



Medicare Shared Savings Program

REPAYMENT MECHANISM

ARRANGEMENTS

Guidance

June 2020
Version #9

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MEDICARE
SHARED SAVINGS
PROGRAM

Revision History (From Version 8 to Version 9)

VERSION	DATE	REVISION / CHANGE DESCRIPTION	SECTIONS AFFECTED IN CURRENT VERSION
9	June 2020	Removal of Track 1+ Model methodology descriptions Updated description and examples of the amount calculations Updated automatic extension language Other revisions for formatting, consistency, and clarity Revised escrow agreement template (Appendix A) Revised sample escrow agreement amendment (Appendix B) Revised letter of credit sample (Appendix C) Revised surety bond sample (Appendix D) Added repayment mechanism cover sheet (Appendix E)	All Note: each Appendix is now accessible through an individual URL noted within this version.

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1 Introduction

1.1 BACKGROUND

The Centers for Medicare & Medicaid Services (CMS) intends this guidance on repayment mechanism arrangements to aid Accountable Care Organizations (ACOs) in establishing and maintaining an adequate repayment mechanism and identifies common mistakes to avoid, ensuring the repayment mechanism promptly satisfies CMS requirements.

Medicare Shared Savings Program (Shared Savings Program) ACOs must establish a repayment mechanism to assure 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)).

To be eligible to participate in a two-sided model (Track 2, the ENHANCED track (formerly Track 3), Levels C, D, or E of the BASIC track, or the Medicare ACO Track 1+ Model (Track 1+ Model)), an ACO must demonstrate that it has established an adequate repayment mechanism. Additionally, an ACO participating in Levels A or B of the BASIC track must demonstrate the adequacy of its repayment mechanism prior to the start of any performance year in which it either elects to participate in or is automatically transitioned to a two-sided model. These ACOs must demonstrate that they are able to repay shared losses incurred at any time within the agreement period and for a sufficient period of time following the end of each agreement period, to permit CMS to calculate the amount of any shared losses that the ACO may owe and to collect the amount from the ACO. ACOs must demonstrate the adequacy of their repayment mechanism arrangements at such other times as requested by CMS.

This version of the guidance document concerns the program requirements for ACOs participating in an agreement period beginning on July 1, 2019, and in subsequent years. While much of this guidance applies to ACOs that started an agreement period prior to July 1, 2019, we encourage these ACOs to contact CMS with questions concerning their repayment mechanism arrangement or applicable repayment mechanism requirements.

1.2 REPAYMENT MECHANISM AMOUNT

Applicants and ACOs transitioning to two-sided models

For ACOs entering an agreement period in Levels C, D, or E of the BASIC track or the ENHANCED track, for agreement periods beginning on or after July 1, 2019, and ACOs in the BASIC track's glide path transitioning from a one-sided model (Level A or B) to a two-sided model (Level C, D, or E), the repayment mechanism amount must be equal to the lesser of the following:

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

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 an ACO, the ACO will be required to repay any remaining balance using alternative funding sources.

Renewing ACOs Applying to Continue Participation in the Shared Savings Program

To confirm that an ACO will be able to repay losses it owes to CMS, the ACO must submit repayment mechanism documentation to CMS showing it has an adequate repayment mechanism as part of the renewal request documentation (pursuant to § 425.204(f)(3)(iv)).

In the case of an ACO that applies to renew its participation agreement and 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 the greater of the following:

- The amount calculated by CMS in accordance with § 425.204(f)(4)(ii); or
- The repayment mechanism amount that the ACO was required to maintain during the last performance year of the participation agreement it seeks to renew.

Track 1+ Model ACOs that wish to use their existing repayment mechanism to support their continued participation in the Shared Savings Program for a new agreement period will need to ensure the arrangement continues to include model-specific references to cover repayment of losses for participation in the Track 1+ Model.

Annual Review of Repayment Mechanism

CMS will estimate the amount of an ACO's repayment mechanism based on available historical data and will give this estimate to the ACO at a time that coincides with the annual application/certification cycle. Additionally, CMS will annually recalculate the repayment mechanism amount estimates for ACOs in two-sided models whose agreement period begins on or after July 1, 2019.

According to § 425.204(f)(4)(iii), an ACO may be required to adjust its repayment mechanism arrangement during its agreement period if the recalculated repayment mechanism amount exceeds the existing repayment mechanism amount by at least 50 percent or \$1,000,000, whichever is the lesser value. CMS will determine if the

recalculated repayment mechanism amount is at least 50 percent or \$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, 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.

Calculation of the Repayment Mechanism Amount

As noted above, the repayment mechanism amount for a BASIC track or ENHANCED track ACO is the lesser of the following:

- One percent of the total per capita Medicare Parts A and B FFS expenditures for its assigned beneficiaries, based on expenditures for the most recent calendar year for which 12 months of data are available ("benchmark-based amount"); or
- Two 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 ("revenue-based amount").

To calculate the repayment mechanism amount for ACOs entering agreement periods beginning on or after July 1, 2019, and for the annual repayment mechanism amount recalculations under § 425.204(f)(4)(iii), CMS will determine an estimate of the number and population of beneficiaries who will be assigned to the ACO. 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. 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. 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 (used in determining the revenue-based amount) by an estimated number of assigned beneficiaries.

Table 1. Calculation Methodology for Benchmark-Based & Revenue-Based Amounts (Example)

Illustration of estimation methodology used to calculate the repayment mechanism amount for a renewing ACO during the application cycle for a January 1, 2020 start date. Additional precision is used in actual calculations and is not shown for purposes of this illustration.

CALCULATION COMPONENT	VARIABLE DESCRIPTION & ENUMERATION	CALCULATION NOTES	BENCHMARK-BASED ESTIMATED VALUES	REVENUE-BASED ESTIMATED VALUES
Assigned Beneficiaries	2018 Assigned Beneficiaries (A)		10,000	10,000
	Assignment Growth (B)		1.00656	1.00656
	Projected 2020 Assigned Beneficiaries (C) [precision: whole number shown]	=AxB	10,066	10,066
Estimated Dollar Amount	2018 Dollars Per Beneficiary (D) [precision: whole number shown]		\$10,000	\$1,000
	Dollar Trend (E)		1.09274	1.09274
	Projected 2020 Dollars Per Beneficiary (F) [precision: 2 decimal places shown]	=DxE	\$10,927.40	\$1,092.74
Forecast Repayment Requirement	Projected 2020 Total Dollars (G) [precision: 2 decimal places shown]	=FxC	\$109,995,208.40	\$10,999,520.84
	Required Percentage (H)		1%	2%
	Forecast Repayment Mechanism Amount (I) [precision: whole number shown]	=GxH	\$1,099,952	\$219,990
Determining the Repayment Mechanism Amount	Existing Repayment Mechanism Amount (K) [precision: whole number shown]	Shown if applicable (existing amount of the two-sided model ACO's repayment mechanism)	\$1,000,000	
	Initial Determined Repayment Mechanism Amount (L) [precision: whole number shown]	L = Lesser of I (Benchmark-based) or I (Revenue-based)*	\$219,990	
	Required Repayment Mechanism Amount (O) [precision: whole number shown]	Compare L to K*	\$1,000,000	

* For ACOs that do not have an existing repayment mechanism, the required amount is equal to the initial determined amount (L). For a renewing ACO, the required repayment mechanism amount (O) assumes the ACO is electing to continue using its existing repayment mechanism to cover its new agreement period and is therefore equal to the higher of the existing repayment mechanism amount (K) or the initially determined repayment mechanism amount (L). Alternatively, a renewing ACO may establish a new repayment mechanism to cover its new agreement period, in which case the required repayment mechanism amount is equal to the initial determined repayment mechanism amount (L).

Addressing the Impact of the COVID-19 Pandemic

In accordance with § 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).

1.3 ESTABLISHING THE REPAYMENT MECHANISM ARRANGEMENT

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:

- Funds placed in escrow established with an insured institution;
- A line of credit as evidenced by a letter of credit that the Medicare program could draw upon, established at an insured institution; or
- A surety bond issued by a company included on the U.S. Department of Treasury's List of Certified (Surety Bond) Companies (available at <https://www.fiscal.treasury.gov/surety-bonds/list-certified-companies.html>).



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.

An ACO may use a combination of the designated repayment mechanisms, 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.

Further details for each repayment mechanism type are provided within this document. The appendices contain a template and samples that meet the Shared Savings Program repayment mechanism requirements.

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. The following authorized users in the ACO Management System (ACO-MS) meet the signatory requirements of the repayment mechanism: ACO Executive, Authorized to Sign (primary), Authorized to Sign (secondary), and Financial Contact.

1.4 REPAYMENT MECHANISM ARRANGEMENT REVIEW

CMS will review an ACO's repayment mechanism arrangement documentation when the ACO applies for participation in an agreement period under a two-sided model or transitions to a two-sided model within its agreement period. CMS will also review an ACO's repayment mechanism arrangement documentation at other times, such as when an ACO establishes a new repayment mechanism during its agreement period (refer to [section 6](#)), is required to increase its repayment mechanism amount (refer to [section 1.2](#)) or must replenish its repayment mechanism (refer to [section 2](#)).

CMS strongly recommends that ACOs submit draft repayment mechanism documentation, preferably as a Word document, early on in the application process or the annual change request cycle, to allow for additional time for reviewers to provide feedback on documentation and for the ACO to resolve any issues. For instance, during the Shared Savings Program's application cycle, ACOs applying to enter an agreement period in a two-sided model may submit draft repayment mechanism documentation with the Notice of Intent to Apply (NOIA) and with the submission of their application. Draft documentation does not need to include an amount.

Figure 1 illustrates an overview of the repayment mechanism documentation review process during an application cycle and annual change request cycle (for ACOs transitioning to a two-sided model in the BASIC track's glide path). For deadlines, refer to the [Application Types & Timeline webpage](#).

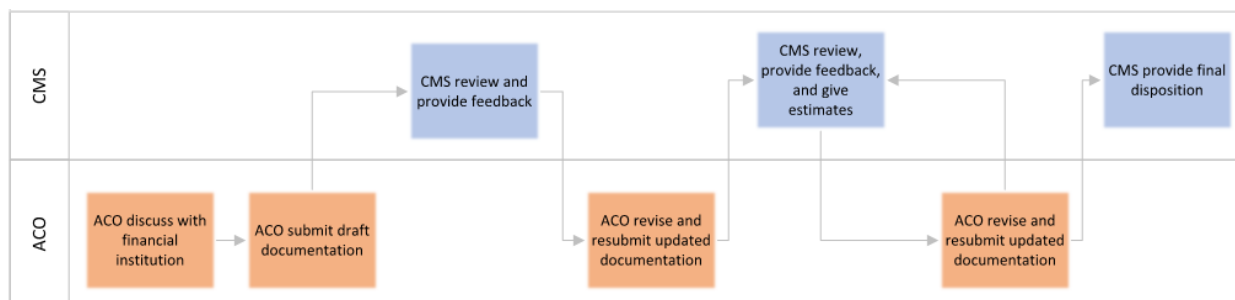


Figure 1. Repayment Mechanism Review Process

1.5 REPAYMENT MECHANISM ARRANGEMENT EXTENSION AND CANCELLATION

An ACO currently participating in a two-sided model that wishes to renew its participation in the Shared Savings Program and enter a new agreement period beginning on July 1, 2019, and in subsequent years, 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 § 425.204(f)(3)(iv)). CMS will require the ACO to extend the term of the existing repayment mechanism by the amount of time specified in § 425.204(f)(6)(ii) and, if necessary, to increase the amount

of the repayment mechanism to reflect the new repayment mechanism amount (refer to [section 1.2](#)).

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. The repayment mechanism can be canceled prior to its expiration if an ACO does not owe CMS shared losses. Further details regarding the conditions under which a repayment mechanism can be terminated are detailed in [section 2](#).

2 General Terms of the Repayment Mechanism

Beneficiary/Recipient/Obligee of Repayment Mechanism: The Centers for Medicare & Medicaid Services. CMS' address is 7500 Security Boulevard, Mail Stop C5-15-12 Baltimore, MD 21244. Financial institutions issuing repayment mechanisms for Shared Savings Program ACOs must designate CMS as the sole beneficiary within a letter of credit, recipient within an escrow agreement, or obligee within a surety bond.

Liable Party: 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.

Term: 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, except as noted below.

For an ACO establishing a new repayment mechanism, to meet this requirement, the repayment mechanism must satisfy one of the following criteria:

- (i) 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
- (ii) 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.

For a renewing ACO that 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 existing repayment mechanism must be amended to meet one of the following criteria:

- (i) 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

- (ii) 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.

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.

Automatic Extension Clauses

ACOs may use clauses providing for the automatic, annual extension of a repayment mechanism (also referred to as an automatic renewal or auto-renewal clause) 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 and 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.

For example, for an ACO entering into a participation agreement with CMS under a two-sided model on January 1, 2020, that chooses this option (that is, a repayment mechanism that has a term of at least two performance years and that provides for automatic, annual 12-month extensions), the initial term of the repayment mechanism arrangement would be 24 months, covering the 12-month performance year beginning January 1, 2020, and the 12-month performance year beginning January 1, 2021. At the end of 2020 (after the repayment mechanism has been in effect for one performance year), the term of the repayment mechanism would be automatically extended by 12 months through the end of the third performance year of the agreement period (through December 31, 2022). Additional automatic, 12-month extensions would occur on a rolling basis at the end of the second, third, fourth, and fifth performance years, ultimately extending the arrangement until 12 months after the end of the agreement period (through December 31, 2025).

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.

Conditions for Termination

The repayment 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.

Dollar Amount: CMS will provide an estimated repayment mechanism amount within its request for information (RFI) communication. CMS will provide a final repayment mechanism amount during the application review period or (if applicable) during the annual change request cycle. The dollar amount funded by the repayment mechanism must at least be the amount specified in the communication of the final amount by CMS.

Replenishment of the Repayment Mechanism

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. 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.

Notification of Changes in Amount

CMS must be provided with notice of any change in the amount funded by the repayment mechanism or terms of the repayment mechanism.

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 should not be paid out of the principal for the repayment mechanism.

Note on 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.

Other Requirements: Reference the sections below for further guidance applicable to specific repayment mechanisms.

3 Funds Placed in Escrow

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. The ACO should contact Stephanie Haysley at 804-343-1567 or stephanie.haysley@usbank.com to open a U.S. Bank escrow account.

For ACOs that plan to use a banking institution other than U.S. Bank to establish an escrow account, CMS strongly encourages the adoption of the CMS-approved escrow agreement template provided in [Appendix A](#). Use of the template should expedite CMS' review and minimize the potential need for revisions, but it does not guarantee CMS' approval.

If the ACO wants to establish an escrow account at a different banking institution and has elected 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. Generally, CMS will accept an escrow agreement with a different banking institution if it meets the General Terms of the Repayment Mechanism, as described in [section 2](#), and under the following conditions:

- (i) The institution is insured.
- (ii) Funds are invested in a money market account, such as in treasury backed securities, mutual funds, or both. An interest-bearing money market deposit account may be used.
- (iii) The instructions for disbursement of the assets, escrow termination and asset replenishment are consistent with CMS' standard escrow instructions (refer to [Appendix A](#), Section 10).
- (iv) The costs, fees, and expenses associated with the escrow account, including any legal expenses incurred by the escrow agent or the ACO, are not borne by CMS, and such costs are not charged to the principal.
- (v) The principal cannot be encumbered for any purpose other than repaying shared losses owed by the ACO to CMS.

- (vi) CMS is not required to indemnify any person or entity against any loss, claim, damages, liabilities, or expenses, including the cost of litigation arising from the escrow agreement or the subject of the agreement.
- (vii) CMS will receive advance notice of any change in the amount of funds held in escrow.
- (viii) The escrow account is fully funded up to the final repayment mechanism amount by the date specified by CMS.

A renewing ACO applying to continue participation in the Shared Savings Program may wish to amend its existing escrow agreement to support participation in its new agreement period (refer to [section 1.5](#)). Refer to [Appendix B](#) for a sample escrow agreement amendment for renewing ACOs to amend the escrow agreement's expiration date. To support the ACO's renewal application, the ACO may also be required to increase the amount of funds held in escrow to the amount calculated by CMS during the application review period. The Escrow Agent may demonstrate this increase in documentation separate from an amendment to the escrow agreement.

CMS encourages ACOs selecting an escrow account as their repayment mechanism to submit a **draft** of the escrow agreement, or escrow agreement amendment, in a Word document to CMS for review, to assist with the review feedback process.



ESCROW AGREEMENT COMMON ERRORS

1. Modification to the indemnification article within the escrow agreement. Refer to the indemnification article in the CMS-approved escrow agreement template ([Appendix A](#), Section 4d) for preferred phrasing.
2. The banking institution or the ACO did not sign the escrow agreement.
3. The banking institution did not include the account number (for example, refer to the CMS-approved escrow agreement template [Appendix A](#), Schedule II).
4. The ACO's legal entity name does not match the CMS system of record.
5. The banking institution did not provide CMS with a letter detailing that the funds are on deposit in the amount of the required final repayment mechanism amount.

4 Letter of Credit

Letter of Credit Terms: CMS will generally accept a Letter of Credit if it meets the General Terms of the Repayment Mechanism, as described in [section 2](#), and under the following conditions:

- (i) The institution establishing the letter of credit is insured.
- (ii) The letter of credit is irrevocable.
- (iii) CMS is designated as the sole beneficiary.

- (iv) The appropriate credit amount is specified and aligns with the required final repayment mechanism amount.
- (v) The terms allow CMS to demand payment for an amount available under the letter of credit upon presentation to the issuing institution of a dated statement signed by an authorized signatory of CMS on CMS's letterhead that includes the following information: Standby Letter of Credit Number; issuance date of the letter of credit; issuing institution name; the amount demanded by the Beneficiary (CMS) from the letter of credit Applicant (ACO) as provided under the Medicare Shared Savings Program regulations at 42 CFR Part 425; and the method of payment to the Beneficiary. This demand is accompanied by the following: the original letter of credit and all amendments thereto, if any; and a copy of the written notice from the Beneficiary to the Applicant of the amount owed.

Note: CMS will consider terms that provide for electronic presentation and the circumstances for electronic presentation.

- (vi) Partial or multiple drawings are allowed.
- (vii) 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.

Automatic Extension Clauses: Refer to the discussion of "Term" in [section 2](#) for additional information.

Sanctioned Entity Clauses: CMS has found language specified in sanctioned entity clauses problematic because such clauses could prevent payment to CMS if the ACO becomes a sanctioned entity. Ideally, the institution issuing the letter of credit should omit the clause entirely. Another option is for the issuing institution to include the clause but modify it to exclude from the definition of "sanctioned entity" any entity sanctioned by or debarred from a federal health care program.

Documentation: Documentation of only the availability of a line of credit 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.

CMS encourages ACOs selecting a Letter of Credit as their repayment mechanism to submit a **draft** letter of credit in a Word document to CMS for review. CMS will not provide a signature to cancel a non-approved repayment mechanism if the ACO or issuing institution submits a final letter of credit that requires revision. 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 the ACO's repayment mechanism.

CMS strongly encourages the adoption of the CMS-approved letter of credit sample provided in [Appendix C](#). Use of the sample should expedite CMS' review and minimize the potential need for revisions, but it does not guarantee CMS' approval.



LETTER OF CREDIT COMMON ERRORS

1. The ACO relied upon the sample within [Appendix C](#) and did not add or verify institution- or ACO-specific information.
2. Language errors are present in a fully executed letter of credit. CMS encourages ACOs to submit a draft letter of credit to CMS for review.
3. The term allowing CMS to demand payment under the letter of credit does not match the language detailed in section 4(v).
4. The term describing the documentation needed from CMS to demand payment under the letter of credit specifies that a statement from CMS is "purportedly" signed by an authorized signatory. CMS recommends removing the word "purportedly." The issuing institution should ensure the signature is legitimate, such as by calling the authorized CMS official for verification.
5. The written or numerical amount on the letter of credit is incorrectly stated.
6. The expiration date of the letter of credit is incorrectly stated.

5 Surety Bond

Surety Companies: The surety bond should be issued from a company included on the [U.S. Department of the Treasury's List of Certified \(Surety Bond\) Companies](#).

Surety Bond Terms: CMS will generally accept a surety bond if it meets the General Terms of the Repayment Mechanism, as described in [section 2](#), and under the following conditions. The bond must contain the following:

- (i) A statement naming the ACO as the Principal, CMS as the Obligee, the insurance company as Surety and including a statement that the Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assignees, jointly and severally, by these presents.
- (ii) The surety's name, street address or post office box number, city, state, and ZIP code on the surety bond should be identical to the surety's legal entity name and address as listed on the [U.S. Department of the Treasury's List of Certified \(Surety Bond\) Companies](#).
- (iii) The appropriate surety bond amount is specified and aligns with the required final repayment mechanism amount.
- (iv) A statement that the surety is liable under the bond for only the shared losses determined by CMS to be owed by the ACO for the performance year(s) under a two-sided model covered by the ACO's participation agreement and CMS may collect on the bond up to amount of the bond (penal sum).

- (v) A statement that the surety agrees to pay the shared losses within 30 days of receiving written notice of the shared losses from CMS demonstrating that the ACO has failed to pay the shared losses in full.
- (vi) A statement that the surety agrees to not contest the amount owed as reflected in the documents provided by CMS to the ACO.
- (vii) A statement that the surety is liable for assessments that occur during the term of the bond.
- (viii) Assurance that the surety will notify CMS promptly in writing if there is a lapse in the surety bond coverage or a change in the amount of the bond.
- (ix) A statement that the surety will notify CMS at least 90 days in advance of cancellation or termination of the bond.
- (x) A statement that the surety will remain liable for any and all indebtedness of the Principal to the Obligee which accrued prior to the effective date of cancellation or termination of the bond.

Automatic Extension Clauses: Refer to the discussion of “Term” in [section 2](#) for additional information.

Execution: When in-person execution of the surety bond is not possible, such as a result of the COVID-19 pandemic, CMS may accept a surety bond or rider executed using an electronic seal. ACOs requiring this flexibility should notify CMS in writing during the repayment mechanism review process. If the use of an electronic seal is permitted, at a later date, CMS may request to receive an original hard copy (paper) by a traceable carrier.

Documentation: CMS strongly encourages the adoption of the CMS-approved surety bond sample provided in [Appendix D](#). Use of the sample should expedite CMS’ review and minimize the potential need for revisions, but it does not guarantee CMS’ approval. CMS encourages ACOs selecting a surety bond as their repayment mechanism to submit a **draft** of the surety bond in a Word document to CMS for review, to assist with the review feedback process.



SURETY BOND COMMON ERRORS

1. The ACO relied upon the sample within [Appendix D](#) and did not add or verify institution- or ACO-specific information.
2. The replenishment language stated a shorter period for replenishment, instead of specifying the 90-day replenishment period.
3. The surety bond was missing a statement that the surety will remain liable for any and all indebtedness of the Principal to the Obligee which accrued prior to the effective date of cancellation or termination of the bond.
4. The contact information for the surety as stated in the surety bond was missing or inconsistent with the information on the U.S. Department of the Treasury's List of Certified (Surety Bond) Companies.
5. The surety bond included an incorrect date for the first day of the ACO's agreement period.

6 How to Change an Existing Repayment Mechanism

If the ACO has an established repayment mechanism for an agreement period and would like to replace this arrangement with a new repayment mechanism during the agreement period, the ACO must submit a written request to the Shared Savings Program mailbox (contact specified in [section 7](#)). CMS will provide further instructions to the ACO once the request is received.

7 Contact Us & Delivery of Original Documentation

Please email SharedSavingsProgram@cms.hhs.gov with any questions and include your ACO ID and the phrase "Repayment Mechanism" in the subject line of the email.

When delivering original documentation to CMS, please take the following actions:

- (1) **Send a scanned or an electronic copy of the original documentation to CMS.**
Please provide this copy either as an upload to ACO-MS (if applicable) or via email to SharedSavingsProgram@cms.hhs.gov. Failure to send a scanned or electronic copy may delay CMS' review and approval of the documentation.
- (2) **Send the original documentation to CMS.** CMS recommends that ACOs and financial institutions send original documentation to CMS via a traceable carrier (e.g., FedEx, UPS, DHL) and provide the tracking information to CMS by email. Refer to [Appendix E](#) for a cover sheet template, which CMS recommends ACOs and financial institutions include when sending original repayment mechanism documentation to CMS.

Appendices A through E: Template or Sample Documents

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](#)