

*The 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, 2000, to December 31, 2000**

FL02-104A

June 25, 2002

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EXECUTIVE SUMMARY

Results in Brief

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

A computer match of New York City pensioners against a listing of all City workers who received a W-2 wage statement for the year 2000 identified 2,033 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 2,033 matched individuals, 148 were NYCERS retirees. For all 148 retirees, 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 also verified the amounts shown on the computer match listing. In addition, we met with retirement system representatives, who assisted us in searching their files for waivers and other relevant information.

This audit did not identify any NYCERS retirees who were in violation of RSSL § 211 or § 212, or who were in violation of § 1117 of the New York City Charter.

However, we did identify an individual who improperly received and cashed 14 pension checks totaling \$3,734 from July 1999 through August 2000. According to NYCERS officials, this individual filed an "Application for Service Retirement" on April 15, 1999, stating that she was retiring from her Clerical Associate title at the Department of Finance on June 11, 1999. However, according to Department of

Finance officials, this individual did not retire until August 21, 2000. Consequently, 14 pension checks were inappropriately issued to this individual.

Consequently, we recommend that NYCERS officials:

- Recoup the \$3,734 in improper pension payments cited in this report.
- Review the City Payroll Management System records to ensure that individuals filing for retirement benefits are actually off the City payroll before issuing pension checks to them.

NYCERS Response

The matters covered in this report were discussed with NYCERS officials during and at the conclusion of this audit. A preliminary draft of this report was sent to NYCERS officials and was discussed at an exit conference on March 12, 2002. On May 7, 2002, we submitted a draft report to NYCERS officials with a request for comments. NYCERS officials responded to the draft report on May 21, 2002. In his response, the Deputy Director Finance of NYCERS stated, in part:

“It appears that there is a difference of opinion concerning what constitutes employment after retirement and eligibility to be covered by § 212 . . . Under NYCERS interpretation of the laws that deal with employment after retirement, a retiree may request that § 212 be applied, regardless of whether they had continuous employment, or had a break in service before returning to public employment.”

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

Auditor Comment

After consultation with our Legal Bureau, this office continues to maintain that the provisions of RSSL §212 apply only to those employees who **actually** retire and at some later date return to public service, not to those employees who merely file a retirement application but never act upon it and who continue to serve as full-time city employees. Furthermore, although the employee in question filed a “Certificate of Employment Under §212 of the Retirement and Social Security Law (RSSL),” it was not applicable because she was not in fact retired. In fact, the certificate itself states that the form is “to be completed by pensioners who have **reentered** [emphasis added] City service.”

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INTRODUCTION

Background

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

Pursuant to RSSL § 211, a service retiree (a person receiving an ordinary service retirement rather than a disability retirement) who is re-employed in New York public service and who exceeds the § 212 salary limitations may have his or her pension benefits denied, unless the prospective employer has requested a waiver from the State or municipal Civil Service Commission or other authorized agency, setting forth the reasons for such request, and has then obtained a waiver from that agency.

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

- New York State Civil Service Commission (NYS)
- Commissioner of Education (NYS)
- New York City Civil Service Commission (NYC)
- Chancellor of 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 in order 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 the employees of various City agencies. They are:

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

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 over \$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 (Volume 3, Title 13, Chapter 1, § 13-171) provides for the re-employment of New York City Employees' Retirement System disability retirees in New York public service. These provisions (also known as "Disability Safeguards") apply up to only the minimum period for service retirement elected by the employee (usually 20 years, but 25 years may be elected), subject to the following conditions: (1) the retiree undergoes a medical examination, (2) the Board of Trustees of the retirement system agrees with the medical board's report and certification of the extent to which the retiree is able to work (the Board must then place the retiree's name on a civil service list as a "preferred eligible"), and (3) the Board reduces the retiree's pension to an amount which, when added to the retiree's salary, does not exceed the current maximum salary for the next highest title than that held by the person at retirement.

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

Objective

The objective of this audit was to identify those New York City Employees' Retirement System

pensioners who may be illegally re-employed (“double-dippers” or “disability violators”), and to quantify the amounts of any improper payments to individuals who appear to be violators of RSSL § 211 and § 212, or New York City Charter § 1117, during calendar year 2000.

Scope and Methodology

Our audit period was calendar year 2000—January 1, 2000, through December 31, 2000. We met with officials of the New York City Employees’ Retirement System (NYCERS) to review their monitoring processes for individual pensioners.

To discover the extent to which retired City employees were being improperly re-employed by City agencies, we asked the Audit Bureau’s EDP Unit to perform a computer match of the approximately 245,000 New York City pensioners against a listing of all City workers (approximately 380,000) who received a W-2 wage statement from the Financial Information Services Agency (FISA) for the year 2000.¹ This matching process identified 2,033 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 why 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: some had been granted waivers; some had their pensions suspended at the appropriate times; and some were not actually employed during 2000, 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 2000. Although we did not match the New York City retirees against the approximately 650,000 other New York City and local government employees paid by systems other than those integrated with FISA, we are presently conducting a year 2000 match of City pensioners against the 250,000 State workers; we will soon issue a report on the results of this match (Audit # FL02-102A).

Of the 2,033 matched individuals, 148 were NYCERS retirees. For all 148 retirees, 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 also verified the amounts shown on the computer match listing. In addition, we met with retirement system representatives, who assisted us in searching their files for waivers and other relevant information.

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS), and included tests of records and other auditing procedures that we 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.

¹ A separate audit report will be issued for three of the five New York City retirement systems; including this audit, the other two audits are #FL02-101A (TRS) and #FL02-106A (BERS). Normally, we audit the remaining two systems—FIRE and POLICE. However, we decided to postpone the audits of these systems because of the World Trade Center tragedy.

NYCERS Response

The matters covered in this report were discussed with NYCERS officials during and at the conclusion of this audit. A preliminary draft of this report was sent to NYCERS officials and was discussed at an exit conference on March 12, 2002. On May 7, 2002, we submitted a draft report to NYCERS officials with a request for comments. NYCERS officials responded to the draft report on May 21, 2002. In his response, the Deputy Director Finance of NYCERS stated, in part:

“It appears that there is a difference of opinion concerning what constitutes employment after retirement and eligibility to be covered by § 212...Under NYCERS interpretation of the laws that deal with employment after retirement, a retiree may request that § 212 be applied, regardless of whether they had continuous employment, or had a break in service before returning to public employment.”

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

Auditor Comment

After consultation with our Legal Bureau, this office continues to maintain that the provisions of RSSL §212 apply only to those employees who **actually** retire, and at some later date return to public service, not employees who merely file a retirement application, but never act upon it, and continue to serve as full-time city employees. Furthermore, although the employee in question filed a “Certificate of Employment Under §212 of the Retirement and Social Security Law (RSSL)”, it was not applicable because she was not in fact retired. In fact, the certificate itself states that the form is “to be completed by pensioners who have **reentered** [emphasis added] City service.”

* * * * *

Our previous audit covering NYCERS pensioners for calendar year 1999 (#FL00-204A, issued April 24, 2001), reported that there were 543 NYCERS retirees among the 1,747 matched individuals in the five New York City retirement systems. Subsequent investigations determined that three of these 543 NYCERS retirees were in apparent violation of § 1117 of the New York City Charter. These individuals received improper pension payments of approximately \$21,000.

**OFFICE OF THE COMPTROLLER
NEW YORK CITY**

DATE FILED: *June 25, 2002*

FINDINGS AND RECOMMENDATIONS

This audit did not identify any NYCERS retirees who were in violation of RSSL § 211 or § 212, or were in violation of § 1117 of the New York City Charter. However, we did identify an individual who improperly received and cashed 14 pension checks totaling \$3,734 from July 1999 through August 2000. According to NYCERS officials, this individual filed an “Application for Service Retirement” on April 15, 1999, stating that she was retiring from her Clerical Associate title at the Department of Finance on June 11, 1999. However, according to Department of Finance officials, this individual did not retire until August 21, 2000. Consequently, 14 pension checks were inappropriately issued to this individual.

Recommendations

NYCERS should:

1. Recoup the \$3,734 in improper pension payments cited in this report.
2. Review City Payroll Management System records to ensure that individuals filing for retirement benefits are actually off the City payroll before issuing pension checks to them.

NYCERS Response: “We are pleased that our process and efforts in monitoring public employment of our retirees have been successful and that no one was cited in this report as being in violation of the Retirement and Social Security Laws §211 and §212, or New York City Charter §1117.

“However, it appears that there is a difference of opinion concerning what constitutes employment after retirement and eligibility to be covered by §212. In this report, you identified an individual who continued to work for the same agency that she retired from and as such, was improperly paid 14 pension checks. Once the retirement application is filed it goes into effect on the retirement date and cannot be withdrawn unless the member files an application to withdraw their retirement prior to the effective date. In this instance, the member filed a retirement application on April 15, 1999 to take effect June 11, 1999. A retirement withdrawal application was never filed. Therefore, the effective date of retirement remains as June 11, 1999.

“Under NYCERS interpretation of the laws that deal with employment after retirement, a retiree may request that §212 be applied, regardless of whether they had continuous employment, or had a break in service before returning to public employment. In this particular case, the pensioner did file the §212 request in March 2001 and as a result was overpaid one (1) month in calendar year 2000. This amount has been recovered. Her earnings for 1999 were under the limitation

amount.”

Auditor Comments: After consultation with our Legal Bureau, this office continues to maintain that the provisions of RSSL §212 apply only to those employees who **actually** retire and at some later date return to public service, not to those employees who merely file a retirement application but never act upon it and who continue to serve as full-time city employees. Furthermore, although the employee in question filed a “Certificate of Employment Under §212 of the Retirement and Social Security Law (RSSL),” it was not applicable because she was not in fact retired. In fact, the certificate itself states that the form is “to be completed by pensioners who have **reentered** [emphasis added] City service.”

ADDENDUM

1 of 1

NYCERS

NEW YORK CITY
EMPLOYEES' RETIREMENT SYSTEM

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

RETIREMENT AND BENEFITS

EXECUTIVE DIRECTOR - JOHN J. MURPHY

May 21, 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 02-104A

Dear Mr. Liwer,

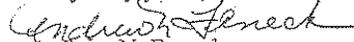
We are in receipt of the above referenced draft audit report, dated May 7, 2002, which addressed the status of pensioners working for the City after their retirement during the period January 1, 2000 through December 31, 2000. We are pleased that our process and efforts in monitoring public employment of our retirees have been successful and that no one was cited in this report as being in violation of the Retirement and Social Security Laws §211 and §212, or New York City Charter §1117.

However, it appears that there is a difference of opinion concerning what constitutes employment after retirement and eligibility to be covered by §212. In this report, you identified an individual who continued to work for the same agency that she retired from and as such, was improperly paid 14 pension checks. Once the retirement application is filed it goes into effect on the retirement date and cannot be withdrawn unless the member files an application to withdraw their retirement prior to the effective date. In this instance, the member filed a retirement application on April 15, 1999 to take effect June 11, 1999. A retirement withdrawal application was never filed. Therefore, the effective date of retirement remains as June 11, 1999.

Under NYCERS interpretation of the laws that deal with employment after retirement, a retiree may request that §212 be applied, regardless of whether they had continuous employment, or had a break in service before returning to public employment. In this particular case, the pensioner did file the §212 request in March 2001 and as a result was overpaid one (1) month in calendar year 2000. This amount has been recovered. Her earnings for 1999 were under the limitation amount.

I sincerely hope that this information resolves the issue. If you should have any questions, I may be reached at the telephone number below.

Very truly yours,


Andrew N. Feneck

Deputy Director Finance

Andrew N. Feneck
Deputy Director Finance
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