



STATE OF INDIANA
AN EQUAL OPPORTUNITY EMPLOYER

STATE BOARD OF ACCOUNTS
302 WEST WASHINGTON STREET
ROOM E418
INDIANAPOLIS, INDIANA 46204-2765

Telephone: (317) 232-2513
Fax: (317) 232-4711
Web Site: www.in.gov/sboa

AMENDED STATE EXAMINER DIRECTIVE 2021-3

Date: March 22, 2022
Subject: Premium Pay under the American Rescue Plan Act
Authority: IC 5-11
Application: This Directive applies to Counties, Cities, and Towns
From: Paul D. Joyce, CPA, State Examiner

State Examiner Directive 2021-3 is amended to include the provisions of the United States Treasury Final Rule. The purpose of this directive is to prescribe the accounting expectations related to the provision of Premium Pay under the American Rescue Plan Act (ARPA). It has come to our attention that ARPA money is being used to provide Premium Pay in the form of "bonuses" to government employees. The ARPA and Final Rule (FR) define Premium Pay as an hourly rate rather than a bonus or stipend. The amount paid to government employees must comply with the definitions and limitations provided in the ARPA and FR. Noncompliance may be reported as a federal finding and questioned cost in the audit report.

American Rescue Plan Act. According to the American Rescue Plan Section 603(c)(1)(B):

Funds may be used for costs incurred "to respond to workers performing **essential work** during the COVID-19 public health emergency by providing **premium pay** to **eligible workers** . . . that are performing such **essential work** . . ." (our emphasis)

Definitions. The following definitions apply to this category of expenditure:

Premium Pay. The term 'premium pay' means an amount of up to \$13 per hour that is paid to an eligible worker, in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID-19 public health emergency. Such amount may not exceed \$25,000 with respect to any single eligible worker. (ARPA Section 602(g)(3) and Section 603(g)(6))

Eligible Workers. The term 'eligible workers' means those workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each chief executive officer of a metropolitan city, nonentitlement unit of local government, or county may designate as critical to protect the health and well-being of the residents of their metropolitan city, nonentitlement unit of local government, or county. (ARPA Section 603(g)(2))

Essential Work. The term "essential work" means work that: (1) Is not performed while teleworking from a residence; and (2) Involves: (i) Regular in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or (ii) Regular physical handling of items that were handled by, or are to be handled by patients, the public, or coworkers of the individual that is performing the work. *(Final Rule)*

Essential Critical Infrastructure Sectors. The term Essential Critical Infrastructure Sectors includes ". . . any work performed by an employee of a State, local, or Tribal government . . ." *(Final Rule)*

Determination of when Premium Pay "Responds to" Eligible Workers Performing Essential Work.

The FR provides that Premium Pay is responsive to eligible workers performing essential work during the public health emergency if each eligible worker who receives premium pay falls into one of three categories:

1. The worker's pay is below the wage threshold of 150 percent of their residing state's average annual wage for all occupations, as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics, or their residing county's average annual wage, as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics, whichever is higher, on an annual basis;
2. The worker is not exempt from the Fair Labor Standards Act (FLSA) overtime provisions; or
3. Written justification is submitted to Treasury if the worker is exempt from FLSA overtime provisions and if premium pay would increase a worker's total pay above 150 percent of their residing state's average annual wage for all occupations, as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics, or their residing county's average annual wage, as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics, whichever is higher, on an annual basis. *(Final Rule)*

Elected Officials

According to the FR, "elected officials are prohibited from using their official position and control over SLFRF [ARPA State and Local Fiscal Recovery Fund] funds for their own private gain. This policy also prohibits, among other things, elected officials from steering funds to projects in which they have a financial interest or using funds to pay themselves premium pay." *(Final Rule)*

According to the award terms and conditions for ARPA SLFRF, "Recipient understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Recipient and subrecipients must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112."

Based on the FR and 2 CFR 200.318, it is the State Board of Accounts audit position that elected officials are not eligible to receive premium pay. Unless the U.S. Treasury states otherwise, payments of premium pay to elected officials will result in a federal finding and questioned cost, whether such payment was made before or after the effective date of the FR.

Limitations.

Payments for premium pay are subject to certain limitations:

1. **Maximum.** "The ARPA recognizes this by defining premium pay to mean an amount up to \$13 per hour in addition to wages or remuneration the worker otherwise receives and in an aggregate amount not to exceed \$25,000 per eligible worker." The FR clarified that the \$25,000 maximum is over the entire period of performance rather than an annual cap. *(Final Rule)*
2. **Work from Home.** "A worker would not be engaged in essential work and, accordingly may not receive premium pay, for telework performed from a residence." *(Final Rule)*
3. **Elected officials.** Elected officials are prohibited from using their official position and control over SLFRF funds for their own private gain. This policy also prohibits, among other things, elected officials from . . . using funds to pay themselves premium pay." *(Final Rule)*

Audit Expectations

During an audit, we will be reviewing the following items regarding Premium Pay:

1. Documentation must be available to show that the payment of premium pay "responds to" eligible workers performing essential work.
2. The amount of Premium Pay provided to an employee must be supported by an hourly rate for hours worked; all calculations must be maintained for audit. According to the FR, the unit of government has "discretion with respect to the way in which premium pay is awarded to eligible workers (e.g. monthly, quarterly, lump sum)." *(Final Rule)*
3. Documentation must be available for audit showing that Premium Pay provided to an employee was for hours worked with regular in-person interaction or physical handling of items, rather than telework from a residence.
4. Documentation must be available for audit to show that the amount of Premium Pay provided to an employee did not exceed \$13 per hour or the maximum of \$25,000 per worker.
5. If the amount of premium pay exceeded the 150 percent of the State or County average annual wage and the worker is exempt from FSLA provisions, the written justification for that payment must be provided.
6. Premium Pay provided to employees must comply with Indiana statute and be included in the salary ordinance or amended salary ordinance.
7. Written internal control procedures and evidence of those internal control procedures must be established to provide reasonable assurance that the financial, compliance and reporting objectives for ARPA funds will be achieved.
8. The procedures outlined in all State Examiner Directives and related memorandums must be followed.

AMENDED DIRECTIVE 2021-3
March 22, 2022
Page 4


You must maintain documentation and explanation that the premium pay meets the definitions of the ARPA and the FR. Any payments that are not in compliance with the ARPA or FR may be identified as a federal finding and questioned cost in the audit report.

If you have any concerns about the provision of Premium Pay, please contact the Directors for your unit:

Counties: Lori Rogers or Ricci Hofherr counties@sboa.in.gov

Cities and Towns: Todd Caldwell or Susan Gordon cities.towns@sboa.in.gov

This Directive may be amended from time to time and may be rescinded at any time in writing by the State Examiner or Deputy State Examiner.


Paul D. Joyce, CPA
State Examiner

SG/DG