

AUDIT REPORT

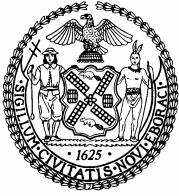


CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF FINANCIAL AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on Non-Pedagogical Pensioners of the New York City Department of Education Working For the City after Retirement January 1, 2005—December 31, 2005

FL07-085A

June 28, 2007



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 reemployed by a City agency and illegally collecting a pension, 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 2005.

A non-pedagogical retiree of the New York City Department of Education who is reemployed in State or City government service may not continue to collect pension benefits except in accordance with conditions established by the New York State Retirement and Social Security Law, the New York State Education Law, and the New York City Charter. Audits such as this provide a means of ensuring that pensioners are complying with all laws pertaining to public service reemployment and that appropriate steps are taken to recoup improper payments to individuals after retirement.

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. Their complete response is attached to this report.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please e-mail my audit bureau at audit@Comptroller.nyc.gov or telephone my office at 212-669-3747.

Very truly yours,

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

William C. Thompson, Jr.

WCT/fh

Report: FL07-085A
Filed: June 28, 2007

Table of Contents

AUDIT REPORT IN BRIEF

Audit Findings and Conclusions..... 1
Audit Recommendations..... 1

INTRODUCTION..... 2

Background..... 2
Objective..... 3
Scope and Methodology..... 3
Discussion of Audit Results..... 4

FINDINGS AND RECOMMENDATIONS..... 5

Overpayment of Pension Benefits..... 5
Recommendations..... 5

APPENDIX – 2005 Pension Overpayments – NYC Board of Education Retirement System – Service Retirees

ADDENDUM – Board of Education Retirement System Response

*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, 2005–December 31, 2005**

FL07-085

AUDIT REPORT IN BRIEF

The objective of this audit was to identify New York City pensioners who may be reemployed by a City agency and illegally collecting a pension from the New York City Board of Education Retirement System (BERS)—known as “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 2005.

Audit Findings and Conclusions

The audit found one individual who received \$28,723 in pension payments during 2005 that appear to violate RSSL §211 or §212 because he was under age 65 and received City wages exceeding the limitations without having a waiver on file at BERS.

Audit Recommendations

The audit made four recommendations, that BERS officials should:

- Investigate the individual identified as receiving a pension while being reemployed in public service. BERS 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 reemployment.

INTRODUCTION

Background

A non-pedagogical service retiree of the New York City Department of Education who is reemployed 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 reemployed in New York public service and who exceeds the §212 salary limitations may have his or her pension benefits denied, unless the service retiree requests that the prospective employer apply for a waiver from the State or municipal Civil Service Commission or other authorized agency. The prospective employer must set forth the reasons for the application and obtain 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)
- Municipal Civil Service Commission of the City of New York (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 reemployed 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 2005, the earnings limitations for a service retiree who filed a Statement of Election under §212 was \$27,500. Accordingly, any service retiree earning more than \$27,500 in 2005 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 pensioners who may be reemployed by a City agency and illegally collecting a pension from the New York City Board of Education Retirement System (BERS)—known as “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 2005.

Scope and Methodology

Our audit period was January 1, 2005, through December 31, 2005. 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 reemployed by City agencies, the Audit Bureau's IT Division performed a computer match of the approximately 277,000 New York City pensioners against a listing of all City workers (approximately 455,000) who received a W-2 wage statement from the Financial Information Services Agency (FISA) for the year 2005.¹ This matching process identified 1,767 individuals under age 65 who received more than \$27,500 in 2005 (service retirees), or \$1,800 in 2005 (disability retirees). These individuals were then sorted by retirement system and investigated to

¹ A separate audit report will be issued for each of the five New York City retirement systems; the other four audits are FL07-083A (TRS), FL07-084A (NYCERS), FL07-082A (POLICE), and FL07-081A (FIRE).

determine the reasons these 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 2005, 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 2005. Although the match did not include local government employees paid by systems other than those integrated with FISA, we are presently conducting 2005 matches of City pensioners (BERS, NYCERS, FIRE, POLICE, and TRS) against the 387,000 State workers; the results of this match will be covered in a separate report (Audit # FL07-086A).

Of the 1,767 matches, 43 consisted of individuals collecting BERS pensions. For all 43 matches, we:

- obtained additional detailed information about their individual year 2005 pension and payroll payments;
- analyzed the timing, and to some extent, the types of payments received;
- verified the amounts shown on the computer-match listing; and
- 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 reemployed pensioners reached the legal earnings limitations of \$27,500 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.

In addition, we followed-up on the implementation status of the recommendations from last year's audit report—*Non-Pedagogical Pensioners of the New York City Department of Education Working for the City after Retirement January 1, 2004–December 31, 2004*, FL06-097A, issued June 30, 2006—by reviewing provided correspondence from BERS.

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included tests of records and other auditing procedures considered necessary. This audit was performed in accordance with the audit responsibilities of the Comptroller 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. We

submitted a draft report to BERS officials with a request for comments. We received a written response from BERS officials on June 4, 2007. 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 AND RECOMMENDATIONS

Overpayment of Pension Benefits

This audit identified one individual who received \$28,723 in pension payments during 2005 that appear to violate applicable sections of State and City laws. (See Appendix for details concerning the retiree and his current employer.) This individual was in apparent violation of RSSL §211 or §212 because he was under age 65 and received City wages exceeding the limitations without having a waiver on file at BERS.

Our total represents the amount of improper year 2005 pension payments based on an analysis of when the reemployed pensioner reached the legal earnings limitation (\$27,500 for service 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 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, if appropriate, any improper payments made to this retiree.

It should be noted that this individual was cited in last year's audit of 2004. In their correspondence concerning the implementation status of the recommendations from last year's audit, BERS officials advised us that they were recouping the previously cited 2004 improper pension payments through reductions in the pensioner's monthly pension allowances.

Recommendations

BERS officials should:

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

BERS Response: "Having examined both pension records and city payrolls our investigation supports your finding that he does appear to have violated RSSL §211 and §212. We will advise the retiree of your finding and of his current status with the above referenced law. We will commence recoupment action for overpayment of pension benefits in the amount of \$23,863.96 net his annuity portion of \$4,859.04 which is exempt under §212."

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.

BERS Response: BERS response did not address this 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.”

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 reemployment.

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

**APPENDIX
2005 PENSION OVERPAYMENTS - NYC BOARD OF EDUCATION RETIREMENT SYSTEM
SERVICE RETIREES**

Pension Number	Date Retired	2005 Pension	Months Overpaid	Amount Overpaid	2005 Employer	Payroll Code	2005 Salary	Waiver Issuing Agency	Waiver in 2005
*E-014938-0	3/10/1999	\$ 43,036	8	\$ 28,723	DCAS	868	\$ 87,203	DCAS	NO

Total Individuals: 1

Total \$ 28,723

NOTES:

DCAS Department of Citywide Administrative Services

* This individual was also cited in our prior audit for 2004



CHRISTINE BAILEY
EXECUTIVE DIRECTOR

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

718-935-5400
OUTSIDE NEW YORK STATE
1-800-843-5575

June 4, 2007

John Graham, Deputy Comptroller
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, 2005 - December 31, 2005
FL07-085A

Dar Mr. Graham:

We have reviewed your recently issued draft audit report on “Non-Pedagogical Pensioners of the New York City Department of Education Working for the City after Retirement” during the period January 1, 2005 through December 31, 2005. In your report you identified one service retiree in calendar year 2005 while collecting a Board of Education Retirement System’s pension was reemployed by the City of New York. During that period he collected wages of approximately \$87,203 without evidence of a valid waiver. You further stated that the earnings limitations for a service retiree who filed a Statement of Election under §212 of the Retirement and Social Security Law (RSSL) was \$27,500. You concluded that for eight months in 2005 this retiree received pension checks totaling \$28,723 for which he was not entitled.

Having examined both pension records and city payrolls our investigation supports your finding that he does appear to have violated RSSL §211 and §212. We will advise the retiree of your finding and of his current status with the above referenced law. We will commence recoupment action for overpayment of pension benefits in the amount of \$23,863.96 net his annuity portion of \$4,859.04 which is exempt under §212.

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

Sincerely,

A handwritten signature in black ink that reads "John Cahalin".

John Cahalin
Director of Operations

cc: Anthony Scully, Bureau of Audit
Board of Trustees
Christine Bailey