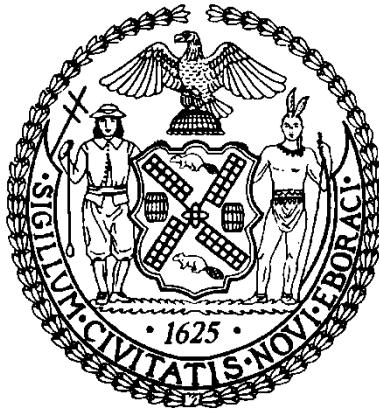


**CITY OF NEW YORK  
OFFICE OF THE  
COMPTROLLER**

**John C. Liu  
COMPTROLLER**

**FINANCIAL AUDIT**

**Tina Kim  
Deputy Comptroller for Audit**



**Audit Report on Pedagogical Pensioners of  
the New York City Teachers' Retirement  
System Working for the City after  
Retirement  
January 1, 2009—December 31, 2009**

*FL11-100A*

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
1 CENTRE STREET  
NEW YORK, N.Y. 10007-2341

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John C. Liu  
COMPTROLLER

June 30, 2011

**To the Residents of the City of New York**

My office has audited the New York City Teachers' Retirement System (TRS) to identify New York City pensioners who appear to be violators of New York State Retirement and Social Security Law (RSSL) §211 and §212, or New York City Charter §1117 during calendar year 2009. These individuals—known as “double-dippers” or “disability violators”—have been re-employed by a City agency and may be illegally collecting a pension from TRS.

The audit found that three TRS pensioners appeared to violate RSSL §211 - §212 or New York City Charter §1117. Two pensioners appeared to violate RSSL §211 - §212 as they were under age 65 and received City wages exceeding the limitations without having a waiver on file, while one additional pensioner appeared to violate §1117 of the New York City Charter, which prohibits a TRS 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. These three individuals possibly received \$27,487 in pension over payments during 2009. The audit recommended that TRS officials investigate those individuals identified in this report and, if in violation of State or City regulations, commence recoupment action against said individuals; forward to the Department of Investigation, if the circumstances warrant such action, the names of individuals found to be illegally collecting pensions; and send reminders to service retirees under the age of 65 and to all disability retirees that clearly state their responsibilities regarding public service re-employment.

The results of the audit have been discussed with TRS officials, and their comments have been considered in preparing this report. Their complete response is attached to this report.

If you have any questions concerning this report, please e-mail my audit bureau at [audit@comptroller.nyc.gov](mailto:audit@comptroller.nyc.gov).

Sincerely,

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

John C. Liu

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

**Audit Report on Pedagogical Pensioners of the  
New York City Teachers' Retirement System  
Working for the City after Retirement  
January 1, 2009–December 31, 2009**

**FL11-100A**

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**AUDIT REPORT IN BRIEF**

The objective of this audit was to identify New York City pedagogical pensioners who appear to be violators of New York State Retirement and Social Security Law (RSSL) §211 and §212, or New York City Charter §1117 during calendar year 2009. These individuals—known as “double-dippers” or “disability violators”—have been re-employed by a City agency and may be illegally collecting a pension from the New York City Teachers' Retirement System (TRS).

**Audit Findings and Conclusions**

The audit found that three TRS pensioners appeared to violate RSSL §211 - §212 or New York City Charter §1117. Two pensioners appeared to violate RSSL §211 - §212 as they were under age 65 and received City wages exceeding the limitations without having a waiver on file, while one additional pensioner appeared to violate §1117 of the New York City Charter, which prohibits a TRS 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. These three individuals possibly received \$27,487 in pension over payments during 2009.

**Audit Recommendations**

The audit made three recommendations that TRS officials should:

- Investigate those individuals identified in this report and, if in violation of State or City regulations, commence recoupment action against said individuals.
- Forward to the Department of Investigation, if the circumstances warrant such action, the names of individuals found to be illegally collecting pensions.
- 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.

**TRS Response**

TRS officials agreed with the three recommendations and indicated that they have taken steps to recoup the overpayments.

## **INTRODUCTION**

### **Background**

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

Pursuant to RSSL §211, a service retiree (a person receiving an ordinary service retirement rather than a disability retirement) who is re-employed in New York public service and who exceeds the §212 salary limitations may have his or her pension benefits denied, unless the service retiree requests that the prospective employer apply for a waiver from the State or municipal Civil Service Commission or other authorized agency. The prospective employer must set forth the reasons for the application and obtain a waiver from that agency.

New York State law grants the authority to issue waivers to the following seven agencies:

- New York State Civil Service Commission (NYS)
- Commissioner of Education (NYS)
- Municipal Civil Service Commission of the City of New York (NYC)
- Chancellor of the Department of Education (NYC)
- Board of Higher Education (CUNY)
- Chancellor of State University (SUNY)
- Administrator of Courts (NYS-NYC)

To obtain a waiver for an employee, the prospective employer of the retiree must show that the person’s skills are unique and in the best interests of the government service, and that no other qualified persons are readily available for recruitment to perform the duties of the position to be filled. Initial or renewed waivers may be for periods of up to two years.

An exception to this restriction is provided by RSSL §212, which permits a service retiree to be re-employed in New York public service if the retiree earns no more than the amount prescribed by that section and files a “Section 212 Statement of Election” with his or her retirement system (see below). 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 2009, 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 2009 should have received a §211 waiver to prevent suspension of the retirement allowance during that year. Failure to comply with these requirements can result in the forfeiture of pension benefits in subsequent years.

Disability retirees are not subject to RSSL §211 and §212. However, the New York City Administrative Code (Volume 3, Title 13, Chapter 4, §13-553), combined with the New York City Charter (§1117), prohibits a TRS 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 New York City pedagogical pensioners who appear to be violators of New York State RSSL §211 and §212, or New York City Charter §1117 during calendar year 2009. These individuals—known as “double-dippers” or “disability violators”—have been re-employed by a City agency and may be illegally collecting a pension from the New York City Teachers' Retirement System.

### **Scope and Methodology**

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS) except for organizational independence as disclosed in the following paragraph. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93 of the New York City Charter.

We are issuing a modified GAGAS compliance statement because of the Comptroller's mandated non-audit responsibility in connection with the TRS Board. In accordance with §13-507 of the New York City Administrative Code, the Comptroller is one of seven trustees of the TRS Board. The Comptroller sits on the Board through a designee. The Comptroller's designee was not involved in planning or conducting this audit or in writing or reviewing this audit report. Accordingly, we feel that the above issue has had no impact on the objectivity of this audit or on the conclusions and associated findings disclosed in this report.

Our audit period was January 1, 2009, through December 31, 2009. We met with officials of the New York City Teachers' Retirement System to review their monitoring processes for individual pensioners.

To discover the extent to which retired City employees were being improperly re-employed by City agencies, the Audit Bureau's Information Technology (IT) Division performed a computer match of approximately 329,601 New York City pensioners against a listing of all City workers (approximately 409,530) who received a W-2 wage statement from the Financial Information

Services Agency (FISA) for the year 2009.<sup>1</sup> This matching process identified 1,180 individuals under age 65 who received more than \$30,000 in 2009 (service retirees) or \$1,800 in 2009 (disability retirees). These individuals were then sorted by retirement system and investigated to determine the reasons they received a pension check and a payroll check concurrently.

Among the valid reasons individuals received both pension checks and payroll checks are the following: some had been granted waivers; some had their pensions suspended at the appropriate times; and some were not actually employed during 2009, but instead received lump-sum payments for accrued vacation and sick leave or for having selected an early retirement program that provided subsequent cash payments in 2009. Although the match did not include local government employees paid by systems other than those integrated with FISA, we are presently conducting 2009 matches of City pensioners (BERS, NYCERS, FIRE, POLICE, and TRS) against the 330,978 State workers; the results of this match will be covered in a separate report (Audit # FL11-102A).

Of the 1,180 matches, 300 consisted of individuals collecting TRS pensions. For all 300 matches, we:

- obtained additional detailed information about their individual year 2009 pension and payroll payments;
- analyzed the timing, and to some extent, the types of payments received;
- verified the amounts shown on the computer-match listing; and
- met with retirement system representatives, who assisted us in searching their files for waivers and other relevant information.

For those pensioners who appeared to lack valid reasons for receiving both pension and payroll checks, we calculated the apparent pension overpayments, based on our analyses of when these re-employed 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 5 percent of the total overpayments, can be determined only by TRS officials.

### **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 was discussed at an exit conference held on June 9, 2011. On June 14, 2011, we submitted a draft report to TRS officials with a request for comments and received a written response from them on June 24, 2011. In their response, TRS officials agreed with the three recommendations and indicated that they have taken steps to recoup the overpayments.

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

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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 FL11-099A (BERS), FL11-098A (NYCERS), FL11-096A (POLICE), and FL11-097AL (FIRE).

## FINDINGS AND RECOMMENDATIONS

### Overpayment of Pension Benefits

This audit identified three TRS retirees who received \$27,487 in pension payments during 2009 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.)

The audit found that two pensioners were in apparent violation of RSSL §211 - §212 because they were under age 65 and received City wages exceeding the limitations without having a waiver on file. The audit found one other pensioner who was in violation of §1117 of the New York City Charter because the pensioner was collecting a disability pension while earning more than \$1,800 (including pension payments). These three individuals apparently received improper pension payments of approximately \$27,487 as follows:

	<u>Number of Matches</u>	<u>Total Improper Payments</u>
§211/212 Violators	2	\$ 15,364
§1117 Violators	<u>1</u>	<u>12,123</u>
Total	<u>3</u>	<u>\$ 27,487</u>

Our total represents the amount of improper 2009 pension payments based on an analysis of when the re-employed 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. Additionally, the annuity portions of the pension payments, if any, are not affected by RSSL §211 and §212 or City Charter §1117, and therefore should be excluded from the overpayments cited in this report. The annuity portions, which are estimated to be less than 5 percent of the total overpayments, can be determined only by 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 2009:

**CASE #1:** This principal, who retired from the Department of Education in September 2008, collected 12 pension checks (one for each month) in calendar year 2009, totaling \$133,345. This individual worked for the Department of Education for six months in 2009 (January through May and July) and collected a salary of \$58,089. We found no evidence that there is a waiver for this individual for any portion of 2009. In May 2009, this person's cumulative salary earnings for the year exceeded the \$30,000 limit for service retirees. Therefore, it appears that one pension check (July) totaling \$8,669 may have been improperly received and cashed in calendar year 2009.



## **RECOMMENDATIONS**

TRS officials should:

1. Investigate those individuals identified in this report and, if in violation of State or City regulation, commence recoupment action against said individuals.
2. Forward to the Department of Investigation, if the circumstances warrant such action, the names of individuals found to be illegally collecting pensions.
3. 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.

**TRS Response:** “Please be advised that the Teachers’ Retirement System (TRS) is in full compliance with all your recommendations.”

APPENDIX 1  
 2009 PENSION OVERPAYMENTS - NEW YORK CITY TEACHERS' RETIREMENT SYSTEM  
 SERVICE RETIREES

Pension Number	Date Retired	2009 Pension	Months Overpaid	*Pension Amount Overpaid	2009 Employee	Payroll Code	2009 Salary	Waiver Issuing Agency	Waiver in 2009
Case #1 U-7388479-0	9/15/2008	\$133,345	1	\$8,669	DOE	746/747	\$58,089	DOEC	No
U-029512-0	8/31/2004	\$20,086	4	\$6,695	DOE	746/747	\$44,438	DOEC	No

Total: \$15,364

Total Individuals: 2

Notes:

\* Amount of pension overpayment after individual exceeded \$30,000 earnings limitation

DOE                      Department of Education  
 DOEC                  Department of Education Chancellor

APPENDIX II  
 2009 PENSION OVERPAYMENTS - NEW YORK CITY TEACHERS' RETIREMENT SYSTEM  
 DISABILITY RETIREES

Pension Number	Date Retired	2009 Pension	Months Overpaid	*Pension Amount Overpaid	2009 Employer	Payroll Code	2009 Salary
U-039296-0	10/1/2008	\$ 37,998	3	\$ 12,123	DOE	742	\$ 42,491

Total Individuals: 1

Total: \$12,123

NOTES:

DOE Department of Education

\* Amount of pension overpayment after individual exceeded earnings limitation of \$1,800 (including pension payments)

RE-EMPLOYED TRS PENSIONERS

TOTALS BY CURRENT EMPLOYER

Current Employer

<u>Department of Education (DOE)</u>	<u>Payroll Code</u>	<u>Total Number of Individuals Paid Under Code</u>
DOE Pedagogical	742	1
DOE Per Diem Teachers	746	2
DOE Per Session Teacher	747	2

Total

5



TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK  
55 Water Street, New York, NY 10041 • www.trsnyc.org • 1 (888) 8-NYC-TRS

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June 24, 2011

Ms. Tina Kim  
Deputy Comptroller for Audits  
1 Centre Street, Room 1100  
New York, NY 10007 – 2341

Re: Audit Report on NYC Teachers' Retirement System  
Pedagogical Pensioners of the New York City  
Teachers' Retirement System **Working for the City after Retirement**  
January 1, 2009 to December 31, 2009  
FL11-100A

Dear Ms. Kim:

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 three (3) "NYC Pensioners **Working for the City after Retirement**" in 2009 that needed to be accounted for concerning the EAR limit of \$30,000.

For one (1) pensioner, TRS records show that the member was suspended in 2010 for three (3) months for exceeding the 2009 EAR limits.

Another pensioner repaid the requested excess earning amount; however, additionally reported wages were discovered resulting in the member exceeding EAR limits again. We have sent correspondences to the pensioner explaining that their earnings must be corroborated and within EAR limits to avoid suspension.

Additionally, there was one (1) Disability Pensioner Working for the City after Retirement in 2009. The pensioner's employer is in the process of recouping the payments that the member incorrectly received.

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. Reilly, A. Bradford, T. Cannady

2004 Actual \$30,000

2004 EAR limit: \$30,000

### Teachers' Retirement System 2009 EAR Audit Report and Overpayment

New York City Pensioners Working for New York City after their Retirement  
State, Disability, and Consultant

#	Employer	Pension #	Date Retired	Payment Type	OTC Wages Earned	Term/ Retro pay	Prior Year wages	Other Adjust	Wages Earned	Over limit	Repayment amount	Resolution	EAR Status	OTC Status
1	City	U7384790	9/15/2008	SR	58,089.00	(4,882.66)	0.00	(8,356.03)	52,571.44	22,571.44	14,215.41	Repayment	Resolute	Pending
2	City	U0295120	8/31/2004	SR	44,438.00	0.00	(4,719.05)	0.00	39,718.95	9,718.95	5,021.61	Suspended 2/1/10-4/30/10	Resolute	Pending
3	Disability	U0392960	10/1/2008	ODR	42,491.33	0.00	0.00	0.00	35,700.75	35,700.75	0.00	No Action	Pending	Pending
4	Consultants	U7298600	9/16/2005	SR	59,067.00	0.00	0.00	0.00	0.00	29,067.00	0.00	No Action	Pending	Pending
5	Consultants	U0383790	7/1/2008	SR	95,180.00	0.00	0.00	0.00	0.00	65,180.00	0.00	Pending	Pending	Pending
6	Consultants	U0326370	6/29/2005	SR	33,755.00	0.00	0.00	0.00	0.00	3,755.00	0.00	Pending	Pending	Pending
7	State	U7263260	9/1/2004	SR	83,391.00	0.00	0.00	0.00	0.00	53,391.00	0.00	Pending	Pending	Pending

End of Report