

# AUDIT REPORT

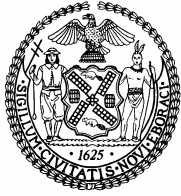


CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
BUREAU OF FINANCIAL AUDIT  
**WILLIAM C. THOMPSON, JR., COMPTROLLER**

## **Audit Report on Pensioners of the New York City Employees' Retirement System Working for the City after their Retirement January 1, 2005—December 31, 2005**

*FL07-084A*

**June 28, 2007**



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 Employees' Retirement System (NYCERS) 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 2004.

A retiree of the New York City Employees' 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 NYCERS' 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](mailto:audit@Comptroller.nyc.gov) or telephone my office at 212-669-3747.

Very truly yours,

A handwritten signature in cursive script that reads "William C. Thompson, Jr.".

William C. Thompson, Jr.

WCT/fh

**Report: FL07-084A**  
**Filed: June 28, 2007**

*Table of Contents*

**AUDIT REPORT IN BRIEF**

Audit Findings and Conclusions..... 1  
Audit Recommendations..... 1

**INTRODUCTION..... 2**

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

**FINDINGS ..... 6**

Overpayment of Pension Benefits..... 6

**RECOMMENDATIONS..... 6**

**APPENDIX – 2005 Pension Overpayments – NYC Employees’ Retirement System – Service Retirees**

**ADDENDUM – NYC Employees’ Retirement System Response**

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

**Audit Report on Pensioners of the  
New York City Employees' Retirement System  
Working for the City after their Retirement  
January 1, 2005–December 31, 2005**

**FL07-084A**

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**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 Employees' Retirement System (NYCERS)—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 2005.

**Audit Findings and Conclusions**

The audit found one individual who received \$20 in pension payments during 2005 that appear to violate RSSL §211 or §212 because he was under age 65 and received City wages exceeding the limitations without having a waiver on file at NYCERS.

**Audit Recommendations**

The audit made four recommendations, that NYCERS officials should:

- Investigate the individual identified as concurrently receiving a pension while being reemployed in public service. NYCERS officials should also commence prompt recoupment action against this individual if he is found to be illegally collecting a pension.
- Forward to the Department of Investigation, if the circumstances warrant such action, the name of this individual if he is found to be illegally collecting a pension.
- 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 Employees' 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 New York City Employees' Retirement System disability retirees, the governing regulations are the New York City Administrative Code (Volume 3, Title 13) and the New York City Charter (§1117). If a post-retirement employee does not comply with the relevant laws, the practice is termed "double-dipping."

Pursuant to RSSL §211, a service retiree (a person receiving an ordinary service retirement rather than a disability retirement) who is 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)
- New York City Civil Service Commission (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). For calendar year 2005, the earnings limitation does not apply after the retiree reaches the age 65.

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

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

For calendar year 2005, the earnings limitation 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 2005 should have received a §211 waiver to prevent suspension of the retirement allowance during that year. Failure to comply with these requirements can result in the forfeiture of pension benefits in subsequent years.

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

After the minimum (20- or 25- year) period for service retirement has expired, disability retirees in New York City are subject to the 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 those New York City pensioners who may be reemployed by a City agency and illegally collecting a pension from the New York City Employees' Retirement System (NYCERS)—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 2005.

### **Scope and Methodology**

Our audit period was January 1, 2005, through December 31, 2005. We met with officials of the New York City Employees' Retirement System (NYCERS) 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 277,000 New York City pensioners against a listing of all City workers (approximately 455,000) who received a W-2 wage statement from the Financial Information Services Agency (FISA) for the year 2005.<sup>1</sup> This matching process identified 1,767 individuals under age 65 who received more than \$27,500 in 2005 (service retirees), or \$1,800 in 2005 (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 2005, 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 2005. Although the match did not include local government employees paid by systems other than those integrated with FISA, we are presently conducting 2005 matches of City pensioners (BERS, NYCERS, FIRE, POLICE, and TRS) against the 387,000 State workers; the results of this match will be covered in a separate report (Audit # FL07-086A).

Of the 1,767 matches, 133 consisted of individuals collecting NYCERS pensions. For all 133 matches, we:

- obtained additional detailed information about their individual year 2005 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 reemployed pensioners reached the legal earnings limitations of \$27,500 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 NYCERS officials.

In addition, we followed-up on the implementation status of the recommendations from last year's audit report—*Pensioners of the New York City Employees' Retirement System Working for the City after Retirement January 1, 2004–December 31, 2004*, FL06-098A, issued June 30, 2006—by reviewing provided correspondence from NYCERS.

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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 FL07-082A (POLICE), FL07-081A (FIRE), FL07-085A (BERS), and FL07-083A (TRS).

In accordance with §13-103 of the New York City Administrative Code, a Board of Trustees heads the New York City Employees Retirement System. The Comptroller is one of the 11 members and 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 the audit report.

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included tests of records and other auditing procedures considered necessary. This audit was performed in accordance with the audit responsibilities of the Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

### **Discussion of Audit Results**

The matters covered in this report were discussed with NYCERS officials during and at the conclusion of this audit. A preliminary draft report was sent to NYCERS officials and the applicable employing and waiver-issuing agencies, and discussed at an exit conference. We submitted a draft report to NYCERS officials with a request for comments. We received a written response from NYCERS officials on June 1, 2007. In their response, NYCERS officials described the actions they have taken to address the report's recommendations.

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



## FINDINGS

### Overpayment of Pension Benefits

This audit identified one individual who received \$20 in pension payments during 2005 that appear to violate applicable sections of State and City laws. (See Appendix for details concerning this retiree and his current employer.) This individual was in apparent violation of RSSL §211 or §212 because he was under age 65 and received City wages exceeding the limitations without having a waiver on file at NYCERS.

Our total represents the amount of improper 2005 pension payments based on an analysis of when the reemployed pensioner reached the legal earnings limitations (\$27,500 for service retirees). 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 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 NYCERS officials. Immediate action by NYCERS and the employing City agency is needed to investigate and recoup, if appropriate, any improper payments made to this retiree identified as possible “double-dipper.”

It should be noted that in their correspondence concerning the implementation status of the recommendations from last year’s audit of 2004, NYCERS officials advised us that they recouped or were in the process of recouping the previously cited 2004 improper pension payments.

## RECOMMENDATIONS

New York City Employees’ Retirement System officials should:

1. Investigate the individual identified as receiving a pension while being reemployed in public service. NYCERS officials should also commence prompt recoupment action against this individual if he is found to be illegally collecting a pension.

**NYCERS Response:** “We have examined the records for the above pensioner and determined that the NYCERS suspended the pensioner’s benefit, except for a very small amount. Note that our investigation showed that the pensioner was actually paid \$70 over 5 months during his suspension period. This nominal amount was paid to the pensioner during 2005 to keep him active on the payroll so that his health insurance would not lapse. NYCERS recouped the funds in January 2006.”

2. Forward to the Department of Investigation, if the circumstances warrant such action, the name of this individual if he is found to be illegally collecting a pension.

**NYCERS Response:** “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 the NYC Charter §1117.”

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.”

***NYCERS Response:*** “All pension overpayments for individuals cited in previous reports have either been fully recouped or are in the process of being recouped.”

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.

***NYCERS Response:*** “A special notice regarding re-employment after retirement is sent to our pensioners each year in September.”

**APPENDIX  
2005 PENSION OVERPAYMENTS - NYC EMPLOYEES' RETIREMENT SYSTEM  
SERVICE RETIREES**

<b>Pension Number</b>	<b>Date Retired</b>	<b>2005 Pension</b>	<b>Months Overpaid</b>	<b>Amount Overpaid</b>	<b>2005 Employer</b>	<b>Payroll Code</b>	<b>2005 Salary</b>	<b>Waiver Issuing Agency</b>	<b>Waiver 2005</b>
N-321122-0	9/13/2002	6,852	4	20	HPD	806	\$47,100	DCAS	NO

**Total Individuals: 1**

**Total: \$ 20**

**NOTES:**

DCAS  
HPD

Department of Citywide Administrative Services  
Department of Housing Preservation and Development

# NYCERS

RETIREMENT AND BENEFITS

NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

MAIL ONLY:  
335 ADAMS STREET,  
SUITE 2300  
BROOKLYN, NY 11201-3751

ALL OTHER SERVICES:  
340 JAY STREET,  
MEZZANINE LEVEL  
BROOKLYN, NY 11201-3751

TEL: (347) 643-3000

EXECUTIVE DIRECTOR: DIANE D'ALESSANDRO

ADDENDUM

PAGE 2

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

June 1, 2007

**Audit Report FL07-84A  
Pensioners Working for the City  
Calendar Year 2005**

Dear Mr. Graham:

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

The audit noted one individual (Pension # 321122) who received \$20 (\$5 per month over 4 months) in pension payments during 2005 that were in violation of RSSL section 212 because he was under age 65 and received City wages in excess of the section 212 limits.

We have examined the records for the above pensioner and determined that the NYCERS suspended the pensioner's benefit, except for a very small amount. Note that our investigation showed that the pensioner was actually paid \$70 over 5 months during his suspension period. This nominal amount was paid to the pensioner during 2005 to keep him active on the payroll so that his health insurance would not lapse. NYCERS recouped the funds in January 2006.

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. A special notice regarding re-employment after retirement is sent to our pensioners each year in September.

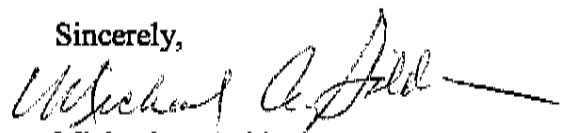
In addition, all pension overpayments for individuals cited in previous audit reports have either been fully recouped or are in the process of being recouped.

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.

Enclosed are details regarding each pensioner cited in this audit report. If you have any questions, I can be reached at the telephone number below.

If you have any questions, I can be reached at the telephone number below.

Sincerely,



Michael A. Goldson  
Director, Finance

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Director, Finance  
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[www.nycers.org](http://www.nycers.org)

