

THE UNITED STATES VIRGIN ISLANDS

OFFICE OF THE VIRGIN ISLANDS INSPECTOR GENERAL



**INSPECTION OF PROCEDURES TO
CONTROL THE RE-EMPLOYMENT OF
RETIRED GOVERNMENT EMPLOYEES**

**ILLEGAL OR WASTEFUL ACTIVITIES SHOULD BE REPORTED TO
THE OFFICE OF THE VIRGIN ISLANDS INSPECTOR GENERAL BY:**

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V. I. INSPECTOR GENERAL

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OFFICE OF THE V. I. INSPECTOR GENERAL

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EXECUTIVE SUMMARY

The following summarizes the major findings from the Inspection of Procedures to Control the Re-employment of Retired Government Employees (INR-02-76-19).

Finding 1: Annuity Overpayments/Unpaid Contributions (pages 7 to 9)

- GERS paid \$2,068,736 in annuities to 22 individuals who violated the return-to-work law.
- GERS did not collect \$1,172,676 in contributions from the retirees/employees and the Government.
- The Government did not always notify GERS about retired member's re-hiring.
- GERS determined that the system has lost at least \$118,865 in investment income.

Finding 2: Non-compliance with Laws and Regulations (pages 11-13)

- The Government did not always follow existing laws governing retired employees reemployment.
- Agencies did not adhere to Executive Order 477-2016.
- At the time of the Executive Order's issuance, Government agencies did not report seven retirees actively employed and five retirees subsequently hired.
- The twelve retirees were allowed to double dip for up to two years and nine months after the Executive Order was issued.
- These retirees accounted for \$1,649,117 of the annuity overpayments.

Finding 3: Internal Controls (pages 15-19)

- The Government did not implement adequate internal controls to prevent violations of the return-to-work law.
- The Government did not ensure compliance with the Code to protect the GERS.
- Measures taken by GERS were not sufficient to determine when retirees returned to work or to deter violations.

Finding 4: Internal Controls (pages 21-22)

- The law as it now exists creates challenges for agencies that require special skill services.

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September 30, 2021

Nellon Bowry, Chairman
Board of Trustees
Government Employees' Retirement System of the Virgin Islands
3438 Kronprindsens Gade
GERS Complex, 3rd Floor
St. Thomas, VI 00802

Dear Chairman Bowry:

This report contains the result of our inspection of procedures to control the re-employment of retired Virgin Islands Government (Government) employees. The objectives of the inspection were to determine: (1) what controls were in place to timely identify when a Government retiree was re-employed by the Government, (2) what procedures were followed by the Government to comply with laws and regulations governing retiree re-employment and, (3) what steps the Government Employees Retirement System (GERS) took to identify retirees who return to work and its impact on the retirement system.

We found that Government officials did not always follow its return-to-work law and Executive Order. Also, Government officials did not implement adequate internal controls to identify and report to GERS when they hired a retiree. Additionally, we found that the GERS' measures taken were not sufficient to determine when retirees returned to work or to deter violations of the law. Specifically, Government officials did not always notify GERS when it hired a member retiree. Also, Government officials failed to implement checks and balances policies and procedures to ensure compliance with the return-to-work law.

GERS has identified and is analyzing the status of 65 re-employed retirees for possible violations of the return-to-work law. As of May 28, 2020, GERS had completed the review of 37 of the 65 re-employed retirees. Consequently, GERS determined, and its report shows, that GERS paid \$2,068,736 in annuities to 22 retirees who violated the return-to-work law. In addition, GERS did not collect \$1,172,676 in contributions from retirees and the Government that was due to GERS when the employees exceeded the allowable period for which they could return to work without forfeiting their retirement benefit. The report shows that GERS collected \$335,541 in repayment, leaving \$2,905,871 owed.

As a result, when the agencies' human resources representatives do not convey re-employed retirees' information to GERS, the System runs the risk of overpaying the retirees' annuity, not timely effectuating the collection of contributions from the employee and the Government, and subjecting the retirement system to lost investment income.

These issues will continue to exist if the Government, through its departments and agencies, and instrumentalities, continues to sidestep the requirements of the return-to-work law.

We made several recommendations to address the conditions and causes cited in the report. Our recommendations addressed the following areas: (i) policy and procedures (ii) adhering to the law (iii) collaboration and communication between agencies and GERS and, (iv) Legislative Revisions to the Virgin Islands Code.

An exit conference was held on August 11, 2021. There was general agreement with the findings and recommendations made in the report.

A response to the recommendations, dated September 14, 2021, was submitted, and is included as Appendix I beginning on page 23 of this report.

If you require additional information, please call me at 774-3388.

Sincerely,



Steven van Beverhoudt, CFE, CGFM
Virgin Islands Inspector General

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INTRODUCTION

BACKGROUND

The Government of the Virgin Islands (Government) created the Government Employees' Retirement System (GERS) on June 24, 1959, by Act No. 479, as a defined-benefit pension plan. On October 1, 1959, the GERS started operations and contributions by employees, and the plan sponsor began. GERS' statutory mandate is to enroll employees into the System within thirty (30) days of service, as a condition of their employment. As the retirement plan sponsor, the Government is responsible for the retirement plan's overall compliance and to ensure that GERS is administered to follow its terms while in operation.

As a result, the Government establishes laws, and the GERS administers its operations to ensure compliance with its terms and the law. Among other responsibilities, the Government and the GERS are responsible for educating the employees/retirees about applicable rules related to re-hired annuitants/pensioners. An annuitant/pensioner is a person collecting a retirement benefit.

News articles about the re-hiring of a high-profiled retiree during the previous administration, and reports from GERS that this issue was not isolated, led the Office of the Virgin Islands Inspector General to commence an inspection on the Government's compliance with the return-to-work law.

The return-to-work law details the criteria, time duration, and salary limitation that retirees can legally return to work for the Government. One goal of this law is to prevent retirees from double dipping. Double dipping occurs when a retiree receives both a pension and pay from the Government beyond the legally allowable time and/or amount.

GERS prepared a return-to-work analysis to determine the number of retirees the Government re-hired, and who violated the return-to-work law. While incomplete, GERS officials reported its initial findings to the GERS's Board in a report dated December 20, 2018. Subsequently, GERS continued to update the analysis with the most recent analysis dated May 28, 2020. Because GERS' return-to-work report included both Tier I and Tier II employees, and the return-to-work law changed on August 30, 2019, to allow only specific Tier I employees to return to work, we had to consider the laws, and requirements that existed before and after August 30, 2019.

Specific Laws Before August 30, 2019

Before August 30, 2019, both Tier I and Tier II retired employees were eligible to return to work for the Government under certain conditions.

Specifically, Title 3, Chapter 27 Section 706(c) of the Virgin Island's Code (Code) limited the number of annual hours worked at 600 hours in any one year, not to exceed two years. At the end of such a period, the service retirement annuity would be canceled, and the retiree/member again becomes a contributor to the retirement system.

Also, Act No. 6110 Section 10 allowed, "Notwithstanding any other law, any retired law enforcement officer, or other retired Government employee employed by the Virgin Islands Police Department pursuant to a contract, either on a full-time or part-time basis, shall not lose their retirement benefits."

In addition, Act No. 6463 Section 25 allowed the Governor to hire specific retired workers to include police officers, peace officers, nurses, teachers, school librarians, school professional guidance counselors, school diagnosticians, school paraprofessionals, school social workers, teacher specialists, school cooks, food service workers, school department chairpersons, and school registrars. The law exempted these employees from the annual 600 hours work limit, and they did not lose their retirement benefits.

Also, Title 3, Chapter 27, Section 714(g), and Section 733(g), specific to the Legislature, and the Judiciary members, remained applicable after August 30, 2019, as discussed below.

Law after August 30, 2019

The law that currently exists for retired GERS members allows only Tier 1 retired nurses, teachers, and police officers to return to work for a limited 2-year period without any annual restrictions on the number of days or hours permitted. This new change was created when on December 21, 2017, Bill No. 32-0102 repealed Act No. 6110, section 10, and Act No. 6463, Section 25.

Specifically, the bill amended Title 3, Chapter 27, Section 706(c), and Chapter 28, Section 755(c) of the Code. Section 755(c) of Title 3, Chapter 28 was amended to state that "(c) Only a nurse, teacher or police officer receiving a service retirement annuity who re-enters the service of the Government either by appointment or on a contractual basis may continue to receive his/her annuity while a current employee of the Government, for a period not to exceed two years and at the end of such period the service retirement annuity shall be canceled and the member shall thereupon again become a contributor to the system..."

Other laws that remain applicable to retirees from the Local and Federal Government and the private sector include:

Title 3, Chapter 27, Section 706a. which states that "No retiree of the federal government, the Government of the United States Virgin Islands, or the private sector shall be employed by the Government of the Virgin Islands on a contractual basis the compensation of which exceeds the highest rate of salary received by that employee before retirement and in any case such rate of compensation shall not exceed \$55,000 per year."

Title 3, Chapter 27, Section 714(g), and Section 733(g) are specific to the Legislature and Judiciary members. Specifically:

- Section 714(g) states that "Nothing contained in this chapter shall be construed to prevent any person eligible therefore from simultaneously receiving an annuity

computed on the basis of years of service other than as a member of the Legislature and an annuity computed in accordance with this section; nor shall anything contained in this chapter be construed to prevent a member of the Legislature from receiving, while serving in the Legislature, an annuity for non-legislative service."

- Section 733(g) states that "Nothing contained in this chapter shall be construed to prevent any person eligible therefore from simultaneously receiving an annuity computed on the basis of years of service other than as a member of the Judiciary and an annuity computed in accordance with this section; nor shall anything contained in this chapter be construed to prevent a member of the Judiciary from receiving, while serving in the Judiciary, an annuity for non-judicial service."

Finally, Executive Order 477-2016 (Executive Order) was signed by the then-Governor of the Virgin Islands on March 2, 2016. The Executive Order required Government departments and agencies to educate the retired employee on (1) the time limit restriction on their ability to receive their pension while working for the department, legally; (2) the financial implication of exceeding the maximum time limit allowed to double dip; and, (3) the requirement that the retired employee certify that he/she has been advised of the restrictions.

The Executive Order also required departments and agencies to (a) maintain a listing and record of all retired persons it re-hires or contracts for services; (b) provide the GERS with a copy of the retired employee's Notice of Personnel Action (NOPA) and contract for employment or appointment letter.

Finally, On May 7, 2020, the Governor of the Virgin Islands issued his seventh supplemental COVID-19 Emergency Executive Order that suspended the return-to-work law during the state of emergency or until rescinded. Specifically, the Governor's COVID-19 emergency executive order suspended 3 V.I.C. sections 706(c), 706a, 755(c), and 755a, which restricts retirees who return to government service from collecting both an annuity and a salary. The findings in this report are not affected by this executive order.

OBJECTIVE, SCOPE, AND METHODOLOGY

Our inspection objectives were to determine (1) what controls were in place to timely identify when a Government retiree was re-employed by the Government, (2) what procedures were followed by the Government to comply with laws and regulations governing retiree re-employment and, (3) what steps GERS took to identify retirees who return to work and its impact on the retirement system.

The inspection scope was fiscal years 2015 through 2019.

We performed our inspection in accordance with the Council of the Inspectors General on Integrity and Efficiency "Quality Standards for Inspections" between February 2019 and June 2020. We interviewed pertinent individuals and obtained and reviewed all documents provided to us by officials of the GERS, Division of Personnel, Department of Property and Procurement, Executive Branch agencies, and Semi-Autonomous agencies. As a basis, we used a GERS

return-to-work report that GERS prepared to determine the number of retirees that violated the return-to-work law. We did not audit the dollar amount GERS specified as owed to the retirement system. However, we analyzed the contents of GERS's report to identify the hiring agencies and the extent to which their actions contributed to the severity of the annuity overpayments. As a result, we sampled some agencies identified in the report to assess the information's accuracy. We focused our interviews on the Government processes used in hiring a retiree and the agencies' respective roles in communicating this information to GERS according to established laws. We examined GERS' processes and tasks used to ensure its members' compliance with the established requirements.

PRIOR AUDIT COVERAGE

GERS completed an internal review: and issued a report, "GERS' Role in Monitoring and Administering Retirees Return-to-work," to its Board of Trustees. The report was dated December 20, 2018. The report showed seven Government employees illegally receiving a GERS pension and a salary. In addition, the report showed that GERS had overpaid the seven individuals a total of \$1,292,767. GERS subsequently suspended the seven individuals' annuity payments because of non-compliance with the return-to-work law.

RESULTS

CONCLUSIONS

We found that the Government officials did not always follow its return-to-work law and Executive Order. Also, the Government officials did not implement adequate internal controls to identify and report to GERS when they hired a retiree. Additionally, we found that the GERS' measures taken were not sufficient to determine when retirees returned to work, or to deter violation of the law.

Specifically, Government officials did not always notify GERS when it hired a member retiree. Also, Government officials failed to implement checks and balances policies and procedures to ensure compliance with the return-to-work law.

GERS has identified and is analyzing the status of 65 re-employed retirees for possible violations of the return-to-work law. As of May 28, 2020, GERS had completed the review of 37 of the 65 re-employed retirees. Consequently, GERS determined, and its report shows, that GERS paid \$2,068,736 in annuities to 22 retirees who violated the return-to-work law. In addition, GERS did not collect \$1,172,676 in contributions from retirees and the Government that was due to GERS when the employees exceeded the allowable period for which they could return to work without forfeiting their retirement benefit. The report shows that GERS collected \$335,541 in repayment, leaving \$2,905,871 owed.

When the agencies' human resources representatives do not convey re-employed retirees' information to GERS, the System runs the risk of overpaying the retirees' annuity, not timely effectuating the collection of contributions from the employee and the Government, and subjecting the retirement system to lost investment income.

These issues will continue to exist if the Government, through its departments and agencies, and instrumentalities, continues to sidestep the requirements of the return-to-work law.

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FINDING 1: ANNUITY OVERPAYMENTS/UNPAID CONTRIBUTIONS

The GERS paid \$2,068,736 in annuities to 22 individuals who violated the return-to-work law. Also, GERS did not collect \$1,172,676 in contributions from the retirees/employees and the Government. Although GERS received repayment totaling \$335,541, it is still owed \$2,905,871. We found that in the absence of the retiree reporting, the Government did not always notify GERS about the retired member's re-hiring. As a result, GERS made pension payments that were not payable and did not collect contributions due from retirees who had returned to work. Consequently, GERS determined that the retirement system lost at least \$118,865 in investment income.

Background

GERS has identified and is analyzing the status of 65 re-employed retirees for possible violations of the returned to work law. As of May 28, 2020, GERS had completed the review of 37 of the 65 re-employed retirees. Consequently, GERS determined, and its report shows, that the System paid \$2,068,736 in annuities to 22 retirees who violated the return-to-work law. In addition, GERS did not collect \$1,172,676 in contributions from retirees and the Government that was due to GERS when the employee exceeded the allowable period they could return to work.

GERS prepared a return-to-work analysis to identify re-employed retirees and to determine if those retirees violated the return-to-work law. GERS' most recent analysis was dated May 28, 2020.

GERS Return-to-work Analysis

We found that the GERS return-to-work analysis included a total of 65 retirees employed by the Executive and Legislative Branches, and semi-autonomous agencies, and instrumentalities. The following schedule shows the breakdown of the number of retirees and the percentage hired at each Government sector.

Government Sector	No. of Employees	Percentage
Executive Branch	56	86%
Semi-autonomous Agencies/instrumentalities	8	12%
Legislature	1	02%
Total:	65	100%

Based on the May 28, 2020, report, GERS had completed the analysis for 37 retirees and had 28 reviews pending. For the 37 completed cases, the GERS report shows that GERS overpaid 22 re-employed retirees \$2,068,736 because the retirees violated the law. Also, GERS did not collect \$1,172,676 in contributions from those retirees and the Government. However, GERS has since received \$335,541 in owed contributions, thereby leaving \$2,905,871 unpaid.

We analyzed 15 of the 22 retirees that GERS determined owed at least \$10,000. We found that the amount owed ranged from \$10,398 to \$458,341. We also found that the period for which these annuitants double dipped or received both their pension and a salary ranged from five months to 14 years and seven months. The following schedule details the 15 annuitants.

No.	Double Dipping Start Date	End Date	Length of Time Double Dipped (yrs/mos)	Annuity Paid	Penalty (Loss Investment Opportunity)	Total
1	11/2007	12/2018	11yrs, 1mo	\$432,397	\$25,944	\$458,341
2	08/2015	05/2018	2yrs, 9mos.	178,370	10,702	189,072
3	09/2009 12/2015	10/2010 12/2018	1year, 1mo 3yrs	172,403	10,344	182,747
4	06/2015	04/2018	2yrs, 10 mos	162,989	9,779	172,768
5	05/2005	06/2011	6yrs, 1mo	151,563	9,094	160,657
6	08/2011	11/2016	5yrs, 3mos	148,886	8,933	157,819
7	05/2005	12/2019	14yrs, 7mos	135,067	8,104	143,171
8	10/2009	03/2015	4yrs, 5mos	127,245	9,860	137,105
9	03/2016	12/2018	1yr, 9mos	125,825	7,550	133,375
10	06/2016	08/2018	2yrs, 2mos	97,291	6,210	103,501
11	05/2017	12/2018	1yr 7mos	86,584	5,195	91,779
12	05/2015	05/2016	1yr	74,974	4,498	79,472
13	03/2017	11/2018	1yr, 8mos	18,146	1,089	19,235
14	07/2018	12/2018	5mos	16,186	971	17,157
15	12/2014	05/2015	6mos	9,807	591	10,398
Grand Total				<u>\$1,937,733</u>	<u>\$118,864</u>	<u>\$2,056,597</u>

Based on the information obtained, GERS determined that two retirees listed violated the return-to-work law for more than ten years. One retiree was found to have double dipped for over 14 years, costing the System \$143,171. The other retiree double dipped for 11 years, costing the system \$458,341.

GERS' analysis identified one retiree who had violated the return-to-work law on more than one occasion. The retiree violated the law by double dipping or receiving both a pension and a salary from September 2009 thru October 2010, and from December 2015 to December 2018. GERS determined that it paid the retiree \$172,403 in annuity payment during the accumulated four years. GERS also assessed a penalty and loss investment opportunity fee. The penalty is the fine imposed on the retiree for violating the return-to-work regulations. Loss of investment opportunity is a fine imposed for estimated loss investment opportunities that GERS could have realized had the money been available. A review of the report showed that GERS billed the annuitant for \$182,747 in penalty and loss of investment opportunities.

Unpaid Contributions

We found that for the 15 retirees sampled, GERS continued to pay annuity payments to the retirees when some retirees had regular retirement contributions taken from their salaries. Specifically, as many as seven retirees' by-weekly payroll had regular retirement contributions deducted during the period GERS determined that they double dipped. Also, four retirees started

making regular retirement contributions in the latter phase of their re-employment, and four retirees did not make any regular retirement contributions.

For example, for six years, one retiree employed by a semi-autonomous agency had regular contributions deducted from their salary while receiving retirement pay from GERS. Another retiree, reemployed by the Executive Branch for five years, made regular retirement contributions while receiving retirement pay.

Also, an employee who double dipped for 11 years started making regular retirement contributions in the last year of re-employment. Although regular contributions started, the retirees' retirement pay continued. This situation occurred in 4 of the 15 cases reviewed.

Finally, regular contribution payments were not paid by 4 of the 15 retirees sampled; One of the four retirees double dipped for 14 years.

Recommendations

We recommend that GERS:

1. continues their efforts to reconcile, determine, and collect all overpaid contributions owed by retirees who violated the return-to-work law.

GERS' Response

The response indicated agreement with the recommendation. GERS will continue its efforts to reconcile, determine, and collect all overpaid contributions owed by retirees who violated the return-to-work law. The Administrator and Director of Member Services are the responsible parties assigned to continue implementing the recommendation. The implementation is ongoing with no set expected completion date.

V.I. Inspector General's Comments

Based on the response submitted, we consider this recommendation resolved, but not completed. A future follow-up review will be necessary to determine GERS' progress toward completing the assessment of those employees who violated the return-to-work law.

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FINDING 2: NON-COMPLIANCE WITH LAWS AND REGULATIONS

We found that Government officials did not always follow existing laws governing retirees reemployed in the Government. Specifically, in addition to the return-to-work law, agencies did not adhere to Executive Order 477-2016 issued by the then-Governor on March 2, 2016. Generally, we found that the Government entities abrogated their responsibility to report and monitor retirees' hiring. At the Executive Order's issuance, Government officials did not report seven retirees actively employed and five retirees subsequently hired. These twelve retirees were allowed to double dip for up to two years and nine months after the Executive Order's issuance and accounted for \$1,649,117 or 80% of the \$2,068,736 in annuity overpayments. We determined that at least \$890,953, or 43% of the overpayments, were paid after the Executive Order's issuance.

Background

The reporting requirement as outlined in Executive Order 477-2016 signed on March 2, 2016, requires Government departments and agencies to inform the retired employee on (1) the time limit restriction on their ability to receive their pension while legally working for the Government; (2) the financial implication of exceeding the maximum time limit allowed to double dip, and; (3) the requirement to certify that he/she had been advised of the restrictions.

Also, The Executive Order required the department and agencies to (a) maintain a listing and record of all retired persons it re-hires or contracts for services, and (b) provide the GERS with a copy of the retired employee's NOPA and contract for employment or appointment letter.

Executive Order 477-2016

We found that departments and agencies did not always follow the requirements of Executive Order No. 477-2016, Section 10, which requires agencies to maintain a list of their hired retirees. Also, agencies did not always provide GERS with a copy of the retired employee's NOPA, contract for employment, or appointment letter.

We conducted ten interviews of various agency heads or human resources representatives and found that none prepared a listing of retirees their agencies hired. In addition, in most instances, the hiring agency did not provide GERS with a copy of the retired employee's NOPA, employment contract, or appointment letter.

We found that the Government had seven retirees actively employed at the Executive Order's issuance and hired five additional retirees after that. Instead of the responsible agency reporting to GERS the retirees' employment status, all twelve (12) retirees were allowed to double dip for up to two years and nine months after the Executive Order's issuance.

Had the hiring Government entities reported the retiree's employment status to GERS, as specified in the Executive Order, GERS could have immediately stopped paying seven annuitants and prevented the double dipping of the additional five annuitants. These twelve

retirees accounted for \$1,649,117 or 80% of the \$2,068,736 in total annuities overpaid. Also, we determined that at least \$890,953, or 43% of the total annuity overpayments were paid after the Executive Order's issuance. The non-reporting of the 12 retirees' re-employment cost the retirement system \$99,309. in lost investment income. The following schedule details the 12 annuitants.

No.	Double Dipping Start Date	End Date	Annuity Paid	Penalty (Loss Investment Opportunity)	Total
Retirees Actively Employed at the Executive Orders Issuance					
1	11/2007	12/2018	\$432,397	\$25,944	\$458,341
2	08/2015	05/2018	178,370	10,702	189,072
3	12/2015	12/2018	172,403	10,344	182,747
4	06/2015	04/2018	162,989	9,779	172,768
5	08/2011	11/2016	148,886	8,933	157,819
6	05/2005	12/2019	135,067	8,104	143,171
7	05/2015	05/2016	74,974	4,498	79,472
Retirees Hired After the Executive Order's Issuance					
8	06/2016	04/2020	97,291	6,210	103,501
9	03/2016	12/2018	125,825	7,550	133,375
10	05/2017	12/2018	86,584	5,195	91,779
11	03/2017	11/2018	18,146	1,089	19,235
12	07/2018	12/2018	16,186	971	17,157
Total			\$1,649,118	\$99,319	\$1,748,437

Recommendations

We recommend GERS work with the Office of the Governor to ensure that:

1. Government agencies are aware of their responsibility under the law to notify GERS when a retiree is hired, and the legal implications of not following the return-to-work law.
2. The Personnel Division develops a policy to promptly notify GERS of all retirees hired by the NOPA process.

GERS' Response

The response indicated agreement with both recommendations. Regarding the first recommendation, GERS officials stated that they will continue to issue the annual letter to the heads of departments, autonomous agencies and copy the Governor, Human Resources Directors, and Personnel Professionals. The Administrator is the person responsible for the recommendation implementation. The expected implementation date is indicated as "ongoing".

V.I. Inspector General's Comments

While it is important for GERS to continue sending out annual notices to the heads of departments, autonomous agencies and copy the Governor, Human Resources Directors, and Personnel Professionals, we encourage GERS to explore other avenues to include the Office of

the Governor in a collaborative action plan to make agencies aware of their responsibility under the law to notify GERS when a retiree is hired, and the legal implications of not following the return-to-work law. Also, a deliberately coordinated effort with Personnel could make GERS' efforts to identify when a retiree returns to work easier.

We will consider these recommendations as unresolved and not implemented.

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FINDING 3: INTERNAL CONTROLS

We found that the Government did not implement adequate internal controls to help prevent violations of the return-to-work law. Although laws existed that addressed circumstances under which retirees were allowed to be hired and still maintain their pension payments, the Government did not ensure compliance with the Code to protect the GERS. Also, we found that GERS measures taken were not sufficient to determine when retirees returned-to-work, or to deter violations of the law, thereby protecting the retirement system from the laws' non-compliance.

Background

We examined the role of three (3) Government entities responsible for establishing rules and regulations and guide Government entities to ensure compliance with the Code. We also examined the relationship between GERS and the semi-autonomous agencies in achieving the objective of the law. Consequently, we interviewed officials with the Division of Personnel, Property and Procurement, and GERS. In addition, we interviewed officials of the Virgin Islands Legislature, Water and Power Authority, Port Authority, University of the Virgin Islands, Waste Management Authority, Public Finance Authority, and the Supreme Court. We examined the level of coordinated efforts between these agencies and GERS to ensure that the applicable Government entities follow and maintain compliance with the return-to-work law.

Division of Personnel

We found that the Division of Personnel does not have written policies and procedures specific to the return-to-work law. The Division of Personnel acts as a facilitator/processor of personnel actions, mainly for the central Government. In addition to the central Government, Personnel process NOPAs for the Legislature, the Judicial Branch, and other semi-autonomous agencies that do not process their own.

Through our interviews, Personnel officials indicated that their divisions had not developed written policies and procedures specific to the return-to-work law. However, officials stated that Personnel has an unwritten requirement that departments and agencies send a letter to Personnel requesting approval to employ a retiree. Officials further noted that not all agencies follow this practice.

Nevertheless, Personnel officials stated that when the Government employs a retiree, the retiree is given a “dual employee number.” This dual employee number prevents GERS' contributions and insurance from being deducted from the retirees' pay as legally allowed. Most notable is that the retirees' NOPA includes a provision that shows the time the retiree is allowed to work without forfeiting their retirement benefits.

From the past and present administration, we asked Personnel officials about the Division's role in notifying GERS when a retiree returns to work. The officials gave different accounts of how GERS is provided the employment information. In one instance, Personnel officials stated that Personnel sends GERS a NOPA for all employees. A second account was that the Government

department or agency sends the NOPA to GERS, and thirdly, the retiree was responsible for taking the NOPAs to GERS.

Although Personnel officials stated that they send all NOPA to GERS, GERS officials said they did not always receive NOPAs from Personnel. We did not find that Personnel had established a policy that provided consistency in notifying GERS on re-employed retirees. Therefore, the lack of a policy creates a systemic problem for the Government.

Property and Procurement

As the central Government's procurement arm, we inquired if the Department of Property and Procurement has policies to identify when an agency is entering into a contract with a retiree. Property and Procurement officials stated that there is no process to identify when a retiree is contracted to perform services for the Government. Also, there is no process for contractors to certify whether they are a retiree. The officials reported that not all professional services and independent contractor contracts are executed through Property and Procurement. Therefore, the officials noted that they may not be aware when a department procures some contractor's services. Currently, Property and Procurement does not provide GERS with information on retirees under contract with the Government.

To determine if any retirees received a contract unknown to GERS, we reviewed the Property and Procurement website to locate contracts issued to individuals from 2015-2019. We prepared a list of the contracts and forwarded the list to GERS to identify if the contracted persons were retirees. GERS identified three individuals on the list as retirees. However, GERS' analysis did not include any of the three individuals they noted.

GERS

GERS is responsible for administering/managing the Government retirement system. The consequences of retirees violating the return-to-work law by double dipping impact the retirement system negatively with undue pension payments and unpaid contributions, thereby causing loss of investment income.

We inquired of GERS officials about measures the retirement system takes to avoid retired members' double dipping. Officials indicated that, in the absents of the retiree self-reporting, GERS officials stated that they would not be aware and have no way of knowing when the Government hires a retiree unless the agencies and instrumentalities report that information to GERS. To complicate matters, officials stated that Government agencies and instrumentalities do not always notify GERS when they hire a retiree. The officials said that GERS obtains information on a retiree's hiring when it is a high-profile person and announcements are made. Also, there are other instances when persons have reported the retiree's hiring to GERS. However, GERS officials stated that when a Government employee retires, GERS gives the retiree an award letter that includes language that speaks to how many hours retirees are permitted to work. Also, the letter indicates that the retiree should notify GERS if they returned to work for the Government.

Additionally, GERS officials also stated that GERS sends correspondence to all agencies on a semi-annual basis, reminding the agencies about the return-to-work guidelines. Also, GERS host a human resources officers meeting annually where the return-to-work regulations are usually discussed. GERS officials believe that besides notifying agencies of the law's requirements, there is little that GERS can do to force agencies to meet the requirements of the Code. In our opinion, the GERS' semi-annual letter to the agencies is insufficient. The letter reminds the agencies of the law, but it does not request the agencies to provide any information on the retirees the agency hired.

As of October 2020, to alleviate double dipping, GERS received limited access to the Personnel system. GERS can now routinely compare its computer system against Personnel's system to obtain information. This access provides GERS with an added recourse to identify hired retirees. GERS can now research the circumstances of the retiree's employment done thru the NOPA process. If GERS determines that the retiree's annuity should be canceled, GERS management will notify their payroll department.

Also, GERS officials stated that they obtain information on a retiree's hiring when it is a high-profile person and when the government makes an announcement. We found that at least 4 of the 15 retirees noted in the previous finding held positions that are routinely given a public announcement and are jobs that are of high public visibility. Also, at least 11 of the 15 retirees held exempted positions. Many of the exempt positions were positions at the top tier of management within the hiring departments.

GERS officials also believe that they would know if a retiree was re-employed if contributions are received from the employee through payroll deductions. However, we found that as many as 7 of the 15 re-hired retirees made regular retirement contribution payments while receiving their retirement pay. We noted that two of those retirees were employed outside of the Executive Branch.

Semi-Autonomous Agencies and Instrumentalities

Through interviews, we found that the method used to notify GERS about retirees hiring varied among the various semi-autonomous agencies and instrumentalities. For example, one agency representative stated that the agency provides the retiree with information instructing them to report their re-employment status to GERS. However, another agency representative indicated that the agency takes no action to notify GERS if contributions are deducted from the employee's pay. Other agencies reported that they do not notify GERS when a retiree works part-time. As a result, GERS would never be made aware of these retirees' re-employment.

From our interviews, we identified 19 retirees employed across these entities of the Government. Of the 19 retirees identified, we found that GERS's list contained four of those retirees. Therefore, a total of 15 re-employed retirees were unknown to GERS. Upon further examination, we noted that all 15 retirees' employment status was listed as part-time.

The following schedule shows the hiring Government entity, the number of retirees hired and not reported to GERS, and the retirees' employment years.

Government Entity	No. of Employees	Employment Year
WAPA	7	2016-2020
Waste Management	1	2018-2019
Legislature	7	2015-2019
Total	15	

These Government entities denied GERS the ability to evaluate and monitor the retirees' employment status to include, at a minimum, the annual and maximum time limit afforded to return-to-work and the salary limit of not exceeding \$55,000 per year along with other factors applicable to the law.

Furthermore, these government entities, in instances of the laws' non-compliance, held the position that: (1) it was incumbent on the retiree to report their re-employment status to GERS, (2) that GERS would find out when GERS received retirement contributions for the employee, or (3) that GERS did not ask for the information.

Also, most of the officials added that, for contracted employees, there is no way for them to know if the contracted person is a retiree of the private sector or the Federal Government. Additionally, some officials stated that unless the retiree was re-hired within the same department as previously employed, there is no way for them to know if they are retirees of the local Government.

Consequently, unless the retiree self-reports their re-employment status to GERS, there is a risk that the employee could violate the return-to-work law by double dipping. Also, when the agency fails to timely notify GERS and wait for retirement contributions to be paid, there is a risk that double dipping has already occurred.

We did note that some agencies have taken steps to monitor the retirees' employment internally. For example, after the enactment of the new law, the University of the Virgin Islands included in their electronic application a question that requires an applicant to state if they are a retiree. The Legislature has also established an employee data form that requires the applicant to indicate if they are a retiree and are receiving retirement benefits.

There must be collaborative efforts between the agencies and GERS to meet the requirements of the law. Agencies and departments must implement processes to capture the employment/contractual relationship with retirees and share the information with GERS. Also, GERS cannot rely primarily on retirees and agencies self-reporting the employment information or obtaining the information through media reports. When the Government entities do not comply with the return-to-work law, the Government's sponsored retirement system is not protected from potential fraud, waste, and abuse.

Recommendations

We recommend that GERS:

1. Consults with the Office of the Governor to ensure that all departments, agencies, and instrumentalities understand their obligations to follow the laws related to re-hiring retirees to avoid the adverse effects on the retirement system.
2. Consults with the Division of Personnel to establish a procedure to ensure that once Personnel issues a retiree a dual-employee number, Personnel automatically reports that information to GERS.
3. Strengthens its communication to agencies by requiring them to adhere to the law and Executive Order by providing information on all retirees hired by the agency on a full-time, part-time, or contractual basis.
4. Periodically cross-checks their list of re-hired retirees to the list of retirees receiving pension payments.
5. Consults with Property and Procurement to have included in its standard professional services contracts a question that asks the professional services contractor to identify if they are a retiree affected by the return-to-work law and to have language that gives notice of the contractor's obligations to report this information to GERS.

GERS' Response

The response indicated agreement with all five recommendations. GERS did not specifically address solutions to each recommendation. Instead, they provided a general plan of action that focused on continued communication with the Office of the Governor, the Director of Personnel, and the Commissioner of Property and Procurement on enforcement of the return-to-work law and Executive Orders; implementation and enforcement of procedures to curtail retirees unlawfully returning to work. The person responsible for the implementation of the recommendations is the Administrator/Director of Member Services. The implementation date is indicated as "ongoing."

V.I. Inspector General's Comments

We find GERS' response too general to determine its effectiveness on the recommendations in this finding. However, while generalized in their response, we encourage GERS to consult and collaborate with all relevant agencies to forge cooperation and compliance with the return-to-work laws.

We will consider the recommendations resolved but not implemented, pending verification of any changes to policies and procedures that would assist GERS in the timely notification of retirees who return to work to included contracted services.

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FINDING 4: THE LAW’S CHALLENGE

Notwithstanding the May 7, 2020, Covid-19 Emergency Executive order that suspends the return-to-work law, we found that the law, as it currently exists, to only allow for nurses, teachers, and police officers to return to work poses some challenges to agencies that may require other types of services from retirees with skills from other disciplines. For example, through interviews with some agency human resource personnel, they expressed concern about the current law. Specifically, in the past, WAPA has used retirees to assist with special utility projects. WAPA’s HR official expressed that similar to police officers and nurses being exempt from the return-to-work regulations, provisions should have been made for the only utility company in the territory since the work and services provided are critical to the community. Also, the Virgin Islands Port Authority’s (VIPA) human resource officials expressed concern about the potential need to hire a retired harbor pilot. The law, without the Covid-19 Emergency Executive order, prohibits WAPA and VIPA from hiring retirees. Also, VIPA indicated that the limit on the compensation level poses a problem with hiring a retired harbor pilot based on the industry-standard compensation.

The GERS administrator expressed that many agencies were asking for clarification of the law. In an interview and in email correspondence, GERS officials were asked if only nurses, teachers, and police officers could return to work. One official stated that it depends, while another cited the law as the only three types of retirees that were allowed to return. The varied answers is concerning because it could lead to an agency's special request being met with an administrative decision that could go against the letter of the law.

We believe that the law may have to be revisited too. At a minimum, the law should address part-time employment of retirees whose special skills may be needed on an emergency or part-time basis.

Recommendation

We recommend that GERS:

1. Assesses the extent to which agencies face a challenge with hiring retirees not included in the current law and, if necessary, suggest changes to the law to prevent the GERS from any selective review of each situation.

GERS’ Response

The response indicated agreement with the recommendation. The response states that GERS concurs that it should assess the extent where agencies face challenges with hiring retirees not included in the current law. GERS will continue to stress in periodic correspondence that agencies contact GERS when there are questions or gray areas in hiring a retiree. The Administrator/Director of Member Services is charged with the implementation of this recommendation. Also, GERS indicated no set expected completion date in its response. The implementation date is indicated as “ongoing.”

V.I. Inspector General's Comments

GERS' response concurred with the recommendation that there is a need to assess the extent to which agencies face a challenge with hiring retirees not included in the current law. However, the GERS action plan continues to rely on agencies contacting GERS with questions or gray areas of concern. Therefore, their action plan does not collectively seek a solution to address the problem but remains localized at each department's level to request a review of each situation. Therefore, we want to stress that our recommendation is for GERS to be proactive and attempt to identify the challenges of the government agencies collectively. This information will help GERS to anticipate issues and to find possible solutions to the return-to-work law as it currently stands and to prevent the GERS from any selective review of each situation.

We will consider this recommendation as unresolved.

GERS' RESPONSE
GOVERNMENT EMPLOYEES' RETIREMENT SYSTEM
OF THE VIRGIN ISLANDS
"Contributing today for a better tomorrow"

September 14, 2021

Mr. Steven van Beverhoudt, CFE, CGFM
Virgin Islands Inspector General
Office of the V.I. Inspector General
2315 Kronprindsens Gade #75
Charlotte Amalie, St. Thomas, V.I. 00802-6468

Re: GERS Responses to Inspection Reports

Dear Inspector General van Beverhoudt:

Our responses to the Inspection Report for the Inspection of Procedures to Control Re-Employment of Retired Government Employees and the Inspection Report for the Inspection of the Use of Loan Proceeds of Select Projects in the GERS Loan Program are attached.

Sincerely,



Nellon L. Bowry
Chairman, GERS Board of Trustees

Attachments

cc: Honorable Albert Bryan, Jr. Governor of the Virgin Islands
GERS Board of Trustees
Austin L. Nibbs, CPA, Administrator/CEO

GERs' RESPONSE
GOVERNMENT EMPLOYEES' RETIREMENT SYSTEM
OF THE VIRGIN ISLANDS

"Contributing today for a better tomorrow"

**GERs RESPONSE TO INSPECTION OF PROCEDURES TO CONTROL
RE-EMPLOYMENT OF RETIRED GOVERNMENT EMPLOYEES**

FINDING 1: ANNUITY OVERPAYMENT/UNPAID CONTRIBUTIONS

The GERS concurs with the recommendation that the GERS continue their efforts to reconcile, determine, and collect all overpaid contributions owed by retirees who violated the return-to-work law.

Plan of Action:

Continue to hold bi-annual educational meetings with the central government and autonomous agencies Human Resources Director and Personnel Professionals to reinforce the protocols, laws, and policies regarding retirees returning to work.

Person Responsible for Implementation:

Administrator / Director of Member Services

Expected Implementation Date:

Ongoing.

FINDING 2: NON-COMPLIANCE WITH LAWS AND REGULATIONS

The GERS concurs with recommendations Nos. 1 and 2.

Plan of Action:

Continue to issue the annual letter to heads of departments and autonomous agencies and copy the Governor and all Human Resources Directors and Personnel Professionals.

Person Responsible for Implementation:

Administrator

Expected Implementation Date:

Ongoing

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**GERS RESPONSE TO INSPECTION OF PROCEDURES TO CONTROL
RE-EMPLOYMENT OF RETIRED GOVERNMENT EMPLOYEES**

FINDING 3: INTERNAL CONTROLS

The GERS concurs with the recommendations Nos. 1, 2, 3, 4, and 5.

Plan of Action:

Continue to communicate with the Office of the Governor, the Director of the Division of Personnel, and the Commissioner of Property and Procurement in the enforcement of the return-to-work laws and Executive Orders relating to retirees returning to work and implement and enforce procedures to curtail a retiree unlawfully returning to work.

Person Responsible for Implementation:

Administrator / Director of Member Services

Expected Implementation Date:

Ongoing

FINDING 4: THE LAW'S CHALLENGE

The GERS concurs with the recommendation that GERS should access the extent where agencies face challenges with hiring retirees not included in the current law.

Plan of Action:

Continue to stress in periodic correspondences to heads of departments and autonomous agencies to contact the GERS when there are questions or gray areas when hiring retirees.

Person Responsible for Implementation:

Administrator / Director of Member Services

Expected Implementation Date:

Ongoing

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ADDITIONAL INFORMATION NEEDED TO CLOSE RECOMMENDATIONS

<u>Recommendation Number and Status</u>	<u>Additional Information Needed</u>
Finding 1:	
1. Resolved, not implemented.	A future follow-up will be necessary to determine the status of the assessment.
Finding 2:	
1. Unresolved.	Provide evidence that a revised action plan has been established to include the Office of the Governor and the Division of Personnel.
2. Unresolved.	Same as 2.1 above.
Finding 3:	
1. Resolved, not implemented.	Provide evidence of policy and procedures changes to assist in the timely notification of retirees who return to work.
2. Resolved, not implemented.	Same as 3.1 above.
3. Resolved, not implemented.	Same as 3.1 above.
4. Resolved, not implemented.	Same as 3.1 above.
5. Resolved, not implemented.	Same as 3.1 above.
Finding 4:	
1. Unresolved.	Provide evidence that GERS has worked Collectively with other entities to identify agency needs.

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