

August 6, 2003

# RESEARCH MEMO

## TIC INTERNATIONAL CORPORATION

---

To: MANAGERS, CONSULTANTS, OTHER PROFESSIONALS

FROM: DAVID LIVINGSTON, DIRECTOR OF RESEARCH

RE: **NEW COBRA COVERAGE TAX CREDIT PROGRAM BEGINS AUGUST 1**

*...IRS RELEASES DETAILED INFORMATION ON HOW THIS PROGRAM IS INTENDED TO WORK*

### **BACKGROUND**

On August 6, 2003 President Bush signed into law the *Trade Act of 2002* which contains provisions to assist workers in many industries who have lost their jobs due primarily to foreign competition. The Act also includes special provisions for displaced workers and some retirees to help purchase continuation health care coverage, either COBRA or state-sponsored programs, by providing a federal subsidy toward the premiums paid by individuals for such coverage.

Although the federal subsidy was supposed to be in effect on December 2, 2002, it has taken the DOL and the IRS almost a year to work out the details on how the subsidy will be implemented. **On July 31, 2003 the IRS dropped a bombshell by opening a number of websites devoted exclusively to this issue with an effective date of August 1, 2003.**

**The primary purpose of this Memo** is to lead administrative managers, group insurance representatives, third party administrative firms, fund consultants, claims supervisors and others involved in the administration of COBRA requirements directly to the websites related to the Health Coverage Tax Credit (HCTC) provided for in the *Trade Act of 2002* which include:

[http://www.irs.gov/pub/irs-utl/hctc\\_health\\_plan\\_administrator\\_guide.pdf](http://www.irs.gov/pub/irs-utl/hctc_health_plan_administrator_guide.pdf) 32 pages

[http://www.irs.gov/pub/irs-utl/hctc\\_cobra\\_early\\_payment\\_procedural\\_guide.pdf](http://www.irs.gov/pub/irs-utl/hctc_cobra_early_payment_procedural_guide.pdf) - a 5-page guide to facilitate payment of the COBRA subsidy for August & September, 2003

<http://www.irs.gov/individuals/article/0,,id=109960.00.html> provides detailed information about the HCTC Program

[www.ccr.gov](http://www.ccr.gov) provides a registration form for group health plans that want to participate in HCTC Program.

**This material should be downloaded as soon as possible and reviewed carefully by every administrative manager of a group health care plan, claims supervisor, fund consultant, and anyone else involved in COBRA administration and should be used as a basis for deciding whether a particular group health plan should participate in the HCTC Program.**

Participation by group health plans in the HCTC Program is voluntary for now. This conclusion is based on a careful reading of the materials on the HCTC websites as well as by the fact that the *Trade Act of 2002* includes no civil penalties against group health plans (GHPs) that elect **not** to participate.

Administration of the subsidy program by a GHP promises to be extremely complex and time-consuming, especially when it comes to “set-up” time, as evidenced by the fact that one of the websites includes a 32-page document addressed specifically to the “Plan Administrator Community” explaining what a plan administrator (or plan sponsor or administrative manager of a group health care plan) will need to do to participate in the COBRA subsidy program. The *Table of Contents* for this guide is attached. **Pages 17-28 of the guide** contain answers to some of the most frequently asked questions about the subsidy program and what plans will need to do in order to implement the program.

Also attached is the IRS *Press Release* and the IRS *Fact Sheet* which provide a quick overview of the HCTC Program along with a state-by-state map showing the number of displaced workers and retirees who are likely to be eligible for the COBRA subsidy based on a July 2003 estimate by the Department of Labor.

**The remainder of this Memo is devoted to answering a few basic questions about the program including:**

1. Who Is Eligible For A COBRA Subsidy?
2. How Is The Subsidy Determined?
3. How And When Is The Subsidy Paid?
4. Are Group Health Plans (GHPs) Required To Participate In The HCTC Program?
5. What Steps Should Be Taken Now By Multiemployer Health Plan Representatives To Evaluate The HCTC Program?

Throughout this report certain abbreviations are used: GHPs (Group Health Plans), HCTC (Health Care Tax Credit Program), and CCR (Central Contractor Registration).

## **1. WHO IS ELIGIBLE FOR A COBRA TAX SUBSIDY?**

There are two groups who may be eligible: (1) **workers displaced by foreign competition** who may become eligible for various types of allowances under the *Trade Act of 2002*, including a federal subsidy for health care continuation coverage (either COBRA or a state-qualified

program), and (2) retirees, ages 55-64 (and therefore, not yet eligible for Medicare) **who are receiving PBGC benefits.**

The determination of eligibility for trade-related allowances and COBRA subsidies is made by various state agencies designated by the Department of Labor. A group health plan plays no role in making this initial selection.

The HCTC Program Administrator at the IRS in Washington, D.C. mails an application form to potentially eligible persons explaining what federal assistance they are entitled to receive, including the possibility of a tax subsidized COBRA premium. The first batch was mailed to 180,100 persons in mid-July of 2003.

The application form requests employment information from a potential eligible and asks whether he or she is currently covered by a group health care plan. If the answer is “yes,” the HCTC program verifies that a particular individual is a member of a qualified health plan. The individual can register in advance on the application form for continuation coverage and indicate whether he would like to receive a federal subsidy on the monthly COBRA premium paid. However, if the plan has not registered on the CCR website to participate in the HCTC Program, the HCTC will notify him that the advance tax credit option is NOT available.

**The DOL estimates that about 182,100 persons are currently eligible (see attached map). About half of this total are eligible workers displaced by foreign competition. This number is expected to grow.**

## **2. WHAT SUBSIDY IS PROVIDED?**

The COBRA subsidy comes in one of two forms: (1) **a monthly payment** equal to 65% of the applicable COBRA premium for a particular plan paid directly to the plan, OR (2) **an annual tax refund** to the qualified beneficiary equal to 100% of the COBRA premiums paid by the worker during a particular tax year as itemized on his or her income tax return.

In order to receive the 65% federal subsidy every month, a plan must register with a U.S. Treasury agency called Central Contractor Registration (CCR). This can be done electronically by going to [www.ccr.gov](http://www.ccr.gov) which has a registration form (see **section 5, p. 12** of the plan administrators guide). There is also a worksheet available at this website to assist with completion of the registration form. Once all of the required information is gathered, the actual online registration takes about 30 minutes to complete depending on the size and complexity of the group health care plan.

The group health plan must register annually to maintain active status. CCR will then make the necessary arrangements with the IRS for the electronic transfer of the appropriate COBRA subsidies each month to particular GHPs.

**If the CCR registration form is not completed, then a GHP's ability to receive the monthly subsidy never occurs making the end-of-the-year tax refund to an individual COBRA beneficiary the only option available to an eligible individual.**

### **3. HOW IS THE SUBSIDY PROVIDED TO A GHP?**

If a plan registers with CCR and as a result, the monthly federal subsidy is available, then the individual will be required to send HCTC his COBRA election form showing the COBRA coverage elected and the related premium. The federal subsidy applies only to COBRA coverage for medical expenses.

Next HCTC will send a monthly invoice to the COBRA qualified beneficiary equal to 35% of the total COBRA premium (for time frames involved, see section 8 of the implementation guide at the first website on page 1, pages 14-15). The qualified beneficiary is applicable to pay the 35% premium on time to HCTC.

It is important to note here that the federal subsidy applies only to the **COBRA premium for medical expenses** and does not apply to any other health care services such as dental or vision care. Thus, if a plan has a separate premium for dental and/or vision care, such premiums are **not** eligible for COBRA subsidy purposes.

If a worker fails to submit his 35% payment on time to the IRS, his participation in the monthly subsidy program will be discontinued and he will then be obligated to pay 100% of the COBRA premium for the rest of the calendar year (in which case, if timely payments are made, he can gain a 100% federal subsidy after the close of the tax year by reporting the total COBRA premiums paid during the calendar year on his individual tax return).

### **4. DOES A GROUP HEALTH PLAN (GHP) HAVE TO PARTICIPATE IN THE HCTC PROGRAM?**

The answer to this question appears to be "NO" (even if one of their COBRA qualified beneficiaries attempts to register for the HCTC program after receiving the Program Kit). The 32-page implementation document says that health plans must register at [www.ccr.gov](http://www.ccr.gov) in order to receive HCTC payments. However, there is no mention of any penalty or loss of tax exempt status if a GHP does NOT register.

If the plan elects not to register, a worker receiving a trade assistance allowance can still obtain a 65% federal COBRA subsidy by certifying the amount that he or she spent for COBRA premiums during the calendar year and reporting that amount on his individual tax return along with a request for a refund.

**Either way an eligible worker can get his COBRA subsidy. It is a question of whether the subsidy is received every month or only after the close of the calendar year. Pay me now (monthly) or pay me later (annually)!**

Of course, a displaced worker would probably rather have the plan receive the subsidy on a monthly basis because it reduces his COBRA premium each month from 100% to 35%. If the plan registers to receive a monthly subsidy, it seems likely that more workers may be able to afford COBRA than would otherwise be the case **which is likely to increase a plan's health care costs due to adverse selection among qualified beneficiaries.**

## 5. **WHAT SHOULD BE DONE NOW?**

Because all of the HCTC material was released *in toto* on July 31<sup>st</sup> as a “done deal” with the IRS providing no opportunity for public comment before it was released, it would not be surprising to hear some negative reactions from the benefits community and group health care plan sponsors concerning the administrative intricacies and administrative costs of the HCTC program. The TIC Research Department will keep you informed about such developments and the IRS response.

**The first step right now** should be for administrative managers, fund consultants, and others involved with COBRA administration to carefully review all of the HCTC materials available on the internet (as cited on page 1 of this Memo) **and begin to consider the pros and cons of participating in the HCTC program for particular multiemployer client health plans.**

Chances are that there will be very few plan participants or beneficiaries who will be eligible for the federal subsidy among multiemployer plans. As noted earlier, it is estimated that about half of the 182,100 eligibles will be retirees age 55-64 who are receiving PBGC benefits. Since multiemployer plans rarely terminate, the number receiving PBGC benefits will be minimal.

Also, it is doubtful that many employees in the construction trades, which represent about 2/3's of all those covered by multiemployer health care plans, have been displaced by foreign competition and therefore, the number qualifying for a COBRA subsidy in the construction trades is likely to be small. As a result, there probably will be no immediate press from participants covered under a multiemployer plan for information about the new federal subsidy program. For this reason it probably makes sense for most multiemployer plans **to just wait-and-see how many qualified beneficiaries for COBRA receive a HCTC Program kit regarding their potential eligibility for HCTC assistance.** It is reasonable to expect that those who do receive the kit will probably call the fund office for more information about the federal subsidy program.

If there are only a few or no inquiries, there would appear to be no reason to go through the administrative hassles and administrative costs of arranging for monthly subsidies. Under these circumstances it may be more appropriate to simply explain to the few eligibles for a COBRA subsidy that they can still receive the subsidy when they file their annual tax return and **to urge them to make sure that they retain evidence (e.g., check stubs) to verify the amount of COBRA premiums paid during the calendar year.**

As noted earlier, there is no penalty against a plan which decides not to participate in the HCTC Program so for that reason alone, there is no compelling reason to “gear up” quickly for receipt of monthly COBRA subsidies. However, a time may come when the trustees will want to give participation more serious consideration in which case prudence will dictate that the administrative costs to the plan and benefits to participants will need to be carefully analyzed before proceeding with such a program.

# # #