



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 4, 2008

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your letter, dated July 15, 2008, about the Department's plans for transition to the new administration and the possibility of political appointees transferring to career positions in the Department.

We are preparing for an efficient and comprehensive transition of the Department's senior leadership that will reinforce concepts of enduring constitutional government, maintain national security efforts, and support the continuity of operations. Transition activities began in May to ensure that we are optimally positioned to execute transition responsibilities and functions. The Attorney General has designated his Chief of Staff, Brian Benczkowski, and Lee Lofthus, Assistant Attorney General for Administration and a career senior executive, to lead the Department's transition activities.

The transition team is currently in the process of finalizing the names of executives who will be designated to lead the Department of Justice and each of its components during transition. In preparation for briefing the incoming Administration, we have undertaken a number of projects directly related to transition activities. For example, we have provided the Office of Personnel Management (OPM) with a list of Presidentially-appointed positions, with historical data, for the Republican and Democratic Presidential Nominees. We also are developing resource materials for incoming political appointees about the competitive hiring process and the hiring of excepted service attorney personnel, as well as preparing the Department's Transition Manual for new appointees. In addition, we have begun scheduling monthly exit briefings for outgoing political appointees.

We appreciate your interest in the possible transfers of political appointees to career positions within the Department. OPM guidance and the Merit System Principles, set forth at 5 U.S.C 2301(b), prohibit the Federal Government from discriminating against political appointees who apply for competitive (career) positions. The Justice Management Division (JMD) has notified component heads of rules affecting political appointees seeking career positions and issued a revision to the Department's Human Resources Order emphasizing

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the Merit Systems Principles. Both of those documents are enclosed. Also enclosed is recent guidance from the Office of Attorney Recruitment and Management on hiring attorneys and summer law interns, emphasizing these Principles and prohibited personnel practices. We require that conversions be reported prior to appointment, which ensures compliance with the Office of Personnel Management (OPM), the Government Accountability Office (GAO), and our internal Department of Justice guidance. As you will note, this guidance emphasizes that political affiliation and similar information must not be considered in hiring decisions. In short, political appointee applicants are to receive no favors, nor penalties. As such, conversions in executive agencies should not be viewed as unusual, and we have no information indicating that the current level of conversions differs significantly from past levels.

Since January 1, 2007, our records indicate a total of eight political appointees have obtained career positions in either the competitive or excepted service (see enclosed list). We note that three of the eight were career reinstatement hires, that is, former career employees who took non-career appointments and then permissibly returned to their career jobs with the U.S. Marshals Service. One of the eight conversions was a career attorney position. Please note we are referring to a "former political appointee" as an individual who previously held a Presidential Appointment with Senate Confirmation (PAS); a noncareer Senior Executive Service (SES) member; or a Schedule C employee. Beginning in September 2008, we will report such hires to GAO on a monthly basis, through June 2009, in response to a GAO request for this information. We understand that this GAO review pertains to a number of agencies.

We hope that this information is helpful. Please do not hesitate to contact this office if you would like additional assistance regarding any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith Nelson", with a long horizontal flourish extending to the right.

Keith B. Nelson
Principal Deputy Assistant Attorney General

Enclosure

cc: The Honorable Lamar Smith
Ranking Minority Member