



*The 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 for New York State
After Their Retirement
January 1, 2000, to December 31, 2000**

FL02-102A

June 27, 2002

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

**New York City Pensioners
Working for New York State
After Their Retirement
January 1, 2000, to December 31, 2000**

FL02-102A

EXECUTIVE SUMMARY

Results in Brief

This audit was performed to identify those New York City pensioners who may be illegally re-employed (“double-dippers” or “disability violators”), and to quantify the amounts of any improper payments to individuals who appear to be violators of New York State Retirement and Social Security Law (RSSL) § 211 and § 212, or New York City Charter § 1117, during calendar year 2000. The five New York City retirement systems are:

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

This report includes New York City pensioners from TRS, NYCERS, and BERS. Normally, we also audit the remaining two retirement systems—POLICE and FIRE. However, we decided to postpone the testing of these two systems because of the World Trade Center tragedy.

To discover the extent to which retired City employees were being improperly re-employed by New York State, we asked the New York State Bureau of Payroll Audit (Office of the State Comptroller, Albany) to perform a computer match of the approximately 245,000 New York City pensioners against a listing of all New York State workers (approximately 250,000 annually) who received a

W-2 wage statement for the year 2000.¹ This matching process identified 1,158 individuals under the age of 70 who either received more than \$17,000 in 2000 (service retirees) or \$1,800 in 2000 (disability retirees). Of the 1,158 matched individuals, 501 were TRS retirees, 313 were POLICE retirees, 312 were NYCERS retirees, 25 were FIRE retirees, and seven were BERS retirees. Thirteen of the 820 retirees from TRS, NYCERS, and BERS appeared to lack valid reasons for being on this list of matched pensioners. Accordingly, these re-employed New York City pensioners may be in violation of applicable laws and regulations, and may have obtained \$121,132 in improper pension payments in 2000.

The breakdowns for the three New York City retirement systems are as follows:

<u>Retirement System</u>	<u>Service Retirees</u>	<u>Disability Retirees</u>	<u>Total Retirees</u>	<u>Improper Pension Payments</u>
TRS	8	0	8	\$71,177
NYCERS	5	0	5	49,955
BERS	<u>0</u>	<u>0</u>	<u>0</u>	<u>-0-</u>
Total	<u>13</u>	<u>0</u>	<u>13</u>	<u>\$121,132</u>

Consequently, we recommend that officials of TRS, NYCERS, and BERS:

- Investigate those individuals identified as receiving pensions while being re-employed in New York State public service. City retirement system 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 those 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 70 and to all disability retirees that clearly state their responsibilities regarding public service re-employment.

¹ This audit report is exclusive of the three separate audit reports of New York City pensioners working for New York City after their retirement in 2000: the three audits of City workers are FL02-101A (TRS), FL02-104A (NYCERS), and FL02-106A (BERS).

- Set up a monitoring program, in conjunction with the other retirement systems, to identify those City retirees re-employed in New York public service.
- Reinforce to New York governmental agencies, in conjunction with the other retirement systems, the importance of maintaining effective procedures to ensure that City pensioners comply with State and City laws regarding public service re-employment.

Agency Responses

The matters covered in this report were discussed with officials of the three New York City retirement systems during and at the conclusion of this audit. A preliminary draft report was sent to officials of the three City retirement systems and was discussed at exit conferences on May 16, 2002, and May 30, 2002. Officials from BERS decided that an exit conference was not necessary. On June 7, 2002, we submitted a draft report to the three City retirement systems with a request for comments. Each of the three New York City retirement systems provided us with separate written responses to a draft of our audit, which are summarized as follows:

- **TRS**: On June 21, 2002, we received a response from the TRS Deputy Director, in which he stated:

“Please be advised that the Teachers’ Retirement System (TRS) is in full compliance with all your recommendations.”
- **NYCERS**: On June 20, 2002, we received a written response from the NYCERS Deputy Director Finance, in which he either agreed to comply with or stated that NYCERS was already in the process of complying with the audit’s six recommendations.
- **BERS**: On June 21, 2002, we received a written response from the BERS Executive Director, in which she stated:

“Our intense efforts at informing all our retirees and prospective retirees of the existing laws governing re-employment in the public sector, and of the strict consequences for violating these laws continue to produce dividends as evidenced by your conclusions. As to your recommendations, BERS will make every effort to comply where feasible. Although no violators have been found in this audit, BERS will continue its vigilance in seeking total adherence to the existing laws.”

We also received a written response from the City University of New York (CUNY), an authorized RSSL § 211 waiver-issuing agency for New York State. CUNY's Director of Internal Audit stated in part:

“The University understands the importance of monitoring the employment activities of City pensioners and will continue to work with the retirement system to ensure full compliance with RSSL requirements.”

In addition, CUNY provided us with documentation for its cited employees. We took this documentation into consideration when preparing this final report.

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

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FL02-102A

INTRODUCTION

Background

A New York City service retiree who is re-employed 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). If a post-retirement employee does not comply with the relevant laws, the practice is termed “double-dipping.”

Pursuant to § 211, a service retiree (a person receiving an ordinary service retirement rather than a disability retirement) who is re-employed in New York public service and who exceeds the § 212 salary limitations may have his or her pension benefits denied, unless the prospective employer has requested a waiver from the State or municipal Civil Service Commission or other authorized agency. The prospective employer must set forth the reasons for the request 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
- New York State Commissioner of Education
- New York City Civil Service Commission
- Chancellor of the New York City Board of Education
- Board of Higher Education, City University of New York
- Chancellor of State University of New York
- Administrator of Courts (New York State and New York City courts)

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

An exception to this restriction is provided by RSSL § 212, which permits a service retiree to be re-employed in New York public service if the retiree earns no more than the amount prescribed by that section and files a "Section 212 Statement of Election" with his or her retirement system (see below). This earnings limitation does not apply after the retiree reaches the age of 70.

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

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

This report includes New York City pensioners from TRS, NYCERS, and BERS. Normally, we also audit the remaining two retirement systems—POLICE and FIRE. However, we decided to postpone the testing of these two systems because of the World Trade Center tragedy.

For calendar year 2000, the earnings limitation for a service retiree who filed a Statement of Election under § 212 was \$17,000. Accordingly, any service retiree earning more than \$17,000 in 2000 should have received a § 211 waiver to prevent suspension of the retirement allowance during that year. (For 1999, the earnings limitation was \$15,500.) 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 re-employment of New York City disability retirees in New York State

public service. The following regulations are applicable to each of the three New York City retirement systems:

TRS:

The New York City Administrative Code (Volume 3, Title 13, Chapter 4, § 13-553), combined with the New York City Charter (§ 1117), prohibits a TRS disability 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.

NYCERS:

The New York City Administrative Code (Volume 3, Title 13, Chapter 1, §13-171) provides for the re-employment 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 (usually 20 years, but 25 years may be elected), subject to the following conditions: (1) the retiree undergoes a medical examination, (2) the Board of Trustees of the retirement system agrees with the medical board’s report and certification of the extent to which the retiree is able to work (the Board must then place the retiree’s name on a civil service list as a “preferred eligible”), and (3) the Board reduces the retiree’s pension to an amount which, when added to the retiree’s salary, does not exceed the current maximum salary for the title next higher than that held by him or her at retirement.

After the minimum (20- or 25-year) 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 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 his or her disability pension is suspended during the time of such employment.

With regard to disability retirees of the three City retirement systems, waivers superseding the above provisions may not be granted.

Objective

The objective of this audit was to identify any New York City pensioners who may be illegally re-employed by New York State (“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 2000.

Scope and Methodology

Our audit period was calendar year 2000. We met with officials of the three New York City retirement systems (TRS, NYCERS, and BERS) to review their monitoring processes for individual pensioners.

To determine the extent to which retired New York City employees were being improperly re-employed by New York State agencies, we asked the New York State Bureau of Payroll Audit (Office of the State Comptroller, Albany) to perform a computer match of the approximately 245,000 New York City pensioners against a listing of all New York State workers (approximately 250,000 annually) who received a W-2 wage statement for the year 2000.² This matching process identified 1,158 individuals under the age of 70 who either received more than \$17,000 in 2000 (service retirees) or \$1,800 in 2000 (disability retirees). We then sorted this list by retirement system and investigated the reasons these individuals concurrently received a pension check and a payroll check.

Among the valid reasons for individuals to receive both a pension check and a payroll check are the following: they had been granted waivers; they had their pensions suspended at the appropriate times; and they were not actually employed during 2000, but instead received lump-sum payments for accrued vacation and sick leave or had selected an early retirement program that provided subsequent cash payments in 2000. Because of the magnitude of the task, we did not match the retirees against the approximately 650,000 other New York City, New York State, and local government employees paid by municipalities, counties, and systems other than those integrated with the State or FISA.

Of the 1,158 matched individuals, 501 were TRS retirees, 313 were POLICE retirees, 312 were NYCERS retirees, 25 were FIRE retirees, and seven were BERS retirees. For all 820 retirees from NYCERS, TRS, and BERS, we obtained additional detailed information about their individual year 2000 pension and payroll payments. We analyzed the timing, and, to some extent, the types of payments received. We verified the amounts shown on the computer match listing. In addition, we met with retirement system representatives, who assisted us in searching their files for waivers and other relevant information.

A total of 13 of the 820 individuals appeared to lack valid reasons for being on both lists. All 13 individuals were service retirees and received improper pension payments totaling \$121,132.

² This audit report is exclusive of the three separate audit reports of New York City pensioners working for New York City after their retirement in 2000: the three audits of City workers are FL02-101A (TRS), FL02-104A (NYCERS), and FL02-106A (BERS).

The breakdowns for the three New York City retirement systems are as follows:

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BERS	<u>0</u>	<u>0</u>	<u>0</u>	<u>-0-</u>
Total	<u>13</u>	<u>0</u>	<u>13</u>	<u>\$121,132</u>

For those retirees for whom we could find no evidence of a waiver or other acceptable alternative documentation, we calculated their apparent overpayments based on our analyses of when these re-employed pensioners reached the legal earnings limitations of \$17,000 for service retirees. Additionally, the annuity portions of the pension payments, if any, which are not affected by RSSL § 211 or § 212 were not excluded; rather, they were estimated to be less than five percent of the total overpayments. The exact annuity portion for each individual, if any, can be determined only by retirement system officials.

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

Agency Responses

The matters covered in this report were discussed with officials of the three New York City retirement systems during and at the conclusion of this audit. A preliminary draft report was sent to officials of the three City retirement systems and was discussed at exit conferences held on May 16, 2002, and May 30, 2002. Officials from BERS decided that an exit conference was not necessary. On June 7, 2002, we submitted a draft report to the three City retirement systems with a request for comments. Each of the three NYC retirement systems provided us with separate written responses to a draft of our audit, which are summarized as follows:

- **TRS**: On June 21, 2002, we received a response from the TRS Deputy Director, in which he stated:

“Please be advised that the Teachers’ Retirement System (TRS) is in full compliance with all your recommendations.”
- **NYCERS**: On June 20, 2002, we received a written response from the NYCERS Deputy Director Finance, in which he either agreed to comply with or stated that NYCERS was already in the process of complying with the audit’s six recommendations.

- **BERS:** On June 21, 2002, we received a written response from the BERS Executive Director, in which she stated :

“Our intense efforts at informing all our retirees and prospective retirees of the existing laws governing re-employment in the public sector, and of the strict consequences for violating these laws continue to produce dividends as evidenced by your conclusions. As to your recommendations, BERS will make every effort to comply where feasible. Although no violators have been found in this audit, BERS will continue its vigilance in seeking total adherence to the existing laws.”

We also received a written response from the City University of New York (CUNY), an authorized RSSL § 211 waiver-issuing agency for New York State. CUNY’s Director of Internal Audit stated in part:

“The University understands the importance of monitoring the employment activities of City pensioners and will continue to work with the retirement system to ensure full compliance with RSSL requirements.”

In addition, CUNY provided us with documentation for its cited employees. We took this documentation into consideration when preparing this final report.

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

* * * * *

In our prior audit report covering the five City retirement systems pensioners for calendar year 1999 (FL00-207A, issued June 27, 2001), there were 14 individuals who were in apparent violation of RSSL § 211 or § 212, or the New York City Charter § 1117. These individuals received improper pension payments totaling \$144,164, as follows:

	<u>Number of Matches</u>	<u>Total</u>
§ 211/212 Violators	10	\$ 88,789
§ 1117 Violators	4	55,375
Total	<u>14</u>	<u>\$144,164</u>

**OFFICE OF THE COMPTROLLER
NEW YORK CITY**

DATE FILED: *June 27, 2002*

FINDINGS AND RECOMMENDATIONS

Overpayment of Pension Benefits

This audit identified 13 retirees who received approximately \$121,000 in calendar year 2000 pension payments 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 13 pensioners and their current employers.)

As stated previously, we identified 13 pensioners who were in apparent violation of RSSL § 211 or § 212 because they were under the age of 70 or received excess State wages above the limitations without having a waiver on file at one of the three City retirement systems. These 13 individuals received improper pension payments of approximately \$121,000.

Our total represents the amount of improper year 2000 pension payments based on an analysis of when the re-employed pensioners reached the year 2000 legal earnings limitation of \$17,000 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, which are not affected by RSSL § 211 or § 212, were not excluded; rather, they were estimated to be less than five percent of the total calculated payments. The exact annuity portion for each individual, if any, can be determined only by City retirement systems officials. Immediate action by the three City retirement systems and employing State agencies is needed to investigate and recoup, when appropriate, any improper payments made to those retirees identified as possible “double-dippers.” (The applicable employing agencies involved in this audit appear in Appendix IV.)

The following is an example of a TRS service retiree who was found to be working at a State agency for the whole of calendar year 2000:

CASE #1: A teacher from the Board of Education who retired on July 5, 1991, collected 12 pension checks in 2000 (one each month) totaling \$41,953. This individual worked all of 2000 (January through December) as an associate professor at Medger Evers College, collecting a salary of \$58,766. We found no evidence of a waiver for this individual for any portion of 2000. This person’s 2000 cumulative salary earnings exceeded the \$17,000 limitation on April 20, 2000; therefore, the individual may have improperly received and cashed eight pension checks (May through December 2000) totaling \$28,086 cashed in 2000.

The following is an example of a NYCERS service retiree who was found to be working at a State agency for the whole of calendar year 2000:

CASE #2: A transit police officer who retired from the New York Transit Authority on January 2, 1988, collected 12 pension checks in 2000 (one each month) totaling \$21,418. This individual worked all of 2000 (January through December) as an addiction program specialist for the New York State

Office of Alcoholism and Substance Abuse, collecting a salary of \$69,188. We found no evidence of a waiver for this individual for any portion of 2000. This person's 2000 cumulative salary earnings exceeded the \$17,000 limitation on March 29, 2000; therefore, he may have improperly received and cashed nine pension checks (April through December 2000) totaling \$16,297 in 2000.

Recommendations

Officials of TRS, NYCERS, and BERS:

1. Investigate those individuals identified as receiving pensions while being re-employed in New York State public service. City retirement system officials should also commence prompt recoupment action against those individuals found to be illegally collecting pensions.
2. Forward to the Department of Investigation, if the circumstances warrant such action, the names of those individuals found to be illegally collecting pensions.
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."
4. Send special reminders to service retirees under the age of 70 and to all disability retirees that clearly state their responsibilities regarding public service re-employment.
5. Set up a monitoring program, in conjunction with the other retirement systems, to identify those City retirees re-employed in New York public service.
6. Reinforce to New York governmental agencies, in conjunction with the other retirement systems, the importance of maintaining effective procedures to ensure that City pensioners comply with State and City laws regarding public service re-employment.

Agency Responses: TRS, NYCERS, and BERS agreed with all of the report's recommendations.

APPENDIX I

SUMMARY OF 2000 PENSION OVERPAYMENTS

	Persons	Amount
TRS	8	\$71,177
NYCERS	5	49,956
TOTAL	13	\$121,132

PENSION OVERPAYMENTS - NYC TEACHERS' RETIREMENT SYSTEM
2000 STATE MATCHES (LACK OF WAIVERS)

APPENDIX II

Pension Number	Date Retired	2000 Pension	Months Overpaid	Amount Overpaid	2000 Employer	Payroll Code	2000 Salary	Waiver Issuing Agency	Waiver in 2000
CASE #1 T-779608-0	7/5/91	\$ 41,953	8	\$ 28,086	MEDGEREVERS	70140 70141	\$ 58,766	CUNYC	No
**U-700389-0	1/19/95	25,744	6	10,896	BOARD OF EDUC.	171	232	BOEC	No
***T-785106-0	9/1/92	36,360	3	9,259	NYC FAMILY CRT KINGSBORO C.C.	5627 465	34,826 13,267	NYSSSC CUNYC	No
U-001452-0	7/23/98	50,160	2	8,358	BOARD OF EDUC. HUNTER COLL.	70121 742	6,788 3,811	CUNYC BOEC	No
T-786583-0	9/3/90	28,403	2	4,627	HUNTER COLL. HUNTER COLL. QUEENS COLL.	70031 70031 70040 70041	17,617 22,937	CUNYC CUNYC	No
T-082909-0	9/1/91	52,825	1	4,483	COLLEGE of S.I.	70101	21,050	CUNYC	No
>T-790384-0	7/1/95	53,126	1	4,274	BOARD OF EDUC. QUEENS COLL. YORK COLL.	171 70041 70081	10,448 13,447	BOEC CUNYC	No
*U-000675-0	2/1/98	14,332	1	1,194	BOARD OF EDUC. NYC TECH COLL.	746 70121	2,649 16,325	BOEC CUNYC	No

Total: \$ 71,177

PENSION OVERPAYMENTS - NYC TEACHERS' RETIREMENT SYSTEM
2000 STATE MATCHES (LACK OF WAIVERS)

NOTES:

MEDGER EYERS
BOARD OF EDUC.
NYC FAMILY CRT
KINGSBORO C.C.
NYC TECH COLL.
HUNTER COLL.
QUEENS COLL.
COLLEGE of S.I.
YORK COLL.

Medger Evers College
Board of Education
NYC Family Court - LAG
Kingsborough Community College
NYC Technical College (Sub-code)
Hunter College
Queens College
College of Staten Island
York College

CUNY
NYSCSC
BOEC

New York City Board of Higher Education (Chancellor's Office)
New York State Civil Service Commission
Board of Education (Chancellor's Office)

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This individual was also cited in our prior audit (for 1999)

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This individual was also cited in our prior audit (for 1998 and 1999)

This individual was also cited in our prior audit (for 1997, 1998, and 1999)

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This individual was also cited in our prior audit (for 1996, 1997, and 1999)

PENSION OVERPAYMENTS - NYC EMPLOYEES' RETIREMENT SYSTEM
2000 STATE MATCHES (LACK OF WAIVERS)

APPENDIX III

Pension Number	Date Retired	2000 Pension	Months Overpaid	Amount Overpaid	2000 Employer	Payroll Code	2000 Salary	Waiver Issuing Agency	Waiver in 2000
CASE # 2 K-176490-0	1/2/88	21,418	9	16,297	ALC. & SUBST. ABUSE	53000	69,188	NYSCSC	No
L-190523-0	5/11/90	72,695	2	12,336	JOHN JAY COLLEGE	70060	71,568	CUNYC	(10/31/98-6/30/00)
N-313620-0	12/31/99	23,273	6	11,097	CREEDMOOR PSY CTR	50150	47,706	NYSCSC	No
N-313894-0	12/31/99	10,102	9	7,569	HEALTH SCI. BKN	28100	121,814	SUNYC	No
N-216883-0	6/5/94	15,942	2	2,656	FISHKILL COR	10050	19,924	NYSCSC	No
Total:				\$ 49,955					

NOTES:

ALC. & SUBST. ABUSE	Alcoholism & Alcohol Abuse
CREEDMOOR PSY CTR.	Creedmoor Psychiatric Center
HEALTH SCI. BKN	Health Science - Brooklyn
FISHKILL COR	Fishkill Correctional Facility
NYSCSC	New York State Civil Service Commission
CUNYC	New York City Board of Higher Education (Chancellor's Office)
SUNYC	New York State Board of Higher Education (Chancellor's Office)

APPENDIX IV

**RE-EMPLOYED NYC PENSIONERS
TOTAL INDIVIDUALS BY CURRENT EMPLOYER**

Number of Retirees Now Working from
the Following Retirement Systems

<u>Current State Employer</u>	<u>Payroll Code</u>	<u>TEACHERS</u>	<u>NYCERS</u>	<u>TOTAL</u>
Alcoholism & Substance Abuse	53000	0	1	1
Board of Education	171/742/745/746	4	0	4
College of Staten Island	70101	1	0	1
Creedmoor Psychiatric Center	50150	0	1	1
Fishkill Correctional Facility	10050	0	1	1
Health Science - Brooklyn	28100	0	2	2
Hunter College	70031	2	0	2
John Jay College	70060/70061			
	70064	0	1	1
Kingsboro Community College	465	1	0	1
Medgar Evers College (Sub-code)	70140/70141	1	0	1
NYC Family Court - LAG	5627	1	0	1
NYC Technical College (Sub-code)	70121	2	0	2
Queens College	70040/70041	2	0	2
York College	70081	1	0	1
Total Individuals:		15	6	21



ADDENDUM I

1 of 8

TEACHERS' RETIREMENT BOARD
TEACHERS' RETIREMENT SYSTEM
40 WORTH STREET, NEW YORK, N.Y. 10013

June 21, 2002

Mr. Roger D. Liwer / Assistant Comptroller for Audits
Office of the Comptroller
Bureau of Audit
1 Centre Street Room 1100
New York, N.Y. 10007-2341

Re: Audit Report on NYC Teachers' Retirement System
Pedagogical Pensioners Working for the State
January 1, 2000 to December 31, 2000
FL 02-102A

Dear Mr. Liwer,

This is in response to your request regarding a follow-up of an audit report that was dated June 6, 2002 regarding NYC Pensioners Working for New York State After their Retirement.

Please be advised that the Teachers' Retirement System (TRS) is in full compliance with all your recommendations. Attached, please find a TRS updated status report, which describes the types of action that will be taken by TRS.

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 after the limitation as cited under Section RSSL 212 or Section RSSL 211 in an appropriate and timely fashion.

If you have any further questions regarding this status report, please feel free to contact us at (212) 386-5169.

Sincerely,

Stan Charles
Deputy Director
Internal Audit Unit

Cc: D.Miller, S. Kessock, P. Raucci, K. Alban, A. Sculy, M. Mullany, B. Osunsanmi

**NYC Pensioners Working for
New York State
After Retirement
2000**

**Internal Audit Unit
June 21, 2002**

Group I

Did Not Exceed

Earnings After Retirement - 2000 (\$17,000)

I - Did Not Exceed

Members Name	Pen #	Soc Sec #	Date Retired	Compt Earn	EAR Overpay	TRS Earnings	Mths Ovrpd	Pen Ovrpd	Emplr	211 Wvr	Findings	Status
1	T 084966	[REDACTED]	09/01/92	\$ 95,574	\$ 78,574	-	4	\$ 21,140	SUNY - Empire		211 Waiver on file	Done
2	U 701332	[REDACTED]	07/01/98	20,442	3,442	\$7,007	1	7,052	BOE / Queens College		\$8,029.96 in arrears payments	Done
3	T 778115	[REDACTED]	07/05/81	37,337	20,337	-	1	5,518	Central NY Psy.		Member suspended from 1/00 - 6/00	Done
4	T 796218	[REDACTED]	07/03/96	30,413	13,413	-	4	19,169	SUNY - Empire		Removed by OTC	Done
5	T 078431	[REDACTED]	02/01/91	39,996	22,996	-	6	16,652	SUNY - Empire		Removed by OTC. Send acknowledgement Letter	Done

ADDENDUM I
4 of 8

Group II

Possibly Exceeded

Earnings After Retirement - 2000 (\$17,000)

II - Possibly Exceeded

Members Name	Pen #	Soc Sec #	Date Retired	Compt Earn	EAR Overpay	TRS Earnings	Mths Ovrpd	Pen Ovrpd	Employr	211 Wvr	Findings	Status
1	T 779608	[REDACTED]	07/05/91	\$ 58,766	\$ 41,766	-	8	\$ 28,086	Medger Evers		Warning Letter - 6/4/02	Pending
2	U 700389	[REDACTED]	01/19/95	35,058	18,058	-	6	10,896	BOE / NYC Family Court		Warning Letter - 6/4/02	Pending
3	T 785106	[REDACTED]	09/01/92	20,055	3,055	-	3	9,259	Kingsboro CC / NYC Tech College		Warning Letter - 6/4/02	Pending
4	U 001452	[REDACTED]	07/23/98	21,428	4,428	\$3,811	2	8,358	BOE / Hunter College		Documentation provided is insufficient. Send la26	Pending
5	T 786583	[REDACTED]	09/03/90	22,937	5,937	-	2	4,827	Hunter College / Queens College		Warning Letter - 6/4/02	Pending
6	T 082009	[REDACTED]	09/01/91	21,060	4,060	\$18,571	1	4,483	College of S.I.		\$582.77 retroactive pay. Member will repay \$3,477.	Pending
7	T 790384	[REDACTED]	07/11/95	23,895	6,895	-	1	4,274	BOE / Queens College / York College		Warning Letter - 6/4/02	Pending
8	U 000675	[REDACTED]	02/01/96	18,974	1,974	\$2,047	1	1,194	BOE / NYC Tech College		Member repaid \$1,794. Still owes \$108.	Pending

ADDENDUM I
6 of 8

Group III



Members with Incorrect

Date of Retirement

Earnings After Retirement - 2000 (\$17,000)

III - Incorrect D.O.R

Members Name	Pen #	Soc Sec #	Date Retired	Compt Earn	EAR Overpay	TRS Earnings	Mths Ovrpd	Pen Ovrpd	Emplr	211 Wvr	Findings
1	T 785106	[REDACTED]	09/01/92	\$ 20,055	\$ 3,055	-	3	\$ 9,259	Kingsboro CC / NYC Tech College		TRS Retirement date is listed as 12/1/92
2	T 078431	[REDACTED]	02/01/91	39,996	22,996	-	6	16,652	SUNY - Empire		TRS Retirement date is listed as 8/1/91
3	T 084966	[REDACTED]	09/01/92	95,574	78,574	-	4	21,140	SUNY - Empire		211 Waiver on file
4	T 082009	[REDACTED]	09/01/91	21,060	4,060	\$18,571	1	4,483	College of S.I.		TRS Retirement date is listed as 1/2/99

ADDENDUM I
8 of 8

NYCERS

RETIREMENT AND BENEFITS

EXECUTIVE DIRECTOR - JOHN J. MURPHY

ADDENDUM II

NEW YORK CITY
EMPLOYEES' RETIREMENT SYSTEM

MAILING ADDRESS:
335 ADAMS STREET, SUITE 2300
BROOKLYN, NY 11201-3751
TEL: (347) 643-3000

June 20, 2002

Roger D. Liwer
Assistant Comptroller, Audits
NYC Office of the Comptroller
Bureau of Audits
1 Centre Street, Room 1100
New York, N.Y. 10007-2341

Re: Audit report # FL 02-102A

Dear Mr. Liwer,

We are in receipt of the above mentioned audit report, dated June 6, 2002, which addressed the status of pensioners employed with New York State after their retirement during the period January 1, 2000 through December 31, 2000. The following is this system's response to the recommendations made in this report.

The five pensioners identified as concurrently receiving a pension benefit while re-employed in public service with the State of New York have been fully investigated. We are in the process of recouping the overpayments.

NYCERS will refer all cases where individuals continuously and knowingly violate RSSL §211 and §212 or NYC Charter §1117 to the Department of Investigation.

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

Special reminders concerning re-employment after retirement will continue to be sent each year to our pensioners.

Our present monitoring program includes the New York City payrolls and all Public Benefit Corporations. NYCERS receives New York State payroll information from your office. However, we are looking into retrieving the payroll information directly from the State.

The level of communication with the agencies, members, and retirees continue to increase. These items will be included.

Very truly yours,



Andrew N. Feneck
Deputy Director Finance

Andrew N. Feneck
Deputy Director Finance
Phone: (347) 643-3114
Fax: (347) 643-3700

Visit our Customer
Service Center:
340 Jay Street
Brooklyn, NY 11201-3751



ADDENDUM III
1 of 1
BOARD OF EDUCATION RETIREMENT SYSTEM
OF THE CITY OF NEW YORK
65 COURT STREET
BROOKLYN, NEW YORK 11201-4965

IRENE IMPELLIZZERI, CHAIR
JAMES KELLY, VICE CHAIR
JERRY CAMMARATA
IRVING S. HAMER, JR.
EDISON O. JACKSON
SANDRA E. LERNER
NINFA SEGARRA
TERRI THOMSON
REBECCA MARSTON, EMPLOYEE MEMBER

718-935-5400
OUTSIDE NEW YORK STATE
1-800-943-5575

CHRISTINE BAILEY, EXECUTIVE DIRECTOR
DENISE ELLIS, DEPUTY EXECUTIVE DIRECTOR

June 19, 2002

Mr. Roger Liwer
Deputy Comptroller
For Audits and Engineering
1 Centre Street, Room 1100
New York, N.Y. 10007-2341

Re: Audit Report on NYC Board of Education
Non-Pedagogical Pensioners Working for
The State After Their Retirement
January 1, 2000, to December 31, 2000
FL 02-102A

Dear Mr. Liwer:

We are in receipt of the above referenced draft audit report on re-employment of "New York City Pensioners Working for the State of New York After their Retirement", for the period January 1, 2000 through December 31, 2000. In this report you have not identified any retirees of the Board of Education Retirement System (BERS) that were found to be in violation of the Retirement and Social Security Law § 211 and §212 or the New York City Charter §1117 during calendar year 2000.

Our intense efforts at informing all our retirees and prospective retirees of the existing laws governing re-employment in the public sector, and of the strict consequences for violating these laws continue to produce dividends as evidenced by your conclusions. As to your recommendations, BERS will make every effort to comply where feasible.

Although no violators have been found in this audit, BERS will continue its vigilance in seeking total adherence to the existing laws. In conclusion, we would like to acknowledge the efforts of all parties involved in conducting this audit.
Thank you.

Cc: Susan Morrison, Bureau of Audits
Board of Trustees

Sincerely,

Christine Bailey
Executive Director



OFFICE OF INTERNAL AUDIT AND MANAGEMENT SERVICES

535 East 80th Street, New York, NY 10021

Voice: (212) 997-5820 Fax: (212) 997-2301

e-mail: ljcbh@cunyvm.cuny.edu

June 18, 2002

Mr. Roger Liwer
Assistant Comptroller For Audits
The City of New York
Office of the Comptroller
1 Centre Street, Room 1100
New York, NY 1007-2341

Dear Mr. Liwer:

I write in response to your request for comments from The City University of New York regarding your draft audit report of New York City pensioners working for New York State after their retirement during the calendar year of 2000 (FL02-102A). The report dealt with New York City service retirees re-employed in New York State public service in accordance with Section 211 of the New York State Retirement and Social Security Law (RSSL).

The draft audit report identified nine CUNY employees, who exceeded the earnings limitation of \$17,000 and did not receive 211 waivers for calendar year 2000. Of these nine employees, two did not violate Section 211 of RSSL and should be removed from the list of potential violators. One employee, who worked at John Jay (Pension No. L-190523-0), was a retiree from the NYC Transit Authority and was exempt from having to receive a Section 211 waiver (see **Attachment I**). The other employee, who worked at Medgar Evers (Pension No. T-779608-0), was in the process of being granted a retroactive approval for employment during the 2000 calendar year (see **Attachment II**). As you know, the New York State Attorney General has opined that "a retired person who returns to employment in the public service"...."and who, through no fault of his own, does not obtain prior approval for such employment".... "should suffer no suspension or diminution of his retirement allowance once retroactive approval has been obtained" (see bracketed portion of **Attachment III**). This individual was singled out in your draft for not having a waiver for 2000 and for improperly receiving pension payments. Since this individual is in the process of obtaining an approved waiver, in accordance with the Attorney General's opinion, the individual

should be excluded both as an example and from the list of potential violators in your final report.

Of the remaining seven employees cited in the draft report, six worked at more than one CUNY college and/or the Board of Education (BOE) during calendar year 2000. Of these six employees, four did not properly complete the CUNY Form 210, *Certification of Prior NYS or NYC Public Service, Collection of Public Pension Funds*. This form requires the retiree to disclose prior public employment and pension plan history for the purpose of establishing a retiree's eligibility for employment. The University Human Resources Services has been requested to re-issue to the colleges a memorandum regarding the importance of completing Form 210 and of complying with Section 211 of RSSL (see **Attachment IV** for an example of such a memorandum).

While Form 210 has improved the reporting and waiver process, the employee has the ultimate responsibility of notifying the college about post retirement earnings. Since the inception of these audits, the responsive actions taken by the University and its colleges have greatly reduced the number of potential violations. The University understands the importance of monitoring the employment activities of City pensioners and will continue to work with the retirement system to ensure full compliance with RSSL requirements.

I appreciate the opportunity to submit this response for inclusion in your final audit report regarding NYC pensioners working for New York State after their retirement during calendar year 2000. If you have any questions regarding this response, please call me at (212) 997-5820 or Ms. Catherine Rodriguez at (212) 997-5825.

Sincerely,



Louis Chiacchere

c: Senior Vice Chancellor Allan Dobrin
Interim Vice Chancellor Ernesto Malave
Vice Chancellor Brenda Malone
Arthur E. Brown, Jr.
Rosemarie O'Rourke
Catherine Rodriguez

NYCERS

RETIREMENT AND BENEFITS

NEW YORK CITY
EMPLOYEES' RETIREMENT SYSTEM
335 ADAMS STREET, SUITE 2300
BROOKLYN, NY 11201-3751
TEL: (347) 643-3000

EXECUTIVE DIRECTOR • JOHN J. MURPHY

[REDACTED]

July 5, 2000
P # 190523-0
NYCTA (Police)
Service Retirement

Dear Mr. Delcastillo

In response to your request regarding the re-employment of NYCTA Police with NY City and NY State Government.
Please be advised that retired NYCTA Police who become employed with NYC or NYS Government are not subject to RSSL Sec. 211 or Sec. 212 thereby their earnings are unlimited after retirement. Sec. 211 is not required for re-employment of NYCTA employees who retired on service retirement including the police.
If you have any question, please call me at 347-643-3107

Milad S. Eskalis

Milad S. Eskalis
Asst. Deputy Director

MILAD S. ESKALIS

PENSION VERIFICATION & RECOVERY DIVISION

PHONE: (347) 643-3107 FAX: (347) 643-3250

THE CITY UNIVERSITY OF NEW YORK

Interpretive Memo: 1-01

Date: 1-9-01

Personnel Policy Number:

Regulation Reference No.: 5.6.

**Index Reference: Exemption from RSSL Section 211 Waivers
Retirees FROM NYC Transit Authority (NYCTA) appointed
in CUNY to either classified or unclassified service position**

Information received from the New York City Department of Citywide Administrative Services (NYC/DCAS) on November 28, 2000 which is based on an opinion received by them from the NYC Corporation Counsel states that a retiree from the NYC Transit Authority who is appointed to a classified staff title is not required to obtain a Retirement and Social Security Law (RSSL) waiver upon being re-employed. DCAS is the final authority on Section 211 waivers for classified staff appointments.

Guidance received from the CUNY Office of the General Counsel and Vice Chancellor for Legal Affairs on December 19, 2000, indicates that while the law in this area is still unsettled the University should, pending final resolution of a case filed in 1999, treat similarly situated employees (I.E. retirees from NYCTA) in the same manner whether appointed to a classified position under the jurisdiction of NYC/DCAS or an unclassified staff position under the jurisdiction of the CUNY Board of Trustees.

APPROVED



University Counsel Director

THE CITY UNIVERSITY OF NEW YORK **FORM 211**
REQUEST FOR APPROVAL OF A WAIVER UNDER SECTION 211 OF
THE RETIREMENT AND SOCIAL SECURITY LAW FOR THE EMPLOYMENT
OF A RETIRED PUBLIC EMPLOYEE IN THE UNCLASSIFIED SERVICE

SUBMIT ORIGINAL TO: UNIVERSITY PERSONNEL OFFICE
535 EAST 80TH STREET, ROOM 600 NEW YORK, N.Y. 10021

Section A. TO BE COMPLETED AT THE EMPLOYING CAMPUS
Approval is requested to employ the retired public employee named below at Medgar Evers College (Name of College)
as a Associate Professor (Title of Position), a (full-time, part-time) position in the unclassified service, effective
9/1/1999 (Date) at a salary not to exceed \$55,930 for the period 9/1/1999 through 8/31/2001
pursuant to Section 211 of the Retirement and Social Security Law. I do hereby affirm under penalty of perjury as provided
for in Section 210 of the Penal Law, that the statements made herein (and on attached papers) are true and correct and that
I have determined that this retiree is duly qualified, competent and physically fit to perform the duties of this position, and that
there are not readily available for recruitment nonretired persons qualified persons to perform the duties of this position, and
that this college has a need for the services to be performed and that this employment is in the best interests of The State and
The City University of New York.

Frances Loudermilk (Signature of Dept. Chair/Administrative Head) Chair, Education Department (Title and Department) 30 May 2002 (Date)
[Signature] (Signature of President or Designee) 30 May 2002 (Date)
[Signature] (Signature of Personnel Director) 30 May 2002 (Date)

NOT former CUNY employee (enter 1 through 4 & 12a) Former CUNY employee (enter 1 through 11 & 12b)

1. Name of retiree	2. Date of Retirement Mth. Day, Yr.	3. Name of Public Retirement System Board of Education
4 (a) Agency retired from Board of Education	(b) Agencies employed at within the two years before retirement	(b) If former CUNY employee, provide dates of service:
5. Final salary \$	6. Final average salary \$	7. Greater of 5 or 6 \$
8. Ret. Allowance without Option \$	9. Sup. Ret Payment, if any Bd. of Ed. to worked for CUNY within 3 yrs prior to retirement \$	10. Sum of 8 & 9 \$
11. Limitation of earning based on difference (for former CUNY employees) [7 minus 10] \$	12 Salary of position offered (a) If external retiree \$	12 (b) If CUNY retiree \$ (limitation not to exceed (item 11) rounded to the next higher multiple of \$500)

HAS THIS PERSON BEEN EMPLOYED AS A RETIREE IN THE PUBLIC SERVICE OF THIS STATE SINCE JANUARY 1, LAST?
 YES NO (IF "YES" COMPLETE FOLLOWING):
Name of Agency: Medgar Evers College, CUNY Dates of Employment: 9/1/1998-8/31/1999 Salary: \$: 8,423.51

SECTION B. TO BE COMPLETED BY RETIREE:
Retiree's Home Mailing Address: [Redacted] Street, Apartment, City, State, Zip Code

I certify that the statement made in this application to the college personnel officer and by me are true and correct to the best of my knowledge. I understand that failure to obtain approval of this waiver by OFSR and the Board of Trustees may adversely affect my pension benefits, and that I may be liable for repayment of such benefits to the appropriate pension system. An approval by the Board of Trustees is valid for a maximum of two years. I understand that I am not eligible for a RSSE Sec. 211 or Sec 212 if I am receiving a disability pension.
Signature of Retiree: [Signature] Date: 6/4/02

Section C. TO BE COMPLETED AT OFFICE OF FACULTY & STAFF RELATIONS
REQUEST NUMBER: _____ APPROVED FOR PERIOD: 9/1/99 THROUGH 8/31/01 *DISAPPROVED _____
SALARY NOT TO EXCEED \$: _____ (Section 211 limit is: \$: B 12(b)): \$ _____
University Personnel Director: [Signature] Date: 6/4/02
*Vice Chancellor for Faculty & Staff Relations or Designee: _____ Date: _____

Section D. Verification of CUNY Board of Trustees Appointment Action
Secretary of the Board: _____ Date: _____

§ 211 RETIREMENT & SOCIAL SECURITY LAW

hearing on charges. *Presley v. Board of Ed. of Central School Dist. No. 1 of Town of Camden*, et al. 1973, 43 A.D.2d 893, 349 N.Y.S.2d 981.

Transit authority's employment of police department retirees at time retirees were receiving retirement allowance did not violate this section. *Flynn v. New York City Police Dept. Retirement System*, 1977, 95 Misc.2d 876, 408 N.Y.S.2d 582.

There is no prohibition against a retired school district treasurer holding the position of treasurer of a school district public library, and there will be no retirement consequences if the retiree does not earn a salary. *Op.State Compt.* 80-37.

3. Approval for employment

A retired person who returns to employment in the public service under the provisions of this section and who, through no fault of his own,

does not obtain prior approval for such employment by the appropriate agency designated by this section, should suffer no suspension or diminution of his retirement allowance once retroactive approval has been obtained. 1974, *Op. Atty. Gen.* 24.

4. Employment by former employer

Where police officer was paid a salary by college during two years prior to his retirement as police officer, and college contributed as a participating employer in retirement system administered by state, police officer was employed by a former employer pursuant to section 210 defining former employer and this section governing employment of retired persons without reduction of retirement benefits, and thus retired police officer was subject to limitation on retirement benefits imposed under this section. *Lynch v. Levin*, 1979, 72 A.D.2d 458, 421 N.Y.S.2d 427.

§ 212. Employment of retired persons

Notwithstanding the provisions of sections one hundred one, two hundred eleven or four hundred one of this chapter or of section five hundred three of the education law, or the provisions of any local law or charter, any retired person may continue as retired and, without loss, suspension or diminution of his retirement allowance, earn in a position or positions in public service in any calendar year an amount not exceeding five thousand dollars provided such retired person employed under this section duly executes and files with the retirement system from which he is receiving a retirement allowance a statement that he elects to have the provisions of this section apply to him. A statement of election executed and filed pursuant to this section may be withdrawn by a retired person at any time by a statement similarly executed and filed. However, there shall be no earning limitations under the provisions of this section on or after the calendar year in which any retired person attains age seventy-two.

As amended L.1974, c. 143, § 1; L.1975, c. 621, § 1; L.1976, c. 148, § 1; L.1977, c. 14, § 1; L.1977, c. 137, § 1; L.1980, c. 463, §§ 1, 2.

1980 Amendment. L.1980, c. 463, § 1, eff. June 23, 1980, in sentence beginning "Notwithstanding the provisions" substituted "five thousand dollars" for "three thousand dollars" and added sentence beginning "However, there shall".

L.1980, c. 463, § 2, eff. June 23, 1980, repealed amendment by L.1977, c. 137, § 1.

1977 Amendment. L.1977, c. 137, § 1, eff. May 13, 1977, without incorporating changes made by L.1977, c. 14, § 1, substituted "the amount promulgated by the secretary of health, education and welfare pursuant to subparagraph A of paragraph 8 of subdivision f of section 203 of the federal social security act," for "twenty-seven hundred sixty dollars".

L.1977, c. 14, § 1, eff. Mar. 15, 1977, retroactive to Jan. 1, 1977, substituted "three thousand dollars" for "twenty-seven hundred sixty dollars".

1976 Amendment. L.1976, c. 148, § 1, eff. May 4, 1976, retroactive to Jan. 1, 1976, substituted "twenty-seven hundred sixty dollars" for "twenty-five hundred twenty dollars".

1975 Amendment. L.1975, c. 621, § 1, eff. July 1, 1975, increased the sum a retired person may earn in a position in public service in any calendar year from \$2400 to \$2620.

1974 Amendment. L.1974, c. 143, § 1, eff. July 1, 1974, in catchline, deleted "low income" following "Employment of" and in text, substituted provisions permitting any retired person to earn up to \$2400 yearly in

ADDENDUM IV RETIREMENT & SOCIAL SECURITY LAW 7 of 10

public service, for provisions which limited them to \$1000 yearly, and in cases where their total retirement allowance was under \$2500 to \$1500.

§ 214. Continuation of employment

Notwithstanding any provision employed prior to July first, nineteen eighty of subdivision f of section one of the social security law, or subdivision one of the civil service law, or section one of the law, or section 9.13 of the mental hygiene code of the education law, or the effective period of this article, the limitations as were applicable to his provisions under which he was employed hundred sixty-four.

As amended L.1973, c. 105, § 44.

1973 Amendment. L.1973, c. 105, § 44, eff. Apr. 25, 1973, substituted "9.13" for "one hundred eighty-four."

§ 215. Effective period

The privilege granted by this article as such and earn compensation in position in full force and effect until December, seventy-four.

As amended L.1971, c. 904, L.1972, c. 193, 1973 Amendment, L.1973, c. 352, § 7, eff. May 31, 1973, substituted "seventy-four" for "seventy-three".

1972 Amendment. L.1972, c. 306, § 47, May 15, 1972, substituted reference to 1973 in lieu of 1972.

1971 Amendment. L.1971, c. 904, eff. June 25, 1971, substituted "seventy-two" for "seventy-one."

ARTICLE 8--NEW YORK STATE FIREMEN'S RETIREMENT LAW

TITLE 2--DEFINITIONS

§ 302. Definitions

The following words and phrases in the following meanings unless a different meaning is indicated by the context:

(c) Final average salary.

(d) By the adoption, filing and resolution in the manner provided of three hundred thirty-one of this participating employer may elect to pay

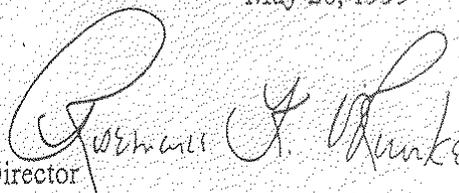
ary" shall mean the regular compensating employer by a member during service immediately preceding the date

THE CITY UNIVERSITY OF NEW YORK
OFFICE OF FACULTY AND STAFF RELATIONS
UNIVERSITY PERSONNEL
535 EAST 80th STREET
NEW YORK, NEW YORK 10021

May 26, 1999

To: College Personnel Directors

From: Rosemarie K. O'Rourke
Deputy University Personnel Director



Re: Section 211/212 Processing and Form 210 completion

I would like to take this opportunity to congratulate each of you on both the continuing improvement of waiver request submissions and the significant reduction in the number of occurrences in which an employee at a CUNY college has been identified by the New York City Comptroller's Office as out of compliance with the Retirement and Social Security Law. I would also like to remind each of you that in order to receive a particular start date, a Section 211 waiver request should be submitted at least four weeks before that date to permit review and approval procedures.

The primary area in which greater compliance is required is in the completion by departments/offices and submission to the college personnel office and then to University Personnel of Form 210 which pre-identifies candidates as falling under the requirement of Section 211 or 212 of the Retirement and Social Security Law. In general, as per information from CUNY Office of Internal Audit, when investigating why Section 211 waivers were not requested, it was observed that Form 210 which should be part of all appointment packages for both full-time and part-time positions had frequently not been completed and submitted to the college personnel office.

As a consequence, 11 CUNY adjunct employees did not complete Form 210 and were not identified upon appointment as recipients of public pensions, while in one instance the employee did not accurately complete the form thereby not revealing his dual employment within CUNY. It is critical that each of you reinforce the necessity of completion and submission of Form 210 as part of the recruitment/selection process. Those twelve employees have been cited in a Comptroller's Audit. They exceeded the Section 212 cap and the colleges were therefore unaware that the selected candidate was a NY State public service retiree since no Form 210 was on file. Please insure that this is collected for all future recruitment/selection efforts.

This appears to be the one remaining loop hole which needs to be closed. I need your assistance so that CUNY can be in full compliance. Generally the employees cited in a current Comptroller's audit, who have exceeded the Section 212 cap without having sought or been granted a Section 211 waiver, have served in the title of adjunct. It is critical that the all department's/offices are advised of the requirement to complete Form 210 for all hires. In addition, all adjuncts receiving a publicly financed New York State pension should complete Form 210 each semester so that you will be aware if during the calendar year they accept other public employment even at another CUNY college which would affect their employment at your college.

I have revised the FORM 210 indicating the changes and advising the candidates, particular adjuncts, of their responsibilities. I greatly appreciate your assistance in insuring that the departments are advised and the forms and section 211/212 processes are followed. Many thanks.

Attachment
pc Samuel T. Phillips
210211.212E dop@211.rko

THE CITY UNIVERSITY OF NEW YORK: ^{Form 210} **ADDENDUM IV**
Certification of Prior NYS or NYC Public Service
Collection of Public Pension Funds: Calendar Year _____

Dear CUNY job candidate:

The New York State Retirement and Social Security Law requires retirees of a public pension plan within the State or City of New York to disclose prior public employment and pension plan history to The City University of New York for the purpose of establishing a retiree's eligibility for employment. Failure to disclose such information can result in the suspension or diminution of the retiree's public pension benefits.

INSTRUCTIONS: Please complete Sections A, B and C as they pertain to you, and then sign the bottom portion of the form. A copy of this form will be required to be submitted prior to any appointment decision made by the college. *You are responsible* for forwarding a copy of the signed form to the college personnel office. (Adjuncts who have checked #2 in Section B must submit this form every semester in which their employment continues)

Section A:

Name (last, first) _____	Social Security # _____
Position Applied for _____	College _____

Section B: Affidavit of Prior Service (Please check the one which applies to you):

- 1) I have no prior service with a public service agency, organization or jurisdiction funded by New York City or New York State;
- 2) I am a former employee of _____ of the City/State of New York and:
 - I am collecting a retirement benefit from a public pension system (including an ORP) maintained by the State or City of New York (please provide pension plan name) _____;
 - I am not collecting a retirement benefit based upon this public service;

Section C: Current Positions in Public Service (please check one of the following only if you checked #2 in Section B):

- 1) I am not currently working for another public service agency, organization or jurisdiction funded by New York City or New York State, nor have I worked at any such entity during the calendar year;
- 2) I am now working for, or have worked for during the calendar year, another public service agency, organization or jurisdiction funded by New York City or New York State (please provide details of this employment):

=====
Attestation: I hereby attest that the information I have provided above is correct to the best of my knowledge.

Signature: _____ Date: _____

Witnessed by: _____ Title: _____ Date: _____
 Department Official

Received by: _____ Title: _____ Date: _____
 College Personnel Staff