

# ERRP

## Early Retiree Reinsurance Program

### *Plan Sponsor Instructions*



## U.S. Department of Health and Human Services

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is **INSERT NUMBER**. The time required to complete this information collection is estimated to average 227 hours for a sponsor's first year in the program, and 150 hours for subsequent years, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: CMS, 7500 Security Boulevard, Attn: PRA Reports Clearance Officer, Mail Stop C4-26-05, Baltimore, Maryland 21244-1850.

*Early Retiree Reinsurance Program (ERRP) Plan Sponsor Instructions for Submitting an Application, Submitting Reimbursement Requests, Submitting Appeals, Reporting Data Inaccuracies, Reporting Change of Ownership, and Other information Collections*

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES

## **Overview**

The Early Retiree Reinsurance Program (ERRP) was established by section 1102 of the Patient Protection and Affordable Care Act (the Affordable Care Act), P.L. 111-148, enacted on March 23, 2010. The Congress appropriated funding of \$5 billion for the temporary program. Section 1102(a)(1) requires the Secretary to establish this temporary program not later than 90 days after enactment of the statute, which is June 21, 2010. The program ends no later than January 1, 2014. The program provides reimbursement to participating employment-based plans for a portion of the cost of health benefits for early retirees and their spouses, surviving spouses and dependents. The Secretary will reimburse plans for certain claims between \$15,000 and \$90,000 (with those amounts being indexed for plan years starting on or after October 1, 2011). The purpose of the reimbursement is to make health benefits more affordable for plan participants and sponsors so that health benefits are accessible to more Americans than they would otherwise be without this program.

The program addresses the recent erosion in the number of employers providing health benefits to early retirees. People in the early retiree age group often face difficulties obtaining insurance in the individual market because of advanced age or chronic conditions that make coverage unaffordable and inaccessible. The program provides needed financial help for employer-based plans to continue to provide valuable coverage to plan participants, and provides financial relief to plan participants. \_

The program provides reimbursement to participating sponsors of employment-based plans for a portion of the costs of providing health benefits to early retirees (and eligible spouses, surviving spouses, and dependents of such retirees). The program regulation at 45 C.F.R. Part 149 defines the term “sponsor”, “employment-based plan”, “health benefits,” and “early retiree,” as well as many other important terms that are relevant to the program. The regulation also sets forth the requirements of the program, including the requirements discussed in these instructions.

This document provides general instructions with respect to:

- (1) Completing and submitting a program application (see ERRP regulation at 45 C.F.R. §149.40),
- (2) Requesting program reimbursement (see ERRP regulation at 45 C.F.R. part 149 subpart E),
- (3) Submitting an appeal of a reimbursement determination (see ERRP regulation at 45 C.F.R. part 149 subpart F),

(4) Reporting inaccuracies in submitted data (see ERRP regulation at 45 C.F.R. part 149, subpart G), and

(5) Reporting plan sponsor change of ownership (see ERRP regulation at 45 C.F.R. part 149, subpart H).

However, it is critical for program applicants and participants to read the regulation in order to fully understand which organizations qualify for the program, how to apply for the program, what costs are eligible for reimbursement under the program, how to submit a request for reimbursement under the program, and sponsors' obligations under the program.

## **Application Information**

### **General Instructions for Completing and Submitting the ERRP Application**

The ERRP application has been designed by the U.S. Department of Health & Human Services (HHS) to assist in the efficient administration of the ERRP in compliance with federal regulatory requirements at 45 C.F.R. Part 149. Plan sponsors wishing to participate in the program eventually will be able to submit an application for the program using the Internet, through the ERRP Secure Website. Until HHS completes the development of the web-based application, sponsors may submit and complete a paper application. The following is an overview of the application process:

1. The Account Manager establishes a Plan Sponsor account (if one does not already exist), either by completing the applicable portions of the paper application, or by going to the ERRP Website.
2. The Account Manager or Authorized Representative, after receiving a Plan Sponsor Identification Number, receives an application identification number for any application started (if online) or submitted (if paper).
3. The Account Manager, Authorized Representative, or Designee(s) completes ALL remaining parts of the application, including the Plan Sponsor Agreement which must be signed by the Plan Sponsor's Authorized Representative.
4. The completed application is submitted.
5. Plan Sponsors will be notified about the status of their application.

Only one ERRP application can be submitted for each employment-based plan. The application must be completed in its entirety (and reviewed and approved by HHS) in order to participate in the ERRP. Even if the submitted application satisfies all criteria specified in the program regulation, it may be denied, depending on the availability of limited ERRP funds.

**NOTE: With respect to ERRP online applications, only sections relevant to the applicant will be displayed online. Some sections of the application that are present in this Notice may not actually be presented at the time the application is being completed.**

Complete the items in Parts I through IV (note that certain items do not apply to paper applications). All fields marked with an asterisk (\*) are required. The following are specific instructions for each Part for each item that is not self explanatory.

### **APPLICATION PART I: Plan Sponsor and Key Personnel Information**

## **A. Plan Sponsor Account Registration**

Complete the required information in items 1-7 for the Plan Sponsor Account Registration.

Item 1: The Plan Sponsor Organization Name must be the same as that associated with its Federal Employer Tax Identification Number (EIN).

Item 2: This item is self-selected by the Plan Sponsor. Please choose the item that best represents the Plan Sponsor's type of organization.

Item 3: When completing this application online, this field will be pre-populated with the number used when the ERRP Plan Sponsor ID was requested.

Item 6: Organization address must be the address associated with the EIN.

## **B. Authorized Representative Invitation (applies to online applications only)**

An Authorized Representative is an individual with legal authority to sign and bind a sponsor to the terms of a contract or agreement. Examples of the Authorized Representative include the Sponsor's general partner, CFO, CEO, president, Human Resource Director, or an individual who holds a position of similar status and authority within the Plan Sponsor's organization. Only one individual at a time can serve in the role of Authorized Representative. For multi-employer plans, the Authorized Representative does not have to be an employee of the Plan Sponsor, but may be a member of the jointly appointed board of trustees, which includes both labor and management trustees. An Authorized Representative of the requesting Plan Sponsor must sign the Plan Sponsor Agreement in the completed application and certify that the information contained in the application is true and accurate to the best of the Plan Sponsor's knowledge and belief.

The Account Manager must complete the required information in Items 1-2 for the Authorized Representative to be invited to register as an ERRP Secure Website user.

## **C. Authorized Representative Information**

The Authorized Representative must complete the required information in Items 1-11 (Items 2 and 12 apply to online applications only).

## **D. Account Manager Information**

The Account Manager is an individual that is authorized to begin the application process on behalf of the Plan Sponsor. An Account Manager may be an employee of the Plan Sponsor, or a non-employee, such as a consultant, with whom the Plan Sponsor has an arrangement to assist with the application process. This individual would have full access rights to the online ERRP application. The Account Manager has the authority to assign an Authorized Representative, and Designees. Although an Account Manager has the ability to designate a replacement Account Manager, there can be only one Account Manager per ERRP application at a time. In addition, once designated as Account Manager, this individual will have to serve in this role across

applications (i.e. Individual cannot serve as Account Manager for one application and as a Designee for another application.)

Complete the required information in Items 1-11 for the Account Manager Information (Items 1 and 11 apply to online applications only).

### **E. Designee Invitation**

A Designee(s) is any individual chosen by either the Authorized Representative or Account Manager to assist with the management of the ERRP application, including making reimbursement requests. The Designee(s) is only able to perform functions that have been delegated by the Authorized Representative or Account Manager.

Complete the required information in Items 1-4 to invite/assign a Designee to the application. (These items apply only to online applications).

Item 3 – Pass Phrase: The Pass Phrase is created by the Authorized Representative/Account Manager, and should be communicated directly to the Designee by the Authorized Representative/Account Manager. .

Item 4 – Privileges that may be assigned to a Designee include but are not limited to the following examples: Complete Electronic Funds Transfer Information, Make Reimbursement Request, Submit Appeals,

Multiple Designees may be added as the Plan Sponsor requires. If you need to add additional Designees and are using an online application, follow the instructions in the online application.

### **F. Designee Information**

A Designee(s) is any individual chosen by either the Authorized Representative or Account Manager to assist with the management of the ERRP application, including requesting reimbursement. The Designee(s) is only able to perform functions that have been delegated by the Authorized Representative or Account Manager.

The Designee must complete the required information in Items 1-11. (Items 1, 2, and 12 apply only to online applications).

Item 1 - If the Designee does not know the Pass Phrase, s/he should contact the Authorized Representative/Account Manager. The Authorized Representative/Account Manager created the Pass Phrase at the time they assigned the Designee in the ERRP Secure Website.

### **G. User Agreement and Privacy Policy (Applies to online applications only).**

The Authorized Representative, Account Manager, and Designee(s) must review and indicate acceptance of the terms of this User Agreement and Privacy Policy as part of their ERRP Secure Website registration.

## **APPLICATION PART II: Plan Information**

### **A. Plan Information**

Complete the required information in Items 1-2 for the employment-based plan for which you are requesting ERRP payments.

Item 2: For ERRP purposes, your plan year cycle start (MM/DD) and end (MM/DD) are determined as follows: The plan year as the year that is designated as the plan year in the plan document of an employment-based plan, except that if the plan document does not designate a plan year, if the plan year is not a 12-month plan year, or if there is no plan document, the plan year is: (1) the deductible or limit year used under the plan, (2) the policy year, if the plan does not impose deductibles or limits on a 12-month basis; (3) the sponsor's taxable year, if the plan does not impose deductibles or limits on a 12-month basis, and either the plan is not insured or the insurance policy is not renewed on a 12-month basis, or (4) the calendar year, in any other case. (See the program regulation at 45 C.F.R. §149.2).

### **B. Benefit Option(s) Provided Under This Plan**

Complete the required information in items 1a-d for each benefit option in the plan for which you are requesting reimbursement under the program.

Item 1b: Unique Benefit Option Identifier is required to uniquely identify each benefit option under the plan. If a Group Number uniquely identifies each option under the plan, then that number may be used. If a Group Number does not uniquely identify each benefit option, then the Plan Sponsor must assign an identifier to each option. Plan Sponsors may use existing internal identifiers, or can develop one specifically for purposes of completing the ERRP application.

Item 1d: Specify the name of the insurer, TPA, or other entity that is administering the benefit option.

If you need to add benefit options, follow the instructions in the online application, or attach additional pages to your paper application.

### **C. Programs and Procedures for Chronic and High-Cost Conditions**

In completing this item, please be aware that the ERRP regulation defines "chronic and high-cost condition" as a condition for which \$15,000 or more in health benefit claims are likely to be incurred during a plan year by one plan participant. (See the ERRP regulation at 45 C.F.R. §149.2).

### **D. Estimated Amount of Early Retiree Reinsurance Program Proceeds**

In completing this item, please follow the instructions in the application.

## **E. Intended Use of Early Retiree Reinsurance Program Proceeds**

In completing this item, please be aware that the ERRP regulation specifies that the sponsor must use the proceeds under this program for the following purposes: (1) To reduce the sponsor's health benefit premiums or health benefit costs, or (2) To reduce health benefit premium contributions, copayments, deductibles, coinsurance, or other out-of-pocket costs, or any combination of these costs, for plan participants. Proceeds under this program must not be used as general revenue for the sponsor. (See the ERRP regulation at 45 C.F.R. §149.200).

## **APPLICATION PART III: Banking Information for Electronic Funds Transfer**

All ERRP payments will be paid via electronic funds transfer. In order to receive payments, all information in this section must be provided.

Please provide the required information for Items 1-9 for the Plan Sponsor's bank and related information.

## **APPLICATION PART IV: Plan Sponsor Agreement**

The Authorized Representative of the Plan Sponsor must read the Plan Sponsor Agreement, and if the terms are accepted, must indicate acceptance by providing an electronic signature (if an online application), or a conventional signature (if a paper application).



## **Reimbursement Request Information**

### **General Instructions for Providing Reimbursement Request Information**

To submit an ERRP reimbursement request, a sponsor must initiate a reimbursement request, and then submit a list of early retirees for whom it is requesting reimbursement as well as documentation of actual costs of the health benefits being submitted for reimbursement. The list of early retirees and the documentation of actual costs of the health benefits being submitted for reimbursement can each be submitted in one of several ways. The sponsor must specify which way it wishes to submit each type of data, as will be discussed below.

### **REIMBURSEMENT REQUEST INFORMATION** **PART I: Reimbursement Request Setup Information**

#### **A. Early Retiree List: Submission Information**

A sponsor must identify how it will be sending its Early Retiree List. To do so, a sponsor must complete Items 1-4e as applicable for each benefit option. These fields may be applied to multiple benefit options or may be filled in for each benefit option individually. The following methods are expected to be available:

- Secure file upload using Hypertext Transfer Protocol Secure (HTTPS) to ERRP Secure Website
- Plan Sponsor (or Vendor) Mainframe to HHS Mainframe
- Data entry in the ERRP Secure Website

Items 2-4 must be completed if sending data using the mainframe-to-mainframe method. If a sponsor chooses this method, it must work with HHS to establish mainframe communications protocols.

#### **B. Documentation of Actual Plan Costs: Submission Information.**

A sponsor must identify how it will be sending its documentation of actual costs for health benefits. To do so, a sponsor must complete Items 1-4e as applicable for each benefit option. These fields may be applied to multiple benefit options or may be filled in for each benefit option individually. The following methods are available:

- Secure file upload using Hypertext Transfer Protocol Secure (HTTPS) to ERRP Secure Website
- Plan Sponsor (or Vendor) Mainframe to HHS Mainframe

- Data entry in the ERRP Secure Website
- Submit hardcopy information via mail delivery service

Items 2-4, as applicable, must be completed if sending data using the mainframe-to-mainframe or hardcopy method of delivery. If a sponsor chooses the mainframe to mainframe method, it must work with HHS to establish mainframe communications protocols.

### **C. Documentation of Actual Early Retiree Costs: Submission of Information**

The Plan Sponsor must complete Items 1-3e as applicable for each benefit option. These fields may be applied to multiple benefit options or may be filled in for each benefit option individually. The following methods are available:

- Secure file upload using Hypertext Transfer Protocol Secure (HTTPS) to ERRP Secure Website
- Submit hardcopy information via mail delivery service

Items 2 and 3 must be completed if submitting hardcopy information via mail delivery service.

## **REIMBURSEMENT REQUEST INFORMATION PART** **II:Reimbursement Request Information**

### **A. Initiate Reimbursement Request**

Items 1 – 6 must be included when initiating a Reimbursement Request. Once the request has been initiated, HHS will assign the Reimbursement Request Number, and all documents a sponsor sends HHS related to that reimbursement request, must reference that number.

### **B, Submit List of Early Retirees**

Items 1-18 must be included in each Early Retiree List.

Item 1: This Reimbursement Request Number will be assigned by HHS after the sponsor initiates a reimbursement request.

Item 5: HHS will assign a Vendor ID to entities sending data to HHS via the mainframe-to-mainframe submission method.

Item 18: If a sponsor has previously included an early retiree in an Early Retiree List and has knowledge that the individual should not have been on the list, and/or that the Effective Date listed in Item 16 or the Termination Date listed in Item 17 was incorrectly specified on that list,

it must include that individual on a subsequent Early Retiree List, and indicate whether the record on this subsequent list is a “Delete” record (i.e., the individual should never have been on the previous Early Retiree List) or an “Update” record ( i.e., the individual’s Effective Date or Termination Date was inaccurately stated on the previous Early Retiree List) Also, this subsequent Early Retiree List should correctly identify the individual’s Effective Date and Termination Date, for any “Update” record. Choose “Add” for early retiree records not submitted previously.

### **C. Submit Documentation of Actual Costs**

Items 1-8 must be included with each request for program reimbursement.

Items 9-18 must be submitted for each item or service paid by the plan and/or early retiree for which the Plan Sponsor is seeking program reimbursement.

Item 13: Incurred date means the date when the sponsor, health insurance issuer (as defined in 45 CFR §160.103), employment-based plan, plan participant, or a combination of these or similar stakeholders, became responsible for payment of the claim. (See ERRP regulation at 45 C.F.R. §149.2).

### **D. Submit Early Retiree Paid Claims Receipt or Other Evidence**

In order for a sponsor to receive reimbursement for the portion of a claim that an early retiree paid, the sponsor must submit prima facie evidence that the early enrollee paid his or her portion of the claim, such as a receipt. (See ERRP regulation at 45 C.F.R. §149.335(b)).

## **Appeal Information**

The ERRP regulation at 45 CFR 149.500 specifies that a sponsor may appeal directly to the Secretary within 15 calendar days of receipt of an adverse reimbursement determination. The request for appeal must specify the findings or issues with which the sponsor disagrees and the reasons for the disagreements. The request for appeal may include supporting documentary evidence the sponsor wishes the Secretary to consider. Essentially the sponsor must provide the Secretary with its issues and arguments and any supporting documentation that it has to support its arguments. The Secretary may accept subsequent supporting documentation if, for example, the sponsor did not have time during the 15 day window to perform a comprehensive data analysis of the issue. It would be helpful in the request for appeal if the sponsor notes that further information will be provided to support the request for appeal and a date by which the information will be received by the Secretary. Consistent with the regulation, the sponsor must include Items 1-6, and 7 if it wishes, when submitting an appeal request.

## **Reporting Data Inaccuracies**

The ERRP regulation at 45 C.F.R. §149.600 acknowledges that claims data submitted for reimbursement may change after the 15-day appeal-request period has expired. For example, if a provider reverses a claim after the appeal-request period has expired, data would need to be updated to reflect the reversal. Because sponsors are obligated to provide accurate data, the regulations state that HHS is establishing a process, separate from the appeals process, that will give sponsors the ability to update HHS on any inaccurate data and will allow HHS to revise reimbursement as necessary, based on the updated data. Consistent with that process, sponsors must specify Items 1-3 when reporting data inaccuracies.

Item 3: The type and detail of information that must be provided will vary, based on the nature and magnitude of the data inaccuracy.

## **Reporting Change of Ownership**

The ERRP regulation at 45 C.F.R. 149.700 requires a sponsor to provide the Secretary with advance notice of any change of ownership of the sponsor. The regulation defines a change of ownership as any of the following:

- (1) The removal, addition, or substitution of a partner, unless the partners expressly agree otherwise as permitted by applicable state law.
- (2) Transfer of all or substantially all of the assets of the sponsor to another party.
- (3) The merger of the sponsor's corporation into another corporation or the consolidation of the sponsor's organization with one or more other corporations, resulting in a new corporate body.
- (4) Transfer of corporate stock or the merger of another corporation into the sponsor's corporation, with the sponsor surviving, does not ordinarily constitute change of ownership.

A sponsor that has a sponsor agreement in effect and is considering or negotiating a change in ownership must notify the Secretary at least 60 days before the anticipated effective date of the change.

The type and detail of information that must be provided with respect to a change of ownership will vary, based on the corporate structure of the plan sponsor and the details of the change of ownership.

## **Other Information to be Produced Upon Request**

The ERRP regulation requires sponsors to develop and submit several types of documentation or information that HHS does not collect from them as a matter of course, but that the sponsor must provide such documentation or information upon request. This documentation and information includes the following:

Section 1102 (c)(6) of the Affordable Care Act requires the Secretary to establish procedures to protect against fraud, waste and abuse. In order to implement this provision, the Secretary will, for example, check the exclusions lists developed by the HHS' Office of the Inspector General and the U.S. General Services Administration before allowing an entity to participate, or play a role, in the program, and will take other steps such as verifying the identities of the early retirees for whom claims are being submitted. To aid the Secretary in detecting and reducing fraud, waste and abuse, we are requiring that sponsors ensure that there are policies and procedures in place to detect and reduce fraud, waste and abuse. While the policies and procedures may be maintained by the sponsor's health insurance issuer or group health plan, the sponsor will have to attest that these policies and procedures are in place in the application. The sponsor must comply with requests from the Secretary to produce the policies and procedures and any documents or data to substantiate the implementation, and the effectiveness, of the procedures.

The ERR regulation at 45 C.F.R. §149.40 requires a sponsor to make an assurance to the Secretary that the sponsor has a written agreement with its health insurance issuer (as defined in 45 CFR 160.103) or employment-based plan, as applicable, regarding disclosure of information to the Secretary, and the health insurance issuer or employment-based plan must disclose to the Secretary, on behalf of the sponsor, at a time and in a manner specified by the Secretary in guidance, information, data, documents, and records necessary for the sponsor to comply with the requirements of the program. This requirement is in place to give deference to the HIPAA privacy regulations, which would prohibit a group health plan or health insurance issuer from submitting protected health information (PHI), such as the type that must be submitted to the Secretary in order to make reimbursements under the ERRP, to a sponsor.

Finally, the ERRP regulation at 45 C.F.R. §149.350 states that the sponsor (or a subcontractor, as applicable) must maintain and furnish to the Secretary, upon request, certain records. The records must be maintained for 10 years after the expiration of the plan year in which the costs were incurred, or longer if otherwise required by law. The records that must be retained are: (1) All documentation, data, and other information related to the regulation, (2) Any other records specified by the Secretary. Although a subcontractor can produce the documents, the sponsor is

ultimately responsible for ensuring that the records are maintained and provided according to this subpart.