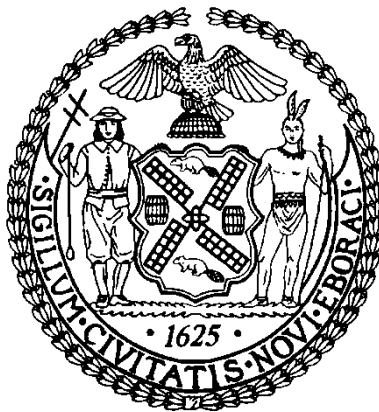


CITY OF NEW YORK OFFICE OF THE COMPTROLLER

**John C. Liu
COMPTROLLER**

BUREAU OF FINANCIAL AUDIT

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



Audit Report on Pensioners of the New York City Fire Department Working for the City after Retirement January 1, 2008—December 31, 2008

FL10-114A

June 30, 2010



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 Fire Department Pension Fund (FIRE) 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 no individuals who received pension payments during 2008 that appeared to violate applicable sections of State and City laws and makes no recommendations to FIRE officials.

The results of the audit have been discussed with FIRE 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,



John C. Liu

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

**Audit Report on Pensioners of the
New York City Fire Department
Working for the City after Retirement
January 1, 2008–December 31, 2008**

FL10-114

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 Fire Department Pension Fund (FIRE)—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), §210 through §216, or New York City Charter §1117, during calendar year 2008.

Audit Findings and Conclusions

The audit found no individuals who received pension payments during 2008 and appear to violate applicable sections of State and City laws. Specifically, no individuals were in apparent violation of RSSL §211 or §212 because they were under age 65 and received City wages exceeding the limitations without having a waiver on file at FIRE, or were in violation of §1117 of the New York City Charter because they were collecting disability pensions while earning more than \$1,800 (including pension payments) during calendar year 2008.

Audit Recommendations

Since the audit found no individuals who received pension payments during 2008 that appeared to violate applicable sections of State and City laws, it makes no recommendations to FIRE officials.

INTRODUCTION

Background

A New York City Fire Department service retiree 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. In the case of New York City Fire Department disability retirees, the governing regulations are the New York City Administrative Code (Volume 3, Title 13) and the New York City Charter (§1117). If a post-retirement employee does not comply with relevant laws, the practice is termed “double-dipping.”

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 limitation 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 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 title next higher to 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.

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 Fire Department Pension Fund—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) except for organizational independence as disclosed in the following 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. 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.

We are issuing a modified GAGAS compliance statement because of the Comptroller's mandated non-audit responsibility in connection with the New York City Fire Department Pension Fund Board. In accordance with §13-302 of the New York City Administrative Code, the Comptroller is one of twelve trustees of the New York City Fire Department Pension Fund and is entitled to cast three of the 24 board votes. The Comptroller is represented on the Board by a designee. The Comptroller's designee was not involved in planning or conducting this audit or in writing or reviewing this audit report. Accordingly, we feel that the above issue has had no impact on the objectivity of this audit or on the conclusions and associated findings disclosed in this report.

Our audit period was January 1, 2008, through December 31, 2008. We met with officials of the New York City Fire Department Pension Fund 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 either 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 year 2008 matches of City pensioners (BERS, NYCERS, FIRE, POLICE,

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), FL10-115A (BERS), FL10-117A (NYCERS), and FL10-118A (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, nine consisted of individuals collecting FIRE pensions. For those nine individuals, 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 reemployed pensioners reached the legal earnings limitation 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 FIRE officials.

In addition, we intended to follow up on the implementation status of the recommendations from last year's audit report—*Pensioners of the New York City Fire Department Pension Fund Working for the City after Retirement January 1, 2007–December 31, 2007*, FL09-119A, issued June 30, 2009—by requesting information from FIRE. However, last year's report did not make any recommendations to FIRE because the audit did not identify any pensioners who received 2007 pension payments and appear to violate applicable sections of State or City laws.

Discussion of Audit Results

The matters covered in this report were discussed with FIRE officials during and at the conclusion of this audit. A preliminary draft report was sent to FIRE officials. They decided to waive the exit conference. We submitted a draft report to them with a request for comments. We received a written response from FIRE officials on June 22, 2010. The full text of the FIRE response is included as an addendum to this report.

FINDINGS

Overpayment of Pension Benefits

The audit found no individuals who received pension payments during 2008 that appeared to violate applicable sections of State and City laws. Specifically, no individuals were in apparent violation of RSSL §211 or §212 because they were under age 65 and received City wages exceeding the limitations without having a waiver on file at FIRE, or were in violation of §1117 of the New York City Charter because they were collecting disability pensions while earning more than \$1,800 (including pension payments) during calendar year 2008.

RECOMMENDATIONS

Since the audit found no individuals who received pension payments during 2008 that appeared to violate applicable sections of State and City laws, it makes no recommendations to FIRE officials.



FIRE DEPARTMENT

9 METROTECH CENTER - ROOM 8S-10

BROOKLYN, NEW YORK 11201-3857

RAY SAYLOR
CHIEF COMPLIANCE OFFICER



June 21, 2010

Ms. H. Tina Kim
Deputy Comptroller
Audits
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, 2008 – December 31, 2008. FL10-114A.**

Dear Ms. Kim:

The above audit did not find any individuals who received pension payments during 2008 that appear to violate applicable sections of State and City laws, hence no recommendations were made. 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, please contact me at (718) 999-1728.

Sincerely,

A handwritten signature in cursive script that reads "Ray Saylor".
Ray Saylor

cc: Michael Vecchi, Associate Commissioner
Mary Basso, Executive Director
Domenick Loccisano, Executive Director