

## EMPLOYEE BENEFITS

**EBSA Disaster Relief Notice 2024-01****Guidance and Relief for Employee Benefit Plans Impacted by Hurricane Helene, Tropical Storm Helene and Hurricane Milton**

December 2024

On November 8, 2024, the Employee Benefits Security Administration (EBSA) and Treasury departments jointly issued [a rule](#) (referred to as the “DOL/IRS joint notice”) extending certain compliance deadlines relating to employee benefit plans, participants, beneficiaries, qualified beneficiaries and claimants affected by Hurricane Helene (including Tropical Storm Helene) and Hurricane Milton<sup>1</sup>. Additionally, the EBSA released [EBSA Disaster Relief Notice 2024-01](#), which provides ERISA plans affected by the storms additional time to comply with certain notice and disclosure requirements. The US Department of Health and Human Services (HHS) advised that they also concur with the relief with respect to laws under its jurisdiction.

These two pieces of guidance provide deadline relief, beginning September 23, 2024, for those affected by Hurricane Helene (September 25, 2024, for Tropical Storm Helene) and October 5, 2024, for those affected by Hurricane Milton. The relief for both storms ends on May 1, 2025.

It is important to note that the relief applies not only to ERISA employee benefit plans under the EBSA Notice but also to plan participants, beneficiaries and enrollees affected by the covered disasters, as specified in the DOL/IRS joint notice.

<sup>1</sup> Including: Hurricane and Tropical Storm Helene (in Alabama, Florida, Georgia, North Carolina, South Carolina, Tennessee and Virginia) and any other Hurricane Helene related major disaster declaration, and Hurricane Milton (Florida).



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**Under the EBSA Notice**, the relief pertains to “employee benefit plans, plan sponsors, labor organizations, and other plan sponsors, plan fiduciaries, participants and beneficiaries, and plan service providers subject to ERISA who were located in a county, tribal area, or other geographic area identified for individual assistance by the Federal Emergency Management Agency (FEMA)<sup>2</sup> because of the devastation caused by the Covered Disasters.” The relief suspends the time periods until May 1, 2025, for:

- Plan administrators and fiduciaries subject to ERISA to furnish required notices, disclosures and other documents (such as Summary Plan Descriptions (SPDs) and Summaries of Material Modification (SMMs), COBRA election notices and Summary Annual Reports (SARs)) to participants and beneficiaries, provided the required disclosures are provided as soon as administratively practicable under the circumstances. The relief also eases the requirements for electronic distribution, allowing plan administrators to deliver materials electronically (including email, text messages and posting to continuous access websites), provided the plan fiduciary has a reasonable belief that participants and beneficiaries have the ability to access those communications.
- Plan administrators to file Form 5500 Annual Reports<sup>3</sup> and M-1 Forms required for MEWAs and entities claiming exception (ECEs)<sup>4</sup> that are directly affected by a covered disaster for the same plan year that applies to the corresponding Form 5500.

The EBSA Notice further states that in cases where plans and service providers “may be unable to achieve full and timely compliance with claims processing and other ERISA requirements,” EBSA’s enforcement approach will be focused on compliance assistance rather than the assessment of penalties.

**The DOL/IRS joint notice** provides relief to plan participants and beneficiaries (and some relief to plan administrators of covered plans) directly affected by an applicable storm and specifically defines which plans and plan participants/beneficiaries (and other interested parties) have been directly affected as follows:

- For plans, the DOL/IRS joint notice provides that “[a]n employee benefit plan [that] is directly affected by Hurricane Helene, Tropical Storm Helene, or Hurricane Milton if the principal place of business of the employer that maintains the plan (in the case of a single-employer plan, determined disregarding the rules of section 414(b) and (c) of the Code); the principal place of business of employers that employ more than 50 percent of the active participants covered by the plan (in the case of a plan covering employees of more than one employer, determined disregarding the rules of section 414(b) and (c) of the Code); or the office of the plan or the plan administrator; or the office of the primary recordkeeper serving the plan, was located in one of the disaster areas (as defined in paragraph III.C.(2)) at the time of the hurricane or tropical storm.”
- For plan participants and beneficiaries, the DOL/IRS joint notice provides that “[a] participant, beneficiary, qualified beneficiary, or claimant directly affected by Hurricane Helene, Tropical Storm Helene, or Hurricane Milton means an individual who resided, lived, or worked in one of the disaster areas (as defined in paragraph III.C.(2)) at the time of the hurricane or tropical storm; or whose coverage was under an employee benefit plan that was directly affected.”

**This means that even if a participant/beneficiary does not live/work in a disaster area but works for an employer located in a disaster area, this relief would also apply to those plan participants/beneficiaries.**

<sup>2</sup> Go to FEMA’s website at [www.fema.gov/disasters](http://www.fema.gov/disasters) for information on identified counties or areas.

<sup>3</sup> Refer to [Tax relief in disaster situations | Internal Revenue Service](#) for detailed information on relief for Form 5500 and tax filing deadlines.

<sup>4</sup> A MEWA or ECE is “directly affected” if the relevant office of the MEWA, ECE, plan administrator, or primary record keeper was located in a covered disaster area.

The following are examples of deadlines this relief will affect for plan participants/beneficiaries and employee benefit plans:

- The DOL/IRS joint notice suspends the time period for plan administrators<sup>5</sup> to provide the COBRA election notice to a qualified beneficiary until May 1, 2025.
- The DOL/IRS joint notice gives participants and beneficiaries additional time to notify plan administrators of COBRA qualifying events or disability determinations, elect and pay for COBRA continuation coverage, request coverage for special enrollment periods, file claims for benefits, appeal denied claims and request external review of certain claims by suspending the running on applicable time periods until May 1, 2025.
  - » The running of the 30-day period (or 60-day period, if applicable) for participants to enroll in group health plans as a result of HIPAA special enrollment events is suspended.
  - » The running of the 60-day COBRA election period and the grace periods for COBRA premium payments are suspended for qualified beneficiaries. The running of the time period for qualified beneficiaries to notify the plan of specific COBRA qualifying events (e.g., divorce, legal separation or a dependent aging off the health plan) is suspended.
  - » The running of the time periods for benefit claim submission (including health FSA claims) and requests for external review under the ERISA claims procedures are suspended. As a result, plan sponsors could be required to hold onto health FSA experience gains beyond the typical expiration of the benefit claims submission period.
  - » Similarly, participants and beneficiaries will have more time to submit claims for benefits under disability, retirement and other plans and appeal denied claims.
  - » Qualified retirement plan participants will receive relief from certain participant contribution and loan repayment deadlines.

**The following example of the COBRA relief is provided in the joint notice:**

Example 1 (Electing COBRA). (i) Facts. Individual A works for Employer X in Buncombe County, NC and participates in X's group health plan. Due to Tropical Storm Helene, X's business is destroyed, and the plan terminates. Individual A has no other coverage. Employer Y is part of the same controlled group as Employer X and continues to operate and sponsor a group health plan. Individual A is provided a COBRA election notice on December 1, 2024. What is the deadline for Individual A to elect COBRA?

(ii) Conclusion. In Example 1, Individual A is eligible to elect COBRA coverage under Employer Y's plan because Employer Y is in the same controlled group as Employer X. The Relief Period is disregarded for purposes of determining Individual A's COBRA election period. The last day of Individual A's COBRA election period is 60 days after May 1, 2025, which is June 30, 2025.

The DOL/IRS joint notice also encourages non-Federal governmental plans and health insurers to extend "otherwise applicable timeframes under titles XXII and XXVII of the Public Health Services Act for participants, beneficiaries and enrollees affected by the covered disasters."

Note that because the DOL/IRS joint notice includes retroactive effective date(s), plans may need to apply the relief retroactively to plan participants and beneficiaries who may have missed specified deadlines (such as a request to add a new dependent during a 60-day HIPAA special enrollment period).

The DOL/IRS joint notice does not impose any specific notification requirements related to the extended deadlines. Nevertheless, ERISA fiduciaries should consider whether they have a fiduciary duty to inform affected participants and beneficiaries about the extensions.

Plan sponsors with specific questions about the application of hurricane disaster relief should consult with their employee benefits attorneys.

<sup>5</sup> In most cases, the employer sponsoring the plan is the plan administrator.



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