

AUDIT REPORT



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

Audit Report on Pedagogical Pensioners of the New York City Teachers' Retirement System Working for the City after Retirement January 1, 2007—December 31, 2007

FL09-120A

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 Teachers' Retirement System (TRS) 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 Teachers' Retirement System 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 TRS 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 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.".

William C. Thompson, Jr.

WCT/fh

Report: FL09-120A
Date: June 30, 2009

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

**Audit Report on Pedagogical Pensioners of the
New York City Teachers' Retirement System
Working for the City after Retirement
January 1, 2007–December 31, 2007**

FL09-120A

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 Teachers' Retirement System (TRS)—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 13 individuals who received \$166,084 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 at TRS, 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.

Audit Recommendations

The audit made four recommendations, that TRS officials should:

- Investigate those individuals identified as receiving pensions while being reemployed in public service. TRS 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 those 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 service retirees under the age of 65 and to all disability retirees that clearly state their responsibilities regarding public service reemployment.

INTRODUCTION

Background

A New York City Teachers’ Retirement System 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 Teachers’ 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 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 Department 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). The 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 City Administrative Code (Volume 3, Title 13, Chapter 4, §13-553) combined with the New York City Charter (§1117), prohibits a New York City Teachers' Retirement System 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 Teachers' 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) 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 Teachers' Retirement System Board. In accordance with §13-507 of the New York City Administrative Code, the Comptroller is one of seven trustees of the Teachers' Retirement System 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, 2007, through December 31, 2007. We met with officials of the New York City Teachers' 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 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 2007.¹ 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, 511 consisted of individuals collecting TRS pensions. For all 511 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

¹ A separate audit report will be issued for each of the five New York City retirement systems; the other four audits are FL09-116A (BERS), FL09-117A (NYCERS), FL09-118A (POLICE), and FL09-119A (FIRE).

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 TRS officials.

In addition, we followed-up on the implementation status of the recommendations from last year's audit report—*Pedagogical Pensioners of the New York City Teachers' Retirement System Working for the City after Retirement January 1, 2006–December 31, 2006*, FL08-110A, issued June 30, 2008—by reviewing provided correspondence from TRS.

Discussion of Audit Results

The matters covered in this report were discussed with TRS officials during and at the conclusion of this audit. A preliminary draft report was sent to TRS officials and the applicable employing and waiver-issuing agencies, and discussed at an exit conference. We submitted a draft report to TRS officials with a request for comments. We received a written response from TRS officials on June 10, 2009. In their response, TRS officials described the actions they have taken to address the report's recommendations.

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

FINDINGS

Overpayment of Pension Benefits

This audit identified 13 retirees who received \$166,084 in pension payments during 2007 that appear to violate applicable sections of State and City laws. (See Appendices I through III for details concerning the retirees and their current employers.)

These 13 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 TRS 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.. These 13 individuals received improper pension payments of approximately \$166,084, as follows:

	<u>Number of Matches</u>	<u>Total Improper Payments</u>
§211/212 Violators	12	\$ 159,536
§1117 Violators	<u>1</u>	<u>6,548</u>
Total	<u>13</u>	<u>\$ 166,084</u>

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, and \$1,800 for disability pensioners). 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 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 TRS officials. Immediate action by TRS 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 TRS service retiree who was found to be working at a City agency during calendar year 2007:

CASE #1: A Teacher who retired in September 1990 collected 12 pension checks (one for each month) in calendar year 2007, totaling \$55,882. This individual worked as an Administrative Staff Analyst for the New York City Fire Department for ten months (January through September and November) and collected a salary of \$76,490. We found no evidence of a waiver for this individual for any portion of 2007. On April 20, 2007, this person's cumulative salary earnings for the year exceeded the \$30,000 limit for service retirees. Therefore, it appears that six pension checks

(May to September and in November) totaling \$25,457 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, TRS officials advised us that they are in full compliance with the previous recommendations and provided a status report detailing the actions taken against the cited pensioners.

RECOMMENDATIONS

TRS officials should:

1. Investigate those individuals identified as concurrently receiving pensions while being reemployed in public service. TRS officials should also commence prompt recoupment action against those individuals found to be illegally collecting pensions.
2. Forward to the Department of Investigation, if the circumstances warrant such action, the names of those individuals found to be illegally collecting pensions.
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."
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.

TRS Response: "Please be advised that the Teachers' Retirement System (TRS) is in full compliance with all your recommendations."

**APPENDIX I
2007 PENSION OVERPAYMENTS - TEACHERS' RETIREMENT SYSTEM
SERVICE RETIREES**

Case#1	Pension Number	Date Retired	2007 Pension	Months Overpaid	Amount Overpaid	2007 Employer	Payroll Code[s]	2007 Salary	Waiver Issuing Agency	Waiver in 2007
	T-790730-0	9/1/1990	\$55,882	6	\$25,457	FIRE DEPT	57	\$76,490	DCAS	NO
	U-731801-0	7/1/2006	91,604	3	\$22,965	DOE	742/746/747	\$44,946	DOEC	NO
	U-731558-0	7/1/2006	77,019	3	\$19,300	DOE	742/746/747	\$44,124	DOEC	NO
	U-731587-0	7/1/2006	98,348	2	\$16,550	DOE	746/747	\$47,468	DOEC	NO
	U-023566-0	8/15/2004	64,865	3	\$16,215	DOE	746	\$33,408	DOEC	NO
	U-719487-0	7/1/2003	90,368	2	\$15,093	DOE	746/747	\$35,410	DOEC	NO
	U-732860-0	10/10/2006	93,101	2	\$14,336	DOE	742	\$130,687	DOEC	NO
	U-727669-0	8/31/2004	67,761	2	\$11,116	DOE	746/747	\$39,821	DOEC	NO
	U-720264-0	7/1/2003	83,545	1	\$6,859	DOE	746	\$32,905	DOEC	NO
	U-714414-0	8/31/2002	67,878	1	\$5,582	DOE	746/747	\$32,556	DOEC	NO
	U-030932-0	7/1/2005	20,211	3	\$4,806	DOE	746/747	\$46,141	DOEC	NO
	*U-007242-0	4/9/2001	6,152	3	\$1,156	DPR	846	\$45,522	DCAS	NO

Total Individuals: 12

Total: 159,536

NOTES:

- DOE - Department of Education
- DPR - Department of Parks and Recreation
- DOEC - Department of Education Chancellor
- DCAS - Department of Citywide Administrative Services
- FIRE DEPT - Fire Department

* This individual was also cited in our prior audit for calendar year 2006.

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

Pension Number	Date Retired	2007 Pension	Months Overpaid	Amount Overpaid	2007 Employer	Payroll Code	2007 Salary
*T-060055-0	4/12/1982	\$7,851	10	\$6,548	CUNY KINGSBORO	465	\$18,245

Total Individuals: 1

Total: \$6,548

NOTES:

CUNY KINGSBORO City University of New York Kingsboro Community College

* This individual was cited in our prior audit for calendar year 2006.

RE-EMPLOYED TRS PENSIONERS

TOTALS BY CURRENT EMPLOYER

Current Employer

	Payroll Code	Total Number of Individuals Paid Under Code
<u>Department of Education (DOE)</u>		
DOE Pedagogical	742	3
DOE Per Diem Teachers	746	9
DOE Per Session Teacher	747	7
<u>Other Agencies</u>		
Fire Department	57	1
Community College (Kingsboro)	465	1
Department of Parks & Recreation	846	1
<u>Total</u>		<u>22</u>



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

Date: June 10, 2009

Mr. John Graham
Deputy Comptroller Audit Accountancy and Contracts
Bureau of Audit
1 Centre Street Room 530
New York, NY 10007 - 2341

Re: Audit Report on NYC Teachers' Retirement System
Pedagogical Pensioners of the New York City
Working for the City after Retirement
January 1, 2007 to December 31, 2007
FL09-120A

Dear Mr. Graham:

Please be advised that the Teachers' Retirement System (TRS) is in full compliance with all your recommendations.

Here is a summary of the remaining EAR cases:

TRS had twelve (12) "NYC Pensioners Working for the City after Retirement" in 2007 that needed to be accounted for concerning the EAR limit of \$30,000.

Eight (8) pensioners were under the EAR limit of \$30,000 due to various reasons such as: The member repaid their excess earnings, or there were reduction adjustments for retroactive pay or prior year's earnings.

Two (2) pensioners exceeded the EAR limit during 2007 and both are currently suspended. For the last two (2) pensioners TRS has no reported wages on file. TRS have sent correspondences to those pensioners explaining that their earnings must be verified and within EAR limits to avoid suspension.

Additionally, there were two (2) Disability Pensioners Working for the City after Retirement in 2007. One (1) was suspended for his excess earnings; we will maintain this pensioner suspension as he continues to earn wages.


For the other disability pensioner's TRS had no reported wages on file. Correspondences have been also sent out to this pensioner explaining that his earnings must be verified and within EAR limits to avoid suspension.

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,


Stan Charles
Deputy Director
Internal Audit Division

Cc: N. Serrano, P. Raucci, A. Scully, S. Morrison-Goldfine

EAR LIMIT \$30,000

2007 Earning After Retirement - UPDATE

Group A New York City Pensioners Working as Consultant after Retirement										
#	Pension #	Date Retired	Employer	Waiver on file	Pension Benefits	OTC Audit	EAR Wages	Diff	Audit Results in Brief	Audit Status
1	U0165070	11/2/2008	DIV/1st JUD/ NYC-COMP	N	3,834.00	181,429.55	0.00	-181,429.55	Over limit (Effective 08/08-07/09) suspension for 2006 EAR	Benefit Suspension 2006/ 2007

Group B New York City Pensioners Working for the State after Retirement										
#	Pension #	Date Retired	Employer	Waiver on file	Pension Benefits	OTC Audit	EAR Wages	Diff	Audit Results in Brief	Audit Status
1	U7174710	7/1/2003	BOE-EMP BPRIN	N	95,499.93	81,152.42	0.00	81,152.42	No Reported Wages	Send Notice
2	U7054530	8/2/01988	BOE-EMP BTEAC	N	56,250.92	34,975.43	0.00	34,975.43	No Reported Wages	Send Notice
3	U0294690	7/1/2005	BOE-EMP BTEAC	N	7,568.04	39,282.08	0.00	39,282.08	No Reported Wages	Send Notice

Group C New York City Pensioners Working for the City after Retirement - Disability										
#	Pension #	Date Retired	Employer	Waiver on file	Pension Benefits	OTC Audit	EAR Wages	Diff	Audit Results in Brief	Audit Status
1	T0600550	4/12/1982	CUNY Kingsboro	N	7,850.84	18,245.34	0.00	18,245.34	Over limit Effective 08/08-07/09 their company working and will continue to be suspended	Benefit Suspension 2006/ 2007
2	T7844370	8/12/1992	CUNY College of S.I.	N	20,990.40	5,040.81	0.00	5,040.81	No Reported Wages CUNY	Send Notice

EAR LIMIT \$30,000

2007 Earning After Retirement - UPDATE

Group D New York City Pensioners Working for the City after Retirement											
#	Pension #	Date Retired	Employer	Waiver on file	Pension Benefits	OTC Audit	EAR Wages	Diff	Audit Results in Brief	Audit Status	
1	T7907300	9/1/1990	Fire Dept	N	50,753.28	76,490.36	0.00	76,490.36	No Reported Wages Fire Department	Send Notice	
2	U7318010	7/1/2006	BOE-EMP BPAXS	N	91,451.77	44,945.77	39,688.32	5,247.45	Did not go over limit Retro Adjustment- \$5,339.97 Prior Year Earnings- \$4,404.51	Resolved	
3	U7315580	7/1/2006	BOE-EMP BTEAC	N	76,924.41	44,124.48	28,532.50	15,591.93	Did not go over limit Under \$30,000	Resolved	
4	U7315870	7/1/2006	BOE-EMP BTEAC	N	98,315.23	47,468.22	29,916.92	17,551.30	Did not go over limit Under \$30,000	Resolved	
5	U0235660	8/15/2004	BOE-EMP BTEAC	N	64,860.36	33,407.86	33,989.78	582.12	Did not go over limit Retro Adjustment- \$5,134.95	Resolved	
6	U7194870	7/1/2003	BOE-EMP BPAXS	N	90,345.37	35,409.74	30,029.59	5,380.15	Did not go over limit Repayment- \$29.59	Resolved	
7	U7194870	10/10/2006	BOE-EMP BEDAD	N	85,828.93	130,687.16	34,935.23	95,751.93	Did not go over limit Retro Adjustment- \$5,146.11 Over limit	Resolved	
8	U7276690	8/31/2004	BOE-EMP BPRIN	N	66,595.25	39,820.94	43,724.07	3,903.13	Effective: 01/09-05/09 2006- 6 months 2007- 5 months	Benefit Suspension 2006/2007	
9	U7202640	7/1/2003	BOE-EMP BPAXS	N	82,357.83	32,905.03	34,802.34	-1,897.31	Did not go over limit Retro Adjustment- \$1,612.51 Repayment- \$3,189.86	Resolved	
10	U7144140	8/31/2002	BOE-EMP BEDAD	N	67,853.54	32,556.16	26,249.88	4,306.28	Did not go over limit Under \$30,000	Resolved	
11	U0309320	7/1/2005	BOE-EMP BTERS	N	19,223.04	46,140.54	56,124.13	-9,983.59	Over limit Effective: 01/08-11/08 2006- 6 months 2007- 5 months	Benefit Suspension 2006/2007	
12	U0072420	4/9/2001	Dept of Parks Recreation	N	4,624.32	45,521.78	0.00	45,521.78	No Reported Wages Parks Department	Send Notice	