

## Chapter 2: Police Pension Funds

### Subchapter 1: [Police Department, Subchapter One Pension Fund]

#### § 13-201 Definitions.

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

1. "Member."

(a) A person who was a member of the police force in the department at the time when this section shall take effect.

(b) In any case where a member, while serving as a member of the police force, is appointed police commissioner or a deputy police commissioner, he or she shall, while serving as police commissioner or deputy police commissioner, continue to be a member of the pension fund. For the purposes of this subchapter, a member whose membership is continued pursuant to this paragraph (b) or whose membership is restored pursuant to paragraph one of subdivision f of section 13-206 of this subchapter, shall during the period of such continuance or restoration of membership, as the case may be, be deemed to be a member of the police force and the police department and his or her service as police commissioner or deputy police commissioner during such period shall be deemed to be service in such force and department.

2. "Board of trustees". The board of trustees provided for in section 13-202 of this subchapter.

#### § 13-202 Board of trustees.

a. The police pension fund shall be administered by a board of trustees which shall, subject to the 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. Such board shall consist of:

1. The police commissioner who shall be chairperson of the board and who shall be entitled to cast one and one-half votes.
2. The comptroller of the city who shall be entitled to cast one and one-half votes.
3. A representative of the mayor who shall be appointed by the mayor and who shall be entitled to cast one and one-half votes.
4. The commissioner of finance of the city who shall be entitled to cast one and one-half votes.
5. The president of the patrolmen's benevolent association of the city of New York who shall be entitled to cast one vote.
6. The first vice-president of the patrolmen's benevolent association of the city of New York who shall be entitled to cast one vote.
7. The second vice-president of the patrolmen's benevolent association of the city of New York who shall be entitled to cast one vote.
8. The chairperson of the board of trustees of the patrolmen's benevolent association of the city of New York who shall be entitled to cast one vote.
9. The president of the captains' endowment association of the police department of the city of New York who shall be entitled to cast one-half vote.
10. The president of the lieutenants' benevolent association, police department, city of New York who shall be entitled to cast one-half vote.
11. The president of the sergeants' benevolent association of the city of New York who shall be entitled to cast one-half vote.
12. The president of the detectives' endowment association of the 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, or to invest the same in obligations issued by the city of New York, obligations issued by the state of New York or obligations issued by the United States of America, as such board of trustees may deem most advantageous for the object of 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 police commissioner shall assign to the board of trustees a sufficient number of clerical and other assistants to permit the board efficiently to exercise its powers and to perform its 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 through twelve, respectively, of subdivision a of this section, shall be a member 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 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 13-213.1 of this subchapter to the board of trustees of the police pension fund provided for in subchapter two of this chapter.

#### § 13-203 Composition of pension fund.

The police pension fund shall consist of the following:

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 imposed by the police department, from time to time, upon or against any member or members.
3. All rewards, fees, gifts, testimonials and emoluments that may be presented, paid or given to any member on account of police services, except such as have been or shall be allowed by the police commissioner to be retained by such members.
4. All moneys received from the property clerk pursuant to sections 14-140 and 10-106 of the code, and all moneys realized, derived or received from the sale of any condemned, unfit or unserviceable property belonging to or in the possession or under the control of the police department.
5. All moneys, pay, compensation or salary, or any part thereof, forfeited, deducted or withheld from any member or members on account of absence for any cause, lost time, sickness or other disability, physical or mental, to be paid semi-monthly by the comptroller to such fund.

6. All moneys received or derived from the granting or issuing of licenses to have and possess pistols or revolvers in dwellings or places of business, or to have and carry concealed a pistol or revolver in such city pursuant to subsection a of section 10-131 of the code.

7. All moneys received or derived from the granting or issuing of permits or the granting of permission to conduct masked or fancy dress balls in the city. Such balls shall be conducted only upon condition that a license fee therefor of not less than five dollars nor more than one hundred dollars shall first be paid to such department for the benefit of such fund.

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 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 within thirty days after this section shall take effect, his or her election to contribute on the basis of retirement either after twenty years of service or after twenty-five years of service.

c. In the case of a member receiving extra pay, salary or compensation for additional duties assigned to him or her, the comptroller shall make such semi-monthly deductions on the basis of such extra pay, salary or compensation unless such member shall signify in writing to the board of trustees his or her election to have his or her benefits and obligations computed on the basis of the pay, salary or compensation received by him or her prior to the time when he or she first received such extra compensation. Members who heretofore or are now receiving such extra pay, salary or compensation shall so signify within thirty days after the first receipt thereof. If any member has or shall have received extra pay, salary or compensation for an aggregate of five years or more or for the period of time fixed by section 14-114 of this code, the comptroller shall continue to make such semi-monthly deductions on the basis of such extra pay, salary or compensation, notwithstanding that such member does not continue to receive it, unless such member shall signify to the board of trustees in writing his or her election to have his or her benefits and obligations computed on the basis of the pay, salary or compensation actually received by him or her. Additional deductions made pursuant to this subdivision shall entitle such member to a pension on the basis of such extra pay, salary or compensation. The provisions of this subdivision shall not diminish or impair the benefits provided in subdivision c of section 14-114 of this code.

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 police 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. Such board of trustees is authorized, empowered and entitled to take and hold any and all gifts or bequests which may be made to such fund or to any police pension fund existing prior to the first day of January, eighteen hundred ninety-eight in any of the territory now constituting the city of New York.

11. 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 13-213.1 of this subchapter.

### **§ 13-204 Reduction of contributions by members.**

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 deductions from the semi-monthly pay, salary or compensation of each member made pursuant to the provisions of this subchapter shall be reduced by two and one-half per cent of such pay, salary or compensation. Such executive order may also provide for 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 adoption of such executive order. The benefits provided pursuant to this section shall apply only to members of the pension fund who are in active service in the police force on or after the date of adoption of such executive order.

### **§ 13-205 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 deductions from the semi-monthly pay, salary or compensation of each member made pursuant to the provisions of this subchapter shall be reduced by two and one-half per cent of such pay, salary or compensation.

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 deductions from the semi-monthly pay, salary or compensation of each member made pursuant to the provisions of this subchapter shall be reduced by two and one-half per cent of such pay, salary or compensation.

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 deductions from the semi-monthly pay, salary or compensation of each member made pursuant to the provisions of this subchapter shall be reduced by two and one-half per cent of such pay, salary or compensation.

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 deductions from the semi-monthly pay, salary or compensation of each member made pursuant to the provisions of this subchapter shall be reduced by two and one-half per cent of such pay, salary or compensation.

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 to June thirtieth, nineteen hundred sixty-eight, the deductions from the semi-monthly pay, salary or compensation of each member made pursuant to the provisions of this subchapter shall be reduced by two and one-half per cent of such pay, salary or compensation.

(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 to June thirtieth, nineteen hundred seventy-one, the deductions from the semi-monthly pay, salary or compensation of each member made pursuant to the provisions of this subchapter shall be reduced by five per cent of such pay, salary or com-

pensation.

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 deductions from the semi-monthly pay, salary or compensation of each member made pursuant to the provisions of this subchapter shall be reduced by five per cent of such pay, salary or compensation.

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 deductions from the semi-monthly pay, salary or compensation of each member made pursuant to the provisions of this subchapter shall be reduced by five per cent of such pay, salary or compensation.

### **§ 13-206 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 pension as provided in this section. In every case such board shall determine the circumstances thereof, and such pension 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 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 salary of such member at the date of his or her retirement.

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 salary of such member 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 nine of section 13-203 of this subchapter, 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 13-221 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 police force, the member so disabled shall be relieved by the commissioner from active service and assigned to the performance of such light duties as a police surgeon 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. 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 nine of section 13-203 of this subchapter, 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 13-221 of this chapter, 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 salary of 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, but shall remain a member of the police force, subject to the rules governing such force, and be assigned to the performance of such light duties as a police surgeon 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 pension to be paid to such member shall be one-half of the annual salary of 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 salary of 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, but shall remain a member of the police force, subject to the rules governing such force, and be assigned to the performance of such light duties as a police surgeon 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 pension to be paid to such member shall be one-third of the annual salary of 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 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 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 of his or her full salary at the date of his or her retirement from 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. (1) In any case where a person who retired for service as a member of the pension fund is subsequently appointed police commissioner or a deputy police commissioner, his or her pension shall cease. During his or her service as police commissioner or deputy police commissioner he or she shall again be a member of the pension fund and shall contribute thereto at the rate of contribution applicable to him or her at the time of his or her prior retirement.

(2) Subject to the provisions of paragraphs three and four of this subdivision f, upon his or her subsequent retirement as police commissioner or deputy police commissioner, as the case may be, he or she shall receive the pension, if any, which he or she was receiving or entitled to receive immediately prior to his or her appointment as police commissioner or deputy police commissioner, and in addition, a further pension of one-sixtieth of his or her average annual salary earned during his or her credited service after restoration to membership pursuant to paragraph one of this subdivision f, multiplied by the number of years of his or her credited service during such restoration.

(3) Subject to the provisions of paragraph four of this subdivision f, where any such retiree who is appointed police commissioner or deputy police commissioner shall have earned at least three years of member credit for service during the period of his or her restoration to membership pursuant to paragraph one of this subdivision f, 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 police commissioner or deputy police commissioner, as the case may be, he or she shall be credited in addition with all service during such period of restoration to membership.

(4) Such total service credit to which he or she was entitled at the time of his or her earlier retirement shall be credited as provided in paragraph three of this subdivision f only in the event that he or she returns to the pension fund with regular interest the actuarial equivalent of the amount of the amount of the pension 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 pension.

g. 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 the members of such board.

h. 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.

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.

j. 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.

### **§ 13-207 [Minimum disability pension.]**

a. Notwithstanding the provisions of section 13-206 of this subchapter, in any case where a pension was or is awarded under the provisions of such 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, such member shall be entitled to a pension of not less than three-fourths the annual salary or compensation payable to a first grade patrolman as of July first, nineteen hundred and sixty-five. In the case of any member receiving a pension less than three-fourths the annual salary or compensation of a first grade patrolman as of July first, nineteen hundred and sixty-five his or her pension shall be increased by such amount which when added to the lesser pension shall equal three-fourths the annual salary or compensation of a first grade patrolman as of July first, nineteen hundred and 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 to the pension which would otherwise be payable under section 13-206 of this subchapter.

c. The pension payable under this section shall be in lieu of any pension which would otherwise be payable to the member under section 13-206 of this subchapter.

### **§ 13-208 Extra service pension credit.**

Except as provided in subdivisions a and b of section 13-206 of this subchapter:

1. A member who shall have elected to contribute on the basis of retirement after twenty years of service, upon completing such period of service, may continue in the service. In such event and upon retirement for service, there shall be added to his or her annual service pension one-sixtieth of the salary received at the date of retirement for each completed additional year of service, during which years such deductions shall have been made. Any such member upon completing twenty-five years of service, shall have such deductions made at the rate of five per cent, in which event and upon retirement for service, such additional amounts also shall be added to his or her annual service pension for the years during which deductions shall have been made at the rate of five per cent.

2. A member who shall have elected to contribute on the basis of retirement after twenty-five years of service, upon completing such period of service, may continue in the service. In such event there shall be added to his or her annual service pension upon retirement for service one-sixtieth of the salary received at the date of retirement for each completed additional year of service, during which years such deductions shall have been made at the rate of five per cent.

### **§ 13-209 Payment of pensions; death.**

a. The board of trustees of the pension fund shall pay a pension out of such fund to the spouse, child or children or dependent parent or parents of any

deceased member of the police force in such department, if the death of such member occur during his or her service in such police force, or after he or she was retired from service in such 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 pension 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 spouse who shall remarry, after such remarriage, or to any child after it shall have reached the age of eighteen years. In lieu of the aforementioned pension, when a member of the force dies while in active service, his or her beneficiary shall be paid the accumulated deductions of such deceased member if written application therefor be made to the board of trustees by such beneficiary.

b. In case any member in the police 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 spouse of such member an annual sum 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 of such member at the date of his or her decease. If such member, dying, leaves no 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 sum as a pension out of such fund, in an amount not to exceed one-half of the salary of such member at the date of his or her decease. The amount of such pension to any spouse shall cease upon his or her death. Such annual pension shall cease upon the death or marriage of such child, or upon its reaching the age of eighteen years. If such payment to the 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 spouse surviving him or her.

c. The board of trustees, subject to the separate approval of the mayor, may presume a member or former member of the pension fund to be dead, if such member has disappeared and has been absent for three years or more, unless there be affirmative evidence that he or she was alive within that time. In the case of a former member who has disappeared, has been absent for three years or more and who was last known to be alive while a member of the police force in the department, the board of trustees, subject to the separate approval of the mayor, may presume that death occurred while such former member was a member of such police force, unless there be affirmative evidence that he or she was alive after his or her separation from service in the police force. If in its judgment the evidence warrants such determination, the board of trustees, subject to the separate approval of the mayor, may make an additional and separate finding that such presumed death occurred while such member or former member was actually engaged in the performance of duty. In the event that the board of trustees, upon approval of the mayor, shall take action pursuant to a presumption of death with respect to the disappearance of a former member of the police force, the police commissioner shall have power to revoke any disciplinary action, with respect to the absence of such former member of the police force, which was taken by him or her after the date when such former member is presumed to have died. Notwithstanding any other provision of law, the board of trustees and the police commissioner shall have power to revoke or rescind any action taken by them, respectively, pursuant to this subdivision, with or without cause at any time prior to five years from the date of the disappearance of a member or former member and thereafter they may take action and exercise such power in the event that they respectively shall determine, on the basis of affirmative evidence submitted to them, that any member or former member was alive after the date he or she was presumed to be dead. Upon the expiration of a period of five years from the date of the disappearance of a member or former member, continuation of the payment of a pension pursuant to this section based upon the presumed death of such member or former member shall be conditioned upon a determination by a court of competent jurisdiction, in an action or special proceeding brought by a beneficiary receiving all or part of such pension or any other member of the family of such member or former member pursuant to the provisions of section 21.7 of the estates, powers and trusts law, that such member or former member is presumed to be dead. Such determination shall be deemed conclusive for the purposes of this section, unless such member or former member thereafter shall be found to be alive.

d. (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 d, 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 first grade patrolman 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 d 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 to 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 d shall be in lieu of any pension which would otherwise be payable on or after January first, nineteen hundred and 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 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.

### **§ 13-210 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 five per cent. or six per cent. deductions without interest made from his or her pay, salary or compensation pursuant to subdivision nine of section 13-203 of this subchapter.

b. In the event that a member shall die before retirement and a pension is not paid by the board of trustees pursuant to section 13-209 of this subchapter, the amount of the five per cent. or six per cent. deductions without interest made from the pay, salary or compensation of such member pursuant to subdivision nine of section 13-203 of this subchapter shall be paid by such board to the beneficiary or beneficiaries, as such member shall have nominated by written designation duly acknowledged 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 designation duly acknowledged.

### **§ 13-211 Time of payment of pensions.**

All pensions payable out of the police pension fund shall be paid in equal monthly installments, each one-twelfth, in amount, of the sum allowed as the annual pension 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.

### **§ 13-212 Exemption from tax and legal process.**

The right of a person to a pension, an allowance, to the return of contributions, the pension itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this subchapter and the moneys in the fund provided for by this subchapter, 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 this article specifically provided.

### **§ 13-213 False swearing.**

Every person who knowingly or wilfully in anywise procures the making or presentation of any false or fraudulent affidavit or affirmation concerning any claim for pension or payment thereof shall in every such case forfeit a sum not exceeding two hundred fifty dollars, to be sued for and recovered by and in the name of such board of trustees, which when recovered, shall be paid to and thereupon become a part of such fund. Any person who shall wilfully

swear falsely in any oath, or affirmation, in obtaining or procuring any pension or payment thereof, under the provisions of this subchapter, shall be guilty of perjury.

### **§ 13-213.1 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 police pension fund provided for in this subchapter.

2. "Pension fund, subchapter two". The police pension fund provided for in subchapter two of this chapter.

3. "Police 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 provisions 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 13-203 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 New York city charter.

\* Editor's note: so in original.

d. 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, 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 police subchapter one beneficiaries, shall be transferred to and assumed by pension fund, subchapter two, and such benefits payable to police 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 police subchapter one beneficiaries shall be transferred to and assumed by pension fund, subchapter two, and such supplemental benefits payable to such police 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 13-228 of this chapter or the provisions of paragraph six of subdivision b of such section 13-228 of this chapter or the provisions of paragraph six of subdivision b of such section 13-228, 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: [Police Department, Subchapter Two Pension Fund]**

### **§ 13-214 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 police pension fund provided for in this subchapter.

2. "Medical board" shall mean the board of physicians provided for in section 13-223 of this subchapter.

3. "City service" shall mean service in the police force in the department and shall include service credit acquired by transfer pursuant to section forty-three of the retirement and social security law or by transfer, from another pension or retirement system, of funds actuarially determined in a manner similar to that provided by such section of the retirement and social security law. In any case where a member, after becoming eligible to retire for service, is appointed police commissioner or deputy police commissioner, and in any case where a person who retired for service as a member of the pension fund is thereafter appointed police commissioner or deputy police commissioner, his or her service as police commissioner or deputy police commissioner shall constitute city service.

4. "Member" shall mean any person included in the membership of the pension fund as provided in section 13-215 of this subchapter.

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" shall mean the average annual compensation earnable by a 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.

7. "Accumulated deductions" shall mean the sum of all the amounts, deducted from the compensation of a 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.

8. (a) Except as otherwise provided in paragraphs (b), (c), (d), (e) and (g) of this subdivision, "regular interest", in the cases of persons who are members on the thirtieth day of June, nineteen hundred forty-seven, shall mean interest at four per centum per annum, compounded annually, and in the cases of persons becoming members thereafter, shall mean interest at three per centum per annum, compounded annually to and including the thirtieth day of June, nineteen hundred sixty-five, and interest at four per centum per annum, compounded annually, from and after the first day of July, nineteen hundred sixty-five, except that (i) as to the annuity savings fund and reserve-for-increased-take-home-pay of persons becoming members after June thirtieth, nineteen hundred forty-seven, the term "regular interest", for the period from July first, nineteen hundred sixty-five through December thirty-first, nineteen hundred sixty-seven, shall mean three per centum per annum compounded annually, and (ii) in the cases of persons becoming members after June thirtieth, nineteen hundred forty-seven, whose city-service has been or shall be terminated by death, retirement, resignation, dismissal, or otherwise on or before June thirtieth, nineteen hundred sixty-seven, the term "regular interest" shall mean interest at three per centum per annum, compounded annually, to and including the date of such termination.

(b) The provisions of paragraph (a) of this subdivision shall not apply to any actuarial valuation, determination or appraisal which is made pursuant to

this chapter and which is used to determine the amount of any contribution required to be paid by the city or other public employer into the contingent reserve fund of the pension fund in the nineteen hundred seventy-seven-nineteen hundred seventy-eight fiscal year of the city or any subsequent fiscal year thereof.

(c) (i) Subject to the provisions of subparagraph (ii) of paragraph (f) of this subdivision, for the purpose of any actuarial valuation, determination or appraisal which is made pursuant to this chapter and which is used to determine the amount of any contribution required to be paid, by the city or other public employer into the contingent reserve fund of the pension fund in the nineteen hundred seventy-seven-nineteen hundred seventy-eight fiscal year of the city and in each succeeding fiscal year thereof to and including the nineteen hundred seventy-nine-nineteen hundred eighty fiscal year thereof, "regular interest" shall mean interest at five and one-half per centum per annum, compounded annually.

(ii) Subject to the provisions of subparagraph (ii) of paragraph (f) of this subdivision, and except as otherwise provided in paragraphs (1) and (4) of subdivision b of section 13-228 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 chapter and which is used to determine the amount of any contribution required to be paid by the city or other public employer into the contingent reserve fund of the pension fund in the nineteen hundred eighty-nineteen hundred eighty-one fiscal year of the city and in each succeeding fiscal year thereof to and including the nineteen hundred eighty-one-nineteen hundred eighty-two fiscal year thereof, "regular interest" shall mean interest at the rate of seven and one-half per centum per annum, compounded annually.

(iii) Subject to the provisions of subparagraph (ii) of paragraph (f) of this subdivision, and except as otherwise provided in paragraphs (1) and (4) of subdivision b of section 13-228 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 (or other obligors required to pay public employer contributions on account of members) 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.

(iv) Subject to the provisions of subparagraph (ii) of paragraph (f) of this subdivision, and except as otherwise provided in paragraphs (1) and (4) of subdivision b of section 13-228 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 (or other obligors required to pay public employer contributions on account of members) 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.

(d) Subject to the provisions of subparagraph (ii) of paragraph (f) of this subdivision, and except as otherwise provided in paragraphs (1) and (4) of subdivision b of section 13-228 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 or other public employer into the contingent reserve fund of the pension fund in the city's nineteen hundred ninety-nineteen hundred ninety-one fiscal year 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 this title.

(e) 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 (d) of this subdivision.

(f) (i) Subject to the provisions of subparagraph (c) of paragraph two of subdivision b of section 13-228 of this subchapter, nothing contained in paragraphs (b), (c), (d) and (e) of this subdivision shall be construed as prescribing for the purpose of crediting interest to individual accounts in the annuity savings fund or to reserves-for-increased-take-home-pay or for any other purpose besides that specified in such paragraphs, a rate of regular interest other than as prescribed in paragraph (a) or paragraph (g) of this subdivision.

(ii) Subject to the provisions of section 13-638.2 of this title, nothing contained in paragraphs (c) and (d) of this subdivision shall be construed as requiring the original unfunded accrued liability contribution, as defined in subparagraph (a) of paragraph (3) of subdivision b of section 13-228 of this subchapter, and the revised unfunded accrued liability contribution, as defined in subparagraph (b) of such paragraph (3), and the nineteen hundred eighty unfunded accrued liability adjustment, as defined in subparagraph (c) of such paragraph (3), and the nineteen hundred eighty-two unfunded accrued liability adjustment, as defined in subparagraph (d) of such paragraph (3) to be determined in any manner other than as prescribed in such subparagraphs. Subject to the provisions of section 13-638.2 of this title, nothing contained in paragraphs (c) and (d) of this subdivision shall be construed as requiring any balance sheet liability or balance sheet liability contribution computed pursuant to the provisions of paragraph (4) of subdivision b of such section 13-228 of this subchapter to be determined in any manner other than as prescribed in such paragraph (4).

(g) (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 subparagraph (ii) to (x), inclusive, of this paragraph (g), 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 twenty-eight 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 such seven percent member 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 equivalent benefit purposes may include, for the purpose of ascertaining the highest 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 (g) 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) of this subdivision.

(iii) The provisions of item (A) of subparagraph (ii) of this paragraph (g) 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 shall be construed as making the provisions of item (A) of such subparagraph (ii) applicable to any such restored member who was not or is not a seven percent member for actuarial equivalent benefit purposes at the time for 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 (g) 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 a discontinued member, and (2) was such a 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 becomes an active member pursuant to the applicable provisions of section 13-256 of this subchapter, the provisions of item (A) of such subparagraph (ii) 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 a discontinued member referred to in item (A) of this subparagraph (iv) 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 13-256 of the code, 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 or her 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 retirement or 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 (g), the selection of mode of benefit (as defined in subdivision twenty-nine of this section) made prior to the date of enactment (as such date is certified pursuant to section forty-one of the legislative law) of this paragraph (g) by a person entitled to a recomputation of benefits pursuant to the best-of-three-computations method (as defined in subdivision thirty-one 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 best-of-three-computations method (as defined in subdivision thirty of this section), and any such person entitled to a recomputation of benefits pursuant to the best-of-three-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 best-of-three-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 (g).

(2) In any case where the original selection of mode of benefit of a person entitled to a recomputation of benefits pursuant to the best-of-three-computations method was a selection of a joint and survivor option (as defined in subdivision thirty-two 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 best-of-three-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 best-of-three-computations method a letter showing amounts of benefits, as recomputed for such person under the best-of-three-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 this paragraph (g).

(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 best-of-three-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 (g), 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 (g) shall be construed as authorizing or permitting him or her to change any selection of mode of benefit (as defined in subdivision twenty-nine



of this section) 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 (g), in any case where a discontinued member referred to in item (A) of subparagraph (iv) of this paragraph 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 (g) shall be construed as authorizing or permitting him or her to change any selection of mode of benefit 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 (g) 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 twenty-nine of this section).

(ix) Notwithstanding the provisions of subparagraph (i) of this paragraph (g) 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) 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 (g) 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 (g) 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.

9. "Pension" shall mean payments for life derived from appropriations made by the city as provided in this subchapter.

10. "Annuity" shall mean payments for life derived from contributions made by a member as provided in this subchapter.

11. "Dependent benefit" shall mean payments derived from contributions made by a member as provided in section 13-253 of this subchapter.

12. "Retirement allowance" shall mean the pension plus the annuity and the pension-providing-for-increased-take-home-pay, if any.

13. "Pension reserve" 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.

14. "Annuity reserve" 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 upon the basis of such mortality tables as shall be adopted by the board with regular interest.

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

16. "Total service" shall mean all service of a member allowable as provided in subdivision three of this section and section 13-218 of this subchapter.

17. "Board" shall mean the board of trustees provided for in section 13-216 of this subchapter.

18. Pension-providing-for-increased-take-home-pay. The annual allowance for life payable in monthly installments derived from contributions made by the city to the contingent reserve fund pursuant to section 13-226 of this subchapter.

19. Reserve-for-increased-take-home-pay. 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 section 13-226 of this subchapter, by the percentage of reduction of his contributions applicable under such section with respect to such period, plus regular interest, and additional interest, if any, thereon.

20. "Special interest". 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 13-234 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 members who are eligible under such provisions for crediting of such amount for such period.

21. "Additional interest". A distribution to the reserve-for-increased-take-home-pay in addition to regular interest, which distribution (a) for each of the periods as to which the provisions of section 13-234 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 to be 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.

22. "Discontinued member." A member who has discontinued police service and who has a vested right to a deferred retirement allowance under section 13-256 of this subchapter.

23. "Police service." Service in the uniformed force of the police department, as a member of such force, including service for which credit is granted by section 14-112 of the code, but excluding any service credit acquired by transfer or otherwise under any provision of law.

24. "Supplementary interest". 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 amount of 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 13-234 of this subchapter or section 13-638.2 of this title grant supplementary interest, consists of the amount prescribed by such provisions for each 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.

25. "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.

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

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

(i) subparagraph (i) of paragraph (g) of subdivision eight of this section (relating to the definition of members as to whom regular interest 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 adopted by the board (A) that a mortality table 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 twenty-eight 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 twenty-six 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 board resolution to be made through the use of a sex-differentiated mortality table.

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

28. "Modified Option 1 pension computation formula".

(a) The method of computing the Option 1 pension component of a retirement allowance payable to a Tier I member and the amount of the Option 1 benefit payable to the beneficiary or estate of such member who selected or selects Option 1 as to such pension component, which method of computation is as prescribed by the succeeding paragraphs of this subdivision twenty-eight.

(b) The initial reserve for such pension component shall be computed through use of mortality tables 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 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 pension component, the present value of such member's maximum pension, as it was at the time of such member's retirement, shall be deemed to be the greatest 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 female 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 twenty-eight; or

(iii) such present value determined on the basis of the male mortality tables and the regular interest applicable to such member in effect immediately prior to the date of enactment of this sub-division.

(d) The 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 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 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 pension component equal to the present value of such member's maximum 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 pension component, shall be the remainder obtained by subtracting from such present value determined pursuant to such paragraph (c) in relation to such pension component, the total of such Option 1 payments on account of such 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 twenty-eight by reason of discontinuance of city-service by a 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 member.

29. "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 or 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.

30. "Best-of-three-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 greatest 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 female mortality tables and the regular interest applicable to such member as of a time prescribed in such resolution; or

(iii) such retirement allowance (or portion thereof) determined on the basis of male mortality tables and the regular interest applicable to such member 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 twenty-eight of this section) applies to any member, the term "best-of-three-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 the pension component (or portion thereof) of such member's retirement allowance.

31. "Person entitled to a recomputation of benefits pursuant to the best-of-three-computations method". Any person who meets all of the conditions stated below in this subdivision thirty-one:

(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 thirty-one, (i) retired for service or superannuation or for ordinary or accident disability or (ii) discontinued service so as to become a discontinued member; 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 best-of-three-computations method (as defined in subdivision thirty 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.

32. "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 thirty-two 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.

33. "Normal rate of contribution." The proportion of the earnable compensation of a member which is required to be deducted from the compensation of such member by the applicable provisions of section 13-225 of this subchapter as his or her member contributions, exclusive of any increase in such contributions pursuant to subdivision c of subdivision d of such section 13-225 or any decrease thereof on account of 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 (relating to election to decrease member contributions by contributions due on account of social security coverage).

34. "Member contributions eligible for pick up by the employer."

(a) with respect to any payroll period for a member (other than a 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 13-225 of this subchapter), the term "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 13-225.1 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 election by such member to increase his or her contributions pursuant to subdivision c or subdivision d of section 13-225 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 a member's normal rate of contribution are required by law to be made from the compensation of any member for any payroll period, such member shall not have, for such payroll period, any member contributions eligible for pick up by the employer. The amount of any member's 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. A member shall not have any 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.

35. "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 13-225.1 of this subchapter are not includible as gross income for federal income tax purposes until distributed or made available.

### **§ 13-215 Membership; composition and eligibility.**

a. The membership of the pension fund shall consist of:

(1) all persons in city-service, as defined in this subchapter, in positions in the competitive class of the civil service, who shall serve probationary periods, or who shall receive permanent appointments in the police force after the time when this section shall take effect; and

(2) all persons in city-service, as defined in this subchapter, who hold a position of surgeon of police classified in the non-competitive class of the civil service.

b. Notwithstanding any other provision of this subchapter or any other law to the contrary, in any case where a member who is eligible to retire for service is appointed police commissioner or a deputy police commissioner, he or she shall, while serving as police commissioner or deputy police commissioner, continue to be a member of the pension fund. For the purposes of this subchapter, a member serving as police commissioner or deputy police commissioner whose membership is continued pursuant to this subdivision b or whose membership is restored pursuant to subdivision a of section 13-262 of this subchapter shall, during the period of such continuance or restoration of membership, be deemed to be a member of the police force in the department and his or her service as police commissioner or deputy police commissioner during such period shall be deemed to be service in such force.

### **§ 13-216 Board of trustees.**

a. The police pension fund shall be administered by a board of trustees which shall, subject to the provisions of law 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. 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 police commissioner who shall be chairperson of the board and who shall be entitled to cast one and one-half votes.
2. The comptroller of the city who shall be entitled to cast one and one-half votes.
3. A representative of the mayor who shall be appointed by the mayor and who shall be entitled to cast one and one-half votes.
4. The director of finance of the city who shall be entitled to cast one and one-half votes.
5. The president of the patrolmen's benevolent association of the city of New York who shall be entitled to cast one vote.
6. The first vice-president of the patrolmen's benevolent association of the city of New York who shall be entitled to cast one vote.
7. The second vice-president of the patrolmen's benevolent association of the city of New York who shall be entitled to cast one vote.
8. The chairperson of the board of trustees of the patrolmen's benevolent association of the city of New York who shall be entitled to cast one vote.
9. The president of the captains' endowment association of the police department of the city of New York who shall be entitled to cast one-half vote.
10. The president of the lieutenants' benevolent association, police department, city of New York who shall be entitled to cast one-half vote.
11. The president of the sergeants' benevolent association of the city of New York who shall be entitled to cast one-half vote.
12. The president of the detectives' endowment association of the city of New York who shall be entitled to cast one-half vote.
13. (i) Where, during any six month period during a fiscal year, as defined in subdivision three of section 13-268 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 one vote 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. §2. Subdivision b of section 13-216 of the administrative code of the city of New York, as amended by chapter 247 of the laws of 1988, is amended to read as follows:

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 eighty-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 police commissioner shall appoint an executive director of the police pension fund, provided, however, that if such designee of the police commissioner is not a member of the uniformed force of the police department, the board of trustees shall approve such appointment. The executive director of the police pension fund shall perform such duties as may be conferred upon him or her 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 through twelve, 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.

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 herein 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 police department. The board of trustees of the pension fund shall work closely with the city of New York police department.

(ii) The provisions of chapter seventeen of the New York city charter shall continue to apply to the police 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 police 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 herein shall be construed to apply to any other vote of the board. No assets of the police 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 police pension fund shall constitute city-service for the purposes of this subchapter for those employees that are members of the fund pursuant to section 13-215 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 herein 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 New York city 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 police pension fund no later than the end of the fiscal year next succeeding the time period during which such assets were drawn upon, provided, however, that where such charge is for assets so withdrawn in fiscal year two thousand four-hundred five or in any fiscal year thereafter, such charge shall be paid by such employer 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 police department.

### **§ 13-217 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.

## § 13-218 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 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 police 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 police pension fund for prior creditable city service by paying into the annuity savings fund of the said police 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, and, subject to the provisions of paragraph two of this subdivision, and shall have the period of such prior creditable city service counted as service as a police officer for the purpose only of determining the amount of his or her pension or retirement allowance. Subject to the provisions of paragraph two and paragraph three of this subdivision, no member of the said police pension fund shall be eligible for retirement for service until he or she has served in the police force 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, and 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 police force, 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 operations order 2-25 of the police department of the city of New York dated December eleventh, two thousand two which immediately precedes service in the police force, 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 police force, 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 police force for purposes of eligibility for benefits and to determine the amount of benefits under the police 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 police pension fund became or becomes earlier than such date would have been or would be if such credit for 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 police 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 police 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 police 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 person who was a member of the board of education retirement system and whose membership therein was terminated by such member attaining membership in the police pension fund, subchapter two, shall receive credit in the said police pension fund for prior creditable city service by paying into the annuity savings fund of the said police 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 July sixteenth, nineteen hundred sixty-five shall take effect, or within one year after becoming a member of the police pension fund, subchapter two, whichever is later, and shall have the period of such prior creditable city service counted as service as a police officer for the purpose only of determining the amount of such member's pension or retirement allowance, provided however, that no member of the said police pension fund shall be eligible for retirement for service until he or she has served in the police force 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.
- f. (1) Upon election, any member of the police pension fund, subchapter two of this chapter, 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 police pension fund, subchapter two of this chapter, 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 police pension fund additional member contributions plus interest which would have been paid or credited had such member been a member of the police pension fund, subchapter two of this chapter, 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 police force for purposes of eligibility for benefits and to determine the amounts of benefits under the police pension fund.
- (2) A member of the police pension fund, subchapter two of this chapter, 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 police department.
- g. (1) (a) Upon election, the following persons (each of whom has been granted a retroactive appointment eligibility date as a New York city police department trainee, pursuant to *Acha v. Beame*, 570 F.2d 57) shall receive credit in the police pension fund, subchapter two of this chapter, for the period of such retroactive eligibility by paying into the annuity savings fund of said police pension fund additional member contributions plus interest which would have been paid or credited had such member been a member of the police pension fund from the retroactive appointment eligibility date as a New York city police department trainee, provided such payment is made within one year after this subdivision takes effect:

Name	Tax Registry #	Name	Tax Registry #
Catherine Wyman	872015	Maureen Kirwan	867289
Kathleen Jappe	866563	Kathleen Driscoll	866837
Martina Guidone	866846	Carol Conry	867273
Kathleen Fogarty	866680	Kathleen Reynolds	872113
Gail Petersen	866867	Catherine DeLaRionda	866830
Alicia Parker	866201	Charlene Davey	866437
Catherine Codd	870819	Mary Boyd	866818
Karen Krizan	867507	Laura Pascual	866684
Kathleen Sammon	866682	Kerry Schreiner	866565
Patricia Scarlett	866900	Kathleen Groger	866840
Eleanor Del Rosario	866867	Anita Matusiak	866879
Yvonne Mitchell	868415	Mary Jo Yakowenko	867916
Lorraine Martucciello	866878.		

(b) The period of such retroactivity shall be deemed to be service in the police force for purposes of eligibility for benefits and to determine the amounts of benefits under the police pension fund.

(2) A member of the police pension fund, subchapter two of this chapter, 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 police department.

h.\* (1) Any member of the pension fund who, prior to June thirtieth, nineteen hundred ninety-two, would have been entitled to transfer membership in another public retirement system to the pension fund pursuant to any provision of law, but who failed to make a timely election to do so, may elect to transfer such membership to the pension fund by filing a written request for such transfer with the first retirement system within one year after the effective date of this subdivision.

\* **Editor's note:** there are two divisions designated h in this section; see 2000 N.Y. Laws chs. 571 and 594.

(2) All transfers of membership to the pension fund pursuant to this subdivision shall be in accordance with the procedures set forth in the transfer provisions that would have been applicable if the member had made a timely election to transfer. Where a transfer is made pursuant to this subdivision, and such applicable transfer provisions would have required a transfer of pension reserves, the first retirement system shall transfer to the pension fund all pension reserves that would have been transferred to the pension fund if the member had made a timely election to transfer.

(3) Service credit transferred to the pension fund pursuant to this subdivision shall be credit in the same manner and for the same purposes as it would have been credited if the member had made a timely election to transfer, and the member shall pay to the pension fund all member contributions, plus interest, which would have been paid or credited if such service credit had been transferred to the pension fund on the date of such member's entry into the pension fund.

h.\* Notwithstanding the provisions of subdivision c of this section, any member who is absent without pay for child care leave of absence pursuant to regulations of the New York city police department shall be eligible for credit for such period of child care leave provided such member files a claim for such service credit with the pension fund by December thirty-first, two thousand one or within ninety days following termination of the child care leave, whichever is later, and contributes to the pension fund an amount which such member would have contributed during the period of such child care leave, together with interest thereon. Service credit provided pursuant to this subdivision shall not exceed one year of credit for each period of authorized child care leave. In the event there is a conflict between the provisions of this subdivision and the provisions of any other law or code to the contrary, the provisions of this subdivision shall govern.

\* **Editor's note:** there are two divisions designated h in this section; see 2000 N.Y. Laws chs. 571 and 594.

### **§ 13-219 Re-entry into membership after withdrawal of contributions.**

If a member has received benefits under section 13-240 of this subchapter, his or her member-service credit at the time of leaving service shall be restored in full provided such member returns 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 age on re-entry to service.

### **§ 13-220 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.

### **§ 13-221 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 he or she 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 at such times as he or she shall determine. Upon the basis of such investigation 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.

### **§ 13-222 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 and annuities.

### **§ 13-223 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 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 the commissioner of citywide administrative services shall each have power to appoint one or more but not exceeding four alternate physicians, who shall hold office at the pleasure of such appointing board or official. Whenever the board of trustees of the retirement system 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 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.

### **§ 13-224 The funds; component funds.**

The funds provided for herein are 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.

### **§ 13-225 Contributions of members and their use; annuity savings fund.**

a. (1) The annuity savings fund shall be the fund in which there shall be accumulated deductions from the compensation of members to provide for their annuities and their withdrawal allowances. Upon the basis of the tables herein authorized, and regular interest, the actuary of such board shall determine for each member 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 until the attainment of the minimum age or 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. Notwithstanding the foregoing, the rate of contribution required to be made on and after October first, nineteen hundred fifty-one, by any member whose rate was computed pursuant to this subdivision, as enacted by local law two of nineteen hundred forty, shall be twenty-five forty-fifths of such prior rate.

(2) Notwithstanding the foregoing provisions of paragraph (one) of this subdivision a, the rate of contribution required to be made on and after the first day of the first payroll period beginning after January first, nineteen hundred sixty-eight by any member who became a member after June thirtieth, nineteen hundred forty-seven and prior to June thirtieth, nineteen hundred sixty-seven shall be his or her rate as of June twenty-ninth, nineteen hundred sixty-seven, as computed pursuant to paragraph (one) of this subdivision a, including any increase thereof pursuant to subdivisions c and d of this section or any decrease thereof pursuant to section 13-226 of this subchapter or subdivision one of section one hundred thirty-eight-b of the retirement and social security law, hereinafter referred to as his or her "computed prior rate", less the difference between the rate which was computed for such member on the date he or she last became a member pursuant to paragraph (one) of the subdivision a, exclusive of any increase thereof pursuant to subdivisions c and d of this section or any decrease thereof pursuant to paragraph (one) of this subdivision or section 13-226 of this subchapter or pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, and the rate which would have been computed for such member on the date he or she last became a member, pursuant to paragraph (one) of this subdivision, had he or she been entitled on that date to regular interest at four per cent; provided that the adjusted rate of contribution computed pursuant to this paragraph shall be subject to change pursuant to subdivisions c and d of this section, section 13-226 of this subchapter or pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law.

(3) for any member to whom the last paragraph applies, and beginning with the first day of the first payroll period commencing after June thirtieth, nineteen hundred sixty-seven and ending with the last day of the last payroll period before the first payroll period beginning after January first, nineteen hundred sixty-eight, the amount of contribution paid by him or her which represents the difference between the "computed prior rate" of such member and his or her adjusted rate of contribution as computed pursuant to paragraph (two) of this subdivision a shall be refunded upon the member's election, or, otherwise, shall be deemed additional contributions for the purpose of purchasing additional annuity, but such additional contributions shall not enter into the computation for allowance on ordinary disability retirement as described in section 13-251 of this subchapter.

b. Such board shall certify to the commissioner who shall deduct from the compensation of each member on each and every pay roll of such member for each and every pay roll 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 a member who elects not to contribute if his or her age and total service are 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 final compensation. 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 deduction 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 deduction 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 deductions 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 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 a member for whom a rate is otherwise fixed pursuant to section 13-226 of this subchapter.

c. In addition to the computed deductions, any member may elect to contribute at a rate fifty per centum 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 13-226 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 13-251 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 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, or any member may deposit therein by a single payment, or in equal installments over a period to be designated by such member, but not exceeding five years, immediately prior to his or her retirement, an amount computed to be sufficient to purchase an additional annuity, which, together with his or her prospective retirement allowance, will provide for him or her a total retirement allowance of one-half of his or her final compensation at the minimum age or period of retirement elected by him or her. Such additional amounts so deposited shall become a part of his or her accumulated deductions. The accumulated deductions of a member withdrawn as provided in this subchapter shall be paid out of the annuity savings fund. Upon retirement of a member, his or her accumulated deductions shall be transferred from such fund to the annuity reserve fund.

e. In the case of a member receiving extra pay, salary or compensation for additional duties assigned to him or her, the comptroller shall make such semi-monthly deductions on the basis of such extra pay, salary or compensation unless such member shall signify in writing to the board, within thirty days after the first receipt thereof, his or her election to have his or her benefits and obligations computed on the basis of the pay, salary or compensation received by him or her prior to the time when he or she first received such extra compensation. If any member receives extra pay, salary or compensation for an aggregate of five years or more or for the period of time fixed by section 14-114 of this code, the comptroller shall continue to make such semi-monthly deductions on the basis of such extra pay, salary or compensation, notwithstanding that such member does not continue to receive it, unless such member shall signify to the board in writing his or her election to have his or her benefits and obligations computed on the basis of the pay, salary or

compensation actually received by him. Additional deductions so made shall entitle such member to a retirement allowance on the basis of such extra pay, salary or compensation. The provisions of this subdivision shall not diminish or impair the benefits provided in subdivision c of section 14-114 of this code.

### **§ 13-225.1 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 pick up and pay into the annuity savings fund, the member contributions eligible for pick up by the employer which each 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 such compensation 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 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, including any member contributions required to be made for the purchase of credit for previous service or credit for military service pursuant to subdivision f of this section, provided, however, that contributions picked up for the purchase of credit for military service shall be deposited in the employer contributions account in accordance with the provisions of subdivision four of section one thousand of the retirement and social security law 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 member contributions eligible for pick up by the employer; 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 it 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 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 as member contributions made by such member pursuant to law and as included in such member's accumulated deductions. Interest on such picked up contributions shall accrue in favor of the 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.

(2) The picked up member contributions of any 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.

(3) 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. 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.

f. 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 payments 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.

### **§ 13-226 Pensions-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 subdivision b or e of section 13-225 of this subchapter, exclusive of any increase thereof pursuant to subdivisions c and d of section 13-225 of this subchapter, or of any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by two and one-half percent of the compensation of such member. Such a reduction shall be subject to waiver by the member as provided in subdivision d of this section 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. Such executive order may also provide for 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 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 subdivision b or e of section 13-225 of this subchapter, exclusive of any increase thereof pursuant to subdivisions c and d of section 13-225 of this subchapter, or of any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by two and one-half percent of the compensation of such member. Such a reduction shall be subject to waiver by the member as provided in subdivision d of this section 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.



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 subdivision b or e of section 13-225 of this subchapter, exclusive of any increase thereof pursuant to subdivisions c and d of section 13-225 of this subchapter, or of any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by two and one-half percent of the compensation of such member. Such a reduction shall be subject to waiver by the member as provided in subdivision d of this section 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.

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 subdivision b or e of section 13-225 of this subchapter, exclusive of any increase thereof pursuant to subdivisions c and d of section 13-225, or of any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by two and one-half percent of the compensation of such member. Such a reduction shall be subject to waiver by the member as provided in subdivision d of this section 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. 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 subdivision b or e of section 13-225 of this subchapter, exclusive of any increase thereof pursuant to subdivisions c and d of section 13-225 of this subchapter, or of any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by two and one-half per cent of the compensation of such member. Such a reduction shall be subject to waiver by the member as provided in subdivision d of this section 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.

6. a. (1) Subject to the provisions of item two of this subparagraph a, 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 subdivision b or e of section 13-225 of this subchapter, exclusive of any increase thereof pursuant to subdivisions c and d of section 13-225 of this subchapter, or of any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by two and one-half per cent of the compensation of such member.

(2) The reduction provided for by item one of this subparagraph a shall be in addition to any reduction made during the period mentioned in such item one pursuant to paragraphs four or five of this subdivision. The amount of the reduction made pursuant to item one of this subparagraph in the deductions of any such member for such portion of the period mentioned in such item one as precedes the effective date of this paragraph 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 to June thirtieth, nineteen hundred seventy-one, the contribution of each member made pursuant to subdivision b or e of section 13-225 of this subchapter, exclusive of any increase thereof pursuant to subdivision c or d of section 13-225 of this subchapter, or of any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by five percent of the compensation of such member.

b. The reductions referred to in paragraph a of this subdivision six shall be subject to waiver by the member as provided in subdivision d of this section 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 contribution for old age, survivor and disability insurance coverage or the tax imposed upon him or her pursuant to the federal insurance contribution act.

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 subdivision b or e of section 13-225 of this subchapter, exclusive of any increase thereof pursuant to subdivision c or d of section 13-225 of this subchapter, or of any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by five per cent of the compensation of such member. Such a reduction shall be subject to waiver by the member as provided in subdivision d of this section 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.

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 subdivision b or e of section 13-225 of this subchapter, exclusive of any increase thereof pursuant to subdivision c or d of section 13-225 of this subchapter, or of any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by five per cent of the compensation of such member. Such a reduction shall be subject to waiver by the member as provided in subdivision d of this section 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.

b. For such period of time as the reduction pursuant to the provisions of subdivision a of this section shall be in effect, 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 the death benefit hereunder, and the pension-providing-for-increased-take-home-pay which are or may become payable on account of such member.

c. Such a benefit and such a pension-providing-for-increased-take-home-pay 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 member, during each period of reduction of member contributions under this section, by the percentage of reduction of his or her contributions applicable under this section with respect to such period, plus regular interest on such sum, and additional interest, if any, thereon.

d. Where a 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 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, a member may withdraw any such waiver by written notice duly acknowledged and filed with the retirement system. Where a member makes an election to waive such reduction he or she shall contribute to the pension fund as otherwise provided in this subchapter.

e. A member who waives a reduction of contribution pursuant to this section or who elects or has elected to discontinue his or her contributions pursuant to subdivision b of section 13-225 of this subchapter shall be entitled to a pension-providing-for-increased-take-home-pay and death benefits to

the same extent as if such waiver or election had not been made.

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

### **§ 13-227 Contributions of members and their use; annuity reserve fund and dependent benefit reserve funds.**

a. The annuity reserve fund shall be the fund from which shall be paid all annuities and all benefits in lieu of annuities, payable as provided in this subchapter.

b. The dependent benefit reserve fund shall be the fund from which shall be paid all dependent benefits payable as provided in section 13-253 of this subchapter.

c. 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 13-253 of this subchapter.

d. Upon the basis of the mortality and other tables herein authorized, and regular interest, the actuary shall compute the amount of contribution, expressed as a proportion of the compensation paid to each such member, which, if paid, semi-monthly during the entire prospective city-service 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 13-253 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 such fund to the dependent benefit reserve fund.

### **§ 13-228 Contributions of the city and their use; contingent reserve fund.**

a. 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 members as provided in this subchapter.

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

(i) annually 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 equal annual installments during the period beginning with fiscal year nineteen hundred seventy-seven-nineteen hundred seventy-eight and ending on the last day of fiscal year nineteen hundred seventy-nine-nineteen hundred eighty, an additional amount which shall be known as the original unfunded accrued liability contribution, and which shall be determined as provided for in subparagraph a of paragraph (3) of this subdivision b; and

(iii) 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 revised unfunded accrued liability contribution and which shall be determined as provided for in subparagraph (b) of paragraph (3) of this subdivision; and

(iv) 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 (4) of this subdivision; and

(v) 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

(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, if any, which accrued in such fiscal year, to make contributions on account of increased-take-home-pay; and

(vii) 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 (c) of paragraph (3) 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 items (i), (iii), (iv), (v), (vi) and (vii) of subparagraph (a) of this paragraph one shall be reduced by the amount of one annual installment of such unfunded accrued liability adjustment.

(ii) If the nineteen hundred eighty unfunded accrued liability adjustment determined pursuant to such subparagraph (c) 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 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), (iii), (iv), (v), (vi) and (vii) 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 reduced by the amount of one annual installment of the nineteen hundred eighty-two unfunded accrued liability adjustment determined pursuant to subparagraph (d) of paragraph three 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), (iii), (iv), (v), (vi) and (vii) 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 (e) 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 (iii), (iv), (v), (vi) and (vii) of subparagraph (a) of this paragraph and items (ii) and (iv) of subparagraph (b) of this paragraph 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 to the contingent reserve fund in such fiscal year.

(ii) Any amount required to be contributed to the contingent reserve fund in any fiscal year of the city preceding the nineteen hundred eighty-nineteen hundred eighty-one fiscal year shall be deemed to have been required to be paid 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 to the contingent reserve fund in such fiscal year.

(iii) It is hereby declared that the provisions of items (i) and (ii) of this subparagraph (c), insofar as they relate to provisions of this subchapter or other laws requiring payment of employer contributions to the pension fund prior to the date of enactment of the act which added this subparagraph (c), express the intent of such provisions of this subchapter 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 13-231 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, article fourteen of such law (if and when applicable) 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 13-232.1 of this subchapter and paragraph one of subdivision b of section 13-232.3 of this subchapter) beginning on or after July first, nineteen hundred ninety-four to the police officer's variable supplements fund, pursuant to subdivisions d, e and f of such section 13-232.1 and to the police superior officer's variable supplements fund pursuant to subdivisions d, e and f of such section 13-232.3.

(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 (F) 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 the nineteen hundred eighty unfunded accrued liability adjustment, determined pursuant to subparagraph (c) 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 revised 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 (e) 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-nineteen 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 (v) of subparagraph (a) of paragraph one of this subdivision b; and

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

(D) 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

(E) 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

(F) the total funds on hand, including the amount of any unpaid moneys appropriated pursuant to section 13-231 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

(G) 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 sub-items 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 13-221 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-nineteen 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 subparagraph (ii) or subparagraph (iii) of paragraph (c) or paragraph (d) of subdivision eight of section 13-214 of this subchapter.

(d) (i) For the purposes of this subparagraph (d), the terms "pension fund, subchapter one" and "police subchapter one beneficiary" shall have the meanings set forth in paragraphs one and three, respectively, of subdivision a of section 13-213.1 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 c of section 13-213.1 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 police 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 police 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) Unfunded accrued liability contributions.—

(a) The original unfunded accrued liability contribution shall be 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 seventy-seven-nineteen hundred seventy-eight fiscal year would be the actuarial equivalent, on the basis of five and one-half percentum interest and the actuarial tables in effect as of July first, nineteen hundred seventy-seven, of the difference between the accrued liability excluding the liability for benefits attributable to the annuity savings fund on June thirtieth, nineteen hundred seventy-five and the total funds on hand, excluding the amount in the annuity savings fund, but including the amount of any unpaid moneys appropriated pursuant to section 13-231 of this subchapter.

(b) (i) The revised unfunded accrued liability contribution shall be an amount determined as prescribed in items (ii), (iii), (iv), (v), (vi) and (vii) of this subparagraph (b).

(ii) To the amount of the difference constituting the unfunded accrued liability as of June thirtieth, nineteen hundred seventy-five heretofore determined pursuant to the provisions of this paragraph three as in effect on July first, nineteen hundred seventy-seven, 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.

(iii) (A) There shall be computed, in the manner provided for in subitem (B) of this item (iii), the discounted value of each of the installments of the unfunded accrued liability contribution which, in the absence of the enactment of chapter nine hundred fifty-seven of the laws of nineteen hundred eighty-one, were payable or would have been payable 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.

(B) 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 was payable or would have been payable and on the basis of five and one-half per centum interest per annum on the amount of such installment.

(C) 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 was or would have been payable to June thirtieth, nineteen hundred eighty at the rate of five and one-half per centum per annum.

(D) The discounted values of all of such installments with respect to such fiscal years, computed as provided for in sub-items (A) and (B) of this item (iii), together with interest on each such installment as provided for in sub-item (C) of this item, shall be added together.

(iv) From the sum computed pursuant to item (ii) of this subparagraph (b), the sum computed pursuant to item (iii) of this subparagraph shall be subtracted.

(v) 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 (iv) of this subparagraph.

(vi) 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 (v) of this subparagraph (b), which installments are hypothetically allocated by such item (v) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-two.

(vii) 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 contribution 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 (vi) of this subparagraph (b), which installments are hypothetically allocated by such item (vi) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

(c) (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 (c).

(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, in article fourteen of the retirement and social security law (if applicable) 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.

(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 of the pension fund, 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 future member contributions of members, if any, subject to article fourteen of the retirement and social security law; and

(5) the total funds on hand as of such June thirtieth, excluding the amount in the annuity savings fund, but including the amount of any unpaid moneys appropriated pursuant to section 13-231 of this subchapter.

(iii) (A) If the amount computed pursuant to sub-item (B) of item (ii) of this subparagraph (c) is larger than the amount computed pursuant to item (iv) of subparagraph (b) of this paragraph (3), 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 sub-item (B) of item (ii) of this subparagraph (c) is smaller than the amount computed pursuant to item (iv) of subparagraph (b) 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 amount which the city would otherwise be required to pay to the contingent reserve fund pursuant to items (i), (iii), (iv), (v), (vi) and (vii) of subparagraph (a) of paragraph (1) 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 (c), 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 (c), 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 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.

\* Editor's note: so in original.

(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.

(d) (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 (d).

(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), (iv), (vi) and (vii) 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 (d) 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), (iii), (iv), (vi) and (vii) 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 those installments of the nineteen hundred eighty-two unfunded accrued liability adjustment computed pursuant to item (iv) of this subparagraph (d), which installments are hypothetically allocated by such item to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

(e) (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 (e).

(ii) Upon the basis of the actuarial tables in effect for valuation purposes with respect to determination of the normal contribution payable 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 payable 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) The nineteen hundred eighty-five unfunded accrued liability adjustment, for 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, 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 (e) over the amount computed pursuant to item (ii) of this subparagraph.

(B) The nineteen hundred eighty-five unfunded accrued liability adjustment for each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, two thousand fifteen, shall be an amount which, when paid to the contingent reserve fund in 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 the June thirtieth, nineteen hundred eighty-eight on the basis of eight per centum interest per annum, of those installments of the 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 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 normal contribution had been required by law to be paid to the contingent reserve fund in the city fiscal year in which the obligation to make such normal contribution had been required by law to be determined in the manner provided for in subitems (B), (C) and (D) of this item (i).

(B) Upon the basis of the mortality and other tables effective under this subchapter as of July first, nineteen hundred seventy-seven 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 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, in any other law prescribing benefits payable by the pension fund in article fourteen of such law (if applicable) 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 reserves-for-increased-take-home-pay (as defined in item (iv) of this subparagraph (a))\* , if any, and the then liability for benefits attributable to the annuity savings fund.

\* Editor's note: so in original.

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

(1) 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 title (as defined in item (iii) of this subparagraph (a)); and

(C) the present value of future member contributions of members, if any, subject to article fourteen of the retirement and social security law; and

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

(2) 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 13-221 of this subchapter and in effect on July first, nineteen hundred seventy-seven, and on the basis of interest at the rate of five and one-half per centum per annum.

(D) The amount of the normal contribution for balance sheet liability purposes hypothetically payable in the subject fiscal year shall be the amount obtained (1) by multiplying such hypothetical normal contribution rate 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 contingent reserve 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 in effect as of July first, nineteen hundred seventy-seven for valuation purposes 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 and the liability for benefits attributable to the annuity savings fund.

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

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

(2) the present value, as of such June thirtieth, of all then required future payments, pursuant to section 13-704 of this title (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

(3) the sum obtained by adding together 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 the total funds on hand as of such June thirtieth, excluding the amount in the annuity savings fund, but including the amount of any unpaid moneys appropriated pursuant to section 13-231 of this subchapter.

(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 contingent reserve 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 in effect as of July first, nineteen hundred seventy-seven for valuation purposes 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 chapter, in article eleven of the retirement and social security law and in any other law prescribing benefits payable by the retirement system on account of all members and beneficiaries, excluding the liability on account of future increased-take-home-pay contributions and the liability for benefits attributable to the annuity savings fund.

(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 June thirtieth, nineteen hundred seventy-five, of all future normal costs of the pension fund, 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 then required future payments, pursuant to section 13-704 of this title (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

(3) the sum obtained by adding together 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 the total funds on hand, as of such June thirtieth, excluding the amount in the annuity savings fund, but including the amount of any unpaid moneys appropriated pursuant to section 13-231 of this subchapter.

(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 title". A hypothetical annual payment to the contingent reserve 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 installments (payable in such year) of losses on prior dispositions of securities within the meaning of section 13-704 of this title over the installments (creditable in such 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 of this title.

(iv) "Annual contribution, for balance sheet liability purposes, on account of reserves-for-increased-take-home-pay". A hypothetical annual payment to the contingent reserve 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 year, to make contributions on account of increased-take-home-pay.

(v) "Annual military law contribution for balance sheet liability purposes". A hypothetical annual payment to the contingent reserve 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) "Deficiency contribution". The annual amount which, under the provisions of paragraph one of this subdivision b and paragraph three thereof, as such provisions were in effect during the period from July first, nineteen hundred seventy-two to June thirtieth, nineteen hundred seventy-seven, the city was required to pay to the contingent reserve fund in each of the city's nineteen hundred seventy-four-nineteen hundred seventy-five, nineteen hundred seventy-five-nineteen hundred seventy-six and nineteen hundred seventy-six-nineteen hundred seventy-seven fiscal years.

(vii) "Contribution on account of amortization, pursuant to section 13-704 of this title, 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 title (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 two hundred fifty-two million, three hundred fifty-two thousand, six hundred ninety-nine dollars (\$252,352,699), consisting of the sum of:

(i) the discounted value, as of June thirtieth, nineteen hundred seventy-four, of the sum of ninety-five million, seven hundred thousand dollars (\$95,700,000), which constituted the amount payable into the contingent reserve 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 ninety-three million, one hundred seventy-two thousand, eighty-five dollars (\$93,172,085); and

(ii) the discounted value, as of June thirtieth, nineteen hundred seventy-four, of the sum of one hundred seventy-two million, four hundred ninety-one thousand, nine hundred ninety-four dollars (\$172,491,994), which constituted the amount payable to the contingent reserve 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 one hundred fifty-nine million, one hundred eighty thousand, six hundred fourteen dollars (\$159,180,614).

(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 title (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 reserves-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 the sums paid to the contingent reserve fund during the subject fiscal year by the city on account of its obligations, which accrued during the city's second fiscal year preceding the subject fiscal year, to provide:

(A) the normal contribution payable in the subject fiscal year under the provisions of paragraphs one and two of this subdivision b as then in effect; and

(B) the installment of the deficiency contribution (as defined in item (vi) of subparagraph (a) of this paragraph four) or the installment of the original unfunded accrued liability contribution, (as defined in subparagraph (a) of paragraph three of this subdivision b), as the case may be, payable in the subject fiscal year; and

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

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

(E) 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 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 (4), 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 (1) of this paragraph (4), which installments are hypothetically allocated by such subparagraph (1) 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 police subchapter one beneficiaries (as defined in paragraph three of subdivision a of section 13-213.1 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 13-213.1 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 annuity reserve fund, the pension reserve fund or the 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 to, or upon the death of, a member in active service shall be paid from such contingent reserve fund.

e. Upon the retirement of such a 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 reserve-for-increased-take-home-pay, shall be transferred from such 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 13-226 of this subchapter, to provide reserves-for-increased-take-home-pay.

f. [Repealed.]

### **§ 13-229 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-provided-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 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 or 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.

## § 13-230 Contributions of public benefit corporations and their use.

Notwithstanding the requirements of section 13-228 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.

## § 13-231 Guarantee of funds.

a. Regular interest, charges payable, the creation and maintenance of reserves in the contingent reserve fund and the pension reserve fund and the maintenance of annuity reserves, pension reserves, dependent benefit reserves and reserves-for-increased-take-home-pay as provided for in this subchapter and the payment of all pensions, pensions-providing-for-increased-take-home-pay, annuities, retirement allowances, 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 13-232, 13-232.1, 13-232.2 and 13-232.3 of this subchapter, 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. 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 be included annually 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 paragraphs two, three and four of this subdivision, all income, interest and dividends derived from deposits and investments authorized by this subchapter, 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 13-232, 13-232.1, 13-232.2 and 13-232.3 of this subchapter) be used in such fiscal year for the purposes hereinafter specified in this paragraph (to the extent that such income, interest and dividends are sufficient for such purposes), 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 by reason of being required to be allowed to such funds pursuant to the provisions of section 13-234 of this subchapter, and to pay into such funds the amount 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 payments prescribed by subparagraphs (A) and (B) of this paragraph, 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) (A) Notwithstanding any other provision of this section or any other law to the contrary, the term "all income, interest and dividends derived from deposits and investments", as used in paragraph two of this subdivision (as such subdivision was in effect prior to July first, nineteen hundred eighty), shall be construed, in relation to disposition of all income, interest and dividends received by the pension fund in each of the city's nineteen hundred seventy-six-nineteen hundred seventy-seven and nineteen hundred seventy-seven-nineteen hundred seventy-eight obligations fiscal years (as such fiscal years were defined by paragraph one of this subdivision prior to such July first) as meaning the remainder obtained:

(i) by subtracting from such income, interest and dividends the amount of any expenses charged thereto pursuant to the provisions of section 13-705 of this title; and

(ii) by subtracting from such amount computed pursuant to item (i) of this subparagraph (A) the amount, if any, required to be paid therefrom pursuant to section 13-232 of this subchapter; and

(iii) by subtracting from the amount computed pursuant to item (ii) of this subparagraph (A) the sum of:

(1) the amounts of regular, supplementary and special interest required to be allowed and paid into the appropriate funds of the retirement system in such fiscal year pursuant to the applicable provisions of section 13-234 of this subchapter; and

(2) the amount of any losses in excess of gains (a) which net losses were sustained by the pension fund during such fiscal year and which net losses were sustained by reason of sales or other dispositions of securities, and (b) to which net losses the provisions of section 13-704 of this title do not apply.

(B) for the purposes of the order of priority governing the disposition, in the payment fiscal year with respect to each such obligations fiscal year, of such remainder computed pursuant to subparagraph (A) of this paragraph three (as such disposition was prescribed by the provisions of this subdivision as in effect during each such payment fiscal year) the provisions of subparagraphs (A) and (B) of such paragraph two shall be deemed to have been inapplicable and the order of priority for such disposition shall be first, the use set forth in subparagraph (C) of such paragraph, second, the use set forth in subparagraph (D) of such paragraph, third, the use set forth in subparagraph (E) of such paragraph and fourth, the use set forth in subparagraph (F) of such paragraph, as such subparagraphs were in effect during such payment fiscal year.

(4) (a) Subject to the provisions of paragraph five of this subdivision b, all income, interest and dividends which were derived from deposits and investments authorized by this title 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 13-232 of this subchapter\* in each such fiscal year for the purposes hereinafter stated in this subparagraph (a), in the order of priority herein stated, as follows:

(A) first, (i) 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 13-234 of this subchapter, and (ii) to pay into such funds the amounts of supplementary interest required to be so paid in such fiscal year under the applicable provisions of such section, and (iii) to pay into the annuity savings fund the amounts of special interest required to be so paid in such fiscal year under the applicable provisions of such section, and (iv) to pay into the contingent reserve fund the amounts of additional interest 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 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, to pay into the contingent reserve fund the amount, if any, by which,

(i) the total of all losses which the pension fund sustained during such fiscal year by reason of sales of securities within the meaning of such section 13-704 of this title and which the responsible public employer, as defined in paragraph four of subdivision a of such section 13-704 of this title, would otherwise be required to amortize pursuant to such section, exceeds

(ii) the total of all gains which were realized during such fiscal year by reason of sales of securities within the meaning of such section and which would otherwise be required by such section to be credited in favor of the responsible public employer in installments.

(b) if the total amount of such income, interest and dividends received during each such fiscal year referred to in subparagraph (a) of this paragraph four is in excess of the total amount required to make, in the same fiscal year, the payments prescribed by items (A), (B) and (C) of such subparagraph (a), 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.

(5) Notwithstanding the provisions of paragraph four of this subdivision 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 four 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 investment) prior to use for the purposes stated in such paragraph four.

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) In the city's nineteen hundred eighty-nineteen hundred eighty-one fiscal year and in each city fiscal year thereafter, the equal monthly payments 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.

### **§ 13-232 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". 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, in determining whether such sale produced a capital gain or a capital loss and the amount thereof.

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

7. "Hypothetical fixed income securities earnings."

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

(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.

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 the 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 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 have 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 per cent 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 police officer's variable supplements fund and the superior police officers' variable supplements fund with respect to all prior base fiscal years pursuant to subdivisions c and d of this section.

14. "Police officer's variable supplements fund". The police officer's variable supplements fund established by subchapter three of this chapter.

15. "Police superior officers' variable supplements fund". The police superior officers' variable supplements fund established by subchapter four of this chapter.

16. "Superior police officers". Members of the uniformed force of the police department who (a) hold the position of sergeant or any position of higher rank in such force, or (b) are detectives.

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 fiscal year;

(2) the total contributions made to the police pension fund, subchapter two, with respect to such base fiscal year on behalf of all members of the uniformed force of the police department who are police officers, as of the last day of such base fiscal year; and

(3) the total contributions made to the police pension fund, subchapter two, with respect to such base fiscal year on behalf of all members of the uniformed force of the police department who are superior police 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 police officer's variable supplements fund share and a superior police officers' variable supplements fund share in the ratio that the total contributions made to the police pension fund, subchapter two, with respect to such base fiscal year on behalf of police officers bears to the total contributions made to the police pension fund, subchapter two, with respect to such base fiscal year on behalf of superior police 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 police officer's variable supplements fund and the superior police 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 police officer's variable supplements fund and the police superior 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 police officer's 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 13-232.1 of this subchapter. Any and all rights of the police superior 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 13-232.2 of this subchapter. Any and all rights of the police superior 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 provision of section 13-232.3 of this subchapter.

### **§ 13-232.1 Payments to police officer's 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 13-232 of this subchapter shall apply to this section 13-232.1 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 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 13-232 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 13-232.

(ii) The cumulative distributions of transferable earnings for prior base fiscal years (as defined in paragraph thirteen of subdivision a of such section 13-232) shall be computed pursuant to such section 13-232 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 13-232), if any, for the nineteen hundred eighty-seven-nineteen hundred eighty-eight base fiscal year, determined pursuant to such section 13-232, 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 13-232 of this subchapter, as made applicable to this section 13-232.1 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. "POVSF 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 police pension fund, subchapter two, with respect to such base fiscal year on behalf of all members of the uniformed force of the police department who are police officers, as of the last day of such base fiscal year, and the denominator of which shall be the total contributions made to such police pension fund with respect to such base fiscal year on behalf of all persons who are members of the uniformed force of the police department as of the last day of such base fiscal year.

7. "POVSF unfunded accrued liability". In any case where the valuation of assets and liabilities of the police officer's variable supplements fund by the actuary pursuant to subdivision e of section 13-270 of this chapter shows that for any base fiscal year, such liabilities exceed such assets, the term "POVSF 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. "Police officer". A member of either this pension fund or the police pension fund provided for in subchapter one of this chapter who, at the time of retirement for service, was not a police superior officer as defined in subdivision four of section 13-278 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 POVFS cumulative earnings factor with respect to such base fiscal year.

d. If the POVFS 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 police officer's 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 POVFS cumulative earnings factor for such base fiscal year referred to in such subdivision d or (2) the liability POVFS 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 POVFS unfunded accrued liability for such base fiscal year, regardless of the amount and character of the POVFS 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.

### **§ 13-232.2 Payments to police superior 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 13-232 of this subchapter shall apply to this section 13-232.2 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 13-232 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 13-232.

(ii) The cumulative distributions of transferable earnings for prior base fiscal years (as defined in paragraph thirteen of subdivision a of such section 13-232) shall be computed pursuant to such section 13-232 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 13-232), if any, for the nineteen hundred eighty-seven-nineteen hundred eighty-eight base fiscal year, determined pursuant to such section 13-232, 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 by 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 chapter two hundred forty-seven of the laws of nineteen hundred eighty-eight and chapter five hundred eighty-one 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 two hundred forty-seven of the laws of nineteen hundred eighty-eight.

(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 police superior 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) items (ii) and (iii) of this subparagraph, as such items were in effect prior to July twenty-sixth, nineteen hundred ninety-one, 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 13-232 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 subdivision 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. "PSOVSF 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 police department who are police superior 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 police department as of the last day of such base fiscal year.

8. "Police superior officers". Members of the uniformed force of the police department who (a) hold the position of sergeant or any position of higher rank in such force, or (b) are detectives.

9. "Police superior officers' variable supplements fund". The police superior officers' variable supplements fund established by subchapter four 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 PSOVSF cumulative earnings factor with respect to such base fiscal year.

d. If the PSOVSF 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 police superior 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.

### **§ 13-232.3 Payments to police superior 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 13-232 of this subchapter shall apply to this section 13-232.3 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 13-232.2 of this subchapter.

(4) "Earnings differential". The amount (expressed as a positive and 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 13-232 of this subchapter, as made applicable to this section 13-232.3 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 the the immediately preceding base fiscal year".

(6) "PSOVSF 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 police department who are police superior 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 police department as of the last day of such base fiscal year.

(7) "PSOVSF unfunded accrued liability". In any case where the valuation of assets and liabilities of the police superior officers' variable supplements fund by the actuary pursuant to subdivision e of section 13-280 of this chapter shows that for any base fiscal year, such liabilities exceed such assets, the term "PSOVSF 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) "Police superior officers". Members of the uniformed force of the police department who (a) hold the position of sergeant or any position of higher rank in such force, or (b) are detectives.

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 PSOVSF cumulative earnings factor with respect to such base fiscal year.

d. If the PSOVSF 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 police superior 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 PSOVSF cumulative earnings factor for such base fiscal year referred to in such subdivision d or (2) the PSOVSF 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 PSOVSF unfunded accrued liability for such base fiscal year, regardless of the amount and character of the PSOVSF 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.

### **§ 13-233 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 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.

### **§ 13-234 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 chapter. The amount so allowed shall be due and payable to such funds, and shall be annually credited thereto by such board.

b. The investment earnings of the retirement system shall be determined for the calendar year nineteen hundred sixty-four. To the extent that such earnings are in excess of the amount allowed as regular interest for calendar year nineteen hundred sixty-four, the board shall declare a rate of special interest, expressed to the lower one-tenth of one per centum, but not to exceed one per centum, to be determined by the amount by which the investment earnings exceed the amount required for the allowance of regular interest divided by the aggregate mean amount for the calendar year nineteen hundred sixty-four in the annuity savings funds of members who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-four. Special interest, as determined by multiplying said special interest rate by the mean amount for the calendar year nineteen hundred sixty-four in the individual annuity savings funds of persons who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-four, shall be credited as of December thirty-first nineteen hundred sixty-four to the individual annuity savings funds of persons who are members, with a balance, after adjustment, as of June thirtieth, nineteen hundred sixty-five and who are allowed regular interest at the rate of three per centum per annum for calendar year nineteen hundred sixty-four. For members who are allowed regular interest at three per centum for calendar year nineteen hundred sixty-four and who do not have a balance, after adjustment, in their annuity savings funds as of June thirtieth, nineteen hundred sixty-five, a payment shall be made equal to the amount of special interest which would have been credited as of December thirty-first, nineteen hundred sixty-four had they had a balance in their annuity savings funds as of June thirtieth, nineteen hundred sixty-five, provided that the sum of said special interest and any additional interest to be paid pursuant to subdivision c hereof is ten dollars or more. Special interest shall not be considered in determining rates of contribution of members.

c. If the full one per centum of special interest has been allowed, then to the extent that the amount of said earnings exceeds the amount allowed as regular interest and the amount allowed or paid as special interest, the board shall declare a rate of additional interest, expressed to the lower one-tenth of one per centum, but not to exceed one per centum, to be determined by the amount by which the investment earnings exceed the sum of the allowance of regular interest and the allowance and payment of special interest divided by the aggregate mean amount for calendar year nineteen hundred sixty-four which would be the reserve-for-increased-take-home-pay of all members to whom special interest is credited or paid pursuant to paragraph b hereof. In determining the reserve-for-increased-take-home-pay of any member to whom special interest is credited pursuant to paragraph b hereof additional interest, as determined by multiplying said additional interest rate by the mean amount for calendar year nineteen hundred sixty-four which would be said member's reserve-for-increased-take-home-pay shall be included. However, for members who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-four and who retire or die prior to June thirtieth, nineteen hundred sixty-five, the amount of additional interest for calendar year nineteen hundred sixty-four shall not be included in the retirement allowance, but shall be paid in a single payment provided that the sum of said additional interest and any special interest to be paid pursuant to paragraph b hereof is ten dollars or more. Additional interest shall not be considered in determining rates of contribution of members.

d. The investment earnings of the retirement system shall be determined for the calendar year nineteen hundred sixty-five. To the extent that such earnings are in excess of the amount allowed as regular interest for calendar year nineteen hundred sixty-five, the board shall declare a rate of special interest, expressed to the lower one-tenth of one per centum, but not to exceed one per centum, to be determined by the amount by which the investment earnings exceed the amount required for the allowance of regular interest divided by the aggregate mean amount for the calendar year nineteen hundred sixty-five in the annuity savings funds of members who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-five. Special interest, as determined by multiplying said special interest rate by the mean amount for the calendar year nineteen hundred sixty-five in the individual annuity savings funds of persons who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-five, shall be credited as of December thirty-first, nineteen hundred sixty-five to the individual annuity savings funds of persons who are members, with a balance, after adjustment, as of June thirtieth, nineteen hundred sixty-six and who are allowed regular interest at the rate of three per centum per annum for calendar year nineteen hundred sixty-five. For members who are allowed regular interest at three per centum for calendar year nineteen hundred sixty-five and who do not have a balance, after adjustment, in their annuity savings funds as of June thirtieth, nineteen hundred sixty-six, a payment shall be made equal to the amount of special interest which would have been credited as of December thirty-first, nineteen hundred sixty-five had they had a balance in their annuity savings funds as of June thirtieth, nineteen hundred sixty-six, provided that the sum of said special interest and any additional interest to be paid pursuant to subdivision e hereof is ten dollars or more. Special interest shall not be considered in determining rates of contribution of members.

e. If the full one per centum of special interest has been allowed, then to the extent that the amount of said earnings exceeds the amount allowed as regular interest and the amount allowed or paid as special interest, the board shall declare a rate of additional interest, expressed to the lower one-tenth of one per centum, but not to exceed one per centum, to be determined by the amount by which the investment earnings exceed the sum of the allowance of regular interest and the allowance and payment of special interest divided by the aggregate mean amount for calendar year nineteen hundred sixty-five which would be the reserve-for-increased-take-home-pay of all members to whom special interest is credited or paid pursuant to subdivision d hereof. In determining the reserve-for-increased-take-home-pay of any member to whom special interest is credited pursuant to subdivision d hereof, additional interest as determined by multiplying said additional interest rate by the mean amount for calendar year nineteen hundred sixty-five which would be said member's reserve-for-increased-take-home-pay shall be included. However, for members who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-five and who retire or die prior to June thirtieth, nineteen hundred sixty-six, the amount of additional interest for calendar year nineteen hundred sixty-five shall not be included in the retirement allowance, but shall be paid in a single payment provided that the sum of



said additional interest and any special interest to be paid pursuant to subdivision d hereof is ten dollars or more. Additional interest shall not be considered in determining rates of contribution of members.

f. The investment earnings of the retirement system shall be determined for the calendar year nineteen hundred sixty-six. To the extent that such earnings are in excess of the amount allowed as regular interest for calendar year nineteen hundred sixty-six, the board shall declare a rate of special interest, expressed to the lower one-tenth of one per centum, but not to exceed one per centum, to be determined by the amount by which the investment earnings exceed the amount required for the allowance of regular interest divided by the aggregate mean amount for the calendar year nineteen hundred sixty-six in the annuity savings funds of members who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-six. Special interest, as determined by multiplying said special interest rate by the mean amount for the calendar year nineteen hundred sixty-six in the individual annuity savings funds of persons who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-six, shall be credited as of December thirty-first, nineteen hundred sixty-six to the individual annuity savings funds of persons who are members, with a balance, after adjustment, as of June thirtieth, nineteen hundred sixty-seven and who are allowed regular interest at the rate of three per centum per annum for calendar year nineteen hundred sixty-six. For members who are allowed regular interest at three per centum for calendar year nineteen hundred sixty-six and who do not have a balance, after adjustment, in their annuity savings funds as of June thirtieth, nineteen hundred sixty-seven, a payment shall be made equal to the amount of special interest which would have been credited as of December thirty-first nineteen hundred sixty-six had they had a balance in their annuity savings funds as of June thirtieth, nineteen hundred sixty-seven, provided that the sum of said special interest and any additional interest to be paid pursuant to subdivision g hereof is ten dollars or more. Special interest shall not be considered in determining rates of contribution of members.

g. If the full one per centum of special interest has been allowed, then to the extent that the amount of said earnings exceeds the amount allowed as regular interest and the amount allowed or paid as special interest, the board shall declare a rate of additional interest, expressed to the lower one-tenth of one per centum, but not to exceed one per centum, to be determined by the amount by which the investment earnings exceed the sum of the allowance of regular interest and the allowance and payment of special interest divided by the aggregate mean amount for the calendar year nineteen hundred sixty-six which would be the reserve-for-increased-take-home-pay of all members to whom special interest is credited or paid pursuant to subdivision f hereof. In determining the reserve-for-increased-take-home-pay of any member to whom special interest is credited pursuant to subdivision f hereof, additional interest as determined by multiplying said additional interest rate by the mean amount for calendar year nineteen hundred sixty-six which would be said member's reserve-for-increased-take-home-pay shall be included. However, for members who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-six and who retire or die prior to June thirtieth, nineteen hundred sixty-seven, the amount of additional interest for calendar year nineteen hundred sixty-six shall not be included in the retirement allowance, but shall be paid in a single payment provided that the sum of said additional interest and any special interest to be paid pursuant to subdivision f hereof is ten dollars or more. Additional interest shall not be considered in determining rates of contribution of members.

h. (1) During the period commencing on July first, nineteen hundred seventy-seven and ending on June thirtieth, nineteen hundred eighty, special interest at the rate of one and one-half per centum per annum, compounded annually, shall be allowed with respect to the individual account of each member in the annuity savings fund.

(2) Subject to the provisions of subdivision j of this section, during the period commencing on July first, nineteen hundred eighty 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 member in the annuity savings fund.

(3) (a) Subject to the provisions of subdivision j of this section, during the period commencing 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 member in the annuity savings fund.

(b) Subject to the provisions of subdivision j of this section, during the period commencing 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 member in the annuity savings fund.

(c) Subject to the provisions of subdivision j 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 member in the annuity savings fund.

(d) Subject to the provisions of subdivision j of this section, during the period commencing on July first, nineteen hundred eighty-eight and ending on 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 member of the annuity savings fund.

(4) Such special interest provided for by paragraphs (1), (2) and (3) of this subdivision shall be credited to such individual account of each 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. Such special interest shall not be considered in determining rates of contributions of members. Nothing contained in this subdivision h shall be construed as applicable to any member who is subject to the provisions of article fourteen of the retirement and social security law.

i. (1) Subject to the provisions of subdivision j of this section, in determining the reserve-for-increased-take-home-pay of each member entitled to such a reserve, additional interest at the rate of one and one-half per centum per annum compounded annually shall be included for each city fiscal year occurring during the period beginning on July first, nineteen hundred seventy-seven and ending on June thirtieth, nineteen hundred eighty.

(2) Subject to the provisions of subdivision j of this section, in determining the reserve-for-increased-take-home-pay of each 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 each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty and ending on June thirtieth, nineteen hundred eighty-two.

(3) (a) Subject to the provisions of subdivision j of this section, in determining the reserve-for-increased-take-home-pay of each member entitled to such a reserve, additional interest at the rate of four per centum per annum compounded annually shall be included for each city fiscal year and portion thereof occurring during the period beginning on July first, nineteen hundred eighty-two and ending on July thirty-first, nineteen hundred eighty-three.

(b) Subject to the provisions of subdivision j of this section, in determining the reserve-for-increased-take-home-pay of each member entitled to such a reserve, additional interest at the rate of one per centum per annum compounded annually shall be included for each city fiscal year and portion thereof occurring during the period beginning on August first, nineteen hundred eighty-three and ending on June thirtieth, nineteen hundred eighty-five.

(c) Subject to the provisions of subdivision j of this section, in determining the reserve-for-increased-take-home-pay of each member entitled to such a reserve, additional interest at the rate of one per centum per annum, compounded annually, shall be included for 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.

(d) Subject to the provisions of subdivision j of this section, in determining the reserve-for-increased-take-home-pay of each 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 each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety.

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

j. (1) The provisions of paragraph (2) of subdivision h of this section and the provisions of paragraphs (1) and (2) of subdivision i of this section, to the extent that any of such provisions grants special or additional interest, as the case may be, for any period prior to July thirty-first, nineteen hundred eighty-one, shall not apply to any person who was not a member on such July thirty-first, and shall not apply to any person to whom, on such July thirty-first, a

deferred retirement allowance or any part of such a retirement allowance was payable pursuant to the provisions of section 13-256 of this subchapter. Nothing contained in subdivisions h and i of this section shall be construed as granting special or additional interest, as the case may be, to any person with respect to any period wherein such person was not a member entitled to be credited with regular interest for the same period or was not a discontinued member entitled to be credited, as a discontinued member, with regular interest for the same period.

(2) (a) The provisions of subparagraph (a) of paragraph (3) of subdivision h of this section, to the extent that such subparagraph grants special interest for any period prior to December sixteenth, nineteen hundred eighty-two, and the provisions of subparagraph (a) of paragraph (3) of subdivision 1 of this section, to the extent that such subparagraph grants additional interest for any period prior to such date, shall not apply to any person who was not a 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 13-256 of this subchapter.

(b) The provisions of subparagraph (d) of paragraph (3) of subdivision h of this section, to the extent that such subparagraph grants special interest for any period prior to the date of enactment of this subparagraph (b) of this paragraph (2) (as such date is certified pursuant to section forty-one of the legislative law), and the provisions of subparagraph (d) of paragraph (3) of subdivision 1 of this section, to the extent that such subparagraph (d) grants additional interest for any period prior to such date, shall not apply to any person who was not a 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 13-256 of this subchapter.

k. (1) Subject to the provisions of paragraph (4) of this subdivision k, in addition to regular interest annually allowed for the period from July first, nineteen hundred seventy-seven to June thirtieth, nineteen hundred eighty 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-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 was credited to such funds with respect to such period.

(2) Subject to the provisions of paragraph (4) of this subdivision k, 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.

(3) (a) Subject to the provisions of paragraph (4) of this subdivision k, 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.

(b) Subject to the provisions of paragraph four of this subdivision k, 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 article, 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.

(c) Subject to the provisions of paragraph (4) of this subdivision k, 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.

(d) Subject to the provisions of paragraph (4) of this subdivision k, 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.

(4) The provisions of paragraphs (1), (2) and (3) of this subdivision k shall not apply to or affect (a) the allowance of interest on or the crediting of interest to accounts of members or discontinued members in the annuity savings fund or (b) the allowance of interest on or crediting of interest to reserve-for-increased-take-home-pay of members or discontinued members or (c) the determination of the amount of any benefit payable to any member or beneficiary.

l. 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 (e) of subdivision eight of section 13-214 of this subchapter the recommendations of such board:

(1) as to whether legislation should be enacted providing for the crediting of special interest to 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 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 k of this section is applicable and if so, the recommended rate thereof and duration of such crediting.

m. 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.

### **§ 13-235 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 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.

### **§ 13-236 Payments from funds.**

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

### **§ 13-237 Fund for current needs.**

For the purpose of meeting 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.

### **§ 13-238 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.

### **§ 13-239 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 ninety per centum of the amount of his or her accumulated contributions provided that the amount so borrowed together with interest thereon, can be repaid before attainment of age sixty-three years by additional deductions of ten per centum from his or her compensation made at the same time compensation is paid to the member. The amount so borrowed together with regular interest creditable to the account of the member on any unpaid balance thereof shall be repaid to the pension fund in equal instalments by deduction from the compensation of the member at the time the compensation is paid, but such instalments shall be at least two per centum of the member's earnable compensation and at least sufficient to repay before attainment of age sixty-three 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 member whose rate of 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.

### **§ 13-240 Termination of membership; discontinuance of service.**

Should a member discontinue city-service except by death or retirement, he or she shall be paid such part of the amount of the accumulated deductions 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 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.

### **§ 13-241 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, he or she shall be paid such part of the amount of the accumulated deductions standing to the credit of his or her individual account in the annuity savings fund as he or she shall be entitled to receive.

### **§ 13-242 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 shall have withdrawn more than one-quarter of his or her accumulated deductions.
3. When any member shall die.
4. When any 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.

### **§ 13-243 Death benefits; ordinary death benefits.**

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

1. 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 13-244 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 a member, such member may be construed by such board to have been in city-service and the benefits provided in this section may be paid in lieu of the retirement allowance.
- c. The member, or on the death of the member, 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 the member's death on the basis of the age of the beneficiary at that time.
- d. Notwithstanding the foregoing provisions of this section, and in lieu of any lesser amount thereby prescribed, upon the death of a member, prior to the first payment of a retirement benefit, who has attained the minimum age or 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 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.

### **§ 13-244 Death benefits; accidental death benefits.**

Upon the accidental death of a member before retirement, provided that evidence shall be submitted to such board proving that the death of such member 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, his or her accumulated deductions 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. Upon application by or on behalf of the dependent of such deceased member, such board shall grant a lump sum payment of the reserve-for-increased-take-home-pay and, in addition thereto, a pension of one-half of the final compensation of such employee, which pension shall in no case be less than one-half of the full salary payable to a first grade police officer on the date of death of such employee:

1. To his or her 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, before such child shall have attained 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 as a joint and survivor pension of one-half of his or her final 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 the 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.
4. 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 wilful 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 38 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.

#### **§ 13-244.1 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."

### **§ 13-245 Accidental death benefits in the case of deaths occurring prior to July first, nineteen hundred sixty-five.**

a. Notwithstanding the provisions of section 13-244 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 and 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 and sixty-five, an amount equal to 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 death, but in no case less than one-half of the salary payable, to a first grade police officer on July first, nineteen hundred sixty-five, and

(2) 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 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 and sixty-five, pursuant to section 13-244 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 the effective date of this section, pursuant to the provisions of section 13-244 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 of the code or any other law.

### **§ 13-246 Retirement; minimum age or 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 such member's 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 such member 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.

### **§ 13-247 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, and all contributions and benefits payable by or on account of any such member shall be computed on the basis of such minimum retirement period.

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, and all contributions and benefits payable by or on account of any such member shall be computed on the basis of such minimum retirement period.

### **§ 13-248 Retirement; selection of age fifty-five.**

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 retirement age of fifty-five, may elect, prior to the certification of his or her rate of contribution, to contribute on the basis of a minimum retirement age of fifty-five by a written election duly executed and acknowledged and filed with the board. The minimum age of retirement for such members so electing shall be fifty-five years, and all contributions and benefits payable by or on account of such member shall be computed on the basis of such minimum retirement age.

### **§ 13-249 Method of computing certain pensions.**

In lieu of any other retirement benefits granted to him or her upon retirement from the police force, any member who shall have served as a chief inspector/chief of operations of the police department on or after July first, nineteen hundred sixty-six, shall be entitled upon retirement to a retirement allowance which shall consist of an annuity which is the actuarial equivalent of his or her accumulated deductions at the time of his or her retirement from the police force 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 inspector. For the purpose of computing the annuity portion of such retirement allowance, such member's accumulated deductions shall be the required amount of such deductions at the time of such member's retirement from the police force, 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.

### **§ 13-250 Continuance of retirement allowance upon election to public office.**

Notwithstanding the provisions of any general, special, local law, charter, administrative code or rule or regulation to the contrary, the payment of any pension from the police pension fund, subchapter two of this chapter, shall not be revoked, repealed or diminished by reason of the pensioner holding or receiving any compensation as the result of his or her election to a public office under the state of New York, or of any city, county or other political subdivision or agency or board of the state of New York.

### **§ 13-251 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.

### **§ 13-252 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.

### **§ 13-252.1 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 Police Pension Fund (NYCPPF) 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 NYCFDPF board of trustees 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 NYCPPF board of trustees 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 NYCPPF board of trustees according to procedures developed by the NYCPPF board of trustees.

(e) The NYCPPF 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 13-244 of this subchapter, shall be entitled to an accidental death benefit as provided by section 13-244 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 section 13-244 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 to have been caused by such member's participation in the World Trade Center rescue, recovery or cleanup operations, as defined in section two of the retirement and social security law, 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 13-244 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 13-244 of this subchapter.

### **§ 13-253 Dependent benefits for surviving spouses and orphans.**

a. The board shall pay a dependent benefit to the surviving spouse, child or children or dependent parent or 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.

b. Dependent benefits shall be granted to the surviving spouse, child or children or dependent parent or parents of a member pursuant to this section only if such member, upon becoming a member, shall elect to contribute the additional deductions provided by subdivision d of section 13-227 of this subchapter.

c. The benefits granted pursuant to this section shall be in addition to any other benefit provided for by this subchapter.

### **§ 13-254 Safeguards on disability retirement.**

a. Once each year the board may, and upon his or her application shall, require any disability pensioner, under the minimum age or 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 concurs in a report by the medical board that such beneficiary is able to engage in a gainful occupation, he or she 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-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-for-increased-take-home-pay, if any, to an amount which shall not exceed the rate of pension and his or her pension-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 age or 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 pension and his or her pension-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-for-increased-take-home-pay, if any, may be revoked by such board.

### **§ 13-255 Retirement allowances; for service.**

Upon retirement for service, a member shall receive a retirement allowance which shall consist of:

1. 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, the member's annuity shall be computed as it would be, (a) if it were not reduced by the actuarial equivalent of any outstanding loan, (b) if it were not increased by the actuarial equivalent of any additional contributions, (c) 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, (d) as it would be without any optional modification;

2. For each additional year of service in the police force, or fraction thereof, beyond his or her required minimum service, a member shall be entitled to, in addition to the benefits provided in subdivision one of this section:

(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 police force rendered both (1) after the completion of such required minimum service in such police 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, a pension of fiftyfive per cent of one-sixtieth of his or her final compensation if such service credit was for service rendered prior to October first, nineteen hundred fifty-one, or seventy-five per cent of one-sixtieth of his or her final compensation if such service was rendered subsequent to October first, nineteen hundred fifty-one.

### **§ 13-256 Vested retirement rights.**

a. Any member who:

(1) discontinues police service on or after July first, nineteen hundred sixty-nine, other than by death, retirement or dismissal; and

(2) prior to such discontinuance, completed five or more years of allowable police 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, files 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 discontinued member could have retired for service if discontinuance had not occurred.

c. Such deferred retirement allowance shall consist of:

(1) an annuity which is the actuarial equivalent of an amount equal to the member's accumulated deductions for the period of his or her police 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 discontinued member whose minimum period for service retirement is twenty years, two and one-half per cent of his or her annual earnable compensation on the date of his or her discontinuance of police service, multiplied by a number equal to the number of years of allowable police 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 discontinued member whose minimum period for service retirement is twenty-five years, two per cent of his or her annual earnable compensation on the date of his or her discontinuance of police service, multiplied by a number equal to the number of years of allowable police service credited to him or her on the date of his or her discontinuance of police 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 per cent of one-sixtieth of his or her final compensation if such service credit was for service rendered prior to October first, nineteen hundred fifty-one, or seventy-five per cent of one-sixtieth of his or her final 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 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 and (4) as it would be without any optional modification.

e. Regular interest on the accumulated deductions of a discontinued member and on his or her reserve-for-increased-take-home-pay shall be credited after discontinuance of police service at the rate which would be applicable if he or she had not discontinued service.

f. If a 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 13-243 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. A discontinued member may elect any option under section 13-261 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 police service, shall terminate the right to a deferred retirement allowance under this section.

i. If a discontinued member who has not withdrawn his or her accumulated deductions in whole or in part shall subsequently re-enter police service before the earliest date on which such 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 police 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 service, at the rate which would have been applicable if he or she had not discontinued service.

j. (1) If a 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 discontinued member could have retired for service if discontinuance had not occurred, re-enter police service, the payment of his or her pension only shall be suspended and forfeited during the period of such police service, except as herein otherwise provided.

(2) Such member may again become a member of the pension fund if, within ninety days after his or her return to service, he or she files a duly executed and acknowledged application for such membership.

(3) 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; provided, however, that he or she shall contribute to such fund at the rate (before modification, if any, to which such discontinued member may be entitled pursuant to section 13-226 of this subchapter) at which he or she would have been contributing if he or she had not discontinued police service. Upon his or her subsequent retirement, 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 13-261 of this subchapter, consisting of:

(i) an annuity which is the actuarial equivalent of his or her accumulated deductions at the time of such retirement; and

(ii) 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 police force rendered by him or her from such date of re-entry; and

(iii) 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 police force rendered by him or her from such date of re-entry.

(4) In addition, upon his or her subsequent retirement, he or she shall receive the pension which he or she was receiving or entitled to receive immediately prior to his or her last restoration.

(5) In lieu of suspension during restoration to police 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 13-243 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.

### **§ 13-256.1 Discharge or dismissal.**

a. Notwithstanding any other provision of law, when a member has attained at least twenty years of creditable police 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.

### **§ 13-257 Retirement allowances; for ordinary disability.**

Upon retirement for ordinary disability, a member 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:

a. In the case of a 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 (i) 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 (ii) 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

b. In the case of a 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 (i) 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 (ii) 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

c. (1) In the case of a member who contributes on the basis of retirement at age fifty-five the retirement allowance that would be payable to him or her after a like amount of total-service and annual earnable compensation on the date of retirement, had he or she attained his or her minimum age for service retirement if such retirement allowance exceeds one-quarter of his or her annual earnable compensation on the date of retirement; otherwise,

(2) The retirement allowance not exceeding one-quarter of his or her annual earnable compensation on date of retirement, that would be paid to him or her were his or her service and present annual earnable compensation on the date of retirement to continue until attainment by him or her of his or her



minimum age of service retirement.

### **§ 13-258 Retirement allowances; for accident disability.**

Upon retirement for accident disability, a member 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, in addition to the annuity and pension provided for by subdivisions one and two of this section.

### **§ 13-259 Accidental disability benefits in the case of retirements prior to July first, nineteen hundred sixty-five.**

a. Notwithstanding the provisions of section 13-258 of this subchapter, in any case where a retirement allowance was or is 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 not be less than three-fourths the annual salary or compensation payable to a first grade patrolman on July first, nineteen hundred sixty-five. In the case of a member receiving a lesser retirement allowance than three-fourths the annual salary or compensation of a first grade patrolman as of July first, nineteen hundred and sixty-five, there shall be added to the pension portion of his or her retirement allowance an amount which when added to his or her retirement allowance provided for under section 13-258 of this subchapter, shall equal three-fourths the annual salary or compensation payable to a first grade patrolman as of July first, nineteen hundred and sixty-five. 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 the police force, 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 survivors insurance coverage, or from any other transaction authorized by law.

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 member under section 13-258 of this subchapter or any other law.

c. The retirement allowance payable pursuant to the provisions of 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 13-258 of this subchapter.

### **§ 13-260 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 city 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 city under the provisions of this article 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 city 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 workers' compensation 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.

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

a. Until the first payment on account of any benefit is made, except pursuant to the provisions of section 13-261.2 of this subchapter, the beneficiary, or, if such beneficiary is an incompetent, then the husband or wife of such beneficiary, or, if there be no husband or wife, a committee of the estate, may elect to receive such benefit in a retirement allowance payable throughout life, or the beneficiary or the husband or wife or committee so electing may then elect to receive the actuarial equivalent at that 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 the beneficiary, or the husband or wife 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 the beneficiary, or the husband or wife 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 the beneficiary, or the husband or wife 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 the beneficiary, or the husband or wife 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.

#### **§ 13-261.1 Modified option 1 pension computation formula.**

a. The board may by resolution direct that under such circumstances as are designated in such resolution, 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 members who:

- (1) became members prior to the date of enactment (as certified pursuant to section forty-one of the legislative law) of this section; and
- (2) 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 a discontinued member; shall be determined under the modified Option 1 pension computation formula (as defined in subdivision twenty-eight of section 13-214 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 pension component of his or her Option 1 allowance 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 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 the board resolution adopted pursuant to subdivision a of this section, and where the first payment on account of the retirement allowance of any 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 (g) of subdivision eight of section 13-214 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).

### **§ 13-261.2 Death of applicant before effective date of retirement.**

a. If a member who is otherwise eligible for retirement pursuant to sections 13-251 and 13-252 of this subchapter dies within thirty days after the filing with the pension board of the application for retirement pursuant to section 13-251 or 13-252 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 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 13-251 of this subchapter shall be payable unless the member would otherwise be entitled to a greater benefit pursuant to section 13-243 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 13-252 of this subchapter shall be payable unless the member would otherwise be entitled to a greater benefit pursuant to section 13-244 of this subchapter, in which event the greater benefit shall be payable.

b. Notwithstanding any law to the contrary, for the purpose of electing an option pursuant to section 13-261 of this subchapter, the pension board shall notify the surviving spouse of any applicant described in subdivision a 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 said section 13-261 and such surviving spouse or personal representative of such estate may elect any such option within thirty days after receipt of such notice.

### **§ 13-261.3 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 13-261 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.

### **§ 13-262 Benefits upon re-entry into membership; after retirement.**

a. (1) Should a beneficiary receiving or entitled to receive a retirement allowance under the provisions of section 13-246, 13-247 or 13-248 of this subchapter, 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 or is under the minimum service retirement age elected by him or her, he or she shall again become a member of the pension system. 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 or has attained the minimum service retirement age 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.

(3) In the case of any such beneficiary who is appointed police commissioner or a deputy police commissioner, he or she shall again become a member of the pension system and shall remain such a member while serving as police commissioner or deputy police 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 so restored, he or she shall be credited with all 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, payable in such form as he or she shall select under section 13-261 of this subchapter.

(6) 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 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.

(7) In addition, upon his or her subsequent retirement, he or she 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.

b. (1) Subject to the provisions of paragraph two of this subdivision, where any beneficiary mentioned in subdivision a of this section, other than a beneficiary serving as police commissioner or deputy police commissioner, shall have earned at least five years of member credit for service in the police force after restoration to active service, and where any beneficiary serving as police commissioner or deputy police 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 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 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 he or she was entitled at the time of his or her earlier retirement shall be credited as provided in paragraph one 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.

### **§ 13-263 Monthly payments.**

A pension-providing-for-increased-take-home-pay, an annuity, a dependent benefit, or a retirement allowance granted under the provisions of this subchapter 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.

### **§ 13-264 Exemption from tax and legal process.**

The right of a person to a pension-providing-for-increased-take-home-pay, an annuity, a dependent benefit, or a retirement allowance, to the return of contribution, 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 chapter, and the moneys in the various funds provided for by this chapter 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 this chapter 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 city police 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.

#### **§ 13-264.1 Eligible rollover distributions.**

a. Notwithstanding anything to the contrary contained in section 13-264 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.

### **§ 13-265 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 of 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.

### **§ 13-266 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.

### **§ 13-267 Limitation on other statutes; application of article.**

No other provision of law which provides wholly or partly at the expense of the city for pensions or 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 spouses or their other dependents.

#### **§ 13-267.1 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 three or four 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 13-228 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 a variable supplements fund established pursuant to subchapter three or four 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 three or four of this chapter.

### **Subchapter 3: [Police Officer's Variable Supplements Fund]**

#### **§ 13-268 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 police officer's 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. "Police officer". 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 not a police superior officer as defined in subdivision four of section 13-278 of subchapter four of this chapter.
2. "Association". The patrolmen's benevolent association of the 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 13-270 of this subchapter.
5. "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 police officer.
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 one". The New York police department pension fund maintained pursuant to subchapter one of chapter two of this title.
8. "Pension fund, subchapter two". The New York police department pension fund maintained pursuant to subchapter two of chapter two of this title.

#### **§ 13-269 Police officer's variable supplements fund.**

a. There is hereby established a fund, to be known as the police officer's 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 13-232 and 13-232.1 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 police officer's 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 chapter two of this title. 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.

#### **§ 13-270 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 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 (A) upon the person who, as of each such June thirtieth, are pension fund beneficiaries and (B) upon the persons who, being police officers in service as of such June thirtieth, may be actuarially expected to retire thereafter as police 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 police officers in service as of June thirtieth who will retire 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 June thirtieth.

f. The police commissioner shall assign to the board such number of clerical and other assistants as may be necessary for the performance of its functions.

### **§ 13-271 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 and four 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-eight, 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-eight, or a part thereof, under such 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 police pension fund, subchapter two and who retired during the period from July first, nineteen hundred eighty-eight to November thirtieth, nineteen hundred eighty-eight 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 prior law, plan and resolution in accordance with the provision 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, on or about December fifteenth, nineteen hundred eighty-eight, 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) 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.

(7) For calendar years succeeding December thirty-first, nineteen hundred eighty-eight, 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 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-eight, 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
1989	\$ 3,000
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 eighty-nine), 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 seven, by the number of full calendar months the beneficiary lived during that calendar year prior to the month of his or her death.

(8) For calendar years succeeding December thirty-first, nineteen hundred eighty-eight, 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 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 eighty-nine), 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 seven 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 seven, which payment shall be made on or about December fifteenth of such year;

(iii) for the calendar year of the beneficiary's death (for those beneficiaries who die on or after February first, nineteen hundred eighty-nine), 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 seven, 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 (i) and (iii) above shall be made only in respect to calendar months following the month of retirement and preceding the month of death.

(9) 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 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" 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

<p>Second anniversary year and each succeeding anniversary year to and including the nineteenth anniversary year</p>	<p>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</p>
<p>Twentieth anniversary year and each succeeding anniversary year</p>	<p>\$12,000</p>

(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 nine 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; and

(iv) if the retirement and death of a beneficiary occur in the same calendar year, aggregate payments under subparagraphs (i) and (iii) above shall be made only in respect to calendar months following the month of retirement and preceding the month of death.

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 seven or paragraph eight 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 nine 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 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 subdivision f of this section and in sections 13-232 and 13-232.1 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 monies 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 13-273 of this subchapter.

e. In addition to the payments set forth in paragraphs eight and nine 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.

f. In the event that the assets of the variable supplements fund are not sufficient to pay benefits under this section for any calendar year, an amount sufficient to pay such benefits shall be appropriated from the contingent reserve fund of pension fund, subchapter two and transferred to the police officers' variable supplements fund.

**§ 13-272 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.

#### **§ 13-273 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.

#### **§ 13-274 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 reports such other facts, recommendations and data as the board may deem pertinent.

#### **§ 13-275 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.

#### **§ 13-276 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.

#### **§ 13-277 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 for expenses under any of the provisions of section three hundred thirty-two of such law.

### **Subchapter 4: [Police Superior Officers' Variable Supplements Fund]**

#### **§ 13-278 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 police superior 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. "Police officer". 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 not a police superior officer.
2. "Fiscal year". Any year commencing with the first day of July and ending with the thirtieth day of June next following.
3. "Board". The board of trustees provided for in section 13-280 of this subchapter.
4. "Police superior officer". Any member of the uniformed force of the police department who (a) hold the position of sergeant or any position of higher rank in such force, or (b) is a detective.
5. "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 police superior officer.
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 police department pension fund maintained pursuant to subchapter two of chapter two of this title.
8. "Pension fund, subchapter one". The New York police department pension fund maintained pursuant to subchapter two of this title.

#### **§ 13-279 Police superior officers' variable supplements fund.**

a. There is hereby established a fund, to be known as the police superior 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 13-232, 13-232.2 and 13-232.3 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 police superior 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.

#### **§ 13-280 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 two votes. 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 two votes. 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, 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 two votes. 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. Four representatives of the police superior officers, who shall each be entitled to cast one vote, and who shall be the four members of the board of trustees of pension fund, subchapter two, serving as such pursuant to paragraphs nine, ten, eleven and twelve of subdivision a of section 13-216 of this chapter.

c. Every act of the board shall be by resolution adopted only by a vote of at least six-tenths 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 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 (A) upon the persons who, as of each such June thirtieth, are pension fund beneficiaries and (B) upon the persons who, being police officers or police superior officers in service as of such June thirtieth, may be actuarially expected to retire thereafter as police superior 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 police officers and police superior officers in service as of June thirtieth who will retire for service as police superior officers 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 police commissioner shall assign to the board such number of clerical and other assistants as may be necessary for the performance of its functions.

**§ 13-281 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, 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 calendar year 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 December fifteenth of such 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 lives 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, 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 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 two, which payment shall be made on or about December fifteenth of such 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) above 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 became or 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" 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 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 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; 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 shall be made only in respect to calendar months following the month of retirement and preceding the month of death.

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 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.

(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 subdivision f of this section and in sections 13-232, 13-232.2 and 13-232.3 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 monies 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 13-283 of this subchapter.

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 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.

f. In the event that the assets of the variable supplements fund are not sufficient to pay benefits under this section for any calendar year, an amount sufficient to pay such benefits shall be appropriated from the contingent reserve fund of pension fund, subchapter two and transferred to the police superior officers' variable supplements fund.

### **§ 13-282 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.

### **§ 13-283 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.

### **§ 13-284 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.

### **§ 13-285 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.

### **§ 13-286 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.

### **§ 13-287 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 for expenses under any of the provisions of section three hundred thirty-two of such law.