

# **Due and Unpaid Employer Contributions (DUEC) Recovery**

**Issue Date** 03/30/2011

## **A. Background**

To complete the section 4044 allocation of plan assets, PBGC must determine the value of a terminated plan's assets at DOPT. Before the Pension Protection Act of 2006 ("PPA 2006"), for any plan that had Due and Unpaid Employer Contributions ("DUEC"), PBGC would value the collectible portion of DUEC and include that value as part of the plan assets. Sometimes that value would be determined based on an adjudication of PBGC's claims (for example, in bankruptcy); more often it would be based on a settlement of those claims. Other times it would be based on an estimate of what PBGC would receive through adjudication or settlement.

In many instances this process slowed down OBA's processing of the case. PPA 2006 created a new mechanism under section 4044(e)(f) of ERISA, similar to the recovery ratio used for purposes of section 4022(c) (the SPARR), that will allow PBGC to assign a value to the collectible portion of DUEC in order to complete the valuation of the plan more quickly.

The first edition of this PBGC Internal Guidance implemented this PPA 2006 provision, and is revised in this second edition only to change the SPDRR Calculation Date (section C).

## **B. Scope and Effective Date**

This PBGC internal guidance applies to plans with Termination Initiation Dates on or after September 16, 2006. This second edition revises the SPDRR Calculation Date, effective for plans with termination initiation dates on or after October 1, 2010.

## **C. Definitions for this Internal Guidance**

**DUEC Recovery** means the value of DUEC determined under PBGC Internal Guidance Valuation and Allocation of Recoveries.

**Due and Unpaid Employer Contributions (DUEC)** means the amount owed to the plan for minimum required contributions, determined in accordance with section 4062(c) of ERISA.

**Non-SPDRR Plan** means a plan for which the total amount of unfunded nonguaranteed benefits (UNGB) as of the date of plan termination (DOPT) exceeds \$20 million. In determining whether UNGB exceed \$20 million, recovery of DUEC is determined under PBGC Internal Guidance Valuation and Allocation of Recoveries.

**SPDRR Calculation Date** means the date as of which the SPDRR is determined. Effective beginning with Fiscal Year 2011, the SPDRR is determined as of the January 31<sup>st</sup> in the fiscal year and is applicable to a SPDRR plan with a TID during that fiscal year. Earlier SPDRR Calculation dates are listed below.

Fiscal Year	SPDRR Calculation Date
FY06	09/30/07
FY07	12/31/07
FY08	03/31/08
FY09	06/30/08
FY10	06/30/09
FY11	01/31/11
FY12	01/31/12

**SPDRR Plan** means a plan for which the total amount of UNGB as of DOPT **does not** exceed \$20 million. In determining whether UNGB exceed \$20 million, recovery of DUEC is determined under PBGC Internal Guidance Valuation and Allocation of Recoveries.

**Termination initiation date (“TID”)** means –

- A. for a plan that terminates in a distress termination under ERISA § 4041(c), the last date on which any notice of intent to terminate is issued to any affected party other than PBGC; or
- for a plan that terminates in an involuntary termination under ERISA § 4042 (even if the plan administrator had filed a notice of intent to terminate the plan in a distress termination), the date on which PBGC issues a notice of determination that the plan will be involuntarily terminated. In the absence of such a notice, the termination initiation date is the date on which PBGC's Director, or his or her designee, authorizes the initiation of proceedings to terminate the plan under ERISA § 4042.

**Valuation DUEC Recovery** means the value defined in section D of this guidance.

**Valuation Plan Assets** means the sum of (a) the Valuation DUEC Recovery, and (b) the value at DOPT of all other plan assets (i.e., stocks, bonds, accounts, and other tangible or intangible plan assets).

## D. Determination of Valuation DUEC Recovery

Valuation DUEC Recovery is the value determined by multiplying (a) the DUEC for a plan by (b) the section 4062(c) recovery ratio. The Valuation DUEC Recovery is added to the plan's other assets to determine the Valuation Plan Assets, which are used for the section 4044 allocation.

The section 4062(c) recovery ratio is determined as follows:

1. Non-SPDRR Plans – The section 4062(c) recovery ratio is the DUEC Recovery divided by the plan's total DUEC.

SPDRR Plans – The section 4062(c) recovery ratio is the "Small Plan DUEC Recovery Ratio" ("SPDRR"). The SPDRR is determined using PBGC's DUEC recovery experience over a prior five-year period (see section E below).

PBGC still completes the valuation and allocation of recoveries for every plan pursuant to PBGC Internal Guidance Valuation and Allocation of Recoveries. The DOPT values generated by this process provide the data for the determination of SPDRR's that will be used by PBGC in subsequent fiscal years.

## E. Determination of the SPDRR

The SPDRR for a particular plan is calculated using the PBGC's actual DUEC Recovery experience for all plans for which (1) the TID falls during the five full fiscal year period ending with the third fiscal year preceding the fiscal year in which falls the TID of the plan for which the SPDRR is being determined, and (2) PBGC has determined the value of its recoveries under ERISA § 4062(c), as of the SPDRR calculation date.

For example, the SPDRR used to determine the Valuation DUEC Recovery for a plan with a TID in FY 2007 is calculated using PBGC DUEC Recovery experience in Fiscal Years 2000 through 2004.

The "SPDRR for a fiscal year" applies to all SPDRR plans with a TID in that fiscal year.

The "SPDRR period" means the 5 full fiscal years ending with the third fiscal year preceding the fiscal year in which the TID occurs.

Once the SPDRR for a fiscal year is calculated, it is fixed. It will not, for example, be updated to include an additional plan for which the recovery determination is completed after the SPDRR calculation date.

Recoveries for any such plan will be included in subsequent SPDRR calculations. Additionally, the SPDRR will not be adjusted to reflect a subsequent adjustment to the value of any recovery for a plan. Instead, such adjustment will be reflected in SPDRR calculations made after the date of the adjustment. PBGC reserves the right to reconsider the above in the event of extenuating circumstances.