

AUDIT REPORT



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

Audit Report on NYC Pensioners Working for New York State After Retirement January 1, 2006 – December 31, 2006

FL08-112A

June 30, 2008



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 pensioners who may be reemployed by New York State 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 2006.

A retiree of any of the five New York City retirement systems who is reemployed in State or City government service may not continue to collect pension benefits except in accordance with conditions established by the New York State Retirement and Social Security Law, the New York City Administrative Code, and the New York City Charter. 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 results of our audit, which are presented in this report, have been discussed with officials of the five New York City retirement systems, and their comments have been considered in preparing this report. Their complete responses are attached to this report.

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

Very truly yours,

A handwritten signature in black ink that reads "William C. Thompson, Jr." with a stylized flourish at the end.

William C. Thompson, Jr.
WCT/fh

Report: FL08-112A
Filed: June 30, 2008

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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 for New York State after Retirement
January 1, 2006—December 31, 2006**

FL08-112A

AUDIT REPORT IN BRIEF

The objective of this audit was to identify New York City pensioners who may be reemployed by New York State 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 2006.

Audit Findings and Conclusions

The audit found 20 individuals who received \$356,458 in pension payments during 2006 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 excess State wages above the limitations without having a waiver on file at one of the five City 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 State agency.

Audit Recommendations

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

- Investigate those individuals identified as receiving pensions while being reemployed in New York State public service. City retirement system 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 those 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 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). If a post-retirement employee does not comply with the relevant laws, the practice is termed “double-dipping.”

Pursuant to §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 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 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). For calendar year 2006, the 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 Employees' Retirement System (NYCERS)
- New York City Teachers' Retirement System (TRS)
- New York City Board of Education Retirement System (BERS)
- New York City Police Department Pension Fund (POLICE)
- New York City Fire Department Pension Fund (FIRE)

This report includes New York City pensioners from the above retirement systems.

For calendar year 2006, the earnings limitation for a service retiree who filed a Statement of Election under §212 was \$27,500. Accordingly, any service retiree earning more than \$27,500 in 2006 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. The following regulations are applicable to each of the five New York City retirement systems:

TRS:

The New York City Administrative Code (Volume 3, Title 13, Chapter 4, §13-553) combined with the New York City Charter (§1117), prohibits a TRS disability 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.

POLICE:

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 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.

FIRE:

The New York City Administrative Code (Volume 3, Title 13, Chapter 3, §13-356 and §13-357), provides for the reemployment of New York City Fire 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.

BERS:

The New York State Education Law (Title 2, Article 52, §2575), combined with the New York City Charter (§1117), prohibits a New York City Department of Education non-pedagogical disability 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.

NYCERS:

The New York City Administrative Code (Volume 3, Title 13, Chapter 1, §13-171), provides for the reemployment of New York City Employees' Retirement System disability retirees in New York State public service. These provisions (also known as "Disability Safeguards") apply up to only 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 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 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.

With regard to disability retirees of the five City retirement systems, waivers superseding the above provisions may not be granted.

Objective

The objective of this audit was to identify any New York City pensioners who may be reemployed by New York State 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 2006.

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 sits on each of these Boards through 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, 2006 through December 31, 2006. We met with officials of the five New York City retirement systems (TRS, POLICE, FIRE, BERS, and NYCERS) to review their monitoring processes for individual pensioners.

To discover the extent to which retired New York City employees were being improperly reemployed by New York State agencies, the New York State Bureau of Payroll Audit (Office of

the State Comptroller, Albany) performed a computer match of the approximately 269,055 New York City pensioners against a listing of all New York State workers (approximately 195,500 annually) who received a W-2 wage statement for the year 2006.¹ This matching process identified 336 individuals under age 65 who either received more than \$27,500 in 2006 (service retirees), or \$1,800 in 2006 (disability retirees). These individuals were then sorted by retirement system and investigated to determine the reasons why 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 2006, 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 2006. Because of the magnitude of the task, we did not match the retirees against the other New York City, New York State, and local government employees paid by municipalities, counties, and systems other than those integrated with the State or FISA.

Of the 336 matches, 199 were individuals collecting POLICE pensions, 61 were individuals collecting NYCERS pensions, 69 were individuals collecting TRS pensions, 5 were individuals collecting FIRE pensions, and 2 were individuals collecting BERS pensions. For 336 individuals from POLICE, NYCERS, TRS, FIRE, and BERS we:

- obtained additional detailed information about their individual year 2006 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.

Initial investigations eliminated 316 of these 336 individuals. The remaining 20 individuals appeared to lack valid reasons for being on both lists. Of the 20 individuals, 13 are service retirees and seven are disability retirees. The total amount of improper pension payments is \$356,458 consisting of \$190,319 in improper pension payments to service retirees, and \$166,139 in improper pension payments to disability retirees.

¹ This audit report is exclusive of the five separate audit reports of New York City pensioners working for New York City after their retirement in 2006: the five audits of City workers are FL08-110A (TRS), FL08-106A (BERS), FL08-109A (NYCERS), FL08-108A (POLICE), and FL08-107A (FIRE).

The breakdowns for the five 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	5	5	10	\$ 229,552
NYCERS	5	2	7	\$ 104,764
TRS	<u>3</u>	<u>0</u>	<u>3</u>	<u>\$ 22,142</u>
Total	<u>13</u>	<u>7</u>	<u>20</u>	<u>\$ 356,458</u>

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 these reemployed pensioners reached the legal earnings limitations of \$27,500 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 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 for New York State after Their Retirement January 1, 2005—December 31, 2005*, FL07-086A, issued June 28, 2007—by reviewing provided correspondence from BERS, POLICE, FIRE, NYCERS, and TRS.

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 and discussed at exit conferences with officials of four of the five retirement systems. FIRE 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 to a draft of this audit, which are summarized as follows:

POLICE Response: On June 20, 2008, we received a response from the POLICE Executive Director, in which he described the actions POLICE has taken to address the report's recommendations.

NYCERS Response: On June 18, 2008, we received a response from the NYCERS Director of Finance, in which he described the actions NYCERS has taken to address the report's recommendations.

TRS Response: On June 23, 2008, 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.”

BERS Response: On June 20, 2008, we received a response from the BERS Director of Operations, in which he described the actions BERS has taken to address the report’s recommendations.

FIRE Response: On June 19, 2008, 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.

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

FINDINGS

Overpayment of Pension Benefits

This audit identified 20 individuals who received \$356,458 in pension payments during 2006 that appear to violate applicable sections of State and City laws. (See Appendices I through VII for the agency summaries and detailed listings of the 20 pensioners and their current employers.)

As stated previously, we identified 20 pensioners who were in apparent violation of RSSL §211 or §212 because they were under age 65 and received excess State wages above the limitations without having a waiver on file at one of the five City 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 State agency and were past their applicable anniversary dates. These 20 individuals received improper pension payments of \$356,458 as follows:

	<u>Number of Individuals</u>	<u>Total Improper Payments</u>
2006 §211/212 Violators	13	\$ 190,319
2006 §1117 Violators	<u>7</u>	<u>166,139</u>
Total	<u>20</u>	<u>\$ 356,458</u>

Our total represents the amount of improper 2006 pension payments based on an analysis of when the reemployed pensioners reached the legal earnings limitations of (\$27,500 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, that are not affected by RSSL §211 or §212, were not excluded; rather, they were estimated to be less than five percent of the total calculated payments. The exact annuity portion, if any, for each individual can be determined only by City retirement systems officials. Immediate action by the five City retirement systems and employing State agencies is needed to investigate and recoup, when appropriate, any improper payments made to those retirees identified as possible “double-dippers.” (The applicable employing agencies involved in this audit appear in Appendix VII.)

The following is an example of a POLICE service retiree who was found to be working at a State agency during calendar year 2006:

CASE #1: This individual, who retired in October 1998, collected 12 pension checks (one each month) in calendar year 2006, totaling \$72,957. This individual worked for the City University of New York – John Jay College for twelve months (January through December) and collected a salary of

\$56,757. We found no evidence of a waiver for this individual for any portion of 2006. On June 22, 2006, this person's cumulative salary earnings for the year exceeded the \$27,500 limit for service retirees. Therefore, it appears that six pension checks (July through December) totaling \$36,585, may have been improperly received and cashed in calendar year 2006.

The following is an example of a NYCERS service retiree who was found to be working at a State agency during calendar year 2006:

CASE #2: This individual, who retired in October 2005, collected 12 pension checks (one each month) in calendar year 2006, totaling \$85,476. This individual worked for the State University of New York—Health Science Center for twelve months (January through December) and collected a salary of \$99,942. We found no evidence of a waiver for this individual for any portion of 2006. On April 19, 2006, this person's cumulative salary earnings for the year exceeded the \$27,500 limit for service retirees. Therefore, it appears that eight pension checks (May through December) totaling \$50,998, may have been improperly received and cashed in calendar year 2006.

The following is an example of a TRS service retiree who was found to be working at a State agency during calendar year 2006:

CASE #3: This individual, who retired in July 2000, collected 12 pension checks (one each month) in calendar year 2006, totaling \$60,425. This individual worked for the City University of New York at York College for twelve months (January through December) and collected a salary of \$40,852. We found no evidence of a waiver for this individual for any portion of 2006. On September 14, 2006, this person's cumulative salary earnings for the year exceeded the \$27,500 limit for service retirees. Therefore, it appears that three pension checks (October through December) totaling \$15,260, may have been improperly received and cashed in calendar year 2006.

The following is an example of a POLICE disability retiree who was found to be working at a State agency during calendar year 2006:

CASE #4: This individual, who retired in October 1982 on a disability pension, collected 12 pension checks in calendar year 2006, totaling \$42,588. This individual worked for the Office of Parks & Recreation – Long Island Park Commission for twelve months (January through December) and collected a salary of \$12,360. Any earnings above \$1,800 for 2006 make the disability pension payments for that year improper. Thus, it appears that eleven months of disability checks (February through December) totaling \$39,047 may have been improperly received and cashed in 2006.

It should be noted that in their correspondences concerning the implementation status of the recommendations from last year's audit of 2005, NYCERS, TRS, POLICE, FIRE and BERS officials advised us that, they have implemented or were in the process of implementing the report's recommendations.

RECOMMENDATIONS

Officials of the New York City retirement systems should:

1. Investigate those individuals identified as concurrently receiving pensions while being reemployed in New York State public service. City retirement system officials should also commence prompt recoupment action against those individuals found to be illegally collecting pensions.

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

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

The NYCERS Director of Finance stated:

"We have investigated all pensioners cited as working for New York State and determined that of the seven pensioners named:

- Five were in violation of §212 of the RSSL, and were suspended from NYCERS' payroll as of May 2008.
- One was found to be in violation of §1117 of the New York City Charter and was suspended from NYCERS' payroll as of April 2008.
- One was retired as a disability pursuant to §507a of the RSSL and was not in violation, as the Personal Service Income Limitation was \$25,000 for calendar year 2006 and the pensioner earned \$14,596. See attached Law Department memo dated December 9, 2005, which addresses income limitations for re-employed retirees that retired pursuant to §605 or §507a of the RSSL."

Auditor Comment: While we are pleased that NYCERS has investigated the cited pensioners, we disagree with NYCERS interpretation of RSSL § 605. RSSL § 605 does not give NYCERS the authority to create its own income limitation for disability pensioners that is contrary to the amount set by § 1117 of the New York City Charter.

In addition, the Comptroller's General Counsel's Office has reviewed the Law Department's opinion dated December 9, 2005 and opined as follows:

The Law Department's reliance in its December 9 opinion on RSSL §605, "Disability retirement," to create an exception to Charter §1117 is unpersuasive. Section 605 provides only that a criterion for eligibility for a disability pension from NYCERS and other non-uniformed services' public pension plans is that the member "is physically or mentally incapacitated for the performance of gainful employment..." The Law Department opinion argues that this phrase allowed NYCERS to "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." That RSSL §605 language, however, refers only to the member's physical or mental condition; it does not in any way refer to allowing a plan to set a level of State or City employment income that a disability retiree would be permitted to earn without triggering Charter §1117. Indeed, there is no mention whatsoever in RSSL §605 (or in §§507-a or -c) of setting an earned income limitation for any purpose, let alone of creating an exception to Charter §1117. Accordingly, there is also no support for the further statement in the Law Department's December 9 opinion that "the requirement of the later-enacted [RSSL] statutes supersede the \$1,800 earnings cap of Charter §1117" for City disability retirees.

We maintain that both individuals cited in this report were in violation of New York City Charter §1117 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 those individuals found to be illegally collecting pensions.

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

BERS did not address this 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.

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

BERS did not address this recommendation.

SUMMARY OF 2006 OVERPAYMENTS

	<u>SERVICE</u>		<u>DISABILITY</u>		<u>TOTAL</u>	
	Persons	Amount	Persons	Amount	Persons	Amount
POLICE	5	92,231	5	137,321	10	229,552
NYCERS	5	75,946	2	28,818	7	104,764
TEACHERS	3	22,142	0	0	3	22,142
TOTAL	<u>13</u>	<u>\$190,319</u>	<u>7</u>	<u>\$166,139</u>	<u>20</u>	<u>\$356,458</u>

**APPENDIX II
2006 PENSION OVERPAYMENTS - NYC POLICE DEPARTMENT PENSION FUND
SERVICE RETIREES**

Pension Number	Date Retired	2006 Pension	Months Overpaid	Amount Overpaid	2006 Employer	Payroll Code	2006 Salary	Waiver Issuing Agency	Waiver in 2006
Case #1 P-045751-0	10/29/1998	\$ 72,957	6	\$ 36,585	JOHN JAY COL	70060	\$56,757	CUNYC	NO
P-038763-0	12/15/1990	26,042	9	19,557	NYC JUDGES-N	5609	136,700	CAC	NO
P-056333-0	10/17/2004	44,280	5	18,450	DEPT OF LAW	3000	53,391	NYSCSC	NO
P-050795-0	3/31/2002	28,678	6	14,339	DEPT OF LAW	3000	52,839	NYSCSC	NO
P-057750-0	4/15/2005	39,600	1	3,300	POLICE DEPAR/QUEENS COLL ADJ	56/70041	29,643	DCAS/CUNYC	NO

Total Individuals: 5

Total: \$ 92,231

Notes:

JOHN JAY COL
QUEENS COLL ADJ
DEPT OF LAW
NYC JUDGES-N
POLICE DEPAR

City University of New York - John Jay College
City University of New York - Queens College Adjunct
Department of Law - State Capitol
Office of Court Administration - Financial Management/Payroll Division
Police Department

CUNYC
SUNYC
CAC
DCAS
NYSCSC

City University of New York
State University of New York
Chief Administrator of the Courts
Department of Citywide Administrative Services
New York State Civil Service Commission

**APPENDIX III
2006 PENSION OVERPAYMENTS - POLICE PENSION FUND
DISABILITY RETIREES**

Pension Number	Date Retired	2006 Pension	Months Overpaid	Amount Overpaid	2006 Employer	Payroll Code	2006 Salary	Disability Safeguards
Case #4 P-021976-0	10/20/1982	\$42,588	11	\$ 39,047	LONG ISLAND	49220	\$12,360	NO
P-022920-0	7/4/1983	31,290	11	28,691	PALISADES INTERSTATE	49059	30,015	NO
P-026931-0	1/31/1986	30,292	11	27,777	SUPREME COURT	5979	136,700	NO
P-010350-0	2/15/1975	30,243	11	27,731	NASSAU COUNTY / CUNY (QNS)	5519 / 70041	136,700	NO
P-042349-0	10/31/1994	42,021	4	14,075	CUNY (STATEN ISLAND)	70101	7,351	NO

Total Individuals: 5

Total: \$137,321

Notes:

LONG ISLAND Office of Parks & Recreation - Long Island Park Commission
PALISADES INTERSTATE Office of Parks & Recreation - Palisades Interstate Park Commission
NASSAU COUNTY Nassau County Supreme Court
CUNY (QNS) CUNY - Queens College Adjunct
CUNY (STATEN ISLAND) CUNY - College of Staten Island Adjunct
SUPREME COURT Office of Court Administration - Supreme Court

**APPENDIX IV
2006 PENSION OVERPAYMENTS - NYC EMPLOYEES' RETIREMENT SYSTEM
SERVICE RETIREES**

Pension Number	Date Retired	2006 Pension	Months Overpaid	Amount Overpaid	2006 Employer	Payroll Code	2006 Salary	Waiver Issuing Agency	Waiver in 2006
Case #2 N-243759-0	10/15/05	\$85,476	8	\$50,998	SUNY HEALTH SCIENCE CENTER	28100	\$99,942	SUNYC	NO
N-243064-0	02/22/05	31,982	5	12,801	SUNY DOWNSTATE	28108	56,075	SUNYC	NO
* N-313002-0	10/05/94	9,258	5	5,355	OFF OF CHILD AND FAM SERV	25000	48,552	NYSCSC	NO
N-243175-0	04/05/05	41,405	6	3,450	SUNY DOWNSTATE	28108	64,290	SUNYC	NO
N-322139-0	10/08/02	40,111	1	3,342	CUNY JOHN JAY	70060/70061	31,069	CUNYC	NO

Total Individuals: 5

Total: \$75.946

Notes:

SUNY HEALTH SCIENCE CENTER State University of New York Health Science Center at Brooklyn
SUNY DOWNSTATE State University of New York Downstate Medical Center
OFF OF CHILD AND FAM SERV Office of Child and Family Services
CUNY JOHN JAY City University of New York John Jay College

NYSCSC New York State Civil Service Commission
SUNY State University of New York
CUNYC City University of New York

* This individual was also cited in our prior audits for 2004, 2003 and 2002.

APPENDIX V
2006 PENSION OVERPAYMENTS - NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM
DISABILITY RETIREES

Pension Number	Date Retired	2006 Pension	Months Overpaid	Amount Overpaid	2006 Employer	Payroll Code	2006 Salary	Disability Safeguards (DS)
N-206674-0	8/18/1992	\$ 21,390	9	\$16,017	SENATE TEMP	4001	\$14,526	NO
N-302457-0	11/23/1992	13,957	11	12,801	CORRECTIONAL	10160	14,596	NO

Total Individuals: 2

Total: \$28,818

Notes:

SENATE TEMP New York State Senate Temporary
CORRECTIONAL Department of Correctional Services

**APPENDIX VI
2006 PENSION OVERPAYMENTS - NYC TEACHERS' RETIREMENT SYSTEM
SERVICE RETIREES**

Pension Number	Date Retired	2006 Pension	Months Overpaid	Amount Overpaid	2006 Employer	Payroll Code	2006 Salary	Waiver Issuing Agency	Waiver in 2006
Case #3 U-004733-0	7/1/2000	\$ 60,425	3	\$ 15,260	CUNY YORK	70081/70082	\$ 40,852	CUNYC	NO
U-018822-0	1/28/2003	56,233	1	4,686	CUNY LEHMAN	70070/70071	31,493	CUNYC	NO
U-023071-0	9/10/1990	24,183	1	2,196	NYC FAM COURT	5627	53,521	CAC	NO

Total Individuals: 3

Total: \$ 22,142

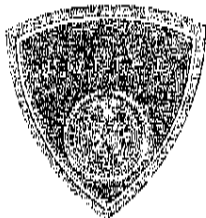
NOTES:

NYC FAM COURT
CUNY YORK
CUNY LEHMAN
CUNYC
CAC

Office of Court Administration NYC Family Court
York College - City University of New York
City University of New York Lehman College
City University of New York Chancellor
Chief Administrator of the Courts

**RE-EMPLOYED NYC PENSIONERS
TOTAL BY CURRENT EMPLOYER**

<u>Current State Employer</u>	<u>Payroll Code</u>	Individuals Paid under Code			TOTAL
		NYCERS	TRS	POLICE	
		2006	2006	2006	
Police Department	56			1	1
Department of Law	3000			2	2
NYS Temporary	4001	1			1
Office of Court Administration Nassau County Supreme Court	5519			1	1
Office of Court Administration Financial Management	5609			1	1
Office of Court Administration NYC Family Court	5627		1		1
Office of Court Administration Supreme Court	5979			1	1
Department of Correctional Services	10160	1			1
Office of Child and Family Services	25000	1			1
SUNY Health Science Center At Brooklyn	28100	1			1
SUNY Downstate Medical in Brooklyn	28108	2			2
Office of Parks & Recreation Palisades Interstate Park Commission	49059			1	1
Office of Parks & Recreation Long Island Park Commission	49220			1	1
CUNY Queens College Adjunct	70041			2	2
Cuny John Jay College	70060	1		1	2
Cuny John Jay Adjunct	70061	1			1
Cuny Lehman College	70070		1		1
CUNY Lehman College Adjunct	70071		1		1
CUNY York College Adjunct	70081		1		1
CUNY York College Hourly	70082		1		1
CUNY College of Staten Island Adjunct	70101			1	1
Total		8	5	12	25



New York City Police Pension Fund

233 Broadway
New York, NY 10279
(212) 603-5100

Anthony J. Garvey
Executive Director

June 18, 2008

John Graham
Deputy Comptroller
Audits, Accountancy & Contracts
Office of the Comptroller
Executive Offices
1 Centre Street
New York, NY 10007-2341

Re: Audit Report on New York City
Pensioners working for New York
State after their Retirement
January 1, 2006 – December 31, 2006
FL08-112A

Dear Mr. Graham:

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 New York State public service. City retirement system 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 Comptrollers 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 11 retirees listed by the Comptrollers Office in the June 9, 2008 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 current law permits. Should such approval be denied, the Police Pension Fund 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 names of those 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 State 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.

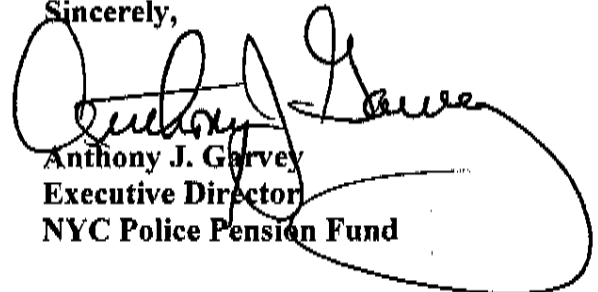
-3-

Response

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 of the retirement package. In 2006, an insert outlining this policy was prepared and mailed to all 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:hdm



John Graham
Deputy Comptroller
Office of the Comptroller
1 Centre Street
New York, N.Y. 10007-2341

June 13, 2008

**Audit Report FL08-112A
Pensioners Working for the State
Calendar Year 2006**

Dear Mr. Graham:

This is in response to the recommendations contained in the Audit Report referenced above.

We have investigated all pensioners cited as working for New York State and determined that of the seven pensioners named:

- Five were in violation of §212 of the RSSL, and were suspended from NYCERS' payroll as of May 2008
- One was found to be in violation of §1117 of the New York City Charter and was suspended from NYCERS' payroll as of April 2008.
- One was retired as a disability pursuant to §507a of the RSSL and was not in violation, as the Personal Service Income Limitation was \$25,000 for calendar year 2006 and the pensioner earned \$14,596. See attached Law Department memo dated December 9, 2005, which addresses income limitations for re-employed retirees that retired pursuant to §605 or §507a of the RSSL.

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.

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

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 like the ones noted above. 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. Our present monitoring program includes New York City payroll and Public Benefit Corporations.

NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

Since NYCERS does not have access to NY State Payroll records, it is very difficult for us to detect violations that occur with NY State employees. As a result, we invariably have several violations each year that are detected through your audit. If there is any way you can share with us your method of monitoring NY State payroll information, so we can monitor for violations "real-time", it would be greatly appreciated.

Enclosed are details regarding each pensioner cited in this audit report. If you have any questions, I can be reached at (347) 643-3522.

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
Phone: 212-788-0745
Fax: 212-788-8900
E-mail: ivancysd@law.nyc.gov

**CONFIDENTIAL
ATTORNEY-CLIENT
MEMORANDUM**

TO: Diane D' Alessandro
Executive Director
NYCERS

Milton Aron
Deputy Executive Director
NYCERS

FROM: Inga Van Eysden *IV*
Chief, Pensions Division

Susan Sanders *SS*
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

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

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.

NYCERS - RESPONSE STATS - PENSIONERS RETURNING TO THE STATE
CALENDAR YEAR 2006

SUSPENDED											
Service	243759		10/15/05	\$ 97,718.09	\$ 27,500.00	\$ 37,436.00	May-08	Dec-08	Pension allowance will be suspended for 8 Months		
Service	243064		02/22/05	\$ 55,200.65	\$ 27,500.00	\$ 14,231.28	June-08	Dec-08	Pension allowance will be suspended for 6 Months		
Service	313002		10/05/99	\$ 51,707.48	\$ 27,500.00	\$ 9,257.75	May-08	Sep-08	Pension allowance has been suspended for 3 Months		
Service	243175		04/05/05	\$ 64,290.00	\$ 27,500.00	\$ 19,967.82	May-08	Oct-08	Pension allowance has been suspended for 5 Months		
Service	322139		10/09/02	\$ 31,069.17	\$ 27,500.00	\$ 3,342.59	May-08	May-08	Pension allowance has been suspended for 1 Month		
Disability	206674		08/18/92	\$ 14,525.50	\$ 1,800.00	\$ 14,023.44	Apr-08	Dec-08	Pension allowance will be suspended for 9 Months		
Disability	302457		11/23/92	\$ 14,596.00	\$ 25,000.00	N/A	N/A	N/A	The pensioner retired under FRSII, Sec.307a. The limitation for 2006 is \$25,000.00, per Law Dept Memo		



TEACHERS' RETIREMENT SYSTEM
55 Water Street, New York, N.Y. 10041

June 20, 2008

Mr. John Graham
Deputy Comptroller Audit Accountancy and Contracts
Bureau of Audit
1 Centre Street Room 500
New York, NY 10007 - 2341

Re: Audit Report on NYC Teachers' Retirement System
New York City Pensioners
Working for New York State after their Retirement
January 1, 2006 to December 31, 2006
FL08-112A

Dear Mr. Graham:

Please be advised that the Teachers' Retirement System (TRS) is in full compliance with all your recommendations. Attached, please find an updated TRS status report, which describes the type of action taken by TRS.

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,

A handwritten signature in black ink, appearing to read "Stan Charles", with a long horizontal line extending to the right.

Stan Charles
Deputy Director
Internal Audit Division

Cc: N. Serrano, P. Raucci, A. Scully, S. Morrison-Goldfine, S. Kupferman, G. Davis III

2006 OTC EAR Update Report - STATE

New York City Pensioners Working for New York State after their Retirement

#	Pension #	Date Retired	Employer	211 Waiver on file	Pension Benefits	OTC Audit	EAR Wages	Diff	Audit Results in Brief	Status
1	U-004733-0	7/1/2000	CUNY QUEENS ADJ/CUNY YORK	N	60,425	40,852	0.00	40,852	<u>Pending Review</u> First letter Sent Employer request an extension for approved 211 waiver	Pending Review
2	*U-018822-0	1/28/2003	CUNY LEHMAN	N	56,233	31,493	0.00	31,493	<u>Did not go over limit</u> prior year earnings \$5,117.85	closed
3	U-023071-0	9/10/1990	NYC FAM COURT	N	24,183	53,521	0.00	53,521	<u>Pending Review</u> First letter Sent Waiting for a response from member about prior earnings	Pending Review
4										
5	Total: 3									



CHRISTINE BAILEY
EXECUTIVE DIRECTOR

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

718-935-5400
OUTSIDE NEW YORK STATE
1-800-843-6573

June 19, 2008

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

Re: Audit Report on NYC Pensioners
Working for New York State
After Retirement
January 1, 2006 - December 31, 2006
FL08-112A

Dar Mr. Graham:

We are in receipt of your recently issued draft audit report on "NYC Pensioners Working for New York State After Their Retirement" covering the period January 1, 2005 through December 31, 2005. 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), combined with the New York City Charter (§ 1117), the RSSL §211 and §212 or the New City Charter § 1117.

We concur with your conclusions, and though no violators have been found in this audit, we will continue to be vigilant in seeking total adherence to the aforementioned laws. Lastly, we would like to acknowledge the efforts of all parties involved in conducting this audit.

Thank you.

Sincerely,

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

John Cahalin
Director of Operations

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



FIRE DEPARTMENT

9 METROTECH CENTER - ROOM 8S-10

BROOKLYN, NEW YORK 11201-3857

RAY SAYLOR
CHIEF COMPLIANCE OFFICER

June 19, 2008

Mr. John Graham
Deputy Comptroller
Policy, Audits, Accountancy & Contracts
Office of the Comptroller
1 Centre Street
New York, New York 10007-2341

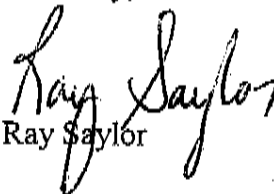
**Re: Audit Report on New York City Pensioners Working for New York State
after their Retirement. January 1, 2006 – December 31, 2006. FL08-112A .**

Dear Mr. Graham:

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 or AIP, please contact me at (718) 999-1728.

Sincerely,


Ray Saylor

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

Audit FL08-112A

AUDIT RECOMMENDATIONS / FDNY RESPONSE – AGENCY IMPLEMENTATION PLAN

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

FDNY Response – The Department agrees that it should investigate and take action against those identified individuals. 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 Department agrees to do so 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 to do so when circumstances warrant such action.

- 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.

FDNY Response – Special reminders on the subject are sent out on a routine basis.