

AUDIT REPORT



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

Audit Report on NYC Pensioners Working for New York State After Retirement January 1, 2007 – December 31, 2007

FL09-121A

June 30, 2009



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

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the responsibilities of the Comptroller contained in Chapter 5, §93, of the New York City Charter, my office conducted an audit to identify New York City pensioners who may be reemployed by New York State and illegally collecting a pension, and to quantify the amounts of any improper payments to individuals who appear to be violators of New York State Retirement and Social Security Law, §211 and §212 or New York City Charter §1117 during calendar year 2007.

A retiree of any of the five New York City retirement systems who is reemployed in State or City government service may not continue to collect pension benefits except in accordance with conditions established by the New York State Retirement and Social Security Law, the New York City Administrative Code, and the New York City Charter. Audits such as this provide a means of ensuring that pensioners are complying with all laws pertaining to public service reemployment and that appropriate steps are taken to recoup improper payments to individuals after retirement.

The results of our audit, which are presented in this report, have been discussed with officials of the five New York City retirement systems, and their comments have been considered in preparing this report. Their complete responses are attached to this report.

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

Very truly yours,

A handwritten signature in black ink that reads "William C. Thompson, Jr.".

William C. Thompson, Jr.

WCT/fh

Report: FL09-121A
Date: June 30, 2009

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

**Audit Report on New York City Pensioners
Working for New York State after Retirement
January 1, 2007—December 31, 2007**

FL09-121A

AUDIT REPORT IN BRIEF

The objective of this audit was to identify New York City pensioners who may be reemployed by New York State and illegally collecting a pension from a New York City retirement system—known as “double-dippers” or “disability violators”—and to quantify the amounts of any improper payments to individuals who appear to be violators of New York State Retirement and Social Security Law (RSSL) §211 and §212 or New York City Charter §1117 during calendar year 2007.

Audit Findings and Conclusions

The audit found 14 individuals who received \$285,449 in pension payments during 2007 that appear to violate applicable sections of State and City laws. These individuals were in apparent violation of RSSL §211 or §212 because they were under age 65 and received excess State wages above the limitations without having a waiver on file at one of the five City retirement systems, or were in violation of §1117 of the New York City Charter because they were collecting disability pensions while earning more than \$1,800 (including pension payments) a year at a New York State agency.

Audit Recommendations

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

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

- Forward to the Department of Investigation, if the circumstances warrant such action, the name of those individuals found to be illegally collecting pensions.
- Ascertain whether previous pension overpayments have been recouped and whether current pensions have been suspended for those individuals who have been cited in previous audits as “double-dippers” or “disability violators.”
- Send special reminders to service retirees under the age of 65 and to all disability retirees that clearly state their responsibilities regarding public service reemployment.

INTRODUCTION

Background

A New York City service retiree who is reemployed by New York State or any of its political subdivisions may not continue to collect pension benefits, except in accordance with conditions established by the New York State Retirement and Social Security Law (RSSL), §210 through 216. In the case of New York City disability retirees, the governing regulations are the New York City Administrative Code (Volume 3, Title 13) and the New York City Charter (§1117). If a post-retirement employee does not comply with the relevant laws, the practice is termed “double-dipping.”

Pursuant to §211, a service retiree (a person receiving an ordinary service retirement rather than a disability retirement) who is reemployed in New York public service and who exceeds the §212 salary limitations may have his or her pension benefits denied, unless the service retiree requests that the prospective employer apply for a waiver from the State or municipal Civil Service Commission or other authorized agency. The prospective employer must set forth the reasons for the application and obtain a waiver from that agency.

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

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

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

An exception to this restriction is provided by RSSL §212, which permits a service retiree to be reemployed in New York public service if the retiree earns no more than the amount prescribed by that section and files a “Section 212 Statement of Election” with his or her retirement system (see below). For calendar year 2007, the earnings limitation does not apply after the retiree reaches the age of 65.

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

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

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

For calendar year 2007, the earnings limitation 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 2007 should have received a §211 waiver to prevent suspension of the retirement allowance during that year. Failure to comply with these requirements can result in the forfeiture of pension benefits in subsequent years.

Disability retirees are not subject to RSSL §211 and §212. However, the New York City Administrative Code, the New York State Education Law, and the New York City Charter (§1117) provide for the reemployment of New York City disability retirees in New York State public service. The following regulations are applicable to each of the five New York City retirement systems:

TRS:

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

POLICE:

The New York City Administrative Code (Volume 3, Title 13, Chapter 2, §13-254), provides for the reemployment of New York City Police Department disability retirees in New York public service. These provisions (also known as “Disability Safeguards”) apply up to only the minimum period for service retirement elected by the employee (usually 20 years, but 25 years may be elected), subject to the following conditions: (1) the retiree undergoes a medical

examination, (2) the Board of Trustees of the retirement system agrees with the medical board report and certification of the extent to which the retiree is able to work (the Board must then place the retiree's name on a civil service list as a "preferred eligible"), and (3) the Board reduces the retiree's pension to an amount which, when added to the retiree's salary, does not exceed the current maximum salary for the next higher title than that held by the person at retirement.

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

FIRE:

The New York City Administrative Code (Volume 3, Title 13, Chapter 3, §13-356 and §13-357), provides for the reemployment of New York City Fire Department disability retirees in New York public service. These provisions (also known as "Disability Safeguards") apply up to only the minimum period for service retirement elected by the employee (usually 20 years, but 25 years may be elected), subject to the following conditions: (1) the retiree undergoes a medical examination, (2) the Board of Trustees of the retirement system agrees with the medical board report and certification of the extent to which the retiree is able to work (the Board must then place the retiree's name on a civil service list as a "preferred eligible"), and (3) the Board reduces the retiree's pension to an amount which, when added to the retiree's salary, does not exceed the current maximum salary for the next higher title than that held by the person at retirement.

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

BERS:

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

NYCERS:

The New York City Administrative Code (Volume 3, Title 13, Chapter 1, §13-171), provides for the reemployment of New York City Employees' Retirement System disability

retirees in New York State public service. These provisions (also known as “Disability Safeguards”) apply up to only the minimum period for service retirement elected by the employee, subject to the following conditions: (1) the retiree undergoes a medical examination, (2) the Board of Trustees of the retirement system agrees with the medical board report and certification of the extent to which the retiree is able to work (the Board must then place the retiree’s name on a civil service list as a “preferred eligible”), and (3) the Board reduces the retiree’s pension to an amount which, when added to the retiree’s salary, does not exceed the current maximum salary for the next higher title than that held by the person at retirement.

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

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

Objective

The objective of this audit was to identify any New York City pensioners who may be reemployed by New York State and illegally collecting a pension from a New York City retirement system—known as “double-dippers” or “disability violators”—and to quantify the amounts of any improper payments to individuals who appear to be violators of RSSL §211 and §212 or New York City Charter §1117 during calendar year 2007.

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS) except for organizational independence as disclosed in the following paragraph. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was performed in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93 of the New York City Charter.

We are issuing a modified GAGAS compliance statement because of the Comptroller’s mandated non-audit responsibility in connection with the retirement system boards for NYCERS, POLICE, FIRE, and TRS. In accordance with §13-103, §13-202, §13-302, and §13-507 of the New York City Administrative Code, and §2575 of the New York State Education Law, Boards of Trustees head NYCERS, POLICE, FIRE, and TRS. The Comptroller is one of the trustees of NYCERS, POLICE, FIRE, and TRS. The Comptroller sits on each of these Boards through a designee. The Comptroller’s designee was not involved in planning or conducting this audit, or in writing or reviewing this audit report. Accordingly, we feel that the above issue has had no

impact on the objectivity of this audit, or on the conclusions and associated findings disclosed in this report.

Our audit period was January 1, 2007 through December 31, 2007. We met with officials of the five New York City retirement systems (TRS, POLICE, FIRE, BERS, and NYCERS) to review their monitoring processes for individual pensioners.

To discover the extent to which retired New York City employees were being improperly reemployed by New York State agencies, the New York State Bureau of Payroll Audit (Office of the State Comptroller, Albany) performed a computer match of the approximately 278,019 New York City pensioners against a listing of all New York State workers (approximately 195,500 annually) who received a W-2 wage statement for the year 2007.¹ This matching process identified 267 individuals under age 65 who either received more than \$30,000 in 2007 (service retirees), or \$1,800 in 2007 (disability retirees). These individuals were then sorted by retirement system and investigated to determine the reasons why those individuals received a pension check and a payroll check concurrently.

Among the valid reasons individuals received both pension checks and payroll checks are the following: some had been granted waivers; some had their pensions suspended at the appropriate times; and some were not actually employed during 2007, 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 2007. Because of the magnitude of the task, we did not match the retirees against the other New York City, New York State, and local government employees paid by municipalities, counties, and systems other than those integrated with the State or FISA.

Of the 267 matches, 197 were individuals collecting POLICE pensions, 38 were individuals collecting NYCERS pensions, 25 were individuals collecting TRS pensions, 6 were individuals collecting FIRE pensions, and 1 individual was collecting a BERS pension. For 267 individuals from POLICE, NYCERS, TRS, FIRE, and BERS we:

- obtained additional detailed information about their individual year 2007 pension and payroll payments;
- analyzed the timing, and, to some extent, the types of payments received;
- verified the amounts shown on the computer match listing; and
- met with retirement system representatives, who assisted us in searching their files for waivers and other relevant information.

Initial investigations eliminated 202 of these 267 individuals. The remaining 65 individuals appeared to lack valid reasons for being on both lists. Of the 65 individuals, 57 are service retirees and eight are disability retirees. The total amount of improper pension payments is \$1,125,348 consisting of \$950,996 in improper pension payments to service retirees, and \$174,352 in improper pension payments to disability retirees.

¹ This audit report is exclusive of the five separate audit reports of New York City pensioners working for New York City after their retirement in 2007: the five audits of City workers are FL09-120A (TRS), FL09-116A (BERS), FL09-117A (NYCERS), FL09-118A (POLICE), and FL09-119A (FIRE).

The breakdowns for the five New York City retirement systems are as follows:

<u>Retirement System</u>	<u>Service Retirees</u>	<u>Disability Retirees</u>	<u>Total Retirees</u>	<u>Improper Pension Payments</u>
POLICE	4	4	8	\$ 177,406
TRS	3	1	4	\$ 94,143
NYCERS	<u>0</u>	<u>2</u>	<u>2</u>	<u>\$ 13,900</u>
Total	<u>7</u>	<u>7</u>	<u>14</u>	<u>\$ 285,449</u>

For those pensioners who appeared to lack valid reasons for receiving both pension and payroll checks, we calculated the apparent pension overpayments, based on our analyses of when these reemployed pensioners reached the legal earnings limitations of \$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 and §212 and New York City Charter §1117 and therefore should be excluded from the overpayments cited in this report. The annuity portions, which are estimated to be less than five percent of the total overpayments, can be determined only by retirement system officials.

In addition, we followed-up on the implementation status of the recommendations from last year's audit report—*New York City Pensioners Working for New York State after Their Retirement January 1, 2006—December 31, 2006*, FL08-112A, issued June 30, 2008—by reviewing provided correspondence from BERS, POLICE, NYCERS, and TRS. We also intended to follow-up on the implementation status of the recommendations from FIRE. However, last year's report did not make any recommendations to FIRE because the audit did not identify any pensioners who received 2006 pension payments that appear to violate applicable sections of state or City laws.

Discussion of Audit Results

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

POLICE Response: On June 2, 2009, we received a response from the POLICE Executive Director, in which he described the actions POLICE has taken to address the report's recommendations.

TRS Response: On June 10, 2009, 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.”

NYCERS Response: On June 4, 2009, we received a response from the NYCERS Director of Finance, in which he described the actions NYCERS has taken to address the report’s recommendations.

FIRE Response: On May 29, 2009, we received a response from the FIRE Chief Compliance Officer, in which he either agreed to implement or stated that FIRE was already in the process of implementing the report’s recommendations.

BERS Response: On June 11, 2009, we received a response from the BERS Director of Operations, stating: “Though no violators have been found in the audit, we will continue to be vigilant in seeking total adherence to the aforementioned laws.”

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

FINDINGS

Overpayment of Pension Benefits

This audit identified 14 individuals who received \$285,449 in pension payments during 2007 that appear to violate applicable sections of State and City laws. (See Appendices I through VII for the agency summaries and detailed listings of the 14 pensioners and their current employers.)

As stated previously, we identified 14 pensioners who were in apparent violation of RSSL §211 or §212 because they were under age 65 and received excess State wages above the limitations without having a waiver on file at one of the five City retirement systems, or were in violation of §1117 of the New York City Charter because they were collecting disability pensions while earning more than \$1,800 (including pension payments) a year at a New York State agency and were past their applicable anniversary dates. These 14 individuals received improper pension payments of \$285,449, as follows:

	<u>Number of Individuals</u>	<u>Total Improper Payments</u>
2007 §211/212 Violators	7	\$ 114,938
2007 §1117 Violators	<u>7</u>	<u>170,511</u>
Total	<u>14</u>	<u>\$ 285,449</u>

Our total represents the amount of improper 2007 pension payments based on an analysis of when the reemployed pensioners reached the legal earnings limitations of (\$30,000 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, that are not affected by RSSL §211 or §212, were not excluded; rather, they were estimated to be less than five percent of the total calculated payments. The exact annuity portion, if any, for each individual can be determined only by City retirement systems officials. Immediate action by the five City retirement systems and employing State agencies is needed to investigate and recoup, when appropriate, any improper payments made to those retirees identified as possible “double-dippers.” (The applicable employing agencies involved in this audit appear in Appendix VIII.)

The following is an example of a POLICE service retiree who was found to be working at a State agency during calendar year 2007:

CASE #1: This individual, who retired in October, 1998, collected 12 pension checks (one for each month) in calendar year 2007, totaling \$73,423. This individual worked for the John Jay College and the Law Department for twelve months (January through December) and collected a salary of \$53,563. We found no evidence of a waiver for this individual for any

portion of 2007. On May 24, 2007, this person's cumulative salary earnings for the year exceeded the \$30,000 limit for service retirees. Therefore, it appears that seven pension checks (June to December) totaling \$42,865 may have been improperly received and cashed in calendar year 2007.

The following is an example of a POLICE disability retiree who was found to be working at a State agency during calendar year 2007:

CASE #2: This individual, who retired in October 1982 on a disability pension, collected 12 pension checks (one for each month) in calendar year 2007, totaling \$42,876. This individual worked for the Office of Parks and Recreation Long Island Park Commission for twelve months (January through December) and collected a salary of \$12,456. This individual became a member of the Police Department in 1961, and therefore does not qualify for "Disability Safeguards" provisions beyond 1981. Accordingly, any earnings above \$1,800 for 2007 make the disability pension payments for the year improper. Therefore, it appears that eleven pension checks (February through December) totaling \$39,310, may have been improperly received and cashed in 2007.

The following is an example of a TRS service retiree who was found to be working at a State agency during calendar year 2007:

CASE #3: This individual, who retired in July 1, 2003, collected 12 pension checks (one for each month) in calendar year 2007, totaling \$95,555. This individual worked for the City University of New York at City College for twelve months in 2007 (January through December) and collected a salary of \$81,152. We found no evidence of a waiver for this individual for any portion of 2007. On May 10, 2007, this person's cumulative salary earnings for the year exceeded the \$30,000 limit for service retirees. Therefore, it appears that seven pension checks (June through December) totaling \$55,860 may have been improperly received and cashed in calendar year 2007.

The following is an example of a NYCERS disability retiree who was found to be working at a State agency during calendar year 2007:

CASE #4: This individual, who retired in November 1992 on a disability pension, collected 12 pension checks (one for each month) in calendar year 2007, totaling \$14,191. This individual worked for the State Department of Correction at the State Office Campus for twelve months (January through December) and collected a salary of \$15,973. This individual became a

member of NYCERS in 1982, and therefore does not qualify for “Disability Safeguards” provisions beyond 2002. Accordingly, any earnings above \$1,800 for 2007 make the disability pension payments for the year improper. Therefore, it appears that eleven pension checks (February through December) totaling \$13,014 may have been improperly received and cashed in 2007.

It should be noted that in their correspondences concerning the implementation status of the recommendations from last year’s audit of 2006, NYCERS, TRS, POLICE, and BERS officials advised us that, they have implemented or were in the process of implementing the report’s recommendations. FIRE did not provide us any correspondence. It should be noted that last year’s report did not make any recommendations to FIRE because the audit did not identify any pensioners who received 2006 pension payments that appear to violate applicable sections of state or City laws.

RECOMMENDATIONS

Officials of the New York City retirement systems should:

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

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

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

The NYCERS Director of Finance stated:

“We have investigated the two pensioners cited who were employed with the State of New York and determined the following:

- One pensioner retired as a disability pursuant to §507a of the RSSL and was not in violation, as the Personal Service Income Limitation was \$26,000 for calendar year 2007 and the pensioner earned \$15,973. See attached Law Department memo dated December 9, 2005, which addresses income limitations for re-employed retirees that retired pursuant to §605 or §507a of the RSSL.
- The other pensioner named retired as a disability pursuant to §605 of the RSSL and was found to be in violation. His pension was suspended for 12 months from May 2007 to April 2008.”

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

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

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

We maintain that both individuals cited in this report were in violation of New York City Charter §1117 and should be required to repay the amount of improper payments they received.

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

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

BERS did not address this recommendation.

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

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

BERS did not address this recommendation.

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

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

BERS did not address this recommendation.

APPENDIX I
SUMMARY OF 2007 OVERPAYMENTS

	SERVICE		DISABILITY		TOTAL	
POLICE	4	53,110	4	124,296	8	177,406
FIREFIGHTERS	3	61,828	1	32,315	4	94,143
OFFICERS	0	0	2	13,900	2	13,900
TOTAL	<u>7</u>	<u>\$114,938</u>	<u>7</u>	<u>\$170,511</u>	<u>14</u>	<u>\$285,449</u>

**APPENDIX II
2007 PENSION OVERPAYMENTS - NYC POLICE DEPARTMENT PENSION FUND
SERVICE RETIREES**

Penion Number	Date Retired	2007 Pension	Months Overpaid	Amount Overpaid	2007 Employer	Payroll Code	2007 Salary	Waiver Issuing Agency	Waiver in 2007
*P-046761-0	10/28/1988	73,423	7	42,088	JOHN JAY COL & ADJ LAW DPT	7008077096125	53,563	CUNY/DGAS	NO
*P-038763-0	12/15/1990	26,330	2	4,374	OFF OF COURT ADM/FIN MAN	5608	49,062	CAC	NO
P-039180-0	8/11/1991	39,870	1	3,065	CITY COLL/CITY COLL ADJ	70020770021	72,863	CUNY	4/1/06-3/31/07
P-029610-0	12/31/1987	33,736	1	2,804	SUNY AT STON/HR	28050	44,837	SUNY	NO

Total Individuals: 4

Total: \$ 83,110

Notes:
CITY COLL
CITY COLL ADJ
JOHN JAY COL & ADJ
LAW DPT
OFF OF COURT ADM/FIN MAN
SUNY AT STON/HR
CUNY
SUNY
CAC
DCAS

City University of New York - City College
City University of New York - City College Adjunct
City University of New York - John Jay College - and John Jay College Adjunct
Law Department (City)
Office of Court Administration - Financial Management/Payroll Division
State University of New York - Stony Brook - Human Resource Services
Bd of Higher Ed (CUNY - City University of New York) (NYC)
State University of New York Chancellor
Chief Administrator of Courts
Department of Citywide Administrative Services

*These individuals were cited in our prior audit for calendar year 2006

APPENDIX III
2007 PENSION OVERPAYMENTS - POLICE PENSION FUND
DISABILITY RETIREES

Pension Number	Date Retired	2007 Pension	Months Overpaid	Amount Overpaid	2007 Employer	Payroll Code	2007 Salary	Disability Safeguards
Case # 2 *P-021976-0	10/20/1982	\$ 42,876	11	\$39,310	OFF OF PARKS/ LONG ISLAND	49220	\$ 12,456	NO
*P-022920-0	7/4/1983	31,578	11	28,954	OFF OF PARKS/ PALISADES INTERSTATE	49059	24,244	NO
*P-026931-0	1/31/1986	30,580	11	28,039	OFF COURT ADM/ SUP COURT	5979	136,700	NO
*P-010350-0	2/15/1975	30,531	11	27,993	OFF COURT ADM/ NASSAU COUNTY	5519	136,700	NO

Total Individuals: 4

Total: \$124,296

Notes:

OFF OF PARKS/ LONG ISLAND
OFF OF PARKS/ PALISADES INTERSTATE
OFF COURT ADM/ NASSAU COUNTY
OFF COURT ADM/ SUP COURT

Office of Parks & Recreation - Long Island Park Commission
Office of Parks & Recreation - Palisades Interstate Park Commission
Office of Court Administration/ Nassau County Supreme Court
Office of Court Administration - Supreme Court

*These individuals were cited in our prior audit for calendar year 2006.

**APPENDIX IV
2007 PENSION OVERPAYMENTS - NYC TEACHERS' RETIREMENT SYSTEM
SERVICE RETIREES**

Pension Number	Date Retired	2007 Pension	Months Overpaid	Amount Overpaid	2007 Employer	Payroll Code	2007 Salary	Waiver Issuing Agency	Waiver In 2007
Case # 3 U-717471-0	7/1/2003	95,555	7	55,860	CUNY CC	70020	81,152	CUNY	NO
U-705453-0	8/2/1998	56,251	1	4,706	OCA-NJD	5597	34,975	CAC	NO
U-029468-0	7/1/2005	7,721	2	1,261	OCA-NYC-HRA PR	5617	39,282	CAC	NO

Total Individuals: 3

Total: \$ 61,828

NOTES:

- CUNY CC City University of New York City Colleges
- OCA-NJD Office of Court Administration-Ninth Judicial District
- OCA-NYC-HRA PR Office of Court Administration-NYC Criminal Court Human Resources Payroll Division
- CUNY Bd. Of Higher Ed.(CUNY - City University of New York) (NYC)
- CAC Chief Administrator of Courts

**APPENDIX V
2007 PENSION OVERPAYMENTS - NYC TEACHERS' RETIREMENT SYSTEM
DISABILITY RETIREES**

Pension Number	Date Retired	2007 Pension	Months Overpaid	Amount Overpaid	2007 Employer	Payroll Code	2007 Salary
T-784437	6/12/1992	\$64,385	6	\$32,315	CUNY/COLL OF S.I. ADJ.	70101	\$5,041

Total Individuals: 1

Total: \$32,315

Notes:

CUNY/COLL OF S.I. ADJ. City University of New York/ College of Staten Island Adjunct

APPENDIX VI
 2007 PENSION OVERPAYMENTS - NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM
 DISABILITY RETIREES

Pension Number	Date Retired	2007 Pension	Months Overpaid	Amount Overpaid	2007 Employer	Payroll Code	2007 Salary	Disability Safeguards (DS)
*N-302457-0	11/23/1992	\$14,191	11	\$13,014	CORRECTIONAL/STATE OFFICE CAMPUS	10160	\$15,973	NO
*N-313070-0	6/26/1999	3875	1	886	DOH/ ST. ALB. HOME FOR VET.	12150	40594	NO

Total Individuals: 2 Total: \$13,900

Notes:

DOH, ST. ALB. HOME FOR VET
 CORRECTIONAL/STATE OFFICE CAMPUS

Department of Health/ St. Albans Home for Veterans
 Department of Correctional Services/ State Office Campus

*This individual was also cited in our prior audit for calendar year 2006.

APPENDIX VII

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

Current State Employer	Payroll Code	Individuals Paid under Code			TOTAL
		NYCERS 2007	TRS 2007	POLICE 2007	
Law Department	25			1	1
Office of Court Administration Nassau County Supreme Court	5519			1	1
Office of Court Administration Ninth Judicial District	5597		1		1
Office of Court Administration Financial Management	5609			1	1
Office of Court Administration NYC Criminal Court	5617		1		1
Office of Court Administration Supreme Court	5979			1	1
Department of Correctional Services	10160	1			1
Department of Health - St. Albans Home for Veterans	12150	1			1
SUNY Stony Brook	28050			1	1
Office of Parks & Recreation Palisades Interstate Park Commission	49059			1	1
Office of Parks & Recreation Long Island Park Commission	49220			1	1
CUNY City College	70020		1	1	2
CUNY City College Adjunct	70021			1	1
Cuny John Jay College	70060			1	1
Cuny John Jay Adjunct	70061			1	1
CUNY College of Staten Island Adjunct	70101		1		1
Total		2	4	11	17



New York City Police Pension Fund

233 Broadway
New York, NY 10279
(212) 693-5100

Anthony J. Garvey
Executive Director

June 02, 2009

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

Re: Audit Report on New York City
Pensioners working for New York
State after their Retirement
January 1, 2007 – December 31, 2007
FL09-121A

Dear Mr. Graham:

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

Recommendation #1

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

Response

The Police Pension Fund is in total agreement that recoupment of pension benefits received in violation of the law should be commenced immediately. It should be noted, however, that this Retirement System does not exercise control over its Pension payroll data tape. We are requesting that the Comptrollers Office, as custodian of Police Pension payroll records, supply a list to my office on a semi-annual basis of all retirees found to be "double-dipping." This will afford the Police Pension Fund an opportunity to fully investigate all identified violators on a timely basis.

-2-

Regarding the 8 retirees listed by the Comptrollers Office in the May 20, 2009 audit report as possible violators, the Police Pension Fund will investigate all members in question to determine if they are in violation of Section 1117 of the New York City Charter. Those in violation will be given the opportunity to obtain retro-active 211 waivers, as the current law permits. Should such approval be denied, the Police Pension Fund will recover all pension monies received from the period in question.

Recommendation #2

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

Response

The Police Pension Fund concurs with recommendation #2, however, no retiree investigated was deemed appropriate for such a referral.

Recommendation # 3

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

Response

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

Recommendation #4

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

-3-

Response

The Police Pension Fund's website provides a special reminder to all retirees with access to the internet and this topic is covered in depth in all retirement seminars conducted by Police Pension Fund personnel as well as in the plan summary description provided to all members. Upon retirement, each member receives the restrictions on employment after retirement in a special handout of the retirement package. In 2006, an insert outlining this policy was prepared and mailed to all retirees and finally, a letter from the NYC Police Pension Fund was sent to the NYC Department of Education requesting that any Police Department retiree seeking employment with the NYC Department of Education be reminded of the statutory restrictions on employment.

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

Sincerely,



Anthony J. Garvey
Executive Director
NYC Police Pension Fund

AJG:hdm



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

Date: June 10, 2009

Mr. John Graham
Deputy Comptroller Audit Accountancy and Contracts
Bureau of Audit
1 Centre Street Room 530
New York, NY 10007 - 2341

Re: Audit Report on NYC Teachers' Retirement System
New York City Pensioners
Working for New York State after their Retirement
January 1, 2007 to December 31, 2007
FL09-121A

Dear Mr. Graham:

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 for the New York State after Retirement" in 2007 that remain over the EAR limit of \$30,000. The three (3) pensioners had no reported wages on file. TRS have sent correspondences to those pensioners explaining that their earnings must be verified and within EAR limits to avoid suspension.

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

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

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

Sincerely,


Stan Charles
Deputy Director
Internal Audit Division

Cc: N. Serrano, P. Raucci, A. Scully, S. Morrison-Goldfine

2007 Earning After Retirement - UPDATE

EAR LIMIT \$30,000

Group A
New York City Pensioners Working as Consultant after Retirement

#	Pension #	Date Retired	Employer	Waiver on file	Pension Benefits	OTC Audit	EAR Wages	Diff	Audit Results in Brief	Audit Status
1	U0165070	11/2/2008	DM/1st JUD/ NYC-COMP	N	3,834.00	181,429.55	0.00	181,429.55	Over limit (Effective 08/08-07/09) *suspension for 2006 EAR	Suspension 2006/ 2007 Benefit

Group B
New York City Pensioners Working for the State after Retirement

#	Pension #	Date Retired	Employer	Waiver on file	Pension Benefits	OTC Audit	EAR Wages	Diff	Audit Results in Brief	Audit Status
1	U7174710	7/1/2003	BOE-EMP BPRIN	N	95,499.93	81,152.42	0.00	81,152.42	No Reported Wages	Send Notice
2	U7054530	8/2/01988	BOE-EMP BTEAC	N	56,250.92	34,975.43	0.00	34,975.43	No Reported Wages	Send Notice
3	U0284690	7/1/2005	BOE-EMP BTEAC	N	7,568.04	39,282.08	0.00	39,282.08	No Reported Wages	Send Notice

Group C
New York City Pensioners Working for the City after Retirement - Disability

#	Pension #	Date Retired	Employer	Waiver on file	Pension Benefits	OTC Audit	EAR Wages	Diff	Audit Results in Brief	Audit Status
1	T0600550	4/12/1982	CUNY Kingsboro	N	7,850.84	18,245.34	0.00	18,245.34	Overlimit Effective: 08/ 08- 07/ 09 *suspension for 2006 EAR *suspension for 2006 EAR	Suspension 2006/ 2007 Benefit
2	T7844370	6/12/1992	CUNY College of S.I.	N	20,990.40	5,040.81	0.00	5,040.81	No Reported Wages CUNY	Send Notice

2007 Earning After Retirement - UPDATE

EAR LIMIT \$30,000

Group D New York City Pensioners Working for the City after Retirement											
#	Pension #	Date Retired	Employer	Waiver on file	Pension Benefits	OTC Audit	EAR Wages	Diff	Audit Results in Brief	Audit Status	
1	T7907300	9/11/1990	Fire Dept	N	50,753.28	76,490.36	0.00	76,490.36	No Reported Wages Fire Department	Send Notice	
2	U7318010	7/1/2006	BOE-EMP BPAXS	N	91,451.77	44,945.77	39,698.32	5,247.45	Did not go over limit Retro Adjustment- \$5,539.97 Prior Year Earnings- \$4,4404.51	Resolved	
3	U7315580	7/1/2006	BOE-EMP BTEAC	N	76,924.41	44,124.48	28,532.50	15,591.98	Did not go over limit Under \$30,000	Resolved	
4	U7315870	7/1/2006	BOE-EMP BTEAC	N	98,315.23	47,468.22	29,916.92	17,551.30	Did not go over limit Under \$30,000	Resolved	
5	U0235660	8/15/2004	BOE-EMP BTEAC	N	64,860.38	33,407.86	33,989.78	-582.12	Did not go over limit Retro Adjustment- \$5,134.95	Resolved	
6	U7194870	7/1/2003	BOE-EMP BPAXS	N	90,345.37	35,469.74	30,029.59	5,380.15	Did not go over limit Repayment - \$29.59	Resolved	
7	U7194870	10/10/2006	BOE-EMP BEDAD	N	85,828.93	130,687.16	34,935.23	95,751.93	Did not go over limit Retro Adjustment- \$5,146.11	Resolved	
8	U7276690	8/31/2004	BOE-EMP BPRIN	N	66,595.25	39,820.94	43,724.07	-3,903.13	Over limit Effective: 01/09-05/09 2006- 6 months 2007- 5 months	Benefit Suspension 2006/2007	
9	U7202640	7/1/2003	BOE-EMP BPAXS	N	82,357.83	32,905.03	34,802.34	-1,897.31	Did not go over limit Retro Adjustment- \$1,612.51 Repayment- \$3,199.86	Resolved	
10	U7144140	8/31/2002	BOE-EMP BEDAD	N	67,853.54	32,556.16	28,249.88	4,306.28	Did not go over limit Under \$30,000	Resolved	
11	U0309320	7/1/2005	BOE-EMP BTERS	N	19,223.04	46,140.54	56,124.13	-9,983.59	Over limit Effective: 01/08-11/08 2006- 6 months 2007- 5 months	Benefit Suspension 2006/2007	
12	U0072420	4/9/2001	Dept of Parks Recreation	N	4,624.32	45,521.78	0.00	45,521.78	No Reported Wages Parks Department	Send Notice	



June 04, 2009

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

Audit Report FL09-121A
Pensioners Working for the State
Calendar Year 2007

Dear Mr. Graham:

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

Recommendation #1 - We have investigated the two pensioners cited who were employed with the State of New York and determined the following:

- One pensioner retired as a disability pursuant to §507a of the RSSL and was not in violation, as the Personal Service Income Limitation was \$26,000 for calendar year 2007 and the pensioner earned \$15,973. See attached Law Department memo dated December 9, 2005, which addresses income limitations for re-employed retirees that retired pursuant to §605 or §507a of the RSSL.
- The other pensioner named retired as a disability pursuant to §605 of the RSSL and was found to be in violation. His pension was suspended for 12 months from May 2007 to April 2008.

Recommendation #2 - NYCERS will refer all cases to the Department of Investigation that involve individuals who continuously and knowingly violate RSSL §211 or §212, NYC Administrative Code Sec 13-171 or NYC Charter §1117.

Recommendation #3 - All pension overpayments for individuals cited in previous audit reports have either been fully recouped or are in the process of being recouped.

Recommendation #4 - A special notice regarding re-employment after retirement is sent to our pensioners each year in September.

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

I have enclosed details regarding the pensioners cited in this audit report. 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

NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

NEW YORK CITY EMPLOYEES RETIREMENT SYSTEM (NYCERS)
 SUMMARY RESPONSE - COMPTROLLER'S AUDIT
 PENSIONERS WORKING FOR THE STATE AFTER RETIREMENT
 CALENDAR YEAR 2007

SYCEDISAB	PENSION#	RET DATE	2007 SALARY	2007 LIMIT	OVER-LD	SUSPENDED FROM PAYMENTS	COMMENTS
Disability	313070-0	11/23/92	\$ 15,973.00	\$ 26,000.00	\$ -	N/A	LIMIT NOT EXCEEDED - Income was \$15,973, limit was \$26,000
Disability	302457-0	06/26/99	\$ 40,584.00	\$ 26,000.00	\$ 10,584.28	May 2007	LIMIT EXCEEDED - Pension allowance has been suspended for 12 Months



MICHAEL A. CARDOZO
Corporation Counsel

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

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

**CONFIDENTIAL
ATTORNEY-CLIENT
MEMORANDUM**

TO: Diane D'Alessandro
Executive Director
NYCERS

Milton Aron
Deputy Executive Director
NYCERS

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

Susan Sanders *SS*
Senior Counsel, Pensions Division

DATE: December 9, 2005

SUBJECT: Issues Relating to Comptroller's Audits

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

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

Income Limitation for Tier 3 and 4 Disability Retirees

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

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

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

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

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

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

The Opinion states:

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

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

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

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

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

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

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

Re-employment as a Consultant

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

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

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



FIRE DEPARTMENT

9 METROTECH CENTER - ROOM 85-10

BROOKLYN, NEW YORK 11201-3857

RAY SAYLOR
CHIEF COMPLIANCE OFFICER



May 29, 2009

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

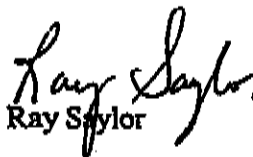
Re: Audit Report on NYC Pensioners Working for New York State After Retirement. January 1, 2007 – December 31, 2007. FL09-121A.

Dear Mr. Graham:

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

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

Sincerely,


Ray Saylor

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

Audit FL09-121A

AUDIT RECOMMENDATIONS / FDNY RESPONSE – AGENCY IMPLEMENTATION PLAN

AUDIT RECOMMENDATIONS / FDNY RESPONSE – AGENCY IMPLEMENTATION PLAN

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

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

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

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

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

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

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

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

BOARD OF EDUCATION RETIREMENT SYSTEM
OF THE CITY OF NEW YORK

KATHLEEN GRIMM, Co-Chair

MILAGROS RODRIGUEZ, Co-Chair



CHRISTINE BAILEY
EXECUTIVE DIRECTOR

ALAN D. AVILES
PHILIP A. BERRY
DAVID C. CHANG
JOAN CORREALE
JOSEPH D'AMICO
DMYTRO FEDKOWSKYJ
WENDY GILGEOUS
TINO HERNANDEZ
EDISON D. JACKSON
JOEL I. KLEIN
RICHARD L. MENSCHEL
MARITA REGAN
MILAGROS RODRIGUEZ
ANNA SANTOS
PATRICK SULLIVAN
TRUSTEES

June 11, 2009

John Graham, Deputy Comptroller
Audits, Accountancy & Contracts
1 Centre Street-5th Floor
New York, NY 1007-2341

Re: Audit Report on New York City
Pensioners Working for the New York
State After Retirement
January 1, 2007-December 31, 2007
FL09-121A

Dear Mr. Graham:

We are in receipt of your recently issued draft audit report on "New York City Pensioners Working for New York State after Retirement" during the period January 1, 2007 through December 31, 2007. For the period under consideration, you did not identify any retiree of the Board of Education Retirement System (BERS) who were re-employed in violation of the New York State Education Law (Title 2, Article 52, § 2575), and the New York City Charter (§1117), the RSSL §211 and §212.

We agree with your conclusions, and though no violators have been found in this audit, we will continue to be vigilant in seeking total adherence to aforementioned laws. Lastly, we would like to extend our gratitude to you and all parties involved in conducting this audit. Thank you.

Sincerely,

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

John Cahalin
Director of Operations

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