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

1. Died before the effective date of his retirement, and

2. Was in service upon which his membership was based when he died or was on the payroll in such service and paid within a period of twelve months prior to his death or within a period of twenty-four months prior to his death if on leave of absence as set forth below and had, unless his service was based on seasonal employment, not been otherwise gainfully employed since he ceased to be on such payroll except while on leave of absence which was granted in accordance with the provisions of subdivision i of section three hundred forty-one of this chapter and which commenced during the period from April first, nineteen hundred sixty-six through June thirtieth, nineteen hundred seventy-four, to perform services as a civilian officer or employee of the Federal government or one of its agencies or a contractor of the United States Agency for International Development engaged to perform the work of such agency, the United Nations, any other international organization of which the United States of America is a member, or a foreign government, and

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

An ordinary death benefit shall not be payable in any case in which an accidental death benefit is payable provided, however, that where payments made pursuant to section three hundred sixty-one of this chapter on account of an accidental death benefit, computed without reduction pursuant to section three hundred sixty-four of this article, and the reserve-for-increased-take-home-pay total less than the ordinary death benefit and the reserve-for-increased-take-home-pay that would have been computed and made payable pursuant to this section three

hundred sixty in the case of ordinary death, the difference shall be paid to the beneficiary or member's estate to which the ordinary death benefit and reserve-for-increased-take-home-pay would have been paid. Provided further, that where the beneficiary or beneficiaries designated to receive the accidental death benefit pursuant to section three hundred sixty-one of this chapter is the same beneficiary or beneficiaries designated by the member to receive the ordinary death benefit, then, and in that case the beneficiary or beneficiaries may elect to receive, in a lump sum, the value of the ordinary death benefit and the reserve-for-increased-take-home-pay, if any, that would have been computed and made payable pursuant to the provisions hereof in case of ordinary death, in lieu of any other benefit.

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

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

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

2. No optional election by him was in effect at the time of his death, or he had made and filed a valid election to receive his retirement allowance without optional modification or under "Option One-half", and

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

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

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

b. The ordinary death benefit plus the reserve-for-increased-take-home-pay shall be payable from the pension accumulation fund. The ordinary death benefit shall not exceed the compensation earnable by such member during his last twelve months of service while a member. The amount thereof shall be computed by multiplying one-twelfth of such compensation by the number of years, not to exceed twelve, of his total service credit. Provided, however, that where the member has more than twelve years of total service credit and where his death occurs on or after April first, nineteen hundred sixty-seven and on or before June thirtieth, nineteen hundred seventy-four, there shall be added to such ordinary death benefit one-twenty-fourth of such compensation multiplied by the number of years, not to exceed twenty-four, but exclusive of the first twelve, of his total service credit. Provided, further, that where a member, qualified under subdivisions a or aa of this section, would have been entitled to a service retirement benefit at the time of his death and where his death occurs on or after April first, nineteen hundred sixty-seven, and on or before June thirtieth, nineteen hundred seventy-four, the amount payable under this section shall be equal to the pension reserve that would have been established had the member retired on the date of his death, unless the ordinary death benefit and the reserve-for-increased-take-home-pay, hereinabove provided for, shall

be in excess thereof.

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

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

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

(b) The ordinary death benefit shall be payable from the pension accumulation fund. Such ordinary death benefit shall be based on compensation earnable by such member during his last twelve months of service while a member. The amount thereof shall be computed by multiplying one-twelfth of such compensation by the number of years, not to exceed thirty-six, of his total service credit. Provided that where a member qualified under subdivisions a and aa of this section would have been eligible for service retirement at the time of his death and where his death occurs on or after April first, nineteen hundred sixty-seven and prior to July first, nineteen hundred seventy-four, the amount payable under this section shall be equal to the pension reserve that would have been established pursuant to section three hundred seventy-five-c had the member retired on the date of his death, unless the ordinary death benefit hereinabove provided for, shall be in excess

thereof. The benefit provided herein shall be in lieu of the ordinary death benefit presently payable under other provisions of this chapter, unless the benefit under such other provisions shall be in excess of those provided for herein, in which event the greater benefit shall be payable.

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

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

d. The member, or on the death of the member, the person nominated by him to receive his death benefit, may provide, by written designation, duly executed and filed with the comptroller, that such death benefit and the reserve-for-increased-take-home-pay shall be paid in the form of an annuity. Such designation shall be filed prior to or within ninety days after the death of the member. The amount of such annuity shall be determined as the actuarial equivalent of such death benefit and reserve on the basis of the age of such beneficiary at the time of the member's death and regular interest.

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

f. Special death benefit. Notwithstanding any provision of paragraph three of subdivision a of this section to the contrary, a special death benefit shall be payable upon the death of an officer or member of the state police who is subject to the provisions of section three hundred eighty-one-b of this chapter, and who has credit for ninety or more days of service while actually a member of the retirement system. In lieu of the ordinary death benefit payable pursuant to subdivisions b or bb of this section, the special death benefit shall be payable upon the death of an officer or member of the state police and shall be equal to three times the member's compensation earnable during his last twelve months of service as a member, raised to the next higher multiple of one thousand dollars. If, however, the ordinary death benefit payable pursuant to subdivision b or bb of this section upon the death of an officer or member of the state police who had been in service on or before April first, nineteen hundred sixty-nine would have exceeded the special death benefit otherwise payable pursuant to this subdivision had he not elected to come under the provisions of section three hundred eighty-one-b, the special death benefit payable under this subdivision shall be equal to that benefit which he would have received had he

remained in his former plan. In no case shall the amount payable as a special death benefit on behalf of an officer or member of the state police who enters or re-enters service in the division after April first, nineteen hundred sixty-nine exceed three times the member's compensation earnable during his last twelve months of service as a member, raised to the next higher multiple of one thousand dollars.

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

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

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

provision of paragraph one of this subdivision to the contrary; or

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

3. For the purpose of this subdivision: (a) the terms "security services unit member", "parkway police unit member", and "security supervisors unit member" shall mean a member in the employ of the state in the collective negotiating unit designated as the security services unit or parkway police unit or security supervisors unit established pursuant to article fourteen of the civil service law; and

(b) the term "death in service" shall include the death of such a member who dies while off the payroll provided he or she (i) was on the payroll in such service and paid within a period of twelve months prior to his or her death, or was on the payroll in the service upon which membership is based at the time he or she 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 Chapter 43 of Title 38 of the United States Code and died while on such active duty or service in the uniformed services on or after June fourteenth, two thousand five, (ii) had not been otherwise gainfully employed since he or she ceased to be on such payroll and (iii) had credit for one or more years of continuous service since he or she last entered or reentered the service of his or her employer. Provided, further, that any such member 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 Chapter 43 of Title 38 of the United States Code who died prior to rendering the minimum amount of service necessary to be eligible for this benefit shall be considered to have satisfied the minimum service requirement.

4. The provisions of this subdivision shall apply in any case where

death occurs on or after the date this subdivision takes effect and prior to July first, nineteen hundred seventy-four.