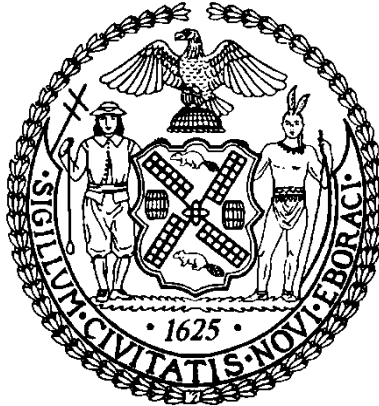


**CITY OF NEW YORK
OFFICE OF THE COMPTROLLER**

**John C. Liu
COMPTROLLER**

FINANCIAL AUDIT

**Tina Kim
Deputy Comptroller for Audit**



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

FL11-096A

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
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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 Police Department Pension Fund (POLICE) 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 POLICE.

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 Police Department 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 POLICE officials.

The results of the audit have been discussed with POLICE officials, and their comments have been considered in preparing this report.

If you have any questions concerning this report, please e-mail my audit bureau at audit@comptroller.nyc.gov.

Sincerely,

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

John C. Liu

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

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AUDIT REPORT IN BRIEF

The objective of this audit was to identify New York City Police Department 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 Police Department Pension Fund (POLICE).

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 Police Department 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 POLICE officials.

POLICE Response

We received correspondence on June 27, 2011 from POLICE officials indicating that they will not be responding to the report.

INTRODUCTION

Background

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

Pursuant to RSSL §211, a service retiree (a person receiving an ordinary service retirement rather than a disability retirement) who is re-employed in New York public service and who exceeds the §212 salary limitations may have his or her pension benefits denied, unless the 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)
- 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). 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 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 2, §13-254) provides for the re-employment of New York City Police Department disability retirees in New York public service. These provisions (also known as “Disability Safeguards”) apply up to only the minimum period for service retirement elected by the employee (usually 20 years, but 25 years may be elected), subject to the following conditions: (1) the retiree undergoes a medical examination, (2) the Board of Trustees of the retirement system agrees with the medical board report and certification of the extent to which the retiree is able to work (the Board must then place the retiree’s name on a civil service list as a “preferred eligible”), and (3) the Board reduces the retiree’s pension to an amount which, when added to the retiree’s salary, does not exceed the current maximum salary for the next highest title than that held by the person at retirement.

After the minimum (20- or 25-year) period for service retirement has expired, disability retirees in New York City are subject to 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 Police Department pensioners who appear to be violators of 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 Police Department Pension Fund.

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 the POLICE Board. In accordance with §13-202 of the New York City Administrative Code, the Comptroller is one of 12 trustees of the POLICE Board. 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 Police Department Pension Fund 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 the 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 2009.¹ This matching process identified 1,180 individuals under age 65 who either 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 they 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).

¹ A separate audit report will be issued for each of the five New York City retirement systems; the other four audits are FL11-097A (FIRE), FL11-098A (NYCERS), FL11-099A (BERS), and FL11-100A (TRS).

Of the 1,180 matches, 407 consisted of individuals collecting POLICE pensions. For all 407 individuals, 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 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 5 percent of the total overpayments, can be determined only by POLICE officials.

Discussion of Audit Results

The matters covered in this report were discussed with POLICE officials during and at the conclusion of this audit. This preliminary draft report was sent to POLICE officials and was discussed at an exit conference held on June 9, 2011. On June 14, 2011, we submitted a draft report to POLICE officials with a request for comments. We received correspondence on June 27, 2011 from POLICE officials indicating that they will not be responding to the report.

FINDINGS AND RECOMMENDATIONS

Overpayment of Pension Benefits

This audit identified no POLICE 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 Police Department 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 violate applicable sections of State and City laws, this report makes no recommendations to POLICE officials.