Gillis, Diana L.

Subject: FW: Manual Interp. 94 and whether acquisition price is determined when there are earn-outs

From: Verne, B. Michael [mailto:MVERNE@ftc.gov]
Sent: Wednesday, December 17, 2014 10:39 AM
To: [redacted]; Walsh, Kathryn E.
Cc: Gillis, Diana L.; Whitehead, Nora
Subject: RE: Manual Interp. 94 and whether acquisition price is determined when there are earn-outs

[redacted] - what it is saying is that when you do a FMV, you take into account the possibility of future payments, but the entire FMV is done at present value because it is based on the fiction that the buyer will pay it all upfront with no future payments. Conversely, if you have fixed future payments, such that the acquisition price is determined, you include those payments at face value (not discounted to present value) because that is the actual amount that will be paid. Likewise, if you have estimated contingent payments, you have determined that you have a reasonable basis for projecting what the future payments will be so they should be treated the same as known fixed future payments and therefore not discounted to present value.

From: [redacted]
Sent: Tuesday, December 16, 2014 11:24 AM
To: Walsh, Kathryn E.; Verne, B. Michael
Subject: RE: Manual Interp. 94 and whether acquisition price is determined when there are earn-outs

It is clear that future payments of a fixed amount must be included at face value, and that in making a FMV determination, you can value future payments at present value. My confusion is that the paragraph begins with "In contrast to the treatment of contingent payments in calculating the acquisition price . . ." So, if the contingent payments can be reasonably estimated so that the acquisition price is determined, are those reasonably estimated contingent payments included at face value or at present value? The "In contrast" language taken with what immediately follows implies that you can use present value, but it I didn't see that stated explicitly.

[redacted]