

## **Request for Emergency PRA Clearance for the Early Retiree Reinsurance Program (ERRP) Survey of Plan Sponsors (CMS-10408)**

### **Summary:**

The Centers for Medicare and Medicaid Services (CMS) is requesting that a Paperwork Reduction Act (PRA) package for the Early Retiree Reinsurance Program (ERRP) Survey of Plan Sponsors be processed under the emergency clearance process associated with 5 CFR 1320.13(a)(2)(i). Clearance of this plan sponsor survey on an emergency basis is essential, in light of the fact that the limited funds appropriated for the program are being depleted, as explained below.

CMS' use of the ERRP survey is essential in order to comply with the requirements, under the Patient Protection and Affordable Care Act (42 U.S.C. 18002) and implementing regulations at 45 CFR part 149, that the Secretary of HHS develop a mechanism to monitor the appropriate use of funds under ERRP. As part of the Secretary's monitoring efforts, the Secretary intends to direct plan sponsors that have received ERRP funds to respond to this survey in order to obtain information about the ERRP program, including how and when plan sponsors have used, or intend to use, ERRP funds.

### **Background:**

Under 42 U.S.C. §18002 and implementing regulations at 45 CFR Part 149, the Early Retiree Reinsurance Program is established as a temporary program to provide reimbursement for the costs of certain health benefits for employment-based plans that offer health benefits to early retirees and their spouses, surviving spouses and dependents who are eligible under that plan. In order to qualify, plan sponsors must submit a complete application to the Department of Health & Human Services (HHS), and must continually update any incorrect or outdated information in its application. Once HHS reviews and analyzes the information on the application, notification will be sent to the plan sponsor about its eligibility to participate in the program. On April 5, 2011, HHS announced that, based on the remaining availability of program funding at that time, the Secretary was exercising her authority under 42 U.S.C. 18002(f) to cease accepting applications under the program, as of May 6, 2011,

In order to receive reimbursement under the program, plan sponsors must submit summary and detailed documentation of actual costs for health care benefits, which consists of documentation of actual costs for the items and services involved, and a list of individuals to whom the documentation applies. HHS reviews and analyzes each reimbursement request, then provides reimbursement under the program to the plan sponsor, as appropriate. The program's funding is limited to \$5 billion, and the program sunsets on January 1, 2014.

Most of the information collection requirements associated with the ERRP are contained in information Collection 0938-1087. However, 42 U.S.C. §18002(c)(4) limits the permissible uses of ERRP proceeds, as follows:

(4) USE OF PAYMENTS – Amounts paid to a participating employment-based plan under this subsection shall be used to lower costs for the plan. Such payments may be used to reduce premium costs for an entity described in subsection (a)(2)(B)(i) or to reduce premium contributions, copayments, deductibles, coinsurance, or other out of pocket costs for plan participants. Such payments shall not be used as general revenues for an entity described in subsection (a)(2)(B)(i).

That subparagraph also states:

The Secretary shall develop a mechanism to monitor the appropriate use of such payments by such entities.

As part of the Secretary's efforts to monitor the appropriate use of such payments, the Secretary intends to direct ERRP plan sponsors that have received ERRP funds, to respond to a survey that will ask detailed questions about how they have used ERRP funds, or intend to use ERRP funds, and the timing of when they have or will use such funds, along with other related questions. This survey is the data collection instrument for this information collection.

CMS initiated the standard PRA process for the ERRP survey and published the survey for a 60-day comment period, which ended November 8, 2011. However, during the past 45 days ERRP has experienced an increased rate in reimbursement requests and CMS projects that the program will initially disperse all the funds appropriated for the program under 42 U.S.C. 18002 by the end of this calendar year. Due to the pending initial exhaustion of program funds, CMS is now seeking approval of the PRA package on an emergency basis to obtain information on the use of ERRP funds as soon as possible. The survey instrument, for which we are now seeking emergency clearance, is somewhat shorter than the version that was disseminated for public comment, as HHS has decided to delete several questions. No public comments were received on the original version (***this will be revised if we receive comments before comment period closes***).

Thus, it is critical that the survey instrument be cleared on an emergency basis so that CMS can begin administering the survey before the program's appropriated funding becomes initially depleted.

#### **Proposed Timeline:**

##### September 9, 2011

- PRA notice published in Federal Register for 60-day comment period

##### November 2, 2011

- Start of informal OMB review period

##### November 8, 2011

- 60-day comment period ends on original version of survey instrument.

##### November 10, 2011

- Emergency FR notice displayed at the Federal Register
- Start of 7-day public comment period
- Emergency PRA package submitted to OMB

##### November 16, 2011

- End of 7-day public comment period

##### November 18, 2011

- Requested OMB approval date