



# Empire Center - SeeThroughNY Data Backgrounder

November 2014

## **NY's early retiree back-to-work waive**

*Full pensions plus full pay available to hundreds under 65*

Retired New York state and local government employees under the age of 65 cannot collect full public pension benefits if they earn more than \$30,000 by returning to work for a state or local agency – but the earnings limit for younger retirees collecting both pensions and pay from government can be waived “temporarily” in certain circumstances.

In records dating back more than 15 years, over 7,000 post-retirement earnings waivers – known as Section 211 waivers, after the statutory provision that makes them possible – have been submitted by state and local agencies, according to records the Empire Center obtained under the Freedom of Information Law.

As of mid-2014, there were 665 active Section 211 waivers on file with New York government agencies. Records of waiver applications – identifying retirees, the agencies issuing waivers, and the agencies employing the retirees or contracting for their services -- have been posted in a searchable database at the Empire Center's transparency website, [www.SeeThroughNY.net](http://www.SeeThroughNY.net).

### **Work after retirement**

Starting in the calendar year in which a state or local government retiree turns 65, there is no limitation or restriction on that person's ability to collect a pension while working for state or local government either as an employee or as an independent contractor or consultant. However, state law creates different rules for younger public-sector retirees.

Under Section 212 of the state Retirement and Social Security Law, state and local government retirees under 65 who return to work for the government are subject to an earnings limit of \$30,000,<sup>1</sup> which means their pension payments are halted after the limit is reached in any given year. For example, a public retiree under 65 who remains in or takes a \$60,000-a-year government job will not receive benefits between June 30 and Dec. 31.

Under Section 211 of the state Retirement and Social Security Law, waivers of the earnings limit for retirees who are younger than 65 can be approved for no more than two years at a time, based on a written request from the retiree's prospective employer. But such waivers can be – and often are – renewed repeatedly.<sup>2</sup>

Depending on civil service jurisdiction, prospective employers seeking Section 211 waivers must apply to the New York State Civil Service Commission; the New York State Education Department; the New York City Department of Citywide Administrative Services; the New York City Department of Education; State University of New York; City University of New York; or the New York State Office of Court Administration.<sup>3</sup>

The official rationale for the waiver policy has been summarized as follows by the state Department of Civil Service:

The state policy reflected in section 211 recognizes that 211 waivers play an important role in New York's workforce management, in the law enforcement arena as well as for filling other jobs such as nurses and school bus drivers. There are legitimate needs for hiring retirees including the transfer of knowledge to new hires, the need to keep vital work going until a permanent replacement can be hired, and the absence of non-retirees with the experience or qualifications required to perform the necessary government functions. While not a substitute for hiring and retaining new workers, in some cases hiring retirees may be necessary.<sup>4</sup>

Prior to October 2008, prospective employers seeking a 211 waiver for an early retiree were required to demonstrate the following:

- the retired person is duly qualified, competent and physically fit to perform the duties of the position in which he or she is to be employed;
- there is need for his or her services;
- there are not readily available for recruitment other qualified persons if he or she is to earn more than \$1,000; and
- his or her employment is in the best interest of the government service.<sup>5</sup>

In 2008, the Legislature enacted a series of reforms intended to crack down on pension double-dipping after an investigation by then-Attorney General Andrew Cuomo of pension fraud in school districts.<sup>6</sup> The new law included amendments designed to tighten the Section 211 waiver process.<sup>7</sup> Prospective employers are now required to "prepare a detailed recruitment plan" for positions in which they seek to temporarily place early retirees. In addition, a Section 211 waiver application must demonstrate that:

- the employment is in the best interest of government; and either
- there is an urgent need for his or her services as a result of an unplanned, unpredictable, unexpected vacancy and sufficient time is not available to recruit a qualified individual and that such hiring shall be deemed as non-permanent rather than a final filling of such position; or
- the prospective employer has undertaken extensive recruitment efforts and has determined that there are no available, qualified non-retirees.<sup>8</sup>

## Quantifying waivers

Between 1998 and mid-2014, at least 7,358 Section 211 waiver applications had been submitted by various agencies, according to the records collected by the Empire Center for the SeeThroughNY Section 211 database.

The largest active waiver on file allows earnings of \$210,000 for Vinay J. Patil for contractual psychiatric services for Herkimer County Mental Health Services. Patil also qualifies for a pension of \$99,204, bringing his total tax-payer-backed earning potential to \$309,204.<sup>9</sup>

Just over half of the 665 active waivers – a total of 345 – apply to early retirees working in “investigator” job titles in state and local agencies, including 108 investigators for New York City district attorneys alone.<sup>10</sup>

With regard to positions under its jurisdiction, the state Department of Civil Service contends that the “overwhelming majority” of 211 waivers state Civil Service Commission issues are for retired law enforcement personnel.<sup>11</sup> The agency attributes this to “the need for highly trained security personnel, particularly in the post 9/11 environment, and the abundant supply of retired law enforcement personnel,” noting that police can retire after just 20 years of service.<sup>12</sup>

## Conclusion

The 2008 reforms were meant to curtail the easy issuance of Section 211 waivers, but the data show that many waivers continue to be issued and renewed every year by state and local agencies. Meanwhile, combined with the lack of any restriction on post-retirement employment for those over 65, the Section 211 waiver system inevitably tends to reduce job and promotional opportunities for younger workers or for those seeking employment for the first time in government.

Concern about the situation is reflected in a 2013-14 legislative proposal that would create a two-year waiting period before any Section 211 waiver could take effect. The sponsor, Sen. Diane Savino (D-Staten Island/Brooklyn) said in her supporting memorandum that the average age of new hires in state government had risen from 35 between 2002 and 2007 to 41 as of 2009. The memo said a two-year delay in new waivers was needed to “compel public employers to address [their] aging workforce and the lack of workforce succession planning, quell public outrage over ‘double-dipping’ and tap in to the availability of a larger labor pool.”<sup>13</sup>

Is the Section 211 waiver law really necessary and working in the public’s best interest? By reviewing and considering the waiver details now available for the first time at SeeThroughNY, taxpayers and elected officials alike can begin to come up with some answers to that question.

## Endnotes

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<sup>1</sup> The current earnings limit dates back to 2007. Since then, bills unsuccessfully have been introduced in the Legislature to, in the words of sponsors' memos, "continue a yearly pattern of granting retirees an increase in what they can earn," by raising the limit to \$32,500. The most recent proposal was S.4732 in 2014.

<sup>2</sup> In one extreme case, a retired Albany city police officer received 20 years' worth of waivers to head up a drug unit for the Albany County Sheriff's Department, where he was among the department's highest-paid employees before he moved to Florida, he filed paperwork claiming a permanent disability. See "County fires \$90G inspector," *Albany Times Union*, Dec. 21, 2012, at <http://www.timesunion.com/local/article/County-fires-90G-inspector-4136749.php>

<sup>3</sup> RSSL sect.211.2

<sup>4</sup> New York State Department of Civil Service, "Civil Service Commission Guidelines for Approval of Requests Pursuant to Retirement and Social Security Law Section 211" at <http://www.cs.ny.gov/commission/211guidelines.cfm>

<sup>5</sup> Ibid

<sup>6</sup> See "New School Pension Fraud Bill is Signed," *New York Times*, Oct. 14, 2008, at [http://www.nytimes.com/2008/10/15/nyregion/15waiver.html?\\_r=0](http://www.nytimes.com/2008/10/15/nyregion/15waiver.html?_r=0)

<sup>7</sup> Chapter 46 of 2008

<sup>8</sup> Ibid

<sup>9</sup> [www.SeeThroughNY.net/pensions/](http://www.SeeThroughNY.net/pensions/)

<sup>10</sup> [www.SeeThroughNY.net/211-waivers](http://www.SeeThroughNY.net/211-waivers)

<sup>11</sup> Section 211 waivers for law enforcement personnel reach to the top in the case of State Police Superintendent Joseph D'Amico, a retired New York City officer who was granted a waiver to keep his \$85,000 pension while collecting a \$136,000 state salary.

<sup>12</sup> Op. cit. "Civil Service Commission Guidelines for Approval of Requests Pursuant to Retirement and Social Security Law Section 211"

<sup>13</sup> Sponsor's memo in support of S.2964. The bill ended the 2014 session in Rules Committee.