

State and Local Fiscal Recovery Fund Compliance Analysis

Expenditure Category: Premium Pay

Prepared by the Porter County Auditor's Office

One of the expenditure categories under the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) is premium pay for eligible workers providing essential services during the COVID-19 pandemic.

Eligible workers are defined as “those workers needed to maintain continuity of operations of essential critical infrastructure sectors as each ... (government) may designate as critical to protect the health and wellbeing of (its) residents.”¹

The Interim Final Rule identified categories of essential workers and provided a list of critical infrastructure sectors based on essential workers under The Heroes Act of 2020. Those sectors include health care, public health and safety, childcare, education, sanitation, transportation, and food production.

The Final Rule, issued on Jan. 6, 2022, retained the “eligible worker” definition with the addition that “all public employees of recipient governments are already included in the interim final rule definition.”²

Premium pay consists of payments of up to \$13 per hour to remunerate essential workers for the elevated health risks they faced and continue to face during the pandemic. Specifically excluded from the definition of essential work eligible for premium pay is telework.

Under the conflict-of-interest policy consistent with 2 C.F.R. Sec. 200.318 (c) applicable to all activities funded with SLFRF awards, elected officials are not eligible for premium pay.³

At its final 2022 budget hearing on Oct. 25, 2021, the Porter County Council unanimously approved premium pay of up to \$4,000 to the following employees: Merit officers, jailers, Juvenile Detention Center officers, and with the exception of administrative staff, employees at the Emergency Medical Agency, Health Department, and the Facilities Department.

“Administrative staff” in this context was construed to mean employees who work primarily in bookkeeping, clerical, or other desk-type jobs.

The 2022 Salary Ordinance adopted on Dec. 7, 2021 incorporated the Council’s motion and further restricted premium pay to full-time county government employees who worked in calendar year 2021 and who remained full-time as of the pay period when premium pay is awarded.

On Feb. 22, 2022, the Porter County Commissioners approved an SLFRF plan that included premium pay. Later that day, the Council appropriated a total of \$969,816 toward premium pay.

The Council’s directive was in keeping with the Interim Final Rule, because at the time of the budget and salary ordinance adoption, the Final Rule had not yet been issued. The Auditor’s Office prepared a list of county employees meeting the Council’s requirements. We determined that all employees we identified met the Interim Final Rule’s definition of essential workers. Specifically, the Facilities’ custodians and maintenance crew are in the “janitors and sanitation workers” category; the merit officers, jailers, JDC

¹ Final Rule, as published in the Federal Register, page 4397

² Final Rule, pages 4397-98

³ Final Rule, page 4400

officers, and EMA employees are in the public safety category; and the Health Department staff are in the public health category.

As evidence that the work performed “responded to” the public health emergency, the Facilities employees were tasked with constructing and installing plastic shields, social distancing signs, and other mitigation measures throughout county buildings and at the county’s COVID testing and vaccine sites. The Facilities team custom-built many of the shields for the front counter windows and in other work spaces. The custodians were tasked with cleaning and disinfecting county buildings, including public counter areas, doors and railings, restrooms, and meeting rooms. Clearly, these workers were potentially exposed to higher risk factors than others who primarily work in non-public areas.

Our office documented that each eligible employee worked more than enough hours in 2021 to be awarded the maximum premium pay of \$4,000. We also documented that none of the premium pay hours were telework hours. This determination was made by our review of the employees’ time cards (employees are required to be onsite in order to clock in and out for their shifts), our discussions with the relevant department heads, and our general knowledge of the positions.

In late January, 2022, our office emailed the County Council and the council attorney our documentation detailing the premium pay to be awarded and the amounts by department for their review.

Our legal notice advertising the premium pay additional appropriation was published in the *Chesterton Tribune* on Feb. 10, 2022. Our advertised appropriation was higher than our calculations in the event the Council decided to amend the list of eligible employees.

Under both the IFR and the final rule, premium pay “responds to” essential work if the workers’ pay is below a wage threshold. If it isn’t below the threshold, the recipient must submit a written justification explaining how the premium pay is responsive. The final rule expanded upon this provision by stating that premium pay is responsive if the employee is non-exempt from the FLSA.

We identified three Porter County employees who met the County Council’s parameters but who did not meet the wage threshold *and* who are exempt from the FLSA. The wage threshold is defined as within 150 percent of the residing state or county’s average annual wage for all occupations, whichever is greater, as defined by the Bureau of Labor Statistics’ Occupational Employment and Wage Statistics. Per the BLS OEW, the annual mean wage for Indiana, as of May, 2020, was \$48,650. Per the BLS Quarterly Census Employment & Wages, the average weekly Porter County wage translates to \$50,232 annually.⁴ Using these two wage statistics, the maximum wages eligible for premium pay under the 150% limitation equate to \$72,975 and \$75,348, respectively. The three exempt employees whose wages exceeded these thresholds were not paid premium pay from the county’s SLFRF fund.

The premium pay totaling \$877,437 was disbursed with the March 4 payroll to 191 employees, broken down as follows:

- Premium Pay -- \$764,000
- FICA -- \$58,333
- PERF -- \$55,104

⁴ BLS OEW average annual wage data groups county data in metropolitan areas. Porter County is included in the Chicago Metropolitan Area, which had a mean wage of \$60,340 as of May, 2020. BLS Quarterly Census Employment & Wages provides county-specific wage data.