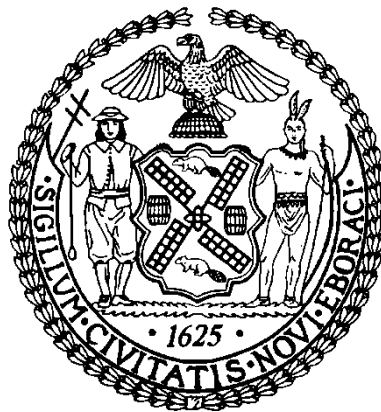


**CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER**

**John C. Liu  
COMPTROLLER**

**FINANCIAL AUDIT**

**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, 2009-December 31, 2009**

*FL11-099A*

**June 30, 2011**

<http://comptroller.nyc.gov>



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

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John C. Liu  
COMPTROLLER

June 30, 2011

**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 New York City pensioners 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 2009. These individuals—known as “double-dippers” or “disability violators”—have been re-employed by a City agency and may be illegally collecting a pension from BERS.

The audit found that that one pensioner was in apparent violation of RSSL §211 - §212 because she was under age 65 and received City wages exceeding the limitations without having a waiver on file and one pensioner was in violation of New York State Education Law (Title 2, Article 52, §2575) regulations and §1117 of the New York City Charter which 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. These individuals received \$5,354 in pension over payments during 2009. The audit recommended that BERS officials investigate those individuals identified in this report and, if in violation of State or City regulations, commence recoupment action against said individuals, and send reminders to service retirees under the age of 65 and to all disability retirees that clearly state their responsibilities regarding public service re-employment.

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](mailto:audit@Comptroller.nyc.gov).

Sincerely,

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

John C. Liu

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

**Audit Report on Non-Pedagogical Pensioners of the  
New York City Department of Education  
Working for the City after Retirement  
January 1, 2009–December 31, 2009**

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**AUDIT REPORT IN BRIEF**

The objective of this audit was to identify New York City pensioners 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 2009. These individuals —known as “double-dippers” or “disability violators”—have been re-employed by a City agency and may be illegally collecting a pension from the New York City Board of Education Retirement System (BERS).

**Audit Findings and Conclusions**

The audit found that one pensioner was in apparent violation of RSSL §211 - §212 because she was under age 65 and received City wages exceeding the limitations without having a waiver on file and one pensioner was in violation of New York State Education Law (Title 2, Article 52, §2575) regulations and §1117 of the New York City Charter which 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. These individuals received \$5,354 in pension over payments during 2009.

**Audit Recommendations**

The audit made two recommendations that BERS officials should:

- Investigate those individuals identified in this report and, if in violation of State or City regulations, commence recoupment action against said individuals.
- 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**

BERS officials agreed with both recommendations and indicated that they have taken steps to recoup the overpayments.

## 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 service retiree requests that the prospective employer apply for a waiver from the State or municipal Civil Service Commission or from any of the 7 authorized agencies listed below. 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 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 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 2009, 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 2009 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 New York City pensioners 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 2009. These individuals—known as “double-dippers” or “disability violators”—have been re-employed by a City agency and may be illegally collecting a pension from the New York City Board of Education Retirement System.

### **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, 2009, through December 31, 2009. We met with officials of the New York City Board of Education Retirement System 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, the Audit Bureau's IT Audit Division performed a computer match of the 329,601 New York City pensioners against a listing of all City workers (409,530) who received a W-2 wage

statement from the Financial Information Services Agency (FISA) for the year 2009.<sup>1</sup> This matching process identified 1,180 individuals under age 65 who received more than \$30,000 in 2009 (service retirees) or \$1,800 in 2009 (disability retirees). These individuals were then sorted by retirement system and investigated to determine the reasons they 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 2009, 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 2009. Although the match did not include local government employees paid by systems other than those integrated with FISA, we are presently conducting 2009 matches of City pensioners (BERS, NYCERS, FIRE, POLICE, and TRS) against the 330,978 State workers; the results of this match will be covered in a separate report (Audit # FL11-102A).

Of the 1,180 matches, 12 consisted of individuals collecting BERS pensions. For all 12 matches, we:

- obtained additional detailed information about their individual year 2009 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 re-employed 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 5 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, 2008–December 31, 2008*, FL10-115A, issued June 30, 2010—by reviewing correspondence provided by BERS.

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<sup>1</sup> A separate audit report will be issued for each of the five New York City retirement systems; the other four audits are FL11-100 (TRS), FL11-098A (NYCERS), FL11-096A (POLICE), and FL11-097A (FIRE).

## **Discussion of Audit Results**

The matters covered in this report were discussed with BERS officials during and at the conclusion of this audit. This preliminary draft report was sent to BERS officials and was discussed at an exit conference held on May 20, 2011. On May 23, 2011, we submitted a draft report to BERS officials with a request for comments and received a written response from them on June 9, 2011. In their response, BERS officials agreed with both recommendations and indicated that they have taken steps to recoup the overpayments.

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 two BERS retirees who received \$5,354 in pension over payments during 2009, thus appearing to violate applicable sections of State and City laws. (See Appendices I through III for details concerning the retirees and their current employers.)

The audit found that one pensioner was in apparent violation of RSSL §211 - §212 because she was under age 65 and received City wages exceeding the limitations without having a waiver on file and one pensioner was in violation of New York State Education Law (Title 2, Article 52, §2575) regulations and §1117 of the New York City Charter which 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. It should also be noted that one of these individuals has been cited in our two prior audits (calendar years 2007 and 2008) as receiving overpayments of \$3,531 and \$4,708 respectively.

Our total represents the amount of improper 2009 pension payments based on an analysis of when the re-employed pensioners reached the legal earnings limitations (\$30,000 for service retirees and \$1,800 for disability pensioners). Allowances were made for those retirees who worked only part of that year. Additionally, the annuity portions of the pension payments, if any, are not affected by RSSL §211 and §212 or 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 5 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, if appropriate, any improper payments made to these retirees identified as possible "double-dippers."

Further, on February 3, 2011, BERS officials advised us that BERS has taken the necessary steps to recoup the \$4,708 in overpayments from the individual cited in last year's audit report regarding calendar year 2008.

## RECOMMENDATIONS

BERS officials should:

1. Investigate those individuals identified in this report and, if in violation of State or City regulation, commence recoupment action against said individuals.

**BERS Response:** "BERS concurs with this recommendation. We have investigated and confirmed the audit finding and have already taken steps to recoup the overpayments."

2. 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:** “A special reminder is included each year in BERSWORDS, a publication sent to all BERS members, including all retirees. Additionally at retirement, BERS alerts new retirees of their responsibilities regarding public service reemployment.”

APPENDIX I  
 2009 PENSION OVERPAYMENTS - BOARD OF EDUCATION RETIREMENT SYSTEM  
 SERVICE RETIREES

Pension Number	Date Retired	2009 Pension	Months Overpaid	*Pension Amount Overpaid	2009 Employer	Payroll Code	2009 Salary	Waiver Issuing Agency	Waiver in 2009
**E-020283-0	8/2/2005	\$14,124	4	\$4,708	DOE	740	\$51,338	DOEC	NO

Total Individuals: 1

Total: \$4,708

NOTES:

DOE Department of Education  
 DOEC Department of Education Chancellor

\*Amount of pension overpayment after individual exceeded \$30,000 earnings limitation

\*\*This individual was also cited in our prior audits for calendar years 2007 and 2008.

APPENDIX II  
 2009 PENSION OVERPAYMENTS - BOARD OF EDUCATION RETIREMENT SYSTEM  
 DISABILITY RETIREES

Pension Number	Date Retired	2009 Pension	Months Overpaid	*Pension Amount Overpaid	2009 Employer	Payroll Code	2009 Salary
E-022970-0	12/30/2008	\$3,895	2	\$646	DOE	745	\$5,926

Total Individuals: 1

Total: \$646

NOTES:

DOE Department of Education  
 DOEC Department of Education Chancellor

\* Amount of pension overpayment after individual exceeded earnings limitation of \$1,800 (including pension payments)

APPENDIX III

RE-EMPLOYED BERS PENSIONERS

TOTALS BY CURRENT EMPLOYER

Current Employer

<u>Department of Education (DOE)</u>	<u>Payroll Code</u>	<u>Total Number of Individuals Paid Under Code</u>
DOE Admin	740	1
DOE Hourly Support Staff	745	1
<u>Total</u>		<u>2</u>

BOARD OF EDUCATION RETIREMENT SYSTEM  
OF THE CITY OF NEW YORK  
65 COURT STREET, 16<sup>th</sup> FLOOR  
BROOKLYN, NEW YORK 11201- 4965



CHRISTINE BAILEY  
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June 9, 2011

Ms. Tina Kim  
Deputy Comptroller for Audit  
Bureau of Audit  
1 Centre Street, Room 1100  
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, 2009-December 31, 2009  
FL11-099A

Dear Ms Kim:

We are in receipt of the draft audit report dated May 23, 2011 on Non-Pedagogical Pensioners of the New York City Department of Education Working for the City after Retirement during the period January 1, 2009 through December 31, 2009. For the period under consideration, you identified two pensioners of the Board of Education Retirement System (BERS) who you cite as being re-employed, one in violation of the New York State Education Law (Title 2, Article 52, § 2575) and the New York City Charter (§1117), and another in violation of RSSL §211 and §212.

We have also reviewed your recommendations and advise the following:

**Recommendation 1**

*Investigate those individuals identified in this report and, if in violation of State or City regulations, commence recoupment action against said individuals.*

**Response**

BERS concurs with this recommendation. We have investigated and confirmed the audit finding and have already taken steps to recoup the overpayments.

**Recommendation 2**

*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.*

**Response**

A special reminder is included each year in BERSWORDS, a publication sent to all BERS members, including all retirees. Additionally at retirement, BERS alerts new retirees of their responsibilities regarding public service reemployment.

BERS is committed to ensuring that retirees are in compliance with State and City laws and regulations. We thank the Comptroller for his vigilance and efforts to enhance our operations. If you have any questions, or concerns about our responses, please let us know.

Sincerely,



Daniel Miller  
Internal Auditor

Cc: Christine Bailey  
John Cahalin