

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**JERSEY CITY, NEW JERSEY, DID NOT
ALWAYS COMPLY WITH EARLY
RETIREE REINSURANCE PROGRAM
REQUIREMENTS**

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EXECUTIVE SUMMARY

Jersey City, New Jersey, incorrectly requested and received \$130,401 in Early Retiree Reinsurance Program reimbursements based on claims that were not in compliance with Federal requirements and Center for Consumer Information Insurance Oversight guidance.

WHY WE DID THIS REVIEW

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 for a portion of the cost of providing health insurance to early retirees aged 55 or older and to certain eligible family members. We conducted this review of the ERRP program because of the large amount of funding for this new program, the short timeframe for which the ERRP program would be in existence, and the amount of payments to be made.

Our objectives were to determine whether the claims that Jersey City, New Jersey (the City), submitted to the Center for Consumer Information Insurance Oversight (CCIIO) for ERRP reimbursements, and the City's use of the reimbursements, were in compliance with Federal requirements and CCIIO guidance.

BACKGROUND

CCIIO, a part of the Centers for Medicare & Medicaid Services, is responsible for program administration.

Claims that plan sponsors submit for ERRP reimbursement must be based on actual costs incurred for providing health benefits, such as medical, surgical, and prescription benefits, to early retirees and their spouses, surviving spouses, and dependents. 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. If an early retiree died before June 1, 2010, claims of the surviving spouse would not qualify for ERRP reimbursement.

Prior to each ERRP reimbursement request, plan sponsors must submit a file, referred to as an Early Retiree List, to CCIIO that identifies all eligible early retirees for a plan year. An Early Retiree List must include each individual who meets the definition of an early retiree and through whom the spouse, surviving spouse, and dependents receive their health benefits.

ERRP reimbursement is limited to 80 percent of the health benefit costs for all claims incurred by the plan during the plan year that begins on or after June 1, 2010. To be eligible for reimbursement, total claims for health benefit costs attributable to each individual early retiree must be between \$15,000 (cost threshold) and \$90,000 (cost limit). Additionally, for a plan year that begins before June 1, 2010, and ends after that date, the amount of claims incurred before

June 1, 2010, that exceeds \$15,000 is not eligible for reimbursement and does not count toward the cost limit.

The Affordable Care Act requires plan sponsors to use ERRP reimbursement to reduce the sponsor's health benefit premiums and health benefit costs, to reduce the plan participants' health benefit premiums and health benefit costs, or a combination of both. Plan sponsors may not use ERRP reimbursements as general revenue.

The City offered self-funded health benefits (consisting of medical and prescription drug benefits) to eligible employees, retirees, and their dependents. The City is the plan sponsor.

HOW WE CONDUCTED THIS REVIEW

Our review covered claims for all of the 201 individuals reported as early retirees by the City for part of 2 plan years from January 1 through December 31, 2010, and from January 1 through September 30, 2011. For the 2 plan years, the City received an ERRP reimbursement of \$4,599,315. We also reviewed how the City used the ERRP reimbursements.

WHAT WE FOUND

The City incorrectly requested and received \$130,401 in ERRP reimbursements based on claims that were not in compliance with Federal requirements and CCIIO guidance. Specifically:

- The City requested and received \$63,700 in net ERRP reimbursements based on unallowable claims of 122 early retirees by submitting claims for costs that were incurred before June 1, 2010, and that exceeded \$15,000.
- The City requested and received \$54,430 in ERRP reimbursements based on unallowable claims of the surviving spouses of seven City employees. The surviving spouses were inappropriately listed as City employees on the Early Retiree Lists. In all these cases, the corresponding City employees died before June 1, 2010.
- The City requested and received \$12,271 in ERRP reimbursements based on unallowable claims of four active employees eligible for coverage under the City's health insurance plan.

The City's use of the ERRP reimbursements was in compliance with Federal requirements and CCIIO guidance.

The City did not have adequate policies and procedures to ensure that it submitted claims for reimbursement of only allowable costs incurred for individuals who met the definition of an early retiree and their spouses and dependents. Specifically, the City did not have policies and procedures to help ensure that it:

- submitted claims for reimbursement of costs that were incurred on or after June 1, 2010, and only for early retirees and their spouses, surviving spouses, and dependents and

- reported individuals who met the definition of an early retiree and through whom the spouse, surviving spouse, and dependents received health benefits on its Early Retiree List.

WHAT WE RECOMMEND

We recommend that the City:

- refund \$130,401 in incorrectly requested and received ERRP reimbursements,
- work with CCIIO to correct any subsequent ERRP reimbursement requests that did not comply with Federal requirements and CCIIO guidance, and
- develop and implement policies and procedures to help ensure that the City claims only allowable health benefit costs incurred for individuals who meet the definition of an early retiree.

CITY COMMENTS AND OUR RESPONSE

In written comments on our draft report, the City partially agreed with our findings and did not directly address all of our recommendations. With regard to our finding related to the net ERRP reimbursements of \$63,700, the City stated that the issue had been corrected in the subsequent ERRP reimbursement request submission. The City agreed with our finding related to the ERRP reimbursements of \$54,430. However, the City disagreed with our finding related to the ERRP reimbursements of \$12,271 and stated that the retired and subsequently reemployed employees were not eligible for any health benefits.

After reviewing the comments and documentation that the City provided, we maintain that our findings and recommendations are valid.

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INTRODUCTION

WHY WE DID THIS REVIEW

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 for a portion of the cost of providing health insurance to early retirees aged 55 or older and to certain eligible family members. We conducted this review of the ERRP program because of the large amount of funding for this new program, the short timeframe for which the ERRP program would be in existence, and the amount of payments to be made.

OBJECTIVES

Our objectives were to determine whether the claims that Jersey City, New Jersey (the City), submitted to the Center for Consumer Information Insurance Oversight (CCIIO) for ERRP reimbursements, and the City's use of the reimbursements, were in compliance with Federal requirements and CCIIO guidance.

BACKGROUND

Early Retiree Reinsurance Program: Federal Funding and How Plan Sponsors Are Reimbursed

Federal Funding of the Program

The Affordable Care Act, section 1102(e), appropriated \$5 billion in funding for the ERRP. The program began reimbursing plan sponsors for costs incurred on or after June 1, 2010. It is scheduled to end on January 1, 2014. As of January 2012, ERRP reimbursements totaled nearly \$4.7 billion. CCIIO, a part of the Centers for Medicare & Medicaid Services (CMS) within the Department of Health and Human Services, is responsible for program administration.¹

Program Participation and Reimbursement

To participate in the ERRP, the plan and its sponsor must meet a set of requirements, and CCIIO must approve the plan sponsor's application.²

¹ Until January 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)).

Claims that plan sponsors submit for ERRP reimbursement must be based on actual costs incurred for providing health benefits, such as medical, surgical, and prescription benefits, to early retirees and their spouses, surviving spouses, and dependents. 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 (the Affordable Care Act §§ 1102(a) and 1102(c)). If an early retiree died before June 1, 2010, claims of the surviving spouse would not qualify for ERRP reimbursement.³

Prior to each ERRP reimbursement request, plan sponsors must submit a file, referred to as an Early Retiree List,⁴ to CCIIO that identifies all eligible early retirees for a plan year. An Early Retiree List must include each individual who meets the definition of an early retiree and through whom the spouse, surviving spouse, and dependents receive their health benefits (45 CFR § 149.335).

ERRP reimbursement is limited to 80 percent of the health benefit costs for all claims that the plan incurs during the plan year that begins on or after June 1, 2010. To be eligible for reimbursement, total claims for health benefit costs attributable to each individual early retiree must be between \$15,000 (cost threshold) and \$90,000 (cost limit). Additionally, for a plan year that begins before June 1, 2010, and ends after that date, the amount of claims incurred before June 1, 2010, that exceeds \$15,000 is not eligible for reimbursement and does not count toward the cost limit (45 CFR §§ 149.100, 149.105, and 149.115).

The Affordable Care Act requires plan sponsors to use ERRP reimbursement to reduce the sponsor's health benefit premiums and health benefit costs, to reduce the plan participants' health benefit premiums and health benefit costs, or a combination of both. Plan sponsors may not use ERRP reimbursements as general revenue (Affordable Care Act § 1102(c)). A plan is presumed to have properly used its ERRP reimbursement in a given year if its contribution toward the health benefit costs for the year is equal to or more than the contribution it made in the baseline period that CCIIO specified in its guidance (the maintenance-of-contribution requirement).⁵

The City Is the Plan Sponsor

The City offered self-funded health benefits (consisting of medical and prescription drug benefits) to eligible employees, retirees, and their dependents. The City is the plan sponsor. In August 2010, CCIIO approved the City's application for participation in the ERRP. The City stated in its application that the ERRP reimbursement would be used to offset any expected increases in plan health benefit premiums and costs. As of December 2011, CCIIO had

³ Available online at http://errp.gov/faq_eligible.shtml, Answer ID 300-7, posted on 09/24/2010. Accessed on April 2, 2013.

⁴ Available online at http://www.errp.gov/wbt/early_retiree_list/early_retiree_list_Lesson6.htm, slide 40. Accessed on April 2, 2013.

⁵ CCIIO's *Guidance on Complying with the Prohibition on Using Early Retiree Reinsurance Program Reimbursements as General Revenue* (Aug. 19, 2011).

reimbursed the City \$4,599,315 for health benefit costs that the City had incurred on behalf of 201 individuals, reported as early retirees by the City, from January 1, 2010, though September 30, 2011.

HOW WE CONDUCTED THIS REVIEW

Our review covered claims for all of the 201 individuals that the City reported as early retirees⁶ for part of 2 plan years from January 1 through December 31, 2010, and from January 1 through September 30, 2011.⁷ For the 2 plan years, the City received an ERRP reimbursement of \$4,599,315. We also reviewed how the City used its ERRP reimbursement.

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.

Appendix A contains the details of our audit scope and methodology. Appendix B contains the Federal requirements and CCIIO guidance for the ERRP. Appendix C lists the Office of Inspector General reports related to prior audits of the ERRP.

FINDINGS

The City incorrectly requested and received \$130,401 in ERRP reimbursements based on claims that were not in compliance with Federal requirements and CCIIO guidance. The improper reimbursements were attributable to unallowable claims (1) for costs incurred prior to June 1, 2010, that exceeded \$15,000, (2) of inappropriately listed surviving spouses, and (3) of active employees.

The City's use of ERRP reimbursements was in compliance with Federal requirements and CCIIO guidance.

THE CITY REQUESTED EARLY RETIREE REINSURANCE PROGRAM REIMBURSEMENTS ON THE BASIS OF UNALLOWABLE CLAIMS

Claims for Costs Incurred Prior to June 1, 2010, That Exceeded \$15,000

The City requested and received \$63,700 in net ERRP reimbursements based on unallowable claims for 122 early retirees by submitting claims for costs that were incurred before June 1, 2010, and that exceeded \$15,000. Federal regulations specify that for a plan year that begins

⁶ The term "early retiree" includes an individual who meets the definition of an early retiree, as well as enrolled spouses, surviving spouses, and dependents of such individuals (45 CFR § 149.2).

⁷ We selected an audit period that ended on September 30, 2011, because CCIIO's reimbursement to the City was based on health benefit costs that the City had incurred on behalf of 201 individuals, reported as early retirees by the City, from January 1, 2010, though September 30, 2011.

before June 1, 2010, and ends after that date, the amount of claims incurred before June 1, 2010, that exceeds \$15,000 is not eligible for reimbursement and does not count toward the individual's cost limit (45 CFR § 149.105(a)).

Surviving Spouses Were Inappropriately Listed As Retirees

The City requested and received \$54,430 in ERRP reimbursements based on unallowable claims of the surviving spouses of seven City employees who retired and died before June 1, 2010. The City listed surviving spouses as retired employees on the Early Retiree Lists and submitted claims for reimbursement of health benefit costs incurred for the surviving spouses. CCIIO specifies that an Early Retiree List must include each individual who meets the definition of an early retiree and through whom the spouse, surviving spouse, and dependents receive their health benefits (45 CFR § 149.335). CCIIO also specifies that a surviving spouse would not satisfy the definition of an early retiree if the individual through whom the surviving spouse receives health benefits died before June 1, 2010.

In one additional case, although the City inappropriately listed the surviving spouse as a retired employee on the Early Retiree List, we did not disallow the related reimbursement of \$108,717 because the retired employee died after June 1, 2010. The retired employee and the surviving spouse of this employee had met the definition of an early retiree.

Claims Made on Behalf of Active Employees

The City requested and received \$12,271 in ERRP reimbursements based on unallowable claims of four active employees. These employees retired but subsequently were reemployed by the City. During their reemployment, they were eligible for coverage under the City's health insurance plan. For a plan sponsor to be eligible for ERRP reimbursement, its claims must be for health benefit costs incurred for individuals who are not active employees⁸ eligible for coverage under an employer's health insurance plan (Affordable Care Act § 1102(a)).

THE CITY HAD INADEQUATE POLICIES AND PROCEDURES

The City did not have adequate policies and procedures to ensure that it submitted claims for reimbursement of only allowable costs incurred for individuals who met the definition of an early retiree and their spouses and dependents. Specifically, the City did not have policies and procedures to help ensure that it:

- submitted claims for reimbursement of costs that were incurred on or after June 1, 2010, and only for early retirees and their spouses, surviving spouses, and dependents and

⁸ The determination of whether an individual is an active employee is made by the plan sponsor in accordance with the rules of its plan (45 CFR § 149.2). Absent a plan definition or plan rules that are unclear, the plan sponsor must use the Medicare Secondary Payer definition of current employment status to determine whether the individual is to be receiving coverage by reason of current employment status (42 CFR § 411.104).

- included on its Early Retiree List individuals who met the definition of an early retiree and through whom the spouse, surviving spouse, and dependents received health benefits.

RECOMMENDATIONS

We recommend that the City:

- refund \$130,401 in incorrectly requested and received ERRP reimbursements,
- work with CCIIO to correct any subsequent ERRP reimbursement requests that did not comply with Federal requirements and CCIIO guidance, and
- develop and implement policies and procedures to help ensure that the City claims only allowable health benefit costs incurred for individuals who meet the definition of an early retiree.

CITY COMMENTS AND OUR RESPONSE

In written comments on our draft report, the City partially agreed with our findings and did not directly address all of our recommendations. The City's comments, excluding the New Jersey guidance and the letter from the City's personnel director, are included as Appendix D. After reviewing the comments and documentation that the City provided, we maintain that our findings and recommendations are valid.

Claims for Costs Incurred Prior to June 1, 2010, That Exceeded \$15,000

City Comments

With regard to our finding that the City requested and received \$63,700 in net ERRP reimbursements for costs that it incurred prior to June 1, 2010, that exceeded \$15,000, the City stated that the issue had been corrected in the subsequent ERRP reimbursement request submission.

Our Response

We maintain that the City should refund \$63,700 in unallowable ERRP reimbursements. To return the unallowable ERRP reimbursements, the City made adjustments within its subsequent ERRP reimbursement request submission. However, as of the end of our fieldwork, CCIIO had not processed the subsequent ERRP reimbursement request because it did not have funds to make payments on subsequent ERRP reimbursement requests. The ERRP is a temporary reinsurance program with limited funding. CCIIO stated that if additional funding became available for ERRP reimbursement, CCIIO would process and pay the outstanding ERRP reimbursement requests in the order received from plan sponsors.

Surviving Spouses Were Inappropriately Listed As Retirees

The City agreed with our finding related to the ERRP reimbursements of \$54,430 based on unallowable claims for surviving spouses who were inappropriately listed as early retirees on the Early Retiree Lists.

Claims Made on Behalf of Active Employees

City Comments

The City disagreed with our finding related to the ERRP reimbursements of \$12,271 for unallowable claims made on behalf of active employees and stated that the retired and subsequently reemployed employees were not eligible for any health benefits.

Our Response

We maintain that the City should refund \$12,271 in unallowable ERRP reimbursements. The Federal ERRP requirements mandate that an early retiree not be “an active employee of an employer ... that has made substantial contributions to fund the [employment-based plan]” (45 CFR § 149.2.). The determination of whether an individual is an active employee is made by the plan sponsor in accordance with the rules of its plan. Further, if a plan’s definition or rules are absent or unclear, the plan sponsor must use the Medicare Secondary Payer definition of current employment status to determine whether the individual should receive coverage based on current employment status. The City did not provide any plan rules that would enable us to determine that the retired and subsequently reemployed employees were not eligible for health benefits as active employees. Therefore, we applied the Medicare Secondary Payer definition of current employment status to make our determination.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our review covered claims for 201 individuals reported as early retirees by the City for parts of 2 plan years from January 1 through December 31, 2010, and from January 1 through September 30, 2011, for which the City received an ERRP reimbursement of \$4,599,315. We also reviewed how the City used the ERRP reimbursement. We reviewed only those internal controls necessary to achieve our objective.

We performed our fieldwork from February 2012 through April 2013.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal law and regulations and CCIIO guidance;
- interviewed City officials to obtain an understanding of the City's policies and procedures related to ERRP;
- reviewed the City's policies and procedures related to claim processing and employee eligibility for health and retirement benefits;
- determined whether the claims that the City submitted to CCIIO were for eligible early retirees by:
 - obtaining Early Retiree Lists that the City submitted to CCIIO and Early Retiree List response files that CCIIO returned to the City;
 - comparing the Social Security numbers of 201 individuals reported as early retirees by the City who participated in ERRP during our audit period to Medicare eligibility data from Medicare's Enrollment Database (EDB);⁹ and
 - verifying the employment status, health benefit and retirement eligibility status, and spouse or dependent status documented in the City's electronic system and paper files for the 201 individuals reported as early retirees by the City;
- determined whether the claims that the City submitted to CCIIO were for allowable health benefit costs by:
 - comparing procedure codes on the claims that the City submitted to CCIIO against the excluded Common Procedure Terminology (CPT) and Healthcare

⁹ 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.

Common Procedure Coding System (HCPCS) codes listed in CCIIO guidance¹⁰ and

- recalculating total health benefit costs and reimbursable costs between cost thresholds and cost limits for each of 201 individuals reported as early retirees by the City;
- determined whether the City used the ERRP reimbursement to offset increases in health benefit plan costs and premiums by
 - using the “aggregate spending trend total dollars” method specified in CCIIO guidance¹¹ to compare the City’s total contributions for each of the 2 plan years (January 1 through December 31, 2010, and January 1 through December 31, 2011) with the City’s average contributions for its baseline period;¹² and
 - reviewing the City’s accounting records and bank statements to determine how the City used the ERRP reimbursements; and
- discussed the results of our review with City 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.

¹⁰ 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.

¹¹ 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 may 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.

¹² The City used 2 consecutive plan years from January 1, 2008, through December 31, 2009, as its baseline period.

APPENDIX B: FEDERAL REQUIREMENTS AND CENTER FOR CONSUMER INFORMATION INSURANCE OVERSIGHT GUIDANCE FOR EARLY RETIREE REINSURANCE PROGRAM

FEDERAL REQUIREMENTS AND CENTER FOR CONSUMER INFORMATION INSURANCE OVERSIGHT GUIDANCE FOR EARLY RETIREE REINSURANCE PROGRAM REIMBURSEMENT AND ITS USE

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 ERRP.

To participate in the ERRP, the plan and its sponsor must meet the requirements of 45 CFR part 149, and CCIIO must approve the plan sponsor's application.¹³ 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 (Affordable Care Act § 1102(c)(1)(B)).¹⁴ "Incurred" means the point in time when the sponsor, health insurance issuer, plan, plan participant, or a combination of these stakeholders become responsible for payment of the claim (45 CFR § 149.2). CCIIO interprets this regulatory definition of "incurred" to mean, with respect to (1) costs associated with an inpatient acute care hospital stay, the date of admission;¹⁵ (2) costs for items and services furnished by institutions (other than inpatient acute care hospitals), "from date of service" for the specific item or service specified on the bill;¹⁶ (3) costs for a health benefit service provided by a

¹³ 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)).

¹⁴ 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.

¹⁵ Available online at http://errp.gov/faq_costs.shtml, Answer ID 200-43, posted on 12/30/2010. Accessed on April 2, 2013.

¹⁶ Available online at http://errp.gov/faq_costs.shtml, Answer ID 200-44, posted on 12/30/2010. Accessed on April 2, 2013.

professional, the date that the service is furnished to an early retiree;¹⁷ and (4) costs for prescription drugs, the date the prescription is filled.¹⁸

ERRP reimbursement is limited to 80 percent of the health benefit costs for all claims incurred by the plan during the plan year that begins on or after June 1, 2010. 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). Additionally, for a plan year that begins before June 1, 2010, and ends after that date, the amount of claims incurred before June 1, 2010, that exceeds \$15,000 is not eligible for reimbursement and does not count toward the cost limit.

The Affordable Care Act requires plan sponsors to use ERRP reimbursement to reduce the sponsor's health benefit premiums and health benefit costs, to reduce the plan participants' health benefit premiums and health benefit costs, or a combination of both.¹⁹ 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 by using, dollar for dollar, sponsor's funds not otherwise used for health benefits due to the program reimbursement, 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.²⁰

¹⁷ Available online at http://errp.gov/faq_costs.shtml, Answer ID 200-45, posted on 12/30/2010. Accessed on April 2, 2013.

¹⁸ Available online at http://errp.gov/faq_costs.shtml, Answer ID 200-47, posted on 12/30/2010. Accessed on April 2, 2013.

¹⁹ "Plan participant" means anyone enrolled in an applicable plan including an early retiree, a retiree, a retiree's spouse and dependent, an active employee, and an active employee's spouse and dependent (45 CFR § 149.2).

²⁰ 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.

FEDERAL REQUIREMENTS AND CENTER FOR CONSUMER INFORMATION INSURANCE OVERSIGHT GUIDANCE FOR EARLY RETIREE STATUS DETERMINATION

The term “early retiree” includes an individual who meets the definition of an early retiree as well as enrolled spouse, surviving spouse, and dependents of such individual (45 CFR § 149.2).

Prior to each ERRP reimbursement request, plan sponsors must submit a file to CCIIO, referred to as an Early Retiree List, that identifies all eligible early retirees for a plan year. An Early Retiree List must include each individual who meets the definition of early retiree and through whom the spouse, surviving spouse, and dependents receive their health benefits.²¹

CCIIO specifies that a surviving spouse would not satisfy the definition of an early retiree if the individual through whom the surviving spouse receives health benefits died before June 1, 2010.²²

An early retiree may not be an active employee of an employer who pays or did pay for his or her health benefits. The determination of whether an individual is an active employee is made by the plan sponsor in accordance with the rules of its plan (45 CFR § 149.2). Absent a plan definition or plan rules that are unclear, the plan sponsor must use the Medicare Secondary Payer definition of current employment status to determine whether the individual is to be receiving coverage by reason of current employment status (42 CFR § 411.104). If a retiree returns to work, even for temporary periods, the employer is required to provide the same coverage under the same conditions that is furnished to other employees (i.e., non-retirees) if the amount of work the individual performs (based on hours, productivity, etc.) would be sufficient to earn the employee coverage from the employer had the employee not retired.²³

²¹ Available online at http://www.errp.gov/wbt/early_retiree_list/early_retiree_list_Lesson6.htm, slide 40. Accessed on April 2, 2013.

²² Available online at http://errp.gov/faq_eligible.shtml, Answer ID 300-7, posted on 09/24/2010. Accessed on April 2, 2013.

²³ *CMS's Medicare Secondary Payer (MSP) Manual*, chapter 1, section 50.1(H). Available online at <http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/msp105c01.pdf>. Accessed on April 2, 2013.

APPENDIX C: RELATED OFFICE OF INSPECTOR GENERAL REPORTS

Report Title	Report Number	Date Issued
<u><i>The UAW Retiree Medical Benefits Trust Properly Claimed Early Retiree Reinsurance Program Reimbursements</i></u>	A-05-11-00108	12/19/2012
<u><i>The Chicago Regional Council of Carpenters Welfare Fund Properly Claimed Early Retiree Reinsurance Program Reimbursements</i></u>	A-05-11-00109	12/19/2012

APPENDIX D: CITY COMMENTS



City of Jersey City
Office of Health Benefits
280 Grove Street
Jersey City, NJ 07302
201-547-5515
myurcik@icnj.org

August 15, 2013

Sheri L. Fulcher
Regional Inspector General for Audit Services
Department of Health & Human Services
233 N. Michigan Avenue Suite 1360
Chicago, IL 60601

Re: Office of Inspector General (OIG) Draft Report No.: A-05-12-00039

Mrs. Fulcher:

I'm writing to you in response to your Draft Report No. A-05-12-00039 regarding your findings pertaining to the City of Jersey City's request and utilization of the Early Retiree Reinsurance Program (ERRP) reimbursement subsidy.

We had previously discussed with OIG representatives that the City of Jersey City is a municipal government operating under protocols specific to a public sector employer and having certain nuances that are inherently different than a standard commercial employer, mainly State statutes specifically governing re-employment. This separate government regulation has not been fully considered within the audits draft documents.

We have reviewed your draft findings and are in disagreement with two of the items contained within the report. Addressing each item as listed on "Page ii" of the Executive Summary Draft:

1. Incurred Date vs. Paid Date Calculation:

ERRP auditors are attempting to disallow \$63,700 in net paid subsidy based on submitted claims for costs incurred before June 1, 2010.

This "Paid Claim" vs. "Incurred Claim" definition had already been corrected within the City's subsequent submission (as permitted by ERRP regulation) that was discussed and recognized by OIG representatives but not outlined within the report. Therefore this recommendation is stale as this amount has already been adjusted with subsequent filing.

2. **Early Retirees:**

OIG auditors are disallowing \$54,130 in paid subsidy for certain members who are considered surviving spouses however, the primary member having died prior to June 1, 2010; the effective date of the ERRP regulation.

The City understands this oversight. This oversight was created due to specific member coding within the third party administrators eligibility system.

3. **Rehire Retirees:**

OIG auditors are questioning \$12,271 in ERRP reimbursements for four rehired retirees.

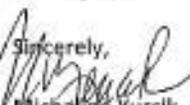
A letter was supplied from the City's Personnel Director, Mrs. Darlene Pharmes, outlining the non-eligibility when a retired City employee is rehired. This specific class of rehires is not eligible for benefits.

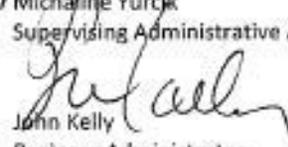
Furthermore, enclosed is New Jersey guidance (Fact Sheet) surrounding employment after retirement for members of the Police and Firemen's Retirement System (PFRS). As stated within this Fact Sheet, returning to employment not covered by the PFRS will not affect the eligibility for retiree benefits with additional language stating that returning to work in a different State retirement system disqualifies them from being able to become a member of that retirement system.

The four rehires identified are all PFRS retirees who were later rehired into a non-benefit eligible position as a Civilian falling under the Public Employees' Retirement System (PERS). This again underscores the members' ineligibility for benefits.

In closing, we understand the intent of the ERRP program and the rationale for proper auditing being conducted. We appreciate the audits findings that the City's ERRP reimbursements were in compliance with Federal requirements and CCIO guidance.

Thank you.

Sincerely,

Michael Yurck
Supervising Administrative Analyst


John Kelly
Business Administrator