



CMS Provides Updated Guidance on the ERRP Maintenance of Contribution Requirement

CMS has provided additional guidance on the satisfaction of the maintenance of contribution requirement for the use of ERRP reimbursements and has also updated the cost threshold and limit amounts for determining reimbursements.

Background

The Patient Protection and Affordable Care Act (PPACA) created the Early Retiree Reinsurance Program (ERRP) under which employers can receive reimbursement of 80% of the portion of the costs of health claims incurred by each eligible retiree or dependent that falls between certain dollar thresholds. Plan sponsors are prohibited from using the reimbursements as general revenue. To ensure that plan sponsors satisfy this requirement, regulations issued in May 2010 require plan sponsors to “continue to provide at least the same level of contribution to support the applicable plan, as it did before the program.” This is commonly referred to as the “maintenance of contribution” (MOC) requirement. In July 2011, the Centers for Medicare & Medicaid Services (CMS) provided guidance that set out what plan sponsors who use ERRP reimbursements to reduce their health benefit premiums and/or costs must do to comply with the prohibition against using ERRP reimbursements as general revenue. (See our August 2, 2011 [For Your Information](#).)

On August 19, 2011 CMS posted additional clarifying [guidance](#) on the satisfaction of the MOC requirement. CMS also announced new [cost threshold and cost limit amounts](#) for determining the reimbursements.

Maintenance of Contribution Requirement

The July 2011 guidance stated that to satisfy the MOC requirement, the plan sponsor had to provide at least the same level of contribution, net of any ERRP reimbursements, to support the plan as it did before participation in ERRP. The revised guidance clarifies that the plan sponsor contribution only has to be net of any ERRP reimbursements if the sponsor applies the ERRP funds toward the plan sponsor contribution. CMS stated that this clarification reflects its original intent and is not a change in policy. This clarification makes it easier for a plan sponsor to satisfy the MOC requirement.

BUCK COMMENT. *Under the initial guidance, if a plan sponsor contributed \$10 million in the base year and received \$1 million in ERRP funds, then to satisfy the MOC requirement, the plan sponsor would have to contribute at least \$11 million, so that the net amount (\$11 million less the \$1 million in ERRP*

reimbursements) was at least \$10 million. Under the new guidance, the plan sponsor satisfies the MOC requirement as long as it contributes or allocates at least \$10 million and uses the ERRP reimbursements for other permissible purposes.

Cost Threshold and Limit Amounts

Currently, under the ERRP, employers receive reimbursement of 80% of the cost of health claims between a cost threshold of \$15,000 and a limit of \$90,000. Under PPACA these amounts are indexed each fiscal year based on the Medical Care Component of the Consumer Price Index for Urban Consumers (CPI-U). For plan years beginning on or after October 1, 2011, the amounts increase to \$16,000 and \$93,000, respectively.

Conclusion

Although PPACA appropriated \$5 billion for ERRP, it is not anticipated that the funds will last much longer because of the amount already reimbursed. Therefore, plan sponsors should submit additional payment requests as soon as possible. Buck's consultants are available to answer any questions or assist in preparing and filing payment requests.

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.