

Publications

DOL & Treasury Extend Certain ERISA-Related Deadlines for Helene and Milton Impacted Areas

ATTORNEYS & PROFESSIONALS

Kathryn Bjornstad Amin

kamin@groom.com

202-861-2604

Louis T. Mazawey

lmazawey@groom.com

202-861-6608

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On November 8, the Departments of Labor and Treasury (the “Departments”) issued guidance extending certain deadlines related to retirement, health, and welfare plans in response to Hurricane Helene, Tropical Storm Helene, and Hurricane Milton. On November 14, 2024, the Department of Health and Human Services (“HHS”) issued a similar Bulletin.

The Departments and HHS issued three pieces of “guidance”:

- [EBSA Disaster Relief Notice 2024-01](#) (the “Notice”) – extends the time for plans to furnish ERISA-required notifications, including SPDs, SMMs, and benefit determinations, as long as there is a good faith effort to furnish the documents as soon as administratively practicable.
- [Final Regulations](#) (the “Final Rule”) – delays/suspends participant COBRA, HIPAA special enrollment, and claims/appeal-related deadlines, as well as the deadline for the plan administrator to provide the COBRA election notice.
- [FAQs for Participants and Beneficiaries](#) – help participants impacted by the hurricanes/tropical storm understand their rights under ERISA. These FAQs essentially just explain and/or reiterate prior guidance.
- [Insurance Standards Bulletin Series](#) – encourages non-federal governmental plans and health insurance issuers offering group or individual health insurance coverage to also extend the participant deadlines and provides non-enforcement relief.

The extensions/suspensions in both the Notice and the Final Rule apply during the periods below (the “Disaster Period”). Generally, these extended/suspended deadlines are tolled and start up again at the end of the Disaster Period.

- Disaster Areas in Florida
 - Hurricane Helene – September 23, 2024 through May 1, 2025
 - Hurricane Milton – October 5, 2024 through May 1, 2025
- Disaster Areas in Georgia (Hurricane Helene) – September 24, 2024 through May 1, 2025

- Disaster Areas in North Carolina, South Carolina, and Virginia (Hurricane Helene and Tropical Storm Helene) – September 25, 2024 through May 1, 2025
- Disaster Areas in Tennessee (Tropical Storm Helene) – September 26, 2024 through May 1, 2025

The Notice

The Notice announces DOL’s authority to adopt these extensions based on ERISA section 518, which allows the Secretary to delay deadlines under ERISA due to a Presidentially-declared disaster. The Secretary has used this authority previously for various hurricanes, and the guidance here largely mirrors that guidance.

The Notice provides relief during the Disaster Period for all disclosures and notifications required under Title I of ERISA (except those addressed in the Final Rule) and states that a plan will not be in violation of ERISA as long as these disclosures and notifications are provided “as soon as administratively practicable under the circumstances.” The Notice goes on to say that good faith delivery includes use of electronic means of communicating where the plan fiduciary reasonably believes participants have effective access, including email, text messages, and continuous access websites.

For example, the relief applies to:

- SPDs and SMMs
- Forms 5500 and M-1
- Procedural requirements for plan loans and distributions – To qualify for the relief, plan administrators must act in good faith and correct deficiencies as soon as administratively practicable with respect to requirements imposed under Title I of ERISA.
- Participant contributions and loan repayments – Plan administrators and other providers that are unable to satisfy the applicable deadlines for forwarding amounts to plans must act reasonably, prudently, and in the interests of employees to comply as soon as administratively practicable.
- Claims and appeal deadlines

In addition, the Notice contains “General ERISA Fiduciary Compliance Guidance,” which essentially urges plan fiduciaries to make reasonable accommodations to prevent the loss of benefits or undue delay and sets forth DOL’s general approach to enforcement for affected plans and service providers.

Final Rule

The Final Rule suspends the imposition of certain deadlines otherwise imposed on health and welfare plan participants (and one applicable to group health plans, plan sponsors, and plan administrators) during the Disaster Period. In other words, these deadlines do not apply during the Disaster Period and do not start to run again until after the Disaster Period is over.

The extensions apply to all plans subject to ERISA and the Internal Revenue Code. HHS “encourages” non-federal governmental plans and health insurance issuers offering group or individual health insurance coverage to also extend the participant deadlines and provide non-enforcement relief.

Plan Administrator Relief

The Final Rule suspends the 14-day deadline (44 days where the employer is the plan administrator) for a plan administrator to provide a COBRA election notice to qualified beneficiaries.

Participant Relief

The following deadlines do not apply to participants during the Disaster Period and do not begin to run until the Disaster Period ends:

- *HIPAA Special Enrollment Period* – The 30-day (in some instances, 60-day) deadline to request enrollment in a group health plan following a special enrollment event (i.e., birth, adoption or placement for adoption of a child, marriage, loss of other health coverage, or eligibility for a state premium assistance subsidy).

- *COBRA Qualifying Event and Disability Extension Notices* – The 60-day deadline by which qualified beneficiaries must notify the plan of certain qualifying events (e.g., divorce or legal separation, a dependent child ceasing to be a dependent under the terms of the plan) or disability determination.
- *COBRA Election* – The 60-day deadline to elect COBRA continuation coverage.
- *COBRA Premium Payments* – The 45-day (for the initial payment) and 30-day (for subsequent payments) deadlines to timely pay COBRA premiums.
- *Benefit Claims and Appeals* – The deadline under the plan by which participants may file a benefit claim (under the terms of the plan) and the 180-day (for group health plans) and 60-day (for other welfare benefit plans) deadlines for appealing an adverse benefit determination.
- *External Review* – the 4-month (for the federal external review process; this period could be different for a state external review process) period for a claimant to file a request for external review.
- *Perfecting a Request for External Review* – the 4-month (or 48-hour following receipt of the incomplete request notification, if later) period for a claimant to perfect an incomplete request for external review.

Participants must have resided, lived, or worked in one of the disaster areas at the time of the hurricane or tropical storm or been covered under a plan that was directly affected. A plan 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, the principal place of business of employers that employ more than 50% of the active participants covered by the plan, 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 at the time of the hurricane or tropical storm.

Please contact your Groom attorney to discuss how we can help you comply with these requirements.