

§ 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 applicable statute of limitations has run; or
- (iii) 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.

42 CFR Ch. IV (10-1-99 Edition)

§ 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