

NYS & NYC ESSA Table of Contents

New York State & New York City ESSA Summary	Page 1
New York State & New York City ESSA Home Rule Summary	Page 2
New York State & New York City ESSA Slide Presentation	Page 4
Spousal Survivor Benefit Policies for Public DB Plans	Page 15
ESSA Modules	Page 18
New York ESSA Proposal in Usual Bill Format	Page 23
Draft Statute	Page 23
Memorandum in Support of Legislation	Page 92
Section Summary	Page 94
Legislative History	Page 103
Fiscal Note	Page 103
Effective Date and Severability	Page 104

New York State and New York City ESSA Summary

The New York State and New York City Equity for Surviving Spouses Act (“NYS & NYC ESSA”) would reinforce for New York public employees the New York statutory surviving spouse protections of the right of election and the family exemption. NYS ESSA is similar to the Retirement Equity Act of 1984 (“REACT”) and other federal laws reinforcing state-law protections for the surviving spouses of more than 140 million American private and federal employees.

NYS & NYC ESSA is based on the four REACT equitable principles. First, an employee’s surviving spouse is entitled to a portion of the employee’s retirement plan’s benefits. Second, the entitlement is established when the employee’s beneficiaries, if any, are determined. Third, the entitlement is to at least one-half of the plan’s benefits. Fourth, the entitlement may be eliminated or reduced only with the surviving spouse’s written consent on a plan form setting forth the waived benefits that the spouse executes after the spouse marries the employee.

NYS & NYC ESSA would, like REACT provide that, absent a knowing spousal waiver, the surviving spouse would be entitled to at least half of the employee’s retirement plan benefits, whether the employee dies before or after retiring. In the latter case, the surviving spouse presumably gets half of each of the employee’s annuity benefit payments during the surviving spouse’s life and would continue to get the same payment amount following the employee’s death.

As is now the case for elective share rights to the same retirement plan benefits, no minimum marriage period would be required to obtain these spousal survivor rights, and these rights would apply to all the employee’s retirement plan benefits. These rights would be unaffected by the length of the marriage or when the employee earned the benefits.

Under current law, the default retirement benefit for New York defined benefit plans is a single life annuity. The law should be changed because pursuant to its provisions surviving spouses have been inadvertently dispossessed of all plan benefits by an employee’s mistaken choice of the default single life annuity. The surviving spouse’s elective share rights are of no value in such case because there are no survivor benefits to be allocated to the employee’s surviving spouse. Further, the elective share rights are inadequate if an employee chooses a non-spouse as the joint and 50% survivor beneficiary. The elective share rights generally entitle the surviving spouse to lifetime monthly payments equal to one-third of 50% of the employee’s lifetime monthly payments, i.e., one sixth of those employee payments. This is half the usual one third elective share interest in a decedent’s assets.

NYS & NYC ESSA would resolve all these issues, protect surviving spouses of New York public employees, make it more likely that both spouses participate in decision-making about family assets and income, and create defaults that better reflect the wishes of most married New York state or local government employees and their spouses.

NYS & NYC ESSA would substantially benefit some individual surviving spouses some of whom would otherwise be left impoverished on an employee’s death and dependent on other New York public funds. For pre-retirement benefits, aggregate plan benefit costs would not change, but an employee’s spouse may be more often entitled to at least 50% of the plan’s death benefit. A decrease in the percentage of non-spousal survivor beneficiaries may increase costs because survivor annuity benefits are COLA adjusted only for surviving spouse beneficiaries. This speculative cost increase from more benefits for surviving spouses would result from NYS & NYC ESSA achieving its equitable goal of improving the access of a public employee’s surviving spouse to retirement plan benefits.

NYS & NYC ESSA Home Rule Summary Memo

Memo to: TBD

TITLE: AN ACT to amend the retirement and social security law, and the administrative code of the City of New York in relation to enacting the “New York State & New York City Equity for Surviving Spouses Act,” which would require any public retirement plan for employees of the New York State, the City of New York, or any other New York locality to provide that (1) the default retirement annuity payment form be a joint and survivor annuity in which an employee’s surviving spouse is the employee’s beneficiary with a right to lifetime payments equal to at least 50% of the annuity benefits to which the employee was entitled; and (2) the default beneficiary for at least 50% of the employee’s pre-retirement death benefits be the employee’s surviving spouse. These default choices are more consistent with the equitable preferences of most married employees to protect their surviving spouses than the current default choices. In order to further protect surviving spouses, particularly those staying home to raise children, the amendment would reinforce the elective share rights of surviving spouses by prohibiting an employee from changing either default designation without the written consent of the employee’s surviving spouse.

BACKGROUND:

The proposed New York state and city legislation, the New York State & New York City Equity for Surviving Spouses Act (“NYS & NYC ESSA”), would reinforce for New York public employees, including employees for the City of New York, the New York statutory surviving spouse protections of the right of election and the family exemption. NYS ESSA is similar to the Retirement Equity Act of 1984 (“REACT”) and other federal laws reinforcing state-law protections for the surviving spouses of more than 140 million American private and federal employees.

PROPOSED LEGISLATION:

The bill would amend New York State and the City of New York law to set forth spousal benefit rights to retirement annuity benefits and death benefits, including any associated employee contributions and reserve-for-increased-take-home-pay, pursuant to the terms of the five New York City defined benefit plans:

- New York City Employees’ Retirement System;
- New York City Fire Pension Fund;
- New York City Board of Education Retirement System;
- New York City Police Pension Fund; and
- Teachers’ Retirement System of the City of New York.

NYS & NYC ESSA is based on the four REACT equitable principles. First, an employee’s surviving spouse is entitled to a portion of the employee’s retirement plan’s benefits. Second, the entitlement is established when the employee’s beneficiaries, if any, are determined. Third, the entitlement is to at least one-half of the plan’s benefits. Fourth, the entitlement may be eliminated or reduced only with the surviving spouse’s written consent on a plan form setting forth the waived benefits that the spouse executes after the spouse marries the employee.

NYS & NYC ESSA would, like REACT provide that, absent a knowing spousal waiver, the surviving spouse would be entitled to at least half of the employee's retirement plan benefits, whether the employee dies before or after retiring. In the latter case, the surviving spouse presumably gets half of each of the employee's annuity benefit payments during the surviving spouse's life and would continue to get the same payment amount following the employee's death.

As is now the case for elective share rights to the same retirement plan benefits, no minimum marriage period would be required to obtain these spousal survivor rights, and these rights would apply to all the employee's retirement plan benefits. These rights would be unaffected by the length of the marriage or when the employee earned the benefits.

Under current law, the default retirement benefit for New York defined benefit plans is a single life annuity. The law should be changed because pursuant to its provisions surviving spouses have been inadvertently dispossessed of all plan benefits by an employee's mistaken choice of the default single life annuity. The surviving spouse's elective share rights are of no value in such case because there are no survivor benefits to be allocated to the employee's surviving spouse. Further, the elective share rights are inadequate if an employee chooses a non-spouse as the joint and 50% survivor beneficiary. The elective share rights generally entitle the surviving spouse to lifetime monthly payments equal to one-third of 50% of the employee's lifetime monthly payments, i.e., one sixth of those employee payments. This is half the usual one third elective share interest in a decedent's assets.

NYS & NYC ESSA would resolve all these issues, protect surviving spouses of New York public employees, make it more likely that both spouses participate in decision-making about family assets and income, and create defaults that better reflect the wishes of most married New York state or local government employees and their spouses.

FISCAL IMPLICATIONS:

The bill would substantially benefit some individual surviving spouses. For pre-retirement benefits, aggregate plan benefit costs would not change, but an employee's spouse may be more often entitled to at least 50% of the plan's death benefit. For retirement benefits, aggregate plan benefit costs may increase because survivor benefits are COLA adjusted only for surviving spouse beneficiaries. The actuary for the New York City plans would have to determine the extent of such cost increases, if any from any change of those plan assumptions, and if there were any such increases whether they would affect the plan funding costs. Such speculative cost increase would result from NYS & NYC ESSA achieving its equitable goal of improving the access of a public employee's surviving spouse to retirement plan benefits. Moreover, there would be offsetting cost reductions to the extent NYS & NYC ESSA would prevent some individual surviving spouses from otherwise being left impoverished on an employee's death, and dependent on New York government public funds.

EFFECTIVE DATE:

The bill shall take effect for all benefit payments beginning after December 31 of the year immediately after the year that the bill is enacted other than those payments made pursuant to a benefit designation executed before such date. If enacted, the bill would not change the law pertaining to the effects of a domestic relations order, a support order, a prenuptial agreement, or a postnuptial agreement.

**NEW YORK STATE & NEW YORK
CITY EQUITY FOR SURVIVING
SPOUSES ACT
(NYS & NYC ESSA)**

What Are the Current New York Protections for Surviving Spouses?

- If there is **no will** and the employee leaves no issue, the employee's **surviving spouse** is entitled to **the employee's entire net estate**. If the employee leaves issue, the surviving spouse is entitled to **\$50,000 plus half of the remaining estate**.
- Notwithstanding the employee's will terms and the employee's plan beneficiary designations:
 - the employee's surviving spouse gets **\$25,000** of the employee's cash, \$20,000 of the employee's farm animals and equipment, and the employee's car (**Family Exemption**)
 - AND the employee's surviving spouse may **elect** to get the greater of **(\$50,000)** or **one-third of the value of the employee's elective estate**, including the **employee's New York public pension benefits (Right to Election)**.

These rights are unaffected by the marriage length or when the benefits were earned.

How Would the NYS & NYC ESSA Improve the Equity of Surviving Spouse Protections?

NYS & NYC ESSA would improve the equity of surviving spouse benefits by reinforcing the New York spousal survivor protections with the **four equity features** of the Retirement Equity Act of 1984 (**REACT**) by providing that:

- A New York public employee's surviving spouse is **entitled to retirement and pre-retirement benefits regardless of whether the surviving spouse is entitled to any other assets** upon the employee's death.
- A New York public employee's spousal survivor benefit protections **take effect when an employee's beneficiaries, if any, are determined.**
- A New York public employee's spousal survivor is entitled to at least **half of the employee's retirement plan benefits or pre-retirement plan benefits.**
- A New York public employee's default spousal survivor benefits may only be **waived with the surviving spouse's consent on a plan form setting forth those benefits after the marriage.**

Why Are NYS & NYC ESSA Equitable Protections for Surviving Spouses Needed? (1)

- Robert **worked for NYC for 30 years**, retired in 1996, and began receiving his monthly NYCERS pension payments soon after. Robert passed away in 2017 and after the funeral, Robert's **widow Muriel applied for survivor benefits**. But she was **notified that she was entitled to no benefits**.

Why Are NYS & NYC ESSA Equitable Protections for Surviving Spouses Needed? (2)

- Robert had accepted the default single-life annuity. A **single-life annuity** pays the retired member the largest monthly benefit, but all payments cease upon death, with **no benefits to the surviving spouse**.
- New York's public retirement systems, however, do not require participants to elect survivor benefit coverage for their spouses and **survivor benefit coverage elections are not set as the default**. **Nor are the spouses notified** if they will receive no survivor benefits. Spouses are thus **denied a say in one of the most significant economic decisions during their marriage**.
- Muriel's husband's decision to forego survivor benefits, made without Muriel's knowledge or consent, has **impoverished Muriel**. Now **75 years old** and in **declining health**, Muriel has to **work part-time to supplement her Social Security** to meet her basic expenses. She **lost the family home to foreclosure**.

Who Would Be Helped by NYS & NYC ESSA Surviving Spouse Protections?

NYS & NYC ESSA would amend New York State and New York City law to set forth **spousal survivor benefit rights to retirement annuity benefits and death benefits** from the **three New York State and five New York City defined benefit plans**:

- New York State and Local Retirement System (**NYSLRS**) and New York State and Local Police and Fire Retirement System (**NYSPFRS**) – **501,890** active members
- New York City Employee Retirement System (NYCERS); New York City Police Pension Fund (NYCPPF), and New York City Fire Pension Fund (NYCFPF) – **273,087** active members
- New York State Teachers' Retirement System (**NYSTRS**), New York City Board of Education Retirement System (**NYCBERS**); New York City Teachers' Retirement System (**NYCTRS**) – **427,557** active members.

More than a **million NY government worker families statewide** would benefit from the **NYS & NYC ESSA giving surviving spouses of NY public employees more equitable access to retirement plan benefits**.

What Benefits Would Stay the Same Under the Provisions of NYS & NYC ESSA?

NYS & NYC ESSA would not change the current statutory revocation of an employee's spousal designations upon divorce, annulment of marriage or judicial separation.

There are several classes of employees whose spouses' benefit rights to retirement annuity benefits and death benefits NYS & NYC ESSA would not change:

- Employees in **retirement pay status** on the effective date
- Employees **who do not change their retirement plan annuity option (including beneficiary) or death benefit beneficiary(ies) after the effective date**
- Employees, to the extent their plan benefits are or become subject to, **domestic relations orders or support orders.**

What is the ESSA Effective Date and Marital Verification and Recoupment Procedures?

NYS & NYC ESSA's effective date would be January 1st of the second year following the year of enactment.

- The applicable plans would have more than a year to conform their forms and procedures to the ESSA spousal survivor protections.
- Under current law, **an employee's spousal designation is revoked upon divorce, annulment of marriage or judicial separation, absent a domestic relations order to the contrary. Only surviving spouses get beneficiary COLAs.** Thus, prudent pension plan administrators now verify marriage as of the time of the death of an employee whose beneficiary appears to be the employee's surviving spouse. If the plan, nevertheless, pays the wrong beneficiary, it remains fully liable to the rightful beneficiary and bears the burden of recovering the wrongful payment.
- **NYS & NYC ESSA gives plans whose administrators acted prudently when paying the wrong beneficiary the right to recoup the wrongful payments from the surviving spouse, who is the correct beneficiary.** This places the recovery burden on the surviving spouse, although in the interests of fairness, monthly annuity payment reductions for recoupment purposes are limited.

Would NYS & NYC ESSA Reduce An Employee's Accrued Plan Benefits?

NYS & NYC ESSA **would not affect the value of an employee's pre-retirement death benefits.** Like the **one-third right of election** of the employee's surviving spouse and the **equitable distribution rights** of the employee's spouse, NYS & NYC ESSA **may affect who obtains such benefits.**

NYS & NYC ESSA **would not affect the value of the employee's retirement benefits.** Like the **one-third right of election** of the employee's surviving spouse and the **equitable distribution rights** of the employee's spouse, NYS & NYC ESSA **may affect who obtains such benefits.** If a 65-year old NYCERS employee with a spouse the same age elects the joint and 50% survivor benefit for the surviving spouse, each lifetime payment of the employee would be reduced by less than 10%.

Thus, **the New York State Constitution's prohibition on the diminishment or impairment of New York State public employee retirement plan benefits would not limit NYS & NYC ESSA,** in the same manner it did not limit the one-third right of election rules or the equitable distribution rules.

Which Private/Federal/State/Local Laws are Models for NYS & NYC ESSA?

- **Private Employer Plans—REACT** — Increased joint and 50% survivor from 65% to 80%
- **Federal Civil Service Retirement System**
- **Federal Employee Retirement System**
- **Federal Military Retirement System**
- **States Requiring Spousal Consent:** Alaska, Arizona, Connecticut, Delaware, Illinois, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Texas, Utah, Washington, West Virginia, Wisconsin, Wyoming
- **States Requiring Spousal Notice:** California, Florida, Hawaii, Maine, Massachusetts, New Hampshire, New Jersey, South Dakota, Virginia
- **Cities Requiring Spousal Consent:** Washington, DC, Chicago, Houston, Phoenix, San Francisco
- **Accidental Death Benefits from NY Government Plans** — Always Surviving Spouse

**NEW YORK STATE & NEW YORK
CITY EQUITY FOR SURVIVING
SPOUSES ACT
(NYS & NYC ESSA)**

Spousal Survivor Benefit Policies for Public Defined Benefit Plans

State/Gov't Agency	Spousal Consent Required	Spousal Notice Only	Citations
Alabama	No	No	AL Stat §§ 36-27-16, -161, 162
Alaska	Yes	No	AK Stat § 39.35.450
Arizona	Yes	No	AZ Stat §§ 38-755, -760, -762, -776
Arkansas	No	No	AR Stat § 24-4-606 & -608
California	No	Yes	CA Govt § 21261
Colorado	No	No	CO Stat §§ 24-51-615, -902, -905, -906, -907, -909
Connecticut	Yes	No	CT Gen'l Stat. § 5-165
Delaware	Yes	No	29 Del. C. § 5528
Florida	No	Yes	FL Stat §§ 121.591, 121.4501, 121.091
Georgia	No	No	GA Stat § 47-2-121
Hawai'i	No	Yes	HI Stat § 88-83
Idaho	No	No	ID Stat § 59-1351
Illinois	Yes	No	IL Stat Ch 40 § 5/14-120
Indiana	No	No	IN Code 5-10.2-4-7
Iowa	Yes	No	IA Stat § 97B.51
Kansas	Yes	No	KS Stat 74-4918, 74-4918a, 74-4925a, 74-4917b
Kentucky	No	No	KY 61.542, 61.635, 61.640
Louisiana	Yes	No	LA RS 11:471, 11:471.1, 477
Maine	No	Yes	ME Stat 5 § 17804
Maryland	No	No	MD Code State Personnel & Pensions § 21-401
Massachusetts	No	Yes	MA Stat 32 § 12
Michigan	Yes	No	MI Stat 38.31
Minnesota	Yes	No	MN Stat §§ 352.115 , 352.116
Mississippi	No	No	2017 MS Laws HB 1301
Missouri	Yes	No	MO Stat 104.395
Montana	No	No	MT Stat 19-2-303, 19-2-801, 19-2-802
Nebraska	No	No	NE Stat § 84-1323
Nevada	Yes	No	NV Stat 286.541, 286.545, 286.674
New Hampshire	No	Yes	NH Stat § 100-A:13

Spousal Survivor Benefit Policies for Public Defined Benefit Plans

State/Gov't Agency	Spousal Consent Required	Spousal Notice Only	Citations
New Jersey	No	Yes	NJ Stat 43:15A-50, 43:15A-50a
New Mexico	Yes	No	NM Stat § 10-11-116
New York	No	No	NY RSSL, EDUC, NYC Admin Code, NYCRR
North Carolina	No	No	NC Stat § 135-5
North Dakota	Yes	No	ND Stat § 40-46-13
Ohio	Yes	No	OH Stat § 145.384
Oklahoma	Yes	No	OK Stat 74 § 918
Oregon	No	No	OR Stat §§ 238.308, 238.390
Pennsylvania	No	No	71 PA Stat § 5705
Rhode Island	No	No	RI Stat § 36-10-18
South Carolina	No	No	SC Stat § 9-1-1620
South Dakota	No	Yes	SD Stat §§ 3-12-510, 3-12-514
Tennessee	No	No	TN Stat § 8-36-601
Texas	Yes	No	TX Gov't § 804.051
Utah	Yes	No	UT Stat § 49-12-405
Vermont	No	No	VT Stat 24 § 5060
Virginia	No	Yes	VA Stat §§ 51.1-165, 51.1-165.1
Washington	Yes	No	WA Stat 41.40.188
West Virginia	Yes	No	WV Stat § 5-10-24; WV Code State Rules § 162-1-8
Wisconsin	Yes	No	WI Stat 40.24
Wyoming	Yes	No	WY Stat § 9-3-420; WY Rules & Regs 19 § 4
TOTAL YESES	22	9	
New York City	No	No	RSSL; NYC Admin. Code
Washington, D.C.	Yes	No	D.C. Mun. Reg. Rule B2606.5
Boston	No	Yes	MA Gen Laws 32 § 12, 32 § 12B
Chicago	Yes	No	IL Stat Ch 40 § 5/7-154

Spousal Survivor Benefit Policies for Public Defined Benefit Plans

San Francisco	Yes	No	S.F. Admin. Code § 16.80
Los Angeles	No	No	10 L.A. Charter & Admin. Code §§ 4.1060, 4.1080.10
TOTAL YESES	3	1	
State/Gov't Agency	Spousal Consent Required	Spousal Notice Only	Citations
Federal Gov't CSRS	Yes	No	5 C.F.R. § 831.611; -.614; -.618; 5 U.S.C. §§ 8339, 8341
Federal Gov't FERS	Yes	No	5 C.F.R. § 842.603; -.606; -.607; 5 U.S.C. §§ 8416, 8442
Federal Gov't TSP	Yes	No	5 U.S.C.A. § 8435
Military Pension	Yes	No	10 U.S.C. § 1448, 1448a
Railroad Ret. Board	Yes	No	45 U.S.C. § 231a(d)
TOTAL YESES	5	0	

Modules Used to Generate ESSA, Including Effective Date Provisions as of April 6, 2022

Death Benefit Module

NYS ESSA Section 2: Section 512 of the Education Law

i. Notwithstanding any other provision of this section to the contrary, at least one-half of the death benefits payable under this section, including any accumulated contributions remaining at the time of the member's death, payable under this section shall be paid to the member's surviving spouse, if any, unless the member elects that the surviving spouse receive less than one-half of the death benefits, and:

1. (A) the member's surviving spouse consents, after the date of the member's marriage, in writing to the member's election;

(Bi) the spousal survivor written consent is on a plan form addressed to the member, and the form sets forth:

(i) the amount of the member's death benefits,

(ii) the entitlement of the surviving spouse to at least half of the death benefits,

(iii) the surviving spouse's right to prevent any future member elections regarding the member's death benefits without the surviving spouse's consent unless the consent of the surviving spouse expressly permits member elections without any further consent by the surviving spouse, and

(iv) the fact that consenting to the member's election would result in the surviving spouse receiving no death benefits or less death benefits than the surviving spouse would otherwise be entitled under this subdivision;

(C) the consent includes an acknowledgement that the surviving spouse understands the surviving spouse's entitlement to be paid at least one-half the death benefits absent the surviving spouse's consent to the member's election, and that the surviving spouse's consent would eliminate or reduce these death benefit payments;

(D) the consent includes a signature by the surviving spouse that was witnessed by either a notary public or a representative of the retirement system; and

- (E) the completed consent and the member's election are received by the system before the member's death;
2. the member and the surviving spouse were legally separated when the member's election was filed with the retirement system;
 3. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of the member's death; or
 4. the retirement board determined that the consent required under paragraph one of this subdivision could not be obtained because
 - (A) there is no surviving spouse;
 - (B) the surviving spouse could not be located between the time the member elected that the surviving spouse would not be paid at least one-half of the death benefits and the date of the member's death; or
 - (C) such other circumstances as the retirement board may prescribe by written plan regulations.
- j. Notwithstanding any other provision of this section to the contrary, a member's election must comply with the terms of subdivision i of this section to be effective.
- k. If the retirement board of the system acts with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, in—
1. relying on a consent referred to in paragraph one of subdivision i of this section, or
 2. making a determination under paragraph four of subdivision i of this section,
- then such consent or determination shall be treated as valid for purpose of discharging the retirement system and the board from liability to the extent of payments made pursuant to such action. These discharges shall not deprive the surviving spouse of any right to which the surviving spouse would otherwise be entitled from any party other than the retirement system or the board.

Annuity Benefit Module

NYS ESSA Section 3: Section 513 of the Education Law

5. Notwithstanding any other provision of this section to the contrary, a member's retirement allowance payable under this section shall be paid as Option 3, so that upon his or her death, if the member has a surviving spouse who was married to the member on the date the member filed his or her retirement application, or on the date the member filed his or her last effective option selection, if any, whichever is later, the surviving spouse shall be paid for life survivor benefit payments, each of which is equal to at least one-half the amount of the member's retirement allowance payments payable under this section unless the member elects that the surviving spouse receive either no survivor benefit payments or survivor benefit payments, each of which is less than one-half the amount of the member's retirement allowance payments, and:

- a.
 - (i) the member's surviving spouse consents, after the date of the member's marriage, in writing to the member's election;
 - (ii) the spousal survivor written consent [is on a plan form addressed to the member and the form](#) sets forth:
 - (A) the amount of the Option 3 monthly benefit entitlements of the member and of the spouse,
 - (B) the time each individual would be entitled under Option 3 to those benefits,
 - (C) the surviving spouse's right to prevent any future member elections regarding the member's survivor benefits without the surviving spouse's consent unless the consent of the surviving spouse expressly permits member elections without any further consent by the surviving spouse, and
 - (D) the fact that consenting to the member's survivor benefit election would result in the surviving spouse receiving no survivor benefits or smaller survivor benefits than the surviving spouse would otherwise be entitled under this subdivision;
 - (iii) the consent includes an acknowledgement that the surviving spouse understands the surviving spouse's entitlement to life survivor benefit payments, each of which is equal to at least one-half the amount of the member's retirement allowance payments absent the surviving spouse's consent to the member's election, and that the surviving spouse's consent would eliminate or reduce those survivor benefits would eliminate or reduce those survivor benefits;
 - (iv) the consent includes a signature by the surviving spouse that was witnessed by either a notary public or a representative of the retirement system; and
 - (v) the completed consent and the member's election are received by the system

before the payability date;

- b. the member and the surviving spouse were legally separated when the member's election was filed with the retirement system;
- c. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date the member's election is filed with the retirement system; or
- d. the retirement board determined that the consent required under paragraph a of this subdivision could not be obtained because
 - (i) there is no surviving spouse;
 - (ii) the surviving spouse could not be located between the time the member elected that the surviving spouse would not be paid a retirement allowance of at least fifty percent of the amount paid to such member and the date of the filing of the member's application for a retirement allowance; or
 - (iii) such other circumstances as the retirement board may prescribe by written plan regulations.

6. Notwithstanding any other provision of this section to the contrary, a member's election must comply with the terms of subdivision five of this section to be effective.

7. If the retirement board of the system acts with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, in—

- a. relying on a consent referred to in paragraph a of subdivision five of this section, or
- b. making a determination under paragraph c of subdivision five of this section,

then such consent or determination shall be treated as valid for purpose of discharging the retirement system and the board from liability to the extent of payments made pursuant to such action. These discharges shall not deprive the surviving spouse of any right to which the surviving spouse would otherwise be entitled from any party other than the retirement system or the board. To the extent the [retirement](#) system and the board were completely discharged for any annuity benefit payments that the system made to the member in excess of what the member would have been entitled under Option 3 if the member's beneficiary had been the surviving spouse, such excess payments shall be called Discharged Payments. The retirement system may recover the actuarial equivalent of those Discharged Payments, computed using the plan's actuarial factors, from the surviving spouse with offsets against the system's monthly annuity benefit payments to the surviving spouse payable under this section, but may not thereby reduce any of those benefit payments by more than 10%.

Effective Date Provision

NYS ESSA Section 14

Section 14. This act shall take effect for all benefit payments beginning after December 31 of the year immediately after the year the bill is enacted other than those payments made pursuant to a benefit designation executed before such date. This act shall not change the law pertaining to a prenuptial agreement or a postnuptial agreement executed on or before December 31 of the year immediately after the year the bill is enacted. This act shall not change the law pertaining to a domestic relations order or a support order.

STATE OF NEW YORK

 BILL NUMBER _____

IN _____

_____, 2022

Passed on Home Rule Request pursuant to Article IX, Section 2(b)(2) of the Constitution
Introduced by: _____

AN ACT to amend the retirement and social security law, and the administrative code of the City of New York in relation to enacting the “New York State & New York City Equity for Surviving Spouses Act,” which would require any public retirement plan for employees of the New York State, the City of New York, or any other New York locality to provide that (1) the default retirement annuity payment form be a joint and survivor annuity in which an employee’s surviving spouse is the employee’s beneficiary with a right to lifetime payments equal to at least 50% of the annuity benefits to which the employee was entitled; and (2) the default beneficiary for at least 50% of the employee’s pre-retirement death benefits be the employee’s surviving spouse. These default choices are more consistent with the equitable preferences of most married employees to protect their surviving spouses than the current default choices. In order to further protect surviving spouses, particularly those staying home to raise children, the amendment would reinforce the elective share rights of surviving spouses by prohibiting an employee from changing either default designation without the written consent of the employee’s surviving spouse.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as the “New York State & New
2 York City Equity for Surviving Spouses Act.”

3
4

5 Section 2. Section 448 of the retirement and social security law, as amended by L. 2021, ch. 376,
6 § 1, is amended to read as follows:

7
8

§ 448. Death benefits

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

1 a. A member of a retirement system who is subject to the provisions of this article, exclusive of
 2 those members for whom provision is made pursuant to subdivision b of this section, shall, at the
 3 time of first becoming a member thereof, make an election, which shall be irrevocable, for
 4 coverage for financial protection in the event of death in service, between the two following
 5 benefits:

6 1. A benefit upon the death of a member in service equal to one month's salary for
 7 each full year of service up to a maximum of three years' salary upon the
 8 completion of thirty-six full years of service, or in the event that a member is
 9 eligible to retire without benefit reduction pursuant to section four hundred
 10 forty-two of this article, a benefit equal to the pension reserve, if any, which
 11 would have been payable to such member had he entered prior to the effective
 12 date of this article and died in service, subject to the benefit limitations set forth
 13 in section four hundred forty-four of this article, if this alternative provides a
 14 greater benefit, or;

15 2. A benefit upon the death of a member in service equal to the member's salary upon
 16 his or her completion of one year of service, two years' salary upon completion
 17 of two years of service, and three years' salary upon completion of three years
 18 of service. In the case of a member of a retirement system other than the New
 19 York state teachers' retirement system, the New York city employees'
 20 retirement system, the New York city board of education retirement system, the
 21 New York city teachers' retirement system, the New York state and local
 22 employees' retirement system or the New York state and local police and fire
 23 retirement system and the New York state teachers' retirement system, such
 24 benefit shall be subject to the following limitations:

25 (a) If the member last joined the retirement system prior to attainment of age
 26 fifty-two, the maximum benefit shall be three years' salary;

27 (b) If the member was age fifty-two when he or she last joined the retirement
 28 system, the maximum benefit shall be two and one-half times annual salary;

29 (c) If the member was age fifty-three when he or she last joined the retirement
 30 system, the maximum benefit shall be two years' salary;

31 (d) If the member was age fifty-four when he or she last joined the retirement
 32 system, the maximum benefit shall be one and one-half times annual salary;

33 (e) If the member was age fifty-five or older but under age sixty-five when he
 34 or she last joined the retirement system, the maximum benefit shall be one year's
 35 salary; and

36 (f) If the member was age sixty-five or older when he or she last joined the
 37 retirement system, the maximum benefit shall be one thousand dollars.

38 In the case of a member of a retirement system other than the New York state teachers'
 39 retirement system, the New York city employees' retirement system, the New

1 York city board of education retirement system, the New York city teachers'
2 retirement system, the New York state and local employees' retirement system
3 or the New York state and local police and fire retirement system, commencing
4 upon attainment of age sixty-one, the benefit otherwise provided pursuant to this
5 paragraph shall be reduced while the member is in service to ninety per centum
6 of the benefit otherwise payable and each year thereafter the benefit payable
7 shall be reduced by an amount equal to ten per centum per year of the original
8 benefit otherwise payable, but not below ten per centum of the original benefit
9 otherwise payable.

10 In the case of a member of the New York state teachers' retirement system,
11 commencing upon attainment of age sixty-one, the benefit otherwise provided
12 pursuant to this paragraph shall be reduced while the member is in service to
13 ninety-six per centum of the benefit otherwise payable and each year thereafter
14 the benefit payable shall be reduced by an amount equal to four per centum per
15 year of the original benefit otherwise payable, but not below sixty per centum of
16 the original benefit otherwise payable. In the case of a member of the New York
17 city employees' retirement system, the New York city board of education
18 retirement system or the New York city teachers' retirement system,
19 commencing upon attainment of age sixty-one, the benefit otherwise provided
20 pursuant to this paragraph shall be reduced while the member is in service to
21 ninety-five per centum of the benefit otherwise payable and each year thereafter
22 the benefit payable shall be reduced by an amount equal to five per centum per
23 year of the original benefit otherwise payable, but not below fifty per centum of
24 the original benefit otherwise payable. In the case of any member of the New
25 York state and local employees' retirement system who is permitted to retire
26 without regard to age or a member of the New York state and local police and
27 fire retirement system, commencing upon attainment of age sixty-one, the
28 benefit otherwise provided pursuant to this paragraph shall be reduced while the
29 member is in service to ninety-seven per centum of the benefit otherwise
30 payable, and each year thereafter the benefit payable shall be reduced by an
31 amount equal to three per centum per year of the original benefit otherwise
32 payable, but not below seventy per centum of the original benefit otherwise
33 payable. In the case of any other member of the New York state and local
34 employees' retirement system, commencing upon attainment of age sixty-one,
35 the benefit otherwise provided pursuant to this paragraph shall be reduced while
36 the member is in service to ninety-six per centum of the benefit otherwise
37 payable, and each year thereafter the benefit payable shall be reduced by an
38 amount equal to four per centum per year of the original benefit otherwise
39 payable, but not below sixty per centum of the original benefit otherwise
40 payable. Upon retirement from any retirement system, the benefit in force shall
41 be reduced by fifty per centum; upon completion of the first year of retirement,
42 the benefit in force at the time of retirement shall be reduced by an additional
43 twenty-five per centum, and upon commencement of the third year of retirement,

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

1 the benefit shall be ten per centum of the benefit in force at age sixty, if any, or
 2 at the time of retirement if retirement preceded such age; provided, however, the
 3 benefit in retirement shall not be reduced below ten per centum of the benefit in
 4 force at age sixty, if any, or at the time of retirement if retirement preceded such
 5 age. Notwithstanding any other provision of this paragraph to the contrary, the
 6 benefit for a retiree from the New York state and local employees' retirement
 7 system shall not be reduced below ten per centum of the benefit in force at the
 8 time of retirement.

9 3. If a member dies in service without having made the election specified in this
 10 subdivision within ninety days after first becoming a member, or within the
 11 period prescribed by the retirement system of which he is a member if such
 12 period is less than ninety days, he shall be deemed to have made the election
 13 specified in paragraph two.

14 4. Notwithstanding any other provision of this article, any member of the New York
 15 state teachers' retirement system who joined on or after July first, nineteen
 16 hundred seventy-three and before July first, nineteen hundred seventy-four may
 17 change the election set forth in this subdivision by filing a new election on or
 18 before June thirtieth, nineteen hundred eighty-nine. The election filed pursuant
 19 to this paragraph shall be irrevocable.

20 5. Notwithstanding any provision of this article, a member of a retirement system
 21 subject to the provisions of this article who last joined such system on or after
 22 January first, two thousand one who is not covered by the death benefit
 23 calculation provided in subdivision b of this section shall, upon a qualifying
 24 death, be covered by the death benefit calculation provided pursuant to
 25 paragraph two of this subdivision and shall not be entitled to elect between the
 26 death benefit calculations provided in paragraphs one and two of this
 27 subdivision. Any individual who last joined such system before January first,
 28 two thousand one who is not covered by the death benefit calculation provided
 29 in subdivision b of this section shall be covered, upon a qualifying death, by the
 30 death benefit calculation provided by paragraph two of this subdivision unless
 31 such individual had timely elected death benefit coverage under the calculation
 32 provided by paragraph one of this subdivision and, upon such death, it is
 33 determined that the benefit, as calculated under such paragraph one would be
 34 greater than as calculated under such paragraph two, in which case the benefit
 35 calculated under such paragraph one shall be payable.

36 b. A member of a retirement system subject to the provisions of this article who is a police officer,
 37 firefighter, correction officer or sanitation worker and is in a plan which permits immediate
 38 retirement upon completion of a specified period of service without regard to age or who is subject
 39 to the provisions of subdivision b of section four hundred forty-five of this article, shall upon
 40 completion of ninety days of service be covered for financial protection in the event of death in
 41 service pursuant to this subdivision.

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

- 1 1. Such death benefit shall be equal to three times the member's salary raised to the
2 next highest multiple of one thousand dollars, but in no event shall it exceed
3 three times the maximum salary specified in section one hundred thirty of the
4 civil service law or, in the case of a member of a retirement system other than
5 the New York city employees' retirement system, the New York city police
6 pension fund, subchapter two or the New York city fire department pension
7 fund, subchapter two, the specific limitations specified for age of entrance into
8 service contained in subparagraphs (b), (c), (d), (e) and (f) of paragraph two of
9 subdivision a of this section.
- 10 2. Provided further, notwithstanding any other provision of this article to the contrary,
11 where the member is a police officer or firefighter and would have been entitled
12 to a service retirement benefit at the time of his or her death and where his or
13 her death occurs on or after July first, two thousand, the beneficiary or
14 beneficiaries nominated for the purposes of this subdivision may elect to receive,
15 in a lump sum, an amount payable which shall be equal to the pension reserve
16 that would have been established had the member retired on the date of his or
17 her death, or the value of the death benefit and the reserve-for-increased-take-
18 home-pay, if any, whichever is greater, provided further that for the purpose of
19 determining entitlement to the benefit provided by this subdivision, and
20 notwithstanding subdivision j of section three hundred forty-one of this chapter,
21 where the member is an officer or member of the state police the total number
22 of days of unused sick leave and accumulated vacation credit accrued by the
23 member at the time of his or her death shall be considered in meeting the total
24 creditable service required to qualify for a service retirement benefit provided
25 without regard to age where his or her death occurs on or after July second, two
26 thousand nine. Provided further that where such police officer or firefighter dies
27 on or after July first, two thousand, after having retired from service, but before
28 a first payment of a retirement allowance, such person shall be deemed to have
29 been in service at the time of his or her death for the purposes of this subdivision
30 only, and provided further that the pension reserve established pursuant to this
31 paragraph for a person who dies after retiring from service, but before first
32 payment of a retirement allowance, shall be determined as of the date of
33 retirement and any pension payments payable for the period of time prior to the
34 retiree's death shall be deducted from any benefits payable pursuant to this
35 subdivision.
- 36 c. For the purpose of this section, salary shall be the regular compensation earned during the
37 member's last twelve months of service in full pay status as a member or, if he or she had not
38 completed twelve months of service prior to the date of death, but was subject to the provisions of
39 subdivision b of this section, the compensation he or she would have earned had he or she worked
40 for the twelve months prior to such date; provided, however, for the purpose of this section salary
41 shall exclude any form of termination pay (which shall include any compensation in anticipation
42 of retirement), or any lump sum payment for deferred compensation sick leave, or accumulated

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

1 vacation credit or any other payment for time not worked (other than compensation received while
 2 on sick leave or authorized leave of absence) and in no event shall it exceed the maximum salary
 3 specified in section one hundred thirty of the civil service law, as added by part B of chapter ten
 4 of the laws of two thousand eight, or the maximum salary specified in section one hundred thirty
 5 of the civil service law, as hereafter amended, whichever is greater.

6 d. The benefits provided pursuant to this section are in lieu of all other benefits provided by this
 7 or any other state or local law exclusive of a benefit provided under the workmen's compensation
 8 law, the civil service law or group life insurance; provided, however, a beneficiary of a member
 9 eligible for a benefit as the result of a service connected accident, may elect to receive such other
 10 benefit in lieu of the benefit provided pursuant to this section.

11 e. For the purposes of this section:

12 1. A member who dies while off the payroll shall be considered to be in service
 13 provided he or she (a) was on the payroll in such service and paid within a period
 14 of twelve months prior to his or her death, or was on the payroll in the service
 15 upon which membership is based at the time he or she was ordered to active duty
 16 pursuant to Title 10 of the United States Code, with the armed forces of the
 17 United States or to service in the uniformed services pursuant to Chapter 43 of
 18 Title 38 of the United States Code and died while on such active duty or service
 19 in the uniformed services on or after June fourteenth, two thousand five, (b) had
 20 not been otherwise gainfully employed since he or she ceased to be on such
 21 payroll and (c) had credit for one or more years of continuous service since he
 22 or she last entered or reentered the service of his or her employer;
 23 notwithstanding any other provision of law to the contrary, a member of the New
 24 York city employees' retirement system or the board of education retirement
 25 system of the city of New York shall be deemed to have died on the payroll for
 26 the purposes of this section in the event that death occurs while such member is
 27 on an authorized leave of absence without pay for medical reasons which has
 28 continuously been in effect since the member was last paid on the payroll in such
 29 service, provided, however, that such member was on the payroll in such service
 30 and paid within the four-year period prior to his or her death; and

31 2. The benefit payable shall be in addition to any payment made on account of a
 32 member's accumulated contributions.

33 3. Provided, further, that any such member ordered to active duty pursuant to Title 10
 34 of the United States Code, with the armed forces of the United States or to
 35 service in the uniformed services pursuant to Chapter 43 of Title 38 of the United
 36 States Code who died prior to rendering the minimum amount of service
 37 necessary to be eligible for this benefit shall be considered to have satisfied the
 38 minimum service requirement.

39 f. Notwithstanding the provisions of any other law to the contrary and solely for the purpose of

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 determining eligibility for the death benefit payable pursuant to this section, a person subject to
 2 this section shall be considered to have died while in teaching service provided such person was
 3 in such service at the time he or she was ordered to active duty pursuant to Title 10 of the United
 4 States Code, with the armed forces of the United States or to service in the uniformed services
 5 pursuant to Chapter 43 of Title 38 of the United States Code and died while on such active duty or
 6 service in the uniformed services on or after June fourteenth, two thousand five. Provided, further,
 7 that any such person ordered to active duty pursuant to Title 10 of the United States Code, with
 8 the armed forces of the United States or to service in the uniformed services pursuant to Chapter
 9 43 of Title 38 of the United States Code who died prior to rendering the minimum amount of
 10 service necessary to be eligible for this benefit shall be considered to have satisfied the minimum
 11 service requirements.

12 g. A member, or on the death of such member, the person nominated by him or her to receive his
 13 or her death benefit, may provide, by written designation, duly executed and filed with the
 14 comptroller, that such death benefit and the reserve-for-increased-take-home-pay shall be paid in
 15 the form of an annuity. Such designation shall be filed prior to or within ninety days after the death
 16 of the member. The amount of such annuity shall be determined as the actuarial equivalent of such
 17 death benefit and reserve on the basis of the age of such beneficiary at the time of the member's
 18 death. For the purposes of this subdivision, the mortality and interest rates used in determining this
 19 annuity shall be the rates in effect on the date of the death of such member.

20 h. Notwithstanding any other provision of this section to the contrary, at least one-half of the death
 21 benefits payable under this section, including the reserve-for-increased-take-home-pay, and any
 22 accumulated contributions remaining at the time of the member's death, payable under this section
 23 shall be paid to the member's surviving spouse, if any, unless the member elects that the surviving
 24 spouse receive less than one-half of the death benefits, and:

25 1. (a) the member's surviving spouse consents, after the date of the member's
 26 marriage, in writing to the member's election;

27 (b) the spousal survivor written consent is on a plan form addressed to the
 28 member, and the form sets forth:

29 (i) the amount of the member's death benefits,

30 (ii) the entitlement of the surviving spouse to at least half of the death
 31 benefits,

32 (iii) the surviving spouse's right to prevent any future member elections
 33 regarding the member's death benefits without the surviving spouse's
 34 consent unless the consent of the surviving spouse expressly permits
 35 member elections without any further consent by the surviving spouse,
 36 and

37 (iv) the fact that consenting to the member's election would result in the
 38 surviving spouse receiving no death benefits or less death benefits than
 39 the surviving spouse would otherwise be entitled under this subdivision;

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 (c) the consent includes an acknowledgement that the surviving spouse
 2 understands the surviving spouse's entitlement to be paid at least one-half the
 3 death benefits absent the surviving spouse's consent to the member's election,
 4 and that the surviving spouse's consent would eliminate or reduce these death
 5 benefit payments;

6 (d) the consent includes a signature by the surviving spouse that was witnessed
 7 by either a notary public or a representative of the retirement system; and

8 (e) the completed consent and the member's election are received by the system
 9 before the member's death;

10 2. the member and the surviving spouse were legally separated when the member's
 11 election was filed with the retirement system;

12 3. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of
 13 Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of
 14 the member's death; and

15 4. the retirement board determined that the consent required under paragraph one of
 16 this subdivision could not be obtained from the surviving spouse because

17 (a) there is no surviving spouse;

18 (b) the surviving spouse could not be located between the time the member
 19 elected that the surviving spouse would not be paid at least one-half of the death
 20 benefits and the date of the member's death; or

21 (c) such other circumstances as the retirement board may prescribe by written
 22 plan regulations.

23 i. Notwithstanding any other provision of this section to the contrary, a member's election must
 24 comply with the terms of subdivision h of this section to be effective.

25 j. If the retirement board of the system acts with the care, skill, prudence, and diligence under the
 26 circumstances then prevailing that a prudent man acting in a like capacity and familiar with such
 27 matters would use in the conduct of an enterprise of a like character and with like aims, in—

28 1. relying on a consent referred to in paragraph one of subdivision h of this section, or

29 2. making a determination under paragraph four of subdivision h of this section,

30 then such consent or determination shall be treated as valid for purpose of discharging the
 31 retirement system and the board from liability to the extent of payments made pursuant to such
 32 action. These discharges shall not deprive the surviving spouse of any right to which the surviving
 33 spouse would otherwise be entitled from any party other than the retirement system or the board.

34
 35
 36 Section 3. Section 448-a of the retirement and social security law, as amended by L. 1998, ch.
 37 388, § 3, is amended to read as follows:

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

- 1
2 § 448-a. Death benefit for vested members who die prior to retirement
- 3 a. A death benefit plus the reserve-for-increased-take-home-pay, if any, shall be payable upon the
4 death of a member of a retirement system who:
- 5 1. Died before the effective date of retirement while a member of such retirement
6 system;
- 7 2. Had at least ten years of credited service at the time of death; and
- 8 3. Died at a time and in a manner which did not result in the eligibility of the member's
9 estate or any beneficiary to receive any death benefits from such retirement
10 system on account of such death.
- 11 b. Benefits provided under this section shall be payable to the member's estate or the beneficiary
12 or beneficiaries nominated by the member on a designation of beneficiary form filed with the
13 administrative head of such retirement system.
- 14 c. The amount of the benefit payable pursuant to this section shall be equal to one-half of the
15 amount of the ordinary death benefit which would have been payable had the member's death
16 occurred on the last day of service upon which membership was based.
- 17 d. Notwithstanding any other provision of this section to the contrary, at least one-half of the death
18 benefits payable under this section, including the reserve-for-increased-take-home-pay remaining
19 at the time of the member's death, payable under this section shall be paid to the member's
20 surviving spouse, if any, unless the member elects that the surviving spouse receive less than one-
21 half of the death benefits, and:
- 22 1. (A) the member's surviving spouse consents, after the date of the member's
23 marriage, in writing to the member's election;
- 24 (B) the spousal survivor written consent is on a plan form addressed to the
25 member and the form sets forth:
- 26 (i) the amount of the member's death benefits,
- 27 (ii) the entitlement of the surviving spouse to at least half of the death
28 benefits,
- 29 (iii) the surviving spouse's right to prevent any future member elections
30 regarding the member's death benefits without the surviving spouse's
31 consent unless the consent of the surviving spouse expressly permits
32 member elections without any further consent by the surviving spouse,
33 and
- 34 (iv) the fact that consenting to the member's election would result in the
35 surviving spouse receiving no death benefits or less death benefits than

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

1 the surviving spouse would otherwise be entitled under this subdivision;

2 (C) the consent includes an acknowledgement that the surviving spouse
3 understands the surviving spouse's entitlement to be paid at least one-half the
4 death benefits absent the surviving spouse's consent to the member's election,
5 and that the surviving spouse's consent would eliminate or reduce these death
6 benefit payments;

7 (D) the consent includes a signature by the surviving spouse that was witnessed
8 by either a notary public or a representative of the retirement system; and,

9 (E) the completed consent and the member's election are received by the system
10 before the member's death;

11 2. the member and the surviving spouse were legally separated when the member's
12 election was filed with the retirement system;

13 3. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of
14 Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of the
15 member's death; or

16 4. the retirement board determined that the consent required under paragraph one of
17 this subdivision could not be obtained from the surviving spouse because

18 (A) there is no surviving spouse;

19 (B) the surviving spouse could not be located between the time the member
20 elected that the surviving spouse would not be paid at least one-half of the death
21 benefits and the date of the member's death; or

22 (C) such other circumstances as the retirement board may prescribe by written
23 plan regulations.

24 e. Notwithstanding any other provision of this section to the contrary, a member's election must
25 comply with the terms of subdivision d of this section to be effective.

26 f. If the retirement board of the system acts with the care, skill, prudence, and diligence under the
27 circumstances then prevailing that a prudent man acting in a like capacity and familiar with such
28 matters would use in the conduct of an enterprise of a like character and with like aims, in—

29 1. relying on a consent referred to in paragraph one of subdivision d of this section, or

30 2. making a determination under paragraph four of subdivision d of this section,

31 then such consent or determination shall be treated as valid for purpose of discharging the
32 retirement system and the board from liability to the extent of payments made pursuant to such
33 action. These discharges shall not deprive the surviving spouse of any right to which the surviving
34 spouse would otherwise be entitled from any party other than the retirement system or the board.

35
36
EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

1 Section 4. Section 508 of the retirement and social security law, as amended by L. 2021, ch. 376,
2 § 2, is amended to read as follows:
3

4 § 508. Death benefits

5 a. A member of a retirement system who is subject to the provisions of this article, exclusive of
6 those members for whom provision is made pursuant to subdivision b of this section, shall, at
7 the time of first becoming a member thereof, make an election, which shall be irrevocable, for
8 coverage for financial protection in the event of death in service, between the two following
9 benefits:

10 1. A benefit upon the death of a member in service equal to one month's salary for
11 each full year of service up to a maximum of three years' salary upon the
12 completion of thirty-six full years of service, or in the event that a member is
13 eligible to retire without benefit reduction pursuant to section five hundred three
14 of this article, a benefit equal to the pension reserve, if any, which would have
15 been payable to such member had he entered prior to the effective date of this
16 article¹ and died in service; or

17 2. A benefit upon the death of a member in service equal to the member's salary upon
18 his or her completion of one year of service, two years' salary upon completion
19 of two years of service, and three years' salary upon completion of three years
20 of service. In the case of a member of a retirement system other than the New
21 York state teachers' retirement system, the New York city employees'
22 retirement system, the New York city board of education retirement system, the
23 New York city teachers' retirement system, or the New York state and local
24 employees' retirement system and the New York state teachers' retirement
25 system, such benefit shall be subject to the following limitations:

26 (a) If the member last joined the retirement system prior to attainment of age
27 fifty-two, the maximum benefit shall be three years' salary;

28 (b) If the member was age fifty-two when he or she last joined the retirement
29 system, the maximum benefit shall be two and one-half times annual salary;

30 (c) If the member was age fifty-three when he or she last joined the retirement
31 system, the maximum benefit shall be two years' salary;

32 (d) If the member was age fifty-four when he or she last joined the retirement
33 system, the maximum benefit shall be one and one-half times annual salary;

34 (e) If the member was age fifty-five or older but under age sixty-five when he
35 or she last joined the retirement system, the maximum benefit shall be one year's
36 salary; and

37 (f) If the member was age sixty-five or older when he or she last joined the
38 retirement system, the maximum benefit shall be one thousand dollars.

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

1 In the case of a member of a retirement system other than the New York state teachers'
2 retirement system, the New York city employees' retirement system, the New
3 York city board of education retirement system, the New York city teachers'
4 retirement system, or the New York state and local employees' retirement
5 system, commencing upon attainment of age sixty-one, the benefit otherwise
6 provided pursuant to this paragraph shall be reduced while the member is in
7 service to ninety per centum of the benefit otherwise payable and each year
8 thereafter the benefit payable shall be reduced by an amount equal to ten per
9 centum per year of the original benefit otherwise payable, but not below ten per
10 centum of the original benefit otherwise payable.

11 Notwithstanding any other provision of this paragraph, in the case of a member of the
12 New York state teachers' retirement system, commencing upon attainment of
13 age sixty-one, the benefit otherwise provided pursuant to this paragraph shall be
14 reduced while the member is in service to ninety-six per centum of the benefit
15 otherwise payable, and each year thereafter the benefit payable shall be reduced
16 by an amount equal to four per centum per year of the original benefit otherwise
17 payable, but not below sixty per centum of the original benefit otherwise
18 payable. In the case of a member of the New York city employees' retirement
19 system, the New York city board of education retirement system or the New
20 York city teachers' retirement system, commencing upon attainment of age
21 sixty-one, the benefit otherwise provided pursuant to this paragraph shall be
22 reduced while the member is in service to ninety-five per centum of the benefit
23 otherwise payable and each year thereafter the benefit payable shall be reduced
24 by an amount equal to five per centum per year of the original benefit otherwise
25 payable, but not below fifty per centum of the original benefit otherwise payable.
26 In the case of any member of the New York state and local employees'
27 retirement system who is permitted to retire without regard to age, commencing
28 upon attainment of age sixty-one, the benefit otherwise provided pursuant to this
29 paragraph shall be reduced while the member is in service to ninety-seven per
30 centum of the benefit otherwise payable, and each year thereafter the benefit
31 payable shall be reduced by an amount equal to three per centum per year of the
32 original benefit otherwise payable, but not below seventy per centum of the
33 original benefit otherwise payable. In the case of any other member of the New
34 York state and local employees' retirement system, commencing upon
35 attainment of age sixty-one, the benefit otherwise provided pursuant to this
36 paragraph shall be reduced while the member is in service to ninety-six per
37 centum of the benefit otherwise payable, and each year thereafter the benefit
38 payable shall be reduced by an amount equal to four per centum per year of the
39 original benefit otherwise payable, but not below sixty per centum of the original
40 benefit otherwise payable. Upon retirement from any retirement system, the
41 benefit in force shall be reduced by fifty per centum; upon completion of the
42 first year of retirement, the benefit in force at the time of retirement shall be
43 reduced by an additional twenty-five per centum, and upon commencement of

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

1 the third year of retirement, the benefit shall be ten per centum of the benefit in
 2 force at age sixty, if any, or at the time of retirement if retirement preceded such
 3 age; provided, however, the benefit in retirement shall not be reduced below ten
 4 per centum of the benefit in force at age sixty, if any, or at the time of retirement
 5 if retirement preceded such age. Notwithstanding any other provision of this
 6 paragraph to the contrary, the benefit for a retiree from the New York state and
 7 local employees' retirement system shall not be reduced below ten per centum
 8 of the benefit in force at the time of retirement.

9 3. If a member dies in service without having made the election specified in this
 10 subdivision within ninety days after first becoming a member, or within the
 11 period prescribed by the retirement system of which he is a member if such
 12 period is less than ninety days, he shall be deemed to have made the election
 13 specified in paragraph two.

14 4. Notwithstanding any provision of this article, a member of a retirement system
 15 subject to the provisions of this article who last joined such system on or after
 16 January first, two thousand one who is not covered by the death benefit
 17 calculation provided in subdivision b of this section shall, upon a qualifying
 18 death, be covered by the death benefit calculation provided pursuant to
 19 paragraph two of this subdivision and shall not be entitled to elect between the
 20 death benefit calculations provided in paragraphs one and two of this
 21 subdivision. Any individual who last joined such system before January first,
 22 two thousand one who is not covered by the death benefits calculation provided
 23 in subdivision b of this section shall be covered, upon a qualifying death, by the
 24 death benefit calculation provided by paragraph two of this subdivision unless
 25 such individual had timely elected death benefit coverage under the calculation
 26 provided by paragraph one of this subdivision and, upon such death, it is
 27 determined that the benefit, as calculated under such paragraph one would be
 28 greater than as calculated under such paragraph two, in which case the benefit
 29 calculated under such paragraph one shall be payable.

30 b. A member of a retirement system subject to the provisions of this article who is a police officer,
 31 firefighter, correction officer, investigator revised plan member or sanitation worker and is in a
 32 plan which permits immediate retirement upon completion of a specified period of service without
 33 regard to age or who is subject to the provisions of section five hundred four or five hundred five
 34 of this article, shall upon completion of ninety days of service be covered for financial protection
 35 in the event of death in service pursuant to this subdivision. Such death benefit shall be equal to
 36 three times the member's salary raised to the next highest multiple of one thousand dollars, but in
 37 no event shall it exceed three times the maximum salary specified in section one hundred thirty of
 38 the civil service law or, in the case of a member of a retirement system other than the New York
 39 city employees' retirement system, or in the case of a member of the New York city employees'
 40 retirement system who is a New York city uniformed correction/sanitation revised plan member
 41 or an investigator revised plan member, the specific limitations specified for age of entrance into
 42 service contained in subparagraphs (b), (c), (d), (e) and (f) of paragraph two of subdivision a of

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 this section.

2 c. For the purpose of this section, salary shall be the regular compensation earned during the
 3 member's last twelve months of service in full pay status as a member or, if he or she had not
 4 completed twelve months of service prior to the date of death, but was subject to the provisions of
 5 subdivision b of this section, the compensation he or she would have earned had he or she worked
 6 for the twelve months prior to such date; provided, however, for the purpose of this section salary
 7 shall exclude any form of termination pay (which shall include any compensation in anticipation
 8 of retirement), or any lump sum payment for deferred compensation sick leave, or accumulated
 9 vacation credit or any other payment for time not worked (other than compensation received while
 10 on sick leave or authorized leave of absence) and in no event shall it exceed the maximum salary
 11 specified in section one hundred thirty of the civil service law, as added by part B of chapter ten
 12 of the laws of two thousand eight, or the maximum salary specified in section one hundred thirty
 13 of the civil service law, as hereafter amended, whichever is greater.

14 d. The benefits provided pursuant to this section are in lieu of all other benefits provided by this
 15 or any other state or local law exclusive of a benefit provided under the workmen's compensation
 16 law, the civil service law or group life insurance; provided, however, a beneficiary of a member
 17 eligible for a benefit as the result of a service-connected accident, may elect to receive such other
 18 benefit in lieu of the benefit provided pursuant to this section.

19 e. For the purposes of this section:

20 1. A member who dies while off the payroll shall be considered to be in service
 21 provided he or she (a) was on the payroll in such service and paid within a period
 22 of twelve months prior to his or her death, or was on the payroll in the service
 23 upon which membership is based at the time he or she was ordered to active duty
 24 pursuant to Title 10 of the United States Code, with the armed forces of the
 25 United States or to service in the uniformed services pursuant to Chapter 43 of
 26 Title 38 of the United States Code and died while on such active duty or service
 27 in the uniformed services on or after June fourteenth, two thousand five, (b) had
 28 not been otherwise gainfully employed since he or she ceased to be on such
 29 payroll and (c) had credit for one or more years of continuous service since he
 30 or she last entered or reentered the service of his or her employer; and

31 2. The benefit payable shall be in addition to any payment made on account of a
 32 member's accumulated contributions.

33 3. Provided, further, that any such member ordered to active duty pursuant to Title 10
 34 of the United States Code, with the armed forces of the United States or to
 35 service in the uniformed services pursuant to Chapter 43 of Title 38 of the United
 36 States Code who died prior to rendering the minimum amount of service
 37 necessary to be eligible for this benefit shall be considered to have satisfied the
 38 minimum service requirement.

39 f. With respect to a member of the New York state and local employees' retirement system who

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 was covered by paragraph two of subdivision a of the former section five hundred eight of this
 2 chapter, as added by chapter eight hundred ninety of the laws of nineteen hundred seventy-six,
 3 prior to its repeal pursuant to chapter six hundred seventeen of the laws of nineteen hundred eighty-
 4 six and who is entitled under the state constitution to have benefits calculated under such provision
 5 as it read prior to such nineteen hundred eighty-six amendment, the lump sum death benefit shall
 6 be determined pursuant to subdivision a of this section. With respect to a member of the New York
 7 state and local employees' retirement system who was covered by subdivision b of the former
 8 section five hundred eight of this chapter, as added by chapter eight hundred ninety of the laws of
 9 nineteen hundred seventy-six, prior to its repeal pursuant to chapter six hundred seventeen of the
 10 laws of nineteen hundred eighty-six and who is entitled under the state constitution to have benefits
 11 calculated under such provision as it read prior to such nineteen hundred eighty-six amendment,
 12 the lump sum death benefit shall be determined pursuant to subdivision a of this section.

13 g. Notwithstanding any other provision of this section to the contrary, at least one-half of the death
 14 benefits payable under this section, including any accumulated contributions remaining at the time
 15 of the member's death, payable under this section shall be paid to the member's surviving spouse,
 16 if any, unless the member elects that the surviving spouse receive less than one-half of the death
 17 benefits, and:

18 1. (a) the member's surviving spouse consents, after the date of the member's
 19 marriage, in writing to the member's election;

20 (b) the spousal survivor written consent is on a plan form addressed to the
 21 member and the form sets forth:

22 (i) the amount of the member's death benefits,

23 (ii) the entitlement of the surviving spouse to at least half of the death
 24 benefits,

25 (iii) the surviving spouse's right to prevent any future member elections
 26 regarding the member's death benefits without the surviving spouse's
 27 consent unless the consent of the surviving spouse expressly permits
 28 member elections without any further consent by the surviving spouse,
 29 and

30 (iv) the fact that consenting to the member's election would result in the
 31 surviving spouse receiving no death benefits or less death benefits than
 32 the surviving spouse would otherwise be entitled under this subdivision;

33 (c) the consent includes an acknowledgement that the surviving spouse
 34 understands the surviving spouse's entitlement to be paid at least one-half the
 35 death benefits absent the surviving spouse's consent to the member's election,
 36 and that the surviving spouse's consent would eliminate or reduce these death
 37 benefit payments;

38 (d) the consent includes a signature by the surviving spouse that was witnessed
 39 by either a notary public or a representative of the retirement system; and

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 (e) the completed consent and the member's election are received by the system
 2 before the member's death;

3 2. the member and the surviving spouse were legally separated when the member's
 4 election was filed with the retirement system;

5 3. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of
 6 Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of the
 7 member's death; or

8 4. the retirement board determined that the consent required under paragraph one of
 9 this subdivision could not be obtained from the surviving spouse because

10 (a) there is no surviving spouse;

11 (b) the surviving spouse could not be located between the time the member
 12 elected that the surviving spouse would not be paid at least one-half of the death
 13 benefits and the date of the member's death; or

14 (c) such other circumstances as the retirement board may prescribe by written
 15 plan regulations.

16 h. Notwithstanding any other provision of this section to the contrary, a member's election must
 17 comply with the terms of subdivision g of this section to be effective.

18 i. If the retirement board of the system acts with the care, skill, prudence, and diligence under the
 19 circumstances then prevailing that a prudent man acting in a like capacity and familiar with such
 20 matters would use in the conduct of an enterprise of a like character and with like aims, in—

21 1. relying on a consent referred to in paragraph one of subdivision g of this section, or

22 2. making a determination under paragraph four of subdivision g of this section,

23 then such consent or determination shall be treated as valid for purpose of discharging the
 24 retirement system and the board from liability to the extent of payments made pursuant to such
 25 action. These discharges shall not deprive the surviving spouse of any right to which the surviving
 26 spouse would otherwise be entitled from any party other than the retirement system or the board.

27
 28
 29 Section 5. Section 508-a of the retirement and social security law, as amended by L. 1998, ch.
 30 388, § 4, is amended to read as follows:

31
 32 § 508-a. Death benefit for vested members who die prior to retirement

33 a. A death benefit plus the reserve-for-increased-take-home-pay, if any, shall be payable upon
 34 the death of a member of a retirement system who:

35 1. Died before the effective date of retirement while a member of such retirement
 36 system;

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

- 1 2. Had at least ten years of credited service at the time of death; and
- 2 3. Died at a time and in a manner which did not result in the eligibility of the
- 3 member's estate or any beneficiary to receive any death benefits from such retirement
- 4 system on account of such death.
- 5 b. Benefits provided under this section shall be payable to the member's estate or the beneficiary
- 6 or beneficiaries nominated by the member on a designation of beneficiary form filed with the
- 7 administrative head of such retirement system.
- 8 c. The amount of the benefit payable pursuant to this section shall be equal to one-half of the
- 9 amount of the ordinary death benefit which would have been payable had the member's death
- 10 occurred on the last day of service upon which membership was based.
- 11 d. Notwithstanding any other provision of this section to the contrary, at least one-half of the death
- 12 benefits payable under this section, including the reserve-for-increased-take-home-pay remaining
- 13 at the time of the member's death, payable under this section shall be paid to the member's
- 14 surviving spouse, if any, unless:
- 15 1. (i) the member's surviving spouse consents, after the date of the member's
- 16 marriage, in writing to the member's election;
- 17 (ii) the spousal survivor consent is on a plan form addressed to the member and
- 18 the form sets forth:
- 19 (A) the amount of the member's death benefits,
- 20 (B) the entitlement of the surviving spouse to at least half of the death
- 21 benefits,
- 22 (C) the surviving spouse's right to prevent any future member elections
- 23 regarding the member's death benefits without the surviving spouse's
- 24 consent unless the consent of the surviving spouse expressly permits
- 25 member elections without any further consent by the surviving spouse,
- 26 and
- 27 (D) the fact that consenting to the member's election would result in the
- 28 surviving spouse receiving no death benefits or less death benefits than
- 29 the surviving spouse would otherwise be entitled under this subdivision;
- 30 (iii) the consent includes an acknowledgement that the surviving spouse
- 31 understands the surviving spouse's entitlement to be paid at least one-half the
- 32 death benefits absent the surviving spouse's consent to the member's election,
- 33 and that the surviving spouse's consent would eliminate or reduce these death
- 34 benefit payments;
- 35 (iv) the consent includes a signature by the surviving spouse that was witnessed
- 36 by either a notary public or a representative of the retirement system; and
- 37 (v) the completed consent and the member's election are received by the system
- 38 before the member's death;

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

1 2. the member and the surviving spouse were legally separated when the member's
2 election was filed with the retirement system;

3 3. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of
4 Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of
5 the member's death; or

6 4. the retirement board determined that the consent required under paragraph one of
7 this subdivision could not be obtained from the surviving spouse because

8 (i) there is no surviving spouse;

9 (ii) the surviving spouse could not be located between the time the member
10 elected that the surviving spouse would not be paid at least one-half of the death
11 benefits and the date of the member's death; or

12 (iii) such other circumstances as the retirement board may prescribe by written
13 plan regulations.

14 e. Notwithstanding any other provision of this section to the contrary, a member's election must
15 comply with the terms of subdivision d of this section to be effective.

16 f. If the retirement board of the system acts with the care, skill, prudence, and diligence under the
17 circumstances then prevailing that a prudent man acting in a like capacity and familiar with such
18 matters would use in the conduct of an enterprise of a like character and with like aims, in—

19 1. relying on a consent referred to in paragraph one of subdivision d of this section, or

20 2. making a determination under paragraph four of subdivision d of this section,

21 then such consent or determination shall be treated as valid for purpose of discharging the
22 retirement system and the board from liability to the extent of payments made pursuant to such
23 action. These discharges shall not deprive the surviving spouse of any right to which the surviving
24 spouse would otherwise be entitled from any party other than the retirement system or the board.

25
26
27 Section 6. Section 514 of the retirement and social security law, as amended by L. 2010, ch. 498,
28 § 1, is amended to read as follows:

29
30 § 514. Options

31 a. A member, or if he or she is an incompetent, the member's spouse or the committee of such
32 member's property, may elect to receive the actuarial equivalent of the retirement allowance at the
33 time of retirement, in the form of a smaller retirement allowance payable to such member for life
34 and one of the following optional settlements:

35 Option one. Upon the member's death, a retirement allowance in an amount equal to
36 that paid to the member shall be paid for life to the beneficiary so designated.

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

1 Option two. Upon the member's death, a retirement allowance of ninety percent or
 2 less (measured in increments of not less than ten percent) of the amount paid to
 3 such member shall be paid for life to the beneficiary so designated.

4 Option three. A five-year certain option under which payment is made to the member
 5 for life but is guaranteed for a minimum of five years following retirement.

6 Option four. A ten-year certain option under which payment is made to the member
 7 for life but is guaranteed for a minimum of ten years following retirement.

8 Option five. Upon the member's death, a retirement allowance in an amount equal to
 9 fifty percent or one hundred percent of that paid to the member shall be paid for
 10 life to such person as he shall nominate by written designation duly
 11 acknowledged and filed with the retirement system at the time of retirement.
 12 Upon the death, prior to the death of the member, of said person so nominated,
 13 the member shall begin receiving, in lieu of the allowance then payable, an
 14 allowance equal in amount to that which would have been payable if no optional
 15 modification of the retirement allowance were in effect.

16 a-1. A member of the New York state and local employees' retirement system or the New York
 17 state and local police and fire retirement system who retires pursuant to the provisions of this
 18 article, may elect, in lieu of the options set forth in subdivision a of this section, the following
 19 optional settlement:

20 Alternative Option. The actuarial equivalent of the member's retirement allowance at
 21 the time of retirement, in the form of a smaller retirement allowance payable to
 22 such members for life and some other benefit or benefits paid either to the
 23 member or to such person or persons as he shall nominate, provided such other
 24 benefit or benefits, together with such smaller allowance, shall be certified by
 25 the actuary of such retirement system to be of equivalent actuarial value to his
 26 retirement allowance and shall be approved by the head of such retirement
 27 system and provided further that nothing herein shall require such retirement
 28 system to pay a benefit in violation of paragraph nine of subsection a of section
 29 four hundred one of the Internal Revenue Code of 1986, as amended, 26 U.S.C.
 30 § 401(a)(9).

31 b. Upon attainment of early retirement age or age sixty-two, if earlier, a member who has not
 32 terminated employment or who is not receiving service retirement, disability or vested benefits
 33 may elect a survivor annuity under option one or option two to be payable on such member's death
 34 during the period commencing with attainment of early retirement age or age sixty-two, if earlier,
 35 and ending upon (i) the attainment of normal retirement age or (ii) the date upon which service
 36 retirement or deferred vested benefits commence, if earlier or later than normal retirement age. In
 37 the event of an election hereunder, the benefits payable to the member or the member's survivor
 38 shall be actuarially reduced to reflect the cost of the survivor annuity elected. Such survivor annuity
 39 shall be paid in lieu of any other death benefit available, unless such death benefit is greater than
 40 such survivor annuity, in which event the applicable death benefit shall be paid in lieu of the

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 survivor benefit hereunder.

2 c. No option hereunder shall be permitted whereby the member would receive less than fifty
3 percent of the pension reserve during such member's life expectancy. Provided, however, the
4 preceding sentence shall not apply if the surviving beneficiary is the member's spouse.

5 d. [As added by L. 2004, ch. 446. See, also, subd. d below.] Notwithstanding any other provision
6 of this article, an option selection previously filed by a member or retired member subject to the
7 provisions of this section may be changed no later than thirty days following the date of payability
8 of his or her retirement allowance. A retired member who has been retired for disability may
9 change an option selection previously filed no later than (1) thirty days following the date on which
10 such member's application for disability retirement was approved by the retirement board or (2)
11 thirty days following the date on which such retiree was retired for disability, whichever is later.

12 d. [As added by L. 2004, ch. 651. See, also, subd. d above.] Notwithstanding any other provision
13 of this article, an option selection previously filed by a member or retired member of the New
14 York city teachers' retirement system or the New York city board of education retirement system
15 subject to the provisions of this section may be changed no later than thirty days following the date
16 of payability of his or her retirement allowance. A retired member who has been retired for
17 disability may change an option selection previously filed no later than (1) thirty days following
18 the date on which such member's application for disability retirement was approved by the
19 retirement board or (2) thirty days following the date on which such retiree was retired for
20 disability, whichever date is later.

21 e. Notwithstanding any other provision of this section to the contrary, a member's retirement
22 allowance shall be paid as Option five, so that upon his or her death, if the member has a surviving
23 spouse who was married to the member on the date the member filed his or her retirement
24 application, or on the date the member filed his or her last effective option selection, if any,
25 whichever is later, the surviving spouse shall be paid for life survivor benefit payments, each of
26 which is equal to at least one-half the amount of the member's retirement allowance payments
27 payable under this section unless the member elects that the surviving spouse receive either no
28 survivor benefit payments or survivor benefit payments, each of which is less than one-half the
29 amount of the member's retirement allowance payments, and:

- 30 1. (a) the member's surviving spouse consents after the date of the member's
31 marriage, in writing to the member's election;
32 (b) the spousal survivor written consent is on a plan form addressed to the
33 member and the form sets forth:
34 (i) the amount of the Option five monthly benefit entitlements of the
35 member and of the spouse,
36 (ii) the time each individual would be entitled under Option five to those
37 benefits,
38 (iii) the surviving spouse's right to prevent any future member elections

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

1 regarding the member's survivor benefits without the surviving spouse's
 2 consent unless the consent of the surviving spouse expressly permits
 3 member elections without any further consent by the surviving spouse,
 4 and

5 (iv) the fact that consenting to the member's survivor benefit election
 6 would result in the surviving spouse receiving no survivor benefits or
 7 smaller survivor benefits than the surviving spouse would otherwise be
 8 entitled under this subdivision;

9 (c) the consent includes an acknowledgement that the surviving spouse
 10 understands the surviving spouse's entitlement to life survivor benefit
 11 payments, each of which is equal to at least one-half the amount of the member's retirement
 12 allowance payments absent the surviving spouse's consent to the member's
 13 election, and that the surviving spouse's consent would eliminate or reduce those
 14 survivor benefits;

15 (d) the consent includes a signature by the surviving spouse that was witnessed
 16 by either a notary public or a representative of the retirement system; and

17 (e) the completed consent and the member's election are received by the system
 18 before the payability date;

19 2. the member and the surviving spouse were legally separated when the member's
 20 election was filed with the retirement system;

21 3. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of
 22 Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of
 23 the filing of the member's application for a retirement allowance; or

24 4. the retirement board determined that the consent required under paragraph 1 of this
 25 subdivision could not be obtained from the surviving spouse because

26 (a) there is no surviving spouse;

27 (b) the surviving spouse could not be located between the time the member
 28 elected that the surviving spouse would not be paid a retirement allowance of at
 29 least fifty percent of the amount paid to such member and the date of the filing
 30 of the member's application for a retirement allowance; or

31 (c) such other circumstances as the retirement board may prescribe by written
 32 plan regulations.

33 f. Notwithstanding any other provision of this section to the contrary, a member's election must
 34 comply with the terms of subdivision e of this section to be effective.

35 g. If the retirement board of the system acts with the care, skill, prudence, and diligence under the
 36 circumstances then prevailing that a prudent man acting in a like capacity and familiar with such
 37 matters would use in the conduct of an enterprise of a like character and with like aims, in—

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 1. relying on a consent referred to in paragraph one of subdivision e of this section, or

2 2. making a determination under paragraph four of subdivision e of this section,

3 then such consent or determination shall be treated as valid for purpose of discharging the
4 retirement system and the board from liability to the extent of payments made pursuant to such
5 action. These discharges shall not deprive the surviving spouse of any right to which the surviving
6 spouse would otherwise be entitled from any party other than the retirement system or the board.

7 To the extent the retirement system and the board were completely discharged for any annuity
8 benefit payments that the system made to the member in excess of what the member would have
9 been entitled under Option five if the member's beneficiary had been the surviving spouse, such
10 excess payments shall be called Discharged Payments. The retirement system may recover the
11 actuarial equivalent of those Discharged Payments, computed using the plan's actuarial factors,
12 from the surviving spouse with offsets against the system's monthly annuity benefit payments to
13 the surviving spouse payable under this section, but may not thereby reduce any of those benefit
14 payments by more than 10%.

15
16
17 Section 7. Section 606 of the retirement and social security law, as amended by L. 2021, ch. 376,
18 § 3, is amended to read as follows:

19
20 § 606. Death benefits

21 a. A member of a retirement system who is subject to the provisions of this article, exclusive of
22 those members for whom provision is made pursuant to subdivision b of this section, shall, at
23 the time of first becoming a member thereof, make an election, which shall be irrevocable, for
24 coverage for financial protection in the event of death in service, between the two following
25 benefits:

26 1. A benefit upon the death of a member in service equal to one month's salary for
27 each full year of service up to a maximum of three years' salary upon the
28 completion of thirty-six full years of service, or in the event that a member is
29 eligible to retire without benefit reduction pursuant to section six hundred three
30 of this article, a benefit equal to the pension reserve, if any, which would have
31 been payable to such member had he entered prior to the effective date of this
32 article and died in service; or

33 2. A benefit upon the death of a member in service equal to the member's salary upon
34 his or her completion of one year of service, two years' salary upon completion
35 of two years of service, and three years' salary upon completion of three years
36 of service. In the case of a member of a retirement system other than the New
37 York state teachers' retirement system, the New York city employees'
38 retirement system, the New York city board of education retirement system, the
39 New York city teachers' retirement system or the New York state and local
40 employees' retirement system and the New York state teachers' retirement

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

1 system, such benefit shall be subject to the following limitations:

2 (a) If the member last joined the retirement system prior to attainment of age
3 fifty-two, the maximum benefit shall be three years' salary;

4 (b) If the member was age fifty-two when he or she last joined the retirement
5 system, the maximum benefit shall be two and one-half times annual salary;

6 (c) If the member was age fifty-three when he or she last joined the retirement
7 system, the maximum benefit shall be two years' salary;

8 (d) If the member was age fifty-four when he or she last joined the retirement
9 system, the maximum benefit shall be one and one-half times annual salary;

10 (e) If the member was age fifty-five or older but under age sixty-five when he
11 or she last joined the retirement system, the maximum benefit shall be one year's
12 salary; and

13 (f) If the member was age sixty-five or older when he or she last joined the
14 retirement system, the maximum benefit shall be one thousand dollars.

15 In the case of a member of a retirement system other than the New York state teachers'
16 retirement system, the New York city employees' retirement system, the New
17 York city board of education retirement system, the New York city teachers'
18 retirement system or the New York state and local employees' retirement
19 system, commencing upon attainment of age sixty-one, the benefit otherwise
20 provided pursuant to this paragraph shall be reduced while the member is in
21 service to ninety per centum of the benefit otherwise payable and each year
22 thereafter the benefit payable shall be reduced by an amount equal to ten per
23 centum per year of the original benefit otherwise payable, but not below ten per
24 centum of the original benefit otherwise payable.

25 In the case of a member of the New York state teachers' retirement system,
26 commencing upon attainment of age sixty-one, the benefit otherwise provided
27 pursuant to this paragraph shall be reduced while the member is in service to
28 ninety-six per centum of the benefit otherwise payable, and each year thereafter
29 the benefit payable shall be reduced by an amount equal to four per centum per
30 year of the original benefit otherwise payable, but not below sixty per centum of
31 the original benefit otherwise payable. In the case of a member of the New York
32 city employees' retirement system, the New York city board of education
33 retirement system or the New York city teachers' retirement system,
34 commencing upon attainment of age sixty-one, the benefit otherwise provided
35 pursuant to this paragraph shall be reduced while the member is in service to
36 ninety-five per centum of the benefit otherwise payable and each year thereafter
37 the benefit payable shall be reduced by an amount equal to five per centum per
38 year of the original benefit otherwise payable, but not below fifty per centum of
39 the original benefit otherwise payable. In the case of any member of the New
40 York state and local employees' retirement system who is permitted to retire

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

1 without regard to age, commencing upon attainment of age sixty-one, the benefit
 2 otherwise provided pursuant to this paragraph shall be reduced while the
 3 member is in service to ninety-seven per centum of the benefit otherwise
 4 payable, and each year thereafter the benefit payable shall be reduced by an
 5 amount equal to three per centum per year of the original benefit otherwise
 6 payable, but not below seventy per centum of the original benefit otherwise
 7 payable. In the case of any other member of the New York state and local
 8 employees' retirement system, commencing upon attainment of age sixty-one,
 9 the benefit otherwise provided pursuant to this paragraph shall be reduced while
 10 the member is in service to ninety-six per centum of the benefit otherwise
 11 payable, and each year thereafter the benefit payable shall be reduced by an
 12 amount equal to four per centum per year of the original benefit otherwise
 13 payable, but not below sixty per centum of the original benefit otherwise
 14 payable. Upon retirement, from any retirement system, the benefit in force shall
 15 be reduced by fifty per centum; upon completion of the first year of retirement,
 16 the benefit in force at the time of retirement shall be reduced by an additional
 17 twenty-five per centum, and upon commencement of the third year of retirement,
 18 the benefit shall be ten per centum of the benefit in force at age sixty, if any, or
 19 at the time of retirement if retirement preceded such age; provided, however, the
 20 benefit in retirement shall not be reduced below ten per centum of the benefit in
 21 force at age sixty, if any, or at the time of retirement if retirement preceded such
 22 age. Notwithstanding any other provision of this paragraph to the contrary, the
 23 benefit for a retiree from the New York state and local employees' retirement
 24 system shall not be reduced below ten per centum of the benefit in force at the
 25 time of retirement.

26 3. If a member dies in service without having made the election specified in this
 27 subdivision within ninety days after first becoming a member, or within the
 28 period prescribed by the retirement system of which he is a member if such
 29 period is less than ninety days, he shall be deemed to have made the election
 30 specified in paragraph two.

31 4. Notwithstanding any provision of this article, a member of a retirement system
 32 subject to the provisions of this article who last joined such system on or after
 33 January first, two thousand one who is not covered by the death benefit
 34 calculation provided in subdivision b of this section shall, upon a qualifying
 35 death, be covered by the death benefit calculation provided pursuant to
 36 paragraph two of this subdivision and shall not be entitled to elect between the
 37 death benefit calculations provided in paragraphs one and two of this
 38 subdivision. Any individual who last joined such system before January first,
 39 two thousand one who is not covered by the death benefit calculation provided
 40 in subdivision b of this section shall be covered, upon a qualifying death, by the
 41 death benefit calculation provided by paragraph two of this subdivision unless
 42 such individual had timely elected death benefit coverage under the calculation
 43 provided by paragraph one of this subdivision and, upon such death, it is

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 determined that the benefit, as calculated under such paragraph one would be
 2 greater than as calculated under such paragraph two, in which case the benefit
 3 calculated under such paragraph one shall be payable.

4 b. A member of a retirement system subject to the provisions of this article who is a police officer,
 5 firefighter, correction officer or sanitation worker and is in a plan which permits immediate
 6 retirement upon completion of a specified period of service without regard to age or who is subject
 7 to the provisions of section six hundred four of this article, shall upon completion of ninety days
 8 of service be covered for financial protection in the event of death in service pursuant to this
 9 subdivision. Such death benefit shall be equal to three times the member's salary raised to the next
 10 highest multiple of one thousand dollars, but in no event shall it exceed three times the maximum
 11 salary specified in section one hundred thirty of the civil service law or, in the case of a member
 12 of a retirement system other than the New York city employees' retirement system, the specific
 13 limitations specified for age of entrance into service contained in subparagraphs (b), (c), (d), (e)
 14 and (f) of paragraph two of subdivision a of this section.

15 c. For the purpose of this section, salary shall be the regular compensation earned during the
 16 member's last twelve months of service in full pay status as a member or, if he or she had not
 17 completed twelve months of service prior to the date of death, but was subject to the provisions of
 18 subdivision b of this section, the compensation he or she would have earned had he or she worked
 19 for the twelve months prior to such date; provided, however, for the purpose of this section salary
 20 shall exclude any form of termination pay (which shall include any compensation in anticipation
 21 of retirement), or any lump sum payment for deferred compensation sick leave, or accumulated
 22 vacation credit or any other payment for time not worked (other than compensation received while
 23 on sick leave or authorized leave of absence) and in no event shall it exceed the maximum salary
 24 specified in section one hundred thirty of the civil service law, as added by part B of chapter ten
 25 of the laws of two thousand eight, or the maximum salary specified in section one hundred thirty
 26 of the civil service law, as hereafter amended, whichever is greater.

27 d. The benefits provided pursuant to this section are in lieu of all other benefits provided by this
 28 or any other state or local law exclusive of a benefit provided under the workmen's compensation
 29 law, the civil service law or group life insurance; provided, however, a beneficiary of a member
 30 eligible for a benefit as the result of a service connected accident, may elect to receive such other
 31 benefit in lieu of the benefit provided pursuant to this section.

32 e. For the purposes of this section:

- 33 1. A member who dies while off the payroll shall be considered to be in service
 34 provided he or she (a) was on the payroll in such service and paid within a period
 35 of twelve months prior to his or her death, or was on the payroll in the service
 36 upon which membership is based at the time he or she was ordered to active duty
 37 pursuant to Title 10 of the United States Code, with the armed forces of the
 38 United States or to service in the uniformed services pursuant to Chapter 43 of
 39 Title 38 of the United States Code and died while on such active duty or service

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 in the uniformed services on or after June fourteenth, two thousand five, (b) had
 2 not been otherwise gainfully employed since he or she ceased to be on such
 3 payroll and (c) had credit for one or more years of continuous service since he
 4 or she last entered or reentered the service of his or her employer;
 5 notwithstanding any other provision of law to the contrary, a member of the New
 6 York city employees' retirement system or the board of education retirement
 7 system of the city of New York shall be deemed to have died on the payroll for
 8 the purposes of this section in the event that death occurs while such member is
 9 on an authorized leave of absence without pay for medical reasons which has
 10 continuously been in effect since the member was last paid on the payroll in such
 11 service, provided, however, that such member was on the payroll in such service
 12 and paid within the four-year period prior to his or her death; and

13 2. The benefit payable shall be in addition to any payment made on account of a
 14 member's accumulated contributions.

15 3. Provided, further, that any such member ordered to active duty pursuant to Title 10
 16 of the United States Code, with the armed forces of the United States or to
 17 service in the uniformed services pursuant to Chapter 43 of Title 38 of the United
 18 States Code who died prior to rendering the minimum amount of service
 19 necessary to be eligible for this benefit shall be considered to have satisfied the
 20 minimum service requirement.

21 f. Notwithstanding any other provision of this section to the contrary, at least one-half of the death
 22 benefits payable under this section shall be paid to the member's surviving spouse, if any, unless
 23 the member elects that the surviving spouse receive less than one-half of the death benefits, and:

24 1. (a) the member's surviving spouse consents, after the date of the member's
 25 marriage, in writing to the member's election;

26 (b) the spousal survivor written consent is on a plan form addressed to the
 27 member and the form sets forth:

28 (i) the amount of the member's death benefits,

29 (ii) the entitlement of the surviving spouse to at least half of the death
 30 benefits,

31 (iii) the surviving spouse's right to prevent any future member elections
 32 regarding the member's death benefits without the surviving spouse's
 33 consent unless the consent of the surviving spouse expressly permits
 34 member elections without any further consent by the surviving spouse,
 35 and

36 (iv) the fact that consenting to the member's election would result in the
 37 surviving spouse receiving no death benefits or less death benefits than
 38 the surviving spouse would otherwise be entitled under this subdivision;

39 (c) the consent includes an acknowledgement that the surviving spouse

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 understands the surviving spouse's entitlement to be paid at least one-half the
 2 death benefits absent the surviving spouse's consent to the member's election,
 3 and that the surviving spouse's consent would eliminate or reduce these death
 4 benefit payments;

5 (d) the consent includes a signature by the surviving spouse that was witnessed
 6 by either a notary public or a representative of the retirement system; and

7 (e) the completed consent and the member's election are received by the system
 8 before the member's death;

9 2. the member and the surviving spouse were legally separated when the member's
 10 election was filed with the retirement system;

11 3. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of
 12 Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of
 13 the member's death; or

14 4. the retirement board determined that the consent required under paragraph one of
 15 this subdivision could not be obtained from the surviving spouse because

16 (a) there is no surviving spouse;

17 (b) the surviving spouse could not be located between the time the member
 18 elected that the surviving spouse would not be paid at least one-half of the death
 19 benefits and the date of the member's death; or

20 (c) such other circumstances as the retirement board may prescribe by written
 21 plan regulations.

22 g. Notwithstanding any other provision of this section to the contrary, a member's election must
 23 comply with the terms of subdivision f of this section to be effective.

24 h. If the retirement board of the system acts with the care, skill, prudence, and diligence under the
 25 circumstances then prevailing that a prudent man acting in a like capacity and familiar with such
 26 matters would use in the conduct of an enterprise of a like character and with like aims, in—

27 1. relying on a consent referred to in paragraph one of subdivision f of this section, or

28 2. making a determination under paragraph four of subdivision f of this section,

29 then such consent or determination shall be treated as valid for purpose of discharging the
 30 retirement system and the board from liability to the extent of payments made pursuant to such
 31 action. These discharges shall not deprive the surviving spouse of any right to which the surviving
 32 spouse would otherwise be entitled from any party other than the retirement system or the board.

33
 34
 35 Section 8. Section 606-a of the retirement and social security law, as amended by L. 1998, ch.
 36 388, § 5, is amended to read as follows:

37
 EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

- 1 § 606-a. Death benefit for vested members who die prior to retirement
 2 a. A death benefit plus the reserve-for-increased-take-home-pay, if any, shall be payable upon
 3 the death of a member of a retirement system who:
- 4 1. Died before the effective date of retirement while a member of such retirement
 5 system;
 - 6 2. Had at least ten years of credited service at the time of death; and
 - 7 3. Died at a time and in a manner which did not result in the eligibility of the member's
 8 estate or any beneficiary to receive any death benefits from such retirement
 9 system on account of such death.
- 10 b. Benefits provided under this section shall be payable to the member's estate or the beneficiary
 11 or beneficiaries nominated by the member on a designation of beneficiary form filed with the
 12 administrative head of such retirement system.
- 13 c. The amount of the benefit payable pursuant to this section shall be equal to one-half of the
 14 amount of the ordinary death benefit which would have been payable had the member's death
 15 occurred on the last day of service upon which membership was based.
- 16 d. Notwithstanding any other provision of this section to the contrary, at least one-half of the death
 17 benefits payable under this section, including any accumulated contributions remaining at the time
 18 of the member's death, payable under this section shall be paid to the member's surviving spouse,
 19 if any, unless the member elects that the surviving spouse receive less than one-half of the death
 20 benefits, and:
- 21 1. (A) the member's surviving spouse consents, after the date of the member's
 22 marriage, in writing to the member's election;
 - 23 (B) the spousal survivor written consent is on a plan form addressed to the
 24 member and the form sets forth:
 - 25 (i) the amount of the member's death benefits,
 - 26 (ii) the entitlement of the surviving spouse to at least half of the death
 27 benefits,
 - 28 (iii) the surviving spouse's right to prevent any future member elections
 29 regarding the member's death benefits without the surviving spouse's
 30 consent unless the consent of the surviving spouse expressly permits
 31 member elections without any further consent by the surviving spouse,
 32 and
 - 33 (iv) the fact that consenting to the member's election would result in the
 34 surviving spouse receiving no death benefits or less death benefits than
 35 the surviving spouse would otherwise be entitled under this subdivision;
 - 36 (C) the consent includes an acknowledgement that the surviving spouse

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 understands the surviving spouse's entitlement to be paid at least one-half the
 2 death benefits absent the surviving spouse's consent to the member's election,
 3 and that the surviving spouse's consent would eliminate or reduce these death
 4 benefit payments;

5 (D) the consent includes a signature by the surviving spouse that was witnessed
 6 by either a notary public or a representative of the retirement system; and

7 (E) the completed consent and the member's election are received by the system
 8 before the member's death;

9 2. the member and the surviving spouse were legally separated when the member's
 10 election was filed with the retirement system;

11 3. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of
 12 Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of
 13 the member's death;

14 4. the retirement board determined that the consent required under paragraph one of
 15 this subdivision could not be obtained from the surviving spouse because

16 (A) there is no surviving spouse;

17 (B) the surviving spouse could not be located between the time the member
 18 elected that the surviving spouse would not be paid at least one-half of the death
 19 benefits and the date of the member's death; or

20 (C) such other circumstances as the retirement board may prescribe by written
 21 plan regulations.

22 e. Notwithstanding any other provision of this section to the contrary, a member's election must
 23 comply with the terms of subdivision d of this section to be effective.

24 f. If the retirement board of the system acts with the care, skill, prudence, and diligence under the
 25 circumstances then prevailing that a prudent man acting in a like capacity and familiar with such
 26 matters would use in the conduct of an enterprise of a like character and with like aims, in—

27 1. relying on a consent referred to in paragraph one of subdivision d of this section, or

28 2. making a determination under paragraph four of subdivision d of this section,

29 then such consent or determination shall be treated as valid for purpose of discharging the
 30 retirement system and the board from liability to the extent of payments made pursuant to such
 31 action. These discharges shall not deprive the surviving spouse of any right to which the surviving
 32 spouse would otherwise be entitled from any party other than the retirement system or the board.

33
 34
 35 Section 9. Section 610 of the retirement and social security law, as amended by L. 2004, ch. 651,
 36 § 2, is amended to read as follows:

37
 EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 § 610. Options

2 a. Until the effective date of retirement a member may elect to receive the actuarial equivalent of
3 the retirement allowance at the time of retirement, in the form of a smaller retirement allowance
4 payable to such member for life and one of the following optional settlements;

5 Option one. Upon the member's death, a retirement allowance in an amount equal to
6 that paid to the member shall be paid for life to such person as he shall nominate
7 by written designation duly acknowledged and filed with the retirement system
8 at the time of retirement.

9 Option two. Upon the member's death, a retirement allowance of seventy-five percent
10 or less (measured in increments of twenty-five percent) of the amount paid to
11 such member shall be paid for life to such person as he shall nominate by written
12 designation duly acknowledged and filed with the retirement system at the time
13 of retirement.

14 Option three. A five-year certain option under which payment is made to the member
15 for life but is guaranteed for a minimum of five years following retirement. Such
16 payments shall continue to a person as he shall nominate by written designation,
17 duly acknowledged and filed with the retirement system, for the unexpired
18 balance of the five-year guaranteed period. If said beneficiary should predecease
19 him, the commuted value of any installments due during the unexpired balance
20 of the five-year guaranteed period shall be paid in a single sum to a duly
21 designated contingent beneficiary or if none exists to the legal representative of
22 the member. Should a beneficiary who has commenced receipt of the payments
23 die before the said guaranteed minimum period, the commuted value of any
24 installments due during the unexpired balance of the five-year guaranteed period
25 shall be paid in a single sum to a duly designated contingent beneficiary or if
26 none exists, to the legal representative of said deceased primary beneficiary.

27 Option four. A ten-year certain option under which payment is made to the member
28 for life but is guaranteed for a minimum of ten years following retirement. Such
29 payments shall continue to a person as he shall nominate by written designation,
30 duly acknowledged and filed with the retirement system, for the unexpired
31 balance of the ten-year guaranteed period. If said beneficiary should predecease
32 him, the commuted value of any installments due during the unexpired balance
33 of the ten-year guaranteed period shall be paid in a single sum to a duly
34 designated contingent beneficiary or if none exists to the legal representative of
35 the member. Should a beneficiary who has commenced receipt of the payments
36 die before the said guaranteed minimum period, the commuted value of any
37 installments due during the unexpired balance of the ten-year guaranteed period
38 shall be paid in a single sum to a duly designated contingent beneficiary or if
39 none exists to the legal representative of said deceased primary beneficiary.

40 Option five. Upon the member's death, a retirement allowance in an amount equal to

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

1 fifty percent or one hundred percent of that paid to the member shall be paid for
 2 life to such person as he shall nominate by written designation duly
 3 acknowledged and filed with the retirement system at the time of retirement.
 4 Upon the death, prior to the death of the member, of said person so nominated,
 5 the member shall begin receiving, in lieu of the allowance then payable, an
 6 allowance equal in amount to that which would have been payable if no optional
 7 modification of the retirement allowance were in effect.

8 a-1. A member of the New York state teachers' retirement system or the New York state and local
 9 employees' retirement system who retires pursuant to the provisions of this article, may elect, in
 10 lieu of the options set forth in subdivision a of this section, the following optional settlement:

11 Alternative Option. The actuarial equivalent of the member's retirement allowance at
 12 the time of retirement, in the form of a smaller retirement allowance payable to
 13 such member for life and some other benefit or benefits paid either to the
 14 member or to such person or persons as he shall nominate, provided such other
 15 benefit or benefits, together with such smaller allowance, shall be certified by
 16 the actuary of the appropriate retirement system to be of equivalent actuarial
 17 value to his retirement allowance and shall be approved by the head of such
 18 retirement system and provided further that nothing herein shall require such
 19 retirement system to pay a benefit in violation of paragraph nine of subsection a
 20 of section four hundred one of the Internal Revenue Code of 1986, as amended,
 21 26 U.S.C. § 401(a)(9).

22 b. No option hereunder shall be permitted whereby the member would receive less than fifty
 23 percent of the actuarial equivalent of the retirement allowance without optional modification
 24 during such member's life expectancy. Provided, however, the preceding sentence shall not apply
 25 if the surviving beneficiary is the member's spouse.

26 c. The mortality and interest rates used in determining options under this article shall be those in
 27 effect for the public retirement system on the date of retirement.

28 d. Notwithstanding any other provision of this section, with respect to the New York state
 29 employees' retirement system:

- 30 1. The comptroller, for reasonable cause, shall have power to extend the time for the
 31 election of an option, for a period or periods which shall expire not later than
 32 sixty days immediately after the effective date of a member's retirement; and
- 33 2. If the member is incompetent, his spouse or the committee of his property, or if he
 34 is a conservatee, his spouse or the conservator of his property, may elect on the
 35 member's behalf a retirement option as provided for in subdivision a of this
 36 section.

37 e. Notwithstanding any other provision of this section, a member of the New York state teachers'
 38 retirement system at the time of retirement may elect an option until the first payment on account

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 of any benefit becomes normally due.

2 f. [As added by L. 2004, ch. 446. See, also, subd. f below.] Notwithstanding any other provision
 3 of this article, an option selection previously filed by a member or retired member subject to the
 4 provisions of this section may be changed no later than thirty days following the date of payability
 5 of his or her retirement allowance. A retired member who has been retired for disability may
 6 change an option selection previously filed no later than (1) thirty days following the date on which
 7 such member's application for disability retirement was approved by the retirement board or (2)
 8 thirty days following the date on which such retiree was retired for disability, whichever is later.

9 f. [As added by L. 2004, ch. 651. See, also, subd. f above.] Notwithstanding any other provision
 10 of this article, an option selection previously filed by a member or retired member of the New
 11 York city teachers' retirement system or the New York city board of education retirement system
 12 subject to the provisions of this section may be changed no later than thirty days following the date
 13 of payability of his or her retirement allowance. A retired member who has been retired for
 14 disability may change an option selection previously filed no later than (1) thirty days following
 15 the date on which such member's application for disability retirement was approved by the
 16 retirement board or (2) thirty days following the date on which such retiree was retired for
 17 disability, whichever date is later.

18 g. Notwithstanding any other provision of this section to the contrary, a member's retirement
 19 allowance shall be paid as Option five, so that upon his or her death, if the member has a surviving
 20 spouse who was married to the member on the date the member filed his or her retirement
 21 application, or on the date the member filed his or her last effective option selection, if any,
 22 whichever is later, the surviving spouse shall be paid for life survivor benefit payments, each of
 23 which is equal to at least one-half the amount of the member's retirement allowance payments
 24 payable under this section unless the member elects that the surviving spouse receive either no
 25 survivor benefit payments or survivor benefit payments, each of which is less than one-half the
 26 amount of the member's retirement allowance payments, and:

27 1. (a) the member's surviving spouse consents after the date of the member's
 28 marriage, in writing to the member's election,

29 (b) the spousal survivor consent is on a plan form addressed to the member and
 30 the form sets forth:

31 (i) the amount of the Option five monthly benefit entitlements of the
 32 member and of the spouse,

33 (ii) the time each individual would be entitled under Option five to those
 34 benefits,

35 (iii) the surviving spouse's right to prevent any future member elections
 36 regarding the member's survivor benefits without the surviving spouse's
 37 consent unless the consent of the surviving spouse expressly permits
 38 member elections without any further consent by the surviving spouse,

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 and

2 (iv) the fact that consenting to the member's survivor benefit election
 3 would result in the surviving spouse receiving no survivor benefits or
 4 smaller survivor benefits than the surviving spouse would otherwise be
 5 entitled under this subdivision;

6 (c) the consent includes an acknowledgement that the surviving spouse
 7 understands the surviving spouse's entitlement to life survivor benefit payments,
 8 each of which is equal to at least one-half the amount of the member's retirement
 9 allowance payments absent the surviving spouse's consent to the member's
 10 election, and that the surviving spouse's consent would eliminate or reduce those
 11 survivor benefits;

12 (d) the consent includes a signature by the surviving spouse that was witnessed
 13 by either a notary public or a representative of the retirement system; and

14 (e) the completed consent and the member's election are received by the system
 15 before the payability date;

16 2. the member and the surviving spouse were legally separated when the member's
 17 election was filed with the retirement system;

18 3. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of
 19 Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of
 20 the filing of the member's application for a retirement allowance;

21 4. the retirement board determined that the consent required under paragraph 1 of this
 22 subdivision could not be obtained from the surviving spouse because

23 (a) there is no surviving spouse;

24 (b) the surviving spouse could not be located between the time the member
 25 elected that the surviving spouse would not be paid a retirement allowance of at
 26 least fifty percent of the amount paid to such member and the date of the filing
 27 of the member's application for a retirement allowance; or

28 (c) such other circumstances as the retirement board may prescribe by written
 29 plan regulations.

30 h. Notwithstanding any other provision of this section to the contrary, a member's election must
 31 comply with the terms of subdivision g of this section to be effective.

32 i. If the retirement board of the system acts with the care, skill, prudence, and diligence under the
 33 circumstances then prevailing that a prudent man acting in a like capacity and familiar with such
 34 matters would use in the conduct of an enterprise of a like character and with like aims, in—

35 1. relying on a consent referred to in paragraph one of subdivision g of this section, or

36 2. making a determination under paragraph three of subdivision g of this section,

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 then such consent or determination shall be treated as valid for purpose of discharging the
 2 retirement system and the board from liability to the extent of payments made pursuant to such
 3 action. To the extent the retirement system and the board were completely discharged for any
 4 annuity benefit payments that the system made to the member in excess of what the member would
 5 have been entitled under Option five if the member's beneficiary had been the surviving spouse,
 6 such excess payments shall be called Discharged Payments. The system may recover the actuarial
 7 equivalent of those Discharged Payments, computed using the plan's actuarial factors, from the
 8 surviving spouse with offsets against the system's monthly annuity benefit payments to the
 9 surviving spouse, but may not thereby reduce any of those benefit payments by more than 10%.

10
 11
 12 Section 10. Section 13-148 of the administrative code of the City of New York, as amended by
 13 L. 1992, ch. 749, § 4, is amended to read as follows:

14
 15 § 13-148. Death benefits; ordinary death benefits.

16
 17 a. Upon the death of a member or of a former member, there shall be paid to his or her estate, or
 18 to such person as he or she has nominated or shall nominate by written designation duly executed
 19 and filed with such board during the lifetime of the member:
 20

21 1. Such member's accumulated deductions, if any; and, in addition thereto;

22 2. (a) If he or she is a member who is in city-service or is on a civil service preferred
 23 eligible list by reason of city-service, unless a pension by payable by the city
 24 under the provisions of section 13-149 of this chapter, a sum which, subject to
 25 the provisions of paragraph four of subdivision e of section 13-638.4 of this title,
 26 shall consist of:

27 (i) an amount equal to the compensation earnable by such member while a
 28 member, during the six months immediately preceding his or her death; or

29 (ii) if the total number of years in which allowable service was rendered
 30 exceeds ten, including service which was allowable during former
 31 membership, then an amount equal to the compensation earnable by such
 32 member in city-service while a member during the twelve months
 33 immediately preceding his or her death; or

34 (iii) if such member, at the time of his or her death, held a career pension plan
 35 position, and if the total number of years in which allowable service was
 36 rendered includes twenty or more years of career pension plan qualifying
 37 service, including career pension plan qualifying service which was
 38 allowable during former membership, then an amount equal to twice the
 39 compensation earnable by him or her in city-service while a member during
 40 the twelve months immediately preceding his or her death; and

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 (iv) in addition to the amount payable under item (i), (ii) or (iii) of this
2 subparagraph (a), the reserve-for-increased-take-home-pay, if any.

3 (b) If the sum of such pension payments made and payable under section 13-149
4 of this chapter plus the reserve-for-increased-take-home-pay, if any, payable as
5 a lump sum under such section, is a lesser sum, then there shall be paid hereunder
6 the difference between the total of such lesser pension sum and reserve, if any,
7 and the greater amount herein provided as ordinary death benefit.

8 (c) Where any member, by any designation heretofore or hereafter filed pursuant
9 to the foregoing provisions of this subdivision a and in effect at the time of the
10 death of such member, nominated or shall nominate any person to receive the
11 amount payable under item (i), (ii) or (iii) of subparagraph (a) of this paragraph
12 two, the reserve-for-increased-take-home-pay, if any, of such member payable
13 under item (iv) of such subparagraph (a) shall be paid to the person so
14 nominated.

15 (d) Payment of the expense of burial not exceeding three hundred dollars to a
16 relative or friend who shall assume responsibility therefor in the absence or
17 failure of the designated beneficiary may be authorized by the comptroller on
18 certificate of the executive director and actuary of the retirement system; such
19 payment by a like amount shall reduce the amount payable to such designated
20 beneficiary or estate.

21 b. Until the first payment has been made on account of a retirement benefit without optional
22 selection of a member, such member shall be construed by such board to have been in city-service
23 and the benefits provided in this section shall be paid in lieu of the retirement allowance.

24 c. 1. The member, or on the death of the member, the person nominated by him or her
25 to receive either his or her accumulated deductions, if any, his or her death
26 benefit, or both, may provide by written designation duly executed and filed with
27 such board that the actuarial equivalent of the benefit otherwise payable in a
28 lump sum shall be paid to the person designated in the form of an annuity
29 payable in installments not more often than once a month, the amount of such
30 annuity to be determined at the time of the member's death on the basis of the
31 age of the beneficiary at that time.

32 2. Where any such designation mentioned in paragraph one of this subdivision c was
33 heretofore or is hereafter filed by a member with respect to a benefit otherwise
34 payable pursuant to the provisions of item (i), (ii) or (iii) of subparagraph (a) of
35 paragraph two of subdivision a of this section, and such designation was or is in
36 effect at the time of the death of such member, or where any such designation
37 was heretofore or is hereafter filed by any person so nominated to receive such
38 benefit, the actuarial equivalent of the reserve-for-increased-take-home-pay, if
39 any, of such member shall be paid to the person named in such designation as
40 beneficiary with respect to such benefit under such item (i), (ii) or (iii), in the

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

1 form of an annuity and in the manner and in accordance with the method of
2 computation prescribed by paragraph one of this subdivision c.

3 d. Notwithstanding any other provision of this section to the contrary, at least one-half of the death
4 benefits payable under this section, including any accumulated deductions or the reserve-for-
5 increased-take-home-pay remaining at the time of the member's death, payable under this section
6 shall be paid to the member's surviving spouse, if any, unless the member elects that the surviving
7 spouse receive less than one-half of the death benefits, and:

8 1. (a) the member's surviving spouse consents, after the date of the member's
9 marriage, in writing to the member's election;

10 (b) the spousal survivor written consent is on a plan form addressed to the
11 member and the form sets forth:

12 (i) the amount of the member's death benefits,

13 (ii) the entitlement of the surviving spouse to at least half of the death
14 benefits,

15 (iii) the surviving spouse's right to prevent any future member elections
16 regarding the member's death benefits without the surviving spouse's
17 consent unless the consent of the surviving spouse expressly permits
18 member elections without any further consent by the surviving spouse,
19 and

20 (iv) the fact that consenting to the member's election would result in the
21 surviving spouse receiving no death benefits or less death benefits than
22 the surviving spouse would otherwise be entitled under this subdivision;

23 (c) the consent includes an acknowledgement that the surviving spouse
24 understands the surviving spouse's entitlement to be paid at least one-half the
25 death benefits absent the surviving spouse's consent to the member's election,
26 and that the surviving spouse's consent would eliminate or reduce these death
27 benefit payments;

28 (d) the consent includes a signature by the surviving spouse that was witnessed
29 by either a notary public or a representative of the retirement system; and

30 (e) the completed consent and the member's election are received by the system
31 before the member's death;

32 2. the member and the surviving spouse were legally separated when the member's
33 election was filed with the retirement system;

34 3. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of
35 Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of
36 the member's death; or

37 4. the retirement board determined that the consent required under paragraph one of

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

1 this subdivision could not be obtained from the surviving spouse because

2 (a) there is no surviving spouse;

3 (b) the surviving spouse could not be located between the time the member
 4 elected that the surviving spouse would not be paid at least one-half of the death
 5 benefits and the date of the member's death; or

6 (c) such other circumstances as the retirement board may prescribe by written
 7 plan regulations.

8 e. Notwithstanding any other provision of this section to the contrary, a member's election must
 9 comply with the terms of subdivision d of this section to be effective.

10 f. If the retirement board of the system acts with the care, skill, prudence, and diligence under the
 11 circumstances then prevailing that a prudent man acting in a like capacity and familiar with such
 12 matters would use in the conduct of an enterprise of a like character and with like aims, in—

13 1. relying on a consent referred to in paragraph one of subdivision d of this section, or

14 2. making a determination under paragraph four of subdivision d of this section,

15 then such consent or determination shall be treated as valid for purpose of discharging the
 16 retirement system and the board from liability to the extent of payments made pursuant to such
 17 action. These discharges shall not deprive the surviving spouse of any right to which the surviving
 18 spouse would otherwise be entitled from any party other than the retirement system or the board.

21 Section 11 Section 13-177 of the administrative code of the City of New York, as amended by L.
 22 1985, ch. 901, § 1, is amended to read as follows:

23 § 13-177. Retirement; options in which retirement allowances may be taken.

24
 25 Until the first payment on account of any benefit is made, the beneficiary, or, if such beneficiary
 26 is an incompetent, then the husband or wife of such beneficiary or, if there be no husband or wife,
 27 a committee of the estate, may elect to receive such benefit in a retirement allowance payable
 28 throughout life, or the beneficiary or the husband or wife or committee so electing may then elect
 29 to receive the actuarial equivalent at that time of his or her annuity, if any, his or her pension, or
 30 his or her retirement allowance in a lesser annuity, if any, or a lesser pension or a lesser retirement
 31 allowance, payable throughout life with the provision that:

32 Option 1.

33 a. If he or she dies before he or she has received in payments the present value
 34 of his or her annuity, if any, his or her pension, or his or her retirement
 35 allowance, as it was at the time of his or her retirement, the balance shall be paid,
 36 in the form of a lump sum or the actuarial equivalent in the form of an annuity,
 37 to his or her legal representatives or to such person as the beneficiary, or the

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 husband or wife or committee so electing, has nominated or shall nominate by
2 written designation duly acknowledged and filed with the board.

3 b. A retired member, or upon the death of a retired member, the person
4 nominated by him or her as his or her beneficiary, may provide by written
5 designation duly executed and filed with such board that the actuarial equivalent
6 of a benefit otherwise payable in a lump sum shall be paid to the person
7 designated in the form of an annuity payable in installments not more than once
8 a month.

9 Option 2. Upon his or her death, his or her annuity, if any, his or her pension, or his or
10 her retirement allowance, shall be continued throughout the life of and paid to
11 such person as the beneficiary, or the husband or wife or committee so electing,
12 has nominated or shall nominate by written designation duly acknowledged and
13 filed with the board at the time of his or her retirement.

14 Option 3. Upon his or her death, one-half of his or her annuity, if any, his or her
15 pension, or his or her retirement allowance, shall be continued throughout the
16 life of and paid to such person as the beneficiary, or the husband or wife or
17 committee so electing, has nominated or shall nominate by written designation
18 duly acknowledged and filed with the board at the time of his or her retirement.

19 Option 4. Upon his or her death, some other benefit or benefits shall be paid to such
20 other person or persons as the beneficiary, or the husband or wife or committee
21 so electing, has nominated or shall nominate, provided such other benefit or
22 benefits, together with such lesser annuity, if any, or lesser pension, or lesser
23 retirement allowance, shall be certified by the actuary of the board to be of
24 equivalent actuarial value to his or her annuity, if any, his or her pension or his
25 or her retirement allowance, and shall be approved by such board.

26 For purposes of this section, the words “pension” and “retirement allowance” shall be deemed to
27 include the pension-providing-for-increased-take-home-pay, if any.

28
29 1. Notwithstanding any other provision of this section to the contrary, a member’s retirement
30 allowance payable under this section shall be paid as Option 3, so that upon his or her death, if
31 the member has a surviving spouse who was married to the member on the date the member filed
32 his or her retirement application, or on the date the member filed his or her last effective option
33 selection, if any, whichever is later, the surviving spouse shall be paid for life survivor benefit
34 payments, each of which is equal to at least one-half the amount of the member’s retirement
35 allowance payments payable under this section unless the member elects that the surviving
36 spouse either receive no survivor benefit payments or survivor benefit payments, each of which
37 is less than one-half the amount of the member’s retirement allowance payments, and:

38 a. (i) the member’s surviving spouse consents after the date of the member’s
39 marriage, in writing to the member’s election;

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

1 (ii) the spousal survivor consent is on a written plan form addressed to the
 2 member and the form sets forth:

3 (A) the amount of the Option 3 monthly benefit entitlements of the
 4 member and of the spouse,

5 (B) the time each individual would be entitled under Option 3 to those
 6 benefits under Option 3,

7 (C) the surviving spouse's right to prevent any future member elections
 8 regarding the member's survivor benefits without the surviving
 9 spouse's consent unless the consent of the surviving spouse expressly
 10 permits member elections without any further consent by the surviving
 11 spouse, and

12 (D) the fact that consenting to the member's survivor benefit election
 13 would result in the surviving spouse receiving no survivor benefits or
 14 smaller survivor benefits than the surviving spouse would otherwise be
 15 entitled under this subdivision,

16 (iii) the consent includes an acknowledgement that the surviving spouse
 17 understands the surviving spouse's entitlement to life survivor benefit
 18 payments, each of which is equal to at least one-half the amount of the
 19 member's retirement allowance payments absent the surviving spouse's
 20 consent to the member's election, and that the surviving spouse's consent to
 21 the member's election would eliminate or reduce those survivor benefits;

22 (iv) the consent includes a signature by the surviving spouse that was
 23 witnessed by either a notary public or a representative of the retirement
 24 system; and

25 (v) the completed consent and the member's election are received by the
 26 system before the payability date;

27 b. the member and the surviving spouse were legally separated when the member's
 28 election, and that the surviving spouse's consent would eliminate or reduce those
 29 survivor benefits;

30 c. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of
 31 Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of
 32 the filing of the member's application for a retirement allowance; or

33 d. the retirement board determined that the consent required under paragraph a of this
 34 subdivision could not be obtained from the surviving spouse because

35 (i) there is no surviving spouse;

36 (ii) the surviving spouse could not be located between the time the member
 37 elected that the surviving spouse would not be paid a retirement allowance of

1 at least fifty percent of the amount paid to such member and the date of the
 2 filing of the member's application for a retirement allowance; or

3 (iii) such other circumstances as the retirement board may prescribe by written plan
 4 regulations.

5 2. Notwithstanding any other provision of this section to the contrary, a member's election must
 6 comply with the terms of subdivision a of this section to be effective.

7 3. If the retirement board of the system acts with the care, skill, prudence, and diligence under
 8 the circumstances then prevailing that a prudent man acting in a like capacity and familiar with
 9 such matters would use in the conduct of an enterprise of a like character and with like aims,
 10 in—

11 a. relying on a consent referred to in paragraph a of subdivision 1 of this section, or

12 b. making a determination under paragraph d of subdivision 1 of this section,

13 hen such consent or determination shall be treated as valid for purpose of discharging the
 14 retirement system and the board from liability to the extent of payments made pursuant to such
 15 action. These discharges shall not deprive the surviving spouse of any right to which the surviving
 16 spouse would otherwise be entitled from any party other than the retirement system or the board.
 17 To the extent the retirement system and the board were completely discharged for any annuity
 18 benefit payments that the system made to the member in excess of what the member would have
 19 been entitled under Option 3 if the member's beneficiary had been the surviving spouse, such
 20 excess payments shall be called Discharged Payments. The retirement system may recover the
 21 actuarial equivalent of those Discharged Payments, computed using the plan's actuarial factors,
 22 from the surviving spouse with offsets against the system's monthly annuity benefit payments to
 23 the surviving spouse payable under this section, but may not thereby reduce any of those benefit
 24 payments by more than 10%.

25
 26
 27 Section 12. Section 13-243 of the administrative code of the City of New York, as amended by
 28 L. 1985, ch. 907, § 1, is amended to read as follows:

29
 30 § 13-243. Death benefits; ordinary death benefits.

31
 32 a. Upon the death of a member or of a former member, there shall be paid to his or her estate, or
 33 to such person as he or she has nominated or shall nominate by written designation duly executed
 34 and filed with such board during the lifetime of the member:

35
 36 1. His or her accumulated deductions; and, in addition thereto,

37 2. If such member is in city-service or is on a civil service preferred eligible list by
 38 reason of city-service, unless a pension be payable by the city under the
 39 provisions of section 13-244 of this subchapter, an amount equal to the

EXPLANATION—Matter (underscoring) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 compensation earnable by him or her while a member, during the six months
 2 immediately preceding his or her death, and, if the total number of years in which
 3 allowable service was rendered exceeds ten, then an amount equal to the
 4 compensation earnable by him or her in city-service while a member during the
 5 twelve months immediately preceding his or her death, and in addition, in either
 6 such case, the reserve-for-increased-take-home-pay.

7 b. Until the first payment has been made on account of a retirement benefit without optional
 8 selection of a member, such member may be construed by such board to have been in city-service
 9 and the benefits provided in this section may be paid in lieu of the retirement allowance.

10 c. The member, or on the death of the member, the person nominated by him or her to receive
 11 either his or her accumulated deductions, his or her death benefit, together with the reserve-for-
 12 increased-take-home-pay, or both, may provide by written designation duly executed and filed
 13 with such board that the actuarial equivalent of the benefit otherwise payable in a lump sum shall
 14 be paid to the person designated in the form of an annuity payable in installments not more often
 15 than once a month, the amount of such annuity to be determined at the time of the member's death
 16 on the basis of the age of the beneficiary at that time.

17 d. Notwithstanding the foregoing provisions of this section, and in lieu of any lesser amount
 18 thereby prescribed, upon the death of a member, prior to the first payment of a retirement benefit,
 19 who has attained the minimum age or completed the minimum period of service, as elected by him
 20 or her for retirement, and whether or not such member shall have filed application for retirement,
 21 there shall be paid to his or her estate, or to such person as he or she has nominated or shall
 22 nominate by written designation duly executed and filed in accordance with the requirements of
 23 this subchapter:

24 1. His or her accumulated deductions; and in addition thereto,

25 2. The amount of reserve equal to the present value of the pension he or she would
 26 have received if he or she had retired and became entitled to pension on the day
 27 immediately preceding his or her death.

28 The beneficiary of such deceased member shall have the right to accept such benefits in lump sum
 29 or in such periodic payments, on an annuity basis, as such beneficiary shall elect.

30 e. Notwithstanding any other provision of this section to the contrary, at least one-half of the death
 31 benefits payable under this section, including any accumulated deductions and the reserve-for-
 32 increased-take-home-pay remaining at the time of the member's death, payable under this section
 33 shall be paid to the member's surviving spouse, if any, unless the member elects that the surviving
 34 spouse receive less than one-half of the death benefits, and:

35 1. (A) the member's surviving spouse consents, after the date of the member's
 36 marriage, in writing to the member's election;

37 (B) the spousal survivor consent is on a plan form addressed to the member and
 38 the form sets forth:

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

- 1 (i) the amount of the member’s death benefits,
2 (ii) the entitlement of the surviving spouse to at least half of the death
3 benefits,
4 (iii) the surviving spouse’s right to prevent any future member elections
5 regarding the member’s death benefits without the surviving spouse’s
6 consent unless the consent of the surviving spouse expressly permits
7 member elections without any further consent by the surviving spouse,
8 and
9 (iv) the fact that consenting to the member’s election would result in the
10 surviving spouse receiving no death benefits or less death benefits than
11 the surviving spouse would otherwise be entitled under this subdivision;
- 12 (C) the consent includes an acknowledgement that the surviving spouse
13 understands the surviving spouse’s entitlement to be paid at least one-half the
14 death benefits absent the surviving spouse’s consent to the member’s election,
15 and that the surviving spouse’s consent would eliminate or reduce these death
16 benefit payments;
- 17 (D) the consent includes a signature by the surviving spouse that was witnessed
18 by either a notary public or a representative of the retirement system, and
- 19 (E) the completed consent and the member’s election are received by the system
20 before the member’s death;
- 21 2. the member and the surviving spouse were legally separated when the member’s
22 election was filed with the retirement system;
- 23 3. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of
24 Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of
25 the member’s death; or
- 26 4. the retirement board determined that the consent required under paragraph one of
27 this subdivision could not be obtained from the surviving spouse because
- 28 (A) there is no surviving spouse;
29 (B) the surviving spouse could not be located between the time the member
30 elected that the surviving spouse would not be paid at least one-half of the death
31 benefits and the date of the member’s death; or
32 (C) such other circumstances as the retirement board may prescribe by written
33 plan regulations.
- 34 f. Notwithstanding any other provision of this section to the contrary, a member’s election must
35 comply with the terms of subdivision e of this section to be effective.
- 36 g. If the retirement board of the system acts with the care, skill, prudence, and diligence under the

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

1 circumstances then prevailing that a prudent man acting in a like capacity and familiar with such
2 matters would use in the conduct of an enterprise of a like character and with like aims, in—

3 1. relying on a consent referred to in paragraph one of subdivision e of this section, or

4 2. making a determination under paragraph four of subdivision e of this section,

5 then such consent or determination shall be treated as valid for purpose of discharging the
6 retirement system and the board from liability to the extent of payments made pursuant to such
7 action. These discharges shall not deprive the surviving spouse of any right to which the surviving
8 spouse would otherwise be entitled from any party other than the system or the retirement board.

10
11 Section 13. Section 13-261 of the administrative code of the City of New York, as amended by L.
12 1987, ch. 775, § 3, is amended to read as follows:

13
14 § 13-261. Retirement; options in which retirement allowances may be taken.

15 a. Until the first payment on account of any benefit is made, except pursuant to the provisions of
16 section 13-261.2 of this subchapter, the beneficiary, or, if such beneficiary is an incompetent, then
17 the husband or wife of such beneficiary, or, if there be no husband or wife, a committee of the
18 estate, may elect to receive such benefit in a retirement allowance payable throughout life, or the
19 beneficiary or the husband or wife or committee so electing may then elect to receive the actuarial
20 equivalent at that time of his or her annuity, his or her pension, or his or her retirement allowance
21 in a lesser annuity or a lesser pension or a lesser retirement allowance, payable throughout life
22 with the provision that:

23 Option 1. If he or she die before he or she has received in payments the present value
24 of his or her annuity, his or her pension, or his or her retirement allowance, as it
25 was at the time of his or her retirement, the balance shall be paid to his or her
26 legal representatives or to such person as the beneficiary, or the husband or wife
27 or committee so electing, has nominated or shall nominate by written
28 designation duly acknowledged and filed with the board.

29 Option 2. Upon his or her death, his or her annuity, his or her pension, or his or her
30 retirement allowance, shall be continued throughout the life of and paid to such
31 person as the beneficiary, or the husband or wife or committee so electing, has
32 nominated or shall nominate by written designation duly acknowledged and
33 filed with the board at the time of his or her retirement.

34 Option 3. Upon his or her death, one-half of his or her annuity, his or her pension, or
35 his or her retirement allowance, shall be continued throughout the life of and
36 paid to such person as the beneficiary, or the husband or wife or committee so
37 electing, has nominated or shall nominate by written designation duly
38 acknowledged and filed with the board at the time of his or her retirement.

39 Option 4. Upon his or her death, some other benefit or benefits shall be paid to such

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

1 other person or persons as the beneficiary, or the husband or wife or committee
 2 so electing, has nominated or shall nominate, provided such other benefit or
 3 benefits, together with such lesser annuity, or lesser pension, or lesser retirement
 4 allowance, shall be certified by the actuary to be of equivalent actuarial value to
 5 his or her annuity, his or her pension or his or her retirement allowance, and shall
 6 be approved by such board.

7
 8 b. For purposes of this section, the terms “pension” and “retirement allowance” shall be deemed
 9 to include the pension-providing-for-increased-take-home-pay, if any.

10
 11 c. Notwithstanding any other provision of this section to the contrary, a member’s retirement
 12 allowance shall be paid as Option 3, so that upon his or her death, if the member has a surviving
 13 spouse who was married to the member on the date the member filed his or her retirement
 14 application, or on the date the member filed his or her last effective option selection, if any,
 15 whichever is later, the surviving spouse shall be paid for life survivor benefit payments, each of
 16 which is equal to at least one-half the amount of the member’s retirement allowance payments
 17 payable under this section unless the member elects that the surviving spouse receive either no
 18 survivor benefit payments or survivor benefit payments, each of which is less than one-half the
 19 amount of the member’s retirement allowance payments, and:

20 1. (a) the member’s surviving spouse consents after the date of the member’s
 21 marriage, in writing to the member’s election;

22 (b) the spousal survivor consent is on a plan form addressed to the member and
 23 the form sets forth:

24 (i) the amount of the Option 3 monthly benefit entitlements of the
 25 member and of the spouse,

26 (ii) the time each would be entitled under Option 3 to those benefits,

27 (iii) the surviving spouse’s right to prevent any future member elections
 28 regarding the member’s survivor benefits without the surviving spouse’s
 29 consent unless the consent of the surviving spouse expressly permits
 30 member elections without any further consent by the surviving spouse,
 31 and

32 (iv) the fact that consenting to the member’s survivor benefit election result in
 33 the surviving spouse receiving no survivor benefits or smaller survivor benefits
 34 than the surviving spouse would otherwise be entitled under this subdivision,

35 (c) the consent includes an acknowledgement that the surviving spouse
 36 understands the surviving spouse’s entitlement to life survivor benefit payments,
 37 each of which is equal to at least one-half the amount of the member’s retirement
 38 allowance payments absent the surviving spouse’s consent to the member’s
 39 election, and that the surviving spouse’s consent would eliminate or reduce those
 40 survivor benefits;

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 (d) the consent includes a signature by the surviving spouse that was witnessed
 2 by either a notary public or a representative of the retirement system; and

3 (e) the completed consent and the member's election are received by the system
 4 before the payability date;

5 2. the member and the surviving spouse were legally separated when the member's
 6 election was filed with the retirement system;

7 3. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of
 8 Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of the
 9 filing of the member's application for a retirement allowance; or

10 4. the retirement board determined that the consent required under paragraph 1 of this
 11 subdivision could not be obtained from the surviving spouse because

12 (a) there is no surviving spouse;

13 (b) the surviving spouse could not be located between the time the member
 14 elected that the surviving spouse would not be paid a retirement allowance of at
 15 least fifty percent of the amount paid to such member and the date of the filing
 16 of the member's application for a retirement allowance; or

17 (c) such other circumstances as the retirement board may prescribe by written
 18 plan regulations.

19 d. Notwithstanding any other provision of this section to the contrary, a member's election must
 20 comply with the terms of subdivision c of this section to be effective.

21 e. If the retirement board of the system acts with the care, skill, prudence, and diligence under the
 22 circumstances then prevailing that a prudent man acting in a like capacity and familiar with such
 23 matters would use in the conduct of an enterprise of a like character and with like aims, in—

24 1. relying on a consent referred to in paragraph one of subdivision c of this section, or

25 2. making a determination under paragraph four of subdivision c of this section,

26 then such consent or determination shall be treated as valid for purpose of discharging the
 27 retirement system and the board from liability to the extent of payments made pursuant to such
 28 action. These discharges shall not deprive the surviving spouse of any right to which the surviving
 29 spouse would otherwise be entitled from any party other than the retirement system or the board.
 30 To the extent the retirement system and the board were completely discharged for any annuity
 31 benefit payments that the system made to the member in excess of what the member would have
 32 been entitled under Option 3 if the member's beneficiary had been the surviving spouse, such
 33 excess payments shall be called Discharged Payments. The retirement system may recover the
 34 actuarial equivalent of those Discharged Payments, computed using the plan's actuarial factors,
 35 from the surviving spouse with offsets against the system's monthly annuity benefit payments to
 36 the surviving spouse payable under this section, but may not thereby reduce any of those benefit
 37 payments by more than 10%.

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1
2
3 Section 14. Section 13-346 of the administrative code of the City of New York, as amended by L.
4 1985, ch. 907, § 1, is amended to read as follows:
5

6 § 13-346. Death benefits; ordinary death benefits.

7 a. Upon the death of an original plan member not subject to article eleven (as defined in subdivision
8 four-c of section 13-313 of this subchapter) who has not completed the period of service, as elected
9 by him or her for retirement, or upon the death of a former original plan member not subject to
10 article eleven, there shall be paid to his or her estate, or to such person as he or she has nominated
11 or shall nominate by written designation duly executed and filed with such board during the
12 lifetime of the member:

- 13 1. His or her accumulated contributions, that is, his or her contributions without
14 interest; and, in addition thereto,
15 2. If such member is in city-service or is on a civil service preferred eligible list by
16 reason of city-service, unless a retirement allowance be payable by the city under
17 the provisions of section 13-347 of this subchapter, an amount equal to the
18 compensation earnable by him or her while a member, during the six months
19 immediately preceding his or her death, and, if the total number of years in which
20 allowable service was rendered exceeds ten, then an amount equal to the
21 compensation earnable by him or her in city-service while a member during the
22 twelve months immediately preceding his or her death, and in addition, in either
23 such case, the accumulation-for-increased-take-home-pay, if any.

24 a-1. Upon the death of an improved benefits plan member not subject to article eleven (as defined
25 in subdivision four-i of such section 13-313) or of a former improved benefits plan member not
26 subject to article eleven, there shall be paid to his or her estate, or to such person as he or she has
27 nominated or shall nominate by written designation duly executed and filed with such board during
28 the lifetime of the member:

- 29 1. His or her accumulated deductions; and, in addition thereto,
30 2. If such member is in city-service or is on a civil service preferred eligible list by
31 reason of city-service, unless a pension be payable by the city under the
32 provisions of section 13-347 of this subchapter, an amount equal to the
33 compensation earnable by him or her while a member, during the six months
34 immediately preceding his or her death, and, if the total number of years in which
35 allowable service was rendered exceeds ten, then an amount equal to the
36 compensation earnable by him or her in city-service while a member during the
37 twelve months immediately preceding his or her death, and in addition, in either
38 such case, the reserve-for-increased-take-home-pay.

39 b. Until the first payment has been made on account of a retirement benefit without optional

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

1 selection of an original plan member not subject to article eleven or an improved benefits plan
 2 member not subject to article eleven, such member may be construed by such board to have been
 3 in city-service and the applicable benefits provided in this section may be paid in lieu of the
 4 retirement allowance.

5 c. The original plan member not subject to article eleven or the improved benefits plan member
 6 not subject to article eleven, or on the death of any such member, the person nominated by him or
 7 her to receive, in the case of an original plan member not subject to article eleven, his or her
 8 accumulated contributions or his or her death benefit, together with the accumulation-for-
 9 increased-take-home-pay, or both, or, in the case of an improved benefits plan member not subject
 10 to article eleven, the person nominated by him or her to receive either his or her accumulated
 11 deductions, his or her death benefit, together with the reserve-for-increased-take-home-pay, or
 12 both, may provide by written designation duly executed and filed with such board that the actuarial
 13 equivalent of the benefit otherwise payable in a lump sum shall be paid to the person designated
 14 in the form of an annuity payable in installments not more often than once a month, the amount of
 15 such annuity to be determined at the time of such member's death on the basis of the age of the
 16 beneficiary at that time.

17 d. Upon the death of an original plan member not subject to article eleven who has completed the
 18 period of service, as elected by him or her for retirement, but who shall not have filed application
 19 for retirement or who, having filed application for retirement shall die prior to the first payment
 20 on account of the benefits thereunder, there shall be paid to his or her estate, or to such person as
 21 he or she has nominated or shall nominate by written designation duly executed and filed with
 22 such board:

- 23 1. His or her accumulated contributions, that is his or her contributions without
 24 interest; and in addition thereto,
- 25 2. The present value of the pension he or she would have received if he or she had
 26 retired and had become entitled to a pension for service on the day immediately
 27 preceding the day of his or her death.

28 e. Notwithstanding the foregoing provisions of this section, and in lieu of any lesser amount
 29 thereby prescribed, upon the death of an improved benefits plan member not subject to article
 30 eleven, prior to the first payment of a retirement benefit, who has completed the minimum period
 31 of service, as elected by him or her for retirement, and whether or not such member shall have
 32 filed application for retirement, there shall be paid to his or her estate, or to such person as he or
 33 she has nominated or shall nominate by written designation duly executed and filed in accordance
 34 with the requirements of this subchapter:

- 35 1. His or her accumulated deductions; and in addition thereto,
- 36 2. The amount of reserve equal to the present value of the pension he or she would
 37 have received if he or she had retired and became entitled to a pension on the
 38 day immediately preceding his or her death.

39 The beneficiary of such deceased member shall have the right to accept such benefits in lump sum

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 or in such periodic payments, on an annuity basis, as such beneficiary shall elect.

- 2 f. 1. The provisions of the preceding subdivisions of this section applicable to original plan
 3 members not subject to article eleven shall apply to an original plan member subject
 4 to article eleven (as defined in subdivision four-d of such section 13-313), except to
 5 the extent and in the manner that any such provision is modified by article eleven.
- 6 2. The provisions of the preceding subdivisions of this section applicable to improved
 7 benefits plan members not subject to article eleven shall apply to an improved
 8 benefits plan member subject to article eleven (as defined in subdivision four-j
 9 of such section 13-313), except to the extent and in the manner that any such
 10 provision is modified by article eleven.

11 g. Notwithstanding any other provision of this section to the contrary, at least one-half of the death
 12 benefits payable under this section, including any accumulated contributions, accumulated
 13 deductions, the accumulation for-increased-take-home-pay, or the reserve-for-increased-take-
 14 home-pay remaining at the time of the member's death, payable under this section shall be paid to
 15 the member's surviving spouse, if any, unless the member elects that the surviving spouse receive
 16 less than one-half of the death benefits, and:

17 1. (A) the member's surviving spouse consents, after the date of the member's
 18 marriage, in writing to the member's election;

19 (B) the spousal survivor written consent is on a plan form addressed to the
 20 member and the form sets forth:

21 (i) the amount of the member's death benefits,

22 (ii) the entitlement of the surviving spouse to at least half of the death
 23 benefits,

24 (iii) the surviving spouse's right to prevent any future member elections
 25 regarding the member's death benefits without the surviving spouse's
 26 consent unless the consent of the surviving spouse expressly permits
 27 member elections without any further consent by the surviving spouse,
 28 and

29 (iv) the fact that consenting to the member's election would result in the
 30 surviving spouse receiving no death benefits or less death benefits than
 31 the surviving spouse would otherwise be entitled under this subdivision,

32 (C) the consent includes an acknowledgement that the surviving spouse
 33 understands the surviving spouse's entitlement to be paid at least one-half the
 34 death benefits absent the surviving spouse's consent to the member's election,
 35 and that the surviving spouse's consent to the member's election would
 36 eliminate or reduce these death benefit payments;

37 (D) the consent includes a signature by the surviving spouse that was witnessed
 38 by either a notary public or a representative of the retirement system, and

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 (E) the completed consent and the member's election are received by the system
 2 before the member's death;

3 2. the member and the surviving spouse were legally separated when the member's
 4 election was filed with the retirement system; or

5 3. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of
 6 Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of
 7 the member's death; or

8 4. the retirement board determined that the consent required under paragraph one of
 9 this subdivision could not be obtained from the surviving spouse because

10 (A) there is no surviving spouse;

11 (B) the surviving spouse could not be located between the time the member
 12 elected that the surviving spouse would not be paid at least one-half of the death
 13 benefits and the date of the member's death; or

14 (C) such other circumstances as the retirement board may prescribe by written
 15 plan regulations.

16 h. Notwithstanding any other provision of this section to the contrary, a member's election must
 17 comply with the terms of subdivision g of this section to be effective.

18 i. If the retirement board of the system acts with the care, skill, prudence, and diligence under the
 19 circumstances then prevailing that a prudent man acting in a like capacity and familiar with such
 20 matters would use in the conduct of an enterprise of a like character and with like aims, in—

21 1. relying on a consent referred to in paragraph one of subdivision g of this section, or

22 2. making a determination under paragraph four of subdivision g of this section,

23 then such consent or determination shall be treated as valid for purpose of discharging the
 24 retirement system and the board from liability to the extent of payments made pursuant to such
 25 action. These discharges shall not deprive the surviving spouse of any right to which the surviving
 26 spouse would otherwise be entitled from any party other than the retirement system or the board.

27
 28
 29 Section 15. Section 13-369 of the administrative code of the City of New York, as amended by L.
 30 1988, ch. 198, § 1, is amended to read as follows:

31
 32 § 13-369. Retirement of original plan members; options in which retirement allowances may be
 33 taken.

34 a. Subject to the provisions of subdivision b of this section, until the first payment on account of
 35 any benefit is made, except pursuant to the provisions of subdivision c of this section, any
 36 beneficiary who was an original plan member at the time of his or her retirement, or, if such

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 beneficiary is an incompetent, then the spouse of such beneficiary, or, if there be no spouse, a
 2 committee of the estate, may elect to receive such benefit in a retirement allowance payable
 3 throughout life, or any such beneficiary or the spouse or committee so electing may then elect to
 4 receive the actuarial equivalent at the time of his or her retirement allowance in a lesser retirement
 5 allowance, payable throughout life with the provision that:

6 Option 1. If he or she dies before he or she has received in payments the present value
 7 of his or her retirement allowance, as it was at the time of his or her retirement,
 8 the balance shall be paid to his or her legal representatives or to such person as
 9 such beneficiary, or the spouse or committee so electing, has nominated or shall
 10 nominate by written designation duly acknowledged and filed with the board.

11 Option 2. Upon his or her death, his or her retirement allowance shall be continued
 12 throughout the life of and paid to such person as such beneficiary, or the spouse
 13 or committee so electing, has nominated or shall nominate by written
 14 designation duly acknowledged and filed with the board at the time of his or her
 15 retirement.

16 Option 3. Upon his or her death, one-half of his or her retirement allowance shall be
 17 continued throughout the life of and paid to such person as such beneficiary, or
 18 the spouse or committee so electing, has nominated or shall nominate by written
 19 designation duly acknowledged and filed with the board at the time of his or her
 20 retirement.

21 Option 4. Upon his or her death, some other benefit or benefits shall be paid to such
 22 other person or persons as such beneficiary, or the spouse or committee so
 23 electing, has nominated or shall nominate, provided such other benefit or
 24 benefits, together with such lesser retirement allowance, shall be certified by the
 25 actuary to be of equivalent actuarial value to his or her retirement allowance,
 26 and shall be approved by such board.

27 b. In the case of an original plan member subject to article eleven (as defined in subdivision four-
 28 d of section 13-313 of this subchapter) or any beneficiary who was an original plan member subject
 29 to article eleven at the time of such member's retirement, the provisions of subdivision a of this
 30 section shall apply except to the extent and in the manner that any such provision is modified by
 31 article eleven.

32 c. If a member who is otherwise eligible for retirement pursuant to section 13-352 or 13-353 of
 33 this subchapter dies within thirty days after the filing with the pension board of the application for
 34 retirement pursuant to section 13-352 or 13-353 of this subchapter and it is established that the
 35 physical or mental impairment or incapacitation of the applicant specified in such application was
 36 directly related to the cause of the applicant's death, such applicant shall be approved by the
 37 pension board effective one day before the date of the applicant's death, provided however that:

38 (1) if a member is entitled to an ordinary disability retirement allowance under the
 39 provisions of this subchapter, the benefits provided pursuant to section 13-352

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 of this subchapter shall be payable unless the member would otherwise be
 2 entitled to a greater benefit pursuant to section 13-346 of this subchapter, in
 3 which event the greater benefit shall be payable; or

- 4 (2) if a member is entitled to an accidental disability retirement allowance under the
 5 provisions of this subchapter, the benefits provided pursuant to section 13-353
 6 of this subchapter shall be payable unless the member would otherwise be
 7 entitled to a greater benefit pursuant to section 13-348 of this subchapter, in
 8 which event the greater benefit shall be payable.

9 d. Notwithstanding any law to the contrary, for the purpose of electing an option pursuant to this
 10 section, the pension board shall notify the surviving spouse of any applicant described in
 11 subdivision c of this section, or, if no such spouse exists, the personal representative of the estate
 12 of such applicant of the right of election pursuant to this section and such surviving spouse or
 13 personal representative of such estate may elect any such option within thirty days after receipt of
 14 such notice.

15 e. Notwithstanding any other provision of this section to the contrary, a member's retirement
 16 allowance shall be paid as Option 3, so that upon his or her death, if the member has a surviving
 17 spouse who was married to the member on the date the member filed his or her retirement
 18 application, or on the date the member filed his or her last effective option selection, if any,
 19 whichever is later, the surviving spouse shall be paid for life survivor benefit payments, each of
 20 which is equal to at least one-half the amount of the member's retirement allowance payments
 21 payable under this section unless the member elects that the surviving spouse receive either no
 22 survivor benefit payments or survivor benefit payments, each of which is less than one-half the
 23 amount of the member's retirement allowance payments, and:

- 24 (1) (a) the member's surviving spouse consents after the date of the member's
 25 marriage, in writing to the member's election;
- 26 (b) the spousal survivor consent is on a plan form addressed to the member and
 27 the form sets forth:
- 28 (i) the amount of the Option 3 monthly benefit entitlements of the
 29 member and of the spouse,
- 30 (ii) the time each individual would be entitled under Option 3 to those
 31 benefits,
- 32 (iii) the surviving spouse's right to prevent any future member elections
 33 regarding the member's survivor benefits without the surviving spouse's
 34 consent unless the consent of the surviving spouse expressly permits
 35 member elections without any further consent by the surviving spouse,
 36 and
- 37 (iv) the fact that consenting to the member's survivor benefit election
 38 would result in the surviving spouse receiving no survivor benefits or
 39 smaller survivor benefits retirement allowance than the surviving spouse

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

- 1 would otherwise be entitled under this subdivision;
- 2 (c) the consent includes an acknowledgement that the surviving spouse
3 understands the surviving spouse’s entitlement to life survivor benefit payments,
4 each of which is equal to at least one-half the amount of the member’s retirement
5 allowance payments absent the surviving spouse’s consent to the member’s
6 election, and that the surviving spouse’s consent would eliminate or reduce those
7 survivor benefits would eliminate or reduce those survivor benefits; and
- 8 (d) the consent includes a signature by the surviving spouse that was witnessed
9 by either a notary public or a representative of the retirement system; and
- 10 (e) the completed consent and the member’s election are received by the system
11 before the payability date;
- 12 (2) the member and the surviving spouse were legally separated when the member’s election
13 was filed with the retirement system;
- 14 (3) any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of
15 Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of the
16 filing of the member’s application for a retirement allowance; or
- 17 (4) the retirement board determined that the consent required under paragraph a of this
18 subdivision could not be obtained from the surviving spouse because
- 19 (a) there is no surviving spouse;
- 20 (b) the surviving spouse could not be located between the time the member
21 elected that the surviving spouse would not be paid a retirement allowance of at
22 least fifty percent of the amount paid to such member and the date of the filing
23 of the member’s application for a retirement allowance; or
- 24 (c) such other circumstances as the retirement board may prescribe by written
25 plan regulations.
- 26 f. Notwithstanding any other provision of this section to the contrary, a member’s election must
27 comply with the terms of subdivision e of this section to be effective.
- 28 g. If the retirement board of the system acts with the care, skill, prudence, and diligence under the
29 circumstances then prevailing that a prudent man acting in a like capacity and familiar with such
30 matters would use in the conduct of an enterprise of a like character and with like aims, in—
- 31 (1) relying on a consent referred to in paragraph one of subdivision e of this section,
32 or
- 33 (2) making a determination under paragraph four subdivision e of this section,
34 then such consent or determination shall be treated as valid for purpose of discharging the
35 retirement system and the board from liability to the extent of payments made pursuant to such
36 action. These discharges shall not deprive the surviving spouse of any right to which the surviving

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

1 spouse would otherwise be entitled from any party other than the retirement system or the
 2 retirement board. To the extent the retirement system and the board were completely discharged
 3 for any annuity benefit payments that the system made to the member in excess of what the
 4 member would have been entitled under Option 3 if the member's beneficiary had been the
 5 surviving spouse, such excess payments shall be called Discharged Payments. The retirement
 6 system may recover the actuarial equivalent of those Discharged Payments, computed using the
 7 plan's actuarial factors, from the surviving spouse with offsets against the system's monthly
 8 annuity benefit payments to the surviving spouse payable under this section, but may not thereby
 9 reduce any of those benefit payments by more than 10%.

10
 11
 12 Section 16. Section 13-370 of the administrative code of the City of New York, as amended by
 13 L. 1990, ch. 288, § 1, is amended to read as follows:

14 § 13-370. Retirement of improved benefits plan members; options in which retirement
 15 allowances may be taken.

16 a. Subject to the provisions of subdivision c of this section, until the first payment on account of
 17 any benefit is made, except pursuant to the provisions of subdivision d of this section any
 18 beneficiary who was an improved benefits plan member at the time of his or her retirement, or, if
 19 such beneficiary is an incompetent, then the spouse of such beneficiary, or, if there be no spouse,
 20 a committee of the estate, may elect to receive such benefit in a retirement allowance payable
 21 throughout life, or any such beneficiary or the spouse or committee so electing may then elect to
 22 receive the actuarial equivalent at the time of his or her annuity, his or her pension, or his or her
 23 retirement allowance in a lesser annuity or a lesser pension or a lesser retirement allowance,
 24 payable throughout life with the provision that:

25 Option 1. If he or she dies before he or she has received in payments the present value
 26 of his or her annuity, his or her pension, or his or her retirement allowance, as it
 27 was at the time of his or her retirement, the balance shall be paid to his or her
 28 legal representatives or to such person as such beneficiary, or the spouse or
 29 committee so electing, has nominated or shall nominate by written designation
 30 duly acknowledged and filed with the board.

31
 32 Option 2. Upon his or her death, his or her annuity, his or her pension, or his or her
 33 retirement allowance, shall be continued throughout the life of and paid to such
 34 person as such beneficiary, or the spouse or committee so electing, has
 35 nominated or shall nominate by written designation duly acknowledged and
 36 filed with the board at the time of his or her retirement.

37 Option 3. Upon his or her death, one-half of his or her annuity, his or her pension, or
 38 his or her retirement allowance, shall be continued throughout the life of and
 39 paid to such person as such beneficiary, or the spouse or committee so electing,

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

- 1 has nominated or shall nominate by written designation duly acknowledged and
2 filed with the board at the time of his or her retirement.
- 3 Option 4. Upon his or her death, some other benefit or benefits shall be paid to such
4 other person or persons as such beneficiary, or the spouse or committee so
5 electing, has nominated or shall nominate, provided such other benefit or
6 benefits, together with such lesser annuity, or lesser pension or lesser retirement
7 allowance, shall be certified by the actuary to be of equivalent actuarial value to
8 his or her annuity, his or her pension or his or her retirement allowance, and shall
9 be approved by such board.
- 10 b. For purposes of this section, the terms “pension” and “retirement allowance” shall be deemed
11 to include the pension-providing-for-increased-take-home-pay, if any.
- 12 c. In the case of an improved benefits plan member subject to article eleven (as defined in
13 subdivision four-j of section 13-313 of this subchapter) or any beneficiary who was an improved
14 benefits plan member subject to article eleven at the time of such member’s retirement, the
15 provisions of subdivisions a and b of this section shall apply except to the extent and in the manner
16 that any such provision is modified by article eleven.
- 17 d. If a member who is otherwise eligible for retirement pursuant to this section dies within thirty
18 days after the filing with the pension board of the application for retirement pursuant to this section
19 and it is established that the physical or mental impairment or incapacitation of the applicant
20 specified in such application was directly related to the cause of the applicant’s death, such
21 application shall be approved by the pension board effective one day before the date of the
22 applicant’s death, provided however that:
- 23 (1) if a member is entitled to an ordinary disability retirement allowance under the
24 provisions of this subchapter, the benefits provided pursuant to section 13-352
25 of this subchapter shall be payable unless the member would otherwise be
26 entitled to a greater benefit pursuant to section 13-346 of this subchapter, in
27 which event the greater benefit shall be payable; or
- 28 (2) if a member is entitled to an accidental disability retirement allowance under the
29 provisions of this subchapter, the benefits provided pursuant to section 13-353
30 of this subchapter shall be payable unless the member would otherwise be
31 entitled to a greater benefit pursuant to section 13-348 of this subchapter, in
32 which event the greater benefit shall be payable.
- 33 e. Notwithstanding any law to the contrary, for the purpose of electing an option pursuant to this
34 section, the pension board shall notify the surviving spouse of any applicant described in
35 subdivision d of this section, or, if no such spouse exists, the personal representative of the estate
36 of such applicant of the right of election pursuant to this section and such surviving spouse or
37 personal representative of such estate may elect any such option within thirty days after receipt of
38 such notice.

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

1 f. Notwithstanding any other provision of this section to the contrary, a member's retirement
 2 allowance shall be paid as Option 3, so that upon his or her death, if the member has a surviving
 3 spouse who was married to the member on the date the member filed his or her retirement
 4 application, or on the date the member filed his or her last effective option selection, if any,
 5 whichever is later, the surviving spouse shall be paid for life survivor benefit payments, each of
 6 which is equal to at least one-half the amount of the member's retirement allowance payments
 7 payable under this section unless the member elects that the surviving spouse receive either no
 8 survivor benefit payments or survivor benefit payments, each of which is less than one-half the
 9 amount of the member's retirement allowance payments, and:

10 (1) (a) the member's surviving spouse consents after the date of the member's marriage,
 11 in writing to the member's election;

12 (b) the spousal survivor consent is on a plan form addressed to the member and
 13 the form sets forth:

14 (i) the amount of the Option 3 monthly benefit entitlements of the
 15 member and of the spouse,

16 (ii) the time each would be entitled under Option 3 to those benefits,

17 (ii) the surviving spouse's right to prevent any future member elections
 18 regarding the member's survivor benefits without the surviving spouse's
 19 consent unless the consent of the surviving spouse expressly permits
 20 member elections without any further consent by the surviving spouse,
 21 and

22 (iv) the fact that consenting to the member's survivor benefit election
 23 would result in the surviving spouse receiving no survivor benefits or
 24 smaller survivor benefits than the surviving spouse would otherwise be
 25 entitled under this subdivision;

26 (c) the consent includes an acknowledgement that the surviving spouse
 27 understands the surviving spouse's entitlement to life survivor benefit payments,
 28 each of which is equal to at least one-half the amount of the member's retirement
 29 allowance payments absent the surviving spouse's consent to the member's
 30 election, and that the surviving spouse's consent would eliminate or reduce those
 31 survivor benefits would eliminate or reduce those survivor benefits;

32 (d) the consent includes a signature by the surviving spouse that was witnessed
 33 by either a notary public or a representative of the retirement system; and

34 (e) the completed consent and the member's election are received by before the
 35 payability date;

36 (2) the member and the surviving spouse were legally separated when the member's
 37 election was filed with the retirement system;

38 (3) any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of
 39 Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 the filing of the member's application for a retirement allowance; or

2 (4) the retirement board determined that the consent required under paragraph a of this
 3 subdivision could not be obtained from the surviving spouse because

4 (a) there is no surviving spouse;

5 (b) the surviving spouse could not be located between the time the member
 6 elected that the surviving spouse would not be paid a retirement allowance of at
 7 least fifty percent of the amount paid to such member and the date of the filing
 8 of the member's application for a retirement allowance; or

9 (c) such other circumstances as the retirement board may prescribe by written
 10 plan regulations.

11 g. Notwithstanding any other provision of this section to the contrary, a member's election must
 12 comply with the terms of subdivision f of this section to be effective.

13 h. If the retirement board of the system acts with the care, skill, prudence, and diligence under the
 14 circumstances then prevailing that a prudent man acting in a like capacity and familiar with such
 15 matters would use in the conduct of an enterprise of a like character and with like aims, in—

16 (1) relying on a consent referred to in paragraph one of subdivision f of this section,
 17 or

18 (2) making a determination under paragraph four of subdivision f of this section,

19 then such consent or determination shall be treated as valid for purpose of discharging the
 20 retirement system and the board from liability to the extent of payments made pursuant to such
 21 action. These discharges shall not deprive the surviving spouse of any right to which the surviving
 22 spouse would otherwise be entitled from any party other than the retirement system or the board.
 23 To the extent the retirement system and the board were completely discharged for any annuity
 24 benefit payments that the system made to the member in excess of what the member would have
 25 been entitled under Option 3 if the member's beneficiary had been the surviving spouse, such
 26 excess payments shall be called Discharged Payments. The retirement system may recover the
 27 actuarial equivalent of those Discharged Payments, computed using the plan's actuarial factors,
 28 from the surviving spouse with offsets against the system's monthly annuity benefit payments to
 29 the surviving spouse payable under this section, but may not thereby reduce any of those benefit
 30 payments by more than 10%.

31
 32
 33 Section 17. Section 13-542 of the administrative code of the City of New York, as added by L.
 34 1985, ch. 907, § 1, is amended to read as follows:

35 § 13-542. Death benefits; ordinary death benefits.

37 a. Upon the death of a contributor before retirement there shall be paid to his or her estate or to
 38 such person as he or she shall have nominated by written designation duly executed and filed with

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 the retirement board:

2 1. His or her accumulated deductions; and, in addition thereto,

3 2. A sum consisting of:

4 (i) His or her reserve-for-increased-take-home-pay, if any, which shall be paid
5 out of the contingent reserve fund; and

6 (ii) An amount, payable out of the contingent reserve fund in the case of a new
7 entrant and out of pension reserve fund number two in the case of a present-
8 teacher, equal to the salary earnable by him or her during the six months
9 immediately preceding his or her death, provided that at the time of his or her
10 death he or she had obtained the age of sixty-five years or had a total-service of
11 thirty-five years and was eligible for service retirement.
12

13 b. Where any contributor, by any designation heretofore or hereafter filed pursuant to subdivision
14 a of this section and in effect at the time of the death of such contributor, nominated or shall
15 nominate any person to receive the amount payable under subparagraph (ii) of paragraph two of
16 subdivision a of this section, the reserve-for-increased-take-home-pay, if any, of such member,
17 payable under subparagraph (i) of such paragraph two shall be paid to the person so nominated.

18 c. (1) The retirement board may adopt rules and regulations providing that in any case where a
19 contributor or designated beneficiary authorized by the applicable provisions of this
20 chapter to nominate a beneficiary to receive a lump sum benefit pursuant to section
21 13-542 or section 13-543 of this chapter represents to the retirement system that a
22 specified person has been designated by such contributor or designated beneficiary as
23 a trustee of an inter vivos or testamentary trust for the purposes of this subdivision c,
24 such person shall be eligible to be nominated to receive, in the capacity of trustee, such
25 lump sum benefit pursuant to the applicable provisions of either of such sections.

26 (2) Any proceeds received by a trustee under this section shall not be subject to the
27 debts of the member or to transfer or estate taxes to any greater extent than if
28 such proceeds were payable to the beneficiaries named in the trust and not to the
29 estate of the member.

30 (3) A payment made in good faith under this section (a) to a person so represented to
31 the retirement system to be a trustee of an inter vivos trust, or (b) to a person
32 who is designated as a successor trustee of an inter vivos trust and who provides
33 a copy of his or her appointment or, (c) to a person who is designated as a trustee
34 or successor trustee of a testamentary trust and who provides a copy of the letters
35 of trusteeship, provided such payment is made to such payee in the capacity of
36 trustee, shall be a complete discharge to the retirement system to the extent of
37 the payment. Such discharge shall not be impaired or affected by an adjudication
38 that a trust is invalid or that a person represented to be or designated as a trustee
39 is not entitled to receive the proceeds, if payment is made in good faith under
40 this section before notice to the retirement system of the claim of invalidity or

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

- 1 lack of entitlement on which such adjudication is based.
- 2 (4) (a) If no person to whom the retirement system is authorized to make payment
3 in the capacity of trustee, as provided for in paragraph three of this subdivision
4 c, claims the proceeds within eighteen months after the death of the member,
5 payment shall be made to the deceased member's estate and such payment shall
6 be a complete discharge to the retirement system to the extent of the payment.
- 7 (b) If satisfactory evidence is furnished within such period of eighteen months
8 that there is or will be no trustee to receive the proceeds, payment shall be made
9 to the deceased member's estate.
- 10 (5) In the event that after a person represented to have been designated as a trustee of
11 an inter vivos or testamentary trust is nominated pursuant to rules and
12 regulations adopted under paragraph one of this subdivision c, the contributor or
13 designated beneficiary authorized to make a nomination shall, in compliance
14 with the applicable provisions of this chapter, nominate for receipt of the same
15 lump sum benefit:
- 16 (a) a beneficiary other than a person so represented to have been designated as a
17 trustee; or
- 18 (b) a person represented to have been designated as a trustee under a different
19 inter vivos or testamentary trust; a payment made in good faith under this section
20 to the last such nominee as of the date of death, whether he or she is a beneficiary
21 not represented to have been designated as trustee or a person represented to
22 have been so designated, shall be a complete discharge to the retirement system
23 to the extent of the payment, provided, however, that if payment is made to a
24 person represented to have been designated as a trustee, the retirement system
25 shall be so discharged if payment is made to such person in the capacity of
26 trustee and if there is compliance with the requirements of paragraph three of
27 this subdivision c with respect to submission of copies. In any case where the
28 last such nominee is a person represented to have been designated as a trustee,
29 the provisions of paragraph four of this subdivision c shall apply.
- 30 d. Notwithstanding any other provision of this section to the contrary, at least one-half of the death
31 benefits payable under this section, including any accumulated deductions, or reserve-for-
32 increased-take-home-pay remaining at the time of the member's death, payable under this section
33 shall be paid to the member's surviving spouse, if any, unless the member elects that the surviving
34 spouse receive less than one-half of the death benefits, and:
- 35 1. (a) the member's surviving spouse consents, after the date of the member's
36 marriage, in writing to the member's election;
- 37 (b) the spousal survivor consent is on a plan form addressed to the member and
38 the form sets forth:
- 39 (i) the amount of the member's death benefits,

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

- 1 (ii) the entitlement of the surviving spouse to at least half of the death
2 benefits,
- 3 (iii) the surviving spouse’s right to prevent any future member elections
4 regarding the member’s death benefits without the surviving spouse’s
5 consent unless the consent of the surviving spouse expressly permits
6 member elections without any further consent by the surviving spouse,
7 and
- 8 (iv) the fact that consenting to the member’s election would result in the
9 surviving spouse receiving no death benefits or less death benefits than
10 the surviving spouse would otherwise be entitled under this subdivision;
- 11 (c) the consent includes an acknowledgement that the surviving spouse
12 understands the surviving spouse’s entitlement to be paid at least one-half the
13 death benefits absent the surviving spouse’s consent to the member’s election,
14 and that the surviving spouse’s consent would eliminate or reduce these death
15 benefit payments;
- 16 (d) the consent includes a signature by the surviving spouse that was witnessed
17 by either a notary public or a representative of the retirement system, and
- 18 (e) the completed consent and the member’s election are received by the system
19 before the member’s death;
- 20 2. the member and the surviving spouse were legally separated when the member’s
21 election was filed with the retirement system;
- 22 3. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of
23 Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of
24 the member’s death; or
- 25 4. the retirement board determined that the consent required under paragraph one of
26 this subdivision could not be obtained from the surviving spouse because
- 27 (a) there is no surviving spouse;
- 28 (b) the surviving spouse could not be located between the time the member
29 elected that the surviving spouse would not be paid at least one-half of the death
30 benefits and the date of the member’s death; or
- 31 (c) such other circumstances as the retirement board may prescribe by written
32 plan regulations.
- 33 e. Notwithstanding any other provision of this section to the contrary, a member’s election must
34 comply with the terms of subdivision d of this section to be effective.
- 35 f. If the retirement board of the system acts with the care, skill, prudence, and diligence under the
36 circumstances then prevailing that a prudent man acting in a like capacity and familiar with such
37 matters would use in the conduct of an enterprise of a like character and with like aims, in—

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

1 1. relying on a consent referred to in paragraph one of subdivision d of this section, or
 2 2. making a determination under paragraph four of subdivision d of this section,
 3 then such consent or determination shall be treated as valid for purpose of discharging the
 4 retirement system and the board from liability to the extent of payments made pursuant to such
 5 action. These discharges shall not deprive the surviving spouse of any right to which the surviving
 6 spouse would otherwise be entitled from any party other than the retirement system or the board.

7
 8
 9 Section 18. Section 13-543 of the administrative code of the City of New York, as amended by L.
 10 1985, ch. 907, § 1, is amended to read as follows:

11
 12 § 13-543. Special death and retirement benefits.

13 a. Upon the death of a contributor, before retirement or within thirty days after the effective date
 14 of his or her service retirement, or within thirty days after the filing of his or her application for
 15 disability retirement, in lieu of any retirement allowance, or optional benefit, or any death benefit,
 16 there shall be paid to his or her estate or to such person as he or she shall have nominated by written
 17 designation duly executed and filed with the retirement board:

18 1. His or her accumulated deductions; and in addition thereto,

19 2. A sum consisting of:

20 i. His or her reserve-for-increased-take-home-pay, if any, which shall be paid
 21 out of the contingent reserve fund; and

22 ii. In the case of any contributor whose death heretofore occurred or occurs
 23 hereafter and prior to July first, nineteen hundred seventy, an amount, payable
 24 out of the contingent reserve fund in the case of a new-entrant and out of pension
 25 reserve fund number two in the case of a present-teacher, equal to (a) six per
 26 cent of his or her average salary multiplied by the number of his or her years of
 27 city-service rendered prior to April tenth, nineteen hundred twenty-nine plus (b)
 28 five per cent of his or her average salary multiplied by the number of his or her
 29 years of city-service rendered subsequent to such date. In the case of a teacher
 30 appointed prior to such date the years of credit under (a) and (b) shall not exceed
 31 thirty-five years in total and in the case of a teacher appointed subsequent to
 32 such date, the years of credit shall not exceed twenty years in total. In no event
 33 shall such amount be less than one-half of his or her average salary, except that
 34 in the case of a teacher who has a total city-service of six months or more and
 35 less than five years such amount shall be six times the average monthly salary
 36 earnable by him or her during his or her city-service immediately preceding his
 37 or her death. If the contributor was a present-teacher, there shall be included a
 38 further amount in addition thereto equal to five per cent of his or her average
 39 salary multiplied by five sevenths of the number of his or her years of prior-

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 service. The total credit for prior-service so allowed shall not exceed twenty-
 2 five years. If in the case of any deceased contributor the total amount payable
 3 under this subparagraph (ii) of this paragraph two of this subdivision is greater
 4 than the largest maximum annual salary paid to any contributor, such total
 5 amount payable shall not be greater than two and three-fourths times the average
 6 salary of the deceased contributor, nor less than the largest maximum annual
 7 salary paid to any contributor; or

8 iii. in the case of any contributor whose death occurs on or after July first,
 9 nineteen hundred seventy, a sum consisting of:

10 (a) an amount equal to the salary earnable by him or her while in city-service,
 11 during the six months immediately preceding his or her death; or

12 (b) if the total number of years of city-service credited to him or her is ten or
 13 more, then an amount equal to the salary earnable by him or her while in city-
 14 service during the twelve months immediately preceding his or her death; or

15 (c) if the total number of years of city-service credited to him or her is twenty
 16 or more, then an amount equal to twice the salary earnable by him or her
 17 while in city-service during the twelve months immediately preceding his or
 18 her death.

19 3. Where any contributor, by any designation heretofore or hereafter filed pursuant to
 20 the preceding provisions of this subdivision and in effect at the time of the death
 21 of such contributor, has nominated or shall nominate any person to receive the
 22 amount payable under subparagraph (ii) or (iii) of paragraph two of this
 23 subdivision a, the reserve-for-increased-take-home-pay, if any, of such
 24 contributor payable under subparagraph (i) of such paragraph two shall be paid
 25 to the person so nominated.

26 b. A contributor eligible for retirement pursuant to section 13-545 or 13-557 of this chapter,
 27 however, may file with the retirement board an application setting forth that he or she elects to be
 28 retired at a time not less than thirty nor more than ninety days after the filing of such application,
 29 provided such contributor shall agree in his or her application that such application shall be
 30 irrevocable from the date of filing. Such application shall retire such contributor on the date he or
 31 she elected to be retired, if then living, and such contributor, on retirement, shall be entitled to
 32 receive any annuity, pension, pension-providing-for-increased-take-home-pay to which he or she
 33 may be entitled, if any, retirement allowance, or any optional benefit he or she may have selected
 34 at the time of the filing of such application or prior thereto pursuant to the provisions of this section.

35 c. 1. A contributor at any time may file with the retirement board his or her election to
 36 have paid to his or her beneficiary, in the event of his or her death, his or her
 37 accumulated salary deductions or death benefit, or both, in accordance with one
 38 of the following options:

39 Option A. Upon the death of the contributor the actuarial value of his or her

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 accumulated salary deductions or death benefit, or both, shall be paid in an
 2 annuity in monthly installments throughout the life of such beneficiary as he or
 3 she shall nominate by written designation duly acknowledged and filed with
 4 such board; or

5 Option B. Upon the death of the contributor the actuarial value of his or her
 6 accumulated salary deductions or death benefit, or both, shall be paid in a lesser
 7 annuity in monthly installments to such beneficiary as the contributor shall
 8 nominate by written designation duly acknowledged and filed with such board
 9 with a provision that should such beneficiary die before he or she has received
 10 the total actuarial value of the accumulated salary deductions or death benefit,
 11 or both, as certified at the time of the death of the contributor, the balance shall
 12 be paid to the estate of the contributor or to such other beneficiary or
 13 beneficiaries as shall have been nominated by the contributor by written
 14 designation duly acknowledged and filed with such board; or

15 Option C. Upon the death of the contributor, that some other benefit or benefits
 16 shall be paid to such beneficiary or beneficiaries as he or she shall have
 17 nominated by written designation duly acknowledged and filed with such board,
 18 provided such other benefit or benefits shall be certified to by the actuary of such
 19 board to be of equivalent actuarial value of the accumulated salary deductions
 20 or death benefit, or both, and shall be approved by such board.

21 2. Where any contributor, by any designation heretofore or hereafter filed pursuant to
 22 paragraph one of this subdivision c and in effect at the time of the death of such
 23 contributor, nominated or shall nominate any beneficiary or beneficiaries to
 24 receive payment of his or her death benefit in accordance with any option
 25 mentioned in such paragraph one, the reserve-for-increased-pay, if any, of such
 26 contributor shall be paid to such beneficiary or beneficiaries in the same manner
 27 and in accordance with the same methods of computation as are prescribed in
 28 such paragraph one with respect to payment of such death benefit pursuant to
 29 such option.

30 d. 1. Where a designated beneficiary has been named to receive either the accumulated salary
 31 deductions or death benefit, or both, but where no election of an option has been made
 32 under the provisions of this section, the designated beneficiary may elect to receive
 33 the amount or amounts payable upon the death of the contributor in a lump sum or he
 34 or she may elect to have the amount paid under any one of the above options in the
 35 same manner as if the contributor had designated the option under which such amount
 36 would have been paid.

37 2. Where any designated beneficiary named as specified in paragraph one of this
 38 subdivision d, has heretofore made or shall hereafter make an election pursuant
 39 to such paragraph one with respect to receipt of the death benefit, the reserve-
 40 for-increased-take-home-pay, if any, of the contributor shall be paid to the same
 41 beneficiary or beneficiaries, in the same manner, and in accordance with the

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 same methods of computation as are prescribed by such paragraph one with
2 respect to payment of the death benefit pursuant to such election.

3 e. The effective date of retirement under section 13-545, 13-547, 13-549 or 13-557 of this chapter,
4 shall be the date specified in the application as the date for retirement, provided that the date so
5 specified is subsequent to the date of filing. In case of disability retirement, the effective date of
6 retirement shall be the date of the medical examination or such other date within thirty days
7 subsequent to the medical examination as shall be mutually agreed upon by the contributor and
8 such board.

9 f. This section shall not apply to a contributor who prior to the tenth day of October, nineteen
10 hundred twenty-nine shall have filed with such board a statement in writing that he or she elected
11 not to come within the provisions of this section.

12 g. Notwithstanding any other provision of this section to the contrary, at least one-half of the death
13 benefits payable under this section, including any accumulated deductions or the reserve-for-
14 increased-take-home-pay remaining at the time of the member's death, payable under this section
15 shall be paid to the member's surviving spouse, if any, unless the member elects that the surviving
16 spouse receive less than one-half of the death benefits, and:

17 1. (a) the member's surviving spouse consents, after the date of the member's
18 marriage, in writing to the member's election;

19 (b) the spousal survivor consent is on a plan form addressed to the member and
20 the form sets forth:

21 (i) the amount of the member's death benefits,

22 (ii) the entitlement of the surviving spouse to at least half of the death
23 benefits,

24 (iii) the surviving spouse's right to prevent any future member elections
25 regarding the member's death benefits without the surviving spouse's
26 consent unless the consent of the surviving spouse expressly permits
27 member elections without any further consent by the surviving spouse,
28 and

29 (iv) the fact that consenting to the member's election would result in the
30 surviving spouse receiving no death benefits or less death benefits than
31 the surviving spouse would otherwise be entitled under this subdivision,

32 (c) the consent includes an acknowledgement that the surviving spouse
33 understands the surviving spouse's entitlement to be paid at least one-half the
34 death benefits absent the surviving spouse's consent to the member's election,
35 and that the surviving spouse's consent to the member's election would
36 eliminate or reduce these death benefit payments;

37 (d) the consent includes a signature by the surviving spouse that was witnessed

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

1 by either a notary public or a representative of the retirement system; and
 2 (e) the completed consent and the member's election are received by the system
 3 before the member's death;

4 2. the member and the surviving spouse were legally separated at the time the
 5 member's election was filed with the retirement system;

6 3. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of
 7 Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of
 8 the member's death; or

9 4. the retirement board determined that the consent required under paragraph one of
 10 this subdivision could not be obtained from the surviving spouse because

11 (a) there is no surviving spouse;

12 (b) the surviving spouse could not be located between the time the member
 13 elected that the surviving spouse would not be paid at least one-half of the death
 14 benefits and the date of the member's death; or

15 (c) such other circumstances as the retirement board may prescribe by written
 16 plan regulations.

17 h. Notwithstanding any other provision of this section to the contrary, a member's election must
 18 comply with the terms of subdivision i of this section to be effective.

19 i. If the retirement board of the system acts with the care, skill, prudence, and diligence under the
 20 circumstances then prevailing that a prudent man acting in a like capacity and familiar with such
 21 matters would use in the conduct of an enterprise of a like character and with like aims, in—

22 1. relying on a consent referred to in paragraph one of subdivision g of this section, or
 23 2. making a determination under paragraph four of subdivision g of this section,

24 then such consent or determination shall be treated as valid for purpose of discharging the
 25 retirement system and the board from liability to the extent of payments made pursuant to such
 26 action. These discharges shall not deprive the surviving spouse of any right to which the surviving
 27 spouse would otherwise be entitled from any party other than the retirement system or the board.

28
 29
 30 Section 19. Section 13-558 of the administrative code of the City of New York, as amended by
 31 L. 2004, ch. 447, § 1, is amended to read as follows:

32 § 13-558. Retirement; options in which retirement allowances may be taken.

33
 34 a. A contributor may at any time file with such board his or her election to receive on retirement
 35 his or her benefits in a retirement allowance payable throughout life or to receive the actuarial
 36 equivalent of his or her annuity, his or her pension, or his or her retirement allowance in a lesser
 37 annuity, or a lesser pension, or a lesser retirement allowance, payable throughout life, with the

EXPLANATION—Matter (underscoring) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 provision that;

2 Option I. If he or she dies before he or she has received in payments the present value
3 of his or her annuity, his or her pension, or his or her retirement allowance, as it
4 was at the time of his or her retirement, the balance shall be paid to his or her
5 legal representative or to such person as he or she shall nominate by written
6 designation duly acknowledged and filed with such board. The contributor may
7 provide by written designation duly acknowledged and filed with such board,
8 that if such balance shall be in the sum of ten thousand dollars or more, the same
9 shall be paid to the person designated in accordance with one of the following
10 options:

11 Option Ia. Upon the death of the contributor such balance shall be paid to the person
12 designated in the form of an annuity, in monthly installments, throughout his or
13 her life. The annuity to the beneficiary, if payable, shall be calculated on the
14 basis of regular interest and the mortality table for Option A; or

15 Option Ib. Upon the death of the contributor such balance shall be paid in a lesser
16 annuity in monthly installments to the person designated with a provision that
17 should such beneficiary die before he or she has received the total actuarial value
18 of such balance, the unused portion shall be paid to the estate of the contributor
19 or to such other person as he or she shall nominate by written designation duly
20 acknowledged and filed with such board. The lesser annuity to the beneficiary,
21 if payable, shall be calculated on the basis of regular interest and the mortality
22 table for Option B.

23 In the event that the contributor has made no election of Option Ia or Option Ib, the designated
24 beneficiary may elect to receive the balance payable upon the death of the contributor in a lump
25 sum or he or she may elect to have such balance paid under any one of the above options in the
26 same manner as if the contributor had designated the option under which such balance would have
27 been paid. The beneficiary nominated in such designation may be changed by the contributor at
28 any time either before or after retirement by a new designation or designations filed prior to the
29 death of the contributor.

30 Option II. Upon his or her death, his or her annuity, his or her pension, or his or her
31 retirement allowance, shall be continued throughout the life of and paid to such
32 person as he or she shall nominate by written designation duly acknowledged
33 and filed with such board.

34 Option III. Upon his or her death, one-half of his or her annuity, his or her pension, or
35 his or her retirement allowance, shall be continued throughout the life of and
36 paid to such person as he or she shall nominate by written designation duly
37 acknowledged and filed with such board.

38 Option IV. Some other benefit or benefits shall be paid either to the contributor or to
39 such person or persons as he or she shall nominate, provided such other benefit
40 or benefits together with such lesser annuity, or lesser pension, or lesser

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

1 retirement allowance shall be certified by the actuary of such board to be of
2 equivalent actuarial value and shall be approved by such board.

3 b. For purposes of this section, the words “pension” and “retirement allowance” shall be deemed
4 to include the pension-providing-for-increased-take-home-pay.

5 c. Notwithstanding any other provision of this title to the contrary, a twenty-year pension plan
6 contributor who has made an election, pursuant to subdivision a of this section, prior to the
7 effective date to his or her retirement, may, at any time before his or her retirement allowance as
8 such a contributor begins, change any such election made by or her to any other election authorized
9 by such subdivision, by filing such changed election with the board. Any such changed election
10 may, at any time before such retirement allowance begins, be further changed in the same manner
11 to any other election authorized by such subdivision. Any such changed election last filed shall
12 supersede all elections previously filed.

13 d. (1) The retirement board may adopt rules and regulations providing that in any case where
14 a contributor or designated beneficiary authorized by the applicable provisions of this
15 chapter to nominate a beneficiary to receive a lump sum benefit under this section
16 represents to the retirement system that a specified person has been designated by such
17 contributor or designated beneficiary as a trustee of an inter vivos or testamentary trust
18 for the purpose of this subdivision d, such person shall (a) be eligible to be nominated
19 to receive, in the capacity of trustee, a lump sum benefit under Option I and (b) be
20 eligible to be nominated to receive, in the capacity of trustee, any benefit under Option
21 IV which the retirement board shall deem appropriate.

22 (2) Any proceeds received by a trustee under this section shall not be subject to the
23 debts of the member or to transfer or estate taxes to any greater extent than if
24 such proceeds were payable to the beneficiaries named in the trust and not to the
25 estate of the member.

26 (3) A payment made in good faith under this section (a) to a person so represented to
27 the retirement system to be a trustee of an inter vivos trust, or (b) to a person
28 who is designated as a successor trustee of an inter vivos trust and who provides
29 a copy of his or her appointment, or (c) to a person who is designated as a trustee
30 or successor trustee of a testamentary trust and who provides a copy of the letters
31 of trusteeship, provided such payment is made to such payee in the capacity of
32 trustee, shall be a complete discharge to the retirement system to the extent of
33 the payment. Such discharge shall not be impaired or affected by an adjudication
34 that a trust is invalid or that a person represented to be or designated as a trustee
35 is not entitled to receive the proceeds, if payment is made in good faith under
36 this section before notice to the retirement system of the claim of invalidity or
37 lack of entitlement on which such adjudication is based.

38 (4) If no person to whom the retirement system is authorized to make payment in the
39 capacity of trustee, as provided for in paragraph three of this subdivision d,
40 claims the proceeds within eighteen months after the death of the retired

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

1 member, payment shall be made to the deceased retired member's estate and
 2 such payment shall be a complete discharge to the retirement system to the
 3 extent of the payment.

4 (a) If satisfactory evidence is furnished within such period of eighteen months
 5 that there is or will be no trustee to receive the proceeds, payment shall be made
 6 to the deceased retired member's estate.

7 (5) In the event that after a person represented to have been designated as a trustee of
 8 an inter vivos or testamentary trust is nominated pursuant to rules and
 9 regulations adopted under paragraph one of this subdivision d, the contributor
 10 or designated beneficiary authorized to make a nomination shall, in compliance
 11 with the applicable provisions of this chapter, nominate for receipt of the same
 12 lump sum benefit:

13 (a) a beneficiary other than a person so represented to have been designated as a
 14 trustee; or

15 (b) a person represented to have been designated as a trustee under a different
 16 inter vivos or testamentary trust;

17 a payment made in good faith under this section to the last such nominee as of the date
 18 of death, whether he or she is a beneficiary not represented to have been designated as
 19 trustee or a person represented to have been so designated, shall be a complete
 20 discharge to the retirement system to the extent of the payment, provided, however,
 21 that if payment is made to a person represented to have been designated as a trustee,
 22 the retirement system shall be so discharged if payment is made to such person in the
 23 capacity of trustee and if there is compliance with the requirements of paragraph three
 24 of this subdivision d with respect to submission of copies. In any case where the last
 25 such nominee is a person represented to have been designated as a trustee, the
 26 provisions of paragraph four of this subdivision d shall apply.

27 e. Notwithstanding section 13-565 and any other provision of this title, an option selection
 28 previously filed by a contributor or retired contributor may be changed no later than thirty days
 29 following the date of payability of his or her retirement allowance. A retired contributor who has
 30 been retired for disability may change an option selection previously filed no later than (1) thirty
 31 days following the date on which such contributor's application for disability retirement was
 32 approved by the retirement board or (2) thirty days following the date on which the contributor
 33 was retired for disability, whichever is later.

34 f. Notwithstanding any other provision of this section to the contrary, a member's retirement
 35 allowance shall be paid as Option III, so that upon his or her death, if the member has a surviving
 36 spouse who was married to the member on the date the member filed his or her retirement
 37 application, or on the date the member filed his or her last effective option selection, if any,
 38 whichever is later, the surviving spouse shall be paid for life survivor benefit payments, each of
 39 which is equal to at least one-half the amount of the member's retirement allowance payments

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 payable under this section unless the member elects that the surviving spouse receive either no
 2 survivor benefit payments or survivor benefit payments, each of which is less than one-half the
 3 amount of the member's retirement allowance payments, and:

4 (1) (a) the member's surviving spouse consents after the date of the member's
 5 marriage, in writing to the member's election;

6 (b) the spousal survivor consent is on a plan form addressed to the member and
 7 the form sets forth:

8 (i) the amount of the Option III monthly benefit entitlements of the
 9 member and of the spouse,

10 (ii) the time each individual would be entitled under Option III to those
 11 benefits,

12 (iii) the surviving spouse's right to prevent any future member elections
 13 regarding the member's survivor benefits without the surviving spouse's
 14 consent unless the consent of the surviving spouse expressly permits
 15 member elections without any further consent by the surviving spouse,
 16 and

17 (iv) the fact that consenting to the member's survivor benefit election
 18 would result in the surviving spouse receiving no survivor benefits or
 19 smaller survivor benefits than the surviving spouse would otherwise be
 20 entitled under this subdivision:

21 (c) the consent includes an acknowledgement that the surviving spouse
 22 understands the surviving spouse's entitlement to life survivor benefit payments,
 23 each of which is equal to at least one-half the amount of the member's retirement
 24 allowance payments absent the surviving spouse's consent to the member's
 25 election, and that the surviving spouse's consent would eliminate or reduce those
 26 survivor benefits would eliminate or reduce those survivor benefits;

27 (d) the consent includes a signature by the surviving spouse that was witnessed
 28 by either a notary public or a representative of the retirement system; and

29 (e) the completed consent and the member's election are received by the system
 30 before the payability date;

31 (2) the member and the surviving spouse were legally separated when the member's
 32 election was filed with the retirement system;

33 (3) any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of
 34 Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of
 35 the filing of the member's application for a retirement allowance; or

36 (4) the retirement board determined that the consent required under paragraph 1 of this
 37 subdivision could not be obtained from the surviving spouse because

38 (a) there is no surviving spouse;

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 (b) the surviving spouse could not be located between the time the member
 2 elected that the surviving spouse would not be paid a retirement allowance of at
 3 least fifty percent of the amount paid to such member and the date of the filing
 4 of the member's application for a retirement allowance; or

5 (c) such other circumstances as the retirement board may prescribe by written
 6 plan regulations.

7 g. Notwithstanding any other provision of this section to the contrary, a member's election must
 8 comply with the terms of subdivision f of this section to be effective.

9 h. If the retirement board of the system acts with the care, skill, prudence, and diligence under the
 10 circumstances then prevailing that a prudent man acting in a like capacity and familiar with such
 11 matters would use in the conduct of an enterprise of a like character and with like aims, in—

12 (1) relying on a consent referred to in paragraph one of subdivision f of this section,
 13 or

14 (2) making a determination under paragraph four of subdivision f of this section,

15 then such consent or determination shall be treated as valid for purpose of discharging the
 16 retirement system and the board from liability to the extent of payments made pursuant to such
 17 action. These discharges shall not deprive the surviving spouse of any right to which the surviving
 18 spouse would otherwise be entitled from any party other than the retirement system or the board.
 19 To the extent the retirement system and the board were completely discharged for any annuity
 20 benefit payments that the system made to the member in excess of what the member would have
 21 been entitled under Option III if the member's beneficiary had been the surviving spouse, such
 22 excess payments shall be called Discharged Payments. The retirement system may recover the
 23 actuarial equivalent of those Discharged Payments, computed using the plan's actuarial factors,
 24 from the surviving spouse with offsets against the system's monthly annuity benefit payments to
 25 the surviving spouse payable under this section, but may not thereby reduce any of those benefit
 26 payments by more than 10%.

27
 28
 29 Section 20. The provisions of this act shall be severable, and if any clause, sentence, paragraph,
 30 subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to
 31 be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be
 32 confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof
 33 directly involved in the controversy in which such judgment shall have been rendered.

34
 35
 36 Section 21. This act shall take effect for all benefit payments beginning after December 31 of the
 37 year immediately after the year the bill is enacted other than those payments made pursuant to a
 38 benefit designation executed before such date. This act shall not change the law pertaining to a
 39 prenuptial agreement or a postnuptial agreement executed on or before December 31 of the year

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

1 immediately after the year the bill is enacted. This act shall not change the law pertaining to a
 2 domestic relations order or a support order.
 3
 4
 5

NEW YORK STATE _____

MEMORANDUM IN SUPPORT OF LEGISLATION

Submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: _____

SPONSOR: _____

TITLE OF BILL: AN ACT to amend the retirement and social security law, and the administrative code of the City of New York in relation to enacting the “New York State & New York City Equity for Surviving Spouses Act,” which would require that any public retirement plan for employees of New York State, the City of New York, or any other New York locality, to provide that (1) the default retirement annuity payment form be a joint and survivor annuity in which an employee’s surviving spouse is the employee’s beneficiary with a right to lifetime payments equal to at least 50% of the annuity benefits to which the employee was entitled; and (2) the default beneficiary for at least 50% of the employee’s pre-retirement death benefits be the employee’s surviving spouse. These default choices are more consistent with the preferences of most employees to protect their surviving spouses than the current default choices. In order to further protect surviving spouses, particularly those staying home to raise children, the amendment would reinforce the elective share rights of surviving spouses by prohibiting an employee from changing either default designation without the written consent of the employee’s surviving spouse.

The amendment would align the New York government retirement practice with that of the federal government, the majority of the states, the District of Columbia, several large municipalities, and most private-employers, all of which protect the surviving spouses of their employees. The amendment is modeled on the Retirement Equity Act of 1984’s amendments to the Employee Retirement Income Security Act of 1974. Those amendments added equitable, protections of the retirement and pre-retirement benefits of the surviving spouses of employees of private employers.

Surviving spouses of employees of New York State, the City of New York, or any other New York locality, in contrast, often do not now obtain the retirement survivor benefits or the pre-retirement death benefits that they expect. This is because the default retirement benefit provides no survivor benefits to anyone, and no pre-retirement death benefits need to be paid to the

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
 NYS & NYC ESSA April 6, 2022

employee's surviving spouse. Moreover, the employee's spouse need receive no notice of the employee's retirement benefit selection or the employee's pre-retirement beneficiary designation. Thus, a non-working spouse raising small children may be emotionally and financially devastated to learn upon the employee's death that the surviving spouse will receive no survivor benefits or death benefits. Older non-working spouses may have to spend their remaining lives in destitution. The spousal right of election, which applies to a decedent's benefits from a New York State, New York City, or any New York locality government employee pension plan, is often of little utility with respect to these benefits because there may be no survivor benefits to elect against and the surviving spouse may not learn of the death benefits quickly enough to recover any portion of those benefits after their distribution.

The amendment would address the default issue by making the default retirement benefit the joint and 50% survivor annuity, with the surviving spouse as beneficiary, and by keeping the default pre-retirement benefit a lump sum payment, but requiring that the surviving spouse be the beneficiary of at least 50% of the lump sum.

As is now the case for a surviving spouse's elective share rights, no minimum marriage period would be required to obtain these surviving spouse benefits, and the spousal survivor benefits would not be limited to those accrued during the member's marriage or to those accrued after the effective date of the amendment. Furthermore, any individual who is not a surviving spouse for elective share rights purposes would not be a surviving spouse for purposes of the amendment.

The amendment would not affect the current plan benefit rules for members who are not married on the earlier of (1) the date the member dies, and (2) date the member filed his or her retirement application, or on the date the member filed his or her last effective option selection, if any, whichever is later. Marriages to a member after the later of those dates would not result in any surviving spouse rights under this amendment.

The amendment would address the knowledge and spousal entitlement issues by not permitting an employee to select a non-default benefit that would reduce the surviving spouse's benefit without the written consent of the member's surviving spouse. The surviving spouse's consent must be on a plan form that sets forth the surviving spouse's entitlement to the default benefit, and the effect of the non-default election or designation on the spouse's entitlement to those survivor or death benefits. This consent must be executed after the date of the member's marriage. The consent would, moreover, be effective only if the surviving spouse acknowledges understanding the consent and signs the form before a notary public or plan representative.

Thus, the amendment would give surviving spouses an equitable interest in what is often the largest liquid asset of the employee and may allow the surviving spouse and their children to avoid poverty or the need for government financial assistance.

Accordingly, the amendment would change the terms of the three New York State and five City of New York defined benefit plans:

- New York State and Local Retirement System;
- New York State and Local Police and Fire Retirement System; and
- New York State Teachers' Retirement System;
- New York City Employees' Retirement System;
- New York City Fire Pension Fund;

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

- New York City Board of Education Retirement System;
- New York City Police Pension Fund; and
- Teachers' Retirement System of the City of New York.

as follows:

Retirement and Social Security Law § 448. Death benefits

This Section applies to members who joined a public retirement system of the State or City of New York between July 1, 1973, and June 30, 1976 (between July 1, 1976, and July 1, 2009, for police officers and firefighters), and who die prior to retirement while actively employed. The death benefit, including the reserve-for-increased-take-home-pay, is payable to the member's designated beneficiary, or, in the absence of a beneficiary, the member's estate. There is currently no provision that requires a member to designate his or her spouse as beneficiary. The measure adds subdivision (h), which provides that the member's surviving spouse, if any, is entitled to at least half of the benefits payable under this Section, unless the surviving spouse waived the death benefits by signing a written consent before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or the surviving spouse could not be located between the time of the member's contrary election and the member's death. If the retirement board acts in accordance with the well-established ERISA fiduciary duty rules in determining that the member was unmarried; that the member and the surviving spouse were legally separated; that the member could not locate the surviving spouse at the relevant time or times; or that at the relevant time the surviving spouse would have been disqualified from exercising elective share rights, the retirement system and the board shall be discharged from liability to the extent of payments pursuant to such action.

Retirement and Social Security Law § 448-a. Death benefit for vested members who die prior to retirement

This Section applies to members who joined a public retirement system of the State or City of New York between July 1, 1973, and June 30, 1976 (between July 1, 1976, and July 1, 2009, for police officers and firefighters). Upon the death of a member prior to retirement who has at least ten years of credited service, a death benefit, including the reserve-for-increased-take-home-pay, is payable to the member's designated beneficiary, or, in the absence of a beneficiary, the member's estate. Under current law, a member is not required to designate his or her spouse as beneficiary. The measure adds subdivision (d), which provides that the member's surviving spouse, if any, is entitled to at least half of the benefits payable under this Section, unless the surviving spouse waived the death benefits by signing a written consent before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or the surviving spouse could not be located between the time of the member's contrary election and the member's death. If the retirement board acts in

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

accordance with the well-established ERISA fiduciary duty rules in determining that the member was unmarried; that the member and the surviving spouse were legally separated; that the member could not locate the surviving spouse at the relevant time or times; or that at the relevant time the surviving spouse would have been disqualified from exercising elective share rights, the retirement system and the board shall be discharged from liability to the extent of payments pursuant to such action.

Retirement and Social Security Law § 508. Death benefits

This Section applies to members who joined a retirement system of the State or City of New York on or after July 1, 1976, and die prior to retirement while actively employed. Accumulated member contributions and a death benefit are payable to the member's designated beneficiary, or, in the absence of a beneficiary, the member's estate. There is currently no provision that requires a member to designate his or her spouse as beneficiary. The measure adds subdivision (g), which provides that the member's surviving spouse, if any, is entitled to at least half of the benefits payable under this Section, unless the surviving spouse waived the death benefits by signing a written consent before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or the surviving spouse could not be located between the time of the member's contrary election and the member's death. If the retirement board acts in accordance with the well-established ERISA fiduciary duty rules in determining that the member was unmarried; that the member and the surviving spouse were legally separated; that the member could not locate the surviving spouse at the relevant time or times; or that at the relevant time the surviving spouse would have been disqualified from exercising elective share rights, the retirement system and the board shall be discharged from liability to the extent of payments pursuant to such action.

Retirement and Social Security Law § 508-a. Death benefit for vested members who die prior to retirement

This Section applies to members who joined a public retirement system of the State or City of New York on or after July 1, 1976, and die prior to retirement with at least ten years of credited service. A death benefit is payable to the member's designated beneficiary, or, in the absence of a beneficiary, the member's estate. Under current law, a member is not required to designate his or her spouse as beneficiary. The measure adds subdivision (d), which provides that the member's surviving spouse, if any, is entitled to at least half of the benefits payable under this Section, unless the surviving spouse waived the death benefits by signing a written consent before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or the surviving spouse could not be located between the time of the member's contrary election and the member's death. If the retirement board acts in accordance with the well-established ERISA fiduciary duty rules in determining that the member was unmarried; that the member and the surviving spouse were

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

legally separated; that the member could not locate the surviving spouse at the relevant time or times; or that at the relevant time the surviving spouse would have been disqualified from exercising elective share rights, the retirement system and the board shall be discharged from liability to the extent of payments pursuant to such action.

Retirement and Social Security Law § 514. Options

This Section sets forth the forms in which members who joined a retirement system of the State or City of New York on or after July 1976, may receive their retirement allowance. If a member does not make an election, benefits are paid as a single life annuity for the life of the member only. The member may, alternatively, elect to receive an actuarially reduced lifetime benefit, and, upon the member's death, a survivor annuity will be paid to the designated beneficiary. Under current law, a member is not required to elect any option or designate his or her spouse as beneficiary. The measure adds subdivision (e), which provides that benefits are paid pursuant to Option Three, so that upon the death of the member after retirement, a lifetime survivor annuity of an amount equal to one-half of the member's retirement annuity is paid to the member's surviving spouse, if any, unless the surviving spouse waived the death benefits by signing a written consent before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or the surviving spouse could not be located between the time of the member's contrary election and the member's death. If the retirement board acts in accordance with the well-established ERISA fiduciary duty rules in determining that the member was unmarried; that the member and the surviving spouse were legally separated; that the member could not locate the surviving spouse at the relevant time or times; or that at the relevant time the surviving spouse would have been disqualified from exercising elective share rights, the retirement system and the board shall be discharged from liability to the extent of payments pursuant to such action. Moreover, the board may recoup any such wrongful benefit payments by reducing each of the surviving spouse's monthly lifetime annuity benefits, but none of the reductions may exceed 10% of the monthly annuity benefit.

Retirement and Social Security Law § 606. Death benefits

This Section applies to members who joined a retirement system of the State or City of New York on or after July 1, 1976, (April 1, 2012, for police officers and firefighters), and die prior to retirement while in active employment. A death benefit is payable to the member's designated beneficiary, or, in the absence of a beneficiary, the member's estate. There is currently no provision that requires a member to designate his or her spouse as beneficiary. The measure adds subdivision (f), which provides that the member's surviving spouse, if any, is entitled to at least half of the benefits payable under this Section, unless the surviving spouse waived the death benefits by signing a written consent before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or the surviving spouse could not be located between the time of the

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

member's contrary election and the member's death. If the retirement board acts in accordance with the well-established ERISA fiduciary duty rules in determining that the member was unmarried; that the member and the surviving spouse were legally separated; that the member could not locate the surviving spouse at the relevant time or times; or that at the relevant time the surviving spouse would have been disqualified from exercising elective share rights, the retirement system and the board shall be discharged from liability to the extent of payments pursuant to such action.

Retirement and Social Security Law § 606-a. Death benefit for vested members who die prior to retirement

This Section applies to members who joined a public retirement system of the State or City of New York on or after July 1, 1976 (April 1, 2012, for police officers and firefighters). Upon the death of a member with at least ten years of credited service who dies prior to retirement, a death benefit, including the reserve-for-increased-take-home-pay, is payable to the member's designated beneficiary, or, in the absence of a beneficiary, the member's estate. Under current law, a member is not required to designate his or her spouse as beneficiary. The measure adds subdivision (d), which provides that the member's surviving spouse, if any, is entitled to at least half of the benefits payable under this Section, unless the surviving spouse waived the death benefits by signing a written consent before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or the surviving spouse could not be located between the time of the member's contrary election and the member's death. If the retirement board acts in accordance with the well-established ERISA fiduciary duty rules in determining that the member was unmarried; that the member and the surviving spouse were legally separated; that the member could not locate the surviving spouse at the relevant time or times; or that at the relevant time the surviving spouse would have been disqualified from exercising elective share rights, the retirement system and the board shall be discharged from liability to the extent of payments pursuant to such action. The measure also corrects the spelling of the word "at" in clause 2 of subsection a.

Retirement and Social Security Law § 610. Options

This Section sets forth the forms in which members who joined a retirement system of the State or City of New York on or after July 1, 1976 (April 1, 2012, for police officers and firefighters), may receive their retirement allowance. If a member does not make an election, benefits are paid as a single life annuity for the life of the member only. The member may, alternatively, elect to receive an actuarially reduced lifetime benefit, and, upon the member's death, a survivor annuity is paid to the designated beneficiary. Under current law, a member is not required to elect any option or designate his or her spouse as beneficiary. The measure adds subdivision (g), which provides that benefits are paid pursuant to Option Three, so that upon the death of the member after retirement, a lifetime survivor annuity of an amount equal to one-half of the member's retirement annuity is paid to the member's surviving spouse, if any, unless the surviving spouse waived the death

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

benefits by signing a written consent before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or the surviving spouse could not be located between the time of the member's contrary election and the member's death. If the retirement board acts in accordance with the well-established ERISA fiduciary duty rules in determining that the member was unmarried; that the member and the surviving spouse were legally separated; that the member could not locate the surviving spouse at the relevant time or times; or that at the relevant time the surviving spouse would have been disqualified from exercising elective share rights, the retirement system and the board shall be discharged from liability to the extent of payments pursuant to such action. Moreover, the board may recoup any such wrongful benefit payments by reducing each of the surviving spouse's monthly lifetime annuity benefits, but none of the reductions may exceed 10% of the monthly annuity benefit.

N.Y.C. Admin. Code § 13-148. Death benefits; ordinary death benefits.

This Section provides that upon the death of a member or former member of the New York City Employees' Retirement System, a death benefit, including accumulated member distributions and the reserve-for-increased-take-home-pay, is payable to the member's designated beneficiary, or, in the absence of a beneficiary, the member's estate. There is currently no provision that requires a member to designate his or her spouse as beneficiary. The measure adds subdivision (d), which provides that the member's surviving spouse, if any, is entitled to at least half of the benefits payable under this Section, unless the surviving spouse waived the death benefits by signing a written consent before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or the surviving spouse could not be located between the time of the member's contrary election and the member's death. If the retirement board acts in accordance with the well-established ERISA fiduciary duty rules in determining that the member was unmarried; that the member and the surviving spouse were legally separated; or that the member could not locate the surviving spouse at the relevant time or times, or that at the relevant time the surviving spouse would have been disqualified from exercising elective share rights, the retirement system and the board shall be discharged from liability to the extent of payments pursuant to such action.

N.Y.C. Admin. Code § 13-177. Retirement; options in which retirement allowances may be taken.

This Section sets forth the forms in which members of the New York City Employees' Retirement System may receive their retirement allowance. If a member does not make an election, benefits are paid as a single life annuity for the life of the member only. The member may, alternatively, elect to receive an actuarially reduced lifetime benefit, and, upon the member's death, a survivor annuity will be paid to the designated beneficiary. Under current law, a member is not required to elect any option or designate his or her spouse as beneficiary. The measure adds a paragraph that provides that benefits are paid pursuant to Option 3, so that upon the death of the member after

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

retirement, a lifetime survivor annuity equal to one-half of the member's retirement annuity is paid to the member's surviving spouse, if any, unless the surviving spouse waived the death benefits by signing a written consent before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or the surviving spouse could not be located between the time of the member's contrary election and the member's death. If the retirement board acts in accordance with the well-established ERISA fiduciary duty rules in determining that the member was unmarried; that the member and the surviving spouse were legally separated; or that the member could not locate the surviving spouse at the relevant time or times, or that at the relevant time the surviving spouse would have been disqualified from exercising elective share rights, the retirement system and the board shall be discharged from liability to the extent of payments pursuant to such action. Moreover, the board may recoup any such wrongful benefit payments by reducing each of the surviving spouse's monthly lifetime annuity benefits, but none of the reductions may exceed 10% of the monthly annuity benefit.

N.Y.C. Admin. Code § 13-243. Death benefits; ordinary death benefits.

This Section provides that upon the death of a member or former member of the New York City Police Pension Fund, a death benefit, including accumulated member distributions and the reserve-for-increased-take-home-pay, is payable to the member's designated beneficiary, or, in the absence of a beneficiary, the member's estate. There is currently no provision that requires a member to designate his or her spouse as beneficiary. The measure adds subdivision (e), which provides that the member's surviving spouse, if any, is entitled to at least half of the benefits payable under this Section, unless the surviving spouse waived the death benefits by signing a written consent before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or the surviving spouse could not be located between the time of the member's contrary election and the member's death. If the retirement board acts in accordance with the well-established ERISA fiduciary duty rules in determining that the member was unmarried; that the member and the surviving spouse were legally separated; or that the member could not locate the surviving spouse at the relevant time or times, or that at the relevant time the surviving spouse would have been disqualified from exercising elective share rights, the retirement system and the board shall be discharged from liability to the extent of payments pursuant to such action.

N.Y.C. Admin. Code § 13-261. Retirement; options in which retirement allowances may be taken.

This Section sets forth the forms in which members of the New York City Police Pension Fund may receive their retirement allowance. If a member does not make an election, benefits are paid as a single life annuity for the life of the member only. The member may, alternatively, elect to receive an actuarially reduced lifetime benefit, and, upon the member's death, a survivor annuity will be paid to the designated beneficiary. Under current law, a member is not required to elect

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

any option or designate his or her spouse as beneficiary. The measure adds subdivision (c), which provides that benefits are paid pursuant to Option 3 so that upon the death of the member after retirement, a lifetime survivor annuity of an amount equal to one-half of the member's retirement annuity is paid to the member's surviving spouse, if any, unless the surviving spouse waived the death benefits by signing a written consent before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or the surviving spouse could not be located between the time of the member's contrary election and the member's death. If the retirement board acts in accordance with the well-established ERISA fiduciary duty rules in determining that the member was unmarried; that the member and the surviving spouse were legally separated; or that the member could not locate the surviving spouse at the relevant time or times, or that at the relevant time the surviving spouse would have been disqualified from exercising elective share rights, the retirement system and the board shall be discharged from liability to the extent of payments pursuant to such action. Moreover, the board may recoup any such wrongful benefit payments by reducing each of the surviving spouse's monthly lifetime annuity benefits, but none of the reductions may exceed 10% of the monthly annuity benefit.

N.Y.C. Admin. Code § 13-346. Death benefits; ordinary death benefits.

This Section provides that upon the death of a member or former member of the New York City Fire Pension Fund, a death benefit, including accumulated contributions, accumulated deductions, the accumulation for-increased-take-home-pay and the reserve-for-increased-take-home-pay is payable to the member's designated beneficiary, or, in the absence of a beneficiary, the member's estate. There is currently no provision that requires a member to designate his or her spouse as beneficiary. The measure adds subdivision (g), which provides that the member's surviving spouse, if any, is entitled to at least half of the benefits payable under this Section, unless the surviving spouse waived the death benefits by signing a written consent before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or the surviving spouse could not be located between the time of the member's contrary election and the member's death. If the retirement board acts in accordance with the well-established ERISA fiduciary duty rules in determining that the member was unmarried; that the member and the surviving spouse were legally separated; or that the member could not locate the surviving spouse at the relevant time or times, or that at the relevant time the surviving spouse would have been disqualified from exercising elective share rights, the retirement system and the board shall be discharged from liability to the extent of payments pursuant to such action.

N.Y.C. Admin. Code § 13-369. Retirement of original plan members; options in which retirement allowances may be taken.

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

This Section applies to members who joined the New York City Fire Pension Fund before July 1, 1981, and sets forth the forms in which retirement benefits may be paid. If a member does not make an election, benefits are paid as a single life annuity for the life of the member only. The member may, alternatively, elect to receive an actuarially reduced lifetime benefit, and, upon the member's death, a survivor annuity will be paid to the designated beneficiary. Under current law, a member is not required to elect any option or designate his or her spouse as beneficiary. The measure adds subdivision (e), which provides that benefits are paid pursuant to Option 3, so that upon the death of the member after retirement, a lifetime survivor annuity of an amount equal to one-half of the member's retirement annuity is paid to the member's surviving spouse, if any, unless the surviving spouse waived the death benefits by signing a written consent before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or the surviving spouse could not be located between the time of the member's contrary election and the member's death. If the retirement board acts in accordance with the well-established ERISA fiduciary duty rules in determining that the member was unmarried; that the member and the surviving spouse were legally separated; or that the member could not locate the surviving spouse at the relevant time or times, or that at the relevant time the surviving spouse would have been disqualified from exercising elective share rights, the retirement system and the board shall be discharged from liability to the extent of payments pursuant to such action. Moreover, the board may recoup any such wrongful benefit payments by reducing each of the surviving spouse's monthly lifetime annuity benefits, but none of the reductions may exceed 10% of the monthly annuity benefit.

N.Y.C. Admin. Code § 13-370. Retirement of improved benefits plan members; options in which retirement allowances may be taken.

This Section applies to members who joined the New York City Fire Pension Fund after June 30, 1981, and sets forth the forms in which retirement benefits may be paid. If a member does not make an election, the benefits will be paid as a single life annuity for the life of the member only. The member may, alternatively, elect to receive an actuarially reduced benefit, and, upon the member's death, a survivor annuity will be paid to the designated beneficiary. Under current law, a member is not required to elect any option or designate his or her spouse as beneficiary. The measure adds subdivision (f), which provides that benefits are paid pursuant to Option 3, so that upon the death of the member after retirement, a lifetime survivor annuity of an amount equal to one-half of the member's retirement annuity is paid to the member's surviving spouse, if any, unless the surviving spouse waived the death benefits by signing a written consent before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or the surviving spouse could not be located between the time of the member's contrary election and the member's death. If the retirement board acts in accordance with the well-established ERISA fiduciary duty rules in determining that the member was unmarried; that the member and the surviving spouse were legally separated; or that the member could not locate the surviving spouse at the relevant time or

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

times, or that at the relevant time the surviving spouse would have been disqualified from exercising elective share rights, the retirement system and the board shall be discharged from liability to the extent of payments pursuant to such action. Moreover, the board may recoup any such wrongful benefit payments by reducing each of the surviving spouse's monthly lifetime annuity benefits, but none of the reductions may exceed 10% of the monthly annuity benefit.

N.Y.C. Admin. Code § 13-542. Death benefits; ordinary death benefits.

This Section provides that upon the death of a member of the New York City Teachers' Retirement System, a death benefit, including accumulated deductions, and the reserve-for-increased-take-home-pay is payable to the member's designated beneficiary, or, in the absence of a beneficiary, the member's estate. There is currently no provision that requires a member to designate his or her spouse as beneficiary. The measure adds subdivision (d), which provides that the member's surviving spouse, if any, is entitled to at least half of the benefits payable under this Section, unless the surviving spouse waived the death benefits by signing a written consent before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or the surviving spouse could not be located between the time of the member's contrary election and the member's death. If the retirement board acts in accordance with the well-established ERISA fiduciary duty rules in determining that the member was unmarried; that the member and the surviving spouse were legally separated; or that the member could not locate the surviving spouse at the relevant time or times, or that at the relevant time the surviving spouse would have been disqualified from exercising elective share rights, the retirement system and the board shall be discharged from liability to the extent of payments pursuant to such action.

N.Y.C. Admin. Code § 13-543. Special death and retirement benefits.

This Section provides that upon the death of a member of the New York City Teachers' Retirement System before retirement, within thirty days after the effective date of his or her service retirement, or within thirty days after filing an application for disability retirement, a death benefit, including accumulated deductions, and the reserve-for-increased-take-home-pay is payable to the member's designated beneficiary, or, in the absence of a beneficiary, the member's estate. There is currently no provision that requires a member to designate his or her spouse as beneficiary. The measure adds subdivision (g), which provides that the member's surviving spouse, if any and the surviving spouse was married to the member on the date of the earlier of the member's death, or of the filing of the member's application for a retirement allowance, is entitled to at least half of the benefits payable under this Section, unless the surviving spouse waived the death benefits by signing a written consent before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or the surviving spouse could not be located between the time of the member's contrary election and the member's death. If the retirement board acts in accordance with the well-

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

established ERISA fiduciary duty rules in determining that the member was unmarried; that the member and the surviving spouse were legally separated; or that the member could not locate the surviving spouse at the relevant time or times, or that at the relevant time the surviving spouse would have been disqualified from exercising elective share rights, the retirement system and the board shall be discharged from liability to the extent of payments pursuant to such action. The measure also corrects the omission of the comma before the word “then” in clause (b) of subparagraph (iii) of paragraph two of subdivision (a).

N.Y.C. Admin. Code § 13-558. Retirement; options in which retirement allowances may be taken.

This Section sets forth the optional forms in which members of the New York City Teachers’ Retirement System may receive their retirement allowance. If a member does not make an election, the benefits will be paid as a single life annuity for the life of the member only. The member may, alternatively, elect to receive an actuarially reduced benefit, and, upon the member’s death, a survivor annuity will be paid to the designated beneficiary. Under current law, a member is not required to elect any option or designate his or her spouse as beneficiary. The measure adds subdivision (f), which provides that benefits are paid pursuant to Option III, so that upon the death of the member after retirement, a lifetime survivor annuity of an amount equal to one-half of the member’s retirement annuity is paid to the member’s surviving spouse, if any, unless the surviving spouse waived the survivor annuity by signing a written consent before a notary public or plan representative or receives a larger survivor benefit. Such consent must include an acknowledgment that the surviving spouse understands the consent. No consent is required if the member and the surviving spouse were legally separated at the time of the member’s contrary election, or the surviving spouse could not be located between the time of the member’s contrary election and the member’s death. If the retirement board acts in accordance with the well-established ERISA fiduciary duty rules in determining that the member was unmarried; that the member and the surviving spouse were legally separated; or that the member could not locate the surviving spouse at the relevant time or times, or that at the relevant time the surviving spouse would have been disqualified from exercising elective share rights, the retirement system and the board shall be discharged from liability to the extent of payments pursuant to such action. Moreover, the board may recoup any such wrongful benefit payments by reducing each of the surviving spouse’s monthly lifetime annuity benefits, but none of the reductions may exceed 10% of the monthly annuity benefit.

LEGISLATIVE HISTORY:

None. New proposal.

FISCAL NOTE AND BUDGET IMPLICATIONS:

Those individual surviving spouses, who would otherwise get no survivor benefits, would benefit significantly from implementing the bill.

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022

The administrative cost of implementing the bill would be insignificant. ERISA plans and federal plans, which have been subject to even more stringent spousal survivor requirements for almost forty years, have not found that the procedures constitute a significant plan burden.

For ordinary death benefit there is no change in the benefit form of payment. The only change is that the member's spouse will become entitled to at least 50% of the ordinary death benefit payment, absent a consent to waive the benefit. Thus, this would not affect the cost of those benefits.

For survivor benefits, there may be a change in the benefit form of payment. The employee's surviving spouse will be entitled to survivor annuity benefit payments at least equal to 50% of the employee's lifetime annuity benefit payments, absent a spousal consent to waive the benefit. There do not appear to public records disclosing the current plan assumptions about the actual or the expected proportion of different benefit form elections, so it is not possible to estimate the likely changes in those proportions, the extent of the actuarial cost of such a change, if any, or the effect, if any, on the plan funding requirements. For survivor annuity benefits, aggregate plan benefit costs may increase because survivor benefits are COLA adjusted only for surviving spouse beneficiaries. N.Y. RETIRE. & SOC. SEC. L. §§ 78-a, 378-a, and N. Y. EDUC. L. § 532. This speculative cost increase would result from the bill achieving its equitable goal of improving the access of a public employee's surviving spouse to retirement plan benefits. Moreover, there would be offsetting government cost reductions to the extent the bill would prevent some individual surviving spouses from otherwise being left impoverished on an employee's death, and dependent on New York government public funds.

EFFECTIVE DATE AND SEVERABILITY:

The bill shall take effect for all benefit payments beginning after December 31 of the year immediately after the year that the bill is enacted other than those payments made pursuant to a benefit designation executed before such date. If enacted, the bill would not change the law pertaining to the effects of a domestic relations order or a support order. Nor would the bill change the law with respect to a prenuptial agreement or a postnuptial agreement executed on or before December 31 of the year immediately after the year the bill is enacted. The bill includes a severability section.

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS & NYC ESSA April 6, 2022