

AUDIT REPORT



CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF FINANCIAL AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on Non-Pedagogical Pensioners of the New York City Board of Education Working for the City after Retirement January 1, 2001—December 31, 2002

FL04-110A

June 25, 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 Board of Education Retirement System (BERS) 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, § 211 and § 212, or New York City Charter § 1117, during calendar years 2001 and 2002.

The results of our audit, which are presented in this report, have been discussed with BERS 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: FL04-110A
Filed: June 25, 2004

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

**Audit Report on Non-Pedagogical Pensioners of the
New York City Board of Education
Working for the City after Retirement
January 1, 2001 – December 31, 2002**

FL04-110A

AUDIT REPORT IN BRIEF

The Comptroller's Office performed an audit to identify New York City Board of Education (non-pedagogical) pensioners who may be illegally re-employed ("double-dippers" or "disability retirees"), 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 years 2001 and 2002.

Audit Findings and Conclusions

The audit found that three individuals who received \$6,124 in pension payments during 2001 and 2002 that appear to violate applicable sections of State and City laws. These individuals were in apparent violation of New York State Retirement and Social Security Law (RSSL) § 211 or § 212 because they were under age 70 and received City wages exceeding the limitations without having a waiver on file at BERS, 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.

Audit Recommendations

To address these issues the report recommended that BERS:

- Investigate those individuals identified as concurrently receiving pensions while being re-employed in public service. BERS 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 65, and to all disability retirees, that clearly state their responsibilities regarding public service re-employment.

INTRODUCTION

Background

A New York City Board of Education service retiree (non-pedagogical) 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), § 211 or § 212. In the case of New York City Board of Education disability retirees (non-pedagogical), the governing regulations are the New York State Education Law (Title 2, Article 52, § 2575) and the New York City Charter (§ 1117). If a post-retirement employee does not comply with relevant laws, the practice is termed “double-dipping.” (Pedagogical retirees of the New York City Board of Education are represented by the New York City Teachers’ Retirement System, which is subject to different regulations and is covered in a separate audit.)

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). For calendar years 2001 and 2002, the earnings limitations do not apply after the retiree reaches the age 70 and 65, respectively.

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 years 2001 and 2002, the earnings limitations for a service retiree who filed a Statement of Election under § 212 were \$18,500 and \$20,000, respectively. Accordingly, any service retiree earning more than \$18,500 (in 2001) or \$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 State Education Law (Title 2, Article 52, § 2575), combined with the New York City Charter (§ 1117), prohibits a New York City Board of Education non-pedagogical disability 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 Board of Education (non-pedagogical) 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 2001 and 2002.

Scope and Methodology

Our audit period was January 1, 2001, through December 31, 2002. We met with officials of the New York City Board of Education Retirement System (BERS) 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 New York City pensioners against a listing of all City workers who received a W-2 wage statement from the Financial Information Services Agency (FISA) for the years 2001 and 2002. In each of these years there were approximately 265,000 pensioners and 400,000 employees who received W-2's.¹ This matching process identified 1,505 individuals (700 in 2001 and 805 in 2002) under age 70 who received more than \$18,500 in 2001 or under age 65 who received more than \$20,000 in 2002 (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 2001 or 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 2001 or 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 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 1,505 matches, 24 consisted of individuals collecting BERS pensions. For all 24 matches, we obtained additional detailed information about their individual year 2001 and 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 these re-employed pensioners reached the legal earnings limitations of \$18,500 (2001) and \$20,000 (2002) 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 BERS 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.

¹ A separate audit report will be issued for each of the five New York City retirement systems; the other four audits are FL04-111A (FIRE), FL04-112A (POLICE), FL04-113A (NYCERS), and FL04-114A (TRS).

Discussion of Audit Results

The matters covered in this report were discussed with BERS officials during and at the conclusion of this audit. A preliminary draft report was sent to BERS 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 BERS officials with a request for comments.

In their response, BERS officials described the actions they have taken to address the report's recommendations. The full text of the BERS response is included as an addendum to this report.

FINDINGS

Overpayment of Pension Benefits

This audit identified three individuals who received \$6,124 in pension payments during 2001 and 2002 that appear to violate applicable sections of State and City laws. (See Appendices I through III for a listing of the three individuals and their current employers.) These three 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 BERS, 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.

Our total represents the amount of improper year 2001 and 2002 pension payments based on an analysis of when the re-employed pensioners reached the legal earnings limitations (\$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, 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 BERS officials. Immediate action by BERS 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.”

RECOMMENDATIONS

Board of Education Retirement System officials should:

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

BERS Response: “We have conducted our own independent investigation, and do concur with your findings. We will soon commence recoupment actions for overpayment of pension funds due BERS from all violators, except for one retiree (E-016834-0) who has been deceased since June 19th, 2002. ”

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

BERS Response: “At this time we do not believe such action to be necessary, instead we will inform these retirees of the likelihood of such action being taken in the future if they persist in violating the law.”

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.”

BERS Response: BERS response did not address this recommendation.

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

BERS Response: “To reiterate, BERS remains totally committed in treating non-compliance of applicable laws governing re-employment of pensioners in the public sector with vigilance, and continues to inform all current and prospective pensioners of the existence of these laws and their consequences if not adhered to.”

**APPENDIX I
PENSION OVERPAYMENTS - NYC BOARD OF EDUCATION RETIREMENT SYSTEM
2001 MATCHES (LACK OF WAIVERS)**

Pension Number	Date Retired	2001 Pension	Months Overpaid	Amount Overpaid	2001 Employer	Payroll Code	2001 Salary	Waiver Issuing Agency	Waiver in 2001
E-014674-0	8/25/98	\$ 6,234	4	\$ 2,076	BOE	746	\$ 27,934	BOEC	NO
E-016834-0	11/15/00	14,503	2	2,416	BOE	746	20,169	BOEC	NO

Total \$ 4,492

NOTES:

BOE Board of Education
BOEC Board of Education Chancellor's Office

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

**APPENDIX II
PENSION OVERPAYMENTS - NYC BOARD OF EDUCATION RETIREMENT SYSTEM
2002 MATCHES (DISABILITY RETIREES)**

Pension Number	Date Retired	2002 Pension	Months Overpaid	Amount Overpaid	2002 Employer	Payroll Code	2002 Salary
E-016846-0	10/31/01	\$ 6,537	3	\$ 1,632	BOE	745	\$ 3,735

Total \$ 1,632

NOTES:

BOE Board of Education

APPENDIX III

RE-EMPLOYED BERS PENSIONERS

TOTAL INDIVIDUALS BY CURRENT EMPLOYER

Current Employer

<u>Board of Education</u>	<u>Payroll Code</u>	<u>Individuals</u>
Full-time Clerical	745	1
Per-diem Teachers	746	<u>2</u>
<u>Total Individuals</u>		<u>3</u>

BOARD OF EDUCATION RETIREMENT SYSTEM
OF THE CITY OF NEW YORK

KATHLEEN GRIMM, Co-Chair

REBECCA MARSTON, Co-Chair



CHRISTINE BAILEY
EXECUTIVE DIRECTOR

ALAN D. AVILES
EVITA BELMONTE
PHILIP A. BERRY
DAVID C. CHANG
JOAN CORREALE
NATALIE GOMEZ-VELEZ
MARTINE G. GUERRIER
TINO HERNANDEZ
JACQUELYN KAMIN
JOEL I. KLEIN
THOMAS J. MALANGA
RICHARD L. MENSCHÉL
MARITA REGAN
AUGUSTA SOUZA KAPPNER
TRUSTEES

June 9, 2004

Mr. Greg Brooks
Deputy Comptroller
For Audits and Engineering
1 Centre Street – 5th Floor
New York, N.Y. 10007-2341

**Re: Audit Report on NYC Board of Education
Non-Pedagogical Pensioners Working for
The City after Their Retirement
January 1, 2001 to December 31, 2002
FL04-110A**

Dear Mr. Brooks:

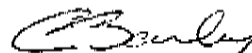
This is in response to your audit report FL04-110A on Non-Pedagogical pensioners of the Board of Education working for the city after their retirement. In your report you identified three pensioners of the Board of Education Retirement System (BERS) who were found to have violated the Retirement and Social Security Law (RSSL) § 211 and 212, and § 1117 of the New York City Charter.

We have conducted our own independent investigation, and do concur with your findings. We will soon commence recoupment actions for overpayment of pension funds due BERS from all violators, except for one retiree (E-016834-0) who has been deceased since June 19th, 2002. You had recommended that if warranted that we should forward the names of the violators to the Department of Investigation. At this time we do not believe such action to be necessary, instead we will inform these retirees of the likelihood of such action being taken in the future if they persist in violating the law.

To reiterate, BERS remains totally committed in treating non-compliance of applicable laws governing re-employment of pensioners in the public sector with vigilance, and continues to inform all current and prospective pensioners of the existence of these laws and their consequences if not adhered to. Lastly, we do appreciate your efforts in identifying violators.

Thank you.

Sincerely,



Christine Bailey
Executive Director

c: Anthony Scully
Board of Trustees