



Alert: Significant Regulatory Developments in Human Resources, Benefits and Compensation

June 3, 2010

Health Care Reform: Early Retiree Reinsurance Program Application

The Office of Management and Budget (“OMB”) has recently posted on its website a draft application and related instructions for sponsors of eligible employment-based plans (“Sponsors”) to participate in the federal Early Retiree Reinsurance Program (the “Program”) established by the Patient Protection and Affordable Care Act. The draft application and instructions can be found at:

http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201005-0938-012

The application is currently only in draft form. It is expected that there will be a lag period between the posting of the final version of the application on the U.S. Department of Health & Human Services (“HHS”) website, and the date that HHS will begin accepting any applications.

Points to Consider

The temporary Program enables certified Sponsors of certified plans to obtain reimbursement of eligible health expenses for eligible early retirees (generally, from age 55 through age 64) and their eligible spouses, surviving spouses, and dependents. The draft application provides certain insights into what the final version of the application likely will require. For example, the draft indicates that:

- The application must include certain information regarding:
 - Each benefit option under the plan for which reimbursement is sought.
 - Cost-reduction programs and procedures for participants with chronic and high-cost conditions.
 - Projected Program reimbursements for the first two plan year cycles.
 - The Sponsor’s intended use of Program proceeds to offset increased Sponsor costs, or reduce participant costs, under the plan.
 - How the Sponsor will maintain its current level of contributions to the plan.

The application currently does not require an initial list of eligible retirees.

- The Sponsor must submit a separate application for each plan for which it will be seeking reimbursement under the Program.
- The application likely will be a paper copy, although HHS may try to develop an online version.
- A “Plan Sponsor Agreement” (committing to Program requirements) is part of the application.
- The Sponsor must have in place policies and procedures (which must be produced to HHS upon request) to detect and reduce fraud, waste, and abuse related to the Program.
- The Sponsor must enter into a written agreement with its plan or insurer regarding disclosure of certain information and documents to HHS under the Program.
- The Sponsor must implement safeguards regarding HIPAA protected health information and the unauthorized use and disclosure of information and documents exchanged under the application.

- Similar to the current Retiree Drug Subsidy application:
 - An “Authorized Representative” of the Sponsor must complete and sign the application.
 - The Sponsor must name an employee or nonemployee “Account Manager” for coordinating the application process and serving as its primary contact with HHS regarding the application.
- The Authorized Representative or Account Manager may designate an individual to assist with certain delegated functions regarding the application.
- Reimbursements will be made based on a plan year cycle that will be determined depending on whether or not the plan year is specified in an existing plan document.
- HHS may deny an application if Program funds are insufficient (a total of \$5 billion has been allocated to fund the Program).

Next Steps

HHS will soon be announcing when and how Sponsors can begin submitting applications. HHS also is expected shortly to issue Questions and Answers regarding the Program. Nevertheless, it is essential that Sponsors prepare now (such as by gathering relevant information, reviewing plan documents and business associate agreements, determining what alternate approaches may be appropriate to address Program requirements, etc.), so that they will be ready to submit complete and accurate applications as soon as practicable. This is important, since Program applications will be processed in the order received by HHS, incomplete or inadequate applications will be returned by HHS, and applications might not be accepted by HHS once projected reimbursements by the Program for plans that submit applications are determined by HHS to exceed Program funding limits.

Aon will continue to monitor relevant developments, and has a dedicated team to assist in helping clients prepare and submit Program applications. If you have any questions regarding this topic, or would like Aon’s assistance regarding the Program, please contact your Aon representative or any of the following individuals:

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