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## HHS Releases Further Guidance on ERRP and Allows Plan Sponsors to Submit Early Retiree Lists

*The Department of Health and Human Services (HHS) has issued further guidance that instructs plan sponsors on how to prepare and submit the “Early Retiree List” and describes the types of medical expenses that will be eligible for reimbursement under the Early Retiree Reinsurance Program (ERRP). Importantly, the guidance provides more information on who is an early retiree for purposes of the program and clarifies when claims of surviving spouses, dependents and COBRA beneficiaries will be eligible for reimbursement.*

### Background

The health care reform law includes an early retiree reinsurance program under which employers can recover part of their cost in providing retiree health coverage to pre-Medicare early retirees and their dependents. (See our May 6, 2010 [For Your Information](#).) On September 17, HHS supplemented previously released guidance for plan sponsors on the ERRP claims submission and reimbursement process. (See our September 21, 2010 [For Your Information](#).) HHS has now posted further [guidance](#) on its [website](#), including new [FAQs](#) and detailed [format requirements](#) for the early retiree eligibility list. Early Retiree Lists can now be submitted to the ERRP Center, and claims can be submitted later in October. HHS has also posted a form [notice](#) that plan sponsors must distribute to all plan participants.

### Applications Not Yet Approved

The guidance advises those plan sponsors whose applications have not yet been approved or denied that they do not have to take any further action, and that HHS will contact the authorized representative and account manager identified in the application when the application is processed. Similarly, plan sponsors that may have submitted multiple applications for the same plan or completed the application before updated ERRP FAQs were posted on June 29 are instructed to wait until contacted by the ERRP Center.

The guidance confirms that a plan sponsor must make HHS aware of any information in its application that may need to be updated or corrected as ERRP progresses. These changes may be made through the ERRP secure website or through a separate process yet to be established. Details on updating HHS on specific issues will be included in future guidance. In the interim, a change in the authorized representative or account manager listed in the application may be made by emailing the ERRP Center.

## Early Retirees and Claim Eligibility

For purposes of ERRP, the term “early retiree” generally refers to the early retiree (subscriber) and his or her spouse, surviving spouse and/or dependents (members). For purposes of ERRP eligibility, the subscriber must meet all of the following criteria –

- age 55 or older
- enrolled for benefits in the plan identified in the ERRP application
- not eligible for Medicare (which HHS will verify based on the Early Retiree List, discussed below)
- not an active employee of the plan sponsor identified in the application.

The FAQs clarify that the subscriber does not actually have to be retired; all that is required is that he or she not be an active employee. Thus, claims of early retirees who have coverage through COBRA generally will be eligible for reimbursement as long as the subscriber satisfies the above requirements. The FAQs also clarify that the following claims will not be eligible for reimbursement –

- claims for a surviving spouse if the subscriber through whom the surviving spouse receives coverage died before June 1, 2010 or died before age 55 while an active employee
- claims for any surviving dependents other than a spouse.

***BUCK COMMENT.*** *The clarification that claims of individuals on COBRA will be eligible for reimbursement is welcome news for plan sponsors since many individuals with large claims elect COBRA.*

## Early Retiree List

Before a plan sponsor with an approved application can submit any reimbursement requests, it must submit an Early Retiree List to the ERRP Center. The Early Retiree List can now be submitted through the ERRP Secure Website or via mainframe.

The Early Retiree List should only include those ERRP-eligible subscribers and individuals who meet the \$15,000 threshold and satisfy the ERRP age and enrollment criteria. After it submits the Early Retiree List, the plan sponsor will receive a response file from the ERRP Center identifying those individuals who are eligible for ERRP and the period of time each individual is ERRP-eligible. The plan sponsor will then use this response file to prepare the claim submission.

***BUCK COMMENT.*** *The process for submitting a census list for the ERRP Center to approve for claim submission is very similar to the Retiree Drug Subsidy (RDS) process and requires careful coordination of eligibility and claims data. Importantly, unlike the RDS covered retiree list which includes all eligible individuals regardless of whether claims will be submitted, the ERRP Early Retiree List only includes eligible individuals who meet the \$15,000 claims threshold.*

The Early Retiree List must include the following information for each early retiree and other individuals –

- name
- date of birth
- gender
- relationship to early retiree
- unique person ID – social security number, alien ID, I-94 ID or other federal ID
- coverage effective and termination dates.

**BUCK COMMENT.** *While not discussed in this guidance, the application approvals that were emailed to plan sponsors also include the requirement that plan sponsors certify that they will not submit claims for “plan participants who are not U.S. citizens or lawfully present in the U.S.” Although plan sponsors may have difficulty determining this status, particularly for dependents, the fact that the Early Retiree List is limited to those individuals who have reached the \$15,000 threshold should limit the impact.*

## Claim Reimbursement

The guidance indicates that plan sponsors will be able to submit summary cost data and reimbursement requests in October. Eligible medical expenses for ERRP are generally limited to items and services covered under Medicare Parts A, B and D. HHS has now provided [guidance](#) on specific items that are not covered by Medicare and will not be credited toward the cost threshold or reimbursed under ERRP. Future guidance will be provided on when and how to disclose post-point-of-sale price concessions, how to adjust claims for such concessions, and how to submit claims data for reimbursement requests.

In addition to claims paid by the plan, amounts paid by early retirees and eligible dependents are also eligible for reimbursement under ERRP. However, the guidance confirms that “prima facie” evidence showing the claim was incurred and actually paid by the individual will be required in order for the sponsor to be reimbursed for those amounts or to have them credited toward the \$15,000 cost threshold. The guidance clarifies that a receipt for the health care item or service would meet this requirement, but an explanation of benefits (EOB) would not.

**BUCK COMMENT.** *This substantiation requirement will make it impractical for most plans to seek reimbursement for amounts paid by plan participants.*

## Use of ERRP Funds

When a plan sponsor is using the ERRP funds to offset increases in its own health benefit premiums or costs, the ERRP regulations require that the sponsor maintain its level of contribution to the plan. This is commonly called the “maintenance of effort” or MOE requirement. Prior guidance indicated that the MOE requirement would have to be satisfied on an aggregate plan basis. Importantly, the FAQs allow sponsors to satisfy this requirement by using aggregate or per capita spending trends, or other HHS approved methods.

**BUCK COMMENT.** *Having the ability to satisfy the MOE requirement on a per capita basis is particularly beneficial to employers who have a plan that is closed to new entrants. It will also be of benefit when enrollment in a plan has dropped due to reductions in force or divestitures.*

The FAQs also confirm that if a plan sponsor chooses to use some or all of its ERRP proceeds to reduce plan participant costs (e.g., contributions, copayments, deductibles, etc.), it must do so for all plan participants, and not just early retirees.

## Required Notice to Plan Participants

Plan sponsors participating in ERRP must provide all plan participants with a form [notice](#) which HHS has now released. The notice informs participants that the plan sponsor can use any reimbursements it receives through ERRP either to reduce or offset increases in participant cost-sharing or to reduce or offset increases in its own costs for maintaining health coverage. The notice must be provided regardless of how the plan sponsor intends to use ERRP reimbursements. Although the notice must be furnished within a reasonable time after the sponsor receives its first ERRP reimbursement, it can be delivered before the first reimbursement is received. HHS has provided instructions for delivering the notice, which give sponsors a number of options. The notice may be included with other plan materials, and can be delivered by U.S. mail or courier service to the plan participant's last known address. Under certain circumstances, sponsors may send the notices electronically to plan participants who are actively working.

**BUCK COMMENT.** *The definition of "plan" used in the ERRP application will determine who must receive the notice. If the plan includes active employees and Medicare retirees, then the notice must be distributed to those participants, in addition to early retirees. Notice must also be provided to new plan participants going forward. Because the notice may result in increased questions from plan participants, employers may want to consider additional communications or FAQs.*

## Conclusion

With this additional guidance, plan sponsors can begin to identify eligible early retirees, collect the required census data and submit their Early Retiree Lists. Although the format for claims submission has not yet been released, discussions can also be initiated with the claims administrators on collecting and reporting the claims data for submission. Buck's consultants can assist plan sponsors in this process, and also have the capability to prepare and submit the Early Retiree List and claims data.

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*This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.*