

# 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 Police Department Working for the City after Retirement January 1, 2002—December 31, 2002**

*FL04-112A*

**June 25, 2004**



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

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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 Police Department Pension Fund (POLICE) 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, § 210 through § 216, or New York City Charter § 1117, during calendar year 2002.

The results of our audit, which are presented in this report, have been discussed with POLICE 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: FL04-112A**  
**Filed: June 25, 2004**

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

**Audit Report on Pensioners of the  
New York City Police Department  
Working for the City after Retirement  
January 1, 2002 – December 31, 2002**

**FL04-112A**

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**AUDIT REPORT IN BRIEF**

The Comptroller's Office performed an audit to identify New York City Police Department 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), § 210 through § 216, or New York City Charter § 1117 during calendar year 2002.

**Audit Findings and Conclusions**

The audit found that 14 pensioners received \$107,228 in pension payments during 2002 that appear to violate applicable sections of State and City laws. These individuals were in apparent violation of RSSL § 211 or §212 because they were under age 65 and received City wages exceeding the limitations without having a waiver on file, or were in violation of § 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.

**Audit Recommendations**

To address these issues the report recommended that New York City Police Department Pension Fund (POLICE) officials:

- Investigate those individuals identified as concurrently receiving pensions while being re-employed in public service. POLICE officials should also commence prompt recoupment action against those individuals found to be illegally collecting pensions.
- Forward to the Department of Investigation, if the circumstances warrant such action, the name 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 Police Department 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 Police Department disability retirees, the governing regulations are the New York City Administrative Code (Volume 3, Title 13) and the New York City Charter (§ 1117). If a post-retirement employee does not comply with relevant laws, the practice is termed “double-dipping.”

Pursuant to RSSL § 211, a service retiree (a person receiving an ordinary service retirement rather than a disability retirement) who is 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 Board 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). This earnings limitation does not apply after the retiree reaches the age of 65.

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

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

For calendar year 2002, the earnings limitation for a service retiree who filed a Statement of Election under § 212 was \$20,000. Accordingly, any service retiree earning more than \$20,000 in 2002 should have received a § 211 waiver to prevent suspension of the retirement allowance during that year. Failure to comply with these requirements can result in the forfeiture of pension benefits in subsequent years.

Disability retirees are not subject to RSSL § 211 and § 212. However, the New York City Administrative Code (Volume 3, Title 13, Chapter 2, § 13-254), provides for the re-employment 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 highest 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. Waivers superseding this provision may not be granted.

### **Objective**

The objective of this audit was to identify those New York City Police Department 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 2002.

## **Scope and Methodology**

Our audit period was January 1, 2002, through December 31, 2002. We met with officials of the New York City Police Department Pension Fund (POLICE) 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 the approximately 265,000 New York City pensioners against a listing of all City workers (approximately 411,000) who received a W-2 wage statement from the Financial Information Services Agency (FISA) for the year 2002.<sup>1</sup> This matching process identified 805 individuals under age 70 who either received more than \$20,000 in 2002 (service retirees), or \$1,800 in 2002 (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 some were not actually employed during 2002, but instead received lump-granted waivers; some had their pensions suspended at the appropriate times; and sum payments for accrued vacation and sick leave or for having selected an early retirement program that provided subsequent cash payments in 2002. 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 year 2001 (BERS and NYCERS) and 2002 (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 # FL04-115A).

Of the 805 matches, 249 consisted of individuals collecting POLICE pensions. For those 249 individuals, we obtained additional detailed information about their individual year 2002 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 re-employed pensioners reached the legal earnings limitation of \$20,000 for service retirees, and \$1,800 for disability pensioners. The annuity portions of the pension payments, if any, are not affected by RSSL § 211 and § 212, and New York City Charter § 1117, and therefore, should be excluded from the overpayments cited in this report. The annuity portions, which are estimated to be less than five percent of the total overpayments, can be determined only by POLICE officials.

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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 FL04-110A (BERS), FL04-111A (FIRE), FL04-113A (NYCERS), and FL04-114A (TRS).

In accordance with §13-202 of the New York City Administrative Code, a board of trustees heads the New York City Police Department Pension Fund. The Comptroller is one of the 12 trustees and is entitled to cast one and a half of the 12 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 POLICE officials during and at the conclusion of this audit. A preliminary draft report was sent to POLICE officials and all applicable employing and waiver-issuing agencies, and discussed at an exit conference. On May 21, 2004, we submitted a draft report to POLICE officials with a request for comments.

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

## FINDINGS

### Overpayment of Pension Benefits

This audit identified 14 POLICE retirees who received \$107,228 in pension payments during 2002 that appear to violate applicable sections of State and City laws. (See Appendix I through III for details concerning the retirees and their current employers.)

Since all of these individuals retired prior to 2002, the strong possibility exists that double-dipping and disability violating by these individuals may be continuing at present. In fact, 5 of these 14 individuals were identified in one or more of our prior audit reports as possible double-dippers or disability violators.

These 14 individuals were in apparent violation of RSSL § 211 or §212 because they were under age 65 and received City wages exceeding the limitations without having a waiver on file at POLICE, or were in violation of § 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 14 individuals received improper pension payments of approximately \$107,000, as follows:

	Number of <u>Individuals</u>	Total Improper <u>Payments</u>
2002 § 211/212 Violators	11	\$57,592
2002 § 1117 Violators	3	49,636
Total	<u>14</u>	<u>\$107,228</u>

Our total represents the amount of improper 2002 pension payments based on an analysis of when the re-employed pensioners reached the legal earnings limitations (\$20,000 for service retirees, and \$1,800 for disability pensioners). 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 and § 212, and New York City Charter § 1117, and, therefore, should be excluded from the overpayments cited in this report. The annuity portions, which are estimated to be less than five percent of the total overpayments, can be determined only by POLICE officials. Immediate action by POLICE and the employing City agency is needed to investigate and recoup where appropriate any improper payments made to these retirees identified as possible double-dippers.



The following is an example of a POLICE service retiree who was found to be working at a City agency during calendar year 2002:

**CASE #1:** A Lieutenant who retired in July 1988 collected 12 pension checks (one each month) in calendar year 2002 totaling \$31,276. He worked as a teacher for the Department of Education for all of calendar year 2002 (January through December) and collected a salary of \$67,167. We found no evidence of a waiver for him for any portion of 2002. On May 15, 2002, his year 2002 cumulative salary earnings exceeded the \$20,000 limit for service retirees; therefore, it appears that seven pension checks (June through December 2002) totaling \$18,267 may have been improperly received and cashed in calendar year 2002.

The following is an example of a POLICE disability retiree who was found to be working at a City agency during calendar year 2002:

**CASE #2:** A Detective who retired in July 2001 on a disability pension, collected 12 pension checks (one each month) in calendar year 2002, totaling \$66,580. He worked as a teacher for the Department of Education from January through August, October, and November and collected a salary of \$23,905. He began working for the Police Department in 1981, and, therefore, cannot qualify for the "Disability Safeguards" provisions beyond 2001. Accordingly, any earnings above \$1,800 for 2002 make the disability pension payments for that year improper. Thus, it appears that nine months of disability pension checks (February through August, October and November 2002) totaling \$41,310, may have been improperly received and cashed in 2002.

## RECOMMENDATIONS

New York City Police Department Pension Fund officials should:

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

**POLICE Response:** "The Police Pension Fund is in total agreement that recoupment of pension benefits received in violation of the law should be commenced immediately. It should be noted, however, that this retirement system does not exercise control over its pension payroll data tape. We are requesting that the Comptroller's 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.

“Regarding the 16 retirees reported by the Comptroller’s Office in the May 24, 2004 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 retroactive 211 waivers, as the current law dictates. Should such approval be denied, the Police Pension Fund will recover all pension moneys received from the period in question.”

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

**POLICE Response:** “The Police Pension Fund concurs with recommendation #2, however, no retiree investigated was deemed appropriate for such a referral.”

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

**POLICE Response:** “The Police Pension Fund has in the past and will continue to suspend or reduce the pension benefit of all identified service or vested interest retirees who elect to continue employment with the City of New York without the benefits of Section 211. Additionally, as noted in our response to previous audits, this fund recovered in excess of six hundred thousand dollars in previous years from members of this System identified as violators of these statutes.”

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

**POLICE Response:** “Upon retirement each member receives the restrictions on employment after retirement in a special handout. In 2001, a letter outlining this policy was prepared and mailed to all retirees and a new letter will be mailed out this fall. In addition, the Police Pension Fund’s website provides a special reminder to all retirees with access to the internet and this topic is covered in depth at all retirement seminars conducted by the Police Pension Fund personnel as well as in the plan summary description provided to all members.”

**APPENDIX I**  
**PENSION OVERPAYMENTS - NYC POLICE DEPARTMENT PENSION FUND**  
**2002 MATCHES (LACK OF WAIVERS)**

Pension Number	Date Retired	2002 Pension	Months Overpaid	Amount Overpaid	2002 Employer	Payroll Code	2002 Salary	Waiver Issuing Agency	Waiver in 2002
<b>*CASE #1</b> P-035267-0	7/6/88	\$31,276	7	18,267	BOE	742	67,167	BOEC	NO
P-041162-0	8/31/93	25,423	3	6,354	BOE	742	32,558	BOEC	NO
P-046887-0	5/24/00	32,931	2	5,710	DEP	826	38,254	DCAS	NO
					JJC - ADJNT.	70061	2,412	CUNYC	NO
P-021866-0	9/30/82	28,365	2	4,747	BOE	742	72,605	BOEC	9/1/01 - 6/30/02
>> P-036222-0	5/15/89	14,202	3	4,232	BOE	742	43,556	BOEC	NO
P-022849-0	6/25/83	8,587	3	3,678	NYPD	056	84,726	DCAS	NO
					JJ COLL.	70060	57,961	CUNYC	NO
** P-026243-0	7/31/85	16,491	2	3,420	BOE	742	75,270	BOEC	1/1/02 - 4/2/02
P-038764-0	12/16/90	39,174	1	3,274	BOE	742	65,788	BOEC	9/1/01 - 6/30/02
>>> P-020195-0	11/1/81	12,351	2	3,098	HRA - DSS	069	60,151	DCAS	NO
P-041589-0	12/31/93	29,438	1	2,453	BOE	742	47,765	BOEC	9/1/01 - 6/30/02
> P-037136-0	9/9/89	28,187	1	2,359	BOE	742	64,714	BOEC	9/1/01 - 6/30/02

Total:         \$     57,592

**APPENDIX I**  
**PENSION OVERPAYMENTS - NYC POLICE DEPARTMENT PENSION FUND**  
**2002 MATCHES (LACK OF WAIVERS)**

**NOTES:**

<b>BOE</b>	<b>Board of Education</b>
<b>BOEC</b>	<b>Board of Education (Chancellor's Office)</b>
<b>CUNYC</b>	<b>Board of Higher Education (City University of New York)</b>
<b>DCAS</b>	<b>Department of Citywide Administrative Services</b>
<b>DEP</b>	<b>Department of Environmental Protection</b>
<b>HRA - DSS</b>	<b>Human Resources Administration - Department of Social Services</b>
<b>JJ COLL.</b>	<b>John Jay College</b>
<b>JJC - ADJNT.</b>	<b>John Jay College Adjunct</b>
<b>NYPD</b>	<b>New York City Police Department</b>
<b>*</b>	<b>This individual was also cited in our prior audits (for 1992, 1997, 1999, and 2001)</b>
<b>**</b>	<b>This individual was also cited in our prior audits (for 1991, 1992, and 1998)</b>
<b>&gt;</b>	<b>This individual was also cited in our prior audit (for 1991)</b>
<b>&gt;&gt;</b>	<b>This individual was also cited in our prior audits (for 1991, 1992, 1996, 1997, 1998, and 1999)</b>
<b>&gt;&gt;&gt;</b>	<b>This individual was also cited in our prior audits (for 1999 and 2000)</b>

**APPENDIX II**  
**PENSION OVERPAYMENTS - NYC POLICE DEPARTMENT PENSION FUND**  
**2002 MATCHES (DISABILITY RETIREES)**

Pension Number	Date Retired	2002 Pension	Months Overpaid	Amount Overpaid	2002 Employer	Payroll Code	2002 Salary	Appointment Year
<b>CASE #2</b> P-048774-0	7/29/01	\$ 66,580	9	\$ 41,310	BOE	742	\$ 23,905	1981
P-018219-0	11/19/80	28,262	3	7,065	BOE	746	2,094	1963
P-018309-0	12/21/80	8,171	1	1,261	BOE	742	40,248	1965

**Total:**        \$        49,636

**NOTES:**

**BOE**                      Board of Education

**APPENDIX III**

**RE-EMPLOYED POLICE PENSIONERS**

**TOTALS BY CURRENT EMPLOYER**

**Current Employer**

<u>Board of Education (BOE)</u>	<u>Payroll Code</u>	<u>Total</u>
BOE (Full-Time Teachers)	742	10
BOE (Per-Diem Teachers)	746	1

**Other Agencies**

HRA/Department of Social Services	069	1
New York Police Department	056	1
John Jay College	70060	1
John Jay College Adjunct	70061	1
Department of Environmental Protection	826	1

<b><u>Total</u></b>		<b><u>16</u></b>
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## New York City Police Pension Fund

233 BROADWAY  
NEW YORK, NEW YORK 10279  
(212) 693-5100

Executive Director-Michael D. Welsome

June 11, 2004

**Greg Brooks**  
**Deputy Comptroller**  
**Policy, Audits, Accountancy & Contracts**  
**1 Centre Street Room 500**  
**New York, NY 10007-2341**

**RE: Audit Report on Pensioners of the NYC**  
**Police Department working for New**  
**York City after their retirement**  
**January 1, 2002 to December 31, 2002**  
**FL04-112A**

**Dear Mr. Brooks:**

**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 public service. POLICE 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 Comptroller's 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.**

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Regarding the 16 retirees reported by the Comptroller's Office in the May 24, 2004 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 an opportunity to obtain retro-active 211 waivers, as the current law dictates. 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, where the circumstances warrant such action, the names of 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 City of New York without the benefit of Section 211. Additionally, as noted in our response to previous audits, this fund recovered in excess of six hundred thousand dollars in previous years 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.



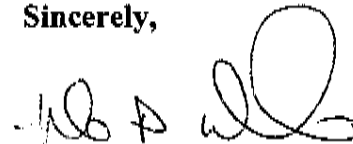
-3-

**Response**

Upon retirement, each member receives the restrictions on employment after retirement in a special handout. In 2001, a letter outlining this policy was prepared and mailed to all retirees and a new letter will be mailed out this fall. In addition, the Police Pension Fund's website provides a special reminder to all retirees with access to the internet and this topic is covered in depth at all retirement seminars conducted by Police Pension Fund personnel as well as in the plan summary description provided to all members.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Michael D. Welsome", with a large, stylized loop at the end.

Michael D. Welsome  
Executive Director  
Police Pension Fund

MDW:hdm