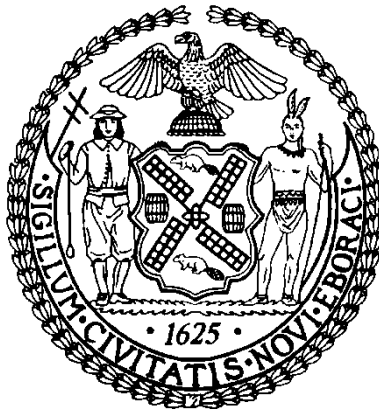


**CITY OF NEW YORK
OFFICE OF THE COMPTROLLER**

**John C. Liu
COMPTROLLER**

BUREAU OF FINANCIAL AUDIT

**H. Tina Kim
Deputy Comptroller for Audit**



**Audit Report on
Non-Pedagogical Pensioners of the
New York City Department of Education
Working for the City after Retirement
January 1, 2008-December 31, 2008**

FL10-115A

June 30, 2010

<http://comptroller.nyc.gov>



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

John C. Liu
COMPTROLLER

June 30, 2010

To the Residents of the City of New York:

My office has audited the New York City Board of Education Retirement System (BERS) to identify 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 2008. 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 audit found that one pensioner received \$4,708 in pension payments during 2008 that appear to violate applicable sections of State and City laws. This individual was in apparent violation of RSSL §211 or §212 because she was under age 65 and received City wages exceeding the limitations without having a waiver on file. The audit recommended that BERS officials investigate the cited pensioner, forward the individual's name to the Department of Investigation should circumstances warrant such action, recoup any previous pension overpayments, and send reminders to retirees that state their responsibilities regarding public service reemployment.

The results of the audit have been discussed with BERS officials, and their comments have been considered in preparing this report. Their complete response is attached to this report.

If you have any questions concerning this report, please e-mail my audit bureau at audit@Comptroller.nyc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Liu".

John C. Liu

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.....5

FINDINGS.....6

Overpayment of Pension Benefits.....6

RECOMMENDATIONS.....7

APPENDIX 2008 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, 2008–December 31, 2008**

FL10-115A

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 2008.

Audit Findings and Conclusions

The audit found that one pensioner received \$4,708 in pension payments during 2008 that appear to violate applicable sections of State and City laws. This individual was in apparent violation of RSSL §211 or §212 because she was under age 65 and received City wages exceeding the limitations without having a waiver on file. This individual was also cited in our prior audit of calendar year 2007.

Audit Recommendations

The audit makes 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 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.
- 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 New York City 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 serve the best interests of the government service, and that no other persons qualified to perform the duties of the position to be filled are readily available for recruitment. 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 2008, the earnings limitations for a service retiree who filed a Statement of Election under §212 was \$30,000. Accordingly, any service retiree earning more than \$30,000 in 2008 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—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 2008.

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This 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.

Our audit period was January 1, 2008, through December 31, 2008. We met with BERS officials 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 277,047 New York City pensioners against a listing of all City workers (approximately 407,216) who received a W-2 wage statement from the Financial Information Services Agency (FISA) for the year 2008.¹ This matching process identified 1,819 individuals under age 65 who received more than \$30,000 in 2008 (service retirees), or \$1,800 in 2008 (disability retirees). These individuals were then sorted by retirement system and investigated to 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 2008 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 2008. Although the match did not include local government employees paid by systems other than those integrated with FISA, we are presently conducting 2008 matches of City pensioners (BERS, NYCERS, FIRE, POLICE, and TRS) against the 355,000 State workers; the results of this match will be covered in a separate report (Audit # FL10-119A).

Of the 1,819 matches, 16 consisted of individuals collecting BERS pensions. For all 16 matches, we:

- obtained additional detailed information about their individual year 2008 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 \$30,000 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.

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, 2007–December 31, 2007*, FL09-116A, issued June 30, 2009—by reviewing provided correspondence from BERS.

¹ A separate audit report will be issued for each of the five New York City retirement systems; the other four audits are FL10-116A (TRS), FL10-117A (NYCERS), FL10-118A (POLICE), and FL10-114A (FIRE).

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 May 10, 2010. BERS officials decided to waive the exit conference. We submitted a draft report to BERS officials with a request for comments and received a written response from them on June 21, 2010. In their response, BERS officials agreed with one audit recommendation and did not address the remaining three.

The full text of the BERS response is included as an addendum to this report.

FINDINGS

Overpayment of Pension Benefits

This audit identified one retiree who received \$4,708 in pension payments during 2008 that appear to violate applicable sections of State and City laws. (See Appendix.)

This individual was in apparent violation of RSSL §211 or §212 because she was under age 65 and received City wages exceeding the limitations without having a waiver on file at BERS. This individual received improper pension payments of approximately \$4,708.

Our total represents the amount of improper 2008 pension payments based on an analysis of when the reemployed pensioner reached the legal earnings limitations (\$30,000 for service retirees). 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 in their correspondence concerning the implementation status of the recommendations from last year's audit of 2007, BERS officials advised us that BERS has taken the necessary steps to recoup the overpayments from the two individuals cited in last year's report (one of which has been cited again in the current audit).

RECOMMENDATIONS

BERS officials should:

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

BERS Response: “We have reviewed the findings and we concur with your conclusions. We have begun to recoup all overpaid funds.”

2. Forward to the Department of Investigation, if the circumstances warrant such action, the names of these individuals if they are 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: BERS response did not address this recommendation

**APPENDIX
2008 PENSION OVERPAYMENTS - BOARD OF EDUCATION RETIREMENT SYSTEM
SERVICE RETIREES**

Pension Number	Date Retired	2008 Pension	Months Overpaid	Amount Overpaid	2008 Employer	Payroll Code	2008 Salary	Waiver Issuing Agency	Waiver in 2008
*E-020283-0	8/2/2005	\$14,124	4	\$4,708	DOE	740	\$48,545	DOEC	NO

Total Individuals: 1

Total: \$4,708

NOTES:

DOE Department of Education
DOEC Department of Education Chancellor

*This individual was also cited in our prior audit for calendar year 2007.



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

ADDENDUM
1 of 1

CHRISTINE BAILEY, EXECUTIVE DIRECTOR

718-935-5400
OUTSIDE NEW YORK STATE
1-800-843-6575

June 21, 2010

John Graham, Deputy Comptroller
Audits, Accountancy & Contracts
1 Centre Street-5th Floor
New York, NY 10007-2341

Re: Audit Report on Non-Pedagogical
Pensioners for the New York City
Department of Education Working
For the City after Retirement
January 1, 2008-December 31, 2008
FL10-115A

Dear Mr. Graham:

We are in receipt of 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, 2008 through December 31, 2008. For the period under consideration, you did identify one pensioner of the Board of Education Retirement System (BERS) who you cite as being re-employed in violation of the New York State Education Law (Title 2, Article 52, § 2575), and the New York City Charter (§1117), the RSSL §211 and §212 and had thus collected pension benefits for which they were not entitled to.

We have reviewed the findings and we concur with your conclusions. We have begun to recoup all overpaid funds. Regarding BERS' response for follow up information on the 2007 audit, please be advised that overpayments are being collected through payroll deductions. Lastly, we would like to extend our gratitude to you and all parties involved in conducting this audit. Thank you.

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