

# AUDIT REPORT



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

## **Audit Report on New York City Pensioners Working as Consultants for The City after Retirement January 1, 2007–December 31, 2007**

*FL09-122A*

**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 pensioners working as consultants for the City 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 any of the five New York City retirement systems who is reemployed as a consultant in 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 officials of the five New York City retirement systems, and their comments have been considered in preparing this report. Their complete responses are 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,

William C. Thompson, Jr.

WCT/fh

**Report: FL09-122A**  
**Date: June 30, 2009**

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

**Audit Report on New York City Pensioners  
Working as Consultants for the City  
after Retirement  
January 1, 2007–December 31, 2007**

**FL09-122A**

**AUDIT REPORT IN BRIEF**

The objective of this audit was to identify New York City pensioners who may be reemployed as a consultant and illegally collecting a pension from a New York City 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 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 six individuals who received \$103,820 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 compensation from the City for professional services that exceeded the limitations without having a waiver on file at their retirement system.

**Audit Recommendations**

The audit made four recommendations, that New York City retirement systems should:

- Investigate those individuals identified as receiving pensions while receiving payments from the City for providing professional services as consultants. City retirement systems 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 all retirees that clearly state their responsibilities when returning to public service after retirement.

## **INTRODUCTION**

### **Background**

A New York City service retiree who is reemployed by New York 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 disability retirees, the governing regulations are the New York City Administrative Code (Volume 3, Title 13) and the New York City Charter (§1117). When 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 prospective employer has requested a waiver from the State or municipal Civil Service Commission or other authorized agency setting forth the reasons for the request, and has then obtained a waiver from that agency.

With regard to consultants, RSSL §211, Subdivision 4, (consultant amendment) states:

“A retired person who returns to public service on or after January first, nineteen hundred seventy-four, as a consultant shall be subject to the limitations applicable to a reemployed retiree as specified in this section or in any other provision of law.”

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 Board of Education (NYC)
- Board of Higher Education (CUNY) (NYC)
- Chancellor of State University (SUNY) (NYS)
- Administrator of Courts (NYS-NYC)

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

An exception to this restriction is provided by RSSL §212, which permits a service retiree to be reemployed in New York public service if the retiree earns no more than the amount

prescribed by that section and files a “Section 212 Statement of Election” with his or her retirement system (see below). This earnings limitation does not apply after the retiree reaches the age of 65.

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

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

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, the New York State Education Law, and the New York City Charter (§1117) provide for the reemployment of New York City disability retirees in New York State public service.

In addition, the New York City Corporation Counsel stated in an opinion that:

“[A] retiree of a retirement system maintained by the City, whose last retirement system membership prior to such retirement commenced on or after May 31, 1973, returns to service as a consultant on or after January 1, 1974, . . . will be subject to the provisions of City Charter §1117 as to suspension and forfeiture of the pension portion of his retirement allowance. . . except to the extent that he qualifies under §211 or §212 of the Retirement and Social Security law for an exemption from such suspension and forfeiture.”

The following regulations are applicable to each of the five City retirement systems:

**POLICE:**

The New York City Administrative Code (Volume 3, Title 13, Chapter 2, §13-254) provides for the reemployment of POLICE disability retirees in New York public service. These provisions (also known as “Disability Safeguards”) apply only up to 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 as to 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 title next higher than that held by the person at retirement.

After the minimum (20- or 25-year) period for service retirement has expired, POLICE disability retirees are subject to the New York City Charter (§1117), which prohibits a retiree from earning more than \$1,800 (including pension payments) per year in New York public service, unless the disability pension is suspended during the time of such employment.

#### **TEACHERS:**

The New York City Administrative Code (Volume 3, Title 13, Chapter 4, §13-553), combined with the New York City Charter (§1117), prohibits a TEACHERS disability retiree from earning more than \$1,800 (including pension payments) per year in New York public service, unless the disability pension is suspended during the time of such employment.

#### **NYCERS:**

The New York City Administrative Code (Volume 3, Title 13, Chapter 1, §13-171) provides for the reemployment of NYCERS disability retirees in New York State public service. These provisions (also known as "Disability Safeguards") apply only up to 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 as to 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 title next higher than that held by the person at retirement.

After the minimum period for service retirement has expired, NYCERS disability retirees are subject to the New York City Charter (§1117), which prohibits a retiree from earning more than \$1,800 (including pension payments) per year in New York public service, unless the disability pension is suspended during the time of such employment.

#### **FIRE:**

The New York City Administrative Code (Volume 3, Title 13, Chapter 3, §13-356 and §13-357) provides for the reemployment of FIRE disability retirees in New York public service. These provisions (also known as "Disability Safeguards") apply only up to 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 as to 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 title next higher than that held by the person at retirement.

After the minimum (20- or 25-year) period for service retirement has expired, FIRE disability retirees are subject to the New York City Charter (§1117), which prohibits a retiree from earning more than \$1,800 (including pension payments) per year in New York public service, unless his or her disability pension is suspended during the time of such employment.

### **BERS:**

The New York State Education Law (Title 2, Article 52, §2575), combined with the New York City Charter (§1117), prohibits a BERS disability retiree from earning more than \$1,800 (including pension payments) per year in New York public service, unless the disability pension is suspended during the time of such employment.

With regard to disability retirees of all five New York City retirement systems, waivers that supersede the above provisions may not be granted.

### **Objective**

The objective of this audit was to identify those New York City pensioners who may be reemployed as a consultant and illegally collecting a pension from a New York City 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 retirement system boards for NYCERS, POLICE, FIRE, and TRS. In accordance with §13-103, §13-202, §13-302, and §13-507 of the New York City Administrative Code, and §2575 of the New York State Education Law, Boards of Trustees head NYCERS, POLICE, FIRE, and TRS. The Comptroller is one of the trustees of NYCERS, POLICE, FIRE, and TRS. The Comptroller sits on each of these Boards 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 five New York City retirement systems (NYCERS, POLICE, FIRE, TRS, and BERS) to review their monitoring processes for individual pensioners.

To determine how many New York City pensioners returned to public service as City consultants, the Audit Bureau's IT Division performed a computer match of the approximately 278,019 New York City pensioners against a listing of all individuals (approximately 14,254) who received a Form 1099. This matching process identified 20 individuals who received non-employee compensation for professional services (as indicated on Form 1099-MISC Box 7) from the City as well as City pension checks. Of the 20 matched individuals, 3 were POLICE retirees, 2 were TEACHERS retirees, 14 were NYCERS retirees, and 1 was a FIRE retiree. The computer match did not identify any BERS retirees.

A total of six individuals appeared to lack valid reasons for being on both lists: 6 service retirees. For these six individuals, we calculated their apparent pension overpayments based on our determination of the date on which they reached the legal earnings limitations of \$30,000 for service retirees. Additionally, the annuity portions of the pension payments, if any, are not affected by RSSL §211 or §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 City retirement system officials.

In addition, we followed-up on the implementation status of the recommendations from last year's audit report—*New York City Pensioners Working as Consultants for the City after Retirement January 1, 2006—December 31, 2006*, FL08-111A, issued June 30, 2008—by reviewing provided correspondence from BERS, POLICE, NYCERS, and TRS. We also intended to follow-up on the implementation status of the recommendations from FIRE. However, last year's report did not make any recommendations to FIRE because the audit did not identify any pensioners who received 2006 pension payments that appear to violate applicable sections of state or City laws.

### **Discussion of Audit Results**

The matters covered in this report were discussed with officials of the five City retirement systems during and at the conclusion of this audit. A preliminary draft report was sent to officials of the five City retirement systems and discussed at exit conferences with officials of four of the five retirement systems. FIRE officials elected to waive their exit conference. We submitted a draft report to the five City retirement systems with a request for comments. Each of the five retirement systems provided us with separate responses to a draft of our audit, which are summarized as follows:

***NYCERS Response:*** On June 4, 2009, we received a response from the NYCERS Director of Finance, in which he described the actions NYCERS has taken to address the report's recommendations.

**TRS Response:** On June 10, 2009, we received a response from the TRS Deputy Director, stating: “Please be advised that the Teachers’ Retirement System (TRS) is in full compliance with all your recommendations.”

**POLICE Response:** On June 2, 2009, we received a response from the POLICE Executive Director, in which he described the actions POLICE has taken to address the report’s recommendations.

**BERS Response:** On June 11, 2009, we received a response from the BERS Director of Operations, stating: “Though no violators have been found in this audit, we will continue to be vigilant in seeking total adherence to aforementioned laws.”

**FIRE Response:** On May 29, 2009, we received a response from the FIRE Chief Compliance Officer, in which he either agreed to implement or stated that FIRE was already in the process of implementing the report’s recommendations.

The full texts of these written responses are included as addenda to this report.

## FINDINGS

### **Overpayment of Pension Benefits**

This audit identified six New York City pensioners who returned to public service as consultants and received a total of approximately \$103,820 in pension payments during 2007 that appear to violate applicable sections of State and City laws. (See Appendices I through IV for the agency summaries and detailed listings of the six pensioners who returned to public service as consultants and their current City agencies) The breakdown of the six pensioners and the improper pension payments they received from two New York City retirement systems are as follows:

| <b><u>Retirement<br/>System</u></b> | <b><u>Service<br/>Retirees</u></b> | <b><u>Improper Pension<br/>Payments</u></b> |
|-------------------------------------|------------------------------------|---|
| NYCERS                              | 5                                  | \$96,188                                    |
| TRS                                 | <u>1</u>                           | <u>7,632</u>                                |
| <b>Total</b>                        | <b>6</b>                           | <b>\$103,820</b>                            |

The six individuals were in apparent violation of RSSL §211 or §212 because they were under age 65 and received compensation from the City for professional services that exceeded the limitations without having a waiver on file at their retirement system.

Our total represents the amount of improper 2007 pension payments based on our determination of the date on which the pensioners reached the 2007 legal earnings limitations of \$30,000 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 or §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 City retirement system officials. Immediate action by the five City retirement systems and the employing City agencies is needed to investigate and recoup, if appropriate, any improper payments made to these retirees identified as possible “double-dippers.”

The following is an example of a NYCERS service retiree who was found to be providing professional services as a consultant for a City agency during calendar year 2007:

**Case #1:** An Assistant District Attorney, who retired in December 2000, collected 12 pension checks (one for each month) in calendar year 2007, totaling \$69,660. This individual worked as a consultant at the Supreme Court 1<sup>st</sup> Judicial District for twelve months (January through December) and received compensation of \$99,100 in 2007. We found no evidence of a waiver for this individual for any portion of 2007. On May 21, 2007, this person’s cumulative compensation for the year exceeded the \$30,000 limit for service retirees. Therefore, it appears that seven pension checks (June

to December) totaling \$38,481 may have been improperly received and cashed in calendar year 2007.

It should be noted that in their correspondences concerning the implementation status of the recommendations from last year's audit of 2006, NYCERS, TRS, POLICE, and BERS officials advised us that, they have implemented or were in the process of implementing the report's recommendations. FIRE did not provide us any correspondence. It should be noted that last year's report did not make any recommendations to FIRE because the audit did not identify any pensioners who received 2006 pension payments that appear to violate applicable sections of state or City laws.

## RECOMMENDATIONS

Officials of each of the five New York City retirement systems should:

1. Investigate those individuals identified as receiving pensions while receiving payments from the City for providing professional services as consultants. City retirement systems officials should also commence prompt recoupment action against those individuals found to be illegally collecting pensions.

**Agency Responses:** TRS, FIRE, and POLICE agreed with this recommendation.

BERS did not address this recommendation. However, the Director of Operations stated, "Though no violators have been found in this audit, we will continue to be vigilant in seeking total adherence to aforementioned laws."

The NYCERS Director of Finance stated:

"We have investigated the five pensioners cited as working as consultants for the City of New York, and determined that none of them were in violation of §211 or §212 of the RSSL, §13-171 of the Administrative Code or §1117 of the NYC Charter.

"Four of the five pensioners were serving on the 18-B criminal attorney panel for the City of New York and were not in violation. See enclosed memo by the NYC Law Department, dated Oct, 15, 2004, which addresses City retirees serving on the 18-B criminal attorney panel for the City of New York.

"The fifth pensioner is a service retiree and has provided information indicating that she is in business for herself as an arbitrator serving multiple clients, one of which is New York City. As such, it does not appear that she was in violation because she was self-employed, and not 're-employed' by the City. We are continuing to review this case to make a final determination if whether she is subject to §212 of the RSSL."

**Auditor Comment:** While we are pleased that NYCERS has investigated the cited pensioners, we disagree with NYCERS determination that pensioners serving on the 18-B

criminal attorney panel are not consultants. The applicable laws governing city pensioners returning to public service after retirement makes no exceptions for 18-B attorneys.

With regard to the fifth pensioner, all consultants are self-employed and not “re-employed” by the City. However, RSSL §211, Subdivision 4, (consultant amendment) states:

“A retired person who returns to public service on or after January first, nineteen hundred seventy-four, as a consultant shall be subject to the limitations applicable to a reemployed retiree as specified in this section or in any other provision of law.”

Consequently, we maintain that all five individuals cited in this report were in violation of RSSL § 211 and § 212 and should be required to repay the amount of improper payments they received.

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

**Agency Responses:** TRS, NYCERS, FIRE, and POLICE agreed with this recommendation.

BERS did not address this recommendation.

3. Ascertain whether previous pension overpayments have been recouped and whether current pensions have been suspended for those individuals who have been cited in previous audits as “double-dippers” or “disability violators.”

**Agency Responses:** TRS, NYCERS, FIRE, and POLICE agreed with this recommendation.

BERS did not address this recommendation.

4. Send special reminders to all retirees that clearly state their responsibilities when returning to public service after retirement.

**Agency Responses:** TRS, NYCERS, FIRE, and POLICE agreed with this recommendation.

BERS did not address this recommendation.

APPENDIX I

SUMMARY OF 2007 OVERPAYMENTS

SERVICE RETIREES

|               |  | <u>PERSONS OF</u> |  | <u>AMOUNT</u> |
|---------------|--|-------------------|--|---------------|
| <u>NYCERS</u> |  | 5                 |  | 96,188        |
|               |  |                   |  |               |
| <u>TRS</u>    |  | 1                 |  | 7,632         |
|               |  |                   |  |               |

TOTAL

6

\$103,820

**APPENDIX II**  
**2007 PENSION OVERPAYMENTS - NYC EMPLOYEES' RETIREMENT SYSTEM**  
**SERVICE RETIREES**

| Case #1 | Pension Number | Date Retired | 2007 Pension | Months Overpaid | Amount Overpaid | 2007 Employer | Payroll Code | 2007 Salary | Waiver Issuing Agency | Waiver in 2007 |
|---------|----------------|--------------|--------------|-----------------|-----------------|---------------|--------------|-------------|-----------------------|----------------|
|         | N-233336-0     | 12/31/2000   | 69,660       | 7               | 38,481          | SUP COURT 1   | 921          | 99,100      | CAC                   | NO             |
|         | *N-237942-0    | 9/28/2002    | 62,727       | 6               | 30,730          | SUP COURT 1   | 921          | 66,163      | CAC                   | NO             |
|         | N-326246-0     | 11/26/2003   | 52,028       | 5               | 20,683          | SUP COURT 1   | 921          | 44,858      | CAC                   | NO             |
|         | N-315836-0     | 11/4/2000    | 20,284       | 4               | 5,620           | MISC          | 98           | 44,075      | DCAS                  | NO             |
|         | N-315837-0     | 7/14/1994    | 11,392       | 1               | 674             | SUP COURT 1   | 921          | 36,487      | CAC                   | NO             |

**Number of individuals: 5**

**Total      \$96,188**

**NOTES:**

CAC      Chief Administrator of the Courts  
DCAS      Department of Citywide Administrative Services  
MISC      Miscellaneous Agency  
SUP COURT 1      Supreme Court 1st Judicial District

\*This individual was also cited in our prior audits for 2004, 2005, and 2006.

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

| Pension Number | Date Retired | 2007 Pension | Months Overpaid | Amount Overpaid | 2007 Employer | Payroll Code | 2007 Salary | Waiver Issuing Agency | Waiver In 2007 |
|----------------|--------------|--------------|-----------------|-----------------|---------------|--------------|-------------|-----------------------|----------------|
| *U-016507-0    | 11/2/2002    | 7,632        | 9               | 7,632           | SUP COURT AP  | 938          | 187,430     | CAC                   | NO             |

Number of Individuals: 1                      Total                      \$7,632

**NOTES:**

SUP COURT AP  
CAC

Supreme Court Appellate Division  
Chief Administrator of the Courts

\*This individual was also cited in our prior audits for 2003, 2004, and 2005.



APPENDIX IV

RE-EMPLOYED NYC PENSIONERS  
TOTALS BY CURRENT EMPLOYER

| <u>Current Employer</u>               | <u>Payroll<br/>Code</u> | <u>Individuals Paid under Code</u> |                     |              |
|---------------------------------------|-------------------------|------------------------------------|---------------------|--------------|
|                                       |                         | <u>NYCERS<br/>2007</u>             | <u>TRS<br/>2007</u> | <u>TOTAL</u> |
| Miscellaneous                         | 98                      | 1                                  |                     | 1            |
| Supreme Court - 1st Judicial District | 921                     | 4                                  |                     | 4            |
| Supreme Court - Appellate Division    | 938                     | 0                                  | 1                   | 1            |
| <b>Total</b>                          |                         | <b>5</b>                           | <b>1</b>            | <b>6</b>     |



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

June 04, 2009

Audit Report FL09-122A  
Pensioners Working as Consultants  
Calendar Year 2007

Dear Mr. Graham:

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

Recommendation #1 - We have investigated the five pensioners cited as working as consultants for the City of New York, and determined that none of them were in violation of §211 or §212 of the RSSL, §13-171 of the Administrative Code or §1117 of the NYC Charter. I have enclosed details regarding each pensioner cited in this audit report.

Four of the five pensioners were serving on the 18-B criminal attorney panel for the City of New York and were not in violation. See enclosed memo by the NYC Law Department, dated Oct, 15, 2004, which addresses City retirees serving on the 18-B criminal attorney panel for the City of New York.

The fifth pensioner is a service retiree and has provided information indicating that she is in business for herself as an arbitrator serving multiple clients, one of which is New York City. As such, it does not appear that she was in violation because she was self-employed, and not "re-employed" by the City. We are continuing to review this case to make a final determination if whether she is subject to §212 of the RSSL.

Recommendation #2 - 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.

Recommendation #3 - All pension overpayments for individuals cited in previous audit reports have either been fully recouped or are in the process of being recouped.

Recommendation #4 - NYCERS sends a special notice regarding re-employment after retirement to our pensioners each year in September.

NYCERS is committed to constant and consistent monitoring to avoid pension overpayments. 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.

If you have any questions, I can be reached at (347) 643-3522, or by email at [mgoldson@nycers.nyc.gov](mailto:mgoldson@nycers.nyc.gov).

Sincerely,

  
Michael A. Goldson  
Director, Finance

cc: Diane D'Alessandro, Executive Director, NYCERS

NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

**NEW YORK CITY EMPLOYEES RETIREMENT SYSTEM (NYCERS)  
SUMMARY RESPONSE - COMPTROLLER'S AUDIT  
PENSIONERS WORKING AS CONSULTANTS FOR THE CITY AFTER RETIREMENT  
CALENDAR YEAR 2007**

| SVCE/DSAB | PENSION# | RET. DATE | 2007 SALARY  | 2007 LIMIT | OVERPAID | SUSPENDED |     | COMMENTS  |
|-----------|----------|-----------|--------------|------------|----------|-----------|-----|---|
|           |          |           |              |            |          | FROM      | TO  |   |
| Service   | 233336-0 | 12/31/00  | \$ 99,100.00 | N/A        | \$ -     | N/A       | N/A | NOT LIMITED - 18-B attorney - not considered City or State employees or consultants |
| Service   | 237942-0 | 09/28/02  | \$ 66,163.00 | N/A        | \$ -     | N/A       | N/A | NOT LIMITED - 18-B attorney - not considered City or State employees or consultants |
| Service   | 326246-0 | 11/26/03  | \$ 44,858.00 | N/A        | \$ -     | N/A       | N/A | NOT LIMITED - 18-B attorney - not considered City or State employees or consultants |
| Service   | 315837-0 | 11/09/00  | \$ 36,467.00 | N/A        | \$ -     | N/A       | N/A | NOT LIMITED - 18-B attorney - not considered City or State employees or consultants |
| Service   | 315836-0 | 11/04/00  | \$ 44,075.00 | N/A        | \$ -     | N/A       | N/A | UNDER REVIEW - The pensioner appears to be self-employed - will research further.   |



THE CITY OF NEW YORK  
**LAW DEPARTMENT**  
100 CHURCH STREET  
NEW YORK, NY 10007

MICHAEL A. CARDOZO  
*Corporation Counsel*

INGA VAN EYSDEN  
Tel.: (212) 788-0745  
Fax: (212) 788-8900  
ivaneysd@law.nyc.gov

**MEMORANDUM**

TO: Karen Mazza  
General Counsel, NYCERS

FROM: Inga Van Eysden  
Chief, Pensions Division

DATE: October 15, 2004

SUBJECT: Legal Issues

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In response to your request, below is a summary of our positions on several issues you and John Murphy recently have brought to the attention of the Pensions Division.

**RSSL §211 and retirees serving on the 18-B criminal attorney panel**

As discussed with you and with counsel for DCAS, we agree that City retirees serving on the 18-B criminal attorney panel in the City of New York do not constitute consultants for purposes of RSSL §211.



**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  
New York City Pensioners  
Working as Consultants for the City after Retirement  
January 1, 2007 to December 31, 2007  
FL09-122A**

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 case:

TRS had one (1) "NYC Pensioner Working as a Consultant after Retirement" in 2007 that remains over the EAR limit of \$30,000. He is currently suspended for his excess earnings; we will maintain this pensioner's suspension through the current calendar year.

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,

A handwritten signature in black ink, appearing to read "Stan Charles", written over a horizontal line.

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<br>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/<br>NYC COMP | N              | 3,834.00         | 181,429.55 | 0.00      | 181,429.55 | Over limit<br>(Effective 08/08-07/09)<br>*suspension for 2006 EAR | Benefit<br>Suspension<br>2006/ 2007 |

| Group B<br>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<br>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<br>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<br>BTEAC | N              | 7,568.04         | 39,282.08 | 0.00      | 39,282.08 | No Reported Wages      | Send Notice  |

| Group C<br>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                     |
|  |           |              |                      | 211            |                  |           |           |           |  |                                  |
| 1  | T0600550  | 4/12/1982    | CUNY Kingsboro       | N              | 7,850.84         | 18,245.34 | 0.00      | 18,245.34 | Overlimit<br>Effective: 08/ 08- 07/ 09<br>*not currently working and will continue to be suspended | Benefit Suspension<br>2006/ 2007 |
| 2  | T7844370  | 6/12/1992    | CUNY College of S.I. | N              | 20,990.40        | 5,040.81  | 0.00      | 5,040.81  | No Reported Wages<br>CUNY  | Send Notice                      |

EAR LIMIT \$30,000

## 2007 Earning After Retirement - UPDATE

| Group D<br>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<br>Fire Department   | Send Notice                         |
| 2   | U7318010  | 7/1/2006     | BOE- EMP<br>BPXS            | N              | 91,451.77        | 44,945.77  | 39,698.32 | 5,247.45  | Did not go over limit<br>Retro Adjustment- \$5,539.97<br>Prior Year Earnings- \$4,404.51 | Resolved                            |
| 3   | U7315580  | 7/1/2006     | BOE- EMP<br>BTEAC           | N              | 76,924.41        | 44,124.48  | 28,532.50 | 15,591.98 | Did not go over limit<br>Under \$30,000  | Resolved                            |
| 4   | U7315870  | 7/1/2006     | BOE- EMP<br>BTEAC           | N              | 98,315.23        | 47,468.22  | 29,916.92 | 17,551.30 | Did not go over limit<br>Under \$30,000  | Resolved                            |
| 5   | U0235660  | 8/15/2004    | BOE- EMP<br>BTEAC           | N              | 64,860.36        | 33,407.66  | 33,989.78 | -582.12   | Did not go over limit<br>Retro Adjustment- \$5,134.95                                    | Resolved                            |
| 6   | U7194870  | 7/1/2003     | BOE- EMP<br>BPXS            | N              | 90,345.37        | 35,409.74  | 30,029.59 | 5,380.15  | Did not go over limit<br>Repayment - \$29.59   | Resolved                            |
| 7   | U7194870  | 10/10/2006   | BOE- EMP<br>BEDAD           | N              | 85,828.93        | 130,687.16 | 34,935.23 | 95,751.93 | Did not go over limit<br>Retro Adjustment- \$5,146.11                                    | Resolved                            |
| 8   | U7276690  | 8/31/2004    | BOE- EMP<br>BPRN            | N              | 66,595.25        | 39,820.94  | 43,724.07 | -3,903.13 | Over limit<br>Effective: 01/09- 05/09<br>2006- 6 months<br>2007- 5 months                | Benefit<br>Suspension<br>2006/ 2007 |
| 9   | U7202640  | 7/1/2003     | BOE- EMP<br>BPXS            | N              | 82,357.83        | 32,905.03  | 34,802.34 | -1,897.31 | Did not go over limit<br>Retro Adjustment- \$1,612.51<br>repayment- \$3,189.86           | Resolved                            |
| 10  | U7144140  | 8/31/2002    | BOE- EMP<br>BEDAD           | N              | 67,853.54        | 32,556.16  | 28,249.88 | 4,306.28  | Did not go over limit<br>Under \$30,000  | Resolved                            |
| 11  | U0309320  | 7/1/2005     | BOE- EMP<br>BTERS           | N              | 19,223.04        | 46,140.54  | 56,124.13 | -9,983.59 | Over limit<br>Effective: 01/08- 11/08<br>2006- 6 months<br>2007- 5 months                | Benefit<br>Suspension<br>2006/ 2007 |
| 12  | U0072420  | 4/9/2001     | Dept of Parks<br>Recreation | N              | 4,624.32         | 45,521.78  | 0.00      | 45,521.78 | No Reported Wages<br>Parks Department  | Send Notice                         |



## **New York City Police Pension Fund**

233 Broadway  
New York, NY 10279  
(212) 693-5100

Anthony J. Garvey  
Executive Director

**June 02, 2009**

**John Graham  
Deputy Comptroller  
Audits, Accountancy & Contracts  
Office of the Comptroller  
Executive Offices  
1 Centre Street Room 500  
New York, NY 10007-2341**

**Re: Audit Report on NYC Pensioners  
Working as Consultants for New  
York City after Retirement  
January 1, 2007 to December 31, 2007  
FL09-122A**

**Dear Mr. Graham:**

**In regards to the above referenced audit report, the following status report is forwarded.**

### **Recommendation #1**

**Investigate those individuals identified as receiving pensions while receiving payments from the City for providing professional services as consultants. City retirement system official should also commence prompt recoupment action against those individual found to be illegally collecting pensions.**

### **Response**

**The Police Pension Fund is in total agreement that recoupment of pension benefits received in violation of the law should be commenced immediately. It should be noted, however, that this Retirement System does not exercise control over its pension payroll data tape. We are requesting that the Comptrollers Office, as custodian of Police Pension payroll records, supply a list to my Office on a semi-annual basis of all retirees found to be "double-dipping." This will afford the Police Pension Fund an opportunity to fully investigate all identified violators on a timely basis.**



-2-

This System is happy to report that none of our members were listed as possible violators by the Comptroller's Office in the May 20, 2009 audit report.

**Recommendation #2**

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

**Response**

The Police Pension Fund concurs with recommendation #2, however, no retiree investigated was deemed appropriate for such a referral.

**Recommendation #3**

Ascertain whether previous pension overpayments have been recouped and whether current pensions have been suspended for those individuals who have been cited in previous audits as "double-dippers" or "disability violators."

**Response**

The Police Pension Fund has in the past and will continue to suspend or reduce the pension benefit of all identified retirees who elect to continue employment with the City of New York in violation of Section 1117 of the New York City.

**Recommendation #4**

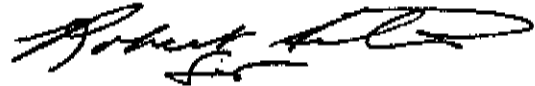
Send special reminders to all retirees that clearly state their responsibilities when returning to public service after retirement.

**Response**

The Police Pension Fund's website provides a special reminder to all retirees with access to the internet and this topic is covered in depth in all retirement seminars conducted by Police Pension Fund personnel as well as in the plan summary description provided to all members. Upon retirement, each member receives the restrictions on employment after retirement in a special handout in the retirement package. An insert outlining this policy was prepared and mailed to all retirees in the calendar year 2006 and finally, a letter from the NYC Police Pension Fund was sent to the NYC Department of Education requesting that any Police Department retiree seeking employment with the NYC Department of Education be reminded of the statutory restrictions on employment.

**I hope this response will aid in the development of a program to insure the integrity of all City Retirement Systems.**

**Sincerely,**

A handwritten signature in black ink, appearing to read "Anthony J. Garvey", with a stylized flourish at the end.

**Anthony J. Garvey  
Executive Director  
NYC Police Pension Fund**

**AJG:hdm**



## FIRE DEPARTMENT

9 METROTECH CENTER - ROOM 8S-10

BROOKLYN, NEW YORK 11201-3857

**RAY SAYLOR**  
CHIEF COMPLIANCE OFFICER



May 29, 2009

Mr. John Graham  
Deputy Comptroller  
Audits, Accountancy & Contracts  
Office of the Comptroller  
1 Centre Street  
New York, New York 10007-2341

**Re: Audit Report on New York City Pensioners Working as Consultants for  
The City after Retirement. January 1, 2007- December 31, 2007 FL09-122A.**

Dear Mr. Graham:

Attached are FDNY's comments on the above mentioned report, as well as our response and Agency Implementation Plan for each of the recommendations. Please thank your audit staff for the assistance they have provided to the Department in this review.

If you wish to discuss any portion of our response, please contact me at (718) 999-1728.

Sincerely,

*Ray Saylor*  
Ray Saylor

cc: Michael Vecchi, Associate Commissioner  
Mary Basso, Executive Director

Audit FL09-122A

*AUDIT RECOMMENDATIONS / FDNY RESPONSE – AGENCY IMPLEMENTATION PLAN*

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

FDNY Response – The above audit did not find any FDNY individuals who violated applicable sections of State and City laws. The Department continues to investigate and take action against those individuals who may be in violation. FDNY has already initiated recoupment proceedings where appropriate.

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

FDNY Response – The above audit did not find any FDNY individuals who violated applicable sections of State and City laws. The Department continues to investigate and take action against those individuals who may be in violation. The Department agrees to notify DOI when circumstances warrant such action.

- 3) Ascertain whether previous pension overpayments have been recouped and whether current pensions have been suspended for those individuals who have cited in previous audits as “double dippers” or “disability violators”.

FDNY Response – The Department agrees; all previously identified pension overpayments have already been, or are in the process of being recouped or suspended.

- 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.

FDNY Response – The Department agrees and special reminders on the subject are sent out on a routine basis.

BOARD OF EDUCATION RETIREMENT SYSTEM  
OF THE CITY OF NEW YORK

KATHLEEN GRIMM, Co-Chair

MILAGROS RODRIGUEZ, Co-Chair



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MILAGROS RODRIGUEZ  
ANNA SANTOS  
PATRICK SULLIVAN  
TRUSTEES

June 11, 2009

John Graham, Deputy Comptroller  
Audits, Accountancy & Contracts  
1 Centre Street-5<sup>th</sup> Floor  
New York, NY 1007-2341

Re: Audit Report on New York City  
Pensioners Working as Consultants for  
The City After Retirement  
January 1, 2007-December 31, 2007  
FL09-122A

Dear Mr. Graham:

We are in receipt of your recently issued draft audit report on "New York City Pensioners Working as Consultants for the City after Retirement" during the period January 1, 2007 through December 31, 2007. For the period under consideration, you did not identify any retiree of the Board of Education Retirement System (BERS) who were re-employed in violation of the New York State Education Law (Title 2, Article 52, § 2575), and the New York City Charter (§1117), the RSSL §211 and §212.

We agree with your conclusions, and though no violators have been found in this audit, we will continue to be vigilant in seeking total adherence to aforementioned laws. Lastly, we would like to extend our gratitude to you and all parties involved in conducting this audit. Thank you.

Sincerely,

A handwritten signature in dark ink, appearing to read "John Cahalin".  
John Cahalin  
Director of Operations

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