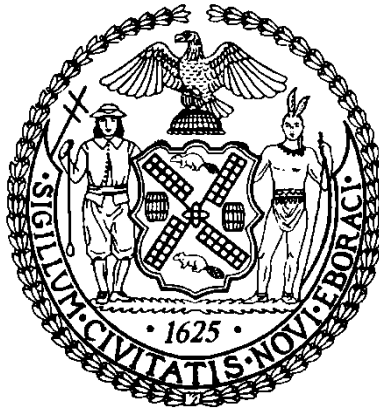


CITY OF NEW YORK OFFICE OF THE COMPTROLLER

**John C. Liu
COMPTROLLER**

FINANCIAL AUDIT

**Tina Kim
Deputy Comptroller for Audit**



Audit Report on New York City Pensioners Working as Consultants for the City after Retirement January 1, 2009-December 31, 2009

FL11-101A

June 30, 2011

<http://comptroller.nyc.gov>



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

John C. Liu
COMPTROLLER

June 30, 2011

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 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 2009. These individuals—known as “double-dippers” or “disability violators”—have been re-employed by a City agency and may be illegally collecting a pension from one of the five retirement systems.

The audit found that 11 pensioners working as consultants appeared to violate RSSL §211 - §212 or New York City Charter §1117. Ten pensioners appeared to violate RSSL §211 - §212 because they were under age 65 and received City wages exceeding the limitations without having a waiver on file, while one additional pensioner appeared to violate §1117 of the New York City Charter, which prohibits a 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. These 11 individuals received \$192,681 in pension over payments during 2009.

The audit recommended that officials of the five retirement systems investigate those individuals identified in this report and, if in violation of State or City regulations, commence recoupment action against said individuals; forward to the Department of Investigation, if the circumstances warrant such action, the names of individuals found to be illegally collecting pensions; and send reminders to service retirees under the age of 65 and to all disability retirees that clearly state their responsibilities regarding public service re-employment.

The results of the audit 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 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 'JCL', followed by the printed name 'John C. Liu'.

John C. Liu

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

**Audit Report on New York City Pensioners
Working as Consultants for the
City after Retirement
January 1, 2009–December 31, 2009**

FL11-101A

AUDIT REPORT IN BRIEF

The objective of this audit was to identify New York City pensioners working as consultants 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 2009. These individuals —known as “double-dippers” or “disability violators”—have been re-employed by a City agency and may be illegally collecting a pension from a New York City retirement system.

Audit Findings and Conclusions

The audit found that 11 pensioners working as consultants appeared to violate RSSL §211 - §212 or New York City Charter §1117. Ten pensioners appeared to violate RSSL §211 - §212 because they were under age 65 and received City wages exceeding the limitations without having a waiver on file, while one additional pensioner appeared to violate §1117 of the New York City Charter, which prohibits a 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. These 11 individuals received \$192,681 in pension over payments during 2009.

Audit Recommendations

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

- Investigate those individuals identified in this report and, if in violation of State or City regulations, commence recoupment action against said individuals.
- Forward to the Department of Investigation, if the circumstances warrant such action, the names of individuals found to be illegally collecting pensions.
- 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.

New York City Retirement Systems' Responses

In their responses, officials from each of the five New York City retirement systems generally agreed to implement or stated that they were already in the process of implementing the audit's recommendations.

INTRODUCTION

Background

A New York City service retiree who is re-employed by New York State or any of its political subdivisions may not continue to collect pension benefits except in accordance with conditions established by 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 RSSL §211, a service retiree (a person receiving an ordinary service retirement rather than a disability retirement) who is re-employed in New York public service and who exceeds the §212 salary limitations may have his or her pension benefits denied unless the prospective employer has requested a waiver. The waiver is requested from the State or municipal Civil Service Commission or from any of the seven authorized agencies (listed below) setting forth the reasons for the request.

Regarding 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 Department of Education (NYC)
- Board of Higher Education (CUNY)
- Chancellor of State University (SUNY)
- Administrator of Courts (NYS-NYC)

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

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

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

- New York City 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 2009, 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 2009 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 re-employment 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 re-employment 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 next title 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 re-employment 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 next title 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 re-employment 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 next title 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.

Regarding 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 New York City pensioners working as consultants who appear to be violators of New York State RSSL §211 and §212 or New York City Charter §1117 during calendar year 2009. These individuals—known as “double-dippers” or “disability violators”—have been re-employed by a City agency and may be illegally collecting a pension from a New York City retirement system.

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 conducted 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, 2009, through December 31, 2009. 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 Information Technology (IT) Audit Division performed a computer match of the 329,601 New York City pensioners against a listing of 13,935 individuals 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, six were POLICE retirees, 14 were TEACHERS retirees, 14 were NYCERS retirees, and two were FIRE retirees. The computer match did not identify any BERS retirees.

For those individuals who appeared to lack valid reasons for receiving both pension and payroll checks, 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. 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 5 percent of the total overpayments, can be determined only by City retirement system officials.

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 was discussed at exit conferences with officials of the five retirement systems. On June 15, 2011, we submitted this 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 22, 2011, we received a response from the POLICE Executive Director in which he agreed with our recommendations.

NYCERS Response: On June 28, 2011, we received a response from the NYCERS Director of Finance in which he agreed with our recommendations.

TRS Response: On June 24, 2011, 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 16, 2011, we received a response from the FIRE Chief Compliance Officer in which he stated “The Fire Pension Fund diligently ensures that retirees are made aware of the rules regarding post-retirement employment. As a result, we have had no violators in the 12 audit reports of retirees working for the State, City or as Consultants for the past 4 calendar years 2006 thru 2009.”

BERS Response: On June 29, 2011, we received a response from the BERS Internal Auditor stating, “BERS is committed to ensuring that retirees are in compliance with State and City laws and regulations.”

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

FINDINGS

Overpayment of Pension Benefits

This audit identified 11 New York City pensioners who returned to public service as consultants and received a total of approximately \$192,681 in pension payments during 2009 that appear to violate applicable sections of State and City laws. (See Appendices I through VI for the agency summaries and detailed listings of the 11 pensioners who returned to public service as consultants and their current City agencies). The breakdown of the 11 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>
NYCERS	6	0	6	\$ 143,700
POLICE	1	1	2	\$ 22,089
TRS	<u>3</u>	<u>0</u>	<u>3</u>	<u>\$ 26,892</u>
Total	<u>10</u>	<u>1</u>	<u>11</u>	<u>\$ 192,681</u>

The audit found that 10 pensioners 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. The audit found one other pensioner in violation of §1117 of the New York City Charter because she was collecting a disability pension while receiving more than \$1,800 (including pension payments) in compensation from the City for professional services.

Our total represents the amount of improper 2009 pension payments based on our determination of the date on which the pensioners reached the 2009 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 5 percent of the total overpayments, can be determined only by City retirement system officials. Immediate action by the three 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 NYCERS service retiree who was found to be providing professional services as a consultant for a City agency during calendar year 2009:

CASE #1: An Assistant District Attorney who retired from the Bronx District Attorney’s Office in 2002 and collected 12 pension checks totaling \$61,459 (one for each month) in calendar year 2009. This individual worked all of 2009, collecting a salary of \$82,625. We found no evidence of a waiver for this individual for any portion of 2009. On January 23, 2009, this person’s cumulative salary earnings for the year exceeded the \$30,000 limit for service retirees. Therefore, it appears that 11 pension

checks (February to December) totaling \$56,337 may have been improperly received and cashed in calendar year 2009.

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 2009:

CASE #2: A Police Officer retired from the Police Department in July 1996 and collected 12 pension checks totaling \$42,235 (one for each month) in calendar year 2009. This individual worked for the Department of Education in April, May, June, October, and November 2009, collecting a salary of \$5,389. In April 2009, this disability pensioner's year 2009 earnings from a New York City agency exceeded the New York City Charter § 1117 income limitation of \$1,800 per year (including pension payments). Therefore, it appears that four pension checks (May, June, October, and November), totaling \$14,088, may have been improperly received and cashed in calendar year 2009.

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 2009:

CASE #3: A Teacher retired from the Department of Education in 2005 and collected 12 pension checks totaling \$48,743 (one for each month) in calendar year 2009. This individual worked 11 months (January through July and September through December) of 2009, collecting a salary of \$59,067. We found no evidence of a waiver for this individual for any portion of 2009. On June 27, 2009, this person's cumulative salary earnings for the year exceeded the \$30,000 limit for service retirees. Therefore, it appears that five pension checks (July, September, October, November, and December) totaling \$20,455 may have been improperly received and cashed in calendar year 2009.

NYCERS, TRS, and POLICE need to step up their efforts to resolve and collect the pension overpayments from those cases cited in this report.

RECOMMENDATIONS

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

1. Investigate those individuals identified in this report and, if in violation of State or City regulation, commence recoupment action against said individuals.

Agency Responses: TRS and POLICE agreed with this recommendation.

FIRE and BERS did not have any individuals cited in this report so this recommendation was not applicable to them.

The NYCERS Director of Finance stated: “We have investigated the six (6) pensioners cited as working as consultants for the City of New York, and determined the following:

- Three (3) of the six 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.
- For the remaining three (3) pensioners cited during the audit, we are collecting documents and investigating the details for each case and we will take the appropriate action – including suspension of the pensions, if warranted – once we verify the facts.”

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 make no exceptions for 18-B attorneys.

In addition, the Comptroller’s General Counsel’s Office reviewed the Law Department’s memo dated October 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: NYCERS, TRS, POLICE, and BERS agreed with this recommendation. FIRE did not respond to this recommendation.

3. 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.

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

APPENDIX I

SUMMARY OF 2009 OVERPAYMENTS

<u>SERVICE</u>			<u>DISABILITY</u>			<u>TOTAL</u>		
Persons	Amount	Persons	Amount	Persons	Amount			
NYCERS	6	\$143,700	0	\$0	6	\$143,700		
POLICE	1	\$8,001	1	\$14,088	2	\$22,089		
TEACHERS	3	\$26,892	0	\$0	3	\$26,892		
TOTAL	10	\$178,593	1	\$14,088	11	\$192,681		

APPENDIX II
2009 PENSION OVERPAYMENTS - NYC EMPLOYEES' RETIREMENT SYSTEM
SERVICE RETIREES

Pension Number	Date Retired	2009 Pension	Months Overpaid	*Pension Amount Overpaid	2009 Employer	Agency Number	2009 Earnings	Waiver Issuing Agency	Waiver in 2009
CASE #1*N-237942-0	9/28/2002	\$61,459	11	\$56,337	SUP COURT 1	921	\$82,625	CAC	NO
N-338855-0	1/13/2007	\$74,331	7	\$43,360	SUP COURT 1	921	\$95,974	CAC	NO
N-243657-0	9/8/2005	\$60,939	3	\$15,235	DEP	826	\$46,946	DCAS	NO
N-324301-0	3/2/2003	\$28,417	6	\$14,208	HPD	806	\$38,563	DCAS	NO
N-341268-0	7/28/2007	\$25,006	5	\$10,423	SUP COURT 1	921	\$91,950	CAC	NO
N-326246-0	11/26/2003	\$49,639	1	\$4,137	SUP COURT 1	921	\$33,036	CAC	NO

Number of Individuals: 6 **Total** **\$143,700**

NOTES:

SUP COURT 1 Supreme Court 1st Judicial District
DEP Department of Environmental Protection
HPD Housing Preservation and Development
DOE Department of Education
DCAS Department of Citywide Administrative Services
CAC Chief Administrator of the Courts

* Amount of pension overpayment after individual exceeded \$30,000 earnings limitation

APPENDIX III

Pension Number	Date Retired	2009 Pension	Months Overpaid	*Pension Amount Overpaid	2009 Employer	Agency Number	2009 Earnings	Waiver Issuing Agency	Waiver in 2009
P-054255-0	1/3/2004	\$19,202	5	\$8,001	DOE	40	\$59,600	DOEC	NO

Total Individual(s): 1

Total \$8,001

NOTES:

DOE

Department of Education

DOEC

Department of Education Chancellor

* Amount of pension overpayment after individual exceeded \$30,000 earnings limitation

APPENDIX IV
2009 PENSION OVERPAYMENTS - POLICE DEPARTMENT PENSION FUND
DISABILITY RETIREES

Pension Number	Date Retired	2009 Pension	Months Overpaid	*Pension Amount Overpaid	2009 Employer	Agency Number	2009 Earnings	**Disability Safeguards (DS)
Case #2 P-043989-0	6/30/1996	\$42,235	4	\$14,088	DOE	40	\$5,389	NO

Total Individuals: 1

Total: \$14,088

NOTES:

DOE

Department of Education

* Amount of pension overpayment after individual exceeded earnings limitation of \$1,800 (including pension payments)

** For individuals who are covered under Disability Safeguards, an overpayment occurs if their pension plus salary for the calendar year exceeds the current maximum salary for the title next higher than that held by the individual when he/she retired

APPENDIX V
2009 PENSION OVERPAYMENTS - TEACHERS' RETIREMENT SYSTEM
SERVICE RETIREES

Pension Number	Date Retired	2009 Pension	Months Overpaid	*Pension Amount Overpaid	2009 Employer	Agency Number	2009 Earnings	Waiver Issuing Agency	Waiver in 2009
Case #3 U-729860-0	9/16/05	\$48,743	5	\$20,455	DOE	040	\$59,067	DOEC	No
U-038379-0	7/1/08	\$11,322	6	\$5,661	SUP COURT 1	921	\$95,180	CAC	No
U-032637-0	6/29/05	\$ 9,313	1	\$ 776	DOE	040	\$ 33,755	DOEC	No

Total Individuals: 3 Total: \$ 26,892

NOTES:

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

* Amount of pension overpayment after individual exceeded \$30,000 earnings limitation

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>NYCERS 2009</u>	<u>POLICE 2009</u>	<u>TRS 2009</u>	<u>TOTAL</u>
Department of Education	040	0	2	2	4
Housing Preservation and Development	806	1	0	0	1
Department of Environmental Protection	826	1	0	0	1
Supreme Court 1st Judicial District	921	4	0	1	5
Total		<u>6</u>	<u>2</u>	<u>3</u>	<u>11</u>



New York City Police Pension Fund

233 Broadway
New York, NY 10273
(212) 696-5100

Kevin Holloran
Executive Director

June 22, 2011

H. Tina Kim
Deputy Comptroller
Audits, Accountancy & Contracts
Office of the Comptroller
Executive Offices
1 Centre Street Room 1100
New York, NY 10007-2341

Re: **Audit Report on NYC Pensioners working
as Consultants for NYC after Retirement
January 1, 2009 to December 31, 2009
FL11-101A**

Dear Ms. Kim:

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

Recommendation #1

Investigate those individuals identified in this report and, if in violation of State or City regulations, commence recoupment action against said individuals.

Response

The NYC Police Pension Fund, NYCPPF, is in total agreement that recoupment of pension benefits received in violation of the law should be recovered. Regarding the 2 retirees listed by the Comptroller's Office in the June, 2011 audit report as possible violators, the NYCPPF will investigate all members in question to determine if they are in violation of Section 1117 of the New York City Charter. Those in violation will be given the opportunity to obtain retro-active 211 waivers, as current law permits. Should such approval be denied, this Retirement System will recover all pension monies received from the period in question.

-2-

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 NYCPPF concurs with recommendation #2, however, no retiree investigated was deemed appropriate for such a referral.

Recommendation #3

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

Response

The NYCPPF'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.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Holloran', with a stylized, looping flourish extending from the end.

Kevin Holloran
Executive Director
NYC Police Pension Fund

KH:hdm



June 28, 2011

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

**Audit Report FL11-101A
Pensioners Working as Consultants
for the City after Retirement
Calendar Year 2009**

Dear Ms. Kim,

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

Recommendation #1 – *Investigate those individuals identified in this report and, if in violation of State or City regulations, commence recoupment action against said individuals.*

Response

We have investigated the six (6) pensioners cited as working as consultants for the City of New York, and determined the following:

- Three (3) of the six 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.
- For the remaining three (3) pensioners cited during the audit, we are collecting documents and investigating the details for each case and we will take the appropriate action – including suspension of the pensions, if warranted - once we verify the facts.

We are appreciative of the Comptrollers Office for highlighting these potential violators during the audit. While NYCERS routinely monitors the earnings of City and State employees, we currently do not have access to the City's information related the earnings of consultants. As a result, we cannot monitor the compliance of the consultant population on a "real-time" basis. NYCERS intends to seek to obtain access to the consultants' earning data, as this access would make our overall monitoring program more effective. Any assistance that the Comptrollers Office could provide towards this effort would be welcome.

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 agrees to refer to the Department of Investigation, where the circumstances warrant such action, the names of individuals found to be illegally collecting pensions.

Recommendation #3 – *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



MICHAEL A. CARDOZO
Corporation Counsel

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

INGA VAN EYSDEN
Tel.: (212) 788-0745
Fax: (212) 788-8900
ivaneydsd@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.



June 24, 2011

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, 2009 to December 31, 2009
FL11-101A

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 2009 that needed to be accounted for concerning the EAR limit of \$30,000.

For the three (3) 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.

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. Reilly, A. Bradford, T. Cannady

Teachers' Retirement System 2009 EAR Audit Report and Overpayment

New York City Pensioners Working for New York City after their Retirement State, Disability, and Consultant														
#	Employer	Pension #	Date Retired	Payment Type	OTC Wages Earned	Term/ Retro pay	Prior year wages	Other Adjust	Wages Earned	Over limit	Repayment amount	Resolution	EAR Status	OTC Status
1	City	U7384790	8/15/2008	SR	58,089.00	(4,882.66)	0.00	(8,358.03)	52,571.44	22,571.44	14,215.41	Repayment	Resolute	Pending
2	City	U0295120	8/31/2004	SR	44,438.00	0.00	(4,719.05)	0.00	39,718.95	9,718.95	5,021.61	Suspended 2/1/10- 4/30/10	Resolute	Pending
3	Disability	U0392960	10/1/2008	ODR	42,491.33	0.00	0.00	0.00	35,700.75	35,700.75	0.00	No Action	Pending	Pending
4	Consultants	U7298600	9/15/2005	SR	59,067.00	0.00	0.00	0.00	0.00	29,067.00	0.00	No Action	Pending	Pending
5	Consultants	U0383790	7/1/2008	SR	95,180.00	0.00	0.00	0.00	0.00	65,180.00	0.00	Pending	Pending	Pending
6	Consultants	U0326370	6/29/2005	SR	33,755.00	0.00	0.00	0.00	0.00	3,755.00	0.00	Pending	Pending	Pending
7	State	U7263260	9/1/2004	SR	83,391.00	0.00	0.00	0.00	0.00	53,391.00	0.00	Pending	Pending	Pending

End of Report



FIRE DEPARTMENT

9 METROTECH CENTER - ROOM 85-10

BROOKLYN, NEW YORK 11201-3857

RAY SAYLOR
CHIEF COMPLIANCE OFFICER



June 16, 2011

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

**Re: Audit Report on NYC Pensioners Working as Consultants for the City
after Retirement January 1, 2009 – December 31, 2009. (Audit Number FL11-
101A)**

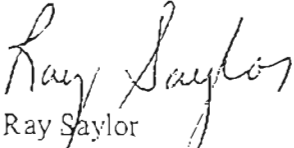
Dear Ms. Kim:

The above audit did not find any individuals who received pension payments during 2009 that appear to violate applicable sections of State and City laws, hence no recommendations were made. The Fire Pension Fund diligently ensures that retirees are made aware of the rules regarding post-retirement employment. As a result, we have had no violators in the 12 audit reports of retirees working for the State, City or as Consultants for the past 4 calendar years 2006 thru 2009.

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



CHRISTINE BAILEY
EXECUTIVE DIRECTOR

BOARD OF EDUCATION RETIREMENT SYSTEM
OF THE CITY OF NEW YORK
65 COURT STREET, 16th FLOOR
BROOKLYN, NEW YORK 11201-4965

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

June 29, 2011

Ms. Tina Kim
Deputy Comptroller for Audit
Bureau of Audit
1 Centre Street, Room 1100
New York, NY 10007-2341

Re: Audit Report on New York City Pensioners
Working as Consultants for the City after Retirement
January 1, 2009-December 31, 2009
FL11-101A

Dear Ms Kim:

We are in receipt of the draft audit report dated June 15, 2011 on New York City Pensioners Working as Consultants for the City after Retirement during the period January 1, 2009 through December 31, 2009. For the period under consideration, you did not identify any pensioners of the Board of Education Retirement System (BERS) who you cite as being re-employed.

We have also reviewed your recommendations and advise the following:

Recommendation 1

Investigate those individuals identified in this report and, if in violation of State or City regulations, commence recoupment action against said individuals.

Response

An investigation was not necessary since the audit did not find any BERS members to be in violation of New York State Education Law (Title 2, Article 52, § 2575), and the New York City Charter (§1117), the RSSL §211 and §212.

Recommendation 2

Forward to the Department of Investigation, if the circumstances warrant such action, the name of this individual if she is found to be illegally collecting a pension.

Response

The audit did not find any BERS members to be in violation of New York State Education Law (Title 2, Article 52, § 2575), and the New York City Charter (§1117), the RSSL §211

and §212. BERS will continue to be alert of any violations of the aforementioned laws and report to the Department of Investigation when circumstances deem such action necessary

Recommendation 3

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 reminder is included each year in BERSWORDS, a publication sent to all BERS members, including all retirees. Additionally at retirement, BERS alerts new retirees of their responsibilities regarding public service reemployment.

BERS is committed to ensuring that retirees are in compliance with State and City laws and regulations. We thank the Comptroller for his vigilance and efforts to enhance our operations. If you have any questions, or concerns about our responses, please let us know.

Sincerely,

A handwritten signature in black ink, appearing to read 'D Miller', written in a cursive style.

Daniel Miller
Internal Auditor

C: Christine Bailey
John Cahalin