



Working Group

Meeting Agenda: December 14, 2021

- I. Call to Order**
Chair Auditor Blaha.
- II. Review and Approval of Working Group Meeting Minutes**
Exhibit A. Draft November 30, 2021 Meeting Minutes
- III. Review of Legislative Proposals**
Exhibits B through D.
 - Supplemental Benefits (B)
 - Maximum Benefit Levels (C)
 - Distributions to Alternate Payees (D)
- IV. Fire Chief Service Credit Certification**
Exhibit E.
- V. Benefit Levels for EMS-Only Members**
Exhibit F.
- VI. Other Business**
- VII. 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 13, 2021.



Exhibit A

11-30-21 Approved Minutes

Members Present

Julie Blaha, State Auditor

Eric Bullen, Minnesota State Fire Chiefs Association Representative (defined benefit lump sum plans)

Steve Donney, City of Harmony Mayor

Bruce Hemstad, Bemidji Fire Relief Association Secretary (defined benefit lump sum plans)

Sue Iverson, City of Red Wing Finance & Accounting Manager

Dan Johnson, Mendota Heights Fire Relief Association Trustee (defined contribution plans)

Ron Johnson, Minnesota State Fire Department Association Representative (defined contribution plans)

Aaron Johnston, Coon Rapids Fire Relief Association Treasurer (defined contribution plans)

Andy Paszak, Proctor Fire Relief Association President (defined benefit lump sum plans)

Darrell Pettis, St. Peter Fire Relief Association Treasurer (defined benefit lump sum plans)

Kevin Wall, Lower Saint Croix Valley Fire Relief Association President (defined benefit lump sum plans)

Michael Walstien, Plymouth Fire Relief Association Trustee (defined contribution plans)

Thomas Wilson, Eden Prairie Fire Relief Association Secretary (defined benefit monthly/lump sum plans)

Members Excused

Office of the State Auditor and Legislative Support Present

Ramona Advani, Deputy State Auditor and General Counsel

Chad Burkitt, Legislative Commission on Pension and Retirement Analyst

Rose Hennessy Allen, Office of the State Auditor Pension Director

Susan Lenczewski, Legislative Commission on Pension and Retirement Executive Director

I. Call to Order

Auditor Blaha called the meeting to order. She explained that the meeting was being recorded and streamed to the Office of the State Auditor (OSA)'s YouTube channel. The meeting attendance was taken and the agenda was accepted with no objections.

II. Review and Approval of Working Group Meeting Minutes

The members reviewed the November 16, 2021, meeting minutes that had been provided in advance. Johnston noted a typo that Michael Kruse's name was inadvertently listed in the attendance list. The minutes were accepted as corrected.

III. Maximum Benefit Levels

Auditor Blaha shared the draft change that would allow relief associations with a defined benefit plan to increase their benefit levels so long as the lump sum level does not exceed \$15,000 and the monthly level does not exceed \$100. Municipal ratification, or ratification by the independent nonprofit firefighting corporation, if applicable, would be required for a benefit level increase unless the relief association meets the limited conditions provided in current law for a benefit change without ratification. Walstien shared the significant hazard that a relief association could face if it increased the benefit level without ratification. The Working Group members adopted the draft change unanimously, with the understanding that minor drafting corrections could be made if identified by the OSA, LCPR, or the Revisor.

IV. Fire Chief Service Credit Certification

Todd Ulrich, treasurer of the Owatonna Fire Relief Association, shared with the Working Group his concern about the lack of input relief associations have in the service credit certification process. A firefighter's service credit is solely used for awarding pension credit with the relief association. Ulrich and the Working Group members spoke at length about the fire chief being the person who determines service credit amounts if a firefighter appeals the amount of service credit certified, and that a relief association's trustees should have input during the appeal process. Working Group members also discussed where (in a relief association's bylaws or through a fire department policy) service credit requirements should be defined. The Working Group will continue its discussion on this topic during the next meeting.

V. Benefit Levels for EMS-Only Members

Hennessy Allen explained that some relief associations have asked the Working Group to consider a change that would allow relief associations to set in their bylaws a different benefit level for members who solely supervise or perform emergency medical response duties. These relief associations have suggested that permitting different benefit levels for those who solely provide medical duties may incentivize relief associations to add volunteer emergency medical personnel to their membership. Working Group members expressed their concern with creating an opportunity for relief associations to set different benefit levels for different groups of members. It also was unclear that making such a change would incentivize relief associations to expand their membership to include volunteer emergency medical personnel. The Working Group members said it would be helpful for the group to hear from relief associations interested in this proposal, to understand more about the request. No action was taken on the topic.

VI. Other Business

There was no other business.

VII. Next Meeting

Tuesday, December 14, 2021
11 a.m. to 12:30 p.m.
Virtually via Zoom

VIII. Adjournment

The meeting was adjourned at 12:10 p.m.



Exhibit B

Supplemental Benefits

Topic:

When a relief association pays a lump-sum distribution, the relief association is also required to pay a supplemental benefit. The supplemental benefit is intended to help offset taxes that must be paid on the service pension or benefit distribution. For service pensions and disability benefits, the amount of the supplemental benefit is equal to 10 percent of the lump-sum distribution, up to a maximum of \$1,000. For survivor benefits, the amount of the supplemental benefit is equal to 20 percent of the survivor benefit distribution, up to a maximum of \$2,000. Relief associations are eligible to apply for reimbursement from the State of Minnesota for supplemental benefits paid to qualified recipients.

The Department of Revenue has identified several retired firefighters who have or will be receiving more than one lump-sum distribution. These firefighters fall into two categories:

- 1) firefighters who receive multiple distributions from the same entity; and
- 2) firefighters who receive one distribution from multiple entities.

The entities may be relief associations or fire departments that participate in the Public Employees Retirement Association (PERA) Statewide Volunteer Firefighter Plan.

The Working Group approved the below changes and included them in the 2020 and 2021 Working Group bills. The supplemental benefit changes were removed when the bill was heard by the Legislative Commission on Pensions and Retirement due to cost concerns by some legislators, so the changes were not passed. Clarification is still needed on this topic, as the Department of Revenue has pending supplemental benefit reimbursement requests.

Does the Working Group want to move forward with the statute changes below, which authorize a supplemental benefit payment with each lump-sum distribution, and each supplemental benefit is equal to 10 percent of the distribution up to a maximum of \$1,000 (or \$2,000 if the final distribution is a survivor benefit)?

Proposed Changes:

424A.10 STATE SUPPLEMENTAL BENEFIT; VOLUNTEER FIREFIGHTERS.

Subdivision 1. **Definitions.** For purposes of this section:

(1) "qualified recipient" means a volunteer firefighter who receives a lump-sum distribution of pension or retirement benefits from a volunteer firefighters relief association or from the voluntary statewide lump-sum volunteer firefighter retirement plan;

(2) "survivor of a deceased active or deferred volunteer firefighter" means the surviving spouse of a deceased active or deferred volunteer firefighter or, if none, the surviving child or children of a deceased active or deferred volunteer firefighter, or, if none, the designated beneficiary of the deceased active or deferred volunteer firefighter, or, if no beneficiary has been designated, the estate of the deceased active or deferred volunteer firefighter;

(3) "active volunteer firefighter" means a person who:

(i) regularly renders fire suppression service, the performance or supervision of authorized fire prevention duties, or the performance or supervision of authorized emergency medical response activities for a fire department;

(ii) has met the statutory and other requirements for relief association membership; and

(iii) is deemed by the relief association under law and its bylaws to be a fully qualified member of the relief association or from the voluntary statewide lump-sum volunteer firefighter retirement plan for at least one month;

(4) "deferred volunteer firefighter" means a former active volunteer firefighter who:

(i) terminated active firefighting service, the performance or supervision of authorized fire prevention duties, or the performance or supervision of authorized emergency medical response activities; and

(ii) has sufficient service credit from the applicable relief association or from the voluntary statewide lump-sum volunteer firefighter retirement plan to be entitled to a service pension under the bylaws of the relief association, but has not applied for or has not received the service pension; and

(5) "volunteer firefighter" includes an individual whose services were utilized to perform or supervise fire prevention duties if authorized under section 424A.01, subdivision 5, and individuals whose services were used to perform emergency medical response duties or supervise emergency medical response activities if authorized under section 424A.01, subdivision 5a.

Subd. 2. **Payment of supplemental benefit.** (a) Upon the payment by a volunteer firefighters relief association or by the voluntary statewide lump-sum volunteer firefighter retirement plan of a lump-sum distribution to a qualified recipient, the association must pay a supplemental benefit to the qualified recipient. Notwithstanding any law to the contrary, the relief association must pay the supplemental benefit out of its special fund and the voluntary statewide lump-sum volunteer firefighter retirement plan must pay the supplemental benefit out of the voluntary statewide lump-sum volunteer firefighter retirement plan. This benefit is an amount equal to ten percent of the regular lump-sum distribution that is paid on the basis of the recipient's service as a volunteer firefighter. In no case may the amount of the supplemental benefit exceed \$1,000. A supplemental benefit under this paragraph may not be paid to a survivor of a deceased active or deferred volunteer firefighter in that capacity.

(b) Upon the payment by a relief association or the retirement plan of a lump-sum survivor benefit to a survivor of a deceased active volunteer firefighter or of a deceased deferred volunteer firefighter, the association must pay a supplemental survivor benefit to the survivor of the deceased active or deferred volunteer firefighter from the special fund of the relief association and the retirement plan must pay a supplemental survivor benefit to the survivor of the deceased active or deferred volunteer firefighter from the retirement fund if chapter 353G so provides. The amount of the supplemental survivor benefit is 20 percent of the survivor benefit, but not to exceed \$2,000.



(c) For purposes of this section, the term "regular lump-sum distribution" means the pretax lump-sum distribution excluding any interest that may have been credited during a volunteer firefighter's period of deferral.

(d) An individual may receive a supplemental benefit under paragraph (a) or under paragraph (b), but not under both paragraphs with respect to one lump-sum volunteer firefighter benefit.

(e) If a qualified recipient receives more than one lump-sum distribution, the qualified recipient is eligible to receive a supplemental benefit or supplemental survivor benefit, whichever is applicable, with each lump-sum distribution. Each supplemental benefit shall be calculated pursuant to paragraph (a) or paragraph (b), as applicable, and shall be subject to a separate limit.

(f) Qualified recipients who elect to receive their lump-sum distribution in installments under section 424A.016, subdivision 5, or 424A.02, subdivision 8, are eligible to receive one supplemental benefit calculated on the total lump-sum distribution amount under paragraph (a) or paragraph (b), as applicable.

Subd. 3. **State reimbursement.** (a) Each year, to be eligible for state reimbursement of the amount of supplemental benefits paid under subdivision 2 during the preceding calendar year, the volunteer firefighters relief association or the voluntary statewide lump-sum volunteer firefighter retirement plan shall apply to the commissioner of revenue by February 15. By March 15, the commissioner shall reimburse the relief association for the amount of the supplemental benefits paid by the relief association to qualified recipients and to survivors of deceased active or deferred volunteer firefighters.

(b) The commissioner of revenue shall prescribe the form of and supporting information that must be supplied as part of the application for state reimbursement. The commissioner of revenue shall reimburse the relief association by paying the reimbursement amount to the treasurer of the municipality where the association is located and shall reimburse the retirement plan by paying the reimbursement amount to the executive director of the Public Employees Retirement Association. Within 30 days after receipt, the municipal treasurer shall transmit the state reimbursement to the treasurer of the association if the association has filed a financial report with the municipality. If the relief association has not filed a financial report with the municipality, the municipal treasurer shall delay transmission of the reimbursement payment to the association until the complete financial report is filed. If the association has dissolved or has been removed as a trustee of state aid, the treasurer shall deposit the money in a special account in the municipal treasury, and the money may be disbursed only for the purposes and in the manner provided in section 424A.08. When paid to the association, the reimbursement payment must be deposited in the special fund of the relief association and when paid to the retirement plan, the reimbursement payment must be deposited in the retirement fund of the plan.

(c) A sum sufficient to make the payments is appropriated from the general fund to the commissioner of revenue.

Subd. 4. **In lieu of income tax exclusion.** (a) The supplemental benefit provided by this section is in lieu of the state income tax exclusion for lump-sum distributions of retirement benefits paid to volunteer firefighters.

(b) If the law is modified to exclude or exempt volunteer firefighters' lump-sum distributions from state income taxation, the supplemental benefits under this section are no longer payable, beginning with the first calendar year in which the exclusion or exemption is effective. This subdivision does not apply to exemption of all or part of a lump-sum distribution under section 290.032 or 290.0802.

EFFECTIVE DATE: This section is effective retroactively for supplemental benefits paid in 2018 and thereafter.



Exhibit C

Maximum Benefit Levels

Topic:

The Working Group is considering a change that would allow relief associations with a defined benefit plan to increase their benefit levels so long as the lump sum level does not exceed \$15,000 and the monthly level does not exceed \$100.

Municipal ratification, or ratification by the independent nonprofit firefighting corporation, if applicable, is required for a benefit level increase unless the relief association meets the limited conditions provided in current law for a benefit change without ratification.

The proposed change allows relief associations and municipalities to evaluate whether to make a benefit level change by considering funded status, contribution requirements, recruitment and retention needs, and any other local factors, without being limited by the flexible service pension maximums that can change annually.

Proposed Change:

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

~~Subd. 2a. **Average amount of available financing.** (a) Annually on or before August 1 as part of the certification of the financial requirements and minimum municipal obligation determined under section 424A.092, subdivision 4, or 424A.093, subdivision 5, as applicable, the secretary or some other official of the relief association designated in the bylaws of each defined benefit relief association shall calculate and certify to the governing body of the applicable municipality the average amount of available financing per active covered firefighter for the most recent three-year period.~~

~~The amount of available financing includes any amounts of fire state aid and police and firefighter retirement supplemental state aid received or receivable by the relief association; any amounts of municipal contributions to the relief association raised from levies on real estate or from other available revenue sources exclusive of fire state aid, and one-tenth of the amount of assets in excess of the accrued liabilities of the relief association calculated under section 424A.092, subdivision 2; 424A.093, subdivisions 2 and 4; or 424A.094, subdivision 2, if any.~~

~~—(b) The maximum service pension which the defined benefit relief association has authority to provide for in its bylaws for payment to a member retiring after the calculation date when the minimum age and service requirements specified in subdivision 1 are met must be determined using the table in subdivision 2b or 2c, whichever applies.~~

~~Subd. 2b. **Maximum monthly amount.** For a defined benefit relief association where the governing bylaws provide for a monthly service pension to a retiring member, the maximum monthly service pension amount per month for each year of service credited that~~



may be provided for in the bylaws is the greater of the service pension amount provided for in the bylaws on the date of the calculation of the average amount of the available financing per active covered firefighter or the maximum service pension figure corresponding to the average amount of available financing per active covered firefighter:

Minimum Average Amount of Available Financing per Firefighter	Maximum Service Pension Amount Payable per Month for Each Year of Service
\$...	\$.25
41	.50
81	1.00
122	1.50
162	2.00
203	2.50
243	3.00
284	3.50
324	4.00
365	4.50
405	5.00
486	6.00
567	7.00
648	8.00
729	9.00
810	10.00
891	11.00
972	12.00
1053	13.00
1134	14.00
1215	15.00
1296	16.00
1377	17.00
1458	18.00
1539	19.00
1620	20.00
1701	21.00
1782	22.00
1823	22.50
1863	23.00
1944	24.00
2025	25.00
2106	26.00
2187	27.00
2268	28.00
2349	29.00



2430	30.00
2511	31.00
2592	32.00
2673	33.00
2754	34.00
2834	35.00
2916	36.00
2997	37.00
3078	38.00
3159	39.00
3240	40.00
3321	41.00
3402	42.00
3483	43.00
3564	44.00
3645	45.00
3726	46.00
3807	47.00
3888	48.00
3969	49.00
4050	50.00
4131	51.00
4212	52.00
4293	53.00
4374	54.00
4455	55.00
4536	56.00
4617	57.00
4698	58.00
4779	59.00
4860	60.00
4941	61.00
5022	62.00
5103	63.00
5184	64.00
5265	65.00
5346	66.00
5427	67.00
5508	68.00
5589	69.00
5670	70.00
5751	71.00
5832	72.00



5913	73.00
5994	74.00
6075	75.00
6156	76.00
6237	77.00
6318	78.00
6399	79.00
6480	80.00
6561	81.00
6642	82.00
6723	83.00
6804	84.00
6885	85.00
6966	86.00
7047	87.00
7128	88.00
7209	89.00
7290	90.00
7371	91.00
7452	92.00
7533	93.00
7614	94.00
7695	95.00
7776	96.00
7857	97.00
7938	98.00
8019	99.00
8100	100.00
any amount in excess of	
8100	100.00

Subd. 2c. ~~Maximum lump-sum amount.~~ For a defined benefit relief association in which the governing bylaws provide for a lump-sum service pension to a retiring member, the maximum lump-sum service pension amount for each year of service credited that may be provided for in the bylaws is the greater of the service pension amount provided for in the bylaws on the date of the calculation of the average amount of the available financing per active covered firefighter or the maximum service pension figure corresponding to the average amount of available financing per active covered firefighter for the applicable specified period:

Minimum Average Amount of Available Financing per Firefighter	Maximum Lump-Sum Service Pension Amount Payable for Each Year of Service
\$...	\$10
11	20



16	30
23	40
27	50
32	60
43	80
54	100
65	120
77	140
86	160
97	180
108	200
131	240
151	280
173	320
194	360
216	400
239	440
259	480
281	520
302	560
324	600
347	640
367	680
389	720
410	760
432	800
486	900
540	1000
594	1100
648	1200
702	1300
756	1400
810	1500
864	1600
918	1700
972	1800
1026	1900
1080	2000
1134	2100
1188	2200
1242	2300
1296	2400
1350	2500



1404	2600
1458	2700
1512	2800
1566	2900
1620	3000
1672	3100
1726	3200
1753	3250
1780	3300
1820	3375
1834	3400
1888	3500
1942	3600
1996	3700
2023	3750
2050	3800
2104	3900
2158	4000
2212	4100
2265	4200
2319	4300
2373	4400
2427	4500
2481	4600
2535	4700
2589	4800
2643	4900
2697	5000
2751	5100
2805	5200
2859	5300
2913	5400
2967	5500
3021	5600
3075	5700
3129	5800
3183	5900
3237	6000
3291	6100
3345	6200
3399	6300
3453	6400
3507	6500



3561	6600
3615	6700
3669	6800
3723	6900
3777	7000
3831	7100
3885	7200
3939	7300
3993	7400
4047	7500
4101	7600
4155	7700
4209	7800
4263	7900
4317	8000
4371	8100
4425	8200
4479	8300
4533	8400
4587	8500
4641	8600
4695	8700
4749	8800
4803	8900
4857	9000
4911	9100
4965	9200
5019	9300
5073	9400
5127	9500
5181	9600
5235	9700
5289	9800
5343	9900
5397	10,000
5451	10,100
5505	10,200
5559	10,300
5613	10,400
5667	10,500
5721	10,600
5775	10,700
5829	10,800



5883	10,900
5937	11,000
5991	11,100
6045	11,200
6099	11,300
6153	11,400
6207	11,500
6261	11,600
6315	11,700
6369	11,800
6423	11,900
6477	12,000
6531	12,100
6585	12,200
6639	12,300
6693	12,400
6747	12,500
6801	12,600
6855	12,700
6909	12,800
6963	12,900
7017	13,000
7071	13,100
7125	13,200
7179	13,300
7233	13,400
7287	13,500
7341	13,600
7395	13,700
7449	13,800
7503	13,900
7557	14,000
7611	14,100
7665	14,200
7719	14,300
7773	14,400
7827	14,500
7881	14,600
7935	14,700
7989	14,800
8043	14,900
8097	15,000

any amount in excess of

Subd. 3. **Determining maximum pension benefit.** (a) Under no circumstances may a defined benefit relief association set in its bylaws a service pension amount applicable to its retiring members who have met the requirements of subdivision 1, above the following maximum amounts:

(i) For a defined benefit relief association in which the governing bylaws provide for a monthly benefit service pension to a retiring member as an alternative form of service pension payment to a lump-sum service pension, the maximum monthly service pension amount for each pension payment type must be determined using the applicable table contained in subdivision 2b or 2c, per month for each year of service credited that may be provided for in the bylaws is \$100; and

(ii) For a defined benefit relief association in which the governing bylaws provide for a lump-sum service pension to a retiring member, the maximum lump-sum service pension amount for each year of service credited that may be provided for in the bylaws is \$15,000.

~~(b) If a defined benefit relief association establishes a service pension in compliance with the applicable maximum contained in subdivision 2b or 2c and the minimum average amount of available financing per active covered firefighter is subsequently reduced because of a reduction in fire state aid or because of an increase in the number of active firefighters, the relief association may continue to provide the prior service pension amount specified in its bylaws, but may not increase the service pension amount until the minimum average amount of available financing per firefighter under the table in subdivision 2b or 2c, whichever applies, permits.~~

~~(c) No defined benefit relief association is authorized to provide a service pension in an amount greater than the largest applicable flexible service pension maximum amount even if the amount of available financing per firefighter is greater than the financing amount associated with the largest applicable flexible service pension maximum.~~

~~(d) The method of calculating service pensions must be applied uniformly for all years of active service. Credit must be given for all years of active service, unless the bylaws of the relief association provide that service credit is not given for:~~

~~(1) years of active service in excess of caps on service credit; or~~

~~(2) years of active service earned by a former member who:~~

~~(i) has ceased duties as a volunteer firefighter with the fire department before becoming vested under subdivision 2; and~~

~~(ii) has not resumed active service with the fire department and active membership in the relief association for a period as defined in the relief association's bylaws, of not less than five years.~~

Subd. 3a. **Penalty for paying pension greater than applicable maximum.** (a) If a defined benefit relief association pays a service pension greater than the maximum service pension associated with the applicable average amount of available financing per active covered firefighter under the table in subdivision 2b or 2c, whichever applies, the maximum service pension under subdivision 3, paragraph (b), or the applicable maximum service pension amount specified in subdivision 3, paragraph (c), whichever is less, the state auditor shall:

(1) disqualify the municipality or the independent nonprofit firefighting corporation associated with the relief association from receiving fire state aid by making the appropriate notification to the municipality and the commissioner of revenue, with the disqualification applicable for the next apportionment and payment of fire state aid; and

(2) order the treasurer of the applicable relief association to recover the amount of the overpaid service pension or pensions from any retired firefighter who received an overpayment.

(b) Fire state aid amounts from disqualified municipalities for the period of disqualifications under paragraph (a), clause (1), must be credited to the amount of fire insurance premium tax proceeds available for the next subsequent fire state aid apportionment.

(c) The amount of any overpaid service pension recovered under paragraph (a), clause (2), must be credited to the amount of fire insurance premium tax proceeds available for the next subsequent fire state aid apportionment.

(d) The determination of the state auditor that a relief association has paid a service pension greater than the applicable maximum must be made on the basis of the information filed by the relief association and the municipality with the state auditor under this chapter and any other relevant information that comes to the attention of the state auditor. The determination of the state auditor is final. An aggrieved municipality, relief association, or person may appeal the determination under section 480A.06.

(e) The state auditor may certify, upon learning that a relief association overpaid a service pension based on an error in the maximum service pension calculation, the municipality or independent nonprofit firefighting corporation associated with the relief association for fire state aid if (1) there is evidence that the error occurred in good faith, and (2) the relief association has initiated recovery of any overpayment amount. Notwithstanding paragraph (c), all overpayments recovered under this paragraph must be credited to the relief association's special fund.

EFFECTIVE DATE: This section is effective on January 1, 2023.

To: State Auditor's Volunteer Fire Relief Association Working Group

From: Susan Lenczewski, Executive Director

Date: December 8, 2021

Subject: Federal and State Law Considerations relating to Distributions from Volunteer Firefighter Relief Associations to Alternate Payees under a Domestic Relations Order

Copy: Rose Hennessy-Allen, Pension Division Director

Issue

The Working Group is considering amending applicable Minnesota statutes to permit volunteer firefighter relief associations to make distributions to alternate payees (former spouses) as early as immediately after the domestic relations order is accepted by the relief association.

Specifically, the Working Group has been asked to consider allowing former spouses of relief association members to be paid after the divorce is finalized, even if the member has not yet separated from active service or been paid.

This memo addresses the federal tax laws and state laws that apply to the issue and should be considered by the Working Group as it develops a recommendation.

Summary of Conclusions

Minnesota Statutes, chapter 424A, does not unambiguously permit the distribution of a pension benefit to an alternate payee under a domestic relations order and should be amended to do so. Such an amendment could include a clarification to subdivision 2 of Section 424A.015 and should include a change to subdivision 3 of Section 424A.05 to add one more permitted type of disbursement from a special fund. This will resolve any potential conflict with statutes in Chapter 518.

The amendment could permit the distribution of the pension benefit to the alternate payee as early as immediately after the domestic relations order has been accepted by the relief association, regardless of the age of the firefighter or whether the firefighter has ended active service. Such an amendment could permit distribution before a firefighter attains age 50, if the distribution is pursuant to a domestic relations order that assigns all or a portion of the firefighter's pension benefit to the former spouse of the firefighter.

For a defined benefit relief association, such an amendment will allow the relief's retirement plan to make the early distribution, but may create a conflict with paragraph (5) of Minnesota Statutes, section 518.58, subdivision 4, which appears to prohibit distribution before the firefighter is able to receive a distribution. This conflict would need to be resolved in the amendment. Relief associations that pay lump sum distributions will be able to comply with early distributions easier than relief associations that pay only monthly annuities. The amendment could allow the monthly defined benefit relief associations to pay lump sum distributions to alternate payees, even while allowing only monthly distributions to firefighters.

Federal tax law does not specifically address the issue of early distribution from a governmental plan under a domestic relations order. If Minnesota statutes are amended to provide for early distribution to an alternate payee pursuant to a domestic relations order, and a relief association complies with an order that requires early distribution, a good faith argument can be made that such a distribution will not cause the relief's retirement plan to violate the qualification requirements under Internal Revenue Code sections 401(a) through 417 et seq.

Applicable Law

The following state and federal laws are relevant to the issue under consideration. (Direct quotes are *italicized*. I have bolded language for emphasis.)

Applicable State Law—Sections of Chapter 424A

Minnesota Statutes section 424A.016, subdivision 2, and section 424A.02, subdivision 1: Under these statutes, which govern defined contribution relief associations and defined benefit relief associations, respectively, a relief association is permitted to distribute a pension benefit to any member who satisfies these requirements, which are the same for both sections:

- (1) separates from active service with the fire department;*
- (2) reaches age 50;*
- (3) completes at least five years of active service as an active member of the fire department...;*
- (4) completes at least five years of active membership with the relief association...; and*
- (5) complies with any additional conditions as to age, service, and membership that are prescribed by the bylaws of the relief association.*

Minnesota Statutes, section 424A.015, subdivision 2, states:

*Subd. 2. No assignment or garnishment. A service pension or ancillary benefits paid or payable from the special fund of a relief association to any person receiving or entitled to receive a service pension or ancillary benefits is **not subject to garnishment, judgment, execution, or other legal process, except as provided in section 518.58, 518.581, or 518A.53.** No person entitled to a service pension or ancillary benefits*

from the special fund of a relief association may assign any service pension or ancillary benefit payments, and the association does not have the authority to recognize any assignment or pay over any sum which has been assigned.

Minnesota Statutes, section 424A.05, subdivision 3, limits disbursements from the special fund of a relief association to only these seven types of payees, none of which include alternate payees under a domestic relations order:

*Subd. 3. Authorized disbursements from special fund. (a) Disbursements from the special fund **may not be made for any purpose other than one of the following:***

- (1) for the payment of service pensions to retired members of the relief association...;*
- (2) for the purchase of an annuity for the applicable person under section 424A.015, subdivision 3, for the transfer of service pension or benefit amounts to the applicable person's individual retirement account under section 424A.015, subdivision 4, or to the applicable person's account in the Minnesota deferred compensation plan under section 424A.015, subdivision 5;*
- (3) for the payment of temporary or permanent disability benefits to disabled members...;*
- (4) for the payment of survivor benefits or for the payment of a death benefit to the estate of the deceased active or deferred firefighter,...;*
- (5) for the payment of the fees, dues and assessments to the Minnesota State Fire Department Association and to the Minnesota State Fire Chiefs Association...;*
- (6) for the payment of insurance premiums to the state Volunteer Firefighters Benefit Association, or an insurance company licensed by the state of Minnesota offering casualty insurance,...; and*
- (7) for the payment of administrative expenses of the relief association as authorized under subdivision 3b.*

Applicable State Law—Sections of Chapters 518 and 518A

Chapter 518 governs divorce and the division of property in divorce in the state of Minnesota. Chapter 518A governs the provision of child support in connection with divorce.

Minnesota Statutes, section 424A.015, subdivision 2, excerpted above, refers to three sections within these chapters: 518.58, 518.581, and 518A.53.

Minnesota Statutes, section 518.58: Subdivision 4 of section 518.58 addresses the division of marital property and states that the court in a marriage dissolution proceeding “*shall make a just and equitable division of the marital property of the parties without regard to marital misconduct, after making findings regarding the division of the property.*” (For purposes of Chapter 518, “marital property” includes “vested public or private pension plan benefits or rights” acquired by either party “during the existence of the marriage relation between them....” Minnesota Statutes, section 518.003, subdivision 3b.)

Under subdivision 4, a division of **marital property** that represents pension plan benefits in the form of future pension plan payments must satisfy five requirements, set forth in five paragraphs. For purposes of this memo and the issue addressed, two requirements are relevant:

Paragraph (1) states that the assigned pension plan benefit *“is payable only to the extent of the amount of the pension plan benefit payable under the terms of the plan.”*

Paragraph (5) states that the assigned pension plan benefit, *“in the case of **defined benefit public pension plan benefits or rights**, may not commence until the public plan member submits a valid application for a public pension plan benefit and the benefit becomes payable.”*

Minnesota Statutes, section 518.581:

Subdivision 1 of section 518.581 authorizes the court in a marital dissolution to require a pension plan to pay amounts as part of the division of pension rights under section 518.58 and may award *“a former spouse all or part of a survivor benefit unless the plan does not allow by law the payment of a surviving spouse benefit to a former spouse.”*

“Surviving spouse benefit” is defined in the definition section, subdivision 4, as *“(1) a benefit a surviving spouse may be eligible for under the laws and bylaws of the pension plan if the employee dies before retirement, or (2) a benefit selected for or available to a surviving spouse under the laws and bylaws of the pension plan upon the death of the employee after retirement.”*

Subdivisions 2 and 3 of section 518.581 address refunds and are not relevant to a relief association retirement plan.

Minnesota Statutes, section 518A.53: This section requires court orders that provide for the support of children, spouses or former spouses to address income withholding. This may apply to domestic relations orders that assign a portion of a retirement benefit under the retirement plan of a relief association, but requires an analysis that is beyond the scope of this memo.

Applicable State Law—Section of Chapter 356

Minnesota Statutes, section 356.49, subdivision 1, states:

A public or private pension plan administrator must provide the court and the parties to a marriage dissolution action involving a plan member or former plan member with information regarding pension benefits or rights of the plan member or former plan member.

Subdivision 2 states that the information must include the following:

- *the pension benefits or rights of the plan member or former plan member as of the first day of the month following the date of the request, or as of the end of the previous fiscal year for the plan, and as of the date of valuation of marital assets under section 518.58, if the person requesting the information specifies that date....;*
- *the accrued service credit of the person;...*
- *a summary of the benefit plan; and*
- *any other information relevant to the calculation of the present value of the benefits or rights.*

Applicable Federal Internal Revenue Code Provisions

Internal Revenue Code Section 72: This law governs the federal tax treatment of distributions from retirement plans, whether in the form of an annuity or lump sum. Section 72 includes several provisions that address the tax treatment of an alternate payee who receives a distribution from a qualified retirement plan pursuant to a qualified domestic relations order (QDRO).

These provisions are too complicated and woven into the rest of section 72 to make any sense when excerpted, so the following are excerpts from IRS Publication 575, which summarizes the requirements of section 72, including provisions applicable to alternate payees:

A spouse or former spouse who receives part of the benefits from a retirement plan under a QDRO reports the payments received as if he or she were a plan participant.

You may be able to roll over tax free all or part of a distribution from a qualified retirement plan that you receive under a QDRO. If you receive the distribution as an employee's spouse or former spouse (not as a nonspousal beneficiary), the rollover rules apply to you as if you were the employee.

Most distributions (both periodic and nonperiodic) from qualified retirement plans and nonqualified annuity contracts made to you before you reach age 59½ are subject to an

additional tax of 10%.... The tax doesn't apply to distributions that are...from a qualified retirement plan (other than an IRA) to an alternate payee under a qualified domestic relations order....

This favorable tax treatment for alternate payees (and the plan member) will apply if the distribution is pursuant to a "qualified domestic relations order." Each reference to a "qualified domestic relations order" in Code section 72 refers to a "qualified domestic relations order" as defined in Internal Revenue Code section 414(p).

Code section 414(p) consists of 13 paragraphs that define a "qualified domestic relations order," describe what the order must include in order to be a QDRO, impose a restriction regarding the earliest date a QDRO can require distribution to an alternate payee, and set forth procedural requirements. Code section 414(p) includes the following paragraph (11):

*(11) Application of rules to certain other plans. For purposes of this title, a distribution or payment from **a governmental plan** (as defined in subsection (d)) or a church plan (as described in subsection (e)) or an eligible deferred compensation plan (within the meaning of section 457(b)) shall be treated as made pursuant to a qualified domestic relations order if it is made pursuant to a domestic relations order which meets the **requirement of clause (i) of paragraph (1)(A)**.*

Clause (i) of paragraph (1)(A) of section 414(p) states:

(1) In general

(A) Qualified domestic relations order. The term "qualified domestic relations order" means a domestic relations order—

(i) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(ii) with respect to which the requirements of paragraphs (2) and (3) are met.

(B) Domestic relations order. The term "domestic relations order" means any judgment, decree, or order (including approval of a property settlement agreement) which—

(i) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and

(ii) is made pursuant to a State domestic relations law (including a community property law).

The remaining paragraphs (2) through (10), (12), and (13), need not be complied with by a governmental plan that makes a distribution to an alternate payee pursuant to a domestic relations order.

Analysis

Compliance with laws, generally

Volunteer firefighter relief associations establish and administer retirement plans that provide retirement benefits in the form of a cash payment (a “lump sum distribution”) or a stream of payments (an “annuity” or “installments”) to firefighters after they cease active service as a firefighter and have reached at least age 50. The trustees of the relief association are fiduciaries under Minnesota law and must comply with the fiduciary requirements, which include the requirement to manage the plan in accordance with the plan document and **act in a manner consistent with law and the plan document**. Minnesota Statutes, section 356A.05.

Each relief association and the retirement plan it administers must satisfy all applicable Minnesota laws. The consequence for failure to comply with all applicable Minnesota laws varies, depending on the statute. For instance, failure to comply with certain requirements in Chapter 424A may result in the relief association not receiving fire state aid. Failure to comply with the fiduciary requirements of Chapter 356A exposes the fiduciary to a lawsuit claiming breach of fiduciary duty, for which the remedies “are those specified by statute or available at common law.” Minnesota Statutes, section 356A.09.

In addition, each relief association must ensure that its retirement plan complies with federal tax laws applicable to qualified retirement plans that are governmental plans. Complying with these requirements allows state aid and contributions to be set aside for eventual payment as a retirement benefit, without causing firefighters to incur federal income tax on their retirement benefit as soon as they vest.

The consequence for failure to comply with these federal tax laws generally depends on whether the IRS discovers the compliance failure through an audit or investigation of the relief association, retirement plan, or the firefighter. If the retirement plan is found to have not complied with applicable federal law, either in operation or in plan documentation, consequences could include the following:

- Retirement benefits specified in the retirement plan document may be considered immediately taxable to the firefighter, to the extent the firefighter is vested in the benefit. The firefighter could be held liable for federal income tax, even though the retirement benefit will not be received by the firefighter until after the firefighter’s active service ends at age 50 or later. In other words, if the relief association trustees do not operate and administer the retirement plan in compliance with applicable federal

tax laws, firefighters could be liable for federal tax on the amount of their vested benefit.

- Investment earnings on the assets held by the trust account of the relief association to fund retirement benefits could become taxable to the trust account beginning with the year in which the noncompliance first occurred.

Domestic relations orders

If a firefighter who has a retirement benefit under the retirement plan of a relief association goes through a divorce, the firefighter's former spouse may seek, as part of the marital property settlement, a portion of the firefighter's retirement benefit from the relief association plan.

This analysis applies the state and federal law requirements noted earlier in this memo to answer the following questions:

- Under current state statutes, is a relief association permitted to make a distribution to an alternate payee? If not, what amendments should be made?

State statutes governing relief associations and their retirement plans do not unambiguously permit the distribution of a pension benefit to an alternate payee under a domestic relations order and should be amended to do so. Such an amendment could include a clarifying change to subdivision 2 of Section 424A.015 and should include a change to subdivision 3 of Section 424A.05 to add one more permitted type of disbursement from a special fund. This will resolve any potential conflict with statutes in Chapter 518 that include pension benefits in marital property and authorize a court to divide them between the parties to a marital dissolution proceeding.

- May state statutes be amended to allow for distributions to alternate payees as early as immediately after a domestic relations order is accepted by the relief association?

State statutes may be amended to permit the distribution of the pension benefit to the alternate payee as early as immediately after the domestic relations order has been accepted by the relief association, regardless of the age of the firefighter or whether the firefighter has ended active service. Such an amendment could be to Sections 424A.016 and 424A.02, to permit distribution before a firefighter attains age 50, if the distribution is pursuant to a domestic relations order that assigns all or a portion of the firefighter's pension benefit to the former spouse of the firefighter.

For a defined benefit relief association, such an amendment will allow the relief's retirement plan to make the early distribution, but may create a conflict with paragraph (5) of Minnesota Statutes, section 518.58, subdivision 4, which appears to prohibit

distribution before the firefighter is able to receive a distribution. This paragraph should be amended or the language added to Chapter 424A will need to include a phrase like “notwithstanding other laws to the contrary, including Section 518.58...”

Relief associations that pay lump sum distributions will be able to comply with early distributions easier than relief associations that pay only monthly annuities. The amendment could allow the monthly defined benefit relief associations to pay lump sum distributions to alternate payees, even while allowing only monthly distributions to firefighters.

After extensively researching applicable federal tax law, it does not appear that the qualification requirements set forth in Internal Revenue Code sections 401(a) through 417 address the issue of early distribution from a governmental plan under a domestic relations order. Rather, federal tax law appears to take a hands-off approach to domestic relations orders dividing governmental plan benefits and requires very little as conditions on the ability of a governmental plan to pay pension benefits to an alternate payee. If Minnesota statutes are amended to provide for early distribution to an alternate payee pursuant to a domestic relations order, and a relief association complies with an order that requires early distribution, a good faith argument can be made that such a distribution will not cause a retirement plan to violate the qualification requirements under Internal Revenue Code sections 401(a) through 417.

Additional considerations based on the applicable state and federal tax laws:

1. The relief association must provide benefit information upon the alternate payee’s request, in accordance with Minnesota Statutes, section 356.49.
2. The relief association must ensure that the court order complies with the definition of a “domestic relations order” under Internal Revenue Code section 414(p)(11), to the extent applicable to a governmental plan, which requires that the court order:
 - is a judgment, decree, or order (including approval of a property settlement agreement) which relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant and is made pursuant to a state domestic relations law, and
 - creates or recognizes the existence of an alternate payee’s right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a firefighter covered by the plan.

This should ensure that the alternate payee is liable for federal income tax on the amount distributed to the alternate payee (rather than the firefighter), but not for the 10% excise tax, and will allow the alternate payee to direct a rollover of the amount distributed.

This definition of a “domestic relations order” could be included in the amendments.

3. If the statutes are amended to permit relief association retirement plans to comply with a domestic relations order that requires the payment of the retirement benefit assigned to an alternate payee as early as immediately after the order is accepted by the relief association, regardless of whether the firefighter has ended active firefighting service or reached age 50, the relief association would have option to permit such early distributions in its bylaws. The relief association may want to consider the following, depending on the type of retirement plan:
 - In a defined contribution plan, the division of the retirement benefit is relatively easy to do. The domestic relations order can identify either a specific dollar amount or a percentage of the firefighter’s account, probably limited to the benefit accrued during the marriage. The assigned benefit could be offered to the alternate payee for receipt in cash or as a direct rollover to an individual retirement account (IRA) as soon as the order is accepted by the relief association.
 - In a defined benefit plan that pays lump sum distributions, the division and payment of the retirement benefit will be similar to the defined contribution plan.
 - In a defined benefit plan that pays a monthly benefit, the relief association would need to decide whether to allow an alternate payee to take the present value of the assigned monthly stream of payments in a lump sum or to begin allowing the monthly payments immediately, calculated to be actuarially equivalent to a benefit payable at age 50. These calculations will probably require an actuary, so may be cost prohibitive for the relief association.

Legislative Commission on Pensions and Retirement

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Exhibit E

Fire Chief Service Credit Certification

Topic:

A provision in the 2018 Working Group bill that went into effect on January 1, 2019, requires the fire chief to annually, by March 31, certify service credit information for each active volunteer firefighter to an officer of the relief association and to the municipal clerk or clerk-treasurer of the largest municipality in population served by the associated fire department.

Fire departments are responsible for establishing the minimum service requirements to earn service credit, calculating the service credit for each firefighter, and determining whether each firefighter is in good standing. Administratively, relief association trustees rely on this information when determining eligibility for pension credit and to correctly award service credit for pension purposes.

The fire chief must also provide to each active volunteer firefighter notification of the amount of service credit rendered by the firefighter for the previous calendar year. The service credit notification must be provided to the firefighter 21 days prior to its certification to the relief association and municipality, along with a description of the process and deadlines for the firefighter to challenge the fire chief's determination. The annual notification to each firefighter is intended to help resolve service credit disputes in a timely manner, rather than when the firefighter requests the service pension distribution.

Some relief associations have asked the Working Group to consider whether it is appropriate for members to lose the accrual of service credit if they fail to meet minimum requirements established by the fire chief. Specifically, the question is whether the fire chief should have the ability to both define the service credit requirements and to determine compliance with the requirements.

Comments captured during the November 30, 2021, Working Group meeting include the following:

- There are concerns with one person (the fire chief) having total control to decide if a firefighter receives service credit.
- The service credit is only used to determine pension credit in the relief association, but the relief association currently has little or no say in the crediting process.
- There is a desire to even-out power between the fire chief and the relief association. One option for doing this could be that the relief association's president or board of trustees is involved in the appeal process if a firefighter challenges the service credit amount.

- There are concerns that credit could be denied to a firefighter because of personality conflicts or a difference of opinion about policies.
- Denial of relief association pension credit sometimes is used as a way to punish firefighters who are not meeting the fire department's minimum service requirements. Instead, the fire chief and municipality should directly discipline firefighters who do not meet fire department requirements, so that the fire department and relief association are not carrying "dead weight."

An optional change is provided below that would require the fire chief to provide, at a firefighter's request, a written explanation and documentation to support the assessment of active service credit. Additional transparency surrounding the fire chief's certification and rationale for any credit reductions may alleviate some of the accountability concerns raised by the Working Group members.

Optional Change:

424A.003 CERTIFICATION OF SERVICE CREDIT.

(a) When a municipal fire department, a joint powers fire department, or an independent nonprofit firefighting corporation is directly associated with the volunteer firefighters relief association, the fire chief shall certify annually by March 31 the service credit for the previous calendar year of each volunteer firefighter rendering active service with the fire department.

(b) The certification shall be made to an officer of the relief association's board of trustees and to the municipal clerk or clerk-treasurer of the largest municipality in population served by the associated fire department.

(c) The fire chief shall notify each volunteer firefighter rendering active service with the fire department of the amount of service credit rendered by the firefighter for the previous calendar year. Upon request, the fire chief shall provide the firefighter with a written explanation and documentation to support the assessment of active service credit. The service credit notification and a description of the process and deadlines for the firefighter to challenge the fire chief's determination of service credit must be provided to the firefighter at least 21 days prior to its certification to the relief association and municipality. If the service credit amount is challenged, the fire chief shall accept and consider any additional pertinent information and shall make a final determination of service credit.

(d) The service credit certification must be expressed as the number of completed months of the previous year during which an active volunteer firefighter rendered at least the minimum level of duties as specified and required by the fire department under the rules, regulations, and policies applicable to the fire department. No more than one year of service credit may be certified for a calendar year.

(e) If a volunteer firefighter who is a member of the relief association leaves active firefighting service to render active military service that is required to be governed by the federal Uniformed Services Employment and Reemployment Rights Act, as amended, the firefighter must be certified as providing service credit for the



period of the military service, up to the applicable limit of the federal Uniformed Services Employment and Reemployment Rights Act. If the volunteer firefighter does not return from the military service in compliance with the federal Uniformed Services Employment and Reemployment Rights Act, the service credits applicable to that military service credit period are forfeited and canceled at the end of the calendar year in which the time limit set by federal law occurs.

EFFECTIVE DATE: This section is effective on January 1, 2023.



Exhibit F

Benefit Levels for EMS-Only Members

Topic:

A provision in the 2018 Working Group bill that went into effect on January 1, 2019, allows volunteer emergency medical personnel to become members of a relief association and to be eligible for service pensions from the relief association on the same basis as volunteer firefighters. In order for volunteer emergency medical personnel to be permitted as members, a relief association must amend its bylaws to authorize the membership eligibility, and the municipality must approve the change.

Some relief associations have asked the Working Group to consider a change that would allow relief associations to set in their bylaws a different benefit level for members who solely supervise or perform emergency medical response duties. The relief associations that requested the change have said the training and response requirements in their communities for individuals who solely perform emergency medical duties are less than the requirements for individuals who perform both firefighting and medical duties, so they feel a different benefit level is warranted. These relief associations have suggested that permitting different benefit levels may incentivize relief associations to add volunteer emergency medical personnel to their membership.

Statute:

424A.01 MEMBERSHIP IN A VOLUNTEER FIREFIGHTERS RELIEF ASSOCIATION.

Subd. 5a. Volunteer emergency medical personnel. Volunteer emergency medical personnel are eligible to be members of the applicable volunteer firefighters relief association and to qualify for service pension or other benefit coverage of the relief association on the same basis as fire department personnel who perform or supervise fire suppression or fire prevention duties if:

- (1) the fire department employs or otherwise uses the services of persons solely as volunteer emergency medical personnel to perform emergency medical response duties or supervise emergency medical response activities;
- (2) the bylaws of the relief association authorize the eligibility; and
- (3) the eligibility is approved by:
 - (i) the municipality, if the fire department is a municipal department;
 - (ii) the joint powers board, if the fire department is a joint powers entity; or
 - (iii) the contracting municipality or municipalities, if the fire department is an independent nonprofit firefighting corporation.