



HHS Acceptance of Plan Sponsor Applications to Participate in Early Retiree Reinsurance Program Imminent: How Plan Sponsors May Prepare

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Within perhaps days or at most weeks, the Department of Health and Human Services (HHS) will announce on the HHS Web site at www.hhs.gov/ociio/ that it is accepting applications for employment-based plans for the Early Retiree Reinsurance Program (Program) established under § 1102 of the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act). For more detail on the Program, please see Schiff Hardin's [Health Care Reform Client Update Number Two](#).

The "Frequently Asked Questions" (FAQs) just posted on the HHS Web site indicate that HHS will process plan sponsors' applications to participate in the Program in the order in which the applications are received. The FAQs also indicate that HHS has posted the Application and the Instructions on the HHS Web site in advance of the posting of the Official Application "to assist potential applicants in better understanding how to prepare an application, and to give applicants time to assemble information required in the application."

We recommend that plan sponsors prepare now to submit a separate, complete and accurate application *for each plan* for which a plan sponsor seeks reimbursement as soon as possible after the HHS Web site announces the posting of the Official Application and the opening of the submission process. Applications rejected for incompleteness or inaccuracy will lose their place in the queue.

Under the Program, once HHS has approved a plan sponsor's application

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and certified its plan, the plan sponsor may submit claims for tax-free reimbursements for up to 80% of the health benefits costs for those non-Medicare-eligible early retirees ages 55-64 (and for their spouses, surviving spouses and dependents of any age) who, on *an individual basis*, have accumulated between \$15,000 and \$90,000 in such costs in a plan year.

To process applications to participate in the Program, HHS will contract with one or more contractors to assist in the administration of the Program. Until the contractor(s) develop(s) the online process, HHS has indicated that a plan sponsor may submit a hard copy application. *Plan sponsors should monitor the HHS Web site for further updates about the submission process and the Official Application.* In the FAQs, HHS indicates: "The Official Application will be posted later in June with the only anticipated change being the addition of an address where the Official Application can be sent."

Currently, plan sponsors may use the HHS draft application as a guide in gathering the following information to prepare for the Official Application:

Part I

- Plan Sponsor EIN, name and address, type of organization, and fax and telephone numbers and/or Web site address (if any);
- Authorized Representative identification information (*i.e.*, the person who signs the Plan Sponsor Agreement and attests to the accuracy of the application); and
- Account Manager identification information (*i.e.*, the person who will interface with HHS on behalf of the employment-based plan).

Part II

- Plan Name and Plan Year Cycle (Plan Year Start Month/Day and End Month/Day);
- Benefit Option Name *as a separate attachment for each benefit option for which the plan sponsor seeks reimbursement*, with its separate unique identifier, source of funding (self-funded/insured/both), and benefit administrator name;
- For chronic and high-cost conditions (*i.e.*, a high-cost condition is one for which an individual participant will likely incur \$15,000 or more in health benefit claims during a plan year):
 - Identification of each such condition for which the employment-based plan has programs and procedures in place that generate or have the potential to generate cost savings for participants;

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- A summary of those programs and procedures; and
- A description of how the plan sponsor has determined that each identified condition satisfies the \$15,000 threshold;
- For estimated amount of Program reimbursements, an estimation of the projected amount of proceeds the plan sponsor expects to receive for the plan identified in the application for each of the first two-year plan cycles;
- For intended use of Program reimbursements:
 - Identification of the intended use, whether to reduce a plan sponsor's increases in health benefit or premium costs; or to reduce *participants'* premium contributions, copays, deductibles, coinsurance and/or other out-of-pocket costs; or to reduce any combination of these costs; and
 - A summary of how the plan sponsor will maintain its level of financial contribution to the employment-based plan in light of the Program reimbursements that relieve the plan sponsor from paying for increased health benefit costs from its own funds.

Part III

- Banking information for Electronic Fund Transfers (bank name and address, account number and organization associated with that account, type of account, bank routing number, bank contact).

Part IV

The Authorized Representative signs a Plan Sponsor Agreement, attesting on behalf of the plan sponsor that the sponsor:

- Will comply with Affordable Care Act § 1102 and its implementing regulations;
- Authorizes its designees to perform delegated functions on its behalf;
- Will enter into HIPAA Protected Health Information (PHI) agreements with its insurer (if any) and plan before submitting reimbursement requests;
- Acknowledges HHS's use of the data the plan sponsor submits;
- Acknowledges that the plan sponsor will not knowingly submit a false claim for federal funds;
- Will establish proper data security safeguards;
- Authorizes HHS to deal in specific ways with the depository account from the banking information supplied;
- Has existing fraud, waste and abuse policies and procedures; and
- Will provide 60 days' written notice to the Secretary of HHS of any change of ownership and acknowledges assignment of the agreement to the new owner, if applicable.

Once HHS reviews and analyzes the information on the application, HHS will notify the plan sponsor

about its eligibility to participate in the Program. To receive reimbursements under the Program after certification, plan sponsors must also submit documentation of actual costs for health care benefits, which consists of documentation of actual costs for the health care items and services involved, and a list of individuals to whom the documentation applies. Once HHS reviews and analyzes each reimbursement request, the Program may make reimbursements to the plan sponsor.

Please feel free to contact any Schiff Hardin attorney listed on the final page of the Client Update noted above for further information or with questions.

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