



The End of an 'ARRA' — What's Left? HCTC!

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June 29, 2011 — As we head into the summer of 2011, the time is coming for the end of the COBRA premium reduction rules originally enacted as part of the American Recovery and Reinvestment Act of 2009 (ARRA). The last available premium reduction would be for August 2011, assuming an involuntary termination in May 2010. Once that ARRA period is over, then what? Well — that means we go back to a world of COBRA without a premium reduction subsidy but still with a special health coverage tax credit (HCTC) for limited groups of individuals. Because the HCTC benefit will soon be the only means by which qualified beneficiaries may obtain a legally mandated "break" on their COBRA premiums, it is helpful to go back and review the HCTC rules and how they work.

As explained in ¶1284 of the *Guide*, the HCTC program was originally enacted as part of the Trade Act of 2002. As originally enacted, it provided a 65-percent tax credit for COBRA coverage (as well as 10 other specified types of qualifying health coverage) to benefit certain workers. The specific workers who could benefit from the HCTC are:

1. individuals who receive a benefit through one of the trade adjustment assistance (TAA) programs;
2. Pension Benefit Guaranty Corporation (PBGC) payees who are age 55 or older; and
3. qualified family members of TAA recipients and PBGC payees.

Eligible individuals cannot be enrolled in certain other health coverage such as Medicaid or Medicare. The IRS administers the HCTC program. In looking for guidance on HCTC, employers and administrators should bear in mind that, aside from the statutory rules, there are no official "regulations" as such. Instead, information is available and updated regularly on the IRS website for the HCTC program at <http://www.irs.gov/individuals/article/0,,id=187948,00.html>.

According to the guidance, the credit as implemented is either "advanceable" and paid on a monthly basis or "refundable" and provided as a tax credit to the qualified beneficiary. The following chart (modified from the IRS-provided chart) helps explain how the credit can be obtained.

How the HCTC Is Obtained

	How Does it Work?	How Does One Register?
Monthly	<p>The monthly option helps pay for health insurance on an "as you go basis" (it is "advanceable").</p> <p>Qualified beneficiary pays 35% of the premium to the HCTC program each month.</p> <p>The HCTC program adds 65% and sends the full payment to the health plan.</p>	<p>Use the eligibility certificate to confirm eligibility.</p> <p>Complete the HCTC monthly registration form and provide the required supporting documents with the form to the HCTC program.</p> <p>The HCTC program will send a monthly invoice to the qualified beneficiary for 35% of the premium once enrolled.</p>
Yearly	<p>Under the yearly option, the qualified beneficiary pays the health premium in full and then claims a credit on the annual Form 1040 (it is "refundable").</p>	<p>There is no formal registration process for the yearly HCTC.</p> <p>The qualified beneficiary pays 100% of the premiums each month to a qualified health plan.</p>

The qualified beneficiary pays 100% of the premiums throughout the year directly to the health plan.
The qualified beneficiary then claims the 65% HCTC on his or her federal income tax return.

The individual must complete and submit *IRS Form 8885, Health Coverage Tax Credit*, and required documentation with his or her federal income tax return.

Eligibility

Actual eligibility for the tax credit is determined on a monthly basis. As noted earlier, two basic categories of individuals may be eligible for the tax credit — certain TAA recipients and PBGC pension recipients.

TAA Recipients

An eligible TAA recipient is: (1) any individual who is receiving a trade readjustment allowance under the Trade Act of 1974 at any time during a month; or (2) individuals who would be eligible for such an allowance except that they have not exhausted their regular unemployment insurance benefits. These benefits are for certain employees who lose work due to increased imports. In addition, individuals receiving benefits under the alternative TAA program, established under the Trade Act of 1974, are also eligible. These benefits are for employees who are at least age 50 and whose wages for new employment are reduced as compared to the prior employment. All TAA recipients remain eligible for the tax credit for one month after the end of the month in which their eligibility for TAA status ceases.

PBGC Pension Recipients

An eligible PBGC pension recipient is a person who is receiving a pension benefit payment from PBGC (or who received a lump sum payment from the PBGC after Aug. 5, 2003) and who has attained age 55 on the first of the month.

An eligible individual is *not* entitled to the tax credit for any month if, on the first day of the month, the individual is imprisoned or the individual (or the individual's spouse or dependent) is covered by other specified coverage. "Other specified coverage" includes:

- insurance coverage through the spouse's employer, if that employer contributes at least 50 percent of the coverage cost for the spouse, the eligible individual and dependents (or the spouse receives coverage in lieu of an employer's cash or other benefits under a cafeteria plan);
- coverage under Medicare;
- a state's Medicaid program;
- a state's SCHIP program;
- a plan in the Federal Employees Health Benefit Program; or
- a Defense of Department health plan.

Special COBRA Election Period

To help implement the HCTC program and facilitate qualified beneficiaries' ability to participate, there is a special 60-day election period under COBRA for individuals who are determined to be eligible for TAA benefits and the HCTC. The special election period applies to those who had not previously elected COBRA coverage and were determined to be eligible for the HCTC, but only if the determination of eligibility occurs within six months of the loss of group health plan coverage. If COBRA coverage is elected under this special 60-day COBRA election period, COBRA coverage would appear to begin on the first day of that election period — there is no required "reach back" for coverage from the date coverage was lost to the beginning of the new 60-day period.

HIPAA Implications of New COBRA Election Period

In a related provision, the law clarifies that the period between the loss of coverage and the beginning of the special 60-day election period does not count against HIPAA's 63-day break-in-coverage rule. Under HIPAA, if a group health plan imposes pre-existing condition exclusion rules, the period of that limitation cannot exceed one year, less any prior creditable coverage under another plan. That prior creditable coverage can be disregarded, however, if there is a break in coverage of at least 63 days. COBRA coverage can help avoid such a break in coverage. In addition, this special legislative rule helps HCTC-qualifying individuals bridge a period of no coverage with the special TAA-benefit election period.

Administering the HCTC Program

Plan administrators also play an important role in helping the government administer the HCTC program. The IRS refers to plan administrators as "HPAs" — health plan administrators. If an HPA wants to facilitate monthly advanced payments of the HCTC, the HPA must enroll with the government through its basic registration process. Once the plan and HPA are registered, HCTC participants will receive a monthly invoice from the HCTC program for 35 percent of their health insurance premium. That is, the bill for the coverage no longer comes from the plan itself to the qualified beneficiary eligible for HCTC monthly amounts. Instead, the government bills the qualified beneficiary for the 35 percent of the applicable premium. The HCTC program then adds 65 percent and sends the full 100-percent premium to the health plan.

If a plan administrator does register, the HPA then has some ongoing responsibilities to help make the program work, such as refunding amounts that are inappropriate paid, submitting premium changes in a timely manner and maintaining current banking information.

When individuals register for the monthly HCTC, or claim the yearly HCTC on their federal tax return, they must submit supporting documents (such as a health insurance bill, COBRA election letter or substitute letter that has the same information that a health insurance bill contains) to show they have the insurance they are claiming. HPAs typically help these individuals if they request information or documentation concerning their health coverage.

This is just a summary of the HCTC program. The full HCTC program guidelines are available online on the IRS-dedicated website. There really are not specific regulations governing the program's implementation. Therefore, employers and administrators in need of additional information should consult the online resources. Of course, new developments in this area will be reported in future issues of the newsletter.

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