

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 Department of Education Working for the City after Retirement January 1, 2003—December 31, 2003

FL05-101A

June 30, 2005



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 year 2003.

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 black ink that reads "William C. Thompson, Jr." in a cursive style.

William C. Thompson, Jr.

WCT/GR

Report: FL05-101A
Filed: June 30, 2005

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

**Audit Report on Non-Pedagogical Pensioners of the
New York City Department of Education
Working for the City after Retirement
January 1, 2003 – December 31, 2003**

FL05-101A

AUDIT REPORT IN BRIEF

The Comptroller's Office performed an audit to identify New York City Department 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 year 2003.

Audit Findings and Conclusions

The audit found that one individual who received \$6,480 in pension payments during 2003 that appear to violate § 1117 of the New York City Charter because she was collecting a disability pension while earning more than \$1,800 (including pension payments) a year at a New York City agency.

Audit Recommendations

BERS should:

- Investigate the individual identified as concurrently receiving a pension while being re-employed in public service. BERS officials should also commence prompt recoupment action against this individual if she 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 she is found to be illegally collecting a pension.
- 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 non-pedagogical service retiree of the New York City Department of Education 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. Non-pedagogical disability retirees are subject to New York State Education Law (Title 2, Article 52, § 2575) regulations and § 1117 of the New York City Charter. If a post-retirement employee does not comply with relevant laws, the practice is termed “double-dipping.” (Pedagogical retirees of the New York City Department of Education are covered under the New York City Teachers’ Retirement System, which is subject to different regulations and is the subject of 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 Department 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 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 2003, the earnings limitations for a service retiree who filed a Statement of Election under § 212 was \$25,000. Accordingly, any service retiree earning more than \$25,000 in 2003 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 Department 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 Department 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 year 2003.

Scope and Methodology

Our audit period was January 1, 2003, through December 31, 2003. 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 the approximately 272,000 New York City pensioners against a listing of all City workers (approximately 424,000) who received a W-2 wage statement from the Financial Information Services Agency (FISA) for the year 2003.¹ This matching process identified 2,064 individuals under age 65 who received more than \$25,000 in 2003 (service retirees), or \$1,800 in 2003 (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.

¹ A separate audit report will be issued for each of the five New York City retirement systems; the other four audits are FL05-098A (POLICE), FL05-099A (FIRE), FL05-100A (NYCERS), and FL05-102A (TRS).

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 2003, 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 2003. 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 2003 (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 # FL05-104A).

Of the 2,064 matches, 51 consisted of individuals collecting BERS pensions. For all 51 matches, we obtained additional detailed information about their individual year 2003 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 \$25,000 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 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.

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 the applicable employing and waiver-issuing agencies, and discussed at an exit conference. On June 3, 2005 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.

Our previous audit covering BERS pensioners for calendar years 2001 and 2002 (#FL04-110A, issued June 25, 2004), reported that there were 3 BERS 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 \$6,124.

FINDINGS

Overpayment of Pension Benefits

This audit identified one individual who received \$6,480 in pension payments during 2003 that appear to violate § 1117 of the New York City Charter because she was collecting a disability pension while earning more than \$1,800 (including pension payments) a year at a New York City agency. (See Appendix I for details concerning the retiree and his current employer.)

Our total represents the amount of improper year 2003 pension payments based on an analysis of when the re-employed pensioner reached the legal earnings limitation (\$1,800 for disability pensioners). Allowances were made for this retiree 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 agency is needed to investigate and recoup where appropriate any improper payments made to this retiree.

RECOMMENDATIONS

BERS officials should:

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

BERS Response: “In adherence with your recommendations, we are now conducting our own investigation of this individual. Once this investigation is complete, and the violation is verified we will promptly commence recoupment of pension overpayments from the pensioner.”

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

BERS Response: BERS response did not address this recommendation.

3. 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: “Lastly, BERS continues to inform our membership of the seriousness of non-compliance with RSSL §211 and §212 also §1117 of the New York City Charter. Our representatives during counseling sessions do reiterate all rules and regulations

pertaining to the governance of re-employment in the public sector to each prospective retiree, and stress the consequences if these laws are violated.”

**APPENDIX I
PENSION OVERPAYMENTS - NYC BOARD OF EDUCATION RETIREMENT SYSTEM
2003 MATCHES (DISABILITY RETIREES)**

Pension Number	Date Retired	2003 Pension	Months Overpaid	Amount Overpaid	2003 Employer	Payroll Code	2003 Salary
E-016589-0	07/06/01	\$ 15,144	5	\$ 6,480	HUNTER HS	470	\$ 3,206

Total \$ 6,480

NOTES:

HUNTER HS Hunter College High School



CHRISTINE BAILEY
EXECUTIVE DIRECTOR

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

ADDENDUM I
1 of 1

718-936-6400
OUTSIDE NEW YORK STATE
1-800-843-6878

June 7, 2005

Greg Brooks
Deputy Comptroller
Policy, Audits, Accountancy & Contracts
1 Centre Street – 5th Floor
New York, N.Y. 10007-2341

Re: Audit Report on Non-Pedagogical Pensioners of the New York City
Department of Education Working for the City after Retirement
January 1, 2003 - December 31, 2003
FL05-101A

Dar Mr. Brooks:

We are in receipt of your recently issued draft audit report on the Department of Education Non-Pedagogical pensioners working for the City after their retirement during the period January 1, 2003 through December 31, 2003. In your report you cited one pensioner who while collecting a disability pension had also earned more than \$1800 in wages. These earnings were in violation of § 1117 of the New York City Charter.

In adherence with your recommendations, we are now conducting our own investigation of this individual. Once this investigation is complete, and the violation is verified we will promptly commence recoupment of pension overpayments from the pensioner.

Lastly, BERS continues to inform our membership of the seriousness of non-compliance with RSSL §211 and §212 also § 1117 of the New York City Charter. Our representatives during counseling sessions do reiterate all rules and regulations pertaining to the governance of re-employment in the public sector to each prospective retiree, and stress the consequences if these laws are violated.

Sincerely,

Christine Bailey
Executive Director

cc: Anthony Scully, Bureau of Audit
Board of Trustees
Rimma Stanton