

# FENNEMORE CRAIG, P.C.

Jennifer Mammano Ward  
Direct Phone: (602) 916-5425  
Direct Fax: (602) 916-5625  
jward@fclaw.com

3003 North Central Avenue, Suite 2600  
Phoenix, Arizona 85012-2913  
(602) 916-5000

**Law Offices**  
Phoenix (602) 916-5000  
Tucson (520) 879-6800  
Nogales (520) 281-3480  
Las Vegas (702) 692-8000  
Denver (303) 291-3200

## **WESTERN PENSION AND BENEFITS CONFERENCE WASHINGTON UPDATE – OCTOBER 20, 2011**

### **IRS:**

**Retirement Plan Limits Changed for 2012.** The IRS today announced the Cost of Living Adjustments for various limits applicable to retirement plans. In a departure from the practice of the last few years, most of the limits have been raised. The chart accessible on the IRS website is attached. (<http://www.irs.gov/retirement/article/0,,id=96461,00.html>)

**Updated Procedures for Issuing Ruling Letters.** The IRS issued revised procedures for issuing opinion and advisory letters for master and prototype and volume submitter retirement plans. In addition, the deadline for submission of mass submitter plans for opinion or advisory letters was extended from October 31, 2011 to January 31, 2012. (*Rev. Proc. 2011-49*).

**Proposed Safe Harbor for Large Employer "Affordable" Health Care Coverage.** Under the Patient Protection and Affordable Care Act ("PPACA"), starting in 2013, applicable large employers will be subject to a penalty for failing to provide "affordable" health care coverage to their full-time employees. PPACA specified a guideline for measuring affordability of 9.5% of MAGI for the employee's household (including spouse and dependent income). The IRS has issued a notice proposing to change this guideline to measure affordability based on 9.5% of the employee's wages from that employer. This change is designed to overcome the practical difficulty of an employer obtaining information about the income of the other members of an employee's household. (*Notice 2011-73*).

**Form 5300 Revised.** The IRS has issued a revised Form 5300 for use in applying for favorable determination letters for individually-designed retirement plans. Form 5300 was last revised in 2001. There are a number of small changes, but one of the biggest was that the format was changed to more closely resemble Form 5307 to aid in the scannability of the form. ([www.irs.gov/pub/irs-pdf/f5300.pdf](http://www.irs.gov/pub/irs-pdf/f5300.pdf)).

### **EBSA:**

**Welfare Plan Audits for PPACA on the Horizon.** In response to an audit report by the Office of the Inspector General that evaluated whether EBSA had taken action to implement PPACA, Phyllis Borzi, head of EBSA, stated that a "large number" of health plans will be investigated for compliance with PPACA as part of EBSA's fiscal year 2012 Health Benefits Security Project (the federal government's FY 2012 began on October 1, 2011). (<http://www.oig.dol.gov/public/reports/oa/2011/09-11-003-12-121.pdf>)

### **OTHER:**

**Petitions for Certiorari in PPACA Individual Mandate Cases.** As discussed in the last Washington Update, there were three major cases decided in the Circuit Courts of Appeals in the last few months regarding the individual mandate under the Patient Protection and Affordable Care Act ("PPACA"). Petitions for writs of certiorari from the Supreme Court have been filed by both the petitioners in the 6th Circuit case decided in June 2011 validating the individual mandate [*Thomas More Law Center v. Obama*, 2011 U.S. App. LEXIS 13265 (6th Cir. June 29, 2011)] and by all parties (26 states and the federal government) in the 11th Circuit case decided in August 2011 striking down the individual mandate [*Florida v. United States HHS*, 2011 U.S. App. LEXIS 16806 (11th Cir. Aug. 12, 2011)]. Given the Circuit split, this should be a hot topic in the current Supreme Court session that started on October 3.

## COLA Increases for Dollar Limitations on Benefits and Contributions

The Internal Revenue Code provides for dollar limitations on benefits and contributions under qualified retirement plans. Code §415 requires the limits to be adjusted annually for cost-of-living increases. The IRS announced on October 20, 2011 [cost-of-living adjustments](#) applicable to dollar limitations for pension plans and other items for tax year 2012.

Please see our [COLA Increases Table](#) for prior years' dollar limitations.

Code Section	2012	2011	2010
<b>IRAs</b>			
IRA Contribution Limit - 219(b)(5)(A)	5,000	5,000	5,000
IRA Catch-Up Contributions - 219(b)(5)(B)	1,000	1,000	1,000
<b>IRA AGI Deduction Phase-out Starting at</b>			
Joint Return	92,000	90,000	89,000
Single or Head of Household	58,000	56,000	56,000
<b>SEP</b>			
SEP Minimum Compensation - 408(k)(2)(C)	550	550	550
SEP Maximum Compensation - 408(k)(3)(C)	250,000	245,000	245,000
<b>SIMPLE Plans</b>			
SIMPLE Maximum Contributions - 408(p)(2)(E)	11,500	11,500	11,500
Catch-up Contributions - 414(v)(2)(B)(ii)	2,500	2,500	2,500
<b>401(k), 403(b), Profit-Sharing Plans, etc.</b>			
Annual Compensation - 401(a)(17)/404(l)	250,000	245,000	245,000
Elective Deferrals - 402(g)(1)	17,000	16,500	16,500
Catch-up Contributions - 414(v)(2)(B)(i)	5,500	5,500	5,500
Defined Contribution Limits - 415(c)(1)(A)	50,000	49,000	49,000
ESOP Limits - 409(o)(1)(C)	1,015,000	985,000	985,000
	200,000	195,000	195,000
<b>Other</b>			
HCE Threshold - 414(q)(1)(B)	115,000	110,000	110,000
Defined Benefit Limits - 415(b)(1)(A)	200,000	195,000	195,000
Key Employee - 416(i)(1)(A)(i)	165,000	160,000	160,000
457 Elective Deferrals - 457(e)(15)	17,000	16,500	16,500
Control Employee - 1.61-21(f)(5)(i)	100,000	95,000	95,000
Control Employee - 1.61-21(f)(5)(iii)	205,000	195,000	195,000
Taxable Wage Base	110,100	106,800	106,800