

§ 160.402 Basis for a civil money penalty.

(a) *General rule.* Subject to § 160.410, the Secretary will impose a civil money penalty upon a covered entity or business associate if the Secretary determines that the covered entity or business associate has violated an administrative simplification provision.

(b) *Violation by more than one covered entity or business associate.* (1) Except as provided in paragraph (b)(2) of this section, if the Secretary determines that more than one covered entity or business associate was responsible for a violation, the Secretary will impose a civil money penalty against each such covered entity or business associate.

(2) A covered entity that is a member of an affiliated covered entity, in accordance with § 164.105(b) of this subchapter, is jointly and severally liable for a civil money penalty for a violation of part 164 of this subchapter based on an act or omission of the affiliated covered entity, unless it is established that another member of the affiliated covered entity was responsible for the violation.

(c) *Violation attributed to a covered entity or business associate.* (1) A covered entity is liable, in accordance with the Federal common law of agency, for a civil money penalty for a violation based on the act or omission of any agent of the covered entity, including a workforce member or business associate, acting within the scope of the agency.

(2) A business associate is liable, in accordance with the Federal common law of agency, for a civil money penalty for a violation based on the act or omission of any agent of the business associate, including a workforce member or subcontractor, acting within the scope of the agency.

[78 FR 5691, Jan. 25, 2013]