

**Annual Report for Fiscal Year 2008  
Under the  
Notification and Federal Employee Antidiscrimination  
and Retaliation Act of 2002**

**Report Prepared for:**  
**Speaker of the House of Representatives**  
**President Pro Tempore of the Senate**  
**Senate Committee on Homeland Security and Governmental Affairs**  
**House Committee on Oversight and Government Reform**  
**Senate Health, Education, Labor, and Pensions Committee**  
**House Education and Labor Committee**  
**Equal Employment Opportunity Commission**  
**Attorney General**

**Report Submitted by:**  
**Pension Benefit Guaranty Corporation**

## Table of Contents

- A. Introduction**
- B. Federal Court Cases Arising Under the Federal Antidiscrimination or Whistleblower Laws**
  - 1. The Number of Federal Court Cases Pending or Resolved in FY 2008**
  - 2. Status or Disposition of Federal Court Cases Including the Amount of Money Required to be Reimbursed to the Judgment Fund and Any Budget Adjustments Relating to the Judgment Fund**
- C. Employees Disciplined for Conduct Inconsistent with Federal Antidiscrimination or Whistleblower Laws**
  - 1. Employees Disciplined in Connection with Federal Court Cases**
  - 2. Employees Disciplined in Administrative Cases**
- D. Final Year-End No FEAR Act Data for Fiscal Year 2008**
- E. PBGC's Discipline Policy for Conduct Inconsistent with Federal Antidiscrimination or Whistleblower Laws**
- F. Data Analysis**
  - 1. Trends**
  - 2. Causal Analysis**
  - 3. Knowledge Gained**
  - 4. Actions Planned to Improve PBGC's EEO Program**
- G. No FEAR Act Training Plan**

### APPENDICES:

- Appendix 1 Final Year-End No FEAR Act Data for FY 2008**
- Appendix 2 EEO and Diversity Policy Statement, dated January 24, 2008**

**A. Introduction**

This report is prepared in accordance with the requirements of Title II, Section 203, of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002. The Act requires federal agencies to submit an annual report to the Speaker of the House of Representatives; the President Pro Tempore of the Senate; Senate Committee on Homeland Security and Governmental Affairs; House Committee on Oversight and Government Reform; the Senate Health, Education, Labor, and Pensions Committee; and the House Education and Labor Committee; the U.S. Equal Employment Opportunity Commission; and the Department of Justice.

The Act holds federal agencies accountable for violations of antidiscrimination and whistleblower protection laws relating to federal employment. The report contains data and analysis concerning equal employment opportunity complaints filed with PBGC during Fiscal Year 2008.

It is the law of this nation and the policy of PBGC to prohibit discrimination in the workplace. PBGC is committed to maintaining an environment that provides equal employment opportunity for its approximately 889 employees, as well as applicants for employment.

**B. Federal Court Cases Arising Under the Federal Antidiscrimination or Whistleblower Laws**

**1. The Number of Federal Court Cases Pending or Resolved in FY 2008**

As shown below in Table 1, there were a total of seven federal district court cases filed by six employees pending in Fiscal Year 2008. Of these, one was dismissed and two were settled. There have been no findings of discrimination in any of these cases.

**TABLE 1**

**Federal Court Cases Pending or Resolved in FY 2008 Separated by Statute**

<b>Title VII of the Civil Rights Act of 1964:</b>	<b>7</b>
<b>Age Discrimination in Employment Act of 1967:</b>	<b>1</b>
<b>Rehabilitation Act of 1973:</b>	<b>0</b>
<b>Whistleblower Protection Act:</b>	<b>0</b>
<b>Equal Pay Act of 1963:</b>	<b>0</b>

**2. Status or Disposition of Federal Court Cases Including the Amount of Money Required to be Reimbursed to the Judgment Fund and Any Budget Adjustments Relating to the Judgment Fund**

Table 2 shows the status and disposition of Federal court cases by statute. In FY 2008, one case (alleging Title VII and ADEA violations) was dismissed with prejudice. Two cases (alleging violations of Title VII) were settled. By the close of the fiscal year, four federal cases remained pending.

As a government corporation, PBGC has corporate funds available to pay judgments and settlements. During FY 2008, PBGC did not have any settlements or judgments paid from the Judgment Fund, nor did it make any budget adjustments relating to the Judgment Fund.

**TABLE 2**

**Status of Discrimination Complaints Filed in FY 2008 by Statute**

<b>Title VII of the Civil Rights Act of 1964:</b>	<b>7</b>
<b>Pending:</b>	<b>4</b>
<b>Dismissed:</b>	<b>1</b>
<b>Settled:</b>	<b>2</b>
<b>Age Discrimination Employment Act of 1967:</b>	<b>1</b>
<b>Pending:</b>	<b>0</b>
<b>Dismissed:</b>	<b>1</b>
<b>Settled:</b>	<b>0</b>
<b>Rehabilitation Act of 1973:</b>	<b>0</b>
<b>Pending</b>	<b>0</b>
<b>Dismissed:</b>	<b>0</b>
<b>Settled:</b>	<b>0</b>
<b>Whistleblower Protection Act:</b>	<b>0</b>
<b>Pending:</b>	<b>0</b>
<b>Dismissed:</b>	<b>0</b>
<b>Settled:</b>	<b>0</b>
<b>Equal Pay Act of 1963:</b>	<b>0</b>
<b>Pending:</b>	<b>0</b>
<b>Dismissed:</b>	<b>0</b>
<b>Settled:</b>	<b>0</b>

**Notes:**

**(1) One of the seven federal court cases pending during FY 2008 alleged violations**

under both Title VII and the ADEA. This same case initially included allegations under the Equal Pay Act, but those allegations were dismissed in FY 2007, and the dismissal of those allegations was not appealed. The remaining six cases alleged violations solely under Title VII.

(2) One complainant filed two federal court cases, one in FY 2003 and one in FY 2005, which were consolidated in FY 2006. These cases are reported separately, in accordance with informal guidance received from OPM.

**C. Employees Disciplined for Conduct Inconsistent with Federal Antidiscrimination or Whistleblower Laws**

Table 3 shows the number of findings of discrimination and the number of employees disciplined for having been found to have engaged in discrimination in violation of the civil rights laws.

**TABLE 3**

**Employees Disciplined for Conduct Inconsistent with  
Federal Antidiscrimination or Whistleblower Laws in FY 2008**

**1. Employees Disciplined in Connection with Federal Court Cases**

Number of Findings:	0
Number of Employees Disciplined:	0

**2. Employees Disciplined in Administrative Cases**

Number of Findings:	0
Number of Employees Disciplined:	0

**D. Final Year-End No FEAR Act Data for FY 2008**

Attached as Appendix 1 is the PBGC's Final Year-End No FEAR Act Data for FY 2008.

## **E. PBGC's Discipline Policy for Conduct Inconsistent with Federal Antidiscrimination or Whistleblower Laws**

PBGC is committed to maintaining a workplace that promotes productivity and professionalism and an environment that protects the dignity of all of its workers. PBGC has issued anti-harassment policy statements, which periodically are sent to all of its employees and contractors, which provide that any harassment of PBGC employees, sexual or non-sexual, is expressly prohibited and will not be tolerated. These statements provide that employees who engage in discriminatory or harassing behavior will be subject to appropriate corrective action -- up to and including dismissal from service -- if allegations are substantiated. See EEO and Diversity Policy Statement, dated January 24, 2008 (Appendix 2).

As noted in its FY 2007 No Fear Report, on April 2, 2007, PBGC updated its internal directive on Disciplinary and Adverse Actions, outlining the procedures for addressing employee misconduct, and including a table of suggested penalties for various infractions. This table includes several categories for misconduct that is inconsistent with federal antidiscrimination or whistleblower laws. Using a progressive discipline approach, and depending on the nature of the misconduct, the penalties can range from a written reprimand for a first offense to removal.

## **F. Data Analysis**

During FY 2008, 20 PBGC employees filed 24 formal complaints of discrimination. This represents a 60% increase in formal complaints, as compared to the 15 formal complaints in FY 2007. The number of repeat filers in FY 2007 increased from two to four. These repeat filers accounted for 17% of the overall complaints in FY 2008.

An analysis of the FY 2008 complaint data reveals that the three leading issues for formal complaints were: harassment (non-sexual), promotion/non-selection and terms/conditions of employment. Of these leading issues, seven complaints raised harassment (non-sexual), seven raised promotion/non-selection and seven raised terms/conditions of employment. In harassment (non-sexual) and promotion-non selection, this represents a significant increase compared to the FY 2007 data. Promotion/non-selection increased from 2 to 7, or a 350% increase; harassment (non-sexual) increased from 4 cases in FY 2007 to 7, a 75% increase; and terms/conditions showed no increase at 7 cases. The only significant decreases were shown in the "other" and "suspension" categories, both of which went from 2 complaints in 2007 to 0 in FY 2008.

A further analysis of FY 2008 complaint data reveals that the three leading bases of formal complaints were: race, reprisal and disability. These are the same leading bases from FY 2007. Of these leading bases, 9 complaints raised race as a basis, 13 complaints raised reprisal as a basis, and 7 complaints raised disability as a basis. This represents a 69.5% increase of cases based on reprisal as compared to the 9 reprisal-based complaints in FY 2007. For race, the number of 8 in 2007 increased slightly in 2008 to 9, representing an 11% increase. The number of disability complaints stayed stable from 2007 to 2008. In both years, 7 complaints included

that basis. PBGC only showed decrease in one category, age, which decreased from 3 cases in FY 2007 to 2 in the current fiscal year.

The agency actively attempts to resolve matters through administrative and judicial settlements and the use of ADR. While further efforts are still needed, PBGC has been able to settle 8% of its cases in FY 2008. Over the past 20 years, no formal complaints have resulted in a final finding of discrimination against PBGC.

## **1. Trends**

An analysis of the No FEAR data for the past several years reveals the most significant increase in the overall number of complaints in recent years, with the highest number being filed in FY 2008. In FY 2003 and FY 2004 there were 11 complaints. In FY 2005 there were 15, and in FY 2006 the total number of complaints rose to 19. The number of complaints decreased in 2007 to 15 total, only to rise to its highest level with 24 complaints in 2008. PBGC received 8 formal complaints from 4 repeat filers this fiscal year (an increase of 2 repeat filers from last year). Repeat filers' claims represent one third of the total complaints filed this fiscal year.

Comparing 2007 and 2008, the data shows more stability in the number of bases claimed in complaints. For example, race complaints fluctuated between FY 2002 and FY 2005 in the range of six to 10 complaints a year, and then rose sharply in FY 2006 to 17 complaints, and decreased significantly in FY 2007 to 8 complaints. In 2008, race complaints increased by 8 to a total of 9. Most of the other bases followed the same trend – only slight increases have been shown. For example, national origin complaints rose from zero complaints in 2007 to 2 complaints in 2008. Reprisal showed the sharpest increase in 2008 with 13 complaints, up from just 9 complaints the previous year. Since 2003, reprisal has followed the same pattern of being a single digit basis one year, then spiking to double digits the next.

Terms and conditions of employment remained one of the three leading issues in FY 2008, joining harassment (non-sexual) and promotion/non-selection as leading issues. Terms and conditions has gone from having 0 complaints between FY 2002 and FY 2005, increasing to 4 in 2006 and 7 complaints in FY 2007. This basis has stayed the same in 2008 with 7 complaints again. For the issue of promotion/non-selection, these cases typically fluctuated between three to six complaints each year until FY 2006 when 11 complaints were raised. In FY 2007 a marked decrease from its 2006 number of 11 was registered with a low of 2 cases. In 2008, this number spiked again up to seven complaints. Harassment (non-sexual) has fluctuated since 2003. The number of complaints ranged from 1 to 6 during the period of 2003 to 2005 and from 12 to 4 from 2006 to 2007. In 2008, seven complaints were filed, making for an alternating low/high pattern for the four year period between 2005 and 2008.

With respect to processing time, since FY 2004, the average number of days in the investigation stage has decreased even as of the number of formal complaints filed with PBGC increased. For example, in FY 2007, there were 15 formal complaints and the average number of days in the investigation stage was 189 days. By FY 2008, the number of complaints had risen to 24, with the average number of days falling to 152. Thus, the number of complaints has risen 62% as the time in investigation has fallen.

In FY 2003, the average time to investigate a complaint was 64 days, and then rose in FY 2004 and FY 2005 to 94 and 146 days, respectively. Since FY 2003, the average time in the final action stage has fluctuated from year to year, without any consistency until FY 2007, when there was a significant increase. In FY 2006, the average time in the final action stage went down to 77 days then went back up to 376 days. Despite this very sharp increase the previous year, the numbers in FY 2008 have gone down to 233, a decrease of 38%. This decrease can be attributed directly to the EEO Office having its own Attorney-Advisor on staff at the end of the last fiscal year replacing the previous use of a collateral Attorney-Advisor.

## **2. Causal Analysis**

The increase in the overall number of complaints, as well as the significant increase in race, sex, and reprisal based complaints, are likely attributable to a number of factors, which will require further analysis. Because the number of complaints is relatively small, it is difficult to make a sound statistical causal analysis with confidence.

We anticipate that as work processes, policies, procedures and complaint data are reviewed and analyzed, barriers will be identified and action plans will be developed. We also hope to pinpoint problem areas and identify departments that require more focused diversity training to alleviate concerns among employees. In the interim there is continued mandatory management and employee EEO and diversity training agency-wide.

## **3. Knowledge Gained**

The use of Alternative Dispute Resolution (ADR) has proven to be an effective means of identifying underlying employee-management issues and improving communication. ADR leads to an earlier resolution of the issues when both parties participate in good faith. Accordingly, PBGC promotes and advocates ADR as an option at all stages of the EEO process. PBGC promotes ADR more aggressively than in the past and is currently providing additional training to managers and employees about the benefits of ADR as a viable and effective tool to resolve disputes. In addition, the collateral counselor cadre is trained in explaining the benefits of using ADR to complainants.



#### **4. Actions Planned to Improve PBGC's Equal Employment Opportunity Program**

PBGC continues to work to improve its EEO Program. In FY 2008, the EEO office added two EEO specialists and an Attorney-Advisor to its ranks. PBGC also conducted its first diversity day training conference, provided quarterly technical briefings for EEO counselors, and provided training for new employees and managers. To improve the timeliness of complaint processing, PBGC included metrics in the Statement of Work for EEO investigative services and initiated the IT analysis process to secure an automated tracking system. The following actions are planned in FY 2009:

- continued quarterly counselor briefings and training sessions,
- continued basic EEO training for new employees and managers,
- selection of new collateral-duty EEO counselors,
- selection of a Management Program Analyst to coordinate compliance with EEO reporting obligations,
- increased participation in the EEO Alternative Dispute Resolution program,
- one-on-one meetings with senior management,
- continued exchange of ideas among and benchmarking with other small agencies on EEO issues,
- continue IT process to procure a computerized case tracking system.

#### **G. No FEAR Act Training Plan**

In addition to the initial No FEAR training provided to all PBGC employees, all new employees are informed of the No FEAR Act training requirement on their first day at PBGC. Each employee is required to complete their initial No Fear Act training within sixty days of their arrival at PBGC. And, in accordance with OPM's rules, No FEAR Act training will be conducted every two years.