



Legal Alert: Early Retiree Reinsurance Program Draft Application, Instructions and FAQs Available; Final Application Expected Late June 2010

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Designed to address the decline in the number of employers providing health coverage to early retirees, the **Early Retiree Reinsurance Program** reimburses participating employment-based plans for a portion of health benefit costs for early retirees and their spouses, surviving spouses, and dependents. An early retiree is a non-active employee who is at least 55 years old and not yet eligible for Medicare. The program covers self-funded and insured plans, including plans sponsored by private employers, governmental employers, unions, and other employers.

The program reimburses plans for 80% of health benefit costs ranging between \$15,000 and \$90,000. For 2010, costs incurred by an early retiree or dependent between the start of the plan year (commonly January 1) and June 1 are credited towards toward the \$15,000 threshold for reimbursement. However, only health benefit costs incurred on or after June 1, 2010 are eligible for reimbursement under this program. Plan sponsors must use the reimbursements to offset health benefit costs or to reduce plan participant costs.

Among other things, eligible plans must provide health benefits to early retirees, have programs and procedures that have generated or have the potential to generate cost-savings with respect to participants with chronic and high-cost conditions, and have programs and procedures in place to protect against fraud, waste, and abuse.

Eligible plan sponsors can apply for the program through the Department of Health and Human Services ("HHS"). Plans must be "certified" before reimbursements can be made. A **draft** application and accompanying documents are currently available for review online at: <http://www.hhs.gov/ociio/regulations/index.html>. According to the draft application, plan sponsors must provide an estimate of their anticipated reimbursements during a two-year period, identify programs that reduce the cost of chronic and high-cost conditions, and explain how reimbursements will be used. HHS intends to have a final application available by the end of June. However, the only anticipated change to the application is the addition of an address where the application can be sent. Therefore, plan sponsors can rely on the draft application in preparing their submissions.

Timely and accurate reimbursement applications will be critical. The program

is scheduled to end no later than January 1, 2014, or when the \$5 billion in funding allocated to the program is exhausted. We anticipate that program funds will be depleted before the program end date as HHS expects more reimbursement requests than there are funds to pay the requests. Any incomplete applications that are resubmitted will be processed as received rather than reviewed based on the original filing date. Therefore, it is imperative that applications contain all required information upon initial submission.

If you have any questions regarding this Legal Alert, please contact the authors, Tiffany Downs, tdowns@fordharrison.com, Isabella Lee, ilee@fordharrison.com, any member of Ford & Harrison's Employee Benefits practice group or the Ford & Harrison attorney with whom you usually work.