

How ARRA and HCTC Interrelate

By Rich Glass, JD

In the world of telecommunications, the term “2G” refers to technology that is second generation. In other words, the technology is an expansion on and an improvement of the original. Typically, the 1G technology is quickly discarded once 2G technology is introduced.

When the premium subsidy under the American Recovery and Reinvestment Act of 2009 (ARRA) was introduced to the benefits world in February 2009, it constituted a 2G version of the Health Coverage Tax Credit (HCTC). However, unlike cell phones, the HCTC program continues to operate, especially during a time of continued high unemployment. In a way, ARRA even breathed new life into the HCTC subsidy. And in turn, the HCTC returned the favor by adding to the maximum COBRA coverage period in some cases.

Overview of the Two Programs

The HCTC became reality in August 2002 when the Trade Act was passed. The HCTC is a subsidy payable to individuals who are eligible for trade adjustment assistance (TAA), Alternative TAA (ATAA) or for pension benefits from the Pension Benefit Guaranty Corporation (PBGC). PBGC beneficiaries must be at least 55 years old to qualify for the HCTC. TAA/ATAA status occurs when the U.S. Department of Labor certifies that a company’s involuntary terminations were for trade-related reasons like foreign competition.

Various health benefit programs qualify for the HCTC besides COBRA: individual coverage or even a spouse’s health coverage. For COBRA and spousal coverage, the individual must be paying more than half of the premium cost. The HCTC cannot be used to pay for stand-alone dental or vision coverage, or COBRA coverage for a health flexible spending account (FSA) or a health reimbursement arrangement (HRA).

The HCTC is a special kind of tax credit. Like most credits, it can be claimed on a

tax return after an individual pays the full premium. It can also be paid immediately, by registering with the HCTC vendor. Individuals forward their portion of the premium to HCTC, which then sends the full amount to the COBRA administrator by electronic funds transfer.

The ARRA subsidy, on the other hand, allows a 65-percent subsidy over as much as 15 months of COBRA for all involuntary terminations occurring on or after Sept. 1, 2008, and ending on May 31, 2010. For reductions of force occurring on or after March 2, 2010, and on or before May 31, 2010, an involuntary termination occurring in that same time frame will also qualify for the subsidy. It applies to all COBRA and state continuation coverage, except health FSAs.

The Subsidy

Before ARRA, the HCTC was 65 percent of the premium for other coverage. ARRA increased the HCTC to 80 percent for the 18-month period starting May 2009 and extending through December 2010. Individuals may not double dip subsidies by adding the discounts from ARRA and the HCTC to get a super-low rate. However, if the 15-month ARRA subsidy period is still in effect if and when an assistance-eligible individual (AEI) loses the HCTC, the individual can select the ARRA subsidy for the remainder of the period.

This makes for some interesting HCTC-ARRA subsidy scenarios:

- **Scenario 1.** A worker is terminated involuntarily and qualifies for TAA benefits. During employment, the individual had stand-alone medical, dental, vision and prescription drug coverage. He wants it all. He can use the 80-percent HCTC for the medical and prescription drug plans, but the HCTC will not pay for dental and vision. He can still



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use the 65-percent ARRA subsidy for those plans. While he did not double dip the two subsidies, he did get to mix and match them.

- **Scenario 2:** A TAA-eligible beneficiary elects the HCTC for COBRA medical coverage. Months later, she loses eligibility for the TAA program. If she is still within the first 15 months of COBRA coverage, she can opt for the 65-percent ARRA subsidy as long as she did not permanently waive it previously.
- **Scenario 3:** A TAA-eligible worker is laid off in August 2010 and starts COBRA coverage at \$200 per month in September. The first three months are part of a severance period during which the employer continues to pay the employer portion of the premium (for example, 75 percent). During this three-month period, the HCTC is unavailable because of the employer payments, but the ARRA subsidy is available. Thus, this individual will flip, flop and flip again between the two programs:
 - *September-November 2010.* The individual is on the ARRA subsidy program and pays \$17.50 per month (\$200 x 25% x 35%).

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around \$700 for her monthly prescription medication, which would have otherwise been covered by insurance. Therefore, the court held she was entitled to recover \$396, which represented the difference between what she paid for the prescription and what she would have paid for COBRA coverage for that month.

Implications

When COBRA violations occur, plan administrators and sponsors wonder how to fix them. It is important to fix COBRA violations for several reasons. On the tax side, correcting violations can minimize exposure to the COBRA excise tax rules (see ¶1511 for a discussion of the COBRA excise tax). Separately, as the *Gomez* case illustrates, qualified beneficiaries tend to sue over COBRA notice violations. Therefore, when a violation occurs, an administrator should evaluate how best to correct the lack of notice in a way that is reasonable under the circumstances. The court in *Gomez* recognized the administrator's attempt to correct the lack of timely COBRA notification as well as the desire to work out a payment plan for the aggrieved qualified beneficiaries. This helped the administrator's case and minimized the applicable damages. 🏠

- *December 2010.* The individual is on the HCTC program after the severance period ends, paying \$40 per month (\$200 x 20%).
- *January 2011 and beyond.* The HCTC bonus ends. Thus, the individual could take either the ARRA subsidy or the HCTC, paying \$70 per month (\$200 x 35%). The ARRA subsidy would expire after 15 months of COBRA at the end of November 2011; the HCTC might expire before or after then.
- **Scenario 4.** A high-placed executive is laid off from a company and is TAA-eligible. Because her modified adjusted gross income exceeds the ARRA subsidy thresholds (\$145,000 single, \$290,000 married filing jointly), she does not qualify for the 65-percent ARRA subsidy. However, this is not a cause for concern. She qualifies for the 80-percent HCTC.

The Maximum Coverage Period For COBRA (and HCTC)

ARRA put more wrinkles into the otherwise well-ironed pair of HCTC pants.

First, COBRA must be extended up to Dec. 31, 2010, for TAA/ATAA-eligible individuals as long as they continue to receive those benefits. Likewise, PBGC beneficiaries can have their COBRA extended up to the employee's death and for a surviving spouse and dependents for an additional 24 months after death. However, both of the PBGC extensions expire on Dec. 31, 2010.

COBRA administrators should not merely take the word of TAA-eligible qualified beneficiaries that they qualify for this extension. These individuals should be able to produce a letter from the HCTC program, which is overseen by the IRS. A recently updated HCTC letter (L4589) would provide sufficient evidence. It states, in pertinent part:

... this letter serves as proof that you are eligible to have your COBRA benefits extended.

The Trade Adjustment Assistance Health Coverage Improvement Act of 2009 was passed as part of the economic stimulus legislation enacted into law on February 17, 2009. Section 1899F of the Act extended the length of time an employer must offer COBRA benefits as follows:

- *Eligible Trade Adjustment Assistance (TAA), Alternative Trade Adjustment Assistance (ATAA), and Reemployment Trade Adjustment Assistance (RTAA) recipients*

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can now have COBRA benefits for as long as they have TAA eligibility.

- *Eligible Pension Benefit Guaranty Corporation (PBGC) payees can now have COBRA as a lifetime benefit, and in the event of the payee's death, their surviving spouse and dependents can have COBRA for an additional 24 months.*

Note: The legislation that created these extensions expires on December 31, 2010.

At this time, these COBRA benefit extensions are only valid through 2010, unless re-authorized by Congress.

What You Should Do to Extend Your COBRA Benefits

Notify your employer of the new law that extends your COBRA benefits. Some employers may request to see this letter as proof that your COBRA benefits should be

extended. Keep a copy of this letter to prove your eligibility for the COBRA benefits extension.

Second, ARRA also extended the duration of eligibility for the HCTC program in certain situations. Starting in January 2010, if an HCTC-eligible individual enrolls in Medicare, dies or divorces, qualified family members may continue to receive the HCTC for up to 24 months after that event.

A good resource for HCTC information is the IRS. The HCTC FAQ page is at <http://www.irs.gov/individuals/article/0,,id=109956,00.html>. The primary HCTC phone number is 866-628-4282. More information on the HCTC program is also in ¶1284 of the *Guide*.

The post-employment health coverage subsidy has evolved from the HCTC to the ARRA subsidy. With the advent of the state-administered insurance exchanges starting in 2014, we should see the next generation of subsidy. If it follows the ARRA pattern, though, it is more likely to complement and build upon the 1G and 2G programs, instead of replacing them. 🏠

Comparison of ARRA Subsidy and HCTC

	ARRA COBRA Subsidy	HCTC
Originating law	American Recovery and Reinvestment Act of 2010 (ARRA)	Trade Act of 2002
Statutory provision	§3001	<ul style="list-style-type: none"> • §1899A (80-percent subsidy) • §1899E (maximum HCTC period) • §1899F (maximum COBRA period)
Eligibility requirement	Must be assistance-eligible individual	Must be TAA/ATAA-eligible individual or PBGC beneficiary
Qualifying event	<ul style="list-style-type: none"> • <i>Involuntary termination of employment for other than gross misconduct</i> • <i>Reduction of hours on or after March 2, 2010, followed by involuntary termination of employment for other than gross misconduct</i> Involuntary termination must occur on or after Sept. 1, 2008 and on or before May 31, 2010.	<ul style="list-style-type: none"> • <i>Involuntary termination of employment for trade-related reasons, as certified by the U.S. Department of Labor</i> No time limit
Amount of subsidy	65 percent of premium	80 percent of premium through 2010; 65 percent of premium thereafter
Applies to health FSAs	No	No
Applies to HRAs	Yes	No
Applies to stand-alone dental or vision coverage	Yes	No
Can apply to other types of coverage	No	Yes (for example, individual policies, some spousal coverage)
Eligibility for Medicare or other group coverage	Ends subsidy	Does not end subsidy
Enrollment in other group coverage	Ends subsidy	Does not end subsidy, unless employer pays for at least 50 percent of premium
Enrollment in Medicare	Ends subsidy	Ends subsidy

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