



THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
NEW YORK, N.Y. 10007

EXECUTIVE ORDER No. 25

December 16, 2016

DESIGNATION OF CERTAIN EMPLOYEES' CONTRIBUTIONS TOWARD EMPLOYER  
PENSION COSTS AS AN EMPLOYER PICK-UP PURSUANT TO SECTION 414(h) OF THE  
INTERNAL REVENUE CODE

WHEREAS, the Correction Officers Benevolent Association, as the certified bargaining representative of municipal employees in the title of Correction Officer, the Correction Captains Association, as the certified bargaining representative of municipal employees in the title of Captain (Correction), and the Assistant Deputy Wardens/Deputy Wardens Association, as the certified bargaining representative of non-managerial municipal employees in the title of Warden (collectively, "Unions"), have submitted petitions seeking elections by the Mayor of certain retirement benefit enhancements pursuant to Article 25 of the Retirement and Social Security Law, which elections (the "Elections") were granted as to the members of the Unions identified in the aforesaid petitions and certain other managerial employees of the Department of Correction who are not represented by the Unions or any other certified bargaining representative and in the civil service title of Warden (the "Covered Employees"); and

WHEREAS, the benefit enhancements provided for in the Elections will be funded by member contributions at a rate over and above the existing rate for member contributions provided for by applicable law ("Additional Member Contributions"), such that the benefit enhancements provided for in the Elections will require no additional contribution by the City to the New York City Employees Retirement System; and

WHEREAS, pursuant to section 414(h) of the Internal Revenue Code, employee contributions to a public employer pension plan may be picked up on a pre-tax basis by the public employer and excluded from an employee's federal gross income if the employer specifies that the contributions, although designated as employee contributions to the plan, are being paid by the employer in lieu of contributions by the employee, and the employee cannot choose to receive the amounts directly instead of having them paid by the employer; and

WHEREAS, the Internal Revenue Service requires that the City take contemporaneous and formal action evidencing an intent to establish an employer pick-up under section 414(h); and

WHEREAS, the Unions and the City of New York agree that the Additional Member Contributions required of the Covered Employees as part of the benefit enhancements provided by the Elections should be picked up by the City for purposes of federal income tax treatment under section 414(h) of the Internal Revenue Code; and

WHEREAS, picking up such contributions on behalf of the Covered Employees will not impose any cost on the City;

NOW, THEREFORE, by the power vested in me as Mayor of the City of New York, it is hereby ordered:

Section 1. Employer Pick-up of Additional Member Contributions of Covered Employees.

- a. The City, through the Office of Payroll Administration, shall pick up the Additional Member Contributions required of the Covered Employees pursuant to the Elections on and after the effective date of the Elections and shall do so by reducing the salary of each of the Covered Employees by that amount which each such Covered Employee is required to contribute under the Elections. The Additional Member Contributions so picked up shall be paid by the City in lieu of the Additional Member Contributions to be paid by Covered Employees pursuant to the Elections and shall be treated as employer contributions solely for the purposes of determining federal income tax treatment under section 414(h) of the United States Internal Revenue Code.

- b. No Covered Employee whose Additional Member Contributions are required to be picked up pursuant to this Order shall have any right to elect that such pick up, with accompanying deduction from the compensation of such Covered Employee as prescribed by subdivision a of this section, shall not be effectuated.
  
- c. Subject to the provisions of subdivision a and b of this section, for all other purposes, this Order does not alter:
  - i. the obligation of such Covered Employee to pay New York state and New York city income and/or wages or earnings taxes and the withholding of such taxes;
  - ii. the determination of the amount of any retirement allowance or other pension fund benefit payable to or on account of such Covered Employee or any other pension fund right, benefit or privilege of such Covered Employee; or
  - iii. the inclusion of the Additional Member Contributions picked up pursuant to this section as part of the employee compensation of such Covered Employee and such Covered Employee's gross compensation (as it would be in the absence of a pick-up program applicable to him or her hereunder).

Section 2. Effective Date. This Order shall take effect immediately.



Bill de Blasio

Mayor