§ 1209. Final average salary. a. For members who first become members of the New York state and local police and fire retirement system on or after April first, two thousand twelve, a member's final average salary shall be equal to one-fifth of the highest total wages earned by such member during any continuous period of employment for which the member was credited with five years of service credit; provided, however, if the wages earned during any year of credited service included in the period used to determine final average salary exceeds the average of the wages of the previous four years of credited service by more than ten percent, the amount in excess of ten percent shall be excluded from the computation of final average salary. Provided, however, beginning on or after April first, two thousand twenty-four, a member's final average salary shall be equal to one-third of the highest total wages earned by such member during any continuous period of employment for which the member was credited with three years of service credit; provided, however, if the wages earned during any year of credited service included in the period used to determine final average salary exceeds the average of the wages of the previous two years of credited service by more than ten percent, the amount in excess of ten percent shall be excluded from the computation of final average salary. Wages in excess of the annual salary paid to the governor pursuant to section three of article four of the state constitution shall be excluded from the computation of final average salary for members who first become members of the New York state and local police and fire retirement system on or after April first, two thousand twelve.

b. Notwithstanding subdivision a of this section, members who first become members of the New York state and local police and fire retirement system on or after April first, two thousand twelve, and who retire from an employer which, prior to April first, two thousand twelve, elected by the adoption, filing and approval of a resolution in the manner provided by section three hundred thirty of this chapter to provide that final average salary shall mean the regular compensation earned from such participating employer by a member during the twelve months of actual service immediately preceding the date of such member's retirement pursuant to subdivision f of section four hundred forty-three of this chapter, shall continue to have his or her final average salary

computed with such twelve month final average salary unless such member would otherwise be entitled to a greater benefit under subdivision a of this section, in which case such greater benefit shall be payable.