



A Plan Sponsor Guide to Distributions under a  
**Public School 403(b) Plan**



Your future. Made easier.®

### Salary Reduction Contributions

Salary reduction contributions made to an annuity contract after December 31, 1988 may not be paid or made available before a distributable event occurs. Such amounts may be distributed to a participant (or, if applicable, the beneficiary) if the participant:

- attains age 59½,
- has a severance from employment,
- dies,
- becomes disabled,
- encounters financial hardship, or
- qualified reservist distribution

Salary reduction contributions made to an annuity contract and corresponding earnings as of December 31, 1988 are “grandfathered” and withdrawal restrictions do not apply. All other non-salary reduction contributions made under an annuity contract are not subject to withdrawal restrictions and may be distributed at any time subject to state law restrictions and/or the terms of the 403(b) plan. Note, however, employer contributions made to an annuity contract issued after December 31, 2008 may not be paid or made available before a distributable event occurs. Such amounts may be distributed to a participant (or, if applicable, the beneficiary):

- (i) upon the participant’s severance from employment (including upon the death of the participant), or
- (ii) upon the occurrence of an event, such as after a fixed number of years, the attainment of a stated age, or disability.

### Checklists

Following are checklists to help a plan sponsor determine whether certain payments may be authorized under the plan. These payments include:

- loans
- hardship distributions
- qualified reservist distributions
- qualified domestic relations orders

For more detailed explanations on these or other topics related to the administration of 403(b) plans, please see the *ING 403(b) Plans -- A Guide for Public School Systems*.

<http://www.ing-usa.com/us/education/403bpublicschoolguide.pdf>

The plan sponsor’s signature on the withdrawal paperwork, along with the information completed and signed by the participant or beneficiary, is necessary to approve the payment. Keep copies of all documentation for the plan’s records.

### Loan Authorization

If your plan document permits loans, participants may borrow from their accounts.

1. Determine the account balance in the 403(b). Take into consideration money held in accounts all vendors under the 403(b) plan.

*Account balance:* \_\_\_\_\_

2. A participant may borrow the lesser of 50% of their vested account balance, or \$50,000.

- Reduce the \$50,000 amount if the participant has an outstanding loan from the plan (or any other plan of the employer) during the 1-year period ending the day before the loan.
- The amount of the reduction is the participant’s highest outstanding loan balance during that period minus the outstanding balance on the date of the new loan. If this amount is zero or less, ignore it.

Maximum loan amount- lesser of 50% of account balance or \$50,000: \_\_\_\_\_

3. The loan must be repaid within 5 years, unless the loan is used to purchase the participant’s principal residence.

### Hardship Distributions

A 403(b) plan may permit employees to receive a hardship distribution only if the distribution is made because of an immediate and heavy financial need of the employee and is necessary to satisfy the need. Hardship distributions from a 403(b) plan are limited to the amount of the employee's elective deferrals and generally do not include any income earned on the deferred amounts. If the plan permits, certain employer matching contributions and employer discretionary contributions may also be included in hardship distributions.

#### Amount available for hardship

Employee deferrals (including earnings) as of 12/31/88	\$ _____
Employee deferrals (excluding earnings) since 12/31/88	+\$ _____
Employer contributions (including earnings) up to 12/31/08	+\$ _____
Total amount available for hardship	=\$ _____

#### Safe Harbor immediate and heavy financial need.

Whether an employee has an immediate and heavy financial need is to be determined based on the following circumstances:

- Expenses for medical care previously incurred by the employee, the employee's spouse, or any dependents of the employee or necessary for these persons to obtain medical care;
- Costs directly related to the purchase of a principal residence for the employee (excluding mortgage payments);
- Payment of tuition, related educational fees, and room and board expenses, for the next 12 months of postsecondary education for the employee, or the employee's spouse, children, or dependents;
- Payments necessary to prevent the eviction of the employee from the employee's principal residence or foreclosure on the mortgage on that residence;
- Payments for burial or funeral expenses for the participant's deceased parent, spouse, child or dependent; or
- Certain expenses relating to the repair of damage to the employee's principal residence.

A plan may also permit distribution for certain expenses including medical, tuition and funeral expenses for a primary beneficiary. For these purposes, a primary beneficiary under the plan is an individual who is named as a beneficiary under the plan and has an unconditional right to all or a portion of the participant's account balance under the plan upon the death of the participant.

Identify reason and include supporting documentation (such as copies of expenses incurred): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

#### Distribution necessary to satisfy financial need.

A distribution may be treated as necessary to satisfy an immediate and heavy financial need:

- The distribution is not in excess of the amount of the immediate and heavy financial need of the employee. The amount of an immediate and heavy financial need may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution. This would include any penalties incurred as a result of the IRS 10% premature distribution penalty tax.
- The employee has obtained all distributions, other than hardship distributions, and all nontaxable loans currently available under all plans maintained by the employer.
- The employee is prohibited under the terms of the plan from making elective contributions and employee contributions to the plan and all other plans maintained by the employer for at least 6 months after receipt of the hardship distribution.

The 403(b) plan sponsor affirms that these conditions are satisfied: \_\_\_\_\_

### Qualified Reservist Distribution

A qualified reservist distribution is:

- One made to a reservist called to active duty for a period of at least 180 days or for an indefinite period.
- Made beginning on the date of such order calling to active duty and ending on the close of the active duty period.
- Made from amounts attributable to elective deferrals under a 403(b) plan.

Qualified reservist distribution conditions are satisfied: \_\_\_\_\_

### Qualified Domestic Relations Order (QDRO)

A Qualified Domestic Relations Order (“QDRO”) creates or recognizes the existence of an alternate payee’s right to, or assigns all or a portion of a participant’s benefit to an alternate payee. An alternate payee is the participant’s spouse, former spouse, child or other dependent. If benefits are paid to a spouse or former spouse, the amount of the payment generally must be included in the spouse’s or former spouse’s taxable income. If benefits are paid to a child or dependent, the amount of the payment is taxable to the participant. For a court order to constitute a QDRO, and for the QDRO to meet ING good order processing standards, the order must meet the following requirements.

#### Instructions

1. To the left of each item note the results of your review (✓ if ok or ‘NIGO’ for “not in good order” if requirement is not met).
2. Attach a copy of this completed document to the QDRO paperwork as documentation of your review.

\_\_\_\_\_ The order must be an original or a court-certified copy of the original, signed by the judge or clerk of the court. A fax or a photocopy cannot be accepted in order to meet ING good order standards.

\_\_\_\_\_ The order must create or recognize the existence of an alternate payee’s right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable under the plan with respect to a participant.

\_\_\_\_\_ The order must constitute a judgment, decree or order (including approval of a property settlement agreement) that relates to provisions of child support, alimony payments or property rights to a spouse, former spouse, child or other dependent of a participant, made pursuant to a state domestic relations law (including a community property law).

\_\_\_\_\_ The order must clearly and unambiguously name each plan to which the order applies.

\_\_\_\_\_ The order must clearly specify the name and last known mailing address of the participant and each alternate payee covered by the order. (If the alternate payee is a minor or is legally incompetent, the order must include the name and address of the alternate payee’s legal representative.) The order should identify the social security number and date of birth of the participant and each alternate payee covered by the order. If State or local law prevent the inclusion of such information in the court order, this data must be provided to ING, in writing, by the party that drafts the court order, in order for good order processing standards to be met.

\_\_\_\_\_ The order must include the amount or percentage, or the manner in which the amount or percentage is to be determined, of the participant’s benefits to be paid by the plan to each alternate payee. The calculation of this amount must be very clear and not subject to interpretation. If the amount ordered to be paid to the alternate payee’s account is at all ambiguous, then the order cannot be accepted

\_\_\_\_\_ The order must be specific with respect to the dollar amount or percentage of the participant’s benefit to which the alternate payee is entitled. The order must specify the exact date as of which the account should be valued. Participant accounts are valued each day the New York Stock Exchange is open under ING processing standards

- \_\_\_\_\_ The order must provide that the calculation of the amount of the participant's benefit to which the alternate payee is entitled to be readily calculable and according to records currently available to ING. Pursuant to this requirement, ING will not accept any order that requires calculations prior to the time ING began providing services to the plan, unless the actual financial records necessary to make such calculation are provided to ING.
- \_\_\_\_\_ If the order specifies a dollar amount to be paid to the alternate payee, such amount may not exceed the participant's vested balance in the plan. Amounts payable to an alternate payee shall be distributed proportionately from the participant's account. Account values fluctuate with market conditions, if the dollar amount specified is above the current balance, the request may be rejected.
- \_\_\_\_\_ A plan may specify a date as of which QDROs are allowed under the plan (such as orders dated after a specified date, e.g., January 1, 2002). Court orders which pre-date the allowance of QDROs under the plan may not be accepted.
- \_\_\_\_\_ The order must not require the plan to provide any type or form of benefit, or any option, not otherwise provided under the plan.
- \_\_\_\_\_ The order must not require the plan to provide increased benefits (determined on the basis of actuarial value).
- \_\_\_\_\_ The order must not require any payment of benefits to an alternate payee that is required to be paid to another person under any court order.
- \_\_\_\_\_ The order must not provide for tax treatment of the account other than as required under federal law and regulations.
- \_\_\_\_\_ If earnings prior to the effective date are also to be segregated on behalf of the alternate payee, the attorney representing the participant must provide the actual financial records necessary to make such calculation, if such records are not available to ING.

This material was created to provide accurate and reliable information on the subjects covered. It is not intended to provide specific legal, tax or other professional advice. The services of an appropriate professional should be sought regarding your individual situation.

IRS Circular 230 Disclosure: Any tax advice contained in this document (including any attachments) was not intended by the author of this document to be used, and cannot be used by the audience or any other person, for the purpose of avoiding any Internal Revenue Code penalties that may be imposed on such person. Any tax advice contained in this document was not intended by the author of this document to be used or referred to, and cannot be used or referred to, in promoting, marketing, or recommending the transaction(s) or matter(s) addressed herein.

Insurance products, annuities and retirement plan funding issued by (third party administrative services may also be provided by) ING Life Insurance and Annuity Company. Securities are distributed by ING Financial Advisers, LLC (member SIPC), Windsor, CT. Annuities may also be issued by ReliaStar Life Insurance Company, Minneapolis, MN. Variable annuities issued by ReliaStar Life Insurance Company are distributed by ING Financial Advisers, LLC. All companies are members of the ING family of companies. Securities may also be distributed through other broker-dealers with which ING Financial Advisers, LLC has selling agreements. Insurance obligations are the sole responsibility of each issuing company. Products and services may vary by state and may not be available in all states.

© 2010 ING North America Insurance Corporation

