

CHECKLIST | Using Medical Loss Ratio (MLR) Rebates

Presented by National Insurance Services

The Affordable Care Act (ACA) requires health insurance issuers to spend a minimum percentage of their premium dollars on medical care and health care quality improvement activities rather than administrative costs. This requirement is known as the medical loss ratio (MLR) rule. The minimum percentage is 85% for issuers in the large group market and 80% for issuers in the small group and individual markets. Issuers that do not meet the applicable MLR standard must provide **rebates to policyholders by Sept. 30 each year**.

Employers with insured group health plans may receive MLR rebates from their issuers. Before using the rebate, private-sector employers should consider their obligations under ERISA. The U.S. Department of Labor (DOL) has provided [guidance](#) explaining how ERISA’s fiduciary duty rules apply to MLR rebates. In general, any rebate amount that qualifies as a “plan asset” under ERISA must be used for the **exclusive benefit of the plan’s participants and beneficiaries**. Also, employers should use this portion of the rebate within **three months** of its receipt to avoid ERISA’s trust requirements.

This checklist outlines the key steps private-sector employers should take to identify permissible options for using MLR rebates.

Step 1: Identify Which Plan or Policy Is Covered by the Rebate

Identify the Covered Plan or Policy	Complete
<p>Determine which plan or policy is covered by the rebate.</p> <p>Employers that have multiple health plans or provide benefits under multiple policies should determine which plan or policy is covered by the rebate. The issuer should include policy information as part of the rebate.</p> <p>Using a rebate generated by one plan to benefit the participants of another plan would be a breach of ERISA’s duty of loyalty to a plan’s participants. Where a plan provides benefits under multiple policies, the employer should allocate or apply the plan’s portion of the rebate for the benefit of participants who are covered by the policy to which the rebate relates, provided this would be prudent and solely in the interests of the plan.</p>	<input type="checkbox"/>

Step 2: Determine Whether the Rebate Is a Plan Asset

According to the DOL, employers should consider a variety of factors to determine whether an MLR rebate qualifies as a plan asset (in whole or in part). These factors include the terms of the health plan’s governing documents, the identity of the policyholder and the source for premium payments.

Apply Factors for Determining Plan Assets		Complete
<p>Review the health plan’s official documents.</p> <p>Employers should review their plan documents to see if there is any language regarding how to treat distributions (such as demutualization proceeds, refunds, dividends or rebates) from health insurance issuers. In general, ERISA requires employers to follow the terms of their plan documents. However, the plan documents may not specifically address who is entitled to such distributions in all situations, and other factors may need to be considered.</p>		<input type="checkbox"/>
<p>Identify the policyholder for the applicable insurance policy.</p> <p>Employers should review their plan documents to determine who is identified as the policyholder. Employers should verify whether they are identified as the policyholder or whether the policyholder is the plan itself or a trust:</p> <ul style="list-style-type: none"> • In most cases, the employer is the policyholder for the health plan. However, the fact that the employer is the policyholder does not, by itself, mean that the employer may retain the distribution; or • If the plan itself or a trust is the policyholder, the entire rebate may be a plan asset, which means the employer would not be able to retain any portion of it. 		<input type="checkbox"/>
<p>Determine the source for premium payments.</p> <p>If the employer is the policyholder and the plan’s documents do not clearly address how to handle distributions from the issuer, the portion of the rebate that must be treated as a plan asset will generally depend on who paid the insurance premiums for the year. Common payment situations and their corresponding plan asset implications are outlined below:</p>		<input type="checkbox"/>
Situation	Plan Assets	Applicable
Premiums are entirely paid from trust assets	Entire rebate is a plan asset	<input type="checkbox"/>
Employer pays 100% of premiums	Entire rebate is not a plan asset	<input type="checkbox"/>
Employees pay 100% of premiums	Entire rebate is a plan asset	<input type="checkbox"/>
Employer and employees pay a fixed percentage of premiums (e.g., employer pays 60%, employees pay 40%)	Percentage of rebate equal to percentage of premium cost paid by employees is a plan asset (e.g., 40%)	<input type="checkbox"/>

Apply Factors for Determining Plan Assets			Complete
Employer pays fixed amount of premiums, and employees pay any additional costs	Portion of the rebate that does not exceed the total amount paid by employees is a plan asset; the remaining balance is not a plan asset	<input type="checkbox"/>	
Employees pay a fixed amount of premiums, and employer pays any additional costs	Portion of the rebate that does not exceed the total amount paid by the employer is not a plan asset; the remaining balance is a plan asset	<input type="checkbox"/>	

Step 3: Determine How to Use the Plan Asset Portion of the Rebate

Understand the Rules for Using MLR Rebates	Complete
<p>Consider options for using any plan asset portion of the MLR rebate.</p> <p>Any portion of a rebate that is a plan asset must be used for the exclusive benefit of the plan’s participants and beneficiaries. Employers have a few different options for applying the plan asset portion of a rebate:</p> <ul style="list-style-type: none"> • The rebate can be distributed to participants using a reasonable, fair and objective allocation method. If the employer finds that the cost of distributing shares of a rebate to former participants approximates the amount of the proceeds, the employer may decide to limit rebates to current participants. Also, an allocation does not fail to be impartial merely because it does not exactly reflect the premium activities of participants; or • The distribution of payments to participants may not be cost-effective because the amounts are small or would cause tax consequences for the participants; in this case, the employer may utilize the rebate for other permissible plan purposes, such as applying the rebate toward future participant premium payments or benefit enhancements. 	<input type="checkbox"/>
<p>Understand the tax consequences of rebate distributions.</p> <p>The rebate’s tax consequences largely depend on whether employees paid their premiums on a pre-tax or after-tax basis:</p> <ul style="list-style-type: none"> • If premiums were paid by employees on a pre-tax basis under a cafeteria plan, the rebate would generally be taxable income to employees in the current year and would also be wages subject to employment taxes; and • If premiums were paid by employees on an after-tax basis, the rebate would generally not be taxable income to employees and would not be subject to employment taxes. However, if an employee deducted the 	<input type="checkbox"/>

Understand the Rules for Using MLR Rebates	Complete
<p>premium payments on their prior year’s taxes, the rebate is taxable to the extent the employee received a tax benefit from the deduction.</p> <p>If the rebate is used to reduce future pre-tax premium payments, it will generally result in a corresponding increase in the employee’s taxable salary. If the rebate is used for benefit enhancements, those improvements will generally be nontaxable.</p>	
<p>Use the plan asset portion of the rebate within three months of receipt.</p> <p>To the extent a rebate qualifies as a plan asset, ERISA would generally require the amount to be held in trust. However, most group health plans receiving rebates do not maintain trusts because their premiums are paid from the employer’s general assets (including employee payroll deductions). The DOL has provided relief from the trust requirement for premium rebates that are used within three months of their receipt.</p> <p>In addition, directing an issuer to apply the rebate toward future participant premium payments or benefit enhancements adopted by the employer would avoid the need for a trust and, in some circumstances, may be consistent with the employer’s fiduciary duties. Employers that decide to take this approach should coordinate with their issuers to establish the process for handling rebates.</p>	<input type="checkbox"/>

Step 4: Provide Rebate Explanation to Plan Participants

Explain How Rebate Will Be Used	Complete
<p>Explain to employees participating in the plan how the plan asset portion of the rebate will be used.</p> <p>Under the MLR rules, issuers are required to provide participants with a notice describing the MLR rebates. This notice explains why a rebate is required under the MLR rules, and it provides that the employer may be obligated under ERISA to use all or a portion of the rebate for the benefit of plan participants.</p> <p>Although the obligation to provide a rebate notice falls on issuers, employers that receive MLR rebates may receive questions from employees who receive the issuer’s notice. As a best practice, employers should consider explaining to participants how they are using the plan asset portion of the rebate for the participants’ benefit.</p>	<input type="checkbox"/>