



CYPEN & CYPEN
NEWSLETTER
for
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Never Forget September 11, 2001
and
Always Remember May 2, 2011

1. CLARIFICATION OF ITEM ON FLORIDA ELECTRONIC ANNUAL REPORT: Item 3 of our January 26, 2017 Newsletter dealt with online reporting of annual reports in Florida. However, we were unaware that the link is not self-executing. Here is the item in its entirety, as corrected, so that it makes sense:

The Florida Division of Retirement is pleased to announce the activation of its online reporting portal for pension plans subject to the reporting and disclosure requirements of Chapters 175 and 185, and Part VII, Chapter 112, Florida Statutes. This will allow plan actuaries and administrators to submit actuarial valuations and police and fire annual reports electronically to the Division, which saves paper and printing costs, allows for a more efficient submission and review process, and improves the accuracy of data gathering for its annual report to the Florida Legislature. The link for the reporting portal can be found at: <http://www.myfloridacfo.com/Division/AA/LocalGovernments/default.htm>. Individuals need to obtain a username and password to access the site, so the public is unable to view the online report.

2. PUBLIC PENSION FUNDS CONTINUE RECOVERY FROM

RECESSION: It is well-known that public pension funds took a major hit during the financial crisis. *National Public Pension Coalition* has written before about the steep drop in funding levels from 2008 – 2009 when the economy was crashing due to Wall Street greed and incompetence. The story that is less well-known is that the majority of public pension funds continue to recover from the depths of the recession, as a recent report from the National Conference on Public Employee Retirement Systems. ([See C & C Newsletter for January 19, 2017, Item 1.](#)) Each year NCPERS surveys its members about various aspects of public pension plans from funding level to investment performance to cost effectiveness. The recently released 2016 survey documents healthy pension funds that provide a secure retirement to firefighters, teachers, librarians, and

other public employees. When it comes to funding status, a key metric for lawmakers and the general public, pension funds continue to improve each year. The average funded level of the surveyed plans has increased from 71.5% in 2014 to 74.1% in 2015 to 76.2% in 2016. These plans have managed to improve their funded status each year, despite an investment environment that remains challenging. Speaking of investing, public pension funds continue to earn strong returns. According to the NCPERS survey, when looking at returns from the past 3 years (8.6%), 5 years (8.3%), and 20 years (7.9%), the pension funds have achieved returns close to or exceeding 8%. When looking at the past 10 years, the investment rate of return was 6.2%, but that 10 year period includes the recession. While funds continue to achieve these strong rates of return, many are lowering their actuarial assumed rate of return to account for continued weakness in the market. Finally, public pensions continue to be a cost-effective way to provide retirement security to millions of hard-working public employees. Pension funds have lowered their costs for administering their funds and paying investment managers. Not only have they lowered their own costs compared to previous years, but their costs are significantly lower than most mutual funds. The report is confirmation of what we already know: public pensions work. They are a cost-effective way to provide retirement security to working families. While pension funds did take a hit during the recession, they continue to recover each year through smart investing and cost-cutting measures.

3. IRON WORKERS VOTE IN FAVOR OF BENEFITS SUSPENSION:

Thus, the U.S. Department of Treasury has written a letter authorizing such suspension of benefits by Iron Workers Local 17 Pension Fund ([See C & C Newsletter for December 22, 2016, Item 3](#)). As required by Multiemployer Pension Reform Act of 2014, the Treasury conducted a vote of eligible plan participants and beneficiaries to approve or reject the benefit suspension. The proposed suspension of benefits must go into effect following the vote unless a majority of all participants and beneficiaries of the plan vote to reject the suspension. A majority of eligible voters did not vote to reject the benefit suspension. Of the 936 votes cast, 616 voted in favor of the benefit suspension, and 320 voted against it. After the suspension goes into effect, the plan sponsor must make an annual determination that all reasonable measures to avoid insolvency have been and continue to be taken, and that the plan is projected to become insolvent unless the suspension continues. If the plan fails to satisfy the annual plan sponsor determination requirement for a plan year, then the suspension of benefits will cease to be in effect beginning as of the first day of the next plan year. (The two-to-one margin in favor of cuts is not surprising, since four-fifths of the plans participants stand to lose little or nothing as a result of the cuts. More than half of the fund's 1,938 participants did not vote.)

4. DALLAS POLICE OFFICERS SUE PENSION FUND FOR LIMITING DROP WITHDRAWALS: A group of retired Dallas police officers filed a lawsuit against the board of trustees of the \$2.1 billion Dallas Police & Fire Pension System, for limiting DROP withdrawals. According to [pionline.com](#), to protect its liquidity after a record \$523 million in

withdrawals from its deferred retirement option plan between August and December, the pension fund board voted temporarily to suspend DROP withdrawals. On December 29, the fund board lifted the suspension on monthly withdrawals, but not lump-sum withdrawals, and in January, unveiled a new withdrawal policy for those with outstanding DROP balances. Under the new policy, retirees can withdraw up to \$3,000 from their DROP accounts monthly, starting March 31. In any month, additional DROP funds may be distributed if the board determines that excess funds are available beyond what is required to meet its monthly benefit payments and other obligations. For those with outstanding lump-sum DROP requests as of January 12, the new policy also calls for \$6.6 million total to be distributed on a pro rata basis based on their requested amounts. The lawsuit alleges that denying members full access to their DROP accounts violates the U.S. and Texas constitutions. The lawsuit also seeks a preliminary injunction from the court preventing the pension fund board from limiting DROP withdrawals.

5. SMARSH ISSUES PUBLIC SECTOR GUIDE TO SOCIAL MEDIA

STRATEGY AND POLICY: The guide contains practical steps that will help public sector agencies, organizations and departments develop a social media strategy and policy to gain maximum value from social media efforts. It also outlines some smart records retention practices -- so you will be better prepared to respond to public records requests or other e-discovery needs when they arise. The wide spread adoption of social media across public agencies is creating new possibilities for public outreach and media relationships. But to be heard above the noise

on social networks, like LinkedIn, Facebook and Twitter requires a smart strategy and thoughtful growth policies. Access the guide at:

[https://afd34ee8b0806295b5a7-9fbee7de8d51db511b5de86d75069107.ssl.cf1.rackcdn.com/Social Media ebook Public Sector 2016.pdf](https://afd34ee8b0806295b5a7-9fbee7de8d51db511b5de86d75069107.ssl.cf1.rackcdn.com/Social_Media_ebook_Public_Sector_2016.pdf).

6. FLORIDA LEGISLATORS LOOK INTO CLOSING FRS DB PLAN:

[House Bill 353](#) and [Senate Bill 428](#), would foreclose enrollment in the Florida Retirement System's defined benefit plan to any city not currently involved. A report from floridapolitics.com indicates that while the defined contribution arm of FRS would be open to new municipal entrants, the defined benefit option would not. The house bill was filed by Jacksonville Republican Jason Fischer. Fischer says his bill is just the first of a series of pension reform bills headed to the Florida Legislature. Senator Jeff Brandes filed the Senate companion bill.

7. NEW CALIFORNIA LAW REQUIRES PUBLIC PENSION RETIREMENT SYSTEMS TO DISCLOSE COMPENSATION AND EXPENSES:

An advisory from Sidley cautions that under a new California law (AB 2833), starting January 1, 2017, each California Public Pension and Retirement Systems, including the University of California, must require vehicles in which the system has made "alternative investments" to provide certain information related to those alternative investments, including information regarding fees and expenses borne directly or indirectly by the system, and investment performance. Each California public pension and retirement system must also disclose this

information, at least annually, at a public meeting. Under the new law, an “alternative investment” is an investment in a private equity fund, venture fund, hedge fund or absolute return fund. The new disclosure requirements apply to all new contracts that a California public pension or retirement system enters into (that is, all fund subscriptions) on or after January 1, 2017 and to all existing contracts pursuant to which a California public pension or retirement system makes a new capital commitment on or after that date. For “grandfathered” investments (that is, existing investments for which the public or retirement system has not made a new capital commitment on or after January 1, 2017), the law requires the public pension or retirement system to undertake “reasonable” efforts to obtain the same information that it is required to obtain from non-grandfathered investment vehicles, and to comply with the same public reporting requirements for any such information it obtains.

8. “BOARD REFRESHMENT” TRENDS: *Investor Responsibility Research Center Institute* has released a 145-page study on “Board Refreshment” Trends at S & P 1500 Firms. “Refreshment” is among the most hotly-debated topics across U.S. boardrooms and within the broader corporate governance community. While shareholders, directors, and other market constituents vary as to the reasons for their refreshment concerns, they typically include snail-paced board turnover, sky-rocketing tenures, stagnant skillsets and deficient diversity. Investor respondents were asked which tenure-related factors with multiple answers allowed would give rise to concern about a board's nominating

and refreshment processes. Among the 120 institutional investors (one-third of whom each own or manage assets in excess of \$100 billion) who responded, 68% pointed to a high proportion of directors with long tenure as cause for concern, 53% identified an absence of newly-appointed independent directors in recent years as a potential problem, and 51% flagged lengthy average tenure as problematic. Just 11% of the investor respondents said that tenure is not a concern, although even several of those respondents indicated that an absence of newly-appointed directors is a concern. In their comments, several investors identified other factors of concern, such as directors' ages, a high overlap between the tenure of the CEO and the tenure of the non-executive directors, and lengthy average tenure coupled with underperformance. Suggested remedies vary as well. Some investors and board members urge wider use of "forced exit" mechanisms, such as mandatory retirement ages or term limits. Other boardroom observers seek process improvements such as board/director evaluations, continuous boardroom succession planning and enhanced disclosure of these procedures. A growing number of investors have begun to take refreshment matters into their own hands. Some shareholders routinely oppose the reelection of long-tenured directors to encourage turnover and fresh blood. Importing a practice from other global markets, other investors threaten to slap "affiliated" (non-independent) labels on long-tenured board members in hopes of spurring boardroom succession. While long tenure, by itself, is typically not enough to sway an election result, it can create a tipping point in contested elections. Notably, hedge funds increasingly seek to tap into investors' angst over refreshment by targeting long-serving board

members. Diversity has become a lightning rod with respect to refreshment. Activists target low-diversity boards with shareholder resolutions and letter-writing campaigns. Disenchanted with the slow pace of progress, some players even urge market regulators to follow the lead of some of their global counterparts by using quotas and other best practice rules (including enhanced disclosure of nominating procedures) to speed up changes in boardroom composition. Largely missing from this debate is hard data on: (1) the scope of the perceived problem, (2) the most effective methods for promoting board refreshment and (3) the benefits and possible side-effects of adopting them. Key findings include:

- **Tenure Trends Reversing... And May Reverse Again:** Average boardroom tenure steadily rose from 8.4 years in 2008 to a peak of nine years in 2013 before slowly reversing course from 2014.
- **Gender Tenure Gap Opens:** Male directors currently have average tenures (9.2 years, down from a high of 9.3 years during the 2013-2015) time period that run nearly three years longer than the average service period (6.4 years) for women directors.
- **Greying of Boards Has Slowed:** The typical director serving on the board at an S&P 1500 firm is 62.5 years old, which is the age high watermark for the 2008-2016 study period.
- **Gender Age Gap Widens:** An average three year-plus age gender gap separates the typical male director (63.1 years old) on S&P 1500 boards from his female boardroom peers (59.8 years old).
- **Older Directors Claim More Board Seats:** Directors who are in their seventies and eighties were the only age groups to claim

bigger slices of the S&P 1500 boardroom seat pie over the 2008-2016 time period.

- **Bulk of Board Seats Occupied by Directors in Their 50s and 60s:** Despite the shifts at both ends of the boardroom age brackets, individuals in their 50s and 60s continue to fill the lion's share (73.6%) of board seats at S&P 1500 companies.
- **Generational Shift Occurs in Boardrooms:** The 2008-2016 study period coincides with a demographic boardroom shift from directors who are members of the so-called "silent generation" (born from roughly 1925 to 1945) to "baby boomer" board members (born from 1946 to 1964).
- **Bumper Crops of "New" Directors in Recent Years:** Contrary to common wisdom, no shortage of "fresh blood" exists in the overall S&P 1500 directorship pool.
- **Fewer Boards Stand Pat:** In 2015, for the first time since 2008, more than one-half of the companies in the S&P 1500 added one or more "new" directors to their boards.
- **Power Shifting Towards Newer Board Members:** The large, recent incoming classes of "new" directors have (temporarily) tipped the balance of power in S&P 1500 boardrooms towards recent arrivals.
- **Double-digit Directors Now Claim Larger Share of Seats:** Gains for "new" nominees have not come at the expense of lengthy-tenured directors.
- **Women, 50-somethings and Leaders Dominate "New" Director Demographics:** Incoming director classes are changing the face

of corporate boards. In 2016, women claimed nearly one-quarter of the “new” spaces around boardroom tables at S&P 1500 companies, up from a study low-point of 12.2 in 2009.

- **Steady, But Slow Gains on Board Gender Diversity:** Diversity shortfalls, especially as they relate to gender, catalyzed the refreshment debate. While nearly all constituents in the U.S. concede the existence of a problem, the slow-to-develop consensus on solutions and self-interest -- boosts in diversity, by definition, require expanding board size or boosting attrition rates by sitting directors -- clearly favor status quo and inertia over urgency and action.
- **Multiples Matter:** In 2016, the most prevalent headcount of female directors on S&P 1500 boards ticked up, for the first time, from one to two, as U.S. boards as a whole started to move beyond gender tokenism.
- **Boards Make Slow Progress on Adding Minority Representation:** Progress in adding more minority directors to boardroom rosters is sluggish, at best. Minority directors now fill slightly more than ten percent of the total directorships at S&P 1500 firms, but these board seats are not evenly spread across the index. Large-cap firms are more likely than not to have one or more minority directors on their rosters.

9. CHOOSING THE CORRECT FILING STATUS: According to the Internal Revenue Service, when taxpayers file their tax return, it is important they use the right filing status because it can affect the amount

of tax they owe for the year. It may even determine if they must file a tax return at all. Taxpayers should keep in mind that their marital status on December 31 is their status for the whole year. Sometimes more than one filing status may apply to taxpayers. When that happens, taxpayers should choose the one that allows them to pay the least amount of tax. When filing their tax return, taxpayers have IRS e-file as the easiest and most accurate way to file. Its tax software helps them choose the right filing status. Most people can use tax software and e-file for free with IRS Free File. This is a free service only available on the IRS website. Visit [IRS.gov](https://www.irs.gov) and click “Free File” on the home page. Here is a list of the five filing statuses:

- Normally this status is for taxpayers who are not married, or who are divorced or legally separated under state law.
- **Married Filing Jointly.** If taxpayers are married, they can file a joint tax return. If a spouse died in 2016, the widowed spouse can often file a joint return for that year.
- **Married Filing Separately.** A married couple can choose to file two separate tax returns. This may benefit them if it results in less tax owed than if they file a joint tax return. Taxpayers may want to prepare their taxes both ways before they choose. They can also use this status if each wants to be responsible only for their own tax.
- **Head of Household.** In most cases, this status applies to a taxpayer who is not married, but there are some special rules. For example, the taxpayer must have paid more than half the cost of

keeping up a home for themselves and a qualifying person. Do not choose this status by mistake. Be sure to check all the rules.

- **Qualifying Widow(er) with Dependent Child.** This status may apply to a taxpayer if their spouse died during 2014 or 2015 and they have a dependent child. Other conditions also apply.

The “Filing” tab on IRS.gov can help with many taxpayers’ federal income tax filing needs. The Interactive Tax Assistant tool can help taxpayers choose the right filing status. More on this topic is in Publication 501, Exemptions, Standard Deduction and Filing Information. On IRS.gov/forms, people can view, download or print the tax products they need. All taxpayers should keep a copy of their tax return. Beginning in 2017, taxpayers using a software product for the first time may need their Adjusted Gross Income (AGI) amount from their prior-year tax return to verify their identity. Taxpayers can learn more about how to verify their identity and electronically sign tax returns at Validating Your Electronically Filed Tax Return. 2017-07 (February 1, 2017).

10. NEW OFFICE ADDRESS: Please note that Cypen & Cypen has a new office address: Cypen & Cypen, 975 Arthur Godfrey Road, Suite 500, Miami Beach, Florida 33140. All other contact information remains the same.

11. CRAZY STATE LAWS: *Good Housekeeping* reminds us that there are crazy laws in every state. In Arizona, it is illegal for a donkey to sleep in a bathtub. Apparently, back in the 1920s, a dam broke that invaded a

rancher's home where a donkey was sleeping in the tub. In 2016, it is still active ... just in case.

12. ZEN PROVEN TEACHINGS TO LIVE BY: If you tell the truth, you do not have to remember anything.

13. PONDERISMS: If a deaf person has to go to court, is it still called a hearing?

14. TODAY IN HISTORY: In 1942, Los Angeles *Times* urges security measures against Japanese-Americans

15. 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.

16. 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>.

17. REMEMBER, YOU CAN NEVER OUTLIVE YOUR DEFINED RETIREMENT BENEFIT.