

December 27, 2024

## Agencies Grant Certain Relief for Hurricane Disaster Areas

The Internal Revenue Service (IRS), U.S. Department of Labor (DOL), and U.S. Department of the Treasury (“Treasury”) recently provided relief for businesses and individuals affected by Hurricanes Debby, Helene, and Milton. We will collectively refer to the three government entities as the “Agencies” in this Alert.

The relief extends various compliance deadlines for employee benefit plans in disaster areas designated by the Federal Emergency Management Agency (FEMA). The disaster areas span several states and include specific counties and cities. The beginning relief dates vary slightly by state, so please check each state’s disaster declaration for the applicable date.

This Alert is broken into two sections: (1) An extension for Form 5500 reporting; and (2) Additional plan administrative relief. This Alert is relevant to any employer with employees and/or operations in one or more of the designated FEMA disaster areas. It may also apply to employers relying on third parties to assist or perform plan functions if the third party’s operations are within a disaster area.

This Alert is relevant for employers with operations in a designated FEMA disaster area.

**Note:** This Alert solely addresses relief applicable to health and welfare benefits. It does not address any relief or other guidance for retirement plans (e.g., 401(k) plans, pension plans, etc.) or other tax reporting and payment relief.

### Highlights

#### Overview

Federal agencies provided relief for businesses and individuals affected by Hurricanes Debby, Helene, and Milton. The relief extends various compliance deadlines until May 1, 2025 for employee benefit plans in disaster areas designated by FEMA.

This Alert is relevant for employers with operations in a designated FEMA disaster area.

#### Key Provisions

The relief exists in two parts:

1. An automatic extension for Form 5500 reporting if the reporting due date falls within the applicable relief period; and
2. Additional plan administrative relief, including: (i) relaxed communication requirements for required ERISA disclosures and notification; and (ii) extended deadlines for COBRA, HIPAA special enrollment rights, and claims and appeals.

The relief does not apply to ACA Form 1094/1095 reporting.

#### Employer Action

If the relief applies:

- Determine whether to utilize the 5500 extension;
- Confirm that plan administration in the FEMA disaster areas will comply with the additional plan administrative relief; and
- Communicate the additional plan administrative relief.

## FEMA disaster areas

The links in the following table are to the IRS announcements granting the Form 5500 extension reporting relief addressed in the next section. We are using the IRS announcements to reflect the respective FEMA disaster areas, because:

1. The IRS announcements generally consolidate the FEMA disaster declarations that may be applicable to a given state, and
2. The FEMA disaster areas described in the introductory section of the IRS announcements (generally, within the first two or three paragraphs) match for both sets of relief described in this Alert.

| State                            | Disaster area            | Beginning relief date     |
|----------------------------------|--------------------------|---------------------------|
| <a href="#">Alabama</a>          | Entire state             | September 22              |
| <a href="#">Florida</a> (Helene) | 41 counties              | September 23 <sup>1</sup> |
| <a href="#">Florida</a> (Milton) | 26 counties              | October 5 <sup>1</sup>    |
| <a href="#">Georgia</a>          | Entire state             | September 24              |
| <a href="#">North Carolina</a>   | Entire state             | September 25              |
| <a href="#">South Carolina</a>   | Entire state             | September 25              |
| <a href="#">Tennessee</a>        | 14 counties              | September 26              |
| <a href="#">Virginia</a>         | 13 counties and 4 cities | September 25              |

## IRS extends Form 5500 reporting deadline

The IRS issued [IR-2024-264](#) (the “Release”) on October 11, 2024, which automatically delays the filing date for tax returns and payments that were due late September 2024 and before May 1, 2025 (the “Automatic Relief Window”), until **May 1, 2025**, for those affected by Hurricanes Debby, Helene, and Milton.

### Scope of taxpayer relief

The Release provides relief to businesses and individuals principally located or residing in an affected disaster zone (i.e., address of record), whose necessary records to complete the tax return are in a disaster zone, or that are unable to obtain necessary information from insurers, TPAs, or other third parties located in a [FEMA disaster area](#).

### Application by reference

Most of the items covered by the Release are beyond the scope of this Alert. The Release does not directly mention anything related to health and welfare benefits, but it incorporates [Revenue Procedure 2018-58](#)<sup>2</sup> by reference which includes Forms 5500 and 990. The Notice **does not** extend the reporting dates for Forms 1094 and 1095.

<sup>1</sup> Florida’s relief began on September 23, 2024 for areas initially affected by Helene and on October 5, 2024 for additional areas affected by Milton. The combined Helene and Milton FEMA disaster areas cover all of Florida.

<sup>2</sup> Revenue Procedure 2018-58 is a list of 44 tax-related items with due dates that may be extended during a declared federal disaster. By referencing this Revenue Procedure, the IRS does not have to write the list out again.

## Form 5500

[Form 5500](#) is the annual information return for ERISA plans, and the reporting date is generally the last day of the 7<sup>th</sup> month following the end of the plan year. The Form 5500 reporting due date is July 31<sup>st</sup> for calendar year plans, which means calendar year plans normally fall outside of the Automatic Relief Window.

However, plans that timely filed a [Form 5558](#) extension and moved their reporting deadlines within the Automatic Relief Window qualify for the reporting relief. The relief also extends to several non-calendar year plans and plans with short plan years required to file during this time.

### Example 1

The Form 5500 reporting due date for a 2023 calendar year plan is July 31, 2024. The plan did not file a Form 5558 extension by or before July 31, 2024. The July 31<sup>st</sup> reporting date falls outside the Automatic Relief Window, so the plan's 2023 Form 5500 report was still due by July 31, 2024.

### Example 2

The Form 5500 reporting due date for a 2023 calendar year plan is July 31, 2024. The plan filed a Form 5558 extension by or before July 31, 2024, extending the reporting due date to October 15, 2024. The October 15<sup>th</sup> reporting date falls within the Automatic Relief Window, so the plan now has until [May 1, 2025](#) to file its 2023 Form 5500 report.

### Example 3

The Form 5500 reporting due date for a July 1, 2023 – June 30, 2024 plan year is January 31, 2025. This reporting date falls within the Automatic Relief Window, and the plan will have until [May 1, 2025](#) to file its 2023 Form 5500 report without the need to file a Form 5558 extension.

## Agencies issue additional plan administrative relief

The Agencies published the following guidance providing for additional plan administrative relief (collectively, the "Relief Guidance") on November 7, 2024.

- [Extension of Certain Timeframes for Employee Benefit Plans, Participants, Beneficiaries, Qualified Beneficiaries, and Claimants Affected by Hurricane Helene, Tropical Storm Helene, or Hurricane Milton](#) ("Final Rule") – The Final Rule extends certain timeframes for participants and beneficiaries to exercise their rights to health care coverage and continuation of group health plan coverage under COBRA; extends the timeframe for plan administrators to provide a COBRA election notice; gives plan participants and beneficiaries affected by these disasters more time to file and complete benefit claims, appeal denied claims, and make important decisions about their health coverage, retirement, and other benefits.
- [EBSA Disaster Relief Notice 2024-01](#) ("EBSA Notice") – The EBSA Notice provides limited relief for certain plan filings, broad relief for the delivery of plan notices and disclosures, and relaxes the rules for electronic delivery.
- [FAQs for Participants and Beneficiaries Impacted by Hurricane Helene or Hurricane Milton](#) ("Hurricane FAQs") – The Hurricane FAQs are intended to help employees, participants, plan sponsors, and employers understand how the Final Rule and EBSA Notice may affect them.

The U.S. Department of Health and Human Services (HHS) indicated in both the Final Rule and EBSA Notice that it concurs with the relief in application to laws under its jurisdiction and encourages plan sponsors of non-federal governmental and church plans (and individual policies) to extend the applicable timeframes under the Public Health Services Act (PHSA). In other words, compliance is optional and not mandatory for those plans.

## Scope of Relief Guidance

The Relief Guidance applies to participants, beneficiaries, qualified beneficiaries, claimants, and employee benefit plans that are directly affected by Helene and Milton. “Directly affected” means an individual resided, lived, or worked in one of the designated disaster areas at the time of the hurricane or tropical storm, or whose coverage was under an employee benefit plan that was directly affected. An employee benefit plan is directly affected if the principal place of business of the employer/plan sponsor,<sup>3</sup> office of the plan or plan administrator, or office of the primary recordkeeper is in a disaster area.

The relief is similar to the plan administrative relief provided by the Agencies during the COVID-19 pandemic. This Alert solely focuses on the Relief Guidance as it relates to health and welfare benefits.

## Relief Period

The Relief Period begins on the applicable beginning relief date (see [FEMA disaster areas](#) above) and ends as of **May 1, 2025**.

## Final Rule and EBSA Notice relief during the Relief Period

| ERISA Disclosures and Notices |   |
|-------------------------------|---|
| <b>Plan Relief</b>            | <p>The plan (through its plan administrator or other fiduciary) will be considered to timely provide all Title I ERISA disclosures and notices if the plan provides the material as soon as it is administratively practical to do so. The plan may use electronic delivery for any plan participants and beneficiaries the plan fiduciary reasonably believes have effective access to electronic means of communication (including email, text messages, and continuous access to websites).</p> <p>Covered disclosures and notices include the plan document(s), summary plan description (SPD), summary of material modification (SMM), summary of benefits and coverage (SBC), summary annual report (SAR), and benefit determinations (including claims and appeals notices).</p> <p>COBRA is addressed separately below.</p> |
| <b>Implications</b>           | <p>In general, an employer should not be subject to penalties if the inability to access or generate information because of a business closure or a backlog of work issues due to location in a disaster area prevents a plan from providing material within a required timeframe, so long as the plan provides the material as soon as reasonably possible.</p> <p>It can be difficult to enforce plan provisions before they are communicated to participants (e.g., benefit limitations and/or denials), so there is still an incentive to provide information as soon as possible.</p>  |

<sup>3</sup> The Final Rule indicates the principal place of business is the location accounting for >50% of active plan participants.

| HIPAA Special Enrollment Rights    |   |
|------------------------------------|---|
| <b>Employee/Participant Relief</b> | <p>The deadlines to request enrollment in a group health plan due to marriage, birth or adoption, the loss of other health coverage, or certain Medicaid/CHIP events are suspended.<sup>4</sup></p> <div style="border: 1px solid #0070C0; padding: 5px; margin-top: 10px;"> <p><b>HIPAA-excepted benefits:</b> The special enrollment rights are generally limited to medical coverage, as most other group health plans (e.g., dental, vision, EAP, health care FSA, etc.) usually qualify as HIPAA-excepted benefits.</p> </div>   |
| <b>Implications</b>                | <p>A special enrollment window does not begin to run (or run again) until the day after the Relief Period ends.</p> <p>The suspension of the special enrollment deadlines also applies to events that occurred before the beginning date of the Relief Period for the disaster zone if the applicable enrollment window extended into the Relief Period.</p> <div style="border: 1px solid #0070C0; padding: 5px; margin-top: 10px;"> <p><b>Example 1:</b> Chris works for Employer A and resides in Florida. He gets married on October 6, 2024. Employer A’s medical plan provides for a 31-day special enrollment window, measured from the marriage date. The Relief Period ends May 1, 2025. Chris’ 31-day special enrollment window starts May 2, 2025, and ends June 1, 2025. Employer A’s plan indicates coverage for marriage is effective on the first day of the following month after a timely request for enrollment. If Chris requests enrollment on May 31, 2025, coverage will be effective on June 1, 2025.</p> </div> <div style="border: 1px solid #0070C0; padding: 5px; margin-top: 10px;"> <p><b>Example 2:</b> Tessica works for Employer B and resides in South Carolina. On October 31, 2024, she gave birth and would like to enroll herself and the child into Employer B’s medical plan. Employer B’s medical plan provides for a 31-day special enrollment window, measured from the birth date. The Relief Period ends May 1, 2025. Tessica’s 31-day special enrollment window starts May 2, 2025, and ends on May 31, 2025. Employer B’s plan indicates coverage for birth is effective retroactive to the date of birth. If Tessica requests enrollment on May 15, 2025, coverage must be retroactive to October 31, 2024.</p> </div> <p>Remember, the only special enrollment event providing for coverage <i>retroactive</i> to the date of the event is a birth, adoption, or placement for adoption. A plan may be able to permit retroactive enrollment for other events<sup>5</sup>, but it will need the approval of any insurance or stop-loss carrier.<sup>6</sup></p> |

<sup>4</sup> HIPAA requires a special enrollment window of at least 30 days (31 days is common) for marriage, birth or adoption, or the loss of other health coverage, and at least 60 days for certain Medicaid/CHIP events. Plans may provide for longer periods.

<sup>5</sup> A plan may permit new hires to make a retroactive election to the date hire as long as it is made within 30 days of the hire date.

<sup>6</sup> The employee cannot pay for this period of retroactive coverage for other special enrollment events on a pre-tax basis. The employee must pay after-tax, or the employer can provide it on a tax-free basis (assuming no discrimination under the Internal Revenue Code).

| COBRA                     |   |
|---------------------------|---|
| <b>Plan Relief</b>        | The deadlines to timely provide COBRA election materials to COBRA qualified beneficiaries are suspended.  |
| <b>Implications</b>       | <p>COBRA administration is usually a standardized process between plan administrators and third-party COBRA administrators, but this does relieve plan administrators from potential penalties caused by disruption to business operations.</p> <p>There is little benefit to intentionally delay providing COBRA election materials.</p>   |
| <b>Participant Relief</b> | <ul style="list-style-type: none"> <li>The 60-day deadline for an employee or qualifying beneficiary to notify the plan of a divorce or loss of dependent eligibility is suspended.</li> <li>The deadline for an employee or qualifying beneficiary to request a disability extension for the COBRA continuation coverage is suspended.</li> <li>The 60-day deadline to elect COBRA is suspended.</li> <li>The 45-day deadline to pay the initial COBRA premium and the 30-day deadlines to pay subsequent monthly COBRA premiums are suspended.</li> </ul>   |
| <b>Implications</b>       | <p>In short, there are no deadlines to elect or pay for COBRA during the Relief Period.</p> <div style="border: 2px solid #0070C0; padding: 10px; margin: 10px 0;"> <p><b>Example:</b> Chris is a resident of Alabama. He worked for Employer A and was enrolled in A's group health plan. Chris' employment was terminated on July 20, 2024, and he timely elected COBRA continuation coverage for A's group health plan. The plan does not permit more than a 30-day grace period for subsequent monthly premium payments after the initial premium. Chris made a timely September payment, but he did not make the October payment or any subsequent payments during the Relief Period. Chris' COBRA coverage cannot be terminated due to missed payments during the Relief Period. Premium payments made by May 31, 2025 (30 days after May 1<sup>st</sup>), are deemed timely. Chris' October through May premium payments are due by May 31, 2025.</p> </div> <p>The Final Rule suggests employers may continue using the "pend and pay" method for maintaining COBRA coverage.<sup>7</sup></p> <ul style="list-style-type: none"> <li><u>Pend and pay</u> – The plan pends claims during the coverage period and pays them after the applicable premiums are paid. This approach appears to be the most common.</li> <li><u>Pay and chase</u> – The plan pays claims during the coverage period and retroactively cancels coverage if premiums are not paid. Since the Final Rule does not require payment during the Relief Period, this can put the plan at significant risk for non-payment. The plan's recourse is to attempt to recover (i.e., "chase") the paid claims from the participant(s).</li> </ul> |

<sup>7</sup> [Final Rule, Example 3](#), which states that a plan may retroactively pay for benefits during the Relief Period. This is also consistent with COBRA administration during the COVID-19 pandemic which allowed the pend and pay method.

## Claims and Appeals

|                           |   |
|---------------------------|---|
| <b>Participant Relief</b> | The deadlines to file a claim for benefits or appeal an adverse benefit determination are suspended.  |
| <b>Implications</b>       | <p>The time to file a claim for benefits or appeal an adverse benefit determination (a denied claim) cannot expire during the Relief Period. This also means a participant may still file a claim or appeal previously deemed denied during the Relief Period because of the participant’s failure to timely file the claim or appeal.</p> <p>Plans should review whether any claims or appeals have been denied on or after the beginning date of the Relief Period for the applicable disaster area because of the participant’s failure to timely file.<sup>8</sup></p> <p><b><u>Health care FSAs (HCFSA) and run-out periods</u></b></p> <p>This relief also means that the run-out period for a HCFSA cannot expire during the Relief Period. For example, if a calendar year HCFSA’s run-out period to submit claims ends March 31, 2025, the run-out period will remain open and participants will have until May 1, 2025 to submit valid claims before forfeiture of an unspent balance (and/or carryover).</p> <p>This relief should also apply to HRAs, although unspent HRA balances for current employees usually carry over to the following year and are not forfeited. This relief does not apply to dependent care FSAs because they are not ERISA plans.</p> <div style="border: 1px solid #0070C0; padding: 10px; margin-top: 10px;"> <p><b>Note:</b> The relief only provides additional time to <i>submit</i> claims. It does not provide additional time to <i>incur</i> them. The additional time to submit claims does not separately apply to the plan’s requirement to provide substantiation for a submitted claim. Once a participant submits a claim, the plan’s usual rules for providing substantiation apply.</p> </div> |

## External Review

|                           |  |
|---------------------------|--|
| <b>Participant Relief</b> | The four-month period to request external review or correct an external review request is suspended.   |
| <b>Implications</b>       | The time to request external review for a denied medical claim based on whether services or treatment are medically necessary or appropriate cannot expire during the Relief Period. |

<sup>8</sup> Most plan administrators will need the assistance of the insurance carrier or third-party administrator.

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## Fiduciary responsibilities

Both the Final Rule and EBSA Notice's requirement for plans, plan administrators, and plan sponsors to act in good faith – as well as effective plan administration and general fiduciary responsibilities – will put pressure on plans to communicate the additional rights as soon as it is practical to do so.

In the EBSA Notice, the DOL reminds plans and plan sponsors of their fiduciary responsibilities 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.” This responsibility includes providing “reasonable accommodations to prevent the loss of benefits or undue delay in benefits payments.” Plans and plan sponsors should act to minimize the risk of benefits loss due to a failure to notify affected employees and participants of their rights or otherwise comply in good faith with both established plan administration requirements and the relief provided by the EBSA Notice and Final Rule.

It may be reasonable for plans to satisfy this requirement by providing the Hurricane FAQs to employees and participants. The DOL drafted them specifically to explain the additional rights to participants and beneficiaries.

## DOL relaxes electronic delivery rules

During the Relief Period, the DOL authorizes communication with employees and participants via emails, text messages, and/or websites as “good faith” delivery of communication, so long as the plan fiduciary “reasonably believes [plan participants and beneficiaries] have effective access to [such] electronic means of communication” and/or “continuous access” to websites.

## Dual administration?

The relief described in this section only applies to participants, beneficiaries, qualified beneficiaries, claimants, and employee benefit plans in the affected FEMA disaster areas. For multi-state employers,<sup>9</sup> this may mean certain relief (e.g., COBRA, HIPAA special enrollment, and claims and appeals) applies to some employees and/or plan participants but not others.

To the extent they have any discretion to do so, some multi-state employers may wish to consider whether they prefer separate administration or relaxing the standards for other participants during the Relief Period for more uniform administration.

## The Hurricane FAQs

The Hurricane FAQs consist of 20 questions written from the employee/participant perspective and answered by the DOL. The first nine questions are specific to the additional rights discussed in this Alert for group health plans and indicate that:

- Participants have more time to request special enrollment, elect and pay for COBRA, file claims for benefits and appeals of adverse benefit determinations, and request external review for denied claims;
- Participants should review the applicable SPD(s) and ask questions about their rights; and
- Individuals may have additional coverage options in addition to employer-provided group health plans, such as the Public Health Insurance Marketplace, Medicare, and Medicaid.

The remaining FAQs pertain to retirement benefits beyond the scope of this Alert.

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<sup>9</sup> Particularly multi-state employers whose principal locations are outside a disaster area.



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## Employer action items

Employers should review the applicable [FEMA disaster area](#) guidance and consult with appropriate advisors, which may include their insurance broker, consulting firm, and/or legal counsel, to determine if the relief described in this Alert applies to them. If yes, employers/plan sponsors should:

- Determine whether to utilize the extended deadline to complete Form 5500 reporting;
- If applicable, confirm that plan administration in the FEMA disaster areas will comply with the additional plan administrative relief described in this Alert; and
- If applicable, determine how to communicate the additional plan administrative relief. As mentioned earlier, it may be reasonable for plans to satisfy this requirement by providing the Hurricane FAQs to employees and participants.

Additionally, multi-state employers subject to the additional plan administrative relief may wish to consider whether they prefer dual administration of certain plan administrative functions (e.g., COBRA, HIPAA special enrollment, and claims and appeals) during the Relief Period, or if it would be more practical to relax those standards for other participants during the Relief Period for more uniform administration. The ability to relax the standards for other participants is dependent upon the employer having the discretionary authority to do so.

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