



For your information®

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HHS releases new guidance on use of ERRP reimbursements and correction of data inaccuracies

The Department of Health and Human Services issued new guidance that gives plan sponsors additional flexibility in the use of Early Retirement Reinsurance Program reimbursements and provides additional information on correcting data inaccuracies and satisfying the participant notice requirements. Plan sponsors may need to take immediate action to correct data inaccuracies.

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Background

The Early Retiree Reinsurance Program (ERRP) in the health care reform law allows employers to recover part of their cost of providing retiree health coverage to pre-Medicare early retirees and dependents. The Department of Health and Human Services (HHS) announced on February 17, 2012, that requests for reimbursement exceeded the \$5 billion funding allocation. The ERRP Center will continue to honor reimbursement requests in the order received. Reimbursement requests processed after all ERRP funds are disbursed will be placed in a “pending payment list” and honored in the order received if additional funds become available. The Centers for Medicare and Medicaid Services also issued guidance stating that plan sponsors are expected to use ERRP funds as soon as possible, but no later than December 31, 2014. (See our February 24, 2012 [For Your Information](#).)

On November 30, 2012, the ERRP Center released new guidance in Common Questions that provides additional information on the use of ERRP reimbursements ([Questions 800-14 through 17](#)), the requirements for correcting data errors ([Questions 500-17 and 18](#)), and providing notice to plan participants ([Question 500-19](#)).

Use of ERRP reimbursements

Plan sponsors cannot use the ERRP reimbursements as general revenue; they may only be applied to reduce:

- The plan sponsor's health benefit premiums and/or costs
- Plan participants' health benefit premium contributions, copayments, deductibles, coinsurance, or other out-of-pocket costs

- A combination of the above

To ensure that a plan sponsor does not use ERRP reimbursements as general revenue, May 2010 regulations require it to “continue to provide at least the same level of contribution to support the applicable plan, as it did before the program.” (See our May 6, 2010 [For Your Information](#).) This is commonly referred to as the “maintenance of contribution” requirement. In 2011 HHS released guidance on how plan sponsors can satisfy this requirement. (See our August 31, 2011 [For Your Information](#).)

The new Common Questions provide additional guidance on how plan sponsors can use the ERRP reimbursements and satisfy the “maintenance of contribution” requirement:

- ERRP reimbursements can be used to offset health benefit or health benefit premium cost increases retroactively in the same plan year that the funds were received.
- A self-funded plan sponsor can estimate the expected increases in health benefit costs for a given plan year and apply ERRP funds to offset the expected increases. However, the plan sponsor must conduct a reconciliation of the estimated and actual cost increases, and return to its “ERRP account” any ERRP funds that exceed the actual cost increases.
- A plan sponsor can use ERRP funds to offset an increase in per capita costs, even if the plan sponsor’s aggregate costs decreased when compared to its baseline costs.
- A plan sponsor can use ERRP funds to offset a percentage increase in costs, even if the plan sponsor’s aggregate costs decreased when compared to its baseline costs.

The guidance provides examples of these permissible uses of ERRP reimbursements.

Buck Comment. A plan sponsor must continue to satisfy the “maintenance of contribution” requirement as long as it retains ERRP funds. It is therefore important that a plan sponsor document the use of ERRP funds as soon as practical.

Correcting data inaccuracies

Plan sponsors that received ERRP reimbursements must continue to report and correct any inaccuracies in the data associated with those reimbursements. The new guidance states that plan sponsors with reimbursement requests in the “pending payment list” who never received any ERRP reimbursements do not have to correct any data inaccuracies until their reimbursement request reaches first place in the pending payment list and funds are available for payment. However, if a plan sponsor received an ERRP reimbursement, it must correct any data inaccuracies in any payment requests in the pending payment list for the same plan year as the reimbursement. Any data inaccuracies must be reported and corrected by the end of the next calendar quarter after the plan sponsors knows, or should know, of any data inaccuracies or they will be considered overpayments that must be returned.

Buck Comment: It is important that plan sponsors who received ERRP reimbursements correct in a timely manner any data inaccuracies in pending payment requests that were for the same plan year. Data

inaccuracies include prescription drug rebates that were estimated in an initial submission, but later were finalized.

Notice to plan participants

Plan sponsors participating in ERRP must provide all plan participants, including new plan participants, with a notice informing them 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 of maintaining health coverage. (See our August 2, 2011 [For Your Information](#).) The new guidance states that a plan sponsor can “cease sending this Notice to new plan participants when the Sponsor no longer possesses any funds.”

Buck Comment. Because plan sponsors must continue to provide this notice to new plan participants until all ERRP funds are used, plan sponsors should document the use of all ERRP funds as soon as possible.

In closing

Plan sponsors who received ERRP funds must:

- Develop a strategy for properly using the ERRP reimbursements
- Document the use of ERRP reimbursements
- Correct any data inaccuracies

Authors

Richard Stover, FSA, MAAA
Mary Harrison, JD

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