

## Chapter 3: Fire Department Pension Fund and Related Funds

### Subchapter 1: New York Fire Department Pension Fund

#### § 13-301 Definitions.

As used in this subchapter the following terms shall mean and include:

1. "Member." A person who was an officer, member or probationary member of the uniformed force of the department at the time when this section shall take effect.
2. "Board of trustees." The board of trustees provided for in section 13-302 of this subchapter.

#### § 13-302 Board of trustees.

a. A board of trustees shall be the head of the New York fire department pension fund and, subject to the provisions of law and to the prior approval of the board of estimate, from time to time shall establish rules and regulations for the administration and transaction of the business of such fund and for the control and disposition thereof. Such board shall consist of:

1. The fire commissioner who shall be chairperson of the board and who shall be entitled to cast three votes.
  2. The comptroller of the city who shall be entitled to cast three votes.
  3. A representative of the mayor who shall be appointed by the mayor and who shall be entitled to cast three votes.
  4. The commissioner of finance of the city who shall be entitled to cast three votes.
  5. The president of the uniformed firefighters' association of greater New York who shall be entitled to cast two votes.
  6. The vice-president of the uniformed firefighters' association of greater New York who shall be entitled to cast two votes.
  7. The treasurer of the uniformed firefighters' association of greater New York who shall be entitled to cast two votes.
  8. The chairperson of the board of trustees of the uniformed firefighters' association of greater New York who shall be entitled to cast two votes.
  9. Three elected members of the executive board of the uniformed fire officers' association of the fire department, city of New York, of whom one shall be an officer of the said department with rank above that of captain and shall be entitled to cast one vote; another shall be a captain of the said department and shall be entitled to cast one vote; another shall be a lieutenant of the said department and shall be entitled to cast one and one-half votes.
  10. The president of the uniformed pilots and marine engineers association, fire department, city of New York, who shall be entitled to cast one-half vote.
- b. Every act of the board of trustees shall be by resolution which shall be adopted only by a vote of at least seven-twelfths of the whole number of votes authorized to be cast by all of the members of such board.
- c. The board of trustees shall receive all moneys applicable to such fund and deposit the same to the credit of such fund, in banks or trust companies to be selected by it, and continue to receive and deposit the funds applicable to the same, as received, to the credit of such fund, and shall have full power to invest the same, subject to the terms, conditions, limitations and restrictions imposed by law upon savings banks in the making and disposing of investments by savings banks, and, subject to like terms, conditions, limitations and restrictions, such board of trustees shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of the funds provided for by this subchapter shall have been invested as well as of the proceeds of such investments and of any moneys belonging to such fund, and such board of trustees shall have the power to make all necessary contracts and to take all necessary remedies in the premises.
- d. The fire commissioner shall assign to the board of trustees a sufficient number of clerical and other assistants to permit the board efficiently to exercise their powers and to perform their duties.
- e. On or before the first day of September of each year, the board of trustees shall make a detailed verified report to the mayor.
- f. Any member of the board referred to in paragraphs five, six, seven, eight and ten, respectively, of subdivision a of this section, shall be members of the uniformed force and may authorize in writing at any time any other officer of the respective associations to represent him or her on such board in the event of his or her absence or disability, provided, however, that the by-laws or constitution of such respective associations provide for the designation of a representative in such event.

g. Notwithstanding any other provision of law to the contrary, on July first, nineteen hundred ninety-five, the duties and responsibilities of the board of trustees of administering the provisions of this subchapter shall be transferred in accordance with the provisions of subdivision f of section 13-312.1 of this subchapter to the board of trustees of the fire department pension fund provided for in subchapter two of this chapter.

(Am. 2018 N.Y. Laws Ch. 476, 12/28/2018, eff. 12/28/2018)

#### § 13-303 Composition.

The New York fire department pension fund shall consist of:

1. The capital, interest, income, dividends, cash deposits, securities and credits in such fund on the first day of January, nineteen hundred forty.
2. All forfeitures and fines imposed by the fire commissioner, from time to time, upon any member or members by way of discipline.
3. All rewards, in money, gifts, testimonials and emoluments that may be paid or given for extraordinary services by any members, except such as have been or shall be allowed by such commissioner, to be retained by such member or members, and such as have been or shall be given to endow a medal or other permanent or competitive reward.
4. All fines and proceeds of suit for penalties under title fifteen and chapter four of title twenty-seven and all license fees payable thereunder which may be paid in from or collected in the boroughs of Manhattan, Brooklyn, Bronx, Queens and Staten Island except as is otherwise provided in section 13-381 of this chapter.
5. All moneys, pay, compensation or salary or any part thereof forfeited, deducted or withheld from any member or members, for or on account of absence from duty, to be paid semi-monthly to the board of trustees of such fund by the comptroller.
6. All gifts, grants, devises or bequests to such fund of any money, real or personal property, right of property or other valuable thing.
7. All moneys received pursuant to section 11-909 of the code.

8. a. A sum of money equal to but not greater than:

(1) Five per cent of the semi-monthly pay, salary or compensation of each member of the force who shall elect to contribute on the basis of retirement after twenty-five years of service in such force, or

(2) Six per cent of the semi-monthly pay, salary or compensation of each member of the force who shall elect to contribute on the basis of retirement after twenty years of service in such force which sum shall be deducted semi-monthly by the comptroller from the pay, salary, or compensation of each such member and forthwith paid to the board of trustees of such fund. Every member shall be deemed to consent and agree to such deductions and shall receipt in full for his or her pay, salary or compensation, and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such member during the period covered by such payment, except his or her claim to the benefits to which he or she may be entitled under the provisions of this subchapter.

b. Each member shall signify in writing to the board of trustees on or before the fifteenth day of May, nineteen hundred forty-one, his or her election to contribute on the basis of retirement either after twenty years of service or after twenty-five years of service.

9. If the amount derived from the above-mentioned sources included in this section shall be insufficient to pay the pensions, allowances, benefits and returns of salary deductions which have been or which may hereafter be granted, it shall be the duty of the commissioner each year at the time of submitting the departmental estimate to the director of the budget, to submit a full and detailed statement of the assets of such fund and the amount required to pay all such sums in full. There shall annually be included in the budget a sum sufficient to provide for such deficiency. The comptroller shall pay the money so provided to the board of trustees.

10. Notwithstanding any other provision of law to the contrary, on and after July first, nineteen hundred ninety-five, the composition of this pension fund shall be as modified by the provisions of section 13-312.1 of this subchapter.

### **§ 13-304 Payment of pensions; disability; retirement for service.**

a. The board of trustees shall retire any member who, upon an examination, as provided in subdivision d of this section, may be found to be disqualified, physically or mentally, for the performance of his or her duties. Such member so retired shall receive from such pension fund an annual allowance or pension as provided in this section. In every case such board shall determine the circumstances thereof, and such pension or allowance so allowed is to be in lieu of any salary received by such member at the time of his or her being so retired. The department shall not be liable for the payment of any claim or demand for services thereafter rendered, and the amount of such pension or allowance shall be determined upon the following conditions:

1. In case of total permanent disability at any time caused in or induced by the actual performance of the duties of his or her position, the amount of annual pension to be allowed shall be not less than three-fourths of the annual compensation allowed such member as salary at the date of his or her retirement and in the case of a member acting in a higher rank, an amount not to exceed three-quarters of the compensation of such rank on the day such injury was suffered.

1-a. In any case where a member is allowed, pursuant to paragraph one of this subdivision a, a pension equal to but not exceeding three-fourths of the annual compensation allowed such member as salary at the date of his or her retirement, such member shall receive, in addition, the amount of the deductions, without interest, made from his or her pay, salary or compensation pursuant to subdivision eight of section 13-303 of this chapter, such amount to be paid either in a lump sum or in the form of an annuity which is the actuarial equivalent of such amount of deductions, as the member may elect. Such annuity, if so elected, shall be computed on the basis of the mortality tables adopted pursuant to section 13-321 of this chapter, as in effect on the date of retirement of such member, and on the basis of regular interest.

2. In case of partial permanent disability at any time caused in or induced by the actual performance of the duties of his or her position, which disqualifies him or her only from performing active duty in the uniformed force, the member so disabled shall be relieved by the commissioner from active service at fires and assigned to the performance of such light duties as a medical officer of such department may certify him or her to be qualified to perform, or he or she shall be retired on his or her own application at not less than three-fourths of his or her salary at the date of his or her retirement from the service, on an examination, as provided by subdivision d of this section, showing that his or her disability is permanent.

2-a. Notwithstanding any other provisions of this code to the contrary, any condition of impairment of health caused by diseases of the lung, resulting in total or partial disability or death to a member of the uniformed force, who successfully passed a physical examination on entry into the service of such department, which examination failed to reveal any evidence of such condition, shall be presumptive evidence that it was incurred in the performance and discharge of duty, unless the contrary be proved by competent evidence.

2-b. In any case where a member is allowed, pursuant to paragraph two of this subdivision a, a pension equal to but not exceeding three-fourths of his or her salary at the date of his or her retirement from the service, such member shall receive, in addition, the amount of the deductions, without interest, made from his or her pay, salary or compensation pursuant to subdivision eight of section 13-303 of this chapter, such amount to be paid either in a lump sum or in the form of an annuity which is the actuarial equivalent of such amount of deductions, as the member may elect. Such annuity, if so elected, shall be computed on the basis of the mortality tables adopted pursuant to section 13-321 of this title, as in effect on the date of retirement of such member, and on the basis of regular interest.

3. In case of total permanent disability not caused in or induced by the actual performance of the duties of his or her position, which shall occur after the expiration of ten years' service in such department, but before he or she has performed service in the force for a period greater than the minimum period for service retirement elected by him or her, the amount of annual pension to be allowed shall be one-half of the annual compensation allowed such member at the date of his or her retirement from the service.

4. In case of partial permanent disability not caused in or induced by the actual performance of the duties of his or her position, which may occur after ten years' service in such department, the member so disabled may be relieved by the commissioner from active service at fires, but shall remain a member of the uniformed force, subject to the rules governing such force, and be assigned to the performance of such light duties as a medical officer of such department may certify him or her to be qualified to perform, or, if such member be retired after the expiration of ten years' service, but before he or she has performed service in the force for a period greater than the minimum period for service retirement elected by him or her, the annual allowance to be paid to such member shall be one-half of the annual compensation allowed such member at the date of his or her retirement from the service.

5. In case of total permanent disability not caused in or induced by the actual performance of the duties of his or her position, which may occur before the expiration of ten years' service in such department, the amount of annual pension to be allowed shall be one-third of the annual compensation allowed such member at the date of his or her retirement from the service.

6. In case of partial permanent disability not caused in or induced by the actual performance of the duties of his or her position, which may occur before ten years' service in such department, the member so disabled shall be relieved by the commissioner from active service at fires, but shall remain a member of the uniformed force, subject to the rules governing such force, and be assigned to the performance of such light duties as a medical officer of such department may certify him or her to be qualified to perform, or, if such member be retired before the expiration of ten years' service, the annual allowance to be paid to such member, shall be one-third of the annual compensation allowed such member at the date of his or her retirement from the service.

b. Any member of such department, who has or shall have performed duty therein for a period of twenty years or upwards, upon a medical examination, as provided in subdivision d of this section, showing that such member is permanently disabled, physically or mentally, so as to be unfit for duty, shall be retired from such force and service, and placed on the roll of the pension fund, and awarded and granted, to be paid from such fund:

1. an annual pension during his or her lifetime, of a sum not less than one-half his or her full salary or compensation at the date of his or her retirement from the service; and

2. If such member is awarded and granted, pursuant to paragraph one of this subdivision b, an annual pension equal to but not exceeding one-half of his or her full salary or compensation at the date of his or her retirement from the service, and if such member, at the time of such retirement, has performed service in the force for a number of years greater than the minimum period for service retirement elected by him or her, an annual pension, in addition to the pension provided for by paragraph one of this subdivision b, which shall be equal to:

(i) one-fortieth of his or her full salary or compensation on the date of his or her retirement from the service, multiplied by the number of years of service in the force performed by him or her after completion of such minimum period of service elected by him or her, if such member elected a minimum period of twenty years; or

(ii) one-fiftieth of his or her full salary or compensation on the date of his or her retirement from the service, multiplied by the number of years of service in the force performed by him or her after completion of such minimum period of service elected by him or her, if such member elected a minimum period of twenty-five years.

c. Any member who:

1. Shall have elected to contribute on the basis of retirement after twenty years of service and who has or shall have performed service in the force for at least twenty years, or

2. Shall have elected to contribute on the basis of retirement after twenty-five years of service and who has or shall have performed service in the force for at least twenty-five years, upon his or her own application in writing to and filed with the board setting forth at what time, not less than thirty days subsequent to the execution and filing thereof, he or she desires to be retired, shall be retired as of the date specified in said application from such force and service, and placed on the roll of the pension fund, and awarded and granted, to be paid from such fund, an annual pension during his or her lifetime, not less than one-half his or her full salary or compensation at the date of his or her retirement from the service, and provided further that at the time so specified for his or her retirement his or her term or tenure of office or employment shall not have terminated or have been forfeited, provided further that upon his or her request in writing the member shall be granted a leave of absence from the date of filing said application until the date the retirement becomes effective.

d. All medical examinations required by or made pursuant to the provisions of this subchapter shall be conducted by a medical board appointed by the commissioner, provided, however, that any member, within thirty days after receipt of the decision of such medical board, in writing may request that the decision of such board be reviewed by a special medical board which shall consist of one doctor of the medical board and a doctor selected and compensated by such member. The decision of such special board shall supersede the decision of the medical board. In the event that the two doctors of the special board shall disagree, a recognized specialist on the condition, disease or injury for which such member has been examined or for which disability is claimed shall be selected by such doctors to be a third member of the special board. The decision of a majority of the three members of such special board shall supersede the decision of the medical board. The specialist selected by the two doctors of the special board shall be compensated by the city. Such compensation shall be fixed by the comptroller and shall be subject to his or her audit.

e. The board of trustees shall have the power to grant, award or pay a pension on account of physical or mental disability or disease, only upon a certificate of a medical board or a special medical board after examination as provided in subdivision d of this section. Such certificate shall set forth the cause, nature and extent of the disability, disease or injury of such member.

f. The granting of a pension on severance from service for fault or delinquency shall not be a matter of right, but such a pension may be granted in consideration of special circumstances by the board of trustees and a vote of at least two-thirds of the whole number of votes authorized to be cast by all of the members of such board.

g. The terms "total permanent disability" and "partial permanent disability" as used in this section may be defined in the rules and regulations of the board of trustees.

h. Notwithstanding any other provision of this code, and in lieu of any lesser amount otherwise provided, any member of the department who has or shall have performed duty therein for a period of at least thirty-five years may elect to be retired and placed on the roll of the pension fund, and awarded and granted, to be paid from such fund, an annual pension during his or her lifetime, of a sum equal to his or her full salary at the date of his or her retirement from service.

i. Except as otherwise provided, the pensions granted under this section shall be for the life of the pensioner, and shall not be revoked, repealed or diminished.

### **§ 13-305 Service-incurred disability benefits in the case of retirements prior to July first, nineteen hundred sixty-five.**

a. Notwithstanding the provisions of section 13-304 of this chapter, in any case where a pension was awarded under the provisions of such section, or any predecessor section, by reason of the retirement of a member for disability caused or induced by the actual performance of the duties of his or her position, prior to July first, nineteen hundred sixty-five, such member shall be entitled to a pension of not less than three-fourths the annual salary or compensation payable to a first grade firefighter as of July first, nineteen hundred sixty-five. In the case of any member receiving a pension less than three-fourths the annual salary or compensation of a first grade firefighter as of July first, nineteen hundred sixty-five, his or her pension will be increased to an amount which will equal three-fourths the annual salary or compensation of a first grade firefighter as of July first, nineteen hundred sixty-five.

b. Such pension shall be payable to the same persons and shall be subject to the same terms and conditions, including provisions as to termination as the pension which would otherwise be payable under section 13-304 of this chapter or any other law.

c. The pension payable under this section shall be in lieu of any pension which would otherwise be payable to the member under section 13-304 of this chapter.

d. Nothing in this chapter shall be construed as creating any rights on behalf of any person who dies prior to October twenty-seventh, nineteen hundred sixty-six, and benefits due thereunder shall be calculated and paid only from such date.

(Am. 2018 N.Y. Laws Ch. 476, 12/28/2018, eff. 12/28/2018)

### **§ 13-306 Reduction of contributions by members.**

a. The mayor, by executive order, adopted prior to the first day of June, nineteen hundred sixty-four, may direct that beginning with the first full payroll period following July first, nineteen hundred sixty-four, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred sixty-five, the deduction from the pay, salary or compensation of a member pursuant to the provisions of this subchapter shall be reduced by two and one-half per centum of such pay, salary or compensation of such member.

b. The mayor, by executive order, adopted prior to June nineteenth, nineteen hundred sixty-five, may direct that beginning with the first full payroll period following July first, nineteen hundred sixty-five and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred sixty-six, the deduction from the pay, salary or compensation of a member pursuant to the provisions of this subchapter shall be reduced by two and one-half per centum of such pay, salary or compensation of such member.

c. The mayor, by executive order adopted prior to June nineteenth, nineteen hundred sixty-six, may direct that beginning with the first full payroll period following July first, nineteen hundred sixty-six and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred sixty-seven, the deduction from the pay, salary or compensation of a member pursuant to the provisions of this subchapter shall be

reduced by two and one-half per centum of such pay, salary or compensation of such member.

d. The mayor, by executive order adopted prior to June seventeenth, nineteen hundred sixty-seven, may direct that beginning with the payroll period, the first day of which is nearest to July first, nineteen hundred sixty-seven, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred sixty-eight, the deduction from the pay, salary or compensation of a member pursuant to the provisions of this subchapter shall be reduced by two and one-half per centum of such pay, salary or compensation of such member.

e. (1) Subject to the provisions of paragraph two of this subdivision, beginning with the first full payroll period following January first, nineteen hundred sixty-seven, and ending with the payroll period immediately prior to that, the first day of which is nearest June thirtieth, nineteen hundred sixty-eight, the deduction from the pay, salary or compensation of a member pursuant to the provisions of this subchapter shall be reduced by two and one-half per centum of such pay, salary or compensation of such member.

(2) The reduction provided for by paragraph one of this subdivision shall be in addition to any reduction made during the period mentioned in such paragraph one pursuant to subdivision c or d of this section. The amount of the reduction made pursuant to paragraph one of this subdivision in the deductions of any such member for such portion of the period mentioned in such paragraph one as precedes the effective date of this subdivision shall be refunded without interest.

(3) Beginning with the payroll period the first day of which is nearest to June thirtieth, nineteen hundred sixty-eight, and ending with the payroll period immediately prior to that the first day of which is nearest June thirtieth, nineteen hundred seventy-one, the deduction from the pay, salary or compensation of a member pursuant to the provisions of this subchapter shall be reduced by five percentum of such pay, salary or compensation of such member.

f. The mayor, by executive order adopted prior to the date forty-five days after the adjournment of the regular session of the legislature in nineteen hundred seventy-one, may direct that beginning with the payroll period, the first day of which is nearest to June thirtieth, nineteen hundred seventy-one, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred seventy-two, the deduction from the pay, salary or compensation of a member pursuant to the provisions of this subchapter shall be reduced by five per centum of such pay, salary or compensation of such member.

g. The mayor, by executive order adopted prior to the date forty-five days after the adjournment of the regular session of the legislature in nineteen hundred seventy-two or June seventeenth of such year, whichever is later, may direct that beginning with the payroll period, the first day of which is nearest to June thirtieth, nineteen hundred seventy-two, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred seventy-three, the deduction from the pay, salary or compensation of a member pursuant to the provisions of this subchapter shall be reduced by five per centum of such pay, salary or compensation of such member.

### **§ 13-307 Extra service pension credits.**

Except as provided in subdivisions a and b of section 13-304 of this chapter, a member who has served the minimum period of time elected by him or her for retirement may continue in the service. In such event and upon his or her retirement for any cause whatsoever, there shall be added to his or her annual pension to which he or she shall upon his or her retirement be entitled an additional amount computed at the rate of one-sixtieth of his or her final salary for each year of such additional service. Any such member who has elected to contribute on the basis of retirement after twenty years of service and who thereafter continues in the service shall have his or her deductions made at the rate of five per cent per annum after completing twenty-five years of service.

### **§ 13-308 Credit for certain prior city service.**

Any person who was a member of the New York city employees' retirement system, and whose membership therein was terminated by his or her attaining membership in the fire department pension fund, subchapter one, and who had withdrawn his or her contributions to the New York city employees' retirement system, shall receive credit in the said fire department pension fund for prior creditable city service by paying into the said fire department pension fund the amount of the employee contributions required to have been paid into the New York city employees' retirement system for such prior creditable city service, within two years after this act shall take effect, provided, however, that no member of the said fire department pension fund shall be eligible for retirement for service until he or she has served in the fire department for a minimum period of twenty or twenty-five years, according to the minimum period of retirement elected by such member prior to the certification of his or her rate of contribution.

### **§ 13-309 Payment of pensions; death.**

a. The board of trustees of the pension fund shall pay a pension out of such fund to the surviving spouse, child or children or dependent parent or parents of any deceased member of the uniformed force of such department, if the death of such member occur during his or her service in such uniformed force, or after he or she was retired from service in such uniformed force. The amount of any such pension to be paid by the board of trustees to each of the several representatives of such member, in case there shall be more than one, from time to time, may be determined by such board according to the circumstances of each case. The annual allowance to the representative or representatives of such member, however, shall be six hundred dollars, and no part of such sum shall be paid to any such surviving spouse who shall remarry, after such remarriage, or to any child after it shall have reached the age of eighteen years.

b. In case any member of the uniformed force of such department is killed while actually engaged in the performance of duty, or if death ensues, or results from a disease, as the immediate effect of injuries received, the board of trustees of such fund, upon evidence submitted to it, shall have power to decide whether death so occurred and upon such decision shall award to the surviving spouse of such member an annual allowance as a pension, to be paid out of such fund in an amount not to exceed, except as herein provided, one-half of the salary or compensation of such member at the date of his or her decease and in the case of a member acting in a higher rank an amount not to exceed one-half the salary or the compensation of such rank. If such member, dying, leaves no surviving spouse surviving him or her, but leaves a child or children, under the age of eighteen years, or dependent parent or parents, such board shall award to the legal guardian of such child or children, or dependent parent or parents, for its or their support and maintenance, an annual allowance out of such fund, in an amount not to exceed one-half of the salary or allowance of such member at the date of his or her decease. The amount of such allowance to any surviving spouse shall cease upon his or her death. Such annual allowance shall cease upon the death or marriage of such child, or upon his or her reaching the age of eighteen years. If such payment to the surviving spouse of any such member shall cease by reason of his or her death, such board shall make payments to the child or children, or dependent parent or parents of such member, if any, as though he or she had died without leaving a surviving spouse.

c. (1) Notwithstanding the provisions of subdivision b of this section, in any case where a pension was or is awarded under the provisions of such subdivision, or any predecessor provision by reason of the death of any such member, occurring before July first, nineteen hundred and sixty-five, such pension, subject to the provisions of paragraphs two and three of this subdivision c, shall consist:

(a) For each full calendar year, on and after January first, nineteen hundred and sixty-five, of a sum as a pension to be paid out of such fund and in an amount not to exceed, except as herein provided, one-half of the annual salary or compensation payable, on July first, nineteen hundred and sixty-five, to a member of the uniformed force of rank, seniority, and other salary-determining status, equal to that of the deceased member on the date of his or her decease, but in no case less than one-half of the salary payable to a firefighter first grade on July first, nineteen hundred and sixty-five, and

(b) For any portion of a calendar year, on and after January first, nineteen hundred and sixty-five, the appropriate pro rata portion of the amount which would be payable, under the provisions of subparagraph (a) of this paragraph one, for the full calendar year which includes such portion of a year, if a pension were payable under this subdivision c for such full calendar year.

(2) Such pension shall be payable to the same persons and shall be subject to the same terms and conditions, including provisions as to termination,



as the pension which would otherwise be payable, on and after January first, nineteen hundred and sixty-five, pursuant to subdivision b of this section or any applicable predecessor provision, by reason of the death of such member.

(3) The pension payable pursuant to the provisions of paragraphs one and two of this subdivision c shall be in lieu of any pension which would otherwise be payable on or after January first, nineteen hundred sixty-five, pursuant to the provisions of such subdivision b, or predecessor provision, and, except as otherwise provided in paragraph one of subdivision e of section 13-686 of this chapter, shall be in lieu of any supplemental retirement allowance which would otherwise be payable, on and after such date, under the provisions of subchapter six of chapter five of this title or any other law.

### **§ 13-310 Return of deductions on discontinuance of membership or on death.**

a. Should a member discontinue service in the force, except by death or retirement, he or she shall be paid the amount of the deductions without interest made from his or her pay, salary or compensation pursuant to subdivision eight of section 13-303 of this subchapter.

b. In the event that a member shall die before retirement and a pension or allowance is not paid by the board of trustees pursuant to section 13-309 of this subchapter, the amount of the deductions without interest made from the pay, salary or compensation of such member pursuant to subdivision eight of section 13-303 of this subchapter shall be paid by such board to the beneficiary or beneficiaries, as such member shall have nominated by signed designation and filed with such board. Such designation shall be made within thirty days after this section shall take effect, and may be changed from time to time, by such member upon filing with the board a new signed designation.

### **§ 13-311 Time of payment of pensions.**

All pensions and allowances payable out of the fire department pension fund pursuant to the provisions of this subchapter shall be paid in equal monthly installments, each one-twelfth, in amount, of the sum allowed as the annual pension or allowance or in ratably smaller amounts when the benefit begins after the first day of the month or ends before the last day of the month.

### **§ 13-312 Exemption from tax and legal process.**

The right of a person to a pension, an allowance, to the return of contributions, the pension or allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this subchapter and the right to any benefit under subchapter five or subchapter six of this chapter and any such benefit itself, and the moneys in the fund provided for by this subchapter and in the funds provided for by such subchapter five and subchapter six, are hereby exempt from any state or municipal tax, and shall not be subject to execution, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in any such subchapter specifically provided.

### **§ 13-312.1 Transfer of assets, liabilities and administration of pension fund, subchapter one to pension fund, subchapter two; payment of certain benefits by pension fund, subchapter two.**

a. The following terms, as used in this section, shall have the following meanings unless a different meaning is plainly required by the context:

1. "Pension fund, subchapter one". The fire department pension fund provided for in this subchapter.
2. "Pension fund, subchapter two". The fire department pension fund provided for in subchapter two of this chapter.
3. "Fire subchapter one beneficiary". Any person who is entitled under the laws in effect immediately prior to July first, nineteen hundred ninety-five to receive benefits from pension fund, subchapter one.

b. Subject to the provision of subdivision g of this section, and notwithstanding any other provision of law to the contrary, on July first, nineteen hundred ninety-five, all assets held by pension fund, subchapter one shall be transferred to pension fund, subchapter two, and shall be credited to the contingent reserve fund of pension fund, subchapter two.

c. Subject to the provisions of subdivision g of this section, and notwithstanding any other provision of law to the contrary, on and after July first, nineteen hundred ninety-five, all moneys which otherwise would be paid to pension fund, subchapter one pursuant to the provisions of section 13-303 of this subchapter or any other provision of law, or from any other source whatsoever, shall instead be paid to the general fund of the city established pursuant to section one hundred nine of the charter.

d. Subject to the provision of subdivision g of this section, and notwithstanding any other provision of law to the contrary, on July first, nineteen hundred ninety-five, all liabilities of pension fund, subchapter one as of such date, including, but not limited to, liability for the payment of all benefits required under laws in effect immediately prior to such date to be paid on and after such date by pension fund, subchapter one to fire subchapter one beneficiaries, shall be transferred to and assumed by pension fund, subchapter two, and such benefits payable to fire subchapter one beneficiaries on and after such date shall be paid to such beneficiaries by pension fund, subchapter two.

e. Subject to the provisions of subdivision g of this section, and notwithstanding any other provision of law to the contrary, on July first, nineteen hundred ninety-five, the liability of the city supplemental pension fund established under section 13-650 of this title for the payment of all supplemental benefits required under laws in effect immediately prior to such date to be paid on and after such date by such supplemental pension fund to fire subchapter one beneficiaries shall be transferred to and assumed by pension fund, subchapter two, and such supplemental benefits payable to such fire subchapter one beneficiaries on and after such date shall be paid to such beneficiaries by pension fund, subchapter two.

f. Notwithstanding any other provision of law to the contrary, on July first, nineteen hundred ninety-five, the duties and responsibilities of administering the provisions of this subchapter conferred upon the board of trustees of pension fund, subchapter one by the provisions of this subchapter in effect immediately prior to such date shall be transferred to and assumed by the board of trustees of pension fund, subchapter two.

g. Notwithstanding any other provision of law to the contrary, for all funding or accounting purposes, including but not limited to, the funding or accounting purposes associated with the implementation of the provisions of this section, the provisions of subparagraph (d) of paragraph two of subdivision b of section 13-331 of this chapter or the provisions of paragraph six of subdivision b of such section 13-331, the transfer of certain assets or liabilities to pension fund, subchapter two as required by subdivision b, d or e of this section to be made on July first, nineteen hundred ninety-five shall be deemed to have been made on July first, nineteen hundred ninety-four, and the payment of certain moneys to the general fund of the city as required by subdivision c of this section to be made on and after July first, nineteen hundred ninety-five shall be deemed to have been made on and after July first, nineteen hundred ninety-four.

## **Subchapter 2: [Fire Department, Subchapter Two Pension Fund]**

### **§ 13-313 Definitions.**

The following words and phrases as used in this subchapter unless a different meaning is plainly required by the context, shall have the following meanings:

1. "Pension fund" shall mean the fire department pension fund subchapter two provided for in this chapter.
2. "Medical board" shall mean the board of physicians provided for in section 13-323 of this subchapter.
3. (a) "City-service", in the case of an original plan member, (as defined in subdivision four-b of this section), shall mean service in the uniformed

force of the department and shall include service credit acquired by transfer pursuant to section 15-111 of this code.

(b) "City-service", in the case of an improved benefits plan member (as defined in subdivision four-f of this section), shall mean service in the unified force of the department and shall include service credit acquired (i) by transfer pursuant to section 15-111 of this code, or (ii) by transfer pursuant to section forty-three or three hundred forty-three of the retirement and social security law, or (iii) by transfer from another pension or retirement system, of funds actuarially determined in a manner similar to that provided by these sections of the retirement and social security law.

(c) An "accident" sustained by such original plan member or such improved benefits plan member, while off-duty and within the geographic limits of the city of New York, shall be deemed to have occurred while in the performance of duty and in the performance of city service for the purpose of granting retirement for accident disability pursuant to the provisions of section 13-353 of this subchapter in cases in which:

(i) a substantial and imminent danger to life or property occasioned the off-duty intervention of the member;

(ii) the conduct of the member was reasonable in the circumstances; and

(iii) the member, in the course of his or her off-duty intervention, utilized skills within the scope of his or her employment by the New York city fire department.

(d) In any case where a member, after completing his or her minimum period for service retirement, is appointed fire commissioner, and in any case where a person who retired from service as a member of the pension fund is thereafter appointed fire commissioner, his or her service as fire commissioner shall constitute city-service.

(e) In any case where a member, after completing his or her minimum period for service retirement, is appointed a deputy fire commissioner, and in any case where a person who retired for service as a member of the pension fund is thereafter appointed a deputy fire commissioner, his or her service as deputy fire commissioner shall constitute city-service.

4. "Member" shall mean any person included in the membership of the pension fund as provided in section 13-314 of this subchapter.

4-a. "Original plan" shall mean all the terms and conditions of this subchapter, and of all other laws, applicable to original plan members.

4-b. "Original plan member" shall mean any member of the original plan pursuant to the provisions of subdivision a of section 13-315 of this subchapter or other applicable provisions of this subchapter.

4-c. "Original plan member not subject to article eleven" shall mean an original plan member to whom, under the provisions of law governing the applicability of article eleven of the retirement and social security law, such article eleven does not apply.

4-d. "Original plan member subject to article eleven" shall mean an original plan member to whom, under the provisions of law governing the applicability of article eleven of the retirement and social security law, such article eleven applies.

4-e. "Improved benefits plan" shall mean all the terms and conditions of this subchapter, and all other laws, applicable to improved benefits plan members.

4-f. "Improved benefits plan member" shall mean any member who, under the applicable provisions of subdivisions b, c, d, e and f of section 13-315 of this subchapter or other applicable provisions of this subchapter, is entitled to the rights, privileges, and benefits of the improved benefits plan and is subject to the obligations thereof, as applicable to him or her.

4-g. "Elective improved benefits plan member" shall mean a member who became an improved benefits plan member as a result of filing an election application pursuant to section 13-315 of this subchapter.

4-h. "Non-elective improved benefits plan member" shall mean a member who became an improved benefits plan member pursuant to the provisions of subdivision b of section 13-315 of this subchapter.

4-i. "Improved benefits plan member not subject to article eleven" shall mean any improved benefits plan member who, under the provisions of law governing the applicability of article eleven of the retirement and social security law, is not subject to such article eleven.

4-j. "Improved benefits plan member subject to article eleven" shall mean any improved benefits plan member to whom, under the provisions of law governing the applicability of article eleven of the retirement and social security law, such article eleven applies.

5. "Beneficiary" shall mean any person in receipt of a pension, an annuity, a retirement allowance, a dependent benefit, a death benefit or any other benefit provided by this subchapter.

6. "Final compensation", in the case of an original plan member, shall mean the annual compensation earnable by a member for city-service upon the date of his or her retirement.

6-a. "Five-year-average compensation", in the case of an improved benefits plan member, shall mean the average annual compensation earnable by such member for city-service during his or her last five years of city-service, or during any other five consecutive years of city-service since he or she last became a member which such member shall designate.

6-b. "Prior original plan member accumulated contributions" shall mean the sum of all the amounts, deducted from the compensation of an original plan member or contributed by him or her while such a member, standing to the credit of his or her individual account in the retirement allowance accumulation fund (as such fund existed prior to the starting date of the improved benefits plan (as such date is defined in subdivision twenty-seven of this section)), without interest thereon.

6-c. "Subsequent original plan member accumulated contributions" shall mean the sum of all amounts, if any, deducted from the compensation of an original plan member or contributed by him or her on or after the starting date of the improved benefits plan (as such date is defined in subdivision twenty-seven of this section) and while he or she is such a member, standing to the credit of his or her individual account in the contingent reserve fund, without interest thereon.

7. "Total accumulated contributions" shall mean, with respect to an original plan member, the amount obtained by adding together his or her prior original plan member accumulated contributions (as defined in subdivision six-b of this section) and his or her subsequent original plan member accumulated contributions (as defined in subdivision six-c of this section) if any, without interest on any of such contributions.

7-a. "Accumulated deductions", with respect to an improved benefits plan member, shall mean the sum of all the amounts, deducted from the compensation of such member or contributed by him or her, standing to the credit of his or her individual account in the annuity savings fund, together with regular interest and special interest, if any, thereon, provided that nothing contained in this subdivision shall be construed as providing or requiring that where any original plan member elects to become an improved benefits plan member, regular interest shall accrue or be credited for any period prior to the effective date of such election on the accumulated contributions of such member transferred to the credit of his or her account in the annuity savings fund pursuant to the applicable provisions of this subchapter.

8. (a) "Regular interest", in the cases of persons who are members on the thirtieth day of June, nineteen hundred forty-seven, shall mean, subject to the provisions of paragraphs (b), (e), (f), (g), (h) and (j) of this subdivision, interest at four per centum per annum, compounded annually, and in the cases of persons becoming members thereafter, shall mean, subject to the provisions of such paragraphs, interest at three per centum per annum, compounded

annually to and including the thirty-first day of December, nineteen hundred sixty-seven, and interest at four per centum, compounded annually, from and after the first day of January, nineteen hundred sixty-eight.

(b) The provisions of paragraph (a) of this subdivision shall not apply to any non-elective improved benefits plan member (as defined in subdivision four-h of this section). Such provisions shall not apply to any elective improved benefits plan member (as defined in subdivision four-g of this section) during any period wherein he or she is such a member.

(c) "Regular interest", in the case of each non-elective improved benefits plan member, shall mean, subject to the provisions of paragraphs (e), (f), (g), (h), (i) and (j) of this subdivision, interest at four per centum per annum, compounded annually.

(d) "Regular interest", in the case of each elective improved benefits plan member, shall mean, subject to the provisions of paragraphs (e), (f), (g), (h), (i) and (j) of this subdivision, interest at four per centum per annum, compounded annually, during the period wherein he or she is such a member. Nothing contained in this paragraph shall be construed as providing or requiring that regular interest shall accrue or be credited, for any period prior to the effective date of the election of any such member to be an elective improved benefits plan member, on the accumulated contributions of such member transferred to the credit of his or her account in the annuity savings fund pursuant to the provisions of section 13-315 of this subchapter.

(e) The provisions of paragraphs (a), (c) and (d) of this subdivision shall not apply to any actuarial valuation, determination or appraisal which (i) is made pursuant to this subchapter and (ii) is used to determine the amount of any contribution required to be paid by the city into the contingent reserve fund of the pension fund in the nineteen hundred eighty-nineteen hundred eighty-one fiscal year of the city or any subsequent fiscal year thereof.

(f) (A) Subject to the provisions of subparagraph (B) of paragraph (i) of this subdivision, and except as otherwise provided in paragraph four of subdivision b of section 13-331 of this subchapter with respect to determination of the amount of the balance sheet liability as of June thirtieth, nineteen hundred eighty and balance sheet liability contributions, for the purpose of any actuarial valuation, determination or appraisal which is made pursuant to this subchapter and which is used to determine the amount of any contribution required to be paid by the city into the contingent reserve fund of the pension fund in the nineteen hundred eighty-nineteen hundred eighty-one fiscal years and nineteen hundred eighty-one-nineteen hundred eighty-two of the city, "regular interest" shall mean interest at the rate of seven and one-half per centum per annum, compounded annually.

(B) Subject to the provisions of subparagraph (B) of paragraph (i) of this subdivision, and except as otherwise provided in paragraph four of subdivision b of section 13-331 of this subchapter with respect to determination of the amount of the balance sheet liability as of June thirtieth, nineteen hundred eighty and balance sheet liability contributions, for the purpose of any actuarial valuation, determination or appraisal which is made pursuant to this subchapter and which is used to determine the amount of any contribution required to be paid by the city into the contingent reserve fund of the pension fund in the nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year of the city and in each succeeding fiscal year thereof to and including the nineteen hundred eighty-seven-nineteen hundred eighty-eight fiscal year thereof, "regular interest" shall mean interest at the rate of eight per centum per annum, compounded annually.

(C) Subject to the provisions of subparagraph (B) of paragraph (i) of this subdivision, and except as otherwise provided in paragraph four of subdivision b of section 13-331 of this subchapter with respect to determination of the amount of the balance sheet liability as of June thirtieth, nineteen hundred eighty and balance sheet liability contributions, for the purpose of any actuarial valuation, determination or appraisal which is made pursuant to this subchapter and which is used to determine the amount of any contribution required to be paid by the city into the contingent reserve fund of the pension fund in the nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year of the city and the nineteen hundred eighty-nine-nineteen hundred ninety fiscal year thereof, "regular interest" shall mean interest at the rate of eight and one-quarter per centum per annum, compounded annually.

(g) Subject to the provisions of subparagraph (B) of paragraph (i) of this subdivision, and except as otherwise provided in paragraph four of subdivision b of section 13-331 of this subchapter with respect to determination of the amount of the balance sheet liability as of June thirtieth, nineteen hundred eighty and balance sheet liability contributions, for the purpose of any actuarial valuation, determination or appraisal which (i) is made pursuant to this subchapter and (ii) is used to determine the amount of any contribution required to be paid by the city into the contingent reserve fund of the pension fund in the nineteen hundred ninety-nineteen hundred ninety-one fiscal year of the city and in any subsequent fiscal year thereof, "regular interest" shall mean interest at such rate per annum, compounded annually, as shall be prescribed by the legislature in section 13-638.2 of title.

(h) On or after May first, nineteen hundred eighty-nine and not later than October thirty-first of such year, the board shall submit to the governor, the temporary president and minority leader of the senate, the speaker of the assembly, the majority and minority leaders of the assembly, the state superintendent of insurance, the chairperson of the permanent commission on public employee pension and retirement systems, the mayor of the city and the members of the board of estimate and city council thereof, the written recommendations of the board as to the rate of interest and effective period thereof which should be established by law as "regular interest" for the purpose specified in paragraph (g) of this subdivision.

(i) (A) Subject to the provisions of subparagraph (c) of paragraph two of subdivision b of section 13-331 of this subchapter, nothing contained in paragraphs (e), (f), (g) and (h) of this subdivision shall be construed as prescribing, for the purpose of crediting interest to individual accounts of improved benefits plan members in the annuity savings fund or to reserves-for-increased-take-home-pay of such members or for any other purpose besides that specified in such paragraphs, a rate of regular interest other than as prescribed by the applicable provisions of paragraph (c) or paragraph (d) or paragraph (j) of this subdivision.

(B) Subject to the provisions of section 13-638.2 of this title, nothing contained in paragraphs (f) and (g) of this subdivision shall be construed as requiring the unfunded accrued liability contribution, as defined in paragraph three of subdivision b of section 13-331 of this subchapter, to be determined in any manner other than as prescribed in such paragraph three. Subject to the provisions of section 13-638.2 of this title, nothing contained in paragraphs (f) and (g) of this subdivision shall be construed as requiring any balance sheet liability or balance sheet liability contribution computed pursuant to the provisions of paragraph four of subdivision b of section 13-331 of this subchapter to be determined in any manner other than as prescribed in such paragraph four.

(j) (i) Commencing on August first, nineteen hundred eighty-three, and continuing thereafter, "regular interest", in the cases of persons who were members on July thirty-first, nineteen hundred eighty-three or who thereafter became or become members, shall mean, subject to the provisions of subparagraphs (ii) to (x), inclusive, of this paragraph (j), interest at seven per centum per annum, compounded annually.

(ii) (A) (1) Subject to the provisions of sub-items (2) and (3) of this item (A), regular interest at the rate of seven per centum per annum, compounded annually, shall be used as the actuarial interest assumption for determining any actuarial equivalent benefit payable to or on account of any seven percent member for actuarial equivalent benefit purposes.

(2) Where an actuarial equivalent benefit is required by board resolution to be determined for any seven percent member for actuarial equivalent benefit purposes through the use of the modified Option 1 pension computation formula (as defined in subdivision thirty-two of this section) the actuarial interest assumptions used in making such determination shall be as prescribed in such formula.

(3) Where it is provided by board resolution that a portion of an actuarial equivalent benefit shall be determined for any seven percent member for actuarial equivalent benefit purposes on the basis of gender-neutral mortality tables, and that the remainder of such benefit shall be determined on the basis of mortality tables which are not gender-neutral, regular interest at the rate of seven per centum per annum, compounded annually, shall be used as the actuarial interest assumption for determining the portion of such benefit required by such resolution to be determined on the basis of gender-neutral mortality tables and such rate of regular interest shall not apply to the determination of the remainder of such benefit.

(B) Notwithstanding that the process of determining whether a member is a seven percent member for actuarial benefit purposes may include, for the purpose of ascertaining the higher applicable benefit, alternative hypothetical benefit calculations utilizing a rate of regular interest other than such rate of seven per centum, nothing contained in subparagraph (i) of this paragraph (j) or in item (A) of this subparagraph (ii) shall be construed as requiring

that in the determination of any actuarial equivalent benefit payable to or on account of any member who is not a seven percent member for actuarial equivalent benefit purposes, any rate of interest be used as the actuarial interest assumption other than regular interest, compounded annually, as prescribed by the applicable provisions of paragraph (a) or paragraph (c) or paragraph (d) of this subdivision eight.

(iii) The provisions of item (A) of subparagraph (ii) of this paragraph (j) shall not apply to any person who, prior to August first, nineteen hundred eighty-three, retired as a member of the pension fund for service or superannuation or for ordinary or accident disability and was such a retiree immediately prior to such August first; provided, however, that if any such retiree returned or returns to city-service and, on or after July thirty-first, nineteen hundred eighty-three, was or is restored to membership in the pension fund as required or permitted by law, the provisions of such item (A), from and after the date of such restoration to membership, shall apply to such restored member with respect to determination of any actuarial equivalent benefit which is both (A) a benefit to which he or she became or becomes entitled upon his or her subsequent retirement or subsequent discontinuance of service so as to qualify for benefits, and (B) a benefit which is not a continuation, without change, of a benefit which had previously become payable to him or her by reason of his or her prior retirement; provided further that nothing contained in the preceding provisions of this subparagraph (iii) shall be construed as making the provisions of such item (A) applicable to any such restored member who was not or is not a seven percent member for actuarial equivalent benefit purposes at the time of such subsequent retirement or subsequent discontinuance of service.

(iv) (A) Subject to the provisions of items (B) and (C) of this subparagraph (iv), the provisions of item (A) of subparagraph (ii) of this paragraph (j) shall not apply to any member who, (1) prior to August first, nineteen hundred eighty-three, discontinued service under such circumstances that such member became an original plan discontinued member (as defined in subdivision sixteen of this section 13-313) or an improved benefits plan discontinued member immediately prior to such August first.

(B) If such a discontinued member returned or returns to city-service and on or after July thirty-first, nineteen hundred eighty-three and before payability of his or her retirement allowance as such member began or begins, again became or becomes an active member pursuant to the applicable provisions of section 13-360 or 13-361, the provisions of item (A) of subparagraph (ii) of this paragraph (j) shall apply to him or her on and after the date of such resumption of active membership; provided that nothing contained in the preceding provisions of this item (B) shall be construed as making the provisions of item (A) of such subparagraph (ii) applicable to any such member who was not or is not a seven percent member for actuarial equivalent benefit purposes at the time of subsequent retirement or subsequent discontinuance of service so as to qualify for benefits.

(C) If such an original plan discontinued member or improved benefits plan discontinued member returned or returns to city-service and on or after July thirty-first, nineteen hundred eighty-three and on or after the date on which payability of his or her retirement allowance as such member began or begins, again became or becomes an active member pursuant to the applicable provisions of section 13-360 or 13-361 of this subchapter, the provisions of item (A) of such subparagraph (ii), on and after the date of such resumption of active membership, shall apply to him or her with respect to determination of any actuarial equivalent benefit which is both (1) a benefit to which he or she became or becomes entitled upon his or her subsequent retirement or subsequent discontinuance of service so as to qualify for benefits, and (2) a benefit which is not a continuation, without change, of a benefit which had previously become payable to him by reason of his or her prior discontinuance of service; provided that nothing contained in the preceding provisions of this item (C) shall be construed as making item (A) of such subparagraph (ii) applicable to any such member who was not or is not a seven percent member for actuarial equivalent benefit purposes at such time of subsequent discontinuance of service.

(v) (A) Subject to the provisions of item (B) of this subparagraph (v) and to the provisions of subparagraph (viii) of this paragraph (j), the selection of mode of benefit (as defined in subdivision thirty-three of this section 13-313) made prior to the date of enactment (as such date is certified pursuant to section forty-one of the legislative law) of this paragraph (j) by a person entitled to a recomputation of benefits pursuant to the better-of-two-computations method (as defined in subdivision thirty-five of this section) in relation to the retirement allowance (or any component thereof) which became payable to him or her prior to such date of enactment shall be the selection of mode of benefit applicable to the recomputed retirement allowance (or any corresponding component thereof) to which he or she is entitled under the better-of-two-computations method (as defined in subdivision thirty-four of this section), and any such person entitled to a recomputation of benefits pursuant to the better-of-two-computations method shall not be entitled to make any change in such selection of mode of benefit.

(B) (1) Notwithstanding the provisions of item (A) of this subparagraph (v), a person entitled to a recomputation of benefits pursuant to the better-of-two-computations method shall be entitled, to the extent and in the manner prescribed in the succeeding sub-items of this item (B), to change the original selection of mode of benefit applicable to the retirement allowance (or any component thereof) which became payable to him or her prior to the date of enactment of this paragraph (j).

(2) In any case where the original selection of mode of benefit of a person entitled to a recomputation of benefits pursuant to the better-of-two-computations method was a selection of a joint and survivor option (as defined in subdivision thirty-six of this section), no change from such original selection of a joint and survivor option may be made under this item (B) to any other selection of mode of benefit if the designated beneficiary selected with respect to such joint and survivor option by such person entitled to a recomputation is not alive at the time of filing of the form whereby such person entitled to a recomputation seeks to change, pursuant to this item (B), his or her original selection of such joint and survivor option.

(3) Except for a change of selection of mode of benefit prohibited by sub-item two of this item (B), any original selection of mode of benefit may be changed pursuant to this item (B) to another selection of mode of benefit, provided all of the conditions set forth in sub-items four, six and eight of this item (B) are met.

(4) Subject to the provisions of sub-items seven and eight of this item (B), a person entitled to a recomputation of benefits pursuant to the better-of-two-computations method may, pursuant to this item (B), effect any such permissible change of his or her original selection of mode of benefit by executing, acknowledging and filing with the pension fund, within the applicable period of time prescribed by sub-item six of this item, a new selection of mode of benefit. If the original selection of mode of benefit of the person filing such new selection was a selection of a joint and survivor option, such new selection shall be void and of no effect unless (a) the designated beneficiary named in such original selection of a joint and survivor option signs and acknowledges, in the form for such new selection of mode of benefit, a consent to such changed selection of mode of benefit, and (b) such original designated beneficiary is alive on the date of filing of such new selection.

(5) The pension fund shall mail to each person entitled to a recomputation of benefits pursuant to the better-of-two-computations method a letter showing amounts of benefits, as recomputed for such person under the better-of-two-computations method for modes of benefit other than joint and survivor options, together with a statement advising such person that upon request, the amounts of recomputed benefits under joint and survivor options will be provided.

(6) The period of time within which any such person entitled to a recomputation may file a new selection of mode of benefit as provided for in sub-items three and four of this item (B) shall be sixty days after the date of issuance set forth in such letter mailed to such person pursuant to sub-item five of this item; provided, however, that if, pursuant to the request of such person, a later letter setting forth benefits information in relation to new selection of a mode of benefit is mailed to such person by the pension fund, such period of time for filing a new selection of mode of benefit shall be thirty days after the date of issuance set forth in such later letter.

(7) Upon the filing of a new selection of mode of benefit pursuant to this item (B) by any such person entitled to a recomputation, such new selection shall be irrevocable and such person shall not be entitled to file any other selection of mode of benefit with respect to such retirement allowance (or any component thereof) which became payable to him or her prior to the date of enactment of paragraph (j).

(8) No new selection of mode of benefit filed pursuant to the preceding sub-items of this item (B) shall be valid or effective as a change of mode of benefit or for any other purpose unless the person entitled to a recomputation of benefits pursuant to the better-of-two-computations method who files such new selection is alive on the date (hereinafter referred to as the "validating date") three hundred sixty-five days after the date of filing of such new selection of mode of benefit. If such person filing such new selection of mode of benefit is alive on the validating date with respect to such new selection, such new selection shall become valid and effective on such validating date; provided, however, that from and after the effective date of retirement of such person making such valid and effective new selection of mode of benefit (if he or she retired for service or superannuation or for ordinary or accident



disability) or from and after the date on which payability of the original benefits of such person began (if he or she was a discontinued member), such new selection of mode of benefit shall supersede such original selection of mode of benefit and shall apply to and govern the amount of benefits payable to such person or to his or her designated beneficiary or estate.

(vi) Subject to the provisions of subparagraph (viii) of this paragraph (j), in any case where a member who retired before August first, nineteen hundred eighty-three for service or superannuation or for ordinary or accident disability returned or returns to city-service and on or after July thirty-first, nineteen hundred eighty-three re-entered or re-enters membership in the pension fund, nothing contained in subparagraphs (i) to (iv), inclusive, of this paragraph (j) shall be construed as authorizing or permitting him or her to change any selection of mode of benefit (as defined in subdivision thirty-three of this section 13-313) made by him or her with respect to any benefit which, upon his or her subsequent retirement or discontinuance of service so as to qualify for benefits, is payable to him or her as a continuation, without change, of a benefit which had previously become payable to him or her by reason of his or her prior retirement.

(vii) Subject to the provisions of subparagraph (viii) of this paragraph (j), in any case where a discontinued member referred to in item (A) of subparagraph (iv) of this paragraph (j) returned or returns to city-service and, on or after July thirty-first, nineteen hundred eighty-three, again became or becomes an active member pursuant to applicable provisions of law, nothing contained in subparagraphs (i) to (iv), inclusive, of this paragraph shall be construed as authorizing or permitting him or her to change any selection of mode of benefit (as defined in subdivision thirty-three of this section 13-313) made by him or her with respect to any benefit which, upon his or her subsequent retirement or discontinuance of service so as to qualify for benefits, is payable to him or her as a continuation, without change, of a benefit which had previously become payable to him or her by reason of his or her prior discontinuance of service.

(viii) Nothing contained in subparagraphs (v), (vi) and (vii) of this paragraph (j) shall be construed as preventing:

(A) any person subject to such subparagraph (v) who, on or after July thirty-first, nineteen hundred eighty-three, re-entered or re-enters city-service and again became or becomes an active member; or

(B) any re-entered member referred to in such subparagraph (vi) or subparagraph (vii); upon his or her subsequent retirement, from exercising any right which any other applicable law grants to him or her under such circumstances to make a selection of mode of benefit (as defined in subdivision thirty-three of section 13-313).

(ix) Notwithstanding the provisions of subparagraph (i) of this paragraph (j) prescribing a rate of regular interest of seven per centum per annum, compounded annually, for specified members described in such subparagraph (i), the rate of regular interest which shall be applied to fix the rate of interest on any loan to any such member eligible to borrow shall be four per centum per annum, compounded annually.

(x) (A) Subject to the provisions of item (B) of this subparagraph (x), the rate of regular interest applicable to determination of the rate of member contribution of any member whose last membership began prior to the date of enactment (as certified pursuant to section forty-one of the legislative law) of this paragraph (j) shall be the rate of regular interest which was applicable, under the provisions of law in effect prior to such date of enactment, to the determination of the rate of member contribution of such member, and nothing contained in the preceding subparagraphs of this paragraph (j) shall be construed as applicable to the determination of the rate of member contribution of any such member whose last membership so began or as changing or affecting the rate of member contribution of any such member.

(B) The rate of regular interest applicable to determination of the rate of member contribution of any elective improved benefits plan member who became or becomes such a member by reason of an election made on or after August first, nineteen hundred eighty-three shall be the rate of regular interest, as prescribed by the applicable provisions of paragraph (a) of subdivision eight of section 13-214 of the code, which is required by the provisions of subdivision (i) of section 13-315 to be applied to the determination of such rate of member contribution. Nothing contained in the preceding subparagraphs of this paragraph (j) shall be construed as applicable to the determination of the rate of member contribution of any such elective improved benefits plan member or as changing or affecting the rate of the member contribution of any such member.

8-a. "Pension", with respect to any retired or deceased improved benefits plan member and with respect to any improved benefits plan discontinued member and with respect to the beneficiaries of any such member, shall mean payments for life derived from appropriations made by the city as provided in this subchapter.

8-b. "Annuity", with respect to any retired or deceased improved benefits plan member and with respect to any improved benefits plan discontinued member and with respect to the beneficiaries of any such member, shall mean payments for life derived from contributions made by such member as provided in this subchapter.

9. "Retirement allowance", in the case of a retired or deceased original plan member and in the case of an original plan discontinued member and in the case of the beneficiaries of any such member, shall mean payments for life derived from appropriations made by the city as provided in this subchapter and from contributions made by a member as provided in this subchapter.

9-a. "Retirement allowance", in the case of a retired or deceased improved benefits plan member and in the case of an improved benefits plan discontinued member and in the case of the beneficiaries of any such member, shall mean pension plus the annuity and the pension-providing-for-increased-take-home-pay, if any.

10. "Dependent benefit" shall mean payments derived from contributions made by a member as provided in sections 13-329 and 13-355 of this subchapter.

11. "Retirement allowance reserve", with respect to any original plan member or his or her beneficiaries, shall mean the present value of all payments to be made on account of any retirement allowance, payable to or on account of a person who retired as an original plan member, or benefit in lieu of any retirement allowance, granted under the provisions of this subchapter, computed upon the basis of such mortality tables as shall be adopted by the board with regular interest.

11-a. "Pension reserve", with respect to any improved benefits plan member or his or her beneficiaries, shall mean the present value of all payments to be made on account of any pension, or benefit in lieu of any pension, granted under the provisions of this subchapter, computed upon the basis of such mortality tables as shall be adopted by the board, with regular interest.

11-b. "Annuity reserve", with respect to any improved benefits plan member or his or her beneficiaries, shall mean the present value of all payments to be made on account of any annuity, or benefit in lieu of any annuity, granted under the provisions of this subchapter computed on the basis of such mortality tables as shall be adopted by the board, with regular interest.

12. "Fiscal year" shall mean any year commencing with the first day of July and ending with the thirtieth day of June next following.

13. "Total service", in the case of an original plan member, shall mean all service of such member allowable with respect to such member as provided in subdivision three of this section and section 13-318 of this subchapter.

13-a. "Total service", in the case of an improved benefits plan member, shall mean all service of such member allowable with respect to such member as provided in subdivision three-a of this section and section 13-318 of this subchapter.

14. "Board" shall mean the board of trustees provided for in section 13-316 of this subchapter.

15. "Accumulation-for-increased-take-home-pay", with respect to any original plan member, shall mean a sum consisting of the total of all products obtained by multiplying the compensation of such member, during each period of reduction of his or her member contributions pursuant to the provisions

of section 13-326 of this subchapter and subdivision b of section four hundred eighty of the retirement and social security law, occurring while he or she is an original plan member, by the percentage of reduction of his or her contributions applicable under such provisions with respect to such period, without interest thereon.

15-a. "Pension-providing-for-increased-take-home-pay", with respect to any improved benefits plan member, shall mean the annual allowance for life payable in monthly installments derived from contributions which the city made to the contingent reserve fund, pursuant to section 13-326 of this subchapter and subdivision b of section four hundred eighty of the retirement and social security law, with respect to the period wherein he or she was an improved benefits plan member.

15-b. "Reserve-for-increased-take-home-pay", with respect to an improved benefits plan member, shall mean:

(a) the amount of the reserve provided by the city which shall be a sum consisting of the total of all products obtained by multiplying the compensation of the member, during each period of reduction of member contributions under the provisions of section 13-326 of this subchapter and subdivision b of section four hundred eighty of the retirement and social security law while he or she is an improved benefits plan member, by the percentage of reduction of his or her contributions applicable under such provisions with respect to such period, plus regular interest, and additional interest, if any, thereon; plus

(b) in the case of any elective improved benefits plan member, the amount of the accumulation-for-increased-take-home-pay, if any, of such member, as such accumulation was on the date next preceding the effective date of his or her election to be such a member, plus regular interest and additional interest, if any, on and after such effective date on the amount of such accumulation; plus

(c) in the case of any non-elective improved benefits plan member who is credited, immediately prior to becoming such a member, with an accumulation-for-increased-take-home-pay, the amount of such accumulation-for-increased-take-home-pay, as such accumulation was on the date next preceding the date on which such member became a nonelective improved benefits plan member, plus regular and additional interest, if any, on and after such date on which he or she became a nonelective improved benefits plan member, on the amount of such accumulation.

16. "Original plan discontinued member" shall mean an original plan member who has a vested right to a deferred retirement allowance under section 13-360 of this subchapter.

16-a. "Original plan discontinued member not subject to article eleven" shall mean an original plan member not subject to article eleven (as defined in subdivision four-c of this section) who has a vested right to a deferred retirement allowance under section 13-360 of this subchapter.

16-b. "Original plan discontinued member subject to article eleven" shall mean an original plan member subject to article eleven (as defined in subdivision four-d of this section) who has a vested right to a deferred retirement allowance under section 13-360 of this subchapter.

16-c. "Fire uniformed force service" shall for purposes of section 13-361 of this subchapter mean service in the uniformed force of the fire department, as a member of such force, including service for which credit is granted by section 15-111 of the code, but excluding any service credit acquired by transfer or otherwise under any provision of law.

16-d. "Improved benefits plan discontinued member" shall mean any improved benefits plan member who has discontinued fire uniformed force service (as defined in subdivision sixteen-c of this section) and who has a vested right to a deferred retirement allowance under section 13-361 of this subchapter.

16-e. "Improved benefits plan discontinued member not subject to article eleven" shall mean an improved benefits plan member not subject to article eleven (as defined in subdivision four-i of this section) who has a vested right to a deferred retirement allowance under section 13-361 of this subchapter.

16-f. "Improved benefits plan discontinued member subject to article eleven" shall mean an improved benefits plan member subject to article eleven (as defined in subdivision four-j of this section) who has discontinued fire uniformed force service and who has a vested right to a deferred retirement allowance under section 13-361 of this subchapter.

17. "Normal rate of contribution as an original plan member" shall mean:

(a) in the case of any original plan member who is required to make member contributions as such a member under the applicable provisions of this subchapter, the proportion of his or her earnable compensation which is required to be deducted from the compensation of such member by the applicable provisions of section 13-325 of this subchapter as his or her member contributions, exclusive of any reduction of such proportion on account of any program for increased-take-home-pay in effect.

(b) in the case of any original plan member who heretofore completed, or who, on or after the effective date of this subdivision, shall complete, his or her minimum period for service retirement, the proportion of his or her earnable compensation (exclusive of any reduction of such proportion on account of any program of increased-take-home-pay in effect) which, as of the date on which he or she completed his or her minimum period for service retirement, was required to be deducted from the compensation of such member by the applicable provisions of section 13-325 of this subchapter, as in effect on such date.

18. "Normal rate of contribution as an improved benefits plan member" shall mean:

(a) in the case of any improved benefits plan member who is not eligible to elect to discontinue making member contributions under the applicable provisions of this subchapter, the proportion required to be deducted from the compensation of such member by the applicable provisions of section 13-315 and/or section 13-327 of this subchapter as his or her member contributions, exclusive of any increase in such proportion pursuant to subdivision c or subdivision d of section 13-327 of this subchapter or any reduction thereof on account of any program for increased-take-home-pay in effect or pursuant to subdivision one of section one-hundred thirty-eight-b of the retirement and social security law (relating to election to decrease member contributions by contributions due on account of social security coverage).

(b) in the case of any improved benefits plan member who completed his or her minimum period for service retirement before becoming an improved benefits plan member and who is eligible under the provisions of this subchapter to elect to discontinue making member contributions or has made such election, the proportion of his or her earnable compensation (exclusive of any increase in such proportion pursuant to subdivision c or subdivision d of section 13-327 of this subchapter or any reduction thereof on account of any program of increased-take-home-pay in effect) which, as of the date on which he or she completed his or her minimum period for service retirement, would have been required to be deducted from his or her compensation by the applicable provisions of sections 13-315 and/or 13-327 of this subchapter if the improved benefits plan had been in effect on his or her date of inception of pension fund membership (as defined in subdivision twenty of this section) and he or she had become an improved benefits plan member on such date of inception.

19. "Date of commencement of contributions as an improved benefits plan member" shall mean the first day (on or after the last commencement of the status of an improved benefits plan member as such member) for which deductions from the compensation of such member are required by the applicable provisions of subdivision i of section 13-315 of this subchapter and/or section 13-327 of this subchapter to be made on account of his or her contributions as an improved benefits plan member.

20. "Date of inception of pension fund membership", in the case of any original plan member (as defined in subdivision four-b of this section) or elective improved benefits plan member (as defined in subdivision four-g of this section), shall mean the earliest date on which such member last became eligible for membership in any pension fund established pursuant to former article one-A repealed by chapter three hundred eighty-five of nineteen hundred eighty-one or subchapter two of this chapter. Nothing herein provided shall limit member service credit restoration pursuant to section 13-319 of this subchapter.

20-a. "Date of commencement of credited member service in the fire uniformed force" shall mean, with respect to any improved benefits plan member, the date of commencement of the period of service in the uniformed force of the fire department as a member of the pension fund which is credited to such member as of the date on which any benefit under this subchapter becomes payable to such member.

21. (a) "Contribution rate deficiency" shall mean with respect to each elective improved benefits plan member (as defined in subdivision four-g of this section) and shall mean with respect to any non-elective improved benefits plan member (as defined in subdivision four-h of this section) who is subject to such a deficiency, an amount equal to the excess, if any, of (ii) over (i) hereof where: (i) is the amount of the total accumulated contributions (as defined in subdivision seven of this section) of such member (as such amount would be in the absence of a loan) as of the earlier of (1) the date next preceding his or her date of commencement of contributions as an improved benefits plan member (as defined in subdivision nineteen of this section) or (2) the date of completion of his or her minimum period for service retirement; and (ii) is the amount (i) would be if the contribution rate of the member to the date specified in (i) had been his or her normal rate of contribution as an improved benefits plan member.

(b) "Contribution rate deficiency" shall mean, with respect to an improved benefits plan discontinued member (as defined in subdivision sixteen-d of this section) who is subject to such a deficiency, an amount equal to the excess, if any, of (ii) over (i) hereof where: (i) is the amount of the total accumulated contributions of such discontinued member (as such amount would be in the absence of a loan) as of the date next preceding his or her date of commencement of contributions as an improved benefits plan member (as defined in subdivision nineteen of this section); and (ii) is the amount (i) would be if the contribution rate of the member to the date specified in (i) had been his or her normal rate of contribution as an improved benefits plan member.

22. "Subsequent period for election of the improved benefits plan" shall mean any of the following three-month periods: the period of three months beginning on the date next succeeding the date which is the last day of a period of thirty months next succeeding the starting date of the improved benefits plan (as defined in subdivision twenty-seven of this section), and subsequent, successive periods of three months' duration, such period for the calendar year nineteen hundred eighty-six beginning on September first, nineteen hundred eighty-six, and ending three months thereafter, and for successive calendar years, beginning with the calendar year nineteen hundred eighty-seven, such periods beginning on June first and ending on August thirty-first of each such year.

23. "Pension fund one-A" shall mean the pension fund provided for by article one-A of title B of chapter nineteen of the code, as in effect immediately prior to July first, nineteen hundred eighty-one.

24. "Special interest" shall mean a distribution to the annuity savings fund, in addition to regular interest, which distribution (a) for each of the periods as to which the provisions of section 13-337 of this subchapter or section 13-638.2 of this title grant special interest, consists of the amount prescribed by such provisions for such period and (b) for each such period, is credited in such applicable amount to the accounts in the annuity savings fund of improved benefits plan members who are eligible under such provisions for crediting of such amount for such period.

25. "Additional interest", with respect to any improved benefits plan member, shall mean a distribution to the reserve-for-increased-take-home-pay in addition to regular interest, which distribution (a) for each of the periods, if any, as to which the provisions of section 13-337 of this subchapter or section 13-638.2 of this title grant additional interest, consists of the amount prescribed by such provisions for such period and (b) for each such period, is included in such applicable amount in the reserve-for-increased-take-home-pay of each member who is eligible under such provisions for inclusion of such amount for such period.

26. "Supplementary interest" shall mean an annual allowance, in addition to regular interest, of interest on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this subchapter (excluding, however, the annuity savings fund and the amounts of total accumulated contributions, accumulations-for-increased-take-home-pay and reserve-for-increased-take-home-pay in the contingent reserve fund), which allowance, (a) for each of the periods as to which the provisions of section 13-337 of this subchapter or section 13.638.2\* of this title grant supplementary interest, consists of the amount prescribed by such provisions for such period and (b) for each such period, is credited in such applicable amount to such funds at the time, in the manner, to the extent and subject to the exclusions prescribed by the provisions of such section.

27. "Starting date of the improved benefits plan" shall mean the date of enactment of the act which added this subdivision twenty-seven, as such date is certified pursuant to section forty-one of the legislative law.

28. "Five-year-average-salary", in the case of an original plan member, shall mean the average annual compensation earnable by such member for city-service during his or her last five years of city-service, or during any other five consecutive years of city-service since he or she last became a member which such member shall designate.

29. "Actuarial equivalent benefit." Any benefit which by law is required to be an actuarial equivalent or by law is required to be determined on the basis of an actuarial equivalent.

30. "Seven percent member for actuarial equivalent benefit purposes."

(a) A member who meets all of the following conditions:

(i) subparagraph (i) of paragraph (j) of subdivision eight of this section (relating to the definition of members as to whom regular interests at seven per centum per annum, compounded annually applies) applies to such member; and

(ii) an actuarial equivalent benefit has become payable to or on account of such member; and

(iii) it is provided by a resolution of the board (A) that a mortality table which takes effect on or after the date of enactment (as certified pursuant to section forty-one of the legislative law) of this subdivision and which does not differentiate on the basis of sex shall be used to calculate such actuarial equivalent benefit or a portion of such benefit, or (B) that the modified Option 1 pension computation formula (as defined in subdivision thirty-two of this section) shall be used to calculate such actuarial equivalent benefit.

(b) Except in cases to which the modified Option 1 pension computation formula applies pursuant to a resolution adopted by the board, nothing contained in subparagraph (iii) of paragraph (a) of this subdivision thirty shall be construed as referring to or including any calculation of an actuarial equivalent benefit (or portion of such benefit) payable to any person where such calculation is required by such resolution to be made through the use of a mortality table in effect prior to such date of enactment.

31. "Tier I member." A member whose benefits (other than a supplemental retirement allowance) are prescribed by this article and who is not subject to the provisions of article eleven, article fourteen or article fifteen of the retirement and social security law.

32. "Modified Option 1 pension computation formula."

(a) The method, as set forth in the succeeding paragraphs of this subdivision, of computing the following benefits:

(i) the Option 1 retirement allowance payable to a Tier I member who retired as an original plan member for service or superannuation or for ordinary or accident disability or who became an original plan discontinued member not subject to article eleven (as defined in subdivision sixteen-a of this section); and

(ii) the pension component of an Option 1 retirement allowance payable to a member who retired as an improved benefits plan member for service or superannuation or ordinary or accident disability or who became an improved benefits plan discontinued member (as defined in subdivision sixteen-d of this section); and

(iii) the method of computing the amount of the Option 1 benefit payable to the beneficiary or estate of any such member above referred to in this paragraph.

(b) The initial reserve for such original plan retirement allowance or improved benefits plan pension component shall be computed through use of mortality tables which are adopted on or after the date of enactment (as certified pursuant to section forty-one of the legislative law) of this subdivision and which do not differentiate on the basis of sex (hereinafter referred to as "gender-neutral mortality tables") and an interest assumption consisting of regular interest of seven per centum per annum, compounded annually.

(c) Solely for the purpose of use as the minuend from which the payments of such original plan retirement allowance or improved benefits plan pension component to such member are subtracted in order to determine the amount of the Option 1 benefit payable, upon such member's death, to such member's beneficiary or estate by reason of such Option 1 selection in relation to such retirement allowance or pension component, the present value of such member's maximum original plan retirement allowance or maximum improved benefits plan pension, as it was at the time of such member's retirement, shall be deemed to be the greater of:

(i) such present value determined on the basis of gender-neutral mortality tables and an interest assumption consisting of regular interest of seven per centum per annum, compounded annually; or

(ii) such present value determined on the basis of the mortality tables and the regular interest applicable to such member in effect immediately prior to the date of enactment (as certified pursuant to section forty-one of the legislative law) of this subdivision.

(d) The original plan retirement allowance or improved benefits plan pension component payable to such member shall be computed on the basis of gender-neutral mortality tables and an interest assumption consisting of regular interest of seven per centum per annum, compounded annually, so that:

(i) the present value, as it was at the time of such member's retirement, of such retirement allowance or pension component; plus

(ii) the present value, as it was at the time of such member's retirement, of the amount payable to such member's Option 1 beneficiary or estate upon the death of the member as provided for by the applicable provisions of paragraph (e) of this subdivision; shall be equal to the Option 1 initial reserve determined for such original plan retirement allowance or improved benefits plan pension component with respect to such member pursuant to the provisions of paragraph (b) of this subdivision.

(e) Where such member dies before he or she has received payments on account of such original plan retirement allowance or improved benefits plan pension component equal to the present value of such member's maximum original plan retirement allowance or maximum improved benefits plan pension as computed pursuant to paragraph (c) of this subdivision, the Option 1 benefit payable to the beneficiary or estate of such deceased member, by reason of such Option 1 selection in relation to such retirement allowance or pension component, shall be the remainder obtained by subtracting from such present value determined pursuant to such paragraph (c) in relation to such retirement allowance or pension component, the total of such Option 1 payments on account of such retirement allowance or pension component received by or payable to such member for the period prior to his or her death.

(f) In relation to the Option 1 benefits determined pursuant to the method of computation set forth in this subdivision by reason of discontinuance of service by an original plan discontinued member or an improved benefits plan discontinued member, the phrase "time of such member's retirement," as set forth in paragraphs (c) and (d) of this subdivision, shall be deemed, for the purpose of this subdivision, to mean the date of commencement of the retirement allowance of such discontinued original plan member or discontinued improved benefits plan member.

33. "Selection of mode of benefit." The choice made by a member (as permitted by and pursuant to the requirements of law governing such choice by such member) as to whether the maximum amount of his or her retirement allowance of a component thereof shall be payable or such retirement allowance or a component thereof shall be payable under an option selected by the member. The term "selection of mode of benefit" shall include a case where the maximum retirement allowance or a maximum component thereof becomes payable because of a member's omission, within the time permitted by law, to select the maximum benefit or an option.

34. "Better-of-two-computations method."

(a) A method (as prescribed by a resolution of the board) under which a retirement allowance (or portion thereof) payable to a member is required to be determined for such member so as to be the greater of:

(i) such retirement allowance (or portion thereof) determined on the basis of gender-neutral mortality tables and regular interest at the rate of seven per centum per annum, or

(ii) such retirement allowance (or portion thereof) determined on the basis of the mortality tables and the regular interest applicable to such member, as such tables and interest were in effect as of a time prescribed in such resolution.

(b) Where, under the provisions of any such resolution of the board, the modified Option 1 pension computation formula (as defined in subdivision thirty-two of this section) applies to any member, the term, "better-of-two-computations method," where used in relation to such member, shall be deemed to include such modified Option 1 pension computation formula, to the extent that such formula governs the determination of (i) such member's retirement allowance (or portion thereof), in the case of an original plan member, or (ii) the pension component (or portion thereof) of such member's retirement allowance in the case of an improved benefits plan member.

35. "Person entitled to a recomputation of benefits pursuant to the better-of-two-computations method." Any person who meets all of the conditions stated below in this subdivision:

(a) such person, during the period beginning on August first, nineteen hundred eighty-three and ending on the date next preceding the date of enactment (as such date is certified pursuant to section forty-one of the legislative law) of this subdivision, (i) retired for service or superannuation or for ordinary or accident disability, or (ii) discontinued service so as to become an original plan discontinued member (as defined in subdivision sixteen of this section) or an improved benefits plan discontinued member (as defined in subdivision sixteen-d of this section); and

(b) such person's retirement allowance (or a portion thereof), by reason of such retirement or discontinuance of service, is required by a resolution adopted by the board to be redetermined pursuant to the better-of-two-computations method (as defined in subdivision thirty-four of this section); and

(c) a first payment on account of his or her retirement allowance (as such retirement allowance was determined prior to the date of enactment of this subdivision) was made prior to such date of enactment.

36. "Joint and survivor option."

(a) Any option under which, at the time when such option is selected, a choice is made which includes both:

(i) a benefit payable for the lifetime of the retired or vested member by whom or in whose behalf such option is selected; and

(ii) a benefit (A) which consists of an amount equal to or constituting a percentage of such retired or vested member's benefit and (B) which is payable for the lifetime of a designated beneficiary selected at the time when such option is selected.

(b) In any case where an option described in paragraph (a) of this subdivision includes a provision prescribing that if the designated beneficiary predeceases such retired or vested member, a maximum benefit shall become payable to such member, such option shall nevertheless be deemed to be a joint and survivor option.

37. "Original plan member contributions eligible for pick up by the employer."

(a) With respect to any payroll period for an original plan member who is required to make member contributions during such payroll period under the provisions of section 13-325 of this subchapter, the term "original plan member contributions eligible for pick up by the employer" shall mean the amount of member contributions which, in the absence of an employer pick up program applicable to such member pursuant to section 13-327.1 of this subchapter (providing for pick up of required member contributions), would be required by law to be deducted, on account of such member's normal rate of contribution (as defined in subdivision seventeen of this section) from the compensation of such member for such payroll period, after (1) giving effect to any reduction in such payroll period, after (1) giving effect to any reduction in such contributions required under any program for increased-take-home-pay and (2) excluding any deductions from such compensation (or redeposits or payments) on account of (i) loans or withdrawals of contributions or (ii) any election by such member to increase his or her contributions pursuant to subdivision d of section 13-325 of this subchapter or (iii) any other cause not attributable to the member's normal rate of contribution, after reduction, if any, in such rate, as described in subparagraph one of this paragraph (a).

(b) If no deductions on account of an original plan member's normal rate of contribution are required by law to be made from the compensation of such member for any payroll period, such member shall not have, for such payroll period, any original plan member contributions eligible for pick up by the employer. The amount of an original plan member's original plan member contributions eligible for pick up by the employer for any payroll period shall be determined solely on the basis of compensation paid to such member for such payroll period by his or her public employer. An original plan member shall not have any original plan member contributions eligible for pick up by the employer with respect to any payroll period for which he or she is not paid compensation by his or her public employer.

38. "Improved benefits plan member contributions eligible for pick up by the employer."

(a) With respect to any payroll period for an improved benefits plan member (other than any such member who is not required to contribute during such payroll period because of his or her currently effective election to discontinue member contributions pursuant to subdivision b of section 13-327 of this subchapter), the term "improved benefits plan member contributions eligible for pick up by the employer" shall mean the amount of member contributions which, in the absence of an employer pick up program applicable to such member pursuant to section 13-327.1 of this subchapter (providing for pick up of required member contributions), would be required by law to be deducted, on account of such member's normal rate of contribution, from the compensation of such member for such payroll period, after (1) giving effect to any reduction in such contributions required under any program for increased-take-home-pay or pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law and (2) excluding any deductions from such compensation (or redeposits, restorations or payments) on account of (i) loans or withdrawals of excess contributions or (ii) any contribution rate deficiency (as defined in subdivision twenty-one of this section) of such member or (iii) any election by such member to increase his or her member contributions pursuant to subdivision c or subdivision d of section 13-327 of this subchapter or (iv) any other cause not attributable to the member's normal rate of contribution after reduction, if any, in such rate as described in subparagraph one of this paragraph (a).

(b) If no deductions on account of an improved benefits plan member's normal rate of contribution are required by law to be made from the compensation of such member for any payroll period, such member shall not have, for such payroll period, any improved benefits plan member contributions eligible for pick up by the employer. The amount of an improved benefits plan member's improved benefits plan member contributions eligible for pick up by the employer for any payroll period shall be determined solely on the basis of compensation paid to such member for such payroll period by his or her public employer. An improved benefits plan member shall not have any improved benefits plan member contributions eligible for pick up by the employer with respect to any payroll period for which he or she is not paid compensation by his or her public employer.

39. "Starting date for pick up." The first day of the first whole payroll period commencing after the date which is three months after the internal revenue service shall have issued a ruling that member contributions picked up pursuant to section 13-327.1 of this subchapter are not includible as gross income for federal income tax purposes until distributed or made available.

### **§ 13-314 Membership; composition and eligibility.**

The membership of the pension fund shall consist of:

a. all persons in city-service, as defined in this subchapter, in positions in the competitive class of the civil service, who shall have served the required probationary period and shall have been appointed medical officers of the fire department or who shall have served the required probationary period and shall have been appointed as fourth grade firefighters after March twenty-ninth, nineteen hundred forty and prior to the date on which this section as hereby amended takes effect, and shall have elected to become a member of the fire department pension fund pursuant to this subchapter prior to such appointment as a fourth grade firefighter or such medical officer; and

b. (1) all persons in city-service, as defined in this subchapter, in positions in the competitive class of the civil service:

(A) who shall have been appointed probationary medical officers of the fire department or probationary firefighters on or after April fourteenth, nineteen hundred fifty-six and prior to the starting date of the improved benefits plan (as defined in subdivision twenty-seven of section 13-313 of this subchapter), and shall have elected to become a member of the fire department pension fund pursuant to this subchapter prior to such appointment as probationary firefighters or probationary medical officers; and

(B) who shall have been appointed on or after such starting date as probationary medical officers of the fire department or probationary firefighters; and

(2) all persons in city-service, as defined in this subchapter, who hold a position of medical officer of the fire department classified in the non-competitive class of the civil service; and

(3) all persons in city-service, as defined in this subchapter, who, during the period commencing on July first, nineteen hundred ninety-five and ending on June thirtieth, nineteen hundred ninety-six, are appointed as provisional firefighters; and

(4) a person in city-service in the position of chief of department in the exempt class of the civil service.

c. in determining the terms of service of any member of the fire department, service as a physician and surgeon in the classified service in any other department in the city; service not exceeding three years as an interne duly appointed and removable by the city of New York in any hospital owned and operated by such city, provided further that such interne shall pay into the pension fund an amount equal to the amount he or she would have paid during such period of service if he or she had been a medical officer in such fire department receiving compensation based on an annual amount of five thousand dollars per year; and temporary service in the fire department as a medical officer, and subsequently thereafter in the fire department shall be counted and held to be service in the fire department of the city. Any person, however, becoming a member of the fire department, in the manner herein provided, shall not be entitled to participate in the benefits of the fire department pension fund, unless he or she shall pay into such fund the total amount he or she would have been required to pay in order to participate therein had he or she been a member of the fire department during the time he or she shall have served in the same or such other department.

d. (1) Notwithstanding any other provision of this subchapter or any other law to the contrary, but subject to the provisions of paragraph two of this subdivision d, in any case where a member who has completed his or her minimum period for service retirement is appointed fire commissioner or deputy fire commissioner he or she shall, while serving as fire commissioner or deputy fire commissioner, continue to be a member of the pension fund. Such member, if he or she was an original plan member at the time of his or her appointment as fire commissioner, shall continue to be an original plan member while serving as fire commissioner, unless he or she elects to become an improved benefits plan member pursuant to the provisions of section 13-315 of this subchapter, and if he or she was an improved benefits plan member at the time of his or her appointment as fire commissioner, he or she shall continue to be an improved benefits plan member while serving as fire commissioner.

(2) Notwithstanding any other provision of this subchapter or any other law to the contrary, but subject to the provisions of paragraph three of this



subdivision, in any case where an improved benefits plan member who is eligible to retire for service is appointed a deputy fire commissioner, he or she shall, while serving as a deputy fire commissioner, continue to be an improved benefits plan member of the pension fund.

(3) The status of any member referred to in paragraph one or paragraph two of this subdivision with respect to applicability or inapplicability of the provisions of article eleven of the retirement and social security law to him or her as a member of the pension fund shall not be affected or changed by his or her appointment as fire commissioner or deputy fire commissioner, as the case may be.

(4) For the purposes of this subchapter, an improved benefits plan member serving as a fire commissioner or deputy fire commissioner whose membership is continued pursuant to the applicable provisions of paragraph one or paragraph two of this subdivision or whose membership is restored pursuant to the applicable provisions of section 13-371 or section 13-372 of this subchapter shall, during the period of such continuance or restoration of membership, be deemed to be a member of the uniformed force of the fire department and his or her service as fire commissioner or deputy fire commissioner during such period shall be deemed service in such force.

### **§ 13-315 Plan membership; original plan, improved benefits plan.**

a. Each person who is a member of the pension fund on the date next preceding the starting date of the improved benefits plan (as such starting date is defined in subdivision twenty-seven of section 13-313 of this subchapter) shall be entitled to the rights, benefits and privileges and be subject to the obligations of the original plan (as defined in subdivision four-a of such section 13-313), unless and until he or she elects, pursuant to the applicable provisions of this subchapter, to be an improved benefits plan member (as defined in subdivision four-f of such section 13-313).

b. Except in the case of re-entry pursuant to section 13-319 and as otherwise provided in this subchapter, each person who becomes or again becomes a member of the pension fund on or after the starting date of the improved benefits plan shall be entitled to the rights, privileges and benefits and be subject to the obligations of the improved benefits plan and shall not be entitled to the rights, privileges and benefits or be subject to the obligations of the original plan.

c. Any original plan member, who is in city-service at the time of filing an application to become an improved benefits plan member as hereinafter provided in this subdivision c, may, by a written application duly executed and filed with the board on or after the starting date of the improved benefits plan (as such starting date is defined in subdivision twenty-seven of section 13-313 of this subchapter) and prior to the date next succeeding the date six months after such starting date, or on or after the effective date of subdivision m of this section and prior to January first, nineteen hundred eighty-three, elect to terminate his or her status as an original plan member and become entitled to the rights, benefits and privileges and be subject to the obligations of the improved benefits plan.

d. Any original plan member who files an application pursuant to subdivision c of this section shall cease to be an original plan member at the end of the day next preceding the starting date of the improved benefits plan and shall become an improved benefits plan member as of such starting date.

e. Any original plan member, who is in city-service at the time of filing an application to become an improved benefits plan member as hereinafter provided in this subdivision e, may, by a written application duly executed and filed with the board during any subsequent period for election of the improved benefits plan (as defined in subdivision twenty-two of section 13-313 of this subchapter), elect to terminate his or her status as an original plan member and become entitled to the rights, privileges and benefits and be subject to the obligations of the improved benefits plan.

f. Any original plan member who files an application pursuant to subdivision e of this section shall cease to be an original plan member at the end of the day next preceding the date of filing of such application and shall become an improved benefits plan member commencing on such date of filing.

g. Any election to be an improved benefits plan member made pursuant to the provisions of this section shall be irrevocable.

h. The status of an original plan member, who elects to become an improved benefits plan member pursuant to the provisions of this section, with respect to applicability or inapplicability of the provisions of article eleven of the retirement and social security law to him or her as a member of the pension fund, shall not be affected or changed by such election.

i. Beginning with the payroll period, the first day of which coincides with or next occurs after the date or commencement of the status of an elective improved benefits plan member as such a member, as prescribed by the applicable provisions of this subchapter, there shall be deducted from the compensation of each such member on each and every payroll of such member for each and every payroll period a proportion of his or her earnable compensation equal to the proportion which would have been determined by the actuary, as of his or her date of inception of pension fund membership (as defined in subdivision twenty of section 13-313 of this subchapter), as his or her rate of member contribution (before reduction on account of increased-take-home-pay) as a member of the police pension fund maintained pursuant to subchapter two of chapter two of this title, if, as of such date of inception of pension fund membership, he or she had not become a member of this pension fund and had instead become a member of such police pension fund; provided, however, that if the foregoing provisions of this subdivision i would otherwise require that such proportion be determined pursuant to the provisions of subdivision a of section 13-225 of this title, as enacted by local law number two of the city for nineteen hundred forty, such proportion shall be determined by the actuary in the same manner as if, as of such date of inception of pension fund membership, the provisions of such subdivision a, as amended by local law number eighty-nine of the city for nineteen hundred fifty-one, and been in effect, so that the fraction to be used in such computation shall be twenty-five seventy-fifths. Such proportion of compensation determined for any elective improved benefits plan member pursuant to the provisions of this subdivision i shall be computed to remain constant. The provisions of section 13-327 of this subchapter shall apply to such deductions and to each elective improved benefits plan member, except insofar as the provisions of such section 13-327 are inconsistent with the provisions of this subdivision i.

j. (1) Each elective improved benefits plan member shall be subject to a contribution rate deficiency (as defined in subdivision twenty-one of section 13-313 of this subchapter) unless and until the amount thereof is paid in full to the pension fund.

(2) Each non-elective improved benefits plan member (as defined in subdivision four-h of section 13-313 of this subchapter) who is or becomes entitled under any provision of this subchapter to credit for member service in the uniformed force of the fire department with respect to any period:

(i) which precedes the date of the last commencement of his or her membership in the pension fund as a non-elective improved benefits plan member; and

(ii) with respect to which period he or she was required to make member contributions to the pension fund; and

(iii) with respect to which period he or she made required member contributions determined pursuant to section 13-325 of this subchapter, as in effect before or on or after the effective date of this subdivision; shall be subject to a contribution rate deficiency, unless and until the amount thereof has been paid in full to the pension fund.

(3) Any improved benefits plan discontinued member (as defined in subdivision sixteen-d of such section 13-313) who, immediately prior to the discontinuance of service which qualified him or her to become such a member, was subject to a contribution rate deficiency, shall be subject to such deficiency while he or she is an improved benefits plan discontinued member, unless and until the amount thereof has been paid in full to the pension fund.

(4) In any case where an original plan discontinued member (as defined in subdivision sixteen of such section 13-313) becomes an improved benefits plan discontinued member pursuant to the provisions of paragraph six of subdivision i of section 13-360 of this subchapter, he or she shall be subject to a contribution rate deficiency unless and until the amount thereof has been paid in full to the pension fund.

(5) For the purpose of payment of a contribution rate deficiency or any part thereof to the pension fund by an improved benefits plan member who is subject to such a deficiency, such deficiency shall be deemed to consist of:

(i) the amount thereof, without regular interest thereon, if such member completed his or her minimum period for service retirement before becoming an improved benefits plan member; or

(ii) the amount thereof, plus regular interest and special interest, if any, thereon, from his or her date of commencement of contributions as an improved benefits plan member (as defined in subdivision nineteen of such section) 13-313 to (A) the date of completion of his or her minimum period for service retirement, or (B) the date of payment, if such member becomes an improved benefits plan member before completion of his or her minimum period for service retirement.

(6) For the purpose of payment of a contribution rate deficiency or any parts thereof to the pension fund by an improved benefits plan discontinued member who is subject to such deficiency, such deficiency shall be deemed to consist of the amount thereof, plus regular interest and special interest, if any, thereon from the date of commencement of contributions as an improved benefits plan member, as applicable to such member, to and including the date next preceding the date of payment.

(7) No contribution rate deficiency which includes regular interest and special interest, if any, thereon as provided for by paragraphs five and six of this subdivision j shall be deemed paid unless the amount thereof, together with such regular interest and special interest, if any, is paid in full to the pension fund.

(8) Subject to the provisions of paragraphs five, six and seven of this subdivision, each improved benefits plan member who is subject to a contribution rate deficiency may, at any time while he or she is a member, at his or her election pay to the pension fund the amount of such deficiency or so much thereof as remains unpaid.

(9) Subject to the provisions of paragraph five of this subdivision, at any time before the date of required commencement of payment of any benefit payable to an improved benefits plan discontinued member who is subject to a contribution rate deficiency, he or she may at his or her election pay to the pension fund the amount of such deficiency or so much thereof as remains unpaid.

(10) The board shall adopt rules and regulations governing the payment of a contribution rate deficiency or the unpaid portion thereof in a lump sum, in periodic installments or in such other manner as the board shall prescribe; provided, however, that such rules and regulations shall not conflict with the provisions of paragraphs five to nine, inclusive, of this subdivision j.

k. For the purposes of section 13-342 of this subchapter (relating to loans to members), the accumulated deductions of any elective improved benefits plan member shall not be deemed to include any part of his or her contribution rate deficiency remaining unpaid.

l. (1) Upon the filing of an application by an original plan member to become an elective improved benefits plan member, an amount equal to his or her accumulated contributions (as defined in subdivision seven of section 13-313 of this subchapter), as such contributions were as of the date next preceding the date of commencement of his or her status as an elective improved benefits plan member, shall be transferred from the contingent reserve fund to the credit of such member's account in the annuity savings fund.

(2) In any case where a non-elective improved benefits plan member is credited, immediately prior to becoming such a member, with accumulated contributions, such contributions, upon his or her becoming such a member, shall be transferred from the contingent reserve fund to the credit of such member's account in the annuity savings fund.

m. (1) For the purposes of this subdivision m, the term "additional contribution rate deficit" shall mean with respect to a retiree subject to such a deficit under the provisions of paragraph four of this subdivision m, an amount equal to the excess, if any, of (b) over (a), where: (a) is the amount of the subsequent original plan member accumulated contributions (as defined in subdivision six-c of section 13-313 of this subchapter) of such retiree (as such amount would be in the absence of a loan), and (b) is the amount (a) would be if (i) the contribution rate of such retiree on and after July first, nineteen hundred eighty-one had been the rate which would be his or her normal rate of contribution as an improved benefits plan member (as defined in subdivision eighteen of such section 13-313 of this subchapter) and (ii) regular and special interest had been credited on and added to such retiree's hypothetical member contributions on and after such July first resulting from such normal rate.

(2) For the purposes of this subdivision m, the term "additional contribution rate deficit" shall mean with respect to a person who is deemed to be an improved benefits plan discontinued member (as defined in subdivision sixteen-d of section 13-313 of this subchapter) under the provisions of paragraph eight of this subdivision and who is subject to such a deficit under the provisions of paragraph nine of this subdivision, an amount equal to the excess of (b) over (a), where: (a) is the amount of the subsequent original plan member accumulated contributions (as defined in subdivision six-c of such section 13-313) of such person (as such amount would be in the absence of a loan) and (b) is the amount (a) would be if (i) the contribution rate of such person on and after July first, nineteen hundred eighty-one had been the rate which would be his or her normal rate of contribution as an improved benefits plan member (as defined in subdivision eighteen of such section 13-313) and (ii) regular and special interest had been credited on and added to such person's hypothetical member contributions on and after such July first resulting from such normal rate.

(3) Notwithstanding any other provision of law to the contrary, in any case where, during the period beginning on July second, nineteen hundred eighty-one and ending on the date thirty days after the effective date of this subdivision m, any member was or shall be retired for service or superannuation or for ordinary or accident disability, and at the time of such retirement, such member was or shall be an original plan member, such retiree may, by a written application duly executed and filed with the board on or after the effective date of this subdivision and prior to January first, nineteen hundred eighty-three, elect the applicable benefits of this subdivision. Any retiree who makes such election (a) shall be deemed to have become an improved benefits plan member, effective July first, nineteen hundred eighty-one, (b) shall be deemed to have been retired, on the effective date of his or her retirement, as an improved benefits plan member and (c) shall be entitled to receive, as of the effective date of his or her retirement and in lieu of any other retirement allowance to which he or she would have been entitled if he or she had not made such election, a retirement allowance determined (subject to the provisions of paragraph four of this subdivision m) for him or her in the same manner as if, where such retirement occurred during the period beginning on July second, nineteen hundred eighty-one and ending on January first, nineteen hundred eighty-two, such retiree, on the date next preceding the effective date of his or her retirement, had elected to be an improved benefits plan member, or as if, where such retirement occurred or occurs during the period beginning on January second, nineteen hundred eighty-two and ending on the date thirty days after the effective date of this subdivision m, the provisions of this subchapter had permitted such retiree, on the date next preceding the effective date of his or her retirement, to elect to be an improved benefits plan member, effective July first, nineteen hundred eighty-one, and he or she had made such election on such next preceding date.

(4) A retiree who makes such election pursuant to paragraph three of this subdivision m shall be subject to a contribution rate deficiency (as defined in subdivision twenty-one of section 13-313 of this subchapter) unless and until the amount thereof is paid to the pension fund in the manner provided for in paragraph five of this subdivision, and in any case where any such retiree had not completed his or her minimum period for service retirement prior to July first, nineteen hundred eighty-one, he or she shall also be subject to an additional contribution rate deficit (as defined in paragraph one of this subdivision m), unless and until the amount thereof is paid to the pension fund in the manner provided for in such paragraph five. The provisions of paragraphs five and seven of subdivision j of this section shall apply to the determination and payment of the amount of the contribution rate deficiency of any retiree making such election. The rules and regulations adopted pursuant to paragraph ten of subdivision j of this section shall not apply to payment of any such contribution rate deficiency.

(5) A retiree who makes such election may elect to pay to the pension fund, in the manner hereinafter provided for in this paragraph five, the whole or any part of the contribution rate deficiency to which he or she is subject or the whole or any part of any additional contribution rate deficit to which he or she is subject. Any such payment, if elected by such retiree, shall be completed no later than the date of filing of such retiree's applicable under paragraph three of this subdivision m electing the application benefits hereof.

(6) For the purpose only of determining the pension portion of the retirement allowance for the required minimum period of service of any retiree retired for service or superannuation who has filed an election application pursuant to paragraph three of this subdivision m:

(i) in any case where such retiree is subject to a contribution rate deficiency which remains unpaid in whole or in part, the annuity computed for such retiree pursuant to paragraph one of subdivision a of section 13-359 of this subchapter shall be computed as it would be under assumptions (i) to (iv) inclusive, of subparagraph (a) of such paragraph one and in addition, as such annuity would be if an amount equal to the whole or any part of such contribution rate deficiency remaining unpaid as of the date of the filing of such retiree's election of the applicable benefits of this subdivision pursuant to paragraph three thereof had been paid to the pension fund on the earlier of (A) such member's date of commencement of contributions as an improved benefits plan member (as defined in subdivision nineteen of section 13-313 of this subchapter) or (B) the date next following the date of termination of such member's required minimum period of service; and

(ii) in any case where such retiree is subject to an additional contribution rate deficit which remains unpaid in whole or in part, such annuity computed for such retiree shall be computed as it would be under assumptions (i) to (iv), inclusive, of such subparagraph (a) and in addition, as such annuity would be if an amount equal to the whole or any part of such additional contribution rate deficit remaining unpaid as of the date of the filing of such member's election of the applicable benefits of this subdivision pursuant to paragraph three thereof had been paid to the pension fund on the date next following the date of completion of such member's required minimum period of service.

(7) For the purpose only of determining the pension portion of the retirement allowance payable to any retiree retired for ordinary disability who has filed an election application pursuant to paragraph three of this subdivision m:

(i) in any case where such retiree is subject to a contribution rate deficiency which remains unpaid in whole or in part, the annuity computed for such retiree pursuant to paragraph one of subdivision a of section 13-363 of this subchapter shall be computed as it would be under assumptions (i) to (iv), inclusive, of subdivision b of such section, and in addition, as such annuity would be if an amount equal to the whole or any part of such contribution rate deficiency remaining unpaid as of the date of filing of such member's election of the applicable benefits of this subdivision pursuant to paragraph three thereof had been paid to the pension fund on the earlier of (A) the date of commencement of contributions as an improved benefits plan member (as defined in subdivision nineteen of section 13-313 of this subchapter) or (B) the date next following the date of completion of such member's minimum period for service retirement; and

(ii) in any case where such retiree is subject to an additional contribution rate deficit which remains unpaid in whole or in part, such annuity computed for such retiree shall be computed as it would be under assumptions (i) to (iv), inclusive, of such subdivision b and in addition, as such annuity would be if an amount equal to the whole or any part of such additional contribution rate deficit remaining unpaid as of the date of such member's election of the applicable benefits of this subdivision pursuant to paragraph three thereof had been paid to the pension fund on the earlier of (A) the date of completion of such retiree's minimum period for service retirement or (B) the day next preceding the effective date of such retiree's retirement.

(8) Notwithstanding any other provision of law to the contrary, in any case where, during the period beginning on July second, nineteen hundred eighty-one and ending on the date thirty days after the effective date of this subdivision m, any original plan member discontinued or shall discontinue service so as to acquire a vested right to a deferred retirement allowance under section 13-360 of this subchapter, such original plan discontinued member (as defined in subdivision sixteen of section 13-313 of this subchapter) may, by a written application duly executed and filed with the board on or after the effective date of this subdivision and prior to January first, nineteen hundred eighty-three, elect the applicable benefits of this subdivision. Any such person making such election (a) shall be deemed to have elected to become an improved benefits plan member, effective July first, nineteen hundred eighty-one, (b) shall be deemed to have discontinued service, as of the date of such discontinuance of service as an original plan member, so as to become an improved benefits plan discontinued member (as defined in subdivision sixteen-d of such section 13-313) and (c) shall be entitled to receive, in lieu of any other deferred retirement allowance to which he or she would have been entitled if he or she had not made such election, a deferred retirement allowance determined for him or her (subject to the provisions of paragraph nine of this subdivision) in the same manner as, and payable at the same time as if, where such discontinuance of service occurred during the period beginning on July second, nineteen hundred eighty-one and ending on January first, nineteen hundred eighty-two, such person, on the date next preceding the date of his or her discontinuance of service, had elected to be an improved benefits plan member, or as if, where such discontinuance of service occurred or occurs during the period beginning on January second, nineteen hundred eighty-two and ending on the date thirty days after the effective date of this subdivision, the provisions of this subchapter had permitted such person, on the date next preceding the date of his or her discontinuance of service, to elect to be an improved benefits plan member, effective July first, nineteen hundred eighty-one, and he or she had made such election on such next preceding date.

(9) A person who is deemed to be an improved benefits plan discontinued member by reason of an election made pursuant to paragraph eight of this subdivision m shall be subject to a contribution rate deficiency (as defined in subdivision twenty-one of section 13-313 of this subchapter) and he or she shall also be subject to an additional contribution rate deficit (as defined in paragraph two of this subdivision), unless and until the amounts of such deficiency and deficit are paid to the pension fund in the manner provided for in paragraph ten of this subdivision. The provisions of paragraphs six and seven of subdivision j of this section shall apply to the determination and payment of the amount of the contribution rate deficiency of any such person deemed to be an improved benefits plan discontinued member.

(10) (i) A person deemed to be an improved benefits plan discontinued member by reason of an election made pursuant to paragraph eight of this subdivision m may elect to pay to the pension fund, in the manner prescribed by subparagraph (ii) of this paragraph ten the whole or any part of the contribution rate deficiency and/or additional contribution rate deficit to which he or she is subject.

(ii) The board shall adopt rules and regulations governing the payment of any such contribution rate deficiency or additional contribution rate deficit or unpaid portion thereof in a lump sum, in periodic installments or in such other manner as the board shall prescribe, provided, however, that any such payment, if elected by any such person deemed to be an improved benefits plan discontinued member, shall be completed no later than the later of (A) the date of filing of such person's application under paragraph eight of this subdivision electing the applicable benefits hereof, or (B) the date of required commencement of payment of benefits to such person under the provisions of section 13-361 of this subchapter.

(11) For the purpose only of determining the pension portion (payable pursuant to paragraph two of subdivision c of section 13-361 of this subchapter) of the deferred retirement allowance payable to a person deemed to be an improved benefits plan discontinued member by reason of an election made pursuant to paragraph eight of this subdivision m, the annuity computed for such person pursuant to paragraph one of such subdivision c shall be computed as it would be under assumptions one to five, inclusive, of subdivision d of such section 13-361 and in addition, as it would be in an amount equal to the additional contribution rate deficit of such person had been paid to the pension fund on the day next preceding the date of such person's discontinuance of service which qualified him or her as an original plan discontinued member.

(12) An election made pursuant to paragraph three or paragraph eight of this subdivision m shall be irrevocable.

(13) Nothing contained in this subdivision m shall affect the applicability of section eleven hundred seventeen of the charter or section 13-356 or section 13-357 of this subchapter or article seven of the retirement and social security law to any person making such an election.

(14) The privilege of making an election pursuant to paragraph three or paragraph eight of this subdivision m shall not apply to and may not be exercised by the estate, personal representatives, distributees or beneficiaries of any deceased person.

(15) (i) In any case where a retiree files an application electing the applicable benefits of this subdivision m pursuant to the provisions of paragraph three hereof, or an original plan discontinued member (as defined in subdivision sixteen of section 13-313 of this subchapter) files an application electing the applicable benefits of this subdivision pursuant to the provisions of paragraph eight hereof, and prior to the filing of such application, the period had expired wherein such retiree or original plan discontinued member was entitled to select an option with respect to the original plan retirement allowance to which he or she was entitled prior to the filing of such application, neither such retiree nor discontinued member nor any person who would otherwise be entitled to select an option in behalf of such retiree or discontinued member shall have any other or further period for selection of an option or for a choice or election that a maximum retirement allowance be paid.

(ii) In any such case wherein the period for selection of an option expired as described in subparagraph (a) of this paragraph fifteen, any option selected prior to such expiration by or on behalf of any such retiree or discontinued member in relation to his or her original plan retirement allowance or

any choice or election prior to such expiration by or on his or her behalf that the maximum of such original plan retirement allowance shall be paid, shall apply to the improved benefits plan retirement allowance to which such retiree or discontinued member becomes entitled by reason of the filing of such application under paragraph three or paragraph eight, as the case may be, of this subdivision.

(16) The status of any person who files an application electing the applicable benefits of this subdivision pursuant to the provisions of paragraph three or paragraph eight hereof with respect to applicability or inapplicability of the provisions of article eleven of the retirement and social security law shall not be affected or changed by such election.

### **§ 13-316 Board of trustees.**

a. A board of trustees shall be the head of the New York fire department pension fund subchapter two, and, subject to the provisions of law, from time to time shall establish rules and regulations for the administration and transaction of the business of such fund and for the control and disposition thereof. The provisions of sections one thousand forty-two, one thousand forty-three, one thousand forty-four and one thousand forty-five of the New York city charter shall not be construed to apply to the adoption of such rules and regulations. Such board shall consist of:

1. The fire commissioner who shall be chairperson of the board and who shall be entitled to cast three votes.
2. The comptroller of the city who shall be entitled to cast three votes.
3. A representative of the mayor who shall be appointed by the mayor and who shall be entitled to cast three votes.
4. The commissioner of finance of the city who shall be entitled to cast three votes.
5. The president of the uniformed firefighters' association of greater New York who shall be entitled to cast two votes.
6. The vice-president of the uniformed firefighters' association of greater New York who shall be entitled to cast two votes.
7. The treasurer of the uniformed firefighters' association of greater New York who shall be entitled to cast two votes.
8. The chairperson of the board of trustees of the uniformed firefighters' association of greater New York who shall be entitled to cast two votes.
9. Three elected members of the executive board of the uniformed fire officers' association of the fire department, city of New York, of whom one shall be an officer of the said department with rank above that of captain and shall be entitled to cast one vote; another shall be a captain of the said department and shall be entitled to cast one vote; another shall be a lieutenant of the said department and shall be entitled to cast one and one-half votes.
10. A representative holding the title of pilot or marine engineer appointed by the president of the uniformed firefighters association of greater New York, who shall be entitled to cast one-half vote.
11. (i) Where, during any six-month period during a fiscal year, as defined in subdivision three of section 13-382 of the code, the equity portion of the assets of the pension fund is less than forty-five percent, subparagraph (ii) of this paragraph shall be effective during the succeeding fiscal year.

(ii) Two investment representatives, one of whom shall be appointed by the mayor and one of whom shall be appointed by the comptroller upon the occurrence of the condition specified in subparagraph (i) of this paragraph. Each such representative shall be entitled to cast two votes only in relation to determinations of the board:

(A) as to whether the assets of the pension fund shall be invested in equities or fixed income securities and the proportion of the assets of the pension fund to be invested in equities and fixed income securities; and

(B) as to the identity, nature, character and amounts of the equities (within the proportion as determined under item (A) of this subparagraph) to be acquired, held, sold, disposed of or otherwise dealt with by the pension fund; and

(C) as to any steps necessary to effectuate any of the functions set forth in items (A) and (B) of this subparagraph; and

(D) as to delegation by the board, pursuant to law, of the functions described in items (A), (B) and (C) of this subparagraph.

b. Subject to the provisions of subdivision b-1 and subdivision f of this section, every act of the board of trustees shall be by resolution which shall be adopted only by a vote of at least seven-twelfths of the whole number of votes authorized to be cast by all of the members of such board.

b-1. Every act of the board of trustees in relation to the investment matters referred to in paragraph thirteen of subdivision a of this section shall be by resolution which shall be adopted only by a vote of at least eight-fourteenths of the whole number of votes authorized to be cast by all of the members of the board empowered to vote on such investment matters.

c. The fire commissioner shall appoint an executive director of the pension fund, provided, however, that if such designee of the fire commissioner is not a member of the uniformed force of the fire department, the board of trustees shall approve such appointment. The executive director of the pension fund shall perform such duties as may be conferred upon such executive director by the chairperson of the board, by resolution passed by the board, or by law.

d. Any member of the board referred to in paragraphs five, six, seven, eight and ten, respectively, of subdivision a of this section, shall be members of the uniformed force and may authorize in writing at any time any other officer of the respective associations to represent him or her on such board in the event of his or her absence or disability, provided, however, that the by-laws or constitution of such respective associations provide for designation of a representative in such event.

e. 1. In addition to the powers conferred upon it by any other provision of law, the board of trustees shall, on or before April first of each year, establish a budget, sufficient to fulfill the powers, duties and responsibilities set forth in this chapter and any other provision of law which sets forth the benefits of members of the pension fund and may draw upon the assets of the pension fund to fund such budget, subject to the provisions of paragraphs two, three, four, five and six of this subdivision and subdivisions f, g, h and i of this section. The provisions of this section shall not be applicable to the payment of investment expenses pursuant to section 13-705 of this title and nothing contained in this subdivision shall be construed as abolishing, limiting, or modifying any power of the board of trustees to provide for the payment of investment expenses pursuant to section 13-705 of this title.

2. If a budget has not been adopted by the commencement of the new fiscal year, the budget for the preceding fiscal year shall be deemed to have been extended for the new fiscal year until such time as a new budget is adopted.

3. Any budget in effect pursuant to paragraph one or two of this subdivision may be modified during such succeeding fiscal year.

4. Notwithstanding any other provision of law, the board of trustees shall have the power either directly or by delegation to the executive director, to obtain by employment or by contract the goods, property and services necessary to fulfill its powers, duties and responsibilities within the appropriation authorized by the board of trustees pursuant to paragraph one of this subdivision.

5. (i) The pension fund shall be considered an entity separate from the city of New York fire department. The board of trustees of the pension fund shall work closely with the city of New York fire department.

(ii) The provisions of chapter seventeen of the New York city charter shall continue to apply to the fire department pension fund and such fund shall constitute an agency for the purposes of such chapter. The board of trustees shall not obtain any legal services by the retention of employees or by

contract unless the corporation counsel shall consent thereto.

6. All contracts for goods or services entered into by the pension fund shall be procured as prescribed in chapter thirteen of the New York city charter; provided, however, that where the provisions of such chapter thirteen require action by the mayor in regard to a particular procurement (except for mayoral action pursuant to subdivision c of section three hundred thirty-four of the New York city charter) such action shall not be taken by the mayor or such appointee of the mayor but shall be taken by the board of trustees or the executive director pursuant to a resolution adopted by the board of trustees delegating such authority to the executive director.

f. Notwithstanding any other provisions of this section, any resolution of the board of trustees which establishes a budget or modifies a budget pursuant to the provisions of paragraph one or three of subdivision e of this section shall require the concurrence of the comptroller and the representative of the mayor. This provision shall only apply to this subdivision and nothing contained in this subdivision shall be construed to apply to any other vote of the board. No assets of the pension fund shall be drawn upon pursuant to the provisions of paragraph one of subdivision e of this section unless authorized by a budget or budget modification established by such resolution of the board of trustees.

g. Employment by the pension fund shall constitute city-service for the purposes of this subchapter for those employees that are members of the fund pursuant to section 13-314 of this subchapter; for all other employees, employment by the pension fund shall constitute city service for the purposes of chapter one of title thirteen of this code; provided, however, that nothing contained in this subdivision shall be construed as granting membership rights in the pension fund or any retirement system to a contractor of such fund or such contractor's employees. Employees of the pension fund shall be deemed to be employees of the city of New York for the purposes of chapter thirty-five of the charter and title twelve of this code.

h. Whenever the assets of the pension fund are drawn upon pursuant to the provisions of paragraph one of subdivision e of this section all monies so withdrawn shall be made a charge to be paid by the employer otherwise required to make contributions to the pension fund no later than the end of the second fiscal year succeeding the time period during which such assets are drawn upon. The actuary shall calculate such charge to be paid by the employer. All charges to be paid pursuant to this subdivision shall be paid at the regular rate of interest utilized by the actuary in determining employer contributions to the pension fund pursuant to the provisions of paragraph two of subdivision b of section 13-638.2 of this title.

i. The funds withdrawn from the pension fund shall not be utilized for any purpose other than the budget established by the board of trustees. All expenditures of the pension fund shall be subject to audit by the comptroller, who may make recommendations, including but not limited to, procedures designed to improve accounting and expenditure control. All expenditures of the pension fund shall be reported to the mayor's office of management and budget and the budgetary office of the city of New York fire department.

(Am. 2016 N.Y. Laws Ch. 298, 9/8/2016, eff. 9/8/2016)

### **§ 13-317 Rules and regulations.**

Each member shall be subject, until retirement, to all the provisions of this subchapter and to all the rules and regulations adopted by such board applying to members.

### **§ 13-318 Credit for service.**

a. Subject to the following and to all other provisions of this subchapter, including such rules and regulations as such board shall adopt in pursuance thereof, such board shall determine and may modify allowances for service.

b. Such board shall fix and determine how much service rendered in any year shall be the equivalent of a year of service and of parts thereof, but shall credit one year for two hundred fifty or more days of service and not more than one year for all service in any calendar year.

c. Time during which a member was absent on leave without pay shall not be allowed in computing service as a member except as to time subsequent to approval of such allowance for retirement purposes granted by the commissioner and approved by such board. Time during which a member was on a preferred civil service list for firefighter shall not be construed to form part of the period within which membership must begin.

d. (1) Any person who was a member of the New York city employees' retirement system and whose membership therein was terminated by his or her attaining membership in the fire department pension fund, subchapter two, and who had withdrawn his or her contributions to the New York city employees' retirement system shall receive credit in the said fire department pension fund for prior creditable city service by paying into the annuity savings fund of the said fire department pension fund the amount of the employee contributions required to have been paid into the New York city employees' retirement system for such prior creditable city service, prior to July first, nineteen hundred eighty-two. Subject to the provisions of paragraphs two and three of this subdivision, no member of the said fire department pension fund shall be eligible for retirement for service until he or she has served in the fire department for a minimum period of twenty or twenty-five years, or until he or she has reached the age of fifty-five, according to the minimum period or age of retirement elected by such member prior to the certification of his or her rate of contribution.

(2) (a) Subject to the provisions of subparagraph (b) of this paragraph any period of allowable service rendered as an "EMT member," as defined in paragraph one of subdivision a of section 13-157.2 of this title, as added by chapter five hundred seventy-seven of the laws of two thousand, which immediately precedes service in the uniformed force of the fire department, and any period of allowable service rendered (i) as a peace officer, as defined in section 2.10 of the criminal procedure law, (ii) in the title of sheriff, deputy sheriff, marshal or district attorney investigator, or (iii) in any position specified in appendix A of the agreement dated October twenty-seventh, two thousand five, among the city of New York, the uniformed firefighters association and the uniformed fire officers association, which immediately precedes service in the uniformed force of the fire department, and any period of allowable service in the uniformed transit police force, uniformed correction force, housing police service and the uniformed force of the department of sanitation immediately preceding service in the uniformed force of the fire department, credit for which immediately preceding allowable service was or is obtained pursuant to paragraph one of this subdivision, shall be deemed to be service in the uniformed force of the fire department for purposes of eligibility for benefits and to determine the amount of benefits under the fire department pension fund.

(b) In any case where by reason of credit for such immediately preceding service, the date of completion of such member's minimum period for service retirement under the fire department pension fund became or becomes earlier than such date would have been or would be if such credit for such immediately preceding service had not been so acquired, there shall be effected with respect to such member:

(i) such increase in such member's normal rate of contribution, effective as of the date on which such member last became a member of the fire department pension fund, as may be necessary to reflect such earlier date of eligibility for service retirement; and

(ii) the charging of such member who acquired or acquires such credit for such immediately preceding service with a contribution rate deficiency:

(A) which shall accrue from the date on which such member last became a member of the fire department pension fund; and

(B) which shall be in such amount as shall be the product of the increase provided in item (i) of this subparagraph (b) and the member's compensation during the period of time provided in sub-item (A) of this item (ii); and

(C) which, unless paid by such member in such manner as shall be prescribed by rules and regulations adopted by the board of trustees of such pension fund, shall require an appropriate adjustment of any benefit which may become payable to or on account of such member.

(3) Nothing contained in subparagraph (b) of paragraph two of this subdivision d shall cause a member who acquires or acquired service credit by reason of the provisions of subparagraph (a) of such paragraph two to be denied:

(a) the right or entitlement, if any, to terminate or reduce contributions to such pension fund or to a refund of or credit for contributions paid during a



period when the member would have been entitled to terminate or reduce such contributions if he or she had such service credit on the date when he or she last became a member of the pension fund; or

(b) any other right, benefit or entitlement of a similarly situated member of such pension fund with equal total service credit consisting only of service in the uniformed force of the fire department, provided that the foregoing provisions of this paragraph three shall not be construed in a manner inconsistent with the provisions of subparagraph (b) of paragraph two of this subdivision d.

e. Any improved benefits plan member who was a member of the board of education retirement system and whose membership therein was terminated by his or her attaining membership in this pension fund shall receive credit in such pension fund for prior creditable city-service by paying into the annuity savings fund of such pension fund the amount of the employee contributions required to have been paid into the board of education retirement system for such prior creditable city-service, within one year after becoming a member of such pension fund, and shall have the period of such prior creditable city-service counted as service as a firefighter for the purpose only of determining the amount of his or her pension or retirement allowance, provided, however, that no member of such pension fund shall be eligible for retirement for service until he or she has served in the uniformed force of the department for a minimum period of twenty or twenty-five years, according to the minimum period elected by such member prior to the certification of his or her rate of contribution.

f. The rights and privileges of any original plan member subject to article eleven (as defined in subdivision four-d of section 13-313 of this subchapter) or improved benefits plan member subject to article eleven (as defined in subdivision four-j of such section 13-313) under the preceding subdivisions of this section shall be as prescribed by such provisions, except to the extent and in the manner that any such provision is modified by article eleven.

g. (1) Upon election, any member of the fire department pension fund, of this subchapter, who was a member of the New York city employees' retirement system while employed as a New York city police department trainee shall receive credit in the said fire department pension fund, of this subchapter, for prior creditable service in the New York city employees' retirement system earned while employed as a New York city police department police trainee by paying into the annuity savings fund of said fire department pension fund additional member contributions plus interest which would have been paid or credited had such member been a member of the fire department pension fund, of this subchapter, from his or her last date of appointment as a New York city police department trainee or date of membership in the New York city employees' retirement system, whichever is later, provided such payment is made within one year after this subdivision shall take effect, and the period of such prior service credit shall be deemed to be service in the fire department for purposes of eligibility for benefits and to determine the amounts of benefits under the fire department pension fund.

(2) A member of the fire department pension fund, of this subchapter, who acquires service credit by reason of the provisions of paragraph one of this subdivision shall be entitled to any other right, benefit or entitlement of a similarly situated member of such pension fund with equal total service credit consisting only of service in the uniformed force of the fire department.

h. Any member of the city of New York fire department pension fund who by reason of simultaneous membership in two public retirement systems, would have been entitled to transfer membership in a public retirement system pursuant to any provision of law, but failed to make a timely election to do so shall be entitled to transfer such membership if written notice is given to the first retirement system joined no later than one year subsequent to the effective date of this subdivision. A member who provides such notice may file a written request for retroactive membership in the fire department pension fund within three years of the effective date of this subdivision. The additional cost due to the retroactive membership shall be borne by the first retirement system.

### **§ 13-319 Re-entry into membership after withdrawal of contributions.**

a. Subject to the provisions of subdivision c of this section, if an original plan member has received benefits under subdivision a of section 13-343 of this subchapter, his or her member-service credit at the time of leaving service shall be restored in full provided such member return to service within five years after leaving service and redeposits the total amount so withdrawn.

b. Subject to the provisions of subdivision c of this section, if an improved benefits plan member has received benefits under subdivision b of such section 13-343, his or her member-service credit at the time of leaving service shall be restored in full provided such member return to service within five years after leaving service and redeposits the total amount so withdrawn. Subsequent contributions shall be at the rate applicable to his or her age on re-entry to service.

c. The rights and privileges of any original plan member subject to article eleven (as defined in subdivision four-d of section 13-313 of this subchapter) under subdivision a of this section and the rights and privileges of any improved benefits plan member subject to article eleven (as defined in subdivision four-j of such section 13-313) under subdivision b of this section shall be as prescribed by the provisions of such subdivision a or subdivision b, as the case may be, except to the extent and in the manner that any such provision is modified by article eleven.

### **§ 13-320 Pension fund; a corporation.**

The pension fund shall have the powers and privileges of a corporation and by its name all of its business shall be transacted, all of its funds invested, all warrants for money drawn and payments made, and all of its cash and securities and other property held.

### **§ 13-321 Pension fund; adoption of tables and certification of rates.**

The actuary appointed by the board of estimate shall be the technical adviser of the board on all matters regarding the operation of the funds provided for by this subchapter and shall perform such other duties as are required of him or her. He or she shall keep in convenient form such data as shall be necessary for the actuarial valuation of such funds. Every five years, he or she shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries as defined by this subchapter and shall make a valuation, as of June thirtieth of each year, of the assets and liabilities of the various funds provided for by this subchapter. Upon the basis of such investigation and valuation such board shall:

1. Adopt for the pension fund such mortality, service and other tables as shall be deemed necessary; and
2. Certify the rates of deduction from compensation computed to be necessary to pay the annuities authorized under the provisions of this subchapter.

### **§ 13-322 Pension fund; reports.**

Such board shall publish annually in the City Record a report for the preceding year showing a valuation of the assets and liabilities of the funds provided for by this subchapter as certified by the actuary, and a statement as to the accumulated cash and securities of the funds as certified by the comptroller, and shall set forth in such report such other facts, recommendations and data as may be of value in the advancement of knowledge concerning employees' pensions, annuities and retirement allowances.

### **§ 13-323 Medical board.**

a. (1) There shall be a medical board of three physicians. One of such physicians shall be appointed by the board and shall hold office at the pleasure of such board, one shall be appointed by the commissioner of health and mental hygiene and shall hold office at the pleasure of such commissioner, and the third shall be appointed by the commissioner of citywide administrative services and shall hold office at the pleasure of such commissioner.

(2) The board, the commissioner of health and mental hygiene and the commissioner of citywide administrative services shall each have power to appoint three alternate physicians, who shall hold office at the pleasure of such appointing board or official. Whenever the board of trustees of the pension fund shall so direct, the functions, powers and duties of the medical board, in addition to being performed and exercised by the three physicians appointed pursuant to paragraph one of this subdivision, shall be performed and exercised by one or more groups of three physicians as hereinafter prescribed. Each such group of three physicians shall function separately as the medical board and each such group may consist partly of a physician or

physicians appointed pursuant to such paragraph one and partly of one or more alternate physicians, or may consist entirely of alternate physicians; provided, however, that one of the physicians or alternate physicians in each such group shall be appointed by the board, one by the commissioner of health and mental hygiene and one by the commissioner of citywide administrative services.

b. The medical board shall arrange for and shall pass upon all medical examinations required under the provisions of this subchapter, shall investigate all essential statements and certifications by or on behalf of a member in connection with an application for disability retirement, and shall report to the board its conclusions and recommendations thereon.

### **§ 13-324 The funds; component funds.**

The funds provided for herein are the retirement allowance reserve fund, the annuity savings fund, the annuity reserve fund, the dependent benefit contingent reserve fund, the dependent benefit reserve fund, the contingent reserve fund and the pension reserve fund.

### **§ 13-325 Contributions by original plan members.**

a. (1) The retirement allowance accumulation fund, as established by the provisions of this subdivision as in effect prior to the starting date of the improved benefits plan (as such date is defined in subdivision twenty-seven of section 13-313 of this subchapter), shall cease to exist on such starting date.

(2) There shall be transferred from such retirement allowance accumulation fund to the contingent reserve fund established by sections 13-324 and 13-331 of this subchapter all assets of the retirement allowance accumulation fund as of such starting date, including the obligation represented by all unpaid amounts which are due and payable to the retirement allowance accumulation fund up to and including such date pursuant to the rates of member deduction and city contribution certified under section 13-321 of this subchapter prior to such date. Any such unpaid amounts which constitute assets of the retirement allowance accumulation fund as of such starting date and which are due from and payable by the city shall be appropriated and paid by the city pursuant to the provisions of this section and section 13-334 of this subchapter as in effect immediately prior to such date.

(3) Of such transferred amount, the prior original plan member accumulated contributions (as defined in subdivision six-b of section 13-313 of this subchapter), as of such starting date, of each original plan member shall be transferred to his or her credit in an individual account in the contingent reserve fund.

b. (1) Subject to the provisions of paragraph two of subdivision c of this section, on and after such starting date, each original plan member shall contribute to the pension fund, through deductions from his or her compensation as provided for by paragraph one of such subdivision c, a proportion of his or her earnable compensation (before reduction of such proportion on account of any program for increased-take-home-pay in effect) equal to the proportion of his or her earnable compensation (before reduction on account of any program for increased-take-home-pay in effect) which he or she was required to contribute to the pension fund as of the date next preceding such starting date.

(2) The normal rate of contribution as an original plan member (as defined in subdivision seventeen of section 13-313 of this subchapter) of any original plan member shall continue unchanged while he or she is an original plan member.

(3) The cash benefits payable under the provisions of this subchapter to, or upon the death of, an original plan member in active service shall be paid from the contingent reserve fund. Upon the retirement of an original plan member, or upon his or her death in the performance of duty, an amount equal to the retirement allowance reserve for the retirement allowance payable on account of his or her city-service as a member, shall be transferred from the contingent reserve fund to the retirement allowance reserve fund.

c. (1) Such board shall certify to the commissioner who shall deduct from the compensation of each original plan member on each and every payroll of such member for each and every payroll period, the proportion of his or her earnable compensation which he or she is required to contribute to the pension fund as provided for by subdivision b of this section, provided that such proportion shall be reduced on account of any program for increased-take-home-pay to the extent and for the period prescribed by any laws providing for such a reduction for members of the pension fund, as applicable to such member. In determining the amount earnable by a member in a payroll period, such board may consider the rate of compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period and such board may omit deductions from compensation for any period less than a full payroll period if an employee was not a member on the first day of the payroll period. To facilitate the making of deductions, such board may modify the contribution required of any member by such an amount as shall not exceed one-tenth of one per cent of the compensation upon the basis of which such contribution is to be made. The deductions provided herein shall be made notwithstanding that the minimum compensation provided by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the reductions made and provided for herein and shall receipt in full for his or her salary or compensation, and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except his or her claim to the benefits to which he or she may be entitled under the provisions of this subchapter. The commissioner shall certify to the comptroller on each and every payroll the amounts to be deducted. Each of such amounts shall be deducted and when deducted shall be paid into the contingent reserve fund, and shall be credited to an individual account of the member from whose compensation such deduction was made.

(2) Notwithstanding any other provision of law to the contrary, in the case of any original plan member whose years of fire service credited to him or her equal or exceed the minimum period for service retirement elected by him or her, that part of any earnable compensation of such member earned after completion of such minimum period and on or after July first, nineteen hundred sixty-nine, which part is obtained by multiplying such compensation by the excess, if any, of his or her normal rate of contribution as an original plan member (as defined in subdivision seventeen of section 13-313 of this subchapter) rate over five per cent, shall not be deducted under subdivision b of this section and paragraph one of this subdivision c. Nothing contained in this paragraph two shall affect or impair any rights conferred upon any such member by section 13-326 of this subchapter.

d. In addition to the contributions from compensation hereinbefore provided, any original plan member may redeposit in the contingent reserve fund by a single payment an amount equal to the total amount which he or she withdrew previously therefrom as provided in this subchapter. Such additional amount so deposited shall become a part of his or her accumulated contributions. The accumulated contributions of an original plan member withdrawn as provided in this subchapter shall be paid out of the contingent reserve fund.

### **§ 13-326 Pension-for-increased-take-home-pay.**

a. 1. The mayor, by executive order adopted prior to the first day of June, nineteen hundred sixty-three, may direct that beginning with the first full payroll period following January first, nineteen hundred sixty-three, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred sixty-four, the contribution of each member made pursuant to section 13-325, shall be reduced by two and one half percentum of the compensation of such member. Such executive order may also provide a method or procedure for the refunding or crediting to a member by the pension fund of the amount of the reduction in his or her deductions for any period prior to the date of adoption of such executive order.

2. The mayor, by executive order adopted prior to the first day of June, nineteen hundred sixty-four, may direct that beginning with the first full payroll period following July first, nineteen hundred sixty-four, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred sixty-five, the contribution of each member made pursuant to section 13-325, shall be reduced by two and one-half percentum of the compensation of such member.

3. The mayor, by executive order adopted prior to June nineteenth, nineteen hundred sixty-five, may direct that beginning with the first full payroll period following July first, nineteen hundred sixty-five, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred sixty-six, the contribution of each member made pursuant to section 13-325 of this subchapter shall be reduced by two and one-half percentum of the compensation of such member.

4. The mayor, by executive order adopted prior to June nineteenth, nineteen hundred sixty-six, may direct that beginning with the first full payroll

period following July first, nineteen hundred sixty-six, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred sixty-seven, the contribution of each member made pursuant to section 13-325 of this subchapter shall be reduced by two and one-half percentum of the compensation of such member.

5. The mayor, by executive order adopted prior to June seventeenth, nineteen hundred sixty-seven, may direct that beginning with the payroll period, the first day of which is nearest to July first, nineteen hundred sixty-seven, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred sixty-eight, the contribution of each member made pursuant to section 13-325 of this subchapter shall be reduced by two and one-half percentum of the compensation of such member.

6. (a) Subject to the provisions of subparagraph b of this paragraph, beginning with the first full payroll period following January first, nineteen hundred sixty-seven, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred sixty-eight, the contribution of each member made pursuant to section 13-325 of this subchapter shall be reduced by two and one-half percentum of the compensation of such member.

(b) The reduction provided for by subparagraph a of this paragraph shall be in addition to any reduction made during the period mentioned in such subparagraph a pursuant to paragraphs four or five of this subdivision a. The amount of the reduction made pursuant to subparagraph a of this paragraph in the deductions of any such member for such portion of the period mentioned in such subparagraph as precedes the effective date of this paragraph shall be refunded without interest.

(c) Beginning with the payroll period the first day of which is nearest to June thirtieth, nineteen hundred sixty-eight and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred seventy-one, the contribution of each member made pursuant to section 13-325 of this subchapter shall be reduced by five percentum of the compensation of such member.

7. The mayor, by executive order adopted prior to the date forty-five days after the adjournment of the regular session of the legislature in nineteen hundred seventy-one, may direct that beginning with the payroll period, the first day of which is nearest to June thirtieth, nineteen hundred seventy-one, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred seventy-two, the contribution of each member made pursuant to section 13-326 of this subchapter shall be reduced by five per centum of the compensation of such member.

8. The mayor, by executive order adopted prior to the date forty-five days after the adjournment of the regular session of the legislature in nineteen hundred seventy-two or June seventeenth of such year, whichever is later, may direct that beginning with the payroll period, the first day of which is nearest to June thirtieth, nineteen hundred seventy-two, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred seventy-three, the contribution of each member made pursuant to section 13-326 of this subchapter shall be reduced by five percentum of the compensation of such member.

b. For such period of time as the reduction pursuant to the provisions of subdivision a of this section and subdivision b of section four hundred eighty of the retirement and social security law shall be in effect, contributions shall be made to the contingent reserve fund by the city, in addition to the city contributions required by section 13-331 of this subchapter, in an amount equal to the amount of the reduction in the contributions of such member pursuant to this section and subdivision b of section four hundred eighty of the retirement and social security law.

c. The benefits provided pursuant to paragraph one of subdivision a of this section shall apply only to members of the pension fund who are in active service in the uniformed force of the fire department on or after the date of adoption of the executive order of the mayor pursuant to such paragraph one.

d. The reduction of the contribution of each original plan member on account of increase-take-home-pay shall be in the amount and for the period prescribed by the program provided for by the preceding subdivisions of this section and subdivision b of section four hundred eighty of the retirement and social security law.

e. (1) Subject to the provisions of the succeeding paragraphs of this subdivision e, the contribution of each improved benefits plan member pursuant to the applicable provisions of section 13-315 of this subchapter and/or subdivision b of section 13-327 of this subchapter shall be reduced in the amount and for the period prescribed by the program provided for by the preceding subdivisions of this section and subdivision b of section four hundred eighty of the retirement and social security law.

(2) (i) In the case of any elective improved benefits plan member (as defined in subdivision four-g of section 13-313 of this subchapter) whose election of such plan becomes effective on the starting date of the improved benefits plan (as such date is defined in subdivision twenty-seven of such section 13-313) and prior to the termination of such reduction as provided for in subdivision b of section four hundred eighty of the retirement and social security law, such reduction pursuant to paragraph one of this subdivision e shall begin on such starting date.

(ii) In the case of any elective improved benefits plan member whose election of such plan becomes effective after such starting date and prior to such time of termination, such reduction pursuant to paragraph one of this subdivision shall begin on the effective date of such election.

(iii) In the case of any non-elective improved benefits plan member (as defined in subdivision four-h of such section 13-313) whose membership in the pension fund begins on or after such starting date and prior to such time of termination, such reduction pursuant to paragraph one of this subdivision shall begin on the date of commencement of the membership of such member in the pension fund.

(iv) Such reduction shall end, in the case of each such elective improved benefits plan member or non-elective improved benefits plan member above referred to in this paragraph two, at such time of termination provided for in subdivision b of section four hundred eighty of the retirement and social security law.

(3) The contribution of each improved benefits plan member which is made pursuant to the applicable provisions of section 13-315 of this subchapter and/or subdivision b of section 13-327 of this subchapter and which is reduced as provided for in this subdivision e shall be exclusive of any increase thereof pursuant to subdivisions c and d of such section 13-327 or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law.

(4) The reduction of the contribution of each improved benefits plan member as prescribed by the preceding provisions of this subdivision shall be subject to waiver of such member as provided in paragraph seven of this subdivision and shall take precedence over the member's privilege under subdivision one of section one hundred thirty-eight-b of the retirement and social security law, to decrease his or her annuity contribution for the purpose of paying his or her contributions for old age, survivors and disability insurance coverage or the tax imposed upon him or her pursuant to the federal insurance contribution act.

(5) For such period of time as the reduction pursuant to the provisions of the preceding paragraphs of this subdivision shall be in effect with respect to an improved benefits plan member, contributions shall be made to the contingent reserve fund by the city at a rate fixed by the actuary, which shall be computed to be sufficient to provide (i) the pension-providing-for-increased-take-home-pay which is or may become payable on account of such member as an improved benefits plan member, and (ii) the death benefit which is or may become payable hereunder in the case of any such member who is an improved benefits member not subject to article eleven (as defined in subdivision four-i of section 13-313 of this subchapter).

(6) Such a death benefit and such a pension-providing-for-increased-take-home-pay payable with respect to an improved benefits plan member shall be based on a reserve-for-increased-take-home-pay, which shall be a sum consisting of the total of all products obtained by multiplying the compensation of the improved benefits plan member, during each period of reduction of member contributions under the preceding paragraphs of this subdivision by the percentage of reduction of his or her contributions applicable thereunder with respect of such period, plus regular interest on such sum, and additional interest, if any, thereon.

(7) Where an improved benefits plan member's rate of contribution is reduced because the city contributes towards the pension-providing-for-increased-take-home-pay pursuant to this section, such improved benefits plan member may by written notice duly acknowledged and filed with the pension fund within one year after such reduction or within one year after he or she last became a member, whichever is later, elect to waive such reduction. One year or more after the filing thereof, an improved benefits plan member may withdraw any such waiver by written notice duly acknowledged and filed with the pension fund. Where an improved benefits plan member makes an election to waive such reduction he or she shall contribute to the pension fund as otherwise provided by the applicable provisions of section 13-315 of this subchapter and/or section 13-322 of this subchapter.

(8) An improved benefits plan member who waives a reduction of contribution pursuant to paragraph seven of this subdivision or who elects or has elected to discontinue his or her contributions pursuant to subdivision b of section 13-327 of this subchapter shall be entitled to a pension-providing-for-increased-take-home-pay and death benefits in the same cases and to the same extent as if such waiver or election had not been made.

### **§ 13-327 Contributions of improved benefits plan members and their use; annuity savings fund.**

a. (1) The annuity savings fund shall be the fund in which shall be accumulated deductions from the compensation of improved benefits plan members to provide for their annuities and their withdrawal allowances.

(2) Upon the basis of the tables herein authorized, and regular interest, the actuary of such board shall determine for each non-elective improved benefits plan member (as defined in subdivision four-h of section 13-313 of this subchapter) the proportion of compensation which, when deducted from each payment of his or her prospective earnable compensation prior to his or her eligibility for retirement and accumulated at regular interest upon the attainment of the minimum period of service retirement elected by him or her, shall be computed to provide, at that time, an annuity equal to twenty-five seventy-fifths of the pension then allowable to him or her for service as a member. Such proportion of compensation shall be computed to remain constant.

(3) The proportion of earnable compensation required to be applied in making deductions from the compensation of an elective improved benefits plan member (as defined in subdivision four-g of section 13-313 of this subchapter) shall be computed as provided for in subdivision i of section 13-315 of this subchapter.

(4) In any case where the membership of any improved benefits plan member is terminated and he or she thereafter acquires a status whereby, under the applicable provisions of this subchapter, he or she is required to make member contributions as an improved benefits plan member consisting of a proportion of his or her earnable compensation (before reduction on account of any program for increased-take-home-pay in effect) other than the proportion of his or her earnable compensation (before reduction on account of any such program) which, before such termination of membership, was required to be deducted from his or her earnable compensation as his or her member contributions, such new proportion of his or her earnable compensation required to be deducted as his or her member contributions as an improved benefits plan member shall be fixed pursuant to the provisions of paragraph two of this subdivision a and such subsequent required deductions from the compensation of such member shall be made on the basis of such new proportion of his or her earnable compensation.

b. Such board shall certify to the commissioner who shall deduct from the compensation of each improved benefits plan member on each and every payroll of such member for each and every payroll period, the proportion of his or her earnable compensation so computed. Such board shall not certify nor shall the commissioner make any deduction for annuity purposes from the compensation of an improved benefits plan member who elects not to contribute if his or her total service is such as would entitle a new entrant to retire for service on a pension not less than seventy-five per cent of one-half of his or her annual earnable compensation on the date of retirement. In determining the amount earnable by an improved benefits plan member in a payroll period, such board may consider the rate of compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period and such board may omit deductions from compensation for any period less than a full payroll period if such an employee was not a member on the first day of the period. To facilitate the making of deductions, such board may modify the deduction required by any such member of such amount as shall not exceed one-tenth of one per cent of the compensation upon the basis of which such deduction is to be made. The deductions provided herein shall be made notwithstanding that the minimum compensation provided by law for any improved benefits plan member shall be reduced thereby. Every improved benefits plan member shall be deemed to consent and agree to the deductions made and provided for by the applicable provisions of section 13-315 of this subchapter and/or this section and shall receipt in full for his or her salary or compensation, and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except his or her claim to the benefits to which he or she may be entitled under the provisions of this subchapter. The commissioner shall certify to the comptroller on each and every payroll the amounts to be deducted. Each of such amounts shall be deducted and when deducted shall be paid into the annuity savings fund, and shall be credited, together with regular interest, to an individual account of the member from whose compensation such deduction was made. The method of computation and deductions prescribed by this subdivision and subdivision a of this section shall be appropriately modified in the case of an improved benefits plan member for whom a rate is otherwise fixed pursuant to section 13-326 of this subchapter.

c. In addition to the computed deductions, any improved benefits plan member may elect to contribute at a rate fifty percentum in excess of that heretofore provided, for the purpose of purchasing additional annuity. In computing the amount of such additional rate any modification of the normal rate pursuant to section 13-326 of this subchapter shall be disregarded. These additional contributions shall be credited to the annuity savings fund with regular interest. Such additional contributions shall not enter into the computation for allowance on ordinary disability retirement as described in section 13-352 of this subchapter. A member may elect to discontinue his or her additional contributions at any time.

d. In addition to the deductions from compensation hereinbefore provided, any improved benefits plan member may redeposit in the annuity savings fund by a single payment an amount equal to the total amount which he or she withdrew previously therefrom as provided in this subchapter. Such amount so deposited shall become a part of his or her accumulated deductions. The accumulated deductions of an improved benefits plan member withdrawn as provided in this subchapter shall be paid out of the annuity savings fund. Upon retirement of an improved benefits plan member, his or her accumulated deductions shall be transferred from such fund to the annuity reserve fund.

#### **§ 13-327.1 Employer pick up of member contributions.**

a. Notwithstanding any other provision of law to the contrary, on and after the starting date for pick up, the city shall:

(1) pick up and pay into the contingent reserve fund the original plan member contributions eligible for pick up by the employer which each original plan member would otherwise be required to make on and after such starting date; and

(2) pick up and pay into the annuity savings fund the improved benefits plan member contributions eligible for pick up by the employer which each improved benefits plan member would otherwise be required to make on and after such starting date.

b. An amount equal to the amount of such picked up contributions shall be deducted by the city from the compensation of such member (as it would be in the absence of a pick up program applicable to him or her hereunder), and shall not be paid to such member. Such deduction shall be effected by means of subtraction from such member's current compensation (as so defined), or offset against future pay increases, or a combination of such methods.

c. (1) The member contributions picked up pursuant to this section, including any member contributions required to be made for the purchase of credit for previous service or credit for military service pursuant to subdivision e of this section, provided, however, that contributions picked up for the purchase of credit for military service shall be deposited in the employer contribution account in accordance with the provisions of subdivision four of section one thousand of the retirement and social security law, for any member shall be paid by the city in lieu of an equal amount of the member contributions otherwise required to be paid by such member under the provisions of this subchapter and shall be deemed to be and treated as employer contributions pursuant to subsection h of section four hundred fourteen of the United States internal revenue code, as amended, for the purposes, under federal law,



for which such subsection h so classifies such picked up contributions. Subject to the provisions of subdivision b of this section, for all other purposes, including but not limited to:

(i) the obligation of such member to pay New York state and New York city income and/or wages or earnings taxes and the withholding of such taxes; and

(ii) the determination of the amount of such member's original plan member contributions eligible for pick up by the employer or improved benefits plan member contributions eligible for pick up by the employer, as the case may be; and

(iii) the determination of the amount of any retirement allowance or other pension fund benefit payable to or on account of such member or any other pension fund right, benefit or privilege of such member; the amount of the member contributions picked up pursuant to this section shall be deemed to be a part of the employee compensation of such member, and such member's gross compensation (as such compensation would be in the absence of a pick up program applicable to him or her hereunder) shall not be deemed to be changed by such member's participation in such program.

(2) Nothing contained in paragraph one of this subdivision c shall be construed as superseding the provisions of section four hundred thirty-one of the retirement and social security law or any similar provision of law which limits the salary base for computing retirement benefits payable by a public retirement system.

d. (1) For the purpose of determining the pension fund rights, benefits and privileges (including the procurement of loans) of any member whose original plan member contributions eligible for pick up by the employer or improved benefits plan member contributions eligible for pick up by the employer are picked up pursuant to this section, such picked up member contributions shall be deemed to be and treated (i) as member contributions made by such member pursuant to law, and (ii) as included in the total accumulated contributions (as defined in subdivision seven of section 13-313 of this subchapter) of any such member who is an original plan member, and (iii) as included in the accumulated deductions (as defined in subdivision seven-a of such section 13-313) of any such member who is an improved benefits plan member.

(2) During any period wherein picked up member contributions of an original plan member remain in the contingent reserve fund to the credit of an individual account of such member pursuant to paragraph four of this subdivision, interest shall not accrue or be payable on such picked up contributions.

(3) Interest on the picked up member contributions of any improved benefits plan member shall accrue in favor of such member and be payable by the city at the same rate, for the same time periods, in the same manner and under the same circumstances as interest would be required to accrue in favor of the member and be payable by the city on such picked up contributions if they were made by the member in the absence of an employer pick up program applicable to such member under the provisions of this section.

(4) The picked up member contributions of any original plan member paid into the contingent reserve fund by the city pursuant to this section shall be credited to a separate account within the individual account of such member in such fund, so that a separate record of the amount of such picked up contributions is maintained.

(5) The picked up member contributions of any improved benefits plan member paid into the annuity savings fund by the city pursuant to this section shall be credited to a separate account within the individual account of such member in such fund, so that a separate record of the amount of such picked up contributions is maintained.

(6) Nothing contained in this subdivision d shall be construed as granting member contributions picked up under this section any status, under federal law, other than as employer contributions, pursuant to subsection h of section four hundred fourteen of the United States internal revenue code, for the federal purposes for which such subsection h so classifies such picked up contributions.

e. Employer pick-up of contributions in respect of previous service or military service. Notwithstanding any other provision of law, any member eligible to purchase credit for previous service with a public employer pursuant to this chapter or to purchase credit for military service pursuant to article twenty of the retirement and social security law, may elect to purchase any or all of such service by executing a periodic payroll deduction agreement where and to the extent such elections are permitted by the retirement system by rule or regulation. Such agreement shall set forth the amount of previous service or military service being purchased, the estimated total cost of such service credit, and the number of payroll periods in which such periodic payment shall be made. Such agreement shall be irrevocable, shall not be subject to amendment or modification in any manner, and shall expire only upon completion of payroll deductions required therein. Notwithstanding the foregoing, any member who has entered into such a payroll deduction agreement and who terminates employment prior to the completion of the payments required therein shall be credited with any service as to which such member shall have paid the contributions required under the terms of such agreement.

f. No member whose member contributions are required to be picked up pursuant to this section shall have any right to elect that such pick up of contributions, with accompanying deduction from the compensation of such member as prescribed by subdivision b of this section, shall not be effectuated.

### **§ 13-328 Contributions of improved benefits plan members and their use; annuity reserve fund.**

The annuity reserve fund shall be the fund from which shall be paid all annuities and all benefits in lieu of annuities, payable to or on account of improved benefits plan members as provided in this subchapter.

### **§ 13-329 Contributions of members and their use; dependent benefit reserve funds.**

a. The dependent benefit reserve fund shall be the fund from which shall be paid all dependent benefits payable as provided in section 13-355 of this subchapter.

b. The dependent benefit contingent reserve fund shall be the fund in which shall be accumulated the contributions of members to create the reserve necessary to pay all benefits provided in section 13-355 of this subchapter.

c. Upon the basis of the mortality and other tables herein authorized, and regular interest, the actuary shall compute the amount of contributions, expressed as a proportion of the compensation paid to each such member, which, if paid semi-monthly during the entire prospective cityservice of the member, would be sufficient to provide for the reserve required at the time of his or her death to cover the dependent benefits which might be payable pursuant to the provisions of section 13-355 of this subchapter. Such proportion of compensation shall be computed to remain constant during his or her prospective city-service. Upon the death of such a member, an amount equal to the reserve for such dependent benefits shall be transferred from the dependent benefit contingent reserve fund to the dependent benefit reserve fund.

### **§ 13-330 Retirement allowance reserve fund for original plan members.**

The retirement allowance reserve fund shall be the fund from which shall be paid all retirement allowances, and all benefits in lieu of retirement allowances, allowable by the pension fund to persons who retired as original plan members or to beneficiaries of such members on account of the city-service of original plan members. Such retirement allowances and benefits shall be paid from the contingent reserve fund in the event that the retirement allowance reserve fund shall be unable to make such payment. Should any retirement allowance payable from such retirement allowance reserve fund be cancelled, the retirement allowance reserve thereon shall thereupon be transferred from the retirement allowance reserve fund to the contingent reserve fund. Should any retirement allowance payable from the retirement allowance reserve fund be reduced, the amount of the annual reduction in such allowance shall be paid annually into the contingent reserve fund during the period of such reduction.

### **§ 13-331 Contributions of the city and their use; contingent reserve fund.**



a. (1) The contingent reserve fund shall be the fund in which shall be accumulated the reserve necessary to pay all retirement allowances, withdrawal allowances and all death benefits allowable by the pension fund on account of the city-service of original plan members as provided in this subchapter and other applicable provisions of law. (2) The contingent reserve fund shall be the fund in which shall be accumulated the reserve necessary to pay all pensions and the reserve-for-increased-take-home-pay, and all death benefits allowable by the city on account of the city-service of improved benefits plan members as provided in this subchapter and other applicable provisions of law.

b. (1) (a) Subject to the provisions of paragraph five of this subdivision, the city shall contribute to the contingent reserve fund:

(i) annually, beginning with fiscal year nineteen hundred eighty-nineteen hundred eighty-one, an amount to be known as the normal contribution; and

(i-a) all unfunded accrued liability installments as required by section 13-638.2 of this title or any other provision of law; and

(i-b) any other payments to the contingent reserve fund as required by applicable law; and

(ii) in each city fiscal year during the period beginning with fiscal year nineteen hundred eighty-nineteen hundred eighty-one, and ending on the last day of fiscal year two thousand fourteen-two thousand fifteen, the annual installment, applicable to such fiscal year, of an additional amount which shall be known as the unfunded accrued liability contribution and which shall be determined as provided for in subparagraphs (b), (c), (d) and (e) of paragraph three of this subdivision; and

(iii) in each city fiscal year during the period beginning with fiscal year nineteen hundred eighty-one-nineteen hundred eighty-two, and ending on the last day of fiscal year two thousand twenty-two thousand twenty-one, the annual installment, applicable to such fiscal year, of an additional amount which shall be known as the balance sheet liability contribution and which shall be determined as provided for in paragraph four of this subdivision; and

(iv) in fiscal year nineteen hundred eighty-nineteen hundred eighty-one, the amount of one year's interest, at the rate of seven and one-half per centum per annum, on the amount of the balance sheet liability as of June thirtieth, nineteen hundred eighty, as determined pursuant to the provisions of paragraph four of this subdivision; and

(v) in each city fiscal year, beginning with fiscal year nineteen hundred eighty—nineteen hundred eighty-one and ending on the last day of fiscal year nineteen hundred ninety-four—nineteen hundred ninety-five, (A) the amount required to fulfill the public employer obligation, if any, which accrued in such fiscal year, to provide accumulations-for-increased-take-home-pay (as defined in subdivision fifteen of section 13-313 of this subchapter) of original plan members, and (B) the amount required to fulfill the public employer obligation, if any, which accrued in such fiscal year, to provide reserves-for-increased-take-home-pay (as defined in subdivision fifteen-b of such section 13-313) of improved benefits plan members; provided, however, that such amount to be contributed hereunder shall not include regular interest and additional interest, if any, required by other provisions of this subchapter to be included in such reserves-for-increased-take-home-pay; and

(vi) in each city fiscal year, beginning with fiscal year nineteen hundred eighty—nineteen hundred eighty-one and ending on the last day of fiscal year nineteen hundred ninety-four—nineteen hundred ninety-five, the amount required to fulfill the public employer obligation, which accrued in such fiscal year under the provisions of subdivision twenty of section two hundred forty-three of the military law, to pay in behalf of members qualifying for such benefit, member contributions with respect to certain periods of the military service of such members.

(b) (i) If the nineteen hundred eighty unfunded accrued liability adjustment determined pursuant to subparagraph (e) of paragraph three of this subdivision b is a credit, the total of the amounts required to be contributed by the city to the contingent reserve fund in each city fiscal year, commencing with the nineteen hundred eighty-nineteen hundred eighty-one fiscal year and ending with the two thousand nine-two thousand ten fiscal year, pursuant to subparagraph (a) of this paragraph one and otherwise pursuant to law shall be reduced by the amount of one annual installment of such nineteen hundred eighty unfunded accrued liability adjustment.

(ii) If the nineteen hundred eighty unfunded accrued liability adjustment determined pursuant to such subparagraph (e) is a charge, the city shall contribute in each city fiscal year, commencing with the nineteen hundred eighty-nineteen hundred eighty-one fiscal year and ending with the two thousand nine-two thousand ten fiscal year, in addition to the amounts required to be contributed under the provisions of subparagraph (a) of this paragraph, one annual installment of such nineteen hundred eighty unfunded accrued liability adjustment.

(iii) The total of the amounts required to be contributed to the contingent reserve fund in each city fiscal year commencing with the nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year and ending with the two thousand eleven-two thousand twelve fiscal year pursuant to items (i), (ii), (iii), (iv), (v) and (vi) of subparagraph (a) of this paragraph (1) and the applicable provisions of items (i) and (ii) of this subparagraph (b) and otherwise pursuant to law shall be reduced by the amount of one annual installment of the nineteen hundred eighty-two unfunded accrued liability adjustment determined pursuant to subparagraph (f) of paragraph (3) of this subdivision b.

(iv)\* The total of the amounts required to be contributed to the contingent reserve fund in each city fiscal year commencing with the nineteen hundred eighty-five-nineteen hundred eighty-six fiscal year and ending with the two thousand fourteen-two thousand fifteen fiscal year pursuant to items (i), (ii), (iii), (iv), (v) and (vi) of subparagraph (a) of this paragraph one and the applicable provisions of items (i) and (ii) of this subparagraph (b) and otherwise pursuant to law shall be increased by the amount of one annual installment of the nineteen hundred eighty-five unfunded accrued liability adjustment determined pursuant to subparagraph (g) of paragraph three of this subdivision b.

\* **Editor's note:** there are two divisions designated b.(1)(b)(iv) in this section.

(iv)\* For the purpose of effectuating the nineteen hundred eighty-eight unfunded accrued liability adjustment provided for in section 13-638.1 of the code, contributions to the contingent reserve fund shall be made by the responsible obligor (as defined in paragraph six of subdivision a of such section) or credits shall be allowed to such obligor against contributions otherwise payable by such obligor, as the case may be, to the extent and in the manner provided for in such section. The annual determination of the normal contribution for fiscal years occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety-eight shall appropriately take account of the nineteen hundred eighty-eight unfunded accrued liability adjustment and the provisions of subparagraph (b) of paragraph two of this subdivision b shall be deemed to be conformably modified for such purpose.

\* **Editor's note:** there are two divisions designated b.(1)(b)(iv) in this section.

(c) (i) Any amount required by the provisions of items (ii), (iii), (iv), (v) and (vi) of subparagraph (a) of this paragraph one and subparagraph (b) of this paragraph one and section 13-704 of this title to be contributed to the contingent reserve fund in the city's nineteen hundred eighty-nineteen hundred eighty-one fiscal year or any subsequent fiscal year shall be payable with interest on such amount at a rate per centum per annum equal to the rate per centum per annum required to be used for the purpose of any actuarial valuation, determination or appraisal made to determine the amount of the normal contribution payable in such fiscal year.

(ii) Any amount required to be contributed by the city to the retirement allowance accumulation fund prior to July first, nineteen hundred eighty-one, other than the contributions required to be made by the city prior to such date with regular interest as provided for by paragraph one of subdivision b of section 13-325 of this subchapter, as in effect prior to such July first, shall be deemed to have been required to be paid with regular interest on such amount.

(iii) It is hereby declared that the provisions of items (i) and (ii) of this subparagraph (c), in so far as they relate to provisions of this article or other laws requiring payment of employer contributions to the pension fund prior to such July first, express the intent of such provisions of this article or other laws requiring such payment.

(iv) The city shall make all payments to the pension fund required by applicable law in accordance with the time of payment requirements set forth in subdivision c of section 13-334 of this chapter. Commencing with payments due in fiscal year two thousand twelve—two thousand thirteen, in any fiscal year in which the city does not make all or any portion of such required payments to the pension fund in a timely manner, the city shall be required to pay interest to the pension fund on such overdue amounts, as determined by the actuary. The actuary shall determine, at such time as he or she deems appropriate, interest payments on such overdue amounts using a rate of interest equivalent to the valuation rate of interest (as defined in paragraph eleven of subdivision a of section 13-638.2 of this title). The city shall make such interest payments on overdue amounts to the pension fund in the manner and at such time as the actuary deems appropriate.

(2) Normal contribution.

(a) (i) Notwithstanding the succeeding provisions of this subparagraph or the provisions of subparagraph (a-one), (b), (c) or (d) of this paragraph, for fiscal year two thousand eleven—two thousand twelve, and for each fiscal year thereafter, the amount of the normal contribution payable to the contingent reserve fund shall be determined pursuant to the provisions of subparagraph (e) of this paragraph. Upon the basis of the latest mortality and other tables herein authorized and regular interest, the actuary shall determine, as of June thirtieth, nineteen hundred eighty and as of each succeeding June thirtieth, the amount of the total liability for all benefits provided in this subchapter, in article eleven of the retirement and social security law and in any other law prescribing benefits payable by the pension fund, on account of all members and beneficiaries, excluding the liability on account of future increased-take-home-pay contributions, if any, and the liability for benefits attributable to the annuity savings fund, provided, however, that in determining such total liability for all benefits as of June thirtieth, nineteen hundred ninety-five and as of each succeeding June thirtieth, the actuary shall include (A) the liability on account of future increased-take-home-pay contributions, if any, (B) the liability on account of future public employer obligations under the provisions of subdivision twenty of section two hundred forty-three of the military law, to pay in behalf of members qualifying for such benefit, member contributions with respect to certain periods of the military service of such members and (C) the liability for benefits attributable to the annuity savings fund.

(ii) For the purposes of subparagraphs (b) and (c) of this paragraph two, the actuary shall determine, as of June thirtieth, nineteen hundred ninety-five and as of each succeeding June thirtieth, the total liability of the pension fund which shall be an amount equal to the sum of (A) the total liability for all benefits as determined pursuant to item (i) of this subparagraph and (B) the amount, as estimated by the actuary, of the total liability of the pension fund on account of all payments which the pension fund may be required to make for base fiscal years (as defined by the applicable provisions of paragraph one of subdivision b of section 13-335.1 of this subchapter and paragraph one of subdivision b of section 13-335.3 of this subchapter) beginning on or after July first, nineteen hundred ninety-four to the firefighters' variable supplements fund, pursuant to subdivisions d, e and f of such section 13-335.1 and to the fire officers' variable supplements fund pursuant to subdivisions d, e and f of such section 13-335.3.

(a-1) Notwithstanding any other provision of law to the contrary, for the purpose of calculating the amount of the normal contribution due from the city to the contingent reserve fund pursuant to subparagraph (c) of this paragraph in fiscal year two thousand five-two thousand six, and in each fiscal year thereafter, both the total liability of the pension fund, as calculated by the actuary in accordance with subparagraph (a) of this paragraph, and the normal rate of contribution, as calculated by the actuary in accordance with subparagraph (b) of this paragraph, shall be determined as of June thirtieth of the second fiscal year preceding the fiscal year in which the normal contribution is payable, provided, however, that (i) the actuary shall use for such calculations the mortality and other tables that are applicable at the time he or she performs such calculations; (ii) the total funds on hand, as determined by the actuary pursuant to sub-item (G) of item (i) of subparagraph (b) of this paragraph, shall be adjusted by adding to such amount the present value of all employer contributions required to be paid into the contingent reserve fund in the fiscal year next preceding the fiscal year in which the normal contribution is payable, as determined by the actuary; and (iii) the present value of the prospective future salaries of all members, as computed by the actuary for the purposes of item (ii) of subparagraph (b) of this paragraph, shall be reduced by the present value of the salaries expected to be paid to all members in the fiscal year next preceding the fiscal year in which the normal contribution is payable, as determined by the actuary.

(b) The normal rate of contribution shall be the rate per centum obtained:

(i) by deducting from the amount of such total liability the sum of:

(A) (1) the amount obtained by adding together the present value of all required future revised unfunded accrued liability contributions and the present value of all required future payments of installments of the nineteen hundred eighty unfunded accrued liability adjustment, determined pursuant to subparagraph (e) of paragraph three of this subdivision b, if such adjustment is a charge; or

(2) the remainder obtained by subtracting from the present value of all required future unfunded accrued liability contributions, the present value of all future installments of the nineteen hundred eighty unfunded accrued liability adjustment required to be credited, if such nineteen hundred eighty adjustment is a credit;

(3) minus (whether (1) or (2) of this sub-item (A) is applicable) the present value of all future installments of the nineteen hundred eighty-two unfunded accrued liability adjustment; and

(A-1) the present value of all future installments of the nineteen hundred eighty-five unfunded accrued liability adjustment determined pursuant to subparagraph (g) of paragraph three of this subdivision b; and

(B) the present value of all required future balance sheet liability contributions, plus, in the case of the determination of the normal contribution payable in fiscal year nineteen hundred eighty-nine hundred eighty-one, the present value, as of June thirtieth, nineteen hundred eighty, of the payment of interest on the balance sheet liability as required by item (iv) of subparagraph (a) of paragraph one of this subdivision b; and

(C) the present value of all required future member contributions of original plan members (as defined in subdivision four-b of section 13-313 of this subchapter); and

(D) the present value of all future member contributions on account of dependent benefits; and

(E) the present value of all required future payments, pursuant to section 13-704 of this title, of installments of losses in excess of installments of gains on dispositions of securities within the meaning of such section; and

(F) in the case of the determination of the normal contribution payable in each fiscal year commencing with fiscal year nineteen hundred ninety-five—nineteen hundred ninety-six, the present value of future member contributions of all members; and

(G) the total funds on hand, including the amount of any unpaid moneys appropriated pursuant to section 13-334 of this subchapter and, in the case of the determination of the normal contribution payable in each fiscal year commencing with fiscal year nineteen hundred ninety-five—nineteen hundred ninety-six, including the amount in the annuity savings fund; and

(H) the present value of all other future installments of accrued liability contributions to the pension fund required by the applicable provisions of section 13-638.3 of this title which are not covered by the preceding subitems of this item (i); and

(ii) by dividing the remainder by one per centum of the present value of the prospective future salaries of all members, as computed by the actuary on the basis of the latest mortality and service tables adopted pursuant to section 13-321 of this subchapter, and on the basis of regular interest. The normal rate of contribution determined by the actuary shall not be less than zero, shall be certified by the actuary after each such valuation and shall continue in force until the next succeeding valuation and certification.

(c) (i) The amount of the normal contribution due from the city to the contingent reserve fund in each city fiscal year, commencing with the nineteen hundred eighty-nine hundred eighty-one fiscal year and ending with the two thousand four-two thousand five fiscal year, shall be the amount obtained by multiplying the normal rate of contribution, as determined by the actuary as of June thirtieth next preceding such fiscal year, by the

aggregate annual salaries of the members on such next preceding June thirtieth, and shall be payable in such fiscal year next following such June thirtieth, together with such regular interest thereon which may be due, if any, as calculated by the actuary.

(ii) The amount of the normal contribution due from the city to the contingent reserve fund in each city fiscal year, commencing with the two thousand five-two thousand six fiscal year, shall be the amount obtained by multiplying the normal rate of contribution, as determined by the actuary as of the second June thirtieth preceding the fiscal year in which the normal contribution is payable, in accordance with the provisions of subparagraphs (a-1) and (b) of this paragraph, by the aggregate amount of the salaries expected to be paid to the members during the fiscal year in which the normal contribution is payable, as determined by the actuary, and such normal contribution shall be payable in the second fiscal year following the June thirtieth as of which the normal rate of contribution is determined, together with such regular interest thereon which may be due, if any, as calculated by the actuary.

(iii) In the case of the normal contribution payable in the nineteen hundred eighty-nineteen hundred eighty-one fiscal year and in any subsequent fiscal year, the term "regular interest", as used in this subparagraph (c), shall mean regular interest as defined by the applicable provisions of paragraph (f) or paragraph (g) of subdivision eight of section 13-313 of this subchapter.

(d) (i) For the purposes of this subparagraph (d), the terms "pension fund, subchapter one" and "fire subchapter one beneficiary" shall have the meanings set forth in paragraphs one and three, respectively, of subdivision a of section 13-312.1 of this chapter.

(ii) The amount of the normal contribution due from the city to the contingent reserve fund in the city's nineteen hundred ninety-four—nineteen hundred ninety-five fiscal year shall be equal to the amount of the normal contribution for such fiscal year, as calculated in accordance with the provisions of subparagraph (c) of this paragraph, minus the sum (calculated by the actuary to reflect regular interest in accordance with the provisions of subparagraph (c) of this paragraph) of the following:

(A) the amount of the assets deemed to have been transferred on July first, nineteen hundred ninety-four from pension fund, subchapter one to this pension fund and credited to the contingent reserve fund in accordance with the provisions of subdivisions b and g of section 13-312.1 of this chapter, as if such transfer actually had been made on such July first; and

(B) the amount of the benefits payable during the nineteen hundred ninety-four—nineteen hundred ninety-five fiscal year by pension fund, subchapter one to fire subchapter one beneficiaries; and

(C) the amount of supplemental benefits payable during the nineteen hundred ninety-four—nineteen hundred ninety-five fiscal year, including the increase in certain of such benefits provided by paragraph four of subdivision a of section 13-687 of this title, as added by the chapter of the laws of nineteen hundred ninety-five which added this subparagraph, by the city supplemental pension fund established under section 13-650 of this title to fire subchapter one beneficiaries.

(e) (i) Notwithstanding the preceding subparagraphs of this paragraph or any other provision of law to the contrary, the normal contribution payable to the contingent reserve fund in fiscal year two thousand eleven—two thousand twelve, and in each fiscal year thereafter, shall be the entry age normal contribution, as determined by the actuary pursuant to this subparagraph in a manner consistent with the entry age actuarial cost method. The actuary shall determine the entry age normal contribution for each such fiscal year as of June thirtieth of the second fiscal year preceding the fiscal year in which such normal contribution is payable, based on the latest mortality and other tables applicable at the time he or she performs such calculations, and the valuation rate of interest as provided for the pension fund in paragraph two of subdivision b of section 13-638.2 of this title.

(ii) In calculating the entry age normal contribution payable in any such fiscal year pursuant to this subparagraph, the actuary, in his or her discretion, may make certain adjustments in the calculation methodology, provided that such adjustments are generally accepted as consistent with the entry age actuarial cost method, and are designed, in general, to fund, on a level basis over the working lifetimes of members from their ages at entry, the actuarial present value of benefits to which such members are expected to become entitled, as determined by the actuary. Such generally accepted adjustments in the calculation methodology, in the discretion of the actuary, may include, but are not limited to, the calculation of the entry age normal contribution (A) on an individual member basis by calculating the amount of the entry age normal contribution attributable to each individual member, and then adding together such individual member amounts, (B) on an aggregate basis for all members or (C) on any combination of an individual member basis and an aggregate basis which is consistent with the entry age actuarial cost method, and the preceding provisions of this item.

(iii) For each such fiscal year, the actuary, in his or her discretion, shall determine, in accordance with the provisions of item (ii) of this subparagraph, the methodology for calculating the entry age normal contribution payable for that particular fiscal year.

(iv) The methodology determined by the actuary in accordance with item (iii) of this subparagraph may provide for the actuary to calculate the entry age normal contribution on an individual member basis by (A) multiplying the entry age normal contribution rate for each individual member, as determined by the actuary, by the salary expected to be paid to that member during the fiscal year in which such normal contribution is payable, and (B) calculating the sum of the individual entry age normal contributions attributable to all such members. The actuary, in his or her discretion, may make any adjustments to such methodology for determining the entry age normal contribution on an individual basis which he or she deems appropriate, and which are consistent with the provisions of item (ii) of this subparagraph.

(v) In the alternative, the methodology determined by the actuary in accordance with item (iii) of this subparagraph may provide for the actuary to calculate the entry age normal contribution on an aggregate basis by multiplying the entry age normal contribution rate for all members in the aggregate, as determined by the actuary, by the aggregate amount of the salaries expected to be paid to all members during the fiscal year in which the normal contribution is payable. The actuary, in his or her discretion, may make any adjustments to such methodology for determining the entry age normal contribution on an aggregate basis which he or she deems appropriate, and which are consistent with the provisions of item (ii) of this subparagraph.

(vi) In the alternative, the methodology determined by the actuary in accordance with item (iii) of this subparagraph may provide for the calculation of the entry age normal contribution on any other basis which the actuary deems appropriate, and which is consistent with the entry age actuarial cost method and the provisions of item (ii) of this subparagraph.

(vii) (A) Where the methodology determined by the actuary in accordance with item (iii) of this subparagraph requires the determination of an entry age normal contribution rate for each individual member in order to calculate the entry age normal contribution for each individual member, the actuary shall determine such rate for each such member in accordance with the entry age actuarial cost method, and such rate, as determined by the actuary for each such member, shall be consistent with a method designed, in general, to fund, on a level basis over the working lifetime of that particular member from his or her age at entry, the actuarial present value of benefits to which such member is expected to become entitled, as determined by the actuary.

(B) Where the methodology determined by the actuary in accordance with item (iii) of this subparagraph requires the determination of an entry age normal contribution rate for all members in the aggregate in order to calculate the entry age normal contribution for all members in the aggregate, the actuary shall determine such rate in accordance with the entry age actuarial cost method, and such rate, as determined by the actuary, shall be consistent with a method designed, in general, to fund, on a level basis over the working lifetimes of members from their ages at entry, the actuarial present value of benefits to which such members are expected to become entitled, as determined by the actuary.

(3) (a) The unfunded accrued liability contribution shall be an amount determined as prescribed in subparagraphs (b), (c) and (d) of this paragraph three.

(b) (i) The "assumed original unfunded accrued liability contribution" shall be a hypothetical amount determined as provided for in this subparagraph (b).

(ii) On the basis of the actuarial tables adopted pursuant to section 13-321 of this subchapter for the purpose of determining the assumed

original unfunded accrued liability contribution and interest at the rate of five and one-half per centum per annum, there shall be computed, as of June thirtieth, nineteen hundred seventy-five, the amount of the total liability for all benefits provided in this subchapter, in article eleven of the retirement and social security law and in any other law prescribing benefits payable by the pension fund, on account of all members and beneficiaries, excluding the liability on account of future increased-take-home-pay contributions.

(iii) From such total liability computed pursuant to item (ii) of this subparagraph (b), there shall be subtracted the sum of:

(A) the present value, as of such June thirtieth, of all then required future member contributions pursuant to the provisions of section 13-325 of this subchapter, as then in effect; and

(B) the sum obtained by adding together the total funds on hand and the balance sheet liability as of such June thirtieth, as such liability is determined pursuant to the provisions of subparagraphs (c) to (i), inclusive, of paragraph four of this subdivision b; and

(C) the present value, as of such June thirtieth, of all then required future payments, pursuant to section 13-704 of this article (as then in effect) of installments of losses in excess of installments of gains on dispositions of securities within the meaning of such section; and

(D) the present value, as of such June thirtieth, of future normal costs of the pension fund, computed pursuant to the entry age normal cost method of determining such normal costs.

(iv) The assumed original unfunded accrued liability contribution shall be a hypothetical amount, which, if paid to the pension fund in forty equal annual installments, commencing with payment of a first installment in the city's nineteen hundred seventy-seven-nineteen hundred seventy-eight fiscal year, would be the actuarial equivalent, on the basis of five and one-half per centum interest and the actuarial tables adopted pursuant to section 13-321 of this subchapter for the purpose of determining the assumed original unfunded accrued liability contributions, of the remainder computed pursuant to item (iii) of this subparagraph (b).

(c) (i) To the amount of the remainder computed pursuant to item (iii) of subparagraph (b) of this paragraph three, there shall be added interest thereon at the rate of five and one-half per centum per annum for the period from July first, nineteen hundred seventy-five to June thirtieth, nineteen hundred eighty.

(ii) There shall be computed in the manner provided for in item (iii) of this subparagraph (c), the discounted value of each of the installments of the assumed original unfunded accrued liability contribution which would have been hypothetically payable, pursuant to the provisions of item (iv) of subparagraph (b) of this paragraph three, in the city's nineteen hundred seventy-seven-nineteen hundred seventy-eight, nineteen hundred seventy-eight-nineteen hundred seventy-nine, nineteen hundred seventy-nine-nineteen hundred eighty, nineteen hundred eighty-nineteen hundred eighty-one and nineteen hundred eighty-one-nineteen hundred eighty-two fiscal years.

(iii) Such discounted value of each such installment shall be computed as of January first of the city's second fiscal year preceding the fiscal year in which such installment would have been hypothetically payable and on the basis of five and one-half per centum interest per annum on the amount of such installment.

(iv) There shall be computed with respect to such discounted value of each such installment, interest thereon from January first of such second fiscal year preceding the fiscal year in which such installment would have been hypothetically payable to June thirtieth, nineteen hundred eighty at the rate of five and one-half per centum per annum.

(v) The discounted values of all of such installments with respect to such fiscal years, computed as provided for in items (ii) and (iii) of this subparagraph (c), together with interest on each such installment as provided for in item (iv) of this subparagraph, shall be added together.

(vi) From the sum computed pursuant to item (i) of this subparagraph (c), the sum computed pursuant to item (v) of this subparagraph shall be subtracted.

(d) (i) With respect to each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty and ending on June thirtieth, nineteen hundred eighty-two, the revised unfunded accrued liability contribution shall be the annual installment, applicable to such fiscal year, of an amount which, if paid to the contingent reserve fund in thirty-five equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-nineteen hundred eighty-one fiscal year, would be the actuarial equivalent, on the basis of seven and one-half per centum interest per annum, of the remainder computed pursuant to item (vi) of subparagraph (c) of this paragraph three.

(ii) With respect to each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-two and ending on June thirtieth, nineteen hundred eighty-eight, the revised unfunded accrued liability contribution shall be the annual installment, applicable to such fiscal year, of an amount which, if paid to the contingent reserve fund in thirty-three equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year, would be the actuarial equivalent, on the basis of eight per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-two on the basis of seven and one-half per centum interest per annum, of those installments of the unfunded accrued liability contribution computed pursuant to item (i) of this subparagraph (d), which installments are hypothetically allocated by such item (i) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-two.

(iii) With respect to each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, two thousand fifteen, the revised unfunded accrued liability contributions shall be the annual installment, applicable to such fiscal year, of an amount which, when paid to the contingent reserve fund in twenty-seven equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, shall be the actuarial equivalent, on the basis of eight and one-quarter per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-eight on the basis of eight per centum interest per annum, of those installments of the unfunded accrued liability contribution computed pursuant to item (ii) of this subparagraph (d), which installments are hypothetically allocated by such item (ii) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

(e) (i) The nineteen hundred eighty unfunded accrued liability adjustment shall be an amount determined as prescribed in items (ii), (iii), (iv) and (v) of this subparagraph (e).

(ii) (A) Upon the basis of the actuarial tables in effect as of June thirtieth, nineteen hundred eighty for valuation purposes and interest at the rate of seven and one-half per centum per annum, there shall be determined, as of June thirtieth, nineteen hundred eighty, the amount of the total liability for all benefits provided in this subchapter, in article eleven of the retirement and social security law and in any other law prescribing benefits payable by the pension fund, on account of all members and beneficiaries, excluding the liability on account of future increased-take-home-pay contributions.

(B) From such total liability computed pursuant to sub-item (A) of this item (ii), there shall be subtracted the sum of:

(1) the present value, as of June thirtieth, nineteen hundred eighty, of all future normal costs, computed pursuant to the entry age normal cost method of determining such normal costs; and

(2) the present value, as of such June thirtieth, of all future installments of the balance sheet liability contribution (as defined in paragraph four of this subdivision b); and

(3) the present value, as of such June thirtieth, of all then required future payments, pursuant to section 13-704 of this title, of installments of losses in excess of installments of gains on dispositions of securities within the meaning of such section; and

(4) the present value, as of such June thirtieth, of all required future member contributions at the rates of member contribution in effect as of

such June thirtieth; and

(5) the total funds on hand as of such June thirtieth, including the amount of any unpaid moneys appropriated pursuant to section 13-334 of this subchapter.

(iii) (A) If the amount computed pursuant to item (ii) of this subparagraph (e) is larger than the amount computed pursuant to item (vi) of subparagraph (c) of this paragraph three, the latter amount shall be subtracted from the former amount and the remainder resulting from such subtraction shall constitute a charge.

(B) If the amount computed pursuant to item (ii) of this subparagraph (e) is smaller than the amount computed pursuant to item (vi) of subparagraph (c) of this paragraph, the former amount shall be subtracted from the latter amount and the remainder resulting from such subtraction shall constitute a credit.

(iv) (A) If the remainder computed pursuant to item (iii) of this subparagraph is a charge, the nineteen hundred eighty unfunded accrued liability adjustment shall be an amount which, if paid to the contingent reserve fund in thirty equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-nineteen hundred eighty-one fiscal year, would be the actuarial equivalent, on the basis of seven and one-half per centum interest per annum, of such remainder.

(B) If the remainder computed pursuant to item (iii) of this subparagraph is a credit, the nineteen hundred eighty unfunded accrued liability adjustment shall be an amount which, if credited in thirty equal annual installments (the first of which installments is to be credited in the city's nineteen hundred eighty-nineteen hundred eighty-one fiscal year) in reduction of the amounts which the city would otherwise be required to pay to the contingent reserve fund pursuant to subparagraph (a) of paragraph one of this subdivision b or otherwise pursuant to law, would be the actuarial equivalent, on the basis of seven and one-half per centum interest per annum, of such remainder.

(v) (A) With respect to determination of the amount of contributions payable to the contingent reserve fund in each of the city's nineteen hundred eighty-nineteen hundred eighty-one and nineteen hundred eighty-one-nineteen hundred eighty-two fiscal years, the annual installment of the nineteen hundred eighty unfunded accrued liability adjustment computed pursuant to item (iv) of this subparagraph (e), which installment is applicable to such fiscal year, shall be applied as a charge or a credit, as the case may be, in relation to such contributions payable in such fiscal year.

(B) With respect to determination of the amount of contributions payable to the contingent reserve fund in each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-two and ending on June thirtieth, nineteen hundred eighty-eight, the nineteen hundred eighty unfunded accrued liability adjustment shall be an amount which, if paid (if a charge) or credited (if a credit) in twenty-eight equal annual installments, commencing with a payment or credit, as the case may be, in the city's nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year, would be the actuarial equivalent, on the basis of eight per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-two on the basis of seven and one-half per centum interest per annum, of those installments of the nineteen hundred eighty unfunded accrued liability adjustment computed pursuant to item (iv) of this subparagraph (e), which installments are hypothetically allocated by such item (iv) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-two.

(C) With respect to determination of the amount of contributions payable to the contingent reserve fund in each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, two thousand ten, the nineteen hundred eighty unfunded accrued liability adjustment shall be in an amount which, when paid (if a charge) or credited (if a credit) in twenty-two equal annual installments, commencing with a payment or credit, as the case may be, in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, shall be the actuarial equivalent, on the basis of eight and one-quarter per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-eight on the basis of eight per centum interest per annum, of those installments of the nineteen hundred eighty unfunded accrued liability adjustment computed pursuant to sub-item (B) of this item (v), which installments are hypothetically allocated by such sub-item (B) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

(D) With respect to determination of the amount of contributions payable to the contingent reserve fund in each of such city fiscal years referred to in sub-item (B) or sub-item (C) of this item (v), the annual installment of the nineteen hundred eighty unfunded accrued liability adjustment computed pursuant to sub-item (B) or sub-item (C) of this item (v), which installment is applicable to such fiscal year, shall be applied as a charge or credit, as the case may be, in relation to such contributions payable in such fiscal year.

(f) (i) The nineteen hundred eighty-two unfunded accrued liability adjustment shall be an amount determined as prescribed in items (ii), (iii), (iv) and (v) of this subparagraph (f).

(ii) Upon the basis of the actuarial tables in effect as of June thirtieth, nineteen hundred eighty-one for valuation purposes and interest at the rate of seven and one-half per centum per annum, there shall be determined, as of June thirtieth, nineteen hundred eighty-two, the amount of the actuarial accrued liability of the pension fund, computed pursuant to the entry age normal cost method of ascertaining such actuarial accrued liability.

(iii) Upon the basis of the actuarial tables in effect as of June thirtieth, nineteen hundred eighty-two for valuation purposes and interest at the rate of eight per centum per annum, there shall be determined, as of June thirtieth, nineteen hundred eighty-two, the amount of the actuarial accrued liability of the pension fund, computed pursuant to the entry age normal cost method of ascertaining such actuarial accrued liability.

(iv) With respect to determination of the amount of contributions payable to the contingent reserve fund in each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-two and ending on June thirtieth, nineteen hundred eighty-eight, the nineteen hundred eighty-two unfunded accrued liability adjustment shall be an amount which, if credited in thirty equal annual installments (the first of which installments is to be credited in the city's nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year) in reduction of the amounts which the city would otherwise be required to pay to the contingent reserve fund pursuant to items (i), (ii), (iii), (v) and (vi) of subparagraph (a) of paragraph (1) of this subdivision b or otherwise pursuant to law, would be the actuarial equivalent, on the basis of eight per centum interest per annum of the excess of the amount computed pursuant to item (ii) of this subparagraph (f) over the amount computed pursuant to item (iii) of this subparagraph.

(v) With respect to determination of the amount of contributions payable to the contingent reserve fund in each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, two thousand twelve, the nineteen hundred eighty-two unfunded accrued liability adjustment shall be an amount which, when credited in twenty-four equal annual installments (the first of which installments is to be credited in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year) in reduction of the amounts which the city would otherwise be required to pay to the contingent reserve fund pursuant to items (i), (ii), (iii), (v) and (vi) of subparagraph (a) of paragraph (1) of this subdivision b or otherwise pursuant to law, shall be the actuarial equivalent, on the basis of eight and one-quarter per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-eight on the basis of eight per centum interest per annum, of the installments of the nineteen hundred eighty-two unfunded accrued liability adjustment computed pursuant to item (iv) of this subparagraph (f), which installments are hypothetically allocated by such item (iv) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

(g) (i) The nineteen hundred eighty-five unfunded accrued liability adjustment shall be an amount determined as prescribed in items (ii), (iii) and (iv) of this subparagraph (g).

(ii) Upon the basis of the actuarial tables in effect for valuation purposes with respect to determination of the normal contribution to the contingent reserve fund in the city's nineteen hundred eighty-four-nineteen hundred eighty-five fiscal year, and interest at the rate of eight per centum per annum, there shall be determined, as of June thirtieth, nineteen hundred eighty-five, the amount of the actuarial accrued liability of the pension fund, computed pursuant to the entry age normal cost method of ascertaining such actuarial accrued liability.

(iii) Upon the basis of the actuarial tables in effect for valuation purposes with respect to determination of the normal contribution to the



contingent reserve fund in the city's nineteen hundred eighty-five-nineteen hundred eighty-six fiscal year, and interest at the rate of eight per centum per annum, there shall be determined, as of June thirtieth, nineteen hundred eighty-five, the amount of the actuarial accrued liability of the pension fund, computed pursuant to the entry age normal cost method of ascertaining such actuarial accrued liability.

(iv) (A) With respect to determination of the amount of contributions payable to the contingent reserve fund in each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-five and ending on June thirtieth, nineteen hundred eighty-eight, the nineteen hundred eighty-five unfunded accrued liability adjustment shall be an amount which, if paid to the contingent reserve fund in thirty equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-five-nineteen hundred eighty-six fiscal year, would be the actuarial equivalent, on the basis of eight per centum interest per annum of the excess of the amount computed pursuant to item (iii) of this subparagraph (g) over the amount computed pursuant to item (ii) of this subparagraph.

(B) With respect to determination of the amount of contributions payable to the contingent reserve fund in each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, two thousand fifteen, the nineteen hundred eighty-five unfunded accrued liability adjustment shall be an amount which, when paid to the contingent reserve fund in twenty-seven equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, shall be the actuarial equivalent, on the basis of eight and one-quarter per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-eight on the basis of eight per centum interest per annum, of those installments of the nineteen hundred eighty-five unfunded accrued liability adjustment computed pursuant to sub-item (A) of this item (iv), which installments are hypothetically allocated by such sub-item (A) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

(4) (a) As used in this section, the following words and phrases, unless a different meaning is plainly required by the context, shall have the following meanings:

(i) (A) "Normal contribution for balance sheet liability purposes." The hypothetical amount which the assumed normal contribution payable in each city fiscal year occurring during the period beginning on July first, nineteen hundred seventy-four and ending on June thirtieth, nineteen hundred eighty would have equalled if such assumed normal contribution had been required by law to be paid to the pension fund in the city fiscal year in which the obligation to make such assumed normal contribution accrued and such assumed normal contribution had been required by law to be determined in the manner provided for in sub-items (B), (C) and (D) of this item (i).

(B) Upon the basis of the mortality and other tables adopted pursuant to section 13-321 of this subchapter for the purpose of determining the balance sheet liability contribution and interest at the rate of five and one-half per centum per annum, the actuary shall determine, as of June thirtieth next preceding each such fiscal year for which such assumed normal contribution is being determined (hereinafter referred to as the "subject fiscal year") the amount of the then total liability for all benefits provided in this subchapter, in article eleven of the retirement and social security law and in any other law prescribing benefits payable by the pension fund, on account of all then members and beneficiaries, excluding the then liability on account of future annual contributions, for balance sheet liability purposes, on account of accumulations-for-increased-take-home-pay (as defined in item (iv) of this subparagraph (a)), if any.

(C) The assumed normal rate of contribution with respect to the subject fiscal year shall be the rate per centum obtained:

(i) by deducting from the amount of such total liability, the sum of:

(A) the present value of all then required future unfunded accrued liability contributions for balance sheet liability purposes (as defined in item (ii) of this subparagraph (a)); and

(B) the present value of all then required future annual contributions, for balance sheet liability purposes, on account of amortization of losses on dispositions of certain securities within the meaning of section 13-704 of this article (as defined in item (iii) of this subparagraph (a)); and

(C) the present value of all then required future member contributions on account of dependent benefits; and

(D) the amount obtained by adding together the total funds on hand and the balance sheet liability as of such June thirtieth next preceding the subject fiscal year; and

(ii) by dividing the remainder by one per centum of the then present value of the prospective future salaries of all members, as computed on the basis of the mortality and service tables adopted pursuant to section 13-321 of this subchapter for the purpose of determining the balance sheet liability contribution, and on the basis of interest at the rate of five and one-half per centum per annum.

(D) The amount of the assumed normal contribution for balance sheet liability purposes hypothetically payable in the subject fiscal year shall be the amount obtained (1) by multiplying such assumed normal rate of contribution computed with respect to the subject fiscal year by the aggregate annual salaries of the members as of June thirtieth of the subject fiscal year and (2) by adding to the product of such multiplication interest on such product at the rate of five and one-half per centum per annum for a period of six months.

(ii) "Unfunded accrued liability contribution for balance sheet liability purposes."

(A) With respect to the city's nineteen hundred seventy-four-nineteen hundred seventy-five fiscal year, such term shall mean a hypothetical amount which, if paid to the pension fund in forty equal annual installments, beginning with payment of a first installment in the city's nineteen hundred seventy-four-nineteen hundred seventy-five fiscal year, would be the actuarial equivalent, on the basis of interest at the rate of five and one-half per centum per annum, of the remainder computed in the manner prescribed by sub-items (B) and (C) of this item (ii).

(B) Upon the basis of the actuarial tables adopted pursuant to such section 13-321 for the purpose of determining the balance sheet liability contribution and interest at the rate of five and one-half per centum per annum, there shall be computed, as of June thirtieth, nineteen hundred seventy-four, the amount of the total liability for all benefits provided by this subchapter, in article eleven of the retirement and social security law and in any other law prescribing benefits payable by the pension fund, on account of all members and beneficiaries, excluding the liability on account of future increased-take-home-pay contributions.

(C) From such total liability computed pursuant to sub-item (B) of this item there shall be subtracted the sum of:

(1) the present value, as of such June thirtieth, of all then required future member contributions pursuant to the provisions of section 13-325 of this subchapter, as then in effect; and

(2) the sum obtained by adding together the total funds on hand and the balance sheet liability as of such June thirtieth, as such liability is determined pursuant to the provisions of subparagraph (b) of this paragraph four; and

(3) the present value, as of such June thirtieth, of all then required future payments, pursuant to section 13-704 of this article (as then in effect) of installments of losses in excess of installments of gains on dispositions of securities within the meaning of such section; and

(4) the present value, as of such June thirtieth, of future normal costs of the pension fund, computed pursuant to the entry age normal cost method of determining such normal costs.

(D) With respect to each of the city's fiscal years occurring during the period from July first, nineteen hundred seventy-five to June thirtieth, nineteen hundred eighty, such term shall mean a hypothetical amount which, if paid to the pension fund in forty equal annual installments, beginning with payment of a first installment in the city's nineteen hundred seventy-five-nineteen hundred seventy-six fiscal year, would be the actuarial equivalent, on

the basis of interest at the rate of five and one-half per centum per annum, of the remainder computed pursuant to sub-items (E) and (F) of this item (ii).

(E) Upon the basis of the actuarial tables adopted pursuant to section 13-321 of this subchapter for the purpose of determining the balance sheet liability contribution and interest at the rate of five and one-half per centum per annum, there shall be computed, as of June thirtieth, nineteen hundred seventy-five, the amount of the total liability for all benefits provided by this subchapter, in article eleven of the retirement and social security law and in any other law prescribing benefits payable by the pension fund, on account of all members and beneficiaries, excluding the liability on account of future increased-take-home-pay contributions.

(F) From such total liability computed pursuant to sub-item (E) of this item (ii), there shall be subtracted the sum of:

(1) the present value, as of such June thirtieth, of all then required future member contributions pursuant to the provisions of section 13-325 of this subchapter, as then in effect; and

(2) the sum obtained by adding together the total funds on hand and the balance sheet liability as of such June thirtieth, as such liability is determined pursuant to the provisions of subparagraphs (c) to (i), inclusive, of this paragraph four; and

(3) the present value, as of such June thirtieth, of all then required future payments, pursuant to section 13-704 of this article (as then in effect) of installments of losses in excess of installments of gains on dispositions of securities within the meaning of such section; and

(4) the present value, as of such June thirtieth, of future normal costs of the pension fund, computed pursuant to the entry age normal cost method of determining such normal costs.

(iii) "Annual contribution, for balance sheet liability purposes, on account of amortization of losses on dispositions of certain securities within the meaning of section 13-704 of this article." A hypothetical annual payment to the retirement allowance accumulation fund in each of the city's fiscal years occurring during the period beginning on July first, nineteen hundred seventy-four and ending on June thirtieth, nineteen hundred eighty, of the amount of the excess of the installments (payable in such year) of losses on prior dispositions of securities within the meaning of section 13-704 of this article over the installments (creditable in such fiscal year) of gains on such prior dispositions, which annual amount shall be determined in the manner provided in subdivision h of such section 13-704.

(iv) "Annual contribution, for balance sheet liability purposes, on account of accumulations-for-increased-take-home-pay." A hypothetical annual payment to the retirement allowance accumulation fund in each of the city's fiscal years occurring during the period from July first, nineteen hundred seventy-four to June thirtieth, nineteen hundred eighty, of the amount required to fulfill the public employer obligation, which accrued in such fiscal year, to provide accumulations-for-increased-take-home-pay (as defined in subdivision fifteen of section 13-313 of this subchapter).

(v) "Annual military law contribution or balance sheet liability purposes." A hypothetical annual payment to the retirement allowance accumulation fund in each of the city's fiscal years occurring during the period beginning on July first, nineteen hundred seventy-four and ending on June thirtieth, nineteen hundred eighty, of the amount required to fulfill the public employer obligation, which accrued in such year under the provisions of subdivision twenty of section two hundred forty-three of the military law, to pay in behalf of members qualifying for such benefit, member contributions with respect to certain periods of military service of such members.

(vi) "Contribution on account of amortization, pursuant to section 13-704 of this article, of losses on dispositions of certain securities." The total annual amount by which the sum of the installments of losses, payable pursuant to section 13-704 of this chapter (as in effect prior to July first, nineteen hundred eighty) in each of the city's fiscal years occurring during the period from July first, nineteen hundred seventy-four to June thirtieth, nineteen hundred eighty in relation to dispositions of securities within the meaning of such section, exceeds the sum of the installments of gains creditable in the same fiscal year in relation to the same dispositions of securities.

(b) The balance sheet liability as of June thirtieth, nineteen hundred seventy-four shall be the sum of eighty-seven million, sixty-four thousand, two hundred seventy-three dollars (\$87,064,273), consisting of the sum of:

(i) the discounted value, as of June thirtieth, nineteen hundred seventy-four, of the sum of forty-two million, ninety thousand dollars (\$42,090,000), which constituted the amount payable into the retirement allowance accumulation fund in the city's nineteen hundred seventy-four-nineteen hundred seventy-five fiscal year by the city in fulfillment of its obligations to make contributions to the pension fund payable in such fiscal year, such discounting being calculated on the basis of interest at the rate of five and one-half per centum per annum and a discount period of six months extending retroactively from January first, nineteen hundred seventy-five to June thirtieth, nineteen hundred seventy-four, and such discounted value being the sum of forty million, nine hundred seventy-eight thousand, one hundred ninety-three dollars (\$40,978,193); and

(ii) the discounted value, as of June thirtieth, nineteen hundred seventy-four, of the sum of forty-nine million, nine hundred forty thousand dollars (\$49,940,000), which constituted the amount payable to the retirement allowance accumulation fund in the city's nineteen hundred seventy-five-nineteen hundred seventy-six fiscal year by the city in fulfillment of its obligations to make contributions to the pension fund payable in such fiscal year, such discounting being calculated on the basis of interest at the rate of five and one-half per centum per annum and a discount period of eighteen months extending retroactively from January first, nineteen hundred seventy-six to June thirtieth, nineteen hundred seventy-four, and such discounted value being the sum of forty-six million, eighty-six thousand, eighty dollars (\$46,086,080).

(c) The balance sheet liability, as of each June thirtieth succeeding June thirtieth, nineteen hundred seventy-four to and including June thirtieth, nineteen hundred eighty, shall be determined as provided for in subparagraphs (d) to (j), inclusive, of this paragraph four.

(d) To the amount of the balance sheet liability as of June thirtieth next preceding the June thirtieth (which last-mentioned June thirtieth is hereinafter referred to as the "subject June thirtieth") as of which the balance sheet liability is being determined as provided for in subparagraph (c) of this paragraph four, there shall be added one year's interest on such amount at the rate of five and one-half per centum per annum.

(e) With respect to the city's fiscal year ending on the subject June thirtieth (hereinafter referred to as the "subject fiscal year") there shall be added together the contribution components hereinafter specified in this subparagraph (e), which components, for the purposes of this paragraph four, are hypothetically deemed to have accrued in the subject fiscal year and to have been payable therein, as follows:

(i) the amount of the normal contribution for balance sheet liability purposes (as defined in item (i) of subparagraph (a) of this paragraph four); and

(ii) the amount of the applicable installment of the unfunded accrued liability contribution for balance sheet liability purposes (as defined in item (ii) of subparagraph (a) of this paragraph); and

(iii) the amount of the annual contribution, for balance sheet liability purposes, on account of amortization of losses on dispositions of certain securities within the meaning of section 13-704 of this chapter (as defined in item (iii) of subparagraph (a) of this paragraph); and

(iv) the amount of the annual contribution, for balance sheet liability purposes, on account of accumulations-for-increased-take-home-pay (as defined in item (iv) of subparagraph (a) of this paragraph); and

(v) the amount of the annual military law contribution for balance sheet liability purposes (as defined in item (v) of subparagraph (a) of this paragraph).

(f) To the amount resulting from the addition prescribed by subparagraph (e) of this paragraph four, there shall be added interest thereon at the rate of five and one-half per centum per annum from January first of the subject fiscal year to June thirtieth of such fiscal year.

(g) The amount computed pursuant to subparagraph (d) of this paragraph four in relation to the balance sheet liability as of June thirtieth next preceding the subject June thirtieth (together with one year's interest on such balance sheet liability as provided for in such subparagraph) shall be added to the amount computed pursuant to subparagraph (f) of this paragraph in relation to the subject fiscal year.

(h) From the amount computed pursuant to subparagraph (g) of this paragraph, there shall be subtracted the sum of:

(i) the total amount of:

(A) the sum paid to the retirement allowance accumulation fund during the subject fiscal year by the city as contributions pursuant to the provisions of section 13-325 of this subchapter as then in effect; and

(B) the amount of the contribution on account of amortization, pursuant to section 13-704 of this chapter, of losses on dispositions of certain securities (as defined in item (vi) of subparagraph (a) of this paragraph four) payable in the subject fiscal year; and

(C) the amount payable in the subject fiscal year on account of accumulations-for-increased-take-home-pay; and

(D) the amount payable in the subject fiscal year in behalf of members pursuant to subdivision twenty of section two hundred forty-three of the military law; plus

(ii) interest on such total amount referred to in item (i) of this subparagraph (h) at the rate of five and one-half per centum per annum from January first of the subject fiscal year to June thirtieth thereof.

(i) The remainder resulting from the subtraction prescribed by subparagraph (h) of this paragraph four shall be the balance sheet liability as of June thirtieth of the subject fiscal year.

(j) The balance sheet liability as of June thirtieth, nineteen hundred eighty shall be the amount resulting from the successive computations of the balance sheet liability as of each June thirtieth succeeding June thirtieth, nineteen hundred seventy-four up to and including June thirtieth, nineteen hundred eighty, as prescribed by subparagraphs (c) to (i), inclusive, of this paragraph four.

(k) The balance sheet liability contribution payable in the city's nineteen hundred eighty-one-nineteen hundred eighty-two fiscal year shall be the first annual installment of an amount which, if paid to the contingent reserve fund in forty equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-one-nineteen hundred eighty-two fiscal year, would be the actuarial equivalent, as of June thirtieth, nineteen hundred eighty-one, on the basis of seven and one-half per centum interest per annum, of an amount equal to the balance sheet liability as of June thirtieth, nineteen hundred eighty.

(l) The balance sheet liability contribution payable in each city fiscal year during the period beginning on July first, nineteen hundred eighty-two and ending on June thirtieth, nineteen hundred eighty-eight shall be one annual installment of an amount which, if paid to the contingent reserve fund in thirty-nine equal annual installments, commencing with a first payment in the city's nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year, would be the actuarial equivalent, as of June thirtieth, nineteen hundred eighty-two, on the basis of eight per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-two on the basis of seven and one-half per centum interest per annum, of those installments of the balance sheet liability contribution computed pursuant to subparagraph (k) of this paragraph four, which installments are hypothetically allocated by such subparagraph (k) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-two.

(m) The balance sheet liability contribution payable in each city fiscal year during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, two thousand twenty-one shall be one annual installment of an amount which, when paid to the contingent reserve fund in thirty-three equal annual installments, commencing with a first payment in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, shall be the actuarial equivalent, as of June thirtieth, nineteen hundred eighty-eight, on the basis of eight and one-quarter per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-eight on the basis of eight per centum interest per annum, of those installments of the balance sheet liability contribution computed pursuant to subparagraph (l) of this paragraph four, which installments are hypothetically allocated by such subparagraph (l) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

(5) Contributions to the contingent reserve fund payable by the city in fiscal years of the city beginning on or after July first, nineteen hundred ninety shall be governed by the provisions of this section, as modified and supplemented by sections 13-638.2 and 13-638.3 of this title, and such other laws as may be applicable.

(6) (a) On the basis of interest at the rate of eight and one-half per centum per annum and the actuarial tables in effect as of July first, nineteen hundred ninety-four, the actuary shall determine the present value, as of such July first, of the future liability of the pension fund for paying all benefits and supplemental benefits on and after such date to fire subchapter one beneficiaries (as defined in paragraph three of subdivision a of section 13-312.1 of this chapter), which liability is deemed to have been transferred to and assumed by the fund pursuant to subdivisions d, e and g of section 13-312.1 of this chapter, as if such transfers actually had been made on such July first.

(b) The city shall pay to the contingent reserve fund in ten equal annual installments, commencing with payment of a first installment in the city's nineteen hundred ninety-four—nineteen hundred ninety-five fiscal year, an amount which, when paid in such installments, is the actuarial equivalent of the amount determined pursuant to subparagraph (a) of this paragraph.

c. Whenever the board, upon recommendation by the actuary, shall determine that it is necessary to increase the reserves held in the retirement allowance reserve fund, the annuity reserve fund, the pension reserve fund or dependent benefit reserve fund, the board may direct that the amount so needed shall be transferred thereto from the contingent reserve fund.

d. The cash benefits payable under the provisions of this subchapter or other applicable laws to, or upon the death of, a member in active service shall be paid from such contingent reserve fund.

e. (1) Upon the retirement of such a member who is an original plan member, or upon his or her death in the performance of duty, an amount equal to the retirement allowance reserve for the retirement allowance payable on account of his or her city-service as a member, shall be transferred from the contingent reserve fund to the retirement allowance reserve fund.

(2) Upon the retirement of a member in active service who is an improved benefits plan member or upon his or her death in the performance of duty, an amount equal to the pension reserve for the pension payable by the city on account of his or her city-service as a member, together with the reserve-for-increased-take-home-pay, shall be transferred from the contingent reserve fund to the pension reserve fund. Contributions shall be paid into the contingent reserve fund, in the manner and to the extent specified by section 13-326 of this subchapter, to provide reserves-for-increased-take-home-pay.

f. [Repealed.]

### **§ 13-332 Contributions of the city and their use; pension reserve fund.**

The pension reserve fund shall be the fund from which shall be paid all pensions, and all pensions-providing-for-increased-take-home-pay, and all benefits in lieu of pensions, and all benefits in lieu of pensions-providing-for-increased-take-home-pay, if any, allowable by the city on account of the city-service of improved benefit plan members. Should any pension or pension-providing-for-increased-take-home-pay payable from such pension reserve fund be cancelled, the pension reserve or reserve-for-increased-take-home-pay thereon shall thereupon be transferred from the pension reserve fund to the contingent reserve fund. Should any pension-providing-for-increased-take-home-pay payable from such fund be reduced, the amount of the annual

reduction in such pension or pension-providing-for-increased-take-home-pay shall be paid annually into the contingent reserve fund during the period of such reduction.

### **§ 13-333 Contributions of public benefit corporations and their use.**

Notwithstanding the requirements of section 13-331 of this subchapter, of the amounts due from the city, all amounts due to the contingent reserve fund on account of any members of the pension fund during the period of their employment by any authority or body corporate and politic constituting a public benefit corporation or its successor, shall be paid by such employing authority or body corporate and politic or successor.

### **§ 13-334 Guarantee of funds.**

a. Regular interest, charges payable, the creation and maintenance of reserves in the contingent reserve fund, the retirement allowance reserve fund and the pension reserve fund and the maintenance of retirement allowance reserves with respect to original plan members, annuity reserves, pension reserves, dependent benefit reserves and reserves-for-increased-take-home-pay as provided for in this subchapter, maintenance of the accumulation-for-increased-take-home-pay and the payment of all retirement allowances payable to or on account of original plan members, pensions, pensions-providing-for-increased-take-home-pay, annuities, retirement allowances payable to or on account of improved benefits plan members, refunds, death benefits, dependent benefits and any other benefits granted under the provisions of this subchapter, are hereby made obligations of the city. Except as otherwise provided in sections 13-335, 13-335.1, 13-335.2 and 13-335.3 of this subchapter and section 13-391.1 of this chapter, all income, interest and dividends derived from deposits and investments authorized by this subchapter shall be used and disposed of in the manner prescribed by subdivision b of this section; provided, however, that nothing contained in this sentence shall diminish or impair the obligations of the city provided for by the preceding sentence of this subdivision a. Upon the basis of each actuarial determination and appraisal provided for in this subchapter, the commissioner shall prepare pursuant to section one hundred twelve of the charter and submit to the director of management and budget an itemized estimate of the amounts necessary to be appropriated by the city to the various funds to provide for payment in full during the ensuing fiscal year of all such obligations of the city accruing during the ensuing fiscal year. There shall annually be included in the budget a sum sufficient to provide for such obligations of the city. The comptroller shall pay the sums so provided into the various funds provided for by this subchapter; subject to the provisions of subdivision b of this section.

b. (1) Subject to the provisions of paragraph two of this subdivision b, all income, interest and dividends derived from deposits and investments authorized by this chapter, which income, interest and dividends were heretofore or are hereafter received during any city fiscal year commencing on or after July first, nineteen hundred eighty, shall (after payment therefrom of the sum, if any, required to be paid pursuant to sections 13-335, 13-335.1, 13-335.2 and 13-335.3 of this subchapter and section 13-391.1 of this chapter) be used in such fiscal year for the purposes hereinafter specified in this paragraph one (to the extent that such income, interest and dividends are sufficient for such purposes), in the order or priority herein stated, as follows:

(A) first, to pay into the funds of the pension fund the amounts of regular interest which are required to be paid into such funds in such fiscal year by reason of being required to be allowed to such funds pursuant to the provisions of section 13-337 of this subchapter, and to pay into such funds the amounts of supplementary interest, if any, required to be so paid in such fiscal year under the applicable provisions of such section, and to pay into the annuity savings fund the amounts of special interest, if any, required to be so paid in such fiscal year under the applicable provisions of such section, and to pay into the contingent reserve fund the amounts of additional interest, if any, required to be paid in such fiscal year under the applicable provisions of such section;

(B) second, to pay into the contingent reserve fund the amount of any losses in excess of gains (i) which net losses the pension fund sustained during such fiscal year by reason of sales or other dispositions of securities, and (ii) for which net losses the pension fund is required to be reimbursed in such fiscal year, and (iii) to which net losses section 13-704 of this title, relating to graduated crediting of gains and amortization of losses on dispositions of certain securities, does not apply;

(C) third, if the total amount of such income, interest and dividends received during such fiscal year is in excess of the total amount required to make, in such fiscal year, the payment prescribed by subparagraphs (A) and (B) of this paragraph one, the amount of such excess shall be paid into the contingent reserve fund and shall become a part of the assets of such fund.

(2) Notwithstanding the provisions of paragraph one of this subdivision or any other law to the contrary, any such income, interest or dividends which are received by the pension fund may be used for the purpose specified in section 13-705 of this title (relating to expenses incurred in the acquisition, management and protection of investments), regardless of when received and prior to use for the purposes stated in such paragraph one.

(3) Subject to the provisions of paragraph four of this subdivision b, all income, interest and dividends which were derived from deposits and investments authorized by this chapter and which were received during each of the city's nineteen hundred seventy-eight-nineteen hundred seventy-nine and nineteen hundred seventy-nine-nineteen hundred eighty fiscal years shall be used (after payment therefrom of the sum, if any, required to be paid pursuant to section 13-335 of this subchapter) in each such fiscal year for the purposes hereinafter stated in this paragraph three, in the order of priority herein stated, as follows:

(A) first, to pay into the funds of the pension fund the amounts of regular interest which are required to be paid into such funds in such fiscal year wherein such income, interest and dividends were received, which interest is so payable by reason of being required to be allowed to such funds in such fiscal year pursuant to the provisions of section 13-337 of this subchapter; and

(B) second, to pay into the retirement allowance accumulation fund the amount of any losses in excess of gains (i) which net losses were sustained by the pension fund during such fiscal year in which such income, interest and dividends were received and which net losses were sustained by reason of sales or other dispositions of securities, and (ii) for which net losses the pension fund is required to be reimbursed in such fiscal year, and (iii) to which net losses section 13-704 of this title, relating to graduated crediting of gains and amortization of losses on dispositions of certain securities, does not apply; and

(C) third, if the total amount of such income, interest and dividends received during such fiscal year is in excess of the total amount required to make, in the same fiscal year, the payments prescribed by subparagraphs (A) and (B) of this paragraph three, the amount of such excess shall be paid into the contingent reserve fund as of June thirtieth of such fiscal year and shall become a part of the assets of such fund as of such date.

(4) Notwithstanding the provisions of paragraph three of this subdivision b or any other law to the contrary, any such income, interest or dividends which were received by the pension fund in either such fiscal year referred to in such paragraph three may be used for the purpose specified in section 13-705 of this title (relating to expenses incurred in the acquisition, management and protection of investments) prior to use for the purposes stated in such paragraph three.

c. (1) The comptroller shall make monthly payments, in twelve equal installments, with respect to obligations which the city incurs to pay sums to the pension fund.

(2) The equal monthly payments in each city fiscal year shall be in respect of obligations which accrue in such fiscal year and shall be made in such fiscal year on or before the last day of each month.

(3) The board of trustees of the pension fund may waive the requirements of the foregoing provisions of this subdivision with respect to time of payment to such fund, provided that any such waiver of time of payment in any instance shall not apply to the time of subsequent payments unless there shall be a subsequent waiver.

### **§ 13-335 Payments to variable supplements funds.**

a. For the purposes of this section, the following terms shall mean and include:

1. "Base fiscal year". Any fiscal year of the city beginning on or after July first, nineteen hundred sixty-nine, with respect to which fiscal year a computation of earnings differential, based on equity investments made or held by the pension fund during such fiscal year, is being made pursuant to this section.

2. "Current fiscal year". The fiscal year of the city next succeeding the base fiscal year.

3. "Prior base fiscal year". Any fiscal year of the city which begins on or after July first, nineteen hundred sixty-nine and which precedes the base fiscal year.

4. "Earnings differential". The amount (expressed as a positive or negative quantity) by which the equity experience factor (expressed as a positive or negative quantity) with respect to the base fiscal year differs from the interest comparison factor with respect to the base fiscal year. If such equity experience factor is greater than such interest comparison factor, the difference between the two shall be expressed as a positive quantity. If such interest comparison factor is greater than such equity experience factor, the difference between the two shall be expressed as a negative quantity.

5. (a) "Equity experience factor". Subject to the provisions of subparagraph (c) of this paragraph five, an amount (expressed as a positive or negative quantity) equal to (i) the income earned by the pension fund during the base fiscal year from its investments in equities, plus (ii) the capital gains, realized or unrealized, occurring during such fiscal year by reason of such investments, less (iii) the capital losses, realized or unrealized, occurring during such fiscal year by reason of such investments.

(b) In the event that any equity is sold during the base fiscal year the expense of such sale, including but not limited to broker's commissions, shall be deducted from capital gain or added to capital loss, determining whether such sale produced a capital gain or a capital loss and the amount thereof.

(c) (i) The equity experience factor for any base fiscal year beginning on or after July first, nineteen hundred eighty-eight shall be determined pursuant to the provisions of this subparagraph (c).

(ii) There shall be computed the sum which would be the equity experience factor for such base fiscal year, if such factor were determined pursuant to subparagraphs (a) and (b) of this paragraph five.

(iii) There shall be computed the amount which would have been the sum computed pursuant to item (ii) of this subparagraph in the absence of the enactment of the act which added this subparagraph (c) to the paragraph five.

(iv) The amount required to be computed pursuant to the provisions of item (iii) of this subparagraph (c) shall be computed pursuant to scientific method recommended to the board by the actuary and approved by the board; provided that if the board is unable to approve, by the required majority vote, any such formula recommended by the actuary such amount shall be computed pursuant to a scientific formula recommended by the actuary and approved by an arbitrator designated pursuant to the procedure set forth in subparagraph (b) of paragraph eight of this subdivision a.

(v) The equity experience factor for such base fiscal year shall be the amount (expressed as a positive or negative quantity) computed pursuant to the provisions of item (iii) of this subparagraph.

6. "Income". Any yield of equities, including but not limited to dividends, other than capital gains.

7. "Hypothetical fixed income securities earnings".

(a) Subject to the provisions of subparagraph (e) of this paragraph seven, the aggregate of the hypothetical interest yields computed pursuant to subparagraphs (b), (c) and (d) of this paragraph.

(b) The board shall compute with respect to each investment made or maintained by the pension fund in an equity during the base fiscal year, the amount of interest which would have been hypothetically earned during such fiscal year, under the methods of calculation prescribed in this subparagraph seven, if an amount equal to such investment had instead been hypothetically invested in fixed income securities and such securities had been held by such fund for a period (in the base fiscal year) co-extensive with the period during which such equity was held by such fund in the base fiscal year.

(c) For the purposes of this section, the amount of any such investment in an equity during the base fiscal year shall be deemed to be:

(i) the market value of the equity on the first day of the base fiscal year, in the case of any such equity acquired by the pension fund prior to the commencement of such fiscal year and held by such fund on the first day of such fiscal year; and

(ii) the total amount paid by such fund to acquire the equity, including but not limited to broker's commissions and other expenses of such acquisition, in the case of any such equity which is acquired by such fund during the base fiscal year.

(d) For the purposes of this section, the amount of interest which would have been earned by the pension fund on such hypothetical fixed income securities during the base fiscal year shall be deemed to be the amount obtained:

(i) by multiplying the amount of the investment in such equity, determined as prescribed by subparagraph (c) of this paragraph seven, by the assumed rate of interest for the base fiscal year; and

(ii) by prorating the interest so computed, in any case where the investment in such equity was maintained by the pension fund for a part of the base fiscal year.

(e) (i) The hypothetical fixed income securities earnings for any base fiscal year beginning on or after July first, nineteen hundred eighty-eight shall be determined pursuant to the provisions of this subparagraph (e).

(ii) There shall be computed the amount which the hypothetical fixed income securities earnings for such base fiscal year would be, if determined pursuant to the provisions of subparagraphs (a), (b), (c) and (d) of this paragraph seven.

(iii) The amount computed pursuant to item (ii) of this subparagraph shall be multiplied by a fraction, the numerator of which is the equity experience factor for such base fiscal year prescribed by item (v) of subparagraph (c) of paragraph five of this subdivision a and the denominator of which is the sum computed pursuant to item (ii) of such subparagraph (c).

(iv) The hypothetical fixed income securities earnings for such base fiscal year shall be the product of the multiplication prescribed by item (iii) of this subparagraph.

8. "Assumed rate of interest".

(a) In relation to any base fiscal year, a hypothetical rate of interest, fixed as hereinafter in this paragraph eight prescribed, which shall be used for the purpose of computing, pursuant to paragraph seven of this subdivision a, amounts of interest which would have been hypothetically earned on hypothetical investments of the pension fund in fixed income securities during such fiscal year.

(b) The board shall fix the assumed rate of interest with respect to each base fiscal year. In the event of a tie vote with respect to the fixation of such rate, it shall be fixed by the arbitrator designated, for the purpose of resolving disputes, in the collective bargaining agreement then in effect between the city and the uniformed firefighters' association of greater New York. If such arbitrator is unable or unwilling to serve, or if there be no such agreement then in effect, such rate shall be fixed by an arbitrator designated by the board. If there is a tie vote as to the designation of such an arbitrator, such rate shall be fixed by an arbitrator appointed by the supreme court, on the application of any member of the board. The cost of any arbitration



pursuant to the foregoing provisions of this subparagraph (b) shall be paid from transferable earnings.

9. "Six per cent interest offset". In relation to any base fiscal year, the excess, if any, of the hypothetical fixed income securities earnings with respect to such year, over the amount which such earnings would be if they had been computed on the basis of an interest rate of six per cent, rather than on the basis of the assumed rate of interest; provided, however, that there shall be no six per cent interest offset with respect to any base fiscal year unless the hypothetical fixed income securities earnings with respect to such fiscal year exceeds the equity experience factor with respect to such fiscal year; and provided further that no six percent interest offset with respect to any base fiscal year shall in any event exceed the amount obtained by subtracting the equity experience factor with respect to such fiscal year from the hypothetical fixed income securities earnings with respect to such fiscal year.

10. "Interest comparison factor". In relation to any base fiscal year, the amount obtained by subtracting the six per cent interest offset, if any, with respect to such fiscal year, from the hypothetical fixed income securities earnings with respect to such fiscal year.

11. "Cumulative earnings differential for the base fiscal year". In relation to a base fiscal year, the amount (expressed as a positive or negative quantity) obtained by adding to the earnings differential for such base fiscal year, the total of all earnings differentials for all prior base fiscal years.

12. "Transferable earnings". In relation to a base fiscal year, the total amount required by the provisions of subdivision c of this section to be distributed, with respect to such base fiscal year, in the manner provided by subdivision d of this section.

13. "Cumulative distributions of transferable earnings for prior base fiscal years". In relation to a base fiscal year, the total of all payments of transferable earnings made or required to be made by the pension fund to the firefighters' variable supplements fund and the fire officers variable supplements fund with respect to all prior base fiscal years pursuant to subdivisions c and d of this section.

14. "Firefighters' variable supplements fund". The firefighters' variable supplements fund established by subchapter five of this chapter.

15. "Fire officers' variable supplements fund". The fire officers' variable supplements fund established by subchapter six of this chapter.

16. "Firefighters".

(a) All firefighters and

(b) all wipers (uniformed) who are members of the fire department pension fund subchapter two.

17. "Fire officers".

(a) All members of the uniformed force of the fire department holding the rank of lieutenant or any position of higher rank in such force and

(b) all pilots, marine engineers (uniformed) or assistant marine engineers (uniformed) who are members of the New York fire department pension fund subchapter two.

b. As soon as practicable after the close of each base fiscal year, but not later than August thirty-first of the current fiscal year, the board shall compute:

(1) the earnings differential with respect to such base fiscal year, and the interest offset, if any, with respect to such base fiscal year;

(2) the total contributions made to the pension fund subchapter two with respect to such base fiscal year on behalf of all personnel who are firefighters, as of the last day of such base fiscal year; and

(3) the total contributions made to the pension fund subchapter two with respect to such base fiscal year on behalf of all personnel who are fire officers, as of such last day.

c. If the cumulative earnings differential for the base fiscal year is a positive quantity and exceeds the cumulative distributions of transferable earnings for prior base fiscal years, a sum equal to the amount of such excess shall be distributed by the pension fund in the manner provided by subdivision d of this section.

d. (1) If there be transferable earnings with respect to the base fiscal year, computed as hereinabove provided, such transferable earnings shall be divided into a firefighters' variable supplements fund share and a fire officers' variable supplements fund share in the ratio that the total contributions made to the pension fund subchapter two with respect to such base fiscal year on behalf of firefighters bears to the total contributions made to the pension fund subchapter two with respect to such base fiscal year on behalf of fire officers, as computed for such base fiscal year pursuant to the provisions of paragraphs two and three of subdivision b of this section.

(2) On or before August thirty-first, of the current fiscal year, the pension fund shall pay from the contingent reserve fund to the firefighters' variable supplements fund and the fire officers' variable supplements fund their respective shares of such transferable earnings with respect to the base fiscal year, as such shares are computed pursuant to paragraph one of this subdivision d.

e. The comptroller shall furnish to the board such information and data as it may request for the purpose of carrying out the provisions of this section.

f. The firefighters' variable supplements fund and the fire officers' variable supplements fund shall not have any rights under this section to any payments by the pension fund to such variable supplements funds derived from or based upon the investment earnings of the pension fund in any fiscal year of the city commencing on or after July first, nineteen hundred eighty-eight. Any and all rights of the firefighters' variable supplements fund to payments from the pension fund derived from or based upon the investment earnings of the pension fund in any fiscal year of the city commencing on or after such July first shall be governed solely by the provisions of section 13-335.1 of this subchapter. Any and all rights of the fire officers' variable supplements fund to payments from the pension fund derived from or based upon the investment earnings of the pension fund in any fiscal year of the city included in the period commencing on such July first and ending on June thirtieth, nineteen hundred ninety-two shall be governed solely by the provisions of section 13-335.2 of this subchapter. Any and all rights of the fire officers' variable supplements fund to payments from the pension fund derived from or based upon the investment earnings of the pension fund in any fiscal year of the city commencing on or after July first, nineteen hundred ninety-two shall be governed solely by the provisions of section 13-335.3 of this subchapter. Any and all rights of the wiper variable supplements assets account to payments from the pension fund derived from or based upon the investment earnings of the pension fund in any fiscal year of the city included in the period commencing July first, nineteen hundred eighty-eight and ending June thirtieth, nineteen hundred ninety-two shall be governed solely by the provisions of section 13-391.1 of this chapter.

### **§ 13-335.1 Payments to firefighters' variable supplements fund for base fiscal years commencing on or after July first, nineteen hundred eighty-eight.**

a. For the purposes of this section, the definitions of terms set forth in paragraphs two, five, six, seven, eight and fourteen of subdivision a of section 13-335 of this subchapter shall apply to this section 13-335.1 with the same force and effect as if such definitions were specifically set forth in this section.

b. For the purposes of this section, the following terms shall mean and include:

1. "Base fiscal year". Any fiscal year of the city beginning on or after July first, nineteen hundred eighty-eight.

2. "Prior base fiscal year". Any fiscal year of the city which begins on or after July first, nineteen eighty-eight and which precedes the base fiscal year.

3. "Cumulative earnings factor as of June thirtieth, nineteen hundred eighty-eight".

(a) An amount, expressed as a positive or negative quantity, as the case may be, which shall be determined in accordance with the method set forth in subparagraph (b) of this paragraph three.

(b) (i) The cumulative earnings differential for the base fiscal year (as defined in paragraph eleven of subdivision a of section 13-335 of this subchapter), as applicable to the nineteen hundred eighty-seven-nineteen hundred eighty-eight base fiscal year (as so defined) shall be computed pursuant to the provisions of such section 13-335.

(ii) The cumulative distributions of transferable earnings for prior base fiscal years (as defined in paragraph thirteen of subdivision a of such section 13-335) shall be computed pursuant to such section 13-335 with respect to such nineteen hundred eighty-seven-nineteen hundred eighty-eight base fiscal year.

(iii) The amount of transferable earnings (as defined in paragraph twelve of subdivision a of such section 13-335), if any, for the nineteen hundred eighty-seven-nineteen hundred eighty-eight base fiscal year, determined pursuant to such section 13-335, shall be added to the cumulative distributions of transferable earnings computed pursuant to item (ii) of this subparagraph (b).

(iv) The sum resulting from the addition prescribed by item (iii) of this subparagraph (b) shall be subtracted from the amount computed pursuant to item (i) of this subparagraph. The remainder resulting from the subtraction shall be the cumulative earnings factor as of June thirtieth, nineteen hundred eighty-eight.

4. "Earnings differential". The amount (expressed as a positive or negative quantity) by which the equity experience factor (expressed as a positive or negative quantity) with respect to the base fiscal year differs from the hypothetical fixed income securities earnings with respect to the base fiscal year. If such equity experience factor is greater than such hypothetical fixed income securities earnings, the difference between the two shall be expressed as a positive quantity. If such hypothetical fixed income securities earnings are greater than such equity experience factor, the difference between the two shall be expressed as a negative quantity.

5. "Cumulative earnings factor."

(a) The cumulative earnings factor for any base fiscal year shall be determined as follows:

(i) If the cumulative earnings factor for the immediately preceding base fiscal year was a positive quantity, the cumulative earnings factor for the base fiscal year shall be equal to the earnings differential for the base fiscal year.

(ii) If the cumulative earnings factor for the immediately preceding base fiscal year was a negative quantity, the cumulative earnings factor for the base fiscal year shall be equal to the sum of:

(A) the earnings differential for the base fiscal year; and

(B) the cumulative earnings factor for the immediately preceding base fiscal year, increased with interest at a rate equal to the assumed rate of interest fixed with respect to such base fiscal year pursuant to the provisions of paragraph eight of subdivision a of section 13-335 of this subchapter, as made applicable to this section 13-335.1 by subdivision a hereof.

(b) In applying the provisions of this paragraph five for the base fiscal year nineteen hundred eighty-eight-nineteen hundred eighty-nine the term defined in paragraph three of this subdivision b as "cumulative earnings factor as of June thirtieth, nineteen hundred eighty-eight" shall be substituted for the term "cumulative earnings factor for the immediately preceding base fiscal year".

6. "FVSF cumulative earnings factor". With respect to any base fiscal year, the amount obtained by multiplying the cumulative earnings factor for such base fiscal year by a fraction, the numerator of which shall be the total contributions made to the fire department pension fund subchapter two with respect to such base fiscal year on behalf of all members of the uniformed force of the fire department who are firefighters, fire marshals (uniformed) and wipers (uniformed), as of the last day of such base fiscal year, and the denominator of which shall be the total contributions made to such fire department pension fund with respect to such base fiscal year on behalf of all persons who are members of the uniformed force of the fire department as of the last day of such base fiscal year.

7. "FVSF unfunded accrued liability". In any case where the valuation of assets and liabilities of the firefighters' variable supplements fund by the actuary pursuant to subdivision e of section 13-384 of this chapter shows that for any base fiscal year, such liabilities exceed such assets, the term "FVSF unfunded accrued liability" shall mean the amount of the excess of such liabilities over the amount of such assets for such base fiscal year.

8. "Firefighter". A member of either this pension fund or the fire department pension fund provided for in subchapter one of this chapter who, at the time of retirement for service, was a firefighter and was not a fire officer as defined in subdivision five of section 13-392 of this chapter.

c. As soon as practicable after the close of each base fiscal year, but not later than December thirty-first of the current fiscal year, the board shall compute the FVSF cumulative earnings factor with respect to such base fiscal year.

d. If the FVSF cumulative earnings factor for such base fiscal year is a positive quantity, the pension fund, on or before December thirty-first of the current fiscal year, shall pay from its contingent reserve fund to the firefighters' variable supplements fund, as the payment due for such base fiscal year under this section, an amount determined pursuant to the provisions of subdivision e of this section.

e. The amount payable for such base fiscal year as provided for in subdivision d of this section shall be the lesser of (1) the FVSF cumulative earnings factor for such base fiscal year referred to in such subdivision d or (2) the FVSF unfunded accrued liability for such base fiscal year.

f. No amount shall be due from or payable by the pension fund to such variable supplements fund under this section for any base fiscal year which shall exceed the FVSF unfunded accrued liability for such base fiscal year, regardless of the amount and character of the FVSF cumulative earnings factor for such base fiscal year.

g. The comptroller shall furnish to the board such information and data as it may request for the purpose of carrying out the provisions of this section.

**§ 13-335.2 Payments to fire officers' variable supplements fund for base fiscal years included in the period commencing on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety-two.**

a. For the purposes of this section, the definitions of terms set forth in paragraphs two, four, six, eight, nine and ten of subdivision a of section 13-335 of this subchapter shall apply to this section 13-335.2 with the same force and effect as if such definitions were specifically set forth in this section.

b. For the purposes of this section, the following terms shall mean and include:

1. "Base fiscal year". Any fiscal year of the city included in the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety-two.

2. "Prior base fiscal year". Any fiscal year of the city which begins on or after July first, nineteen hundred eighty-eight and which precedes the base fiscal year.

3. "Cumulative earnings factor as of June thirtieth, nineteen hundred eighty-eight".

(a) An amount, expressed as a positive or negative quantity, as the case may be, which shall be determined in accordance with the method set forth in subparagraph (b) of this paragraph three.

(b) (i) The cumulative earnings differential for the base fiscal year (as defined in paragraph eleven of subdivision a of section 13-335 of this subchapter), as applicable to the nineteen hundred eighty-seven-nineteen hundred eighty-eight base fiscal year (as so defined) shall be computed pursuant to the provisions of such section 13-335.

(ii) The cumulative distributions of transferable earnings for prior base fiscal years (as defined in paragraph thirteen of subdivision a of such section 13-335) shall be computed pursuant to such section 13-335 with respect to such nineteen hundred eighty-seven-nineteen hundred eighty-eight base fiscal year.

(iii) The amount of transferable earnings (as defined in paragraph twelve of subdivision a of such section 13-335), if any, for the nineteen hundred eighty-seven-nineteen hundred eighty-eight base fiscal year, determined pursuant to such section 13-335, shall be added to the cumulative distributions of transferable earnings computed pursuant to item (ii) of this subparagraph (b).

(iv) The sum resulting from the addition prescribed by item (iii) of this subparagraph (b) shall be subtracted from the amount computed pursuant to item (i) of this subparagraph.

(v) The remainder resulting from the subtraction shall be the cumulative earnings factor as of June thirtieth, nineteen hundred eighty-eight.

4. "Equity experience factor."

(a) An amount (expressed as a positive or negative quantity) which shall be determined for each base fiscal year in accordance with the method of computation set forth in the succeeding subparagraphs of this paragraph four.

(b) The amount of income earned by the pension fund during the base fiscal year from its investment in equities shall be computed.

(c) To each such amount of income for a base fiscal year there shall be added the capital gains, realized and unrealized, occurring during such base fiscal year of reason of such investments.

(d) From the sum resulting from the addition prescribed by subparagraph (c) of this paragraph there shall be subtracted the capital losses, realized or unrealized, occurring during such base fiscal year by reason of such investment.

(e) In the event that any equity is sold during the base fiscal year, the expense of such sale, including but not limited to broker's commissions, shall be deducted from capital gain or added to capital loss, in determining whether such sale produced a capital gain or a capital loss and the amount thereof.

(f) (i) With respect to base fiscal years occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety, the remainder resulting from the subtraction prescribed by subparagraph (d) of this paragraph shall be adjusted so that it equals the amount which it would have been in the absence of the enactment of chapters five hundred eighty-one and five hundred eighty-three of the laws of nineteen hundred eighty-nine.

(ii) With respect to each base fiscal year included in the period beginning on July first, nineteen hundred ninety and ending on June thirtieth, nineteen hundred ninety-two, the remainder resulting from the subtraction prescribed by subparagraph (d) of this paragraph shall be adjusted so that it equals the amount which it would have been in the absence of the enactment of chapter five hundred eighty-three of the laws of nineteen hundred eighty-nine.

(iii) For the purpose of determining the entitlement, with respect to any base fiscal year included in the period beginning on July first, nineteen hundred ninety and ending on June thirtieth, nineteen hundred ninety-two, of the fire officers' variable supplements fund to receive payment of any sum from the pension fund pursuant to this section, the cumulative earnings factor for such base fiscal year shall be calculated in the same manner as if (A) that part of this subparagraph, which part, prior to July twenty-sixth, nineteen hundred ninety-one, referred to chapter five hundred eighty-one of the laws of nineteen hundred eighty-nine, had never been enacted and (B) item (ii) of this subparagraph and this item (iii), as such items were in effect immediately prior to such July twenty-sixth, had never been enacted.

(g) Any adjustment required to be made pursuant to the provisions of subparagraph (f) of this paragraph shall be computed pursuant to a scientific method recommended to the board by the actuary and approved by the board; provided that if the board is unable to approve, by the required majority vote, any such formula recommended by the actuary, such adjustment shall be computed pursuant to a scientific formula recommended by the actuary and approved by an arbitrator designated pursuant to the procedure set forth in subparagraph (b) of paragraph eight of subdivision a of section 13-335 of this subchapter.

(h) The equity experience factor for such base fiscal year shall be the amount remaining after the adjustment prescribed by subparagraphs (f) and (g) of this paragraph has been made.

5. "Hypothetical fixed income securities earnings".

(a) The aggregate of the hypothetical interest yields computed pursuant to subparagraphs (b), (c) and (d) of this paragraph five.

(b) The board shall compute with respect to each investment made or maintained by the pension fund in an equity during the base fiscal year, the amount of interest which would have been hypothetically earned during such fiscal year, under the methods of calculation prescribed in this paragraph five, if an amount equal to such investment had instead been hypothetically invested in fixed income securities and such securities had been held by such fund for a period (in the base fiscal year) co-extensive with the period during which such equity was held by such fund in the base fiscal year.

(c) For the purposes of this section, the amount of any such investment in an equity during the base fiscal year shall be deemed to be:

(i) the market value of the equity on the first day of the base fiscal year, in the case of any such equity acquired by the pension fund prior to the commencement of such fiscal year and held by such fund on the first day of such fiscal year; and

(ii) the total amount paid by such fund to acquire the equity, including but not limited to broker's commissions and other expenses of such acquisition, in the case of any such equity which is acquired by such fund during the base fiscal year.

(d) For the purposes of this section, the amount of interest which would have been earned by the pension fund on such hypothetical fixed income securities during the base fiscal year shall be deemed to be the amount obtained:

(i) by multiplying the amount of the investment in such equity, determined as prescribed by subparagraph (c) of this paragraph five, by the assumed rate of interest for the base fiscal year; and

(ii) by prorating the interest so computed, in any case where the investment in such equity was maintained by the pension fund for a part of the base fiscal year; and

(iii) by multiplying the amount of interest computed for the full base fiscal year pursuant to items (i) and (ii) of this subparagraph by a fraction, the numerator of which is the amount designated as the equity experience factor with respect to such base fiscal year by subparagraph (h) of paragraph four

of this subdivision b and the denominator of which is the remainder produced by the subtraction prescribed by subparagraph (d) of such paragraph four with respect to such base fiscal year; and (iv) by adding together the products of all such multiplications performed pursuant to item (iii) of this subparagraph in relation to all such equities held by the pension fund during such fiscal year.

6. "Cumulative earnings factor".

(a) The cumulative earnings factor for any base fiscal year shall be determined as follows:

(i) If the cumulative earnings factor for the immediately preceding base fiscal year was a positive quantity, the cumulative earnings factor for the base fiscal year shall be equal to the earnings differential for the base fiscal year.

(ii) If the cumulative earnings factor for the immediately preceding base fiscal year was a negative quantity, the cumulative earnings factor for the base fiscal year shall be equal to the sum of:

(A) the earnings differential for the base fiscal year; and

(B) the cumulative earnings factor for the immediately preceding base fiscal year.

(b) In applying the provisions of this paragraph six for the base fiscal year nineteen hundred eighty-eight-nineteen hundred eighty-nine, the term defined in paragraph three of this subdivision b as "cumulative earnings factor as of June thirtieth, nineteen hundred eighty-eight" shall be substituted for the term "cumulative earnings factor for the immediately preceding base fiscal year".

7. "FOVSF cumulative earnings factor". With respect to any base fiscal year, the amount obtained by multiplying the cumulative earnings factor for such base fiscal year by a fraction, the numerator of which shall be the total contributions made to the pension fund with respect to such base fiscal year on behalf of all members of the uniformed force of the fire department who are fire officers, as of the last day of such base fiscal year, and the denominator of which shall be the total contributions made to the pension fund with respect to such base fiscal year on behalf of all persons who are members of the uniformed force of the fire department as of the last day of such base fiscal year.

8. "Fire officers".

(a) All members of the uniformed force of the fire department holding the rank of lieutenant or any position of higher rank in such force, and

(b) all pilots, marine engineers (uniformed) or assistant marine engineers (uniformed) who are members of the New York fire department pension fund subchapter two.

9. "Fire officers' variable supplements fund". The fire officers' variable supplements funds established by subchapter six of this chapter.

c. As soon as practicable after the close of each base fiscal year, but not later than August thirty-first of the current fiscal year, the board shall compute the FOVSF cumulative earnings factor with respect to such base fiscal year.

d. If the FOVSF cumulative earnings factor for the base fiscal year is a positive quantity, the pension fund, on or before August thirty-first of the current fiscal year, shall pay from its contingent reserve fund to the fire officers' variable supplements fund a sum equal to the amount of such factor.

e. The comptroller shall furnish to the board such information and data as it may request for the purpose of carrying out the provisions of this section.

**§ 13-335.3 Payments to fire officers' variable supplements fund for base fiscal years commencing on or after July first, nineteen hundred ninety-two.**

a. For the purposes of this section, the definitions of terms set forth in paragraphs two, five, six, seven, eight and fifteen of subdivision a of section 13-335 of this subchapter shall apply to this section 13-335.3 with the same force and effect as if such definitions were specifically set forth in this section.

b. For the purposes of this section, the following terms shall mean and include:

1. "Base fiscal year". Any fiscal year of the city beginning on or after July first, nineteen hundred ninety-two.

2. "Prior base fiscal year". Any fiscal year of the city which begins on or after July first, nineteen hundred ninety-two and which precedes the base fiscal year.

3. "Cumulative earnings factor as of June thirtieth, nineteen hundred ninety-two". An amount, expressed as a positive or negative quantity, as the case may be, which shall be equal to the cumulative earnings factor for the nineteen hundred ninety-one-nineteen hundred ninety-two base fiscal year computed pursuant to section 13-335.2 of this subchapter.

4. "Earnings differential". The amount (expressed as a positive or negative quantity) by which the equity experience factor (expressed as a positive or negative quantity) with respect to the base fiscal year differs from the hypothetical fixed income securities earnings with respect to the base fiscal year. If such equity experience factor is greater than such hypothetical fixed income securities earnings, the difference between the two shall be expressed as a positive quantity. If such hypothetical fixed income securities earnings are greater than such equity experience factor, the difference between the two shall be expressed as a negative quantity.

5. "Cumulative earnings factor".

(a) The cumulative earnings factor for any base fiscal year shall be determined as follows:

(i) If the cumulative earnings factor for the immediately preceding base fiscal year was a positive quantity, the cumulative earnings factor for the base fiscal year shall be equal to the earnings differential for the base fiscal year.

(ii) If the cumulative earnings factor for the immediately preceding base fiscal year was a negative quantity, the cumulative earnings factor for the base fiscal year shall be equal to the sum of:

(A) the earnings differential for the base fiscal year; and

(B) the cumulative earnings factor for the immediately preceding base fiscal year, increased with interest at a rate equal to the assumed rate of interest fixed with respect to such base fiscal year pursuant to the provisions of paragraph eight of subdivision a of section 13-335 of this subchapter, as made applicable to this section 13-335.3 by subdivision a hereof.

(b) In applying the provisions of this paragraph five for the base fiscal year nineteen hundred ninety-two-nineteen hundred ninety-three, the term defined in paragraph three of this subdivision b as "cumulative earnings factor as of June thirtieth, nineteen hundred ninety-two" shall be substituted for the term "cumulative earnings factor for the immediately preceding base fiscal year".

6. "FOVSF cumulative earnings factor". With respect to any base fiscal year, the amount obtained by multiplying the cumulative earnings factor for such base fiscal year by a fraction, the numerator of which shall be the total contributions made to the pension fund with respect to such base fiscal year on behalf of all members of the uniformed force of the fire department who are fire officers, as of the last day of such base fiscal year, and the denominator of which shall be the total contributions made to the pension fund with respect to such base fiscal year on behalf of all persons who are members of the uniformed force of the fire department as of the last day of such base fiscal year.

7. "FOVSF unfunded accrued liability". In any case where the valuation of assets and liabilities of the fire officers' variable supplements fund by the actuary pursuant to subdivision e of section 13-394 of this chapter shows that for any base fiscal year, such liabilities exceed such assets, the term "FOVSF unfunded accrued liability" shall mean the amount of the excess of such liabilities over the amount of such assets for such base fiscal year.

8. "Fire officers". (i) All members of the uniformed force of the fire department holding the rank of lieutenant or any position of higher rank in such force and (ii) all pilots, marine engineers (uniformed) or assistant marine engineers (uniformed) who are members of the pension fund and (iii) any member of the pension fund holding a position in the fire marshal occupational group above the rank of fire marshal (uniformed).

c. As soon as practicable after the close of each base fiscal year, but not later than December thirty-first of the current fiscal year, the board shall compute the FOVSF cumulative earnings factor with respect to such base fiscal year.

d. If the FOVSF cumulative earnings factor for such base fiscal year is a positive quantity, the pension fund, on or before December thirty-first of the current fiscal year, shall pay from its contingent reserve fund to the fire officers' variable supplements fund, as the payment due for such base fiscal year under this section, an amount determined pursuant to the provisions of subdivision e of this section.

e. The amount payable for such base fiscal year as provided for in subdivision d of this section shall be the lesser of (1) the FOVSF cumulative earnings factor for such base fiscal year referred to in such subdivision d or (2) the FOVSF unfunded accrued liability for such base fiscal year.

f. No amount shall be due from or payable by the pension fund to such variable supplements fund under this section for any base fiscal year which shall exceed the FOVSF unfunded accrued liability for such base fiscal year, regardless of the amount and character of the FOVSF cumulative earnings factor for such base fiscal year.

g. The comptroller shall furnish to the board such information and data as it may request for the purpose of carrying out the provisions of this section.

### **§ 13-336 Trustees of funds; investments.**

a. The members of the board shall be the trustees of the several funds provided for by this subchapter, and shall have full power to invest the same, subject, except as otherwise provided in subdivision b of this section, to the terms, conditions, limitations and restrictions imposed by law upon savings banks in the making and disposing of investments by savings banks; and subject to like terms, conditions, limitations and restrictions, such trustees shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of the funds provided for by this subchapter shall have been invested as well as of the proceeds of such investments and of any moneys belonging to such funds.

b. Notwithstanding the provisions of subdivision two of section one hundred seventy-seven of the retirement and social security law, or any other provision of law to the contrary, the amounts which may be invested by the pension fund in securities pursuant to the provisions of paragraphs (a), (b), (c), (d), (e) and (f) of subdivision twenty-six of section two hundred thirty-five of the banking law, shall be subject to the following maximum limits, in lieu of any such limits imposed by any other provision of law:

- (1) Not more than fifty per cent of the assets of the pension fund shall be invested in such securities; and
- (2) Not more than five per cent of such assets shall be invested in the securities of any one corporation and its subsidiaries; and
- (3) Not more than two per cent of the total issued and outstanding equity securities of any one corporation shall be owned by the pension fund.

### **§ 13-337 Allowance of interest.**

a. Such board shall annually allow regular interest on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this subchapter. The amount so allowed shall be due and payable to such funds, and shall be annually credited thereto by such board.

b. (1) Subject to the provisions of subdivision d of this section, during the period commencing on July first, nineteen hundred eighty-one and ending on June thirtieth, nineteen hundred eighty-two, special interest at the rate of three and one-half per centum per annum, compounded annually, shall be allowed with respect to the individual account of each improved benefits plan member in the annuity savings fund.

(2) (i) Subject to the provisions of subdivision d of this section, during the period beginning on July first, nineteen hundred eighty-two and ending on July thirty-first, nineteen hundred eighty-three, special interest at the rate of four per centum per annum, compounded annually, shall be allowed with respect to the individual account of each improved benefits plan member in the annuity savings fund.

(ii) Subject to the provisions of subdivision d of this section, during the period beginning on August first, nineteen hundred eighty-three and ending on June thirtieth, nineteen hundred eighty-five, special interest at the rate of one per centum per annum, compounded annually, shall be allowed with respect to the individual account of each improved benefits plan member in the annuity savings fund.

(iii) Subject to the provisions of subdivision d of this section, during the period commencing on July first, nineteen hundred eighty-five and ending on June thirtieth, nineteen hundred eighty-eight, special interest at the rate of one per centum per annum, compounded annually, shall be allowed with respect to the individual account of each improved benefits plan member in the annuity savings fund.

(iv) Subject to the provisions of subdivision d of this section, during the period commencing on July first, nineteen hundred eighty-eight and ending June thirtieth, nineteen hundred ninety, special interest at the rate of one and one-quarter per centum per annum, compounded annually, shall be allowed with respect to the individual account of each improved benefits plan member in the annuity savings fund.

(3) The special interest referred to in paragraphs one and two of this subdivision b shall be credited to such individual account of each such member entitled thereto in the same manner and at the same time as regular interest is required to be credited to such account with respect to the same period of time.

(4) Such special interest referred to in paragraphs one and two of this subdivision b shall not be considered in determining rates of contributions of such members. Nothing contained in this subdivision b shall be construed as applicable to any member who is subject to the provisions of article fourteen of the retirement and social security law.

c. (1) Subject to the provisions of subdivision d of this section, in determining the reserve-for-increased-take-home-pay of each improved benefits plan member entitled to such a reserve, additional interest at the rate of three and one-half per centum per annum compounded annually shall be included for the period commencing on July first, nineteen hundred eighty-one, and ending on June thirtieth, nineteen hundred eighty-two.

(2) (i) Subject to the provisions of subdivision d of this section, in determining the reserve-for-increased-take-home-pay of each improved benefits plan member entitled to such a reserve, additional interest at the rate of four per centum per annum compounded annually shall be included for the period commencing on July first, nineteen hundred eighty-two and ending on July thirty-first, nineteen hundred eighty-three.

(ii) Subject to the provisions of subdivision d of this section, in determining the reserve-for-increased-take-home-pay of each improved benefits plan member entitled to such a reserve, additional interest at the rate of one per centum per annum compounded annually shall be included for the period commencing on August first, nineteen hundred eighty-three and ending on June thirtieth, nineteen hundred eighty-five.

(iii) Subject to the provisions of subdivision d of this section, in determining the reserve-for-increased-take-home-pay of each improved benefits plan member entitled to such a reserve, additional interest at the rate of one per centum per annum compounded annually shall be included for the period commencing on July first, nineteen hundred eighty-five and ending on June thirtieth, nineteen hundred eighty-eight.



(iv) Subject to the provisions of subdivision d of this section, in determining the reserve-for-increased-take-home-pay of each improved benefits plan member entitled to such a reserve, additional interest at the rate of one and one-quarter per centum per annum compounded annually shall be included for the period commencing on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety.

(3) Additional interest shall not be considered in determining rates of contribution of such members. Nothing contained in this subdivision c shall be construed as applicable to any member who is subject to the provisions of article fourteen of the retirement and social security law.

d. (1) The provisions of subparagraph (i) of paragraph two of subdivision b of this section, to the extent that such provisions grant special interest for any period prior to December sixteenth, nineteen hundred eighty-two, and the provisions of subparagraph (i) of paragraph two of subdivision c of this section, to the extent that such provisions of such subdivision c grant additional interest for any period prior to such date, shall not apply to any person who was not an improved benefits plan member on such date and shall not apply to any person to whom, on such date, a deferred retirement allowance or any part of such a retirement allowance was payable pursuant to the provisions of section 13-361 of this chapter.

(2) The provisions of subparagraph (iv) of paragraph two of subdivision b of this section, to the extent that such provisions grant special interest for any period prior to the date of enactment of the provisions of this paragraph two (as such date is certified pursuant to section forty-one of the legislative law), and the provisions of subparagraph (iv) of paragraph two of subdivision c of this section, to the extent that such provisions grant additional interest for any period prior to such date, shall not apply to any person who was not an improved benefits plan member on such date and shall not apply to any person to whom on such date, a deferred retirement allowance or any part of such a retirement allowance was payable pursuant to the provisions of section 13-361 of this chapter.

(3) Nothing contained in subdivision b or subdivision c of this section shall be construed as entitling any person to the crediting of special or additional interest with respect to any period wherein he was not (a) an improved benefits plan member entitled to crediting of regular interest with respect to the same period or (b) an improved benefits plan discontinued member (as defined in subdivision sixteen-d of section 13-313 of this subchapter) entitled to crediting of regular interest as an improved benefits plan discontinued member with respect to the same period.

e. (1) Subject to the provisions of paragraph (3) of this subdivision e, in addition to regular interest annually allowed for the period from July first, nineteen hundred eighty to June thirtieth, nineteen hundred eighty-two on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this subchapter, there shall be annually allowed with respect to such period supplementary interest at the rate of three and one-half per centum per annum on such mean amount for the preceding year in each of such funds. Such supplementary interest shall be annually credited to such funds at the same time and in the same manner as regular interest is credited to such funds with respect to such period.

(2) (i) Subject to the provisions of paragraph three of this subdivision e, in addition to regular interest annually allowed for the period from July first, nineteen hundred eighty-two to July thirty-first, nineteen hundred eighty-three on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this subchapter, there shall be annually allowed with respect to such period supplementary interest at the rate of four per centum per annum on such mean amount for the preceding year in each of such funds. Such supplementary interest shall be annually credited to such funds at the same time and in the same manner as regular interest is credited to such funds with respect to such period.

(ii) Subject to the provisions of paragraph (3) of this subdivision e, in addition to regular interest annually allowed for the period from August first, nineteen hundred eighty-three to June thirtieth, nineteen hundred eighty-five on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this subchapter, there shall be annually allowed with respect to such period supplementary interest at the rate of one per centum per annum on such mean amount for the preceding year in each of such funds. Such supplementary interest shall be annually credited to such funds at the same time and in the same manner as regular interest is credited to such funds with respect to such period.

(iii) Subject to the provisions of paragraph (3) of this subdivision e, in addition to regular interest annually allowed for the period from July first, nineteen hundred eighty-five to June thirtieth, nineteen hundred eighty-eight on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this subchapter, there shall be annually allowed with respect to such period supplementary interest at the rate of one per centum per annum on such mean amount for the preceding year in each of such funds. Such supplementary interest shall be annually credited to such funds at the same time and in the same manner as regular interest is credited to such funds with respect to such period.

(iv) Subject to the provisions of paragraph (3) of this subdivision e, in addition to regular interest annually allowed for the period from July first, nineteen hundred eighty-eight to June thirtieth, nineteen hundred ninety on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this subchapter, there shall be annually allowed with respect to such period supplementary interest at the rate of one and one-quarter per centum per annum on such mean amount for the preceding year in each of such funds. Such supplementary interest shall be annually credited to such funds at the same time and in the same manner as regular interest is credited to such funds with respect to such period.

(3) The provisions of paragraphs one and two of this subdivision e shall not apply to or affect (a) the allowance of interest on or the crediting of interest to accounts of improved benefits plan members or improved benefits plan discontinued members in the annuity savings fund, or (b) the allowance of interest on or crediting of interest to reserves-for-increased-take-home-pay of improved benefits plan members or improved benefits plan discontinued members, or (c) the determination of the amount of any benefit payable to any member or beneficiary.

f. On or after May first, nineteen hundred eighty-nine and not later than October thirty-first of such year, the board shall submit to the public officers and permanent commission referred to in paragraph (h) of subdivision eight of section 13-313 of this subchapter the recommendations of such board:

(1) as to whether legislation should be enacted providing for the crediting of special interest to improved benefits plan members after June thirtieth, nineteen hundred ninety and if so, the recommended rate thereof and duration of such crediting; and

(2) as to whether legislation should be enacted providing that in the determination of reserves-for-increased-take-home-pay of improved benefits plan members entitled to such a reserve, additional interest shall be included for any period after June thirtieth, nineteen hundred ninety, and if so, the recommended rate thereof and the period as to which such interest should be included; and

(3) as to whether legislation should be enacted providing for the crediting of supplementary interest after June thirtieth, nineteen hundred ninety to such funds to which subdivision e of this section is applicable and if so, the recommended rate thereof and duration of such crediting.

g. The allowance of special interest, additional interest and supplementary interest, if any, with respect to any fiscal year of the city beginning on or after July first, nineteen hundred ninety shall be governed by the applicable provisions of section 13-638.2 of this title.

### **§ 13-338 Custodian of funds.**

The comptroller shall be custodian of the several funds provided for by this subchapter. Such funds, and all moneys which shall form a part thereof, or which shall hereafter accrue to them, shall be in his custody for the purposes of this subchapter subject to the direction, control and approval of such board as to disposition, investment, management and report.

### **§ 13-339 Payments from funds.**

All payments from such funds shall be made by such comptroller upon a voucher signed by the secretary of the board.

### **§ 13-340 Fund for current needs.**

For the purpose of meeting, in relation to original plan members, disbursements for retirement allowances and other payments, and for the purpose of meeting, in relation to improved benefits plan members, disbursements for pensions, pensions-providing-for-increased-take-home-pay, annuities and other payments, there may be kept an available fund, not exceeding ten per cent of the total amount in the several funds provided for by this subchapter,

on deposit in any bank in this state organized under the laws thereof or under the laws of the United States, or in any trust company incorporated by any law of this state, provided such bank or trust company shall furnish adequate security for such fund, and further provided that the sum deposited in any one bank or trust company shall not exceed twenty-five per cent of the paid-up capital and surplus of such bank or trust company.

### **§ 13-341 Prohibition upon trustees and employees.**

Except as provided in this subchapter, the trustees and employees assigned to the board are prohibited from having any interest, directly or indirectly, in the gains or profits of any investment of the pension fund or as such, directly or indirectly, from receiving any pay or emolument for their services. The trustees and such employees, directly or indirectly, for themselves or as agents or partners of others, shall not borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by such board; nor shall any such trustee or any such employee become an indorser or surety or become in any manner an obligor for moneys loaned by or borrowed of such pension fund.

### **§ 13-342 Rules regulating loans to members.**

Any member who shall have been a member continuously at least three years, may borrow from the pension fund, subject to such rules and regulations as may be approved by such board, an amount not exceeding seventy-five per cent of the amount of his or her accumulated contributions (as defined in subdivision seven of section 13-313 of this subchapter), in the case of an original plan member, or an amount not exceeding seventy-five per cent of the amount of his or her accumulated deductions (as defined in subdivision seven-a of such section 13-313), in the case of an improved benefits plan member, provided that the amount so borrowed by any such original plan member or improved benefits plan member, together with interest thereon, can be repaid before attainment of age sixty-five years by additional deductions of ten per cent from his or her compensation made at the same time compensation is paid to the member. Upon retirement, an original plan member may borrow up to ninety percent of his or her accumulated contributions. An improved benefits plan member may borrow up to ninety percent of his or her accumulated deductions. The amount so borrowed together with regular interest applicable to the member (if he or she is an original plan member) or creditable to his or her account (if he or she is an improved benefits plan member) on any unpaid balance thereof shall be repaid to the pension fund in equal installments by deduction from the compensation of the member at the time the compensation is paid, but such installments shall be at least five per cent of the member's earnable compensation and at least sufficient to repay before attainment of age sixty-five years, the amount borrowed with interest thereon. Notwithstanding anything to the contrary in this subchapter, the additional deductions required to repay the loan shall be made, and the interest paid on the loan shall be credited to the proper funds of the pension fund. In lieu of loan, any improved benefits plan member whose rate or contribution is cancelled, may withdraw from his or her account and may restore thereto in any year as he or she may elect any sum in excess of the maximum in his or her annuity savings account and due thereto at the end of the calendar year in which he or she became entitled to cancel his or her rate. The actuarial equivalent of any unpaid balance of a loan at the time any benefit may become payable shall be deducted from the benefit otherwise payable, except that each loan made pursuant to this section shall be insured by the pension fund, without cost to the member, against the death of such member in an amount up to but not exceeding twenty-five thousand dollars, as follows:

1. Until thirty days have elapsed after the making thereof, no part of the loan shall be insured.
2. From the thirtieth through the fifty-ninth day after the making thereof, twenty-five per centum of the present value of the outstanding loan shall be insured.
3. From the sixtieth through the eighty-ninth day after the making thereof, fifty per centum of the present value of the outstanding loan shall be insured.
4. On and after the ninetieth day after the making thereof, all of the present value of the outstanding loan shall be insured. Upon the death of a member, the amount of insurance so payable shall be credited to his or her accumulated contributions in the case of an original plan member, or to his or her accumulated deductions, in the case of an improved benefits plan member.

### **§ 13-343 Termination of membership; discontinuance of service.**

a. Should an original plan member discontinue city-service except by death or retirement, he or she shall be paid such part of the amount of the accumulated contributions (as defined in subdivision seven of section 13-313 of this subchapter), that is, his or her contributions without interest, standing to the credit of his or her individual account in the contingent reserve fund as he or she shall demand. Such board, however, in its discretion, may withhold for not more than one year after such member last rendered city-service all or part of his or her accumulated contributions, if after a previous discontinuance of service he or she withdrew from the retirement allowance accumulation fund or the contingent reserve fund, as the case may be, all or part of the amount of his or her accumulated contributions and failed to redeposit such withdrawn amount in such fund.

b. Should an improved benefits plan member discontinue city-service except by death or retirement, he or she shall be paid such part of the amount of the accumulated deductions (as defined in subdivision seven-a of such section 13-313 of this subchapter) standing to the credit of his or her individual account in the annuity savings fund as he or she shall demand. Such board, however, in its discretion, may withhold for not more than one year after such a member last rendered city-service all or part of his or her accumulated deductions, if after a previous discontinuance of service he or she withdrew from the annuity savings fund all or part of the amount of his or her accumulated deductions and failed to redeposit such withdrawn amount in such fund.

### **§ 13-344 Termination of membership; election to city, county or state office.**

Should a member previously in city-service as a city official or employee be elected a city, county or state official, he or she may on application therefor and approval by the mayor, withdraw from the pension fund, and upon such withdrawal: (a) if he or she is an original plan member, he or she shall be paid such part of the amount of the accumulated contributions (as defined in subdivision seven of section 13-313 of this subchapter), that is, his or her contributions without interest, standing to the credit of his or her individual account in the contingent reserve fund as he or she shall be entitled to receive; or (b) if he or she is an improved benefits plan member, he or she shall be paid such part of the accumulated deductions (as defined in subdivision seven-a of such section 13-313 of this subchapter) standing to the credit of his or her individual account in the annuity savings fund as he or she shall be entitled to receive.

### **§ 13-345 Termination of membership; miscellaneous.**

Membership in the pension fund shall cease upon the occurrence of any one of the following conditions:

1. When the time out of city-service, other than time on a preferred civil service list, of any member who has resigned or has been separated from the service through no fault of his or her own, and who has total service of less than twenty-five years, shall aggregate more than five years in any period not exceeding ten consecutive years since he or she last became a member.
2. When any member who is an original plan member shall have withdrawn more than one-half of his or her accumulated contributions (as defined in subdivision seven of section 13-313 of this subchapter), or when any member who is an improved benefits plan member shall have withdrawn more than one-quarter of his or her accumulated deductions.
3. When any member shall die.
4. When any member who is an original plan member shall be retired on a retirement allowance or when any member who is an improved benefits plan member shall be retired on a pension.
5. When any member becomes eligible to participate in another pension or retirement system supported in whole or in part by the city or state of New York.

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

a. Upon the death of an original plan member not subject to article eleven (as defined in subdivision four-c of section 13-313 of this subchapter) who has not completed the period of service, as elected by him or her for retirement, or upon the death of a former original plan member not subject to article eleven, 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. His or her accumulated contributions, that is, his or her contributions without interest; and, in addition thereto,

2. If such member is in city-service or is on a civil service preferred eligible list by reason of city-service, unless a retirement allowance be payable by the city under the provisions of section 13-347 of this subchapter, an amount equal to the compensation earnable by him or her while a member, during the six months immediately preceding his or her death, and, if the total number of years in which allowable service was rendered exceeds ten, then an amount equal to the compensation earnable by him or her in city-service while a member during the twelve months immediately preceding his or her death, and in addition, in either such case, the accumulation-for-increased-take-home-pay, if any.

a-1. Upon the death of an improved benefits plan member not subject to article eleven (as defined in subdivision four-i of such section 13-313) or of a former improved benefits plan member not subject to article eleven, 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. His or her accumulated deductions; and, in addition thereto,

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

b. Until the first payment has been made on account of a retirement benefit without optional selection of an original plan member not subject to article eleven or an improved benefits plan member not subject to article eleven, such member may be construed by such board to have been in city-service and the applicable benefits provided in this section may be paid in lieu of the retirement allowance.

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

d. Upon the death of an original plan member not subject to article eleven who has completed the period of service, as elected by him or her for retirement, but who shall not have filed application for retirement or who, having filed application for retirement shall die prior to the first payment on account of the benefits thereunder, 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:

1. His or her accumulated contributions, that is his or her contributions without interest; and in addition thereto,

2. The present value of the pension he or she would have received if he or she had retired and had become entitled to a pension for service on the day immediately preceding the day of his or her death.

e. Notwithstanding the foregoing provisions of this section, and in lieu of any lesser amount thereby prescribed, upon the death of an improved benefits plan member not subject to article eleven, prior to the first payment of a retirement benefit, who has completed the minimum period of service, as elected by him or her for retirement, and whether or not such member shall have filed application for retirement, 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 in accordance with the requirements of this subchapter:

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

2. The amount of reserve equal to the present value of the pension he or she would have received if he or she had retired and became entitled to a pension on the day immediately preceding his or her death. The beneficiary of such deceased member shall have the right to accept such benefits in lump sum or in such periodic payments, on an annuity basis, as such beneficiary shall elect.

f. 1. The provisions of the preceding subdivisions of this section applicable to original plan members not subject to article eleven shall apply to an original plan member subject to article eleven (as defined in subdivision four-d of such section 13-313), except to the extent and in the manner that any such provision is modified by article eleven.

2. The provisions of the preceding subdivisions of this section applicable to improved benefits plan members not subject to article eleven shall apply to an improved benefits plan member subject to article eleven (as defined in subdivision four-j of such section 13-313), except to the extent and in the manner that any such provision is modified by article eleven.

## § 13-347 Death benefits; accidental death benefits.

a. Upon the accidental death of an original plan member not subject to article eleven (as defined in subdivision four-c of section 13-313 of this subchapter) before retirement, or upon the accidental death of an improved benefits plan member not subject to article eleven (as defined in subdivision four-i of such section 13-313) before retirement, provided that evidence shall be submitted to such board proving that the death of such original plan member not subject to article eleven or of such improved benefits plan member not subject to article eleven, as the case may be, was the natural and proximate result of an accident sustained while a member and while in the performance of duty at some definite time and place and that such death was not the result of wilful negligence on his or her part:

(1) his or her accumulated contributions (as defined in subdivision seven of such section 13-313) that is, his or her contributions without interest, if he or she was an original plan member not subject to article eleven at the time of his or her death, shall be paid to his or her estate, or to such persons as he or she has nominated or shall nominate by written designation, duly acknowledged and filed with such board; and

(2) his or her accumulated deductions (as defined in subdivision seven-a of such section 13-313), if he or she was an improved benefits plan member not subject to article eleven at the time of his or her death, shall be paid to his or her estate or to such persons as he or she has nominated or shall nominate by written designation, duly acknowledged and filed with such board.

b. Upon application by or on behalf of the dependents of such deceased member:

(1) such board, if such deceased member was an original plan member not subject to article eleven at the time of his or her death, shall grant, to the payee or payees and to the extent and in the manner provided for in subdivision c of this section, a lump sum payment of the accumulation for increased

take-home-pay and, in addition, an allowance of one-half of the final compensation of such employee, which allowance shall in no case be less than one-half of the full salary payable to a first grade firefighter on the date of death of such employee and in the case of a member acting in a higher rank an amount not to exceed one-half the salary at the compensation of such rank; and

(2) such board, if such deceased member was an improved benefits plan member not subject to article eleven at the time of his or her death, shall grant, to the payee or payees and to the extent and in the manner provided for in subdivision c of this section, a lump sum payment of the reserve-for-increased-take-home-pay and, in addition thereto, a pension of one-half of the five-year-average compensation (as defined in subdivision six-a of such section 13-313) of such employee, which pension shall in no case be less than one-half of the full salary payable to a first grade firefighter on the date of death of such employee.

c. The applicable lump sum payment and allowance or pension, as the case may be, referred to in subdivision b of this section shall be granted:

(1) To such deceased member's surviving spouse, to continue until the death of the surviving spouse; or

(2) If there be no surviving spouse, or if the surviving spouse dies before any child of such deceased member shall have attained the age of eighteen years or if a student under the age of twenty-three years, then to his or her child or children under such age, divided in such manner as such board in its discretion shall determine, to continue, if such deceased member was an original plan member not subject to article eleven at the time of his or her death, as a joint and survivor pension of one-half of his or her final compensation until every such child dies or attains such age, and to continue, if such deceased member was an improved benefits plan member not subject to article eleven at the time of his or her death, as a joint and survivor pension of one-half of his or her five-year-average compensation until every such child dies or attains such age; or

(3) If there be no surviving spouse or child under the age of eighteen years or if a student under the age of twenty-three years surviving such deceased member, then to his or her dependent father or mother, as such deceased member shall have nominated by written designation duly acknowledged and filed with such board; or, if there be no such nomination, then to his or her dependent father or to his or her dependent mother, as such board in its discretion shall direct, to continue for life.

d. (1) The provisions of the preceding subdivisions of this section applicable to original plan members not subject to article eleven shall apply to an original plan member subject to article eleven (as defined in subdivision four-d of such section 13-313), except to the extent and in the manner that any such provision is modified by article eleven.

(2) The provisions of the preceding subdivisions of this section applicable to improved benefits plan members not subject to article eleven shall apply to an improved benefits plan member subject to article eleven (as defined in subdivision four-j of such section 13-313), except to the extent and in the manner that any such provision is modified by article eleven.

e. An accident resulting in the death of an original plan member (as defined in subdivision four-b of section 13-313 of this subchapter) or improved benefits plan member (as defined in subdivision four-f of such section 13-313), while off-duty and within the geographic limits of the city of New York, shall be deemed to have occurred while in the performance of duty for the purpose of granting accidental death benefits pursuant to the provisions of subdivision a of this section in cases in which:

(1) a substantial and imminent danger to life or property occasioned the off-duty intervention of the member;

(2) the conduct of the member was reasonable in the circumstances; and

(3) the member, in the course of his or her off-duty intervention, utilized skills within the scope of his or her employment by the New York city fire department.

f. Notwithstanding any other provision of law to the contrary, and solely for the purposes of this section, a member shall be deemed to have died as the natural and proximate result of an accident sustained in the performance of duty upon which his or her membership is based, and not as a result of willful negligence on his or her part, provided that such member was in active service upon which his or her membership is based at the time that such member was ordered to active duty, pursuant to Title 10 of the United States Code, with the armed forces of the United States or to service in the uniformed services pursuant to 48 U.S.C. Chapter 43, and such member died while on such active duty or service in the uniformed services on or after June fourteenth, two thousand five while serving on such active military duty or in the uniformed services.

### **§ 13-347.1 COVID-19 benefit.**

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

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

(b) such member contracted COVID-19 within forty-five days after reporting to work as described in paragraph (a) of this subdivision, as confirmed by a positive laboratory test or as diagnosed before or after such member's death by a licensed, certified, registered or authorized physician, nurse practitioner, or physician's assistant currently in good standing in any state or the District of Columbia, or a physician, nurse practitioner, or physician's assistant authorized to practice in New York by executive order during the declared COVID-19 state of emergency; and

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

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

3. Notwithstanding any provision of this title or of any general, special or local law to the contrary, and solely for the purpose of determining eligibility for benefits under this section, where a member:

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

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

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

(d) Such member died on or before December thirty-first, two thousand twenty, and COVID-19 caused or contributed to such member's death, as documented on such member's death certificate, or as certified by a physician, nurse practitioner, or physician's assistant described in paragraph (c) of this subdivision who determines with a reasonable degree of medical certainty that COVID-19 caused or contributed to the member's death, such



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

4. Such member's statutory beneficiary, as defined pursuant to this title, for purposes of accidental death benefits payable from such member's retirement system under this title, may, within ninety days of such member's retirement or September first, two thousand twenty, whichever is later, apply to such member's retirement system to request the conversion of such member's service or disability retirement benefit into an accidental death benefit. For purposes of the salary base upon which the accidental death benefit is calculated, such member shall be deemed to have died on the date of such member's retirement. At the time of such conversion, such statutory beneficiary shall relinquish all rights to the prospective benefits payable under the service or disability retirement statute, including any post-retirement death benefits, since such member's death. If the statutory beneficiary is not the only beneficiary receiving or entitled to receive a benefit under the service or disability retirement statute including, but not limited to, a post-retirement death benefit or benefit paid or payable pursuant to the member's option selection, the accidental death benefit payments to the statutory beneficiary will be reduced by any amounts paid or payable to any other statutory beneficiary.

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

(2021 N.Y. Laws Ch. 78, 3/12/2021, eff. 3/12/2021\*)

\* **Editor's note:** 2021 N.Y. Laws Ch. 78, § 14, provides: "This act shall take effect immediately and shall be deemed to have been in full force and effect on and after March 1, 2020; provided that the provisions of this act shall expire and be deemed repealed on December 31, 2022."

### **§ 13-348 Accidental death benefits in the case of deaths occurring prior to July first, nineteen hundred sixty-five.**

a. Notwithstanding the provisions of section 13-347 of this subchapter, in any case where a pension was or is awarded under the provisions of such section, by reason of the death of a member occurring before July first, nineteen hundred sixty-five, such pension, subject to the provisions of subdivisions b and c of this section, shall be:

(1) For each full calendar year, on and after January first, nineteen hundred sixty-five an amount equal to one-half of the annual salary or compensation payable, on July first, nineteen hundred sixty-five, to a member of the uniformed force of rank, seniority and other salary-determining status, equal to that of the deceased member on the date of his or her death, but in no case less than one-half of the salary payable, to a first grade firefighter on July first, nineteen hundred sixty-five, and

(2) For any portion of a calendar year, on and after January first, nineteen hundred sixty-five, the appropriate pro rata portion of the amount which would be payable, under the provisions of paragraph one of this subdivision a, for the full calendar year which includes such portion of a year, if a pension were payable under this section for such full calendar year.

b. Such pension shall be payable to the same persons and shall be subject to the same terms and conditions, including provisions as to termination, as the pension which would otherwise be payable, on and after January first, nineteen hundred sixty-five, pursuant to section 13-347 of this subchapter by reason of the death of such member.

c. The pension payable pursuant to the provisions of subdivisions a and b of this section shall be in lieu of any pension which would otherwise be payable on and after January first, nineteen hundred sixty-five, pursuant to the provisions of section 13-347 of this subchapter and, except as otherwise provided in paragraph one of subdivision e of section 13-686 of this title, shall be in lieu of any supplemental retirement allowance which would otherwise be payable, on and after such date, under the provisions of subchapter six of chapter five of this title or any other law.

### **§ 13-349 Retirement; minimum period for service retirement.**

Any member in city-service who shall have attained the minimum age or period of service retirement elected by him or her upon his or her own written application to and filed with the board setting forth at what time, not less than thirty days subsequent to the execution and filing thereof, he or she desires to be retired, shall be retired as of the date specified in said application, provided that at the time so specified for his or her retirement, his or her term or tenure of office or employment shall not have terminated or have been forfeited, provided further that upon his or her request in writing the member shall be granted a leave of absence from the date of filing said application until the date the retirement becomes effective.

### **§ 13-350 Retirement; selection of either twenty or twenty-five years of city-service.**

a. Any person becoming a member who was not previously a member or who during his or her last previous membership in the pension fund contributed on the basis of a minimum period of retirement of twenty years of city-service, may elect, prior to the certification of his or her rate of contribution, to contribute on the basis of a minimum retirement period of twenty years of city-service, by a written election duly executed and acknowledged and filed with the board. The minimum period of retirement for such member so electing shall be twenty years of city-service.

b. Any person becoming a member who was not previously a member or who during his or her last previous membership in the pension fund contributed on the basis of a minimum period of retirement of twenty-five years of city-service, may elect, prior to certification of his or her rate of contribution, to contribute on the basis of a minimum retirement period of twenty-five years of city-service by a written election duly executed and acknowledged and filed with the board. The minimum period of retirement for such members so electing shall be twenty-five years of city-service.

### **§ 13-351 Method of computing retirement allowance of chief of department.**

a. Any member who shall have been appointed as a chief of department of the fire department shall be entitled, upon retirement for service from such position, to elect to receive, in lieu of any other service retirement benefit to which he or she may be entitled, the applicable retirement allowance provided for in the succeeding subdivisions of this section.

b. If such member was an original plan member not subject to article eleven (as defined in subdivision four-c of section 13-313 of this subchapter) at the time of such retirement, such retirement allowance shall be equal to two-thirds of his or her salary as chief of department.

c. If such member was an improved benefits plan member not subject to article eleven (as defined in subdivision four-i of such section 13-313) at the time of such retirement, such retirement allowance shall consist of an annuity which is the actuarial equivalent of his or her accumulated deductions at the time of such retirement and a pension, which, when added to such annuity, will make such retirement allowance equal to two-thirds of his or her salary as chief of department. For the purpose of computing the annuity portion of such retirement allowance, his or her accumulated deductions shall be the required amount of such deductions at the time of his or her retirement from such position, including any amount then remaining unpaid with respect to his or her contribution rate deficiency (as defined in subdivision twenty-one of such section) 13-313, if any, without any increase resulting from excess contributions and without any decrease resulting from withdrawals, loans, optional modification, payment of his or her contributions for old age and survivor's insurance coverage, or from any other transaction authorized by law. For the purposes of this subdivision c, any such unpaid amount of contribution rate deficiency, in the case of any such member who becomes an improved benefits plan member before completion of his or her minimum period for service retirement, shall be deemed to consist of such amount plus regular interest thereon from his or her date of commencement of contributions as an improved benefits plan member (as defined in subdivision nineteen of such section) 13-313 to the date of completion of his or her minimum period for service retirement.

d. If such member was an original plan member subject to article eleven (as defined in subdivision four-d of such section 13-313) at the time of such retirement, such retirement allowance shall be determined pursuant to the provisions of subdivision b of this section, except to the extent and in the manner that any such provision is modified by article eleven. e. If such member was an improved benefits plan member subject to article eleven (as



defined in subdivision four-j of such section) 13-313 at the time of such retirement, such retirement allowance shall be determined pursuant to the provisions of subdivision c of this section, except to the extent and in the manner that any such provision is modified by article eleven.

### **§ 13-352 Retirement; for ordinary disability.**

Medical examination of a member in city-service for ordinary disability shall be made upon the application of the commissioner, or upon the application of such member or of a person acting in his or her behalf, stating that such member is physically or mentally incapacitated for the performance of duty and ought to be retired. If such medical examination shows that such member is physically or mentally incapacitated for the performance of duty and ought to be retired, the medical board shall so report and the board shall retire such member for ordinary disability not less than thirty nor more than ninety days after the execution and filing of application therefor with the pension fund.

### **§ 13-353 Retirement; for accident disability.**

Medical examination of a member in city-service for accident disability and investigation of all statements and certifications by him or her or on his or her behalf in connection therewith shall be made upon the application of the commissioner, or upon the application of a member or of a person acting in his or her behalf, stating that such member is physically or mentally incapacitated for the performance of city-service, as a natural and proximate result of such city-service, and certifying the time, place and conditions of such city-service performed by such member resulting in such alleged disability and that such alleged disability was not the result of willful negligence on the part of such member and that such member should, therefore, be retired. If such medical examination and investigation shows that such member is physically or mentally incapacitated for the performance of city-service as a natural and proximate result of an accidental injury received in such city-service while a member, and that such disability was not the result of willful negligence on the part of such member and that such member should be retired, the medical board shall so certify to the board, stating the time, place and conditions of such city-service performed by such member resulting in such disability, and such board shall retire such member for accident disability forthwith.

#### **§ 13-353.1 Accidental disability retirement; World Trade Center presumption.**

1. (a) Notwithstanding any provisions of this code or of any general, special or local law, charter or rule or regulation to the contrary, if any condition or impairment of health is caused by a qualifying World Trade Center condition as defined in section two of the retirement and social security law, it shall be presumptive evidence that it was incurred in the performance and discharge of duty and the natural and proximate result of an accident not caused by such member's own willful negligence, unless the contrary be proved by competent evidence.

(b) The New York City Fire Department Pension Fund (NYCFDPF) board of trustees is hereby authorized to promulgate rules and regulations to implement the provisions of this paragraph.

2. (a) Notwithstanding the provisions of this chapter or of any general, special or local law, charter, administrative code or rule or regulation to the contrary, if a member who participated in World Trade Center rescue, recovery or cleanup operations as defined in section two of the retirement and social security law, and subsequently retired on a service retirement, an ordinary disability retirement, an accidental disability retirement, or a performance of duty disability retirement and subsequent to such retirement is determined by the head of the retirement system to have a qualifying World Trade Center condition, as defined in section two of the retirement and social security law, upon such determination by the NYCFDPF board of trustees, it shall be presumed that such disability was incurred in the performance and discharge of duty as the natural and proximate result of an accident not caused by such member's own willful negligence, and that the member would have been physically or mentally incapacitated for the performance and discharge of duty of the position from which he or she retired had the condition been known and fully developed at the time of the member's retirement, unless the contrary is proven by competent evidence.

(b) The NYCFDPF shall consider a reclassification of the member's retirement as an accidental disability retirement effective as of the date of such reclassification.

(c) Such member's retirement option shall not be changed as a result of such reclassification.

(d) The member's former employer at the time of the member's retirement shall have an opportunity to be heard on the member's application for reclassification by the NYCFDPF board of trustees according to procedures developed by the NYCFDPF.

(e) The NYCFDPF board of trustees is hereby authorized to promulgate rules and regulations to implement the provisions of this paragraph.

3. Notwithstanding any other provision of this chapter or of any general, special or local law, charter, administrative code or rule or regulation to the contrary, if a retiree who: (1) has met the criteria of subdivision one of this section and retired on a service or disability retirement, or would have met the criteria if not already retired on an accidental disability; and (2) has not been retired for more than twenty-five years; and (3) dies from a qualifying World Trade Center condition, as defined in section two of the retirement and social security law, as determined by the applicable head of the retirement system or applicable medical board, then unless the contrary be proven by competent evidence, such retiree shall be deemed to have died as a natural and proximate result of an accident sustained in the performance of duty and not as a result of willful negligence on his or her part. Such retiree's eligible beneficiary, as set forth in section 13-347 of this subchapter, shall be entitled to an accidental death benefit as provided by sections 13-347 and 13-348 of this subchapter, however, for the purposes of determining the salary base upon which the accidental death benefit is calculated, the retiree shall be deemed to have died on the date of his or her retirement. Upon the retiree's death, the eligible beneficiary shall make a written application to the head of the retirement system within the time for filing an application for an accidental death benefit as set forth in sections 13-347 and 13-348 of this subchapter requesting conversion of such retiree's service or disability retirement benefit to an accidental death benefit. At the time of such conversion, the eligible beneficiary shall relinquish all rights to the prospective benefits payable under the service or disability retirement benefit, including any post-retirement death benefits, since the retiree's death. If the eligible beneficiary is not the only beneficiary receiving or entitled to receive a benefit under the service or disability retirement benefit (including, but not limited to, post-retirement death benefits or benefits paid or payable pursuant to the retiree's option selection), the accidental death benefit payments to the eligible beneficiary will be reduced by any amounts paid or payable to any other beneficiary.

4. Notwithstanding any other provision of this code or of any general, special or local law, charter, or rule or regulation to the contrary, if a member who: (1) has met the criteria of subdivision one of this section; and (2) dies in active service from a qualifying World Trade Center condition, as defined in section two of the retirement and social security law, as determined by the applicable head of the retirement system or applicable medical board, then unless the contrary be proven by competent evidence, such member shall be deemed to have died as a natural and proximate result of an accident sustained in the performance of duty and not as a result of willful negligence on his or her part. Such member's eligible beneficiary, as set forth in section 13-347 of this subchapter, shall be entitled to an accidental death benefit provided he or she makes written application to the head of the retirement system within the time for filing an application for an accidental death benefit as set forth in section 13-347 of this subchapter.

### **§ 13-354 Certain disabilities of firefighters.**

Notwithstanding any other provisions of this code to the contrary, any condition of impairment of health caused by diseases of the lung, resulting in total or partial disability or death to a member of the uniformed force, who successfully passed a physical examination on entry into the service of such department, which examination failed to reveal any evidence of such condition, shall be presumptive evidence that it was incurred in the performance and discharge of duty, unless the contrary be proved by competent evidence.

### **§ 13-355 Dependent benefits for surviving spouses and orphans.**

a. (1) Where any member who became a member prior to the starting date of the improved benefits plan (as such date is defined in subdivision twenty-seven of section 13-313 of this chapter), elected to purchase dependent benefits pursuant to section B19-7.42 of former article one-A of former chapter nineteen, and such member, prior to such starting date, makes additional contributions required by sections B19-7.21 and B19-7.42 of such former article one-A to the contingent dependent benefit reserve fund provided for by subdivision c of such section B19-7.21, and such member on and after such starting date makes additional contributions, at the same rate to the dependent benefit contingent reserve fund provided for by subdivision b of

section 13-329 of this subchapter, dependent benefits shall be payable on and after such starting date with respect to such member as provided for in subdivision b of this section from the dependent benefit reserve fund provided for by subdivision a of such section 13-329.

(2) In any case where prior to such starting date, dependent benefits were granted with respect to any deceased member or deceased retired member pursuant to the provisions of this section and such sections B197.21 and B19-7.42 as then in effect, dependent benefits with respect to such member shall be payable on and after such starting date to the person or persons eligible to receive same pursuant to the provisions of subdivision b of this section.

b. (1) Except as otherwise provided in paragraph two of this subdivision and subject to the provisions of subdivisions a and d of this section, the board shall pay a dependent benefit to the surviving spouse, child or children or dependent parents of any deceased member if the death of such member occur during his or her service or after he or she was retired from service. The amount of any such dependent benefit to be paid by the board to each of the several representatives of such member, in case there shall be more than one, from time to time, may be determined by such board according to the circumstances of each case. The annual dependent benefit to the representative or representatives of such member, however, shall be six hundred dollars, and no part of such sum shall be paid to any such surviving spouse who shall remarry, after such remarriage, or to any child after it shall have reached the age of eighteen years.

(2) In any case where an original plan member subject to article eleven (as defined in subdivision four-d of section 13-313 of this subchapter) or an improved benefits plan member subject to article eleven (as defined in subdivision four-j of such section 13-313) who has elected to contribute the additional deductions provided for by subdivision c of section of this subchapter dies during his or her service, no dependent benefits shall be paid under this section to any person by reason of such death; provided, however that the contributions of such member to the dependent benefit contingent reserve fund, without interest thereon, if such member was an original plan member subject to article eleven at the time of his or her death, and with regular interest thereon, if such member was an improved benefits plan member subject to article eleven at the time of his or her death, shall be paid, subject to the determination of the board as provided for by paragraph one of this subdivision b, to the person or persons who would have been entitled under the provisions of such paragraph one to receive a dependent benefit by reason of such death if such member had not been subject to the provisions of article eleven of the retirement and social security law at the time of his or her death.

c. Dependent benefits shall be granted pursuant to this section to the surviving spouse, child or children or dependent parent or parents of a member:

(1) only upon satisfaction of the applicable requirements set forth in subdivision a of this section, if such member last became a member prior to such starting date; and

(2) only if the member, where he or she becomes a member on or after such starting date, shall elect to contribute the additional deductions provided for by subdivision c of section 13-329 of this subchapter.

d. The benefits granted pursuant to this section shall be in addition to any other benefit provided for by this subchapter.

### **§ 13-356 Safeguards on disability retirement; disability retirees other than disability retirees under improved benefits plan.**

a. Once each year the board may, and upon his or her application shall, require any member, after retirement for disability and while under the minimum period for service retirement elected by him or her, to undergo medical examination. Such examination shall be made at the place of residence of such beneficiary or other place mutually agreed upon. Upon the completion of such examination the medical board shall report and certify to the board whether such beneficiary is or is not totally or partially incapacitated physically or mentally and whether he or she is or is not engaged in or able to engage in a gainful occupation. If the board concur in a report by the medical board that such beneficiary is able to engage in a gainful occupation, it shall certify the name of such beneficiary to the appropriate civil service commission, state or municipal, and such commission shall place his or her name as a preferred eligible on such appropriate lists of candidates as are prepared for appointment to positions for which he or she is stated to be qualified. Should such beneficiary be engaged in a gainful occupation, or should he or she be offered city-service as a result of the placing of his or her name on a civil service list, such board shall reduce the amount of his or her disability retirement allowance to an amount which, when added to that then earned by him or her, or earnable by him or her in city-service so offered him or her, shall not exceed the current maximum salary for the title next higher than that held by him or her when he or she was retired. Should the earning capacity of such beneficiary be further altered, such board may further alter his or her retirement allowance to an amount which shall not exceed the rate of retirement allowance upon which he or she was originally retired but which, subject to such limitation, shall equal, when added to that earnable by him or her, the current maximum salary for the title next higher than that held by him or her when he or she was retired. The provisions of this section shall be executed, any provision of the charter or the code to the contrary notwithstanding.

b. Should any member, after retirement for disability and while under the minimum period for service retirement elected by him or her, refuse to submit to one medical examination in any year by a physician or physicians designated by the medical board, his or her retirement allowance may be discontinued until his or her withdrawal of such refusal. Should such refusal continue for one year, all his or her rights in and to such retirement allowance may be revoked by such board.

c. (1) The provisions of this section shall apply to:

(i) any beneficiary who retired for disability prior to the starting date of the improved benefits plan (as such date is defined in subdivision twenty-seven of section 13-313 of this subchapter); and

(ii) any beneficiary who becomes a beneficiary by retiring for disability on or after such starting date and who at the time of such retirement, is an original plan member.

(2) The provisions of this section shall not apply to any beneficiary who becomes a beneficiary by retiring for disability and who at the time of such retirement is an improved benefits plan member.

### **§ 13-357 Safeguards on disability retirement; disability retirees under improved benefits plan.**

a. Once each year the board may, and upon his or her own application shall, require any disability pensioner, under the minimum period for service retirement elected by him or her, and who at the time of his or her retirement for disability was an improved benefits plan member, to undergo medical examination. Such examination shall be made at the place or residence of such beneficiary or other place mutually agreed upon. Upon the completion of such examination the medical board shall report and certify to the board whether such beneficiary is or is not totally or partially incapacitated physically or mentally and whether he or she is or is not engaged in or able to engage in a gainful occupation. If the board concur in a report by the medical board that such beneficiary is able to engage in a gainful occupation, it shall certify the name of such beneficiary to the appropriate civil service commission, state or municipal, and such commission shall place his or her name as a preferred eligible on such appropriate lists of candidates as are prepared for appointment to positions for which he or she is stated to be qualified. Should such beneficiary be engaged in a gainful occupation, or should he or she be offered city-service as a result of the placing of his or her name on a civil service list, such board shall reduce the amount of his or her disability pension and his or her pension-providing-for-increased-take-home-pay, if any, to an amount which, when added to that then earned by him or her, or earnable by him or her in city-service so offered him or her, shall not exceed the current maximum salary for the title next higher than that held by him or her when he or she was retired. Should the earning capacity of such beneficiary be further altered, such board may further alter his or her pension and his or her pension-providing-for-increased-take-home-pay, if any, to an amount which shall not exceed the rate of pension and his or her pension-providing-for-increased-take-home-pay, if any, upon which he or she was originally retired but which, subject to such limitation, shall equal, when added to that earnable by him or her, the current maximum salary for the title next higher than that held by him or her when he or she was retired. The provisions of this section shall be executed, any provision of the charter or the code to the contrary notwithstanding.

b. Should any disability pensioner, under the minimum period for service retirement elected by him or her, and who was an improved benefits plan

member at the time of his or her retirement for disability, refuse to submit to one medical examination in any year by a physician or physicians designated by the medical board, his or her pension and his or her pension-providing-for-increased-take-home-pay, if any, may be discontinued until his or her withdrawal of such refusal. Should such refusal continue for one year, all his or her rights in and to such pension and his or her pension-providing-for-increased-take-home-pay, if any, may be revoked by such board.

### **§ 13-358 Retirement allowances of original plan members; for service.**

a. Subject to the provisions of subdivision b of this section, upon retirement for service an original plan member not subject to article eleven (as defined in subdivision four-c of section 13-313 of this subchapter) shall receive a retirement allowance which shall be equal to one-half his or her final compensation plus, for each year he or she shall have served in the uniformed force of the fire department after having attained the minimum period of service retirement elected by him or her, the additional amount provided for by section two hundred seven-b of the general municipal law with respect to such year.

b. In addition to the benefits provided for in subdivision a of this section, an original plan member not subject to article eleven, upon retirement for service, shall receive, for each year, or fraction thereof, of service credit transferred from the New York city employees' retirement system, a retirement allowance of fifty-five percent of one-sixtieth of his or her five-year-average-salary (as defined in subdivision twenty-eight of section 13-313 of this subchapter) if such service credit was for service rendered prior to October first, nineteen hundred fifty-one or seventy-five percent of one-sixtieth of his or her five-year-average-salary if such service was rendered on or after October first, nineteen hundred fifty-one. Nothing contained in this subdivision b shall be construed as denying or impairing any right granted to any member by any other provision of law with respect to any such transferred service credit which consists of credit for service as a member of a uniformed force, the members of which, during their service in such force, are eligible for membership in the New York city employees' retirement system.

c. Upon retirement for service, an original plan member subject to article eleven (as defined in subdivision four-d of section 13-313 of this subchapter) shall receive a retirement allowance determined pursuant to the provisions of subdivisions a and b of this section, except to the extent and in the manner that any such provision is modified by article eleven.

### **§ 13-359 Retirement allowances of improved benefits plan members; for service.**

a. Subject to the provisions of subdivision b of this section, upon retirement for service, an improved benefits plan member not subject to article eleven (as defined in subdivision four-i of section 13-313 of this subchapter) shall receive a retirement allowance which shall consist of:

1. (a) An annuity based on his or her required annuity savings at the termination of his or her required minimum period of service, and in addition, a pension which when added to the annuity shall be equal to one-half of his or her annual earnable compensation on the date of retirement, for his or her minimum period of service. For the purpose only of determining the pension portion of the retirement allowance for minimum service, such member's annuity under this paragraph one shall be computed as it would be, (i) if it were not reduced by the actuarial equivalent of any outstanding loan, (ii) if it were not increased by the actuarial equivalent of any additional contributions, (iii) if it were not reduced by reason of such member's election to decrease his or her annuity contributions in order to apply the amount of such reduction in payment of his or her contributions for old-age and survivors insurance coverage, (iv) as it would be without any optional modification, and (v) as it would be, in the case of any improved benefits plan member not subject to article eleven who is subject to a contribution rate deficiency (as defined in subdivision twenty-one of such section 13-313) under the provisions of this subchapter, if an amount equal to the whole or any part of such deficiency remaining unpaid as of the effective date of such member's retirement for service had been paid to the pension fund on the earlier of (A) his or her date of commencement of contributions as an improved benefits plan member (as defined in subdivision nineteen of such section 13-313) or (B) the date next following the date of termination of such member's required minimum period of service.

(b) If such member became an improved benefits plan member after the date of termination of such member's required minimum-period of service, his or her required annuity savings at the termination of his or her required minimum period of service shall be deemed to be such member's accumulated contributions (as defined in subdivision seven of section 13-313 of this subchapter) credited to him or her as an original plan member as of such date of termination, provided, however, that for the purpose only of determining the pension portion of the retirement allowance for minimum service, such member's annuity under this paragraph one shall be computed as it would be under the conditions prescribed in items (i), (iv), and (v) of subparagraph (a) of this paragraph.

2. For each additional year of service in the uniformed force of the fire department, or fraction thereof, beyond his or her required minimum service, such a member shall be entitled to, in addition to the benefits provided in paragraph one of this subdivision a;

(a) a pension of one-sixtieth of his or her average annual earnings from his or her date of eligibility for retirement to the actual date of retirement; and

(b) a pension-providing-for-increased-take-home-pay which shall be the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may be entitled, if any, for all periods of such service in the uniformed force of the department rendered both (1) after the completion of such required minimum service in such uniformed force and (2) after December thirty-first, nineteen hundred sixty-six.

3. For each year, or fraction thereof, of service credit transferred from the New York city employees' retirement system, or service credit acquired pursuant to subdivision d of section 13-318 of this subchapter or pursuant to the applicable provisions of subdivisions e and f of such section, a pension of fifty-five percent of one-sixtieth of his or her five-year-average compensation (as defined in subdivision six-a of such section 13-313) if such service credit was for service rendered prior to October first, nineteen hundred fifty-one or seventy-five percent of one-sixtieth of his or her five-year-average compensation if such service was rendered subsequent to October first, nineteen hundred fifty-one.

4. (a) For service in the uniformed force of the fire department in addition to and in excess of his or her required minimum period of service, such member shall be entitled to receive, in addition to the benefits provided for by the preceding paragraphs of this subdivision a, an annuity which shall be determined in the manner provided for in subparagraphs (b), (c), (d) and (e) of this paragraph four.

(b) There shall be added together (i) the total amount of the accumulated deductions of such member, if any, whenever made, as the same are on the date next preceding the date on which such member's retirement becomes effective, including all voluntary additional contributions, whenever made, and (ii) the unpaid amount of any loan of such member outstanding as of such date.

(c) Subject to the provisions of subparagraph (d) of this paragraph four, there shall be determined the amount of the accumulated deductions, if any, credited to such member with respect to the years of his or her service credited as his or her minimum period of service, as such deductions were on the date of completion of such minimum period of service (but also as such deductions would then be in the absence of a loan), excluding, however, from such accumulated deductions:

(i) the value, as of such completion date, of all of such member's voluntary, additional contributions made with respect to such years of service credited as his or her minimum period of service;

(ii) the value, as of such completion date, of any accumulated deductions credited with respect to any period of service preceding and not included in such period of service credited as such member's minimum period of service.

(d) If such member became an improved benefits plan member after the date of completion of such member's minimum period of service, his or her accumulated deductions with respect to his or her minimum period of service shall be deemed to be, only for the purposes of this paragraph four, such member's accumulated contributions (as defined in subdivision seven of section 13-313 of this subchapter) credited to him or her as an original plan member as of such completion date with respect to the period of service credited to such member as his or her minimum period of service, as such accumulated contributions would be in the absence of a loan, and excluding from such accumulated contributions the value, as of such date, of any

accumulated contributions credited with respect to any period of service preceding and not included in such period of service credited as such member's minimum period of service.

(e) From the amount computed pursuant to subparagraph (b) of this paragraph four, there shall be subtracted the amount computed pursuant to subparagraph (c) of this paragraph or subparagraph (d) hereof, as the case may be.

(f) The annuity to which such member shall be entitled under this paragraph four, if any, shall be the actuarial equivalent, as of the date next preceding the date on which such member's retirement becomes effective, of the remainder computed pursuant to subparagraph (e) of this paragraph four.

b. Upon retirement for service, an improved benefits plan member subject to article eleven (as defined in subdivision four-j of such section 13-313) shall receive a retirement allowance consisting of an annuity and a pension determined pursuant to the provisions of subdivision a of this section, except to the extent and in the manner that any such provision is modified by article eleven.

### **§ 13-360 Vested retirement rights; original plan members.**

a. For the purposes of this section, the term "service" shall mean service in the uniformed force of the fire department, as a member of such force, including service for which credit is granted pursuant to section 15-111 of the code, but excluding any service credit acquired by transfer or otherwise under any other provision of law.

b. (1) Any member who:

(i) discontinued "service" on or after July first, nineteen hundred sixty-nine, and prior to the starting date of the improved benefits plan (as such starting date is defined in subdivision twenty-seven of section 13-313 of this subchapter) other than by death, retirement or dismissal; and

(ii) prior to such discontinuance, completed fifteen or more years of "service", at least five of which immediately preceded such discontinuance; and

(iii) does not withdraw his or her accumulated contributions in whole or in part; and

(iv) at least thirty days prior to the date of such discontinuance, filed a duly executed application for a deferred retirement allowance hereunder; shall have a vested right to receive a deferred retirement allowance as provided in this section. For the purposes of this subchapter, any such member who acquired such a vested right pursuant to the provisions of this paragraph one shall be deemed to have become an original plan discontinued member.

(2) Any original plan member who:

(i) discontinues "service" on or after such starting date, other than by death, retirement or dismissal; and

(ii) prior to such discontinuance, completed five or more years of "service"; and

(iii) does not withdraw his or her accumulated contributions in whole or in part; and

(iv) at least thirty days prior to the date of such discontinuance, filed a duly executed application for a deferred retirement allowance hereunder; shall have a vested right to receive a deferred retirement allowance as provided in this section and shall be an original plan discontinued member.

c. (1) Upon such discontinuance under the conditions and in compliance with the provisions of subdivision b of this section, such deferred retirement allowance shall vest automatically.

(2) Such retirement allowance shall become payable on the earliest date on which such original plan discontinued member could have retired for service if discontinuance had not occurred.

d. Such retirement allowance, in the case of an original plan discontinued member not subject to article eleven (as defined in subdivision sixteen-a of section 13-313 of this subchapter), shall be:

(1) An amount equal to:

(i) in the case of any such original plan discontinued member not subject to article eleven whose minimum period for service retirement is twenty years, two and one-half percent of his or her final compensation on the date of his or her discontinuance of "service", multiplied by the number of years of "service" credited to him or her on the date of such discontinuance; or

(ii) In the case of any such original plan discontinued member not subject to article eleven whose minimum period for service retirement is twenty-five years, two percent of his or her final compensation on the date of his or her discontinuance of "service", multiplied by the number of years of "service" credited to him or her on the date of such discontinuance; and

(2) an amount equal to fifty dollars for each year of city-service credited to him or her, other than "service".

d-1. Such retirement allowance, in the case of an original plan discontinued member subject to article eleven (as defined in subdivision sixteen-b of such section 13-313) shall consist of an amount determined pursuant to the provisions of subdivision d of this section, except to the extent and in the manner that any such provision is modified by article eleven.

e. If an original plan discontinued member dies before attaining the earliest age at which he or she could have retired for service if discontinuance had not occurred, his or her accumulated contributions shall be paid (1) to the beneficiary designated by him or her pursuant to section 13-346 of this subchapter to receive his or her accumulated contributions in the event that such contributions were to become payable under such section, or (2) if such member had made no such designation, to his or her estate.

f. An original plan discontinued member may elect any option under section 13-369 of this subchapter at any time prior to the first payment on account of his or her retirement allowance under this section.

g. Withdrawal of accumulated contributions, in whole or in part, after discontinuance of "service", shall terminate the right to a deferred retirement allowance under this section.

h. If an original plan discontinued member who has not withdrawn his or her accumulated contributions in whole or in part shall subsequently reenter "service" before the earliest date on which such original plan discontinued member could have retired for service if discontinuance had not occurred, he or she shall be entitled to the service credit and status to which he or she was entitled immediately prior to his or her discontinuance of "service".

i. (1) If an original plan discontinued member who has not withdrawn his or her accumulated contributions in whole or in part shall subsequently and on or after the earliest date on which such original plan discontinued member could have retired for service if discontinuance had not occurred, re-enter "service", his or her retirement allowance shall be suspended and forfeited during the period of such "service".

(2) (i) Such original plan discontinued member may again become a member of the pension fund if, within ninety days after his or her return to such "service", he or she files a duly executed and acknowledged application for such membership.

(ii) Subject to the provisions of subparagraphs (iii) and (iv) of this paragraph two, if any such original plan discontinued member shall again become



a member of the pension fund, he or she shall become such member as a new entrant.

(iii) If such original plan discontinued member, at the time of his or her discontinuance of "service", was an original plan discontinued member not subject to article eleven, he or she shall, as such new entrant, continue to be an original plan discontinued member not subject to article eleven. If such original plan discontinued member, at the time of his or her discontinuance of "service", was an original plan discontinued member subject to article eleven, he or she shall, as such new entrant, continue to be an original plan discontinued member subject to article eleven.

(iv) Any original plan discontinued member who again becomes a member of the pension fund pursuant to the preceding subparagraphs of this paragraph two shall contribute to such fund at the rate (before modification, if any, to which such original plan discontinued member may be entitled pursuant to section 13-326 of this subchapter) at which he or she would have been required to contribute if he or she had not discontinued "service". The provisions of paragraph two of subdivision c of section 13-325 of this subchapter shall not apply to an original plan discontinued member who again becomes a member pursuant to this paragraph two.

(3) (i) Upon the subsequent retirement of any such original plan discontinued member who, pursuant to the provisions of subparagraph (iii) of paragraph two of this subdivision i, is an original plan discontinued member not subject to article eleven, he or she shall be credited with all of his or her "service" as a member subsequent to his or her last restoration to membership and he or she shall receive therefor a retirement allowance equal to one-sixtieth of his or her average annual salary or wages from the date of his or her re-entry into membership to the date of his or her subsequent retirement, multiplied by the number of years of "service" rendered by him or her from such date of re-entry.

(ii) Upon the subsequent retirement of any such original plan discontinued member who, pursuant to the provisions of subparagraph (iii) of paragraph two of this subdivision i, is an original plan discontinued member subject to article eleven, he or she shall be credited with all of his or her "service" as a member subsequent to this last restoration to membership and he or she shall receive therefor a retirement allowance determined pursuant to the provisions of subparagraph (i) of this paragraph three, except to the extent and in the manner that any such provision is modified by article eleven. If, after the restoration of any such original plan discontinued member subject to article eleven, he or she separates from "service" at a time when he or she is ineligible to retire under the provisions of such article eleven, that part of his or her accumulated contributions which is attributable to the period of his or her service subsequent to his or her last restoration to membership and which remains to his or her credit shall be refunded to him or her, without interest, pursuant to rules and regulations promulgated by the board with respect to refunds under such circumstances.

(4) In addition to the applicable retirement allowance provided for by paragraph three of this subdivision i, any such new entrant original plan discontinued member, upon his or her subsequent retirement, shall receive the retirement allowance which he or she was receiving or entitled to receive immediately prior to his or her last restoration. If, after the restoration of any such original plan discontinued member subject to article eleven, he or she separates from service at a time when he or she is ineligible to retire under the provisions of such article eleven, he or she shall receive, in addition to the refund of a portion of his or her accumulated contributions as provided for in subparagraph (ii) of such paragraph three, the retirement allowance which he or she was receiving or entitled to receive immediately prior to his or her last restoration.

(5) During restoration to "service", in lieu of suspension of any benefits payable in the event of his or her death by reason of any option selection in respect to his or her retirement allowance, a beneficiary may pay to the fund from which his or her ordinary retirement allowance was payable, the amount by which his or her ordinary retirement allowance exceeded the optional retirement allowance theretofore granted to him or her, in which event such optional benefit shall continue and be payable in the event of his or her death as though no payment were suspended.

(6) Any original plan discontinued member who has again become a member of the pension fund pursuant to the provisions of paragraphs one and two of this subdivision i may, during such restored membership, by a written application duly executed and filed with the board pursuant to the provisions of subdivision c or subdivision e of section 13-315 of this subchapter, as the case may be, elect to become an improved benefits plan discontinued member restored to membership. As of the applicable time specified in subdivision d or subdivision f of such section with respect to commencement of status as an improved benefits plan member, any such original plan discontinued member who filed such an application shall cease to be an original plan discontinued member restored to membership and shall become an improved benefits plan discontinued member restored to membership. If such member was a restored original plan discontinued member not subject to article eleven immediately prior to the commencement of his or her status as a restored improved benefits plan discontinued member, he or she shall thereafter be an improved benefits plan discontinued member subject to article eleven, restored to membership. If such member was a restored original plan discontinued member subject to article eleven immediately prior to the commencement of his or her status as a restored improved benefits plan discontinued member, he or she shall thereafter be an improved benefits plan discontinued member subject to article eleven, restored to membership. On and after the date on which the status of any such member as an improved benefits plan discontinued member restored to membership begins, his or her rights, privileges, benefits and obligations as such member shall be as prescribed by the provisions of section 13-359 of this subchapter; provided, however, that he or she shall contribute to the annuity savings fund on and after such date at the rate of contribution (before modification, if any, to which he or she may be entitled on account of increased-take-home-pay) which would have been applicable to him or her if the improved benefits plan had been in existence and he or she had become a non-elective improved benefits plan member as of the date of commencement of the period of member service in the uniformed force of the fire department which was credited to him or her at the time when he or she last discontinued service so as to become entitled to benefits under this section.

j. Notwithstanding any other provision of law, a discontinued member with ten or more years of credited service in the pension fund who dies before a retirement benefit becomes payable and who is otherwise not entitled to a death benefit from the pension fund shall be deemed to have died on the last day that he or she was in service upon which his or her membership was based for purposes of eligibility for the payment of a death benefit pursuant to the provisions of section 13-346 of this title. The death benefit payable in such case shall be one-half of that which would have been payable had such member died on the last day that service was rendered.

### **§ 13-361 Vested retirement rights; improved benefits plan members.**

a. Any improved benefits plan member who:

(1) discontinues fire uniformed force service (as defined in subdivision sixteen-c of section 13-313 of this subchapter) on or after the starting date of the improved benefits plan (as such date is defined in subdivision twenty-seven of such section 13-313), other than by death, retirement or dismissal; and

(2) prior to such discontinuance, completed five or more years of allowable fire uniformed force service; and

(3) does not withdraw his or her accumulated deductions in whole or in part; and

(4) at least thirty days prior to the date of such discontinuance, filed a duly executed application for a deferred retirement allowance hereunder; shall have a vested right to receive a deferred retirement allowance as provided in this section.

b. (1) Upon such discontinuance under the conditions and in compliance with the provisions of subdivision a of this section, such deferred retirement allowance shall vest automatically.

(2) Such retirement allowance shall become payable on the earliest date on which such improved benefits plan discontinued member could have retired for service if discontinuance had not occurred.

c. Such deferred retirement allowance, in the case of an improved benefits plan discontinued member not subject to article eleven (as defined in subdivision sixteen-e of such section 13-313), shall consist of:

(1) an annuity which is the actuarial equivalent of an amount equal to such member's accumulated deductions for the period of his or her fire uniformed force service, plus any accumulated contributions transferred to his or her credit pursuant to section forty-three of the retirement and social security law, as the total of such accumulated deductions and contributions is on the earliest date on which such member could have retired for service; and

(2) a pension, which together with his or her annuity shall be equal to:

(i) in the case of any such improved benefits plan discontinued member not subject to article eleven whose minimum period for service retirement is twenty years, two and one-half percent of his or her annual earnable compensation on the date of his or her discontinuance of fire uniformed force service, multiplied by a number equal to the number of years of allowable fire uniformed force service credited to him or her on the date of such discontinuance, plus the number of his or her years of service for which credit was transferred pursuant to section forty-three of the retirement and social security law; or

(ii) in the case of any such improved benefits plan discontinued member not subject to article eleven whose minimum period for service retirement is twenty-five years, two percent of his or her annual earnable compensation on the date of his or her discontinuance of fire uniformed force service, multiplied by a number equal to the number of years of allowable fire uniformed force service credited to him or her on the date of his or her discontinuance of such service, plus the number of years of his or her service for which credit was transferred pursuant to section forty-three of the retirement and social security law; and

(3) for each year, or fraction thereof, of his or her service credit transferred from the New York city employees' retirement system, a pension of fifty-five percent of one-sixtieth of his or her five-year-average compensation (as defined in subdivision six-a of such section 13-313) if such service credit was for service rendered prior to October first, nineteen hundred fifty-one or seventy-five percent of one-sixtieth of his or her five-year-average compensation if such service was rendered on or after October first, nineteen hundred fifty-one.

d. For the purpose only of determining the pension portion of such retirement allowance pursuant to paragraphs one and two of subdivision c of this section, the annuity referred to in such paragraph one shall be computed as it would be (1) if it were not reduced by the actuarial equivalent of any outstanding loan, (2) if it were not increased by the actuarial equivalent of any additional contributions, (3) if it were not reduced by reason of such member's election to decrease his or her annuity contributions in order to apply the amount of such reduction in payment of his or her contributions for old-age and survivors insurance coverage, (4) as it would be without any optional modification, and (5) as it would be, in the case of any improved benefits plan discontinued member not subject to article eleven who is subject to a contribution rate deficiency (as defined in subdivision twenty-one of section 13-313 of this subchapter), if the whole or any part of such deficiency remaining unpaid at the time when such retirement allowance becomes payable had been paid to the pension fund on his or her date of commencement of contributions as an improved benefits plan member (as defined in subdivision nineteen of such section 13-313).

d-1. Such deferred retirement allowance, in the case of an improved benefits plan discontinued member subject to article eleven (as defined in subdivision sixteen-f of such section 13-313), shall consist of an annuity and pension determined pursuant to the provisions of subdivisions c and d of this section, except to the extent and in the manner that any such provision is modified by article eleven.

e. Regular interest on the accumulated deductions of an improved benefits plan discontinued member and on his or her reserve-for-increased-take-home-pay shall be credited after discontinuance of fire uniformed force service at the rate which would be applicable if he or she had not discontinued such service.

f. If an improved benefits plan discontinued member dies before attaining the earliest age at which he or she could have retired for service if discontinuance had not occurred, his or her accumulated deductions shall be paid (1) to the beneficiary designated by him or her pursuant to section 13-346 of this subchapter to receive his or her accumulated deductions in the event that such deductions were to become payable under such section, or (2) if such member had made no such designation, to his or her estate.

g. An improved benefits plan discontinued member may elect any option under section 13-369 of this subchapter at any time prior to the first payment on account of his or her retirement allowance under this section.

h. Withdrawal of accumulated deductions, in whole or in part, after discontinuance of fire uniformed force service, shall terminate the right to a deferred retirement allowance under this section.

i. If an improved benefits plan discontinued member who has not withdrawn his or her accumulated deductions in whole or in part shall subsequently re-enter fire uniformed force service before the earliest date on which such improved benefits plan discontinued member could have retired for service if discontinuance had not occurred, he or she shall be entitled to the service credit and status to which he or she was entitled immediately prior to his or her discontinuance of fire uniformed force service and shall be credited with regular interest on his or her accumulated deductions and his or her reserve-for-increased-take-home-pay from the time of such discontinuance to the time of his or her re-entry into fire uniformed force service, at the rate which would have been applicable if he or she had not discontinued such service.

j. (1) If an improved benefits plan discontinued member who has not withdrawn his or her accumulated deductions in whole or in part shall subsequently and on or after the earliest date on which such improved benefits plan discontinued member could have retired for service if discontinuance had not occurred, re-enters fire uniformed force service, the payment of his or her pension only shall be suspended and forfeited during the period of such fire uniformed force service, except as herein otherwise provided.

(2) Such improved benefits plan discontinued member may again become a member of the pension fund, if within ninety days after his or her return to fire uniformed force service, he or she files a duly executed and acknowledged application for such membership.

(3) (i) Subject to the provisions of subparagraphs (ii) and (iii) of this paragraph three, if such beneficiary shall again become a member of the pension fund, the payment of his or her annuity shall also be suspended and forfeited and his or her annuity reserve shall be transferred to his or her credit in the annuity savings fund and he or she shall become such member as a new entrant.

(ii) If such improved benefits plan discontinued member, at the time of his or her discontinuance of fire uniformed force service, was an improved benefits plan discontinued member not subject to article eleven, he or she shall, as such new entrant, continue to be an improved benefits plan discontinued member not subject to article eleven. If such improved benefits plan discontinued member, at the time of his or her discontinuance of fire uniformed force service, was an improved benefits plan discontinued member subject to article eleven, he or she shall, as such new entrant, continue to be an improved benefits plan discontinued member subject to article eleven.

(iii) Any improved benefits plan discontinued member who again becomes a member of the pension fund pursuant to the provisions of paragraph two of this subdivision j and the preceding subparagraphs of this paragraph three, shall contribute to such fund at the rate (before modification, if any, to which such improved benefits plan discontinued member may be entitled pursuant to section 13-326 of this subchapter) at which he or she would have been contributing if he or she had not discontinued fire uniformed force service.

(iv) Upon the subsequent retirement of any such improved benefits plan discontinued member who, pursuant to the provisions of subparagraph (ii) of this paragraph three, is an improved benefits plan discontinued member not subject to article eleven, he or she shall be credited with all of his or her service as a member subsequent to his or her last restoration to membership and he or she shall receive therefor a retirement allowance, payable in such form as he or she shall select under section 13-369 of this subchapter, consisting of:

(A) an annuity which is the actuarial equivalent of his or her accumulated deductions at the time of such retirement; and

(B) a pension equal to one-sixtieth of his or her average annual earnings from the date of his or her re-entry into membership to the date of his or her subsequent retirement, multiplied by the number of years of his or her allowable service in the uniformed force of the fire department rendered by him or her from such date of re-entry; and

(C) a pension-providing-for-increased-take-home-pay which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may be entitled, if any, for the period of his or her allowable service in the uniformed force of the fire department rendered by him or her from such



date of re-entry.

(v) Upon the subsequent retirement of any such improved benefits plan discontinued member who, pursuant to the provisions of subparagraph (ii) of this paragraph three, is an improved benefits plan discontinued member subject to article eleven, he or she shall be credited with all of his or her service as a member subsequent to his or her last restoration to membership and he or she shall receive therefor a retirement allowance determined pursuant to the provisions of subparagraph (iv) of this paragraph three, except to the extent and in the manner that any such provision is modified by article eleven.

(vi) In addition to the applicable retirement allowance provided for by subparagraph (iv) or subparagraph (v) of this subdivision j, as the case may be, any such improved benefits plan discontinued member, upon his or her subsequent retirement, shall receive the pension which he or she was receiving or entitled to receive immediately prior to his or her last restoration.

(vii) If, after the restoration of any such improved benefits plan discontinued member subject to article eleven, he or she separates from service at a time when he or she is ineligible to retire under the provisions of such article eleven, he or she shall receive a retirement allowance which shall consist of an annuity which is the actuarial equivalent of his or her accumulated deductions and the pension, including the pension-providing-for-increased-take-home-pay, if any, which he or she was receiving or entitled to receive immediately prior to his or her last restoration.

(viii) In lieu of suspension during restoration to fire uniformed force service of any benefits payable in the event of his or her death by reason of any optional selection in respect to his or her pension, any such beneficiary may pay to the fund or funds from which his or her ordinary pension was payable, the amount by which his or her ordinary pension exceeded the optional pension heretofore granted to him or her, in which event such optional benefit shall continue and be payable in the event of his or her death as though no payment was suspended.

k. Notwithstanding any other provision of law, a discontinued member with ten or more years of credited service in the pension fund who dies before a retirement benefit becomes payable and who is otherwise not entitled to a death benefit from the pension fund shall be deemed to have died on the last day that he or she was in service upon which his or her membership was based for purposes of eligibility for the payment of a death benefit pursuant to the provisions of section 13-346 of this title. The death benefit payable in such case shall be one-half of that which would have been payable had such member died on the last day that service was rendered.

### **§ 13-361.1 Discharge or dismissal.**

a. Notwithstanding any other provision of law, when a member has attained at least twenty years of creditable fire uniformed force service in the retirement system, the discharge or dismissal from employment of such person shall not preclude such person from receiving any rights or benefits to which he or she shall otherwise be entitled as a member or retired member of the retirement system nor upon retirement shall his or her benefits be in any way diminished as a result of such discharge or dismissal. Such member shall be deemed to be retired on the date of his or her discharge or dismissal from service for purposes of determining his or her rights and benefits as a member of the retirement system.

b. Notwithstanding anything to the contrary in subdivision a of this section, a member, other than a member to which article fourteen of the retirement and social security law is applicable, that has attained at least twenty years of creditable service in the retirement system shall forfeit the retirement benefits to which the member would otherwise be entitled if the member is convicted under the laws of the state of New York of a felony, or under the laws of another state or of the United States of an offense or crime which, if committed in the state of New York, would be a felony.

c. Nothing in this section shall be construed to in any way modify or affect the rights or benefits of any member of the retirement system to which article fourteen of the retirement and social security law is applicable.

### **§ 13-362 Retirement allowances of original plan members; for ordinary disability.**

a. Upon retirement for ordinary disability, an original plan member not subject to article eleven (as defined in subdivision four-c of section 13-313 of this subchapter) shall receive a retirement allowance which shall be equal to:

1. If the number of years of city-service credited to him or her is equal to or exceeds the minimum period for service retirement elected by him or her, (a) one-fortieth of his or her final compensation multiplied by the number of years of city-service credited to him or her, in the case of any such member whose minimum period is twenty years of city-service, and (b) one-fiftieth of his or her final compensation multiplied by the number of years of city-service credited to him or her, in the case of any such member whose minimum period is twenty-five years of city-service; or

2. One-half of his or her final compensation as such member, if the number of years of city-service credited to him or her is equal to or exceeds ten, but is less than his or her minimum period for service retirement; or

3. One-third of his or her final compensation as such member, if the number of years of city-service credited to him or her is less than ten.

b. Upon retirement for ordinary disability, an original plan member subject to article eleven (as defined in subdivision four-d of such section 13-313) shall receive a retirement allowance determined pursuant to the provisions of subdivision a of this section, except to the extent and in the manner that any such provision is modified by article eleven.

### **§ 13-363 Retirement allowances of improved benefit plan members; for ordinary disability.**

a. Subject to the provisions of subdivision b of this section, upon retirement for ordinary disability, an improved benefits plan member not subject to article eleven (as defined in subdivision four-i of section 13-313 of this subchapter) shall receive a retirement allowance which shall consist of:

1. An annuity which shall be the actuarial equivalent of his or her accumulated deductions at the time of his or her retirement; and

2. A pension which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may then be entitled, if any; and

3. A pension, which, together with his or her annuity and the pension-providing-for-increased-take-home-pay, if any, shall be equal to:

(i) In the case of any such member who contributes on the basis of retirement after twenty years of city-service, a retirement allowance equal to one-fortieth of his or her annual earnable compensation on the date of retirement multiplied by the number of years of city-service credited to him or her, but not less than (A) one-half of his or her annual earnable compensation on the date of retirement, if the years of city-service credited to him or her are ten or more, or (B) one-third of his or her annual earnable compensation on the date of retirement, if the years of city-service credited to him or her are less than ten; or

(ii) In the case of any such member who contributes on the basis of retirement after twenty-five years of city-service, a retirement allowance equal to one-fiftieth of his or her annual earnable compensation on the date of retirement, multiplied by the number of years of city-service credited to him or her, but not less than (A) one-half of his or her annual earnable compensation on the date of retirement, if the years of city-service credited to him or her are ten or more, or (B) one-third of his or her annual earnable compensation on the date of retirement, if the years of city-service credited to him or her are less than ten.

b. For the purpose only of determining the pension portion of the retirement allowance payable for ordinary disability under the provisions of this section, the member's annuity shall be computed as it would be (1) if it were not reduced by the actuarial equivalent of any outstanding loan, (2) if it were not increased by the actuarial equivalent of any additional contributions, (3) if it were not reduced by reason of the member's election to decrease his or her annuity contributions in order to apply the amount of such reduction in payment of his or her contributions for old-age and survivors insurance coverage, (4) as it would be without optional modification, and (5) as it would be, in the case of any improved benefits plan member not subject to article eleven who is subject to a contribution rate deficiency (as defined in subdivision twenty-one of such section 13-313) under the provisions of this

subchapter, if the whole or any part of such deficiency remaining unpaid as of the effective date of such member's retirement for ordinary disability had been [x

### **§ 13-364 Retirement allowances of original plan members; for accident disability.**

a. Upon retirement for accident disability, an original plan member not subject to article eleven (as defined in subdivision four-c of section 13-313 of this subchapter) shall receive:

1. a retirement allowance which shall be equal to three-quarters of his or her final compensation on the date of his or her retirement and in the case of a member acting in a higher rank, an amount not to exceed three-quarters of the compensation of such rank on the day such injury was suffered; and

2. his or her accumulated contributions, without interest, either in a lump sum or in the form of an annuity which is the actuarial equivalent of such accumulated contributions, as such member shall elect; and

3. for each year he or she shall have served in the uniformed force of the fire department after having completed the minimum period of service retirement elected by him or her, the additional amount provided for by section two hundred seven-b of the general municipal law with respect to such year.

b. Upon retirement for accident disability, an original plan member subject to article eleven (as defined in subdivision four-d of such section 13-313) shall receive a retirement allowance determined pursuant to the provisions of subdivision a of this section, except to the extent and in the manner that any such provision is modified by article eleven.

### **§ 13-365 Accidental disability benefits in the case of retirements prior to July 1, 1965.**

a. Notwithstanding the provisions of section 13-364 of this subchapter, in any case where a retirement allowance was awarded under the provisions of such section, by reason of the retirement for accidental disability of a member occurring before July first, nineteen hundred sixty-five, such retirement allowance shall be not less than three-fourths the annual salary or compensation earnable by a first grade firefighter on July first, nineteen hundred and sixty-five. In the case of a member receiving a lesser retirement allowance, such retirement allowance shall be increased to an amount which will equal three-fourths of the earn able salary or compensation of a first grade firefighter on July first, nineteen hundred and sixty-five. Such retirement allowance shall be computed as it would have been without deduction for outstanding loans and optional modifications.

b. Such retirement allowance shall be payable to the same persons and shall be subject to the same terms and conditions, including provisions as to terminations, as the retirement allowance which would otherwise be payable to the members under section 13-364 of this subchapter or any other law.

c. The retirement allowance payable pursuant to the provisions of such subdivisions a and b of this section shall be in lieu of any retirement allowance which would otherwise be payable on and after the effective date of this section pursuant to the provisions of section 13-364 of this subchapter.

d. Nothing in this section shall be construed as creating any rights on behalf of any person who dies prior to October twenty-seventh, nineteen hundred sixty-six and benefits due thereunder shall be calculated and paid only from such date this law becomes effective.

### **§ 13-366 Retirement allowances of improved benefits plan members; for accident disability.**

a. Upon retirement for accident disability, an improved benefits plan member not subject to article eleven shall receive a retirement allowance which shall consist of:

(1) An annuity, which shall be the actuarial equivalent of his or her accumulated deductions at the time of his or her retirement; and

(2) A pension which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may then be entitled, if any; and

(3) A pension, of three-quarters of his or her annual earnable compensation on the date of retirement and in the case of a member acting in a higher rank, an amount not to exceed three-quarters of the annual earnable compensation of such rank on the day such injury was suffered, in addition to the annuity and pension provided for by paragraphs one and two of this subdivision a; and

(4) For each year he or she shall have served in the uniformed force of the fire department after having completed the minimum period of service retirement elected by him or her, the additional amount provided for by section two hundred seven-b of the general municipal law with respect to such year.

b. Upon retirement for accident disability, an improved benefits plan member subject to article eleven shall receive a retirement allowance determined pursuant to the provisions of subdivision a of this section, except to the extent and in the manner that any such provision is modified by article eleven.

### **§ 13-367 Retirement allowances of improved benefits plan members credited with certain service as battalion chief.**

a. In the case of the retirement of an improved benefits plan member not subject to article eleven (as defined in subdivision four-i of section 13-313 of this subchapter), who, pursuant to certification from an eligible list and permanent appointment to the position of battalion chief, shall have served in such rank for a period of not less than five years, such member shall be entitled to receive a retirement allowance which shall be the larger of:

(1) the retirement allowance which would be computed for such member if this section had not been enacted; or

(2) a retirement allowance computed pursuant to the provisions of subdivision b of this section.

b. (1) A retirement allowance shall be computed for such member in all respects pursuant to the applicable provisions of this subchapter as if this section had not been enacted, except as provided in paragraphs two and three of this subdivision b.

(2) Solely for the purpose of calculating the annual earnable compensation on the date of retirement in computing a retirement allowance under the applicable provisions referred to in paragraph one of this subdivision b, the component thereof consisting of the base salary on the date of retirement shall not be such member's base salary in the position held by him or her on such date, but shall instead be deemed to be an amount equal to the base salary which would have been payable on the date of such member's retirement, if he or she had been promoted to the position of deputy chief of the department on that date. The said deputy chief's base salary shall not be used for the purpose of calculating any other component of such member's retirement allowance under this subdivision.

(3) For the purpose of computing a retirement allowance pursuant to this subdivision b, any additional compensation of such member for acting in a higher rank shall be excluded.

c. Where an improved benefits plan member subject to article eleven (as defined in subdivision four-j of section 13-313 of this subchapter) shall have served in the rank of battalion chief for a period of not less than five years as described in subdivision a of this section, he or she shall, upon retirement, be entitled to a retirement allowance determined pursuant to the applicable provisions of subdivisions a and b of this section, except to the extent and in the manner that any such provision is modified by article eleven.

### **§ 13-368 Retirement allowances; restrictions on.**

a. If a lump sum which has been paid or which is payable under the provisions of the workers' compensation law equals or exceeds the present value

of all amounts otherwise payable out of moneys provided or to be provided by the pension fund under the provisions of this subchapter on account of the same disability of the same person, no payment shall be made to such person under the provisions of this subchapter. If such lump sum be a percentage less than one hundred per cent of the present value of all such amounts, there shall be paid as it becomes due under the provisions of this subchapter, in lieu of each amount otherwise payable, an amount equal to the percentage thereof which is the difference between such lesser per cent and one hundred per cent.

b. If an amount which is payable throughout a period under the provisions of the workers' compensation law equals or exceeds the amounts otherwise payable during the same period out of the moneys provided or to be provided by the pension fund under the provisions of this subchapter on account of the same disability of the same person, no payment shall be made to such person under the provisions of this subchapter during such period nor thereafter, until the total amount of such omitted payments, together with the regular interest which they would have accumulated, equals the amount paid under the workers' compensation law, together with the regular interest which it would have accumulated. If an amount which is payable throughout a period under the provisions of the workers' compensation law be a percentage less than one hundred per cent of the amounts otherwise payable during the same period out of moneys provided or to be provided by the pension fund under the provisions of this subchapter on account of the same disability of the same person, there shall be paid during such period as it becomes due under the provisions of this subchapter, in lieu of each amount otherwise payable, the percentage thereof which is the difference between such lesser per cent and one hundred per cent.

c. No decision of the state industrial board shall be binding on the medical board or on the board in the determination of eligibility of a claimant for an accident disability or an accidental death benefit.

d. Notwithstanding any of the foregoing provisions of this section or any other law to the contrary, pending the final determination of a claim for workers' compensation benefits, the board may authorize payment of all or any part of the benefits which are payable under this subchapter and to which any of the foregoing provisions of this section apply, and in that event the pension fund shall be entitled to reimbursement out of the unpaid installment or installments of compensation due under the workers' compensation law provided that claim therefor is filed with the workers' compensation board, together with proof of the fact and amount of payment.

### **§ 13-369 Retirement of original plan members; options in which retirement allowances may be taken.**

a. Subject to the provisions of subdivision b of this section, until the first payment on account of any benefit is made, except pursuant to the provisions of subdivision c of this section, any beneficiary who was an original plan member at the time of his or her retirement, or, if such beneficiary is an incompetent, then the spouse of such beneficiary, or, if there be no spouse, a committee of the estate, may elect to receive such benefit in a retirement allowance payable throughout life, or any such beneficiary or the spouse or committee so electing may then elect to receive the actuarial equivalent at the time of his or her retirement allowance in a lesser retirement allowance, payable throughout life with the provision that: Option 1. If he or she die before he or she has received in payments the present value of his or her retirement allowance, as it was at the time of his or her retirement, the balance shall be paid to his or her legal representatives or to such person as such beneficiary, or the spouse or committee so electing, has nominated or shall nominate by written designation duly acknowledged and filed with the board. Option 2. Upon his or her death, his or her retirement allowance shall be continued throughout the life of and paid to such person as such beneficiary, or the spouse or committee so electing, has nominated or shall nominate by written designation duly acknowledged and filed with the board at the time of his or her retirement. Option 3. Upon his or her death, one-half of his or her retirement allowance shall be continued throughout the life of and paid to such person as such beneficiary, or the spouse or committee so electing, has nominated or shall nominate by written designation duly acknowledged and filed with the board at the time of his or her retirement. Option 4. Upon his or her death, some other benefit or benefits shall be paid to such other person or persons as such beneficiary, or the spouse or committee so electing, has nominated or shall nominate, provided such other benefit or benefits, together with such lesser retirement allowance, shall be certified by the actuary to be of equivalent actuarial value to his or her retirement allowance, and shall be approved by such board.

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

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

(1) if a member is entitled to an ordinary disability retirement allowance under the provisions of this subchapter, the benefits provided pursuant to section 13-352 of this subchapter shall be payable unless the member would otherwise be entitled to a greater benefit pursuant to section 13-346 of this subchapter, in which event the greater benefit shall be payable; or

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

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

#### **§ 13-369.1 Retired employees; change of options.**

Notwithstanding any other provision of law to the contrary, no beneficiary shall be permitted to change any optional selection after it has become effective, provided, however, that if:

(a) a retired member nominates the spouse of such member as the survivor beneficiary under option two or three of section 13-369 of the code, or if a retired member nominates the spouse of such member under option four of such section to receive payment of an annual benefit as a survivor; and

(b) such person so nominated ceases by causes other than death to be his or her spouse or is divorced from or separated pursuant to a judicial decree from such spouse, then the board of trustees shall have the authority to permit the change of the optional benefit to the maximum benefit that is the actuarial equivalent by and with the consent of all parties.

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

a. Subject to the provisions of subdivision c of this section, until the first payment on account of any benefit is made, except pursuant to the provisions of subdivision d of this section any beneficiary who was an improved benefits plan member at the time of his or her retirement, or, if such beneficiary is an incompetent, then the spouse or such beneficiary, or, if there be no spouse, a committee of the estate, may elect to receive such benefit in a retirement allowance payable throughout life, or any such beneficiary or the spouse or committee so electing may then elect to receive the actuarial equivalent at the time of his or her annuity, his or her pension, or his or her retirement allowance in a lesser annuity or a lesser pension or a lesser retirement allowance, payable throughout life with the provision that: Option 1. If he or she die before he or she has received in payments the present value of his or her annuity, his or her pension, or his or her retirement allowance, as it was at the time of his or her retirement, the balance shall be paid to his or her legal representatives or to such person as such beneficiary, or the spouse or committee so electing, has nominated or shall nominate by written designation duly acknowledged and filed with the board. Option 2. Upon his or her death, his or her annuity, his or her pension, or his or her retirement allowance, shall be continued throughout the life of and paid to such person as such beneficiary, or the spouse or committee so electing, has nominated or shall nominate by written designation duly acknowledged and filed with the board at the time of his or her retirement. Option 3. Upon his or her death, one-half

of his or her annuity, his or her pension, or his or her retirement allowance, shall be continued throughout the life of and paid to such person as such beneficiary, or the spouse or committee so electing, has nominated or shall nominate by written designation duly acknowledged and filed with the board at the time of his or her retirement. Option 4. Upon his or her death, some other benefit or benefits shall be paid to such other person or persons as such beneficiary, or the spouse or committee so electing, has nominated or shall nominate, provided such other benefit or benefits, together with such lesser annuity, or lesser pension or lesser retirement allowance, shall be certified by the actuary to be of equivalent actuarial value to his or her annuity, his or her pension or his or her retirement allowance, and shall be approved by such board.

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

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

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

(1) if a member is entitled to an ordinary disability retirement allowance under the provisions of this subchapter, the benefits provided pursuant to section 13-352 of this subchapter shall be payable unless the member would otherwise be entitled to a greater benefit pursuant to section 13-346 of this subchapter, in which event the greater benefit shall be payable; or

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

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

### **§ 13-370.1 Retired employees; change of options.**

Notwithstanding any other provision of law to the contrary, no beneficiary shall be permitted to change any optional selection after it has become effective, provided, however, that if:

(a) a retired member nominates the spouse of such member as the survivor beneficiary under option two or three of section 13-370 of the code, or if a retired member nominates the spouse of such member under option four of such section to receive payment of an annual benefit as a survivor; and

(b) such person so nominated ceases by causes other than death to be his or her spouse or is divorced from or separated pursuant to a judicial decree from such spouse, then the board of trustees shall have the authority to permit the change of the optional benefit to the maximum benefit that is the actuarial equivalent by and with the consent of all parties.

### **§ 13-371 Benefits upon re-entry into membership; after retirement of original plan members.**

a. (1) Should a beneficiary receiving or entitled to receive a retirement allowance under the provisions of section 13-349, or 3-350 of this subchapter, who was an original plan member at the time of his or her last retirement, re-enter city-service, his or her retirement allowance shall cease. In the case of any such beneficiary who re-enters city-service (other than as fire commissioner or deputy fire commissioner), he or she shall again become a member of the fund as an original plan member, and in the case of any such beneficiary who re-enters city-service by reason of being appointed fire commissioner or deputy fire commissioner, he or she shall again become a member of the fund as an original plan member and, subject to the provisions of paragraph two of this subdivision shall remain such a member while serving as fire commissioner or deputy fire commissioner, and an amount equal to the retirement allowance reserve of any such member shall be transferred to the contingent reserve fund.

(2) Where any beneficiary who again becomes a member as provided for in paragraph one of this subdivision a elects to become an improved benefits plan member pursuant to the applicable provisions of section 13-315 of this subchapter:

(i) he or she shall, if he or she became an original plan member not subject to article eleven (as defined in subdivision four-c of section 13-313 of this subchapter) upon such restoration of membership, be from the effective date of such election an improved benefits plan member not subject to article eleven (as defined in subdivision four-i of such section 13-313); and

(ii) he or she shall, if he or she became an original plan member subject to article eleven (as defined in subdivision four-d of such section 13-313) upon such restoration of membership, be from the effective date of such election an improved benefits plan member subject to article eleven (as defined in subdivision four-j of such section 13-313).

(3) On and after the effective date of such election, his or her rights, privileges, benefits and obligations, as such restored improved benefits plan member, shall be governed by the provisions of section 13-372 of this subchapter.

b. (1) Subject to the applicable provisions of paragraphs five and six of this subdivision b, in any case where any such beneficiary who is appointed fire commissioner or deputy fire commissioner, subsequently retires while fire commissioner or deputy fire commissioner and without having elected to become an improved benefits plan member pursuant to the applicable provisions of section 13-315 of this subchapter, he or she shall receive the retirement allowance, if any, which he or she was receiving or entitled to receive immediately prior to his or her appointment as fire commissioner or deputy fire commissioner and in addition, a further retirement allowance as provided for by the applicable provisions of paragraph two or paragraph three of this subdivision b.

(2) If such appointee is an original plan member not subject to article eleven at the time of such retirement as fire commissioner or deputy fire commissioner, he or she shall receive a further retirement allowance of one-sixtieth of his or her average annual salary earned during his or her credited service as fire commissioner or deputy fire commissioner, multiplied by the number of years of his or her credited service as fire commissioner or deputy fire commissioner.

(3) If such appointee is an original plan member subject to article eleven at the time of such retirement as fire commissioner or deputy fire commissioner, he or she shall receive a further retirement allowance determined pursuant to the provisions of paragraph two of this subdivision b, except to the extent and in the manner that any such provision is modified by article eleven.

(4) The further retirement allowance payable to such appointee as prescribed by the applicable provisions of paragraph two or paragraph three of this subdivision shall be payable in such form as he or she shall select under section 13-369 of this subchapter.

(5) Subject to the provisions of paragraph six of this subdivision, where any beneficiary who is appointed fire commissioner or deputy fire commissioner shall have earned at least three years of member credit for service as fire commissioner or deputy fire commissioner, the total service credit to which he or she was entitled at the time of his or her earlier retirement may, at his or her election, again be credited to him or her and upon his or her subsequent retirement as fire commissioner or deputy fire commissioner, he or she shall be credited in addition with all service as fire commissioner



or deputy fire commissioner.

(6) Such total service credit to which such fire commissioner or deputy fire commissioner was entitled at the time of his or her earlier retirement shall be credited as provided in paragraph five of this subdivision b only in the event that he or she returns to the pension fund with regular interest the actuarial equivalent of the amount of the retirement allowance he or she received; provided, however, that in the event that such amount is not so repaid, the actuarial equivalent thereof shall be deducted from his or her subsequent retirement allowance.

c. During restoration to service for the city, other than city-service as defined in this subchapter, in lieu of suspension of any benefits payable in the event of his or her death by reason of any optional selection in respect to his or her retirement allowance, a beneficiary who was an original plan member at the time of his or her last retirement prior to his or her last restoration to city-service may pay to the fund from which his or her ordinary retirement allowance was payable, the amount by which his or her ordinary retirement allowance exceeded the optional retirement allowance theretofore granted to him or her, in which event such optional benefit shall continue and be payable in the event of his or her death as though no payment were suspended.

### **§ 13-372 Benefits upon re-entry into membership; after retirement of improved benefits plan members.**

a. (1) Should a beneficiary receiving or entitled to receive a retirement allowance under the provisions of section 13-349 or 13-350 of this subchapter, and who was an improved benefits plan member at the time of his or her last retirement, re-enter city-service, his or her retirement allowance and his or her pension-providing-for-increased-take-home-pay, if any, shall cease.

(2) If he or she had not served the period of service elected by him or her, he or she shall again become a member of the pension fund as an improved benefits plan member. Except as otherwise provided in paragraph three of this subdivision a, if he or she has served the minimum period of service elected by him or her, he or she may file a duly executed and acknowledged application therefor within ninety days after his or her return to service and thereupon again become a member of such fund as an improved benefits plan member.

(3) In the case of any such beneficiary who is appointed fire commissioner or a deputy fire commissioner, he or she shall again become a member of the pension fund as an improved benefits plan member and shall remain such a member while serving as fire commissioner or deputy fire commissioner.

(4) The annuity reserve of any such member whose membership is restored as above provided in this section shall be transferred to his or her credit in the annuity savings fund, and he or she shall contribute to such fund as if he or she were a new entrant.

(5) Upon the subsequent retirement of any such member whose membership is restored as above provided in this section and who, as such restored member, is an improved benefits plan member not subject to article eleven (as defined in subdivision four-i of section 13-313 of this subchapter), he or she shall be credited with all of his or her service as a member subsequent to his or her last restoration to membership and shall receive a retirement allowance therefor as if he or she were a new entrant, which retirement allowance shall be determined pursuant to the applicable provisions of this subchapter governing the granting of such a retirement allowance to an improved benefits plan member not subject to article eleven.

(6) Where any such member whose membership is restored as above provided in this section is, as such restored member, an improved benefits plan member subject to article eleven (as defined in subdivision four-j of such section 13-313), he or she shall, upon his or her subsequent retirement, be credited with all of his or her service as a member subsequent to his or her last restoration to membership and shall receive a retirement allowance therefor as if he or she were a new entrant, which retirement allowance shall be determined pursuant to the applicable provisions of this subchapter governing the granting of such a retirement allowance to an improved benefits plan member subject to article eleven.

(7) A retirement allowance determined pursuant to the applicable provisions of subdivision five or subdivision six of this section shall be payable in such form as such member entitled thereto shall select under section 13-370 of this subchapter.

(8) In lieu of suspension during restoration to city-service of any benefits payable in the event of his or her death by reason of any optional selection in respect to his or her pension and the pension-providing-for-increased-take-home-pay, if any, a beneficiary who was an improved benefits plan member at the time of his or her last retirement prior to his or her last restoration to city-service may pay to the fund or funds from which his or her ordinary pension and his or her pension-providing-for-increased-take-home-pay, if any, were payable, the amount by which his or her ordinary pension and the pension-providing-for-increased-take-home-pay, if any, exceeded the optional pension and the pension-providing-for-increased-take-home-pay, if any, heretofore granted to him or her, in which event such optional benefit shall continue and be payable in the event of his or her death as though no payment were suspended.

(9) In addition, upon his or her subsequent retirement, any such member who again becomes a member as an improved benefits plan member under the applicable provisions of paragraphs one, two, three and four of this subdivision shall receive the pension and the pension-providing-for-increased-take-home-pay, if any, which he or she was receiving or entitled to receive immediately prior to his or her last restoration.

(10) Where any member who again becomes a member as an original plan member under section 13-371 of this subchapter elects pursuant to the provisions of section 13-315 of this subchapter while he or she is such a restored member to become an improved benefits plan member, the following shall apply:

(i) Subject to the provisions of subparagraph (iv) of this paragraph ten, the termination of his or her earlier retirement allowance, as provided for by such section,\* 13-371 shall not be affected by such election and shall continue in effect while such member remains in city-service.

(ii) The accumulated contributions of such member as an original plan member shall remain in the retirement allowance reserve fund and shall not be transferred to his or her credit in the annuity savings fund. On and after the effective date of his or her election to become an improved benefits plan member, he or she shall contribute to the pension fund as if he or she were a new entrant as an improved benefits plan member.

(iii) Upon the subsequent retirement of any such member who, as a restored member, is an improved benefits plan member by reason of such election, he or she shall be credited with all of his or her service as a member subsequent to his or her last restoration to membership and he or she shall receive a retirement allowance therefor determined pursuant to the applicable provisions of paragraph five or paragraph six of this subdivision, which retirement allowance shall be payable in such form as he or she shall select under section 13-370 of this subchapter.

(iv) Upon becoming entitled to a retirement allowance as provided for by subparagraph (iii) of this paragraph, he or she shall receive, in addition to such retirement allowance, the retirement allowance, if any, which he or she was receiving or entitled to receive as an original plan retiree immediately prior to his or her last restoration.

b. (1) Subject to the provisions of paragraphs two and three of this subdivision b:

(i) where any beneficiary mentioned in subdivision a of this section, other than a beneficiary serving as fire commissioner or deputy fire commissioner, shall have earned at least five years of member credit for service in the uniformed force of the fire department after restoration to active service; and

(ii) where any beneficiary serving as fire commissioner or deputy fire commissioner shall have earned at least three years of member credit for service during restoration to membership pursuant to this section; the total service credit to which any such restored member above referred to in this paragraph one was entitled at the time of his or her earlier retirement may, at his or her election, again be credited to him or her and upon his or her subsequent retirement he or she shall be credited in addition with all member service earned by him or her subsequent to his or her last restoration to membership.

(2) Such total service credit to which any such restored member referred to in paragraph one of this subdivision b was entitled at the time of his or her earlier retirement shall be credited as provided in such paragraph one only in the event that he or she returns to the pension fund with regular interest

the actuarial equivalent of the amount of the retirement allowance he or she received; provided, however, that in the event that such amount is not so repaid, the actuarial equivalent thereof shall be deducted from his or her subsequent retirement allowance.

(3) In any case where any restored member who is eligible for and elects the crediting of his or her total service credit (to which he or she was entitled at the time of his or her earlier retirement) pursuant to the provisions of paragraphs one and two of this subdivision b became an improved benefits plan member by election made pursuant to the provisions of section 13-315 of this subchapter after his or her restoration to membership, he or she shall, upon his or her subsequent retirement, receive for such total service credit a retirement allowance determined pursuant to the provisions of section 13-359 of this subchapter, and he or she shall not receive any other retirement allowance or benefit for such total service credit.

### **§ 13-372.1 Modified option 1 pension computation formula.**

a. The board may by resolution direct that under such circumstances as are designated in such resolution:

(1) benefits under Option 1 payable to or on account of original plan members who (i) were Tier I members in city-service on July thirty-first, nineteen hundred eighty-three and (ii) retired or retire on or after August first, nineteen hundred eighty-three for service or superannuation or for ordinary or accident disability or on or after such August first, discontinued or discontinue service so as to become original plan discontinued members; and

(2) benefits under Option 1 which consist of or are derived from the pension component of a retirement allowance and which are payable to or on account of improved benefits plan members who (i) became such members prior to the date of enactment (as certified pursuant to section forty-one of the legislative law) of this section and (ii) retired or retire on or after August first, nineteen hundred eighty-three for service or superannuation or ordinary or accident disability or on or after such August first, discontinued or discontinue service so as to become improved benefits plan discontinued members; shall be determined under the modified Option 1 pension computation formula (as defined in subdivision thirty-two of section 13-313 of the code).

b. If the board makes a direction, pursuant to the provisions of subdivision a of this section, for use of such formula, it may also direct by resolution:

(1) that any member who is subject to the modified Option 1 pension computation formula may elect, at such time and in accordance with such procedures as are prescribed in such resolution, that such formula shall not apply to such member and that the initial reserve determined for the purpose of providing the benefits payable by reason of his or her selection of Option 1 and the Option 1 retirement allowance of any such original plan member or pension component of the Option 1 retirement allowance of any such improved benefits plan member shall be determined on the basis of gender-neutral mortality tables and regular interest of seven per centum per annum, compounded annually; and

(2) that the benefit payable, upon the death of the member making such election, to his or her beneficiary or estate shall be the difference between such Option 1 initial reserve and the total of the payments of such retirement allowance or pension component received by or payable to such member for the period prior to his or her death; and

(3) that where any member subject to the modified Option 1 pension computation formula retired before the effective date of a board resolution adopted pursuant to subdivision a of this section, and where the first payment on account of the retirement allowance of any original plan discontinued member or improved benefits plan discontinued member subject to such formula was made before the effective date of such resolution, such retiree or discontinued member, within such period of time after such effective date and in accordance with such procedures as are prescribed in such resolution, may elect the method of Option 1 benefit determination set forth in the preceding paragraphs of this subdivision b.

c. In any case, where, pursuant to board resolution, a benefit is required to be determined under the modified Option 1 pension computation formula and the determination of such benefit is also required by a board resolution adopted pursuant to sub-item (3) of item (A) of subparagraph (ii) of paragraph (j) of subdivision eight of section 13-313 of the code to reflect different computations of separate portions of such benefit, the methods of computation under the modified Option 1 pension computation formula shall be appropriately adjusted so as to give effect to the provisions of such resolution adopted pursuant to such sub-item (3).

### **§ 13-373 Monthly payments to beneficiaries under original plan.**

A retirement allowance granted under the provisions of this subchapter by reason of the retirement of an original plan member shall be paid in equal monthly installments or in ratably smaller amounts when the benefit begins after the first day of the month or ends before the last day of the month.

### **§ 13-374 Monthly payments to beneficiaries under improved benefits plan.**

A pension-providing-for-increased-take-home-pay, an annuity, a dependent benefit, or a retirement allowance granted under the provisions of this subchapter by reason of the retirement of an improved benefits plan member shall be paid in equal monthly instalments or in ratably smaller amounts when the benefit begins after the first day of the month or ends before the last day of the month.

### **§ 13-375 Exemption under original plan from tax and legal process.**

The right of a person under the provisions of law governing the original plan to a retirement allowance or a dependent benefit, to the return of contributions, the retirement allowance or dependent benefit itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this subchapter relating to such plan, and the right to any benefit under subchapter five or subchapter six of this chapter and any such benefit itself, and the moneys in the various funds provided for by this subchapter and in the funds provided for by such subchapter five and subchapter six, are hereby exempt from any state or municipal tax, and shall not be subject to execution, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in any such subchapter specifically provided. Notwithstanding the foregoing provisions of this section, a retired member shall have the right, at any time after the retired member's retirement, to execute and file a dues deduction authorization card or an authorization in writing with the New York fire department pension fund authorizing the deduction from the retired member's retirement allowance of membership dues or premiums for employee organization sponsored group insurance plans and the payment thereof to a retiree organization of which the retired member certifies he or she is then a member and which the retired member certifies is then affiliated with either an employee organization certified or recognized as the collective bargaining representative of all employees in the negotiating unit of which the retired member was a part prior to his or her retirement or an employee organization with which such employee organization is then affiliated. The comptroller shall thereafter deduct from the retirement allowance of such retired member the amount of membership dues required to be paid by such retired member or premiums for employee organization sponsored group insurance plans and shall transmit the sum so deducted to said retiree organization. Such authorization shall continue in effect until revoked in writing by such retired member. The board shall determine the cost of administering deductions for premiums for employee organization sponsored group insurance plans and the cost incurred by the pension fund and the comptroller in administering the same shall be paid by the employee organization.

#### **§ 13-375.1 Eligible rollover distributions.**

a. Notwithstanding anything to the contrary contained in section 13-375 of this subchapter, in the event that, under the terms of this subchapter, a person becomes entitled to a distribution from the pension fund which constitutes an "eligible rollover distribution" within the meaning of paragraph thirty-one of subsection a of section four hundred one of the internal revenue code, such distributee may elect, subject to any rules and regulations adopted pursuant to subdivision b of this section, to have such distribution, or a portion thereof, paid directly to an "eligible retirement plan" within the meaning of paragraph thirty-one of subsection a of section four hundred one of the internal revenue code.

b. The board of trustees is authorized to adopt such rules and regulations as it finds to be necessary in administering the provisions of this section, provided that they are not inconsistent with the applicable provisions of the internal revenue code and the rules and regulations thereunder.

### **§ 13-376 Exemption under improved benefits plan from tax and legal process.**

The right of a person under the provisions of law governing the improved benefits plan to a pension, a pension-providing-for-increased-take-home-pay, an



annuity, a dependent benefit, or a retirement allowance, to the return of contributions, the pension, the pension-providing-for-increased-take-home-pay, annuity, dependent benefit, or a retirement allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this subchapter relating to such plan, and the right to any benefit under subchapter five or subchapter six of this chapter and any such benefit itself, and the moneys in the various funds provided for by this subchapter and in the funds provided for by such subchapter five and subchapter six are hereby exempt from any state or municipal tax, and shall not be subject to execution, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in any such subchapter specifically provided. Notwithstanding the foregoing provisions of this section, a retired member shall have the right, at any time after the retired member's retirement, to execute and file a dues deduction authorization card or an authorization in writing with the New York fire department pension fund authorizing the deduction from the retired member's retirement allowance of membership dues or premiums for employee organization sponsored group insurance plans and the payment thereof to a retiree organization of which the retired member certifies he or she is then a member and which the retired member certifies is then affiliated with either an employee organization certified or recognized as the collective bargaining representative of all employees in the negotiating unit of which the retired member was a part prior to his or her retirement or an employee organization with which such employee organization is then affiliated. The comptroller shall thereafter deduct from the retirement allowance of such retired member the amount of membership dues required to be paid by such retired member or premiums for employee organization sponsored group insurance plans and shall transmit the sum so deducted to said retiree organization. Such authorization shall continue in effect until revoked in writing by such retired member. The board shall determine the cost of administering deductions for premiums for employee organization sponsored group insurance plans and the cost incurred by the pension fund and the comptroller in administering the same shall be paid by the employee organization.

### **§ 13-376.1 Eligible rollover distributions.**

a. Notwithstanding anything to the contrary contained in section 13-376 of this subchapter, in the event that, under the terms of this subchapter, a person becomes entitled to a distribution from the pension fund which constitutes an "eligible rollover distribution" within the meaning of paragraph thirty-one of subsection a of section four hundred one of the internal revenue code, such distributee may elect, subject to any rules and regulations adopted pursuant to subdivision b of this section, to have such distribution, or a portion thereof, paid directly to an "eligible retirement plan" within the meaning of paragraph thirty-one of subsection a of section four hundred one of the internal revenue code.

b. The board of trustees is authorized to adopt such rules and regulations as it finds to be necessary in administering the provisions of this section, provided that they are not inconsistent with the applicable provisions of the internal revenue code and the rules and regulations thereunder.

### **§ 13-377 Protection against fraud or mistake.**

Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of this pension fund, shall be guilty of a misdemeanor. Should any change or error in records result in any member or beneficiary receiving from the pension fund more or less than he or she would have been entitled to receive otherwise, on the discovery of any such error such board shall correct such error, and, as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which he or she was entitled shall be paid.

### **§ 13-378 State supervision.**

The pension fund shall be subject to the supervision of the department of insurance in accordance with the provisions of sections three hundred seven through three hundred twelve of the insurance law, so far as the same are applicable thereto, and are not inconsistent with the provisions of this subchapter.

### **§ 13-379 Limitation on other statutes; application of subchapter.**

Except as otherwise provided in this subchapter, no other provision of law which provides wholly or partly at the expense of the city for retirement benefits for employees in the city-service, shall apply to such employees who are entitled to be members or beneficiaries of the pension fund provided for by this subchapter, their surviving spouse or their other dependents.

### **§ 13-379.1 Excess benefit plan.**

a. As used in this section, the following words and phrases shall have the following meanings, unless a different meaning is plainly required by the context:

(1) "Retirement benefits" shall mean benefits payable to a beneficiary by the pension fund or a variable supplements fund established pursuant to subchapter five or six of this chapter which are subject to the limitations imposed by section 415(b) of the Internal Revenue Code.

(2) "Beneficiary" shall mean a person who is receiving retirement benefits from the pension fund.

(3) "Excess benefit plan" shall mean the excess benefit plan established by this section for the sole purpose of paying benefits as permitted under section 415(m) of the Internal Revenue Code.

(4) "Eligible participant" shall mean a beneficiary who is entitled to replacement benefits from the excess benefit plan for a plan year in accordance with subdivisions d and e of this section.

(5) "Replacement benefits" shall mean the benefits payable by the excess benefit plan to an eligible participant as determined pursuant to subdivision e of this section.

(6) "Internal Revenue Code" shall mean the Federal Internal Revenue Code of 1986, as amended.

(7) "Plan year" shall mean the limitation year of the pension fund as provided in section six hundred twenty of the retirement and social security law.

b. There is hereby established an excess benefit plan, the sole purpose of which shall be to provide replacement benefits, as permitted by section 415(m) of the Internal Revenue Code, to beneficiaries whose annual retirement benefits have been reduced because such benefits exceed the limitations imposed by section 415(b) of the Internal Revenue Code. The excess benefit plan shall be administered by the board of trustees of the pension fund.

c. There is hereby established a fund to be known as the excess benefit fund which shall be maintained for the sole purpose of providing replacement benefits to eligible participants in the excess benefit plan established by this section, as permitted under section 415(m) of the Internal Revenue Code. Such fund shall consist of such employer contributions as shall be made thereto pursuant to subdivision f of this section. Such contributions to the excess benefit fund shall be held separate and apart from the assets held by the other funds of the pension fund, provided, however, that the assets of the excess benefit fund may be invested with the other pension fund assets, but such excess benefit fund assets shall be accounted for separately from the other pension fund assets.

d. All beneficiaries of the pension fund whose retirement benefits for a plan year are being reduced because of section 415(b) of the Internal Revenue Code shall be eligible participants in the excess benefit plan for that plan year. Participation in the excess benefit plan shall be determined for each plan year. No beneficiary of the pension fund shall be an eligible participant in the excess benefit plan for any plan year for which his or her retirement benefits are not reduced because of section 415(b) of the Internal Revenue Code.

e. (1) For each plan year in which a beneficiary is an eligible participant in the excess benefit plan, such eligible participant shall receive replacement benefits from the excess benefit plan equal to the difference between the full amount of the retirement benefits otherwise payable to the eligible participant for that plan year prior to any reduction because of section 415(b) of the Internal Revenue Code, and the retirement benefits payable to the eligible participant for that plan year as reduced because of section 415(b) of the Internal Revenue Code. No replacement benefits for any plan year shall be paid pursuant to this subdivision to any beneficiary who is not receiving retirement benefits from the pension fund for that plan year.

(2) Replacement benefits pursuant to this section shall be paid at the same time and in the same manner as the retirement benefits which are being replaced. At no time shall an eligible participant be permitted directly or indirectly to defer compensation under the excess benefit plan.

f. (1) The required employer contributions to the excess benefit fund for each plan year shall be an amount, as determined by the actuary, which is necessary to pay the total amount of replacement benefits that are payable pursuant to this section to eligible participants for that plan year.

(2) Such required employer contributions shall be paid into the excess benefit fund from an allocation of the employer contribution amounts paid pursuant to section 13-331 of this subchapter and other applicable provisions of law. Such allocation of employer contribution amounts shall be paid into the excess benefit fund at such times and in such amounts as determined by the actuary.

(3) The benefit liabilities of the excess benefit plan shall be funded on a plan year to plan year basis, provided, however, that any employer contributions to the excess benefit fund, including any investment earnings on such contributions, which are not used to pay replacement benefits for the current plan year shall be used to pay replacement benefits for future plan years.

g. The right of an eligible participant to receive replacement benefits pursuant to this section, and the replacement benefits received pursuant to this section, shall be exempt from any state or municipal tax, and shall not be subject to execution, garnishment, attachment or any other process whatsoever, and shall be unassignable, except as otherwise specifically provided for benefits payable by the pension fund.

h. Nothing contained in this section shall be construed to mean or imply that variable supplements payments from the variable supplements fund established pursuant to subchapter five or six of this chapter constitute pension or retirement allowance payments, or that any such variable supplements fund constitutes a pension or retirement system or fund.

i. Nothing contained in this section shall be construed as affecting in any way the eligibility of any person for variable supplements pursuant to applicable provisions of subchapter five or six of this chapter.

## Subchapter 3: New York Fire Department Life Insurance Fund

### § 13-380 Life insurance fund.

a. The life insurance fund shall consist of all moneys in such fund on the first day of January, nineteen hundred forty.

b. The board of trustees of the New York fire department pension funds shall be the head of the New York fire department life insurance fund and shall have power and authority, from time to time, to establish and amend rules and regulations for the administration and transaction of the business of such fund and for the control and disposition thereof in accordance with the provisions of this code and all laws applicable thereto. The chairperson and first vice-chairperson of such board, respectively, shall be the treasurer and assistant treasurer of the fund. They shall make a semi-annual report verified by the members of such board of the condition of such fund, containing a statement of the accumulated cash and securities in such fund and of all receipts and disbursements for or on account of such fund, together with the names of all beneficiaries and the amount paid to each, and file such report in the office of the comptroller.

c. (1) There shall be deducted from the monthly pay of each firefighter, officer and probationary firefighter of such department, and from the monthly pension of retired members of such department, a monthly sum not exceeding nine dollars, but not less than one dollar, which shall be received and deposited by such board to the credit of the New York fire department life insurance fund, in banks or trust companies to be selected by the board. Such board shall, subject to the provisions of paragraph two of this subdivision, have full power to invest such fund, subject to the terms, conditions, limitations and restrictions imposed by law upon savings banks in the making and disposing of investments by savings banks; and subject to like terms, conditions, limitations and restrictions, such board shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of such funds shall have been invested. The comptroller shall be the custodian of all investments purchased pursuant to the authority vested herein.

(2) The members of the board shall have the same investment powers and power to delegate such powers as are vested by this code and the retirement and social security law in the members of the board of trustees of the fire department pension fund, subchapter two.

d. (1) In case of the death of any active member or of any pensioned or retired member of such department, and so contributing, there shall be paid to the beneficiary or beneficiaries named in a written designation filed with the board of trustees, or if there be no such written designation, then to the surviving spouse, or if there be no surviving spouse, then to the legal representatives of such deceased active member or pensioned and retired member out of the monies so assessed, a sum as hereinafter in this paragraph one provided:

(i) subject to the provisions of subdivision g of this section, the sum of five thousand dollars, if such member was an active member at the time of his or her death; or

(ii) subject to the provisions of subdivision g of this section, the sum of two thousand dollars, if such member was a pensioned or retired member of such department at the time of his or her death.

(2) The assessment, in the discretion of the board, may be increased to not exceeding the sum of nine dollars in each month's pay, or each month's pension or pensioned and retired members of such department.

(3) None but active and retired members of the uniformed force and probationary firefighters shall be eligible to membership in this fund.

e. Such treasurer and assistant treasurer shall give bond for the faithful and honest performance of their respective duties under this subchapter in such sum as may be fixed and with sureties to be approved by the comptroller. Any such bond shall run to the New York fire department life insurance fund.

f. Any member of such fund who is on leave of absence from the fire department for military duty as defined in sections two hundred forty-two and two hundred forty-three of the military law of the state of New York shall continue to be a member of such fund during such military duty. Upon his or her restoration to his or her position in the fire department, there shall be deducted monthly from his or her salary and paid to the New York fire department life insurance fund, such sum, as will over a period of five years, equal the amount which he or she would have been required to contribute if he or she had been continuously employed in the fire department during such period of service, or any part of such amount remaining unpaid at the date of such restoration. In lieu of such deduction, however, such amount or any part thereof may be paid by such member at any time or from time to time while in such service, or, in a lump sum or by larger monthly deductions, after his or her restoration to his or her position in the fire department, or by any other method of deduction which will complete the payment of such amount in a period less than five years from the date of such restoration. In the event such member has failed or shall fail to complete full payment of such amount of contributions remaining due and unpaid within the time herein specified, there shall be deducted monthly from the salary of such member or by any other method of deduction and paid to the New York fire department life insurance fund within a period of eighteen months, such sum as will equal the amount which he or she would have been required to contribute if he or she had been continuously employed in the fire department during such period of service, or any part of such amount remaining unpaid, plus interest at the rate of two and one-half per centum per annum computed from either five years after the date of such restoration or January first, nineteen hundred fifty-three, whichever date is later. In case of death of any member during his or her absence in such service or at any time prior to the full payment by him or her of the contributions due and payable to such fund during his or her absence, his or her beneficiary or beneficiaries or his or her surviving spouse or legal representatives, as the case may be, shall receive the sum required to be paid pursuant to subdivision d or g of this section in the case of the death of an active member, less the amount of such contributions remaining due and unpaid.

g. From time to time, but not longer than every three years, the board of trustees may request the actuary of the fire department pension fund to make

a valuation of the assets and liabilities of the fund in order to determine whether (i) an increase in the sums payable under this section would be consistent with operations of the life insurance fund on a basis whereby the cost of sums payable is met from deductions made pursuant to the provisions of this section from the pay or pensions of members or retired members or assessments made pursuant to the provisions of this section against members or retired members, or (ii) a decrease in sums payable is required in order to maintain the life insurance fund on such basis. If the actuary certifies to the board of trustees that an increase in such sums payable is warranted or that a decrease in such sums payable is required, the board shall, by resolution, increase or decrease such sums payable in accordance with the certification of the actuary. Such resolution and the actuarial data upon which an increase or decrease of sums is justified shall be public information.

## Subchapter 4: Payments to Exempt or Volunteer Associations and Firefighters Home

### § 13-381 Payments to exempt or volunteer firefighters' associations; Queens and Richmond.

- a. Each of the following exempt or veteran volunteer firefighters' associations of the boroughs of Queens and Richmond, to wit:
  1. The exempt firemen's association of the town of Newtown,
  2. The exempt firemen's association, fifth ward, borough of Queens,
  3. The veteran volunteer firemen's association of the village of Jamaica,
  4. The Woodhaven exempt volunteer firemen's association,
  5. The exempt firemen's association of Flushing,
  6. The veteran firemen's association of Long Island city,
  7. The exempt firemen's association of Long Island city,
  8. The exempt firemen's benevolent association of College Point,
  9. The veteran firemen's association of the north shore fire department of Staten Island,
  10. The veteran and exempt volunteer firemen's association of the Edgewater fire department of Staten Island,
  11. The veteran volunteer firemen's association of Tottenville fire department,
  12. The south shore veteran and exempt firemen's association, which on and after the first day of January, nineteen hundred fifty-two shall own, operate and maintain a clubhouse for the benefit of the members of such respective associations, shall be entitled to receive from and shall be paid by the comptroller of the city, in advance of and for each year beginning on the first day of January, the sum of forty dollars for each bona fide member of such association, plus five hundred dollars, or the sum of forty-five hundred dollars, whichever is less, upon presenting to the comptroller on or after the preceding first day of November in each year, a verified statement signed by the duly authorized officers of such association which shall set forth the number of living bona fide members thereof on such preceding first day of November and which shall state further whether or not the association owns, operates and maintains a clubhouse for the benefit of its members.
- b. In determining the membership of such associations, only exempt or honorably discharged volunteer firefighters shall be considered as members.
- c. The fire commissioner shall set aside annually, from the fines and proceeds of suits for penalties brought by him or her under the code which may be collected or paid in from the boroughs of Queens and Staten Island, and from the license fees payable to him or her under the code which may be collected or paid in from such boroughs, a sum of money sufficient to cover the payments required to be made to the exempt or veteran volunteer firefighters' associations as provided in subdivision a of this section.
- d. Upon receipt from the comptroller of a notification as to the amounts required to be paid in any year in order to carry out the provisions of subdivision a of this section, the fire commissioner shall pay such amounts to the comptroller from the revenues set aside by such commissioner pursuant to the provisions of subdivision c of this section.

## Subchapter 5: [Firefighters' Variable Supplements Fund]

### § 13-382 Definitions.

As used in this subchapter, the following words and phrases shall have the following meanings, unless a different meaning is plainly required by the context:

1. "Variable supplements fund". The firefighters' variable supplements fund established by this subchapter.
  - 1-a. "Minimum period". The minimum period of credited service which a member of pension fund subchapter one or pension fund subchapter two is required by law to perform in order to be eligible to retire for service with immediate payability of retirement allowance.
  - 1-b. "Firefighter". A member of either pension fund referred to in subdivision one-a of this section who, at the time of retirement for service by reason of fulfillment of the minimum period, was a firefighter and was not a fire officer as defined in subdivision five of section 13-392 of subchapter six of this chapter.
2. "Association". The uniformed firefighters' association of greater New York.
3. "Fiscal year". Any year commencing with the first day of July and ending with the thirtieth day of June next following.
4. "Board". The board of trustees provided for in section 13-384 of this subchapter.
5. "Pension fund beneficiary".
  - (a) Subject to the provisions of paragraph (b) of this subdivision and except as provided in subdivision e of section 13-385 of this subchapter, any person who receives a retirement allowance by reason of having retired, on or after October first, nineteen hundred sixty-eight, for service (with credit for twenty or more years of service creditable toward the minimum period) as a member of pension fund subchapter one or subchapter two and as a firefighter or fire marshal (uniformed).
  - (b) With respect to benefits payable under this subchapter for calendar years succeeding December thirty-first, nineteen hundred ninety-two, the term "pension fund beneficiary" \*subject to the provisions of paragraph thirteen of subdivision a of section 13-385 of this subchapter) shall include each person who receives a retirement allowance by reason of having retired, on or after October first, nineteen hundred sixty-eight, for service (with credit for twenty or more years of service creditable toward the minimum period) as a member of pension fund subchapter one or pensions fund subchapter two and as a wiper (uniformed).
6. "Variable supplement". Any sum authorized to be paid to a pension fund beneficiary pursuant to the provisions of this subchapter.

7. "Pension fund subchapter two". The New York fire department pension fund subchapter two maintained pursuant to subchapter two of chapter three of this title.

8. "Pension fund subchapter one". The New York fire department pension fund maintained pursuant to subchapter one of chapter three of this title.

### **§ 13-383 Firefighters' variable supplements fund.**

a. There is hereby established a fund, to be known as the firefighters' variable supplements fund. Such fund shall consist of such monies as may be paid thereto from pension fund subchapter two, pursuant to the provisions of sections 13-335 and 13-335.1 of this chapter and all other monies received by such fund from any other source pursuant to law.

b. It is hereby declared by the legislature that the firefighters' variable supplements fund shall not be, and shall not be construed to constitute, a pension or retirement system or fund, and that it shall function as a means whereby payments, not constituting a pension or retirement allowance, shall be made in accordance with the provisions of this subchapter, to eligible pension fund beneficiaries as a supplement to benefits received by them under subchapter one or subchapter two of this chapter. The legislature hereby reserves to the state of New York and itself the right and power to amend, modify or repeal any or all of the provisions of this subchapter.

### **§ 13-384 Board of trustees.**

a. The variable supplements fund shall be administered by a board of trustees which shall, subject to applicable provisions of law and to the prior approval of the board of estimate, from time to time establish rules and regulations for the administration and transaction of the business of such fund and for the control and disposition thereof.

b. Such board shall consist of:

1. The representative of the mayor who is a member of the board of trustees of pension fund subchapter two, who shall be entitled to cast one vote. The mayor may, by instrument in writing filed in his or her office and with the board, designate one or more members of his or her office to act in the place of such representative at meetings of the board, in the event of such representative's absence therefrom.

2. The comptroller of the city, who shall be entitled to cast one vote. Any deputy comptroller authorized, pursuant to subdivision b of section ninety-four of the New York city charter, to act in the place of the comptroller as a member of the board of trustees of pension fund, subchapter two, may be authorized by the comptroller, in accordance with the provisions of such subdivision b, to act in the place of the comptroller as a member of the board.

2-a. The commissioner of finance, who shall be entitled to cast one vote. Such commissioner may, by instrument in writing filed in his or her office and with the board, designate one or more members of his or her office to act in his or her place at meetings of the board, in the event of such commissioner's absence therefrom.

3. Two members of the association designated by it, who shall each be entitled to cast one vote. The members so designated shall be officers of the association who are members of the board of trustees of pension fund subchapter two. Each such designee may at any time, by written authorization filed with the board, authorize any other officer of the association to act in his or her place as a member of the board in the event of such designee's absence from any meeting thereof; provided that the by-laws or constitution of the association provide for the designation of a representative for such purpose.

c. Every act of the board shall be by resolution which shall be adopted only by a vote of at least three-fifths of the whole number of votes authorized to be cast by all of the members of such board.

d. The actuary appointed pursuant to section 13-121 of the code shall be the technical advisor of the board.

e. (1) As of June thirtieth of the nineteen hundred eighty-eight-nineteen hundred eighty-nine base fiscal year and as of June thirtieth of each succeeding base fiscal year, the actuary referred to in subdivision d of this section shall make a valuation of the assets and liabilities of the variable supplements fund in accordance with the requirements of the succeeding paragraphs of this subdivision e.

(2) The actuary shall base such annual valuation of liabilities only (A) upon the persons who, as of each such June thirtieth, are pension fund beneficiaries or persons eligible to receive supplemental benefits pursuant to subdivision e of section 13-385 of this subchapter and (B) upon the persons who, being firefighters or fire marshals (uniformed) in service as of such June thirtieth, may be actuarially expected to retire thereafter as firefighters or fire marshals (uniformed) for service with twenty or more years of service creditable toward the minimum period and (C) with respect to any such valuation for any base fiscal year beginning on or after July first, nineteen hundred ninety-two, also upon the persons who, being wipers (uniformed) in service as of June thirtieth of such base fiscal year beginning on or after such July first, may be actuarially expected to retire thereafter as wipers (uniformed) or firefighters or fire marshals (uniformed) for service with twenty or more years of service creditable toward the minimum period.

(3) The liabilities determined in such valuation shall be equal to the actuarial present value of accumulated plan benefits. The actuarial assumptions used by the actuary in making such annual valuation of liabilities, including assumptions as to interest rate, mortality of pension fund beneficiaries and number of firefighters and fire marshals (uniformed) in service as of June thirtieth who will retire for service as firefighters or fire marshals (uniformed) with twenty or more years of service creditable toward the minimum period, and, with respect to the base fiscal years referred to in subparagraph (C) of paragraph two of this subdivision, the number of wipers (uniformed) in service as of the applicable June thirtieth who will retire for service as wipers (uniformed) or firefighters or fire marshals (uniformed) with twenty or more years of service creditable toward the minimum period, shall be adopted by the board on the recommendation of the actuary.

(4) For the purposes of such annual valuation of the assets of the variable supplements fund, such assets shall be valued at their fair market value as of each such June thirtieth.

f. The fire commissioner shall assign to the board such number of clerical and other assistants as may be necessary for the performance of its functions.

### **§ 13-385 Payment of supplemental benefits.**

a. (1) The variable supplements fund shall pay variable supplements to pension fund beneficiaries in accordance with the provisions of the succeeding paragraphs of this subdivision a.

(2) Subject to the provisions of paragraphs three, four, six and seven of this subdivision a, and the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, for the period from January first, nineteen hundred eighty-eight to December thirty-first, nineteen hundred eighty-nine, variable supplements shall be payable monthly for each month of eligibility therefor under the provisions of this subchapter and the benefit plan and payment resolution as in effect immediately prior to July first, nineteen hundred eighty-eight:

(i) to persons who, having retired on or before June thirtieth, nineteen hundred eighty-eight, were or are pension fund beneficiaries eligible for monthly payments with respect to such period from January first, nineteen hundred eighty-eight to December thirty-first, nineteen hundred eighty-nine, or a part thereof, under such applicable prior law, benefit plan and resolution; and

(ii) to persons who, as of June thirtieth, nineteen hundred eighty-eight, were in service as members of the fire department pension fund subchapter two and who retired during the period from July first, nineteen hundred eighty-eight to November thirtieth, nineteen hundred eighty-nine so as to become pension fund beneficiaries who would be entitled, if such prior law, plan and resolution were in effect for such period, to receive monthly payments thereunder for such period from such July first or a part thereof.

(3) The number of full calendar months in the calendar year nineteen hundred eighty-eight for which each such pension fund beneficiary referred to in paragraph two of this subdivision a is entitled to receive monthly payments under such applicable prior law, plan and resolution in accordance with the provisions of such paragraph two shall be multiplied by one-twelfth of the sum of twenty-five hundred dollars.

(4) The total of the monthly amounts payable to each such pension fund beneficiary for full calendar months in such calendar year under the provisions of such paragraph two shall be subtracted from the applicable product computed pursuant to paragraph three of this subdivision a.

(5) Subject to the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, as soon as practicable after the enactment of the chapter which added this paragraph five of this subdivision a, the variable supplements fund shall pay to each such eligible beneficiary referred to in paragraph two of this subdivision a, an amount equal to the remainder resulting from the subtraction prescribed by paragraph four of this subdivision, as applicable to such pension fund beneficiary.

(6) The number of full calendar months in the calendar year nineteen hundred eighty-nine for which each such pension fund beneficiary referred to in paragraph two of this subdivision a is entitled to receive monthly payments under such applicable prior law, plan and resolution in accordance with the provisions of such paragraph two shall be multiplied by one-twelfth of the sum of three thousand dollars.

(7) The total of the monthly amounts payable to each such pension fund beneficiary for full calendar months in such calendar year under the provisions of such paragraph two shall be subtracted from the applicable product computed pursuant to paragraph six of this subdivision a.

(8) Subject to the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, on or about December fifteenth, nineteen hundred eighty-nine, the variable supplements fund shall pay to each such eligible beneficiary referred to in paragraph two of this subdivision a, an amount equal to the remainder resulting from the subtraction prescribed by paragraph seven of this subdivision, as applicable to such pension fund beneficiary.

(9) Nothing contained in the preceding paragraphs of this subdivision a shall be construed as entitling any pension fund beneficiary therein described to any payment for any month in which the retirement or death of such pension fund beneficiary occurred or occurs.

(10) For calendar years succeeding December thirty-first, nineteen hundred eighty-nine, the variable supplements fund, subject to the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, and subject to the provisions of paragraph thirteen of this subdivision a, shall pay to each pension fund beneficiary who retired prior to July first, nineteen hundred eighty-eight, variable supplements payments as follows:

(i) for each calendar year following calendar year nineteen hundred eighty-nine, but not including the calendar year of the beneficiary's death, a single annual payment to be paid on or about December fifteenth of such year, as follows:

Calendar Year	Supplement
1990	\$ 3,500
1991	\$ 4,000
1992	\$ 4,500
1993	\$ 5,000
1994	\$ 5,500
1995	\$ 6,000
1996	\$ 6,500
1997	\$ 7,000
1998	\$ 7,500
1999	\$ 8,000
2000	\$ 8,500
2001	\$ 9,000
2002	\$ 9,500
2003	\$10,000
2004	\$10,500
2005	\$11,000
2006	\$11,500
2007 and each calendar year thereafter	\$12,000

(ii) for the calendar year of the beneficiary's death (for those pension fund beneficiaries who die on or after February first, nineteen hundred ninety), an amount calculated by multiplying one-twelfth times the supplement applicable to the year of death, as provided in the chart set forth in subparagraph (i) of this paragraph ten, by the number of full calendar months the beneficiary lived during that calendar year prior to the month of his or her death.

(11) For calendar years succeeding December thirty-first, nineteen hundred eighty-nine, the variable supplements fund, subject to the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, and subject to the provisions of paragraph thirteen of this subdivision a, shall pay to each person who, as of June thirtieth, nineteen hundred eighty-eight, was in service as a member of pension fund subchapter two and who retired for service thereafter so as to become a pension fund beneficiary, variable supplements payments as follows:

(i) for the calendar year of retirement (for those beneficiaries who retire on or after January first, nineteen hundred ninety), an amount calculated by multiplying one-twelfth times the supplement applicable to the year of retirement, as provided for in the chart set forth in subparagraph (i) of paragraph ten of this subdivision a, by the number of calendar months elapsing from and including the month next following the month of retirement to the end of such calendar year of retirement, such payment to be made on or about December fifteenth of such year;

(ii) for each calendar year following the year of retirement, but not including the calendar year of the beneficiary's death, a single annual payment equal to the supplement provided for with respect to each such calendar year as set forth in the chart in subparagraph (i) of such paragraph ten, which payment shall be made on or about December fifteenth of such year; and

(iii) for the calendar year of the beneficiary's death (for those beneficiaries who die on or after February first, nineteen hundred ninety), an amount calculated by multiplying one-twelfth times the supplement applicable to the year of death, as provided for in the chart set forth in subparagraph (i) of such paragraph ten, by the number of full calendar months the beneficiary lived during that calendar year prior to the month of his or her death.

(iv) If the retirement and death of a beneficiary occur in the same calendar year, aggregate payments under subparagraphs (i) and (iii) of this paragraph shall be made only in respect to calendar months following the month of retirement and preceding the month of death.

(12) The variable supplements fund, subject to the provisions of subparagraphs (i) and (iii) of paragraph one of subdivision b of this section, and subject to the provisions of paragraph thirteen of this subdivision a, shall pay to each person who becomes a member of pension fund, subchapter two on or after July first, nineteen hundred eighty-eight, and who retires for service so as to become a pension fund beneficiary, variable supplements payments as follows:

(i) (A) subject to the provisions of subparagraph (iv) of this paragraph, for the calendar year of retirement, where such retirement occurs before January first, two thousand eight, an amount calculated by multiplying one-twelfth times the sum of twenty-five hundred dollars by the number of calendar months elapsing from and including the month next following the month of retirement to the end of such calendar year of retirement, such payment to be made on or about December fifteenth of such year;

(B) subject to the provisions of subparagraph (iv) of this paragraph, for the calendar year of retirement, where such retirement occurs on or after January first, two thousand eight, an amount calculated by multiplying one-twelfth times the sum of twelve thousand dollars by the number of calendar months elapsing from and including the month next following the month of retirement to the end of such calendar year of retirement, such payment to be made on or about December fifteenth of such year;

(ii) subject to the provisions of subparagraph (ii-a) of this paragraph, for each calendar year following the year of retirement, but not including the calendar year of the beneficiary's death, a single annual payment to be paid on or about December fifteenth of such year, as follows:

CALENDAR YEAR OF ANNIVERSARY OF RETIREMENT (references hereinafter to "anniversary year" shall mean calendar year of anniversary)	SUPPLEMENT
First anniversary year	The sum of (1) a lower-based component equal to one-twelfth of the base sum of \$2500 multiplied by the number of whole calendar months from and including the first month of such calendar year to and including the month in which the anniversary of the date of retirement occurs, and (2) a higher-based component equal to one-twelfth of the base sum of \$3000 multiplied by the number of months remaining in such calendar year
Second anniversary year and each succeeding anniversary year to and including the nineteenth anniversary year	The sum of a lower-based component and a higher-based component computed pursuant to the formula, above, for the first anniversary year, except that for each such anniversary year succeeding the first, (i) the lower-based component shall be computed on a base sum \$500 higher than the base sum required to be used in computing the lower-based component for the next preceding anniversary year and the higher-based component shall be computed on a base sum \$500 higher than the base sum required to be used in computing the higher-based component for such next preceding anniversary year
Twentieth anniversary year and each succeeding anniversary year	\$12,000

(ii-a) for each calendar year which occurs both after the year of retirement and after December thirty-first, two thousand seven (but not including the calendar year of the beneficiary's death), notwithstanding any provision of subparagraph (ii) of this paragraph which otherwise would be applicable, a single annual payment of twelve thousand dollars, which payment (A) shall be in lieu of any other amount which otherwise would be payable under subparagraph (ii) of this paragraph for such calendar year and (B) shall be made on or about December fifteenth of such year;

(iii) (A) for the calendar year of the beneficiary's death, where such death occurs both after the year of retirement and prior to January first, two thousand eight, an amount calculated in accordance with the formula which would apply to the year of death under subparagraph (ii) of this paragraph twelve if such death had not occurred, but prorated on the basis of the number of full calendar months the beneficiary lived during the year of death prior to the month of his or her death;

(B) for the calendar year of the beneficiary's death, where such death occurs both after the year of retirement and in the calendar year two thousand eight or thereafter, an amount calculated by multiplying one-twelfth of twelve thousand dollars by the number of months the beneficiary lived during the year of death prior to the month of his or her death;

(iv) if the retirement and death of a beneficiary occur in the same calendar year, aggregate payments under subparagraphs (i) and (iii) of this paragraph shall be made only in respect to calendar months following the month of retirement and preceding the month of death.

(13) (i) subject to the provisions of subparagraphs (ii), (iii), (iv) and (v) of this paragraph thirteen, and the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, for the period from January first, nineteen hundred ninety-three to December thirty-first, nineteen hundred ninety-three, variable supplements shall be payable monthly (from the wiper variable supplements assets account) for each month of eligibility therefor under the provisions of section 13-391.1 of this subchapter and the wipers (uniformed) benefit plan and payment resolution as in effect immediately prior to January first, nineteen hundred ninety-three:

(A) to persons who, having retired on or before January first, nineteen hundred ninety-three, were or are pension fund beneficiaries who both (1) qualify as such beneficiaries pursuant to paragraph (b) of subdivision five of section 13-382 of this subchapter and (2) are eligible for monthly payments with respect to such period from January first, nineteen hundred ninety-three to December thirty-first, nineteen hundred ninety-three, or a part thereof, under such applicable prior law, benefit plan and resolution; and

(B) to persons who, as of December thirty-first, nineteen hundred ninety-two, were in service as members of the fire department pension fund subchapter two and who retired during the period from January first, nineteen hundred ninety-three to November thirtieth, nineteen hundred ninety-three, so as to become pension fund beneficiaries who both (1) qualify as such beneficiaries pursuant to paragraph (b) of such subdivision five and (2) would be entitled, if such prior law, plan and resolution were in effect for such period, to receive monthly payments thereunder for such period from such January first or a part thereof.

(ii) The number of full calendar months in the calendar year nineteen hundred ninety-three for which each such pension fund beneficiary referred to



in subparagraph (i) of this paragraph thirteen is entitled to receive monthly payments under such applicable prior law, plan and resolution in accordance with the provisions of such subparagraph (i) shall be multiplied by one-twelfth of the sum of five thousand dollars.

(iii) The total of the monthly amounts payable to each such pension fund beneficiary for full calendar months in such calendar year under the provisions of such subparagraph (i) shall be subtracted from the applicable product computed pursuant to subparagraph (ii) of this paragraph thirteen.

(iv) Subject to the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, on or about December fifteenth, nineteen hundred ninety-three, the variable supplements fund shall pay to each such eligible beneficiary referred to in subparagraph (i) of this paragraph thirteen, an amount equal to the remainder resulting from the subtraction prescribed by subparagraph (iii) of this paragraph, as applicable to such pension fund beneficiary.

(v) Nothing contained in the preceding subparagraphs of this paragraph thirteen shall be construed as entitling any pension fund beneficiary eligible to receive any payment thereunder to any payment for any month in which the retirement or death of such pension fund beneficiary occurred or occurs.

(vi) For calendar years succeeding December thirty-first, nineteen hundred ninety-three, the variable supplements fund, subject to the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, shall pay to each pension fund beneficiary who both (A) retired prior to January first, nineteen hundred ninety-four and (B) qualifies as such a beneficiary pursuant to paragraph (b) of subdivision five of section 13-382 of this subchapter, variable supplements payments in accordance with the terms and conditions set forth in subparagraphs (i) and (ii) of paragraph ten of this subdivision a, as applicable to such calendar years.

(vii) For calendar years succeeding December thirty-first, nineteen hundred ninety-three, the variable supplements fund, subject to the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, shall pay to each person who, as of June thirtieth, nineteen hundred eighty-eight, was in service as a member of pension fund subchapter two and who retired for service, on or after January first, nineteen hundred ninety-four so as to become a pension fund beneficiary who qualified as such a beneficiary pursuant to paragraph (b) of subdivision five of section 13-382 of this subchapter, variable supplements payments in accordance with the terms and conditions set forth in subparagraphs (i), (ii), (iii) and (iv) of paragraph eleven of this subdivision a, as applicable to such calendar years.

(viii) The variable supplements fund, subject to the provisions of subparagraphs (i) and (iii) of paragraph one of subdivision b of this section, shall pay to each person who becomes a member of pension fund, subchapter two on or after July first, nineteen hundred eighty-eight, and who retires for service so as to become a pension fund beneficiary who qualified as such a beneficiary pursuant to paragraph (b) of subdivision five of section 13-382 of this subchapter, variable supplements payments in accordance with the terms and conditions set forth in subparagraphs (i), (ii), (iii) and (iv) of paragraph twelve of this subdivision.

(ix) Nothing contained in the preceding subparagraphs of this paragraph shall be construed as providing for payment of variable supplements for any period prior to January first, nineteen hundred ninety-three. Nothing contained in the preceding paragraphs of this subdivision a or in subdivision five of section 13-382 of this subchapter shall be construed as entitling any person who retired or retires as a wiper (uniformed) to payment of variable supplements under this subdivision a for any period prior to January first, nineteen hundred ninety-three.

b. (1) (i) Subject to the provisions of subparagraphs (ii), (iii) and (iv) of this paragraph one, on or after July first, nineteen hundred eighty-eight, where a pension fund beneficiary is entitled to receive variable supplements payments pursuant to subdivision a of this section, and that beneficiary is also entitled to receive a supplemental retirement allowance or cost-of-living adjustment pursuant to any other provision of law enacted on or after July first, nineteen hundred eighty-eight (hereinafter referred to as "other supplemental retirement allowance"), the amount of such variable supplement payable for a calendar year or a part of such calendar year to such beneficiary shall be reduced by the amount of such other supplemental retirement allowance that is payable to such beneficiary to the extent that such other supplemental retirement allowance is attributable to the same calendar year or part of such calendar year.

(ii) For any pension fund beneficiary referred to in paragraph two or paragraph ten or paragraph eleven of subdivision a of this section, or in any of subparagraphs (i), (vi) and (vii) of paragraph thirteen of such subdivision a, whose variable supplements payments are being reduced pursuant to subparagraph (i) of this paragraph one because such other supplemental retirement allowance is also payable to that beneficiary, the reduction provided for in such subparagraph (i) shall cease as to such beneficiary on the later of (A) the first day of the month next following the month in which such beneficiary attains age sixty-two; or (B) January first, two thousand seven.

(iii) For any pension fund beneficiary referred to in paragraph twelve of subdivision a of this section, or in subparagraph (viii) of paragraph thirteen of such subdivision, whose variable supplements payments are being reduced pursuant to subparagraph (i) of this paragraph one because such other supplemental retirement allowance is also payable to that beneficiary, the reduction provided for in such subparagraph (i) shall cease as to such beneficiary on the later of (A) the first day of the month following the month in which such beneficiary attains age sixty-two; or (B) the earlier of (1) the first day of the month next following the month in which the nineteenth anniversary of the retirement of such beneficiary occurs or (2) January first, two thousand eight.

(iv) In any case where the reduction of variable supplements payments to a pension fund beneficiary has ceased pursuant to subparagraph (ii) or subparagraph (iii) of this paragraph one, that beneficiary, for the purpose of determining his or her eligibility for and the amount of any other supplemental retirement allowance, shall be deemed to have retired on the date of the cessation of such reduction specified in the applicable provisions of such subparagraph (ii) or subparagraph (iii).

(v) The payment of all variable supplements payable pursuant to subdivision a of this section are hereby made obligations of the city, and the city hereby guarantees that such supplements shall be paid to all eligible pension fund beneficiaries.

(2) The legislature hereby declares that the variable supplements authorized by this subchapter and the granting and receipt thereof:

(i) shall not create or constitute membership in a pension or retirement system and shall not create or constitute a contract with any pension fund beneficiary or with any member of pension fund subchapter one or pension fund subchapter two; and

(ii) shall not constitute a pension or retirement allowance or benefit under pension fund subchapter one or pension fund subchapter two or otherwise.

(3) Except as otherwise provided in sections 13-335 and 13-335.1 of this chapter and section 13-391.1 of this subchapter, nothing contained in this subchapter shall create or impose any obligation on the part of pension fund subchapter one or pension fund subchapter two or the funds or monies thereof, or authorize such funds or monies to be appropriated or used for any payment under this article or for any purpose thereof.

c. Pension fund beneficiaries shall be eligible to receive variable supplements pursuant to this subchapter, notwithstanding any other provision of law to the contrary.

d. The monies or assets of the variable supplements fund shall not be used for any purpose, other than payment of variable supplements pursuant to the provisions of this subchapter, except that they may be invested as authorized by section 13-387 of this chapter.

e. Notwithstanding any inconsistent provision of this subchapter or any benefit plan or payment resolution that was in effect prior to July first, nineteen hundred eighty-eight, any original plan discontinued member (as defined in subdivision sixteen of section 13-313 of this chapter) or improved benefits plan discontinued member (as defined in subdivision sixteen-d of such section) who discontinued service as a firefighter on or after July first, nineteen hundred sixty-nine, but prior to July nineteenth, nineteen hundred eighty-nine shall be deemed to be a pension fund beneficiary for purposes of eligibility to receive supplemental benefits under this section for any period of time for which such discontinued member receives payments of a deferred

retirement allowance pursuant to section 13-360 or 13-361 of this chapter, and the date of retirement of such discontinued member, for purposes of applying the requirements of this section which determine the eligibility of a pension fund beneficiary to receive supplemental benefits under this section, shall be deemed to be the first day of the period for which such discontinued member first began receiving payments of a deferred retirement allowance pursuant to section 13-360 or 13-361 of this chapter.

f. For the purposes of paragraphs eleven and twelve of subdivision a of this section, the date of entry into the police pension fund, subchapter two shall be substituted for the date of entry into the fire department pension fund, subchapter two in the event that a pension fund beneficiary has transferred service credit from such police pension fund pursuant to the provisions of section 15-111 of this code.

g. In addition to the payments set forth in paragraphs eleven and twelve of subdivision a of this section, there shall be paid to each pension fund beneficiary, on or about the December fifteenth next succeeding his or her date of retirement, an amount equal to the variable supplements payments, subject to the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, that he or she would have received, had he or she retired on the date of his or her earliest eligibility for service retirement, in the period measured from (1) the later of (i) such earliest eligibility date and (ii) January 1, 2002, and (2) his or her date of retirement.

h. Notwithstanding any other provision of law to the contrary, where a pension fund beneficiary has transferred credit from the New York city employees' retirement system to the fire department pension fund, subchapter two for service rendered in the uniformed force of the New York city department of correction which immediately preceded service in the uniformed force of the fire department, such pension fund beneficiary shall, for the purposes of paragraphs eleven and twelve of subdivision a of this section, have the earliest date of such transferred uniformed correction service substituted for his or her date of entry into the fire department pension fund, subchapter two.

### **§ 13-386 Variable supplements fund; a corporation.**

The variable supplements fund shall have the powers and privileges of a corporation and by its name all of its business shall be transacted, all of its funds invested, all warrants for money drawn and payments made, and all of its cash and securities and other property held.

### **§ 13-387 Trustees of funds; investments.**

a. The members of the board shall be the trustees of the monies received by or belonging to the variable supplements fund pursuant to this subchapter and, subject to the provisions of subdivision b of this section, shall have full power to invest same, subject to the terms, conditions, limitations and restrictions imposed by law upon savings banks in the making and disposing of investments by savings banks; and subject to like terms, conditions, limitations and restrictions, such trustees shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of such monies shall have been invested as well as of the proceeds of such investments and of any monies belonging to such fund.

b. The members of the board shall have the same investment powers and power to delegate such powers as are vested by the code and the retirement and social security law in the members of the board of trustees of the pension fund subchapter two.

### **§ 13-388 Annual reports.**

The board shall publish annually in the City Record a report for the preceding year showing the assets of the variable supplements fund and a statement as to the accumulated cash and securities of such fund as certified by the comptroller, and shall set forth in such report such other facts, recommendations and data as the board may deem pertinent.

### **§ 13-389 Custodian of funds.**

The comptroller shall be custodian of the monies and assets of the variable supplements fund. All such monies and assets included in such fund or which shall hereafter accrue to such fund shall be in his or her custody for the purposes of this subchapter subject to the direction, control and approval of such board as to disposition, investment, management and report. All payments from such fund shall be made by the comptroller upon a voucher signed by the secretary of the board.

### **§ 13-390 Prohibitions with respect to trustees and employees.**

Except as provided in this subchapter, the trustees and employees assigned to the board are prohibited from having any interest, directly or indirectly, in the gains or profits of any investment of the variable supplements fund or as such, directly or indirectly, from receiving any pay or emolument for their services. The trustees and such employees, directly or indirectly, for themselves or as agents or partners of others, shall not borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by such board.

### **§ 13-391 State supervision.**

The superintendent of insurance may examine the affairs of the variable supplements fund with the same powers and jurisdiction as are applicable in the case of an examination of a life insurance company by the superintendent under article three of the insurance law. The variable supplements fund shall be subject to assessment for expenses pursuant to the provisions of section three hundred thirteen of the insurance law, but shall not be subject to assessment under any of the provisions of section three hundred thirty-two of such law.

#### **§ 13-391.1 Variable supplements for wipers for periods included in the period beginning on July first, nineteen hundred eighty-eight and ending on December thirty-first, nineteen hundred ninety-two.**

a. As used in this section, the following terms shall mean and include:

1. "Wiper (uniformed)". A member of pension fund subchapter one or pension fund subchapter two holding the position of wiper (uniformed).
2. "Minimum period". The minimum period of credited service which a member of the fire department pension fund subchapter one or the fire department pension fund subchapter two is required by law to perform in order to be eligible to retire for service with immediate payability of retirement allowance.
3. "Wiper pension fund beneficiary". Any person who receives a retirement allowance by reason of having retired, on or after October first, nineteen hundred sixty-eight, for service (with credit for twenty or more years of service creditable toward the minimum period) as a member of pension fund subchapter one or pension fund subchapter two and as a wiper (uniformed).
4. "Board of Trustees". The board of trustees of the firefighters' variable supplements fund established by section 13-384 of the code, as such section would be in the absence of the enactment of the act which added this section 13-391.1. Subdivisions c and d of such section, as it would be in the absence of such enactment, shall govern the functioning of such board for the purposes of this section.
5. "Wiper variable supplements assets account".

(a) Subject to the provisions of subdivision f of this section, a separate account of assets which (i) shall be available as a source of payment of variable supplements to wiper pension fund beneficiaries pursuant to the provisions of this section and subparagraph (i) of paragraph thirteen of subdivision a of section 13-385 of this subchapter, and (ii) shall consist of the assets hereinafter designated in this paragraph as included in such account and (iii) shall be separately maintained by the firefighters' variable supplements fund (within the assets of such fund), in the custody of the comptroller, for the benefit of wiper pension fund beneficiaries.

(b) As of July first, nineteen hundred eighty-eight, there shall be determined by the board of trustees, on the recommendation of the actuary, the

portion of the assets of the firefighters variable supplements fund which is attributable to persons who are wipers (uniformed) as of such July first and persons who are wiper pension fund beneficiaries as of such July first.

(c) If the board of trustees is unable to make such determination by the required majority vote, such dispute shall be resolved, on the basis of the recommendation of the actuary, pursuant to the procedure set forth in subdivision d of section 13-384 of this subchapter, as such subdivision would be in the absence of the enactment of the act which added this section 13-391.1.

(d) Upon the making of the determination provided for in subparagraphs (b) and (c) of this paragraph five, the assets attributable to such wipers and wiper pension fund beneficiaries, as so determined, shall be credited by the firefighters' variable supplements fund to the wiper variable supplements assets account.

(e) (i) For each base fiscal year included in the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety-two as to which the cumulative earnings factor, as calculated pursuant to section 13-335.2 of this chapter is a positive quantity, the amount of such factor shall be multiplied by a fraction, the numerator of which shall be the total contributions made to pension fund subchapter two with respect to such base fiscal year on behalf of all members of the uniformed force of the fire department who are wipers (uniformed), as of the last day of such base fiscal year, and the denominator of which shall be the total contributions made to such pension fund with respect to such base fiscal year on behalf of all persons who are members of the uniformed force of the fire department as of the last day of such base fiscal year.

(ii) On or before August thirty-first of the current fiscal year with respect to such base fiscal year, pension fund subchapter two shall pay an amount equal to the product of such multiplication into the wipers variable supplements assets account.

b. Subject to the provisions of subdivision f of this section, with respect to any period included in the period beginning on July first, nineteen hundred eighty-eight and ending on December thirty-first, nineteen hundred ninety-two, the entitlement of all wiper pension fund beneficiaries to variable supplements shall be determined pursuant to the provisions of this subchapter five (other than this section), as such provisions would be in the absence of the enactment of chapter five hundred eighty-three of the laws\* nineteen hundred eighty-nine and as such provisions are modified by this section.

c. For the purpose of determining such entitlement, the provisions of such subchapter (other than this section) shall be interpreted and applied in the manner provided for in the succeeding subdivisions of this section. For such purpose, a wiper pension fund beneficiary shall be entitled to receive variable supplements only to the extent provided for in this section.

d. For each month during the period from July first, nineteen hundred eighty-eight to December thirty-first, nineteen hundred eighty-nine, the firefighters' variable supplements fund shall pay to each wiper pension fund beneficiary the monthly variable supplement for which such beneficiary would be eligible under the provisions of this subchapter and the benefit plan and payment resolution as in effect immediately prior to July first, nineteen hundred eighty-eight.

e. Subject to the provisions of subdivision f of this section, for any period included in the period beginning on January first, nineteen hundred ninety and ending on December thirty-first, nineteen hundred ninety-two, the granting of variable supplements to wiper pension fund beneficiaries shall be governed by the provisions of sections 13-385 and 13-391 of this subchapter, as such provisions would be in the absence of the enactment of chapter five hundred eighty-three of the laws of nineteen hundred eighty-nine. For such purpose, the assets providing a basis for a grant of variable supplements to wiper pension fund beneficiaries shall be only the assets in the wipers variable supplements assets account. For any period included in the period beginning on January first, nineteen hundred ninety and ending on December thirty-first, nineteen hundred ninety-two, variable supplements may not be paid to a wiper pension fund beneficiary from any assets other than assets of the wiper variable supplements asset account.

f. On January first, nineteen hundred ninety-four, the wiper variable supplements asset account shall terminate and cease to exist and all assets in such account on such date, and all rights to any moneys due and owing to such account on such date, shall be transferred to and become the property of the variable supplements fund.

g. Nothing contained in the preceding subdivisions of this section shall be construed as preventing the application of the provisions of this section for the purposes of, and in the manner and to the extent prescribed by subparagraphs (i), (ii), (iii), (iv) and (v) of paragraph thirteen of subdivision a of section 13-385 of this subchapter.

## Subchapter 6: [Fire Officers' Variable Supplements Fund]

### § 13-392 Definitions.

As used in this subchapter, the following words and phrases shall have the following meanings, unless a different meaning is plainly required by the context:

1. "Variable supplements fund". The fire officers' variable supplements fund established by this subchapter.
- 1-a. "Minimum period". The minimum period of credited service which a member of pension fund, subchapter one or pension fund, subchapter two is required by law to perform in order to be eligible to retire for service with immediate payability of retirement allowance.
- 1-b. "Firefighter". A member of either pension fund referred to in subdivision one-a of this section who, at the time of retirement for service by reason of fulfillment of the minimum period, was a firefighter and was not a fire officer.
2. "Association". The uniformed fire officers' association of the fire department, city of New York.
3. "Fiscal year". Any year commencing with the first day of July and ending with the thirtieth day of June next following.
4. "Board". The board of trustees provided for in section 13-394 of this chapter.
5. "Fire officer".

(a) Any member of the uniformed force of the fire department holding the position of lieutenant or any position of higher rank in such force and (b) any pilot, marine engineer (uniformed) or assistant marine engineer (uniformed) who is a member of pension fund subchapter two or pension fund subchapter one and (c) any member of either such pension fund holding a position in the fire marshal occupational group above the rank of fire marshal (uniformed).

6. "Pension fund beneficiary". Any person who receives a retirement allowance by reason of having retired, on or after October first, nineteen hundred sixty-eight, for service (with credit for twenty or more years of service creditable toward the minimum period) as a member of pension fund subchapter one or pension fund subchapter two and as a fire officer.

7. "Variable supplement". Any sum authorized to be paid to a pension fund beneficiary pursuant to the provisions of this subchapter.

8. "Pension fund subchapter two". The New York fire department pension fund subchapter two maintained pursuant to subchapter two of chapter three of this title.

9. "Pension fund subchapter one". The New York fire department pension fund maintained pursuant to subchapter one of chapter three of this title.

### § 13-393 Fire officers' variable supplements fund.

a. There is hereby established a fund, to be known as the fire officers' variable supplements fund. Such fund shall consist of such monies as may be paid thereto from pension fund subchapter two, pursuant to the provisions of sections 13-335, 13-335.2 and 13-335.3 of this chapter and all other monies received by such fund from any other source pursuant to law.

b. It is hereby declared by the legislature that the fire officers' variable supplements fund shall not be, and shall not be construed to constitute, a pension or retirement system or fund, and that it shall function as a means whereby payments, not constituting a pension or retirement allowance, shall be made in accordance with the provisions of this subchapter, to eligible pension fund beneficiaries as a supplement to benefits received by them under subchapter one or two of this chapter. The legislature hereby reserves to the state of New York and itself the right and power to amend, modify or repeal any or all of the provisions of this subchapter.

**§ 13-394 Board of trustees.**

a. The variable supplements fund shall be administered by a board of trustees which shall, subject to applicable provisions of law and to the prior approval of the board of estimate, from time to time establish rules and regulations for the administration and transaction of the business of such fund and for the control and disposition thereof.

b. Such board shall consist of:

1. The representative of the mayor who is a member of the board of trustees of pension fund subchapter two, who shall be entitled to cast one vote. The mayor may, by instrument in writing filed in his or her office and with the board, designate one or more members of his or her office to act in the place of such representative at meetings of the board, in the event of such representative's absence therefrom.

2. The comptroller of the city, who shall be entitled to cast one vote. Any deputy comptroller authorized, pursuant to subdivision b of section ninety-four of the New York city charter, to act in the place of the comptroller as a member of the board of trustees of pension fund, subchapter two, may be authorized by the comptroller, in accordance with the provisions of such subdivision b, to act in the place of the comptroller as a member of the board.

2-a. The commissioner of finance, who shall be entitled to cast one vote. Such commissioner may, by instrument in writing filed in his or her office and with the board, designate one or more members of his or her office to act in his or her place at meetings of the board, in the event of such commissioner's absence therefrom.

3. Two members of the association designated by it, who shall each be entitled to cast one vote. The members so designated shall be officers of the association who are members of the board of trustees of pension fund subchapter two. Each such designee may at any time, by written authorization filed with the board, authorize any other officer of the association to act in his or her place as a member of the board in the event of such designee's absence from any meeting thereof; provided that the by-laws or constitution of the association provide for the designation of a representative for such purpose.

c. Every act of the board shall be by resolution adopted only by a vote of at least three-fifths of the whole numbers of votes authorized to be cast by all of the members of such board.

d. The actuary appointed pursuant to section 13-121 of the code shall be the technical adviser of the board.

e. (1) As of June thirtieth of the nineteen hundred ninety-two-nineteen hundred ninety-three fiscal year and as of June thirtieth of each succeeding fiscal year, the actuary referred to in subdivision d of this section shall make a valuation of the assets and liabilities of the variable supplements fund in accordance with the requirements of the succeeding paragraphs of this subdivision e.

(2) The actuary shall base such annual valuation of liabilities only (i) upon the persons who, as of each such June thirtieth, are pension fund beneficiaries and (ii) upon the persons who, being in service as of such June thirtieth as members of pension fund subchapter two, may be actuarially expected to retire thereafter as fire officers for service with twenty or more years of service creditable toward the minimum period.

(3) The liabilities determined in such valuation shall be equal to the actuarial present value of accumulated plan benefits. The actuarial assumptions used by the actuary in making such annual valuation of liabilities, including assumptions as to interest rate, mortality of pension fund beneficiaries and number of members of such pension fund in service as of June thirtieth who will retire as fire officers for service with twenty or more years of service creditable toward the minimum period, shall be adopted by the board on the recommendation of the actuary.

(4) For the purposes of such annual valuation of the assets of the variable supplements fund, such assets shall be valued at their fair market value as of each such June thirtieth.

f. The fire commissioner shall assign to the board such number of clerical and other assistants as may be necessary for the performance of its functions.

**§ 13-395 Payment of supplemental benefits.**

a. (1) The variable supplements fund shall pay variable supplements to pension fund beneficiaries in accordance with the provisions of the succeeding paragraphs of this subdivision a.

(2) For calendar years succeeding December thirty-first, nineteen hundred ninety-two, the variable supplements fund, subject to the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, and subject to the provisions of paragraph five of this subdivision a, shall pay to each pension fund beneficiary who retired prior to July first, nineteen hundred eighty-eight, and to each person who, having been in service as a member of pension fund subchapter two on June thirtieth, nineteen hundred eighty-eight, retired for service prior to January first, nineteen hundred ninety-three so as to become a pension fund beneficiary, variable supplements payments as follows:

(i) for each calendar year following December thirty-first, nineteen hundred ninety-two, but not including the calendar year of the beneficiary's death, a single annual payment to be paid on or about January thirty-first next succeeding such calendar year, as follows:

Calendar Year	Supplement
1993	\$ 5,000
1994	\$ 5,500
1995	\$ 6,000
1996	\$ 6,500
1997	\$ 7,000
1998	\$ 7,500
1999	\$ 8,000
2000	\$ 8,500
2001	\$ 9,000

2002	\$ 9,500
2003	\$10,000
2004	\$10,500
2005	\$11,000
2006	\$11,500
2007 and each calendar year thereafter	\$12,000

(ii) for the calendar year of the beneficiary's death (for those pension fund beneficiaries who die on or after February first, nineteen hundred ninety-three), an amount calculated by multiplying one-twelfth times the supplement applicable to the year of death, as provided in the chart set forth in subparagraph (i) of this paragraph two, by the number of full calendar months the beneficiary lived during that calendar year prior to the month of his or her death.

(3) For calendar years succeeding December thirty-first, nineteen hundred ninety-two, the variable supplements fund, subject to the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, and subject to the provisions of paragraph five of this subdivision a, shall pay to each person who, as of June thirtieth, nineteen hundred eighty-eight, was in service as a member of pension fund subchapter two and who retired for service on or after January first, nineteen hundred ninety-three so as to become a pension fund beneficiary, variable supplements payments as follows:

(i) for the calendar year of retirement, an amount calculated by multiplying one-twelfth times the supplement applicable to the year of retirement, as provided for in the chart set forth in subparagraph (i) of paragraph two of this subdivision a, by the number of calendar months elapsing from and including the month next following the month of retirement to the end of such calendar year of retirement, such payment to be made on or about January thirty-first next succeeding such year;

(ii) for each calendar year following the year of retirement, but not including the calendar year of the beneficiary's death, a single annual payment equal to the supplement provided for with respect to each such calendar year as set forth in the chart in subparagraph (i) of such paragraph two, which payment shall be made on or about January thirty-first next succeeding such calendar year;

(iii) for the calendar year of the beneficiary's death (for those beneficiaries who die on or after February first, nineteen hundred ninety-three), an amount calculated by multiplying one-twelfth times the supplement applicable to the year of death, as provided for in the chart set forth in subparagraph (i) of such paragraph two, by the number of full calendar months the beneficiary lived during that calendar year prior to the month of his or her death; and

(iv) if the retirement and death of a beneficiary occur in the same calendar year, aggregate payments under subparagraphs (i) and (iii) of this paragraph three shall be made only in respect to calendar months following the month of retirement and preceding the month of death.

(4) The variable supplements fund, subject to the provisions of subparagraphs (i) and (iii) of paragraph one of subdivision b of this section, shall pay to each person who becomes a member of pension fund subchapter two on or after July first, nineteen hundred eighty-eight, and who retires for service so as to become a pension fund beneficiary, variable supplements payments as follows:

(i) (A) subject to the provisions of subparagraph (iv) of this paragraph, for the calendar year of retirement, where such retirement occurs before January first, two thousand eight, an amount calculated by multiplying one-twelfth times the sum of twenty-five hundred dollars by the number of calendar months elapsing from and including the month next following the month of retirement to the end of such calendar year of retirement, such payment to be made on or about January thirty-first next succeeding such year;

(B) subject to the provisions of subparagraph (iv) of this paragraph, for the calendar year of retirement, where such retirement occurs on or after January first, two thousand eight, an amount calculated by multiplying one-twelfth times the sum of twelve thousand dollars by the number of calendar months elapsing from and including the month next following the month of retirement to the end of such calendar year of retirement, such payment to be made on or about January thirty-first next succeeding such year;

(ii) subject to the provisions of subparagraph (ii-a) of this paragraph, for each calendar year following the year of retirement, but not including the calendar year of the beneficiary's death, a single annual payment to be paid on or about January thirty-first next succeeding such calendar year for which payment is due under this subparagraph, as follows:

CALENDAR YEAR OF ANNIVERSARY OF RETIREMENT (references hereinafter to "anniversary year" mean calendar year of anniversary)	SUPPLEMENT
First anniversary year	The sum of (1) a lower-based component equal to one-twelfth of the base sum of \$2,500 multiplied by the number of whole calendar months from and including the first month of such calendar year to and including the month in which the anniversary of the date of retirement occurs, and (2) a higher-based component equal to one-twelfth of the base sum of \$3,000 multiplied by the number of months remaining in such calendar year
Second anniversary year and each succeeding anniversary year to and including the nineteenth anniversary year	The sum of a lower-based component and a higher-based component computed pursuant to the formula, above, for the first anniversary year, except that for each such anniversary year succeeding the first, the lower-based component shall be computed on a base sum \$500 higher than the base sum required to be used in computing the lower-based component for the next preceding anniversary year and the higher based component shall be computed on a base sum \$500 higher than the base sum required to be used in computing the higher-based component for such next preceding anniversary year
Twentieth anniversary year and each succeeding anniversary year	\$12,000



(ii-a) for each calendar year which occurs both after the year of retirement and after December thirty-first, two thousand seven (but not including the calendar year of the beneficiary's death), notwithstanding any provision of subparagraph (ii) of this paragraph which otherwise would be applicable, a single annual payment of twelve thousand dollars, which payment (A) shall be in lieu of any other amount which otherwise would be payable under subparagraph (ii) of this paragraph for such calendar year and (B) shall be made on or about January thirty-first next succeeding such calendar year;

(iii) (A) for the calendar year of the beneficiary's death, where such death occurs both after the year of retirement and prior to January first, two thousand eight, an amount calculated in accordance with the formula which would apply to the year of death under subparagraph (ii) of this paragraph four if such death had not occurred, but prorated on the basis of the number of full calendar months the beneficiary lived during the year of death prior to the month of his or her death;

(B) for the calendar year of the beneficiary's death, where such death occurs both after the year of retirement and in the calendar year two thousand eight or thereafter, an amount calculated by multiplying one-twelfth of twelve thousand dollars by the number of months the beneficiary lived during the year of death prior to the month of his or her death; (iv) if the retirement and death of a beneficiary occur in the same calendar year, aggregate payments under subparagraphs (i) and (iii) of this paragraph four shall be made only in respect to calendar months following the month of retirement and preceding the month of death.

(5) (i) In any case where a pension fund beneficiary who is entitled to receive a payment for the nineteen hundred ninety-three calendar year pursuant to paragraph two or paragraph three of this subdivision a has received, prior to the date of enactment of the act which added this paragraph five, a payment for the nineteen hundred ninety-three calendar year pursuant to the provisions of this section and the benefit plan and payment resolution as in effect prior to such date of enactment, such beneficiary shall be entitled to receive such payment provided for by such paragraph two or paragraph three for the calendar year nineteen hundred ninety-three, in addition to such payment received by such beneficiary for such calendar year prior to such date of enactment pursuant to such provisions of such section, benefit plan and resolution.

(ii) In any case where a pension fund beneficiary who is entitled to receive a payment for the nineteen hundred ninety-three calendar year pursuant to paragraph two or paragraph three of this subdivision a became entitled, prior to such date of enactment, to receive a payment for the nineteen hundred ninety-three calendar year pursuant to the provisions of this section and such benefit plan and resolution as in effect prior to such date of enactment, but the variable supplements fund did not, prior to such date of enactment, cause a check for such payment to be issued to such beneficiary, the variable supplements fund (A) shall pay to such beneficiary the amount to which he or she became entitled, prior to such date of enactment, to receive for the nineteen hundred ninety-three calendar year pursuant to the provisions of such section, benefit plan and resolution (which payment shall be made at the time prescribed by such benefit plan and resolution), and (B) in addition, shall pay to such beneficiary, on or about January thirty-first, nineteen hundred ninety-four, the sum to which he or she is entitled under the provisions of such paragraph two or paragraph three of this subdivision for the nineteen hundred ninety-three calendar year.

(iii) In any case where, if the act which added this paragraph five had not been enacted, a pension fund beneficiary who is entitled to receive a payment for the nineteen hundred ninety-three calendar year pursuant to paragraph three of this subdivision a would have become entitled, by reason of retirement on or after such date of enactment, to receive a payment for the nineteen hundred ninety-three calendar year pursuant to the provisions of this section and the benefit plan and payment resolution as in effect prior to such date of enactment, the variable supplements fund (A) shall pay to such beneficiary the amount which he or she would have become entitled to receive for the nineteen hundred ninety-three calendar year pursuant to the provisions of such section, benefit plan and resolution if such act had not been enacted (which payment shall be made at the time prescribed by such benefit plan and resolution) and (B) in addition, shall pay to such beneficiary, on or about January thirty-first, nineteen hundred ninety-four, the sum to which he or she is entitled under the provisions of such paragraph three of this subdivision for the nineteen hundred ninety-three calendar year.

b. (1) (i) Subject to the provisions of subparagraphs (ii), (iii) and (iv) of this paragraph one, on or after January first, nineteen hundred ninety-three, where a pension fund beneficiary is entitled to receive variable supplements payments pursuant to subdivision a of this section, and that beneficiary is also entitled to receive a supplemental retirement allowance or a cost-of-living adjustment pursuant to any other provision of law enacted on or after January first, nineteen hundred ninety-three (hereinafter referred to as "other supplemental retirement allowance"), the amount of such variable supplement payable for a calendar year or a part of such calendar year to such beneficiary shall be reduced by the amount of such other supplemental retirement allowance that is payable to such beneficiary to the extent that such other supplemental retirement allowance is attributable to the same calendar year or part of such calendar year.

(ii) For any pension fund beneficiary referred to in paragraph two or paragraph three of subdivision a of this section, whose variable supplements payments are being reduced pursuant to subparagraph (i) of this paragraph one because such other supplemental retirement allowance is also payable to that beneficiary, the reduction provided for in such subparagraph (i) shall cease as to such beneficiary on the later of (A) the first day of the month next following the month in which such beneficiary attains age sixty-two; or (B) January first, two thousand seven.

(iii) For any pension fund beneficiary referred to in paragraph four of subdivision a of this section, whose variable supplements payments are being reduced pursuant to subparagraph (i) of this paragraph one because such other supplemental retirement allowance is also payable to that beneficiary, the reduction provided for in such subparagraph (i) shall cease as to such beneficiary on the later of (A) the first day of the month next following the month in which such beneficiary attains age sixty-two; or (B) the earlier of (1) the first day of the month next following the month in which the nineteenth anniversary of the retirement of such beneficiary occurs or (2) January first, two thousand eight.

(iv) In any case where the reduction of variable supplements payments to a pension fund beneficiary has ceased pursuant to subparagraph (ii) or subparagraph (iii) of this paragraph one, that beneficiary, for the purpose of determining his or her eligibility for and the amount of any other supplemental retirement allowance, shall be deemed to have retired on the date of the cessation of such reduction specified in the applicable provisions of such subparagraph (ii) or subparagraph (iii).

(v) The payments of all variable supplements payable pursuant to subdivision a of this section are hereby made obligations of the city, and the city hereby guarantees that such supplements shall be paid to all eligible pension fund beneficiaries; provided that nothing contained in the preceding provisions of this subparagraph (v) shall be construed as making such guarantee applicable to any payment which paragraph five of such subdivision directs to be made in an amount determined pursuant to the provisions of this section and the benefit plan and payment resolution as in effect prior to the date of enactment of the act which added this subparagraph (v).

(2) The legislature hereby declares that the variable supplements authorized by this subchapter and the granting and receipt thereof:

(i) shall not create or constitute membership in a pension or retirement system and shall not create or constitute a contract with any pension fund beneficiary or with any member of pension fund subchapter one or pension fund subchapter two; and

(ii) shall not constitute a pension or retirement allowance or benefit under pension fund subchapter one or pension fund subchapter two or otherwise.

(3) Except as otherwise provided in sections 13-335, 13-335.2 and 13-335.3 of this chapter, nothing contained in this subchapter shall create or impose any obligation on the part of pension fund subchapter one or pension fund subchapter two or the funds or monies thereof, or authorize such funds or moneys to be appropriated or used for any payment under this subchapter or for any purpose thereof.

c. Pension fund beneficiaries shall be eligible to receive variable supplements pursuant to this subchapter, notwithstanding any other provision of law to the contrary.

d. The monies or assets of the variable supplements fund shall not be used for any purpose, other than payment of variable supplements pursuant to

the provisions of this subchapter, except that they may be invested as authorized by section 13-397 of this chapter.

e. In addition to the payments set forth in paragraphs three and four of subdivision a of this section, there shall be paid to each pension fund beneficiary, on or about the January thirty-first of the calendar year next succeeding his or her date of retirement, an amount equal to the variable supplements payments, subject to the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, that he or she would have received, had he or she retired on the date of his or her earliest eligibility for service retirement, in the period measured from (1) the later of (i) such earliest eligibility date and (ii) January 1, 2002, and (2) his or her date of retirement.

#### **§ 13-396 Variable supplements fund; a corporation.**

The variable supplements fund shall have the powers and privileges of a corporation and by its name all of its business shall be transacted, all of its funds invested, all warrants for money drawn and payments made, and all of its cash and securities and other property held.

#### **§ 13-397 Trustees of funds; investments.**

a. The members of the board shall be the trustees of the monies received by or belonging to the variable supplements fund pursuant to this subchapter and, subject to the provisions of subdivision b of this section, shall have full power to invest same, subject to the terms, conditions, limitations and restrictions imposed by law, upon savings banks in the making and disposing of investments by savings banks; and subject to like terms, conditions, limitations and restrictions, such trustees shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of such monies shall have been invested as well as of the proceeds of such investments and of any monies belonging to such fund.

b. The members of the board shall have the same investment powers and power to delegate such powers as are vested by the code and the retirement and social security law in the members of the board of trustees of the pension fund, subchapter two.

#### **§ 13-398 Annual reports.**

The board shall publish annually in the City Record a report for the preceding year showing the assets of the variable supplements fund and a statement as to the accumulated cash and securities of such fund as certified by the comptroller, and shall set forth in such report such other facts, recommendations and data as the board may deem pertinent.

#### **§ 13-399 Custodian of funds.**

The comptroller shall be custodian of the monies and assets of the variable supplements fund. All such monies and assets included in such fund or which shall hereafter accrue to such fund shall be in his or her custody for the purposes of this subchapter subject to the direction, control and approval of such board as to disposition, investment, management and report. All payments from such fund shall be made by the comptroller upon a voucher signed by the secretary of the board.

#### **§ 13-400 Prohibitions with respect to trustees and employees.**

Except as provided in this subchapter, the trustees and employees assigned to the board are prohibited from having any interest, directly or indirectly, in the gains or profits of any investment of the variable supplements fund or as such, directly or indirectly, from receiving any pay or emolument for their services. The trustees and such employees, directly or indirectly, for themselves or as agents or partners of others, shall not borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by such board.

#### **§ 13-401 State supervision.**

The superintendent of insurance may examine the affairs of the variable supplements fund with the same powers and jurisdiction as are applicable in the case of an examination of a life insurance company by the superintendent under article three of the insurance law. The variable supplements fund shall be subject to assessment for expenses pursuant to the provisions of section three hundred thirteen of the insurance law, but shall not be subject to assessment under any of the provisions of section three hundred thirty-two of such law.