

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 Fire Department Working for the City after Retirement January 1, 2002—December 31, 2002

FL04-111A

June 21, 2004



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

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the responsibilities of the Comptroller contained in Chapter 5, § 93, of the New York City Charter, my office conducted an audit to identify New York City Fire Department Pension Fund (FIRE) 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, § 210 through § 216, or New York City Charter § 1117, during calendar year 2002.

The results of our audit, which are presented in this report, have been discussed with FIRE officials, and their comments have been considered in preparing this report.

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 212-669-3747 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.
WCT/gr

Report: FL04-111A
Filed: June 21, 2004

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

**Audit Report on Pensioners of the
New York City Fire Department
Working for the City after Retirement
January 1, 2002 – December 31, 2002**

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AUDIT REPORT IN BRIEF

The Comptroller's Office performed an audit to identify New York City Fire Department Pension Fund (FIRE) 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 year 2002.

Audit Findings and Conclusions

The audit found that one individual who received \$39,480 in pension payments during 2002 that appear to violate applicable sections of State and City laws. This individual was in apparent violation of § 1117 of the New York City Charter because he was collecting a disability pension while earning more than \$1,800 (including pension payments) a year at a New York City agency.

Audit Recommendations

To address these issues the report recommended that FIRE should:

- Investigate the individual identified as concurrently receiving a pension while being re-employed in public service. FIRE officials should also commence prompt recoupment action against this individual if he is found to be illegally collecting a pension.
- Forward to the Department of Investigation, if the circumstances warrant such action, the name of this individual if he is found to be illegally collecting a pension.
- Ascertain whether previous pension overpayments have been recouped and whether current pensions have been suspended for those individuals who have been cited in previous audits as "double-dippers" or "disability violators."

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

INTRODUCTION

Background

A New York City Fire 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 Fire Department disability retirees, the governing regulations are the New York City Administrative Code (Volume 3, Title 13) and the New York City Charter (§ 1117). If a post-retirement employee does not comply with relevant laws, the practice is termed “double-dipping.”

Pursuant to RSSL § 211, a service retiree (a person receiving an ordinary service retirement rather than a disability retirement) who is 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 the Board of Education (NYC)
- Board of Higher Education (CUNY) (NYC)
- Chancellor of State University (SUNY) (NYS)
- Administrator of Courts (NYS-NYC)

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

An exception to this restriction is provided by RSSL § 212, which permits a service retiree to be 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 65.

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

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

For calendar year 2002, the earnings limitation for a service retiree who filed a Statement of Election under § 212 was \$20,000. Accordingly, any service retiree earning more than \$20,000 in 2002 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 3, § 13-356 and § 13-357), provides for the re-employment of New York City Fire Department disability retirees in New York public service. These provisions (also known as "Disability Safeguards") apply up to only the minimum period for service retirement elected by the employee (usually 20 years, but 25 years may be elected), subject to the following conditions: (1) the retiree undergoes a medical examination, (2) the Board of Trustees of the retirement system agrees with the medical board report and certification of the extent to which the retiree is able to work (the Board must then place the retiree's name on a civil service list as a "preferred eligible"), and (3) the Board reduces the retiree's pension to an amount which, when added to the retiree's salary, does not exceed the current maximum salary for the next highest title than that held by the person at retirement.

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

Objective

The objective of this audit was to identify those New York City Fire 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 year 2002.

Scope and Methodology

Our audit period was January 1, 2002, through December 31, 2002. We met with officials of the New York City Fire Department Pension Fund (FIRE) 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 265,000 New York City pensioners against a listing of all City workers (approximately 411,000) who received a W-2 wage statement from the Financial Information Services Agency (FISA) for the year 2002.¹ This matching process identified 805 individuals under age 65 who either received more than \$20,000 in 2002 (service retirees), or \$1,800 in 2002 (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 2002, 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 2002. Although we did not match the New York City retirees against local government employees paid by systems other than those integrated with FISA, we are presently conducting year 2001 (BERS and NYCERS) and 2002 (BERS, NYCERS, FIRE, POLICE, 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 # FL04-115A).

Of the 805 matches, 8 consisted of individuals collecting FIRE pensions. For those eight individuals, we obtained additional detailed information about their individual year 2002 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.

For those pensioners who appeared to lack valid reasons for receiving both pension and payroll checks, we calculated the apparent pension overpayments, based on our analyses of when re-employed pensioners reached the legal earnings limitation of \$20,000 for service retirees, and \$1,800 for disability pensioners. The annuity portions of the pension payments, if any, are not affected by RSSL § 211 and § 212, and New York City Charter § 1117, and therefore, should be excluded from the overpayments cited in this report. The annuity portions, which are estimated to be less than five percent of the total overpayments, can be determined only by FIRE officials.

In accordance with §13-302 of the New York City Administrative Code, a board of trustees heads the New York City Fire Department Pension Fund. The Comptroller is one of the

¹ A separate audit report will be issued for each of the five New York City retirement systems; the other four audits are FL04-110A (BERS), FL04-112A (POLICE), FL04-113A (NYCERS), and F04-114A (TRS).

12 trustees and is entitled to cast three of the 24 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.

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.

Discussion of Audit Results

The matters covered in this report were discussed with FIRE officials during and at the conclusion of this audit. A preliminary draft report was sent to FIRE officials and all applicable employing and waiver-issuing agencies, and discussed at an exit conference. On May 21, 2004 we submitted a draft report to FIRE officials with a request for comments.

FIRE provided us with a written response to the draft report on June 1, 2004. In his response, FIRE's Chief Compliance Officer either agreed to implement or stated that FIRE was already in the process of implementing all four recommendations. The full text of FIRE's response is included as an addendum to this report.

Our previous audit covering FIRE pensioners for calendar years 2000 and 2001 (#FL03-128A, issued June 30, 2003), reported that there were five FIRE retirees who were in apparent violation of RSSL § 211 or § 212, or § 1117 of the New York City Charter. These individuals received improper pension payments of approximately \$77,533.

FINDINGS

Overpayment of Pension Benefits

This audit identified one FIRE retiree who received \$39,480 in pension payments during 2002 that appear to violate applicable sections of State and City laws. (See Appendix I for details concerning the retiree and his current employer.) This individual was in apparent violation of § 1117 of the New York City Charter because he was collecting a disability pension while earning more than \$1,800 (including pension payments) a year at a New York City agency.

Our total represents the amount of improper year 2002 pension payments based on an analysis of when the re-employed pensioner reached the legal earnings limitation of \$1,800 for disability pensioners. Allowances were made for this retiree since he only worked part of that year. Additionally, the annuity portions of the pension payments, if any, are not affected by RSSL § 211 and § 212, and New York City Charter § 1117, and therefore, should be excluded from the overpayments cited in this report. The annuity portions, which are estimated to be less than five percent of the total overpayments, can be determined only by FIRE officials. Immediate action by FIRE and the employing City agency is needed to investigate and recoup where appropriate any improper payments made to this retiree identified as a possible “disability violator.”

RECOMMENDATIONS

New York City Fire Department Pension Fund officials should:

1. Investigate the individual identified as concurrently receiving a pension while being re-employed in public service. FIRE officials should also commence prompt recoupment action against this individual if he is found to be illegally collecting a pension.

FIRE Response: “The Department agrees that it should investigate and take action against those identified individuals. FDNY has already initiated recoupment proceedings where appropriate.”

2. Forward to the Department of Investigation, if the circumstances warrant such action, the name of this individual if he is found to be illegally collecting a pension.

FIRE Response: “The Department agrees to do so when circumstances warrant such action.”

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.”

FIRE Response: “All previously identified pension overpayments have already been or in the process of being recouped.”

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

FIRE Response: “Special reminders on the subject are sent out on a routine basis.”

**APPENDIX I
PENSION OVERPAYMENTS - NYC FIRE DEPARTMENT PENSION FUND
2002 MATCHES (DISABILITY RETIREES)**

Pension Number	Date Retired	2002 Pension	Months Overpaid	Amount Overpaid	2002 Employer	Payroll Code	2002 Salary	Appointment Year
R-019144-0	01/31/01	\$ 88,200	7	\$ 39,480	BOE	746	\$ 6,208	1979

Total \$ 39,480

NOTES:

BOE Board of Education



FIRE DEPARTMENT

9 METROTECH CENTER BROOKLYN, N.Y. 11201-3857

FRANK J. BUCCELLATO
Chief Compliance Officer
Strategic Planning, Audit & Review Room #85-9

June 1, 2004

Mr. Greg Brooks
Deputy Comptroller
Policy, Audits, Accountancy & Contracts
Office of the Comptroller
1 Centre Street
New York, New York 10007-2341

Re: Audit Report on Pensioners of the New York City Fire Department working for the City after their retirement. January 1, 2002 – December 31, 2002. FL04-111A.

Dear Mr. Brooks:

Attached is FDNY's comments on the above mentioned report, as well as our response and Agency Implementation Plan for each of the recommendations. Please thank your audit staff for the assistance they have provided to the Department in this review.

If you wish to discuss any portion of our response or AIP, please contact me at (718) 999-2033.

Sincerely,

Frank J. Buccellato

Cc: M. Vecchi
M. Basso

Audit FL04-111A

Audit Recommendations / FDNY Response – Agency Implementation Plan

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

FDNY Response – The Department agrees that it should investigate and take action against those identified individuals. FDNY has already initiated recoupment proceedings where appropriate.

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

FDNY Response – The Department agrees to do so when circumstances warrant such action.

- 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”.

FDNY Response – All previously identified pension overpayments have already been or are in the process of being recouped.

- 4) Send Special reminders to service retirees under the age of 65, and to all disability retirees, that clearly state their responsibilities regarding public service re-employment.

FDNY Response – Special reminders on the subject are sent out on a routine basis.