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MEMORANDUM

TO: Marvin Krislov

FROM: Alan M. Freeman

RE: Administration Proposals to Modify H.R. 2721: The
Federal Employee Fairness Act of 1993

The Administration has identified eight modifications that it would like made to H.R. 2721, The Federal Employee Fairness Act of 1993 (FEFA). The FEFA is intended to improve the process by which federal employees file discrimination complaints. In a letter to Rep. William Ford, Chairman of the House Committee on Education and Labor, former OMB Director Leon Panetta stated that the Administration would support passage of H.R. 2721 if it were modified so as to:

- (1) provide for a mandatory pre-complaint counseling process for all agencies with alternative dispute resolution (ADR) processes approved by the Equal Employment Opportunity Commission (EEOC);
- (2) provide for the use of third party neutral counselors during the pre-complaint counseling phase;
- (3) require the EEOC to develop pre- and post- complaint ADR guidelines for use by agencies with approved plans to facilitate the effective resolution of cases;
- (4) remove EEOC's proposed authority to bring civil actions on its own behalf to enforce certain orders by its Administrative Judges, or the provisions of settlement agreements;
- (5) expand the definition of administrative judge to include administrative law judges;
- (6) broaden the EEOC's authority to review an administrative judge's findings of fact and conclusions of law;
- (7) allow the Administration time to manage effectively the implementation of the bill by delaying the effective date until January 1997; and
- (8) raise the standard by which stays will be issued and provide for agency comments regarding the issuance and extension of such stays.

The current complaint rules and procedures are detailed in 29 CFR Part 1614. In its current state, H.R. 2721 makes the following significant modifications to the current rules and procedures:

- (1) requires each agency to make counseling available to aggrieved employees throughout the complaint process;
- (2) requiring agencies to establish voluntary 20 day ADR processes that will be available to employees;
- (3) imposes significantly greater sanctions for failure to cooperate fully with discovery requests;
- (4) places an affirmative duty on the respondent agency to collect and preserve all documents and information relevant to the claim as soon as it receives the complaint;