

January 12, 2021

Chai Feldblum
cfeldblum@jbrpt.org

Dear Chai:

Thank you for meeting with the affinity groups and listening to the recommendations we propose for the incoming administration. We appreciate your commitment to supporting and strengthening the Justice Department's workforce.

While our groups represent different communities, we all exist to advocate for diversity, equity and inclusion at DOJ. To that end, the implementation of our recommendations would benefit all of our members—and indeed, the entire DOJ workforce.

As you requested, we have outlined our collective recommendations below, and organized them in a timeframe that we believe is realistic. If you would like to reach any of us for any reason, you can find our DOJ email addresses in the description of our organizations in the attachment. Again, thank you for your support.

Respectfully,

DOJ Association of Black Attorneys
DOJ Gender Equality Network
DOJ Association of Hispanic Employees for Advancement and Development
DOJ Pan Asia
DOJ Pride
Blacks in Government, Edward Woods Jr. Chapter
The Justice Native American Association

I. Within the administration's first 30 days, we recommend the following actions:

A. Rescind the Executive Order on “divisive” diversity training, or narrow the scope of DOJ's implementation of it.

Executive Order 13950, *Combating Race and Sex Stereotyping*—which bans “divisive” diversity and inclusion training at federal agencies—signals to federal employees that people of color are not welcome, their positions are not secure, and that discussing systemic injustice is inappropriate in the workplace. We hope that President-Elect Biden will rescind the Order immediately after taking office. Barring that, we urge DOJ to significantly narrow the scope of its implementation guidance.

The plain language of the Executive Order and corresponding OMB and OPM memoranda make clear that the Order only applies to diversity and inclusion training, and that such training must be scrutinized by OPM to determine whether it includes so-called “divisive” concepts. Yet, JMD’s interim guidance implementing the Order covers not only training, but also “programs, activities, and events.” We believe that JMD’s overly expansive interpretation of the Order is why several affinity group events and other diversity programs at the Department have been cancelled.

The affinity groups met with Assistant Attorney General Lee Lofthus and other JMD officials to request that they narrow its guidance, and we followed up by sending JMD a letter outlining our position. Our letter (available here: <https://dojgen.squarespace.com/s/Affinity-Group-Follow-Up-Letter-to-AAG-Lofthus-11-3-2020-Final-with-Exhibit.pdf>) fleshes out our argument for why JMD should cabin its enforcement of the Order to only training.

If the President does not immediately rescind the Executive Order, we would also want to see effective review systems at OPM and DOJ so there is not a de facto lockbox for all proposed training.

B. Issue an inclusive Equal Employment Opportunity statement.

An Equal Employment Opportunity (EEO) statement is a critical affirmation of an agency’s rights and values. The requirement to issue an EEO statement stems from the Civil Rights Act of 1964, as implemented by the Equal Employment Opportunity Commission in Management Directive (MD) 715.1. MD-715 requires the heads of all federal agencies to issue “a written policy statement expressing their commitment to [equal employment opportunity] and a workplace free of discriminatory harassment,” including discrimination on any protected basis. Building on the Department’s current EEO statement, we propose the following inclusive language:

We must ensure that no applicant for employment or employee of our Department will be denied equal opportunity because of race, color, national origin, ethnicity, religion, disability, age, sex, sexual characteristics, sexual orientation, gender identity, gender expression, protected genetic information, pregnancy, status as a parent or caregiver, marital status, political affiliation, or any other non-merit-based factor. We will take swift and appropriate corrective and/or disciplinary action when employees are found to have engaged in discrimination, retaliation, or harassment, including sexual harassment, which are prohibited by our policies regardless of whether the discrimination, retaliation, or harassment violates federal law.

C. Appoint officials in the Office of the Attorney General to liaise with employee affinity groups.

To help facilitate communication between the employee resource groups and senior Department leadership, we recommend that the Office of the Attorney General (OAG) and

Office of the Deputy Attorney General (ODAG) designate at least one staff member to serve as an employee-resource-group liaison. Past administrations, including the current one, have routinely done this.

D. Help spread the word about affinity groups.

We believe that our groups would have thousands of more members if more employees knew about us. Many employees enter their tour of duty at the Department and work for years without realizing that affinity groups exist.

We ask that the administration require all components to include information about each of our groups in onboarding materials for new hires. We also request that the Attorney General or Deputy Attorney General send an email to all employees notifying them about the affinity groups, including information about how employees can become members. This will demonstrate that diversity, equity and inclusion is a top priority for the new administration and provide underrepresented employees with the information they need to get involved with our groups.

II. Within the administration's first 60 days, we recommend the following actions:

A. Schedule separate meetings with each affinity group.

While the employee affinity groups share many common goals, each has its own priorities and concerns and specific ideas on how to address them. Holding separate meetings with senior Department leadership (*i.e.*, the Attorney General and/or Deputy Attorney General) and each affinity group would provide an excellent opportunity to discuss each group's agenda.

B. Reestablish the Diversity Council.

In 2010, Attorney General Holder formed a Diversity Management Advisory Council (the "Council") to coordinate Department-wide diversity management efforts, monitor the implementation of each component's diversity management plan, and meet biannually with the Attorney General to report on the status of the Department's efforts. Unfortunately, the Council has since been disbanded. During this national reckoning with systemic racism and other forms of discrimination, reconstituting the Council is of the utmost importance.

The Council's mission should be to ensure that the Department's workforce, at all levels, is as diverse as the people of the United States that we represent. The Council should be composed of representatives from each employee affinity group, diversity and inclusion leaders from every DOJ component, an appointed diversity officer from OAG or ODAG, and a representative from JMD and OARM.

The goals of the Council should include: (1) developing and sharing effective diversity management practices and policies, such as hiring and management best practices and training

programs, for the consideration and adoption of components across the Department; (2) increasing diversity among the Department's managers, supervisors, and the Senior Executive Service; (3) identifying and evaluating methods and relevant data to measure diversity management efforts, particularly for recruitment and retention at every level; (4) recommending enhanced diversity training for all Department supervisors and hiring officials as well as all employees; and (5) coordinating these efforts with the Department's leadership, as necessary, to obtain support and resources.

C. Address diversity in Senior Executive Service (SES) and other leadership positions.

Achieving widespread diversity in SES, other management positions and political appointments has been a long-time problem at the Department. We ask that JMD host at least three workshops per year (one within the first 60 days of the administration) designed to equip underrepresented employees with the tools and information they need to seek SES and leadership positions at the Department. We also request that the administration work with JMD and OARM to review current leadership structures across the Department and evaluate data to determine whether current recruiting and retraining mechanisms are helping the Department achieve diverse leadership and management teams across components. Further, we ask the administration to hold a workshop for diverse candidates who are interested in joining the administration, on detail or as a political appointee, in leading the Department's components.

III. Within its first 90 days, we recommend the following actions:

A. Take steps to further the goal of pay equity.

The Justice Department should pay its employees based on the experience that we bring, not the salary we leave behind. But like many employers, the Justice Department is under the mistaken belief that it is lawful and fair to set employees' pay using their salary history. That practice disproportionately harms people of color and women, and it should end.

We urge DOJ to prohibit components from using new employees' prior salary when determining their pay at the Department, including those transferring from other federal jobs. We also believe that DOJ should offer all employees the option of requesting a confidential audit of an office's GS/step assignments so that if an employee's starting salary was less than a counterpart with comparable or less experience, DOJ will augment the employee's salary accordingly. In addition, DOJ may wish to consider proactively conducting such reviews.

B. Share data about workforce diversity.

To effectively address issues of diversity at the Department, we believe that the scope of the problem should be understood. We ask the administration to provide clear data on the diversity of employees in all types of positions at the Department, attrition rates, etc. Given the recent extensive changes to the DOJ FactBook, which was the previous source of some data on diversity at the Department, we request a meeting between affinity group leadership and DOJ leadership to discuss data-gathering at the Department.

C. Take measures to address the hiring and retention of diverse employees.

While the data has not been made available to us to assess, some of the affinity groups have seen an unusually high rate of members leaving the Department in recent years. We ask the administration to take additional Department-wide measures to address hiring and retention rates of diverse employees. This could include establishing policies and practices to increase DOJ's outreach to diverse communities during the hiring process.

ATTACHMENT

The DOJ Association of Black Attorneys (DOJABA) is a group of attorneys organized since 1989 for the purpose of enhancing the professional environment of Black attorneys at the Department and providing outreach and community support to those interested in the pursuit of law. DOJABA members include attorneys in the Offices, Boards and Divisions of the Department as well as various United States Attorneys' Offices. There are approximately 200 DOJABA members throughout the country. *Chair: Oneshia Herring, oneshia.herring@usdoj.gov*

The DOJ Gender Equality Network (DOJ GEN) is an employee-run advocacy and resource organization with approximately 700 members across the Department. DOJ GEN works to promote the equal and supportive treatment of Department employees and contractors regardless of gender. To that end, DOJ GEN strives to eradicate pay inequities and sexual harassment, while encouraging the Department to increase diversity, enhance workplace flexibility, and promote family-friendly policies. *President: Stacey Young, stacey.young2@usdoj.gov*

Blacks in Government, Edward Woods Jr., DOJ Chapter is a local chapter of the National organization that serves as an advocate of equal opportunity to address practices of racial discrimination against Blacks in government and promotes professional development for all employees at the Local, State and Federal government levels. BIG is comprised of over 5700 members nationwide. *President: Darlene Brooks, darlene.w.brooks@usdoj.gov*

The Justice Native American Association (JUNAA) is an association of the Department of Justice that is dedicated to improving the work environment of Native American employees at the Department. This includes identifying, addressing, and assisting in developing effective policies and practices to increase the number of Native Americans working in the Department of Justice workforce. This is of critical importance given the large presence the Department has in Indian country working on Native issues. *President: JoAnn Kintz, joann.kintz@usdoj.gov*

The DOJ Association of Hispanic Employees (DOJ AHEAD) is an organization open to all employees of the Department of Justice. Its primary goals are to: assist DOJ in promoting equitable participation and full utilization of its Hispanic employees; assist DOJ in increasing the numbers of qualified Hispanics in its workforce; speak on issues affecting DOJ AHEAD members and Hispanic employees; develop and maintain meaningful relationships with the greater DOJ community, including management and develop and maintain meaningful relationships with Hispanic employees and the greater Hispanic community. *President: Sandra Park, sandra.park@usdoj.gov*

DOJ Pride serves as the Department of Justice's recognized organization for LGBTQ+ employees and allies. Since 1994, DOJ Pride has worked with agency leadership to identify and address key issues and areas affecting the Department's LGBTQ+ employees. *President: Derek Julius, derek.julius2@usdoj.gov*

The Department of Justice Asian Pacific American Employees Association (DOJ Pan Asia)

was created in 1994. It is an employee organization open to all employees of the U.S. Department of Justice. The primary purposes of DOJ Pan Asia are to assist the Justice Department in promoting and effecting full and equitable participation and utilization of its Asian Pacific American employees; to increase the numbers of Asian Pacific Americans within the Justice Department's workforce; and to bring to the attention of appropriate Justice Department officials any discriminatory or other employment practices that may be inconsistent with the objectives of DOJ Pan Asia. *Chair: Samuel Go, samuel.go@usdoj.gov*