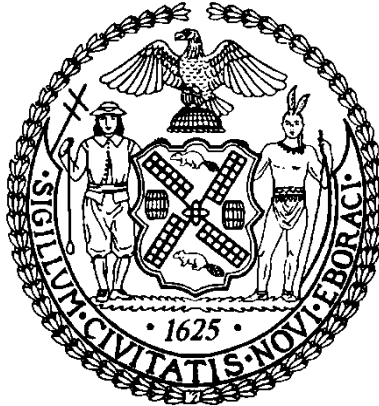


**CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER**

**John C. Liu  
COMPTROLLER**

**FINANCIAL AUDIT**

**Tina Kim  
Deputy Comptroller for Audit**



**Audit Report on Pensioners of the New York  
City Employees' Retirement System Working  
for the City after Retirement  
January 1, 2009—December 31, 2009**

*FL11-098A*

**June 30, 2011**

<http://comptroller.nyc.gov>



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

John C. Liu  
COMPTROLLER

June 30, 2011

**To the Residents of the City of New York**

My office has audited the New York City Employees' Retirement System (NYCERS) to identify New York City pensioners who appear to be violators of New York State Retirement and Social Security Law (RSSL) §211 and §212, or New York City Charter §1117 during calendar year 2009. These individuals—known as “double-dippers” or “disability violators”—have been re-employed by a City agency and may be illegally collecting a pension from NYCERS.

The audit found no pensioners who were in apparent violation of RSSL §211 - §212 because none of the pensioners under age 65 received City wages exceeding the limitations without having a waiver on file, and no pensioners were in violation of §1117 of the New York City Charter, which prohibits a New York City Employees' Retirement System 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. Because the audit found no pensioners who violate applicable sections of State and City laws, this report makes no recommendations to NYCERS officials.

The results of the audit have been discussed with NYCERS officials, and their comments have been considered in preparing this report. Their complete response is attached to this report.

If you have any questions concerning this report, please e-mail my audit bureau at [audit@Comptroller.nyc.gov](mailto:audit@Comptroller.nyc.gov).

Sincerely,

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

John C. Liu

*Table of Contents*

**AUDIT REPORT IN BRIEF**

Audit Findings and Conclusions.....1  
Audit Recommendations.....1  
New York City Employees’ Retirement System Response.....1

**INTRODUCTION.....2**

Background.....2  
Objective.....3  
Scope and Methodology.....4  
Discussion of Audit Results.....5

**FINDINGS.....6**

Overpayment of Pension Benefits.....6

**RECOMMENDATIONS.....6**

**ADDENDUM NYC Employees’ Retirement System Response**

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

**Audit Report on Pensioners of the  
New York City Employees' Retirement System Working  
for the City after Retirement  
January 1, 2009–December 31, 2009**

**FL11-098A**

---

**AUDIT REPORT IN BRIEF**

The objective of this audit was to identify New York City pensioners who appear to be violators of New York State Retirement and Social Security Law (RSSL) §211 and §212, or New York City Charter §1117 during calendar year 2009. These individuals—known as “double-dippers” or “disability violators”—have been re-employed by a City agency and may be illegally collecting a pension from the New York City Employees' Retirement System (NYCERS).

**Audit Findings and Conclusions**

The audit found no pensioners who were in apparent violation of RSSL §211 - §212 because none of the pensioners under age 65 received City wages exceeding the limitations without having a waiver on file, and no pensioners were in violation of §1117 of the New York City Charter, which prohibits a New York City Employees' Retirement System 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.

**Audit Recommendations**

Because the audit found no pensioners who violate applicable sections of State and City laws, this report makes no recommendations to NYCERS officials.

**NYCERS Response**

NYCERS officials responded that they are committed to constant and consistent monitoring to avoid pension overpayments.

## **INTRODUCTION**

### **Background**

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

Pursuant to RSSL §211, a service retiree (a person receiving an ordinary service retirement rather than a disability retirement) who is re-employed in New York public service and who exceeds the §212 salary limitations may have his or her pension benefits denied, unless the service retiree requests that the prospective employer apply for a waiver from the State or municipal Civil Service Commission or from any of the seven authorized agencies listed below. 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)
- New York City Civil Service Commission (NYC)
- Chancellor of the Board of Education (NYC)
- Board of Higher Education (CUNY)
- Chancellor of State University (SUNY)
- Administrator of Courts (NYS-NYC)

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

An exception to this restriction is provided by RSSL §212, which permits a service retiree to be re-employed in New York public service if the retiree earns no more than the amount prescribed by that section and files a "Section 212 Statement of Election" with his or her retirement system (see below). For calendar year 2009, the earnings limitation does not apply after the retiree reaches the age 65.

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

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

For calendar year 2009, 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 2009 should have received a §211 waiver to prevent suspension of the retirement allowance during that year. Failure to comply with these requirements can result in the forfeiture of pension benefits in subsequent years.

Disability retirees are not subject to RSSL §211 and §212. However, the New York City Administrative Code (Volume 3, Title 13, Chapter 1, §13-171) provides for the reemployment of New York City Employees' Retirement System disability retirees in New York public service. These provisions (also known as "Disability Safeguards") apply up to only the minimum period for service retirement elected by the employee, subject to the following conditions: (1) the retiree undergoes a medical examination, (2) the Board of Trustees of the retirement system agrees with the medical board's report and certification of the extent to which the retiree is able to work (the Board must then place the retiree's name on a civil service list as a "preferred eligible"), and (3) the Board reduces the retiree's pension to an amount which, when added to the retiree's salary, does not exceed the current maximum salary for the next higher title than that held by the person at retirement.

After the minimum (20- or 25-year) period for service retirement has expired, disability retirees in New York City are subject to 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 New York City pensioners who appear to be violators of New York State RSSL §211 and §212 or New York City Charter §1117 during calendar year 2009. These individuals—known as "double-dippers" or "disability violators"—have been re-employed by a City agency and may be illegally collecting a pension from the New York City Employees' Retirement System.

## **Scope and Methodology**

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

We are issuing a modified GAGAS compliance statement because of the Comptroller's mandated non-audit responsibility in connection with NYCERS. In accordance with §13-103 of the City Administrative Code, the Comptroller is one of 11 trustees of the City Employees' Retirement System. 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, 2009, through December 31, 2009. We met with officials of the New York City Employees' Retirement System 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, the Audit Bureau's Information Technology (IT) Audit Division performed a computer match of approximately 329,601 New York City pensioners against a listing of all City workers (approximately 409,530) who received a W-2 wage statement from the Financial Information Services Agency (FISA) for the year 2009.<sup>1</sup> This matching process identified 1,180 individuals under age 65 who received more than \$30,000 in 2009 (service retirees) or \$1,800 in 2009 (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 2009, 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 2009. Although the match did not include local government employees paid by systems other than those integrated with FISA, we are presently conducting 2009 matches of City pensioners (BERS, NYCERS, FIRE, POLICE, and TRS) against the 330,978 State workers; the results of this match will be covered in a separate report (Audit # FL11-102A).

---

<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 FL11-096A (POLICE), FL11-097A (FIRE), FL11-099A (BERS), and FL11-100A (TRS).

Of the 1,180 matches, 452 consisted of individuals collecting NYCERS pensions. For all 452 matches, we:

- obtained additional detailed information about their individual year 2009 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.

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 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 City Charter §1117 and, therefore, should be excluded from the overpayments cited in this report. The annuity portions, which are estimated to be less than 5 percent of the total overpayments, can be determined only by NYCERS officials.

### **Discussion of Audit Results**

The matters covered in this report were discussed with NYCERS officials during and at the conclusion of this audit. This preliminary draft report was sent to NYCERS officials and was discussed at an exit conference held on June 8, 2011. On June 14, 2011, we submitted a draft report to NYCERS officials with a request for comments and received a written response from them on June 28, 2011. In their response, NYCERS officials stated that they are committed to constant and consistent monitoring to avoid pension overpayments.

The full text of the NYCERS response is included as an addendum to this report.



## **FINDINGS AND RECOMMENDATIONS**

### **Overpayment of Pension Benefits**

This audit identified no NYCERS retirees who appear to violate applicable sections of State and City laws during 2009. Specifically, none of the pensioners under age 65 received City wages exceeding the limitations without having a waiver on file, and no pensioners were in violation of §1117 of the New York City Charter, which prohibits a New York City Employees' Retirement System 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.

## **RECOMMENDATIONS**

Because the audit found no pensioners who violated applicable sections of State and City laws, this report makes no recommendations to NYCERS officials.



June 28, 2011

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

**Audit Report FL11-098A**  
**Pensioners Working for the City**  
**after Retirement**  
**Calendar Year 2009**

Dear Ms. Kim,

This letter is in response to the audit report referenced above.

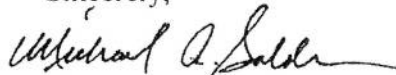
The above audit did not find any individuals who received pension payments during 2009 that appeared to violate State or City regulations, therefore no recommendations were made.

NYCERS sends a special notice regarding re-employment after retirement to our pensioners each year in September.

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

If you have any questions, I can be reached at (347) 643-3522, or by email at [mgoldson@nycers.nyc.gov](mailto:mgoldson@nycers.nyc.gov).

Sincerely,



Michael A. Goldson  
Director, Finance

Diane D'Alessandro, Executive Director, NYCERS