Employment of Teachers’ Pension and Annuity Fund Retirees

July 1, 2007 to December 31, 2008
The Honorable Jon S. Corzine  
Governor of New Jersey

The Honorable Richard J. Codey  
President of the Senate

The Honorable Joseph J. Roberts, Jr.  
Speaker of the General Assembly

Mr. Albert Porroni  
Executive Director  
Office of Legislative Services

Enclosed is our report on the audit of the Employment of Teachers’ Pension and Annuity Fund Retirees for the period of July 1, 2007 to December 31, 2008. If you would like a personal briefing, please call me at (609) 292-3700.

Stephen M. Eells  
Assistant State Auditor  
September 16, 2009
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Employment of Teachers’ Pension and Annuity Fund Retirees

Background

Under normal circumstances an individual must have at least a 30 day break in service after their retirement date to be considered retired from the Teachers’ Pension and Annuity Fund (TPAF). If a person accepts full or part-time employment in a position covered by the TPAF, they must re-enroll in the pension fund and their retirement benefits will be suspended. Membership in the TPAF is required as a condition of employment if the teaching or professional staff position requires certification, is covered by social security, and the salary is $7,500 or more. Chapter 355, P.L. 2001 (N.J.S.A. 18A:66-53.2) provides an exemption from the re-enrollment after retirement provisions to retirees of the TPAF who are certificated superintendents or administrators such as a principal, assistant principal, vice-principal, director, supervisor, school business administrator, and state monitor. A retiree may accept employment with the same school district 120 days after their retirement date or from a different school district after the required 30 day break in service. These retirees can be employed by a school district for one year with an additional one year extension. These individuals can then go to another school district and start the above process over again, thus receiving another two year exemption while continuing to receive their monthly retirement benefit.

Scope

We have completed an audit of the Employment of Teachers’ Pension and Annuity Fund Retirees for the period July 1, 2007 to December 31, 2008. Chapter 355, P.L. 2001 (N.J.S.A. 18A:66-53.2) provides an exemption from the re-enrollment after retirement provisions to retirees of the Teachers’ Pension and Annuity Fund (TPAF) who are certified superintendents or certified administrators. During the fourth quarter of calendar year 2007 we identified over 200 TPAF retirees that were working for school districts and made more than $15,000 during the quarter.
Projected school district annual salaries for these individuals totaled $22 million while their annual pension amounts totaled $10 million.

**Objective**

The objective of our audit was to determine whether the school districts hiring TPAF retirees were in compliance with the re-enrollment exemption.

This audit was conducted pursuant to the State Auditor’s responsibilities as set forth in Article VII, Section 1, Paragraph 6 of the State Constitution and Title 52 of the New Jersey Statutes.

**Methodology**

Our audit was conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States.

In preparation for our testing, we studied legislation and administrative code. We also interviewed officials from the Department of Education (DOE), the Department of the Treasury, Division of Pensions and Benefits, and various school district personnel to gain an understanding of their oversight and monitoring functions.

A nonstatistical sampling approach was used. Retirees were judgmentally selected based on our comparison of the Department of Labor and Workforce Development’s wage reporting data files of sampled school districts for the fourth quarter of calendar year 2007 and a retirement database obtained from the Department of the Treasury, Division of Pensions and Benefits. Annual school district salaries were projected based on the fourth quarter wage reporting data multiplied by four. Projections for annual pension amounts were based on the monthly amount multiplied by 12. Independent contractors were identified from a DOE spreadsheet that contained information about TPAF retirees working at school districts. Our samples of TPAF retirees were designed to provide conclusions about the TPAF re-enrollment exemption.
Conclusions

We found that the sampled school districts were in compliance with the TPAF retirees re-enrollment exemption provision. We identified 127 retirees that received an estimated $8 million in pension payments and an estimated $10 million in wages/vendor payments from school districts during calendar year 2007. We visited 32 school districts and tested 47 TPAF retirees to determine compliance with the employment after retirement regulations. We concluded that school districts were in compliance with the law in 46 of 47 instances. The one exception was referred to the Division of Pensions and Benefits for further review.

We noted that 12 of the 127 TPAF retirees were being paid as independent contractors by the school district. These individuals appear to be employees not contractors and the districts may be in violation of Internal Revenue Service and state payroll tax regulations which may expose the school districts to unnecessary fines and penalties. These cases have been referred to the state Department of Labor and Workforce Development.

Currently school districts are not required to notify the Department of Education or the Division of Pensions and Benefits regarding post retirement employment. Proper disclosure could help to clarify or resolve any questionable employment practices by the school districts.
September 11, 2009

Mr. Stephen M. Eells, Assistant State Auditor
Office of Legislative Services
Office of the State Auditor
125 South Warren Street
P.O. Box 067
Trenton, NJ 08625-0067

Dear Mr. Eells:

SUBJECT: Response to OLS Audit Report of the Employment of Teachers’ Pension and Annuity Fund Retirees.

The New Jersey Department of Education (DOE) has received and reviewed the Office of Legislative Services (OLS) Audit Report of the Employment of Teachers’ Pension and Annuity Fund Retirees for the period July 1, 2007 to December 31, 2008. The auditors’ conclusions, along with our comments are as follows:

**OLS Auditors’ Conclusions**

We found that the sampled school districts were in compliance with TPAF retirees re-enrollment exemption provision. We identified 127 retirees that received an estimated $8 million in pension payments and an estimated $10 million in wages/vendor payments from school districts during calendar year 2007. We visited 32 school districts and tested 47 TPAF retirees to determine compliance with the employment after retirement regulations. We concluded that school districts were in compliance with the law in 46 of 47 retirees reviewed. The one exception was referred to the Division of Pensions and Benefits for further review.

We noted that 12 out of the 127 TPAF retirees were being paid as independent contractors by the school district. These individuals appear to be employees not contractors and the districts may be in violation of Internal Revenue Service and state payroll tax regulations which may expose the school districts to unnecessary fines and penalties. These cases have been referred to the state Department of Labor and Workforce Development.

Currently school districts are not required to notify the Department of Education or the Division of Pensions and Benefits regarding post retirement employment. Proper disclosure could help to clarify or resolve any questionable employment practices by the school districts.

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**DOE Comments**

In response to a request by the Division of Pensions and Benefits made in 2007 to gather data regarding post retirement employment, Commissioner Lucille E. Davy authorized the addition of several data elements about retired administrators to the department’s annual Certificated Staff Collection. Since the staff collection was an established annual snapshot of personnel employed in all of the school districts, it was appropriate to add several data elements that would assist the Division of Pensions and Benefits.

The October 15, 2007 collection contained the following data elements about any retired administrators employed by the school district: SSN, name, job code, full-time equivalent status, date of retirement, pension system retired from, whether there was a board resolution of critical need and if so, the number of the resolution, and the date employed by the district. This information was sent to the Division of Pensions and Benefits for their use. The collection of the data and the forwarding of it to the Division of Pensions and Benefits is now an annual process by the DOE.

We trust that our comments satisfy the concerns raised in the audit report. Should you have any questions or need further information, please contact me at 984-5593.

Sincerely,

Robert J. Cicchino, Director  
Office of Fiscal Accountability and Compliance

RJC/DC/CP/ doe response- tpf retires  
c: Lucille E. Davy  
    John J. Hart  
    Katherine Attwood  
    Donna Arons  
    David Corso  
    Kathryn Forsyth
Mr. Joseph Ettenger  
Office of Legislative Services  
125 West State Street  
PO Box 067  
Trenton, New Jersey 08625

Dear Mr. Ettenger:

Enclosed are the comments to findings in the audit report on the Employment of Teachers' Pension and Annuity Fund Retirees.

If you have any questions please contact me directly at 292-3678.

Sincerely,

Frederick J. Beaver  
Director

Enclosure
The Division of Pensions and Benefits monitors the post-retirement employment activity of its members. This allows the Division to identify retirees who violate the provisions of the Statutes under which a retiree is permitted to resume public employment after retirement without jeopardizing the receipt of his or her retirement benefits.

The Legislature has enacted laws which provide exceptions to the general re-enrollment regulations. These exceptions have afforded certain categories of retirees the opportunity to continue their career in public employment while collecting retirement benefits. Although these exceptions appear to contradict the intent of the general re-enrollment regulations which bar retirees from the simultaneous receipt of both retirement benefits and salary from public employment, the language of the legislation is clear. The Division's post-retirement violation screening model is sensitive to all existing laws and regulations.