



# City of New York

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## OFFICE OF THE COMPTROLLER

Scott M. Stringer  
COMPTROLLER



## FINANCIAL AUDIT

**Marjorie Landa**

Deputy Comptroller for Audit

Audit Report on the Non-Pedagogical  
Pensioners of the New York City  
Department of Education Working for  
the City after Retirement

January 1, 2014 – December 31, 2014

FN15-084A

January 11, 2016

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
1 CENTRE STREET  
NEW YORK, NY 10007

SCOTT M. STRINGER  
COMPTROLLER

January 11, 2016

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 may be re-employed by a City agency and simultaneously illegally collecting a pension from BERS and to quantify the amount of any improper payments to such individuals who appear to be violators of the New York State Retirement and Social Security Law (RSSL) §211 and §212, or New York City Charter §1117 during Calendar Year 2014. We audit the City's pension funds to ensure that pensioners are complying with all laws pertaining to public service reemployment and that appropriate steps are taken to recoup any improper payments made to individuals after retirement.

This audit found one BERS pensioner who violated sections of RSSL §211-§212. Specifically, this pensioner worked as an Associate Supervisor of School Security for the New York City Police Department and earned a salary of \$80,215 while collecting 12 pension checks. According to RSSL §211 and §212, a service retiree who is under the age of 65, reemployed in New York public service without a waiver, and whose salary exceeds the income limitations of \$30,000 in Calendar Year 2014, must have had his or her pension benefits suspended, except in limited circumstances not applicable to the identified retiree. As a result, BERS overpaid \$30,018 in pension payments to this pensioner for Calendar Year 2014.

When the auditors informed BERS of the potential pension overpayments, it initiated its own investigation to determine any other additional overpayments that should be recouped. Based on BERS' calculation, this pensioner is required to pay back \$55,747 for pension overpayments from Calendar Years 2013 to 2015.

The audit recommended that BERS officials send special reminders to its service retirees under the age of 65 and to all disability retirees that detail their responsibilities regarding public service reemployment.

The results of our audit have been discussed with BERS officials and their comments have been considered in preparing this report. Their complete written 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 blue ink, appearing to read "Scott M. Stringer", written over the word "Sincerely,".

Scott M. Stringer

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# THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER FINANCIAL AUDIT

## Audit Report on the Non-Pedagogical Pensioners of the New York City Department of Education Working for the City after Retirement January 1, 2014 – December 31, 2014

**FN15-084A**

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### EXECUTIVE SUMMARY

The objectives of this audit were to identify New York City pensioners who may be re-employed by a City agency and simultaneously illegally collecting a pension from the New York City Board of Education Retirement System (BERS)—post-retirement City employees who do not comply with all necessary employment regulations are known as “double-dippers”—and to quantify the amount of any improper payments to such individuals who appear to be violators of the New York State Retirement and Social Security Law (RSSL) §211 and §212, or New York City Charter §1117 during Calendar Year 2014.

BERS provides retirement benefits to non-pedagogical civil service employees who were employed by the City of New York and School District for the City of New York.<sup>1</sup> The reemployment of retired public employees in public service is governed by RSSL. Specifically, under RSSL Article 7, §212, a service retiree (a person receiving retirement benefits rather than disability retirement benefits) who is under age of 65 can be reemployed in New York public service subject to an annual \$30,000 earning limitation.<sup>2</sup> This means that a member of the BERS system who retires before the age of 65 who is not collecting a disability pension and who is under age 65 may collect his/her pension and work for the City or State, so long as he/she does not earn in excess of \$30,000 per year from a New York City or State public sector position.<sup>3</sup>

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<sup>1</sup> Non-pedagogical employees are administrative employees other than teachers.

<sup>2</sup> RSSL §210 defines “public service” as the service of the state or any political division, including a special district, district corporation, school district, board of cooperative educational services or county vocational education and extension board, or the service of a public benefit corporation or public authority created by or pursuant to laws of the state of New York, or service of any agency or organization which contributes as a participating employer in a retirement system or pension plan administered by the state or any of its political subdivisions.

<sup>3</sup> Disability retirees are not subject to RSSL §211 and §212. However, 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.

If a retiree's post-retirement earnings in a New York State public sector position exceeds the annual earnings limitation, the retiree's pension benefits should be suspended unless the retiree has obtained a waiver under RSSL §211.<sup>4</sup> If a retired employee does not comply with all applicable restrictions and collects a pension while earning in excess of \$30,000 in a covered public sector job, the retiree is said to be "double-dipping."

## **Audit Finding and Conclusion**

Our audit found one BERS pensioner who was under age 65 and received City wages of \$80,215 without having a required waiver to cover any portion of the 2014 earnings. According to RSSL §211 and §212, a service retiree who is under the age of 65 and reemployed in New York public service whose salary exceeds the income limit of \$30,000 (in Calendar Year 2014) will have his or her pension benefits suspended, unless the service retiree requests that the prospective employer apply for a waiver. As a result, BERS overpaid \$30,018 in pension payments to this pensioner.

When we informed BERS of the potential pension overpayments, it initiated its own investigation to determine any other additional overpayments that should be recouped. Based on BERS calculation, this pensioner is required to pay \$55,747 back to BERS for overpaid pensions from Calendar Years 2013 to 2015.

## **Audit Recommendation**

To address the non-compliance issue, we recommended that BERS officials send special reminders to its service retirees under the age of 65 and to its disability retirees to detail their responsibilities regarding compliance with public service reemployment requirements.

## **Agency Response**

BERS officials agreed with our recommendation and had already taken steps to recoup the overpayments.

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<sup>4</sup> The earnings limitation does not apply after the retiree reaches the age of 65.

# AUDIT REPORT

## Background

BERS provides retirement benefits to non-pedagogical civil service employees who were employed by the City of New York and School District for the City of New York. The reemployment of retired public employees in public service is governed by RSSL. Specifically, under RSSL Article 7, §212, a service retiree (a person receiving retirement benefits rather than disability retirement benefits) who is under age 65 can be reemployed in New York public service subject to an annual \$30,000 earning limitation. This means that a member of the BERS system who retires before the age of 65 who is not collecting a disability pension may collect his/her pension and work for the City or State, so long as he/she does not earn in excess of \$30,000 per year from a New York State public sector position.

If a retiree's post-retirement earnings in a New York City or State public sector position exceeds the annual earnings limitation, the retiree's pension benefits should be suspended unless the retiree has obtained a waiver under RSSL §211. If a retired employee does not comply with all applicable restrictions and collects a pension while earning in excess of \$30,000 in a covered public sector job, the retiree is said to be "double-dipping."

For a service retiree to obtain a waiver, the prospective employer must submit a request to the appropriate authorizing 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)
- Chancellor of State University (SUNY)
- Administrator of Courts (NYS-NYC)

Waiver requests must include a statement setting forth the reasons for the waiver application. Further, the application must show that the person's skills are unique and that the person's hire would be in the best interests of the government service; further, the prospective employer must show that no other qualified persons are readily available for recruitment to perform the duties of the position to be filled. Initial waivers and their renewal may be for periods of up to two years.

There are five New York City retirement systems, each of which provide benefits to different employees of the City of New York. 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)

## Objectives

The objectives of this audit are to identify New York City pensioners who may be re-employed by a City agency and simultaneously illegally collecting a pension from the New York City Board of Education Retirement System (BERS)—post-retirement City employees who do not comply with all necessary employment regulations are known as “double-dippers”—and to quantify the amount of any improper payments to such individuals who appear to be violators of RSSL §211 and §212, or New York City Charter §1117 during Calendar Year 2014.

## Scope and Methodology Statement

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. Although our audit did not include local government employees paid by systems other than those integrated with the Financial Information Services Agency (FISA), we believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope period of this audit was Calendar Year 2014. Please refer to the Detailed Scope and Methodology section at the end of this report for the specific audit procedures and detailed tests conducted during the course of this audit.

## Discussion of Audit Results

The matters covered in this report were discussed with BERS officials during and at the conclusion of this audit. On December 3, 2105, we submitted a preliminary draft report to BERS. On December 9, 2015, BERS officials informed us that they decided to waive the exit conference. On December 14, 2015, we submitted a draft report to BERS officials with a request for written comments. On January 4, 2016, we received a written response. In the response, BERS officials agreed with our recommendation and had already taken steps to recoup the overpayments. Their written response is attached as an addendum to this report.

# FINDING AND RECOMMENDATION

## Overpayment of Pension Benefits

Our audit found one BERS pensioner who was under age 65 and received City wages exceeding \$30,000 without having a required waiver to cover any portion of the 2014 earnings. This pensioner had post-employment earnings of \$80,215 for Calendar Year 2014, which resulted in a \$30,018 pension overpayment. While collecting 12 pension checks, totaling \$51,460, this pensioner worked as an Associate Supervisor of School Security for the Police Department and collected a salary of \$80,215.

According to RSSL §211 and §212, a service retiree who is under the age of 65 and reemployed in New York public service whose salary exceeds the income limit of \$30,000 (in Calendar Year 2014) will have his or her pension benefits suspended, unless the service retiree requests that the prospective employer apply for a waiver.<sup>5</sup> Accordingly, as a result of exceeding the earning limitations without obtaining a waiver, the pensioner we identified improperly received seven pension payments (June to December) totaling \$30,018 during Calendar Year 2014. This total represents the amount of improper 2014 pension payments based on an analysis of when the reemployed pensioner reached the annual legal earnings limit (\$30,000 for service retirees).<sup>6</sup>

After we informed BERS of the potential pension overpayments, it initiated its own investigation to determine other additional overpayments that should be recouped. As a result, BERS is going to recoup all overpayments including those not covered by our audit scope as follows:

| Calendar Year | Amount to be Recoup | Months of Overpayments |
|---------------|---------------------|------------------------|
| 2013          | \$4,288             | 1 month                |
| 2014          | \$30,018            | 7 months               |
| 2015          | \$21,441            | 5 months               |

## Recommendation

BERS officials should send special reminders to its service retirees under the age of 65 and its disability retirees to detail their responsibilities regarding compliance with public service reemployment requirements.

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

A special reminder is included each year in BERS WORDS which is a publication sent to all BERS members including all retirees. The SPD can be found on the BERS website. Additionally, BERS provides notification to new retirees of their responsibilities regarding public service re-employment.

<sup>5</sup> This suspension does not apply to certain positions such as elected officials.

<sup>6</sup> 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, were excluded from the overpayments cited in this report.



BERS is committed to ensuring that retirees are in compliance with State and City laws and regulations.”

## DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. 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. Although our audit did not include local government employees paid by systems other than those integrated with FISA, we believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope period of this audit was Calendar Year 2014. We met with BERS officials to obtain an understanding of their payment processes for individual pensioners. To discover the extent to which retired City employees were improperly receiving pension payments from the retirement systems, we obtained the following information:

- payments summary for active New York City pensioners from PPMS (the City's pension payroll management system);<sup>7</sup>
- member records from all five retirement systems;
- City workers who received a W-2 wage statement; and
- waiver information from the three authorized agencies who may issue waivers for BERS retirees: New York State Civil Service Commission, New York City Department of Citywide Administration, and City University of New York.<sup>8</sup>

To determine the accuracy of the PPMS members' information, we compared the members' social security numbers and birthdates with the data provided by each retirement system. We then eliminated the pensioners who were over or turning 65 in 2014 because the earnings limitation does not apply after a retiree reaches the age of 65. We identified 90,356 pensioners who were under age 65 during Calendar Year 2014 and received payments through PPMS.

We matched the 90,356 New York City pensioners against a listing of all City workers who received a W-2 wage statement.<sup>9</sup> This matching process identified 106 individuals who:

- collected BERS pensions during calendar year 2014;
- were under age 65; and
- are either service retirees who retired prior to January 1, 2014, and received more than \$30,000 in wages during 2014, or disability retirees who received more than \$1,800 in pension payments and wages from the City during 2014.

We excluded the service retirees who had waivers that covered Calendar Year 2014 and then determined the reasons for the remaining individuals to receive a pension check and a payroll

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<sup>7</sup> The information was provided by FISA, which is the custodian of the City's Payroll Management System and Pension Payroll Management System.

<sup>8</sup> According to the Personnel Rules and Regulations of the City of New York, Department of Citywide Administration shall have all the powers and duties of the Municipal Civil Service Commission provided in the civil service law or in any other statute or local law. Board of Higher Education became CUNY's Board of Trustees.

<sup>9</sup> A separate audit report will be issued for each of the five New York City retirement systems; the other four audits are FN15-082A (TRS), FN15-083A (POLICE), FN15-085A (NYCERS), and FN15-086A (FIRE).

check concurrently. Among the valid reasons individuals received both pension checks and payroll checks are the following: some had their pensions suspended at the appropriate times, and some were not actually re-employed by the City agencies during 2014, but instead received lump-sum payments for accrued vacation, sick leave, or selected an early retirement program that provided subsequent cash payments in 2014.<sup>10</sup> Although the match did not include local government employees paid by systems other than those integrated with FISA, we are presently conducting Calendar Year 2014 matches of City pensioners (BERS, NYCERS, FIRE, POLICE, and TRS) against New York State workers; the results of this match will be covered in a separate report (Audit # FN15-087A).

For the one individual we identified who appears to have violated the RSSL's prohibitions on re-employment, we:

- obtained additional detailed information about their individual pension and payroll payments;
- analyzed the timing, and the types of payments received that were considered as earned income;
- verified the amounts shown on the computer-match listing; and
- contacted retirement system representatives, who assisted us in searching the pensioner's file for waivers and other relevant information (if any).

For the pensioner 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 the re-employed pensioner reached the legal earnings limit of \$30,000. 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 excluded from the overpayments cited in this report.

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<sup>10</sup> Information for payroll checks is limited to the City agencies that use the City's Payroll Management System to process their payrolls.



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

718-605-5400  
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January 4, 2016

Ms. Marjorie Landa  
Deputy Comptroller for Audit  
Bureau of Audit  
1 Centre Street, Room 1100  
New York, NY 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, 2014-December 31, 2014  
FN15-084A**

Dear Ms. Landa:

We are in receipt of the draft audit report dated December 14, 2015 on Non-Pedagogical Pensioners of the New York City Department of Education Working for the City after Retirement during the period January 1, 2014 through December 31, 2014. For the period under consideration, you identified one pensioner of the Board of Education Retirement System (BERS) who you cite as being re-employed, in violation of RSSL §211 and §212.

We have also reviewed your recommendations and advise the following:

**Recommendation 1**

***BERS officials should send special reminders to its service retirees under the age of 65 and to all disability retirees to detail their responsibilities regarding compliance with public service reemployment requirements.***

**Response**

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

A special reminder is included each year in BERS WORDS which is a publication sent to all BERS members including all retirees. The SPD can be found on the BERS website. Additionally, BERS provides notification to new retirees of their responsibilities regarding public service re-employment.

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,

A handwritten signature in black ink, appearing to read "Oleg Aminov", with a long, sweeping flourish extending to the right.

Oleg Aminov  
Internal Auditor

Cc: Harvey Gordon  
John Cahalin