

DEPARTMENT OF THE TREASURY

31 CFR Part 35

RIN 1505-AC77

Coronavirus State and Local Fiscal Recovery Funds

AGENCY: Department of the Treasury

ACTION: Interim Final Rule

SUMMARY: The Secretary of the Treasury (Treasury) is issuing this Interim Final Rule to implement the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act.

DATES: *Effective date:* The provisions in this Interim Final Rule are effective [____], 2021.

Comment date: Comments must be received on or before [____], 2021.

ADDRESSES: Please submit comments electronically through the Federal eRulemaking Portal:

<http://www.regulations.gov> [(if hard copy, preferably an original and two copies to the [Office of the Undersecretary for Domestic Finance], Attention: [Name], Room [#####] MT, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Because postal mail may be subject to processing delay, it is recommended that comments be submitted electronically.)] All comments should be captioned with “Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule Comments.” Please include your name, organization affiliation, address, email address and telephone number in your comment. Where appropriate, a comment should include a short executive summary (no more than [#] single-spaced pages).] In general, comments received will be posted on <http://www.regulations.gov> without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, will be part of the public record and subject to public

risks they have faced and continue to face.¹⁰⁰ Many of these workers earn lower wages on average and live in socioeconomically vulnerable communities as compared to the general population.¹⁰¹ A recent study found that 25 percent of essential workers were estimated to have low household income, with 13 percent in high-risk households.¹⁰² The low pay of many essential workers makes them less able to cope with the financial consequences of the pandemic or their work-related health risks, including working hours lost due to sickness or disruptions to childcare and other daily routines, or the likelihood of COVID-19 spread in their households or communities. Thus, the threats and costs involved with maintaining the ongoing operation of vital facilities and services have been, and continue to be, borne by those that are often the most vulnerable to the pandemic. The added health risk to essential workers is one prominent way in which the pandemic has amplified pre-existing socioeconomic inequities.

The Fiscal Recovery Funds will help respond to the needs of essential workers by allowing recipients to remunerate essential workers for the elevated health risks they have faced and continue to face during the public health emergency. To ensure that premium pay is targeted to workers that faced or face heightened risks due to the character of their work, the Interim Final Rule defines essential work as work involving regular in-person interactions or regular physical handling of items that were also handled by others. A worker would not be engaged in essential work and, accordingly may not receive premium pay, for telework performed from a residence.

¹⁰⁰ Economic Policy Institute, Only 30% of those working outside their home are receiving hazard pay (June 16, 2020), <https://www.epi.org/press/only-30-of-those-working-outside-their-home-are-receiving-hazard-pay-black-and-hispanic-workers-are-most-concerned-about-bringing-the-coronavirus-home/>.

¹⁰¹ McCormack, *supra* note 37.

¹⁰² *Id.*



KENTUCKY PUBLIC PENSIONS AUTHORITY

David L. Eager, Executive Director

1260 Louisville Road • Frankfort, Kentucky 40601
kyret.ky.gov • Phone: 502-696-8800 • Fax: 502-696-8822



Kentucky Public
Pensions Authority

September 8, 2021

VIRGINIA HOFFMAN
BARREN COUNTY FISCAL COURT
117-3A NORTH PUBLIC SQ
GLASGOW, KY 42141

Dear VIRGINIA HOFFMAN:

Kentucky Public Pensions Authority (KPPA) has reviewed information submitted by your agency regarding the Premium Pay Incentive that will be paid to your employees.

It has been determined that the Premium Pay Incentive payment is considered a bonus payment. Kentucky Revised Statute 78.510(13) states that "...A lump-sum bonus, severance pay, or employer-provided payment for purchase of service credit shall be included as creditable compensation but shall be averaged over the employee's service with the system in which it is recorded if it is equal to or greater than one thousand dollars (\$1000)..." In order for KPPA to properly account for all bonuses paid in a fiscal year, you must report these payments on your monthly report. These payments should be reported on a separate record with a payment reason of Bonus/Severance Payment. Payments must be reported in the month in which the member receives the bonus or severance payment. The posting month should be the month in which the member receives the payment, unless the payment is being reported retroactively. If the payment is retroactive, the posting month must be the last month of the period to which the payment should be applied

If you have any questions, please contact me at 1-888-696-8810.

Sincerely,

/s/ D'Juan Surratt

D'Juan Surratt
Division of Employer Reporting Compliance and Education

Employer Code: V005
Letter: ME-002
DMS

7250



KPPA
Kentucky Public Pensions Authority

SECURE EMAIL PORTAL

RE: [External] RE: Secure: Premium Pay Incentive

jhoffman@glasgow-ky.com

RE: [External] RE: Secure: Premium Pay Incentive

Received: Sep 8, 2021 3:11 PM
Expires: Sep 22, 2021 3:11 PM
From: djuan.surratt@kyret.ky.gov
To: jhoffman@glasgow-ky.com
Cc:
Subject: RE: [External] RE: Secure: Premium Pay Incentive

This message was sent securely using Zix[®]

Yes, it will be subject to retirement.

From: jhoffman@glasgow-ky.com <jhoffman@glasgow-ky.com>
Sent: Wednesday, September 8, 2021 4:11 PM
To: Surratt, D'Juan (KPPA) <djuan.surratt@kyret.ky.gov>
Subject: [External] RE: Secure: Premium Pay Incentive

This message has originated from an External Source. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

This message was sent securely using Zix[®]

Thank you for your response.

It doesn't specifically say, but is this payment subject to withholding retirement?

Thank you

— Originally sent by djuan.surratt@kyret.ky.gov on Sep 8, 2021 2:38 PM —

This message was sent securely using Zix[®]

Good afternoon.

Please see the attached response concerning the Premium Pay Incentive payment.

If you have any questions please let us know.

Thanks,
D'Juan

emergency and its negative economic impacts, (2) to provide premium pay to essential workers, (3) to provide government services to the extent of eligible governments' revenue losses, and (4) to make necessary water, sewer, and broadband infrastructure investments—and not otherwise. These four eligible uses reflect Congress's judgment that the Fiscal Recovery Funds should be expended in particular ways that support recovery from the COVID-19 public health emergency. The further restrictions reflect Congress's judgment that tax cuts and pension deposits do not fall within these eligible uses. The Interim Final Rule describes how Treasury will identify when such uses have occurred and how it will recoup funds put toward these impermissible uses and, as discussed in Section VIII of this Supplementary Information, establishes a reporting framework for monitoring the use of Fiscal Recovery Funds for eligible uses.

A. Deposit into Pension Funds

The statute provides that recipients may not use Fiscal Recovery Funds for “deposit into any pension fund.” For the reasons discussed below, Treasury interprets “deposit” in this context to refer to an extraordinary payment into a pension fund for the purpose of reducing an accrued, unfunded liability. More specifically, the Interim Final Rule does not permit this assistance to be used to make a payment into a pension fund if both:

1. the payment reduces a liability incurred prior to the start of the COVID-19 public health emergency, and
2. the payment occurs outside the recipient's regular timing for making such payments.

Under this interpretation, a “deposit” is distinct from a “payroll contribution,” which occurs when employers make payments into pension funds on regular intervals, with contribution amounts based on a pre-determined percentage of employees' wages and salaries.

As discussed above, eligible uses for premium pay and responding to the negative economic impacts of the COVID-19 public health emergency include hiring and compensating public sector employees. Interpreting the scope of “deposit” to exclude contributions that are part of payroll contributions is more consistent with these eligible uses and would reduce administrative burden for recipients. Accordingly, if an employee’s wages and salaries are an eligible use of Fiscal Recovery Funds, recipients may treat the employee’s covered benefits as an eligible use of Fiscal Recovery Funds. For purposes of the Fiscal Recovery Funds, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and State), workers’ compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

Treasury anticipates that this approach to employees’ covered benefits will be comprehensive and, for employees whose wage and salary costs are eligible expenses, will allow all covered benefits listed in the previous paragraph to be eligible under the Fiscal Recovery Funds. Treasury expects that this will minimize the administrative burden on recipients by treating all the specified covered benefit types as eligible expenses, for employees whose wage and salary costs are eligible expenses.

Question 27: Beyond a “deposit” and a “payroll contribution,” are there other types of payments into a pension fund that Treasury should consider?

