

AUDIT REPORT

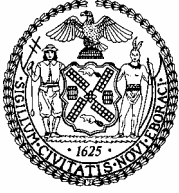


CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF FINANCIAL AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on Pensioners of the New York City Employees' Retirement System Working for the City after their Retirement January 1, 2004—December 31, 2004

FL06-098A

June 30, 2006



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

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the responsibilities of the Comptroller contained in Chapter 5, §93, of the New York City Charter, my office conducted an audit to identify New York City Employees' Retirement System (NYCERS) retirees who may be reemployed by a City agency and illegally collecting a pension, and to quantify the amounts of any improper payments to individuals who appear to be violators of New York State Retirement and Social Security Law, §211 and §212 or New York City Charter § 1117 during calendar year 2004.

A retiree of the New York City Employees' Retirement System who is reemployed in State or City government service may not continue to collect pension benefits except in accordance with conditions established by the New York State Retirement and Social Security Law, the New York City Administrative Code, and the New York City Charter. Audits such as this provide a means of ensuring that pensioners are complying with all laws pertaining to public service reemployment and that appropriate steps are taken to recoup improper payments to individuals after retirement.

The results of our audit, which are presented in this report, have been discussed with NYCERS' officials, and their comments have been considered in preparing this report. Their complete response is attached to this report.

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

Very truly yours,

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

William C. Thompson, Jr.

WCT/fh

Report: FL06-098A
Filed: June 30, 2006

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

**Audit Report on Pensioners of the
New York City Employees' Retirement System
Working for the City after their Retirement
January 1, 2004–December 31, 2004**

FL06-098A

AUDIT REPORT IN BRIEF

The objective of this audit was to identify New York City pensioners who may be reemployed by a City agency and illegally collecting a pension from the New York City Employees' Retirement System (NYCERS)—known as “double-dippers” or “disability violators”—and to quantify the amounts of any improper payments to individuals who appear to be violators of New York State Retirement and Social Security Law (RSSL) §211 and §212, or New York City Charter §1117, during calendar year 2004.

Audit Findings and Conclusions

The audit found four individuals who received \$20,734 in pension payments during 2004 that appear to violate applicable sections of State and City laws. These individuals were in apparent violation of RSSL §211 or §212 because they were under age 65 and received City wages exceeding the limitations without having a waiver on file at 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.

Audit Recommendations

The audit made four recommendations, that NYCERS officials should:

- Investigate those individuals identified as concurrently receiving pensions while being reemployed 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 reemployment.

INTRODUCTION

Background

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

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

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

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

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

An exception to this restriction is provided by RSSL §212, which permits a service retiree to be reemployed in New York public service if the retiree earns no more than the amount prescribed by that section and files a “Section 212 Statement of Election” with his or her retirement system (see below). For calendar year 2004, the earnings limitation does not apply after the retiree reaches the age 65.

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

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

For calendar year 2004, the earnings limitation for a service retiree who filed a Statement of Election under §212 was \$27,500. Accordingly, any service retiree earning more than \$27,500 in 2004 should have received a §211 waiver to prevent suspension of the retirement allowance during that year. Failure to comply with these requirements can result in the forfeiture of pension benefits in subsequent years.

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

After the minimum (20- or 25- year) period for service retirement has expired, disability retirees in New York City are subject to the New York City Charter §1117, which prohibits a retiree from earning more than \$1,800 a year (including pension payments) in New York public service, unless the retiree's disability pension is suspended during the time of such employment. Waivers superseding this provision may not be granted.

Objective

The objective of this audit was to identify those New York City pensioners who may be reemployed by a City agency and illegally collecting a pension from the New York City Employees' Retirement System (NYCERS)—known as "double-dippers" or "disability violators"—and to quantify the amounts of any improper payments to individuals who appear to be violators of RSSL §211 and §212, or New York City Charter §1117 during calendar year 2004.

Scope and Methodology

Our audit period was January 1, 2004, through December 31, 2004. We met with officials of the New York City Employees' Retirement System (NYCERS) to review their monitoring processes for individual pensioners.

To discover the extent to which retired City employees were being improperly reemployed by City agencies, the Audit Bureau's IT Division performed a computer match of approximately 277,000 New York City pensioners against a listing of all City workers (approximately 431,000) who received a W-2 wage statement from the Financial Information Services Agency (FISA) for the year 2004.¹ This matching process identified 1,199 individuals under age 65 who received more than \$27,500 in 2004 (service retirees), or \$1,800 in 2004 (disability retirees). These individuals were then sorted by retirement system and investigated to determine the reasons these individuals received a pension check and a payroll check concurrently.

Among the valid reasons individuals received both pension checks and payroll checks are the following: some had been granted waivers; some had their pensions suspended at the appropriate times; and some were not actually employed during 2004, 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 2004. Although the match did not include local government employees paid by systems other than those integrated with FISA, we are presently conducting 2004 matches of City pensioners (BERS, NYCERS, FIRE, POLICE, and TRS) against the 392,000 State workers; the results of this match will be covered in a separate report (Audit # FL06-101A).

Of the 1,199 matches, 226 consisted of individuals collecting NYCERS pensions. For all 226 matches, we:

- obtained additional detailed information about their individual year 2004 pension and payroll payments;
- analyzed the timing, and to some extent, the types of payments received;
- verified the amounts shown on the computer-match listing; and
- met with retirement system representatives, who assisted us in searching their files for waivers and other relevant information.

For those pensioners who appeared to lack valid reasons for receiving both pension and payroll checks, we calculated the apparent pension overpayments, based on our analyses of when reemployed pensioners reached the legal earnings limitations of \$27,500 for service retirees, and \$1,800 for disability pensioners. The annuity portions of the pension payments, if any, are not affected by RSSL §211 and §212 and New York City Charter §1117 and therefore should be excluded from the overpayments cited in this report. The annuity portions, which are estimated to be less than five percent of the total overpayments, can be determined only by NYCERS officials.

¹ A separate audit report will be issued for each of the five New York City retirement systems; the other four audits are FL06-099A (POLICE), FL06-100A (FIRE), FL06-097A (BERS), and FL06-096A (TRS).

In accordance with §13-103 of the New York City Administrative Code, a Board of Trustees heads the New York City Employees Retirement System. The Comptroller is one of the 11 members and sits on the Board through a designee. The Comptroller's designee was not involved in planning or conducting this audit, or in writing or reviewing the audit report.

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

Discussion of Audit Results

The matters covered in this report were discussed with NYCERS officials during and at the conclusion of this audit. A preliminary draft report was sent to NYCERS officials and the applicable employing and waiver-issuing agencies, and discussed at an exit conference held on May 16, 2006. On June 2, 2006, we submitted a draft report to NYCERS officials with a request for comments. We received a written response from NYCERS officials on June 16, 2006. In their response, NYCERS officials described the actions they have taken to address the report's recommendations.

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

FINDINGS

Overpayment of Pension Benefits

This audit identified four individuals who received \$20,734 in pension payments during 2004 that appear to violate applicable sections of State and City laws. (See Appendices I through III for a listing of the four individuals and their current employers.)

These four individuals were in apparent violation of RSSL §211 or §212 because they were under age 65 and received City wages exceeding the limitations without having a waiver on file at 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 four individuals received improper pension payments of approximately \$20,734, as follows:

	<u>Number of Matches</u>	<u>Total Improper Payments</u>
§211/212 Violators	2	\$12,666
§1117 Violators	<u>2</u>	<u>8,068</u>
Total	<u>4</u>	<u>\$ 20,734</u>

Our total represents the amount of improper 2004 pension payments based on an analysis of when the reemployed pensioners reached the legal earnings limitations (\$27,500 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 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, 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 working at a City agency during calendar year 2004:

CASE #1: A Sanitation Worker who retired from the Department of Sanitation in September 1989 collected 12 pension checks (one each month) in calendar year 2004 totaling \$20,772. He worked as a Teacher for the Department of Education for all of calendar year 2004 (January through December) and collected a salary of \$58,630. We found no evidence of a waiver for him for any portion of 2004. In July 2004, cumulative salary earnings for 2004 exceeded the \$27,500 limit for service retirees; therefore, it appears

that five pension checks (August through December 2004) totaling \$9,284 may have been improperly received and cashed.

The following is an example of a NYCERS disability retiree who was found to be working at a City agency during calendar year 2004:

CASE #2: An Assistant City Highway Repairer who retired from the Department of Transportation in May 1997 on a disability pension, collected 12 pension checks (one each month) in calendar year 2004, totaling \$10,084. He worked as a Community Service Aide for the Department for the Aging from January through November and collected a salary of \$4,165. Since he is over the minimum period for service retirement, he cannot qualify for the "Disability Safeguards" provisions. Accordingly, any earnings above \$1,800 for 2004 make the disability pension payments for that year improper. Thus, it appears that nine months of disability pension checks (March through November 2004) totaling \$7,563 may have been improperly received and cashed.

RECOMMENDATIONS

New York City Employees' Retirement System officials should:

1. Investigate those individuals identified as concurrently receiving pensions while being reemployed 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 the four pensioners cited working for the City of New York and determined that two were in violation of §212 of the RSSL and one was in violation of §1117 of the NYC Charter. The other pensioner named was retired as a disability pursuant of §605 of the RSSL and was not in violation, as the Personal Service Income Limitation was \$23,500 for calendar year 2004 and the pensioner only earned \$4,165. See attached Law Department memo dated December 9, 2005, which addresses income limitations for reemployed retirees that retired pursuant to §605 or §507a of the RSSL."

Auditor Comment: While we are pleased that NYCERS has investigated the cited pensioners, we disagree with NYCERS interpretation of RSSL § 605. RSSL § 605 does not give NYCERS the authority to create its own income limitation for disability pensioners that is contrary to the amount set by § 1117 of the New York City Charter.

In addition, the Comptroller's General Counsel's Office has reviewed the Law Department's opinion dated December 9, 2005 and opined as follows:

The Law Department's reliance in its December 9 opinion on RSSL §605, "Disability retirement," to create an exception to

Charter §1117 is unpersuasive. Section 605 provides only that a criterion for eligibility for a disability pension from NYCERS and other non-uniformed services' public pension plans is that the member "is physically or mentally incapacitated for the performance of gainful employment..." The Law Department opinion argues that this phrase allowed NYCERS to "set an amount of personal service income which a disability retiree could earn after retirement before being considered 'gainfully employed' and, therefore, subject to pension suspension." That RSSL §605 language, however, refers only to the member's physical or mental condition; it does not in any way refer to allowing a plan to set a level of State or City employment income that a disability retiree would be permitted to earn without triggering Charter §1117. Indeed, there is no mention whatsoever in RSSL §605 (or in §§507-a or -c) of setting an earned income limitation for any purpose, let alone of creating an exception to Charter §1117. Accordingly, there is also no support for the further statement in the Law Department's December 9 opinion that "the requirement of the later-enacted [RSSL] statutes supersede the \$1,800 earnings cap of Charter §1117" for City disability retirees.

We maintain that all four individuals cited in this report were in violation of RSSL § 211 and § 212, or New York City Charter §1117 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.

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

4. Send special reminders to service retirees under the age of 65, and to all disability retirees, that clearly state their responsibilities regarding public service reemployment.

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

APPENDIX I
2004 PENSION OVERPAYMENTS - NYC EMPLOYEES' RETIREMENT SYSTEM
SERVICE RETIREES

Pension Number	Date Retired	2004 Pension	Months Overpaid	Amount Overpaid	2004 Employer	Payroll Code	2004 Salary	Waiver Issuing Agency	Waiver 2004
CASE #1 *N-187866-0	9/12/1989	20,773	5	9,284	DOE	742/747	58,630	DOEC	NO
N-315586-0	10/29/2000	23,197	1	3,382	DOC	072	94,637	DCAS	NO

Total Individuals: 2

Total: \$ 12,666

NOTES:

DCAS

DOC

DOE

DOEC *

Department of Citywide Administrative Services

Department of Correction

Department of Education

Department of Education Chancellor's Office

* This individual was cited in our prior audits for calendar years 1991, 1993, 1994, 1996, 1997, and 1998.

APPENDIX II
2004 PENSION OVERPAYMENTS - NYC EMPLOYEES' RETIREMENT SYSTEM
DISABILITY RETIREES

Pension Number	Date Retired	2004 Pension	Months Overpaid	Amount Overpaid	2004 Employer	Payroll Code	2004 Salary	Disability Safeguards
CASE #2 N-309831-0	5/10/1997	10,084	9	7,563	DOA	125	4,165	NO
N-178121-0	12/30/1987	60,148	1	505	DOE	746	2,712	NO

Total Individuals: 2 Total: \$ 8,068

NOTES:

DOA Department of the Aging
 DOE Department of Education

RE-EMPLOYED NYCERS PENSIONERS

TOTALS BY CURRENT EMPLOYER

Current Employer

	Payroll <u>Code</u>	Total Number of Individuals <u>Paid Under Code</u>
<u>Department of Education (DOE)</u>		
DOE (Full-Time Teachers)	742	1
DOE (Per-Diem Teachers)	746	1
DOE (Per-Session Teachers)	747	1
<u>Other Agencies</u>		
Department of Correction	072	1
Department for the Aging	125	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: DIANE D'ALESSANDRO

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

June 16, 2006
Audit Report FL06-098A

Dear Mr. Graham:

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

We have investigated the four pensioners cited working for the City of New York and determined that two were in violation of §212 of the RSSL and one was in violation of §1117 of the NYC Charter. The other pensioner named was retired as a disability pursuant to §605 of the RSSL and was not in violation, as the Personal Service Income Limitation was \$23,500 for calendar year 2004 and the pensioner only earned \$4,165. See attached Law Department memo dated December 9, 2005, which addresses income limitations for re-employed retirees that retired pursuant to §605 or §507a of the RSSL.


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

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

As part of our audit plan, NYCERS suspends the retirement allowance when the pensioner exceeds the earning limitation as set forth in §211 and §212 of the RSSL, 13-171 of the NYC Administrative Code or §1117 of the NYC Charter. Our present monitoring program includes New York City payroll and Public Benefit Corporations.

Enclosed are our detailed responses for each pensioner cited in this report. If you have any questions you can reach me at the telephone number below.

Very truly yours,



Andrew N. Feneck
Director, Benefit Disbursements

Andrew N. Feneck
Director, Benefit Disbursements
Phone: 347-643-3114
Fax: 347-643-3114
E-Mail: afeneck@nycers.nyc.gov

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www.nycers.org

NYCERS

RETIREMENT AND BENEFITS

NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

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

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

TEL: (347) 643-3000

EXECUTIVE DIRECTOR: DIANE D'ALESSANDRO

To: Karl Bloom
From: Salwa Boutros
Date: 06/16/06

Subject: NYCERS follow-up to Comptroller's Report # FL06-098A

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

2004 Service Retirees

P# 187866-0

[REDACTED] exceeded the income limitations in July 2004 pursuant to §212 of the RSSL. His pension allowance was suspended for 5 months starting 04/2006 through 08/2006.

P# 315586-0

[REDACTED] exceeded the income limitations in May 2004 pursuant to §212 of the RSSL. His pension allowance was suspended for 7 months starting 08/2004.

2004 Disability Retirees

P# 309831

[REDACTED] retired pursuant to §605 of the RSSL and did not exceed the income limitation for year 2004. The personal service income limitation was \$23,500.

P# 178121-0

[REDACTED] retired pursuant to §13-167 of the NYC Administrative Code and exceeded the income limitations, under §1117 of the NYC Charter, in November 2004. Beginning with the December 2004 payroll, \$100 monthly was deducted from her pension check for 5 months.