

# 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 Fire Department Working for the City after Retirement January 1, 2007—December 31, 2007**

*FL09-119A*

**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 Fire Department Pension Fund (FIRE) retirees who may be reemployed by a City agency 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 the New York City Fire Department 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 FIRE officials, and their comments have been considered in preparing this report. Their complete response is 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 e-mail my audit bureau at [audit@Comptroller.nyc.gov](mailto: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." in a cursive style.

William C. Thompson, Jr.

WCT/fh

**Report: FL09-119A**  
**Date: June 30, 2009**

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

**Audit Report on Pensioners of the  
New York City Fire Department  
Working for the City after Retirement  
January 1, 2007–December 31, 2007**

**FL09-119A**

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**AUDIT REPORT IN BRIEF**

The objective of this audit was to identify New York City pensioners who may be reemployed by a City agency and illegally collecting a pension from the New York City Fire Department Pension Fund (FIRE)—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), §210 through §216, or New York City Charter §1117, during calendar year 2007.

**Audit Findings and Conclusions**

The audit did not find any individuals who received pension payments during 2007 that appear to violate applicable sections of State and City laws. Specifically, no 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 FIRE, 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) during calendar year 2007.

**Audit Recommendations**

Since the audit did not find any individuals who received pension payments during 2007 that appear to violate applicable sections of State and City laws, the audit did not make any recommendations to FIRE officials.

## **INTRODUCTION**

### **Background**

A New York City Fire Department service retiree who is reemployed 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 Fire 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 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 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 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). 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 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 (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 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 pensioners who may be reemployed by a City agency and illegally collecting a pension from the New York City Fire Department Pension Fund—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 New York City Fire Department Pension Fund Board. In accordance with §13-302 of the New York City Administrative Code, the Comptroller is one of twelve trustees of the New York City Fire Department Pension Fund and is entitled to cast three of the 24 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 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 New York City Fire Department Pension Fund to review their monitoring processes for individual pensioners.

To discover the extent to which retired City employees were being improperly reemployed by City agencies, the Audit Bureau's IT Division performed a computer match of the approximately 278,019 New York City pensioners against a listing of all City workers (approximately 403,173) who received a W-2 wage statement from the Financial Information Services Agency (FISA) for the year 2007.<sup>1</sup> This matching process identified 1,135 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 these 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. Although the match did not include local government employees paid by systems other than those integrated with FISA, we are presently conducting year 2007 matches of City pensioners (BERS, NYCERS, FIRE, POLICE, and TRS) against the 195,500 State workers; the results of this match will be covered in a separate report (Audit # FL09-121A).

Of the 1,135 matches, nine consisted of individuals collecting FIRE pensions. For those nine individuals, 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.

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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 FL09-120A (TRS), FL09-116A (BERS), FL09-117A (NYCERS), and FL09-118A (POLICE).

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 reemployed pensioners reached the legal earnings limitation 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 FIRE officials.

In addition, we intended to follow-up on the implementation status of the recommendations from last year's audit report—*Pensioners of the New York City Fire Department Pension Fund Working for the City after Retirement January 1, 2006–December 31, 2006*, FL08-107A, issued June 30, 2008—by requesting information 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 FIRE officials during and at the conclusion of this audit. A preliminary draft report was sent to FIRE officials. FIRE officials decided to waive the exit conference. We submitted a draft report to FIRE officials with a request for comments. We received a written response from FIRE officials on May 29, 2009. The full text of the FIRE response is included as an addendum to this report.



## **FINDINGS AND RECOMMENDATIONS**

### **Overpayment of Pension Benefits**

The audit did not find any individuals who received pension payments during 2007 that appear to violate applicable sections of State and City laws. Specifically, no 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 FIRE, 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) during calendar year 2007.

### **RECOMMENDATIONS**

Since the audit did not find any individuals who received pension payments during 2007 that appear to violate applicable sections of State and City laws, the audit did not make any recommendations to FIRE officials.



**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

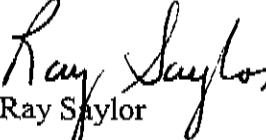
**Re: Audit Report on Pensioners of the New York City Fire Department  
Working for the City after their Retirement.  
January 1, 2007 – December 31, 2007. FL09-119A.**

Dear Mr. Graham:

The above audit did not find any individuals who received pension payments during 2007 that appear to violate applicable sections of State and City laws, hence no recommendations were made. Please thank your audit staff for the assistance they have provided to the Department in this review.

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

Sincerely,

  
Ray Saylor

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