

# AUDIT REPORT



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

## **Audit Report on Pensioners of the New York City Employees' Retirement System Working for the City after their Retirement January 1, 2003—December 31, 2003**

*FL05-100A*

**June 30, 2005**



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

WILLIAM C. THOMPSON, JR.  
COMPTROLLER

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

Ladies and Gentlemen:

In accordance with the responsibilities of the Comptroller contained in Chapter 5, § 93, of the New York City Charter, my office conducted an audit to identify New York City Employees' Retirement System (NYCERS) retirees who may be illegally re-employed ("double-dippers" or "disability violators"), and to quantify the amounts of any improper payments to individuals who appear to be violators of New York State Retirement and Social Security Law, § 211 and § 212, or New York City Charter § 1117, during calendar year 2003.

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

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

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

Very truly yours,

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

William C. Thompson, Jr.

WCT/gr

**Report: FL05-100A**  
**Filed: June 30, 2004**

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

**Audit Report on Pensioners of the  
New York City Employees' Retirement System  
Working for the City after their Retirement  
January 1, 2003 – December 31, 2003**

**FL05-100A**

**AUDIT REPORT IN BRIEF**

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

**Audit Findings and Conclusions**

The audit found three individuals who received \$30,039 in pension payments during 2003 that appear to violate applicable sections of State and City laws. These individuals were in apparent violation of RSSL § 211 or § 212 because they were under age 65 and received City wages exceeding the limitations without having a waiver on file at NYCERS, or were in violation of § 1117 of the New York City Charter because they were collecting disability pensions while earning more than \$1,800 (including pension payments) a year at a New York City agency.

**Audit Recommendations**

NYCERS should:

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

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

## **INTRODUCTION**

### **Background**

A New York City Employees’ Retirement System service retiree who is re-employed by the State or any of its political subdivisions may not continue to collect pension benefits, except in accordance with conditions established by the New York State Retirement and Social Security Law (RSSL), § 210 through § 216. In the case of New York City Employees’ Retirement System 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 from the State or municipal Civil Service Commission or other authorized agency setting forth the reasons for such request, and has then obtained a waiver from that agency.

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

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

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

An exception to this restriction is provided by RSSL § 212, which permits a service retiree to be re-employed in New York public service if the retiree earns no more than the amount prescribed by that section and files a “Section 212 Statement of Election” with his or her retirement system (see below). For calendar year 2003, the earnings limitation does not apply after the retiree reaches the age 65.

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

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

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

Disability retirees are not subject to RSSL § 211 and § 212. However, the New York City Administrative Code (Volume 3, Title 13, Chapter 1, § 13-171), provides for the re-employment of New York City Employees' Retirement System 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, 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 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. Waivers superseding this provision may not be granted.

### **Objective**

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

## **Scope and Methodology**

Our audit period was January 1, 2003, through December 31, 2003. We met with officials of the New York City Employees' Retirement System (NYCERS) to review their monitoring processes for individual pensioners.

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

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

Of the 2,064 matches, 349 consisted of individuals collecting NYCERS pensions. For all 349 matches, we obtained additional detailed information about their individual year 2003 pension and payroll payments. We analyzed the timing, and to some extent, the types of payments received. We also verified the amounts shown on the computer-match listing. In addition, we met with retirement system representatives, who assisted us in searching their files for waivers and other relevant information.

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

In accordance with §13-103 of the New York City Administrative Code, a Board of Trustees heads the New York City Employees Retirement System. The Comptroller is one of the

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<sup>1</sup> A separate audit report will be issued for each of the five New York City retirement systems; the other four audits are FL05-098A (POLICE), FL05-099A (FIRE), FL05-101A (BERS), and FL05-102A (TRS).

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

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

### **Discussion of Audit Results**

The matters covered in this report were discussed with NYCERS officials during and at the conclusion of this audit. A preliminary draft report was sent to NYCERS officials and the applicable employing and waiver-issuing agencies, and discussed at an exit conference. On June 7, 2005, we submitted a draft report to NYCERS officials with a request for comments.

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

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Our previous audit covering NYCERS pensioners for calendar years 2001 and 2002 (#FL04-113A, issued June 30, 2004), reported that there were three NYCERS retirees who were in apparent violation of RSSL § 211 or § 212 or § 1117 of the New York City Charter. These individuals received improper pension payments of approximately \$35,643.

## FINDINGS

### **Overpayment of Pension Benefits**

This audit identified three individuals who received \$30,039 in pension payments during 2003 that appear to violate applicable sections of State and City laws. (See Appendices I through III for a listing of the three individuals and their current employers.)

These three individuals were in apparent violation of RSSL § 211 or § 212 because they were under age 65 in 2003 and received City wages exceeding the limitations without having a waiver on file at NYCERS, or were in violation of § 1117 of the New York City Charter because they were collecting disability pensions while earning more than \$1,800 (including pension payments) a year at a New York City agency and had surpassed their applicable employment anniversary dates. These three individuals received improper pension payments of approximately \$30,000, as follows:

	<u>Number of Matches</u>	<u>Total Improper Payments</u>
2003 § 211/212 Violators	2	\$25,864
2003 § 1117 Violators	<u>1</u>	<u>4,175</u>
Total	<u>3</u>	<u>\$ 30,039</u>

Our total represents the amount of improper 2003 pension payments based on an analysis of when the re-employed pensioners reached the legal earnings limitations (\$25,000 for service retirees, and \$1,800 for disability pensioners). Allowances were made for those retirees who worked only part of that year. Moreover, 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 NYCERS officials. Immediate action by NYCERS and the employing City agencies is needed to investigate and recoup where appropriate any improper payments made to these retirees identified as possible “double-dippers.” (The applicable employing agencies involved in this audit appear in Appendix III.)

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

**CASE #1:** A Recreation Director who retired from the Department of Parks and Recreation in April 2000 collected 12 pension checks (one each month) in calendar year 2003 totaling \$27,734. He worked as a full-time Guidance Counselor for the Department of Education for all of calendar year 2003 (January through December) and collected a salary of \$103,605. We



found no evidence of a waiver for him for any portion of 2003. In March 2003, cumulative salary earnings for 2003 exceeded the \$25,000 limit for service retirees; therefore, it appears that nine pension checks (April through December 2003) totaling \$20,800 may have been improperly received and cashed.

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

**CASE #2:** An Assistant City Highway Repairer who retired from the Department of Transportation in May 1997 on a disability pension, collected 12 pension checks (one each month) in calendar year 2003, totaling \$9,945. He worked as a Community Service Aide for the Department for the Aging from July through December and collected a salary of \$1,663. Since he is over the minimum period for service retirement, he cannot qualify for the “Disability Safeguards” provisions. Accordingly, any earnings above \$1,800 for 2003 make the disability pension payments for that year improper. Thus, it appears that five months of disability pension checks (August through December 2003) totaling \$4,175 may have been improperly received and cashed.

## RECOMMENDATIONS

New York City Employees’ Retirement System officials should:

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

**NYCERS Response:** “We have investigated the three (3) pensioners cited and determined that of the three (3) pensioners named, only two (2) were in violation of §211 and §212 of the RSSL, §13-171 of the Administrative Code, or §1117 of the NYC Charter. Both pensioners are in the process of being recouped. The third pensioner cited, who retired as a disability under §507a of the RSSL, is not in violation as the Personal Service Income Limitation was \$22,600 for calendar year 2003 and the pensioner only earned \$4,175.”

**Auditor Comment:** While we are pleased that NYCERS has investigated its cited pensioners, we disagree with NYCERS interpretation of RSSL § 507-a. RSSL §507-a (3) (c) states that “Each retirement system shall be entitled to adopt appropriate procedures for . . . continued entitlement to a disability retirement allowance.” RSSL §507-a (3) (c) does not give NYCERS the authority to create its own income limitation for disability pensioners which is contrary to the amount set by § 1117 of the New York City Charter. Therefore, we maintain that all three individuals cited in this report were in violation of

RSSL § 211 and § 212, or 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 individuals found to be illegally collecting pensions.

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

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.”

**NYCERS Response:** NYCERS 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 re-employment.

**NYCERS Response:** “A special notice regarding re-employment after retirement is sent to our pensioners each year in September.”

**APPENDIX I  
PENSION OVERPAYMENTS - NYC EMPLOYEES' RETIREMENT SYSTEM  
2003 MATCHES (LACK OF WAIVERS)**

Pension Number	Date Retired	2003 Pension	Months Overpaid	Amount Overpaid	2003 Employer	Payroll Code	2003 Salary	Waiver Issuing Agency	Waiver in 2003
*CASE # 1 N-231623-0	4/2/2000	27,734	9	20,800	DOE	742/747	115,573	DOEC	NO
N-225383-0	11/13/1997	29,306	2	5,064	LAGUARDIA CC	469	39,417	CUNY	NO

Total: \$ 25,864

**NOTES:**

DOE  
LAGUARDIA CC

Department of Education  
LaGuardia Community College

CUNY  
DOEC

Board of Higher Education (City University of New York)  
Department of Education Chancellor's Office

\* This individual was also cited in our prior audit for 2001 and 2002

**APPENDIX II  
PENSION OVERPAYMENTS - NYC EMPLOYEES' RETIREMENT SYSTEM  
2003 MATCHES (DISABILITY RETIREES)**

Pension Number	Date Retired	2003 Pension	Months Overpaid	Amount Overpaid	2003 Employer	Payroll Code	2003 Salary	Appointment Year
CASE # 2 N-309831-0	5/10/1997	9,945	5	4,175	DFTA	125	1,663	1986

Total:              \$   4,175      

**NOTES:**

DFTA                      Department for the Aging

RE-EMPLOYED NYCERS PENSIONERS

TOTALS BY CURRENT EMPLOYER

Current Employer

<u>Department of Education (DOE)</u>	<u>Payroll Code</u>	<u>Total</u>
DOE (Full-Time Teachers)	742	1
DOE (Per-Session Teachers)	747	1
 <u>Other Agencies</u>		
Department for the Aging	125	1
LaGuardia Community College	469	1
 <b><u>Total</u></b>		<b><u>4</u></b>

# NYCERS

## RETIREMENT AND BENEFITS

NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

MAIL ONLY:  
335 ADAMS STREET,  
SUITE 2300  
BROOKLYN, NY 11201-3751

ALL OTHER SERVICES:  
340 JAY STREET,  
MEZZANINE LEVEL  
BROOKLYN, NY 11201-3751

TEL: (347) 643-3000

ACTING EXECUTIVE DIRECTOR: MILTON ARON

Greg Brooks  
Deputy Comptroller  
Office of the Comptroller  
1 Centre Street - 1300N  
New York, N.Y. 10007-2341

June 22, 2005  
Audit Report FL05-100A

Dear Mr. Brooks:

This is in response to your request regarding the progress this office has made in implementing the recommendations contained in the above-mentioned Audit Report.

We have investigated the three (3) pensioners cited and determined that of the three (3) pensioners named, only two (2) were in violation of §211 and §212 of the RSSL, §13-171 of the Administrative Code, or §1117 of the NYC Charter. Both pensioners are in the process of being recouped. The third pensioner cited, who retired as a disability under §507a of the RSSL, is not in violation as the Personal Service Income Limitation was \$22,600 for calendar year 2003 and the pensioner only earned \$4,175. Attached are our detailed responses for each pensioner.

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 §13-171 or NYC Charter §1117. A special notice regarding re-employment after retirement is sent to our pensioners each year in September.

As part of our audit plan, NYCERS suspends the retirement allowance when the pensioner exceeds the earnings 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.

Very truly yours,



Andrew N. Feneck  
Director, Benefit Disbursements

cc: Milton Aron  
Karl Bloom

Andrew N. Feneck  
Director, Benefit Disbursements  
Tele # 347- 643-3114  
Fax #: 347- 643-3114  
E-Mail: afeneck@nycers.nyc.gov

# NYCERS

RETIREMENT AND BENEFITS

NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM  
ADDENDUM I  
2 of 2  
MAIL ONLY: 335 ADAMS STREET, SUITE 2300, BROOKLYN, NY 11201-3751  
ALL OTHER SERVICES: 340 JAY STREET, MEZZANINE LEVEL, BROOKLYN, NY 11201-3751  
TEL: (347) 643-3000  
ACTING EXECUTIVE DIRECTOR: MILTON ARON

To: Andrew Feneck & Karl Bloom

From: Salwa Boutros

Date: June 22, 2005

Subject: NYCERS follow-up to Comptroller's Report # FL05-100A

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The following report contains our investigation of those pensioners identified as being re-employed with the New York City FL05 -100A

Year 2003 NY City Matches (Lack of Waivers)

2003 Service Retirees

P# 231623-0

██████████ exceeded the income limitations in April 2003. His pension allowance will be suspended for 8 months starting 10/2005. (He was overpaid in year 2001 and year 2002 and starting deduction 6/2004 ending 9/2005 and will continue for year 2003 starting 10/2005. (See copy attached).

P# 225383-0

██████████ exceeded the income limitations in May 2003 instead of June 2003, as previously reported, and as a result was overpaid 2 months. His pension allowance was suspended for the month of July 2003. We will suspend his pension allowance for 1 additional month July 2005.

2003 Disability Retirees

P# 309831

██████████ did not exceed the income limitation for year 2003. The personal service income limitation was \$22,600 for calendar year 2003. (See copy of resolution 73 of 1985, and 507a of the RSSL)