insurance premium payments are funneled back to a reinsurer related to the provider, or (2) situations in which a provider may have the option of paying less than the insurance premium billed to it (that is, claim an accrual for the billed premium but eventually pay the insurer a smaller amount). The commenter felt the regulations should be clear that a provider's costs are payable only to the extent that the provider has actually paid a premium.

Response: We have chosen not to incorporate the commenter's examples in the regulations. However, we agree that Medicare cannot properly pay a provider unless the provider has actually incurred a cost. In the first example, the provider's intermediary must examine the situation of an insurer reinsuring with a party related to the provider. To the extent the intermediary determines the provider's premiums are unnecessarily or improperly funneled back to a party related to the provider, the premiums would be unallowable. In the second example, to the extent that a provider does not fully liquidate its accrual, that portion of the accrual would be unallowable.

Comment: One commenter took exception to the proposal's claim that no additional information collection requirements would be imposed as a result of the proposed changes to the regulations. The commenter stated that the requirement that unfunded deferred compensation (for example) be an allowable cost only during the period in which actual payment was made to the employee would necessitate additional recordkeeping by providers who must convert their financial reporting systems.

Response: Medicare policy for unfunded deferred compensation plans remains unchanged. If deferred compensation is unfunded, Section 2140.2 of the Provider Reimbursement Manual has long indicated that the provider does not claim an expense until actual payment is made to the employee (or accrued and liquidated timely). Any necessary recordkeeping should already be in place to comply with existing policy. No new or additional recordkeeping would be required under this rule.

Comment: One commenter believes the proposal addressed a concern with over-accrual of costs but failed to provide for under-accrual of costs. The commenter indicated that if payment subsequent to filing the cost report exceeds the accrual, there is no ready mechanism to correct the under-accrued costs and to obtain proper payment. Similarly, the rule should be clarified to allow the provider to increase its interest expense in a situation in which accrued investment income is offset against interest costs but payment is not subsequently received.

Response: If the amount actually expended is greater than the accrual, the excess amount may be treated as paid on a cash basis. Similarly, if the amount of investment income actually realized is less than the amount of the accrual, the amount received serves as the basis for making an appropriate adjustment (that is, to allow additional interest expense).

Comment: One commenter stated that if this rule were adopted, providers would incur costs in treating Medicare patients that would not be paid by Medicare, thus forcing providers to shift incurred costs to other patients. The commenter noted that such cost shifting is prohibited by section 1861(v)(1)(A) of the Act.

Response: In accordance with our policy involving the accrual basis of accounting, Medicare has always paid a provider for incurred costs for which the related liability has been properly accrued, even though the provider has not transferred actual assets to satisfy its obligation. That is, Medicare, through interim payments and eventually through the cost report settlement process, has paid its share of the cost even though the provider in some cases has not yet expended any funds. To the extent that Medicare pays before the provider expends funds, Medicare has made an advance payment for the cost. The purpose of this rule is to recover Medicare's payment after permitting the provider a reasonable period of time in which to liquidate its obligation, if liquidation has not occurred within the required time period. To recover Medicare payments for costs for which the provider has not timely liquidated its obligation does not shift incurred costs to non-Medicare patients.

Comment: One commenter stated that the rule should be clarified to reflect that providers are entitled to be paid for the current period's amortized portion of costs that are not liquidated within 1 year, such as bond discount or bond issue costs.

Response: We do not agree that clarification is necessary. The regulation addresses costs for which liabilities are incurred and must be liquidated timely in order to receive Medicare payment for the year of accrual. It is not intended to apply to the current year's amortized portion of costs, which do not require current liquidation.

Comment: One commenter believed that the savings to the program cited in the proposed rule are suspect because in the vast majority of cases for the items in question, payment to the provider merely will be deferred to a later period. Therefore, a savings to the government would not be permanent.

Response: We did not identify any ''savings'' in the proposed rule. Rather, we stated that the lack of clarification in the regulations involving the accrual basis of accounting forced the Medicare program to settle cases involving accrued sick leave, FICA taxes, deferred compensation, and unpaid mortgage interest. We indicated our belief that without a change to the regulations, the Medicare program could be forced to pay additional amounts of accrued liabilities even though providers may not liquidate the liabilities on a current (that is, timely) basis.

This rule will result in a clearer statement in the regulations of our policy precluding Medicare payment for expenses in a cost reporting period for which the associated liability is not liquidated timely. If the liability is not liquidated timely, Medicare will recover payment it made for the year of accrual. (Generally, recovery is applicable to the actual year of accrual, although it could apply to a later period in some cases, such as for vacation pay.) Should the liability thereafter be liquidated and our policy provides for Medicare payment in that subsequent period, there will be a Medicare outlay for that period. In cases in which the liability is never liquidated, Medicare does not share in the cost, in the current period or a later period.

B. Self-Insurance

Comment: Some commenters noted that under the proposal, self-insurance program costs would have to be paid within 75 days after the close of the cost reporting period. They suggested that we modify the proposed change to allow program payment in the cost reporting period in which the provider incurs the cost, provided that payment by the provider is made within the timeframes specified in the provider's self-insurance funding plan.

Response: The commenter suggests that the program should recognize a provider's own established time frames in liquidating liabilities for contributions to a self-insurance fund. This would defeat the purpose of the rule, which requires a consistent time frame to be used by all providers, in accordance with longstanding program policy.

Comment: One commenter stated that the proposed rule was not clear as to Medicare's policy in cases in which a self-insurer provides advance funding under State law, and the account is