What Do I Do With This MLR Rebate Check?

Plan Type	Who May Share in the Refund	How to Calculate Refund	How to Distribute
ERISA Plan*	1. Employer and 2. Employees (pick one) • Employees participating in the plan **both** in the year in which the rebate is based (2011) **and** the year in which the rebate was paid (2012) • Employees participating in the plan during the year the rebate is paid (2012) 3. Where an employer offers more than one policy to its employees, refunds **must** be calculated separately for each policy. 4. ERISA does not require that former participants be included or excluded. The fiduciary should determine cost of including former participants and make a prudent decision based upon facts and circumstances.	1. Employer receives its proportionate share of the refund (If employer paid 60% of the premiums in the year in which the rebate was based, employer may receive 60% of refund). 2. Employees can share in the refund in an amount equal to the percent of its contribution toward premiums in the year in which the rebate was calculated. 3. Employers should use an objective method of allocation. Best practice is to calculate rebate using the same method each year. 4. Example: Employer could add up how much each employee sharing in the refund has paid in insurance premiums to date in 2012. Use these totals to allocate proportionate share of refund due to employees.	1. Employers can choose to issue rebate checks to each employee eligible to share in the refund. 2. Employers can choose to apply credit to employee premium payments in next month. 3. In either case, if employee premiums were paid on a pre-tax basis, both #1 and #2 will create taxable income (wages). 4. Employees that paid premiums on a post-tax basis and deducted premiums on their taxes are required to include the refund in income this year. 5. Employers must issue refund to employees within 90 days of receipt of check in order to avoid ERISA trust requirements.**
Non-Federal Government Plans	1. Employers and 2. **Current participants** in the plan **at the time the rebate is received** in one of the following ways (pick one): • To employees covered **under any option** offered by the employer • To employees covered **under the policy** offered by the employee for which a rebate was issued	1. Same as above, except that ERISA does not govern. 45 C.F.R. 158.242(b) provides specific guidelines for distribution.	1. Employers can choose to issue rebate checks to employees covered under **the policy and covered at the time the rebate check was received by employer**. 2. Employers can choose to share the refund with employees **covered under the policy or any policy offered by the employer** by applying a credit to employee's premium payments in next month 3. In either case, if employee premiums were paid on a pre-tax basis, both #1 and #2 will create taxable income.
Non-ERISA Plans/& Non-Federal Government Plans (Church Plans)	1. Same as non-federal government plans. 2. See unique rules on "How to Distribute."	1. Same as non-federal Government plans. 2. See unique rules on "How to Distribute."	1. Insurance carrier can only release rebate check to employer if employer provides written assurance that it will distribute refund as required of non-federal government plans 2. If employer does not agree, insurance carrier distributes refund directly to all employees eligible (employer loses its share).
Resources	ERISA Plans on fiduciary obligations: http://www.dol.gov/ebsa/newsroom/tr11-04.html	45 C.F.R. 158.242(b)	

*Plans are governed by ERISA's fiduciary obligations. Plan documents should be reviewed. If silent on how distributions are funded, then employer is to exercise duty of impartiality. If cost of making refunds to participants is not cost effective, (e.g. payments would be of de minimis amounts or create tax consequences to the participants or plan, the rebate can be used for other permissible purposes, such as reduction in future contributions or future benefit enhancements. If Plans that make use of a trust to hold plan assets should consult with their ERISA attorney.

**Rebates must be provided by insurers no later than August 1 following the Medical Loss Rebate reporting year (calendar year).