal earnings limitations. 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 or §212, 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 City retirement system officials. Immediate action by the five City retirement systems and the employing City agencies is needed to investigate and recoup, if appropriate, any improper payments made to these retirees identified as possible “double-dippers.”

The following is an example of a POLICE disability retiree who was found to be providing professional services as a consultant for a City agency during calendar year 2008:

CASE #1, POLICE: A Police Officer, who retired from the Police Department in June 2006 on a disability pension, collected 12 pension checks (one for each month) in calendar year 2008, totaling \$97,999. This individual worked for the Department of Education for five months (July to November) and collected compensation of \$1,218. This individual became a member of the Police Department in 1983, and therefore does not qualify for “Disability Safeguards” provisions beyond 2003. Accordingly, any earnings above \$1,800 for 2008 make the disability pension payments for the year improper. Therefore, it appears that four pension checks (August to November) totaling \$43,052, may have been improperly received and cashed in 2008.

The following is an example of a NYCERS service retiree who was found to be providing professional services as a consultant for a City agency during calendar year 2008:

CASE #2, NYCERS: An Assistant District Attorney who retired from the Bronx District Attorney’s Office in December 2000, collected 12 pension checks (one for each month) in calendar year 2008, totaling \$66,946. This individual worked for Supreme Court 1st Judicial District for all of 2008 (January through December), collecting compensation of \$124,452. We found no evidence of a waiver for this individual for any portion of 2008. On February 15, 2008, this person’s cumulative earnings for the year exceeded the \$30,000 limit for service retirees. Therefore, it appears that 10 pension checks (March to December), totaling \$55,183, may have been improperly received and cashed in calendar year 2008. It should be noted that this individual was cited in our prior audits for calendar years 2004-2007, as footnoted in Appendix IV.

The following is an example of a TRS service retiree who was found to be providing professional services as a consultant for a City agency during calendar year 2008:

CASE #3, TRS: A Principal who retired from the Department of Education in September 2005 collected 12 pension checks (one for each month) in calendar year 2008, totaling \$77,439. This individual worked seven months (March to June, and October to December) of 2008, collecting compensation of \$50,531. We found no evidence of a waiver for this individual for any portion of 2008. On October 14, 2008, this person’s cumulative earnings for the year exceeded the \$30,000 limit for service retirees. Therefore, it appears that two pension checks (November and December), totaling \$12,285, may have been improperly received and cashed in calendar year 2008.

It should be noted that in their correspondence concerning the implementation status of the recommendations from last year’s audit of 2007, NYCERS, TRS, POLICE and FIRE officials advised us that they have implemented or were in the process of implementing the report’s recommendations. Also, last year’s report made no recommendations to POLICE, FIRE, and BERS because the audit did not identify any pensioners who received 2007 pension payments that appeared to violate applicable sections of state or City laws.

RECOMMENDATIONS

Officials of each of the five New York City retirement systems should:

1. Investigate those individuals identified as receiving pensions while receiving payments from the City for providing professional services as consultants. City retirement systems officials should also commence prompt recoupment action against those individuals found to be illegally collecting pensions.

Agency Responses: TRS, FIRE, and POLICE agreed with this recommendation.

BERS did not address this recommendation. However, the Director of Operations stated, “We agree with your conclusions, and though no violators have been found in this audit, we will continue to be vigilant in seeking total adherence to aforementioned laws.”

The NYCERS Director of Finance stated: “We have investigated the three (3) pensioners cited as working as consultants for the City of New York, and determined the following:

- All three pensioners were serving on the 18-B criminal attorney panel for the City of New York and were not in violation. See enclosed memo by the NYC Law Department, dated Oct, 15, 2004, which addresses City retirees serving on the 18-B criminal attorney panel for the City of New York.

Auditor Comment: While we are pleased that NYCERS has investigated the cited pensioners, we disagree with the NYCERS determination that pensioners serving on the 18-B criminal attorney panel are not consultants. The applicable laws governing city pensioners returning to public service after retirement makes no exceptions for 18-B attorneys.

In addition, the Comptroller’s General Counsel’s Office reviewed the Law Department’s memo dated Oct, 15, 2004, and opined as follows:

“I found no provisions within the City Administration or the City Charter which would exempt 18-B Criminal attorneys from §§ 211 and 212 of the RSSL.”

Consequently, we maintain that all three individuals cited in this report were in violation of RSSL § 211 and § 212 and should be required to repay the amount of improper payments they received.

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

Agency Responses: TRS, NYCERS, FIRE, and POLICE agreed with this recommendation.

BERS did not address this 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.”

Agency Responses: TRS, NYCERS, FIRE, and POLICE agreed with this recommendation.

BERS did not address this recommendation.

4. Send special reminders to all retirees that clearly state their responsibilities when returning to public service after retirement.

Agency Responses: TRS, NYCERS, FIRE, and POLICE agreed with this recommendation.

BERS did not address this recommendation.

APPENDIX I
SUMMARY OF 2008 OVERPAYMENTS

	<u>SERVICE</u>		<u>DISABILITY</u>		<u>TOTAL</u>	
	Persons	Amount	Persons	Amount	Persons	Amount
POLICE	1	\$4,801	6	\$113,063	7	\$117,864
NYCERS	3	93,201	0	0	3	93,201
TEACHERS	3	27,425	0	0	3	27,425
TOTAL	<u>7</u>	<u>\$125,427</u>	<u>6</u>	<u>\$113,063</u>	<u>13</u>	<u>\$238,490</u>

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

Pension Number	Date Retired	2008 Pension	Months Overpaid	Amount Overpaid	2008 Employer	Agency Number	2008 Earnings	Waiver Issuing Agency	Waiver in 2008
P-054255-0	1/3/2004	\$19,202	3	\$4,801	DOE	40	\$47,290	DOEC	NO

Total Individual(s): 1 **Total** \$ 4,801

NOTES:

DOE Department of Education
DOEC Department of Education Chancellor

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

Pension Number	Date Retired	2008 Pension	Months Overpaid	Amount Overpaid	2007 Employer	Agency Number	2008 Salary	Disability Safeguards (DS)
Case #1 P-060177-0	6/30/2006	\$97,999	4	\$43,052	DOE	40	\$1,218	NO
P-022904-0	7/1/1983	37,193	11	34,103	SUP COURT AP	938	88,883	NO
P-043989-0	6/30/1996	41,935	4	13,998	DOE	40	3,683	NO
P-040130-0	8/21/1992	25,167	4	8,379	DOE	40	2,111	NO
P-020458-0	12/31/1981	29,124	3	7,281	DOE	40	2,714	NO
P-022273-0	11/23/1982	37,620	2	6,250	DOE	40	1,817	NO

Total Individuals: **6** **Total:** **\$ 113,063**

DOE Department of Education
 SUP COURT AP Supreme Court Appellate Division

APPENDIX IV
2008 PENSION OVERPAYMENTS - NYC EMPLOYEES' RETIREMENT SYSTEM
SERVICE RETIREES

Pension Number	Date Retired	2008 Pension	Months Overpaid	Amount Overpaid	2008 Employer	Agency Number	2008 Earnings	Waiver Issuing Agency	Waiver in 2008
Case # 2 *N-233336-0	12/31/2000	\$66,946	10	\$55,183	SUP COURT 1	921	\$124,452	CAC	NO
*N-237942-0	9/28/2002	61,882	5	25,608	SUP COURT 1	921	120,026	CAC	NO
*N-326246-0	11/26/2003	50,786	3	12,410	SUP COURT 1	921	62,445	CAC	NO

Number of Individuals: 3 Total \$ 93,201

NOTES:

SUP COURT 1 Supreme Court 1st Judicial District
CAC Chief Administrator of the Courts

*These individuals were also cited in our prior audits for calendar years 2004, 2005, 2006, and 2007.

APPENDIX V
2008 PENSION OVERPAYMENTS - TEACHERS' RETIREMENT SYSTEM
SERVICE RETIREES

Pension Number	Date Retired	2008 Pension	Months Overpaid	Amount Overpaid	2008 Employer	Agency Number	2008 Earnings	Waiver Issuing Agency	Waiver in 2008
Case #3 U-030222-0	9/1/05	\$77,439	2	\$12,285	DOE	040	\$50,531	DOEC	No
U-025123-0	7/2/04	31,623	4	10,540	DOE	040	41,288	DOEC	No
*U-016507-0	11/2/02	5,367	6	4,600	SUP COURT 1/SUP COURT AP	921/938	203,951	CAC	No

Total Individuals: 3 **Total: \$** 27,425

NOTES:

DOE Department of Education
DOEC Department of Education Chancellor
SUP COURT 1 Supreme Court 1st Judicial District
SUP COURT AP Supreme Court Appellate Division
CAC Chief Administrator of the Courts

*This individual was also cited in our prior audits for calendar years 2003, 2004, 2005, and 2007.

APPENDIX VI

RE-EMPLOYED NYC PENSIONERS

TOTALS BY CURRENT EMPLOYER

<u>Current Employer</u>	<u>Payroll Code</u>	<u>Individuals Paid under Code</u>			<u>TOTAL</u>
		<u>TRS 2008</u>	<u>POLICE 2008</u>	<u>NYCERS 2008</u>	
Department of Education	040	2	6	0	8
Administration for Children Services	068	0	0	0	0
Supreme Court 1st Judicial District	921	1	0	3	4
Supreme Court Appellate Division	938	1	1	0	2
Total		<u>4</u>	<u>7</u>	<u>3</u>	<u>14</u>

It should be noted that the one of the 13 pensioners cited in this report, was employed by multiple agencies.



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 Room 500
New York, NY 10007-2341

Re: **Audit Report on NYC Pensioners
Working as Consultants for New
York City after Retirement
January 1, 2008 to December 31, 2008
FL10-120A**

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 pensions while receiving payments from the City for providing professional services as consultants. City retirement system official should also commence prompt recoupment action against those individual 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.

Regarding the 7 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-211 waivers, as current law permits. Should such approval is 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 names of individuals found to be illegally collecting pensions.

Response

The Police Pension Fund concurs with recommendation #2.

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 retirees who elect to continue employment with the City of New York in violation of Section 1117 of the New York City.

Recommendation #4

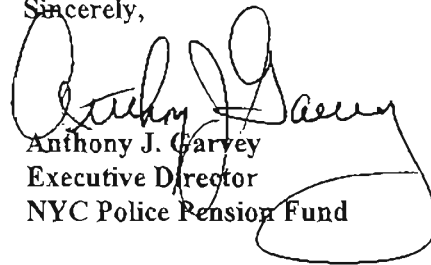
Send special reminders to all retirees that clearly state their responsibilities when returning to public service after retirement.

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 in 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 in 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 Systems.

Sincerely,



Anthony J. Garvey
Executive Director
NYC Police Pension Fund

AJG:br



June 22, 2010

Tina Kim
Deputy Comptroller for Audits
Office of the Comptroller
1 Centre Street
New York, N.Y. 10007-2341

**Audit Report FL10-120A
Pensioners Working as Consultants
Calendar Year 2008**

Dear Ms. Kim,

This is in response to the recommendations contained in the audit report referenced above.

Recommendation #1 – *Investigate those individuals identified as concurrently receiving pensions while being reemployed in public service. City retirement systems officials should also commence prompt recoupment action against those individuals found to be illegally collecting pensions.*

Response

We have investigated the three (3) pensioners cited as working as consultants for the City of New York, and determined the following:

- All three pensioners were serving on the 18-B criminal attorney panel for the City of New York and were not in violation. See enclosed memo by the NYC Law Department, dated Oct, 15, 2004, which addresses City retirees serving on the 18-B criminal attorney panel for the City of New York.

Recommendation #2 – *Forward to the Department of Investigation, if the circumstances warrant such action, the names of individuals found to be illegally collecting pensions.*

Response

NYCERS will refer all cases to the Department of Investigation that involve individuals who continuously and knowingly violate RSSL §211 or §212, NYC Administrative Code Sec 13-171 or NYC Charter §1117.

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

All pension overpayments for individuals cited in previous audit reports have either been fully recouped or are in the process of being recouped.

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 reemployment.*

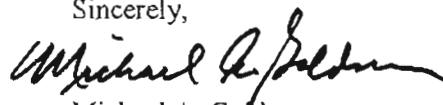
Response

A special notice regarding re-employment after retirement is sent to our pensioners each year in September.

NYCERS is committed to constant and consistent monitoring to avoid pension overpayments. As part of our ongoing procedures, NYCERS suspends the retirement allowance when the pensioner exceeds the earning limitation as set forth in §211 and §212 of the RSSL, 13-171 of the NYC Administrative Code or §1117 of the NYC Charter.

If you have any questions, I can be reached at (347) 643-3522, or by email at mgoldson@nycers.nyc.gov.

Sincerely,



Michael A. Goldson
Director, Finance

cc: Diane D'Alessandro, Executive Director, NYCERS



THE CITY OF NEW YORK
LAW DEPARTMENT

100 CHURCH STREET
NEW YORK, NY 10007

MICHAEL A. CARDOZO
Corporation Counsel

INGA VAN EYSDEN
Tel.: (212) 788-0745
Fax: (212) 788-8900
ivaneysd@law.nyc.gov

MEMORANDUM

TO: Karen Mazza
General Counsel, NYCERS

FROM: Inga Van Eysden
Chief, Pensions Division

DATE: October 15, 2004

SUBJECT: Legal Issues

In response to your request, below is a summary of our positions on several issues you and John Murphy recently have brought to the attention of the Pensions Division.

RSSL §211 and retirees serving on the 18-B criminal attorney panel

As discussed with you and with counsel for DCAS, we agree that City retirees serving on the 18-B criminal attorney panel in the City of New York do not constitute consultants for purposes of RSSL §211.



THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007


MICHAEL A. CARDOZO
Corporation Counsel


INGA VAN EYSDEN
Phone: 212-788-0745
Fax: 212-788-8900
E-mail: ivaneysd@law.nyc.gov

**CONFIDENTIAL
ATTORNEY-CLIENT
MEMORANDUM**

TO: Diane D'Alessandro
Executive Director
NYCERS

Milton Aron
Deputy Executive Director
NYCERS

FROM: Inga Van Eysden 
Chief, Pensions Division

Susan Sanders 
Senior Counsel, Pensions Division

DATE: December 9, 2005

SUBJECT: Issues Relating to Comptroller's Audits

You have asked us to opine on two matters that have been brought up in relation to Comptroller's Audit Reports FL05-100a, 103A and 104A. The Comptroller has questioned the income limitation set forth in NYCERS' Rule 23(a)(8), as it pertains to the procedures for determining continued entitlement to a disability retirement allowance under §§ 605, 507-a and

507-c of the RSSL. He also has questioned NYCERS' determination that a member who was reinstated to Tier 1 with an original membership date prior to May 31, 1973 is entitled to be re-employed as a consultant without suspension of pension benefits.

Income Limitation for Tier 3 and 4 Disability Retirees

Tier 1 and 2 disability retirees who are subsequently employed in the public sector are subject to the earning limitation of Charter § 1117 once they have passed the minimum age for service retirement. Administrative Code § 13-171. The Comptroller believes that Tier 3 and 4 disability retirees should also be subject to the \$1,800 annual limitation of Charter § 1117. Instead, Tier 3 and 4 NYCERS members who retire under §§ 507-a, 507-c or 605 of the RSSL are subject to the income limitation set forth in NYCERS' Rule 23(a)(8), originally adopted as Resolution # 73 of the Board of Trustees in August 1985 and amended to include RSSL § 507-c in October 1997.

Resolution # 73 was drafted with the assistance and approval of the Office of the Corporation Counsel in accordance with Corporation Counsel Opinion 15-84, dated May 18, 1984, which responded to a request of the NYCERS Board of Trustees to explain the meaning of the language "incapacitated for the performance of gainful employment" used in connection with disability retirement in RSSL § 605.¹ The Corporation Counsel Opinion concluded that the language of RSSL § 605 differed materially from the language of the Tier 1 and 2 disability statutes, which require that the member be "physically or mentally incapacitated for the performance of duty" (ordinary disability retirement) or "physically or mentally incapacitated for

¹ While the Corporation Counsel Opinion addresses only the language of RSSL § 605, RSSL §§ 507-a and 507-c, the two disability retirement statutes for NYCERS members who are correction officers, also contain the same requirement that the member be "incapacitated for the performance of gainful employment."

the performance of city-service” (accident disability retirement). The language in the Tier 1 and 2 disability statutes had consistently been construed by the Courts to mean that the applicant must be incapacitated for the performance of duties of the position he or she held.

The Corporation Counsel Opinion also compared the language of RSSL § 605 to the language of the Article 14 ordinary and accident disability statutes for non-uniformed members, RSSL §§ 506 and 507, respectively. In order for a member to receive benefits under either of these statutes, he or she must have been determined to be eligible for primary Social Security disability benefits. Thus, eligibility for disability benefits under RSSL §§ 506 and 507 is dependent upon the receipt of Social Security benefits under the standard used by the Social Security Administration, *i.e.*, “inability to engage in any substantial gainful activity.”

The Corporation Counsel Opinion concluded that, in enacting the Tier 4 RSSL § 605 “gainful employment” standard, the Legislature intended to ease the more restrictive Tier 3 Social Security requirement. It found, therefore, that NYCERS was not bound to construe or apply the “gainful employment” language of that statute in the same manner as the Social Security Administration interprets the term “substantial gainful activity” in its disability statute.

The Opinion states:

{T}he Board in applying Article 15 may give the term “incapacitated for the performance of gainful employment” a reasonable interpretation which is consistent with the Legislature’s intent that an employee not receive disability retirement benefits merely because he or she is disabled from performing the duties of his or her particular position.

C.C. Op. 15-84 at p. 4.

Resolution # 73 strikes a balance between the less restrictive language of the Tier 1 and 2 statutes and the very restrictive language of the Tier 3 statutes by setting a standard for an initial finding of disability that is similar to that of Tiers 1 and 2, while requiring that people

who retire under the Tier 3 and 4 statutes have their earnings monitored after retirement to ensure that they are not capable of performing “gainful employment.”

Therefore, Resolution # 73 directed the Medical Board to continue to use the Tier 1 and 2 disability standard – “mentally or physically incapacitated for the performance of his or her job title” – when initially evaluating applicants for disability retirement under RSSL §§ 507-a and 605. See NYCERS Rule 23(a)(5)(a). When determining continuing entitlement to a disability retirement allowance under those statutes, however, Resolution # 73 set an amount of personal service income which a disability retiree could earn after retirement before being considered “gainfully employed” and, therefore, subject to pension suspension. This amount was set at \$13,5000 of personal service income for calendar year 1985 and had risen to \$22,6000 of personal service income by calendar year 2003. In this way, Resolution # 73 took into account the Corporation Counsel Opinion’s finding that the Legislature had envisioned the term “‘incapacitated for the performance of gainful employment’ . . . as requiring more than the employee’s incapacitation for the performance of duties of his position.” C.C. Op. 15-84 at p. 3.

In view of the statutory change from the “performance of duty” or “performance of city-service” disability standard of Tiers 1 and 2 of the to the “gainful employment” disability standard of the Tier 3 corrections statutes and Tier 4 basic disability statute, this office concludes that NYCERS validly exercised its statutory rulemaking powers in adopting the income limitation provision of Resolution # 73. See Administrative Code § 13-103(a)(1). We further conclude that the point at which a disability retiree under a statute containing a “gainful employment” standard reaches such income limitation is the point at which he or she may be considered to be gainfully employed and, thus, subject to pension suspension.

We recognize that Charter § 1117 has never been amended to reflect the legislative changes in disability retirement standards that have evolved as subsequent retirement tiers have been enacted. Nevertheless, we believe that the requirements of the later-enacted statutes supersede the \$1,800 earnings cap of Charter § 1117 in the case of former City employees who retired under the provisions of RSSL §§ 507-a, 507-c and 605. We therefore conclude that the pension suspension provisions of NYCERS Rule 23(a)(8)(c) through (e) provide a lawful alternative to those of Charter § 1117 for members who retired under RSSL §§ 507-a, 507-c and 605.

Re-employment as a Consultant

You have informed us that the Comptroller's audit has identified a person who joined NYCERS when Tier 4 was in effect and subsequently reinstated his membership to a date in Tier 1 which was prior to the enactment of RSSL § 211(4), the "consultant amendment." The Comptroller believes that this person must be subject to the consultant amendment, while it is NYCERS' position that the person is entitled to the rights in effect on the reinstated membership date. It is our opinion that NYCERS is correct.

The Comptroller relies on a 1974 Corporation Counsel Opinion, which states that any person who last became a member of a retirement system after May 31, 1973 is subject to the restrictions of RSSL § 211(4). The language of Chapter 646 of the Laws of 1999, codified at RSSL § 645, makes clear that the date a person last joined NYCERS is irrelevant once a reinstatement to an earlier membership date has taken place. Therefore, when a member reinstates to a Tier 1 membership and acquires a membership date prior to May 31, 1973, he or she is entitled to be re-employed upon retirement as a consultant without suspension of his or her pension.

This result is mandated by RSSL § 645, which provides that the member who returns to an earlier tier or membership date under its provisions “shall be deemed to have been a member of his or her current retirement system during the entire period of time commencing with and subsequent to the original date of such previous ceased membership” and “shall be entitled to all the rights, benefits and privileges” stemming from the original membership date. This broad language supports the inference that the member is to be treated as having commenced membership on the original membership date for all purposes. The sole exception to the entitlement of a reinstated member to “all the rights, benefits and privileges” of membership, which relates to reinstatement of service in a system other than the member’s current system, is beyond the scope of this inquiry.



TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK
55 Water Street, New York, NY 10041 • www.trs.nyc.ny.us • 1 (888) 8-NYC-TRS

Date: June 24, 2010

Ms. Tina Kim
Deputy Comptroller for Audits
1 Centre Street, Room 1100
New York, NY 10007 – 2341

Re: Audit Report on NYC Teachers' Retirement System
New York City Pensioners
Working as Consultants for the City after Retirement
January 1, 2008 to December 31, 2008
FL10-120A

Dear Ms. Kim:

Please be advised that the Teachers' Retirement System (TRS) is in full compliance with all your recommendations.

Here is a summary of the remaining EAR cases:

TRS had three (3) "NYC Pensioners Working as a consultant for the City after Retirement" in 2008 that needed to be accounted for concerning the EAR limit of \$30,000.

For two (2) pensioners, TRS has no reported wages on file. We have sent correspondences to those pensioners explaining that their earnings must be corroborated and within EAR limits to avoid suspension.

Additionally, TRS has one (1) "NYC Pensioner Working as a Consultant after Retirement" in 2008 that remains over the EAR limit of \$30,000. He is currently suspended for his excess earnings in 2007; we will maintain his suspension.

Again, as part of the TRS original audit plan, it is customary for TRS to suspend a member's pension allowance when that member exceeds his/her earnings limitation, as cited under Section RSSL 212, RSSL 211, and NYC Chapter 1117, in an appropriate and timely fashion.

In conclusion, TRS will continue its vigilance in seeking total adherence to the existing laws.

If you have any further questions regarding this status report, please feel free to contact me at (212) 612-5503.

Sincerely,

Stan Charles
Deputy Director
Internal Audit Division

Cc: N. Serrano, P. Raucci, A. Scully, T. Cannady

2008 EAR limit: \$30,000

2008 EAR Audit Report and Accountability

2008 EAR limit: \$30,000

New York City Pensioners Working for New York City after their Retirement										
Pension #	Date Retired	Employer	211 Waiver on file	Pension Benefits	OTC Wages	TRS Wages Earned	Diff	Audit Response	Results	
1	U7352370	9/1/2007	DOE	N	86,341	87,434	37,352	50,082	Member did not exceed Prior year earnings such as termination, vacation, sick or retro payments Member made payment for excess earnings Prior year earnings such as termination, vacation, sick or retro payments	ok
2	U0352010	8/21/2007	DOE	N	42,943	46,026	35,501	10,525	Member made payment for excess earnings Prior year earnings such as termination, vacation, sick or retro payments	ok
3	U7263240	9/2/2007	DOE	N	75,725	35,352	31,368	3,984	Member made payment for excess earnings Prior year earnings such as termination, vacation, sick or retro payments	ok
4	U7359410	7/2/2007	DOE	N	66,958	63,943	30,046	33,897	Member did not exceed Prior year earnings such as termination, vacation, sick or retro payments	ok
5	U0192240	7/1/2003	DOE	0	85,528	32,048	33,362	-1,314	Member made payment for excess earnings Prior year earnings such as termination, vacation, sick or retro payments	ok
6	U0177230	7/1/2003	DOE	N	62,027	39,446	22,212	17,234	Member did not exceed Prior year earnings such as termination, vacation, sick or retro payments	ok
7	U0361830	7/1/2007	DOE	N	30,730	32,908	26,850	6,058	Member did not exceed Prior year earnings such as termination, vacation, sick or retro payments	ok
8	U7346940	7/1/2007	DOE	N	78,986	35,954	29,574	6,380	Member did not exceed Prior year earnings such as termination, vacation, sick or retro payments	ok
9	U7353290	7/1/2005	DOE	N	77,322	75,800	33,766	42,034	Member made payment for excess earnings Prior year earnings such as termination, vacation, sick or retro payments	ok
10	U7289810	7/1/2005	DOE	N	67,747	31,569	28,853	2,716	Member did not exceed Prior year earnings such as termination, vacation, sick or retro payments	ok
11	U0353560	7/9/2007	DOE	N	72,608	92,034	34,753	57,281	Member made payment for excess earnings Prior year earnings such as termination, vacation, sick or retro payments	ok

2008 EAR limit: \$30,000

2008 EAR Audit Report and Accountability

2008 EAR limit: \$30,000

New York City Pensioners Working for New York City after their Retirement									
Pension #	Date Retired	Employer	211 Waiver on file	Pension Benefits	OTC Wages	TRS Wages Earned	Diff.	Audit Result	Results
12 U7352950	7/1/2007	DOE	N	76,777	34,245	30,153	4,092	Member made payment for excess earnings Prior year earnings such as termination, vacation, sick or retro payments Member did not exceed	ok
13 U7353840	7/1/2007	DOE	N	70,842	31,979	29,911	2,068	Prior year earnings such as termination, vacation, sick or retro payments Member did not exceed	ok
14 U0244880	4/1/2004	DOE	N	67,995	32,617	29,696	2,921	Prior year earnings such as termination, vacation, sick or retro payments Member did not exceed	ok
15 U7128110	7/1/2002	DOE	N	72,448	32,566	29,937	2,629	Prior year earnings such as termination, vacation, sick or retro payments Member was restored but exceeded	ok
16 U0338050	5/01/2007	DOE	N	28,705	66,417	41,602	24,815	Member was notified Member made payment for excess earnings	Pending
17 U0344580	7/1/2007	DOE	N	51,980	46,404	32,332	14,072	Prior year earnings such as termination, vacation, sick or retro payments Member did not exceed	ok
18 U0359940	10/17/007	DOE	N	16,016	41,286	33,153	8,133	Prior year earnings such as termination, vacation, sick or retro payments Member made payment for excess earnings	ok
19 U0302590	5/1/2007	DOE	N	22,039	36,600	35,953	647	Prior year earnings such as termination, vacation, sick or retro payments	ok

2008 EAR limit: \$30,000

2008 EAR Audit Report and Accountability

2008 EAR limit: \$30,000

New York City Pensioners Working for New York City after their Retirement- Disability										
Pension #	Date Retired	Employer	Waiver on file	Pension Benefits	OTC Wages	FRS Wages Earned	Diff	Audit Result	Results	
1	U0364520	12/13/2007	DOE	N	18,709	12,855	5,434	0	Payments cancelled	OK

New York City Pensioners Working for New York State after their Retirement									
Pension #	Date Retired	Employer	Waiver on file	Waiver Period	Pension Benefits	OTC Wages	Wages Earned	Audit Result	Results
1	U0222930	1/27/2004	CUNY	N	88,798	43,152	0	Member made payment for excess earnings Prior year earnings such as termination, vacation, sick or retro payments	OK
2	U7090780	7/1/2001	CUNY	N	65,339	31,549	0	Member did not exceed Prior year earnings such as termination, vacation, sick or retro payments	OK
3	U7287000	7/1/2005	CUNY	N	63,644	34,458	5,509	No payroll records on File- State Member was notified	Pending
4	U7311930	7/1/2006	CUNY	N	68,283	52,495	0	No payroll records on File- State Member was notified	Pending
5	U0294690	7/1/2005	CAC	N	7,568	42,539	0	No payroll records on file- State Member was notified	Pending

2008 EAR limit: \$30,000

2008 EAR Audit Report and Accountability

2008 EAR limit: \$30,000

New York City Pensioners Working for New York City after their Retirement as a Consultant										
Pension #	Date Retired	Employer	Waiver on file	Waiver Period	Pension Benefits	OTC Wages	Wages Earned	Audit Result	Results	
1	U0302220	9/01/05	5/01/1977	DOE	N	77,439	50,531	0	No payroll records on file- Consultants Member was notified	Pending
2	U0251230	7/2/2004	9/08/1982	DOE	28,984	41,288	0	0	No payroll records on file- Consultants Member was notified	Pending
3	U0185070	11/2/2002	3/01/1982	DOE	5,367	203,951	0	0	Member is currently suspended for 2007, and will be suspended for 2008	OK



FIRE DEPARTMENT

9 METROTECH CENTER - ROOM 8S-10 BROOKLYN, NEW YORK 11201-3857

RAY SAYLOR
CHIEF COMPLIANCE OFFICER



June 21, 2010

Ms. H. Tina Kim
Deputy Comptroller
Audits
Office of the Comptroller
1 Centre Street
New York, New York 10007-2341

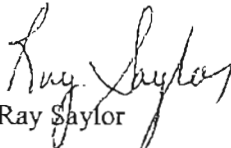
**Re: Audit Report on New York City Pensioners Working as Consultants for
The City after Retirement. January 1, 2008– December 31, 2008 FL10-120A.**

Dear Ms. Kim:

Attached are FDNY's comments on the above mentioned report, as well as our response and Agency Implementation Plan for each of the recommendations. Please thank your audit staff for the assistance they have provided to the Department in this review.

If you wish to discuss any portion of our response, please contact me at (718) 999-1728.

Sincerely,


Ray Saylor

cc: Michael Vecchi, Associate Commissioner
Mary Basso, Executive Director
Domenick Loccisano, Executive Director

Audit FL10-120A

AUDIT RECOMMENDATIONS / FDNY RESPONSE – AGENCY IMPLEMENTATION PLAN

- 1) Investigate those individuals identified as receiving pensions while receiving payments from the City for providing professional services as consultants. City retirement systems officials should also commence prompt recoupment action against those individuals found to be illegally collecting pensions.

FDNY Response – The above audit did not find any FDNY individuals who violated applicable sections of State and City laws. The Department continues to investigate and take action against those individuals who may be in violation. FDNY has already initiated recoupment proceedings where appropriate.

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

FDNY Response – The above audit did not find any FDNY individuals who violated applicable sections of State and City laws. The Department continues to investigate and take action against those individuals who may be in violation. The Department agrees to notify DOI when circumstances warrant such action.

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

FDNY Response – The Department agrees; all previously identified pension overpayments have already been, or are in the process of being recouped or suspended.

- 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.

FDNY Response – The Department agrees and special reminders on the subject are sent out on a routine basis.



BOARD OF EDUCATION RETIREMENT SYSTEM
OF THE CITY OF NEW YORK
65 COURT STREET
BROOKLYN, NEW YORK 11201- 4965

CHRISTINE BAILEY, Executive Director

718-935-5400
OUTSIDE NEW YORK STATE
1-800-843-5575

June 21, 2010

John Graham, Deputy Comptroller
Audits, Accountancy & Contracts
1 Centre Street-5th Floor
New York, NY 10007-2341

Re: Audit Report on New York City
Pensioners Working as Consultants for
The City After Retirement
January 1, 2008-December 31, 2008
FL10-120A

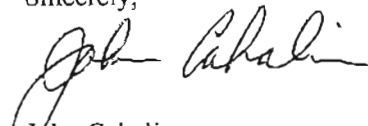
Dear Mr. Graham:

We are in receipt of your recently issued draft audit report on "New York City Pensioners Working as Consultants for the City after Retirement" during the period January 1, 2008 through December 31, 2008. For the period under consideration, you did not identify any retiree of the Board of Education Retirement System (BERS) who were re-employed in violation of the New York State Education Law (Title 2, Article 52, § 2575), and the New York City Charter (§1117), the RSSL §211 and §212.

We agree with your conclusions, and though no violators have been found in this audit, we will continue to be vigilant in seeking total adherence to aforementioned laws. Regarding BERS' response for follow up on the 2007 audit, please note that the 2007 report did not make any recommendations to BERS because the audit did not identify any pensioners who received 2007 overpayments.

Lastly, we would like to extend our gratitude to you and all parties involved in conducting this audit. Thank you.

Sincerely,


John Cahalin
Director of Operations

cc: Anthony Scully, Bureau of Audit
Board of Trustees
Christine Bailey