



September 11th
Victim Compensation Fund

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Economic Loss

Presented March 26, 2014

The information in this presentation is intended solely as an overview. It is intended to be general and does not set forth any rules or guidance that is specific to any given claim. There is more detailed guidance in the FAQs on the www.vcf.gov website.



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Part I: Overview - Basic Premise of Economic Loss Calculations

- The calculation of economic loss involves estimating the difference between an individual's projected economic circumstances "but for" a specified event – that is, if the event (here, 9/11) had not occurred – and the individual's actual economic circumstances as a result of the event.



Part I: Overview - VCF Economic Loss Calculations

- VCF awards generally consist of 3 components:
 - Economic + Non-Economic Loss – Collateral Source Payments
- Economic loss may include the following loss categories:
 1. Loss of Earnings
 2. Replacement Services Loss
 3. Medical + Other Out-Of-Pocket Expenses



Part I: Overview – Focus of VCF Training

- PI claims - constitute the vast majority of VCF claims.
- Disabled Claimants - PI claimants who are unable to work or whose earnings capacity has decreased as a result of the Claimant's disability due to the eligible condition(s).



Part I: Overview - Level of Disability or Incapacity

- For purposes of calculating economic loss, the VCF will consider the eligible injury or condition caused a disability or incapacity that is either:
 - Permanent or temporary
 - Total or partial

- Only those losses that are a result of the Claimant's disability or incapacity or death as a result of a VCF-eligible injury/condition are compensable by the VCF.



Part I: Overview- Loss Period: Past vs. Future Losses

- **Past Losses:** losses sustained from the date of start of disability or incapacity to end of disability or incapacity or claim date, whichever is earlier.
 - Not discounted to present-dollar amounts
- **Future Losses:** losses sustained from the claim date through the defined loss period (e.g., work life expectancy, life expectancy or end of disability).
 - Future losses are discounted back to the claim date.



Part II: Lost Earnings - General

- Lost earnings is defined as the Claimant's earning capacity but for the injury, less the actual earning capacity (any "residual" or mitigating earnings).



Part II: Lost Earnings - Factors/Assumptions

- Factors/assumptions considered:
 - Age at date of onset of disability/incapacity or death
 - Compensable income
 - Employer-provided benefits (e.g., medical, pension)
 - Work life and/or other defined loss period
 - Growth and inflation rates
 - Effective tax rate
 - Risk of unemployment
 - Discount rate
 - Residual earnings capacity/“mitigating” earnings
 - Consumption (for deceased individuals only)

- In general, economic loss is calculated using standardized assumptions for certain components unless actual data is available and verifiable. Detailed information regarding the assumptions used in calculating economic loss is available at FAQ 6.18.



Part II: Lost Earnings - Compensable Income

- Income includes combined compensation from all sources including salaries, wages, bonuses, overtime, tips, commissions, self-employment earnings, deferred compensation, and part-time income.
- In general, the SMO will determine the most appropriate income data to use for the calculations.
- The VCF relies generally on pay stubs and employer statements as the most accurate depiction of actual compensation.



Part II: Lost Earnings - Employer-Provided Benefits

- Losses are based on the value of the *employer's* contribution. Types of benefits include:
 - Health insurance
 - Pension
 - Defined benefit plan - based on monthly pension payable at retirement; or
 - Defined contribution plan (e.g., 401(k) or 403(b) plans) - based on employer contribution as % of salary.
 - Car or housing allowance; Other
- Claimants should submit pension plans and other benefit information to the extent that this information is not fully addressed in pay stubs.
- For Claimants who do not have or cannot document fringe benefits, the VCF uses a default value as “assumed” benefits.
 - Health insurance: VCF model assumes \$2,400 per year
 - Pension: VCF model assumes 4% of pension-eligible compensation income



Part II: Lost Earnings - Work Life Expectancy

- Number of years the claimant would have worked but for the loss event (9/11).
- In general, the VCF uses standard of expected remaining years of workforce participation based on Claimant's age at time of disability or death.
 - In rare cases, this may be adjusted due to special individual circumstances or needs.



Table 2
Expected Remaining Years of Workforce Participation

Age	All Active Males
25	34.19
30	29.88
35	25.49
40	21.17
45	17.03
50	13.03
55	9.43
60	6.31
65	4.60

Source: "Worklife in a Markov Model with Full-time and Part-time Activity" by Kurt V. Krueger, Gary R. Skoog, and James E. Cieccka in the *Journal of Forensic Economics* 19(1), 2006, pp. 61-82.



Part II: Lost Earnings – Growth and Inflation

- A growth rate based on the Claimant's age at disability or death is applied to earnings to attempt to replicate the pay increases the individual would have expected in the future but for disability or death. The VCF model applies individual age-specific growth rates as set forth in FAQ 6.18, Table 3.
- An inflation adjustment of 2% is also generally applied each year.



Table 3
Presumed Age-Specific Earnings Growth Rates
(Including Life-Cycle, Inflation, and Overall Productivity Increases)

Age	Earnings Growth Rate
18	9.976%
19	9.807%
20	9.642%
21	9.481%
22	9.271%
23	9.062%
24	8.854%
25	8.645%
26	8.438%
27	8.230%
28	8.023%
29	7.816%
30	7.610%
31	7.404%
32	7.199%
33	6.994%
34	6.789%
35	6.585%
36	6.381%
37	6.177%
38	5.974%
39	5.771%
40	5.569%
41	5.367%
42	5.166%
43	4.964%
44	4.764%
45	4.563%
46	4.363%
47	4.163%
48	3.964%
49	3.765%
50	3.567%
51	3.369%
52	3.171%
53+	3.000%

Note: Nominal percentage changes assume annual inflation or cost of living increases of 2.0% plus overall productivity adjustments of 1.0% per year. The underlying real life-cycle percentage change is calculated using a regression analysis of log of total earnings on experience and experience squared using earnings for full-time year-round male workers from the 2010 Current Population Survey (CPS) table PINC-04.



Part II: Lost Earnings – Taxes and Risk of Employment

- Future income is adjusted to account for taxes and risk of unemployment.
- Taxes: The VCF uses effective income tax rates for Claimant's income bracket applicable in his/her domicile.
- Risk of unemployment: The VCF applies a 6% adjustment based on historical unemployment rates.



Table 1
Presumed Future Effective Combined Federal, State and Local Income Tax Rates for New York

Income								
\$10,000	\$20,000	\$25,000	\$30,000	\$35,000	\$40,000	\$45,000	\$50,000	\$60,000
3.70%	5.70%	7.70%	8.84%	9.99%	11.14%	12.29%	13.43%	14.58%
Income								
\$70,000	\$80,000	\$90,000	\$100,000	\$125,000	\$150,000	\$175,000	\$200,000	\$225,000
15.12%	15.67%	17.51%	19.34%	21.41%	23.47%	25.53%	27.59%	29.65%

Note: Calculated from data reported by the Internal Revenue Service's Statistics of Income (SOI) Division for individual income tax returns: Forms 1040, 1040A, 1040EZ for Tax Years 2007, 2008, and 2009 (Table 2; files 07in33ny.xls, 08in33ny.xls, 09in33ny.xls). Obtained from the IRS website, <http://www.irs.gov/taxstats/article/0,,id=171535,00.html>



Part II: Lost Earnings – Discount Rate

- *Past* lost earnings are not increased for interest or adjusted for the time value of money.
- *Future* lost earnings are discounted to present value to provide the lump sum representing future loss.



Table 5
Assumed Before-Tax and After-Tax Discount Rates

Age of Victim	Before-Tax Discount Rate	After-Tax Discount Rate
35 & Under	4.1%	3.5%
36 - 54	3.8%	3.2%
55 & Over	3.2%	2.7%

Note: The present value of presumed economic loss is calculated by applying the after-tax discount rate corresponding to the victim's age at death to all future periods. For example, projected earnings and benefits for a victim who was 30 years old at the time of death will be discounted to present value at 3.5% per year for all future years, and projected earnings and benefits for a 45-year-old victim will be discounted to present value at 3.2% per year for all future years.



Part II: Lost Earnings – Residual or Mitigating Earnings

- There may be residual or “mitigating” earnings that reflect the Claimant’s earnings capacity after the injury/disability to offset potential lost earnings.
 - Example: A firefighter deemed disabled by the FDNY for active firefighting duties may nevertheless be able to perform another job. In that case, residual earnings may equal what he/she could earn as a security guard until work life expectancy.
- Residual earnings are deducted from lost earnings.



Part II: Lost Earnings – Personal Consumption

- Considered in death claims only.
- Represents the percent of income a person spends on or behalf of himself and as a result would not be available to other household members.
- Calculated as a share (based on household size) of certain expenditure categories, including food, apparel, transportation, personal care, entertainment



Table 4
Decedent's Personal Expenditures or Consumption as Percent of Income

	Income									
	\$10,000	\$20,000	\$25,000	\$30,000	\$35,000	\$40,000	\$45,000	\$50,000	\$60,000	
Single	77.6%	75.4%	75.0%	73.2%	68.3%	63.4%	63.5%	63.7%	62.6%	
Single, 1 dependent child	18.8%	18.8%	18.8%	18.8%	17.7%	16.6%	16.5%	16.5%	16.1%	
Married, no children	34.9%	26.8%	25.7%	25.7%	22.4%	19.2%	17.8%	16.5%	16.1%	
Married, 1 dependent child	18.8%	16.9%	16.5%	14.7%	13.7%	12.6%	11.9%	11.2%	10.9%	
Married, 2 dependent children	12.9%	12.0%	11.8%	10.9%	10.1%	9.4%	8.9%	8.4%	8.2%	

	Income									
	\$70,000	\$80,000	\$90,000	\$100,000	\$125,000	\$150,000	\$175,000	\$200,000	\$225,000	
Single	61.6%	52.7%	45.8%	45.8%	45.8%	45.8%	45.8%	45.8%	45.8%	
Single, 1 dependent child	15.7%	13.4%	11.9%	11.9%	11.9%	11.9%	11.9%	11.9%	11.9%	
Married, no children	15.7%	12.9%	10.8%	10.8%	10.8%	10.8%	10.8%	10.8%	10.8%	
Married, 1 dependent child	10.6%	8.8%	7.6%	7.6%	7.6%	7.6%	7.6%	7.6%	7.6%	
Married, 2 dependent children	8.0%	6.7%	5.8%	5.8%	5.8%	5.8%	5.8%	5.8%	5.8%	



Part III: Replacement Services Loss

- Replacement services losses represent the cost of obtaining those services that the Claimant can no longer perform due to disability/incapacity or death.
- Considered on a case-by-case basis.
- Examples:
 - Home maintenance and repairs
 - Child care
 - Housekeeping, cooking, shopping, outdoor chores



Part IV: Medical Expense Losses

- *Past* medical losses are based on actual out-of-pocket costs (amounts not covered by insurance), supported by invoices or other corroborative documentation.
- The VCF currently does not provide compensation for potential future medical costs. The VCF will reexamine this issue closer to the end of the program. Future medical costs are addressed in the component of future loss that incorporates health insurance benefits (if the claims would be covered). In addition, future medical expenses may be affected if the WTC Health Program continues beyond Fiscal Year 2016. See FAQ 6.37.



Part V: Non-Economic Loss

- For PI Claims:
 - No presumed amounts. Non-economic loss varies by type, duration and prognosis of injury.
 - Non-economic loss for PI claims in VCF1 for respiratory and similar injuries generally ranged from \$5,000 to \$125,000.
- For Deceased Claims:
 - Presumed amounts of \$250,000 plus \$100,000 for each spouse and dependent.



Part VI: Collateral Source Offsets

- The statute requires the Special Master to reduce compensation by collateral source payments the Claimant has received or is entitled to receive as a result of 9/11.
- Collateral source payments are defined to include:
 - Social Security Survivor or Disability Benefits
 - Workers' compensation payments
 - Unemployment compensation
 - Continuation of pay provided by employer
 - Life Insurance
 - Settlement payments
 - WTC Health Program costs for the Claimant
- The Special Master has discretion in valuing the appropriate deduction for collateral offset by determining:
 - whether collateral source payout is certain or can be computed with sufficient certainty;
 - the appropriate amount that should be deducted, taking into account the time value of money and contributions made by the injured Claimant or decedent.



Part VII: Calculation of Individual VCF Awards - VCF Economic Loss Models

- Computer models have been developed that incorporate the economic loss assumptions so that claims can be evaluated through a uniform process and that allow for input of claimant-specific data.
- Employer-specific models have been created for certain employers with numerous potential claimants (e.g. FDNY, NYPD). These models incorporate actual data provided by the employees and ensure accuracy and consistency for claimants employed by the same entity.



Part VII: Calculation of Individual VCF Awards – Input Data

- VCF claim forms request general information about claimed losses, disability, employment/compensation history and type of benefits provided. This information provides a reference point for identifying the nature and extent of economic losses.
- *However*, the data input for models must be based on documented and verified information.