



CYPEN & CYPEN
NEWSLETTER
for
DECEMBER 17, 2015

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Never Forget September 11, 2001

and

Always Remember May 2, 2011

1. FED RATE HIKE MAY GIVE COMPANIES BREATHING ROOM ON PENSIONS: Non-financial institutions may not see immediate changes from the Federal Reserve's move to raise interest rates, but it will provide companies with pension obligations a little breathing room, according to the *Wall Street Journal*. Longer-term rates will not jump immediately based on small moves the Fed makes with the short-term rates it controls, but it could allow companies to assume

better returns on employee pension plans. Nothing earth-shaking or magical happens with the increase to rates that remain historically low, but it does send a message: we are through a rough patch. The U.S. central bank raised rates to a range of 25 basis points to 50 basis points, from a rate it had let fluctuate between zero and 25 basis points for several years following the financial crisis. The Fed's Federal Open Market Committee said the U.S. economy is expanding at a moderate pace, but encouraging signs in household and business spending have been countered by "soft" export numbers. Rising interest rates have the potential to improve the funding level of pension plans. Companies calculate their pension funding levels according to a formula that is tied to high-quality, longer-term bond rates. This "discount rate" is revised every year and used to project whether a plan's assets will rise over time to meet future expected payouts. The Fed's short-term rate moves do not necessarily translate in lockstep to long-term rate movements, but ultimately a rising-interest-rate environment should benefit corporate discount rates. Mercer estimates that a 100 basis-point move would lift the percentage of companies with a fully-funded pension plan to 25% from the current 10% level. Such moves could spur finance chiefs to reevaluate the administration of their plans. Companies have been trying to offload the risk of pensions for years, using lump-sum buyouts for retirees and former employees, and transferring the benefits packages to insurance companies. The more fully-funded a pension, the cheaper it is to offload that risk to an insurance company. In 2012, Verizon Communications Inc. and General Motors Co. were

among the first to transfer pension liabilities to insurers. In the separate deals, Prudential Financial Inc. took on a combined roughly \$35 billion in future-benefit obligations. The GM move affected non-union employees. As *CFO Journal* reported, Dow Chemical Co. says its pension could rise by the 20 percentage points it needs for full funding with as little as a one-percentage-point increase in prevailing interest rates.

2. DO FEES EXPLAIN DB OUTPERFORMANCE OVER DC?: Center for Retirement Research at Boston College has published a new report comparing investment returns by plan type from 1990 through 2012, using data from the U.S. Department of Labor's Form 5500. A review by planadviser.com shows that during the sample period defined benefit plans outperformed 401(k)s by an average of 0.7% per year, even after controlling for plan size and asset allocation. Much of the money accumulated in 401(k)s is eventually rolled over into individual retirement accounts, which earn even lower returns. CRR finds one major reason for the lower returns in 401(k)s and IRAs is higher fees, which should be a major concern as they can sharply reduce a saver's nest egg over time. Regarding the calculation method, aggregate returns can be calculated in a number of ways. One approach is simply to average the rate of return calculated for each plan in the sample, but this exercise produces a somewhat misleading average because, in reality, a small number of very large plans tends to hold much larger portions of assets than small-plan counterparts. So, an alternative measure would weight returns by plan

assets and then identify the average. Whether the two approaches in calculating returns yield different results depends on the size distribution of plans and the relationship between size and returns. The high percentage of plans and participants generally fall into the less than \$100 million category, but the bulk of assets does in fact rest in the larger plans. In the case of DB plans, returns very clearly increase with the size of the plan. The pattern is somewhat different for defined contribution plans, where returns increase until plans reach \$1 billion, and then decline thereafter. In both cases, excluding plans with less than \$100 million will produce higher returns. Weighting by assets will also produce higher returns for both types of plans, because it will deemphasize the low returns earned by small plans.

3. “FULL-TIME” IS WHAT EMPLOYER SAYS IT IS: Safdi received long-term disability benefits for seven years before they were terminated. After several administrative appeals, Safdi sued for benefits owed under the private right of action created by the Employee Retirement Income Security Act of 1974. The federal district court entered judgment against Safdi. On appeal, the United States Court of Appeals for the Sixth Circuit affirmed. Since 1983, Safdi had practiced medicine with the employer. In 1998, the employer purchased group disability insurance for its doctors. The primary document for the plan described benefits for employees “in active full-time employment” with a covered employer. The policy defined “active full-time employment” as *inter alia*, working for a

covered employer on a full-time basis and paid regular earnings and working at least the number of hours shown in the coverage schedule. The earliest coverage schedule set the third condition at 30 hours per week. Safdi's condition forced him to reduce his workload from 75 to 80 hours per week to about 30 to 40 hours per week. As a result, he lost income due to fewer hours billed. The insurance carrier initially denied his claim on grounds that he had not shown a significant reduction of income under his reduced, yet still full time, work schedule. In particular, Safdi did not qualify for total disability benefits because, according to the carrier, his work schedule indicated his ability to perform material and substantial duties of his occupation on a full-time basis. The district court concluded that "full-time" effectively meant the number of hours Safdi himself worked before his disability; that is, 70 to 80 hours per week. Although Safdi contended that full-time should be read to mean the 30 hours per week mentioned in the definition, the district court rejected this interpretation. When interpreting ERISA plan provisions, general principles of contract law apply; unambiguous terms are given their plain meaning in an ordinary and popular sense. The ordinary meaning of "full-time" is "employed for or working the amount of time considered customary or standard." The "customary standard" amount of time in this context is likely the average hours of gastroenterologists generally. *Safdi v. Covered Employer's Long Term Disability Plan Under the Union Central Employee Security Benefit Trust*, Case No. 14-3598 (U.S. 6th Cir. November 24, 2015).

4. INSTEAD OF RAIDING THE ASSETS FORFEITURE FUND, CONGRESS SHOULD SIMPLY DISCONTINUE IT:

Civil asset forfeiture is a tool that enables law enforcement officials legally to seize personal cash or private property, based on probable cause that it was obtained through a criminal act, according to leoaffairs.com. The law allows officers to seize a person's private property and cash without charging them with a crime. In 1984, Congress passed the Comprehensive Crime Control Act, which allowed law enforcement agencies to keep the proceeds of successful civil forfeitures. After the Comprehensive Crime Control Act passed, agencies within the Department of Justice began to deposit the money made from forfeitures into a newly created Assets Forfeiture Fund. In 1992, the Internal Revenue Service and other Treasury agencies were allowed to deposit forfeiture proceeds into the Treasury Forfeiture Fund, which is the Treasury Department's special account. At the time, Congress made the judgment that law enforcement funding was a high priority that trumped any other potential use of the funds, which is why the Treasury and Justice Departments were given exclusive control of the funds. It appears that Congress is currently re-evaluating the arrangement. In the 2013 and 2015 Bipartisan Budget Acts, Congress withdrew \$2.3 billion from the Treasury and the Assets Forfeiture Fund to balance out spending increases in other parts of the budget. The withdrawal of \$2.3 billion from the Assets Forfeiture Fund shows that Congress now believes that there are other departments in the government that need the funds more than law enforcement agencies. Even though Congress has determined that the Assets Forfeiture

Fund should be used for other purposes, it has to stop taking money out of the funds. If Congress continues to dip into the Assets Forfeiture Fund, it can cause a potentially serious problem because a lot of law enforcement agencies depend on the funds to finance a large portion of their operations. Unexpected withdrawals like the ones made in the 2013 and 2015 Bipartisan Budget Acts can result in budget shortfalls that lawmakers may be unable to cover on short notice. Congress unexpectedly taking money out of the Assets Forfeiture Fund could also result in law enforcement officials seizing more property, to ensure they have enough forfeiture revenue, which could result in serious problems for innocent property owners. A solution to the problem is for Congress to return forfeiture revenues to the General Fund. By doing so, Congress will end the profit incentive that often distorts the priorities of law enforcement officials, and restore the power of the funds to federal, state, and local legislatures.

5. MORE THAN FIFTY PERCENT OF WOMEN ARE VERY CONCERNED ABOUT RETIREMENT SAVINGS: Women are more concerned than men about how much they are saving for retirement and are more likely than men to put money away in their workplace retirement accounts, yet they also view themselves as less prepared for retirement. *Employee Benefit News* reports that both men and women are concerned about being able to pay bills, pay down debt and about their investments losing money, but women also have a higher level of concern than men about health, the well-being of their immediate family and the economy. Women also are more concerned

than men about accumulating enough money for retirement. Eight in 10 women have concerns about saving enough for retirement, with 54% saying they are very concerned. The anxiety expressed by women is understandable when one considers the challenges they face in achieving a financially secure retirement. Income disparities and time out of the workforce are among factors that will reduce retirement savings, as well as Social Security and employer-provided retirement benefits. At the same time, longer lifespans will necessitate more savings to produce additional years of retirement income.

Seventy-eight percent of women say they are contributing to their workplace retirement savings plan, compared to 75% of men. The fact that many are contributing, but also are very concerned about not being able to retire when and how they want to, implies that they may not be saving enough to feel secure about reaching their retirement goals. Even though more women than men are contributing to a workplace plan, nearly six in 10 women and men report being behind schedule in saving for a financially secure retirement. Neither gender believes they are saving enough for retirement, indicating that inadequate savings rates may be more a function of a perceived lack of ability to save more than a lack of awareness regarding the need to save. Only one in five women consider themselves do-it-yourself investors, compared to 40% of men. [What a surprise.] Men's perception about their spouses or partners when it comes to investing is usually not correct, with three out of 10 men believing their partners want them to handle everything. When it comes to seeking financial advice, women are also more likely than men to ask friends or family

for help. Fifty-seven percent of women say they will consult friends and family on financial issues, compared to 43% of men; and 40% will consult work colleagues, compared to 31% of men. Older women are much more likely than younger women to be knowledgeable about financial issues, have a relationship with a financial adviser or own a variety of financial products. Younger women, on the other hand, are more concerned about personal financial issues than their older counterparts, and are much more likely to talk to friends and co-workers about financial issues.

6. OVERALL TRAFFIC DEATHS IN U.S. FALL: Nearly 33,000 Americans died on U.S. roadways last year, a figure that has gradually declined in recent years. According to governing.com, in certain states, however, fatality tallies are headed in the opposite direction. Updated data for 2014 published by the National Highway Traffic Safety Administration provide a detailed portrait of the prevalence of various types of fatal crashes and where they are occurring. Over the year, Vermont (-36%) and New Hampshire (-30%) experienced the largest declines in traffic fatalities. Meanwhile, Wyoming recorded 150 fatalities in 2014 after the number of lives lost there had plummeted to just 87 the prior year. New Mexico's 383 traffic fatalities similarly marked the deadliest year for the state since 2007. Many factors can push a state's traffic deaths up or down in a given year. One often-cited factor is the economy, since roads are more filled with people commuting to and from work or traveling for pleasure in good economic times. Drops in the unemployment rate

generally coincide with increases in traffic fatality rates. State laws, too, play a role in preventing traffic deaths. Primary seatbelt laws, which enable law enforcement officers to ticket drivers absent any other infractions, promote seatbelt usage. The role of seatbelts in saving lives is well documented: those not wearing seatbelts accounting for nearly half (49%) of passenger vehicle occupant deaths. It is those riskier drivers who are not buckling up where even small changes in seatbelt use can have a big effect on fatalities. The weather in a state can also influence traffic deaths over the course of a year. Heavy snowfall may lead to more accidents, but fewer fatalities actually occur usually with not as many vehicles on roadways and motorists tending to drive more slowly. Warmer weather, on the other hand, tends to encourage more walking, biking and other modes of travel.

7. TRENDS THAT SHOOK BENEFITS IN 2015: Although approaching the process from different ends of the spectrum, brokers, employers and end consumers faced increased expectations for their respective roles in employee benefit plans this year. According to *Employee Benefit Adviser* the situation, coupled with evolutions in technology, 401(k) and voluntary product design, made 2015 anything but static. Here are seven trends that shook benefits in 2015:

- **Changing titles.** During 2015 and especially in the fourth quarter, brokers shifted away from being benefit consultants to being compliance consultants.

- **Voluntary customization.** Non-traditional voluntary benefits experienced continued customization this past year. In the next few years we will see this trend continue, whether it be giving the employees more options or simply just customizing content about benefits to help them understand it.
- **Betting on the consumer.** The big bet in U.S. markets was on the consumer in 2015. Government is relying on consumers to make educated choices about insurance, and ultimately, their healthcare decisions and overall wellness. Shift to healthcare consumerism is well known.
- **Repealing the ACA.** Members of Congress continued efforts to repeal the Affordable Care Act in 2015, despite a June 2015 Supreme Court ruling that upheld subsidies for more than 6 million people. Since the law's passage House Republicans have voted more than 50 times to repeal or delay the law.
- **Changing regulations.** This year the agent and broker industry was mistreated and excluded by the alphabet of the federal government. If that was not enough, most insurance carriers have decided, agents and brokers are not worthy of a fair compensation for their hard work. Consumers are being denied access to an expert.
- **Survival mode.** In 2015 brokers were in a trend of survival as their world got rocked pretty hard with Zenefits. It was not so much that they disliked Zenefits, but they had the same reaction that taxicabs had to Uber. For brokers, 2015 was about survival and how they could recreate and reinvent to be relevant in a

post-ACA world.

- **Automating 401(k)s.** 2015 was about giving small businesses access to 401(k)s by automating them and making it easier to have one. Robo-advisers use computer-generated model, or algorithms, to get workers into better investments, and say they can do it more cheaply than managed account services offered by traditional record-keepers.

8. HO...THAT'S RICH!: Pionline.com reports that a manager has a client for its new alternative investments funds for the defined contribution market -- a defined benefit plan! The unidentified client is a non-profit health care system in the Midwest. Officials from the \$2.5 billion pension fund recently made a \$50 million commitment to the fund's investment fund option. Launched in August, the fund is designed to offer private equity and private market investments as part of a suite of target-date funds. The fund noted the small irony of the first client being a defined benefit plan.

9. SIGNS YOU DO NOT MAKE ENOUGH MONEY: If you are constantly struggling to make ends meet, you may be facing a combination of problems. It can be frustrating to be in a financial rut and not be able to find a way out. You may think that you make decent money, but you are still struggling each month. You may be overspending or you may not make enough money. You may be overspending while not making enough to cover your basic needs. If you do not make enough to cover your bills, you will need to take

steps now to increase your income. Even if you feel like you are too poor to budget, a budget can help you get back on track. Learn from [about.com](https://www.about.com) the signs you are not making enough money:

- **You Are Using Your Credit Cards Every Month.** One of the biggest signs that you have an income issue is that you are using credit cards towards the end of the month to cover all of your expenses. If you are running out of money during the month, or you are using credit cards to help you manage between paychecks, then you are most likely facing an income issue.
- **You Run Out of Money at the Beginning of the Month.** Every now and then, you can have a bad month, where everything is super tight the last week or so. However, if you are struggling to make ends meet after the fifth of the month, then you are most likely facing an income crisis. This situation is a strong indicator of an income crisis, because it demonstrates that there is not as much overspending going on. If you are barely able to pay your bills and you do not have enough left over to eat on, then you are not making enough money.
- **You Cannot Cover Your Bills:** If you are choosing between which bills to pay, then you definitely have an income crisis. It is important to do something about this situation as quickly as possible. You may need to take on a second job to help you catch up. You should also look for ways to reduce your bills, like moving to an area with lower rent, or selling your car. Take the

steps both in the short term and the long term to fix this situation.

- **There is Nothing Else to Cut:** When you look at your budget to find extra money, you cannot find anything else to cut. You are already doing without cable, you do not have a gym membership, and you never eat out. It can be very frustrating when you are choosing between eating and paying your electricity bill. If you have cut everything you can, and you still cannot make ends meet then you have a serious income issue.
- **You Cannot Handle an Emergency:** When you are stretched tight each month, it is difficult to put money aside in an emergency fund. If you are not able to handle an emergency, you may end up using your credit cards. Eventually your credit card payments will grow large enough that they cripple you even more. If you do not have any extra money for an emergency fund each month, then you do not make enough money.
- **You Are Constantly Worried About Money:** There is a difference between worrying about how to pay for an unexpected car repair, and the sick knot in your stomach that never leaves as you worry about how to pay for groceries or cover the rent. If you are worrying about money constantly, and it is keeping you awake at nights, you are likely not making enough money. Put some of the worry to good use and start making a plan that will turn your situation around.
- **You Are Not Reaching Your Financial Goals:** If you are

barely staying afloat and not making any progress on paying off your debt or saving money, then you are likely not making enough money. This situation may not be as serious as the other signs listed above, but it is still enough that you may want to take the steps you need to change your current situation. You may find yourself in this situation when you start your first job, and you do not make as much as you thought you would. You need to address this problem before it becomes permanent.

- **You are not paying your lawyer.** [Just kidding.]

10. COST OF HOLIDAY GIFTS WILL RISE SLIGHTLY: The PNC Christmas Price Index shows the current cost for one set of each of the gifts given in the song “The Twelve Days of Christmas.” It began about 30 years ago when PNC Bank decided to figure out how much it would cost to buy each of the gifts. Thus, a holiday tradition was started that continues to this day. The PNC Christmas Price Index is similar to the Consumer Price Index, which measures changes in price of goods and services like housing, food, clothing, transportation and more. It reflects spending habits of the average American. The goods and services in the PNC Christmas Price Index are far more whimsical. In most years, the price changes closely mirror those in the Consumer Price Index. It is a fun way to measure consumer spending and trends in the economy. Here is the 2015 line-up, showing current cost for one set of each of the gifts in the song:

12 Drummers Drumming...\$2,854.80 (same as 2014)

11 Pipers Piping...\$2,635.00 (same as 2014)
10 Lords-a-Leaping...\$5,508.70 (up 3%)
9 Ladies Dancing...\$7,552.84 (same as 2014)
8 Maids-a-Milking...\$58.00 (same as 2014)
7 Swans-a-Swimming...\$13,125.00 (same as 2014)
6 Geese-a-Laying...\$360.00 (same as 2014)
5 Gold Rings...\$750.00 (same as 2014)
4 Calling Birds...\$599.96 (same as 2014)
3 French Hens...\$181.50 (same as 2014)
2 Turtle Doves...\$290.00 (up 11.5%)
And a Partridge in a Pear Tree...\$214.99 (up 3.5%)

The overall total is \$34,130.99, a 0.6% increase.

11. WHO IS THE RICHEST PERSON IN EACH STATE?: That question is asked often enough that it deserves an answer...from *Forbes*. So, for the first time ever, *Forbes* offers an unique road map to wealth in America, with a list of the richest person in each state. Here are some of particular interest (at least to us):

- Mickey Arison – Florida, age 65. Source of wealth: Carnival Cruises. Net worth, \$7.4 Billion.
- Larry Ellison, California, age 70. Source of wealth: Oracle. Net Worth, \$52.8 Billion.
- Ken Griffin – Illinois, age 46. Source of wealth: hedge Funds. Net worth, \$6.6 Billion.

- David Koch, New York, age 75. Source of wealth diversified. Net worth \$42.7 Billion.
- David Tepper, New Jersey, age 57. Source of wealth: hedge funds. Net worth, \$10.4 Billion.
- Leslie Wexner – Ohio, age 77. Source of wealth: retail. Net worth, \$7.5 Billion.

12. SO YOU THINK YOU KNOW EVERYTHING: A dragonfly has a life span of 24 hours.

13. TODAY IN HISTORY: In 1903, at 10:35 a.m., first sustained motorized aircraft flight (Orville Wright).

14. 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.

15. 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>.

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

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