**§ 40. Membership of retirement system.** a. Each person who becomes a member of the retirement system shall file a duly executed application with the comptroller. Such application shall contain:

1. A detailed statement of all such person's service, and

2. A statement that he consents and agrees to membership and to the contributions prescribed by this article.

b. Membership in the retirement system shall be mandatory for the following:

1. All persons who enter or re-enter the service of the state or of a participating employer on and after July first, nineteen hundred forty-eight, except those:

(a) In the exempt class of the classified service.

(b) In the labor class.

(c) Who are laborers and who are not covered by article nine of the military law.

(d) In the unclassified service.

(e) Who are teachers or instructors and who are eligible to membership in another retirement system.

(f) Sixty years of age and over, whose positions in the exempt class, labor class or unclassified service have by reason of a reclassification of positions on or after December fifteenth, nineteen hundred forty-eight, been placed in the competitive or non-competitive class of the classified service.

(g) Whose positions are excluded from eligibility for membership in the retirement system and are covered only by old-age and survivors insurance.

(h) Whose positions pay compensation at a rate of less than fifteen hundred dollars a year.

(i) Otherwise specifically provided for by law.

Persons employed in state or local institutions reporting to or subject to the supervision of the state departments of correction, education, social welfare, health or mental hygiene need not become members until the completion of six months of service.

2. (a) Those persons who enter or re-enter service in the state colleges of agriculture, home economics, veterinary medicine, or industrial and labor relations, the state agricultural experiment station at Geneva, or any other institution or agency under the management and control of Cornell university as representative of the state university trustees, or who enter or re-enter service in the state college of ceramics under the management and control of Alfred university as the representative of the state university trustees, and who do not elect the optional retirement program established by article eight-B of the education law, except employees who hold federal cooperative appointments with the United States department of agriculture as designated by the director of the New York state cooperative extension service and who are eligible for participation in the federal retirement system as provided in subparagraph (b) below. Each such member shall be covered by the provisions of this article to the full amount of the salary paid to him from direct or indirect federal or state taxes. Any person who is in such service when this paragraph takes effect and who has not made contribution to the annuity savings fund of the New York state employees' retirement system may on or before July first, nineteen hundred fifty-seven become a member of the New York state employees' retirement system and receive credit for allowable service rendered prior to January first, nineteen hundred twenty-one, by filing with the comptroller a statement duly executed and acknowledged, consenting and agreeing to membership and to the deductions for annuity purposes prescribed in this article, provided he or she shall pay to the proper fund in installments as he or she shall elect, except that such payments shall be made within a period no greater than the number of months of his or her service elapsed between January first, nineteen hundred twenty-one and his or her date of membership, an amount equal to the amount that would have been in the fund had he or she been a member during such elapsed service. Such persons shall receive member service credit for the time for which such payments are made.

(b) (1) Any employee of a county extension service association and any employee of Cornell university appointed for the first time on or after August first, nineteen hundred seventy-seven who holds a federal

cooperative appointment with the United States department of agriculture as designated by the director of the New York state cooperative extension service and who is eligible for participation in the federal retirement system shall be excluded from membership in the state employees' retirement system;

(2) any person who on or before July thirty-first, nineteen hundred seventy-seven holds a state cooperative appointment as designated by the director of the New York state cooperative extension service, may elect to receive federal cooperative appointment in the manner provided for by the relevant federal laws, rules and regulations and to participate in the federal retirement system and discontinue participation in the state retirement system by filing a written notice of termination, on or before December thirty-first, nineteen hundred seventy-eight with the comptroller. Any employee who is a member of the New York state employees' retirement system at the time he or she elects coverage in the federal retirement program shall be deemed to be a person who discontinues service on the effective date of such election, for the purpose of determining his or her eligibility for rights and benefits in such state system; provided however, that if he or she does not withdraw accumulated contributions, (i) continued service with the county extension service association or Cornell university while under the federal retirement program shall be deemed to be member service in the state employees' retirement system for the purpose of determining eligibility for any vested retirement allowance, retirement allowance or ordinary death benefit under 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 the person or his or her estate or person designated by him or her may become entitled under either such system shall be computed only on the basis of service otherwise creditable to him or her therein and his or her compensation during such service. Electing employees and their beneficiaries shall not be entitled to any right or benefit under the New York state employees' retirement system other than a vested retirement allowance, retirement allowance or ordinary death benefit to the extent provided for in this chapter.

3. Every police officer and firefighter, appointed to and employed by

a city, county, town, village or police or fire district, in a position in the classified civil service, other than in a position in the exempt class, and who is not eligible to become a member of a local pension system. Notwithstanding any other provision of this article, so far as such police officers and firefighters are concerned, their employers shall be treated in all respects as if they were participating employers. Such employers shall pay into the pension accumulation fund the amount required to pay the accrued liability on account of such police officers and firefighters, as computed by the actuary. Such payment shall be made in such installments as the comptroller shall require.

c. The following may become members of the retirement system:

1. An officer or employee who is in the service of a participating employer on the date it becomes a participating employer, unless his office or position has been excluded from eligibility for membership in the retirement system pursuant to sections thirty or thirty-one of this article.

2. An officer or employee in the service of the state or of a participating employer who would be excluded from membership by the provisions of subdivision e of this section except for the fact that he, nevertheless, may become a member pursuant to a specific provision of law.

3. Any other person in the service of the state or a participating employer, except as provided in subdivision b or subdivision e of this section.

4. Officers or employees of the federal government who have at least five years of member service credit at the time they become federal officers or employees may continue as contributing members.

The provisions of this paragraph four as hereby amended shall not affect the membership of officers or employees of the federal government heretofore commenced or continued hereunder, provided, however, that all

memberships hereunder shall be conditioned upon the receipt by the retirement system of the payments required by section forty-two of this article.

5. A person who:

(a) Is a teacher within the meaning of subdivision four of section five hundred one of the education law,

(b) Is not a member of the New York state teachers' retirement system and has not elected the optional retirement program established either by article eight-b or by article three, part V of the education law,

(c) On or after April first, nineteen hundred fifty, enters upon his employment as such a teacher in a state-operated institution or community college under the jurisdiction of the board of trustees of the state university, and

(d) Elects to become a member of this retirement system upon his entry into such employment and at no other time.

6. An officer or employee who is in the service of an institution for the instruction of the deaf, mute or the blind, which receives state pupils whose instruction and support are paid for by the state or a participating employer.

7. All war veterans in state service on March twenty-first, nineteen hundred thirty, entitled to benefit under the provisions of former section twenty-one-a of the civil service law or former subdivision eight of section three of the public buildings law or section two hundred fourteen or two hundred fifteen of the military law shall have the right to elect to become members of the New York state employees' retirement system, and to be covered by all the provisions of law relative thereto. Upon exercising such right, such war veteran shall be deemed to have waived his rights to any benefits under such sections.

8. Any person who is regularly employed under the control of the division of military and naval affairs whose duties in such employment require substantially all normal working hours and whose regular compensation is paid by the United States from funds allocated to the New York army national guard, or the New York air national guard. For

purposes of eligibility for membership in the retirement system, such employees shall be deemed to be employees of the state. The provisions of this paragraph eight shall be effective only if and during the time that the United States shall undertake to and does provide the employers' contributions which the state is required to pay to the retirement system on account of the memberships of such employees.

9. Notwithstanding any inconsistent provision of subdivision e of this section, or of this chapter or of any other law, an officer or employee in the service of the state or of a participating employer who, at the time of entering such service, was or is entitled to benefits by any other pension or retirement system maintained by the state or a political subdivision thereof, provided such benefits, exclusive of any annuity based solely on his own contributions and interest thereon, are suspended during his active membership in the retirement system. He shall contribute to the retirement system as a new member.

d. A member, discontinued from the government service because the office in which he was employed was transferred to:

1. The federal government, or

2. Any public authority or public corporation organized pursuant to the laws of this state and which is not a participating employer, may file a written election with the comptroller stating that he elects to continue as a member. Such election shall be subject to the approval of the comptroller and such continuance shall be conditioned upon the receipt by the retirement system of the payments required by section forty-two of this article.

e. Any person who is or may be entitled to benefits by any other law providing for pensions and annuities for civil service employees, wholly or partly at the expense of the state or of a political subdivision thereof, shall not be a member. This provision, however, shall not:

1. Affect the membership of any person who legally is a member of the retirement system on July first, nineteen hundred forty-eight.

2. Exclude from membership any person who is or may become a member pursuant to paragraph two of subdivision c of this section.

3. Exclude from membership any person paid a salary from two or more sources, each of which entitles him to membership in a retirement system.

4. Exclude from membership any person holding office pursuant to appointment by the governor by and with the advice and consent of the senate, who at the time of such appointment would otherwise be entitled to a retirement allowance wholly or partly at the expense of the state or of a political subdivision thereof.

5. Exclude from membership any person who is or may become eligible for old-age and survivors insurance benefits pursuant to the provisions of this article except where his position was or is excluded from eligibility for membership in this retirement system in order to extend old-age and survivors insurance coverage to it and such eligibility shall not have been restored.

f. Termination of membership. Membership in the retirement system shall cease upon the occurrence of any one of the following conditions:

1. When seven years have elapsed since a member has performed government service provided, however, that no part of such seven year period shall run during such time as a member, with at least five years of member service credit, shall serve as an officer or employee of the federal government or the United Nations or other international organizations of which the United States of America is a member.

2. When a member shall die.

3. When a member shall retire.

4. When a member shall have withdrawn all or part of his accumulated contributions. Acceptance by a member of a refund of excess

contributions pursuant to subdivision g of section twenty-one, subdivision c of section seventy-two, subdivision c or d of section seventy-one, subdivision c or d of section seventy-one-a or subdivision c of section eighty-four, subdivision i of section eighty-five or subdivision h of section eighty-six of this article or borrowing from his fund in the retirement system pursuant to section fifty of this article shall not terminate his membership. Acceptance of such a refund of excess contributions by a member entitled to a vested retirement allowance pursuant to section seventy-six of this chapter shall not terminate his right to such vested retirement allowance nor shall acceptance by him of a refund of the amount of his contributions and regular interest thereon which is in excess of the amount of the accumulated contributions which he would then have to his credit had he been contributing on the basis of his rate of normal contribution terminate his right to such vested retirement allowance.

5. When a member who has not attained eligibility for a retirement allowance or a vested retirement allowance has discontinued service with the state or a participating employer for a period of at least thirty consecutive days and has requested termination of membership on a form prepared by the comptroller for such purpose by filing such form with the comptroller. If such person subsequently rejoins the retirement system within five years from the date he discontinued service with the state or a participating employer, such person shall be entitled to every retirement right, benefit and privilege which would have been available to him had he reentered employment on the date of such discontinuance from service.

g. As to any class of persons whose compensation is only partly paid by the state or a participating employer or who are serving on a temporary or other than per annum basis, the comptroller, in his discretion, may:

1. Deny the right to become members, or

2. Make optional the individual entrance of those whose membership otherwise would be mandatory.