

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 Retirement January 1, 2001—December 31, 2002

FL04-113A

June 30, 2004



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 illegally re-employed ("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, § 211 and § 212, or New York City Charter § 1117, during calendar years 2001 and 2002.

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.

Audits such as this provide a means of ensuring that pensioners are complying with all laws pertaining to public service re-employment and that appropriate steps are taken to recoup improper payments to individuals after retirement.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please contact my audit bureau at 212-669-3747 or e-mail us at audit@Comptroller.nyc.gov.

Very truly yours,

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

William C. Thompson, Jr.

WCT/gr

Report: FL04-113A
Filed: June 30, 2004

*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 Retirement
January 1, 2001 – December 31, 2002**

FL04-113A

AUDIT REPORT IN BRIEF

The Comptroller's Office performed an audit to identify New York City Employees' Retirement System (NYCERS) pensioners who may be illegally re-employed ("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 years 2001 and 2002.

Audit Findings and Conclusions

The audit found three individuals who received \$35,643 in pension payments during 2001 and 2002 that appear to violate applicable sections of State and City laws. One of the three individuals received improper pension payments in both 2001 and 2002. These individuals were in apparent violation of RSSL § 211 or § 212 because they were under age 70 in 2001 or under age 65 in 2002 and received City wages exceeding the limitations without having a waiver on file at NYCERS, 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.

Audit Recommendations

To address these issues the report recommended that NYCERS officials:

- Investigate those individuals identified as concurrently receiving pensions while being re-employed in public service. NYCERS 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 service retirees under the age of 65, and to all disability retirees, that clearly state their responsibilities regarding public service re-employment.

INTRODUCTION

Background

A New York City Employees’ Retirement System 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 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 re-employed 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 such request, and has then obtained 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 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). For calendar years 2001 and 2002, the earnings limitations do not apply after the retiree reaches the age 70 and 65, respectively.

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 years 2001 and 2002, the earnings limitations for a service retiree who filed a Statement of Election under § 212 were \$18,500 and \$20,000, respectively. Accordingly, any service retiree earning more than \$18,500 (in 2001) or \$20,000 (in 2002) 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 re-employment 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 (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 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 highest 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 Employees' Retirement System pensioners who may be illegally re-employed ("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 years 2001 and 2002.

Scope and Methodology

Our audit period was January 1, 2001, through December 31, 2002. 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 re-employed by City agencies, we asked the Audit Bureau's EDP Unit to perform a computer match of New York City pensioners against a listing of all City workers who received a W-2 wage statement from the Financial Information Services Agency (FISA) for the years 2001 and 2002. In each of these years there were approximately 265,000 pensioners and 400,000 employees who received W-2's.¹ This matching process identified 1,505 individuals (700 in 2001 and 805 in 2002) under age 70 who received more than \$18,500 in 2001 or under age 65 who received more than \$20,000 in 2002 (service retirees), or \$1,800 in either year (disability retirees). We then sorted these lists by retirement system and investigated the reasons those 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 2001 or 2002, 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 2001 or 2002. Although we did not match the New York City retirees against local government employees paid by systems other than those integrated with FISA, we are presently conducting 2001 (BERS and NYCERS) and 2002 (BERS, NYCERS, FIRE, POLICE, and TRS) matches of City pensioners against the 250,000 State workers; the results of this match will be covered in a separate report (Audit # FL04-115A).

Of the 1,505 matches, 274 consisted of individuals collecting NYCERS pensions. For all 274 matches, we obtained additional detailed information about their individual year 2001 and 2002 pension and payroll payments. We analyzed the timing, and to some extent, the types of payments received. We also verified the amounts shown on the computer-match listing. In addition, we 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 \$18,500 (2001) or \$20,000 (2002) 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.

¹ A separate audit report will be issued for each of the five New York City retirement systems; the other four audits are FL04-110A (BERS), FL04-111A (FIRE), FL04-112A (POLICE), and FL04-114A (TRS).

The annuity portions, which are estimated to be less than five percent of the total overpayments, can be determined only by NYCERS officials.

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 is entitled to cast one of the seven board votes. 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 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. The audit was performed in accordance with the City Comptroller's audit responsibilities 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 was discussed at an exit conference. On June 4, 2004, we submitted a draft report to NYCERS officials with a request for comments.

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

The audit identified three individuals who received \$35,643 in pension payments during 2001 and 2002 that appear to violate applicable sections of State and City laws. One of the three individuals received improper pension payments in both 2001 and 2002. (See Appendices I through IV for a listing of the four individuals and their current employers.)

These individuals were in apparent violation of RSSL § 211 or § 212 because they were under age 70 in 2001 or under age 65 in 2002 and received City wages exceeding the limitations without having a waiver on file at NYCERS, 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 three individuals (four matches) received improper pension payments of approximately \$35,000, as follows:

	<u>Number of Matches</u>	<u>Total Improper Payments</u>
2001/2002 § 211/212 Violators	3	\$33,199
2001/2002 § 1117 Violators	<u>1</u>	<u>2,444</u>
Total	<u>4</u>	<u>\$35,643</u>

Our total represents the amount of improper 2001 and 2002 pension payments based on an analysis of when the re-employed pensioners reached the legal earnings limitations (\$18,500 in 2001 and \$20,000 in 2002 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 NYCERS officials. Immediate action by NYCERS and the employing City agencies is needed to investigate and recoup where appropriate any improper payments made to these retirees identified as possible “double-dippers.” (The applicable employing agencies involved in this audit appear in Appendix IV.)

The following is an example of a NYCERS service retiree who was found to be working at a City agency during calendar year 2001:

CASE #1: A Recreation Director who retired from the Department of Parks and Recreation in April 2000, collected 12 pension checks (one each month) in

calendar year 2001 totaling \$28,282. He worked as a full-time guidance counselor for the Department of Education for all of calendar year 2001 (January through December) and collected a salary of \$75,354. We found no evidence of a waiver for him for any portion of calendar year 2001. In March 2001, his year 2001 cumulative salary earnings exceeded the \$18,500 limit for service retirees. Therefore, it appears that nine pension checks (April through December 2001) totaling \$20,979 may have been improperly received and cashed in calendar year 2001.

The following is an example of a NYCERS disability retiree who was found to be working at a City agency during calendar year 2002:

CASE #2: A sanitation worker who retired in July 1993 on a disability pension, collected 12 pension checks (one each month) in calendar year 2002, totaling \$9,728. He worked as a city park worker for the Department of Parks and Recreation for four months in 2002 (August through November) and collected a salary of \$6,166. He began working for the Department of Sanitation in 1979, and therefore, cannot qualify for the “Disability Safeguards” provisions beyond 1999. Accordingly, any earnings above the \$1,800 for 2002 make the disability pension payments for that year improper. Thus, it appears that 3 months of disability checks (September through November 2002), totaling \$2,444 may have been improperly received and cashed in 2002.

RECOMMENDATIONS

New York City Employees’ Retirement System officials should:

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

NYCERS Response: “We have investigated all pensioners cited and determined that of the twenty eight (28) pensioners named, twenty one (21) were in violation of §211 and §212 of the RSSL, 13-171 of the NYC Administrative Code or § 1117 of the NYC Charter. In all twenty one (21) cases the overpayments are in the process of being recouped.”

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

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 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: NYCERS 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 re-employment.

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

**APPENDIX I
PENSION OVERPAYMENTS - NYC EMPLOYEES' RETIREMENT SYSTEM
2001 MATCHES (LACK OF WAIVERS)**

Pension Number	Date Retired	2001 Pension	Months Overpaid	Amount Overpaid	2001 Employer	Payroll Code	2001 Salary	Waiver Issuing Agency	Waiver in 2001
CASE #1 N-231623-0	4/2/00	28,282	9	20,979	BOE	742	75,354	BOEC	NO

Total: \$ 20,979

NOTES:

BOE Board of Education
DOH Department of Health
QNS-CC Queensboro Community College

BOEC Board of Education (Chancellor's Office)
CUNYC Board of Higher Education (City University of New York)
DCAS Department of Citywide Administrative Services

**APPENDIX II
PENSION OVERPAYMENTS - NYC EMPLOYEES' RETIREMENT SYSTEM
2002 MATCHES (LACK OF WAIVERS)**

Pension Number	Date Retired	2002 Pension	Months Overpaid	Amount Overpaid	2002 Employer	Payroll Code	2002 Salary	Waiver Issuing Agency	Waiver in 2002
N-231623-0	4/2/00	12,984	4	8,272	BOE	742/747	85,429	BOEC	NO
N-219286-0	12/1/95	23,688	2	3,948	BOE	742	63,396	BOEC	9/1/01 - 6/30/02

Total: \$ 12,220

NOTES:

BOE **Board of Education**

BOEC **Board of Education (Chancellor's Office)**

**APPENDIX III
PENSION OVERPAYMENTS - NYC EMPLOYEES' RETIREMENT SYSTEM
2002 MATCHES (DISABILITY RETIREES)**

Pension Number	Date Retired	2002 Pension	Months Overpaid	Amount Overpaid	2002 Employer	Payroll Code	2002 Salary
CASE #2 N-306489-0	7/1/93	9,728	3	2,444	DPR	846	6,166

Total: \$ 2,444

NOTES:

DPR Department of Parks and Recreation

RE-EMPLOYED NYCERS PENSIONERS

TOTALS BY CURRENT EMPLOYER

Current Employer

<u>Board of Education (BOE)</u>	<u>Payroll Code</u>	<u>Total</u>
BOE (Full-Time Teachers)	742	3
BOE (Per-Session Teachers)	747	1
<u>Other Agencies</u>		
Department of Parks and Recreation	846	1
<u>Total</u>		<u>5</u>

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: JOHN J. MURPHY

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

June 18, 2004
Audit Reports: FL04-113A,
FL04-115A, FL04-148A

Dear Mr. Brooks,

This is in response to your request regarding the progress this office has made in implementing the recommendations contained in the above-mentioned Audit Reports.

We have investigated all pensioners cited and determined that of the twenty eight (28) pensioners named, twenty one (21) were in violation of §211 and §212 of the RSSL, 13-171 of the NYC Administrative Code or §1117 of the NYC Charter. In all twenty one (21) cases the overpayments are in the process of being recouped. One pensioner cited has been referred to Corporation Counsel for an opinion regarding disability retirees re-employed as a consultant. Attached are our detailed responses for each pensioner by audit report.

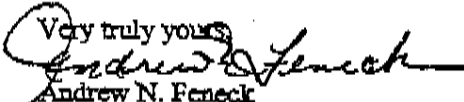
NYCERS will refer all cases to the Department of Investigation that involve individuals who continuously and knowingly violate RSSL §211 or §212, NYC Administrative Code Sec 13-171 or NYC Charter §1117. A special notice regarding re-employment after retirement is sent to our pensioners each year in September.

As part of our audit plan, NYCERS suspends the retirement allowance when the pensioner exceeds the earnings 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. NYCERS receives New York State payroll information from your office.

Of the twenty eight (28) pensioners named eighteen (18) were retirees working for the State of New York. To prevent or minimize pension overpayments for re-employed retirees working for the State it is necessary that we have the required payroll information on a regular basis, not at the time the audit is in progress. By the time we are notified of violations a year or so has passed, which could translate into large overpayments. Before the State implemented their new payroll system, PAYSr, we would receive "non-member" payroll information from the bi-weekly payroll tapes. This non-member information was very helpful in isolating and preventing overpayments. Since their payroll conversion the State has been very reluctant in supplying this information.

It is NYCERS responsibility, and Comptrollers as custodian of the fund, to minimize if not eliminate pension overpayments all together. To attain that goal I am requesting your services and influence in attaining New York State payroll information on a regular basis. It is in our best interest, as I believe it is with the State, to share this limited information with one another.

Very truly yours,


Andrew N. Feneck
Director, Benefit Disbursements

cc: John Murphy
Milton Aron
Karl Bloom

Phone: (347) 643-3114
Fax: (347) 643-3700

Visit our Website at
www.nycers.org

NYCERS

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: JOHN J. MURPHY

RETIREMENT AND BENEFITS

MEMORANDUM

To: Andrew Feneck, Karl Bloom
From: Salwa Boutros
Date: 6/16/04
Subject: NYCERS follow-up to Comptroller's Report # FL04-113A

The following report contains our investigation of those pensioners identified as being re-employed with New York City.

FL04-113A
Year 2001 and 2002 NY City Matches (Lack of Waivers)

Service retirees working for New York City

P# 231623-0

[REDACTED] is a member of Teacher Retirement System. Due to an internal computer program error, his earnings did not show up in our payroll match. This is in the process of being corrected. We have been in contact with TRS. His membership with TRS has since been canceled. For 2001 and 2002, he exceeded the income limitations in April of each year. His pension allowance will be suspended for 16 months starting 6/2004.

P# 233351

[REDACTED] did not exceed the limitations in year 2001. [REDACTED] received two checks on 1/4/01 for \$2,525.67 and 6/8/01 for \$2,155.67. The first check was back pay for time prior to his retirement from Department of Health and Mental Hygiene (S816), and the second check was due to the Collective Bargaining Increase for 4/1/2000. See copies attached from Department of Health. †

P# 219286

[REDACTED] had a waiver covering the period from 9/01 to 6/02, and continued working until the end of the year. He exceeded the limitations in 10/02; therefore, his pension allowance will be suspended for two months starting June 2004.

2002 Disability Retirees

P# 306489

[REDACTED] did not exceed the income limitation for year 2002. The personal service income limitation was \$22,200. Please see copy attached. †