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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-9996-N2]

Early Retiree Reinsurance Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces that CMS, based on the projected availability of funding under the Early Retiree Reinsurance Program (ERRP), is exercising its authority under the ERRP regulations at 45 CFR 149.45(a) to deny ERRP reimbursement requests, in their entirety, that include claims that are incurred after December 31, 2011. Therefore, plan sponsors must not include such claims in their Claim Lists and Summary Cost Data submitted in support of a reimbursement request. Should circumstances related to the availability of ERRP funding change, CMS may issue a new notice announcing approval of ERRP reimbursement request that include claims incurred after December 31, 2011.

EFFECTIVE DATE: This notice is effective [OFR--insert date of public inspection at the **Federal Register**].

FOR FURTHER INFORMATION CONTACT: David Mlawsky, (410) 786-6851.

SUPPLEMENTARY INFORMATION:

I. Background

The Patient Protection and Affordable Care Act (Pub. L. 111-148, enacted on March 23, 2010) (the Affordable Care Act), included a provision that establishes the temporary Early Retiree Reinsurance Program (ERRP), which provides reimbursement to eligible sponsors of employment-based plans for a portion of the costs of providing health coverage to early retirees (and eligible spouses, surviving spouses, and dependents of such retirees). Section 1102(a)(1) of the Affordable Care Act required the Secretary to establish the program within 90

days of enactment of the law (by June 21, 2010). In the May 5, 2010 **Federal Register** (75 FR 24450), we published an interim final regulation with comment period, implementing the program as of June 1, 2010. Section 1102(e) of the Affordable Care Act appropriates funding of \$5 billion for the temporary program. The regulation at 45 CFR 149.45(a) states that based on the projected or actual availability of program funding, the Secretary may deny applications that otherwise meet the requirements of this part, and if an application is approved, may deny all or part of a sponsor's reimbursement request. Under that authority, in the April 5, 2011 **Federal Register** (76 FR 18766), the Secretary announced that CMS would stop accepting applications for ERRP as of May 6, 2011.

II. Provisions of this Notice

CMS is exercising our authority under 45 CFR 149.45(a) to deny certain reimbursement requests based on the available amount remaining of the \$5 billion in appropriated program funding, and the rate at which it is being disbursed. We are now announcing that any Claim List submitted to ERRP in support of a reimbursement request, that includes one or more claims with an incurred date identified as January 1, 2012 or after, will be rejected in its entirety. Therefore, to avoid such a consequence, a plan sponsor must not submit any Claim List or Summary Cost Data that includes any claim with an incurred date identified as January 1, 2012 or later.

As specified in 45 CFR 149.325, a claim may be submitted to ERRP only after it has been incurred, and paid. Therefore, under this notice, and consistent with current policy, if a claim is incurred on or before December 31, 2011, but paid after December 31, 2011, the sponsor may submit the claim, but not until it has been paid. Existing guidance defining the date upon which various types of claims are considered to have been incurred, and paid, for purposes of ERRP, are detailed at www.errp.gov, by clicking on Common Questions, and then clicking on Costs and Reimbursement.

We note that our decision to deny reimbursement requests that include claims with incurred dates of January 1, 2012, or after, is based on the actual availability of remaining appropriated ERRP funds and the rate at which reimbursements have been disbursed, as opposed to the projected amounts of ERRP reimbursements that applicants listed in their ERRP applications. Should circumstances related to the availability of ERRP funding change, we may decide it is appropriate to approve reimbursement requests that include claims incurred after December 31, 2011. If this occurs, we will provide such notice in the **Federal Register**.

III. Collection of Information Requirements

This document does not impose any new information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995. However, the information collection requirements associated with the ERRP are currently approved under OMB control number 0938-1087, with an expiration date of September 30, 2014.

CMS-9996-N2

Authority: 45 CFR 149.45(a).

Dated: December 6, 2011

Marilyn Tavenner,

Acting Administrator,

Centers for Medicare & Medicaid

Services.

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