§ 361. Accidental death benefit. a. An accidental death benefit and the reserve-for-increased-take-home-pay shall be payable upon the death of a member if, upon application, filed within five years after the death of such member the comptroller shall determine, on the basis of the evidence, that such member:

1. Died before the effective date of his retirement, as the natural and proximate result of an accident sustained in the performance of duty in the service upon which his membership was based, and

2. Did not cause such accident by his own willful negligence, and

3. At the time of such accident was actually a member of the police and fire retirement system.

Where the claimant is an infant or is mentally or physically incapacitated, and because of the aforesaid disability application for accidental death benefit is not filed within the time specified by this subdivision, or where a person entitled to make a claim dies before the expiration of the time so specified, the comptroller in his or her discretion may grant leave to file such application within a reasonable time after the expiration of the time specified in this subdivision.

Notwithstanding the provisions of section two hundred forty-two, two hundred forty-three or two hundred forty-four of the military law or the provisions of any other law to the contrary and solely for the purpose of determining eligibility for an accidental death benefit and/or special accidental death benefit, a member shall be considered to have died as the natural and proximate result of an accident sustained in the performance of duty 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.

b. The accidental death benefit and the

reserve-for-increased-take-home-pay shall be payable from the pension reserve fund. Such accidental death benefit shall consist of a pension of one-half of the member's final average salary. The payment of such pension shall be subject to the provisions of section three hundred sixty-four of this article. The reserve-for-increased-take-home-pay shall be paid in a lump sum to those entitled thereto in accordance with subdivision d of this section. The member's accumulated contributions shall be refunded in accordance with subdivision d of section three hundred fifty-one of this article.

c. The accidental death benefit payable pursuant to this section on account of a member whose:

1. Service was on other than a full-time basis at the time of his death, and

2. Death was the natural and proximate result of an accident sustained while a member and while in the performance of duty, shall be equal to the benefit that would be paid on account of such member were his service on a full-time basis.

d. The pension on account of accidental death and the reserve-for-increased-take-home-pay shall be paid to:

1. The member's widow or widower to continue during his or her lifetime. If he or she shall leave no widow or widower, or if his or her widow or widower shall die before all his or her children shall have attained age eighteen, or if students, before all of his or her children shall have attained age twenty-three, or sooner die, then to

2. His or her child or children under age eighteen, or, if students, his or her children under age twenty-three, divided in such manner as the comptroller, in his discretion, shall determine. Such pension shall continue as a joint and survivor pension until every such child shall have attained age eighteen, or, if a student, shall have attained age twenty-three, or sooner die. If no widow or widower or child under age eighteen, or, if a student, under age twenty-three, shall survive such

member, at the time of his or her death, then to

3. His or her dependent father or dependent mother, as he or she shall have nominated by written designation duly acknowledged and filed with the comptroller. Such pension shall continue for the life of the parent so designated. If there be no such designation, then to

4. His or her dependent father or dependent mother, as the comptroller, in his discretion, shall determine. Such pension shall continue for the life of the parent so elected.

For purposes of this subdivision, student shall mean a person enrolled in an accredited institution of higher education for at least twelve semester hours for a semester of not less than fifteen weeks, inclusive of examination periods; or eight semester hours a quarter; or, in programs not organized on a semester or quarter basis, twenty-four semester hours for an academic year of not more than twelve months or the equivalent, as determined by the commissioner of education. A student shall be considered full-time for a program organized on an academic-year basis only if the student has filed a plan of study with the institution for the entire academic year.