

AUDIT REPORT



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

Audit Report on New York City Pensioners Working as Consultants for The City after Retirement January 1, 2006–December 31, 2006

FL08-111A

June 30, 2008



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 working as consultants for the City 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 2006.

A retiree of any of the five New York City retirement systems who is reemployed as a consultant in 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." in a cursive style.

William C. Thompson, Jr.
WCT/fh

Report: FL08-111A
Filed: June 30, 2008

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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 as Consultants for the City
after Retirement
January 1, 2006–December 31, 2006**

FL08-111A

AUDIT REPORT IN BRIEF

The objective of this audit was to identify New York City pensioners who may be reemployed as a consultant 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 2006.

Audit Findings and Conclusions

The audit found four individuals who received \$49,629 in pension payments during 2006 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 payments from the City for professional services that exceeded the limitations without having a waiver on file at their retirement system, or were in violation of §1117 of the New York City Charter because they were collecting disability pensions while receiving more than \$1,800 (including pension payments) a year from a New York City agency.

Audit Recommendations

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

- Investigate those individuals identified as receiving pensions while receiving payments from the City for providing professional services as consultants. City retirement systems 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 names of individuals found to be illegally collecting pensions.
- Ascertain whether previous pension overpayments have been recouped and whether current pensions have been suspended for those individuals who have been cited in

- previous audits as “double-dippers” or “disability violators.”
- Send special reminders to all retirees that clearly state their responsibilities when returning to public service after retirement.

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). When 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 reemployed in New York public service and who exceeds the §212 salary limitations may have his or her pension benefits denied unless the prospective employer has requested a waiver from the State or municipal Civil Service Commission or other authorized agency setting forth the reasons for the request, and has then obtained a waiver from that agency.

With regard to consultants, RSSL §211, Subdivision 4, (consultant amendment) states:

“A retired person who returns to public service on or after January first, nineteen hundred seventy-four, as a consultant shall be subject to the limitations applicable to a reemployed retiree as specified in this section or in any other provision of law.”

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 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 after their retirement. They are:

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

For calendar year 2006, the earnings limitations for a service retiree who filed a Statement of Election under §212 was \$27,500. Accordingly, any service retiree earning more than \$27,500 in 2006 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.

In addition, the New York City Corporation Counsel stated in an opinion that:

“[A] retiree of a retirement system maintained by the City, whose last retirement system membership prior to such retirement commenced on or after May 31, 1973, returns to service as a consultant on or after January 1, 1974, . . . will be subject to the provisions of City Charter §1117 as to suspension and forfeiture of the pension portion of his retirement allowance. . . except to the extent that he qualifies under §211 or §212 of the Retirement and Social Security law for an exemption from such suspension and forfeiture.”

The following regulations are applicable to each of the five City retirement systems:

POLICE:

The New York City Administrative Code (Volume 3, Title 13, Chapter 2, §13-254) provides for the reemployment of POLICE disability retirees in New York public service. These provisions (also known as “Disability Safeguards”) apply only up to 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’s report and

certification as to 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 title next higher than that held by the person at retirement.

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

TEACHERS:

The New York City Administrative Code (Volume 3, Title 13, Chapter 4, §13-553), combined with the New York City Charter (§1117), prohibits a TEACHERS disability retiree from earning more than \$1,800 (including pension payments) per year in New York public service, unless the 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 NYCERS disability retirees in New York State public service. These provisions (also known as "Disability Safeguards") apply only up to 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 as to 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 title next higher than that held by the person at retirement.

After the minimum period for service retirement has expired, NYCERS disability retirees are subject to the New York City Charter (§1117), which prohibits a retiree from earning more than \$1,800 (including pension payments) per year in New York public service, unless the 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 FIRE disability retirees in New York public service. These provisions (also known as "Disability Safeguards") apply only up to 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's report and certification as to 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 title next higher than that held by the person at retirement.

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

With regard to disability retirees of all five New York City retirement systems, waivers that supersede the above provisions may not be granted.

Objective

The objective of this audit was to identify those New York City pensioners who may be reemployed as a consultant 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 2006.

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, 2006, through December 31, 2006. We met with officials of the five New York City retirement systems (NYCERS, POLICE, FIRE, TRS, and BERS) to review their monitoring processes for individual pensioners.

To determine how many New York City pensioners returned to public service as City consultants, the Audit Bureau's IT Division performed a computer match of the approximately 269,055 New York City pensioners against a listing of all individuals (approximately 11,033) who received a Form 1099. This matching process identified 28 individuals who received non-employee compensation for professional services (as indicated on Form 1099-MISC Box 7) from the City as well as City pension checks. Of the 28 matched individuals, 7 were POLICE retirees, 4 were TEACHERS retirees, 16 were NYCERS retirees, and 1 was a FIRE retiree. The computer match did not identify any BERS retirees.

A total of four individuals appeared to lack valid reasons for being on both lists: three service retirees and one disability retiree. For these four individuals, we calculated their apparent pension overpayments based on our determination of the date on which they reached the legal earnings limitations of \$27,500 for service retirees and \$1,800 for disability retirees. Additionally, the annuity portions of the pension payments, if any, are not affected by RSSL §211 or §212 or 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 City 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 as Consultants for the City after Retirement January 1, 2005—December 31, 2005*, FL07-087A, issued June 28, 2007—by reviewing provided correspondence from BERS, POLICE, FIRE, NYCERS, and TRS.

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 our audit, which are summarized as follows:

POLICE Response: On June 20, 2008, we received a response from the POLICE Executive Director, in which he described the actions POLICE has taken to address the report's recommendations.

NYCERS Response: On June 18, 2008, 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.

TRS Response: On June 23, 2008, 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.”

BERS Response: On June 20, 2008, we received a response from the BERS Director of Operations, in which he described the actions BERS has taken to address the report’s recommendations.

FIRE Response: On June 19, 2008, 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.

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

FINDINGS

Overpayment of Pension Benefits

This audit identified four New York City pensioners who returned to public service as consultants and received a total of approximately \$49,629 in pension payments during 2006 that appear to violate applicable sections of State and City laws. (See Appendices I through V for the agency summaries and detailed listings of the four pensioners who returned to public service as consultants and their current City agencies.) The breakdown of the four pensioners and the improper pension payments they received from two 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>
NYCERS	2	0	2	43,451
TRS	<u>1</u>	<u>1</u>	<u>2</u>	<u>6,178</u>
Total	<u>3</u>	<u>1</u>	<u>4</u>	<u>\$ 49,629</u>

These four individuals were in apparent violation of RSSL §211 or §212 because they were under age 65 and received payments from the City for professional services that exceeded the limitations without having a waiver on file at their retirement system, or were in violation of §1117 of the New York City Charter because they were collecting disability pensions while earning more than \$1,800 (including pension payments) a year at a New York City agency and had surpassed their applicable employment anniversary dates.

Our total represents the amount of improper 2006 pension payments based on our determination of the date on which the pensioners reached the 2006 legal earnings limitations of \$27,500 for service retirees and \$1,800 for disability pensioners. Allowances were made for those retirees who worked only part of that year. Additionally, the annuity portions of the pension payments, if any, are not affected by RSSL §211 or §212 or 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 City retirement system officials. Immediate action by the five City retirement systems and the employing City agencies is needed to investigate and recoup, if appropriate, any improper payments made to these retirees identified as possible “double-dippers” or “disability violators.”

The following is an example of a NYCERS service retiree who was found to be providing professional services as a consultant for a City agency during calendar year 2006:

Case #1: An Assistant District Attorney who retired in September 2002, collected 12 pension checks in 2006 (one each month) totaling \$61,459. This individual worked 10 months (January through March, May through August, and October through December) and received a salary totaling

\$109,155. We found no evidence of a waiver for this individual for any portion of 2006. This person's 2006 cumulative earnings exceeded the \$27,500 limitation on May 10, 2006; therefore six pension checks (June through August, and October through December) totaling \$30,729, may have been improperly received and cashed in 2006.

The following is an example of a TRS disability retiree who was found to be providing professional services as a consultant for a City agency during calendar year 2006:

Case #2: An individual who retired on January 1998, on a disability pension collected 12 pension checks in 2006 (one each month) totaling \$15,602. This individual worked 5 months (February through May, and July) and received a salary, totaling \$1,463. Any earnings above \$1,800 for 2006 make the disability pension payments for that year (after that point in time) improper. Thus, it appears that 3 months of disability pension checks (April, May, and July) totaling \$3,878 may have been improperly received and cashed in 2006.

It should be noted that in their correspondences concerning the implementation status of the recommendations from last year's audit of 2005, NYCERS, TRS, POLICE, FIRE and BERS officials advised us that, they have implemented or were in the process of implementing the report's recommendations.

RECOMMENDATIONS

Officials of each of the five New York City retirement systems should:

1. Investigate those individuals identified as receiving pensions while receiving payments from the City for providing professional services as consultants. City retirement systems officials should also commence prompt recoupment action against those individuals found to be illegally collecting pensions.

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

BERS did not address this recommendation. However, the Director of Operations stated, "Although no violators have been found in this audit or in recent ones, we will continue to be vigilant in seeking total compliance with the aforementioned laws."

The NYCERS Director of Finance stated:

"We have investigated the two pensioners cited as working as consultants for the City of New York, and determined that neither of them were in violation of §211 or §212 of the RSSL, §13-171 of the Administrative Code or §1117 of the NYC Charter. I have enclosed details regarding each pensioner cited in this audit report.

“Both of these pensioners were serving on the 18-B criminal attorney panel for the City of New York and were not in violation. See enclosed memo by the NYC Law Department, dated Oct, 15, 2004, which addresses City retirees serving on the 18-B criminal attorney panel for the City of New York.”

Auditor Comment: While we are pleased that NYCERS has investigated the cited pensioners, we disagree with NYCERS determination that pensioners serving on the 18-B criminal attorney panel are not consultants. The applicable laws governing city pensioners returning to public service after retirement makes no exceptions for 18-B attorneys.

Consequently, we maintain that both individuals cited in this report were in violation of RSSL § 211 and § 212 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 individuals found to be illegally collecting pensions.

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

NYCERS and BERS did not address this recommendation.

4. Send special reminders to all retirees that clearly state their responsibilities when returning to public service after retirement.

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

BERS did not address this recommendation.

SUMMARY OF 2006 OVERPAYMENTS

	<u>SERVICE</u>			<u>DISABILITY</u>			<u>TOTAL</u>		
	Persons	Amount		Persons	Amount		Persons	Amount	
NYCERS	2	43,451		0	0		2	43,451	
TRS	1	2,300		1	3,878		2	6,178	
TOTAL	<u>3</u>	<u>\$45,751</u>		<u>1</u>	<u>\$3,878</u>		<u>4</u>	<u>\$49,629</u>	

**APPENDIX II
2006 PENSION OVERPAYMENTS - NYC EMPLOYEES' RETIREMENT SYSTEM
SERVICE RETIREES**

Pension Number	Date Retired	2006 Pension	Months Overpaid	Amount Overpaid	2006 Employer	Payroll Code	2006 Salary
Case #1 *N-237942-0	09/29/02	\$61,459	6	\$30,729	SUPREME CT 1st JUD	921	\$109,155
N-330285-0	01/13/05	25,489	6	12,722	SUPREME CT 1st JUD	921	59,130

Number of Individuals: 2

Total

\$43,451

NOTES:

SUPREME CT 1st JUD Supreme Court 1st Judicial District

* This individual was also cited in our prior audits for 2004 and 2005

**APPENDIX III
2006 PENSION OVERPAYMENTS - NYC TEACHERS' RETIREMENT SYSTEM
SERVICE RETIREES**

Pension Number	Date Retired	2006 Pension	Months Overpaid	Amount Overpaid	2006 Employer	Payroll Code	2006 Salary
*U-016507-0	11/2/2002	3,834	3	2,300	APPELLATE DIV/ 1st JUD	938/921	128,193

Number of Individuals: 1

Total

\$2,300

NOTES:

1st JUD
APPELLATE DIV

Supreme Court 1st Judicial District
Supreme Court Appellate Division

* This individual was also cited in our prior audits for 2003, 2004, and 2005

**APPENDIX IV
2006 PENSION OVERPAYMENTS - NYC TEACHERS' RETIREMENT SYSTEM
DISABILITY RETIREES**

Pension Number	Date Retired	2006 Pension	Months Overpaid	Amount Overpaid	2006 Employer	Payroll Code	2006 Salary
Case # 2 U-000574-0	1/7/1998	\$15,602	3	\$3,878	DPR	846	\$1,463

Number of Individuals: 1

Total \$3,878

NOTES:

DPR

Department of Parks and Recreation

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

<u>Current Employer</u>	<u>Payroll Code</u>	<u>Individuals Paid under Code</u>		
		<u>TRS 2006</u>	<u>NYCERS 2006</u>	<u>TOTAL</u>
Department of Parks & Recreation	846	1		1
Supreme Court - 1st Judicial District	921	1	2	3
Supreme Court - Appellate Division	938	1		1
Total		<u>3</u>	<u>2</u>	<u>5</u>



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

June 13, 2008

**Audit Report FL08-111A
Pensioners Working as Consultants
Calendar Year 2006**

Dear Mr. Graham:

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

We have investigated the two pensioners cited as working as consultants for the City of New York, and determined that neither of them were in violation of §211 or §212 of the RSSL, §13-171 of the Administrative Code or §1117 of the NYC Charter. I have enclosed details regarding each pensioner cited in this audit report.

Both of these pensioners were serving on the 18-B criminal attorney panel for the City of New York and were not in violation. See enclosed memo by the NYC Law Department, dated Oct, 15, 2004, which addresses City retirees serving on the 18-B criminal attorney panel for the City of New York.

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.

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. Our present monitoring program includes New York City payroll and Public Benefit Corporations.

Please note that a special notice regarding re-employment after retirement is sent to our pensioners each year in September.

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



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

MICHAEL A. CARDOZO
Corporation Counsel

INGA VAN EYSDEN
Tel.: (212) 788-0745
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ivaneysd@law.nyc.gov

MEMORANDUM

TO: Karen Mazza
General Counsel, NYCERS

FROM: Inga Van Eysden
Chief, Pensions Division

DATE: October 15, 2004

SUBJECT: Legal Issues

In response to your request, below is a summary of our positions on several issues you and John Murphy recently have brought to the attention of the Pensions Division.

RSSL §211 and retirees serving on the 18-B criminal attorney panel

As discussed with you and with counsel for DCAS, we agree that City retirees serving on the 18-B criminal attorney panel in the City of New York do not constitute consultants for purposes of RSSL §211.

NYCERS - RESPONSE STATS - PENSIONERS RETURNING TO THE CITY AS CONSULTANTS
CALENDAR YEAR 2006

SERVICE	PENSION NUMBER	LAST NAME	RETIREMENT DATE	SALARY (2006)	LIMIT (2006)	OVERPAID		SUSPENDED		COMMENTS
						\$	-	FROM	TO	
Service	237942-0	[REDACTED]	09/28/02	\$109,155.00	N/A	\$	-	N/A	N/A	18-B attorney - not considered City or State employees or consultants - rather they are considered outside employees
Service	330285-0	[REDACTED]	01/13/05	\$59,130	N/A	\$	-	N/A	N/A	18-B attorney - not considered City or State employees or consultants - rather they are considered outside employees



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

June 20, 2008

Mr. John Graham
Deputy Comptroller Audit Accountancy and Contracts
Bureau of Audit
1 Centre Street Room 500
New York, NY 10007 - 2341

Re: Audit Report on NYC Teachers' Retirement System
New York City Pensioners
Working as Consultants for the City after Retirement
January 1, 2006 to December 31, 2006
FL08-111A

Dear Mr. Graham:

Please be advised that the Teachers' Retirement System (TRS) is in full compliance with all your recommendations. Attached, please find an updated TRS status report, which describes the type of action taken by TRS.

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,

A handwritten signature in black ink, appearing to read "Stan Charles", written over a horizontal line.

Stan Charles
Deputy Director
Internal Audit Division

Cc: N. Serrano, P. Raucci, A. Scully, S. Morrison-Goldfine, S. Kupferman, G. Davis III

2006 OTC EAR Audit - Update Report- CONSULTANT

New York City Pensioners Working for New York City as a Consultant after Retirement										
#	Pension #	Date Retired	Employer	211 Waiver on file	Pension Benefits	OTC Audit	EAR Wages	Diff	Audit Results in Brief	Account
1	U-016507-0	11/2/2008	DIV1st JUD/ NYC COMP	N	3,834	128,193	0.00	128,193	Pending review over limit No reported wages on file First letter sent 1/31 second letter	Pending Review
2										
3	Total: 1									



CHRISTINE BAILEY
EXECUTIVE DIRECTOR

**BOARD OF EDUCATION RETIREMENT SYSTEM
OF THE CITY OF NEW YORK
65 COURT STREET
BROOKLYN, NEW YORK 11201- 4965**

718-935-5400
OUTSIDE NEW YORK STATE
1-800-843-5575

June 19, 2008

John Graham, Deputy Comptroller
Audits, Accountancy & Contracts
1 Centre Street – 5th Floor
New York, N.Y. 10007-2341

Re: Audit Report on New York City
Pensioners Working as Consultants for
The City after Retirement
January 1, 2006 - December 31, 2006
FL08-111A

Dar Mr. Graham:

This is to acknowledge receipt of your recently issued draft audit report on “New York City Pensioners Working as Consultants for the City after Retirement” covering the period January 1, 2006 through December 31, 2006. 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), combined with the New York City Charter (§ 1117), the RSSL §211 and §212 or the New City Charter § 1117.

Although no violators have been found in this audit or in recent ones, we will continue to be vigilant in seeking total compliance with the aforementioned laws. Lastly, we would like to acknowledge the efforts of all parties involved in conducting this audit.

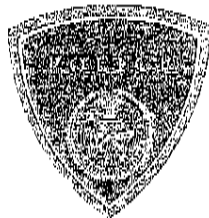
Thank you.

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



New York City Police Pension Fund

233 Broadway
New York, NY 10279
(212) 893-5100

Anthony J. Garvey
Executive Director

June 18, 2008

John Graham
Deputy Comptroller
Audits, Accountancy & Contracts
Office of the Comptroller
Executive Offices
1 Centre Street Room 500
New York, NY 10007-2341

Re: Audit Report on NYC Pensioners
Working as Consultants for New
York City after Retirement
January 1, 2006 to December 31, 2006
FL08-111A

Dear Mr. Graham:

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

Recommendation #1

Investigate those individuals identified as receiving pensions while receiving payments from the City for providing professional services as consultants. City retirement system official should also commence prompt recoupment action against those individual 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-

This System is happy to report that none of our members were listed as possible violators by the Comptroller's Office in the June 9, 2008 audit report.

Recommendation #2

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

Response

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

Recommendation #3

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

Response

The Police Pension Fund has in the past and will continue to suspend or reduce the pension benefit of all identified retirees who elect to continue employment with the City of New York in violation of Section 1117 of the New York City.

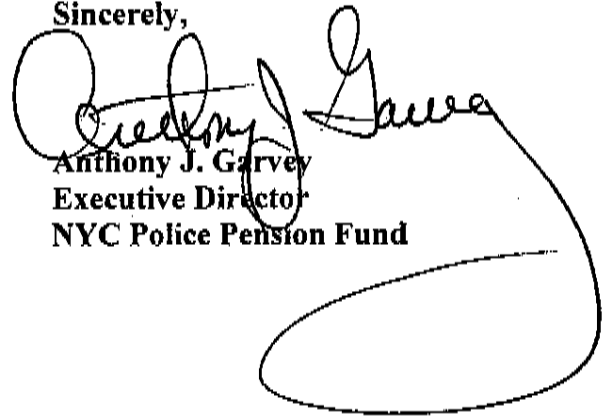
Recommendation #4

Send special reminders to all retirees that clearly state their responsibilities when returning to public service after retirement.

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 in the retirement package. An insert outlining this policy was prepared and mailed to all retirees in the calendar year 2006 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



FIRE DEPARTMENT

9 METROTECH CENTER - ROOM 85-10

BROOKLYN, NEW YORK 11201-3857

RAY SAYLOR
CHIEF COMPLIANCE OFFICER



June 19, 2008

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

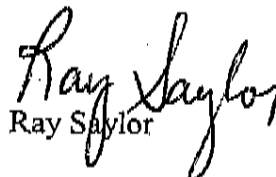
Re: Audit Report on New York City Pensioners Working as Consultants for the City after Retirement. January 1, 2006 – December 31, 2006. FL08-111A.

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, please contact me at (718) 999-1728.

Sincerely,


Ray Saylor

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

Audit FL08-111A

AUDIT RECOMMENDATIONS / FDNY RESPONSE – AGENCY IMPLEMENTATION PLAN

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

FDNY Response – The Department agrees that it should investigate and take action against those identified individuals. 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 Department agrees to do so 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 to do so when circumstances warrant such action.

- 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.

FDNY Response – Special reminders on the subject are sent out on a routine basis.