



Medicare Shared Savings Program: Establishing a Repayment Mechanism Webcast

Moderated by Leah Nguyen
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Operator: Hello and welcome to today's Medicare Learning Network® Event. My name is Sara and I'll be your web events specialist. We are using webcast technology today. We recommend streaming the audio live through your computer speakers. All lines have been placed on mute to prevent any background noise.

Please note that today's webcast is being recorded. For best viewing and participation, please disable your pop-up blockers. After the presentation, we will have a question-and-answer session. To submit a comment or to ask a question via the web, locate the Q&A box on the left-hand side of your screen. Type your question in the open area and click new question. We will also take questions via the phone lines and instructions on how to do so will be given at the appropriate time.

It is now my pleasure to turn today's program over to Leah Nguyen. Leah, please go ahead.

Announcements & Introduction

Leah Nguyen: This is Leah Nguyen from the Provider Communications Group here at CMS, and I am your moderator today. Welcome to this Medicare Learning Network webcast on the Medicare Shared Savings Program: Establishing a Repayment Mechanism.

Before we get started, there are few items that I'd like to cover. You can download a copy of today's presentation by clicking the handout button at the bottom of your screen. This webcast is open to everyone. If you're a member of the press, you're welcome to listen, but please don't ask questions during the Q&A session; send inquires to press@cms.hhs.gov.

I will now turn the call over to Joe Otto from the Center for Medicare.

Presentation

Joe Otto: Thank you, Leah. Welcome everyone. My name is Joe Otto. I'm a Deputy Director of the Division of ACO Finance and Data Analytics, one of the divisions in the Performance-based Payment Policy Group in the Center for Medicare that supports the Medicare Shared Savings Program, and Heidi McMahon is the Lead Contract Staff for LMI. We both will be providing information for today's webcast on Repayment Mechanism Requirements for Accountable Care Organizations, otherwise known as ACOs, participating in the Medicare Shared Savings Program.

We will review topics related to establishing and maintaining an adequate repayment mechanism arrangement, required for ACOs participating in two-sided shared savings and shared losses models of the Shared Savings Program. Specifically, Level C, D, and E of the BASIC track and the ENHANCED track. This event may be most relevant for ACOs applying to participate in a two-sided model for an agreement period beginning on January 1st, 2022 or transitioning to performance-based risk within the BASIC tracks, glide path for performance year 2022. We will conclude the webcast with a question-and-answer session.

Slide 2, specify the disclaimer about the content of this presentation. We encourage you to reference Slide 3 for a list of acronyms used in this presentation.



Slide 4 includes an outline of the main topics of today's presentation. We will provide an overview of the repayment mechanism requirements and timelines and provide details on how to maintain and submit repayment mechanism information.

In the first section of the presentation, we will provide an introduction to the Shared Savings Program's Repayment Mechanism Requirement and review key dates for ACOs establishing a repayment mechanism to support their participation in the two-sided model beginning on January 1st, 2022.

Shared Savings Program ACOs must establish a repayment mechanism to assure CMS that they can repay shared losses for which they may be liable upon reconciliation for each performance year under which they accept performance-based risk. Repayment mechanism requirements are specified in the Shared Savings Program regulations under title 42 on a Code of Federal Regulations part 425, section 425.204(f).

CMS is also issued repayment mechanism arrangement guidance to a Shared Savings Program ACOs and establishing and maintaining an adequate repayment mechanism. The latest version of the guidance is accessible on the Shared Savings Program website as referenced in the hyperlinks throughout this presentation. The timing of when an ACO must establish repayment mechanism arrangement is based on the timing of when it enters a two-sided model, and ACOs entering an agreement period in level C, D, or E on the BASIC track or the ENHANCED track must demonstrate the adequacy of its repayment mechanism prior to the start of this agreement period, prior to any change in the terms and type of the repayment mechanism and at such other times as requested by CMS.

An ACO entering an agreement period in Level A or Level B of the BASIC track must demonstrate the adequacy of its repayment mechanism prior to the start of any performance year and which either – it either elects to participate in or automatically transition to a two-sided model, Level C, Level D, or Level E of the BASIC track prior to any change in the terms and type of repayment mechanism and at such other times as requested by CMS.

A renewing ACO, or a reentering ACO that is the same legal entity as an ACO that previously participated in the program, may continue to use its existing repayment mechanism to support its participation in the new agreement period.

An ACO that will participate in the two-sided model must establish one or more of the following repayment mechanisms in an amount and by the deadline specified by CMS.

An escrow account with an insured institution. A surety bond from a company included on the U.S. Department of Treasury's List of Certified Companies or a line of credit as evidenced by a letter of credit that the Medicare program could draw upon established at an insured institution. Insured institutions include and then institution insured by either of the following, Federal Deposit Insurance Corporation, FDIC, or the National Credit Union Shared Insurance Fund Program.

This slide includes a figure that illustrates an overview of the repayment mechanism documentation review process during an application cycle and annual change request cycle. Illustration shows that the process often starts with an ACO working with the financial institution to discuss options to establish repayment mechanism.



The ACO then submits repayment mechanism documentation within the ACO management system or ACO-MS for short.

CMS strongly recommends the ACO submit track repayment mechanism documentation preferably as a Word document early on in the application process or the annual change request cycle. CMS reviews and provides feedback on repayment mechanism documentation with the issuance of the request for information or RFI for short. The ACO reviews CMS feedback and works with a financial institution to revise repayment mechanism documentation to correct identified deficiencies. The ACO submits revised repayment mechanism documentation to CMS within ACO-MS.

This process repeats for the second RFI. CMS provides the ACO with the final disposition on the adequacy of the repayment mechanism. We encourage ACOs to begin preparing for the repayment mechanism requirements early in the application process or the annual change request cycle. Let's review some initial steps ACOs may take as part of preparing to establish repayment mechanism arrangement.

ACOs will need to identify the preferred type of repayment mechanism arrangement and choose the financial institution to work with to establish the arrangement. The type of the repayment mechanism submitted will determine the signatory requirements of the ACO in preparing to establish a repayment mechanism arrangement.

Identify the organizational contacts who can authorize the repayment mechanism for your ACO. There are four authorized users in ACO-MS and meet the repayment mechanism signatory requirements. The ACO executive, authorized to sign primary and secondary contact and the financial contact. If the ACO is required to sign the repayment mechanism, an individual that is authorized to buying business on behalf of the ACO can sign the repayment mechanism.

We encourage ACOs and financial institutions establishing repayment mechanism to review the Shared Savings Program Repayment Mechanism Arrangements Guidance available on the program website. With the next few slides, we review the key dates for your ACO to be aware of when planning to meet the repayment mechanism requirement.

As we review select dates from the timeline for the application cycle for January 1st, 2022, start date and the corresponding repayment mechanism actions, please keep in mind that the complete application timeline in additional required actions are specified on the Shared Savings Program application types in timeline webpage. For currently participating ACOs, the change request cycle for performance year 2022 will follow the same schedule at the application cycle. As indicated on the slide, an ACO's first opportunity to submit draft repayment mechanism documentation to CMS for review through ACO-MS is with Phase 1 of the application.

This phase begins on June 8th, 2021, and concludes on June 28th, 2021, at noon Eastern time. If an ACO is not prepared to upload draft documentation during this period, we will have the option to note that by selecting that checkbox in ACO-MS. We encourage ACOs to submit draft repayment mechanism documentation for CMS review as early as possible. to allow for additional time for CMS to provide feedback and for ACOs to work with their financial institutions to resolve deficiencies with the repayment mechanisms.



CMS anticipates distributing the first request for information or RFI-1 to ACOs is on July 21st, 2021. ACOs should review the repayment mechanism amount estimate at RFI-1 available within the application cycle tabs in ACO-MS or the participation options report within the reporting tab of ACO-MS. ACOs should review deficiencies return by CMS on repayment mechanism documentation. ACOs will have the opportunity to respond to repayment mechanism reviewed feedback provided by RFI-1 by submitting revised draft payment mechanism documentation from July 21st, 2021, through August 3rd, 2021, at noon Eastern time.

CMS anticipates issuing the final repayment mechanism documentation amount at RFI-2 during phase 1 of the review cycle on August 25th, 2021. ACOs should wait for notification from CMS as the final repayment mechanism amount before finalizing the repayment mechanism arrangement.

ACOs should review deficiencies return by CMS on repayment mechanism documentation with RFI-2. ACOs should work with their financial institutions to finalize repayment mechanism documentation and execute the arrangements, if applicable. ACOs should submit final repayment mechanism documentation according to CMS instructions providing an electronic version in hard copy original, if applicable. Final repayment mechanism documentation is due to CMS on September 10th, 2021, at noon Eastern time. Please also note that the dates on this slide and the prior slide are subject to change.

We encourage ACOs to monitor the Application Types & Timeline webpage for updated information. We also encourage ACOs participating in the program and monitor the spotlight newsletter for announcements about upcoming deadlines.

Repayment Mechanism Requirements

In this section of our presentation, we will review repayment mechanism requirements specified as general terms. We also review terms specific each repayment mechanism type and demonstrate how these terms are reflected in the repayment mechanism documentation.

There are required general terms that are common to all repayment mechanism types. Please refer to Section Two of the Repayment Mechanism Guidance for additional information. We'll go into further detail for each bullet points listed in the next slide.

Financial institutions issuing repayment mechanisms must designate CMS as sole – as the sole beneficiary within a letter of credit, CMS as recipient within an escrow agreement, and CMS as the obligee within a surety bond. CMS's name and address must be listed correctly within the repayment mechanism as Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop C5-15-12, Baltimore, Maryland 21244. Including the CMS mail stop helps ensure documentation is received by CMS in a timely manner.

The ACO that is applying to the Shared Savings Program must be the liable party for the repayment mechanism because it would be the liable party for any shared losses. The ACO legal entity name (LEN) detailed in ACO-MS is the ACO legal entity name that must be listed on the repayment mechanism.

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. An ACO has two options for establishing the repayment mechanism duration.



One option is that 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 ACO's agreement period.

Another option is that 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 or 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.

The automatic, annual 12-month extensions begins on the last day of the ACO's first performance year under a two-sided model. The automatic extension clause 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. Generally, automatic extension clauses are relevant to letters of credit and surety bonds, but are not typically used in escrow accounts, which do not have a termination date.

This slide contains a table demonstrating repayment mechanism duration options for an ACO entering or transitioning to a two-sided model for performance year 2022. For an ACO that is currently participating in agreement period and entered the BASIC tracks glide path in a one-sided model, beginning on July 1st, 2019, or January 1st, 2020, the ACO has two options to establish to repayment mechanism duration during the performance year 2022 change request cycle.

One option is that the term covers the entire duration in the ACO's participation under a two-sided model plus 12 months following the conclusion of the ACO's agreement period and, therefore, covers the period between January 1st, 2022, through December 31st, 2025.

Another option is that the term covers 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 it will eventually remain in effect for the duration of the agreement period plus 12 months following the conclusion of the agreement period, which is December 31st, 2025.

Here is the expiration date is December 31st, 2023, provided that the first automatic extension must occur on December 31st, 2022, extending the repayment mechanism through December 31st, 2024. The second automatic extension occurs on December 31st, 2023, extending the repayment mechanism through December 31st, 2025. For an ACO applying to enter a two-sided model beginning January 1st, 2022, the ACO has two options to establish repayment mechanism direction during the application cycle. One option is that the term covers the entire duration of the ACO's participation under a two-sided model plus 12-months following the conclusion of the ACO's agreement period and, therefore, covers the period between January 1st, 2022, through December 31st, 2027.

Another option is that the term covers the first two performance years in which the ACO is participating under a two-sided model and provides for automatic, annual 12-month extension of the repayment mechanism such that it will eventually remain in effect for the duration of the agreement period plus 12-months following the conclusion of the agreement period, which is December 31st, 2027.

Here the expiration date is December 31st, 2023, provided that the first automatic extension must occur on December 31st, 2022, extending the repayment mechanism through December 31st, 2024. The second



automatic extension occurs on December 31st, 2023, extending the repayment mechanism through December 31st, 2025. The third automatic extension occurs on December 31st, 2024, extending the repayment mechanism through December 31st, 2026. The fourth automatic extension occurs on December 31st, 2025, extending the repayment mechanism through December 31st, 2027.

In this slide we describe how CMS calculates the amount of the repayment mechanism. The repayment mechanism amount must be equal to the lesser of the following, in accordance with the Shared Savings Program's regulation.

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

The Repayment Mechanism Arrangements Guidance includes an example of the calculation methodology. Draft repayment mechanism documentation does not need to include a dollar amount. CMS anticipates issuing the final repayment mechanism amount at RFI-2, during phase 1 of the review cycle on August 25th, 2021. We encourage ACOs to wait until CMS issues the final amount before finalizing the repayment mechanism arrangement.

The dollar amount funded by the repayment mechanism may exceed the amount specified in the communication of the final amount by CMS. Within ACO-MS, repayment mechanism amount estimates are provided within the Participation Options Report, available in the Reporting tab, with Phase 1, RFI-1, and RFI-2. Within the report, refer to the Estimate of High or Low Revenue tab.

As an ACO that is signed into ACO-MS, you'll see the icon shown on this slide to retrieve the information provided in the Participation Options Report. Within ACO-MS, repayment mechanism amount estimates are also accessible in the Application Cycle tab, in the Repayment Mechanism Amount Calculation pop-up.

To view, select the ACO from the My ACOs tab and then locate the Application Cycle tab. On the left-hand side thumb, find the row designation that specifies repayment mechanism amount. If applicable, this row will show a hyperlink amount. Click on the hyperlink amount to show the calculation.

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. This statement should cite the regulations at 42 Code of Federal Regulations Part 425. Refer to the Repayment Mechanism Arrangement Guidance, for examples, within the Escrow Agreement Template, Letter of Credit Sample, and Surety Bond Sample.

The repayment mechanism documentation should allow for payment to CMS in response to written notice from CMS, sometimes referred to as a demand letter from CMS.

After the repayment mechanism has been used to repay any portion of shared losses owed to CMS, the ACO must replenish the amount of funds available through the repayment mechanism within 90 days. The resulting amount available through the repayment mechanism must be at least the amount specified by CMS. If it is not



possible for the ACO to replenish the existing repayment mechanism arrangement, for example, because the arrangement was terminated, the ACO is required to establish one or more new repayment mechanisms to support its participation in the Shared Savings Program and maintain compliance with program requirements.

Account fees or other fees associated with establishing, maintaining, or canceling a repayment mechanism are the responsibility of the ACO and should not be paid out of the principal for an escrow account or penal sum of surety bond.

In the case of a letter of credit, all of the issuing institution's charges and fees are paid by the ACO and shall not be deducted from any payment the issuing institution makes to CMS under the letter of credit. This portion of the presentation is oriented to discussing terms specific to each repayment mechanism type.

At this point, I would like to transition the presentation to Heidi McMahon.

Heidi McMahon: Thank you, Joe. We will review the availability of sample documents in ACO-MS with prepopulated content in fillable fields. We will also review key terms specific to each repayment mechanism type and common errors specific to each repayment mechanism type.

The Shared Savings Program to Repayment Mechanism Arrangements Guidance includes a surety bond sample, a letter of credit sample, and then escrow agreement template, which we collectively referred to as samples in this presentation. Use of these CMS-approved samples will minimize the potential need for revisions and should expedite CMS's review, but it does not guarantee CMS's approval of the repayment mechanism documentation. When submitting a draft to CMS for review, we ask that ACOs and financial institutions indicate modifications to a CMS-approved sample in track changes within a Word document. Further, CMS may return feedback on the draft document using track changes and review comments.

Many repayment mechanism deficiencies are avoidable errors that your ACO can help prevent. One common deficiency is a mismatch between the ACO legal entity name listed on the repayment mechanism document and the ACO legal entity name in ACO-MS. The ACO legal entity name listed within the repayment mechanism must match the ACO legal entity name listed in ACO-MS.

Another common deficiency is an incorrect agreement period start date. Generally, the correct date is the date that the ACO enters into the Medicare Shared Savings Program ACO Participation Agreement with CMS.

A common deficiency within the letter of credit or surety bond is that the repayment mechanism's expiration date or duration is incorrect. Another common deficiency is the dollar amount. It is a numerical dollar amount or the written dollar amount or both is stated incorrectly or contains a typographical error. The dollar amount must be accurately stated and must be at least the required final repayment mechanism amount specified by CMS.

We encourage ACOs and financial institutions to proofread the repayment mechanism documentation prior to submission. The Repayment Mechanism Arrangements Guidance includes an escrow agreement template, a letter credit sample, a surety bond sample that meets the Shared Saving Program requirements.



Starting with the application cycle for January 1st, 2022, start date and the performance year 2022 change request cycle, ACO-MS will include features that allow ACOs to download prepopulated document — repayment mechanism document based on the relevant template or sample.

This functionality is accessible to ACO when they are selecting the repayment mechanism type. For applicants, navigate to the Repayment Mechanism tab, and for currently participating ACOs, navigate to the Repayment Mechanism Task on your dashboard.

Under Repayment Mechanism Type, select Applicable Type, then select the Download button to access the prepopulated document within – with ACO-specific information within certain fillable fields including the ACO legal entity name of displayed within ACO-MS, the participation agreement effective date, and the duration options for the expiration date.

ACOs have the opportunity to select one or more repayment mechanism types and download a prepopulated document for each. This slide indicates the view within ACO-MS that shows the button for download CMS escrow. Once the ACO has selected its repayment mechanism type to be funds placed in escrow with an insured institution CMS escrow agreement.

Once an ACO has downloaded a prepopulated repayment mechanism document from ACO-MS, the ACO can send the document to its financial institution outside of ACO-MS. When the ACO is ready to submit its repayment mechanism documentation to CMS for review, the ACO will need to upload the document within ACO-MS.

The view on this slide shows the functionality for uploading the repayment mechanism document, which is another step within selecting the repayment mechanism type.

Once an ACO uploads its repayment mechanism documentation, the ACO completes the submission by clicking on the Submit Repayment Mechanism for CMS Disposition button.

Further, CMS and the U.S. Bank National Association have a standard escrow account agreement in place for use between U.S. Bank and third parties, where CMS is the recipient of funds held in escrow if payment is due to CMS. To open a U.S. Bank escrow account, the ACO should contact Stephanie Haysley by phone at 804-343-1567 or by email at stephanie.haysley@usbank.com. An ACO-MS and ACO specified is coordinating with U.S. Bank on establishing an escrow account by selecting that checkbox that is the repayment mechanism type is U.S. Bank Escrow Agreement.

The ACO must also uploaded draft U.S. Bank escrow agreement for CMS review once available to the ACO. The image on this slide also demonstrates the option for an ACO to select checkboxes in ACO-MS that it does not currently have a repayment mechanism document to upload, and that the ACO agrees to upload the documents in the future when the documents are ready for CMS review and by no later than the final due date. Please refer to the Repayment Mechanism Arrangements Guidance available on the Shared Service Program website to access a sample of the templates without pre-populated ACO specific information.

We begin our review of the details of each repayment mechanism types with the escrow agreement. The requirements for escrow agreement as repayment mechanisms are specified in Section 3 of the Repayment



Mechanism Arrangements Guidance and reflected in the CMS escrow agreement template. Escrow agreements are multipage documents, and this slide provides an overview of the components of the CMS escrow agreement.

The escrow agreement is completed by the ACO and the financial institution and must be signed by the ACO; the bank and CMS must also provide counter signature. CMS will only sign the escrow agreement. Ancillary documents will not be signed. The signature requirement for the ACO and the bank are often identified as common errors within the escrow agreement.

The ACO and bank may wait to complete the signatory requirements within the escrow agreement until final execution of the repayment mechanism documentation. Schedule I, titled Notice and Deposit Information, must be completed by the ACO, the bank, and CMS. The CMS escrow agreement includes CMS's contact information in schedule one. Exhibit A, titled Certification of Shared Losses or Distribution of Assets, is completed by CMS. For providing instructions to the bank regarding demand for payment or distribution of escrow fund, the ACO or bank should not populate Exhibit A.

Schedule II, titled Account and Description Term is completed by the bank. A common error is the omission of the escrow account number. And finally, Schedule III, titled Escrow Agencies and Disclosures, will be completed by the bank. The bank has the opportunity to provide independent schedule of fees and/or disclosures for the agreement.

This presentation includes excerpts of escrow agreement tax corresponding to certain Shared Savings Program requirements. We encourage ACOs and financial institutions to refer to the CMS escrow agreement template in order to review the complete text of the agreement.

As indicated in the right of this slide, escrow funds must be invested in a permissible investment type, specifically a money market account, treasury-backed securities, or both. An interest-bearing money market deposit account may be used. The ACO and bank will designate the investment in which within the CMS escrow agreement template on Schedule II.

For an example, the image on the left side of the slide is an excerpt of the investment language from section 6B of the CMS escrow template. As indicated on the right of the slide, the instructions for the disbursement of assets, escrow termination, and asset replenishment must be consistent with CMS's standard escrow instruction. Refer to Section 10 and Exhibit A of the CMS escrow agreement template for language that meets this requirement.

As indicated in the right of the slide, the cost, fees, and expenses associated with the escrow account, including any legal expenses incurred by the escrow agent or the ACO, are not born by CMS and are not charged to the principle referred to the related statement and Schedule III of the CMS escrow agreement template as shown on the left of the slide.

Further, the escrow account principle cannot be encumbered for any purposes other than repaying shared losses owed by the ACO to CMS. Also, CMS is not required to indemnify any person or entity against any loss, claim, damages, liability, or expenses including the cost of litigation arising from the escrow agreement or the subject of the agreement.



Please refer to the related statement in Section 4.d of the CMS escrow agreement template. A common error within the escrow agreement submission is the modification to the indemnification article. Another condition of an escrow agreement is that CMS will receive advance notice of any change in the amount of the funds held in escrow.

Lastly, the escrow account must be fully funded up to the final repayment mechanism amount by the date specified by CMS. CMS encourages ACOs to work with a financial institution to fully fund the escrow account by the deadline specified by CMS for finalizing the repayment mechanism.

A common error within the escrow agreement submission is that the banking institution does not provide CMS with the letter detailing that the escrow funds were on deposit and the amount of the required final repayment mechanism amount determined by CMS.

Next, we turn our attention to reviewing specific terms related to a letter of credit, which are specified in Section 4 of the Repayment Mechanism Arrangements Guidance and reflected in the letter credit sample. As indicated on the right of the slide, the letter of credit must be irrevocable, and CMS must be designated as the sole beneficiary within the letter of credit.

The left of the slide shows an excerpt from a letter of credit sample listing CMS is the beneficiary and specifying the address information for CMS. A common error within the letter of credit submission is that the institution or ACO-specific information is not added. It is left blank or it is incorrect.

As specified on the right of the slide, the appropriate credit amount must be specified within the letter of credit and a line with the required final repayment mechanism amount determined by CMS. The left of the slide shows the fields for the written and numerical dollar amount within the letter of credit sample. A common error within the letter of credit submission is incorrectly stated or written or numerical amount. Also shown here is a letter of credit sample allows for the specification of the letter credit duration by selecting one of two check boxes.

A common error within the letter of credit submission is that an incorrectly stated expiration date is used. Earlier in our presentation, we discussed the duration example, which may be helpful for ACOs and financial institutions to reference when drafting the repayment mechanism. As specified on the right of the slide, the letter of credit must include a term allowing CMS to demand payment under a letter of credit as specified in Section 4V of the repayment mechanism arrangements guidance.

The left of the slide shows how this provision is specified within the letter of credit sample and we encourage financial institutions to utilize this language when preparing the letter of credit. A common error within the letter of credit submission is that the term allowing CMS to demand payments under the letter of credit does not match the requirements in the guidance.

For instance, the term may be considered deficient if it indicates that a statement from CMS is purportedly signed by an authorized CMS signatory. Further, a letter of credit must specify that multiple impartial drawings are allowed.



As specified on the right of the slide, all of the issuing institutions charges and fees are paid by the ACO and shall not be deducted from any payment the issuing institution makes to CMS under the letter of credit. The left of the slide shows how a related term is specified within the letter of credit sample.

We are now going to review the terms specific to a surety bond which is specified in Section 5 of the Repayment Mechanism Arrangements Guidance and reflected in the surety bond sample. The surety bond must contain a statement naming the ACO as principal, CMS as obligee, the insurance company as surety, and include a statement that the principal maturity bond themselves, their errors, executors, administrators, successors, and assignees jointly and severally.

The left side of the slide shows how this provision is specified within a surety bond sample. The image on the slide also shows certain fillable fields within a surety bond sample including a field for the surety company's legal entity name, the surety company's address. The surety company's name, street address, post office box number, city, state, and zip code on surety bond should be identical to the surety legal entity name and address listed on the U.S. Department of Treasury's list of certified companies.

A common error within the surety bond submission is that the contact information for the surety is missing or inconsistent with the information on the U.S. Department of Treasury's list of certified companies. As shown here, the surety bond sample contains fields for the written dollar amount and the numerical dollar amount. The amount must align with the required final repayment mechanism amount determined by CMS.

As shown on the left of the slide, the surety bond sample includes the field for the agreement effective date, which is the date of the first day of the ACO's agreement period. A common error within the surety bond submission is that an incorrect effective date is indicated.

As indicated on the right of the slide, the surety bond must contain a statement that the surety is liable under the bond for any shared losses determined by CMS to be owed for an ACO or owed by the ACO for the performance years under a two-sided model covered by the ACO Shared Saving Program participation agreement, and CMS may collect on the bond up to the amount of the bond or the penal sum.

This language is demonstrated at point 1 within the surety bond temple excerpt shown on the left of the slide. As shown on the right of the slide, the surety bond must contain a statement, but the surety agrees to pay shared losses owed within 30 days of receiving written notice from CMS demonstrating that an ACO has failed to pay this shared losses in full.

The bond must contain a statement that the surety agreed not to contest the amount owed as reflected in the documents provided by CMS to the ACO. Additionally, the bond must provide assurance that the surety will notify CMS promptly in writing if there's a lapse in surety bond coverage or change in the bond amount.

To the left of the slide shows how these provisions are specified within our surety bond sample. Point 5 of surety bond sample details the replenishment provision that we've previously covered in this presentation. A common error with surety bond submission is that the replenishment language states shorter periods than 90 days.



Additionally, as specified on the right of the slide, the surety bond must contain a statement that the surety will notify CMS at least 90 days in advance of cancellation or termination of the bond. Further, the surety bond must include a statement that they surety will remain liable for any and all indebtedness of the principal to the obligee which occurred prior to the effective date of the cancellation or termination of the bond.

A common error within the surety bond submission is that this statement is missing. As shown here, surety bond sample allows for the specification of the bond duration by selecting one of two check boxes. Earlier in the presentation, we discussed duration examples, which may be helpful for ACOs and surety to reference when drafting the repayment mechanism.

This slide concludes the surety bond demonstration and shows a signature fields within the surety bond sample. Final surety bond must be signed by the ACO and the surety. Executed bonds include a notarized power of attorney documentation; CMS may accept surety bonds or surety bond rider executed using electronic or digital field. ACOs requiring this flexibility should notify CMS in writing during the repayment mechanism review process.

CMS may request a copy of the digital signature audit report to accompany the use of the surety bond or rider executed using digital or electronic field, if applicable. At a later date, CMS may request to receive an original hard copy by traceable carrier.

A renewing ACO or reentering ACO that has the same legal entity name as an ACO that previously participated in the program, made existing repayment mechanism to establish its ability to repay shared losses incurred for the performance year and a new agreement period. CMS will require that an ACO extend the term of the existing repayment mechanisms by the amount of time specified in the program's regulations and, if necessary, to revise the amounts of the repayment mechanism to reflect the new repayment mechanism amount determined by CMS.

Track 1+ model ACOs that wish to use their existing repayment mechanisms to support the participation in a new agreement period will need to ensure that the arrangement continues to include model specific references to cover the repayment mechanism losses for participation in the Track 1+ plus model.

An existing repayment mechanism can be revived through an escrow agreement amendment, a letter of credit amendment, or surety bond rider, as applicable. Please refer to the Payment Mechanism Arrangements Guidance for a sample of an escrow agreement amendment sample.

Renewing ACOs will have an additional question within ACO-MS asking their intent to use the repayment mechanism to use an existing repayment mechanism for their new agreement period. At this point, I will transition the presentation back to Joe Otto. Thank you.

Maintaining a Repayment Mechanism

Joe Otto: Thank you, Heidi. In the next section of the presentation, we discussed maintaining repayment mechanism that complies with Shared Savings Program requirement. For agreement periods beginning on or after July 1st, 2019, CMS recalculates the ACO's repayment mechanism amount before the second – any subsequent performance year in the agreement period.



CMS will determine if the recalculated repayment mechanism amount is at least 50 percent or \$1 million dollars greater than the existing repayment mechanism amount. If an ACO's recalculated the repayment mechanism amount exceeds the aforementioned threshold, CMS will issue the ACO a written notice, 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. Aside from the initial demonstration of the adequacy of the repayment mechanism, the ACO must demonstrate the adequacy of its repayment mechanism prior to any change in the terms and type of payment mechanism and at such other times as requested by CMS.

During the change request cycle, CMS provides ACOs currently participating in two-sided models with data on the payment mechanism amount estimates and an indicator for whether they were calculated amount met or did not meet the threshold to update the repayment mechanism amount.

The ACO can locate this information in ACO-MS within the Application Cycle tab or within the Participation Options Report, within the Reporting tab. After CMS issues final disposition, an ACO required to adjust its repayment mechanism amount as a result of the annual recalculation will receive a separate written notice letting the ACO know that the amount of its repayment mechanism must be increased to the recalculated repayment mechanism amount.

We recommend ACOs hold on finalizing modifications to the repayment mechanism arrangements until receiving this notification from CMS. An ACO determined to owe shared losses receives a written notification or demand letter from CMS of the amount of shared losses – it must be paid to the program.

If an ACO shared losses, the ACO must take payment in full to CMS within 90 days of receipt of notification. If the ACO does not completely repay shared losses by the deadline specified in the demand letter, CMS will use the repayment mechanism to support recoupment. ACOs must also replace shared losses to avoid accruing interest on any amount that remains unpaid after the 90-day payment window and referral of an unpaid debt to the Department of Treasury for collection.

After the repayment mechanism has been used to repay any portion of shared losses owed to CMS, ACOs must replenish the amount of funds available through the repayment mechanism within 90 days. Your payment mechanism may be terminated at the earliest of the following conditions: 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.

Also, 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.



Submitting Originals to CMS and Executing Arrangements

In the final section of our presentation, we discuss submission of original documentation to CMS and execution of final repayment mechanism arrangements. The financial institution must sign each type of repayment mechanism. The type of repayment mechanism submitted will determine the signatory requirements of the ACO.

An ACO must sign the final surety bond and escrow agreement or amendment to the escrow agreement or amendment to a letter of credit. Generally, the ACO is not required to sign an original letter of credit. As mentioned earlier in the presentation, there are four authorized users in ACO-MS that meet the repayment mechanism requirement signatory requirement,

the ACO executive authorized to sign primary and secondary contact and the financial contact.

If the repayment mechanism requires counter signature by CMS, CMS will counter sign the final repayment mechanism after the program application has been approved. CMS will only sign the repayment mechanism; ancillary documents will not be signed.

Please note that if an ACO submits a final letter of credit for review and CMS requires any changes to the submitted documentation, it may delay the establishment of ACO's repayment mechanism. When delivering original documentation to the CMS, ACOs or financial institutions should complete both of the following actions: send a scanned or electronic copy of the original documentation to CMS either as an upload to ACO-MS or via email. Failure to send the scanned or electronic copy may delay CMS's review and approval of the documentation. Send the original documentation to CMS. We recommend that ACOs and financial institutions send original documentation to CMS via a traceable carrier.

For example, FedEx, UPS, or DHL and provide the tracking information to CMS by email. Repayment mechanism arrangements guidance contains a documentation cover sheet, and we recommend completing this cover sheet and including it with original repayment mechanism documentation being sent to CMS.

This concludes the prepared portion of the presentation. I want to thank you for your attendance today and we look forward to addressing your questions on the Shared Savings for Payment Mechanism Requirement.

Question & Answer Session

Leah Nguyen: Thank you, Joe. Our experts will now take your questions. We will begin our session by answering a few questions from webcast participants and then take questions from the phone.

Operator, please prompt the telephone users and begin to compile the Q&A roster.

Operator: To ask a question, press "star" followed by the number "1" on your touchtone phone. To remove yourself from the queue, press the "pound" key. Remember to pick up your handset to ensure clarity. Once your line is open, state your name and organization. Please note your line will remain open during the time you're asking your question, so anything you say or any background noise will be heard in the conference.



If you have more than one question, press “star” “1” to get back into the queue. We will address the additional questions as time permits. Please hold while we compile the Q&A roster.

Please hold while we compile the Q&A roster.

Leah Nguyen: Okay and while you compile the roster, we will start taking questions from the webcast. I will turn it over to LMI.

Heidi McMahon: Thanks, Leah. Commonly received question is when is the final repayment mechanism available for the PY 22 and where can I locate the final amount?

CMS anticipates issuing the final repayment mechanism amount on August 25th for phase 1 of the application RFI-2 for an ACO that is planning to participate in a two-sided risk which is the BASIC level, BASIC track level C, D, or E, and the ENHANCED track for the performance year 2022.

An ACO will be able to view the repayment mechanism amount during the review cycle in ACO-MS by selecting its ACO ID from My ACO tab and selecting the Application Cycle subtab or accessing the Participation Options Report available on Reporting tab.

A second commonly referred to question is when are the repayment mechanism documents due to CMS for performance year 2022? All repayment mechanism documents must be fully funded and executed by ACOs and issuing institutions and submitted to CMS by September 10th, 2021.

Have any questions compiled from the phone?

Operator: No, we don't have any on the phone.

Heidi McMahon: Okay, great. We'll go ahead and transition some of the other questions, so thank you.

One of the questions that we received is is an escrow account the same as the bank checking account?

So, the – an escrow agreement is defined as an arrangement by the following. So, it's one-party deposits in asset with a third-party or escrow agent, who in turn makes delivery to another party. If and when a specified condition of the contract are not – aren't met. So, the depositors, the ACO, the escrow agent is defined as a financial institution and the recipient of the escrow agreement is CMS.

And so, the banking checking account is not sufficient to meet the escrow agreement requirement as a repayment mechanism.

So, another question that we had received in the queue states in the terms of the date, should we submit the draft repayment mechanism in the June 8th through June 28th application cycle?

So, yes, we strongly encourage that ACOs submit draft repayment mechanism documentation; preferably, we have the Word document early in the application process or the annual change request cycle to allow for



additional time for the reviewers to provide feedback on the documentation and for the ACO to resolve any issues.

For instance, during the Shared Savings Program application cycle, ACOs applying to enter the two-sided model, should submit the draft repayment mechanism with the submission of your application, and draft documentation does not need to include an amount. So, we would encourage you to submit that in Word with potential track changes.

I see another question in the queue that has been asked, can we use a combination of allowed repayment mechanisms if the total amount covered by the combination is equal to or exceeds the required amount provided by CMS? Yes, you may provide multiple repayment mechanism documents for review. We would expect that option and each document that you would present for review would need to meet Shared Savings Program requirements, but that is a potential.

So, one of the other commonly asked questions is where can I find the Repayment Mechanism Arrangements Guidance. The updated Repayment Mechanism Arrangements Guidance version 10 is now available by the Program Guidance & Specifications webpage or on the application toolkit.

Another question is that we sometimes receive is where can I find the CMS address for sending original final repayment mechanism documentation? The Repayment Mechanism Arrangements Guidance section 7 titled the Contact Information and Delivery of Original Documentation and Appendix E, Repayment Mechanism Documentation Cover Page, includes the CMS address for sending original and final executed, fully funded repayment mechanism documentation.

CMS encourages ACOs and financial institutions to use the cover page when sending documentation to CMS. This is extremely important to you – to include the mail stop – which is populated within the cover sheet when sending documentation to CMS. And lastly, we would also encourage ACOs to send the documents by a traceable carrier. As an example of using FedEx, UPS, or DHL and providing the tracking information to our team is – to the CMS team is critical because that helps our team track – check the details with the retrieval of the documentation.

Joe Otto: Heidi, this is Joe. I can take a few.

Heidi McMahon: That sounds great, Joe. thank you

Joe Otto: Thank you very much. So hopefully this is not repetitious, and we are trying to triage questions as they come in and I don't believe that we covered the question yet. Is an escrow account the same as a bank checking account? For example, the account that we currently receive an insured savings payments through.

So great question and just as we were responding, an escrow agreement defines the arrangement by the following. One party deposits an asset with a third-party person or an escrow agent, who in turn makes the delivery to another party if and when the specified conditions of the contract are met. The depositor is the ACO. The escrow agent is a financial institution; the recipient of the arrangement is CMS. So just in short, the escrow account is not the same as a bank checking account that was established to receive share taking payments as earned.



Another question that came in – apologize – scrolling down – is it required to use U.S. Bank for an escrow account or maybe ACO set up an escrow account at its current bank? And just as a response to that, an ACO may establish an escrow agreement with a financial institution other than U.S. Bank in really any financial institution that the ACO has an existing or wants to establish an existing relationship with.

Where ACOs plan to use the banking institution other than U.S. Bank to establish an escrow account, CMS encourages the adoption of the CMS-approved escrow agreement template provided as Appendix A of the Repayment Mechanism Arrangements Guidance. Use of the template should expedite CMS review and minimize the potential need for revisions, but it does not guarantee approval from CMS's side. That template is both available on that Shared Savings Program website and it will be available for download through ACO-MS.

We have received a few questions related to a proposed rule, the Inpatient Prospective Payment System Proposed Rule. We would like to hold on answering those questions for now. We do have additional guidance that will be coming out shortly to specify in detail more information about how the repayment mechanism relates to the IPPS and what we're calling freeze relating to ACOs having the potential to possibly freeze in their current level within the BASIC track and not advance further on in BASIC track; however, that is a proposed rule, not yet finalized, and we want to make sure that we provide clear communication to ACOs related to that possible proposed freeze so that we can clearly provide information to ACOs how the repayment mechanisms relate to the proposed freeze. Heidi, were there any other questions that you saw on the queue?

Heidi McMahon: Yes, Joe. I see another one that we would be able to address. There is a question that came in. It says, if choosing option 2 for the duration requirement, would you require a new bond for each performance tier? And thank you for that question. The repayment mechanism must be in effect for the duration of the ACO's participation under two-sided model plus 12 months following the conclusion of the agreement period in order to meet the repayment mechanism requirement.

Therefore, the repayment mechanism required to cover each performance tier of the participation agreement plus 12 months following the conclusion of the agreement period in order to meet the repayment mechanism requirement, so I know that was probably a mouthful there, but no we wouldn't require a new bond for each performance tier, you should be able to utilize that by transitioning to using a rider if some of the duration options needed to be modified. Thank you for that question.

Another commonly asked question is if I have questions about repayment mechanisms during the review cycle, who should I contact? And the best way to reach the repayment mechanism team during that annual application cycle or change request cycle is to send an email to the ACO applications mailbox that's included in the resources slide. ACOs may also utilize the helpdesk icon in the ACO-MS center or the Shared Savings Program mailbox. CMS requests that ACOs include the ACO ID and the phrase to repayment mechanism within the subject line of the email. So –

Joe Otto: And then I see one that came in, Heidi. This is Joe. I can take another one.

Heidi McMahon: Sounds great. Thank you.

Joe Otto: Thank you. A question that came in from one of our participants is can we locate in the ACO-MS ACO management system the repayment mechanism documents that are currently applicable for this



upcoming performance year? So yes, an ACO-MS, ACOs will have the option to download samples or templates for the different repayment mechanism types, so the letter of credit, surety bonds, and the escrow agreement.

These samples or templates are also available on the Medicare Shared Savings Program website, which we do include in our resources slide. We thank you for the question. We will continue to look for additional questions that are coming in.

Heidi McMahon: Joe, should we do a re-prompt for the phone to see if anyone has any questions?

Joe Otto: That would be great. Thank you.

Heidi McMahon: Okay. Great. Blair, do you want to do a re-prompt?

Operator: To ask a question, press “star” followed by the number “1” on your touchtone phone. To remove yourself from the queue, press the “pound” key. Remember to pick up your handset to assure clarity. Once your line is open, state your name and organization. Please note your lines will remain open during the time you are asking your question. So, anything you say or any background noise will be heard in the conference. If you have more than one question press “star” “1” to get back in the queue, and we will address additional questions if time permits. Please hold while we compile the Q&A roster. Please hold while we compile the Q&A roster. We are showing no audio questions.

Heidi McMahon: Joe, are there any additional questions on the webcast platform?

Joe Otto: I am reviewing it to see which ones we may not have already addressed.

Heidi McMahon: Okay. Take your time.

Joe Otto: I’m not seeing any yet, but Heidi, are you seeing any on your side?

Heidi McMahon: Yes, I was just scrolling through as well and I am not seeing anything pop up right now.

Leah Nguyen: Okay. It sounds like we can probably end a few minutes early if that is okay with both of you.

Joe Otto: Yes, that sounds great, and any questions that either come in after or that were unaddressed today specifically related to like the Inpatient Prospective Payment System Rule, it is my understanding that we will get those in our queue after the presentation that we’ll be able to follow up by email.

Heidi McMahon: That is correct.

Additional Information

Leah Nguyen: Great. So, thank you. On slide 56, you will find a link to evaluate today’s webcast. Evaluations are anonymous, confidential, and voluntary. We hope you will take a few moments to evaluate your experience. An audio recording and transcript will be available in about two weeks at go.cms.gov/mln-events.



I would like to thank our speakers and all participants who joined us for today's Medicare Learning Network event on the Medicare Shared Savings Program. Have a great day.

Operator: This concludes today's call.