§ 448. Death benefits. a. A member of a retirement system who is subject to the provisions of this article, exclusive of those members for whom provision is made pursuant to subdivision b of this section, shall, at the time of first becoming a member thereof, make an election, which shall be irrevocable, for coverage for financial protection in the event of death in service, between the two following benefits:

1. A benefit upon the death of a member in service equal to one month's salary for each full year of service up to a maximum of three years' salary upon the completion of thirty-six full years of service, or in the event that a member is eligible to retire without benefit reduction pursuant to section four hundred forty-two of this article, a benefit equal to the pension reserve, if any, which would have been payable to such member had he entered prior to the effective date of this article and died in service, subject to the benefit limitations set forth in section four hundred forty-four of this article, if this alternative provides a greater benefit, or;

2. A benefit upon the death of a member in service equal to the member's salary upon his or her completion of one year of service, two years' salary upon completion of two years of service, and three years' salary upon completion of three years of service. In the case of a member of a retirement system other than the New York state teachers' retirement system, the New York city employees' retirement system, the New York city board of education retirement system, the New York city teachers' retirement system, the New York state and local employees' retirement system or the New York state and local police and fire retirement system, such benefit shall be subject to the following limitations:

(a) If the member last joined the retirement system prior to attainment of age fifty-two, the maximum benefit shall be three years' salary;

(b) If the member was age fifty-two when he or she last joined the retirement system, the maximum benefit shall be two and one-half times annual salary;

(c) If the member was age fifty-three when he or she last joined the retirement system, the maximum benefit shall be two years' salary;

(d) If the member was age fifty-four when he or she last joined the retirement system, the maximum benefit shall be one and one-half times annual salary;

(e) If the member was age fifty-five or older but under age sixty-five when he or she last joined the retirement system, the maximum benefit shall be one year's salary; and

(f) If the member was age sixty-five or older when he or she last joined the retirement system, the maximum benefit shall be one thousand dollars.

In the case of a member of a retirement system other than the New York state teachers' retirement system, the New York city employees' retirement system, the New York city board of education retirement system, the New York city teachers' retirement system, the New York state and local employees' retirement system or the New York state and local police and fire retirement system, commencing upon attainment of age sixty-one, the benefit otherwise provided pursuant to this paragraph shall be reduced while the member is in service to ninety per centum of the benefit otherwise payable and each year thereafter the benefit payable shall be reduced by an amount equal to ten per centum per year of the original benefit otherwise payable, but not below ten per centum of the original benefit otherwise payable.

In the case of a member of the New York state teachers' retirement system, commencing upon attainment of age sixty-two if such member's date of membership is prior to April first, two thousand twelve or attainment of age sixty-three if such member's date of membership is on or after April first, two thousand twelve, the benefit otherwise provided pursuant to this paragraph shall be reduced while the member is in service to ninety-six per centum of the benefit otherwise payable and each year thereafter the benefit payable shall be reduced by an amount equal to four per centum per year of the original benefit otherwise payable, but not below sixty per centum of the original benefit otherwise payable. In the case of a member of the New York city employees' retirement system, the New York city board of education retirement system or the New York city teachers' retirement system, commencing upon attainment of age sixty-one, the benefit otherwise

provided pursuant to this paragraph shall be reduced while the member is in service to ninety-seven per centum of the benefit otherwise payable and each year thereafter the benefit payable shall be reduced by an amount equal to three per centum per year of the original benefit otherwise payable, but not below seventy per centum of the original benefit otherwise payable. In the case of any member of the New York state and local employees' retirement system who is permitted to retire without regard to age or a member of the New York state and local police and fire retirement system, commencing upon attainment of age sixty-two if such member's date of membership is prior to April first, two thousand twelve or attainment of age sixty-three if such member's date of membership is on or after April first, two thousand twelve, the benefit otherwise provided pursuant to this paragraph shall be reduced while the member is in service to ninety-seven per centum of the benefit otherwise payable, and each year thereafter the benefit payable shall be reduced by an amount equal to three per centum per year of the original benefit otherwise payable, but not below seventy per centum of the original benefit otherwise payable. In the case of any other member of the New York state and local employees' retirement system, commencing upon attainment of age sixty-two if such member's date of membership is prior to April first, two thousand twelve or attainment of age sixty-three if such member's date of membership is on or after April first, two thousand twelve, the benefit otherwise provided pursuant to this paragraph shall be reduced while the member is in service to ninety-six per centum of the benefit otherwise payable, and each year thereafter the benefit payable shall be reduced by an amount equal to four per centum per year of the original benefit otherwise payable, but not below sixty per centum of the original benefit otherwise payable. Upon retirement from any retirement system, the benefit in force shall be reduced by fifty per centum; upon completion of the first year of retirement, the benefit in force at the time of retirement shall be reduced by an additional twenty-five per centum, and upon commencement of the third year of retirement, the benefit shall be ten per centum of the benefit in force at age sixty, if any, or at the time of retirement if retirement preceded such age; provided, however, the benefit in retirement shall not be reduced below ten per centum of the benefit in force at age sixty, if any, or at the time of retirement if retirement

preceded such age. Notwithstanding any other provision of this paragraph to the contrary, the benefit for a retiree from the New York state and local employees' retirement system, the New York state teachers' retirement system, the New York city employees' retirement system, the New York city board of education retirement system or the New York city teachers' retirement system shall not be reduced below ten per centum of the benefit in force at the time of retirement.

3. If a member dies in service without having made the election specified in this subdivision within ninety days after first becoming a member, or within the period prescribed by the retirement system of which he is a member if such period is less than ninety days, he shall be deemed to have made the election specified in paragraph two.

4. Notwithstanding any other provision of this article, any member of the New York state teachers' retirement system who joined on or after July first, nineteen hundred seventy-three and before July first, nineteen hundred seventy-four may change the election set forth in this subdivision by filing a new election on or before June thirtieth, nineteen hundred eighty-nine. The election filed pursuant to this paragraph shall be irrevocable.

5. Notwithstanding any provision of this article, a member of a retirement system subject to the provisions of this article who last joined such system on or after January first, two thousand one who is not covered by the death benefit calculation provided in subdivision b of this section shall, upon a qualifying death, be covered by the death benefit calculation provided pursuant to paragraph two of this subdivision and shall not be entitled to elect between the death benefit calculations provided in paragraphs one and two of this subdivision. Any individual who last joined such system before January first, two thousand one who is not covered by the death benefit calculation provided in subdivision b of this section shall be covered, upon a qualifying death, by the death benefit calculation provided by paragraph two of this subdivision unless such individual had timely elected death benefit coverage under the calculation provided by paragraph one of this subdivision and, upon such death, it is determined that the benefit, as

calculated under such paragraph one would be greater than as calculated under such paragraph two, in which case the benefit calculated under such paragraph one shall be payable.

b. A member of a retirement system subject to the provisions of this article who is a police officer, firefighter, correction officer or sanitation worker and is in a plan which permits immediate retirement upon completion of a specified period of service without regard to age or who is subject to the provisions of subdivision b of section four hundred forty-five of this article, shall upon completion of ninety days of service be covered for financial protection in the event of death in service pursuant to this subdivision.

1. Such death benefit shall be equal to three times the member's salary raised to the next highest multiple of one thousand dollars, but in no event shall it exceed three times the maximum salary specified in section one hundred thirty of the civil service law or, in the case of a member of a retirement system other than the New York city employees' retirement system, the New York city police pension fund, subchapter two or the New York city fire department pension fund, subchapter two, the specific limitations specified for age of entrance into service contained in subparagraphs (b), (c), (d), (e) and (f) of paragraph two of subdivision a of this section.

2. Provided further, notwithstanding any other provision of this article to the contrary, where the member is a police officer or firefighter and would have been entitled to a service retirement benefit at the time of his or her death and where his or her death occurs on or after July first, two thousand, the beneficiary or beneficiaries nominated for the purposes of this subdivision may elect to receive, in a lump sum, an amount payable which shall be equal to the pension reserve that would have been established had the member retired on the date of his or her death, or the value of the death benefit and the reserve-for-increased-take-home-pay, if any, whichever is greater, provided further that for the purpose of determining entitlement to the benefit provided by this subdivision, and notwithstanding subdivision j of section three hundred forty-one of this chapter, where the member is

an officer or member of the state police the total number of days of unused sick leave and accumulated vacation credit accrued by the member at the time of his or her death shall be considered in meeting the total creditable service required to qualify for a service retirement benefit provided without regard to age where his or her death occurs on or after July second, two thousand nine. Provided further that where such police officer or firefighter dies on or after July first, two thousand, after having retired from service, but before a first payment of a retirement allowance, such person shall be deemed to have been in service at the time of his or her death for the purposes of this subdivision only, and provided further that the pension reserve established pursuant to this paragraph for a person who dies after retiring from service, but before first payment of a retirement allowance, shall be determined as of the date of retirement and any pension payments payable for the period of time prior to the retiree's death shall be deducted from any benefits payable pursuant to this subdivision.

3. Provided further, notwithstanding any other provision of this article to the contrary, where the member is in a title as defined in subdivision i of section eighty-nine of this chapter, and would have been entitled to a service retirement benefit at the time of such member's death and where such member's death occurs on or after July first, two thousand twenty-six, the beneficiary or beneficiaries nominated for the purposes of this subdivision may elect to receive, in a lump sum, an amount payable which shall be equal to the pension reserve that would have been established had the member retired on the date of such member's death, or the value of the death benefit and the reserve-for-increased-take-home-pay, if any, whichever is greater.

c. For the purpose of this section, salary shall be the regular compensation earned during the member's last twelve months of service in full pay status as a member or, if he or she had not completed twelve months of service prior to the date of death, but was subject to the provisions of subdivision b of this section, the compensation he or she would have earned had he or she worked for the twelve months prior to such date; provided, however, for the purpose of this section salary shall exclude any form of termination pay (which shall include any

compensation in anticipation of retirement), or any lump sum payment for deferred compensation sick leave, or accumulated vacation credit or any other payment for time not worked (other than compensation received while on sick leave or authorized leave of absence) and in no event shall it exceed the maximum salary specified in section one hundred thirty of the civil service law, as added by part B of chapter ten of the laws of two thousand eight, or the maximum salary specified in section one hundred thirty of the civil service law, as hereafter amended, whichever is greater.

d. The benefits provided pursuant to this section are in lieu of all other benefits provided by this or any other state or local law exclusive of a benefit provided under the workmen's compensation law, the civil service law or group life insurance; provided, however, a beneficiary of a member eligible for a benefit as the result of a service connected accident, may elect to receive such other benefit in lieu of the benefit provided pursuant to this section.

e. For the purposes of this section:

1. A member who dies while off the payroll shall be considered to be in service provided he or she (a) 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, (b) had not been otherwise gainfully employed since he or she ceased to be on such payroll and (c) 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; notwithstanding any other provision of law to the contrary, a member of the New York city employees' retirement system or the board of education retirement system of the city of New York shall be deemed to have died on the payroll for the purposes of this section in the event that death occurs while such member is on an authorized

leave of absence without pay for medical reasons which has continuously been in effect since the member was last paid on the payroll in such service, provided, however, that such member was on the payroll in such service and paid within the four-year period prior to his or her death; and

2. The benefit payable shall be in addition to any payment made on account of a member's accumulated contributions.

3. 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.

f. Notwithstanding the provisions of any other law to the contrary and solely for the purpose of determining eligibility for the death benefit payable pursuant to this section, a person subject to this section shall be considered to have died while in teaching service provided such person was in such service 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 person 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 requirements.

g. A member, or on the death of such member, the person nominated by him or her to receive his or her 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. For the purposes of this subdivision, the mortality and interest rates used in determining this annuity shall be the rates in effect on the date of the death of such member.