

MEMO# 30366

October 28, 2016

DOL Provides Relief for Employee Benefit Plans and Plan Participants Affected by Hurricane Matthew

[30366]

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TO: PENSION MEMBERS No. 38-16

OPERATIONS MEMBERS No. 37-16

TRANSFER AGENT ADVISORY COMMITTEE No. 58-16 RE: DOL PROVIDES RELIEF FOR
EMPLOYEE BENEFIT PLANS AND PLAN PARTICIPANTS AFFECTED BY HURRICANE MATTHEW

In a news release issued on October 27, 2016, the Department of Labor provided compliance guidance applicable to victims of Hurricane Matthew.[\[1\]](#) DOL's announcement follows guidance issued by the Internal Revenue Service on October 21, 2016. IRS's guidance, Announcement 2016-39, provides relief with respect to hardship distributions and loans from plans for taxpayers adversely affected by Hurricane Matthew.[\[2\]](#) DOL indicated that it will not treat any person as having violated Title I of ERISA solely because that person relied on the relief provided under Announcement 2016-39. Furthermore, DOL will not, solely on the basis of a failure attributable to Hurricane Matthew, seek to bring enforcement action under Title I with respect to temporary delays in the forwarding of participant payments and withholdings to a plan. Such relief applies to the extent that the affected employers and service providers act reasonably, prudently and in the interest of employees to comply as soon as practical under the circumstances.

The guidance addresses the 30-day advance notice requirement applicable to blackout periods under section 101(i) of ERISA. The regulations under this section provide an exception from the advance notice requirement for events beyond the control of the plan administrator, as determined by a fiduciary in writing.[\[3\]](#) For plans affected by Hurricane Matthew, DOL will not allege a violation of the blackout notice requirements solely on the basis that the fiduciary did not make a written determination.

Covered Disaster Areas

Covered disaster areas include the following counties:

North Carolina: Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Gates, Greene, Harnett, Hoke, Hyde, Johnston, Jones, Lenoir, Martin, Nash, New Hanover, Onslow, Pamlico,

Pasquotank, Pender, Perquimans, Pitt, Robeson, Sampson, Tyrrell, Washington, Wayne and Wilson counties.

South Carolina: Beaufort, Berkeley, Charleston, Colleton, Darlington, Dillon, Dorchester, Florence, Georgetown, Horry, Jasper, Marion, Orangeburg and Williamsburg counties.

Georgia: Brantley, Bryan, Bulloch, Camden, Candler, Chatham, Effingham, Emanuel, Evans, Glynn, Jenkins, Liberty, Long, McIntosh, Pierce, Screven, Tattnall, Toombs, Ware and Wayne counties.

Florida: Bradford, Brevard, Clay, Duval, Flagler, Indian River, Lake, Martin, Nassau, Palm Beach, Putnam, Seminole, St. Johns, St. Lucie and Volusia counties.^[4]

Shannon Salinas
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endnotes

[1] The DOL News Release is *available here*:
<https://www.dol.gov/newsroom/releases/ebsa/ebsa20161027-0>.

[2] IRS Announcement 2016-39 is *available here*:
<https://www.irs.gov/pub/irs-drop/a-16-39.pdf>. The announcement also provides relief from procedural requirements for plan distributions (including distributions from IRAs) and loans. See Memorandum to Pension Members No. 35-16, Operations Members No. 35-16 and Transfer Agent Advisory Committee No. 56-16 [30355], dated October 27, 2016.

[3] 29 CFR § 2520.101-3(b)(2)(ii)(B).

[4] See *generally*,
<https://www.irs.gov/uac/newsroom/irs-gives-expanded-tax-relief-to-victims-of-hurricane-matthew-parts-of-four-states-eligible-extension-filers-have-until-march-15-to-file>,
<https://www.irs.gov/uac/tax-relief-for-victims-of-hurricane-matthew-in-florida>, and
<https://www.irs.gov/uac/tax-relief-for-victims-of-hurricane-matthew-in-georgia>.