§ 41. Allowances for service. a. Generally. Subject to all provisions of law appertaining thereto and to such reasonable rules and regulations as the comptroller shall adopt or amend in pursuance thereof, he shall determine and may modify allowances for service and shall issue prior service certificates and certificates for service in war after world war I. The comptroller, however, shall not allow more than one year of credit for all service rendered in any calendar year.

b. Allowable service. Only the following types of service shall be allowable in computing service credits:

1. Government service.

2. Prior city and county service rendered in a city of the state or in a county within the boundaries of such city, if such city has a pension system allowing credit for prior state and county service.

3. Prior service rendered to an employer before the latter became a participating employer. Such credit shall be allowable immediately upon such employer's becoming a participating employer. The employer for whom the member is working at the time such prior service credit is allowed, shall pay the contribution required to be made by an employer on account of such credit.

4. Civil service in any capacity as an officer or employee of the federal government, or military duty in the armed forces of the federal government and not otherwise creditable, rendered or performed by a member prior to the time he last became a member. The allowance of credit for such service shall be conditioned upon the receipt by the retirement system of all the payments required to be made on account thereof by section forty-two of this article.

5. Civil service rendered as an officer or employee of the federal government as provided in subdivision d or paragraph four of subdivision c of section forty of this article. The allowance of credit for such service shall be conditioned upon the receipt by the retirement system of all the payments required to be made on account thereof by section

forty-two of this article. Except as so provided, employment by the federal government shall not entitle a person to contribute to the retirement system during the period of such employment.

6. Any member may obtain credit for any allowable service:

(a) For which he made contributions, regardless of whether such contributions were returned to him when he left such service, or

(b) Rendered by him while not a member of any retirement system that is actuarially sound and of which the state or municipality thereof is a contributor, provided he makes the contributions required by this article for such credit and renders at least two years of member service after he last became a member.

No credit shall be allowed for service if, but for the member's failure to avail himself of the privilege of transfer within the time and in the manner provided in section forty-three of this article, credit for such service could have been obtained upon transfer from another retirement system pursuant to such section.

c. Purchase of previous member service credit.

1. A member who has not previously been a member may purchase credit at any time for all allowable member service; provided, however, that a member joining the system pursuant to paragraph nine of subdivision c of section forty of this article shall not be permitted to purchase credit for, or otherwise be allowed credit for the previous service upon which his retirement or pension from another pension or retirement system is or would be based. In order to purchase credit, which may be purchased pursuant to this paragraph, the member shall pay into the annuity savings fund, either in a lump sum or in installments, a sum equal to the amount which would have been in such fund to his credit had he actually been a member contributing thereto during the entire period of such previous member service. If such payment be made in installments, the same shall be paid within a period no greater than the number of months of such member service.

2. A member who, after a previous membership, withdrew all or part of his accumulated contributions shall be credited with all allowable

service rendered prior to such withdrawal, provided he:

(a) Renders at least two years of member service after his last withdrawal, and

(b) Redeposits such withdrawn amount in the annuity savings fund, either in a lump sum or in installments; provided, however, that a member joining the system pursuant to paragraph nine of subdivision c of section forty of this article shall not be permitted to purchase credit for, or otherwise be allowed credit for the previous service upon which his retirement or pension from another pension or retirement system is or would be based. If such payment be made in installments, the same shall be paid within a period no greater than the number of months of member service lost by such withdrawal.

d. Credit allowable only if paid for. In the event that a member retires or that any benefit becomes payable because of his membership in the retirement system prior to the completion of all of the payments required to be made by him as a condition precedent to his obtaining credit for member service, the amount of his retirement allowance or such other benefits shall be based only on:

1. The service rendered by him since he last became a member of the retirement system and for which contributions have been paid by him, and

2. Any additional service, all the conditions precedent to the crediting of which have been completely fulfilled by him. However, if the full amount of the payments required to be made by the member is not paid to the retirement system, the amount of service credit shall be proportional to the total amount of the payments made.

e. Waiver of membership requirement in certain cases. In the case of a person in the employ of a participating employer, the requirements in sections sixty and seventy-five of this article that a member must have credit for one or more years of service as a member shall not apply if:

1. Such person became a member within one year after his employer became a participating employer, and

2. He was in the service of such participating employer for the entire year previous to his retirement or death.

f. Restoration of credit in certain cases.

1. A member who has been discontinued from service through no fault of his own and who has withdrawn his accumulated contributions shall have his total service credit restored in full if:

(a) He had less than twenty years of total service credit when he was so discontinued, and

(b) He returns to service within ten years after such discontinuance, and

(c) He redeposits the total amount so withdrawn by him and

(d) His employer elects to and does pay to the pension accumulation fund an amount equal to the reserve required to cover such restoration of credit.

2. Upon such return to service, such member shall contribute to the retirement system as a new member.

3. In the event such a member retires before his employer makes such payment, he may elect to receive his benefit immediately as if full service credit were allowable. He thereupon shall be entitled to receive the full amount of such benefit for such period as the same can be paid from the combined reserve available on his account in the annuity reserve fund and pension reserve fund. When his employer makes such payment, his benefit thereafter shall be continued from the reserve so paid.

4. The provisions of this subdivision f shall be controlling notwithstanding any provision in this article to the contrary.

g. Prior service credit and credit for service in war after world war I in certain cases. Allowable prior service credit and allowable credit for service in war after world war I shall be granted immediately to:

1. Any member who shall have rendered at least two years of service

since he last became a member.

2. Any person who is in the service of a participating employer on the date it approves participation and who becomes a member within one year after such date.
The employer for whom the member is working at the time such prior service credit or credit for service in war after world war I is allowed, shall pay the contribution required to be made by an employer on account of such credit.

h. Prior service certificates and certificates for service in war after world war I.

1. The comptroller shall issue a certificate, to be known as a prior service certificate, to each member entitled to prior service credit. Such certificate shall certify the amount of such credit which shall be allowed in computing any pension provided for by this article.

2. The comptroller, upon application, shall issue a certificate for service in war after world war I to each member entitled thereto. Such certificate shall certify to service in war after world war I allowable to such member.

3. The comptroller, upon application of a member at any time, or upon his own initiative within one year from the date of issuance of a prior service certificate or a certificate for service in war after world war I may modify any such certificate in accordance with the allowance for prior service or service in war after world war I credit to which the member is shown to be entitled.

4. A member's prior service certificate, certificate for service in war after world war I, or any such certificate as modified, shall become void upon the termination of his membership in the retirement system. Except as provided by subdivision d of section one hundred two of this article, resumption of membership after such termination shall be without credit for prior service or service in war after world war I.

i. Allowances during leaves of absence without pay.

1. Time during which a member is absent on leave without pay:

(a) Shall not be included in computing prior service.

(b) May be included in computing member service and final average salary only if the head of the department in which such member is employed and the comptroller allow such time for retirement purposes at the time such leave of absence is granted.

(c) Shall be included in computing member service and final average salary in case such a leave of absence was granted, during the period from March first, nineteen hundred forty, until six months after the termination of world war II, to enable the member to enter the service of the federal government or its associated powers, or to engage in war work or defense industries only if:

(1) The fact that such service was rendered is established to the satisfaction of the comptroller, and

(2) Such member shall have notified the comptroller in writing, on or before July first, nineteen hundred forty-seven, or within one year after such leave of absence was granted, that he claims member service credit pursuant to the provisions of this subparagraph (c), and

(3) Such member, within a period not greater than the number of months during which he was on leave of absence, shall pay into:

(aa) The annuity savings fund such amounts as would have been in such fund to his credit had he remained in the performance of his regular duties as a member at the same salary he was receiving when such leave of absence was granted, and

(bb) The pension accumulation fund such amounts as would have been in such fund had he remained in the performance of his regular duties. Such amounts shall be determined by the actuary and shall be sufficient to pay the contribution that the state or a participating employer would have paid for an ordinary death benefit and for that portion of the pension provided for in paragraph two of subdivision a or paragraph two of subdivision b of section seventy-five of this article for service during such period.

(d) Shall be included in computing member service and final average salary in case such a leave of absence commenced during the period from April first, nineteen hundred sixty-six through June thirtieth, nineteen

hundred seventy-four, and was granted for a period of not more than two years to enable the member to perform services as a civilian officer or employee of the Federal government or one of its agencies or a contractor of the United States Agency for International Development engaged to perform the work of such agency, the United Nations, any other international organization of which the United States of America is a member, or a foreign government only if:

(1) The comptroller allows inclusion of such time for retirement purposes at the time such leave of absence is granted, and

(2) Payment during such leave of absence or within one year after the end of such leave of absence is made by the employee into:

(aa) The annuity savings fund of contributions equal to the contributions which the member would have made during the period of such leave of absence had he been performing his regular duties, and

(bb) The pension accumulation fund of a further contribution equal to the contribution which his employer would have made on his behalf during the period of such leave of absence had he been performing his regular duties. The payments required by this item (bb) may be made on the member's behalf by the organization employing him during such leave of absence.

2. In the event that, during a leave of absence granted pursuant to subparagraph (c) of paragraph one of this subdivision i

(a) The position of such member is abolished or made unnecessary through no delinquency or misconduct on his part, such leave of absence shall be deemed to continue until six months after the termination of world war II and such member may continue his contributions and receive credit therefor during such period.

(b) A disability or injury of such member occurs, he shall be entitled only to the return of his contributions.

(c) The death of such member occurs, his beneficiaries or representatives shall be entitled only to the return of his accumulated contributions and the ordinary death benefit, if such benefit would otherwise be payable.

3. In the event that a member, who made contributions pursuant to such subparagraph (c), is separated from service before he becomes eligible

for a retirement allowance or a death benefit, all such contributions and his accumulated contributions shall be returned to him or to his beneficiaries or representatives.

j. Allowance for unused sick leave for members in the employ of the state.

1. In addition to any other service credit to which he or she is entitled, a member who meets the requirements set forth in paragraphs two and three of this subdivision shall be granted one day of additional service credit for each day of accumulated unused sick leave which he or she has at time of retirement for service, but such credit shall not (a) exceed one hundred sixty-five days, (b) be considered in meeting any service or age requirements prescribed in this chapter, and (c) be considered in computing final average salary. However, for an executive branch member designated managerial or confidential pursuant to article fourteen of the civil service law or in the collective negotiating units established by article fourteen of the civil service law designated the professional, scientific and technical services unit, the rent regulation services negotiating unit, the security services negotiating unit, the security supervisors negotiating unit, the state university professional services negotiating unit, the administrative services negotiating unit, the institutional services negotiating unit, the operational services negotiating unit and the division of military and naval affairs negotiating unit and, effective on and after June twenty-seventh, two thousand seventeen for the agency police services unit such service credit limitation provided in subparagraph (a) of this paragraph shall not exceed two hundred days. For a nonjudicial officer or employee of the unified court system not in a collective negotiating unit or in a collective negotiating unit specified in section one of chapter two hundred three of the laws of two thousand four, for employees of the New York state dormitory authority, for employees of the New York state thruway authority, the New York state canal corporation and the state university construction fund and for employees of the New York liquidation bureau such service credit limitation provided in subparagraph (a) of this paragraph shall not exceed two hundred days. For members who first become members of a public

retirement system of the state on or after April first, two thousand twelve, such credit shall not exceed one hundred days.

2. Such service retirement credit shall be granted only to members in the employ of the state who, prior to retirement, were subject to a plan established by law, rule, regulation, written order or written policy which provided for the regular earning and accumulation of sick leave.

3. In the case of persons who last became members on or after July first, nineteen hundred seventy-three, the provisions of this subdivision shall apply only to those retiring from service prior to July first, nineteen hundred seventy-four.

k. Credit for certain world war II service. 1. In addition to credit for military service as defined in paragraph one of subdivision thirty-one of section two of this chapter, a member in the employ of the state as of March thirty-first, nineteen hundred seventy, may obtain credit for military service as defined in paragraph two of subdivision thirty-one of section two of this chapter in accordance with the provisions of this subdivision.

2. To obtain such credit a member shall: (a) deposit in the annuity savings fund a sum equal to the product of his normal rate of contribution at time of entry into state service, his annual rate of compensation at that time, and the period of military service being claimed, with regular interest, and (b) deposit in the pension accumulation fund a sum equal to the product of the state's normal contribution rate at the time of the member's entry into such service, his annual rate of compensation at that time, and the period of military service being claimed, with regular interest. Such deposit must be made on or before March thirty-first, nineteen hundred seventy-two, provided, however, such member may elect to deposit such amount over a period of time no greater than the period for which credit is being claimed, in which case such payments must commence no later than March thirty-first, nineteen hundred seventy-two. If the full amount of such payments is not paid to the retirement system, the amount of service credited shall be proportional to the total amount of the payments made.

3. (a) A member who enters the employ of the state on or after April first, nineteen hundred seventy and prior to April first, nineteen hundred seventy-two shall have one year from his date of entry to make application and payment for such service in the manner specified above. The salary base for such an employee shall be his annual rate of compensation at the time of his entry into state service.

(b) A member who reenters the employ of the state on or after April first, nineteen hundred seventy and prior to April first, nineteen hundred seventy-two shall have one year from his date of reentry to make application and payment for such service in the manner specified above. The salary base for such payments shall be either the employee's (i) annual rate of compensation at the time of original entry into such service or (ii) his annual rate of compensation upon reentry into such service, whichever would result in the greater contributions.

4. Such credit for military service shall not be used to increase a service retirement benefit if at the time of retirement such member (a) is retiring from service with less than ten years of total service credit, or (b) is retiring with less than three years of member service rendered subsequent to the date of last entry into state service; upon retirement as specified in (a) or (b), there shall be refunded to such member the amount of such deposit plus accrued interest exclusive of the amount deposited to the pension accumulation fund attributable to death and disability benefits.

5. For the purposes of this subdivision the member's normal rate of contribution in the case of an employee of the state who (a) enters service on or after the date that employee contributions were reduced pursuant to section seventy-a or when no employee contributions were required shall be based on the latest schedule of normal contribution rates in effect for employees of the state, and shall be set as if such schedule had been in effect at the time of his entry into state service, or (b) transfers into the retirement system shall not be less than the rate the member would have had if all his service, exclusive of that being claimed pursuant to this subdivision, had been rendered as a member of the retirement system.

6. In no event shall credit be granted pursuant to this subdivision if credit is granted for the same period of time pursuant to other provisions of law.

7. Subject to the provisions of paragraph three of this subdivision no application for credit pursuant to the provisions of this subdivision shall be honored if made on or after April first, nineteen hundred seventy-two.

8. A member may direct, upon a form prepared by the comptroller, that his excess contributions be applied toward the payments required by this subdivision. The term excess contributions shall mean accumulated contributions in excess of the amount thereof required to provide a pension or retirement allowance. Appropriate transfers and credits to the annuity savings fund and the pension accumulation fund will be made in the manner set forth in an official regulation adopted by the comptroller for such purpose.

* l. Employer pick-up of contributions in respect of previous service or military service. Notwithstanding any other provision of law, any member eligible to purchase credit for previous service with a public employer pursuant to this section or section forty-two of this title or to purchase credit for military service pursuant to article twenty of this chapter, may elect to purchase any or all of such service by executing a periodic payroll deduction agreement where and to the extent such elections are permitted by the retirement system by rule or regulation. Such agreement shall set forth the amount of previous service or military service being purchased, the estimated total cost of such service credit, and the number of payroll periods in which such periodic payments shall be made. Such agreement shall be irrevocable, shall not be subject to amendment or modification in any manner, and shall expire only upon completion of payroll deductions required therein. Notwithstanding the foregoing, any member who has entered into such a payroll deduction agreement and who terminates employment prior to the completion of the payments required therein shall be credited with any service as to which such member shall have paid the contributions required under the terms of the agreement.

* NB Takes effect upon notice of ruling by Internal Revenue Service -- expires per ch. 627/2007 §22