BENEFITS INSIDER

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The ***Benefits Insider*** is a bimonthly member exclusive publication prepared for WEB members by the American Benefits Council ("the Council"), a premiere benefits advocacy organization based in Washington, DC. This newsletter provides the latest news and analysis on the most important benefits-related policy matters in Congress, executive branch agencies and the federal judiciary.

Please note: any views or opinions expressed in these stories represent the advocacy positions of the American Benefits Council and its membership. They do not necessarily reflect the views of WEB or its membership. To inquire about membership with the American Benefits Council, contact Deanna Johnson at (202) 289-6700 or djohnson@abcstaff.org.

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RECENT REGULATORY ACTIVITY

Agencies Issue Disaster Relief Extensions for Employee Benefit Plans and Participants

You Need to Know:

- DOL and Treasury/IRS have issued guidance providing relief for employee benefit plans and participants affected by recent hurricanes/tropical storms.
- The guidance includes extensions for most participant-related deadlines, along with good-faith relief for plans for ERISA deadlines through May 1, 2025.

On November 8, the U.S. Department of Labor's Employee Benefits Security Administration (EBSA), the U.S. Treasury Department, and the Internal Revenue Service (IRS) issued coordinated guidance to support employee benefit plans and participants affected by Hurricane Helene, Tropical Storm Helene, and Hurricane Milton. The U.S. Department of Health and Human Services (HHS) also reviewed and endorsed the relief measures.

The guidance, designed to ease compliance requirements and extend certain deadlines, includes:

- **EBSA Disaster Relief Notice 2024-01**: Outlines relief for plans from specific ERISA requirements and deadlines during the disaster period.
- **Joint Notice Extending Certain Timeframes**: Provides extended deadlines for participant actions under ERISA and the Internal Revenue Code, such as HIPAA special enrollment, COBRA continuation, and claims and appeals and an extended deadline for plans to send the COBRA election notice. 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.
- **FAQs for Participants and Beneficiaries**: Offers information to help participants understand how the disasters may affect their health and retirement benefits.

EBSA Disaster Relief Notice 2024-01

This notice provides relief from ERISA compliance deadlines. Key highlights include:

- **Notices and Disclosures**: Plans will not violate ERISA for delays in furnishing required notices or documents during the relief period if good-faith efforts are made to deliver them as soon as administratively practicable. This includes allowances for electronic communications, such as email or continuous access websites.
- **Form 5500 and Form M-1 Deadlines**: The IRS has extended deadlines for these filings.
- **Verification and Plan Loans**: Retirement plans may deviate from procedural requirements for loans and distributions if delays result from one of the specified disasters, provided that plan administrators act in good faith and correct deficiencies

promptly. Relief under SECURE 2.0 also allows increased loan limits and extended repayment deadlines.

- **Claims Processing**: DOL will focus on compliance assistance, providing grace periods and emphasizing good faith compliance with claims procedures.

Joint Notice Extending Certain Timeframes

The joint notice extends deadlines for affected plan participants to exercise certain rights. These extensions apply to:

- **HIPAA Special Enrollment**: Deadline for participants to enroll in group health plans.
- **COBRA Continuation**: Deadlines for electing and paying for COBRA coverage and for a qualifying event, second qualifying event, and disability determination notifications.
- **Benefit Claims, Appeals and External Review**: Deadlines for filing claims and appeals and requesting external review. For example, a Florida resident affected by Hurricane Helene now has until June 9, 2025, to file an appeal for an adverse benefit determination dated September 1, 2024.

The notice also extends the deadline for plans to send the COBRA election notice.

The relief applies during the following periods:

- Hurricane Helene
    - Disaster areas in Florida – September 23, 2024, through May 1, 2025
    - Disaster areas in Georgia – September 24, 2024, through May 1, 2025
    - Disaster areas in North Carolina, South Carolina, and Virginia – September 25, 2024, through May 1, 2025
- Tropical Storm Helene
    - Disaster areas in North Carolina, South Carolina, and Virginia – September 25, 2024, through May 1, 2025
    - Disaster areas in Tennessee – September 26, 2024, through May 1, 2025
- Hurricane Milton
    - Disaster areas in Florida – October 5, 2024, through May 1, 2025.

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.

The agencies will continue to monitor the situation and may issue additional relief as necessary. HHS has encouraged similar extensions for non-federal governmental plans and health insurers consistent with this guidance.

PBGC Annual Report Shows Continued Improvement in Single Employer, Multiemployer Programs

You Need to Know:

- The PBGC's latest annual report shows that the agency's pension insurance programs, especially the single-employer program – is in very strong financial condition, reporting record-high surpluses and record-low reasonably possible liabilities.

- These figures justify swift legislative action to reduce PBGC premiums as soon as possible to stave off departures from the defined benefit system.

The Pension Benefit Guaranty Corporation (PBGC) released its **2024 Annual Report** describing the continued trend of improvement in the financial status of the agency's two pension insurance programs, as indicated by the third consecutive year of rising surpluses in both the single-employer program and its long-troubled multiemployer program.

The substantial and increasing surplus in the PBGC's single-employer program, especially, add urgency to the Council's **proposed reforms to the defined benefit pension system**. The Council's proposals include measures to reduce excessive PBGC premiums and discourage future increases in order to reduce the level of risk transfer activity and further departures from the defined benefit system.

The PBGC's Participant and Plan Sponsor Advocate has endorsed many of these proposals (The advocate's latest report is expected at year-end).

Single-Employer Program

The single-employer insurance program surplus has grown to $54.2 billion as of the end of Fiscal Year 2024, an all-time high and an increase from the reported $44.6 billion surplus as of the end of Fiscal Year 2023,

The agency estimates that its reasonably possible future liabilities in single-employer plans (taking into account only those sponsored by companies with credit ratings below investment grade) has dwindled to a historic low of $2.6 billion, down almost 90% from $25.7 billion last year.

These figures are consistent with the agency's **Fiscal Year (FY) 2023 Projections Report**, issued in July, which projected a surplus of $71.6 billion by the end of FY 2033 and reported the single-employer program's funding ratio – calculated by comparing assets ($124.9 billion) to liabilities ($53.3 billion) – of 234%.

Multiemployer Program

Meanwhile, the multiemployer program, which reported a deficit position as recently as 2020, boasts a surplus of $2.1 billion as of the end of Fiscal Year 2024, an increase over the $1.5 billion surplus reported in 2023.

The PBGC also reports that the multiemployer program's exposure dropped to $189 million in 2024 (again, accounting only for companies with credit ratings below investment grade), compared to $410 million in 2023.

RECENT LEGISLATIVE ACTIVITY

Group Letter Delivered to Congress Urging Extension of Telehealth Flexibility

You Need to Know:

- Statutory flexibility for Health Savings Account (HSA)-eligible high-deductible employer-sponsored health plans to offer telehealth coverage pre-deducible is slated to expire at the end of 2024.
- A letter signed by more than 225 organizations, including many Council member companies, was sent to Congress on November 21 urging lawmakers to enact a long-term extension of this flexibility.

More than 225 organizations have **signed on to a letter** urging Congress to extend, before the end of the year, the law that allows employers the flexibility to offer telehealth services below the deductible to employees with a Health Savings Account (HSA).

This flexibility, originally introduced under the Coronavirus Aid, Relief, and Economic Security Act (CARES) Act of 2020, allows individuals to access telehealth services without first meeting a deductible in high-deductible health plans (HDHPs).

In election-night polling commissioned by the American Benefits Council, 86% of respondents – all who actually voted in the election this year — said they want Congress to extend this provision.

As the letter explains, telehealth services — particularly for mental health and substance use disorder treatment — have become essential in expanding access to care. The bipartisan Telehealth Expansion Act (H.R. 1843/S. 1001) seeks to make this flexibility permanent, but immediate action is needed to ensure the policy's continuation beyond 2024.

The legislative strategy for the "lame duck" session remains very fluid and it is uncertain whether a legislative vehicle will be available to include an extension before the end of the year.

The group letter, organized by the Alliance to Fight for Health Care (a broad-based coalition established by the Council) was delivered to Congress on November 21 and is signed by numerous Council member companies, along with public-sector employers, nonprofit

organizations, patient advocacy groups, health care providers, insurers, brokers, unions trade associations and other employer sponsors of health coverage.

In a statement accompanying the letter, Council President James Klein emphasized the importance of swift and permanent action. "Employer-sponsored health coverage is planned prospectively and is already in place for 2025. Therefore, this provision of the law urgently needs to be renewed before the end of the year. Given how health coverage works, allowing this provision to expire, or extending it for a partial year will cause undue disruption for workers and their families," said Council President James A. Klein. "People rely upon access to affordable telehealth services, especially mental health. Action by Congress is urgent," Klein added.

MISCELLANEOUS

EBRI, Council Report Highlights Value of ERISA Preemption Amid Threats

You Need to Know:

- A new report from EBRI and the American Benefits Council underscores the critical role of ERISA's preemption framework in enabling multi-state employers to offer consistent, cost-effective, and innovative benefits, even as it faces growing threats from state and local laws.

- Insights from focus groups with employers highlight how ERISA preemption reduces administrative costs, fosters innovation and ensures equitable benefits for employees across state lines, underscoring the need for policymakers to protect this vital legal standard.

A newly released report by the Employee Benefit Research Institute (EBRI) and American Benefits Council (Council) underscores the critical importance of ERISA preemption to the operation of employer-sponsored benefit plans.

Marking the 50th anniversary of ERISA's passage, the report's findings warn this foundational legal protection is under increasing threat from state and local lawmaking as well as evolving legal challenges. The report will be shared with policymakers on Capitol Hill and elsewhere to help them understand the vital role that ERISA federal preemption plays in enabling large multi-state employers like Council member companies, to sponsor their benefit programs.

The report, ***ERISA at 50: No Midlife Crisis for ERISA Preemption***, is based on insights from two focus groups of several senior benefits decision-makers at Council member companies. Collectively, the dozen companies participating in the focus groups employ more than 600,000 workers and cover over one million lives in their health care programs, and spend more than $7 billion annually on health care.

Key Findings

The roundtable discussions, facilitated by EBRI and the Council, focused primarily on ERISA preemption in the context of sponsorship of health benefits. However, as the participants in the focus groups noted, erosion of ERISA preemption for health plans will have negative implications for employer-sponsored retirement plans as well. The conversations among the corporate benefit leaders revealed several critical benefits of ERISA preemption:

- **Regulatory Uniformity**: ERISA preemption allows employers operating in multiple states to provide consistent benefits, avoiding a "patchwork" of conflicting state regulations.

- **Cost Reduction**: By simplifying compliance, ERISA preemption lowers administrative costs, enabling richer benefits and more affordable coverage for employees.

- **Fostering Innovation**: A uniform regulatory landscape promotes creativity and flexibility in benefits design, which could be hindered by varied state requirements.

- **Commitment to Benefits**: Despite concerns over potential erosion of ERISA preemption, employers remain committed to offering competitive health benefits to attract and retain talent.

Preserving ERISA Preemption

In conjunction with releasing the report Council President, James Klein, emphasized the significance of ERISA preemption in preserving equitable benefits across states.

"ERISA is the foundation for the employer-sponsored benefits system. Preemption, its crowning achievement, enables multi-state employers to offer benefits uniformly and equitably. Without it, administrative burdens and costs would skyrocket, stifling innovation and making it impossible to treat employees consistently," he said.

"The legal framework allows companies to offer a consistent menu of high-quality benefits to workers across state lines and fosters employer innovations that address those workers' specific needs," said Barb Marder, EBRI president and CEO, in a statement. "Were ERISA preemption to disappear, benefits executives expressed uncertainty about how their companies would adapt to the complexity of state-level regulations, but they agreed that health benefits remain a key workforce tool."

The Council's continued call on policymakers to safeguard ERISA's federal preemption standard is at the very core of our advocacy. National employers confront a growing tide of state and local laws that add complexity and cost to benefits administration. The preservation of ERISA preemption is vital to maintaining the flexibility and innovation that have defined the employer-sponsored benefits system for the past five decades.