§ 393. Election. 1. Election of the optional retirement program.

(a) Each eligible employee initially appointed on or after July first, nineteen hundred sixty-four, within thirty days of his entry into service, shall elect (i) to join either the New York state teachers' retirement system or the New York state employees' retirement system or other public retirement system in this state in accordance with the provisions of law applicable thereto or (ii) to elect the optional retirement program established pursuant to this article; provided however, that (1) such persons initially entering service during the period July first, nineteen hundred sixty-four through November fourth, nineteen hundred sixty-four may defer such election until December fourth, nineteen hundred sixty-four, and (2) eligible employees of an electing employer initially appointed on or after the effective date of the election to offer such program may defer such election until the ninetieth day following such effective date of the election to offer such program established by an electing employer. Any such deferred election shall be effective as of the date of entry into service or the effective date of such offer, whichever is later.

(b) In the event an eligible employee fails to make an election as provided in paragraph (a) of this subdivision, he shall be deemed to have elected membership in the New York state teachers' retirement system, or such public retirement system in this state in which his membership may be otherwise required in accordance with law, except that eligible employees of institutions under the management and control of Cornell university or Alfred university as the representative of the state university trustees shall be deemed to have elected membership in the New York state employees' retirement system. Such membership shall be effective as of the date of entry into service, or in the case of membership in the New York city employees retirement system, at the time otherwise required by law.

(c) The amount, if any, required to have been contributed by any employee in accordance with an election, a deferred election or failure to elect pursuant to paragraph (a) or paragraph (b) of this subdivision shall be collected by payroll deductions in such manner as may be provided by the comptroller for employees of state university electing the optional retirement program, or by the appropriate fiscal officer for employees of an electing employer, or in the case of membership in

either the New York state employees' retirement system or the New York state teachers' retirement system or other public retirement system in this state, by the retirement system concerned.

(d) Eligible employees other than those employed by an electing employer appointed on or before June thirtieth, nineteen hundred sixty-four, may elect the optional retirement program established pursuant to this article. Such election shall be made on or before December fourth, nineteen hundred sixty-four, and shall become effective as of January first, nineteen hundred sixty-five. Eligible employees of an electing employer appointed before the effective date of the election to offer such program may elect the optional retirement program established pursuant to this article. Such election shall be made on or before the ninetieth day following the effective date of such offer and shall become effective on or as of the first day of January next following the effective date of such offer.

(e) Any state employee or employee of an electing employer who becomes eligible to elect the optional retirement program by reason of (i) the certification of the position held by him pursuant to paragraph three of section three hundred ninety of this article or (ii) his appointment, promotion, transfer or reclassification to a position previously so certified, may elect the optional retirement program established pursuant to this article. Such election shall be made within thirty days after notice in writing to such employee of his eligibility, and shall become effective on the date of such election, except that in no case shall such election by a state employee become effective prior to January first, nineteen hundred sixty-five, or in the case of an eligible employee of an electing employer, prior to the first day of January next following the effective date of the offer of such program.

(f) Any eligible employee who was employed by the University of Buffalo prior to its merger into state university and who elected to continue in the retirement program theretofore provided by the University of Buffalo in accordance with section three of chapter nine hundred eighty of the laws of nineteen hundred sixty-two and who elects the optional retirement program established pursuant to this article as provided in paragraphs (d) or (e) of this subdivision shall become ineligible to continue in the retirement program provided by the University of Buffalo prior to merger on the effective date of such

election. Such election shall constitute a waiver of all rights and benefits provided under sections three and seven of chapter nine hundred eighty of the laws of nineteen hundred sixty-two.

(g) No election by an eligible employee of the optional retirement program shall be effective unless it shall be accompanied by an appropriate application, where required, for the issuance of a contract or contracts under the program.

2. Ineligibility for retirement system membership. Any employee who elects the optional retirement program shall be ineligible for membership in the New York state employees' retirement system, the New York state teachers' retirement system or any other public retirement system in this state so long as he shall remain continuously employed in any position by state university or the institutions under the management and control of Cornell university or Alfred university as representative of the board or by an electing employer and shall continue in the optional retirement program.

3. (a) Any eligible employee who is a member of either the New York state employees' retirement system or the New York state teachers' retirement system at the time he elects the optional retirement program established pursuant to this article, shall be deemed to be a person who discontinues service on the effective date of such election, for the purpose of determining his eligibility for rights and benefits in either such system; provided however, that if he does not withdraw his accumulated contributions, (i) his continued service with state university while under the optional retirement program shall be deemed to be member service in either the New York state employees' retirement system or the New York state teachers' retirement system for the purpose of determining his eligibility for any vested retirement allowance, retirement allowance or ordinary death benefit under either such system dependent upon a specified period of total service or upon attainment of a specified age while in service or upon death while in service; and (ii) the amount of any such benefit to which he or his estate or person designated by him may become entitled under either such system shall be computed only on the basis of service otherwise creditable to him therein and his compensation during such service.

(b) Electing employees and their beneficiaries shall not be entitled to any right or benefit under either the New York state employees' retirement system or the New York state teachers' retirement system other than a vested retirement allowance, retirement allowance or ordinary death benefit to the extent expressly provided for in this section.

4. (a) Any eligible employee of an electing employer who is a member or transferred contributor of either the New York city teachers' retirement system or the New York city employees' retirement system at the time he elects the optional retirement program offered by an electing employer pursuant to this article shall be deemed to be a person who terminates membership on the effective date of such election, for the purpose of determining his eligibility for rights and benefits in either such system; provided however, that if he does not withdraw his accumulated contributions, (i) his continued service at a community college whose employees are otherwise eligible for the New York city teachers' retirement system, or the New York city employees' retirement system shall be deemed to be member service in either the New York city teachers' retirement system or the New York city employees' retirement system for the purpose of determining his eligibility for any retirement allowance or ordinary death benefit under either such system dependent upon a specified period of total service or upon attainment of a specified age while in service or upon death while in service; and (ii) the amount of any such benefit to which he or his estate or person designated by him may become entitled under either such system shall be computed only on the basis of service otherwise creditable to him therein and his compensation during such service. (b) Electing employees and their beneficiaries shall not be entitled to any right or benefit under either the New York city teachers' retirement system or the New York city employees' retirement system other than a retirement allowance or ordinary death benefit to the extent expressly provided for in this section. Such employee shall not be eligible for any benefit pursuant to section B3-36.0, subdivision two or section B3-36.0, subdivision three of the administrative code of the city of New York or section two hundred forty-five of the military law.

5. (a) Subdivision two of this section shall not apply to any eligible employee who has elected the optional retirement program and after June thirtieth, two thousand two, renders service which is creditable in the New York state teachers' retirement system, other than service for which a contribution is made to the optional retirement program.

(b) Subdivision three of this section shall not apply to any member of the New York state teachers' retirement system who, after joining such system, elects the optional retirement program.

(c) Anything in subdivision three of this section notwithstanding, any eligible employee who is a member of the New York state teachers' retirement system and had elected the optional retirement program prior to July first, two thousand two, may obtain credit for service, other than service for which a contribution is made to the optional retirement program, which is creditable in such system, was rendered after such member had elected the education department optional retirement program, and was rendered between December first, nineteen hundred ninety-one and June thirtieth, two thousand two, provided (i) such member has rendered at least five years of service credited with the New York state teachers' retirement system at the time such service is credited, and (ii) in the case of such member subject to the provisions of article fourteen or fifteen of the retirement and social security law, the member contributes three percent of the wages earned for such service together with interest at the rate of five percent per annum compounded annually from the date of such service until payment is made.

(d) Anything in this subdivision five notwithstanding, service as an eligible employee for which a contribution is made to the optional retirement program shall neither entitle any eligible employee to join or rejoin the New York state teachers' retirement system nor be creditable in such system.