

# 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 0938-1087. The time required to complete this information collection is estimated to average 309 hours for each of the second and third years of the program (July 1, 2011 – June 30, 2012, and July 1, 2012 – June 30, 2013), and 221 hours for the fourth year of the program (July 1, 2013 – June 30, 2014), 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.

## U.S. DEPARTMENT OF HEALTH &amp; 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, and codified at 42 U.S.C. 18002. 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 employment-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 completing all information collections associated with the program (see ERRP regulation at 45 C.F.R. Part 49). Please note that if any information in the Application changes or if the sponsor discovers that any information is incorrect, the sponsor is required to promptly report the change or inaccuracy.

It is critical for program applicants and participants to read the regulation, and the “Common Questions” and other policy guidance on the ERRP website, at [www.errp.gov](http://www.errp.gov), in order to fully understand which organizations qualify for the program, how to apply for the program, when applications may be submitted 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. The HHS Secretary has exercised her authority to cease taking applications for participation in the program, pursuant to 42 U.S.C. 18002(f). (See 76 Fed Reg 18766). However,

plan sponsors have an ongoing obligation to update any incorrect or outdated information in their application. The following are specific instructions for updating each item in the application that is not self-explanatory. Responses to all items marked with an asterisk (\*) are required.

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

### **A. Plan Sponsor Information**

Complete the required information in items 1-7.

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 one category that best describes the Plan Sponsor's type of organization.

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

### **B. Authorized Representative Information**

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. Furthermore, the Authorized Representative cannot be the same person as the Account Manager. 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 Authorized Representative's knowledge and belief.

Complete the required information in Items 1-7 for the Authorized Representative Information.

### **C. Account Manager Information**

The Account Manager is generally the individual who coordinates the application process for the Plan Sponsor, and is the Sponsor's primary contact with HHS with respect to the application. 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. There can be only one Account Manager per ERRP application at a time. Furthermore, the Authorized Representative cannot be the same person as the Account Manager.

Complete the required information in Items 1-7 for the Account Manager Information.

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

### **A. Plan Information**

Complete the required information in Items 1-2 for the employment-based plan for which you expect to be requesting ERRP reimbursements.

Item 2: For ERRP purposes, your plan year cycle start (MM/DD) and end (MM/DD) are determined as follows: The plan year is 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**

This section of the application appeared in previous versions, but has been removed. There is nothing to complete in this section.

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

In completing this item, please follow the instructions in the application. 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). Therefore, you should make clear in your summary that the conditions for which you have programs and procedures in place, have resulted in \$15,000 or more in health benefit claims, or likely would result in such amount of claims, absent the programs and procedures, for one plan participant, during a plan year. You should also identify at least two chronic and high-cost conditions for which you have programs and procedures in place that have resulted in \$15,000 or more in health benefit claims, or likely would result in such amount of claims, absent the programs and procedures, for one plan participant, during a plan year. You should also identify the nature of each such program (e.g. disease management, case management, wellness program, etc.)

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

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

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

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, or (3) To reduce any combination of the costs in (1) and (2). 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). In completing this item, please follow the instructions in the application. Check the box or boxes that apply.

## **APPLICATION PART III: 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 his or her signature. A stamped signature is not permitted.



## **Access to ERRP Secure Website**

### **Part I- User Registration Information**

Authorized Representatives, Account Managers and Designees must complete required items in 1 through 12 in order to be able to access the Secure Website and be able to perform the tasks allowed for each type of website user. Item 2 requires Authorized Representatives, Account Managers and Designees to read and accept the User Agreement and Privacy Policy that will appear.

### **Part II-Designee Invitation**

The Authorized Representative and/or Account Manager can designate other individuals to perform tasks within the Secure Website. While an Authorized Representative can designate individuals to perform certain tasks within the Secure Website, there are certain tasks that only an Authorized Representative can perform. For example, only an Authorized Representative can make the affirmation that appears in Part I.F. in “Reimbursement Request Information.”

### **Part III- Login Warning**

Authorized Representatives, Account Managers and Designees must read and accept this agreement, by clicking “I Accept”, otherwise access to the Secure Website will not be allowed. Or Authorized Representatives, Account Managers and Designees click “Decline”, in which case access will not be allowed.

### **Part IV- User Agreement and Privacy Policy**

Authorized Representatives, Account Managers and Designees must read and accept the terms of the User Agreement and Privacy Policy, by clicking “I Accept”, otherwise access to the Secure Website will not be allowed. Or Authorized Representatives, Account Managers and Designees click “I decline”, in which case access will not be allowed.

## **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. The sponsor will then receive a response to its early retiree list from HHS, indicating which of the individuals on the early retiree list are actually early retirees under the ERRP, and for what period of time. The sponsor will submit summary-level cost data and well as a detailed claims list, which document 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, for each plan year, how it will be sending its Early Retiree List, and how it will receive HHS' response to the submission. To do so, a sponsor must complete Item 1. 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. Submit Detailed Claims Data: Submission Information.**

A sponsor must identify, for each plan year, how it will be sending its documentation of actual costs for health benefits. To do so, a sponsor must complete Item 1. Items 2-4, as applicable, must be completed if sending data using the mainframe-to-mainframe method of delivery. If a sponsor chooses the mainframe to mainframe method, it must work with HHS to establish mainframe communications protocols.

#### **C. Assign Reimbursement-Related Privilege to Account Manager**

An Authorized Representative may assign certain privileges to an Account Manager. While an Authorized Representative can designate individuals to perform certain tasks within the Secure Website, there are certain tasks only an Authorized Representative can perform. For example, only an Authorized Representative can make the affirmation that appears in Part I.F. in "Reimbursement Request Information."

#### **D. Banking Information**

An Authorized Representative, Account Manager, or Designee with appropriate privileges must complete the information in this section.

#### **E. Affirmation by Authorized Representative**

The Authorized Representative must read the Affirmation and click to affirm that he or she will comply with the terms of the affirmation.

## **REIMBURSEMENT REQUEST INFORMATION PART II:**

### **Reimbursement Request Information**

## **A. Initiate Reimbursement Request**

An individual with the appropriate privileges must select a sponsor, an application and plan year when initiating a reimbursement request. This is because an individual may have authority to request reimbursement for more than one sponsor, application and/or plan year. 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 and Process Response Files**

A sponsor must electronically submit an early retiree list, of all individuals for whom the sponsor has submitted cost data for the plan year, with each Reimbursement Request. The list must include all such members and the subscriber through whom the member has coverage, even if the sponsor has not submitted costs for the subscriber. The form and content of the list will vary, depending upon the method of delivery. The plan sponsor must also be able to process HHS's response to the early retiree list, which will be either in a Mainframe Layout or Secure Website Layout. See the Information Collection Document for the file layouts, one of which a sponsor must be able to process.

## **C. The Sponsor Must Review Response/Notification Files**

The sponsor must review the response file from HHS and only submit claims information for individuals for claims incurred while the individuals qualify as early retiree (and spouses, surviving spouses and dependents of early retirees).

## **D. Submit Summary Cost Data**

A Plan Sponsor must submit, with each Reimbursement Request, summary cost data related to the Reimbursement Request on a cumulative basis. A sponsor must only submit summary data for items and services for which Medicare would reimburse under Parts A or B, or which may be covered under a standard Part D plan. Guidance on this topic can be found at [www.errp.gov](http://www.errp.gov). Summary Cost Data will include costs paid by plan, costs paid by early retiree, if any, threshold reduction, and limit reduction.

## **E. Submit Detailed Claims Data**

A sponsor must only submit detailed claims data for items and services for which Medicare would reimburse under Parts A or B, or which may be covered under a standard Part D plan. Furthermore, a sponsor must include, when appropriate, the detailed claims information listed in the Information Collection Document for professional claims, institutional claims, and pharmacy claims, as appropriate. See the Information Collection Document for the file layouts, one of which a sponsor must be able to process.

For additional information about what a sponsor should enter with respect to Member ID and Member Group ID, see the Common Questions document at [www.errp.gov](http://www.errp.gov)

“Record Type” means whether the file is a professional, institutional, or prescription claim, whether it is a header or trailer for subsequent or previous such claims, etc.

“Place of Service” means, for example, doctor’s office or hospital, as identified by industry standard code sets.

“Type of Bill” means type of facility/bill classification/frequency, as identified by industry standard code sets.

“ICD Diagnosis Code Qualifier” means whether the ICD code listed is from the 9<sup>th</sup> or the 10<sup>th</sup> edition.

“Rendering Provider ID Qualifier” means whether the Rendering Provider ID listed is a National Provider Identifier (NPI) or other type of ID.

“Facility Provider ID Qualifier” means whether the Facility Provider ID listed is an NPI or other type of ID.

“Prescription Service Provider ID Qualifier” means whether the Prescription Service ID listed is an NPI or other type of ID.

“Prescription Product/Service ID Qualifier” means whether the product or service listed is an NDC code or other type of code.

## **F. Submit Prima Facie Evidence of Early Retiree Payment**

When required, a sponsor must submit prima facie evidence that the early enrollee paid his or her portion of the claim, in instances when the sponsor submits ERRP costs for such amounts. This evidence must be in the form of a receipt. (See ERRP regulation at 45 C.F.R. §149.335(b)). Each collection of submitted receipts must be accompanied by a Prima Facie Evidence Cover Sheet. The data that must be included in each receipt, and in each Cover Sheet, is set forth in section F.

Included in this revised PRA submission is a draft copy of the Prima Facie Evidence Cover Sheet that HHS intends to publish, along with specific, detailed instructions for how to complete the Cover Sheet, and how to send the Cover Sheet and accompanying receipts to HHS.

## **G. Authority to View Protected Health Information**

An individual sending and/or receiving retiree data and/or claims or summary cost data must read and agree to the terms the statement relating to the authority to view protected health information. The individual must accept the terms of the notice by clicking “I accept”. The individual sending and/or receiving may also click “I Decline”, in which case the individual will not be able to access certain electronic Protected Health Information.

## **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. Additional information about the circumstances under which it would be appropriate to submit an appeal, and how to submit an appeal, will be published in a guidance document on this topic at [www.errp.gov](http://www.errp.gov). Consistent with the regulation and that guidance document, the sponsor must or may include the Items 1-12, as applicable, when submitting an appeal request.

## **Reopening Information**

The ERRP regulation at 45 CFR 149.610 permits a plan sponsor to request a reopening of a reimbursement determination. A plan sponsor must submit the following information if it wishes to submit a request for reopening:

- 1) Plan Sponsor ID (assigned by HHS)
- 2) Application ID (assigned by HHS)
- 3) Copy of the Determination that is the subject of the reopening request
- 4) A description of the issue
- 5) Supporting documentary evidence (optional)
- 6) Analysis of the estimated financial impact, including the specific amount of reimbursement at issue.

A sponsor may request such an appeal within one year for any reason, and within 4 years for good cause. HHS expects to publish guidance setting forth specific instructions for how to request a reopening, and how the reopening process works. A copy of that draft guidance, entitled Explanation of the Processes for Reporting Early Retiree and Claims Data Inaccuracies, and for Reopening, is being submitted as part of this revised PRA package.

## **Reporting Data Inaccuracies**

The ERRP regulation at 45 C.F.R. §149.600 acknowledges that claims data submitted for reimbursement may change after a sponsor has submitted data for reimbursement. 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 data inaccuracies and will allow HHS to reopen and revise reimbursement as necessary, based on the updated data. The process HHS expects to establish, is that the sponsor must submit a reimbursement request that includes an accurate Early Retiree List, accurate summary claims data, accurate detailed claims data, and accurate evidence of payment by early retirees (if applicable), no later than during the calendar quarter after a sponsor knows or should know of such data inaccuracies. Consistent with that process, sponsors must report data inaccuracies by reporting the data required to be submitted in a reimbursement request, in a form and manner specified in Reimbursement Request Information, Part II. The reimbursement request could be reimbursement request solely for the purpose of reporting data inaccuracies, or data inaccuracies could be reported as part of a broader reimbursement request in which the sponsor seeks additional reimbursement from that received for prior reimbursement requests.

## **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:

42 U.S.C. 18002 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 or any and all other entities participating in the administration of the 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 ERRP 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. It is necessary that these agreements also be in place with other entities participating in the administration of the plan.

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 6 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.