§ 401.101 Purpose and scope.

(a) The regulations in this subpart:

(1) Implement section 1106(a) of the Social Security Act as it applies to the Health Care Financing Administration (HCFA). The rules apply to information obtained by officers or employees of HCFA in the course of administering title XVIII of the Social Security Act (Medicare), information obtained by Medicare intermediaries or carriers in the course of carrying out agreements

401.128 Where requests for records may be made.
401.130 Materials available at social security district offices and branch offices.
401.132 Materials in field offices of the Office of Hearings and Appeals, SSA.
401.133 Availability of official reports on providers and suppliers of services, State agencies, intermediaries, and carriers under Medicare.
401.134 Release of Medicare information to State and Federal agencies.
401.135 Release of Medicare information to the public.
401.136 Requests for information or records.
401.140 Fees and charges.
401.144 Denial of requests.
401.148 Administrative review.
401.152 Court review.

Subparts C–E—[Reserved]

Subpart F—Claims Collection and Compromise

§ 401.601 Basis and scope.
§ 401.603 Definitions.
§ 401.605 Omissions not a defense.
§ 401.607 Claims collection.
§ 401.613 Compromise of claims.
§ 401.615 Payment of compromise amount.
§ 401.617 Suspension of collection action.
§ 401.621 Termination of collection action.
§ 401.623 Joint and several liability.
§ 401.625 Effect of HCFA claims collection decisions on appeals.


Subpart A—[Reserved]

Subpart B—Confidentiality and Disclosure

§ 401.101 Purpose and scope.
§ 401.102 Definitions.

For purposes of this subpart:

Act means the Social Security Act.

Freedom of Information Act rules mean the substantive mandatory disclosure provisions of the Freedom of Information Act, 5 U.S.C. 552 (including the exemptions from mandatory disclosure, 5 U.S.C. 552(b), as implemented by the Department’s public information regulation, 45 CFR part 5, subpart F and by §§ 401.106 to 401.152 of this subpart.

Person means a person as defined in the Administrative Procedure Act, 5 U.S.C. 551(2). This includes State or local agencies, but does not include Federal agencies or State or Federal courts.

Record has the same meaning as that provided in 45 CFR 5.5.

Subject individual means an individual whose record is maintained by the Department in a system of records, as the terms “individual,” “record”, and “system of records” are defined in the Privacy Act of 1974, 5 U.S.C. 552a(b).

§ 401.105 Rules for disclosure.

(a) General rule. The Freedom of Information Act rules shall be applied to every proposed disclosure of information. If, considering the circumstances of the disclosure, the information would be made available in accordance with the Freedom of Information Act rules, then the information may be disclosed regardless of whether the requester or recipient of the information has a statutory right to request the information under the Freedom of Information Act, 5 U.S.C. 552, or whether a request has been made.

(b) Application of the general rule. Pursuant to the general rule in paragraph (a) of this section,

(1) Information shall be disclosed—

(i) To a subject individual when required by the access provision of the Privacy Act, 5 U.S.C. 552a(d), as implemented by the Department Privacy Act regulation, 45 CFR part 5b; and

(ii) To a person upon request when required by the Freedom of Information Act, 5 U.S.C. 552;

(2) Unless prohibited by any other statute (e.g., the Privacy Act of 1974, 5 U.S.C. 552a(b), the Tax Reform Act of 1976, 26 U.S.C. 6103, or section 1106(d) and (e) of the Social Security Act), information may be disclosed to any requester or recipient of the information, including another Federal agency or a State or Federal court, when the information would not be exempt from mandatory disclosure under Freedom of Information Act rules or when the information nevertheless would be made available under the Department’s public information regulation’s criteria for disclosures which are in the public interest and consistent with obligations of confidentiality and administrative necessity, 45 CFR part 5, subpart F, as supplemented by §§ 401.106 to 401.152 of this subpart.

§ 401.106 Publication.
(a) Methods of publication. Materials required to be published under the provisions of The Freedom of Information Act, 5 U.S.C. 552 (a)(1) and (2) are published in one of the following ways:
(1) By publication in the Federal Register of HCFA regulations, and by their subsequent inclusion in the Code of Federal Regulations;
(2) By publication in the Federal Register of appropriate general notices;
(3) By other forms of publication, when incorporated by reference in the Federal Register with the approval of the Director of the Federal Register; and
(4) By publication of indexes of precedential orders and opinions issued in the adjudication of claims, statements of policy and interpretations that have been adopted but have not been published in the Federal Register, and of administrative staff manuals and instructions to staff that affect a member of the public.
(b) Availability for inspection. Those materials which are published in the Federal Register pursuant to 5 U.S.C. 552(a)(1) shall, to the extent practicable and to further assist the public, be made available for inspection at the places specified in § 401.128.
§ 401.108 HCFA rulings.
(a) After September 1981, a precedent final opinion or order or a statement of policy or interpretation that has not been published in the Federal Register as a part of a regulation or of a notice implementing regulations, but which has been adopted by HCFA as having precedent, may be published in the Federal Register as a HCFA Ruling and will be made available in the publication entitled HCFA Rulings.
(b) Precedent final opinions and orders and statements of policy and interpretation that were adopted by HCFA before October, 1981, and that have not been published in the Federal Register are available in HCFA Rulings.
(c) HCFA Rulings are published under the authority of the Administrator, HCFA. They are binding on all HCFA Components, and on the Social Security Administration to the extent that components of the Social Security Administration adjudicate matters under the jurisdiction of HCFA.
§ 401.110 Publications for sale.
The following publications containing information pertaining to the program, organization, functions, and procedures of HCFA may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.
(a) Titles 20, 42, and 45 of the Code of Federal Regulations.
(b) Federal Register issues.
(c) Compilation of the Social Security Laws.
(d) HCFA Rulings.
(e) Social Security Handbook. The information in the Handbook is not of precedent or interpretative force.
(f) Medicare/Medicaid Directory of Medical Facilities.
§ 401.112 Availability of administrative staff manuals.
All HCFA administrative staff manuals and instructions to staff personnel which contain policies, procedures, or interpretations that affect the public are available for inspection and copying. A complete listing of such materials is published in HCFA Rulings. These manuals are generally not printed in a sufficient quantity to permit sale or other general distribution to the public. Selected material is maintained at Social Security Administration district offices and field offices and may be inspected there. See §§ 401.130 and 401.132 for a listing of this material.
§ 401.116 Availability of records upon request.
(a) General. In addition to the records made available pursuant to §§ 401.106, 401.108, 401.110 and 401.112, HCFA will, upon request made in accordance with this subpart, make identified records available to any person, unless they are exempt from disclosure under the provisions of section 552(b) of title 5, United States Code (see § 401.126), or any other provision of law.
§ 401.118 Misappropriation, alteration, or destruction of records.

No person may remove any record made available to him for inspection or copying under this part, from the place where it is made available. In addition, no person may steal, alter, mutilate, obliterate, or destroy in whole or in part, such a record. See sections 641 and 2071 of title 18 of the United States Code.

§ 401.118 Deletion of identifying details.

When HCFA publishes or otherwise makes available an opinion or order, statement of policy, or other record which relates to a private party or parties, the name or names or other identifying details will be deleted.

§ 401.120 Creation of records.

Records will not be created by compiling selected items from the files, and records will not be created to provide the requester with such data as ratios, proportions, percentages, per capita, frequency distributions, trends, correlations, and comparisons. If such data have been compiled and are available in the form of a record, the record shall be made available as provided in this subpart.

§ 401.126 Information or records that are not available.

(a) Specific exemptions from disclosure. Pursuant to paragraph (b) of 5 U.S.C. 552, certain classes of records are exempt from disclosure. For some examples of the kinds of materials which are exempt, see subpart F of the public information regulation of the Department of Health and Human Services (45 CFR part 5) and the appendix to that regulation.

(b) Materials exempt from disclosure by statute. Pursuant to paragraph (b)(3) of 5 U.S.C. 552, as amended, which exempts from the requirement for disclosure matters that are exempt from disclosure by statute, provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding or refers to particular types of matter to be withheld:

(i) Reports described in sections 1106 (d) and (e) of the Social Security Act shall not be disclosed, except in accordance with the provisions of sections 1106 (d) and (e). Sections 1106 (d) and (e) provide for public inspection of certain official reports dealing with the operation of the health programs established by titles XVIII and XIX of the Social Security Act (Medicare and Medicaid), but require that program validation survey reports and other formal evaluations of providers of services shall not identify individual patients, individual health care practitioners, or other individuals. Section 1106(e) further requires that none of the reports shall be made public until the contractor or provider whose performance is being evaluated has had a reasonable opportunity to review that report and to offer comments. See §401.133 (b) and (c);

(ii) Except as specified in paragraph (b)(2)(ii) of this section, HCFA may not disclose any accreditation survey or any information directly related to the survey (including corrective action plans) made by and released to it by the Joint Commission on Accreditation of Healthcare Organizations, the American Osteopathic Association or any other national accreditation organization that meets the requirements of §488.6 or §493.506 of this chapter. Materials that are confidential include accreditation letters and accompanying recommendations and comments prepared by an accreditation organization concerning the entities it surveys.

(ii) Exceptions.

(A) HCFA may release the accreditation survey of any home health agency; and

(B) HCFA may release the accreditation survey and other information directly related to the survey (including corrective action plans) to the extent the survey and information relate to an enforcement action (for example, denial of payment for new admissions, civil money penalties, temporary management and termination) taken by HCFA; and

(3) Tax returns and return information defined in section 6103 of the Internal Revenue Code, as amended by the Tax Reform Act of 1976, shall not be disclosed except as authorized by the Internal Revenue Code.
Health Care Financing Administration, HHS  § 401.130

(c) Effect of exemption. Neither 5 U.S.C. 552 nor this regulation directs the withholding of any record or information, except to the extent of the prohibitions in paragraph (b) of this section. Except for material required to be withheld under the statutory provisions incorporated in paragraph (b) of this section or under another statute which meets the standards in 5 U.S.C. 552(b)(3), materials exempt from mandatory disclosure will nevertheless be made available when this can be done consistently with obligations of confidentiality and administrative necessity. The disclosure of materials or records under these circumstances in response to a specific request, however, is of no precedent force with respect to any other request.


§ 401.128 Where requests for records may be made.

(a) General. Any request for any record may be made to—
(1) Any HCFA component;
(2) Director, Office of Public Affairs, HCFA 313–H, Hubert H. Humphrey Building, 200 Independence Avenue, Washington, DC 20201; or
(3) Director of Public Affairs in any Regional Office of the Department of Health and Human Services.

The locations and service areas of these offices are as follows:
Region IV—101 Marietta Street, Atlanta, GA 30323. Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.
Region V—300 South Wacker Drive, Chicago, IL 60606. Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.
Region VI—1200 Main Tower Building, Dallas, TX 75202. Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
Region VII—601 East 12th Street, Kansas City, MO 64106. Iowa, Kansas, Missouri, Nebraska.

(b) Records pertaining to individuals. HCFA maintains some records pertaining to individuals. Disclosure of such records is generally prohibited by section 1106 of the Social Security Act (42 U.S.C. 1306), except as prescribed in §401.105 (See also §401.126(b)). Requests for records pertaining to individuals may be addressed to:
Director, Office of Research, Demonstrations and Statistics, HCFA, Baltimore, Maryland 21235, when information is sought from the record of a person who has participated in a research survey conducted by or for HCFA, Office of Research, Demonstrations and Statistics; or whose records have been included by statistical sampling techniques in research and statistical studies authorized by the Social Security Act in the field of health care financing.

(c) Requests for materials listed in §401.130 or §401.132 or indexed in the HCFA Rulings. A request to inspect and copy materials listed in §401.130 or §401.132 or indexed in HCFA Rulings may be made to any district or branch office of the Social Security Administration. If the specific material requested is not available in the office receiving the request, the material will be obtained and made available promptly.

§ 401.130 Materials available at social security district offices and branch offices.

(a) Materials available for inspection. The following are available or will be made available for inspection at the social security district offices and branch offices:
(1) Compilation of the Social Security Laws.
(2) The Public Information Regulation of the Department of Health and Human Services (45 CFR part 5).
§ 401.132 Materials in field offices of the Office of Hearings and Appeals, SSA.

(a) Materials available for inspection. The following materials are available for inspection in the field offices of the Office of Hearings and Appeals, SSA.

(1) Title 45 of the Code of Federal Regulations (including the public information regulation of the Department of Health and Human Services).

(2) Regulations of the Social Security Administration and HCFA.

(3) Title 5, United States Code.

(4) Compilation of the Social Security Laws.

(5) HCFA Rulings.


(b) Handbook available for inspection and copying. The Office of Hearings and Appeals Handbook is available for inspection and copying in the field offices of the Office of Hearings and Appeals.

§ 401.133 Availability of official reports on providers and suppliers of services, State agencies, intermediaries, and carriers under Medicare.

Except as otherwise provided for in § 488.325 of this chapter for SNFs, the following must be made available to the public under the conditions specified:

(a) Statements of deficiencies and survey reports on providers of services prepared by State agencies. (1) Statements
Health Care Financing Administration, HHS

§ 401.134 Release of Medicare information to State and Federal agencies.

(a) Except as provided in paragraph (b) of this section, the following information may be released to an officer or
§ 401.135 Release of Medicare information to the public.

The following shall be made available to the public under the conditions specified:

(a) Information as to amounts paid to providers and other organizations and facilities for services to beneficiaries under title XVIII of the Act: Provided, That no information identifying any particular beneficiaries shall be disclosed under this paragraph.

(b) The name of any provider of services to Medicare beneficiaries on—

(1) Has been found by a Federal court to have been guilty of submitting false claims in connection with Medicare; or

(2) Has been found by a carrier or intermediary, after consultation with a professional medical association functioning external to program administration or, if appropriate, the State employee of an agency of the Federal or a State government lawfully charged with the administration of a program receiving grants-in-aid under title V and XIX of the Social Security Act for the purpose of administration of those titles, or to any officer or employee of the Department of Army, Department of Defense, solely for the administration of its Civilian Health and Medical Program of the Uniformed Services (CHAMPUS):

(1) Information, including the identification number, concerning charges made by physicians, other practitioners, or suppliers, and amounts paid under Medicare for services furnished to beneficiaries by such physicians, other practitioners, or suppliers, to enable the agency to determine the proper amount of benefits payable for medical services performed in accordance with those programs; or

(2) Information as to physicians or other practitioners that has been disclosed under § 401.105.

(3) Information relating to the qualifications and certification status of hospitals and other health care facilities obtained in the process of determining whether, and certifying as to whether, institutions or agencies meet or continue to meet the conditions of participation of providers of services or whether other entities meet or continue to meet the conditions for coverage of services they furnish.

(b) The release of such information shall not be authorized by a fiscal intermediary or carrier.

(c) The following information may be released to any officer or employee of an agency of the Federal or a State government lawfully charged with the duty of conducting an investigation or prosecution with respect to possible fraud or abuse against a program receiving grants-in-aid under Medicaid, but only for the purpose of conducting such an investigation or prosecution, or to any officer or employee of the Department of the Army, Department of Defense, solely for the administration of its Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), provided that the agency has filed an agreement with HCFA that the information will be released only to the agency's enforcement branch and that the agency will preserve the confidentiality of the information received and will not disclose that information for other than program purposes:

(1) The name and address of any provider of medical services, organization, or other person being actively investigated for possible fraud in connection with Medicare, and the nature of such suspected fraud. An active investigation exists when there is significant evidence supporting an initial complaint but there is need for further investigation.

(2) The name and address of any provider of medical services, organization, or other person found, after consultation with a professional association or a program review team, to have provided unnecessary services, or of any physician or other individual found to have violated the assignment agreement on at least three occasions.

(3) The name and address of any provider of medical services, organization or other person released under paragraph (c)(1) or (2) of this section concerning which an active investigation is concluded with a finding that there is no fraud or other prosecutable offense.

§ 401.135 Release of Medicare information to the public.
medical authority, to have been engaged in a pattern of furnishing services to beneficiaries which are substantially in excess of their medical needs; except that the name of any provider or other person shall not be disclosed pursuant to a finding under this paragraph (b)(2) of this section, unless that provider or other person has first been afforded a reasonable opportunity to offer evidence on his behalf.

(c) Upon request in writing, cost reports submitted by providers of services pursuant to section 1815 of the Act to enable the Secretary to determine amounts due the providers.

§ 401.136 Requests for information or records.

(a) A request should reasonably identify the requested record by brief description. Requesters who have detailed information which would assist in identifying the records requested are urged to provide such information in order to expedite the handling of the request. Envelopes in which written requests are submitted should be clearly identified as Freedom of Information requests. The request should include the fee or request determination of the fee. When necessary, a written request will be promptly forwarded to the proper office, and the requester will be advised of the date of the receipt and identification and address of the proper office.

(b) Determinations of whether records will be released or withheld will be made within 10 working days from date of receipt of the request in the office listed in §401.128 except where HCFA extends this time and sends notice of such extension to the requester. Such extension may not exceed 10 additional working days and shall apply only where the following unusual circumstances exist:

1. The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the requests;
2. The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are requested in a single request; or
3. The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the request or among two or more components of HCFA having a substantial interest in the subject matter of the request.

(c) If an extension is made, the requester will be notified in writing before the expiration of 10 working days from receipt of the request and will be given an explanation of why the extension was necessary and the date on which a determination will be made.

(d) Authority to extend the time limit with respect to any request for information or records is granted to the Director, Office of Public Affairs, HCFA and to the Director of Public Affairs in any HHS Regional Office. Those officers and employees of HCFA who are listed in §401.144(a) as having authority to deny requests for information from records maintained on individuals are granted authority to extend the time limit for responding to requests for information from such records.

§ 401.140 Fees and charges.

(a) Statement of policy. It is HCFA's policy to comply with certain requests for information services without charge. Except as otherwise determined pursuant to paragraph (c) of this section, fees will be charged for the following services with respect to all other requests for information from records which are reasonably identified by the requesters:

1. Reproduction, duplication, or copying of records;
2. Searches for records; and
3. Certification or authentication of records.

(b) Fee schedules. The fee schedule is as follows:

1. Search for records. Three dollars per hour: Provided, however, That no charge will be made for the first half hour.
2. Reproduction, duplication, or copying of records. Ten cents per page where such reproduction can be made by commonly available photocopying machines. The cost of reproducing records which cannot be so photocopied will be determined on an individual basis at actual cost.
§ 401.144 Certification of records. Three dollars per certification or authentication.

(4) Forwarding materials to destination. Any special arrangements for forwarding which are requested shall be charged at actual cost; however, no charge will be made for postage.

(5) No charge will be made when the total amount does not exceed five dollars.

(3) Certification or authentication of records. Three dollars per certification or authentication.

(4) Forwarding materials to destination. Any special arrangements for forwarding which are requested shall be charged at actual cost; however, no charge will be made for postage.

(5) No charge will be made when the total amount does not exceed five dollars.

(3) Certification or authentication of records. Three dollars per certification or authentication.

(4) Forwarding materials to destination. Any special arrangements for forwarding which are requested shall be charged at actual cost; however, no charge will be made for postage.

(5) No charge will be made when the total amount does not exceed five dollars.

(3) Certification or authentication of records. Three dollars per certification or authentication.

(4) Forwarding materials to destination. Any special arrangements for forwarding which are requested shall be charged at actual cost; however, no charge will be made for postage.

(5) No charge will be made when the total amount does not exceed five dollars.

(3) Certification or authentication of records. Three dollars per certification or authentication.

(4) Forwarding materials to destination. Any special arrangements for forwarding which are requested shall be charged at actual cost; however, no charge will be made for postage.

(5) No charge will be made when the total amount does not exceed five dollars.

(3) Certification or authentication of records. Three dollars per certification or authentication.

(4) Forwarding materials to destination. Any special arrangements for forwarding which are requested shall be charged at actual cost; however, no charge will be made for postage.

(5) No charge will be made when the total amount does not exceed five dollars.

(3) Certification or authentication of records. Three dollars per certification or authentication.

(4) Forwarding materials to destination. Any special arrangements for forwarding which are requested shall be charged at actual cost; however, no charge will be made for postage.

(5) No charge will be made when the total amount does not exceed five dollars.

(3) Certification or authentication of records. Three dollars per certification or authentication.

(4) Forwarding materials to destination. Any special arrangements for forwarding which are requested shall be charged at actual cost; however, no charge will be made for postage.

(5) No charge will be made when the total amount does not exceed five dollars.

(3) Certification or authentication of records. Three dollars per certification or authentication.

(4) Forwarding materials to destination. Any special arrangements for forwarding which are requested shall be charged at actual cost; however, no charge will be made for postage.

(5) No charge will be made when the total amount does not exceed five dollars.

(3) Certification or authentication of records. Three dollars per certification or authentication.
Subparts C–E—[Reserved]

Subpart F—Claims Collection and Compromise

SOURCE: 48 FR 39064, Aug. 29, 1983, unless otherwise noted.

§ 401.601 Basis and scope.

(a) Basis. This subpart implements for HCFA the Federal Claims Collection Act (FCCA) of 1966 (31 U.S.C. 3711), and conforms to the regulations (4 CFR parts 101-105) issued jointly by the General Accounting Office and the Department of Justice that generally prescribe claims collection standards and procedures under the FCCA for the Federal government.

(b) Scope. Except as provided in paragraphs (c) through (f) of this section, the regulations in this subpart describe HCFA’s procedures and standards for the collection of claims in any amount, and the compromise of, or the suspension or termination of collection action on, all claims for money or property that do not exceed $100,000 or such higher amount as the Attorney General may from time to time prescribe, exclusive of interest, arising under any functions delegated to HCFA by the Secretary.

(c) Amount of claim. HCFA refers all claims that exceed $100,000 or such higher amount as the Attorney General may from time to time prescribe, exclusive of interest, arising under any functions delegated to HCFA by the Secretary.

(d) Related regulations—(1) Department regulations. DHHS regulations applicable to HCFA that generally implement the FCCA for the Department are located at 45 CFR part 30. These regulations apply only to the extent HCFA regulations do not address a situation.

(2) HCFA regulations. The following regulations govern specific debt management situations encountered by HCFA and supplement this subpart:

(i) Claims against Medicare beneficiaries for the recovery of overpayments are covered in 20 CFR 404.515.

(ii) Adjustments in Railroad Retirement or Social Security benefits to recover Medicare overpayments to individuals are covered in §§ 405.350–405.358 of this chapter.

(iii) Claims against providers, physicians, or other suppliers of services for overpayments under Medicare and for assessment of interest are covered in §§ 405.377 and 405.378 of this chapter, respectively.

(iv) Claims against beneficiaries for unpaid hospital insurance or supplementary medical insurance premiums under Medicare are covered in § 408.110 of this chapter.

(v) State repayment of Medicaid funds by installments is covered in § 430.48 of this chapter.

(e) Collection and compromise under other statutes and at common law. The regulations in this subpart do not—

(1) Preclude disposition by HCFA of claims under statutes, other than the FCCA, that provide for the collection or compromise of a claim, or suspension or termination of collection action.

(2) Affect any rights that HCFA may have under common law as a creditor.

(f) Fraud. The regulations in this subpart do not apply to claims in which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of a debtor or any other party having an interest in the claim. HCFA forwards these claims to the Department of Justice for disposition under 4 CFR 105.1.

(g) Enforced collection. HCFA refers claims to the Department of Justice for enforced collection through litigation in those cases which cannot be compromised or on which collection action cannot be suspended or terminated in accordance with this subpart or the regulations issued jointly by the Attorney General and the Comptroller General.


§ 401.603 Definitions.

For purposes of this subpart—

Claim means any debt owed to HCFA.

Debtor means any individual, partnership, corporation, estate, trust or other legal entity against which HCFA has a claim.
§ 401.605 Omissions not a defense.

The failure of HCFA to comply with the regulations in this subpart, or with the related regulations listed in § 401.601(d), is not available as a defense to a debtor against whom HCFA has a claim for money or property.

§ 401.607 Claims collection.

(a) General policy. HCFA recovers amounts of claims due from debtors, including interest where appropriate, by—

(1) Direct collections in lump sums or in installments; or

(2) Offsets against monies owed to the debtor by the Federal government where possible.

(b) Collection in lump sums. Whenever possible, HCFA attempts to collect claims in full in one lump sum. However, if HCFA determines that a debtor is unable to pay the claim in one lump sum, HCFA may instead enter into an agreement to accept regular installment payments.

(c) Collection in installments. Generally, HCFA requires that all claims to be satisfied by installment payments must be liquidated in three years or less. If unusual circumstances exist, such as the possibility of debtor insolvency, an installment agreement that extends beyond three years may be approved.

(1) Debtor request. If a debtor desires to repay a claim in installments, the debtor must submit—

(i) A request to HCFA; and

(ii) Any information required by HCFA to make a decision regarding the request.

(2) HCFA decision. HCFA will determine the number, amount and frequency of installment payments based on the information submitted by the debtor and on other factors such as—

(i) Total amount of the claim;

(ii) Debtor's ability to pay; and

(iii) Cost to HCFA of administering an installment agreement.

(d) Collection by offset. (1) HCFA may offset, where possible, the amount of a claim against the amount of pay, compensation, benefits or other monies that a debtor is receiving or is due from the Federal government.

(2) Under regulations at § 405.350—405.358 of this chapter, HCFA may initiate adjustments in program payments to which an individual is entitled under title II of the Act (Federal Old Age, Survivors, and Disability Insurance Benefits) or under the Railroad Retirement Act of 1974 (45 U.S.C. 231) to recover Medicare overpayments.

§ 401.613 Compromise of claims.

(a) Amount of compromise. HCFA requires that the amount to be recovered through a compromise of a claim must—

(1) Bear a reasonable relation to the amount of the claim; and

(2) Be recoverable through enforced collection procedures.

(b) General factors. After considering the bases for a decision to compromise a claim under paragraph (c) of this section, HCFA may further consider factors such as—

(1) The age and health of the debtor if the debtor is an individual;

(2) Present and potential income of the debtor; and

(3) Whether assets have been concealed or improperly transferred by the debtor.

(c) Basis for compromise. Bases on which HCFA may compromise a claim include the following—

(1) Inability to pay. HCFA may compromise a claim if it determines that the debtor, or the estate of a deceased debtor, does not have the present or prospective ability to pay the full amount of the claim within a reasonable time.

(2) Litigative probabilities. HCFA may compromise a claim if it determines that it would be difficult to prevail in a case before a court of law as a result of the legal issues involved or inability of the parties to agree to the facts of the case. The amount that HCFA accepts in compromise under this provision will reflect—

(i) The likelihood that HCFA would have prevailed on the legal question(s) involved;

(ii) Whether and to what extent HCFA would have obtained a full or partial recovery of a judgment, depending on the availability of witnesses, or
other evidentiary support for HCFA's claim; and
(iii) The amount of court costs that would be assessed to HCFA.

(3) Cost of collecting the claim. HCFA may compromise a claim if it determines that the cost of collecting the claim does not justify the enforced collection of the full amount. In this case, HCFA may adjust the amount it accepts as a compromise to allow an appropriate discount for the costs of collection it would have incurred but for the compromise.

(d) Enforcement policy. HCFA may compromise statutory penalties, forfeitures, or debts established as an aid to enforcement or to compel compliance, if it determines that its enforcement policy, in terms of deterrence and securing compliance both present and future, is adequately served by acceptance of the compromise amount.

§ 401.615 Payment of compromise amount.
(a) Time and manner of compromise. Payment by the debtor of the amount that HCFA has agreed to accept as a compromise in full settlement of a claim must be made within the time and in the manner prescribed by HCFA. Accordingly, HCFA will not settle a claim until the full payment of the compromise amount has been made.

(b) Effect of failure to pay compromise amount. Failure of the debtor to make payment, as provided by the compromise agreement, reinstates the full amount of the claim, less any amounts paid prior to the default.

(c) Prohibition against grace periods. HCFA will not agree to inclusion of a provision in an installment agreement that would permit grace periods for payments that are late under the terms of the compromise agreement.

§ 401.617 Suspension of collection action.
(a) General conditions. HCFA may temporarily suspend collection action on a claim if the following general conditions are met—
(i) Amount of future recovery. HCFA determines that future collection action may result in a recovery of an amount sufficient to justify periodic review and action on the claim by HCFA during the period of suspension.
(ii) Statute of limitations. HCFA determines that—
(i) The applicable statute of limitations has been tolled, waived or has started running anew; or
(ii) Future collections may be made by HCFA through offset despite an applicable statute of limitations.

(b) Basis for suspension. Bases on which HCFA may suspend collection action on a particular claim include the following—
(1) A debtor cannot be located; or
(2) A debtor—
(i) Owns no substantial equity in property;
(ii) Is unable to make payment on HCFA's claim or is unable to effect a compromise; and
(iii) Has future prospects that justify retention of the claim.

(c) Locating debtors. HCFA will make every reasonable effort to locate missing debtors sufficiently in advance of the bar of an applicable statute of limitations to permit timely filing of a lawsuit to recover the amount of the claim.

(d) Effect of suspension on liquidation of security. HCFA will liquidate security, obtained in partial recovery of a claim, despite a decision under this section to suspend collection action against the debtor for the remainder of the claim.

§ 401.621 Termination of collection action.
(a) General factors. After considering the bases for a decision to terminate collection action under paragraph (b) of this section, HCFA may further consider factors such as—
(i) The age and health of the debtor if the debtor is an individual;
(ii) Present and potential income of the debtor; and
(iii) Whether assets have been concealed or improperly transferred by the debtor.

(b) Basis for termination of collection action. Bases on which HCFA may terminate collection action on a claim include the following—
(1) Inability to collect a substantial amount of the claim. HCFA may terminate collection action if it determines...
§ 401.623

that it is unable to collect, or to enforce collection, of a significant amount of the claim. In making this determination, HCFA will consider factors such as—

(i) Judicial remedies available;
(ii) The debtor's future financial prospects; and
(iii) Exemptions available to the debtor under State or Federal law.

(2) Inability to locate debtor. In cases involving missing debtors, HCFA may terminate collection action if—

(i) There is no security remaining to be liquidated;
(ii) The prospects of collecting by offset, whether or not an applicable statute of limitations has run, are considered by HCFA to be too remote to justify retention of the claim.

(3) Cost of collection exceeds recovery. HCFA may terminate collection action if it determines that the cost of further collection action will exceed the amount recoverable.

(4) Legal insufficiency. HCFA may terminate collection action if it determines that the claim is legally without merit.

(5) Evidence unavailable. HCFA may terminate collection action if—

(i) Efforts to obtain voluntary payment are unsuccessful; and
(ii) Evidence or witnesses necessary to prove the claim are unavailable.

§ 401.623 Joint and several liability.

(a) Collection action. HCFA will liquidate claims as quickly as possible. In cases of joint and several liability among two or more debtors, HCFA will not allocate the burden of claims payment among the debtors. HCFA will proceed with collection action against one debtor even if other liable debtors have not paid their proportionate shares.

(b) Compromise. Compromise with one debtor does not release a claim against remaining debtors. Furthermore, HCFA will not consider the amount of a compromise with one debtor to be a binding precedent concerning the amounts due from other debtors who are jointly and severally liable on the claim.

§ 401.625 Effect of HCFA claims collection decisions on appeals.

Any action taken under this subpart regarding the compromise of a claim, or suspension or termination of collection action on a claim, is not an initial determination for purposes of HCFA appeal procedures.

PART 402—CIVIL MONEY PENALTIES, ASSESSMENTS, AND EXCLUSIONS

Subpart A—General Provisions

Sec.
402.1 Basis and scope.
402.3 Definitions.
402.5 Right to a hearing before the final determination.
402.7 Notice of proposed determination.
402.9 Failure to request a hearing.
402.11 Notice to other agencies and other entities.
402.13 Penalty, assessment, and exclusion not exclusive.
402.15 Collateral estoppel.
402.17 Settlement.
402.19 Hearings and appeals.
402.21 Judicial review.

Subpart B—Civil Money Penalties and Assessments

402.105 Amount of penalty.
402.107 Amount of assessment.
402.109 Statistical sampling.
402.111 Factors considered determinations regarding the amount of penalties and assessments.
402.113 When a penalty and assessment are collectible.
402.115 Collection of penalty or assessment.

Subpart C—Exclusions [Reserved]

AUTHORITY: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).
SOURCE: 63 FR 68690, Dec. 14, 1998, unless otherwise noted.

Subpart A—General Provisions

§ 402.1 Basis and scope.

(a) Basis. This part is based on the sections of the Act that are specified in paragraph (c) of this section.

(b) Scope. This part—

(1) Provides for the imposition of civil money penalties, assessments, and exclusions against persons that violate the provisions of the Act specified in