

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, 2000–December 31, 2001

FL03-127A

June 6, 2003



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:

Pursuant to Chapter 5, Section 93 of the New York City Charter, we have identified New York City Police Department Pension Fund (POLICE) retirees who may be illegally re-employed (“double-dippers” or “disability violators”), and quantified the amounts of any improper payments to individuals who appear to be violators of New York State Retirement and Social Security Law, § 210 through § 216, or New York City Charter § 1117, during calendar years 2000 and 2001.

Audits such as this provide a means of ensuring that pensioners are complying with all laws pertaining to public service re-employment and that appropriate steps are taken to recoup improper payments to individuals after retirement.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please contact my audit bureau at 212-669-7842 or e-mail us at audit@Comptroller.nyc.gov.

Very truly yours,

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

William C. Thompson, Jr.

Report: FL03-127A
Filed: June 10, 2003

Table of Contents

AUDIT REPORT IN BRIEF	1
Audit Findings and Conclusions	1
Audit Recommendations	1
INTRODUCTION	2
Background	2
Objective	3
Scope and Methodology	3
POLICE Response	5
FINDINGS	6
Overpayment of Pension Benefits	6
Recommendations	7
APPENDIX I – Pension Overpayments-2000/2001 Lack of Waivers	
APPENDIX II – Pension Overpayments-2000/2001 Disability Retirees	
APPENDIX III – Total Individuals by Current Employer	
ADDENDUM I – POLICE Response	

*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, 2000–December 31, 2001**

FL03-127A

Audit Report in Brief

The Comptroller's Office performed an audit to identify New York City Police Department Pension Fund (POLICE) retirees 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), § 210 through § 216, or New York City Charter § 1117, during calendar years 2000 and 2001.

Audit Findings and Conclusions

The audit found that 11 individuals who received \$120,672 in pension payments during 2000 and 2001 that appear to violate applicable sections of State and City laws. Three of the 11 individuals received improper pension payments in both 2000 and 2001. These individuals were in apparent violation of RSSL § 211 or § 212 because they were under age 70 and received City wages exceeding the limitations without having a waiver on file at POLICE, or were in violation of § 1117 of the New York City Charter because they were collecting disability pensions while earning more than \$1,800 a year at a New York City agency and had surpassed their applicable employment anniversary dates.

Audit Recommendations

To address these issues the report recommended that POLICE should:

- Investigate those individuals identified as concurrently receiving pensions while being re-employed 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 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.
- 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 City 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.

Introduction

Background

A New York City Police Department 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 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 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 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 years 2000 and 2001, the earnings limitations for a service retiree who filed a Statement of Election under § 212 were \$17,000 and \$18,500, respectively. Accordingly, any service retiree earning more than \$17,000 (in 2000) or \$18,500 (in 2001) 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 re-employment of New York City Police Department disability retirees in New York public service. These provisions (also known as "Disability Safeguards") apply 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 Police Department 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 years 2000 and 2001.

Scope and Methodology

Our audit period was January 1, 2000 through December 31, 2001. We met with officials of the New York City Police Department Pension Fund (POLICE) 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, the Audit Bureau EDP Unit performed a computer match of the approximately 254,000 New York City pensioners against a listing of all City workers (approximately 400,000) who received a W-2 wage statement from the Financial Information Services Agency (FISA) for the years 2000 and 2001.¹ This matching process identified 2,733 individuals (2,033 in 2000 and 700 in 2001) under age 70 who either received more than \$17,000 in 2000 or \$18,500 in 2001 (service retirees), or \$1,800 in either year (disability retirees). We then sorted these lists by retirement system and investigated the reasons those 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 2000 or 2001, 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 or 2001. 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 year 2000 (POLICE and FIRE) and 2001 (POLICE, FIRE, and TRS) matches of City pensioners against the 250,000 State workers; the results of this match will be covered in a separate report (Audit # FL03-129A).

Of the 2,733 matches, 497 consisted of individuals collecting POLICE pensions. For all 497 matches, we obtained additional detailed information about their individual year 2000 and 2001 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.

A total of 11 individuals, three of whom are being cited for both 2000 and 2001, appeared to lack valid reasons for receiving both pension and payroll checks. We calculated the apparent pension overpayments for those retirees, based on our analyses of when the re-employed pensioners reached the legal earnings limitations of \$17,000 (2000) or \$18,500 (2001) for service retirees, and \$1,800 for disability pensioners. The annuity portions of the pension payments, if any, that are not affected by RSSL § 211 and § 212, and New York City Charter § 1117, were not excluded; rather, they were estimated to be less than five percent of the total overpayments. The exact annuity portion for these individuals, if any, can be determined only by POLICE officials.

In accordance with § 13-202 of the New York City Administrative Code, a Board of Trustees heads the New York City Police Department Pension Fund. The Comptroller is one of 12 trustees and is entitled to cast one and a half of the 12 Board votes. 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 the audit report.

¹Separate audit reports will be issued for three of the five New York City retirement systems; including this audit, the other two audits are #FL03-126A (TRS) and #FL03-128A (FIRE). Normally, we audit the remaining two systems—BERS and NYCERS. However, we decided to audit these systems every other year because of the limited number of pensioners who have been identified as “double-dippers” on prior audits of these systems.

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 audit responsibilities of the City Comptroller as set forth in Chapter 5, § 93, of the New York City Charter.

POLICE Response

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 all applicable employing and waiver-issuing agencies on April 9, 2003, and discussed at an exit conference held on April 15, 2003. On April 30, 2003, we submitted a draft report to POLICE officials with a request for comments.

POLICE provided us with a written response to a draft of our audit on May 14, 2003. In his response, POLICE's Deputy Inspector agreed with the audit's findings and recommendations. The full text of POLICE's response is included as an addendum to this report.

* * * * *

Our previous audit covering POLICE pensioners for calendar year 1999 (#FL00-205A, issued March 2, 2001), reported that there were 248 POLICE retirees among the 1,747 matched individuals in the five New York City retirement systems. Subsequent investigations determined that 15 of these 248 POLICE retirees were in apparent violation of RSSL § 211 or § 212, or the New York City Charter § 1117. Those individuals received improper pension payments of approximately \$116,000.

FINDINGS

Overpayment of Pension Benefits

This audit identified 11 individuals who received \$120,672 in pension payments during 2000 and 2001 that appear to violate applicable sections of State and City laws. Three of the 11 individuals received improper pension payments in both 2000 and 2001. (See Appendices I through III for a listing of the 11 individuals and their current employers.)

Since all of these individuals retired prior to 2000, the strong possibility exists that double-dipping and disability violating by these individuals may be continuing at present. In fact, seven of these eleven individuals were identified in one or more of our prior audit reports as possible double-dippers or disability violators.

These eleven individuals were in apparent violation of RSSL § 211 or § 212 because they were under age 70 and received City wages exceeding the limitations without having a waiver on file at POLICE, or were in violation of § 1117 of the New York City Charter because they were collecting disability pensions while earning more than \$1,800 (including pension payments) a year at a New York City agency and had surpassed their applicable employment anniversary dates. These eleven individuals (fourteen matches) received improper pension payments of approximately \$120,000, as follows:

	<u>Number of Individuals</u>	<u>Total Improper Payments</u>
2000/2001 § 211/212 Violators	6	\$28,566
2000/2001 § 1117 Violators	<u>5</u>	<u>92,106</u>
Total	<u>11</u>	<u>\$ 120,672</u>

Our total represents the amount of improper 2000 and 2001 pension payments based on an analysis of when the re-employed pensioners reached the legal earnings limitations (\$17,000 in 2000 and \$18,500 in 2001 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, that 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, if any, for each individual can be determined only by POLICE officials. Immediate action by POLICE and the employing City agencies is needed to investigate and recoup where appropriate any improper payments made to these retirees identified as possible double-dippers. (The applicable employing agencies involved in this audit appear in Appendix III.)

The following is an example of a POLICE service retiree who was found to be working at a City agency during calendar year 2001:

CASE #1: A Sergeant who retired in October 1993 collected 12 pension checks (one each month) in calendar year 2001 totaling \$31,530. He worked as a teacher for the Board of Education for nine months in 2001 (January through

September) and collected a salary of \$25,561. We found no evidence of a waiver for him for any portion of calendar year 2001. On May 31, 2001, his year 2000 cumulative salary earnings exceeded the \$18,500 limit for service retirees; therefore, it appears that four pension checks (June through September 2001) totaling \$10,508 may have been improperly received and cashed in calendar year 2001.

The following is an example of a POLICE disability retiree who was found to be working at a City agency during calendar year 2000:

CASE #2: A Sergeant who retired in September 1991 on a disability pension, collected 12 pension checks (one each month) in calendar year 2000, totaling \$43,791. He worked as a per-diem teacher for the Board of Education from January through July, September, and December, and collected a salary of \$23,786. He began working for the Police Department in 1979, and, therefore, cannot qualify for the "Disability Safeguards" provisions beyond 1999. Accordingly, any earnings above \$1,800 for 2000 make the disability pension payments for that year improper. Thus, it appears that eight months of disability checks (February through July, September and December 2000), totaling \$29,108, may have been improperly received and cashed in 2000.

Recommendations

New York City Police Department Pension Fund officials should:

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

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 Comptrollers Office, as custodian of Police Pension payroll records, supply a list to my Office on a semi-annual basis of all retirees found to be "double-dipping." This will afford the Police Pension Fund an opportunity to fully investigate all identified violators on a timely basis.

Regarding the 11 retirees reported by the Comptrollers Office in the 04-30-2003 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 the current law dictates. Should such approval be denied, the Police Pension Fund will recover all pension moneys received from the period in question. The last audit, we recovered \$70,231.12 in one year from 8 retirees previously identified as violators."

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

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 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 recovered in excess of five hundred thousand dollars in previous years, from members of this System identified as violators of these statutes.”

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.

POLICE Response: “Upon retirement, each member receives the restrictions on employment after retirement in a special handout. In 2001, a letter outlining this policy was prepared and mailed to all retirees. In addition, 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.”

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.

POLICE Response: “The Police Pension Fund looks forward to participating in a joint effort for the purpose of establishing control in this area.”

6. Reinforce to City 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.

POLICE Response: “The Police Pension Fund will continue to do everything we can within the limits of our authority to prevent double dipping abuse and requests the assistance of the Comptroller’s Office in reinforcing this point to other City and State agencies.”



New York City Police Pension Fund

233 BROADWAY
NEW YORK, NEW YORK 10279
(212) 693-5100

Executive Director-Michael D. Welsome

May 14, 2003

Greg Brooks
Deputy Comptroller
Policy, Audits, Accountancy & Contracts
1 Centre Street Room 500
New York, NY 10007-2341

Re: Audit Report on Pensioners of the NYC
Police Department working for the City after their
Retirement 01-01-2000 to 12-31-2001 FL03-127A

Dear Mr. Brooks:

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

Recommendation #1

Investigate those individuals identified as concurrently receiving pensions while being re-employed public service. POLICE officials should also commence prompt recoupment action against those found to be illegally collecting pensions.

Response

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

Regarding the 11 retirees reported by the Comptrollers Office in the 04-30-2003 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 the current law dictates. Should such approval be denied, the Police Pension Fund will recover all pension moneys received from the period in question. The last audit, we recovered \$70,231.12 in one year from 8 retirees previously identified as violators.

Recommendation #2

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

Response

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

Recommendation #3

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

Response

The Police Pension Fund has in the past and will continue to suspend or reduce the pension benefit of all identified 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 recovered in excess of five hundred thousand dollars in previous years, from members of this System identified as violators of these statutes.

Recommendation #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.

Response

Upon retirement, each member receives the restrictions on employment after retirement in a special handout. In 2001, a letter outlining this policy was prepared and mailed to all retirees. In addition, 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.

Recommendation #5

Set up a monitoring program to identify those City retirees re-employed in New York public service in conjunction with the other retirement systems.

Response

The Police Pension Fund looks forward to participating in a joint effort for the purpose of establishing control in this area.

Recommendation #6

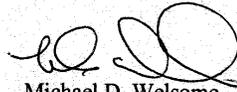
Reinforce to City agencies the importance of maintaining effective procedures to ensure that City pensioners comply with State and City laws regarding public service re-employment in conjunction with other retirement systems.

Response

The Police Pension Fund will continue to do everything we can within the limits of our authority to prevent double dipping abuse and requests the assistance of the Comptroller's Office in reinforcing this point to other City and State agencies.

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

Sincerely,



Michael D. Welsome
Executive Director
Police Pension Fund

MDW:hdm