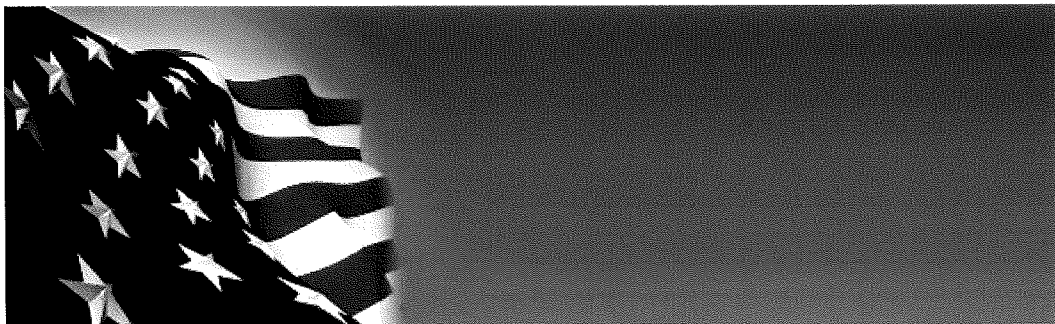


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## CYPEN & CYPEN NEWSLETTER for APRIL 30, 2015

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Stephen H. Cypen, Esq., Editor

Never Forget September 11, 2001

and

Always Remember May 2, 2011

**1. IRS CLARIFIES THAT PLANS DO NOT NECESSARILY HAVE TO RECOUP OVERPAYMENTS:** What should a retirement plan sponsor do if it discovers that it has overpaid benefits to a retiree or other former employee? The question has recently arisen in the case of the pension plan of Pontiac, Michigan, which accidentally overpaid many of its retirees an average of \$1,000 over a 16-month period. Carol V. Calhoun says that many pension fund trustees have believed that they were required as a fiduciary matter to seek repayment of the overpayments, plus interest, from the retirees. However, such repayments may cause a substantial financial hardship to retirees, particularly older retirees. In some instances, the expenses of collection can exceed the amount the fund is able to collect. And for a governmental entity, which is always in the public eye, seeking repayments from retirees based on a mistake not of their doing may generate public disapproval. Internal Revenue Service has recently issued Revenue Procedure 2015-27, which requests comments on recoupment of overpayments, and provides some interim alternatives for plans. It gives two possible alternatives: retroactively amending the plan to conform to the way it was actually operated or having the employer make up the overpayments. In either case, the correction itself must of course be permissible under the tax qualification rules applicable to retirement plans. The new rules are effective July 1, 2015. However, plans can choose to apply them as early as March 27, 2015. These options may be particularly valuable for governmental plans. A governmental plan has considerable flexibility in structuring benefits, unlike a private corporation, which is limited in benefits it can provide to the top employees.

Nevertheless, governmental plan trustees will need to consider carefully how to respond to an overpayment situation. In some instances, a plan amendment may require action of a legislature, which may be hard or impossible to obtain in a timely manner. The plan trustees may well have no way to compel an employer to repay overpayments, if it is unwilling to do so. Finally, it should be borne in mind that overpayments are not just a concern of the retirees, but also of IRS. Overpayments may jeopardize tax qualification of the plan. Depending on size of the error, and how quickly it is discovered, the plan may need to file with IRS and pay a penalty in order to avoid plan disqualification. The Revenue Procedure is available at <http://www.irs.gov/pub/irs-drop/rp-15-27.pdf>.

**2. GOVERNMENTAL PLAN DETERMINATION LETTERS -- AND THEIR PENDING DEMISE:** Carol V. Calhoun has prepared an excellent piece on governmental plan determination letters and their eventual demise. From February 1, 2015 through January 31, 2016, Internal Revenue Service is accepting requests for determination letters regarding tax qualification of most governmental retirement systems. However, this period may be the last chance for state and local retirement systems and other governmental plans to obtain formal IRS reassurance that their plans are qualified. Currently, IRS rules provide for a five-year cycle for requesting determination letters. A governmental plan was able to file for a determination letter during Cycle C, which occurred February 1, 2008 through January 31, 2009 and again February 1, 2013 through January 31, 2014. They were also permitted to file during Cycle E, which first occurred February 1, 2010 through January 31, 2011. The second Cycle E period opened February 1, 2015 and will end January 31, 2016. Due to staffing issues, IRS has informally indicated that it will likely discontinue the current determination letter program for individually designed plans. Among the options being considered is permitting a plan to request a determination letter only when it is first adopted or when it is terminated. Between those times, IRS is considering providing only standard language to reflect changes in law or regulations. Part of the intent seems to be to encourage plans to adopt prototype or volume submitter plans, so that IRS would need to review only documents used by many employers, rather than reviewing each employer's plan. As a practical matter, though, any such change would be a particular concern for governmental plans. Governmental plans tend to be very large and complex, and often will not fit in a prototype document. If IRS eliminates the current determination letter process, it will be difficult enough for governmental plans to ensure they are able to keep their plans updated with new laws and regulations. It will be exponentially more difficult to ensure compliance with qualification rules if a plan has not obtained an IRS determination letter during the period when such letters are available. Access the entire piece at <http://benefitsattorney.com/governmental-plan-determination-letters-last-chance/>. Also see (C & C Newsletter for April 23, 2015, Item 11).

**3. SAN FRANCISCO RETIREES GET PENSION CUT OVERTURNED:** A San Francisco retiree group has won a big victory. Reversing a superior court ruling, an appeals court overturned part of a voter-approved San Francisco pension reform in 2011 that ended higher payments to retirees when investments have "excess earnings." The feisty group, Protect Our Benefits, is unhappy because the appeals court ruled higher payments can be ended for city workers who retired on or before November 5, 1996,

when the supplemental cost-of-living adjustment was first approved by voters. The appellate court has denied POB's petition for rehearing, meaning the next step is a petition to the California Supreme Court in an attempt to have the ruling regarding the pre-1996 retirees overturned. Of nearly 27,000 San Francisco Employees Retirement System members receiving benefits last year, about 8,300 retired before voters approved the supplemental COLA on November 5, 1996. Retirees in the city-run pension system receive a basic COLA of up to 2%, depending on inflation. San Francisco voters approved a supplement on November 5, 1996, which could boost the COLA to 3% of the pension amount. The money for the supplemental COLA comes from pension fund investment earnings "in excess of the expected earnings on the actuarial value of assets" in the previous year. The city pension system currently assumes investments will earn 7.5% a year, the same as California's three large state retirement systems, which critics say is too optimistic. In the past, for example, excess earnings paid for a "13th check" pension bonus in San Jose and two CalPERS programs. All three of those programs have been discontinued. However, 20 county retirement systems operating under a 1937 act can still use excess earnings for retiree bonuses, retiree health care or lowering employer contributions. San Francisco pension system is different, in that increases must be approved by voters, rather than bargained by unions and then approved by elected local or state lawmakers. After initial voter approval in 1996, the supplemental COLA was strengthened by a vote in 2002 making the supplement permanent, not reducible once granted. Another vote in 2008 increased the supplement from 3 to 3.5% of the pension amount. Enjoying a surplus, the San Francisco pension system went without employer contributions from 1996 to 2004! The city became the model for requiring voter approval of pension increases in San Diego in 2006 and Orange County in 2008. Last year the pension system was 94% funded using market value of assets. This year, employer contributions for police are 37% of pay, for firefighters 44% and for miscellaneous 19%. In the court battle over Proposition C, the city said switching the supplemental COLA from excess earnings to a requirement that pensions be fully funded "clarified" voter intent in 2008 when the supplement was increased to 3.5%. A superior court judge, agreeing with the city, said the legislative history of the previous votes showed that the supplemental COLA was tied to whether the pensions were fully funded. In a 3-to-0 ruling, a state appeals court overturned the superior court decision. The 2008 ballot materials do not mention full funding, said the panel. The appeals court also said retirees before November 6, 1996, have no vested right to the supplement. The contractual basis of a pension right is an exchange for services, and those retirees left service before the supplement was offered. Stay tuned.

**4. FLORIDA RETIREMENT SYSTEM GRANTS SAME-SEX COUPLES RIGHT TO BE NAMED BENEFICIARIES ON STATE PENSIONS:** Following legalization of same-sex marriage in Florida after prolonged litigation, the Florida Retirement System has quietly granted same-sex couples the right to be named beneficiaries on state pensions, according to *Daily Business Review*. Change in policy by the Florida Retirement System was announced in a letter sent by the Florida Division of Retirement to all retirees or participants in the Deferred Retirement Option Program (DROP). The letter cited the recent federal court ruling allowing same-sex marriage licenses to be issued in Florida. The letter notes the change applies to retirees and DROP participants who applied

before January 1, 2015. Supporters said they could not wait for Florida to join the rest of the nation and wait for the U.S. Supreme Court to rule on nationwide marriage equality. There are tens of thousands of same-sex couples who are affected by this policy, which affects all state employees, including teachers, police officers and firefighters. The Florida Attorney General's office pursued several avenues of appeal after federal and state judges ruled in favor of same-sex marriage, which became legal January 5, 2015.

**5. PUBLIC PLANS DATA WEBSITE LAUNCHES:** State and local government leaders know that retirement benefits are important in attracting and retaining talented workers. Having easy access to reliable data about pension plans can help inform those decision makers and others interested in retirement security issues. The Center for State and Local Government Excellence, the Center for Retirement Research at Boston College and the National Association of Retirement Administrators announced launch of the enhanced Public Plans Data website. PPD aggregates data to provide policymakers and others a comprehensive view of public sector retirement plans. Available on the site are

- "Quick Facts," including asset allocations and funded ratios at the national, state, and plan levels;
- Individual and aggregated data on more than 150 state and local pension plans; and
- An interactive browser that allows users to explore data from a variety of tables.

The Public Plans Database, established in 2007, is the most comprehensive database of public retirement plan data on employee and employer contributions, benefits, investment income, fees, plan membership, and plan provisions. Users can access downloadable comprehensive annual financial reports and actuarial valuations for every plan included in the database. In addition, an application programming interface allows users to connect directly to the PPD database and receive updates as they are made. Here is the link to the database: <http://www.publicplansdata.org/>.

**6. HOW TO MESS UP YOUR REQUIRED MINIMUM DISTRIBUTION:** Taking your correct required minimum distribution sounds so easy, according to The Slot Report: you just divide the balance of your IRA at the end of last year by your IRS-provided life expectancy factor. What could possibly go wrong? The answer: lots. On the surface the rules for calculating a required minimum distribution seem simple, when you begin to dig more deeply into the tax code, regulations and other duties, you find that RMDs can actually be incredibly complicated. Worse yet, if you fail correctly to navigate the proverbial RMD minefield, the mistakes you make that lead to an RMD shortfall can land you with a steep 50% penalty. With that in mind -- and while by no means an exhaustive list -- here are seven RMD mistakes you should avoid at all costs:

- Using the wrong table to determine your life expectancy factor. The overwhelming majority of IRA owners use the Uniform Life Table to determine their life expectancy factor. However, if the sole beneficiary of your IRA is your spouse and your spouse is more than 10 years younger than you, you can use the Joint Life Table. At no time does an IRA owner use the Single Life Table to calculate lifetime RMDs.

- Taking your RMD from the wrong type of account. If you have multiple IRAs, you can generally take the total RMD for all of your IRAs from just one IRA as long as the distribution is large enough to cover your cumulative IRA RMDs. However, if you have IRAs and other types of retirement accounts, such as a 401(k), distributions from one type of retirement account (for example a 401(k)) cannot be used to offset RMDs for another type of retirement account (such as an IRA).
- Failing to adjust your prior year-end balance for an outstanding rollover or transfer. It is not uncommon for people to move IRA money from one account to another. It happens all of the time for a wide assortment of reasons. If you happen to be moving money from one IRA to another late in the year, it is possible that your IRA funds might be “in transit” on December 31 and thus, will not be included in the year-end balance of either the distributing IRA or the receiving IRA. If that is the case, you have to “manually” add in the value of the outstanding rollover or transfer into your prior year-end balance to calculate your RMD.
- Failing to adjust your prior year-end balance for a recharacterization of a Roth IRA conversion made in the year after conversion. Similar to the previous mistake, a manual adjustment may have to be made to your prior year-end IRA balance if you converted a portion of your IRA to a Roth IRA last year, but recharacterized all or a portion of that conversion this year. For instance, suppose you converted \$50,000 to a Roth IRA in 2014, but when you went to file your 2014 tax return, you were unhappy with the resulting tax bill and decided to recharacterize the conversion and have the funds go back to a traditional IRA. The converted funds were not actually in your year-end traditional IRA balance, but now, once the recharacterization is made, the conversion is treated as though it never happened. Therefore, you must pretend like Roth money was traditional IRA money and make a manual adjustment to your prior year-end balance.
- Taking your RMD from your spouse’s retirement account. If you are married and file a joint return, income from both your IRA and your spouse’s will be reported on line 15 (a/b). Thus, there will generally be no difference in your tax bill whether you take a distribution from your IRA or your spouse’s IRA. That might lead you to believe that you can take your RMD from your spouse’s IRA, or *vice versa*. After all, what does Uncle Sam care if he gets the same thing either way? Well he does care, which means you have to as well. Your RMDs must come from your IRAs and your spouse’s RMDs must come from her IRAs.
- Forgetting to take your RMD altogether. It can be hard enough to remember the things in life that are really important to us, and for most people, RMDs do not really fit that category. RMDs also only impact IRA owners 70 ½ or older, and there’s little dispute that, on the whole, memory weakens with age. Put those two things together, coupled with the regular chaos of everyday life, and it is not a surprise to learn that forgetting to take an RMD is not exactly a rare occurrence.
- Failing timely to correct any mistakes you uncover. Mistakes happen. That is an inescapable fact. When it comes to making an RMD mistake though -- like most things in life -- it is more about how you deal with the mistake once you uncover it than it is about the mistake itself. If you discover you have made an RMD error, you are subject to a 50% penalty for any shortfall, but if you take corrective action (immediately take the amount you should have taken), self-report your mistake to

the IRS and properly complete the required paperwork, there is a good chance that the IRS will waive the penalty. If, on the other hand, you do nothing and the IRS discovers your mistake, you should be prepared to pay up!

**7. ANNUAL STATISTICAL SUPPLEMENT TO THE SOCIAL SECURITY BULLETIN, 2014:** Social Security Administration, Office of Retirement and Disability Policy, Office of Research, Evaluation, and Statistics has released SSA Publication No. 13-11700. Published annually since 1940, the supplement is a major resource for data on our nation’s Social Insurance and Welfare Program. A majority of the statistical tables present information about programs administered by the Social Security Administration -- the Old-Age, Survivors, and Disability Insurance program, known collectively as Social Security, and the Supplemental Security Income program. In addition, data are presented on the major health care programs -- Medicare and Medicaid -- and social insurance programs, including workers’ compensation, unemployment insurance, temporary disability insurance, Black Lung benefits, and veterans’ benefits. The supplement also includes program summaries and legislative histories that help users of the data understand these programs. The report is no longer available in hard copy, but can be accessed at <http://www.socialsecurity.gov/policy/docs/statcomps/supplement/2014/supplement14.pdf>. Meanwhile, here are just a few pieces of information from the 550 page volume:

Social Security  
(Old-Age, Survivors, and Disability Insurance)

Employment and Earnings

Workers in OASDI covered employment, 2013	163.2 million
Average earnings, 2013	\$43,786
Earnings required in 2014 for -	
1 quarter of coverage	\$1,200
Maximum of 4 quarters of coverage	\$4,800
Earnings test exempt amounts for 2014	
Under full retirement age for entire year	\$15,480
For months before reaching full retirement age in 2014	\$41,400
Beginning with month of reaching full retirement age in 2014	Test eliminated

Program Data

Cost-of-living adjustment for December 2013	1.5 percent
Average monthly benefit, December 2013	
Retired workers	\$1,294
Widows and widowers, nondisabled	\$1,244
Disabled workers	\$1,146
Number of beneficiaries, December 2013	
Old-Age, Survivors, and Disability Insurance	58.0 million
Old-Age Insurance	
Total	40.8 million
Retired workers	37.9 million

Survivors Insurance	
Total	6.2 million
Widows and widowers, nondisabled	3.9 million
Disability Insurance	
Total	11.0 million
Disabled workers	8.9 million
Benefit payments, 2013	
Old-Age, Survivors, and Disability Insurance	\$812.3 billion
Old-Age and Survivors Insurance	\$672.1 billion
Disability Insurance	\$140.1 billion
Administrative expenses, 2013	
Old-Age and Survivors Insurance	
Amount	\$3.4 billion
As a percentage of total benefits paid	0.5 percent
Disability Insurance	
Amount	\$2.8 billion
As a percentage of total benefits paid	2.0 percent

## Program Trends

- About 58.0 million persons received Social Security benefits for December 2013, an increase of 1,220,425 (2.2%) since December 2012. Seventy percent were retired workers and their spouses and children, 11% were survivors of deceased workers, and 19% were disabled workers and their spouses and children.
- Seventy-three percent of the 37.9 million retired workers received reduced benefits because of entitlement prior to full retirement age. Relatively more women (75.4%) than men (70.3%) received reduced benefits.
- The number of beneficiaries aged 65 or older rose from about 35.7 million in 2008 to almost 40.8 million in 2013 (14.1%). The number of beneficiaries aged 85 or older increased at a lesser rate during the 5-year period (11.7%), from about 4.9 million in 2008 to more than 5.5 million in 2013. In 2013, about 57,000 centenarians were receiving Social Security.
- About 22.8 million women aged 65 or older received benefits for December 2013. About 10.9 million (47.8%) were entitled solely to a retired-worker benefit. About 6.4 million (28.2%) were dually entitled to a retired-worker benefit and a wife's or widow's benefit, and about 5.5 million (23.9%) were receiving wife's or widow's benefits only.
- More than 3.2 million children under age 18 received benefits, including 1,200,282 children of deceased workers, 1,710,618 children of disabled workers, and 325,846 children of retired workers.
- About 10.2 million persons received benefits based on disability -- 8,940,950 disabled workers, 1,030,166 disabled adult children, and 257,248 disabled widows and widowers. In addition, 156,672 spouses and 1,771,155 minor and student children of disabled workers received benefits.
- Average monthly benefits for December 2013, including the 1.5% cost-of-living adjustment, were \$1,294 for retired workers, \$1,146 for disabled workers, and

\$1,244 for nondisabled widows and widowers. Among retired workers, monthly benefits averaged \$1,451 for men and \$1,134 for women. For disabled workers, average monthly benefits were \$1,271 for men and \$1,011 for women.

- Average monthly family benefits for December 2013 were \$2,298 for a widowed mother or father and children; \$1,973 for a disabled worker, wife, and children; and \$2,672 for a retired worker, wife, and children.
- Total OASDI benefit payments for calendar year 2013 were \$812.3 billion. Payments from the OASI trust fund were \$672.1 billion -- an increase of 5.4% from the \$637.9 billion paid in 2012.
- Benefit payments from the DI trust fund, from which benefits are paid to disabled workers, their spouses, and children, increased by 2.4% from \$136.9 billion in 2012 to \$140.1 billion in 2013.
- OASDI benefit awards in calendar year 2013 totaled 5,533,395, including 2,794,285 to retired workers, 510,867 to their spouses and children, and 861,668 to survivors of insured workers. Benefits were awarded to 868,965 disabled workers and to 497,610 of their spouses and children.

**8. ODD PUNISHMENT FOR CRIMES:** From FindLaw's Legally Weird blog, we learn that jail just does not always get the message across. People go to jail, get out and go right back in for another crime. Maybe they need more creative punishments. Former NFL player Darren Sharper may have the oddest probation condition ever seen. Sharper pled guilty to several rapes in different states. He has been sentenced to 15 years in prison, but may only have to serve nine. But do not think he is getting off easy, though. Once released from prison, Sharper will be on probation for the rest of his life. As a condition of probation he must take sex offender counseling and is prohibited from drinking alcohol, visiting bars or using the internet for sexual gratification. Oh, yeah, he must also submit to a "penile plethysmograph." A penile plethysmograph is a sensor, attached to the penis, which measures a person's arousal and reactions to sexual images. Reports are unclear as to what will happen if Sharper does show arousal. Will he get a shock every time he reacts to an image? Will he be sent back to prison? Regardless, a penile plethysmograph is probably preferable to spending more years in prison. P.S., why should he not wear the gismo in prison? P.P.S does Darren really have a Sharper Image?

**9. 36TH ANNUAL POLICE OFFICERS' AND FIREFIGHTERS' PENSION TRUSTEES' SCHOOL:** The 36th Annual Police Officers' & Firefighters' Pension Trustees' School will take place on June 2-4, 2015. You may access information and updates about the Conference, including area maps, a copy of the program when completed and links to register at the Residence Inn Tallahassee Universities at the Capitol. Please continue to check the FRS website for updates regarding the program at [www.myflorida.com/frs/mpf](http://www.myflorida.com/frs/mpf). All police officer and firefighter plan participants, board of trustee members, plan sponsors and anyone interested in the administration and operation of the Chapters 175 and 185 pension plans should take advantage of this unique, insightful and informative program.

**10. FPPTA 31ST ANNUAL CONFERENCE:** The Florida Public Pension Trustees

Association's 31st Annual Conference will take place on June 28 through July 1, 2015 at the Boca Raton Resort & Club, Boca Raton. A link on FPPTA's web site, [www.fppta.org](http://www.fppta.org), will take you to the Boca Raton Resort & Club site to make your room reservations. You may access information and updates about the Conference at FPPTA's website. All police officer and firefighter plan participants, board of trustee members, plan sponsors and anyone interested in the administration and operation of the Chapters 175 and 185 pension plans should take advantage of this conference.

**11. APHORISMS:** A good time to keep your mouth shut is when you are in deep water.

**12. TODAY IN HISTORY:** In 1904, ice cream cone makes its debut.

**13. 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.

**14. 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>.

**15. REMEMBER, YOU CAN NEVER OUTLIVE YOUR DEFINED RETIREMENT BENEFIT.**

\* \* \* \* \*

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