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The Health Coverage Tax Credit and
The Trade and Globalization Adjustment Assistance Act of 2009[1]

What is the Health Coverage Tax Credit?
The Health Coverage Tax Credit ("HCTC") is a refundable tax credit of up to 80% of the cost of premiums for eligible individuals.[2]

Who is eligible for the HCTC?
- Eligible TAA recipient;
- Eligible ATAA recipient; or
- Eligible PBGC pension recipient; and
- The qualifying family members of any of the above.

Who is an eligible TAA recipient?
Effective February 17, 2009 through December 31, 2010,[3] an eligible TAA recipient will be any individual who (1) is receiving a trade readjustment allowance[4] under the Trade Act; (2) would be eligible to receive a trade readjustment allowance but for being in a break for training (under an approved training program) that exceeds the period specified in Trade Act § 233(e), but is within the period for receiving the allowance under Trade Act § 233(a).[5] An individual is treated as an eligible TAA recipient until the end of the month after he or she stops receiving TAA benefits.

Who is an eligible ATAA recipient?
An eligible ATAA Recipient is any individual receiving an alternative trade adjustment assistance benefit under a demonstration program for older workers. An individual is treated as an eligible ATAA recipient until the end of the month after he or she stops receiving TAA benefits.

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[1] The Trade and Globalization Adjustment Assistance Act of 2009 ("TGAAA") is part of the American Recovery and Reinvestment Act of 2009 ("ARRA"). See ARRA § 1800 et seq.

[2] Effective May 1, 2009, pursuant to Section 1899A of ARRA, the maximum credit amount increased from 65% to 80% of the cost of the premiums.

[3] Before February 17, 2009, an eligible TAA recipient was any individual who is receiving a trade readjustment allowance under the Trade Act or would be receiving such readjustment but for the requirement that the individual must first exhaust unemployment benefits. This criteria has not been removed, but appears verbatim in the "special rule" that is part of the eligibility requirement now in effect. Presumably, these prior criteria will go back into effect on January 1, 2011.

[4] ARRA expanded the definition of who is eligible for trade assistance. Employees are eligible for trade assistance if they worked in the service industry or for federal, state, or local public entities. Job loss due to competition with any foreign country may now qualify for trade assistance. Relief is extended to all employees of a firm if a significant number of the firm's jobs are threatened by foreign imports. The definition of foreign imports has been expanded to include services performed in foreign countries and imports of component parts of manufactured items, regardless of whether the items are threatened by foreign competition. The criteria for determining whether a firm or its employees qualify for assistance has also changed.

[5] Section 1899C of ARRA amended the eligibility requirements for TAA recipients.

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Who is an eligible PBGC recipient?

An eligible PBGC recipient is any individual who is at least 55 years old and receiving pension benefits paid by the PBGC. Receipt of a lump sum (after August 5, 2002) from the PBGC for his or her PBGC benefit is considered to be receiving PBGC pension benefits for as long as he or she would have received such benefits if he or she had not accepted the lump sum payment.

Who is a qualifying family member?

A qualifying family member is any individual who is either the eligible individual's spouse or dependent, and who does not have other specified coverage (Code § 152).

What are the conditions for HCTC availability?

The HCTC is available each month to eligible individuals who:

- Pay premiums for and are covered by qualified health insurance;
- Are not in prison;
- Cannot be claimed as dependent on someone else's tax return; and
- Do not have other specified coverage, including Medicare.

What is qualified health insurance ("QHI")?

- Code § 35(e) lists what constitutes QHI.
- QHI includes COBRA coverage, but not all COBRA coverage. For example, FSAs are not QHI. Premiums paid with HSAs or Archer MSAs are also not eligible for HCTC. Alternative COBRA coverage, however, may constitute QHI.
- Effective February 17, 2009 through December 31, 2010, QHI includes coverage under any employee benefit plan funded by a VEBA that is established pursuant to a bankruptcy order or by agreement with a Title 11 (bankruptcy) authorized representative.[6]

What is other specified coverage?

Other specified coverage includes health coverage for which 50% or more of the cost is paid or incurred by the current or former employer of the eligible individual or the eligible individual's spouse. (For ATAA recipients, other specified coverage includes health coverage if an employer pays or incurs any portion of the cost of such coverage.)

Other specified health coverage also includes health coverage under any of the following programs:

- Medicare Part A or Part B
- Medicaid
- State Children's Health Insurance Program ("CHIP")[7]
- Federal Employees Health Benefits Program ("FEHBP")
- TRICARE

[6] Section 1899G of ARRA added paragraph (K) to Code § 35(e), which provides for this special coverage to constitute QHI.

[7] The Children's Health Insurance Reauthorization Act of 2009 instituted the use of "CHIP" rather than the previously used "SCHIP" to refer to the State Children's Health Insurance Program established under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.).

Are there any special rules concerning group health plans?
Group health plans are not required to participate in the HCTC program. If they are going to participate in the HCTC program, group health plans must enroll in the program. If a plan is enrolled in the HCTC program, the plan must accept full and timely COBRA payments. If a group health plan is not enrolled in the HCTC program, eligible individuals will still be able to claim the HCTC on their tax returns.

Are there any special rules for maximum COBRA coverage periods?[8]
Effective February 17, 2009, the maximum COBRA continuation coverage periods for certain types of individuals (listed below) will be modified if those periods would otherwise have terminated after the effective date. The modified COBRA continuation coverage will not extend coverage that would otherwise terminate on or before December 31, 2010, beyond that date.

> **TAA-Eligible Recipients:** For a covered employee who is a TAA-eligible individual on the date that the maximum coverage period would otherwise terminate, the maximum coverage period must extend until the individual ceases to be a TAA-eligible individual.
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> **PBGC Recipients:** For a covered employee who has a nonforfeitable right to a benefit, of which any portion is paid by the PBGC, the maximum coverage period shall not end before the earlier of the covered employee's death, or, in the case of a surviving spouse or dependents, 24 months after the covered employee's death.

Are there any special rules concerning Medicare, Divorce, or Death?[9]
For eligible coverage months that start after December 31, 2009 and start before January 1, 2011:

> **Medicare:** If an eligible individual becomes entitled to benefits under Medicare Part A or enrolled in Medicare Part B, any month that would have otherwise been considered an eligible month will be treated as such a month with respect to the individual for the sole purpose of determining the amount of the HCTC with respect to any qualifying family members of such individual.
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> **Divorce:** If an eligible individual and his or her spouse divorce, such spouse shall be treated as an eligible individual for the purpose of receiving the HCTC for 24 months starting on the date the divorce is final. In calculating the HCTC, only qualifying family members who were qualifying family members immediately before the divorce was final may be taken into account.
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> **Death:** If an eligible individual dies, the eligible individual's spouse shall be treated as an eligible individual for the purpose of receiving the HCTC for 24 months starting on the date of the death. In calculating the HCTC, only qualifying family members who were qualifying family members immediately before the death may be taken into account. Any individual who was a qualifying family member of the eligible individual immediately before the death shall be treated as an eligible individual for the purpose of

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[8] Section 1899F of ARRA made the changes to the maximum COBRA coverage periods.

[9] Section 1899E of ARRA created the special rules concerning Medicare, divorce, and death.

receiving the HCTC for 24 months starting on the date of the death. In calculating the HCTC, only such qualifying family member may be taken into account.

Are there any special rules concerning creditable coverage?[10]
For plan years that start after February 17, 2009 but before January 1, 2011, for a TAA-eligible individual, the period starting on the date the TAA-eligible individual lost coverage and ending on the date that is 7 days after the date the Secretary of the Treasury (or any person/entity the Secretary designates) issues a qualified health insurance costs credit eligibility certificate to the TAA-eligible individual is not taken into account when determining the 63-day continuous period of non-coverage.

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[10] Section 1899D of ARRA created the special rules concerning creditable coverage.