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ALSO IN THIS ISSUE –

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"The Pension Specialists "

The Obama Administration Proposes Taxing Some Roth IRA Distributions And Proposes Other Law Changes

The 2016 election campaign has started. Taxes and the related topic of income inequality will be discussed. In fact, the Obama administration by releasing its 2016 Budget proposal has started the discussion. Set forth below is a summary of the IRA and pension law changes as proposed by the Obama administration. Unsurprisingly, the proposals seek to reduce the tax benefits realized by individuals with higher incomes. Some of these proposals are new for 2016 and some are carryovers from the 2015 budget proposal.

1. The law will "cap" the tax benefit (exclusion or tax deduction) that a person may receive from an IRA, 401(k) or other tax preferred plan at the 28% bracket. That is, those individuals in a higher tax bracket (33%, 35%, 39.6%, etc) would not be able to claim a tax deduction for the full amount or claim a full tax exclusion. This is the first proposal or discussion making some Roth IRA distributions taxable. New for 2016.

2. The standard RMD rules would apply to a person who had funds within a Roth IRA in the same manner as they know apply to funds within a traditional IRA, SEP-IRA and SIMPLE IRA. This change does not generate any additional tax revenues, but is being made to lower the amounts in Roth IRAs earning tax free income. Proposed in 2015. This change would only apply to those Roth IRA accountholders who attain age 70½ in 2016 or later.

3. Required distributions would no longer apply to individuals who had an aggregated balance of less than $l00,000 in IRAS, 401(k)'s and other retirement accounts. A special rule would apply in the case of certain defined benefit plans. Proposed in 2015.

4. A person who has after-tax dollars in an IRA or pension plan would lose the right to convert such dollars into a Roth IRA. That is, a person will be eligible to convert only "taxable" funds, he or she could not convert after-tax funds. New for 2016.

5. Require most non-spouse beneficiaries to take required distributions using the 5-year rule. The life distribution rule no longer could be used. This is a large revenue raiser and it raises greatly the taxes to be paid by nonspouse beneficiaries. This change would only apply if the IRA accountholder died on or after January 1, 2016.

6. The proposed law will "cap" the amount of funds a person may accumulate within tax preferred plans. This was also proposed in the 201 5 budget proposal.

The person would be required to aggregate the balance he or she has within personal IRAs with the balance within all employer sponsored retirement plans. Once a certain limit is reached, then no additional contributions could be made by the individual or by the individual's employer on his or her behalf. The account balance could grow if due to

Continued on page 6

Treasury Inspector General Audits IRS Procedures Relating to IRA RMDs

The IRS is audited from time to time by internal auditors. In the case of the IRS, it is the Treasury Inspector General for Tax administration (TIGTA) who conducts various audits to assist the IRS in performing its duties more effectively. The main tax duty of the IRS is to maximize the collection of tax revenues. When taxpayers fails to comply with the RMD laws, the federal government fails to collect tax dollars it is owed.

A recent tax audit was conducted to determine what improvements, if any, could be made by the IRS with respect to the required minimum distribution laws.

The current IRS procedure has been used since 2002. This procedure was created in the context that many times Congress and the IRS are not in agreement on many tax subjects. With respect to individuals age 70½ and older, the IRS has adopted the approach of requiring the IRA custodian to furnish an RMD notice in January of each year. The notice must cover three subjects. First, inform the individual of his/her deadline to take the RMD. Secondly, calculate the RMD amount or not calculate the RMD amount but inform the individual that the IRA custodian will do so if requested. Thirdly, inform the individual that the IRS will be informed via the Form 5498 that the IRS is being told he/she must take an RMD. Note, the IRS is not informed of the RMD amount each taxpayer must withdraw. Common sense indicates the IRS should be so informed, but Congress has been unwilling to adopt a different procedure when the IRS does not grant other Congressional requests on other tax issues. Note the RMD notice is only furnished to living IRA account holders. An RMD notice is not required to be furnished to an inheriting beneficiary. The IRS has adopted the procedures that it is totally up to IRA beneficiaries to comply with the RMD rules. Presumably, the IRS understands this is unrealistic and there is significant noncompliance. Apparently, the IRS wants to be able to say to Congress, "but we told you so."

The main recommendation of the audit was that the IRS should implement a process of directly communicating with those individuals who are subject to the RMD rules. That is, individual letters would be mailed to taxpayers. The audit report fails to discuss why the IRS has the current procedures it does. That is, there is no discussion of the IRS relationship with Congress on this issue.

For the present time the IRS has indicated it will not be adopting a procedure of communicating directly with taxpayers. That is, the IRS will not take on the duty of furnishing an RMD to the taxpayers. The reason given, budget restraints. It will continue to require IRA custodians to furnish the annual RMD notice. As discussed in a prior newsletter articles, the IRS has adopted procedures which may lead IRA custodians to furnish individual RMD amounts to the IRS on a voluntary basis. The IRS can compare this RMD amount to actual distributions from the 1099-R forms to see if the individual has failed to comply with the RMD rules.

With respect to inherited IRAs, current IRS procedures should be improved greatly as they create tax traps for general taxpayers. Current procedures are totally inadequate. One could argue the IRS is giving inadequate guidance because many beneficiaries will make errors and will have to pay taxes sooner than they otherwise would have had to pay.

Congress needs to act. It needs to adopt new rules which will govern both individuals and the IRS and allow and encourage there to be compliance with the RMD laws.

The Pension Digest

An IRA Accountholder Should Avoid Having His/Her Estate As the Inheriting Traditional IRA Beneficiary

When an estate is the inheriting IRA beneficiary, the tax rules will generally require faster and larger distributions to the estate rather than if the IRA accountholder had named another person as his or her IRA beneficiary.

An inherited IRA has valuable tax planning capabilities. The income earned by an inherited IRA is tax deferred until withdrawn. An investment or savings account grows much faster when annual income taxes are not required to be paid each year on the earnings.

When a beneficiary withdraws more than is required for that year, such distribution is generally taxable and will no longer be in the IRA to earn tax deferred income.

This situation does arise. John Doe designates his spouse, Michelle, as his primary beneficiary, but no contingent beneficiary or he designates his estate as the contingent beneficiary. Michelle predeceases John and then he dies. Most IRA plan agreements will provide that his estate.becomes his beneficiary if no designated beneficiary is alive when he dies.

For example, if John has a traditional IRA with a balance of $150,000 and dies at age 52 with his estate as his beneficiary,then the IRA must be closed used the 5 year rule. Assume John and Michelle had two children and they are the beneficiaries of his estate. The children via the estate will need to withdraw the $150,000 in the 5-6 year period and will pay more in income taxes sooner than if they would have been able to stretch distributions over their life expectancies.

This is a customer service topic. This is the individual's concern and he or she must decide what is best for himself or herself and his/her beneficiaries.

A Roth IRA Accountholder Must Avoid Having His/Her Estate Be the Inheriting Roth IRA Beneficiary

When an estate is the inheriting Roth IRA beneficiary, the tax rules require the inherited Roth IRA be closed by December 31 of the year containing the 5th anniversary of the account holder's death. No one wants to close a Roth IRA within 5-6 years when such inherited Roth IRA could have generated tax-free income for a person or persons for 40-60 years or longer.

An inherited Roth IRA has unmatched valuable tax planning capabilities. The income earned by an inherited Roth IRA is not taxed as long as it remains in the inherited Roth IRA and will be tax free when distributed. Simply put, the income earned by a Roth IRA is allowed to continue to earn additional tax free income. This right is lost if a person's estate is the Roth IRA beneficiary.

This situation could arise. Mario Rubio established his Roth IRA in 2003. The current balance is $135,000. He designated his spouse, Sophia, as his primary beneficiary and their one daughter as the contingent beneficiary. The family is involved in a car accident and Sophia and the daughter predecease Mario. Mario would have wanted the Roth IRA to go his sister and brother.

His siblings via his estate will need to withdraw the $135,000 in the 5-6 year period. No income tax will be owed as the distributions from the Roth IRA are tax free as he had had the Roth IRA for more than five years and the distributions are being made to a beneficiary. What has been lost is the right to earn tax free income over the life expectancies of his brother and sister.

It may well be that a Roth IRA accountholder should designate more than two levels of beneficiaries. CWF will be creating a beneficiary designation form allowing the designation of three beneficiary levels. In some cases a Roth IRA accountholder should have their attorney draft a customized Roth IRA beneficiary designation form.

New Rules For Correcting Elective Deferral Errors Within 401(k) Plans

On April 20, 2015, the IRS issued Rev. Proc. 2015-28. Employers who have 401(k) plans with elective deferral errors now have additional safe harbor methods which may be used to correct such errors or failures that begin on or before December 31, 2020. The IRS may decide to allow the use of the new safe harbors for failures made after December 31, 2020 but that will be decided at later time. The new safe harbors allow certain 401(k) participants to continue to receive the tax benefits associated with participating in a 401(k) qualified profit sharing plan even though the plan has not been operated in accordance with the term of the plan document.

The IRS has created two categories for such errors. First, there are errors related to automatic deferral and then those that are "standard" elective deferral errors.

Prior to Revenue Procedure 2015-28 an employer in order to correct the elective deferral mistake for a participant had to make a correcting QNEC of 50% of the amount which should have been deferred, but which was not. Many employers adopted the approach, if we must make a 50% correcting QNEC why do we want to take on the risk of having elective deferral errors. And many employers choose to not included automatic deferral provisions within their 401(k) plan.

The IRS and the DOL want employers to write their 401(k) plans to include automatic elective deferral contribution features. That is, the plan is written to automatically enroll new employees as participants and to commence deferrals at set percentages of compensation and such rates change. For example, a new employee is deemed to have agreed to defer 3% in her first year of employment, 4% her second year, 5% her third year and 6% for her fourth year and any subsequent year. These percentages will be deferred from a participant's paycheck unless he or she affirmatively notifies the plan administrator that she wants a different percentage deferred/withheld.

Employers make errors in implementing the automatic deferral provisions. They forget to automatically enroll some employees and they forget to increase the deferral according to the schedule.

In Rev. Proc. 2015-28 the IRS authorizes a "long" correction period allowing an employer to correct their errors arising from automatic deferral provision as long as the following conditions are met.

1. Correct deferral must start to be made by a deadline. If the participant notified the employer of its error, the correct deferral must commence with the first payment of compensation which occurs after the last day of the month occurring after the month of the notification.If the participant did notify the employer of its error, the correct deferral must commence with the first payment of compensation which occurs on or after the last day of the 9½ month period after the end of the in which the failure first occurred.
2. The participant must be furnished a form or notice as discussed later explaining the error(s) . Such notice must be furnished no later than 45 days after the date correct deferral begin.
3. The employer must make its matching contribution, if any, with respect to the amount not deferred. Such contribution must be made in accordance with the timing requirements under SCP for significant operation failures and it must be adjusted for earnings.

Employers also make errors with respect standard 401(k) elective deferral provisions. For example, John Doe instructs the administrator he wishes to defer 12% of his salary for the last 4 months of 2015 rather than his usual 3%, but the administrator fails to implement the change so only 3% is deferred.

The IRS has also created two categories for these standard deferral errors: those not extending beyond three months and those that do, but they do not extend beyond the SCP correction period for a significant failure as defined in Rev. Proc. 2013-12.

For those errors not extending past three months, the employer will NOT be required to make any correcting QNEC contribution as long as the employer satisfies the following conditions.

1. Correct deferral must start to be made by a deadline. If - the participant notified the employer of its error, the correct deferral must commence with the

first payment of compensation which occurs after the last day of the month occurring after the month of the notification. If the participant did not notify the employer of its error, the correct deferral must commence with the first payment of compensation which occurs after the three-month period that begins when the failure first occurred.

2. The participant must be furnished a form or notice as discussed later explaining the error(s) . Such notice must be furnished no later than 45 days after the date correct deferral begin.
3. The employer must make its matching contribution, if any, with respect to the amount not deferred. Such contribution must be made in accordance with the timing requirements under SCP for significant operation failures and it must be adjusted for earnings.

For those errors extending past three months but not extending beyond the SCP correction period for significant failures, an employer is required to make a 25% QNEC corrective contribution for each participant who had an elective deferral failure and the employer must satisfy the following conditions.

1. Correct deferral must start to be made by a deadline. If the participant notified the employer of its error, the correct deferral must commence with the first payment of compensation which occurs after the last day of the month occurring after the month of the notification. If the participant did not notify the employer of its error, the correct deferral must commence with the first payment of compensation made on or after the last day of the second plan year following the plan year in which the failure first occurred.
2. The participant must be furnished a form or notice as discussed later explaining the error(s) . Such notice must be furnished no later than 45 days after the date correct deferral begin.
3. In addition to the 25% QNEC, the 'employer must make its matching contribution, if any, with respect to the amount not deferred. Such contribution must be made in accordance with the timing requirements under SCP for significant operation failures and it must be adjusted for earnings.

In order to qualify to use one of these safe harbor correction methods, the plan administrator must furnish an employee with respect to whom there has been an elective deferral error a notice setting for the following information.

1. A general discussion of the error. For example, it should be stated what percentage of eligible compensation should have been deferred, the under deferral percentage and the date when such deferral should have commenced. The individual need not be informed what the dollar amount of the deferral would have been.
2. The name of the plan and the name of the plan representative (i.e. plan contact) to whom the individual may direct his or her questions via phone, email or fax.
3. A statement that the correct deferral are now being made with respect to the individual's paychecks or if not yet, soon will be.
4. A statement that the individual may increase his or her deferral percentage in order to make for his or her missed deferral opportunities, subject to the statutory limits.
5. A statement that any corrective contributions, if any, have been made or will be made shortly. Such notice should discuss that such contributions are to be adjusted for earnings. However, the guidance is that the notice need not include the amount of the corrective contribution or the date the correcting contribution was made.

In summary, the IRS has authorized very employer-friendly safe harbors to allow an employer to correct errors relating to elective deferral. Employers will certainly wish to use these new safe harbors. Note that an employer who was not required to make a matching contribution would have no correcting contribution to make as long as corrected within the three month time frame for a standard deferral failure or within 9½ months after the end of the plan year for a failure arising from automatic deferral provisions.

Proposed Law Changes,
Continued from page 1

earnings, but not on account of new contributions.

The law would permit a person to accumulate an initial balance of $3,400,000 as that is the actuarial equivalent of a joint and 100% survivor annuity of $210,000 per year. The $210,000 limit would be adjusted for cost of living increases.

CWF Observation. This proposal would greatly complicate the administration of IRAs and pension plans. There would be a tremendous increase in the need for actuarial and accounting services. It may well be an employee would need to inform his/her current employer what he/she has accumulated in his/her IRAs and other pension plans.

7. The proposed law would allow certain nonspouse beneficiaries who mistakenly are paid a distribution from an inherited to roll over such distribution if certain rules are met. This was also proposed in the 2015 proposal.

8. The 401(k) plan rules would be changed so that an employer would have to let those employees working 500-999 hours per year for three consecutive years to be able to make elective deferral contributions. Under current law, an employer is not required to allow employees who work less than 1,000 hours to participate in the plan. Although the employer would have to let such employees make elective deferral, the employer would not be required to make any contributions, matching or profit sharing, on behalf of such employees.

9. The IRS and the DOL are big fans of automatic enrollment pension plans. Under current law an employer's decision to sponsor a pension or profit sharing plan is totally voluntary. Many small and moderate size employers choose to not offer a plan due to the regulatory complexity. The IRS and the DOL don't seem to accept why so many employers choose to not offer such plans. Their solution, change the law so an employer must offer a simplified retirement plan.

An employer with more than 10 employees which has been in business for at least two years would be required to offer a payroll deduction IRA program. Employees would automatically be enrolled to have 3% of compensation withheld unless they expressly waived coverage. An employee could have a larger percentage withheld. Funds could go into either a traditional IRA or a Roth IRA. To offset some of the cost for maintaining this plan there would various tax credits extended to the small employers.

10. The current tax rules applying to the taxation of net unrealized appreciation would be repealed. The general tax rule is, when a person takes a distribution from his or her IRA or 401(k) plan, such amount is combined with other wage or ordinary income for such year and taxed at the applicable marginal income tax bracket. Many times a person will move into a higher tax bracket on account of the IRA/401(k) distribution.

Current law allows an employee who has been distributed employer stock to be taxed differently. He or she will include the cost basis of the stock in his or her income for the year of distribution, but is able to defer further taxation to when the stock is subsequently sold. There is no time limit by when the individual must sell the stock. It may be the government won't see any tax revenues for 20-50 years.

Example. Jane works for ABC, Inc from ages 22-38. Her employer has a profit sharing which invests in employer stock. The corporation has been very successful. The corporation contributes stock which at the time contributed had a cost basis of $45,000, but has a value of $450,000 when distributed to her. Although she has various options, she elects to have the stock distributed to her in-kind. Under this method she includes the $45,000 in her income and pays tax on such amount. Now assume the stock appreciates to $600,000 and she then decides to sell the stock. She would have $555,000 of long term gain and it would be taxed at a rate of 28% under current law. That is, she will not pay any tax on the stock appreciation until she sells the stock. And at that time she will most likely qualify to pay tax at then existing capital gain rates on the stock gain. The current tax rate is 28% but there were times during 2009-2012 when the tax rate was 10%, 15% or 20%. This change would not apply to a person who was age 50 or older as of December 31, 2015.

11. The current tax laws allowing a publicly traded company to claim a tax deduction for dividends paid with respect to stock held in an ESOP would be repealed.

12. Current law permits an employer to offer various annuity investments within the employer sponsored

Continued on page 7

The Pension Digest

Proposed Law Changes,
Continued from page 6

plan. However, an employer may decide to liquidate such investments as it can liquidate other investments. The proposal is that the law would be changed to give each participant the right to rollover the annuity to an IRA or other retirement account via a direct rollover even though he or she was not otherwise eligible for a distribution. As mentioned in prior newsletters, insurance companies have a tremendous political lobby.

Although the odds of these Obama proposals becoming law before November of 2016 are slim at best, they certainly will be discussed during the upcoming election period along with many other tax subjects. Note, the Obama administration is not asking for the extension of the Qualified Charitable Distribution (QCD) rules for 2015 and subsequent years. The charitable industry almost has a political lobby as strong as the insurance companies. Time will tell if the QCD rules are extended permanently, temporarily or not at all.

Distribution Options Available to a 401(k) Participant

Hopefully direct rollovers of 401(k) funds into either a traditional IRA and/or a Roth IRA are common events at a financial institution. A direct rollover is made because an individual completes a 401(k) distribution form and instructs to have a direct rollover. An IRA custodian wants to discuss with its customer that he or she will be furnished the 401(k) distribution form and the IRA custodian would like to receive a completed copy of this form for its files. Why? The 401(k) trustee on this form informs the individual that his or her distribution qualifies to be directly rolled over or rolled over. **Note the various options.** More than one may be selected.

Distribution Election #1: If you are the PARTICIPANT OF A NON-DESIGNATED ROTH ACCOUNT, complete this section.

☐ 1. Directly roll over $____________ to a traditional IRA. No withholding applies. I hereby certify that this amount is comprised of taxable funds, if any, of $____________. and also nontaxable funds (basis), if any, of $____________. The check will be made out as follows: ____ (name of custodian/trustee)

for____ (Participant's name) **traditional IRA.*****

☐ 2. Directly roll over $____________ to a conversion Roth IRA. No withholding applies. I acknowledge that I must include this amount in my taxable income. In some cases it would be prudent for me to make estimated tax payments. I hereby certify that this amount is comprised of nontaxable funds (i.e. basis), if any, of $____________ and also taxable funds, if any, of $____________. The check will be made out as follows: ____ (name of custodian/trustee)

for ____ (Participant's name) **Roth IRA.*****

☐ 3. Pay me (i.e. the Participant) $____________. If your distribution is eligible to be rolled over, then federal income tax withholding of 20% is mandatory and you will be paid 80%. If your distribution is ineligible to be rolled over, then you will need to complete the withholding instruction section. In general, 10% of the distribution must be withheld unless you instruct to have more or less withheld, including having no amount withheld.

☐ 4. Internally do an in-plan conversion to a Designated Roth Account. No withholding applies. I acknowledge that I must include this amount in my taxable income. In some cases it would be prudent for me to make estimated tax payments. I hereby certify that this amount is comprised of nontaxable funds (i.e. basis), if any, of $____________ and also taxable funds, if any, of $____________. The funds will be transferred into my Designated Roth Account and invested as they are currently invested or as I otherwise instruct.

Distribution Election #2: If you are the PARTICIPANT OF A DESIGNATED ROTH ACCOUNT, complete this section.

The distribution of your Designated Roth funds is ☐ qualified or it is ☐ nonqualified.

☐ 1. Directly roll over $____________ to a Roth IRA. No withholding applies. The check will be made out as follows:

____(name of custodian/trustee)

for ____ (Participant's name) **Roth IRA.*****

☐ 2. Directly roll over $____________ to another Designated Roth 401(k) account. No withholding applies. The check will be made out as follows:

______________________________(name of custodian/trustee)

for ____________________________ (Participant's name) **Designated Roth.*****

☐ 3. Pay me (i.e. the Participant) $____________. Of this amount $____________ is my Designated Roth Contribution and withholding does not apply. The remaining amount is the earnings amount and it is $____________; 20% of this earnings amount or $____________ may be required to be withheld for a nonqualified distribution.

What To Do When A Customer Incurs a Medical Expense Before Establishing His/Her HSA?

The HSA owner (and his or her tax adviser) must decide if an HSA distribution is used to pay a qualified medical expense. This is not the HSA custodian's duty. The HSA custodian prepares the Form 1099-SA and generally inserts a reason code "1" in box 3. There are exceptions. A "2" is used to report the distribution of an excess contribution. A "3" is used if the HSA owner is disabled. A "4" or "6" is used if there is a distribution made to an inheriting beneficiary. The HSA owner will complete Form 8889 and show the total of those medical expenses which were qualified and those which were not.

Can distributions incurred prior. to the establishment of the HSA be qualified?

The IRS position is they cannot be. The Bobrow rollover case showed the IRS position is not always right.

HSAs are created under the authority of Internal Revenue Code section 223. Code section 223(d)(2) defines "Qualified Medical Expenses." It is set forth at the end of this article.

Note there is nothing in the statutory law requiring that a medical expense in order to a be a qualified medical expense is one which the individual, his or her spouse, or his or her dependent incurred after the HSA has been established. The IRS added this requirement in IRS Notice 2004-2. The IRS has cited no authority or rationale as to why this requirement was added. Q & A 26 is set forth below. The IRS has set forth this position in each Publication 969 issued since 2004.

Q & A 26 from Notice 2004-2.

What are the "qualified medical expenses" that are eligible for tax-free distributions?

The term "qualified medical expenses" are expenses paid by the account beneficiary, his or her spouse or dependents for medical care as defined in section 213(d) (including nonprescription drugs as described in Rev. Rul. 2003-102, 2003-38 1.R.B. 559), but only to the extent the expenses are not covered by insurance or otherwise. The qualified medical expenses must be incurred only after the HSA has been established. For purposes of determining the itemized deduction for medical expenses, medical expenses paid or reimbursement by distributions from an HSA are not treated as expenses paid for medical care under section 213.

The IRS' position is questionable. It is the individual and his or her tax preparer who must decide if they will follow the IRS position or adopt the position it is possible for a medical expense incurred that same year to be a qualified expense for HSA purposes even if incurred prior to when the HSA was established.

If the individuals decide to challenge the IRS's position, then we believe the taxpayer should attach a note to the Form 8889 informing the IRS that he or she incurred a medical expense prior to establishing the HSA, then established the HSA and funded it, and then took a distribution which he or she believes is "qualified."

As with IRAs, the law expressly allows an individual until the tax filing deadline to establish and fund his or her HSA for the prior tax year. If Congress had wanted to impose the requirement that the HSA had to be established prior to incurring a medical expense in order for it to be "qualified", Congress would have written the law to include this requirement. It is not so written.

Internal Revenue Code section 223(d) (2) is set forth.

(2) QUALIFIED MEDICAL EXPENSES-

(A) IN GENERAL- The term 'qualified medical expenses' means, with respect to an account beneficiary, amounts paid by such beneficiary for medical care (as defined in section 213(d) for such individual, the spouse of such individual, and any dependent (as defined in section 152) of such individual, but only to the extent such amounts are not compensated for by insurance or otherwise. Such term shall include an amount paid for medicine or a drug only if such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin.

(B) HEALTH INSURANCE MAY NOT BE PURCHASED FROM ACCOUNT- Subparagraph (A) shall not apply to any payment for insurance.

(C) EXCEPTIONS- Subparagraph (l3) shall not apply to any expense for coverage under--

(i) a health plan during any period of continuation coverage required under any Federal law,

(ii) a qualified long-term care insurance contract (as defined in section 7702B(b)),

(iii) a health plan during a period in which the individual is receiving unemployment compensation under any Federal or State law, or

(iv) in the case of an account beneficiary who has attained the age specified in section 181 1 of the Social Security Act, any health insurance other than a medicare supplemental policy (as defined in section 1882 of the Social Security Act).