(d) Related regulations—(1) Department regulations. DHHS regulations applicable to CMS that generally implement the FCCA for the Department are located 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 providers, physicians, or other suppliers of services for overpayments under Medicare and for assessment of interest are covered in §§ 405.350–405.358 of this chapter.

(v) State repayment of Medicaid funds by installments is covered in § 408.110 of this chapter.

(vi) 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.

§ 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.

Extended repayment schedule means installment payments to pay back a debt.

§ 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) **Extended repayment schedule.** (1)
For purposes of this paragraph (c)(2), the following definitions apply:

   **Extreme hardship** exists when a provider or supplier qualifies as being in “hardship” as defined in this paragraph and the provider’s or supplier’s request for an extended repayment schedule (ERS) is approved under paragraph (c)(3) of this section.

   **Hardship** exists when the total amount of all outstanding overpayments (principal and interest) not included in an approved, existing repayment schedule is 10 percent or greater than the total Medicare payments made for the cost reporting period covered by the most recently submitted cost report for a provider filing a cost report, or for the previous calendar year for a supplier or non-cost-report provider.

   (ii) CMS or its contractor reviews a provider’s or supplier’s request for an ERS. For a provider or a supplier not paid by Medicare during the previous year or paid only during a portion of that year, the contractor or CMS will use the last 12 months of Medicare payments. If less than a 12-month payment history exists, the number of months available is annualized to equal an approximate yearly Medicare payment level for the provider or supplier.

   (iii) For a provider or supplier requesting an ERS, CMS or its contractor evaluates the request based on the definitions and information submitted under this paragraph (c)(2). For a provider or supplier whose situation does not meet the definitions in paragraph (c)(2)(i) of this section, CMS or its contractor evaluates the ERS request using the information in paragraph (c)(3) of this section in deciding to grant an ERS.

   (iv) CMS or its contractor is prohibited from granting an ERS to a provider or supplier if there is reason to suspect the provider or supplier may file for bankruptcy, cease to do business, discontinue participation in the Medicare program, or there is an indication of fraud or abuse committed against the Medicare program.

   (v) CMS or its contractor may grant a provider or a supplier an ERS of at least 6 months if repaying an overpayment within 30 days will constitute a “hardship” as defined in paragraph (c)(2)(i) of this section. If a provider or supplier is granted an ERS under this paragraph, missing one installment payment constitutes a default and the total balance of the overpayment will be recovered immediately.

   (vi) CMS or its contractor may grant a provider or a supplier an ERS of 36 months and up to 60 months if repaying an overpayment will constitute an “extreme hardship” as defined in paragraph (c)(2)(i) of this section.

(3) **CMS decision.** CMS 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 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.


§401.613 **Compromise of claims.**

(a) **Amount of compromise.** HPCA 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