

How the Trade Act Subsidy Affects COBRA

By Constance L. Gilchrest

With the ranks of the unemployed topping the 10 million mark in recent months, more employers may need to familiarize themselves with a 2002 law that affects COBRA administration: the Trade Adjustment Assistance Reform Act (“Trade Act”).

When President Bush signed the Trade Act into law on Aug. 6, 2002, the ripple effect reached the shores of COBRA in three respects for individuals who lost jobs due to foreign competition:

- Payment of 65 percent of COBRA premiums for eligible terminated workers
- Tax credit of 65 percent of COBRA premiums for eligible terminated workers
- Second COBRA enrollment period

The Trade Act applies to companies that are subject to COBRA provisions and have experienced a reduction in work force due to the competition from foreign import trade. These employers may have employees eligible for the COBRA premium subsidy tax credit. The U.S. Department of Labor (DOL) determines eligibility for both the employer and employee. It depends on their job responsibilities whether or not they will become eligible.

Once an individual becomes eligible, 65 percent of their COBRA premiums are paid under the Health Coverage Tax Credit (HCTC).

How and Why Was the HCTC Created?

The Trade Act created the HCTC, which is a federal tax credit that can pay for 65 percent of health insurance premiums for certain individuals. Congress established the HCTC with the goal of making health coverage more affordable for individuals who otherwise would not be able to continue their health coverage.

Which Government Agency Administers the HCTC?

The U.S. Department of Treasury (Internal Revenue Service) administers the HCTC program along with other agencies such as the states and the private health industry.

Who Is Eligible for the HCTC?

Three groups of individuals are eligible:

- Pension Benefit Guaranty Corporation (PBGC) pension recipients who are at least 55 years old;
- individuals receiving a trade readjustment allowance under the trade adjustment assistance (TAA) program and attend TAA-approved training; or
- individuals receiving a wage subsidy under the alternative TAA (ATAA) program for older workers.

Individuals in these three groups must also meet some general requirements and have a qualified health plan to be eligible for the HCTC. If eligible, individuals can receive the tax credit for their family members as well.

How Does Someone Find Out if They Are Eligible for TAA?

Individuals should contact the U.S. Department of Labor Employment and Training Administration (DOLETA) for referral to the appropriate state workforce agency, the state department or the office that handles unemployment benefits. Individuals may also call DOLETA at 1-877-US-2JOBS or visit it online at the DOLETA Web site.

How Does An Eligible Individual Receive the HCTC?

The eligible individual can choose one of the following options:



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- 1) register for the monthly HCTC and receive it on a monthly basis in the form of a payment to the individual's health plan to help pay for insurance premiums as they are due; or
- 2) claim the yearly HCTC on their federal tax return. The individual will receive the credit as part of their tax refund or as a credit against the taxes they owe.

There are two methods for the payment or reimbursement of the COBRA premium: refundable and advanceable credits.

Refundable Credit

The beneficiary claims a tax credit on their federal tax return. The credit is 65 percent of the COBRA premium. For example, if 65 percent of the COBRA premium for a TAA beneficiary equals \$3,000 and the qualified beneficiary's tax return indicated they owe \$2,000 in federal income taxes, the IRS would issue a \$1,000 tax refund.

The "dollar" relationship is "one to one." In other words, \$1 of COBRA premium subsidy either reduces tax liability by \$1 or creates a tax refund of \$1. To receive this credit, individuals must provide proof of payment with their tax returns. Therefore, it is not uncommon for employers to receive requests in March and April for the COBRA payment history for the prior tax year.

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penalties. Therefore, if one were to write the opinion, it would be more appropriate to deny a decision in the administrator's favor due to the lack of evidence in the record on when the actual event occurred as compared to the timing of the COBRA notice.

In any event, the fact that a judge can be so confused on the law is an important reason why plan administrators must be so clear in communicating the rules of how COBRA works. Here, the employer may have provided some misleading communications because it was trying to manage an employment dispute and the COBRA/group health plan administrators were not really aware of what was going on. This led to miscommunications to the qualified beneficiary (through his designated agent) and caused the failure to elect COBRA coverage. The important lesson for employers and administrators is that when there is an employment dispute and an employer is going to provide some type of continued coverage pending its resolution, the employer must consider the interplay between this continued coverage and COBRA coverage and clearly communicate that matter to the qualified beneficiary. 🏠

Advanceable Credit

The eligible individual may register for the monthly HCTC, and simply pay the individual portion of 35 percent to the HCTC program, which would forward the entire premium to the employer to help pay for the insurance premiums.

An advanceable credit would allow dollars to be advanced directly to the employer. The eligible individual could have the credit forwarded to the employer or health plan and then pay the remaining 35 percent of the COBRA premium. Another option would be for the individual to report the amount they paid on their federal tax return.

New COBRA Election Period

As a last minute provision, Congress added a new 60-day COBRA election period to the trade legislation. The special 60-day election period applies to individuals who were determined eligible for continuation coverage benefits and the TAA health tax credit.

Determination of eligibility must occur within six months of the loss of coverage under the group health plan. If COBRA is elected under the TAA election period, coverage would begin on the first day of the special 60-day election period.

The period between the loss of coverage and the beginning of the 60-day election period *does not* count against the 63-day gap in coverage under HIPAA. Therefore, the eligible individual cannot be subjected to a pre-existing condition exclusion.

The United States is experiencing a period of economic challenge. However, there is hope for those who have lost their jobs due to foreign import trade. Eligible TAA individuals who elect COBRA should take advantage of the HCTC provisions making it more affordable to continue their health coverage. 🏠

HCTC Contact Information

- HCTC Web site: <http://www.irs.gov>, IRS keyword "HCTC" or <http://www.irs.gov/individuals/article/0,,id=109960,00.html>
- *Health Plan Administrator Operations Guide* — http://www.irs.gov/pub/irs-utl/2005-09-28_final_hpa_op_guide.pdf
- HCTC Customer Contact Center — 866/628-HCTC
- The HCTC "Program Kit" for potentially eligible individuals — http://www.irs.gov/pub/irs-utl/program_kit_rev_1-2007.pdf 🏠

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