

EBSA Disaster Relief Notice 2024-01

Guidance and Relief for Employee Benefit Plans Impacted by Hurricane Helene, Tropical Storm Helene, and Hurricane Milton

The Department of Labor (Department) recognizes that recent natural disasters may impede efforts to comply with various requirements and deadlines under the Employee Retirement Income Security Act (ERISA) for some time to come. This Disaster Relief Notice 2024-01 covers the major disasters (Covered Disasters) declared by President Joseph R. Biden Jr. under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act¹ with respect to (1) Hurricane Helene (including Tropical Storm Helene)² and (2) Hurricane Milton.³ This guidance applies 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) because of the devastation caused by the Covered Disasters.⁴

The relief under this Disaster Relief Notice 2024-01 begins on the first day of the incident period and ends on May 1, 2025.⁵ FEMA has established different incident periods for different affected areas. For disaster areas in Florida, the incident period for Hurricane Helene began on September 23, 2024, and for Hurricane Milton, the incident period began on October 5, 2024. For disaster areas in North Carolina, South Carolina, and Virginia, the incident period began on September 25, 2024. For disaster areas in Georgia, the incident period began September 24, 2024. For disaster areas in Tennessee, the incident period began on September 26, 2024. In all areas, relief ends on May 1, 2025.

This Disaster Relief Notice 2024-01 has been coordinated with and reviewed by the Department of the Treasury (Treasury Department), the Internal Revenue Service (IRS), and the Department of Health and Human Services (HHS). The Treasury Department, the IRS, and HHS have advised the Department that they concur with the relief specified in this notice in the application of the laws under their jurisdiction.⁶

¹ 42 U.S.C. 5121 et seq.

² To include Virginia Tropical Storm Helene (DR 4831-VA), Florida Hurricane Helene (DR 4828-FL), South Carolina Hurricane Helene (DR 4829-SC), North Carolina Tropical Storm Helene (DR 4827-NC), Georgia Hurricane Helene (DR 4830-GA), Tennessee Tropical Storm Helene (DR 4832-TN) and any other Hurricane Helene related major disaster declaration.

³ Florida Hurricane Milton (DR-4834-FL).

⁴ Go to FEMA's website at www.fema.gov/disasters for information on identified counties or areas.

⁵ The incident period is the "time interval during which the disaster-causing incident occurs. . . . The incident period will be established by FEMA in the FEMA-State Agreement and published in the Federal Register." 44 CFR 206.32(f).

⁶ Section 104 of Title I of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires that the Secretaries of Labor, the Treasury, and Health and Human Services (the Departments) ensure through an interagency Memorandum of Understanding (MOU) that regulations, rulings, and interpretations issued by each of the Departments relating to the same matter over which two or more departments have jurisdiction, are administered so as to have the same effect at all times. Under section 104 of HIPAA, the Departments, through the MOU, are to provide for coordination of policies relating to enforcement of the same requirements in order to have a

HHS has advised the Department that HHS will exercise enforcement discretion consistent with the relief provided in this notice so that non-Federal governmental plans and health insurance issuers offering group or individual health insurance coverage may furnish notices, disclosures, or other documents required by provisions of title XXVII of the Public Health Service Act (PHS Act) (except for those notices required under PHS Act section 2799A-1(c)) in accordance with the timelines set forth in this notice. This exercise of enforcement discretion applies to plans and issuers located in a county, tribal area, or other geographic area identified for individual assistance by FEMA because of the devastation caused by the Covered Disasters. HHS has advised the Department that HHS encourages states with primary enforcement authority to adopt a similar approach with respect to health insurance issuers impacted by the Covered Disasters. HHS has also advised the Department that HHS will not consider a state to have failed to substantially enforce applicable provisions of title XXVII of the PHS Act because the state adopts such an approach.

Extension of Certain Timeframes for Employee Benefit Plans

Joint Notice Issued by the Department of Labor and Department of the Treasury/Internal Revenue Service

The Department (pursuant to its authority under section 518 of ERISA) and the Treasury Department and IRS (pursuant to their authority under section 7508A of the Internal Revenue Code (Code)) are publishing a joint notice in the Federal Register to announce an extension for a number of deadlines so that plan participants, beneficiaries, employers and other plan sponsors affected by the Covered Disasters have additional time to make critical health coverage and other decisions affecting benefits. For group health plans subject to ERISA or the Code, the relief allows additional time for participants and beneficiaries to comply with certain deadlines affecting COBRA continuation coverage, special enrollment periods, claims for benefits, appeals of denied claims, and external review of certain claims and for plans to provide a COBRA election notice. With regard to disability, retirement, and other plans, the joint notice provides additional time for participants and beneficiaries to make claims for benefits and appeal denied claims. Without the extension, individuals might miss key deadlines during the incident period that could result in the loss or lapse of group health coverage or the denial of a valid claim for benefits.

In the joint notice, HHS encourages non-Federal governmental plans and health insurance issuers offering group or individual health insurance coverage to extend otherwise applicable timeframes under titles XXII and XXVII of the PHS Act for participants, beneficiaries, and enrollees affected by the Covered Disasters in a manner consistent with the relief specified in the joint notice.

Section 518 Relief Under this Notice 2024-01

In addition to the relief provided in the joint notice, the Department is separately announcing in this Disaster Relief Notice 2024-01 an extension of deadlines for furnishing other required notices or disclosures to plan participants, beneficiaries, and other persons so that employers, plan fiduciaries, and plan sponsors have additional time to meet their obligations under Title of I ERISA as a result of the Covered Disasters. This extension applies to the furnishing of notices, disclosures, and other documents

coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in enforcement. See section 104 of HIPAA and Memorandum of Understanding applicable to Title XXVII of the PHS Act, Part 7 of ERISA, and Chapter 100 of the Code, published at 64 FR 70164, December 15, 1999.

required by provisions of Title I of ERISA over which the Department has interpretive and regulatory authority, except for those notices and disclosures addressed in the joint notice issued by the Department and the Treasury Department and IRS and those notices required under ERISA Sec. 716(c).⁷ Subject to the duration limitation in ERISA section 518, an employee benefit plan and the responsible plan fiduciary will not be in violation of ERISA for a failure to timely furnish a notice, disclosure, or document that must be furnished during the period beginning on the first day of the incident period and ending May 1, 2025 for the Covered Disaster area, if the plan and responsible fiduciary act in good faith and furnish the notice, disclosure, or document as soon as administratively practicable under the circumstances. Good faith acts include use of electronic alternative means of communicating with plan participants and beneficiaries who the plan fiduciary reasonably believes have effective access to electronic means of communication, including email, text messages, and continuous access websites.

The Department believes that such relief is immediately needed to preserve and protect private sector employee benefit plans. Accordingly, the Department has determined, pursuant to section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b) and (d), that there is good cause for granting the relief provided by this notice effective immediately upon publication and that notice and public participation may result in undue delay and, therefore, be contrary to the public interest.

Plan Loans and Distributions

Verification Procedures

If an employee pension benefit plan fails to follow procedural requirements for plan loans or distributions imposed by the terms of the plan, the Department will not treat it as a failure if:

- That failure is solely attributable to a Covered Disaster;
- The plan administrator makes a good-faith, diligent effort under the circumstances to comply with those requirements; and
- The plan administrator makes a reasonable attempt to correct any procedural deficiencies, such as assembling any missing documentation, as soon as administratively practicable.

This relief for verification procedures imposed by the terms of the plan is limited to verification requirements required under provisions of Title I of ERISA that are within the interpretive and regulatory authority of the Department, and, for example, does not include spousal consent or other statutory or regulatory requirements under the jurisdiction of the Treasury Department and IRS.

Treasury Department/IRS Plan Loan Disaster Relief Relating to the Covered Disasters

Section 331 of the SECURE 2.0 Act of 2022 (SECURE 2.0) amended the Code to add section 72(p)(6), which provides for special rules for plan loans of certain qualified individuals impacted by federally declared major disasters occurring on or after Jan. 26, 2021. Under section 72(p)(6)(A), the maximum loan amount from a qualified employer plan for a qualified individual is the lesser of: the present value of individual's nonforfeitable accrued benefit, or \$100,000 (minus any outstanding plan loans). For qualified individuals with respect to any qualified disaster, section 72(p)(6)(B) of the Code provides that repayment of an outstanding loan from a qualified employer plan may be delayed by up to one year

⁷ ERISA Section 716(c)(9) provides separate authority to modify or waive timing requirements specified under ERISA Sec. 716(c) and any modifications or waiver will be announced separately.

if the due date would otherwise occur during a specified period that begins on the first day of the incident period of a qualified disaster and ends 180 days after the last day of the incident period with respect to that disaster. Subsequent loan repayments may be adjusted to reflect the delay in the due date and any interest accruing during such delay.

The Department has advised the Treasury Department and IRS that it will not treat any person as having violated the provisions of Title I of ERISA, including the adequate security and reasonably equivalent basis requirements in ERISA section 408(b)(1) and 29 CFR 2550.408b-1, solely because they complied with these special rules for plan loans.⁸

Participant Contributions and Loan Repayments

Under 29 CFR 2510.3-102, amounts that a participant or beneficiary pays to an employer, or amounts withheld from the participant's wages by an employer, for contribution or repayment of a participant loan to an employee pension benefit plan constitute plan assets. Generally, these amounts must be forwarded to the plan on the earliest date on which such amounts can reasonably be segregated from the employer's general assets, but in no event later than the 15th business day of the month following the month in which the amounts were paid to or withheld by the employer.

The Department recognizes that some employers and service providers may not be able to forward participant payments and withholdings to employee pension benefit plans within prescribed timeframes due to a Covered Disaster. In such instances, the Department will not – solely on the basis of a failure attributable to a Covered Disaster – take enforcement action with respect to a temporary delay in forwarding such payments or contributions to the plan. Employers and service providers must act reasonably, prudently, and in the interest of employees to comply as soon as administratively practicable under the circumstances.

Blackout Notices

In general, the administrator of an individual account plan is required to provide 30 days' advance notice to participants and beneficiaries whose rights under the plan will be temporarily suspended, limited, or restricted by a blackout period under 29 CFR 2520.101-3. For instance, a period of suspension, limitation, or restriction of more than three consecutive business days on a participant's ability to direct investments, obtain loans, or obtain other distributions from the plan results in a blackout period and triggers the advance notice. The regulations provide an exception to the advance notice requirement when the inability to provide the notice is due to events beyond the reasonable control of the plan administrator and a fiduciary so determines in writing. The above relief under Section 518 applies to blackout notices that are required to be provided under the regulation, including those required to be provided after the blackout period begins. The Department will not require the written determination by a fiduciary pursuant to the regulation for blackout notices covered by this notice, as natural disasters are by definition beyond a plan administrator's control.

Form 5500 and Form M-1 Filing Relief

⁸ For more information regarding rules that apply to plan loans or distributions regarding disaster relief, see Code sections 72(p)(6), 72(t)(8), and 72(t)(11) and IRS Disaster relief frequently asked questions: Retirement plans and IRAs under the SECURE 2.0 Act of 2022 at <https://www.irs.gov/newsroom/disaster-relief-frequent-asked-questions-retirement-plans-and-iras-under-the-secure-20-act-of-2022#loans>.

Form 5500 Annual Return/Report filing relief is provided in accordance with guidance published by the Treasury Department and IRS in a news release on the IRS disaster relief website. See the relevant Helene (GA 2024-08, SC 2024-08, NC 2024-08, AL 2024-05, VA 2024-01, TN 2024-01, FL 2024-08) and Milton (FL-2024-10) IRS news releases available at www.irs.gov/newsroom/tax-relief-in-disaster-situations. See also Treasury Regulations under Code section 7508A and Section 8 of Rev. Proc. 2018-58, 2018-50 I.R.B. 990.

Form M-1 filings required for multiple employer welfare arrangements (MEWAs) and certain entities claiming exception (ECEs) directly affected by a Covered Disaster are provided relief for the same period of time as the Form 5500 Annual Return/Report filing relief. A MEWA or ECE is directly affected by a Covered Disaster if the relevant office of the MEWA, ECE, plan administrator, or primary record keeper serving the MEWA or ECE was located in a Covered Disaster area.

General ERISA Fiduciary Compliance Guidance

The Department recognizes that affected plan participants and beneficiaries may encounter problems due to a Covered Disaster. The guiding principle for plans and plan fiduciaries must be to act reasonably, prudently, and in the interest of the covered workers and their families who rely on their health, retirement, and other employee benefit plans for their physical and economic wellbeing. Plan fiduciaries should make reasonable accommodations to prevent the loss of benefits or undue delay in benefits payments in such cases and should attempt to minimize the possibility of individuals losing benefits because of a failure to comply with pre-established timeframes.

In addition, the Department acknowledges that there may be instances when plans and service providers may be unable to achieve full and timely compliance with claims processing and other ERISA requirements. The Department's approach to enforcement will emphasize compliance assistance and include grace periods and other relief where appropriate, including when physical disruption to a plan or service provider's principal place of business makes compliance with pre-established timeframes for certain claims decisions or disclosures impossible.

Additional/Extension of Relief

The Department will continue to monitor the effects of the Covered Disasters and may respond to the situation as appropriate, which may include providing additional relief as warranted.

Contact Information

For more information, visit the Department's Employee Benefits Security Administration's (EBSA) Disaster Relief pages for Employers and Advisers or Workers and Families at www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief and www.dol.gov/agencies/ebsa/workers-and-families/disaster-relief, or contact EBSA at www.askebsa.dol.gov or 1-866-444-3272. Questions about IRS guidance should be directed to the IRS at www.irs.gov/newsroom/tax-relief-in-disaster-situations or 1-202-317-5500. Questions about HHS guidance should be directed to HHS at marketreform@cms.hhs.gov.