§ 445-i. Optional age fifty-five retirement program for New York city teachers and certain other members. a. Definitions. The following words and phrases as used in this section shall have the following meanings unless a different meaning is plainly required by the context.

1. "TRS" shall mean the New York city teachers' retirement system.

2. "BERS" shall mean the board of education retirement system of the city of New York.

3. "Administrative code" shall mean the administrative code of the city of New York.

4. "BERS rules and regulations" shall mean the rules and regulations for the government, management and control of BERS adopted pursuant to section twenty-five hundred seventy-five of the education law.

5. "New York city eligible position" shall mean:

(i) with respect to members of TRS, all positions as a teacher (as defined in subdivision seven of section 13-501 of the administrative code), and shall not include any position covered by section 13-563 of the administrative code; or

(ii) with respect to members of BERS, the following positions in education service: head nurses, head nurses (BOE), supervisors of nurses, staff nurses, registered nurses (BOE), public health nurses, pediatric nurse associates, supervising therapists, senior occupational therapists, senior occupational therapists (BOE), occupational therapists, occupational therapists (BOE), senior physical therapists, senior physical therapists (BOE), physical therapists, physical therapists (BOE), substitute vocational assistants, non-annualized adult education teachers, non-annualized adult education assistant coordinators, non-annualized adult education coordinators, directors of drug and alcohol programs, assistant directors of drug and alcohol programs, sign language interpreters, teachers of military science, senior army, navy, air force, aerospace, marine corps or coast guard instructors, army, navy, air force, aerospace, marine corps or coast guard instructors, youth development specialists and the following

positions represented by the recognized teacher organization for collective bargaining purposes: education administrators, education officers, associate education officers, education analysts and associate education analysts.

6. "New York city eligible member" shall mean a member of TRS or BERS who is subject to the provisions of this article and who is employed in a New York city eligible position.

7. "Age fifty-five retirement program" shall mean all the terms and conditions of this section.

8. "Starting date of the age fifty-five retirement program" shall mean the commencement date of the first payroll period which begins after the enactment date of the age fifty-five retirement program.

9. "Enactment date of the age fifty-five retirement program" shall mean the date this section takes effect.

10. "Participant in the age fifty-five retirement program" shall mean any New York city eligible member who, under the applicable provisions of subdivision b of this section, is entitled to the rights, benefits and privileges and is subject to the obligations of the age fifty-five retirement program, as applicable to him or her.

11. "Participating retirement system" shall mean TRS or BERS.

12. "Active service" shall mean, for a member of TRS, service as a teacher (as defined in subdivision seven of section 13-501 of the administrative code) for which such member is being paid on the payroll or, for a member of BERS, education service for which such member is being paid on the payroll.

13. "Education service" shall mean service as a paid official or employee of the board of education of the city of New York or the New York city school construction authority, and allowable pursuant to the applicable provisions which govern the service credit of a member of

BERS.

b. Participation in age fifty-five retirement program. 1. Subject to the provisions of paragraphs five and six of this subdivision, any person who is a New York city eligible member in active service on the enactment date of the age fifty-five retirement program may elect to become a participant in the age fifty-five retirement program by filing, within one hundred eighty days after such enactment date, a duly executed application for such participation with the retirement system of which such person is a member, provided he or she is a New York city eligible member in active service on the date such application is filed.

2. Subject to the provisions of paragraphs five and six of this subdivision, any person who becomes a New York city eligible member in active service after the enactment date of the age fifty-five retirement program may elect to become a participant in the age fifty-five retirement program by filing, within one hundred eighty days after becoming a New York city eligible member in active service, a duly executed application for such participation with the retirement system of which such person is a member, provided he or she is a New York city eligible member in active service on the date such application is filed.

3. (i) Except as provided in subparagraph (ii) of this paragraph, any election to be a participant in the age fifty-five retirement program shall be irrevocable.

(ii) Notwithstanding any other provision of law to the contrary, any participant in the age fifty-five retirement program whose age and amount of credited service (which amount of credited service shall, for the limited purposes only of this subparagraph, include service rendered previous to becoming a member which is not yet credited, but for which such person is or may become eligible to obtain service credit pursuant to applicable provisions of law) at the time of first becoming such a participant are such that he or she could not possibly be able to accumulate a total of at least twenty-five years of credited service by the time he or she reaches age sixty-two, assuming such person were to earn a full year of credited service in each and every year until he or she becomes sixty-two years of age (whether or not such person actually

intends to earn such amounts of credit), may withdraw from the age fifty-five retirement program by filing, within three hundred sixty-five days after first becoming such a participant, a written request to withdraw from such program with the retirement system of which such person is a member.

4. Where any participant in the age fifty-five retirement program shall cease to hold a New York city eligible position, he or she shall cease to be such a participant and, during any period in which such person is not a New York city eligible member, he or she shall not be a participant in the age fifty-five retirement program.

5. Where any participant in the age fifty-five retirement program terminates service in a New York city eligible position and returns to service in a New York city eligible position at a later date and again becomes a New York city eligible member, he or she shall again become such a participant upon becoming a New York city eligible member.

6. Notwithstanding any other provision of law to the contrary, any person who is eligible to elect to become a participant in the age fifty-five retirement program pursuant to paragraph one or two of this subdivision for the full one hundred eighty-day period provided for in such applicable paragraph, and who fails to timely file a duly executed application for such participation with the appropriate retirement system, shall not thereafter be eligible to become a participant in such program.

c. 1. Service retirement. Notwithstanding any other provision of law to the contrary, a participant in the age fifty-five retirement program:

(i) who is otherwise eligible to retire for service with immediate payability of a retirement allowance pursuant to the applicable service retirement provisions of the administrative code or the BERS rules and regulations; and

(ii) who has completed twenty-five or more years of credited service; and

(iii) who has attained age fifty-five; and

(iv) who, subject to the provisions of paragraph nine of subdivision d

of this section, has paid, before the effective date of retirement, all additional member contributions and interest (if any) required by paragraphs one, four and five of subdivision d of this section; and

(v) who shall be a participant in the age fifty-five retirement program in active service at the time so specified for his or her retirement; shall, subject to the provisions of paragraph nine of subdivision d of this section, be permitted to retire pursuant to the applicable service retirement provisions of the administrative code or the BERS rules and regulations with a minimum retirement age of fifty-five, and the benefit reduction provisions set forth in subdivision a of section four hundred forty-two of this article shall not be applied to the calculation of such participant's retirement benefit, provided, however, that no such participant who otherwise meets the retirement eligibility requirements of this paragraph shall be permitted to retire pursuant to this paragraph prior to June thirtieth, two thousand eight.

2. Vesting. (i) A participant in the age fifty-five retirement program:

(A) who, on or after June thirtieth, two thousand eight, as such a participant in such retirement program, discontinues service as a teacher (as defined in subdivision seven of section 13-501 of the administrative code) or discontinues education service (as defined in paragraph thirteen of subdivision a of this section), other than by death or retirement; and

(B) who, prior to such discontinuance, completed twenty-five or more years of credited service; and

(C) who, subject to the provisions of paragraph nine of subdivision d of this section, has paid, prior to such discontinuance, all additional member contributions and interest (if any) required by paragraphs one, four and five of subdivision d of this section; and

(D) who does not withdraw in whole or in part his or her accumulated deductions pursuant to the applicable provisions of the administrative code or the BERS rules and regulations unless such participant thereafter returns to public service and repays the amounts so withdrawn, together with interest; shall be entitled to receive a deferred vested benefit as provided in this paragraph.

(ii)(A) Upon such discontinuance under the conditions and in compliance with the provisions of subparagraph (i) of this paragraph, such deferred vested benefit shall vest automatically.

(B) Such vested benefit shall become payable on the earliest date on which such discontinued member could have retired for service if such discontinuance had not occurred.

(iii) Subject to the provisions of paragraph nine of subdivision d of this section, such deferred benefit shall be a retirement allowance determined in accordance with the applicable provisions of subparagraph (v) of paragraph one of this subdivision in the same manner as if he or she had retired for service pursuant to paragraph one of this subdivision.

d. Additional member contributions. 1. In addition to the member contributions required by the applicable provisions of the administrative code or the BERS rules and regulations, each participant in the age fifty-five retirement program shall contribute to the retirement system of which he or she is a member (subject to the applicable provisions of section 13-521.1 of the administrative code or subdivision nineteen of section twenty-five hundred seventy-five of the education law) an additional one and eighty-five one-hundredths percent of his or her compensation earned from all credited service rendered on and after the starting date of the age fifty-five retirement program (i) while such person is a participant in such program;

(ii) before such person becomes such a participant pursuant to paragraph one or two of subdivision b of this section (whether or not rendered in a New York city eligible position); and

(iii) after such person ceases to be a participant, but before he or she again becomes such a participant pursuant to paragraph five of subdivision b of this section (whether or not rendered in a New York city eligible position).

2. A participant in the age fifty-five retirement program shall contribute additional member contributions until the later of (i) June twenty-ninth, two thousand eight; or (ii) the date on which he or she has completed twenty-five years of credited service.

3. (i) Commencing with the first full payroll period after each person becomes a participant in the age fifty-five retirement program, additional member contributions at the rate specified in paragraph one of this subdivision shall be deducted, subject to the applicable provisions of section 13-521.1 of the administrative code or subdivision nineteen of section twenty-five hundred seventy-five of the education law, from the compensation of such participant on each and every payroll of such participant for each and every payroll period for which he or she is such a participant.

(ii) (A) Those portions of the additional member contributions required by paragraph one of this subdivision which are attributable to credited service rendered on and after the starting date of the age fifty-five retirement program, and prior to the actual commencement of deductions from compensation pursuant to subparagraph (i) of this paragraph, by a person who becomes a participant pursuant to paragraph one of subdivision b of this section, shall be paid by deductions from the compensation of such participant pursuant to and in accordance with the provisions of item (B) of this subparagraph.

(B) Commencing with the payroll period in which deductions of additional member contributions from such participant's compensation are begun pursuant to subparagraph (i) of this paragraph, in addition to such deductions required by subparagraph (i) of this paragraph, there shall be another deduction of additional member contributions made from the compensation of such participant at one-third the rate at which deductions are being made pursuant to subparagraph (i) of this paragraph, subject to the applicable provisions of section 13-521.1 of the administrative code or subdivision nineteen of section twenty-five hundred seventy-five of the education law, on each and every payroll period until the total amount of unpaid additional member contributions described in item (A) of this subparagraph, if any, has been paid by deductions from compensation pursuant to this subparagraph, provided, however, that deductions pursuant to this item shall be made only during the period while such person is a participant after first becoming a participant pursuant to paragraph one of subdivision b of this section and before ceasing to be such a participant.

4. (i) Each participant in the age fifty-five retirement program shall

be charged with a contribution deficiency consisting of the total amount of additional member contributions such person is required to make pursuant to paragraph one of this subdivision which is not deducted from his or her compensation pursuant to paragraph three of this subdivision, if any, together with interest thereon, compounded annually, and computed in accordance with the provisions of subparagraphs (ii) and (iii) of this paragraph.

(ii) (A) Subject to the provisions of subparagraph (iii) of this paragraph, the interest required to be paid on the amount specified in subparagraph (i) of this paragraph shall accrue from the end of each of the payroll periods for which such amount would have been deducted from compensation if he or she had been a participant at the beginning of that payroll period and such deduction had been required for such payroll period, until such amount is paid to the retirement system.

(B) The rate of interest to be applied to such amount during the period for which interest accrues on that amount shall be equal to the rate or rates of interest required by law to be used during that same period to credit interest on the accumulated deductions of retirement system members.

(iii) Except as otherwise provided in paragraph five of this subdivision, no interest shall be due on any unpaid additional member contributions which are not attributable to a period prior to the first full payroll period referred to in paragraph three of this subdivision.

5. (i) (A) Should any person who, pursuant to paragraph eleven of this subdivision, has received a refund of the employee portion of his or her additional member contributions (as established in accordance with item (B) of subparagraph (ii) of paragraph six of this subdivision), including any interest paid on such employee portion, again become a participant in the age fifty-five retirement program pursuant to paragraph five of subdivision b of this section, an appropriate amount shall be included in such participant's contribution deficiency (including interest thereon as calculated pursuant to subparagraph (ii) of this paragraph) for any credited service for which such person received a refund of such employee portion of additional member contributions (including any amount of an unpaid loan balance deemed to have been returned to such person pursuant to paragraph thirteen of this

subdivision), as if such employee portion of additional member contributions never had been paid.

(B) Any person who has his or her membership in one participating retirement system terminated without transferring such membership directly from such participating retirement system to the other participating retirement system, who has an unpaid balance of a loan of the employee portion of his or her additional member contributions pursuant to paragraph twelve of this subdivision at the time of the termination of such membership, who, pursuant to paragraph five of subdivision b of this section, thereafter again becomes a participant in the age fifty-five retirement program as a member of either participating retirement system without having received a refund of the employee portion of his or her additional member contributions pursuant to paragraph eleven of this subdivision, shall have an appropriate amount included in such participant's contribution deficiency (including interest thereon as calculated in subparagraph (ii) of this paragraph) for any credited service for which such person borrowed and did not repay such employee portion of additional member contributions, as if such employee portion of additional member contributions never had been paid.

(ii) (A) Interest on the employee portion of a participant's additional member contributions included in such participant's contribution deficiency pursuant to subparagraph (i) of this paragraph shall be calculated as if such employee portion of additional member contributions never had been paid by such participant, and such interest shall accrue from the end of the payroll period to which an amount of such employee portion of additional member contributions is attributable, compounded annually, until such amount is paid to the retirement system.

(B) The rate of interest to be applied to each such amount during the period for which interest accrues on that amount shall be equal to the rate or rates of interest required by law to be used during that same period to credit interest on the accumulated deductions of retirement system members.

6. (i) All additional member contributions required by this subdivision (and any interest paid thereon) which are received by the

retirement system of which the participant is a member shall be paid into its contingent reserve fund and shall not for any purpose be deemed to be member contributions or accumulated deductions of a member under the applicable provisions of the administrative code or the BERS rules and regulations or otherwise while he or she is a participant in the age fifty-five retirement program or otherwise.

(ii) All additional member contributions required for any period of credited service pursuant to paragraph one of this subdivision (and any interest paid thereon pursuant to paragraph four of this subdivision) which, pursuant to subparagraph (i) of this paragraph, are paid by a participant, subject to the applicable provisions of section 13-521.1 of the administrative code or subdivision nineteen of section twenty-five hundred seventy-five of the education law, into the contingent reserve fund of the retirement system of which such participant is a member (other than repayments of loans of additional member contributions pursuant to paragraph twelve of this subdivision or amounts paid in satisfaction of a contribution deficiency calculated in accordance with paragraph five of this subdivision) shall be divided in the following manner:

(A) one-half of such additional member contributions (and any such interest paid thereon) shall be the employer contribution portion of such additional member contributions; and

(B) one-half of such additional member contributions (and any such interest paid thereon) shall be the employee portion of such additional member contributions, and shall be credited to the employee additional contributions account which shall be established for such participant within the contingent reserve fund of such retirement system.

(iii) No person, while he or she is a participant or otherwise, shall at any time be permitted:

(A) to borrow, pursuant to paragraph twelve of this subdivision or any other provision, any of the employer contribution portion of his or her additional member contributions (as established in accordance with item (A) of subparagraph (ii) of this paragraph, including any interest paid thereon) which has been paid into the contingent reserve fund of the retirement system; or

(B) to receive a refund of any of such employer contribution portion pursuant to paragraph eleven of this subdivision or any other provision.

(iv) None of the employer contribution portion of a participant's additional member contributions (including any interest paid thereon) shall for any purpose:

(A) be deemed to be part of the employee portion of additional member contributions paid by a participant; or

(B) be credited to the employee additional contributions account established for such participant in the contingent reserve fund of the retirement system.

(v) All repayments of loans of the employee portion of additional member contributions pursuant to paragraph twelve of this subdivision and all payments of the employee portion of additional member contributions in satisfaction of a contribution deficiency calculated in accordance with paragraph five of this subdivision which are paid by a participant to the contingent reserve fund of a participating retirement system (and any interest paid thereon) shall be part of the employee portion of such participant's additional member contributions and shall be credited to the employee additional contributions account established for such participant in the contingent reserve fund of such retirement system.

7. Where a person who was a participant in the age fifty-five retirement program as a member of one participating retirement system becomes such a participant as a member of the other participating retirement system:

(i) the employer contribution portion of the additional member contributions paid by such person to such first retirement system pursuant to this subdivision (including any interest paid thereon) that is attributable to any period of credited service obtained in such second retirement system by purchase or transfer, which previously was credited in such first retirement system, shall (only for purposes of this subdivision, and not for purposes of determining required employer contributions to such second retirement system) be deemed to have been paid to such second retirement system rather than to such first retirement system; and

(ii) the employee portion of the additional member contributions paid by such person to such first retirement system pursuant to this subdivision (including any interest paid thereon) which remains credited

to the employee additional contributions account established for such person in the contingent reserve fund of such first retirement system that is attributable to any period of credited service obtained in such second retirement system by purchase or transfer, which previously was credited in such first retirement system, shall (only for purposes of this subdivision, and not for purposes of determining required employer contributions to such second retirement system) be deemed to have been paid to such second retirement system rather than to such first retirement system, and shall be credited to the employee additional contributions account established for such participant in the contingent reserve fund of such second retirement system.

8. A person who was a participant in the age fifty-five retirement program as a member of one participating retirement system, who becomes such a participant as a member of the other participating retirement system and who thereafter transfers his or her membership in such first retirement system directly to such second retirement system as such a participant shall be deemed to have the same unpaid balance of a loan of the employee portion of additional member contributions pursuant to paragraph twelve of this subdivision (including accrued interest) as he or she had in such first retirement system at the time of such transfer of membership to the second retirement system.

9. (i) Where a participant who is otherwise eligible for service retirement pursuant to paragraph one of subdivision c of this section did not, prior to the effective date of retirement, pay the entire amount of a contribution deficiency chargeable to him or her pursuant to paragraphs four and five of this subdivision, or repay the entire amount of a loan of the employee portion of his or her additional member contributions pursuant to paragraph twelve of this subdivision (including accrued interest on such loan), that participant, nevertheless, shall be eligible to retire pursuant to paragraph one of subdivision c of this section, provided, however, that where such participant is not entitled to a refund of the employee portion of additional member contributions pursuant to subparagraph (iii) of paragraph eleven of this subdivision, such participant's service retirement benefit calculated pursuant to the applicable provisions of

the administrative code or the BERS rules and regulations shall be reduced by a life annuity (calculated in accordance with the method set forth in subdivision h of section six hundred thirteen-a of this chapter) which is actuarially equivalent to:

(A) the amount of any unpaid contribution deficiency chargeable to such member pursuant to paragraphs four and five of this subdivision; plus

(B) the amount of any unpaid balance of a loan of the employee portion of his or her additional member contributions pursuant to paragraph twelve of this subdivision (including accrued interest on such loan).

(ii) Where a participant who is otherwise eligible for a vested right to a deferred benefit pursuant to paragraph two of subdivision c of this section did not, prior to the date of discontinuance of service, pay the entire amount of a contribution deficiency chargeable to him or her pursuant to paragraphs four and five of this subdivision, or repay the entire amount of a loan of the employee portion of his or her additional member contributions pursuant to paragraph twelve of this subdivision (including accrued interest on such loan), that participant, nevertheless, shall be eligible for a vested right to a deferred benefit pursuant to paragraph two of subdivision c of this section, provided, however, that the deferred vested benefit determined pursuant to subparagraph (iii) of paragraph two of such subdivision c shall be reduced by a life annuity (calculated in accordance with the method set forth in subdivision h of section six hundred thirteen-a of this chapter) which is actuarially equivalent to:

(A) the amount of any unpaid contribution deficiency chargeable to such member pursuant to paragraphs four and five of this subdivision; plus

(B) the amount of any unpaid balance of a loan of the employee portion of his or her additional member contributions pursuant to paragraph twelve of this subdivision (including accrued interest on such loan).

10. The retirement board of TRS and the retirement board of BERS may, consistent with the provisions of this subdivision, promulgate regulations for the payment of additional member contributions required by this subdivision, and any interest thereon, by participants in the age fifty-five retirement program (including the deduction of such

contributions, and any interest thereon, from the participants' compensation).

11. (i) Subject to the provisions of paragraph thirteen of this subdivision, a participant in the age fifty-five retirement program who retires for disability pursuant to the applicable provisions of the administrative code or the BERS rules and regulations shall be entitled, upon such retirement, to a refund of the employee portion of his or her additional member contributions paid pursuant to this subdivision (including any interest on such employee portion paid to the retirement system) which remains credited to the employee additional contributions account established for such person in the contingent reserve fund of the retirement system of which he or she is a member at the time of such retirement for disability, together with interest thereon at the rate of interest required by law to be used to credit interest on the accumulated deductions of retirement system members, compounded annually.

(ii) Subject to the provisions of paragraph thirteen of this subdivision, upon the death of a participant in the age fifty-five retirement program, there shall be paid to such person as he or she has nominated or shall nominate to receive his or her accumulated deductions by written designation duly executed and filed with the retirement system during the lifetime of such participant, or, to his or her estate if no such person is nominated, the employee portion of his or her additional member contributions paid pursuant to this subdivision (including any interest on such employee portion paid to the retirement system) which remains credited to the employee additional contributions account established for such person in the contingent reserve fund of the retirement system of which he or she is a member at the time of his or her death, together with interest thereon at the rate of interest required by law to be used to credit interest on the accumulated deductions of retirement system members, compounded annually.

(iii) Subject to the provisions of paragraph thirteen of this subdivision, a person:

(A) who is or was a participant in the age fifty-five retirement program;

(B) who retires for service as a member of TRS or BERS pursuant to the

applicable service retirement provisions of the administrative code or the BERS rules and regulations;

(C) who is in active service on the effective date of retirement;

(D) who is at least sixty-two years of age on the effective date of retirement; and

(E) who was in active service for a total of at least six months out of each of the two twelve-month periods immediately preceding his or her retirement for service, shall, upon such retirement for service, be entitled to a refund of the employee portion of his or her additional member contributions paid pursuant to this subdivision (including any interest on such employee portion paid to the retirement system) which remains credited to the employee additional contributions account established for such person in the contingent reserve fund of the retirement system of which he or she is a member at the time of such retirement for service, together with interest thereon at the rate of interest required by law to be used to credit interest on the accumulated deductions of retirement system members, compounded annually.

(iv) Subject to the provisions of paragraph thirteen of this subdivision, a person who ceases to be a participant in the age fifty-five retirement program as a member of a participating retirement system because he or she ceases to hold a New York city eligible position, who thereafter is employed in another position in public employment which is not a New York city eligible position, but which entitles such person to membership in another public retirement system which is maintained in whole or in part by the city or state of New York, and who thereafter transfers his or her membership in such participating retirement system directly to such second public retirement system, shall be permitted to withdraw the employee portion of his or her additional member contributions paid pursuant to this subdivision (including any interest on such employee portion paid to the retirement system) which remains credited to the employee additional contributions account established for such person in the contingent reserve fund of such participating retirement system, together with interest thereon at the rate of interest required by law to be used to credit interest on the accumulated deductions of retirement system members, compounded annually.

(v) Subject to the provisions of paragraph thirteen of this subdivision, any person who withdraws as a participant in the age fifty-five retirement program by filing a valid request for such withdrawal pursuant to subparagraph (ii) of paragraph three of subdivision b of this section shall, upon such withdrawal, be entitled to a refund of the employee portion of his or her additional member contributions paid pursuant to this subdivision (including any interest on such employee portion paid to the retirement system) which remains credited to the employee additional contributions account established for such person in the contingent reserve fund of the retirement system of which he or she is a member at the time of such withdrawal as a participant, together with interest thereon at the rate of interest required by law to be used to credit interest on the accumulated deductions of retirement system members, compounded annually.

(vi) Subject to the provisions of paragraph thirteen of this subdivision, a participant in the age fifty-five retirement program who has been terminated from employment in a New York city eligible position for economic reasons by his or her public employer shall be entitled, upon such termination, to withdraw the employee portion of his or her additional member contributions paid pursuant to this subdivision (including any interest on such employee portion paid to the retirement system) which remains credited to the employee additional contributions account established for such person in the contingent reserve fund of the retirement system of which he or she is a member at the time of such termination from employment, together with interest thereon at the rate of interest required by law to be used to credit interest on the accumulated deductions of retirement system members, compounded annually.

(vii) Notwithstanding any other provision of law to the contrary,

(A) no person shall be permitted to withdraw from the retirement system any additional member contributions paid pursuant to this subdivision or any interest paid thereon, except pursuant to and in accordance with the preceding subparagraphs of this paragraph;

(B) no person, while he or she is a participant in the age fifty-five retirement program, shall be permitted to withdraw any such additional member contributions or any interest paid thereon pursuant to any of the preceding subparagraphs of this paragraph or otherwise; and

(C) no person, while he or she is a participant or otherwise, shall at any time be permitted to withdraw any of the employer contribution portion of his or her additional member contributions, including any interest paid thereon (as established in accordance with item (A) of subparagraph (ii) of paragraph six of this subdivision), pursuant to any of the preceding subparagraphs of this paragraph or otherwise.

12. A participant in the age fifty-five retirement program shall be permitted to borrow from the employee portion of his or her additional member contributions (as established in accordance with item (B) of subparagraph (ii) of paragraph six of this subdivision, including any interest paid thereon) which is credited to the employee additional contributions account established for such participant in the contingent reserve fund of the retirement system of which he or she is a member. The borrowing from such employee portion of additional member contributions pursuant to this paragraph shall be governed by the same rights, privileges, obligations and procedures set forth in the applicable provisions of section six hundred thirteen-a of this chapter (for TRS members) or section six hundred thirteen-b of this chapter (for BERS members) which govern the borrowing by members subject to article fifteen of this chapter of member contributions made pursuant to section six hundred thirteen of this chapter. The retirement board of TRS and the retirement board of BERS may, consistent with the provisions of this subdivision and the applicable provisions of section six hundred thirteen-a of this chapter (for TRS) or section six hundred thirteen-b of this chapter (for BERS) as made applicable to this subdivision, promulgate regulations governing the borrowing of such employee portion of additional member contributions, provided, however, that no person, while he or she is a participant or otherwise, shall at any time be permitted to borrow, pursuant to this paragraph or any other provision, any of the employer contribution portion of his or her additional member contributions, including any interest paid thereon (as established in accordance with item (A) of subparagraph (ii) of paragraph six of this subdivision).

13. Whenever a person has an unpaid balance of a loan of the employee portion of his or her additional member contributions pursuant to

paragraph twelve of this subdivision at the time he or she becomes entitled to a refund of the employee portion of his or her additional member contributions pursuant to paragraph eleven of this subdivision, the amount of such unpaid loan balance (including accrued interest) shall be deemed to have been returned to such member, and the refund of such employee portion shall be the net amount of such employee portion, together with interest thereon in accordance with the provisions of paragraph eleven of this subdivision.

14. Notwithstanding any other provision of law to the contrary, the provisions of section one hundred thirty-eight-b of this chapter shall not be applicable to the additional member contributions which are required by this subdivision.

15. Notwithstanding any other provision of law to the contrary, the additional member contributions which are required by this subdivision shall not be reduced under any program for increased-take-home-pay.

16. The provisions of subdivision b of section four hundred forty of this article shall apply to participants under this section.