

# Handling MLR Rebates

September 2021

*Legislation and regulations are subject to change. This guidance is current as of the date of this publication.*

## General Requirements

### Background

- Health Insurance companies are required to disclose the amount of medical plan premiums spent on claims and quality improvement versus the portion spent on administration, marketing, and profit
- Rebate is based on a formula that takes into account data from prior three years

Medical Loss Ratio =

$$\frac{\text{Claims + Quality Improvement}}{\text{Total Premiums (minus taxes and assessments)}}$$

- Insurers in large group market must meet MLR of at least 85%
- Insurers in small group and individual market must meet MLR of at least 80%
  - Most states define small group market at 50 or fewer employees; however, some define at 100 or fewer
- Does not apply to self-insured plans or excepted benefits (e.g., dental or vision, etc.)
- Insurers in small group and individual market must meet MLR of at least 80%
  - Most states define small group market at 50 or fewer employees, however, some define at 100 or fewer
- Does not apply to self-insured plans or excepted benefits (e.g. dental, vision, etc.)

### When Will Employers Receive Rebates?

- Carriers must report financial results by July 31 to Department of Health and Human Services (HHS) for the previous calendar year
  - Multi-state carriers report results separately for each state
- Rebates due to policyholders by September 30
  - Rebates sent to plan sponsor (employer) for group health plans
  - Carriers typically notify plan sponsor AND individual participants of the rebate
- Beginning in 2021 (for 2020 reporting year), insurers may prepay their estimated MLR rebate at any time during the year.
  - If estimated payment ends up being less than what is owed, insurer may defer payment of remaining amount until next annual payment deadline.
  - Employers may receive multiple rebates or premium credits from a carrier

## What Should Employers Do with Rebate?

- Plans Subject to ERISA
  - Generally, any portion of the rebate attributable to employee contributions will be considered “plan assets” and subject to ERISA’s fiduciary rules
  - DOL has issued MLR rebate guidance based on existing ERISA rules
- Plans Not Subject to ERISA
  - Non-Federal governmental plans (e.g. cities, states, counties, public schools) and other plans not subject to ERISA (e.g. church plans) are subject to similar distribution rules
- Plans Funded Through a Trust (e.g. public entities using a VEBA, Union sponsored multiple employer plans)
  - Subject to different rules that will not be discussed here – these plans should consult with legal counsel

## Determining What Portion of Rebate is Plan Assets

	Premium Payment Amount	Plan Assets
Most Common	Employer and Employee pay percentage of premium (e.g. 80%/20%)	Percentage of rebate equal to employee’s contribution percentage is plan asset
Common	Employee pays fixed amount; employer pays remaining premium (e.g. employee pays \$250 to participate in Single, \$750 family) employer pays the difference	No plan assets unless rebate exceeds amount paid by employer
Less Common	Employer pays fixed amount; employee pays remainder of premium (e.g. employer pays flat amount per month employee pays the difference)	100% of rebate is plan asset unless rebate exceeds total employee contributions
Less Common	Employer pays entire premium	No plan assets
Uncommon	Entire premium paid by employee	100% of rebate is plan asset

## Examples

Assume 150 employee company spending \$1,000,000 annually on health insurance

- Example 1
  - Employer pays 75% for Single and 50% for Family - Employee/Participants pay 25% for Single and 50% for Family (COBRA participants pay 100% of premium)
  - \$1,000,000 in total annual premium; Employer paid \$600,000 – Employee contributions = \$400,000
  - \$20,000 rebate: \$8,000 (40%) is considered plan assets
- Example 2
  - Employee pays a flat amount (\$200/mo. Single - \$500/mo. Family) to participate in the plan
  - \$1,000,000 in total annual premium; Employer paid \$600,000 – Employee contributions = \$400,000
  - \$20,000 rebate: \$0 is considered plan assets because it is less than the total employer contribution
- Example 3
  - Employer pays flat amount toward the plan (\$300/mo. Single - \$500/mo. employee pays the difference)
  - Total annual employee contributions = \$400,000

- \$20,000 rebate: \$20,000 is considered plan assets

## What Can Employers Do with Portion of Rebate that is Plan Assets?

- ERISA's Exclusive Benefit Rule
  - *"Fiduciaries must run the plan solely in the interest of participants and beneficiaries and for the exclusive purpose of providing benefits and paying plan expenses"*
- What does plan document say?
  - Plan documents may contain language defining how the plan handles plan assets
  - Plan document/SPD can be drafted giving allowing plan sponsor to apply all rebates toward employer plan costs before distributing to participants
- If nothing is specified in plan documents, then two ways to distribute rebates:
  - Return plan asset portion of rebate to participants
  - Use amounts to improve benefits/reduce participant contributions

## General MLR Employer Rules

- ERISA Trust Rules
  - Plan assets should be used or distributed to participants within 90 days of receipt to avoid ERISA requirement that assets be held in trust
- Forms of Participant Distribution
  - Check, added to paycheck, premium holiday
- Distribution or benefit enhancement must be related to plan that generated the rebate
  - Examples - Rebate cannot be used to reduce premiums for a different health plan, or to fund a wellness program that benefits participants that were not covered by the plan
- Employers that offer multiple plans
  - DoI Technical Release 2011-04 makes it clear that it is permitted to distribute rebate only to participants covered by the group policy that generated the rebate
    - It may be possible for employers to argue that the rebate could be distributed to all participants under a single ERISA plan – even to participants not covered by the policy that generated the rebate

## Common Questions

### Question 1: Should I make a benefit enhancement?

**Answer: Maybe, but it could be administratively difficult.**

- Employer would need to actuarially determine the value of the proposed benefit enhancement
- Keep in mind ERISA's trust rules
  - It may be difficult to implement benefit enhancements that will "use up" the value of the rebate within 90 days
- Other considerations
  - May not be rebates in future years to continue paying for any benefit enhancements

- Most rebate amounts are not substantial enough to make significant benefit improvements

**Question 2: Does the rebate provided to a participant need to match their particular contribution?**

**Answer: No. DOL guidance makes it clear that rebates can be uniform across all participants and not exactly reflect the premium amounts paid by each participant**

- In choosing an allocation method, the employer may “properly weigh the costs to the plan and the ultimate plan benefit as well as the competing interests of participants or classes of participants provided such method is reasonable, fair and objective.”
- Most commonly employers divide the rebate evenly over all current plan participants to simplify administration
- Example:
  - 150 employees on the plan - \$20,000 Rebate - \$8,000 Plan Assets = \$53.33 rebate per covered employee

**Question 3: What participants should receive the rebate?**

**Answer: There is some flexibility here.**

- Distribution Choices
  - Participants covered by the plan in the year in which the rebate is received (i.e., current plan year participants, including COBRA participants); or
  - Individuals who participated in the plan both in the year in which the rebate is received and the year used to calculate the rebate
  - Note – this may include participants in the plan this year that did not participate in the year that generated the rebate – That’s OK!
- DOL Guidance on Former Plan Participants
  - If cost of distributing the rebate former participants (e.g. terminated employees who participated in the plan last year) approximates the amount of the rebate employers are not required to make a distribution to those former participants

**Question 4: What is the tax treatment of rebates paid to participants?**

**Answer: It primarily depends on whether the premiums were paid on a pre-tax or after-tax basis.**

- Employee Pre-tax Contributions
  - Any returned rebates in cash or added to payroll are subject to federal income tax and employment tax for the year of distribution
    - The employer need to report the amount as taxable income through their payroll system
    - The employee would have owed tax on income if a smaller pre-tax contribution had been in effect in the first place
  - A premium holiday would reduce the employee’s pre-tax contribution and the employee would pay tax on the additional net amount in the paycheck so nothing else needs to be done by the employer
- When Employee Contributions are Made After-tax
  - Rebates are generally not subject to federal income tax

## Question 5: Do MLR Rebate Distribution Rules Apply to Non-ERISA Plans?

**Answer: Yes, similar rules apply to entities such as state and local governments and some Indian tribal governments are not subject to ERISA.**

- Policyholder is required to use portion of rebates attributable to the amount of premium paid by subscribers
  - Reduce future premiums
    - Allocate the rebate among all participants covered under any option offered by the plan at the time the rebate is received; OR
    - Allocate the rebate among only participants covered under the policy to which the rebate is attributable
  - Make a cash refund to participants covered under the policy to which the rebate is attributable at the time the rebate is received
- Regardless of what method is chosen, employer may divide the rebate evenly among participants, divide it based on actual contributions, or apportion it in a manner that reasonable reflects each participant's contributions

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