

Certain ERISA Deadlines Extended Due to Hurricanes in Southeast

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The Departments of Labor and the Treasury issued guidance extending certain deadlines for health and welfare plans due to Hurricanes Helene and Milton. Similarly, the Department of Health and Human Services (“HHS”) released a Bulletin to assist individuals and businesses impacted by these storms. Collectively, the Departments provided four pieces of guidance:

- 1. EBSA Disaster Relief Notice 2024-01.** Extends the time for plans to provide ERISA-required notifications, such as SPDs, SMMs, and benefit determinations, provided there is a good faith effort to furnish these documents as soon as administratively practicable.
- 2. Final Regulations.** Delays or suspends deadlines related to COBRA, HIPAA special enrollment, and claims/appeals, including the deadline for plan administrators to issue COBRA election notices.
- 3. FAQs for Participants and Beneficiaries.** Helps participants affected by the hurricanes and tropical storm understand their ERISA rights, essentially reiterating previous guidance.
- 4. Insurance Standards Bulletin Series.** Encourages non-federal governmental plans and health insurance issuers to extend participant deadlines and offers non-enforcement relief.

The extensions and suspensions in the Notice and Final Rule apply during the “Disaster Period,” with deadlines tolled and resuming after this period ends.

■ Disaster Periods

- **Florida:**
 - Hurricane Helene: September 23, 2024 – May 1, 2025
 - Hurricane Milton: October 5, 2024 – May 1, 2025
- **Georgia** (Hurricane Helene): September 24, 2024 – May 1, 2025
- **North Carolina, South Carolina, Virginia** (Hurricane Helene and Tropical Storm Helene): September 25, 2024 – May 1, 2025
- **Tennessee** (Tropical Storm Helene): September 26, 2024 – May 1, 2025

■ The Notice

The Notice, which provides relief, applies to all Title I ERISA disclosures and notifications (except those in the Final Rule) and requires good faith efforts to provide these as soon as administratively practicable. Good faith delivery includes electronic communication methods such as email, text messages, and websites.

The notice provides examples of the type of benefit plan disclosure and notification timing extensions that would apply including:

- Summary Plan Descriptions and Summary of Material Modifications
- Forms 5500 and M-1
- Procedural requirements for plan loans and distributions
- Participant contributions and loan repayments
- Claims and appeal deadlines

The Notice also includes “General ERISA Fiduciary Compliance Guidance,” urging plan fiduciaries to prevent benefit loss or undue delay.

■ Final Regulations

The Final Regulations suspend certain deadlines for health and welfare plan participants during the Disaster Period. These deadlines resume after the Disaster Period ends and apply to all ERISA and Internal Revenue Code plans. HHS encourages non-federal plans and health insurance issuers to extend participant deadlines and provide non-enforcement relief.

Plan Administrator Relief

The 14-day (or 44-day if the employer is the plan administrator) deadline for issuing COBRA election notices is suspended.

Participant Relief

- The following employee notification deadlines are suspended during the Disaster Period:
- HIPAA Special Enrollment Period
- COBRA Qualifying Event and Disability Extension Notices
- COBRA Election
- COBRA Premium Payments
- Benefit Claims and Appeals
- External Review and Perfecting a Request for External Review

Participants must have been in the disaster area or covered by an affected plan at the time of the hurricanes or tropical storm. A plan is directly affected if the employer’s principal place of business, the office of the plan or administrator, or the primary recordkeeper’s office was in the disaster area.

The companies that are eligible for these rules need to be in a county that is marked as eligible for *individual assistance* (and not only public assistance) through FEMA.