

# AUDIT REPORT



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

## **Audit Report on Non-Pedagogical Pensioners of the New York City Department of Education Working For the City after Retirement January 1, 2007—December 31, 2007**

*FL09-116A*

**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 Board of Education Retirement System (BERS) 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 non-pedagogical retiree of the New York City Department of Education 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 State Education Law, 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 BERS 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.".

William C. Thompson, Jr.

WCT/fh

**Report: FL09-116A**  
**Date: June 30, 2009**

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

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

**FL09-116A**

**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 Board of Education Retirement System (BERS)—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 that two pensioners received \$5,026 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 City wages exceeding the limitations without having a waiver on file.

**Audit Recommendations**

The audit made four recommendations that BERS officials should:

- Investigate the individuals identified as receiving pensions while being reemployed in public service. BERS officials should also commence prompt recoupment action against these individuals if they are found to be illegally collecting pensions.
- Forward to the Department of Investigation, if the circumstances warrant such action, the names of these individuals if they are found to be illegally collecting a 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 non-pedagogical service retiree of the New York City Department of Education 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. Non-pedagogical disability retirees are subject to New York State Education Law (Title 2, Article 52, §2575) regulations and §1117 of the New York City Charter. If a post-retirement employee does not comply with relevant laws, the practice is termed “double-dipping.” (Pedagogical retirees of the New York City Department of Education are covered under the New York City Teachers’ Retirement System, which is subject to different regulations and is the subject of a separate audit.)

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 limitations 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 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. 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 Board of Education 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). 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.

Our audit period was January 1, 2007, through December 31, 2007. We met with officials of the New York City Board of Education Retirement System 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 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 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, 22 consisted of individuals collecting BERS pensions. For all 22 matches, 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.

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 BERS officials.

In addition, we followed-up on the implementation status of the recommendations from last year's audit report—*Non-Pedagogical Pensioners of the New York City Department of*

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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), FL09-117A (NYCERS), FL09-118A (POLICE), and FL09-119A (FIRE).

*Education Working for the City after Retirement January 1, 2006–December 31, 2006*, FL08-106A, issued June 30, 2008—by reviewing provided correspondence from BERS.

### **Discussion of Audit Results**

The matters covered in this report were discussed with BERS officials during and at the conclusion of this audit. A preliminary draft report was sent to BERS officials and the applicable employing and waiver-issuing agencies, and discussed at an exit conference. We submitted a draft report to BERS officials with a request for comments. We received a written response from BERS officials on June 11, 2009. In their response, BERS officials described the actions they have taken to address the report's recommendations.

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



## **FINDINGS AND RECOMMENDATIONS**

### **Overpayment of Pension Benefits**

This audit identified two retirees who received \$5,026 in pension payments during 2007 that appear to violate applicable sections of State and City laws. (See Appendices I and II for details concerning the retirees and their current employers.)

These two 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 BERS. These two individuals received improper pension payments of approximately \$5,026.

Our total represents the amount of improper 2007 pension payments based on an analysis of when the reemployed pensioners reached the legal earnings limitations (\$30,000 for service retirees). Allowances were made for those retirees who worked only part of that year. Moreover, the annuity portions of the pension payments, if any, are not affected by RSSL §211 and §212, 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 BERS officials. Immediate action by BERS and the employing City agencies is needed to investigate and recoup, if appropriate, any improper payments made to these retirees.

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

**CASE #1:** A School Food Service Manager retired in August 2005 and collected 12 pension checks (one each month) in calendar year 2007, totaling \$14,124. This individual worked as a School Food Service Manager for the Department of Education (DOE) for twelve months (January through December) and collected a salary of \$50,447. We found no evidence of a waiver for this individual for any portion of 2007. On September 7, 2007, this person's cumulative salary earnings for the year exceeded the \$30,000 limit for service retirees. Therefore, it appears that three pension checks (October through December) totaling \$3,531 may have been improperly received and cashed in calendar year 2007.

It should be noted that in their correspondence concerning the implementation status of the recommendations from last year's audit of 2006, BERS officials advised us that all of the audit recommendations were implemented.

## RECOMMENDATIONS

BERS officials should:

1. Investigate the two individuals identified as receiving pensions while being reemployed in public service. BERS officials should also commence prompt recoupment action against these individuals if they are found to be illegally collecting pensions.

***BERS Response:*** “We have reviewed the findings and we concur with your conclusions, and will seek repayment of all overpaid funds.”

2. Forward to the Department of Investigation, if the circumstances warrant such action, the names of these individuals if they are found to be illegally collecting a pension.

***BERS Response:*** BERS response 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.”

***BERS Response:*** BERS response 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.

***BERS Response:*** BERS response did not address this recommendation.

APPENDIX I  
 2007 PENSION OVERPAYMENTS - BOARD OF EDUCATION 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 #1 E-020283-0	8/2/2005	\$14,124	3	\$3,531	DOE	740	\$50,447	DOEC	NO
*E-020243-0	7/1/2005	\$8,969	2	1,495	DOE	740	\$39,175	DOEC	NO

Total Individuals: 2

Total: \$5,026

## RE-EMPLOYED BERS PENSIONERS

TOTALS BY CURRENT EMPLOYERCurrent Employer

	<u>Payroll Code</u>	Total Number of Individuals <u>Paid Under Code</u>
<u>Department of Education (DOE)</u>		
DOE Admin	740	2
<u>Total</u>		<u>2</u>

BOARD OF EDUCATION RETIREMENT SYSTEM  
OF THE CITY OF NEW YORK

KATHLEEN GRIMM, Co-Chair

MILAGROS RODRIGUEZ, Co-Chair



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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-5<sup>th</sup> Floor  
New York, NY 1007-2341

Re: Audit Report on Non-Pedagogical  
Pensioners for the New York City  
Department of Education Working  
For the City after Retirement  
January 1, 2007-December 31, 2007  
FL09-116A

Dear Mr. Graham:

We are in receipt of your recently issued draft audit report on "Non-Pedagogical Pensioners of the New York City Department of Education Working for the City after Retirement" during the period January 1, 2007 through December 31, 2007. For the period under consideration, you did identify two pensioners of the Board of Education Retirement System (BERS) who you cite as being 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 and had thus collected pension benefits for which they were not entitled to.

We have reviewed the findings and we concur with your conclusions, will seek repayment of all overpaid funds. 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 that reads "John Cahalin".

John Cahalin  
Director of Operations

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