

# Former Director Sues Howard University Pension Plan

The former director of academic information resources at Howard University has sued the higher education institution, employees' pension plan and Howard University Retirement Plan Committee.

Reported by [NOAH ZUSS](#)

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A former Howard University employee has filed a lawsuit against Howard University Employees' Retirement Plan fiduciaries claiming the defendants' reliance on outdated mortality tables shortchanged retirees.

Howard University, the Howard University Employees' Retirement Plan, the plan's retirement plan committee and 10 individual committee members were [targeted in the purported class action complaint](#) under the Employee Retirement Income Security Act. The lawsuit *Whetstone v. Howard University et al*, filed by former employee Stephen Whetstone on behalf of a purported class of participants, alleges four breaches of fiduciary duty and was filed August 17 in U.S. District Court for the District of Columbia.

By using improper mortality tables to calculate joint and survivor annuities and preretirement survivor annuities for plan participants, the defendants harmed the financial security of Howard University's retirees, the complaint says.

"Defendants use formulas that appear to be based on outdated actuarial assumptions to calculate these types of benefits," the complaint states. "These formulas result in Plaintiff and Class Members receiving less than the 'actuarial equivalent' of their vested benefits, in violation of ERISA's actuarial equivalence requirements."

The class of plaintiffs are retired Howard University employees—and their beneficiaries—who receive pension benefits in the form of a joint and survivor annuity and preretirement survivor annuities, the complaint shows.

[ERISA mandates](#) that joint and survivor annuity benefits to a beneficiary must be between 50% and 100% of the amount paid during the participant's life, the "actuarial equivalent" of the retiree's single life annuity. By law, benefits must not be less than the amount that would be payable as a survivor annuity under a QJSA.

The lawsuit alleges Howard University defendants violated ERISA's actuarial equivalence requirements, depressing the value of JSAs and preretirement survivor annuities offered to Participants.

"Despite the considerable increases in life expectancy over the past 50 years, Defendants continue to use antiquated actuarial assumptions that do not reflect the conditions when Participants began receiving benefits," the complaint states. "Defendants use formulas that appear to be based on the Uninsured Pensioners 1984 mortality table based on data from the 1960s and 1970s. Coupled with a 7% interest rate, the UP-84 produces conversion factors that are consistently lower than the conversion factors produced by contemporary actuarial assumptions causing Participants of the Plan who receive JSAs and preretirement survivor annuities to collect less than they would if Defendants used current and reasonable actuarial assumptions."

In 2022, the IRS [published a guide for defined benefit plan](#) fiduciaries to properly implement accruals in tax exempt and government entity retirement plans. Retirement plan lawsuits centered on [actuarial equivalence complaints](#) [arise](#) periodically, says Drew Oringer, a partner in and general counsel at the Wagner Law Group, which is not involved in the litigation.

"This is another in a line of cases alleging improper actuarial assumptions," explains Oringer.

Howard University established the plan in 1976, and the plan was frozen as of June 20, 2010, according to the complaint. Participants in the plan are current or former employees of Howard University.

Based on data from the most recently filed public documents, the plan has 4,182 participants and beneficiaries receiving payments from the plan, and Howard University employs 1,019 active participants as of June 30, 2022, according to the complaint.

Based on the plan's Form 5500 data submitted to the Department of Labor in 2023, the Howard University Employees' Retirement Plan comprised about \$618.5 million in assets under administration for 8,242 participants, as of June 2022.

Whetstone's complaint seeks to certify a class applying to participants and beneficiaries of the plan who began receiving benefits on or after a date six years prior to the complaint's filing and whose annuities were undervalued by the plan's calculations.

The complaint also seeks a declaratory judgment that the formulas used by the plan for determining JSA and QPSA benefits violate ERISA's actuarial equivalence requirements and its anti-forfeiture provision.

Representatives for Howard University did not return a request for comment.

The purported class of plaintiffs is represented by Siri & Glimstad LLP, based in New York.

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**Tags**

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