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United States Senate

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May 30, 2013

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Sebelius:

I write in my capacity as Ranking Member of the Senate Finance Committee to request information about the Early Retiree Reinsurance Program (ERRP). The Centers for Medicare & Medicaid Services (CMS) recently published a notice setting termination dates for various parts of the ERRP in preparation for the January 1, 2014 sunset date.¹ With the program coming to a close, this is an opportune time to consider whether CMS made effective use of the \$5 billion appropriated by Congress, whether the program achieved its stated goals, and how remaining money will be disbursed.

At the time when the Department of Health and Human Services (HHS) started accepting applications for ERRP, HHS described the program as “a bridge to the new health insurance marketplace established by the Exchanges in 2014 ... [that] will provide much needed financial assistance for employers, including businesses, unions, state and local governments, and nonprofits, so retirees can get quality, affordable insurance.”² Less than a year later, however, CMS announced that it would stop accepting applications “due to the availability of funds.”³ Indeed, although Congress appropriated \$5 billion for CMS to disburse until January 1, 2014, CMS had exceeded its \$4.7 billion cap for reimbursement by September 2012.⁴ Additionally, the Government Accountability Office (GAO) found that as of October 2012, there were 5,699 outstanding ERRP reimbursement requests that accounted for almost \$2.5 billion in unreimbursed claims.

¹ 78 Fed. Reg. 23936 (April 23, 2013).

² HHS News Release dated, June 29, 2010, *Applications for Early Retiree Reinsurance Program Now Being Accepted* (available at <http://www.hhs.gov/news/press/2010pres/06/20100629a.html>).

³ 76 Fed. Reg. 18766 (April 5, 2011).

⁴ GAO-13-391 (April 30, 2013).

The recent GAO report reinforces some of our earlier concerns about ERRP. A 2011 GAO report found that out of the \$2.9 billion paid out before October 2011, nearly 46 percent of the recipients described themselves as “government entities.”⁵ Indeed, the most recent data provided by HHS – released more than a year ago in February 2012 – confirms that many state entities received large payments under ERRP. For example, the Commonwealth of Kentucky received \$95 million and the Georgia Department of Community Health received nearly \$58 million.⁶ A number of unions also received large ERRP payments, such as the UAW Retiree Medical Benefits Trust, which received \$387 million.

These large disbursements, combined with the early termination date of the program, cast doubt on ERRP’s stated goal of serving as a bridge to the health care exchanges. To better understand the operation of ERRP, please explain:

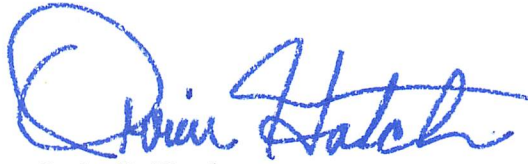
1. Why did CMS choose not to equally disburse ERRP funds from the program’s inception through January 1, 2014, and instead disbursed all available funds in 2011 and 2012?
2. What percent of the \$5 billion provided to the program was not used to pay claims? What activities were funded outside of paying claims?
3. Please provide a detailed breakdown of CMS’s costs to administer the ERRP.
4. What is the total number and total dollar value of claims yet to be paid that were submitted by approved plan sponsors?
 - a. How will CMS prioritize which outstanding claims, if any, should be paid?
 - b. How many of these claims does CMS anticipate will be paid fully, and how many will be paid in part?
5. The October 2012 GAO report noted that CMS had a goal of “conducting audits of 30 ERRP plan sponsors that officials said account for 30 percent of program reimbursements.” To date, how many audits have been initiated by CMS? How many audits are complete? How many are ongoing? How much money has CMS recovered from audits?
6. To date, how much money has CMS recovered from sponsors’ self-reported inaccuracies?
7. The notice published in the Federal Register on April 23, 2013 stated that plan sponsors are not required to submit corrections to data inaccuracies after July 31, 2013. If, sometime after the July 31 deadline, a plan sponsor discovers an error that resulted in overpayment, does CMS expect the sponsor to return the overpayment to CMS?

⁵ GAO-11-875R (September 30, 2011).

⁶ Early Retiree Reinsurance Program: Reimbursement Update, February 17, 2012, available at http://cciio.cms.gov/resources/files/Files2/02172012/errp-posting_feb2012.pdf.

We appreciate your assistance in helping us better understand how HHS and CMS are administering the ERRP. Thank you for your timely attention to this request and we look forward to receiving your response by July 1, 2013.

Sincerely,

A handwritten signature in blue ink, appearing to read "Orrin Hatch". The signature is fluid and cursive, with a large initial "O" and a long horizontal stroke at the end.

Orrin G. Hatch
Ranking Member

cc: Acting Administrator Marilyn Tavenner, Centers for Medicare & Medicaid Services