

DESCRIPTION OF PROPOSAL TO EXTEND TRADE ADJUSTMENT ASSISTANCE
PROGRAM AND THE HEALTH COVERAGE TAX CREDIT

Scheduled for Markup
by the
Senate Committee on Finance
on April 22, 2015

I. Introduction

The Senate Committee on Finance has scheduled a markup of a proposal to amend the Trade Act of 1974 to extend the Trade Adjustment Assistance (TAA) program through December 31, 2021 and the Health Care Tax Credit through 2019. This document provides a description of the proposal.

II. Proposal

A. Extension of the Trade Adjustment Assistance Program

Present Law

Trade Adjustment Assistance (TAA) is a group of programs that provide federal job-training and other assistance to workers, firms, farmers, and communities that have been adversely affected by foreign trade. TAA was created by the Trade Expansion Act of 1962 (P.L. 87-794) and has been reauthorized and expanded several times in subsequent years, including in the Trade Act of 1974 (P.L. 93-618), the Trade Act of 2002 (P.L. 107-210), and the Trade and Globalization Adjustment Assistance Act of 2009.

It was most recently authorized by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA; Title II of P.L. 112-40). Under TAAEA, the program operated under one set of eligibility and benefit provisions through December 31, 2013, and then reverted to a more restrictive set of provisions on January 1, 2014. The TAA program was scheduled to be phased out beginning January 1, 2015, but the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235) provided funding for the program and allowed it to continue full operation through FY2015.

The largest TAA program, TAA for Workers (TAAW) provides federal assistance to workers who have been separated from their jobs due to increased imports or because their jobs moved to a foreign country. The largest components of the TAAW program are (1) job training funds and (2) income support for workers who are enrolled in an eligible training program and have exhausted their unemployment compensation. The TAAW program is administered by the Department of Labor (DOL).

TAA programs are also available to firms and farmers that have been adversely affected by international competition. TAA for Firms, administered by the Department of Commerce, supports trade-impacted businesses by providing technical assistance in developing business

recovery plans and by providing matching funds to implement those plans. TAA for Farmers, administered by the Department of Agriculture, provides technical support and cash benefits to producers of agricultural commodities and fisherman who are adversely affected by increased imports.

Description of Proposal

Applicability of Provisions Relating to Trade Adjustment Assistance

The proposal repeals the Trade Adjustment Assistance Extension Act of 2011 (Public Law 112-40; 125 Stat.416) and puts in place TAA provisions for workers, firms, and farmers as of December 31, 2013. The bill provides that both workers and firms in either service or manufacturing sectors are eligible for TAA. It also offers the same coverage to secondary workers (for example, manufacturers of component parts) in those sectors. Workers are eligible for TAA if the petitioning workers' firm has shifted the production of articles or services to any foreign country. The number of weeks a worker may qualify for Trade Readjustment Allowances are unchanged, and a worker may enroll in training within 26 weeks of either certification or layoff.

Extension of Trade Adjustment Assistance Program

The proposal extends the TAA program through June 30, 2021 and authorizes \$450 million for training funds annually for fiscal years 2015-2021. The proposal includes continuation of the Reemployment Trade Adjustments Assistance, a program that provides a wage supplement for workers age 50 and over who are certified for TAA benefits who gain employment at a lower wage than before their TAA qualifying event.

Performance Measurement and Reporting

The proposal aligns portions of the indicators of performance with the Workforce Innovation and Opportunity Act (WIOA) of 2014 (P.L. 113-128) by amending the data reporting requirement to reflect performance measures that are entered into by cooperating State or cooperating State agency to report on an annual basis a comprehensive performance accountability measure with specific indicators of performance. The proposal adds a transparency section that requires accessibility of the state performance report on an annual basis.

The proposal also amends the collection and publication of data requirement by adding a new provision to review the average cost per worker receiving training under TAA, and examining the median earnings of workers instead of the average earnings.

Applicability of Trade Adjustment Assistance Provisions

The proposal establishes applicable provisions for petitions filed on or after January 1, 2014, and on or before the date the implementing bill is enacted. In general, if a worker or firm

was determined ineligible for TAA after January 1, 2014, but may have been eligible under criteria reestablished under this Act, the Secretary shall reconsider that determination.

The proposal provides that worker certified as eligible to apply for TAA shall be eligible on and after 90 days after the date of the enactment of this Act.

The proposal provides that benefits received by a worker before the date of the enactment of this Act includes any determination of the maximum benefits for which the worker is eligible on the date of the enactment of this Act.

The proposal provides that certification for firms and reconsideration of denials of certifications be based on the requirements in effect on December 31, 2013 for petitions filed on or after January 1, 2014 for workers not certified or reconsidered for denial of certification before the bill's enactment. If a firm or its representative files a petition for a certification of eligibility not later than 90 days after such date of enactment, a firm that meets the eligibility requirement will be in effect on the date of the enactment of the Act.

Sunset Provisions

The proposal provides for a reversion to prior law (Chapters 2, 3, 5, and 6 of Title II of the Trade Act of 1974 as in effect on January 1, 2014) beginning July 1, 2021. In general, the proposal authorizes expanded provisions through June 30, 2021. On July 1, 2021 it reverts to a more restrictive set of provisions, which are scheduled to be in effect for one year.

Effective Date

The proposal is generally effective 90 days after the date of enactment.

B. Extension and Modification of Health Coverage Tax Credit

Present Law

Health Coverage Tax Credit

Eligible coverage months

In the case of an eligible individual, a refundable tax credit is provided for 72.5 percent of the individual's premiums for qualified health insurance of the individual and qualifying family members for each eligible coverage month beginning in the taxable year.¹ The credit is commonly referred to as the health coverage tax credit ("HCTC"). The credit is available only with respect to amounts paid by the individual for qualified health insurance.

¹ Qualifying family members are the individual's spouse and any dependent for whom the individual is entitled to claim a dependency exemption. Any individual who has certain specified coverage is not a qualifying family member.

Eligibility for the credit is determined on a monthly basis. In general, an eligible coverage month is any month if (1) the month begins before January 1, 2014, and (2) as of the first day of the month, the individual is an eligible individual, is covered by qualified health insurance, the premium for which is paid by the individual, does not have other specified coverage, and is not imprisoned under Federal, State, or local authority. In the case of a joint return, the eligibility requirements are met if at least one spouse satisfies the requirements.

Eligible individuals

An eligible individual is an individual who is (1) an eligible Trade Adjustment Assistance (“TAA”) recipient, (2) an eligible alternative TAA recipient, or (3) an eligible Pension Benefit Guaranty Corporation (“PBGC”) pension recipient. In general, an individual is an eligible TAA recipient for a month if the individual (1) receives for any day of the month a trade readjustment allowance under the Trade Act of 1974 or would be eligible to receive such an allowance but for the requirement that the individual exhaust unemployment benefits before being eligible to receive an allowance and (2) with respect to such allowance, is covered under a required certification. An individual is an eligible alternative TAA recipient for a month if the individual participates in a certain program under the Trade Act of 1974 and receives a related benefit for the month. Generally, an individual is an eligible PBGC pension recipient for any month if the individual (1) is age 55 or over as of the first day of the month and (2) receives a benefit for the month, any portion of which is paid by the PBGC. A person who may be claimed as a dependent on another person’s tax return is not an eligible individual. In addition, an otherwise eligible individual is not eligible for the credit for a month if, as of the first day of the month, the individual has certain specified coverage, such as certain employer-provided coverage or coverage under certain governmental health programs.

Advance payment of HCTC

The credit is available on an advance payment basis by means of payments by the Department of the Treasury (“Treasury”) once a qualified health insurance costs eligibility certificate is in effect.² In some cases, Treasury may also make retroactive payments on behalf of a certified individual for qualified health insurance coverage for eligible coverage months occurring before the first month for which an advance payment is otherwise made on behalf of the individual. With respect to any taxable year, the amount which is allowed as HCTC for an eligible individual for a taxable year is reduced (but not below zero) by the aggregate of amount paid as an advance HCTC on behalf of the eligible individual for months beginning in the taxable year.

Qualified health insurance

Qualified health insurance eligible for the credit is: (1) COBRA continuation³ coverage; (2) State-based continuation coverage provided by the State under a State law that requires such

² Sec. 7527.

³ COBRA continuation is defined by section 9832(d)(1).

coverage; (3) coverage offered through a qualified State high risk pool; (4) coverage under a health insurance program offered to State employees or a comparable program; (5) coverage through an arrangement entered into by a State and a group health plan, an issuer of health insurance coverage, an administrator, or an employer; (6) coverage offered through a State arrangement with a private sector health care coverage purchasing pool; (7) coverage under a State-operated health plan that does not receive any Federal financial participation; (8) coverage under a group health plan that is available through the employment of the eligible individual's spouse; (9) coverage under individual health insurance⁴ if the eligible individual was covered under individual health insurance during the entire 30-day period that ends on the date the individual became separated from the employment which qualified the individual for the TAA allowance, the benefit for an eligible alternative TAA recipient, or a pension benefit from the PBGC, whichever applies ("30-day requirement"); and (10) coverage under an employee benefit plan funded by a voluntary employee beneficiary association ("VEBA")⁵ established pursuant to an order of a bankruptcy court (or by agreement with an authorized representative).⁶

Qualified health insurance does not include any State-based coverage (i.e., coverage described in (2)-(7) in the preceding paragraph), unless the State has elected to have such coverage treated as qualified health insurance and such coverage meets certain consumer-protection requirements.⁷ Such State coverage must provide that each qualifying individual is guaranteed enrollment if the individual pays the premium for enrollment or provides a qualified health insurance costs eligibility certificate and pays the remainder of the premium. In addition, the State-based coverage cannot impose any pre-existing condition limitation with respect to qualifying individuals. State-based coverage cannot require a qualifying individual to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual who is not a qualified individual. Finally, benefits under the State-based coverage must be the same as (or substantially similar to) benefits provided to similarly situated individuals who are not qualifying individuals.

A qualifying individual is an eligible individual who seeks to enroll in the State-based coverage and who has aggregate periods of creditable coverage⁸ of three months or longer, does not have other specified coverage, and who is not imprisoned. However, State-based coverage that satisfies any or all of the consumer-protection requirements for State-based coverage with respect to all eligible individuals plan is also qualified health insurance for purposes of HCTC.⁹

⁴ For this purpose, "individual health insurance" means any insurance which constitutes medical care offered to individuals other than in connection with a group health plan. Such term does not include Federal- or State-based health insurance coverage.

⁵ See section 501(c)(9) for the definition of a VEBA.

⁶ See 11 U.S.C. sec.114.

⁷ For guidance on how a State elects a health program to be qualified health insurance for purposes of the credit, see Rev. Proc. 2004-12, 2004-1 C.B. 528.

⁸ Creditable coverage is determined under section 9801(c) of the Health Insurance Portability and Accountability Act, Pub. L. No. 104-191.

⁹ See Q&A-10 of Notice 2005-50, 2005-27 I.R.B

Qualified health insurance does not include coverage under a flexible spending or similar arrangement or any insurance if substantially all of the coverage is for excepted benefits.

Premium assistance credit

For taxable years ending after December 31, 2013, a refundable tax credit (the “premium assistance credit”) is provided for eligible individuals and families who purchase health insurance through an American Health Benefit Exchange.¹⁰ The premium assistance credit, which is refundable and payable in advance directly to the insurer, subsidizes the purchase of certain health insurance plans through an American Health Benefit Exchange.

The premium assistance credit is available for individuals (single or joint filers) with household incomes between 100 and 400 percent of the Federal poverty level (“FPL”) for the family size involved who are not eligible for certain other health insurance. The premium assistance credit amount is generally the lower of (1) the premium for the qualified health plan in which the individual or family enrolls, and (2) the premium for the second lowest cost silver plan¹¹ in the rating area where the individual resides, reduced by the individual’s or family’s share of premiums.

If the premium assistance credit received through advance payment exceeds the amount of premium assistance credit to which the taxpayer is entitled for the taxable year, the liability for the overpayment must be reflected on the taxpayer’s income tax return for the taxable year subject to a limitation on the amount of such liability. For persons with household income below 400 percent of FPL, the liability for the overpayment for a taxable year is limited to a specific dollar amount which ranges from \$600 to \$2,500, depending of the household income as a percentage of FPL.

Description of Proposal

Extension of HCTC

The proposal amends the definition of eligible coverage month for HCTC purposes to include months beginning before January 1, 2020, if the requirements for an eligible coverage month are otherwise met.¹²

¹⁰ Section 36B added by the Patient Protection and Affordable Care Act (“PPACA”) Pub. L. No 111-148, and the Health Care and Education Reconciliation Act of 2010 (“HCERA”),¹⁰ Pub. L. No. 111-152, enacted in March, 2010, are collectively referred to as the Affordable Care Act (“ACA”). The ACA made various changes to the law including , for example, the establishment of American Health Benefit Exchanges.

¹¹ Under section 1302(d) of PPACA, a qualified health plan is categorized by level (bronze, silver, gold or platinum), depending on its actuarial value, that is the percentage of the plan’s share of the total costs of benefits under the plan. A silver level plan must have an actuarial value of 70 percent.

¹² The proposal generally also provides for extension through 2020 of the expired provision of the Trade Act of 1974, including changes to the Act made by the American Recovery and Reinvestment Act of 2009 (“ARRA”), Pub. L. No. 111–5.

Election of HCTC

In order to coordinate eligibility for the premium assistance credit with eligibility for HCTC, the proposal provides that, in order to be eligible for HCTC for any eligible coverage month during a taxable year, the eligible individual must elect allowance of HCTC. Further, except as the Secretary of Treasury may provide, the election must apply for that coverage month and all subsequent eligible coverage months during the taxable year, be made no later than the due date, with any extension, for filing his or her income tax return for the year, and be irrevocable. Further, the period for assessing any deficiency attributable to the election (or revocation of the election) does not expire before one year after the date on which the Secretary of Treasury is notified of the election (or revocation). The taxpayer is not entitled to the premium assistance credit for any coverage month that the individual elects the HCTC.

The proposal eliminates the 30-day requirement as a requirement for an individual insurance policy to be qualified health insurance for purposes of the HCTC, but the proposal limits the expansion to off exchange plans. The proposal otherwise extends the pre-2014 law for qualified coverage, including the rules for Stated-based coverage,¹³ and the treatment of COBRA continuation coverage and coverage under certain VEBA as qualified health insurance.

Advance payment

In the case of an eligible individual on whose behalf advance payment of HCTC, or premium assistance credit, is made for months occurring during a taxable year who subsequently elects HCTC for any eligible months, the individual's income tax liability is increased by the amount of the advance payment, but then offset by the amount of the HCTC. If the individual on whose behalf the advance HCTC is made does not elect HCTC but instead claims the premium assistance credit for any coverage months, the increase in tax liability equal to the advance payment is offset by the amount of the allowable premium assistance credit but any remaining tax liability attributable to the advance payment (and advance payment of premium assistance credit, if any) is limited in the same way as if the advance payment of HCTC had instead been advance payment of premium assistance credit.

Under the proposal, the Secretary of Treasury is directed to establish no later than one year after date of enactment of the proposal a new program for making advance HCTC payments to providers of insurance on behalf of enrolled eligible individuals. Further, the program shall only provide for retroactive payments for coverage months occurring after the end of such one year period after the date of enactment.

¹³ The ACA made various changes to the law with respect to health insurance coverage in the individual and group markets and the law with respect to group health plans. In addition to the establishment of American Health Benefit Exchanges, the changes to the individual and group health insurance markets include, for example, the mandatory community rating in health insurance premiums for the individual and small group market; guaranteed issue, availability, and renewability for purchasers of individual health insurance plans and insured group health plans; and a prohibition against preexisting condition limitations in health insurance plans, including group health plans. These changes are all effective by 2014. Thus, for coverage provided for months during 2014 and later, coverage cannot limit the consumer-protection requirements to qualified individuals.

Agency outreach

The Secretaries of the Departments of Treasury, Health and Human Services, and Labor, and the Director of Pension Benefit Guaranty Corporation are directed to carry out programs of public outreach, including on the Internet, to inform potential HCTC eligible individuals of the extension of HCTC availability and the availability of the election to claim such credit retroactively for coverage months beginning after December 31, 2013.

Effective Date

The proposal is effective for coverage months beginning after December 31, 2013. For any taxable year beginning after December 31, 2103 but before the date of enactment of this proposal, the election to claim HCTC may be made any time after the date of enactment and before the expiration of the 3-year statute of limitation period¹⁴ with respect to such taxable year; and may be made on an amended income tax return. Further, for taxable years 2014 and 2015, individual coverage purchased through an American Health Benefit Exchange is treated as an individual policy for purposes of HCTC and the change under the proposal eliminating the 30 day requirement also applies to such coverage.

C. Offset

[Reserved]

¹⁴ Section 6511(a)