



CYPEN & CYPEN NEWSLETTER for May 16, 2019

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Stephen H. Cypen, Esq., Founding Editor
Robert D. Klausner, Esq., Senior Editor

Never Forget September 11, 2001
and
Always Remember May 2, 2011

1. EDUCATING STUDENTS ABOUT SOCIAL SECURITY:

In May, we celebrate Teacher Appreciation Week and honor all of the educators who are preparing students for the future. Social Security knows that a well-informed instructor is usually the best one suited to educate others. That's why we have online resources that are easy to access and share. Social Security's Educator [Toolkit](#) is a rich resource for teachers and advocates. Our Information for Educators page contains information and resources to engage students and to educate them on Social Security. It includes:

- Infographics and handouts for each lesson plan
- Links to Social Security webpages
- Talking points
- Quiz questions and answers

Here's a brief sample appropriate for high school students:

Start the discussion by asking the students what they think they know about Social Security and if they think Social Security is important to them as high school students. Capture key words/phrases on the board/screen to keep for future discussion. You can access the [toolkit](#) for more information. It's important for students to understand why Social Security was created, and why it is essential to their lives today and in the future. This knowledge and understanding will provide students a strong base on which to build their financial future. Young workers can also see how Social Security directly relates to them at our [students website](#). At Social Security, we appreciate informed people speaking about our programs and benefits in a thoughtful and informed way. We value and welcome the efforts all teachers make to educate America's young people. Jim Borland, Acting Deputy Commissioner for Communications, Social Security Administration, May 7, 2019.

2. PENSION FUND RETURNS SHOW RISK DOESN'T ALWAYS EQUAL REWARD – FITCH:

State and local pension funds have been increasing their allocations to riskier assets since 2001 but the higher risk has not translated into higher returns, according to a report from Fitch Ratings. According to the report, the combined asset allocation to equities and alternatives among U.S. state, county and municipal pension plans rose to 77% in 2017 from 67% in 2001, while the average median return for the period from 2008 to 2017 is 6.2%, falling behind the average median return of 6.4% for 2001 to 2017. The report also said that with historically low interest rates in recent years, "pension portfolios have shifted into broader ranges of equity and alternative assets with the intention of preserving long-term returns. However, this is often at the cost of higher exposure to short-term volatility and the risk that plan sponsors and participating governments will have to absorb the consequences of heightened risk." The state with the highest combined allocation to equities and alternatives is Arizona with 86%, the report noted. It is one of seven states, including Connecticut, Hawaii, Maryland, New Hampshire, New Jersey and Rhode Island, that showed average underperformance of 2% or higher. The report also noted that every state from 2001 to 2017 underperformed its expected rate of return, except South Dakota, which has a combined allocation to equities and alternatives of 66%. "Persistent shortfalls in investment performance eventually necessitate future increases in employer contributions, which could be especially problematic for states with already elevated pension liabilities," said Olu Sonola, Fitch Ratings analyst and co-author, in the report. Total unfunded pension liabilities increased to \$1.2 trillion at the end of 2017 from \$33 billion at the end of 2001, according to the report, reflecting lower than expected investment returns, contribution shortfalls and increases in projected future benefits. Rob Kozlowski, *Pensions & Investments*, May 6, 2019.

3. REPLACE YOUR SOCIAL SECURITY CARD ONLINE:

Need to replace your lost or misplaced Social Security card? If you live in a qualifying state, our online application makes getting a replacement card easier than ever. There's no need to sit in traffic or visit a local office or Card Center. As long as you're only requesting a replacement card, and no other changes, you can use our free online service from the comfort of your home or office. All you need to do is create a [my Social Security account](#). Your identity and personal information matter to us. We protect your information by using strict identity verification and security features. The application process has built-in features to detect fraud and confirm your identity. Once you have a personal account, simply follow the instructions to replace your Social Security card. In many cases, even if you lost your card, you may not need a replacement. Most of the time, simply knowing your Social Security number is enough. Visit our website to find out whether you can request your replacement Social Security card online or what the requirements are in your area [on our website](#). Darlynda Bogle, Acting Assistant Deputy Commissioner, Social Security Administration, May 2, 2019.

4. IRS.GOV IS THE FIRST PLACE TO GO FOR ANSWERS TO TAX QUESTIONS:

Taxpayers who received an extension to file their 2018 tax return might have questions. They should remember that help is just a few clicks away on [IRS.gov](#). Here are some of the tools and resources they may find useful.

Researching a tax question

- The [Interactive Tax Assistant](#) asks a series of questions and provides answers based on a taxpayer's input. There is also a page for [Frequently Asked Questions](#) and the [IRS Tax Map](#), which allows taxpayer to search for information about specific tax laws. Users can search by topic or keywords.
- Additional help is available in [Publication 17](#), Your Federal Income Tax, and the [tax reform information](#) page.

Finding forms and publications

- All [IRS forms, instructions and publications](#) are available on IRS.gov.

Making a payment

Taxpayers who need to make a payment can:

- Use [IRS Direct Pay](#). It is a free, secure way to pay online directly from a checking

or savings account.

- Pay their taxes by [credit or debit card](#). Fees apply when using this option.
- Use the [Electronic Federal Tax Payment System](#). It has online and phone options. Registration is required to use this system.
- Use the [IRS2Go app](#), which allows taxpayers with a mobile device to get instant payment confirmation.
- View their federal tax information at [IRS.gov/account](#). It's a secure way for them to review the amount they owe, access their tax records online, and see their payment history.
- Learn what to do if they [can't pay what they owe](#).

Using IRS Free File to file tax returns through October 15

- [IRS Free File](#) can be used to prepare and e-file taxes online for free through the October 15 deadline. Taxpayers who earned less than \$66,000 in 2018 can use free tax preparation software online. All taxpayers, regardless of income, can use free file fillable forms.

Checking on the status of a refund

- After filing their 2018 tax return, taxpayers can easily find the most up-to-date information about their tax refund using "[Where's My Refund?](#)" tool on IRS.gov. Where's My Refund is also available on the [IRS2Go app](#). It's updated once every 24 hours, usually overnight. So, there's no need for a taxpayer to check the status of their refund more often.

Issue Number: Tax Tip 2019-50, IRS Tax Tips, April 30, 2019.

5. KENTUCKY APPEALS COURT DISMISSES PENSION FUND'S HEDGE FUND LAWSUIT:

The Kentucky Court of Appeals has dismissed a December 2017 lawsuit alleging breach of trust and fiduciary duties against BlackstoneGroup, [Prisma Capital Partners](#), KKR & Co. and [Pacific Alternative Asset Management](#) Co., after the \$18 billion [Kentucky Retirement Systems](#), Frankfort, invested \$1.5 billion in hedge fund investments run by the firms. The suit, Mayberry vs. KKR, was filed on behalf of state taxpayers and KRS by eight public employees who are members of the retirement system. The plaintiffs claimed that the defendants enticed KRS to invest in funds of funds investment vehicles, when KRS could have earned higher returns in the stock market. On April 23, the appeals court reversed an earlier decision by a state circuit court judge in November 2018 denying the hedge

fund firms' motion to dismiss. The appeals court ruled that plaintiffs did not sufficiently plead their case, as their allegations "do not support a finding of taxpayer standing," the April 23 opinion said. Plaintiffs made a "generalized allegation" that their taxes increased, for instance. "They have asserted a mere speculation or expectancy that their taxes have increased or will increase because of defendants' actions. This is insufficient to support taxpayer standing." Additionally, plaintiffs did not allege that their benefits have been or will be decreased as a result of the defendants alleged actions, the decision said. On Monday, an attorney for Blackstone responded for comment on the decision. "We're pleased with the appellate court's decision dismissing plaintiffs' claims for lack of standing," Don Kelly, an attorney at Wyatt, Tarrant & Combs, wrote in an email. "This is a case that never should have been brought. We followed our agreement with KRS to the letter and delivered \$158 million in net profits to Kentucky pensioners -- representing returns three times the benchmark set by KRS itself." KRS declined to comment for this story, as did Prisma, which was acquired by KKR in 2012 and merged with PAAMCO in 2017 to form PAAMCO Prisma Holdings. Danielle Walker, *Pensions & Investments*, April 5, 2019.

6. SENATORS PROPOSE LEGISLATION TO END CONGRESSIONAL PENSIONS:

Two freshman Republican senators are trying to end taxpayer-funded pensions for members of Congress. Senators Mike Braun of Indiana and Rick Scott of Florida announced the End Pensions In Congress Act on Tuesday. "Pensions are kind of an archaic thing," said Braun in an interview with Yahoo Finance. "Here in government, I think it's a great example of where it's a remnant of the way things used to be. Most people [outside of Congress] don't get them anymore." According to a 2017 report from the Congressional Research Service, members of Congress are eligible for a pension at age 62 if they have served for at least five years. Members qualify for a pension at age 50 if they've completed 20 years of service, and members of any age can receive a pension after 25 years of service. The size of the pension depends on years of service and the average of the highest three years of salary. "I think it's time for that to go, especially when you look at the performance that both Congress and senators have provided over the last few decades. It'd be not only symbolic -- it just shouldn't be a perk that's there in anymore," said Braun. The CRS [report](#) said 611 retired members of Congress were receiving federal pensions based at least in part on their Congressional service, as of October 2016. Braun argues U.S. representatives and senators should use their Thrift Savings Plan to save for retirement, which is similar to a private sector 401(k). (All Congressional members are eligible for a pension plan as well as the Thrift Savings Plan). Defined contribution plans like 401(k)s have become the predominant retirement saving vehicle for the private sector, with 47% of firms offering them, compared with 8% of companies offering defined benefit plans, or pensions, [according to the Bureau of Labor](#)

Statistics. Florida Gov. Ron Desantis introduced similar legislation under the same name when he was serving in Congress, though it did not become law. Braun said he expects it will be difficult for his bill to make it to the president's desk. "It's got a long journey ahead of us, but that doesn't mean we can't try to get the discussion going," said Braun. Braun has also introduced a bill that would prevent members of Congress from being paid if they fail to pass a budget on time. Jessica Smith, Yahoo Finance, February 12, 2019.

7. TOP 10 ISSUES FOUND IN 403(B) PLANS:

Compiled from lists published by the IRS, DOL and Auditors, here are 10 items to check and review to make sure your 403(b) plan is operating in line with IRS and DOL expectations:

- Universal Availability Issues: a. Excluding "part time" employees without using or having the 20 hour rule in the plan document or misusing the 20 hour rule. No document should use the phrases "part time" or "full time" in 2018. Such language is an invitation for the DOL or the IRS to ask the plan sponsor for the definition used and to discover that the plan sponsor is using health insurance rules in a 403(b) plan (an expensive mistake). b. Using a waiting period before employees are permitted to defer. c. Failing to have "proof documents" for employees who were notified but declined deferral opportunities
- Excess 402(g) contributions (deferral limits are 402(g)). This includes (especially) improper use of the 15 Years of Service Catch Up rule (ineligible employer; improper application of lifetime limit; improper ordering of Age 50 Catch Up and 15 YOS Catch Up); failure to include Roth contributions
- Plan Loans that violate IRC Section 72(p): failure to make timely loan repayments; defaults not noticed or treated properly; loans from multiple vendors that, in aggregate, exceed the 72(p) limits
- Financial Hardship Distribution Failures: Inadequate documentation or proof; distributions that exceed the amount needed to relieve the hardship
- Ineligible Plan Sponsors of 403(b): 403(b)'s can only be sponsored by public education organizations or organizations exempt under 501(c)(3) (A short list is available with additional details). The most common error is a 403(b) sponsored by a 501(c) organization which is not 501(c)(3). There are many kinds of 501(c) organizations and they all can sponsor 401(k) plans, but only a 501(c)(3) can sponsor a 403(b).
- Plan Document Failure: No plan document by 12-31-2009: Document is unsigned: Plan Sponsor does not have a copy or know where the document is; Plan Sponsor believes an outline or similar item produced by the vendor is a plan document; and ultimately, not having a restated, PPA compliant document by March of

2020 ERISA cf Non-ERISA: Although an employer contribution to a 403(b) does make that plan ERISA, the actual test is employer control over the plan. Employers signing off on loans or hardships, mandating certain limited investment choices and late deposit of employee deferrals will all arguably make a plan ERISA. Non-ERISA is a “slippery slope.” It is easy to make a mistake in operating the plan which will support a DOL argument that that plan is ERISA and subject the sponsor to fines and penalties for failing to file 5500’s etc. A related issue is a 403(b) plan which the employer believes to be Non-ERISA but which contains a provision which ties it to an ERISA Plan. An example of this would be a Non-ERISA deferral only plan and a 401(a) plan containing a formula which causes the employer contribution to the 401(a) plan to match the deferrals in the alleged Non-ERISA plan. This arrangement causes the Non-ERISA plan to be ERISA.

- No Discrimination Testing: All Matches and other kinds of employer contributions which function according to a group or class differentiated system must be tested each year to be sure any “discrimination” is within legal parameters.
- The Definition of Compensation in the Plan Document is not followed: Does the plan include post-severance compensation? Commissions, bonuses, overtime, 403(b) deferrals, 125 plan contributions? Does the person or department preparing the census each year understand how the plan defines compensation and use that definition?
- Multiple 403(b) plans and 403(b) annuity contract limitations and correlation: Older 403(b)’s often have a plan and contract for pre-match deferrals and another plan and contract for deferrals which were matched. Coordination errors can appear as excess deferrals or Employee contributions not made to the “matching plan” but which arguably should have been matched. If the deferral only plan has prohibited employer control (hardship and/ or loan decisions by the employer, for example), the deferral only plan becomes ERISA and now the Employer would be paying for 2 ERISA administrations and filing 2 5500’s. It is also important to match up the annuity contracts with the plan document provisions. If the annuity contracts have joint and survivor annuity distributions, then the plan must provide for such distributions. Old annuity contracts may not contain updated contribution limits, required distribution language or eligible rollover requirements.
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Patricia Neal Jensen, QBI, June 12, 2018.

8. DID YOU KNOW BENJAMIN FRANKLIN SAID THIS?:

The worst wheel of the cart makes the most noise.

9. PONDERISMS:

How far east can you go before you're heading west?

10. INSPIRATIONAL QUOTES:

I hated every minute of training, but I said, 'Don't quit. Suffer now and live the rest of your life as a champion.' - Muhammad Ali

11. TODAY IN HISTORY:

On this day in 2013, human stem cells are successfully cloned

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

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