MEMORANDUM

March 23, 2011

To: Energy and Commerce Committee Members

Fr: Subcommittee on Oversight and Investigations Majority Staff

Re: Impending Exhaustion of Funding for Early Retiree Reinsurance Program

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The Early Retiree Reinsurance Program (ERRP), a $5 billion fund hailed as one of the key early benefits of the Patient Protection and Affordable Care Act (PPACA), will exhaust its resources long before the planned sunset on January 1, 2014, according to information provided by the Center for Consumer Information and Insurance Oversight (CCIIO). Recent figures show that CCIIO has approved over 5,000 entities to participate in the program. In 2010, however, CCIIO doled out $535 million to just 253 of those entities. Based on those spending patterns, the fund will exhaust its resources much sooner than originally estimated, with the majority of that money going to state and local governments. If the fund runs out of money, it is highly unlikely that the remaining beneficiaries, including unions and large corporations, would be able to obtain Congressional approval or public support for assistance on an individual basis.

This memorandum summarizes information the Subcommittee on Oversight and Investigations Majority staff has gathered about the program.[1]

Overview of the Early Retiree Reinsurance Program

The ERRP was established by Section 1102 of the PPACA. The PPACA created two programs to act as a bridge to the new health insurance exchanges that would begin in 2014: the temporary high-risk pools for individuals with pre-existing conditions and the ERRP. The PPACA appropriates $5 billion to each of these programs, for a total of $10 billion. Richard Popper, Director of the Office of Insurance Programs at CCIIO, informed Committee staff that the ERRP was intended to address trends that have led employers to reduce or eliminate health benefits for early retirees.

Employers and unions that provide an employment-based group health plan to early retirees, their spouses or dependents are eligible to participate in the ERRP. To participate in the program, employers and unions must have an approved application, be able to document health

[1] The information contained in this report was obtained at a staff briefing on March 3, 2011, from the report issued by CCIIO on March 2 ("Implementation and Operation of the Early Retiree Reinsurance Program During Calendar Year 2010."), and through additional information gathered from representatives from the Centers for Medicare and Medicaid Services.

claims, implement procedures that have the potential to generate plan savings, and have policies in place to detect and reduce fraud or waste. The ERRP reimburses the employer 80 percent of the actual cost of an early retiree's health expenses between $15,000 and $90,000.[2] These reimbursements may be used to reduce a sponsor's health benefit costs or premiums, plan participants' premiums, co-payments, deductibles, co-insurance, or other out-of-pocket health benefit costs, or a combination thereof. Reimbursements may not be used for general revenue. The ERRP reimburses for qualified claims beginning on or after June 1, 2010.

Majority Committee Staff Findings

- CCIIO estimates ERRP will exhaust its funds in 2012, far sooner than expected.

In 2010 the ERRP paid out $535 million in reimbursements to 253 plan sponsors, while approving a total of 5,452 applications to participate in the program. Richard Popper informed Committee staff that the program will exhaust its resources in 2012, yet Majority Committee staff believes that the program could exhaust its resources even sooner.

In the seven months that the ERRP was reimbursing claims in 2010, 5% of the program's enrollees managed to spend 10% of the available funding. If the remaining 5,199 applicants require a similar level of reimbursement, the program will quickly spend all available funding as early as this year. In order for the program to avoid exhausting resources, the remaining 5,199 sponsors would have to request, on average, no more than 40% of the reimbursement level doled out to the 253 sponsors reimbursed in 2010.

- The ERRP acts as another bailout of state and local governments.

Over one-third of the $535 million spent by the ERRP in 2010 was spent on five government entities. Fifty-six percent of the ERRP funding spent in 2010 ($298 million) went to government organizations. Of that amount well over half was sent to the following five government entities:

  - California Public Employees' Retirement System: $57,834,267
  - State of New Jersey Treasury Department, Pension Accounting Services: $38,622,698
  - Georgia Department of Community Health, State Health Benefit Plan: $34,916,832
  - Commonwealth of Kentucky: $29,666,516
  - Employees Retirement System of Texas: $20,982,299

  - Total: $182, 022,612

The remaining $116 million was spent on additional state governments and a variety of cities, counties and other government entities. According to CCIIO, 47% of the 5,452 approved plan sponsors are government organizations. Because of the rate at which government entities collected reimbursements from the ERRP in 2010, and the fact that CCIIO has stated there are over 2,000 government entities approved to collect reimbursements in 2011, it is likely the

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[2] Medical, surgical, hospital, and prescription drug benefits qualify for reimbursement. According to CCIIO's report reimbursement for services related to routine vision, dental, or custodial care are generally excluded.

majority of ERRP funding will be spent on these groups. Neither the ERRP nor the PPACA was intended as a de facto bailout for state and local governments.

- The ERRP is an inefficient and inappropriate use of funding.

Majority Committee staff has learned that funds the ERRP will not spend on government entities will go to companies that do not appear to need the financial assistance of the federal government. Information obtained by Majority Committee staff indicates that Fortune 500 companies with billions of dollars in revenue and Hollywood unions are among those taking advantage of the taxpayer money being provided by the ERRP. Subsidizing these groups may not be the most efficient or appropriate use of taxpayer money, especially considering that the ERRP was given the same amount of funding as the high-risk pool program for individuals with pre-existing conditions.

We have attached the full list of sponsors that received ERRP funding in 2010.

Conclusion

The ERRP will exhaust its funding long before the intended program end date January 1, 2014. The majority of the funding in 2010 went to state and local governments. Based on enrollment trends this pattern will continue. Finally, among the entities receiving funding are a number of large corporations that do not need the assistance of the federal government, and other entities that would not receive public support for assistance on an individual basis.