



# Medicare Shared Savings Program

# REPAYMENT MECHANISM

# ARRANGEMENTS

## Guidance

March 2023  
Version 12

*Disclaimers: The contents of this document do not have the force and effect of law and are not meant to bind the public in any way, unless specifically incorporated into a contract. This document is intended only to provide clarity to the public regarding existing requirements under the law.*

*This communication material was prepared as a service to the public and is not intended to grant rights or impose obligations. It may contain references or links to statutes, regulations, or other policy materials. The information provided is only intended to be a general summary. It is not intended to take the place of either the written law or regulations. We encourage readers to review the specific statutes, regulations, and other interpretive materials for a full and accurate statement of its contents.*



MEDICARE  
SHARED SAVINGS  
PROGRAM

## Revision History - Version 12

Title of Section & Revisions/Changes Description (since last version)	Link to Affected Area
<p>Revised changes to repayment mechanism requirement with the CY2023 Physician Fee Schedule (PFS).</p> <p><b>Establishing a Repayment Mechanism:</b> New section and sub-sections created to detail steps associated with ACO applicants establishing a repayment mechanism; addition of timeline graphic.</p> <p><i>Select Repayment Mechanism Type and Financial Institution:</i> Update to include descriptions of the repayment mechanism types.</p> <p><i>Develop Draft Documentation:</i> Update to description of developing the draft repayment mechanism; added definitions of terms applicable to all repayment mechanism types; reorganized concepts to be aware of for each repayment mechanism type.</p> <p><i>Submit Draft Documentation:</i> Addition of reference to Application Steps &amp; Timeline webpage; update to description of submitting documentation in ACO-MS; clarified draft documentation expectations.</p> <p><i>Receive Feedback and Correct Deficiencies:</i> Defined RFI; added reference to ACO-MS tip sheet; clarified draft documentation expectations.</p> <p><i>Final Repayment Mechanism Amount and Document Finalization:</i> Replaced calculation methodology table with location of information in ACO-MS; revised ACO authorized signors for repayment mechanism; clarified how to finalize a repayment mechanism and submitting original documentation to CMS.</p>	<a href="#">Section 2</a>
<p><b>Maintaining a Repayment Mechanism:</b> New section and sub-sections created to include steps associated with participating ACO repayment mechanism activities.</p> <p><i>Annual Recalculation:</i> Revised to include detail regarding the Participation Options Report.</p> <p><i>Changing Existing Repayment Mechanism:</i> ACO-Initiated Request to Edit Repayment Mechanism Task in ACO-MS resource removed from Appendix and now found in Knowledge Library.</p> <p><i>Repaying Shared Losses:</i> Clarified repayment not required through CMS approved repayment mechanism arrangement.</p>	<a href="#">Section 3</a>
<p><b>Renewal and Early Renewal Applicants:</b> New section and sub-sections created to include all renewal and early renewal applicant concepts. Added description of RME task in ACO-MS at time of renewal or early renewal.</p> <p><i>Utilizing an Existing Repayment Mechanism:</i> Added description of application question response to indicate use of existing repayment mechanism; added description of processes to amend an existing repayment mechanism arrangement.</p> <p><i>Establishing a New Repayment Mechanism:</i> Added description of application question response to indicated use of new repayment mechanism.</p>	<a href="#">Section 4</a>
<p><b>Cancellation of Repayment Mechanisms:</b> Added description of initiation of the repayment mechanism cancellation process by an ACO and financial institution.</p>	<a href="#">Section 5</a>

## Table of Contents

1	Introduction .....	3
2	Establishing a Repayment Mechanism .....	3
2.1	Select Repayment Mechanism Type and Financial Institution.....	4
2.2	Develop Draft Documentation .....	6
2.3	Submit Draft Documentation .....	8
2.4	Receive Feedback and Correct Deficiencies .....	9
2.5	Final Repayment Mechanism Amount and Document Finalization .....	9
3	Maintaining a Repayment Mechanism .....	11
3.1	Annual Recalculation .....	11
3.2	Changing Existing Repayment Mechanism .....	12
3.3	Repaying Shared Losses .....	12
3.4	Replenishment .....	12
4	Renewal and Early Renewal Applicants .....	12
4.1	Utilizing an Existing Repayment Mechanism .....	13
4.2	Establishing a New Repayment Mechanism.....	14
5	Cancellation of Repayment Mechanisms .....	14
5.1	ACO Request to Cancel.....	14
5.2	Cancellation Initiated by Financial Institution .....	14
	Appendices A through F: Template or Sample Documents and Additional Resources .....	16

# 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 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](#).

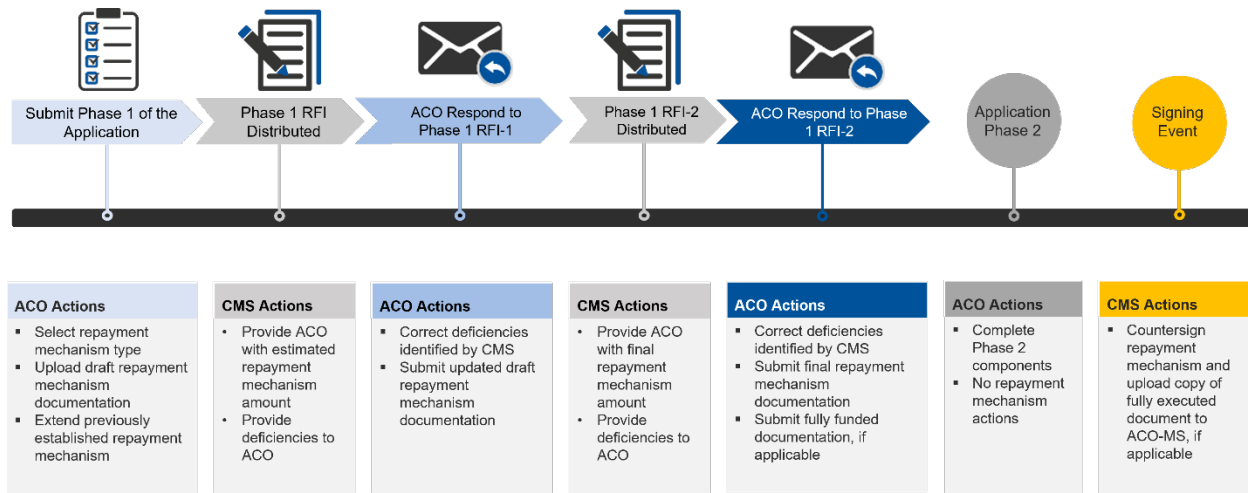
## 2 Establishing a Repayment Mechanism

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 its agreement period ([42 CFR § 425.204 \(f\)\(3\)](#)). For participation options and eligibility criteria, reference the [Application Reference Manual](#).

Section 2 of this guidance details the process for establishing a repayment mechanism for the first time. Further details for each repayment mechanism type are also provided (see *Figure 1* for an overview of this process).

The appendices contain a template and samples that meet 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.

For information on maintaining an existing repayment mechanism, refer to Section 3 of this guidance.

## 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.

An escrow agreement or letter of credit must be established with an insured institution, and a surety bond must be issued by a company included on the U.S. Department of Treasury's List of Certified Companies.

### INSURED INSTITUTION

Insured institutions include an institution 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.

### 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).

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. CMS will sign only the escrow agreement; ancillary documents will not be signed.

**Fully Funding:** 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. In order to meet this requirement, the financial institution must provide a signed letter that includes the financial institution letterhead and a statement indicating that the funds are on deposit. This requirement must be met before the repayment mechanism will be approved and 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 not provided a signed letter on the financial institution letterhead and 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 will be 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 C](#). 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.

### 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 D](#). 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 Obligor 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.

## 2.2 Develop Draft Documentation

When working with a financial institution to draft a repayment mechanism arrangement, there are general terms that need to be met across all repayment mechanism types.

Please note that 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.

Sharing the following definitions with the chosen financial institution may assist the ACO with meeting repayment mechanism requirements:

- **Liable 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.
- **Beneficiary/Recipient/Obligee of Repayment Mechanism:** CMS must be designated as the sole beneficiary.

The Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Mail Stop C5-15-12  
Baltimore, MD 21244

- **Inception Date:** The inception date, generally included within escrow agreement and surety bond documentation, must reflect the date that 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](#), 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 occurs one year prior to the expiration date to establish the required term. The 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 last day of the ACO's first performance year 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 C](#) (letter of credit sample), and [Appendix D](#) (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 F: 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 should submit draft repayment mechanism documentation during the initial submission period of the application process or the annual change request cycle.

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.

Initial applicants will be prompted to submit a repayment mechanism within their application once 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.



### REMINDER

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

## 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, although only an estimate will be provided at this 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 final documentation.
- Draft documentation is not expected to have the required signatures until all other deficiencies have been resolved. However, the repayment mechanism feedback will include signature related deficiencies at each round 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-Repayment Mechanism 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.

After Phase 1 RFI-1, the repayment mechanism amount calculation can be viewed by navigating to the ACO's Application Cycle tab in [ACO-MS](#), locating the Repayment Mechanism Amount row and selecting the amount.

### *2.5.2 Addressing the Impact of the COVID-19 Pandemic*

In accordance with [42 CFR § 425.611\(c\)\(5\)](#), in calculating or recalculating the amount of an ACO's repayment mechanism, CMS excludes all Parts A and B FFS payment amounts for a beneficiary's episode of care for treatment of coronavirus disease 2019 (COVID-19) triggered by an inpatient service. This provision was established with the interim final rule with comment period entitled "Medicare and Medicaid Programs; Basic Health Program, and Exchanges; Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency and Delay of Certain Reporting Requirements for the Skilled Nursing Facility Quality Reporting Program," which appeared in the May 8, 2020 Federal Register (85 FR 27577 through 27582) and was finalized in the CY 2021 Physician Fee Schedule Final Rule (85 FR 84472, 84770 through 84785).

### *2.5.3 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-Repayment Mechanism 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).

### *2.5.4 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, 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.

### *2.5.5 Submit Documentation via Traceable Carrier*

If the ACO has received conditional approval of the repayment mechanism, pending delivery of original documentation to CMS, 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)).

The Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Mail Stop C5-15-12  
Baltimore, MD 21244

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

## **3 Maintaining a Repayment Mechanism**

### **3.1 Annual Recalculation**

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 adjust its repayment mechanism during its agreement period if the recalculated repayment mechanism amount exceeds the existing repayment mechanism amount by \$1,000,000. CMS will determine if the recalculated repayment mechanism amount is \$1,000,000 greater than the existing repayment mechanism amount.

If an ACO's recalculated repayment mechanism amount exceeds the aforementioned threshold, CMS will issue the ACO a written notice via [ACO-MS](#), letting the ACO know 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

It is possible that the amount of shared losses incurred by an ACO, as determined upon annual financial reconciliation, could 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 that 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 Applicants

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.

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 Utilizing an Existing Repayment Mechanism

A 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.

### 4.1.1 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.

### 4.1.2 Repayment Mechanism Amount

If the 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 must be equal to or greater than the amount calculated by CMS in accordance with [42 CFR § 425.204\(f\)\(4\)\(ii\)](#), please refer to [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](#).

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

- **Escrow Agreement:** Renewal and early renewal applicants using an existing escrow agreement should refer to [Appendix B](#) for a sample escrow agreement amendment.
  - The Escrow Agent may demonstrate a required increase in 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\(f\)\(4\)\(iv–v\)](#).
- **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.

## 4.2 Establishing a New Repayment Mechanism

If a renewing ACO would like to establish a new repayment mechanism, please refer to Section 2 of this guidance.

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](#).

## 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 the repayment mechanism expires.

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 original established repayment mechanism at the request of the ACO; only after the replacement repayment mechanism has been approved by CMS.

ACOs should send requests to cancel a repayment mechanism to CMS by email ([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 regarding 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: Template or Sample Documents and Additional Resources

Please access the referenced documents using the following URLs:

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