

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**THE CHICAGO REGIONAL COUNCIL OF
CARPENTERS WELFARE FUND
PROPERLY CLAIMED EARLY RETIREE
REINSURANCE PROGRAM
REIMBURSEMENTS**

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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.¹

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 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 plan sponsor’s application to participate in the program must be approved by the CCIIO.² 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)).³ 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 retiree must be between \$15,000 (cost threshold) and \$90,000 (cost limit) (45 CFR §§ 149.100 and 149.115).

¹ 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.

² 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 sponsor must offer (75 Fed. Reg.24451 (May 5, 2010)).

³ 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.

Section 1102(c)(4) of the Affordable Care Act requires plans to use ERRP reimbursement to reduce the health benefit costs of the plan. 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 plan sponsors must "...maintain the level of effort in contributing to support their applicable plan ... [as it did before its participation in the ERRP]. Otherwise, plan sponsors might circumvent the prohibition on using the program funds as general revenue...." We refer to this as the maintenance-of-contribution requirement.

According to 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.⁴

The Chicago Regional Council of Carpenters Welfare Fund

The Chicago Regional Council of Carpenters Welfare Fund (the Fund) offered health benefits (consisting of medical and prescription drug benefits) funded by participating employer contributions and premiums for eligible employees, retirees, and their dependents. The Fund is the plan sponsor.

In July 2010, CCIIO approved the Fund's application for participation in the ERRP.⁵ The Fund stated in its application that the ERRP reimbursement would become a plan asset, and the ERRP reimbursement would be used to offset any expected increases in health benefit plan costs and premiums. As of March 2011, CCIIO had reimbursed the Fund \$1,611,366 for health benefit costs that the Fund had incurred on behalf of 281 early retirees from July 1, 2009, through December 31, 2010.

⁴ 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.

⁵ 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 Fund submitted to CCIIO for ERRP reimbursements and the Fund's use of the reimbursements were in compliance with Federal requirements and CCIIO guidance.

Scope

Our review covered early retiree claims for part of 2 plan-years from July 1, 2009, through June 30, 2010, and from July 1, 2010, through December 31, 2010, for which the Fund received an ERRP reimbursement of \$1,611,366.⁶ We reviewed only those internal controls necessary to achieve our objective.

We performed our fieldwork at Chicago Regional Council of Carpenters Welfare Fund in Chicago, Illinois, from August 2011 through November 2011.

Methodology

To accomplish our objective, we:

- reviewed applicable Federal law and regulations;
- interviewed the Fund's officials to obtain an understanding of their policies and procedures related to ERRP;
- reviewed the Fund's policies and procedures related to claim processing and employee eligibility for health and retirement benefits;
- determined whether the claims submitted by the Fund to CCIIO were for eligible early retirees by
 - obtaining early retiree lists that the Fund to CCIIO and early retiree list response files that CCIIO returned to the Fund;

⁶ 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 that date, 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).

- comparing the Social Security numbers of 281 early retirees who participated in ERRP during our audit period to Medicare eligibility data from Medicare’s Enrollment Database (EDB);⁷ and
- verifying the employment status, health benefit and retirement eligibility status, and spouse or dependent status documented in the Fund’s electronic system files for the 281 early retirees;
- determined whether the claims submitted by the Fund to CCIIO were for the allowable health benefit costs by
 - comparing procedure codes on the claims that the Fund submitted to CCIIO against the excluded Common Procedure Terminology (CPT) and Healthcare Common Procedure Coding System (HCPCS) codes listed in CCIIO guidance⁸ and
 - recalculating total health benefit costs and reimbursable costs between cost thresholds and cost limits for each of 281 early retirees;
- determined whether the Fund used the ERRP reimbursement to offset any increases in its health benefit plan cost and premiums by
 - using a method specified in CCIIO guidance⁹ to compare the Fund’s per-capita contributions¹⁰ for each of the two plan-years (July 1, 2009, through June 30, 2010, and July 1, 2010, through June 30, 2011) to the Fund’s average per-capita contributions for its baseline period;¹¹
 - reviewing accounting records and bank statements of the Fund to determine how the Fund used the ERRP reimbursements; and

⁷ Medicare’s EDB is the authoritative source for all Medicare entitlement information. The EDB contains information on all individuals entitled to Medicare, including demographic information and enrollment dates.

⁸ 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.

⁹ The CCIIO’s *Guidance on Complying with the Prohibition on Using Early Retiree Reinsurance Program Reimbursements as General Revenue* (Aug. 19, 2011) specifies that one of the following four methodologies can be used for determining compliance with the maintenance-of-contribution requirement: (1) using the aggregate spending trend percentage; (2) using the aggregate spending trend total dollars; (3) using the per-capita spending trend percentage; and (4) using the per-capita spending trend total dollars.

¹⁰ The per-capita contribution is the average amount of health benefit costs that the plan sponsor incurred per plan recipient.

¹¹ The Fund used 5 consecutive plan-years from July 1, 2004, through June 30, 2009, as its baseline period. See footnote 4 for various periods that a sponsor can use as its baseline period.

- reviewing the Board of Trustees minutes from September 2008 through August 2011 to determine how it intended to use the ERRP reimbursement; and
- discussed the results of our review with the Fund officials and CCIIO officials.

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 Fund submitted to CCIIO for ERRP reimbursement during our audit period and the Fund's subsequent use of the reimbursements complied with Federal requirements and guidance. The claims were based on allowable costs of \$6,434,931 that the Fund expended within the plan-years for the health benefits provided to 281 eligible early retirees and their family members, of which \$2,014,208 were attributable to the costs between the cost threshold and the cost limit.¹² On the basis of such claims, we determined that CCIIO appropriately reimbursed the Fund \$1,611,366 for 80 percent of the costs between the cost threshold and the cost limit. Because the Fund's per-capita contributions of \$3,533 and \$3,129 to its plans for the plan-years ended June 30, 2010, and June 30, 2011, exceeded the per-capita contribution of \$2,794 that the Fund had made to its plan during its baseline period, the Fund met the use of reimbursement requirement in accordance with CCIIO's guidance.¹³ We are not submitting any recommendations to the Fund.

OTHER MATTERS

We noted a weakness in the CCIIO guidance. It addresses section 1102(c)(4) of the Affordable Care Act, which prohibits the use of ERRP reimbursements as general revenue and requires CCIIO to develop a mechanism to monitor the appropriate use of reimbursement payments. In accordance with the guidance, a plan has used its reimbursements appropriately if it meets the maintenance-of-contribution requirement. Because the Fund met the maintenance-of-contribution requirement, all of its ERRP reimbursements were presumed, by the guidance, to have been used appropriately. This presumption is the weakness we found in the guidance. The Fund placed the ERRP reimbursements in a revenue pool from which it paid various Fund expenses. Because the Fund's accounting records could not match a paid expense to a specific

¹² 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).

¹³ To demonstrate that the Fund met the use of reimbursement requirement by passing the maintenance-of-contribution test, the Fund used the per-capita spending trend total dollars methodology and the 5-year period ended June 30, 2009, as its base year period. See the CCIIO guidance *Complying with the Prohibition on Using Early Retiree Reinsurance Program Reimbursements as General Revenue* (Aug. 19, 2011) for various methodologies that can be used for the maintenance-of-contribution test.

revenue source, we could not determine whether ERRP reimbursements were used as general revenue to pay nonhealth-related expenses of administrative costs, liability insurance, and pensions. Accordingly, the maintenance-of-contribution requirement may not always prevent such reimbursements from being used as general revenue. We discussed this issue with CCIIO officials.