

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**THE UAW RETIREE MEDICAL  
BENEFITS TRUST PROPERLY CLAIMED  
EARLY RETIREE REINSURANCE  
PROGRAM REIMBURSEMENTS**

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# *Office of Inspector General*

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## INTRODUCTION

### BACKGROUND

#### Early Retiree Reinsurance Program

The Patient Protection and Affordable Care Act, P. L. No. 111–148 and the Health Care and Education Reconciliation Act of 2010, P.L. No. 111–152 (together, the Affordable Care Act), enacted on March 23, 2010, established the Early Retiree Reinsurance Program (ERRP). The ERRP is a temporary reinsurance program designed to reimburse participating employment-based plans (plan) for a portion of the cost of providing health insurance to early retirees aged 55 or older and to certain eligible family members. The Center for Consumer Information Insurance Oversight (CCIIO), a part of the Centers for Medicare & Medicaid (CMS) within the Department of Health and Human Services, is responsible for program administration.<sup>1</sup>

The Affordable Care Act § 1102(e) appropriated \$5 billion in funding for the ERRP. The ERRP began in October 2010 and is scheduled to end on January 1, 2014. As of January 2012, ERRP reimbursements totaled nearly \$4.7 billion.

#### Federal Requirements and the Center for Consumer Information Insurance Oversight Guidance

To participate in the ERRP, the plan and its sponsor must meet the requirements of 45 CFR part 149, and the sponsor's application to participate in the program must be approved by the CCIIO.<sup>2</sup> Early retirees must be individuals who are (1) aged 55 or older, (2) not eligible for health insurance coverage under Medicare, and (3) not active employees eligible for coverage under an employer's health insurance plan (section 1102(a)(2)(C) of the Affordable Care Act).

Claims submitted by plan sponsors for ERRP reimbursement must be based on actual costs incurred for providing health benefits to early retirees and their spouses, surviving spouses, and dependents (the Affordable Care Act § 1102(c)(1)(B)).<sup>3</sup> ERRP reimbursement is limited to 80 percent of the health benefit costs for all claims incurred by the plan during the plan-year. To be eligible for reimbursement, claims for health benefit costs attributable to each individual early

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<sup>1</sup> Until December 2011, the Office of Consumer Information and Insurance Oversight within the Department of Health and Human Services administered the program. The name CCIIO used throughout this report refers to CCIIO and its predecessor.

<sup>2</sup> Generally, the regulation uses the term "sponsor" when referring to the entity that applies for and receives reimbursement under the ERRP and uses the term "employment-based plan" when referring to the health benefits arrangement that the plan must offer (75 Fed. Reg.24451 (May 5, 2010)).

<sup>3</sup> the term "health benefits" includes medical, surgical, hospital, prescription drug, and other benefits as determined by the Secretary of Health and Human Services, whether self-funded or delivered through the purchase of insurance or otherwise (section 1102(a)(2)(A) of the Affordable Care Act). The CCIIO guidance *Claims Ineligible for Reimbursement Under the Early Retiree Reinsurance Program* (Sept. 28, 2010) clarifies that CCIIO provides ERRP reimbursement only for items and services for which Medicare generally reimburses.

retiree must be between \$15,000 (cost threshold) and \$90,000 (cost limit) (45 CFR §§149.100 and 149.115).

Plans must use ERRP reimbursements to reduce the health benefit costs of the plan (section 1102(c)(4) of the Affordable Care Act). This section also requires CCIIO to develop a mechanism to monitor the appropriate use of ERRP reimbursement. In the preamble to the interim final rule (75 Fed. Reg. 24456 (May 5, 2010)) that implemented ERRP, CCIIO states that sponsors must "... maintain the level of effort in contributing to support their applicable plan ... [as it did before its participation in the ERRP]. Otherwise, sponsors might circumvent the prohibition on using the program funds as general revenue...." We refer to this requirement as the maintenance-of-contribution requirement.

According to the CCIIO's *Guidance on Complying with the Prohibition on Using Early Retiree Reinsurance Program Reimbursements as General Revenue* (Aug. 19, 2011), a plan is presumed to have properly used its ERRP reimbursement in a given year if the plan meets the maintenance-of-contribution requirement. To meet that requirement, the plan's contribution toward the health benefit cost for the year must be equal to or more than the contribution it made in its baseline period.<sup>4</sup>

### **The UAW Retiree Medical Benefits Trust**

The UAW Retiree Medical Benefits Trust (the Trust), established in 2010, was created to administer health benefits for retirees of General Motors, Ford, and Chrysler. The Trust provides medical and prescription drug benefits to eligible retirees, their spouses, and dependents. The Trust is the plan sponsor.

In July 2010, CCIIO approved the Trust's application for participation in the ERRP.<sup>5</sup> The Trust stated in its application that the ERRP reimbursement would be used exclusively for Trust purposes, including mitigating the rate of increase in participant cost sharing, lowering the cost of health benefits provided by the Trust, and extending the period of time that the Trust will be able to provide coverage to UAW retirees. As of April 2011, CCIIO had reimbursed the Trust \$220,667,611 for health benefit costs that the Trust had claimed on behalf of 16,184 early retirees from January 1, 2010 through March 31, 2011.

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<sup>4</sup> The *Guidance on Complying with the Prohibition on Using Early Retiree Reinsurance Program Reimbursements as General Revenue* specifies that plan sponsors may use any of the following periods as their baseline period for determining their contribution level: (1) the plan sponsor's most recent 12-month plan-year that ended before the date the plan sponsor submitted its ERRP application; (2) a period consisting of up to 5 of the plan sponsor's most recent consecutive 12-month plan-years, including the plan sponsor's most recent 12-month plan-year that ended before the plan sponsor submitted the ERRP application; and (3) a single 12-month plan-year for which the plan sponsor's budget for health benefits and/or health benefit premiums was finalized or for which a collective bargaining agreement was ratified before June 1, 2010.

<sup>5</sup> CCIIO began accepting applications of plan sponsors for participation in the ERRP on June 29, 2010 (CCIIO press release, June 29, 2010).

## **OBJECTIVES, SCOPE, AND METHODOLOGY**

### **Objectives**

Our objectives were to determine whether the claims that the Trust submitted to CCIIO for ERRP reimbursements and the Trust's use of the reimbursements, were in compliance with the Federal requirements and CCIIO guidance.

### **Scope**

Our review covered early retiree claims for part of 2 plan-years from January 1, 2010, through December 31, 2010, and from January 1, 2011, through March 30, 2011, for which the Trust received an ERRP reimbursement of \$220,667,611.<sup>6</sup> We reviewed only those internal controls necessary to achieve our objective.

We performed our fieldwork at the UAW Retiree Medical Benefits Trust in Detroit, Michigan.

### **Methodology**

To accomplish our objective, we:

- reviewed applicable Federal law and regulations;
- interviewed the Trust's officials to obtain an understanding of their policies and procedures related to ERRP;
- reviewed the Trust's policies and procedures related to claim processing and employee eligibility for health benefits;
- determined whether the claims submitted by the Trust to CCIIO were for eligible early retirees by
  - obtaining early retiree lists that the Trust submitted to CCIIO and early retiree list response files that CCIIO returned to the Trust;
  - comparing the Social Security numbers of 16,184 early retirees who participated in ERRP during our audit period to Medicare eligibility data from Medicare's Enrollment Database (EDB);<sup>7</sup> and

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<sup>6</sup> Once an application was approved, a plan sponsor was allowed to apply for reimbursement for costs incurred for plan-years that started before June 1, 2010, as long as they ended after June 1, 2010 (for example, calendar year 2010 plans) (75 Fed. Reg. 24457 (May 5, 2010)). If a plan-year began before June 1, 2010, and ended after June 1, 2010, the amount of claims for services provided before June 1, 2010, could be counted toward the threshold. However, only the amount of claims for services provided on or after June 1, 2010 that exceeded the threshold would be eligible for ERRP reimbursement (45 CFR §149.105).

<sup>7</sup> The EDB is the authoritative source for all Medicare entitlement information. It contains information on all individuals entitled to Medicare, including demographic information and enrollment dates.

- verifying the employment status, health benefit status, and spouse or dependent status documented in the Trust’s electronic system files for the 16,184 early retirees;
- determined whether the claims submitted by the Trust to CCIIO were for the allowable health benefit costs by
  - comparing procedure codes on the claims that the Trust submitted to CCIIO against the excluded Common Procedure Terminology (CPT) and Healthcare Common Procedure Coding System (HCPCS) codes listed in CCIIO guidance<sup>8</sup> and
  - recalculating total health benefit costs and reimbursable costs between cost threshold and cost limit for each of 16,184 early retirees;
- determined whether the Trust used the ERRP reimbursement to offset any increases in its health benefit plan cost and premiums by
  - reviewing the Trust’s accounting records and bank statements to determine how the Trust accounted and used the ERRP reimbursements; and
  - reviewing the Committee meeting minutes from January 2010 through August 2011 to determine how the Trust intended to use the ERRP reimbursement; and
- discussed the results of our audit with the Trust and CCIIO representatives.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## **RESULTS OF AUDIT**

The claims that the Trust submitted to CCIIO for ERRP reimbursement during our audit period and the Trust’s use of the reimbursements complied with Federal requirements and guidance. The claims were based on allowable costs of \$580,808,547 that the Trust expended within the plan years for the health benefits provided to 16,184 eligible early retirees and their family dependents. Of this amount, \$275,834,514 was attributable to costs between the cost threshold

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<sup>8</sup> The CCIIO guidance *Claims Ineligible for Reimbursement under the Early Retiree Reinsurance Program* (Sept. 28, 2010) and *Coding Details for Ineligible Services Under Medicare Which Will Apply to ERRP* (July 18, 2011) specified CPT and HCPCS codes for services not eligible for reimbursement under ERRP.

and cost limit.<sup>9</sup> On the basis of such claims, we determined that CCIIO reimbursed the Trust \$220,667,611 (80 percent of the costs between the individual cost threshold and the cost limit). Because the Trust met the maintenance-of-contribution requirement, its use of the ERRP reimbursements was considered appropriate in accordance with CCIIO's guidance. We are not submitting any recommendations to the Trust.

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<sup>9</sup> The CCIIO's reimbursement is limited to 80-percent of the portion of the health benefit costs attributable to the claims between \$15,000 (cost threshold) and \$90,000 (cost limit) for plan years that start on any date before October 1, 2011 (45 CFR §§149.100 and 149.115).