

# 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 Police Department Working for the City after Retirement January 1, 2007—December 31, 2007**

*FL09-118A*

**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 Police Pension Fund (POLICE) 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 2007.

A retiree of the New York City Police Department 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 POLICE officials, and their comments have been considered in preparing this report. Their complete response is attached to this report.

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

Very truly yours,

A handwritten signature in black ink that reads "William C. Thompson, Jr." in a cursive style.

William C. Thompson, Jr.

WCT/fh

**Report: FL09-118A**  
**Date: June 30, 2009**

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

**Audit Report on Pensioners of the  
New York City Police Department  
Working for the City after Retirement  
January 1, 2007—December 31, 2007**

**FL09-118A**

**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 Police Pension Fund (POLICE)—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 §211 and §212, or New York City Charter §1117 during calendar year 2007.

**Audit Findings and Conclusions**

The audit found that four pensioners received \$45,436 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 City wages exceeding the limitations without having a waiver on file, or were in violation of the New York City Administrative Code Volume 3, Title 13, Chapter 2, §13-254 (Disability Safeguards) or §1117 of the New York City Charter because they were collecting disability pensions and received City wages exceeding the applicable earnings limitations.

**Audit Recommendations**

The audit made four recommendations, that POLICE officials should:

- Investigate those individuals identified as receiving pensions while being reemployed in public service. POLICE 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 Police Department 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 Police Department disability retirees, the governing regulations are the New York City Administrative Code (Volume 3, Title 13) and the New York City Charter (§1117). If a post-retirement employee does not comply with relevant laws, the practice is termed “double-dipping.”

Pursuant to RSSL §211, a service retiree (a person receiving an ordinary service retirement rather than a disability retirement) who is 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 Department 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. 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 2007, the earnings limitation 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 (Volume 3, Title 13, Chapter 2, §13-254), provides for the reemployment of New York City Police Department 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 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 pensioners who may be reemployed by a City agency and illegally collecting a pension from the New York City Police Department Pension Fund—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 New York City Police Pension Fund Board. In accordance with §13-202 of the New York City Administrative Code, the Comptroller is one of twelve trustees of the New York City Police Pension Fund Board. The Comptroller sits on the Board through a designee. The Comptroller's designee was not involved in planning or conducting this audit, or in writing or reviewing this audit report. Accordingly, we feel that the above issue has had no impact on the objectivity of this audit, or on the conclusions and associated findings disclosed in this report.

Our audit period was January 1, 2007, through December 31, 2007. We met with officials of the New York City Police Department Pension Fund 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 the approximately 278,019 New York City pensioners against a listing of all City workers (approximately 403,173) who received a W-2 wage statement from the Financial Information Services Agency (FISA) for the year 2007.<sup>1</sup> This matching process identified 1,135 individuals under age 65 who either received more than \$30,000 in 2007 (service retirees), or \$1,800 in 2007 (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 2007, 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 2007. Although the match did not include local government employees paid by systems other than those integrated with FISA, we are presently conducting 2007 matches of City pensioners (BERS, NYCERS, FIRE, POLICE, and TRS) against the approximately 195,500 State workers; the results of this match will be covered in a separate report (Audit # FL09-121A).

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<sup>1</sup> A separate audit report will be issued for each of the five New York City retirement systems; the other four audits are FL09-119A (FIRE), FL09-117A (NYCERS), FL09-116A (BERS), and FL09-210A (TRS).

Of the 1,135 matches, 430 consisted of individuals collecting POLICE pensions. For all 430 individuals, we:

- obtained additional detailed information about their individual year 2007 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 limitation of \$30,000 for service retirees, and \$1,800 for disability pensioners. The annuity portions of the pension payments, if any, are not affected by RSSL §211 and §212, and New York City Charter §1117 and therefore, should be excluded from the overpayments cited in this report. The annuity portions, which are estimated to be less than five percent of the total overpayments, can be determined only by POLICE officials.

In addition, we followed-up on the implementation status of the recommendations from last year's audit report—*Pensioners of the New York City Police Department Working for the City after Retirement January 1, 2006–December 31, 2006*, FL08-108A, issued June 30, 2008—by reviewing provided correspondence from POLICE.

### **Discussion of Audit Results**

The matters covered in this report were discussed with POLICE officials during and at the conclusion of this audit. A preliminary draft report was sent to POLICE officials and the applicable employing and waiver-issuing agencies, and discussed at an exit conference. We submitted a draft report to POLICE officials with a request for comments. We received a written response from POLICE officials on June 2, 2009. In their response, POLICE officials described the actions they have taken to address the report's recommendations.

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



## FINDINGS

### **Overpayment of Pension Benefits**

This audit identified four POLICE retirees who received \$45,436 in pension payments during 2007 that appears to violate applicable sections of State and City laws. (See Appendices I through III for details concerning the retirees 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 POLICE, or were in violation of the New York City Administrative Code Volume 3, Title 13, Chapter 2, §13-254 (Disability Safeguards) or §1117 of the New York City Charter because they were collecting disability pensions and received City wages exceeding the applicable earnings limitations. These four individuals received improper pension payments of approximately \$45,436 as follows:

	<u>Number of Individuals</u>	<u>Total Improper Payments</u>
§211/212 Violators	2	\$22,611
§13-254 /§1117 Violators	<u>2</u>	<u>22,825</u>
Total	<u>4</u>	<u>\$45,436</u>

Our total represents the amount of improper 2007 pension payments based on an analysis of when the reemployed pensioners reached the legal earnings limitations (\$30,000 for service retirees, and \$1,800 for disability pensioners). Allowances were made for those retirees who worked only part of that year. 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 POLICE officials. Immediate action by POLICE and the employing City agencies is needed to investigate and recoup, if appropriate, any improper payments made to these retirees.

The following is an example of a POLICE service retiree who was found to be working at a City agency during calendar year 2007:

**CASE #1:** A Captain who retired in October 1993 collected 12 pension checks (one for each month) in calendar year 2007, totaling \$55,622. This individual worked as a Teacher for the Department of Education for twelve months (January through December) and collected a salary of \$51,246. We found no evidence of a waiver for this individual for any portion of 2007. On August 31, 2007, this person's cumulative salary earnings for the year exceeded the \$30,000 limit for service retirees. Therefore, it appears that

four pension checks (September through December) totaling \$18,597 may have been improperly received and cashed in calendar year 2007.

The following is an example of a POLICE disability retiree who was found to be working at a City agency during calendar year 2007:

**CASE #2:** A Lieutenant who retired in January 1979 on a disability pension, collected 12 pension checks (one each month) in calendar year 2007, totaling \$27,642. At the same time this individual worked as an Associated Staff Analyst for the Police Department for six months (January through June) and collected a salary of \$15,620. This person became a member of POLICE in 1956, and therefore does not qualify for “Disability Safeguards” provisions beyond 1976. Accordingly, any earnings above \$1,800 for 2007 make the disability pension payments for that year improper. Thus, it appears that five pension checks (February through June) totaling \$11,482 may have been improperly received and cashed in 2007.

It should be noted that in their correspondence concerning the implementation status of the recommendations from last year’s audit of 2005, POLICE officials advised us that all of the audit recommendations are being implemented.

## RECOMMENDATIONS

POLICE officials should:

1. Investigate those individuals identified as receiving a pension while being reemployed in public service. POLICE officials should also commence prompt recoupment action against those individuals found to be illegally collecting a pension.

**POLICE 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 Comptroller’s 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.”

“Regarding the 4 retirees listed by the Comptroller’s Office in the May 20, 2009 audit report as possible violators, the Police Pension Fund will investigate all members in question to determine if they are in violation of Section 1117 of the New York City Charter. Those in violation will be given the opportunity to obtain retro-active 211 waivers, as current law permits. Should such approval be denied, this Retirement System will recover all pension moneys received from the period in question.”

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

***POLICE Response:*** “The Police Pension Fund concurs with recommendation #2, however, no retiree investigated was deemed appropriate for such a referral.”

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.”

***POLICE Response:*** “The Police Pension Fund has in the past and will continue to suspend or reduce the pension benefit of all identified service or vested interest retirees who elect to continue employment with the City of New York without the benefit of Section 211. Additionally, as noted in our response to previous audits, this fund has recovered over six hundred thousand dollars from members of this System identified as violators of these statutes.”

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.

***POLICE 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 at 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 of the retirement package. In 2006, an insert outlining this policy was prepared and mailed to all retirees 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 ensure the integrity of all City Retirement Systems.”

**APPENDIX I**  
**2007 PENSION OVERPAYMENTS - POLICE DEPARTMENT PENSION FUND**  
**SERVICE RETIREES**

Pension Number	Date Retired	2007 Pension	Months Overpaid	Amount Overpaid	2007 Employer	Payroll Code	2007 Salary	Waiver Issuing Agency	Waiver in 2007
P-041311-0	10/8/1993	\$55,622	4	\$18,597	DOE	742/747	\$51,248	DOEC	NO
P-053805-0	8/14/2003	78,931	1	4,014	DOE	742/747	34,779	DOEC	NO

**Total Individuals: 2**

**Total: \$22,611**

**NOTES:**

DOE Department of Education  
 DOEC Department of Education Chancellor

APPENDIX II  
 2007 PENSION OVERPAYMENTS - POLICE DEPARTMENT PENSION FUND  
 DISABILITY RETIREES

Pension Number	Date Retired	2007 Pension	Months Overpaid	Amount Overpaid	2007 Employer	Payroll Code	2007 Salary	Disability Safeguards (DS)
Case # 2 *P-015784-0	1/14/1979	\$27,642	5	11,482	POLICE DEPT	56	\$15,620	NO
*P-052990-0	2/28/2003	17,014	8	11,343	DOE	746,747	20,801	NO

Total Individuals: 2

Total: \$22,825

NOTES:

POLICE DEPT  
DOE

NYC Police Department  
Department of Education

\*These individuals were cited in our prior audit for calendar year 2006.

**RE-EMPLOYED POLICE PENSIONERS**  
**TOTALS BY CURRENT EMPLOYER**

**Current Employer**

	<u>Payroll Code</u>	<u>Total Number of Individuals Paid Under Code</u>
<u>Department of Education (DOE)</u>		
DOE Pedagogical	742	2
DOE Per Diem Teachers	746	1
DOE Per Session Teacher	747	3
<u>Other Agencies</u>		
Police Department	56	1
<b><u>Total</u></b>		<b><u>7</u></b>



## **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  
New York, NY 10007-2341**

**Re: Audit Report on Pensioners of the NYC  
Police Department working for New  
York City after their Retirement  
January 1, 2007 -- December 31, 2007  
FL09-118A**

**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 pension while being reemployed in public service. POLICE officials should also commence prompt recoupment action against those individuals found to be illegally collecting a pension.**

### **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 Comptroller's 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-

Regarding the 4 retirees listed by the Comptroller's Office in the May 20, 2009 audit report as possible violators, the Police Pension Fund will investigate all members in question to determine if they are in violation of Section 1117 of the New York City Charter. Those in violation will be given the opportunity to obtain retro-active 211 waivers, as current law permits. Should such approval be denied, this Retirement System will recover all pension monies received from the period in question.

**Recommendation #2**

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

**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 service or vested interest retirees who elect to continue employment with the City of New York without the benefit of Section 211. Additionally, as noted in our response to previous audits, this fund has recovered over six hundred thousand dollars from members of this System identified as violators of these statutes.

**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.




-3-

**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 at 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 of the retirement package. In 2006, an insert outlining this policy was prepared and mailed to all retirees 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 System.

Sincerely,



Anthony J. Garvey  
Executive Director  
Police Pension Fund

AJG:hdm