



NEW YORK STATE  
BAR ASSOCIATION

# Report and Recommendations of the New York State Bar Association **Trusts and Estates Law Section**

January 2024

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# **EQUITY FOR SURVIVING SPOUSES ACT (ESSA)**

## **EXECUTIVE SUMMARY**

January 2024

The Equity for Surviving Spouses Act (ESSA) is proposed legislation that would provide surviving spouses of New York public sector employees with retirement benefit protections similar to those provided to surviving spouses of private sector employees, federal government employees, and public sector employees in almost all other states.

ESSA was developed in response to concerns raised by New York legal services attorneys, who advised surviving spouses of state and city employees. These surviving spouses were distressed to learn after the death of their spouse that they were entitled to no retirement plan benefits. As a result, they were left with significantly reduced standards of living, or in complete destitution.

This is a gap in protections for surviving spouses of New York public sector employees. While New York provides surviving spouses with the right to elect to obtain one-third of the value of their deceased loved one's property, this protection is of no utility if there are no survivor benefits for them to elect against. Similarly, the right of election is of no help if they are not notified of their deceased loved one's designated beneficiary for death benefits.

ESSA would remedy this gap by providing surviving spouses with default benefits from public employer retirement plans at least equal to the retirement survivor benefit under a joint and 50% survivor annuity and at least half of the death benefit. These default benefits may be waived by the surviving spouse with a written plan form. This waiver provision underscores the autonomy of surviving spouses in decisions that significantly impact their financial well-being.

ESSA mirrors the Federal Retirement Equity Act of 1984 provisions governing 100 million active members of private employer retirement plans and the similar provisions governing three million active members of federal employer retirement plans.

ESSA thus remedies a gap in New York surviving spouse protections by applying a tried-and-true approach used for forty years by private and federal employer retirement plans.

If enacted, ESSA would also bring New York in line with almost all other states, as only Tennessee, Alabama, and New York deny such protections to surviving spouses of their public sector employees. ESSA would enhance protections for surviving spouses of New York public sector employees, thereby safeguarding families across New York State.

## MEMORANDUM

From: Trusts & Estates Law Section of the New York State Bar Association  
 To: House of Delegates of the New York State Bar Association  
 Re: Proposed Legislation – Equity for Surviving Spouses Act (ESSA)  
 Date of Approval: June 21, 2023

**TITLE OF BILL: AN ACT** to amend the retirement and social security law, and the education law in relation to enacting the “Equity for Surviving Spouses Act,” which would amend the terms of the eight defined benefit employer retirement plans for employees of the State of New York and/or New York localities, including the City of New York, to provide that: (1) a retired employee’s surviving spouse, if any, is entitled by default to the survivor portion of the joint and 50% survivor annuity form of the retiree’s retirement benefits; and (2) an employee’s surviving spouse, if any, is entitled by default to 50% of the employee’s lump sum death benefits. The surviving spouse could waive the right to receive benefits at least equal to those the surviving spouse would receive under either of the defaults by executing and filing with the plan a written consent on a plan form. The amendment would enhance the protections for surviving spouses of New York public employees, recognize that marriage is an economic partnership, and encourage public employees and their spouses to prepare together for the eventualities of old age and death.

**LAW & SECTION REFERRED TO:** The legislation would add the following subdivisions to the following Sections of the Retirement & Social Security Law:

- Subdivisions f, g, and h to Section 51;
- Subdivisions g, h, and i to Section 60;
- Subdivisions d, e, and f to Section 60-c;
- Subdivisions f, g, and h to Section 90;
- Subdivisions f, g, and h to Section 351;
- Subdivisions h, i, and j to Section 360;
- Subdivisions d, e, and f to Section 360-c;
- Subdivisions f, g, and h to Section 390,
- Subdivisions h, i, and j to Section 448;
- Subdivisions d, e, and f to Section 448-a;
- Subdivisions g, h, and i to Section 508;
- Subdivisions d, e, and f to Section 508-a;
- Subdivisions e, f, and g. to Section 514;
- Subdivisions f, g, and h to Section 606;
- Subdivisions d, e, and f to Section 606-a;
- Subdivisions g, h, and i to Section 610; and
- Subdivisions twelve, thirteen, and fourteen to Section 657.

The legislation would also add the following subdivisions to the following Sections of the Education Law:

- Subdivisions i, j, and k to Section 512; and
- Subdivisions five, six, and seven to Section 513.

The legislation would also add the following subdivisions to the following Sections of the New York City Administrative Code:

- Subdivisions d, e, and f to Section 13-148;
- Subdivisions one, two, and three to Section 13-177;
- Subdivisions e, f, and g to Section 13-243;
- Subdivisions c, d, and e to Section 13-261;
- Subdivisions g, h, and i to Section 13-346;
- Subdivisions e, f, and g to Section 13-369,
- Subdivisions f, g, and h to Section 13-370,
- Subdivisions d, e, and f to Section 13-542;
- Subdivisions g, h, and i to Section 13-543; and
- Subdivisions f, g, and h to Section 13-558.

The legislation would also update statutory references in subdivisions b.1 and b.2 of Section 512 of the Education Law, and replace the term “blank” on which specified written designations are made with the term “form” in subdivisions aa and c of Sections 90 and 390 of the Retirement & Social Security Law.

**STATUTORY PURPOSE:** The Equity for Surviving Spouses Act (ESSA) was developed in response to concerns raised about deficiencies in protections for surviving spouses of public employees and of former employees who are members of New York public defined benefit employer retirement plans. While mourning, a member’s surviving spouse may be devastated to learn that they will not receive any survivor or death benefits; some, as a result, may spend the remainder of their lives in destitution. The spousal right of election, which applies to the member’s benefits from New York public employer retirement plans, is often of little utility because there may be no survivor benefits to elect against, and the surviving spouse may not learn of the death benefits in time to recover any benefits.

There are three reasons that surviving spouses of members of public employer retirement plans are not adequately protected. First, a member’s current default retirement benefit is a single life annuity benefit with no survivor benefits. Second, a member’s surviving spouse may currently receive none of the member’s death benefits. Third, a member’s spouse may currently receive no notice of the member’s form of retirement annuity benefit election, or of the beneficiary election for annuity or death benefits.

ESSA would remedy these deficiencies with three plan term changes. First, the default retirement annuity benefit for a member with a surviving spouse would become the joint and 50% survivor annuity, with the member’s surviving spouse as beneficiary. Second, the default beneficiary of 50% of the death benefit for a member with a surviving spouse would become the member’s surviving spouse. Third, the member would be unable to elect a retirement benefit or a death benefit that would provide the surviving spouse, if any, with smaller payments than those the surviving spouse would receive under either default benefit without the spouse’s written consent.

ESSA would align New York State public employer retirement practice with that of the federal government, most states, and most private-employers, all of which similarly protect the surviving spouses of their employees. The legislation is modeled on the Retirement Equity Act of 1984’s enhancement of the surviving spouse protections of the Employee Retirement Income Security

Act of 1974 (ERISA). Forty years after surviving spouses of employees of private employers were afforded stronger equitable protections, ESSA would do the same for surviving spouses of New York public employees.

The surviving spouse's consent, like those used in the Retirement Equity Act of 1984, must be on a form that sets forth the surviving spouse's entitlement to the default benefit, and the consequences of consenting to an alternate form of benefit, or a different beneficiary. This consent must be executed on or 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. The consent for the annuity benefit must be filed with the plan on or before the date the retirement benefit election is finalized and for the death benefit on or before the date of death.

ESSA would affect the terms of the eight New York public employer retirement 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;
- New York City Board of Education Retirement System;
- New York City Police Pension Fund; and
- Teachers' Retirement System of the City of New York.

ESSA is intended to amend all the provisions relating to the retirement survivor annuity provisions and death benefit provisions of these eight plans as described above. Each of these provisions has a different aim and may govern different plans subsets. Thus, these provisions, which appear to be twenty-nine in number, are not identical. In order to illustrate how ESSA amends these different provisions, the attached ESSA Modules show how ESSA amends a retirement survivor annuity provision and a death benefit provision that relate only to the New York State Teachers' Retirement System. The ESSA Modules also present the provision pertaining to the ESSA scope of coverage and its effective date.

ESSA would not change the law pertaining to a domestic relations order or a support order. ESSA would govern all benefit payments beginning after December 31 of the year immediately after the year ESSA is enacted. ESSA would not affect payments made pursuant to an annuity or death benefit designation executed on or before such December 31. On the other hand, death benefit or retirement benefit applications executed after this date would be subject to the ESSA provisions.

As is now the case for the spousal right of election, ESSA's surviving spouse protections would not require any minimum marriage period, and the surviving spouse survivor benefits would not be limited to those accrued during the member's marriage or to those accrued after the ESSA effective date. Furthermore, any individual who is not a surviving spouse for purposes of exercising the spousal right of election would not be a surviving spouse for purposes of ESSA.

ESSA would not affect the current plan benefit rules for New York public employees or former New York public employees who are plan members who are not married on the later of the date the member files an application for retirement, or elects a form of retirement payment. Marriages occurring after these dates would not confer any surviving spouse rights under ESSA.

This memorandum is derived from the memorandum in support of legislation that is part of the attached Proposed ESSA Bill.

ESSA would remedy an unjust flaw in surviving spouse protections by adopting a tried and-true approach used for approximately forty years by private and federal retirement plans with more than 100 million active plan participants. ESSA recognizes that marriage is an economic partnership, and that both spouses have a stake in retirement benefits payable after the death of their partner. ESSA would enhance protections for surviving spouses of New York public employees, and thus protect families across New York State.

# ESSA Modules

## Illustrative Death Benefit Module 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 any death benefits payable under this section, including any accumulated contributions remaining at the time of the member's death, shall be paid to the member's surviving spouse, if any, unless the member elects (in a manner that accords with this subdivision i) that the surviving spouse receive less than one-half of the death benefits, and:

1. (A) the member's surviving spouse consented, on or after the date of the member's marriage, in writing to the member's election;
- (B) the surviving spouse's consent is on a plan form that sets forth:
  - (i) the amount of the member's death benefits and of the spouse, if the spouse were entitled to half those benefits;
  - (ii) a statement to the effect that (absent valid consent to the contrary) the surviving spouse is entitled to at least half of the death benefits;
  - (iii) a statement to the effect that the surviving spouse has the 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 either no death benefits or smaller death benefits than the surviving spouse would otherwise receive under this subdivision;
- (C) the consent includes an acknowledgement that the surviving spouse understands that, absent the surviving spouse's consent to the member's election, the surviving spouse would be entitled to at least one-half of the death benefits, and that the surviving spouse's consent would result in the elimination or reduction of such death benefits;
- (D) the consent includes a signature by the surviving spouse that was witnessed by a notary public or a representative of the retirement system; and
- (E) the system receives the completed consent and the member's election 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;
4. it is established to the satisfaction of the retirement board of the system that the surviving spouse could not have been located if the member had been willing and able to exercise due diligence to locate the surviving spouse on the date of the member's death; or
5. there is no surviving spouse.

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 person 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 that at least one of paragraphs two, three, four, or five of subdivision i of this section is true,

then (without implication as to what liability the retirement system and the board might have in the absence of this subdivision k) 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; provided that the foregoing discharges shall not act to deprive the surviving spouse of any rights to recover amounts from any party other than the retirement system or the board.

## **Illustrative Annuity Benefit Module**

### **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, with the spouse as the member's beneficiary, 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, unless the member (a) elects that the surviving spouse receive survivor benefit payments in amounts that are greater than the benefit payments that would be paid to the surviving spouse under Option 3, if the spouse were the member's beneficiary; or (b) elects (in a manner that accords with this subdivision five) that the surviving spouse receive either no survivor benefit payments or survivor benefit payments, in amounts that are smaller than the benefit payments that would be paid to the surviving spouse under Option 3, if the spouse were the member's beneficiary, and:

- a. (i) the member's surviving spouse consented, on or after the date of the member's marriage, in writing to the member's election;
- (ii) the surviving spouse's consent is on a plan form that sets forth:
  - (A) the amount of the Option 3 monthly benefit entitlements of the member and of the spouse, if the spouse were the member's beneficiary, and when the member and the surviving spouse would each be entitled to those benefits;
  - (B) a statement to the effect that (absent valid consent to the contrary) the surviving spouse is entitled to survivor benefit payments in amounts that are greater or equal to the amounts of the retirement allowance payments that would be paid to the surviving spouse under Option 3, if the spouse were the member's beneficiary;
  - (C) a statement to the effect that the surviving spouse has the 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 receive under this subdivision;
- (iii) the consent includes an acknowledgement that the surviving spouse understands that, absent the surviving spouse's consent to the member's election, the surviving spouse would be entitled to be paid lifetime survivor

benefit payment amounts that are at least the amounts that would be paid to the surviving spouse under Option 3, if the spouse were the member's beneficiary, and that the surviving spouse's consent would result in the elimination or reduction of such survivor benefits;

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

(v) the system receives the completed consent and the member's election before the date the member filed his or her retirement application, or the date the member filed his or her last effective option selection, if any, whichever is later;

- 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;
- d. it is established to the satisfaction of the retirement board of the system that the surviving spouse could not have been located if the member had been willing and able to exercise due diligence to locate the surviving spouse on the later of the date the member's retirement application was filed with the retirement system, or the date the member's last effective option selection was filed with the retirement system; or
- e. there is no surviving spouse.

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 person 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. determining that at least one of paragraphs b, c, d, or e of subdivision five of this section is true,

then (without implication as to what liability the retirement system and the board might have in the absence of this subdivision seven) 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; provided that the foregoing discharges shall not act to deprive the surviving spouse of any rights to recover from any party other than the retirement system or the

board. The retirement system may recover the actuarial equivalent of such 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%.

## **Scope of Coverage and Effective Date Provisions**

### **ESSA Section 32**

Section 32. 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 any domestic relations order or a support order.

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 on or before December 31 of the year immediately after the year the bill is enacted.

## **Illustrative Explanatory paragraphs in Memorandum in Support of Legislation for Education Law §§ 512 and 513**

### Education Law § 512. Withdrawal and death benefits

This Section applies to members of the New York State Teachers' Retirement System who die prior to retirement. Under current law, the death benefit, including the accumulated member contributions, is payable to the member's designated beneficiary, or, in the absence of a designated beneficiary, the member's estate. Under current law, a member need not designate his or her spouse as a beneficiary for any portion of the member's death benefits. The measure adds subdivision (i), which provides that the member's surviving spouse, if any, is entitled to at least half of the benefit payable under this Section, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent and be filed with the plan before the member's death. 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 with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 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 statutory reference describing who may be paid the member's benefits if the member dies before retiring, but has no beneficiary designation in effect, is updated. The current statute references Section 103-a of the decedent estate law, which was repealed effective September 1, 1967. Thus, the reference is replaced by one to the current counterpart, Section 1310 of the Surrogate's Court Procedure Act.

### Education Law § 513. Optional allowances

This Section sets forth the forms in which a member of the New York State Teachers' Retirement System may elect to receive his or her retirement allowance. Under current law, in the absence of an election, benefits are paid as a single life annuity. i.e., only for the life of the member. The member may, alternatively, elect an optional form of benefit that pays the member an actuarially reduced benefit, and, upon the death of the member, a lifetime survivor annuity to the member's designated beneficiary. Under current law, a member need not elect any option or designate his or her spouse as beneficiary. The measure adds subdivision five, which provides that the default benefits are paid pursuant to Option 3, so that upon the death of the member after retirement, the member's surviving spouse, if any, is entitled to lifetime survivor annuity payments that are at least 50% of the annuity payments made to the member under such option if the surviving spouse is the beneficiary, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. The consent must include an acknowledgment that the surviving spouse understands the consequences of waiving benefits

payable under Option 3 and be filed with the plan on or before the date the member finalized his retirement benefit election. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or if 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 care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 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 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 discharged payments by reducing each of the surviving spouse's monthly lifetime annuity benefits by no more than 10%.

## STATE OF NEW YORK

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 BILL NUMBER \_\_\_\_\_

IN \_\_\_\_\_

\_\_\_\_\_, 2024

**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 education law in relation to enacting the “Equity for Surviving Spouses Act,” which would which would amend the terms of the eight defined benefit employer retirement plans for employees of the State of New York and/or New York localities, including the City of New York, to provide that: (1) a retired employee’s surviving spouse, if any, is entitled by default to the survivor portion of the joint and 50% survivor annuity form of the retiree’s retirement benefits; and (2) an employee’s surviving spouse, if any, is entitled by default to 50% of the employee’s lump sum death benefits. The surviving spouse could waive the right to receive benefits at least equal to those the surviving spouse would receive under either of the defaults by executing and filing with the plan a written consent on a plan form. The amendment would enhance the protections for surviving spouses of New York public employees, recognize that marriage is an economic partnership, and encourage public employees and their spouses to prepare together for the eventualities of old age and death.

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 “Equity for Surviving  
2 Spouses Act.”

3

4

5 Section 2. Section 512 of the education law, as amended by L. 2021, ch. 78, § 5, is amended to  
6 read as follows:

7

8 § 512. Withdrawal and death benefits

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted  
ESSA May 22. 2023



1 Benefits upon withdrawal and death shall be payable as follows:

2

3 a. A member who withdraws from service or ceases to be a teacher for any cause other than death  
4 or retirement shall be paid on demand the accumulated contributions standing to the credit of his  
5 individual account in the annuity savings fund. A member who has no accumulated contributions  
6 credited to his individual account in the annuity savings fund and who ceases to be a teacher for  
7 any cause other than death or retirement may withdraw from membership in the system by filing  
8 a notice of withdrawal with the system pursuant to rules and regulations adopted by the retirement  
9 board.

10 b. 1. Should a contributor die before retirement, his accumulated contributions shall be paid to  
11 his estate or to such person as he shall have nominated to receive such benefit. In the  
12 event such designated beneficiary does not survive him, or if he shall not have so  
13 designated a beneficiary, such benefit shall be payable to the deceased member's estate  
14 or as provided in section [one thousand three hundred ten of the surrogate's court](#)  
15 [procedure act](#) [~~one hundred three a of the decedent estate law~~]. Such nomination must  
16 be by written designation duly executed and filed with the retirement board.

17 2. In addition to the return of accumulated contributions, a death benefit also shall be  
18 payable upon the death of a member who dies before the effective date of his  
19 retirement, and was in service upon which his membership was based when he  
20 died or was on the payroll in such service and paid within a period of twelve  
21 months prior to his death and had not been otherwise gainfully employed since  
22 he ceased to be on such payroll or if, during the period that membership is valid,  
23 the retirement board shall determine to its satisfaction that said member was  
24 physically or mentally incapacitated for the performance of duty at the time he  
25 ceased to be on the payroll in such service and that he had been so incapacitated  
26 and had not been otherwise gainfully employed since he ceased to be on such  
27 payroll; provided he had credit for one or more years of service while actually a  
28 member. The amount of death benefit shall be computed by multiplying one  
29 twelfth of the compensation earnable by such member during his last twelve  
30 months of service while a member by the number of years, not to exceed twelve,  
31 of his total credit for service as a teacher in this state. Where the member has  
32 more than twelve years of credited service as a teacher in this state and when his  
33 death occurs on or after July first, nineteen hundred sixty-one, and before July  
34 first, nineteen hundred seventy-four, there shall be added to such benefit one  
35 twenty-fourth of such compensation multiplied by the number of years in excess  
36 of twelve, but not to exceed twenty-four such years, of his total credit for service  
37 as a teacher in the state. The death benefit shall be paid to such person as he shall  
38 have nominated to receive such benefit. In the event such designated beneficiary  
39 does not survive him, or if he shall not have so designated a beneficiary, such  
40 benefit shall be payable to the deceased member's estate or as provided in  
41 section one thousand three hundred ten [of the surrogate's court procedure act](#)  
42 [~~one hundred three a of the decedent estate law~~]. Such nomination must be by  
43 written designation duly executed and filed with the retirement board. The

EXPLANATION—Matter ([underscored](#)) is new; matter in brackets [-] is old law to be omitted  
ESSA May 22, 2023

1 provisions of this paragraph two of subdivision b of this section shall apply only  
2 to deaths occurring on and after July first, nineteen hundred fifty-nine.

3 3. Notwithstanding any other provisions of this article or any rules or regulations  
4 adopted thereunder by the retirement board, the death benefit payable pursuant  
5 to paragraph two of this subdivision, in the case of a member who dies after  
6 having become eligible to apply and be retired for special service or  
7 superannuation pursuant to the provisions of this article, shall be increased by  
8 the amount, if any, that the actuarial equivalent of the pension portion of his  
9 retirement allowance, computed as if he had been retired on the day immediately  
10 preceding his death, and computed in accordance with the provisions of  
11 subdivision two of section five hundred ten and subdivision four of section five  
12 hundred eleven-a of this article, exceeds the amount of the death benefit  
13 otherwise payable pursuant to paragraph two of this subdivision. The provisions  
14 of this paragraph three of subdivision b of this section shall apply only to deaths  
15 occurring after the date on which said paragraph three becomes operative and  
16 prior to July first, nineteen hundred seventy-four.

17 4. Notwithstanding any other provision of this article, the requirement of one or more  
18 years of credited service, as set forth in paragraph two of this subdivision, shall  
19 be deemed to have been satisfied by any member who has credit for three or  
20 more months of service rendered since last becoming a member. The provisions  
21 of this paragraph shall apply only to deaths occurring after June thirtieth,  
22 nineteen hundred seventy and before July first, nineteen hundred seventy-five.

23 5. Notwithstanding any other provision of this article, the death benefit payable  
24 pursuant to paragraph two of this subdivision shall be increased by the excess,  
25 if any, of the greater of a or b over the sum of c and d, where a, b, c and d are as  
26 set forth hereunder:

27 a. One-twelfth of the member's compensation multiplied by the number of years,  
28 not to exceed thirty-six, of his total credited state service.

29 b. The lesser of three times the member's compensation or twenty thousand  
30 dollars.

31 c. The death benefit which, in accordance with the provisions of paragraph two  
32 of this subdivision, is payable in addition to the return of accumulated  
33 contributions.

34 d. The reserve for increased-take-home-pay.

35 The term "compensation", as used in this subparagraph, shall mean (1) in the case of  
36 a member who has credit for one or more years of service rendered since last  
37 becoming a member, the compensation earned by such member during his last  
38 twelve months of service, and (2) in the case of a member who has credit for less  
39 than one year of service rendered since last becoming a member, it shall mean  
40 his annual rate of compensation at the time of his death. The provisions of this  
41 paragraph shall apply only to deaths occurring after June thirtieth, nineteen

1 hundred seventy and before July first, nineteen hundred seventy-five. The  
 2 additional death benefits payable hereunder shall be construed as being payable  
 3 under paragraph two of this subdivision for the purpose of computing benefits  
 4 payable under paragraph three of this subdivision.

5 c. The member or, within ninety days after his death, the person nominated by him to receive any  
 6 benefit payable on his account, may file with the retirement board a written designation, duly  
 7 executed, providing that such benefit shall be paid in the form of an annuity to the person so  
 8 nominated. Such annuity shall be determined as the actuarial equivalent of the benefit otherwise  
 9 payable, on the basis of the interest rate and the mortality tables adopted by the retirement board  
 10 for use in the calculations of such annuities. Such annuity shall be payable throughout the life of  
 11 the person so nominated, with no payments at his death unless the member or, within ninety days  
 12 after his death, the person nominated by him to receive his benefit, shall elect to have the actuarial  
 13 equivalent of such annuity paid in the form of a reduced annuity payable for life with the provision  
 14 that if the person so nominated should die before the annuity payments received by him are equal  
 15 to such actuarial equivalent, the balance thereof shall be paid in a lump sum to such beneficiary's  
 16 estate or to such person as such member or his nominee shall have designated. Such designation  
 17 of a beneficiary to receive such benefit may be made or changed at any time by the person who  
 18 made it. Such election or change shall be made by written designation duly executed and filed with  
 19 the retirement board. Notwithstanding the foregoing provisions, the retirement board reserves the  
 20 right to pay any benefit in the form of a lump sum payment if the annuity determined as the  
 21 actuarial equivalent of the benefit otherwise payable is less than one hundred dollars per month.

22 d. 1. The retirement board may adopt rules and regulations providing that a trustee of an inter  
 23 vivos or testamentary trust shall be eligible to be nominated to receive a lump sum  
 24 benefit pursuant to subdivision b of this section.

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

29 3. A payment made in good faith under this section to either a designated trustee of an  
 30 inter vivos trust, a successor trustee of an inter vivos trust who provides a copy  
 31 of his appointment or a trustee of [or] successor trustee of a testamentary trust  
 32 who provides a copy of the letters of trusteeship shall be a complete discharge  
 33 to the system to the extent of the payment.

34 4. If no qualified trustee claims the proceeds within eighteen months after the death of  
 35 the member, or if satisfactory evidence is furnished within such period showing  
 36 that there is or will be no trustee to receive the proceeds, payment shall be made  
 37 to the deceased member's estate.

38 e. Notwithstanding any other provision of law, a member with ten or more years of credited service  
 39 in such system who dies before a retirement benefit becomes payable and who is otherwise not  
 40 entitled to a death benefit from the retirement system shall be deemed to have died on the last day  
 41 that he or she was in service upon which his or her membership was based for purposes of

1 eligibility for the payment of a death benefit pursuant to the provisions of this section. The death  
 2 benefit payable in such case shall be one-half of that which would have been payable had such  
 3 member died on the last day that service was rendered.

4 f. Notwithstanding the provisions of any other law to the contrary and solely for the purpose of  
 5 determining eligibility for the death benefit payable pursuant to this section, a person subject to  
 6 this section shall be considered to have died while in teaching service provided such person was  
 7 in such service at the time he or she was ordered to active duty pursuant to Title 10 of the United  
 8 States Code, with the armed forces of the United States or to service in the uniformed services  
 9 pursuant to Chapter 43 of Title 38 of the United States Code and died while on such active duty or  
 10 service in the uniformed services on or after June fourteenth, two thousand five. Provided, further,  
 11 that any such person ordered to active duty pursuant to Title 10 of the United States Code, with  
 12 the armed forces of the United States or to service in the uniformed services pursuant to Chapter  
 13 43 of Title 38 of the United States Code who died prior to rendering the minimum amount of  
 14 service necessary to be eligible for this benefit shall be considered to have satisfied the minimum  
 15 service requirement.

16 g. Notwithstanding any other provision of law to the contrary, any member of the retirement  
 17 system subject to article fourteen or fifteen of the retirement and social security law who has  
 18 permanently ceased teaching shall have the right to elect the return of his or her accumulated  
 19 contributions and thereby terminate his or her membership in the retirement system without regard  
 20 to the amount of service to his or her credit, provided a public employee retirement system in  
 21 another state has certified in a manner satisfactory to the system that such member is a member of  
 22 such other retirement system, has at least five years of retirement credit in such other system, and  
 23 is eligible, upon the termination of his or her membership in the system, to obtain retirement credit  
 24 in such other retirement system for the service which has been credited to his or her membership  
 25 in the system. Upon refund of such accumulated contributions, any and all obligations of the  
 26 retirement system to such member shall be totally discharged. The retirement board is authorized  
 27 to adopt such rules and regulations as may be necessary to implement this subdivision.

28 h. [Expires and deemed repealed Dec. 31, 2022, pursuant to L. 2021, c. 78, § 14. See, also, subd.  
 29 H above.]

30 1. Notwithstanding any other provision of this article or of any general, special or local  
 31 law to the contrary, and solely for the purpose of determining eligibility for  
 32 benefits under this section, where:

33 (A) a member reported in person to such member's usual place of public  
 34 employment at the direction of such member's public employer or to any  
 35 alternate worksite as directed by such public employer, on or after March first,  
 36 two thousand twenty, provided that such alternate worksite was not such  
 37 member's home or residence;

38 (B) such member contracted COVID-19 within forty-five days after reporting to  
 39 work as described in subparagraph (A) of this paragraph as confirmed by a  
 40 positive laboratory test or as diagnosed before or after such member's death by

1 a licensed, certified, registered or authorized physician, nurse practitioner, or  
 2 physician's assistant currently in good standing in any state or the District of  
 3 Columbia, or a physician, nurse practitioner, or physician's assistant authorized  
 4 to practice in New York by executive order during the declared COVID-19 state  
 5 of emergency; and

6 (C) such member died on or before December thirty-first, two thousand twenty-  
 7 two, and COVID-19 caused or contributed to such member's death, as  
 8 documented on such member's death certificate, or as certified by a physician,  
 9 nurse practitioner, or physician's assistant described in subparagraph (B) of this  
 10 paragraph who determines with a reasonable degree of medical certainty that  
 11 COVID-19 caused or contributed to the member's death, such member's  
 12 statutory beneficiary shall receive an accidental death benefit, unless such  
 13 statutory beneficiary elects to receive an ordinary death benefit.

14 2. Any amount payable as a result of this section shall be reduced by any amount paid  
 15 by such member's retirement system to any recipient of ordinary death benefits  
 16 under this article.

17  
 18 3. (A) Notwithstanding any provision of this article or of any general, special or  
 19 local law to the contrary, and solely for the purpose of determining eligibility  
 20 for benefits under this section, where a member:

21 (i) retired from his or her retirement system on or after March first, two  
 22 thousand twenty, and before July first, two thousand twenty;

23 (ii) on or after March first, two thousand twenty, reported in person to such  
 24 member's usual place of public employment at the direction of such  
 25 member's public employer or to any alternate worksite as directed by such  
 26 public employer, provided that such alternate worksite was not such  
 27 member's home or residence;

28 (iii) contracted COVID-19 within forty-five days after any such date of  
 29 reporting to work in person, as confirmed by a positive laboratory test or as  
 30 diagnosed before or after such member's death by a licensed, certified,  
 31 registered or authorized physician, nurse practitioner, or physician's assistant  
 32 currently in good standing in any state or the District of Columbia, or a  
 33 physician, nurse practitioner, or physician's assistant authorized to practice  
 34 in New York by executive order during the declared COVID-19 state of  
 35 emergency; and

36 (iv) such member died on or before December thirty-first, two thousand  
 37 twenty, and COVID-19 caused or contributed to such member's death, as  
 38 documented on such member's death certificate, or as certified by a  
 39 physician, nurse practitioner, or physician's assistant described in clause (iii)  
 40 of this subparagraph who determines with a reasonable degree of medical  
 41 certainty that COVID-19 caused or contributed to the member's death, such  
 42 member's statutory beneficiary shall receive an accidental death benefit if

1 such statutory beneficiary elects conversion of the member's service or  
2 disability retirement benefit into an accidental death benefit.

3  
4 (B) Such member's statutory beneficiary, as defined under this article, for  
5 purposes of accidental death benefits payable from such member's retirement  
6 system under this article, may, within ninety days of such member's retirement  
7 or September first, two thousand twenty, whichever is later, apply to such  
8 member's retirement system to request the conversion of such member's service  
9 or disability retirement benefit into an accidental death benefit. For purposes of  
10 the salary base upon which the accidental death benefit is calculated, such  
11 member shall be deemed to have died<sup>5</sup> on the date of such member's retirement.  
12 At the time of such conversion, such statutory beneficiary shall relinquish all  
13 rights to the prospective benefits payable under the service or disability  
14 retirement statute, including any post-retirement death benefits, since such  
15 member's death. If the statutory beneficiary is not the only beneficiary receiving  
16 or entitled to receive a benefit under the service or disability retirement statute,  
17 including, but not limited to, a post-retirement death benefit or benefit paid or  
18 payable pursuant to the member's option selection, the accidental death benefit  
19 payments to the statutory beneficiary will be reduced by any amounts paid or  
20 payable to any other statutory beneficiary.

- 21 4. In order to be eligible for the benefit described in this subdivision, the applicable  
22 retirement system or systems are authorized to promulgate rules and regulations  
23 to administer this benefit including, but not limited to, requiring a statement to  
24 be filed confirming the member contracted COVID-19 and the dates and  
25 locations of the member's employment.

26 i. Notwithstanding any other provision of this section to the contrary, at least one-half of any death  
27 benefits payable under this section, including any accumulated contributions remaining at the time  
28 of the member's death, payable under this section shall be paid to the member's surviving spouse,  
29 if any, unless the member elects (in a manner that accords with this subdivision i) that the surviving  
30 spouse receive less than one-half of the death benefits, and:

- 31 1. (A) the member's surviving spouse consented, on or after the date of the  
32 member's marriage, in writing to the member's election;

33 (B) the surviving spouse's consent is on a plan form that sets forth:

34 (i) the amount of the member's death benefits, and of the spouse, if the  
35 spouse were entitled to half those benefits;

36 (ii) a statement to the effect that (absent valid consent to the contrary)  
37 the surviving spouse is entitled to at least half of the death benefits;

38 (iii) a statement to the effect that the surviving spouse has the right to  
39 prevent any future member elections regarding the member's death  
40 benefits without the surviving spouse's consent unless the consent of the



1 surviving spouse expressly permits member elections without any  
 2 further consent by the surviving spouse; and

3 (iv) the fact that consenting to the member's election would result in the  
 4 surviving spouse receiving either no death benefits or smaller death  
 5 benefits than the surviving spouse would otherwise receive under this  
 6 subdivision;

7 (C) the consent includes an acknowledgement that the surviving spouse  
 8 understands that, absent the surviving spouse's consent to the member's  
 9 election, the surviving spouse would be entitled to be paid at least one-half of  
 10 the death benefits, and that the surviving spouse's consent would result in the  
 11 elimination or reduction of such death benefits;

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

14 (E) the system receives the completed consent and the member's election before  
 15 the member's death;

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

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

21 4. it is established to the satisfaction of the retirement board of the system that the  
 22 surviving spouse could not have been located if the member had been willing  
 23 and able to exercise due diligence to locate the surviving spouse on the date of  
 24 the member's death; or

25 5. there is no surviving spouse.

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

28 k. If the retirement board of the system acts with the care, skill, prudence, and diligence under the  
 29 circumstances then prevailing that a prudent person 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 i of this section,  
 32 or

33 2. determining that at least one of paragraphs two, three, four, or five of subdivision  
 34 i of this section is true,

35 then (without implication as to what liability the retirement system and the board might have in  
 36 the absence of this subdivision k) such consent or determination shall be treated as valid for  
 37 purpose of discharging the retirement system and the board from liability to the extent of payments  
 38 made pursuant to such action; provided that the foregoing discharges shall not act to deprive the

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1 [surviving spouse of any rights to recover amounts from any party other than the retirement system](#)  
 2 [or the board.](#)

3  
 4  
 5 Section 3. Section 513 of the education law, as amended by L. 1973, ch. 1046, § 82, is amended  
 6 to read as follows:

7  
 8 § 513. Optional allowances

9 1. With the exception that no election of an optional benefit shall become effective in case a  
 10 member dies within thirty days after the filing of an application for a retirement allowance,  
 11 until the first payment on account of any benefit becomes normally due, any member, at the  
 12 time of his retirement, may elect to receive his benefits in a retirement allowance payable  
 13 throughout life or he may on retirement elect to receive the actuarial equivalent at that time of  
 14 his retirement allowance in a lesser retirement allowance, payable throughout life with the  
 15 provision that:

16 Option 1. If he dies before he has received in payments the present value of his  
 17 retirement allowance as it was at the time of his retirement, the balance shall be  
 18 paid to his legal representatives or to such person as he shall nominate by written  
 19 designation duly acknowledged and filed with the retirement board.

20 Option 2. Upon his death, his retirement allowance shall be continued through  
 21 the life of and paid to such person as he shall nominate by written designation  
 22 duly acknowledged and filed with the retirement board at the time of his  
 23 retirement.

24 Option 3. Upon his death, one-half of his retirement allowance shall be  
 25 continued throughout the life of and paid to such person as he shall nominate by  
 26 written designation duly acknowledged and filed with the retirement board at  
 27 the time of his retirement.

28 Option 4. Some other benefit or benefits shall be paid either to the member or to  
 29 such person or persons as he shall nominate, provided such other benefit or  
 30 benefits, together with the lesser retirement allowance, shall be certified by the  
 31 actuary to be of equivalent actuarial value to his retirement allowance and shall  
 32 be approved by the retirement board.

33 2. If any retired member who has not elected an optional benefit, or who has elected a benefit under  
 34 Option 4 providing for the payment at death of the amount, if any, by which his accumulated  
 35 contributions at the time of his retirement exceed the aggregate amount of his annuity payments,  
 36 dies within thirty days after the date his retirement becomes effective, notwithstanding any other  
 37 provisions of this law to the contrary, benefits shall be paid in accordance with subdivision (b) or  
 38 (c) of section five hundred twelve, except that the amount of his accumulated contributions payable  
 39 under paragraph (1) of said subdivision (b) shall be reduced by any annuity payments received by  
 40 him prior to his death and the benefit payable under paragraph (2) of said subdivision (b) shall be  
 41 reduced by any pension payments received by him prior to his death. The amounts payable shall  
 42 be paid to the beneficiary or beneficiaries entitled thereto as provided under section five hundred

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1 twelve, except that if the member has elected Option 4, as provided above, the beneficiary  
 2 nominated under such Option 4 shall be substituted for any beneficiary previously nominated and  
 3 all amounts payable shall be paid to the beneficiary nominated under such Option 4.

4 3. In the case of persons who last became members on or after July first, nineteen hundred seventy-  
 5 three, the provisions of subdivision two of this section shall apply only to deaths occurring after  
 6 the date on which said subdivision two becomes operative and prior to July first, nineteen hundred  
 7 seventy-four.

8 4. a. The retirement board may adopt rules and regulations providing that a trustee of an inter  
 9 vivos or testamentary trust shall be (1) eligible to be nominated to receive a lump sum  
 10 benefit under option one and (2) eligible to be nominated to receive any benefit under  
 11 option four which the retirement board shall deem appropriate.

12 b. Any proceeds received by a trustee under this section shall not be subject to the  
 13 debts of the member or to transfer or estate taxes to any greater extent than if  
 14 such proceeds were payable to the beneficiaries named in the trust and not to the  
 15 estate of the member.

16 c. A payment made in good faith under this section to either a designated trustee of an  
 17 inter vivos trust, a successor trustee of an inter vivos trust who provides a copy  
 18 of his appointment or a trustee or successor trustee of a testamentary trust who  
 19 provides a copy of the letters of trusteeship shall be a complete discharge to the  
 20 system to the extent of the payment.

21 D. If no qualified trustee claims the proceeds within eighteen months after the death  
 22 of the retired member, or if satisfactory evidence is furnished within such period  
 23 showing that there is or will be no trustee to receive the proceeds, payment shall  
 24 be made to the deceased retired member's estate.

25 5. Notwithstanding any other provision of this section to the contrary, a member's retirement  
 26 allowance payable under this section shall be paid as Option 3, with the spouse as the member's  
 27 beneficiary, so that upon his or her death, if the member has a surviving spouse who was married  
 28 to the member on the date the member filed his or her retirement application, or on the date the  
 29 member filed his or her last effective option selection, if any, whichever is later, unless the member  
 30 (a) elects that the surviving spouse receive survivor benefit payments in amounts that are greater  
 31 than the benefit payments that would be paid to the surviving spouse under Option 3, if the spouse  
 32 were the member's beneficiary; or (b) elects (in a manner that accords with this subdivision five)  
 33 that the surviving spouse receive either no survivor benefit payments or survivor benefit payments,  
 34 in amounts that are smaller than the benefit payments that would be paid to the surviving spouse  
 35 under Option 3, if the spouse were the member's beneficiary, and:

36 a. (i) the member's surviving spouse consented on or after the date of the member's  
 37 marriage, in writing to the member's election;

38 (ii) the surviving spouse's consent is on a plan form that sets forth:

39 (A) the amount of the Option 3 monthly benefit entitlements of the  
 40 member and of the spouse, if the spouse were the member's beneficiary,

1 and when the member and the surviving spouse would each be entitled  
 2 to those benefits;

3 (B) a statement to the effect that (absent valid consent to the contrary) the  
 4 surviving spouse is entitled to survivor benefit payments in amounts that  
 5 are greater or equal to the amounts of the retirement allowance payments  
 6 that would be paid to the surviving spouse under Option 3, if the spouse  
 7 were the member's beneficiary;

8 (C) a statement to the effect that the surviving spouse has the right to  
 9 prevent any future member elections regarding the member's survivor  
 10 benefits without the surviving spouse's consent unless the consent of the  
 11 surviving spouse expressly permits member elections without any  
 12 further consent by the surviving spouse; and

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

17 (iii) the consent includes an acknowledgement that the surviving spouse  
 18 understands that, absent the surviving spouse's consent to the member's  
 19 election, the surviving spouse would be entitled to be paid lifetime survivor  
 20 benefit payment amounts that are at least the amounts that would be paid to the  
 21 surviving spouse under Option 3, if the spouse were the member's beneficiary,  
 22 and that the spouse's consent would result in the elimination or reduction of such  
 23 survivor benefits;

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

26 (v) the system receives the completed consent and the member's election before  
 27 the date the member filed his or her retirement application, or the date the  
 28 member filed his or her last effective option selection, if any, whichever is later;

29 b. the member and the surviving spouse were legally separated when the member's  
 30 election was filed with the retirement system;

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

34 d. it is established to the satisfaction of the retirement board of the system that the  
 35 surviving spouse could not have been located if the member had been willing  
 36 and able to exercise due diligence to locate the surviving spouse on the later of  
 37 the date the member's retirement application was filed with the retirement  
 38 system, or the date the member's last effective option selection was filed with  
 39 the retirement system; or

40 e. there is no surviving spouse.

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

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

6 a. relying on a consent referred to in paragraph a of subdivision five of this section, or

7 b. determining that at least one of paragraphs b, c, d, or e of subdivision five of this  
 8 section is true,

9 then (without implication as to what liability the retirement system and the board might have in  
 10 the absence of this subdivision seven) such consent or determination shall be treated as valid for  
 11 purpose of discharging the retirement system and the board from liability to the extent of payments  
 12 made pursuant to such action; provided that the foregoing discharges shall not act to deprive the  
 13 surviving spouse of any rights to recover from any party other than the retirement system or the  
 14 board. The retirement system may recover the actuarial equivalent of such discharged payments,  
 15 computed using the plan's actuarial factors, from the surviving spouse with offsets against the  
 16 system's monthly annuity benefit payments to the surviving spouse payable under this section, but  
 17 may not thereby reduce any of those benefit payments by more than 10%.

18  
 19  
 20 Section 4. Section 51 of the retirement & social security law, as amended by L. 1972, ch. 283, §  
 21 32, is amended to read as follows:  
 22

23 § 51. Refunds and Withdrawals.  
 24

25 a. A member under age sixty may withdraw his accumulated contributions if he has been separated  
 26 from service for a period of at least fifteen days.

27 b. A member sixty years of age, or over, may elect, not later than fifteen days after filing his  
 28 application for retirement, or not later than thirty days after his mandatory retirement has become  
 29 effective by operation of law, to withdraw his accumulated contributions in lieu of a retirement  
 30 allowance, provided that he

31 1. Has had less than five years of total service credit, or

32 2. Last became a member before April sixth, nineteen hundred forty-three, or

33 3. Is eligible for an annual retirement allowance which, without optional modification,  
 34 amounts to less than three hundred dollars.

35 c. The following contributions or additional contributions shall be treated as excess contributions  
 36 which, together with regular interest and special interest thereon, may be withdrawn by a member  
 37 at any time prior to retirement, or if not so withdrawn, shall be used to purchase additional annuity:

38 1. Contributions paid by a member in order to receive credit for service in war after

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1 world war I, as defined in section two of this article, not including, however,  
2 contributions required by subdivision k of section forty-one of this article.

3 2. Additional contributions paid by a member pursuant to section eighty, eighty-nine-  
4 a or eighty-nine-b and where, as a result of a change in his employment, such  
5 additional contributions would not provide an additional pension allowance for service  
6 for which such additional contributions were made.

7 3. Such other contributions to the annuity savings fund as may be determined by  
8 regulation of the comptroller to be excess and subject to such withdrawal.

9 d. If a member dies before the effective date of his retirement, his accumulated contributions shall  
10 be paid to his estate or to the person nominated by him in a written designation duly executed and  
11 filed with the comptroller.

12 In the event such a designated beneficiary does not survive him, or if he shall not have so  
13 designated a beneficiary, such contributions shall be payable to the deceased member's estate or  
14 as provided in section one thousand three hundred ten of the surrogate's court procedure act. Such  
15 member, or after his death, the person so nominated by him may file with the comptroller a written  
16 designation, duly executed providing that such contributions shall be paid in the form of an annuity  
17 to such person so nominated. Such designation shall be filed prior to or within ninety days after  
18 the death of the member. The amount of such annuity shall be determined as the actuarial  
19 equivalent of such accumulated contributions on the basis of regular interest and the age of the  
20 person so nominated as of the date of such member's death.

21 d. Notwithstanding the provisions of section ninety of this article, accumulated contributions shall  
22 be payable in the manner provided by subdivision d or e of this section in the case of a retired  
23 member who shall die before attaining age seventy where:

24 1. His application for retirement became effective prior to his death, and

25 2. No optional election by him was in effect at the time of his death, or he had made  
26 and filed a valid election to receive his retirement allowance without optional  
27 modification, and

28 3. He died within the period of thirty days immediately after his retirement became  
29 effective.

30 The amount of the accumulated contributions so payable under this subdivision shall be reduced  
31 by the amount of any annuity payment that may have been paid on account of such retirement.

32 The provisions of this subdivision shall apply in any case where death occurred on or after January  
33 first, nineteen hundred fifty-four.

34 e. A member, or after his death, the person nominated by him to receive his accumulated  
35 contributions, may elect to receive the actuarial equivalent of the annuity specified in subdivision  
36 d of this section in the form of a reduced annuity, payable for life, with the further proviso that if  
37 the person so nominated should die before the annuity payments received by him are equal to such  
38 actuarial equivalent, the balance thereof shall be paid in a lump sum to such beneficiary's estate

1 or to such person as such member or his nominee shall have designated prior to his death. Such  
 2 election shall be made prior to or within ninety days after the death of the member. Such  
 3 designation of a beneficiary to receive such lump sum may be made or changed at any time by the  
 4 person who made it. Such election, designation or change shall be made by a writing duly executed  
 5 and filed with the comptroller. If the person nominated to receive such lump sum does not survive  
 6 the member's beneficiary, such lump sum, if any, shall be payable to the estate of the member's  
 7 beneficiary or as provided in section one thousand three hundred ten of the surrogate's court  
 8 procedure act.

9 f. Notwithstanding any other provision of this section to the contrary, at least one-half of the  
 10 accumulated contributions remaining at the time of the member's death, payable under this section  
 11 shall be paid to the member's surviving spouse, if any, unless the member elects (in a manner that  
 12 accords with this subdivision f) that the surviving spouse receive less than one-half of the death  
 13 benefits, and:

14 1. (A) the member's surviving spouse consented, on or after the date of the  
 15 member's marriage, in writing to the member's election;

16 (B) the surviving spouse's consent is on a plan form that sets forth:

17 (i) the amount of the member's accumulated contributions, and of the  
 18 spouse, if the spouse were entitled to half those contributions;

19 (ii) a statement to the effect that (absent valid consent to the contrary)  
 20 the surviving spouse is entitled to at least half of the accumulated  
 21 contributions;

22 (iii) a statement to the effect that the surviving spouse has the right to  
 23 prevent any future member elections regarding the accumulated  
 24 contributions without the surviving spouse's consent unless the consent  
 25 of the surviving spouse expressly permits member elections without any  
 26 further consent by the surviving spouse; and

27 (iv) the fact that consenting to the member's election would result in the  
 28 surviving spouse receiving either no accumulated contributions or  
 29 smaller contributions than the surviving spouse would otherwise receive  
 30 under this subdivision;

31 (C) the consent includes an acknowledgement that the surviving spouse  
 32 understands that, absent the surviving spouse's consent to the member's  
 33 election, the surviving spouse would be entitled to be paid at least one-half of  
 34 the accumulated contributions, and that the surviving spouse's consent would  
 35 result in the elimination or reduction of such payments;

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

38 (E) the system receives the completed consent and the member's election before  
 39 the member's death;

- 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)  
4        of Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date  
5        of the member's death;
- 6        4. it is established to the satisfaction of the retirement board of the system that the  
7        surviving spouse could not have been located if the member had been willing  
8        and able to exercise due diligence to locate the surviving spouse on the date of  
9        the member's death; or
- 10       5. there is no surviving spouse.

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 person 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. determining that at least one of paragraphs two, three, four, or five of subdivision  
19        i of this section is true,

20 then (without implication as to what liability the retirement system and the board might have in  
21 the absence of this subdivision h) such consent or determination shall be treated as valid for  
22 purpose of discharging the retirement system and the board from liability to the extent of payments  
23 made pursuant to such action; provided that the foregoing discharges shall not act to deprive the  
24 surviving spouse of any rights to recover amounts from any party other than the retirement system  
25 or the board.

26  
27  
28 Section 5. Section 60 of the retirement & social security law, as amended by L. 2011, ch. 582, §§  
29 1, 2, is amended to read as follows:  
30

31 § 60. Ordinary death benefit

32 a. An ordinary death benefit plus the reserve-for-increased-take-home-pay shall be payable upon  
33 the death of a member who:

- 34        1. Died before the effective date of his retirement, and
- 35        2. Was in service upon which his membership was based when he died or was on the  
36        payroll in such service and paid within a period of twelve months prior to his  
37        death or within a period of twenty-four months prior to his death if on leave of

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1 absence as set forth below and had, unless his service was based on seasonal  
 2 employment, not been otherwise gainfully employed since he ceased to be on  
 3 such payroll except while on leave of absence which was granted in accordance  
 4 with the provisions of subdivision i of section forty-one of this chapter and  
 5 which commenced during the period from April first, nineteen hundred sixty-six  
 6 through June thirtieth, nineteen hundred seventy-four, to perform services as a  
 7 civilian officer or employee of the federal government or one of its agencies or  
 8 a contractor of the United States Agency for International Development engaged  
 9 to perform the work of such agency, the United Nations, any other international  
 10 organization of which the United States of America is a member, or a foreign  
 11 government, and

- 12 3. Has credit for one or more years of service while actually a member. This  
 13 requirement of one or more years of service while actually a member shall not  
 14 be applicable to the reserve-for-increased-take-home-pay and shall be subject to  
 15 waiver as provided in subdivision e of section forty-one of this article.

16 An ordinary death benefit shall not be payable in any case in which an accidental death benefit is  
 17 payable provided, however, that where payments made pursuant to section sixty-one of this chapter  
 18 on account of an accidental death benefit, computed without reduction pursuant to section sixty-  
 19 four of this article, and the reserve-for-increased-take-home-pay total less than the ordinary death  
 20 benefit and the reserve-for-increased-take-home-pay that would have been computed and made  
 21 payable pursuant to this section sixty in the case of ordinary death, the difference shall be paid to  
 22 the beneficiary or member's estate to which the ordinary death benefit and reserve-for-increased-  
 23 take-home-pay would have been paid.

24 Provided further, that where the beneficiary or beneficiaries designated to receive the accidental  
 25 death benefit pursuant to section sixty-one of this article is the same beneficiary or beneficiaries  
 26 designated by the member to receive the ordinary death benefit, then, and in that case, the  
 27 beneficiary or beneficiaries may elect to receive, in a lump sum, the value of the ordinary death  
 28 benefit and the reserve-for-increased-take-home-pay, if any, that would have been computed and  
 29 made payable pursuant to the provisions hereof in case of ordinary death, in lieu of any other  
 30 benefit.

31 Notwithstanding the provisions of any other law to the contrary and solely for the purpose of  
 32 determining eligibility for an ordinary death benefit and/or guaranteed ordinary death benefit, a  
 33 member shall be considered to have died while in service upon which his or her membership was  
 34 based provided such member was on the payroll in the service upon which membership is based  
 35 at the time he or she was ordered to active duty pursuant to Title 10 of the United States Code,  
 36 with the armed forces of the United States or to service in the uniformed services pursuant to  
 37 Chapter 43 of Title 38 of the United States Code and died while on such active duty or service in  
 38 the uniformed services on or after June fourteenth, two thousand five. Provided, further, that any  
 39 such member ordered to such active duty with the armed forces of the United States or in service  
 40 in the uniformed services who died prior to rendering the minimum amount of service necessary  
 41 to be eligible for this benefit shall be considered to have satisfied the minimum service  
 42 requirement.

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1 aa. Notwithstanding the provisions of section ninety of this article, an ordinary death benefit plus  
 2 the reserve-for-increased-take-home-pay shall be payable to the beneficiary designated in a valid  
 3 election of “Option One-half”, if any, or in the manner provided by subdivision c, d, or e of this  
 4 section, in any other case, if a retired member shall die where:

- 5 1. His application for retirement became effective prior to his death, and
- 6 2. No optional election by him was in effect at the time of his death, or he had made  
 7 and filed a valid election to receive his retirement allowance without optional  
 8 modification or under “Option One-half”, and
- 9 3. He died within the period of thirty days immediately after his retirement became  
 10 effective.

11 The amount of the ordinary death benefit so payable under this subdivision shall be reduced by the  
 12 amount of any pension payment that may have been paid on account of such retirement.

13 The provisions of this subdivision shall apply in any case where death occurred on or after January  
 14 first, nineteen hundred fifty-four.

15 32. The ordinary death benefit plus the reserve-for-increased-take-home-pay shall be payable  
 16 from the pension accumulation fund. The ordinary death benefit shall not exceed the  
 17 compensation earnable by such member during his last twelve months of service while a  
 18 member. The amount thereof shall be computed by multiplying one-twelfth of such  
 19 compensation by the number of years, not to exceed twelve, of his total service credit.  
 20 Provided, however, that where the member has more than twelve years of total service  
 21 credit and where his death occurs on or after July first, nineteen hundred sixty, and on or  
 22 before June thirtieth, nineteen hundred seventy-four, there shall be added to such ordinary  
 23 death benefit one-twenty-fourth of such compensation multiplied by the number of years,  
 24 not to exceed twenty-four, but exclusive of the first twelve, of his total service credit.  
 25 Provided, further, that where a member, qualified under subdivisions a or aa of this section,  
 26 would have been entitled to a service retirement benefit at the time of his death and where  
 27 his death occurs on or after July first, nineteen hundred sixty-three and on or before June  
 28 thirtieth, nineteen hundred seventy-four, the amount payable under this section shall be  
 29 equal to the pension reserve that would have been established had the member retired on  
 30 the date of his death, unless the ordinary death benefit and the reserve-for-increased-take-  
 31 home-pay, hereinabove provided for, shall be in excess thereof.

32 In the case of a retired member who has returned to service, total service credit, for purposes of  
 33 this section only, shall include service rendered prior to his retirement, provided that he shall have  
 34 rendered at least one year of service since he last became a member, or provided he shall have  
 35 rendered since he returned to public service one year of service during which he elected pursuant  
 36 to subdivision a of section one hundred one of this article not to be restored to membership in the  
 37 retirement system. The member’s accumulated contributions shall be refunded in accordance with  
 38 subdivision d of section fifty-one of this article.

39 bb. (a) An ordinary death benefit shall be payable upon the death of a member who was in the  
 40 employ of the state during its participation under section seventy-five-a of this chapter or of a



1 participating employer while such employer is participating under the provisions of section  
2 seventy-five-b of this chapter.

3 The provisions of this subdivision bb shall apply in any case where death occurred on or after  
4 August nineteenth, nineteen hundred sixty-six and prior to July first, nineteen hundred seventy-  
5 four.

6 (b) The ordinary death benefit shall be payable from the pension accumulation  
7 fund. Such ordinary death benefit shall be based on compensation earnable by  
8 such member during his last twelve months of service while a member. The  
9 amount thereof shall be computed by multiplying one-twelfth of such  
10 compensation by the number of years, not to exceed thirty-six, of his total  
11 service credit. Provided that where a member, qualified under subdivisions a and  
12 aa of this section would have been eligible for service retirement at the time of  
13 his death and where his death occurs on or after August nineteenth, nineteen  
14 hundred sixty-six and prior to July first, nineteen hundred seventy-four, the  
15 amount payable under this section shall be equal to the pension reserve that  
16 would have been established pursuant to section seventy-five-c had the member  
17 retired on the date of his death, unless the ordinary death benefit hereinabove  
18 provided for shall be in excess thereof. The benefit provided herein shall be in  
19 lieu of the ordinary death benefit presently payable under other provisions of  
20 this chapter, unless the benefit under such other provisions shall be in excess of  
21 those provided for herein, in which event the greater benefit shall be payable.

22 (c) In the case of a retired member who has returned to service, total service  
23 credit, for purposes of this subdivision only, shall include service rendered prior  
24 to his retirement, provided that he shall have rendered at least one year of service  
25 since he last became a member, or provided he shall have rendered since he  
26 returned to public service one year of service during which he elected pursuant  
27 to subdivision a of section one hundred one of this article not to be restored to  
28 membership in the retirement system. The member's accumulated contributions  
29 shall be refunded in accordance with subdivision d of section fifty-one of this  
30 article.

31 c. The ordinary death benefit and the reserve-for-increased-take-home-pay shall be paid to the  
32 member's estate or to such person as he shall have nominated to receive such ordinary death  
33 benefit. To be effective, such a nomination must be in the form of a written designation, duly  
34 acknowledged and filed with the comptroller for this specific purpose. In the event such a  
35 designated beneficiary does not survive him, or if he shall not have so designated a beneficiary,  
36 such benefit shall be payable to the deceased member's estate or as provided in section one  
37 thousand three hundred ten of the surrogate's court procedure act.

38 d. The member, or on the death of the member, the person nominated by him to receive his death  
39 benefit, may provide, by written designation, duly executed and filed with the comptroller, that  
40 such death benefit and the reserve-for-increased-take-home-pay shall be paid in the form of an  
41 annuity. Such designation shall be filed prior to or within ninety days after the death of the member.

1 The amount of such annuity shall be determined as the actuarial equivalent of such death benefit  
 2 and reserve on the basis of the age of such beneficiary at the time of the member's death and  
 3 regular interest.

4 e. A member, or after his death, the person nominated by him to receive his ordinary death benefit,  
 5 may elect to receive the actuarial equivalent of the annuity specified in subdivision d of this section  
 6 in the form of a reduced annuity, payable for life, with the further proviso that if the person so  
 7 nominated should die before the annuity payments received by him are equal to such actuarial  
 8 equivalent, the balance thereof shall be paid in a lump sum to such beneficiary's estate or to such  
 9 person as such member or his nominee shall have designated prior to his death. Such election shall  
 10 be made prior to or within ninety days after the death of the member. Such designation of a  
 11 beneficiary to receive such lump sum may be made or changed at any time by the person who  
 12 made it. Such election, designation or change shall be made by a writing duly executed and filed  
 13 with the comptroller. If the person nominated to receive such lump sum does not survive the  
 14 member's beneficiary, such lump sum, if any, shall be payable to the estate of the member's  
 15 beneficiary, or as provided in section one thousand three hundred ten of the surrogate's court  
 16 procedure act.

17 f. 1. Notwithstanding any provision of paragraph three of subdivision a of this section to  
 18 the contrary and in lieu of the ordinary death benefit payable pursuant to subdivisions b or  
 19 bb of this section or the guaranteed ordinary death benefit payable pursuant to section sixty-  
 20 a of this article, a special death benefit shall be payable upon the death in service of a security  
 21 service s unit member or parkway police unit member or security supervisors unit member  
 22 who is subject to the provisions of this article, and who has credit for ninety or more days of  
 23 service while actually a member of the retirement system.

24 2. The special death benefit provided under this section to the beneficiary of  
 25 such security services unit member or parkway police unit member or security  
 26 supervisors unit member shall be:

27 (a) in the case of a security services unit member or parkway police unit member  
 28 or security supervisors unit member who was employed by the state on or before  
 29 the date this act takes effect, equal to three times the member's compensation  
 30 earnable during his last twelve months of service as a member or, if he had not  
 31 completed twelve months of service prior to the date of his death, three times  
 32 the compensation he would have earned had he worked for twelve months prior  
 33 to such date, in either case raised to the next higher multiple of one thousand  
 34 dollars. If, however, the ordinary death benefit payable pursuant to subdivision  
 35 b or bb of this section upon the death of such a security services member or  
 36 parkway police unit member or security supervisors unit member would have  
 37 exceeded the special death benefit payable pursuant to this subdivision, the  
 38 special death benefit payable in the event of death of such a member prior to  
 39 July first, nineteen hundred seventy-one shall be equal to that benefit which  
 40 would have otherwise been payable pursuant to subdivision b or bb of this  
 41 section notwithstanding any provision of paragraph one of this subdivision to

1 the contrary; or

2 (b) in the case of a security services unit member or parkway police unit member  
 3 or security supervisors unit member who enters service after the date this act  
 4 takes effect,<sup>1</sup> equal to three times the member’s compensation earnable during  
 5 his last twelve months of service as a member or, if he has not completed twelve  
 6 months of service prior to the date of his death, three times the compensation he  
 7 would have earned had he worked for twelve months prior to such date in either  
 8 case raised to the next higher multiple of one thousand dollars.

- 9 3. For the purpose of this subdivision: (a) the terms “security services unit member”,  
 10 “parkway police unit member”, and “security supervisors unit member” shall  
 11 mean a member in the employ of the state in the collective negotiating unit  
 12 designated as the security services unit or parkway police unit or security  
 13 supervisors unit established pursuant to article fourteen of the civil service law;  
 14 and (b) the term “death in service” shall include the death of such a member who  
 15 dies while off the payroll provided he or she (i) was on the payroll in such service  
 16 and paid within a period of twelve months prior to his or her death, or was on  
 17 the payroll in the service upon which membership is based at the time he or she  
 18 was ordered to active duty pursuant to Title 10 of the United States Code, with  
 19 the armed forces of the United States or to service in the uniformed services  
 20 pursuant to Chapter 43 of Title 38 of the United States Code and died while on  
 21 such active duty or service in the uniformed services on or after June fourteenth,  
 22 two thousand five, (ii) had not been otherwise gainfully employed since he or  
 23 she ceased to be on such payroll and (iii) had credit for one or more years of  
 24 continuous service since he last entered or reentered the service of his or her  
 25 employer. Provided, further, that any such member ordered to active duty  
 26 pursuant to Title 10 of the United States Code, with the armed forces of the  
 27 United States or to service in the uniformed services pursuant to Chapter 43 of  
 28 Title 38 of the United States Code who died prior to rendering the minimum  
 29 amount of service necessary to be eligible for this benefit shall be considered to  
 30 have satisfied the minimum service requirement.

- 31 4. The provisions of this subdivision shall apply in any case where death occurs on or  
 32 after the date this subdivision takes effect and prior to July first, nineteen  
 33 hundred seventy-four.

34 g. Notwithstanding any other provision of this section to the contrary, at least one-half of any death  
 35 benefits payable under this section, including the reserve-for-increased-take-home-pay at the time  
 36 of the member’s death, payable under this section shall be paid to the member’s surviving spouse,  
 37 if any, unless the member elects (in a manner that accords with this subdivision g) that the  
 38 surviving spouse receive less than one-half of the death benefits, and:

- 39 1. (a) the member’s surviving spouse consented, on or after the date of the  
 40 member’s marriage, in writing to the member’s election;

41 (b) the surviving spouse’s consent is on a plan form that sets forth:

- 1           (i) the amount of the member’s death benefits, and of the spouse, if the  
 2           spouse were entitled to half those benefits;
- 3           (ii) a statement to the effect that (absent valid consent to the contrary)  
 4           the surviving spouse is entitled to at least half of the death benefits;
- 5           (iii) a statement to the effect that the surviving spouse has the right to  
 6           prevent any future member elections regarding the member’s death  
 7           benefits without the surviving spouse’s consent unless the consent of the  
 8           surviving spouse expressly permits member elections without any  
 9           further consent by the surviving spouse; and
- 10           (iv) the fact that consenting to the member’s election would result in the  
 11           surviving spouse receiving no death benefits or less death benefits than  
 12           the surviving spouse would otherwise be entitled under this subdivision;
- 13           (c) the consent includes, an acknowledgement that the surviving spouse  
 14           understands that, absent the surviving spouse’s consent to the member’s  
 15           election, the surviving spouse is entitled to be paid at least one-half the death  
 16           benefits, and that the surviving spouse’s consent would result in the elimination  
 17           or reduction of such death benefits;
- 18           (d) the consent includes a signature by the surviving spouse that was witnessed  
 19           by a notary public or a representative of the retirement system, and
- 20           (e) the system receives the completed consent and the member’s election before  
 21           the member’s death;
- 22           2.   the member and the surviving spouse were legally separated when the member’s  
 23           election was filed with the retirement system;
- 24           3.   any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a)  
 25           of Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date  
 26           of the member’s death;
- 27           4.   it is established to the satisfaction of the retirement board of the system that the  
 28           surviving spouse could not have been located if the member had been willing  
 29           and able to exercise due diligence to locate the surviving spouse on the date of  
 30           the member’s death; or
- 31           5.   there is no surviving spouse.

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

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

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

1           2. determining that at least one of paragraphs two, three, four, or five of subdivision  
2           i of this section is true,

3 then (without implication as to what liability the retirement system and the board might have in  
4 the absence of this subdivision i) such consent or determination shall be treated as valid for purpose  
5 of discharging the retirement system and the board from liability to the extent of payments made  
6 pursuant to such action; provided that the foregoing shall not act to deprive the surviving spouse  
7 of any rights to recover amounts from any party other than the retirement system or the board.

8  
9  
10 Section 6. Section 60-c of the retirement and social security law, added L. 1998, ch. 388, § 1, is  
11 amended to read as follows:

12  
13 § 60-c. Death benefit for vested members who die prior to retirement

14 a. A death benefit plus the reserve-for-increased-take-home-pay shall be payable upon the death  
15 of a member who:

- 16           1. Died before the effective date of retirement while a member of the retirement  
17           system;
- 18           2. Had at least ten years of credited service at the time of death; and
- 19           3. Died at a time and in a manner which did not result in the eligibility of the member's  
20           estate or any beneficiary to receive any other retirement system death benefits  
21           on account of such death.

22 b. Benefits provided under this section shall be payable to the member's estate or the beneficiary  
23 or beneficiaries nominated by the member on a designation of beneficiary form filed with the  
24 comptroller pursuant to section sixty of this title, who would have been eligible to receive benefits  
25 if benefits had become payable pursuant to such section.

26 c. The amount of the benefit payable pursuant to this section shall be equal to one-half of the  
27 amount of the ordinary death benefit which would have been payable pursuant to section sixty of  
28 this title had the member's death occurred on the last day of service upon which membership was  
29 based.

30 d. Notwithstanding any other provision of this section to the contrary, at least one-half of any death  
31 benefits payable under this section, including the reserve-for-increased-take-home-pay at the time  
32 of the member's death, payable under this section shall be paid to the member's surviving spouse,  
33 if any, unless the member elects (without implication as to what liability the retirement system and  
34 the board might have in the absence of this subdivision d) that the surviving spouse receive less  
35 than one-half of the death benefits, and:

- 36           1. (A) the member's surviving spouse consented, on or after the date of the  
37           member's marriage, in writing to the member's election;
- 38           (B) the surviving spouse's consent is on a plan form that sets forth:

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1 (i) the amount of the member's death benefits, and of the spouse, if the  
2 spouse were entitled to half those benefits;

3 (ii) a statement to the effect that (absent valid consent to the contrary)  
4 the surviving spouse is entitled to at least half of the death benefits;

5 (iii) a statement to the effect that the surviving spouse has the right to  
6 prevent any future member elections regarding the member's death  
7 benefits without the surviving spouse's consent unless the consent of the  
8 surviving spouse expressly permits member elections without any  
9 further consent by the surviving spouse; and

10 (iv) the fact that consenting to the member's election would result in the  
11 surviving spouse receiving either no death benefits or smaller death  
12 benefits than the surviving spouse would otherwise receive under this  
13 subdivision;

14 (C) the consent includes an acknowledgement that the surviving spouse  
15 understands that, absent the surviving spouse's consent to the member's  
16 election, the surviving spouse would be entitled to be paid at least one-half of  
17 the death benefits, and that the surviving spouse's consent to the member's  
18 election would result in the elimination or reduction of such death benefits; and

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

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

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

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

28 4. it is established to the satisfaction of the retirement board of the system that the  
29 surviving spouse could not have been located if the member had been willing  
30 and able to exercise due diligence to locate the surviving spouse on the date of  
31 the member's death; or

32 5. there is no surviving spouse.

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 person 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—

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



1           2. determining that at least one of paragraphs two, three, four, or five of subdivision i  
 2           of this section is true,

3           then (without implication as to what liability the retirement system and the board might have in  
 4           the absence of this subdivision f) such consent or determination shall be treated as valid for purpose  
 5           of discharging the retirement system and the board from liability to the extent of payments made  
 6           pursuant to such action; provided that the foregoing discharges shall not act to deprive the  
 7           surviving spouse of any rights to recover amounts from any party other than the retirement system  
 8           or the board.

10  
 11 Section 7. Section 90 of the retirement and social security law, as amended by L. 2004, ch. 446, §  
 12 1, is amended to read as follows:

13  
 14 § 90. Options

15 A member; or if he is an incompetent, his spouse or the committee of his property; or if he is a  
 16 conservatee, his spouse or the conservator of his property, may elect to receive a Single Life  
 17 Allowance (a retirement allowance without optional modification) or to receive the actuarial  
 18 equivalent of his retirement allowance at the time of his retirement, in the form of a smaller  
 19 retirement allowance payable to him for life and one of the following optional settlements:

20           Cash Refund-Contributions (Option One-half). If he dies before he has received  
 21           annuity payments equal to the present value of his annuity, as it was at the time  
 22           of his retirement, the balance thereof shall be paid to his estate or to a beneficiary  
 23           designated as provided in this section. In the event a designated beneficiary does  
 24           not survive him, any balance shall be payable to the estate of the deceased retired  
 25           member or as provided in section one thousand three hundred ten of the  
 26           surrogate's court procedure act. The beneficiary so designated may elect by  
 27           written designation, duly executed and filed with the comptroller, to receive the  
 28           balance payable in the form of an annuity, the amount of which shall be  
 29           determined as the actuarial equivalent of such balance on the basis of regular  
 30           interest and the age of such beneficiary at the time of the retiree's death, or in  
 31           the alternative to receive the actuarial equivalent of such balance in the form of  
 32           a reduced annuity payable for life, with the further proviso that if he should die  
 33           before the annuity payments received by him are equal to such actuarial  
 34           equivalent, the balance thereof shall be paid in a lump sum to his estate or to  
 35           such person as he shall have designated to receive same. In either case the  
 36           election shall be made within ninety days after the death of the retiree. The  
 37           designation of the individual who is to receive such lump sum on the death of  
 38           the beneficiary, may be changed by the beneficiary at any time. Such election,  
 39           designation or change shall be made by a writing, duly executed and filed with  
 40           the comptroller. In the event a designated beneficiary has elected to receive a  
 41           balance payable in the form of a reduced annuity, and the person designated by  
 42           him to receive a lump sum payment does not survive him, such lump sum, if

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1 any, shall be payable to the estate of the designated beneficiary or as provided  
2 in section one thousand three hundred ten of the surrogate's court procedure act.

3 Cash Refund-Initial Value (Option One). If he dies before he has received retirement  
4 allowance payments equal to the present value of his retirement allowance, as it  
5 was at the time of his retirement, the balance thereof shall be paid to his estate  
6 or to the beneficiary so designated. In the event a designated beneficiary does  
7 not survive him, any balance shall be payable to the estate of the deceased retired  
8 member or as provided in section one thousand three hundred ten of the  
9 surrogate's court procedure act. The beneficiary so designated may elect by  
10 written designation, duly executed and filed with the comptroller, to receive the  
11 balance payable in the form of an annuity, the amount of which shall be  
12 determined as the actuarial equivalent of such balance on the basis of regular  
13 interest and the age of such beneficiary at the time of the retiree's death, or in  
14 the alternative, to receive the actuarial equivalent of such balance in the form of  
15 a reduced annuity payable for life, with the further proviso that if he should die  
16 before the annuity payments received by him are equal to such actuarial  
17 equivalent, the balance thereof shall be paid in a lump sum to his estate or to  
18 such person as he shall have designated to receive same. In either case the  
19 election shall be made within ninety days after the death of the retiree. The  
20 designation of the individual who is to receive such lump sum on the death of  
21 the beneficiary, may be changed by the beneficiary at any time. Such election,  
22 designation or change shall be made by a writing, duly executed and filed with  
23 the comptroller. In the event a designated beneficiary has elected to receive a  
24 balance payable in the form of a reduced annuity, and the person designated by  
25 him to receive a lump sum payment does not survive him, such lump sum, if  
26 any, shall be payable to the estate of the designated beneficiary or as provided  
27 in section one thousand three hundred ten of the surrogate's court procedure act.

28 Joint Allowance-Full (Option Two). Upon his death, a retirement allowance in an  
29 amount equal to that paid to him, shall be paid for life to the beneficiary so  
30 designated.

31 Joint Allowance-Half (Option Three). Upon his death, a retirement allowance of one-  
32 half the amount paid to him shall be paid for life to the beneficiary so designated.

33 Actuarial Equivalent Allowance (Option Four). Such other optional benefit or benefits  
34 as the comptroller shall approve and which shall be the actuarial equivalent of  
35 his retirement allowance at the time of his retirement.

36 aa. In the event that the monthly retirement allowance payable to a member or a beneficiary shall  
37 amount to less than twenty-five dollars, then and in such event, the member or beneficiary may  
38 elect, in lieu of such monthly retirement allowance, to receive the actuarial equivalent thereof in a  
39 lump sum.

40 All elections under this section shall be made on [forms](#) prepared by the comptroller for that  
41 purpose. Any such election may be made at any time before the first payment on account of any

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- 1 benefit becomes normally due, except that in the case of retirement on account of disability, such  
 2 an election may be made within thirty days after mailing by the comptroller of notification of  
 3 approval of retirement on account of disability.
- 4 An optional election shall not become effective if the member dies before the effective date of his  
 5 retirement. Provided, however, if a member who is otherwise eligible for disability retirement  
 6 pursuant to this chapter dies after the filing in the office of the comptroller of the application for  
 7 disability retirement and a valid option election form pursuant to this chapter and it is established  
 8 that the physical or mental impairment or incapacitation of the applicant specified in such  
 9 application was directly related to the cause of the applicant's death, such application shall be  
 10 approved by the comptroller effective one day before the date of the applicant's death. An election  
 11 of an option may be withdrawn or a new option may be chosen within the period provided in this  
 12 subdivision b for the making of such an election. Except as provided in subdivision b of section  
 13 seventy of this article, where an optional election does not become effective, retirement shall be  
 14 without option.
- 15 bb. 1. Notwithstanding any other provision of this section or of section seventy of this  
 16 article, the comptroller, for reasonable cause, shall have power to extend the time  
 17 for the election of an option, for a period or periods which shall expire not later  
 18 than sixty days immediately after the effective date of a member's retirement.
- 19 2. Notwithstanding any other provision of this section, but except where payment of  
 20 accumulated contributions, an ordinary death benefit, or both, is or are required  
 21 pursuant to subdivision dd of section fifty-one of this article or subdivision aa  
 22 of section sixty of this article, retirement shall be on the basis of "Option One-  
 23 half" unless the member files an effective election pursuant to this section to  
 24 retire on a different basis. The provisions of this paragraph two shall apply to  
 25 cases where retirement shall become effective on or after May first, nineteen  
 26 hundred fifty-four.
- 27 c. A member, or person authorized by this section to make an election in his behalf, may designate  
 28 his beneficiary under any of the options herein provided. Each such designation shall be:
- 29 1. Made in writing on a [form](#) provided by the comptroller for such purpose, and  
 30 2. Ineffective until it is filed in the comptroller's office, and  
 31 3. Revocable to the extent that:
- 32 (a) A new beneficiary under a "Cash Refund-Contributions" option (Option  
 33 One-half), or "a Cash Refund-Initial Value" option (Option One) may be  
 34 designated at any time during the member's life.
- 35 (b) A new beneficiary under any other option may be designated at any time  
 36 within the period provided for the making of an election pursuant to this section.
- 37 d. In the event of the death of a retired member, the installment of his retirement allowance, which  
 38 would have become due and payable next following his death, shall be pro-rated as of the date of  
 39 his death. The amount of such installment, as so pro-rated, shall be paid as follows:

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- 1           1. If the member shall have:
- 2               (a) Elected to receive an optional benefit pursuant to this section, and
- 3               (b) Designated a beneficiary pursuant to this section, such amount shall be paid
- 4               to such beneficiary, if such beneficiary survives him. In any other case such
- 5               amount shall be paid to the retired member's estate or pursuant to section one
- 6               thousand three hundred ten of the surrogate's court procedure act.
- 7           2. If the member shall not have elected to receive an optional benefit, such amount
- 8               shall be paid to the beneficiary designated by him pursuant to subdivision d of
- 9               section fifty-one of this article. In the event the appropriately designated
- 10              beneficiary does not survive such member, or if he shall not have so designated
- 11              a beneficiary, such amount shall be payable to the retired member's estate or
- 12              pursuant to section one thousand three hundred ten of the surrogate's court
- 13              procedure act.
- 14           e. Notwithstanding any other provision of this article, an option selection previously filed by a
- 15              member or retired member subject to the provisions of this section may be changed no later than
- 16              thirty days following the date of payability of his or her retirement allowance. A retired member
- 17              who has been retired for disability may change an option selection previously filed no later than
- 18              (1) thirty days following the date on which such member's application for disability retirement
- 19              was approved by the retirement board or (2) thirty days following the date on which such retiree
- 20              was retired for disability, whichever is later.
- 21           f. Notwithstanding any other provision of this section to the contrary, a member's retirement
- 22           allowance payable under this section shall be paid as Option Three, with the spouse as the
- 23           member's beneficiary, so that upon his or her death, if the member has a surviving spouse who
- 24           was married to the member on the date the member filed his or her retirement application, or on
- 25           the date the member filed his or her last effective option selection, if any, whichever is later, unless
- 26           the member (a) elects that the surviving spouse receive survivor benefit payments, whose amounts
- 27           are at least equal to the amounts of the retirement allowance payments that would be paid to the
- 28           surviving spouse under Option Three, if the spouse were the member's beneficiary; or (b) elects
- 29           (in a manner that accords with this subdivision f) that the surviving spouse receive either no
- 30           survivor benefit payments or survivor benefit payments, whose amounts are less than the amounts
- 31           of the retirement allowance payments that would be paid to the surviving under Option Three, if
- 32           the spouse were the member's beneficiary, and :
- 33               1. (a) the member's surviving spouse consented on or after the date of the
- 34               member's marriage, in writing to the member's election;
- 35               (b) the surviving spouse's consent is on a plan form that sets forth:
- 36                   (i) the amount of the Option Three monthly benefit entitlements of the
- 37                   member and of the spouse, if the spouse were the member's beneficiary,
- 38                   and when the member and the surviving spouse would each be entitled
- 39                   to those benefits;
- 40                   (ii) a statement to the effect that (absent valid consent to the contrary)

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1 the surviving spouse is entitled to survivor benefit payments in amounts  
 2 that are greater or equal to the amounts of the retirement allowance  
 3 payments that would be paid to the surviving spouse under Option 3, if  
 4 the spouse were the member's beneficiary;

5 (iii) a statement to the effect that the surviving spouse has the right to  
 6 prevent any future member elections regarding the member's survivor  
 7 benefits without the surviving spouse's consent unless the consent of the  
 8 surviving spouse expressly permits member elections without any  
 9 further consent by the surviving spouse, and

10 (iv) the fact that consenting to the member's survivor benefit election  
 11 would result in the surviving spouse receiving no survivor benefits or  
 12 smaller survivor benefits than the surviving spouse would otherwise  
 13 receive under this subdivision;

14 (c) the consent includes an acknowledgement that the surviving spouse  
 15 understands that, absent the surviving spouse's consent to the member's  
 16 election, the surviving spouse would be entitled paid lifetime survivor benefit  
 17 payment amounts that are at least the amounts that would be paid to the surviving  
 18 spouse under Option Three, if the spouse were the member's beneficiary, and  
 19 that the surviving spouse's consent would result in the elimination or reduction  
 20 of such survivor benefits;

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

23 (e) the system receives the completed consent and the member's election before  
 24 the date the member filed his or her retirement application, or the date the  
 25 member filed his or her last effective option selection, if any, whichever is later;

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

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

31 4. it is established to the satisfaction of the retirement board of the system that the  
 32 surviving spouse could not have been located if the member had been willing  
 33 and able to exercise due diligence to locate the surviving spouse on the later of  
 34 the date the member's retirement application was filed with the retirement  
 35 system, or the date the member's last effective option selection was filed with  
 36 the retirement system; or

37 5. there is no surviving spouse.

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

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

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

5 2. determining that at least one of paragraphs two, three, four, or five of subdivision f  
 6 this section is true,

7 then (without implication as to what liability the retirement system and the board might have in  
 8 the absence of this subdivision h) such consent or determination shall be treated as valid for  
 9 purpose of discharging the retirement system and the board from liability to the extent of payments  
 10 made pursuant to such action; provided that the foregoing discharges shall not act to deprive the  
 11 surviving spouse of any rights to recover from any party other than the retirement system or the  
 12 board. The retirement system may recover the actuarial equivalent of such discharged payments,  
 13 computed using the plan's actuarial factors, from the surviving spouse with offsets against the  
 14 system's monthly annuity benefit payments to the surviving spouse payable under this section, but  
 15 may not thereby reduce any of those benefit payments by more than 10%.

16  
 17  
 18 Section 8. Section 351 of the retirement & social security law, as amended by L. 2018, ch. 476, §  
 19 185, is amended to read as follows:

20  
 21 § 351 Refunds and withdrawals

22  
 23 a. A member under age sixty may withdraw his accumulated contributions if he has been separated  
 24 from service for a period of at least fifteen days.

25 b. A member sixty years of age or over, may elect, not later than fifteen days after filing his  
 26 application for retirement, or not later than thirty days after his mandatory retirement has become  
 27 effective by operation of law, to withdraw his accumulated contributions in lieu of a retirement  
 28 allowance, provided that he

29 1. Has had less than five years of total service credit, or

30 2. Last became a member of the state employees' retirement system before April sixth,  
 31 nineteen hundred forty-three, and subsequently became a member of the police  
 32 and fire retirement system, or

33 3. Is eligible for an annual retirement allowance which, without optional modification,  
 34 amounts to less than three hundred dollars.

35 c. The following contributions or additional contributions shall be treated as excess contributions  
 36 which, together with regular interest and special interest thereon, may be withdrawn by a member  
 37 at any time prior to retirement, or if not so withdrawn, shall be used to purchase additional annuity:

38 1. Contributions paid by a member in order to receive credit for service in war after  
 39 world war I, as defined in section three hundred two of this article, not including,  
 40 however, contributions required by subdivision k of section three hundred forty-

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- 1           one of this article.
- 2           2. Additional contributions paid by a member pursuant to sections three hundred  
3           eighty-one, three hundred eighty-one-a, three hundred eighty-three, three  
4           hundred eighty-three-a, three hundred eighty-four, three hundred eighty-four-a,  
5           three hundred eighty-four-b, three hundred eighty-four-d, three hundred eighty-  
6           five, three hundred eighty-five-a, three hundred eighty-six, three hundred  
7           eighty-seven, three hundred eighty-seven-a and three hundred eighty-eight and  
8           where, as a result of a change in his employment, such additional contributions  
9           would not provide an additional pension allowance for service for which such  
10          additional contributions were made.
- 11          3. Such other contributions to the annuity savings fund as may be determined by  
12          regulation of the comptroller to be excess and subject to such withdrawal.
- 13          d. If a member dies before the effective date of his retirement, his accumulated contributions shall  
14          be paid to his estate or to the person nominated by him in a written designation duly executed and  
15          filed with the comptroller. In the event such a designated beneficiary does not survive him, or if  
16          he shall not have so designated a beneficiary, such contributions shall be payable to the deceased  
17          member's estate or as provided in section one thousand three hundred ten of the surrogate's court  
18          procedure act. Such member, or after his death, the person so nominated by him may file with the  
19          comptroller a written designation, duly executed providing that such contributions shall be paid in  
20          the form of an annuity to such person so nominated. Such designation shall be filed prior to or  
21          within ninety days after the death of the member. The amount of such annuity shall be determined  
22          as the actuarial equivalent of such accumulated contributions on the basis of regular interest and  
23          the age of the person so nominated as of the date of such member's death.
- 24          dd. Notwithstanding the provisions of section three hundred ninety of this article, accumulated  
25          contributions shall be payable in the manner provided by subdivision d or e of this section in the  
26          case of a retired member who shall die before attaining age seventy where:
- 27                1. His application for retirement became effective prior to his death, and  
28                2. No optional election by him was in effect at the time of his death, or he had made  
29                and filed a valid election to receive his retirement allowance without optional  
30                modification, and  
31                3. He died within the period of thirty days immediately after his retirement became  
32                effective.
- 33          The amount of the accumulated contributions so payable under this subdivision shall be reduced  
34          by the amount of any annuity payment that may have been paid on account of such retirement.
- 35          The provisions of this subdivision shall apply in any case where death occurred on or after January  
36          first, nineteen hundred fifty-four.
- 37          e. A member, or after his death, the person nominated by him to receive his accumulated  
38          contributions, may elect to receive the actuarial equivalent of the annuity specified in subdivision  
39          d of this section in the form of a reduced annuity, payable for life, with the further proviso that if

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1 the person so nominated should die before the annuity payments received by him are equal to such  
 2 actuarial equivalent, the balance thereof shall be paid in a lump sum to such beneficiary's estate  
 3 or to such person as such member or his nominee shall have designated prior to his death. Such  
 4 election shall be made prior to or within ninety days after the death of the member. Such  
 5 designation of a beneficiary to receive such lump sum may be made or changed at any time by the  
 6 person who made it. Such election, designation or change shall be made by a writing duly executed  
 7 and filed with the comptroller. If the person nominated to receive such lump sum does not survive  
 8 the member's beneficiary, such lump sum, if any, shall be payable to the estate of the member's  
 9 beneficiary or as provided in section one thousand three hundred ten of the surrogate's court  
 10 procedure act.

11 f. Notwithstanding any other provision of this section to the contrary, at least one-half of the  
 12 accumulated contributions remaining at the time of the member's death, payable under this section  
 13 shall be paid to the member's surviving spouse, unless the member elects (in a manner that accords  
 14 with this subdivision f) that the surviving spouse receive less than one-half of the accumulated  
 15 contributions, and:

16 1. (A) the member's surviving spouse consented, on or after the date of the  
 17 member's marriage, in writing to the member's election

18 (B) the surviving spouse's consent is on a plan form that sets forth:

19 (i) the amount of the member's accumulated contributions, and of the  
 20 spouse, if the spouse were entitled to half those contributions;

21 (ii) a statement to the effect that (absent valid consent to the contrary)  
 22 the surviving spouse is entitled to at least half of the accumulated  
 23 contributions;

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

29 (iv) the fact that consenting to the member's election would result in the  
 30 surviving spouse receiving either no accumulated contributions or  
 31 smaller contributions than the surviving spouse would otherwise receive  
 32 under this subdivision;

33 (C) the consent includes an acknowledgement that the surviving spouse  
 34 understands that, absent the surviving spouse's consent to the member's  
 35 election, the surviving spouse would be entitled to be paid at least one-half of  
 36 the accumulated contributions, and that the surviving spouse's consent would  
 37 result in the elimination or reduction of such payments; and

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

40 (E) the system receives the completed consent and the member's election before



- 1           the member's death;
- 2           2. the member and the surviving spouse were legally separated when the member's
- 3           election was filed with the retirement system;
- 4           3. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a)
- 5           of Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date
- 6           of the member's death;
- 7           4. it is established to the satisfaction of the retirement board of the system that the
- 8           surviving spouse could not have been located if the member had been willing
- 9           and able to exercise due diligence to locate the surviving spouse on the date of
- 10           the member's death; or
- 11           5. there is no surviving spouse.

12 g. Notwithstanding any other provision of this section to the contrary, a member's election must

13 comply with the terms of subdivision f of this section to be effective.

14 h. If the retirement board of the system acts with the care, skill, prudence, and diligence under the

15 circumstances then prevailing that a prudent person acting in a like capacity and familiar with such

16 matters would use in the conduct of an enterprise of a like character and with like aims, in—

- 17           1. relying on a consent referred to in paragraph one of subdivision f of this section, or
- 18           2. determining that at least one of paragraphs two, three, four, or five of subdivision f
- 19           of this section is true,

20 then (without implication as to what liability the retirement system and the board might have in

21 the absence of this subdivision h) such consent or determination shall be treated as valid for

22 purpose of discharging the retirement system and the board from liability to the extent of payments

23 made pursuant to such action; provided that the foregoing discharges shall not at to deprive the

24 surviving spouse of any rights to recover amounts from any party other than the retirement system

25 or the board.

26

27

28 Section 9. Section 360 of the retirement and social security law, as amended by L. 2018, ch. 476,

29 § 186, is amended to read as follows:

30

31 § 360. Ordinary death benefit

32 a. An ordinary death benefit plus the reserve-for-increased-take-home-pay shall be payable upon

33 the death of a member who:

- 34           1. Died before the effective date of his retirement, and
- 35           2. Was in service upon which his membership was based when he died or was on the
- 36           payroll in such service and paid within a period of twelve months prior to his
- 37           death or within a period of twenty-four months prior to his death if on leave of

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1 absence as set forth below and had, unless his service was based on seasonal  
 2 employment, not been otherwise gainfully employed since he ceased to be on  
 3 such payroll except while on leave of absence which was granted in accordance  
 4 with the provisions of subdivision i of section three hundred forty-one of this  
 5 chapter and which commenced during the period from April first, nineteen  
 6 hundred sixty-six through June thirtieth, nineteen hundred seventy-four, to  
 7 perform services as a civilian officer or employee of the Federal government or  
 8 one of its agencies or a contractor of the United States Agency for International  
 9 Development engaged to perform the work of such agency, the United Nations,  
 10 any other international organization of which the United States of America is a  
 11 member, or a foreign government, and

12 3. Has credit for one or more years of service while actually a member. This requirement of one  
 13 or more years of service while actually a member shall not be applicable to the reserve-for-  
 14 increased-take-home-pay and shall be subject to waiver as provided in subdivision e of section  
 15 three hundred forty-one of this article.

16 An ordinary death benefit shall not be payable in any case in which an accidental death benefit is  
 17 payable provided, however, that where payments made pursuant to section three hundred sixty-  
 18 one of this chapter on account of an accidental death benefit, computed without reduction pursuant  
 19 to section three hundred sixty-four of this article, and the reserve-for-increased-take-home-pay  
 20 total less than the ordinary death benefit and the reserve-for-increased-take-home-pay that would  
 21 have been computed and made payable pursuant to this section three hundred sixty in the case of  
 22 ordinary death, the difference shall be paid to the beneficiary or member's estate to which the  
 23 ordinary death benefit and reserve-for-increased-take-home-pay would have been paid. Provided  
 24 further, that where the beneficiary or beneficiaries designated to receive the accidental death  
 25 benefit pursuant to section three hundred sixty-one of this chapter is the same beneficiary or  
 26 beneficiaries designated by the member to receive the ordinary death benefit, then, and in that case  
 27 the beneficiary or beneficiaries may elect to receive, in a lump sum, the value of the ordinary death  
 28 benefit and the reserve-for-increased-take-home-pay, if any, that would have been computed and  
 29 made payable pursuant to the provisions hereof in case of ordinary death, in lieu of any other  
 30 benefit.

31 Notwithstanding the provisions of any other law to the contrary and solely for the purpose of  
 32 determining eligibility for an ordinary death benefit and/or guaranteed ordinary death benefit, a  
 33 member shall be considered to have died while in service upon which his or her membership was  
 34 based provided such member was on the payroll in the service upon which membership is based  
 35 at the time he or she was ordered to active duty pursuant to Title 10 of the United States Code,  
 36 with the armed forces of the United States or to service in the uniformed services pursuant to  
 37 Chapter 43 of Title 38 of the United States Code and died while on such active duty or service in  
 38 the uniformed services on or after June fourteenth, two thousand five. Provided, further, that any  
 39 such member ordered to active duty with the armed forces of the United States or to service in the  
 40 uniformed services who died prior to rendering the minimum amount of service necessary to be  
 41 eligible for this benefit shall be considered to have satisfied the minimum service requirement.

42 aa. Notwithstanding the provisions of section three hundred ninety of this article, an ordinary death



1 benefit plus the reserve-for-increased-take-home-pay shall be payable to the beneficiary  
 2 designated in a valid election of “Option One-half”, if any, or in the manner provided by  
 3 subdivisions c, d, or e of this section, in any other case, if a retired member shall die where:

- 4 1. His application for retirement became effective prior to his death, and
- 5 2. No optional election by him was in effect at the time of his death, or he had made  
 6 and filed a valid election to receive his retirement allowance without optional  
 7 modification or under “Option One-half”, and
- 8 3. He died within the period of thirty days immediately after his retirement became  
 9 effective.

10 The amount of the ordinary death benefit so payable under this subdivision shall be reduced by the  
 11 amount of any pension payment that may have been paid on account of such retirement.

12 The provisions of this subdivision shall apply in any case where death occurred on or after January  
 13 first, nineteen hundred fifty-four.

- 14 32. The ordinary death benefit plus the reserve-for-increased-take-home-pay shall be payable  
 15 from the pension accumulation fund. The ordinary death benefit shall not exceed the  
 16 compensation earnable by such member during his last twelve months of service while a  
 17 member. The amount thereof shall be computed by multiplying one-twelfth of such  
 18 compensation by the number of years, not to exceed twelve, of his total service credit.  
 19 Provided, however, that where the member has more than twelve years of total service  
 20 credit and where his death occurs on or after April first, nineteen hundred sixty-seven and  
 21 on or before June thirtieth, nineteen hundred seventy-four, there shall be added to such  
 22 ordinary death benefit one-twenty-fourth of such compensation multiplied by the number  
 23 of years, not to exceed twenty-four, but exclusive of the first twelve, of his total service  
 24 credit. Provided, further, that where a member, qualified under subdivisions<sup>1</sup> a or aa of this  
 25 section, would have been entitled to a service retirement benefit at the time of his death  
 26 and where his death occurs on or after April first, nineteen hundred sixty-seven, and on or  
 27 before June thirtieth, nineteen hundred seventy-four, the amount payable under this section  
 28 shall be equal to the pension reserve that would have been established had the member  
 29 retired on the date of his death, unless the ordinary death benefit and the reserve-for-  
 30 increased-take-home-pay, hereinabove provided for, shall be in excess thereof.

31 In the case of a retired member who has returned to service, total service credit for purposes of this  
 32 section only, shall include service rendered prior to his retirement, provided that he shall have  
 33 rendered at least one year of service since he last became a member or provided he shall have  
 34 rendered since he returned to public service one year of service during which he elected pursuant  
 35 to subdivision a of section four hundred one of this article not to be restored to membership in the  
 36 police and fire retirement system. The member’s accumulated contributions shall be refunded in  
 37 accordance with subdivision d of section three hundred fifty-one of this article.

- 38 bb. (a) An ordinary death benefit shall be payable upon the death of a member who was  
 39 in the employ of the state during its participation under section three hundred  
 40 seventy-five-a of this chapter or of a participating employer while such employer

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1 is participating under the provisions of section three hundred seventy-five-b of  
2 this chapter.

3 The provisions of this subdivision bb shall apply in any case where death occurred on or<sup>2</sup> April  
4 first, nineteen hundred sixty-seven and prior to July first, nineteen hundred seventy-four.

5 (b) The ordinary death benefit shall be payable from the pension accumulation fund.  
6 Such ordinary death benefit shall be based on compensation earnable by such  
7 member during his last twelve months of service while a member. The amount  
8 thereof shall be computed by multiplying one-twelfth of such compensation by  
9 the number of years, not to exceed thirty-six, of his total service credit.  
10 Provided that where a member qualified under subdivisions a and aa of this  
11 section would have been eligible for service retirement at the time of his death  
12 and where his death occurs on or after April first, nineteen hundred sixty-seven  
13 and prior to July first, nineteen hundred seventy-four, the amount payable  
14 under this section shall be equal to the pension reserve that would have been  
15 established pursuant to section three hundred seventy-five-c had the member  
16 retired on the date of his death, unless the ordinary death benefit hereinabove  
17 provided for, shall be in excess thereof. The benefit provided herein shall be in  
18 lieu of the ordinary death benefit presently payable under other provisions of  
19 this chapter, unless the benefit under such other provisions shall be in excess  
20 of those provided for herein, in which event the greater benefit shall be  
21 payable.

22 (c) In the case of a retired member who has returned to service, total service credit, for  
23 purposes of this subdivision only, shall include service rendered prior to his  
24 retirement, provided that he shall have rendered at least one year of service  
25 since he last became a member, or provided he shall have rendered since he  
26 returned to public service one year of service during which he elected pursuant  
27 to subdivision a of section four hundred one of this article not to be restored to  
28 membership in the retirement system. The member's accumulated  
29 contributions shall be refunded in accordance with subdivision d of section  
30 three hundred fifty-one of this article.

31 c. The ordinary death benefit and the reserve-for-increased-take-home-pay shall be paid to the  
32 member's estate or to such person as he shall have nominated to receive such ordinary death  
33 benefit. To be effective, such a nomination must be in the form of a written designation, duly  
34 acknowledged and filed with the comptroller for this specific purpose. In the event such a  
35 designated beneficiary does not survive him, or if he shall not have so designated a beneficiary,  
36 such benefit shall be payable to the deceased member's estate or as provided in section one  
37 thousand three hundred ten of the surrogate's court procedure act.

38 d. The member, or on the death of the member, the person nominated by him to receive his death  
39 benefit, may provide, by written designation, duly executed and filed with the comptroller, that  
40 such death benefit and the reserve-for-increased-take-home-pay shall be paid in the form of an  
41 annuity. Such designation shall be filed prior to or within ninety days after the death of the member.  
42 The amount of such annuity shall be determined as the actuarial equivalent of such death benefit

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1 and reserve on the basis of the age of such beneficiary at the time of the member's death and  
2 regular interest.

3 e. A member, or after his death, the person nominated by him to receive his ordinary death benefit,  
4 may elect to receive the actuarial equivalent of the annuity specified in subdivision d of this section  
5 in the form of a reduced annuity, payable for life, with the further proviso that if the person so  
6 nominated should die before the annuity payments received by him are equal to such actuarial  
7 equivalent, the balance thereof shall be paid in a lump sum to such beneficiary's estate or to such  
8 person as such member or his nominee shall have designated prior to his death. Such election shall  
9 be made prior to or within ninety days after the death of the member. Such designation of a  
10 beneficiary to receive such lump sum may be made or changed at any time by the person who  
11 made it. Such election, designation or change shall be made by a writing duly executed and filed  
12 with the comptroller. If the person nominated to receive such lump sum does not survive the  
13 member's beneficiary, such lump sum, if any, shall be payable to the estate of the member's  
14 beneficiary or as provided in section one thousand three hundred ten of the surrogate's court  
15 procedure act.

16 f. Special death benefit. Notwithstanding any provision of paragraph three of subdivision a of this  
17 section to the contrary, a special death benefit shall be payable upon the death of an officer or  
18 member of the state police who is subject to the provisions of section three hundred eighty-one-b  
19 of this chapter, and who has credit for ninety or more days of service while actually a member of  
20 the retirement system. In lieu of the ordinary death benefit payable pursuant to subdivisions b or  
21 bb of this section, the special death benefit shall be payable upon the death of an officer or member  
22 of the state police and shall be equal to three times the member's compensation earnable during  
23 his last twelve months of service as a member, raised to the next higher multiple of one thousand  
24 dollars. If, however, the ordinary death benefit payable pursuant to subdivision b or bb of this  
25 section upon the death of an officer or member of the state police who had been in service on or  
26 before April first, nineteen hundred sixty-nine would have exceeded the special death benefit  
27 otherwise payable pursuant to this subdivision had he not elected to come under the provisions of  
28 section three hundred eighty-one-b, the special death benefit payable under this subdivision shall  
29 be equal to that benefit which he would have received had he remained in his former plan. In no  
30 case shall the amount payable as a special death benefit on behalf of an officer or member of the  
31 state police who enters or re-enters service in the division after April first, nineteen hundred sixty-  
32 nine exceed three times the member's compensation earnable during his last twelve months of  
33 service as a member, raised to the next higher multiple of one thousand dollars.

34 g. 1. Notwithstanding any provision of paragraph three of subdivision a of this section to  
35 the contrary and in lieu of the ordinary death benefit payable pursuant to  
36 subdivisions b or bb of this section or the guaranteed ordinary death benefit  
37 payable pursuant to section three hundred sixty-a of this article, a special death  
38 benefit shall be payable upon the death in service of a security services unit  
39 member or parkway police unit member or security supervisors unit member  
40 who is subject to the provisions of this article, and who has credit for ninety or  
41 more days of service while actually a member of the retirement system.

1           2. The special death benefit provided under this section to the beneficiary of such  
2           security services unit member or parkway police unit member or security  
3           supervisors unit member shall be:

4           (a) in the case of a security services unit member or parkway police unit member  
5           or security supervisors unit member who was employed by the state on or before  
6           the date this act takes effect, equal to three times the member's compensation  
7           earnable during his last twelve months of service as a member or, if he had not  
8           completed twelve months of service prior to the date of his death, three times  
9           the compensation he would have earned had he worked for twelve months prior  
10          to such date, in either case raised to the next higher multiple of one thousand  
11          dollars. If, however, the ordinary death benefit payable pursuant to subdivision  
12          b or bb of this section upon the death of such a security services member or  
13          parkway police unit member or security supervisors unit member would have  
14          exceeded the special death benefit payable pursuant to this subdivision, the  
15          special death benefit payable in the event of the death of such a member prior to  
16          July first, nineteen hundred seventy-one shall be equal to that benefit which  
17          would have otherwise been payable pursuant to subdivision b or bb of this  
18          section notwithstanding any provision of paragraph one of this subdivision to  
19          the contrary; or

20          (b) in the case of a security services unit member or parkway police unit member  
21          or security supervisors unit member who enters service after the date this act  
22          takes effect, equal to three times the member's compensation earnable during  
23          his last twelve months of service as a member or, if he has not completed twelve  
24          months of service prior to the date of his death, three times the compensation he  
25          would have earned had he worked for twelve months prior to such date, in either  
26          case raised to the next higher multiple of one thousand dollars.

27          3. For the purpose of this subdivision:

28          (a) the terms "security services unit member", "parkway police unit member",  
29          and "security supervisors unit member" shall mean a member in the employ of  
30          the state in the collective negotiating unit designated as the security services unit  
31          or parkway police unit or security supervisors unit established pursuant to article  
32          fourteen of the civil service law; and

33          (b) the term "death in service" shall include the death of such a member who  
34          dies while off the payroll provided he or she (i) was on the payroll in such service  
35          and paid within a period of twelve months prior to his or her death, or was on  
36          the payroll in the service upon which membership is based at the time he or she  
37          was ordered to active duty pursuant to Title 10 of the United States Code, with  
38          the armed forces of the United States or to service in the uniformed services  
39          pursuant to Chapter 43 of Title 38 of the United States Code and died while on  
40          such active duty or service in the uniformed services on or after June fourteenth,  
41          two thousand five, (ii) had not been otherwise gainfully employed since he or  
42          she ceased to be on such payroll and (iii) had credit for one or more years of

1 continuous service since he or she last entered or reentered the service of his or  
 2 her employer. Provided, further, that any such member ordered to active duty  
 3 pursuant to Title 10 of the United States Code, with the armed forces of the  
 4 United States or to service in the uniformed services pursuant to Chapter 43 of  
 5 Title 38 of the United States Code who died prior to rendering the minimum  
 6 amount of service necessary to be eligible for this benefit shall be considered to  
 7 have satisfied the minimum service requirement.

- 8 4. The provisions of this subdivision shall apply in any case where death occurs on or  
 9 after the date this subdivision takes effect and prior to July first, nineteen  
 10 hundred seventy-four.

11 h. Notwithstanding any other provision of this section to the contrary, at least one-half of any death  
 12 benefits payable under this section, including the reserve-for-increased-take-home-pay at the time  
 13 of the member's death, payable under this section shall be paid to the member's surviving spouse,  
 14 if any, unless the member elects (in a manner that accords with this subdivision h) that the  
 15 surviving spouse receive less than one-half of the death benefits, and:

- 16 1. (a) the member's surviving spouse consented, on or after the date of the  
 17 member's marriage, in writing to the member's election;

18 (b) the surviving spouse's consent is on a plan form that sets forth:

19 (i) the amount of the member's death benefits, and of the spouse, if the  
 20 spouse were entitled to half those benefits;

21 (ii) a statement to the effect that (absent valid consent to the contrary)  
 22 the surviving spouse is entitled to at least half of the death benefits;

23 (iii) a statement to the effect that the surviving spouse has the right to  
 24 prevent any future member elections regarding the member's death  
 25 benefits without the surviving spouse's consent unless the consent of the  
 26 surviving spouse expressly permits member elections without any  
 27 further consent by the surviving spouse; and

28 (D) the fact that consenting to the member's election would result in the  
 29 surviving spouse receiving either no death benefits or smaller death  
 30 benefits than the surviving spouse would otherwise receive under this  
 31 subdivision;

32 (c) the consent includes an acknowledgement that the surviving spouse  
 33 understands that, absent the surviving spouse's consent to the member's  
 34 election, the surviving spouse would be entitled to be paid at least one-half of  
 35 the death benefits, and that the surviving spouse's consent would result in the  
 36 elimination or reduction of such death benefits; and

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

39 (e) the system receives the completed consent and the member's election before

- 1           the member's death;
- 2           2. the member and the surviving spouse were legally separated when the member's
- 3           election was filed with the retirement system;
- 4           3. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a)
- 5           of Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date
- 6           of the member's death;
- 7           4. it is established to the satisfaction of the retirement board of the system that the
- 8           surviving spouse could not have been located if the member had been willing
- 9           and able to exercise due diligence to locate the surviving spouse on the date of
- 10          the member's death; or
- 11          5. there is no surviving spouse.

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

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

- 17           1. relying on a consent referred to in paragraph one of subdivision h of this section, or
- 18           2. determining that at least one of paragraphs two, three, four, or five of subdivision i  
 19           of this section is true,

20 then (without implication as to what liability the retirement system and the board might have in  
 21 the absence of this subdivision j) such consent or determination shall be treated as valid for purpose  
 22 of discharging the retirement system and the board from liability to the extent of payments made  
 23 pursuant to such action; provided that the foregoing discharges shall not act to deprive the  
 24 surviving spouse of any rights to recover amounts from any party other than the retirement system  
 25 or the board.

26

27

28 Section 10. Section 360-c of the retirement and social security law, as amended by L. 1998, ch.  
 29 388, § 2, is amended to read as follows:

30

31 § 360-c. Death benefit for vested members who die prior to retirement

32 a. A death benefit plus the reserve-for-increased-take-home-pay shall be payable upon the death  
 33 of a member who:

- 34           1. Died before the effective date of retirement while a member of the retirement  
 35           system;
- 36           2. Had at least ten years of credited service at the time of death; and

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1           3. Died at a time and in a manner which did not result in the eligibility of the member's  
2           estate or any beneficiary to receive any other retirement system death benefits  
3           on account of such death.

4           b. Benefits provided under this section shall be payable to the member's estate or the beneficiary  
5           or beneficiaries nominated by the member on a designation of beneficiary form filed with the  
6           comptroller pursuant to section sixty of this chapter, who would have been eligible to receive  
7           benefits if benefits had become payable pursuant to such section.

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 pursuant to section sixty of  
10          this chapter had the member's death occurred on the last day of service upon which membership  
11          was based.

12          d. Notwithstanding any other provision of this section to the contrary, at least one-half of any death  
13          benefits payable under this section, including the reserve-for-increased-take-home-pay at the time  
14          of the member's death, payable under this section shall be paid to the member's surviving spouse,  
15          if any, unless the member elects (in a manner that accords with this subdivision d) that the  
16          surviving spouse receive less than one-half of the death benefits, and:

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

19           (B) the surviving spouse's consent is on a plan form that sets forth:

20           (i) the amount of the member's death benefits, and of the spouse, if the  
21           spouse were entitled to half those benefits;

22           (ii) a statement to the effect that (absent valid consent to the contrary)  
23           the surviving spouse is entitled to at least half of the death benefits;

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

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

33           (C) the consent includes an acknowledgement that the surviving spouse  
34           understands that, absent the surviving spouse's consent to the member's  
35           election, the surviving spouse would be entitled to be paid at least one-half of  
36           the death benefits, and that the surviving spouse's consent would result in the  
37           elimination or reduction of such death benefits;

38           (D) the consent includes a signature by the surviving spouse that was witnessed

1 by a notary public or a representative of the retirement system; and

2 (E) the system receives the completed consent and the member's election before  
 3 the member's death;

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

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

9 4. it is established to the satisfaction of the retirement board of the system that the  
 10 surviving spouse could not have been located if the member had been willing  
 11 and able to exercise due diligence to locate the surviving spouse on the date of  
 12 the member's death; or

13 5. there is no surviving spouse.

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 person 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. determining that at least one of paragraphs two, three, four, or five of subdivision i  
 21 of this section is true,

22 then (without implication as to what liability the retirement system and the board might have in  
 23 the absence of this subdivision f) such consent or determination shall be treated as valid for purpose  
 24 of discharging the retirement system and the board from liability to the extent of payments made  
 25 pursuant to such action; provided that the foregoing discharges shall not act to deprive the  
 26 surviving spouse of any right s to recover amounts from any party other than the retirement system  
 27 or the board.

28  
 29  
 30 Section 11. Section 390 of the retirement and social security law, as amended by L. 2004, ch. 446,  
 31 § 2, is amended to read as follows:

32  
 33 § 390. Options

34 A member; or if he is an incompetent, his spouse or the committee of his property; or if he is a  
 35 conservatee, his spouse or the conservator of his property, may elect to receive a Single Life  
 36 Allowance (a retirement allowance without optional modification) or to receive the actuarial  
 37 equivalent of his retirement allowance at the time of his retirement, in the form of a smaller  
 38 retirement allowance payable to him for life and one of the following optional settlements.

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1 Cash Refund-Contributions (Option One-half). If he dies before he has received  
 2 annuity payments equal to the present value of his annuity, as it was at the time  
 3 of his retirement, the balance thereof shall be paid to his estate or to a beneficiary  
 4 designated as provided in this section. In the event a designated beneficiary does  
 5 not survive him, any balance shall be payable to the estate of the deceased retired  
 6 member or as provided in section one thousand three hundred ten of the  
 7 surrogate's court procedure act.

8 The beneficiary so designated may elect by written designation, duly executed  
 9 and filed with the comptroller, to receive the balance payable in the form of an  
 10 annuity, the amount of which shall be determined as the actuarial equivalent of  
 11 such balance on the basis of regular interest and the age of such beneficiary at  
 12 the time of the retiree's death, or in the alternative, to receive the actuarial  
 13 equivalent of such balance in the form of a reduced annuity payable for life, with  
 14 the further proviso that if he should die before the annuity payments received by  
 15 him are equal to such actuarial equivalent, the balance thereof shall be paid in a  
 16 lump sum to his estate or to such person as he shall have designated to receive  
 17 same. In either case the election shall be within ninety days after the death of the  
 18 retiree. The designation of the individual who is to receive such lump sum on  
 19 the death of the beneficiary, may be changed by the beneficiary at any time.  
 20 Such election, designation or change shall be made by a writing, duly executed  
 21 and filed with the comptroller. In the event a designated beneficiary has elected  
 22 to receive a balance payable in the form of a reduced annuity, and the person  
 23 designated by him to receive a lump sum payment does not survive him, such  
 24 lump sum, if any, shall be payable to the estate of the designated beneficiary or  
 25 as provided in section one thousand three hundred ten of the surrogate's court  
 26 procedure act.

27 Cash Refund-Initial Value (Option One). If he dies before he has received retirement  
 28 allowance payments equal to the present value of his retirement allowance, as it  
 29 was at the time of his retirement, the balance thereof shall be paid to his estate  
 30 or to the beneficiary so designated. In the event a designated beneficiary does  
 31 not survive him, any balance shall be payable to the estate of the deceased retired  
 32 member or as provided in section one thousand three hundred ten of the  
 33 surrogate's court procedure act. The beneficiary so designated may elect by  
 34 written designation, duly executed and filed with the comptroller, to receive the  
 35 balance payable in the form of an annuity, the amount of which shall be  
 36 determined as the actuarial equivalent of such balance on the basis of regular  
 37 interest and the age of such beneficiary at the time of the retiree's death, or in  
 38 the alternative, to receive the actuarial equivalent of such balance in the form of  
 39 a reduced annuity payable for life, with the further proviso that if he should die  
 40 before the annuity payments received by him are equal to such actuarial  
 41 equivalent, the balance thereof shall be paid in a lump sum to his estate or to  
 42 such person as he shall have designated to receive same. In either case the  
 43 election shall be within ninety days after the death of the retiree. The designation  
 44 of the individual who is to receive such lump sum on the death of the beneficiary,

1           may be changed by the beneficiary at any time. Such election, designation or  
 2           change shall be made by a writing, duly executed and filed with the comptroller.  
 3           In the event a designated beneficiary has elected to receive a balance payable in  
 4           the form of a reduced annuity, and the person designated by him to receive a  
 5           lump sum payment does not survive him, such lump sum, if any, shall be payable  
 6           to the estate of the designated beneficiary or as provided in section one thousand  
 7           three hundred ten of the surrogate's court procedure act.

8           Joint Allowance-Full (Option Two). Upon his death, a retirement allowance in an  
 9           amount equal to that paid to him, shall be paid for life to the beneficiary so  
 10          designated.

11          Joint Allowance-Half (Option Three). Upon his death, a retirement allowance of one-  
 12          half the amount paid to him shall be paid for life to the beneficiary so designated.

13          Actuarial Equivalent Allowance (Option Four). Such other optional benefit or benefits  
 14          as the comptroller shall approve and which shall be the actuarial equivalent of  
 15          his retirement allowance at the time of his retirement.

16          aa. In the event that the monthly retirement allowance payable to a member or a beneficiary shall  
 17          amount to less than twenty-five dollars, then and in such event, the member or beneficiary may  
 18          elect, in lieu of such monthly retirement allowance, to receive the actuarial equivalent thereof in a  
 19          lump sum.

20          All elections under this section shall be made on forms prepared by the comptroller for that  
 21          purpose. Any such election may be made at any time before the first payment on account of any  
 22          benefit becomes normally due, except that in the case of retirement on account of disability, such  
 23          an election may be made within thirty days after mailing by the comptroller of notification of  
 24          approval of retirement on account of disability.

25          An optional election shall not become effective if the member dies before the effective date of his  
 26          retirement. Provided, however, if a member who is otherwise eligible for disability retirement  
 27          pursuant to this chapter dies after the filing in the office of the comptroller of the application for  
 28          disability retirement and a valid option election form pursuant to this chapter and it is established  
 29          that the physical or mental impairment or incapacitation of the applicant specified in such  
 30          application was directly related to the cause of the applicant's death, such application shall be  
 31          approved by the comptroller effective one day before the date of the applicant's death. An election  
 32          of an option may be withdrawn or a new option may be chosen within the period provided in this  
 33          subdivision b for the making of such an election. Except as provided in subdivision b of section  
 34          three hundred seventy of this article, where an optional election does not become effective,  
 35          retirement shall be without option.

36          bb. 1. Notwithstanding any other provision of this section or of section three hundred seventy of  
 37                this article, the comptroller, for reasonable cause, shall have power, to extend the time  
 38                for the election of an option, for a period or periods which shall expire not later than  
 39                sixty days immediately after the effective date of a member's retirement.

40          2. Notwithstanding any other provision of this section, but except where payment of

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1 accumulated contributions, an ordinary death benefit, or both, is or are required  
 2 pursuant to subdivision dd of section three hundred fifty-one of this article or  
 3 subdivision aa of section three hundred sixty of this article, retirement shall be  
 4 on the basis of “Option One-half” unless the member files an effective election  
 5 pursuant to this section to retire on a different basis. The provisions of this  
 6 paragraph two shall apply to cases where retirement shall become effective on  
 7 or after April first, nineteen hundred sixty-seven.

8 c. A member, or person authorized by this section to make an election in his behalf, may designate  
 9 his beneficiary under any of the options herein provided. Each such designation shall be:

- 10 1. Made in writing on a [form](#) provided by the comptroller for such purposes, and
- 11 2. Ineffective until it is filed in the comptroller’s office, and
- 12 3. Revocable to the extent that:

13 (a) A new beneficiary under a “Cash Refund-Contributions” option (Option  
 14 One-half), or a “Cash Refund-Initial Value” option (Option One) may be  
 15 designated at any time during the member’s life.

16 (b) A new beneficiary under any other option may be designated at any time  
 17 within the period provided for the making of an election pursuant to this section.

18 d. In the event of the death of a retired member, the installment of his retirement allowance, which  
 19 would have become due and payable next following his death, shall be pro-rated as of the date of  
 20 his death. The amount of such installment, as so pro-rated, shall be paid as follows:

- 21 1. If the member shall have

22 (a) Elected to receive an optional benefit pursuant to this section, and

23 (b) Designated a beneficiary pursuant to this section, such amount shall be paid  
 24 to such beneficiary, if such beneficiary survives him. In any other case such  
 25 amount shall be paid to the retired member’s estate or pursuant to section one  
 26 thousand three hundred ten of the surrogate’s court procedure act.

- 27 2. If the member shall not have elected to receive an optional benefit, such amount  
 28 shall be paid to the beneficiary designated by him pursuant to subdivision d of  
 29 section three hundred fifty-one of this article. In the event the appropriately  
 30 designated beneficiary does not survive such member, or if he shall not have so  
 31 designated a beneficiary, such amount shall be payable to the retired member’s  
 32 estate or pursuant to section one thousand three hundred ten of the surrogate’s  
 33 court procedure act.

34 e. Notwithstanding any other provision of this article, an option selection previously filed by a  
 35 member or retired member subject to the provisions of this section may be changed no later than  
 36 thirty days following the date of payability of his or her retirement allowance. A retired member  
 37 who has been retired for disability may change an option selection previously filed no later than  
 38 (1) thirty days following the date on which such member’s application for disability retirement

1 was approved by the retirement board or (2) thirty days following the date on which such retiree  
2 was retired for disability, whichever is later.

3 f. Notwithstanding any other provision of this section to the contrary, a member's retirement  
4 allowance payable under this section shall be paid as Option Three, with the spouse as the  
5 member's beneficiary, so that upon his or her death, if the member has a surviving spouse who  
6 was married to the member on the date the member filed his or her retirement application, or on  
7 the date the member filed his or her last effective option selection, if any, whichever is later, unless  
8 the member (a) elects that the surviving spouse receive a) survivor benefit payments, whose  
9 amounts are at least equal to the amounts of the retirement allowance payments that would be paid  
10 to the surviving spouse under Option Three, if the spouse were the member's beneficiary; or (b)  
11 elects (in a manner that accords with this subdivision f) that the surviving spouse receive either  
12 no survivor benefit payments or survivor benefit payments, whose amounts are less than the  
13 amounts of the retirement allowance payments that would be paid to the surviving under Option  
14 Three, if the spouse were the member's beneficiary, and:

15 1. (a) the member's surviving spouse consented on or after the date of the  
16 member's marriage, in writing to the member's election;

17 (b) the surviving spouse's consent is on a plan form that sets forth:

18 (i) the amount of the Option Three monthly benefit entitlements of the  
19 member and of the spouse, if the spouse were the member's beneficiary,  
20 and when the member and the surviving spouse would each be entitled  
21 to those benefits;

22 (ii) a statement to the effect that (absent valid consent to the contrary) t  
23 the surviving spouse is entitled to survivor benefit payments in amounts  
24 that are greater or equal to the amounts of the retirement allowance  
25 payments that would be paid to the surviving spouse under Option 3, if  
26 the spouse were the member's beneficiary;

27 (iii) a statement to the effect that the surviving spouse has the right to  
28 prevent any future member elections regarding the member's survivor  
29 benefits without the surviving spouse's consent unless the consent of the  
30 surviving spouse expressly permits member elections without any  
31 further consent by the surviving spouse; and

32 (iv) the fact that consenting to the member's survivor benefit election  
33 would result in the surviving spouse receiving no survivor benefits or  
34 smaller survivor benefits than the surviving spouse would otherwise  
35 receive under this subdivision;

36 (c) the consent includes an acknowledgement that the surviving spouse  
37 understands that, absent the surviving spouse's consent to the member's  
38 election, the surviving spouse would be entitled paid lifetime survivor benefit  
39 payment amounts that are at least the amounts that would be paid to the surviving  
40 spouse under Option 3, if the spouse were the member's beneficiary, and that

1 the surviving spouse's consent would result in the elimination or reduction of  
 2 such survivor benefits;

3 (d) the consent includes a signature by the surviving spouse that was witnessed  
 4 by a notary public or a representative of the retirement system, and

5 (e) the system receives the completed consent and the member's election before  
 6 the date the member filed his or her retirement application, or the date the  
 7 member filed his or her last effective option selection, if any, whichever is later;

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

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

13 4. it is established to the satisfaction of the retirement board of the system that the  
 14 surviving spouse could not have been located if the member had been willing  
 15 and able to exercise due diligence to locate the surviving spouse on the later of  
 16 the date the member's retirement application was filed with the retirement  
 17 system, or the date the member's last effective option selection was filed with  
 18 the retirement system; or

19 5. there is no surviving spouse.

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

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

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

26 2. determining that at least one of paragraphs two, three, four, or five of subdivision f  
 27 this section is true,

28 then (without implication as to what liability the retirement system and the board might have in  
 29 the absence of this subdivision h) such consent or determination shall be treated as valid for  
 30 purpose of discharging the retirement system and the board from liability to the extent of payments  
 31 made pursuant to such action; provided that the foregoing discharges shall not act to deprive the  
 32 surviving spouse of any rights to recover from any party other than the retirement system or the  
 33 board. The retirement system may recover the actuarial equivalent of such discharged payments,  
 34 computed using the plan's actuarial factors, from the surviving spouse with offsets against the  
 35 system's monthly annuity benefit payments to the surviving spouse payable under this section, but  
 36 may not thereby reduce any of those benefit payments by more than 10%.

37  
 38  
 EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted  
 ESSA May 22, 2023

1 Section 12. Section 448 of the retirement and social security law, as amended by L. 2021, ch. 376,  
2 § 1, is amended to read as follows:

3  
4 § 448. 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 the  
7 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 four hundred  
14 forty-two of this article, a benefit equal to the pension reserve, if any, which  
15 would have been payable to such member had he entered prior to the effective  
16 date of this article and died in service, subject to the benefit limitations set forth  
17 in section four hundred forty-four of this article, if this alternative provides a  
18 greater benefit, or;
- 19 2. A benefit upon the death of a member in service equal to the member's salary upon  
20 his or her completion of one year of service, two years' salary upon completion  
21 of two years of service, and three years' salary upon completion of three years  
22 of service. In the case of a member of a retirement system other than the New  
23 York state teachers' retirement system, the New York city employees'  
24 retirement system, the New York city board of education retirement system, the  
25 New York city teachers' retirement system, the New York state and local  
26 employees' retirement system or the New York state and local police and fire  
27 retirement system and the New York state teachers' retirement system, such  
28 benefit shall be subject to the following limitations:
- 29 (a) If the member last joined the retirement system prior to attainment of age  
30 fifty-two, the maximum benefit shall be three years' salary;
- 31 (b) If the member was age fifty-two when he or she last joined the retirement  
32 system, the maximum benefit shall be two and one-half times annual salary;
- 33 (c) If the member was age fifty-three when he or she last joined the retirement  
34 system, the maximum benefit shall be two years' salary;
- 35 (d) If the member was age fifty-four when he or she last joined the retirement  
36 system, the maximum benefit shall be one and one-half times annual salary;
- 37 (e) If the member was age fifty-five or older but under age sixty-five when he  
38 or she last joined the retirement system, the maximum benefit shall be one year's  
39 salary; and
- 40 (f) If the member was age sixty-five or older when he or she last joined the

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted  
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1 retirement system, the maximum benefit shall be one thousand dollars.

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

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

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted  
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1 the benefit in force at the time of retirement shall be reduced by an additional  
 2 twenty-five per centum, and upon commencement of the third year of retirement,  
 3 the benefit shall be ten per centum of the benefit in force at age sixty, if any, or  
 4 at the time of retirement if retirement preceded such age; provided, however, the  
 5 benefit in retirement shall not be reduced below ten per centum of the benefit in  
 6 force at age sixty, if any, or at the time of retirement if retirement preceded such  
 7 age. Notwithstanding any other provision of this paragraph to the contrary, the  
 8 benefit for a retiree from the New York state and local employees' retirement  
 9 system shall not be reduced below ten per centum of the benefit in force at the  
 10 time of retirement.

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

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

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

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



1 service pursuant to this subdivision.

2 1. Such death benefit shall be equal to three times the member's salary raised to the  
 3 next highest multiple of one thousand dollars, but in no event shall it exceed  
 4 three times the maximum salary specified in section one hundred thirty of the  
 5 civil service law or, in the case of a member of a retirement system other than  
 6 the New York city employees' retirement system, the New York city police  
 7 pension fund, subchapter two or the New York city fire department pension  
 8 fund, subchapter two, the specific limitations specified for age of entrance into  
 9 service contained in subparagraphs (b), (c), (d), (e) and (f) of paragraph two of  
 10 subdivision a of this section.

11 2. Provided further, notwithstanding any other provision of this article to the contrary,  
 12 where the member is a police officer or firefighter and would have been entitled  
 13 to a service retirement benefit at the time of his or her death and where his or  
 14 her death occurs on or after July first, two thousand, the beneficiary or  
 15 beneficiaries nominated for the purposes of this subdivision may elect to receive,  
 16 in a lump sum, an amount payable which shall be equal to the pension reserve  
 17 that would have been established had the member retired on the date of his or  
 18 her death, or the value of the death benefit and the reserve-for-increased-take-  
 19 home-pay, if any, whichever is greater, provided further that for the purpose of  
 20 determining entitlement to the benefit provided by this subdivision, and  
 21 notwithstanding subdivision j of section three hundred forty-one of this chapter,  
 22 where the member is an officer or member of the state police the total number  
 23 of days of unused sick leave and accumulated vacation credit accrued by the  
 24 member at the time of his or her death shall be considered in meeting the total  
 25 creditable service required to qualify for a service retirement benefit provided  
 26 without regard to age where his or her death occurs on or after July second, two  
 27 thousand nine. Provided further that where such police officer or firefighter dies  
 28 on or after July first, two thousand, after having retired from service, but before  
 29 a first payment of a retirement allowance, such person shall be deemed to have  
 30 been in service at the time of his or her death for the purposes of this subdivision  
 31 only, and provided further that the pension reserve established pursuant to this  
 32 paragraph for a person who dies after retiring from service, but before first  
 33 payment of a retirement allowance, shall be determined as of the date of  
 34 retirement and any pension payments payable for the period of time prior to the  
 35 retiree's death shall be deducted from any benefits payable pursuant to this  
 36 subdivision.

37 c. For the purpose of this section, salary shall be the regular compensation earned during the  
 38 member's last twelve months of service in full pay status as a member or, if he or she had not  
 39 completed twelve months of service prior to the date of death, but was subject to the provisions of  
 40 subdivision b of this section, the compensation he or she would have earned had he or she worked  
 41 for the twelve months prior to such date; provided, however, for the purpose of this section salary  
 42 shall exclude any form of termination pay (which shall include any compensation in anticipation  
 43 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  
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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  
 40 determining eligibility for the death benefit payable pursuant to this section, a person subject to

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

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

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

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

27 (b) the surviving spouse's consent is on a plan form that sets forth:

28 (i) the amount of the member's death benefits, and of the spouse, if the  
 29 spouse were entitled to half those benefits;

30 (ii) a statement to the effect that (absent valid consent to the contrary)  
 31 the surviving spouse is entitled to at least half of the death benefits;

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

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

1 (c) the consent includes an acknowledgement that the surviving spouse  
 2 understands that, absent the surviving spouse's consent to the member's  
 3 election, the surviving spouse would be entitled to be paid at least one-half of  
 4 the death benefits, and that the surviving spouse's consent would result in the  
 5 elimination or reduction of such death benefits;

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

8 (e) the system receives the completed consent and the member's election before  
 9 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;

15 4. it is established to the satisfaction of the retirement board of the system that the  
 16 surviving spouse could not have been located if the member had been willing  
 17 and able to exercise due diligence to locate the surviving spouse on the date of  
 18 the member's death; or

19 5. there is no surviving spouse.

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

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

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

27 2. determining that at least one of paragraphs two, three, four, or five of subdivision  
 28 h of this section is true,

29 then (without implication as to what liability the retirement system and the board might have in  
 30 the absence of this subdivision j) such consent or determination shall be treated as valid for purpose  
 31 of discharging the retirement system and the board from liability to the extent of payments made  
 32 pursuant to such action; provided that the foregoing discharges shall not act to deprive the  
 33 surviving spouse of any rights to recover from any party other than the retirement system or the  
 34 board.

35  
 36  
 37 Section 13.\_Section 448-a of the retirement and social security law, as amended by L. 1998, ch.  
 38 388, § 3, is amended to read as follows:  
 39

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted  
 ESSA May 22, 2023

1 § 448-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 the  
3 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 any death  
17 benefits payable under this section, including the reserve-for-increased-take-home-pay remaining  
18 at the time of the member's death, payable under this section shall be paid to the member's  
19 surviving spouse, if any, unless the member elects (in a manner that accords with this subdivision  
20 d) that the surviving spouse receive less than one-half of the death benefits, and:

21 1. (A) the member's surviving spouse consented, on or after the date of the  
22 member's marriage, in writing to the member's election;

23 (B) the surviving spouse's consent is on a plan form that sets forth:

24 (i) the amount of the member's death benefits, and of the spouse, if the  
25 spouse were entitled to half those benefits;

26 (ii) a statement to the effect that (absent valid consent to the contrary)  
27 the surviving spouse is entitled to at least half of the death benefits;

28 (iii) a statement to the effect that the surviving spouse has the right to  
29 prevent any future member elections regarding the member's death  
30 benefits without the surviving spouse's consent unless the consent of the  
31 surviving spouse expressly permits member elections without any  
32 further consent by the surviving spouse; and

33 (iv) the fact that consenting to the member's election would result in the  
34 surviving spouse receiving either no death benefits or smaller death  
35 benefits than the surviving spouse would otherwise receive under this  
36 subdivision;

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted  
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1 (C) the consent includes an acknowledgement that the surviving spouse  
 2 understands that, absent the surviving spouse's consent to the member's  
 3 election, the surviving spouse would be entitled to be paid at least one-half of  
 4 the death benefits, and that the surviving spouse's consent would result in the  
 5 elimination or reduction of such death benefits;

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

8 (E) the system receives the completed consent and the member's election before  
 9 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 the  
 14 member's death;

15 4. it is established to the satisfaction of the retirement board of the system that the  
 16 surviving spouse could not have been located if the member had been willing and  
 17 able to exercise due diligence to locate the surviving spouse on the date of the  
 18 member's death; or

19 5. there is no surviving spouse.

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

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

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

27 2. determining that at least one of paragraphs two, three, four, or five of subdivision  
 28 d of this section is true,

29 then (without implication as to what liability the retirement system and the board might have in  
 30 the absence of this subdivision f) such consent or determination shall be treated as valid for purpose  
 31 of discharging the retirement system and the board from liability to the extent of payments made  
 32 pursuant to such action; provided that the foregoing discharges shall not act to deprive the  
 33 surviving spouse of any rights to recover from any party other than the retirement system or the  
 34 board.

35  
 36  
 37 Section 14. Section 508 of the retirement and social security law, as amended by L. 2021, ch. 376,  
 38 § 2, is amended to read as follows:  
 39

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted  
 ESSA May 22, 2023



1 § 508. Death benefits

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

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

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

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

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

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

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

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

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

36 In the case of a member of a retirement system other than the New York state teachers'  
 37 retirement system, the New York city employees' retirement system, the New  
 38 York city board of education retirement system, the New York city teachers'  
 39 retirement system, or the New York state and local employees' retirement

1 system, commencing upon attainment of age sixty-one, the benefit otherwise  
 2 provided pursuant to this paragraph shall be reduced while the member is in  
 3 service to ninety per centum of the benefit otherwise payable and each year  
 4 thereafter the benefit payable shall be reduced by an amount equal to ten per  
 5 centum per year of the original benefit otherwise payable, but not below ten per  
 6 centum of the original benefit otherwise payable.

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



1 paragraph to the contrary, the benefit for a retiree from the New York state and  
 2 local employees' retirement system shall not be reduced below ten per centum  
 3 of the benefit in force at the time of retirement.

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

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

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

39 c. For the purpose of this section, salary shall be the regular compensation earned during the  
 40 member's last twelve months of service in full pay status as a member or, if he or she had not  
 41 completed twelve months of service prior to the date of death, but was subject to the provisions of  
 42 subdivision b of this section, the compensation he or she would have earned had he or she worked

1 for the twelve months prior to such date; provided, however, for the purpose of this section salary  
 2 shall exclude any form of termination pay (which shall include any compensation in anticipation  
 3 of retirement), or any lump sum payment for deferred compensation sick leave, or accumulated  
 4 vacation credit or any other payment for time not worked (other than compensation received while  
 5 on sick leave or authorized leave of absence) and in no event shall it exceed the maximum salary  
 6 specified in section one hundred thirty of the civil service law, as added by part B of chapter ten  
 7 of the laws of two thousand eight, or the maximum salary specified in section one hundred thirty  
 8 of the civil service law, as hereafter amended, whichever is greater.

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

14 e. For the purposes of this section:

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

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

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

34 f. With respect to a member of the New York state and local employees' retirement system who  
 35 was covered by paragraph two of subdivision a of the former section five hundred eight of this  
 36 chapter, as added by chapter eight hundred ninety of the laws of nineteen hundred seventy-six,  
 37 prior to its repeal pursuant to chapter six hundred seventeen of the laws of nineteen hundred eighty-  
 38 six and who is entitled under the state constitution to have benefits calculated under such provision  
 39 as it read prior to such nineteen hundred eighty-six amendment, the lump sum death benefit shall  
 40 be determined pursuant to subdivision a of this section. With respect to a member of the New York  
 41 state and local employees' retirement system who was covered by subdivision b of the former

1 section five hundred eight of this chapter, as added by chapter eight hundred ninety of the laws of  
 2 nineteen hundred seventy-six, prior to its repeal pursuant to chapter six hundred seventeen of the  
 3 laws of nineteen hundred eighty-six and who is entitled under the state constitution to have benefits  
 4 calculated under such provision as it read prior to such nineteen hundred eighty-six amendment,  
 5 the lump sum death benefit shall be determined pursuant to subdivision a of this section.

6 g. Notwithstanding any other provision of this section to the contrary, at least one-half of any death  
 7 benefits payable under this section, including any accumulated contributions remaining at the time  
 8 of the member's death, payable under this section shall be paid to the member's surviving spouse,  
 9 if any, unless the member elects (in a manner that accords with this subdivision g) that the  
 10 surviving spouse receive less than one-half of the death benefits, and:

11 1. (a) the member's surviving spouse consented, on or after the date of the  
 12 member's marriage, in writing to the member's election;

13 (b) the surviving spouse's consent is on a plan form that form sets forth:

14 (i) the amount of the member's death benefits, and of the spouse, if the  
 15 spouse were entitled to half those benefits;

16 (ii) a statement to the effect that (absent valid consent to the contrary)  
 17 the surviving spouse is entitled to at least half of the death benefits;

18 (iii) a statement to the effect that the surviving spouse has the right to  
 19 prevent any future member elections regarding the member's death  
 20 benefits without the surviving spouse's consent unless the consent of the  
 21 surviving spouse expressly permits member elections without any  
 22 further consent by the surviving spouse; and

23 (iv) the fact that consenting to the member's election would result in the  
 24 surviving spouse receiving either no death benefits or smaller death  
 25 benefits than the surviving spouse would otherwise receive under this  
 26 subdivision;

27 (c) the consent includes an acknowledgement that the surviving spouse  
 28 understands that, absent the surviving spouse's consent to the member's  
 29 election, the surviving spouse would be entitled to be paid at least one-half of  
 30 the death benefits, and that the surviving spouse's consent would result in the  
 31 elimination or reduction of such death benefits;

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

34 (e) the system receives the completed consent and the member's election before  
 35 the member's death;

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 the

1 member's death;

2 4. it is established to the satisfaction of the retirement board of the system that the  
 3 surviving spouse could not have been located if the member had been willing and  
 4 able to exercise due diligence to locate the surviving spouse on the date of the  
 5 member's death; or

6 5. there is no surviving spouse.

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

9 i. If the retirement board of the system acts with the care, skill, prudence, and diligence under the  
 10 circumstances then prevailing that a prudent person 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 g of this section,  
 13 or

14 2. determining that at least one of paragraphs two, three, four, or five of subdivision  
 15 g of this section is true,

16 then (without implication as to what liability the retirement system and the board might have in  
 17 the absence of this subdivision i) such consent or determination shall be treated as valid for purpose  
 18 of discharging the retirement system and the board from liability to the extent of payments made  
 19 pursuant to such action; provided that the foregoing discharges shall not act to deprive the  
 20 surviving spouse of any rights to recover from any party other than the retirement system or the  
 21 board.

22  
 23  
 24 Section 15. Section 508-a of the retirement and social security law, as amended by L. 1998, ch.  
 25 388, § 4, is amended to read as follows:

26  
 27 § 508-a. Death benefit for vested members who die prior to retirement

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

30 1. Died before the effective date of retirement while a member of such retirement  
 31 system;

32 2. Had at least ten years of credited service at the time of death; and

33 3. Died at a time and in a manner which did not result in the eligibility of the  
 34 member's estate or any beneficiary to receive any death benefits from such retirement  
 35 system on account of such death.

36 b. Benefits provided under this section shall be payable to the member's estate or the beneficiary  
 37 or beneficiaries nominated by the member on a designation of beneficiary form filed with the  
 38 administrative head of such retirement system.

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted  
 ESSA May 22, 2023

1 c. The amount of the benefit payable pursuant to this section shall be equal to one-half of the  
 2 amount of the ordinary death benefit which would have been payable had the member's death  
 3 occurred on the last day of service upon which membership was based.

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

9 1. (i) the member's surviving spouse consented, on or after the date of the  
 10 member's marriage, in writing to the member's election;

11 (ii) the surviving spouse's consent is on a plan form that sets forth:

12 (A) the amount of the member's death benefits, and of the spouse, if the  
 13 spouse were entitled to half those benefits;

14 (B) a statement to the effect that (absent valid consent to the contrary)  
 15 the surviving spouse is entitled to at least half of the death benefits;

16 (C) a statement to the effect that the surviving spouse has the right to  
 17 prevent any future member elections regarding the member's death  
 18 benefits without the surviving spouse's consent unless the consent of the  
 19 surviving spouse expressly permits member elections without any  
 20 further consent by the surviving spouse; and

21 (D) the fact that consenting to the member's election would result in the  
 22 surviving spouse receiving either no death benefits or smaller death  
 23 benefits than the surviving spouse would otherwise receive under this  
 24 subdivision;

25 (iii) the consent includes an acknowledgement that the surviving spouse  
 26 understands that, absent the surviving spouse's consent to the member's  
 27 election, the surviving spouse would be entitled to be paid at least one-half of  
 28 the death benefits, and that the surviving spouse's consent would result in the  
 29 elimination or reduction of such death benefits;

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

32 (v) the system receives the completed consent and the member's election before  
 33 the member's death;

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

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

39 4. it is established to the satisfaction of the retirement board of the system that the

surviving spouse could not have been located if the member had been willing and able to exercise due diligence to locate the surviving spouse on the date of the member's death; or

5. there is no surviving spouse.

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

f. If the retirement board of the system acts with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 d of this section,  
or

2. determining that at least one of paragraphs two, three, four, or five of subdivision d of this section is true,

then (without implication as to what liability the retirement system and the board might have in the absence of this subdivision f) 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; provided that the foregoing discharges shall not act to deprive the surviving spouse of any rights to recover from any party other than the retirement system or the board.

Section 16. Section 514 of the retirement and social security law, as amended by L. 2010, ch. 498, § 1, is amended to read as follows:

§ 514. Options

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

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

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

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

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

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted  
ESSA May 22, 2023



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

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

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

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

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

38 d. [As added by L. 2004, ch. 446. See, also, subd. D below.] Notwithstanding any other provision  
 39 of this article, an option selection previously filed by a member or retired member subject to the  
 40 provisions of this section may be changed no later than thirty days following the date of payability

1 of his or her retirement allowance. A retired member who has been retired for disability may  
 2 change an option selection previously filed no later than (1) thirty days following the date on which  
 3 such member's application for disability retirement was approved by the retirement board or (2)  
 4 thirty days following the date on which such retiree was retired for disability, whichever is later.

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

14 e. Notwithstanding any other provision of this section to the contrary, a member's retirement  
 15 allowance shall be paid as Option two with fifty as the percent and the spouse as the member's  
 16 beneficiary, so that upon his or her death, if the member has a surviving spouse who was married  
 17 to the member on the date the member filed his or her retirement application, or on the date the  
 18 member filed his or her last effective option selection, if any, whichever is later, unless the member  
 19 (a) elects that the surviving spouse receive survivor benefit payments in amounts that are greater  
 20 than the benefit payments that would be paid to the surviving spouse under Option two with fifty  
 21 as the percent and the spouse as the member's beneficiary; or (b) elects (in a manner that accords  
 22 with this subdivision e) that the surviving spouse receive either no survivor benefit payments or  
 23 survivor benefit payments, in amounts that are smaller than the benefit payments that would be  
 24 paid to the surviving spouse under Option two with fifty as the percent and the spouse as the  
 25 member's beneficiary, and:

26 1. (a) the member's surviving spouse consented on or after the date of the  
 27 member's marriage, in writing to the member's election;

28 (b) the surviving spouse's consent is on a plan form that sets forth:

29 (i) the amount of the monthly benefit entitlements of the member and of  
 30 the spouse under Option two with fifty as the percent and the spouse as  
 31 the member's beneficiary, and when the member and the surviving  
 32 spouse would each be entitled to those benefits;

33 (ii) a statement to the effect that (absent valid consent to the contrary)  
 34 the surviving spouse is entitled to survivor benefit payments in amounts  
 35 that are greater or equal to the amounts of the retirement allowance  
 36 payments that would be paid to the surviving spouse under Option two  
 37 with fifty as the percent, if the spouse were the member's beneficiary;

38 (iii) a statement to the effect that the surviving spouse has the right to  
 39 prevent any future member elections regarding the member's survivor  
 40 benefits without the surviving spouse's consent unless the consent of the



1 surviving spouse expressly permits member elections without any  
 2 further consent by the surviving spouse; and

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

7 (c) the consent includes an acknowledgement that the surviving spouse  
 8 understands the surviving spouse would be entitled to paid lifetime survivor  
 9 benefit payment amounts that are at least the amounts that would be paid to the  
 10 surviving spouse under Option two with fifty as the percent, if the spouse were  
 11 the member's beneficiary, and that the surviving spouse's consent would result  
 12 in the elimination or reduction of such survivor benefits;

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

15 (e) the system receives the completed consent and the member's election before  
 16 the date the member filed his or her retirement application, or the date the  
 17 member filed his or her last effective option selection, if any, whichever is later;

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

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

23 4. it is established to the satisfaction of the retirement board of the system that the  
 24 surviving spouse could not have been located if the member had been willing  
 25 and able to exercise due diligence to locate the surviving spouse on the later of  
 26 the date the member's retirement application was filed with the retirement  
 27 system, or the date the member's last effective option selection was filed with  
 28 the retirement system; or

29 5. there is no surviving spouse.

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

32 g. If the retirement board of the system acts with the care, skill, prudence, and diligence under the  
 33 circumstances then prevailing that a prudent person 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 e of this section,  
 36 or

37 2. determining that at least one of paragraphs two, three, four, or five of subdivision  
 38 e of this section is true,

1 then (without implication as to what liability the retirement system and the board might have in  
 2 the absence of this subdivision g) such consent or determination shall be treated as valid for  
 3 purpose of discharging the retirement system and the board from liability to the extent of payments  
 4 made pursuant to such action; provided that the foregoing discharges shall not act to deprive the  
 5 surviving spouse of any rights to recover from any party other than the retirement system or the  
 6 board. The retirement system may recover the actuarial equivalent of such discharged payments,  
 7 computed using the plan's actuarial factors, from the surviving spouse with offsets against the  
 8 system's monthly annuity benefit payments to the surviving spouse payable under this section, but  
 9 may not thereby reduce any of those benefit payments by more than 10%.

10  
 11  
 12 Section 17. Section 606 of the retirement and social security law, as amended by L. 2021, ch. 376,  
 13 § 3, is amended to read as follows:

14 § 606. Death benefits

15  
 16 a. A member of a retirement system who is subject to the provisions of this article, exclusive of  
 17 those members for whom provision is made pursuant to subdivision b of this section, shall, at  
 18 the time of first becoming a member thereof, make an election, which shall be irrevocable, for  
 19 coverage for financial protection in the event of death in service, between the two following  
 20 benefits:

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

28 2. A benefit upon the death of a member in service equal to the member's salary upon  
 29 his or her completion of one year of service, two years' salary upon completion  
 30 of two years of service, and three years' salary upon completion of three years  
 31 of service. In the case of a member of a retirement system other than the New  
 32 York state teachers' retirement system, the New York city employees'  
 33 retirement system, the New York city board of education retirement system, the  
 34 New York city teachers' retirement system or the New York state and local  
 35 employees' retirement system and the New York state teachers' retirement  
 36 system, such benefit shall be subject to the following limitations:

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

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

41 (c) If the member was age fifty-three when he or she last joined the retirement

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1 system, the maximum benefit shall be two years' salary;

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

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

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

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

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

1 the member is in service to ninety-six per centum of the benefit otherwise  
 2 payable, and each year thereafter the benefit payable shall be reduced by an  
 3 amount equal to four per centum per year of the original benefit otherwise  
 4 payable, but not below sixty per centum of the original benefit otherwise  
 5 payable. Upon retirement, from any retirement system, the benefit in force shall  
 6 be reduced by fifty per centum; upon completion of the first year of retirement,  
 7 the benefit in force at the time of retirement shall be reduced by an additional  
 8 twenty-five per centum, and upon commencement of the third year of retirement,  
 9 the benefit shall be ten per centum of the benefit in force at age sixty, if any, or  
 10 at the time of retirement if retirement preceded such age; provided, however, the  
 11 benefit in retirement shall not be reduced below ten per centum of the benefit in  
 12 force at age sixty, if any, or at the time of retirement if retirement preceded such  
 13 age. Notwithstanding any other provision of this paragraph to the contrary, the  
 14 benefit for a retiree from the New York state and local employees' retirement  
 15 system shall not be reduced below ten per centum of the benefit in force at the  
 16 time of retirement.

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

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

38 b. A member of a retirement system subject to the provisions of this article who is a police officer,  
 39 firefighter, correction officer or sanitation worker and is in a plan which permits immediate  
 40 retirement upon completion of a specified period of service without regard to age or who is subject  
 41 to the provisions of section six hundred four of this article, shall upon completion of ninety days  
 42 of service be covered for financial protection in the event of death in service pursuant to this  
 43 subdivision. Such death benefit shall be equal to three times the member's salary raised to the next

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1 highest multiple of one thousand dollars, but in no event shall it exceed three times the maximum  
 2 salary specified in section one hundred thirty of the civil service law or, in the case of a member  
 3 of a retirement system other than the New York city employees' retirement system, the specific  
 4 limitations specified for age of entrance into service contained in subparagraphs (b), (c), (d), (e)  
 5 and (f) of paragraph two of subdivision a of this section.

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

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

23 e. For the purposes of this section:

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

1 and paid within the four-year period prior to his or her death; and

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

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

10 f. Notwithstanding any other provision of this section to the contrary, at least one-half of any death  
11 benefits payable under this section shall be paid to the member's surviving spouse, if any, unless  
12 the member elects (in a manner that accords with this subdivision f) that the surviving spouse  
13 receive less than one-half of the death benefits, and:

14 1. (a) the member's surviving spouse consented, on or after the date of the  
15 member's marriage, in writing to the member's election;

16 (b) the surviving spouse's consent is on a plan form that sets forth:

17 (i) the amount of the member's death benefits, and of the spouse, if the  
18 spouse were entitled to half those benefits;

19 (ii) a statement to the effect that (absent valid consent to the contrary)  
20 the surviving spouse is entitled to at least half of the death benefits;

21 (iii) a statement to the effect that the surviving spouse has the right to  
22 prevent any future member elections regarding the member's death  
23 benefits without the surviving spouse's consent unless the consent of the  
24 surviving spouse expressly permits member elections without any  
25 further consent by the surviving spouse; and

26 (iv) the fact that consenting to the member's election would result in the  
27 surviving spouse receiving either no death benefits or smaller death  
28 benefits than the surviving spouse would otherwise receive under this  
29 subdivision;

30 (c) the consent includes an acknowledgement that the surviving spouse  
31 understands the surviving spouse would be entitled to be paid at least one-half  
32 of the death benefits absent the surviving spouse's consent to the member's  
33 election, and that the surviving spouse's consent would result in the elimination  
34 or reduction of such death benefits;

35 (d) the consent includes a signature by the surviving spouse that was witnessed  
36 by a public or a representative of the retirement system; and

37 (e) the system receives the completed consent and the member's election before  
38 the member's death;



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;

6 4. it is established to the satisfaction of the retirement board of the system that the  
 7 surviving spouse could not have been located if the member had been willing  
 8 and able to exercise due diligence to locate the surviving spouse on the date of  
 9 the member's death; or

10 5. there is no surviving spouse.

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 person 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. determining that at least one of paragraphs two, three, four, or five of  
 19 subdivision f of this section is true,

20 then (without implication as to what liability the retirement system and the board might have in  
 21 the absence of this subdivision h) such consent or determination shall be treated as valid for  
 22 purpose of discharging the retirement system and the board from liability to the extent of payments  
 23 made pursuant to such action; provided that the foregoing discharges shall not act to deprive the  
 24 surviving spouse of any rights to recover from any party other than the retirement system or the  
 25 board.

26  
 27  
 28 Section 18, Section 606-a of the retirement and social security law, as amended by L. 1998, ch.  
 29 388, § 5, is amended to read as follows:

30 § 606-a. Death benefit for vested members who die prior to retirement

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

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

36 2. Had at least ten years of credited service at the time of death; and

37 3. Died at a time and in a manner which did not result in the eligibility of the member's  
 38 estate or any beneficiary to receive any death benefits from such retirement  
 39 system on account of such death.

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1 b. Benefits provided under this section shall be payable to the member's estate or the beneficiary  
 2 or beneficiaries nominated by the member on a designation of beneficiary form filed with the  
 3 administrative head of such retirement system.

4 c. The amount of the benefit payable pursuant to this section shall be equal to one-half of the  
 5 amount of the ordinary death benefit which would have been payable had the member's death  
 6 occurred on the last day of service upon which membership was based.

7 d. Notwithstanding any other provision of this section to the contrary, at least one-half of any death  
 8 benefits payable under this section, including any accumulated contributions remaining at the time  
 9 of the member's death, payable under this section shall be paid to the member's surviving spouse,  
 10 if any, unless the member elects (in a manner that accords with this subdivision d) that the  
 11 surviving spouse receive less than one-half of the death benefits, and:

12 1. (A) the member's surviving spouse consented, on or after the date of the  
 13 member's marriage, in writing to the member's election;

14 (B) the surviving spouse's consent is on a plan form that sets forth:

15 (i) the amount of the member's death benefits, and of the spouse, if the  
 16 spouse were entitled to half those benefits;

17 (ii) a statement to the effect that (absent valid consent to the contrary)  
 18 the surviving spouse is entitled to at least half of the death benefits;

19 (iii) a statement to the effect that the surviving spouse has the right to  
 20 prevent any future member elections regarding the member's death  
 21 benefits without the surviving spouse's consent unless the consent of the  
 22 surviving spouse expressly permits member elections without any  
 23 further consent by the surviving spouse; and

24 (iv) the fact that consenting to the member's election would result in the  
 25 surviving spouse receiving either no death benefits or smaller death  
 26 benefits than the surviving spouse would otherwise receive under this  
 27 subdivision;

28 (C) the consent includes an acknowledgement that the surviving spouse  
 29 understands that, absent the surviving spouse's consent to the member's  
 30 election, the surviving spouse would be entitled to be paid at least one-half of  
 31 the death benefits, and that the surviving spouse's consent would result in the  
 32 elimination or reduction of such death benefits;

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

35 (E) the system receives the completed consent and the member's election before  
 36 the member's death;

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

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

4        4. it is established to the satisfaction of the retirement board of the system that the  
 5        surviving spouse could not have been located if the member had been willing  
 6        and able to exercise due diligence to locate the surviving spouse on the date of  
 7        the member's death; or

8        5. there is no surviving spouse.

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

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

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

16       2. determining that at least one of paragraphs two, three, four, or five of subdivision  
 17       d of this section is true,

18       then (without implication as to what liability the retirement system and the board might have in  
 19       the absence of this subdivision f) such consent or determination shall be treated as valid for purpose  
 20       of discharging the retirement system and the board from liability to the extent of payments made  
 21       pursuant to such action; provided that the foregoing discharges shall not act to deprive the  
 22       surviving spouse of any rights to recover from any party other than the retirement system or the  
 23       board.

24  
 25  
 26       Section 19. Section 610 of the retirement and social security law, as amended by L. 2004, ch. 651,  
 27       § 2, is amended to read as follows:

28  
 29       § 610. Options

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

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

37       Option two. Upon the member's death, a retirement allowance of seventy-five percent  
 38       or less (measured in increments of twenty-five percent) of the amount paid to  
 39       such member shall be paid for life to such person as he shall nominate by written

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1 designation duly acknowledged and filed with the retirement system at the time  
2 of retirement.

3 Option three. A five-year certain option under which payment is made to the member  
4 for life but is guaranteed for a minimum of five years following retirement. Such  
5 payments shall continue to a person as he shall nominate by written designation,  
6 duly acknowledged and filed with the retirement system, for the unexpired  
7 balance of the five-year guaranteed period. If said beneficiary should predecease  
8 him, the commuted value of any installments due during the unexpired balance  
9 of the five-year guaranteed period shall be paid in a single sum to a duly  
10 designated contingent beneficiary or if none exists to the legal representative of  
11 the member. Should a beneficiary who has commenced receipt of the payments  
12 die before the said guaranteed minimum period, the commuted value of any  
13 installments due during the unexpired balance of the five-year guaranteed period  
14 shall be paid in a single sum to a duly designated contingent beneficiary or if  
15 none exists, to the legal representative of said deceased primary beneficiary.

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

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

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

40 Alternative Option. The actuarial equivalent of the member's retirement allowance at  
41 the time of retirement, in the form of a smaller retirement allowance payable to  
42 such member for life and some other benefit or benefits paid either to the

1 member or to such person or persons as he shall nominate, provided such other  
 2 benefit or benefits, together with such smaller allowance, shall be certified by  
 3 the actuary of the appropriate retirement system to be of equivalent actuarial  
 4 value to his retirement allowance and shall be approved by the head of such  
 5 retirement system and provided further that nothing herein shall require such  
 6 retirement system to pay a benefit in violation of paragraph nine of subsection a  
 7 of section four hundred one of the Internal Revenue Code of 1986, as amended,  
 8 26 U.S.C. § 401(a)(9).

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

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

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

17 1. The comptroller, for reasonable cause, shall have power to extend the time for the  
 18 election of an option, for a period or periods which shall expire not later than  
 19 sixty days immediately after the effective date of a member's retirement; and

20 2. If the member is incompetent, his spouse or the committee of his property, or if he  
 21 is a conservatee, his spouse or the conservator of his property, may elect on the  
 22 member's behalf a retirement option as provided for in subdivision a of this  
 23 section.

24 e. Notwithstanding any other provision of this section, a member of the New York state teachers'  
 25 retirement system at the time of retirement may elect an option until the first payment on account  
 26 of any benefit becomes normally due.

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

34 f. [As added by L. 2004, ch. 651. See, also, subd. F above.] Notwithstanding any other provision  
 35 of this article, an option selection previously filed by a member or retired member of the New  
 36 York city teachers' retirement system or the New York city board of education retirement system  
 37 subject to the provisions of this section may be changed no later than thirty days following the date  
 38 of payability of his or her retirement allowance. A retired member who has been retired for

1 disability may change an option selection previously filed no later than (1) thirty days following  
 2 the date on which such member's application for disability retirement was approved by the  
 3 retirement board or (2) thirty days following the date on which such retiree was retired for  
 4 disability, whichever date is later.

5 g. Notwithstanding any other provision of this section to the contrary, a member's retirement  
 6 allowance shall be paid as Option two with fifty as the percent and the spouse as the member's  
 7 beneficiary, so that upon his or her death, if the member has a surviving spouse who was married  
 8 to the member on the date the member filed his or her retirement application, or on the date the  
 9 member filed his or her last effective option selection, if any, whichever is later, unless the member  
 10 (a) elects that the surviving spouse receive survivor benefit payments in amounts that are greater  
 11 than the benefit payments that would be paid to the surviving spouse under Option two with fifty  
 12 as the percent and the spouse as the member's beneficiary; or (b) elects (in a manner that accords  
 13 with this subdivision g) that the surviving spouse receive either no survivor benefit payments or  
 14 survivor benefit payments, in amounts that are smaller than the benefit payments that would be  
 15 paid to the surviving spouse under Option two with fifty as the percent and the spouse as the  
 16 member's beneficiary, and:

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

19 (b) the surviving spouse's consent is on a plan form that sets forth:

20 (i) the amount of the monthly benefit entitlements of the member and of  
 21 the spouse under Option two with fifty as the percent and the spouse as  
 22 the member's beneficiary, and when the member and the surviving  
 23 spouse would each be entitled to those benefits;

24 (ii) a statement to the effect that (absent valid consent to the contrary)  
 25 the surviving spouse is entitled to survivor benefit payments in amounts  
 26 that are greater or equal to the amounts are greater or equal to the  
 27 amounts of the retirement allowance payments that would be paid to the  
 28 surviving spouse under Option two with fifty as the percent and the  
 29 spouse as the member's beneficiary;

30 (iii) a statement to the effect that the surviving spouse has the right to  
 31 prevent any future member elections regarding the member's survivor  
 32 benefits without the surviving spouse's consent unless the consent of the  
 33 surviving spouse expressly permits member elections without any  
 34 further consent by the surviving spouse; and

35 (iv) the fact that consenting to the member's survivor benefit election  
 36 would result in the surviving spouse receiving no survivor benefits or  
 37 smaller survivor benefits than the surviving spouse would otherwise  
 38 receive under this subdivision;

39 (c) the consent includes an acknowledgement that the surviving spouse  
 40 understands that, absent the surviving spouse's consent to the member's

1 election, the surviving spouse would be entitled paid lifetime survivor benefit  
 2 payment amounts that are at least the amounts that would be paid to the surviving  
 3 spouse under Option two with fifty as the percent and the spouse as the  
 4 member's beneficiary, and that the surviving spouse's consent would result in  
 5 the elimination or reduction of such survivor benefits;

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

8 (e) the system receives the completed consent and the member's election before  
 9 the date the member filed his or her retirement application, or the date the  
 10 member filed his or her last effective option selection, if any, whichever is later;

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

16 4. it is established to the satisfaction of the retirement board of the system that the  
 17 surviving spouse could not be have been located if the member had been willing  
 18 and able to exercise due diligence to locate the surviving spouse on the later of  
 19 the date the member's retirement application was filed with the retirement system,  
 20 or the date the member's last effective option selection was filed with the  
 21 retirement system; or

22 5. there is no surviving spouse.

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

25 i. If the retirement board of the system acts with the care, skill, prudence, and diligence under the  
 26 circumstances then prevailing that a prudent person 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 g of this section,  
 29 or

30 2. determining that at least one of paragraphs two, three, four, or five of subdivision  
 31 g of this section is true,

32 then (without implication as to what liability the retirement system and the board might have in  
 33 the absence of this subdivision i) such consent or determination shall be treated as valid for purpose  
 34 of discharging the retirement system and the board from liability to the extent of payments made  
 35 pursuant to such action; provided that the foregoing discharges shall not act to deprive the  
 36 surviving spouse of any rights to recover from any party other than the retirement system or the  
 37 board. The retirement system may recover the actuarial equivalent of such discharged payments,  
 38 computed using the plan's actuarial factors, from the surviving spouse with offsets against the  
 39 system's monthly annuity benefit payments to the surviving spouse payable under this section, but

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1 may not thereby reduce any of those benefit payments by more than 10%.  
 2  
 3

4 Section 20. Section 657 of the retirement and social security law, as amended by L. 1989, ch. 75,  
 5 § 2, is amended to read as follows:  
 6

7 § 657. Survivor's benefit for retired state employees

- 8 1. a. The term "retired state employee" as used in this section shall mean a former employee  
 9 or officer of the state (1) who while in state service retired for any cause from any  
 10 retirement system or pension plan supported by funds of the state other than the state  
 11 university optional retirement program of article eight-B of the education law or the  
 12 education department optional retirement program of article three, part V, of the  
 13 education law, or (2) who while in state service retired for any cause from either or  
 14 both such optional retirement programs provided he or she had thereupon attained age  
 15 fifty-five, or (3) who terminated state service for any cause on or after the attainment  
 16 of age sixty-two; and who, at the time he or she retired pursuant to subparagraph one  
 17 or two of this paragraph or terminated service pursuant to subparagraph three of this  
 18 paragraph, had ten or more years of full time service as a state employee, provided that  
 19 the ten years' full time service were within the last fifteen years prior to such retirement  
 20 or termination. For purposes of this section, no person shall be deemed to be or have  
 21 been an employee or officer of the state or in the state service for any period during  
 22 which his or her salary was not paid directly by the state, except a person employed in  
 23 an institution specified in paragraph b of this subdivision or a person employed in an  
 24 authority or commission specified in paragraph c of this subdivision.
- 25 b. For all purposes of this section alone, the state colleges of agriculture, home  
 26 economics, industrial and labor relations, and veterinary medicine, the state  
 27 agricultural experiment station at Geneva, and any other institution or agency  
 28 under the management and control of Cornell university, as the representative  
 29 of the board of trustees of the state university of New York, and the state college  
 30 of ceramics under the management and control of Alfred university, as the  
 31 representative of the board of trustees of the state university of New York shall  
 32 be deemed to be the state.
- 33 c. For the purpose of determining eligibility for benefits under this section, previous  
 34 service rendered as an employee of an authority or commission established  
 35 under the public authorities law shall be credited to a retired state employee as  
 36 state service, provided such authority or commission has in effect, at the time of  
 37 retirement of such retired employee, a provision for a survivor's benefit which  
 38 is substantially equivalent to that provided in this section and in which previous  
 39 state service is credited to retired authority or retired commission employees  
 40 toward eligibility for such survivor's benefit.
- 41 D. For the purpose of determining eligibility for benefits under this section, no retired  
 42 state employee who retired prior to October first, nineteen hundred sixty-six

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1 shall be eligible for benefits hereunder unless such retiree is a pensioner of the  
 2 New York state and local employees' retirement system or the New York state  
 3 and local police and fire retirement system.

4 2. The amount of a survivor's benefit under this section shall be a lump sum of two thousand  
 5 dollars, except that where a retired state employee dies while reemployed as provided in  
 6 subdivision four of this section or dies within thirty days following retirement pursuant to  
 7 subdivision one of this section, the amount of the survivor's benefit under this section, if any, shall  
 8 be two thousand dollars less any ordinary death benefit, exclusive of any ordinary death benefit  
 9 attributable to the reserve-for-increased-take-home-pay, payable on account of the death of such  
 10 employee under a retirement system or pension plan supported by funds of the state.

11 3. In addition to the benefit provided pursuant to subdivision two of this section an additional  
 12 benefit shall be provided on behalf of retired state employees who retire or terminate their services,  
 13 as defined by subdivision one of this section, on or after April first, nineteen hundred seventy,  
 14 except, however, such additional benefits shall be provided on behalf of retired state employees  
 15 who were members of the state police in a collective negotiating unit consisting of commissioned  
 16 officers established pursuant to article fourteen of the civil service law who retire or terminate their  
 17 services, as defined by subdivision one of this section, on or after April first, nineteen hundred  
 18 seventy-one, and on behalf of retired state employees who were members of the state police in a  
 19 collective negotiating unit defined in the certification of the public employment relations board  
 20 dated December twenty-ninth, nineteen hundred seventy in case numbers C-0570 and C-0575  
 21 established pursuant to article fourteen of the civil service law who retire or terminate their  
 22 services, as defined by subdivision one of this section, on or after April first, nineteen hundred  
 23 seventy-two, of one thousand dollars, except that where such retired state employee dies while  
 24 reemployed as provided in subdivision five of this section or dies within thirty days following  
 25 retirement pursuant to subdivision one of this section, the amount of the survivor's benefit under  
 26 this section, if any, shall be three thousand dollars less any ordinary death benefit, exclusive of any  
 27 ordinary death benefit attributable to the reserve-for-increased-take-home-pay, payable on account  
 28 of the death of such employee under a retirement system or pension plan supported by funds of  
 29 the state in lieu of the survivor's benefits specified in subdivision two of this section.

30 4. A survivor's benefit under this section shall not be payable in any case in which a survivor's  
 31 benefit is payable pursuant to section six hundred fifty-five of this chapter.

32 5. The eligibility for survivor's benefit protection provided by this section of a retired state  
 33 employee who subsequently reenters state service, or enters the service of a participating employer  
 34 of a retirement system or pension plan supported by funds of the state, shall continue but only until  
 35 such employee attains eligibility either for coverage under the survivor's benefit program provided  
 36 by section six hundred fifty-five of this article or for payment of an ordinary death benefit of two  
 37 thousand dollars or more, exclusive of any ordinary death benefit attributable to the reserve-for-  
 38 increased-take-home-pay, payable on account of the death of such employee under such a  
 39 retirement system or pension plan. Each time such employee leaves state service, or the service of  
 40 such a participating employer, and loses the eligibility attained following such entry or reentry,  
 41 such employee shall again become eligible for payment of a survivor's benefit provided by this

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1 section.

2 6. The survivor's benefit payable under this section shall be paid to such person or persons as the  
 3 retired state employee shall have last nominated to receive benefits under a retirement option of  
 4 the retirement system or pension plan supported by funds of the state of which such employee last  
 5 became a member, or if such employee did not nominate such a beneficiary, or if such beneficiary  
 6 has died, or if the employee was not a member of such a retirement system or pension plan, to the  
 7 person last specifically designated by such employee to receive the survivor's benefit under this  
 8 section on a form prescribed by and filed with the state comptroller. In the event such a designated  
 9 beneficiary does not survive such employee, or if a beneficiary was not designated, the survivor's  
 10 benefit shall be payable to the estate of the retired state employee or as provided in section thirteen  
 11 hundred ten of the surrogate's court procedure act.

12 7. The survivor's benefit fund provided for by subdivision seven of section six hundred fifty-five  
 13 of this article shall be the fund from which survivor's benefit payments pursuant to this section  
 14 shall be paid.

15 8. The state comptroller shall prescribe such regulations as may be required for the effective  
 16 administration and implementation of the provisions of this section including the establishment of  
 17 criteria for determining eligibility for payment under this section. The state comptroller may enter  
 18 into agreement with other agencies to perform such duties as may be necessary to implement the  
 19 provisions of this section.

20 9. a. Every state department or agency shall promptly inform the state comptroller of the  
 21 retirement or termination, as defined by subdivision one of this section, of any  
 22 employee on whose behalf a survivor's benefit under this section may be payable.  
 23 Such employer shall set forth the relevant state employment record of the employee  
 24 and such other information as is required by the form to be prescribed by the state  
 25 comptroller.

26 b. Every public retirement system or pension plan within the state shall promptly  
 27 inform the state comptroller of the death of any member on whose behalf a  
 28 survivor's benefit under this section may be payable. Such system or plan shall  
 29 set forth the name or names of the beneficiary or beneficiaries, if any, last  
 30 designated by the member under any retirement option selected and such other  
 31 information as is required by the form to be prescribed by the state comptroller.

32 10. A designated beneficiary of every retired state employee who filed a designation of beneficiary  
 33 form with the state comptroller must file an application with the state comptroller for a survivor's  
 34 benefit under this section within six months after the death of such employee in order to qualify  
 35 for the survivor's benefit provided by this section. For good cause shown, the state comptroller  
 36 may waive this time requirement.

37 11. The provisions of this section shall apply to retired state employees who retire or terminate  
 38 their service, as defined by subdivision one of this section, on or before June thirtieth, nineteen  
 39 hundred seventy-four, provided, however, that nothing herein shall be deemed to apply to any

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1 employee who retired on or before September thirtieth, nineteen hundred sixty-six and who died  
2 prior to the effective date of this subdivision.

3 12. Notwithstanding any other provision of this section to the contrary, at least one-half of any  
4 survivor's benefits payable under this section shall be paid to the member's surviving spouse, if  
5 any, unless the member elects (in a manner that accords with this subdivision 12) that the surviving  
6 spouse receive less than one-half of the survivor's benefits, and:

7 a. (i) the member's surviving spouse consented, on or after the date of the  
8 member's marriage, in writing to the member's election;

9 (ii) the surviving spouse's consent is on a plan form that sets forth:

10 (A) the amount of the member's survivor's benefits, and of the spouse,  
11 if the spouse were entitled to half those benefits;

12 (B) a statement to the effect that (absent valid consent to the contrary)  
13 the surviving spouse is entitled to at least half of the survivor's benefits;

14 (C) a statement to the effect that the surviving spouse has the right to  
15 prevent any future member elections regarding the member's survivor's  
16 benefits without the surviving spouse's consent unless the consent of the  
17 surviving spouse expressly permits member elections without any  
18 further consent by the surviving spouse; and

19 (D) the fact that consenting to the member's election would result in the  
20 surviving spouse receiving either no survivor's benefits or smaller  
21 survivor's benefits than the surviving spouse would otherwise receive  
22 under this subdivision;

23 (iii) the consent includes an acknowledgement that the surviving spouse  
24 understands that, absent the surviving spouse's consent to the member's  
25 election, the surviving spouse would be entitled to be paid at least one-half of  
26 the survivor's benefits, and that the surviving spouse's consent to the member's  
27 election would result in the elimination or reduction of such survivor's benefits;

28 (iv) the surviving spouse signed the spousal survivor consent, and the signature  
29 was witnessed by a notary public or a representative of the retirement system,  
30 and

31 (v) the system receives the completed consent and the member's election before  
32 the member's death;

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

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

38 d. it is established to the satisfaction of the retirement board of the system that the

surviving spouse could not have been located if the member had been willing and able to exercise due diligence to locate the surviving spouse on the date of the member's death; or

e. there is no surviving spouse.

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

14. If the retirement board of the system acts with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 12 of this section,  
or

b. determining that at least one of paragraphs b, c, d or f of subdivision i of this section is true,

then (without implication as to what liability the retirement system and the board might have in the absence of this subdivision fourteen) 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; provided that the foregoing discharges shall not act to deprive the surviving spouse of any rights to recover amounts from any party other than the retirement system or the board.

Section 21. Section 13-148 of the administrative code of the City of New York, as amended by L. 1992, ch. 749, § 4, is amended to read as follows:

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

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

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

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

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

(ii) if the total number of years in which allowable service was rendered

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1 exceeds ten, including service which was allowable during former  
 2 membership, then an amount equal to the compensation earnable by such  
 3 member in city-service while a member during the twelve months  
 4 immediately preceding his or her death; or

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

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

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

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

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

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

35 c. 1. The member, or on the death of the member, the person nominated by him or her  
 36 to receive either his or her accumulated deductions, if any, his or her death  
 37 benefit, or both, may provide by written designation duly executed and filed with  
 38 such board that the actuarial equivalent of the benefit otherwise payable in a  
 39 lump sum shall be paid to the person designated in the form of an annuity  
 40 payable in installments not more often than once a month, the amount of such

1 annuity to be determined at the time of the member's death on the basis of the  
2 age of the beneficiary at that time.

- 3 2. Where any such designation mentioned in paragraph one of this subdivision c was  
4 heretofore or is hereafter filed by a member with respect to a benefit otherwise  
5 payable pursuant to the provisions of item (i), (ii) or (iii) of subparagraph (a) of  
6 paragraph two of subdivision a of this section, and such designation was or is in  
7 effect at the time of the death of such member, or where any such designation  
8 was heretofore or is hereafter filed by any person so nominated to receive such  
9 benefit, the actuarial equivalent of the reserve-for-increased-take-home-pay, if  
10 any, of such member shall be paid to the person named in such designation as  
11 beneficiary with respect to such benefit under such item (i), (ii) or (iii), in the  
12 form of an annuity and in the manner and in accordance with the method of  
13 computation prescribed by paragraph one of this subdivision c.

14 d. Notwithstanding any other provision of this section to the contrary, at least one-half of any death  
15 benefits payable under this section, including any accumulated deductions or the reserve-for-  
16 increased-take-home-pay remaining at the time of the member's death, payable under this section  
17 shall be paid to the member's surviving spouse, if any, unless the member elects (in a manner that  
18 accords with this subdivision d) that the surviving spouse receive less than one-half of the death  
19 benefits, and:

- 20 1. (a) the member's surviving spouse consented, on or after the date of the  
21 member's marriage, in writing to the member's election;  
22 (b) the surviving spouse's consent is on a plan form that sets forth:  
23 (i) the amount of the member's death benefits, and of the spouse, if the  
24 spouse were entitled to half those benefits;  
25 (ii) a statement to the effect that (absent valid consent to the contrary)  
26 the surviving spouse is entitled to at least half of the death benefits;  
27 (iii) a statement to the effect that the surviving spouse has the right to  
28 prevent any future member elections regarding the member's death  
29 benefits without the surviving spouse's consent unless the consent of the  
30 surviving spouse expressly permits member elections without any  
31 further consent by the surviving spouse; and  
32 (iv) the fact that consenting to the member's election would result in the  
33 surviving spouse receiving either no death benefits or smaller death  
34 benefits than the surviving spouse would otherwise receive under this  
35 subdivision;  
36 (c) the consent includes an acknowledgement that the surviving spouse  
37 understands that, absent the surviving spouse's consent to the member's  
38 election, the surviving spouse would be entitled to be paid at least one-half of  
39 the death benefits, and that the surviving spouse's consent would result in the  
40 elimination or reduction of such death benefits;

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

3 (e) the system receives the completed consent and the member's election before  
 4 the member's death;

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  
 9 the member's death;

10 4. it is established to the satisfaction of the retirement board of the system that the  
 11 surviving spouse could not have been located if the member had been willing  
 12 and able to exercise due diligence to locate the surviving spouse on the date of  
 13 the member's death; or

14 5. there is no surviving spouse.

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

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

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

22 2. determining that at least one of paragraphs two, three, four, or five of subdivision  
 23 d of this section is true,

24 then (without implication as to what liability the retirement system and the board might have in  
 25 the absence of this subdivision f) such consent or determination shall be treated as valid for purpose  
 26 of discharging the retirement system and the board from liability to the extent of payments made  
 27 pursuant to such action; provided that the foregoing discharges shall not act to deprive the  
 28 surviving spouse of any rights to recover from any party other than the retirement system or the  
 29 board.

30  
 31  
 32 Section 22 Section 13-177 of the administrative code of the City of New York, as amended by L.  
 33 1985, ch. 901, § 1, is amended to read as follows:

34 § 13-177. Retirement; options in which retirement allowances may be taken.

35  
 36 Until the first payment on account of any benefit is made, the beneficiary, or, if such beneficiary  
 37 is an incompetent, then the husband or wife of such beneficiary or, if there be no husband or wife,  
 38 a committee of the estate, may elect to receive such benefit in a retirement allowance payable

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1 throughout life, or the beneficiary or the husband or wife or committee so electing may then elect  
 2 to receive the actuarial equivalent at that time of his or her annuity, if any, his or her pension, or  
 3 his or her retirement allowance in a lesser annuity, if any, or a lesser pension or a lesser retirement  
 4 allowance, payable throughout life with the provision that:

5 Option 1.

6 a. If he or she dies before he or she has received in payments the present value  
 7 of his or her annuity, if any, his or her pension, or his or her retirement  
 8 allowance, as it was at the time of his or her retirement, the balance shall be paid,  
 9 in the form of a lump sum or the actuarial equivalent in the form of an annuity,  
 10 to his or her legal representatives or to such person as the beneficiary, or the  
 11 husband or wife or committee so electing, has nominated or shall nominate by  
 12 written designation duly acknowledged and filed with the board.

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

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

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

29 Option 4. Upon his or her death, some other benefit or benefits shall be paid to such  
 30 other person or persons as the beneficiary, or the husband or wife or committee  
 31 so electing, has nominated or shall nominate, provided such other benefit or  
 32 benefits, together with such lesser annuity, if any, or lesser pension, or lesser  
 33 retirement allowance, shall be certified by the actuary of the board to be of  
 34 equivalent actuarial value to his or her annuity, if any, his or her pension or his  
 35 or her retirement allowance, and shall be approved by such board.

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

38  
 39 1. Notwithstanding any other provision of this section to the contrary, with the spouse as the  
 40 member’s beneficiary, a member’s retirement allowance payable under this section shall be paid

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1 as Option 3, so that upon his or her death, if the member has a surviving spouse who was married  
 2 to the member on the date the member filed his or her retirement application, or on the date the  
 3 member filed his or her last effective option selection, if any, whichever is later, unless the member  
 4 (a) elects that the surviving spouse receive survivor benefit payments in amounts that are greater  
 5 than the benefit payments that would be paid to the surviving spouse under Option 3, if the spouse  
 6 were the member's beneficiary; or (b) elects (in a manner that accords with this subdivision one)  
 7 that the surviving spouse receive no survivor benefit payments or survivor benefit payments, in  
 8 amounts that are smaller than the benefit payments that would be paid to the surviving spouse  
 9 under Option 3, if the spouse were the member's beneficiary, and:

10 a. (i) the member's surviving spouse consented on or after the date of the member's  
 11 marriage, in writing to the member's election;

12 (ii) the spousal survivor consent is on a written plan form that sets forth:

13 (A) the amount of the Option 3 monthly benefit entitlements of the  
 14 member and of the spouse, if the spouse were the member's beneficiary,  
 15 and when the member and the surviving spouse would each be entitled  
 16 to those benefits;

17 (B) a statement to the effect that (absent valid consent to the contrary)  
 18 the surviving spouse is entitled to survivor benefit payments in amounts  
 19 that are greater or equal to the amounts of the retirement allowance  
 20 payments that would be paid to the surviving spouse under Option 3, if  
 21 the spouse were the member's beneficiary;

22 (C) a statement to the effect that the surviving spouse has the right to  
 23 prevent any future member elections regarding the member's survivor  
 24 benefits without the surviving spouse's consent unless the consent of the  
 25 surviving spouse expressly permits member elections without any  
 26 further consent by the surviving spouse; and

27 (D) the fact that consenting to the member's survivor benefit election  
 28 would result in the surviving spouse receiving no survivor benefits or  
 29 smaller survivor benefits than the surviving spouse would otherwise  
 30 receive under this subdivision;

31 (iii) the consent includes an acknowledgement that the surviving spouse  
 32 understands that, absent the surviving spouse's consent to the member's  
 33 election, the surviving spouse would be entitled paid lifetime survivor benefit  
 34 payment amounts that are at least the amounts that would be paid to the surviving  
 35 spouse under Option 3, if the spouse were the member's beneficiary, and that  
 36 the surviving spouse's consent to the member's election would result in the  
 37 elimination or reduction of such survivor benefits;

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

1 (v) the system receives the completed consent and the member's election before  
 2 the date the member filed his or her retirement application, or the date the  
 3 member filed his or her last effective option selection, if any, whichever is later;

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

7 c. 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  
 9 the filing of the member's application for a retirement allowance;

10 d. the surviving spouse could not be located on the date the member's election was  
 11 filed with the retirement system, unless the date when the member's last  
 12 effective option selection was filed with the retirement systems was later, in  
 13 which case, the surviving spouse could not be located between the date the  
 14 member's election was filed with the retirement system, and the date the  
 15 member's last effective option selection was filed with the retirement system;  
 16 or

17 e. there is no surviving spouse.

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

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

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

25 b. determining that at least one of paragraphs b, c, d, or e of subdivision 1 of this  
 26 section is true,

27 then (without implication as to what liability the retirement system and the board might have in  
 28 the absence of this subdivision 3) such consent or determination shall be treated as valid for  
 29 purpose of discharging the retirement system and the board from liability to the extent of payments  
 30 made pursuant to such action; provided that the foregoing discharges shall not act to deprive the  
 31 surviving spouse of any rights to recover from any party other than the retirement system or the  
 32 board. The retirement system may recover the actuarial equivalent of such discharged payments,  
 33 computed using the plan's actuarial factors, from the surviving spouse with offsets against the  
 34 system's monthly annuity benefit payments to the surviving spouse payable under this section, but  
 35 may not thereby reduce any of those benefit payments by more than 10%.

36  
 37  
 38 Section 23. Section 13-243 of the administrative code of the City of New York, as amended by L.  
 39 1985, ch. 907, § 1, is amended to read as follows:  
 40

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted  
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1 § 13-243. Death benefits; ordinary death benefits.

2  
3 Upon the death of a member or of a former member, there shall be paid to his or her estate, or to  
4 such person as he or she has nominated or shall nominate by written designation duly executed  
5 and filed with such board during the lifetime of the member:  
6

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

8 2. If such member is in city-service or is on a civil service preferred eligible list by  
9 reason of city-service, unless a pension be payable by the city under the  
10 provisions of section 13-244 of this subchapter, an amount equal to the  
11 compensation earnable by him or her while a member, during the six months  
12 immediately preceding his or her death, and, if the total number of years in which  
13 allowable service was rendered exceeds ten, then an amount equal to the  
14 compensation earnable by him or her in city-service while a member during the  
15 twelve months immediately preceding his or her death, and in addition, in either  
16 such case, the reserve-for-increased-take-home-pay.

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

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

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

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

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

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

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted  
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1 e. Notwithstanding any other provision of this section to the contrary, at least one-half of any death  
 2 benefits payable under this section, including any accumulated deductions and the reserve-for-  
 3 increased-take-home-pay remaining at the time of the member's death, payable under this section  
 4 shall be paid to the member's surviving spouse, if any, unless the member elects (in a manner that  
 5 accords with this subdivision e) that the surviving spouse receive less than one-half of the death  
 6 benefits, and:

7 1. (A) the member's surviving spouse consented, on or after the date of the  
 8 member's marriage, in writing to the member's election;

9 (B) the surviving spouse's consent is on a plan form that sets forth:

10 (i) the amount of the member's death benefits, and of the spouse, if the  
 11 spouse were entitled to half those benefits;

12 (ii) a statement to the effect that (absent valid consent to the contrary)  
 13 the surviving spouse is entitled to at least half of the death benefits;

14 (iii) a statement to the effect that the surviving spouse has the right to  
 15 prevent any future member elections regarding the member's death  
 16 benefits without the surviving spouse's consent unless the consent of the  
 17 surviving spouse expressly permits member elections without any  
 18 further consent by the surviving spouse; and

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

23 (C) the consent includes an acknowledgement that the surviving spouse  
 24 understands that, absent the surviving spouse's consent to the member's  
 25 election, the surviving spouse would be entitled to be paid at least one-half of  
 26 the death benefits, and that the surviving spouse's consent would result in the  
 27 elimination or reduction of such death benefits;

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

30 (E) the system receives the completed consent and the member's election before  
 31 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;

37 4. it is established to the satisfaction of the retirement board of the system that the  
 38 surviving spouse could not have been located if the member had been willing  
 39 and able to exercise due diligence to locate the surviving spouse on the date of

1 the member's death; or

2 5. there is no surviving spouse.

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

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

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

10 2. determining that at least one of paragraphs two, three, four, or five of subdivision  
11 e of this section is true,

12 then (without implication as to what liability the retirement system and the board might have in  
13 the absence of this subdivision g) such consent or determination shall be treated as valid for  
14 purpose of discharging the retirement system and the board from liability to the extent of payments  
15 made pursuant to such action; provided that the foregoing discharges shall not act to deprive the  
16 surviving spouse of any rights to recover from any party other than the system or the retirement  
17 board.

18  
19  
20 Section 24. Section 13-261 of the administrative code of the City of New York, as amended by L.  
21 1987, ch. 775, § 3, is amended to read as follows:

22  
23 § 13-261. Retirement; options in which retirement allowances may be taken.

24 a. Until the first payment on account of any benefit is made, except pursuant to the provisions of  
25 section 13-261.2 of this subchapter, the beneficiary, or, if such beneficiary is an incompetent, then  
26 the husband or wife of such beneficiary, or, if there be no husband or wife, a committee of the  
27 estate, may elect to receive such benefit in a retirement allowance payable throughout life, or the  
28 beneficiary or the husband or wife or committee so electing may then elect to receive the actuarial  
29 equivalent at that time of his or her annuity, his or her pension, or his or her retirement allowance  
30 in a lesser annuity or a lesser pension or a lesser retirement allowance, payable throughout life  
31 with the provision that:

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

38 Option 2. Upon his or her death, his or her annuity, his or her pension, or his or her  
39 retirement allowance, shall be continued throughout the life of and paid to such

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1 person as the beneficiary, or the husband or wife or committee so electing, has  
 2 nominated or shall nominate by written designation duly acknowledged and  
 3 filed with the board at the time of his or her retirement.

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

9 Option 4. Upon his or her death, some other benefit or benefits shall be paid to such  
 10 other person or persons as the beneficiary, or the husband or wife or committee  
 11 so electing, has nominated or shall nominate, provided such other benefit or  
 12 benefits, together with such lesser annuity, or lesser pension, or lesser retirement  
 13 allowance, shall be certified by the actuary to be of equivalent actuarial value to  
 14 his or her annuity, his or her pension or his or her retirement allowance, and shall  
 15 be approved by such board.

16  
 17 b. For purposes of this section, the terms “pension” and “retirement allowance” shall be deemed  
 18 to include the pension-providing-for-increased-take-home-pay, if any.

19  
 20 c. Notwithstanding any other provision of this section to the contrary, a member’s retirement  
 21 allowance shall be paid as Option 3, with the spouse as the member’s beneficiary, so that upon his  
 22 or her death, if the member has a surviving spouse who was married to the member on the date the  
 23 member filed his or her retirement application, or on the date the member filed his or her last  
 24 effective option selection, if any, whichever is later, unless the member (a) elects that the surviving  
 25 spouse receive survivor benefit payments in amounts that are greater than the benefit payments  
 26 that would be paid to the surviving spouse under Option 3, if the spouse were the member’s  
 27 beneficiary; or (b) elects (in a manner that accords with this subdivision c. that the surviving spouse  
 28 receive either no survivor benefit payments or survivor benefit payments, in amounts that are  
 29 smaller than the benefit payments that would be paid to the surviving spouse under Option 3, if  
 30 the spouse were the member’s beneficiary, and:

31 1. (a) the member’s surviving spouse consented on or after the date of the  
 32 member’s marriage, in writing to the member’s election;

33 (b) the surviving spouse’s consent is on a plan form that sets forth:

34 (i) the amount of the Option 3 monthly benefit entitlements of the  
 35 member and of the spouse, if the spouse were the member’s beneficiary,  
 36 and when the member and the surviving spouse would each be entitled  
 37 to those benefits;

38 (ii) a statement to the effect that (absent valid consent to the contrary)  
 39 the surviving spouse is entitled to survivor benefit payments in amounts  
 40 that are greater or equal to the amounts of the retirement allowance  
 41 payments that would be paid to the surviving spouse under Option 3, if



- 1           the spouse were the member’s beneficiary;
- 2           (iii) a statement to the effect that the surviving spouse has the right to  
3           prevent any future member elections regarding the member’s survivor  
4           benefits without the surviving spouse’s consent unless the consent of the  
5           surviving spouse expressly permits member elections without any  
6           further consent by the surviving spouse; and
- 7           (iv) the fact that consenting to the member’s survivor benefit election  
8           result in the surviving spouse receiving no survivor benefits or smaller  
9           survivor benefits than the surviving spouse would otherwise receive  
10           under this subdivision;
- 11           (c) the consent includes an acknowledgement that the surviving spouse  
12           understands that, absent the surviving spouse’s consent to the member’s  
13           election, the surviving spouse would be entitled to be paid lifetime survivor  
14           benefit payment amounts that are at least the amounts that would be paid to the  
15           surviving spouse under Option 3, if the spouse were the member’s beneficiary,  
16           and that the surviving spouse’s consent would result in the elimination or  
17           reduction of such survivor benefits;
- 18           (d) the consent includes a signature by the surviving spouse that was witnessed  
19           by a notary public or a representative of the retirement system; and
- 20           (e) the system receives the completed consent and the member’s election before  
21           the date the member filed his or her retirement application, or the date the  
22           member filed his or her last effective option selection, if any, whichever is later;
- 23           2. the member and the surviving spouse were legally separated when the member’s  
24           election was filed with the retirement system;
- 25           3. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of  
26           Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of the  
27           filing of the member’s application for a retirement allowance;
- 28           4. it is established to the satisfaction of the retirement board of the system that the  
29           surviving spouse could not have been located if the member had been willing and  
30           able to exercise due diligence to locate the surviving spouse on the later of the date  
31           the member’s retirement application was filed with the retirement system, or the date  
32           the member’s last effective option selection was filed with the retirement system; or
- 33           5. there is no surviving spouse.
- 34           d. Notwithstanding any other provision of this section to the contrary, a member’s election must  
35           comply with the terms of subdivision c of this section to be effective.
- 36           e. If the retirement board of the system acts with the care, skill, prudence, and diligence under the  
37           circumstances then prevailing that a prudent person acting in a like capacity and familiar with such  
38           matters would use in the conduct of an enterprise of a like character and with like aims, in—

- 1        1. relying on a consent referred to in paragraph one of subdivision c of this section,  
 2        or  
 3        2. determining that at least one of paragraphs two, three, four or five of subdivision  
 4        one of this section is true,

5        then (without implication as to what liability the retirement system and the board might have in  
 6        the absence of this subdivision e.) such consent or determination shall be treated as valid for  
 7        purpose of discharging the retirement system and the board from liability to the extent of payments  
 8        made pursuant to such action; provided that the foregoing discharges shall not act to deprive the  
 9        surviving spouse of any rights to recover from any party other than the retirement system or the  
 10       board. The retirement system may recover the actuarial equivalent of such discharged payments,  
 11       computed using the plan's actuarial factors, from the surviving spouse with offsets against the  
 12       system's monthly annuity benefit payments to the surviving spouse payable under this section, but  
 13       may not thereby reduce any of those benefit payments by more than 10%.

14  
 15  
 16 Section 25. Section 13-346 of the administrative code of the City of New York, as amended by L.  
 17 1985, ch. 907, § 1, is amended to read as follows:  
 18

19 § 13-346. Death benefits; ordinary death benefits.

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

- 26        1. His or her accumulated contributions, that is, his or her contributions without  
 27        interest; and, in addition thereto,  
 28        2. If such member is in city-service or is on a civil service preferred eligible list by  
 29        reason of city-service, unless a retirement allowance be payable by the city under  
 30        the provisions of section 13-347 of this subchapter, an amount equal to the  
 31        compensation earnable by him or her while a member, during the six months  
 32        immediately preceding his or her death, and, if the total number of years in which  
 33        allowable service was rendered exceeds ten, then an amount equal to the  
 34        compensation earnable by him or her in city-service while a member during the  
 35        twelve months immediately preceding his or her death, and in addition, in either  
 36        such case, the accumulation-for-increased-take-home-pay, if any.

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

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- 1 the lifetime of the member:
- 2 1. His or her accumulated deductions; and, in addition thereto,
- 3 2. If such member is in city-service or is on a civil service preferred eligible list by  
4 reason of city-service, unless a pension be payable by the city under the  
5 provisions of section 13-347 of this subchapter, an amount equal to the  
6 compensation earnable by him or her while a member, during the six months  
7 immediately preceding his or her death, and, if the total number of years in which  
8 allowable service was rendered exceeds ten, then an amount equal to the  
9 compensation earnable by him or her in city-service while a member during the  
10 twelve months immediately preceding his or her death, and in addition, in either  
11 such case, the reserve-for-increased-take-home-pay.
- 12 b. Until the first payment has been made on account of a retirement benefit without optional  
13 selection of an original plan member not subject to article eleven or an improved benefits plan  
14 member not subject to article eleven, such member may be construed by such board to have been  
15 in city-service and the applicable benefits provided in this section may be paid in lieu of the  
16 retirement allowance.
- 17 c. The original plan member not subject to article eleven or the improved benefits plan member  
18 not subject to article eleven, or on the death of any such member, the person nominated by him or  
19 her to receive, in the case of an original plan member not subject to article eleven, his or her  
20 accumulated contributions or his or her death benefit, together with the accumulation-for-  
21 increased-take-home-pay, or both, or, in the case of an improved benefits plan member not subject  
22 to article eleven, the person nominated by him or her to receive either his or her accumulated  
23 deductions, his or her death benefit, together with the reserve-for-increased-take-home-pay, or  
24 both, may provide by written designation duly executed and filed with such board that the actuarial  
25 equivalent of the benefit otherwise payable in a lump sum shall be paid to the person designated  
26 in the form of an annuity payable in installments not more often than once a month, the amount of  
27 such annuity to be determined at the time of such member's death on the basis of the age of the  
28 beneficiary at that time.
- 29 D. Upon the death of an original plan member not subject to article eleven who has completed the  
30 period of service, as elected by him or her for retirement, but who shall not have filed application  
31 for retirement or who, having filed application for retirement shall die prior to the first payment  
32 on account of the benefits thereunder, there shall be paid to his or her estate, or to such person as  
33 he or she has nominated or shall nominate by written designation duly executed and filed with  
34 such board:
- 35 1. His or her accumulated contributions, that is his or her contributions without  
36 interest; and in addition thereto,
- 37 2. The present value of the pension he or she would have received if he or she had  
38 retired and had become entitled to a pension for service on the day immediately  
39 preceding the day of his or her death.

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

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

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

- 14 f. 1. The provisions of the preceding subdivisions of this section applicable to original plan  
 15 members not subject to article eleven shall apply to an original plan member subject  
 16 to article eleven (as defined in subdivision four-d of such section 13-313), except to  
 17 the extent and in the manner that any such provision is modified by article eleven.
- 18 2. The provisions of the preceding subdivisions of this section applicable to improved  
 19 benefits plan members not subject to article eleven shall apply to an improved  
 20 benefits plan member subject to article eleven (as defined in subdivision four-j  
 21 of such section 13-313), except to the extent and in the manner that any such  
 22 provision is modified by article eleven.

23 g. Notwithstanding any other provision of this section to the contrary, at least one-half of any death  
 24 benefits payable under this section, including any accumulated contributions, accumulated  
 25 deductions, the accumulation for-increased-take-home-pay, or the reserve-for-increased-take-  
 26 home-pay remaining at the time of the member's death, payable under this section shall be paid to  
 27 the member's surviving spouse, if any, unless the member elects (in a manner that accords with  
 28 this subdivision g) that the surviving spouse receive less than one-half of the death benefits, and:

- 29 1. (A) the member's surviving spouse consented, on or after the date of the  
 30 member's marriage, in writing to the member's election;
- 31 (B) the surviving spouse's consent is on a plan form that sets forth:
  - 32 (i) the amount of the member's death benefits, and of the spouse, if the  
 33 spouse were entitled to half those benefits;
  - 34 (ii) a statement to the effect that (absent valid consent to the contrary)  
 35 the surviving spouse is entitled to at least half of the death benefits;
  - 36 (iii) a statement to the effect that the surviving spouse has the right to  
 37 prevent any future member elections regarding the member's death  
 38 benefits without the surviving spouse's consent unless the consent of the  
 39 surviving spouse expressly permits member elections without any

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1 further consent by the surviving spouse; and

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

6 (C) the consent includes an acknowledgement that the surviving spouse  
 7 understands the surviving spouse would be entitled to be paid at least one-half  
 8 of the death benefits absent the surviving spouse's consent to the member's  
 9 election, and that the surviving spouse's consent to the member's election would  
 10 result in the elimination or reduction of such death benefits;

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

13 (E) the system receives the completed consent and the member's election before  
 14 the member's death;

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

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

20 4. it is established to the satisfaction of the retirement board of the system that the  
 21 surviving spouse could not have been located if the member had been willing  
 22 and able to exercise due diligence to locate the surviving spouse on the date of  
 23 the member's death; or

24 5. there is no surviving spouse.

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

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

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

32 2. determining that at least one of paragraphs two, three, four, or five of subdivision  
 33 g of this section is true,

34 then (without implication as to what liability the retirement system and the board might have in  
 35 the absence of this subdivision i) such consent or determination shall be treated as valid for purpose  
 36 of discharging the retirement system and the board from liability to the extent of payments made  
 37 pursuant to such action; provided that the foregoing discharges shall not act to deprive the  
 38 surviving spouse of any rights to recover from any party other than the retirement system or the

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1 [board.](#)  
 2  
 3

4 Section 26. Section 13-369 of the administrative code of the City of New York, as amended by L.  
 5 1988, ch. 198, § 1, is amended to read as follows:  
 6

7 § 13-369. Retirement of original plan members; options in which retirement allowances may be  
 8 taken.

9 a. Subject to the provisions of subdivision b of this section, until the first payment on account of  
 10 any benefit is made, except pursuant to the provisions of subdivision c of this section, any  
 11 beneficiary who was an original plan member at the time of his or her retirement, or, if such  
 12 beneficiary is an incompetent, then the spouse of such beneficiary, or, if there be no spouse, a  
 13 committee of the estate, may elect to receive such benefit in a retirement allowance payable  
 14 throughout life, or any such beneficiary or the spouse or committee so electing may then elect to  
 15 receive the actuarial equivalent at the time of his or her retirement allowance in a lesser retirement  
 16 allowance, payable throughout life with the provision that:

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

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

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

32 Option 4. Upon his or her death, some other benefit or benefits shall be paid to such  
 33 other person or persons as such beneficiary, or the spouse or committee so  
 34 electing, has nominated or shall nominate, provided such other benefit or  
 35 benefits, together with such lesser retirement allowance, shall be certified by the  
 36 actuary to be of equivalent actuarial value to his or her retirement allowance,  
 37 and shall be approved by such board.

38 b. In the case of an original plan member subject to article eleven (as defined in subdivision four-  
 39 d of section 13-313 of this subchapter) or any beneficiary who was an original plan member subject  
 40 to article eleven at the time of such member's retirement, the provisions of subdivision a of this



1 section shall apply except to the extent and in the manner that any such provision is modified by  
2 article eleven.

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

- 9 (1) if a member is entitled to an ordinary disability retirement allowance under the  
10 provisions of this subchapter, the benefits provided pursuant to section 13-352  
11 of this subchapter shall be payable unless the member would otherwise be  
12 entitled to a greater benefit pursuant to section 13-346 of this subchapter, in  
13 which event the greater benefit shall be payable; or
- 14 (2) if a member is entitled to an accidental disability retirement allowance under the  
15 provisions of this subchapter, the benefits provided pursuant to section 13-353  
16 of this subchapter shall be payable unless the member would otherwise be  
17 entitled to a greater benefit pursuant to section 13-348 of this subchapter, in  
18 which event the greater benefit shall be payable.

19 D. Notwithstanding any law to the contrary, for the purpose of electing an option pursuant to this  
20 section, the pension board shall notify the surviving spouse of any applicant described in  
21 subdivision c of this section, or, if no such spouse exists, the personal representative of the estate  
22 of such applicant of the right of election pursuant to this section and such surviving spouse or  
23 personal representative of such estate may elect any such option within thirty days after receipt of  
24 such notice.

25 e. Notwithstanding any other provision of this section to the contrary, a member's retirement  
26 allowance shall be paid as Option 3, with the spouse as the member's beneficiary, so that upon his  
27 or her death, if the member has a surviving spouse who was married to the member on the date the  
28 member filed his or her retirement application, or on the date the member filed his or her last  
29 effective option selection, if any, whichever is later, unless the member (a) elects that the surviving  
30 spouse receive survivor benefit payments in amounts that are greater than the benefit payments  
31 that would be paid to the surviving spouse under Option 3, if the spouse were the member's  
32 beneficiary; or (b) elects (in a manner that accords with this subdivision e) that the surviving spouse  
33 receive either no survivor benefit payments or survivor benefit payments, in amounts that are  
34 smaller than the benefit payments that would be paid to the surviving spouse under Option 3, if  
35 the spouse were the member's beneficiary, and:

36 (1) (a) the member's surviving spouse consented on or after the date of the  
37 member's marriage, in writing to the member's election;

38 (b) the surviving spouse's consent is on a plan form that sets forth:

39 (i) the amount of the Option 3 monthly benefit entitlements of the  
40 member and of the spouse, if the spouse were the member's beneficiary,

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1 and when the member and the surviving spouse would each be entitled  
 2 to those benefits;

3 (ii) a statement to the effect that (absent valid consent to the contrary)  
 4 the surviving spouse is entitled to survivor benefit payments in amounts  
 5 that are greater or equal to the amounts of the retirement allowance  
 6 payments that would be paid to the surviving spouse under Option 3, if  
 7 the spouse were the member's beneficiary;

8 (iii) a statement to the effect that the surviving spouse has the right to  
 9 prevent any future member elections regarding the member's survivor  
 10 benefits without the surviving spouse's consent unless the consent of the  
 11 surviving spouse expressly permits member elections without any  
 12 further consent by the surviving spouse; and

13 (iv) the fact that consenting to the member's survivor benefit election  
 14 would result in the surviving spouse receiving no survivor benefits or  
 15 smaller survivor benefits retirement allowance than the surviving spouse  
 16 would otherwise receive under this subdivision;

17 (c) the consent includes an acknowledgement that the surviving spouse  
 18 understands the surviving spouse would be entitled to be paid lifetime survivor  
 19 benefit payment amounts that are at least the amounts that would be paid to the  
 20 surviving spouse under Option 3, if the spouse were the member's beneficiary,  
 21 and that the surviving spouse's consent would result in the elimination or  
 22 reduction of such survivor benefits; and

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

25 (e) the system receives the completed consent and the member's election before  
 26 the date the member filed his or her retirement application, or the date the  
 27 member filed his or her last effective option selection, if any, whichever is later;

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

30 (3) 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 the  
 32 filing of the member's application for a retirement allowance;

33 (4) it is established to the satisfaction of the retirement board of the system that the  
 34 surviving spouse could not have been located if the member had been willing  
 35 and able to exercise due diligence to locate the surviving spouse on the later of  
 36 the date the member's retirement application was filed with the retirement  
 37 system, or the date the member's last effective option selection was filed with  
 38 the retirement system; or

39 (5) there is no surviving spouse.

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

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

6 (1) relying on a consent referred to in paragraph one of subdivision e of this section,  
7 or

8 (2) determining that at least one of paragraphs two, three, four, or five of subdivision  
9 e of this section is true,

10 then (without implication as to what liability the retirement system and the board might have in  
11 the absence of this subdivision g) such consent or determination shall be treated as valid for  
12 purpose of discharging the retirement system and the board from liability to the extent of payments  
13 made pursuant to such action; provided that the foregoing discharges shall not act to deprive the  
14 surviving spouse of any rights to recover from any party other than the retirement system or the  
15 board. The retirement system may recover the actuarial equivalent of such discharged payments,  
16 computed using the plan's actuarial factors, from the surviving spouse with offsets against the  
17 system's monthly annuity benefit payments to the surviving spouse payable under this section, but  
18 may not thereby reduce any of those benefit payments by more than 10%.  
19  
20

21 Section 27. Section 13-370 of the administrative code of the City of New York, as amended by L.  
22 1990, ch. 288, § 1, is amended to read as follows:

23 § 13-370. Retirement of improved benefits plan members; options in which retirement allowances  
24 may be taken.

25 32. Subject to the provisions of subdivision c of this section, until the first payment on account  
26 of any benefit is made, except pursuant to the provisions of subdivision d of this section  
27 any beneficiary who was an improved benefits plan member at the time of his or her  
28 retirement, or, if such beneficiary is an incompetent, then the spouse of such beneficiary,  
29 or, if there be no spouse, a committee of the estate, may elect to receive such benefit in a  
30 retirement allowance payable throughout life, or any such beneficiary or the spouse or  
31 committee so electing may then elect to receive the actuarial equivalent at the time of his  
32 or her annuity, his or her pension, or his or her retirement allowance in a lesser annuity or  
33 a lesser pension or a lesser retirement allowance, payable throughout life with the provision  
34 that:

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

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- 1 Option 2. Upon his or her death, his or her annuity, his or her pension, or his or her  
 2 retirement allowance, shall be continued throughout the life of and paid to such  
 3 person as such beneficiary, or the spouse or committee so electing, has  
 4 nominated or shall nominate by written designation duly acknowledged and  
 5 filed with the board at the time of his or her retirement.
- 6 Option 3. Upon his or her death, one-half of his or her annuity, his or her pension, or  
 7 his or her retirement allowance, shall be continued throughout the life of and  
 8 paid to such person as such beneficiary, or the spouse or committee so electing,  
 9 has nominated or shall nominate by written designation duly acknowledged and  
 10 filed with the board at the time of his or her retirement.
- 11 Option 4. Upon his or her death, some other benefit or benefits shall be paid to such  
 12 other person or persons as such beneficiary, or the spouse or committee so  
 13 electing, has nominated or shall nominate, provided such other benefit or  
 14 benefits, together with such lesser annuity, or lesser pension or lesser retirement  
 15 allowance, shall be certified by the actuary to be of equivalent actuarial value to  
 16 his or her annuity, his or her pension or his or her retirement allowance, and shall  
 17 be approved by such board.
- 18 b. For purposes of this section, the terms “pension” and “retirement allowance” shall be deemed  
 19 to include the pension-providing-for-increased-take-home-pay, if any.
- 20 c. In the case of an improved benefits plan member subject to article eleven (as defined in  
 21 subdivision four-j of section 13-313 of this subchapter) or any beneficiary who was an improved  
 22 benefits plan member subject to article eleven at the time of such member’s retirement, the  
 23 provisions of subdivisions a and b of this section shall apply except to the extent and in the manner  
 24 that any such provision is modified by article eleven.
- 25 D. If a member who is otherwise eligible for retirement pursuant to this section dies within thirty  
 26 days after the filing with the pension board of the application for retirement pursuant to this section  
 27 and it is established that the physical or mental impairment or incapacitation of the applicant  
 28 specified in such application was directly related to the cause of the applicant’s death, such  
 29 application shall be approved by the pension board effective one day before the date of the  
 30 applicant’s death, provided however that:
- 31 (1) if a member is entitled to an ordinary disability retirement allowance under the  
 32 provisions of this subchapter, the benefits provided pursuant to section 13-352  
 33 of this subchapter shall be payable unless the member would otherwise be  
 34 entitled to a greater benefit pursuant to section 13-346 of this subchapter, in  
 35 which event the greater benefit shall be payable; or
- 36 (2) if a member is entitled to an accidental disability retirement allowance under the  
 37 provisions of this subchapter, the benefits provided pursuant to section 13-353  
 38 of this subchapter shall be payable unless the member would otherwise be  
 39 entitled to a greater benefit pursuant to section 13-348 of this subchapter, in  
 40 which event the greater benefit shall be payable.

1 e. Notwithstanding any law to the contrary, for the purpose of electing an option pursuant to this  
 2 section, the pension board shall notify the surviving spouse of any applicant described in  
 3 subdivision d of this section, or, if no such spouse exists, the personal representative of the estate  
 4 of such applicant of the right of election pursuant to this section and such surviving spouse or  
 5 personal representative of such estate may elect any such option within thirty days after receipt of  
 6 such notice.

7 f. Notwithstanding any other provision of this section to the contrary, a member's retirement  
 8 allowance shall be paid as Option 3, with the spouse as the member's beneficiary, so that upon his  
 9 or her death, if the member has a surviving spouse who was married to the member on the date the  
 10 member filed his or her retirement application, or on the date the member filed his or her last  
 11 effective option selection, if any, whichever is later, unless the member (a) elects that the surviving  
 12 spouse receive survivor benefit payments in amounts that are greater than the benefit payments  
 13 that would be paid to the surviving spouse under Option 3, if the spouse were the member's  
 14 beneficiary; or (b) elects (in a manner that accords with this subdivision f) that the surviving spouse  
 15 receive either no survivor benefit payments or survivor benefit payments, in amounts that are  
 16 smaller than the benefit payments that would be paid to the surviving spouse under Option 3, if  
 17 the spouse were the member's beneficiary, and:

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

20 (b) the surviving spouse's consent is on a plan form that sets forth:

21 (i) the amount of the Option 3 monthly benefit entitlements of the  
 22 member and of the spouse, if the spouse were the member's beneficiary,  
 23 and when the member and the surviving spouse would each be entitled  
 24 to those benefits;

25 (ii) a statement to the effect that (absent valid consent to the contrary)  
 26 the surviving spouse is entitled to survivor benefit payments in amounts  
 27 that are greater or equal to the amounts of the retirement allowance  
 28 payments that would be paid to the surviving spouse under Option 3, if  
 29 the spouse were the member's beneficiary;

30 (ii) a statement to the effect that the surviving spouse has the right to  
 31 prevent any future member elections regarding the member's survivor  
 32 benefits without the surviving spouse's consent unless the consent of the  
 33 surviving spouse expressly permits member elections without any  
 34 further consent by the surviving spouse; and

35 (iv) the fact that consenting to the member's survivor benefit election  
 36 would result in the surviving spouse receiving no survivor benefits or  
 37 smaller survivor benefits than the surviving spouse would otherwise  
 38 receive under this subdivision;

39 (c) the consent includes an acknowledgement that the surviving spouse  
 40 understands the surviving spouse would be entitled to be paid lifetime survivor

1 benefit payment amounts that are at least the amounts that would be paid to the  
 2 surviving spouse under Option 3, if the spouse were the member's beneficiary,  
 3 and that the surviving spouse's consent would result in the elimination or  
 4 reduction of such survivor benefits;

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

7 (e) the system receives the completed consent and the member's election before  
 8 the date the member filed his or her retirement application, or the date the  
 9 member filed his or her last effective option selection, if any, whichever is later;

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

15 (4) it is established to the satisfaction of the retirement board of the system that the  
 16 surviving spouse could not have been located if the member had been willing  
 17 and able to exercise due diligence to locate the surviving spouse on the later of  
 18 the date the member's retirement application was filed with the retirement  
 19 system, or the date the member's last effective option selection was filed with  
 20 the retirement system; or

21 (5) there is no surviving spouse.

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 person 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,  
 28 or

29 (2) determining that at least one of paragraphs two, three, four or five of subdivision  
 30 f of this section is true,

31 then (without implication as to what liability the retirement system and the board might have in  
 32 the absence of this subdivision h) such consent or determination shall be treated as valid for  
 33 purpose of discharging the retirement system and the board from liability to the extent of payments  
 34 made pursuant to such action; provided that the foregoing discharges shall not act to deprive the  
 35 surviving spouse of any rights to recover from any party other than the retirement system or the  
 36 board. The retirement system may recover the actuarial equivalent of such discharged payments,  
 37 computed using the plan's actuarial factors, from the surviving spouse with offsets against the  
 38 system's monthly annuity benefit payments to the surviving spouse payable under this section, but  
 39 may not thereby reduce any of those benefit payments by more than 10%.

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1  
2  
3 Section 28. Section 13-542 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 § 13-542. Death benefits; ordinary death benefits.

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

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

11 2. A sum consisting of:

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

14 (ii) An amount, payable out of the contingent reserve fund in the case of a new  
15 entrant and out of pension reserve fund number two in the case of a present-  
16 teacher, equal to the salary earnable by him or her during the six months  
17 immediately preceding his or her death, provided that at the time of his or her  
18 death he or she had obtained the age of sixty-five years or had a total-service of  
19 thirty-five years and was eligible for service retirement.  
20

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

26 c. (1) The retirement board may adopt rules and regulations providing that in any case where a  
27 contributor or designated beneficiary authorized by the applicable provisions of this  
28 chapter to nominate a beneficiary to receive a lump sum benefit pursuant to section  
29 13-542 or section 13-543 of this chapter represents to the retirement system that a  
30 specified person has been designated by such contributor or designated beneficiary as  
31 a trustee of an inter vivos or testamentary trust for the purposes of this subdivision c,  
32 such person shall be eligible to be nominated to receive, in the capacity of trustee, such  
33 lump sum benefit pursuant to the applicable provisions of either of such sections.

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

38 (3) A payment made in good faith under this section (a) to a person so represented to  
39 the retirement system to be a trustee of an inter vivos trust, or (b) to a person  
40 who is designated as a successor trustee of an inter vivos trust and who provides



1 a copy of his or her appointment or, (c) to a person who is designated as a trustee  
 2 or successor trustee of a testamentary trust and who provides a copy of the letters  
 3 of trusteeship, provided such payment is made to such payee in the capacity of  
 4 trustee, shall be a complete discharge to the retirement system to the extent of  
 5 the payment. Such discharge shall not be impaired or affected by an adjudication  
 6 that a trust is invalid or that a person represented to be or designated as a trustee  
 7 is not entitled to receive the proceeds, if payment is made in good faith under  
 8 this section before notice to the retirement system of the claim of invalidity or  
 9 lack of entitlement on which such adjudication is based.

10 (4) (a) If no person to whom the retirement system is authorized to make payment  
 11 in the capacity of trustee, as provided for in paragraph three of this subdivision  
 12 c, claims the proceeds within eighteen months after the death of the member,  
 13 payment shall be made to the deceased member's estate and such payment shall  
 14 be a complete discharge to the retirement system to the extent of the payment.

15 (b) If satisfactory evidence is furnished within such period of eighteen months  
 16 that there is or will be no trustee to receive the proceeds, payment shall be made  
 17 to the deceased member's estate.

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

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

26 (b) a person represented to have been designated as a trustee under a different  
 27 inter vivos or testamentary trust; a payment made in good faith under this section  
 28 to the last such nominee as of the date of death, whether he or she is a beneficiary  
 29 not represented to have been designated as trustee or a person represented to  
 30 have been so designated, shall be a complete discharge to the retirement system  
 31 to the extent of the payment, provided, however, that if payment is made to a  
 32 person represented to have been designated as a trustee, the retirement system  
 33 shall be so discharged if payment is made to such person in the capacity of  
 34 trustee and if there is compliance with the requirements of paragraph three of  
 35 this subdivision c with respect to submission of copies. In any case where the  
 36 last such nominee is a person represented to have been designated as a trustee,  
 37 the provisions of paragraph four of this subdivision c shall apply.

38 D. Notwithstanding any other provision of this section to the contrary, at least one-half of any  
 39 death benefits payable under this section, including any accumulated deductions, or reserve-for-  
 40 increased-take-home-pay remaining at the time of the member's death, payable under this section  
 41 shall be paid to the member's surviving spouse, if any, unless the member elects (in a manner that



1 accords with this subdivision d) that the surviving spouse receive less than one-half of the death  
 2 benefits, and:

- 3 1. (a) the member's surviving spouse consented, on or after the date of the  
 4 member's marriage, in writing to the member's election;  
 5 (b) the surviving spouse's consent is on a plan form that sets forth:
    - 6 (i) the amount of the member's death benefits, and of the spouse, if the  
 7 spouse were entitled to half those benefits;
    - 8 (ii) a statement to the effect that (absent valid consent to the contrary)  
 9 the surviving spouse is entitled to at least half of the death benefits;
    - 10 (iii) a statement to the effect that the surviving spouse has the right to  
 11 prevent any future member elections regarding the member's death  
 12 benefits without the surviving spouse's consent unless the consent of the  
 13 surviving spouse expressly permits member elections without any  
 14 further consent by the surviving spouse; and
    - 15 (iv) the fact that consenting to the member's election would result in the  
 16 surviving spouse receiving either no death benefits or smaller death  
 17 benefits than the surviving spouse would otherwise receive under this  
 18 subdivision;
  - 19 (c) the consent includes an acknowledgement that the surviving spouse  
 20 understands that, absent the surviving spouse's consent to the member's  
 21 election, the surviving spouse would be entitled to be paid at least one-half of  
 22 the death benefits, and that the surviving spouse's consent would result in the  
 23 elimination or reduction of such death benefits;
  - 24 (d) the consent includes a signature by the surviving spouse that was witnessed  
 25 by a notary public or a representative of the retirement system, and
  - 26 (e) the system receives the completed consent and the member's election before  
 27 the member's death;
- 28 2. the member and the surviving spouse were legally separated when the member's  
 29 election was filed with the retirement system;
  - 30 3. 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 member's death;
  - 33 4. it is established to the satisfaction of the retirement board of the system that the  
 34 surviving spouse could not have been located if the member had been willing  
 35 and able to exercise due diligence to locate the surviving spouse on the date of  
 36 the member's death; or
  - 37 5. there is no surviving spouse.

38 e. Notwithstanding any other provision of this section to the contrary, a member's election must

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1 comply with the terms of subdivision d of this section to be effective.

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

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

6 or

7 2. determining that at least one of paragraphs two, three, four, or five of subdivision  
 8 d of this section is true,

9 then (without implication as to what liability the retirement system and the board might have in  
 10 the absence of this subdivision f.) such consent or determination shall be treated as valid for  
 11 purpose of discharging the retirement system and the board from liability to the extent of payments  
 12 made pursuant to such action; provided that the foregoing discharges shall not act to deprive the  
 13 surviving spouse of any rights to recover from any party other than the retirement system or the  
 14 board.

15  
 16  
 17 Section 29. Section 13-543 of the administrative code of the City of New York, as amended by L.  
 18 1985, ch. 907, § 1, is amended to read as follows:

19  
 20 § 13-543. Special death and retirement benefits.

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

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

27 2. A sum consisting of:

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

30 ii. In the case of any contributor whose death heretofore occurred or occurs  
 31 hereafter and prior to July first, nineteen hundred seventy, an amount, payable  
 32 out of the contingent reserve fund in the case of a new-entrant and out of pension  
 33 reserve fund number two in the case of a present-teacher, equal to (a) six per  
 34 cent of his or her average salary multiplied by the number of his or her years of  
 35 city-service rendered prior to April tenth, nineteen hundred twenty-nine plus (b)  
 36 five per cent of his or her average salary multiplied by the number of his or her  
 37 years of city-service rendered subsequent to such date. In the case of a teacher  
 38 appointed prior to such date the years of credit under (a) and (b) shall not exceed  
 39 thirty-five years in total and in the case of a teacher appointed subsequent to

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1 such date, the years of credit shall not exceed twenty years in total. In no event  
 2 shall such amount be less than one-half of his or her average salary, except that  
 3 in the case of a teacher who has a total city-service of six months or more and  
 4 less than five years such amount shall be six times the average monthly salary  
 5 earnable by him or her during his or her city-service immediately preceding his  
 6 or her death. If the contributor was a present-teacher, there shall be included a  
 7 further amount in addition thereto equal to five per cent of his or her average  
 8 salary multiplied by five sevenths of the number of his or her years of prior-  
 9 service. The total credit for prior-service so allowed shall not exceed twenty-  
 10 five years. If in the case of any deceased contributor the total amount payable  
 11 under this subparagraph (ii) of this paragraph two of this subdivision is greater  
 12 than the largest maximum annual salary paid to any contributor, such total  
 13 amount payable shall not be greater than two and three-fourths times the average  
 14 salary of the deceased contributor, nor less than the largest maximum annual  
 15 salary paid to any contributor; or

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

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

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

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

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

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

1 at the time of the filing of such application or prior thereto pursuant to the provisions of this section.

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

6 Option A. Upon the death of the contributor the actuarial value of his or her  
 7 accumulated salary deductions or death benefit, or both, shall be paid in an  
 8 annuity in monthly installments throughout the life of such beneficiary as he or  
 9 she shall nominate by written designation duly acknowledged and filed with  
 10 such board; or

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

21 Option C. Upon the death of the contributor, that some other benefit or benefits  
 22 shall be paid to such beneficiary or beneficiaries as he or she shall have  
 23 nominated by written designation duly acknowledged and filed with such board,  
 24 provided such other benefit or benefits shall be certified to by the actuary of such  
 25 board to be of equivalent actuarial value of the accumulated salary deductions  
 26 or death benefit, or both, and shall be approved by such board.

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

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

1 would have been paid.

- 2 2. Where any designated beneficiary named as specified in paragraph one of this  
3 subdivision d, has heretofore made or shall hereafter make an election pursuant  
4 to such paragraph one with respect to receipt of the death benefit, the reserve-  
5 for-increased-take-home-pay, if any, of the contributor shall be paid to the same  
6 beneficiary or beneficiaries, in the same manner, and in accordance with the  
7 same methods of computation as are prescribed by such paragraph one with  
8 respect to payment of the death benefit pursuant to such election.

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

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

18 g. Notwithstanding any other provision of this section to the contrary, at least one-half of any death  
19 benefits payable under this section, including any accumulated salary deductions or the reserve-  
20 for-increased-take-home-pay remaining at the time of the member's death, payable under this  
21 section shall be paid to the member's surviving spouse, if any, unless the member elects (in a  
22 manner that accords with this subdivision g.) that the surviving spouse receive less than one-half  
23 of the death benefits, and:

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

26 (b) the surviving spouse's consent is on a plan form that sets forth:

27 (i) the amount of the member's death benefits and of the spouse, if the  
28 spouse were entitled to half those benefits;

29 (ii) a statement to the effect that (absent valid consent to the contrary)  
30 the surviving spouse is entitled to at least half of the death benefits;

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

36 (iv) the fact that consenting to the member's election would result in the  
37 surviving spouse receiving either no death benefits or smaller death  
38 benefits than the surviving spouse would otherwise receive under this  
39 subdivision,

1 (c) the consent includes an acknowledgement that the surviving spouse  
 2 understands that, absent the surviving spouse's consent to the member's  
 3 election, the surviving spouse would be entitled to be paid at least one-half of  
 4 the death benefits, and that the surviving spouse's consent to the member's  
 5 election would result in the elimination or reduction of such death benefits;

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

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

10 2. the member and the surviving spouse were legally separated at the time the  
 11 member's 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;

15 4. it is established to the satisfaction of the retirement board of the system that the  
 16 surviving spouse could not have been located if the member had been willing  
 17 and able to exercise due diligence to locate the surviving spouse on the date of  
 18 the member's death; or

19 5. there is no surviving spouse.

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

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

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

27 2. determining that at least one of paragraphs two, three, four, or five of subdivision  
 28 g of this section is true.

29 then (without implication as to what liability the retirement system and the board might have in  
 30 the absence of this subdivision i) such consent or determination shall be treated as valid for purpose  
 31 of discharging the retirement system and the board from liability to the extent of payments made  
 32 pursuant to such action; provided that the foregoing discharges shall not act to deprive the  
 33 surviving spouse of any rights to recover from any party other than the retirement system or the  
 34 board.

35  
 36  
 37 Section 30. Section 13-558 of the administrative code of the City of New York, as amended by L.  
 38 2004, ch. 447, § 1, is amended to read as follows:

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted  
 ESSA May 22, 2023



1 § 13-558. Retirement; options in which retirement allowances may be taken.

2  
3 a. A contributor may at any time file with such board his or her election to receive on retirement  
4 his or her benefits in a retirement allowance payable throughout life or to receive the actuarial  
5 equivalent of his or her annuity, his or her pension, or his or her retirement allowance in a lesser  
6 annuity, or a lesser pension, or a lesser retirement allowance, payable throughout life, with the  
7 provision that;

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

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

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

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

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

40 Option III. Upon his or her death, one-half of his or her annuity, his or her pension, or  
41 his or her retirement allowance, shall be continued throughout the life of and  
42 paid to such person as he or she shall nominate by written designation duly

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted  
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1 acknowledged and filed with such board.

2 Option IV. Some other benefit or benefits shall be paid either to the contributor or to  
3 such person or persons as he or she shall nominate, provided such other benefit  
4 or benefits together with such lesser annuity, or lesser pension, or lesser  
5 retirement allowance shall be certified by the actuary of such board to be of  
6 equivalent actuarial value and shall be approved by such board.

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

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

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

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  
41 lack of entitlement on which such adjudication is based.

1 (4) If no person to whom the retirement system is authorized to make payment in the  
 2 capacity of trustee, as provided for in paragraph three of this subdivision d,  
 3 claims the proceeds within eighteen months after the death of the retired  
 4 member, payment shall be made to the deceased retired member's estate and  
 5 such payment shall be a complete discharge to the retirement system to the  
 6 extent of the payment.

7 (a) 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 retired 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 d, the contributor  
 13 or 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;

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

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

37 f. Notwithstanding any other provision of this section to the contrary, a member's retirement  
 38 allowance shall be paid as Option III, with the spouse as the member's beneficiary, so that upon  
 39 his or her death, if the member has a surviving spouse who was married to the member on the date  
 40 the member filed his or her retirement application, or on the date the member filed his or her last

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1 effective option selection, if any, whichever is later, unless the member (a) elects that the surviving  
 2 spouse receive survivor benefit payments in amounts that are greater than the benefit payments  
 3 that would be paid to the surviving spouse under Option III, if the spouse were the member's  
 4 beneficiary; or (b) elects (in a manner that accords with this subdivision f) that the surviving spouse  
 5 receive either no survivor benefit payments or survivor benefit payments, in amounts that are  
 6 smaller than the benefit payments that would be paid to the surviving spouse under Option III, if  
 7 the spouse were the member's beneficiary, and:

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

10 (b) the surviving spouse's consent is on a plan form that sets forth:

11 (i) the amount of the Option III monthly benefit entitlements of the  
 12 member and of the spouse, if the spouse were the member's beneficiary,  
 13 and when the member and the surviving spouse would each be entitled  
 14 to those benefits;

15 (ii) a statement to the effect that (absent valid consent to the contrary)  
 16 the surviving spouse is entitled to survivor benefit payments in amounts  
 17 that are greater or equal to the amounts of the retirement allowance  
 18 payments that would be paid to the surviving spouse under Option III, if  
 19 the spouse were the member's beneficiary;

20 (iii) a statement to the effect that the surviving spouse has the right to  
 21 prevent any future member elections regarding the member's survivor  
 22 benefits without the surviving spouse's consent unless the consent of the  
 23 surviving spouse expressly permits member elections without any  
 24 further consent by the surviving spouse; and

25 (iv) the fact that consenting to the member's survivor benefit election  
 26 would result in the surviving spouse receiving no survivor benefits or  
 27 smaller survivor benefits than the surviving spouse would otherwise  
 28 receive under this subdivision;

29 (c) the consent includes an acknowledgement that the surviving spouse  
 30 understands that, absent the surviving spouse's consent to the member's  
 31 election, the surviving spouse would be entitled to be paid lifetime survivor  
 32 benefit payment amounts that are at least the amounts that would be paid to the  
 33 surviving spouse under Option III, if the spouse were the member's beneficiary,  
 34 and that the surviving spouse's consent would result in the elimination or  
 35 reduction of such survivor benefits;

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

38 (e) the system receives the completed consent and the member's election before  
 39 the date the member filed his or her retirement application, or the date the  
 40 member filed his or her last effective option selection, if any, whichever is later;

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

6 (4) it is established to the satisfaction of the retirement board of the system that the  
 7 surviving spouse could not have been located if the member had been willing  
 8 and able to exercise due diligence to locate the surviving spouse on the later of  
 9 the date the member's retirement application was filed with the retirement  
 10 system, or the date the member's last effective option selection was filed with  
 11 the retirement system; or

12 (5) there is no surviving spouse.

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

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

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

20 (2) determining that at least one of paragraphs two, three, four, or five of subdivision  
 21 f. of this section is true,

22 then (without implication as to what liability the retirement system and the board might have in  
 23 the absence of this subdivision h) such consent or determination shall be treated as valid for  
 24 purpose of discharging the retirement system and the board from liability to the extent of payments  
 25 made pursuant to such action; provided that the foregoing discharges shall not act to deprive the  
 26 surviving spouse of any rights to recover from any party other than the retirement system or the  
 27 board. The retirement system may recover the actuarial equivalent of such discharged payments,  
 28 computed using the plan's actuarial factors, from the surviving spouse with offsets against the  
 29 system's monthly annuity benefit payments to the surviving spouse payable under this section, but  
 30 may not thereby reduce any of those benefit payments by more than 10%.

31  
 32  
 33 Section 31. The provisions of this act shall be severable, and if any clause, sentence, paragraph,  
 34 subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to  
 35 be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be  
 36 confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof  
 37 directly involved in the controversy in which such judgment shall have been rendered.  
 38  
 39

1 Section 32. This act shall not change the law pertaining to any domestic relations order or a support  
 2 order. This act shall not change the law pertaining to a prenuptial agreement or a postnuptial  
 3 agreement executed on or before December 31 of the year immediately after the year the bill is  
 4 enacted.

5 This act shall take effect for all benefit payments beginning after December 31 of the year  
 6 immediately after the year the bill is enacted other than those payments made pursuant to a benefit  
 7 designation executed on or before December 31 of the year immediately after the year the bill is  
 8 enacted.

9  
 10

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 education law in relation to enacting the “Equity for Surviving Spouses Act,” which would which would amend the terms of the eight defined benefit public retirement plans for employees of the State of New York or New York localities, including the City of New York, to provide that: (1) a retired employee’s surviving spouse, if any, is entitled by default to the survivor portion of the joint and 50% survivor annuity form of the retiree’s retirement benefits; and (2) an employee’s surviving spouse, if any, is entitled by default to 50% of the employee’s lump sum death benefits. The surviving spouse could waive the right to receive payments at least equal to those he or she would receive under either of the defaults by executing and filing with the plan a written consent on a plan form. The amendment would enhance the protections for surviving spouses of New York public employees, recognize that marriage is an economic partnership, and encourage public employees and their spouses to prepare together for the eventualities of old age and death.

The amendment was developed in response to concerns raised about deficiencies in protections for surviving spouses of New York public employees and of former employees who are members of public employee retirement plans. While mourning, a member’s surviving spouse may be devastated to learn that they will not receive any survivor or death benefits; some, as a result, may spend the remainder of their lives in destitution. The spousal right of election, which applies to the member’s benefits from New York public employee retirement plans, is often of little utility because there may be no survivor benefits to elect against, and the surviving spouse may not learn of the death benefits in time to recover any benefits.

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted  
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There are three reasons that surviving spouses of members of public employee retirement plans are not adequately protected. First, a member's current default retirement benefit is a single life annuity benefit with no survivor benefits. Second, a member's surviving spouse may currently receive none of the member's death benefits. Third, a member's spouse may currently receive no notice of the member's form of retirement annuity benefit election, or of the beneficiary election for annuity or death benefits.

The amendment would remedy these deficiencies with three plan term changes. First, the default retirement annuity benefit for a member with a surviving spouse would become the joint and 50% survivor annuity, with the member's surviving spouse as beneficiary. Second, the default beneficiary of 50% of the death benefit for a member with a surviving spouse would become the member's surviving spouse. Third, the member would be unable to elect a retirement benefit or a death benefit that would provide the surviving spouse, if any, with smaller payments than those the surviving spouse would receive under either default benefit without the spouse's written consent.

The amendment would align New York State public employee retirement practice with that of the federal government, the District of Columbia, most states, and most private-employers, all of which similarly protect the surviving spouses of their employees. The legislation is modeled on the Retirement Equity Act of 1984's enhancement of the surviving spouse protections of the Employee Retirement Income Security Act of 1974 (ERISA). Forty years after surviving spouses of employees of private employers were afforded stronger equitable protections, the amendment would do the same for surviving spouses of New York public employees.

The surviving spouse's consent, like those used in the Retirement Equity Act of 1984, must be on a form that sets forth the surviving spouse's entitlement to the default benefit, and the consequences of consenting to an alternate form of benefit, or a different beneficiary. This consent must be executed on or 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. The consent for the annuity benefit must be filed with the plan on or before the date the retirement benefit election is finalized and for the death benefit on or before the date of death.

The amendment would not change the law pertaining to a domestic relations order or a support order. The amendment would govern all benefit payments beginning after December 31 of the year immediately after the year the amendment is enacted. The amendment would not affect payments made pursuant to an annuity or death benefit designation executed on or before such December 31. On the other hand, death benefit or retirement benefit applications executed after this date would be subject to the provisions of the amendment.

As is now the case for the spousal right of election, the amendment's surviving spouse protections would not require any minimum marriage period, and the surviving spouse survivor benefits would not be limited to those accrued during the member's marriage or to those accrued after the amendment's effective date. Furthermore, any individual who is not a surviving spouse for purposes of exercising the spousal right of election would not be a surviving spouse for purposes of the amendment.

The amendment would not affect the current plan benefit rules for New York public employees or



former New York public employees who are plan members who are not married on the later of the date the member files an application for retirement, or elects a form of retirement payment. Marriages occurring after these dates would not confer any surviving spouse rights under the amendment.

The amendment would affect the terms of the eight New York public employee retirement 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;
- 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:

#### Education Law § 512. Withdrawal and death benefits

This Section applies to members of the New York State Teachers' Retirement System who die prior to retirement. Under current law, the death benefit, including the accumulated member contributions, is payable to the member's designated beneficiary, or, in the absence of a designated beneficiary, the member's estate. Under current law, a member need not designate his or her spouse as a beneficiary for any portion of the member's death benefits. The measure adds subdivision i, which provides that the member's surviving spouse, if any, is entitled to at least half of the benefit payable under this Section, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent and be filed with the plan before the member's death. 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 with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 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 statutory reference describing who may be paid the member's benefits if the member dies before retiring, but has no beneficiary designation in effect, is updated. The current statute references Section 103-a of the decedent estate law, which was repealed effective September 1, 1967. Thus, the reference is replaced by one to the current counterpart, Section 1310 of the Surrogate's Court Procedure Act.

#### Education Law § 513. Optional allowances

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This Section sets forth the forms in which a member of the New York State Teachers' Retirement System may elect to receive his or her retirement allowance. Under current law, in the absence of an election, benefits are paid as a single life annuity. i.e., only for the life of the member. The member may, alternatively, elect an optional form of benefit that pays the member an actuarially reduced benefit, and, upon the death of the member, a lifetime survivor annuity to the member's designated beneficiary. Under current law, a member need not elect any option or designate his or her spouse as beneficiary. The measure adds subdivision five, which provides that the default benefits are paid pursuant to Option 3, so that upon the death of the member after retirement, the member's surviving spouse, if any, is entitled to lifetime survivor annuity payments that are at least 50% of the annuity payments made to the member under such option if the surviving spouse is the beneficiary, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. The consent must include an acknowledgment that the surviving spouse understands the consequences of waiving benefits payable under Option 3 and be filed with the plan on or before the date the member filed his or her retirement application, or on the date the member finalized his retirement benefit election. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or if 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 care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 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 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 discharged payments by reducing each of the surviving spouse's monthly lifetime annuity benefits by no more than 10%.

#### Retirement and Social Security Law § 51. Refunds and Withdrawals

This Section applies to members of the New York State and Local Employees' Retirement System who die prior to retirement. Under current law, the death benefit, including the accumulated member contributions, is payable to the member's designated beneficiary, or, in the absence of a designated beneficiary, the member's estate. Under current law, a member need not designate his or her spouse as a beneficiary for any portion of the member's death benefits. The measure adds subdivision f, which provides that the member's surviving spouse, if any, is entitled to a minimum death benefit of half of the benefit payable under this Section, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent and be filed with the plan before the member's death. 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 with the care, skill,

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prudence, and diligence under the circumstances then prevailing that a prudent person 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 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 statutory reference describing who may be paid the member's benefits if the member dies before retiring, but has no beneficiary designation in effect, is updated.

#### Retirement and Social Security Law § 60. Ordinary death benefit

This Section applies to members of the New York State and Local Employees' Retirement System who die while actively employed and prior to retirement. Under current law, 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 designated beneficiary, the member's estate. Under current law, a member need not designate his or her spouse as a beneficiary for any portion of the member's death benefits. The measure adds subdivision (g), which provides that the member's surviving spouse, if any, is entitled to a minimum death benefit of half of the benefit payable under this Section, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent and be filed with the plan before the member's death. 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 with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 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 statutory reference describing who may be paid the member's benefits if the member dies before retiring, but has no beneficiary designation in effect, is updated.

#### Retirement and Social Security Law § 60-c. Death benefit for vested members who die prior to retirement

This Section applies to members of the New York State and Local Employees' Retirement System who have at least ten years of credited service, who are not in active service, and who die prior to retirement. Under current law, 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 designated beneficiary, the member's estate. Under current law, a member need not designate his or her spouse as a beneficiary for any portion of the member's death benefits. The measure adds subdivision (d),

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which provides that the member's surviving spouse, if any, is entitled to a minimum death benefit of half of the benefit payable under this Section, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent and be filed with the plan before the member's death. 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 with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 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 statutory reference describing who may be paid the member's benefits if the member dies before retiring, but has no beneficiary designation in effect, is updated.

#### Retirement and Social Security Law § 90. Options

This Section sets forth the forms in which a member of the New York State and Local Employees' Retirement System may receive his or her retirement allowance. Under current law, in the absence of an election, benefits are paid as a single life annuity. i.e., only for the life of the member. The member may, alternatively, elect an optional form of benefit that pays the member an actuarially reduced benefit, and, upon the death of the member, a lifetime survivor annuity to the member's designated beneficiary. Under current law, a member need not elect any option or designate his or her spouse as beneficiary. The measure adds subdivision (f), which provides that the default benefits are paid pursuant to Option Three, so that upon the death of the member after retirement, the member's surviving spouse, if any, is entitled to lifetime survivor annuity payments that are at least 50% of the annuity payments made to the member under such option if the surviving spouse is the beneficiary, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. The consent must include an acknowledgment that the surviving spouse understands the consequences of waiving benefits payable under Option Three and be filed with the plan on or before the date the member finalized his or her retirement benefit election. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or if 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 care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 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 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

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payments pursuant to such action. Moreover, the board may recoup any such discharged payments by reducing each of the surviving spouse's monthly lifetime annuity benefits by no more than 10%. References in subdivisions aa. and cc to a designation being made in writing on a blank is replaced by a reference to a designation being made in writing on a form.

#### Retirement and Social Security Law § 351. Refunds and Withdrawals

This Section applies to members of the New York State and Local Police and Fire Retirement System who die prior to retirement. Under current law, the death benefit, including the accumulated member contributions, is payable to the member's designated beneficiary, or, in the absence of a designated beneficiary, the member's estate. Under current law, a member need not designate his or her spouse as a beneficiary for any portion of the member's death benefits. The measure adds subdivision (f), which provides that the member's surviving spouse, if any, is entitled to a minimum death benefit of half of the benefit payable under this Section, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent and be filed with the plan before the member's death. 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 with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 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 statutory reference describing who may be paid the member's benefits if the member dies before retiring, but has no beneficiary designation in effect, is updated.

#### Retirement and Social Security Law § 360. Ordinary death benefit

This Section applies to members of the New York State and Local Police and Fire Retirement System 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 designated beneficiary, the member's estate. A member is not currently required to designate his or her spouse as a beneficiary for any portion of the member's death benefit.

The measure adds subdivision (h), which provides that the member's surviving spouse, if any, is entitled to is entitled to a minimum death benefit of half of the benefit payable under this Section, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent and be filed with the plan before the member's death. 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 with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 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 statutory reference describing who may be paid the member's benefits if the member dies before retiring, but has no beneficiary designation in effect, is updated.

Retirement and Social Security Law § 360-c. Death benefit for vested members who die prior to retirement

This Section applies to members of the New York State and Local Police and Fire Retirement System who have at least ten years of credited service, who are not in active service, and who die prior to retirement. Under current law, 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 designated beneficiary, the member's estate. The measure adds subdivision (d), which provides that the member's surviving spouse, if any, is entitled to a minimum death benefit of half of the benefit payable under this Section, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent and be filed with the plan before the member's death. 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 with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 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 statutory reference describing who may be paid the member's benefits if the member dies before retiring, but has no beneficiary designation in effect, is updated.

Retirement and Social Security Law § 390. Options

This Section sets forth the forms in which a member of the New York State and Local Police and Fire Retirement System may receive his or her retirement allowance. Under current law, in the absence of an election, benefits are paid as a single life annuity. i.e., only for the life of the member. The member may, alternatively, elect an optional form of benefit that pays the member an actuarially reduced benefit, and, upon the death of the member, a lifetime survivor annuity to the member's designated beneficiary. Under current law, a member need not elect any option or

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designate his or her spouse as beneficiary. The measure adds subdivision (f), which provides that the default benefits are paid pursuant to Option Three, so that upon the death of the member after retirement, the member's surviving spouse, if any, is entitled to lifetime survivor annuity payments that are at least 50% of the annuity payments made to the member under such option if the surviving spouse is the beneficiary, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. The consent must include an acknowledgment that the surviving spouse understands the consequences of waiving benefits payable under Option Three and be filed with the plan on or before the date the member finalized his retirement benefit election. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or if 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 care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 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 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 discharged payments by reducing each of the surviving spouse's monthly lifetime annuity benefits by no more than 10%.

#### Retirement and Social Security Law § 448. Death benefits

This Section applies to members who joined a public employee 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. Under current law, 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 designated beneficiary, the member's estate. The measure adds subdivision (h), which provides that the member's surviving spouse, if any, is entitled to a minimum death benefit of half of the benefit payable under this Section, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent and be filed with the plan before the member's death. 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 with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 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

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statutory reference describing who may be paid the member's benefits if the member dies before retiring, but has no beneficiary designation in effect, is updated.

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 employee 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, under current law, 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 designated beneficiary, the member's estate. The measure adds subdivision (d), which provides that the member's surviving spouse, if any, is entitled to a minimum death benefit of half of the benefit payable under this Section, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent and be filed with the plan before the member's death. 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 with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 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 statutory reference describing who may be paid the member's benefits if the member dies before retiring, but has no beneficiary designation in effect, is updated.

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. Under current law, the death benefit, including the accumulated member contributions, is payable to the member's designated beneficiary, or, in the absence of a designated beneficiary, the member's estate. Under current law, a member need not designate his or her spouse as a beneficiary for any portion of the member's death benefits. The measure adds subdivision (g), which provides that the member's surviving spouse, if any, is entitled to a minimum death benefit of half of the benefit payable under this Section, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent and be filed with the plan before the member's death. 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

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be located between the time of the member's contrary election and the member's death. If the retirement board acts with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 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 statutory reference describing who may be paid the member's benefits if the member dies before retiring, but has no beneficiary designation in effect, is updated.

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 employee 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. Under current law, a death benefit is payable to the member's designated beneficiary, or, in the absence of a designated beneficiary, the member's estate. Under current law, a member need not designate his or her spouse as a beneficiary for any portion of the member's death benefits. The measure adds subdivision (d), which provides that the member's surviving spouse, if any, is entitled to a minimum death benefit of half of the benefit payable under this Section, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent and be filed with the plan before the member's death. 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 with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 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 statutory reference describing who may be paid the member's benefits if the member dies before retiring, but has no beneficiary designation in effect, is updated.

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. Under current law, in the absence of an election, benefits are paid as a single life annuity. i.e., only for the life of the member. The member may, alternatively, elect an optional form of benefit that pays the member an actuarially reduced benefit, and, upon the death of the member, a lifetime survivor

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annuity to the member's designated beneficiary. Under current law, a member need not elect any option or designate his or her spouse as beneficiary. The measure adds subdivision (e), which provides that the default benefits are paid pursuant to Option Two with fifty as the percent, so that upon the death of the member after retirement, the member's surviving spouse, if any, is entitled to lifetime survivor annuity payments that are at least 50% of the annuity payments made to the member under such option if the surviving spouse is the beneficiary, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. The consent must include an acknowledgment that the surviving spouse understands the consequences of waiving benefits payable under Option Two with fifty as the percent and be filed with the plan on or before the date the member finalized his retirement benefit election. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or if 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 care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 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 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 discharged payments by reducing each of the surviving spouse's monthly lifetime annuity benefits by no more than 10%.

#### 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. Under current law, the death benefit is payable to the member's designated beneficiary, or, in the absence of a designated beneficiary, the member's estate. Under current law, a member need not designate his or her spouse as a beneficiary for any portion of the member's death benefits. The measure adds subdivision (f), which provides that the member's surviving spouse, if any, is entitled to a minimum death benefit of half of the benefit payable under this Section, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent and be filed with the plan before the member's death. 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 with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 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

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retirement system and the board shall be discharged from liability to the extent of payments pursuant to such action. The statutory reference describing who may be paid the member's benefits if the member dies before retiring, but has no beneficiary designation in effect, is updated.

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 employee 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, under current law, 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 designated beneficiary, the member's estate. Under current law, a member need not designate his or her spouse as a beneficiary for any portion of the member's death benefits. The measure adds subdivision (d), which provides that the member's surviving spouse, if any, is entitled to is entitled to a minimum death benefit of half of the benefit payable under this Section, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent and be filed with the plan before the member's death. 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 with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 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 statutory reference describing who may be paid the member's benefits if the member dies before retiring, but has no beneficiary designation in effect, is updated. 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. Under current law, in the absence of an election, benefits are paid as a single life annuity. i.e., only for the life of the member. The member may, alternatively, elect an optional form of benefit that pays the member an actuarially reduced benefit, and, upon the death of the member, a lifetime survivor annuity to the member's designated beneficiary. Under current law, a member need not elect any option or designate his or her spouse as beneficiary. The measure adds subdivision (g), which provides that the default benefits are paid pursuant to Option two with fifty as the percent, so that upon the death of the member after retirement, the member's

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surviving spouse, if any, is entitled to lifetime survivor annuity payments that are at least 50% of the annuity payments made to the member under such option if the surviving spouse is the beneficiary, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. The consent must include an acknowledgment that the surviving spouse understands the consequences of waiving benefits payable under Option two with fifty as the percent and be filed with the plan on or before the date the member finalized his retirement benefit election. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or if 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 care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 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 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 discharged payments by reducing each of the surviving spouse's monthly lifetime annuity benefits by no more than 10%.

Retirement and Social Security Law § 657. Survivor's benefit for retired state employees

This Section provides that upon the death of a state employee who retired before June 30, 1974, a survivor's benefit, including the reserve-for-increased-take-home-pay, is payable under current law as a lump sum to the member's designated beneficiary, or, in the absence of a designated beneficiary, the member's estate. Under current law, a member need not designate his or her spouse as a beneficiary for any portion of the member's survivor's benefit. The measure adds subdivision twelve, which provides that the member's surviving spouse, if any, is entitled to a minimum death benefit of half of the benefit payable under this Section, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent and be filed with the plan before the member's death. 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 with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 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.

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

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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 contributions and the reserve-for-increased-take-home-pay, is payable under current law to the member's designated beneficiary, or, in the absence of a designated beneficiary, the member's estate. Under current law, a member need not designate his or her spouse as a beneficiary for any portion of the member's death benefits. The measure adds subdivision (d), which provides that the member's surviving spouse, if any, is entitled to a minimum death benefit of half of the benefit payable under this Section, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent and be filed with the plan before the member's death. 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 with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 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 statutory reference describing who may be paid the member's benefits if the member dies before retiring, but has no beneficiary designation in effect, is updated.

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. Under current law, in the absence of an election, benefits are paid as a single life annuity. i.e., only for the life of the member. The member may, alternatively, elect an optional form of benefit that pays the member an actuarially reduced benefit, and, upon the death of the member, a lifetime survivor annuity to the member's designated beneficiary. Under current law, a member need not elect any option or designate his or her spouse as beneficiary. The measure adds a paragraph one which provides that the default benefits are paid pursuant to Option 3, so that upon the death of the member after retirement, the member's surviving spouse, if any, is entitled to lifetime survivor annuity payments that are at least 50% of the annuity payments made to the member under such option if the surviving spouse is the beneficiary, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. The consent must include an acknowledgment that the surviving spouse understands the consequences of waiving benefits payable under Option 3 and be filed with the plan on or before the date the member finalized his retirement benefit election. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or if 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 care, skill, prudence, and diligence under the

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circumstances then prevailing that a prudent person 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 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 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 discharged payments by reducing each of the surviving spouse's monthly lifetime annuity benefits by no more than 10%.

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 contributions and the reserve-for-increased-take-home-pay, is payable under current law to the member's designated beneficiary, or, in the absence of a designated beneficiary, the member's estate. Under current law a member need not designate his or her spouse as a beneficiary for any portion of the member's death benefit. The measure adds subdivision e, which provides that the member's surviving spouse, if any, is entitled to a minimum death benefit of half of the benefit payable under this Section, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent and be filed with the plan before the member's death. 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 with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 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 statutory reference describing who may be paid the member's benefits if the member dies before retiring, but has no beneficiary designation in effect, is updated.

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. Under current law, in the absence of an election, benefits are paid as a single life annuity. i.e., only for the life of the member. The member may, alternatively, elect an optional form of benefit that pays the member an actuarially reduced benefit, and, upon the death of the member, a lifetime survivor annuity to the member's designated beneficiary. Under current law, a member need not elect any option or designate his or her spouse as beneficiary. The measure adds subdivision (c), which provides that the default benefits are paid

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pursuant to Option 3, so that upon the death of the member after retirement, the member's surviving spouse, if any, is entitled to lifetime survivor annuity payments that are at least 50% of the annuity payments made to the member under such option if the surviving spouse is the beneficiary, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. The consent must include an acknowledgment that the surviving spouse understands the consequences of waiving benefits payable under Option 3 and be filed with the plan on or before the date the member finalized his retirement benefit election. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or if 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 care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 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 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 discharged payments by reducing each of the surviving spouse's monthly lifetime annuity benefits by no more than 10%.

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, the accumulation for-increased-take-home-pay and the reserve-for-increased-take-home-pay is payable under current law to the member's designated beneficiary, or, in the absence of a designated beneficiary, the member's estate. Under current law, a member need not designate his or her spouse as a beneficiary for any portion of the member's death benefit. The measure adds subdivision (g), which provides that the member's surviving spouse, if any, is entitled to a minimum death benefit of half of the benefit payable under this Section, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent and be filed with the plan before the member's death. 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 with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 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 statutory reference describing who

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may be paid the member's benefits if the member dies before retiring, but has no beneficiary designation in effect, is updated.

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

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. Under current law, in the absence of an election, benefits are paid as a single life annuity. i.e., only for the life of the member. The member may, alternatively, elect an optional form of benefit that pays the member an actuarially reduced benefit, and, upon the death of the member, a lifetime survivor annuity to the member's designated beneficiary. Under current law, a member need not elect any option or designate his or her spouse as beneficiary. The measure adds subdivision e, which provides that the default benefits are paid pursuant to Option 3, so that upon the death of the member after retirement, the member's surviving spouse, if any, is entitled to lifetime survivor annuity payments that are at least 50% of the annuity payments made to the member under such option if the surviving spouse is the beneficiary, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. The consent must include an acknowledgment that the surviving spouse understands the consequences of waiving benefits payable under Option 3 and be filed with the plan on or before the date the member finalized his retirement benefit election. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or if 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 care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 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 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 discharged payments by reducing each of the surviving spouse's monthly lifetime annuity benefits by no more than 10%.

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. Under current law, in the absence of an election, benefits are paid as a single life annuity. i.e., only for the life of the member. The member may, alternatively, elect an optional form of benefit that pays the member an actuarially reduced benefit, and, upon the death of the member, a lifetime survivor annuity to the member's designated beneficiary. Under current law, a member need not elect any option or designate his or her spouse as beneficiary. The measure adds subdivision (f), which provides that

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the default benefits are paid pursuant to Option 3, so that upon the death of the member after retirement, the member's surviving spouse, if any, is entitled to lifetime survivor annuity payments that are at least 50% of the annuity payments made to the member under such option if the surviving spouse is the beneficiary, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. The consent must include an acknowledgment that the surviving spouse understands the consequences of waiving benefits payable under Option 3 and be filed with the plan on or before the date the member finalized his retirement benefit election. 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 if 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 care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 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 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 discharged payments by reducing each of the surviving spouse's monthly lifetime annuity benefits by no more than 10%.

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 are payable under current law to the member's designated beneficiary, or, in the absence of a designated beneficiary, the member's estate. Under current law, a member need not designate his or her spouse as a beneficiary for any portion of the member's death benefit. The measure adds subdivision (d), which provides that the member's surviving spouse, if any, is entitled to a minimum death benefit of half of the benefit payable under this Section, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent and be filed with the plan before the member's death. 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 with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 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 statutory reference

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describing who may be paid the member's benefits if the member dies before retiring, but has no beneficiary designation in effect, is updated.

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 under current law to the member's designated beneficiary, or, in the absence of a designated beneficiary, the member's estate. Under current law, a member need not designate his or her spouse as a beneficiary for any portion of the member's death benefit. 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 a minimum death benefit of half of the benefit payable under this Section, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent and be filed with the plan before the member's death. 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 with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 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 statutory reference describing who may be paid the member's benefits if the member dies before retiring, but has no beneficiary designation in effect, is updated.

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. Under current law, in the absence of an election, benefits are paid as a single life annuity. i.e., only for the life of the member. The member may, alternatively, elect an optional form of benefit that pays the member an actuarially reduced benefit, and, upon the death of the member, a lifetime survivor annuity to the member's designated beneficiary. Under current law, a member need not elect any option or designate his or her spouse as beneficiary. Under current law, a member need not elect any option or designate his or her spouse as beneficiary. The measure adds subdivision (f), which provides that the default benefits are paid pursuant to Option III, so that upon the death of the member after retirement, the member's surviving spouse, if any, is entitled to lifetime survivor annuity payments that are at least 50% of the annuity payments made to the member under such option if the surviving spouse

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is the beneficiary, unless the surviving spouse otherwise consented by signing a written consent on a plan form before a notary public or plan representative. The consent must include an acknowledgment that the surviving spouse understands the consequences of waiving benefits payable under Option III and be filed with the plan on or before the date the member finalized his retirement benefit election. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or if 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 care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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 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 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 discharged payments by reducing each of the surviving spouse's monthly lifetime annuity benefits by no more than 10%.

#### 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.

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 requisite procedures constitute a significant plan burden.

For ordinary death benefits, the benefit form of payment will not change. 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 plan's cost of those benefits.

For annuity benefits, the benefit form of payment may change. 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 beneficiaries who are the member's surviving spouse. N.Y. RETIRE. & SOC. SEC. L. §§ 78-a, 378-a, and N. Y. EDUC. L. § 532. This

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speculative cost increase would result from the bill achieving its equitable goal of improving the access of a public employee's surviving spouse to the employee's 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.

**SCOPE OF COVERAGE, EFFECTIVE DATE, AND SEVERABILITY:**

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 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 on or before December 31 of the year immediately after the year the bill is enacted. The bill includes a severability section.



# Explaining ESSA: A Proposal To Protect the Surviving Spouses of New York Public Employees

By Albert Feuer and Anna Masilela



In New York, surviving spouses are protected by the right of election. But the surviving spouses of New York public employees are not always so protected, as there is an unjust and avoidable flaw in those protections. The widow of a retired New York City public employee learned of this flaw firsthand upon the death of her husband who had worked for the city for 20 years and was receiving a monthly pension after he retired. Soon after burying her late husband after 50 years of marriage, the widow was abruptly informed that she would receive no plan survivor benefits. The right of election was of no help, as there was nothing to elect against. As a result, the widow was impoverished, lost her home, and was forced to seek public assistance.

The proposed Equity for Surviving Spouses Act (ESSA) fixes the unjust flaw with a tried-and-true approach that has been protecting the spouses of 100 million private employees, and of three million civilian and military federal employees.

## New York Right of Election

Under New York law, a decedent's surviving spouse generally has the right to elect to obtain a minimum portion of the value of the property owned by the decedent at the time of death. As a rule, absent a surviving spouse's waiver of these rights, the surviving spouse is entitled to the greater of \$50,000 or one-third of the value of the prop-

erty subject to election.<sup>1</sup> The property subject to election includes the decedent's employer retirement plan benefits.<sup>2</sup> The elective share is an amount calculated on the basis of the value of the decedent's elective estate assets rather than a fraction of each of the decedent's assets.<sup>3</sup>

In particular, the surviving spouse of a New York public employee whose only asset was the employee's death benefit from a retirement plan, may elect to receive one-third of the value of such asset, if one-third of the benefit exceeds the \$50,000 right of election minimum threshold. If one-third of the benefit does not exceed \$50,000, the surviving spouse may elect to receive \$50,000 or the entire benefit, whichever is smaller. For example, if the death benefit were \$300,000, the surviving spouse may elect to receive \$100,000, and if it were \$90,000, the surviving spouse may elect to receive \$50,000, and if it were \$30,000, the surviving spouse may elect to receive the entire \$30,000. Similarly, the surviving spouse of a New York public employee whose only asset was the employee's survivor annuity benefits from such a plan may elect to receive one-third of the value of such annuity benefits if one-third of the benefit exceeds the \$50,000 right of election minimum threshold. If one-third of the benefit does not exceed \$50,000, the surviving spouse may elect to receive \$50,000 or the entire benefit, whichever is smaller. When the retirement benefit

is a single-life annuity, there are no survivor benefits, and nothing to elect against.

### **Three Simple Changes Would Protect Surviving Spouses**

ESSA would protect surviving spouses with three simple changes to the terms of the eight New York public employee retirement plans that provide annuity benefits. These changes would provide a surviving spouse of a participant in any of those plans with a minimum annuity benefit and a minimum death benefit.

First, ESSA would change the plans' default retirement benefit to a joint and 50% survivor benefit with the surviving spouse as the beneficiary. Each of the eight New York public employee retirement plans currently permit their plan participants to choose a joint and 50% survivor benefit.

Second, ESSA would only permit a participant to elect a smaller benefit payment to the surviving spouse if the surviving spouse consents to such election in writing on a plan form that explains the effect of such consent, including the precise benefit being waived. Thus, no spousal consent would be needed if the participant elects a joint and 100% survivor annuity with the spouse as the beneficiary, in which the survivor annuity payments are the same as the participant's annuity payments, because the surviving spouse would get more than under the joint and 50% survivor benefit.

Third, ESSA would entitle the surviving spouse to at least half the death benefit, absent the surviving spouse's written consent.

This would prevent a recurrence of the widow's devastating tragedy, as well as the lesser tragedy of a surviving spouse of a retired New York public employee, who, soon after the retiree's funeral, is informed that the surviving spouse must retrench financially because there will be no further pension benefits.

### **ESSA's Three Simple Changes Are Part of a Tried-and-True Approach**

ESSA's three simple changes are part of a tried-and-true approach that has been used for almost 40 years by private pension plans subject to the Retirement Equity Act of 1984 (REACT). Those plans now have almost 100 million active participants, i.e., participants who are not yet collecting plan benefits. This approach has also been used for more than 40 years by the federal employee pension plans, which now have more than three million active participants.

## **The Eight New York Public Employee Retirement Plans**

The eight New York public employee retirement plans consist of two groups of plans that cover different public employees.

First are the three plans for state employees and employees of localities other than New York City, which together had almost a million active participants at the end of June 2022:

1. New York State and Local Retirement System;
2. New York State and Local Police and Fire Retirement System; and
3. New York State Teachers' Retirement System.

Second are the five plans that pertain only to employees of New York City, which together had almost a half-million active participants at the end of June 2022:

1. New York City Employees' Retirement System;
2. New York City Fire Pension Fund;
3. New York City Board of Education Retirement System;
4. New York City Police Pension Fund; and
5. Teachers' Retirement System of the City of New York.

### **What Is the Current Default Retirement Benefit?**

The default retirement benefit for each of the eight New York public employee retirement plans is a single-life annuity, in which the monthly annuity benefit payments begin after the participant files a retirement application and end with the death of the participant. Under such benefit option no one is entitled to any survivor benefits. ESSA would protect surviving spouses by changing the default to a joint and 50% survivor annuity.

### **May a Participant Currently Choose a Retirement Benefit With Survivor Benefits?**

The participant may do so by completing and filing a plan benefit option form. The participant may choose any single individual beneficiary, who may, but need not, be the participant's surviving spouse. ESSA would build upon the current benefit options, which allow participants to choose joint and survivor benefits.

## **What Is the Effect on the Participant's Annuity Payments if the Participant Chooses a Benefit Option With Survivor Benefits for the Surviving Spouse?**

If a plan participant chooses a benefit option with survivor benefits, then the participant's annuity payments would usually decrease by less than 10-15%. This reduction would be affected by the difference between the ages of the participant and the spouse. For example, a participant who is entitled to monthly payments of \$2,000 as a single-life annuity, could be entitled to monthly payments of \$1,800, if the participant chose a joint and 50% survivor annuity. The surviving spouse would receive a monthly lifetime annuity of \$900, i.e., one-half of the reduced benefit paid to the participant. ESSA would insure that the participant's surviving spouse would get annuity benefit payments at least this large.

## **Would ESSA Permit Participants To Choose a Pop-Up Benefit?**

ESSA would permit participants to choose a pop-up benefit, but would require spousal consent because the surviving spouse's annuity payments would be less than the amounts payable under the joint and 50% survivor option. Each of the eight New York public employee retirement plans currently offers "pop-up" joint and 50% survivor options. A pop-up benefit permits the participant to provide the beneficiary with survivor benefits and permits the participant to obtain the maximum benefit if the beneficiary predeceases the participant. For example, a participant who is entitled to monthly payments of \$2,000 with the single-life annuity option, and \$1,800 with the joint and 50% survivor annuity option, could be entitled to \$1,700 with the pop-up joint and 50% survivor annuity option. For the pop-up option, if the spouse survives the participant, the spouse would be entitled to \$850 payments. If, however, the participant survives the spouse, the participant would be entitled to \$2,000 payments as of the passing of the spouse.

## **Do the Eight New York Public Employee Retirement Plans Pay Death Benefits?**

Each of the eight New York public employee retirement plans pays death benefits if a participant in a plan dies before beginning to receive retirement benefits. Those benefits are generally paid as a lump-sum, other than accidental death benefits, which are always payable as annuities to the surviving spouse, if any. The current default beneficiary for death benefits other than accidental death benefits is the participant's estate. The participant may complete and file a plan form to choose any person or persons to receive death benefits other than accidental-death benefits.

The eight New York public employee retirement plans each provide accidental (line-of-duty) death benefits, payable to beneficiaries of participants who die as a natural and proximate result of an accident sustained in the performance of duty. These benefits, unlike other death benefits, are not generally paid as lump sums, but as periodic annuity payments, whose annual amounts generally are 50% of the participant's final annual salary.

Participants do not choose their accidental death benefit beneficiaries. Instead, statutes set forth successive "statutory beneficiaries." First priority is always given to the participant's surviving spouse, if any, who is entitled to the benefit payments as long as the surviving spouse stays alive and unmarried. Second priority is always given to the participant's surviving minor children, if any, until they reach age 18.

New York State provided special COVID accidental-death benefits for public employees who contracted COVID and died within a brief period after reporting for work and used the same statutory beneficiaries.<sup>4</sup> These COVID accidental death beneficiaries were paid to the same statutory beneficiaries as all other accidental-death benefits.

ESSA would protect surviving spouses by providing that, absent a spousal consent, at least half of the death benefits, other than accidental death benefits, is payable to the surviving spouse. ESSA does not address accidental death benefits because they are payable to surviving spouses, if any.

## **Will ESSA Be Retroactive?**

There would be a transition period between the date of enactment and ESSA's effective date.

## **What Is the ESSA Effective Date?**

ESSA would be effective on January 1 of the second year immediately after the year the ESSA bill is enacted.

## **How Long Would the ESSA Transition Period Be?**

ESSA provisions would govern all benefit designations executed after December 31 of the year immediately after the year the ESSA bill is enacted. ESSA would not affect payments made pursuant to a benefit designation executed on or before such December 31.

Thus, marriages solemnized after the appropriate December 31 would not affect death benefit designations executed on or before the same December 31. For example, a designation of the participant's sibling before the same December 31 would remain effective whether the partici-

pant marries the participant's surviving spouse before such designation, at the time of the designation, or after the designation.

On the other hand, death benefit or retirement benefit applications executed after the same December 31 would be subject to the ESSA provisions. The participant's spouse would have the right to the ESSA minimum surviving spouse annuity or death benefits in such cases, absent a spousal valid consent to the contrary.

### **Would ESSA Affect Individuals Who Are Receiving Plan Benefits Before the ESSA Effective Date?**

ESSA would not affect individuals receiving plan benefits before the ESSA effective date. If they chose to receive monthly retirement benefits that would end when they pass away, those benefit payments would not be changed, and there would be no survivor benefits.

### **How Would ESSA Affect the Equitable Distribution Rules that Govern Marital Dissolutions and Separations?**

ESSA would not change the law pertaining to the rights of a public employee's divorced or separated spouse to an equitable portion of the employee's retirement benefits under the New York equitable distribution rules.

The Court of Appeals held unanimously in *Majauskas v. Majauskas* that courts may issue domestic relations orders that may, but need not, allocate a portion of the participant's retirement benefits from a New York public employee retirement plan to the former spouse.<sup>5</sup> In particular, the court allocated part of the participant's lifetime benefits to the former spouse.

### **Would ESSA Change the Law Pertaining to a Domestic Relations Order or a Support Order?**

ESSA would not change the law pertaining to a domestic relations order or a support order. This is because ESSA would only affect the plan terms. Domestic relations orders and support orders may override participant lifetime payment entitlements under the terms of a New York public employee retirement plan as in *Majauskas*. This implies that these orders may also override a participant's beneficiary designations and/or benefit option elections under the terms of the plan. Moreover, ESSA explicitly declares that it shall not change the law pertaining to a domestic relations order or a support order.

### **Would ESSA Change the Law Pertaining to Separation Agreements?**

ESSA would not change the law pertaining to separation agreements. The Court of Appeals held unanimously that separation agreements may overrule beneficiary designations that participants had made pursuant to the terms of a New York public employee retirement plan.<sup>6</sup>

### **Is There a Minimum Marriage Period for a Participant's Surviving Spouse To Have ESSA Rights to Minimum Annuity Benefits?**

The surviving spouse is entitled to the ESSA minimum annuity benefits, absent a valid consent to the contrary by the surviving spouse, regardless of the length of the marriage. ESSA incorporates the EPTL 5-1.1-A right of election marriage rules. Those rules impose no minimum marriage requirements for a surviving spouse to have the right to elect to obtain a share of the participant's elective estate.

### **On What Date Is Marital Status Determined for the Participant's Surviving Spouse To Have ESSA Right to Minimum Retirement Annuity Benefits?**

The participant's marital status is determined for purposes of ESSA rights to minimum retirement annuity benefits on the date the participant filed his or her retirement application, or on the date the participant filed his or her last effective option selection, whichever is later. ESSA disregards changes in marital status between such time and the time of the participant's death.

### **Does a Participant's Marriage After the Plan Retirement Benefits Have Begun To Be Paid Give the Participant's New Spouse Any ESSA Rights to Annuity Survivor Benefits?**

The new spouse would have no ESSA surviving spouse rights. Generally, once retirement benefits commence, the option elected and the beneficiary, if any, designated become irrevocable under the plan terms. ESSA would not change this rule.

### **Is There a Minimum Marriage Period for a Participant's Surviving Spouse To Have ESSA Rights to Death Benefits?**

The participant's surviving spouse is entitled to at least half of the participant's death benefit, absent a valid consent to the contrary by the surviving spouse, regardless of the length of the marriage. ESSA incorporates the EPTL 5-1.1-A right of election marriage rules. Those rules impose no minimum marriage requirements for a surviving

spouse to have the right to elect to obtain a share of the participant's elective estate.

### **On What Date Is Marital Status Determined for the Participant's Surviving Spouse To Have ESSA Right to Minimum Death Benefits?**

The participant's marital status is determined for purposes of ESSA rights to minimum death benefits on the date the participant dies.

### **If a Participant's Spouse Abandons the Participant, Would the Spouse Have Any ESSA Surviving Spouse Rights?**

Such a spouse would have no ESSA surviving spouse rights. ESSA incorporates each of the equitable spousal disqualification rules of EPTL 5-1.2 that are part of the right of election rules. These rules include disqualification for abandonment that continues until the plan participant's death.

### **If a Participant Cannot Locate His Spouse Would the Spouse Have Any ESSA Surviving Spouse Rights?**

Such a spouse would have no ESSA surviving spouse rights. ESSA incorporates the REACT spousal disqualification rule that if a surviving spouse could not have been located, the surviving spouse has no ESSA rights. For ESSA purposes not located means could not have been located by the member if the member had been willing and able to exercise due diligence. This is an equitable expansion of the right of election spousal disqualification rules.

### **How Would ESSA Treat Prenuptial or Postnuptial Agreements?**

ESSA would not affect prenuptial and postnuptial agreements executed on or before the December 31 immediately following the enactment of ESSA, i.e., before the ESSA effective date.

Prenuptial and postnuptial agreements executed on or after the ESSA effective date would not affect the surviving spouse rights to annuity benefits or death benefits from any of the eight New York public employee retirement plans. On or after such date, surviving spouses would only be able to waive their ESSA rights to annuity benefits or death benefits from any of the eight New York public employee retirement plans by executing a plan form that describes the precise benefit being waived, the right to the benefit, and that contains an acknowledgement that the spouse understands the ESSA spousal benefit entitlement that the spouse is consenting to waive.

### **Would ESSA Use the Prudent Person of Care Standard to Determine if the Fiduciaries of the Eight New York Public Employee Retirement Plans Comply With Their ESSA Obligations?**

ESSA would determine the compliance of fiduciaries of the eight New York public employee retirement plans with their ESSA obligations, such as determining the need for a participant's surviving spouse to consent to a waiver of the surviving spouse's ESSA rights, by applying the same prudent person of care standard that governs the investment duties of the fiduciaries of each of the eight New York public employee retirement plans.<sup>7</sup>

### **Would ESSA Violate the New York State Constitution?**

ESSA would not violate the state constitution prohibition on the diminishment of benefits from New York public employee retirement plans. The Court of Appeals in *Majauskas* ruled unanimously that the provision in question, Section 7 of Article V of the New York State Constitution (adopted at the 1938 Constitutional Convention during the Great Depression), was intended to prevent any reduction in the value of the benefit distributions that a public employee retirement plan is required to make.<sup>8</sup> Thus, the provision did not preclude the diversion of a portion of the participant's lifetime benefit payments to the participant's former spouse under a domestic relations order. This implies that the provision does not preclude the ESSA requirements pertaining to whether the participant's surviving spouse is entitled to any of the participant's death benefits or survivor benefits.

### **Would ESSA Impose Undue Administrative Costs on Any of Eight New York Public Employee Retirement Plans?**

The ESSA rules would not impose undue administrative costs on any of those plans. A pension actuary reviewed two of the eight New York public employee retirement plans and found that ESSA would not materially affect the contribution obligation of the sponsors of those plans or the value of the benefits provided by those plans. There is no indication that the federal government, which has more than twice as many active participants than do all the eight New York public employee retirement plans in concert and has been applying similar rules to that of ESSA for more than 40 years, has found that the rules pose an undue administrative burden. Nor is there any indication that private employers, with approximately 100 million active participants, dealing with similar rules for almost 40 years, have found that the rules pose an undue administrative burden. Thus, it is reasonable to conclude that none of the eight New York public employee retirement plans

would find that ESSA would pose an undue administrative burden.

### Would ESSA Unduly Limit the Control of New York Employees Over Their Benefits?

ESSA would not unduly limit the control of New York public employees over their retirement plan benefits. New York laws apply equitable principles to those benefits. Individualized equitable principles are used by the equitable distribution rules to determine entitlements to a public employee's retirement benefits, including the survivor annuity benefits and the death benefits, on a marital dissolution or separation. General equitable principles are used to determine accidental death benefit beneficiaries. General equitable principles are used by the right of election rules and ESSA to determine entitlements to a deceased public employee's retirement plan benefits, including the participant's survivor annuity benefits and death benefits.

### Are the Eight New York Public Employee Retirement Plans Outliers by Failing To Provide Surviving Spouse Protections?

By failing to provide any surviving spouse protections, the eight New York public employee retirement plans are outliers.

Of the 50 states, 43 have public employee retirement plans that make the surviving spouse, if any, the beneficiary for either a lump-sum death benefit or a survivor annuity by law or require the spouse's consent to the participant's election of a less valuable benefit or designation of another person as beneficiary.

Four other states have plans that either make the spouse the default beneficiary, but do not require any spousal consent to the change in such beneficiary or provide notice to the spouse of the participant's election or designation of another person as the beneficiary.

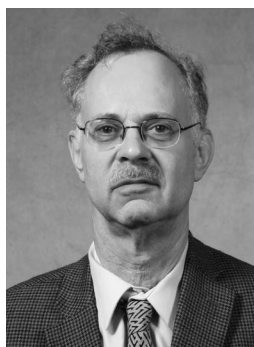
New York, Tennessee, and Alabama are the only states with no public retirement plans that provide any of these protections.

### Conclusion

ESSA would remedy an unjust flaw in surviving spouse protections by adopting a tried-and-true approach used for approximately 40 years by private and federal retirement plans with more than 100 million active plan participants. ESSA would enhance protections for surviving spouses of New York public employees.

### Endnotes

- 1 Estates Powers and Trusts Law (EPTL) 5-1.1-A(a).
- 2 See EPTL 5-1.1-A(b)(G).
- 3 See EPTL 5-1.1-A(a)(2).
- 4 See 2020 N.Y. Laws ch. 89.
- 5 See 61 N.Y.2d 481, at 493 (1984).
- 6 See *Kaplan v. Kaplan*, 82 N.Y.2d 300 (1993).
- 7 Retire & Soc. Sec. § 177.9(b).
- 8 See 61 N.Y.2d, at 493.



**Albert Feuer** is the principal of the Law Offices of Albert Feuer and chair of the Life Insurance and Employee Benefits Committee of the NYSBA Trusts and Estates Law Section.



**Anna Masilela** is an attorney at Schotter, Millican LLP and vice-chair of the Life Insurance and Employee Benefits Committee of the NYSBA Trusts and Estates Law Section.

The authors would like to thank the members of the Life Insurance and Employee Benefits Committee, whose immense efforts made ESSA possible.

\*The views and opinions expressed in this article are those of the authors and do not necessarily reflect the views and opinions of any entities they represent.

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October 24, 2023

TO: Members of the Executive Committee

FROM: NYSBA Committee on Legal Aid

RE: COLA comment in support of Trusts and Estates Law Sections Affirmative  
Legislative Proposal – New York State Equity for Surviving Spouses Act

The Committee on Legal Aid (COLA) would like to co-sponsor the Trusts and Estates Law Sections Affirmative Legislative Proposal – New York State Equity for Surviving Spouses Act. As representatives of legal services programs that represent persons living in economic hardship, we often see the results of this inequity. At present, surviving spouses can be left completely unaware that their spouse chose a single-life annuity, which leaves the surviving spouse without any pension income upon the death of the employee. The consequences of this decision are horrific, often throwing what was a middle-class household into one of poverty. For all the above reasons, and those outlined in the memo by the New York State Bar Trusts & Estates Law Section, we lend our support to this bill.

**New York State Bar Association**  
*Committee on Diversity, Equity, and Inclusion*

October 3, 2023

Albert Feuer  
Chair, Life Insurance and Employee Benefits Committee  
New York State Bar Association Trusts & Estates Law Section  
Law Offices of Albert Feuer  
110-45 71<sup>st</sup> Road #7M  
Forest Hills, New York 11375  
afeuer@aya.yale.edu

Dear Mr. Feuer:

The Association's Committee on Diversity, Equity, and Inclusion (the "Committee on DEI") has reviewed the Equity for Surviving Spouses Act ("ESSA") legislative proposal (the "ESSA Proposal") of the Association's Trusts & Estates Law Section, Life Insurance and Employee Benefits Committee (the "LIEB Committee"). Our comments on the ESSA Proposal of the LIEB Committee are as follows:

- **We Support the ESSA Proposal.**

We commend the LIEB Committee on its thoughtful and thorough legislative proposal, as well as the Committee's commitment to ensuring access to survivor benefits in New York State. We support the ESSA Proposal, including its stated goal of remedying inequalities in protections for the surviving spouses of New York public sector retirees.

Ensuring that spouses have access to survivor benefits is critical for many New York State families, and will support the economic stability of those impacted. Although this is true generally, it is particularly true in instances of large wage gaps between spouses, as well as for spouses who identify as women. Notably, a 2023 report from the New York State Department of Labor<sup>1</sup> found that in 2021, New Yorkers who identify as women earned only 88.2 cents for every dollar earned by those who identify as men, and that this wage gap can be found at every wage level and across a multitude of industries and occupations. This unconscionable disparity is even more significant for those with intersectional identities; for example, Black or African American women earn only 67.8 cents on the dollar and Hispanic or Latina women earn only 62.9 cents on the dollar. Ensuring that the surviving spouses of New York public sector retirees have access to survivor benefits offers couples and families an opportunity for economic stability in the face of the loss of a loved one, particularly in instances where wage disparities between spouses would result in an even more substantial financial loss to the surviving spouse.

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<sup>1</sup> See N.Y. ST. DEP'T OF LAB., THE GENDER PAY GAP IN THE PANDEMIC ERA (Mar. 14, 2023), <https://nysdolreports.com/gwg/2023-gwgreport/>.

Access to survivor benefits is also critically important for LGBTQ+ individuals who are married, as LGBTQ+ people also experience a substantial wage gap, resulting in the lack of survivor benefits having the capability to economically destabilize these couples and families. A recent study by the Human Rights Campaign<sup>2</sup> found that workers in the United States who identify as LGBTQ+ earn only about 90 cents for every dollar earned by non-LGBTQ+ workers. The wage gap experienced by LGBTQ+ folks is further exacerbated for those with intersectional identities. For example, LGBTQ+ Black workers earn only 80 cents for every dollar, LGBTQ+ Native American workers earn only 70 cents for every dollar, transgender men and women earn only 70 and 60 cents for every dollar respectively, and non-binary, genderqueer, genderfluid, and two-spirit workers earn only 70 cents for every dollar. By remedying the inequalities in protections for the surviving spouses of New York public sector retirees, we work towards a goal of helping spouses and families, including those who already experience disparities in income and wages, maintain economic stability.

- **We Recommend Revisions to Reflect Gender Neutral Language.**

A review of the ESSA Proposal shows that there are various portions of the proposal—including the proposed legal amendments and explanatory narrative—use gendered terms and language, including, but not limited to, his and her. We would recommend revising the language in the ESSA Proposal to use gender neutral language in place of gendered language, in order to ensure that the ESSA Proposal reflects the gender identities and pronouns of all New Yorkers affected.

The Committee thanks the LIEB Committee for its work on this legislative proposal, and remains willing to collaborate with the LIEB Committee and the Trusts & Estates Section on this matter and others.

Signed,

Nihla Sikkander and Dena DeFazio on behalf of the New York State Bar Association's Committee on Diversity, Equity and Inclusion

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<sup>2</sup> See HUM. RIGHTS CAMPAIGN, THE WAGE GAP AMONG LGBTQ+ WORKERS IN THE UNITED STATES (2023), <https://www.hrc.org/resources/the-wage-gap-among-lgbtq-workers-in-the-united-states>.

**From:** [Robert Brown](mailto:Robert.Brown@robertbrownlaw.com)  
**To:** [mschwartz@daypitney.com](mailto:mschwartz@daypitney.com); [Richards, Thomas](mailto:Richards.Thomas@nysba.org)  
**Cc:** [albertfeuer@verizon.net](mailto:albertfeuer@verizon.net)  
**Subject:** FW: Equity for Surviving Spouses Act (ESSA)  
**Date:** Friday, August 18, 2023 4:32:47 PM

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I am happy to report that the GP Section supports the proposal.

**Robert E. Brown, Esq.**  
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**From:** albertfeuer@verizon.net <albertfeuer@verizon.net>  
**Sent:** Thursday, August 17, 2023 10:31 PM  
**To:** Robert Brown <rbrown@robertbrownlaw.com>  
**Cc:** 'Tortora, Kate' <ktortora@nysba.org>; attorney@mampc.net; 'Tamara Kenworthy' <tkenworthy@kenwortheylaw.com>  
**Subject:** RE: Equity for Surviving Spouses Act (ESSA)

Dear Mr. Brown,

That is excellent news. Thanks for the efforts. Please send a confirmation to my Section Chair, Michael S. Schwartz ([mschwartz@daypitney.com](mailto:mschwartz@daypitney.com)) and to Thomas Richards, the NYSBA Deputy Counsel at [trichards@nysba.org](mailto:trichards@nysba.org), so they can add this to their records.

Enjoy the weekend,

Best wishes,

Albert

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**From:** Robert Brown <[rbrown@robertbrownlaw.com](mailto:rbrown@robertbrownlaw.com)>  
**Sent:** Thursday, August 17, 2023 6:53 PM

**albertfeuer@verizon.net**

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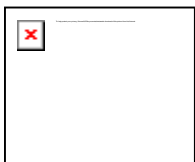
**From:** Fern Finkel <ffinkel@ffelderlaw.com>  
**Sent:** Friday, October 27, 2023 3:13 PM  
**To:** albertfeuer@verizon.net  
**Cc:** Michael S. Schwartz  
**Subject:** Re: Elder Law and Special Needs Section Reapproval of the Equity for Surviving Spouses Act (ESSA)

Hello Albert:

The Elder Law and Special Needs Section supports the Equity for Surviving Spouses Act (ESSA), as previously approved by the Section, and as amended in June.

Very truly yours,  
Fern J. Finkel  
Chair, NYSBA ELSN

**Fern J. Finkel, Esq.**  
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On Thu, Oct 26, 2023 at 3:00 PM <[albertfeuer@verizon.net](mailto:albertfeuer@verizon.net)> wrote:

Dear Fern,

We have received formal confirmations from each of the other NYSBA Sections and Committees that like the Elder Law and Special Needs Section have decided to support ESSA. If your Section prefers to prepare more than a simple email of support feel free to do so, but I would prefer to go forward at this time with the simple email and then later submit the report.

Thank you again for helping persuade your Section to support ESSA.

Best wishes,

Albert

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**From:** [albertfeuer@verizon.net](mailto:albertfeuer@verizon.net) <[albertfeuer@verizon.net](mailto:albertfeuer@verizon.net)>  
**Sent:** Tuesday, October 24, 2023 4:19 PM  
**To:** '[ffinkel@ffelderlaw.com](mailto:ffinkel@ffelderlaw.com)' <[ffinkel@ffelderlaw.com](mailto:ffinkel@ffelderlaw.com)>  
**Cc:** Michael S. Schwartz ([mschwartz@daypitney.com](mailto:mschwartz@daypitney.com)) <[mschwartz@daypitney.com](mailto:mschwartz@daypitney.com)>  
**Subject:** Elder Law and Special Needs Section Reapproval of the Equity for Surviving Spouses Act (ESSA)

Dear Fern,

I trust you enjoyed the return to normal life after the conclusion last week of the Elder Law and Special Needs Section fall meeting. I understand that the executive committee reapproved ESSA. Please send me confirmation of this approval, which can be in the form of an email addressed to me and my section chair Michael Schwartz at [mschwartz@daypitney.com](mailto:mschwartz@daypitney.com) or in a memo. I would like confirmation before the end of the week, so that I may complete the filing of the formal ESSA report to the House of Delegates.

Best wishes,

Albert





# NEW YORK STATE BAR ASSOCIATION

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## LOCAL AND STATE GOVERNMENT LAW SECTION

October 3, 2023

New York State Bar Association Executive Committee  
c/o Reports Group

**Via Email Only**

Attention: Greg Arenson, Liaison, Local and State Government Law Section  
[Garenson@kaplanfox.com]

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Trusts and Estates Law Section

To the NYSBA Executive Committee and Messrs. Schwartz and Feuer,

I write on behalf of the Local and State Government Law Section in response to your solicitation of our Section's comments on the proposed Equity for Surviving Spouses Act (ESSA), as modified earlier this year. We appreciate your consultation with our Section on the impact that this proposed legislation may have on our Section's members and the state and local governments in New York.

Consistent with our response to the prior iteration of this proposed legislation, our Section's Executive Committee has decided not to take a formal position, because the proposal does not directly affect our individual Section members or the government entities for whom many of them work. That being said, and also consistent with our earlier approach to this matter, we have sought, and are passing along, the input received from some of the retirement systems that will be directly impacted by this proposed legislation. I have attached a joint letter from the five New York City retirement funds, all of which continue to oppose this proposal due to, among other things, important public policy concerns as well as the potentially significant adverse financial consequences that this proposal is likely to have for them and, in turn, for the public employers that participate in those retirement plans. The five funds have representatives of both public employee unions and government officials on their boards.

We encourage the Executive Committee of the New York State Bar Association to give careful consideration to the policy, administrative, fiscal and constitutional concerns raised by the pension systems directly impacted, including the fiscal burdens upon those systems that will necessarily be borne by all public employers that participate in the retirement plans affected.

Once again, we thank you for the opportunity for our Section to provide input on this issue. With kind regards,

Lisa M. Cobb  
Chair, Local and State Government Law Section

September 25, 2023

**Via Electronic Mail Only**

**lcobb@wallacelaw.net**

Lisa M. Cobb  
Chair, Local and State Government Law Section  
New York State Bar Association

To the Executive Committee:

We are writing on behalf of the five New York City Retirement Funds and Systems ("NYCRFS"), regarding the Trusts and Estates Law Section's proposed legislation entitled the Equity for Surviving Spouses Act ("ESSA"). It is our understanding that these comments will be forwarded to ensure that they are appropriately considered during the State Bar Association's legislative review process. This is consistent with the approach taken by Mr. Kenneally as the preceding Section Chair, and we very much appreciate your willingness to continue that approach.

Last year, the NYCRFS unanimously and vociferously objected to this proposal on several grounds, including: (1) the significant restriction it places upon the core prerogatives of the City's employees, (2) the heightened risk of litigation on constitutional grounds, given the radical change that the proposal would make to long-established protected pension rights and benefits, and (3) the undue administrative burdens and costs it imposes upon the NYCRFS. The updated proposal does not alleviate NYCRFS's concerns. We recognize that the fiduciary standard has been modified – perhaps in an attempt to protect or assist the NYCRFS – but the proposal simply cannot avoid creating additional burdens and potential liability exposure.

The NYCRFS again emphasize the following points, in continued objection to the proposal:

First, at its foundational core, the proposed legislation will undoubtedly provoke constitutional challenges on grounds of impairment of contractual pension benefits under the New York State Constitution, Article V, Section 7, a prospect highlighted by the proposal's intended effect upon pensionable time earned before marriage to the required spousal beneficiary. In addition, because under this proposal the member is forced into a specific pension option, members could argue that their pension rights are diminished and impaired. The law currently provides for the ability to choose the pension option that best fits the member's needs at the time of retirement.

We see no reason to confront the complexities and uncertainties of such litigation or to encourage a bill that would certainly provoke it, particularly given our strong fundamental policy objections.

Second, the proposed legislation would strip our members of financial autonomy. It is a fundamental principle of NYCRFS, dating to the inception of the pension systems in the early 20<sup>th</sup> Century, that members should always possess and maintain this deserved right of choice with respect to the pensions they have spent their careers earning. This proposal is based in part upon a federal enactment from almost forty years ago that does not reflect the modern demographics of City employment. It fails to account for the complexities of modern families, which often include current and former spouses and partners, as well as minor and adult dependents who may have special needs. Rather, it seeks to impose a paternalistic, inflexible, and outdated notion of equity in all situations. As such, because this proposed legislation substantially and undeniably infringes on public employees' established rights, we must oppose it as a matter of public policy.

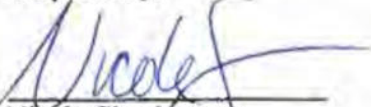
Third, the proposed legislation would impose significant and costly administrative burdens on the Fund. The burdens include, but are not limited to: (1) necessitating large scale changes to various pension administration software systems, which likely will not be possible within the window of as little as one year specified in the proposal; (2) complexities regarding required confirmation of marital status (and regular updating of such status); (3) potential increase in correspondence and client service interactions by members or beneficiaries arguing their right has been illegally taken away; as well as (4) related difficulties presented by the need to locate spouses for informational purposes and required payments.

Moreover, this proposal often would not promote the interests of justice. The seminal case of Majauskas v. Majauskas, 61 N.Y.2d 481 (1984), which already provides for an ex-spouse to receive half of the member's pension that was earned during the marriage, likely intersects with this proposal in ways that create complex scenarios as a matter of equity among members themselves, their various spouses, and their dependents or adult children. In addition, as noted above, the proposal wholly fails to account for the injustice created by a late marriage and needy dependents from earlier marriages. As a result, in the end, the proposal, by attempting to address one scenario, creates a variety of potential unjust outcomes. That is why these decisions are best left to members and an important reason why the proposal is fundamentally flawed.

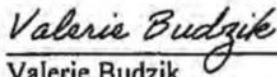
We respectfully conclude by noting that the NYCRFS remain adamant in their objection to this legislation upon which there is such a fundamental difference of views with the authors of the proposal, primarily on public policy grounds, but also as a result of the other burdens and challenges highlighted in this letter. That is why, when this legislation was first brought to the attention of the NYCRFS, employee representatives and public officials on the boards of the systems came together to oppose it. We continue to oppose this bill in its entirety and urge the

New York State Bar Association and its component committees and sections to cease pursuing a far-reaching initiative that is flawed at its very core.

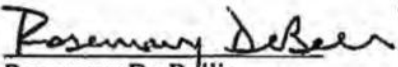
Respectfully,



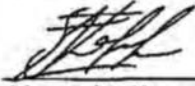
Nicole Giambarrèse  
General Counsel, New York City Police Pension Fund



Valerie Budzik  
General Counsel, Teachers' Retirement System of the City of New York

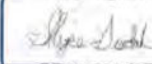


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Alexander Kazazis  
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DocuSigned by:



Ilyse Sisolak

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cc:

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## PRESIDENT'S COMMITTEE ON ACCESS TO JUSTICE

January 2, 2024

TO: Committee on Diversity, Equity, and Inclusion  
FROM: President's Committee on Access to Justice  
RE: Support of the Diversity Report Card Recommendations

The President's Committee on Access to Justice has reviewed the Committee on Diversity, Equity, and Inclusion and supports its findings and recommendations as it furthers the President's Committee on Access to Justice's mission of promoting and facilitating access to our justice system for all.