

**Annual Report for Fiscal Year 2010
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

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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, the Senate Committee on Homeland Security and Governmental Affairs, the House Committee on Oversight and Government Reform, the Senate Health, Education, Labor, and Pensions Committee, 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 (EEO) complaints activity at PBGC, including Federal court cases and resulting disciplinary actions during Fiscal Year 2010.

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 968 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 2010

As shown below in Table 1, there were a total of eight federal court cases pending in Fiscal Year 2010 filed by seven employees. All eight cases included claimed violations of Title VII of the Civil Rights Act of 1964 prohibits discrimination based on race, sex, color, religion, disability and reprisal. Two of the cases also included claimed violations of the Age Discrimination in Employment Act (ADEA) which prohibits discrimination based on age, and one case included claimed violations of the Rehabilitation Act which prohibits discrimination based on disability.

TABLE 1

Federal Court Cases Pending or Resolved in FY 2010 Separated by Statute

Title VII of the Civil Rights Act of 1964:	8
Age Discrimination in Employment Act of 1967:	2

Rehabilitation Act of 1973:	1
Whistleblower Protection Act:	0
Equal Pay Act of 1963:	0

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. There were eight pending cases during FY 2010. One case settled and two others (previously dismissed in FY 2009) were denied en banc review by the circuit court in FY 2010. By the close of the fiscal year, four federal cases remained pending against the Agency.

As a government corporation, PBGC has corporate funds available to pay judgments and settlements. During FY 2009, 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 Federal Court Cases Pending in FY 2010 by Statute

Title VII of the Civil Rights Act of 1964:	8
Pending:	5
Dismissed:	2
Settled:	1
Age Discrimination Employment Act of 1967:	2
Pending:	2
Dismissed:	0
Settled:	0
Rehabilitation Act of 1973:	1
Pending	1
Dismissed:	0
Settled:	0
Whistleblower Protection Act:	0
Pending:	0
Dismissed:	0
Settled:	0

Equal Pay Act of 1963:	0
Pending:	0
Dismissed:	0
Settled:	0

Note: (1) One employee 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. In FY 2009, they were dismissed by the district court, and the dismissal was affirmed by the circuit court of appeals. The employee subsequently filed a petition for en banc review which was denied in FY 2010.

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 2010

1. Employees Disciplined in Connection with Federal Court Cases

Number of Findings:	0
Number of Employees Disciplined:	0

2. Employees Disciplined Whether or Not in Connection with Federal Court Cases

Number of Employees Disciplined:	0
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D. Final Year-End No FEAR Act Data for FY 2010

Attached as Appendix 1 is the PBGC’s final year-end No FEAR Act Data for FY 2010.

E. PBGC’s Discipline Policy for Conduct Inconsistent with Federal Antidiscrimination or Whistleblower Laws

PBGC is committed to maintaining a workplace that promotes productivity, professionalism and an environment that protects the dignity of all of its workers. PBGC has issued policy statements, which periodically are sent to all of its employees and contractors. The statements provide that any harassment of PBGC employees, sexual or non-sexual, is expressly prohibited and will not be tolerated. Further, they state 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 Reaffirmation of EEO and Diversity Policy Statements, dated January 20, 2010 (Appendix 2).

PBGC maintains an 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, which has been in effect since 2007, includes several categories for conduct 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 from duty.

F. Data Analysis

During FY 2010, 16 PBGC employees filed 21 formal complaints of discrimination. The number of complaints is identical to the previous year's total. The number of people filing complaints increased slightly from 15 to 16, representing a 6.67% increase from the previous year. The number of repeat filers in FY 2010 decreased from three to one. These repeat filers accounted for 4.76% of the overall complaints in FY 2010.

An analysis of the FY 2010 complaint data reveals that the leading issue for formal complaints was harassment (non-sexual). This issue was raised in 12 cases. In 2009, harassment was raised in 11 cases. This represents a 9.0% increase from FY 2009. No other issue was raised in double digits in formal cases for the year.

Promotion/Non-selection was the next most prominent issue in FY 2010, being raised in five cases. Only a single complaint contained that issue in FY 2009. The next prominent issue raised in formal complaints was Assignment of Duties. This issue doubled its occurrence from the previous year's total of two to four. Several issues that were not raised in the previous year were named in FY 2010. Removal, Medical Examination, and Directed Reassignment were each identified in one case during FY 2010. Several issues - Termination, Suspension, and Awards - were not raised in FY 2010 although they were raised in FY 2009.

Further analysis of FY 2010 complaint data reveals that the three leading bases of discrimination alleged in formal complaints were: race, reprisal, and sex. These three bases were also the most prominently named in 2009. Race and reprisal have been the two leading bases since FY 2008. In FY 2010, 14 complaints raised race as a basis, 13 complaints raised reprisal as a basis, and 11 complaints raised sex as a basis. There was no change from FY 2009 in the number of cases naming race as a basis, as the incidence rate remained static at 14. For

Reprisal, 2010 saw a 9.5% decrease from its 2009 number. The number of cases in which it was named as a basis fell from 15 to 13. The number of sex-based complaints increased from eight in FY 2009 to 11 in FY 2010, for a change of 37.5%. PBGC did not show a decrease in any other category save for Color, which decreased from two cases in FY 2009, to one in the current fiscal year, FY 2010. While this represents a 50% drop in that category, it was not significant due to the low occurrence of the basis overall.

The agency actively attempts to resolve matters through administrative and judicial settlements and the use of Alternative Dispute Resolution (ADR). While further efforts are still needed, PBGC was able to settle four formal complaints during the administrative process and four formal complaints that were among a plaintiff's claims in one lawsuit filed in a federal district court." This is a substantial improvement over the four formal cases settled during FY 2009. Over the past 20 years, no formal complaints have resulted in a final finding of discrimination against PBGC.

1. Trends

The number of complaints increased from FY 2005 to FY 2008 with the exception of 2007, when there was a slight decrease. Since FY 2005, no fewer than 15 claims have been raised each year. The total number of complaints in FY 2010, though a decrease from the FY 2008 number, was higher than the number raised each year from FY 2005– 2007. In the last two fiscal years, the Agency registered 21 complaints respectively. In FY 2010, there was a decrease from three repeat filers the previous year to only one.

Race complaints have stayed steady between FY2009 and FY2010. This falls in line with the remarkably similar complaint numbers between the two periods. While the number of complaints for this basis has stayed static, it still reflects an increase in the number of race complaints filed since 2008. When looking at the reprisal basis since 2008, we see that there was a slight spike in complaints in 2009. In the current fiscal year, the number of complaints naming reprisal as a basis has returned to its 2008 level. For the period since 2005, reprisal has only registered less than 13 complaints twice, in 2005 and 2007. The number of sex-based complaints has steadily increased since reaching a low point in FY 2007, when only five complaints were registered. Sex was identified as a basis in eight complaints in FY 2009, and 11 complaints in FY 2010.

Harassment (non-sexual) was again the leading issue in FY 2010, being raised in 12 complaints. No other issue was raised in formal complaints more than five times. The issue with the most significant increase was Assignment of Duties, which experienced a 100% increase, being raised twice in FY 2009 to four times in the current reporting period. Other issues such as Disciplinary Action (removal), Medical Examination, and Directed Reassignment reflect a similar increase percentage-wise, each registering one complaint in FY 2010, after not being raised at all in FY2009. Similarly, several issues such as Termination, Awards, and Suspension that were raised in FY2009, were not raised at all in FY2010. Evaluation/ Appraisal, which has stayed steady with three claims every year since 2007, saw a decrease of 33% in FY

2010.

The Agency continues to show progress in reducing processing times at the investigative and final action stages. It is important to note that while the data reflects some slight increases in processing times in FY2010, the Agency calculated these periods differently than in FY 2009 based on EEOC guidance. Nevertheless, processing times overall have fallen dramatically since FY 2005.

Since FY 2006, the average number of days in the investigation stage has decreased. This is despite the increase in the number of formal complaints filed with PBGC. For example, in FY 2007, there were 15 formal complaints and the average number of days in the investigation stage was 189 days. In FY 2010, the number of complaints rose to 21. Processing time in 2010 was an average of 149 days. While this is due to the aforementioned alteration in calculation techniques, it is still the lowest total with the exception of the 2009 fiscal year since going back to 2005. Thus, the number of complaints has risen 40% since FY 2007 as the time in investigation has fallen. Of note, in FY 2010, 100% of investigations were timely processed. Final action processing time also decreased between FY 2007 and FY 2010. These improvements are attributed to having a full-time Attorney-Advisor on the EEO staff since FY 2008, and eliminating the complaints back log from previous fiscal years.

2. Causal Analysis

The increase in overall complaint activity since 2005 is likely due to numerous conditions which will require additional analysis. Because of the relatively small number of complaints and the fluctuations from year-to-year, it is difficult to assess causation. At present, no prevalent factors have been identified as driving forces behind the agency's complaint activity. However, significant strides were made in FY 2010 to enhance PBGC's ability to analyze complaint data, including the procurement of an automated complaint tracking and reporting system as well as a new applicant tracking system.

The EEO Office is continuing its efforts to identify personnel practices that may require further examination. PBGC hopes that the newly purchased complaints and reporting system will facilitate the process of reviewing and analyzing work processes, policies, procedures, and complaints and assist in identifying barriers and developing action plans. The automated complaints system should also create more man hours to devote to these efforts. In addition, we will continue to pinpoint problem areas and departments where diversity training efforts can be focused and most useful to prevent and alleviate concerns among employees.

3. Knowledge Gained

In the past, the use of Alternative Dispute Resolution (ADR) has proven to be an

effective means of identifying underlying employee-management issues and improving communication, thereby leading to an earlier resolution of the issues when both parties participate in good faith. 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 has provided additional training to managers and employees about the benefits of ADR as a viable and effective tool to resolve disputes. In addition, the EEO Office has taken steps to enhance its staff members knowledge of mediation through training and other resources.

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

PBGC continues to work to improve its EEO Program. In FY 2010 , diversity and equal opportunity principles were incorporated in the PBGC Human Capital Plan for 2010 – 2014 and the PBGC Strategic Plan for Fiscal Years 2011 – 2015. PBGC managers and supervisors continued to be held accountable for achieving the EEO elements and standards in their respective performance plans.

Interim Managers for the Hispanic Employment Program and Federal Women's Program were named and the Agency continued to reach out to audiences of historically underrepresented groups and individuals with disabilities through job fairs and student employment programs, PBGC's second annual Students with Disabilities Job Shadowing Day, an ongoing Disability Awareness series and ethnic program observances.

The Agency conducted ongoing Basic EEO Training Workshops for employees and managers. EEO staff collaborated with the human resources and legal departments to develop an Anti-Harassment brochure to answer frequently asked questions about PBGC's Anti-Harassment policy.

To improve timeliness of complaint processing, the EEO staff implemented and maintained a manual complaint tracking system. In FY 2010, 100% of formal complaint investigations were timely processed and 80% of Final Agency Decisions were timely issued, both significant improvements over last year's numbers.

The Following actions are FY 2011 planned in FY 2011:

- Implement new EEO automated case tracking and reporting system
- Filling full-time Special Emphasis Program (SEP) Manager position.
- Incorporate EEO review, input, and recommendations in the agency's ongoing strategic Human Capital plans,
- Review results of EEOC Technical Audits and feedback and begin to implement recommendations,

- Provide training to expand knowledge of and participation in the EEO Alternative Dispute Resolution program,
- Review options for providing EEO training to employees and managers
- Exchange of ideas and benchmarking with other small agencies on EEO issues.
- Continue Basic EEO Training workshop for employees
- Conduct EEO Managerial Course
- Re –establish role of the Workforce Diversity Board
- Develop and initiate Team to conduct Trend and Barriers Analysis

G. No FEAR Act Training Plan

All new employees are informed of the No FEAR Act training requirement on their first day at PBGC and are required to complete their initial No Fear Act training within sixty days of their arrival at PBGC. During FY 2010 all PBGC employees received No FEAR training with the exception of those employees who were out on extended leave. As those employees return to work, they are required to take the training.

Equal Employment Opportunity Data Posted Pursuant to Title III of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Pub. L. 107-174

Complaint Activity	Comparative Date					FY 2010
	Previous fiscal Year Data					
	2005	2006	2007	2008	2009	
Number of Complaints Filed	15	19	15	24	21	21
Number of Complainants	13	13	14	20	15	16
Repeat Filers	2	3	2	4	3	1

Complaint Activity	Comparative Date					FY 2010
	Previous fiscal Year Data					
	2005	2006	2007	2008	2009	
Note: Complainants can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.						
Race	10	17	7	9	14	14
Color	5	7	0	3	2	1
Religion	1	4	0	2	0	0
Reprisal	8	14	8	13	15	13
Sex	10	15	5	6	8	11
National Origin	1	5	0	2	0	0
Equal Pay Act	0	1	0	0	0	0
Age	8	7	3	2	5	6
Disability	3	3	7	7	4	6
Non-EEO	0	0	0	0	0	0

Complaints by Issue	Comparative Date					FY 2010
	Previous fiscal Year Data					
	2005	2006	2007	2008	2009	
Note: Complainants can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.						
Appointment/Hire	1	1	0	1	0	0
Assignment of Duties	3	0	0	3	2	4
Awards	1	0	0	0	1	0
Conversion to Full-time	1	0	0	0	0	0
Disciplinary Action						
Demotion	0	0	0	0	0	0
Reprimand	0	1	0	0	0	0
Removal	0	0	1	0	0	1
Suspension	1	0	2	0	1	0
Other	1	0	0	0	0	0
Duty hours	0	0	0	0	0	0
Evaluation Appraisal	1	7	3	3	3	2
Examination/Test	0	0	0	0	0	0
Harrasment						
Non-Sexual	1	12	2	7	11	12
Sexual	1	0	0	2	0	0
Medical Examination	1	0	0	0	0	1
Pay (including overtime)	1	1	0	0	0	0
Promotion/Non-Selection	6	11	0	7	1	5
Reassignment						
Denied	0	0	1	0	0	0
Directed	1	0	0	0	0	1
Reasonable Accommodation	1	0	1	2	3	2
Reinstatement	0	0	0	0	0	0
Retirement	0	0	0	0	0	0
Termination	0	2	1	0	2	0
Terms/Conditions of Employment	0	4	1	7	4	3
Time and Attendance	0	1	0	0	1	1
Training	0	0	0	0	1	1
Other	4	6	4	0	0	0

No FEAR Act Data

Processing Time	Comparative Data					FY 2010
	Previous Fiscal Year Data					
	2005	2006	2007	2008	2009	
Complaints pending during fiscal year						
Average number of days in investigation stage	354	441	189	152	129	149
Average number of days in final action stage	132	77	376	233	24	44
Complaint pending during fiscal year where hearing was requested						
Average number of days in investigation stage	360	515	473	208	200	199
Average number of days in final action stage	98	0	168	16	0	59
Complaint pending during fiscal year where hearing was not requested						
Average number of days in investigation stage	244	383	336	144	232	277
Average number of days in final action stage	146	77	584	403	24	48

Data for fiscal years 2002-2005 has not been revised to reflect Final EEOC Rules effective 8/2/2006

Complaints Dismissed by Agency	Comparative Data					FY 2010
	Previous Fiscal Year Data					
	2005	2006	2007	2008	2009	
Total Complaints Dismissed by Agency	2	10	1	1	7	5
Average days pending prior to dismissal	81	183	192	70	79	71
Complaints Withdrawn by Complainants						
Total Complaints Withdrawn by Complainants	-	-	1	2	1	0

No FEAR Act Data

Findings of Discrimination Rendered by Issue	Comparative Data										FY 2010	
	Previous Fiscal Year Data											
	2005		2006		2007		2008		2009			
	#	%	#	%	#	%	#	%	#	%	#	%
Findings After Hearing												
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action	0	0	0	0	0	0	0	0	0	0	0	0
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours												
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment	0	0	0	0	0	0	0	0	0	0	0	0
Non-Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment	0	0	0	0	0	0	0	0	0	0	0	0
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0

No FEAR Act Data

Findings of Discrimination Rendered by Issue	Comparative Data										FY 2010	
	Previous Fiscal Year Data											
	2005		2006		2007		2008		2009			
	#	%	#	%	#	%	#	%	#	%	#	%
Findings Without Hearing												
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action	0	0	0	0	0	0	0	0	0	0	0	0
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours												
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment	0	0	0	0	0	0	0	0	0	0	0	0
Non-Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment	0	0	0	0	0	0	0	0	0	0	0	0
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0

No FEAR Act Data

Pending Complaints Filed in Previous Fiscal Years by Status	Comparative Data					FY 2010
	Previous Fiscal Year Data					
	2005	2006	2007	2008	2009	
Total complaints from previous Fiscal Years	16	22	1	18	12	18
Total Complainants	19	15	16	13	8	10
Number complaints pending						
Investigation	17	1	0	1	0	1
Hearing	3	5	0	12	9	14
Final Action	3	6	0	3	2	1
Appeal with EEOC Office of Federal Operations	0	2	0	2	1	2

Data for fiscal years 2002-2005 has not been revised to reflect Final EEOC Rules effective 8/2/2006

Complaint Investigations	Comparative Data					FY 2010
	Previous Fiscal Year Data					
	2005	2006	2007	2008	2009	
Pending Complaints Where Investigations Exceeds Required Time Frames	28	22	10	2	0	0