Coronavirus State and Local Fiscal Recovery Funds

Summary of Department of Treasury Interim Final Rule

On May 10th, the U.S. Treasury Department issued their **interim final rule** regarding the Coronavirus State and Local Fiscal Recovery Funds. This rule will serve as guidance for states on how to apply for and properly use the funds made available to them through the American Rescue Plan Act of 2021. Below is a summary and analysis of the rule regarding premium pay for essential workers that can be used in communication with local and state elected leaders.

First, it should be established that this document provides clarity around how Treasury intends these funds to be spent while giving you, the union leader and advocate, additional messaging points to justify the creation of a premium pay benefit in your state, county, or city.

Firstly, the rule states, several times, that the "clear intent" of Congress was that premium pay, as part of the overall state and local funding program, be established and provided to essential workers. When speaking with elected officials you can highlight that not only did the legislative statute create this intent, but now Treasury guidance has reiterated the point for themselves. Secondly, Treasury in its writing chose to highlight the harsh economic reality for so many essential workers as a result of having to work through a global pandemic. The rule mentions in several areas and is written in such a way to acknowledge that the most vulnerable have been hit the hardest by this pandemic, and as such the premium pay benefit should target this group.

The rule cites a study showing 25 percent of essential workers are estimated to have "low" household income making them less able to cope with the financial consequences of the pandemic. (p. 47) These households as a result of their economic status and employment situation saw an increase in work-related health risks and lost hours due to sickness or disruption to childcare. This acknowledgement by Treasury is important since many of our members, unfortunately sit at the intersection of health risk and economic hardship, which was aggravated during the pandemic – further justifying access to premium pay.

Bottom line, the rule clearly supports that:

1. Congress intended the recovery fund to include premium pay for essential workers.

2. The health and economic freedom of essential workers were hit the hardest during the pandemic and so premium pay programs are justified specifically for low-income groups.

Below is a condensed bullet-point version of the rule followed by more detailed summary and analysis.

- Premium Pay can be provided directly to both employers and workers.
- Workers in meat processing, food handling, and grocery stores are among those eligible for Premium Pay.
- Additional definition of "essential work" was added to include "work involving regular in-person interactions or regular physical handling of items…"
- Premium Pay is defined as a benefit no greater than $13 more per hour, not to exceed $25,000.
- Premium Pay must be additive, it cannot replace current benefits or be used to cut hours.
- Premium Pay can be retrospective and prospective.

What can the fund be used for?
Fiscal Recovery funds can be used by the state or local government to provide premium pay to eligible workers **directly** or to provide grants to third-party employers with eligible workers preforming essential work. (p. 45)

Which workers can receive premium pay?
Among the list of workers who are covered include workers at: food production facilities, grocery stores, public health and safety staff, and staff at nursing home and home care settings. (p. 46)

- The rule highlights the need for premium pay by identifying how workers have risked their health and lives to meet the daily needs of communities. The rule specifically mentions meat processing plants as "hotspots" for transmissions to support this statement out of all other types of work performed during the pandemic. (p. 46) This ***is further proof that Congress and now Treasury see premium pay as a legitimate and necessary use of recovery funds.***

The rule defines "essential work" as work involving regular in-person interactions or regular physical handling of items that were also handled by others. Telework will not be deemed acceptable under this rule as essential work. (p. 47)

Along with the list of industries included in this document, the rule defines "eligible worker" as follows: *Those workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each Governor of a State or territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their state, territory, or tribal government.* (p. 48)

How is Premium Pay defined and applied?
Premium pay is defined as an amount up to $13 an hour in addition to wages the worker otherwise receives, not to exceed $25,000 per worker. Treasury recognizes the inequitable economic effect the pandemic has had on essential workers and has designed the premium pay rule to address that reality. As such, if a premium pay benefit exceeds 150 percent of the average annual wage for all occupations in that state, then a written justification to Treasury must be submitted by the State, Territory or Tribal government. (p. 49)

> *The 150 percent wage threshold is determined by the higher of 1. residing state's average annual wage for all occupations as defined by the Bureau of Labor Statistics or 2. the residing county's average annual wage.*

Premium pay may also be applied retrospectively, meaning a benefit can be given for work performed anytime since the start of the pandemic. Treasury in fact encourages recipients to prioritize retrospective payments when possible. Those workers who have already received a premium pay benefit from a state or local program are still eligible under this rule for premium pay. (p. 51)

Premium Pay as a substitute for other benefits?

The rule clearly states that premium pay is intended to compensate essential workers for the heightened risk associated with COVID-19 and that it must be "**entirely**" additive to a worker's regular rate of wages. This benefit "may not" be used to reduce or substitute the normal earnings of a worker. (p. 50)

Grants to third party employers

The rule imposes some additional reporting requirements for grants to third-party employers, including the public disclosure of grant provided. The rule does not establish or identify reporting requirements for direct payments to workers. (p. 52)

> *It is evident that establishing a direct employee premium pay benefit, without additional reporting requirements, would be less burdensome and more efficient for states to establish compared to a third-party employer program.*

Timeline of use of funds

The Fiscal Recovery Funds must be used to cover costs incurred by the state, territory, tribal or local government by December 31, 2024.