CYPEN & CYPEN NEWSLETTER for July 11, 2019

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

1. THE FEDERAL COMMUNICATIONS COMMISSION HELPS CONSUMERS AVOID SCAM CALLS:

You know those robocalls from scammers that you keep getting on your phones? We get them at the Federal Communications Commission (FCC), too. Scammers use a technique known as spoofing to mask their caller ID on your phone and disguise their identities to steal valuable personal information, including your bank account passwords and Social Security number. In one recent case, the toll-free number of the FCC's Consumer Center was used to disguise the actual incoming call number. We've alerted the public to the problem and have taken measures to prevent this from happening again. We're aware that the same thing happens with Social Security's phone number. Some callers may pressure you for personal information or immediate payment; others offer deals that seem too good to be true. The number of calls is daunting, but we are taking action to turn the

tide against spoofed robocalls. The first line of defense is consumer awareness. The FCC provides guidance about spoofing scams and robocalls, including consumer resources for call-blocking apps and other services. We also post timely articles on the FCC Consumer Help Center website to alert you to the latest scams and amplify consumer warnings from Social Security and other government agencies. Consumers can keep track of these alerts by following @FCC on Twitter.

We recommend the following tips to avoid becoming a victim of a call scam:

- Don't answer calls from numbers you don't recognize.
- If the caller is not who you were expecting, hang up immediately.
- Never give out personal information such as account numbers, passwords, Social Security numbers, mother's maiden names or other identifying information if a call seems suspicious.

In its continuing efforts to help stifle malicious phone scams, the FCC empowered phone companies to aggressively block by default unwanted and illegal robocalls before they reach consumers. It's all about safeguarding the American public. We'll continue to partner with Social Security, the Federal Trade Commission and other federal agencies to get the job done. Patrick Webre, Chief, Consumer and Governmental Affairs Bureau, Federal Communications Commission, Social Security Administration, June 20, 2019.

2. MEDIAN AGE DOESN'T TELL THE WHOLE STORY:

The nation's median age was 38.2 in 2018, up from 37.2 in 2010, but new county population characteristics released by the U.S. Census Bureau today show that age is more than a number. Two or more counties can have the same median age -- the point when half the population is older and half younger -- yet have age profiles of their populations that are completely different. Some may have relatively large shares of young adults and not many children or older people while other counties can have large proportions of children and 35- to 59-year-olds (i.e., their parents). Despite these compositional differences, these counties can have roughly the same median age. Two or more counties can have the same median age -- the point when half the population is older and half younger -- yet have age profiles of their populations that are completely different. To illustrate this, let's look at three counties that have roughly the same median age as the nation and as each other.

Same Median Age, Different Age Structures

California's San Francisco County -- which has the same boundary as the city of San Francisco -- had a median age of 38.2 in 2018, a slight decrease from 38.5 in 2010. San

Francisco County is home to many 25- to 39-year-olds who collectively make up almost a third (32.5%) of the total county population. The “population pyramid” below shows how the size of the county’s age groups, broken down by sex, is distributed. Now compare San Francisco County with Carver County, Minnesota, which is a part of the Minneapolis-St. Paul-Bloomington, MN-WI metropolitan area. In 2018, Carver County’s median age was 38.1, up from 36.3 in 2010. The age structure in Carver County has two distinct groups: those under the age of 20 and those ages 35 to 59 -- basically children and the parents of those children. Carver County has about the same median age as San Francisco County, but its age structure is almost the inverse. One has a large population of children and 35- to 59-year-olds (Carver) while the other has a lot of 25- to 39-year-olds (San Francisco).

When No Age Group Dominates
Some counties have no one age group that sticks out. For example, Greenville County in South Carolina, part of the Greenville-Anderson-Mauldin, SC metropolitan area, had a median age of 38.2, up from 37.2 in 2010. Greenville County’s median ages in 2010 and 2018 were the same as the nation’s, and its age structure is very similar to the nation’s as well. The population is more evenly distributed across most age groups, unlike the distinct age groups that dominate in San Francisco County and Carver County. Median age is useful in summarizing whether a population is aging, but it’s important to remember that there is more to the age structure of the population than the snapshot that median age alone can provide.
Luke Rogers, United States Census Bureau, June 20, 2019.

3. TAXPAYERS WHO STILL HAVEN’T FILED THEIR 2018 TAX RETURN SHOULD DO SO ASAP:
While the federal income tax-filing deadline has passed for most people, some taxpayers did not file an extension and still have not filed their tax returns. These taxpayers should file ASAP. They should do so even if they can’t pay to avoid potential penalties and interest, which can continue to add up quickly.

Here are some things taxpayers in this situation should know:

- Penalties and interest are only added on unfiled returns if the taxpayer did not pay taxes by the April deadline. Taxpayers who did not file and owe tax should file a tax return and pay as much as they are able to now. If they cannot pay the full amount, they should learn about payment options. These can reduce possible penalties and interest added to the amount the taxpayer owes.
- IRS Free File is available on IRS.gov through October 15.

- Some taxpayers may have extra time to file their tax returns and pay any taxes due. These include:
  - Some disaster victims
  - Military service members and eligible support personnel in combat zones
  - U.S. citizens and resident aliens who live and work outside the U.S. and Puerto Rico
- If a return is filed more than 60 days after the April due date, the minimum penalty is either $210 or 100 percent of the unpaid tax, whichever is less. Therefore, if the tax due is $210 or less, the penalty is equal to the tax amount due. If the tax due is more than $210, the penalty is at least $210.
- The IRS provided penalty relief for certain taxpayers whose 2018 federal income tax withholding and estimated tax payments fell short of their total tax liability for the year.
- Other taxpayers filing after the deadline may also qualify for penalty relief. Those who are charged a penalty may contact the IRS and explain why they were unable to file and pay by the due date.
- Taxpayers who have a history of filing and paying on time often qualify for first-time penalty abatement.
- There is no penalty for filing late if a refund is due.

Issue number: Tax Tip 2019-80, IRS Tax Tips, June 20, 2019.

4. FIVE RETIREMENT-PLANNING MYTHS:

Saving for the retirement you've been dreaming about is entirely possible. It begins with judicious saving and an awareness of potential obstacles you might encounter along the way. If you've already crunched numbers on retirement, you're ahead of most. According to The Employee Benefit Research Institute's (EBRI) 2019 Retirement Confidence Survey, only 42% of working-age people have tried to calculate how much they'll need to save to live comfortably in retirement. The survey also found that retirees are considerably more likely to say their expenses in retirement are higher than expected (30%) rather than lower (15%). It's not hard to see why there's disconnect between expectations and reality: you have to make *a* lot of assumptions about your health, longevity and lifestyle in retirement. Below are five assumptions about retirement and the caveats that come with them.

Myth #1: You can always keep working.

The EBRI survey found that 80% of workers are planning to continue doing some kind of work for pay after they retire. It's true that people are living longer and are generally healthier these days, and many retirees find they want to continue working because they like it. But many of the survey's respondents also gave financial reasons: 75% said they'll

continue working as a source of income in retirement. The risk is that working in retirement isn’t always possible. The survey found many retirees end up leaving the workforce earlier than planned -- 43% the retired respondents in 2019 said they had retired unexpectedly. Sometimes, workers find they have enough money to retire early (33%). More often, people have to stop working due to health problems (35%), company downsizing or workplace closures (35%, up from 26% in 2017). Retiring for any of these reasons could pose serious problems for those who don’t have adequate savings. Of course, some people continue to work into their 80s or even their 90s. But you’re probably better off structuring your savings plans so that working in retirement is a matter of choice, not necessity.

Myth #2: You’ll need only 70–80% of your pre-retirement income.
If you were saving 20–30% of your pre-retirement income, then the 70–80% income-replacement rule is a good place to start. Otherwise, this old rule of thumb may have outlived its usefulness. It may assume that retiring will free you from any work-related expenses and taxes, that you’ve paid off your mortgage and that your children will be financially independent. However, even if these expenses go away, you should still prepare for other costs to go up. For instance, major health care expenses can be difficult to plan for. Medicare doesn’t cover everything, and health care expenses that Medicare doesn’t cover -- such as long-term care -- can add up quickly. You also might spend more on other things. You might want to travel or spend more on gifts, or you might provide financial support to a relative or friend, as 30% of retirees report doing in the EBRI survey. The bottom line is that it’s safer to aim at covering 100% of your pre-retirement income, less whatever you’re saving for retirement. As with any general rule, there are plenty of exceptions. So be sure to sit down and fine-tune your retirement budget as the time draws near.

Myth #3: You’ll be in a lower tax bracket once you retire.
Even before recent changes, marginal tax rates have been near post-WWII lows, and while it’s possible, it’s not a given that you’ll move to a lower bracket in retirement. Even if they do, the change will likely be just a few percentage points rather than a major shift. For example, for 2019 a couple with a pre-retirement income of $157,500 would have to earn about 48% less to move from the 24% bracket to the 22% bracket and about 75% less to move to the 12% bracket. Sure, your salary will be going away (as will FICA taxes), but you will still have income, such as distributions from retirement accounts and Social Security benefits. (For married couples filing jointly, up to 85% of your Social Security income may be taxable if your modified adjusted gross income is more than $44,000.) You should remember that as recently as the 1980s, the top federal tax bracket was a whopping 70%. While tax rates aren’t likely to return to that level anytime soon, it is

possible rates could rise in the future. So if your taxable income remains the same in retirement as when you were working, higher rates in the future could boost your tax liability. Unless you have a very high pre-retirement income, it's safer to assume that you will keep paying taxes at roughly the same rate after you stop working.

Myth #4: The stock market will save you.
The market declines of 2002 and 2008 should have convinced most people that this is not a reliable assumption, at least if you don't have time to potentially recover from a downturn. But with the market performing relatively well since, it's easy to forget that you may not see the kinds of returns going forward that you saw in the 30 years prior to 2000. It's always better to be cautious when making assumptions about the market's performance and to have some cash and more stable investments in your portfolio to help you weather a bear market. Whatever your risk tolerance and risk capacity, your retirement spending plan should consider a range of reasonable portfolio outcomes. Based on our capital market expectations, you could plan for five to seven percent returns for stocks and about three percent for bonds. Don't assume the same return every year. Market returns fluctuate and a bear market in the early years of your retirement could have a significant impact on your ability to sustain cash flow. Working with an advisor to complete or update a retirement plan can help. Market gains can help your savings go further in retirement, but they aren't a replacement for pre-retirement saving. And make sure that you have a cushion of less volatile investments in place when you reach retirement.

Myth #5: There's always Social Security.
Some people head into retirement thinking they'll be able to rely on Social Security to cover most of their needs. Others doubt that Social Security will even exist by the time they retire. Both scenarios are highly unlikely. The Social Security Administration projects that the current system will be depleted by 2035 assuming no changes, such as means-testing or raising the retirement age. One option would be to reduce benefits for future retirees or tax Social Security benefits at a higher rate. Social Security is likely to be a valuable resource for many retirees, but don't get carried away. No matter what, Social Security is going to cover only a portion of your retirement spending, and you will need additional savings to bridge the gap.

The bottom line: Be flexible
All things considered, it's important to start with a plan, but be ready to adjust your plans when needed. Don't get into a situation where your retirement works only if one set of assumptions turns out to be true. Stress-testing your plan and keeping these retirement myths in mind will go a long way toward putting you on the path to your ideal retirement.

Charles Schwab, June 18, 2019.

5. FLORIDA SUPREME COURT REVERSES PRIOR RULING ADOPTING DAUBERT AS EXPERT ADMISSIBILITY STANDARD:

Over the past few years, the governing standard for expert admissibility in the state of Florida has been uncertain, to say the least. But in the recent decision, *In re: Amendments to the Florida Evidence Code*, No. SC19-107 (Fla. May 23, 2019), it appears the Florida Supreme Court has finally settled on an evidentiary standard. In a reversal of its prior ruling, the Court now holds that *Daubert* is the governing standard for the admissibility of expert witnesses. The decision marks a turning point in Florida's evidentiary rules, as it joins the majority of states that follow the *Daubert* standard.

Florida's History of Expert Admissibility Standards

The holding *In re: Amendments to the Florida Evidence Code* was decided after consideration of its lengthy procedural history and the constitutional issues concerning Florida's evidentiary standards. Since 1979, the Florida courts (along with all federal and state courts) followed the standard set forth in *Frye* v. *United States*, 293 F. 1013 (D.C. Cir. 1923), that is, expert opinions must gain "general acceptance" within the scientific community in order to be admitted. However, in 1993, the United States Supreme Court adopted the standard set forth in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), which focuses on an analysis of enumerated factors when determining expert admissibility. Unlike *Frye,* the *Daubert* standard applies to all types of scientific and non-scientific expert testimony. *Daubert* was adopted by the federal courts and codified in Rule 702 of the Federal Rules of Evidence. Most state courts also adopted *Daubert*, but Florida continued to employ the *Frye* standard. In 2013, the Florida State Legislatureamended the Florida Evidence Code and adopted the *Daubert* standard. Although the Florida courts had typically adopted the procedural rules of the code, the Florida Supreme Court continued to use the *Frye* standard but did not rule on the constitutionality of the amendments. This practice naturally created some confusion amongst attorneys and experts as to which standard should rightfully apply. In 2018, the Florida Supreme Court definitively held in *DeLisle v. Crane Co.*, No. SC16-2182 (Fla. October 25, 2018), that *Frye* was the governing standard and that the *Daubert* amendment to the Florida Evidence Code infringed upon the Court's rulemaking authority. The *DeLisle* decision seemed to mark a turning point, as a standard for expert admissibility was unequivocally set forth by the Florida Supreme Court.

Re: Amendments to the Florida Evidence Code

The *DeLisle* decision, however, was not the Florida Supreme Court's final word on expert admissibility. *In re: Amendments to the Florida Evidence Code,* decided on May 23, 2019

in a 5-2 decision, the Court overruled its prior ruling. The Court expressly adopted the amendments set forth in the Florida Evidence Code, holding that *Daubert* is the governing standard when determining the admissibility of expert testimony in Florida state courts. The Court found that the previous "grave constitutional concerns" of *Daubert* were unfounded and that the amendments "remedy deficiencies of the *Frye* standard," as *Daubert* applies to all types of expert testimony – not just new or novel techniques. The decision also cited the Court's longstanding practice of adopting provisions of the Florida Evidence Code, noting that the amendments "will create consistency between the state and federal courts with respect to the admissibility of expert testimony and will promote fairness and predictability in the legal system, as well as help lessen forum shopping." Justice Robert Luck dissented on the grounds that the Court lacked authority to amend its rules without following the traditional amendment process, which requires referral to the Florida Bar committees. Justice Jorge Labarga also dissented, finding that *Frye* is the superior standard for determining the admissibility of expert testimony. Justice Labargawrote that "*Daubert* and its progeny drastically expanded the type of expert testimony subject to challenge" and that the standard will "negatively impact constitutional rights" by usurping the jury's role from evaluating the evidence. The drastic change in the Court's position since the *DeLisle* decision may be attributed to the retirement of three Florida Supreme Court justices and their subsequent replacement with more conservative justices. However, in light of the bench's current makeup and the unlikelihood of any additional justices retiring, it is safe to say that the Court's current position and adoption of the *Daubert* standard will remain the same for the near future.
Anjelica Cappellino, The Expert Institute, June 18, 2019.

6. CALPERS ENLISTS IN TRUST TO PRE-FUND CONTRIBUTIONS:
CalPERS adopted two asset allocations for a new trust fund established by the state to help California public employers that offer a defined benefit pension plan to pre-fund pension contributions. The trust fund, established Jan. 1, was created in response to anticipated rising pension costs over the next several years, Christine Reese, a CalPERS investment director, told the investment committee Monday. Employers have the opportunity to pre-fund pension contributions by investing in the trust, an Internal Revenue Code Section 115 trust that is tax-exempt. The contributions and the investment earnings on those contributions can only be withdrawn to pay pension contributions or to be invested in another trust with the same purpose, Ms. Reese said. "Cash flows for the trust will be unpredictable as they're voluntary," she said, adding that cash flows will also vary in size and timing. What's more, after discussing the new investment trust with public employers, staff learned that the time horizon is short-to-medium term and the risk tolerance is low to moderate, she said. Asset growth in the first year could range from $100 million up to a few billion dollars, depending on whether California participates in the

next fiscal year, a report to the investment committee said. "At this time ... we don't have an indication that (the state of California will) participate soon but potentially in 2019, later in the year," Ms. Reese said. "Based on that feedback and with the difficulty of meeting those goals with one option, we determined it would be best to offer two options for employers to have a choice," she said. The $365.1 billion California Public Employees' Retirement System, Sacramento, approved the two asset allocations recommended by staff. One target asset allocation, CEPPT Strategy 1, is a more moderate portfolio. It consists of 47% fixed income, 40% global equity, 8% real estate investment trusts and 5%, treasury inflation-protected securities. The Strategy 2 asset allocation is more conservative, with 73% fixed income, 14% global equity, 8% REITS and 5% TIPS. CalPERS staff will implement the two asset allocation strategies. Arleen Jacobius,*Pensions & Investments*, June 18, 2019.

7. WHAT WOULD HAPPEN IF 401K'S WENT AWAY?:
Do we really need 401ks and similarly designed employee-retirement plans? Is there anything better? What would happen if they disappeared altogether? Bad things, of course, but the Employee Benefit Research Institute does the math. As expected, younger workers are hurt worse than their older counterparts, but it's general mayhem for all. If defined contribution retirement plans were eliminated entirely, "the youngest age cohort (those currently ages 35–39) would suffer the most, with average retirement deficitsincreasing 23% from $49,182 to $60,253," EBRI's Jack VanDerhei writes. Older cohortswould experience less of an impact. "Those ages 40-44 would have an increase of 18%, while those ages 45-49 would have a 13% increase. The average deficits for households above age 50 would increase but by less than 10%." The reason for the analysis, VanDerhei explains, is a number of recent policy proposals "that call into question the value of existing defined contribution plans, yet the suggested alternatives do not provide a detailed analysis of the impact of terminating defined contribution plans on retirement income adequacy for American households. In 2017, EBRI produced "simulation results" showing that, if employer-sponsored retirement plans went completely away, the aggregate retirement deficits would jump from $4.13 trillion to $7.05 trillion (an increase of 71%).

Flip side
But the brief then flips, and examines the issue from the opposite direction, assuming every employer were to sponsor a defined contribution plan. "Again, in this scenario, the youngest age cohort and single females would experience the largest change in retirement income adequacy," EBRI finds. The youngest age cohort would benefit the most from this scenario, with average retirement deficits decreasing 24% from $49,182 to $37,506. Older cohorts would experience less of an impact: those ages 40–44 would have

a decrease of 19%, while those ages 45–49 would have a 16% decrease and those ages 50–54 would have a 12% decrease. The average deficit for households above age 55 would decrease but by less than 10%.
John Sullivan, Editor-In-Chief, 401k Specialist, June 18, 2019.

8. DID YOU KNOW BENJAMIN FRANKLIN SAID THIS?:
Money has never made man happy, nor will it. There is nothing in its nature to produce happiness. The more of it one has the more one wants.

9. PONDERISMS:
Why does "cleave" mean both split apart and stick together?

10. INSPIRATIONAL QUOTES:
“When you have confidence, you can have a lot of fun. And when you have fun, you can do amazing things.” – *Joe Namath*

11. TODAY IN HISTORY:
On this day in 1944, Franklin Roosevelt announces that he will run for a fourth term as President of the United States.

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