

limits set forth in § 401.136 and this section constitutes an exhaustion of the requester's administrative remedies.

**§ 401.152 Court review.**

Where the Administrator upon review affirms the denial of a request for records, in whole or in part, the requester may seek court review in the district court of the United States pursuant to 5 U.S.C. 552(a)(4)(B).

**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 CMS 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 CMS'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 CMS by the Secretary.

(c) *Amount of claim.* CMS refers all claims that exceed \$100,000 or such higher amount as the Attorney General may from time to time prescribe, exclusive of interest, to the Department of Justice or the General Accounting Office for the compromise of claims, or the suspension or termination of collection action.

(d) *Related regulations*—(1) *Department regulations.* DHHS regulations applicable to CMS that generally implement the FCCA for the Department are lo-

cated at 45 CFR part 30. These regulations apply only to the extent CMS regulations do not address a situation.

(2) *CMS regulations.* The following regulations govern specific debt management situations encountered by CMS 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 CMS 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 CMS 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. CMS forwards these claims to the Department of Justice for disposition under 4 CFR 105.1.

(g) *Enforced collection.* CMS 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

## § 401.603

Attorney General and the Comptroller General.

[48 FR 39064, Aug. 29, 1983, as amended at 52 FR 48123, Dec. 18, 1987; 57 FR 56998, Dec. 2, 1992; 61 FR 49271, Sept. 19, 1996; 61 FR 63748, Dec. 2, 1996]

### § 401.603 Definitions.

For purposes of this subpart—

*Claim* means any debt owed to CMS.

*Debtor* means any individual, partnership, corporation, estate, trust or other legal entity against which CMS has a claim.

### § 401.605 Omissions not a defense.

The failure of CMS 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 CMS has a claim for money or property.

### § 401.607 Claims collection.

(a) *General policy.* CMS 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, CMS attempts to collect claims in full in one lump sum. However, if CMS determines that a debtor is unable to pay the claim in one lump sum, CMS may instead enter into an agreement to accept regular installment payments.

(c) *Collection in installments.* Generally, CMS 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 CMS; and

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

(2) *CMS decision.* CMS will determine the number, amount and frequency of

## 42 CFR Ch. IV (10–1–02 Edition)

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 CMS of administering an installment agreement.

(d) *Collection by offset.* (1) CMS 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, CMS 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.

[48 FR 39064, Aug. 29, 1983, as amended at 61 FR 49271, Sept. 19, 1996; 61 FR 63748, Dec. 2, 1996]

### § 401.613 Compromise of claims.

(a) *Amount of compromise.* HFCA 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, CMS 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 CMS may compromise a claim include the following—

(1) *Inability to pay.* CMS 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.* CMS may compromise a claim if it determines