



# 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 Pensioners of the  
New York City Fire Department  
Working for the City after Retirement  
January 1, 2014 to December 31, 2014**

FN15-086A

**December 30, 2015**

<http://comptroller.nyc.gov>



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

SCOTT M. STRINGER  
COMPTROLLER

December 30, 2015

To the Residents of the City of New York:

My office has audited the Fire Department Pension Fund (FIRE) to identify New York City pensioners who may be re-employed by a City agency and simultaneously illegally collecting a pension from FIRE 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 three FIRE pensioners who appear to have violated sections of RSSL §211-§212 or New York City Charter §1117. Specifically, we identified one pensioner who worked as a teacher for the Department of Education (DOE) and earned a salary of \$43,376 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 his or her pension benefits suspended, except in limited circumstances not applicable to the identified retiree. In addition, two FIRE disability pensioners violated New York City Charter §1117 because they were under the age of 65, received disability pension payments, also earned in excess of \$1,800 through New York City re-employment, and did not have their pension payments suspended during the time of their re-employment. These three pensioners received a total of \$126,538 in post-retirement earnings for Calendar Year 2014, which resulted in \$68,431 pension overpayments.

The audit recommends that FIRE officials investigate those individuals identified in this report and commence recoupment action against them, and send special reminders to 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 FIRE 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,

Scott M. Stringer

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

## Audit Report on Pensioners of the New York City Fire Department Working for the City after Retirement January 1, 2014 to December 31, 2014

FN15-086A

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### EXECUTIVE SUMMARY

The objectives of this audit were to identify those New York City pensioners who may be re-employed by a City agency and simultaneously illegally collecting a pension from the New York City Fire Department Pension Fund (FIRE)—post retirement City employees who do not comply with all necessary employment regulations are known as “double-dippers”—and to quantify the amounts 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.

FIRE provides retirement benefits to full-time uniform firefighters who were employed by the New York City Fire Department. The reemployment of retired public employees in public service is governed by the RSSL. Specifically, under RSSL Article 7, §212, a service retiree (a person receiving retirement benefits rather than a disability retirement) who is under the age of 65 can be reemployed in New York public service subject to an annual \$30,000 earning limitation.<sup>1</sup> This means that a member of the FIRE 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, provided he/she does not earn more than \$30,000 per year from such a 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.<sup>2</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.”

Disability retirees are not subject to RSSL §211 and §212. However, disability retirees in New York City are subject to the New York City Charter §1117, which prohibits a retiree from earning

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<sup>1</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>2</sup> The earnings limitation does not apply after the retiree reaches the age of 65.

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.

## **Audit Findings and Conclusion**

Our audit found three FIRE pensioners who appear to have violated sections of RSSL §211-§212 or New York City Charter §1117. Specifically, one pensioner worked as a teacher for the Department of Education (DOE) and earned a salary of \$43,376 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 his or her pension benefits suspended.<sup>3</sup>

In addition, two FIRE disability pensioners violated New York City Charter §1117 because they were under the age of 65, received disability pension payments and earnings through New York public service exceeding the \$1,800 income limitation, and did not suspend pension payments during the time of such re-employment.

These three pensioners received a total of \$126,538 in post-retirement earnings for Calendar Year 2014, which resulted in \$68,431 pension overpayments.

## **Audit Recommendations**

To address the non-compliance issue, we recommend that FIRE officials should:

- Investigate those individuals identified in this report and commence recoupment action against them.
- Send special reminders to service retirees under the age of 65 and to all disability retirees that detail their responsibilities regarding public service reemployment.

## **Agency Response**

FIRE officials agreed with our recommendations and provided an audit implementation plan.

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<sup>3</sup> This suspension does not apply to certain types of re-employment, such as being elected to public office.

# AUDIT REPORT

## Background

FIRE provides retirement benefits to full-time uniform firefighters who were employed by the New York City Fire Department. The reemployment of retired public employees in public service is governed by the New York State RSSL. Specifically, under RSSL Article 7, §212, a service retiree (a person receiving retirement benefits rather than a disability retirement) who is under the age of 65 can be reemployed in New York public service subject to an annual \$30,000 earning limitation. This means that a member of the FIRE 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, provided he/she does not earn more than \$30,000 per year from such a 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 authorized agency, including a statement setting forth the reasons for the waiver application. The application must show that the person's skills are unique and that their 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.

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)

There are five New York City retirement systems that provide benefits for their agencies' employees as well as for employees of other 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)

Disability retirees are not subject to RSSL §211 and §212. However, disability retirees in New York City are subject to the New York City Charter §1117, which prohibits a 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.

However, the New York City Administrative Code (Title 13, Chapter 3, §13-356 and §13-357) provides an exception for the reemployment of New York City Fire Department disability retirees in New York public service. These provisions (also known as "Disability Safeguards") apply to disability retirees who do not serve the minimum period for service retirement (usually 20 years, but 25 years may be elected). To be covered by Disability Safeguards, a retiree must meet the following conditions: 1) the retiree must undergo a medical examination; 2) the Board of Trustees (the Board) of the retirement system must agree with the medical board report and certification of the extent to which the retiree is able to work (the Board must then place the retiree's name on a civil service list as a "preferred eligible"); and 3) the Board must reduce the retiree's pension to an amount which, when added to the retiree's salary, does not exceed the current maximum salary for the title next higher to that held by the person at retirement.

After the minimum period for service retirement has expired, disability retirees in New York City are subject to the New York City Charter §1117. Waivers superseding this provision may not be granted.

## Objectives

The audit's objectives were to identify those New York City pensioners who may be re-employed by a City agency and simultaneously illegally collecting a pension from the New York City Fire Department Pension Fund (FIRE)—post retirement City employees who do not comply with all necessary employment regulations are known as "double-dippers"—and to quantify the amounts 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 except for organizational independence as noted in the subsequent paragraph. 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 City's payroll system run by 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.

In accordance with §13-302 of the New York City Administrative Code, the Comptroller is one of 12 trustees of the Board of the New York City Fire Department Pension Fund and is entitled to cast three of the 24 board votes. The Comptroller sits on the Board through a representative. Neither the Comptroller nor his representative on the Board were involved in the audit process.

The audit's scope period 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 FIRE officials during and at the conclusion of this audit. On December 7, 2015, we submitted a preliminary draft report to FIRE officials. On December 10, 2015, FIRE officials informed us that they decided to waive the exit conference. On December 18, 2015, we submitted a draft report to FIRE officials with a request for written comments. On December 23, 2015, we received a written response. In its response, FIRE officials agreed with our recommendations and provided an audit implementation plan. Their written response is attached as an addendum to this report.



# FINDINGS AND RECOMMENDATIONS

## Overpayment of Pension Benefits

Our audit found three FIRE pensioners who appear to have violated sections of RSSL §211-§212 or NYC Charter §1117. These pensioners were under the age 65 and received a total of \$124,764 in post-retirement earnings for Calendar Year 2014. This resulted in \$68,431 pension overpayments to these pensioners as follows (see Appendices I and II for details concerning the retirees and their current employers).

Law Violated	Number of Violators	Total Earnings	Overpayment Amount
RSSL §211 – §212	1	\$43,585 <sup>^</sup>	\$7,968
NYC Charter §1117	2	\$81,179 <sup>*</sup>	\$60,463

<sup>^</sup> Included \$209 in consultant payments from the City.

<sup>\*</sup> Included \$1,697 in consultant payments from the City.

The total amount of improper 2014 pension payments were calculated based on an analysis of when the reemployed pensioners reached the legal earnings limitations (\$30,000 for service retirees and \$1,800 for disability retirees).<sup>4</sup>

Specifically, one pensioner worked as a teacher for the Department of Education (DOE) and earned a salary of \$43,376 while collecting 12 pension checks.<sup>5</sup> According to RSSL §211 and §212, a service retiree who is under the age of 65, reemployed in New York public service, and whose salary exceeds the income limitations of \$30,000 in Calendar Year 2014, must have his or her pension benefits suspended, unless the service retiree requests that the prospective employer apply for a waiver.<sup>6</sup> Our review of all relevant records found no evidence that the pensioner obtained a waiver to cover any portion of the 2014 earnings. As a result of exceeding the earning limitations without obtaining a waiver, two pension payments (November to December) totaling \$7,968 were improperly received during Calendar Year 2014.

In addition, two FIRE disability pensioners violated New York City Charter §1117 because they were under the age of 65, received disability payments from the FIRE pension system and earnings through New York public service of more than \$1,800, and did not suspend pension payments during the time of such re-employment. As a result, these pensioners improperly received pension payments of \$60,463.

One of the FIRE disability retirees who was found working for DOE in 2014 was granted disability retirement in November 2010. Based on the conditions set in New York City Administrative Code Title 13, Chapter 3, §13-356 and §13-357, the retiree was qualified to be covered by the Disability Safeguards until September 7, 2014. After September 7, 2014, the retiree was subject to New York City Charter §1117 earning limitation of \$1,800. Our review found that by September 15, 2014, this retiree had exceeded the earning limitation set forth by New York City Charter §1117

<sup>4</sup> The annuity portions of the pension payments, if any, are not covered by RSSL §211 and §212 or New York City Charter §1117 and therefore were excluded from the overpayments cited in this report.

<sup>5</sup> This pensioner also received \$209 in consultant fees from the City. However, the consultant fees did not affect our determination of the overpayment of pension benefits.

<sup>6</sup> This suspension does not apply to certain types of re-employment, such as being elected to public office.

and the remaining four months of pension payments should have been suspended, totaling \$22,891.

The other disability retiree retired in July 2008 and was hired by DOE as a part-time General Education Teacher in July 2009. By the end of January 2014, this retiree's earned income and pension payment exceeded the \$1,800 threshold established in the New York City Charter §1117; therefore, the pension payments from February to June, totaling \$37,572 should have been suspended.

## Recommendations

FIRE officials should:

1. Investigate those individuals identified in this report and commence recoupment action against them.

**Agency Response:** “**Agree** - The Fire Pension Fund will investigate and commence recoupment from those individuals in the report who are in violation of RSSL Sections 211 and 212, and Section 1117 of the NYC Charter.”

2. Send special reminders to service retirees under the age of 65 and to all disability retirees that detail their responsibilities regarding public service reemployment.

**Agency Response:** “**Agree** - The Fire Pension Fund will work with the Office of the Comptroller and FISA to send periodic reminders regarding public service reemployment to retirees with their quarterly pension statements.”

## DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards except for organizational independence as noted in the subsequent paragraph. 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.

In accordance with §13-302 of the New York City Administrative Code, the Comptroller is one of 12 trustees of the New York City Fire Department Pension Fund and is entitled to cast three of the 24 board votes. The Comptroller sits on the Board through a representative. Neither the Comptroller nor his representative on the Board were involved in the audit process.

The scope period of this audit was Calendar Year 2014. We met with FIRE 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 the City's pension payroll management system (PPMS);<sup>7</sup>
- Member records from all five retirement systems;
- City workers who received a W-2 wage statement; and
- Waivers information from three of the seven authorized agencies: 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 from each retirement system. We then eliminated the pensioners who were over or turned 65 in 2014 because the earning 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 300 individuals who:

- Collected FIRE pensions during calendar year 2014;
- Were under age 65; and

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

<sup>8</sup> According to the Personnel Rules and Regulations of the City of New York, the 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), FN15-084A (BERS), and FN15-085A (NYCERS).

- Are either service retirees who retired prior to January 1, 2014, and received more than \$30,000 in wages during 2014, or disability retirees and received \$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 individuals to receive a pension check and a payroll check concurrently. Among the valid reasons are the following: some had 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 the State workers. The results of this match will be covered in a separate report (Audit # FN15-087A).

For the remaining three individuals, 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 pensioners' files for waivers and other relevant information (if any).

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 re-employed pensioners reached the legal earnings limitation of \$30,000 for service retirees or \$1,800 for disability pensioners. The annuity portions of the pension payments, if any, are not covered 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.

**2014 PENSION OVERPAYMENTS - NEW YORK CITY FIRE PENSION SYSTEM**  
**SEVICE RETIREES**

<b>Pension Number</b>	<b>Date Retired</b>	<b>2014 Pension</b>	<b>Months Overpaid</b>	<b>*Pension Amount Overpaid</b>	<b>2014 Employer</b>	<b>Payroll Code</b>	<b>2014 Earnings</b>	<b>Agency Responsible for Issuing Waiver</b>	<b>Waiver in 2014?</b>
R-20970	10/31/2002	\$ 47,685	2	7,968	DOE	746	\$ 43,376	DCAS	NO

**Total Individual(s): 1**                      **Total:                      \$7,968**

**Notes:**

DOE                      New York City Department of Education  
 \*Amount of pension overpayment after individual exceeded \$30,000 earnings limitation per New York State Retirement and Social Security Law (RSSL) §211 and §212

**2014 PENSION OVERPAYMENTS - NEW YORK CITY FIRE PENSION SYSTEM  
DISABILITY RETIREES**

<b>Pension Number</b>	<b>Date Retired</b>	<b>2014 Pension</b>	<b>Months Overpaid</b>	<b>*Pension Amount Overpaid</b>	<b>2014 Employer</b>	<b>Payroll Code</b>	<b>2014 Salary</b>
R-024335	7/3/2008	\$ 90,232	5	\$ 37,572	DOE	746	\$ 7,549
R-025417	11/20/2010	\$ 68,673	4	\$ 22,891	DOE	742	\$ 73,630

**Total Individual(s): 2**

**Total: \$60,463**

**Notes:**

DOE            New York City Department of Education

\*Disability retirees are not subject to RSSL §211 and §212. However, the New York City Administrative Code (Volume 3, Title 13, Chapter 3, §13-356 and §13-357), provides for the reemployment of New York City Fire Department disability retirees in New York public service. These provisions (also known as "Disability Safeguards") apply up to only the minimum period for service retirement elected by the employee (usually 20 years, but 25 years may be elected), subject to the following conditions: (1) the retiree undergoes a medical examination, (2) the Board of Trustees of the retirement system agrees with the medical board report and certification of the extent to which the retiree is able to work (the Board must then place the retiree's name on a civil service list as a "preferred eligible"), and (3) the Board reduces the retiree's pension to an amount which, when added to the retiree's salary, does not exceed the current maximum salary for the next highest title than that held by the person at retirement.

After the minimum (20- or 25-year) period for service retirement has expired, disability retirees in New York City are subject to the New York City Charter §1117, which prohibits a 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.



**FIRE DEPARTMENT**

9 METROTECH CENTER ROOM 8S-17

BROOKLYN, NEW YORK 11201-3857

RAY SAYLOR  
DEPUTY DIRECTOR

December 21, 2015

Ms. Marjorie Landa  
Deputy Comptroller for Audit Office of  
the Comptroller  
1 Centre Street  
New York, New York 10007-2341

Re: Audit Report on Pensioners of the New York City Fire Department Working  
for the City after their Retirement. January 1, 2014 -December 31, 2014.  
FN1S-086A.

Dear Ms. Landa:

Attached are FDNY's comments on the above mentioned report, as well as our  
response and Agency Implementation Plan for each of the recommendations. Please  
thank your audit staff for the assistance they have provided to the Department in this  
review.

If you wish to discuss any portion of our response or AIP, please contact me at  
(718) 999-1728.

Sincerely,

Ray Saylor

cc: Douglas White, Deputy Director Administration  
Stephen Rush, Assistant Commissioner of Budget and Finance  
Mary Basso, Executive Director, Pensions  
Domenick Loccisano, Executive Director, Internal Audit & Control

**Audit FN15-086A**

**AUDIT RECOMMENDATIONS / FDNY RESPONSE – AGENCY IMPLEMENTATION PLAN**

- 1) Fire Officials should investigate those individuals identified in this report and commence recoupment action against them.

FDNY Response – Agree - The Fire Pension Fund will investigate and commence recoupment from those individuals in the report who are in violation of RSSL Sections 211 and 212, and Section 1117 of the NYC Charter.

- 2) Fire Officials should send special reminders to service retirees under the age of 65 and all disability retirees that their responsibilities regarding public service reemployment.

FDNY Response – Agree - The Fire Pension Fund will work with the Office of the Comptroller and FISA to send periodic reminders regarding public service reemployment to retirees with their quarterly pension statements.