



**CYPEN & CYPEN**  
**NEWSLETTER**  
**for**  
**JANUARY 7, 2016**

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Never Forget September 11, 2001

and

Always Remember May 2, 2011

**1. S&P 1500 PENSION FUNDED STATUS INCREASED BY 3% IN 2015 FUELED BY INCREASES IN INTEREST RATES:** The estimated aggregate funding level of pension plans sponsored by S&P 1500 companies increased from 79% as of December 31, 2014 to 82% as of December 31, 2015 according to a piece in the International Foundation of Employee Benefits. Decreases in equity and fixed income markets were more than offset by increases in

interest rates used to calculate corporate pension plan liabilities, increasing funded status by 3%. The estimated aggregate deficit of \$404 billion as of December 31, 2015 is approximately \$100 billion less than the \$504 billion deficit seen at the end of 2014.

**2. IRS AND TREASURY GUIDANCE FOR EMPLOYEE PLANS DETERMINATION LETTER PROGRAM:** International Foundation of Employee Benefit Plans announced that the Internal Revenue Service and Department of the Treasury have issued Notice 2016-03, stating that they will issue guidance in anticipation of the elimination, effective January 1, 2017, of the 5-year remedial amendment cycle system for individually designed plans under the Employee Plans determination letter program. The guidance will provide that:

- Controlled groups and affiliated service groups that have previously made a Cycle A election are permitted to submit determination letter applications during the Cycle A submission period beginning February 1, 2016, and ending January 31, 2017.
- Expiration dates on determination letters issued prior to January 4, 2016, are no longer operative; and
- The period during which certain employers may, on or after January 1, 2016, establish or adopt a defined contribution pre-approved plan and, if permissible, apply for a determination letter, is extended from April 30, 2016, to April 30, 2017.

The changes described in the notice will be reflected in an update to Revenue Procedure 2007-44, 2007-2 C.B. 54. Employers may rely on this notice until Rev. Proc. 2007-44 is updated to include these changes. Here is a link to Notice 2016-03: <https://www.irs.gov/pub/irs-drop/n-16-03.pdf>.

**3. BANKRUPTCY GRANTS COAL COMPANIES' MOTION TO REJECT CBAs, TERMINATE RETIREE BENEFITS:** In a December 28, 2015 opinion, Judge Tamara O. Mitchell of the U.S. Bankruptcy Court for the Northern District of Alabama granted a motion by the company and its subsidiaries requesting authorization to reject their current CBAs, and terminate retiree benefits allowing them to continue with a pending sale of their mining operations. The case stems from a decline of global metallurgical coal industry since 2011. The court recognized the impact the ruling will have on employees, retirees, creditors, vendors, the city and the state. At the beginning of the 57 page order including 142 footnotes, summarized by Bloomberg, the court signaled where it was heading:

At the outset, the court notes and recognizes the impact any ruling on the pending motion and objections has on multiple stake holders in these Chapter 11 cases. As noted on the record during the hearing, the dollar or quantitative monetary impact on each employee or retiree may not be as high an amount as to other creditors. However, the impact on each employee and each retiree is huge, and may be difficult for many, if not all, to understand, much less accept as fair,

equitable or just.

*In re: Walter Energy, Inc.*, Case No. 15-02741-TOM11 (Bankr. N.D. Ala. December 28, 2015).

#### **4. CALIFORNIA STATE BOARD RULES AGAINST SAN DIEGO'S PENSION CUT BACKS:**

A new state labor board ruling casts doubt on San Diego's aggressive pension cutbacks, and orders the city to spend millions creating retroactive pensions for 2,000 employees hired since those cutbacks took effect. As reported in *Los Angeles Times*, the city attorney predicts (always a dangerous thing) that a state appellate court would nullify the ruling and vindicate the pension cutbacks, which city voters easily approved as Proposition B in 2012. The measure replaced guaranteed pensions with 401(k)-style retirement plans for most new city hires. Labor leaders praised the board's ruling and urged city officials to accept defeat so they could rein in the potentially spiraling costs of litigation. The city's bill is going to keep accumulating with interest, and it will only get more expensive if they keep filing appeals, according to the union. Many city budget projections and proposals rely on future pension savings created by Prop B, so any softening or elimination of the measure could have a significant effect. The city has hired roughly 2,000 employees without pensions since the cutbacks took place in July 2012, now required by the ruling to backfill pensions for those workers, pay them 7% interest as a penalty and cover their attorney's fees.

**5. PENSIONS HOT TOPIC IN STATES:** The *Wall Street Journal* reports that state lawmakers are paying attention to pensions. However, the focus is not limited to retirement benefits of public-sector employees, which have been cut at equal rates by Democratic and Republican governors since 2009. The growing support of pension overhauls by Democrats has strained relations with unions. Forty-five states put into law some 245 pension related bills in 2015, up from 89 such laws taking effect in 37 states just three years ago. Topics of the legislation range from early retirement incentives to military service credits to fossil fuel divestiture. Pensions have come to the political forefront as costs associated with the retirement benefits of teachers, firefighters and other public sector workers have risen after the financial crisis due to investing losses and chronic underfunding by states. For states with pension holes, even those led by Democrats, the increased legislative activity is unlikely to slow in future years. The legislative attention on revamping pensions is also unlikely to abate, regardless of political leaning, as unfunded retirement obligations continue to mount. Nearly all states since 2009 have instituted some type of pension benefit overhaul. Those changes have ranged from cycling workers onto 401(k) style accounts to increasing worker contributions to hiking minimum retirement ages. In the State of Florida, the accompanying chart reveals that:

- Florida Retirement System, which previously was non-contributory, began requiring participants to contribute 3% of pay beginning July 1, 2011.

- For new hires as of July 1, 2011, 8 year final average salary period from 5, COLA accrual eliminated for all service credits earned after July 1, 2011.
- For new hires as of July 1, 2011, 8 year vesting period from 6, raised normal retirement age, from 62 to 65, and 55 to 60 for public safety workers.
- Changes approved in 2011 include FRS participants maintain option to select a DB or DC plan as their primary retirement benefit.

**6. MOVE OVER, AMERICA:** More than 150 U.S. law enforcement officers have been killed since 1999 after being struck by vehicles along America's highways, according to the National Law Enforcement Officers Memorial Fund. To lower that deadly toll, a new coalition of traffic safety and law enforcement groups is launching a nationwide public awareness campaign to protect emergency personnel along our nation's roadsides. According to a national poll sponsored by the National Safety Commission:

- 71% of Americans have not heard of "Move Over" laws;
- 86% support enacting "Move Over" laws in all 50 states; and
- 90% believe traffic stops and roadside emergencies are dangerous for law enforcement and first responders.

The poll was conducted among 625 registered voters. Forty three states have passed "Move Over" laws, which require motorists to

move over and change lanes to give safe clearance to law enforcement officers on roadsides. In Florida, it is Section 316.126, Florida Statutes. To read more, please visit:

<http://www.moveoveramerica.com/>.

**7. SO YOU THINK YOU KNOW EVERYTHING:** An ostrich's eye is bigger than its brain.

**8. TODAY IN HISTORY:** In 1954, Georgetown – IBM experiment, the first public demonstration of a machine translation system, is held in New York at the head office of IBM.

**9. 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.

**10. 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>.

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