

deferred compensation. Therefore, we have not adopted the commenter's suggestion to address salaries and bonuses in the text of the regulation.

#### IV. Provisions of the Final Rule

This final rule generally confirms the provisions of the proposed rule, with the clarifying changes discussed above in the responses to comments. In addition, upon further consideration of the regulations text set forth in the proposed rule, we believe that one additional policy clarification is necessary.

Section 413.24(c)(2) of the proposed rule consisted of an example that indicated that the accrual of postretirement health benefits under Medicare cannot be recognized unless the liability for the benefits is liquidated timely. That example referred to Statement of Financial Accounting Standards (SFAS) No. 106 (December 1990), *Employers' Accounting for Postretirement Benefits Other Than Pensions*, without explicitly citing SFAS No. 106. SFAS No. 106, generally effective for fiscal years beginning after December 15, 1992, requires an employer to accrue the expected cost of providing postretirement benefits to employees (and the employees' beneficiaries and covered dependents) during the years the employees provide the necessary services. However, it does not provide for timely liquidation of the accruals in accordance with Medicare policy. Accordingly, the example clarified, consistent with Medicare policy, that the accrual of postretirement benefits (addressed in SFAS No. 106) cannot be recognized in allowable costs in the year of the accrual without timely liquidation of the related liability.

We now believe that the original example is unnecessary in the final rule. Because payment for postretirement benefits is deferred, the benefits are deferred compensation. Therefore, Medicare policy on deferred compensation, funded and unfunded, applies to postretirement benefit deferred compensation plans as well as to other types of deferred compensation plans. The deferred compensation policy is found in section 2140 of the Provider Reimbursement Manual and also, with regard to liquidation of liabilities related to accrued deferred compensation costs, in § 413.100(c)(2)(vii) of this final rule. The deferred compensation policy sets forth the requirements to be met, including timely liquidation of liabilities, in order to receive Medicare payment for deferred compensation.

Under SFAS No. 106, a provider may have postretirement benefit obligations applicable to more than one year, for example, prior service costs, or a transition obligation (which, under SFAS No. 106, the provider may elect to accrue immediately or on a delayed basis). For purposes of Medicare payment, the deferred compensation policy provides, in Provider Reimbursement Manual section 2140.3.B.1 (by reference to section 2142.5, *Pension Costs for Past and Current Service*), that past service costs applicable to more than one cost reporting year must be amortized over a minimum of 10 years, even if the related liability for the accrual has been liquidated timely.

Therefore, in lieu of the example in proposed § 413.24(c)(2), we have clarified in § 413.100(c)(2)(vii)(C) of this final rule that postretirement benefit plans addressed in SFAS No. 106 are deferred compensation arrangements to which all the provisions of Medicare's deferred compensation policy apply.

We believe it should have been clear to readers of the proposed rule that Medicare's deferred compensation policy applies to all deferred compensation arrangements, including postretirement benefit plans. However, although the proposed rule addressed postretirement health benefits, clarifying that the accrual of such benefits cannot be recognized for Medicare payment in the year of the accrual without timely liquidation of the liability for the benefits, it did not emphasize the applicability of the deferred compensation policy in all respects to postretirement benefit plans.

Therefore, there could be situations in which a provider that has elected to accrue postretirement benefit past service costs over more than 10 years for accounting and reporting purposes (that is, for non-Medicare purposes) in conformity with SFAS No. 106, mistakenly believed it needed to use the same period for amortizing the costs for Medicare purposes. If, for Medicare purposes, the provider now wants to amortize the costs over fewer years, but not fewer than 10 years, it may request its intermediary, subject to the requirements in the regulations at § 405.1885, to make the change to applicable cost reporting periods in accordance with the longstanding policy in section 2140.3.B.1 of the Provider Reimbursement Manual. In all cases, Medicare payment is subject to the policy in this final rule and in Provider Reimbursement Manual section 2140.4 regarding timely liquidation of the associated accruals for the deferred compensation.

Correspondingly, if a provider has amortized the costs over fewer than 10 years for Medicare purposes without the express permission of its intermediary, the intermediary is required, subject to § 405.1885, to make necessary adjustments to conform the amortization to the policy in section 2140.3.B.1. of the Provider Reimbursement Manual. (We note that if a provider has been permitted by its intermediary to amortize such costs for Medicare purposes over fewer than 10 years, assuming timely liquidation of the associated accruals, the intermediary will not now make adjustments to reflect amortization over at least 10 years, nor is the provider required to make such a change.)

The other clarifying changes to the proposed rule that are set forth in this final rule, as discussed in our responses to public comments in Section IV of this final rule, are as follows:

- In § 413.100(c)(2)(i) of this rule, we have clarified that short-term liabilities also include the current portion of long-term liabilities, such as the mortgage interest due to be paid in the current year.

- We have added new § 413.100(c)(2)(ii)(C) to address necessary adjustment to a provider's cost report if accruals for vacation pay and all-inclusive paid days off are not properly liquidated. The new material incorporates policy currently in section 2146.2 of the Provider Reimbursement Manual, which provides that the adjustment to disallow accrued cost generally is made in the current period if payment for the vacation or all-inclusive paid days off is not made in the required time period or if benefits are forfeited by the employee.

- In § 413.100(c)(2)(iii)(A) concerning sick pay, we have clarified that contributions to the deferred compensation plan must be reduced to reflect estimated forfeitures.

- In § 413.100(c)(2)(iii)(B), we have clarified that only if an employee has a *nonforfeitable* right to demand cash for unused sick leave at the end of each year can the sick pay be includable in allowable costs, without funding, in the cost reporting period in which it is earned. We believe that, typically, an employee's right to demand cash for unused sick leave is nonforfeitable. However, in a situation in which an employee has a right to demand cash but, later, for any reason may not be entitled to receive the cash (that is, the amount is forfeitable under certain conditions), a provider cannot accrue the sick leave benefit and make a current year claim for Medicare payment under § 413.100(c)(2)(iii)(B).