



# Medicare Shared Savings Program

# REPAYMENT MECHANISM

# ARRANGEMENTS

## Guidance

March 2024  
Version 13

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MEDICARE  
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## Revision History—Version 13

Title of Section & Revisions/Changes Description (since last version)	Link to Affected Area
Renewal and Early Renewal Applicants: Additional guidance inserted into Section 4.1.2 <i>Repayment Mechanism Amount</i> to outline the two options for ACOs when choosing an amount.	<a href="#">Section 4</a>

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# 1 Introduction

Medicare Shared Savings Program (Shared Savings Program) Accountable Care Organizations (ACOs) that will participate in a two-sided model must establish a repayment mechanism to assure the Centers for Medicare & Medicaid Services (CMS) that they can repay losses for which they may be liable upon reconciliation for each performance year under which they accept performance-based risk ([42 CFR § 425.204\(f\)](#)).

CMS intends this guidance on repayment mechanism arrangements to aid Shared Savings Program ACOs in establishing and maintaining an adequate repayment mechanism. This guidance identifies common errors to avoid and helps ensure that ACOs submit a repayment mechanism that satisfies CMS requirements.

An ACO that will participate in a two-sided model must establish one or more of the following repayment mechanisms in an amount and by the deadline specified by CMS ([42 CFR § 425.204\(f\)\(2\)](#)):

- Escrow Agreement: An escrow account established with an insured institution.
- Letter of Credit: A line of credit as evidenced by a letter of credit that the Medicare program could draw upon, established at an insured institution.
- Surety Bond: A surety bond issued by a company included on the [U.S. Department of the Treasury's List of Certified \(Surety Bond\) Companies](#).

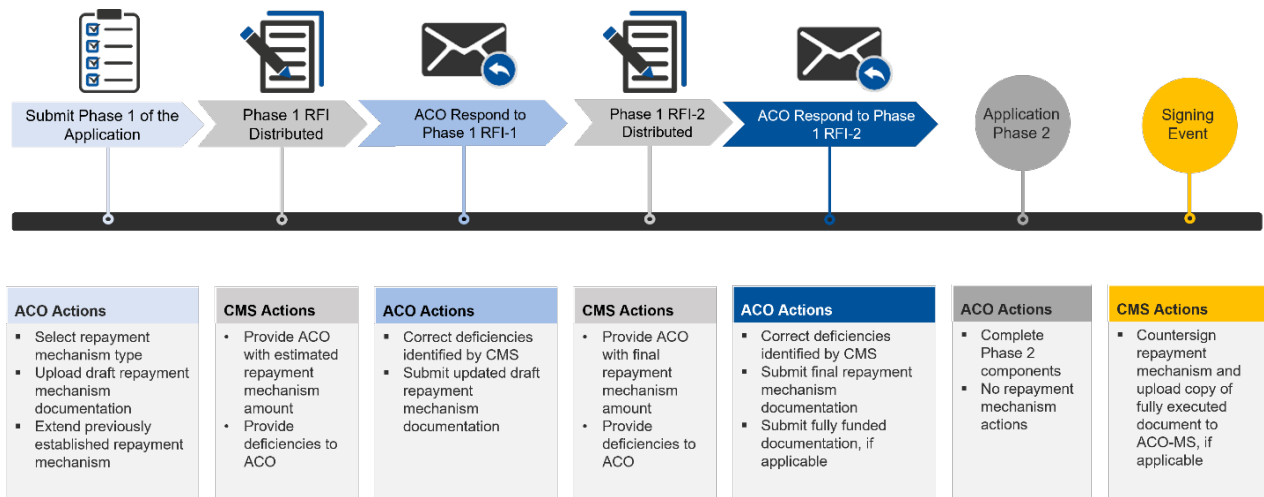
## 2 Establishing a Repayment Mechanism

To be eligible to participate in a two-sided risk model of the Shared Savings Program (Levels C, D, or E of the BASIC track, or the ENHANCED track), an ACO must demonstrate that it has established an adequate repayment mechanism prior to the start of the agreement period ([42 CFR § 425.204 \(f\)\(3\)](#)). For participation options and eligibility criteria, refer to the [Application Reference Manual](#).

This section of the guidance details the process for establishing a repayment mechanism for the first time. Further details for each repayment mechanism type are also provided (refer to Figure 1 for an overview of this process). For information on maintaining an existing repayment mechanism, refer to Section 3 of this guidance.

The [Appendices](#) at the end of this document provide sample surety bond and letter of credit documents, as well as an escrow agreement template that meets the Shared Savings Program repayment mechanism requirements.

Figure 1. Repayment Mechanism Milestones of the Application Process




ACOs in the BASIC track’s glide path that are transitioning from one-sided risk to two-sided risk must provide documentation of the repayment mechanism in accordance with the application process deadlines for repayment mechanisms for that year.

## 2.1 Select Repayment Mechanism Type and Financial Institution

An ACO may elect to use a single repayment mechanism type or a combination of the designated repayment mechanism types, such as placing certain funds in escrow, obtaining a surety bond for a portion of funds, and providing a letter of credit for the remainder of the required repayment mechanism amount.

Escrow agreements and letters of credit must be established with an insured institution, while surety bonds must be issued by a company included on the U.S. Department of Treasury’s List of Certified Companies.

 **INSURED INSTITUTION**

Insured institutions include those insured by either of the following:

- Federal Deposit Insurance Corporation (FDIC)
- National Credit Union Share Insurance Fund program

Refer to the Shared Savings Program December 2018 final rule, 83 FR 67937-67938.

Each repayment mechanism type must meet specific requirements as outlined in Steps 2.1.1–2.1.3.

### 2.1.1 Funds Placed in Escrow

ACOs can establish an escrow account with an insured institution. CMS has created an approved escrow agreement template provided in [Appendix A](#). Use of the template should minimize the potential need for revisions, but it does not guarantee CMS' approval.

Additionally, CMS and the U.S. Bank National Association (“U.S. Bank”) have a standard escrow account agreement in place for use between the U.S. Bank and third parties, where CMS is the recipient of funds held in escrow if payment is due to CMS. ACOs that elect to open a U.S. Bank escrow account should contact Stephanie Haysley at 804-343-1567 or [stephanie.haysley@usbank.com](mailto:stephanie.haysley@usbank.com) or Bill Michie at 804-771-7935 or [william.michie@usbank.com](mailto:william.michie@usbank.com).

If an ACO establishes an escrow account at a different banking institution and elects to not utilize the template included in [Appendix A](#), CMS must approve the escrow agreement and the instructions for disbursement of the assets. Using escrow agreements that deviate from the language in the template may require additional review time. CMS will sign only the approved escrow agreement; ancillary documents will not be signed.

**Fully Funded:** CMS requires the financial institution establishing the escrow funds to provide proof it has received the repayment mechanism funds necessary to satisfy the required amount. In order to meet this requirement, the financial institution must provide a signed letter on its letterhead with a statement indicating the funds are on deposit. This requirement must be met before CMS approves the repayment mechanism by the date which CMS requires the repayment mechanism documentation to be fully funded and fully executed.



#### ESCROW AGREEMENT COMMON ERRORS

1. The funds are not invested in a permissible type of investment: a money market account, treasury backed securities, or both. An interest-bearing money market deposit account may be used.
2. The financial institution has neither provided a signed letter on the financial institution letterhead nor included a statement indicating that the funds are on deposit in the escrow account. CMS requires the financial institution that established the funds placed in escrow to provide proof that the financial institution has received the repayment mechanism amount before the repayment mechanism is approved.

### 2.1.2 Line of Credit

ACOs can establish a line of credit at an insured institution, as evidenced by a letter of credit that the Medicare program can draw upon. CMS has created an approved letter of credit sample provided in [Appendix B](#). Use of the sample should minimize the potential need for revisions, but it does not guarantee CMS' approval.



## LETTER OF CREDIT COMMON ERRORS

1. The ACO used the term “purportedly” when describing the documentation needed from CMS to demand payment under the letter of credit signed by an authorized signatory. The issuing institution should ensure the signature is legitimate, such as by calling the authorized CMS official for verification.
2. The letter of credit includes a sanctioned entity clause. The letter of credit should not use a sanctioned entity clause, as this could prevent payment to CMS if the ACO becomes a sanctioned entity. The clause must be removed in its entirety or modified to exclude from the definition of “sanctioned entity” any entity sanctioned by or debarred from a federal health care program.
3. Documentation of only the availability of a line of credit was provided and is not acceptable, because the funds would not be encumbered for the purpose of the ACO repaying shared losses it owes to CMS based on the ACO’s participation in the Shared Savings Program.
4. The ACO or issuing institution submitted a final letter of credit that requires revision and is requesting CMS signature to cancel. CMS will not provide a signature to cancel a non-approved repayment mechanism.
5. The ACO elected to use auto-renewal and populated the auto-renewal clause with incorrect dates. The ACO should follow the guidance language within the sample letter of credit’s auto-renewal clause for each date input.

### 2.1.3 Surety Bond

ACOs can establish a surety bond issued from a company included on the [U.S. Department of the Treasury’s List of Certified \(Surety Bond\) Companies](#). CMS has created a surety bond sample provided in [Appendix C](#). Use of the sample should minimize the potential need for revisions, but it does not guarantee CMS’ approval.



## SURETY BOND COMMON ERRORS

1. The surety bond does not contain a statement that the Surety agrees to not contest the amount owed as reflected in the documents provided by CMS to the ACO.
2. The surety bond does not contain a statement that the surety will remain liable for any and all indebtedness of the Principal to the Obligee which accrued prior to the effective date of cancellation or termination of the bond.
3. The surety bond does not contain a statement if there is a lapse in the Bond coverage or if there is any change in the amount of the bond.
4. The ACO elected to use auto-renewal and populated the auto-renewal clause with incorrect dates. The ACO should follow the guidance language within the sample surety bond’s auto-renewal clause for each date input.

## 2.2 Develop Draft Documentation

ACOs generally work with a financial institution to draft a repayment mechanism arrangement. To better assist ACOs in the creation of new repayment mechanism arrangements, an “RM Generator” is now available to ACOs within [ACO-MS](#). The generator will allow ACOs to input the necessary data to create a draft repayment mechanism for review with their financial institution prior to submitting the draft for CMS review.

ACOs are strongly encouraged to submit repayment mechanism documentation in draft form to CMS for review. Once all non-finalization deficiencies have been addressed, CMS will notify the ACO that the repayment mechanism documents can be finalized and submitted with a status of “Ready for Finalization.” If an ACO submits a final repayment mechanism arrangement for review, and CMS requires any changes to the submitted documentation, it may delay the establishment of the ACO’s repayment mechanism.

There are general terms that need to be met across all repayment mechanism types. ACOs should share the following definitions with the chosen financial institution to assist the ACO with meeting repayment mechanism requirements:

- **Liabe Party:** The ACO must be the liable party for the repayment mechanism. Therefore, the ACO Legal Entity Name (LEN) detailed in the ACO Management System (ACO-MS) must be listed on the repayment mechanism. Do not list any other entity in conjunction or on behalf of the ACO LEN within the repayment mechanism.
- **Beneficiary/Recipient/Obligee of Repayment Mechanism:** CMS must be designated as the sole beneficiary.

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- **Inception Date:** The inception date, generally included within escrow agreement and surety bond documentation, must reflect the date the ACO enters into a Participation Agreement with CMS.
  - The inception date (also known as the Participation Agreement start date) can be viewed by navigating to the ACO’s Performance Year tab in [ACO-MS](#) and locating the agreement period start date row for the applicable program year column.
- **Duration:** The repayment mechanism must be in effect for the duration of the ACO’s participation under a two-sided model plus 12 months following the conclusion of the agreement period ([42 CFR § 425.204\(f\)\(6\)](#)). For an ACO that is establishing a repayment mechanism to meet this requirement, the repayment mechanism must satisfy one of the following criteria:
  - Option 1 – The repayment mechanism covers the entire duration of the ACO’s participation under a two-sided model plus 12 months following the conclusion of the agreement period; or
  - Option 2 – The repayment mechanism covers a term of at least the first two performance years in which the ACO is participating under a two-sided model and provides for



automatic, annual 12-month extensions of the repayment mechanism such that the repayment mechanism will eventually remain in effect for the duration of the agreement period plus 12 months following the conclusion of the agreement period.

- ACOs may use clauses providing for the automatic, annual extension of a repayment mechanism that begins on the initial expiration date. The initial term of the repayment mechanism must cover at least the first two performance years in which the ACO is participating under a two-sided model. The automatic extension must provide for automatic annual 12-month extensions of the repayment mechanism beginning on the initial expiration date under a two-sided model such that the repayment mechanism will eventually remain in effect for the duration of the agreement period plus 12 months following the conclusion of the agreement period (refer to [42 CFR §§ 425.204\(f\)\(6\)\(i\)\(B\)](#) and [§§425.204\(f\)\(6\)\(ii\)\(B\)](#)).

**Notice of Non-extension and Early Termination:** If an automatic extension clause is utilized, it should state that the financial institution will notify CMS at least 90 days in advance if it elects not to extend the repayment mechanism or if it wishes to terminate the repayment mechanism before it expires.

- **Replenishment:** Repayment mechanism must allow for replenishment within 90 days if any portion of the repayment mechanism is used to repay shared losses owed to CMS, as detailed in [42 CFR § 425.204\(f\)\(5\)](#).
- **Condition for Calling Funds:** The repayment mechanism documentation should indicate that CMS will make a demand for repayment mechanism funds if the ACO fails to pay shared losses it owes to CMS as a result of participation in the Shared Savings Program, citing the regulations at 42 CFR Part 425. For examples, refer to [Appendix A](#) (escrow agreement template), [Appendix B](#) (letter of credit sample), and [Appendix C](#) (surety bond sample).
- **Demand Letter:** Repayment mechanism documentation should allow for payment to CMS in response to a written notice from CMS, sometimes referred to as a demand letter.
- **Account Fees:** Account fees or other fees associated with establishing, maintaining, or canceling a repayment mechanism are the responsibility of the ACO and cannot be paid out of the principal or penal sum for the repayment mechanism.

**Note:** Regarding applicability of state laws, CMS did not preempt any state laws or state law requirements in the final rule establishing the Shared Savings Program. To the extent that state law affects an ACO's operations, CMS expects the ACO to comply with those requirements as an entity authorized to conduct business in the state. Refer to the Shared Savings Program November 2011 Final Rule, 76 FR 67802, 67816.


Before submitting draft documentation in [ACO-MS](#), review [Appendix E: New Repayment Mechanism Checklist](#) or [Appendix F: Renewing ACO Repayment Mechanism Checklist](#) to ensure all required elements are included.

## 2.3 Submit Draft Documentation

ACOs applying to, re-entering into, or transitioning to a two-sided model must submit documentation demonstrating the adequacy of the repayment mechanism. These ACOs should submit draft repayment mechanism documentation during the initial submission period of the

application process or the annual change request cycle.

**Note:** If an ACO submits a final repayment mechanism arrangement for review and CMS requires any changes to the submitted documentation, it may delay the establishment of the ACO’s repayment mechanism. Draft documentation is not expected to include the final amount before it is available or executed signatures prior to finalization of the repayment mechanism document.

 **REMINDER**

Upcoming deadlines can be found on the Shared Savings Program [Application Types & Timeline webpage](#).

Initial applicants will be prompted to submit a repayment mechanism within their application upon selecting a two-sided model. Renewal and Early Renewal applicants should refer to [Section 4](#) of this guidance for additional information.

Currently participating ACOs transitioning into a two-sided model will need to submit a Participation Options Change Request (POCR) selecting a two-sided track. This will create a repayment mechanism task on the ACO dashboard.

Within the repayment mechanism task in [ACO-MS](#), select the repayment mechanism type that matches the draft documentation and upload a copy of the draft documentation. Once the ACO submission period closes, CMS will review the ACO’s repayment mechanism documentation.

## 2.4 Receive Feedback and Correct Deficiencies

Requests for information (RFIs) provide the ACOs opportunities to update and correct repayment mechanism deficiencies. If applicable, CMS uploads a document to the repayment mechanism task within [ACO-MS](#) with comments and edits to assist the ACO.

Deficiencies will be issued through [ACO-MS](#), and ACOs must respond to RFIs in [ACO-MS](#).

### ADDITIONAL RESOURCE

[Requests for Information in ACO-MS tip sheet](#)

**Note:** Deficiencies for requirements that may not be able to be completed at that time will be issued until they are met with the final repayment mechanism documentation. This provides ACOs with a full list of requirements that must be met. For example:

- Draft documentation will receive a deficiency for the repayment mechanism amount at Phase 1 RFI-1, because only an estimated amount is available in [ACO-MS](#) at that time. ACOs will continue to receive this deficiency until the final amounts are released at Phase 1 RFI-2 and the amount is correctly included on the submitted documentation.
- Draft documentation will receive signature related deficiencies until final documentation is received, because ACOs should not have the required signatures completed until all other deficiencies have been resolved. ACOs will continue to receive signature-related deficiencies at each RFI until final signed documentation is uploaded to [ACO-MS](#).

### 2.4.1 Repayment Mechanism Amount Estimate

CMS will estimate the amount of an ACO’s repayment mechanism based on available data with the release of Phase 1 RFI-1. For detailed information on how repayment mechanism amounts are calculated, refer to [Section 2.5.1](#) of this guidance. The final repayment mechanism amount will not be released until Phase 1 RFI-2. The estimate provided at Phase 1 RFI-1 provides

ACOs with an initial estimate as to what their final amount could be if no changes are made to the participation list. This amount should only be used as a reference point and not used to finalize a repayment mechanism.

ACOs can find information about the repayment mechanism amount in [ACO-MS](#) on the Application Cycle subtab or within the Revenue tab of the *Participation Options Report* within the Reporting tab in ACO-MS.

**Note:** The Phase 1 RFI-1 estimate will factor in all ACO participants on an ACO's participant list at the close of the initial submission deadline. Any participants added during Phase 1 RFI-1 will be factored into the final amount provided at Phase 1 RFI-2. Any deletions of ACO participants during Phase 1 RFI-2 **will not** be factored into the final amount. Therefore, any ACO participants that the ACO does not want factored into the final amount should be deleted from the participant list during Phase 1 RFI-1 response period.

## 2.5 Final Repayment Mechanism Amount and Document Finalization

### 2.5.1 Calculation of Repayment Mechanism Amount

The repayment mechanism amount must be equal to the lesser of the following, in accordance with [42 CFR § 425.204\(f\)\(4\)\(ii\)](#):

- One-half (0.5) percent of the total per capita Medicare Parts A and B fee-for-service (FFS) expenditures for its assigned beneficiaries, based on expenditures and the number of assigned beneficiaries for the most recent calendar year for which 12 months of data are available; or
- One percent of the total Medicare Parts A and B FFS revenue of its ACO participants, based on revenue for the most recent calendar year for which 12 months of data are available, and based on the ACO's number of assigned beneficiaries for the most recent calendar year for which 12 months of data are available.

CMS will determine an estimate of the number and population of beneficiaries who will be assigned to the ACO based on the most recent calendar year for which 12 months of data are available. In determining the benchmark-based amount, CMS will use the estimated assigned beneficiary population to project the ACO's total per capita Medicare Parts A and B FFS expenditures for the most recent calendar year for which 12 months of data are available. In determining the revenue-based amount, CMS will project ACO participants' total Medicare Parts A and B FFS revenue based on claims for all Medicare FFS beneficiaries furnished services by ACO participants during this same calendar year. In calculating the repayment mechanism amount, CMS will multiply the projected amount of total per capita Medicare Parts A and B FFS expenditures (used in determining the benchmark-based amount) and the projected amount of ACO participants' total Medicare Parts A and B FFS revenue expressed as a per beneficiary value (used in determining the revenue-based amount) by an estimated number of assigned beneficiaries.

### 2.5.2 Locating Final Repayment Mechanism Amount in ACO-MS

The dollar amount funded by the repayment mechanism must be at least the amount specified in the communication of the final amount by CMS. The final repayment mechanism amount will

be released with Phase 1 RFI-2. ACOs can find the final repayment mechanism amount in [ACO-MS](#) on the Application Cycle subtab or within the Revenue tab of the *Participation Options Report* within the Reporting tab. For more information about the Participation Options Report, refer to the Data Dictionary, which will be available in the Application Cycle subtab (via the information bubble).

### 2.5.3 Finalization of Repayment Mechanism

Once the ACO has resolved any deficiencies in the draft repayment mechanism documentation identified by CMS and the final repayment mechanism amount is available, ACOs will receive a “Ready for Finalization” notification that repayment mechanism documents are ready for finalization. This will serve as notification that the ACO may finalize and upload final documentation via [ACO-MS](#). Final documentation is due during Phase 1 RFI-2.

The type of repayment mechanism selected will determine the signatory requirements of the ACO. CMS requires an ACO to sign the final surety bond, escrow agreement, and/or amendment to a letter of credit documentation. An original letter of credit does not require an ACO signatory.

If digital signature is used to execute repayment mechanism documentation, a copy of the digital signature audit report is to accompany the repayment mechanism.

### 2.5.4 Submit Documentation via Traceable Carrier

If the ACO has received conditional approval of the repayment mechanism, pending delivery of original documentation to CMS, this means that the original documentation must be received by CMS to be fully approved. Please send original documentation along with the cover sheet found in [Appendix E](#) to CMS via a traceable carrier (e.g., FedEx, UPS, DHL) and provide the tracking information to CMS by email ([SharedSavingsProgram@cms.hhs.gov](mailto:SharedSavingsProgram@cms.hhs.gov)).

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If CMS has not requested original documentation as part of the conditional approval of your repayment mechanism, no additional action is required to submit original documentation after receiving approval.

## 3 Maintaining a Repayment Mechanism

### 3.1 Required Amount Increases

According to [42 CFR § 425.204\(f\)\(4\)\(iii\)](#), CMS recalculates the ACO's repayment mechanism amount for the second and each subsequent performance year in the agreement period, based on the certified ACO participant list for the relevant performance year, except that the number of assigned beneficiaries used in the calculations is the number of beneficiaries assigned to the ACO at the beginning of the relevant performance year under [42 CFR § 425.400\(a\)\(2\)\(i\)](#) (for ACOs under preliminary prospective assignment with retrospective reconciliation) or [42 CFR § 425.400\(a\)\(3\)\(i\)](#) (for ACOs under prospective assignment).

An ACO may be required to increase its repayment mechanism during its agreement period if the recalculated repayment mechanism amount exceeds the existing repayment mechanism amount by \$1,000,000, as calculated by CMS.

If an ACO's recalculated repayment mechanism amount exceeds the aforementioned threshold, CMS will provide notice to the ACO in writing via [ACO-MS](#) that the amount of its repayment mechanism must be increased to the recalculated repayment mechanism amount.

The ACO has 90 days from the date of receipt of the written notice to submit documentation for CMS approval showing that the amount of its repayment mechanism has been increased to the amount specified by CMS.

## 3.2 Changing Existing Repayment Mechanism

If the ACO has an established repayment mechanism for an agreement period and would like to update terms of the arrangement or replace the arrangement with a new repayment mechanism during the agreement period, the ACO must submit a Request to Edit Repayment Mechanism Task in [ACO-MS](#) for CMS review. Refer to the [ACO-Initiated Request to Edit Repayment Mechanism Task in ACO-MS](#) resource, located in the Knowledge Library of [ACO-MS](#).

## 3.3 Repaying Shared Losses

The amount of shared losses incurred by an ACO, as determined upon annual financial reconciliation, may be more or less than the repayment mechanism amount. If the amount of the repayment mechanism is not sufficient to cover the total amount of the shared losses owed by the ACO, the ACO will be required to repay any remaining balance using alternative funding sources.

If necessary, CMS may require the ACO to extend the duration of the repayment mechanism to ensure the ACO fully repays CMS any shared losses for each of the performance years of the agreement period (refer to [42 CFR § 425.204\(f\)\(6\)\(iii\)](#)).

Furthermore, an ACO may choose to cover the shared losses with alternative funds and not the established repayment mechanism.

## 3.4 Replenishment

After the repayment mechanism has been used to repay any portion of shared losses owed to CMS, the ACO is required to replenish the amount of funds available through its repayment mechanism within 90 days, pursuant to [42 CFR § 425.204\(f\)\(5\)](#). The resulting amount available through the repayment mechanism must be at least the amount specified by CMS in accordance with [42 CFR § 425.204\(f\)\(4\)](#). If it is not possible to replenish the existing arrangement (for example, because it was terminated), the ACO is required to establish one or more new repayment mechanism(s) to support its participation in the Shared Savings Program.

# 4 Renewal and Early Renewal Applications

The ACO must submit repayment mechanism documentation to CMS showing it has an adequate repayment mechanism as part of the renewal or early renewal application pursuant to [42 CFR § 425.204\(f\)\(3\)\(iv\)](#). The repayment mechanism applicable to the new agreement period

may be the existing repayment mechanism currently in use with required modifications or a new repayment mechanism. For existing Escrow Agreements, the agreement inception date on the amendment must match the original escrow agreement inception date. For Letter of Credit, amendments must reference the original letter of credit number. For Surety Bonds, riders must reference the original surety bond number.

Once the ACO submits a renewal or early renewal application, any pending edit repayment mechanism task will be withdrawn in [ACO-MS](#). You will be required to complete your repayment mechanism updates within the Repayment Mechanism task created during Phase 1 of the application cycle.

## 4.1 Establishing a New Repayment Mechanism for the New Agreement Period

Renewing or early renewing ACOs may elect to establish a new repayment mechanism for their new agreement period. Refer to [Section 2](#) of this guidance for additional information.

If selecting this option, the ACO should select to utilize a new repayment mechanism for its next agreement period within the repayment mechanism task of the renewal application in [ACO-MS](#).

## 4.2 Establishing a New Repayment Mechanism for Both the Current and New Agreement Periods

A renewing or early renewing ACO may elect to establish a new repayment mechanism for both the current and new agreement period. If electing this option, the ACO is encouraged to contact the SSP Helpdesk by clicking the SSP Helpdesk icon (located within the [ACO-MS](#) banner) or email [SharedSavingsProgram@cms.hhs.gov](mailto:SharedSavingsProgram@cms.hhs.gov) to discuss options specific to the ACO.

## 4.3 Utilizing an Existing Repayment Mechanism

A renewing or early renewing ACO is permitted to use its existing repayment mechanism to establish its ability to repay any shared losses incurred for performance years in the new agreement period (refer to [42 CFR § 425.204\(f\)\(3\)\(iv\)-\(v\)](#)).

If choosing this option, the ACO should select to utilize an existing repayment mechanism for its next agreement period within the repayment mechanism task of the renewal or early renewal application in [ACO-MS](#). Amendment(s) to modify the existing repayment mechanism's duration and amount (if applicable) should be uploaded in lieu of a new repayment mechanism if selecting this option.

### 4.3.1 Duration Requirement

Renewal and early renewal applicants that wish to use an existing repayment mechanism to establish its ability to repay any shared losses incurred for performance years in the new agreement period must amend the duration of the current repayment mechanism to meet one of the following criteria in accordance with [42 CFR § 425.204\(f\)\(6\)\(ii\)](#):

- Option 1 – The duration of the existing repayment mechanism is extended by an amount of time that covers the duration of the new agreement period plus 12 months following the conclusion of the new agreement period; or

- Option 2 – The duration of the existing repayment mechanism is extended, if necessary, to cover a term of at least the first two performance years of the new agreement period and provides for automatic, annual 12-month extensions of the repayment mechanism such that the repayment mechanism will eventually remain in effect for the duration of the new agreement period plus 12 months following the conclusion of the new agreement period.

Refer to [Section 2.2](#) of this guidance for further details regarding automatic extension clauses applicable to renewing ACOs.

### 4.3.2 *Repayment Mechanism Amount*

If the renewing or early renewing ACO wishes to use its existing repayment mechanism to establish its ability to repay any shared losses incurred for performance years in the new agreement period, the amount of the repayment mechanism is calculated by CMS in accordance with [42 CFR § 425.204\(f\)\(4\)\(ii\)](#), per [42 CFR § 425.204\(f\)\(4\)\(iv\)\(A\)](#). The final repayment mechanism amount required for the new agreement period will be provided at Phase 1 RFI-2. Refer to [Section 2.5.1](#) of this guidance for more information about the calculation and [Section 2.5.2](#) of this guidance for information on where to find the amount in [ACO-MS](#).

The renewing or early renewing ACO can utilize one of the following options for the amount:

- Option 1 – If the current agreement period’s existing repayment mechanism amount is higher than the new agreement period’s final calculated repayment mechanism amount, the ACO can choose to maintain the existing repayment mechanism at the higher amount for the duration of the new agreement period plus 12 months following the conclusion of the new agreement period. This will lock in the existing repayment mechanism amount for the duration of the new agreement period plus 12 months, with no opportunity to lower the repayment mechanism amount.
- Option 2 – The ACO may establish a new repayment mechanism in the amount detailed in [ACO-MS](#) as the final repayment mechanism amount for the new agreement period start date for the entire five-year agreement period plus 12 months following the conclusion of the new agreement period, and maintain the existing repayment mechanism through financial reconciliation for the current performance year. With this option, the ACO would have two repayment mechanisms at the same time for the new agreement period’s first year.

**Example:** For the current agreement period, an ACO has an existing \$500,000 repayment mechanism. The final required amount for the new agreement period is \$200,000. The ACO can choose to either keep the existing \$500,000 repayment mechanism for the entire duration of the new agreement period plus 12 months following the conclusion of the new agreement period, or the ACO can choose to establish a new \$200,000 repayment mechanism and maintain the existing \$500,000 repayment mechanism until financial reconciliation for the current performance year occurs. In other words, during the new agreement period’s first year, the ACO would have two repayment mechanisms for a total of \$700,000 until financial reconciliation for the current performance year occurs, after which, the \$500,000 repayment mechanism can be cancelled.

### 4.3.3 Repayment Mechanism Type Considerations for the Use of an Existing Repayment Mechanism

- **Escrow Agreement:** Renewal and early renewal applicants using an existing escrow agreement may work with the financial institution to make any required changes.
  - The Escrow Agent may demonstrate a required increase in the repayment mechanism amount without the use of an amendment to the escrow agreement. Please refer to [Section 2.1.1](#) of this guidance for more information regarding fully funding the account.
  - If the required amount for the new agreement period is lower than the currently established amount, please refer to [42 CFR § 425.204\(f\)\(4\)\(iv\)](#).
- **Letter of Credit:** Renewal and early renewal applicants updating an existing letter of credit may work with the financial institution to submit an amendment to the existing letter of credit.
- **Surety Bond:** Renewal and early renewal applicants updating an existing surety bond may work with the insurance company to submit a rider to the existing surety bond.

## 5 Cancellation of Repayment Mechanisms

An ACO is required to maintain its repayment mechanism after the termination of its participation in the Shared Savings Program until CMS determines the amount of any shared losses owed and collects that amount from the ACO or until the repayment mechanism expires. CMS will notify ACOs regarding cancellation opportunities when an existing repayment mechanism is no longer required (if applicable).

A repayment mechanism may be terminated at the earliest of the following conditions, in accordance with [42 CFR § 425.204\(f\)\(6\)\(iv\)](#):

- The ACO has fully repaid CMS any shared losses owed for each of the performance years of the agreement period under a two-sided model.
- CMS has exhausted the amount reserved by the ACO's repayment mechanism, and the arrangement does not need to be maintained to support the ACO's participation under the Shared Savings Program.
- CMS determines that the ACO does not owe any shared losses under the Shared Savings Program for any of the performance years of the agreement period.

### 5.1 ACO Request to Cancel

If an ACO establishes a new repayment mechanism to replace an existing repayment mechanism, CMS will cancel the originally established repayment mechanism at the request of the ACO, but only after the replacement repayment mechanism has been approved by CMS.

ACOs should send requests to cancel a repayment mechanism to CMS by emailing [SharedSavingsProgram@cms.hhs.gov](mailto:SharedSavingsProgram@cms.hhs.gov).

CMS evaluates the request and determines whether a repayment mechanism is no longer required, pursuant to [42 CFR § 425.204\(f\)\(6\)\(iv\)](#). CMS will complete the required documentation and notify the Financial Institution and ACO of the cancellation.



## 5.2 Cancellation Initiated by Financial Institution

If CMS receives a notice of cancellation or non-extension/renewal from a financial institution in regard to a repayment mechanism established to support an ACO's participation in the Shared Savings Program, CMS will contact the ACO to discuss the required next steps for the ACO to maintain compliance, if applicable.

Pursuant to [42 CFR § 425.204\(f\)\(6\)](#), the repayment mechanism must be in effect for the duration of the ACO's participation under a two-sided model plus 12 months following the conclusion of the agreement period. ACOs are subject to compliance action, including involuntary termination of their participation agreement, if an approved repayment mechanism is not in place in accordance with [42 CFR § 425.204\(f\)](#).

## Appendices A through F Links: Template or Sample Documents and Additional Resources

Please access the referenced documents using the following URLs:

- [Appendix A: Escrow Agreement Template](#)
- [Appendix B: Letter of Credit Sample](#)
- [Appendix C: Surety Bond Sample](#)
- [Appendix D: Repayment Mechanism Documentation Cover Sheet](#)
- [Appendix E: New Repayment Mechanism Checklist](#)
- [Appendix F: Renewing ACO Repayment Mechanism Checklist](#)