

**Minnesota Volunteer Fire Relief Association
Working Group Meeting**

Office of the State Auditor
Wednesday, December 18, 2013
11 a.m. to 1 p.m.

- I. Call to Order**
Chair Auditor Otto.
- II. Review and Approval of Working Group Meeting Minutes**
Exhibit A. Draft November 20, 2013 Meeting Minutes
- III. Continuation of New Audit Threshold Discussion**
Exhibit B.
- IV. Review of Draft Language for Defined Contribution Plan Change**
Exhibit C.
- V. Review of Draft Language for the Definition of Municipality**
Exhibit D.
- VI. Discussion of Pension Calculation Clarification**
Exhibit E.
- VII. Continuation of Fiduciary Duties and Responsibilities Discussion**
Exhibit F.
- VIII. Other Business**
- IX. Next Meeting**
- X. Adjournment**

Individuals with disabilities who need a reasonable accommodation to participate in this event, please contact Rose Hennessy Allen at (651) 296-5985 or (800) 627-3529 (TTY) by December 16, 2013.

Volunteer Fire Relief Association Working Group

Office of the State Auditor
Wednesday, November 20, 2013
11 a.m. to 1 p.m.

Members Present

Steve Donney, City of Harmony Mayor
Bruce Duncan, Excelsior Fire Relief Association President (defined benefit lump sum plans)
Dennis Feller, City of Lakeville Finance Director
Dave Ganfield, Apple Valley Fire Relief Association Administrator (defined benefit monthly/lump sum combination plans)
Bruce Hemstad, Bemidji Fire Relief Association Secretary (defined benefit lump sum plans)
Dave Jaeger, Mahnomon Fire Relief Association Treasurer (defined benefit lump sum plans)
Aaron Johnston, Coon Rapids Fire Relief Association Treasurer (defined contribution plans)
Larry Martin, Legislative Commission on Pensions and Retirement Director
Rebecca Otto, State Auditor
Bruce Roed, Mentor Fire Relief Association Trustee (defined contribution plans)
Mark Rosenblum, Minnesota State Fire Department Association Representative (defined benefit lump sum plans)
Nyle Zikmund, Minnesota State Fire Chiefs Association Representative (defined benefit monthly plans)

Members Excused

Others Present

Bill Braun, Woodbury Fire Relief Association Representative
Mary Chamberlain, Abdo, Eick & Meyers Representative
Aaron Dahl, Office of the State Auditor Pension Analyst
Celeste Grant, Deputy State Auditor/General Counsel
Rose Hennessy Allen, Office of the State Auditor Pension Director
Jim Jensen, Office of the State Auditor Pension Analyst
Michael Johnson, Office of the State Auditor Pension Analyst
Amber Kollman, Office of the State Auditor Pension Intern
Mike Luger, Eden Prairie Fire Relief Association Representative
Brian McKnight, Wells Fargo Advisors Representative

The following motions were duly made, seconded and approved:

- RESOLVED to approve the November 6, 2013, Working Group Meeting Minutes;
- RESOLVED to approve the draft language that clarifies supplemental benefits must be based on the lump-sum distribution amount before any deferred interest is added and before any taxes are deducted; and
- RESOLVED to approve the amended draft language that makes clear that amounts forfeited under the return-to-service law remain forfeited and are not reinstated should a defined contribution plan member resume active service and membership.

I. Call to Order

Chair Auditor Otto called the meeting to order.

II. Review and Approval of Working Group Meeting Minutes

The members reviewed the November 6, 2013, meeting minutes that had been provided in advance. Hemstad made a motion to approve the meeting minutes. Jaeger seconded the motion that then was adopted unanimously.

Auditor Otto provided each member with a list of relief associations that had not yet submitted their annual reporting requirements to the Office of the State Auditor. If the reporting forms are not submitted by November 30, the relief associations will automatically forfeit their fire and supplemental state aid. Auditor Otto asked for and received assistance from the Working Group members to contact relief associations with missing reporting forms.

III. Discussion of Audit Threshold

During the last meeting, there was a request for information on how the new audit threshold will affect relief associations. Auditor Otto provided the Group with the number of relief associations that will need to have an audit during the upcoming year and in the previous eight years. She also provided the Group with the number of relief associations that will have an attestation requirement instead of the audit requirement, and shared the percentage of relief associations that filed early, on time, or late during the current reporting year. The Group noted the big change in the number of relief associations that will be required to have an audit and acknowledged that the earlier reporting deadline for relief associations that do not have an audit may be problematic for accountants as it falls during their busy season. The Group discussed the appropriateness of the \$500,000 threshold amount and decided that it would be premature to pursue any legislative change regarding the new threshold until it is implemented and is in effect for a reporting cycle. The Group decided to revisit this topic at the next meeting to share any additional thoughts.

IV. Review of Draft Language for Technical Changes

Auditor Otto requested that Technical Change #2 be held over to a future meeting as additional research is being done.

The Group revisited the draft language for Technical Change #3, which removes the word “qualified” from the term “qualified municipality” that is used in three places within the volunteer fire relief association statutes. Auditor Otto shared that, based on a request at the last meeting, the Department of Revenue was contacted regarding the proposed changes and had no concerns. The proposed changes would have no effect on a relief association’s qualification for state aid. Martin agreed that the word “qualified” is redundant and unnecessary in the three instances identified in the draft.

Auditor Otto explained that the Group agreed to the concept of Technical Change #4 during the last meeting. She asked if there were any questions regarding the proposed change. Martin offered a drafting suggestion, to change the word “shall” to “must.”

Auditor Otto said that a vote on the Technical Changes would be held when the wording is finalized.

V. Review of Supplemental Benefit Technical Change

Auditor Otto explained that the proposed change makes clear that the supplemental benefit must be calculated on the lump-sum distribution amount before any deferred interest is added and before any taxes are deducted. The clarification that the distribution means the pre-tax distribution is based on a request by the Department of Revenue. Roed made a motion to approve the draft language. Feller seconded the motion that was then adopted unanimously.

VI. Discussion of Defined Contribution Plan Changes

- **Inactive Members and Ancillary Benefits**

Ancillary benefits are disability and survivor benefits. Statute specifies how these benefits must be calculated for active and deferred members of defined contribution plans. Auditor Otto explained that questions occasionally arise about how ancillary benefits should be handled for inactive members or for members who have separated before becoming vested and whose accounts have not yet been forfeited. The Group generally agreed that these benefit issues should be addressed by a relief association in its bylaws. Grant explained that statute does not directly authorize ancillary benefit payments to all individuals in these situations. If the Group would like to allow defined contribution plans to pay ancillary benefits to these individuals, the statute should be updated to authorize the payments. The Group agreed that language should be drafted that would authorize a defined contribution plan to, through its bylaws, allow ancillary benefit payments to individuals who are inactive or who have separated before becoming vested. The topic will be revisited at the next meeting.

- **Update for Conformity with Return to Service Law**

The statute that defines how accounts must be established and maintained for members of a defined contribution plan requires that allocations be made for all years of active service. The return-to-service law, though, states that amounts previously forfeited are not reinstated if a defined contribution plan member resumes active service and membership. Auditor Otto explained that when a non-vested amount is forfeited from a member’s account it is allocated among the active members. There is no straightforward way to reinstate amounts that have been forfeited. The draft language corrects this problem by making clear that amounts forfeited under the return-to-service law remain forfeited and are not reinstated should the member resume active service and membership. Martin provided a few drafting suggestions. Donney made a motion to approve the draft language, as amended. Roed seconded the motion that was then adopted unanimously.

VII. Discussion of Fiduciary Duties and Responsibilities

The Group began discussing fiduciary duties and responsibilities and brainstormed options for relief association trustees to obtain training. Martin noted that in a defined benefit plan, the management of the benefit plan is just as important as the management of the plan finances. The Group discussed the importance of having a relief association treasurer who is properly trained and who is held accountable by the board of trustees to meet deadlines and due dates. Succession planning and allowing time for a transition between new officers were noted as best practices. It was agreed that discussion on this topic would be continued at the next meeting.

VIII. Other Business

There was no other business.

IX. Next Meeting

Thursday, December 5, 2013

11:00 a.m. to 1:00 p.m.

Office of the State Auditor

X. Adjournment

The meeting was adjourned shortly after 1:00.

Exhibit B Audit Threshold Information

Topic:

During the 2013 legislative session, the threshold which triggers the requirement for a relief association to be audited was changed. Under the new law, relief associations “with assets of at least \$500,000 or liabilities of at least \$500,000 in the prior year or in any previous year” are required to have an audit report. (Minn. Stat. § 69.051, subd. 1.) Previously, relief associations with assets or liabilities of at least \$200,000 were required to have an audit report.

Reporting Information:

Relief associations with assets and liabilities that do not reach the audit threshold are required to have their financial reporting form attested to by an accountant. (Minn. Stat. § 69.051, subd. 1a.) The reporting forms and attestation are due to the Office of the State Auditor annually by March 31.

Relief associations with assets or liabilities above the audit threshold are required to submit their reporting forms and audit report to the Office of the State Auditor annually by June 30. After a relief association exceeds the new audit threshold, it maintains the audit requirement and the June 30 reporting deadline, even if the association’s assets and liabilities subsequently drop below the threshold.

Reporting Practice:

The number of relief associations required to have an audit and the number of relief associations required to have an attestation for the past several reporting years are listed below. The 2013 reporting year is the first year that the new \$500,000 threshold is in effect. Note that the 2013 reporting year numbers are preliminary and could change slightly after the 2012 reporting cycle is complete.

Reporting Year	Attestation Only Required	Audit Required
2013	494	190
2012	202	482
2011	225	488
2010	225	492
2009	244	473
2008	247	470
2007	256	461
2006	287	428
2005	322	392

A summary of form submission trends for the 2012 reporting year is provided below. The majority of relief associations that have the attestation requirement instead of being audited filed their annual reporting forms to the Office of the State Auditor late, with 45 percent of the associations filing at least two months late. In contrast, nearly half of relief associations with the audit requirement filed early or on time, and only 16 percent filed at least two months late. Late reporting may result in a relief association's receipt of its fire state aid to be delayed, which in turn results in missed investment opportunities.

Attestation Only Required		
Days Early/Late	Percent of Plans	Average Net Assets
At Least 30 Days Early	2%	\$98,768
0 to 30 Days Early	16%	\$133,454
1 to 30 Days Late	27%	\$137,433
31 to 60 Days Late	10%	\$141,278
61 to 90 Days Late	5%	\$116,281
At Least 91 Days Late	40%	\$127,236
Audit Required		
Days Early/Late	Percent of Plans	Average Net Assets
At Least 30 Days Early	15%	\$1,662,932
0 to 30 Days Early	33%	\$1,093,841
1 to 30 Days Late	26%	\$695,690
31 to 60 Days Late	10%	\$489,857
61 to 90 Days Late	5%	\$405,590
At Least 91 Days Late	11%	\$467,163

Outreach:

Many relief associations will be required to report earlier during 2014; in March instead of June. The Office of the State Auditor will continue to provide education about this reporting change. Assistance from the Working Group members in spreading the word about the change among relief associations in your communities will also be appreciated.

Specific steps that the Office of the State Auditor is taking to inform relief associations of the reporting change and to provide education regarding the change include:

- Notice in the 2012 Legislative Update prepared by the Pension Division;
- Article in the January-February 2014 Minnesota Fire Chief Magazine;
- Notices in the November and December 2013 Pension Division Newsletters;
- Email notice sent to trustees, municipal officials, and auditors of relief associations impacted by the change; and
- Educational resources for accountants and auditors performing an attestation.

Exhibit C
Defined Contribution Plan
Inactive Members and Ancillary Benefits

Issue:

For defined contribution plans, statute specifies how ancillary (disability and survivor) benefits for active and deferred members must be calculated. Questions have arisen regarding the eligibility of non-vested members who have separated from active service and the eligibility of inactive members to receive ancillary benefits.

Defined contribution plans are required to keep the accounts of non-vested members who separate from active service intact for at least five years before being forfeited. Should a beneficiary of a non-vested member who passes away during the five-year waiting period before the member's account is forfeited be eligible for a survivor benefit?

Inactive members include members who are on a leave of absence or who have a break in service. These members have not yet separated from active service, but are not currently accruing active service credit as they are unable to meet minimum service and membership requirements. How should ancillary benefits be handled for inactive members should they become disabled or pass away while in inactive status?

424A.016 DEFINED CONTRIBUTION VOLUNTEER FIREFIGHTERS' RELIEF ASSOCIATION SPECIFIC REGULATION.

...

Subd. 7. **Limitation on ancillary benefits.** (a) A defined contribution relief association may only pay an ancillary benefit which would constitute an authorized disbursement as specified in section 424A.05. The ancillary benefit for active members must equal the vested and nonvested amount of the individual account of the member.

(b) For deferred members, the ancillary benefit must equal the vested amount of the individual account of the member. For the recipient of installment payments of a service pension, the ancillary benefit must equal the remaining balance in the individual account of the recipient.

(c) If the bylaws so permit and as the bylaws define, the relief association may pay an ancillary benefit to a member who is not active or deferred.

(d) (1) If a survivor or death benefit is payable under the articles of incorporation or bylaws, the benefit must be paid:

- (i) as a survivor benefit to the surviving spouse of the deceased firefighter;
- (ii) as a survivor benefit to the surviving children of the deceased firefighter if no surviving spouse;
- (iii) as a survivor benefit to a designated beneficiary of the deceased firefighter if no surviving spouse or surviving children; or
- (iv) as a death benefit to the estate of the deceased active or deferred firefighter if no surviving spouse, no surviving children, and no beneficiary designated.

(2) If there are no surviving children, the surviving spouse may waive, in writing, wholly or partially, the spouse's entitlement to a survivor benefit.

(d) For purposes of this section, for a defined contribution volunteer fire relief association, a trust created under chapter 501B may be a designated beneficiary. If a trust payable to the surviving children organized under chapter 501B has been established as authorized by this section and there is no surviving spouse, the survivor benefit may be paid to the trust, notwithstanding the requirements of this section.

Exhibit D

Municipal Ratification Requirements

Issue:

The term “municipality” is defined in the chapter of State law that pertains to volunteer fire relief associations. Based on this definition, it appears that each municipality which contacts with an independent nonprofit firefighting corporation may be required to ratify relief association bylaw changes and deferred interest rates. If the independent nonprofit firefighting corporation is the entity responsible for paying required contributions to its affiliated relief association, it would seem that the board of the independent nonprofit firefighting corporation should be the entity that ratifies relief association bylaw and interest rate changes.

Working Group members have mentioned that this same issue may apply to relief associations affiliated with a fire district and to relief associations affiliated with a fire department operated as or by a joint powers entity.

Optional Change #1 below changes the definition of “municipality” to include an independent nonprofit firefighting corporation. Optional Change #2 below changes the definition of “municipality” to include an independent nonprofit firefighting corporation, and a joint powers entity and a fire district if either the joint powers entity or the fire district is responsible for satisfying the minimum obligation with respect to the special fund of the relief association.

424A.001 DEFINITIONS.

...

Subd. 3. **Municipality.** "Municipality" means a municipality which has established a fire department with which the relief association is directly associated, or the municipalities which have entered into a contract with the independent nonprofit firefighting corporation of which the relief association is a subsidiary.

424A.094 NONPROFIT FIREFIGHTING CORPORATIONS.

Subdivision 1. **Authorized inclusion in fire state aid program; covered nonprofit corporations.** (a) This section applies to any independent nonprofit firefighting corporation incorporated or organized under chapter 317A which: (1) operates exclusively for firefighting purposes; (2) which is composed of volunteer firefighters; and (3) which has a duly established separate subsidiary incorporated firefighters' relief association which provides retirement coverage for or pays a service pension to a retired firefighter or a retirement benefit to a surviving dependent of either an active or a retired firefighter, and which is subject to the applicable provisions of chapter 424A.

(b) Notwithstanding any law to the contrary, a municipality contracting with an independent nonprofit firefighting corporation must be included in the distribution of fire state aid to the appropriate county auditor by the state auditor only if the independent nonprofit firefighting corporation complies with the provisions of this section.

Subd. 2. **Determination of actuarial condition and funding costs.** Each independent nonprofit firefighting corporation to which this section applies shall determine the actuarial condition and the funding costs of the subsidiary relief association using the following procedure:

(1) An independent nonprofit firefighting corporation which has a subsidiary relief association which pays a monthly benefit service pension shall procure an actuarial valuation of the special fund of the subsidiary relief association at the same times and in the same manner as specified in section 424A.093, subdivisions 2 and 3, and an independent nonprofit firefighting corporation which has a subsidiary relief association which pays a lump-sum service pension shall determine the accrued liability of the special fund of the relief association in accordance with section 424A.092, subdivision 2.

(2) The financial requirements of the special fund of the subsidiary relief association which pays a monthly benefit service pension shall be determined in the same manner as specified in section 424A.093, subdivision 4, and the financial requirements of the special fund of the subsidiary relief association shall be determined in the same manner as specified in section 424A.092, subdivision 3.

(3) The minimum obligation of the independent nonprofit firefighting corporation on behalf of the special fund of the subsidiary relief association shall be determined in the same manner as specified in section 424A.093, subdivision 5 or section 424A.092, subdivision 4, as applicable.

(4) The independent nonprofit firefighting corporation shall appropriate annually from the income of the corporation an amount at least equal to the minimum obligation of the independent nonprofit firefighting corporation on behalf of the special fund of the subsidiary relief association.

Subd. 3. **Authorized pension disbursements.** Authorized disbursements of assets of the special fund of the subsidiary relief association of the nonprofit firefighting corporation shall be governed by the provisions of section 424A.05.

Optional Change #1:

424A.001 DEFINITIONS.

...

Subd. 3. **Municipality.** "Municipality" means a municipality which has established a fire department with which the relief association is directly associated, or ~~the municipalities which have entered into a contract with the~~ an independent nonprofit firefighting corporation of which the relief association is a subsidiary.

Optional Change #2:

424A.001 DEFINITIONS.

Subd. 3. **Municipality.** "Municipality" means:

(a) a municipality which has established a fire department with which the relief association is directly associated, ~~or the municipalities which have entered into a contract with the;~~

(b) an independent nonprofit firefighting corporation of which the relief association is a subsidiary;

(c) a joint powers entity if the joint powers entity is the entity responsible for satisfying the minimum obligation with respect to the special fund of the relief association; or

(d) a fire district if the fire district is the entity responsible for satisfying the minimum obligation with respect to the special fund of the relief association.

Exhibit E

Pension Calculation Clarification

Issue:

The deferred service pension statutes specify that the deferred service pension is governed by and must be calculated under the statute, law, articles of incorporation, and bylaws that are effective on the date that a member separates from active service. Similar language for service pensions paid to active members and for ancillary benefit payments would be helpful. The draft language below would create a new subdivision in the section of statute that applies to all volunteer fire relief associations to clarify that all pension and benefit payments must be calculated based on the information in effect when a member separates. The language currently found in the deferred service pension statutes would be removed as it would become redundant.

424A.015 GENERALLY APPLICABLE VOLUNTEER FIREFIGHTERS' RELIEF ASSOCIATION PENSION PLAN REGULATION.

...

Subd. 6. A service pension or ancillary benefit payable under this chapter is governed by and must be calculated under the general statute, special law, relief association articles of incorporation, and relief association bylaw provisions applicable on the date on which the member separated from active service with the fire department and active membership in the relief association.

424A.016 DEFINED CONTRIBUTION VOLUNTEER FIREFIGHTERS' RELIEF ASSOCIATION SPECIFIC REGULATION.

...

Subd. 6. **Deferred service pensions.** (a) A member of a relief association is entitled to a deferred service pension if the member separates from active service and membership and has completed the minimum service and membership requirements in subdivision 2. The requirement that a member separate from active service and membership is waived for persons who have discontinued their volunteer firefighter duties and who are employed on a full-time basis under section 424A.015, subdivision 1.

(b) The deferred service pension is payable when the former member reaches at least age 50, or at least the minimum age specified in the bylaws governing the relief association if that age is greater than age 50, and when the former member makes a valid written application.

(c) A defined contribution relief association may, if its governing bylaws so provide, credit interest or additional investment performance on the deferred lump-sum service pension during the period of deferral. If provided for in the bylaws, the interest must be paid:

(1) at the investment performance rate actually earned on that portion of the assets if the deferred benefit amount is invested by the relief association in a separate account established and maintained by the relief association;

(2) at the investment performance rate actually earned on that portion of the assets if the deferred benefit amount is invested in a separate investment vehicle held by the relief association; or

(3) at the investment return on the assets of the special fund of the defined contribution volunteer firefighter relief association in proportion to the share of the assets of the special fund to the credit of each individual deferred member account through the accounting date on which the investment return is recognized by and credited to the special fund.

(d) Unless the bylaws of a relief association that has elected to pay interest or additional investment performance on deferred lump-sum service pensions under paragraph (c) specifies a different interest or additional investment performance method, including the interest or additional investment performance period starting date and ending date, the interest or additional investment performance on a deferred service pension is creditable as follows:

(1) for a relief association that has elected to pay interest or additional investment performance under paragraph (c), clause (1) or (3), beginning on the date that the member separates from active service and membership and ending on the accounting date immediately before the deferred member commences receipt of the deferred service pension; or

(2) for a relief association that has elected to pay interest or additional investment performance under paragraph (c), clause (2), beginning on the date that the member separates from active service and membership and ending on the date that the separate investment vehicle is valued immediately before the date on which the deferred member commences receipt of the deferred service pension.

~~(e) The deferred service pension is governed by and must be calculated under the general statute, special law, relief association articles of incorporation, and relief association bylaw provisions applicable on the date on which the member separated from active service with the fire department and active membership in the relief association.~~

424A.02 DEFINED BENEFIT RELIEF ASSOCIATIONS; SERVICE PENSIONS.

Subd. 7. **Deferred service pensions.** (a) A member of a defined benefit relief association is entitled to a deferred service pension if the member separates from active service and membership and has completed the minimum service and membership requirements in subdivision 1. The requirement that a member separate from active service and membership is waived for persons who have discontinued their volunteer firefighter duties and who are employed on a full-time basis under section 424A.015, subdivision 1.

(b) The deferred service pension is payable when the former member reaches at least age 50, or at least the minimum age specified in the bylaws governing the relief

association if that age is greater than age 50, and when the former member makes a valid written application.

(c) A defined benefit relief association that provides a lump-sum service pension governed by subdivision 3 may, when its governing bylaws so provide, pay interest on the deferred lump-sum service pension during the period of deferral. If provided for in the bylaws, interest must be paid in one of the following manners:

(1) at the investment performance rate actually earned on that portion of the assets if the deferred benefit amount is invested by the relief association in a separate account established and maintained by the relief association;

(2) at the investment performance rate actually earned on that portion of the assets if the deferred benefit amount is invested in a separate investment vehicle held by the relief association; or

(3) at an interest rate of up to five percent, compounded annually, as set by the board of trustees.

(d) Any change in the interest rate set by the board of directors under paragraph (c), clause (3), must be ratified by the governing body of the municipality served by the fire department to which the relief association is directly associated, or by the independent nonprofit firefighting corporation, as applicable.

(e) Interest under paragraph (c), clause (3), is payable beginning on the January 1 next following the date on which the deferred service pension interest rate as set by the board of trustees was ratified by the governing body of the municipality served by the fire department to which the relief association is directly associated, or by the independent nonprofit firefighting corporation, as applicable.

(f) Unless the bylaws of a relief association that has elected to pay interest or additional investment performance on deferred lump-sum service pensions under paragraph (c) specifies a different interest or additional investment performance method, including the interest or additional investment performance period starting date and ending date, the interest or additional investment performance on a deferred service pension is creditable as follows:

(1) for a relief association that has elected to pay interest or additional investment performance under paragraph (c), clause (1) or (3), beginning on the first day of the month next following the date on which the member separates from active service and membership and ending on the last day of the month immediately before the month in which the deferred member commences receipt of the deferred service pension; or

(2) for a relief association that has elected to pay interest or additional investment performance under paragraph (c), clause (2), beginning on the date that the member separates from active service and membership and ending on the date that the separate investment vehicle is valued immediately before the date on which the deferred member commences receipt of the deferred service pension.

(g) For a deferred service pension that is transferred to a separate account established and maintained by the relief association or separate investment vehicle held by the relief association, the deferred member bears the full investment risk subsequent to transfer and in calculating the accrued liability of the volunteer firefighters relief association that pays a lump-sum service pension, the accrued liability for deferred service pensions is equal to the separate relief association account balance or the fair market value of the separate investment vehicle held by the relief association.

~~(h) The deferred service pension is governed by and must be calculated under the general statute, special law, relief association articles of incorporation, and relief association bylaw provisions applicable on the date on which the member separated from active service with the fire department and active membership in the relief association.~~

Exhibit F

Fiduciary Duties and Responsibilities

Topic

Each trustee of a volunteer fire relief association fills the role and carries the responsibilities of a fiduciary to the association. The Merriam-Webster dictionary defines the word fiduciary as “relating to or involving trust (such as the trust between a customer and a professional).”

As fiduciaries, each trustee on a relief association’s board owes a duty to the members, to the taxpayers, and to the State that activities are carried out in accordance with State law. A fiduciary shall act in good faith and exercise that degree of judgment and care, under the circumstances, that persons of prudence, discretion, and intelligence would exercise in the management of their own affairs, not for speculation, considering the probable safety of plan capital (Special Fund) as well as the probable investment return to be derived from the assets.

A trustee may not delegate his or her fiduciary duty. Relief association trustees are not relieved of their fiduciary duties by hiring professional consultants or investment advisors. Relief association trustees should ask questions of professional consultants and monitor investment performance.

A fiduciary must make a reasonable effort to obtain the knowledge and skills sufficient to perform fiduciary duties adequately. A relief association’s board of trustees is required to develop and periodically revise a program for the continuing education of its board members. The program must be designed to provide trustees with the knowledge and skills needed to enable them to perform their fiduciary activities.

Resources

Relief associations have options for providing no- and low-cost training to its trustees. These options include:

- Asking the association’s broker or investment advisor to attend a board meeting to provide an update on the investment markets, discuss new investment products or trends, review the association’s portfolio and investment performance, review the Investment Report Card provided by the Office of the State Auditor, and to discuss any recent statutory changes;
- Asking the association’s accountant or auditor to attend a board meeting to provide an update on the association’s finances and funding, to discuss any audit concerns or management notes, and to discuss any upcoming changes in accounting standards;

- Reviewing educational materials provided by the Office of the State Auditor, including the weekly E-Update, monthly Pension Division Newsletter, annual Legislative Update, Sample Bylaw Guides, and recorded online training videos;
- Subscribing to and reading educational materials related to investing, accounting, or other topics pertinent to the administration of a pension plan; and
- To consider training opportunities provided by the Fire Service Organizations and through the State Fire Schools.

Requirements

356A.02 FIDUCIARY STATUS AND ACTIVITIES.

Subdivision 1. **Fiduciary status.** For purposes of this chapter, the following persons are fiduciaries:

- (1) any member of the governing board of a covered pension plan;
- (2) the chief administrative officer of a covered pension plan or of the State Board of Investment;
- (3) any member of the State Board of Investment; and
- (4) any member of the Investment Advisory Council.

Subd. 2. **Fiduciary activity.** The activities of a fiduciary identified in subdivision 1 that must be carried out in accordance with the requirements of section 356A.04 include, but are not limited to:

- (1) the investment and reinvestment of plan assets;
- (2) the determination of benefits;
- (3) the determination of eligibility for membership or benefits;
- (4) the determination of the amount or duration of benefits;
- (5) the determination of funding requirements or the amounts of contributions;
- (6) the maintenance of membership or financial records;
- (7) the expenditure of plan assets; and
- (8) the selection of financial institutions and investment products.

356A.03 PROHIBITION OF CERTAIN PERSONS FROM FIDUCIARY STATUS.

Subdivision 1. **Individual prohibition.** For the prohibition period established by subdivision 2, a person, other than a constitutional officer of the state, who has been convicted of a violation listed in subdivision 3, may not serve in a fiduciary capacity identified in section 356A.02.

Subd. 2. **Prohibition period.** A prohibition under subdivision 1 is for a period of five years, beginning on the day following conviction for a violation listed in subdivision 3 or, if the person convicted is incarcerated, the day following unconditional release from incarceration.

Subd. 3. **Applicable violations.** A prohibition under subdivision 1 is imposed as a result of any of the following violations of law:

(1) a violation of federal law specified in United States Code, title 29, section 1111, as amended;

(2) a violation of Minnesota law that is a felony under Minnesota law; or

(3) a violation of the law of another state, United States territory or possession, or federally recognized Indian tribal government, or of the Uniform Code of Military Justice, that would be a felony under the offense definitions and sentences in Minnesota law.

Subd. 4. **Documentation.** In determining the applicability of this section, the appropriate appointing authority, the State Board of Investment, or the covered pension plan, as the case may be, may rely on a disclosure form meeting the requirements of the federal Investment Advisers Act of 1940, as amended through June 2, 1989, and filed with the State Board of Investment or the pension plan.

356A.04 GENERAL STANDARD OF FIDUCIARY CONDUCT.

Subdivision 1. **Duty.** A fiduciary of a covered pension plan owes a fiduciary duty to:

(1) the active, deferred, and retired members of the plan, who are its beneficiaries;

(2) the taxpayers of the state or political subdivision, who help to finance the plan;

and

(3) the state of Minnesota, which established the plan.

Subd. 2. **Prudent person standard.** A fiduciary identified in section 356A.02 shall act in good faith and shall exercise that degree of judgment and care, under the circumstances then prevailing, that persons of prudence, discretion, and intelligence would exercise in the management of their own affairs, not for speculation, considering the probable safety of the plan capital as well as the probable investment return to be derived from the assets.

356A.05 DUTIES APPLICABLE TO ALL ACTIVITIES.

(a) The activities of a fiduciary of a covered pension plan must be carried out solely for the following purposes:

(1) to provide authorized benefits to plan participants and beneficiaries;

(2) to incur and pay reasonable and necessary administrative expenses; or

(3) to manage a covered pension plan in accordance with the purposes and intent of the plan document.

(b) The activities of fiduciaries identified in section 356A.02 must be carried out faithfully, without prejudice, and in a manner consistent with law and the plan document.

356A.06 INVESTMENTS; ADDITIONAL DUTIES.

Subd. 3. **Absence of personal profit.** No fiduciary may personally profit, directly or indirectly, as a result of the investment or management of plan assets. This subdivision, however, does not preclude the receipt by a fiduciary of reasonable compensation, including membership in or the receipt of benefits from a pension plan, for the fiduciary's position with respect to the plan.

356A.13 CONTINUING FIDUCIARY EDUCATION.

Subdivision 1. **Obligation of fiduciaries.** A fiduciary of a covered pension plan shall make reasonable effort to obtain knowledge and skills sufficient to enable the fiduciary to perform fiduciary activities adequately. At a minimum, a fiduciary of a covered pension plan shall comply with the program established in accordance with subdivision 2.

Subd. 2. **Continuing fiduciary education program.** The governing boards of covered pension plans shall each develop and periodically revise a program for the continuing education of any of their board members and any of their chief administrative officers who are not reasonably considered to be experts with respect to their activities as fiduciaries. The program must be designed to provide those persons with knowledge and skills sufficient to enable them to perform their fiduciary activities adequately.