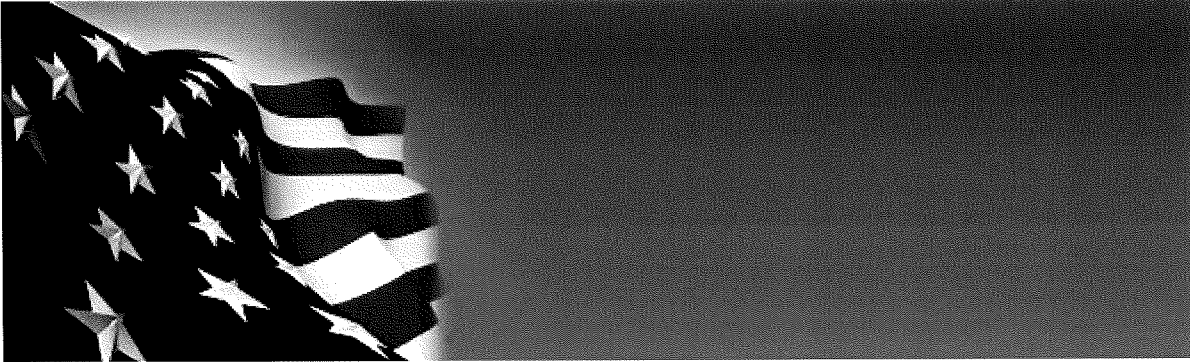


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CYPEN & CYPEN NEWSLETTER for AUGUST 14, 2014

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Stephen H. Cypen, Esq., Editor

Never Forget September 11, 2001

and

Always Remember May 2, 2011

1. STAKEHOLDERS...OR STEAKHOLDERS?: And now the fun begins. *Florida Trend* reports that Florida's influential business advocates and policy groups have formed Taxpayers for Sustainable Pensions, a coalition dedicated to achieving municipal pension reform. The groups convened in Tallahassee to announce their commitment to reforming taxpayer-funded government pensions to ensure funding and long-term sustainability. The coalition will pursue options for local pension reform, including legislative, constitutional and local-level solutions. After lawmakers were unable to pass a municipal pension reform bill during the 2014 Legislative Session, the groups were "inspired" to create the coalition to focus attention on local liabilities. Improving the health of local pension plans, the coalition will work with state and local officials, as well as key stakeholders, to propose and implement solutions to ensure Florida taxpayers can afford benefits promised to local government workers. Members of the coalition include:

- Americans For Prosperity – Florida
- Associated Industries of Florida
- The Florida Chamber Foundation
- The Florida League of Cities
- Florida TaxWatch
- The National Federation of Independent Business
- R Street Institute

To quote Robert Weissert, of Florida TaxWatch, "Taxpayers for Sustainable Pensions is determined to find a solution to protect Florida's taxpayers from underfunded, unfair and unsustainable pension mandates that leave Florida cities vulnerable to debt and even bankruptcy." And, Scott Dudley, of the Florida League of Cities, Inc., "The Florida League of Cities and its 410 member cities are proud to stand with such a broad and diverse coalition of interests, all seeking to fix Florida's municipal police and firefighter pension system." Right. [Editor's note: we take full responsibility for editing this piece.]

2. HOW IRAs WORK: About.com has a nice piece on understanding individual retirement accounts. An individual retirement account (or (individual retirement arrangement) is a tax-favored investment account designed to help individuals save for retirement. There are many different types of IRAs, but the two distinct types are traditional IRAs and Roth IRAs. You can open an IRA through an investment house or brokerage as long as you are earning income and are younger than age 70 1/2. Money that goes into an IRA, otherwise known as contributions, can be invested in any way that the IRA account holder chooses. Depending on where you invest, you should have a broad range of stocks, bonds, mutual funds and other types of equities to choose from. In theory, anything you can invest in can be invested in through an IRA. Contributions to a traditional IRA may be tax-deductible, depending on whether you have another retirement account through work. Investments in an IRA grow tax-deferred, meaning the account is not taxed as long as the money is held inside the account. Once you take the money out, otherwise known as taking distributions, you will pay taxes on the contributions and earnings. The idea is that in retirement your income will be lower, so taxes you pay will be less significant than what you would pay during your working years. You can withdraw money from an IRA at any time, but if you

take the money out before retirement age (currently at least age 59 1/2), you will not only pay taxes but could also face a 10% early withdrawal penalty. There are some exceptions to the early withdrawal penalty, depending on whether you meet certain qualifications. You must start taking at least minimum distributions from your account by age 70 1/2. There are limits to how much you can put into your IRA each year. These limits change over time, adjusting every year or two with inflation. There are additional catch-up contributions available to investors age 50 or older, designed to accelerate savings growth in the pre-retirement years. You have until the tax filing deadline to make contributions. For example, you can make 2014 IRA contributions any time before April 15, 2015. If you file for an extension, you may have even longer. There are also self-employed IRAs, SEP IRAs and SIMPLE IRAs. These arrangements work in similar ways to the traditional IRA, but have different contribution limits and other rules. A rollover IRA is a traditional IRA that can be used to house other tax-favored investment accounts without tax penalty. For example, if you are leaving a job and need to move your 401(k) account, a rollover IRA maybe the place to do it. A Roth IRA is similar in many ways to a traditional IRA, including contribution limits, how to open an account and how contributions can be invested. But in other ways Roth IRAs are distinctly different. The big difference is instead of putting tax-deductible money into the account to grow tax-deferred, Roth IRA contributions are made after tax. Once in the account, contributions and earnings within a Roth grow tax free. Even after the money is withdrawn at retirement, it is withdrawn tax free -- as long as the distributions are considered qualified distributions. There are a few other differences. Your adjusted gross income must be below a certain level to contribute to a Roth IRA. There is also no requirement to take minimum distributions from a Roth as long as you are the original account holder. And you may be able to withdraw contributions (although not earnings) from a Roth IRA before retirement, without paying a 10% penalty. You can have more than one IRA, including a traditional, a SEP or SIMPLE and a Roth, as well as your 401(k). You can even convert a traditional IRA to a Roth, depending on whether you think that doing so will save taxes for you for the future.

3. FEDERAL EMPLOYEES WILL GET PHASED RETIREMENT: The Office of Personnel Management is adopting its proposed phased

retirement regulations with four minor changes. Phased retirement is a human resources tool that will allow full-time employees to work a part-time schedule, and draw partial retirement benefits during employment. The "Moving Ahead for Progress in the 21st Century Act," or "MAP-21" ([see C & C Newsletter for July 31, 2014, item 8](#)) requires OPM to publish regulations implementing phased retirement under the Civil Service Retirement System and the Federal Employees' Retirement System. The final rule informs agencies and employees about who may elect phased retirement, what benefits are provided during phased retirement, how OPM intends to compute the annuity payable during and after phased retirement and how employees may fully retire after a period of phased retirement. The final rule does not address every administrative detail of the phased retirement process. OPM will be issuing separate guidances to assist agencies and employees with administrative and procedural matters that do not need to be addressed in the rule. Employees may not enter phased retirement or submit applications for phased retirement to OPM until 90 days after publication of the final rule, that is, November 6, 2014.

4. PENSION PLAN AMENDMENTS MAY CONSTITUTE BREACH OF CONTRACT UNDER STATE LAW: The United States Court of Appeals for the Fourth Circuit considered certain constitutional challenges related to a public pension plan sponsored by the City of Baltimore. Plaintiffs were active and retired Baltimore police officers and firefighters who participated in the plan, as well as the unions that represent them. Plaintiffs primarily challenged the city's decision changing the manner in which annual increases to pension benefits were calculated, claiming that substitution of a cost-of-living adjustment for a "variable benefit" violated the members' rights under the contract clause and the takings clause of the federal Constitution. After considering extensive evidence, the district court concluded that the elimination of the variable benefit constituted a substantial impairment of certain members' contract rights, and that the impairment was not reasonable and necessary to serve an important public purpose. The court therefore held that the city had violated the contract clause, and dismissed the takings clause claim as moot. Upon review, the appellate court concluded that the members' rights under the contract clause were not impaired, because the members retained a state law remedy for breach of contract. Therefore, the

court vacated the judgment of the district court with respect to the city's elimination of the variable benefit. The court also affirmed the decision below, upholding the remaining portions of the ordinance at issue, and vacated the court's order dismissing the takings clause claim. Thus, the court remanded for further proceedings consistent with the opinion. A state or municipality does not impair the obligation of contracts merely by breaching one of its contracts or by otherwise modifying a contractual obligation. Not every breach of contract is a violation of the federal Constitution. If plaintiffs retain the right to recover damages for breach of contract, there is no impairment of contract under the contract clause. A city is permitted to raise any defense of breach of contract in a state law action, except a defense that even if there was a contract and it was broken, the city cannot be liable because the repealing ordinance extinguished any remedy that plaintiffs would otherwise have had. Here, the ordinance neither prevented the plaintiffs from pursuing a state law breach of contract claim nor shielded the city from its obligation to pay damages should it found to be in breach of contract. The preceding statements are hornbook law. What we cannot reconcile is how the court did not recognize that Article 22, Section 42 of the Baltimore City Code does provide for a contract clause claim:

Upon becoming [a member of the plan], such member shall thereupon be deemed to have entered into a contract with the Mayor and City Council of Baltimore, the terms of which shall be the provisions of this Article 22, as they exist at the effective date of this ordinance, or at the time of becoming a member, whichever is later, and the benefits provided thereunder shall not thereafter be in any way diminished or impaired.

Cherry v. Mayor and City Council of Baltimore City, Case No. 13-1007 (U.S. 4th Cir. August 6, 2014).

5. EQUITIES BOOST U.S. MASTER UNIVERSE RETURNS: The median return of the BNY Mellon U.S. Master Trust Universe was +3.74% for the second quarter of 2014, the fourth straight quarter of positive results. The Universe's median plan was up 16.22% for the 12 months ending June 30, 2014. Median allocations by asset class continue to show institutions more invested in alternatives, real estate and other real assets compared to three years ago, with a

corresponding drop in U.S. equity allocations. With a market value of more than \$2.6 trillion and an average plan size of \$3.9 billion, the BNY Mellon U.S. Master Trust Universe is a fund level tracking service that can be used to make peer comparisons of both performance and asset allocation results. The Universe consists of 661 corporate, foundation, endowment, public, Taft-Hartley, and health care plans. Here are some of the highlights:

- 99% of plans in the BNY Mellon Master Trust universe returned positive results during the quarter.
- 40% of plans matched or outperformed the custom policy return for Q2.
- Corporate plans recorded the highest median return (+4.00%), followed by public plans (+3.85%).
- The median allocation to the alternatives/other asset class was 23%, up from 18% three years ago, while median allocation to U.S. equity was 27%, down from 32% three years earlier.
- U.S. equities posted a quarterly median return of +4.50%, versus the Russell 3000 Index return of +4.87%. Non-U.S. equities saw a median return of +4.68%, slightly behind the Russell Developed ex US Large Cap Index result of +4.70%. U.S. fixed income had a median return of +2.35%, versus the Barclays Capital U.S. Aggregate Bond Index return of +2.04%. Non-U.S. fixed income posted a median return of +3.68%, compared to the Citigroup Non-U.S. World Government Bond Index return of +2.64%. Real estate had a median return of +3.06%, versus the NCREIF Property Index result of +2.74%.
- The average asset allocation in the BNY Mellon U.S. Master Trust Universe for the second quarter was U.S. equity 27%, U.S. fixed income 27%, non-U.S. equity 17%, non-U.S. fixed income 1%, real estate 4%, cash 1%, and alternatives/other 23%.

6. SO LONG TENSION...HELLO PENSION: Mark Burnam, Florida financial adviser, has written a piece for *At the Ready Magazine*, entitled "So Long Tension...Hello Pension." Retirement for most people usually conjures up thoughts of being 65 or older, and not working anymore. However, most first responders retire and begin their second half of life as early as age 48. Retirement for first responders does not mean one stops working, as it really means one has simply retired from his current job and public pension system. A second half of life is now beginning. Will you be prepared? Will you be

able to retire at such a young age and never work again? Do you have a plan? Will you risk depleting your retirement assets before your "day" comes? What about health care? Social Security? Taxes? Do not be the guy or gal in the financial horror stories coming from your department. After busting your hump for 25 to 30 years, do you want to have to work to make ends meet in retirement? Certainly not. Most may work in some capacity because they want to, but not because they must. Some may "decompress" for 3 to 6 months or so and then continue working in some capacity, either full-or-part-time just to keep busy, pay for health care or to bridge the gap between retirement and Social Security. Again, a major component and a goal for your peace-of-mind retirement should be working because you want to -- not because you have to. Burnam's financial advice is instilled to:

- Save more.
- Spend less.
- Maximize your 457 compensation plan.
- Reduce and eliminate debt to become debt-free.

Sounds simple, but Rome was not built in a day, and neither is a sound retirement plan. Maintaining a discipline in small bites over 20 to 30 years can make all the difference. Take half of that raise you just got and increase your 457 deferred comp contributions. Increase your mortgage payment, pay bi-weekly or add a 13th payment per year. But, do something.

7. TIAA-CREF SURVEY FINDS ONE-THIRD OF AMERICANS HAVE NEVER INCREASED THEIR RETIREMENT PLAN CONTRIBUTION RATE: A new survey from Teachers Insurance and Annuity Association – College Retirement Equities Fund reveals that more than one-third of Americans who contribute to an employer-sponsored retirement plan (36%) have never increased the percentage of their salary they contribute to their company's plan. An additional 26% of workers have not increased their contribution in more than one year. Considering that 44% of American employees save 10% or less of their annual income each year, these findings indicate that many employees have the opportunity to improve their retirement readiness by increasing their plan contributions regularly. But will they? The findings come from a TIAA-CREF survey conducted among a sample of 1,000 adults who are currently contributing to a retirement plan,

conducted between May 19, 2014 and May 28, 2014.

8. SOCIAL SECURITY HAS RULES TO EXPLAIN RULES!:

Plansponsor.com reports on testimony for a House Ways and Means Subcommittee on Social Security hearing entitled "What Workers Need to Know About Social Security as They Plan for Their Retirement." The following seemingly-impossible statistic is true: Social Security's Handbook has 2,728 rules and its Program Operating Manual has tens of thousands of rules to explain these rules. The rules and the rules to explain the rules are written in a language that no one can remotely understand, unless they have spent years immersed in the system's provisions. What most people do is rely on Social Security's calculators and staff in making their collection decisions, but Social Security's calculators do not inform individuals about the benefits they can collect based on their current, former, or deceased spouse. Social Security's benefit calculators are used by Social Security's telephone and local office staff, and produce benefit estimates that are generally incorrect. The reason is the calculators' default assumptions are the economy will experience no future wage growth or inflation. The most common question workers appear to ask is no question. Instead, they figure out when is the earliest date they can take their retirement benefit, and apply at that date. They appear to have little or no idea about eligibility for spousal, widow/widower/divorcee spousal, and divorced widow/widower benefits, little or no idea about deeming provisions, little or no idea about delayed retirement credits, file and suspend options, start-stop-start strategies, family benefit maximums, the adjustment of the reduction factor that can mitigate the earnings test, and the list goes on. A recent study showed that one-quarter of retirees underestimated their benefits by more than 22%, and one-tenth underestimated them by more than 50%. One-quarter overestimated their benefits by more than 21% and one-tenth over estimated them by over 100%. Is this a great system, or what?

9. MAN THE TORPEDOES: A person reaching age 66 now is at "full retirement age" according to onwallstreet.com. Such seniors can claim their retirement benefits without any reduction, no matter how much they continue to earn. Most seniors claim Social Security at age 66 or earlier, but they do not have to do. The obvious reason to wait is an 8% annual increase in benefits for up to four years, for those who

wait past 66 to begin. Yet, there is still another advantage of being patient: seniors can gain by employing a “reverse tax torpedo” tactic. Many people who need retirement income in their 60s claim Social Security then, supplementing those benefits with IRA withdrawals if necessary. A double tax on Social Security benefits and IRA withdrawals has been called the tax torpedo; to reverse the process, seniors can delay Social Security until age 70 while using IRA funds for spending money until then. The later a client starts Social Security, the larger the benefit will be, so smaller IRA withdrawals can generate the total required for retirement income. The formula for determining the tax on Social Security benefits includes IRA distributions in full but only half of Social Security benefits. Thus, increasing Social Security by waiting until age 70 and consequently reducing the desired IRA withdrawals can dramatically lower the tax on Social Security benefits. A retired couple with \$97,000 of income (\$70,411 in Social Security after delaying benefits to age 70 plus \$26,589 from their IRA) would owe \$6,492 less in federal income tax than a retired couple with the same \$97,000 income receiving \$40,006 in Social Security benefits after starting early plus \$56,994 in IRA distributions. Nevertheless, there are situations to claim Social Security earlier than age 70. For a married couple, one spouse can take the spousal benefit at age 66 while they both delay until age 70 for maximum benefits.

10. INTERESTING FACTS: Warner Communications paid \$28 million for the copyright to the song Happy Birthday. Wondering why your cable bill just tripled?

11. TODAY IN HISTORY: In 1907, “Ha-Tikva” adopted as official Zionist hymn.

12. KEEP THOSE CARDS AND LETTERS COMING: Several readers regularly supply us with suggestions or tips for newsletter items. Please feel free to send us or point us to matters you think would be of interest to our readers. Subject to editorial discretion, we may print them. Rest assured that we will not publish any names as referring sources.

13. PLEASE SHARE OUR NEWSLETTER: Our newsletter readership is not limited to the number of people who choose to enter a free subscription. Many pension board administrators provide hard

copies in their meeting agenda. Other administrators forward the newsletter electronically to trustees. In any event, please tell those you feel may be interested that they can subscribe to their own free copy of the newsletter at <http://www.cypen.com/subscribe.htm>.

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**777 Arthur Godfrey Road
Miami Beach, Florida 33140
Telephone/Miami-Dade: 305.532.3200
Telephone/Broward: 954.522.3200
Telephone/Toll Free: 800.332.3200
Telecopier: 305.535.0050
www.cypen.com
info@cypen.com**

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