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WITHDRAWAL SHEET

Ronald Reagan Library

Collection: ROBERTS, JOHN G. JR.: Files

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File Folder: Fair Housing [1] OA 10016 12658

Date: 3/12/97

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. memo	from John G. Roberts to Fred F. Fielding re Fair Housing (partial)	1/31/83	P5 C83 6/2/00

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P-1 National security classified information [(a)(1) of the PRA].
- P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
- P-3 Release would violate a Federal statute [(a)(3) of the PRA].
- P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
- P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- F-1 National security classified information [(b)(1) of the FOIA].
- F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- F-3 Release would violate a Federal statute [(b)(3) of the FOIA].
- F-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
- F-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
- F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

THE WHITE HOUSE

WASHINGTON

July 11, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: "Fair Housing Amendments of 1983" for
Transmittal to Congress by the President

Richard Darman has asked for our views as soon as possible on the Administration's fair housing amendments and an accompanying section-by-section analysis. We received and cleared the original version of these items on June 14. Three changes have been made in the previously-approved material, at the recommendation of Hamilton Fish, ranking Republican on the House Judiciary Committee. The changes would provide a 120-day period after receipt of a complaint during which the Secretary of HUD generally must decide whether to pursue it, and authorize the Secretary to pursue claims deferred to state agencies and unresolved after 90 days or even prior to expiration of the 90-day period if he certifies that protection of rights and justice so requires. I have indicated the new sections on the bill. HUD, Justice, OMB, and OPD have reviewed and approved the changes. I have also reviewed them, and am not disposed to interpose any objection to them.

Attachment

THE WHITE HOUSE

WASHINGTON

July 11, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

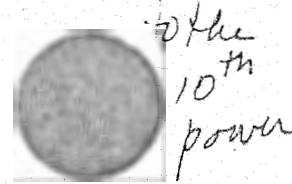
SUBJECT: "Fair Housing Amendments of 1983" for
Transmittal to Congress by the President

Counsel's Office has reviewed the changes in the "Fair Housing Amendments of 1983," and finds no objection to them from a legal perspective.

FFF:JGR:aw 7/11/83

cc: FFFielding
JGRoberts
Subj.
Chron

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) 1/1Name of Correspondent: Richard G. Daiman☐ MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: "Fair Housing Amendments of 1983"
as transmitted to Congress by the
President

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Completion Date YY/MM/DD
<u>W Halland</u>	ORIGINATOR	<u>83107/11</u>		<u>1/1</u>
<u>WAT17</u>	Referral Note: <u>D</u>	<u>83107/11</u>		<u>5/83107/11</u> <u>ASAP</u>
	Referral Note:	<u>1/1</u>		<u>1/1</u>
	Referral Note:	<u>1/1</u>		<u>1/1</u>
	Referral Note:	<u>1/1</u>		<u>1/1</u>
	Referral Note:	<u>1/1</u>		<u>1/1</u>

ACTION CODES:

A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet
to be used as Enclosure

I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:

A - Answered C - Completed
B - Non-Special Referral S - Suspended

FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

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WHITE HOUSE STAFFING MEMORANDUM

DATE: July 11, 1983 ACTION/CONCURRENCE/COMMENT DUE BY: ASAPSUBJECT: "Fair Housing Amendments of 1983" for Transmittal to Congress
by the President

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	☐	☐	HARPER	☐	☒
MEESE	☐	☒	HERRINGTON	☐	☐
BAKER	☐	☒	JENKINS	☐	☐
DEAVER	☐	☒	McMANUS	☐	☐
STOCKMAN	☐	☐	MURPHY	☐	☐
CLARK	☐	☐	ROGERS	☐	☐
DARMAN	☐	☒ P	ROLLINS	☐	☐
DUBERSTEIN	☒	☐	VERSTANDIG	☒	☐
FELDSTEIN	☐	☐	WHITTLESEY	☒	☐
FIELDING	☒	☐	BRADY/SPEAKES	☐	☐
FULLER	☒	☐	_____	☐	☐
GERGEN	☒	☐	_____	☐	☐

REMARKS:

Please forward comments on the bill and section-by-section analysis as soon as possible. The transmittal message was staffed to you on June 10 and has not been changed.

Thank you.

RESPONSE:

Richard G. Darman.
Assistant to the President



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

JUL 11 1983

MEMORANDUM FOR: Richard Darman
FROM: David Stockman *DS*
SUBJECT: Fair Housing Draft Bill

On June 10, 1983, I sent you the HUD/Justice "Fair Housing Amendments of 1983" for transmittal to Congress by the President. On June 13, 1983, at the request of HUD's General Counsel, Jim Frey called your office to put a hold on the package.

The reason for the hold was that HUD and Justice were considering certain changes to the bill and section-by-section summary recommended by Representative Hamilton Fish (ranking Republican on the House Judiciary Committee) in a meeting with Secretary Pierce and the Attorney General.

The changes:

- Provide a 120-day period after receiving a complaint for HUD to investigate and decide whether to resolve the complaint;
- Provide for HUD to take action at the request of the complainant on a complaint that was referred to a State or local agency for resolution and has not been resolved within 90-days; and
- Authorize HUD to take action, at any time, on a complaint that was referred to a State or local agency, if the Secretary certifies that the protection of the rights of the parties or the interests of justice require such action.

The revised draft bill and section-by-section summary have been submitted by HUD after review and approval by Justice. OMB and the Office of Policy Development (Barr) have reviewed, and agree with, the revised package.

The original Presidential transmittal letter or message, which I sent you on June 10 with the original bill, does not need to be modified because of the revisions made in the bill subsequently. HUD recommends, and we agree, that the original transmittal be used.

Enclosed is an original and 15 copies of the revised bill and section-by-section summary.

A BILL

To amend title VIII of the Act commonly referred to as the Civil Rights Act of 1978 to provide the Secretary of Housing and Urban Development and the Attorney General with additional authority to enforce rights to fair housing, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Fair Housing Amendments Act of 1983".

SHORT TITLE FOR 1968 ACT

SEC. 2. The Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by inserting immediately after the comma at the end of the enacting clause the following: "That this Act may be cited as the 'Civil Rights Act of 1968'.".

SEC. 3. Title VIII of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by inserting immediately after the title's catchline the following new section:

SHORT TITLE

SEC. 800. This title may be referred to as the 'Fair Housing Act'."

DEFINITIONS

SEC. 4. Section 802 of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended --

(a) by striking out "or 806." in subsection (f) and inserting in lieu thereof "806, or 817."; and

(b) by adding at the end thereof the following new subsections:

"(h) 'Conciliation' means the resolution of issues raised by a complaint and its investigation, through informal negotiations involving the person aggrieved, the respondent and the Secretary (or a State or local agency to which a complaint is referred).

"(i) 'Conciliation agreement' means a written record, executed by the person aggrieved and the respondent and (except in the case of an agreement obtained by a State or local agency to which a complaint is referred) approved by the Secretary, setting out the terms under which the issues raised by a complaint and its investigation have been resolved.

"(j) 'Respondent' includes the person named in a complaint, or any other person identified in the course of investigation as a person who participated in, or was responsible for, an alleged discriminatory housing practice.

"(k) 'Handicap' means, with respect to a person, (1) a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment; but such term does not include any current impairment that consists of alcoholism or drug abuse, or any other impairment that would be a direct threat to the property or the safety of others."

DISCRIMINATION AGAINST THE HANDICAPPED

SEC. 5. Section 804 of such Act is amended --

(a) by adding the following after subsection (e):

"(f)(1) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, a dwelling to any person because of a handicap of a prospective buyer or renter or of any person associated with such buyer or renter unless such handicap would prevent a prospective dwelling occupant from complying with such rules, policies, and practices as are permitted by paragraph (2) of this subsection.

"(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of handicap. For purposes of this paragraph --

"(A) discrimination includes --

"(i) refusal to permit reasonable modifications of premises occupied, or to be occupied, by persons with a handicap which are necessary to afford such handicapped persons ready access to and use of premises, but in the case of a rental, no modification

need be permitted unless the renter first agrees to restore the premises to the condition which existed before such modification, reasonable wear and tear excepted; and

"(ii) refusal to make reasonable accommodations in policies, practices, rules, services, or facilities when such accommodations are necessary to afford handicapped persons ready access to and use of dwellings; and

"(B) discrimination does not include --

"(i) refusal to make alterations in premises at the expense of sellers, landlords, owners, brokers, building managers, or persons acting on their behalf;

"(ii) refusal to modify generally applicable rules, policies, practices, services, or facilities where such modification would result in expense to sellers, landlords, owners, brokers, building managers, or persons acting on their behalf or unreasonable inconvenience to other affected persons; or

"(iii) refusal to allow architectural changes to, or modifications of, buildings which would decrease the marketability or value of a building or alter the manner in which a building or its environs has been, or is intended to be, used.";

(b) by inserting "handicap", immediately after "sex," each place it appears in sections 805 and 806, and subsections (c), (d) and (e) of section 804 of such Act.

ENFORCEMENT BY THE GOVERNMENT

SEC. 6. Section 810 of such Act is amended --

(a) by striking out "Within thirty days after receiving a complaint, or within thirty days after the expiration of any period of reference under subsection (c), the" in subsection (a) and inserting in lieu thereof "The";

(b) by adding after "person aggrieved" in the fourth sentence of subsection (a) the phrase "and to the respondent";

(c) by adding the following after the fourth sentence in subsection (a):

"The Secretary shall make and give notice of his decision whether to resolve the complaint as promptly as possible and, so far as practicable, not later than one hundred and twenty days after receiving the complaint or after expiration of any period of reference under subsection (c)."

(NO TIME PERIOD
IN EARLIER
VERSION)

(d) by adding the following at the end of subsection (a):
"A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any arbitration that results from a conciliation agreement under this section may award appropriate specific relief, including monetary relief, to the person aggrieved."

(e) by adding the following after the third sentence in subsection (b):

"A person who is not named in a complaint, but who is identified in the course of investigation as a respondent, may be joined as an additional or substitute respondent by means of written notice from the Secretary. Such notice shall set out the procedural rights and obligations of respondents and shall explain the basis for the Secretary's belief that the person to

whom the notice is addressed is properly joined as a respondent. The notice shall be accompanied by a copy of the original complaint."; and

(f) by striking out subsection (c) and inserting the following in lieu thereof:

"(c) Whenever a complaint alleges a discriminatory housing practice which appears to constitute a violation of a State or local fair housing law within the jurisdiction of a State or local public agency which has been certified by the Secretary under this subsection, the Secretary shall refer such complaint to such agency and, except as provided in this subsection, shall take no further action with respect to such complaint if the appropriate State or local agency has, within thirty days from the date of referral, commenced proceedings in the matter and, having done so, carries forward such proceedings with reasonable promptness. The Secretary shall take action as provided in subsection (a) on a complaint referred to a State or local agency on which a final disposition by such agency has not been obtained upon request by the complainant made at any time not less than ninety days following the date of referral, provided that the Secretary may continue such action from time to time so long as the Secretary believes, on the basis of consultation with the State or local agency, that the ongoing efforts of such agency are likely to result in satisfactory resolution of the complaint. The Secretary also may take further action at any time on a complaint referred to a State or local agency if the Secretary certifies that in his judgment, under the circumstances

(EARLIER VERSION
SIMPLY REQUIRED
STATE AGENCY TO
ACT WITH "REASONABLE
PROMPTNESS")

✓
of the particular case, the protection of the rights of the parties or the interests of justice require such action. In making such certification with respect to a complaint on which a final disposition by a State or local agency has been obtained, the Secretary shall accord substantial weight to the findings and conclusions made by the State or local agency. In no event shall the Secretary take further action where the State or local agency has obtained a conciliation agreement. An agency may be certified under this paragraph if the Secretary determines that the substantive rights protected by such agency are substantially equivalent to such rights protected by this title (provided that an agency may be certified with respect to discriminatory housing practices based on race, color, religion, sex, or national origin notwithstanding that the agency does not provide substantially equivalent protection against discriminatory housing practices based on handicap) and that the authority of such agency to investigate and conciliate complaints is substantially equivalent to such authority granted to the Secretary by and under this title."

(g) by striking out subsection (d) and inserting in lieu thereof the following:

"(d)(1) Whenever a complaint is filed with the Secretary, or whenever the Secretary is taking further action on a complaint previously referred to a State or local fair housing agency pursuant to subsection (c) of this section, and the Secretary determines on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of

this title, the Secretary may refer the matter to the Attorney General with a recommendation that a civil action be filed on behalf of the United States for appropriate temporary or preliminary relief pending final disposition of the complaint by the Secretary. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with Rule 65 of the Federal Rules of Civil Procedure.

"(2) If within thirty days after notification to a respondent of the Secretary's decision to resolve a complaint, the Secretary has not secured an acceptable conciliation agreement, the Secretary may at any time thereafter refer the matter to the Attorney General with a recommendation that a civil action be filed on behalf of the United States. Nothing in this paragraph shall prevent the referral of a complaint to the Attorney General before the expiration of thirty days after notification of the Secretary's decision to resolve a complaint, if the Secretary certifies that conciliation of the complaint has been attempted and that additional efforts are considered unlikely to be successful.

"(3) The Secretary, in the Secretary's sole discretion, may refer any matter otherwise within the Secretary's jurisdiction under this title to the Attorney General with a recommendation that appropriate action be taken.

"(4) Whenever the Secretary has reasonable cause to believe that a respondent has failed to comply with a conciliation agreement approved by the Secretary, the Secretary may refer the matter to the Attorney General with a recommendation that a civil

action be filed on behalf of the United States for the enforcement of the terms of the agreement in an appropriate district court. In any proceeding brought under this paragraph, the petition for enforcement shall include a true copy of the conciliation agreement, and the court's inquiry shall be limited to interpretation of the agreement's terms and to factual issues concerning the nature and extent of the respondent's alleged failure to comply with the agreement. Nothing in this paragraph shall prevent the court from setting aside or modifying any provision of a conciliation agreement upon a finding that the provision is unconscionable or in derogation of the Constitution or laws of the United States.

"(5) Actions may be brought under this section in any appropriate United States district court. If the court finds that the respondent has engaged or is about to engage in a discriminatory housing practice, the court may award such preventive relief, including a permanent or temporary injunction, restraining order, or other order, against the person or persons responsible for a violation of this title as is necessary to insure the full enjoyment of the rights granted by this title, and may assess a civil penalty against the respondent in an amount not exceeding \$50,000, and for any subsequent violation by such respondent may assess a civil penalty in an amount not exceeding \$100,000, to vindicate the public interest. The court may allow the prevailing party (other than the United States) a reasonable attorney's fee as part of the costs.

"(6) Actions brought under this section shall be commenced within eighteen months after the alleged discriminatory housing practice or failure to comply with a conciliation agreement occurred."

ENFORCEMENT BY PRIVATE PERSONS

SEC. 7. Section 812 of such Act is amended --

(a) by striking out subsection (a) and inserting in lieu thereof the following:

"(a)(1) The rights granted by sections 803, 804, 805, 806, and 817, as well as the rights created by a conciliation agreement, may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within two years after the alleged breach of the conciliation agreement or the alleged discriminatory housing practice occurred.

"(2) A civil action may be filed without regard to whether a complaint has been filed with the Secretary pursuant to section 810(a) and without regard to the status of any such complaint filed with the Secretary, but where the Secretary or a State or local agency has obtained a conciliation agreement, no action may be filed under this section by the person aggrieved except for the purpose of enforcing the terms of such an agreement.

"(3) The court may continue a civil action brought pursuant to paragraph (1) of this subsection from time to time before bringing it to trial if the court believes that the ongoing efforts of the Secretary or of a State or local agency to obtain

conciliation are likely to result in satisfactory settlement of the discriminatory housing practice which forms the basis for the action in court.

"(4) Any sale, encumbrance, or rental consummated prior to the issuance of any court order issued under the authority of this title, and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the filing of a complaint or civil action under the provisions of this title shall not be affected."

(b) by striking out subsection (c) and inserting in lieu thereof the following:

"(c) The court may grant as relief, as it deems appropriate, actual damages, any permanent or temporary injunction, temporary restraining order, and other relief, including punitive damages, and may allow the prevailing party a reasonable attorney's fee as part of the costs.";

(c) by adding the following after subsection (c):

"(d) Upon timely application, the Attorney General may intervene in such civil action, if the Attorney General certifies that the case is of general public importance. Upon such intervention the Attorney General may obtain such equitable and declaratory relief as may be appropriate.".

ENFORCEMENT BY THE ATTORNEY GENERAL

SEC. 8. Section 813 of such Act is amended by striking out subsection (a) and inserting the following in lieu thereof:

"(a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a

pattern or practice of resistance to the full enjoyment of any of the rights granted by this title, or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance, the Attorney General may bring a civil action in an appropriate United State district court.

"(b) The Court may award such preventive relief, including a permanent or temporary injunction, restraining order, or other order against the persons or persons responsible for a violation of this title as is necessary to insure the full enjoyment of the rights granted by this title. The court may assess a civil penalty against the respondent in an amount not exceeding \$50,000, and for any subsequent violation by such respondent may assess a civil penalty in an amount not exceeding \$100,000, to vindicate the public interest.".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 9. (a) Section 803 of such Act is amended --

(1) by striking out the words "EFFECTIVE DATES" in the caption and inserting in lieu thereof the word "APPLICABILITY";

(2) by striking out subsection (a) and inserting in lieu thereof the following:

"(a) The prohibitions against discrimination in the sale or rental of housing set forth in section 804 shall apply to all dwellings except as exempted by subsection (b) of this section and by section 807."; and

(3) by striking out "section 804 (other than subsection (c))" in the opening clause of subsection (b) and inserting in lieu thereof "subsections (a), (b), (d), or (f) of section 804."

(b) Section 804 of such Act is amended by striking out "As made applicable by section 803 and except" and inserting in lieu thereof "Except".

(c) Sections 805 and 806 of such Act are amended by striking out "After December 31, 1968, it" in each such section and by inserting in lieu thereof in each such section "It".

(d) Section 810(e) of such Act is amended by striking out the word "complainant" and inserting in lieu thereof "plaintiff".

(e) Section 810(f) of such Act is amended to read as follows:

"(f) Whenever, prior to the conclusion of conciliation efforts by the Secretary, an action filed pursuant to this section, section 812 or section 813 shall come to trial, the Secretary shall immediately terminate all efforts to resolve such complaint by informal methods."

(f) Section 811(e) of such Act is amended to read as follows:

"(e) In case of contumacy or refusal to obey a subpoena or to answer an interrogatory, a petition for enforcement may be filed in the United States district court for the district in which the person to whom the subpoena or interrogatory was addressed resides, was served, or transacts business."

(g) Section 811(f) is amended --

(1) by striking out the word "or" after the words "the subpoena" and inserting in lieu thereof the phrase, "interrogatory or other"; and

(2) by striking out the phrase "his subpoena" and inserting in lieu thereof "the Secretary's subpoena, interrogatory".

(h) Section 814 of such Act is amended by striking out "812 or 813" and inserting in lieu thereof "810, 812 or 813".

(i) Section 817 of such Act is amended by striking out the last sentence.

CONFORMING AMENDMENT TO TITLE IX OF 1968 CIVIL RIGHTS ACT

SEC. 10. Section 901 of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by inserting ", handicap (as defined in Section 802 of this Act)," immediately after "sex" each place it appears.

APPLICABILITY

SEC. 11. The amendments made by this Act shall be applicable to complaints pending before the Secretary, to complaints heretofore referred to State or local agencies pursuant to Section 810(c) of Public Law 90-284 and pending on the date of enactment of this Act, and to all complaints initiated, filed or referred thereafter, but nothing in this Act shall be construed to shorten the time for filing a civil action pursuant to this title with regard to any complaint filed with the Secretary, or referred to a State or local agency, prior to the effective date of this Act.

Section-by Section Summary of the Fair Housing Amendments Act of 1983

Popular Names

Section 1 provides that the Act may be cited as the "Fair Housing Amendments Act of 1983". Sections 2 and 3 are nonsubstantive amendments making official the popular names of the 1968 Act and Title VIII of that Act.

Definitions

Section 4 adds Section 817 of the existing law (prohibitions on harassment and intimidation of persons exercising fair housing rights) to the definition of discriminatory housing practice. This change would clarify that complaints may be made to HUD in intimidation cases, and that the strengthened enforcement powers proposed for the Justice Department could be employed in such cases. (Current law provides only for "appropriate civil action(s)" to enforce Section 817.)

Section 4 also provides definitions of "conciliation" and "conciliation agreement" in order to facilitate other amendments which increase the prominence of conciliation as a milestone in the enforcement process. Also added is a definition of "respondent", which includes both persons identified by the person aggrieved in the original complaint and others identified in the course of investigation as persons who participated in or who were responsible for the alleged illegal practice.

In addition, a definition of "handicap" is provided. The term is defined (with respect to a person) as (1) a physical or mental impairment which substantially limits one or more major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment. The term, however, does not include any current impairment that consists of alcoholism or drug abuse, or any other impairment that would be a direct threat to the property or safety of others.

Discrimination Against The Handicapped

Section 5 adds handicapped persons as a new protected class under the Fair Housing Act. A new Section 804(f) prohibits refusals to sell or rent or refusals to negotiate for the sale or rental of dwellings because of the handicap of a buyer or renter or of any person associated with the buyer or renter. The amendment also prohibits discrimination in the terms, conditions or privileges of sale or rental, or in the provision of services or facilities in connection with a dwelling, because of handicap.

The amendment includes an outline describing the broad types of seller/renter conduct which will be considered discriminatory, and other actions which are not included in the definition of discrimination.

Discrimination includes refusal to permit reasonable modifications of premises for occupancy by persons with handicaps where those modifications are necessary for ready access and use, but in the case of rental dwellings, the renter must first agree to restore the premises, reasonable wear and tear excepted.

The refusal to make reasonable accommodations of policies, practices, rules, services or facilities connected with a sale or rental, when such accommodations are necessary to afford handicapped persons ready access and use, is also included in the definition of discrimination.

It is not, however, considered discriminatory under the amendments to refuse to make alterations at the expense of the housing supplier, or to refuse to modify rules, policies, practices, services or facilities where the modification would result in expense to the housing supplier, or in unreasonable inconvenience to other affected persons. Refusal to allow architectural changes or other building modifications is not discriminatory under the amendments if the change or modification would decrease a building's marketability or value, or alter the manner in which a building or its environs has been or is intended to be used.

The amendment also adds "handicap" as a prohibited basis of discrimination under other provisions of the Act, including Sections 804(c) (advertising), (d) (misrepresentation of availability of units) and (e) (block busting), 805 (financing), 806 (provision of brokerage services), and 901 (criminal prohibition against intimidation).

Enforcement by the Government

Section 6 is one of the bill's key amendments. It would augment Section 810 of the present law by authorizing HUD to refer a complaint to the Attorney General with the recommendation

that the Attorney General initiate a lawsuit for injunctive relief and civil penalties during or after HUD's investigation-conciliation process.

Section 810(a) of the Act currently requires that the Secretary investigate a complaint and give notice in writing to the aggrieved person whether he intends to resolve it within thirty days after receipt of the complaint or after expiration of a period of reference to a State or local fair housing agency. The thirty-day limitation is unrealistically short to permit adequate investigation of a complaint and an informed decision whether to attempt to resolve it by conciliation. Section 6(a) of the bill removes the thirty-day limitation, and Section 6(c) of the bill substitutes therefor a provision requiring the Secretary to make and give notice of his decision whether to resolve the complaint as promptly as possible and, so far as practicable, within 120 days after receiving the complaint or reactivating a complaint previously referred to a State or local agency. The provision is not intended to bar the Secretary from conducting further investigation after the determination to resolve and commencement of conciliation where considered necessary. The permission to defer the determination to resolve beyond 120 days where it is not practicable to do otherwise is intended to provide for unusual circumstances, such as where issuance and enforcement of subpoenas and interrogatories under Section 811 of the Act is required.

A new provision is added to Section 810(a) of the Act stating that a conciliation agreement may provide for binding

arbitration of the dispute arising from the complaint. Any such arbitration may result in the award of appropriate specific relief, including monetary relief, to the person aggrieved. The specification of such authority of the arbitrator is not intended to question the appropriateness of current practice of providing for specific relief, including monetary relief, in conciliation agreements.

Section 6(e) of the bill contains an amendment to Section 810(b) permitting the Secretary to join additional respondents as parties to a complaint where such persons are identified, in the course of investigation, as appropriate additional or substitute respondents. The Secretary must provide written notice of this action to any such new respondent.

Section 810(c), regarding referral of complaints to State or local agencies administering laws providing substantially equivalent rights and remedies, is revised to assure that State and local laws which have been recognized under current law will not lose such status (and, as a consequence, their rights to reimbursement for expenses under Section 816 of the Act) as a result of the amendments. The fair housing laws of 30 States and 40 localities have been recognized to date. The amendment would confirm HUD's practice since 1972 by providing that, as to remedies, a State or local agency will be certified if the authority of such agency to investigate and conciliate complaints is substantially equivalent to such authority granted to the Secretary, notwithstanding that the State or local law fails to provide a complainant with a judicial remedy. Current

regulations provide that the Secretary will recall referred complaints, pursuant to the recall authority granted by Section 810(b) of the Act, where the applicable State or local law fails to provide access to a State or local court and the complaint has not been satisfactorily resolved. Under current law, such recall by the Secretary recommences the statute of limitations for institution of private action by the complainant pursuant to Section 810(d). Following enactment of the amendments, recall of a previously referred complaint by the Secretary under such circumstances would permit the Secretary to pursue the enhanced enforcement procedures provided by the amendments. Thus, such enhanced procedures will be available as a back-up to State and local conciliation efforts as well as HUD conciliation.

The revisions to Section 810(c) reflect the position of investigation and conciliation as the key remedial procedure under the Act and the benefits of providing for the availability of this procedure at the most decentralized level where housing transactions occur and within the most ready access to complainants and respondents. The revisions also reflect, however, that the Fair Housing Act represents strong national civil rights policy for which Federal enforcement responsibility is important and not to be evaded or diluted. Accordingly, the amendment preserves the right of the Secretary under current law to reactivate a complaint referred to a State or local agency if the Secretary certifies that in his judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such

action. In the interests of according finality to informed dispositions of complaints by State and local agencies, the amendment provides that, in making the foregoing certification with respect to a complaint on which a final disposition by the State or local agency has been obtained, the Secretary is to accord substantial weight to the findings and conclusions made by the agency. The Secretary is barred from taking any further action where a conciliation agreement has been obtained.

In order to further assure the availability of enforcement of Federal rights to aggrieved persons, the amendment also provides that the complainant may obtain reactivation of a complaint by the Secretary where a final disposition has not been obtained within 90 days following referral to a State or local agency. However, the Secretary may defer active investigation of such a complaint so long as the Secretary believes, on the basis of consultation with the State or local agency, that the ongoing efforts of such agency are likely to result in satisfactory resolution of the complaint. It is intended that the term "final disposition" encompasses no cause determinations, conciliation agreements, enforceable consent orders, orders issued after hearing, and any other actions resulting in termination of the agency proceeding.

The amendment also provides that, as to substantive rights, an agency may be certified if the law it administers provides substantially equivalent protection against discriminatory housing practices based on race, color, religion, sex or national origin even if it does not provide such protection with respect

to discrimination based on handicap. Current HUD regulations permit recognition of a State or local law as providing substantially equivalent rights notwithstanding that the statute does not prohibit acts of discrimination based on sex, which was added as a basis of prohibited discrimination under the Fair Housing Act in 1974. In fact, all State and local laws which have been recognized contain adequate prohibitions against discrimination based on sex. The proposed amendment reflects a determination that the exception of sex discrimination is no longer necessary and, further, that prohibitions against sex discrimination in housing are essential to an effective and comprehensive State or local fair housing law. However, not all State or local laws currently recognized contain prohibitions against discrimination based on handicap. The amendment is intended to make clear that complaints based on other prohibitions may be referred to a State or local agency even if the State or local fair housing law administered by it does not prohibit discrimination based on handicap.

The amendment is not intended to otherwise limit the Secretary's judgment and discretion in determining whether a particular State or local law is sufficiently comprehensive in its prohibitions to be an effective instrument in carrying out and achieving the intent and purposes of the Act.

Section 6 extensively amends Section 810(d), dividing that subsection into six paragraphs:

Paragraph (1) provides for authority in the Secretary to refer cases to the Attorney General during HUD's investigation

stage where necessary for the purpose of seeking preliminary judicial relief pending final administrative disposition of a complaint. Any temporary restraining order or other order granting preliminary or temporary relief would be issued in accordance with Rule 65 of the Federal Rules of Civil Procedure.

Paragraph (2) provides basic authority for suits by the Attorney General on behalf of the United States where the Secretary, within thirty days after the notice of a decision to resolve, has not secured an acceptable conciliation agreement. If the Secretary wishes to refer the case to the Attorney General before the expiration of this thirty-day period, the Secretary must certify that conciliation has been attempted and that additional efforts are not likely to succeed.

Paragraph (3) authorizes the Secretary, in his or her sole discretion, to refer any case otherwise within the Secretary's jurisdiction for action by the Attorney General.

Paragraph (4) authorizes judicial enforcement by the Attorney General, upon referral from the Secretary, of conciliation agreements. The paragraph is explicit on the point that such an action should be in the nature of a suit to enforce a contract -- i.e., the court is not to look behind the agreement to examine the facts leading up to it. However, a special reservation allows the court reviewing an agreement to set it aside or modify it if any provision is "unconscionable or in derogation of the Constitution or laws of the United States".

Paragraph (5) authorizes U.S. District Courts, in actions brought by the Attorney General under Section 810, to assess up

to \$50,000 in civil penalties against any person or persons responsible for a violation of the Fair Housing Act. For any subsequent violation by the same respondent, a civil penalty may be assessed in an amount up to \$100,000. The purpose of the civil penalties is "to vindicate the public interest." The court is also authorized to award preventive relief, including a permanent or temporary injunction, restraining order, or other order, and may allow the prevailing party (other than the United States) a reasonable attorney's fee as part of the costs.

Paragraph (6) provides for a statute of limitations on enforcement actions filed by the Attorney General under Section 810 -- eighteen months following the alleged discriminatory housing practice or violation of a conciliation agreement. (The statute of limitations for filing a complaint with the Secretary is 180 days following the alleged discriminatory housing practice.)⁺

Because the basic thrust of an action by the Attorney General is to vindicate the public interest in assuring freedom from discrimination, the bill does not authorize intervention of right in the Attorney General's action by a private person aggrieved seeking redress for the violation. However, consolidation of private actions commenced under Section 812 with enforcement actions under Section 810 involving common questions of law and fact will be available under Rule 42 of the Federal Rules of Civil Procedure.

Under current law, Section 810(d) provides an independent basis for commencement of a private action by an aggrieved person

following inability of the Secretary to obtain voluntary compliance. Such actions are subject to a special, short statute of limitations and may not be brought in Federal Court if the person aggrieved has a judicial remedy under a State or local law providing substantially equivalent rights and remedies. It also is uncertain, under current law, whether an aggrieved person who commences suit under Section 810(d) may obtain damages as well as equitable relief. In view of separate amendments to Section 812 which expand the statute of limitations for suits brought under that Section and permit such suits to be brought without regard to whether a complaint has been filed with the Secretary or the status of such a complaint, the amendment eliminates the separate basis for private action under Section 810(d) as unnecessary.

Enforcement by Private Persons

Section 7 amends Sections 812(a) and (c) of the present law -- the private litigation provisions.

Section 812(a) is amended to:

1. extend the statute of limitations for private actions from 180 days to two years;
2. clarify that a private action may be filed whether or not a complaint has been filed with the Secretary, and without regard to the status of such a complaint;
3. make explicit the aggrieved person's separate cause of action to enforce the terms of a conciliation agreement;

4. provide that where the Secretary or a state or local agency has obtained a conciliation agreement, no separate civil action may be filed by the person aggrieved under Title VIII except for the purpose of enforcing the terms of the agreement.

Other features of present Section 812(a) are retained without substantive change. Section 812(b) is also undisturbed.

Revised Section 812(c) authorizes the court to grant as relief, as it deems appropriate, actual damages, any permanent or temporary injunction, temporary restraining order, and other relief, including punitive damages. As under current law, "actual damages" recoverable as a result of a discriminatory housing practice are intended to include intangible damages, such as emotional distress and humiliation, as well as out-of-pocket costs. See Jeanty v. McKay & Poague, Inc., 496 F.2d 1119 (1974); Steele v. Title Realty Co., 478 F.2d 380 (10th Cir. 1973). The dollar limit on punitive damages is removed -- leaving the amount of such damages to the discretion of the court -- and the attorney's fee clause is adjusted to follow the format of the Civil Rights Attorney's Fee Awards Act, 42 U.S.C. 1988. (A comparable attorney's fee provision appears in amended Section 810(d).) Under current law, an attorney's fee may be awarded only to a prevailing plaintiff and only if the court finds that the plaintiff is financially unable to assume such fee.

A new Section 812(d) is added to the Act, providing that the Attorney General may intervene in any private civil action

brought under Section 812, if the Attorney General certifies that the case is of general public importance. Upon such intervention, the Attorney General may obtain such equitable and declaratory relief as may be appropriate.

Special Jurisdiction of the Attorney General

To augment the new litigation authority for the Attorney General contained in revised Section 810(d) of the Act, the bill provides in Section 8 for amendments to the Attorney General's existing enforcement powers contained in Section 813 of the present law. In addition to the existing authority of the United States to sue for injunctive relief, the court is empowered in an action brought under Section 813 to assess a civil penalty, "to vindicate the public interest," of up to \$50,000 against a respondent found to have violated the statute and to assess a penalty of up to \$100,000 for a subsequent violation by the same respondent.

Technical and Conforming Amendments

Section 9 contains a series of technical and conforming amendments. They include confirmation of the authority of the Secretary to enforce an interrogatory, as well as a subpoena, under Section 811. Section 10 adds "handicap" as a protected class under Title IX of the Civil Rights Act of 1968, which imposes criminal penalties for intimidating or interfering with any person in the exercise of rights protected by the Fair Housing Act.

Applicability

Section 11 provides that the new enforcement powers set out in the bill shall be applicable to pending complaints, and provides that the bill's revised time requirements shall not be construed to shorten the time for filing a civil action with regard to complaints filed before the Amendments Act's effective date. This latter provision is necessary because, under court decisions, some complainants have been permitted to file suits very late where the Secretary's case-closing letter was received beyond the 180-day statutory filing period.

MEMORANDUM

JGR only
HOUSING
DISCRIMINATION

THE WHITE HOUSE

WASHINGTON

January 31, 1983

FOR: FRED F. FIELDING
FROM: JOHN G. ROBERTS *JGR*
SUBJECT: Fair Housing

Stan Morris has transmitted the attached fact sheet on fair housing in response to a request from Richard Hauser. The fact sheet notes that since the Administration took office, the Department of Justice has:

- undertaken 130 housing discrimination investigations;
- obtained 8 criminal indictments;
- filed 3 "pattern and practice" suits (against the town of Cicero, Illinois and apartment complex owners in Boston and Detroit);
- argued (and won) a major housing discrimination case in the Supreme Court (Havens Realty).

It also indicates that several consent decrees have been negotiated and that over a dozen potential lawsuits may reach the litigation stage within the next six months. With respect to legislative activity, the fact sheet simply notes that the revision of the Fair Housing Act will be before Congress this session, and that Justice is working with HUD to review various proposals.

I think it is important, as the storm clouds gather over the issue of housing discrimination legislation, to recall what Mark Twain said of the cat who sat on a hot stove lid. The cat will never sit on a hot stove lid again, but it will also never sit on a cold one. The fact that we were burned last year because we did not sail in with new voting rights legislation does not mean we will be hurt this year if we go slowly on housing legislation. Government intrusion (though, e.g., an "effects test") quite literally hits much closer to home in this area than in any other civil rights area. The Administration should have its positions in order - and even some proposed reforms ready - but I do not think there is a need to concede all or many of the controversial points (effects test, national administrative remedy) to preclude political damage.

**WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET**HS☐ **O - OUTGOING**☐ **H - INTERNAL**☐ **I - INCOMING**Date Correspondence
Received (YY/MM/DD) 1 1Name of Correspondent: Stanley E. Morice☐ **MI Mail Report**

User Codes: (A) _____ (B) _____ (C) _____

Subject: Fact Sheet on Fair Housing**ROUTE TO:****ACTION****DISPOSITION**

Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>W Holland</u>		ORIGINATOR	<u>83101127</u>			<u>1 1</u>
		Referral Note:				
<u>WAT 18</u>		<u>A</u>	<u>83101127</u>			<u>1 1</u>
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United States Department of Justice
ASSOCIATE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

JAN 25 1983

Roberts

121619 *CU*

January 25, 1983

MEMORANDUM FOR: Richard A. Hauser
Deputy Counsel to the
President
FROM: Stanley E. Morris
Associate Deputy Attorney General

I am enclosing a fact sheet on fair housing which you requested yesterday. It outlines what our policies have been and some products of our litigation. It is general regarding our position on fair housing legislation because we will need to maintain some flexibility until we have determined what the situation is on the "Hill".

If you have any questions, call me or Brad Reynolds.

cc: Edward C. Schmults
Brad Reynolds



HOUSING DISCRIMINATION ENFORCEMENT FACT SHEET

January 20, 1981 to December 31, 1982

The President and the Attorney General have committed this Administration to the full and fair enforcement of the civil rights laws. The right of equal opportunity to housing without regard to race, creed, color, national origin or handicap, is central to our concerns. This fact sheet is intended to set forth information concerning the Administration's enforcement of nondiscrimination in housing, with an emphasis on the efforts of the Civil Rights Division of the Department of Justice.

I. Litigation Activity

A. Approximately 130 investigations of alleged discrimination in housing have been undertaken since the beginning of this Administration.

B. Indictments in eight cases have been obtained which charge criminal interference with housing rights on the basis of race.

C. Three systemic, or "pattern and practice," suits have been filed alleging racial discrimination in housing. We recently filed suit against Cicero, Illinois, charging the town with unlawful housing and employment discrimination. The complaint alleged that Town officials

had harassed black persons trying to move into the community and that, for explicitly racial reasons, the Town refused to participate in the Community Development Block Grant program.

We have also filed two suits against large apartment complex owners in the Boston area and in the Detroit suburbs. Additional actions will be filed in the near future. Over a dozen potential lawsuits are being actively investigated by the Civil Rights Division, and many of those are likely to be recommended for litigation within the next six months.

D. Negotiations in several cases have led to consent decrees designed to remedy previous violations and bring an end to discriminatory conduct.

E. The Department of Justice has received additional referrals of pattern and practice complaints from the Department of Housing and Urban Development which are currently under active investigation.

F. In the Havens Realty case we successfully argued in the Supreme Court that "testers" should be granted standing to challenge discrimination in the sale, rental or financing of housing, thus increasing the effectiveness of enforcement of anti-discrimination laws in the housing area.

G. In the City of Birmingham case, we are arguing in the Court of Appeals for the Sixth Circuit that officials who clearly and demonstrably act in response to the racially motivated desires of their constituents with respect to housing decisions are guilty of discriminatory conduct.

II. Legislative Activity

Revision of the Fair Housing Act will be before the Congress this session, and the Department has been actively working with the Department of Housing and Urban Development and others in the Administration on the various legislative proposals currently under consideration.

In this regard, consideration is being given to specific amendments to the existing law that are designed, among other things, to enhance the statute's enforcement provisions, expand its coverage in several particulars and address the current exemptions from Title VIII liability. We are reviewing the different alternatives that have been proposed and anticipate being in a position shortly to announce an Administration position with regard to fair housing legislation.

THE WHITE HOUSE
WASHINGTON

May 18, 1983

MEMORANDUM FOR CRAIG L. FULLER
ASSISTANT TO THE PRESIDENT
FROM: FRED F. FIELDING *Orig. signed by FFF*
COUNSEL TO THE PRESIDENT
SUBJECT: Fair Housing Amendments Act of 1983

Counsel's Office has received the Cabinet Council on Legal Policy materials on the above-referenced subject. Based on the limited amount of time for review, we see no legal objections.

FFF:JGR:aw 5/18/83

cc: FFFielding
✓ JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

May 18, 1983

MEMORANDUM FOR CRAIG L. FULLER
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
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WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) 1 / 1Name of Correspondent: William French Smith☐ MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Fair Housing Amendments Act of 1983

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CUH011</u>	ORIGINATOR	<u>830518</u>			<u>1 / 1</u>
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<u>CUAT18</u>	<u>D</u>	<u>830518</u>		<u>S</u>	<u>830518</u> <u>10.00 am</u>
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Office of the Attorney General
Washington, D. C. 20530

May 17, 1983

MEMORANDUM

TO: The Cabinet Council on Legal Policy

FROM: William French Smith, *WFS*
Attorney General *SRP*

Samuel R. Pierce, Jr.
Secretary of Housing and
Urban Development

SUBJECT: Fair Housing Amendments Act of 1983

I. Introduction

The Fair Housing Amendments Act of 1983 would significantly strengthen the enforcement provisions of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968) and extend limited protection under the Act to the mentally and physically handicapped. The bill was drafted jointly by, and reflects agreement between, the Department of Justice and the Department of Housing and Urban Development. Sponsorship of the bill would demonstrate the Administration's commitment to strengthened enforcement of the nation's fair housing laws and would constitute a commendable initiative on the part of the Administration in the civil rights area.

The Fair Housing Act was enacted 15 years ago. While there has been a broad consensus regarding the need for the Act, its enforcement mechanism has been the subject of recurring criticism. The statutory process relies primarily upon conciliation, which, in principle, is still regarded as the most desirable method of resolving fair housing complaints. However, without any power to back up its conciliation efforts, HUD is unable to get respondents to take the conciliation process seriously. Thereafter, except in the "pattern or practice" cases that can be referred to the Attorney General, it is up to the private complainant to pursue the matter in court. As former HUD Secretary Carla Hills stated, "the present law, in relying upon conciliation, is an invitation to intransigence."

The President acknowledged this defect in current law in his State of the Union address, and pledged to take action:

"Effective enforcement of our Nation's fair housing laws is . . . essential to answering equal opportunity. In the year ahead, we will work to strengthen enforcement of fair housing laws for all Americans."

The proposed bill would give credibility and effectiveness to the conciliation process by giving the Secretary recourse to another enforcement mechanism if conciliation fails. The bill would provide that the Secretary of HUD, upon failure of conciliation, could recommend to the Attorney General that the United States file suit for equitable relief or a civil penalty or both.

II. Existing Law

A. Enforcement Provisions

The Fair Housing Act currently provides three alternative enforcement procedures. First, Section 810 of the Act provides that any person who has been or who believes that he or she will be injured by a discriminatory housing practice may file a written complaint with HUD. ^{1/} HUD is authorized to seek an end to the discriminatory practice through "conference, conciliation, and persuasion." If HUD is unable to secure voluntary compliance with the law within thirty days of the filing of the complaint, the aggrieved party may file a civil action.

Alternatively, an injured individual may file suit directly in federal court pursuant to section 812 of the Act, without first having filed a complaint with HUD or with a state or local agency. A plaintiff may obtain an injunction, actual damages, a maximum of \$1,000 in punitive damages, and court costs. The court may award reasonable attorney's fees to a prevailing plaintiff only in cases of financial need.

^{1/} If either state or local laws provide substantially equivalent rights and remedies to the aggrieved party, the Secretary must refer the complaint to the state or local agency for conciliation. If the state does not commence proceedings within thirty days or if, in the Secretary's judgment, it is not acting with reasonable promptness, then the Secretary may reenter the case.

Finally, Section 813 of the Act authorizes the Justice Department to initiate a civil action against any person who has engaged in a pattern or practice of discriminatory housing activities, or against any person responsible for denying a group rights granted by Title VIII if such denial raises an issue of general public importance. The Attorney General is not authorized to file suits to redress individual complaints of discrimination and is not authorized to intervene in private Title VIII litigation.

B. Protection of the Handicapped

The Fair Housing Act currently prohibits discrimination based upon race, color, religion, sex, or national origin, but does not prohibit discrimination against the handicapped.

III. Proposed Administration Bill

A. Enforcement Provisions

The proposed bill would strengthen the enforcement provisions of the Fair Housing Act in several ways:

- (1) The bill would authorize the Secretary, upon his determination not to continue conciliation attempts, to refer a complaint to the Attorney General with a recommendation that he commence an action in federal district court for equitable relief or for a civil penalty. The referral may be made at any time more than 30 days after notification to the parties of the Secretary's decision to attempt to resolve the complaint if an acceptable conciliation agreement has not been obtained, or prior thereto if the Secretary certifies that conciliation has been attempted and additional efforts are considered unlikely to be successful. The bill authorizes the court to impose a civil penalty of up to \$50,000 for initial violations and up to \$100,000 for subsequent violations, "to vindicate the public interest."
- (2) The bill would authorize the Attorney General to intervene in private fair housing suits of general public importance.
- (3) The bill would strengthen HUD's investigation and conciliation authority by confirming HUD's authority to issue interrogatories to respondents, permitting conciliation agreements to provide for binding arbitration with power in the arbitrator to award both specific and monetary relief, and empowering the Attorney General to seek judicial enforcement of conciliation agreements.

- (4) The bill would promote private enforcement by extending the statute of limitations from 180 days to two years, eliminating the current \$1,000 limit on punitive damages, and permitting awards of attorneys' fees to prevailing parties irrespective of financial need. (This would conform the Fair Housing Act to the Civil Rights Attorneys' Fee Awards Act.)
- (5) The bill would authorize the Attorney General, upon referral from the Secretary, to seek appropriate preliminary or temporary judicial relief pending final disposition of an administrative complaint.

B. Protection of the Handicapped

The proposed bill would also extend the protection of the Fair Housing Act to handicapped persons, with certain limitations. Section 4(b) of the bill defines "handicap" to mean:

. . . . (1) a physical or mental impairment which substantially limits one or more of [a] person's major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment; but such term does not include any current impairment that consists of alcoholism or drug abuse, or any other impairment that would be a direct threat to the property or the safety of others.

The most notable aspects of this definition are that it includes both physical and mental impairments, and that it excludes any current impairment that consists of alcoholism or drug abuse.

Section 5(a) of the proposed bill defines unlawful "discrimination" for purposes of the provisions protecting the handicapped. "Discrimination" includes refusal to permit reasonable modification of premises to afford handicapped persons "ready access to and use of premises," but only if (1) such modification entails no expense to the provider of housing; (2) in the case of a rental, the handicapped person agrees to restore the premises to their original condition; and (3) the modification would not decrease the marketability or value of a building or alter the building's use or intended use. "Discrimination" also includes a refusal to make reasonable modifications in policies, practices, rules, services, or facilities necessary to afford handicapped persons "ready access to and use of dwellings," except where such modification would result in (1) expenses to providers of housing; or (2) unreasonable inconvenience to other affected persons.

IV. Related Legislation

A. 1980 Fair Housing Legislative Efforts

The Fair Housing Act has not been significantly amended since its enactment in 1968. In 1980, the House passed a bill (H.R. 5200) which sought to strengthen enforcement mechanisms under the Act, in part by empowering HUD to initiate administrative actions before administrative law judges and authorizing the Department of Justice to bring housing discrimination suits on behalf of individuals. H.R. 5200 would also have extended the protections of the Act to handicapped persons (not including those whose impairment was related to alcohol or drug abuse or endangered public safety or property).

H.R. 5200 was not enacted by the Senate for several reasons. Senator Hatch was insistent that the bill contain a provision requiring proof of intent to discriminate in cases brought under the Act. Senators Hatch and Thurmond also objected to the proposed administrative enforcement mechanism.

B. Pending Legislative Proposals

There are other fair housing bills that will be considered by this Congress.

1. Mathias Bill (S. 1220)

On May 5, 1983, Senator Mathias and a bipartisan group of approximately 40 co-sponsors introduced S. 1220. This bill is supported by the Leadership Conference on Civil Rights, and, along with the Administration proposal, will be the focus of congressional and public consideration. S. 1220 would improve enforcement of the Act by strengthening the enforcement authority of the Attorney General but also by establishing a system of administrative law judges to be selected by a presidentially-appointed three-member Fair Housing Review Commission. The ALJs, whose final orders would be reviewable by a court of appeals under the "substantial evidence" test, could provide equitable and declaratory relief, compensatory damages, reasonable attorney and expert witness fees, and civil penalties up to \$10,000. In addition, S. 1220 would extend the Act's protection to the mentally and physically handicapped and to families with children; make the Act explicitly applicable to property and mortgage insurers, real estate appraisers, and mortgage purchasers; and require that HUD promulgate substantive regulations under the Act within six months.

The principal contrast between the proposed Administration bill and the Mathias bill lies in the Mathias bill's establishment of an administrative enforcement mechanism to

supplement judicial enforcement. We believe that the Administration proposal is a superior alternative for these reasons:

(a) We believe that a civil penalty remedy is crucial. It removes reliance upon the continued interest of an individual complainant in continuing to press a complaint after alternative housing may have been obtained, and where the likelihood of substantial compensatory damages is not great. We also consider it preferable to placing the Attorney General in a parens patriae position, attempting to establish compensatory damages for individuals, because of the clear character of a civil penalty as vindicating the public interest. However, any system permitting imposition of a civil penalty by politically appointed administrative law judges will be resisted politically (as it was in 1980) and raises constitutional questions as well.

(b) A stated objective of both proposals is speedy disposition. The administrative law judge system proposed by the Mathias bill entails review of the ALJ's decision by the Fair Housing Commission (if either the complainant or the respondent so elects) and by the U.S. Court of Appeals. Moreover, even if administrative assessment of a civil penalty is affirmed, the Attorney General must bring a civil action to collect it. This system will only lengthen the enforcement process, not shorten it. A respondent unwilling to take conciliation seriously is unlikely to be any more responsive in the preliminary stages of such an administrative proceeding.

(c) Establishment of an administrative law judge system and a Fair Housing Review Commission will mean an additional layer of bureaucracy. This is particularly undesirable when the extent to which the system will be utilized is speculative because of (1) uncertainty regarding the extent of referrals to State and local agencies and (2) the discretion of the Secretary of HUD under the Mathias bill to refer an unresolved complaint either to the administrative law system or to the Attorney General for judicial enforcement.

2. Hatch Bill (S. 140)

On January 26, 1983, Senator Hatch introduced S. 140, which differs substantially from the proposed Administration bill. Among other things, S. 140 would provide that an action is prohibited by the Act only if it is taken with the intent of discriminating; transfer conciliation authority from the Department of HUD to the Department of Justice; limit the definition of "handicap" to physical impairments; provide limited protection against discrimination by appraisers of real estate; and require discrimination charges to be referred to state or local fair housing agencies in a greater number of cases.

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) 1 / 1Name of Correspondent: William French Smith☐ MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Fair Housing Amendments Act of 1983

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>WH011</u>	ORIGINATOR	<u>8310518</u>			<u>1 / 1</u>
	Referral Note:				
<u>WH018</u>	<u>D</u>	<u>8310518</u>		<u>S</u>	<u>8310518</u> <u>10:00 am</u>
	Referral Note:				
		<u>1 / 1</u>			<u>1 / 1</u>
	Referral Note:				
		<u>1 / 1</u>			<u>1 / 1</u>
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ACTION CODES:

A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet
to be used as Enclosure

I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

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Office of the Attorney General

Washington, D. C. 20530

MAY 18 1983

TO: The Cabinet Council on Legal Policy

FROM: William French Smith *WFS*
Attorney General

Samuel R. Pierce, Jr. *SRP*
Secretary of Housing
and Urban Development

SUBJECT: Fair Housing Amendments Act of 1983

Attached is a revised fair housing bill that reflects two minor changes from the prior bill. The Department of Justice and H.U.D. have agreed on the changes.

The first change would amend Section 810(c) of the Fair Housing Act, which deals with the referral of complaints to state and local agencies. It would prevent the loss of certification by state and local agencies that have been certified to date as providing substantially equivalent rights and remedies as the Fair Housing Act.

This scheme is more effective than that proposed by Senators Kennedy and Mathias (S. 1220) and should be preferred by existing state agencies that would be put out of business by S. 1220. That bill requires, for complaints to be referred, that states or localities have a complete mechanism comparable to the entire federal scheme, including investigation, conciliation, administrative enforcement (including damages and civil penalties), and judicial review of administrative enforcement.

The second change would retain the existing provision requiring courts to expedite cases under the Act. The abolition of civil priorities is the subject of separate, comprehensive legislation.

A BILL

To amend title VIII of the Act commonly referred to as the Civil Rights Act of 1968 to provide the Secretary of Housing and Urban Development and the Attorney General with additional authority to enforce rights to fair housing, and for other purposes.

Be it enacted by the Senate and House of Representatives
of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Fair Housing Amendments Act of 1983".

SHORT TITLE FOR 1968 ACT

SEC. 2. The Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by inserting immediately after the comma at the end of the enacting clause the following: "That this Act may be cited as the 'Civil Rights Act of 1968'.".

SEC. 3. Title VIII of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by inserting immediately after the title's catchline the following new section:

"SHORT TITLE

"SEC. 800. This title may be referred to as the 'Fair Housing Act'.".

DEFINITIONS

SEC. 4. Section 802 of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended --

(a) by striking out "or 806." in subsection (f) and inserting in lieu thereof "806, or 816."; and

(b) by adding at the end thereof the following new subsections:

"(h) 'Conciliation' means the resolution of issues raised by a complaint and its investigation, through informal negotiations involving the person aggrieved, the respondent and the Secretary.

"(i) 'Conciliation agreement' means a written record, executed by the person aggrieved and the respondent and approved by the Secretary, setting out the terms under which the issues raised by a complaint and its investigation have been resolved.

"(j) 'Respondent' includes the person named in a complaint, or any other person identified in the course of investigation as a person who participated in, or was responsible for, an alleged discriminatory housing practice.

"(k) 'Handicap' means, with respect to a person, (1) a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment; but such term does not include any current impairment that consists of alcoholism or drug abuse, or any other impairment that would be a direct threat to the property or the safety of others."

DISCRIMINATION AGAINST THE HANDICAPPED

SEC. 5. Section 804 of such Act is amended --

(a) by adding the following after subsection (e):

"(f)(1) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, a dwelling to any person because of a handicap of a prospective buyer or renter or of any person associated with such buyer or renter unless such handicap would prevent a prospective dwelling occupant from complying with such rules, policies, and practices as are permitted by paragraph (2) of this subsection.

"(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of handicap. For purposes of this paragraph--

"(A) discrimination includes--

"(i) refusal to permit reasonable modifications of premises occupied, or to be occupied, by persons with a handicap which are necessary to afford such handicapped persons ready access to and use of premises, but in the case of a rental, no modification need be permitted unless the renter first agrees to restore the premises to the condition which existed before such modification, reasonable wear and tear excepted; and

"(ii) refusal to make reasonable modifications in policies, practices, rules, services, or facilities when such modifications are necessary to afford handicapped persons ready access to and use of dwellings; and

"(B) discrimination does not include--

"(i) refusal to make alterations in premises at the expense of sellers, landlords, owners, brokers, building managers, or persons acting on their behalf;

"(ii) refusal to modify generally applicable rules, policies, practices, services, or facilities where such modification would result in expense to sellers,

landlords, owners, brokers, building managers, or persons acting on their behalf or unreasonable inconvenience to other affected persons; or

"(iii) refusal to allow architectural changes to, or modifications of, buildings which would decrease the marketability or value of a building or alter the manner in which a building or its environs has been, or is intended to be, used.";

(b) by inserting "handicap," immediately after "sex," each place it appears in section 806, and subsections (c) and (d) of section 804 of such Act.

ENFORCEMENT BY THE GOVERNMENT

SEC. 6. Section 810 of such Act is amended--

(a) by striking out "Within thirty days after receiving a complaint, or within thirty days after the expiration of any period of reference under subsection (c), the" in subsection (a) and inserting in lieu thereof "The";

(b) by adding after "person aggrieved" in the fourth sentence of subsection (a) the phrase "and to the respondent";

(c) by adding the following at the end of subsection (a): "A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any arbitration that results from a conciliation agreement under this section may award appropriate specific relief, including monetary relief, to the person aggrieved."

(d) by adding the following after the third sentence in subsection (b):

"A person who is not named in a complaint, but who is identified in the course of investigation as a respondent, may be joined as an additional or substitute respondent by means of written notice from the Secretary. Such notice shall set out the procedural rights and obligations of respondents and shall explain the basis for the Secretary's belief that the person to whom the notice is addressed is properly joined as a respondent. The notice shall be accompanied by a copy of the original complaint."; and

(e) by striking out subsection (c) and inserting the following in lieu thereof:

"(c) Whenever a complaint alleges a discriminatory housing practice which appears to constitute a violation of a State or local fair housing law within the jurisdiction of a State or local public agency which has been certified by the Secretary under this subsection, the Secretary shall refer such complaint to such agency and shall take no further action with respect to such complaint if the appropriate State or local agency has, within thirty days from the date of referral, commenced proceedings in the matter and, having done so, carries forward such proceedings with reasonable promptness. In no event

shall the Secretary take further action unless he certifies that in his judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action. An agency may be certified under this paragraph if the Secretary determines that the substantive rights protected by such agency are substantially equivalent to such rights protected by this title (provided that an agency may be certified with respect to discriminatory housing practices based on race, color, religion, or national origin notwithstanding that the agency does not provide substantially equivalent protection against discriminatory housing practices based on sex or handicap) and that the authority of such agency to investigate and conciliate complaints is substantially equivalent to such authority granted to the Secretary by and under this title."

(f) by striking out subsection (d) and inserting in lieu thereof the following:

"(d)(1) Whenever a complaint is filed with the Secretary, or whenever the Secretary is taking further action on a complaint previously referred to a State or local fair housing agency pursuant to subsection (c) of this section, and the Secretary determines on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this title, the Secretary may refer

the matter to the Attorney General with a recommendation that a civil action be filed on behalf of the United States for appropriate temporary or preliminary relief pending final disposition of the complaint by the Secretary. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with Rule 65 of the Federal Rules of Civil Procedure.

"(2) If within thirty days after notification to a respondent of the Secretary's decision to resolve a complaint, the Secretary has not secured an acceptable conciliation agreement, the Secretary may at any time thereafter refer the matter to the Attorney General with a recommendation that a civil action be filed on behalf of the United States. Nothing in this paragraph shall prevent the referral of a complaint to the Attorney General before the expiration of thirty days after notification of the Secretary's decision to resolve a complaint, if the Secretary certifies that conciliation of the complaint has been attempted and that additional efforts are considered unlikely to be successful.

"(3) The Secretary, in the Secretary's sole discretion, may refer any matter otherwise within the Secretary's jurisdiction under this title to the Attorney General with a recommendation that appropriate action be taken.

"(4) Whenever the Secretary has reasonable cause to believe that a respondent has failed to comply with a conciliation agreement, the Secretary may refer the matter to the Attorney

General with a recommendation that a civil action be filed on behalf of the United States for the enforcement of the terms of the agreement in an appropriate district court. In any proceeding brought under this paragraph, the petition for enforcement shall include a true copy of the conciliation agreement, and the court's inquiry shall be limited to interpretation of the agreement's terms and to factual issues concerning the nature and extent of the respondent's alleged failure to comply with the agreement. Nothing in this paragraph shall prevent the court from setting aside or modifying any provision of a conciliation agreement upon a finding that the provision is unconscionable or in derogation of the Constitution or laws of the United States.

"(5) Actions may be brought under this section in any appropriate United States district court. If the court finds that the respondent has engaged or is about to engage in a discriminatory housing practice, the court may award such preventive relief, including a permanent or temporary injunction, restraining order, or other order, against the person or persons responsible for a violation of this title as is necessary to insure the full enjoyment of the rights granted by this title, and may assess a civil penalty against the respondent in an amount not exceeding \$50,000, and for any subsequent violation by such respondent may assess a civil penalty in an amount not exceeding \$100,000, to vindicate the public interest. The court may allow the prevailing

party (other than the United States) a reasonable attorney's fee as part of the costs.

"(6) Actions brought under this section shall be commenced within eighteen months after the alleged discriminatory housing practice or failure to comply with a conciliation agreement occurred."

ENFORCEMENT BY PRIVATE PERSONS

SEC. 7. Section 812 of such Act is amended--

(a) by striking out subsection (a) and inserting in lieu thereof the following:

"(a)(1) The rights granted by sections 803, 804, 805, 806, and 816, as well as the rights created by a conciliation agreement, may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within two years after the alleged breach of the conciliation agreement or the alleged discriminatory housing practice occurred.

"(2) A civil action may be filed without regard to whether a complaint has been filed with the Secretary pursuant to section 810(a) and without regard to the status of any such complaint filed with the Secretary, but where the Secretary or a State or local agency has obtained a conciliation agreement, no action may be filed under this section by the

person aggrieved except for the purpose of enforcing the terms of such an agreement.

"(3) The court may continue a civil action brought pursuant to paragraph (1) of this subsection from time to time before bringing it to trial if the court believes that the on-going efforts of the Secretary or of a State or local agency to obtain conciliation are likely to result in satisfactory settlement of the discriminatory housing practice which forms the basis for the action in court.

"(4) Any sale, encumbrance, or rental consummated prior to the issuance of any court order issued under the authority of this title, and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the filing of a complaint or civil action under the provisions of this title shall not be affected."

(b) by striking out subsection (c) and inserting in lieu thereof the following:

"(c) The court may grant as relief, as it deems appropriate, actual damages, any permanent or temporary injunction, temporary restraining order, and other relief, including punitive damages, and may allow the prevailing party a reasonable attorney's fee as part of the costs.";

(c) by adding the following after subsection (c):

"(d) Upon timely application, the Attorney General may intervene in such civil action, if the Attorney General certifies that the case is of general public importance. Upon such intervention the Attorney General may obtain such equitable and declaratory relief as may be appropriate."

SEC. 8. Section 813 of such Act is amended by striking out subsection (a) and inserting the following in lieu thereof:

"(a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title, or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance, the Attorney General may bring a civil action in an appropriate United States district court.

"(b) The court may award such preventive relief, including a permanent or temporary injunction, restraining order, or other order against the persons or persons responsible for a violation of this title as is necessary to insure the full enjoyment of the rights granted by this title. The court may assess a civil penalty against the respondent in an amount not exceeding \$50,000, and for any subsequent violation by such respondent may assess a civil penalty in an amount not exceeding \$100,000, to vindicate the public interest."

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 9. (a) Section 803 of such Act is amended --

(1) by striking out the words "EFFECTIVE DATES" in the caption and inserting in lieu thereof the word "APPLICABILITY";

(2) by striking out subsection (a) and inserting in lieu thereof the following:

"(a) The prohibitions against discrimination in the sale or rental of housing set forth in section 804 shall apply to all dwellings except as exempted by subsection (b) of this section and by section 807."; and

(3) by striking out "section 804 (other than subsection (c))" in the opening clause of subsection (b) and inserting in lieu thereof "subsections (a), (b), (d), or (f) of section 804".

(b) Section 804 of such Act is amended by striking out "As made applicable by section 803 and except" and inserting in lieu thereof "Except".

(c) Sections 805 and 806 of such Act are amended by striking out "After December 31, 1968, it" in each such section and by inserting in lieu thereof in each such section "It".

(d) Section 810(e) of such Act is amended by striking out the word "complainant" and inserting in lieu thereof "plaintiff".

(e) Section 810(f) of such Act is amended to read as follows:

"(f) Whenever, prior to the conclusion of conciliation efforts by the Secretary, an action filed pursuant to section 812 or 813 shall come to trial, the Secretary shall immediately terminate all efforts to resolve such complaint by informal methods."

(f) Section 811(e) of such Act is amended to read as follows:

"(e) In case of contumacy or refusal to obey a subpoena or to answer an interrogatory, a petition for enforcement may be filed in the United States district court for the district in which the person to whom the subpoena or interrogatory was addressed resides, was served, or transacts business."

(g) Section 811(f) is amended --

(1) by striking out the word "or" after the words "the subpoena" and inserting in lieu thereof the phrase ", interrogatory or other"; and

(2) by striking out the phrase "his subpoena" and inserting in lieu thereof "the Secretary's subpoena, interrogatory".

(h) Section 817 of such Act is amended by striking out the last sentence.

(i) Section 815, 816, 817, 818, and 819 of such Act, and all references thereto, are redesignated as sections 814, 815, 816, 817, and 818, respectively.

APPLICABILITY

SEC. 10. The amendments made by this Act shall be applicable to complaints pending before the Secretary, to complaints heretofore referred to State or local agencies pursuant to Section 810(c) of Public Law 90-284 and pending on the date of enactment of this Act, and to all complaints initiated, filed or referred thereafter, but nothing in this Act shall be construed to shorten the time for filing a civil action pursuant to this title with regard to any complaint filed with the Secretary, or referred to a State or local agency, prior to the effective date of this Act.