Plan Recoveries - Valuation and Allocation

Issue Date 10/01/2012

A. Background

PBGC asserts claims for Due and Unpaid Employer Contributions ("DUEC"), Unfunded Benefit Liabilities ("UBL"), and unpaid premiums (including Termination Premiums), against a contributing sponsor and its controlled group members with respect to terminated plans sponsored by a member of the controlled group. Recoveries on these claims reimburse PBGC for its losses and are used for determining the amounts in PBGC's financial statements. Also, PBGC shares a portion of its recoveries with plan participants and beneficiaries, with recovery amounts used to determine their benefits.

The DUEC claim is a plan asset and is asserted on behalf of the plan under ERISA §§ 4042(d) and 4062(c). The portion of the recovery allocated to the DUEC claim can affect (1) the value of plan assets allocated under ERISA § 4044, (2) the determination of the ERISA § 4062(c) Recovery Ratio used to calculate DUEC recovery amounts for plans with Unfunded Nonguaranteed Benefits ("UNGB") that do not exceed $20 million (see ERISA § 4044(f)), and (3) the amount of PBGC's UBL claim under ERISA § 4062(b).

The UBL claim is a corporate asset of PBGC. Recoveries allocated to this claim can affect (1) the Section 4022(c) amount that PBGC pays to participants under ERISA § 4022(c), (2) the determination of the Small Plan Average Recovery Ratio ("SPARR"), used to determine the Section 4022(c) amount paid under plans with UNGB that do not exceed $20 million (see ERISA § 4022(c)(3)(A-B)), and (3) PBGC's net losses for financial statements.

Unpaid premiums owed to PBGC are an asset of PBGC's revolving fund. The portion of the recovery allocated to the unpaid premium claim affects PBGC's financial statements.

PBGC's recoveries are valued and allocated among the claims pursuant to the rules in this Internal Guidance. First, PBGC determines a starting value for the recovery as of the receipt date (or expected receipt date). Then, PBGC discounts the recovery value(s) to the plan termination date. Finally, PBGC allocates the total recovery value among PBGC's claims (according to the claims' priority status and other rules) as of the plan termination date. Where two or more plans within the same controlled group terminate together (e.g., during the same bankruptcy proceeding, even if the termination dates are not the same), PBGC's claims for the various plans are generally aggregated. (See section F.4**.**)

The values determined under this guidance may differ from those used for financial statement purposes.

B. Scope and Effective Date

This Internal Guidance applies to PBGC-trusteed plans. As it is primarily a restatement of existing policies, most of the rules contained herein have been effective for many years (see the Pension Protection Act enacted as part of the Omnibus Budget Reconciliation Act of 1987, P.L. 100-203). This sixth edition of this internal guidance is effective upon issuance and applies to all valuation and allocation of recoveries completed on or after the issuance date.

C. Definitions

Date of Plan Termination (DOPT) means the termination date determined in accordance with ERISA § 4048.

Date of Trusteeship (DOTR) means the date on which PBGC becomes statutory trustee of a terminated plan. This is either the date of the last signature on an agreement for termination of the plan between

PBGC and the plan administrator, or the entry date of the court order (or other date as established by court order) in a termination under ERISA § 4042(c).

Due and Unpaid Employer Contributions (DUEC) means the amounts required to be contributed to the plan pursuant to ERISA §§ 302 and 303 and IRC §§ 412 and 430 as of DOPT, but not contributed by that date. Liability for this claim is owed to PBGC as statutory trustee upon termination of the plan, pursuant to ERISA §§ 4042(d) and 4062(c). While the literal language of ERISA § 4062(c), as amended by the Pension Protection Act of 2006 (PPA), refers to "shortfall amortization charges" and "waiver amortization charges," PBGC believes the amended language was incorrectly drafted. Therefore, PBGC construes ERISA § 4062(c) as referring to the same liability as under the pre-PPA provision – i.e., liability for due and unpaid minimum required contributions.

Premium means any unpaid flat rate or variable rate premium amount required under ERISA § 4006(a)(3)(A)(1) and (a)(3)(E), § 4007, and applicable PBGC regulations, and includes Termination Premiums, as applicable, under section F.2.b.

Recovery Valuation Group (RVG) means the interdepartmental group responsible for reviewing all large and complex recovery valuations as described in Paragraph H of this guidance.

Termination Premium means the premium owed pursuant to ERISA § 4006(a)(7) and applicable PBGC regulations, and addressed in section F.2.b.

Unfunded Benefit Liabilities (UBL) means the excess, as of the DOPT, of (a) the total value of a plan's benefit liabilities determined in accordance with 29 CFR part 4044, subpart B, over (b) the fair market value (or fair value, if appropriate) of the plan's assets determined in accordance with ERISA § 4044(a) and 29 CFR § 4044.41(b). The UBL and DUEC values used for purposes of the recovery valuation and allocation process are those in the Pension Information Profile (PIP) for a plan.

Note: (December 4, 2023) "Fair Value" has been added to this guidance's definition of Unfunded Benefit Liabilities and its Section D(1)(a) below to reflect changes prescribed by PBGC's final rule on Benefit Payments and Allocation of Assets, effective August 10, 2023. The rule amends PBGC's asset allocation regulation and its regulation on Liability for Termination of Single-Employer Plans (29 CFR part 4062) to clarify that PBGC will generally apply fair market value for purposes of allocating assets to participants' benefits and determining and collecting employer liability for plan underfunding and will apply fair value instead, where that methodology is appropriate.

D. Valuation of Recoveries

1. **Determination of Starting Value.**

   a. **General Rule.** PBGC determines a recovery's "starting value" using the fair market value (or fair value, if appropriate) of the recovery (or PBGC's best estimate of such value) as of the date on which PBGC receives or expects to receive payment or on a date soon thereafter (the "Starting Value Date"). In cases in which portions of PBGC's recovery are received on multiple, separate dates, PBGC will determine the starting value for each component of the recovery as of the date it is (or is expected to be) received. (E.g., if the recovery includes two separate cash distributions, a stock distribution, and a note payable in installments over ten years, PBGC would determine a starting value for each of these four components.) If PBGC knows, or in its best estimate expects, that it will receive no recovery, PBGC will determine a \$0 recovery value. In appropriate cases, the valuation may include estimated amounts.

      In rare cases, PBGC's staff may be able to reasonably assign a monetary value to all or a portion of its recovery but may not be able to reasonably estimate when the distribution to

PBGC of that recovery will take place. In such a case, PBGC staff shall value the recovery (or the applicable portion of that recovery) using an estimated payment date that is two years after the date on which PBGC performs its valuation and allocation of recoveries (see section H.2).

b. **Offset for Expenses.** In appropriate cases the value of a recovery can be reduced by clearly identifiable, commercially reasonable expenses incurred in obtaining the recovery -- e.g., expenses that would reasonably be incurred in seeking recoveries outside of bankruptcy. These would include expenses related to assistance from outside parties, such as outside counsel, industry specialists, investment bankers, expert witnesses and actuarial contractors. Recoveries shall not be reduced by PBGC's direct or indirect internal administrative or overhead expenses (e.g., salaries of PBGC employees). PBGC staff shall provide (1) a brief description of the service provided in obtaining the recovery, (2) the amount of payment, and (3) the date of payment. Each expense amount shall be discounted to DOPT (using the PBGC Select Rate). (If there are multiple plans with different DOPTs, the amount(s) will be discounted using the PBGC Select Rate in effect as of the DOPT of whichever plan terminated latest.)

2. **Discounting of Value(s) to DOPT.** The value of a recovery under a terminated plan is discounted from the Starting Value Date to DOPT, using the PBGC Select Rate in effect as of DOPT. (The PBGC Select Rate is the rate published in 29 C.F.R. part 4044, Appendix B, first column (it) – i.e., the interest rate used for valuing benefits during the first 20-25 years after DOPT.)

   In a case involving two or more plans within the same controlled group that terminate together (e.g., during the same bankruptcy proceeding) but do not have the same termination date, PBGC will initially discount the recovery value(s) to the DOPT of whichever plan terminated latest ("Allocation Date"), using the PBGC Select Rate in effect as of that date. PBGC will, as of that date, perform its allocation of recoveries to all plans under section F of this guidance. For recoveries allocated to plan(s) with earlier termination date(s), PBGC will discount the allocated recovery a second time to the earlier DOPT(s), using the PBGC Select Rate(s) in effect as of those earlier DOPT(s).

E. Claim Amounts and Priority

1. **In General.** The amounts of the DUEC, UBL, and premium claims shall be the amounts as of DOPT. The claims shall be based on the best available estimates. In bankruptcy cases, each claim shall be classified by its priority.

2. **Secured Claims.** The value of a secured claim depends upon the facts and circumstances. In no event shall the amount allocated to a particular secured claim exceed the value of the collateral.

3. **Premium Claims.** Premium claims do not include penalties, and are treated as general unsecured claims.

4. **Other Plan Claims.** In general, where a plan has claims other than DUEC claims (e.g., amounts required to be contributed to the plan pursuant to legal commitments such as plan agreements, trust agreements, or collective-bargaining agreements; or a fiduciary-breach claim), these claims are treated in the same way as DUEC claims for purposes of the allocation under section F. However, a different treatment may be appropriate depending on the facts and circumstances.

   In cases involving recoveries on plan claims other than DUEC, the amount of recovery for each type of claim (DUEC claim, fiduciary-breach claim, contract claim, or other type of plan claim) should be separately identified. Thus, even if DUEC and other plan claims of the same priority have shared in recoveries or been combined as "DUEC" in the application of sections F.2(c), (d), and (f.i), they should be separated in the report of allocation results.

See also section H.2.a, requiring that cases involving plan claims other than DUEC be processed by the date on which OBA needs recovery information to complete its actuarial case valuation.

Note: (May 5, 2021) When PBGC pursues a claim for fiduciary breach separately from its global claim against the plan sponsor, PBGC treats the recoveries on the fiduciary breach claim as plan assets. OGC will provide their best estimate (including any pertinent details such as a payment schedule) of the recovery amount and AED will value that amount as of DOPT and add it to the DOPT value of plan assets. The fiduciary breach claim and the recovery amount are not treated as DUEC and are exempt from CFRD's recovery valuation, in accordance with the decision by OBA, OGC, and CFRD documented in the January 4, 2016 email in Appendix A.

F. Allocation of Recoveries

1. **In General.** The allocation of recoveries to claims for DUEC, UBL, and unpaid premiums occurs as of the plan's DOPT. (See section D.2 for cases involving two or more plans within the same controlled group that terminate together (e.g., during the same bankruptcy proceeding) but do not have the same termination date.)

   PBGC uses the methodology described in this Paragraph F unless it is determined that the allocation rules in Paragraph F should not apply under the facts and circumstances of a particular case, in which case the recoveries may be allocated on a facts-and-circumstances basis. The RVG Chairperson must concur in any such allocation.

2. **Method for Allocating Recoveries to Claims**

   a. **Post-DOPT contributions.** Amounts that are paid to the plan as ordinary contributions after DOPT are treated as a recovery and are allocated entirely to the DUEC claim (first to secured DUEC, then to priority DUEC, and last to any general unsecured DUEC). If the post-DOPT contributions exceed the plan's DUEC claim, the excess is not allocated to the DUEC claims of other plans in the controlled group; instead, the excess is allocated to the plan's UBL claim.

      Because CFRD's calculation of the UBL claim in the PIP already takes into account any post-DOPT contributions, no further adjustment to the UBL claim is necessary for such contributions.

   b. **Termination premiums.** Termination Premiums are included as premium claims in the valuation and allocation process if PBGC has compromised its Termination Premium claims as part of a global settlement amount and either of the following apply:

      (i) The sponsor and any controlled group members have liquidated, but outside of any bankruptcy or insolvency proceeding (whether under Chapter 7 or Chapter 11 of the Bankruptcy Code or under a similar state or other law); or

      (ii) The sponsor or one or more of its controlled group members is continuing in business after a distress test 3 or distress test 4 termination or a termination that occurred during a reorganization under Chapter 11 of the Bankruptcy Code or under any similar state or other law.

Termination Premiums are excluded from the valuation and allocation process in all other cases, except (1) cases in which the total recovery exceeds 100% of all claims combined, in which case only the recovery amount above the UBL shall be allocated to the termination premium claim, or (2) other unusual cases in which the Chief of Negotiations and Restructuring ("CNR") determines that they should be included.

c. **Secured Claims.** Recoveries shall be allocated first to any secured claims in order of their priority. If the value of the recovery is not sufficient to cover secured claims of equal priority, the value shall be allocated pro-rata based on the amounts of such secured claims. In no event shall the amount allocated to a particular secured claim exceed the value of the collateral (or, if less, of the secured claim).

d. **Priority Bankruptcy Claims.** Any recovery value remaining after the allocation to secured claims shall be allocated to priority bankruptcy claims in order of their priority. Except in highly unusual circumstances, the UBL claim for purposes of this allocation shall be treated as having no priority. If the value of the recovery is not sufficient to cover claims of equal priority, the value shall be allocated pro-rata based on the amounts of such claims.

e. **Adjust UBL Claim.** Since DUEC recovery (as well as recovery on other plan claims) affects the amount of the remaining UBL, the UBL claim must be reduced by the amount of any recoveries allocated to DUEC (except post-DOPT contribution amounts) or such other claims in subparagraphs 2(c), and (d) above.

f. **Allocate Pro-Rata to Remaining Claims.** Allocate the remaining recovery amount pro-rata among DUEC, UBL, Unpaid Premium, and any other claims (e.g., fiduciary-breach claims) as of the DOPT.

(i) **Pro-Rata Allocation to General Unsecured DUEC.** Determine the amount of the recovery for DUEC (or other plan claims) as of the DOPT using the following equation:

$$\text{DUEC Recovery} = \frac{[\text{TC} - \sqrt{(\text{TC}^2 - 4 \times \text{TR} \times \text{DUEC})}]}{2}$$

Where:

- **TC** equals total amount of claims (DUEC, UBL and Unpaid Premiums, including Termination Premiums (where applicable)), as of the DOPT to which the recovery is being allocated.
- **TR** equals total net recovery (determined as of the DOPT) being allocated.
- **DUEC** equals the total DUEC claims (or other plan claims) as of the DOPT to which the recovery is being allocated.

(ii) **Adjust UBL Claim.** Since DUEC recovery (as well as recovery on other plan claims) affects the amount of the remaining UBL, the UBL claim must be reduced by the amount of any recovery allocated to DUEC (or such other claims) determined in Subparagraph 2(f)(i) above.

(iii) **Allocate Remaining Recovery Amount Pro-Rata.** Allocate the remaining recovery amount pro-rata as of the DOPT between the remaining non-DUEC claims (in most cases this will be the general unsecured UBL and premium claims, including Termination Premium claims where applicable).

3. **Multiple Settlements.** When PBGC recoveries on its claims result from settlements with more than one company or bankruptcy estate, the recovery values shall be combined and allocated to PBGC's various claims as of DOPT.

4. **Multiple Plans.** For allocation of recoveries in cases involving two or more plans within the same controlled group that terminate together (e.g., during the same bankruptcy proceeding, even if the termination dates are not the same), PBGC will aggregate claims of the same priority, and allocate to the claims according to the methodology in section F.2. If, after allocation to the claims of highest priority, there is any remaining recovery value, PBGC will allocate the excess to the next priority level of claims, and so on. Thus, in a case involving two plans, with Plan A having a secured claim of $1,000 and a priority DUEC claim of $1,000, and Plan B having no secured claims and a priority DUEC claim of $1,000, PBGC would allocate a recovery value of $2,000 as follows: $1,500 to Plan A ($1,000 to the secured claim and $500 to the priority DUEC claim) and $500 to Plan B (to the priority DUEC claim).

G. Special Rules

1. **Large Plan Exception.** If the plan is a non-SPARR plan (i.e., the plan has UNGB greater than $20 million) and the value of the recovery changes significantly between the date when PBGC staff completes the valuation and allocation (see section H.2) and the date when PBGC computes the total Section 4022(c) amount for the plan, the CNR, in consultation with the Deputy Director for Operations ("DDO"), may decide to revalue the recovery as of a later date for the purpose of determining Title IV benefits (guaranteed benefits plus any additional benefits to which plan assets are allocated pursuant to ERISA section 4044 and 29 CFR part 4044) and the total Section 4022(c) amount for the plan. The exception for these rare cases is in addition to the exception provided in section G.2 below.

2. **Mistake of Fact or Extraordinary Material Change of Circumstances.** Subsequent adjustments to the value of recoveries shall be made only in situations in which the valuation was based on a material mistake of fact or there has been an extraordinary material change of circumstances. An example of such a mistake would be an employer's having substantial assets that were not taken into account at the time the recoveries were valued. An example of an extraordinary material change of circumstances would be a substantial unexpected recovery in a legal action pertaining to a terminated and trusteed pension plan. The RVG shall determine whether a valuation was based on a material mistake of fact or whether there has been an extraordinary material change of circumstances concerning a valuation, and whether or not to adjust the recovery value. Where the RVG Chairperson concludes that there has been a material mistake of fact or an extraordinary material change of circumstances, and that the valuation should be changed, the RVG shall determine an adjusted recovery value. RVG determinations under this paragraph are subject to the approval of the CNR (and the DDO in the case of non-SPARR plans).

3. **Subsequent Insufficiencies.** In the case of a plan that is sufficient for guaranteed benefits as of the termination date, and subsequently becomes insufficient as described in ERISA § 4041(c)(3)(C)(ii), the value of PBGC's net recoveries on its claims for DUEC, unfunded benefit liabilities and unpaid premiums shall be determined as of the date of the subsequent insufficiency as described in ERISA § 4062(b)(1)(B) (using as the discount rate the PBGC Select Rate in effect as of that date).

H. Case Processing

1. **Responsibilities.** The Corporate Finance and Restructuring Department ("CFRD") has lead responsibility for completing the recovery valuation and allocation process. The Office of the General Counsel ("OGC"), Financial Operations Department ("FOD"), and OBA shall provide assistance on financial, legal, and other matters as appropriate.

2. **Recovery Valuation and Allocation Due Date.** CFRD shall complete the recovery valuation and allocation for each terminated plan in the processing period first occurring after all significant uncertainties regarding the value of recoveries are removed, but in any event no later than:

   a. For non-SPARR plans (and any plans that have non-DUEC plan claims, such as fiduciary-breach claims), the date when the information is needed for OBA to complete the actuarial case valuation;

   b. For SPARR plans, 36 months after the plan's DOTR.

   Processing Periods. CFRD will process cases in batches. Processing periods for completing batches of cases will occur no less frequently than annually, provided the timeframe described in section 2.a and b is met.

   Excessive Uncertainties. In rare and unusual circumstances where excessive uncertainties make it unreasonable to value recoveries within the timeframe above, CFRD and OGC may prepare a recommendation to the RVG Chairperson to delay the due date. The RVG Chairperson is responsible for determining whether there are excessive uncertainties for purposes of the recovery valuation and allocation and whether to delay the due date.

3. **Recovery Valuation Group**

   a. The RVG consists of representatives from CFRD, OGC, OBA, FOD, and other units of PBGC as appropriate. The RVG Chairperson is designated by the CNR.

   b. RVG concurrence is required for the following cases:

      1. Cases that, as of the DOPT, involve total UBL of more than $25 million for all terminated plans sponsored by the same controlled group (determined using the best available information as of the date when the RVG completes its valuation and allocation and assuming a zero value for DUEC);

      2. Cases presenting issues that are significant, complex, or novel.

      3. Cases involving a recovery valuation and allocation that occurs later than the due date prescribed in section H.2.a and b.

      Any issues unresolved by the RVG shall be referred to the CNR for resolution.

Example

Valuation and allocation of combined recoveries from a bankrupt entity in a case involving one plan with post-DOPT contributions

A.	**Assumptions**	**Plan 1**
1.	Date of Plan Termination (DOPT)	12/31/2010
2.	Select Rate at DOPT	4.48%
3.	Allocation Date[1]	12/31/2010

4.	Discount Factor applicable to discount from Allocation Date to plan's respective DOPT[2]	1.0000	
		First Combined Recovery (RECOV-1)	**Second Combined Recovery (RECOV-2)**
5.	Starting Value of Combined Recoveries	$215.00	$300.37
6.	Starting Value Date (Date Recoveries Received)	07/01/2011	12/31/2011
7.	Discount Factor Applicable to discount to Allocation Date	.9784	.9571
		First Combined Expense (EXP-1)	
8.	Combined Expenses Incurred	$100.00	
9.	Date Expenses Incurred	07/01/2011	
10.	Discount Factor Applicable to discount to Allocation Date	.9784	

Note 1: Allocation Date = DOPT, or in the case of multiple DOPTs, the latest DOPT.

Note 2: Because this example does not involve multiple plans with different DOPTs, there is no additional discounting. For purposes of completeness, the example includes the discount-factor step, applying a factor of 1.0000 to the recovery.

B. Claims (as of each plan's DOPT)		**Plan 1**
1.	Gross DUEC[3]	$1,000.00
2.	Secured DUEC Claim (perfected 430(k) or 412(n) liens)[4] [5]	$0.00
3.	Unsecured Priority DUEC: Administrative Priority (Code § 507(a)(2))[6]	$100.00
4.	Unsecured Priority DUEC: 180-Day DUEC Claim[7]	$0.00
5.	General Unsecured UBL	$5,000.00
6.	General Unsecured Premium[8]	$ 50.00
7.	Total Claims	$6,050.00
8.	Post-DOPT Contributions[9]	$100.00

Note 3: In general, where the plan has claims other than DUEC claims -- e.g., a fiduciary-breach claim -- these are included as DUEC for purposes of the valuation and allocation process. See section E.4 of guidance. The pro rata allocation to each type of claim should, however, be separately identified. (Only that portion of the DUEC recovery that relates to missed required contributions is used for purposes of calculating the SPDRR under ERISA § 4044(f).)

Note 4: The secured DUEC claim reflects the amount (up to the value of the collateral) perfected against total controlled group, including non-debtor controlled group members. For cases in which PBGC has a secured claim and PBGC's liens include those filed against non-bankrupt controlled group members, interest on the secured claim will continue to apply post-bankruptcy petition date of the plan sponsor.

Note 5: If there are secured claims other than DUEC, they also would be included here and in allocation step C.5. In order for the recovery methodology to work, however, RVG staff must keep track of the pro rata allocation to each type of claim, because recoveries allocated to non-DUEC are not used for reducing DUEC claims of lower priority or for adjusting the general unsecured UBL claim in step C.7.

Note 6: If there are priority claims other than DUEC (e.g., a priority claim for post-petition date premiums), they also would be included here and in allocation step C.6. In order for the recovery methodology to work, however, RVG staff must keep track of the pro rata allocation to each type of claim, because recoveries allocated to non-DUEC are not used for reducing DUEC claims of lower priority or for adjusting the general unsecured UBL claim in step C.7.

Note 7: For cases in which PBGC has a secured claim, the RVG will consult with OGC on whether that claim supersedes any 180-day DUEC priority claim that PBGC may have.

Note 8: In this example, Termination Premiums are excluded from the valuation and allocation process, as this case does not fall within the circumstances described under section F.2.b of the internal guidance.

Termination Premiums claims are included for those cases involving a global settlement and either of the following apply: The sponsor and controlled group members liquidated, but outside of any bankruptcy or insolvency proceeding; or the sponsor or one or more of its controlled group members is continuing in business after a distress test 3 or 4 or occurred during a reorganization under Chapter 11 of the Bankruptcy Code. In cases where Termination Premiums are included, the model adds the Termination Premiums amount with the regular premiums amount and allocates to the combined claim; however, for bookkeeping purposes, PBGC will keep track of the pro-rata allocations to each claim and the RVG will report to FOD the amount(s) allocated to Termination Premiums.

Note 9: Post-DOPT Contributions are not used to reduce UBL any further, as the UBL is already reduced to account for the expected DUEC recovery, which includes Post-DOPT Contributions. In this example, the $100 of post-DOPT contributions has already been discounted to DOPT.

C. Procedures

Recovery Calculation Spreadsheet

1. Determine Total Recovery Amount at Allocation Date
    a. Discount RECOV-1 to Allocation Date: $215.00 * .9784 = $210.35
    b. Discount RECOV-2 to Allocation Date: $300.37 * .9571 = $287.49
    c. Sum RECOV-1 and RECOV-2: $210.35 + $287.49 = **$497.84**
2. Determine Total Expense Amount at Allocation Date
    a. Discount EXP-1 to Allocation Date: $100.00 * .9784 = $97.84
    b. Sum EXP-1: **$97.84**
3. Determine Total Net Recovery Amount at Allocation Date (TR)
    a. Subtract Total Expense Amount at Allocation Date from Total Recovery Amount at Allocation Date:

= $497.84 - $97.84 = **$400.00**

Recovery Allocation Spreadsheet

4. Determine Net DUEC Claim

   a. Subtract Post-DOPT Contributions from Gross DUEC Claim:

      = $1,000.00 - $100.00 = **$900.00**

5. Allocate Recovery to Secured DUEC Claim

   a. Determine Secured DUEC Claims Remaining after Reduction of Post-DOPT Contributions.

      = the greater of (Secured DUEC Claim less Post-DOPT Contributions) or $0.00:

      = $0.00 - $100 = -$100.00, **$0.00**

   b. Determine Recovery for Combined Secured DUEC Claim

      = the lesser of (Secured DUEC Claim less Post-DOPT Contributions) or Total Net Recovery Amount at Allocation Date

      = **$0.00**

   c. Allocate Total Net Recovery Amount at Allocation Date to Secured DUEC Claim:

$$= \text{Recovery for Combined Secured DUEC Claim} \quad X \quad \frac{(\text{Secured DUEC Claim for Plan}}{\text{Combined Secured DUEC Claim})}$$

      = $0.00 * ($0.00 / $0.00) = **$0.00**

   d. Determine Remaining Recovery Amount by subtracting (Recovery for Combined Secured DUEC Claim from Total Net Recovery Amount at Allocation Date):

      = $400.00 - $0.00 = **$400.00**

6. Allocate Recovery to Unsecured Priority DUECs

   a. Determine Unsecured Priority DUECs

      = (Unsecured Admin Priority DUEC Claim + Unsecured 180-day DUEC Claim)

      = ($100.00 + $0.00)

      = **$100.00**

   b. Determine whether Post-DOPT Contributions should be allocated to Unsecured Priority DUECs

      = Post-DOPT Contributions less Secured DUEC Claim

      = $100.00 - $0.00

      = **$100**

   c. Determine Unsecured Priority DUEC Claims remaining after reduction of Post-DOPT Contributions

      = Unsecured Priority DUECs – Post-DOPT Contributions Allocated to Unsecured Priority DUECs

      = $100 - $100

      = **$0**

d. Determine Recovery for Unsecured Priority DUEC Claims

= the lesser of Combined Unsecured Priority DUEC Claims or Remaining Recovery Amount (lesser of $0.00 and $400.00)

= **$0.00**

e. Allocate Total Net Recovery Amount at Allocation Date to Unsecured Priority DUEC Claims:

= Recovery for Unsecured Priority DUEC Claim X (Unsecured Priority DUEC Claim for Plan / Combined Unsecured Priority DUEC Claim)

= $0.00 * ($0.00/$0.00) = **$0.00**

f. Determine new Remaining Recovery Amount by subtracting Unsecured Priority DUEC Claims from previous Remaining Recovery Amount:

= $400.00 - $0.00 = **$400.00**

7. Reduce General Unsecured UBL Claims at DOPT by Recoveries allocated to Secured and Unsecured Priority DUEC Claims:

a. General Unsec. UBL Claims at DOPT - Secured DUEC Claims Recovery – Unsecured Priority DUEC Recovery:

= $5,000.00 - $0.00 - $0.00 = **$5,000.00**

8. Calculate Recovery for Combined General Unsecured DUEC Claim

Where:

Total Recovery (TR)	=	$400.00
Gross DUEC	=	$1,000.00
Combined General Unsecured DUEC Claim (DUEC)	=	Net DUEC – Secured DUEC Claim Recovery – Unsecured Priority DUEC Claim
	=	$900.00 - $0.00 - $0.00 = $900.00
Total Remaining Claims (TC)	=	Reduced Unsec. UBL Claims at DOPT + Combined General Unsecured DUEC Claim + Unpaid Premium Claim as of DOPT
	=	$5,000.00 + $900.00 + $50.00 = $5,950.00

a. Determine Recovery for Combined General Unsecured DUEC Claim:

$$\frac{TC - \surd[(TC\text{^}2)-4 \times TR \times DUEC]}{2} = \frac{\$5{,}950.00 - \surd[(\$5{,}950.00\text{^}2)-4 \times \$400.00 \times \$900.00]}{2} = \mathbf{\$61.13}$$

9. Allocate General Unsecured DUEC Recovery

a. Allocate General Unsecured DUEC Recovery

= Recovery for Combined General Unsecured DUEC Claim X (General Unsecured DUEC Claim for Plan / Combined General Unsecured DUEC Claim)

= $61.13 x ($900.00 / $900.00) = **$61.13**

10. Determine Remaining Recovery Amount
    a. Determine new Remaining Recovery Amount

       Old Remaining Recovery Amount – Recovery for Combined Gen. Unsecured DUEC Claim

       = $400.00 - $61.13 = **$338.87**
11. Determine Adjusted General Unsecured UBL Claim
    a. Subtract Discounted Unsecured DUEC Recovery at DOPT from Unsecured UBL Claim:

       = $5,000.00 - $61.13 = **$4,938.87**
12. Determine Combined Remaining UBL and Premium Claims
    a. Adjusted General Unsecured UBL Claim + Unpaid Premium Claims as of DOPT

       = $4,983.87 + $50.00 = **$4,988.87**

13. Allocate Recovery to General Unsecured UBL Claims
    a.

$$= \text{Remaining Recovery Amount} \quad X \quad \frac{\text{(Adj. General Unsecured UBL Claim for Plan}}{\text{Combined Remaining UBL and Premium Claims)}}$$

= $338.87 x ($4,938.87 / $4,988.87)

= **$335.47**

14. Allocate Recovery to Premium Claims
    a.

$$= \text{Remaining Recovery Amount} \quad X \quad \frac{\text{(Unpaid Premium Claim for Plan}}{\text{Combined Remaining UBL and Premium Claims)}}$$

= $338.87 x ($50.00 / $4,988.87)

= **$3.40**

15. Summary of Claims and Recoveries
    a. Total Allocated DUEC Claims at DOPT:

       = Secured DUEC Recovery + Unsecured Priority DUEC Recovery + General Unsecured DUEC Recovery

       = $0.00 + $0.00 + $61.13

       = **$61.13**
    b. Allocated General Unsecured UBL Recovery at DOPT

       = **$335.47**
    c. Allocated Premium Recovery at DOPT

       = **$3.40**
16. Discount Recoveries to DOPT:

a. (Discount Total Allocated DUEC Recoveries at DOPT) and add Post-DOPT Contribution DUEC Recoveries

   = ($61.13 x 1.000) + $100.00

   = $61.13 + $100.00

   = **$161.13**

b. Discount Allocated General Unsecured UBL Recovery to DOPT

   = $355.47 x 1.0000

   = **$335.47**

c. Discount Premium Recoveries to DOPT

   = $3.40 x 1.0000

   = **$3.40**

Appendix A:

From: Jones Taylor

Sent: Monday, January 4, 2016 6:18 PM

To: Schneider Andrea; Travia Cynthia; Traynham Aaron; Krettek Joseph; Cooper Kenneth; Hagan Nicole; Grohman Donald; Lee Jennifer A.; Hutchins Michael; Shelton Mark; Jones Michael; Bonds Quinette; Ryan Matthew

Subject: Reporting of Estimated Recoveries on Fiduciary Breach Claims to AED

All,

On November 24, 2015, there was a discussion between OGC, AED, OGC, and CFRD – coordinated by Andrea Schneider, the Recovery Valuation Group Chairwoman – to confirm best practices for reporting PBGC recoveries for fiduciary breach claims, for purposes of AED's determination of plan assets. The group concluded that AED generally has a system in place to interact with OGC in order to estimate and account for monies received due to fiduciary breach. This system provides accurate information and generally obviates the need for CFRD to treat estimated fiduciary breach recoveries in the way generally proposed under PBGC's Internal Guidance on Valuation and Allocation of Recoveries.

The internal guidance provides that CFRD generally will treat monies received due to fiduciary breach as recoveries to be allocated to DUEC. The allocation methodology, however, is complex. Furthermore, CFRD is not in the best position to know if a fiduciary breach claim exists, and if one does, and what the expected recovery may be. If CFRD were to continue treating fiduciary breach recoveries as recoveries to be allocated to

DUEC, this would impose an administrative burden on CFRD due to the difficulty in incorporating fiduciary breach data into pre-existing financial models and procedures.

With OGC's input, CFRD, AED, and OGC agreed that AED would continue to coordinate directly with OGC in order to appropriately account for fiduciary breach estimates that are ultimately used in benefit determinations. CFRD agreed to provide to AED, generally around the time of its annual deliverable, a compilation of the OGC Best Estimate forms for cases involving fiduciary breach.

Apologies for the delayed delivery of this summary of our meeting. The above had to go through certain review channels, which was complicated in part by the holidays.

Regards,

Taylor